

RESOLUTION NO. 2024-20

A RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO ENTER INTO AN ASSET PURCHASE AGREEMENT WITH FALLS RIVER CONCERTS LLC FOR THE PURCHASE OF THE BUSINESS OF ROCKIN' ON THE RIVER.

WHEREAS, the Lorain Port Authority is empowered and established under Chapter 4582 of the Ohio Revised Code for the purposes and duties set forth therein, and

WHEREAS, Black River Landing was created by the Lorain Port Authority to further the mission of public access to our waterways and the promotion of economic development; and

WHEREAS, Rockin' on the River began in Lorain in 2015 and has grown in popularity over the past ten years; and

WHEREAS, Through the success of all events that take place at Black River Landing, especially including Rockin' on the River, Black River Landing has become a top tourist destination in Lorain County, attracting hundreds of thousands of people annually to Lorain; and

WHEREAS, Falls River Concerts LLC is an Ohio limited liability company owned by Robert (Bob) and Sandra (Sandy) Earley which are the owners of the assets of the business Rockin' on the River; and

WHEREAS, The Lorain Port Authority desires to continue the legacy of Rockin' on the River at Black River Landing and Falls River Concerts LLC desires to sell their Rockin' on the River assets to the Lorain Port Authority for continuation of operation at Black River Landing.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Lorain Port Authority:

SECTION I. That the Executive Director or his designee is authorized and directed to enter into an agreement with Falls River Concerts LLC for the asset purchase of Rockin' on the River as outlined in the attached Asset Purchase Agreement.

SECTION II. The Asset Purchase Agreement includes the purchase of substantially all of the business of Rockin' on the River as well as consultation services to be rendered by Bob and Sandy Earley of Falls River Concerts, LLC.

SECTION III. It is found and determined that all formal proceedings and actions of this Board concerning and relating to the passage of this resolution were adopted in an open meeting of this Board, and that all deliberations of this Board

and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal Requirements, including Section 121.22, of the Ohio Revised Code.

Ayes: 8

Nays: 0

Abstain: 0

Adopted: 09/03/2024



Brad Mullins, Chairman



Tom Brown, Executive Director

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “Agreement”), dated as of the ____ day of _____, 2024 (the “Effective Date”), is entered into by, between and among **LORAIN PORT AUTHORITY**, a port authority duly organized and validly existing under the laws of the State of Ohio (the “Purchaser”), whose business address is 319 Black River Lane, Lorain, Ohio 44052, **FALLS RIVER CONCERTS, LLC**, an Ohio limited liability company (“Seller”), whose business address is 496 Eldridge Rd Aurora, Ohio 44202, **ROBERT EARLEY** (“Bob”) and **SANDRA EARLEY** (“Sandy”), whose residential address is 496 Eldridge Rd Aurora, Ohio 44202. Seller, Purchaser, Bob and Sandy may each be referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Seller is engaged in the business of promoting live music concerts throughout Northeastern Ohio known as Rockin’ on the River (collectively, the “Business”); and,

WHEREAS, Seller desires to sell and assign to Purchaser, and Purchaser desires to purchase and assume from Seller, substantially all the Rockin’ on the River assets of the Business, subject to the terms and conditions set forth herein; and,

WHEREAS, capitalized terms used in this Agreement shall have the meanings given to such terms herein, as such definitions are identified by the cross-references set forth in Exhibit A attached hereto and incorporated herein by reference.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I PURCHASE AND SALE

Section 1.01 Purchase and Sale of Assets. Subject to the terms and conditions set forth herein, at the Closing, Seller shall sell, convey, assign, transfer, and deliver to Purchaser, and Purchaser shall purchase from Seller, free and clear of all liens, judgments and encumbrances, all of Seller’s right, title, and interest in, to, and under all of the tangible and intangible assets, properties, and rights of every kind and nature and wherever located (other than the Excluded Assets), which relate to, or are used or held for use in connection with, the Business (collectively, the “Purchased Assets”), including without limitation the following:

- (a) all inventories, including all consumables of the Business, wherever located relating to and owned by Seller (“Inventory”);
- (b) Seller’s tangible personal property as outlined in Exhibit B Inventory List (the “Tangible Personal Property”);
- (c) all of Seller’s rights under warranties, indemnities, and all similar rights against third parties to the extent related to any Purchased Assets;
- (d) originals or, where not available, copies, of all books and records, including books of account, ledgers, and general, financial, and accounting records, machinery and equipment

maintenance files, customer lists, customer purchasing histories, price lists, distribution lists, supplier lists, production data, quality control records and procedures, customer complaints and inquiry files, research and development files, records, and data (including all correspondence with any federal, state, local, or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any arbitrator, court, or tribunal of competent jurisdiction (collectively, "Governmental Authority")), sales material and records, strategic plans and marketing, and promotional surveys, material, and research;

(e) all rights with respect to Seller's general intangible and intellectual property, including without limitation, the name "Rockin' on the River", any copyrighted materials, trade names, trademarks, service marks, websites, URLs, and social media accounts used in connection with the Business;

(f) all rights, title, and interest in and to Seller's customer and vendor lists associated with the Business; and

(g) all other tangible or intangible assets of Seller used in the Business not specifically included within the Excluded Assets below, including without limitation goodwill, know-how associated with the Business and the going concern value of the Purchased Assets and the Business.

Section 1.02 Excluded Assets. Notwithstanding the foregoing, the Purchased Assets shall not include any of the following items specifically set forth on Section 1.02 of the Disclosure Schedules (collectively, the "Excluded Assets"):

- (a) All cash and cash equivalents held by Seller;
- (b) All accounts receivable from third parties relating to Seller;
- (c) Seller's bank accounts;
- (d) Seller's tax refunds; and
- (e) 1988 Ford Econoline Van.
- (f) Assets not directly associated with "Rockin' on the River" business

Section 1.03 Transition Services. Sellers agree to provide consultation services to the Purchaser for a period of up to three years following Closing. At Purchaser's request, Seller agrees to provide these services to Purchaser for the 2025 concert season. Seller agrees to provide consultation services for the 2026 and 2027 concert seasons as mutually agreed upon in the future. Seller agrees to provide these services to purchaser for an annual fee of Twenty-Five Thousand Dollars (\$25,000) which will be paid within the calendar year that services are rendered, but no later than April 1st. Purchaser shall notify Seller in writing by October 1st if services will be necessary for the following calendar year. If services are not agreed upon and rendered, Purchaser will have no obligation to pay the annual fee for that calendar year. Purchaser has all rights to terminate the need for consultation services at any point. Consultation services include but are not limited to:

- (a) Industry Introductions;

- (b) Booking of Entertainment;
- (c) Music industry practices;
- (d) Vendor Relationships; and
- (e) Other services not yet determined.

Section 1.04 No Assumption of Liabilities. Notwithstanding any provision in this Agreement to the contrary, Purchaser shall not assume and shall not be responsible to pay, perform, or discharge any Liabilities of Seller of any kind or nature whatsoever (the “Excluded Liabilities”). For purposes of this Agreement, “Liabilities” means liabilities, obligations, or commitments of any nature whatsoever, whether asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured, or otherwise.

Section 1.05 Purchase Price. The total aggregate purchase price to be paid for the Purchased Assets shall be Two Hundred Twenty-Five Thousand Dollars (\$225,000.00) (the “Purchase Price”). The sum of Five Thousand Dollars (\$5,000.00) (the “Deposit”) shall be paid as an earnest money deposit to Falls River Concerts, LLC on or before three (3) days after the full execution of this Agreement. The Deposit shall be (i) credited to the Purchase Price at the Closing, (ii) paid to Seller if this Agreement is properly terminated by Seller due to Purchaser’s default, or (iii) returned to Purchaser if this Agreement is properly terminated by Purchaser pursuant to the exercise of any right of termination provided to Purchaser this Agreement. The balance of the Purchase Price shall be paid in two equal payments of One Hundred Ten Thousand Dollars (\$110,000) the first at the later date of Closing or October 1st, 2024 and the second in calendar year 2025 but by March 31st, 2025 by certified or cashier’s check or by wire transfer. This Section 1.05 shall survive termination of this Agreement.

Section 1.06 Allocation of Purchase Price. The Purchase Price shall be allocated among the Purchased Assets for all purposes (including Tax and financial accounting) as shown on the allocation schedule set forth on Section 1.05 of the Disclosure Schedules (the “Allocation Schedule”). The Allocation Schedule shall be prepared in accordance with Section 1060 of the Internal Revenue Code of 1986, as amended. Purchaser and Seller shall file all returns, declarations, reports, information returns and statements, and other documents relating to federal, state, and local taxes (including amended returns and claims for refund) (“Tax Returns”) in a manner consistent with the Allocation Schedule.

Section 1.07 Assignments and Third-Party Consents. To the extent that Seller’s rights under any Purchased Asset may not be assigned to Purchaser without the consent of another Person which has not been obtained, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful, and Seller, at its expense, shall use its reasonable best efforts to obtain any such required consent(s) as promptly as possible. If any such consent shall not be obtained or if any attempted assignment would be ineffective or would impair Purchaser’s rights under the Purchased Asset in question so that Purchaser would not in effect acquire the benefit of all such rights, Seller, to the maximum extent permitted by Law and the Purchased Asset, shall act after the Closing as Purchaser’s agent in order to obtain for it the benefits thereunder and shall cooperate, to the maximum extent permitted by Law and the Purchased Asset, with Purchaser in any other reasonable arrangement designed to provide such benefits to Purchaser.

ARTICLE II CLOSING

Section 2.01 Closing. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the “Closing”) shall take place by exchange of documents and signatures (or their electronic counterparts), on the 31 day of October, 2024, 2:00 p.m. eastern daylight saving time, or at such other time or place or in such other manner as Seller and Purchaser may mutually agree upon in writing. The date on which the Closing is to occur is herein referred to as the “Closing Date.”

Section 2.02 Closing Deliverables.

(a) At the Closing, Seller shall deliver to Purchaser the following:

(i) a bill of sale incorporated herein (the “Bill of Sale”), duly executed by Seller, transferring the Purchased Assets to Purchaser;

(ii) Financial Statements as outlined in Section 3.03

(iii) a resolution of the Members, which authorize the execution, delivery, and performance of this Agreement, the Bill of Sale, the Assignment and Assumption Agreement, the Transition Services Agreement, and the other agreements, instruments, and documents required to be delivered in connection with this Agreement or at the Closing (collectively, the “Transaction Documents”) and the consummation of the transactions contemplated hereby and thereby; and

(iv) such other customary instruments of transfer or assumption, filings, or documents, in form and substance reasonably satisfactory to Purchaser, as may be required to give effect to the transactions contemplated by this Agreement; and

(b) At the Closing, Purchaser shall deliver to Seller the following:

(i) the balance of the Purchase Price after application of the Deposit as outlined in the payment terms of Section 1.05;

(ii) a certificate of the Secretary (or equivalent officer) of Purchaser certifying as to (a) the resolutions of the board of trustees of Purchaser, which authorize the execution, delivery, and performance of this Agreement and the Transaction Documents and the consummation of the transactions contemplated hereby and thereby; and (b) the names and signatures of the officers of Purchaser authorized to sign this Agreement and the other Transaction Documents.

**ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SELLER, BOB AND SANDY**

Seller, Bob and Sandy, jointly and severally, represent and warrant to Purchaser that the statements contained in this ARTICLE III are true and correct as of the date hereof and as of the Closing Date.

Section 3.01 Organization and Authority of Seller. Seller is a limited liability company, duly organized, validly existing, and in good standing under the Laws of the State of Ohio. Seller has full power and authority to enter into this Agreement and the other Transaction Documents to which Seller is a party, to carry out its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and any other Transaction

Document to which Seller is a party; the performance by Seller of its obligations hereunder and thereunder; and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite manager, member, officer, and board action on the part of Seller. This Agreement and the Transaction Documents constitute legal, valid, and binding obligations of Seller enforceable against Seller in accordance with their respective terms.

Section 3.02 No Conflicts or Consents. The execution, delivery, and performance by Seller of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) violate or conflict with any provision of the Articles of Organization, Operating Agreement, Bylaws, or other governing documents of Seller; (b) violate or conflict with any provision of any statute, law, ordinance, regulation, rule, code, constitution, treaty, common law, other requirement, or rule of law of any Governmental Authority (collectively, “Laws”) or any order, writ, judgment, injunction, decree, stipulation, determination, penalty, or award entered by or with any Governmental Authority (“Governmental Order”) applicable to Seller, the Business, or the Purchased Assets; (c) require the consent, notice, declaration, or filing with or other action by any individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association, or other entity (“Person”) or require any permit, license, or Governmental Order; (d) violate or conflict with, result in the acceleration of, or create in any party the right to accelerate, terminate, modify, or cancel any Contract to which Seller is a party or by which Seller or the Business is bound or to which any of the Purchased Assets are subject (including any Assigned Contract); or (e) result in the creation or imposition of any charge, claim, pledge, equitable interest, lien, security interest, restriction of any kind, or other encumbrance (“Encumbrance”) on the Purchased Assets.

Section 3.03 Financial Statements. Complete copies of the balance sheets and statements of income of the Business for the fiscal years ended 2023, 2022, and 2021, and the balance sheets and statements of income as and for the months of January through September ended October 1st, 2024 (collectively, the “Financial Statements”), have been delivered to Purchaser. The Financial Statements fairly represent the financial condition of the Business as of the respective dates they were prepared and the results of the operations of the Business for the periods indicated. The balance sheet of the Business as of October 1st, 2024 is referred to herein as the “Balance Sheet” and the date thereof as the “Balance Sheet Date”.

Section 3.04 Undisclosed Liabilities. Seller has no Liabilities with respect to the Business, except (a) those which are adequately reflected or reserved against in the Balance Sheet as of the Balance Sheet Date, and (b) those which have been incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date and which are not, individually or in the aggregate, material in amount.

Section 3.05 Absence of Certain Changes, Events, and Conditions. Since the Balance Sheet Date, the Business has been conducted in the ordinary course of business consistent with past practice, and there has not been any change, event, condition, or development that is, or could reasonably be expected to be, individually or in the aggregate, materially adverse to: (a) the business, results of operations, condition (financial or otherwise), or assets of the Business; or (b) the value of the Purchased Assets.

Section 3.06 Assigned Contracts. Each Assigned Contract is valid and binding on Seller in accordance with its terms and is in full force and effect. Neither Seller nor, to Seller’s knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of any intention to terminate, any Assigned Contract. No event or circumstance has occurred that would constitute an event of default under any Assigned Contract or result in a termination thereof. Complete and correct copies of each Assigned Contract (including all

modifications, amendments, and supplements thereto and waivers thereunder) have been made available to Purchaser. There are no disputes pending or threatened under any Assigned Contract.

Section 3.07 Title to Purchased Assets. Seller has good and valid title to all the Purchased Assets, free and clear of Encumbrances.

Section 3.08 Condition and Sufficiency of Assets. Each item of Tangible Personal Property is structurally sound, is in good operating condition and repair, and is adequate for the uses to which it is being put, and no item of Tangible Personal Property needs maintenance or repair except for ordinary, routine maintenance and repairs that are not material in nature or cost. The Purchased Assets are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property, and assets necessary to conduct the Business as currently conducted. None of the Excluded Assets are material to the Business.

Section 3.09 Inventory. All Inventory, whether or not reflected in the Balance Sheet, consists of a quality and quantity usable and salable in the ordinary course of business consistent with past practice, except for obsolete, damaged, defective, or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established.

Section 3.10 Legal Proceedings; Governmental Orders.

(a) There are no claims, actions, causes of action, demands, lawsuits, arbitrations, inquiries, audits, notices of violation, proceedings, litigation, citations, summons, subpoenas, or investigations of any nature, whether at law or in equity (collectively, “Actions”) pending or, to Seller’s knowledge, threatened against or by Seller: (i) relating to or affecting the Business or the Purchased Assets; or (ii) that challenge or seek to prevent, enjoin, or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

(b) Seller is in compliance with all Governmental Orders against, relating to, or affecting the Business or the Purchased Assets.

Section 3.11 Compliance with Laws. Seller is in compliance with all Laws applicable to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets.

Section 3.12 Taxes. All Taxes due and owing by Seller have been, or will be, timely paid. No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of Seller. All Tax Returns required to be filed by Seller for any tax periods prior to Closing have been, or will be, timely filed. Such Tax Returns are, or will be, true, complete, and correct in all respects. The term “Taxes” means all federal, state, local, foreign, and other income, gross receipts, sales, use, production, ad valorem, transfer, documentary, franchise, registration, profits, license, withholding, payroll, employment, unemployment, excise, severance, stamp, occupation, premium, property (real or personal), customs, duties, or other taxes, fees, assessments, or charges of any kind whatsoever, together with any interest, additions, or penalties with respect thereto.

Section 3.13 Brokers. No broker, finder, or investment banker is entitled to any brokerage, finder’s, or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Seller.

Section 3.14 Full Disclosure. No representation or warranty by Seller in this Agreement and no statement contained in the Disclosure Schedules to this Agreement or any certificate or other document furnished or to be furnished to Purchaser pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

For purposes of this Agreement, “Seller’s knowledge” shall mean the actual knowledge of Bob and Sandy after reasonable investigation.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Seller that the statements contained in this **ARTICLE IV** are true and correct as of the date hereof.

Section 4.01 Organization and Authority of Purchaser. Purchaser is a port authority duly organized, validly existing, and in good standing under the Laws of the State of Ohio. Purchaser has full power and authority to enter into this Agreement and the other Transaction Documents to which Purchaser is a party, to carry out its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Purchaser of this Agreement and any other Transaction Document to which Purchaser is a party, the performance by Purchaser of its obligations hereunder and thereunder, and the consummation by Purchaser of the transactions contemplated hereby and thereby have been duly authorized by all requisite action on the part of Purchaser. This Agreement and the Transaction Documents constitute legal, valid, and binding obligations of Purchaser enforceable against Purchaser in accordance with their respective terms.

Section 4.02 No Conflicts; Consents. The execution, delivery, and performance by Purchaser of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) violate or conflict with any provision of the organizational documents of Purchaser; (b) violate or conflict with any provision of any Law or Governmental Order applicable to Purchaser; or (c) require the consent, notice, declaration, or filing with or other action by any Person or require any permit, license, or Governmental Order.

Section 4.03 Brokers. No broker, finder, or investment banker is entitled to any brokerage, finder’s, or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Purchaser.

Section 4.04 Legal Proceedings. There are no Actions pending or, to Purchaser’s knowledge, threatened against or by Purchaser that challenge or seek to prevent, enjoin, or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

ARTICLE V COVENANTS

Section 5.01 Confidentiality. From and after the Closing, Seller shall, and shall cause its Affiliates to, hold, and shall use its reasonable best efforts to cause its or their respective directors, officers, employees, consultants, counsel, accountants, and other agents (“Representatives”) to hold, in confidence any and all information, whether written or oral, concerning the Business, except to the extent that Seller

can show that such information: (a) is generally available to and known by the public through no fault of Seller, any of its Affiliates, or their respective Representatives; or (b) is lawfully acquired by Seller, any of its Affiliates, or their respective Representatives from and after the Closing from sources which are not prohibited from disclosing such information by a legal, contractual, or fiduciary obligation. If Seller or any of its Affiliates or their respective Representatives are compelled to disclose any information by Governmental Order or Law, Seller shall promptly notify Purchaser in writing and shall disclose only that portion of such information which is legally required to be disclosed, *provided that* Seller shall use reasonable best efforts to obtain as promptly as possible an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information. For purposes of this Agreement: (i) “Affiliate” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person; and (ii) the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

Section 5.02 Non-Competition; Non-Solicitation.

(a) Seller, Bob and Sandy each acknowledge the competitive nature of the Business and accordingly agree, in connection with the sale of the Purchased Assets, including the goodwill of the Business, which Purchaser considers to be a valuable asset, and in exchange for good and valuable consideration, that for a period of 3 years commencing on the Closing Date (the “Restricted Period”), Seller, Bob and Sandy shall not, and shall not permit any of their respective Affiliates to, directly or indirectly, (i) engage in or assist others in promoting, organizing or presenting live music concerts (the “Restricted Business”) within a 100 mile radius of 421 Black River Lane, Lorain, Ohio 44052 (the “Territory”); (ii) have an interest in any Person that engages directly or indirectly in the Restricted Business in the Territory in any capacity, including as a partner, shareholder, director, member, manager, employee, principal, agent, trustee, or consultant; or (iii) cause, induce, or encourage any material actual or prospective client, customer, supplier, or licensor of the Business (including any existing or former client or customer of Seller and any Person that becomes a client or customer of the Business after the Closing), or any other Person who has a material business relationship with the Business, to terminate or modify any such actual or prospective relationship. Notwithstanding the foregoing, Bob and Sandy shall be permitted to render services under the Transition Services Agreement, and Seller, Bob and Sandy may own, directly or indirectly, solely as an investment, securities of any Person traded on any national securities exchange if Seller, Bob or Sandy is not a controlling Person of, or a member of a group which controls, such Person and does not, directly or indirectly, own five percent (5%) or more of any class of securities of such Person.

(b) Seller acknowledges that a breach or threatened breach of this Section 5.02 would give rise to irreparable harm to Purchaser, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by Seller of any such obligations, Purchaser shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance, and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

(c) Seller acknowledges that the restrictions contained in this Section 5.02 are reasonable and necessary to protect the legitimate interests of Purchaser and constitute a material inducement to Purchaser to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any covenant contained in this Section 5.02

should ever be adjudicated to exceed the time, geographic, product or service, or other limitations permitted by applicable Law in any jurisdiction or any Governmental Order, then any court is expressly empowered to reform such covenant in such jurisdiction to the maximum time, geographic, product or service, or other limitations permitted by applicable Law or such Governmental Order. The covenants contained in this Section 5.02 and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

Section 5.03 Public Announcements. Unless otherwise required by applicable Laws, no party to this Agreement shall make any public announcements in respect of this Agreement or the transactions contemplated hereby without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed), and the parties shall cooperate as to the timing and contents of any such announcement.

Section 5.04 Bulk Sales Laws. The parties hereby waive compliance with the provisions of any bulk sales, bulk transfer, or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Purchaser. Any Liabilities arising out of the failure of Seller to comply with the requirements and provisions of any bulk sales, bulk transfer, or similar Laws of any jurisdiction shall be treated as Excluded Liabilities.

Section 5.05 Intentionally Omitted.

Section 5.06 Transfer Taxes. All sales, use, registration, and other such Taxes and fees (including any interest and penalties) incurred in connection with this Agreement and the other Transaction Documents, if any, shall be borne and paid by Seller when due. Seller shall, at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees, and Purchaser shall cooperate with respect thereto as necessary.

Section 5.07 Further Assurances. Following the Closing, the Parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the other Transaction Documents.

ARTICLE VI INDEMNIFICATION

Section 6.01 Survival. All representations, warranties, covenants, and agreements contained herein and all related rights to indemnification shall survive the Closing.

Section 6.02 Indemnification by Seller. Subject to the other terms and conditions of this ARTICLE VI, from and after Closing, Seller, Bob and Sandy, jointly and severally, shall indemnify and defend each of Purchaser and its Affiliates and their respective Representatives (collectively, the “Purchaser Indemnitees”) against, and shall hold each of them harmless from and against, any and all losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees (collectively, “Losses”), incurred or sustained by, or imposed upon, the Purchaser Indemnitees based upon, arising out of, or with respect to:

(a) any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement, any other Transaction Document, or any schedule, certificate, or exhibit related thereto, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(b) any breach or non-fulfillment of any covenant, agreement, or obligation to be performed by Seller pursuant to this Agreement, any other Transaction Document, or any schedule, certificate, or exhibit related thereto;

(c) any Excluded Asset or any Excluded Liability; or

(d) any Third-Party Claim based upon, resulting from, or arising out of the business, operations, properties, assets, or obligations of Seller or any of its Affiliates (other than the Purchased Assets) conducted, existing, or arising on or prior to the Closing Date. For purposes of this Agreement, “Third-Party Claim” means notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing.

Section 6.03 Indemnification by Purchaser. Subject to the other terms and conditions of this **ARTICLE VI**, from and after Closing, Purchaser shall indemnify and defend each of Seller, Bob and Sandy, and its Affiliates and their respective Representatives (collectively, the “Seller Indemnitees”) against, and shall hold each of them harmless from and against any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, or with respect to:

(a) any inaccuracy in or breach of any of the representations or warranties of Purchaser contained in this Agreement, any other Transaction Document, or any schedule, certificate, or exhibit related thereto, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date); or

(b) any breach or non-fulfillment of any covenant, agreement, or obligation to be performed by Purchaser pursuant to this Agreement.

Section 6.04 Indemnification Procedures. Whenever any claim shall arise for indemnification hereunder, the party entitled to indemnification (the “Indemnified Party”) shall promptly provide written notice of such claim to the other party (the “Indemnifying Party”). In connection with any claim giving rise to indemnity hereunder resulting from or arising out of any Action by a Person who is not a party to this Agreement, the Indemnifying Party, at its sole cost and expense and upon written notice to the Indemnified Party, may assume the defense of any such Action with counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party shall be entitled to participate in the defense of any such Action, with its counsel and at its own cost and expense. If the Indemnifying Party does not assume the defense of any such Action, the Indemnified Party may, but shall not be obligated to, defend against such Action in such manner as it may deem appropriate, including settling such Action, after giving notice of it to the Indemnifying Party, on such terms as the Indemnified Party may deem appropriate and no action taken by the Indemnified Party in accordance with such defense and settlement shall relieve the Indemnifying Party of its indemnification obligations herein provided with respect to any damages resulting therefrom. The

Indemnifying Party shall not settle any Action without the Indemnified Party's prior written consent (which consent shall not be unreasonably withheld or delayed).

Section 6.05 Cumulative Remedies. The rights and remedies provided in this **ARTICLE VI** are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

ARTICLE VII CONDITIONS PRECEDENT

Section 7.01 Conditions to Purchaser's Obligations. Purchaser's obligations under this Agreement are subject to the satisfaction, on the Closing Date, of each of the following conditions, any of which may be waived in writing by Purchaser:

- (a) Seller will have materially complied with and performed all its obligations under this Agreement.
- (b) All representations and warranties of Seller in this Agreement will be materially true and complete as of the date when given and on the Closing Date.
- (c) Seller will have obtained all consents and/or approvals necessary for Seller to assign the Assigned Contracts to Purchaser.
- (d) Buyer will have received evidence of the due authorization and execution of this Agreement by Seller in form and substance satisfactory to Purchaser.
- (e) No litigation, statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by or in any court or governmental authority of competent jurisdiction or any self-regulatory organization having authority over the matters contemplated hereby, which prohibits the consummation of any of the transactions contemplated by this Agreement.

Section 7.02 Condition to Seller's Obligations. Seller's obligations under this Agreement are subject to the satisfaction, on the Closing Date, of the following conditions:

- (a) Purchaser will have fully complied with and performed all its obligations under this Agreement.
- (b) All representations and warranties of Purchaser in this Agreement will be true and complete as of the date when given and on the Closing Date.

ARTICLE VIII MISCELLANEOUS

Section 8.01 Expenses. All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

Section 8.02 Notices. All notices, claims, demands, and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by email of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 8.02):

If to Seller, Bob or Sandy: Robert Earley
496 Eldridge Rd
Aurora, Ohio 44202
Email: riverconcerts@aol.com
Attention: Bob Earley

with a copy to: Megan Shero-Cuiffo, ESQ
12971 E River Rd
Columbia Station, Ohio 44028
Email: megan.shero@gmail.com
Attention: Megan Shero-Cuiffo, ESQ

If to Purchaser: Lorain Port Authority
319 Black River Lane
Lorain, Ohio 44052
Email: tbrown@lorainportauthority.com
Attention: Thomas Brown, Executive Director

with a copy to: Bricker Graydon LLP
100 South Third Street, Columbus, Ohio 43215-4291
Email: ckalvis@brickergraydon.com
Attention: Colin Kalvas, Esq.

Section 8.03 Interpretation; Headings. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 8.04 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement.

Section 8.05 Entire Agreement. This Agreement and the other Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents, the Exhibits, and the Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 8.06 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Any purported assignment in violation of this Section shall be null and void. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 8.07 Amendment and Modification; Waiver. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No failure to exercise, or delay in exercising, any right or remedy arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy.

Section 8.08 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule (whether of the State of Ohio or any other jurisdiction). Any legal suit, action, proceeding, or dispute arising out of or related to this Agreement, the other Transaction Documents, or the transactions contemplated hereby or thereby may be instituted in the federal courts of the United States of America in Cleveland, Ohio, or the courts of the State of Ohio located in Lorain County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, proceeding, or dispute.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS AND SCHEDULES ATTACHED TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT: (I) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION; (II) EACH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER; (III) EACH PARTY MAKES THIS WAIVER KNOWINGLY AND VOLUNTARILY; AND (IV) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 8.09 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

SELLER:

FALLS RIVER CONCERTS, LLC

By: _____

Name: _____

Title: _____

ROBERT:

Robert Earley, Individually

SANDRA:

Sandra Earley, Individually

PURCHASER:

LORAIN PORT AUTHORITY

By: _____

Name: _____

Title: _____

EXHIBIT A

DEFINITIONS CROSS-REFERENCE TABLE

The following terms have the meanings set forth in the location in this Agreement referenced below:

<u>Term</u>	<u>Section</u>
Actions	Section 3.10(a)
Affiliate	Section 5.01
Agreement	Preamble
Allocation Schedule	Section 1.05
Assigned Contracts	Section 1.01(b)
Assignment and Assumption Agreement	Section 2.02(a)(ii)
Balance Sheet	Section 3.03
Balance Sheet Date	Section 3.03
Bill of Sale	Section 2.02(a)(i)
Business	Recitals
Purchaser	Preamble
Purchaser Indemnitees	Section 6.02
Closing	Section 2.01
Closing Date	Section 2.01
Contracts	Section 1.01(b)
Control	Section 5.01
Deposit	Section 1.05
Disclosure Schedules	Section 1.01(b)
Encumbrance	Section 3.02
Excluded Assets	Section 1.02
Excluded Liabilities	Section 1.04
Financial Statements	Section 3.03
Governmental Authority	Section 1.01(f)
Governmental Order	Section 3.02
Indemnified Party	Section 6.04
Indemnifying Party	Section 6.04
Inventory	Section 1.01(a)
Laws	Section 3.02

Liabilities	Section 1.03
Losses	Section 6.02
Person	Section 3.02
Purchased Assets	Section 1.01
Purchase Price	Section 1.04
Representatives	Section 5.01
Restricted Business	Section 5.02(a)
Restricted Period	Section 5.02(a)
Seller	Preamble
Seller Indemnitees	Section 6.03
Tangible Personal Property	Section 1.01(c)
Taxes	Section 3.122
Tax Returns	Section 1.05
Territory	Section 5.02(a)
Third-Party Claim	Section 6.02(d)
Transaction Documents	Section 2.02(a)(iv)
Transition Services Agreement	Section 2.02(a)(iii)

EXHIBIT B
Inventory List

- (3) Golf carts
- (1) Chevy Box Truck
- (8) High Top Tables
- (12) Bar Stools
- (2) Rolling Bars
- (25) Camp chairs
- (20) Garbage Cans