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**LOAN AGREEMENT**

**by and between**

**ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF MEMPHIS**

**AND**

**COUNTY OF SHELBY, TENNESSEE**

**and**

**DISTILLED SPIRITS, INC.,**

**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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## LOAN AGREEMENT

**THIS LOAN AGREEMENT**, dated as \_\_\_\_\_, 2021 (the "**Loan Agreement**"), between the 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 DISTILLED SPIRITS, INC., a Delaware corporation (the "**Obligor**");

### 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 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**") under an Indenture of Trust, dated as of \_\_\_\_\_, 2021, between the Issuer and Regions Bank, Nashville, Tennessee, as trustee for the Bonds (the "**Bond Trustee**"); and

**WHEREAS**, the proceeds of the Bonds shall be loaned to Obligor pursuant to this Loan Agreement to provide funds to the Obligor to (i) 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 attached hereto (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

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto formally covenant, agree and bind themselves as follows:

### ARTICLE I DEFINITIONS

**SECTION 1.1. DEFINITIONS.** Unless otherwise defined herein or in the Bond Indenture, capitalized terms used in this Loan Agreement, the Bond Indenture, or the Note shall have the meanings set forth below.

"**Account**" means any account established within a Fund.

"**Act**" means Title 7, Chapter 53, Part 1, et seq., Tennessee Code Annotated, as amended.

**"Administration Expenses"** means the reasonable and necessary fees and expenses incurred by the Issuer pursuant to this Loan Agreement and the Bond Indenture.

**"Authorized Denominations"** means the denomination of One-Hundred Thousand Dollars (\$100,000) or any integral multiple of Five Thousand Dollars (\$5,000) in excess thereof, provided, however, that with respect to the Bonds, such term shall mean Five Thousand Dollars (\$5,000) and any integral multiple thereof in the event a Public Rating of "A" or better is issued and maintained for the Bonds.

**"Bond Counsel"** means Butler Snow LLP or any other attorney at law or firm of attorneys of nationally recognized experience in matters pertaining to the validity of, and if applicable, exclusion from gross income for federal income tax purposes of interest on, the obligations of states and their political subdivisions as may be selected by the Obligor and reasonably acceptable to the Issuer.

**"Bond Fund"** means the Bond Fund created in Section 3.02 of the Bond Indenture.

**"Bond Indenture"** means the Indenture of Trust of even date herewith relating to the Bonds between the Issuer and the Bond Trustee, including any indentures supplemental thereto made in conformity therewith.

**"Bondholder" or "Owner" or "Holder"** of the Bonds of a Series means the registered owner of any fully registered Bond of such Series.

**"Bond Resolution"** means the Resolution adopted by the Issuer on \_\_\_\_\_, 2021, approving and authorizing the issuance of the Bonds and the execution, delivery and performance of the Bond Indenture and the Loan Agreement.

**"Bond Trustee"** means Regions Bank, Nashville, Tennessee, as trustee and as registrar and Paying Agent for the Bonds under the Bond Indenture, and any successor trustee appointed in accordance with the Bond Indenture.

**"Business Day"** means any day other than a Saturday or Sunday or other day on which commercial banks located in Memphis, Tennessee, are required or authorized to remain closed.

**"City"** means the City of Memphis, Tennessee/

**"Claims"** shall mean all claims, lawsuits, causes of action and other legal actions and proceedings of whatever nature brought against (whether by way of direct action, counter claim, cross action or impleader) any Indemnified Party, even if groundless, false, or fraudulent, so long as the claim, lawsuit, cause of action or other legal action or proceeding is alleged or determined, directly or indirectly, to arise out of, to result from, to relate to or to be based upon, in whole or in part, the transactions contemplated hereby, the Project, or the Bond Indenture, including, without limitation, the following: (a) the issuance of the Bonds, including, but not limited to liabilities arising under the Securities Act of 1933, the Securities Exchange Act of 1934 or any applicable state securities laws, but such indemnity for securities liabilities shall be subject to the limitation that such indemnity shall not have been determined by a binding legal precedent to be void as contrary to public policy and such indemnity for securities liability shall not include any liability or loss, cost or expense including attorneys' fees if determined to be so void, and (b) the duties, activities, acts or omissions (even if negligent) of any Person in connection with the issuance of the Bonds, or the obligations of the various parties arising under the Bond Indenture or this Loan Agreement, or the breach of any representation or warranty set forth in the Bond Indenture or this Loan Agreement, (c) the duties, activities, acts or omissions (even if negligent) of any Person in **connection with the design, construction, installation, operation, use, occupancy, maintenance or ownership of the Project** or any

part thereof, including, without limitation, any claim to recover damages for injury to person or property, (d) any untrue statement or alleged untrue statement of a material fact made by the Obligor and contained in the Obligor Documents or in any information submitted by the Obligor to the Issuer or to the Bond Trustee in connection with the issuance and purchase of the Bonds, or any omission or alleged omission of any material fact necessary to be stated therein in order to make the statements therein not misleading or incomplete, (e) any suit, **action, administrative proceeding, enforcement action, investigation, inquiry, or governmental or private action** of any kind whatsoever commenced against the Obligor, the Project or any Indemnified Party which (i) alleges a violation of any applicable law, ordinance, or regulation, including without limitation, law, ordinance, or regulation dealing with the environment, public safety or public health, or (ii) might adversely affect the validity or enforceability of the Bonds, the Obligor Documents, or the performance by the Obligor or any Indemnified Party of any of their respective obligations thereunder, or (f) any act or negligence of (i) the Obligor or of any of its agents, contractors, servants, employees, or licensees, or (ii) any assignee or lessee of the Obligor or of any agents, contractors, servants, employees or licensees of any assignee or lessee of the Obligor..

**"Code"** means the Internal Revenue Code of 1986, as amended from time to time, including, when appropriate, the statutory predecessor thereof, or any applicable corresponding provisions of any future laws of the United States of America relating to federal income taxation, and except as otherwise provided herein or required by the context hereof, includes interpretations thereof contained or set forth in the applicable regulations of the Department of the Treasury (including applicable final or temporary regulations and also including regulations issued pursuant to the statutory predecessor of the Code), the applicable rulings of the Internal Revenue Service (including published Revenue Rulings and private letter rulings), and applicable court decisions.

**"Completion Date"** means the date on which the Obligor provides to the Bond Trustee a Certificate of Completion of the Project in the form attached hereto as EXHIBIT D.

**"Continuing Disclosure Agreement"** means the Continuing Disclosure Agreement entered into by and among the Obligor, Issuer, and the Bond Trustee in connection with the issuance of the Bonds.

**"Cost" or "Costs"** as applied to the Project means and includes any and all costs permitted by the Code and the Act.

**"Costs of Issuance"** means all costs that are treated as issuance costs within the meaning of Section 1.150-1(b) of the Code, including, but not limited to, fees for the initial placement of the Bonds, counsel fees (including fees of Bond Counsel, underwriter's counsel, Issuer's counsel, Bond Trustee's counsel and Obligor's counsel relating to the issuance of the Bonds, as well as any other specialized counsel fees incurred in connection with the issuance of the Bonds); financial advisory fees incurred in connection with the issuance of the Bonds; Bond Trustee fees and [Trustee] fees incurred in connection with the issuance of the Bonds; Paying Agent and registrar and authenticating agent fees related to issuance of the Bonds; accountant fees related to the issuance of the Bonds; printing costs of the Bonds and of any preliminary and/or final offering materials; publication costs associated with the financing proceedings; filing fees relating to any security for the Bonds; any fees paid to the Issuer relating to the issuance of the Bonds; and costs of engineering and feasibility studies necessary to the issuance of the Bonds.

**"Costs of Issuance Fund"** means the costs of issuance fund created under Section 3.16 of the Bond Indenture.

**"County"** means the county of Shelby, Tennessee

**"Deed of Trust"** means 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 [Trustee] with respect to the Premises (as defined in the Bond Indenture).

**"Delivery Date"** means \_\_\_\_\_, 2021.

**"Event of Default"** means those defaults specified in Section 8.01 of the Bond Indenture, or any of the Obligor Documents.

**"Funds"** means the Costs of Issuance Fund, the Bond Fund, the Reserve Fund, the Rebate Fund and the Project Fund.

**"Government Obligations"** means direct obligations of the United States of America or obligations the full and timely payment of the principal of and interest on which is unconditionally guaranteed by the United States of America.

**"Guaranty"** means all obligations of a Person guaranteeing, or in effect guaranteeing, any Indebtedness, dividend or other obligation of an obligor in any manner, whether directly or indirectly, including but not limited to obligations incurred through an agreement, contingent or otherwise, by such Person: (a) to purchase such Indebtedness or obligation or any property constituting security therefor; (b) to advance or supply funds: (i) for the purchase or payment of such Indebtedness or obligation, or (ii) to maintain working capital or other balance sheet condition; (c) to purchase securities or other property or services primarily for the purpose of assuring the owner of such Indebtedness or obligation of the ability of an obligor to make payment of the Indebtedness or obligation; or (d) otherwise to assure the owner of such Indebtedness or obligation against loss in respect thereof.

**"Income Available for Debt Service"** means for any period, the excess of revenues over expenses of the person or group of persons involved.

**"Indemnified Party"** shall mean the Issuer, the County, the City, and any of their respective past, present and future **officers, directors, members, officials, consultants, agents, servants and employees, any person who "controls" the Issuer** or within the meaning of Section 15 of the Securities Act of 1933, as amended, or Section 20(a) of the Securities Exchange Act of 1934, as amended, and any successor to any of such Persons.

**"Indemnified Persons"** means the Indemnified Parties and the Bond Trustee.

**"Interest Payment Date"** means each March 1, commencing March 1, 2024, or, if such day is not a Business Day, the immediately succeeding Business Day in the years during which the Bonds are Outstanding under the provisions of the Bond Indenture; provided, however, that the Bonds are convertible capital appreciation term bonds, and will not pay current interest, and as such 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.

**"Issuer Representative"** means the Chair of the Issuer, the President of the Issuer, or such other person at the time, and from time to time, designated by written certificate of the Issuer furnished to the Obligor and the Bond Trustee containing the specimen signature of such person and signed on behalf of the Issuer by its Chair. Such certificate shall designate an alternate or alternates, any of whom may act at any time as Issuer Representative.

**"Loan Agreement"** means this Loan Agreement and any amendments and supplements hereto made in conformity herewith and with the Bond Indenture.

**"Losses"** means losses, costs, damages, expenses, judgments, and liabilities of whatever nature (including, but not limited to, reasonable attorney's, accountant's and other professional's fees, litigation and court costs and expenses, amounts paid in settlement and amounts paid to discharge judgments and amounts payable by Indemnified Persons to any other Person under any arrangement providing for indemnification of that Person) directly or indirectly resulting from arising out of or relating to one or more Claims, and all any and all expenses reasonably incurred in the investigation of, preparation for or defense of any Claims.

**"Maximum Annual Debt Service Requirement"** means an amount equal to ten percent (10%) of the par amount of the Bonds.

**"Maximum Rate"** means the lesser of (a) 15% per annum or (h) the maximum interest rate permitted by applicable Tennessee law.

**"Note"** means the promissory note issued by the Obligor evidencing the amounts owed and pursuant to the Bonds issued under and pursuant to the Bond Indenture.

**"Obligor Documents"** means, collectively, this Loan Agreement, the Note, the Continuing Disclosure Agreement, the Bond Indenture, the Deed of Trust, and any UCC filings.

**"Outstanding"** means, as of any particular time, with respect to either Series of Bonds, all Bonds of such Series which have been duly authenticated and delivered by the Bond Trustee under the Bond Indenture, except:

(a) Bonds theretofore cancelled by the Bond Trustee or delivered to the Bond Trustee for cancellation after purchase in the open market or because of payment at or redemption prior to maturity;

(b) Bonds of such Series for the payment or redemption of which cash funds (or Government Obligations to the extent permitted in Section 7.0I of the Bond Indenture) shall have been theretofore deposited with the Bond Trustee (whether upon or prior to the maturity or redemption date of any such Series of Bonds); provided that if such Series of Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements satisfactory to the Bond Trustee shall have been made therefor, or waiver of such notice satisfactory in form to the Bond Trustee, shall have been filed with the Bond Trustee and provided further that prior to such payment or redemption, the Bonds of such Series to be paid or redeemed shall be deemed to be Outstanding for the purpose of transfers and exchanges under Section 2.07 of the Bond Indenture; and

(c) Bonds of such Series in lieu of which other Bonds of such Series have been authenticated under Section 2.08 of the Bond Indenture.

**"Paying Agent"** means the Bond Trustee, in its capacity as paying agent for the Bonds, and any other bank or trust company designated pursuant to the Bond Indenture to serve as a paying agent for the Bonds, and any successor designated pursuant to the Bond Indenture.

**"Payment Office"** means, with respect to the Bond Trustee or other Paying Agent, the office maintained by the Bond Trustee or any affiliate of the Bond Trustee or of another Paying Agent for the payment of principal of and interest on the Bonds.

**"Permitted Investments"** means dollar denominated investments, to the extent permitted by law, in any of the following:

- (a) Government Obligations;
- (b) debt obligations which are (i) issued by any state or political subdivision thereof or any agency or instrumentality of such state or political subdivision, and (ii) at the time of purchase, rated by any Rating Agency in one of the two highest categories assigned by such Rating Agency (without regard to any refinement or gradation or rating category by numerical modifier or otherwise);
- (c) any bond, debenture, note, participation certificate or other similar obligation which is either (i) issued or guaranteed by the Federal National Mortgage Association, the Federal Home Loan Bank System, the Federal Home Loan Mortgage Corporation or the Federal Farm Credit Bank, or (ii) backed by the full faith and credit of the United States of America;
- (d) U.S. denominated deposit account, certificates of deposit and banker's acceptances with domestic commercial banks, including the [Trustee] or its affiliates, which have a rating on their short-term certificates of deposit on the date of purchase of "A 1" by Standard & Poor's, "F I+" by Fitch or "P 1" by Moody's, without regard to gradation, and which matures not more than three hundred sixty (360) days after the date of purchase;
- (e) commercial paper which is rated at the time of purchase within the classification or higher, "A 1" by Standard & Poor's, "F I+" by Fitch or "P 1" by Moody's, without regard to gradation, and which matures not more than two hundred seventy (270) days after the date of purchase;
- (f) bonds, notes, debentures or other evidences of indebtedness issued or guaranteed by a corporation which are, at the time of purchase, rated by any Rating Agency in any of the three (3) highest rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise);
- (g) shares of a money market mutual fund or other collective investment fund registered under the federal Investment Company Act of 1940, whose shares are registered under the Securities Act of 1933, having assets of at least One Hundred Million Dollars (\$100,000,000) and having a rating of AAAM or AAAM-G or equivalent by a Rating Agency, including money market mutual funds from which the Bond Trustee or its affiliates derive a fee for investment advisory or other services to the fund.

**"Placement Agent"** means Duncan – Williams, Inc., Memphis, Tennessee.

**"Placement Agreement"** means that certain Placement Agreement by and between Placement Agent and Issuer.

**"Premium Security"** means any Permitted Investment purchased or to be purchased at a premium from funds in the Project Fund.

**"Principal Payment Date"** means March 1, or any such other date on which principal of the Bonds is due and payable, whether upon maturity or upon extraordinary redemption pursuant to Section 5.02, 5.03 or 5.04 in the Bond Indenture.

**"Project"** shall have the meaning set forth in the recitals hereof.

**"Project Fund"** means the project fund created under Section 3.06 of the Bond Indenture.

**"Qualified Project Costs"** means Costs of the Project which constitute costs for property which is to be owned by the Obligor or another member of the Obligor and will not be used in an "unrelated trade or business" (as such term is used in Section 513(a) of the Code) of the Obligor (or any other organization described in Section 501(c)(3) of the Code) or in the trade or business of a person who is neither a governmental unit nor an organization described in Section 501(c)(3) of the Code. Costs of Issuance are not Qualified Project Costs and any fees paid to banks for letters of credit, for municipal bond insurance premiums or other guaranty fees and any capitalized interest on the Bonds shall be allocated between Qualified Project Costs to be paid or reimbursed from proceeds of the Bonds and Costs other than Qualified Project Costs to be paid or reimbursed from the proceeds of the Bonds. Qualified Project Costs shall not include costs or expenses paid more than sixty (60) days prior to the adoption by the Issuer, the Obligor or another member of the Obligor of a reimbursement resolution unless those expenditures qualify as "preliminary expenditures" within the meaning of the Code.

**"Rebate Fund"** means that special fund established in the name of the Issuer with the Bond Trustee pursuant to Section 3.15 of the Bond Indenture.

**"Regular Record Date"** means the last day of the month preceding each regularly scheduled Interest Payment Date therefor.

**"Requisite Percentage"** means the Holders of not less than fifty-one percent (51%) of the Outstanding principal amount of the Bonds.

**"Reserve Fund"** means the reserve fund for the Bonds created in Section 3.07 of the Bond Indenture.

**"Reserve Fund Requirement"** means an amount equal to 10% of the initial principal amount of the Bonds on their date of issuance.

**"Reserved Rights"** means the rights of the Issuer (a) to receive the amounts payable to the Board under Sections 5.7, 7.9, and 9.5 of this Loan Agreement and the right to receive the payment of expenses and attorneys' fees under any other documents and instruments executed and delivered in connection with the Bonds, (b) to indemnification under Section 7.5 of this Loan Agreement and to receive amounts payable to the Board thereunder, (c) the right to exemption from liability under Section 11.9 and 11.11 of this Loan Agreement or under any like provision set forth in any document or instrument executed and delivered in connection with the Bonds, (d) to receive all notices, advices, and directions under the Note, the Bond Indenture, and any other documents and instruments executed and delivered in connection with the Bonds, (e) to inspect the Project and records of the Obligor as provided in this Loan Agreement, and (f) to independently enforce the rights described in subsections (a) through (e) above and any remedies in connection therewith.

**"Responsible Officer"** when used with respect to the Bond Trustee means any officer of the Bond Trustee having direct responsibility for administration of the Bond Indenture.

**"Securities Depository"** means The Depository Trust Company, New York, New York, and any successor thereto as permitted by the Bond Indenture.

**"Special Record Date"** means a special date fixed to determine the names and addresses of Owners of Bonds for purposes of paying interest on a special Interest Payment Date for the payment of defaulted interest, all as further provided in Section 2.04 of the Bond Indenture.

**"Threshold Amount"** means Ten Million Dollars (\$10,000,000) plus an amount equal to Ten Million Dollars (\$10,000,000) multiplied by a percentage equal to the aggregate percentage increase or decrease from January 1, 2021 in the "Dodge Construction Index for U.S. and Canadian Cities", with reference to the city in which the subject property is located (or, if such Index is not available for such city, with reference to the city located closest geographically to the city in which the subject property is located), or, if such index is no longer published, such other index which is certified to be comparable and appropriate by the Obligor in an officer's certificate delivered to the Bond Trustee.

**"Trust Estate"** means the property pledged and assigned to the Bond Trustee pursuant to the granting clauses of the Bond Indenture.

## **ARTICLE II REPRESENTATIONS**

### **SECTION 2.1. REPRESENTATIONS BY THE ISSUER.** The Issuer represents that:

(a) The Issuer is a duly organized and validly existing public nonprofit corporation organized and existing under and pursuant to the laws of the State of Tennessee and has full power and authority under the laws of the State of Tennessee (including, in particular, the Act) to enter into the transactions contemplated by this Loan Agreement and the Bond Indenture and to carry out its obligations hereunder and thereunder. By proper action the Issuer has duly authorized the execution and delivery of this Loan Agreement and the Bond Indenture and the performance of its obligations under this Loan Agreement and the Bond Indenture.

(b) To the best of the Issuer's knowledge, neither the execution and delivery of the Bonds, the Bond Indenture or this Loan Agreement, the consummation of the transactions contemplated thereby and hereby nor the fulfillment of or compliance with the terms and conditions or provisions of the Bonds, the Bond Indenture or this Loan Agreement conflict with or result in the breach of any of the terms, conditions or provisions of any constitutional provision or statute of the State of Tennessee or of any agreement or instrument or judgment, order or decree of which the Issuer has notice that it is a party or constitutes a default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature upon any property or assets of the Issuer under the terms of any instrument or agreement

(c) The Issuer has the power and authority to issue the Bonds for the purposes of financing Costs of the Project and paying Costs of Issuance. Each Series of Bonds shall be issued in the aggregate principal amount, mature, bear interest, be subject to redemption prior to maturity, be secured, and have such other terms and conditions as are set forth in the Bond Indenture.

(d) The Bonds are to be issued under and secured by the Bond Indenture pursuant to which the Issuer's interest in this Loan Agreement and in the Note, and the revenues and receipts derived by the Issuer from the Note, will be pledged and assigned to the Bond Trustee as security for payment of the principal of, premium, if any, and interest on the Bonds.

(e) The issuance of the Bonds and the execution of this Loan Agreement and the Bond Indenture have been approved by the Issuer pursuant to the Bond Resolution at a duly constituted meeting.

(f) Except as otherwise permitted by this Loan Agreement, the Issuer covenants that it has not and will not pledge the income and revenues derived from this Loan Agreement other than to secure the Bonds.

**SECTION 2.2. REPRESENTATIONS BY THE OBLIGOR.** The Obligor represents that:

(a) The Obligor is a corporation duly created and in good standing under the laws of the State of Delaware and authorized to do business in the State of Tennessee, has power to enter into the Obligor Documents and by proper action has duly authorized the execution and delivery of the Obligor Documents.

(b) Neither the execution and delivery of any of the Obligor Documents, the consummation of the transactions contemplated hereby and thereby, nor the fulfillment of or compliance with the terms and conditions of the Obligor Documents, conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction or any agreement or instrument to which the Obligor is now a party or by which it is bound or constitute a default under any of the foregoing.

(c) No event of default or any event which, with the giving of notice or the lapse of time, or both, would constitute an Event of Default, has occurred.

(d) To the best of the Obligor's knowledge, information and belief, all of the documents, instruments and written information supplied by or on behalf of the Obligor, which have been reasonably relied upon by Bond Counsel in rendering their opinion or counsel to the Obligor in rendering its opinion with respect to the status of the Obligor under applicable law, are true and correct in all material respects, do not contain any untrue statement of a material fact and do not omit to state any material fact necessary to be stated therein to make the information provided therein, in light of the circumstances under which such information was provided, not misleading.

(e) The Project consists entirely of property that is owned, or to be owned, and operated by the Obligor. None of the Project will be used in an "unrelated trade or business."

(f) Any information that has been or will be supplied by the Obligor that has been or will be relied upon by the Issuer, the Bond Trustee and Bond Counsel with respect to Bonds is true and correct.

(g) The Obligor is duly authorized to operate the Project under the laws, rulings, regulations and ordinances of the State of Tennessee and the departments, agencies and political subdivisions thereof.

(h) The Project constitutes a "project" within the meaning of the Act, and all proceeds of the Bonds not applied to pay Costs of Issuance or fund the Reserve Fund will be used to finance or refinance a "cost" within the meaning of the Act.

(i) Based on current facts, estimates and circumstances, it is currently expected that the Project will not be sold or disposed of in a manner producing sale proceeds which, together with accumulated proceeds of the Bonds or earnings thereon, would be sufficient to enable the Obligor to retire substantially all of the Bonds prior to the maturity of the Bonds.

(j) The Obligor will construct and operate the Project in accordance with all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities or rating or inspection organizations, bureaus, associations, or offices having jurisdiction over the Project, and the Obligor has obtained or will cause to be obtained all requisite approvals of the State of Tennessee and of other federal, state, regional and local governmental bodies for the Project.

(k) Substantially all of the net proceeds of the Bonds, including earnings from the investment thereof, were used, or will be used, to finance or refinance Qualified Project Costs.

(l) The Obligor will not discriminate against the patients of the Project on the basis of race, religion, sex or national origin.

(m) The Obligor agrees to perform all obligations imposed upon it by the express terms of the Bond Indenture.

### **ARTICLE III TERM OF LOAN AGREEMENT**

**SECTION 3.1. TERM OF THIS LOAN AGREEMENT.** Subject to Section 11.12 hereof, this Loan Agreement shall remain in full force and effect from the date of delivery hereof until such time as all of the Bonds shall have been fully paid or provision made for such payment pursuant to the Bond Indenture and all reasonable and necessary fees and expenses of the Bond Trustee and the Issuer accrued and to accrue through final payment of the Bonds and all liabilities of the Obligor with respect to the Bonds accrued and to accrue through final payment of the Bonds have been paid.

### **ARTICLE IV ISSUANCE OF THE BONDS; CONSTRUCTION OF PROJECT; DISBURSEMENTS**

**SECTION 4.1. AGREEMENT TO ISSUE BONDS, APPLICATION OF BOND PROCEEDS AND OTHER FUNDS.** The Issuer will sell the Bonds and cause the same to be authenticated and delivered to the initial purchasers thereof in accordance with the Bond Indenture and the Placement Agreement, and will deliver the proceeds thereof to the Bond Trustee for deposit as provided in Section 3.01 of the Bond Indenture.

**SECTION 4.2. COST OF CONSTRUCTION.** The Obligor represents and warrants that it will complete the Project within the amount of the funds to be deposited in the Project Fund and within the amount of other available funds of the Obligor. In the event the moneys in the Project Fund available for payment of the Costs of the Project should not be sufficient to pay the Costs of the Project in full, the Obligor agrees to complete the Project and to pay that portion of the Costs of the Project in excess of the moneys available therefor in the Project Fund. The Issuer does not make any warranty, either express or implied, that the moneys paid into the Project Fund and available for payment of the Costs of the Project will be sufficient to pay all of the Costs of the Project. The Obligor agrees that if after exhaustion of the moneys in the Project Fund, the Obligor should pay any portion of the Costs of the Project pursuant to the provisions of this Section, the Obligor shall not be entitled to any reimbursement therefor from the Issuer, the Bond Trustee or the Owners, nor shall the Obligor be entitled to any diminution of the amounts payable under this Agreement hereof or under the Note.

**SECTION 4.3. PLANS; MODIFICATIONS OF PROJECT.** The Obligor hereby covenants and agrees that no changes or modifications, or substitutions, deletions, or additions shall be made with respect to the Project if such change would disqualify the Project under the Act.

**SECTION 4.4. COMPLIANCE WITH REGULATORY REQUIREMENTS.** The Obligor agrees that all work in connection with the acquisition, construction and equipping of the Project has been or will be completed strictly in accordance with all applicable ordinances and statutes, and in accordance with the requirements of all regulatory authorities in all material respects, and any rating or inspection organization, bureau, association, or office having jurisdiction, and it will furnish to the Issuer all information

necessary for the Issuer to comply with all of the foregoing and all laws, regulations, orders and other governmental requirements.

The Obligor shall, at no expense to the Issuer, promptly comply in all material respects or cause compliance in all material respects with all laws, ordinances, orders, rules, regulations and requirements of duly constituted public authorities which may be applicable to the Obligor or to the Project and the operation thereof, including without limitation, Tennessee Code Annotated § 7-53-101 et seq.

**SECTION 4.5. REQUESTS FOR DISBURSEMENTS.** The Obligor shall be entitled to disbursements of moneys from the Project Fund to pay the Costs related to the Project. Disbursements from the Project Fund shall be made by the Bond Trustee upon receipt of a requisition therefor signed by the Obligor in substantially the form attached hereto as EXHIBIT B to pay Costs of the Project. Notwithstanding the foregoing, the Obligor shall make no request for disbursement of moneys from the Project Fund for payment of Costs of Issuance.

**SECTION 4.6. COSTS OF ISSUANCE FUND.** The Obligor shall be entitled to disbursement of moneys in the Costs of Issuance Fund to pay the Costs of Issuance. The Obligor shall request disbursements from the Costs of Issuance Fund on the form attached hereto as EXHIBIT C to pay Costs of Issuance, and to reimburse itself for Costs of Issuance paid by the Obligor, upon presentation to the Bond Trustee of a request for disbursement signed by the Obligor.

**SECTION 4.7. MODIFICATION OF DISBURSEMENTS.** The making of any disbursement or any part of a disbursement shall not be deemed an approval or acceptance by the Bond Trustee of the work theretofore done. Upon prior notice to the Obligor and in order to satisfy requirements specified in the Bond Indenture, the Bond Trustee may deduct from any disbursement to be made under this Loan Agreement any amount necessary for the payment of fees and expenses required to be paid under this Loan Agreement and any insurance premiums, taxes, assessments, water rates, sewer rents and other charges, liens and encumbrances upon the Project, whether before or after the making of this Loan Agreement, and any amounts necessary for the discharge of mechanic's liens, and apply such amounts in payment of such fees, expenses, premiums, taxes, assessments, charges, liens and encumbrances. All such sums so applied shall be deemed disbursements under this Loan Agreement.

**SECTION 4.8. RESERVED.**

**SECTION 4.9. ALLOCATION OF, AND LIMITATION ON, EXPENDITURES FOR THE PROJECT.** The Obligor covenants to account for the expenditure of sale proceeds and investment earnings to be used for the Costs of the Project on its books and records by allocating proceeds to expenditures within eighteen (18) months of the later of the date that (i) the expenditure is made, or (ii) the Completion Date. The foregoing notwithstanding, the Obligor shall not expend sale proceeds or investment earnings thereon more than sixty (60) days after the earlier of (i) the fifth anniversary of the delivery of the Bonds, or (ii) the date the Bonds are retired, unless the Obligor obtains an Opinion of Bond Counsel that such expenditure will not adversely affect the tax- exempt status of the Bonds.

**SECTION 4.10. CHANGE OF CONTROL.** No sale, merger, or other change of control transaction may be consummated by the Obligor without the consent of the Bondholders.

**SECTION 4.11 RESERVED.**

**ARTICLE V**  
**LOAN OF BOND PROCEEDS; NOTE; PROVISION FOR PAYMENT**

**SECTION 5.1. LOAN OF BOND PROCEEDS.** The Issuer hereby agrees to loan to the Obligor the proceeds of the Bonds to provide for the payment of Costs of the Project and Costs of Issuance and to fund the Reserve Fund. The Obligor hereby agrees to repay the loan of the proceeds of the Bonds pursuant to the conditions set forth in Section 5.2 hereof.

**SECTION 5.2. REPAYMENT OF LOAN.** The Obligor agrees to pay to the Bond Trustee for the account of the Issuer all payments when due of interest on the Bonds and the principal thereof, pursuant to the payment provisions contained in the Note. If for any reason the amounts paid to the Bond Trustee by the Obligor on the Note, together with any other amounts available in the Bond Fund, are not sufficient to pay the principal of, premium, if any, and interest on the Bonds when due, the Obligor agrees that such amounts shall be used to pay the principal of, premium, if any, and interest on the Bonds, and the Obligor agrees to pay the amount required to make up such deficiency.

**SECTION 5.3. CREDITS.** Any amount in the Bond Fund at the close of business of the Bond Trustee on the day immediately preceding any payment date on the Note in excess of the aggregate amount then required to be contained in the Bond Fund pursuant to Section 5.2 hereof shall be credited in the following order of priority:

- (a) *first*, against payments due on the next succeeding Interest Payment Date in respect of the Bonds, on a pro rata basis; and
- (b) *second*, against payments due on the next succeeding Principal Payment Date in respect of the Bonds, on a pro rata basis.

In the event that all of the Bonds then Outstanding are called for redemption, any amounts contained in the Reserve Fund and the Bond Fund at the close of business of the Bond Trustee on the day immediately preceding such redemption date shall be credited against the payments due by the Obligor on the Note, as provided below.

The principal amount of any Bonds of either Series to be applied by the Bond Trustee as a credit against any sinking fund payment pursuant to Section 5.02 of the Bond Indenture shall be credited against the obligation of the Obligor with respect to payment of installments of principal of the Note relating to such Series as described in the Supplemental Indenture relating to such Series.

The cancellation by the Bond Trustee of any Bonds of either Series purchased by the Obligor or of any Bonds of either Series redeemed or purchased by the Issuer through funds other than funds received on the Note relating to such Series shall constitute payment of a principal amount of the Note of such Series equal to the principal amount of the Bonds of such Series so cancelled. Upon receipt of written notice from the Bond Trustee of such cancellation, the [Trustee] shall at the request of the Obligor endorse on the Note of such Series such payment of such principal amount thereof.

**SECTION 5.4. NOTE.** Concurrently with the sale and delivery by the Issuer of the Bonds, the Obligor shall execute and deliver the Note substantially in the form set forth in the First Supplemental Indenture.

**SECTION 5.5. PAYMENT OF BOND TRUSTEE'S AND PAYING AGENT'S FEES AND EXPENSES.** The Obligor agrees to pay the fees and expenses (including attorney's fees) of the Bond Trustee

and any Paying Agents as and when the same become due, and as they arise from time to time, upon submission by the Bond Trustee or any Paying Agent of a written statement therefor.

**SECTION 5.6. RESERVE FUND.**

(a) The Reserve Fund shall be fully funded as of the date of date of the issuance of the Bonds. In the event any moneys in the Reserve Fund are transferred to the Bond Trustee for deposit to the Bond Fund pursuant to Section 3.09 of the Bond Indenture, except if such moneys are transferred due to the redemption of all Bonds, the Obligor agrees to deposit additional moneys into the Reserve Fund in an amount sufficient to restore the balance therein to the Reserve Fund Requirement, such amount to be deposited in accordance with Section 6.03(c) of the Bond Indenture within 270 days.

(b) In the event the value of any cash and Permitted Investments in the Reserve Fund (as determined pursuant to the statement of the Bond Trustee furnished in accordance with Section 6.03(b) of the Bond Indenture) is less than ninety percent (90%) of the Reserve Fund Requirement as a result of a decline in the market value of such investments on deposit in the Reserve Fund, the Obligor agrees to deposit additional moneys into the Reserve Fund in an amount sufficient to restore the balance therein to the Reserve Fund Requirement, such amount to be deposited in accordance with Section 6.03(c) of the Bond Indenture.

**SECTION 5.7. PAYMENT OF ADMINISTRATION EXPENSES.** In consideration of the agreement of the Issuer to issue the Bonds and loan the proceeds thereof to provide financing for the Project, the Obligor hereby agrees to pay any and all costs paid or incurred by the Issuer in connection with the financing or refinancing of the Project, whenever incurred, including out of pocket expenses and compensation in connection with the issuance of the Bonds, including, without limitation, reasonable sums for reimbursement of the fees and expenses incurred by the Issuer's financial advisors, consultants and legal counsel in connection with the Project and the issuance of the Bonds and any matters, inquiries and/or audits arising subsequent to the issuance of the Bonds related to the Bonds, the Project, or the documents executed in connection therewith.

**SECTION 5.8. PAYEES OF PAYMENTS.** The payments on the Note pursuant to Section 5.2 hereof shall be paid in funds immediately available at the Payment Office of the Bond Trustee, directly to the Bond Trustee for the account of the Issuer and shall be deposited into the Bond Fund. The amounts provided for in Section 5.6 hereof shall be paid to the Bond Trustee for the account of the Issuer and shall be deposited into the applicable Account of the Reserve Fund. The payments to be made to the Bond Trustee and the Paying Agent under Section 5.5 hereof shall be paid directly to the Bond Trustee and the Paying Agent for their own use. The payments for Administration Expenses under Section 5.7 hereof shall be paid directly to the Issuer for its own use.

**SECTION 5.9. OBLIGATIONS OF OBLIGOR HEREUNDER UNCONDITIONAL.** The obligations of the Obligor to make the payments required in Section 5.2 hereof shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim the Obligor might otherwise have against the Issuer or the Bond Trustee. The Obligor will not suspend or discontinue, or permit the suspension or discontinuance of, any payments provided for in Section 5.2 hereof for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Project, commercial frustration of purpose, any change in the tax or other laws or administrative rulings of or administrative actions by the United States of America or the State of Tennessee or any political subdivision of either, or any failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Loan Agreement, whether express or implied. Nothing contained in this Section shall be construed to release the Issuer from the performance of any agreements on its part herein contained; and in the event the Issuer shall fail to perform any such

agreement, the Obligor may institute such action against the Issuer as the Obligor may deem necessary to compel performance, provided that no such action shall violate the agreements on the part of the Obligor contained herein and the Issuer shall not be required to pay any costs, expenses, damages or any amounts of whatever nature except for amounts received pursuant to this Loan Agreement. Nothing herein shall be construed to impair the Obligor's right to institute an independent action for any claim that it may have against the Issuer, the Bond Trustee, any Bondholder or any other third party. The Obligor may, however, at its own cost and expense and in its own name or in the name of the Issuer, prosecute or defend any action or proceedings or take any other action involving third persons which the Obligor deems reasonably necessary in order to secure or protect this right of possession, occupancy, and use hereunder, and in such event the Issuer hereby agrees to cooperate fully with the Obligor.

## **ARTICLE VI MAINTENANCE AND INSURANCE**

**SECTION 6.1. MAINTENANCE AND MODIFICATIONS OF PROJECT BY OBLIGOR.** The Obligor may, at its own expense, cause to be made from time to time any additions, modifications or improvements to the Project provided such additions, modifications or improvements do not impair the character of the Project as a "project" within the meaning of the Act.

**SECTION 6.2. INSURANCE.** Throughout the term of this Loan Agreement, the Obligor will, at its own expense, provide or cause to be provided insurance against loss or damage to the Project, and the facility, equipment, and assets of the Project, in accordance with the terms of the Bond Indenture.<sup>1</sup>

## **ARTICLE VII SPECIAL COVENANTS<sup>2</sup>**

**SECTION 7.1. NO WARRANTY OF MERCHANTABILITY, CONDITION OR SUITABILITY BY THE ISSUER.** The Issuer makes no warranty, either express or implied, as to the condition of the Project or that the Project will be suitable for the Obligor's purposes or needs. Without limiting the effect of the preceding sentence, it is expressly agreed that in connection with this Loan Agreement (i) the Issuer makes no warranty of merchantability and (ii) there are no warranties which extend beyond the description contained herein.

**SECTION 7.2. RIGHT OF ACCESS TO THE PROJECT.** The Obligor agrees that the Issuer, the Bond Trustee, and any of their duly authorized agents shall have the right at all reasonable times upon reasonable notice to the Obligor to examine and inspect the Project to determine that the Obligor is in compliance with the terms and conditions of this Loan Agreement; provided that any such inspection will be conducted in a manner that will minimize any intrusion on the operations of the Project.

**SECTION 7.3. NONSECTARIAN USE.** The Obligor agrees that no proceeds of the Bonds will be used to construct, acquire or install any portion of the Project which is intended to be used or which is being used for religious or sectarian purposes.

**SECTION 7.4. FURTHER ASSURANCES.** The Issuer and the Obligor agree that they will, from time to time, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, such

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<sup>1</sup> GT: Consider expanding insurance requirements.

<sup>2</sup> Tyree, are you not contemplating incorporating some financial covenants, such as days cash on hand, coverage ratios in addition to reporting requirements to be incorporated in the CDA

supplements hereto and such further instruments as may reasonably be required for carrying out the intention of or facilitating the performance of this Loan Agreement.

#### **SECTION 7.5. INDEMNIFICATION.**

(a) THE OBLIGOR AGREES THAT IT WILL AT ALL TIMES INDEMNIFY AND HOLD HARMLESS EACH OF THE INDEMNIFIED PARTIES AGAINST ANY AND ALL LOSSES, CLAIMS OR EXPENSES DUE TO GOVERNMENTAL AUDITS AND/OR INQUIRIES, INCLUDING LOSSES AS A RESULT OF THE NEGLIGENT ACTS OR OMISSIONS OF ANY INDEMNIFIED PARTY, OTHER THAN LOSSES RESULTING FROM FRAUD, WILLFUL MISCONDUCT OR THEFT ON THE PART OF THE RESPECTIVE INDEMNIFIED PARTY CLAIMING INDEMNIFICATION. THE OBLIGOR ALSO SHALL INDEMNIFY THE BOND TRUSTEE FOR, AND DEFEND AND HOLD IT HARMLESS AGAINST, ANY LOSSES, LIABILITIES, CLAIMS OR DEMANDS OR EXPENSES (INCLUDING ATTORNEYS FEES) INCURRED WITHOUT GROSS NEGLIGENCE OR BAD FAITH ON ITS PART, ARISING OUT OF OR IN CONNECTION WITH THE ACCEPTANCE OR ADMINISTRATION OF THE TRUST CREATED UNDER THE BOND INDENTURE OR THE PERFORMANCE OF ITS DUTIES UNDER THE BOND INDENTURE, INCLUDING THE COSTS AND EXPENSES OF DEFENDING ITSELF AGAINST ANY CLAIM OR LIABILITY IN CONNECTION WITH THE EXERCISE OR PERFORMANCE OF ANY OF ITS POWERS OR DUTIES UNDER THE BOND INDENTURE. THE BOND TRUSTEE MAY ENFORCE ITS RIGHTS UNDER THE PRECEDING SENTENCE AS A THIRD PARTY BENEFICIARY OF THIS LOAN AGREEMENT.

(b) NONE OF THE INDEMNIFIED PERSONS SHALL BE LIABLE TO THE OBLIGOR FOR, AND THE OBLIGOR HEREBY RELEASES EACH OF THEM FROM, ALL LIABILITY TO THE OBLIGOR FOR, ALL INJURIES, DAMAGES OR DESTRUCTION TO ALL OR ANY PART OF ANY PROPERTY OWNED OR CLAIMED BY THE OBLIGOR THAT DIRECTLY OR INDIRECTLY RESULT FROM, ARISE OUT OF OR RELATE TO THE DESIGN, CONSTRUCTION, OPERATION, USE, OCCUPANCY, MAINTENANCE OR OWNERSHIP OF THE PROJECT OR ANY PART THEREOF, EVEN IF SUCH INJURIES, DAMAGES OR DESTRUCTION DIRECTLY OR INDIRECTLY RESULT FROM, ARISE OUT OF OR RELATE TO, IN WHOLE OR IN PART, ONE OR MORE ACTS OR OMISSIONS, INCLUDING ACTS OR OMISSIONS CONSTITUTING GROSS NEGLIGENCE ON THE PART OF ANY INDEMNIFIED PERSON (BUT NOT INCLUDING ACTS OR OMISSIONS CONSTITUTING FRAUD, WILLFUL MISCONDUCT OR THEFT ON THE PART OF THE RESPECTIVE INDEMNIFIED PERSON CLAIMING RELEASE) IN CONNECTION WITH THE ISSUANCE OF THE BONDS OR THE PROJECT.

(c) Each Indemnified Person, as appropriate, shall reimburse the Obligor for payments made by the Obligor pursuant to this Section to the extent of any proceeds, net of all expenses of collection, actually received by it from any other source (but not from the proceeds of any claim against any other Indemnified Person). with respect to any Loss to the extent necessary to prevent a recovery of more than the Loss by such Indemnified Person with respect to such Loss. At the request and expense of the Obligor, each Indemnified Person shall claim or prosecute any such rights of recovery from other sources (other than any claim against another Indemnified Person) and such Indemnified Person shall assign its rights to such rights of recovery from other sources (other than any claim against another Indemnified Person), to the extent of such required reimbursement, to the Obligor.

(d) In case any Claim shall be brought or, to the knowledge of any Indemnified Person, threatened against any Indemnified Person in respect of which indemnity may be sought against the Obligor, such Indemnified Person promptly shall notify the Obligor in writing; provided, however, that any failure so to notify shall not relieve the Obligor of its obligations under this Section.

(e) The Obligor shall have the right to assume the investigation and defense of all Claims, including the employment of counsel and the payment of all expenses. Each Indemnified Person shall have the right to employ separate counsel in any such action and participate in the investigation and defense thereof, but the fees and expenses of such counsel shall be paid by such Indemnified Person unless (i) the employment of such counsel has been specifically authorized by the Obligor in writing, (ii) the Obligor has failed after receipt of notice of such Claim to assume the defense and to employ counsel, or (iii) the named parties to any such action (including any impleaded parties) include both an Indemnified Person and the Obligor, and the Indemnified Person shall have been advised by counsel that there may be one or more legal defenses available to it which are different from or additional to those available to the Obligor (in which case, if such Indemnified Person notifies the Obligor in writing that it elects to employ separate counsel at the Obligor's expense, the Obligor shall not have the right to assume the defense of the action on behalf of such Indemnified Person; provided, however, that the Obligor shall not, in connection with any one action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegation or circumstances, be liable for the reasonable fees and expenses of more than one separate firm of attorneys for the Indemnified Parties, which firm shall be designated in writing by the Indemnified Parties).

(f) Each Indemnified Person shall cooperate with the Obligor, and the Obligor shall cooperate with each Indemnified Person, in the defense of any action or Claim.

(g) The Obligor shall not be liable for any settlement of any action or Claim without the Obligor's consent but, if any such action or Claim is settled with the consent of the Obligor or there be final judgment for the plaintiff in any such action or with respect to any such Claim, the Obligor shall indemnify and hold harmless the Indemnified Persons from and against any Loss by reason of such settlement or judgment to the extent provided in paragraph (a) of this Section.

(h) The provisions of this Section shall survive the termination of this Loan Agreement, and the obligations of the Obligor hereunder shall apply to Losses or Claims under subsection (a) above whether asserted prior to or after the termination of this Loan Agreement or the resignation or removal of the Bond Trustee. In the event of failure by the Obligor to observe the covenants, conditions and agreements contained in this Section, any Indemnified Person may take any action at law or in equity to collect amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Obligor under this Section. The obligations of the Obligor under this Section shall not be affected by any assignment or other transfer by the Issuer of its rights, titles or interests under this Loan Agreement to the Bond Trustee pursuant to the Bond Indenture and will continue to inure to the benefit of the Indemnified Parties after any such transfer. The provisions of this Section shall be cumulative with and in addition to any other agreement by the Obligor to indemnify any Indemnified Person.

**SECTION 7.6. AUTHORITY OF OBLIGOR.** Whenever under the provisions of this Loan Agreement the approval of the Obligor is required, or the Issuer or the Bond Trustee are required to take some action at the request of the Obligor, such approval or such request shall be made by the Obligor unless otherwise specified in this Loan Agreement and the Issuer or the Bond Trustee shall be authorized to act on any such approval or request and the Obligor shall have no complaint against the Issuer or the Bond Trustee as a result of any action taken.

**SECTION 7.7. AUTHORITY OF ISSUER REPRESENTATIVE.** Whenever under the provisions of this Loan Agreement the approval of the Issuer or the Bond Trustee are required, or the Obligor is required to take some action at the request of the Issuer, such approval or such request shall be made by the Issuer Representative unless otherwise specified in this Loan Agreement and the Obligor or the Bond Trustee shall be authorized to act on any such approval or request and the Issuer shall have no complaint against the Obligor or the Bond Trustee as a result of any such action taken.

**SECTION 7.8. NO PERSONAL LIABILITY.** No obligations contained in the Bonds, the Bond Indenture or this Loan Agreement shall be deemed to be the obligations of any officer, director, member, trustee, agent or employee of the Issuer, the City, the County, the Bond Trustee or the Obligor in his or her individual capacity, and neither the governing body of the Obligor or the Bond Trustee, any official of the Issuer, the County, nor any official of the Issuer executing the Bonds, the Bond Indenture or this Loan Agreement shall be liable personally thereon or be subject to any personal liability or accountability with respect thereto.

**SECTION 7.9. FEES AND EXPENSES.** The Obligor agrees to pay promptly upon demand therefor all costs paid, incurred or charged by the Issuer in connection with the Bonds, including without limitation, (i) all fees required to be paid to the Issuer with respect to the Bonds, (ii) all out of pocket expenses and Costs of Issuance (including reasonable fees and expenses of attorneys employed by the Issuer) reasonably incurred by the Issuer in connection with the issuance of the Bonds, and (iii) all out of pocket expenses (including reasonable fees and expenses of attorneys employed by the Issuer) reasonably incurred by the Issuer in connection with the enforcement of any of its rights or remedies or the performance of its duties under the Bond Indenture or this Loan Agreement or in connection with any governmental inquiry and/or audit in connection with the Bonds.

**SECTION 7.10. RESERVED.**

**SECTION 7.11. RELIANCE; RECORDKEEPING; EXPENDITURES OF ISSUER.** (a) The Issuer and the Obligor hereby recognize and agree that the representations and covenants set forth in this Agreement may be relied upon by all persons interested in the legality and validity of the Bonds including, without limitation, the Trustee. In performing their duties and obligations hereunder, the Issuer and the Trustee may rely upon statements and certificates of the Obligor reasonably believed to be genuine and upon audits of the books and records of the Obligor pertaining to the Project. In addition, the Issuer and the Trustee may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Issuer or the Trustee hereunder in good faith and in conformity with the opinion of such counsel. In determining whether any default or lack of compliance by the Obligor exists under this Agreement, neither the Trustee nor the Issuer shall be required to conduct any investigation into or review of the operations or records of the Obligor and may rely solely upon any notice or certificate delivered to the Trustee or the Issuer by the Obligor with respect to the occurrence or absence of a default.

## **ARTICLE VIII FAILURE TO PERFORM COVENANTS AND REMEDIES THEREFOR**

**SECTION 8.1. FAILURE TO PERFORM COVENANTS.** Upon failure of the Obligor to pay when due any payment (other than failure to make any payment on the Note, which default shall have no grace period) required to be made under this Loan Agreement or to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, and continuation of such failure for a period of sixty (60) days (thirty (30) days in the case of the failure to observe and perform any covenant, condition or agreement pertaining to Reserved Rights) after written notice, specifying such failure and requesting that it be remedied, is given to the Obligor by the Issuer or the Bond Trustee, the Issuer or the Bond Trustee shall have the remedies provided in Section 9.2 hereof.

**SECTION 8.2. REMEDIES FOR FAILURE TO PERFORM.** Upon the occurrence of a failure of the Obligor to perform as provided in Section 9.1 and Section 8.01 of the Bond Indenture, hereof, the Bond Trustee, as assignee of the Issuer, upon compliance with all applicable law and the terms and provisions of the Bond Indenture, may take any one or more of the following actions:

(a) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Issuer, and require the Obligor to carry out any agreements with or for the benefit of the Bondholders and to enforce performance and observance of any duty, obligation, agreement or covenant of the Obligor under the Act or this Loan Agreement; or

(b) by action or suit in equity require the Obligor to account as if it were the trustee of an express trust for the Issuer; or

(c) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer;

(d) 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; or

(e) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Bond Trustee and the Bondholders, and require the Issuer to carry out the agreement with or for the benefit of the Bondholders and to perform its or their duties under the Act or the Bond Indenture; or

(f) direct the [Trustee] as beneficiary of the Deed of Trust to direct the trustee under the Deed of Trust to foreclose on, or exercise such other rights available under, the Deed of Trust.

**SECTION 8.3. DISCONTINUANCE OF PROCEEDINGS.** In case any proceeding taken by the Bond Trustee, as assignee of the Issuer, on account of any failure to perform under Section 9.1 shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Issuer or the Bond Trustee, then and in every case the Issuer and the Bond Trustee shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Issuer and the Bond Trustee shall continue as though no such proceeding had been taken.

**SECTION 8.4. NO REMEDY EXCLUSIVE.** No remedy herein conferred upon or reserved to the Bond Trustee, as assignee of the Issuer, is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Bond Trustee to exercise any remedy reserved to it in this Article IX, it shall not be necessary to give any notice, other than notice required in Section 9.1 hereof. Such rights and remedies given hereunder to the Bond Trustee, as assignee of the Issuer, shall also extend to the holders of the Bonds, subject to the terms and conditions set forth in the Bond Indenture.

**SECTION 8.5. AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES.** In the event the Issuer or the Bond Trustee should employ attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the Obligor herein or in the Bond Indenture contained, the Obligor agrees that it will on demand therefor pay to the Issuer or the Bond Trustee, as the case may be, the reasonable fees of such attorneys and such other expenses reasonably and incurred by the Issuer or the Bond Trustee.

**SECTION 8.6. WAIVERS.** In the event any agreement contained in this Loan Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach waived and shall not be deemed to waive any other breach hereunder. In view of the

assignment of the Issuer's rights in and under this Loan Agreement to the Bond Trustee under the Bond Indenture, the Issuer shall have no power to waive any failure to perform under Section 9. I hereunder without the consent of the Bond Trustee (other than a failure to observe the covenants pertaining to Reserved Rights, which may be waived by the Issuer without the consent of the Bond Trustee).

**SECTION 8.7. ENFORCEMENT OF RESERVED RIGHTS BY ISSUER.** Notwithstanding anything in this Agreement to the contrary, the Issuer shall have the right to independently enforce the Reserved Rights and shall not be required to obtain the consent of the Trustee, the Owners or any other person or entity in order to enforce any of the Reserved Rights.

**ARTICLE IX  
ARTICLE X PREPAYMENT OF NOTES**

**SECTION 9.1. PREPAYMENT OF THE NOTE.** The Obligor shall have and is hereby granted the option to prepay the Note subject to and consistent with the provision of the extraordinary redemption of the Bonds as provided for in the Bond Indenture.<sup>3</sup>

**SECTION 9.2. CONDITIONS TO EXERCISE OF OPTION.** To exercise the option granted in Section 10.1 hereof, the Obligor shall give written notice to the Bond Trustee consistent with the terms of the Bond Indenture and Section 10.1 hereof.

**ARTICLE X  
MISCELLANEOUS**

**SECTION 10.1. NOTICES.** 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 respective address provided for below upon any of the following dates:

- (a) The date of notice by facsimile, electronic mail or similar communication, which is confirmed promptly in writing;
- (b) 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;
- (c) The date of the receipt thereof by such other party if not given pursuant to (a) or (b) above.

The address for notice for each of the parties shall be as follows (which address may be changed from time to time by a party by delivery of notice of such change to the other party and to the Bond Trustee in accordance with this Section):

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

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<sup>3</sup> Confirm this works for CAB structure.

Phone: 901-259-7100  
Facsimile: 901-259-7180  
Email: markb@farris-law.com

Obligor<sup>4</sup>: Distilled Spirits, Inc.  
[ADDRESS]  
Memphis, TN  
Telephone:  
Facsimile:

Bond Counsel: 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  
[Address]  
Nashville, Tennessee  
Attention:  
Telephone:  
Facsimile:

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

**SECTION 10.2. BINDING EFFECT.** This Loan Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Obligor, and their respective successors and assigns, subject, however, to the limitations contained in Sections 8.1, 8.2 and 11.9 hereof.

**SECTION 10.3. SEVERABILITY.** In the event any provision of this Loan Agreement 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 10.4. AMOUNTS REMAINING IN FUNDS.** It is agreed by the parties hereto that any amounts remaining in the Costs of Issuance Fund, Bond Fund, the Reserve Fund and the Project Fund upon expiration or sooner termination of this Loan Agreement, after payment in full of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Bond Indenture), the fees, charges, and expenses of the Bond Trustee, the Issuer and the Paying Agent in accordance with the Bond Indenture, the Administration Expenses and all other amounts required to be paid under this Loan Agreement and the Bond Indenture, shall belong to and be paid to the Obligor by the Bond Trustee or the Issuer.

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<sup>4</sup> Obligor counsel?

**SECTION 10.5. AMENDMENTS, CHANGES, AND MODIFICATIONS.** Except as otherwise provided in this Loan Agreement or in the Bond Indenture, subsequent to the initial issuance of the Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Bond Indenture), this Loan Agreement may not be effectively amended, changed, modified, altered, or terminated without the written consent of the Bond Trustee in accordance with the Bond Indenture.

**SECTION 10.6. EXECUTION IN COUNTERPARTS.** This Loan Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 10.7. PAYMENT.** At such time as the principal of, premium, if any, and interest on all Bonds Outstanding under the Bond Indenture shall have been paid, or shall be deemed to be paid, in accordance with the Bond Indenture, and all other sums payable by the Obligor under this Loan Agreement shall have been paid, the Notes shall be deemed to be fully paid and shall be delivered by the Bond Trustee to the Obligor.

**SECTION 10.8. GOVERNING LAW.** This Loan Agreement shall be governed and construed in accordance with the law of the State of Tennessee.

**SECTION 10.9. NO PECUNIARY LIABILITY OF ISSUER.** No provision, covenant, or agreement contained in this Loan Agreement, or any obligations herein imposed upon the Issuer, or the breach thereof, shall constitute an indebtedness of the Issuer within the meaning of any Tennessee constitutional provision or statutory limitation or shall constitute or give rise to a pecuniary liability of the Issuer or a charge against its general credit. In making the agreements, provisions, and covenants set forth in this Loan Agreement, the Issuer has not obligated itself except with respect to the application of the revenues, income, and all other property therefrom, as hereinabove provided. 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.

**SECTION 10.10. PAYMENTS DUE ON NON-BUSINESS DAYS.** If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Loan Agreement, shall not be 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 Loan Agreement.

**SECTION 10.11. NO INDIVIDUAL LIABILITY.** No covenant or agreement contained in this Loan Agreement or the Bond Indenture shall be deemed to be the covenant or agreement of any past, present or future member of the governing body of the Issuer, the Obligor, the City, the County, or the Bond Trustee or of any past, present or future officer, director, trustee, agent or employee of the Issuer, the Bond Trustee, the Obligor, the City or the County, in his or her individual capacity, and none of such persons shall be subject to any personal liability or accountability by reason of the execution hereof, whether by virtue of

any constitution, statute or rule of law, or by the enforcement or any assessment or penalty, or otherwise it being expressly agreed and understood that the Bonds and this Agreement are solely corporate obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any such persons under or by reason of any of the obligations, promises or agreements entered into between the Issuer and the Obligor whether contained in this Agreement or to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such persons is, by the execution of this Agreement, and as a condition of, and as part of the consideration for, the execution of this Agreement, expressly waived and released.

**SECTION 10.12. SURVIVAL OF COVENANTS.** All covenants, agreements, representations and warranties made by the Obligor in this Loan Agreement, the Bond Indenture, the Note and the Bonds, and in any certificates or other documents or instruments delivered pursuant to this Loan Agreement or the Bond Indenture, shall survive the execution and delivery of this Loan Agreement, and the Bond Indenture and the Note and shall continue in full force and effect until the Bonds and the Note are paid in full and all of the Obligor's other payment obligations (including without limitation the indemnification obligation under Section 7.5 hereof and the obligations under Sections 5.5, 5.7 and 9.5 hereof) under this Loan Agreement, the Bond Indenture, the Note and the Bonds are satisfied. All such covenants, agreements, representations and warranties shall be binding upon any successor and assigns of the Obligor.

**IN WITNESS WHEREOF**, the Issuer and the Obligor have caused this Loan Agreement to be executed in their respective corporate names, 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

**DISTILLED SPIRITS, INC.**

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

**EXHIBIT A**  
**PROJECT DESCRIPTION**

**EXHIBIT B**

**FORM OF REQUISITION FOR PROJECT FUND DISBURSEMENT**

Regions Bank  
[ADDRESS]  
Nashville, Tennessee  
Phone:  
Attention:

Re: 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.), Series 2021

Ladies and Gentlemen:

Reference is made to the Indenture of Trust, dated as of \_\_\_\_\_, 2021 (the "**Bond Indenture**"), between Regions Bank, as trustee (the "**Trustee**") and the Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee ("**Issuer**"). Reference is also made to the Loan Agreement, dated as of \_\_\_\_\_, 2021 (the "Loan Agreement"), between the Issuer and Distilled Spirits, Inc. (the "**Obligor**"), relating to the above-captioned bonds (the "**Bonds**"). Initially capitalized terms used herein shall have the meanings specified for them in the Loan Agreement.

1. As Trustee, you are requested to disburse funds from the Project Fund pursuant to Section 3.06 of the Bond Indenture in the amount(s), to the person(s) and for the purpose(s) set forth on Schedule I attached hereto and incorporated herein by reference. An invoice or other appropriate evidence of the obligations described on Schedule I is attached hereto.

2. The undersigned certifies that:

(i) there has been received no notice (A) of any lien, right to lien or attachment upon, or claim affecting the right of the payee to receive payment of, any of the moneys payable under this Requisition to any of the persons, firms or corporations named therein, and (B) that any materials, supplies or equipment covered by this Requisition are subject to any lien or security interest, or if any notice of any such lien, attachment, claim or security interest has been received, such lien, attachment, claim or security interest has been released, discharged, insured or bonded over or will be released, discharged, insured or bonded over upon payment of this Requisition;

(ii) this Requisition contains no items representing payment on account of any percentage entitled to be retained at the date of this Requisition;

(iii) the obligation stated on this Requisition has been incurred in connection with the acquisition, construction or equipping of the Project, each item is a proper charge against the Project Fund, and the obligation has not been the basis for a prior Requisition that has been paid;

(iv) this Requisition contains no items representing any Costs of Issuance or any other amount constituting an issuance cost under Section 147(g) of the Code;

(v) not less than 95% of the sum of: (A) the amounts requisitioned by this Requisition to be funded with the proceeds of the Bonds plus (B) all amounts allocated to the Bonds previously

disbursed from the Project Fund, have been or will be applied by the Obligor to pay Costs of the Project;

(vi) as of the date hereof no event or condition has happened or is happening or exists that constitutes, or that with notice or lapse of time or both, would constitute, an Event of Default under the Bond Indenture or under the Loan Agreement; and

(vii) nothing has come to the attention of the undersigned that would cause it to conclude that the representations and warranties contained in the Loan Agreement and the Bond Indenture are not true and correct as of the date hereof.

Dated: \_\_\_\_\_

**DISTILLED SPIRITS, INC.**

By: \_\_\_\_\_  
Authorized Officer

**Schedule I**

[Description of Project Costs]

**EXHIBIT C**

**FORM OF REQUISITION FOR COST OF ISSUANCE DISBURSEMENT**

Regions Bank  
[ADDRESS]  
Nashville, Tennessee 37201  
Phone:  
Attention:

Re: The Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee (Distilled Spirits, Inc., Project), Series 2021

Ladies and Gentlemen:

Reference is made to the Bond Indenture, dated as of \_\_\_\_\_, 2021 (the "**Bond Indenture**"), between Regions Bank, as trustee (the "**Trustee**") and the Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee ("**Issuer**"). Reference is also made to the Loan Agreement, dated as of \_\_\_\_\_, 2021 (the "Loan Agreement"), between the Issuer and Distilled Spirits, Inc. (the "**Obligor**"), relating to the above-captioned bonds (the "**Bonds**"). Initially capitalized terms used herein shall have the meanings specified for them in the Loan Agreement.

The Bond Trustee is hereby authorized and directed to make payment from the Costs of Issuance Fund as specified in Schedule I attached hereto. The undersigned authorized representative of the Obligor hereby certifies to you in connection with the amount for which payment is requested by this requisition, as follows:

1. The obligations as set forth on this requisition were incurred in connection with the issuance of the Bonds;
2. All previous disbursements, if any, made pursuant to Section 4.6 of the Loan Agreement have been expended for Costs of Issuance described in prior requisitions, if any, submitted by the authorized representative of the Obligor;
3. This requisition is for costs that were properly incurred and are proper charges against the Costs of Issuance Fund;
4. The expenditures of the amount requested under this requisition, when added to all disbursements under previous requisitions, will result in no more than two percent (2%) of the aggregate face amount of the Bonds being used for payment of Costs of Issuance related to the Bonds;
5. Nothing has come to the attention of the Obligor that would cause it to conclude that the representations and warranties contained in the Loan Agreement are not true and correct as of the date hereof; and
6. No event has occurred and is continuing which constitutes an Event of Default under the Bond Indenture or the Loan Agreement.

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

**DISTILLED SPIRITS, INC.**

By: \_\_\_\_\_  
Authorized Officer

**Schedule I**

[Description of Costs of Issuance]

**EXHIBIT D**

**FORM OF CERTIFICATE OF COMPLETION OF THE PROJECT**

Regions Bank  
[ADDRESS]  
Nashville, Tennessee 37201  
Phone:  
Attention:

Re: The Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee (Distilled Spirits, Inc., Project), Series 2021

Ladies and Gentlemen:

References is made to of the Loan Agreement, dated as of \_\_\_\_\_, 2021 (the "Loan Agreement"), between The Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee (the "Issuer"). and Distilled Spirits, Inc. (the "Obligor"), relating to the above-captioned bonds (the "Bonds"). Terms used in this certificate shall have the meanings specified for them in the Loan Agreement. Reference is also made to the Indenture of Trust, dated as of \_\_\_\_\_, 2021 (the "Bond Indenture"), between the Issuer and U.S. Bank National Association (the "Bond Trustee"), providing for the issuance of the Bonds.

This Certificate of Completion is delivered to you in connection with Sections 3.06(e) of the Bond Indenture and in connection with the transfer of funds from the Project Fund to the Bond Fund.

The undersigned authorized representative of the Obligor hereby certifies to you as follows:

1. As of the date written below the Project has reached completion;
2. No further obligations shall be stated on a Requisition after the date written below that has been incurred in or about the acquisition, construction or equipping of the Project that would require disbursements from the Project Fund;
3. On and after the date written below amounts currently on deposit in the Project Fund may be transferred to the Bond Fund pursuant to Section 3.06(e) of the Bond Indenture.
4. Nothing has come to the attention of the Obligor that would cause it to conclude that the representations and warranties contained in the Loan Agreement and the Bond Indenture are not true and correct as of the date hereof; and
5. No event has occurred and is continuing which constitutes an Event of Default under the Bond Indenture or the Loan Agreement.

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

**DISTILLED SPIRITS, INC.**

By: \_\_\_\_\_  
Authorized Officer

\*To be accompanied by a certificate of an independent consultant certifying that the Project has been built in accordance with the approved plans and specifications and all permits, licenses and d authorizations necessary for the operation of the facility have been obtained and listing the same.

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