

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (“Agreement”) is entered into and effective as of June ___, 2022, by and between (i) **BOYD REAL PROPERTY, LLC**, a Kentucky limited liability company with its principal office located at 10001 Linn Station Road, Louisville, Kentucky, 40223 (“Boyd”) and (ii) **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, a Kentucky consolidated local government, with an address of 601 West Jefferson Street, Louisville, Kentucky 40202 (“Metro,” each a “Party” and collectively, the “Parties”).

RECITALS

A. Metro previously enacted Resolution No. 14, Series 2022 (the “Inducement Resolution”) on February 3, 2022 in support of a project to be undertaken by Boyd Company, or its affiliate, in connection with the acquisition, construction, equipping and installation of four or more new buildings at 1400 Cecil Avenue in Louisville, Kentucky, as provided for in Section 103.200 of the Kentucky Revised Statutes, which support included the proposed issuance of industrial revenue bonds.

B. Boyd is an affiliate of Boyd Company.

C. Section IV of the Inducement Resolution provided that if the Bonds, as that term is defined in the Inducement Resolution, were structured as a conduit lease transaction, as a condition to the issuance of the Bonds, the Parties would enter into an agreement pursuant to which the lessee shall make certain payments in lieu of taxes (“PILOT Payments”) to Metro.

D. Metro subsequently approved an ordinance in connection with the issuance of the revenue bonds as Ordinance No. ___, Series 2022 on June ___, 2022 (the “Bond Ordinance”), and the Bonds will be structured as a conduit lease transaction, as reflected by that certain Lease Agreement between the Parties dated June ___, 2022 (the “Lease Agreement”).

AGREEMENT:

NOW, THEREFORE, the Parties hereby agree as follows:

1. Definitions.

- (a) “Payment Date” shall mean December 31 of each year during the Term, beginning December 31, 2023.
- (b) “Lease Term” shall mean the term of the Lease Agreement entered into by and between the Parties.
- (c) All capitalized terms not defined herein shall have the same meaning as in the Lease Agreement.

2. PILOT Payments. Pursuant to the Inducement Resolution, the Bond Ordinance and Section 4.4 of the Lease Agreement, Boyd agrees to pay during the Lease Term, on or before the Payment Date, an annual PILOT Payment to Metro in an amount equal to (i)

prior to the cap of \$10,847,480 in abated ad valorem taxes otherwise being due to Metro (the "Cap"), in amounts equal to 20% of the amount (with the other 80% of the amount counting towards the Cap) and at the same times as the ad valorem taxes that would otherwise be due to the Metro with respect to the Project if the Project was not exempt from ad valorem taxes by virtue of Metro's ownership, and (ii) once the Cap has been met, in amounts equal to and at the same times as the ad valorem taxes would otherwise be due to Metro with respect to the Project if the Project was not exempt from ad valorem taxes by virtue of Metro's ownership.

3. The Parties acknowledge that Boyd is responsible for the payment of any and all ad valorem taxes assessed as of January 1, 2022 with respect to the Project, which were assessed prior to the execution of the Lease Agreement, and that this Agreement will apply to assessments starting with the assessments made beginning January 1, 2023.
4. If a PILOT Payment is not timely made, notice shall be provided by Metro to Boyd as set forth in Section 7.6 of the Lease Agreement.
5. Miscellaneous.
 - (a) Entire Agreement. This Agreement embodies the entire agreement and understanding of the Parties related to its subject matter and supersedes all prior proposals, understandings, agreements, correspondence, arrangements and contemporaneous oral agreements relating to the subject matter of this Agreement. No representation, promise, inducement or statement of intention that has not been embodied in this Agreement has been made by either Party.
 - (b) Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.
 - (c) Amendment; Waiver. This Agreement may be amended, modified or superseded only by a written instrument signed by both of the Parties to this Agreement. No party will be deemed to have waived compliance by the other Party of any provision of this Agreement unless such waiver is contained in a written instrument signed by the waiving Party and no waiver that may be given by a Party will be applicable except in the specific instance for which it is given. The failure of either Party to enforce at any time any of the provisions of this Agreement or to exercise any right or option contained in this Agreement or to require at any time performance of any of the provisions of this Agreement, by the other Party, will not be construed to be a future waiver of such provisions and will not affect the validity of this Agreement or any of its provisions or the right of such Party thereafter to enforce each provision of this Agreement. No course of dealing will operate as a waiver or modification of any provision of this Agreement or otherwise prejudice such Party's rights, powers and remedies.

- (d) **Binding Effect.** All of the provisions of this Agreement will be binding upon and inure to the benefit of and be enforceable by the Parties to this Agreement and their respective successors and assigns.
- (e) **Further Assurances.** Throughout the Lease Term, each Party will execute and deliver such additional documents or take such additional actions as may be requested by the other Party to this Agreement if such requested document or action is reasonably necessary to effect the transactions described in this Agreement.
- (f) **Construction and Interpretation of Agreement.**
- i. Section titles or captions in this Agreement are included for purposes of convenience only and will not be considered a part of this Agreement in construing or interpreting any of its provisions. All references in this Agreement to Sections will refer to sections of this Agreement unless the context clearly otherwise requires.
 - ii. The Parties have participated jointly in the negotiation and drafting of this Agreement. If any ambiguity or question of intent or interpretation arises, no presumption or burden of proof will arise favoring or disfavoring either Party by virtue of the authorship of any of the provisions of this Agreement.
 - iii. Unless the context otherwise requires, when used in this Agreement, the singular will include the plural, the plural will include the singular, and all nouns, pronouns and any variations thereof will be deemed to refer to the masculine, feminine or neuter, as the identity of the person or persons may require.
 - iv. The Parties do not intend that this Agreement provide to any third party any right, remedy or benefit, or that any third party will have any right to enforce any provision of this Agreement.
- (g) **Governing Law.** This Agreement will be governed by, and will be construed and enforced in accordance with, the laws of the Commonwealth of Kentucky, without giving effect to any conflict of law rule or principle thereof. Any dispute hereunder or any appeal from a decision hereunder shall be instituted exclusively in the courts of the Commonwealth of Kentucky located in Jefferson County.
- (h) **Limited Assignment, Binding Effect.** Neither Party shall assign any of its rights or obligations under this Agreement without obtaining the prior written consent of the other Party. Subject to the foregoing, all of the provisions of this Agreement shall be binding upon, and shall inure to, the benefit of and be enforceable by the Parties to this Agreement, their respective successors and assigns.
- (i) **Severability of Provisions.** If a court in any proceeding holds any provision of this Agreement or its application to any person or circumstance invalid, illegal or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it was held to be invalid, illegal or unenforceable, shall not be affected, and shall be valid, legal and enforceable, shall not be affected, and shall be valid, legal and enforceable to the fullest extent

permitted by law, but only if and to the extent such enforcement would not materially and adversely frustrate the Parties' essential objectives as expressed in this Agreement. Furthermore, in lieu of any such invalid or unenforceable term or provision, the Parties intend that the court add to this Agreement a provision as similar in terms to such invalid or unenforceable provision as may be valid and enforceable, so as to effect the original intent of the Parties to the greatest extent possible.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first written above.

BOYD REAL PROPERTY, LLC

By: _____

Title: _____

("Boyd")

**LOUISVILLE/JEFFERSON COUNTY METRO
GOVERNMENT**

By: _____

Title: _____

("Metro")

Approved as to Form and Legality:

Michael J. O'Connell
Jefferson County Attorney

By: _____

Assistant County Attorney