

**AGREEMENT**

between

**Cruzan VIRIL, Ltd.**

and

**Government of the United States Virgin Islands**

**Dated October 6, 2009**

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## **AGREEMENT**

**THIS AGREEMENT** (this "Agreement"), dated October 6, 2009, is made by and between Cruzan VIRIL, Ltd. ("Cruzan") and the Government of the United States Virgin Islands (the "Government"). The Government and Cruzan are sometimes collectively referred to as the "Parties" and individually as a "Party".

## **RECITALS**

### **A. Government Recitals**

**WHEREAS** the Government is committed to promoting the growth, development and diversification of the economy of the United States Virgin Islands (the "Virgin Islands" or the "Territory"); to benefiting the people of the Virgin Islands by developing to the fullest possible extent the human and economic resources available therein; to promoting capital investment for the economic development of the Virgin Islands; to establishing and preserving opportunities for skilled jobs for residents of the Virgin Islands; and to enhancing the business climate in the Virgin Islands, all of which purposes and objectives are declared to be in the public interest; and

**WHEREAS** the Government is interested in promoting a greater measure of economic self-sufficiency and autonomy, especially in light of the continuing international economic recession; and

**WHEREAS** the Government is interested in promoting economic growth and stability by generating revenue sufficient to support bond financing for capital investment throughout the Virgin Islands; and

**WHEREAS** the Government is committed to increasing employment opportunities and improving economic conditions on St. Croix and throughout the Virgin Islands; and

**WHEREAS** the Territory faces several challenges with significant financial impacts, which challenges have been exacerbated by the continuing global economic recession, including, but not limited to, the unfunded liability of the Government Employees Retirement System ("GERS"), retroactive pay obligations, unfunded healthcare costs, and the costs of operating and closing solid waste landfills; and

**WHEREAS** to these ends, the Government made a conscious decision to utilize the tools at its disposal through federal and territorial law to develop the rum production industry in the Territory; and

**WHEREAS** Cruzan and its predecessor companies have been producing bulk and branded rums, including Cruzan Rum, the Virgin Islands' leading branded rum, in St. Croix, Virgin Islands for over 70 years, and in the past 10 years has had five different owners; and

**WHEREAS**, there is no long-term written agreement currently between the Government and Cruzan that would ensure the continued production of Cruzan Rum and other rums in St. Croix, Virgin Islands, and the Government deems it important historically, culturally and economically to the Virgin Islands to ensure such continued rum production; and

**WHEREAS** the Government, is aware that the existing Cruzan distillery on St. Croix, Virgin Islands (the "Cruzan Distillery") has had wastewater treatment concerns that have impacted the production capacity of Cruzan, and the Government is committed to assisting Cruzan in financing the development of an environmentally sound wastewater treatment plant at the distillery; and

**WHEREAS** the Government currently provides significant statutory incentives for the attraction and support of rum production facilities in the Territory, including the following:

- A Molasses Subsidy Fund and other molasses subsidies to assist distillers engaged in the processing of molasses into rum within the Virgin Islands (33 V.I.C. § 3036);
- Statutorily provided marketing support payments designed to support the long-term growth of branded rum products to build a stable long-term rum industry;
- Rum production incentives on bulk rum products to sustain the Virgin Islands bulk rum production industry in the face of international challenges in that industry;
- Statutory exemptions on property, excise, gross receipts and Income Taxes and other local Tax incentives; and
- Environmental mitigation support; and

**WHEREAS** the Government is entering into a long-term public-private relationship with Cruzan to advance the Government's aforementioned purposes; and

**WHEREAS** the improvement, renovation, upgrading, and expansion of the existing Cruzan distillery is intended to generate substantial new revenues, including new Cover Over Revenues, that will enable the Government to support economic self-sufficiency and fiscal autonomy as well as capital investment and economic stability throughout the Virgin Islands; and

**WHEREAS** the development of an expanded and improved Cruzan Distillery is intended to strengthen the Virgin Islands rum industry ("Virgin Islands Rums"), may induce Cruzan to develop additional brands of rums, and provide the Government with the financial flexibility to provide needed support to said industry; and

**WHEREAS** the Government and Cruzan desire to memorialize their public-private relationship by this Agreement and to provide a project finance structure in which the revenues that will be used to repay the bonds to be issued in one or more series (the "Cruzan Project Bonds"), to finance the construction of a wastewater treatment facility (the "Cruzan Wastewater Treatment Facility") and the improved and/or expanded production facilities (the "Cruzan Expansion Facility"), and collectively with the Cruzan Distillery and the Cruzan Wastewater Treatment Facility, the "Facilities"), and the revenues used to finance economic incentives

provided by the Government hereunder will derive from existing and future projected Cover Over Revenues produced by the operation of the Facilities; and

**WHEREAS** the Government is entering into this Agreement with Cruzan in reasonable reliance upon the longstanding commitment of the Congress of United States ("Congress") to assist the Virgin Islands in attracting new and increased rum production through the availability of the rum cover over program, and the mutual desire of the Parties to further the purpose of said program; and

**WHEREAS** Congress, in 1954 as part of the Revised Organic Act, extended the equalization cover-over provision to the Virgin Islands to foster greater fiscal autonomy, and in 1983 and 2000, enacted laws which vested the legislature of the Virgin Islands (the "Virgin Islands Legislature") with sole authority to determine how rum Cover Over Revenues should be utilized; and

**WHEREAS**, upon the execution of this Agreement, the Government will submit this Agreement to the Virgin Islands Legislature for ratification pursuant to enabling legislation; and

**WHEREAS** it is the policy and determination of the Government that certain benefits and incentives as provided herein, in exchange for obligations and benefits received, should be made available to Cruzan to assist in its renovation, upgrading, improvement, expansion, and development of its existing rum production facilities on St. Croix, and the provision of these benefits are declared to meet the compelling public needs outlined above; and

**WHEREAS** the project (the "Project") will consist of the alteration, upgrade, expansion or renovation of the Cruzan Distillery by Cruzan and / or its Affiliates in order to meet Cruzan's production obligations under this Agreement or otherwise, or to be made to such other real property and improvements thereon which Cruzan may acquire to maintain and expand its production of rum, as contemplated under this Agreement, including the Cruzan Wastewater Treatment Facility to be constructed beginning in 2010 and any further upgrading and/or expansion constituting the Cruzan Expansion Facility to increase production capacity which Cruzan Wastewater Treatment Facility and Cruzan Expansion Facility will be financed with the proceeds of Cruzan Project Bonds, the debt service on such bonds will be derived from a portion of the Annual Gross Cover Over Receipts;

#### **B. Cruzan Recitals**

**WHEREAS**, Cruzan's parent corporation, Beam Global, is the largest United States based distilled spirits company with a portfolio of globally recognized brands including Jim Beam bourbon, Sauza tequila, Courvoisier cognac, DeKuyper cordials (in the United States), Maker's Mark bourbon, Canadian Club whiskey, Teacher's scotch and Cruzan Rum; and

**WHEREAS**, Beam Global is a subsidiary of Fortune Brands, a United States based consumer brands company in the distilled spirits, home and hardware products, and golf industries whose brands, including in addition to the spirits brands listed above, include market leading brands such as Titleist golf products, Moen faucets and Master Lock security products; and

**WHEREAS**, Cruzan Rum is one of the fastest growing rum brands in the premium segment of the rum industry; and

**WHEREAS**, Cruzan is deeply rooted in the history of the Virgin Islands and traces its heritage back to 1760; and

**WHEREAS**, the Cruzan Rum name is derived from the word used to describe St. Croix residents, and in recognition of that heritage Beam Global has recently launched a new campaign advertising Cruzan Rum as "The Legendary Rum of St. Croix"; and

**WHEREAS**, Cruzan desires to secure a long term future in the Virgin Islands and strengthen its mutually beneficial partnership with the Government and the people of the Virgin Islands; and

**WHEREAS**, extending and strengthening this partnership will enable Cruzan to further contribute to the economic stability, self-sufficiency, energy conservation and environmental protection of St. Croix; and

**WHEREAS**, Cruzan intends to improve its environmental stewardship by investing in the state-of-the-art Cruzan Wastewater Treatment Facility which will relieve pressure on the island's precious resources; and

**WHEREAS**, Cruzan intends to expand its production capacity in order to produce more Rum in the Virgin Islands once the Cruzan Wastewater Treatment Facility is operational; and

**WHEREAS**, the proposed investments in the Cruzan Facilities are estimated to require expenditures of approximately \$105,000,000; and

**WHEREAS**, the incentives negotiated between Cruzan and the Government will secure Cruzan's long-term commitment to produce Rum exclusively on St. Croix.

**C. Joint Recitals**

**WHEREAS** the Parties recognize that the Project will have a significant positive impact on the welfare of the St. Croix community, including an increase of rum cover over revenues to the Virgin Islands treasury, creation of additional economic opportunities and revenues for other Virgin Islands industries that will support and otherwise do business with respect to the Project, increased confidence in the Virgin Islands economy, creation of jobs on St. Croix and other benefits, and, therefore, the Government is desirous of facilitating the Project; and

**WHEREAS** the Parties recognize that the competitive advantage of sugar cane producing countries has disadvantaged Virgin Islands rum and threatens the long-term financial health and viability of rum production in the Virgin Islands;

**WHEREAS** the completed Cruzan Wastewater Treatment Facility and Cruzan Expansion Facility are projected to generate approximately twice the Cover Over Revenues previously generated from production at the Cruzan Facilities; and

**WHEREAS** the Parties recognize that the ownership of Cruzan has changed six times over the past 25 years, during which time Cruzan has sustained its presence and commitment to operating its facilities on St. Croix and the Government is desirous of providing an incentive to ownership stability.

**NOW, THEREFORE,** in consideration of the foregoing recitals, the covenants, representations, warranties, commitments and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **ARTICLE I**

### **GENERAL PROVISIONS**

#### **1.1. Agreement Scope**

This Agreement shall become effective and legally bind the Parties upon the full execution hereof and the adoption by the Virgin Islands Legislature of an act ratifying this Agreement and the obligations of the Government contained herein (the "Ratifying Act") (such date, the "Effective Date"). This Agreement sets forth the terms and conditions under which the Government intends to provide inducements to Cruzan to continue and increase its production of Rum for the production of Cruzan Rum and other Branded Rum Products, in the Virgin Islands for sales to markets in the United States of America. These conditions include, but are not limited to, (a) Government-sponsored capital financing of the Project for Cruzan, predicated on long-term rum production, (b) assistance in financing (i) remediation for environmental protection, (ii) Cruzan's long-term commitment to distill on St. Croix, United States Virgin Islands the rum required for the production of Cruzan Rum and other branded rum, for sales to markets in the United States of America, and (iii) its responsibility for the renovations to and expansion and operation of the necessary rum-producing Facilities in St. Croix, and (c) the mutual covenants, representations and warranties in connection therewith. This Agreement includes this document and any exhibits, attachments, schedules or appendices attached hereto or referenced herein all of which are hereby incorporated by reference.

#### **1.2. Government Obligations**

In consideration of Cruzan committing to maintaining and expanding its Rum distillation operations exclusively on St. Croix, the Government agrees to fully perform its obligations as set forth in this Agreement. In addition, in order to provide, if necessary, the grant financing contemplated by this Agreement and to perform the other obligations required of it hereunder, the Government shall enter into such additional agreements and/or use best efforts to adopt appropriate legislative or regulatory enactments, as the case may be, as may be necessary to fulfill such obligations. The Government shall not adopt legislation, executive orders, regulations, or enter into an agreement, obligation, legal instrument, or other undertaking which



would materially impair or limit the Government's ability to fully perform its obligations as set forth in this Agreement.

### **1.3. No Additional Cost to Cruzan**

The Government shall fully fund and perform its obligations under this Agreement, and unless specifically otherwise provided herein (or in any subsequent agreement to be executed pursuant hereto), at no time shall Cruzan be responsible for, assume, or be required to incur or pay any cost, charge or expense under this Agreement relating to any obligations of the Government.

### **1.4. Inducement**

The Parties acknowledge that (a) the financing, Tax, production, and marketing incentives granted by the Government hereunder constitute the main inducement for Cruzan to expand its Rum distillation operations and to commit to maintain its distillation operations exclusively on St. Croix, (b) absent such financing, Tax, production and marketing incentives, Cruzan would not commit to a long-term obligation to maintain and to expand its Rum distillation operations exclusively on St. Croix, and (c) Cruzan's development and operation plans with respect to maintaining and expanding its Rum distillation operations exclusively on St. Croix rely on the continued availability of such incentives throughout the Term. The Parties also acknowledge that Cruzan's long-term commitment to exclusively produce Rum for Cruzan Rum and other Branded Rum Products in accordance with the terms of this Agreement constitutes one of the main inducements for the Government to provide the financing, Tax, production and marketing incentives set forth in this Agreement.

### **1.5. Cruzan Obligations**

In consideration of the Government granting the benefits and incentives to Cruzan under this Agreement, which consideration shall be acknowledged by Cruzan upon the full execution, adoption and ratification of this Agreement by the Government and the Virgin Islands Legislature, Cruzan agrees to fully perform its obligations as set forth in this Agreement. In addition, in order to perform such obligations under this Agreement, Cruzan shall enter into such additional agreements as necessary. Cruzan shall not enter, and shall not cause or suffer its Affiliates to enter, into any other contract, agreement, arrangement, undertaking or transaction that would materially impair or limit Cruzan's ability to fully perform its obligations as set forth in this Agreement.

## **ARTICLE II**

### **DEFINITIONS**

#### **2.1. Defined Terms**

For purposes of this Agreement, the following terms shall have the meanings set forth below:

"AAA" shall have the meaning specified in Section 8.3.3(c) hereof.

**"Affiliate"** shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person.

**"Aggregate Annual Rum Sales"** shall mean, for a Fiscal Year, the total of Branded Rum Sales and Bulk Rum Sales (including all Strategic Third-Party Branded Rum Product Sales).

**"Agreement"** shall have the meaning specified in the preamble and Section 1.1 hereof.

**"Annual Average Branded Rum Sales"** shall have the meaning specified in Section 6.1.6(c) hereof.

**"Annual Average Bulk Rum Sales"** shall have the meaning specified in Section 6.1.6(c) hereof.

**"Annual Cruzan Surplus Receipts"** shall have the meaning specified in Section 6.1.6(b)(iii) hereof.

**"Annual Gross Cover Over Receipts"** shall have the meaning specified in Section 6.1.5 hereof.

**"Annual Gross Cruzan Surplus Receipts"** shall have the meaning specified in Section 6.1.5 hereof.

**"Annual Payment"** shall have the meaning specified in Section 5.4.1 hereof.

**"Beam Global"** shall mean Beam Global Spirits & Wine, Inc.

**"Branded Rum Production Incentive Payments"** shall mean the payments made pursuant to Section 5.3.2 hereof.

**"Branded Rum Products"** shall mean all Rum produced at the Facilities for products ultimately to be sold to consumers in the United States under brand names owned or licensed by Cruzan or its Affiliates, and shall be counted cumulatively toward the incentives provided in this Agreement.

**"Branded Rum Sales"** shall mean, with respect to any Fiscal Year, the aggregate number of proof gallons of Branded Rum Products subject to federal excise tax sold in the United States during such Fiscal Year and attributable to the Facilities, as reported in the Monthly Cover Over Reports for such Fiscal Year.

**"Bulk Rum"** shall mean all Rum, other than Branded Rum Products, which are both produced at the Facilities for products ultimately to be sold to consumers in the United States and sold for resale to Persons other than Affiliates of Cruzan (which Bulk Rum includes Strategic Third-Party Branded Products), and shall be counted cumulatively toward the incentives provided in this Agreement.

**"Bulk Rum Production Incentive Payments"** shall mean the payments made pursuant to Section 5.3.1 hereof.

**"Bulk Rum Sales"** shall mean, with respect to any Fiscal Year, the aggregate number of proof gallons of all Bulk Rum subject to federal excise tax sold in the United States during such Fiscal Year and attributable to the Facilities, as reported in the Monthly Cover Over Reports for such Fiscal Year.

**"Business Day"** means any day that is not a Saturday, Sunday or legal holiday in the United States Virgin Islands or a day on which banking institutions organized under the laws of the United States Virgin Islands are legally authorized to close.

**"Congress"** shall have the meaning set forth in the Government Recitals hereto.

**"Cover Over Rate"** shall have the meaning specified in Section 6.2.1(a) hereof.

**"Cover Over Revenues"** shall mean the federal excise tax revenues payable to the Government by the U.S. Government pursuant to Section 7652(b) of the U.S. Internal Revenue Code or any other statute or implementing regulation or other sources of administrative authority which may implement, be substituted or replaced for such Section in the future. For purposes of this Agreement, Cover Over Revenues are deemed to be "payable to the Government" in respect of a Fiscal Year when all Monthly Cover Over Reports in respect of such Fiscal Year have been submitted by TTB to the U.S. Department of the Interior and a copy of each has been received by OMB/VI, and shall be determined without regard to the actual timing of such payment by the U.S. Government. The Cover Over Revenues attributable to any relevant Rum sales (including Aggregate Annual Rum Sales) during any Fiscal Year are determined by multiplying the number of proof gallons of relevant Rum sales by the Cover Over Rate calculated in accordance with Section 7652(b) of the U.S. Internal Revenue Code (or any other statute or implementing regulation or other sources of administrative authority which may implement, be substituted for, or replace such Section in the future) for such Fiscal Year.

**"Cruzan"** shall have the meaning specified in the introduction to this Agreement.

**"Cruzan Distillery"** shall have the meaning set forth in the Government Recitals hereto.

**"Cruzan Expansion Facility"** shall have the meaning set forth in the Government Recitals hereto.

**"Cruzan Expansion Project"** shall mean the acquisition, planning, design, construction and equipping, as applicable, of the Cruzan Expansion Facility to be financed from proceeds of Cruzan Expansion Project Bonds.

**"Cruzan Expansion Project Bonds"** shall mean bonds issued to finance the Cruzan Expansion Project.

**"Cruzan Project Bond Indenture"** shall have the meaning specified in Section 6.1.6(a) hereof.

**"Cruzan Project Bonds"** shall have the meaning specified in Section 6.1.1 hereof, and shall collectively consist of the Cruzan Wastewater Treatment Project Bonds and the Cruzan Expansion Project Bonds.

**"Cruzan Project Pledged Revenue Account"** shall have the meaning specified in Section 6.1.6(a) hereof.

**"Cruzan Rum"** shall mean any Branded Rum Product bearing the name "Cruzan."

**"Cruzan Surplus Receipts Account"** shall have the meaning specified in Section 6.1.6(b)(iii) hereof.

**"Cruzan Undedicated Cover Over Revenues"** shall mean, with respect to any Fiscal Year, the Cover Over Revenues attributable to production of Rum at the Facilities for such Fiscal Year after satisfaction of all debt service obligations with respect to the Cruzan Project Bonds.

**"Cruzan Wastewater Treatment Facility"** shall have the meaning set forth in the Government Recitals hereto.

**"Cruzan Wastewater Treatment Project"** shall mean the acquisition, planning, design, construction, soft costs and equipping of a wastewater treatment plant to be financed from proceeds of Cruzan Wastewater Treatment Project Bonds and to be built and operated by Cruzan in order to comply with the terms of the TPDES Permit.

**"Cruzan Wastewater Treatment Project Bonds"** shall mean those bonds described in Section 6.1.3(a) hereof.

**"Debt Service Account"** shall mean the account described in Section 6.1.6(b)(i) hereof.

**"Debt Service Reserve Account"** shall mean the account described in Section 6.1.6(b)(i) hereof.

**"Diageo"** shall mean Diageo USVI Inc., a corporation duly organized and existing under the laws of the Virgin Islands.

**"Diageo Agreement"** shall mean the Agreement between Diageo and the Government, dated as of June 17, 2008, as ratified by Act No. 7012 of the Legislature of the Virgin Islands, as the same may be amended and supplemented in accordance with the terms thereof.

**"Dispute"** shall have the meaning specified in Section 8.3.1 hereof.

**"Economic Development Commission"** shall be the Virgin Islands Economic Development Commission authorized pursuant to 29 V.I.C. § 704.

**"Economic Development Incentives"** shall mean those incentives provided by the Government to Cruzan in accordance with Section 4.1 hereof.

**"Economic Development Obligations"** shall mean those obligations imposed on Cruzan pursuant to Section 4.2 hereof.

**"Effective Date"** shall have meaning specified in Section 1.1 hereof.

**“Environmental Laws”** shall mean any applicable statute, ordinance, rule, regulation, code, policy, interpretation, Permit, license, authorization, order, judgment, injunction, decree or case law principle or doctrine relating to pollution, Hazardous Substances, land use, or protection of human health or the environment.

**“Estimate Summary”** shall have the meaning specified in Section 5.6.1 hereof.

**“Estimated Cover Over Revenue Payment”** shall mean, with respect to any Fiscal Year, the projected Cover Over Revenues actually paid to the Government by the U.S. Government at the beginning of such Fiscal Year, which payment is referred to as the “base advance” and is subject to subsequent true-up adjustment.

**“Estimated Marketing Support Payments”** shall mean, with respect to any Fiscal Year, the portion of the Estimated Cover Over Revenue Payment attributable to projected Branded Rum Sales during such Fiscal Year to be paid to Cruzan in accordance with Section 5.1.3(a)(i) hereof on the basis of the Estimate Summary prepared by Cruzan for such Fiscal Year.

**“Estimated Molasses Subsidy Payment”** shall mean, with respect to any Fiscal Year, the estimated amount of the Molasses Subsidy Payment to be paid to Cruzan in accordance with Section 5.2.1 hereof on the basis of the Estimate Summary prepared by Cruzan for such Fiscal Year.

**“Estimated Production Incentive Payment”** shall mean, with respect to any Fiscal Year, the portion of the Estimated Cover Over Revenue Payment attributable to the projected Aggregate Annual Rum Sales during such Fiscal Year to be paid to Cruzan in accordance with Section 5.3 hereof on the basis of the Estimate Summary prepared by Cruzan for such Fiscal Year.

**“Estimated Rum Promotion Support Payment”** shall mean, with respect to any Fiscal Year, the portion of the Estimated Cover Over Revenue Payment attributable to projected Bulk Rum Sales during such Fiscal Year to be paid to Cruzan in accordance with Section 5.1.2 hereof on the basis of the Estimate Summary prepared by Cruzan for such Fiscal Year.

**“Estimated Strategic Third-Party Marketing Support Payments”** shall mean, with respect to any Fiscal Year, the portion of the Estimated Cover Over Revenue Payment attributable to projected Strategic Third-Party Branded Products Sales to be paid to Cruzan in accordance with Section 5.1.3 hereof on the basis of the Estimate Summary prepared by Cruzan for such Fiscal Year.

**“Event of Force Majeure”** shall mean any act that (a) materially and adversely affects the affected Party’s ability to perform the relevant obligations under this Agreement or delays such affected Party’s ability to do so, (b) is beyond the reasonable control of the affected Party, (c) is not due to the affected Party’s fault or negligence and (d) could not be avoided, by the Party who suffers it, by the exercise of commercially reasonable efforts, including the expenditure of any reasonable sum of money and, subject to the satisfaction of the conditions set forth in (a) through (d) above, an “Event of Force Majeure” shall include: (i) natural phenomena, such as storms, floods, lightning and earthquakes; (ii) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (iii) transportation

disasters, whether by ocean, rail, land or air; (iv) strikes or other labor disputes that are not due to the breach of any labor agreement by the affected Party; (v) fires; (vi) actions or omissions of a Governmental Authority (including the actions of the Government in its capacity as a Governmental Authority or in the exercise of its Governmental Functions), and (vii) the reduction of the Cover Over Rate below its Historic Base Level, that were not voluntarily induced or promoted by the affected Party, or brought about by the breach of its obligations under this Project Agreement or any Governmental Rule. Under no circumstances shall an Event of Force Majeure include any of the following events: (A) economic hardship; (B) changes in market condition, (C) any strike or labor dispute involving the employees of Cruzan or any Affiliate of Cruzan, other than industry or nationwide strikes or labor disputes; (D) the occurrence of any manpower, material or equipment shortages; or (E) any delay, default, or failure (financial or otherwise) of the affected Party that is not the result of an event that would otherwise be an Event of Force Majeure; provided further, that upon the occurrence of any Event of Force Majeure, the affected Party shall promptly notify the unaffected Party and shall use commercially reasonable efforts to mitigate the effects thereof.

**"Excess Amount"** shall have the meaning specified in Section 5.4.2 hereof.

**"Excess Payment Cap"** shall have the meaning specified in Section 5.1.3(a)(ii) hereof.

**"Facilities"** shall have the meaning set forth in the Government's Recitals hereof.

**"Fiscal Year"** shall mean the Government's fiscal year of October 1 through September 30.

**"5% Cap"** shall have the meaning set forth in Section 5.1.3(a)(i) hereof.

**"Fortune"** shall mean Fortune Brands, Inc.

**"FY 2009 True-Up Payment"** shall have the meaning set forth in Section 5.6.5 hereof.

**"GERS"** shall have the meaning set forth in the Government Recitals hereto.

**"Government"** shall have the meaning specified in the introduction to this Agreement.

**"Government Account"** shall have the meaning specified in Section 6.1.6(b)(ii) hereof.

**"Governmental Authority"** shall mean any Federal, state or local governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof) and any arbitrator to whom a dispute has been presented under Governmental Rule, pursuant to the terms of this Agreement or by agreement of the Parties.

**"Governmental Function"** means any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which the Government is authorized or required to perform in its capacity as a Governmental Authority in accordance with Governmental Rules.

**"Governmental Rule"** shall mean any statute, law, treaty, rule, code, ordinance, regulation, permit, interpretation, certificate or order of any Governmental Authority, or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority.

**"Hazardous Substances"** shall mean any and all pollutants, contaminants, toxic, harmful or hazardous materials, substances or waste, or any other substances that: (a) might pose a hazard to health, safety or the environment; (b) the treatment, decontamination, containment or removal of which may be required; or (c) the generation, manufacture, refining, production, processing, treatment, storage, handling, transportation, transfer, use, disposal, release, discharge, spillage, seepage or migration of which is now or hereafter regulated, restricted, prohibited or penalized by any Environmental Law. Hazardous Substances include, without limitation, any substance, material or waste defined, listed or regulated by or in any statute, rule, regulation, Permit or order comprising Environmental Laws, and any other substance, material or waste that is regulated as hazardous, toxic, dangerous, harmful, a pollutant, a contaminant or words of similar meaning, or that because of the nature or characteristics of such substance, material or waste it requires special handling or care to prevent or mitigate a potential threat to human health or the environment.

**"Historic Base Level"** shall have the meaning specified in Section 6.2.1 hereof.

**"Income Tax"** shall mean any form of Tax including, without limitation, any alternative minimum tax or any levy, impost, duty, surcharge, contribution in the nature of Tax imposed, collected or assessed by, or payable to a Tax Authority on any income, as defined in the United States Internal Revenue Code as it applies to the Virgin Islands and all penalties and interest included in or related to any Income Tax.

**"Issuer"** shall have the meaning specified in Section 6.1.1 hereof.

**"Marketing Activities"** shall have the meaning specified in Section 5.1.1 hereof.

**"Marketing Support Agreement"** shall mean the Marketing Support Agreement dated as of October 1, 2006, between the Government and Virgin Islands Rum Industries, Ltd., together with any amendments thereto prior to the Effective Date.

**"Marketing Support Payments"** shall mean the payments made pursuant to Section 5.1.3(a) hereof.

**"Matching Fund Bond Indenture"** shall mean that certain Indenture of Trust relating to Revenue and Refunding Bonds (Virgin Islands Matching Funds Loan Notes) between the Issuer and the Trustee, dated as of May 1, 1998, as supplemented and amended from time to time.

**"Matching Fund Bonds"** shall mean those bonds issued from time to time under the Matching Fund Bond Indenture.

**"Material Default"** shall have the meaning specified in Section 6.2.3 hereof.

**"Molasses Subsidy Payments"** shall have the meaning specified in Section 5.2.1 hereof.

**"Monthly Cover Over Reports"** shall mean the report of actual monthly collections of federal excise tax revenues pursuant to Section 7652 of the U.S. Internal Revenue Code or any other statute or implementing regulation or other sources of administrative authority which may implement, be substituted for, or replace such Section in the future, which report is prepared immediately following the end of such month by TTB and submitted to the U.S. Department of the Interior, and a copy of which is delivered to the OMB/VI approximately forty-five (45) days after the end of such month.

**"OMB/VI"** shall mean the Government's Office of Management and Budget.

**"Party"** or **"Parties"** shall have the meaning specified in the introduction to this Agreement.

**"Payment Effective Date"** shall have the meaning specified in Section 5.5.5 hereof.

**"Permits"** means all consents, registrations, filings, licenses, permits, certificates, decrees, approvals, authorizations, qualifications, entitlements and orders of Governmental Authorities.

**"Person"** means any individual or entity (including any corporation, limited partnership, joint venture, limited liability company, estate, trust or other body).

**"Production Incentive Payments"** shall mean those payments set forth in Section 5.3 hereof.

**"Project"** shall have the meaning set forth in the Government Recitals hereto.

**"Ratifying Act"** shall have the meaning specified in Section 1.1 hereof.

**"Rum"** shall mean alcohol distillate produced from sugar cane molasses, sugar cane juice, or other derivatives of sugar cane.

**"Rum Promotion Support Payments"** shall mean those payments set forth in Section 5.1.2 hereof.

**"Special Escrow Agent"** shall have the meaning specified in Section 6.1.6 hereof.

**"Special Escrow Agreement"** shall have the meaning specified in Section 6.1.6 hereof.

**"Strategic Third-Party Branded Products"** shall mean Bulk Rum produced at the Facilities to be sold under brands not owned by Cruzan or its Affiliates, which third-party brands are identified on their respective labels as Virgin Islands Rum and approved in writing by the Government as a Strategic Third Party Branded Product, and shall be counted cumulatively toward the incentives provided in this Agreement.

**"Strategic Third-Party Branded Rum Product Sales"** shall mean with respect to any Fiscal Year, the aggregate number of proof gallons of Strategic Third-Party Branded Products



sold in the United States and subject to federal excise tax during such Fiscal Year and attributable to the Facilities, as reported in the Monthly Cover Over Reports for such Fiscal Year.

**"Strategic Third-Party Marketing Support Payments"** shall mean those payments set forth in Section 5.1.3(a)(ii) of this Agreement.

**"Tax" or "Taxes"** shall mean any form of tax including alternative minimum tax or any levy, impost, duty, surcharge, contribution or withholding in the nature of tax (including without limitation; Income Tax, capital tax, gross receipts tax, excise tax, customs duties, franchise tax, sales and use tax, personal property tax, value added tax, land or stock transfer tax, mortgage registration tax and real estate tax), imposed, collected or assessed by, or payable to a Tax Authority and all penalties and interest included in or related to any Tax.

**"Tax Authority"** shall mean any governmental, state or municipality body competent to impose or collect or assess any Tax in the Virgin Islands.

**"Term"** shall have the meaning set forth in Section 8.15 hereof.

**"Territory"** shall have the meaning set forth in the Government Recitals hereto.

**"TPDES Permit"** shall mean Cruzan's Territorial Pollutant Discharge Elimination System permit.

**"True-Up Amount"** shall mean, with respect to any Fiscal Year, the amount calculated by subtracting the Estimated Marketing Support Payment, Estimated Molasses Subsidy Payment, Estimated Rum Promotion Payment, Estimated Strategic Third-Party Marketing Support Payments or Estimated Production Incentive Payment, as the case may be, from the applicable Marketing Support Payments, Molasses Subsidy Payments, Rum Promotion Payments, Strategic Third-Party Marketing Support Payments, or Production Incentive Payments actually payable or to be paid for the Fiscal Year in question.

**"Trustee"** shall mean The Bank of New York Trust Company, N.A., successor to United States Trust Company of New York, as Trustee under the Matching Fund Bond Indenture, or any successor thereto as provided in the Matching Fund Bond Indenture.

**"TTB"** shall mean the U.S. Alcohol and Tobacco Tax and Trade Bureau.

**"VIPFA" and "Authority"** shall each mean the Virgin Islands Public Finance Authority created and existing pursuant to Title 29, Chapter 15, Virgin Islands Code, or any successor thereto.

**"Virgin Islands"** shall have the meaning set forth in the Government Recitals hereto.

**"Virgin Islands Code"** shall mean the laws of the Virgin Islands as from time to time amended.

**"Virgin Islands Legislature"** shall have the meaning set forth in the Government Recitals hereto.

**"Virgin Islands Rums"** shall have the meaning set forth in the Government Recitals hereto.

**"Virgin Islands Tax Code"** shall mean the mirror United States Internal Revenue Code as applicable to the Virgin Islands and as from time to time amended.

### **ARTICLE III**

#### **IMPROVEMENTS**

##### **3.1. Development of the Facilities**

3.1.1 Following the occurrence of the Effective Date and the closing of the financing specified in Section 6.1 herein, Cruzan shall

(a) continue its alterations, upgrades, improvements, expansions, or renovations to the Facilities, including, but not limited to, the Cruzan Wastewater Treatment Project and the Cruzan Expansion Project contemplated in Section 6.1.3 herein, required in order for Cruzan to meet its production obligations under this Agreement or otherwise, or such other real property improvements thereon which Cruzan acquires to maintain and expand its production of Rum, as contemplated under this Agreement, to be designed, developed, constructed, equipped and operated in accordance with all applicable laws and regulations, including applicable Environmental Laws; and

(b) comply with all employment laws of the United States and the Virgin Islands during alteration and operation of the Facilities.

3.1.2 It is understood and agreed that Cruzan's obligations set forth above in Section 3.1.1 are conditioned upon the following (any one or more of which conditions may be waived by Cruzan, at Cruzan's sole option, without affecting any other condition or obligation of either Party hereunder), it being understood that Cruzan shall use all commercially reasonable efforts to cause such conditions to be satisfied as soon as reasonably practicable:

(a) Cruzan's ability to timely obtain such Permits as may be necessary to construct, equip and operate the Cruzan Distillery, the Cruzan Expansion Facility or the Wastewater Treatment Facility; or

(b) Cruzan's ability to receive, without restriction, any Tax credit or marketing support or incentive payments granted by the Government pursuant to this Agreement; or

(c) Cruzan's ability to obtain the financing for the Cruzan Wastewater Treatment Project and the Cruzan Expansion Project described in Article VI of this Agreement.

### **3.2. Assistance with Permits**

Throughout the Term, the Government shall do all things and take such actions reasonably necessary, to the fullest extent permitted by law, to assist Cruzan (and, where applicable, its contractors and subcontractors), in Cruzan's expeditious filing of all applications for and obtaining, maintaining and renewing all Permits. The Government shall take all feasible and lawful measures necessary to have all Permits issued as soon as is practicable, provided that Cruzan has complied with its obligations set forth in Section 3.1.1(b).

## **ARTICLE IV**

### **ECONOMIC DEVELOPMENT TAX INCENTIVES AND OBLIGATIONS**

#### **4.1. Economic Development Tax Incentives**

In addition to any other Tax or development incentives that Cruzan may in the future be eligible to receive, the following Tax and other Economic Development Incentives set forth in this Section 4.1 shall be granted to Cruzan and remain in full force and effect throughout the Term; provided, however, Cruzan, as of the Effective Date, shall agree to terminate its existing benefits under the existing Certificate issued by Economic Development Commission.

##### **4.1.1 Corporate Income Tax Reduction.**

(a) For operating income associated with Branded Rum Products or derived from the Facilities and for investment income earned with respect to the Facilities for each taxable year during the Term, Cruzan shall be entitled to: (a) reduce the amount of each payment of its estimated Income Taxes by ninety percent (90%); and (b) reduce its Income Tax liability shown on its Income Tax return by ninety percent (90%). In the case of estimated Income Taxes, such reduction shall be prorated over the quarterly payments due.

(b) The reduction of Income Tax liability on a current basis or the reduction of Income Taxes otherwise payable by Cruzan shall be applicable with respect to all of the computations, assessments, and collection of such Income Taxes, as provided by the Virgin Islands Tax Code including the payment of the estimated Income Taxes.

(c) The payment of all dividends (including payments falling within Sections 881 and 1442 of the Virgin Islands Tax Code as well as dividend equivalent amounts as imposed by Section 884 of the Virgin Islands Tax Code), and interest by Cruzan shall be entitled to, in the case of interest, a 100% exemption from income and withholding tax, and in the case of dividends a 90% exemption from income and withholding tax on the distribution of operating or investment income and a 100% exemption from income and withholding tax on any distribution which Cruzan can identify as being made out of funds received from the Government under Article V of this Agreement.

(d) In determining Cruzan's Income Tax liability for any tax year or part thereof during the Term, the reduction in Income Tax liability and liability to withholding taxes, customs duties, gross receipts taxes, excise taxes and all other Taxes and benefits shall not be treated as taxable income to Cruzan.

(e) In determining Cruzan's Income Tax liability, payments made or exemptions granted under this Section 4.1.1, Section 4.1.2 or Section 4.1.3 and the subsidies provided under Article V of this Agreement by the Government to Cruzan shall not be treated as taxable income to Cruzan.

#### 4.1.2 Other Tax Exemptions.

Cruzan shall be completely exempted from the payment of the following Taxes:

(a) All Taxes on real property or any interest in real property (including all improvements located thereon) to the extent that such property is utilized in connection with the Facilities (which exemption shall inure to the benefit of the ultimate owner of the Facilities as well as to Cruzan), including but not limited to other similar Taxes, assessments, charges, fees, levies, surcharges and contributions made assessed by or paid to any Tax Authority.

(b) Gross receipts taxes.

(c) All excise and similar taxes levied on or in connection with materials and equipment utilized in the Facilities including, but not limited to, raw materials, building materials, furnishings, supplies, tools, pipes, pumps, conveyor belts, appliances, or other equipment, materials, supplies, goods, merchandise, and/or commodities for use in the construction, alteration, expansion, maintenance, reconstruction, and/or operation of the Facilities.

4.1.3 Customs Duty. Notwithstanding anything to the contrary in the laws of the Virgin Islands, raw materials, component parts, machinery and equipment imported into the Virgin Islands by Cruzan for the purpose of producing, creating or assembling an article, good or commodity as a result of industrial or manufacturing processing, such raw materials or, component parts, machinery and equipment shall be subject upon importation into the Virgin Islands, to customs duties (where applicable) at a rate of no more than one percent (1%) or less where such lesser rate is provided by the Virgin Islands Code.

#### 4.1.4 No Adverse Actions.

(a) The Government hereby acknowledges that Cruzan will, from March 1, 2009, be entitled to receive the Tax reductions, exemptions and other benefits granted to Cruzan by the Government and set out in this Agreement without the need for any formal application procedure by Cruzan and that receipt of the above Tax benefits shall be dependent upon the material compliance by Cruzan with the requirements set forth in Section 4.2 hereof. Outside the terms of Section 4.2, there shall be no additional conditions or requirements imposed upon

Cruzan that could result in the suspension, revocation or reduction of such benefits.

(b) The Government hereby agrees and covenants with Cruzan that, except as otherwise provided in this Agreement and to the extent permitted by law, the Government shall not take or fail to take any action, nor permit any action within its control to be taken or fail to be taken, which would or could cause Cruzan to lose any applicable Tax reductions, exemptions or benefits granted to Cruzan pursuant to this Agreement or any extension thereto.

#### **4.2. Economic Development Obligations**

##### **4.2.1 Maintenance of Audit Records.**

(a) During the Term, Cruzan shall maintain accurate books, records and accounts of the Economic Development Incentives and the Economic Development Obligations granted and/or imposed by this Article in order to assist the Government in the administration of such incentives and obligations and the Government and Cruzan shall cooperate to create a record keeping program reasonably acceptable to both Parties.

(b) When so requested, Cruzan will provide the Government with any information reasonably related to Cruzan's Economic Development Incentives and Economic Development Obligations and supporting documentation. The Government shall have the right, upon reasonable request during the Term, to cause an audit of the books, records, and accounts maintained by Cruzan pursuant to Section 4.2.1(a), to be performed by the V.I. Economic Development Commission, or other agency designated by the Government upon prior written notice to Cruzan. The Government shall be responsible for the costs of such audits and the out-of-pocket expenses of Cruzan directly incurred in connection with such audit; provided, however, if the results of such audit demonstrate that Cruzan has materially failed to comply with the terms of this Section 4.2, Cruzan shall be responsible for the costs of such audit.

##### **4.2.2 Investment by Cruzan.**

(a) Subject to the issuance of Cruzan Project Bonds and through its commitment to produce Rum in the Virgin Islands, Cruzan shall determine and cause to be invested in the Project amounts (excluding inventory) sufficient to accomplish the purposes described in Section 6.1.3, it being understood that the amounts financed pursuant to the provisions of Article VI of this Agreement shall qualify as the total amount of such investment.

(b) Cruzan shall employ a minimum of 58 employees. During the Term (i) at least eighty percent (80%) of Cruzan's employees shall be "Residents of the Virgin Islands" as defined in Title 29, Chapter 12, Section 703(e), Virgin Islands Code, and (ii) not less than twenty percent (20%) of Cruzan's employees

who are in management, supervisory and/or technical positions shall be Residents of the Virgin Islands.

(c) Cruzan shall utilize commercially reasonable efforts to contract with suppliers, vendors, contractors and subcontractors in the Virgin Islands for its procurement and construction needs with respect to the Project.

4.2.3 Cruzan shall comply with any and all reasonable requests for information of the V.I. Office of the Governor, Economic Development Commission, Department of Finance, Office of Management and Budget, Department of Labor, Bureau of Internal Revenue, and Bureau of Audit and Control relating to the subject matter of this Agreement.

4.2.4 Cruzan shall comply in a reasonable and substantial manner with all applicable provisions of the Virgin Islands Code and all applicable federal and territorial laws and rules and regulations, including without limitation, those governing non-discrimination, veterans' employment rights, and ecological and environmental standards; provided, however, that in the event of a conflict between the specific terms of this Agreement and the Virgin Islands Code or applicable territorial laws and rules and regulations, the specific terms of this Agreement shall control.

4.2.5 In the event that an audit result indicates that Cruzan is not in substantial compliance with its obligation to produce Rum for sale in the United States as set forth in Section 6.2 hereof and such non-compliance is not due to an Event of Force Majeure the Government may seek to resolve such failure in accordance with the terms of Section 8.3 hereof, possibly resulting in the reduction or elimination of the Economic Development Incentives granted to Cruzan until such time as Cruzan shall resume compliance with its obligations under Section 6.2.

#### **4.3. Benefits Effective Date**

The effective date of the Tax exemptions, reductions and benefits described in this Article IV shall be March 1, 2009.

### **ARTICLE V**

#### **MARKETING AND MOLASSES SUBSIDY AND INCENTIVE PAYMENTS**

##### **5.1. Marketing Activities and Support Payments**

###### **5.1.1 Marketing Activities.**

(a) Cruzan shall perform or shall cause one of its Affiliates to perform marketing activities such as specified in Exhibit B (the "Marketing Activities").

(b) Cruzan's Marketing Activities shall now or hereafter be in furtherance of its promotion of Cruzan Rum and Ronrico Rum (or any other

Branded Rum Products utilizing the Rum produced at the Facilities), and when advisable from a marketing viewpoint, Virgin Islands Rums, in the United States.

(c) Cruzan shall regularly report to the Government on the content and effectiveness of the Marketing Activities performed hereunder. The Government shall have the right, at reasonable times and upon reasonable prior notice, to meet with the representatives of Cruzan to discuss the Marketing Activities and its progress in promoting Cruzan Rum, Ronrico Rum and Virgin Islands Rums generally.

5.1.2 Rum Promotion Support Payments. The Government, to support and promote Cruzan's products sales, agrees to make Rum Promotion Support Payments (the "Rum Promotion Support Payments") to Cruzan for sales of Bulk Rum (including Strategic Third-Party Branded Rum Products) as follows:

(a) Bulk Rum Sales:

(i) For the Fiscal Year ending September 30, 2009, the Rum Promotion Support Payments to Cruzan for Bulk Rum Sales will remain unchanged from the prior Fiscal Year.

(ii) Commencing on October 1, 2009, and continuing through March 31, 2012, Rum Promotion Support Payments shall equal 35% of the Annual Gross Cover Over Receipts attributable to Bulk Rum Sales;

(iii) Commencing on April 1, 2012, and continuing through the remainder of the Term, the Rum Promotion Support Payments to Cruzan shall equal 6% of the Annual Gross Cover Over Receipts attributable to Bulk Rum Sales if annual Bulk Rum Sales are less than four million proof gallons; provided, however, such Rum Promotion Support Payments shall increase to 7% of the Annual Gross Cover Over Receipts attributable to Bulk Rum Sales if such sales are between four million and six million proof gallons in any such Fiscal Year; and provided further, that such Rum Promotion Support Payments to Cruzan shall increase to 8% of the Annual Gross Cover Over Receipts attributable to Bulk Rum Sales if annual Bulk Rum Sales exceed six million proof gallons in any such Fiscal Year. For the purposes of this Section 5.1.2(a)(iii), the threshold quantities of Bulk Rum Sales shall be reduced proportionally if the relevant time period involved is less than a full Fiscal Year.

(iv) During the Term, if it is determined that Diageo and/or any Affiliate of Diageo is selling or has sold in any given year, in the aggregate, at least 500,000 proof gallons of Rum produced at Diageo's St. Croix facility to third-parties for resale under brand names not owned by Diageo and/or its Affiliates, and such sales are or would be detrimental to Bulk Rum Sales, this Agreement will be amended to provide additional incentives to ensure that the incentives provided by the Government to

Cruzan for Bulk Rum are equal on a per proof gallon basis in all respects with the incentives provided to Diageo under the Diageo Agreement for so long as such conditions persist.

(b) Cruzan's estimated range of projections of Bulk Rum Sales (in numbers of proof gallons) under this Agreement (assuming that the Rum Promotion Support Payments are made), for each Fiscal Year covered by the initial Term, are set forth in Exhibit C-1 to this Agreement.

5.1.3 Marketing Support Payments. The Government, to support and promote Cruzan's performance of the Marketing Activities, agrees to make marketing support payments (the "Marketing Support Payments") and Strategic Third-Party Marketing Support Payments to Cruzan as follows:

(a) Branded Rum Sales:

(i) Commencing on the Payment Effective Date, and for each Fiscal Year covered by this Agreement, Marketing Support Payments to Cruzan shall equal 35% of the Annual Gross Cover Over Receipts attributable to Branded Rum Sales; provided, however, that Marketing Support Payments for sales of Cruzan Rum as of the Effective Date shall be capped at 5% of the Annual Gross Cover Over Receipts attributable to sales of such Branded Rum Products through the end of Fiscal Year 2011 (September 30, 2011) (the "5% Cap");

(ii) The accumulated excess Payment Cap amount (calculated in accordance with Section 4(a) of the Marketing Support Agreement) (the "Excess Payment Cap") shall be in effect with respect to the period from the Effective Date through the end of Fiscal Year 2011. To the extent that the 5% Cap operates to lower the Marketing Support Payments that would have been due to Cruzan but for the 5% Cap, the 5% Cap shall be raised on a dollar-for-dollar basis to the extent of availability under the Excess Payment Cap. All remaining unused availability under the Excess Payment Cap will be applied as above to subsequent years of operation of the 5% Cap. All payments due to Cruzan under the Excess Payment Cap shall be deposited directly in the Cruzan Surplus Receipts Account and shall not be applied to the Government Account as otherwise set forth in Section 6.1.6(b)(ii).

(b) Strategic Third-Party Marketing Support Payments. For each Fiscal Year covered by this Agreement, Strategic Third-Party Marketing Support Payments shall be paid to Cruzan, in addition to the Bulk Rum Production Incentive Payments applicable to such products, for the production of Strategic Third-Party Branded Rum Products in an amount equal to 2% of the Annual Gross Cover Over Receipts attributable to Strategic Third-Party Branded Rum Products (the "Strategic Third-Party Marketing Support Payments"); provided, however, that 75% of such support payments shall be passed through Cruzan



and/or its Affiliates to the owners of the respective third-party branded products. Such Strategic Third-Party Marketing Support Payments shall be in addition to, and shall not reduce or count towards any limitations with respect to, the Rum Promotion Support Payments, Marketing Support Payments, Molasses Subsidy Payments, or Production Incentive Payments provided for in this Article V of this Agreement;

(c) Cruzan's estimated range of projections of Aggregate Annual Rum Sales (in numbers of proof gallons) under this Agreement (assuming that the Marketing Support Payments are made), for each Fiscal Year covered by the initial Term, are set forth in Exhibit C-2 to this Agreement.

5.1.4 The Government's payment to Cruzan of Rum Promotion Support Payments, Strategic Third-Party Marketing Support Payments and Marketing Support Payments due hereunder shall be subject only to the deposit of Annual Gross Cover Over Receipts into the Cruzan Project Pledged Revenue Account provided in Section 6.1.6 hereof.

## **5.2. Molasses Subsidy Payments**

5.2.1 The Government, to support and promote the development and operation of the Project and Cruzan's production of Rum at the Facilities, agrees to make molasses subsidy payments (the "Molasses Subsidy Payments") to Cruzan as follows:

(a) Commencing on the Effective Date, and for each Fiscal Year covered by this Agreement, the Molasses Subsidy Payment shall equal the amount to be paid to Cruzan as an industry purchaser of molasses pursuant to the provisions of 33 Virgin Islands Code §3036 (2007), which amount shall never be less than the difference between (a) 16 cents (U.S.) per gallon of molasses purchased by Cruzan for use in the production of Rum at the Facilities, and (b) the total cost per gallon of such molasses to Cruzan.

(b) Notwithstanding Section 5.2.1(a), following the end of the third full Fiscal Year commencing after the Effective Date, the molasses subsidy rate for Rum produced at the Facilities, but not destined for sale in the United States, will be reduced by one-third (i.e., by five and one-third cents (U.S.) per gallon of molasses) for each of the following three Fiscal Years, and shall cease completely at the beginning of the sixth full Fiscal Year commencing after the Effective Date.

## **5.3. Production Incentive Payments**

5.3.1 The Government, to support and promote the continued production of Bulk Rum by Cruzan at the Facilities for sale to the United States market, agrees to make production incentive payments (the "Bulk Rum Production Incentive Payments") to Cruzan for each Fiscal Year covered by this Agreement, beginning with the Fiscal Year ending September 30, 2012, in the amount of 6% of the Annual Gross Cover Over Receipts attributable to Bulk Rum Sales in respect of such Fiscal Year.

5.3.2 The Government, to support and promote the continued production of Rum by Cruzan at the Facilities to be used in Branded Rum Products, agrees to make production incentive payments (the "Branded Rum Production Incentive Payments") to Cruzan for each Fiscal Year covered by this Agreement, beginning with the Fiscal Year ending September 30, 2012, in the amount of 6% of the Annual Gross Cover Over Receipts attributable to Branded Rum Sales in respect of such Fiscal Year.

#### **5.4. Restrictions and Other Adjustments to Marketing Support, Molasses Subsidy and Production Incentive Payments**

5.4.1 The amount of Marketing Support Payments, Molasses Subsidy Payments, Rum Promotion Support Payments, Strategic Third-Party Marketing Support Payments, and Production Incentive Payments for any Fiscal Year (collectively, for purposes of this Section 5.4, the "Annual Payment") to be paid to Cruzan shall be payable from and shall not, in the aggregate, exceed the Annual Cruzan Surplus Receipts amount transferred to the Cruzan Surplus Receipts Account. Notwithstanding the foregoing, in no event shall the Annual Payment due to Cruzan in any Fiscal Year be reduced due to a lack of funds available in the Cruzan Surplus Receipts Account because of payments made in respect of principal and interest payable on any outstanding bonds or notes secured by, or to be issued or secured by, the Matching Fund Bond Indenture or any similar instrument, it being understood that, if necessary, such debt service amounts shall be debited first from amounts set forth in Section 6.1.6(b)(ii). If, however, any Annual Payment due to Cruzan is reduced due to such principal and interest payments and lack of funds available from the account set forth in Section 6.1.6(b)(iii) (Cruzan Surplus Receipts Account), then funds available in the accounts set forth in Section 6.1.6(b)(iv) (Government Account) shall be used to fund the Cruzan Surplus Receipts Account such that each Annual Payment will be made in a timely manner. If Annual Payment is still not made in full after application of funds as set forth in the previous sentence, Cruzan shall be reimbursed for such reductions in future years when sufficient funds are deposited into the Cruzan Surplus Receipts Account.

5.4.2 If the amount of the Annual Payment payable to Cruzan for any Fiscal Year exceeds the Annual Cruzan Surplus Receipts, such excess amounts shall be known as the "Excess Amount" and shall be accumulated as a credit for future application. A credit of an Excess Amount shall not require the withholding of any funds by the Government, but shall accrue in accounting ledger form for future application as described below.

5.4.3 The Annual Payment shall consist of the sum of the following components: first the Molasses Subsidy Payments, then the Production Incentive Payments, then the Marketing Support Payments, then the Rum Promotion Support Payments, and finally the Strategic Third-Party Marketing Support Payments. If the Annual Payment is reduced because it would exceed the available Annual Cruzan Surplus Receipts in any Fiscal Year, first the allocation of the Strategic Third-Party Marketing Support Payments as a portion of the Annual Payment shall be reduced, then the Rum Promotion Support Payments, then the Marketing Support Payments, and then, if necessary, the Production Incentive Payments shall be reduced accordingly.

5.4.4 If in any Fiscal Year the calculation of the Annual Payment results in an aggregate amount less than the available Annual Cruzan Surplus Receipts for such Fiscal Year, any Excess Amount carried over from previous Fiscal Years shall be added to such Annual Amount for payment to Cruzan; provided that the Annual Payment (as so increased) to be paid to Cruzan in such Fiscal Year shall not, as a result of such allocation, exceed the available Annual Cruzan Surplus Receipts for such Fiscal Year. Any Excess Amount so allocated shall then be deducted from the running total of Excess Amounts that may have accumulated to that time and the remainder, if any, shall continue to be carried forward.

5.4.5 The Government agrees to levy no Virgin Islands Taxes or other charges on the Marketing Support Payments, Molasses Subsidy Payments, Rum Promotion Support Payments, Strategic Third-Party Marketing Support Payments, and Production Incentive Payments paid to Cruzan in any Fiscal Year.

5.4.6 Notwithstanding Sections 5.1, 5.2 and 5.3 hereof, the total amount of the Annual Payment due to be paid to Cruzan in any Fiscal Year shall not exceed the Annual Gross Cover Over Receipts less the amounts as set forth in Sections 6.1.6(b)(i) and 6.1.6(b)(ii) below.

#### **5.5. Payment Procedure and Timing**

5.5.1 Annually, on a date to be agreed by the Government and Cruzan, Cruzan shall deliver to the Government a written report of its estimated Aggregate Annual Rum Sales for the current and next succeeding Fiscal Year. At such time, Cruzan shall also deliver to the Government a summary of the Estimated Marketing Support Payment, Estimated Molasses Subsidy Payment, Estimated Strategic Third-Party Marketing Support Payment, Estimated Rum Promotion Support Payment, and Estimated Production Incentive Payment projected to be payable to Cruzan in respect of such Fiscal Year based on the projected Aggregate Annual Rum Sales noted above. Such notice to the Government shall be known as the "Estimate Summary".

5.5.2 After receipt of Cruzan's Estimate Summary, the Government shall deliver its Estimated Cover Over Revenue Payment request to the U.S. Government.

5.5.3 Upon receipt of any Estimated Cover Over Revenue Payment for any Fiscal Year, the Government shall cause the Estimated Marketing Support Payment, Estimated Molasses Subsidy Payment, the Estimated Rum Promotion Support Payment, the Estimated Strategic Third-Party Marketing Support Payments, and the Estimated Production Incentive Payment to be paid to Cruzan by depositing the same in a segregated account to be established for such purpose within two (2) Business Days of the Government's receipt thereof and distributing it to Cruzan within five (5) days after such deposit.

#### **5.5.4**

(a) Except as otherwise provided in Section 5.5.5 with respect to the Fiscal Year ending on September 30, 2009, following the OMB/VI's receipt of

the Monthly Cover Over Report for September of each Fiscal Year, the Government and Cruzan shall calculate (I) Aggregate Annual Rum Sales, (II) Marketing Support Payments, (III) Molasses Subsidy Payments, (IV) Production Incentive Payments, (V) Rum Promotion Support Payments, (VI) Strategic Third-Party Marketing Support Payments and (VII) the True-Up Amount, in respect of such Fiscal Year.

(b) Payment of the True-Up Amount for a Fiscal Year shall be made to Cruzan or the Government, as the case may be, as an adjustment to the Estimated Marketing Support Payments, as calculated by the Government and Cruzan, during each subsequent Fiscal Year, as a cash payment to Cruzan or the Government, as the case may be, to be made no later than November 30 of the subsequent Fiscal Year.

5.5.5 Except as otherwise expressly provided in this Agreement, the payments provided for in this Article V shall become effective as of March 1, 2009 the ("Payment Effective Date"). The Government and Cruzan shall calculate (I) Aggregate Annual Rum Sales, (II) Marketing Support Payments, (III) Molasses Subsidy Payments, (IV) Production Incentive Payments, (V) Rum Promotion Support Payments, (VI) Strategic Third-Party Marketing Support Payments and (VII) and true-up amount to be paid in excess of payments already made under the Marketing Support Agreement, in respect of the period from January 1, 2009, through September 30, 2009 (the "FY 2009 True-Up Payment"). The FY 2009 True-Up Payment will be made by the Government to Cruzan no later than November 30, 2009.

## ARTICLE VI

### PROJECT FINANCING

#### 6.1. Financing Structure

6.1.1 The parties hereto acknowledge and agree that all amounts due and payable under this Agreement shall be subject and subordinate to the lien created under the Matching Fund Bond Indenture. In consideration of the undertaking by Cruzan to continue to produce Rum at the Facilities and to further develop, and continue to own and operate the Facilities as and to the extent provided in this Agreement, the Government agrees, unless otherwise advised by Cruzan, following the Effective Date and such other conditions to be agreed between the Government and Cruzan, to facilitate the 100% grant financing for the benefit of the Facilities through the issuance of one or more series of tax-exempt bonds (the "Cruzan Project Bonds") to be issued by the VIPFA, as the "Issuer", pursuant to the Cruzan Project Bond Indenture (as the same may be supplemented from time to time), the proceeds of which Cruzan Project Bonds shall be used exclusively for the payment of the renovation and improvement, construction, and soft costs relating to the Project and Cruzan working capital funding in connection with the development and construction of the Project (whether such costs are incurred prior to or after the issuance of the Cruzan Project Bonds) and shall be requisitioned by Cruzan in substantially similar form as currently required under the Matching Fund Bond Indenture.

The Cruzan Project Bonds will be repaid from the Cover Over Revenues attributable to the operation of the Facilities, except as may otherwise be provided in the Cruzan Project Bond Indenture or other documents relating thereto. The Government shall fully fund and perform its obligations under this Agreement, and, unless otherwise specifically provided herein (or in any subsequent agreement to be executed pursuant hereto), at no time shall Cruzan be responsible for, assume, or be required to incur or pay any cost, charge or expense under this Agreement relating to any obligations of the Government.

6.1.2 The proceeds of the Cruzan Project Bonds shall be held by the trustee under the Cruzan Project Bond Indenture in a segregated construction trust account, to be invested and disbursed as required and directed by Cruzan in connection with the development, renovation, expansion, construction, soft cost and working capital funding needs of Cruzan in relation to the Project and the Facilities. Any Cruzan Project Bonds proceeds not used for such purposes shall be used for the redemption or defeasance of the Cruzan Project Bonds following completion of construction and full operation of the Project.

6.1.3 It is currently anticipated that the Issuer will issue the following series of Cruzan Project Bonds, payable from a lien on Cover Over Revenues attributable to the Facilities:

(a) Approximately US \$30 million Cruzan Project Bonds, to be used for acquisition, renovation, improvement, development, construction and soft costs attributable to the construction and installation of the Cruzan Wastewater Treatment Facility and capitalized interest, reserves and costs of issuance thereof (the "Cruzan Wastewater Treatment Project Bonds"); and

(b) Approximately US \$75 million Cruzan Project Bonds, to be used for acquisition, renovation, improvement development, construction and soft costs attributable to the Cruzan Distillery and the Cruzan Expansion Facility and capitalized interest, reserves and costs of issuance thereof (the "Cruzan Expansion Project Bonds").

6.1.4 The Government agrees to cause the supplementing of the Matching Fund Bond Indenture to modify the additional bonds test controlling the issuance of future Matching Fund Bonds in a manner that will limit the commitment of future Cruzan Undedicated Cover Over Revenues so as to not encumber such Cruzan Undedicated Cover Over Revenues which might, at any time, be required to be paid to Cruzan pursuant to Article V or Section 6.1.6(b) of this Agreement.

6.1.5 The Cruzan Project Bonds shall have a term not to exceed thirty (30) years from the date of issuance of any series of Cruzan Project Bonds. Except as otherwise provided herein, the Cruzan Project Bonds shall not be secured by any source other than the Cover Over Revenues attributable to the operation of the Facilities in any Fiscal Year ("Annual Gross Cover Over Receipts"), to be transferred to the Government pursuant to Section 5.01(b)(9) of the Matching Fund Bond Indenture (the "Annual Gross Cruzan Surplus Receipts"), except as otherwise provided in the Cruzan Project Bond

Indenture, and shall be subordinate to the outstanding Matching Fund Bonds. For the avoidance of doubt, none of Cruzan, its Affiliates or Fortune (or any of its Affiliates) will be obligors with respect to the Cruzan Project Bonds, and none of their respective assets will be encumbered by such bonds or under the Cruzan Project Bond Indenture.

6.1.6 Within 5 days of the Effective Date, the Government and the Authority shall provide irrevocable directions to The Bank of New York Mellon Trust Company, N.A., or its successor, as Special Escrow Agent (the "Special Escrow Agent") under the Special Escrow Agreement, dated as of May 1, 1998, as amended and supplemented (the "Special Escrow Agreement") to establish and maintain for the Term the Cruzan Project Pledged Revenue Account, Debt Service Account and related Debt Service Reserve Account, Government Account, and Cruzan Surplus Receipts Account; provided, however, that prior to the issuance of any Cruzan Project Bonds or after payment in full of all outstanding Cruzan Project Bonds and the termination of the Cruzan Project Bond Indenture, the Parties shall establish and maintain, or cause the establishment and maintenance of, such further accounts as shall be necessary to carry out the terms of this Agreement. In addition to the other documentation required to facilitate the issuance of the Cruzan Project Bonds (all such documentation to be agreed in form and substance by the Government and Cruzan), the Parties shall also agree on the form and substance of the documentation evidencing the following:

(a) Pursuant to the Cruzan Project Bond Indenture to be executed in connection with the issuance of the Cruzan Project Bonds, which may be in substantially similar form of the Matching Fund Bond Indenture or may be in the form of a supplement thereto or in such other form of indenture as determined by the VIPFA (the "Cruzan Project Bond Indenture"), all Annual Gross Cover Over Receipts shall be deposited into an appropriate account and pledged as security for the Cruzan Project Bonds (the "Cruzan Project Pledged Revenue Account").

(b) Pursuant to the Cruzan Project Bond Indenture, the trustee thereunder shall deposit the following amounts into the following accounts from amounts on deposit in the Cruzan Project Pledged Revenue Account:

(i) first, to a Debt Service Account and related Debt Service Reserve Account, if necessary, such amounts as shall be required under the Cruzan Project Bond Indenture to pay or reserve for the principal, interest and other financing costs payable in respect of the Cruzan Project Bonds;

(ii) then, to an account designated by the Government (the "Government Account"), according to the following schedule:

(A) October 1, 2009, through September 30, 2010, an amount equal to 60% of the Annual Gross Cover Over Receipts attributable to Bulk Rum Sales (excluding Strategic Third-Party Branded Rum Product Sales) for such period;

(B) October 1, 2010, through March 31, 2012, an amount equal to 68.5% of the Annual Gross Cover Over Receipts attributable to Bulk Rum Sales (excluding Strategic Third-Party Branded Rum Product Sales) for such period;

(C) (x) commencing on April 1, 2012, and continuing through the Term, an amount equal to 82% of the Annual Gross Cover Over Receipts attributable to Bulk Rum Sales (excluding Strategic Third-Party Branded Rum Product Sales) for each such Fiscal Year; (y) provided, however, that this amount shall decrease to 80% when Bulk Rum Sales for any Fiscal Year exceeds five million proof gallons; (z) provided further, that this amount shall decrease to 78% when Bulk Rum Sales for any Fiscal Year exceeds seven million proof gallons;

(D) commencing October 1, 2009, through September 30, 2010, an amount equal to 58% of the Annual Gross Cover Over Receipts attributable to Strategic Third-Party Branded Rum Product Sales for such period;

(E) commencing October 1, 2010, through March 31, 2012, an amount equal to 66.5% of the Annual Gross Cover Over Receipts attributable to Strategic Third-Party Branded Rum Product Sales for such period;

(F) (x) commencing in April 1, 2012, and continuing through the Term, an amount equal to 80% of the Annual Gross Cover Over Receipts attributable to Strategic Third-Party Branded Rum Product Sales for each such Fiscal Year; (y) provided, however, that this amount shall decrease to 78% when Bulk Rum Sales for any Fiscal Year exceeds five million proof gallons; (z) provided further, that this amount shall decrease to 76% when Bulk Rum Sales for any Fiscal Year exceeds seven million proof gallons;

(G) commencing effective the Payment Effective Date through Fiscal Year 2011, an amount equal to 60% of the Annual Gross Cover Over Receipts attributable to Branded Rum Sales for such period;

(H) (x) commencing October 1, 2011, and continuing through the Term, an amount equal to 60% of the Annual Gross Cover Over Receipts attributable to Branded Rum Sales for each such Fiscal Year; (y) provided, however, that this amount shall decrease to 54% when Branded Rum Sales for any Fiscal Year exceeds eleven million proof gallons

(iii) then, to an account to be known as the "Cruzan Surplus Receipts Account", an amount equal to the Annual Gross Cover Over Receipts less the amounts due to be deposited into other accounts pursuant to Sections 6.1.6(b)(i) and (ii) above, which amount shall be known as the "Annual Cruzan Surplus Receipts" and shall be used to make the payments to Cruzan, required pursuant to Sections 5.1, 5.2, 5.3, 5.4, and 5.5 hereof.

(iv) then any amounts remaining in the Cruzan Project Pledged Revenue Account shall be deposited to the Government Account as directed by the Government.

Notwithstanding the above, prior to the issuance of any Cruzan Project Bonds and the Cruzan Project Bond Indenture, or, upon payment in full of all outstanding Cruzan Project Bonds and the termination of the Cruzan Project Bond Indenture, the Government and the Authority shall provide irrevocable directions to the Special Escrow Agent to deposit the Annual Gross Cover Over Receipts into the accounts in the order and the amounts as set forth above. Notwithstanding any other provision of this Agreement, in the event of a change to the Cruzan Project Bond Indenture, Special Escrow Agent or Special Escrow Agreement or other circumstance that precludes the implementation of this Section 6.1.6(b), the Parties agree to do all things and take all actions required, necessary or appropriate to assure each Party's receipt of the economic benefits provided to such Party under the terms of this Agreement.

(c) For any partial Fiscal Year under this Agreement or in any Fiscal Year in which an Event of Force Majeure has interrupted the sale or production of Rum for Bulk Rum and Branded Rum Products, for the purpose of determining which of the percentages in Section 6.1.6(b)(ii) shall apply to such Fiscal Year or partial Fiscal Year, the respective Bulk Rum Sales and Branded Rum Sales for each month during which the Facilities were in operation during such Fiscal Year shall be averaged and such average shall be multiplied by twelve (12) and the result shall be known as the "Annual Average Bulk Rum Sales" and "Annual Average Branded Rum Sales". If the Annual Average Bulk Rum Sales are less than 5,000,000 proof gallons, the percentages in Sections 6.1.6(b)(ii)(C)(x) and 6.1.6(b)(ii)(F)(x) shall apply. If the Annual Average Bulk Rum Sales exceed 5,000,000 proof gallons, the applicable percentage in Section 6.1.6(b)(ii)(C)(y) or (z) and 6.1.6(b)(ii)(F)(y) or (z), respectively, shall apply. If the Annual Average Branded Rum Sales are less than 11,000,000 proof gallons, the percentage in Sections 6.1.6(b)(ii)(H)(x) shall apply. If the Annual Average Branded Rum Sales exceed 11,000,000 proof gallons, the percentage in Section 6.1.6(b)(ii)(H)(y) shall apply.

## **6.2. Cruzan Obligations**

6.2.1 Commencing on the Effective Date, and continuing through the Term hereof, and provided that (i) the Cover Over Revenue tax amount determined in accordance with Section 7652(b) of the U.S. Internal Revenue Code (the "Cover Over Rate") is not reduced below its historic base level of US \$10.50 per proof gallon of



relevant Rum sales with respect to Aggregate Rum Sales (the "Historic Base Level"), (ii) the Economic Development Incentives granted by the Government to Cruzan have not been materially reduced or made unavailable to Cruzan, (iii) no occurrence of an Event of Force Majeure with respect to the performance of the obligations of either Party hereunder has occurred, and (iv) the requirements of the named branded products do not exceed the capacity of the Facilities, Cruzan shall distill at the Facilities all Bulk Rum, Branded Rum Products and Ronrico Rum for sale into the United States. If the requirements of the named branded products exceed the production capacity of the Facilities by more than 15%, Cruzan and the Government will work together to investigate the feasibility of expanding the production capabilities of the Facilities.

6.2.2 If at any time the Cover Over Rate is reduced below the Historic Base Level for a period greater than twelve (12) months or the Economic Development Incentives granted by the Government to Cruzan are materially reduced or unavailable to Cruzan for a period of greater than twelve (12) months, Cruzan shall not be obligated to produce Rum at the Facilities according to the provisions of this Agreement, and may terminate this Agreement.

6.2.3 Except as otherwise permitted by this Agreement or following an Event of Force Majeure, if Cruzan fails to produce Rum for sale into the United States from the Facilities in accordance with Sections 6.2.1 (subject to the terms and conditions therein), Cruzan shall be considered to be in material default of its obligations under this Agreement (a "Material Default") and shall have 12 months following receipt of notice of such Material Default to cure such Material Default by producing the required Rum for sale into the United States. If Cruzan fails to cure such Material Default, Cruzan shall pay to the Government liquidated damages in an amount specified in a schedule to be produced by the Parties at the time of sale of any series of Cruzan Project Bonds. The liquidated damages shall be the amount necessary to reimburse the Government for the costs of the principal, interest and redemption premium if any, due and payable under the grant financing made available to Cruzan by the Authority, on behalf of the Government, due to the occurrence and continuation of a Material Default by Cruzan under this Agreement. Following the occurrence and continuance of a Material Default for a twelve (12) month period, the Government may terminate this Agreement with prior written notice to Cruzan.

6.2.4 If Cruzan decides to forgo the grant financing proposed by Section 6.1 and procures alternative financing in lieu thereof, the Parties agree to amend this Agreement if, and as necessary to, reasonably preserve the economic and other benefits contemplated by the Parties in Articles III, IV, and V hereof and the receipt of amounts which would otherwise be deposited to the Cruzan Project Pledged Revenue Account for the benefit of the Government and Cruzan as set forth in Section 6.1.6(b) of this Agreement.

6.2.5 Upon the issuance of the Cruzan Project Bonds and throughout the Term, Cruzan agrees to maintain or cause to be maintained commercially reasonable insurance against such risks, loss, and damage either as part of the global insurance program for the portfolio of facilities operated by Fortune or on a stand-alone basis, at the

discretion of Fortune. THE GOVERNMENT DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE BUSINESS OR INTEREST OF CRUZAN.

6.2.6 During the period of time in which the Cruzan Project Bonds remain outstanding or undefeased, following the occurrence of an event of loss at or damage to the Facilities resulting in a commercially significant reduction in the output of Rum that can be produced at the Facilities and that is caused by an event that is insurable at the time of the occurrence of the event at commercially reasonable rates, Cruzan agrees to rebuild the Facilities and re-commence production of Rum at the Facilities as soon as reasonably possible after the occurrence of such event of loss at the levels of production required by this Agreement. If Cruzan fails to so rebuild the Facilities and so re-commence production of Rum at the Facilities, such failure shall be deemed a Material Default and the Government may take the actions specified above in Section 6.2.3.

6.2.7 Cruzan further agrees that, subject to the issuance of the Cruzan Project Bonds, it will explore further expansion for other product lines and opportunities; and implement of enhancements to the Facilities that are consistent with the development of a tourist attraction.

## **ARTICLE VII**

### **REPRESENTATIONS, WARRANTIES, COVENANTS AND ACKNOWLEDGEMENTS**

#### **7.1. Representations, Warranties, Remedies and Acknowledgements**

7.1.1 The Government hereby represents and warrants to Cruzan as of the date hereof and as of the Effective Date that:

(a) The Government is not prohibited from consummating the transactions contemplated in this Agreement by any law, regulation, agreement, instrument, restriction, order or judgment;

(b) The Government has: (i) the legal power, due authority and necessary and adequate funding ability to make the representations and perform its obligations set forth in this Agreement, or shall take all legally permitted and feasible actions necessary to obtain such legal power, due authority and necessary funding; (ii) duly obtained such approvals, authorizations, or consents in accordance with applicable law and procedures to the extent that the approval, authorization, or consent of the federal or any other local government or agency or any third party to make the representations and perform its obligations contained herein is required; and (iii) with respect to the funding commitments made by the Government hereunder, such funding commitment has been, or on or prior to the date of issuance and disbursement of any proceeds thereof, and throughout the period that the same is outstanding, shall be properly budgeted and authorized pursuant to all applicable law;

(c) The Government knows of no material impediment which would prevent, impede, diminish or delay its timely performance of its obligations hereunder; and

(d) There are no actions, suits or proceedings pending or, to the best of the Government's knowledge, threatened against or affecting the Government before any court or administrative body or arbitral tribunal that could reasonably be expected to have a material adverse effect on the ability of the Government to meet and carry out its obligations under this Agreement.

7.1.2 Cruzan hereby represents and warrants to the Government as of the date hereof and the Effective Date that:

(a) Cruzan is a corporation duly organized and validly existing under the laws of the Virgin Islands and has the corporate power and authority and has taken all necessary action authorizing it, to execute and deliver this Agreement and to perform its obligations hereunder.

(b) The execution, delivery and performance by Cruzan of this Agreement do not violate or conflict with, or result in a default under, any contract or agreement to which Cruzan is bound.

(c) Assuming due authorization, execution and delivery of this Agreement by the Government, this Agreement is the legal, valid and binding obligation of Cruzan, enforceable against it in accordance with its terms, subject to the effects of bankruptcy or insolvency or laws affecting creditors' rights generally.

(d) There are no actions, suits or proceedings pending or, to the best of Cruzan's knowledge, threatened against or affecting Cruzan before any court or administrative body or arbitral tribunal that could reasonably be expected to have a material adverse effect on the ability of Cruzan to meet and carry out its obligations under this Agreement.

(e) Neither Cruzan nor any of its shareholders or Affiliates of Cruzan are involved in any litigation, arbitration or claim against the Government, except for claims arising in the ordinary course of Cruzan's business, including pursuant to the Marketing Support Agreement.

(f) Cruzan is a wholly owned subsidiary of Beam Global, which in turn is a wholly owned subsidiary of Fortune.

## **7.2. Special Levies**

The Government covenants that, without the prior written consent of Cruzan, no Government entity shall: (a) levy against any real or personal property constituting the Facilities, any special assessment or special tax for the cost of any improvements in or for the benefit of the Facilities; (b) undertake any local improvements in, on or for the benefit of the

Facilities pursuant to the imposition of a special assessment or special tax against any real or personal property within the Facilities; (c) levy or impose additional Taxes on any real or personal property within the Facilities, in the manner provided by law for the provision of special services to the Facilities or for the payment of debt incurred in order to provide such special services; (d) permit or approve the imposition of any recapture fees that are applicable to the Facilities or (e) levy against any moveable personal property any Tax, including but not limited to personal property, sales or value added taxes. Nothing in this Section 7.2 shall prevent the Government from levying or imposing additional Taxes upon the Facilities in the manner provided by law which are applicable to and applied equally to all other properties within the Virgin Islands and which are not contrary to the agreements reached herein as implemented from time to time.

### **7.3. Make-Whole Actions**

7.3.1 The Government and Cruzan each assert that it enters into this Agreement based upon certain objectives and expectations, more specifically described below in this Section 7.3. The Government and Cruzan each further acknowledge and agree that it is not possible to predict, consider and provide for all future changes, circumstances or contingencies affecting the performance or implementation of this Agreement. Therefore, in order to preserve the basis upon which this Agreement is entered into by the Government and Cruzan, the Government and Cruzan each agree to the terms and conditions set forth in this Section 7.3.

7.3.2 The Government acknowledges and agrees that Cruzan has entered into this Agreement in material reliance on each and all of the obligations and commitments of the Government under this Agreement, as a package and without exception, with the reasonable expectation that Cruzan will receive all of the benefits of such obligations and commitments, including, without limitation, receipt of benefits in the form of the Marketing Support Payments, Molasses Subsidy Payments, Rum Promotion Payments, Strategic Third-Party Marketing Support Payments, and Production Incentive Payments described in Article V of this Agreement.

7.3.3 The Government and Cruzan each further agree and acknowledge that it is not possible to predict, consider or provide for all future changes, circumstances or contingencies affecting the performance or implementation of this Agreement. Therefore, the Government represents, warrants and covenants to Cruzan that in the event of a change in law, or any other act, event or circumstance, the result of which would be to diminish, impede, impair or prevent in connection with the Facilities the full performance after the Effective Date of any or all of the obligations and commitments made by the Government, the Government shall exercise its best efforts to, and to the extent permitted by law shall, provide Cruzan either with an exemption from the law as so changed or otherwise with another obligation or commitment reasonably acceptable to Cruzan and having economic effect equivalent to the commitment so lessened or removed. If the Government fails to provide such exemption or other commitment, such failure shall be an impairment of this Agreement. In furtherance of the foregoing, in the event that Cover Over Revenues attributable to the Facilities are for any reason received by the Government but are not available to satisfy the Government's payment obligations

to Cruzan hereunder, the Government agrees to fund such obligations from other sources to the extent permitted by law.

7.3.4 The Government agrees to use reasonable efforts to strenuously oppose any proposed legislation, initiative, act, event, plan or proposal which would otherwise have the effect of voiding or reducing any of the obligations or commitments as set forth in this Agreement. To the extent an initiative would negatively impact the full performance after the Effective Date of any or all of the obligations or commitments made by the Government, the Government shall take all legally appropriate steps to defend the obligations and commitments contained herein.

7.3.5 Cruzan acknowledges and agrees that the Government has entered into this Agreement in material reliance on each and all of the obligations and commitments of Cruzan under this Agreement, as a package and without exception, with the reasonable expectation that the Government will receive all the benefits contemplated to inure to it under the terms of this Agreement.

7.3.6 The Government and Cruzan each acknowledge and agree that: (a) the objectives and expectations set forth in this Section 7.3 are reasonable; (b) the commitments and obligations set forth in this Section 7.3 are intended to be continuous throughout the duration of this Agreement and (c) that the terms and conditions set forth in this Section 7.3 are material to this Agreement and intended to be enforced to the maximum extent possible.

#### **7.4. Acknowledgements**

The Government and Cruzan agree and acknowledge that:

7.4.1 Cruzan would not have considered making renovations and capital improvements to and expansion of the Facilities in St. Croix without the obligations and commitments to be provided by the Government hereunder for the entire period for which such obligations and commitments are to be made available during the Term.

7.4.2 The Government would not have considered granting the benefits and exemptions to be provided to Cruzan under the terms of this Agreement without the obligations and commitments to be provided by Cruzan as set forth in this Agreement.

7.4.3 The Parties will exercise their best efforts and take all actions to fulfill and maintain the obligations and commitments that they have made for the specific period referenced herein.

7.4.4 The Government will not pledge, encumber or otherwise restrict the Annual Gross Cover Over Receipts attributable to the Facilities in any manner that will prevent the Government from paying the Marketing Support Payments, Molasses Subsidy Payments, Rum Promotion Payments, Strategic Third-Party Marketing Support Payments, and Production Incentive Payments and performing its other obligations and commitments described herein.

7.4.5 Cruzan has relied upon the continued performance of the Government's obligations and commitments for their specified duration in connection with its decision to improve, renovate, and expand the Facilities.

7.4.6 This Agreement has been the subject of arm's-length negotiations between Cruzan and the Government and it is the intent of the Parties that this Agreement constitutes an enforceable contract.

#### **7.5. Negative Covenants**

Without the prior written consent of Cruzan, the Government, to the extent permitted by law, shall not take, approve, assist or allow any action, or fail to take, approve, assist or allow any action, if such action or failure to act, as the case may be, is reasonably likely to adversely affect, diminish or impair the beneficial use, operation, utility or occupancy of the Facilities or the ability of Cruzan to beneficially use, occupy, obtain, receive or otherwise enjoy any of: (i) the physical sites, facilities, improvements, programs, financial incentives or other benefits existing as of the Effective Date and contemplated by any portion of this Agreement, or (ii) the obligations or other commitments of the Government contemplated by, or set forth in, this Agreement. In addition, and without limitation, the Government specifically agrees that subject to the terms of the existing Matching Fund Bond Indenture and the Cruzan Project Bond Indenture, it shall not encumber any of the Annual Gross Cover Over Receipts that are intended to finance the Marketing Support Payments, Molasses Subsidy Payments, Rum Promotion Payments, Strategic Third-Party Marketing Support Payments, and Production Incentive Payments to Cruzan either through the issuance of Additional Bonds (as such term is defined in the Matching Fund Bond Indenture) based on such additional revenues or otherwise.

#### **7.6. Remedies**

7.6.1 The Parties expressly agree and recognize that, with respect to breach of certain of the covenants, agreements, representations, warranties or commitments contained herein, the Parties may not be fairly or adequately compensated by any legal remedy in an action for monetary damages. Therefore, the Parties agree that upon a breach of this Agreement, the non-defaulting party, in accordance with the dispute resolution procedures set forth in Section 8.3 hereof, may seek the specific performance of any of the covenants, agreements, representations, warranties or commitments contained herein or may be awarded damages for failure of performance or breach of any representation or warranty, or both, to the extent permitted by applicable law. No action taken by such Party pursuant to the provisions of this Section 7.6 or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies, and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to the Parties at law or in equity. Notwithstanding the foregoing, the sole remedy of the Government for the continued occurrence of a Material Default (as defined in Section 6.2.3) shall be the receipt of the liquidated damages payment and termination right referred to in Section 6.2.3. The Government may not terminate this Agreement for any default other than a Material Default.

7.6.2 No claim may be made by one Party against the other Party for any special, indirect, consequential, incidental or punitive damages in respect of any claim for breach of contract or any other theory of liability arising out of or relating to this Agreement or the development, construction or operation of the Project or any act, omission or event occurring in connection therewith and the Parties hereby waive, release and agree not to sue upon any claim for such damages.

7.6.3 In the event that Cruzan abandons the Facilities, prior to the issuance of any of the Cruzan Project Bonds, in breach of its obligations under this Agreement and provided that the Government has complied with its obligations under this Agreement, the Parties agree that the amount of the damages to be incurred by the Government may be difficult or impossible to determine and therefore the Parties agree that Cruzan shall pay to the Government an amount equal to US \$7.5 million as liquidated damages for such failure to perform its obligations hereunder.

## **ARTICLE VIII**

### **MISCELLANEOUS**

#### **8.1. Counterparts**

This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

#### **8.2. Governing Law**

The governing law of this Agreement shall be the law of the Territory of the United States Virgin Islands.

#### **8.3. Dispute Resolution**

8.3.1 Mutual Discussions. Except as otherwise provided in this Section 8.3, if a dispute or difference of any kind whatsoever shall arise among the Parties in connection with, relating to or arising out of this Agreement (each, a "Dispute"), one of such Parties shall notify the other of such Dispute. Such Parties shall attempt to settle such Dispute in the first instance by mutual discussions between their respective designated representatives. Failing such resolution, a senior representative of the Government and the President of Cruzan (or their duly appointed representatives) shall meet to resolve such Dispute and the joint decision of such individuals shall be binding upon the Parties hereto. If a settlement of any such Dispute or difference is not reached pursuant to this Section 8.3.1 within 60 days after such notice of Dispute is delivered, then the provisions of Section 8.3.2 hereof shall apply.

8.3.2 Mediation. If a settlement of any such Dispute or difference is not reached pursuant to Section 8.3.1, the Parties agree to submit the matter to mediation. The process for mediation shall be governed by the procedures set forth in Rule 3.2 of the Local Rules of the District Court of the Virgin Islands.

### 8.3.3 Judicial Resolution.

(a) If the settlement of any Dispute or difference (other than those addressed in Section 8.3.3(b) below) is not reached pursuant to Sections 8.3.1 or 8.3.2 above, then either party may initiate a lawsuit including but not limited to a lawsuit for breach of contract for damages, subject to the restrictions set forth in Section 7.6.2 hereof, in a court of competent jurisdiction in the Virgin Islands. The Parties agree and hereby waive any right to a jury trial, and such proceeding, should it proceed to trial, shall be a bench trial.

(b) If the settlement of any Dispute or difference related to the applicability or payment of liquidated damages under this Agreement by Cruzan (other than liquidated damages payable pursuant to Section 7.6.3 which dispute resolution process shall be governed by Section 8.3.3(a) above) is not reached pursuant to Sections 8.3.1 or 8.3.2 above, then either Party may initiate a proceeding for the adjudication of such Dispute, subject to the restrictions set forth in Section 7.6.2 hereof, in the United States District Court of the Virgin Islands. If the United States District Court of the Virgin Islands or the Third Circuit Court of the United States refuses for any reason to adjudicate such Dispute, the Parties agree that the provisions of Section 8.3.3(c) shall apply.

(c) If a Dispute cannot be settled pursuant to Section 8.3.3(b) above, such Dispute shall be determined by arbitration administered by the American Arbitration Association ("AAA"). The number of arbitrators shall be three. Within thirty (30) days of delivery of the request for arbitration, each party shall appoint one (1) arbitrator. If the two party appointed arbitrators do not reach an agreement on the appointment of a third arbitrator who shall serve as the chairman of the tribunal within fifteen (15) days of their appointment, the AAA shall appoint the third arbitrator. The language of the arbitration shall be English. Judgment upon any award(s) rendered by the arbitrators may be entered in any court having jurisdiction thereof. Nothing in this Agreement shall prevent either party from seeking provisional measures from any court of competent jurisdiction, and any such request shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

8.3.4 Continued Performance. The Parties shall continue to perform their respective obligations under this Agreement during the existence of any Dispute under this Agreement or the pendency of any mediation or arbitration.

8.3.5 Commercial Acts. The Parties each agree that the execution, delivery and performance of this Agreement constitute private and commercial acts rather than public or governmental acts.

### 8.4. Rules of Interpretation

In this Agreement, unless the context otherwise requires, headings are for convenience only and do not affect the interpretation of this Agreement; a reference to an Exhibit, Article or



Section is a reference to that Exhibit to, or Article or Section of, this Agreement; a reference to a document includes any amendment or supplement to, or replacement or novation of, that document; a reference to the singular includes the plural and vice versa; the words "include," "includes," and "including" mean include, includes, and including "without limitation" and "without limitation by specification," and any list or series following any such term is: (a) not exhaustive and (b) not meant to be limited to elements or items of the same or similar kind; and the words "hereof", "herein" and "hereunder", or "thereof", "therein" and "thereunder" and words of similar import when used shall refer to this Agreement or any other agreement as a whole and not to any particular provision.

#### **8.5. Construction**

This Agreement shall not be construed more strictly against one Party than against any other Party merely by virtue of the fact that this Agreement may have been prepared by counsel for one of the Parties, it being recognized that all Parties have contributed substantially and materially to the preparation of this Agreement.

#### **8.6. Conflicts**

Subject to Section 8.2 hereof, all statutes, codes, ordinances, rules and regulations in effect in the Virgin Islands as of the date hereof shall continue in effect in their current form during the entire Term, except as may otherwise be agreed to by Cruzan in writing and except to the extent of amendments mandated by Government or federal requirements. Notwithstanding the foregoing, if any of any statute, code, ordinance, rule or regulation is hereafter adopted, amended or interpreted so as to be less restrictive upon Cruzan than is currently the case, then at the option of Cruzan, such less restrictive amendment or interpretation shall control and become applicable without the requirement of an amendment to this Agreement.

#### **8.7. Severability**

In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect and for any reason whatsoever, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. In the event any such provision is held to be invalid, illegal or unenforceable, the Parties hereto shall make their best efforts to agree on a provision in substitution for such invalid, illegal or unenforceable provision that is as near in economic benefit as possible to the provision found to be invalid, illegal or unenforceable.

#### **8.8. Notices**

All communications and notices expressly provided for herein shall be sent, by registered first class mail, postage prepaid, by a nationally recognized overnight courier for delivery on the following Business Day or by telecopy (with such telecopy to be confirmed promptly in writing sent by mail or overnight courier as aforesaid), as follows:

GOVERNMENT OF THE UNITED  
STATES VIRGIN ISLANDS:

Governor  
Government House  
21-22 Kongens Gade  
St. Thomas, US Virgin Islands 00802  
Telephone: 340-774-1000  
Telefax: 340-777-6234

WITH COPIES TO:

Commissioner  
Virgin Islands Department of Property &  
Procurement  
Bldg. 1, Subbase –  
3rd Floor  
St. Thomas, US Virgin Islands 00802  
Telephone: 340-774-3320  
Telefax: 340-714-9511

Virgin Islands Public Finance Authority  
24 Honduras, 2nd Floor  
Frenchtown  
US Virgin Islands 00802  
Telephone: 340-714-1635  
Telefax: 340-714-1636  
Attention: Director of Finance and Administration

Attorney General of the Virgin Islands  
Virgin Islands Department of Justice  
34-38 Kronprindsens Gade  
GERS Building, 2nd Floor  
St. Thomas, US Virgin Islands 00802

CRUZAN:

Cruzan VIRIL, Ltd.  
PO Box 218  
Frederiksted, St. Croix  
US Virgin Islands 00842-0218  
Attention: President

WITH COPIES TO:

Beam Global Spirits & Wine, Inc.  
510 Lake Cook Road  
Deerfield, IL 60015  
Attention: General Counsel

Fortune Brands, Inc.  
520 Lake Cook Road  
Deerfield, IL 60025  
Attention: SVP - Strategy and Corporate  
Development

or to such other address as the receiving Party shall have most recently forwarded to the sending Party pursuant to the provisions of this Section 8.8.

#### **8.9. Mutual Cooperation**

The Parties agree to cooperate fully with each other to achieve passage of the Ratifying Act. Further, the Parties agree to cooperate fully in connection with the development and issuance of all press releases, correspondence to third-parties, and publications concerning the Project and this Agreement. The Parties also agree that, for the Term, they will communicate and consult on an ongoing basis with respect to any and all challenges by third parties, including, but not limited to, the initiation of, or defense against, any third-party litigation, administrative proceedings, or legislative actions contesting, undermining, or seeking to invalidate this Agreement or any of its provisions.

#### **8.10. Assignment**

This Agreement is not assignable by the Government in whole or in part except where Cruzan consents, in its sole discretion, to such assignment in writing. Cruzan shall have the right at any time to assign all its rights and obligations, or any part thereof, in and to this Agreement, or any part thereof, to any Cruzan Affiliate that agrees to assume the assigned obligations of Cruzan in and to this Agreement or applicable portion thereof; provided, however, that proof of the ability of such Cruzan Affiliate to fulfill any assigned obligations shall be provided to the Government as part of the advance notice by Cruzan. The Government may object to such assignment if it reasonably appears that the Cruzan Affiliate lacks such ability. Cruzan shall provide the Government at least thirty (30) days advance written notice of its intention to assign this Agreement. The Government shall receive a copy of the written agreement of the Cruzan Affiliate to agree to assume all assigned obligations and shall acknowledge to the Government its ability to fulfill such obligations.

#### **8.11. No Third-Party Beneficiary**

This Agreement is for the sole and exclusive benefit of the Government and Cruzan and, if applicable, any permitted successors, transferees or assigns thereof. No other Persons or entities are intended third party beneficiaries of this Agreement, including, without limitation, any third parties that may, from time to time, have ownership, security or other interests in any real or personal property associated with the Project, nor shall such third parties have any rights to enforce any of the provisions of this Agreement.

#### **8.12. Contractual Relationship**

None of the commitments or other obligations, agreements or provisions contained in this Agreement shall or shall be deemed to give the Government the right or power to exercise control over the affairs or management of Cruzan or its Affiliates, the Facilities or any part thereof. The relationship between the Government and Cruzan is, and at all times shall remain, contractual. No commitment or other obligation, agreement or provision of this Agreement, nor any agreement executed pursuant hereto, is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest between or among the

Government and Cruzan or to create any equity interest in the Facilities for the Government. Notwithstanding any other provision of this Agreement or any other agreement executed pursuant hereto or in connection herewith, the Government is not and shall not be construed as a partner, joint venturer, alter ego, manager, controlling Person or other business associate or participant of any kind of Cruzan, its stockholders, members, or partners or the Facilities.

#### **8.13. Further Assurances**

The Government and Cruzan agree to do all things and take all actions required, necessary or appropriate to carry out the terms of this Agreement and the implementation of the Parties' intent as reflected by the terms of this Agreement. Such things and actions include, but are not limited to, the obtaining, negotiation, execution and delivery of all necessary or desirable agreements, filings, consents, authorizations, approvals, licenses or deeds. Without limiting the generality of the foregoing, the Parties agree: (a) to take all actions, without exception, which are necessary and appropriate at any time to assure the binding effect, legality and enforceability of their respective obligations and commitments hereunder and (b) not to take any action which would affect adversely in any way whatsoever the binding effect, legality and enforceability of their respective obligations and commitments hereunder.

#### **8.14. Survival of Representations and Warranties**

The representations, warranties and covenants made by each of the Parties hereto and contained herein shall survive the performance of any obligations to which such representations, warranties and covenants relate.

#### **8.15. Term of Agreement**

The term of this Agreement (the "Term") shall commence on the Effective Date and continue in effect through the later to occur of the thirtieth (30th) anniversary of the Effective Date and the date on which the Cruzan Project Bonds issued pursuant to Article VI of this Agreement are no longer outstanding, which date for the Term may be extended by Cruzan for a period of thirty (30) additional years upon the delivery of written notice to the Government by Cruzan no later than thirty (30) days prior to the anticipated expiration of the Term. Upon the termination of this Agreement, Cruzan shall continue to retain ownership of the facilities financed hereunder. The Parties agree that if the Effective Date does not occur by November 30, 2009, or if the Cruzan Project Bonds are not issued by March 31, 2010 at the prevailing market rates (and in no event to exceed a 9% rate of interest), Cruzan may immediately terminate this Agreement in its sole and absolute discretion.

#### **8.16. Binding Effect**

This Agreement and all terms, provisions and obligations set forth herein shall be binding upon and shall inure to the benefit of the Government and Cruzan and their respective successors and assigns.

#### **8.17. Waivers**

Waiver of any of the obligations of a Party set forth in this Agreement may only be effected, in writing, by the other Party hereto. No delay or omission to exercise any right or power by any Party shall be construed to be a waiver. In the event any provision is waived by a Party, such waiver shall not be deemed to waive any other provision.

#### **8.18. Entire Agreement**

This Agreement is the entire agreement and supersedes all prior and collateral communications and agreements of the Parties relating to the subject matter.

#### **8.19. Amendments**

This Agreement may be amended only by a written modification duly executed by the Parties' authorized representatives.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**[PAGE INTENTIONALLY LEFT BLANK]**

**[SIGNATURE PAGES FOLLOW]**

WHEREFORE, the Parties hereto have executed this Agreement as of the date first written above.

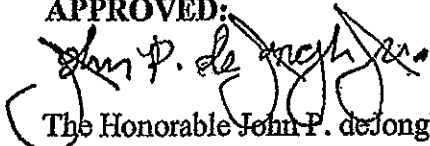
**CRUZAN VIRIL, LTD.**

By: 

Name: Patrick Coley

Title: Authorized Signatory

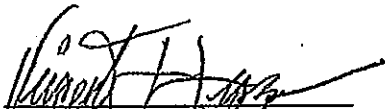
**APPROVED:**



The Honorable John P. deJongh, Jr.  
Governor of the U.S. Virgin Islands

**APPROVED** as to legal sufficiency,

By:

  
\_\_\_\_\_  
Vincent F. Frazer, Esquire  
Attorney General



# Exhibit C-1

## Projected Bulk Rum Sales

Year	Volume (in m PG)	YoY Growth
CY 2010	6.64	
CY 2011	6.56	-1.22%
CY 2012	6.56	0.00%
CY 2013	6.56	0.00%
CY 2014	6.56	0.00%
CY 2015	6.56	0.00%
CY 2016	6.56	0.00%
CY 2017	6.56	0.00%
CY 2018	6.56	0.00%
CY 2019	6.56	0.00%
CY 2020	6.56	0.00%
CY 2021	6.56	0.00%
CY 2022	6.56	0.00%
CY 2023	6.56	0.00%
CY 2024	6.56	0.00%
CY 2025	6.56	0.00%
CY 2026	6.56	0.00%
CY 2027	6.56	0.00%
CY 2028	6.56	0.00%
CY 2029	6.56	0.00%
CY 2030	6.56	0.00%
CY 2031	6.56	0.00%
CY 2032	6.56	0.00%
CY 2033	6.56	0.00%
CY 2034	6.56	0.00%
CY 2035	6.56	0.00%
CY 2036	6.56	0.00%
CY 2037	6.56	0.00%
CY 2038	6.56	0.00%
CY 2039	6.56	0.00%

## Exhibit C-2

### Projected Aggregate Annual Rum Sales

<i>Year</i>	<i>Volume (in m PG)</i>	<i>YoY Growth</i>
CY 2010	10.6	
CY 2011	10.5	0.00%
CY 2012	16.1	53.33%
CY 2013	16.2	0.62%
CY 2014	16.3	0.62%
CY 2015	16.4	0.61%
CY 2016	16.5	0.60%
CY 2017	16.6	0.60%
CY 2018	16.7	0.60%
CY 2019	16.8	0.60%
CY 2020	16.9	0.60%
CY 2021	17.0	0.60%
CY 2022	17.1	0.60%
CY 2023	17.2	0.60%
CY 2024	17.3	0.60%
CY 2025	17.4	0.60%
CY 2026	17.5	0.60%
CY 2027	17.6	0.60%
CY 2028	17.7	0.60%
CY 2029	17.8	0.60%
CY 2030	17.9	0.60%
CY 2031	18.0	0.60%
CY 2032	18.1	0.60%
CY 2033	18.3	0.60%
CY 2034	18.4	0.60%
CY 2035	18.5	0.60%
CY 2036	18.6	0.60%
CY 2037	18.7	0.60%
CY 2038	18.8	0.60%
CY 2039	18.9	0.60%