

ORDINANCE NO. _____, SERIES 2022

AN ORDINANCE OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE “ISSUER”) AUTHORIZING THE ISSUANCE OF BONDS IN THE 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 (THE “BONDS”); APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF (i) A TRUST INDENTURE (THE “INDENTURE”), BETWEEN THE ISSUER AND U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, AS TRUSTEE (THE “TRUSTEE”) SECURING THE BONDS, (ii) A LEASE AGREEMENT, BY AND BETWEEN THE ISSUER AND BOYD REAL PROPERTY, LLC (THE “LESSEE”), (iii) A BOND PURCHASE AGREEMENT, BY AND AMONG THE ISSUER, THE LESSEE AND BOYD COMPANY (THE “BOND PURCHASER”), (iv) AN IN-LIEU OF TAX PAYMENTS AGREEMENT, BY AND BETWEEN THE ISSUER AND THE LESSEE, (v) A HOME OFFICE PAYMENTS AGREEMENT, BY AND AMONG THE ISSUER, THE TRUSTEE, THE LESSEE AND THE BOND PURCHASER, AND (vi) ANY AND ALL OTHER RELATED DOCUMENTS; AND THE TAKING OF OTHER RELATED ACTION (AS AMENDED).

SPONSORED BY: COUNCIL MEMBER ANGELA BOWENS

WHEREAS, the Louisville/Jefferson County Metro Government (the “Issuer”), pursuant to the provisions of Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes, as amended (the “Act”), is specifically authorized and empowered to issue up to \$119,000,000 of its Louisville/Jefferson County Metro Government Industrial Building Revenue Bonds (Boyd Real Property, LLC Project), Series 2022 (the “Bonds”), hereinafter approved; and

WHEREAS, Boyd Real Property, LLC, a Kentucky limited liability company (the “Lessee”), proposes that the Issuer, pursuant to the Act, assist the Lessee in financing 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 (hereinafter referred to as the “Project”)

(which is more particularly described in the Agreement hereinafter identified and approved), which Project is projected to result in the creation of at least one thousand (1,000) jobs, and the Project qualifies for financing within the meaning of the Act; and

WHEREAS, the Lessee has also committed to a community benefits agreement, which will be memorialized in a Memorandum of Understanding (“MOU”) substantially similar to the draft MOU attached as Exhibit F; and

WHEREAS, the Issuer has agreed and is willing, pursuant to the Act, to issue the Bonds and to utilize the proceeds of such Bonds to assist in the Project upon terms which are set forth in the Lease Agreement (the “Agreement”), by and between the Issuer and the Lessee hereinafter approved and as a condition to the issuance of the Bonds by the Issuer, the Lessee has agreed to enter into In-Lieu of Tax Payments Agreements, one with the Issuer and a separate one with the Board of Education of Jefferson County, Kentucky (the “School Board”), each to provide for payments to the Issuer and the School Board, respectively, during the term of the Bonds; and

WHEREAS, pursuant to the provisions of Section 103.230 of the Act, the Lessee has made a request in writing, addressed to the Issuer, that the sale of the Bonds, bearing interest as set out in the Trust Indenture (the “Indenture”), by and between the Issuer and U.S. Bank Trust Company, National Association, as Trustee (the “Trustee”) (or any successors or substitutes therefor), hereinafter approved shall be made upon a private placement basis to Boyd Company (the “Bond Purchaser”) (or any successors or substitutes therefor); and

WHEREAS, it is necessary and proper in the interests of the health, safety, convenience and general welfare of the citizens, residents and inhabitants of the Issuer

and its environs that the Issuer (a) authorize the issuance of the Bonds, (b) authorize the execution of the Agreement between the Issuer and the Lessee, (c) authorize the execution of the Indenture to the Trustee (or to any other institution which may serve as Trustee as described in such Indenture) for the holders of the Bonds, and the execution of related documents, (d) authorize the execution and delivery of a Bond Purchase Agreement (the "Purchase Agreement"), by and among the Issuer, the Lessee and the Bond Purchaser, (e) authorize the issuance and delivery of an In-Lieu of Tax Payments Agreement, by and between the Issuer and the Lessee, (f) authorize the execution and delivery of a Home Office Payments Agreement, by and among the Issuer, the Trustee, the Lessee and the Bond Purchaser, and (g) confirm and approve the sale of the Bonds and approve other necessary or related documents and actions.

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE "COUNCIL") AS FOLLOWS:

SECTION I: For the purposes set forth in the preamble, which is incorporated as a part hereof, the Issuer, acting by and through its Metro Council, hereby:

(A) Confirms and ratifies the Resolution No. 14, Series 2022 of the Council, adopted on February 3, 2022, whereby the Issuer agreed to authorize and issue its bonds for industrial building purposes for the Lessee.

(B) Authorizes the sale, issuance, execution and delivery of bonds in an aggregate principal amount not to exceed \$119,000,000 principal amount of the Bonds, the Bonds to be issued in the form and subject to the terms and specifications set forth in the Indenture and in the Purchase Agreement identified and approved herein.

(C) Authorizes the use of the proceeds of the Bonds, as provided in the Indenture and in the Agreement hereinafter approved, for the Project.

(D) Authorizes and approves the appointment of U.S. Bank Trust Company, National Association to serve as Trustee (or any successors or substitutes therefor), in connection with the Bonds.

SECTION II: The Issuer hereby approves, and the Mayor of the Issuer is hereby authorized, empowered and directed to execute, acknowledge and deliver on behalf of the Issuer, with the attestation of the Metro Council Clerk, the Agreement (and the amendments thereto relating to each series of Bonds authorized hereunder) which is hereby approved, authorized and adopted in substantially the form submitted herewith and designated Exhibit A, respectively, with such changes therein as the officials executing the same may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION III: In order to provide for the authorization and security of the Bonds to be issued pursuant to the Act to finance the Project and expenses incident to such financing and to prescribe the terms and conditions upon which the Bonds are to be secured, executed, authenticated, accepted and held, the Issuer hereby approves and the Mayor of the Issuer is hereby authorized, empowered and directed to execute and acknowledge on behalf of the Issuer, with the attestation of the Metro Council Clerk, the Indenture, and said officials are hereby authorized, empowered and directed to cause the Indenture to be accepted, executed and acknowledged by the Trustee hereby so appointed (or other institution as described in the Indenture). The Indenture is hereby approved, authorized and adopted in substantially the form submitted herewith and

designated Exhibit B, with such changes as the officials executing the same may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof. The Bonds will mature as to principal no later than thirty (30) years after the date of issuance of the Bonds, will be subject to redemption in certain events and will bear interest payable periodically at the rate or rates, all as provided in the Indenture, reference to which is hereby made.

It is acknowledged that in and by the Indenture, as it is hereby approved, that the Trustee may have discretion in designating the Paying Agent (as defined in the Indenture) in respect of the Bonds.

SECTION IV: The Issuer hereby approves, and the Mayor of the Issuer is authorized and directed to execute and deliver on behalf of the Issuer, the Purchase Agreement in connection with the original sale of the Bonds, in substantially the form submitted herewith and designated Exhibit C with such changes as the official executing the same may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION V: The Issuer hereby approves, and the Mayor of the Issuer is authorized and directed to accept on behalf of the Issuer, the In-Lieu of Tax Payments Agreement, in substantially the form submitted herewith and designated Exhibit D, with such changes as the official executing the same may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION VI: The Issuer hereby approves, and the Mayor of the Issuer is authorized and directed to accept on behalf of the Issuer, the Home Office Payments Agreement, in substantially the form submitted herewith and designated Exhibit E with

such changes as the official executing the same may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION VII: The sale of the Bonds pursuant to the terms of the Purchase Agreement is hereby authorized, approved and directed. The Mayor of the Issuer is hereby authorized to approve such sale document.

SECTION VIII: The Mayor of the Issuer is authorized to approve on behalf of the Issuer the interest rate to be borne by the Bonds; provided, however, that such interest rate shall not exceed six percent (6.00%) per annum.

SECTION IX: The Mayor of the Issuer, the Metro Council Clerk, the County Attorney and other appropriate County officials, and each of them, for and on behalf of the Issuer, are hereby authorized, empowered and directed to do and perform any and all things necessary to effect the execution of the Indenture, their execution and acceptance by the Trustee, the performance of all obligations of the Issuer pursuant to the Indenture and related documents, the execution and delivery of the Bonds and the performance of all other actions of whatever nature necessary to effect and carry out the authority conferred by this Ordinance and by the Indenture. The Mayor of the Issuer, the Metro Council Clerk, the County Attorney and other appropriate County officials are hereby further authorized, empowered and directed for and on behalf of the Issuer to execute all papers, documents, certificates, releases, terminations, financing statements or other instruments (including but not limited to a deed from Lessee to the Issuer) that may be required for the carrying out and effectuation of the authority conferred by and the purposes of this Ordinance and the Indenture, or to evidence said authority and purposes, and to exercise and otherwise take all action necessary to the full realization of the rights

and purposes of the Issuer under the Agreement and related documents and to perform all of the obligations of the Issuer under the Agreement and related documents. Further, the Mayor of the Issuer, the Metro Council Clerk, the County Attorney and other appropriate County officials, and each of them, for and on behalf of the Issuer, are hereby authorized, empowered and directed to execute (i) any amendments or supplements to the Agreement and Indenture, and (ii) any additional deed from the Lessee to convey Issuer additional real property to be funded by Bond proceeds and used in connection with the Project, and to take all other action necessary to the full realization of the rights and purposes of the Issuer under any such amendments, supplements or additional deeds.

SECTION X: THE ISSUER SHALL NEVER BE REQUIRED TO PAY FROM ITS OWN FUNDS ANY OBLIGATIONS DERIVING FROM THE ISSUANCE OF THE BONDS, AND THE BONDS ARE DECLARED TO BE SPECIAL AND LIMITED OBLIGATIONS PAYABLE SOLELY AND ONLY FROM THE RECEIPTS DERIVED UNDER THE AGREEMENT WITH RESPECT TO THE PROJECT AND THE TRUST ESTATE CREATED UNDER THE INDENTURE, AS PROVIDED IN THE DOCUMENTS HEREIN APPROVED.

SECTION XI: The provisions of this Ordinance except Section 10 are hereby declared to be severable and if any section, phrase or provision shall, for any reason, be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

SECTION XII: In the event of any conflict or conflicts between the provisions of this Ordinance and of any prior ordinances, resolutions or parts thereof, the provisions of this Ordinance shall prevail.

SECTION XIII: This Ordinance shall take effect upon its passage and approval or as otherwise becoming law. The summary of this Ordinance read at the meeting of the Council described below is approved for purposes of publication as provided by law.

SECTION XIV: This Resolution shall take effect upon its passage and approval or as otherwise becoming law.

This Ordinance was given a first reading at a duly convened meeting of the Council, held on the _____ day of _____, 2022, and given second reading and approval at a duly convened meeting of the Council held on the _____, day of _____, 2022.

Sonya Harward
Metro Council Clerk

David James
President of the Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By: _____

CERTIFICATION

I, the undersigned, do hereby certify that I am the duly qualified and acting Metro Council Clerk of the Louisville/Jefferson County Metro Government, and as such Clerk, I further certify that the foregoing is a true, correct and complete copy of an Ordinance duly adopted by the Legislative Council of said Issuer at a duly convened meeting held on the ____ day of _____, 2022, signed by the Mayor and President of the Council, duly filed and recorded in my office, all as appears from the official records of said Legislative Council in my possession and under my control.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Issuer this ____ day of _____, 2022.

Sonya Harward,
LOUISVILLE METRO COUNCIL CLERK

(SEAL)