

**BILL NO. 27-\_\_\_\_\_**

**TWENTY-SEVENTH LEGISLATURE OF THE VIRGIN ISLANDS  
OF THE UNITED STATES OF AMERICA**

**REGULAR SESSION**

**2008**

To ratify the Agreement, dated June 17, 2008, between Diageo USVI, Inc. and the Government of the United States Virgin Islands to expand rum production in the Virgin Islands and to authorize the issuance of subordinated matching fund revenue bonds to finance, as a grant, the construction of a rum production facility on the island of St. Croix, the use of certain funds to be generated from cover over revenues received by the Government of the United States Virgin Islands from excise taxes collected on rum produced at the facility and sold in the United States of America and other related matters.

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RECOMMENDED BY THE GOVERNOR

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**WHEREAS**, the Government of the United States Virgin Islands (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 hereby 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 \$50 million, (2) a total accumulated unfunded pension fund deficit estimated to exceed \$1.2 billion and (3) a debt ratio per capita more than twice that of any state of the United States of America (the "United States"); and

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

**WHEREAS**, the Government supports initiatives which would improve the Virgin Islands' credit ratings in the capital markets; and

**WHEREAS**, the Government is committed to increasing employment opportunities and improving economic conditions on the island of 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 of providing 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. A Molasses Subsidy Fund to assist distillers engaged in the processing of molasses into rum within the Virgin Islands (33 V.I.C. § 3036);
- b. Statutorily provided marketing support payments designed to support the long-term growth of branded rum products to build a stable long-term rum industry;
- c. Statutory exemptions on property, excise, gross receipts and income taxes and other local tax incentives; and
- d. 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 plc, one of the leading distilled spirits companies in the world, and certain of its affiliates 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 source of funding for the Government's substantial unfunded pension fund liability, and thereby reduce the risk of such unfunded liability becoming a burden of the federal government, all of the foregoing being consistent with Congress' intent in providing the rum cover over in 1954; and

**WHEREAS**, the public-private relationship between the Government and Diageo USVI Inc. ("Diageo"), a Virgin Islands corporation affiliated with Diageo plc, established by the Agreement (hereinafter defined) is a classic project finance enterprise inasmuch as the revenues that will secure the bonds to be issued by the Virgin Islands Public Finance Authority (the "Authority"), on behalf of the Government, to finance, as a grant, the development and construction of a new rum production facility, and the revenues used to finance economic incentives provided by the Government will derive from incremental cover over revenues generated from the sale of rum in the United States produced at the new rum distillery ("Incremental Cover Over Revenues"); and

**WHEREAS**, the Government is entering into the Agreement, dated June 17, 2008, between Diageo and the Government (the "Agreement"), in reasonable reliance upon Congress's longstanding commitment to assist the Virgin Islands in attracting new rum production through the availability of the rum cover over program (the "Cover Over Program"), and the resulting public-private relationship created thereunder is fully consistent with the letter and purpose of the Cover Over Program; and

**WHEREAS**, Congress, in 1983 and 2000, enacted laws which vested the Virgin Islands legislature with sole authority to determine the expenditure of rum cover over revenues; and

**WHEREAS**, the Governor has executed the Agreement and has submitted said Agreement to the Twenty-Seventh Legislature of the Virgin Islands for ratification; and

**WHEREAS**, it is the policy and determination of the Government that certain benefits and incentives as provided in the Agreement, 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 the island of St. Croix, and the provision of these benefits are hereby declared to meet the compelling public needs outlined above; and

**WHEREAS**, the Government is committed to the economic development on the island of St. Croix and has authorized, pursuant to the terms of the Agreement, the establishment and administration of a Community Facilities Trust to be funded from a portion of the Incremental Cover Over Revenues to provide a source of financing for the development, operations and maintenance of community and/or sports facilities or urban development projects in the Virgin Islands as recommended by the Governor subject to the approval of the Legislature;

**NOW THEREFORE,**

**BE IT ENACTED** by the Legislature of the United States Virgin Islands:

**SECTION 1. Authorization of Agreement.** The Twenty-Seventh Legislature of the Virgin Islands ratifies the Agreement which is appended to this Act as Appendix A and hereby made a part of this Act. The Governor and/or his designees, all acting on behalf of the Government, are hereby authorized to do, perform, and consummate all such acts and things required to be done, performed, or consummated by the Government under the terms and provisions of the Agreement ratified by Section 1 of this Act.

**SECTION 2. Authorization to Borrow.** (A) The Authority is authorized to issue revenue bonds pursuant to Section 1574(a) of the Virgin Islands Revised Organic Act 48 U.S.C.A. 1574, as amended (the "Revised Organic Act"), and Title 29, Chapter 15 of the Virgin Islands Code (the "Virgin Islands Public Finance Authority Act") (the "Diageo Project Subordinated Matching Fund Bonds") and referred to hereinafter as the "Diageo Project Bonds") pursuant to a Subordinated Diageo Project Matching Fund Indenture of Trust to be entered into between the Authority and The Bank of New York Trust Company, N.A., as Diageo Project Trustee (the "Diageo Project Trustee") (the "Diageo Project Indenture").

The Diageo Project Indenture will be substantially similar to the Matching Fund Indenture. The Diageo Project Indenture shall be secured by the assignment of the Diageo



Project Loan Agreement to be entered into between the Government and the Authority (the "Diageo Project Loan Agreement"), which Diageo Project Bonds shall be subordinate to the Authority's outstanding matching fund revenue bonds (the "Matching Fund Bonds") issued under the Indenture of Trust, dated as of May 1, 1998, as supplemented (collectively, the "Matching Fund Indenture"), between the Authority and The Bank of New York Trust Company, N.A., as successor trustee (the "Trustee"). The Diageo Project Bonds shall be authorized to be issued in an amount not to exceed \$250 million for the purpose of providing a grant to Diageo to provide funds to (i) finance 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 the island of St. Croix, in a principal amount not to exceed \$250 million (the "Diageo Project"), (ii) pay capitalized interest on the Diageo Project Bonds during construction of the Diageo Project; (iii) fund any necessary reserves, (iv) pay the costs of issuance of the Diageo Project Bonds and the Diageo Project Subordinated Matching Fund Loan Notes to be entered into by the Government and the Authority (the "Diageo Project Loan Notes"), (v) pay accrued interest if any, on the Diageo Project Bonds from their dated date to the date of delivery thereof, and (vi) authorize the Government and the Authority to enter into certain agreements to secure repayment of such bonds, notes or other obligations. The Government is authorized to issue the Diageo Project Loan Notes and execute the Diageo Project Loan Agreement to evidence its obligation to repay the Diageo Project Loan.

(B) Authorization to Pledge Matching Fund Revenues. The Government is hereby authorized to pledge the matching fund revenues (as defined in Title 29, Section 42, Virgin Islands Code, and hereafter referred to as the "Matching Fund Revenues") to be received by the Government as Incremental Cover Over Revenues pursuant to the terms of this Agreement, subject to the existing prior lien and security interest of the Matching Fund Indenture, as security for repayment of the Diageo Project Loan Note. The Special Escrow Agreement, dated as of May 1, 1998, entered into by and among the Government, the Authority and The Bank of New York Trust Company, N.A., as successor Special Escrow Agent (the "Special Escrow Agent"), as amended and supplemented (the "Special Escrow Agreement"), together with the Diageo Project Special Escrow Agreement to be entered into among the Government, the Authority and the Special Escrow Agent (the "Diageo Project Special Escrow Agreement") providing for the deposit and administration of funds for the benefit of the holders of the Outstanding Matching Fund Bonds, Additional Matching Fund Bonds, the Diageo Project Bonds, and any Additional Diageo Project Bonds (as defined below) shall be maintained for so long as any of the Diageo Project Bonds or any additional loans made with the proceeds of Additional Diageo Project Bonds issued under a duly authorized supplement to the Diageo Project Indenture for the Diageo Project Bonds ("Additional Diageo Project Bonds") are outstanding.

(C) Authorization to Pledge Incremental Cover Over Revenues. The Government is hereby authorized to pledge the Incremental Cover Over Revenues, to be received by the Government, subject to the prior lien of the Matching Fund Indenture and the terms and conditions of the Agreement, as security for repayment of the Diageo Project Loan Note.

(D) Authorization to Assign 2008 Diageo Project Loan Note and Diageo Project Loan Agreement. In connection with the issuance by the Authority of the Diageo Project Bonds, the

Authority is hereby authorized to assign to the Trustee, for the benefit of the holders of the Diageo Project Bonds, the Authority's rights and interest in, to and under the Diageo Project Loan Note and the Diageo Project Loan Agreement or other instruments authorized herein subject to and in accordance with the terms of the Diageo Project Indenture and the Diageo Project Loan Agreement.

(E) Authorization to Execute All Necessary Agreements. The Government, acting by the Governor or Commissioner of Finance, and the Authority, acting by the Governor as Chairman (or such other member(s) designated in the resolution of the Authority), are each hereby authorized to (i) execute and deliver all documents and agreements necessary or advisable in connection with the issuance of the bonds, notes and other evidence of indebtedness authorized herein, (ii) loan the proceeds of the Authority's Diageo Project Bonds to the Government as contemplated herein, and (iii) pay all expenses associated with the issuance of the bonds, notes, and other evidence of indebtedness authorized herein, including, without limitation, any costs or expenses required to be paid by or in relation to the Diageo Project Loan Agreement and Diageo Project Loan Notes authorized herein, including any liquidity facility or bond insurance policy relating to the Diageo Project Bonds.

#### **SECTION 4. Interest Rate and Term.**

Neither the Diageo Project Bonds nor the Diageo Project Loan Note shall bear interest at a federally tax exempt rate in excess of seven percent (7%) per annum or a federally taxable rate in excess of eight percent (8%) per annum. The respective terms of the Diageo Project Bonds and of the Diageo Project Loan Note shall not exceed thirty (30) years from the date of issuance thereof.

#### **SECTION 5. Effective Date.**

This Act shall take effect immediately upon approval thereof by the Governor.

## **APPENDIX A**

### **AGREEMENT**

**Dated June 17, 2008 between**

**Diageo USVI, Inc.**

**and the**

**The Government of the United States Virgin Islands**