

**SERIES 2018B LEASE AGREEMENT**

Between

**LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, KENTUCKY**

and

**BROWN-FORMAN DISTILLERY, INC.**

**UP TO \$4,250,000**

**LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, KENTUCKY,  
INDUSTRIAL BUILDING REVENUE BONDS, SERIES 2018B  
(BROWN-FORMAN WHISKEY ROW PROJECT)**

Dated as of

**[Closing Date]**

The Interest Of The Louisville/Jefferson County Metro Government, Kentucky In This  
Series 2018B Lease Agreement Has Been Assigned To  
Washington Investments, LLC

## TABLE OF CONTENTS

(This Table of Contents is not a part of this Series 2018B Lease Agreement,  
but is for convenience of reference only.)

RECITALS .....	1
ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION.....	2
Section 1.01.    Definitions .....	2
ARTICLE II REPRESENTATIONS AND WARRANTIES.....	8
Section 2.01.    Representations And Warranties Of The Issuer .....	8
Section 2.02.    Representations, Agreements, And Warranties Of The Company .....	9
Section 2.03.    Further Representations, Warranties, Covenants, And Agreements Binding On Issuer And Company .....	10
Section 2.04.    Representations And Covenants For Benefit Of Bondholders .....	11
ARTICLE III ISSUANCE OF BONDS; APPLICATION OF BOND PROCEEDS; THE PROJECT	11
Section 3.01.    Agreement To Issue The Series 2018B Bonds; Application Of Series 2018B Bond Proceeds .....	11
Section 3.02.    Authorization To Servicing Agent To Disburse From Construction Fund .....	11
Section 3.03.    Title To And Acquisition And Construction Of Project .....	11
Section 3.04.    Improvements; Assignment Of Warranties .....	13
Section 3.05.    Establishment Of Completion Date .....	13
Section 3.06.    Agreement As To Ownership Of Project .....	13
Section 3.07.    Financing Of Additional Facilities .....	14
Section 3.08.    Advances Of Series 2018B Bond Proceeds; Disbursements From Construction Fund .....	14
Section 3.09.    Company Required To Pay If Construction Fund Insufficient.....	15
ARTICLE IV LEASE OF PROJECT; AMOUNTS PAYABLE .....	16
Section 4.01.    Lease Of Project .....	16
Section 4.02.    Rent And Other Amounts Payable .....	16
Section 4.03.    Payments Assigned.....	17
Section 4.04.    Obligations Of Company Unconditional; Exception .....	17
Section 4.05.    Credits Against Rentals.....	18
ARTICLE V DAMAGE, DESTRUCTION, AND CONDEMNATION .....	18
Section 5.01.    Damage, Destruction, And Condemnation.....	18

ARTICLE VI SPECIAL COVENANTS AND AGREEMENTS.....	19
Section 6.01.    No Warranty Of Condition Or Suitability By Issuer.....	19
Section 6.02.    Access To Project.....	19
Section 6.03.    Further Assurances And Corrective Instruments .....	19
Section 6.04.    Issuer And Authorized Company Representatives .....	19
Section 6.05.    Financing Statements.....	19
Section 6.06.    Company To Maintain Its Corporate Existence; Conditions Under Which Exceptions Permitted.....	20
Section 6.07.    Maintenance Of Project; Permits; Maintenance And Modifications.....	20
Section 6.08.    Taxes And Other Governmental Charges .....	20
Section 6.09.    Insurance .....	21
Section 6.10.    Liens; Contests.....	22
Section 6.11.    Easements And Other Rights .....	23
Section 6.12.    Modifications Of Project.....	23
Section 6.13.    Release Of Portions Of Project Site .....	23
Section 6.14.    Removal Of Project Facilities.....	24
Section 6.15.    Project Facilities List .....	24
Section 6.16.    Environmental Use Of Project.....	24
Section 6.17.    Notice Of Proposed Plan Or Petition .....	26
Section 6.18.    Rights Related To Annexation.....	27
ARTICLE VII ASSIGNMENT OR SUBLEASE; INDEMNIFICATION; REDEMPTION .....	27
Section 7.01.    Assignment .....	27
Section 7.02.    Release And Indemnification Covenants .....	28
Section 7.03.    Redemption Of Series 2018B Bonds.....	29
Section 7.04.    Issuer To Grant Security Interest To Servicing Agent .....	29
ARTICLE VIII DEFAULTS AND REMEDIES.....	30
Section 8.01.    Defaults Defined.....	30
Section 8.02.    Remedies On Default.....	31
Section 8.03.    No Remedy Exclusive.....	31
Section 8.04.    Agreement To Pay Attorneys' Fees And Expenses.....	31
Section 8.05.    No Additional Waiver Implied By One Waiver .....	32
ARTICLE IX OPTION TO TERMINATE AGREEMENT; PURCHASE OF PROJECT BY COMPANY .....	32

Section 9.01.	Option To Terminate At Any Time .....	32
Section 9.02.	Company’s Option To Purchase Project .....	32
Section 9.03.	Conveyance Of Project .....	33
Section 9.04.	Obligation To Purchase Project .....	33
Section 9.05.	Company Entitled To Certain Rent Abatements If Series 2018B Bonds Paid Before Maturity .....	33
ARTICLE X MISCELLANEOUS .....		34
Section 10.01.	Term Of Agreement .....	34
Section 10.02.	Notices .....	34
Section 10.03.	Binding Effect .....	35
Section 10.04.	Severability .....	35
Section 10.05.	Amounts Remaining In Funds .....	35
Section 10.06.	Amendments, Changes, And Modifications .....	35
Section 10.07.	Execution In Counterparts .....	35
Section 10.08.	Signatures .....	35
Section 10.09.	Applicable Law .....	35
Section 10.10.	Captions .....	36
Section 10.11.	Approval Of Assignment .....	36
Section 10.12.	Limitation Of Issuer’s Liability .....	36
Section 10.13.	Payments Due On Saturdays, Sundays, And Holidays .....	36
Section 10.14.	Entire Agreement .....	36
<b>EXHIBIT A – Project Site Description</b>		
<b>EXHIBIT B – Project Description</b>		

## SERIES 2018B LEASE AGREEMENT

This **SERIES 2018B LEASE AGREEMENT** dated as of [Closing Date], is made and entered into by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, KENTUCKY**, a consolidated local government and political subdivision of the Commonwealth of Kentucky, as lessor, whose address is 601 West Jefferson Street, Louisville, Jefferson County, Kentucky 40202, Attention: Jefferson County Attorney, and **BROWN-FORMAN DISTILLERY, INC.**, a Delaware corporation, as lessee, whose address is 850 Dixie Highway, Louisville, Jefferson County, Kentucky 40210, Attention: General Counsel.

### WITNESSETH

**WHEREAS**, all capitalized terms used in this preamble shall have the meanings set forth in ARTICLE I of this Series 2018B Lease Agreement, unless the context or use clearly indicates another meaning or intent; and

**WHEREAS**, the Act authorizes the Issuer to issue industrial revenue bonds and to make the proceeds thereof available to a corporation for the purpose of financing industrial building facilities as defined in the Act, such bonds being payable from the revenues derived from the Issuer's leasing of such facilities to the corporation; and, under the Act, the financing of industrial buildings constitutes a public purpose; and

**WHEREAS**, the Issuer has found and determined, and hereby finds and determines, that the issuance by the Issuer of the Series 2018B Bonds in order to finance the industrial building facilities and properties comprising the Project will assist in creating substantial new employment opportunities in, and will promote the economic development of, the Issuer and the Commonwealth and will be consistent with and in furtherance of the purposes of the Act; and

**WHEREAS**, the Company and the Issuer have full right and lawful authority to enter into this Series 2018B Lease Agreement and to perform and observe the provisions hereof on their part to be performed and observed; and

**WHEREAS**, this Series 2018B Lease Agreement provides for the financing of the Project by application of the proceeds of the Series 2018B Bonds and the leasing of the Project to the Company for rentals sufficient to pay debt service on (and the redemption price of) the Series 2018B Bonds when due.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto covenant, agree, and bind themselves as follows; provided, that any obligation of the Issuer created by or arising out of this Series 2018B Lease Agreement shall never constitute a general obligation of or a pledge of the faith, credit, or taxing power of the Issuer, the Commonwealth, or any political subdivision of the Commonwealth but shall be payable solely out of the Pledged Receipts, anything herein contained to the contrary by implication or otherwise notwithstanding:

**ARTICLE I**  
**DEFINITIONS AND RULES OF CONSTRUCTION**

**Section 1.01. Definitions.** The capitalized terms used in this Series 2018B Lease Agreement shall have the meanings set forth below unless the context requires otherwise. Capitalized terms used herein, but not defined herein shall have the meanings provided by the Bond Purchase Agreement.

“**Act**” means Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes, as amended and in full force on the date of execution of this Series 2018B Lease Agreement.

“**Series 2018B Assignment**” means the Assignment of Series 2018B Lease Agreement dated as of [Closing Date] from the Issuer to the Purchaser, and any permitted amendments or supplements thereto.

“**Authorized Company Representative**” means the person or persons at the time designated to act on the Company’s behalf by written certificate furnished to the Issuer and the Servicing Agent containing the specimen signature or signatures of such person or persons and signed on the Company’s behalf by its duly-authorized representative. Such certificate may designate an alternate or alternates.

“**Authorized Issuer Representative**” means the person or persons at the time designated to act on the Issuer’s behalf by written certificates furnished to the Company and the Servicing Agent containing the specimen signature or signatures of such person or persons and signed on the Issuer’s behalf by its Mayor or Metro Council Clerk. Such certificate may designate an alternate or alternates.

“**Bills of Sale**” means one or more bills of sale transferring title of one or more components of the Project or the Project Site from the Company to the Issuer.

“**Bond Counsel**” means Stoll Keenon Ogden PLLC, a Kentucky professional limited liability company.

“**Bond Documents**” means the Series 2018B Bonds, the Bond Purchase Agreement, this Series 2018B Lease Agreement, the Series 2018B PILOT Agreement, the Bond Legislation, and the Series 2018B Assignment.

“**Bond Fund**” has the meaning provided in ARTICLE I of the Bond Purchase Agreement.

“**Bond Legislation**” means Ordinance No. [Ordinance Number] adopted by the Issuer’s Legislative Body on [Second Reading Date] and any permitted amendments or supplements thereto.

“**Bond Purchase Agreement**” means the Bond Purchase Agreement dated as of [Closing Date] by and among the Issuer, the Company, the Purchaser, and the Servicing Agent and any permitted amendments or supplements hereto.

“**Bondholder**” means the Purchaser and any subsequent person in whose name any Series 2018B Bond(s) is registered.

“**Bond Service Charges**” means all payments of principal and interest on the Series 2018B Bonds, together with any other payments owed to the Bondholder pursuant to the requirements of the Bond Documents.

“**Business Day**” means a day that is not (a) a Saturday, Sunday, or legal holiday on which banking institutions in the Commonwealth or the State of New York are authorized by law to close, or (b) a day on which the New York Stock Exchange is closed.

“**Clerk**” means the Metro Council Clerk of the Issuer.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Commonwealth**” means the Commonwealth of Kentucky.

“**Company**” means Brown-Forman Distillery, Inc., a Delaware corporation having a principal office address of 850 Dixie Highway, Louisville, Kentucky 40210, together with its successors or assigns.

“**Company Documents**” means this Series 2018B Lease Agreement, the Bond Purchase Agreement, the Series 2018B PILOT Agreement, and any permitted amendments or supplements hereto or thereto.

“**Completion Date**” means the date established pursuant to a certificate of an Authorized Company Representative pursuant to Section 3.05 hereof. Notwithstanding any other provision herein, the Completion Date shall be a Business Day occurring on or before December 31, 2019.

“**Construction Fund**” means the fund so designated that is established pursuant to Section 5.01(b) of the Bond Purchase Agreement.

“**Control Group**” has the same meaning as “controlled group of corporations” provided in Code Section 1563.

**“Costs of Construction”** shall be deemed to include the following costs with respect to the Project which are either (a) charged, or (b) with or but for a proper election may be charged, by the Company to a capital account:

- (i) the costs of improving the Project Site and obligations of the Company incurred for labor, property, and materials (including reimbursements payable to the Company and payments on contracts in the Company’s name) in connection with the acquisition, construction, installation, and equipping of the Project (including capitalization of interest on the Series 2018B Bonds or interest costs incurred in respect of any interim financing of the Project);
- (ii) the costs of contract bonds and of insurance of all kinds that may be necessary or desirable during the course of construction, acquisition, installation, and equipping of the Project;
- (iii) all costs of engineering services, including the costs of the Company for test borings, surveys, estimates, plans, and specifications, and preliminary investigation therefor, and for supervising construction, as well as for the performance of all other duties required by or consequent upon the proper construction of the Project;
- (iv) all costs and expenses incurred in connection with the issuance and sale of any Series 2018B Bonds, including compensation and expenses of the Servicing Agent, legal expenses and fees, rating agency fees, financial advisory fees, underwriting fees and compensation, printing, engraving, and photocopying costs, and recording and filing fees;
- (v) all other costs which the Company has paid or shall be required to pay, under the terms of any contract or contracts for the acquisition, construction, installation, and equipping of the Project;
- (vi) any sums required to reimburse the Issuer or the Company for advances made by either of them for any of the above items, including sales taxes and other taxes and fees, or for any other costs incurred for work done by either of them which are properly chargeable to the Project; and
- (vii) to the extent authorized by the Act, all other items related to the acquisition, construction, installation, and equipping of the Project, the costs of which are, or with or but for a proper election



by the Company, may be, charged to a capital account on the Company's books.

**"Deeds"** means one or more deeds to be recorded in the records of the office of the Metro Council Clerk of the Louisville/Jefferson County Metro Government, Kentucky and transferring title of one or more components of the Project or the Project Site from the Company to the Issuer.

**"Default"** has the meaning provided in Section 8.01 hereof.

**"Defaults"** means any of the events described in Section 8.01 hereof.

**"Expenses"** has the meaning provided in Section 6.16 hereof.

**"Force Majeure"** means without limitation acts of God; strikes or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the Commonwealth or of any of their departments, agencies, or officials, or of any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accident to machinery, transmission pipes, or canals; and any other cause or event not reasonably within the Company's control.

**"Industrial Building"** means those real or personal properties, or a combination thereof, which constitute an "industrial building" as such term is defined in the Act.

**"Instruments"** has the meaning provided in Section 6.11 hereof.

**"Interest Payment Date"** means (a) each December 19<sup>th</sup> beginning (and including) December 19, 2019 and ending December 19, 2047, and (b) the Maturity Date.

**"Issuer"** means the Louisville/Jefferson County Metro Government, Kentucky, a consolidated local government and political subdivision of the Commonwealth.

**"Hazardous Materials"** has the meaning provided in Section 6.16 hereof.

**"Series 2018B Lease Agreement"** means this Series 2018B Lease Agreement dated as of [Closing Date] by and between the Issuer and the Company, as assigned to the Purchaser pursuant to the Series 2018B Assignment, and any permitted amendments or supplements thereto.

**"Legislative Body"** means the Metro Council of the Issuer.

**"Maturity Date"** means April 1, 2048.

**“Net Proceeds”**, when used with respect to any insurance proceeds or any condemnation award, means the amount remaining after deducting all expenses (including attorneys’ fees) incurred in the collection of such proceeds or award from the gross proceeds thereof.

**“Obligations”** means the Company’s obligations to the Issuer under the terms of this Series 2018B Lease Agreement.

**“Outstanding”**, in connection with Series 2018B Bonds means, as of the time in question, all Series 2018B Bonds authenticated and delivered under the Bond Purchase Agreement, except:

- (i) Series 2018B Bonds cancelled upon surrender, exchange, or transfer, or cancelled because of payment or redemption at or before that time;
- (ii) Series 2018B Bonds, or the portion thereof, for the payment, redemption, or purchase for cancellation of which sufficient moneys have been deposited and credited with the Servicing Agent on or before that date for that purpose (whether upon or before the maturity or redemption date of those Series 2018B Bonds); provided, that if any of those Series 2018B Bonds are to be redeemed before their maturity, notice of that redemption shall have been given or arrangements satisfactory to the Servicing Agent shall have been made for giving notice of that redemption, or waiver by the Bondholder of that notice satisfactory in form to the Servicing Agent shall have been filed with the Servicing Agent; and
- (iii) Series 2018B Bonds, or the portion thereof, which are deemed to have been paid and discharged.

**“Payment in Full of the Series 2018B Bonds”** means the first date when all principal of and interest on the Series 2018B Bonds shall have been paid in full, or amounts sufficient and available therefore shall have been deposited in the Bond Fund.

**“Plans and Specifications”** means the plans and specifications for the Project on file, and available for inspection by the Issuer and the Servicing Agent, at the Company’s Principal Office, as the same may be changed from time to time.

**“Pledged Receipts”** means (i) any and all Rent Payments under this Series 2018B Lease Agreement, (ii) all other moneys received by the Issuer, the Bondholder, or the Servicing Agent for the Issuer’s account, in respect of this

Series 2018B Lease Agreement or the Project, except certain expense, reimbursement, and indemnity payments which are, pursuant to the provisions of this Series 2018B Lease Agreement, to be made by the Company directly to the Issuer or the Servicing Agent, (iii) unexpended proceeds derived from the sale of the Series 2018B Bonds in the Construction Fund, and (iv) the income and profit from the investment of any moneys while held in the Bond Fund or the Construction Fund. Nothing herein shall be construed as requiring the Issuer to use or apply to the payment of Bond Service Charges any revenues from any source other than Pledged Receipts.

**“Principal Office”** means 850 Dixie Highway, Louisville, Kentucky 40210.

**“Project”** has the meaning provided in **EXHIBIT B** attached hereto.

**“Project Site”** means the real estate and interests in real estate constituting the site of the Project, as described in **EXHIBIT A** attached hereto.

**“Purchaser”** means Washington Investments, LLC, a Kentucky limited liability company having a principal office address of 626 W. Main Street, Louisville, Kentucky 40202.

**“Rent Payments”** has the meaning provided in Section 4.02(a) hereof.

**“Servicing Agent”** means Washington Investments, LLC, a Kentucky limited liability company having a principal office address of 626 W. Main Street, Louisville, Kentucky 40202, together with its successors or assigns.

**“Series 2018B Bonds”** means the bond or bonds issued by the Issuer pursuant to the Bond Legislation in an aggregate maximum par amount of \$4,250,000 and designated “Industrial Building Revenue Bonds, Series 2018B (Brown-Forman Whiskey Row Project)” and includes any Series 2018B Bonds issued in exchange therefore pursuant to the Bond Legislation and the Bond Purchase Agreement.

**“Series 2018B PILOT Agreement”** means the Series 2018B Payment In Lieu Of Taxes Agreement dated as of [Closing Date] by and between the Issuer and the Company and any permitted amendments or supplements thereto.

**“Term of Agreement”** means the term of this Series 2018B Lease Agreement as specified in Section 10.01 hereof.

All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles then in effect. Words of the feminine gender shall be deemed and construed to include correlative words of the masculine and neuter genders. Unless the context shall otherwise indicate, words importing the singular

number shall include the plural and vice versa. Unless otherwise specified, the word “including” shall mean “including without limitation,” the word “or” shall mean “and/or,” and the word “any” shall mean “any and all.” All references in this Series 2018B Lease Agreement to designated “**Articles**,” “**Sections**” and other subdivisions are to the designated Articles, Sections, and other subdivisions of this instrument as originally executed unless the context indicates otherwise. The words “**herein**,” “**hereof**” and “**hereunder**” and other words of similar import refer to this Series 2018B Lease Agreement as a whole and not to any particular article, section, or other subdivision unless the context indicates otherwise.

Any reference herein to the Issuer or the Legislative Body or any officer or official of the Issuer shall include those who succeed to their respective functions, duties, or responsibilities pursuant to or by operation of law or who are lawfully performing such functions. Any reference herein to any other person or entity shall include his or its respective successors and assigns. Any reference herein to a Section or provision of the Constitution of the Commonwealth or to a section, provision, or chapter of the Kentucky Revised Statutes shall include such Section or provision or chapter as from time to time amended, modified, revised, supplemented, or superseded, provided that no such change shall be deemed applicable by reason of this provision if such change would in any way constitute an impairment of the rights of the Issuer or the Company under this Series 2018B Lease Agreement.

## **ARTICLE II REPRESENTATIONS AND WARRANTIES**

**Section 2.01. Representations And Warranties Of The Issuer.** The Issuer represents, covenants, and warrants that:

(a) The Issuer is a consolidated local government and political subdivision of the Commonwealth duly organized and existing under the laws of the Commonwealth. Under the provisions of the Act, the Issuer is authorized to enter into the transactions contemplated by the Bond Documents and to carry out its obligations hereunder and thereunder. The Issuer is not in default under or in violation of the Constitution or any of the laws of the Commonwealth relevant to the issuance of the Series 2018B Bonds or the consummation of the transactions contemplated pursuant to the Bond Documents and has duly authorized the issuance of the Series 2018B Bonds, and the execution and delivery of the Bond Documents, by the Bond Legislation, which was duly adopted by the Issuer’s Legislative Body and is in full force and effect according to law. The Bond Documents constitute valid and legally binding obligations of the Issuer enforceable in accordance with their terms.

(b) The Issuer agrees to provide funds through the issuance of the Series 2018B Bonds in order to finance the acquisition, construction, installation, and equipping of the Project, which constitutes an Industrial Building, subject to the consideration of this Series 2018B Lease Agreement, to the end that commerce and industry, the economy, job opportunities, and the public welfare may be promoted; and to secure the Series 2018B Bonds by entering into the Bond Purchase Agreement and the Series 2018B Assignment. The Issuer

represents, covenants, and agrees that its interest in this Series 2018B Lease Agreement will be assigned solely to the Purchaser pursuant to the Series 2018B Assignment and that no other assignment or pledge of the same will be made by the Issuer except as may otherwise be permitted or provided by the Bond Documents.

(c) Neither the execution and delivery of the Bond Documents, the consummation of the transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the terms and conditions of the Bond Documents conflict with or results in a breach of the terms, conditions, or provisions of any corporate restriction or any agreement or instrument to which the Issuer is now a party or by which it is bound or to which any of its property or assets is subject or (except in such manner as will not materially impair the Issuer's ability to perform its obligations hereunder or thereunder) of any statute, order, rule, or regulation of any court or governmental agency or body having jurisdiction over the Issuer or its property, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge, or encumbrance whatsoever upon any of the Issuer's property or assets under the terms of any instrument or agreement, except as set forth in this Series 2018B Lease Agreement.

(d) The Project Site is located within the Issuer's boundaries. There is no legal restriction on the Issuer's ability to lease the Project (including the Project Site) to the Company hereunder and to reconvey fee simple title to the Project (including the Project Site) to the Company in accordance with the terms of this Series 2018B Lease Agreement. The Issuer shall not mortgage or encumber the Project (including the Project Site) unless requested in writing by the Company.

(e) The Bond Legislation of the Issuer's Legislative Body, and the Issuer's agreement in prior correspondence and discussions described therein in respect of the financing of the Project, have been continuously, and are currently, in effect.

**Section 2.02. Representations, Agreements, And Warranties Of The Company.** The Company represents, agrees, and warrants that:

(a) It is a corporation validly organized and existing under the laws of the State of Delaware, is duly qualified to transact business in the Commonwealth and has the corporate power to enter into this Series 2018B Lease Agreement and by proper corporate action has duly authorized the execution and delivery of this Series 2018B Lease Agreement.

(b) Neither the execution and delivery of this Series 2018B Lease Agreement nor the consummation of the transactions contemplated hereby conflicts with or results in a breach of the terms, conditions, or provisions of the Company's Restated Certificate of Incorporation or Amended and Restated Bylaws, or any corporate restriction or any agreement or instrument to which the Company is now a party or by which it is bound or to which any of its property or assets is subject or (except in such manner as will not materially impair the Company's ability to perform its obligations hereunder) of any statute, order, rule, or regulation of any court or governmental agency or body having jurisdiction over the Company or its

property, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge, or encumbrance whatsoever upon any of the Company's property or assets under the terms of any instrument or agreement, except as set forth in this Series 2018B Lease Agreement.

(c) The Company Documents have been duly executed and delivered by the Company and constitute legal, valid, and binding obligations of the Company in accordance with their respective terms, except to the extent that enforcement thereof may be limited by laws, rulings, and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium, or other laws affecting the enforcement of creditors' rights, and to the exercise of judicial discretion in accordance with general principles of equity.

(d) There are no actions, suits, or proceedings pending, or to the Company's knowledge threatened, against or affecting the Company before any court or before any governmental or administrative body or agency which might result in any material adverse change in the Company's operations, business, property, assets, or condition (financial or otherwise); and the Company is not in default with respect to or under any applicable statute, rule, writ, injunction, decree, order, or regulation of any governmental agency which might have consequences that would materially and adversely affect the Company's operations, business, property, or assets.

(e) To the Company's knowledge, no consent, approval, authorization, or other order of any federal, state, or local governmental authority, not previously obtained or given, is required in connection with the acquisition, construction, installation, and equipping of the Project or the consummation of the transactions contemplated hereby.

(f) Except as provided in Section 6.13 hereof, the Company does not intend to sell or dispose of the Project during the Term of Agreement.

(g) The Bond Legislation and the Issuer's agreement in prior correspondence and discussions described therein under which the Issuer conditionally agreed, among other things, to issue the Series 2018B Bonds for the purposes set forth herein, have encouraged and induced the Company to undertake the acquisition, construction, installation, and equipping of the Project, and the Company believes that such undertaking will promote economic development and encourage the increase of industry within the environs of the Issuer and the Commonwealth.

(h) All of the Project is and shall be situated on the Project Site. The Company intends to operate the Project as an Industrial Building during the Term of Agreement.

**Section 2.03. Further Representations, Warranties, Covenants, And Agreements Binding On Issuer And Company.** In connection with the sale and issuance of the Series 2018B Bonds, the representations, warranties, covenants, and agreements stated in the other Bond Documents on behalf of the Company and the Issuer by their respective officers or agents shall be binding upon the respective parties as if specifically made herein. However, there are no

representations, warranties, covenants, or agreements other than those stated in the Bond Documents.

**Section 2.04. Representations And Covenants For Benefit Of Bondholders.** The Issuer and the Company acknowledge that this Series 2018B Lease Agreement is executed in part to induce the purchase of the Series 2018B Bonds. Accordingly, all representations, warranties, covenants, and agreements on the part of the Issuer and the Company set forth in this Series 2018B Lease Agreement and in other certificates and documents related to the issuance of the Series 2018B Bonds signed by the Company or the Issuer are hereby declared to be for, in addition to the mutual benefit of the parties, the benefit of the Servicing Agent, the Bondholder, and Bond Counsel with respect to the issuance of the Series 2018B Bonds, and to be binding upon the Company or the Issuer, as the case may be.

### **ARTICLE III ISSUANCE OF BONDS; APPLICATION OF BOND PROCEEDS; THE PROJECT**

**Section 3.01. Agreement To Issue The Series 2018B Bonds; Application Of Series 2018B Bond Proceeds.** The Issuer agrees that it will issue pursuant to the Bond Purchase Agreement and the Bond Legislation, sell, and cause to be delivered to or upon the order of the Purchaser the Series 2018B Bonds in an aggregate principal amount up to \$4,250,000, bearing interest, maturing, and having such other terms and conditions as are set forth in the Bond Purchase Agreement. The proceeds received from the sale of the Series 2018B Bonds shall be deposited in the Construction Fund to be used to pay the Costs of Construction, all in accordance with Section 3.08 hereof.

**Section 3.02. Authorization To Servicing Agent To Disburse From Construction Fund.** The Issuer hereby authorizes and directs the Servicing Agent under the Bond Purchase Agreement to disburse the moneys in the Construction Fund as provided therein and in Section 3.08 hereof.

**Section 3.03. Title To And Acquisition And Construction Of Project.**

(a) The Company has conveyed to the Issuer good and marketable fee simple title to and ownership of certain components of the Project and the Project Site, subject to any encumbrances which are acceptable to the Issuer. It is agreed by the parties that such conveyance by the Company was and is in consideration and in facilitation of the issuance of the Series 2018B Bonds by the Issuer pursuant to the Act in order to finance the Project.

(b) The Company represents and agrees that it has caused or will cause the Project to be acquired, installed, constructed, equipped, and completed as herein provided on the Project Site in accordance with the Plans and Specifications, as the same may be amended from time to time.

(c) The Company agrees that it will make, execute, acknowledge, and deliver any contracts, orders, receipts, writings, and instructions with any persons, firms, or corporations, and in general do all things which may be necessary or customary, for acquiring, constructing, installing, and equipping the Project.

(d) The Company agrees that it will ask, demand, sue for, levy, and use its best efforts to recover and receive such sums of money, debts, or other demands whatsoever in connection with the Project to which it may be entitled under any contract, order, guaranty, warranty, writing, or instruction in connection with any of the foregoing, and it will enforce the provisions of any contract, agreement, obligation, bond, or other security in connection with the Project.

(e) The Company agrees that it will perform the acquisition, construction, installation, and equipping of the Project with all reasonable dispatch, and use its best efforts to cause such acquisition, construction, installation, and equipping to be completed by the Completion Date, delays caused by reason of Force Majeure only excepted; but if for any reason such acquisition, construction, installation, and equipping of the Project is not completed by said date there shall be no resulting liability on the part of the Company and no diminution in or postponement of the payments required pursuant to this Series 2018B Lease Agreement by the Company.

(f) The parties agree that the Company shall transfer title to future components of the Project and the Project Site to the Issuer pursuant to one or more Deeds or one or more Bills of Sale provided by the Company to the Issuer. The parties shall execute, deliver, and record (if necessary) such Deeds or Bills of Sale on or before each December 31<sup>st</sup> occurring on or before the Completion Date and on or before the Completion Date in calendar year 2019 to transfer title to the components of the Project and the Project Site acquired, constructed, installed, and equipped during the calendar year ending on each such December 31<sup>st</sup>. It is agreed by the parties that each such conveyance will be made by the Company in consideration and in facilitation of the issuance of the Series 2018B Bonds by the Issuer pursuant to the Act in order to finance the Project. **EXHIBIT B** hereto shall automatically be deemed amended upon the effectuation of any such Deed or Bill of Sale to reflect the additional components of the Project or Project Site so transferred and then leased by the Company from the Issuer hereunder. Upon the effectuation of each such Deed or Bill of Sale in accordance with its terms, all property described therein shall become part of the Project and subject to terms and requirements of this Series 2018B Lease Agreement without any further action of the parties. The Issuer and the Company agree that title to any components of the Project constituting real property improvements shall automatically vest in the Issuer if title to the land underlying such real property improvements has been previously transferred by the Company to the Issuer in connection with the Issuer's issuance of industrial revenue bonds for the Company's benefit and that the execution or recordation of a separate deed shall be unnecessary to effectuate the transfer of title to such real property improvements from the Company to the Issuer.



**Section 3.04. Improvements; Assignment Of Warranties.** The Company, as the Issuer's designee, will make, execute, acknowledge, and deliver any contracts, orders, receipts, writings, and instructions with any other persons, firms, or corporations and in general use all reasonable efforts to do all things required with respect to constructing, acquiring, installing, and equipping the Project. Any amounts received in connection with the foregoing, after deduction of expenses incurred in such recovery, before the Completion Date and full disposition of the Series 2018B Bond proceeds in accordance with this Series 2018B Lease Agreement and the Bond Purchase Agreement, shall be paid to the Company.

The Issuer hereby assigns, without recourse or warranty whatsoever, to the Company all warranties, guaranties, indemnities, expressed or implied, or similar rights which the Issuer may have against any manufacturer, seller, engineer, contractor, or builder in respect of the Project or any component part thereof. Such assignment shall remain in effect so long as no Default hereunder shall have occurred and be continuing. So that the Company may have the full benefit of the assignment affected or intended to be affected by this Section 3.04, the Issuer agrees that it will, at the Company's expense, execute and deliver such further documents, including powers of attorney, enjoining such actions or proceedings as the Company shall reasonably request.

**Section 3.05. Establishment Of Completion Date.** The Completion Date of the Project shall be the date of completion of the acquisition, construction, installation, and equipping of the Project as evidenced to the Servicing Agent by a certificate signed by an Authorized Company Representative stating that, except for amounts retained by the Servicing Agent at the Company's direction for any amount of the Costs of Construction not then due and payable or the liability for payment of which is being contested or disputed by the Company, (a) acquisition, construction, installation, and equipping of the Project has been completed in accordance with the Plans and Specifications and all labor, services, materials, and supplies used in such construction and installation have been paid for, (b) all other facilities necessary in connection with the Project have been acquired, constructed, installed, and equipped in accordance with the Plans and Specifications and all costs and expenses incurred in connection therewith have been paid, and (c) to the Company's knowledge and belief and based upon reasonable inquiry, the Project is suitable and sufficient for its intended purposes. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being. Upon receipt of such certificate, the Servicing Agent shall retain in the Construction Fund a sum (specified in writing to it by the Company) equal to the amounts necessary for payment of any portion of the Costs of Construction of the Project not then due and payable or the liability for payment of which is being contested or disputed by the Company. The remaining amounts in the Construction Fund shall be applied by the Servicing Agent as provided in Section 5.01(d) of the Bond Purchase Agreement.

**Section 3.06. Agreement As To Ownership Of Project.** The Issuer and the Company agree that title to and ownership of the Project and the Project Site shall, during the Term of Agreement, be vested in the Issuer, subject to the terms of this Series 2018B Lease Agreement. It

is acknowledged that the Company has conveyed title to and ownership of certain components of the Project and the Project Site to the Issuer in connection with the issuance of the Series 2018B Bonds pursuant to the Act and will convey title to and ownership of the remaining components of the Project and the Project Site to the Issuer in connection with the issuance of the Series 2018B Bonds pursuant to the Act in accordance with the requirements of Section 3.03(f) hereof.

**Section 3.07. Financing Of Additional Facilities.** The Company and the Issuer hereby recognize that additional costs of Industrial Building facilities at the Project Site (other than those costs which are financed by the Series 2018B Bonds) may be financed by one or more series of revenue bonds issued in addition to the Series 2018B Bonds, to the extent permitted by law. The Issuer authorizes the Company to make improvements and build additional facilities as the Company determines are appropriate or necessary to enhance its operations at the Project Site, provided such additions or improvements do not materially and adversely affect the value of the Project and the Project Site.

**Section 3.08. Advances Of Series 2018B Bond Proceeds; Disbursements From Construction Fund.** The Purchaser, as purchaser of the Series 2018B Bonds under the Bond Purchase Agreement, shall make advances of Series 2018B Bond proceeds, in amounts of at least \$10,000.00 and no more frequently than twelve times in any twelve-month period, to the Servicing Agent (for the Issuer's account) for deposit in the Construction Fund. The total amount of all advances of Series 2018B Bond proceeds shall not exceed \$4,250,000. The procedure for the Company's requesting an advance of Series 2018B Bond proceeds from the Purchaser, and for the Purchaser making such advances, shall be as follows:

(a) The Purchaser shall make each such advance by paying the amount thereof in immediately available funds to the Servicing Agent, provided that the Purchaser's obligation to make each such advance shall be subject to the fulfillment (or waiver in writing by the Purchaser) of the following conditions precedent:

(i) at least one Business Day before making an advance, the Purchaser shall have received a written requisition from an Authorized Company Representative (a copy of which shall have been sent to the Servicing Agent by the Company) (A) requesting that the Purchaser make such advance in the amount and on the date specified therein, (B) describing the Costs of Construction for which such advance is requested, (C) stating that, to the knowledge of the Authorized Company Representative signing such requisition, the statements set forth in clauses (ii) and (iii) below are true and correct on and as of such date, and (D) certifying that the total amount of all advances to be received by the Company pursuant to this Series 2018B Lease Agreement will not exceed \$4,250,000;

(ii) all appropriate governmental and regulatory and other consents, approvals, licenses, authorizations, exemptions, and environmental and construction permits for the construction, improvement, and operation of the Project that are required to be obtained as of the date of such advance shall have been obtained (and Company shall have no reason to

believe that all others required to be obtained in the future will not be obtained in a timely fashion) and shall be in full force and effect; and

(iii) no Default under this Series 2018B Lease Agreement shall have occurred and be continuing on and as of the date of such advance.

(b) The Purchaser shall make each advance on the date and in the amount specified in the requisition delivered pursuant to Section 3.08(a) hereof. No advance of Series 2018B Bond proceeds shall be made after the Completion Date.

Notwithstanding anything to the contrary in this Bond Purchase Agreement, as long as (i) the Series 2018B Bonds are held by the Purchaser or an assignee of the Purchaser related to or for the benefit of an affiliate of the Company, and (ii) the lessee hereunder is the Company, the payment and funding obligations described in this Section 3.08 may be satisfied by intercompany journal entries reflecting intercompany payment and funding of such funds, and no funds need be transferred during such period. The provisions of the immediately preceding sentence shall survive any bankruptcy or liquidation of the Company, the Purchaser, or such assignee.

The Issuer has, in the Bond Purchase Agreement, authorized and directed the Servicing Agent to make payments from the Construction Fund to pay the Costs of Construction or to reimburse the Company for any amount of the Costs of Construction paid or incurred by it. Payments for Costs of Construction shall be made promptly or within three Business Days of the Servicing Agent's receipt from time to time of a requisition signed by the Authorized Company Representative stating with respect to each payment to be made: (i) the requisition number, (ii) the name and address of (or wire instructions for) the person, firm, or corporation to whom payment (including reimbursement in the Company's case) is due, (iii) the amount to be paid and the general purpose of such payment, and (iv) that each obligation mentioned therein has been properly incurred, is a proper charge against the Construction Fund, is unpaid or unreimbursed, and has not been the basis of any previous disbursement from the Construction Fund. The Company agrees (i) to cause such requisitions to be directed to the Servicing Agent as may be necessary to effect payments out of the Construction Fund in accordance with this Section 3.08 and (ii), in the case of reimbursement to the Company for payment of any Costs of Construction, to furnish to the Servicing Agent, upon written request, the name of the person, firm, or corporation to whom such Costs of Construction was paid.

**Section 3.09. Company Required To Pay If Construction Fund Insufficient.** If the moneys in the Construction Fund available for payment of the Costs of Construction should be insufficient to pay such Costs of Construction in full when due, the Company agrees to pay such portion of the Costs of Construction in excess of the moneys available therefor in the Construction Fund at such time and shall be entitled to seek reimbursements for such excess payment pursuant to Section 3.08 hereof. The Issuer does not make any warranty, either express or implied, that the moneys paid into the Construction Fund and available for payment of the Costs of Construction will be sufficient to pay all of such Costs of Construction. The Company agrees that if, after exhaustion of such moneys in the Construction Fund, the Company should

directly pay any portion of the Costs of Construction pursuant to the provisions of this Section 3.09, it shall not be entitled to any diminution or abatement of the amounts payable under Section 4.02 hereof.

#### **ARTICLE IV LEASE OF PROJECT; AMOUNTS PAYABLE**

**Section 4.01. Lease Of Project.** The Issuer hereby demises and leases to the Company, and the Company leases from the Issuer, the Project and the Project Site at the rent set forth in Section 4.02 hereof and in accordance with the provisions of this Series 2018B Lease Agreement, subject to the rights of the Company under Section 3.07 hereof. The Issuer makes no warranty, either express or implied, as to the Project and the Project Site or that it will be suitable for the Company's purposes or needs. The Issuer agrees that so long as no Default hereunder or Event of Default under the Bond Purchase Agreement has occurred and is continuing, the Company, on performing the covenants and conditions contained herein, shall and may peaceably, quietly, and exclusively have, hold, enjoy, and possess the Project and the Project Site free from molestation, eviction, or disturbance by the Issuer or by any other person or persons claiming the same by, through, or under the Issuer. The Issuer agrees that it will not sell, assign, transfer, or convey the Project or the Project Site or any portion thereof (except as otherwise permitted in this Series 2018B Lease Agreement) or create or permit the creation of any lien, encumbrance, or charge upon the Project and the Project Site other than the security intended to be given under the Bond Purchase Agreement, and that it will not grant any easement, license, right of way, or other right or privilege in the nature of easements with respect to the Project and the Project Site except as provided herein or as permitted by the Company. This Series 2018B Lease Agreement shall be deemed and construed to be a "net lease," and the Company shall pay absolutely net during the term of this Series 2018B Lease Agreement the rent and all other payments required hereunder, free of any deductions, without abatement, deduction, or set-off other than those herein expressly provided.

#### **Section 4.02. Rent And Other Amounts Payable.**

(a) In consideration of the lease of the Project and the Project Site, the Company hereby covenants and agrees to make rent payments ("**Rent Payments**") as follows: on or before any Interest Payment Date or the Maturity Date for the Series 2018B Bonds or any other date that any payment of interest or principal is required to be made in respect of the Series 2018B Bonds pursuant to the Bond Purchase Agreement, until the principal of and interest on the Series 2018B Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Bond Purchase Agreement, the Company will pay in immediately available funds a sum which will enable the Servicing Agent to pay the amount payable on such date as principal of (whether at maturity or upon redemption, acceleration, or otherwise) and interest on the Series 2018B Bonds as provided in the Bond Purchase Agreement.

(b) The Company shall reimburse or pay the Issuer for any and all costs, expenses, fees (including attorney's fees), and liabilities paid or incurred by the Issuer in satisfaction of any obligation of the Company hereunder not performed by the Company in accordance with the terms hereof. The Company shall also repay or reimburse the Issuer for any and all expenses paid or to be paid by the Issuer and requested by the Company, or required by the Bond Documents or incurred in enforcing the provisions of the Bond Documents, or incurred in defending any action or proceedings with respect to the Project, the Project Site, or the Bond Documents, or arising out of or based upon any other document relating to the issuance of the Series 2018B Bonds, which are not otherwise required to be paid by the Company hereunder.

(c) The Company will also pay the reasonable fees and expenses of the Servicing Agent under the Bond Purchase Agreement and all other amounts which may be payable to the Servicing Agent under Section 9.05 of the Bond Purchase Agreement, such amounts to be paid directly to the Servicing Agent for its accounts as and when such amounts become due and payable.

(d) If the Company should fail to make any of the payments required in this Section 4.02, the item or installment so in default shall continue as an obligation of the Company until the amount in default shall have been fully paid, and the Company agrees to pay the same with interest thereon, to the extent permitted by law, from the date when such payment was due to the date of payment.

**Section 4.03. Payments Assigned.** The Issuer pursuant to the Bond Purchase Agreement and the Series 2018B Assignment, has assigned the Issuer's rights, title, and interest in the Pledged Receipts to the Purchaser, and the Company hereby consents to such assignment. All payments by the Company constituting Pledged Receipts under this Series 2018B Lease Agreement will be in lawful money of the United States of America in immediately available funds. The Company further agrees to make all payments hereunder directly to the Servicing Agent for the account of the Issuer to be deposited in the Bond Fund, and to make all payments required to be made under Section 7.02 hereof directly to the Issuer.

**Section 4.04. Obligations Of Company Unconditional; Exception.** The Company's obligation to make the payments required in Section 4.02(a) hereof shall be absolute and unconditional, without relief from valuation and appraisal laws, and shall not be subject to any defense or right of setoff, counterclaim, or recoupment arising out of any breach by the Issuer or the Servicing Agent of any obligation to the Company, whether hereunder or otherwise, or out of any indebtedness or liability at any time owing to the Company by the Issuer or the Servicing Agent, and, until such time as the principal of and interest on the Series 2018B Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Bond Purchase Agreement, the Company will not suspend or discontinue any payments provided for in Section 4.02(a) hereof, and except as provided in ARTICLE IX hereof, will not terminate this Series 2018B Lease Agreement for any cause, including the occurrence of any acts or circumstances that may constitute failure of

consideration, eviction or constructive eviction, destruction of or damage to the Project or the Project Site, the taking by eminent domain of title to or temporary use of any or all of the Project or the Project Site, commercial frustration of purpose, any change in the laws of the United States of America or of the Commonwealth, or any political subdivision of either thereof, or any failure of the Issuer or the Servicing Agent to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Series 2018B Lease Agreement. Nothing contained in this Section 4.04 shall be construed to release the Issuer from the performance of any of the agreements on its part herein contained, and if the Issuer or the Servicing Agent should fail to perform any such agreement on its part, the Company may institute such action against the Issuer or the Servicing Agent as the Company may deem necessary to compel performance so long as such action does not abrogate the Company's obligations contained in the first sentence of this Section 4.04.

Notwithstanding anything to the contrary in this Series 2018B Lease Agreement, as long as (i) the Series 2018B Bonds are held by the Purchaser or an assignee of the Purchaser related to or for the benefit of an affiliate of the Company and (ii) the lessee under this Series 2018B Lease Agreement is the Company, the Company's obligation to make Rent Payments pursuant to Section 4.02 hereof and the Purchaser's right to receive the same may be satisfied by intercompany journal entries reflecting intercompany payment receipt of such Rent Payments, and no funds need be transferred during such period. The provisions of the immediately preceding sentence shall survive any bankruptcy or liquidation of the Company or the Purchaser or such assignee.

**Section 4.05. Credits Against Rentals.** Notwithstanding any provision contained in this Series 2018B Lease Agreement or in the Bond Purchase Agreement to the contrary, in addition to any credits against Rent Payments payable under Section 4.02(a) hereof resulting from the payment or prepayment thereof from other sources any moneys deposited with the Servicing Agent in the Bond Fund, from any source, for payment on the Series 2018B Bonds shall be credited against the obligation of the Company to pay Rental Payments equal to the principal and interest on the Series 2018B Bonds as the same become due.

## **ARTICLE V DAMAGE, DESTRUCTION, AND CONDEMNATION**

**Section 5.01. Damage, Destruction, And Condemnation.** Unless the Company shall exercise an option to prepay the Rental Payments due hereunder pursuant to the provisions of ARTICLE IX hereof, or shall be obligated to prepay the Rent Payments due hereunder pursuant to the provisions of ARTICLE IX hereof (in which case the provisions of ARTICLE IX hereof shall control), if before full payment of the Series 2018B Bonds (or provision for payment thereof in accordance with the provisions of the Bond Purchase Agreement), (i) the Project or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty, or (ii) title to or the temporary use of the Project or any part thereof or any estate of the Company in the Project or any part thereof be taken under the exercise of the power of eminent domain by

any governmental body or by any person, firm, or corporation acting under governmental authority, the Company shall be obligated to continue to pay the amounts specified herein, but the Net Proceeds of any insurance benefits or condemnation awards shall be paid to the Company.

## ARTICLE VI SPECIAL COVENANTS AND AGREEMENTS

**Section 6.01. No Warranty Of Condition Or Suitability By Issuer.** THE ISSUER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE PROJECT OR THE CONDITION THEREOF, OR THAT THE PROJECT WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS. EXCEPT TO THE EXTENT OTHERWISE PROVIDED IN SECTION 4.01 HEREOF, THE ISSUER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, THAT THE COMPANY 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 COMPANY'S PURPOSES.

**Section 6.02. Access To Project.** The Company agrees that the Issuer and the Servicing Agent and their duly authorized agents, attorneys, experts, engineers, accountants, and representatives shall have the right at their expense to inspect the Project and the Project Site at all reasonable times during normal business hours and on at least forty-eight hours prior written notice for purposes reasonably related to the administration of the Bond Documents. The Issuer and the Servicing Agent and such other persons agree to maintain confidentiality of any information acquired hereunder or in the course of issuing the Series 2018B Bonds except to the extent that the disclosure of such information may be legally required and notice of such required disclosure is first given to the Company.

**Section 6.03. Further Assurances And Corrective Instruments.** The Issuer and the Company agree that they will, from time to time, execute, acknowledge, and deliver or cause to be executed, acknowledged, and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Series 2018B Lease Agreement.

**Section 6.04. Issuer And Authorized Company Representatives.** Whenever under the provisions of this Series 2018B Lease Agreement the approval of the Issuer or the Company is required or the Issuer or the Company is required to take some action at the request of the other, such approval or such request shall be given for the Issuer by an Authorized Issuer Representative and for the Company by an Authorized Company Representative. The Servicing Agent shall be authorized to act on any such approval or request.

**Section 6.05. Financing Statements.** The Company agrees to execute and file or cause to be executed and filed all financing statements, if any, or amendments thereof or continuation

statements necessary to perfect and continue the perfection of any security interests granted in the Bond Purchase Agreement. The Company shall pay all costs of filing such instruments.

**Section 6.06. Company To Maintain Its Corporate Existence; Conditions Under Which Exceptions Permitted.** The Company agrees that during the Term of Agreement it will maintain its corporate existence, will continue to be a corporation duly qualified to do business in the Commonwealth, will not dispose of all or substantially all of its assets to another entity, and will not consolidate with or merge into another entity, unless in all cases such other entity (i) is a corporation organized under the laws of, or duly qualified to do business as a foreign corporation in, the Commonwealth and (ii) assumes in writing all of the Company's obligations herein. Compliance with all of these requirements shall relieve the Company of all of its obligations herein.

If consolidation, merger, sale, or other transfer is made as provided in this Section 6.06, the provisions of this Section 6.06 shall continue in full force and effect, and no further consolidation, merger, or sale or other transfer shall be made except in compliance with the provisions of this Section 6.06.

**Section 6.07. Maintenance Of Project; Permits; Maintenance And Modifications.** The Company shall use, maintain, and operate the Project, or cause it to be used, maintained, and operated, in good repair, in accordance with all applicable laws, rules, and regulations, subject to ordinary wear and tear and obsolescence. Subject to the terms of Section 6.12, Section 6.13, and Section 6.14 hereof, the Company may make modifications, replacements, and renewals of and to the Project as the Company shall deem necessary or desirable and that do not materially and adversely affect the value of the Project provided that all such additions, modifications, or improvements comply with all applicable federal, state, and local codes. Improvements on the Project Site which are not a part of the Project shall be under the Company's absolute control and dominion.

**Section 6.08. Taxes And Other Governmental Charges.**

(a) The Company shall pay, as the same become due, all taxes, assessments, impositions, and governmental charges of any kind whatsoever, general and specific, foreseen and unforeseen, and any and all utilities and other governmental charges that may be lawfully assessed, levied, or imposed on the payments under this Series 2018B Lease Agreement or on or with respect to the Project and the Project Site. The Company shall pay as the same become due all utility and other charges incurred in the operation, maintenance, use, and occupancy of the Project and the Project Site and all assessments and charges lawfully made by any governmental body for public improvements to the Project and the Project Site. The Company may allow to exist any indebtedness for any such tax, assessment, charge, levy, or claim, provided any such tax, assessment, charge, levy, or claim is being contested in good faith by appropriate proceedings and the Company shall have established and maintained adequate reserves for the payment of the same.



(b) The Company and the Issuer acknowledge that under Section 103.285 of the Act no ad valorem taxes are presently to be due on the Project financed from the proceeds of the Series 2018B Bonds so long as the Series 2018B Bonds are outstanding and to the extent title to the Project is held by the Issuer, with the exception of the tax on the value of the Company's leasehold interest under this Series 2018B Lease Agreement pursuant to Sections 132.020 and 132.200 of the Kentucky Revised Statutes, and that such ad valorem tax exemption was and is a material factor in inducing the location of the Project in the Commonwealth and the Issuer's environs. As long as such ad valorem tax exemption remains constitutionally valid, the Issuer agrees not to take any action which may reasonably be construed as tending to cause or induce the levy or assessment of ad valorem taxes on the Project so long as the Series 2018B Bonds are outstanding and to the extent title to the Project is held by the Issuer. If any such assessment or levy is threatened or occurs as a result of any action on the part of Issuer, the Commonwealth, or other local taxing authority, the Issuer shall fully cooperate with the Company in all reasonable ways to prevent any such levy or assessment. The Company further acknowledges such ad valorem tax exemption applies only to the Project to the extent financed by the Series 2018B Bonds and does not apply to improvements and equipment not financed by the Series 2018B Bonds.

**Section 6.09. Insurance.**

(a) The Company agrees at its sole expense to maintain, or cause to be maintained, insurance policies, or self-insurance plans with the Issuer and the Servicing Agent as additional insureds, as their interests may appear (subject to the provisions of Section 10.12 hereof), insuring against such risks, and in such amounts, as are customarily insured against by entities owning facilities of like size and type as the Project and the Project Site, paying as the same become due and payable all premiums in respect thereof, including:

- (i) commercial general liability insurance coverage;
- (ii) insurance covering the Project against special form causes of loss (including fire and similar perils) in an amount not less than the replacement cost of the Project;
- (iii) workers' compensation coverage;
- (iv) environmental liability coverage; and
- (v) any other type of insurance required by the laws of the Commonwealth.

(b) The Company shall require that any contractor employed for construction at the Project Site provide comprehensive general liability coverage and workers' compensation coverage in amounts customarily carried by contractors with respect to such construction.

(c) The insurance policies or endorsements or self-insurance plans, as the case may be, shall cover the entire Project and the Project Site. The Company shall provide the Issuer and the Servicing Agent with certificates from the insurers or the Company's insurance

agent or self-insurance plans, as the case may be, at such times as may be necessary to show that insurance is being maintained as required by this Section 6.09.

**Section 6.10. Liens; Contests.**

(a) The Company will not directly or indirectly create, incur, assume, or suffer to exist any lien on or with respect to the Project and the Project Site, except (i) liens for taxes either not yet due and payable or being contested by the Company in good faith by appropriate proceedings, (ii) materialmen's, mechanics', workmen's, repairmen's, or other like liens arising in the ordinary course of business which are, notwithstanding the fact that payment of the underlying claim may be delinquent and the fact that a lien has been asserted against the Project or the Project Site, (A) being contested in good faith by appropriate proceedings and, (B) if the liens are in an aggregate amount greater than \$500,000, immediately or subsequently discharged by bonding or other applicable procedure or process, and (iii) liens arising out of judgments or awards against the Company which have been bonded or with respect to which at the time an appeal or proceeding for review is being prosecuted in good faith and with respect to which there shall have been secured a stay of execution pending the outcome of such appeal or proceeding. In connection with all mechanics or similar statutory liens, and in accordance with Section 376.100 of the Kentucky Revised Statutes, the Issuer hereby recognizes and agrees that the Company shall for purposes of such statute be deemed a person contracting with the Issuer for the furnishing of improvements or services for which any such lien is created, thereby providing the Company with full authority and ability, to the exclusion of the Issuer, to bond any such lien pursuant to such statute. The parties agree to execute any and all further documents that may be required in order to facilitate the authority of the Company provided hereby.

(b) The Company shall have the right, after prior written notice to the Issuer, to contest by appropriate legal proceedings conducted in good faith, all without cost or expense to the Issuer, the validity or application of all present and future laws, ordinances, orders, rules, regulations, and requirements of all federal, state, and municipal governments, courts, departments, commissions, boards, and officers, or any other body exercising functions similar to those of any of the foregoing, which may be of applicability to the Project and the Project Site or any part thereof, and the Company may delay compliance therewith until the final determination of any such proceeding. If any lien or charge against the Project and the Project Site would or might be incurred by reason of any such delay, the Company nevertheless may contest as aforesaid and delay as aforesaid, provided that the Company bonds any such charge or lien with, or obtains a stay of enforcement from, the court or governmental agency having jurisdiction over any such matter. The rights given to the Company hereunder are intended to be the rights otherwise attributable to the owner of the Project and the Project Site, and shall be exercised hereunder to the exclusion of the Issuer throughout the Term of Agreement.

(c) In connection with this Section 6.10, the parties hereby agree that the results achieved by the Company with respect to its contest of any laws, or its contest of any taxes, shall in all respects be fully and completely binding on the Issuer, and that the agreement

or disagreement of the Issuer with respect to such outcome shall in no way alter, diminish, or modify the obligations and undertakings of the Issuer hereunder.

**Section 6.11. Easements And Other Rights.** Promptly upon written request of the Company, the Issuer agrees to execute any and all instruments or documents (collectively, “**Instruments**”) reasonably requested by the Company that may be required (i) in order to provide for easements, licenses, other means of ingress and egress, and such other rights or limited rights with respect to the Project and the Project Site as the Company may reasonably require or (ii) in order for the Company to obtain and maintain any and all licenses, permits, or other governmental or agency approvals that may be necessary or desirable (as determined by the Company) in the conduct of its operations on the Project. All such Instruments shall be prepared by the Company, and shall be approved by the Issuer with respect to form and substance, which approval shall not be unreasonably withheld or delayed. All such Instruments shall be prepared and recorded at the Company’s expense, and shall in no way abridge or modify the rights and obligations of the parties to this Series 2018B Lease Agreement.

**Section 6.12. Modifications Of Project.** The Company may, also at its own expense, make from time to time any additions, modifications, or improvements to the Project or the Project Site it may deem desirable for its business purposes that do not materially and adversely affect the value of the Project and the Project Site. All such additions, modifications, and improvements to the Project so made by the Company shall become a part of the Project, provided that any personal property, machinery, equipment, or furniture installed by the Company at its own cost (i.e., not financed from proceeds of Series 2018B Bonds) for use in connection with the operation of the Project and which is not essential to the operation of the Project may be removed by the Company at any time and from time to time, and provided further that any damage to the Project occasioned by such removal shall be repaired by the Company at its own expense. Improvements on the Project Site which are not a part of the Project shall be under the Company’s absolute control and dominion.

**Section 6.13. Release Of Portions Of Project Site.** The Company shall have the right to release from this Series 2018B Lease Agreement and the leasehold estate created hereby any part of the Project Site (on which Project facilities are not located) at any time and from time to time. Before any such release, the Company and the Issuer, at the Company’s cost, shall furnish the Issuer the following:

(a) a notice in writing containing (i) an adequate legal description of that portion of the Project Site with respect to which such right is to be exercised, and (ii) a statement that the Company intends to exercise its right to the release of such portion of the Project Site on a date stated, which shall not be less than ten nor more than sixty days from the date of such notice; and

(b) a certificate of an Authorized Company Representative, dated not more than sixty days before the date of the release, and stating that, in the opinion of the person signing such certificate (i) the portion of the Project Site with respect to which the right is exercised is not needed for the operation of the Project, and (ii) the release will not materially

impair the usefulness of the Project and will not destroy the means of ingress thereto or egress therefrom.

On the date of any such release, the parties shall deliver to the Servicing Agent a duly authorized and executed copy of the appropriate amendment or supplement to this Series 2018B Lease Agreement. The Issuer shall, if requested by the Company, convey good and marketable fee simple title to such released portion of the Project Site to the Company by deed and such other instruments as may be necessary, all in form and substance mutually agreeable to the parties, subject to the following: (i) those liens and encumbrances (if any) to which title to the Project Site was subject when acquired by the Issuer; (ii) those liens and encumbrances created or consented to by the Company; and (iii) those liens and encumbrances resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Series 2018B Lease Agreement. Such documents shall be prepared by the Company and all expenses of the Issuer incurred in connection with such release and conveyance shall be paid by the Company.

If the parties hereto shall exercise the right granted to them under this Section 6.13, the Company shall not be entitled to any abatement or diminution of the payments under Section 4.02 hereof.

If the parties hereto shall exercise the right granted to them under this Section 6.13, the portion of the Project released to the Company by the Issuer shall be subject to all property taxes levied by the Issuer or the Commonwealth or any political subdivision thereof effective as of the date of such release.

**Section 6.14. Removal Of Project Facilities.** The Company and the Issuer shall not be under any obligation to renew, repair, or replace any inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary Project facilities, except as may be otherwise required herein. In any instance where the Company in its reasonable discretion determines that any items of Project facilities have become inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary, the Company may remove such items of Project facilities and may, on behalf of the Issuer, sell, trade in, exchange, or otherwise dispose of them (as a whole or in part) and may retain any proceeds of such disposal. The removal from the Project of any portion of the Project facilities pursuant to the provisions of this Section 6.14 shall not entitle the Company to any abatement or diminution of the payments required under Section 4.02 hereof.

**Section 6.15. Project Facilities List.** The Company shall maintain a list setting forth in reasonable detail all items constituting the Project.

**Section 6.16. Environmental Use Of Project.** The Company shall not use the Project and the Project Site in any manner so as to violate in a material way any applicable law, rule, regulation, or ordinance of any governmental entity or authority or in such manner as to vitiate insurance upon the Project and the Project Site. The Company shall not commit or permit any waste upon the Project and the Project Site which would materially decrease the value of the Project and the Project Site. The Company shall materially comply with all regulations

concerning the environment, health, and safety relating to the generation, use, handling, production, disposal, discharge, and storage of Hazardous Materials, as defined herein, in, on, under, or about the Project and the Project Site. The Company shall promptly take any and all necessary action in response to the presence, storage, use, disposal, transportation, or discharge of any Hazardous Materials in, on, under or about the Project and the Project Site by the Company or persons acting on behalf of or at the direction of the Company as all applicable laws, rules, regulations, or ordinances may require; provided, however, that the Company shall not, without the Issuer's prior written consent, which consent shall not be unreasonably withheld, take any remedial action in response to the presence of any Hazardous Materials in, on, under or about the Project and the Project Site, nor enter into any settlement agreement, consent decree, or other compromise in respect to any claims, proceedings, lawsuits, or actions, completed or threatened pursuant to any Hazardous Materials laws or in connection with any third party, if such remedial action, settlement, consent, or compromise might, in the Issuer's sole determination, impair the value of the Project and the Project Site; the Issuer's prior consent shall not, however, be necessary if the presence of Hazardous Materials in, on, under, or about the Project and the Project Site either (i) poses an immediate threat to the health, safety, welfare or property right of any individual, or (ii) is of such a nature that an immediate remedial response is necessary under applicable laws, rules, regulations, or ordinances, and it is not possible to obtain the Issuer's consent before undertaking such action. If the Company undertakes any remedial action with respect to any Hazardous Materials on, under or about the Project and the Project Site, the Company shall immediately notify the Issuer of any such remedial action, and shall conduct and complete such remedial action (A) in compliance with all applicable federal, state, and local laws, regulations, rules, ordinances, and policies, (B) to the Issuer's reasonable satisfaction and (C) in accordance with the orders and directives of all governmental authorities. (With reference to the foregoing provisions of this paragraph, the Issuer acknowledges that the Company's use of the Project may involve the use or storage of Hazardous Materials, provided that such use shall be in conformity with all applicable laws and the terms of this Series 2018B Lease Agreement.)

The Company shall protect, indemnify, and hold the Issuer and its officials, officers, employees, and agents, and the Servicing Agent and its officers, employees, and agents, harmless from and against any and all claims, proceedings, lawsuits, liabilities, damages, losses, fines, penalties, judgments, settlements, awards, costs, and expenses (including reasonable attorneys' fees and costs and expenses of investigation and proof actually incurred) which arise out of or relate in any way to any generation, use, handling, production, transportation, disposal, or storage of any Hazardous Materials in, on, under, or about the Project and the Project Site by the Company or any person acting on behalf of or at the direction of the Company, including (i) all foreseeable and all unforeseeable consequential damages directly or indirectly arising out of (A) the use, generation, storage, discharge, or disposal of Hazardous Materials by the Company, or persons acting on behalf of or at the direction of the Company, (B) any residual contamination affecting any natural resource or the environment, or (C) the existence of Hazardous Materials on or about the Project and the Project Site before the effective date of this Series 2018B Lease Agreement, and (ii) the costs of any required or necessary repair,

cleanup, or detoxification of the Project and the Project Site and the preparation of any closure or other required plans (all such costs, damages, and expenses referred to in this Section 6.16 hereafter referred to as “**Expenses**”); provided there shall be no such indemnification of the Issuer and its commissioners, officers, employees, and agents upon any negligence or intentional misconduct of the Issuer or any of its commissioners, officers, employees, or agents. In addition, the Company agrees that if any Hazardous Material is caused to be removed from the Project and the Project Site by the Company, the Issuer, or any other person or entity, such Hazardous Material shall be considered generated, transported, or disposed of solely in the Company’s name and the Company shall assume any and all liability for such removed Hazardous Material. The Company’s indemnification of the Issuer and the Servicing Agent shall be a continuing indemnification and shall remain in full force and effect notwithstanding the expiration or termination of this Series 2018B Lease Agreement.

As used herein, the term “**Hazardous Materials**” shall mean: (i) oil, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other substances, materials or pollutants that (A) pose a hazard to the Project and the Project Site, to adjacent premises or to persons on or about the Project and the Project Site or adjacent premises, (B) that cause the Project and the Project Site to be in violation of any local, state, or federal law, rule, regulation, or ordinance, or (C) which are defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” or “toxic substances” or words of similar import under any applicable local, state, or federal law or under the regulations, policy guidelines or other publications adopted or promulgated pursuant thereto, including (1) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq., (2) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801, et seq., (3) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901, et seq., (4) the Clean Air Act, 42 U.S.C. §7412 and amendments thereto, (5) the Toxic Substance Control Act, 15 U.S.C. §2601 et seq., (6) the Clean Water Act, 33 U.S.C. §1317 and 1321(b)(2)A, and (7) rules, regulations, ordinances, and other publications adopted or promulgated pursuant to the aforesaid laws, (ii) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, and (iii) any other chemical, material, or substance, exposure to which is prohibited, limited, or regulated by any governmental authority or may or could pose a hazard to the health and safety or property interests of the Company or its employees, the occupants of the Project and the Project Site or the owners or occupants of property adjacent to or surrounding the Project and the Project Site.

**Section 6.17. Notice Of Proposed Plan Or Petition.** The Issuer shall provide the Company notice of any submission by the Issuer of any proposed plan of bankruptcy or reorganization to the State Local Debt Officer, or any successor thereof, for approval pursuant to KRS 66.400 or the filing of a petition of bankruptcy or reorganization with any applicable governmental authority no later than thirty days before the date the Issuer submits or files any such proposed plan or petition.

**Section 6.18. Rights Related To Annexation.** The Issuer and the Company agree that the Company shall retain all rights arising from and related to the proposed annexation of all or any portion of the Project or the Project Site by any city, municipal corporation, or other political subdivision. The Issuer and the Company further agree that (a) the Issuer shall provide the Company notice of such proposed annexation of the Project or the Project Site pursuant to KRS 81A.425 or other authority within two business days of the Issuer's receipt of such notice or knowledge of such proposed annexation, (b) the Issuer shall not consent to any such proposed annexation of the Project or the Project Site without the Company's prior written consent, which the Company can withhold for any reason, (c) the Issuer shall petition pursuant to KRS 81A.420(2) or other authority in opposition to any such proposed annexation of the Project or the Project Site if timely requested by the Company at the Company's expense, and (d) the Issuer hereby agrees that the Company can assert any right provided to parties opposing the annexation of property under KRS 81A.510 or other authority in its own name and right and in the Issuer's name and right.

## **ARTICLE VII ASSIGNMENT OR SUBLEASE; INDEMNIFICATION; REDEMPTION**

**Section 7.01. Assignment.** This Series 2018B Lease Agreement may be assigned, or the Project and the Project Site may be subleased, by the Company without the necessity of obtaining the consent of the Issuer or the Purchaser, subject, however, to each of the following conditions:

(a) No assignment (other than pursuant to Section 6.06 hereof) or sublease shall relieve the Company from primary liability for any of its obligations hereunder, and, upon any such assignment or sublease, the Company shall continue to remain primarily liable for payment of the amounts specified in Section 4.02 hereof and for performance and observance of the other agreements on its part herein provided to be performed and observed by it, to the same extent as though no assignment or sublease had been made.

(b) The Company shall, within thirty days after a written request therefor, furnish or cause to be furnished to the Issuer and to the Bondholder a true and complete copy of each assignment or sublease and assumption of obligation, as the case may be.

Anything herein to the contrary notwithstanding, the Company's interest in this Series 2018B Lease Agreement may not be assigned, or more than an insubstantial part of the Project subleased, unless (i) such assignment or sublease shall be to any entity constituting a member of any Control Group to which the Company belongs or (ii) the Company shall have furnished to the Issuer and the Bondholder an opinion of Bond Counsel to the effect that the proposed assignment or sublease will not impair the validity of the Series 2018B Bonds under the Act.

## **Section 7.02. Release And Indemnification Covenants.**

(a) The Company shall and hereby agrees to indemnify, save, and defend the Issuer and the Servicing Agent harmless against and from all claims by or on behalf of any person, firm, corporation, or other legal entity arising from the conduct or management by the Company or any of its contractors, subcontractors, agents, assigns, or sublessees of, or from any work or thing done by the Company or any of its contractors, subcontractors, agents, assigns, or sublessees on, the Project and the Project Site during the Term of Agreement, including, (i) any condition of the Project and the Project Site, (ii) any breach or default on the part of the Company in the performance of any of its obligations under the Company Documents, (iii) any act of negligence of the Company or of any of its agents, contractors, servants, employees, licensees, assigns, or sublessees or (iv) any act of negligence of any assignee or lessee of the Company, or of any agents, contractors, servants, employees, or licensees of any assignee or lessee of the Company. If any action shall be brought against the Issuer or the Servicing Agent in respect of which indemnity hereunder may be sought against the Company, then the Issuer or the Servicing Agent, as the case may be, shall promptly notify the Company in writing, and the Company at its option may or, at the request of the Issuer or the Servicing Agent, as the case may be, shall assume the defense thereof, including the employment of counsel and the right to negotiate and consent to settlement. If the Company assumes the defense thereof, the Issuer or the Servicing Agent, as the case may be, shall have the right to employ separate counsel in any such action and to participate in the defense thereof, provided that the fees and expenses of such counsel shall be at the expense of the Issuer or the Servicing Agent, as the case may be, unless the employment of such counsel has been authorized in writing by the Company. The Company shall not be liable for any settlement of any such action effected without its consent.

(b) Notwithstanding the fact that it is the intention of the parties hereto that the Issuer shall not incur any pecuniary liability by reason of the terms of this Series 2018B Lease Agreement or the undertakings required of the Issuer hereunder, by reason of the issuance of the Series 2018B Bonds, by reason of the execution of the Bond Purchase Agreement or the Series 2018B Assignment or by reason of the performance of any act requested of the Issuer by the Company, including, but not limited to, all claims, liabilities, or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if the Issuer should incur any such pecuniary liability, then the Company shall indemnify, defend, and hold the Issuer harmless against all claims, demands or causes of action whatsoever, by or on behalf of any person, firm, or corporation or other legal entity arising out of the same or out of any offering statement in connection with the sale or resale of the Series 2018B Bonds and all reasonable costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon. If any action shall be brought against the Issuer in respect of which indemnity hereunder may be sought against the Company, the Issuer shall promptly notify the Company in writing, and the Company at its option may or, at the request of the Issuer, shall assume the defense thereof, including the employment of counsel, and the right to negotiate and consent to settlement. If the Company assumes the defense thereof, the Issuer shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel



shall be at the expense of the Issuer. The Company shall not be liable for any settlement of any such action effected without its consent. All references to the Issuer in this Section 7.02 shall be deemed to include its officials, officers, employees, and agents.

(c) The Company shall and hereby agrees to indemnify the Servicing Agent for, and hold it harmless against, any loss, liability, or expense (including the reasonable costs and expenses of defending against any claim of liability) incurred without negligence or willful misconduct by such indemnified party and arising out of or in connection with the acceptance or administration of its duties as Servicing Agent under the Bond Purchase Agreement. If any action shall be brought against the Servicing Agent in respect of which indemnity hereunder may be sought against the Company, the Servicing Agent shall promptly notify the Company in writing, and the Company at its option may assume the defense thereof, including the employment of counsel and the right to negotiate and consent to settlement. If the Company assumes the defense thereof, the Servicing Agent shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the Servicing Agent unless the Company shall have consented in writing to the employment of such counsel. The Company shall not be liable for any settlement of any such action effected without its consent.

(d) Notwithstanding anything to the contrary in this Section 7.02, the Company shall have no obligation to indemnify the Issuer or the Servicing Agent against claims, demands, causes of action, cost, expenses, or damages resulting from or connected with their own negligence or willful misconduct.

**Section 7.03. Redemption Of Series 2018B Bonds.** The Company shall have and is hereby granted the option to prepay the rentals hereunder and thus cause all or a portion of the Series 2018B Bonds to be redeemed at the times and at the prices permitted by the Bond Purchase Agreement and, if the Company exercises such option, it shall notify the Servicing Agent as provided in the Bond Purchase Agreement. The Issuer, at the Company's request, shall forthwith take all steps (other than the payment of the money required for such redemption) necessary under the applicable redemption provisions of the Bond Purchase Agreement to effect redemption of all or part of the Outstanding Series 2018B Bonds, as the Company may specify, on the date established for such redemption. Any amount so prepaid which is less than the full unpaid principal amount of the Series 2018B Bonds shall be credited against the rentals representing the installment or installments of principal due on the Series 2018B Bonds being redeemed.

**Section 7.04. Issuer To Grant Security Interest To Servicing Agent.** The parties hereto agree that pursuant to the Series 2018B Assignment, the Issuer shall assign to the Servicing Agent in order to secure payment of the Series 2018B Bonds, all of the Issuer's right, title, and interest in and to this Series 2018B Lease Agreement, except for the Issuer's rights under Section 4.02(b), Section 6.08(b), Section 6.16, Section 7.02, and Section 8.04 hereof.

**ARTICLE VIII  
DEFAULTS AND REMEDIES**

**Section 8.01. Defaults Defined.** The following shall be “**Defaults**” under this Series 2018B Lease Agreement and the term “**Default**” shall mean, whenever it is used in this Series 2018B Lease Agreement, any of the following events:

(a) Failure by the Company to pay any amount required to be paid under Section 4.02(a) hereof that results in a failure to pay principal of or interest on the Series 2018B Bonds, and such failure causes an Event of Default under the Bond Purchase Agreement;

(b) Failure by the Company to observe and perform any material covenant, condition or agreement on its part to be observed or performed hereunder, other than as referred to in Section 8.01(a) hereof, for a period of thirty days after receipt by the Company of written notice from the Servicing Agent or the Bondholder specifying such failure and requesting that it be remedied, unless the Servicing Agent or the Bondholder shall agree in writing to an extension of such time before its expiration or such notice is rescinded; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Servicing Agent or the Bondholder, as applicable, will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Company within the applicable period and diligently pursued until such failure is corrected, and if the Authorized Company Representative delivers a notice to the Servicing Agent or the Bondholder, as applicable, designating the date by which such failure is expected to be corrected;

(c) The Company’s voluntary initiation of any proceeding under any federal or state law relating to bankruptcy, insolvency, arrangement, reorganization, readjustment of debt, or any other form of debtor relief, or the initiation against the Company of any such proceeding which shall remain undismissed or unstayed for sixty consecutive days, or failure by the Company to promptly have discharged or stayed any execution, garnishment or attachment of such consequence as would materially impair the Company’s ability to carry on its operations at the Project, or assignment by the Company for the benefit of creditors, or the Company’s entry into an agreement of composition with its creditors; or

(d) The occurrence of an Event of Default under the Bond Purchase Agreement.

The provisions of subsection (b) of this Section 8.01 are subject to the following limitation: if by reason of Force Majeure the Company is unable in whole or in part to carry out any of its agreements contained herein (other than its obligations contained in ARTICLE IV hereof), the Company shall not be deemed in Default during the continuance of such inability. The Company agrees, however, to use reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing the Company from carrying out its agreement, provided that the settlement of strikes and other industrial disturbances shall be entirely within the discretion of the Company and the Company shall not be required to settle strikes, lockouts, and other

industrial disturbances by acceding to the demands of the opposing party or parties when such course is in the sole judgment of the Company unfavorable to the Company.

**Section 8.02. Remedies On Default.** Whenever any Default referred to in Section 8.01 hereof shall have happened and be continuing, the Bondholder or the Issuer may take one or any combination of the following remedial steps:

(a) If the Bondholder has declared the Series 2018B Bonds immediately due and payable pursuant to Section 6.02 of the Bond Purchase Agreement, by written notice to the Issuer and the Company, declare an amount equal to all amounts then due and payable on the Series 2018B Bonds, whether by acceleration of maturity (as provided in the Bond Purchase Agreement) or otherwise, to be immediately due and payable as liquidated damages under this Series 2018B Lease Agreement and not as a penalty, whereupon the same shall become immediately due and payable;

(b) Order the Servicing Agent to terminate the disbursement of any moneys in the Construction Fund and apply such moneys to the payment of any amounts then due or to become due under this Series 2018B Lease Agreement; or

(c) Take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement, or covenant of the Company under this Series 2018B Lease Agreement.

Any amounts collected pursuant to action taken under this Section 8.02 shall be applied in accordance with the provisions of this Series 2018B Lease Agreement and the Bond Purchase Agreement.

**Section 8.03. No Remedy Exclusive.** Subject to Section 6.02 of the Bond Purchase Agreement, no remedy herein conferred upon or reserved to the Issuer or the Bondholder 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 Series 2018B Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power so long as the Default is continuing 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. To entitle the Issuer or the Bondholder to exercise any remedy reserved to it in this ARTICLE VIII, it shall not be necessary to give any notice, other than such notice as may be required in this ARTICLE VIII. The Bondholder, subject to the provisions of the Series 2018B Assignment, shall be entitled to the benefit of all covenants and agreements herein contained.

**Section 8.04. Agreement To Pay Attorneys' Fees And Expenses.** If any Default shall have occurred and the Issuer or the Bondholder should employ attorneys or incur other expenses for the collection of payments required hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained, the

Company agrees that it will, within ten Business Days after demand therefor, pay to the Issuer or the Bondholder the reasonable fee of such attorneys and such other reasonable expenses so incurred by the Issuer or the Bondholder.

**Section 8.05. No Additional Waiver Implied By One Waiver.** If any agreement contained in this Series 2018B Lease Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**ARTICLE IX  
OPTION TO TERMINATE AGREEMENT;  
PURCHASE OF PROJECT BY COMPANY**

**Section 9.01. Option To Terminate At Any Time.** The Company shall have and is hereby granted the option to terminate its obligations under this Series 2018B Lease Agreement before full payment of the Series 2018B Bonds by providing for the payment of all of the Series 2018B Bonds outstanding and other expenses in accordance with Section 3.04 of the Bond Purchase Agreement.

**Section 9.02. Company's Option To Purchase Project.** The Company shall have, and is hereby granted, the option to purchase the Project and the Project Site at any time before the expiration of the Term of Agreement upon payment of \$10.00 to the Issuer and upon payment in full of all then Outstanding Series 2018B Bonds or provision for their payment having been made pursuant to the Bond Purchase Agreement, through prepayment of Rent Payments hereunder or otherwise, provided that, as of the date of such purchase, all fees, expenses, and charges due and payable under the provisions of this Series 2018B Lease Agreement and the Bond Purchase Agreement shall have been paid by the Company and the Issuer receives certificates to that effect from the respective recipients of such fees, expenses, and charges. To exercise such option the Company shall give written notice to the Issuer and the Servicing Agent if any of the Series 2018B Bonds shall then be unpaid or provision for their payment shall not have been made in accordance with the provisions of the Bond Purchase Agreement, and shall specify therein the date of closing such purchase, which date shall be not less than fifteen nor more than ninety days from the date such notice is given; and in respect of the redemption of the Series 2018B Bonds in accordance with the provisions of the Bond Purchase Agreement, the Company shall make arrangements reasonably satisfactory to the Servicing Agent for the giving of the required notice of redemption in accordance with the applicable provisions of the Bond Purchase Agreement. The option granted to the Company by this Section 9.02 shall survive termination of this Series 2018B Lease Agreement.

The Issuer shall not contest any election by the Company to purchase the Project pursuant to this ARTICLE IX as a result of the submission by the Issuer of a proposed plan of bankruptcy or reorganization to the State Local Debt Officer pursuant to KRS 66.400 or the filing of a petition of bankruptcy or reorganization with any applicable governmental authority and

in such case the Issuer shall fully cooperate with the Company in all respects to convey title to the Project to the Company despite any such proposed plan or filing.

**Section 9.03. Conveyance Of Project.** At the closing of any purchase of the Project and the Project Site pursuant to this ARTICLE IX, the Issuer will upon receipt of the purchase price deliver to the Company the following:

(a) An acknowledgment that this Series 2018B Lease Agreement has been terminated and, if the Bond Purchase Agreement shall not at the time have been satisfied in full, a release from the Purchaser of the Issuer's assignment of its rights under this Series 2018B Lease Agreement to the Purchaser pursuant to the Series 2018B Assignment.

(b) Documents conveying to the Company good and marketable fee simple title to the Project and the Project Site, by deed and such other instruments as may be necessary, all in form and substance mutually agreeable to the parties, subject to the following (i) those liens and encumbrances, if any, to which title to the Project and the Project Site was subject when acquired by the Issuer, unless subsequently released, (ii) those liens and encumbrances created or consented to by the Company, and (iii) those liens and encumbrances resulting from the Company's failure to perform or observe any of its duties in this Series 2018B Lease Agreement.

The documents described in (i), (ii), and (iii) of the immediately preceding paragraph shall be prepared by the Company and all reasonable expenses of the Issuer incurred in connection with such conveyance shall be paid by the Company.

Upon the closing of any purchase of the Project and the Project Site pursuant to this ARTICLE IX, the Project shall be subject to all property taxes levied by the Issuer or the Commonwealth or any political subdivision thereof effective as of the date of the Company's purchase of the Project from the Issuer.

**Section 9.04. Obligation To Purchase Project.** The Company hereby agrees to purchase, and the Issuer hereby agrees to sell, the Project and the Project Site for \$10.00 at the expiration of the Term of Agreement following full payment of the Series 2018B Bonds or provision for payment thereof having been made in accordance with the provisions of the Bond Purchase Agreement, subject to compliance with the provisions of the first sentence of Section 9.02 hereof.

**Section 9.05. Company Entitled To Certain Rent Abatements If Series 2018B Bonds Paid Before Maturity.** If at the time the aggregate moneys in the Bond Fund shall be sufficient (and shall continue to be sufficient) to retire in accordance with the provisions of the Bond Purchase Agreement all of the then Outstanding Series 2018B Bonds, and to pay all fees and charges of the Servicing Agent, if any, due or to become due through the date on which the last of the Series 2018B Bonds is retired, under circumstances not resulting in termination of the Term of Agreement, and if a Default shall not have occurred and be continuing, the Company shall not be required to pay any further rent under Section 4.02 hereof.

**ARTICLE X  
MISCELLANEOUS**

**Section 10.01. Term Of Agreement.** This Series 2018B Lease Agreement shall remain in full force and effect from the date hereof to and including the Maturity Date, or such time as all of the Series 2018B Bonds and the fees, expenses, and indemnities of the Issuer and the Servicing Agent, if any, have been paid, or provision has been made for such payments and the Project has been conveyed to the Company pursuant to ARTICLE IX hereof.

**Section 10.02. Notices.** All notices, certificates, or other communications hereunder shall be sufficiently given and shall be deemed given when delivered personally or received by facsimile transmission, telex, overnight delivery service, or United States mail, and, in each case, addressed as follows:

if to the Issuer, to:	Louisville/Jefferson County Metro Government, Kentucky 527 West Jefferson Street Louisville, Kentucky 40202 Telephone: (502) 574-2003 Attention: Mayor;
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if to the Company, to:	Brown-Forman Distillery, Inc. 850 Dixie Highway Louisville, Kentucky 40210 Telephone: (502) 774-7349 Attention: Treasurer;
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With a copy to:	Stoll Keenon Ogden PLLC 500 West Jefferson Street Suite 2000 Louisville, Kentucky 40202 Telephone: (502) 333-6000 Attention: Public Finance Chair; and
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if to the Servicing Agent, to:	Washington Investments, LLC 626 West Main Street Louisville, Kentucky 40202 Telephone: (502) 774-7349 Attention: Treasurer
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Notices to the Servicing Agent shall be effective upon receipt by the Servicing Agent. A duplicate copy of each notice, certificate, or other communication given hereunder by the Issuer or the Company shall also be given to the Servicing Agent. A duplicate of any notice, certificate,

or other communication given hereunder to any entity shall also be given to the Company. The Issuer, the Company, and the Servicing Agent may, by written notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, or other communications shall be sent.

**Section 10.03. Binding Effect.** This Series 2018B Lease Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Company, the Servicing Agent, the Bondholder, and their respective successors and assigns.

**Section 10.04. Severability.** Except to the extent otherwise set forth herein, if any provision of this Series 2018B Lease 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 10.05. Amounts Remaining In Funds.** Subject to the provisions of the Bond Purchase Agreement, it is agreed by the parties hereto that any amounts remaining in the Bond Fund, the Construction Fund, or any other fund or account created hereunder or under the Bond Purchase Agreement upon expiration or earlier termination of this Series 2018B Lease Agreement, as provided in this Series 2018B Lease Agreement, after Payment in Full of the Series 2018B Bonds (or provision for payment thereof having been made in accordance with the provisions of the Bond Purchase Agreement), the fees and expenses of the Servicing Agent, if any, in accordance with the Bond Purchase Agreement, shall belong to and be promptly paid to the Company by the Servicing Agent.

**Section 10.06. Amendments, Changes, And Modifications.** After the issuance of Series 2018B Bonds and before their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Bond Purchase Agreement), and except as otherwise herein expressly provided, this Series 2018B Lease Agreement may not be effectively amended, changed, modified, altered, or terminated without the written consent of the Bondholder and Servicing Agent in accordance with the provisions of the Bond Purchase Agreement and the written consent of the parties hereto.

**Section 10.07. Execution In Counterparts.** This Series 2018B Lease Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 10.08. Signatures.** Signature pages to this Series 2018B Lease Agreement may be exchanged by facsimile or electronic mail and each party hereto agrees to be bound by its facsimile or PDF signature.

**Section 10.09. Applicable Law.** This Series 2018B Lease Agreement shall be governed by and construed in accordance with the laws of the Commonwealth.

**Section 10.10. Captions.** The captions and headings in this Series 2018B Lease Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions, Articles, or Sections of this Series 2018B Lease Agreement.

**Section 10.11. Approval Of Assignment.** The Company hereby acknowledges that it has received an executed copy of and approves the Bond Purchase Agreement and is familiar with its provisions, and agrees that it will take all such actions as are required or contemplated of it under the Bond Purchase Agreement to preserve and protect the rights of the Servicing Agent and of the Bondholder thereunder and that it will not take any action which would cause a default thereunder. Any redemption of Series 2018B Bonds before maturity shall be effected as provided in the Bond Purchase Agreement.

**Section 10.12. Limitation Of Issuer's Liability.** Upon any default by the Issuer hereunder, the liability of the Issuer to the Company shall be enforceable only out of its interest in the Project and under this Series 2018B Lease Agreement and there shall be no other recourse for damages by the Company against the Issuer, its officers, the members of its Legislative Body, or any of its officials, officers, agents, and employees, or any of the property now or hereafter owned by it or them. No provision, covenant, or agreement contained in this Series 2018B Lease Agreement or breach thereof shall constitute or give rise to a pecuniary liability of the Issuer or a charge upon its general credit or taxing powers. In making such covenants, agreements or provisions, the Issuer has not obligated itself, except with respect to issuing the Series 2018B Bonds for purposes of the Project and the application of the revenues of this Series 2018B Lease Agreement as hereinabove provided.

**Section 10.13. Payments Due On Saturdays, Sundays, And Holidays.** If any date a payment under this Series 2018B Lease Agreement is a day which is not a Business Day, and the Servicing Agent is closed, then such payment need not be made by the Company on that date, but that payment be made on the next succeeding Business Day on which the Servicing Agent is open for business with the same force and effect as if that payment were made on the fixed date and no interest shall accrue for the period after that date.

**Section 10.14. Entire Agreement.** This Series 2018B Lease Agreement, the other Bond Documents and the Bond Legislation merge all prior negotiations, representations, warranties, and agreements between the parties hereto and constitute the entire agreement of the parties with respect to the subject matters of this Series 2018B Lease Agreement, the other Bond Documents, and the Bond Legislation. The parties shall be responsible only for their representations, warranties, and agreements set forth in this Series 2018B Lease Agreement, the other Bond Documents, and the Bond Legislation.

[Signature Page To Follow]



[SIGNATURE PAGE TO SERIES 2018B LEASE AGREEMENT]

IN WITNESS WHEREOF, the Issuer has caused this Series 2018B Lease Agreement to be executed in its name and the Company has caused this Series 2018B Lease Agreement to be executed in its name all as of the date first above written.

**LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT, KENTUCKY**

Attest:

\_\_\_\_\_  
Stephen Ott, Metro Council Clerk

By: \_\_\_\_\_  
Greg Fischer, Mayor

Approved as to form and legality:

Michael J. O'Connell  
Jefferson County Attorney

By: \_\_\_\_\_  
Assistant Jefferson County Attorney

**BROWN-FORMAN DISTILLERY, INC.**

By: \_\_\_\_\_  
Dwight Haygood  
Secretary

COMMONWEALTH OF KENTUCKY     )  
   ) SS.  
COUNTY OF JEFFERSON            )

The foregoing instrument (including the appended **EXHIBITS A and B**) was subscribed, sworn to and acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2018, by Greg Fischer and Stephen Ott, as the respective Mayor and Metro Council Clerk of the Louisville/Jefferson County Metro Government, Kentucky, for and on behalf of Metro Government.

My commission expires \_\_\_\_\_.

[Seal]

\_\_\_\_\_  
Notary Public

COMMONWEALTH OF KENTUCKY     )  
   ) SS.  
COUNTY OF JEFFERSON            )

The foregoing instrument (including the appended **EXHIBITS A and B**) was subscribed, sworn to and acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2018, by Dwight Haygood, as the Secretary of Brown-Forman Distillery, Inc., for and on behalf of the Corporation.

My commission expires \_\_\_\_\_.

[Seal]

\_\_\_\_\_  
Notary Public

This instrument prepared by:

**STOLL KEENON OGDEN PLLC**  
500 West Jefferson Street  
Suite 2000  
Louisville, Kentucky 40202  
Telephone: (502) 568-5460  
Email: mark.franklin@skofirm.com

By: \_\_\_\_\_  
Mark S. Franklin

## EXHIBIT A

### Project Site

The following described real property located in the Jefferson County, Kentucky, and more particularly described as follows:

A certain tract of land in the community of Louisville, Jefferson County, Kentucky, previously described in Deed Book 9751 Page 951 and known locally as Tax Block 18A Lot 19 and 20, and more particularly described as follows:

**BEGINNING** at a building corner in the northeast corner of the intersection of the north right-of-way line of West Main street (90' R/W) and the west right-of-way line of North First Street (60' R/W); thence with the north right-of-way line of West Main Street North 81 deg. 07 min. 36 sec. West, 205.84 feet to a set "X" cut at the southwest corner of a tract of land conveyed to Waterfront Investments, LLC in Deed Book 7361, Page 352, which is south of the building wall 0.78 feet and which is the **TRUE POINT OF BEGINNING**; thence continuing with the north right-of-way line of West Main Street North 81 deg. 07 min. 36 sec. West, 28.25 feet to a set "X" cut at the southeast corner of a tract of land conveyed to Waterfront Investments H, LLC recorded in Deed Book 7718, Page 585; thence continuing with the north right-of-way line of West Main Street North 81 deg. 07 min. 36 sec. West, 29.19 feet to a set "X" cut at the southeast corner of a tract of land conveyed to DKH Properties, Inc, and Daren Doogarsingh recorded in Deed Book 8738, Page 168 which is 0.74 feet south of the building wall; thence with the line of DKH Properties, Inc. and Daren Doogarsingh North 08 deg. 48 min. 54 sec. East, 204.00 feet to a point at the northeast corner of DKH Properties, Inc. and Daren Doogarsingh and on the south right-of-way line of Washington Street (50' R/W) and south of the building wall 0.64 feet; thence with the south right-of-way line of Washington Street South 81 deg. 07 min. 36 sec. East, 29.19 feet to a point at the northwest corner of Waterfront Investments II, LLC; thence with the south right-of-way line of Washington Street South 81 deg. 07 min. 36 sec. East, 28.25 feet to a point at the northwest corner of Waterfront Investments, LLC which is 0.79 feet south of the building wall; thence with the line of Waterfront Investments, LLC South 08 deg. 48 min. 54 sec. West, 204.00 feet to the **TRUE POINT OF BEGINNING** and containing 0.269 acres (11718 square feet).

Being the same property conveyed to Louisville/Jefferson County Metro Government, Kentucky by deed dated [Closing Date], and of record in Deed Book \_\_\_\_\_, Page \_\_\_\_\_, in the Office of the Clerk of Jefferson County, Kentucky.

## **EXHIBIT B**

### **The Project**

The **“Project”** includes all industrial building facilities financed by the Bonds and acquired, constructed, installed, and equipped by the Company at 117 and 119 West Main Street in downtown, Louisville, Kentucky, consisting of new personal property to be utilized in the manufacture of bourbon, including fermentation, distilling, cooperage, filling, and bottling facilities.