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**INDENTURE OF TRUST**

**by and between**

**ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD OF THE  
CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE**

**And**

**REGIONS BANK,  
as Bond Trustee**

**Dated as of \_\_\_\_\_, 2021**

*relating to*

**ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD OF THE  
CITY OF MEMPHIS AND  
COUNTY OF SHELBY, TENNESSEE  
TAXABLE CONVERTIBLE CAPITAL APPRECIATION REVENUE BONDS  
(DISTILLED SPIRITS, INC., PROJECT)  
SERIES 2021**

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## INDENTURE OF TRUST

**THIS INDENTURE OF TRUST**, dated as of \_\_\_\_\_, 2021 (this "**Bond Indenture**"), between ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE, a public nonprofit corporation duly organized and existing under the laws of the State of Tennessee (the "**Issuer**"), and REGIONS BANK, Nashville, Tennessee, as bond trustee (the "**Bond Trustee**"), being authorized to accept and execute trusts of the character herein set out;

### WITNESSETH:

**WHEREAS**, the Issuer has been duly organized and created under and pursuant to the provisions of Title 7, Chapter 53, Part 1 et seq., Tennessee Code Annotated, as amended (the "**Act**"), as a public corporation and instrumentality of the City of Memphis and the County of Shelby, Tennessee; and

**WHEREAS**, the Issuer is authorized by the Act to, among other things, enter into loan agreements relating to "projects" authorized to be undertaken by the Issuer pursuant to the Act, for such payments and upon such terms as the Board of Directors of the Issuer may deem advisable in accordance with the provisions of the Act; to issue its revenue bonds pursuant to the provisions of the Act for the purpose of carrying out any of its powers; and, as security for the payment of principal of, and the interest on, any such bonds so issued, to mortgage and pledge any or all of its projects, to pledge the revenues and receipts therefrom, and to assign and pledge all or any part of its interests in, and rights under, the loan agreements relating thereto or to any thereof; and

**WHEREAS**, the Issuer has agreed to issue \$\_\_\_\_\_ in aggregate principal amount of revenue bonds designated "Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, Taxable Convertible Capital Appreciation Revenue Bonds (Distilled Spirits, Inc., Project), Series 2021" (the "**Bonds**") under this Bond Indenture; and

**WHEREAS**, the proceeds of the Bonds shall be loaned to Obligor pursuant to a Loan Agreement, dated as of \_\_\_\_\_, 2021 (the "**Loan Agreement**"), between the Issuer and the Obligor, to provide funds to the Obligor to (A) finance or refinance a portion of the costs of the acquisition, construction and equipping of a distillery in the City of Memphis, Tennessee (the "**Project**"), including interest on the Bonds payable prior to the expected date of completion and commercial operation thereof, as more fully described herein, (ii) fund a portion of the Reserve Fund (as defined in the Loan Agreement) for the Bonds, and (iii) pay certain expenses in connection with the issuance and sale of the Bonds; and

**WHEREAS**, the Bonds are to be substantially in the form set forth as Exhibit A to this Bond Indenture and the Bond Trustee's authentication certificate and the assignment with respect thereto are to be substantially in the forms attached to such form of Bonds with such necessary or appropriate variations, omissions, and insertions as permitted or required by this Bond Indenture; and

**WHEREAS**, all things necessary to make the Bonds, when authenticated by the Bond Trustee and issued as in this Bond Indenture provided, the valid, binding, and legal limited and special obligations of the Issuer and to constitute this Bond Indenture a valid, binding, and legal instrument for the security of the Bonds in accordance with its terms, having been done and performed;

### **NOW, THEREFORE, THIS INDENTURE OF TRUST WITNESSETH:**

That the Issuer,, in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the owners thereof and of the sum of One Dollar (\$1.00)

to it duly paid by the Bond Trustee at or before the execution and delivery of these presents, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to secure the payment of the principal of, premium, if any, and interest on all Bonds at any time Outstanding under this Bond Indenture, according to their tenor and effect, and to secure the performance and observance of all the covenants and conditions in the Bonds and herein contained, and to declare the terms and conditions upon and subject to which the Bonds are issued and secured, has executed and delivered this Bond Indenture and has granted, bargained, sold, warranted, alienated, remised, released, conveyed, assigned, pledged, set over, and confirmed, and by these presents does grant, bargain, sell, warrant, alien, remise, release, convey, assign, pledge, set over, and confirm unto the Bond Trustee, and to its successors and assigns forever, all and singular the following described property, franchises, and income but in any event excluding Reserved Rights (together, the “**Trust Estate**”):

A. All of the Issuer’s right, title and interest in and to the Loan Agreement (except for Reserved Rights), together with all powers, privileges, options and other benefits of the Issuer contained in the Loan Agreement; provided, however, that nothing in this clause shall impair, diminish or otherwise affect the Issuer’s obligations under the Loan Agreement or, except as otherwise provided in this Bond Indenture, impose any such obligations on the Bond Trustee; and

B. All of the Issuer’s right, title and interest in and to the Note delivered by the Obligor to the Issuer pursuant to the Loan Agreement; and

C. Amounts on deposit from time to time in the Funds and Accounts, but excluding the Rebate Fund (all as defined in the Loan Agreement), subject to the provisions of this Bond Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein; and

D. All revenue, accounts receivable and Gross Revenues (hereinafter defined) of the Obligor, except and excluding all such items, whether now owned or hereafter acquired by the Obligor, which by their terms or by reason of applicable law would become void or voidable if granted, assigned, or pledged hereunder by the Obligor, or which cannot be granted, pledged, or assigned hereunder without the consent of other parties whose consent is not secured, or without subjecting the Bond Trustee to a liability not otherwise contemplated by the provisions hereof, or which otherwise may not be, or are not, hereby lawfully and effectively granted, pledged, and assigned by the Obligor, provided that the Obligor may subject to the lien hereof any such excepted property, whereupon the same shall cease to be excepted property; and

E. As provided in the Deed of Trust executed herewith, the land described on Exhibit B hereto (the “**Premises**”) and incorporated herein for all purposes, including, without limitation, all buildings, structures, fixtures, additions, enlargements, extensions, improvements, modifications or repairs now or hereafter located thereon or therein and with the tenements, hereditaments, servitudes, appurtenances, rights, privileges and immunities thereunto belonging or appertaining which may from time to time be owned by the Obligor, and all claims or expectancy, of, in and to the Premises, it being the intention of the parties hereto that, so far as may be permitted by law, all property of the character hereinabove described, which is now owned or is hereafter acquired by the Obligor, and is affixed or attached or annexed to the Premises, shall be and remain or become and constitute a portion of the Premises, and the security covered by and subject to the lien of this Bond Indenture and the Deed of Trust; and

E. Any and all property of every kind or description which may from time to time hereafter be sold, transferred, conveyed, assigned, hypothecated, endorsed, deposited, pledged, mortgaged, granted or delivered to, or deposited with the Bond Trustee as additional security by the Issuer or anyone on its part or with its written consent, or which pursuant to any of the provisions hereof or of the Loan Agreement or either Note may come into the possession of or control of the Bond Trustee or a receiver appointed pursuant to Article VIII hereof, as such additional security (except amounts held in the Rebate Fund); and the Bond

Trustee is hereby authorized to receive any and all such property as and for additional security for the payment of the Bonds, and to hold and apply all such property subject to the terms hereof.

**TO HAVE AND TO HOLD** the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended to be, to the Bond Trustee and its successors in said trust and assigns forever;

**IN TRUST, NEVERTHELESS**, upon the terms herein set forth for the equal and proportionate benefit, security, and protection of all owners of the Bonds issued under and secured by this Bond Indenture without privilege, priority, or distinction as to the lien or otherwise of any of the Bonds over any other of the Bonds;

**PROVIDED, HOWEVER**, that if the Issuer, its successors or assigns, shall pay, or cause to be paid, the principal of the Bonds and the premium, if any, and the interest due or to become due thereon, at the times and in the manner mentioned in the Bonds according to the true intent and meaning thereof, and shall cause the payments to be made into the Bond Fund as hereinafter required or shall provide, as permitted hereby, for the payment thereof by depositing with the Bond Trustee the entire amount due or to become due hereon, or certain securities as herein permitted and shall keep, perform, and observe all the covenants and conditions pursuant to the terms of this Bond Indenture to be kept, performed, and observed by it, and shall pay or cause to be paid to the Bond Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments this Bond Indenture and the rights hereby granted shall cease, determine, and be void; otherwise this Bond Indenture to be and remain in full force and effect.

**THIS BOND INDENTURE FURTHER WITNESSETH** and it is expressly declared that all Bonds issued and secured hereunder are to be issued, authenticated, and delivered and all said rights hereby pledged and assigned are to be dealt with and disposed of under, upon, and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses, and purposes as hereinafter expressed, and the Issuer has agreed and covenanted, and does hereby agree and covenant, with the Bond Trustee and with the respective owners from time to time of the Bonds as follows:

## **ARTICLE I DEFINITIONS**

**SECTION 1.01 DEFINITIONS.** All defined words and phrases used in this Bond Indenture and not otherwise defined herein shall have the meaning given and ascribed to such words and phrases in Article I of the Loan Agreement.

**SECTION 1.02 RECITAL INCORPORATION.** The recitals set forth in the beginning of this Bond Indenture are hereby incorporated herein.

## **ARTICLE II AUTHORIZATION, TERMS, EXECUTION AND ISSUANCE OF BONDS**

**SECTION 2.01 AUTHORIZED AMOUNT OF BONDS.** No Bonds may be issued under this Bond Indenture except in accordance with this Article.

**SECTION 2.02 PRIORITY OF BONDS, BONDS NOT AN OBLIGATION OF ISSUER.** The Bonds issued under this Bond Indenture and at any time Outstanding shall in all respects be equally and ratably secured hereby, without preference, priority, or distinction on account of the date or dates or the actual time or times of the issuance or maturity of the Bonds, so that all Bonds at any time issued and Outstanding hereunder shall have the same right, lien, and preference under and by virtue of this



Bond Indenture, and shall all be equally and ratably secured hereby. The Bonds shall be payable solely out of the revenues and other security pledged hereby and shall not constitute an indebtedness of the Issuer within the meaning of any state constitutional provision or statutory limitation and shall never constitute nor give rise to a pecuniary liability of the Issuer.

**SECTION 2.03 AUTHORIZATION OF BONDS.** There is hereby authorized to be issued hereunder and secured hereby a Series of Bonds designated the “Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, Taxable Convertible Capital Appreciation Revenue Bonds (Distilled Spirits, Inc., Project), Series 2021” (the “**Bonds**”).

The Bonds are convertible capital appreciation term bonds, are to be dated as of the date of delivery and will not pay current interest. Interest on the Bonds will accrue and be compounded annually on March 1 commencing on March 1, 2024, and will be payable solely at maturity as set forth below. Interest and principal on the Bonds is payable on March 1 every year as specified below and represents a return of the original principal amount and the payment of an investment return accrued over the life of the bond at an annual compounding rate that is necessary to produce the approximate yield to maturity. The Bond are not subject to redemption prior to maturity.

The Accreted Value per \$\_\_\_\_\_ maturity amount of the Bonds on the date of original issuance and on each March 1 are set forth below:

**YEARS**

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03/01/2021  
03/01/2022  
03/01/2023  
03/01/2024  
03/01/2025  
03/01/2026  
03/01/2027  
03/01/2028  
03/01/2029  
03/01/2030  
03/01/2031

**SECTION 2.04 PAYMENT OF BONDS.**

(a) The principal of and premium, if any, on the Bonds shall be payable in lawful money of the United States of America at the Payment Office of the Bond Trustee, or at the designated corporate trust office of its successor, upon presentation and surrender of such Bonds. Payment of interest on any Bond shall be made to the person who is the Registered Owner thereof at the close of business on the Regular Record Date for such Interest Payment Date by check mailed by the Bond Trustee on such Interest Payment Date to such Registered Owner at his or her address as it appears on the registration records kept by the Bond Trustee or by wire transfer of same day funds to an account within the United States, upon receipt by the Bond Trustee prior to the Regular Record Date of a written request by a Registered Owner of One Million Dollars (\$1,000,000) or more in aggregate principal amount of Bonds. The CUSIP number and appropriate dollar amounts for each CUSIP number shall accompany all payments of principal, premium, if any, and interest on the Bonds. Any such interest not so timely paid or duly provided for shall cease to be payable to the person who is the Registered Owner of such Bond at the close

of business on the Regular Record Date and shall be payable to the person who is the Registered Owner thereof at the close of business on a Special Record Date for the payment of any such defaulted interest. Such Special Record Date shall be fixed by the Bond Trustee whenever moneys become available for payment of the defaulted interest, and notice of the Special Record Date shall be given to the Registered Owners of the Bonds not less than ten (10) days prior thereto by first class postage prepaid mail to each such Registered Owner as shown on the registration records, stating the date of the Special Record Date and the date fixed for the payment of such defaulted interest. Alternative means of payment of interest may be used if mutually agreed upon between the owners of any Bonds and the Bond Trustee. All such payments shall be made in lawful money of the United States of America.

(b) Notwithstanding the foregoing, payments of the principal of and interest on any Bonds that are subject to the book entry system as provided in Article II of this Bond Indenture shall be made in accordance with the rules, regulations and procedures established by the securities depository in connection with the book entry system.

**SECTION 2.05 EXECUTION OF BONDS, SIGNATURES.** The Bonds shall be executed on behalf of the Issuer by its Chairman or President and attested by the Secretary. The signatures of such officers may be in facsimile. In case any officer who shall have signed any of the Bonds shall cease to hold such office and any of such Bonds shall have been authenticated by the Bond Trustee or delivered or sold, such Bonds with the signatures thereto affixed may, nevertheless, be authenticated by the Bond Trustee, and delivered, and may be sold by the Issuer, as though the person or persons who signed such Bonds had remained in office.

**SECTION 2.06 REGISTRATION AND EXCHANGE OF BONDS; PERSONS TREATED AS OWNERS.**

(a) The Issuer shall cause books for the registration and for the transfer of the Bonds as provided in this Bond Indenture to be kept by the Bond Trustee which is hereby appointed the bond registrar of the Issuer for the Bonds, Upon surrender for transfer of any fully registered Bond at the Payment Office of the Bond Trustee, duly endorsed for transfer or accomplished by an assignment duly executed by the Registered Owner or his attorney duly authorized in writing, the Issuer shall execute and the Bond Trustee shall authenticate and deliver in the name of the transferee or transferees a new fully registered Bond or Bonds of a like Aggregate Principal Amount for a like principal amount and maturity.

(b) The Issuer shall execute and the Bond Trustee shall authenticate and deliver Bonds which the Bondholder making the exchange is entitled to receive, bearing numbers not contemporaneously Outstanding. The execution by the Issuer of any fully registered Bond of any denomination shall constitute full and due authorization of such denomination and the Bond Trustee shall thereby be authorized to authenticate and deliver such Bond.

(c) The Bond Trustee shall not be required to transfer or exchange any Bond after the mailing of notice calling such Bond or any portion thereof for redemption has been given as herein provided, nor during the period beginning at the opening of business fifteen (15) days before the day of mailing by the Bond Trustee of a notice of prior redemption and ending at the close of business on the day of such mailing.

(d) As to any Bond, the Person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of principal of or interest on any Bond shall be made only to or upon the written order of the Registered Owner thereof or his legal representative, but such registration may be changed as hereinabove provided. All such payments shall be

valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums paid.

(e) The Bond Trustee shall require the payment by any Bondholder requesting exchange or transfer, of, any tax or other governmental charge required to be paid with respect to such exchange or transfer and any reasonable fees of the Bond Trustee.

**SECTION 2.07 LOST, STOLEN, DESTROYED, AND MUTILATED BONDS.** Upon receipt by the Bond Trustee of evidence satisfactory to it of the ownership of and the loss, theft, destruction, or mutilation of any Bond and, in the case of a lost, stolen, or destroyed Bond, of indemnity and/or security satisfactory to it, and upon surrender and cancellation of the Bond if mutilated, (i) the Issuer shall execute, and the Bond Trustee shall authenticate and deliver, a new Bond of the same date and maturity as the lost, stolen, destroyed or mutilated Bond in lieu of such lost, stolen, destroyed, or mutilated Bond, or (ii) if such lost, stolen, destroyed, or mutilated Bond shall have matured or have been called for redemption, in lieu of executing and delivering a new Bond as aforesaid, the Issuer may pay such Bond. Any such new Bond shall bear a number not contemporaneously Outstanding. The applicant for any such new Bond may be required to pay all expenses and charges of the Issuer and of the Bond Trustee in connection with the issue of such new Bond. All Bonds shall be held and owned upon the express condition that, to the extent permitted by law, the foregoing conditions are exclusive with respect to the replacement and payment of mutilated, destroyed, lost, or stolen Bonds, negotiable instruments, or other securities. If after the delivery of such new Bond, a bona fide purchaser of the original Bond in lieu of which such duplicate Bond was issued presents for payment such original Bond, the Obligor or the Bond Trustee shall be entitled to recover upon such new Bond from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security and/or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the Obligor or the Bond Trustee in connection therewith.

**SECTION 2.08 DELIVERY OF BONDS.**

(a) Upon the execution and delivery of this Bond Indenture, the Issuer shall execute and deliver to the Bond Trustee and the Bond Trustee shall authenticate the Bonds and deliver them to the initial purchasers thereof as directed by the Issuer and as hereinafter in this Section provided.

(b) Prior to the delivery by the Bond Trustee of any of the Bonds there shall be filed with and delivered to the Bond Trustee:

(i) a certified resolution of the board of directors of the Issuer authorizing (A) the execution and delivery of the Loan Agreement, this Bond Indenture and all other documents necessary or required to be executed and delivered by the Issuer in connection with the issuance of the Bonds, and (B) the issuance of the Bonds;

(ii) original executed counterparts of the Loan Agreement, this Bond Indenture, the Deed of Trust, the Tax Compliance Agreement, and the Continuing Disclosure Agreement;

(iii) the Note, duly executed by the Obligor and payable to the Bond Trustee;

(iv) a request and authorization to the Bond Trustee on behalf of the Issuer and signed by its Chairman to authenticate and deliver the Bonds to the purchasers therein identified upon payment to the Bond Trustee but for the account of the Issuer of a sum specified in such request and authorization; and

(v) an opinion of Bond Counsel addressed to the Bond Trustee (or a reliance letter therefor) to the effect that the Bonds have been duly and validly authorized, issued and delivered and constitute valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their terms, that the interest payable on the Bonds is excludable from gross income for federal income tax purposes and that each of the instruments to which the Issuer is a party has been duly and validly authorized, executed and delivered by the Issuer and constitutes the legal, valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms, subject to customary qualifications on enforceability.

**SECTION 2.09 BOND TRUSTEE'S AUTHENTICATION CERTIFICATE.** The Bond Trustee's authentication certificate upon the Bonds shall be substantially in the form and tenor hereinafter provided. No Bond shall be secured hereby or entitled to the benefit hereof, or shall be valid or obligatory for any purpose, unless the certificate of authentication, substantially in such form, has been duly executed by the Bond Trustee and such certificate of the Bond Trustee upon any Bond shall be conclusive evidence and the only competent evidence that such Bond has been authenticated and delivered hereunder. The Bond Trustee's certificate of authentication shall be deemed to have been duly executed by it if manually signed by an authorized signatory of the Bond Trustee, but it shall not be necessary that the same person sign the certificate of authentication on all of the Bonds issued hereunder.

**SECTION 2.10 NO ISSUANCE OF ADDITIONAL BONDS.** Subject to Section 2.08 hereof, the Issuer agrees that it will not issue any additional bonds under this Bond Indenture. Only the Bonds shall be Outstanding under this Bond Indenture and entitled to the security of the Trust Estate.

**SECTION 2.11 CANCELLATION AND DESTRUCTION OF BONDS BY THE BOND TRUSTEE.** Whenever any Outstanding Bonds shall be delivered to the Bond Trustee for the cancellation thereof pursuant to this Bond Indenture, upon payment of the principal amount or interest represented thereby or for replacement pursuant to Section 2.08 hereof, such Bonds shall be promptly cancelled and treated in accordance with the Bond Trustee's standard retention policies. In the event of destruction of the Bonds by the Bond Trustee, a certificate of destruction evidencing such destruction shall be furnished by the Bond Trustee to the Issuer and the Obligor upon written request.

**SECTION 2.12 BOOK ENTRY ONLY SYSTEM.**

(a) The Bonds shall be initially issued in the form of a single fully registered Bond for each maturity of the Bonds, registered in the name of Cede & Co., as nominee of DTC, and except as provided in Section 2.14 hereof, all of the outstanding Bonds shall be registered in the name of Cede & Co., as nominee of DTC.

(b) With respect to Bonds registered in the name of Cede & Co., as nominee of DTC, the Issuer and the Bond Trustee shall have no responsibility or obligation to any participant in DTC (a "**DTC Participant**") or to any person on behalf of whom such a DTC Participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, the Issuer and the Bond Trustee shall have no responsibility or obligation with respect to (a) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Bonds, (b) the delivery to any DTC Participant or any other person, other than a Bondholder, as shown on the registration books, of any notice with respect to the Bonds, including any notice of redemption, or (c) the payment to any DTC Participant or any other person, other than a Bondholder as shown in the registration books, of any amount with respect to principal of, premium, if any, or interest on, the Bonds. Notwithstanding any other provision of this Bond Indenture to the contrary, the Issuer and the Bond Trustee shall be entitled to treat and consider the person in whose name each Bond is registered in the registration books as the absolute owner of such Bond for the purpose

of payment of principal, premium, if any, and interest with respect to such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Bond Trustee shall pay all principal of, premium, if any, and interest on the Bonds only to or upon the order of the respective owners, as shown in the registration books as provided in this Bond Indenture, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to payment of principal of, premium, if any, and interest on, the Bonds to the extent of the sum or sums so paid. No person other than an owner, as shown in the registration books, shall receive a Bond certificate evidencing the obligation of the Issuer to make payments of principal, premium, if any, and interest, pursuant to this Bond Indenture. Upon delivery by DTC to the Bond Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Bond Indenture with respect to payment of interest to the Registered Owner at the close of business on the Record Date, the word "Cede & Co." in this Bond Indenture shall refer to such new nominee of DTC.

### **SECTION 2.13 SUCCESSOR SECURITIES DEPOSITORY; TRANSFERS OUTSIDE BOOK ENTRY ONLY SYSTEM.**

(a) In the event the Obligor determines DTC is incapable of discharging its responsibilities described herein and in the representation letter of the Issuer to DTC (the "**DTC Letter**") and that it is in the best interest of the beneficial owners of the Bonds that they be able to obtain certificated Bonds, the Issuer, at the direction of the Obligor, but only to the extent permitted by the rules of DTC in effect at the time, shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities Exchange Act of 1934, as amended, notify DTC and DTC Participants, identified by DTC, of the appointment of such successor securities depository and transfer one or more separate Bonds to such successor securities depository, or (ii) notify DTC and DTC Participants, identified by DTC, of the availability through DTC of Bonds and transfer one or more separate Bonds to DTC Participants, identified by DTC, having Bonds credited to their DTC accounts. In such event, the Bonds shall no longer be restricted to being registered in the registration books in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Bondholders transferring or exchanging Bonds shall designate, in accordance with the provisions of this Bond Indenture.

(b) Upon the written consent of DTC, the Bond Trustee, in accordance with the DTC Letter, shall withdraw the Bonds from DTC, and authenticate and deliver Bonds fully registered to the assignees of DTC or its nominee. If the request for such withdrawal is not the result of any Issuer action or inaction, such withdrawal, authentication and delivery shall be at the cost and expense (including costs of printing, preparing and delivering such Bonds) of the Persons requesting such withdrawal, authentication and delivery.

**SECTION 2.14 PAYMENTS TO CEDE & CO.** Notwithstanding any other provision of this Bond Indenture to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal or premium, if any, and interest on, such Bond and all notices, transfers and deliveries with respect to such Bond shall be made and given, respectively, in the manner provided in the DTC Letter.

### **SECTION 2.15 LIMITATIONS ON TRANSFER.**

(a) The Bonds and interests therein may only be issued and sold or transferred in accordance with and consistent with the provisions of the institutional investment letter executed by the Obligor and the initial and subsequent Purchaser of the Bonds, in Authorized Denominations to a Person

which is an “accredited investor”, as defined in Regulation D promulgated under the Securities Act of 1933 (the “**Securities Act**”), as amended, or a “qualified institutional buyer” within the meaning of Rule 144A promulgated under the Securities Exchange Act of 1934, as amended, and which is purchasing such Bonds for its own account. Neither the Bonds nor any interest therein may be transferred or resold except as permitted under the Securities Act pursuant to registration or an exemption therefrom.

(b) The Bonds shall bear a legend stating that they have not been registered under the Securities Act and that they are subject to the transfer requirements described in Section 2.16(a) and Section 2.16(b) hereof. By purchasing a Bond or any interest therein, each purchaser shall be deemed to have agreed to these transfer requirements.

(c) The Bonds, and related documentation, including this Bond Indenture, may be amended or supplemented from time to time by to modify the restrictions on and procedures for resale and other transfers of the Bonds and interests therein to reflect any change in applicable law or regulation (or the interpretation thereof) or in practices relating to the resale or other transfer of restricted securities generally, if the Bond Trustee shall have received an opinion of Bond Counsel to the effect that such amendment or supplement is necessary or appropriate.<sup>1</sup>

### **ARTICLE III REVENUES AND FUNDS**

#### **SECTION 3.01 APPLICATION OF PROCEEDS OF BONDS AND OTHER FUNDS.**

(a) The Issuer will sell and cause the Bonds to be delivered to the initial purchasers thereof upon payment to the Bond Trustee of the aggregate proceeds of such sale in the amount of \$\_\_\_\_\_ (i.e., \_\_\_% of the principal amount of the Bonds), which shall be applied as follows:

- (i) \$\_\_\_\_\_ shall be deposited into the Project Fund;
- (ii) \$\_\_\_\_\_ shall be deposited into the Reserve Fund;

(b) The Bond Trustee shall (i) accept for credit to the Reserve Fund, any amount provided by the Obligor for such purpose, and (ii) accept for deposit into the Cost of Issuance Fund any amount provided by the Obligor for such purpose.

**SECTION 3.02 CREATION OF THE BOND FUND.** There is hereby created by the Issuer and ordered established with the Bond Trustee a trust fund to be designated as “Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee Taxable Convertible Capital Appreciation Revenue Bonds (Distilled Spirits, Inc.), Series 2021, Bond Fund” (the “**Bond Fund**”). There are hereby created by the Issuer and ordered established with the Bond Trustee (i) two separate accounts within the Bond Fund relating to the Bonds, to be designated (A) the “Principal Account”, which shall be used to pay the principal of the Bonds when due and payable, and (B) the “Interest Account”, which shall be used to pay the interest on the Bonds when due and payable.

#### **SECTION 3.03 PAYMENTS INTO THE BOND FUND.**

(a) On the Delivery Date of the Bonds, there shall be deposited into the Interest Account of the Bond Fund the amount of capitalized interest provided for in Section 3.01(a)(ii)

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<sup>1</sup> GT: Add PPM restrictions.

(b) Each month there shall be deposited into the Bond Fund all payments of principal of and interest on the Note for such month. There shall also be deposited into the Interest Account and/or Principal Account of the Bond Fund (A) all moneys to be transferred to such Accounts from the Reserve Fund, pursuant to Section 3.10 hereof, and (B) all moneys transferred to the Interest Account and/or Principal Account of the Bond Fund from the Project Fund pursuant to Sections 3.06(b) and 3.06(e) hereof. There shall also be deposited to the Interest Account and the Principal Account, of the Bond Fund all other moneys required to be deposited therein pursuant to the Loan Agreement and all other moneys received by the Bond Trustee when accompanied by written directions that such moneys are to be paid into the applicable account of the Bond Fund. There shall be retained or deposited in the Bond Fund all interest and other income received on investments or moneys required to be transferred thereto, in accordance with Section 6.02 hereof.

(c) The Issuer hereby covenants and agrees that, to the extent such have been paid to or on behalf of the Issuer, so long as any of the Bonds are Outstanding it will deposit, or cause to be deposited, into the Bond Fund sufficient revenues and receipts derived from the Loan Agreement promptly to pay the principal of, premium, if any, and interest on the Bonds as the same become due and payable.

**SECTION 3.04 CUSTODY OF THE BOND FUND.** The Bond Fund shall be held in the custody of the Bond Trustee but in the name of the Issuer, and the Issuer hereby authorizes and directs the Bond Trustee to withdraw sufficient funds from the Bond Fund to pay the principal of and interest on the Bonds as the same become due and payable in accordance with the priority set forth in Section 3.04(b), which authorization and direction the Bond Trustee hereby accepts.

**SECTION 3.05 REVENUE FUND.** (a) There is hereby created and established with the Bond Trustee a trust fund designated as the “Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee Taxable Convertible Capital Appreciation Revenue Bonds (Distilled Spirits, Inc. Project), Series 2021, Revenue Fund” (the “**Revenue Fund**”). If an Event of Default under Section 8.01(a) of this Bond Indenture shall occur and continue for a period of five (5) days, Obligor shall deposit with the Bond Trustee all Gross Revenues of such Obligor (except to the extent otherwise provided by or inconsistent with any instrument creating any mortgage, lien, charge, encumbrance, pledge or other security interest granted, created, assumed, incurred or existing in accordance with the provisions of this Bond Indenture) during each succeeding month, beginning on the first day thereof and on each day thereafter, until no default under Section 8.01(a) of this Bond Indenture then exists.

(b) On the fifth Business Day preceding the end of each month in which any Obligor has made payments to the Bond Trustee for deposit into the Revenue Fund, the Bond Trustee shall withdraw and pay or deposit from the amounts on deposit in the Revenue Fund the following amounts in the order indicated:

First: To the payment of all amounts due the Bond Trustee under this Bond Indenture;

Then: To the Obligor.

(c) The money deposited to the Revenue Fund, together with all investments thereof and investment income therefrom, shall be held in trust and applied solely as provided in this Section and in Article VI hereof. Pending disbursements of the amounts on deposit in the Revenue Fund, the Bond Trustee shall promptly invest and reinvest such amounts in accordance with Article VI hereof. All such investments shall have a maturity not greater than ninety-one (91) days from date of purchase.

(d) Except as described in Section 3.05(a) above, each Obligated Group Member shall be entitled to full possession and use of its Gross Revenues.

(e) As used herein, "Gross Revenues" means all receipts, revenues, rentals, income, insurance proceeds, condemnation awards, and other moneys received by or on behalf of any Obligor, including (without limitation) revenues derived from (i) the ownership, operation or leasing of any portion of any facilities and all rights to receive the same, whether in the form of accounts, health care insurance receivables, general intangibles or other rights, and the proceeds of such accounts, receivables, general intangibles and other rights, whether now existing or hereafter coming into existence or whether now owned or held or hereafter acquired, and (ii) gifts, grants, bequests, donations and contributions heretofore or hereafter made that are legally available to meet any of the obligations of the Obligor incurred in the financing, operation, maintenance or repair of any portion of the Property of the Obligor; provided, however, that there shall be excluded from Gross Revenues (A) all such items, whether now owned or hereafter acquired by the Obligor, which by their terms or by reason of applicable law cannot be granted, assigned or pledged hereunder or which would become void or voidable if granted, assigned or pledged hereunder by the Obligor, or which cannot be granted, pledged or assigned hereunder without the consent of other parties whose consent is not secured, or without subjecting the Bond Trustee to a liability not otherwise contemplated by the provisions hereof, or which otherwise may not be, or are not, hereby lawfully and effectively granted, pledged and assigned by the Obligor, and (B) gifts, grants, bequests, donations and contributions to an Obligor heretofore or hereafter made, and the income and gains derived therefrom, which are specifically restricted by the donor or grantor to a particular purpose which is inconsistent with their use of payments required under this Bond Indenture

### **SECTION 3.06 PROJECT FUND.**

(a) There is hereby created and established with the Bond Trustee a trust fund designated as "Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee Taxable Convertible Capital Appreciation Revenue Bonds (Distilled Spirits, Inc.), Series 2021, Project Fund" (the "**Project Fund**"). Moneys in the Project Fund shall be used solely to pay Costs of the Project, as hereinafter provided. Moneys in the Project Fund may not be used to pay Costs of Issuance without an opinion of Bond Counsel delivered to the Bond Trustee prior to the use of such funds.

(b) In the event there are insufficient moneys in the Bond Fund to pay the principal of or interest on the Bonds when due, the Bond Trustee shall transfer moneys in the Project Fund to the Bond Fund to pay (i) first, on a pro rata basis, any interest on the Bonds then due and unpaid, and (ii) second, on a *pro rata* basis, any principal of the Bonds then due and unpaid. The Bond Trustee shall disburse moneys in the Project Fund as provided herein and in Section 4.5 of the Loan Agreement

(c) Payments from the Project Fund shall be made in accordance with this Article III and Article IV of the Loan Agreement. Upon receipt of the certifications required pursuant to the Loan Agreement, the Bond Trustee shall pay the amount requested to the extent that the Obligor is entitled to payment pursuant to the Loan Agreement.

(d) If an Event of Default occurs under this Bond Indenture, and the Bond Trustee declares the principal of all Bonds and the interest accrued thereon to be due and payable, no moneys may be paid out of the Project Fund by the Bond Trustee during the continuance of such an Event of Default; provided, however, that if such an Event of Default shall be waived and such declaration shall be rescinded by the Bond Trustee or the holders and owners of the Bonds pursuant to the terms of this Bond Indenture, the full amount of any such remaining moneys in the Project Fund may again be disbursed by the Bond Trustee in accordance with the provisions of the Loan Agreement and this Bond Indenture.



(e) On or after the Completion Date as evidenced by the receipt by the Bond Trustee of the Certificate of Completion of the Project in the form attached as Exhibit D to the Loan Agreement, the Bond Trustee shall transfer amounts on deposit in the Project Fund to the Bond Fund.

**SECTION 3.07 CREATION OF THE RESERVE FUND.** There is hereby created and established with the Bond Trustee a trust fund designated as the “Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee Taxable Convertible Capital Appreciation Revenue Bonds (Distilled Spirits, Inc. Project), Series 2021, Reserve Fund” (the “**Reserve Fund**”), which shall be used to provide a reserve for the payment of the principal of and interest on the Bonds and such reserve fund shall be ten percent (10%) of the initial par amount of the Bonds funded by the gross proceeds of \_\_\_\_\_.

**SECTION 3.08 PAYMENTS INTO THE RESERVE FUND.** In addition to the deposits required by Section 3.01 hereof there shall be deposited into the Reserve Fund, all moneys required to be transferred thereto pursuant to Section 6.02 hereof, and all other moneys received by the Bond Trustee when accompanied by directions that such moneys are to be paid into the Reserve Fund. There shall also be retained in the Reserve Fund all interest and other income received on investments of Reserve Fund moneys to the extent provided in Section 6.02 hereof.

**SECTION 3.09 USE OF MONEYS IN THE RESERVE FUND.**

(a) Except as provided in this Section 3.09 and in Section 3.15 hereof, moneys in the Reserve Fund shall be used solely for the payment of the principal of and interest on the Bonds, in the event moneys in the Interest Account and/or the Principal Account in the Bond Fund are insufficient to make such payments when due, whether on an Interest Payment Date, Principal Payment Date or otherwise.

(b) Upon the occurrence of an Event of Default of which the Bond Trustee is deemed to have actual notice hereunder and the election by the Bond Trustee of the remedy specified in Section 8.02(a) hereof, any amounts on deposit (i) the Reserve Fund shall, subject to the provisions of Section 3.15 hereof, be transferred by the Bond Trustee to the Principal Account and applied in accordance with Section 8.05 hereof. In the event of the redemption of a portion of the Bonds, any amounts on deposit in the Reserve Fund in excess of the Reserve Fund Requirement in effect immediately after such redemption may, subject to the provisions of Section 3.15 hereof, be transferred on an equal and proportionate basis to the Principal Account and the Interest Account, as applicable, and applied to the payment of the principal of and interest on the Bonds to be redeemed, as applicable. On March 1 in each year, any earnings on the Reserve Fund Obligations on deposit in the Reserve Fund that are in excess of the Reserve Fund Requirement shall be transferred (i) prior to the Completion Date, to the Project Fund, and (ii) thereafter, into the Interest Account of the Bond Fund.

(c) If at any time moneys in the Reserve Fund are sufficient to pay the principal or redemption price of and all accrued interest on all then Outstanding Bonds, the Bond Trustee shall use the moneys on deposit in the Reserve Fund to pay such principal or redemption price of and interest on the Bonds.

(d) If the monies in the Reserve Fund are below the Reserve Fund Requirement, the Obligor shall deposit monies necessary to replenish the deficit within 270 days.

**SECTION 3.10 CUSTODY OF THE RESERVE FUND.** The Reserve Fund shall be held in the custody of the Bond Trustee but in the name of the Issuer, and the Issuer hereby authorizes and directs the Bond Trustee to transfer sufficient moneys from the Reserve Fund, to the Bond Trustee for deposit to the Bond Fund to pay the principal of and interest on the Bonds for the purposes herein described, which

authorization and direction the Bond Trustee hereby accepts. In the event there shall be a deficiency in the Bond Fund on any Interest Payment Date or Principal Payment Date for the Bonds, the Bond Trustee shall promptly make up such deficiency from the Reserve Fund.

**SECTION 3.11 NON-PRESENTMENT OF BONDS.** In the event that any Bonds shall not be presented for payment when the principal thereof or interest thereon becomes due, either at maturity, the date fixed for redemption thereof, or otherwise, if funds sufficient for the payment thereof shall have been deposited into the Bond Fund or otherwise made available to the Bond Trustee for deposit therein as provided in Section 3.03 hereof, all liability of the Issuer to the owner or owners thereof for the payment of such Bonds shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Bond Trustee to hold such fund or funds, without liability for interest thereon, for the benefit of the owner or owners of such Bonds, who shall thereafter be restricted exclusively to such fund or funds for any claim of whatever nature on his or their part under this Bond Indenture or on, or with respect to, said Bond, and all such funds shall remain uninvested. If any Bond shall not be presented for payment within the period of two (2) years following the date of final maturity of such Bond, the Bond Trustee shall, to the extent required by law, transfer such funds to the state treasury of the state in which the principal office of the Bond Trustee is located, in which case the owner of such Bonds shall look only to such state for payment, or, in the alternative, to the extent permitted by law, the Bond Trustee shall, upon request in writing by the Obligor, return such funds to the Obligor free of any trust or lien and such Bond shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Obligor. In either event, the Bond Trustee shall have no further responsibility with respect to such moneys or payment of such Bonds. Thereafter, the Bondholders shall be entitled to look only to the Obligor for payment, and then only to the extent of the amount so repaid by the Bond Trustee. The Obligor shall not be liable for any interest on any sums paid to it.

**SECTION 3.12 BOND TRUSTEE'S AND PAYING AGENTS' FEES, CHARGES, AND EXPENSES.** Pursuant to the provisions of the Loan Agreement, the Obligor has agreed to pay to the Bond Trustee and to each Paying Agent, commencing with the effective date of the Loan Agreement and continuing until the principal of, premium, if any, and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the provisions of this Bond Indenture, the reasonable and necessary fees and expenses (including attorney's fees) of the Bond Trustee and each Paying Agent, as and when the same become due, upon the submission by the Bond Trustee and each Paying Agent of a statement therefor.

**SECTION 3.13 MONEYS TO BE HELD IN TRUST.** All moneys required to be deposited with or paid to the Bond Trustee under any provision of this Bond Indenture (except moneys in the Rebate Fund) shall be held by the Bond Trustee in trust for the purposes specified in this Bond Indenture, and except for moneys deposited with or paid to the Bond Trustee for the redemption of Bonds for which the notice of redemption has been duly given, shall, while held by the Bond Trustee, constitute part of the Trust Estate and be subject to the lien hereof.

**SECTION 3.14 REPAYMENT TO THE OBLIGOR FROM THE FUNDS.** Any amounts remaining in the Cost of Issuance Fund, Bond Fund, Reserve Fund or Project Fund after payment in full of the Bonds (or after making provision for such payment), the fees and expenses of the Bond Trustee and the Paying Agents (including attorney's fees, if any), the Administration Expenses, and all other amounts required to be paid hereunder and under the Loan Agreement shall be paid to the Obligor upon the termination of the Loan Agreement.

**SECTION 3.15 REBATE FUND.**

(a) A special Rebate Fund is hereby established by the Issuer. The Rebate Fund shall be for the sole benefit of the United States of America and shall not be subject to the claim of any other Person, including without limitation the Bondholders. The Rebate Fund is established for the purpose of complying with Section 148 of the Code. The money deposited in the Rebate Fund, together with all investments thereof and investment income therefrom, shall be held in trust and applied solely as provided in this Section. The Rebate Fund is not a portion of the Trust Estate and is not subject to the lien of this Bond Indenture. Notwithstanding the foregoing, the Bond Trustee with respect to the Rebate Fund is afforded all the rights, protections and immunities otherwise accorded to it hereunder.

(b) Within sixty (60) days after the close of each fifth “Bond Year,” the Obligor shall deliver to the Bond Trustee a computation in the form of a certificate of an officer of the Obligor of the amount of “Excess Earnings,” if any, for the period beginning on the date of delivery of the Bonds and ending at the close of such “Bond Year” and the Obligor shall pay to the Bond Trustee for deposit into the Rebate Fund an amount equal to the difference, if any, between the amount then in the Rebate Fund and the Excess Earnings so computed. The term “Bond Year” means with respect to the Bonds each one-year period ending on the anniversary of the date of delivery of the Bonds or such other period as may be elected by the Issuer in accordance with the Code and notice of which election has been given to the Bond Trustee. If, at the close of any Bond Year, the amount in the Rebate Fund exceeds the amount that would be required to be paid to the United States of America under paragraph (d) below if the Bonds had been paid in full, such excess may, at the written request of the Obligor, be transferred from the Rebate Fund and paid to the Obligor.

(c) In general, “Excess Earnings” for any period of time means the sum of

(i) the excess of --

(A) the aggregate amount earned during such period of time on all “Nonpurpose Investments” (including gains on the disposition of such Obligations) in which “Gross Proceeds” of the issue are invested (other than amounts attributable to an excess described in this subparagraph (c)(i)), over

(B) the amount that would have been earned during such period of time if the “Yield” on such Nonpurpose Investments (other than amounts attributable to an excess described in this subparagraph (c)(i)) had been equal to the yield on the issue, plus

(ii) any income during such period of time attributable to the excess described in subparagraph (c)(i) above.

The term Nonpurpose Investments, Gross Proceeds, Issue Date and Yield shall have the meanings given to such terms in section 148 of the Code.

(d) The Bond Trustee shall, if directed in writing by the Obligor, pay to the United States of America at least once every five (5) years, to the extent that funds are available in the Rebate Fund or otherwise provided by the Obligor, an amount that ensures that at least ninety percent (90%) of the Excess Earnings from the date of delivery of the Bonds to the close of the period for which the payment is being made will have been paid. The Bond Trustee shall pay to the United States of America not later than sixty (60) days after the Bonds have been paid in full as directed by the Obligor in writing, to the extent that funds are available in the Rebate Fund or otherwise provided by the Obligor, 100% of the amount then required to be paid under Section 148 of the Code as a result of Excess Earnings.

(e) The amounts to be computed, paid, deposited or disbursed under this section shall be determined by the Obligor acting on behalf of the Issuer within thirty (30) days after each Bond Year. By such date, the Obligor shall also notify, in writing, the Bond Trustee and the Issuer of the determinations the Obligor has made and the payment to be made pursuant to the provisions of this section. Upon written request of any Registered Owner of Bonds, the Obligor shall furnish to such Registered Owner of Bonds a certificate (supported by reasonable documentation, which may include calculation by Bond Counsel or by some other service organization) showing compliance with this section and other applicable provisions of section 148 of the Code.

(f) The Bond Trustee shall maintain a record of the periodic determinations by the Obligor of the Excess Earnings for a period beginning on the first anniversary date of the issuance of the Bonds and ending on the date six (6) years after the final retirement of the Bonds. Such records shall state each such anniversary date and summarize the manner in which the Excess Earnings, if any, were determined.

(g) If the Bond Trustee shall declare the principal of the Bonds and the interest accrued thereon immediately due and payable as the result of an Event of Default specified in this Bond Indenture, or if the Bonds are optionally or mandatorily prepaid or redeemed prior to maturity as a whole in accordance with their terms, any amount remaining in any of the funds shall be transferred to the Rebate Fund to the extent that the amount therein is less than the Excess Earnings computed by the Obligor and provided to the Bond Trustee in writing as of the date of such acceleration or redemption, and the balance of such amount shall be used immediately by the Bond Trustee for the purpose of paying principal of, redemption premium, if any, and interest on the Bonds when due in accordance with the priority set forth herein. In furtherance of such intention, the Issuer hereby authorizes and directs its Chairman to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the Issuer, which may be permitted by the Code as are consistent with the purpose for the issuance of the Bonds.

(h) The requirements contained in this Section relating to the computation and payment of Excess Earnings shall not be applicable if all Gross Proceeds (as defined in the Tax Compliance Agreement) of the Bonds are expended in compliance with Section 1.148-7 of the Code.

(i) Notwithstanding any of the provisions of this Section, the Bond Trustee shall have no duty or responsibility with respect to the Rebate Fund except to follow the specific written instructions of the Obligor.

**SECTION 3.16 COST OF ISSUANCE FUND.** There is hereby created and established with the Bond Trustee a trust fund designated as the “Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee Taxable Convertible Capital Appreciation Revenue Bonds (Distilled Spirits, Inc. Project), Series 2021, Cost of Issuance Fund” (the “**Cost of Issuance Fund**”). The Bond Trustee shall disburse moneys in the Cost of Issuance Fund as provided in Article IV of the Loan Agreement. Moneys in the Cost of Issuance Fund may be used only for payment of the Cost of Issuance. On the earlier of (a) the day the Bond Trustee receives a certificate of the Obligor to the effect that all Cost of Issuance relating to the Bonds has been paid and (b) the 180th day following the Delivery Date, any moneys remaining in the Cost of Issuance Fund shall be transferred to the Project Fund, and thereafter no such moneys shall be used to pay Cost of Issuance. The Cost of Issuance Fund shall then be closed.

**ARTICLE IV  
COVENANTS OF THE ISSUER**

**SECTION 4.01 PERFORMANCE OF COVENANTS; AUTHORITY.** The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions contained in this Bond Indenture, in any and every Bond and in all proceedings of the Issuer pertaining hereto; provided, however, that except for the covenant of the Issuer set forth in Section 4.02 hereof relating to payment of the Bonds, the Issuer shall not be obligated to take any action or execute any instrument pursuant to any provision hereof until it shall have been requested to do so by the Obligor or by the Bond Trustee, or until it shall have received the instrument to be executed and at the option of the Issuer shall have received from the party requesting such execution assurance satisfactory to the Issuer that the Issuer shall be reimbursed for its reasonable expenses incurred or to be incurred in connection with taking such action or executing such instrument. Notwithstanding anything in this Agreement to the contrary, it is expressly understood and agreed by the parties hereto that (a) the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Issuer by the Obligor as to the existence of any act or state of affairs required hereunder to be noticed by the Issuer; and (b) the Issuer shall not be under any obligation hereunder to perform any record-keeping or to provide any legal services, it being understood that such services shall be performed either by the Obligor or the Trustee. The Issuer covenants that it is duly authorized under the laws of the State of Tennessee, including particularly and without limitation the Act, to issue the Bonds and to execute this Bond Indenture, and to pledge the revenues and receipts hereby pledged, and to assign its rights under and pursuant to the Loan Agreement and the Note in the manner and to the extent herein set forth, that all action on its part and to the extent herein set forth, that all action on its part for the issuance of the Bonds and the execution and delivery of this Bond Indenture has been duly and effectively taken and will be duly taken as provided herein, and that the Bonds in the hands of the owners thereof are and will be valid and enforceable limited obligations of the Issuer according to the import hereof, except as enforcement thereof and hereof may be limited by bankruptcy, insolvency, moratorium, reorganization and other similar laws affecting the rights of creditors and by the application of general principles of equity, if such remedies are pursued.

**SECTION 4.02 PAYMENTS OF PRINCIPAL, PREMIUM, IF ANY, AND INTEREST.** The Issuer will promptly pay or cause to be paid the principal of, premium, if any, and interest on all Bonds issued hereunder according to the terms and priority hereof. Notwithstanding the foregoing, the principal, premium, if any, and interest payments are payable solely from revenues and other amounts derived from the Trust Estate, which revenues and security are hereby specifically pledged to the payment thereof in the manner and to the extent herein specified. Nothing in the Bonds or in this Bond Indenture shall be considered or construed as pledging any funds or assets of the Issuer other than those pledged hereby.

**SECTION 4.03 SUPPLEMENTAL INDENTURES: RECORDATION OF BOND INDENTURE AND SUPPLEMENTAL INDENTURES.** The Issuer will execute and deliver all indentures supplemental hereto, and will cause this Bond Indenture, the Loan Agreement, and all supplements hereto and thereto, as well as all security instruments and financing statements relating thereto, to be filed in each office required by law in order to publish notice of the liens created by this Bond Indenture and the Loan Agreement. The Bond Trustee, at the Obligor's expense and direction, will cause all continuation statements and all supplements to any financing statement or continuation statement and other instruments as may be required, at all times to be recorded, registered and filed in such manner and in such places as may be required by law in order fully to preserve and protect the security of the Bondholders and all rights of the Bond Trustee hereunder. Notwithstanding the preceding sentence, the Bond Trustee shall not be liable for failure to effect any such filings.

**SECTION 4.04 LIEN OF BOND INDENTURE.** The Issuer hereby agrees not to create any lien having priority or preference over the lien of this Bond Indenture upon the Trust Estate or any part thereof, other than the security interest granted by it to the Bond Trustee, except as otherwise specifically provided in Article VIII hereof. The Issuer agrees that no obligations the payment of which is secured by payments or other moneys or amounts derived from the Loan Agreement and the other sources provided herein will be issued by it except for the Bonds and any replacement thereof issued in accordance with Section 2.08 of this Bond Indenture.

**SECTION 4.05 RIGHTS UNDER THE LOAN AGREEMENT.**

(a) The Issuer will observe all of the obligations, terms and conditions required on its part to be observed or performed under the Loan Agreement. The Issuer agrees that wherever in the Loan Agreement it is stated that the Issuer will notify the Bond Trustee, give the Bond Trustee some right or privilege, or in any way attempts to confer upon the Bond Trustee the ability for the Bond Trustee to protect the security for payment of the Bonds, that such part of the Loan Agreement shall be as though it were set out in this Bond Indenture in full.

(b) The Issuer agrees that the Bond Trustee as assignee of the Loan Agreement may enforce, in its name or in the name of the Issuer, all rights of the Issuer (except for Reserved Rights) and all obligations of the Obligor under and pursuant to the Loan Agreement for and on behalf of the Bondholders, whether or not the Issuer is in default hereunder.

**SECTION 4.06 TAX COVENANTS; BLUE SKY COMPLIANCE.** (a) The Issuer covenants and agrees that until the final maturity of the Bonds, based upon the Obligor's covenants in Section 4.10 of the Loan Agreement, it will not knowingly take any action, use any money on deposit in any fund or account maintained in connection with the Bonds, whether or not such money was derived from the proceeds of the sale of the Bonds or from any other source, in a manner that would cause the Bonds to be arbitrage bonds, within the meaning of Section 148 of the Code. In the event the Obligor notifies the Issuer that it is necessary to restrict or limit the yield on the investment of moneys held by the Bond Trustee pursuant to this Bond Indenture, or to use such moneys in any certain manner to avoid the Bonds being considered arbitrage bonds, the Issuer at the written direction and expense of the Obligor shall deliver to the Bond Trustee appropriate written instructions of the Issuer, in which event the Bond Trustee shall, upon receipt of indemnity pursuant to Section 9.01(m) of the Bond Indenture, take such action as instructed to restrict or limit the yield on such investment or to use such moneys in accordance with such instructions.

(b) The Issuer shall not knowingly use any proceeds of Bonds or any other funds of the Issuer, directly or indirectly, in any manner, and shall not knowingly take any other action or actions, that would result in any of the Bonds being treated other than as an obligation described in Section 103(a) of the Code.

(c) The Issuer will not knowingly use any portion of the proceeds of the Bonds, including any investment income earned on such proceeds, directly or indirectly, to make or finance loans to Persons who are not Exempt Persons." For purposes of the preceding sentence, a loan to an organization described in Section 501(c)(3) of the Code for use with respect to an unrelated trade or business, determined according to Section 513(a) of the Code, constitutes a loan to a Person who is not an "Exempt Person."

(d) The Issuer will not knowingly take any action that would result in all or any portion of the Bonds being treated as federally guaranteed within the meaning of Section 149(b)(2) of the Code.

(e) For purposes of this Section, the Issuer's compliance shall be based solely on acts or omissions by the Issuer, and no acts, omissions or directions of the Obligor, the Bond Trustee or any other Persons shall be attributable to the issuer.

(f) The Issuer shall not be required to execute or otherwise provide a general or special consent to service of process or qualify to do business in connection with (i) any qualification of the Bonds under any blue sky or securities laws in any jurisdiction or (ii) any determination of the Bonds as eligible investments under the laws of any other jurisdiction

**SECTION 4.07 CHANGE IN LAW.** To the extent that published rulings of the Internal Revenue Service, or amendments to the Code modify the covenants of the Issuer that are set forth in this Bond Indenture or that are necessary for interest on the Bonds to be excludable from gross income for federal income tax purposes, the Issuer, upon receiving the written opinion of Bond Counsel to such effect, will comply, at the expense of the Obligor, with such modifications and direct the Bond Trustee to take such reasonable action as may be required to comply with such modifications.

**SECTION 4.08 PROGRAM INVESTMENT.** The proceeds of the Bonds are to be used to finance the Project. With respect to the Bonds, the Issuer asserts:

(a) At least ninety-five percent (95%) of all amounts received by the Issuer with respect to the Bonds will be used for one or more of the following purposes: to make loans to exempt organizations, to pay the principal or interest or otherwise to service the debt on the Bonds; to reimburse the Issuer or to pay for administrative costs of issuing such obligations; or to redeem or retire such Bonds of the Issuer at the next earliest possible date of redemption.

(b) Any person or any related party, as defined in Section 1.150-1 of the Code, from whom the Issuer may acquire obligations, shall not, pursuant to an arrangement, formal or informal, purchase the Issuer's bonds in an amount related to the amount of the obligations to be acquired from such person by the Issuer.

(c) The Issuer does not waive the right to treat the Loan Agreement as a program investment.

## **ARTICLE V REDEMPTION OF BONDS**

**SECTION 5.01 EXTRAORDINARY REDEMPTION OF THE BONDS DUE TO CERTAIN EVENTS.** The Bonds are not subject to optional redemption prior to their stated dates of maturity. The Bonds will be subject to extraordinary mandatory redemption, on a pro rata basis, by the Issuer at the written direction of Obligor, in whole or in part prior to their scheduled maturities, at a redemption price equal to 100% of the principal amount thereof plus accrued interest from the most recent Interest Payment Date to the date of redemption, on any date following the occurrence of any of the following events:

(a) as a result of damage to, or destruction or condemnation of, all or any portion the Project, to the extent that the net proceeds of insurance or condemnation award exceed the Threshold Amount and Obligor has determined not to use such net proceeds or award to repair, rebuild or replace the Project in accordance with the terms of the Loan Agreement and this Bond Indenture; or

(b) as a result of any changes in the Constitution or laws of the State of Tennessee or of the United States of America or of any legislative, executive, or administrative action (whether state or

federal) or of any final decree, judgment, or order of any court or administrative body (whether state or federal), the obligations of the Obligor under the Loan Agreement and/or the Note have become, as established by an opinion of Bond Counsel, void or unenforceable in any material respect in accordance with the intent and purpose of the parties as expressed in the Loan Agreement and/or the Note.

#### **SECTION 5.02 EXTRAORDINARY REDEMPTION WITH EXCESS CASH FLOW.**

The Bonds are subject to mandatory redemption at a redemption price equal to the principal amount thereof plus accrued interest to, but not including, the redemption date in part, without premium, on March 1 of each year in an amount equal to 30% of the amount that the Obligor's Income Available for Debt Service exceeds the Obligor's Maximum Annual Debt Service Requirements during the prior fiscal year, provided (i) the Obligor is in compliance with its financial covenants set forth in the Loan Agreement and will be in compliance with such covenants following such redemption, (ii) such Bonds will be redeemed only in an Authorized Denomination, and (iii) no Bond may be redeemed in part if the principal amount to be outstanding following such partial redemption is not an Authorized Denomination.<sup>2</sup>

#### **SECTION 5.03 METHOD OF SELECTION OF BONDS IN CASE OF PARTIAL REDEMPTION; REDEMPTION PRIORITY.**

(a) In the event that less than all of the Outstanding Bonds are to be redeemed pursuant to Section 5.01 or Section 5.02, the Bonds shall be redeemed pro rata, and in the event that less than all Outstanding Bonds of a maturity are to be redeemed pursuant to this Article V, the Bonds of such maturity to be redeemed shall be selected by lot in such manner as the Bond Trustee may determine in its sole discretion.

(b) If a Bond is of a denomination larger than the minimum Authorized Denomination, a portion of such Bond may be redeemed, but Bonds shall be redeemed only in the principal amount of an Authorized Denomination and no Bond may be redeemed in part if the principal amount to be Outstanding following such partial redemption is not an Authorized Denomination.

#### **SECTION 5.04 NOTICE OF REDEMPTION.**

(a) Bonds shall be called for redemption by the Bond Trustee as herein provided upon receipt by the Bond Trustee at least forty-five (45) days prior to the redemption date of a certificate of the Obligor specifying the principal amount of Bonds to be called for redemption, the applicable redemption price or prices and the provision or provisions of this Bond Indenture pursuant to which such Bonds are to be called for redemption. In case of every redemption, the Bond Trustee shall cause notice of such redemption to be given by mailing by first class mail, postage prepaid, a copy of the redemption notice to the owners of the Bonds designated for redemption in whole or in part, at their addresses as the same shall last appear upon the registration books, in each case not more than sixty (60) nor less than twenty (20) days prior to the redemption date. In addition, notice of redemption shall be sent by first class or registered mail, return receipt requested, or by overnight delivery service (i) contemporaneously with such mailing: (A) to any owner of One Million Dollars (\$1,000,000) or more in principal amount of Bonds, and (B) to at least two (2) or more information services of national recognition that disseminate redemption information with respect to municipal bonds; and (ii) to any securities depository registered as such pursuant to the Securities Exchange Act of 1934, as amended, that is an owner of Bonds to be redeemed so that such notice is received at least two (2) days prior to such mailing date. An additional notice of redemption shall be given by certified mail, postage prepaid, mailed not less than sixty (60) nor more than ninety (90) days after the

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<sup>2</sup> Tyree, confirm structure.



redemption date to any owner of Bonds selected for redemption that has not surrendered the Bonds called for redemption, at the address as the same shall last appear upon the registration books.

- (b) All notices of redemption shall state: the redemption date,
  - (i) the redemption price,
  - (ii) the identification, including complete designation (including series) and issue date of the Bonds and the CUSIP number (and in the case of partial redemption, certificate number and the respective principal amounts, interest rates and maturity dates) of the Bonds to be redeemed,
  - (iii) the condition or conditions for redemption, if any,
  - (iv) that on the redemption date the redemption price will become due and payable upon each such Bonds, and that interest thereon shall cease to accrue from and after said date, and
  - (v) the name and address of the Bond Trustee and any paying agent for such Bonds, including the place where such Bonds are to be surrendered for payment of the redemption price and the name and phone number of a contact person at such address.
  - (vi) Notwithstanding the foregoing, failure to give any notice of redemption, or any defect therein, shall not affect the validity of any proceedings for the redemption of the Bonds to be redeemed.

**SECTION 5.05 BONDS DUE AND PAYABLE ON REDEMPTION DATE; INTEREST CEASES TO ACCRUE.** On the redemption date specified in the notice of redemption, an amount of money sufficient to redeem all Bonds called for redemption at the appropriate redemption price, including accrued interest to the date fixed for redemption, shall be deposited with the Bond Trustee. If at the time of mailing of notice of any optional redemption the Obligor shall not have deposited with the Bond Trustee moneys sufficient to redeem all of the Bonds called for redemption, such notice may state that it is conditional in that it is subject to the deposit of moneys with the Bond Trustee not later than the redemption date, and such notice shall be of no effect unless such moneys are so deposited. On the redemption date the principal amount of each Bond to be redeemed, together with the accrued interest thereon to such date and redemption premium, if any, shall become due and payable; and from and after such date, notice having been given and deposit having been made in accordance with the provisions of this Article V, then, notwithstanding that any Bonds called for redemption shall not have been surrendered, no further interest shall accrue on any such Bonds. From and after such date of redemption (such notice having been given and such deposit having been made), the Bonds to be redeemed shall not be deemed to be Outstanding hereunder, and the Issuer shall be under no further liability in respect thereof.

**SECTION 5.06 CANCELLATION.** All Bonds which have been redeemed shall be cancelled by the Bond Trustee and treated as provided in Section 2.12 hereof.

**SECTION 5.07 PARTIAL REDEMPTION OF FULLY REGISTERED BONDS.** Upon surrender of any fully registered Bond for redemption in part only, the Issuer shall execute and the Bond Trustee shall authenticate and deliver to the owner thereof, at the expense of the Obligor, a new Bond or Bonds of the same maturity of Authorized Denominations in an aggregate principal amount equal to the unredeemed portion of the Bond surrendered.

## **ARTICLE VI INVESTMENTS**

**SECTION 6.01 INVESTMENT OF BOND FUND, PROJECT FUND, RESERVE FUND, AND REVENUE FUND MONEYS.** Any moneys held as part of the Bond Fund, Project Fund, Reserve Fund, or Revenue Fund shall be invested or reinvested by the Bond Trustee at the written request and direction of the Obligor (upon which the Bond Trustee is entitled to rely) in Permitted Investments. In the absence of written directions from the Obligor to the Bond Trustee, such moneys shall be invested in the Fidelity Institutional Money Market Treasury Only Portfolio or such other investment selected in writing by the Obligor and acceptable to the Bond Trustee described in subsection (i) of the definition of Permitted Investments. All Permitted Investments shall be either subject to redemption at any time at a fixed value at the option of the owner thereof or shall mature or be marketable not later than the business day prior to the date on which the proceeds are expected to be expended. For the purpose of any investment or replacement under this Section, the Permitted Investments shall be deemed to mature at the earliest date on which the Obligor is, on demand, obligated to pay a fixed sum in discharge of the whole of such obligation. The Bond Trustee may make any and all investments permitted by the provisions of this Section through its trust department or investment department. In order to comply with the directions of the Obligor, the Bond Trustee may sell, at the market price, or present for redemption, or may otherwise cause liquidation prior to their maturities, any of the obligations in which funds have been invested, and the Bond Trustee shall not be liable for any loss or penalty of any nature resulting therefrom. In order to avoid loss in the event of any need for funds, the Obligor may instruct the Bond Trustee, in lieu of a liquidation or redemption of investments in the fund or account needing funds, to exchange such investment for investments in another fund or account that may be liquidated at no, or at reduced, loss. The Bond Trustee shall be under no liability for interest on any moneys received hereunder unless specifically agreed to in writing. Notwithstanding anything to the contrary in this Section 6.01, (i) the Obligor shall not direct the Bond Trustee to purchase any Premium Security unless the written instructions of the Obligor to make such purchase set forth the amount of premium on such Premium Security, and (ii) the Obligor shall not direct the Bond Trustee to sell any Premium Security, unless prior to such sale, the Obligor has directed the Bond Trustee as to the amount of realized premium on such Premium Security to be transferred from the Project Fund to the account in which such Premium Security was held. The Bond Trustee shall not be obligated to enter into any investment, agreement or similar agreement unless the terms of any such agreement are acceptable to the Bond Trustee in its reasonable discretion, any liability of the Bond Trustee under such agreement shall be limited to actual losses occasioned by the gross negligence or willful misconduct of the Bond Trustee, and the Obligor pays to the Bond Trustee a commercially reasonable additional fee established in good faith in accordance with the Bond Trustee's standard fee schedule.

### **SECTION 6.02 ALLOCATION AND TRANSFERS OF INVESTMENT INCOME.**

(a) Any investments in any Fund shall be held by or under the control of the Bond Trustee and shall be deemed at all times a part of the Fund from which the investment was made. Any loss resulting from such investments shall be charged to such Fund. The Bond Trustee shall not be liable for any loss or penalty resulting from any such investment made in accordance with any direction by an Obligor or for the Bonds becoming "arbitrage bonds" by reason of any such investment. Any interest or other gain from any fund from any investment or reinvestment pursuant to Section 6.01 hereof shall be allocated and transferred as follows:

(b) Any interest or other gain realized as a result of any investments or reinvestments of moneys in the Project Fund shall be credited to the Project Fund until the Completion Date, and thereafter to the Bond Fund.

(c) Any interest or other gain realized as a result of any investments or reinvestments of moneys in the Bond Fund shall be retained therein unless a deficiency exists in the Reserve Fund, in which case such interest or other gain shall be paid from the Bond Fund into the Reserve Fund.

(d) Any interest or other gain realized as a result of any investments or reinvestments of moneys in the Reserve Fund shall be retained in the Reserve Fund, if a deficiency exists therein at that time. If such deficiency does not exist following the payment of principal of or interest on the Bonds on any Principal Payment Date or Interest Payment Date, such interest or other gain shall be paid (i) prior to the Completion Date, to the Project Fund, and (ii) thereafter, to the appropriate account of the Bond Fund.

(e) The Bond Trustee shall sell and reduce to cash a sufficient portion of such investments whenever the cash balance in any Fund is insufficient for the purposes of such Fund.

**SECTION 6.03 VALUATION OF PERMITTED INVESTMENTS.** Accounting and valuation of Permitted Investments in any Fund or Account will be performed as follows:

(a) On a monthly basis, the Bond Trustee shall furnish to the Obligor a full and complete statement of all receipts and disbursements of Permitted Investments in any Fund and Account covering such period.

(b) The Bond Trustee shall also furnish an annual statement on or before January 15 of each year a statement of the assets contained in each Fund and Account. Assets will be valued at market value as of December 31 by the Bond Trustee in such statement in accordance with the normal valuation procedures of the Bond Trustee; provided, however, in the event monies are withdrawn from the Reserve Fund for a deficiency in the Bond Fund with respect to amounts due in respect of the Bonds pursuant to Section 3.10 hereof, assets in the Reserve Fund shall also be valued as of the first Business Day after such transfer is made (any such date and each February 1 referred to as a “**Valuation Date**”).

(c) Pursuant to Section 5.6 of the Loan Agreement, if (i) on any Valuation Date the amount on deposit in the Reserve Fund is less than ninety percent (90%) of the Reserve Fund Requirement as a result of a decline in the market value of investments on deposit in the Reserve Fund, the Obligor shall deposit with the Bond Trustee an amount necessary to restore the Reserve Fund to the Reserve Fund Requirement within sixty (60) days following the date on which the Obligor receives notice of such deficiency, and (ii) at any time, the amount on deposit in the Reserve Fund is less than 100% of the Reserve Fund Requirement as a result of a draw on the Reserve Fund, the Obligor shall deposit with the Bond Trustee an amount necessary to restore the Reserve Fund to the Reserve Fund Requirement in not more than twelve (12) substantially equal monthly installments beginning on the first day of the month after the month in which such draw occurred.

## **ARTICLE VII DISCHARGE OF BOND INDENTURE**

### **SECTION 7.01 DISCHARGE OF THE BOND INDENTURE**

(a) If, when the Bonds secured hereby shall become due and payable in accordance with their terms or otherwise as provided in this Bond Indenture and the whole amount of the principal of, premium, if any, and interest due and payable upon all of the Bonds shall be paid, or provision shall have been made for the payment of the same, together with all other sums payable hereunder (including but not limited to the fees and expenses of the Bond Trustee and any Paying Agent, in accordance with Section 3.12 hereof), then the right, title and interest of the Bond Trustee in and to the Trust Estate and all covenants, agreements and other obligations of the Issuer to the Bondholders shall thereupon cease, terminate and

become void and be discharged and satisfied. In such event, upon the written request of the Issuer or of the Obligor, and upon receipt of an opinion of Bond Counsel to the effect that all conditions precedent herein provided relating to the satisfaction and discharge of this Bond Indenture have been complied with, the Bond Trustee shall execute such documents as may be reasonably required by the Issuer and shall turn over to the Obligor any surplus in the Cost of Issuance Fund, Bond Fund, Reserve Fund and Project Fund. The Bond Trustee shall notify the Issuer that the Issuer's obligations under the Bonds and this Bond Indenture have been satisfied in full within 20 days after the effective date of such satisfaction and the fulfillment of the Issuer's obligations hereunder and under the Bonds.

(b) All Outstanding Bonds shall prior to the maturity or redemption date thereof be deemed to have been paid within the meaning and with the effect expressed in this Section if (i) in case said Bonds are to be redeemed on any date prior to their maturity, the Obligor shall have given to the Bond Trustee in form satisfactory to it irrevocable written instructions to give on a date in accordance with the provisions of Section 5.02 hereof notice of redemption of such Bonds on said redemption date, such notice to be given in accordance with the provisions of Section 5.02 hereof, (ii) there shall have been deposited with the Bond Trustee (or another Paying Agent) either moneys in an amount which shall be sufficient, or Government Obligations which shall not contain provisions permitting the redemption thereof at the option of the issuer, or any other Person other than the holder thereof, the principal of and the interest on which when due, and without any reinvestment thereof will provide moneys which, together with the moneys, if any, deposited with or held by the Bond Trustee or any Paying Agent at the same time (including the Bond Fund and the Reserve Fund), shall be sufficient, in the opinion of an independent certified public accountant, to pay when due the principal of, premium, if any, and interest due and to become due on said Bonds on or prior to the redemption date or maturity date thereof, as the case may be, and (iii) in the event that said Bonds are not by their terms subject to redemption within the next forty-five (45) days, the Obligor shall have given the Bond Trustee in form satisfactory to it irrevocable written instructions to give, as soon as practicable in the same manner as the notice of redemption is given pursuant to Section 5.01 hereof, a notice to the owners of such Bonds that the deposit required by subclause (ii) above has been made with the Bond Trustee (or another depository) and that said Bonds are deemed to have been paid in accordance with this Section and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal of, premium, if any, and interest on said Bonds. Neither the Government Obligations nor moneys deposited with the Bond Trustee pursuant to this Section nor principal or interest payments on any such Government Obligations shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of, premium, if any, and interest on said Bonds; provided any such cash received from such principal or interest payments on such Government Obligations deposited with the Bond Trustee, if not then needed for such purpose, shall, at the written direction of the Obligor, either (1) be reinvested, to the extent practicable, in Government Obligations of the type described in clause (ii) of this paragraph maturing at the times and in amounts sufficient to pay when due the principal of, premium, if any, and interest to become due on said Bonds on or prior to such redemption date or maturity date thereof as the case may be, or (2) be used to pay principal and/or interest on the Bonds. At such time as any Bond shall be deemed paid as aforesaid, it shall no longer be secured by or entitled to the benefits of this Bond Indenture, except for the purpose of any payment from such moneys or Government Obligations deposited with the Bond Trustee and the purpose of transfer and exchange pursuant to Section 2.07 hereof.

(c) The release of the obligations of the Issuer under this Section shall be without prejudice to the rights of the Bond Trustee to be paid reasonable compensation for all services rendered by it hereunder and all its reasonable and necessary expenses, charges and other disbursements incurred on or about the administration of the trust hereby created and the performance of its powers and duties hereunder.

**ARTICLE VIII  
DEFAULTS AND REMEDIES**

**SECTION 8.01 EVENTS OF DEFAULT.** If any of the following events occur, it is hereby defined as and shall be deemed an “Event of Default”:

(a) Default in the payment of the principal of or premium, if any, on any Bond when the same shall become due and payable, whether at the stated maturity thereof, or upon proceedings for redemption or otherwise.

(b) Default in the payment of any installment of interest on any Bond when the same shall become due and payable.

(c) Failure by the Issuer in the performance or observance of any other of the covenants, agreements or conditions on its part in this Bond Indenture or in the Bonds contained, which failure shall continue for a period of sixty (60) days after written notice specifying such failure and requesting that it be remedied, is given to the Issuer and the Obligor by the Bond Trustee or to the Issuer, the Obligor and to the Bond Trustee by the owners of not less than the Requisite Percentage of the Bonds Outstanding; *provided* that such failure is the result of the failure of the Obligor to perform its obligations under the Loan Agreement.

(d) Failure by the Obligor in the performance or observance of any other obligations, covenants, agreements or conditions on its part in the Loan Agreement, the Note or the Deed of Trust, which failure shall continue for a period of sixty (60) days (thirty (30) days in the case of a failure pertaining to any Reserved Rights) after written notice specifying such failure and requesting that it be remedied, is given to the Issuer and the Obligor by the Bond Trustee or to the Issuer, the Obligor and to the Bond Trustee by the owners of not less than the Requisite Percentage of the Bonds Outstanding.

**SECTION 8.02 REMEDIES ON EVENTS OF DEFAULT.** Upon the occurrence of an Event of Default, the Bond Trustee shall have the following rights and remedies:

(a) The Bond Trustee shall, in the event that the payment of the principal of and accrued interest on the Note has been declared due and payable immediately by the Bond Trustee, by notice in writing given to the Issuer and the Obligor, declare the principal amount of all Bonds then Outstanding and the interest accrued thereon to be immediately due and payable and said principal and interest shall thereupon become immediately due and payable. Upon any declaration of acceleration hereunder, the Bond Trustee shall give notice to the Bondholders in the same manner as a notice of redemption under Article V hereof, stating the date upon which the Note and the Bonds shall be payable.

The provisions of the preceding paragraph, however, are subject to the condition that if, after the payment of the principal of, and accrued interest on, the Note and the Bonds has been declared due and payable immediately, the declaration of the acceleration of the Note shall be annulled in accordance with the provisions of this Bond Indenture, the declaration of the acceleration of the Bonds shall be automatically annulled, and the Bond Trustee shall promptly give written notice of such annulment to the Issuer and the Obligor and notice to Bondholders in the same manner as a notice of redemption under Article V hereof; but no such annulment shall extend to or affect any subsequent Event of Default or impair any right or remedy consequent thereon;

(b) The Bond Trustee may, upon receiving security and/or indemnity satisfactory to it, by mandamus, or other suit, action or proceeding at law or in equity, enforce the rights of the Bondholders, and require the Issuer or the Obligor or both of them to carry out the agreements with or for

the benefit of the Bondholders and to perform its or their duties under the Act, the Loan Agreement and this Bond Indenture.

(c) The Bond Trustee may, upon receiving security and/or indemnity satisfactory to it, by action or suit in equity, require the Issuer to account as if it were the trustee of an express trust for the Bondholders but any such judgment against the Issuer shall be enforceable only against the funds and accounts hereunder in the hands of the Bond Trustee.

(d) The Bond Trustee may, upon receiving security and/or indemnity satisfactory to it, by action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders.

(e) The Bond Trustee may, upon receiving security and/or indemnity satisfactory to it, upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Bond Trustee and the Bondholders, have appointed a receiver or receivers of the Trust Estate upon a showing of good cause with such powers as the court making such appointment may confer.

(f) The Bond Trustee may, upon receiving security and/or indemnity satisfactory to it, as beneficiary of the Deed of Trust, direct the trustee under the Deed of Trust to foreclose on, or exercise such other rights available under, the Deed of Trust.

No right or remedy is intended to be exclusive of any other right or remedy, but each and every such right or remedy shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

If any Event of Default shall have occurred and if requested by the owners of the Requisite Percentage of Bonds then Outstanding and indemnified as provided in Section 9.01(m) hereof (except the remedy under Section 8.02(a) above, for which no indemnity may be required), the Bond Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Section as it, being advised by counsel, shall deem most expedient in the interests of such Bondholders. In the event the Bond Trustee shall receive inconsistent or conflicting requests and security and/or indemnity from two (2) or more groups of owners of Outstanding Bonds, each representing less than the Requisite Percentage of the Outstanding Bonds, the Bond Trustee, in its sole discretion, may determine what action, if any, shall be taken and shall have no responsibility of having taken such action.

**SECTION 8.03 CONTROL OF PROCEEDINGS.** Anything in this Bond Indenture to the contrary notwithstanding, the owners of a Requisite Percentage of Bonds then Outstanding shall have the right, at any time, to the extent permitted by law, by an instrument or instruments in writing executed and delivered to the Bond Trustee, to direct the time, method, and place of conducting all proceedings, to be taken in connection with the enforcement of the terms and conditions of this Bond Indenture, or for the appointment of a receiver, and any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions hereof and provided, further, that notwithstanding anything to the contrary in this Bond Indenture, the Issuer shall have the sole ability to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of Section 4.11 of the Loan Agreement. The Bond Trustee shall not be required to act on any direction given to it pursuant to this Section until security and/or indemnity as set forth in Section 9.01(m) hereof is provided to it by such Bondholders.

**SECTION 8.04 RIGHTS AND REMEDIES OF BONDHOLDERS.** No owner of any Bond shall have any right to institute any suit, action, or proceeding in equity or at law for the enforcement of this Bond Indenture or for the execution of any trust hereof or for the appointment of a receiver or any

other applicable remedy hereunder, unless a default has occurred of which the Bond Trustee has been notified as provided in Section 9.01 hereof, or of which by said Section it is deemed to have notice, nor unless such default shall have become an Event of Default and the owners of at least the Requisite Percentage of Bonds then Outstanding shall have made written request to the Bond Trustee, nor unless they have also offered to the Bond Trustee security and/or indemnity as provided in Section 9.01(m) hereof, nor unless the Bond Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit, or proceeding in its own name; and such notification, request, and offer of security and/or indemnity are hereby declared in every case at the option of the Bond Trustee to be conditions precedent to the execution of the powers and trusts of this Bond Indenture, and to any action or cause of action for the enforcement of this Bond Indenture, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more owners of the Bonds shall have the right in any manner whatsoever to affect, disturb, or prejudice the lien of this Bond Indenture by his, her, its, or their action or to enforce any right hereunder except in the manner herein provided and that all proceedings at law or in equity shall be instituted, had, and maintained in the manner herein provided and for the equal benefit of the owners of all Bonds then Outstanding, subject to the priority set forth herein. Nothing in this Bond Indenture contained shall, however, affect or impair the right of any owner of Bonds to enforce the payment of the principal of, premium, if any, or interest on any such Bond at and after the maturity thereof; or the obligation of the Issuer to pay the principal of, premium, if any, and interest on each of the Bonds to the respective owners of the Bonds at the time and place, from the source, in the manner and with the priority set forth herein and in the Bonds.

#### **SECTION 8.05 APPLICATION OF MONEYS.**

(a) Subject to the provisions of subparagraph (c) hereof, all moneys received by the Bond Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the costs (including all fees and expenses of the Bond Trustee) and expenses (including reasonable attorney fees) of the proceedings resulting in the collection of such moneys and the expenses, liabilities, and advances incurred or made by the Bond Trustee, be deposited into the Bond Fund, and all moneys so deposited into the Bond Fund and all moneys held in or deposited into the Bond Fund during the continuance of an Event of Default and available for payment of the Bonds under the provisions of Section 3.04 hereof shall (after payment of the fees and expenses of the Bond Trustee) be applied as follows:

(i) Unless the principal of all of the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

First: To the payment on the Bonds, on a pro rata basis, to the Persons entitled thereto of all installments of interest then due on the Bonds and, if the amount available shall not be sufficient to pay in full the interest due on the Bonds, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege; and

Second: To the payment on the Bonds, on a pro rata basis, to the Persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due, with interest on such Bonds from the respective dates upon which they become due at the rate of interest borne by such Bonds and, if the amount available shall not be sufficient to pay in full Bonds, together with such interest, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto, without any discrimination or privilege;

(ii) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal

and interest then due and unpaid upon all of the Bonds (together with interest on overdue installments of principal at the rate of interest borne by each Bond), without preference or priority of principal over interest, any other installment of interest, or of any Bond over any other Bond, according to the amounts due respectively for principal and interest, ratably, to the Persons entitled thereto without any discrimination or privilege; and

(iii) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article then, subject to the provisions of paragraph (ii) of this Section in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of the foregoing paragraph (i) of this Section.

(b) Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times, and from time to time, as the Bond Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Bond Trustee shall apply such moneys, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The Bond Trustee shall give such notice as it may deem appropriate of the deposit of any such moneys and of the fixing of any such date, and shall not be required to make payment to the owner of any unpaid Bond until such unpaid Bond shall be presented to the Bond Trustee for appropriate endorsement or for cancellation if fully paid.

(c) Notwithstanding the foregoing, any moneys transferred into any Account of the Bond Fund from the Reserve Fund shall be held by the Bond Trustee separate and apart from any other moneys in such Account of the Bond Fund.

(d) Whenever all of the Bonds and interest thereon have been paid under the provisions of this Section and all expenses and fees of the Bond Trustee and the Paying Agents and all Administration Expenses have been paid, any balance remaining in any funds shall be paid to the Obligor as provided in Section 3.13 hereof.

#### **SECTION 8.06 BOND TRUSTEE MAY ENFORCE RIGHTS WITHOUT BONDS.**

All rights of action and claims under this Bond Indenture or any of the Bonds Outstanding hereunder may be enforced by the Bond Trustee without the possession of any of the Bonds or the production thereof in any trial or proceedings relative thereto; and any suit or proceeding instituted by the Bond Trustee shall be brought in its name as Bond Trustee, without the necessity of joining as plaintiffs or defendants any owners of the Bonds and any recovery of judgment shall be for the ratable benefit of the owners of the Bonds, subject to the provisions of this Bond Indenture.

#### **SECTION 8.07 BOND TRUSTEE TO FILE PROOFS OF CLAIM IN RECEIVERSHIP, ETC.**

(a) In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, or other judicial proceedings affecting the Obligor, the Bond Trustee shall, to the extent permitted by law, be entitled to file such proofs of claims and other documents as may be necessary or advisable in order to have claims of the Bond Trustee and of the Bondholders allowed in such proceedings for the entire amount due and payable by the Issuer under the Bond Indenture or by the Obligor at the date of the institution of such proceedings and for any additional amounts which



may become due and payable by it after such date, without prejudice, however, to the right of any Bondholder to file a claim in his, her or its own behalf.

(b) No provision of this Bond Indenture empowers the Bond Trustee to authorize, consent to, accept or adopt on behalf of any Bondholder any plan or reorganization, arrangement, adjustment or composition affecting any of the rights of any Bondholders, or authorizes the Bond Trustee to vote in respect of the claim in any proceeding described in this Section.

(c) In the event the Bond Trustee incurs expenses or renders services in any proceedings affecting the Obligor and described in this Section, the expenses so incurred and compensation for services so rendered are intended to constitute expenses of administration under the United States Bankruptcy Code or equivalent law.

**SECTION 8.08 DELAY OR OMISSION NO WAIVER.** No delay or omission of the Bond Trustee or of any Bondholder to exercise any right or power accruing upon any default or Event of Default shall exhaust or impair any such right or power or shall be construed to be a waiver of any such default or Event of Default, or acquiescence therein; and every power and remedy given by this Bond Indenture may be exercised from time to time and as often as may be deemed expedient.

**SECTION 8.09 DISCONTINUANCE OF PROCEEDINGS ON DEFAULT, POSITION OF PARTIES RESTORED.** In case the Bond Trustee shall have proceeded to enforce any right under this Bond Indenture, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Bond Trustee, then and in every such case the Issuer and the Bond Trustee shall be restored to their former positions and rights hereunder with respect to the Trust Estate, and all rights, remedies, and powers of the Bond Trustee shall continue as if no such proceedings had been taken.

**SECTION 8.10 ENFORCEMENT OF RIGHTS.** The Bond Trustee, as pledgee and assignee for security purposes of all the right, title, and interest of the Issuer in and to the Loan Agreement (except for Reserved Rights) and the Note shall, upon compliance with applicable requirements of law and except as otherwise set forth in this Article VIII, be the sole real party in interest in respect of, and shall have standing, exclusive of owners of Bonds to enforce each and every right granted to the Issuer under the Loan Agreement and under the Note. The Issuer and the Bond Trustee hereby agree, without in any way limiting the effect and scope thereof, that the pledge and assignment hereunder to the Bond Trustee of any and all rights of the Issuer in and to the Note and the Loan Agreement shall constitute an agency appointment coupled with an interest on the part of the Bond Trustee which, for all purposes of this Bond Indenture, shall be irrevocable and shall survive and continue in full force and effect notwithstanding the bankruptcy or insolvency of the Issuer or its default hereunder or on the Bonds. Subject to Section 9.01 hereof, in exercising such right and the rights given the Bond Trustee under this Article VIII, the Bond Trustee shall take such action as, in the judgment of the Bond Trustee, would best serve the interests of the holders of the Bond, taking into account the priority thereof, the provisions of the Bond Indenture, and the security and remedies afforded to owners of Note. Notwithstanding anything contained herein to the contrary, the Issuer may independently enforce any of its Reserved Rights, in its sole discretion, without the consent or further action of the Bond Trustee or the Bondholders.

**SECTION 8.11 UNDERTAKING FOR COSTS.** All parties to this Bond Indenture agree, and each Bondholder by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Bond Indenture, or in any suit against the Bond Trustee for any action taken or omitted by it as Bond Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such

suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by or against the Bond Trustee, to any suit instituted by any Bondholder, or group of Bondholders, holding in aggregate more than the Requisite Percentage of Bonds Outstanding, or to any suit instituted by a Bondholder for the enforcement of the payment of the principal of (or premium, if any) or interest on any Bond on or after the respective maturities thereof expressed in such Bond (or, in the case of redemption, on or after the redemption date).

**SECTION 8.12 WAIVER OF EVENTS OF DEFAULT.** The Bond Trustee may in its discretion waive any Event of Default hereunder and its consequences, and shall do so upon the written request of the Owners of a Requisite Percentage of Bonds then Outstanding; provided, however, that the Bond Trustee may not waive an Event of Default described in subparagraph (a) of Section 8.01 hereof without the written consent of the Registered Owners of all the Bonds then Outstanding. Notwithstanding anything herein to the contrary, neither the Trustee nor the Bondholders shall be permitted to waive any default based upon any Reserved Rights without the prior written consent of the Issuer.

## **ARTICLE IX CONCERNING THE BOND TRUSTEE AND PAYING AGENTS**

**SECTION 9.01 DUTIES OF THE BOND TRUSTEE.** The Bond Trustee hereby accepts the trust imposed upon it by this Bond Indenture and agrees to perform said trusts, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Bond Indenture against the Bond Trustee:

(a) The Bond Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Bond Indenture. In case an Event of Default has occurred (which has not been cured) the Bond Trustee shall exercise such of the rights and powers vested in it by this Bond Indenture and use the same degree of care and skill in its exercise as a prudent corporate trustee would exercise or use under the circumstances in the conduct of its own affairs.

(b) The Bond Trustee may execute any of the trusts or powers hereof and perform any of its duties hereunder, either directly or by or through attorneys, agents, receivers, or employees, and the Bond Trustee shall not be responsible for any misconduct or negligence on the part of any receiver, agent or attorney appointed with due care by it hereunder, and shall be entitled to act upon an opinion of Bond Counsel concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers, and employees as may reasonably be employed in connection with the trust hereof. The Bond Trustee may act upon an opinion of Bond Counsel and shall not be responsible for any loss or damage resulting from any action or nonaction taken by or omitted to be taken in good faith in reliance upon such opinion of Bond Counsel.

(c) The Bond Trustee shall not be responsible for any recital herein or in the Bonds (except in respect to the certificate of authentication by the Bond Trustee endorsed on the Bonds and the acceptance of the trusts hereunder).

(d) The Bond Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder or the proceeds thereof, or for any moneys disbursed by the Bond Trustee in accordance with this Bond Indenture; The Bond Trustee makes no representations as to the value or condition of the Trust Estate or any part thereof as to the title thereto or the security afforded thereby or hereby; as to the validity or sufficiency of this Bond Indenture or the Bonds; as to the technical or financial feasibility of the Project; as to the compliance of the Project with the Act; or as to the tax exempt status of the Bonds. The Bond Trustee is not a party to, is not responsible for, and makes no representations with

respect to matters set forth in any preliminary or final offering statement, disclosure material or similar document prepared and distributed in connection with the sale of the Bonds and shall have no responsibilities for compliance with any state or federal securities laws in connection with the Bonds. The Bond Trustee may become the owner of the Bonds with the same rights which it would have if not Bond Trustee.

(e) The Bond Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram, teletransmission or other paper or document reasonably believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any request or direction of the Issuer or the Obligor mentioned herein shall be sufficiently evidenced by a written request, order, or consent signed in the name of the Issuer or Obligor, by the Issuer Representative, or Obligor, as the case may be. Any action taken by the Bond Trustee pursuant to this Bond Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the owner of any Bonds shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in place thereof.

(f) As to the existence or nonexistence of any fact or matter or as to the sufficiency or validity of any instrument, paper, or proceeding, the Bond Trustee shall be entitled to rely and shall be protected in acting or refraining to act upon a certificate signed on behalf of the Issuer or the Obligor by the Issuer Representative or Obligor or such other person as may be designated for such purpose as sufficient evidence of the facts therein contained, and prior to the occurrence of a default of which the Bond Trustee has been notified as provided in subsection (h) of this Section, or of which by said subsection it is deemed to have notice, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction, or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same.

(g) The permissive right of the Bond Trustee to do things enumerated in this Bond Indenture shall not be construed as a duty (except as otherwise herein provided) and the Bond Trustee shall not be answerable for other than its own gross negligence or willful misconduct, except that:

(i) the Bond Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Bond Trustee was grossly negligent in ascertaining the pertinent facts;

(ii) the Bond Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Bondholders of at least a majority in Aggregate Principal Amount of the Outstanding Bonds relating to the time, method, and place of conducting any proceeding for any remedy available to the Bond Trustee, or exercising any trust or power conferred upon the Bond Trustee, under this Bond Indenture; and

(iii) the Bond Trustee shall not be liable if the Bond Trustee reasonably relies in good faith upon an Officer's Certificate delivered pursuant to this Bond Indenture or an opinion of Bond Counsel.

(h) The Bond Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except failure by the Issuer to cause to be made any of the payments to the Bond Trustee required to be made by Article VIII hereof unless a Responsible Officer shall be specifically notified in writing of such default by the Issuer or by the owners of at least a Requisite Percentage of Bonds then Outstanding and all notices or other instruments required by this Bond Indenture to be delivered to the Bond Trustee, must, in order to be effective, be delivered to a Responsible Officer at the designated corporate

trust office of the Bond Trustee, and in the absence of such notice so delivered, the Bond Trustee may conclusively assume there is no default except as aforesaid.

(i) All moneys received by the Bond Trustee shall, until used or applied or invested as herein provided, be held in trust in the manner and for the purposes for which they were received, but need not be segregated from other funds except to the extent required by this Bond Indenture or law.

(j) At any and all reasonable times the Bond Trustee and its duly authorized agents, attorneys, experts, engineers, accountants, and representatives shall have the right, but shall not be required, to inspect the Project, including all books, papers, and records of the Issuer and the Obligor pertaining to the Project and the Bonds.

(k) The Bond Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises, and no provision of this Bond Indenture shall require the Bond Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, without regard to whether it shall have grounds for believing that repayment of such funds or indemnity satisfactory against such risk or liability is not assured to it.

(l) Notwithstanding anything in this Bond Indenture contained, the Bond Trustee shall have the right, but shall not be required, to demand in respect of the authentication of any Bonds, the withdrawal of any cash, or any action whatsoever within the purview of this Bond Indenture, any showings, certificates, opinion, appraisals, or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Bond Trustee deemed desirable for the purpose of establishing the right of the Issuer to the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Bond Trustee.

(m) Before taking any action under this Section or Article VIII hereof; the Bond Trustee may require that security and/or indemnity reasonably satisfactory to it be furnished to it for the reimbursement of its fees, costs, liabilities and all expenses (including attorney's fees) which it may incur and to protect it against all liability, except liability which may result from its gross negligence or willful misconduct, by reason of any action so taken.

(n) Except as provided in Section 9.01(a) above, it shall not be the duty of the Bond Trustee, except as expressly provided herein, to see that any duties or obligations imposed herein or in the Loan Agreement upon the Issuer, the Obligor, or other Persons are performed, and the Bond Trustee shall not be liable or responsible because of the failure of the Issuer, the Obligor, or other Persons to perform any act required of them pursuant to the terms of this Bond Indenture.

(o) In acting or omitting to act pursuant to the provisions of the Loan Agreement, the Bond Trustee shall be entitled to and be protected by the rights and immunities accorded to it by the terms of this Bond Indenture.

(p) In the event the Bond Trustee receives inconsistent or conflicting requests and indemnity from two (2) or more groups of holders of Bonds, each representing less than a Requisite Percentage of Bonds then Outstanding, the Bond Trustee, in its sole discretion, may determine what action, if any, shall be taken and shall have no responsibility for having taken such action.

(q) The Bond Trustee's immunities and protections from liability in connection with the performance of its duties under this Bond Indenture shall extend to the Bond Trustee's officers, directors, attorneys, agents and employees. Such immunities and protections, together with the Bond

Trustee's right to compensation, shall survive the Bond Trustee's resignation or removal and final payment of the Bonds.

#### **SECTION 9.02 FEES AND EXPENSES OF BOND TRUSTEE AND PAYING AGENT.**

(a) The Issuer agrees, but solely from any funds received from the Obligor pursuant to the Loan Agreement, to (i) timely pay to the Bond Trustee, each Paying Agent and all other agents from time to time their fees for services rendered hereunder, in accordance with a written schedule provided by the Bond Trustee to the Obligor, as and when the same become due and all expenses (including attorney's fees) reasonably and necessarily made or incurred by the Bond Trustee, such Paying Agent or such other agent in connection with such services as and when the same become due as provided in Section 3.12 hereof, and (ii) timely reimburse the Bond Trustee upon its request for all reasonable expenses, disbursements, and advances incurred or made by the Bond Trustee in accordance with any provisions of this Bond Indenture (including the reasonable compensation, expenses, and disbursements of its agents and counsel), except any such expense, disbursement, or advance as may be attributable to the negligence or bad faith of the Bond Trustee.

(b) As security for the performance of the obligations of the Issuer under this Section, the Bond Trustee shall be secured under this Bond Indenture by a lien prior to the Bonds, and for the payment of the expenses and reimbursements due hereunder, the Bond Trustee shall have the right to use and apply any trust funds held by it hereunder, unless held or required to be held in the Rebate Fund.

#### **SECTION 9.03 RESIGNATION OR REPLACEMENT OF BOND TRUSTEE.**

(a) The present or any future Bond Trustee may resign by giving to the Issuer, the Obligor and each Bondholder thirty (30) days' notice of such resignation. Such resignation shall not be effective until such time as a successor Bond Trustee shall have accepted its appointment. The present or any future Bond Trustee may be removed (a) at any time by an instrument in writing executed by the owners of at least a Requisite Percentage of Bonds Outstanding or (b) if an Event of Default hereunder has not occurred and is continuing, by an instrument in writing executed by the Obligor.

(b) In case the present or any future Bond Trustee shall at any time resign or be removed or otherwise become incapable of acting, a successor may be appointed by the owners of at least a Requisite Percentage of Bonds Outstanding by an instrument or concurrent instruments signed by such Bondholders, or their attorneys in fact duly appointed; provided that the Issuer may, by an instrument executed by order of the Board of Directors, appoint a successor until a new successor shall be appointed by the Bondholders as herein authorized. The Issuer upon making such appointment shall forthwith give notice thereof to each Bondholder and to the Obligor, which notice may be given concurrently with the notice of resignation given by any resigning Bond Trustee. Any successor so appointed by the Issuer shall immediately and without further act be superseded by a successor appointed in the manner above provided by the owners of at least a Requisite Percentage of Bonds Outstanding. In the event that the Issuer does not so act within thirty (30) days after notice of resignation, the Bond Trustee shall have the right to petition a court of competent jurisdiction to appoint a successor Bond Trustee.

(c) Every successor Bond Trustee shall always be a bank, banking corporation or trust company duly organized under the laws of the United States of America or any state or territory thereof, with trust powers in good standing, qualified to act hereunder, and having a combined capital and surplus of not less than Fifty Million Dollars (\$50,000,000). Any successor appointed hereunder shall execute, acknowledge, and deliver to the Issuer and the predecessor Bond Trustee an instrument accepting such appointment hereunder and thereupon such successor shall, without any further act, deed, or conveyance,

become vested with all the estates, properties, rights, powers, and trusts of its predecessor in the trust hereunder with like effect as if originally named as Bond Trustee herein; but the Bond Trustee retiring shall, nevertheless, on the written demand of its successor, execute and deliver an instrument conveying and transferring to such successor, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the predecessor, who shall, upon payment of the expenses, charges and other disbursements which are due and owing to it pursuant to Sections 3.12 and 9.02 hereof, duly assign, transfer and deliver to the successor all properties and moneys held by it under this Bond Indenture. Should any instrument in writing from the Issuer be required by any successor for more fully and certainly vesting in and confirming to it all of such estates, properties, rights, powers, and trusts, the Issuer shall, on request of such successor, make, execute, acknowledge, and deliver the deeds, conveyances, and necessary instruments in writing.

(d) The notices herein provided for shall be given by mailing a copy thereof to the Obligor and the Registered Owners of the Bonds at their addresses as the same shall last appear on the registration books. The instruments evidencing the resignation or removal of the Bond Trustee and the appointment of a successor hereunder, together with all other instruments provided for in this Section shall be filed and/or recorded by the successor Bond Trustee in each recording office where this Bond Indenture shall have been filed and/or recorded.

**SECTION 9.04 CONVERSION, CONSOLIDATION OR MERGER OF BOND TRUSTEE.** Any bank, banking corporation or trust company into which the Bond Trustee merges or is consolidated, or to which it (or a receiver on its behalf) may sell or transfer its corporate trust business as a whole, or substantially as a whole, shall be the successor of the Bond Trustee under this Bond Indenture with the same rights, powers, duties, and obligations and subject to the same restrictions, limitations, and liabilities as its predecessor, all without the execution or filing of any papers or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding. In case any of the Bonds to be issued hereunder shall have authenticated, but not delivered, any successor Bond Trustee may adopt the certificate of any predecessor Bond Trustee, and deliver the same as authenticated; and, in case any of such Bonds shall not have been authenticated, any successor Bond Trustee may authenticate such Bonds in the name of such successor Bond Trustee.

**SECTION 9.05 DESIGNATION AND SUCCESSION OF PAYING AGENT.** The Bond Trustee shall act as Paying Agent for the Bonds unless and until the appointment of any additional or replacement Paying Agent for the Bonds pursuant to a supplemental indenture. Any additional or replacement Paying Agent for the Bonds shall have been a bank or trust company having the same qualifications as are required for a replacement or successor trustee for the Bonds. Any bank or trust company with or into which any Paying Agent may be merged or consolidated, or to which the assets and business of such Paying Agent may be sold, shall be deemed the successor of such Paying Agent for the purposes of this Bond Indenture. If the position of Paying Agent shall become vacant for any reason, the Issuer shall, within thirty (30) days thereafter, appoint such bank or trust company as shall be specified by the Obligor and located in the same city as such Paying Agent to fill such vacancy; provided, however, that if the Issuer shall fail to appoint such Paying Agent within said period, the Bond Trustee shall make such appointment. Each Paying Agent shall enjoy the same protective provisions in the performance of its duties hereunder as are specified in Section 9.01 hereof with respect to the Bond Trustee insofar as such provisions may be applicable.

## **ARTICLE X SUPPLEMENTAL INDENTURES AND AMENDMENTS TO THE LOAN AGREEMENT**

**SECTION 10.01 SUPPLEMENTAL INDENTURES NOT REQUIRING CONSENT OF BONDHOLDERS.** The Issuer and the Bond Trustee may, without the consent of, or notice to, the

Bondholders, enter into such indentures or agreements supplemental hereto (which supplemental indentures or agreements shall thereafter form a part hereof) for any one or more or all of the following purposes:

(a) To add to the covenants and agreements in this Bond Indenture contained other covenants and agreements thereafter to be observed for the protection or benefit of the Bondholders.

(b) To cure any ambiguity, or to cure, correct, or supplement any defect or inconsistent provision contained in this Bond Indenture, or to make any provisions with respect to matters arising under this Bond Indenture or for any other purpose if such provisions are necessary or desirable and do not, in the judgment of the Bond Trustee, adversely affect the interests of the owners of the Bonds.

(c) To subject to this Bond Indenture additional revenues, properties, or collateral.

(d) To qualify this Bond Indenture under the Trust Indenture Act of 1939, if such be hereafter required in the opinion of Bond Counsel.

(e) To maintain the extent to which the interest on the Bonds is not includable in the gross income of the recipients thereof, if in the opinion of Bond Counsel such supplemental indenture or agreement is necessary.

**SECTION 10.02 SUPPLEMENTAL INDENTURES REQUIRING CONSENT OF BONDHOLDERS.** Exclusive of supplemental indentures covered by Section 10.01 hereof, the owners of not less than the Requisite Percentage of Bonds then Outstanding and affected thereby shall have the right, from time to time, to consent to and approve the execution by the Issuer and the Bond Trustee of such indenture or indentures supplemental hereto as shall be deemed necessary or desirable by the Issuer for the purpose of modifying, altering, amending, adding to, or rescinding, in any particular, any of the terms or provisions contained in this Bond Indenture; provided, however, that without the consent of the owners of all the Bonds at the time Outstanding nothing herein contained shall permit, or be construed as permitting any of the following:

(a) An extension of the maturity of, or a reduction of the principal amount of, or a reduction of the rate of, or extension of the time of payment of interest on, or a reduction of a premium payable upon any redemption of, any Bond.

(b) The deprivation of the owner of any Bond then Outstanding of the lien created by this Bond Indenture (other than as originally permitted hereby) or the priority thereof.

(c) A privilege or priority of any Bond over any other Bond

(d) A reduction in the Requisite Percentage of Bonds Outstanding required for consent to any supplemental bond indenture.

Upon the execution of any supplemental bond indenture pursuant to the provisions of this Section, this Bond Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties, and obligations under this Bond Indenture of the Issuer, the Bond Trustee and all owners of Bonds then Outstanding shall thereafter be determined, exercised, and enforced hereunder, subject in all respects to such modifications and amendments.

If at any time the Issuer shall request the Bond Trustee to enter into such supplemental bond indenture for any of the purposes of this Section, the Bond Trustee shall, upon being satisfactorily secured and/or indemnified with respect to costs, fees and expenses (including attorney's fees), cause notice of the

proposed execution of such supplemental indenture to be mailed to the Registered Owners of the Bonds at their addresses as the same last appear on the registration books. Such notice shall briefly set forth the nature of the proposed supplemental bond indenture and shall state that copies thereof are on file at the designated office of the Bond Trustee for inspection by all Bondholders. If, within sixty (60) days or such longer period as shall be prescribed by the Issuer following the giving of such notice, the owners of not less than the Requisite Percentage of Bonds Outstanding at the time of the execution of any such supplemental bond indenture shall have consented to and approved the execution thereof as herein provided, no owner of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Bond Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof.

### **SECTION 10.03 EXECUTION OF SUPPLEMENTAL INDENTURE.**

(a) The Bond Trustee is authorized to join with the Issuer in the execution of any such supplemental bond indenture and to make further agreements and stipulations which may be contained therein, but the Bond Trustee shall not be obligated to enter into any such supplemental bond indenture which affects its rights, duties, or immunities under this Bond Indenture. The Bond Trustee shall be entitled to receive, and shall be fully protected in relying upon, an opinion of Bond Counsel stating that the execution and delivery of a supplemental bond indenture is authorized or permitted by this Bond Indenture and the Act, has been effected in compliance with the provisions hereof and that such execution and delivery will not adversely affect the tax exemption of the interest on the Bonds. The Bond Trustee may receive an opinion of Bond Counsel as conclusive evidence as to whether the Bondholders would be so affected by any such modification or amendment to this Bond Indenture.

(b) Any supplemental bond indenture executed in accordance with the provisions of this Article shall thereafter form a part of this Bond Indenture; and all the terms and conditions contained in any such supplemental bond indenture as to any provision authorized to be contained therein shall be deemed to be part of this Bond Indenture for any and all purposes. In case of the execution and delivery of any supplemental bond indenture, express reference may be made thereto in the text of the Bonds issued thereafter, if any, if deemed necessary or desirable by the Bond Trustee.

**SECTION 10.04 CONSENT OF OBLIGOR.** Anything herein to the contrary notwithstanding, a supplemental bond indenture under this Article that materially affects the rights or obligations of any Obligor shall not become effective unless and until the Obligor shall have consented in writing to the execution and delivery of such supplemental bond indenture unless the Obligor is in default under the Loan Agreement or an Event of Default described under Section 8.01(a), (b) or (c) hereunder has occurred and is continuing, in which case no consent of the Obligor shall be required. The Bond Trustee shall cause notice of the proposed execution of any supplemental indenture together with a copy of the proposed supplemental bond indenture to be mailed to the Obligor at least fifteen (15) days prior to the proposed date of execution of such supplemental bond indenture.

**SECTION 10.05 AMENDMENTS, ETC., OF THE LOAN AGREEMENT NOT REQUIRING CONSENT OF BONDHOLDERS.** The Issuer and the Bond Trustee shall, without the consent of or notice to the Bondholders, consent to any amendment, change, or modification of the Loan Agreement as may be required (a) for the purpose of curing any ambiguity or formal defect or omission, (b) to maintain the extent to which the interest on the Bonds is not includable in the gross income of the recipients thereof, if in the opinion of Bond Counsel such amendment is necessary, and (c) in connection with any other change therein which does not adversely affect the Bond Trustee or the owners of the Bonds.

**SECTION 10.06 AMENDMENTS, ETC., OF THE LOAN AGREEMENT REQUIRING CONSENT OF BONDHOLDERS.**



(a) Except for the amendments, changes, or modifications as provided in Section 10.05 hereof, neither the Issuer nor the Bond Trustee shall consent to any other amendment, change, or modification of the Loan Agreement without the giving of notice to and the written approval or consent of the owners of not less than the Requisite Percentage of Bonds at the time Outstanding given and procured as provided in Section 10.02 hereof. If at any time the Issuer and the Obligor shall request the consent of the Bond Trustee to any such proposed amendment, change, or modification of the Loan Agreement, the Bond Trustee shall, upon being satisfactorily secured and/or indemnified with respect to expenses, cause notice of such proposed amendment, change, or modification to be given in the same manner as provided in Section 10.02 hereof. Such notice shall briefly set forth the nature of such proposed amendment, change, or modification and shall state that copies of the instrument embodying the same are on file at the designated office of the Bond Trustee for inspection by all Bondholders.

(b) In executing any amendment, change or modification of the Loan Agreement, the Bond Trustee shall be entitled to receive, and shall be fully protected in relying upon, an opinion of Bond Counsel stating that the execution and delivery of such amendment, change, modification of the Loan Agreement is authorized or permitted by this Bond Indenture and the Loan Agreement and the Act, has been effected in compliance with the provisions of this Bond Indenture and the Loan Agreement and that such modification will not adversely affect the tax exemption of the interest on the Bonds. The Bond Trustee may receive an opinion of Bond Counsel as conclusive evidence as to whether the Bondholders would be so affected by any such amendment, change, or modification of the Loan Agreement.

## **ARTICLE XI MISCELLANEOUS**

### **SECTION 11.01 EVIDENCE OF SIGNATURE OF BONDHOLDERS AND OWNERSHIP OF BONDS.**

(a) Any request, consent, or other instrument which this Bond Indenture may require or permit to be signed and executed by the Bondholders may be in one or more instruments of similar tenor, and shall be signed or executed by such Bondholders in person or by their attorneys appointed in writing. Proof of the execution of any such instrument or of an instrument appointing any such attorney, or of the ownership of Bonds shall be sufficient (except as otherwise herein expressly provided) if made in the following manner, but the Bond Trustee may, nevertheless, in its discretion, require further or other proof in cases where it deems the same desirable:

(i) The fact and date of the execution by any Bondholder or his attorney of such instrument may be proved by the certificate of any officer authorized to take acknowledgments in the jurisdiction in which he purports to act that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before a notary public.

(ii) The ownership of any fully registered Bond and the amount and numbers of such Bonds and the date of holding the same shall be proved by the registration books of the Issuer kept by the Bond Trustee.

(b) Any request or consent of the owner of any Bond shall bind all future owners of such Bond in respect of anything done or suffered to be done by the Issuer or the Bond Trustee in accordance therewith.

**SECTION 11.02 NO PERSONAL LIABILITY.** No recourse under or upon any obligation, covenant or agreement contained in this Bond Indenture, or in any Bond hereby secured, or

under any judgment obtained against the Issuer, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, under or independent of this Bond Indenture, shall be had against any elected official, officer, director, agent or employee, as such, past, present or future, of any of the Issuer, the Bond Trustee the City, or the County, either directly or through the Issuer, or otherwise, for the payment for or to Issuer or any receiver thereof, or for or to the holder of any Bond issued hereunder or otherwise of any sum that may be due and unpaid by the Issuer upon any such Bond. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such person to respond by reason of any act or omission on his part or otherwise, for the payment for or to the Issuer or any receiver thereof or for or to the holder of any Bond issued hereunder or otherwise, of any sum that may remain due and unpaid upon the Bonds hereby secured or any of them, is hereby expressly waived and released as a condition of and consideration for the execution of this Bond Indenture and the issue of such Bonds.

**SECTION 11.03 LIMITED OBLIGATION.** The Issuer, the City, the County, or any political subdivision thereof, and the Trustee, except the Issuer and the Trustee to the extent set forth herein, shall in any event not be liable for the payment of the principal of, premium, if any, or interest on any of the Bonds issued hereunder. The Bonds are limited obligations of the Issuer payable solely from the revenues, receipts and resources of the Issuer pledged to their payment and not from any other revenues, funds or assets of the Issuer. None of the Bonds of the Issuer issued hereunder shall be construed or constitute an indebtedness of the Issuer or an indebtedness or obligation (special, moral or general) of the Issuer, the City, the County, or any political subdivision thereof, except the Issuer to the extent set forth herein, within the meaning of any constitutional or statutory provision whatsoever.

**SECTION 11.04 PARTIES INTERESTED HEREIN.** With the exception of rights herein expressly conferred on the Obligor, nothing in this Bond Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person other than the Issuer, the Bond Trustee, the Paying Agents and the owners of the Bonds, any right, remedy, or claim under or by reason of this Bond Indenture, and any covenants, stipulations, promises, and agreements in this Bond Indenture contained by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Bond Trustee and the owners of the Bonds.

**SECTION 11.05 TITLES, HEADINGS, ETC.** The titles and headings of the articles, sections, and subdivisions of this Bond Indenture have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms or provisions hereof.

**SECTION 11.06 SEVERABILITY.** In the event any provision of this Bond Indenture shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**SECTION 11.07 GOVERNING LAW.** This Bond Indenture shall be governed and construed in accordance with the laws of the State of Tennessee.

**SECTION 11.08 EXECUTION OF COUNTERPARTS.** This Bond Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 11.09 NOTICES.**

(a) Any notice, request or other communication under this Loan Agreement shall be given in writing and shall be deemed to have been given by either party to the other party at the addresses shown below upon any of the following dates:

(i) The date of notice by facsimile, electronic mail or similar communications, which is confirmed promptly in writing;

(ii) Three (3) Business Days after the date of the mailing thereof, as shown by the post office receipt if mailed to the other party hereto by registered or certified mail;

(iii) The date of the receipt thereof by such other party if not given pursuant to (a) or (b) above.

(b) The address for notice for each of the parties shall be as follows:

Issuer: Economic Development Growth Engine Industrial Development Board of the  
City of Memphis and County of Shelby, Tennessee  
100 Peabody Place, Suite 1100  
Memphis, Tennessee 38103

*with a copy to:* Farris Bobango, PLC  
999 S. Shady Grove Road, Suite 500  
Memphis, TN 38120  
Attention: Stephen L. Anderson  
Phone: 901-259-7100  
Facsimile: 901-259-7180  
Email: markb@farris-law.com

Obligor: Distilled Spirits, Inc.  
802 Royal Avenue  
Memphis, TN 38107  
Attention: McCauley Williams, CEO  
Telephone: 901-483-1257  
Facsimile: mwilliams@brdistilling.com

*with a copy to:* Butler Snow LLP  
1020 Highland Colony Pkwy, Suite 1400  
Ridgeland, Mississippi 39157  
Attention: Tray Hairston  
Telephone: 601-985-4630  
Email: Tray.hairston@butlersnow.com; Geoffrey.morris@butlersnow.com;

Bond Trustee: Regions Bank  
150 4<sup>th</sup> Avenue North, Suite 1500  
Nashville, Tennessee 37219  
Attention: Daniel Olsen, Vice President  
Telephone: 615-770-4357  
Facsimile: 615-770-4350  
Email: daniel.olson@regions.com

Notwithstanding the foregoing, notices to the Bond Trustee shall be effective only upon receipt.

**SECTION 11.10 PAYMENTS DUE ON NON-BUSINESS DAYS.** If the date for making any payment or the last day for performance of any act or the exercising of any right, as provided in this Bond Indenture, shall be a day other than a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Bond Indenture.

**SECTION 11.11 CONSENTS.** If the Bond Trustee is requested to take any discretionary action as the holder of the Note, the Bond Trustee may seek the consent of the Holders of the related Bonds to the taking of such action, and if the Holders of at least a Requisite Percentage of the Bonds then Outstanding consent to the taking of such action, the Bond Trustee shall be fully protected in relying on such consent and shall have no liability for taking such action.

**SECTION 11.12 NO WARRANTY BY ISSUER.** THE ISSUER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE PROJECT OR THE CONDITION THEREOF, OR THAT THE PROJECT IS SUITABLE FOR THE PURPOSES OR NEEDS OF THE OBLIGOR. THE ISSUER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, THAT THE OBLIGOR WILL HAVE QUIET AND PEACEFUL POSSESSION OF THE PROJECT. THE ISSUER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION OR WORKMANSHIP OF ANY PART OF THE PROJECT OR ITS SUITABILITY FOR THE OBLIGOR'S PURPOSES.

*[Signatures follow on next page]*

**IN WITNESS WHEREOF**, Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee has caused this Bond Indenture to be executed on its behalf by its Chairman and attested by its Secretary, and the Bond Trustee has caused this Bond Indenture to be executed on its behalf by its duly authorized officer to evidence its acceptance of the trusts hereby created, all as of the date first above written.

**ECONOMIC DEVELOPMENT GROWTH ENGINE  
INDUSTRIAL DEVELOPMENT BOARD OF THE CITY  
OF MEMPHIS AND COUNTY OF SHELBY,  
TENNESSEE**

By: \_\_\_\_\_  
Name: Al Bright, Jr.  
Title: Chairman

Attest:

By: \_\_\_\_\_  
Name: Dr. Florence Jones  
Title: Secretary

**Acknowledged and Agreed to:**

**DISTILLED SPIRITS, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

**ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD OF THE  
CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE  
TAXABLE CONVERTIBLE  
CAPITAL APPRECIATION REVENUE BONDS  
(DISTILLED SPIRITS, INC., PROJECT), SERIES 2021**

No. R-1

\$\_\_\_\_\_

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

INTEREST RATE:

DELIVERY DATE: \_\_\_\_\_, 2021

MATURITY DATE: MARCH \_\_\_\_, 2021

CUSIP NO.: \_\_\_\_\_

ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE, a public nonprofit corporation duly organized and existing under the laws of the State of Tennessee (the “**Issuer**”), for value received, promises to pay, from the sources described herein, to the Registered Owner specified above, or registered assigns, the principal amount specified above, on the maturity date specified above (unless this Bond shall have been called for prior redemption) and to pay, from such sources, interest on said sum at the interest rate specified above, until payment of the principal hereof has been made or provided for.

This Bond is a Convertible Capital Appreciation Term Bond and is to be dated as of the date of delivery. Interest on the Bond will accrue and be compounded annually on March 1 commencing on March 1, 2024 (each an “**Interest Payment Date**”) and will be payable solely at maturity. Interest and principal on the Bond are payable on March 1 every year as specified below and represents a return of the original principal amount and the payment of an investment return accrued over the life of the bond at an annual compounding rate that is necessary to produce the approximate yield to maturity. The Bond is not subject to redemption prior to maturity.

The Accreted Value per \$\_\_\_\_\_ maturity amount of the Bond on the date of original issuance and on each March 1 are set forth below:

**YEARS**

---

03/01/2021  
03/01/2022  
03/01/2023  
03/01/2024  
03/01/2025  
03/01/2026  
03/01/2027  
03/01/2028  
03/01/2029  
03/01/2030  
03/01/2031

NEITHER THE STATE OF TENNESSEE NOR ANY POLITICAL SUBDIVISION OR AGENCY OF THE STATE OF TENNESSEE, INCLUDING THE CITY OF MEMPHIS OR SHELBY COUNTY SHALL BE LIABLE OR OBLIGATED (GENERALLY, SPECIALLY, MORALLY OR OTHERWISE) TO PAY THE PRINCIPAL OF THIS BOND OR THE PREMIUM, IF ANY, OR INTEREST HEREON, EXCEPT WITH RESPECT TO THE ISSUER AND SOLELY FROM THE SOURCES IDENTIFIED IN THE BOND INDENTURE AND LOAN AGREEMENT HEREINAFTER IDENTIFIED AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF TENNESSEE, OR THE CITY OF MEMPHIS OR SHELBY COUNTY OR ANY OTHER POLITICAL SUBDIVISION OR AGENCY THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS. THE ISSUER HAS NO TAXING POWER.

This Bond and the series of Bonds of which it is a part have been issued under and pursuant to Tennessee Code Annotated §§ 7-53-101 et seq. (the “Act”). This Bond is a limited obligation of the Issuer payable solely from the revenues, receipts and resources of the Issuer pledged to its payment and not from any other revenues, funds or assets of the Issuer. No owner of this Bond has the right to compel the Issuer to pay the principal of, interest or redemption premium, if any, on the Bond, except from such sources.

The principal of and premium, if any, on this Bond are payable upon the presentation and surrender hereof at Regions Bank, \_\_\_\_\_ Nashville, Tennessee, as bond trustee, or at the designated corporate trust office of its successor in trust (the “**Bond Trustee**”) under an Indenture of Trust, dated as of \_\_\_\_\_, 2021 (the “**Bond Indenture**”), by and between the Issuer and the Bond Trustee. Interest on this Bond will be paid on each Interest Payment Date (or, if such Interest Payment Date is not a business day, on the next succeeding business day), by check or draft mailed to the person in whose name this Bond is registered (the “**Registered Owner**”) in the registration records of the Issuer maintained by the Bond Trustee at the address appearing thereon at the close of business on the last day of the calendar month next preceding such interest payment date (the “**Regular Record Date**”) or by wire transfer of same day funds to an account within the United States upon receipt by the Bond Trustee prior to the Regular Record Date of a written request by a Registered Owner of One Million Dollars (\$1,000,000) or more in aggregate principal amount of Bonds. The CUSIP number and appropriate dollar amounts for each CUSIP number shall accompany all payments of principal of, redemption premium, if any, and interest on the Bonds. Any such interest not so timely paid or duly provided for shall cease to be payable to the person who is the Registered Owner hereof at the close of business on the Regular Record Date and shall be payable to the person who is the Registered Owner hereof at the close of business on a Special Record Date (as defined in the hereinafter defined Loan Agreement), for the payment of any defaulted interest. Such Special Record Date shall be fixed by the Bond Trustee whenever moneys become available for payment of the defaulted interest, and notice of the Special Record Date shall be given to the Registered Owners of such Bonds not less than ten (10) days prior to such Special Record Date. Alternative means of payment of interest may be used if mutually agreed upon between the owner of this Bond and the Bond Trustee, as provided in the Bond Indenture. All such payments shall be made in lawful money of the United States of America without deduction for the services of the Bond Trustee.

This Bond shall be issued pursuant to a book entry system administered by The Depository Trust Company (together with any successor thereto, “**Securities Depository**”). The book entry system will evidence beneficial ownership of the Bonds with transfers of beneficial ownership effected on the register held by the Securities Depository pursuant to rules and procedures established by the Securities Depository. So long as the book entry system is in effect, transfer of principal, interest and premium payments, and provisions of notices or other communications, to beneficial owners of the Bonds will be the responsibility of the Securities Depository as set forth in the Bond Indenture.

This Bond is one of a duly authorized series of bonds of the Issuer dated as of their date of issuance, known as “Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, Taxable Convertible Capital Appreciation Revenue Bonds (Distilled Spirits, Inc., Project) Series, 2021 (the “**Bonds**”). The Bonds will be loaned to the Obligor (hereinafter defined) pursuant to the Loan Agreement (hereinafter defined) to provide funds to (A) finance or refinance the costs of the acquisition, construction and equipping of a distillery in the City of Memphis, Tennessee, as more particularly described in Exhibit A to the Loan Agreement (the “**Project**”), including interest on the Bonds payable prior to the expected date of completion and commercial operation thereof, as more fully described herein, (ii) fund a portion of the Reserve Fund (as defined in the Loan Agreement) for the Bonds, and (iii) pay certain expenses in connection with the issuance and sale of the Bonds.

To provide for its loan repayment obligations, the Obligor has entered into a Loan Agreement, dated as of \_\_\_\_\_, 2021, between the Issuer and the Obligor (the “**Loan Agreement**”). To secure its obligations under the Loan Agreement in respect of the Bonds, the Obligor has issued its Note (the “**Note**”) pursuant the Bond Indenture. Pursuant to the Bond Indenture and a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of \_\_\_\_\_, 2021, from the Obligor to the deed of trust trustee named therein for the benefit of the Bond Trustee (the “**Deed of Trust**”), the Obligor has pledged and granted a security interest in, among other things, the Gross Revenues (as defined in the Bond Indenture) and has granted a mortgage lien on the Mortgaged Property (as defined in the Deed of Trust) to the Bond Trustee to secure the Note.

This Bonds and the claims for interest hereon are payable only out of the revenues derived by the Issuer pursuant to the Loan Agreement and the Note. The Bonds are issued under and are equally and ratably secured and are entitled to the protection given by the Bond Indenture.

No recourse under or upon any obligation, covenant, or agreement contained in the Bond Indenture, or in any Bond, or under any judgment obtained against the Issuer or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, under or independent of the Bond Indenture, shall be had against any director, incorporator, officer, agent, employee, or representative as such, past, present or future, of the Issuer, either directly or through the Issuer or otherwise, for the payment for or to the Issuer or for or to the Registered Owner of any Bond issued thereunder or otherwise, of any sum that may be due and unpaid by the Issuer upon any such Bond.

Neither the elected officials, directors, officers, agents, employees or representatives of the Issuer past, present or future, nor any person executing this Bond or the Bond Indenture, shall be personally liable hereon or thereon or be subject to any personal liability by reason of the issuance hereof and thereof, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly released and waived as a condition of and in consideration for the execution of the Bond Indenture and the issuance of this Bond.

Reference is hereby made to the Bond Indenture and all indentures supplemental thereto, the Indenture and the Deed of Trust for a description of the revenues pledged, the nature and extent of the security, the rights, duties, and obligations of the Issuer, the Bond Trustee, the Trustee and the owners of the Bonds, and the terms and conditions upon which the Bonds are, and are to be, secured.

The Bonds are subject to optional, extraordinary and mandatory sinking fund redemption on the dates and in the amounts set forth in the Bond Indenture.

If less than all Bonds are to be redeemed, the selection shall be made by the Securities Depository in accordance with the procedures of the Securities Depository. Notice of the call for any redemption shall



be given by the Bond Trustee by sending a copy of the redemption notice by mail not more than sixty (60) nor less than thirty (30) days prior to the redemption date to the Registered Owner of each Bond to be redeemed as shown on the registration records kept by the Bond Trustee, as provided in the Bond Indenture. All Bonds or portions thereof called for redemption will cease to bear interest after the specified redemption date, provided funds for their payment are on deposit at the place of payment at that time.

The Bonds may be purchased by, and subsequently transferred to, only “Accredited Investors,” as defined in Rule 501 under the Securities Act of 1933, as amended, (the “Securities Act”) and “Qualified Institutional Buyers” as defined in Rule 144A under the Securities Act.

The Bonds are issuable as fully registered bonds in Authorized Denominations (as defined in the Bond Indenture) and are exchangeable for an equal aggregate principal amount of fully registered Bonds of the same maturity of other Authorized Denominations at the aforesaid office of the Bond Trustee but only in the manner and subject to the limitations and on payment of the charges provided in the Bond Indenture.

This Bond is fully transferable by the Registered Owner hereof in person or by his or her duly authorized attorney on the registration books kept at the principal office of the Bond Trustee upon surrender of this Bond together with a duly executed written instrument of transfer satisfactory to the Bond Trustee. Upon such transfer a new fully registered Bond of authorized denomination or denominations for the same aggregate principal amount and maturity will be issued to the transferee in exchange herefor, all upon payment of the charges and subject to the terms and conditions set forth in the Bond Indenture.

The Bond Trustee will not be required to transfer or exchange any Bond after the mailing of notice calling such Bond or any portion thereof for redemption has been given as herein provided, nor during the period beginning at the opening of business fifteen (15) days before the day of mailing by the Bond Trustee of a notice of prior redemption and ending at the close of business on the day of such mailing.

The Issuer and the Bond Trustee may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of making payment (except to the extent otherwise provided hereinabove and in the Bond Indenture with respect to Regular and Special Record Dates for the payment of interest) and for all other purposes, and neither the Issuer nor the Bond Trustee shall be affected by any notice to the contrary. The principal of, premium, if any, and interest on this Bond shall be paid free from and without regard to any equities between the Obligor and the original or any intermediate owner hereof, or any setoffs or counterclaims.

The owner of this Bond shall have no right to enforce the provisions of the Bond Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Bond Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Bond Indenture. In case an event of default under the Bond Indenture shall occur, the principal of all of the Bonds at any such time Outstanding under the Bond Indenture may be declared or may become due and payable, upon the conditions and in the manner and with the effect provided in the Bond Indenture. The Bond Indenture provides that such declaration may in certain events be waived by the Bond Trustee or the owners of a requisite principal amount of the Bonds Outstanding under the Bond Indenture.

To the extent permitted by, and as provided in, the Bond Indenture, modifications or amendments of the Bond Indenture, or of any indenture supplemental thereto, and of the rights and obligations of the Issuer and of the owners of the Bonds may be made with the consent of the Issuer and the Bond Trustee and, in certain instances, of not less than a majority in aggregate principal amount of the Bonds then Outstanding; provided, however, that no such modification or amendment shall be made which will affect

the terms of payment of the principal of, premium, if any, or interest on any of the Bonds, which are unconditional. Any such consent by the owner of this Bond shall be conclusive and binding upon such owner and upon all future owners of this Bond and of any Bond issued upon the transfer or exchange of this Bond whether or not notation of such consent is made upon this Bond.

**IT IS HEREBY CERTIFIED, RECITED AND DECLARED** that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Bond Indenture and issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law.

**THIS BOND** shall not be entitled to any benefit under the Bond Indenture, or any indenture supplemental thereto, or become valid or obligatory for any purpose until the Bond Trustee shall have manually signed the certificate of authentication hereon.

**IN WITNESS WHEREOF**, Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, has caused this Bond to be executed with the manual or facsimile signatures of its Chairman and Secretary, all as of the date set forth above.

**ECONOMIC DEVELOPMENT GROWTH ENGINE  
INDUSTRIAL DEVELOPMENT BOARD OF THE CITY  
OF MEMPHIS AND COUNTY OF SHELBY,  
TENNESSEE**

By: \_\_\_\_\_  
Chairman

Attest:

\_\_\_\_\_  
Secretary

**(FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION)**

This is one of the Bonds referred to in the within mentioned Bond Indenture.

Date of Authentication:

\_\_\_\_\_

REGIONS BANK, as Bond Trustee

By: \_\_\_\_\_  
Authorized Signatory

**(END OF FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION)**

**(FORM OF ASSIGNMENT)**

ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within Bond, and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney to transfer such Bond on the books kept for registration and transfer of the within Bond, with full power of substitution in the premises.

Date: \_\_\_\_\_

\_\_\_\_\_  
NOTICE: The signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without enlargement or alteration or any change whatsoever.

Signature Guaranteed By:

\_\_\_\_\_

\_\_\_\_\_  
Authorized Signatory

NOTE: The signature to this Assignment must be guaranteed by a financial institution that is a member of the Securities Transfer Agents Medallion Program (“STAMP”), the Stock Exchange Medallion Program (“SEMP”) or the New York Stock Exchange, Inc. Medallion Signature Program (“MSP”).

\*\* [END OF BOND FORM] \*\*

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