**PAYMENT IN LIEU OF TAXES AGREEMENT**

This **PAYMENT IN LIEU OF TAXES AGREEMENT**, made and entered into as of the \_\_\_\_\_ day of December, 2023 (“Agreement”), is made by and among the BOARD OF EDUCATION OF HARDIN COUNTY, KENTUCKY, a body politic and corporate of the Commonwealth of Kentucky (the “Board of Education”) and BLUEOVAL SK, LLC, a Delaware limited liability company organized and existing under the laws of Delaware (the “Company”) (collectively, the “Parties”).

 WITNESSETH

WHEREAS, the Hardin County School District (the “School District”), by and through its Board of Education, is a body politic and corporate existing under KRS 160.160 and has the authority under KRS 160.460 through 160.476 to levy *ad valorem* taxes for school purposes on all property otherwise subject to its taxation jurisdiction (“School Property Taxes”); and

WHEREAS, in 2022, the Company acquired forty-seven (47) tracts of contiguous real property comprising approximately 1,551 +/- acres and generally located near Glendale, Hardin County, Kentucky in connection with an economic development project to develop two (2) electric battery manufacturing plants and be known as the BlueOval SK Battery Park (the “Project”), which will be financed in substantial part through the assistance of, *inter alia*, Industrial Revenue Bonds (“IRB,” or “IRBs” as the context requires) issued and sponsored by Hardin County, Kentucky (the “County”); and

WHEREAS, the County and the Commonwealth of Kentucky have formally offered an incentives package based on the aforementioned job creation, as well as project investment in excess of approximately Five Billion, Eight Hundred Million Dollars ($5,800,000,000.00), a component part of the incentives offer being the issuance of IRBs by the County to facilitate property tax abatement; and

WHEREAS, the Project represents new investment and is expected to generate substantial new employment within the County and the School District, which using reasonable business judgment, the Company estimates new job creation related to the Project of 5,000 new full-time positions; and

WHEREAS, on May 19, 2023, the Hardin County Fiscal Court enacted Resolution 2023-097 (attached as Tab A), preliminarily authorizing the issuance of IRBs for the Project in an amount up to $5,8000,000,000 (Five Billion, Eight Hundred Million Dollars). On December 21, 2023, the Hardin County Fiscal Court adopted its Board Resolution authorizing the issuance of the IRBs. Such IRBs are to be issued before December 31, 2023; and

WHEREAS, the Kentucky Economic Development Finance Authority (“KEDFA”) approved, on December 7, 2023, the Company’s request for the issuance of the IRBs as a condition to utilizing certain state level property tax rates and exemptions (attached at Tab B); and

WHEREAS, as an inducement to the IRB issuance, the Company has agreed to certain obligations to the Board of Education, in recognition of the tax benefit the Company will receive and in support of lost potential School Tax Revenue to the Hardin County, Kentucky School District (“School District”); and

WHEREAS, as a condition to receiving the desired tax benefits arising from the financing of the investment in the Project, KEDFA conditioned its aforementioned approval upon the Parties entering into this Agreement; and

WHEREAS, the County and the Company have entered into a Memorandum of Agreement as of May 19, 2023 (attached at Tab C) concerning the IRBs, which also contains an agreement to finance further Project expansion via additional IRB issues should the Company so elect; and

WHEREAS, the County will issue before December 31, 2023 taxable IRBs in one or more series (each a “Bond Series”) in one or over a period of years in an aggregate principal amount not to exceed $5,800,000,000.00 (Five Billion, Eight Hundred Million Dollars) (the “Bonds”), for the benefit of the Company, pursuant to KRS 103.200 to 103.285, inclusive (the “Act”), to finance the acquisition, construction and installation of the Project and to acquire title to the property comprising the Project, comprised of the Real Property and Improvements and certain tangible personal property, all as defined in such Bond Series documents (“Project Assets”), and to lease the Project Assets back to the Company, all pursuant to the Act; and

WHEREAS, the County and the Company have agreed that title to the Project Assets will be conveyed to the County and leased to the Company pursuant to the Act, so long as the Bonds remain outstanding; and

WHEREAS, the County and the Company have entered into an In-Lieu of Tax Payments Agreement dated December 1, 2023, providing for, *inter alia*, certain obligations and terms therefore in consideration of the issuance of the Bonds; and

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

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

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

Section 2. Project Exempt from Taxation. It is represented, understood, acknowledged and agreed by the Parties that pursuant to KRS 103.285, all Real Property, Improvements thereon and applicable tangible personal property owned by the County as part of the Project and financed with proceeds of the Bond or Bond Series are exempt from *ad valorem* taxation by the County, the Commonwealth of Kentucky, and each City, School District and all other political subdivisions in Kentucky to the same extent as other public property used for public purposes, so long as same is owned by the County.

Section 3. Agreement to Make Local PILOT Payment. In consideration of the County’s agreement to issue the Bonds and to take all other actions authorized and required by the Resolution, and as required by KEDFA, the Company hereby agrees that in and for each calendar year during the term of this Agreement until the termination date or maturity date with respect to each Bond or Bond Series beginning on and after the first January 1st assessment date following the issuance of said Bond or Bond Series (each, an “Assessment Date”) that the County owns the Project, the Company shall make a payment to the Board of Education computed as indicated below for each of the Assessment Dates during the term of said Bond or Bond Series with respect to the Project financed with the proceeds of said Bond or Bond Series. The annual payment shall be equal to 100% of the amount of School Property Taxes levied on the fair cash value of the Project Assets by the Board of Education that otherwise would have been assessed, due and payable if the Project Assets were owned by a tax-paying entity and subject to payment of traditional School Property Taxes absent the application of KRS 103.285 (the “School PILOT Payment”), for each of the Assessment Dates following issuance of the Bond or Bond Series.

Section 4. Calculation of School PILOT Payment. The amount of the School PILOT Payment in each calendar year such payment is due hereunder shall be equal to (i) the Fair Cash Value (as hereinafter defined) of the Project Assets as of January 1 of such calendar year, multiplied by (ii) the published and certified general *ad valorem* tax rate(s) on such property levied by the Board of Education as set forth and in effect during such calendar year.

Section 5. Determination of Fair Cash Value of the Project. The Department of Revenue, Kentucky Finance and Administration Cabinet (the “Department”), oversees the assessment of personal property within the County for the purpose of imposing tangible personal property taxes. The Hardin County Property Valuation Administrator (the “PVA”) is statutorily responsible for establishing the assessed value of real estate and improvements within the County for the purpose of imposing real property taxes pursuant to KRS 132.

1. The “Fair Cash Value” of the Real Property and Improvements portion of the Project Assets shall be as determined annually by the PVA in a manner *as if* the Real Property and Improvements were owned by a tax­paying entity. In a manner consistent with KRS 132.220 and KRS 132.230, by March 1st of each year, the Company shall list the Real Property and Improvements of the Project with the PVA and provide such information, including the Company’s asserted Fair Cash Value of the Real Property and Improvements, as is necessary for the PVA to determine an assessed value. The PVA shall process each annual listing in a manner consistent with all other properties in the County, and shall notify the Company of any change(s) to the listed Fair Cash Value asserted by the Company. In the unlikely event of no listing by the Lessee, the PVA shall nonetheless determine a value and may make a physical inspection of the Real Property and Improvements portion of the Project Assets to assist in such valuation.
2. The Fair Cash Value of the applicable tangible personal property Project Assets shall be determined by reference to an annual filing of Kentucky Department of Revenue Form 62A500 and associated schedules by the Company, upon which the Company shall report for valuation and assessment purposes the Fair Cash Value of any applicable tangible personal property Project Assets in a manner as if such property were owned by a tax-paying entity. Such Forms 62A500 shall be filed annually with the County PVA Office on or before the traditional due date for such form(s).

Section 6. Valuation Appeal Rights. In a manner consistent with the property tax valuation appeal rights afforded all real property owners in the County, the Company shall have the annual right, at its sole expense and in its own name, to seek and prosecute in good faith a valuation adjustment to the proposed Fair Cash Value of the Real Property and Improvements portion of the Project Assets by administrative appeal or litigation or otherwise, of any tax valuation determined and noticed by the PVA of such Real Property and Improvements, and if any adjustment thereto is made by order, agreement or otherwise, the respective PILOT Payment(s) shall be re-calculated based upon the assessment resulting from such adjusted valuation. The Parties agree that any such action shall proceed through the traditional real property tax valuation appeal and dispute resolution process of KRS Chapters 133 and 131 *(e.g.*,Hardin County Board of Assessment Appeals, Kentucky Board of Tax Appeals, etc.) If for any reason the Real Property and Improvements of Project Assets or any part of the property included within the Project Assets is legally placed on the taxable *ad valorem* tax rolls, such as the early termination or full satisfaction of the IRBs issued for the Project, the obligation of the Company to make future PILOT Payments shall terminate with respect to such property on and after December 31st of the then current calendar year, and the owner of such property shall thereafter pay *ad valorem* taxes on that property as is otherwise required of any tax-paying entity going forward.

Section 7. Timing of School PILOT Payment.

1. Any School PILOT Payment due and payable in a calendar year determined hereunder shall be paid at the same time and in the same manner as are all other Hardin County Property Taxes for such calendar year, except that the Company shall deliver the respective School PILOT Payment directly to the Board of Education at the address provided in Section 10, below, instead of to the traditional County tax collector thereof. The School PILOT Payment for each such calendar year shall be due and payable in full no later than December 31 of the involved year; provided, however, if the Company pays a School PILOT Payment to the School District respectively on or before the “discount date” established pursuant to KRS 134.015, the Company may reduce said School PILOT Payment by the corresponding discount percentage, and provided further that if the Company pays a School PILOT Payment after December 31 or a later due date established pursuant to KRS 134.015, the Company shall increase said PILOT Payment by the corresponding penalty percentage established by KRS 134.015.
2. To the extent any final and non-appealable valuation review ultimately results in an overpayment of School PILOT Payment(s) for any calendar year, any such overpayment shall not be eligible for refund to the Company but shall be recognized a credit toward PILOT payment obligation(s) for the next calendar year School PILOT Payment then due. No interest shall accrue or be due on any such overpayment.

Section 8. Termination. Notwithstanding any other provision herein and with the exception of Sections 1 and 2 hereof, this Agreement shall terminate on the date immediately following the first date that no Bond or Bond Series issued by the County pursuant to the Resolution remain issued and outstanding.

Section 9. Foreign Trade Zone. The Company has applied for and received approval on October 3, 2023, from the U.S. Foreign Trade Zones Board concerning the designation of the Project site as a Foreign Trade Zone, designated as FTZ Subzone 29U. At the time the Company seeks to undertake the activation of FTZ Subzone 29U, the Parties agree to confer as to the impact, if any, of such activation on this Agreement and work in good faith toward an understanding.

Section 10. Notices. All notices, tax valuations, appeals, certificates or other communications appropriate or required hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered or certified mail, postage prepaid, addressed as follows:

If to the Board of Education, at: Hardin County Board of Education

 Attn: Superintendent’s Office

 65 W.A. Jenkins Road
Elizabethtown, Kentucky 42701

If to the Company, at: BlueOval SK, LLC

 Attn: Chief Financial Officer

 2022 Battery Park Drive

 Glendale, Kentucky 42740

The Board of Education and the Company may by advanced written notice given hereunder designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 11. Entire Agreement. This Agreement contains all of the agreement’s terms and conditions made between the Parties hereto regarding the subject matter of this Agreement and there are no other agreements or understandings, written or oral, between the Parties relating to the subject matter of this Agreement. This Agreement supersedes all prior agreements and understandings, written and oral, between the Parties with respect to the subject matter hereof.

Section 12. Amendment. This Agreement may not be modified orally or in any other manner than by an agreement in writing signed by the Parties hereto or their respective successors in interest. The invalidity, illegality or unenforceability of any provision of this Agreement will not affect the validity, legality or enforceability of the remaining provisions.

Section 13. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Board of Education, the Company and their respective successors and assigns and shall be respected by all officers and office holders thereof.

Section 14. Default. In the event that the Company fails to fully and timely make payment of any payment otherwise owed under this Agreement, the Board of Education shall notify the Company that it is in default and give the Company thirty (30) days to cure the default. In the event of default concerning full and timely payment of a PILOT Payment as required hereunder, which is not cured within thirty (30) days of receipt of written notice of such default, then, at the option of the Board of Education exercised by written notice to the Company, the Board of Education may proceed to collect such amounts through independent means. It is further agreed that Company will pay all costs of collection, including the Board of Education’s reasonable attorney fees in such event.

Section 15. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 16. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky and enforceable in any court having appropriate jurisdiction and venue.

Section 17. Captions/Sections. The captions, headings or sections in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Agreement.

Section 18. No Third Party Rights. The Parties do not intend that this Agreement shall confer on any third party, other than Hardin County PVA as to Sections 5 and 6, any right, remedy or benefit, nor that any third party shall have any right to enforce any provision of this Agreement. The Parties acknowledge that the Agreement is limited to the time periods and subject matters herein involved.

Section 19. Jointly Drafted. 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 shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

Section 20. Signatures. The Parties covenant, warrant and agree that the signatory representing each party is duly authorized to sign this Agreement and to bind such party by his or her action.

Section 21. Number and Gender. Unless the context otherwise requires, when used herein, the singular shall include the plural, the plural shall include the singular, and all nouns, pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, as the identity of the person or persons may require.

 Section 22. Effect of Bankruptcy. In the event that the Company or its assigns shall file a voluntary action seeking relief under applicable bankruptcy laws, or have an involuntary action filed against it seeking such relief, then and in that event, it is agreed that all payments required by this Agreement shall be treated the same as if there were ad valorem taxes under applicable Kentucky law, giving said payments and obligations preference over all other secured and unsecured creditors.

 Section 23. Severability. If any provision of this Agreement, or the application thereof to any person, entity or circumstances, shall be invalid or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to other person, entities or circumstances, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

Section 24. Mutual Cooperation and Further Assurances. The Parties shall cooperate with each other to achieve the purpose of this Agreement, and will execute and deliver such other documents and perform such other actions as may be necessary, convenient or appropriate to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement.

Section 25. Waiver of Compliance. Except as otherwise provided in this Agreement, any failure of either Party to comply with any obligation, covenant or agreement contained in this Agreement may be waived only by written notice from the other party. No failure by either Party to exercise, and no delay in exercising, any right under this Agreement will operate as a waiver of such right nor will any single or partial exercise of any right under this Agreement preclude any other or future exercises of that right by that Party.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

IN WITNESS WHEREOF, the Board of Education and the Company have executed this Agreement effective as of the date first above written.

BOARD OF EDUCATION OF HARDIN COUNTY

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Chairman

BLUEOVAL SK, LLC

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Chief Financial Officer

Have Seen and Agree as to Sections 5 and 6:

Office of the Hardin County PVA

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Property Valuation Administrator

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