

PAYMENT IN LIEU OF TAXES AGREEMENT

This PAYMENT IN LIEU OF TAXES AGREEMENT (this “Agreement”) is made effective as of [____], 202__ (the “Effective Date”) by and between (i) LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, a municipality and political subdivision of the Commonwealth of Kentucky (“Metro Government”) and (ii) [DEVELOPER OR AN AFFILIATE] (“Lessee”).

RECITALS

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

B. Metro Government, by and through its Legislative Council, has the authority by and through the statutes applicable to cities and county to levy *ad valorem* property taxes for the use and benefit of Metro Government and the Urban Services District on all property subject to local taxation with a taxable situs in Jefferson County, Kentucky or in the Urban Services District, respectively (“Metro Property Taxes”).

C. Lessee is currently acquiring, constructing, installing, and equipping an industrial project consisting of the facilities and properties described in Attachment A attached hereto (the “Project Element”), the Project Element being located within Jefferson County, Kentucky and the Urban Services District.

D. The Project Element represents new investment and is expected to generate economic development within Metro Government.

E. On [____], Metro Government adopted a resolution (the “Inducement Resolution”) providing for, among other things, the issuance of one or more series of taxable industrial building revenue bonds for the benefit of MGI Louisville, LLC (“MGI”), its affiliates and assigns, pursuant to KRS 103.200 through 103.285, inclusive (the “Act”), to finance the acquisition, construction, and installation of multi-phase/multi-element project (the “Project”), which includes the Project Element, to acquire title to the Project, and to lease the Project back to MGI, its affiliates and assigns, all pursuant to the Act.

F. On [____] MGI, with Metro Government’s consent, partially assigned to Lessee MGI rights under the Inducement Resolution with respect to the Project Element and designated \$[____.00] (the “Designated Metro Cap”) as the portion of the Metro Cap Amount assigned to the Bond Series (defined below).

G. On [____], Metro Government adopted an ordinance (the “Bond Ordinance”) authorizing the issuance and sale of a series of taxable industrial building revenue bonds for the benefit of Lessee to finance the acquisition, construction, and installation of the Project Element (the “Bond Series”).

H. Metro Government and Lessee have agreed that title to the Project Element will be conveyed to the Metro Government and leased back to Lessee, pursuant to the Act, so long as the Bonds are outstanding and have executed a lease agreement pursuant to which Lessee’s lease payments will repay the Bonds (the “Lease Agreement”).

I. As a condition of Metro Government's agreement to enter into the Lease Agreement and other documents necessary to vest title to the Project Element in the Metro Government and to affect the lease of the Project Element to Lessee, Lessee has agreed to make certain payments to the School District and Metro Government in lieu of School Property Taxes and Metro 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 Element Exempt From Taxation. It is understood, acknowledged, and agreed by the parties that pursuant to KRS 103.285, the Project Element is exempt from *ad valorem* property taxation by Metro Government and other political subdivisions in Kentucky to the same extent as other public property used for public purposes, so long as same is owned by Metro Government and any balance remains outstanding on the Bonds. The parties further agree that (a) Lessee's leasehold interest is exempt from local taxation and is taxable for state purposes at the rate applicable to leasehold interests in industrial buildings and (b) any proportion of the value of the leasehold interest created through any private financing is taxable at applicable state and local tax rates. The parties agree that the recording of the Lease Agreement or a memorandum thereof with the County Clerk of Jefferson County, Kentucky shall constitute the listing of Lessee's taxable leasehold interest in real property created thereby pursuant to KRS 132.220. Lessee agrees annually to list any taxable leasehold interest in tangible personal property created by the Lease Agreement by listing such interest on and filing a Form 62A500 (Tangible Personal Property Tax Return).

Section 3. Agreement To Make PILOT Payments. In consideration of Metro Government's agreement to issue the Bonds and take all other actions authorized by the Bond Ordinance, Lessee agrees to make payments to the School District and to Metro Government, as follows:

(a) School PILOT Payments. In each calendar year during the term of this Agreement with respect to the Bonds, beginning on and after the first January 1st assessment date following issuance of the Bonds (each an "Assessment Date") that the Metro Government owns the Project Element or any portion thereof, Lessee shall make a payment to the School District for each of the up to forty (40) Assessment Dates during the term of said Bonds (each, a "School PILOT Payment" and together, the "School PILOT Payments"), while any portion of the Bonds remains outstanding. The amount of the PILOT Payment in each calendar year shall be equal to (i) the Fair Cash Value (as hereinafter defined) of the Project Element as of the Assessment Date of such calendar year, multiplied by (ii) the *ad valorem* property tax rate levied by the Board of Education. If, in any calendar year during which the foregoing calculation is made, the Board of Education has levied different *ad valorem* tax rates on different classes of property, the foregoing calculation shall be made separately for each such class of property that is included within the Project Element financed by the Bonds.

(b) Metro PILOT Payments – Metro Abated Taxes in Excess of the Designated Metro Cap. In each calendar year during the term of this Agreement with respect to the Bonds, beginning on and after the first Assessment Date with respect to which the cumulative amount of the annual Metro Abated Taxes (as hereinafter defined) exceeds the Designated Metro Cap, Lessee shall make a payment to Metro Government equal to the excess Metro Abated Taxes for that calendar year (each, a "Metro PILOT Payment", together, the "Metro PILOT Payments" and with the School

PILOT Payments, each a “PILOT payment” and together the “PILOT Payments”). The amount of the “Metro Abated Taxes” for a calendar year shall be equal to (i) the Fair Cash Value (as hereinafter defined) of the Project Element as of the Assessment Date of such calendar year, multiplied by (ii) the County and Urban Services District *ad valorem* property tax rates levied by the Metro Government. If, in any calendar year during which the foregoing calculation is made, Metro Government has levied different County or Urban Services District *ad valorem* tax rates on different classes of property, the foregoing calculation shall be made separately for each such class of property that is included within the Project Element financed by the Bonds.

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

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

Section 7. Timing and Distribution of PILOT Payments. Any PILOT Payment payable in any calendar year hereunder shall be paid at the same time and in the same manner as Jefferson County, Kentucky *ad valorem* property taxes for such calendar year, except that Lessee shall deliver the School PILOT Payment to the School District and the Metro PILOT Payment to Metro Government, at the applicable address provided in Section 9 below, instead of the regular tax collector, along with supporting calculations. Any PILOT Payment for each such calendar year shall be due and payable in full no later than two full months from the date the bills for Jefferson County property taxes are issued in accordance with KRS 134.015; provided, however, if Lessee pays a PILOT Payment on or before any discount date established pursuant to KRS 134.015 for Jefferson County property taxes, Lessee may reduce the PILOT Payment by the corresponding discount percentage.

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

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

To the Metro Government, at:

Jefferson County Attorney's Office
300 S. Fifth Street, Suite 300N
Louisville, Kentucky 40202

To the School District:

Superintendent
Jefferson County Public Schools
VanHoose Education Center
3332 Newburg Road
Louisville, Kentucky 40218

To Lessee:

[Address]

With a copy that shall
not constitute notice to:

Timothy J. Eifler
Stoll Keenon Ogden PLLC
400 West Market Street
Suite 2700
Louisville, Kentucky 40202

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

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

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

Section 12. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. The parties to this Agreement need not execute the same counterpart. Each party to this Agreement shall deliver to the other party, an original wet signature page for such party, which signature page shall be deemed to be such party's original signature for all purposes; provided, however, that a signature delivered by facsimile or other electronic transmission (including electronic mail) will be also considered an original signature and constitute effective execution and delivery of this Agreement for all purposes.

Section 13. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

Section 14. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Agreement.

[Signature page immediately follows]

SIGNATURE PAGE TO PILOT AGREEMENT

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the Effective Date.

LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT

By: _____
Craig Greenberg, Mayor

Attest:

By: _____
Sonya Harward
Metro Council Clerk

[DEVELOPER OR AN AFFILIATE]

By: _____

Name: _____

Title: _____

ATTACHMENT A

Project Element Description

[Description of Phase / Element]