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**AGREEMENT**

**Between**

**DIAGEO USVI INC.**

**and**

**THE GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS**

**Dated as of June 17, 2008**

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## AGREEMENT

THIS AGREEMENT (this "Agreement"), dated as of the 17th day of June, 2008, is made by and between Diageo USVI Inc. ("Diageo") and the Government of the United States Virgin Islands (the "Government"). The Government and Diageo are 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 ("Virgin Islands"); 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 by alleviating (1) annual governmental deficits which have exceeded US \$50 million, (2) a total accumulated unfunded pension fund deficit estimated to exceed US \$1.2 billion and (3) a debt ratio per capita more than twice that of any US state; 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 supports initiatives which would improve the Virgin Islands' credit ratings in global capital markets; and
- WHEREAS the Government is committed to increasing employment opportunities and improving economic conditions on St. Croix; and
- WHEREAS to these ends, the Government has committed to employ innovative economic incentives, similar to those being deployed successfully by mainland states, to attract new manufacturing investment; and
- WHEREAS the Government is interested in attracting new state-of-the-art manufacturing facilities which create skilled jobs and support the development of other diversified Virgin Islands industries in addition to real estate, tourism, and financial services; and

- WHEREAS the Government, mindful of the Virgin Islands' distinct ecological conditions, is interested in attracting state-of-the-art environmentally sound manufacturing facilities; and
- WHEREAS, since 1954, the United States Congress ("Congress") has encouraged the Virgin Islands to direct its deployment of financial incentives toward the attraction of additional rum production, which is historically indigenous to the Virgin Islands, and Congress has made available the rum cover-over program to support the Government's efforts to attract new rum production; and
- WHEREAS Congress' purpose in providing rum cover-over eligibility to the Virgin Islands is to promote economic self-sufficiency and fiscal autonomy for the Virgin Islands Government and economic stability for the Virgin Islands; and
- WHEREAS, as Congress has recognized repeatedly, without availability of the rum cover-over revenues as a financing mechanism, the Virgin Islands would lack the resources necessary to attain Government self-sufficiency and economic growth and stability; and
- WHEREAS, in 1954, when Congress first made the Virgin Islands eligible to participate in the rum cover-over program, Congress' expressed intent was to provide the Virgin Islands competitive and economic parity with Puerto Rico, which had enjoyed access to the rum cover-over program since 1917, and to relieve the federal government of the burden to provide periodic federal deficit-financing appropriations for the Virgin Islands; and
- WHEREAS, since Congress extended the rum cover-over program to the Virgin Islands in 1954, the Virgin Islands has not achieved economic or competitive parity with Puerto Rico through the production of rum and has not succeeded in eliminating annual governmental deficits as Congress intended, because the Virgin Islands has heretofore been unable to attract sufficient rum production; and
- WHEREAS, since 1954, the Virgin Islands has attracted two producers of rum, Brugal and the Cruzan VIRIL Ltd., with Brugal leaving the Virgin Islands in the 1970's; and
- WHEREAS, apart from rum production, the Virgin Islands has attracted only one major manufacturing facility (HOVENSA) since the 1960's that is still in operation; and
- WHEREAS, in pursuing its commitment to attract new rum production, the Government competes with foreign venues which offer substantial financial incentives; thus the Government has designed a modern set of incentives to compete in its efforts to attract rum production within the Virgin Islands; and

- WHEREAS the Government currently provides significant statutory incentives for the attraction and support of rum production facilities, including the following:
  - A Molasses Subsidy Fund 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;
  - Statutory exemptions on property, excise, gross receipts and income taxes and other local tax incentives; and
  - Environmental mitigation support; and
- WHEREAS to become more broadly competitive as a rum production venue, the Virgin Islands has committed best efforts to utilize these incentive programs to expand production by one or more rum industry leaders in the global premium brand sector; and
- WHEREAS the Government is entering into a long-term public-private relationship with Diageo to advance the Government's aforementioned purposes; and
- WHEREAS the operation of the new rum distillery will 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 a new rum distillery will diversify the Virgin Islands rum industry that has become reliant on one producer, and provide the Government with the financial flexibility to provide needed support to assist that producer in addressing long-standing environmental issues that have impeded its long-term growth; and
- WHEREAS the development of a new rum distillery through the implementation of this Agreement will enhance the self-sufficiency and fiscal autonomy of the Government and provide a mechanism for funding the substantial unfunded pension fund liability, and thereby reduce the risk of such unfunded liability becoming a burden of the federal government, consistent with Congress' intent in providing the rum cover-over in 1954; and
- WHEREAS the public-private relationship between the Government and Diageo established by this Agreement is a classic project finance enterprise inasmuch as the revenues that will finance the bonds for construction of the new rum production facility, and the revenues used to finance economic incentives provided by the Government, will derive from new cover-over revenues produced by the operation of the new rum distillery; and
- WHEREAS the Government is entering into this Agreement with Diageo in reasonable reliance upon Congress' longstanding commitment to assist the Virgin Islands in

attracting new rum production through the availability of the rum cover-over program, and the resulting public-private relationship is fully consistent with the letter and purpose of the rum cover-over provisions; and

- WHEREAS Congress, in 1983 and 2000, enacted laws which vested 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 Island 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 Diageo to assist in its development of its new bulk rum production facilities on St. Croix, and the provision of these benefits are declared to meet the compelling public needs outlined above; and

**B. Diageo Recitals**

- WHEREAS Diageo and its Affiliates (the "Diageo Group") is the world's leading premium drinks business with an outstanding collection of beverage alcohol brands across spirits, wine and beer categories including Smirnoff, Johnnie Walker, Guinness, Baileys, J&B, José Cuervo, Tanqueray, Crown Royal, Beaulieu Vineyard and Sterling Vineyards wines, Bushmills Irish whiskey and Captain Morgan rum; and
- WHEREAS Captain Morgan is a global leader among rum brands and the second leading rum consumed in the United States and production of Captain Morgan is expected to grow steadily in coming years; and
- WHEREAS Diageo Group has determined to build, own and operate its own facility for the production of bulk rum to be used in its Captain Morgan branded products; and
- WHEREAS Diageo Group evaluated alternative sourcing strategies for the long-term production of Captain Morgan rum brands across the Caribbean; and
- WHEREAS Diageo Group is attracted by the economic incentives offered by the Government to locate on St. Croix -- in lieu of other competing locations -- all of its United States production of Captain Morgan rum upon implementation of Phase Two of the Project (as described below); and
- WHEREAS Diageo intends, directly or through one or more Affiliates, to construct, own and operate its facility for the production of bulk rum to be used for Captain Morgan branded products at one or more locations on St. Croix; and
- WHEREAS location on St. Croix and construction of the Project will require new facility construction and relocation expenditures in the order of US \$150 million; and



- WHEREAS the Project will include a state-of-the art environmentally sound manufacturing plant; and
- WHEREAS Diageo Group, having done its due diligence, has determined the investment in and development of the Project on St. Croix and the receipt of the benefits and incentives as set forth herein are beneficial to its growth and desire to enhance its position in the global rum market; and

**C. Joint Recitals**

- WHEREAS the Parties recognize that the Project will have a significant positive impact on the welfare of the community, including the creation of jobs on St. Croix, 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 the Project, increased confidence in the Virgin Islands economy and other benefits, and therefore the Government is desirous of having Diageo locate the Project on St. Croix; and
- WHEREAS upon full implementation of Phase Two, the building of the Project is projected to contribute an estimated \$78 million to the Virgin Islands economy; and
- WHEREAS the current estimate is that once Phase Two is fully operational, the Project will generate approximately 40 to 70 direct jobs and total direct and indirect employment of approximately 230 jobs and yield a recurring annual additional contribution of approximately \$53 million to the Virgin Islands economy and will generate significant additional Cover Over Revenues for the Government; and
- WHEREAS the Parties recognize that Diageo Group can locate the Project in other jurisdictions or source its bulk rum requirements from existing facilities but agree that both Parties and the residents of the Virgin Islands will be benefited by Diageo Group's decision to construct and operate the Project on St. Croix.

**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 Legislature of the Virgin Islands of the Act ratifying this Agreement and the obligations of the Government contained herein (such date, the



"Effective Date"). This Agreement sets forth the terms and conditions under which the Government intends to obtain and be responsible for, among other things, the potential grant financing related to the Project and Diageo intends to locate and be responsible for the construction and operation of the Project in the Virgin Islands and the covenants, representations and warranties in connection therewith. The 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 Diageo locating the Project and operations related to the Project 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 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 any legislation, executive order, regulation, agreement, obligation, legal instrument, or other undertaking which materially impairs or limits the Government's ability to fully perform its obligations as set forth in this Agreement.

#### 1.3 No Additional Cost to Diageo

The Government shall fully fund and perform its obligations under this Agreement, and at no time shall Diageo be responsible for or be required to incur or pay any cost, charge or expense under this Agreement relating to those obligations (or any agreement executed pursuant hereto) unless this Agreement (or the agreement executed pursuant hereto) specifically identifies a cost, charge or expense to be borne or paid by Diageo.

#### 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 Diageo to undertake the Project, (b) absent such financing, tax, production and marketing incentives, Diageo would not locate the Project in the Virgin Islands, and (c) Diageo's development and operation plans with respect to the Project rely on the continued availability of such incentives throughout the Term of this Agreement. The Parties also acknowledge that Diageo's commitment to produce bulk rum for Captain Morgan branded 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 Diageo Obligations

In consideration of the Government granting the benefits and incentives to Diageo under this Agreement, which consideration shall be acknowledged by Diageo upon the full execution, adoption and ratification of this Agreement by the Government, Diageo agrees to fully perform its obligations as set forth in this Agreement. In addition, in order to perform such obligations under this Agreement, Diageo shall enter into such additional agreements as necessary. Diageo

shall not enter, and shall not cause or suffer its Affiliates to enter, into any other contract, agreement, arrangement, undertaking or transaction that materially impairs or limits its 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:

**"Affiliate"** shall mean with respect to Diageo any entity which is controlled by or directly or indirectly owned in whole or in part by Diageo plc.

**"Aggregate Rum Sales"** shall mean, with respect to any Fiscal Year, the aggregate number of proof gallons of all taxable rum sold in the United States during such Fiscal Year attributable to the Project, as reported in the Monthly Cover Over Reports for such Fiscal Year.

**"Agreement"** shall have the meaning specified in the preamble.

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

**"Annual Gross Cover Over Receipts"** shall have the meaning specified in Section 6.1.6(a) hereof.

**"Baseline Rum Sales"** shall mean zero (the number of proof gallons of taxable rum that would have been sold by Diageo from facilities located in the Virgin Islands in the absence of this Agreement).

**"Cover Over Rate"** shall have the meaning specified in Section 6.2.1 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 regulation which may be substituted 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 Rum Sales and Incremental Rum Sales) during any Fiscal Year are determined by multiplying the number of proof gallons of relevant rum sales by a Dollar amount calculated in accordance with Section 7652(b) of the U.S. Internal Revenue Code for such Fiscal Year.

**"Diageo Group"** shall have the meaning specified in the Recitals hereof.

"Diageo Project Bonds" shall have the meaning specified in Section 6.1.1 hereof.

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

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

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

"Dispute" shall have the meaning specified in Section 10.3.1 hereof.

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

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

"Effective Date" shall mean the date upon which both of the following have been accomplished: (a) this Agreement has been signed by authorized representatives of each Party hereto and (b) upon the adoption by the Legislature of the United States Virgin Islands of the Act ratifying this Agreement and the obligations of the Government hereunder.

"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 Incremental Rum Sales during such Fiscal Year multiplied by thirty-five percent (35%).

"Estimated Molasses Subsidy Payment" shall mean, with respect to any Fiscal Year, the estimated amount of the Molasses Subsidy Payment to be paid to Diageo on the basis of the Estimate Summary prepared by Diageo 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 projected Incremental Rum Sales during such Fiscal Year multiplied by eight (8%) percent or nine and one half (9.5%), as the case may be, as referenced in Section 5.3.1 hereof.

"Estimate Summary" shall have the meaning specified in Section 5.5.1 hereof.

"Environmental Laws" shall mean any 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.

"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; and (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) 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; provided, however, that 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 Diageo or any Affiliate of Diageo, other than industry or nationwide strikes or labor disputes; (D) weather conditions which could reasonably be anticipated by experienced contractors operating in the relevant location; (E) the occurrence of any manpower, material or equipment shortages; (F) the reduction of the Cover-Over Rate below its Historic Base Level; or (G) 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.

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

"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 Project 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.

"Incremental Cover Over Revenues" shall mean, with respect to any Fiscal Year, the Cover Over Revenues attributable to the Incremental Rum Sales for such Fiscal Year.

"Incremental Rum Sales" shall mean, with respect to any Fiscal Year, the number of proof gallons attributable to the Project, calculated by subtracting Baseline Rum Sales from Aggregate Rum Sales.

"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 Payment" shall have the meaning specified in Section 5.1.2 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 Virgin Islands Public Finance Authority and the Trustee, dated as of May 1, 1998, as supplemented by the First Supplemental Indenture of Trust, dated as of May 1, 1998 and the Second Supplemental Indenture of Trust, dated as of December 1, 2004, each by and between the Virgin Islands Public Finance Authority and the Trustee, as supplemented and amended from time to time.

"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, 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.

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

"Phase One" shall mean the period of time beginning on the Effective Date and ending upon the commencement of Phase Two of the Project.

"Phase Two" shall mean the date upon which Diageo commences the production of all bulk rum at the Project for the sale of Captain Morgan branded products in the United States, except as otherwise provided in this Agreement.

"Project" shall mean the design, construction, ownership and operation of a fully operational, state-of-the-art facility, including any subsequent improvements, for the production and potential storage of rum together with all related utilities and transportation improvements and facilities necessary and appurtenant thereto to be located on a site or sites to be selected by Diageo on St. Croix, the basic components of which are specified on Exhibit A hereto; which, at the sole option of Diageo, may be developed in a single phase or two separate phases each of them comprising the facilities and related equipment to allow Diageo to distill up to approximately 11 million proof gallons per year at the end of the first phase and up to approximately 20 million proof gallons per year at the end of the second phase.

"Project Construction" shall mean, to the extent applicable, the development, design, engineering, construction, equipping and commissioning of the Project, including the receipt of all necessary Permits for the foregoing activities, so that full operations may begin at the Project.

"Project Coordinator" shall mean the qualified and experienced individual designated from time to time by the Governor who shall represent the Government in coordinating with Diageo regarding the needs and requirements of the Project as set forth in this Agreement and as may from time to time arise in an administrative, communications and facilitation and obligation fulfillment context.

"Production Incentive Payment" shall have the meaning specified in Section 5.3.1 hereof.

"Project Site" shall mean the site or sites to be selected by Diageo for construction of the Project.

"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, 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 10.15 of this Agreement.

"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 or Estimated Production Incentive Payment, as the case may be, from the applicable Marketing Support Payments, Molasses Subsidy Payments or Production Incentive Payments actually received or to be received for the Fiscal Year in question.

"Trustee" shall mean The Bank of New York Trust Company, N.A., as 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.

"Virgin Islands" shall mean the United States Virgin Islands.

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

"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** **FACILITATION OF THE PROJECT**

#### **3.1 Development of the Project**

3.1.1 Following the occurrence of the Effective Date and the closing of the financing specified in Section 6.1 hereof, Diageo shall or shall cause one or more of its Affiliates to

(a) acquire, through lease or purchase, an appropriate Project Site on St. Croix upon which the Project shall be developed; provided, that if title to the Project Site is acquired by or transferred to an Affiliate of Diageo, such Affiliate shall accede to the terms of this Agreement in a manner reasonably acceptable to the Government, pursuant to which such accession such Affiliate shall become a Party to this Agreement and become jointly and severally liable for the obligations of Diageo hereunder;

(b) cause the Project to be designed, developed, constructed, equipped and operated in accordance with all applicable laws and regulations, including applicable Environmental Laws, as soon as reasonably practicable; and

(c) comply with all employment laws of the United States and the Virgin Islands during construction and operation of the Project.

3.1.2 It is understood and agreed that Diageo's obligations to (x) acquire, through lease or purchase, the Project Site and (y) cause the Project to be designed, developed, constructed, equipped and (z) commence operations of the Project in a timely manner, are conditioned upon the following (any one or more of which conditions may be waived by Diageo, at Diageo's sole option, without affecting any other condition or obligation of either party hereunder), it being understood that Diageo shall use all commercially reasonable efforts to cause such conditions to be satisfied as soon as reasonably practicable:

(a) Diageo's ability to secure a Project Site on St. Croix on a commercially reasonable basis that is appropriate to develop the Project; or

(b) Diageo's ability to timely obtain such permits as may be necessary to construct, equip and operate the Project; or

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

(d) Diageo's ability to obtain the Project financing described in Article VI of this Agreement.

3.1.3 It is further understood and agreed that at Diageo's sole option the Project may be developed, constructed and operated in a single phase or in two separate phases. If Diageo determines it will develop the Project in two phases, Diageo shall begin development of Phase One of the Project as soon as possible after the occurrence of the Effective Date and the closing of the financing described in Article VI of this Agreement. Development of Phase Two of the Project will occur when it is determined by Diageo to be economically advantageous to do so.

3.1.4 For the avoidance of doubt, the Parties acknowledge and agree that unless otherwise decided by Diageo, Diageo will sell no bulk rum to the United States before January 2012.

### **3.2 Designation of a Project Coordinator**

The Parties agree that it is in the Parties' best interests for the design, development, construction, equipping and operational start up of the Project to proceed on an expeditious timetable. Accordingly, in order for the Project to commence as soon as possible and to proceed in an efficient and orderly manner and to be completed on schedule, the Government shall, on the Effective Date, designate a Project Coordinator who shall devote such time as may be reasonably required to carry out his or her duties during Project Construction and thereafter during operation of the Project. In particular, such duties may relate to labor, transportation, permitting or other Project-related issues.

### 3.3 Assistance with Permits

For the Term of this Agreement, the Government shall do all things and take such actions reasonably necessary, to the fullest extent permitted by law, to assist Diageo (and, where applicable, its contractors and subcontractors), through the Project Coordinator, in Diageo'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 Diageo 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 Diageo may be currently or in the future eligible to receive, the following tax and other Economic Development Incentives set forth in this Section 4.1 shall be granted to Diageo and remain in full force and effect throughout the Term of this Agreement or any extension thereto.

#### 4.1.1 Corporate Income Tax Reduction.

(a) For operating income derived from the Project and for investment income earned with respect to the Project for each taxable year during the Term of this Agreement or any extension thereof, Diageo 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 Diageo 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 Diageo 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 Diageo can identify as being made out of funds received from the Government under Article V of this Agreement.

(d) In determining Diageo's Income Tax liability for any tax year or part thereof during the Term of this Agreement or any extension thereto, 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 Diageo.

(e) In determining Diageo's Income Tax liability, payments made by the Government to Diageo under Article V shall not be treated as taxable income to Diageo.

#### 4.1.2 Other Tax Exemptions.

Diageo 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 Project (which exemption shall inure to the benefit of the ultimate owner of the Project Site as well as to Diageo), 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 Project 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 Project.

4.1.3 Customs Duty. Notwithstanding anything to the contrary in the laws of the Virgin Islands, raw materials and component parts imported into the Virgin Islands by Diageo 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 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 Diageo will from the Effective Date be entitled to receive the Tax reductions, exemptions and other benefits granted to Diageo by the Government and set out in this Agreement without the need for any formal application procedure by Diageo and that receipt of the above tax benefits shall be dependent upon the material compliance by Diageo with the requirements set forth in Section 4.2 hereof. Outside the terms of this Section 4.2, there shall be no additional conditions or requirements imposed upon Diageo that could result in the suspension, revocation or reduction of such benefits.

(b) The Government hereby agrees and covenants with Diageo 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 Diageo to lose any applicable Tax reductions, exemptions or benefits granted to Diageo pursuant to this Agreement or any extension thereto.

#### 4.2 Economic Development Obligations

##### 4.2.1 Maintenance of Audit Records

(a) During the term of this Agreement, Diageo 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 Diageo shall cooperate to create a record keeping program reasonably acceptable to both Parties.

(b) When so requested, Diageo will provide the Government with any information reasonably related to Diageo's Economic Development Incentives and Economic Development Obligations and supporting documentation. The Government shall have the right, upon reasonable request during the term of this Agreement, to cause an audit of the books, records, and accounts maintained by Diageo 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 Diageo. The Government shall be responsible for the costs of such audits and the out-of-pocket expenses of Diageo directly incurred in connection with such audit; provided, however, if the results of such audit demonstrate that Diageo has materially failed to comply with the terms of this Section 4.2, Diageo shall be responsible for the costs of such audit.

##### 4.2.2 Economic Development Requirements

(a) Through its commitment to produce bulk rum in the Virgin Islands, Diageo shall cause to be invested in the Project not less than US \$150 million, excluding inventory, over the course of Phase One and Phase Two of the Project, it being understood that the amounts financed pursuant to the provisions of Article VI of this Agreement shall qualify as such investment.

(b) Upon commencement of commercial production of bulk rum at the Project, Diageo shall employ a minimum of 40 employees. During the term of this Agreement (i) at least eighty percent (80%) of Diageo'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 Diageo's employees who are in management, supervisory and/or technical positions shall be Residents of the Virgin Islands.

4.2.3 Diageo 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.

4.2.4 Diageo 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 Diageo 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 10.3 hereof, possibly resulting in the reduction or elimination of the Economic Development Incentives granted to Diageo until such time as Diageo shall resume compliance with its obligations under Section 6.2.

**4.3 Effective Date**

The effective date of the Tax exemptions, reductions and benefits described in this Article IV shall be the Effective Date of this Agreement.

**ARTICLE V**  
**MARKETING AND MOLASSES SUBSIDY AND INCENTIVE PAYMENTS**

**5.1 Marketing Activities and Support Payments**

**5.1.1 Marketing Activities.**

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

(b) Diageo's Marketing Activities shall be in furtherance of its promotion of the Captain Morgan rum brand (or any other products utilizing the bulk rum produced by the Project for sale in the United States), and when advisable from a marketing viewpoint "Virgin Islands Rums" or "Caribbean Rums", in the United States.

(c) Diageo 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 Diageo to discuss the Marketing Activities and its progress in promoting both the Captain Morgan brand and Virgin Islands Rums or Caribbean Rums generally.

(d) Diageo's estimated range of projections of Aggregate 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 of this Agreement, are set forth in Exhibit C to this Agreement.

5.1.2 Marketing Support Payments. The Government, to support and promote Diageo's performance of the Marketing Activities, agrees to make marketing support payments (the "Marketing Support Payments") to Diageo as follows:

(a) For each Fiscal Year covered by this Agreement, beginning with the Fiscal Year ending September 30, 2012, the Marketing Support Payment shall equal thirty-five percent (35%) of the Incremental Cover Over Revenues in respect of such Fiscal Year.

5.1.3 The Government's payment to Diageo of Marketing Support Payments due hereunder shall be subject only to the deposit of Annual Gross Cover Over Receipts into the Diageo 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 Diageo's production of bulk rum at the Project, agrees to make molasses subsidy payments (the "Molasses Subsidy Payments") to Diageo as follows:

(a) For each Fiscal Year covered by this Agreement, beginning with the Fiscal Year ending September 30, 2012, the Molasses Subsidy Payment shall equal the amount to be paid to Diageo 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 Diageo for use in the production of bulk rum at the Project and (2) the total cost per gallon of such molasses to Diageo.

#### 5.3 Production Incentive Payments

5.3.1 The Government, to support and promote the continued production of bulk rum by Diageo at the Project, agrees to make production incentive payments (the "Production Incentive Payments") to Diageo as follows:

(a) For each Fiscal Year covered by this Agreement, beginning with the Fiscal Year ending September 30, 2012, Production Incentive Payments in the amount of eight percent (8%) of the Incremental Cover Over Revenues in respect of such Fiscal Year.

(b) For each Fiscal Year in which the Incremental Cover Over Revenues exceeds \$200 million, the Production Incentive Payment amount shall be increased to nine and one half percent (9.5%) of the Incremental Cover Over Revenues in respect of such Fiscal Year.

Oct. 30, 2011 -  
Sept. 30, 2012  
35% Inc. Cover Over Revenues

**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 and Production Incentive Payments for any Fiscal Year (collectively, for purposes of this Section 5.4, the "Annual Payment") to be paid to Diageo shall be payable from and shall not, in the aggregate, exceed the Annual Diageo Surplus Receipts amount transferred to the Diageo Surplus Receipts Account. Notwithstanding the foregoing, in no event shall the Annual Payment due to Diageo in any Fiscal Year be reduced due to a lack of funds available in the Diageo 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 Diageo is reduced due to such principal and interest payments, Diageo shall be reimbursed for such reductions in future years when sufficient funds are deposited into the Diageo Surplus Receipts Account.

5.4.2 If the amount of the Annual Payment payable to Diageo for any Fiscal Year exceeds the Annual Diageo Surplus Receipts, such excess amounts shall be known as the "Excess Amount" and shall be accumulated as a credit for future application. For the avoidance of doubt, such credit 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 Payment, then the Production Incentive Payment and finally the Marketing Incentive Payment. If the Annual Payment is reduced because it would exceed the available Annual Diageo Surplus Receipts in any Fiscal year, first the allocation of the Marketing Incentive Payment as a portion of the Annual Payment shall be reduced and then, if necessary, the Production Incentive Payment 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 Diageo Surplus Receipts for such year, any Excess Amount carried over from previous Fiscal Years shall be added to such Annual Amount for payment to Diageo; provided that the Annual Payment to be paid to Diageo in such Fiscal Year shall not exceed the available Annual Diageo Surplus Receipts. Any Excess Amount so allocated shall then be deducted from the running total of Excess Amounts that may have accumulated to that time.

5.4.5 The Government agrees to levy no Virgin Islands Taxes or other charges on the Marketing Support Payments, Molasses Subsidy Payments and Production Incentive Payments paid to Diageo 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 Diageo 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), 6.1.6(b)(ii) and 6.1.6(b)(iii) below.

5.5 Payment Procedure and Timing

5.5.1 Annually, on a date to be agreed by the Government and Diageo, Diageo shall deliver to the Government its Estimated Incremental Rum Sales for the current and next succeeding Fiscal Year. At such time, Diageo shall also deliver to the Government a summary of the Estimated Marketing Support Payment, Estimated Molasses Subsidy Payment and Estimated Production Incentive Payment projected to be payable to Diageo in such Fiscal Year based on the projected Incremental Rums Sales noted above. Such notice to the Government shall be known as the "Estimate Summary".

5.5.2 After receipt of Diageo'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 and the Estimated Production Incentive Payment due to Diageo to be deposited in a segregated account to be established for such purpose and to be distributed to Diageo within five (5) days.

5.5.4

(a) Following the OMB/VI's receipt of the cover over report in September of each Fiscal Year, the Government and Diageo shall calculate (I) Aggregate Rum Sales, (II) Incremental Rum Sales, (III) Incremental Cover Over Revenues, (IV) Marketing Support Payments, (V) Molasses Subsidy Payments, (VI) Production Incentive Payments, and (VI) True-Up Amount, in respect of such Fiscal Year.

(b) Payment of the True-Up Amount for a Fiscal Year shall be made to Diageo or the Government, as the case may be, as an adjustment to the Estimated Marketing Support Payments, as calculated by the Government and Diageo, during each subsequent Fiscal Year, either pro-rated among all four quarterly payments or applied solely to the first quarterly payment, at the Government's sole discretion, OR as a cash payment to Diageo or the Government, as the case may be, to be made no later than November 30 of the subsequent Fiscal Year.

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 Diageo to

develop, own and operate the Project and Project Site as and to the extent provided in this Agreement, the Government agrees, unless otherwise advised by Diageo, following the Effective Date and such other conditions to be agreed between the Government and Diageo, to facilitate the 100% grant financing of the Project through the issuance of tax-exempt bonds (the "Diageo Project Bonds") to be issued by the Virgin Islands Public Finance Authority (the "Issuer"), the proceeds of which shall be used exclusively for the payment of the Project and Project Site development, construction and soft costs and Diageo 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 Diageo Project Bonds) and shall be requisitioned by Diageo in substantially similar form as currently required under the Matching Fund Bond Indenture. The Diageo Project Bonds will be repaid from the Incremental Cover Over Revenues attributable to the operation of the Project except as may otherwise be provided in the Diageo Project Indenture.

6.1.2 The proceeds of the Diageo Project Bonds shall be held by the Trustee in a segregated construction trust account, to be invested and disbursed as required and directed by Diageo in connection with the development, construction, soft cost and working capital funding needs of Diageo in relation to the Project and Project Site. Any Diageo Project Bonds proceeds not used for such purposes shall be used for the redemption or defeasance of the Diageo Project Bonds following completion of construction and commencement of commercial operation of the Project.

6.1.3 It is currently anticipated that the Issuer will issue the following series of Diageo Project Bonds, payable from a lien on all Incremental Cover Over Revenues:

(a) Approximately US \$250 million Tax-Exempt Diageo Project Bonds, to be used for Project and Project Site acquisition, development, construction and soft costs, working capital funding, capitalized interest, reserves and costs of issuance;

(b) Additional Diageo Project Bonds to be issued as necessary for Project completion or expansion purposes as determined by the Parties;

it being understood that (i) if Diageo decides to develop the Project in two phases, the amount of the Diageo Project Bonds shall be reduced and an additional series of Diageo Project Bonds shall be issued when needed to fund the construction and other related costs necessary to construct the second phase of the Project and (ii) the actual issuance amounts shall be determined on the basis of the needs of the Project and other financing considerations.

6.1.4 The Government agrees to supplement 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 Incremental Cover Over Revenues so as to not encumber such Incremental Cover Over Revenues which might, at any time, be required to be paid to Diageo pursuant to Article V or Section 6.1.6(b) of this Agreement.

6.1.5 The Diageo Project Bonds shall have a term not to exceed thirty (30) years. Except as otherwise provided herein, the Diageo Project Bonds shall not be secured by any source other than the Incremental Cover Over Revenues except as otherwise provided in the Diageo Project Indenture.

6.1.6 In addition to the other documentation required to facilitate the issuance of the Diageo Project Bonds (all such documentation to be agreed in form and substance by the Government and Diageo), the Parties shall also agree on the form and substance of the documentation evidencing the following:

(a) Pursuant to the Diageo Project Indenture (or Diageo Project Indenture supplement) to be executed in connection with the issuance of the Diageo Project Bonds (the "Diageo Project Indenture"), all Incremental Cover Over Revenues generated by the sale of bulk rum from the Project in the United States (the "Annual Gross Cover Over Receipts") shall be deposited into a Pledged Revenue Account (the "Diageo Project Pledged Revenue Account") to be created pursuant to the Diageo Project Indenture.

Pledged  
Rev.  
Acct.

(b) Pursuant to the Diageo Project Indenture, the trustee thereunder shall deposit the following amounts into the following accounts to be created under the Diageo Project Indenture from amounts on deposit in the Diageo 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 Diageo Project Indenture to pay or reserve for the principal, interest and other financing costs payable in respect of the Diageo Project Bonds;

(ii) then, subject to Section 5.4.1 hereof, to a Government Account (x) during Phase One of the Project, (1) in any Fiscal Year in which the Incremental Rum Sales is equal to or less than 11,000,000 proof gallons, an amount equal to fifty seven percent (57%) of the Annual Gross Cover Over Receipts, or (2) in any Fiscal Year in which Incremental Rum Sales is greater than 11,000,000 proof gallons, an amount equal to fifty one percent (51%) of the Annual Gross Cover Over Receipts; and (y) during Phase Two of the Project, an amount equal to fifty one percent (51%) of the Annual Gross Cover Over Receipts; and (z) notwithstanding (x) and (y) above, in any Fiscal Year in which the Annual Gross Cover Over Receipts in such Fiscal Year exceed \$200 million, an amount equal to forty nine and one half percent (49.5%) of the Annual Gross Cover Over Receipts;

(iii) then, to an account to be controlled by a Government-sponsored "Communities Facilities Trust" an amount equal to three percent (3%) of the Annual Gross Cover Over Receipts;

30% → Com. Fac. Trust  
AGCO Acct. (Govt.)

X < 11 m proof gallons  
57% Annual Gross  
Cover Over Rec.  
X > 11 m proof gallons  
51% Ann. Gross Cover  
Over Rec.  
AGCO > \$200 million  
49.5% of AGCOR

(iv) then, to an account to be known as the "Diageo 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(i), (ii) and (iii) above, which amount shall be known as the "Annual Diageo Surplus Receipts" and shall be used to make the payments to Diageo, required pursuant to Sections 5.1, 5.2, 5.3, 5.4 and 5.5 hereof;

(v) then any amounts remaining in the Diageo Project Pledged Revenue Account shall be deposited to a Government account as directed by the Government.

(c) For the first Fiscal Year of bulk rum sales from the Project into the US market or in any Fiscal Year in which an Event of Force Majeure has interrupted the sales of bulk rum produced at the Project into the US market, for the purpose of determining whether the percentage in Section 6.1.6(b)(ii)(x) or Section 6.1.6(b)(ii)(y) shall apply to such Fiscal Year, the Incremental Rum Sales for each month during which the Project was 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 Sales". If the Annual Average Sales is less than 11,000,000 proof gallons, the percentage in Section 6.1.6(b)(x) shall apply. If the Annual Average Sales exceeds 11,000,000 proof gallons, the percentage in Section 6.1.6(b)(y) shall apply.

## 6.2 Diageo Obligations

### 6.2.1

(a) Following the substantial completion of construction and commencement of commercial operation of the Project until the commencement of Phase Two of the Project 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") and (ii) the Economic Development Incentives granted by the Government to Diageo have not been materially reduced or made unavailable to Diageo, Diageo shall produce at the Project bulk rum for sales of Captain Morgan branded products in the United States in amounts not less than those set forth in Exhibit D to this Agreement unless the occurrence of an Event of Force Majeure prevents such production.

(b) Following the commencement of Phase Two of the Project and provided that (a) the Cover Over Rate is not reduced below the Historic Base Level and (b) the Economic Development Incentives granted by the Government to Diageo have not been materially reduced or made unavailable to Diageo, subject to Section 3.1.4, Diageo shall produce at the Project all bulk rum for sales of Captain Morgan branded products in the United States unless the occurrence of

an Event of Force Majeure prevents such production or if the bulk rum requirements of the Captain Morgan brand of products exceeds the capacity of the Project at such time. If the bulk rum requirements of the Captain Morgan brand of products exceeds the production capacity of the Project by more than 15%, Diageo and the Government will work together to investigate the feasibility of expanding the production capabilities of the Project.

(c) Notwithstanding the ability of Diageo to construct the Project in two phases, Diageo agrees to proceed toward full optimization of the Project and the production of all bulk rum for sales of Captain Morgan branded products in the United States as soon as commercially feasible. Additionally, the Parties agree that following the date hereof Diageo may create new and innovative products within the Captain Morgan brand which cannot incorporate the bulk rum produced at the Project. In such event, Diageo shall use commercially reasonable efforts to include bulk rum from the Project into such products as soon as commercially feasible.

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 Diageo are materially reduced or unavailable to Diageo for a period of greater than twelve (12) months, Diageo shall not be obligated to produce bulk rum at the Project and may terminate this Agreement with prior written notice to the Government.

6.2.3 If Diageo fails to produce bulk rum for sale into the United States from the Project in the amounts specified in Sections 6.2.1(a) and 6.2.1(b) except as expressly permitted therein, Diageo 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 amounts of bulk rum for sale into the United States. 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 Diageo. Upon termination of this Agreement pursuant to this Section 6.2.3, Diageo shall pay to the Government liquidated damages in an amount specified in Exhibit D to this Agreement.

6.2.4 If Diageo 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, V and VII hereof and the receipt of amounts which would otherwise be deposited to the Diageo Project Pledged Revenue Account for the benefit of the Government and Diageo as set forth in Section 6.1.6(b) of this Agreement.

6.2.5 Following the initial issuance of the Diageo Project Bonds but no later than June 30, 2009 (it being understood that this date is not the date upon which the Diageo Project Bonds must be issued), the Parties agree to review in good faith and revise, if necessary, the figures set forth in Exhibit D hereof to reflect then current market

conditions. The Parties shall perform a similar exercise within six (6) months after the issuance of any additional Diageo Project Bonds.

6.2.6 Upon the issuance of the Diageo Project Bonds through completion of construction and commencement of commercial operation of the Project, Diageo shall maintain or cause to be maintained with respect to the Project, construction all risks and other forms of insurance typical for the construction of facilities of comparable size and type and the proceeds of such insurance shall be available to Diageo for the repair of any damage sustained to the Project during the applicable period.

6.2.7 After the completion of construction and commencement of commercial operation of the Project, during the period of time in which the Diageo Project Bonds remain outstanding or undefeased, following the occurrence of fire or other damage to the Project resulting in a commercially significant reduction in the output of rum that can be produced at the Project and that is caused by an event that is insurable at the time of the occurrence of the event at commercially reasonable rates, Diageo agrees to rebuild the Project and re-commence production of bulk rum at the Project as soon as reasonably possible after the occurrence of such event of loss at the levels of production required by this Agreement. If Diageo fails to so rebuild the Project and so re-commence production of bulk rum at the Project, such failure shall be a Material Default and the Government may take the actions specified in Section 6.2.3 above.

6.2.8 Diageo agrees to maintain commercially reasonable insurance against the property damage risks described in Section 6.2.7 above either as part of the global insurance program for the portfolio of facilities operated by the Diageo Group or on a stand-alone basis, at the discretion of Diageo. The proceeds from any claim made on such insurance shall be available to Diageo toward the satisfaction of its obligations under this Agreement.

## **ARTICLE VII** **PUBLIC SERVICE FACILITY**

### **7.1 Community Service Facilities and Urban Redevelopment Projects**

As provided in Section 6.1.6(b)(iii) hereof, three percent (3%) of the Annual Gross Cover Over Receipts shall be deposited in a Communities Facilities Trust account to be established and administered by the Virgin Islands Public Finance Authority, for the development, operations and maintenance of community and/or sports facilities or urban redevelopment projects on St. Croix and similar facilities on projects on St. Thomas or St. John which projects shall be recommended by the Governor and subject to approval by the Legislature. An advisory board shall be appointed by the Governor of the U.S. Virgin Islands with respect to such facilities and projects, whose membership shall include one representative selected by the Governor from a list of individuals proposed from time to time by Diageo.

**ARTICLE VIII**  
**REPRESENTATIONS, WARRANTIES, COVENANTS AND ACKNOWLEDGEMENTS**

**8.1 Representations, Warranties and Acknowledgements**

The Government hereby represents and warrants to Diageo 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, (x) 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.

8.1.2 Diageo hereby represents and warrants to the Government as of the date hereof and the Effective Date that:

(a) Diageo is a corporation duly organized and validly existing under the laws of U.S. 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 Diageo of this Agreement do not violate or conflict with, or result in a default under, any contract or agreement to which Diageo 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 Diageo, 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 Diageo's knowledge, threatened against or affecting Diageo before any court or administrative body or arbitral tribunal that could reasonably be expected to have a material adverse effect on the ability of Diageo to meet and carry out its obligations under this Agreement.

(e) Neither Diageo nor any of its shareholders or their affiliates is involved in any litigation, arbitration or claim against the Government.

(f) Diageo is a direct, wholly-owned subsidiary of Selviac Nederland B.V. ("Selviac").

(g) Selviac, an indirect, wholly-owned subsidiary of Diageo plc, has duly authorized the execution, delivery and performance by Diageo of this Agreement.

## **8.2 Special Levies**

The Government represents and warrants that, without the prior written consent of Diageo, no Government entity shall: (a) levy against any real or personal property constituting the Project, any special assessment or special tax for the cost of any improvements in or for the benefit of the Project; (b) undertake any local improvements in, on or for the benefit of the Project pursuant to the imposition of a special assessment or special tax against any real or personal property within the Project Site; (c) levy or impose additional taxes on any real or personal property within the Project Site, in the manner provided by law for the provision of special services to the Project or to an area in which the Project Site is located or for the payment of debt incurred in order to provide such special services; or (d) permit or approve the imposition of any recapture fees that are applicable to the Project or Project Site. Nothing in this Section 8.2 shall prevent the Government from levying or imposing additional taxes upon the Project or Project Site 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.

## **8.3 Make-Whole Actions**

8.3.1 The Government and Diageo each assert that it enters into this Agreement based upon certain objectives and expectations, more specifically described below in this Section 8.3. The Government and Diageo 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 the Agreement is entered into by the



Government and Diageo, the Government and Diageo each agree to the terms and conditions set forth in this Section 8.3.

8.3.2 The Government acknowledges and agrees that Diageo 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 Diageo 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 and Production Incentive Payments described in Article V of this Agreement.

8.3.3 The Government and Diageo 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 Diageo 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 Project 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 Diageo either with an exemption from the law as so changed or otherwise with another obligation or commitment reasonably acceptable to Diageo 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 Incremental Cover Over Revenues attributable to the Project are for any reason received by the Government but are not available to satisfy the Government's payment obligations to Diageo hereunder, the Government agrees to fund such obligations from other sources to the extent permitted by law.

8.3.4 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.

8.3.5 Diageo acknowledges and agrees that the Government has entered into this Agreement in material reliance on each and all of the obligations and commitments of Diageo 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.

8.3.6 The Government and Diageo each acknowledge and agree that: (a) the objectives and expectations set forth in this Section 8.3 are reasonable; (b) the commitments and obligations set forth in this Section 8.3 are intended to be continuous throughout the duration of this Agreement and (c) that the terms and conditions set forth

in this Section 8.3 are material to this Agreement and intended to be enforced to the maximum extent possible.

#### 8.4 Acknowledgements

The Government and Diageo agree and acknowledge that:

8.4.1 Diageo would not have considered locating the Project in the Virgin Islands 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 of this Agreement.

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

8.4.3 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.

8.4.4 The Government will not pledge, encumber or otherwise restrict the Incremental Cover Over Revenues attributable to the Project in any manner that will prevent the Government from paying the Marketing Support Payments, Molasses Subsidy Payments and Production Incentive Payments and performing its other obligations and commitments described herein.

8.4.5 Diageo has relied upon the continued performance of the Government's obligations and commitments for their specified duration in connection with its decision to locate the Project at the Project Site.

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

#### 8.5 Negative Covenants

Without the prior written consent of Diageo, 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 Project or the ability of Diageo 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 Diageo Project Bond Indenture, it shall not encumber any of the Incremental Cover Over Revenues that are intended to finance the Marketing Support Payments, Molasses Subsidy Payments and Production

Incentive Payments to Diageo 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.

## **ARTICLE IX**

### **REMEDIES**

#### **9.1 Remedies**

9.1.1 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 10.3 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 9.1 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.

9.1.2 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.

9.1.3 In the event that Diageo abandons the Project, prior to the earlier to occur of the issuance of the Diageo Project Bonds or commencement of commercial operation of the Project, 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 Diageo shall pay to the Government an amount equal to US \$25 million as liquidated damages for such failure to perform its obligations hereunder.

**ARTICLE X**  
**MISCELLANEOUS**

**10.1 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.

**10.2 Governing Law**

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

**10.3 Dispute Resolution**

**10.3.1 Mutual Discussions.** Except as otherwise provided in this Section 10.3, 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, the Project Coordinator and the President of Diageo (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 10.3.1 within 60 days after such notice of Dispute is delivered, then the provisions of Section 10.3.2 hereof shall apply.

**10.3.2 Mediation.** If a settlement of any such Dispute or difference is not reached pursuant to Section 10.3.1, 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.

**10.3.3 Judicial Resolution.**

(a) If the settlement of any Dispute or difference (other than those addressed in Section 10.3.3(b) below) is not reached pursuant to Sections 10.3.1 or 10.3.2 above, then either party may initiate a lawsuit including but not limited to one for breach of contract for damages, subject to the restrictions set forth in Section 9.1.2 hereof, in a court of competent jurisdiction in the United States 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 Diageo (other than liquidated damages payable pursuant to Section 9.1.3 which dispute resolution process shall be governed by Section 10.3.3(a) above) is not reached pursuant to Sections 10.3.1 or 10.3.2 above, then either Party may initiate a

proceeding for the adjudication of such Dispute, subject to the restrictions set forth in Section 9.1.2 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 10.3.3(c) shall apply.

(c) If a Dispute cannot be settled pursuant to Section 10.3.3(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.

10.3.4 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.

10.3.5 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.

#### 10.4 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.

#### 10.5 Construction

This Agreement shall not be construed more strictly against one Party than against any other Party merely by virtue of the fact that the 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.

10.6 **Conflicts**

Subject to Section 10.2 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 of this Agreement, except as may otherwise be agreed to by Diageo 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 Diageo than is currently the case, then at the option of Diageo, such less restrictive amendment or interpretation shall control and become applicable without the requirement of an amendment to this Agreement.

10.7 **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.

10.8 **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 A COPY 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  
No. 32-33 Kongens Gade  
P.O. Box 430  
St. Thomas, U.S. Virgin Islands 00804-0430  
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  
3438 Kronprindsens Gade  
GERS Building 2nd Floor  
St. Thomas, US Virgin Islands 00802  
Telephone: 340-774-5666  
Telefax: 340-774-9710

DIAGEO:

Diageo USVI Inc.  
c/o G. Hunter Logan, Jr, Esq.  
Nichols Newman Logan & Grey, P.C.  
1131 King Street  
Christiansted, St. Croix  
US Virgin Islands 00820  
Telephone: 340-773-3200  
Telefax: 340-773-3409

WITH COPIES TO:

Selviac Nederland B.V.  
Molenwerf 10-12  
1014 BG Amsterdam, the Netherlands  
Telephone: 31-20-774-5095  
Telefax: 31-20-774-5091  
Attention: Legal Director

Diageo Netherlands Holdings B.V.  
Molenwerf 10-12  
1014 BG Amsterdam, the Netherlands  
Telephone: 31-20-774-5095  
Telefax: 31-20-774-5091  
Attention: Legal Director

DLA Piper US LLP  
1200 Nineteenth Street, N.W.  
Washington D.C. 20036-2412  
Telephone: 202-861-3900  
Telefax: 202-223-2085  
Attention: John Merrigan

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 10.8.

10.9 Press Releases

The Parties agree to cooperate fully with each other in connection with all press releases and publications concerning the Project.

10.10 Assignment

This Agreement is not assignable by the Government in whole or in part except where Diageo consents, in its sole discretion, to such assignment in writing. Diageo 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 Affiliate of Diageo that agrees to assume the assigned obligations of Diageo in and to this Agreement or applicable portion thereof; provided, however, that proof of the ability of such Affiliate to fulfill any assigned obligations shall be provided to the Government as part of the advance notice by Diageo. The Government may object to such assignment if it reasonably appears that the Affiliate of Diageo lacks such ability. Diageo 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 Affiliate of Diageo to agree to assume all assigned obligations and shall acknowledge to the Government its ability to fulfill such obligations.



#### **10.11 No Third Party Beneficiary**

This Agreement is for the sole and exclusive benefit of the Government and Diageo 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.

#### **10.12 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 Diageo or any of its Affiliates, the Project or any part thereof. The relationship between the Government and Diageo 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 Diageo or to create any equity interest in the Project for the Government. Notwithstanding any other provision of this Agreement or agreement executed pursuant hereto, 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 Diageo, its stockholders, members, or partners or the Project.

#### **10.13 Further Assurances**

The Government and Diageo 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.

#### **10.14 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.

#### **10.15 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 Diageo Project Bonds issued pursuant to Article VI of this

Agreement are no longer outstanding, which date for the term of this Agreement may be extended by Diageo for a period of thirty (30) additional years upon the delivery of written notice to the Government by Diageo no later than thirty (30) days prior to the anticipated expiration of the Term. Upon the termination of this Agreement, Diageo shall retain ownership of the Project and the Project Site. The Parties agree that if the Effective Date shall not occur by July 31, 2008, this Agreement shall terminate.

**10.16 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 Diageo and their respective successors and assigns.

**10.17 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.

**10.18 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.

**10.19 Amendments**

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

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

[SIGNATURE PAGES FOLLOW]

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

DIAGEO USVI INC.

By: 

Name: ARISTIO PEREZ

Title: DIRECTOR

## **EXHIBIT A**

### **Basic Components of Completed Project**

Product: 20,000,000 pg per year of light column still rum

Raw material: Molasses

Days of operation: 250

### **Operations and Cost Areas**

1. Land
  - a. Estimated area of 40 to 50 acres.
  - b. Water will be treated and some can be reused, but it must also be possible to discharge clean water from the site.
  - c. Access to import and export facilities near a port.
2. Civil work including roads, cement pads, grading, fences, and drainage.
3. Buildings including still tower and other administration buildings as required.
  - a. Still tower
  - b. Offices for all administrative personnel
  - c. Laboratory
  - d. Quality control
  - e. Guard houses
  - f. Shift operators and supervisors offices
  - g. Maintenance
  - h. Control room
  - i. Yeast and fermentation structure
4. Loading and unloading equipment including
  - a. Weigh scales
  - b. Rum loading rack
5. Utilities
  - a. Boiler including water treatment
  - b. Cooling tower including water treatment
  - c. RO unit to process water
  - d. Demin treatment
  - e. CIP system
  - f. Fire prevention system

6. Molasses Storage for 1 year
7. Yeast and fermentation
8. Distillation
9. Tanks for intermediate products, final run down tanks, final bonded storage, and tanks for barreling
10. Potential Barrel warehouse, on site or off site, with loading and unloading facilities for 24,000,000 mpg's at 150 proof barrels
11. Barrels for bulk rum maturation

**EXHIBIT B**  
**MARKETING ACTIVITIES**

**Potential Marketing Activities**

Media-Television  
Media-Digital  
Media-Other  
Advertising Production  
Creative Agency Fees  
Relationship Marketing  
Relationship Market Agency Fees  
Consumer Public Relations  
Trade Public Relations  
Consumer Sponsorships  
Innovation/Product Development  
Brand Identification / Packaging Development  
Consumer Planning and Research  
Experimental Marketing / Sampling  
Point of Sale  
Consumer Promotions  
Value Added Packaging  
Promotional Taxes  
Commercial Advertising and Promotion  
Discounts and consideration to customers

**EXHIBIT C**

**PROJECTED AGGREGATE RUM SALES**

	<b><u>Low</u></b>		<b><u>Base</u></b>	
	<b><u>YoY Growth</u></b>	<b><u>Volume (m PG)</u></b>	<b><u>YoY Growth</u></b>	<b><u>Volume (m PG)</u></b>
CY2011				
CY2012	1.0%	10.1	4.0%	12.0
CY2013	0.5%	10.2	3.0%	12.3
CY2014	0.0%	10.2	3.0%	12.7
CY2015	0.0%	10.2	3.0%	13.1
CY2016	0.0%	10.2	2.0%	13.3
CY2017	0.0%	10.2	2.0%	13.6
CY2018	0.0%	10.2	2.0%	13.9
CY2019	0.0%	10.2	2.0%	14.1
CY2020	0.0%	10.2	2.0%	14.4
CY2021	0.0%	10.2	2.0%	14.7
CY2022	0.0%	10.2	1.0%	14.9
CY2023	0.0%	10.2	1.0%	15.0
CY2024	0.0%	10.2	1.0%	15.2
CY2025	0.0%	10.2	1.0%	15.3
CY2026	0.0%	10.2	1.0%	15.5
CY2027	0.0%	10.2	0.0%	15.5
CY2028	0.0%	10.2	0.0%	15.5
CY2029	0.0%	10.2	0.0%	15.5



**EXHIBIT D****MINIMUM RUM PRODUCTION REQUIREMENTS**

Year	Minimum Production (PG)	Liquidated Damages payable (\$m)				
		US 5-Year Treasury Rate in Year of claim				
		2.0%	4.0%	6.0%	8.0%	10.0%
2009		241	203	171	145	122
2010		246	211	183	158	137
2011		249	220	194	172	153
2012	1,500,000	248	223	201	181	164
2013	1,500,000	254	233	214	197	182
2014	1,500,000	247	230	215	201	189
2015	1,500,000	235	222	211	200	190
2016	1,500,000	223	214	207	199	193
2017	1,500,000	210	206	202	199	195
2018	1,500,000	197	197	197	197	197
2019	1,500,000	203	203	203	203	203
2020	1,500,000	196	196	196	196	196
2021	1,500,000	190	190	190	190	190
2022	1,500,000	182	182	182	182	182
2023	1,500,000	175	175	175	175	175
2024	1,500,000	167	167	167	167	167
2025	1,500,000	159	159	159	159	159
2026	1,500,000	150	150	150	150	150
2027	1,500,000	141	141	141	141	141
2028	1,500,000	131	131	131	131	131
2029	1,500,000	121	121	121	121	121
2030	1,500,000	110	110	110	110	110
2031	1,500,000	99	99	99	99	99
2032	1,500,000	87	87	87	87	87
2033	1,500,000	74	74	74	74	74
2034	1,500,000	61	61	61	61	61
2035	1,500,000	47	47	47	47	47
2036	1,500,000	32	32	32	32	32
2037	1,500,000	16	16	16	16	16

The liquidated damage amount payable shall be based on the 5 Year Treasury Bill Rate, as reported by the Wall Street Journal, applicable on the date such amount becomes due. If the exact required Treasury Bill Rate is not specified on the table above, the required rate and resultant liquidated damage amount shall be interpolated using the amounts provided above.