

Administrative Services Committee  
November 19, 2018  
Minutes

Ed Brady called the meeting to order at 4:30pm

Committee Members Present: Ed Brady, Kim Chamberland, Lisa Evans  
Staff: Michael Doss, City Manager; Lori Pegg, Community Services Manager; Pam Holbrook, Assistant City Manager; Pat Wirthlin, Finance Director  
Visitors: Rachel Richardson, Christopher Hicks

**High Street 4 Lot Residential Design Development**

Phil Ditchen has requested that the property located at 308 High Street be rezoned from R-3 Single Family Residential District to R-3 Single Family Residential District with a Planned Development Overlay. Planning Commission held a Public Hearing on October 10, 2018 and City Council held a Public Hearing on November 8, 2018. There were no questions or concerns at either of these hearings.

Per City Charter Section 12.02, Ordinances shall be proposed by committee action only. Staff is requesting that this committee consider requesting that the Law Director prepare and Ordinance to adopt the request for a Planned Development Overlay to the property located at 308 High Street.

Mr. Brady noted that there had been several public hearings and that no issues had been raised during those meetings. Ms. Holbrook added that she had a call from a resident today to talk about any stormwater runoff and she addressed that. He also asked if the City could require the properties to be sold and not used as rental property. Ms. Holbrook stated that it is too late in the process to add any conditions to the development.

Mr. Brady asked the committee members and staff if there were any concerns or additional questions. No one on the committee had any additional questions and they all agreed that it was a great project and a nice addition to High Street.

Mr. Brady made a motion, which was seconded by Ms. Chamberland. All three voted yes.

***The committee agreed to make a motion authorizing the law director to prepare an ordinance Rezoning .596 Acres, more or less, of Real Property From R-3 Single Family Residential District to R-3 Single Family Residential District with Planned Development Overlay.***

**Cooperative Agreement**

Mr. Doss presented a proposed Cooperative Agreement by and among the City of Milford, FC Training Facility, LLC, Clermont County CVB and Clermont County Port Authority. This cooperative agreement, if approved, will serve several purposes. Most importantly, it will serve as the primary agreement among the aforementioned parties relating to the FCC Training

Facility, LLC. Second, unlike the original Development Agreement which anticipated a separate agreement between the City and the Port Authority, the Cooperative Agreement now includes the terms relating to the contribution of the land to the Port Authority and the further commitment of the Port Authority to lease the training facility to FCC Training Facility, LLC. Third, due to the timing requirements, FCC Training Facility, LLC went ahead and acquired the land for the training facility. Once the City is able to issue its debt, the Cooperative Agreement provides that the City will reimburse to FCC Training Facility, LLC for \$3.5 million of its land acquisition cost---which was the City's original commitment in the Development Agreement. And, finally, the Cooperative Agreement extends the deadline by which the City must issue its debt, which of course, is subject to approval by the City's bond counsel.

Mr. Brady asked if all parties involved are in basic agreement with this document and Mr. Doss noted that all of the legal counsels have worked together to draft this agreement. Mr. Doss stated that the original agreement noted that the City would purchase the property and convey it to the Port Authority. The FCC went ahead and purchased the property, so the City will essentially reimburse them for their purchase of the property.

Mr. Brady asked the other committee members and staff if there were any other concerns or comments. There were no additional concerns or comments and all committee members were in agreement to proceed.

Mr. Brady made a motion, which was seconded by Ms. Chamberland and all three voted yes.

***The committee agreed to make a motion authorizing the Law Director to prepare an ordinance authorizing the City Manager to enter into a Cooperative Agreement between the City of Milford, Clermont County Convention & Visitor's Bureau, Clermont County Port Authority and FCC Training Facility, LLC.***

**Additional Business appropriate to come before the committee**

Mr. Doss noted that we need to schedule another committee meeting for amendments to appropriations. The committee discussed a time for the next committee meeting and agreed on November 29<sup>th</sup> at 4:00pm. The agenda will be distributed once it is finalized.

Mr. Brady made a motion to adjourn that was seconded by Ms. Evans and three voted yes.

The meeting was adjourned at 4:39pm

Respectfully Submitted,

Lori Pegg

## **PUBLIC NOTICE**

### **AGENDA**

#### **ADMINISTRATIVE SERVICES COMMITTEE MEETING**

*Chair: Ed Brady*

*Committee Members: Lisa Evans and Kim Chamberland*

**Monday, November 19, 2018 at 4:30 p.m.**

**Council Chambers, 745 Center Street, Milford, Ohio 45150**

- Discuss High Street 4 Lot Residential Development
- Cooperative Agreement between the City of Milford, Clermont County Convention and Visitors Bureau, Clermont County Port Authority and FC Cincinnati Training Facility, LLC
- And all additional matters that may properly come before the committee

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**PROFESSIONAL SPORTS FACILITY  
COOPERATIVE AGREEMENT**

**Among**

**CITY OF MILFORD, OHIO**

**And**

**CLERMONT COUNTY OHIO CONVENTION & VISITORS BUREAU, INC.**

**And**

**FCC TRAINING FACILITY, LLC**

**And**

**CLERMONT COUNTY PORT AUTHORITY**

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**Dated as of November \_\_, 2018**

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**THIS PROFESSIONAL SPORTS FACILITY COOPERATIVE AGREEMENT** (this "Cooperative Agreement") is made and entered into as of the 9<sup>th</sup> day of November, 2018, among the **City of Milford, Ohio**, an Ohio municipal corporation, with an address of 745 Center Street, Suite 200, Milford, Ohio 45150 (the "City"), the **Clermont County Ohio Convention & Visitors Bureau, Inc.**, a non-profit corporation existing under the laws of the State of Ohio, with an address of P.O. Box 100, 410 East Main Street, Batavia, Ohio 45103 (the "CVB"), the **Clermont County Port Authority**, an Ohio port authority and political subdivision (the "Port Authority"), and **FCC TRAINING FACILITY, LLC**, an Ohio limited liability company, with an address of 14 E. 4<sup>th</sup> Street, Third Floor, Cincinnati, Ohio 45202 (the "Developer" and together with the City, the CVB, and the Port Authority, the "Parties"), witnesseth:

**RECITALS:**

1. Fussball Club Cincinnati, LLC (the "Team"), through its affiliate the Developer, seeks to develop a facility to support Team operations, including but not limited to, personnel training, development, management, and merchandising operations, along with associated tournaments, seminars and similar events (the "Project"). The Team and Developer desire the location of this practice facility to be on an approximately 20 acre tract of land located within the boundaries of the City (such land being referred to herein as the "Property" and is more fully described in Exhibit A which is attached hereto and made a part hereof) and believe that the Project will result in the creation of new jobs and employment opportunities in furtherance of commerce within the City.
2. The City and the CVB have heretofore determined, and now with the Port Authority, hereby further determine that the construction of the Project is in the best interests of their respective constituencies and will enhance, foster, aid, and promote economic development, tourism, and public recreational opportunities within their respective jurisdictions.
3. The City intends to support the Project by (a) providing for the issuance of certain obligations (as more fully described herein and particularly in Section 2.A. and referred to herein as the "City Securities") the proceeds of which will be used, together with other available monies described herein, to pay the costs of acquiring the Property and (b) contributing the Property to the Port Authority.
4. The Project constitutes a "professional sports facility" for purposes of ORC Section 5739.09(A)(12) and the Parties intend for the Project to constitute a "port authority facility" for purposes of ORC Section 4582.21(E).
5. The Developer has entered into an Agreement Relating to Real Property Tax Exemption and Obligation to Make School Board Payments with the Milford Exempted Village School District (the "School District") dated on or about July 1, 2018 providing, in pertinent part, for compensation to be paid to the School District in an amount set forth therein if the Project is exempt from taxation under ORC Section 4582.46, (such agreement being referred to herein as the "School Compensation Agreement").

6. In order to support the development of the Project, Clermont County, Ohio (the "County") has, by its Resolution No. 137-18, exercised its authority under ORC Section 5739.09(A)(12) to increase the rate of its existing transient occupancy tax (as such tax has been previously implemented pursuant to ORC Section 5739.09 and is referred to herein as the "Baseline Lodging Tax") by one percent (1%) (the proceeds of such increase shall be referred to herein as the "Incremental Lodging Tax") for the purposes of paying the costs of constructing, improving, and maintaining the Project (which includes but is not limited to the acquisition of the related Property) and paying for expenses considered necessary by the CVB to promote travel and tourism with respect thereto (such incremental 1% tax being more fully defined in Section 3.A), as well as authorizing the execution of a Cooperative Agreement by and among the City, the County, and the CVB dated as of September \_\_, 2018 (the "County Cooperative Agreement"), wherein the County has pledged to remit the receipts generated by the Incremental Lodging Tax to the CVB, which in turn has pledged to remit the receipts of the Incremental Lodging Tax to the City to defray the costs of the City Obligations.

7. Subsequent to the Parties' and the County's prior determinations and agreement, events have transpired which have necessitated a determination by the Developer that to facilitate the timely development of the Project, the Developer would need to acquire the Property prior to the issuance of the City Securities and provide for the constructive sale of the Property to the City and for the conveyance of the Property from the Developer to the City and then from the City to the Port Authority.

8. Following conveyance of the Property to the Port Authority, it is further anticipated that the Port Authority will thereafter lease the Property to the Developer in the manner more fully set forth herein. The Developer will construct the Project on behalf of the Port Authority. The Parties intend for the Project to be exempt from taxation pursuant to ORC Sections 4582.46 and 5739.02(A)(13).

9. In recognition of the foregoing recitals and the facts and circumstances preceding the execution of this Cooperative Agreement, the Parties intend to cooperate in good faith with one another pursuant to the terms of this Cooperative Agreement to effect the acquisition and necessary conveyances of the Property and the construction, equipping, and maintenance of the Project.

**NOW, THEREFORE**, in consideration of the foregoing, the promises contained herein, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### **SECTION 1. COOPERATIVE AGREEMENT**

For the reasons set forth in the Recitals hereto, which Recitals are incorporated herein by reference, the City, the CVB, the Port Authority, and the Developer have determined to cooperate with each other in order to effect the acquisition and required conveyances of the Property and the construction, equipping, and maintenance of the Project. This Cooperative Agreement, including the Exhibits hereto, all of which are incorporated herein by reference, is intended to and shall be an agreement by the Parties hereto to cooperate in the placing into effect of the foregoing, and the agreements contained herein are intended to and shall be construed as agreements to further effect cooperative action and safeguard the respective interests of the Parties.

## SECTION 2. DEVELOPER ACTION

A. **Acquisition and Conveyance of Property.** The Developer has consummated the acquisition of the Property for the price of FIVE MILLION DOLLARS (\$5,000,000) pursuant to various purchase agreements on or prior to the date of this Cooperative Agreement. On or immediately after the date of this Cooperative Agreement, the Developer will convey the Property to the City by quit-claim deed in the form attached hereto as Exhibit B for a purchase price equal to FIVE MILLION DOLLARS (\$5,000,000) (the "Purchase Price"), which Purchase Price will consist of and be paid to Developer in accordance with Section 3.A.(iii) hereof.

B. **Construction of the Project.** The Developer shall enter into a construction manager at risk agreement (the "CMAR Agreement") with the Port Authority pursuant to which the Developer will construct, at its sole cost and expense, the Project, in all events in accordance with the zoning and building code requirements of the City. The Developer shall have the right under the CMAR Agreement and the Project Lease (defined *infra*) to design the Project (including but not limited to its site plan and architecture) to the specifications of the Team.

C. **Leasing and Operation of the Project.** The Developer shall enter into a project lease agreement (the "Project Lease") with the Port Authority pursuant to which the Developer will lease the Project and the Property (collectively, the "Leased Premises") from the Port Authority for a period of 360 days, at an annual rent of \$1.00, and subject to a period of renewal terms exercisable annually with the mutual consent of the Port Authority and the Developer in an amount mutually agreeable to the Developer and Port Authority; provided, however, that such Project Lease shall not contain any provision which in the City's reasonable judgment would impair the City's ability to enforce its rights set forth in Section 5.A of this Cooperative Agreement; and provided further, such Project Lease will provide that, upon termination of such Project Lease for any reason, including reason of default, the Leased Premises will be transferred by the Port Authority to the Developer for an amount equal to (i) \$1.00, plus (ii) all expenses of the Port Authority incurred in effecting such transfer, including but not limited to reasonable attorneys' fees, plus (iii) the amount necessary to retire or otherwise defease any lease revenue bonds issued by the Port Authority in connection with the financing of the Project.

D. **Insurance.** For the term of the Project Lease, the Developer will maintain reasonable levels of insurance on the Leased Premises.

E. **Sponsored Events.** The Team, Developer (if appropriate) and the CVB may, at the option of the CVB, enter into an agreement setting forth the Team's commitment to host and sponsor certain tournaments, seminars, clinics and similar events.

F. **Indemnity Agreements.** Simultaneously with the commencement of the Project Lease term, the Developer will provide indemnity agreements to the CVB and the City in form and substance substantially similar to the indemnity agreement the Developer will provide to the Port Authority in connection with the Project Lease.

### SECTION 3. CITY ACTIONS; ISSUANCE OF CITY SECURITIES

#### A. Issuance of City Securities, Payment of Purchase Price, and Subject to Appropriation Commitment.

(i) Within one hundred fifty (150) days of the date of this Cooperative Agreement, the City will take all necessary and reasonable steps to issue the City Securities in the principal amount described below which will, together with monies originally provided by the Developer as described below, provide sufficient monies to pay the costs of acquiring the Property (such costs being the "Public Project Costs"). The City Securities, hereinafter the "City Securities", will be issued in an amount equal to the lesser of (i) the Public Project Costs, or (ii) an amount sufficient to yield net proceeds of \$3,500,000 for application towards the Public Project Costs. The City Securities are expected to be payable solely from the City's lawfully available, nontax revenues. The issuance of the City Securities will be subject to additional legislation of the City, receipt of a favorable opinion of counsel to the City, and the availability of a market for the securities.

(ii) The difference between the \$3,500,000 of net proceeds of the City Securities and the Purchase Price shall be, for purposes of this Cooperative Agreement, the "Remainder Public Project Costs".

(iii) Upon conveyance of the Property to the City, the City shall constructively pay the Purchase Price to Developer in the following manner:

(a) Upon the issuance of the City Securities, the City shall pay to Developer an amount equal to the lesser of (i) the net proceeds of the City Securities after payment of costs of issuance and reserve funds necessary for the issuance thereof, and (ii) THREE MILLION, FIVE HUNDRED THOUSAND DOLLARS (\$3,500,000).

(b) On or before the issuance of the City Securities, the City and the Developer will enter into a Subject to Appropriation Agreement (the "Appropriation Obligation" and together with the City Securities the "City Obligations") pursuant to which the City will agree to make certain payments to the Developer no less frequently than annually, but solely from the Incremental Lodging Tax received pursuant to the County Cooperative Agreement remaining after (i) reimbursement of the City for annual debt service on the City Securities for the most recent calendar year and (ii) payment of any Accrued Deficit (as defined infra) outstanding at the time of such payment; provided, however, that the aggregate of all annual payments to the Developer shall not exceed an amount equal to the lesser of (i) the Remainder Public Project Costs, and (ii) ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000). The Parties acknowledge and agree that the City's obligations under that Subject to Appropriation Agreement will be subject to an annual appropriation by the City's City Council.

The Parties acknowledge and agree that the City shall have no obligation to use any monies other than those described in Section 3.A.(iii) to provide for the payment of the Property. The Parties further acknowledge that the issuance of the City Securities will be the subject of separate legislation of the City which, as of the date of this Cooperative Agreement, has not yet been passed.



(iv) For purposes of this Section 3, "Accrued Deficit" shall mean any portion of the aggregate principal, interest, redemption premium and any other debt service charges which the City paid from its nontax revenues in any preceding calendar year in respect of the City Securities which has not yet been reimbursed from the Incremental Lodging Tax during the term of the City Securities.

B. **Contribution to the Port Authority.** Upon its receipt of the Property from the Developer, and by no later than December 31, 2018, the City will contribute the Property to the Port Authority by quit-claim deed in the form attached hereto as Exhibit C.

C. **Zoning.** The City will, to the extent permitted by law and consistent with the City's Codified Ordinances, cooperate with the Developer and the Port Authority to ensure that the Property is properly zoned for the Project (including but not limited to zoning allowing for retail space within the Project) and that the Project have signage viewable from Interstate 275.

#### **SECTION 4. CVB CONTRACT FOR CONSTRUCTION OF PROFESSIONAL SPORTS FACILITY.**

A. **Professional Sports Facility.** The CVB has previously entered into that certain Professional Sports Facility Development Agreement with the Developer dated as of August 1, 2018 (the "**CVB Development Agreement**") in order to fulfill the requirement of ORC Section 5739.09(A)(12) that it contracts for the construction, improvement, or maintenance of a professional sports facility that is or will be located on property acquired, in whole or in part, with revenue from the Incremental Lodging Tax. For the avoidance of doubt, the Parties hereto intend that the Project constitutes a "professional sports facility" as defined in ORC Section 5739.09(A)(12) and that this Cooperative Agreement is also a contract with the CVB pursuant to which the Developer has agreed to construct the Project in accordance with the other provisions hereof. In the event of any conflict between the terms of the CVB Development Agreement and this Cooperative Agreement, the terms of this Cooperative Agreement shall control.

B. **Pledge of Incremental Lodging Tax.** Pursuant to the County Cooperative Agreement, the CVB has pledged all revenues that it receives from the Incremental Lodging Tax to the City for repayment of the City Obligations. Other than the receipts from the Incremental Lodging Tax, no other monies of the CVB shall be pledged for the repayment of the City Obligations or the Project.

#### **SECTION 5. SPECIAL PROVISIONS RELATING TO CONSTRUCTION AND USE OF PROJECT**

A. **Failure to Construct or Reduction in Use of Project.** If a Failure Event (as defined below) shall occur, the City, in its sole discretion, may require the Developer to pay to the City an amount equal to the then outstanding principal amount of the City Securities together with any accrued but unpaid interest through such date (such payment being the "Early Payment").

For purposes of this Section 5.A., each of the following shall constitute a "Failure Event":

(i) By the Two Hundred Seventieth (270<sup>th</sup>) day following the date on which the City acquires the Property, the Developer shall have failed to give a notice to proceed with construction of the Project,

(ii) By the Six Hundred Thirtieth (630<sup>th</sup>) day following the date on which the City acquires the Property, the Developer shall have failed to substantially complete construction of the Project in order that a certificate of occupancy may be issued for the Project, and

(iii) For any calendar year following the Base Tax Year, the date on which the City reasonably determines that the Municipal Income Tax Withholdings for that calendar year are less than 50% of the Base Tax Year Withholdings. For purposes of this Section 5.A.iii, (a) "Base Tax Year" shall mean the first calendar year next succeeding the calendar year in which a certificate of occupancy is issued for the Project, (b) "Municipal Income Tax Withholdings" shall mean the actual municipal payroll withholding taxes collected and received during that calendar year and in respect of that calendar year by the City from all individuals employed at the Project and (c) "Base Tax Year Withholdings" shall mean the actual municipal payroll withholding taxes collected and received during the Base Tax Year and in respect of the Base Tax Year by the City from all individuals employed at the Project. Notwithstanding the foregoing, it shall not be deemed a Failure Event if the Municipal Income Tax Withholdings in any given year are below the aforementioned 50% threshold as a result of a change in law, including but not limited to a change in the income tax rate applicable within the City.

**B. Maintenance and Use of Project.**

(i) Subject to the terms of the Project Lease and Section 5.B(ii), the Developer will (a) have exclusive, unlimited use, access, and freedom to schedule the use of the Project at its sole discretion, and (b) have the exclusive right to rent or sublease portions of the Project, at its sole discretion, and retain the revenues from such rents and subleases (anticipated rentals include fields or facilities by event, hourly, seasonal or multi-year terms, commercial activity such as team store, sports medicine practice, physical therapy, sports fitness and other complimentary businesses)

(ii) The Developer has agreed to provide the Port Authority with certain access rights to the Project or portions thereof under the Project Lease, which access includes, but is not limited to, access at certain times for events showcasing the Project for economic development purposes.

(iii) Subject to the terms of the Project Lease, the term of the Project Lease shall only be extended upon the mutual agreement of the Developer and the Port Authority. Upon a failure to extend the term of the Project Lease, the Project shall be transferred to the Developer as described in Section 2.C. hereof..

(iv) Developer shall retain any revenue generated by its operation of the Project, including but not limited to, any rental fees, lease fees, concessions sales, merchandise/retail sales, sponsorship sales or any other revenues that the Developer may receive. Furthermore, Developer shall have the right to allow the Team to retain similar revenues related to Team operations at the Project.

(v) The Developer will have the exclusive right to develop corporate partnership assets including signage (subject to local zoning laws), corporate events, fan engagement activities, and other concepts to maximize the Team's corporate partner exposure and partnership value.

(vi) No Party will use any other party's corporate marks or official designations without prior approval from the party to whom such corporate marks or official designations belong.

(vii) Notwithstanding any other provision of this Cooperative Agreement to the contrary, the Developer shall not be permitted to use, or enter into any contracts relating to the use of, the Project in any manner which would impair the City's rights set forth in Section 5.A.

C. **Imposition of Admissions Tax.** The Developer acknowledges that the City reserves the right to impose an admissions tax in connection with ticketed sporting events hosted at the Project.

## SECTION 6. REPRESENTATIONS AND WARRANTIES

A. **Representations and Warranties of Developer.** Developer hereby represents and warrants that:

(i) It is a limited liability company duly organized and in full force and effect under the laws of the State of Ohio, with full power to execute and deliver this Cooperative Agreement and perform its obligations hereunder;

(ii) It has duly authorized, executed and delivered this Cooperative Agreement and no approval or other action by any governmental authority is required in connection therewith;

(iii) This Cooperative Agreement constitutes its valid and binding obligation enforceable in accordance with its terms, except to the extent that the enforcement thereof may be limited by bankruptcy laws and other laws affecting creditors' rights and the exercise of judicial discretion;

(iv) Neither the making nor the performance of this Cooperative Agreement will conflict with or violate its organizational documents or any indenture, agreement or other instrument to which it is a party or by which it may be bound; and,

(v) There are no actions, suits, proceedings, inquiries or investigations pending, or to its knowledge threatened, against or affecting it in any court or before any governmental authority or arbitration board or tribunal that challenges the validity or enforceability of, or seeks to enjoin performance of, this Cooperative Agreement, or if successful would materially impair its ability to perform its obligations under this Cooperative Agreement.

B. **Representation and Warranties of the City.** The City hereby represents and warrants that:

(i) It has duly authorized, executed and delivered this Cooperative Agreement and no further approval or other action by any governmental authority is required in connection therewith;

(ii) This Cooperative Agreement constitutes its valid and binding obligation enforceable in accordance with its terms, except to the extent that the enforcement thereof may be limited by bankruptcy laws and other laws affecting creditors' rights and the exercise of judicial discretion; and,

(iii) Neither the making nor the performance of this Cooperative Agreement will conflict with or violate its organizational documents or any indenture, agreement or other instrument to which it is a party or by which it may be bound.

**C. Representation and Warranties of the CVB.** The CVB hereby represents and warrants that:

(i) It has duly authorized, executed and delivered this Cooperative Agreement and no approval or other action by any governmental authority is required in connection therewith;

(ii) This Cooperative Agreement constitutes its valid and binding obligation enforceable in accordance with its terms, except to the extent that the enforcement thereof may be limited by bankruptcy laws and other laws affecting creditors' rights and the exercise of judicial discretion;

(iii) Neither the making nor the performance of this Cooperative Agreement will conflict with or violate its organizational documents or any indenture, agreement or other instrument to which it is a party or by which it may be bound; and

(iv) There are no actions, suits, proceedings, inquiries or investigations pending, or to its knowledge threatened, against or affecting it in any court or before any governmental authority or arbitration board or tribunal that challenges the validity or enforceability of, or seeks to enjoin performance of, this Cooperative Agreement, or if successful would materially impair its ability to perform its obligations under this Cooperative Agreement.

**D. Representation and Warranties of the Port Authority.** The Port Authority hereby represents and warrants that:

(i) It has duly authorized, executed and delivered this Cooperative Agreement and no further approval or other action by any governmental authority is required in connection therewith;

(ii) This Cooperative Agreement constitutes its valid and binding obligation enforceable in accordance with its terms, except to the extent that the enforcement thereof may be limited by bankruptcy laws and other laws affecting creditors' rights and the exercise of judicial discretion;

(iii) Neither the making nor the performance of this Cooperative Agreement will conflict with or violate its organizational documents or any indenture, agreement or other instrument to which it is a party or by which it may be bound; and

(iv) To its knowledge, there are no suits or proceedings pending, or threatened in writing, affecting it in any court or before any governmental authority or arbitration board or tribunal that challenges the validity or enforceability of, or seeks to enjoin performance of, this Cooperative Agreement, or if successful would materially impair its ability to perform its obligations under this Cooperative Agreement.

## SECTION 7. EVENTS OF DEFAULT AND REMEDIES

Except as otherwise provided in this Cooperative Agreement, in the event of any default in or breach of this Cooperative Agreement, or any of its terms or conditions, by any Party hereto, such defaulting Party shall, upon written notice from any non-defaulting Party, proceed immediately to cure or remedy such default or breach, and, in any event, within thirty (30) days after receipt of such notice. In the event such default or breach is of such nature that it cannot be cured or remedied within said thirty (30) day period, then in such event the defaulting Party shall upon written notice from any non-defaulting Party commence its actions to cure or remedy said breach within said thirty (30) day period, and proceed diligently thereafter to cure or remedy said breach. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved non-defaulting Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach.

## SECTION 8. ASSIGNMENT

The Parties may not assign their rights or obligations hereunder without first receiving the prior written consent of all non-assigning Parties to this Cooperative Agreement.

## SECTION 9. NOTICES

A notice or communication under this Cooperative Agreement by any Party to another shall be sufficiently given by hand delivery, by reputable overnight courier, or by certified mail, postage prepaid, return receipt requested, to the addresses set forth in the preambles hereto, or if such notice is addressed in such other way in respect to any Party as that Party may from time to time designate in writing by notice to the other Parties. Any such notice or communication shall be effective upon receipt or, if given by overnight courier or certified mail, upon failure or refusal of delivery.

## SECTION 10. MISCELLANEOUS

A. **Amendments.** This Cooperative Agreement shall not be amended except by written agreement executed by all Parties.

B. **Governing Law.** This Cooperative Agreement shall be governed by and construed in accordance with the laws of the State of Ohio without regard to its principles of conflicts of laws. All claims, counterclaims, disputes and other matters in question between the Parties, or their respective agents and employees, arising out of or relating to this Cooperative Agreement or its breach will be decided in a court of competent jurisdiction within the County or Clermont, Ohio.

C. **Severability.** If any provision of this Cooperative Agreement is held to be illegal, invalid or unenforceable, said provision will be fully severable. This Cooperative Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Cooperative Agreement and the remaining provisions of this Cooperative Agreement will remain in

full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this Cooperative Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Cooperative Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible that is and will be legal, valid and enforceable.

**D. No Personal Liability.** All covenants, obligations and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of the City, the CVB, the Port Authority, or the Developer other than in his or her official capacity, and neither the members of the legislative bodies of the City, the CVB, or the Port Authority nor any member of the Developer, nor any official of the City, the CVB, the Port Authority, or the Developer executing this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution thereof or by reason of the covenants, obligations or agreements of the City, the CVB, the Port Authority, and the Developer contained in this Agreement

**E. Counterparts.** This Cooperative Agreement may be executed in counterpart, and in any number of counterparts, each of which shall be treated as an original and all of which, together, shall constitute one and the same instrument.

#### **SECTION 11. EXHIBITS**

The following exhibits are hereby incorporated into and made a part of this Cooperative Agreement.

|           |                                   |
|-----------|-----------------------------------|
| Exhibit A | Description of the Property       |
| Exhibit B | Quit-Claim Deed to City           |
| Exhibit C | Quit-Claim Deed to Port Authority |

IN WITNESS HEREOF, the City, the CVB, and the Developer have caused this Cooperative Agreement to be executed in their names by their duly authorized officers, all as of the day and the year first written above.

**CITY OF MILFORD, OHIO**

By: \_\_\_\_\_  
Name: Michael Doss  
Title: City Manager

**CLERMONT COUNTY OHIO CONVENTION & VISITORS BUREAU, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Approved as to form:**

By: \_\_\_\_\_  
Name: Mike Minniear  
Title: Law Director

**FCC TRAINING FACILITY, LLC**

By: \_\_\_\_\_  
Name: G. Jeffrey Berding  
Title: President and General Manager

**CLERMONT COUNTY PORT AUTHORITY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY FISCAL OFFICER'S CERTIFICATE**

The undersigned, fiscal officer of the City of Milford, Ohio, hereby certifies that the moneys required to meet the obligations, if any and excluding the proceeds of the City Obligations which will be appropriated at the time those City Obligations are authorized, of the City during the year 2018 under the foregoing Cooperative Agreement have been lawfully appropriated by the Council of the City of Milford, Ohio for such purpose and are in the treasury of the City 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.

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Director of Finance  
City of Milford, Ohio

Dated: \_\_\_\_\_, 2018



**PORT AUTHORITY FISCAL OFFICER'S CERTIFICATE**

The undersigned, fiscal officer of the Clermont County Port Authority, hereby certifies that the moneys required to meet the obligations of the Clermont County Port Authority during the year 2018 under the foregoing Cooperative Agreement have been lawfully appropriated by the Board of Trustees of the Butler County Port Authority for such purpose and are in the treasury of the Clermont County Port 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.

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Fiscal Officer  
Clermont County Port Authority

Dated: \_\_\_\_\_, 2018

**EXHIBIT A**

**DESCRIPTION OF THE PROPERTY**

**DIXON PROPERTY**

**Auditor's Parcel No. 21-07-37.121P**

Situated in Edward Simpson's Military Survey No. 1770, Miami Township, Clermont County, Ohio and being more particularly described as follows:

Commencing at a P.K. Nail in the centerline of U.S. Route 50 where said centerline intersects the west right-of-way line of Interstate 275; thence along said centerline North 54°54'04" West 563.30 feet to a point; thence leaving said centerline South 1°24'34" East 442.60 feet to a point and the true place of beginning for this description; thence continuing South 1°24'34" East 681.17 feet to a point; thence South 83°25'39" West 197.47 feet to an iron pin; thence South 77°25'39" West, 396.00 feet to a point; thence South 57°25'39" West, 170.94 feet to a point; thence South 56°10'39" West, 100.84 feet to a point; thence North 55°53'15" West, 148.76 feet to a point; thence North 4°56'59" East, 979.79 feet to a point; thence North 4°09'25" West, 84.58 feet to a point; thence North 22°56'25" East, 114.50 feet to a point; thence North 5°41'57" East, 91.74 feet to a point; thence South 63°58'24" East, 532.34 feet to a point; thence South 61°06'06" East, 350.00 feet to the place of beginning containing 20.00 acres of land.

**BEAUTY RIDGE**

**Auditor's Parcel No. 21-07-37.-127P:**

Situated in Edward Simpson's Military Survey No. 1770, Miami Township, Clermont County, Ohio, in the City of Milford and being more particularly described as follows:

Commencing at a point in the centerline of U.S. Route 50 where the same is intersected by the westerly line of Interstate 275; thence along the centerline of U.S. Route 50, North 54 deg. 54 minutes 04 seconds West, 563.30 feet to the true point of beginning for this description; thence leaving said centerline South 1 deg. 24 minutes 34 seconds East, 442.60 feet to an iron pin; thence North 61 deg. 06 minutes 06 seconds West, 350.00 feet to an iron pin; thence North 63 deg. 58 minutes 24 seconds West, 182.56 feet to a point; thence North 27 deg. 20 minutes 38 seconds East, 447.67 feet to a point in the centerline of U.S. Route 50; thence along said centerline South 47 deg. 47 minutes 23 seconds East, 171.49 feet to a P.K. nail; thence South 54 deg. 54 minutes 04 seconds East, 155.15 feet to the beginning. Containing 3.9254 acres of land.

LESS AND EXCEPT the following property conveyed to 731 US Route 50, Ltd., by General Warranty Deed recorded February 12, 2009 in Official Record Book 2161, Page 1243, as set forth as follows:

Situated in Simpson's Military Survey #1770, Milford (Miami) Township, City of Milford, Clermont County, Ohio and being more particularly described as follows:

Beginning at the intersection of the westerly Limited Access Right of Way line of Interstate Route 275 with the centerline of United States Route 50;

Thence North 54 degrees 54 minutes 04 seconds West for a distance of 560.30 feet with the centerline of said US Route 50;

Thence South 01 degrees 24 minutes 34 seconds East for a distance of 204.27 feet leaving said centerline of US Route 50 with the westerly line of Donald L. and Joanne Kellerman and passing a set

5/8" Iron Pin at a distance of 31.10 to a set 5/8" Iron Pin and Cap and the real place of beginning for this description;

Thence South 01 degrees 24 minutes 34 seconds East for a distance of 238.33 feet continuing with the westerly line of Donald L. and Joanne Kellerman to a set 5/8" Iron Pin and Cap;

Thence North 61 degrees 06 minutes 06 second West for a distance of 46.33 feet with the northerly line of Max and Mona Dixon to a set 5/8" Iron Pin and Cap;

Thence North 01 degrees 24 minutes 34 seconds West for a distance of 3.62 feet leaving the northerly line of Max and Mona Dixon to a set 5/8" Iron Pin and Cap;

Thence North 38 degrees 31 minutes 52 seconds West for a distance of 24.36 feet to a set 5/8" Iron Pin and Cap;

Thence North 01 degrees 30 minutes 19 seconds West for a distance of 94.26 feet to a set 5/8" Iron Pin and Cap;

Thence North 35 degrees 54 minutes 40 seconds East for a distance of 24.51 feet to a set 5/8" Iron Pin and Cap;

Thence North 01 degrees 24 minutes 34 seconds West for a distance of 78.16 feet to a set 5/8" Iron Pin and Cap;

Thence North 88 degrees 35 minutes 26 seconds East for a distance of 40.00 feet to the place of beginning;

Said property contains 0.2467 acres more or less.

The above described real estate is a part of the same premises described as recorded in Deed Book 1966, Page 452 of the Clermont County, Ohio Deed Records and identified as Parcel No. 21-07-37-127P on the Tax Maps of said County.

Based on a survey by Nordloh & Associates, Inc. under the direct supervision of Lee C. Nordloh, P.S. Ohio Registration No. 7066, dated October, 2008.

**EXHIBIT B**  
**Quit-Claim Deed to City**

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(ABOVE LINE FOR RECORDER'S USE ONLY)

**QUIT CLAIM DEED**

**FCC TRAINING FACILITY LLC**, an Ohio limited liability company (the "Grantor"), grants to the **CITY OF MILFORD, OHIO**, an Ohio municipal corporation (the "Grantee"), whose mailing address is 745 Center Street, Suite 200, Milford, Ohio 45150, the following described real property (the "Property"):

**SEE EXHIBIT "A" ATTACHED  
HERETO AND MADE A PART HEREOF**

and all the estate, title and interest of said Grantor in law and in equity, of, in and to said Property; together with all of the privileges and appurtenances to the same belonging, and all rents, issues and profits hereof; to have and to hold the same **FOR SO LONG AS** the Property is used for the Intended Use (defined *infra*), and if the Property ceases to be used for the Intended Use then the Property and fee simple title to the Property shall automatically re-vest in the Grantor.

Prior Instrument References:

**Auditor's Parcel No. 21-07-37.121P**  
Official Records Book 2791, Page 2050  
Clermont County, Ohio Records

**Auditor's Parcel No. 21-07-37.-127P**  
Official Records Book 2789, Page 886  
Clermont County, Ohio Records

The Property is conveyed subject to the following restrictive covenant and possibility of reverter:

As a condition to Grantor conveying the Property to Grantee, the Grantee shall convey the Property to the Clermont County Port Authority (the "Port") by no later than November 30, 2018 for use in accordance with that certain Professional Sports Facility Cooperative

Agreement dated as of November \_\_, 2018 by and among the Grantor, the Grantee, the Port, and the Clermont County Ohio Convention & Visitors Bureau, Inc. (the "Cooperative Agreement" and such use being the "Intended Use"). If, for whatever reason, the Property is either (i) not so conveyed to the Port by 11:59 PM on December 31, 2018, or (ii) at any point in the future Grantee's conveyance of the Property to the Port is rescinded or Grantee is required to reacquire the Property from the Port, then the Property shall automatically revert to Grantor (the "Possibility of Reverter"). Except as provided below, the Possibility of Reverter shall be perpetual and a covenant running with the land. Upon the occurrence of the Possibility of Reverter as provided herein, Grantor or Grantee may evidence such occurrence by the execution and recording by either party of an affidavit stating that the Property has ceased to be used for the Intended Use but no such execution or recordation shall be a condition precedent to reversion of the Property to Grantor.

Grantee acknowledges that it has consulted with competent counsel regarding certain legal and equitable principles which disfavor forfeitures and favor free alienability of land. Notwithstanding this, Grantee, its successors and assigns do hereby waive, release and abandon any defenses relating to such equitable principles, or other similar legal or equitable principles which may come into existence in the future.

The Possibility of Reverter reserved herein shall continue and shall not be extinguished by foreclosure of any mortgage or other voluntary encumbrance burdening the Property.

[Remainder of page intentionally left blank. Signature page to follow.]



**EXHIBIT "A"**

**LEGAL DESCRIPTION**

**DIXON PROPERTY**

**Auditor's Parcel No. 21-07-37.121P**

Situated in Edward Simpson's Military Survey No. 1770, Miami Township, Clermont County, Ohio and being more particularly described as follows:

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Said property contains 0.2467 acres more or less.

The above described real estate is a part of the same premises described as recorded in Deed Book 1966, Page 452 of the Clermont County, Ohio Deed Records and identified as Parcel No. 21-07-37-127P on the Tax Maps of said County.

Based on a survey by Nordloh & Associates, Inc. under the direct supervision of Lee C. Nordloh, P.S. Ohio Registration No. 7066, dated October, 2008.





Grantor has executed this Deed as of the \_\_\_<sup>th</sup> day of November, 2018.

**GRANTOR:**

**CITY OF MILFORD OHIO**, an Ohio municipal corporation

By: \_\_\_\_\_  
Michael Doss  
City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Mike Minnear, Law Director

STATE OF OHIO                                    )  
  ): SS:  
COUNTY OF CLERMONT                        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by Michael Doss, City Manager of the City of Milford, Ohio, an Ohio municipal corporation, on behalf of said municipal corporation.

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

This instrument prepared by:  
P. Andrew Spoor, Esq.  
Keating Muething and Klekamp PLL  
One East Fourth Street, Suite 1400  
Cincinnati, Ohio 45202

## EXHIBIT "A"

### LEGAL DESCRIPTION

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