

## SERIES 2018B PAYMENT IN LIEU OF TAXES AGREEMENT

This **SERIES 2018B PAYMENT IN LIEU OF TAXES AGREEMENT**, effective as of **[Closing Date]** (this “**Agreement**”), is made by and between:

- (i) the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, KENTUCKY**, a political subdivision of the Commonwealth of Kentucky (“**Metro Government**”); and
- (ii) **BROWN-FORMAN DISTILLERY, INC.**, a Delaware corporation (the “**Company**”).

### WITNESSETH

**WHEREAS**, Jefferson County Public Schools (the “**District**”), by and through its Board of Education (the “**Board of Education**”), is a body politic and corporate existing under Section 160.160 of the Kentucky Revised Statutes (“**KRS**”) and has the authority under KRS 160.460 through 160.476 to levy ad valorem taxes for school purposes on all property subject to local taxation with a taxable situs in the District (“**School Property Taxes**”);

**WHEREAS**, the Company or an affiliate thereof is currently acquiring, constructing, installing, and equipping an industrial project of the Company consisting of the facilities and properties described in **EXHIBIT A** attached hereto (collectively, the “**Project**”), such Project being within the geographic boundaries of Metro Government and the District; and

**WHEREAS**, the Project represents new investment and is expected to generate economic development within Metro Government and the District; and

**WHEREAS**, on **[Second Reading Date]**, Metro Government adopted a Bond-authorizing Ordinance (the “**Ordinance**”) providing for, among other things, the issuance of taxable industrial building revenue bonds designated as “Louisville/Jefferson County Metro Government, Kentucky, Industrial Building Revenue Bonds, Series 2018B (Brown-Forman Whiskey Row Project)” in an aggregate principal amount of up to \$4,250,000 (the “**Series 2018B Bonds**”) for the benefit of the Company, pursuant to KRS 103.200 through 103.285, inclusive, (the “**Act**”), to finance the acquisition, construction, installation, and equipping of the Project, to acquire title to the Project, and to lease said portion back to the Company, all pursuant to the Act; and

**WHEREAS**, Metro Government and the Company have agreed that title to the Project will be conveyed to Metro Government and leased back to the Company, pursuant to the Act, so long as the Series 2018B Bonds are outstanding; and

**WHEREAS**, a condition of Metro Government’s agreement to enter into the documents necessary to vest title to the Project in Metro Government and to effect the lease of the Project to the Company, the Company has agreed to make certain payments to the Board of Education in lieu of School Property Taxes and to enter into this Agreement with respect thereto;

NOW, THEREFORE, in consideration of the foregoing, the mutual agreement of the parties contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

**Section 1. Recitals Incorporated.** It is hereby found, determined, and declared that the recitals set forth in the preambles to this Agreement, including the definitions contained therein, are true and correct and are hereby incorporated in this Section 1 by reference.

**Section 2. Project Exempt From Taxation.** It is understood, acknowledged, and agreed by the parties that pursuant to KRS 103.285, the Project is exempt from taxation by Metro Government, the Board of Education, and other political subdivisions in the Commonwealth of Kentucky to the same extent as other public property used for public purposes, so long as same is owned by Metro Government and any balance remains outstanding on the Bonds. It is further understood, acknowledged, and agreed by the parties that (a) the Company's leasehold interest is exempt from local taxation and is taxable for state purposes at the rate applicable to leasehold interests in industrial buildings; (b) any proportion of the value of the leasehold interest created through any private financing is taxable at applicable state and local rates; and (c) the distilled spirits stored in or at the Project will not be governed by KRS 103.285. The parties agree that the recording of the Series 2018B Lease Agreement related to the Bonds with the Jefferson County Clerk shall constitute the listing of the taxable leasehold interest in real property created thereby pursuant to KRS 132.220. The Company agrees annually to list any taxable leasehold interest in tangible personal property created by each Series 2018B Lease Agreement by listing such interest on and filing a Form 62A500 (Tangible Personal Property Tax Return).

**Section 3. Agreement To Make PILOT Payments.** In consideration of Metro Government's agreement to issue the Series 2018B Bonds and take all other actions authorized by the Ordinance, the Company hereby agrees that in each calendar year during the term of this Agreement with respect to the Series 2018B Bonds beginning on and after the first January 1<sup>st</sup> assessment date following issuance of said Series 2018B Bonds (each an "Assessment Date") that Metro Government owns the Project or any portion thereof, the Company shall make a payment to Metro Government computed as indicated below, equal to the amount of all School Taxes levied on the Project or the portion thereof owned by Metro Government that otherwise would have been due and payable to the Board of Education, as if the Project were owned by a tax-paying entity and subject to payment of School Property Taxes absent the application of KRS 103.285 (each, a "PILOT Payment" and together, the "PILOT Payments"), for each of the Assessment Dates following issuance of the Series 2018B Bonds while any portion of the Series 2018B Bonds remain outstanding.

**Section 4. Calculation Of PILOT Payments.** The amount of the PILOT Payment in each calendar year shall be equal to (i) the Fair Cash Value (as hereinafter defined) of the Project as of January 1<sup>st</sup> of such calendar year, multiplied by (ii) the ad valorem tax rate levied by the Board of Education for such calendar year under KRS 160.460 through 160.476. If, in any calendar year during which the foregoing calculation is made, the Board of Education has

levied different ad valorem tax rates on different classes of property subject to School Property Taxes, the foregoing calculation shall be made separately for each such class of property that is included within the Project.

**Section 5. Determination Of Fair Cash Value Of The Project.** The Jefferson County Property Valuation Administrator (the “PVA”) is responsible for establishing the assessed value of real estate within Jefferson County for the purpose of imposing real property taxes. The Department of Revenue, Kentucky Finance and Administration Cabinet (the “Department”), oversees the assessment of distilled spirits and other personal property within Metro Government for the purpose of imposing personal property taxes. The “Fair Cash Value” of the real property portion of the Project shall be as determined annually by the PVA as if the Project were owned by a tax-paying entity. The “Fair Cash Value” of the personal property portion of the Project shall be annually determined using its original cost and age and the applicable trending tables published by the Department in its Form 62A500 (Tangible Personal Property Tax Return), adjusted to take into account the scrapping, removal, or other disposition of personal property in the ordinary course of business.

**Section 6. Valuation Appeal Rights.** Each of the Board of Education and the Company shall have the right at its sole expense and in its own name and without any expense to the other party, to seek and prosecute in good faith an adjustment, by administrative appeal, litigation or otherwise, of any tax assessment made by the PVA of the real property portion of the Project, and if any adjustment is made the PILOT Payments shall be calculated based upon the assessment resulting from such adjustment. If for any reason the Project or any part of the property included within the Project is legally placed on the ad valorem tax rolls, the obligation of the Company to make the PILOT Payments shall terminate with respect to that property on and after January 1<sup>st</sup> of the following calendar year, and the owner of the property shall thereafter pay ad valorem taxes on that property as required of a tax-paying entity.

**Section 7. Timing Of PILOT Payments.** Any PILOT Payment payable in any calendar year hereunder shall be paid at the same time and in the same manner as are School Property Taxes for such calendar year, except that the Company shall deliver the PILOT Payment to the Board of Education, at the address provided in Section 9 below instead of the regular tax collector along with supporting calculations. The PILOT Payment for each such calendar year shall be due and payable in full no later than two full months from the date the bill for the School Property Taxes is issued in accordance with KRS 134.015; provided, however, if the Company pays a PILOT Payment to the Board of Education on or before any discount date established pursuant to KRS 134.015 for the School Property Taxes, the Company may reduce the PILOT Payment by the corresponding discount percentage, and provided further that the Company pays a PILOT Payment to the Board of Education after the due date established pursuant to KRS 134.015 for the School Property Taxes, the Company shall increase the PILOT Payment by the corresponding penalty percentage.

**Section 8. Termination.** Notwithstanding any other provision herein and with the exception of Sections 1 and 2 hereof, this Agreement shall terminate on the day immediately

following the first date that no Series 2018B Bonds issued by Metro Government pursuant to the Ordinance remain issued and outstanding.

**Section 9. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered or certified mail, postage prepaid, or sent by telegram, addressed as follows:

If to Metro Government, at:	Jefferson County Attorney's Office Jefferson Hall of Justice 600 West Jefferson Street Louisville, Kentucky 40202
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If to the Board of Education, at:	Jefferson County Public Schools 3332 Newburg Road Louisville, Kentucky 40218
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If to the Company, at:	Mark W. Blayney Vice President, Domestic Tax Brown-Forman Distillery, Inc. 850 Dixie Highway Louisville, Kentucky 40210
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- and -

Timothy J. Eifler  
Stoll Keenon Ogden, PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202

Metro Government and the Company may by notice given hereunder designate any further or different addresses to which subsequent notices, certificates, or other communications shall be sent.

**Section 10. Entire Agreement.** This Agreement contains all of the agreements and conditions made between the parties hereto regarding the subject matter of this Agreement and there are no other agreements or understandings, written or oral, between the parties relating to the subject matter of this Agreement. This Agreement supersedes all prior agreements and understandings, written and oral, between the parties with respect to such subject matter. This Agreement may not be modified orally or in any other manner than by an agreement in writing signed by both parties hereto or their respect successors in interest. The invalidity, illegality, or unenforceability of any provision of this Agreement will not affect the validity, legality, or enforceability of the remaining provisions.

**Section 11. Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon Metro Government, the Company and their respective successors and assigns.

**Section 12. Execution In Counterparts.** This 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 13. Signatures.** Signature pages to this Agreement may be exchanged by facsimile or electronic mail and each party hereto agrees to be bound by its facsimile or PDF signature.

**Section 14. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

**Section 15. Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Agreement.

[Signature Page To Follow]

**[SIGNATURE PAGE TO SERIES 2018B PAYMENT IN LIEU OF TAXES AGREEMENT]**

**IN WITNESS WHEREOF**, Metro Government and the Company have executed this Series 2018B Payment In Lieu of Taxes Agreement effective 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

## **EXHIBIT A**

### **Project Description**

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.