
LEASE AGREEMENT

BETWEEN

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT

AND

BOYD REAL PROPERTY, LLC

\$119,000,000 LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT
INDUSTRIAL BUILDING REVENUE BONDS
(BOYD REAL PROPERTY, LLC PROJECT), SERIES 2022

Dated

as of

[June 1, 2022]

STITES & HARBISON, PLLC
BOND COUNSEL

LEASE AGREEMENT

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(This Index is not a part of this Agreement
but rather is for convenience of reference only)

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LEASE AGREEMENT

THIS LEASE AGREEMENT (the “Agreement”) is dated as of [June 1, 2022], but will not be effective and binding on the parties hereto until [_____] (the “Effective Date”), by and between the LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, a consolidated local government and political subdivision of the Commonwealth of Kentucky (the “Issuer”), and BOYD REAL PROPERTY, LLC, a Kentucky limited liability company (the “Lessee”), under the following circumstances summarized in the following recitals (the capitalized terms not defined in the recitals being used therein as defined in Article 1 hereof):

WITNESSETH:

WHEREAS, pursuant to the provisions of Chapter 103 of the Kentucky Revised Statutes, as supplemented and amended (the “Act”), the Issuer is authorized and empowered to issue its revenue bonds and to enter into lease agreements for the purpose of facilitating the acquisition, construction, improving, equipping and financing of industrial buildings constituting a “project” within the meaning of the Act; and

WHEREAS, the Lessee and the Issuer each has the full right and lawful authority to enter into this Agreement and perform and observe the provisions hereof on their respective parts to be performed and observed; and

WHEREAS, the Issuer proposes to assist in the acquisition, construction, equipping and installation of four or more new buildings at 1400 Cecil Avenue in the City of Louisville, Kentucky; all for lease to the Lessee for light manufacturing or warehousing and distribution (the “Project”), which will constitute an industrial building approved by an ordinance of the Issuer on [June 9, 2022]; and

WHEREAS, the Lessee is desirous of financing the acquisition, construction, equipping and installation of the proposed Project through this Agreement with the Issuer pursuant to the Act; and

WHEREAS, the Project will promote the economic development of the Commonwealth of Kentucky, relieve conditions of unemployment, as it is projected to result in the creation of at least one thousand (1,000) jobs, and otherwise contribute to the accomplishment of the purposes of the Act, and to promote and accomplish such purposes the Issuer is willing to and proposes to issue bonds in an aggregate principal amount not to exceed \$119,000,000 (the “Bonds”) and to use the proceeds thereof in order to assist in the financing of the acquisition, construction, equipping and installation of the Project and certain incidental costs upon the terms and conditions set forth herein; and

WHEREAS, the Bonds are to be issued pursuant to and secured by a Trust Indenture, dated as of the date hereof (the “Indenture”), by and between the Issuer and U.S. Bank Trust Company, National Association, as trustee (the “Trustee”); and

NOW THEREFORE, for and in consideration of the promises and the mutual covenants and agreements hereinafter contained, the parties hereto covenant and agree, each with the other, as follows:

ARTICLE 1

DEFINITIONS

Section 1.1 Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, the words and terms set forth in Section 1.2 hereof shall have the meanings set forth therein unless the context or use clearly indicates another meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms defined therein.

Section 1.2 Definitions. As used herein:

“Act” means Sections 103.200 through 103.287 of the Kentucky Revised Statutes, as in force on the date of execution of this Agreement.

“Additional Bonds” means any Additional Bonds as defined in the Indenture.

“Additional Payments” means the amounts required to be paid by the Lessee pursuant to the provisions of Section 4.2 hereof.

“Agreement” means this Lease Agreement as amended as supplemented from time to time.

“Authenticating Agent” means the Authenticating Agent as defined in the Indenture.

“Authorized Lessee Representative” means the person at the time designated to act on behalf of the Lessee by written certificate furnished to the Issuer and the Trustee, containing the specimen signature of that person and signed by the Lessee. That certificate may designate an alternate or alternates. In the event that the person so designated becomes unavailable or unable to act and the Lessee fails to designate a replacement within ten (10) days after such unavailability or inability to act, the Purchaser shall appoint an interim Authorized Lessee Representative until such time as the Lessee designates that person.

“Bond Fund” means the Bond Fund created in the Indenture.

“Bond Legislation” means (a) when used with reference to the Bonds, the ordinance providing for their issuance and approving this Agreement, the Indenture, the Purchase Agreement and related matters; (b) when used with reference to an issue of Additional Bonds, the ordinance providing for the issuance of the Bonds, to the extent applicable, and the legislation providing for the issuance of the Additional Bonds and approving any amendment to this Agreement, any Supplemental Indenture and related matters; and (c) when used with reference to Bonds when Additional Bonds are outstanding, the ordinance providing for the

issuance of the Bonds and the legislation providing for the issuance of the then outstanding and the then to be issued Additional Bonds; in each case as amended or supplemented from time to time.

“Bond Service Charges” means, for any period, the principal of and interest on the Bonds for that period whether due at maturity or upon acceleration or redemption.

“Bonds” means the bonds to be issued in an aggregate principal amount not to exceed \$119,000,000 and denominated Louisville/Jefferson County Metro Government Industrial Building Revenue Bonds (Boyd Real Property, LLC Project), Series 2022 issued by the Issuer pursuant to the Bond Legislation and the Indenture.

“Business Day” means any day of the year, other than a Saturday or Sunday, on which banking institutions located in the city or cities in which the corporate trust office of the Trustee is located are not required or authorized by law to remain closed or on which the New York Stock Exchange is not closed.

“Commonwealth” means the Commonwealth of Kentucky.

“Completion Date” means the date of completion of the Project evidenced in accordance with the requirements of Section 3.6 hereof.

“Deed” means the Deed and Consideration Certificate, dated as of [_____, 2022], from the Lessee to the Issuer with respect to the Project Site.

“Eligible Investments” means Eligible Investments as defined in the Indenture.

“Event of Default” means any of the events described as an Event of Default in Section 7.1 hereof.

“Facilities” means the Project.

“Force Majeure” means any of the causes, circumstances or events described as constituting Force Majeure in Section 7.1 hereof.

“Holder” or “Holder of a Bond” means the Person in whose name a Bond is registered on the Register.

“Indenture” means the Trust Indenture, dated as of the same date as this Agreement, between the Issuer and the Trustee, as amended or supplemented from time to time.

“Installation Period” means the period between the beginning of the acquisition, construction, equipping and installation of the Project or the date on which the Bonds are delivered to the Purchaser, whichever is earlier, and the Completion Date.

“Interest Payment Date” means, as to the Bonds, the date set forth as such in the Bond form attached as Exhibit A to the Indenture, and as to Additional Bonds, each date designated as an Interest Payment Date in the Bond form for which provision is made in the Supplemental Indenture or Bond Legislation.

“Interest Rate” means [four percent (4.00%) per annum], being the rate borne by the Bonds.

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

“Lease Payments” means the amounts required to be paid or otherwise satisfied by the Lessee pursuant to Section 4.1 of this Agreement.

“Lease Term” means the period from the date hereof until the earlier of (i) [_____, 2052] or (ii) prepayment in whole of the Bonds and Additional Bonds.

“Legislative Authority” means the Metro Council of the Issuer.

“Lessee” means Boyd Real Property, LLC, a Kentucky limited liability company, and its lawful successors and assigns.

“Net Proceeds” when used with respect to any insurance or condemnation award, means the gross proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all expenses (including attorneys’ fees and any extraordinary expenses of the Trustee) incurred in the collection of such gross proceeds.

“Notice Address” to the Issuer, the Lessee and the Trustee shall be addressed as follows:

(i) If to the Lessee: Boyd Real Property, LLC
10001 Linn Station Road
Louisville, Kentucky 40223
Attention: Monty Boyd, Manager

(ii) If to the Issuer: Louisville/Jefferson County Metro Government
601 W. Jefferson Street
Louisville, Kentucky 40202
Attention: Office of the Mayor

(iii) If to the Trustee: U.S. Bank Trust Company, National Association
435 N. Whittington Parkway
Louisville, Kentucky 40222
Attention: [Amy Anders]

(iv) If to the Purchaser: Boyd Company
1400 Cecil Avenue
Louisville, Kentucky 40211
Attention: Monty Boyd, President

“Outstanding Bonds,” “Bonds outstanding” or “outstanding” as applied to Bonds means, as of the applicable date, all Bonds which have been authenticated and delivered, or which are being delivered by the Trustee under this Indenture, except:

1. Bonds cancelled upon surrender, exchange or transfer, or cancelled because of payment or redemption, on or prior to that date;
2. Bonds, or the portion thereof, which have been paid or otherwise satisfied and discharged or caused to have been paid or otherwise satisfied and discharged pursuant to the provisions of the Indenture; and
3. Bonds in lieu of which others have been authenticated under Section 3.7 of the Indenture.

“Paying Agent” means the Paying Agent as defined in the Indenture.

“Person” or words importing person means firms, associations, partnerships (including without limitation, general and limited partnerships), joint ventures, limited liability companies, societies, estates, trusts, corporations, public or governmental bodies, other legal entities and natural persons.

“Plans and Specifications” means the plans and specifications describing the Project Facilities as now prepared and as they may be changed as herein provided from time to time.

“Project” or “Project Facilities” means the Project Site (as it may be amended to add additional real property that the Lessee may acquire from time to time) and the Lessee’s facilities as described in the third recital hereof (and more particularly described in the Plans and Specifications) and as set forth in Exhibit A attached hereto, together with any additions, modifications and substitutions to the Project Site, the facilities and such personal property, as set forth in Exhibit B, attached hereto, as they may be amended from time to time to reflect the additions to, or deletions from, the facilities, or the Project Site.

“Project Costs” means the costs of the Project specified in Section 3.4 hereof.

“Project Fund” means the Project Fund created in the Indenture.

“Project Site” means the real estate described in Exhibit A hereto (as it may be amended to add additional real property that the Lessee may acquire from time to time).

“Purchase Agreement” means, as to the Bonds, the Bond Purchase Agreement, dated as of [_____, 2022], by and among the Issuer, the Purchaser and the Lessee, and as to any

Additional Bonds, any Bond Purchase Agreement that may be provided for in the applicable Bond Legislation providing for the issuance of the Additional Bonds.

“Purchaser” means Boyd Company, and as to Additional Bonds, the Person or Persons identified as the purchaser or purchasers in the Purchase Agreement.

“Register” means the books kept and maintained by the Registrar for registration and transfer of Bonds pursuant to Section 3.6 of the Indenture.

“Registrar” means the Registrar as defined in the Indenture.

“Revenues” means (a) the Lease Payments, (b) all other moneys received or to be received by the Issuer or the Trustee in respect of the Lease Payments, including without limitation, all moneys and investments in the Bond Fund, (c) any moneys and investments in the Project Fund, and (d) all income and profit from the investment of the foregoing moneys.

“Trustee” means the Trustee at the time serving as such under the Indenture, until a successor Trustee shall have become such pursuant to the applicable provisions of the Indenture, and thereafter “Trustee” shall mean the successor Trustee.

“Unassigned Issuer’s Rights” means all of the rights of the Issuer to receive Additional Payments under Section 4.2 hereof, to be held harmless and indemnified under Sections 5.4 and 5.5 hereof, to be reimbursed for attorneys’ fees and expenses under Section 7.4 hereof, and to give or withhold consent to amendments, changes, modifications, alterations and termination of this Agreement under Section 10.7 hereof.

Section 1.3 Interpretation. Any reference herein to the Issuer, to the Legislative Authority or to any member or official of either includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the Commonwealth or the Act, or to a section, provision or chapter of the Kentucky Revised Statutes or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this paragraph, if it constitutes in any way an impairment of the rights or obligations of the Issuer, the Holders, the Trustee, the Registrar or the Lessee under this Agreement, the Indenture, the Bond Legislation, the Bonds, or any other instrument or document entered into in connection with any of the foregoing; including without limitation, any alteration of the obligation to pay Bond Service Charges in the amount and manner, at the times, and from the sources provided in the Bond Legislation and Indenture except as permitted in the Indenture.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa. The terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder,” “hereinafter,” and similar terms refer to this Agreement; and the term “hereafter” means after,

and the term “heretofore” means before, the date of delivery of the Bonds. Words of any gender include the correlative words of the other gender, unless the sense indicates otherwise.

Section 1.4 Captions and Headings. The captions and headings in this Agreement are solely for ease of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

ARTICLE 2

REPRESENTATIONS

Section 2.1 Representations of the Issuer. The Issuer, in reliance, in part, upon the opinion of Bond Counsel, makes the following representations and warranties as the basis for the undertaking on its part herein contained.

(a) The Issuer is a consolidated local government and political subdivision of the Commonwealth of Kentucky. Pursuant to the Act, the Issuer has the power to issue the Bonds, to enter into this Agreement and the transactions contemplated hereby, and to carry out its obligations hereunder. The Issuer is not in default under or in violation of the Constitution or any of the laws of the Commonwealth or any charter which authorizes its de jure existence or is relevant to the issuance of the Bonds or the consummation of the transactions contemplated hereby or in connection with such issuance, and has been duly authorized to issue the Bonds and to execute and deliver this Agreement. The Issuer agrees that it will do or cause to be done in a timely manner all things necessary to preserve and keep in full force and effect, and to carry out the terms of, this Agreement and the terms of the Indenture.

(b) The Issuer has determined that the Project constitutes and will constitute an activity permitted to be financed pursuant to the Act and that the financing of the Project is in the public interest and for a public purpose. The Issuer will acquire title to the Project and the Project Site and lease the same to the Lessee pursuant to the Act and this Agreement.

(c) The Issuer has found and determined and hereby finds and determines that it has complied with all requirements of the Act as may be applicable with respect to the issuance of the Bonds and the execution of this Agreement.

(d) The Issuer agrees to use and apply the net proceeds of the Bonds to assist in the acquisition, construction, equipping and installation of the Project and to lease the Project to the Lessee pursuant to the Agreement to the end that the purposes of the Act may be accomplished.

(e) To accomplish the foregoing, the Issuer agrees to issue the Bonds following the execution of this Agreement, on such terms and conditions as are set forth in the Indenture. The net proceeds from the issuance of the Bonds shall be applied, upon direction of the Lessee for application, to the payment or satisfaction of the Project Costs.

(f) No official of the Issuer has any material interest whatsoever in the Lessee or in the transactions contemplated by this Agreement.

(g) Neither the execution and delivery of this Agreement or the Indenture, the consummation of the transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement or the Indenture, materially conflict with or result in a material breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Issuer is now a party or by which it is bound or constitute a material default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any material nature upon any of the property or assets of the Issuer under the terms of any instrument or agreement.

Section 2.2 Representations and Covenants of the Lessee. The Lessee represents and covenants that:

(a) It has the capacity to enter into and carry out the transactions contemplated by those documents. Execution, delivery and performance do not, and will not, violate any provision of law applicable to the Lessee and do not, and will not, conflict with or result in a default under any agreement or instrument to which the Lessee is a party or by which it is bound for which waivers have not been obtained. This Agreement has been duly executed and delivered by the Lessee and all steps necessary have been taken to constitute this Agreement, the Purchase Agreement and the Deed (and any additional deeds related to the conveyance of additional real property to the Issuer from the Lessee) valid and binding obligations of the Lessee.

(b) The provision of financial assistance to be made available to the Lessee under this Agreement and the commitments therefor made by the Issuer have induced the Lessee to maintain within the boundaries of the Issuer that business of the Lessee to be conducted by use of the Project and such business will create additional jobs and employment opportunities within the Issuer.

(c) The Project will be completed substantially in accordance with the Plans and Specifications and the Project will be operated and maintained in such manner as to conform with all applicable zoning, planning, building, environmental and other applicable governmental regulations and as to be consistent with the Act.

(d) The Project will be located entirely within the boundaries of Jefferson County, Kentucky.

(e) There are no actions, suits, proceedings, inquiries or investigations pending, or to the knowledge of the Lessee threatened, against or affecting the Lessee in any court or before any governmental authority or arbitration board or tribunal which are reasonably anticipated to materially and adversely affect the transactions contemplated on their part by the Lease or which are reasonably anticipated to adversely affect the validity or enforceability of the Bonds or the lease documents or the ability of the Lessee to perform their obligations under any of the foregoing.

ARTICLE 3

COMPLETION OF THE PROJECT; ISSUANCE OF THE PROJECT BONDS

Section 3.1 Acquisition and Installation. The Lessee (a) has previously, or will, upon the issuance of the Bonds, convey to the Issuer or cause to be conveyed to the Issuer from time to time the Project and it has caused and will cause the Project to be acquired and installed as herein provided on the Project Site with due diligence to the completion thereof substantially in accordance with the Plans and Specifications, all as provided herein, (b) shall pay or otherwise satisfy when due all fees, costs and expenses incurred in connection with that acquisition and installation from funds made available therefor in accordance with this Agreement or otherwise, and (c) shall ask, demand, sue for, levy, recover and receive all those sums of money, debts, and other demands whatsoever which may be due, owing and payable under the terms of any contract, agreement, obligation, bond or other performance security with respect thereto.

Section 3.2 Plans and Specifications. The Lessee has the Plans and Specifications available for inspection by the Issuer and may revise the Plans and Specifications from time to time provided that no revision shall be made which would change the Project purposes to other than purposes permitted by the Act.

Section 3.3 Issuance of the Bonds; Application of Proceeds. To acquire, construct, equip and install the Project, the Issuer will issue, sell and deliver the Bonds to the Purchaser. The Bonds will be issued pursuant to the Indenture in the aggregate principal amount, will bear interest, will mature and will be subject to redemption as set forth therein. The Lessee hereby approves the terms and conditions of the Indenture and the Bonds, and of the terms and conditions under which the Bonds will be issued, sold and delivered.

The consideration for the issuance and sale of the Bonds shall be the conveyance of the Project Site to the Issuer and the expenditures made for the acquisition, construction, equipping and installation of the Project and any other moneys necessary for the costs of issuance of the Project. Pending the disbursement pursuant to Section 3.4 hereof, the monetary proceeds, if any, so deposited in the Project Fund, together with any investment earnings thereof, shall constitute a part of the Revenues assigned by the Issuer to the payment of Bond Service Charges as provided in the Indenture.

At the request of the Lessee, and for the purposes and upon fulfillment of the conditions specified in the Indenture, the Issuer may provide for the issuance, sale and delivery of Additional Bonds and use the proceeds from the sale thereof for any additions to the Project.

Section 3.4 Disbursements from the Project Fund. Subject to the provisions below, disbursements from the Project Fund of moneys if any moneys are retained in the Project Fund shall be made, by execution and delivery to the Trustee of a disbursement request (unless there is a Home Office Payments Agreement in effect in which event such request shall be delivered to the Purchaser in place of the Trustee) substantially in the form attached hereto and incorporated herein by reference as Exhibit C, only to reimburse or pay the Lessee, or any Person designated by the Lessee, for the following Project Costs:

(a) Costs incurred directly or indirectly for or in connection with the acquisition, construction, equipping and installation of the Project, including costs incurred in respect of the Project for preliminary planning and studies; architectural, legal, engineering, accounting, consulting, supervisory and other services; labor, services and materials; and recording of documents and title work;

(b) Premiums attributable to any surety bonds and insurance required to be taken out and maintained during the Installation Period with respect to the Project Site and the Project Facilities;

(c) Taxes, assessments and other governmental charges in respect of the Project that may become due and payable during the Installation Period;

(d) Costs incurred directly or indirectly in seeking to enforce any remedy against any contractor or subcontractor in respect of any actual or claimed default under any contract relating to the Project Facilities;

(e) Financial, legal, accounting, printing and engraving fees, charges and expenses incurred in connection with the authorization, sale, issuance and delivery of the Bonds, including, without limitation, the fees and expenses of the Trustee and its counsel, and the Issuer and its counsel, and any paying agent properly incurred under the Indenture that may become due and payable during the Installation Period;

(f) Any other costs, expenses, fees and charges properly chargeable to the cost of acquisition and installation of the Project; and/or

(g) Payment of interest on the Bonds during the Installation Period.

Any disbursement from the Project Fund for the payment of Project Costs shall be made by the Trustee (unless there is a Home Office Payments Agreement in effect in which event such disbursement shall be made by the Purchaser) only upon the written order of the Authorized Lessee Representative. Each such written order shall be in substantially the form of the disbursement request attached hereto as Exhibit C. In case any contract provides for the retention of a portion of the contract price, there shall be requested to be paid from the Project Fund (to the extent there is no Home Office Payments Agreement in effect) only the net amount remaining after deduction of any such portion, and only when that retained amount is due and payable, may it be requested to be paid from the Project Fund.

Any moneys in the Project Fund remaining after the Completion Date and payment, or provision for payment, in full of the Project Costs, at the written direction of the Authorized Lessee Representative, promptly shall be:

(a) used for the purchase of the Bonds in the open market for the purpose of cancellation at prices not exceeding the full market value thereof plus accrued interest thereon to the date of payment therefor;

(b) paid into the Bond Fund to be applied to the redemption of the Bonds; or

(c) used to accomplish a combination of the foregoing as is provided in that direction.

Section 3.5 [Intentionally Omitted].

Section 3.6 Completion Date. The Lessee shall cause the Issuer and the Trustee to be notified (unless there is a Home Office Payments Agreement in effect in which event such notification shall be delivered to the Issuer and the Purchaser but not to the Trustee) of the Completion Date by a certificate signed by the Authorized Lessee Representative stating:

(a) The date on which the Project Facilities were substantially completed or acquired,

(b) All other facilities necessary in connection with the Project have been acquired, constructed, equipped and installed,

(c) The acquisition, construction, equipping and installation of the Project Facilities and those other facilities have been accomplished in such a manner as to conform with all applicable zoning, planning, building, environmental and other similar governmental regulations, and

(d) Except for items the Lessee is contesting, all costs of that acquisition, construction, equipping and installation then or theretofore due and payable have been paid.

That certificate shall state that it is given without prejudice to any rights against third parties which then exist or subsequently may come into being. The certificate shall be delivered as promptly as practicable after the occurrence of the events and conditions referred to in subsections (a) through (d) of this Section.

Section 3.7 Investment of Fund Moneys. At the written request of the Authorized Lessee Representative, any moneys held as part of the Bond Fund or the Project Fund shall be invested or reinvested by the Trustee in Eligible Investments in accordance with Section 5.5 of the Indenture (unless there is a Home Office Payments Agreement in effect in which event such investment or reinvestment shall be made by the Purchaser).

ARTICLE 4

LEASE OF PROJECT TO LESSEE; PROVISIONS FOR PAYMENT

Section 4.1 Lease of Project; Lease Payments and Other Amounts Payable.

(a) The Issuer hereby leases the Project to the Lessee and the Lessee hereby leases the Project from the Issuer upon the terms and conditions of this Agreement. The term of this Agreement shall commence on the date of issuance of the Bonds, and shall expire on the date when the Bonds are paid or otherwise satisfied in full as provided in the Indenture, and all

other sums payable by or on behalf of the Lessee under this Agreement shall have been paid or otherwise satisfied, except for obligations of the Lessee under Sections 4.2, 5.4 and 5.5 hereof.

(b) The Issuer covenants with the Lessee that so long as the Lessee observes and performs the terms and conditions of this Agreement, the Lessee shall have during the lease term sole and exclusive possession of the Project, and the Lessee shall be entitled to quiet enjoyment of the Project, except that the Issuer does not covenant any greater title or enjoyment than the Lessee has previously conveyed or shall cause to be conveyed to the Issuer.

(c) The Lessee covenants and agrees that upon the sale and delivery by the Issuer of the Bonds, the Lessee will make or cause to be made Lease Payments or otherwise satisfy the Lease Payments during the term of the Agreement directly to the Trustee or as otherwise set forth in an agreement pursuant to Section 3.9 of the Indenture for the account of the Issuer, as and for the repayment of the Bond Service Charges on the Bonds on [December 31], commencing [December 31, 2022].¹

The Lessee agrees to have paid to the Trustee, the Paying Agent, the Authenticating Agent, the Registrar and any other such fiduciary, the reasonable and necessary fees and expenses of such fiduciary, as and when the same become due, upon submission of a statement therefor. Such fees shall include a [\$5,500] acceptance fee payable to the Trustee together with a [\$1,500] annual fee payable to the Trustee for so long as there is in effect a Home Office Payments Agreement.²

In the event the Lessee should fail to satisfy the terms of this Section, the item or installment in default shall continue as an obligation of the Lessee until the amount in default shall have been fully paid or otherwise satisfied, and the Lessee agrees to satisfy the same.

In the event the Lessee should fail to satisfy any of the Lease Payments required in this Section when due, the failure shall continue as an obligation of the Lessee until the amount in default shall have been fully satisfied.

The Lessee also agrees that it shall satisfy the Lease Payments provided in this Agreement regardless of whether or not the Project is used or useful, existing or non-existing or whether any applicable laws, regulations or standards prevent or prohibit the use of the Project.

Except for such interest of the Lessee as may hereafter arise pursuant to Section 10.3 hereof or Section 5.8 of the Indenture, the Lessee and the Issuer each acknowledges that neither the Lessee nor the Issuer has any interest in the Bond Fund and any moneys deposited therein shall be in the custody of and held by the Trustee in trust for the benefit of the Holders (unless there is a Home Office Payments Agreement in effect in which event such moneys shall be held by the Purchaser).

Section 4.2 Additional Payments. The Lessee shall cause to be paid to the Issuer, as Additional Payments hereunder, any and all costs and expenses incurred or to be paid by the

¹ NTD: To be confirmed by Lessee.

² NTD: To be confirmed by Trustee.

Issuer in connection with the issuance and delivery of the Bonds and Additional Bonds or otherwise related to actions taken by the Issuer under this Agreement or the Indenture.

Section 4.3 Place of Payments. The Lessee shall make all monetary Lease Payments directly to the Trustee at its designated corporate trust office or as otherwise set forth in any agreement entered into in accordance with Section 3.9 of the Indenture. Additional Payments shall be made directly to the person or entity to whom or to which they are due.

Section 4.4 In-Lieu of Payments. If there are In-Lieu of Tax Payments Agreements (the “Tax Payments Agreements”), then the Lessee shall pay to each of the Issuer and Jefferson County Public Schools, respectively, pursuant to the applicable Tax Payments Agreement, as set forth in Exhibit D attached hereto, In-Lieu of Payments (as defined in the Tax Payments Agreements) on behalf of the Issuer beginning in [January 1, 2023] in accordance with the terms of the Tax Payments Agreements.

Section 4.5 Obligations Unconditional. Subject to Section 10.11, the obligations of the Lessee to make Lease Payments and Additional Payments shall be absolute and unconditional, and the Lessee shall make such payments or otherwise satisfy the Lease Payments and Additional Payments without abatement, diminution or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set-off, recoupment or counterclaim which the Lessee may have or assert against the Issuer, the Trustee or any other Person.

Section 4.6 Assignment of Agreement and Revenues. To secure the payment of or otherwise satisfy Bond Service Charges, the Issuer shall assign to the Trustee, by the Indenture, its rights under and interest in this Agreement (except for the Unassigned Issuer’s Rights) and the Revenues. The Lessee hereby agrees and consents to those assignments.

ARTICLE 5

ADDITIONAL AGREEMENTS AND COVENANTS

Section 5.1 Right of Inspection. Subject to reasonable security and safety regulations and upon two (2) Business Days’ notice, the Trustee, and its agents, shall have the right during normal business hours to inspect the Project and the books and records of the Lessee with respect thereto.

Section 5.2 Assignment by Lessee. This Agreement may be assigned by the Lessee subject to each of the following conditions:

(a) The assignee shall assume in writing the obligations of the Lessee hereunder to the extent of the interest assigned.

(b) The Lessee shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to the Issuer and the Trustee a true and complete copy of each such assumption of obligations and assignment.

Section 5.3 Special Covenants. The Lessee covenants as follows:

(a) The Lessee will promptly cause to be paid, as the same become due, (i) all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project or any machinery, equipment or other property installed or brought by the Lessee therein or thereon, (ii) all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project, and (iii) all assessments and charges lawfully made by any governmental authority for public improvement, as such assessments and charges become due. The Lessee may in good faith contest or litigate any such taxes, assessments and other charges, and, in the event of such contest or litigation, may permit the taxes, assessments or other charges so contested or litigated to remain unpaid during the period of such contest or litigation and any appeal therefrom, if, during such period enforcement of any such contested or litigated item shall be effectively stayed. Further the Lessee may and in its own name apply for any tax exemption from payment in lieu of taxes allowed by the Commonwealth, or any political or taxing subdivision thereof under any existing or future provision of law which grants or may grant any such tax exemption or exemptions from payments in lieu of taxes;

(b) The Lessee acknowledges and agrees that the Issuer shall have no obligation to insure the Project or any part thereof, and no responsibility for any damage or destruction thereof. During the acquisition, construction, installation and equipping of the Project, and throughout the Lease Term, the Lessee shall cause the Project to be insured against such property and personal injury risks as is consistent with its insurance practices in effect from time to time, including self insurance. In lieu of separate insurance policies, such insurance may be in the form of a blanket insurance policy or policies of the Lessee. Insurance policies may be written with deductible amounts and exceptions and exclusions as the Lessee deems necessary in the normal course of its business. The Issuer and the Trustee shall be named as additional insureds under any such insurance policy or policies, as their respective interests may appear. The Net Proceeds of the insurance carried pursuant to the provisions of this Section 5.3(b) shall be paid to the Lessee and applied to the repair or replacement of the Project, the redemption of the Bonds or any portion thereof, or for such other use as the Lessee shall determine; provided, however, that no damage to, or destruction of, the Project shall affect the Lessee's obligation to pay rent hereunder, or entitle the Lessee to reduce or otherwise diminish its rental payments.

The Lessee shall furnish to the Issuer and the Trustee at closing and annually thereafter a certificate (unless there is a Home Office Payments Agreement in effect, in which event no such certificate shall be necessary to provide to the Trustee) of the Authorized Lessee Representative or other evidence satisfactory to the Issuer that it is in compliance with the requirements of this Section 5.3(b) and that such insurance provides coverage of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate for third party liability. To the extent the Lessee is required to provide the Trustee with said certificate, the Trustee shall be entitled to rely upon said certificate as to the compliance with insurance requirements. The Trustee makes no representations as to the adequacy of the insurance and has no duty to confirm compliance so long as there is in effect a Home Office Payments Agreement.

All claims made under any insurance policies carried pursuant to the requirement of this Section 5.3(b), regardless of amount, may be adjusted by the Lessee with the insurers.

Section 5.4 Indemnification. In addition to, and not in lieu of, the indemnification provided in Section 5.5 hereof, the Lessee releases the Issuer and the Trustee from, agrees that the Issuer and the Trustee shall not be liable for, and causes to be indemnified the Issuer and the Trustee against, all liabilities, claims, and reasonable out of pocket costs and expenses imposed upon, incurred by or asserted against the Issuer or the Trustee on account of: (a) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the maintenance, operation and use of the Project; (b) any breach or default on the part of the Lessee in the performance of any covenant or agreement of the Lessee under this Agreement, or any related document, or arising from any act or failure to act by the Lessee, or any of its agents, contractors, servants, employees or licensees; (c) the authorization, issuance, sale, trading, redemption or servicing of the Bonds, and the provision of any information or certification furnished in connection therewith concerning the Bonds, the Project or the Lessee including, without limitation, any information furnished by the Lessee for, and included in, or used as a basis for preparation of, any certifications furnished by the Issuer; (d) any failure of compliance with the provisions of the Act; and (e) any claim, action or proceeding brought with respect to the matters set forth in (a), (b), (c) and (d) above.

The Lessee agrees to indemnify the Trustee for and to hold it harmless against all liabilities, claims, and reasonable out of pocket costs and expenses incurred without gross negligence or willful misconduct on the part of the Trustee, on account of any action taken or omitted to be taken by the Trustee in accordance with the terms of this Agreement, the Bonds or the Indenture, including the acceptance and administration of the trusts established under the Indenture or any action taken at the request of or with the consent of the Lessee, including the costs and expenses of the Trustee in defending itself against any such claim, action or proceeding brought in connection with the exercise or performance of any of its powers or duties under this Agreement, the Bonds or the Indenture.

The Lessee agrees to have indemnified the Issuer for and to hold it harmless against all liabilities, claims, and reasonable out of pocket costs and expenses incurred on the part of the Issuer on account of any alleged defect in the title of the Project Site, including the costs and expenses of the Issuer in defending itself against any such claim, action or proceeding brought in connection with the alleged defect.

In case any action or proceeding is brought against the Issuer or the Trustee in respect of which indemnity may be sought hereunder, the party seeking indemnity promptly shall give notice of that action or proceeding to the Lessee, and the Lessee upon receipt of that notice shall have the obligation and the right to have assumed the defense of the action or proceeding; provided, that failure of a party to give that notice shall not relieve the Lessee from any of its obligations under this Section unless that failure prejudices the defense of the action or proceeding by the Lessee. An indemnified party may employ separate counsel, and participate in the defense, and still be indemnified against the cost of employing such counsel and all other expenses despite an assumption of the defense by the Lessee if the indemnified party believes in good faith that there may be defenses available to it which are not available to the Lessee or which are adverse to or in conflict with those available to the Lessee and which the indemnified party believes in good faith cannot be effectively asserted by common counsel. The Lessee shall not be liable for any settlement made without its consent, which consent shall not be unreasonably withheld.

The indemnification set forth above is intended to and shall include the indemnification of all affected officials, directors, officers and employees of the Issuer and the Trustee, respectively. That indemnification is intended to and shall be enforceable by the Issuer and the Trustee, respectively, to the full extent permitted by law. The indemnification set forth in this Section shall survive the resignation or removal of the Trustee or the termination of the Agreement or the Indenture.

Section 5.5 Environmental Use of Project.

The Lessee shall cause the Project not to be used in any manner so as to violate any applicable law, rule, regulation or ordinance of any governmental body or in such manner as to vitiate insurance upon the Project.

(a) The Lessee agrees to and shall indemnify, hold harmless, and defend the Issuer, its members, officials, agents and employees from and against any and all claims, losses, damages, expenses, causes of action, lawsuits, government regulatory enforcement actions, and liability (individually, a “Claim” collectively, “Claims”) asserted against the Issuer arising out of alleged or actual “environmental contamination” (hereinafter defined) arising from the Project.

(b) “Environmental contamination” as used herein shall mean damages to persons or property or violations of state or federal environmental laws or regulations arising out of the Project, the Project facility or the operations of the Project with respect to but not limited to air emissions, water effluent discharges, and waste generation, transportation, storage, disposal, or the handling of hazardous materials.

(c) The Issuer shall promptly notify the Lessee in writing after any Claim is made, brought or asserted, in any event, in writing, against the Issuer, and as to which the Issuer has actual knowledge by receipt of such written notification. The Lessee shall promptly notify the Issuer in writing after any Claim is made, brought or asserted against the Lessee.

(d) The Issuer shall cooperate with the Lessee, including but not limited to, assisting in defense Claims, but solely at the cost of Lessee. In the event the Issuer provides notice to the Lessee under Section 5.5(c), the Lessee shall handle and control the defense of all Claims and the Lessee’s decision on litigation and settlement and all other such aspects shall be final; provided, however, no settlement or decision shall impose upon the Issuer by apportionment or otherwise, any loss, damage or liability as a result thereof.

(e) The provisions of this Section 5.5 shall survive the termination of this Lease and shall continue in full force and effect, binding the Lessee to the provisions of this Section 5.5 without regard to the manner of termination of this Lease.

ARTICLE 6

REDEMPTION OF PROJECT BONDS

Section 6.1 Optional Redemption. At any time and from time to time, the Lessee may deliver moneys or evidence of other consideration to the Trustee in addition to Lease Payments or Additional Payments required to be made. Any moneys so delivered shall be held by the Trustee in a special account in the Bond Fund and delivery of those moneys or evidence of other consideration shall not operate to abate or postpone Lease Payments or Additional Payments otherwise becoming due or to alter or suspend any other obligations of the Lessee under this Agreement. Such optional redemption shall be in accordance with the provisions of Section 4.1(b) of the Indenture.

Section 6.2 Actions by Issuer. At the request of the Lessee or the Trustee, the Issuer shall take all steps required of it under the applicable provisions of the Indenture or the Bonds to effect the redemption of all or a portion of the Bonds pursuant to this Article 6.

ARTICLE 7

EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default. Each of the following shall be an Event of Default:

(a) The Lessee shall fail to pay or otherwise satisfy any Lease Payment when due and such nonpayment or nonsatisfaction shall continue for a period of twenty (20) days after notice from the Trustee of such nonpayment or nonsatisfaction is provided to the Lessee;

(b) The Lessee shall fail to provide satisfaction acceptable to the Holders or fail to deliver to the Trustee, or cause to be delivered on its behalf, the moneys in order to redeem any outstanding Bonds in the manner and upon the date requested in writing by the Trustee when due;

(c) The Lessee shall fail to observe and perform any other agreement, term or condition contained in this Agreement and the continuation of such failure for a period of sixty (60) days after notice thereof shall have been given to the Lessee by the Issuer or the Trustee, or for such longer period as the Issuer and the Trustee may agree to in writing; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the Lessee institutes or has instituted curative action within the applicable period and diligently pursues that action to completion and provides the Trustee and the Issuer with a certification to that effect;

Notwithstanding the foregoing, if, by reason of Force Majeure or other similar circumstance beyond the control of the Lessee, the Lessee is unable to perform or observe any agreement, term or condition hereof (other than the payment or satisfaction of Lease Payments) which would give rise to an Event of Default under subsection (c) hereof, the Lessee shall not be deemed in default during the continuance of such inability. However, the Lessee shall promptly give written notice to the Trustee and the Issuer of the existence of an event of Force Majeure and shall use its best efforts to remove the effects thereof; provided that the settlement of strikes or other industrial disturbances shall be entirely within its discretion.

The term Force Majeure shall mean, without limitation, Acts of God; strikes, lockouts 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 any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots, epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornados; storms; droughts; floods, arrests; restraint of government and people; explosions; partial or entire failure of utilities; shortages of labor, materials, supplies or transportation not the fault of the Lessee.

(d) The occurrence and continuance of an Event of Default under the Indenture.

Section 7.2 Remedies on Default. Whenever an Event of Default shall have happened and be subsisting, any one (1) or more of the following remedial steps may be taken:

- (a) The Issuer may accelerate the total of all the Lease Payments;
- (b) If acceleration of the principal amount of the Bonds has been declared pursuant to Section 7.3 of the Indenture, the Trustee shall declare all Lease Payments to be immediately due, whereupon the same shall become immediately due;
- (c) The Issuer or the Trustee may have access to, inspect, examine and make copies of the books, records, accounts and financial data of the Lessee pertaining to the Project; or
- (d) The Issuer or the Trustee may pursue all remedies now or hereafter existing at law or in equity to collect all amounts then due and thereafter to become due under this Agreement or to enforce the performance and observance of any other obligation or agreement of the Lessee under those instruments.

Notwithstanding the foregoing, the Issuer or the Trustee shall not be obligated to take any steps which in its opinion will or might cause it to expend time or money or otherwise incur liability unless and until a satisfactory indemnity bond has been furnished to the Issuer at no cost or expense to the Issuer. Any amounts collected as Lease Payments or applicable to or in satisfaction of Lease Payments and any other amounts which would be applicable to payment or in satisfaction of Bond Service Charges collected pursuant to action taken under this Section shall be paid, if moneys, into the Bond Fund and applied in accordance with the provisions of the Indenture or, if the outstanding Bonds have been paid or otherwise satisfied and discharged in accordance with the provisions of the Indenture, shall be paid or otherwise satisfied as provided in Section 5.8 of the Indenture for transfers of remaining amounts in the Bond Fund.

The provisions of this Section are subject to the further limitation that the rescission by the Trustee of its declaration that all of the Bonds are immediately due also shall constitute an annulment of any corresponding declaration made pursuant to subsection (b) of this Section and a waiver and rescission of the consequences of that declaration and of the Event of Default with

respect to which that declaration has been made, provided that no such waiver or rescission shall extend to or affect any subsequent or other default or impair any right consequent thereon.

If an Event of Default shall happen and is continuing, in case there shall be pending proceedings for the bankruptcy or for the reorganization of the Lessee under the federal bankruptcy laws or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Lessee or in the case of any other similar judicial proceedings relative to the Lessee, or to the creditors or property of the Lessee, the Trustee shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to this Agreement, irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 7.2 or of Section 7.2 of the Indenture, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee allowed in such judicial proceedings relative to the Lessee, its creditors, or its property, and to collect and receive any moneys or other property payable or of its charges and expenses; and any receiver, assignee or trustee in bankruptcy is hereby authorized to make such payments to the Trustee, and to pay to the Trustee any amount due it for compensation and expenses, including reasonable counsel fees and expenses incurred by it up to the date of such distribution.

Section 7.3 No Remedy Exclusive. No remedy conferred upon or reserved to the Issuer or the Trustee by this Agreement 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 Agreement, or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair that right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in this Article, the Issuer or the Trustee must notify the Lessee upon the occurrence of an Event of Default.

Section 7.4 Agreement to Pay Attorneys' Fees and Expenses. If an Event of Default should occur and the Issuer or the Trustee should incur expenses, including attorneys' fees and expenses, in connection with the enforcement of this Agreement, the Lessee shall have promptly reimbursed the Issuer and the Trustee, as applicable, for the reasonable expenses so incurred upon demand.

Section 7.5 No Waiver. No failure by the Issuer or the Trustee to insist upon the strict performance by the Lessee of any provision hereof shall constitute a waiver of their right to strict performance and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by the Lessee to observe or comply with any provision hereof.

Section 7.6 Notice of Default. The Lessee shall have delivered to the Trustee promptly upon becoming aware of the occurrence of any Event of Default hereunder a certificate of any Authorized Lessee Representative or the Lessee to such effect setting forth the details thereof and the actions to be taken with respect thereto.

ARTICLE 8

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 8.1 Damage and Destruction. Unless the Lessee shall have exercised its options to prepay the Bonds in whole, terminate the Lease Term and purchase the Project, if prior to payment in full of the Bonds the Project is damaged or destroyed by fire or other casualty, the Lessee shall be obligated to continue to cause to be paid or otherwise satisfied the Lease Payments and shall promptly replace, repair, rebuild or restore the property damaged to substantially the same condition as existed prior to the event causing such damage, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Lessee and as will not impair operations of the Project or change its character to such an extent that its ownership by the Issuer would not be permitted under the Act.

Section 8.2 Condemnation. Unless the Lessee shall have exercised its options to prepay the Bonds in whole, terminate the Lease Term and purchase the Project, if the title in and to, or the temporary use of, the Project or any part thereof shall 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 Lessee shall be obligated to continue to cause to be paid or otherwise satisfied the Lease Payments, and, to the extent the Lessee deems it necessary, shall cause the restoration of the Project to substantially the same condition as it existed prior to the exercise of the said power of eminent domain, or shall acquire and install other machinery, equipment or related property suitable for the Lessee's operations at the Project, title to which machinery, equipment or related property will be conveyed to the Issuer by bills of sale and which will be deemed a part of the Project and available for use and occupancy by the Lessee without additional Lease Payments.

Section 8.3 Proceeds of Insurance and Condemnation Awards. All Net Proceeds of insurance resulting from claims for such losses and all Net Proceeds of any condemnation award shall be paid to the Lessee.

ARTICLE 9

CONVEYANCE OF PROJECT TO LESSEE; GRANTS OF EASEMENTS

Section 9.1 Option to Purchase Unimproved Project Site. The Lessee shall have, and is hereby granted, an option to purchase any unimproved portion of the Project Site at any time, at a purchase price equal to one dollar (\$1.00) per acre of the portion of the Project Site to be purchased, provided that it furnishes the Issuer and Trustee with the following:

(a) a written notice containing (i) a legal description of that portion of, or interest in, the Project Site with respect to which such option is to be exercised, (ii) a statement that the Lessee intends to exercise its option to purchase such portion of, or interest in, the Project Site on a date stated, which shall not be less than five (5) days nor more than ninety (90) days from the date of such notice, and (iii) proof that the portion of the Project Site to be conveyed is not necessary for the use and occupancy of the Project; and

(b) an amount of money or other consideration equal to the purchase price computed as provided in this Section, together with any other costs incurred by the Issuer associated with such conveyance.

The Issuer agrees that upon receipt of the notice, certificate and money or other consideration required in this Section to be furnished to it by the Lessee, the Issuer will promptly deliver the same to the Trustee for deposit in the Bond Fund, if money, and secure from the Trustee a release from the liens and/or security interests afforded by the Indenture of such portion of, or interest in, the Project Site with respect to which the Lessee shall have exercised the option granted to it in this Section subject to any right and title reserved in and to the Issuer and that thereafter such portion or interest shall not be deemed to be a portion of the Project Site. If the Lessee shall exercise the option granted to it under this Section, the Lessee shall not be entitled to any diminution in or postponement or abatement of the rents payable under this Agreement.

If the Lessee purchases any unimproved part of, or interest in, the Project Site pursuant to this Section, the Lessee and the Issuer agree that all walls presently standing or hereafter erected on or contiguous to the boundary line of the portion of, or interest in, the Project Site so purchased shall be party walls and each party grants the other a ten-foot easement adjacent to any such party wall for the purpose of inspection, maintenance, repair and replacement thereof and the tying-in of new construction.

Section 9.2 Conveyance upon Expiration of Term of Agreement. When the term of this Agreement has expired and the Bondholder certifies to the Issuer that all of the Bonds, including principal and interest and all other obligations incurred and to be incurred by the Issuer in connection with the Project and under the Indenture and this Agreement have been satisfied and Section 9.4 hereof has been satisfied, the Issuer shall promptly, or direct the Trustee promptly to, have transferred, conveyed, released, alienated, assigned and set over to the Lessee all of the Trustee's and the Issuer's title and interest in and to the Project by a good and sufficient deed and such other legal instruments as may be required therefor. The obligations specified in this section shall be and remain prior and superior to the Indenture and may be exercised whether or not the Lessee is in default hereunder provided that such default will not result in nonfulfillment of any condition to this right.

Section 9.3 General Option to Purchase Prior to Expiration of Agreement. The Lessee shall have and may exercise on any date upon which the Bonds may be redeemed pursuant to the Indenture prior to the expiration of the term of this Agreement, the option to purchase the Project under the provisions of this Section upon paying or causing to be paid to the Trustee or otherwise satisfying the purchase price therefor in an amount as provided in Section 9.4 of this Agreement. The Lessee may exercise such option by giving written notice thereof to the Issuer and the Trustee pursuant to Article 10 hereof and by making payments or otherwise providing consideration as provided in this Agreement.

Section 9.4 Purchase Price. The purchase price pursuant to Section 9.2 of this Agreement shall be the sum of one dollar (\$1.00) plus, in the case of Section 9.3, such additional amount, if any, which, with all other funds available therefor, or other consideration in lieu thereof, will be sufficient to provide for satisfaction of all Bonds in conformity with the

Indenture and all other obligations incurred and to be incurred by the Issuer in connection with the Project and under the Indenture and this Agreement. Such satisfaction of the Bonds shall include the Bond Service Charges for all of the Bonds, and any expenses in connection with such satisfaction.

Section 9.5 Date of Settlement. The purchase price of the Project under Section 9.4 of this Agreement shall be paid or otherwise satisfied on a date of settlement and at a place to be mutually agreed upon by the Trustee, the Issuer and the Lessee which shall be on or after the maturity date or the redemption date of the Bonds in whole. The purchase price, if in money, shall be paid to the Trustee on behalf of the Issuer in such coin or currency of the United States of America or in direct United States Government Obligations, or adequate consideration for the purchase price shall otherwise be provided and the Issuer shall contemporaneously convey to the Lessee all of the Issuer's right, title and interest in and to the Project by a good and sufficient deed and such other legal instruments as shall be required therefor. The Lessee shall cause to be borne all costs and expenses in connection with the preparation of the documents of conveyance and the delivery hereof and all fees, assessments, taxes and charges incurred by the Issuer and payable in connection with the conveyance of title to the Project. Upon conveyance of title and payment therefor as aforesaid, this Agreement shall cease and terminate and all obligations of the Lessee hereunder, except obligations pertaining to Sections 4.2, 5.4 and 5.5 of this Agreement, shall be terminated and extinguished.

In no event, however, shall title to the Project be conveyed to the Lessee until the Bondholder certifies to the Issuer that all of the Bonds, including principal and interest, and all other obligations incurred by the Issuer under the Indenture and this Agreement have been satisfied.

Section 9.6 Easements. Upon the request by or on behalf of the Lessee, the Issuer agrees to grant, modify or release to the Lessee or other parties during the term of this Agreement, such easements with respect to the Project Site, as the Lessee may need or desire in order to conduct its business, or commence construction or improvement on or about the property of the Lessee, including the Project Site.

ARTICLE 10

MISCELLANEOUS

Section 10.1 Term of Agreement. This Agreement shall be and remain in full force and effect from the date of delivery of the Bonds to the original Purchaser until such time as all of the obligations and requirements of Article 9 hereof have been satisfied, except that the obligations of the Lessee set forth in Sections 4.2, 5.4 and 5.5 hereof shall survive any termination of this Agreement.

Section 10.2 Effective Date. This Agreement is dated for reference purposes only as of [_____, 2022], but it will not be effective and binding on the parties hereto until the Effective Date as set forth in the preamble of this Agreement.

Section 10.3 Amounts Remaining in Funds. Any amounts in the Bond Fund remaining unclaimed by the Holders of Bonds for three (3) years after the due date thereof (whether at stated maturity, by redemption or otherwise), at the option of the Lessee, shall be deemed to belong to and shall be paid to the Lessee.

Section 10.4 Notices. All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when received by registered or certified mail, postage prepaid, and addressed to the appropriate Notice Address. The Lessee, the Issuer and the Trustee, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

Section 10.5 Extent of Covenants of the Issuer; No Personal Liability. All covenants, obligations (including the obligation to pay or otherwise satisfy Lease Payments), and agreements (collectively hereinafter referred to as the “Covenants”) of the Issuer contained in this Agreement or the Indenture shall be effective to the extent authorized and permitted by applicable law. **NO SUCH COVENANT SHALL BE DEEMED TO BE A COVENANT OF ANY PRESENT OR FUTURE DIRECTOR, OFFICER, AGENT OR EMPLOYEE OF THE ISSUER, THE LEGISLATIVE AUTHORITY, THE COMMONWEALTH, ANY AGENCY OR POLITICAL SUBDIVISION THEREOF IN OTHER THAN HIS OFFICIAL CAPACITY, AND NEITHER THE MEMBERS OF THE LEGISLATIVE AUTHORITY NOR ANY OFFICIAL EXECUTING THE BONDS NOR ANY OFFICIAL, EMPLOYEE OR AGENT OF THE ISSUER, THE COMMONWEALTH, ANY AGENCY OR POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE PERSONALLY ON THE BONDS OR BE SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF THE ISSUANCE THEREOF OR BY REASON OF THE COVENANTS OF THE ISSUER CONTAINED IN THIS AGREEMENT OR IN THE INDENTURE. THE BONDS AND THE COVENANTS SHALL NOT BE DEEMED TO BE DEBTS OR OBLIGATIONS OF THE ISSUER, THE COMMONWEALTH OR ANY AGENCY OR POLITICAL SUBDIVISION THEREOF, INCLUDING BUT NOT LIMITED TO THE LEGISLATIVE AUTHORITY (EXCEPT AS OTHERWISE SET FORTH IN THIS SECTION 10.5).**

Section 10.6 Binding Effect. This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Issuer, the Lessee and their respective permitted successors and assigns provided that this Agreement may not be assigned by the Issuer except to the Trustee, or as provided by law, pursuant to the Indenture or as otherwise may be necessary to enforce or secure payment or satisfaction of Bond Service Charges. This Agreement may be enforced only by the parties, their assignees and others who may, at law, stand in their respective places. It is understood that the Lessee has an unrestricted right to assign all or any part of its rights and obligations in the Lease, subject to the requirements of Section 5.2 hereof

Section 10.7 Amendments and Supplements. Except as otherwise expressly provided in this Agreement or the Indenture, subsequent to the issuance of the Bonds and prior to all conditions provided for in the Indenture for release of the Indenture having been met, this Agreement may not be effectively amended, changed, modified, altered or terminated except in

accordance with the provisions of Article 11 of the Indenture, as applicable, and to provide for the lease of additional portions of the Project to the Issuer.

Section 10.8 Execution Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

Section 10.9 Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 10.10 Governing Law. This Agreement shall be deemed to be a contract made under the laws of the Commonwealth and for all purposes shall be governed by and construed in accordance with the laws of the Commonwealth.

Section 10.11 Certificates by Lessor and Lessee. Each party hereto agrees at any time and from time to time during the term of this Lease, within fifteen (15) days after written request from the other party, to execute, acknowledge, and deliver to the other party a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), and the dates to which the Lease Payments and other charges have been paid in advance, if any, and stating whether or not, to the best knowledge of the signer of such certificate, the other party hereto is in default in the performance of any covenant, agreement, or condition contained in this Lease, and, if so, specifying each such default of which the signer may have knowledge and containing such other information as may be reasonably requested.

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK. SIGNATURES
ON FOLLOWING PAGES]

BOYD REAL PROPERTY, LLC, as Lessee

By: _____

Title: Manager

STATE OF _____)
) SS:
COUNTY OF _____)

I, the undersigned, Notary Public in and for the _____ and County aforesaid, do hereby certify that on the _____ day of _____, 2022, the foregoing instrument (including Exhibits A, B, C and D attached) was produced to me in said County by Boyd Real Property, LLC, and acknowledged by him to be his free act and deed.

Witness my hand this _____ day of _____, 2022.

My Commission expires: _____

NOTARY PUBLIC

THIS INSTRUMENT PREPARED BY:

Alex P. Herrington, Jr. (Mike)
STITES & HARBISON
400 West Market Street
Suite 1800
Louisville, Kentucky 40202-3352
(502) 587-3400

EXHIBIT A

PROJECT SITE

This Exhibit A may be amended from time to time to reflect the addition of real property to the Project Site. A determination may be made not to place of record with the Jefferson County Clerk any such amendments.

LEGAL DESCRIPTION

Tract 1, and Tract 3, as depicted on the Jefferson County Industrial Foundation Plat recorded in Plat Book [____], Page [____] on [_____, 2022] in the Jefferson County Clerk's office.

Being a part of the same property acquired by the Boyd Real Property, LLC, by Deed dated [_____, 2022] and recorded in Deed Book [____], Page [____] in the Jefferson County Clerk's office.

EXHIBIT B

PERSONAL PROPERTY

All fixtures, furniture and equipment (“FF&E”) related to the Project and located at the Project Site. The Personal Property includes all FF&E currently existing or hereafter added to the Project at the Project Site. This Exhibit B may be amended from time to time to reflect additions to, substitutions for or deletions from the Personal Property. A determination may be made not to place of record with the Jefferson County Court Clerk any such amendments.

EXHIBIT C

FORM OF DISBURSEMENT REQUEST

STATEMENT NO. __ REQUESTING DISBURSEMENT OF FUNDS
FROM PROJECT FUND PURSUANT TO SECTION 3.4 OF THE
LEASE AGREEMENT DATED AS OF [JUNE 1, 2022] BETWEEN
THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT
AND BOYD REAL PROPERTY, LLC.

Pursuant to Section 3.4 of the Lease Agreement (the “Agreement”) between the Louisville/Jefferson County Metro Government (the “Issuer”) and Boyd Real Property, LLC (the “Lessee”) dated as of [June 1, 2022], the undersigned Authorized Lessee Representative hereby requests and authorizes (A) U.S. Bank Trust Company, National Association, as Trustee (the “Trustee”) with the prior written acknowledgement of receipt of this Disbursement Request by the Trustee (as depository of the Project Fund created by the Trust Indenture (the “Indenture”), dated as of [June 1, 2022], by and between the Issuer and the Trustee, and defined in the Agreement), or (B) in the event that the Trustee has entered into a Home Office Payments Agreement (as defined in the Indenture), Boyd Company (or any successor thereto), to pay (i) to the Lessee or to the person(s) listed on the Disbursement Schedule hereto, and (ii) thereafter to the Lessee out of the moneys deposited in the Project Fund the aggregate sum of [\$_____] and to pay such person(s) or to reimburse the Lessee in full, as indicated in the Disbursement Schedule, attached hereto, for the advances, payments and expenditures made by it in connection with the items listed in the Disbursement Schedule.

In connection with the foregoing request and authorization, the undersigned hereby certifies that:

- (a) Each item for which disbursement is requested hereunder is properly payable out of the Project Fund in accordance with the terms and conditions of the Agreement and none of those items has formed the basis for any disbursement heretofore made from said Project Fund.
- (b) Each such item is or was necessary in connection with the acquisition, construction, equipping and installation of the Project, as defined in the Agreement.
- (c) The Lessee has received, or will concurrently with payment receive appropriate waivers of any mechanics’ or other liens with respect to each item for which disbursement is requested hereunder.
- (d) This statement and all exhibits hereto, including the Disbursement Schedule, shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warranty, protection and authority to the Trustee for its actions taken pursuant hereto.
- (e) This statement constitutes the approval of the Lessee of each disbursement hereby requested and authorized.

This ____ day of _____, 2022.

Authorized Lessee Representative

Acknowledged Receipt of
Disbursement Request No. ____:

This ____ day of _____, 2022.

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee

By: _____

Title: _____

OR, IF APPLICABLE

BOYD COMPANY, as Purchaser

By: _____

Title: _____

DISBURSEMENT SCHEDULE

STATEMENT NO. _____ REQUESTING AND AUTHORIZING
DISBURSEMENT OF FUNDS FROM PROJECT FUND PURSUANT TO SECTION 3.4 OF
THE LEASE AGREEMENT DATED AS OF [JUNE 1, 2022] BETWEEN THE
LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AND BOYD REAL
PROPERTY, LLC

PAYEE

AMOUNT

PURPOSE

EXHIBIT D

IN-LIEU OF TAX PAYMENTS AGREEMENTS