

**RESOLUTION NO. 2025-05**

**A RESOLUTION AUTHORIZING AND APPROVING A TRANSACTION CONCERNING THE ACQUISITION, CONSTRUCTION, EQUIPPING, INSTALLATION, AND IMPROVEMENT OF THE LORAIN OHIO KARTPLEX PROJECT, AND RELATED IMPROVEMENTS CONSTITUTING "PORT AUTHORITY FACILITIES" TO BE LOCATED ON CERTAIN REAL PROPERTY TO BE ACQUIRED BY THE AUTHORITY; AUTHORIZING THE ACCEPTANCE OF THE CONVEYANCE OF LEASEHOLD INTEREST IN REAL PROPERTY BY A GROUND LEASE; AUTHORIZING A PROJECT LEASE; AUTHORIZING A CONSTRUCTION SERVICES AGREEMENT; AUTHORIZING AN INDEMNIFICATION AGREEMENT; AUTHORIZING OTHER COLLATERAL DOCUMENTS; AND AUTHORIZING AND APPROVING RELATED MATTERS.**

WHEREAS, the Lorain Port Authority (the "Authority"), a body corporate and politic duly organized and validly existing under the laws of the State of Ohio (the "State"), is authorized and empowered by the laws of the State including, without limitation, Sections 13 and 16 of Article VIII, Ohio Constitution and Ohio Revised Code Chapter 4582 (the "Act") to promote economic development within the City of Lorain, Ohio (the "City") and Lorain County, Ohio (the "County") by providing assistance to projects that create and preserve jobs and employment opportunities within the City and the County; and

WHEREAS, the Authority is authorized and empowered, by virtue of the laws of the State, including without limitation, the Act, (a) to enter into agreements with respect to the acquisition, construction, equipping, installation, and improvement of "port authority facilities", as defined in Section 4582.21(E), Ohio Revised Code, located within the boundaries of the City, (b) to acquire, construct, equip, install, improve, maintain, and operate property constituting port authority facilities in furtherance of any authorized purpose of the Authority, including in order to create or preserve jobs and employment opportunities or to improve the economic welfare of the people of the State, (c) to lease or convey interests in real property to any person to further the purposes of the Act, and (d) to enact this Resolution, to enter into the Ground Lease, the Project Lease, the Indemnity Agreement, and any Collateral Documents, each as defined in Section 1, upon the terms and conditions provided in this Resolution; and

WHEREAS, Ohio Motorsports Park Real Estate Holdings LLC (together with its affiliates, and permitted successors and assigns, "Developer") plans to acquire, construct, install, equip, and improve certain "port authority facilities," as defined in Section 4582.21(E), Ohio Revised Code, consisting of a motorsports entertainment complex containing approximately 65,000 sq. ft. of total building area, including kart racing and radio controlled car racing tracks, restaurant, esports, retail, storage, and lounge spaces, and a timing and scoring tower, together with appurtenances related thereto, to be located on the Project Site (collectively, the "Project"); and

WHEREAS, the Authority desires to assist with the acquisition, construction, development, and improvement of the Project in order to fulfill the economic development goals of the Authority; and

WHEREAS, upon execution of the Ground Lease, the Project Lease, the Indemnity Agreement, Construction Services Agreement and any Collateral Documents, each as defined in Section 1, (a) the Project will constitute a "port authority facility" within the meaning of that term as defined in Ohio Revised Code Section 4582.21(E); (b) the acquisition, construction, development, improvement, and operation of the Project will be consistent with the purposes of Ohio Constitution Article VIII, Sections 13 and 16, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people within the jurisdiction of the Authority and within the State of Ohio and to encourage housing opportunities within the jurisdiction of the Authority and within the State of Ohio; and (c) the Project will be consistent with the purposes identified in Ohio Revised Code Section 4582.21(B) because the Project is to (i) create jobs and employment opportunities and thereby to enhance the economic welfare of the people within the jurisdictions of the Authority, (ii) encourage housing opportunities within the jurisdiction of the Authority and within the State of Ohio, and (iii) to enhance, foster, aid, provide, or promote economic development within the jurisdiction of the Authority.

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

Section 1. Definitions. In addition to the words and terms elsewhere defined in this Resolution, the following words and terms as used in this Resolution shall have the following meanings unless otherwise provided and unless the context or use indicates another or different meaning or intent:

"Act" means Sections 13 and 16 of Article VIII of the Ohio Constitution and Ohio Revised Code Chapter 4582, as enacted and amended from time to time.

"Authority" means the Lorain Port Authority, a port authority and body corporate and politic duly organized and validly existing under the laws of the State.

"Collateral Documents" means such security instruments, pledges, assignments, and recognition and attornment agreements and acknowledgments as shall be required by the Authority.

"Construction Services Agreement" means the Construction Services Agreement expected to be dated the date of the Project Lease between the Authority and the Developer, the Lessee, or one or more other affiliates of the Developer as the construction services provider for the acquisition, construction, equipment, installation, and improvement of the Project, as the same may be amended or supplemented from time to time in accordance with its terms.

"Executive" means President of the Authority or the Chair or Vice Chair of the Legislative Authority.

"Fiscal Officer" means the Secretary and Fiscal Officer or an Assistant Secretary and Fiscal Officer of the Authority.

"Ground Lease" means the lease between the Lessee and the Authority which Ground Lease shall grant the Authority leasehold interest in and to the Project Site, which leasehold interest

and title shall represent a sufficient interest in the real property on the Project Site to enable the Authority to cause the acquisition, construction, equipment, installation, and improvement of the Project and shall vest ownership of the Project in the Authority.

“Indemnity Agreement” means the indemnification agreement expected to be dated the date of the Project Lease by the Lessee and such other guarantors as required by the Executive, in favor of the Authority.

“Legislative Authority” means the Board of Directors of the Authority.

“Lessee” means Xell Real Estate Holdings LLC or one or more of the affiliated entities, successors and assigns of Developer.

“Project” means the Project, consisting generally of the acquisition, construction, installation, equipping, and improvement of a mixed-use development consisting of a motorsports entertainment complex containing approximately 65,000 sq. ft. of total building area, including kart racing and radio controlled car racing tracks, restaurant, esports, retail, storage, and lounge spaces, and a timing and scoring tower and related improvements to be located in the City of Lorain, Ohio, constituting “port authority facilities” as defined in the Act.

“Project Lease” means the Project Lease between the Authority and the Lessee, Project Lease shall require the Lessee to operate the Project and to pay Rent Payments due to the Authority under the Project Lease.

“Project Purposes” means acquiring, constructing, equipping, installing, and improving the Project to be owned by the Authority and leased to the Lessee for commerce and economic development purposes.

“Rent Payments” means the Rent Payments as defined in the Project Lease.

“State” means the State of Ohio.

“Term Sheet” means the term sheet currently on file with the Legislation Authority between the Port Authority and the Developer, executed as of September 17, 2024, which describes the general terms of the proposed transaction.

The captions and headings in this Resolution are solely for convenience of reference and do not define, limit or describe the scope or intent of any provisions or Sections of this Resolution.

Section 2. Determinations by Legislative Authority. This Legislative Authority determines that (i) the Project constitutes “port authority facilities” as defined in the Act; (ii) the utilization of the Project is in furtherance of the purposes of the Act and will enhance, foster, aid, provide and promote commerce and economic development and will benefit the people of the State by improving the welfare of the people of the State; and (iii) provision of the Project requires the consummation of the transactions contemplated in this Resolution. The Authority is authorized to, and this Legislative Authority hereby determines that the Authority shall, acquire a leasehold ownership interest in real property on which the Project is to be located pursuant to the Ground

Lease and shall lease such real property to the Lessee pursuant to the Project Lease for use by the Lessee, and that such acquisition and lease are in furtherance of the purposes of the Act.

Section 3. Ground Lease, Project Lease, Indemnification Agreement, and Collateral Documents. The Executive and the Fiscal Officer are each hereby authorized and directed, for and in the name of the Authority and on its behalf, to execute and deliver the Ground Lease, the Project Lease, the Indemnity Agreement, Construction Services Agreement, and any Collateral Documents, and, all with the terms substantially similar to those provided in the Term Sheet, with such modifications as are necessary to conform to this Resolution. The terms of the aforesaid documents are hereby approved with such changes therein as are not inconsistent with this Resolution and not substantially adverse to the Authority and which are permitted by the Act and shall be approved by the officers executing those documents. The approval of such changes, and that such changes are not substantially adverse to the Authority, shall be conclusively evidenced by the execution of those documents by those officers.

Section 4. Other Documents and Consents. The Executive and the Fiscal Officer are each hereby authorized and directed to accept and record the Ground Lease or a memorandum of the Ground Lease, the Project Lease or a memorandum of such Project Lease, any recognition and attornment agreements and acknowledgments or similar instruments related to any mortgages or other leases to be recorded on the real property on which the Project is to be located, and any Collateral Documents, and to execute any certifications, financing statements, assignments, agreements, and instruments that are necessary or appropriate to consummate the transactions and perfect the assignments contemplated in this Resolution, the Ground Lease, the Project Lease, the Construction Services Agreement, the Indemnity Agreement, and any Collateral Documents.

Section 5. Acquisition and Construction. It is hereby determined by this Legislative Authority that the acquisition of the leasehold interest in the Project Site, and the acquisition, construction, equipping, installation, and improvement of the Project, shall be undertaken by the Lessee pursuant to the Project Lease and the Construction Services Agreement. The Construction Services Agreement shall designate the Lessee, the Developer, or one or more other affiliates of the Developer as the "construction services provider" for the Authority and shall authorize the construction services provider to enter into such contracts and agreements with such other contractors or construction managers as the construction services provider may determine are necessary to acquire, construct, equip, install, and improve the Project.

Section 6. Sales Tax Exemption. This Board hereby authorizes the Executive, the Fiscal Officer, or either of them, upon the execution of the Ground Lease, the Project Lease, and the Construction Services Agreement, by the parties to each of them, to provide the Developer, the Lessee, or their nominees with appropriate certificates ("Exemption Certificates") to support the claim of an exemption from Ohio sales and uses taxes that might otherwise apply with respect to the purchase of building and construction materials incorporated into structures or improvements to real property, within the meaning of Ohio Revised Code Section 5739.02(B)(13), that constitute Project improvements.

Section 7. Severability. Each section of this Resolution and each subdivision or paragraph of any section thereof is hereby declared to be independent and the finding or holding of any section or any subdivision or paragraph of any section thereof to be invalid or void shall not be

deemed or held to affect the validity of any other section, subdivision or paragraph of this Resolution.

Section 8. Compliance with Open Meeting Law. It is found and determined that all formal actions of this Legislative Authority concerning and relating to the adoption of this Resolution were taken in an open meeting of this Legislative Authority, and that all deliberations of this Legislative Authority and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.

Section 9. Effective Date. This Resolution shall be in full force and effect upon its adoption.

The undersigned hereby certify that the foregoing Resolution 2025-05 was duly adopted by the Board of Directors of the Lorain Port Authority in compliance with the law.

Adopted: February 11, 2025

Yeas: 5

Nays: 1

Abstentions: 1



VICE CHAIR



SECRETARY

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CONSTRUCTION SERVICES AGREEMENT

Among

Ohio Motorsports Park Real Estate Holdings LLC, as the Construction Services Provider

and

LORAIN PORT AUTHORITY

Dated

as of

[\_\_\_\_], 2025

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## CONSTRUCTION SERVICES AGREEMENT

This CONSTRUCTION SERVICES AGREEMENT (the “Agreement”), dated as of [ ], 2025, by and among Ohio Motorsports Park Real Estate Holdings LLC, an Ohio limited liability company (together with its permitted successors and assigns, the “Construction Services Provider”) and the LORAIN PORT AUTHORITY, a port authority and political subdivision duly organized and validly existing under the laws of the State of Ohio (the “Port Authority”), with each capitalized word or term used as a defined term in this Agreement but not otherwise defined herein having the meaning assigned to it in the Project Lease defined below:

### **RECITALS:**

A. The Construction Services Provider, through its subsidiary Xell Real Estate Holdings LLC, an Ohio limited liability company, is the owner of certain real property (the “Property”) in Lorain County, Ohio (“County”) and the City of Lorain, Ohio (the “City”), and is currently undertaking acquiring, constructing, developing, equipping, and improving of motorsports entertainment complex containing approximately 65,000 sq. ft. of total building area, including kart racing and radio controlled car racing tracks, restaurant, esports, retail, storage, and lounge spaces, and a timing and scoring tower, together with appurtenances related thereto (as further defined in the Project Lease, the “Project”);

B. Pursuant to the Act, the Construction Services Provider has requested the assistance of the Port Authority in financing and developing the Project, and the Port Authority has determined that the Project is in furtherance of the Port Authority’s authorized purposes and therefore constitute “port authority facilities” as defined in the Act;

C. In order to provide for the acquisition, construction, installation, equipping and improvement of the Project, the Port Authority and the Construction Services Provider, acting as an independent contractor with and service provider to the Port Authority for such purpose, have determined to enter into this Agreement;

NOW THEREFORE, in consideration of the foregoing and in order to induce the Construction Services Provider to induce the Port Authority to undertake the Project, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Construction Services Provider and the Port Authority covenant and agree as follows:

## ARTICLE I

### DEFINITIONS

#### Section 1.1 Use of Defined Terms.

In addition to the words and terms defined in this Section 1.1, elsewhere in this Agreement, or by reference to another document, each capitalized word or term used as a defined term in this Agreement but not otherwise defined herein shall have the meanings set forth in the Project Lease, unless the context or use indicates another meaning or intent.

“Allowable Costs” means all amounts paid or payable by the Construction Services Provider within the categories encompassed by the line items of the Cost Budget pursuant to the

Construction Services Agreement, the Approved Construction Documents, the Transaction Documents, and any other agreements relating to the Project and shall also include, in any event, whether or not included in the foregoing, all Project Costs.

“Approved Construction Documents” means, collectively, the Plans and Specifications, any Construction Contracts, the Cost Budget, and the Proposed Schedule of Work and Draw Schedule, together with amendments or additions thereto.

“Authorized Construction Services Provider Representative” means the duly authorized representative of the Construction Services Provider designated by written certificate furnished to the Port Authority containing the specimen signature of that person and signed on behalf of the Construction Services Provider. That certificate may designate an alternate or alternates.

“Completion Certificate” means a certificate given in accordance with Section 4.3 of this Agreement and evidencing the Project Completion Date.

“Construction Contract” means any contract between the Construction Services Provider and any of a construction manager, a contractor, or a subcontractor for the construction of any portion of the Project.

“Construction Deadline” means, with respect to the Project, [\_\_\_\_], 2026.

“Construction Draw” means disbursements from any Project Funding for payment of Allowable Costs of the Project.

“Construction Event of Loss” means an event of damage or casualty occurring during the Construction Period with respect to all or part of the Project that is determined to be a Construction Event of Loss pursuant to Section 5.1 of this Agreement.

“Construction Event of Taking” means a condemnation occurring during the Construction Period and determined to be a Construction Event of Taking pursuant to Section 5.2 of this Agreement.

“Construction Force Majeure Event” means any cause, circumstance or event occurring during the Construction Period that is not reasonably within the control of the Construction Services Provider or its agents employees, contractors, subcontractors and material suppliers, and which may include, without limitation, the following: acts of God; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; strikes; labor disputes; insurrections, civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; droughts; other weather conditions; floods; arrests; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; partial or entire failure of utilities; and unavailability of labor or materials. An event or occurrence that arises or results from an intentional, wrongful or grossly negligent action or failure to act by the Construction Services Provider, its agents, employees, contractors, subcontractors and material suppliers during the Construction Period shall not be a Construction Force Majeure Event.

“Construction Loss Proceeds” means any Net Proceeds (excluding personal property, business interruption so long as an Event of Default shall not have occurred and be continuing), fixtures (other than those fixtures constituting part of the Project), extra expense, expediting and loss adjustment expense claim proceeds) or recoveries from third parties reasonably expected by the Construction Services Provider to be available during the Construction Period on account of any Construction Event of Loss or Construction Event of Taking, whether pursuant to any insurance, award or other claim for damage or relief against a third party or otherwise.

“Cost Budget” means the written budget, the form of which is attached hereto as Exhibit A setting forth the Allowable Costs for the acquisition, construction, installation, equipping and improvement of the Project, prepared in cost breakdown form, certified as to accuracy by the Construction Services Provider and delivered by the Construction Services Provider to the Port Authority, with such changes and modifications from time to time that are approved in accordance with Section 3.7 of this Agreement.

“Inspector” means one or more independent architectural or engineering professionals selected by the Port Authority to exercise the duties of the Inspector described in this Agreement.

“Material Delay” means any event or condition (or related series of events or conditions) that causes or results in a delay (or total stoppage) in the progress of the acquisition, construction, installation, equipping and improvement of the Project of such duration that the acquisition, construction, installation, equipping and improvement of the Project cannot reasonably be completed within the Cost Budget on or before the Completion Deadline.

“Project Funding” means, collectively, all sources of financing for the costs of the Project available to the Construction Services Provider.

“Project Funding Shortfall” means, at any time during the Construction Period, the aggregate amount by which (i) Construction Draws then outstanding, *plus* (ii) costs that have been incurred but not paid or reimbursed from the proceeds of a Construction Draw, *plus* (iii) costs of the Project that remain to be incurred in order to complete the acquisition, construction, installation, equipping, and improvement of the Project, exceeds the sum of (x) Project Funding available to pay Project Costs, *plus* (y) the amount of Construction Loss Proceeds reasonably expected by the Construction Services Provider to be available during the Construction Period for application to the payment of those costs.

“Project Lease” means the Project Lease dated as of the date of this Agreement between the Port Authority, as project lessor, and Ohio Motorsports Park Real Estate Holdings LLC, an Ohio limited liability company, through its subsidiary Xell Real Estate Holdings LLC, as project lessee, as it may validly be amended or supplemented and in effect from time to time.

“Proposed Schedule of Work and Draw Schedule” means the schedule for the completion of the Project and a schedule of Construction Draws to be made.

“Transaction Documents” means, collectively, the Ground Lease, the Project Lease, this Agreement, the Indemnity Agreement, and each of the documents, agreements, and instruments evidencing and securing the Project Funding.

“Work” means the entire completed construction or the various separately identifiable parts thereof required to be furnished under the Approved Construction Documents with respect to the Project.

Section 1.2 Interpretation.

Any reference herein to the Port Authority, to the Legislative Authority or to any member or officer of either includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State or the Act, or to a section, provision or chapter of the Ohio Revised Code or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; *provided that*, no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision, if it constitutes in any way a limitation, restriction or impairment of the rights or obligations of the Port Authority or the Construction Services Provider under this Agreement or any other Transaction Document.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms “hereof”, “hereby”, “herein”, “hereto”, “hereunder” and similar terms refer to this Agreement; and the term “hereafter” means after, and the term “heretofore” means before, the date of execution and delivery of this Agreement. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

Reference to a numbered or lettered Article, Exhibit, Section or subsection means that Article, Exhibit, Section or subsection of or to this Agreement, unless the context indicates a different meaning or intent.

Section 1.3. Captions and Headings.

The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

[End of Article I]

## ARTICLE II

### APPOINTMENT OF THE CONSTRUCTION SERVICES PROVIDER

#### Section 2.1 Appointment.

Pursuant to the Act, and subject to the terms and conditions hereof, the Port Authority hereby designates and appoints the Construction Services Provider as its agent in connection with the acquisition, construction, installation, equipping and improvement of the Project. The activities of the Construction Services Provider with respect to the Project shall be performed by the Construction Services Provider as the agent of the Port Authority. The Construction Services Provider shall cause the construction of the Project in accordance with the Plans and Specifications and pursuant to the terms of this Agreement and the other Transaction Documents. The Construction Services Provider will have substantially the responsibilities of a general contractor or construction manager with respect to the Project. Unless otherwise directed by the Port Authority, the Construction Services Provider shall have sole possession, use, and control of the Project during the Construction Period for the purposes of performing its obligations hereunder.

#### Section 2.2 Acceptance and Undertaking.

The Construction Services Provider hereby unconditionally accepts the appointment provided for herein as an independent contractor with and agent of the Port Authority and undertakes, for the benefit of the Port Authority, to act as the Port Authority's agent for the purpose of the acquisition, construction, installation, equipping, constructing and improvement of the Project during the Construction Period in accordance with the Plans and Specifications and pursuant to the terms of this Agreement and the other Transaction Documents.

#### Section 2.3 Term.

The Construction Services Provider's duties under this Agreement shall commence on the effective date of the Project Lease and terminate upon the earliest to occur of (i) Project Completion Date or (ii) termination of the Construction Services Provider's authority pursuant to Section 6.3 hereof.

[End of Article II]

## ARTICLE III

### SCOPE OF AGENCY

#### Section 3.1 Scope of Agency.

(a) Subject to the terms of this Agreement, the Port Authority hereby expressly authorizes the Construction Services Provider, or any agent or contractor of the Construction Services Provider, and the Construction Services Provider unconditionally agrees, for the benefit of and as the agent of the Port Authority, to take all action necessary or desirable (i) for the acquisition, construction, installation, equipping and improvement, in a good and workmanlike manner, of the Project in accordance with this Agreement, the other Transaction Documents, and the Plans and Specifications, (ii) for the performance and satisfaction of any and all of the Construction Services Provider's or the Port Authority's obligations under any Construction Contract, and (iii) to fulfill all of the obligations of the Construction Services Provider under this Agreement and the other Transaction Documents, including, without limitation, performance of the following activities:

(A) all design and supervisory functions relating to the acquisition, construction, installation, equipping and improvement of the Project and performance of all architectural and engineering Work related thereto;

(B) negotiation and performance of the obligations of the Port Authority under all contracts and arrangements for acquisition, construction, installation, equipping and improvement of the Project on such terms and conditions as are customary and reasonable in light of local and national standards and practices;

(C) negotiation and performance of the obligations of the Port Authority under all contracts and arrangements to procure all materials and equipment necessary for the acquisition, construction, installation, equipping and improvement of the Project;

(D) obtaining all necessary permits, licenses, consents, approvals, entitlements and other authorizations required under applicable laws (including without limitation Environmental Laws), from each governmental authority in connection with the acquisition, construction, installation, equipping and improvement of the Project in accordance with the Plans and Specifications, and all of the foregoing required for the use and operation of the Project;

(E) maintaining all books and records with respect to the acquisition, construction, installation, equipping and improvement of the Project and its operation and management; and

(F) performance of all other acts necessary in connection with the acquisition, construction installation, equipping and improvement of the Project in accordance with the Plans and Specifications.

(b) Subject to the terms and conditions of this Agreement and the other Transaction Documents, during the Construction Period, the Construction Services Provider shall have sole

management and control over and responsibility for the acquisition, construction, installation, equipping and improvement of the Project, the testing, means, methods, sequences and procedures with respect thereto, and the security of the Project and the real property on which the Project are located.

(c) The Construction Services Provider shall obtain and pay for any and all permits and bonds required to be obtained before commencement of the Work and for all other permits, governmental fees, sales taxes and use taxes, if any, licenses and inspections necessary for the proper execution and completion of the Work as and when the same are required to be obtained.

(d) Upon execution and delivery of this Agreement, the Construction Services Provider shall prepare and timely sign and acknowledge as Construction Services Provider of and for, and principal contractor of, the Port Authority, an appropriate form of notice of commencement of construction (“Notice of Commencement”). If necessary, the Construction Services Provider shall provide the Notice of Commencement to the Port Authority for signature and acknowledgment on behalf of the Port Authority, and for filing in the appropriate office of the Lake County Recorder or with the Port Authority. The Port Authority agrees to cooperate in the preparation and execution of the Notice of Commencement, and the Port Authority, and the Construction Services Provider on behalf of the Port Authority, shall make the Notice of Commencement readily available to the public. In addition, the Construction Services Provider shall cause the signed and acknowledged Notice of Commencement to be posted at any site where construction of the Project occurs and provided to any contractors, subcontractors or vendors when requested or required.

### Section 3.2 Delegation of Duties.

The Construction Services Provider may execute any of its duties under this Agreement by or through agents, contractors, employees or attorneys-in-fact; provided, *however, that*, no such delegation shall limit or reduce in any way the Construction Services Provider’s duties and obligations under this Agreement.

### Section 3.3 Performance.

The Construction Services Provider shall undertake to cause the construction of the Project in accordance with the provisions of this Agreement and shall pay all amounts required to construct the Project in accordance with the Plans and Specifications and the Cost Budget. The Port Authority shall not be liable to the Construction Services Provider for failure or delay in any aspect of the performance of the Work. The Construction Services Provider shall be obligated to complete the constructing, installing, equipping, and improving of the Project in accordance with the Plans and Specifications notwithstanding that (i) the sufficiency of available funds to pay the costs of the Project, and (ii) any delays or unforeseen circumstances with respect to the acquiring, constructing, equipping, and improving the Project, including, without limitation, a Construction Force Majeure Event.

### Section 3.4 Reports.

Upon the written request of the Port Authority, no later than the twentieth (20<sup>th</sup>) day of each month after the Closing Date and continuing until the Project Completion Date, the Construction Services Provider shall provide a written report to the Port Authority setting forth in reasonable detail (x) all expenditures made or incurred on account of Allowable Costs for the Project during the previous month, (y) the total Allowable Costs as of the last day of the previous month, and (z) a construction status report, to include a written description of all material changes



to the Work by the Construction Services Provider. Additionally, the Construction Services Provider shall provide to the Port Authority such additional reports and information as the Port Authority may reasonably request in writing from time to time relating to the transactions contemplated hereby. The Construction Services Provider shall also certify to the Port Authority the aggregate total of all Allowable Costs incurred through the Project Completion Date within one hundred eighty (180) days after the Project Completion Date.

**Section 3.5 Recovery on Contractor Warranties.**

So long as no Event of Default has occurred and is continuing, the Construction Services Provider shall, at its cost in the name and on behalf of the Port Authority, negotiate, accept and prosecute any claim for damages, compensation or other recoveries due from any contractors or subcontractors based on a breach of contract or breach of warranty (whether express or implied). If an Event of Default has occurred and is continuing, the Port Authority is hereby expressly and irrevocably authorized, but not required, to exercise every right, option, power or authority which the Construction Services Provider has against any contractor or subcontractor and the Port Authority shall cause any such proceeds, net of any costs incurred by the Port Authority in prosecuting any claim or exercising any right, to be deposited for use in accordance with the Transaction Documents. The Construction Services Provider and the Port Authority shall be entitled to reimbursement for any costs incurred by them in negotiating, accepting and prosecuting such claims.

**Section 3.6 Approved Construction Documents.**

The Plans and Specifications and Cost Budget have been developed to the extent necessary to commence construction of the Project. The Construction Contracts, Cost Budget, and Proposed Schedule of Work and Draw Schedule will be developed and completed by the Construction Services Provider prior to the commencement of construction, unless otherwise permitted by the Port Authority (which permission has been provided for the Project), and upon their completion will be approved by the Port Authority (to be evidenced by the applicable Plat Agreement). The Construction Contracts shall include the contractual provisions set forth on Exhibit B to this Agreement. Upon the Port Authority's approval of such documents no further material changes shall be made except in accordance with Section 3.7 hereof. As the Project are being undertaken, the Plans and Specifications will continue to be completed during construction and will be submitted to or made available to the Port Authority for review upon the written request of the Port Authority.

**Section 3.7 Limits on Change in Approved Construction Documents or Cost Budget.**

(a) Changes To Plans and Specifications; Equipment; Contracts. No subsequent amendment to, or change in, any one or more of the Approved Construction Documents shall be made by the Construction Services Provider without prior written consent of the Port Authority, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that no such prior written consent is required for any change or amendment that: (i) together with all other changes submitted concurrently therewith does not increase the costs of the Project by more than \$100,000; (ii) does not cause or create a Project Funding Shortfall; (iii) will not materially reduce the value of the Project; and (iv) will not materially alter the character or use of the Project.

(b) Changes To Work Schedule. The Construction Services Provider may change the Proposed Schedule of Work and Draw Schedule upon notification to the Port Authority; provided, however no such change may be made without the Port Authority's prior written consent if the effect of the change, in the reasonable opinion of the Port Authority, is likely to jeopardize the final completion of the Project or unreasonably extend the final completion of the Project, provided, that the Port Authority's consent does not obligate it to provide funds or take other actions to meet any revised draw schedule.

[End of Article III]

## ARTICLE IV

### COVENANTS, REPRESENTATIONS, AND WARRANTIES OF THE CONSTRUCTION SERVICES PROVIDER

#### Section 4.1 Covenants of the Construction Services Provider.

During the Construction Period (and, where indicated, thereafter), the Construction Services Provider shall:

(a) cause the acquisition, construction, installation, equipping and improvement of the Project and cause such acquisition, construction, installation, equipping and improvement to be prosecuted in a good and workmanlike manner, and substantially in accordance with (i) the Approved Construction Documents, (ii) the schedule for acquisition, construction, installation, equipping and improvement of the Project, (iii) prevalent industry practices, and (iv) all applicable laws;

(b) use its best efforts to cause acquisition, construction, installation, equipping and improvement of the Project to be completed and the Completion Date to occur on or before the Construction Deadline;

(c) use its best efforts to cause all material outstanding punch list items with respect to the acquisition, construction, installation, equipping and improvement of the Project to be completed on or prior to the Construction Deadline;

(d) at all times subsequent to the initial Construction Draw (i) file all necessary documents under the applicable real property law and the Uniform Commercial Code in order to perfect and maintain the perfection of such title and all other interests in favor of the Port Authority created and intended to be created under the Transaction Documents, (ii) pay, or cause to be paid, all assessments, charges and taxes, if any, payable in connection with the acquisition, construction, installation, equipping and improvement of the Project to be paid as and when due, whether claim shall be made for payment thereof during or after the Construction Period, subject to the right of the Construction Services Provider to contest, in good faith, any such assessment change or tax so long as, by nonpayment of any such items, neither the Project nor any property of the Port Authority shall be subject to imminent loss or forfeiture, and in the contest of which, the Port Authority hereby agrees to cooperate, at the cost and expense of the Construction Services Provider, (iii) not permit liens (other than those in favor of the Port Authority) to be filed or maintained respecting the Project, provided that mechanics' liens may be bonded and contested as provided herein, and (iv) on a monthly basis, deliver to the Port Authority true, correct and complete progress reports as required by Section 3.4 hereof regarding the acquisition, construction, installation, equipping and improvement of the Project and adequacy of funding for the Project in relationship to the then current Cost Budget;

(e) cause title to the Project to be and remain, during the Construction Period and on the Completion Date, free from and clear of all liens, claims, and encumbrances, except for (i) those created by or arising under the Transaction Documents, (ii) real estate taxes and assessments that are a lien but not yet due and payable, (iii) liens or claims for materials supplied or labor or services performed in connection with the acquisition, construction, installation, equipping and improvement of the Project that are bonded-off or otherwise removed in accordance with

applicable laws within ninety (90) days of the filing of such lien and in any event prior to the commencement of an action to foreclose on such lien, and (iv) any other liens or exceptions that are approved in writing by the Port Authority or that the Port Authority causes to be created;

(f) make available for inspection at the Construction Services Provider's office by a duly authorized representative of the Port Authority during normal business hours, any of the Construction Services Provider's books and records insofar as they relate to the Project at such times as reasonably requested by the Port Authority when requested to do so;

(g) reimburse the Port Authority from the proceeds of Construction Draws pursuant to the Transaction Documents for all costs of the Project paid by the Port Authority, in accordance with the Transaction Documents, including but not limited to the costs of title insurance policies, title examinations, recording fees, surveys, fees of counsel for services rendered and out-of-pocket expenses for which the Port Authority is entitled to be reimbursed pursuant to the Transaction Documents;

(h) purchase or acquire under any conditional sales contract or security agreement or any lease agreement, any personal property of any kind intended to be incorporated into the Project or paid for with the proceeds of Construction Draws, and apply the proceeds of Construction Draws available for such purpose under the Transaction Documents to pay in full the purchase price of personal property before payment therefor becomes past due or, in any event, within thirty (30) days after delivery thereof; *provided, however, that*, the foregoing shall not apply to amounts withheld and unpaid on account of bona fide disputes with the suppliers thereof;

(i) allow the Port Authority and its agents, at all times (i) during normal business hours, the right of entry and free access to the Project to inspect all Work done, labor performed and materials furnished in and about the Project, and (ii) to require to be replaced or otherwise corrected (at the Construction Services Provider's sole cost, or that of its contractors, subcontractors or material suppliers if the need for replacement or correction is the result of the breach of duty by or the intentional, wrongful or negligent act or failure to act of any such person, its agents or employees), any material or Work that materially fails to comply with the respective Plans and Specifications therefore, provided that the Port Authority shall provide thirty (30) days' notice of its election to exercise such right and reasonable opportunity for the Construction Services Provider to cure such failure of compliance, and (iii) to prevent any person other than the Port Authority and its respective agents, employees, licensees and invitees, employees or invitees of the Construction Services Provider, contractor, subcontractor or their agents from entering upon the Project Site;

(j) at all times prior to the Port Authority's acceptance of all of the Project pursuant to the Project Lease, maintain, or cause to be maintained, on behalf of the Port Authority and submit to the Port Authority for its review, evidence of the following insurance coverages for the Project:

(i) comprehensive general liability insurance, on a claims made basis, including auto, for property damage and personal injury or death, with limits of liability of at least \$2,000,000 per occurrence and with a deductible not in excess of \$25,000, which may be provided by umbrella or excess liability policies, and worker's compensation insurance (including employer's liability insurance), for all employees, contractors, or other agents of the Port Authority as well as of the

Construction Services Provider and contractors involved in the construction of the Project, in such amounts as are established by law; and

(ii) all risk (including builder's risk) property insurance in the amount of the full replacement cost of the Project, exclusive of land (and all other property insured thereby if such policy applied to property other than the Project), with a deductible not in excess of \$10,000 in aggregate; and

provided, that (A) all insurance policies shall name the Construction Services Provider as a named insured and the Port Authority, as additional insureds and shall, unless otherwise agreed by the Port Authority in writing, be issued by carriers with a *Best's Insurance Reports* policyholder's rating of "A" or better and a financial size category of "X" or better; (B) the Construction Services Provider shall deliver to the Port Authority prior to the Closing Date, copies of all such policies, together with endorsements and original certificates therefor; (C) copies of all renewal policies (including endorsements) and original certificates therefor shall be deposited with the Port Authority as evidence of such insurance; (D) all policies shall contain provisions for thirty (30) days' written notice to the Port Authority prior to expiration or cancellation; and (E) each insurer under any policies shall be required to waive any defenses the insurer may have to payment as a consequence of acts or omissions of any party;

(k) in the event of any damage to or destruction of the Project, or any part thereof, during the Construction Period, to the extent that insurance proceeds, are not sufficient to cover the full cost of any repair, rebuilding or restoration due to deductible and co-insurance amounts under insurance policies maintained by the Construction Services Provider, the Construction Services Provider shall provide funding, to pay the cost of repair, rebuilding or restoration;

(l) notify the Port Authority in writing within three (3) days of the occurrence of any Event of Default hereunder as to which the Construction Services Provider has knowledge;

(m) not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age, veteran status, or ancestry in violation of applicable laws, and ensure that applicants for employment are considered for employment and that employees are treated during employment, without regard to their race, religion, color, sex, national origin, disability, age, veteran status, or ancestry as required by applicable law, and incorporate the requirements of this paragraph in all of the respective contracts for any of the Work prescribed herein (other than subcontracts for standard commercial supplies or raw materials), and require all contractors for any part of the Work involved in the provision of the Project to incorporate such requirements in all subcontracts for such Work; and

(n) obtain on a timely basis all utility connections and permits when needed as required by the Plans and Specifications and all utility services for water, gas, electric, telephone, sewer and storm drainage and sanitary waste disposal so that such utility services shall be available to an extent adequate to serve the Project.

#### Section 4.2 Construction Force Majeure Event.

(a) The Construction Services Provider shall give the Port Authority prompt written notice of the occurrence of any Construction Force Majeure Event with respect to the Project that has caused, or is reasonably likely to cause a Material Delay. Upon the occurrence of a Construction Force Majeure Event the Construction Services Provider shall use its good faith efforts to complete the acquisition, construction, installation, equipping and improvement of the Project, or cause the acquisition, construction, installation, equipping and improvement of the Project to be completed, in such manner as to cause the Completion Date to occur on or before the Construction Deadline and within the Cost Budget.

(b) Following an occurrence that constitutes a Construction Force Majeure Event, the Construction Services Provider shall prepare, as promptly as practicable, a written estimate of any resulting or reasonably expected Material Delay, and shall deliver such estimate to the Port Authority. If a Construction Force Majeure Event should cause a Material Delay, the Construction Deadline shall be extended for such additional period of time as may be reasonably necessary to cure such Construction Force Majeure Event and to permit expeditious completion of the acquisition, construction, installation, equipping and improvement of the Project, but in any event for a period ending not later than January 1, 2026, without the prior written consent of the Port Authority. If the extent of any Material Delay will not prevent completion of acquisition, construction, installation, equipping and improvement of the Project on or prior to the Construction Deadline (as extended) the Construction Services Provider shall proceed to cause the acquisition, construction, installation, equipping and improvement of the Project to be completed and the completion conditions to be satisfied as expeditiously as possible in a commercially reasonable manner under the circumstances pursuant to Article II and the other Transaction Documents.

#### Section 4.3 Project Completion Date.

The Project shall be deemed completed when the Construction Services Provider shall have provided to the Port Authority, and the Port Authority and the Inspector shall have approved, a Completion Certificate prepared and signed by the Construction Services Provider, which Completion Certificate shall (i) state the total costs of acquiring, installing, equipping and otherwise improving the Project, and (ii) state:

(a) the date of completion of acquisition, construction, installation, equipping and improvement of such Project and that all other facilities necessary for the proper functioning of such Project has been acquired, constructed, installed, equipped and otherwise improved, including all punch-list items;

(b) that the acquisition, construction, installation, equipping and improvement of such Project has been completed in accordance with the Plans and Specifications, and that all costs then due and payable in connection therewith have been paid, and all obligations, costs and expenses in connection with such Project and then payable out of the Project Funding have been paid or discharged;

(c) that all other facilities necessary for the proper functioning of such Project have been provided and all costs and expenses incurred in connection with such facilities have been paid or discharged, including all punch-list items and associated retainages;

(d) that the acquisition, construction, installation, equipping and improvement of such Project has been accomplished in a manner that conforms to all applicable zoning, planning,

building, environmental and other regulations of each governmental authority having jurisdiction over such Project;

(e) that all licenses and approvals for the use and operation of such Project then required by any governmental authority have been obtained; and

(f) that the acquisition, construction, installation, equipping and improvement of such Project have been accomplished in a manner that permits the Port Authority to use and operate such Project for the applicable purposes pursuant to the Project Lease.

The Completion Certificate shall also specify (i) which costs and expenses, if any, are not yet due, or are being contested, and (ii) what amounts should be retained for any other reasons. Notwithstanding the foregoing, the Completion Certificate shall state that it is given without prejudice to any rights against third parties that then exist or that may come into being subsequently.

#### Section 4.4 Correction of Work.

The Construction Services Provider warrants to the Port Authority that all materials shall be of good quality and all Work shall be of first-class, good and workmanlike quality, in conformance with the requirements of the Plans and Specifications in all material respects and as set forth in this Agreement and free from defects in materials and workmanship (without regard to the standard of care exercised in its performance) for a period of one year after delivery of the Completion Certificate for the Project. The Construction Services Provider shall, at its sole cost and expense, (i) promptly correct, or cause to be corrected, all of the Work not in material conformance with the Plans and Specifications and this Agreement, (ii) promptly correct, or cause to be corrected, any defects in materials and workmanship of the Work (without regard to the standard of care exercised in its performance) that appear within a period of one year after delivery of the Completion Certificate for the Project, and (iii) replace, repair or restore, or cause replacement, repairs or restoration of, any parts of the Work or any of the fixtures, equipment or other items placed therein that are injured or damaged as a consequence of corrective action taken pursuant hereto. The Construction Services Provider shall remove, in a manner which at all times complies with all applicable Environmental Laws, from the real property on which the Project are located all portions of the Work which are defective or nonconforming and which have not been corrected under this Section unless removal is waived by Authority in writing. Nothing contained in this Section shall be construed to establish a period of limitation with respect to any other obligation of the Construction Services Provider under this Agreement. Should the Construction Services Provider fail to make or cause to be made, corrections required by this Section, the Port Authority may do so at the sole expense of the Construction Services Provider. The obligations of the Construction Services Provider hereunder shall survive the termination of this Agreement.

#### Section 4.5 Certain Representations and Warranties.

The Construction Services Provider represents and warrants to the Port Authority as follows:

(a) Organization and Power. The Construction Services Provider (a) is an Ohio limited liability company, duly organized, validly existing and in full force and effect under the laws of its jurisdiction of organization; and (b) has all power, authority and legal right to carry on its

business as now conducted and to execute, deliver and perform its obligations under this Agreement and all other Transaction Documents to which it is a party.

(b) Litigation. There is no action, suit or proceeding pending, or to the best of the Construction Services Provider's knowledge, threatened, against or affecting the Construction Services Provider at law or in equity before any court, or by or before any federal, state, municipal or other governmental department, commission, board, bureau, agency, or instrumentality or arbitrator which, if adversely decided, could have a material adverse effect on the business, assets or financial condition of the Construction Services Provider or its right to enter into this Agreement or the other Transaction Documents to which it is a party or the validity or effectiveness hereof.

(c) No Defaults. No Event of Default by the Construction Services Provider has occurred and is continuing under this Agreement or the other Transaction Documents or any other agreement or document contemplated thereunder to which it is a party.

(d) Insurance. All insurance required by this Agreement or the Project Lease to be obtained by the Construction Services Provider is in effect and all premiums now due and payable in respect of such insurance have been paid.

(e) Construction Documents and Other Agreements. True and complete copies of the Plans and Specifications, any Construction Contract, and all other agreements relating to the Project have been delivered to the Port Authority, and there have been no alterations, modifications, amendments or changes of any nature whatsoever to any one or more of the foregoing since the respective dates of delivery thereof to Authority except as expressly permitted hereunder (including but not limited to Section 3.7(a) hereof). True and complete copies of all such alterations, modifications and amendments have been furnished to the Port Authority.

(f) Cost Budget. The Cost Budget as of the date hereof sets forth and presents a full and complete representation by the Construction Services Provider of all costs, expenses and fees which the Construction Services Provider expects to pay to complete the Project on or before the Final Completion Date.

(g) Status Under State Laws. The Construction Services Provider represents and warrants to the Port Authority that it is and will remain in compliance and, upon request, will provide to the Port Authority appropriate statements or affidavits (and will procure the same from all contractors and subcontractors and provide them to the Port Authority) stating that it is in compliance with all legal requirements for contracting with the Port Authority including, without limitation, all requirements imposed by Ohio campaign financing laws contained in Ohio Revised Code Chapter 3517, including, but not limited to, Ohio Revised Code Sections 3517.13(I)(1), 3517.13(I)(3), 3517.13(J)(1), and 3517.13(J)(3), any provisions of Ohio Revised Code Sections 2921.42 (relating to unlawful interests in public projects) that may be applicable to it, and that it is not aware of any finding for recovery having been issued against it by the Auditor of State of Ohio which is "unresolved" under Ohio Revised Code Section 9.24.

[End of Article IV]



## ARTICLE V

### CASUALTY, CONDEMNATION AND ENVIRONMENTAL EVENTS

#### Section 5.1 Construction Event of Loss or Casualty.

(a) The Construction Services Provider shall give the Port Authority written notice of the occurrence of any casualty with respect to the Project during the Construction Period promptly following the occurrence thereof. As promptly as practicable, the Construction Services Provider shall prepare an estimate of the cost of restoring, rebuilding and repairing the related damage to the Project and shall deliver such estimate to the Port Authority. If the Port Authority, after consultation with the Construction Services Provider, in its good faith judgment determines that a Project Funding Shortfall will exist, after settlement with the applicable insurance carriers, to pay for the cost of restoring, rebuilding and repairing the related damage, upon written notice from the Port Authority, the Construction Services Provider shall promptly deposit or cause to be deposited with and at the direction of the Port Authority an amount sufficient to pay for the cost of restoring, rebuilding and repairing the related damage and completing the Project or shall provide evidence reasonably satisfactory to the Port Authority evidencing the Port Authority's satisfaction that such funds are available to the Construction Services Provider to cause such restoration, rebuilding or repair upon demand of the Construction Services Provider.

(b) If a casualty shall occur with respect to the Project during the Construction Period, unless the cost of restoring, rebuilding and repairing the resultant damage is less than \$100,000 (in which case the proceeds of the insurance may be paid directly to the Construction Services Provider, who shall receive the same in trust for application to the costs of the restoration, rebuilding and repairing of the affected property), the Net Proceeds of the resulting insurance award shall be paid and applied as provided in the Transaction Documents. The Construction Services Provider shall apply the insurance proceeds so advanced to pay for the cost of rebuilding, restoring and repairing the resulting damage. Thereafter, the Construction Services Provider shall apply the proceeds of Construction Draws available for such purpose under the Transaction Documents to complete the acquisition, construction, installation, equipping and improvement of the Project and use good faith efforts to cause the acquisition, construction, installation, equipping and improvement of the Project to be completed prior to the Construction Deadline; provided, that if and to the extent any surplus of insurance proceeds remains after completion of acquisition, construction, installation, equipping and improvement of the Project, that surplus shall be applied pursuant to the Transaction Documents.

#### Section 5.2 Construction Event of Taking or Condemnation.

(a) The Construction Services Provider shall give the Port Authority written notice of the occurrence of any condemnation of all or any material part of the Project during the Construction Period promptly following the occurrence thereof together with a written estimate of the schedule and cost of restoring the Project and shall deliver such estimate to the Port Authority. If a condemnation of all or any part of the Project occurs during the Construction Period that, in the good faith judgment of the Port Authority, after consultation with the Construction Services Provider, (i) renders impossible or impractical the restoration of the remaining portion of the Project as an architectural unit adequate for the intended use of the Project, (ii) will not give rise to an award sufficient to pay, together with Available Funds, any increased costs and expenses of

completing the acquisition, construction, installation, equipping and improvement of the Project pursuant to the Plans and Specifications, as modified to accommodate Changes necessitated by the condemnation, without incurring a Project Funding Shortfall, or (iii) will cause a Material Delay such that the acquisition, construction, installation, equipping and improvement of the Project cannot reasonably be completed before the Construction Deadline (any such event being called a “Construction Event of Taking”), whereupon the Construction Services Provider shall use its best efforts to eliminate the Material Delay.

(b) If a condemnation occurs with respect to any part of the Project during the Construction Period, unless the cost of replacing the taken or condemned portions of the Project is less than \$100,000 (in which case the proceeds of the resulting award may be paid directly to the Construction Services Provider, who shall receive the same in trust for application to the costs of replacing the affected portions of the Project), the Net Proceeds of the resulting award shall be paid and applied as provided in the Transaction Documents. The Construction Services Provider shall apply the proceeds of the award so disbursed to pay for the cost of replacing the taken or condemned portions of the Project, but the Construction Services Provider shall not be obligated to fund or pay for any portion of the costs of such replacement except to the extent of Construction Loss Proceeds and of the proceeds of Construction Draws, except to the further extent that the Construction Services Provider shall be obligated as the result of the intentional, wrongful or negligent acts or failures to act of itself, its agents, employees, contractors, subcontractors or material suppliers or shall otherwise elect. Thereafter, the Construction Services Provider shall apply the proceeds of Construction Draws available for such purpose under the Transaction Documents to complete the acquisition, construction, installation, equipping and improvement of the Project and use good faith efforts to cause the acquisition, construction, installation, equipping and improvement of the Project to be completed prior to the Construction Deadline; provided, that if and to the extent any surplus of condemnation proceeds remains after completion of the acquisition, construction, installation, equipping and improvement of the Project, that surplus shall be applied pursuant to the Transaction Documents.

### Section 5.3 Hazardous Materials.

(a) If, in the course of the construction of the Project the Construction Services Provider discovers Hazardous Materials or underground storage tanks that are not included in the Work pursuant to the Plans and Specifications, and which are not maintained in accordance with all applicable Environmental Laws, the Construction Services Provider shall notify the Port Authority promptly and, if directed by the Port Authority, or if commercially reasonable under the circumstances, shall stop and cause all contractors and subcontractors to stop the Work. If stopped, such Work shall be commenced only after consultation with and consent of the Port Authority. All Hazardous Materials that may be discovered shall be maintained, removed, transported and disposed of by qualified contractors in accordance with all applicable state and federal Environmental Laws.

(b) The Construction Services Provider shall not permit a violation of any Environmental Laws to exist with respect to the Project Site. The Construction Services Provider shall not use or permit to be used all or any portion of the Project Site for the storage, treatment, use or disposal of any substance for which a license or permit is required by state, federal or local Environmental Laws and for which no such license or permit has been obtained. Without limitation express or implied, unless caused by the gross negligence or willful misconduct of the Port Authority or of any employee or agent of the Port Authority (other than the Construction

Services Provider), the Construction Services Provider shall pay all sums and take all such actions as may be required to avoid or discharge the imposition of any lien on the Project Site under any Environmental Law, and the Construction Services Provider shall indemnify and save harmless the Port Authority from any and all loss, claims, liabilities and expenses (including attorney's and expert fees) incurred or suffered by the Port Authority by virtue of the provisions of any Environmental Law now or hereinafter in effect or by virtue of the failure of the Construction Services Provider to comply or cause compliance with any Environmental Law now or hereinafter in effect or by virtue of the failure of the Construction Services Provider to comply with any Environmental Law in connection with the presence of any Hazardous Materials on the Project Site in violation of such Environmental Laws.

[End of Article V]

## ARTICLE VI

### EVENTS OF DEFAULT

#### Section 6.1 Construction Events of Default.

If any one or more of the following events shall occur:

(a) the Construction Services Provider fails to apply the proceeds of any Construction Draw or any funds paid to the Construction Services Provider by or on behalf of the Port Authority within ten (10) days after the receipt of the same in a manner consistent with the requirements of the Transaction Documents and as specified in any applicable Disbursement Request Form, to the payment of costs of acquiring, installing, equipping and otherwise improving the Project;

(b) the Construction Services Provider shall commit or perform any act constituting fraud, misapplication of funds, intentionally illegal acts, or willful misconduct in connection with the performance of its obligations under this Agreement or any other Transaction Document to which it is a party;

(c) the filing by Construction Services Provider of any petition for dissolution or liquidation of Construction Services Provider, or the commencement by the Construction Services Provider of a voluntary case under any applicable bankruptcy, insolvency or other similar law for the relief of debtors, foreign or domestic, now or hereafter in effect, or Construction Services Provider shall have consented to the entry of an order for relief in an involuntary case under any such law, or the appointment of or taking possession by a receiver, custodian or trustee (or other similar official) for the Construction Services Provider or any substantial part of its property, or a general assignment by the Construction Services Provider for the benefit of its creditors, or the Construction Services Provider shall have taken any corporate action in furtherance of any of the foregoing; or the filing against the Construction Services Provider of an involuntary petition in bankruptcy that results in an order for relief being entered or, notwithstanding that an order for relief has not been entered, the petition is not dismissed within ninety (90) days of the date of the filing of the petition, or the filing under any law relating to bankruptcy, insolvency or relief of debtors of any petition against the Construction Services Provider that either (i) results in a finding or adjudication of insolvency of the Construction Services Provider or (ii) is not dismissed within ninety (90) days of the date of the filing of such petition;

(d) The acquisition, construction, installation, equipping and improvement of the Project are not completed on or before the Construction Deadline, subject to the provisions of Section 4.2, or the Construction Services Provider fails to comply with the provisions of subsection 4.1(a) for thirty (30) days following written notice from the Port Authority;

(e) the occurrence of any event designated as an “Event of Default” under the Project Lease which has not been remedied by the Construction Services Provider within any applicable cure period;

(f) the Construction Services Provider shall fail to maintain insurance as required by the provisions of subsection 4.1(j) and such failure continues for ten (10) days following written notice or the Construction Services Provider shall fail to perform as required by the provisions of subsection 4.1(k) and such failure continues for five (5) days following written notice; or

(g) the Construction Services Provider shall breach in any material respect any of its representations or warranties under this Agreement or any other Transaction Document to which it is a party or shall fail to observe or perform any material term, covenant or condition of this Agreement or any other Transaction Document to which it is a party (other than as described in subsections (a) through (f) of this Section 6.1); then, in any such event, the Port Authority, subject to its rights under the Transaction Documents, may, exercise its rights and remedies provided for in this Agreement; provided, in the case of a failure or breach described in subsections (d) or (g), such failure or breach, shall not constitute an Event of Default so long as the Construction Services Provider notifies the Port Authority within thirty (30) days of its intention to cure such failure or breach within thirty (30) days; provided, however, that if such failure is other than payment of money and is of such a nature that it cannot be corrected within such thirty (30) day period, institutes curative action within such thirty (30) day period, such failure or default shall not constitute an Event of Default if the Construction Services Provider diligently pursues such action to completion and cures such failure within a reasonable period, not to exceed one year, after such thirty (30) day period.

The Construction Services Provider shall pay all reasonable costs and expenses incurred by or on behalf of the Port Authority, including without limitation reasonable fees and expenses of counsel, as a result of any Event of Default. The Construction Services Provider acknowledges that its obligations to make such payments shall be absolute and unconditional under any and all circumstances and shall be paid and performed, as the case may be, without notice or demand and without any abatement, reduction, diminution, set-off, defense, counterclaim or recoupment whatsoever is provided.

#### Section 6.2 Damages.

The termination of this Agreement or the exercise by the Port Authority of its rights and remedies under this Agreement pursuant to Section 6.1 shall in no event relieve the Construction Services Provider of its liability and obligations hereunder, all of which shall survive any such termination.

#### Section 6.3 Remedies; Remedies Cumulative.

In addition to the right to terminate this Agreement, if an Event of Default shall have occurred and be continuing, the Port Authority shall have all other rights available at law, in equity or otherwise, including without limitation, the right to (i) remove and replace the Construction Services Provider, or (ii) require the Construction Services Provider to complete, or cause to be completed, all or any part of the Project, and to hold the Port Authority harmless from any damages or additional costs arising from the Event of Default. No failure to exercise and no delay in exercising, on the part of the Port Authority any right, remedy, power or privilege under this Agreement or under the other Transaction Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided in this Agreement are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

#### Section 6.4 Costs of Enforcement.

If an action shall be brought by any of the Port Authority for the enforcement of any provision of this Agreement, the Construction Services Provider shall pay to the Port Authority, all costs and other expenses that may become payable as a result thereof, including, without

limitation, reasonable attorneys' fees and expenses. If any of the Port Authority shall be made a party defendant to any litigation commenced against the Construction Services Provider arising out of any of the transactions contemplated by this Agreement or the Transaction Documents, the Construction Services Provider shall pay all costs and reasonable attorneys' fees and expenses incurred or paid by the Port Authority in connection with such litigation. The obligations of the Construction Services Provider under this Section shall survive the termination of this Agreement.

[End of Article VI]

## ARTICLE VII

### CERTAIN RIGHTS

Section 7.1 Cure of the Construction Services Provider's Defaults.

The Port Authority, without waiving or releasing any obligation or Event of Default, may (but shall be under no obligation to), remedy any Event of Default for the account of and at the sole cost and expense of the Construction Services Provider after reasonable written notice to the Construction Services Provider with respect thereto and reasonable opportunity afforded to the Construction Services Provider to do and perform the same. All reasonable out-of-pocket costs and expenses so incurred (including without limitation fees and expenses of counsel), together with interest thereon at the annual rate of interest equal to the lower of 12% or the maximum rate allowed by law, from the date on which such sums or expenses are paid by the Port Authority, shall be paid by the Construction Services Provider to the Port Authority within five (5) days after written demand therefor.

[End of Article VII]

## ARTICLE VIII

### MISCELLANEOUS

#### Section 8.1 Notices.

All notices, certificates, requests or other communications hereunder shall be in writing and by first-class mail, postage prepaid, courier service, delivery charges prepaid, facsimile transmission (if the sender's system can confirm receipt of the transmission) or delivery addressed to the appropriate Notice Address and deemed effective on receipt, with a duplicate copy of such notice to be provided to the Port Authority and the Construction Services Provider, as the case may be. The Construction Services Provider, the Port Authority and any other person to receive notices as provided in the definitions of Notice Address may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

#### Section 8.2 Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the Port Authority, the Construction Services Provider and their respective successors and the assigns. The Construction Services Provider may not assign this Agreement or any of its rights or obligations hereunder in whole or in part to any person without the prior written consent of the Port Authority which shall not be unreasonably withheld.

#### Section 8.3 Governing Law.

This Agreement and the rights and obligations of the parties under this Agreement shall be governed by, and construed and interpreted in accordance with, the law of the State without regard to conflict of laws principles.

#### Section 8.4 Amendments and Waivers.

This Agreement shall not be amended, supplemented or modified except by an instrument in writing executed by the Port Authority and the Construction Services Provider.

#### Section 8.5 Counterparts.

This Agreement may be executed in any number of counterparts as may be convenient or necessary, and it shall not be necessary that the signatures of both parties hereto be contained on any one counterpart hereof. Additionally, the parties hereto agree that for purposes of facilitating the execution of this Agreement, (a) the signature pages taken from the separate individually executed counterparts of this Agreement may be combined to form multiple fully executed counterparts and (b) a facsimile transmission shall be deemed to be an original signature for all purposes. All executed counterparts of this Agreement shall be deemed to be originals, but all such counterparts taken together or collectively, as the case may be, shall constitute one and the same agreement.

#### Section 8.6 Severability.

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.



Section 8.7 Headings and Table of Contents.

The headings and table of contents contained in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

Section 8.8 Indemnification.

The Construction Services Provider agrees to assume liability for, and to indemnify, protect, defend, save and keep harmless the Port Authority and its officers, agents and employees (the "Indemnified Parties"), from and against, any and all claims, losses, damages, fines, penalties, liabilities and expenses (including attorneys' fees and expenses) of itself or by any third party that may be imposed on, incurred by or asserted against an Indemnified Party, whether or not the Indemnified Party shall also be indemnified as to any such claim by any other person (except to the extent such claim is covered by the insurance required by this Agreement), the basis of which claim (a) relates to or was caused by the actions or the actual or alleged failures to act of the Construction Services Provider, its agents, employees, contractors, subcontractors and materials suppliers while in possession or control of the Project, whether or not such action or inaction was negligent or reckless, or is in any way related to the construction of the Project or the selection of contractors, subcontractors or material suppliers relating thereto; (b) is based, in whole or in part upon the Construction Services Provider's actual or alleged failure to satisfactorily complete the Project, (c) relates to or was caused by any actual or alleged fraud, misapplication of funds, illegal acts, or willful misconduct on the part of the Construction Services Provider, (d) relates to or was caused by any actual or alleged failure of the Construction Services Provider to comply with the provisions of the Act, Ohio Revised Code Chapter 1311, Ohio Revised Code Chapter 4115, or any other applicable provision of the Ohio Revised Code, or (e) relates to or was caused by the bankruptcy or insolvency of the Construction Services Provider. It is expressly understood and agreed that the indemnity provided for herein shall survive the expiration or termination of and shall be separate and independent from any remedy under any Transaction Document.

Section 8.9 Non-Recourse; Limited Liability.

Notwithstanding any other provision of this Agreement, the obligations of the Port Authority hereunder and with respect to the provision and operation and maintenance of the Project shall not be payable from any money or other property of the Port Authority except from Available Funds and any such obligations of the Port Authority shall be satisfied entirely from those sources and any money or other property provided by the Construction Services Provider or the Guarantors for that purpose, and the Port Authority is not obligated to use any money or assets (other than Available Funds) in connection with this Agreement or to satisfy any duties, obligations, requirements or liabilities arising hereunder including the failure to perform any duty, obligation or agreement and any liability arising therefrom. ***Without limiting the foregoing, it is expressly understood and agreed that none of the Construction Services Provider or any other persons shall have any right or claim to any payment from, or any claim on any revenues of, the Port Authority other than Available Funds to pay any obligations under this Agreement, and no obligation of the Port Authority hereunder, or under any other contract made by the Construction Services Provider on behalf of the Port Authority, shall constitute a general debt or obligation of, or a pledge of the general credit of, the Port Authority, or give rise to any pecuniary liability of the Port Authority except from, and all such obligations shall be payable solely and exclusively from, the Available Funds.***

Section 8.10 Third-Party Beneficiaries.

No provision of this Agreement shall be construed to create any third-party beneficiaries of this Agreement except as are expressly identified in this Agreement.

[End of Article VIII]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized representatives as of the day and year first above written.

OHIO MOTORSPORTS PARK REAL ESTATE  
HOLDINGS LLC,  
an Ohio limited liability company

By: \_\_\_\_\_  
[ ]

[Acknowledgment]

**LORAIN  
PORT AUTHORITY**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**AUTHORITY'S FISCAL OFFICER'S CERTIFICATE**

The undersigned, Secretary and Fiscal Officer of the Lorain Port Authority, hereby certifies that the moneys required to meet the obligations of the Authority during the year 2025 under the Agreement have been lawfully appropriated by the Board of Directors of the Authority for such purposes and are in the treasury of the Authority or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

\_\_\_\_\_  
Assistant Secretary and Fiscal Officer  
Lorain Port Authority

Dated: \_\_\_\_\_, 2025

[Acknowledgment]

**EXHIBIT A**

Cost Budget

[To Be Added]

## EXHIBIT B

### Addendum to Construction Contracts

**Paragraphs 1 through 8 below shall be incorporated into all Construction Contracts, as that term is defined in the Construction Services Agreement dated as of [\_\_\_], 2025 (“Agreement”) between the Lorain Port Authority (“Authority”) and Ohio Motorsports Park Real Estate Holdings LLC, as Construction Services Provider.**

Required Contract Provisions — Contract # \_\_\_\_\_, dated \_\_\_\_\_ [date of contract]

1. Contractor acknowledges that Ohio Motorsports Park Real Estate Holdings LLC (“Construction Services Provider”) is acting as construction services provider for the Lorain Ohio Kartplex Project (“Project”) for the Lorain Port Authority, the owner of the Project (“Authority”), in connection with the work included in this contract (“Work”).

2. Contractor will indemnify the Authority to the same extent that it indemnifies the Construction Services Provider. With respect to the Work, and solely to the extent necessary to effect such indemnity, Contractor hereby expressly and specifically waives any defenses it may have to the application of or liability under such indemnity by way of Section 35, Article II of the Ohio Constitution and Section 4123.74 of the Ohio Revised Code, as well as any other similar immunity provided for or by any statute, law or constitutional provision of the State of Ohio and of any other applicable state. This covenant shall survive the termination of this contract.

3. Contractor acknowledges that the Authority is not and shall not be obligated to use any money or assets in connection with the Work or to satisfy any duties, obligations, requirements or liabilities whatsoever under this contract. The Contractor irrevocably acknowledges and agrees that it will look solely to the Construction Services Provider for the payment of any additional amounts due or allegedly due under this contract, and that it will not assert or bring any claim against the Authority with respect to any such amounts.

***Without limiting the foregoing, it is expressly understood and agreed that neither the Construction Services Provider, the Contractor, nor any other person shall have any right or claim to any payment from, or any claim on any revenues of; the Authority other than amounts made available by the Construction Services Provider to pay any obligations under this contract, and no obligation of the Authority hereunder, or under any other contract made by the Construction Services Provider for or on behalf of the Authority with respect to the Project, shall constitute a general debt or a pledge of the general credit of the Authority, or give rise to any pecuniary liability of the Authority except from, and all such obligations shall be payable solely and exclusively from, the Lease (as defined in the Agreement) to the extent, if any, available.***

4. Contractor represents and warrants to the Construction Services Provider and Authority that it is and will remain in compliance and, upon request, will provide to the Construction Services Provider appropriate statements or affidavits (and will procure the same from all subcontractors and provide them to the Construction Services Provider) stating that it is in compliance with all legal requirements to be eligible to contract with the Authority, and that it is not aware of any finding for recovery having been issued against it by the Auditor of the State of Ohio which is “unresolved” under Section 9.24, Ohio Revised Code.

5. Contractor shall include the provisions of paragraphs 1 through 4 in all subcontracts that it issues (or contracts for the supply of materials to be used in the Work).

6. Contractor acknowledges that the Authority may be entitled to an Ohio sales and use tax exemption pursuant to Section 5739.02(B) of the Ohio Revised Code for building and construction materials or services incorporated into the real estate being improved by the Work and the Contractor shall not pay any such Ohio sales or use tax to the extent that exemption is applicable, but only if the Construction Services Provider has provided the Contractor with an appropriate certification (or copy thereof) signed by the Authority, evidencing the availability of such exemption. Contractor shall, and shall require all subcontractors and vendors to, retain copies of all records required under Section 5739.03 of the Ohio Revised Code in connection with the sales or use tax exemption for at least five years after completion of the Work and shall provide those records to the Tax Commissioner of the State of Ohio upon request. This covenant shall survive the termination of this contract.

7. Contractor irrevocably acknowledges and agrees that the Authority has no financial responsibility with respect to the Project, and the Construction Services Provider is responsible to pay all costs to construct the Project in accordance with the Lease, as defined in the Agreement.

8. Contractor acknowledges that the Authority is a third party beneficiary to this agreement.

[End of Addendum]

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**GROUND LEASE  
(LORAIN OHIO KARTPLEX PROJECT)**

between

XELL REAL ESTATE HOLDINGS LLC

and

LORAIN PORT AUTHORITY

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Dated as of  
[\_\_\_\_], 2025

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Bricker Graydon LLP  
Authority Counsel



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### **EXHIBITS:**

EXHIBIT A	PROJECT SITE
EXHIBIT B	THE PROJECT
EXHIBIT C	MEMORANDUM OF GROUND LEASE
EXHIBIT D	PERMITTED ENCUMBRANCES

## GROUND LEASE

THIS GROUND LEASE (“Ground Lease”) is made and entered into as of [\_\_\_\_], 2025 (the “Effective Date”) by and between Xell Real Estate Holdings LLC , an Ohio limited liability company with a tax mailing address at c/o 21884 Avalon Drive, Rocky River, Ohio 44116 Attention: [\_\_\_\_\_] (hereinafter referred to as “Ground Lessor”), and the Lorain Port Authority, a port authority and body corporate and politic organized and existing under the Constitution and laws of the State of Ohio, having an address of 319 Black River Land, Lorain, Ohio 44052 (hereinafter referred to as “Ground Lessee”).

### WITNESSETH:

WHEREAS, Ground Lessee, consistent with the authority granted to it under Article VIII, Sections 13 and 16 of the Ohio Constitution, and Resolution No. [\_\_\_\_] passed by the Board of Directors of the Ground Lessee (the “Board of Directors”) on [\_\_\_\_], 2025 (as the same may be amended, the “Legislation”), is authorized and intends to lease the real property the City of Lorain, Lorain County, Ohio, described on Exhibit A to this Ground Lease (the “Project Site”) in order to facilitate the acquisition, construction, equipping, development, and improvement of a motorsports entertainment complex containing approximately 65,000 sq. ft. of total building area, including kart racing and radio controlled car racing tracks, restaurant, esports, retail, storage, and lounge spaces, and a timing and scoring tower, together with appurtenances related thereto (as further defined in Section 6(a) hereof and described on Exhibit B hereof, the “Project”) to be located at the Project Site; and

WHEREAS, to cause the construction and operation of the Project, the Ground Lessee, as project lessor, and the Ground Lessor or its permitted successors and assigns, as project lessee have entered into a Project Lease, dated as of [\_\_\_\_], 2025 (the “Project Lease”), wherein Ground Lessor or its permitted successors and assigns agrees to construct the Project, to cause the operation of the Project, and to convey the Project to the Ground Lessee, and the Ground Lessee agrees to lease back the Project and the Project Site to Ground Lessor or its permitted successors and assigns; and

WHEREAS, in consideration of its receipt of the rent contained herein, Ground Lessor has indicated that it is willing to Lease the Project Site to Ground Lessee for the purposes set forth in the Legislation and Ground Lessee desires to take, rent, and lease the Project Site from Ground Lessor all subject to and upon the terms, provisions and conditions hereinafter set forth; and

WHEREAS, a memorandum of this Ground Lease (the “Memorandum of Ground Lease”) will be recorded in the Office of the Fiscal Officer of Lorain County, Ohio upon execution of this Ground Lease, the form of which is attached hereto as Exhibit C.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, and in and for the covenants, agreements,

representations, and warranties hereinafter set forth, Ground Lessor and Ground Lessee hereby covenant, agree, represent, and warrant as follows:

SECTION 1. PROJECT SITE.

Ground Lessor for and in consideration of the rents, covenants and conditions herein contained to be kept, performed and observed by Ground Lessee, does lease and demise to Ground Lessee, and Ground Lessee does rent and accept from Ground Lessor, the Project Site.

SECTION 2. USE

During the Term (as defined in Section 4 hereof) Ground Lessee may use, or permit the use of, the Project Site for any lawful purpose consistent with the Legislation and this Ground Lease, subject, however, to the Project Lease.

SECTION 3. GROUND LESSOR'S WARRANTIES.

(a) Warranty of Title. Ground Lessor hereby represents, warrants and covenants for the benefit of Ground Lessee that Ground Lessor has a valid fee simple interest in the Project Site, subject to the covenants, real estate taxes, service payments in lieu of taxes, and assessments which are a lien but not yet due and payable, agreements, mortgages, contracts, conditions, restrictions, easements and other matters of record and/or as described in Exhibit D attached hereto and incorporated herein by reference (the "Permitted Encumbrances").

(b) Warranty of Quiet Enjoyment. Ground Lessor covenants and agrees that it has full right, power and authority to execute and perform this Ground Lease and grant the estate demised herein, and that Ground Lessee, in consideration of its full payment of the Rent (as defined in Section 5 hereof), the receipt of which is hereby acknowledged, shall be entitled to lawfully and quietly hold, occupy and enjoy the Project Site during the Term (as defined in Section 4 hereof) of this Ground Lease without any hindrance, interference or molestation by Ground Lessor or any person claiming by, through or under Ground Lessor, subject, however, to the Project Lease.

SECTION 4. GROUND LEASE TERM.

(a) Lease Term. The term of this Ground Lease shall commence on the Effective Date hereof and shall expire on the date occurring ten (10) years after the Completion Date, as defined and evidenced in the Project Lease; provided, that this Ground Lease is subject to earlier termination on (i) the date on which Ground Lessor or Ground Lessee elects to terminate this Ground Lease under the circumstances set forth in Section 4(b) hereof, (ii) the date on which Ground Lessor elects to terminate this Ground Lease under the circumstances set forth in Section 10(b) hereof, (iii) the date on which Ground Lessee elects to terminate this Ground Lease under the circumstances set forth in Sections 9(b), 9(c), or 10(a) hereof, or (iv) the date on which the Project Lease actually terminates (the "Term"). If the Project Lease is terminated prior to the end of the Project Lease Term (as defined therein) in accordance with its terms, then, immediately and

simultaneously, the Term shall terminate without any further action by Ground Lessor or Ground Lessee. Upon expiration of the Term, Ground Lessee shall peacefully surrender the Project Site and the Project thereon to Ground Lessor.

(b) Termination. At any time during the Term of this Ground Lease occurring five (5) years after the date on which the Project Lease commenced, unless the Project Lease has been amended, in which case such date shall be extended to the date specified in such amendment (the "Project Lease Initial Term"), Ground Lessor shall have the option to terminate this Ground Lease in its sole discretion effective upon (i) thirty (30) days written notice from Ground Lessor to Ground Lessee of the termination, (ii) payment by Ground Lessor to Ground Lessee of the sum of all annual rent payments for the remainder of the Project Lease Initial Term due to the Lorain Port Authority, as lessor under the Project Lease, from Project Lessor or its permitted successors and assigns, as lessee under the Project Lease, (iii) payment by Ground Lessor to Ground Lessee of a termination fee equal to One Dollar (\$1.00), and (iv) at the sole cost and expense of Ground Lessor, the execution of all instruments and documents, the payment of all recording fees, transfer fees, or other fees, including the reasonable attorneys' fees and expenses of the Ground Lessee, and the taking of any other actions necessary to complete the transfer of the estate created by this Ground Lease from Ground Lessee to Ground Lessor. Ground Lessee agrees to enter into and provide to Ground Lessor for recording a release of any and all memorandums of this Ground Lease or the Project Lease, upon termination.

At any time during the Term of this Ground Lease after the expiration of the Project Lease Initial Term, Ground Lessor and Ground Lessee shall each have the option to terminate this Ground Lease effective upon (i) written notice from the terminating party to the other party, (ii) payment by Ground Lessor to Ground Lessee of a termination fee equal to One Dollar (\$1.00), and (iii) at the sole cost and expense of Ground Lessor, the execution all instruments and documents, the payment of all recording fees, transfer fees, or other fees, including the reasonable attorneys' fees and expenses of the Ground Lessee, and the taking of any other actions necessary to complete the transfer of the estate created by this Ground Lease from Ground Lessee to Ground Lessor. After completion of construction of the Project, the Ground Lessor and Ground Lessee have the option to terminate this Ground Lease prior to expiration of the Project Lease Initial Term, provided, in addition to the requirements of this Section, Ground Lessor shall also be required to deliver to the Ground Lessee a guaranty (the "Guaranty"), acceptable to the Ground Lessee, to defend and indemnify the Ground Lessee for any liability that may arise from the Project, provided, however, that the Guaranty shall not require the Ground Lessor to defend or indemnify the Ground Lessee for any claims, lawsuit or any losses incurred by Ground Lessee due to the negligence or willful misconduct of Ground Lessee or any of its employees or agents. The Guaranty shall remain in place for five (5) years following the completion of the Project, as evidenced by a certificate of occupancy.

(c) Holdover. The parties agree that any holding over by Ground Lessee beyond the expiration of the Term of this Ground Lease shall be a tenancy at will, which tenancy shall terminate immediately upon written notice of termination by Ground Lessor.

SECTION 5. RENT; TAXES; CLOSING DELIVERABLES.

(a) Rent. Ground Lessee shall pay to Ground Lessor rent in the amount of One Dollar (\$1.00) for each year during the Term as rent (“Rent”) for the Project Site, the sufficiency of which is hereby acknowledged by Ground Lessor. Such Rent shall be due and payable to Ground Lessor on each anniversary of the Effective Date of this Ground Lease.

(b) Taxes. Notwithstanding anything to the contrary in this Ground Lease, from and after the Effective Date, Ground Lessor agrees to pay or cause to be paid any and all real property taxes, service payments in lieu of taxes, and assessments, and all property taxes on personal property located on the Project Site (“Taxes”) that become due and payable upon or against the Project Site during the Term, if any.

(c) Contest of Taxes. Ground Lessor reserves the right to contest the amount or validity of any Taxes or other impositions by appropriate legal proceedings. Ground Lessee shall, upon request, join in any such proceedings if Ground Lessor determines that it shall be necessary or appropriate for Ground Lessee to do so in order for Ground Lessor to prosecute such proceedings properly, and in such event Ground Lessor shall pay all reasonable costs and expenses incurred by Ground Lessee in connection therewith.

(d) Application for Tax Exemption. Ground Lessor reserves the right to apply for an exemption from real property taxation with respect to the Project. Ground Lessor and Ground Lessee agree to and shall cooperate with each other and execute such further documents and provide such further information as may be reasonably required in connection with the filing and processing of any such applications.

(e) Other Charges. Ground Lessor shall pay, or cause or require to be paid, any and all other charges for water, heat, gas, electricity, sewer and any and all other utilities, as well as any other expense, cost, charge or other fees with respect to the Leased Property, or the construction, operation, management, repair, rebuilding, use or occupancy thereof, or of any portion thereof (collectively, “Other Charges”) during the Lease Term.

SECTION 6. CONSTRUCTION OF PROJECT BY GROUND LESSOR.

(a) Ground Lessor’s Right to Construct Project. The “Project” initially includes the construction of a motorsports entertainment complex containing approximately 65,000 sq. ft. of total building area, including kart racing and radio controlled car racing tracks, restaurant, esports, retail, storage, and lounge spaces, and a timing and scoring tower, together with appurtenances related thereto on the Project Site pursuant to the Project Lease, all as generally described on Exhibit B hereto. The Project, as it may from time to time thereafter be repaired, renovated, modified, reconstructed or replaced, shall include, without limitation, all of the following:

(i) The mixed-use facility, including the load bearing components of the facility, as applicable, or any part thereof, including, without limitation, caissons, footings, foundation walls, shear walls, grade beams, columns, and beams to the extent located at the Project Site; and

(ii) All fans, gates, lights and other fixtures, machinery, improvements and equipment now or hereafter installed in the distributing facility or at the Project Site; and

(iii) All improvements, fixtures, machinery, facilities and equipment (including all electrical, mechanical, plumbing and drainage facilities, equipment and appurtenances), which serve the motorsports facility, and those serving the parking facilities at the Project Site; and

(iv) Any property interest in all or any portion of electrical, mechanical, plumbing, and drainage facilities, equipment and appurtenances in or under the improvements on the Project Site (wherever located) which now or hereafter service the other above-described improvements, fixtures, machinery and equipment which comprise elements of the motorsports facility or the Project Site; and

(v) Except as specifically excluded by this definition, all means of vehicular and pedestrian ingress and egress to and from the motorsports facility and the Project Site, including the parking facilities at the Project Site.

Ground Lessor shall have the right as necessary, at any time and from time to time during the Term of this Ground Lease, to cause to be constructed the Project for the purposes described herein and in the Legislation. Ground Lessor and Ground Lessee acknowledge and agree that pursuant to the Project Lease, Ground Lessee, as Lessor, shall cause Ground Lessor or its permitted successors and assigns, as Lessee, to construct the Project. All construction of the Project shall be in compliance with the laws, ordinances, and other governmental requirements applicable to the Project Site. Ground Lessee agrees that competitive bidding requirements do not apply to the construction of the Project pursuant to section 4582.12 of the Ohio Revised Code, based on the representations and agreements of the Ground Lessor under this Ground Lease and the Project Lessee under the Project Lease that the Project (a) will create jobs and employment opportunities within Lorain County, Ohio, and (b) will be used for purposes consistent with Art. VIII, Sections 13 and 16 of the Ohio Constitution.

(b) Easements and Dedications. In order to provide for the orderly development of the Project Site it may be necessary, desirable or required that street, water, sewage drainage, gas, power line and other easements and dedications and similar rights be granted or dedicated in favor of Ground Lessee or a utility over or within portions of the Project Site. Ground Lessor and Ground Lessee shall upon request of the other, join together in executing and delivering such documents from time to time and throughout the Term of this Ground Lease as may be appropriate, necessary or required by the several governmental agencies, public utilities and companies for the purpose of granting such easements and dedications in favor of Ground Lessee or utility companies

or suppliers over the Project Site; provided, however, Ground Lessor, may in its sole discretion refuse to grant such easements to third parties other than utility companies or suppliers; and provided, further, that such easements are in a form and content reasonably acceptable to Ground Lessor.

#### SECTION 7. OWNERSHIP OF PROJECT AND FIXTURES; REMOVAL.

It is expressly understood and agreed that, subject to the terms and conditions of this Ground Lease, the City Ground Lease, and the Project Lease, any and all buildings, improvements, fixtures, machinery and equipment of any nature whatsoever at any time constructed, placed or maintained upon any part of the Project Site by Ground Lessor or Ground Lessee, as the case may be, shall be and remain the property of Ground Lessee at all times during the Term of the Ground Lease. Notwithstanding the foregoing, any machinery or equipment owned by any third party and placed on the Project Site shall not be deemed the property of the Ground Lessee; and to the extent that a Lessee, manager or licensee has the right to use all or a portion of the Project Site, said party shall have the right to remove any personal property which they have placed in the Project Site at any time. Notwithstanding the foregoing, upon termination of the Ground Lease or at the end of the Term, Ground Lessee shall have no obligation to remove any personal property or any other part of the Project from the Project Site, the Project Site shall revert to Ground Lessor, and the Project shall thereafter become the property of Ground Lessor. The Ground Lessor agrees and acknowledges that the Ground Lessee has no obligation to maintain the Project, to undertake any capital repairs, or to expend funds in connection with the Project.

Notwithstanding the foregoing, for federal, state and local income tax and financial accounting purposes, Base Lessor shall be treated as the legal and beneficial owner of the Leased Property and the Project, entitled to any and all benefits and baring any and all burdens of ownership of the Leased Property and the Project. Without limiting the foregoing, Base Lessor and Base Lessee acknowledge and agree that Base Lessor intends to depreciate its rights to and any interests in the Project for purposes of federal income tax. Base Lessee shall not have the right to, and shall not, depreciate the Project.

#### SECTION 8. LIENS.

(a) Prohibition of Liens on Leasehold Interest. Ground Lessee shall not suffer or permit any mechanics' liens, materialmen's or other liens to be filed against the leasehold interest created hereby, or the fee interest of all or any portion of the Project Site pursuant to any obligation, contract or agreement to which Ground Lessee is a party. Except for this Ground Lease, other Permitted Encumbrances and any mortgage financing in accordance with Section 6(a) of the Project Lease, Ground Lessor shall not cause to be filed any mortgage lien, mechanics' lien, restriction or other lien or encumbrance against the leasehold interest created hereby or the leasehold interest created under the City Ground Lease that shall be superior to the interest of Ground Lessee herein.

(b) Removal of Mechanics' Liens by Ground Lessee. If Ground Lessee shall cause any mechanics' liens or materialmen's liens to be recorded against Ground Lessor's leasehold interest in the Project Site under the City Ground Lease, Ground Lessee shall cause the same to be removed or bonded off within thirty (30) days at the expense of Ground Lessee. In the event that Ground Lessee shall fail to remove any such lien(s) in the manner herein provided, then Ground Lessor may, but shall not be obligated to, take such action or actions as it deems appropriate to cause the removal of such lien(s).

(c) Mortgage Liens. This Ground Lease, all rights of the Ground Lessee in this Ground Lease, and all interest or estate of Ground Lessee in the Project Site, are subject and subordinate to any mortgage, deed of trust, security interest or other security document of like nature that at any time may encumber all or any part of the Project Site and any replacements, renewals, amendments, modifications, extensions or refinancings thereof, and each advance (including future advances) made under any such instrument (collectively "Mortgages"). The subordination to any future Mortgage provided in this paragraph is expressly conditioned upon the Mortgage holder's agreement that as long as no default by Ground Lessee occurs under this Ground Lease, the holder of the Mortgage will not disturb Ground Lessee's rights of possession under this Ground Lease. If the holder of any Mortgage at a foreclosure sale or any other transferee or purchaser acquires Ground Lessor's interest in this Ground Lease or the Project Site, Ground Lessee will attorn to and recognize such transferee or successor as Ground Lessor under this Ground Sublease.

## SECTION 9. CONDEMNATION.

(a) Interest of Parties on Condemnation. In the event the Project Site or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, the interests of Ground Lessor and Ground Lessee in the award or consideration for such transfer and the effect of the taking or transfer upon this Ground Lease shall be as provided by this Section 9.

(b) Total Taking – Termination. Subject to the terms and conditions hereof, in the event the entire Project Site is taken or transferred as described in paragraph (a), upon delivery of written notice by either party to the other of its election to terminate the Ground Lease, this Ground Lease and all of the right, title and interest thereunder shall terminate and cease on the date title to such land so taken or transferred vests in the condemning authority and the proceeds of such condemnation shall be allocated first, to the Ground Lessee, to the extent necessary to pay any fees incurred by the Ground Lessee, including the reasonable attorneys' fees and expenses of the Ground Lessee, in connection with such condemnation, and second, the balance of the condemnation proceeds, if any, shall belong to Ground Lessor.

(c) Partial Taking – Termination. In the event the taking or transfer of only a part of the Project Site leaving the remainder of the Project Site in such location or in such form, shape, or reduced size as to be not effectively and practicably useable in the reasonable opinion of the



Ground Lessor for the purpose of operation of the Project, upon delivery of written notice by either party to the other of its election to terminate this Ground Lease, this Ground Lease and all right, title and interest thereunder shall terminate and cease on the date title to the Project Site or the portion thereof so taken or transferred vests in the condemning authority and the proceeds of such condemnation shall be divided as provided in and under the conditions and requirements set forth in Section 9(b) hereof. Notwithstanding the foregoing, no such termination shall be effective unless the requirements for termination of this Ground Lease are satisfied.

(d) Partial Taking – Continuation. In the event of the taking or transfer of only a part of the Project Site leaving the remainder of the Project Site in such location and in such form, shape, or size as to be used effectively and practicably in the reasonable opinion of the Ground Lessor for the purpose of operation of the Project, as of the date title to such portion vests in the condemning authority, this Ground Lease shall continue. In the event of any such partial taking or transfer, the proceeds thereof shall be allocated first, to the Ground Lessee, to the extent necessary to pay any fees incurred by the Ground Lessee, including the reasonable attorneys' fees and expenses of the Ground Lessee, in connection with such condemnation, and second, to be used to restore the remaining portion of the Project as an architectural unit adequate for its intended use as the Project as determined by Ground Lessor in its reasonable discretion, and third, the balance of the proceeds of the partial taking or transfer, if any, after completion of such restoration, if any, shall be transferred to Ground Lessor.

#### SECTION 10. DEFAULTS; REMEDIES.

(a) If Ground Lessor defaults under this Ground Lease and such default continues following notice and a reasonable opportunity for Ground Lessor to cure the same as provided in this Section 10 or the Project Lease, as appropriate Ground Lessee shall have the right to terminate this Ground Lease by thirty (30) days written notice to Ground Lessor, and this Ground Lease shall terminate upon (i) payment by Ground Lessor to Ground Lessee of the sum of the remaining annual rent due to the Ground Lessee, as lessor under the Project Lease, from Ground Lessor or its permitted successors and assigns, as lessee under the Project Lease, (ii) payment by Ground Lessor to Ground Lessee of a termination fee equal to One Dollar (\$1.00), and (iii) at the sole cost and expense of Ground Lessor, the execution all instruments and documents, the payment of all recording fees, transfer fees, or other fees, including the reasonable attorneys' fees and expenses of the Ground Lessee, and the taking of any other actions necessary to complete the transfer of the estate created by this Ground Lease from Ground Lessee to Ground Lessor.

(b) If Ground Lessee defaults under this Ground Lease and such default continues following notice and a reasonable opportunity for Ground Lessee to cure the same as provided in this Section 10 or the Project Lease, as appropriate Ground Lessor shall have the right to terminate this Ground Lease by thirty (30) days written notice to Ground Lessee, and this Ground Lease shall terminate upon (i) payment by Ground Lessor to Ground Lessee of a termination fee equal to One Dollar (\$1.00), and (ii) at the sole cost and expense of Ground Lessor, the execution all instruments and documents, the payment of all recording fees, transfer fees, or other fees, including the reasonable attorneys' fees and expenses of the Ground Lessee, and the taking of any other actions

necessary to complete the transfer of the estate created by this Ground Lease from Ground Lessee to Ground Lessor.

(c) Except as otherwise provided herein, in the event of any default with respect to or breach of this Ground Lease, or any of its terms or conditions by either party hereto, or any successor to such party, such party shall, upon written notice from the other, proceed to cure or remedy such default or breach and in any event, shall effect such cure or remedy within sixty (60) days after receipt of such notice. In case such action is not taken or diligently pursued, or the default shall not be cured or remedied within the period set forth above, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations, and proceedings to obtain damages from such default or breach.

(d) Each right and remedy provided for in this Ground Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Ground Lease or now or hereafter existing at law or in equity or by statute or by agreement or otherwise, and the exercise or beginning of the exercise by Ground Lessor or Ground Lessee of any one or more of the rights or remedies provided for in this Ground Lease or now or hereafter existing at law or in equity or by statute or by agreement or otherwise shall not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Ground Lease or now or hereafter existing at law or in equity or by statute or by agreement or otherwise.

#### SECTION 11. SURRENDER.

Ground Lessee shall deliver up and surrender to Ground Lessor possession of the Project Site upon the expiration of this Ground Lease, or its termination for any reason and upon such expiration and termination, the title to the Project on the Project Site shall revert to Ground Lessor without further action by Ground Lessee. Notwithstanding the foregoing, Ground Lessee agrees to deliver to Ground Lessor physical possession of and title to, by statutory form quit claim deed and bill of sale, the Project located on the Project Site upon the termination of this Ground Lease, as is, and subject to the effects of time, ordinary wear and tear, damage, destruction, and taking by eminent domain. The obligations of the Ground Lessor under this Section 11 shall survive the termination of this Ground Lease.

#### SECTION 12. SUBLETTING AND ASSIGNMENT.

(a) Subletting. During the Term of this Ground Lease, Ground Lessee shall not be entitled to sublet the Project Site to Base Lessor or any person or entity controlled by, controlling, or under common control with Ground Lessor without Ground Lessor's prior written consent in each instance.

(b) Assignment by Ground Lessee. During the Term of this Ground Lease, Ground Lessee shall not be entitled to assign its rights under this Ground Lease to any person other than

Ground Lessor or any person or entity controlled by, controlling, or under common control with Ground Lessor without Ground Lessor's prior written consent in each instance.

(c) Assignment by Ground Lessor. During the Term of this Ground Lease, Ground Lessor shall be entitled to assign its rights and obligations under this Ground Lease to a purchaser, transferee or assignee of the Project Site.

#### SECTION 13. NON-MERGER.

There shall be no merger of this Ground Lease, or of the leasehold estate created by this Ground Lease, with the fee estate in the Project Site by reason of the fact that this Ground Lease, the leasehold estate created by this Ground Lease, or any interest in this Ground Lease or in any such leasehold estate, may be held, directly or indirectly, by or for the account of any person who shall own the fee estate in the Project Site or any interest in such fee estate. No such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Project Site and all persons having an interest in this Ground Lease, or in the leasehold estate created by this Ground Lease, shall join in a written instrument consenting to and effecting such merger and shall duly record the same.

#### SECTION 14. GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without reference to principles of conflicts of law.

#### SECTION 15. REPRESENTATIONS.

(a) Ground Lessor Representations. Ground Lessor warrants and represents that Ground Lessor has the power and authority to execute this Ground Lease. Ground Lessor warrants and represents that Ground Lessor is an Ohio limited liability company registered to transact business in the State of Ohio. Ground Lessor further represents that there is no agreement binding upon Ground Lessor nor any litigation pending or, to the best of its knowledge, threatened against Ground Lessor that would prohibit Ground Lessor from executing this Ground Lease or performing Ground Lessor's obligations hereunder.

(b) Ground Lessee Representations. Ground Lessee warrants and represents that Ground Lessee has the power and authority to execute this Ground Lease. Ground Lessee further represents that there is no agreement binding upon Ground Lessee nor any litigation pending or threatened against Ground Lessee that would prohibit Ground Lessee from executing this Ground Lease or performing Ground Lessee's obligations hereunder.

#### SECTION 16. ESTOPPEL CERTIFICATES.

Either party shall at any time, upon not less than thirty (30) days prior written notice by the other party, execute, acknowledge and deliver to such party a statement in writing certifying that

this Ground Lease is unmodified and in full force and effect (or if there has been any modification thereof that the same is in full force and effect as modified and stating the modification or modifications and, to the knowledge of the party providing the certification, that there are no defaults existing, or if there is any claimed default stating the nature and extent thereof), and stating the dates on which the Rent and Taxes have been paid; provided, that such statements may not be requested more frequently than once each year unless the party from which the statement is being requested is in default under this Ground Lease or under the Project Lease. It is expressly understood and agreed that any such statement delivered pursuant to this Section 16 may be relied upon by any prospective assignee of the leasehold estate of Ground Lessee, or any prospective purchaser of the fee simple estate of Ground Lessor, or any lender or prospective assignee of any lender on the security of the Project Site or any part thereof.

#### SECTION 17. GENERAL PROVISIONS.

(a) Provisions Run with the Land. All of the provisions of this Ground Lease shall be deemed as running with the land.

(b) No Waiver of Breach. No failure by either Ground Lessor or Ground Lessee to insist upon the strict performance by the other of any covenant, agreement, term or condition of this Ground Lease or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Ground Lease but each and every covenant, condition, agreement and term of this Ground Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

(c) Time of the Essence. Time is of the essence of this Ground Lease and of each provision.

(d) Computation of Time. The time in which any act provided by this Ground Lease is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is also excluded.

(e) Unavoidable Delay – Force Majeure. If either party shall be delayed or prevented from the performance of any act required by this Ground Lease by reason of acts of war, acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws, or regulations or other cause, without fault and beyond the reasonable control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay; and the period for the performance of any such be extended for a period equivalent to the period of such delay; provided, however, nothing in this Section 17(e) shall excuse Ground Lessor from the prompt payment of Taxes as provided in Section 5(b) hereof, except as may be expressly provided elsewhere in this Ground Lease.

(f) Successors in Interest. All of the terms, covenants, conditions, and restrictions in this Ground Lease shall inure to the benefit of and shall be binding upon the successors in interest

of Ground Lessor and Ground Lessee and their permitted transferees, subtenants, licensees and assigns.

(g) Entire Agreement. This Ground Lease, together with the Project Lease, contains the entire agreement of the parties with respect to the matters covered by this Ground Lease and no other agreement, statement or promise made by any party or to any employee, officer or agent of any party which is not contained in this Ground Lease shall be binding or valid.

(h) Partial Invalidity. If any term, covenant, condition or provision of this Ground Lease is held by a court of competent jurisdiction to be invalid, void or enforceable, the remainder of the provisions herein shall remain in full force and effect and shall in no way be affected impaired or invalidated.

(i) Relationship of Parties. Nothing contained in this Ground Lease shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Ground Lessor and Ground Lessee, and nothing herein shall be deemed to create any relationship between Ground Lessor and Ground Lessee other than the relationship of Ground Lessor and Ground Lessee.

(j) Interpretation and Definitions. The language in all parts of this Ground Lease shall in all cases be simply construed according to its fair meaning and not strictly for or against Ground Lessor or Ground Lessee. Unless otherwise provided in this Ground Lease, or unless the context otherwise requires, the following definitions and rules of construction shall apply to this Ground Lease:

(i) Number and Gender. In this Ground Lease the neuter gender includes the neuter gender feminine and gender masculine and the singular number includes the plural and the word "Person" includes a corporation, limited liability company, partnership, governmental agency, firm or association wherever the context so requires; and

(ii) Mandatory and Permissive. "Shall," "will" and "agrees" are mandatory; "may" is permissive.

(k) Captions. Captions of the sections and paragraphs of this Ground Lease are for convenience and reference only and the words contained herein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Ground Lease.

(l) Parties. The parties are Ground Lessor and Ground Lessee named in this Ground Lease.

(m) Modification. This Ground Lease is not subject to modification except in writing signed by Ground Lessor and Ground Lessee.

(n) Notices – Method and Time. All notices, demands or requests from one party to another shall be either (i) personally delivered or (ii) delivered by depositing in the U.S. mail, certified or registered, postage prepaid, or (iii) delivered by depositing with a private nationally registered overnight courier service, delivery fees prepaid to the addressee at the address first set forth in the first paragraph of this Ground Lease or at such other address as any party from time to time designates in writing to the other.

(o) Broker's Commissions. Each of the parties represents and warrants that there are no claims for broker's commissions or finder's fees in connection with the execution of this Ground Lease.

(p) Recording. The parties shall, concurrently with the execution of this Ground Lease, execute, acknowledge and record a Memorandum of Ground Lease, the form of which is attached hereto as Exhibit C.

(q) Extent of Covenants; No Personal Liability. All covenants, stipulations, obligations and agreements of Ground Lessor and Ground Lessee contained herein are deemed to be and shall be the covenants, stipulations and obligations and agreements of Ground Lessor and Ground Lessee to the full extent authorized by and permitted by the laws of the State of Ohio. No covenant, stipulation, obligation or agreement of the parties hereto shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, officer, agent or employee of Ground Lessor, Ground Lessee, the Board of Directors of the Ground Lessee in other than that person's official capacity. Neither the Board of Directors of Ground Lessee, nor any official executing this Ground Lease shall be subject to any personal liability or accountability by reason of such execution.

(r) Counterparts. This Ground Lease may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

(s) Ground Lessee's Obligations Limited. Notwithstanding any other provision of this Ground Lease none of the obligations of Ground Lessee created by and no requirement imposed on Ground Lessee created by or arising out of this Ground Lease (including, without limitation, any obligation under Section 8(b) hereof) shall ever constitute a general debt of Ground Lessee or give rise to any general pecuniary liability of Ground Lessee. The obligations of and requirements imposed on Ground Lessee hereunder shall be payable solely and exclusively from amounts, if any, available to Ground Lessee under the Project Lease with respect to the Project Site (collectively, the "Special Revenues") and Ground Lessee shall not be obligated to satisfy such obligations or requirements from any other source. Neither Ground Lessor nor any other person shall have the right or claim to any payment from or to any revenue of Ground Lessee except from the Special Revenues, and only to the extent provided herein.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF OHIO            )  
                                  )    SS:  
COUNTY OF LORAIN    )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2025, by [\_\_\_\_], the [\_\_\_\_] of the Lorain Port Authority, an Ohio port authority and political subdivision, on behalf of the port authority.

\_\_\_\_\_  
Notary Public

[SEAL]

This Instrument was prepared by  
Colin Kalvas  
Bricker Graydon LLP  
100 South Third Street  
Columbus, Ohio 43215  
(614) 227-2300

**AUTHORITY FISCAL OFFICER’S CERTIFICATE**

The undersigned, Secretary and Fiscal Officer of the Lorain Port Authority, hereby certifies that the moneys required to meet the obligations of the Authority during the year 2025 under the Ground Lease have been lawfully appropriated by the Board of Directors of the Authority for such purposes and are in the treasury of the Authority or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

---

Secretary and Fiscal Officer  
Lorain Port Authority

Dated: [ \_\_\_\_\_ ], 2025

**EXHIBIT A**

**PROJECT SITE**

Legal Description

[See Attached]

## **EXHIBIT B**

### **THE PROJECT**

The Project consists of the construction of a Motorsports Entertainment Complex consisting of approximately six (6) buildings and multiple race tracks located in the City of Lorain, Lorain County, Ohio.

## EXHIBIT C

### MEMORANDUM OF GROUND LEASE

### MEMORANDUM OF GROUND LEASE

**THIS MEMORANDUM OF GROUND LEASE** (Lorain Ohio Kartplex Project), dated as of [\_\_\_\_], 2025 by and between Xell Real Estate Holdings LLC (the “Ground Lessor”), and the Lorain Port Authority, a port authority and body corporate and politic organized and existing under the Constitution and the laws of the State of Ohio (the “Ground Lessee”), who represent as follows:

1. The name and address of Ground Lessor is Xell Real Estate Holdings LLC, tax mailing address at c/o [\_\_\_\_], Lorain, Ohio 44114, Attention: [\_\_\_\_].
2. The name and address of Ground Lessee is the Lorain Port Authority, 319 Black River Lane, Lorain , Ohio 44052.
3. Ground Lessee and Ground Lessor entered into a certain Ground Lease (Rauch & Lang Carriage Company Project) dated as of [\_\_\_\_], 2025 (the “Ground Lease”) with respect to certain demised premises further described on **EXHIBIT A** (the “Project Site”) attached hereto and made a part hereof by this reference. Ground Lessor claims title to the real property pursuant to a certain vesting deed dated [\_\_\_\_], and recorded as Instrument No. [\_\_\_\_] in the Lorain County, Ohio Fiscal Officer’s Office.
4. A certain Project (as defined in the Ground Lease) will be constructed on the Project Site.
5. The term of the Ground Lease with respect to the Project Site shall commence [\_\_\_\_], 2025, and will expire on the date occurring forty (10) years thereafter; provided, the Ground Lease is subject to earlier termination as described therein.
6. The Ground Lease is hereby incorporated by reference in and made a part of this Memorandum of Ground Lease as fully as if it were set forth herein in its entirety. All parties having or acquiring an interest in the property referred to herein are hereby given notice of all provisions, covenants and obligations contained in the Ground Lease.
7. Notwithstanding any other provision of the Ground Lease or this Memorandum of Ground Lease none of the obligations of Ground Lessee created by and no requirement imposed on Ground Lessee created by or arising out of the Ground Lease or this Memorandum of Ground Lease shall ever constitute a general debt of Ground Lessee

or give rise to any general pecuniary liability of Ground Lessee. The obligations of and requirements imposed on Ground Lessee under the Ground Lease and hereunder shall be payable solely and exclusively from the Special Revenues, as defined in the Ground Lease.

8. This Memorandum of Ground Lease may be executed in counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute one and the same instrument.

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GROUND LESSEE:

LORAIN PORT AUTHORITY

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF OHIO                    )  
  )    SS:  
COUNTY OF LORAIN            )

The foregoing instrument was acknowledged before me this \_\_\_ day of [\_\_\_\_], 2025, by [\_\_\_\_], the [\_\_\_] the Lorain Port Authority, an Ohio port authority and political subdivision, on behalf of the port authority.

\_\_\_\_\_  
Notary Public

[SEAL]

This Instrument was prepared by  
Colin Kalvas  
Bricker Graydon LLP  
100 South Third Street  
Columbus, Ohio 43215  
(614) 227-2300



AUTHORITY FISCAL OFFICER’S CERTIFICATE

The undersigned, assistant secretary and fiscal officer of the Lorain Port Authority, hereby certifies that the moneys required to meet the obligations of the Authority during the year 2025 under this instrument have been lawfully appropriated by the Board of Directors of the Authority for such purposes and are in the treasury of the Authority or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

---

Assistant Secretary and Fiscal Officer  
Lorain Port Authority

Dated: [ \_\_\_\_\_ ], 2025

EXHIBIT A

PROJECT SITE

Legal Description

[See Attached]

## **EXHIBIT D**

### **PERMITTED ENCUMBRANCES**

Permitted Encumbrances includes:

1. []

## INDEMNITY AGREEMENT

**THIS INDEMNITY AGREEMENT** (“Agreement”) is made as of the [ ] day of [ ], 2025 by **Ohio Motorsports Park Real Estate Holdings LLC**, an Ohio limited liability company (together with its affiliated and controlled entities, collectively, the “Indemnitor”), to and for the benefit of the **LORAIN PORT AUTHORITY**, an Ohio port authority (“Port Authority”).

### RECITALS:

A. Ohio Motorsports Park Real Estate Holdings LLC (the “Developer”), as the sole member and one hundred percent (100%) owner of Xell Real Estate Holdings LLC, an Ohio limited liability company, is the fee simple owner of certain real property more particularly described on **Exhibit “A”** attached to this Agreement (collectively, the “Project Property”) and located in the City of Lorain, Lorain County, Ohio (the “City”); and

B. The Developer has agreed to acquire, construct, rehabilitate, equip, develop, improve, and install, a mixed-use entertainment complex that will include kart racing tracks, radio controlled car racing track, restaurant, eSport facilities, retail motorsports sales offices, storage, lounge and a timing & scoring tower (approximately 65,000 square feet of building space), together with necessary appurtenances related thereto on the Project Property (the “Project”); and

C. Under the laws of the State of Ohio, particularly Ohio Revised Code Sections 4582.21 through 4582.59 (the “Act”), the Port Authority is authorized (i) to acquire a leasehold interest in the Project Property under a ground lease (the “Ground Leases”) between the Developer, through its subsidiary Xell Real Estate Holdings LLC as ground lessor, and the Port Authority, as ground lessee; (ii) to cause the construction of the Project on the Project Property, and to appoint the Developer as its construction services provider in order to construct the Project on the Project Property under a Construction Services Agreement (the “Construction Services Agreements”); (iii) to lease the Project to the Developer or one or more Developer affiliates under one or more project lease agreements (the “Project Lease Agreements”); (iv) to enter into one or more indemnity agreements (the “Indemnity Agreements”) with such Indemnitor as are required by, and satisfactory to, the officers of the Port Authority; and (v) to execute any additional agreements, documents, or certifications to cause the proper acquisition, construction, development, and improvement of the Project and the protection of the Port Authority’s interests in connection with the Project (collectively, items (i) through (v) above are referred to as the “Proposed Transaction”); and

D. An inducement to the Port Authority, and a condition precedent to the Port Authority’s ownership and support of the Project for the benefit of the Developer, is the execution and delivery of this Agreement by the Indemnitor.

**NOW, THEREFORE**, to induce the Port Authority to own and support the Project for the benefit of the Developer and in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Indemnitor hereby, jointly and severally, covenants and agrees for the benefit of Port Authority as follows:

1. As used in this Agreement, the following terms shall have the following meanings (such meanings to be applicable both to the singular and plural forms of the terms defined):

(a) “Environmental Laws” shall mean any and all federal, state and local laws or statutes that relate to Hazardous Materials or impose liability or standards of conduct concerning public or occupational health, safety and welfare or the environment, as now or hereafter in effect and as have been or hereafter may be amended, modified or reauthorized, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 *et seq.*, the Hazardous Materials Transportation Authorization Act of 1994, 42 U.S.C. §§ 5101 *et seq.*, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 *et seq.*, the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*, the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.*, and the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651 *et seq.*, and all rules, regulations, codes, ordinances and guidance documents promulgated or published thereunder, and the provisions of any licenses, permits, orders and decrees issued pursuant to any of the foregoing.

(b) “Contract Liability” shall have the meaning given to such term in Section 2 of this Agreement.

(c) “Excluded Liability” shall mean each Liability to the extent it is attributable to the gross negligence or willful misconduct of any Indemnified Party.

(d) “Hazardous Materials” shall mean any and all hazardous, toxic, dangerous or other wastes, substances, chemicals, gases, pollutants, contaminants, liquids and materials, including, without limitation, asbestos and petroleum products, all of the foregoing defined as such in or regulated by any Environmental Law, including, without limitation, (i) “hazardous substances” and “toxic substances” as such terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 *et seq.*, or the Hazardous Materials Transportation Authorization Act of 1994, 49 U.S.C. §§ 5101 *et seq.*; (ii) “hazardous wastes,” as such term is defined by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 *et seq.*; (iii) crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure; (iv) any radioactive material, including any source, special nuclear or by-product material as defined at Atomic Energy Act of 1954, 42 U.S.C. §§ 2011 *et seq.*; (v) asbestos in any form or condition; and (vi) polychlorinated biphenyls (“PCBs”) and hydrocarbons or substances or compounds containing PCBs or hydrocarbons.

(e) “Leased Property” shall mean, collectively, the Project Property and the Project.

(f) “Liability” shall mean, collectively, any Contract Liability or any Environmental Liability.

(g) “Reports” shall mean those environmental reports described on **Exhibit “B”** attached to this Agreement.

2. The Indemnitor represent, warrant and covenant to the Port Authority as follows:

(a) The Indemnitor shall defend, indemnify, and hold harmless the Port Authority and its permitted successors and assigns (including any member, officer, director or employee of the Port Authority and its permitted successors and assigns) (collectively, the “Indemnified Parties,” and each, an “Indemnified Party”) against, and agrees that the Indemnified Parties shall not be liable for, any and all liabilities, obligations, claims, damages, penalties, causes of action, costs, and expenses (including, without limitation, reasonable documented attorneys’ fees and expenses) imposed upon, incurred by or asserted against an Indemnified Party (collectively, “Contract Liabilities,” and each, a “Contract Liability”), other than any Excluded Liability, arising out of or resulting from, or in any way connected with the execution and delivery of the Contract Documents; the consummation of the transactions provided for or contemplated by the Contract Documents; all activities undertaken by the Port Authority pursuant to the Contract Documents in furtherance of the Project; all activities undertaken by any Indemnitor pursuant to the Contract Documents in furtherance of the Project, including activities of the Indemnitor or any contractor or subcontractor of the Indemnitor to construct the Project; the Indemnitor’s use and occupancy of the Leased Property; any breach, violation, or nonperformance by the Indemnitor of any covenant, condition, provision or agreement set forth in the Contract Documents that is required to be observed and performed by the Indemnitor, including any actions taken by the Port Authority to enforce such breach, violation, or nonperformance by the Indemnitor; any claim that sales and use taxes are payable with respect to any transaction contemplated by the Contract Documents or the Leased Property; and any act, failure to act, or misrepresentation by the Indemnitor in connection with, or in the performance of any obligation on the Indemnitor’ part to be performed, related to the Contract Documents or the Leased Property.

(b) Except as otherwise set forth in the Reports, to the best of the Indemnitor’ knowledge after due inquiry, the Project Property (including underlying groundwater and areas leased to tenants) and the use and operation of the Project Property are currently in compliance with all applicable Environmental Laws, and the Project Property and the use and operation of the Project Property shall remain in such compliance. Except as otherwise set forth in the Reports, to the best of the Indemnitor’ knowledge, all governmental permits relating to the use and/or operation of the Project Property required by applicable Environmental Laws are in effect. Such permits shall remain in effect and the Indemnitor shall comply with such permits or shall use reasonable efforts to cause the tenants subject to such permits to comply with such permits.

(c) No release, generation, discharge, manufacture, storage, treatment, transportation or disposal of Hazardous Materials shall occur on, in, under (including the underlying groundwater) or from the Project Property, nor, to the best of such Indemnitor’ knowledge after due inquiry, except as otherwise set forth in the Reports, has the same occurred, except for such Hazardous Materials which are or shall be used or stored at the Project Property in the ordinary course of business operations in compliance with all Environmental Laws (all such Hazardous Materials being referred to in this Agreement as the “Permitted Substances”). Except as otherwise set forth in the Reports, to the best knowledge of the Indemnitor after due inquiry, no release, generation, discharge,

manufacture, storage, treatment, transportation or disposal of Hazardous Materials has occurred on, in, under (including the underlying groundwater) or from any parcel(s) of real estate adjacent to the Project Property. Except as otherwise set forth in the Reports, to the best of the Indemnitor' knowledge after due inquiry, there is not, and to the extent of the Indemnitor' power shall not be (i) any Hazardous Material stored or otherwise located on, in or under the Project Property (including the underlying groundwater) other than Permitted Substances; (ii) any violations of Environmental Laws resulting in environmental, health or safety hazards that pertain to any of the Project Property or the business or operations conducted on the Project Property; and (iii) any underground storage tanks present on or under the Project Property or the business or operations conducted on the Project Property. Without limitation of the foregoing: (A) the Indemnitor agree to promptly notify the Port Authority, in writing, if the Indemnitor have or acquire notice or knowledge that any Hazardous Material (other than Permitted Substances) has been or is threatened to be released, discharged, disposed of, transported, stored or used on, in, under or from or otherwise located on or beneath the surface of the Project Property or any parcel(s) of real estate adjacent to the Project Property; and (B) if any Hazardous Material (other than any Permitted Substance) is found on or beneath the surface of the Project Property in violation of any applicable Environmental Law. The Indemnitor, at their own cost and expense, shall immediately take such action as is necessary to detain the spread of and remove such Hazardous Material to the complete satisfaction of the appropriate governmental authorities. No Hazardous Material (other than Permitted Substances) shall be introduced to or handled on the Project Property without the prior written consent of the Port Authority, and to the extent such consent is given by the Port Authority, or to the extent that Permitted Substances are introduced to or handled on the Project Property, all such Hazardous Materials and Permitted Substances shall be handled and maintained in compliance with all applicable Environmental Laws. No part of the Project Property contains "waters of the United States" as defined in 33 CFR 328 or any "wetlands."

(d) There are no pending or threatened: (i) requests for information, actions or proceedings from any governmental agency or any other person or entity regarding the condition or use of the Project Property, or the disposal of Hazardous Material, or regarding any Environmental Law; or (ii) liens or governmental actions, notices of violations, notices of noncompliance or other proceedings of any kind with respect to the Project Property. The Indemnitor shall immediately notify the Port Authority and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to the condition of the Project Property or compliance with Environmental Laws. The Indemnitor shall promptly cure and have dismissed with prejudice any such actions and proceedings to the satisfaction of the Port Authority. The Indemnitor shall keep the Project Property free of any lien imposed pursuant to any Environmental Law.

(e) The Port Authority shall have the right at all times and from time to time to conduct environmental audits of the Project Property by a consultant of the Port Authority's choosing. If based upon any audit performed pursuant to this subparagraph (e), any consultant recommends the removal of any Hazardous Material from the Project Property, the Indemnitor shall cause such Hazardous Material to be removed in accordance with all Environmental Laws and within the time periods reasonably required by the Port Authority. The Indemnitor shall cooperate in the conduct of each audit and review performed pursuant

to this subparagraph (e). If the audit or review reveals Hazardous Materials or conditions materially different from those found in the Reports, the fees and expenses of any consultant who performs an audit or review pursuant to this subparagraph (e) shall be borne by the Indemnitor and shall be paid by the Indemnitor to the Port Authority within fifteen (15) days of demand, together with interest thereon at the rate of ten percent (10%) per annum from the date written notice specifying such nonpayment is served on the Indemnitor until paid.

(f) If the Indemnitor fail to comply with any of the foregoing warranties, representations and covenants, the Port Authority may (i) declare an Event of Default under any of the Contract Documents, and/or (ii) cause the removal (and/or other cleanup acceptable to the Port Authority) of any Hazardous Material from the Project Property sufficient to satisfy the requirements of applicable Environmental Laws. The costs of Hazardous Material removal and/or other cleanup (including transportation and storage costs) shall become due and payable on demand by the Port Authority with interest thereon at the rate of ten percent (10%) per annum from the date written notice specifying such nonpayment is served on the Indemnitor until paid. The Indemnitor shall give the Port Authority, its agents and employees access to the Project Property to remove or otherwise clean up any Hazardous Material. The Port Authority, however, has no affirmative obligation to remove or otherwise clean up any Hazardous Material, and this Agreement and the other Contract Documents shall not be construed as creating any such obligation.

(g) Except in the case of an Excluded Liability, the Indemnitor shall indemnify, defend (with legal counsel reasonably acceptable to the Port Authority and at the sole cost of the Indemnitor) and hold the Port Authority and the Port Authority's affiliates, shareholders, directors, officers, employees, and agents ("Indemnitees"), free and harmless from and against all losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements or expenses of any kind or nature whatsoever (including reasonable documented attorneys' and experts' fees and disbursements and expenses incurred in investigating, defending against or prosecuting any litigation, claim or proceedings) which may at any time be imposed upon, incurred by or asserted or awarded against the Port Authority in connection with or arising from or out of any of the following:

(i) the presence of any Hazardous Material on, in, under or affecting all or any portion of the Project Property, the underlying groundwater, any adjacent or surrounding areas or any area at which any Hazardous Material transported from the Project Property was disposed of;

(ii) any misrepresentation, inaccuracy or breach of any warranty, covenant or agreement contained or referred to in this Agreement;

(iii) any violation or claim of violation by Indemnitor or any Indemnitor of any Environmental Law; or



(iv) the imposition of any lien on the Project Property for the recovery of any costs for environmental cleanup and/or other response costs relating to the release or threatened release of any Hazardous Material.

The foregoing indemnification is the personal obligation of the Indemnitor and shall survive this Agreement and the Contract Documents and any sale or other transfer of the Project Property by Indemnitor or any transfer of the Project Property by foreclosure or by a deed in lieu of foreclosure. The foregoing indemnification shall not be affected or negated by any exculpatory clause that may be contained in the Contract Documents. Except in the case of an Excluded Liability, the Indemnitor hereby waive, release and agree not to make any claim or bring any cost recovery action against the Port Authority under any Environmental Law. The Indemnitor expressly understands and agrees that the obligation of the Indemnitor to the Port Authority under this indemnity shall be without regard to fault on the part of the Indemnitor. Notwithstanding anything contained in this Agreement to the contrary, however, Indemnitor shall not be responsible for losses, liabilities, obligations, penalties, claims, litigation, demands, costs, judgments, suits, proceedings, damages, disbursements or expenses which arise from or are connected with the presence of any Hazardous Material or other contaminant in violation of any Environmental Law, which presence results solely from any action by the Port Authority, its agents or its representatives (other than the Developer in its capacity as the lessee of the Project Property or in its capacity as the Port Authority's construction manager at-risk) after and while the Port Authority is in possession and control of the Project Property.

3. Upon notice of the assertion of, or any circumstance or matter that might be reasonably expected to give rise to, any Liability, the Indemnified Party shall give prompt written notice of the same to the Indemnitor. Upon receipt of written notice of the assertion of, or a matter or circumstance that might reasonably be expected to give rise to, a Liability, the Indemnitor shall have the sole right and duty to assume, and shall assume, the defense thereof, with full power and exclusive authority to litigate, compromise or settle the same in its sole discretion; provided, that the Indemnified Party shall have the right to approve any obligations imposed upon it by compromise or settlement of any Liability or in which it otherwise has a material interest, which approval shall not be unreasonably withheld, unreasonably conditioned or unreasonably delayed. The Indemnitor shall not be liable for any settlement of any Liability effected without its written consent, but if settled with the written consent of the Indemnitor, or if there be a final judgment for the plaintiff in an action, the Indemnitor agrees to indemnify and hold harmless the Indemnified Party, except in the case of any Excluded Liability. If at any time an Indemnified Party becomes dissatisfied, in their reasonable discretion, with the selection of counsel by the Indemnitor, a new mutually agreeable counsel shall be retained at the expense of the Indemnitor.

4. Each Indemnified Party shall have the right to employ counsel in any such action at its own expense; provided, however, that such Indemnified Party shall have the right to employ counsel in any such action and the fees and expenses of such counsel shall be at the expense of the Indemnitor if: (i) the employment of counsel by such Indemnified Party has been authorized by the Indemnitor, (ii) there reasonably appears that there is a conflict of interest between any Indemnitor and the Indemnified Party in the conduct of the defense of such action (in which case the Indemnitor shall not have the right to direct the defense of such action on behalf of the Indemnified Party), (iii) no Indemnitor shall have employed counsel to assume the defense of such

action, or (iv) the action is a claim that sales and use taxes are payable with respect to any transaction contemplated by the Contract Documents. The obligations of the Indemnitor under this Agreement shall survive the termination of this Agreement and all Contract Documents and shall be in addition to any other rights, including without limitation, rights to indemnity which any Indemnified Party may have at law, in equity, by contract or otherwise.

5. If the Port Authority incurs any costs (including reasonable documented attorneys' fees and court costs) to collect or enforce the obligations of the Indemnitor under this Agreement, the Indemnitor shall, upon demand by the Port Authority, immediately reimburse the Port Authority therefor, including, without limitation, reasonable documented attorneys' fees incurred in any litigation and bankruptcy and administrative proceedings and appeals therefrom, plus interest from the date so paid by the Port Authority until the date reimbursed by the Indemnitor with interest thereon at the rate of ten percent (10%) per annum from the date written notice requesting such reimbursement is served on the Indemnitor until paid. In addition to the foregoing, the Port Authority shall be entitled to its reasonable documented attorneys' fees and costs incurred in any post-judgment proceedings to collect or enforce any judgment or order relating to this Agreement or any of the Contract Documents. This provision is separate and several and shall survive the merger of this provision into any judgment.

6. The Port Authority may rely on this Agreement notwithstanding disclosure to the Port Authority of any adverse environmental information relating to the Project Property; it being the intention of this Section 6 that the obligations of the Indemnitor under this Agreement shall not be limited or qualified by reason of the Port Authority's knowledge of any such adverse environmental information except as otherwise provided in this Agreement with respect to the Reports.

7. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, except to the extent any law, rule or regulation of the federal government of the United States of America may be applicable hereto, in which event such federal law, rule or regulation shall govern and control.

8. The obligations and liabilities of the Indemnitor under this Agreement shall be joint and several and shall be binding upon and enforceable against the Indemnitor and each of their respective successors and assigns.

9. In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, the Indemnitor and the Port Authority shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Agreement and the validity and enforceability of the remaining provisions, or portions or applications of the remaining provisions, shall not be affected thereby and shall remain in full force and effect.

10. Any notices, communications and waivers under this Agreement shall be in writing and shall be (a) delivered in person, (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, (c) by overnight express carrier, or (d) via email transmission with confirmation of delivery (including by reply email), addressed in each case as follows:

To Port Authority: Lorain Port Authority  
319 Black River Lane  
Lorain, Ohio 44052  
Attention: Interim Executive Director

With a Copy To: Bricker Graydon LLP  
100 South Third Street  
Columbus, Ohio 43215  
Attention: Colin Kalvas, Esq.

The Developer: Ohio Motorsports Park Real Estate Holdings LLC  
c/o [ ]  
[ ]  
Attention: [ ]

With a Copy To: [ ]  
[ ]  
[ ]  
[ ]  
Attention: [ ]

To the Indemnitors: [ADDRESSES TO BE ADDED]

or to any other address as to any of the parties to this Agreement, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received, or (iv) if sent via email, upon confirmation of delivery.

11. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute one and the same instrument.

12. THE INDEMNITOR AND THE PORT AUTHORITY ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR ANY OF THE CONTRACT DOCUMENTS OR WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED IN THIS AGREEMENT AND THE CONTRACT DOCUMENTS WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES. ACCORDINGLY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE INDEMNITOR AND THE PORT AUTHORITY, BY ITS ACCEPTANCE OF THIS AGREEMENT, HEREBY KNOWINGLY AND VOLUNTARILY MUTUALLY (A) WAIVE THE RIGHT TO TRIAL BY JURY

IN ANY CIVIL ACTION, CLAIM, COUNTERCLAIM, CROSS-CLAIM, THIRD-PARTY CLAIM, DISPUTE, DEMAND, SUIT OR PROCEEDING ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR ANY OF THE CONTRACT DOCUMENTS OR ANY RENEWAL, EXTENSION OR MODIFICATION OF THIS AGREEMENT OR ANY OF THE CONTRACT DOCUMENTS, OR ANY CONDUCT OF ANY PARTY RELATING THERETO, AND (B) AGREE THAT ANY SUCH ACTION, CLAIM, SUIT OR PROCEEDING SHALL BE TRIED BEFORE A JUDGE AND NOT BEFORE A JURY. THE INDEMNITOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST THE PORT AUTHORITY OR ANY OTHER PERSON INDEMNIFIED UNDER THIS AGREEMENT ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

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IN WITNESS WHEREOF, the Indemnitor has executed this Agreement as of the date set forth above.

**WARNING—BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.**

**OHIO MOTORSPORTS PARK REAL ESTATE HOLDINGS LLC**

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

Title: \_\_\_\_\_

Accepted as of the date first above written:

**LORAIN PORT AUTHORITY**

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

Title: \_\_\_\_\_

**EXHIBIT "A"**  
**PROJECT PROPERTY**

**EXHIBIT “B”**

**DESCRIPTION OF ENVIRONMENTAL REPORTS**

1. Phase I Environmental Site Assessment completed by HZW Environmental Consultants, LLC, an Ohio limited liability company, on December 19, 2024.
2. []
3. []

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**PROJECT LEASE  
(LORAIN OHIO KARTPLEX PROJECT)**

between

LORAIN PORT AUTHORITY

and

XELL REAL ESTATE HOLDINGS LLC

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Dated as of  
[\_\_\_\_], 2025

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Bricker Graydon LLP  
Authority Counsel



## PROJECT LEASE AGREEMENT

THIS LEASE AGREEMENT (this “Lease”) is made and entered into as of [\_\_\_\_], 2025 between the LORAIN PORT AUTHORITY, a port authority and a body corporate and politic organized and existing under the laws of the State of Ohio (hereinafter referred to, together with its successors and permitted assigns, as the “Lessor”), and Xell Real Estate Holdings LLC (hereinafter referred to, together with its permitted successors and assigns, as the “Lessee”).

### WITNESSETH:

WHEREAS, pursuant to a Ground Lease between Xell Real Estate Holdings LLC, as Ground Lessor, and the Lorain Port Authority, as Ground Lessee, dated as of [\_\_\_\_], 2025 (the “Ground Lease”), the Lessor holds a Ground Lease interest in certain real property located in the City of Lorain, Lorain County, Ohio, described generally on Exhibit A attached hereto (the “Project Site”); and

WHEREAS, the Lessee has requested that the Lessor (i) cooperate with the Lessee in connection with acquiring, constructing, developing, equipping, and improving of motorsports entertainment complex containing approximately 65,000 sq. ft. of total building area, including kart racing and radio controlled car racing tracks, restaurant, esports, retail, storage, and lounge spaces, and a timing and scoring tower, together with appurtenances related thereto to be located at the Project Site (the “Project”) by the Lessor accepting ownership of the Project, which Project shall constitute a port authority facility within the meaning of Ohio Revised Code Section 4582.21(E), upon completion thereof as set forth herein, and (ii) make and enter into this Lease with respect to the Project Site and the Project (the Project Site and the Project are hereinafter referred to collectively as the “Leased Property”); and

WHEREAS, the Lessor desires to lease the Leased Property to the Lessee, and the Lessee desires to lease the Leased Property from the Lessor, subject to and upon the terms hereinafter set forth; and

WHEREAS, a memorandum of this Lease will be recorded in the Office of the Fiscal Officer of Lorain County, Ohio upon execution of this Lease, the form of which is attached hereto as Exhibit B.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations and warranties made herein by the Lessor and the Lessee, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lessor and the Lessee hereby covenant, agree, represent and warrant as follows:

## LEASE AND USE

### 1. THE LEASED PROPERTY; USE.

(a) The Leased Property. The Lessor hereby leases to the Lessee, and the Lessee hereby leases from the Lessor the Leased Property, subject to the terms and conditions set forth herein.

(b) Use. The Lessee may use, or permit the use of, the Project Site for acquiring, constructing, developing, equipping, improving, and installing the Project, and the maintenance and operation of the Leased Property, in accordance with Section 4 of this Lease. The Lessee covenants that, at its cost, it shall complete the Project. The Lessee shall use and occupy the Leased Property in a lawful and safe manner, and shall, in its use and occupancy of the Leased Property, keep, observe, and comply, in all material respects, with all municipal, state, and federal rules and regulations, ordinances, statutes, and laws and all restrictive covenants applicable to the Leased Property and the Lessee's use and occupancy thereof, and shall not use or permit the Leased Property to be used for any unlawful purpose. Lessor agrees that competitive bidding requirements do not apply to the construction of the Project pursuant to section 4582.12 of the Ohio Revised Code, based on the representations and agreements of the Ground Lessor under this Ground Lease and the Project Lessee under the Project Lease that the Project (a) will create jobs and employment opportunities within Lorain County, Ohio, and (b) will be used for purposes consistent with Art. VIII, Sections 13 and 16 of the Ohio Constitution.

(c) No Modification of Permitted Encumbrances. Except upon a default by Lessee under this Lease or as otherwise set forth in this Lease, without the prior written consent of Lessee the Lessor shall not terminate, amend, modify, waive, or grant its consent as contemplated under, any of the agreements, instruments or documents that constitute or evidence any of the covenants, conditions, restrictions, easements, encumbrances and other matters of record, including the Ground Lease and the permitted encumbrances identified in the Ground Lease (collectively, the "Permitted Encumbrances").

(d) Lessor's Warranty of Quiet Enjoyment. The Lessor covenants and agrees that the Lessee shall be entitled, upon paying the Rent (as defined in Section 3(a)), the Other Consideration (as defined in Section 3(b)), and the Taxes (as defined in Section 3(c)) and keeping and performing the covenants, conditions, and terms of this Lease on the Lessee's part to be kept or performed, to lawfully and quietly hold, occupy, and enjoy the Leased Property during the Lease Term (as defined in Section 2), without hindrance or interference by the Lessor, or any person claiming by, through or under the Lessor, subject, however, to the exercise of rights created in persons by Permitted Encumbrances.

### 2. LEASE TERM.

(a) Lease Term. Subject to the terms and conditions hereof, the term of this Lease shall commence on the date hereof (hereinafter, the "Commencement Date") and expire on the date that

is forty (40) years after the Completion Date (as defined in Section 4) (hereinafter referred to as the "Lease Term").

(b) Option to Terminate Lease and Acquire Project. At any time during the Term of this Project Lease occurring five (5) years after the Commencement Date, the Lessee shall have the option to terminate this Lease and acquire the Lessor's entire interest in the Project at a purchase price of One Dollars (\$1.00); provided, however, that Lessee shall only be entitled to terminate this Lease (i) on or after the expiration of the Lease Term, (ii) pursuant to the terms of this Lease, or (iii) at any time upon termination of the Ground Lease.

At any time during the Lease Term after the Completion Date, the Lessee may terminate this Lease effective upon (i) thirty (30) days written notice from the Lessee to the Lessor of the termination, and (ii) payment of by the Lessee to the Lessor of the sum of all annual rent payments for the remainder of the Lease Term (the "Termination Date"). In addition, in the event of a sale of or assignment of its interest in the Project Site by Lessee prior to the Termination Date, the Lessee may terminate this Lease and acquire the Project for the foregoing purchase price. If the Lease is terminated prior to the Termination Date, Lessee shall also be required to deliver to the Lessor a guaranty (the "Guaranty"), acceptable to the Lessor, to defend and indemnify the Lessor for any liability that may arise from the Project, provided, however, that the Guaranty shall not require the Lessee to defend or indemnify the Lessor for any claims, lawsuits or any losses incurred by Lessor due to willful misconduct of Lessor or any of its employees or agents.

If the Lessee terminates this Lease, (i) the Lessor shall convey the Project to the Lessee by statutory form quit claim deed and bill of sale, as is, subject only to Permitted Encumbrances, any matters the Lessee causes to arise through the Lessor pursuant to the terms of this Lease, and any other matters agreed to in writing by the Lessee and subject to the effects of time, ordinary wear and tear, damage, destruction, and taking by eminent domain; and (ii) the Lessee shall pay all closing costs relating to such closing, including, but not limited to, the reasonable attorneys' fees of the Lessor. In conjunction with the termination of the Lease, the Lessor and the Lessee shall cooperate to execute such additional documentation not inconsistent with the terms of this Lease as may be required to effectuate the conveyance of the Project from the Lessor to the Lessee.

(c) Holdover. If the Lessee shall hold over after the expiration of the Lease Term, or any extension thereof, that tenancy shall be from month-to-month on the terms of this Lease.

### 3. RENT, OTHER CONSIDERATION, TAXES, AND CLOSING FEES.

(a) Rent. The Lessee shall pay to the Lessor, on each anniversary of the Commencement Date, the amount of One Dollars (\$1.00) as rent ("Rent") for the Lease of the Leased Property. Rent shall be prorated for any period during the Lease Term which does not amount to a full calendar year.

(b) Other Consideration. The Lessee shall (i) construct the Project, and all construction contracts for the Project will be entered into or held by Lessee or any person or entity controlled

by, controlling or under common control with the Lessee; (ii) cause the Leased Property to be operated; (iii) provide at its expense routine maintenance, repair, capital expenditures, and improvements to the Leased Property as necessary to maintain the Leased Property in good condition and working order; provided, however, the Lessee obligation to provide capital repairs in the case of damage or casualty is limited to payment of any loss deductible and insurance proceeds received by the Lessee (except in cases where the insufficiency of such insurance proceeds is the result of an act or omission of the Lessee); (iv) pay or cause to be paid any and all other charges for water, heat, gas, electricity, sewer, and any and all other utilities, as well as any other expense, cost, charge or other fees with respect to the Leased Property; (v) pay or cause to be paid any and all reasonable Lessor fees and expenses that may arise in connection with the Leased Property, including, without limitation, expenses relating to transfer of title, and recording of documents; and (vi) pay or cause to be paid any and all other costs, fees, charges, and expenses related to the construction, operation, management, repair, rebuilding, use or occupancy of the Leased Property or of any portion thereof (collectively, "Other Consideration") during the Lease Term.

(c) Taxes. The Lessee agrees to pay, or to cause or require to be paid, any and all real property taxes, assessments, and governmental charges, including, without limitation, payments in lieu of taxes, if any, applicable to property included in the Leased Property that become due and payable during the Lease Term (collectively "Taxes"). The Lessee, at its own expense, shall have the right to contest the amount or validity of any Taxes by appropriate legal proceedings. The Lessor shall, upon request but at the sole cost and expense of the Lessee, join and cooperate with the Lessee in any such proceedings if the Lessee determines that it shall be necessary or appropriate for the Lessor to do so in order for the Lessee to prosecute such proceedings effectively.

(d) Closing Fees. The Lessee shall make the following payments on the Effective Date: (i) to the Lessor, a closing fee in the amount of One Hundred Thousand Dollars (\$100,00.00).

#### 4. CONSTRUCTION OF THE PROJECT.

(a) Construction of the Project; General Conditions. The Lessee shall cause the construction of the Project in accordance with Section 3(b) hereof. The Lessor and the Lessee acknowledge and agree that the Lessee shall pay the costs of the Project and that the Lessor shall have no obligation to construct the Project, to hold any construction contracts for the Project, or to pay the costs of construction of the Project. The Lessee shall have the right, at any time and from time to time during the Lease Term, to construct, reconstruct, rebuild, remodel, replace, and remove buildings and other improvements on the Project Site, including activities related to the Project, and to modify the contour of the Project Site; provided, however, that the cost thereof shall not be borne or paid by the Lessor, unless and except to the extent, if any, that the Lessor may agree in writing to pay those costs; provided, further, that Lessee shall not undertake any digging, drilling, excavating or other activities which disturb the subsurface of the Project Site without first considering the effect such activities might have on any subsurface contaminants.

On the Commencement Date, the Lessee shall provide the Lessor with a budget and cost

estimate for the Project. After the Commencement Date until the completion of the Project, upon request by the Lessor, the Lessee shall provide the Lessor with periodic updates on the construction of the Project.

On the Commencement Date, the Lessor shall provide the Lessee and its contractors with appropriate certificates (“Exemption Certificates”) to support the claim of an exemption from Ohio sales and uses taxes that might otherwise apply with respect to the purchase of building and construction materials incorporated into the Project that constitute improvements within the meaning of Ohio Revised Code Section 5739.02(B)(13). In the event the conveyance of title to the Project to the Lessor by the Lessee does not occur, the Lessee shall, on behalf of itself and its nominees, return the Exemption Certificates to the Lessee and, unless another exemption from sales and use taxes is available, remit to the Tax Commissioner of the State of Ohio any Ohio sales and uses taxes that would have been paid with respect to the purchase of building and construction materials incorporated into the Project that constitute improvements but for the Exemption Certificates. If the Lessee does not remit those sales and uses taxes due to the availability of another exemption, it will provide the Lessor with evidence of that exemption.

Upon completion of the Project, which shall be evidenced and established as provided in the Construction Services Agreement dated as of the date of this Project Lease between the Ohio Motorsports Park Real Estate Holdings LLC, an Ohio limited liability company, as construction services provider, and the Lessor, as the port authority (the “Construction Services Agreement”), the Lessee shall certify in writing the date on which the Project was complete (the “Completion Date”). On the Completion Date, the Lessee shall deliver, transfer, and convey title to the Project to the Lessor by a statutory form quit claim deed and bill of sale, with the Lessor to hold such title only for the duration of the Lease Term. Notwithstanding the Lessor’s Ground Lease interest in the Project Site and ownership of the Project during the Lease Term in accordance with the terms of this Lease, Lessee shall maintain, or cause to be maintained, insurance on the Project and the Project Site in accordance with Section 9 hereof.

(b) Easements and Dedications. In order to provide for the orderly development of the Leased Property, it may be necessary, desirable or required that street, dedications and water, sewer, gas, and electric line easements and other easements and dedications and similar rights, be granted or dedicated to governmental units, utility companies and other service providers over or within portions of the Leased Property. The Lessor shall, upon the request of the Lessee, join in executing and delivering such documents from time to time and throughout the Lease Term as may be appropriate, necessary or required for such purpose. Any such easements or dedications shall constitute Permitted Encumbrances.

(c) Zoning and Other Governmental Approvals. In the event that the Lessee reasonably deems it necessary or appropriate to obtain use, zoning or other permits for the Leased Property or any part thereof, or the use thereof, the Lessor agrees to execute from time to time, upon the request of the Lessee and at the cost and expense of the Lessee, such documents, petitions, applications and authorizations as may be necessary or appropriate for the purpose of obtaining conditional use permits, zoning and rezoning approval, or other necessary or appropriate governmental approvals,

so as to permit the Lessee to utilize the Leased Property for the purposes described in Section 1(b).

(d) Restrictions. The Lessor shall join with the Lessee from time to time, at the Lessee's request and at the Lessee's expense, with respect to the Lessor's interest in the Leased Property: (i) to grant, in the ordinary course of business, easements, licenses, rights-of-way, and other rights and privileges in the nature of easements, covenants, conditions or restrictions; (ii) to release, in the ordinary course of business, existing easements and appurtenances that benefit the Leased Property; and (iii) to execute and deliver any instrument necessary or appropriate to make or confirm such grants or releases to any person or entity.

## 5. OWNERSHIP OF PROJECT AND REMOVAL.

It is expressly understood and agreed that, subject to the terms and conditions of this Lease, the Lessee shall have a leasehold estate in the Leased Property, and the Lessee shall have the exclusive possession of and right to use, operate and maintain the Leased Property during the Lease Term. The Lessor shall have a leasehold interest in the Project Site and title to the Project, with title to the Project to be held in the name of the Lessor from and after the Completion Date until the expiration or earlier termination of the Lease Term. Upon the expiration or earlier termination of the Lease Term, Lessor shall convey title to the Project to Lessee by delivery to Lessee of a statutory form quit claim deed and bill of sale. Notwithstanding the foregoing, Lessee and, to the extent the Lessee has Leased all or a portion of the Leased Property or granted to any manager, licensee or other person the right to use all or a portion of the Leased Property, any such person subleasing or otherwise granted rights to use all or a portion of the Leased Property, shall have the right to remove any personal property that it places in, on or about the Leased Property. Lessor will cooperate with Lessee to provide Lessee's reasonable and appropriate non-disturbance agreements; provided, that the reasonable costs of the Lessor in preparing or reviewing any such agreements shall be paid by the Lessee. During the Lease Term, Lessee will have the sole and exclusive right to carry the value of and to depreciate improvements relating to the Project on its books.

Notwithstanding the foregoing, for federal, state and local income tax and financial accounting purposes, Lessee shall be treated as the legal and beneficial owner of the Leased Property, entitled to any and all benefits and bearing any and all burdens of ownership of the Leased Property. Without limiting the foregoing, the Lessor and the Lessee acknowledge and agree that the Lessee intends to depreciate its rights to and any interests in the Leased Property for purposes of federal income tax. The Lessor shall not have the right to, and shall not, depreciate the Leased Property.

## 6. MORTGAGES.

(a) The Lessee's Right to Encumber Without the Lessor's Consent. The Lessee may, at any time and from time to time during the Lease Term, encumber by mortgage or other security instrument by way of assignment or otherwise, the Lessee's interest under this Lease and the leasehold estate hereby created for any purpose. In no event shall the Lessee be permitted to

encumber the Lessor's interest in the Leased Property. If any mortgagee or leasehold mortgagee or potential mortgagee or leasehold mortgagee requests that the Lessor grant any express approvals with respect to its mortgage or leasehold mortgage or execute and deliver any documents in connection therewith, the Lessor will grant such approvals and execute and deliver such documents as long as such approvals or documents do not materially impair the Lessor's rights or materially increase its obligations hereunder; provided, that in no event will the Lessor be required to encumber or subordinate its reversionary interest in the Leased Property except as may be contemplated in the Ground Lease or by the Permitted Encumbrances and in no event will the Lessor be required to undertake any liability whatsoever for the obligations of the Lessee secured or to be secured by any mortgage or leasehold mortgage. Without limiting the generality of the foregoing, if any potential mortgagee or leasehold mortgagee requires that, in order to accept a mortgage or leasehold mortgage, this Lease be modified in any manner that would not materially impair the Lessor's rights or materially increase its obligations hereunder, the Lessor will execute and deliver the requested amendment.

(b) Assignment of Leases. The Lessee shall have the absolute right to collaterally assign any Lease relating to all or any part of the Leased Property to any mortgage lender or leasehold mortgage lender without the Lessor's consent.

## 7. MECHANICS' LIENS.

(a) Prohibition of Liens on Leased Property. Except for Permitted Encumbrances, the Lessee shall not suffer or permit any mechanics' liens, materialmen's or other liens to be filed against the Lessor's Ground Lease interest in the Leased Property. Except for this Lease, the Ground Lease, and the Permitted Encumbrances, the Lessor shall not sell or otherwise dispose of, or grant or convey or cause to be filed any mortgage lien, mechanics' lien, restriction or other lien or encumbrance against the Leased Property.

(b) Removal of Liens. If any such lien, restriction or other encumbrance shall be imposed upon the Lessor's interest in the Leased Property as a result of the Lessee's breach of its covenant in Section 7(a), the defaulting party (the "Defaulting Party") shall cause the same to be released or discharged within sixty (60) days thereafter; provided, however, that if the Defaulting Party, in good faith, desires to contest, or to permit another person to contest the same, the Defaulting Party shall be permitted to do so, but in such case the Defaulting Party shall cause the person so contesting, including any sublessee, to indemnify and save the other party hereto harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure upon any such lien, restriction or other encumbrance, cause the same to be discharged and removed prior to the execution of such judgment. In the event that the Defaulting Party shall fail to remove any such liens in the manner herein provided, then the other party hereto may, but shall not be obligated to, take such action or actions as it deems appropriate to cause their removal.

## 8. CONDEMNATION.

(a) Interest of Parties on Condemnation. In the event the Leased Property or any part

thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, then the interests of the Lessor and the Lessee in the award or consideration for such transfer and the effect of the taking or transfer under this Lease shall be as provided by this Section 8.

(b) Total or Partial Taking – Termination. Subject to the terms and conditions hereof, in the event the entire Leased Property is taken or so transferred or a part of the Leased Property is taken or so transferred, leaving the remainder thereof in such locations or in such form, shape or reduced size as to be not effectively and practicably useable in the sole discretion of the Lessee for the purpose of operation of the Leased Property as permitted by Section 1(b), this Lease and all of the right, title and interest of the Lessor and the Lessee hereunder shall cease on the date title to the Leased Property or part thereof vests in the condemning authority, and the entire proceeds of such condemnation shall be allocated to the Lessee.

(c) Partial Taking – Continuation. In the event of the taking or transfer of only a part of the Leased Property, leaving the remainder thereof in such locations and in such form, shape or size as to be used effectively and practicably in the sole discretion of the Lessee for the purpose of operation of the Leased Property as permitted by Section 1(b), as of the date title to such portion vests in the condemning authority, this Lease shall continue. In the event of any such partial taking or transfer, the entire proceeds thereof shall be allocated to the Lessee.

## 9. INSURANCE.

(a) Required Insurance Coverage. The Lessee shall continuously maintain, or cause to be maintained, Required Commercial General Liability Insurance Coverage and Required Property Insurance Coverage with respect to the Leased Property and the activities to be conducted therein or thereon. Lessor shall not be responsible for any liability whatsoever resulting from its Ground Lease interest in the Project Site and its ownership of the Project, and Lessor shall not be responsible for maintaining any insurance coverage or paying any insurance premium or loss deductible resulting from its Ground Lease interest in the Project Site and its ownership of the Project. Evidence of Required Commercial General Liability Insurance Coverage and Required Property Insurance Coverage shall be delivered to the Lessor on the Commencement Date and thereafter maintained current.

“Required Commercial General Liability Insurance Coverage” means comprehensive commercial general liability, property damage and indemnity insurance, including, without limitation, water damage, products and completed operations, so-called assumed and contractual liability coverage, and claims for bodily injury, death or property damage, naming Lessor as an additional insured on a primary and non-contributory basis, in a minimum amount of One Million Dollars (\$1,000,000) per person, One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) aggregate, in forms and with companies reasonably satisfactory to Lessor.



“Required Property Insurance Coverage” means commercially reasonable insurance (including, without limitation, self-insurance or alternative risk management programs) against loss or damage by fire, flood, and such other hazards, casualties and contingencies (including, without limitation, so-called builder’s risk insurance on an all risk basis) naming Lessor as an additional insured, in an amount equal to the full insurable value of the Project.

Insurance providing Required Commercial General Liability Insurance Coverage and Required Property Insurance Coverage shall, by endorsement, name the Lessor as an additional insured on a primary and non-contributory basis. Such insurance policies shall be obtained and maintained by means of policies with nationally recognized, responsible insurance companies qualified to do business in the State of Ohio, in conjunction with other companies through an insurance trust or other arrangements reasonably satisfactory to the Lessor. The insurance to be provided may be by blanket policies. Each policy of insurance shall provide expressly, by endorsement, that it shall not be subject to cancellation or substantial modification without not less than thirty (30) days’ advance written notice to the Lessor. Certificates evidencing any such policy shall be deposited with the Lessor promptly after the Commencement Date and from time to time thereafter to evidence the timely renewal or replacement of any then-existing insurance coverage.

All policies providing the Required Property Insurance Coverage shall contain a clause requiring all proceeds resulting from any claim for loss or damage in excess of Fifty Thousand Dollars (\$50,000) to be used to repair or rebuild the Leased Property. The proceeds of Required Commercial General Liability Insurance Coverage shall be applied toward the extinguishment or satisfaction of the liability with respect to which such insurance proceeds have been paid.

(b) Waiver of Subrogation. Every insurance policy carried pursuant to the requirements of this Section 9 with respect to the Leased Property shall (if it can be so written and does not result in a material additional premium) include provisions denying to the insurer subrogation rights against the other party to the extent such rights have been waived by the insured prior to the occurrence of damage or loss. The Lessor and the Lessee each hereby waives any rights of recovery against the other party for any direct damage or consequential loss insured by any such policy, if and to the extent such party is insured or, by the inclusion of deductible provisions therein or otherwise, to the extent of the proceeds paid under any such policy, whether or not the damage or loss shall have been caused by an act or omission of the other party.

## 10. ASSIGNMENT AND LEASE.

(a) The Lessee’s Right to Assign. During the Lease Term, (i) the Lessee may Lease the Leased Property in whole or in part, without the Lessor’s prior written consent, to any person or entity controlled by, controlling or under common control with the Lessee, and (ii) except for assignments to any person or entity controlled by, controlling or under common control with the Lessee, or in connection with any mortgage or leasehold mortgage, or to any purchaser of the Project Site (none of which shall require the consent of the Lessor, but shall require that written notice of such assignment be given to the Lessor), the Lessee shall have the right to assign this Lease, in whole or in part, but only with the Lessor’s prior written consent to the assignment,

which consent shall not be unreasonably withheld, conditioned or delayed. In each instance, the Lessee shall provide a true and complete copy of any such assignment or Lease to the Lessor. Any assignment shall be in form and substance satisfactory to the Lessor in its reasonable discretion, and shall include, without limitation, an unqualified assumption of the Lessee's duties and obligations hereunder. Upon any permitted assignment of this Lease, the assignor shall be released from the performance and observance of all obligations and all liabilities under this Lease except those obligations described in Section 13 hereof, and the Lessor shall look solely to the assignee for the performance and observance of the Lessee's obligations and liabilities hereunder except for those obligations described in Section 13 hereof, as to which Lessor may continue to look to the assignor for performance. Following a permitted assignment by the existing Lessee of this Lease, the assignee's right to further assign this Lease shall be subject to the same terms and conditions as those that are applicable to the initial Lessee hereunder.

(b) Foreclosure Sale Purchaser as Assignee. Any purchaser at a foreclosure sale of the Lessee's interest under this Lease shall be deemed to be an assignee accepting assignment thereof (though no consent of the Lessor shall be required for such assignment), from and after the effective date of the assignment, transfer, or conveyance of such interest and shall thereupon be bound to perform the provisions of this Lease to be performed by the Lessee hereunder. Aircraft storage agreements for terms of one (1) month or less between Lessee and its customers are not considered Leases for the purposes of this paragraph.

(c) Estoppel Certificates. Either the Lessee or the Lessor shall at any time and from time to time, upon not less than thirty (30) days' prior written notice by the other party, execute, acknowledge and deliver to such party a statement in writing certifying that this Lease is unmodified and in full force and effect (or, if there has been any modification thereof, that the same is in full force and effect as modified and stating the modification or modifications) and that, to the best of such party's actual knowledge (without any duty of inquiry) there are no defaults existing (or, if there is any claimed default, stating the nature and extent thereof); and stating the dates to which the Rent, the Other Consideration, and the Taxes have been paid. It is expressly understood and agreed that any such statement delivered pursuant to this Section 10(c) may be relied upon by any prospective assignee or sublessee of the Ground Lease interest of the Lessor or the leasehold estate of the Lessee, as the case may be, or any lender or prospective assignee of any lender on the security of the Leased Property or any part thereof.

## 11. LAW OF STATE.

This Lease shall be governed by and construed in accordance with the laws of the State of Ohio, without reference to principles of conflicts of law.

## 12. REPRESENTATIONS.

(a) The Lessor. The Lessor warrants and represents that (i) the Lessor has the power and authority to execute this Lease, and (ii) there is no agreement binding upon the Lessor, nor any litigation pending or threatened against the Lessor, that would prohibit the Lessor from

executing this Lease or performing the Lessor's obligations hereunder.

The Lessor hereby confirms its findings and determinations, which are based, in part, upon representations made by the Lessee, that upon execution of the Ground Lease and the conveyance of title to the Project to the Lessor by the Lessee (a) the Project will be a "port authority facility" within the meaning of that term as defined in Ohio Revised Code Section 4582.21(E), (b) the acquisition, development, construction, improvement, and operation of the Project will be consistent with the purpose of (i) Ohio Constitution Article VIII, Section 13, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State of Ohio, and (ii) Ohio Constitution Article VIII, Section 16, to encourage housing opportunities and leasing of housing; and (c) the Project will be consistent with the purposes of Ohio Revised Code Section 4582.21(B) to enhance, foster, aid, provide, or promote transportation and economic development within Lorain County, Ohio.

(b) The Lessee. The Lessee warrants and represents that (i) the Lessee has the power and authority to execute this Lease, (ii) Lessee is an Ohio limited liability company registered to transact business in the State of Ohio, and (iii) there is no agreement binding upon the Lessee, nor any litigation pending or threatened against the Lessee, that would prohibit the Lessee from executing this Lease or performing the Lessee's obligations hereunder.

### 13. LIABILITY AND INDEMNIFICATION

(a) General. The Lessee shall defend, indemnify, and hold harmless the Lessor and its permitted successors and assigns (including any member, officer, director or employee thereof) (collectively, the "Indemnified Parties" and each an "Indemnified Party") against, and agrees that the Indemnified Parties shall not be liable for, any and all liabilities, obligations, claims, damages, penalties, causes of action, costs, and expenses (including, without limitation, reasonable documented attorneys' fees and expenses) imposed upon, incurred by or asserted against an Indemnified Party (collectively, "Contract Liabilities" and each a "Contract Liability"), other than any Excluded Liability (as hereinafter defined), arising out of or resulting from, or in any way connected with the execution and delivery of this Lease or the Ground Lease, the consummation of the transactions provided for or contemplated by this Lease or the Ground Lease, all activities undertaken by the Lessor pursuant to this Lease or the Ground Lease in furtherance of the Project, all activities undertaken by the Lessee pursuant to this Lease or the Ground Lease in furtherance of the Project, including activities of the Lessee or any contractor or subcontractor of the Lessee to construct the Project, Lessee's or any sublessee's or assignee's use and occupancy of the Leased Property, any breach, violation, or nonperformance by the Lessee of any covenant, condition, provision or agreement set forth in this Lease or the Ground Lease that is required to be observed and performed by the Lessee, including any actions taken by Lessor to enforce such breach, violation, or nonperformance by the Lessee, any claim that sales and use taxes are payable with respect to any transaction with respect to this Lease, the Ground Lease, or the Leased Property, and any act, failure to act, or misrepresentation by the Lessee in connection with, or in the performance of any obligation on the Lessee's part to be performed, related to this Lease, the Ground Lease, or the Leased Property.

(b) Environmental Matters. The Lessee releases the Indemnified Parties from, agrees that the Indemnified Parties shall not be liable for, and indemnifies each Indemnified Party against, all charges, claims, costs, damages, expenses, fines, judgments, penalties, and remedial and removal action requirements (including without limitation, all documented and reasonable attorneys' fees and expenses), together with all costs incurred by an Indemnified Party in connection with any investigation or monitoring of site conditions or any clean-up, remedial, removal or restoration work by any governmental authority (collectively, "Environmental Liabilities" and each an "Environmental Liability") that arise out of or in connection with or result from:

(i) the presence in, on or under the Leased Property of any Hazardous Materials, or any release or discharge of any Hazardous Materials in, on, under, from or onto the Leased Property;

(ii) any activity, including, without limitation, construction, carried on or undertaken on or off the Leased Property, and whether by the Lessee or any other persons, in connection with the handling, treatment, removal, storage, decontamination, clean-up, transport or disposal of any Hazardous Materials that at any time are located or present in, on or under, or that at any time migrate, flow, percolate, diffuse or in any way move onto or under, the Leased Property;

(iii) the necessity under Environmental Laws to protect wildlife, aquatic species, vegetation, flora and fauna, including, without limitation, the need to take any mitigative action;

(iv) any allegation of lack of compliance by the Lessee with Environmental Laws, or any act or omission of the Lessee causing an environmental condition that requires remediation or would allow any governmental authority to impose a lien or encumbrance on the Leased Property; or

(v) any residual contamination in, on or under the Leased Property, or affecting any natural resources, and any contamination of any property or natural resources arising in connection with the generation, use, handling, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with applicable laws, regulations, codes and ordinances.

(c) Definitions. As used in this Section 13:

"Environmental Laws" means and includes the Resource Conservation and Recovery Act of 1976, ("RCRA") 42 U.S.C. §§ 6901-6987, as amended by the Hazardous and Solid Waste Amendments of 1984, the Comprehensive Environmental Response, Compensation and Liability

Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601-9657, (“CERCLA”), the Hazardous Materials Transportation Act of 1975, 49 U.S.C. §§ 1801-1812, the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2671, the Clean Air Act, 42 U.S.C. §§ 7401 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq., and all similar federal, state and local environmental laws, ordinances, rules, orders, statutes, decrees, judgments, injunctions, codes and regulations, and any other federal, state or local laws, ordinances, rules, codes and regulations relating to the environment, human health or natural resources or the regulation or control of or imposing liability or standards of conduct concerning human health, the environment, Hazardous Materials or the clean-up or other remediation of the Leased Property, or any part thereof, as any of the foregoing may have been from time to time amended, supplemented or supplanted.

“Excluded Liability” means each Contract Liability to the extent it is attributable to the gross negligence or willful misconduct of any Indemnified Party.

“Hazardous Material” means any substance, waste or material that is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, including petroleum, crude oil or any fraction thereof, petroleum derivatives, by products and other hydrocarbons and is or becomes regulated by any governmental authority, including any agency, department, commission, board or instrumentality of the United States, the State of Ohio or any political subdivision thereof and also including asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls (“PCBs”) and radon gas.

“Liability” means, collectively, any Contract Liability or any Environmental Liability.

(d) Upon notice of the assertion of, or any circumstance or matter that might be reasonably expected to give rise to, any Liability, the Indemnified Party shall give prompt written notice of the same to the Lessee.

(e) Upon receipt of written notice of the assertion of, or a matter or circumstance that might reasonably be expected to give rise to, a Liability, the Lessee shall have the sole right and duty to assume, and shall assume, the defense thereof, with full power and exclusive authority to litigate, compromise or settle the same in its sole discretion; provided, that the Indemnified Party shall have the right to approve any obligations imposed upon it by compromise or settlement of any Liability or in which it otherwise has a material interest, which approval shall not be unreasonably withheld, unreasonably conditioned or unreasonably delayed.

If at any time an Indemnified Party becomes dissatisfied, in their reasonable discretion, with the selection of counsel by the Lessee, a new mutually agreeable counsel shall be retained at the expense of the Lessee.

Each Indemnified Party shall have the right to employ counsel in any such action at its own expense; provided, however, that such Indemnified Party shall have the right to employ counsel in any such action and the fees and expenses of such counsel shall be at the expense of the Lessee if:

(i) the employment of counsel by such Indemnified Party and agreement to pay such counsel's reasonable fees and expenses has been authorized by the Lessee in writing, (ii) there reasonably appears that there is a conflict of interest between the Lessee and the Indemnified Party in the conduct of the defense of such action (in which case the Lessee shall not have the right to direct the defense of such action on behalf of the Indemnified Party), (iii) the Lessee shall not in fact have employed counsel to assume the defense of such action, or (iv) the action is a claim that sales and use taxes are payable with respect to any transaction in connection with this Lease, the Ground Lease, or the Leased Property. The obligations of the Lessee under this Section 13(e) shall survive the termination of this Lease and shall be in addition to any other rights, including without limitation, rights to indemnity which any Indemnified Party may have at law, in equity, by contract or otherwise.

The Lessee shall not be liable for any settlement of any Liability effected without its written consent, but if settled with the written consent of the Lessee, or if there be a final judgment for the plaintiff in an action, the Lessee agrees to indemnify and hold harmless the Indemnified Party, except only to the extent of any Excluded Liability.

(f) The Lessor agrees to cooperate with the Lessee and its representatives in obtaining, signing and/or filing any requisite governmental approvals, consents, agreements, waivers, permits, or deed notifications/restrictions which may be required related to the Lessee's use of the Leased Property, and which will be obtained at the Lessee's sole expense.

(g) The Lessee shall cause any sublessee of any portion of the Leased Property, in each case other than the Lessee, to indemnify, defend and save the Lessor harmless from and against all liabilities, judgments, claims, demands, suits, actions, losses, penalties, fines, damages, costs and expenses, including reasonable attorneys' fees, of any kind or nature whatsoever, due to or arising out of or from any breach, violation or nonperformance of any covenant, condition, provision or agreement in this Lease or which has been set forth and contained in a Lease on the part of the Lessee to be fulfilled, kept, observed and performed on behalf of the Lessee, except to the extent due to or arising out of or from any gross negligence or willful misconduct of the Lessor. The obligations of the Lessee under this Section 13(g) shall survive the termination of this Lease and shall be in addition to any other rights, including without limitation, rights to indemnity which the Lessor may have at law, in equity, by contract or otherwise.

(h) The Lessor shall not have any obligation to pay any moneys with respect to the acquiring, constructing, developing, equipping, improving, installing, or financing of the Project.

#### 14. DEFAULT.

The occurrence of any one or more of the following events shall be a default and breach of this Lease by Lessee:

(a) Lessee shall fail to pay any Rent, Other Consideration, Taxes, or any other money due hereunder within ten (10) days after notice from Lessor that such payment is delinquent;

(b) Lessee shall fail to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this Lease for a period of thirty (30) days after notice thereof from Lessor; provided, however, that if the term, condition, covenant or obligation to be performed by Lessee is of such nature that the same cannot reasonably be performed within such thirty (30) day period, no default shall be deemed to have occurred if Lessee commences such performance within said thirty (30) day period and thereafter diligently undertakes to continue such performance until the default is cured;

(c) A trustee or receiver shall be appointed to take possession of substantially all of Lessee's assets in, on or about the Leased Property or of Lessee's interest in this Lease (and Lessee does not regain possession within sixty (60) days after such appointment); Lessee makes an assignment for the benefit of creditors; or substantially all of Lessee's assets in, on or about the Leased Property or Lessee's interest in this Lease are attached or levied upon under execution (and Lessee does not discharge the same within sixty (60) days thereafter);

(d) A petition in bankruptcy, insolvency, or for reorganization or arrangement is filed against Lessee pursuant to any federal or state statute, and Lessee fails to secure a stay or discharge of such petition within ninety (90) days after the filing of the same; or

(e) Lessee files a petition in bankruptcy or insolvency or for reorganization or arrangement pursuant to any federal or state statute.

Upon the occurrence of any event of default, Lessor shall have the following rights and remedies, in addition to those allowed by law, any one or more of which may be exercised without further notice to or demand upon Lessee:

(i) To the extent permitted by and subject to any applicable law, Lessor may reenter the Leased Property and cure any default of Lessee, in which event Lessee shall reimburse Lessor as additional rent for any reasonable cost and expenses which Lessor may incur to cure such default;

(ii) Lessor may terminate this Lease as of the date of such default, in which event Lessor shall convey title to the Project to Lessee by delivery to Lessee of a statutory form quit claim deed and bill of sale, and upon such conveyance this Lease shall terminate forthwith.

The occurrence of the event described in this paragraph shall be a default and breach of this Lease by Lessor. Lessor shall fail to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this Lease for a period of thirty (30) days after notice thereof from Lessee; provided, however, that if the term, condition, covenant or obligation to be performed by Lessor is of such nature that the same cannot reasonably be performed within such thirty (30) day period, no default shall be deemed to have occurred if Lessor commences such performance within said thirty (30) day period and thereafter diligently undertakes to continue such performance until the default is cured. Upon the occurrence of such

event of default by Lessor, Lessee may terminate this Lease as of the date of such default, in which event Lessor shall convey title to the Project to Lessee by delivery to Lessee of a statutory form quit claim deed and bill of sale, and upon such conveyance this Lease shall terminate forthwith.

15. GENERAL PROVISIONS.

(a) Provisions Run with the Land. All of the provisions of this Lease shall be deemed as running with the land.

(b) No Waiver of Breach. No failure by either the Lessor or the Lessee to insist upon the strict performance by the other of any covenant, agreement, term or condition of this Lease, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Lease, but each and every covenant, condition, agreement and term of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach. No waiver of any breach shall in any event be effective unless the same is in writing, signed by the non-breaching party, and then such waiver shall be effective only in the specific instance and for the specific purpose for which it is given.

(c) Time of Essence. Time is of the essence of this Lease and of each provision hereof.

(d) Computation of Time. The time in which any act provided by this Lease is to be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, or legal holiday, in which event the last day also shall be excluded.

(e) Unavoidable Delay; Force Majeure. If either party shall be delayed or prevented from the performance of any act required by this Lease by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws, or regulations or other cause, without fault and beyond the reasonable control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay; and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, provided, however, nothing herein shall excuse the Lessee from the prompt payment of any Rent, Other Consideration, and Taxes required to be paid by the Lessee, except as may be otherwise expressly provided in this Lease.

(f) Successors in Interest. All of the terms, covenants, conditions, and restrictions in this Lease shall inure to the benefit of and shall be binding upon the successors in interest of the Lessor and the Lessee and their permitted transferees, subtenants, licensees and assigns.

(g) Entire Agreement. This Lease contains the entire agreement of the Lessor and the Lessee with respect to the matters covered by this Lease, and no other agreement, statement or promise made by either the Lessor or the Lessee, or any employee, officer or agent of either such party that is not contained in this Lease shall be binding or valid.



(h) Net Lease. It is understood and agreed that this Lease is intended to be a net lease. It is the intention of the parties that the Rent shall be payable to the Lessor without set-off whatsoever.

(i) Partial Invalidity. If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void or enforceable, the remainder of the provisions contained herein shall remain in full force and effect and shall in no way be affected impaired or invalidated.

(j) Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent between the Lessor and the Lessee, or of partnership or of joint venture or of any association between the Lessor and the Lessee, and neither the method of computation of Rent nor any acts of the Lessor or the Lessee shall be deemed to create any relationship between the Lessor and the Lessee other than the relationship of the lessor and the lessee.

(k) Interpretation and Definitions. The language in all parts of this Lease shall in all cases be simply construed according to its fair meaning and not strictly for or against the Lessor or the Lessee. Unless otherwise provided in this Lease, or unless the context otherwise requires, the following definitions and rules of construction shall apply to this Lease:

(i) Number and Gender. The neuter gender includes the neuter, feminine and masculine genders, the singular number includes the plural and the word "person" includes corporation, partnership, firm or association wherever the context so requires; and

(ii) Mandatory and Permissive. "Shall," "will" and "agrees" are mandatory; "may" is permissive.

(l) Captions. Captions of the articles, sections and paragraphs of this Lease are for convenience and reference only and the captions shall not in any way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease.

(m) Terms Include Extensions. All references to the "Lease Term" shall include any extensions thereof.

(n) Parties. Parties shall include the Lessor and the Lessee named in this Lease.

(o) Interest. Any amount accruing to the Lessor or the Lessee under the provisions of this Lease that shall not be paid when due shall bear interest at the rate of ten percent (10%) per annum from the date written notice specifying such nonpayment is served on the defaulting party until paid.

(p) Modification. This Lease is not subject to modification except in writing signed by the Lessor and the Lessee, and during the Lease Term.

(q) Notices; Method and Time. All Rent, notices, demands or requests from one party to another shall be in writing and deemed given if delivered personally, or if deposited in the U.S. mail, certified mail, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, or via facsimile with transmission verified with the original of such notice sent as above described, and in any case addressed as follows:

Lessor:

Lorain Port Authority  
319 Black River Lane  
Lorain, Ohio 44052  
Attention: Interim Executive Director

With a Copy To:

Colin Kalvas, Esq.  
Bricker Graydon LLP  
100 South Third Street  
Columbus, Ohio 43215

Lessee:

Xell Real Estate Holdings LLC  
c/o [ ]  
[ ]  
Attention: [ ]

With a Copy To:

[ ]  
[ ]  
[ ]  
[ ]  
Attention: [ ]

(r) Broker's Commissions. The Lessor and the Lessee each represents and warrants that there are no claims for broker's commissions or finder's fees in connection with the execution of this Lease, and each such party agrees to indemnify (or to cause any sublessee, including the Lessee, to indemnify) the other party against all liabilities arising from any such claim.

(s) Liability Limited. It is expressly understood and agreed by and between the Lessor, the Lessee, and their respective successors and assigns that nothing herein contained shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, officer, agent or employee of the Lessor or the Lessee in other than his or her official capacity, and neither the members of the Board of Directors of the Lessor or the Lessee nor any officer, agent or employee of the Lessor or the Lessee shall be subject to any personal liability or accountability by reason of the stipulations, obligations or agreements contained in this Lease. Any obligation of the Lessor created by or arising out of this Lease shall never constitute a general obligation or debt of, or a pledge of the general credit of, the Lessor, and the liability, if any, of the Lessor hereunder for the performance of any obligation under this Lease and the satisfaction of any liability arising therefrom shall be strictly limited to the right, title and interest of the Lessor in the Leased Property, any proceeds from the Lessor's use, lease, sale or encumbrance thereof, and any condemnation awards or construction loss proceeds with respect to the Leased Property. In furtherance of the foregoing and not in limitation thereof, and notwithstanding anything to the contrary herein, this Lease does not and shall not constitute a debt, or a pledge of the faith and credit, of the State of Ohio or any political subdivision of the State of Ohio, including the Lessor, and nothing herein gives the Lessee or any other party, and they do not and shall not have the right to have excises or taxes levied by the General Assembly or the taxing authority of any political subdivision of the State of Ohio, including the Lessor, for the payment of any amount due under this Lease.

(t) Recording. The parties shall, concurrently with the execution of this Lease, execute, acknowledge, and record a Memorandum of Project Lease, the form of which is attached hereto as Exhibit B.

(u) Inspection. Lessee shall permit Lessor, at all reasonable times upon two business days' prior notice, to enter upon and inspect the Leased Property. Lessor shall use reasonable efforts to minimize the interference with Lessee's and/or any sublessee's or assignee's operations and shall comply with all Lessee/sublessee/assignee rules and regulations, including, without limitation, all security and traffic requirements and shall repair or replace any damage caused by Lessor's accessing the Property.

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IN WITNESS WHEREOF, the parties hereto, by their duly authorized officers, have each executed this Lease as of the day and year first above set forth.

LESSOR:

LORAIN PORT AUTHORITY

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF OHIO            )  
                                  )    SS:  
COUNTY OF LORAIN    )

The foregoing instrument was acknowledged before me this \_\_\_ day of [\_\_\_\_], 2025, by [\_\_\_\_], the [\_\_\_\_] of the Lorain Port Authority, an Ohio port authority and political subdivision, on behalf of the port authority.

\_\_\_\_\_  
Notary Public

[SEAL]



FISCAL OFFICER'S CERTIFICATE

The undersigned, Secretary and Fiscal Officer of the Lessor, hereby certifies that the moneys required to meet the obligations of the Lessor during the year 2025 under the foregoing Lease have been lawfully appropriated by the Legislative Authority of the Lessor for such purposes and are in the treasury of the Lessor or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

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Assistant Secretary and Fiscal Officer  
Lorain Port Authority

Dated: [\_\_\_\_], 2025

EXHIBIT A  
PROJECT SITE  
Legal Description  
[See Attached]

EXHIBIT B

MEMORANDUM OF PROJECT LEASE

**MEMORANDUM OF PROJECT LEASE**

**THIS MEMORANDUM OF PROJECT LEASE** (Rauch & Lang Carriage Company Project), dated as of [\_\_\_\_], 2025 by and between the Lorain Port Authority, a port authority and body corporate and politic organized and existing under the Constitution and the laws of the State of Ohio (the “Lessor”), Xell Real Estate Holdings LLC (the “Lessee”), and who represent as follows:

1. The name and address of the Lessor is the Lorain Port Authority, 319 Black River Lane, Lorain, Ohio 44113.
2. The name and address of the Lessee is Xell Real Estate Holdings LLC, tax mailing address at c/o [\_\_\_\_], Lorain, Ohio 44114, Attention: [\_\_\_\_].
3. Lessor and Lessee entered into a certain Project Lease (Rauch & Lang Carriage Company Project) dated as of [\_\_\_\_], 2025 (the “Project Lease”) with respect to certain demised premises further described on **EXHIBIT A** (the “Project Site”) attached hereto and made a part hereof by this reference. Lessee claims title to the real property pursuant to a certain vesting deed dated [\_\_\_\_], and recorded as Instrument No. [\_\_\_\_] in the Lorain County, Ohio Fiscal Officer’s Office.
4. A certain Project (as defined in the Project Lease) will be constructed on the Project Site.
5. The term of the Project Lease with respect to the Project Site shall commence on [\_\_\_\_], 2025, and will expire on the date occurring forty (40) years after the Completion Date (as defined in the Project Lease); provided, the Project Lease is subject to earlier termination as described therein.
6. The Project Lease is hereby incorporated by reference in and made a part of this Memorandum of Project Lease as fully as if it were set forth herein in its entirety. All parties having or acquiring an interest in the property referred to herein are hereby given notice of all provisions, covenants and obligations contained in the Project Lease.



7. Notwithstanding any other provision of the Project Lease or this Memorandum of Project Lease none of the obligations of Lessor created by and no requirement imposed on Lessor created by or arising out of the Ground Lease, the Project Lease, or this Memorandum of Project Lease shall ever constitute a general debt of Lessor or give rise to any general pecuniary liability of Lessor. The obligations of and requirements imposed on the Lessor under the Lease and hereunder shall be payable solely and exclusively from the Rents to be received by the Lessor from the Lessee pursuant to the Project Lease.
8. This Memorandum of Project Lease may be executed in counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto, by their duly authorized officers, have each have executed this Memorandum of Project Lease as of the day and year first above set forth.

LESSOR:

LORAIN PORT AUTHORITY

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF OHIO                    )  
  )    SS:  
COUNTY OF LORAIN            )

The foregoing instrument was acknowledged before me this \_\_\_ day of [\_\_\_\_\_], 2025, by [\_\_\_\_\_], the [\_\_\_\_\_] of the Lorain Port Authority, an Ohio port authority and political subdivision, on behalf of the port authority.

\_\_\_\_\_  
Notary Public

[SEAL]



## FISCAL OFFICER'S CERTIFICATE

The undersigned, Secretary and Fiscal Officer of the Lorain Port Authority, hereby certifies that the moneys required to meet the obligations of the Authority during the year 2025 under this instrument have been lawfully appropriated by the Board of Directors of the Authority for such purposes and are in the treasury of the Authority or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

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Assistant Secretary and Fiscal Officer  
Lorain Port Authority

Dated: [\_\_\_\_], 2025

EXHIBIT A

PROJECT SITE

Legal Description

[Please See Attached]