

## FACILITY MANAGEMENT AGREEMENT

This Management Agreement (the "Agreement") entered into by and between Music Event Management, Inc. ("MEMI" or "Manager") and the City of Huber Heights, Ohio (the "City") is to define the terms and conditions of consultation of construction and management of a the new outdoor, covered amphitheater to be located in the City containing approximately 4500 seats and immediately surrounding pedestrian amenities, loading docks and parking (the "Amphitheatre"). All parking lots necessary to provide parking for the Amphitheatre and the Amphitheater constitute the "Facility". MEMI and the City acknowledge the terms of this Agreement shall be effective upon its execution, and the terms of this Agreement shall be binding as contained herein.

1. Services to be performed by MEMI: MEMI will provide construction management services and advice with respect to the construction of the Amphitheatre and once it has been completed, MEMI will be the exclusive manager of the Facility. Within the authority granted to Manager under this Agreement, including Exhibit A hereto, MEMI shall provide all management services, labor and material appropriate to carry out its duties hereunder. Manager shall devote its reasonable good faith efforts to doing all things reasonably necessary for the orderly and efficient administration, management and operation of the Amphitheatre/Facility, including the negotiation and enforcement of leases, licenses, ticketing agreements or contracts, use agreements and bookings for the Facility. All leases, licenses, use agreements, bookings and any other agreements pertaining to the use, operation, maintenance and occupancy of the Facility will be negotiated by MEMI and executed by the City. MEMI shall use its reasonable good faith efforts in light of market conditions and attendance patterns to secure, devise and promote concerts, plays, celebrations, family shows, patriotic events, public recreation and other public gatherings and events appropriate to the operation of the Facility. Such efforts shall be designed to promote as wide a use of the Facility as is practical and economically feasible, generating as much revenue/net profit as reasonably possible, consistent with and to the end that the citizens of Huber Heights and public generally may enjoy and receive those benefits intended from the Facility.

2. Term: The term of this Agreement will be for ten (10) seasons (2015–2024) and shall terminate on December 31, 2024. This Agreement shall automatically renew for up to three (3) additional five-year terms (each a "Renewal Term") unless MEMI or the City provides written notice of its intent to not renew no later than one hundred eighty days (180) days prior to the expiration of either the Initial Term or any Renewal Term.

3. Management Fee: The City shall pay MEMI a Management Fee in the amount of Eighty-Thousand Six Hundred Fifty Dollars (\$80,650.00) for the period from June 15, 2014 through November 30, 2014, of which Twenty Thousand Dollars (\$20,000.00) will be due and payable upon the execution of this Agreement and the balance in the amount of Sixty- Thousand Six Hundred Fifty Dollars (\$60,650.00) due on or before December 15, 2014.

Beginning December 1, 2014, the Management Fee shall be increased to the amount of Two Hundred Twenty Five Thousand Dollars (\$225,000.00) per year, payable in equal monthly amounts of Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750.00), the first installment of which shall be due and payable on January 15, 2015 and each successive installment shall be due and payable on the fifteenth day of the following month. The Management Fee shall not be reduced due to any delays in opening the Amphitheatre for any reason, including but not limited to, delays caused by weather, construction, strikes, acts of God, financing, funding, permits, suppliers or vendors.

4. Allocation of Net Profit:

a. The annual Net Profit from the operation of the Facility will be divided between MEMI and the City such that the City shall receive the first One Hundred Fifty Thousand Dollars (\$150,000) from the operation of the Facility and the remaining Net Profit shall be divided between MEMI and the City such that the City receives an amount equal to sixty percent (60%) of the Net Profit and MEMI receives an amount equal to forty percent (40%) of the Net Profit. “Net Profit” shall be defined as all Revenue less all Expenses directly related to or arising from the operation of the Facility.

b. “Revenue” shall include but not be limited to, venue sponsorship fees, box seat fees and membership fees or premiums associated with a reserved ticket or club program, all manifested ticket sales, non-manifested ticket sales that are sold on a show-by-show basis, rebates, net food and beverage revenues, facility maintenance fees, box office fees, net parking revenues, net merchandise revenues, and all other revenue related to or arising from the operation of the Facility, except for any revenue arising from or generated from the sale of “naming rights” to the Facility which shall be retained by the City. Naming Rights include the sale by the City, with or without the assistance of MEMI, of the right of the third party purchaser to attach its name to some portion of the Facility for a specific period of time as agreed upon by the City and the third party purchaser.

c. “Expenses” shall include, but not be limited to, talent cost, stage hands, advertising, catering, security, ticket takers, ushers, event liability insurance, cleaning expense, event box office expense, show related equipment rental, legal fees, audit fees, sales taxes, admission taxes, entertainment taxes, operating supplies, lawn care, and may include compensation and benefits for administrative, sales, marketing, promotion, maintenance and management staff, none of whom shall be MEMI employees.

d. The City shall be responsible for the payment of all Expenses in excess of Revenue from the operation of the Facility.

e. Thirty (30) days following the conclusion of each season, MEMI and City shall jointly develop a report indicating the Net Profit, if any, from the operation of the Facility and shall distribute the Net Profit to the City and to MEMI.

5. Owner’s Expenses: As the owner of the Facility, the City shall be responsible for the expenses typically associated with the ownership of real property which shall not be an

Expense for purposes of the calculation of Net Profit such as all capital expenditures for improvements, additions, maintenance or repairs to the Facility and surrounding area and utilities, real estate taxes, property and casualty insurance and for services which the City performs such as police, fire, traffic control and medical emergency services.

6. Termination, Dispute Resolution, Insurance & Indemnity:

a. This Agreement shall terminate upon the first to occur of:

- i. The expiration of the Term;
- ii. Termination by MEMI if the City has breached, violated or is otherwise in default of any material terms of this Agreement
- iii. Termination by the City if MEMI has breached, violated or is otherwise in default of any materials terms of this Agreement
- iv. Any party (i) making a general assignment for the benefit of its creditors; (ii) applying for or consenting to the appointment of a receiver, trustee or liquidator of all of its assets; (iii) being adjudicated a bankrupt or insolvent; (iv) filing a voluntary petition of bankruptcy or petition or answer seeking a composition, reorganization or arrangement with creditors; (v) admitting (by answer, default or otherwise) the material allegations of any petition filed against it in any bankruptcy, reorganization, composition, insolvency or other proceeding (whether Federal or State) relating to the relief of debtors; or
- v. Termination by the City in the event the City deems it in its best interests to close the Facility and the Facility shuts down for two (2) full seasons. If the City reopens the Facility prior to the end of the 2nd full season and conducts more than six (6) events out of the Facility in any one season that attract at least 2000 people MEMI shall be used as the Manager for all of those events and shall be entitled to its Management Fee for that season.
- vi. By the mutual consent of the City and MEMI.

b. In the event of a dispute between the parties with regard to any aspect of this Agreement the parties agree to immediately submit the dispute to mediation either in accord with American Arbitration Association Mediation Services or as agreed upon by the parties. The parties hereto shall employ their collective best efforts to resolve any disputes. No formal action shall be taken by either party hereunder until the dispute has been mediated.

c. MEMI shall maintain certain insurance coverages during the course of this Agreement and shall name the City as additional insureds as more fully set forth on Exhibit B attached. MEMI shall cause it tenants, concessionaires, service contractors and others using or performing work or services in or about the Facility to procure and maintain policies of insurance customary in the industry, including, but not limited to, workers' compensation insurance, and with the coverages (but not necessarily the same amounts, in Manager's reasonable judgment) as set forth in Exhibit "B". The Manager's policies of insurance shall

provide that the insurer will not cancel coverage of any named insured without at least thirty (30) days prior written notice to City. MEMI shall provide City evidence of the required insurance, such evidence to be in a form reasonably satisfactory to City.

d. MEMI agrees to protect, defend, indemnify and hold harmless the City and its officers, employees, agents and assigns from and against any and all claims, suits, demands, judgments or causes of action, arising out of or relating to any acts or omissions of MEMI, its employees, officers or agents, with respect to the operation of the Facility.

7. Miscellaneous:

a. Amendment: This Agreement may be modified or amended from time to time only in a writing executed by each of the parties.

b. Binding Agreement/Assignment: Except as otherwise provided herein, this Agreement shall be binding upon, and inure to the benefit of, the parties hereto, and their respective executors, administrators, heirs, successors and assigns; provided however, neither party shall assign this Agreement or any duty hereunder without the prior written consent of the other party.

c. Entire Agreement: This Agreement which includes Exhibits A and B attached and as amended from time to time contains the entire agreement between the parties hereto with respect to the subject matter hereof.

d. Jurisdiction and Venue: This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. Each of the parties consents and voluntarily submits to personal jurisdiction in the State of Ohio and the courts located in Montgomery County, Ohio or the United States District Court for the Southern District of Ohio.

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

f. Independent Contractor: Subject to the terms of this Agreement, City hereby engages MEMI, as an independent contractor and not as an agent of or for the City, as the party with the sole responsibility and right to operate, manage and maintain the Pavilion Facilities for the Term, and MEMI hereby undertakes and agrees to act in such capacity in accordance with the provisions of this Agreement. In connection therewith, MEMI agrees to perform all of the services required of it as set forth in this Agreement and to comply (and cause its Affiliates to comply) with the provisions of this Agreement. It is the intent of the parties that MEMI will have sole authority over the operation and management of the Facility from and after the date of opening, subject to: (a) the terms of this Agreement; and, (b) applicable laws and governmental regulations. City hereby authorizes MEMI and

delegates to MEMI the right, subject to the terms of this Agreement, to grant permission to third parties to use the Facility by license or use agreements.

g. Damage & Destruction: If all or any portion of the Facility shall be damaged or destroyed by fire, storm, earthquake or other casualty, then the City may elect to (i) rebuild and repair the Facility with any shortfall in insurance proceeds paid by City from its separate funds; in which case this Agreement shall remain in effect; or (ii) terminate this Agreement, in which case this Agreement will terminate on the thirtieth (30<sup>th</sup>) day following MEMI's receipt of such Notice.

8. Acknowledgment of the City: By entering into this Agreement, the City understands and acknowledges that:

(i) the entertainment industry is extremely competitive and contains substantial risk and volatility;

(ii) MEMI is a subsidiary of the Cincinnati Symphony Orchestra, ("CSO"), both of which are non-profit entities whose reputations, business and community relationships are of paramount importance to them and the undertaking of this Agreement by MEMI shall make the reputation, business and community relationships of the City of equal importance to MEMI;

(iii) the CSO owns Riverbend Music Center - Hulbert Taft Jr. Center for the Performing Arts, J. Ralph Corbett Pavilion & PNC Pavilion, which includes the Riverbend Music Center and the PNC Pavilion; MEMI leases the Taft Theatre (collectively, the "Venues"); and the CSO occupies and performs at Music Hall, which are all located in Cincinnati, Ohio;

(iv) MEMI is actively engaged in the management of those venues and promotion of concerts and events at those Venues and MEMI has disclosed these activities in Cincinnati to the City; and

(v) performers and entertainers, not MEMI, oftentimes choose or dictate which cities and Venues at which they will perform and that there may be occasions where it is not economically feasible for MEMI to schedule a performer into a facility the size of the Amphitheatre and that during a certain season, a performer or entertainer may play at one of the other Venues managed by MEMI and not at the Amphitheatre. Nevertheless MEMI believes that there are certain synergies to be gained by both MEMI and the City in the entering into of this Agreement and MEMI shall use its best efforts to take advantage of those opportunities to the mutual benefit of the parties.

9. Confidentiality: The business of conducting and operating an entertainment venue that offers live entertainment to the public on a contract basis and/or on the rental - of - the - facility basis is a complex, multifaceted undertaking. The business itself, including the provision of services as well as the booking of entertainment is highly competitive between venues and between the Acts hired to perform. Negotiations are Act specific and are affected by the choice of time of the performance, the competition in markets where multiple venues exist,



market conditions generally, relationships within the industry, etc. Each contract entered into with an Act is different. Each contract negotiated with a service provider can be different than with any other venue. MEMI has the responsibility for the negotiation of and the contracting for services and the booking of Acts into the Amphitheater. This process includes a high degree of confidentiality if the venue is going to be successful. The means and methods of negotiation and selected terms of service contracts and booking contracts include information known only to certain employees of MEMI; which information is closely guarded by MEMI; which results in less expense and greater revenue to MEMI; is information and knowhow developed by MEMI over years of experience, and; would take significant time and expense for others to duplicate. Accordingly, MEMI shall maintain its trade secrets in the performance of its duties hereunder. It shall identify any trade secrets in any communications with the City. The City shall maintain the confidentiality of any and all trade secrets of MEMI in accord with all laws, rules and regulations.

AGREED AND ACCEPTED:

Music Event Management, Inc.

By: 

Michael C. Smith

Its: CEO

Date: 6/23/14

City of Huber Heights, Ohio

By: 

Robert B. Schommer

Its: City Manager

Date: 6/23/14

**EXHIBIT A**  
**TO THE MANAGEMENT AGREEMENT BETWEEN MEMI AND THE CITY OF HUBER HEIGHTS**

**PRE-OPENING DUTIES**

During the Pre-Opening Period, MEMI shall perform, subject to the terms of the Agreement, the following duties:

(a) Develop an operations manual for the Facility (the "Operations Manual"), which shall contain recommended terms with respect to the management and operation of the Facility following the Opening Date, including policies and procedures to be implemented in operating the Facility. The Operations Manual shall be subject to the approval of the City.

(b) Establish prices, rates and rate schedules for user, license, concessions, occupancy, and advertising agreements, and booking commitments, at the Facility, which shall be subject to the reasonable approval of the City and which shall be consistent with the terms of the Agreement. MEMI shall cooperate with any third party as may be required in accord with the Agreement in establishing such schedules and commitments and evaluate comparable charges for similar goods and services at similar and/or competing facilities.

(c) Submit to the City recommendations regarding the selection of potential providers of Naming Rights and Concessions at the Facility and, if requested by the City, prepare RFPs or RFQs in connection with the bidding for such services for the review and approval of the City.

(d) Collaborate with the City to procure, negotiate,, administer and assure compliance with service contracts with respect to the Facility, including without limitation contracts for ticketing, , maintenance, telephone, staffing personnel including guards and ushers, extenuation and other services which are deemed by MEMI to be either necessary or useful in operating the Facility following the Opening Date.

(e) As agent for the City, procure, negotiate, execute (as agent on behalf of the City), administer and assure compliance with vendor, concessions and merchandising agreements, user/rental agreements, booking commitments, licenses, and all other contracts or agreements required in the ordinary course of business in operating the Facility.

(f) Require that all material vendor/license agreements entered into by MEMI during the Term contain standard indemnification, insurance, assignment and termination provisions in form reasonably acceptable by the City, and provide the City with a copy of all such agreements within five (5) business days of their date of execution.

(g) Answer questions about the Facility as requested by the City's Project Manager during construction of the Facility and work with the City's Project Manager in coordinating and preparing the Operations Manual as well as in implementing MEMI's duties hereunder specifically but without limitation with regard to items (h), (i), (j), (k) and (o).

(h) Develop and recommend a proposed inventory of furniture, fixtures and equipment to be used at the Facility, and assist the City with its procurement of such furniture, fixture and equipment. To the extent the City requests that MEMI procure such items, they shall be purchased by MEMI for the Facility with no mark-up. All such items procured by MEMI shall be for and on behalf of the City and the City shall be the sole owner thereof.

(i) Prepare and submit to the City a list of operating supplies necessary for the start-up of the Facility, and assist the City with its procurement of such operating supplies. To the extent the City requests that MEMI procure such items, they shall be purchased by MEMI for the Facility with no mark-up. All such items procured by MEMI shall be for and on behalf of the City and the City shall be the sole owner thereof.

(j) Advise the City as soon as possible on any construction and operational issues with respect to the Facility that may arise during the Term. The City acknowledges that MEMI's employees, agents and subcontractors are not, nor do they purport to be, certified architects, engineers or general contractors, and that any advice concerning construction will be limited to the operational aspects of such construction.

(k) Assist the City in developing and implementing a telecommunications plan for the Facility.

(l) Arrange for and otherwise book events at the Facility in accordance with a booking schedule to be developed by MEMI and reasonably approved by the City. MEMI shall cooperate with any third party as may be required.

(m) Coordinate with the City and the City's Risk Management specialist in managing the risk management and insurance needs at the Facility.

(n) Plan, promote and execute, in conjunction with the City, "grand opening" events at or for the Facility.

(o) Engage, supervise and direct all personnel at the Facility that MEMI and the City deem necessary to perform the pre-opening services described herein, and conduct staff planning, retention, and training programs with respect to such personnel as determined to be necessary by MEMI in its sole discretion.

(p) Maintain detailed, accurate and complete financial and other records of all its activities under this Agreement in accordance with generally accepted accounting principles, which records shall be made available to the City, the State Auditor's Office and their respective representatives upon request subject to and in accord with all laws, rules and regulations.

(q) Cooperate with the City in a timely manner for the purpose of creating financial and other reports detailing MEMI's activities in connection with the Facility, as required in the Agreement.

(r) Subject to the terms of the Agreement, the Operating Budgets and the scope of



MEMI's authority under the Agreement, cause such other acts and things to be done with respect to the Facility, as determined by MEMI in its reasonable discretion, to be necessary for the management and operation of the Facility prior to the Opening Date.

(s) To the extent not otherwise enumerated above, MEMI shall also provide any other services reasonably requested by the City.

(t) Manage, maintain and comply with the City owned branding and wayfinding study prepared for and on behalf of the City by MKSK Architects. MEMI acknowledges that the City owned branding and wayfinding study constitutes valuable property of the City that MEMI shall not disseminate, duplicate or use for its own benefit or for the benefit of any third parties.

### **OPERATIONAL START-UP**

Simultaneously with the pre-opening services outlined above, MEMI shall begin and continue throughout with these additional services:

- Develop user policies including:
  - Booking and Scheduling
  - Rental rates and service fees
  - Show Producer's Guide
  - User rental contract
  - Service contracts (electrical, phones, catering, security, decorating, etc.)
  - House policies (rules and regulations of usage)
- Develop personnel policies
- Cooperate with the City to establish charts of accounts and total accounting system including:
  - Payroll processing
  - Accounts receivable
  - Bank accounts
  - Report functions
  - Box office
- Determine necessary computer hardware/software required
- Customize an Operations Manual for the facility
- In conjunction with the City Develop emergency plans (fire, bomb threat, hazardous materials, flood, etc.)
- Cooperate with the City to establish preventative maintenance systems for mechanical and electrical equipment
- Cooperate with the City to acquire necessary permits
- Design in conjunction with the City traffic management and flow policies and procedures for the most efficient movement of traffic into and away from the Facility
- Review food and beverage service plan including:
  - Layout, location, and design of concession stands
  - Catering facilities
  - Portable outlets

- Support and preparation areas
- Small wares
- FF&E

## **FACILITY MARKETING**

Below is MEMI's typical Scope of Services:

- Conduct situational analysis
- Based on analysis and research, develop marketing plan targeting:
  - National market
  - Regional market
  - State market
  - Local market
- Develop marketing plan for facility's use
- Begin to identify potential advertisers, sponsors and event producers.
- Exploit ground breaking for maximum public relations value and exposure in the industry, both nationally and locally.
- Maintain ongoing exposure to industry.
- Assist the City with planning Grand Opening to maximize market impact and community relations.
- Maintain booking calendar; schedule and contract events.
- Schedule and promote special events to round out programming.
- Create an in-house advertising capability.
- Web site development.

## **FACILITY MANAGEMENT**

Upon execution of the Agreement, MEMI will provide senior management staff to include; general manager, production manager, marketing manager, box office manager and sponsorship manager for the facility to prepare for ongoing operations of the venue. MEMI will recruit and hire full-time, part-time and/or contractual service staff in accordance with an organizational chart, budget, and schedule approved by the City. MEMI will manage and conduct all facets of the facility operation, including:

- Comprehensive facility management;
- Programming/scheduling of events;
- Co-promotion and in-house promotion of events;
- Sales & Marketing of Advertising, Sponsorships, Branding & other
- Commercial Rights;
- Event attendance capacities per building and fire codes;

- Marketing and Communications;
- Event Management;
- Food and Beverage Service;
- Merchandising;
- Building Operations and Maintenance;
- Crowd Management, Security, and Emergency Procedures;
- Safety, Risk Management, and Insurance;
- Parking and related vehicle access issues;
- Information technology.

#### **OPERATIONAL DUTIES**

MEMI's duties following the Opening Date, all of which are subject to the terms of the Agreement, shall include, without limitation, the following:

(a) Manage all aspects of the Facility in accordance with the Operations Manual, as approved by the City, and the terms of this Agreement, including but not limited to managing purchasing, payroll, fire prevention, security, crowd control, routine repairs, preventative maintenance, janitorial services, promotions, advertising, energy conservation, security, box office, admission procedures, parking, and general user services.

(b) Establish and adjust prices, rates and rate schedules for user, license, concessions, occupancy, and advertising agreements, and booking commitments, at the Facility, which shall be subject to the reasonable approval of the City. MEMI shall cooperate with any third party as may be required in establishing such schedules and commitments and evaluate comparable charges for similar goods and services at similar and/or competing facilities.

(c) Assist the City to procure, negotiate, execute, administer and assure compliance with service contracts with respect to the Facility, including without limitation contracts for ticketing, maintenance, telephone, staffing personnel including guards and ushers, emergency and other services which are deemed by MEMI to be either necessary or useful in operating the Facility.

(d) Assist the City to procure, negotiate, execute, administer and assure compliance with vendor, concessions and merchandising agreements, user/rental agreements, booking commitments, licenses, and all other contracts or agreements required in the ordinary course of business in operating the Facility.

(e) Require that all vendors and licensees of the Facility execute vendor/license agreements containing standard indemnification, insurance, assignment and termination provisions in form reasonably acceptable to the City, and provide to the City for signature at the earliest possible time.

(f) Provide standard form advertising and sponsorship contracts, user/rented agreements and license agreements for use at or with respect to the Facility. The City acknowledges, other than as set forth in Section (n) below, MEMI's sole responsibility with regard to providing legal advice or assistance hereunder shall be to provide such standard form contracts.

(g) Operate and maintain the Facility, including the equipment utilized in connection with its operation and any improvements made during the Term in the condition and manner at least equal to all applicable laws, rules, regulations and ordinances.

(h) Arrange for and otherwise book events at the Facility in accordance with a booking schedule to be developed by MEMI and reasonably approved by the City

(i) MEMI will assist the City by facilitating the hiring of all personnel MEMI deems necessary for the operation of the Facility in accordance and conduct staff planning, retention and training programs as determined to be necessary by MEMI in its sole discretion.

(j) Maintain detailed, accurate and complete financial and other records of all its activities under this Agreement in accordance with generally accepted accounting principles.

(k) Prepare a proposed Annual Plan, Operating Budget and Capital Expenditures budget and submit such proposed plans and budgets to the City.

(l) Timely submit to the City when due all Operating Expenses in the Operating Budget and other expenses approved by the City that are incurred in connection with the operation, maintenance, supervision and management of the Facility from the Facility Operating Account.

(m) After consultation with the City's legal counsel, if requested by the City and at the City's reasonable cost and expense, institute, defend, and settle in good faith any and all legal actions or proceedings concerning the operation of the Facility, including without limitation actions or proceedings to collect charges, rentals or other income generated by the Facility, to cancel or to eliminate any agreement pertaining to the Facility, pursuant to the terms thereof, for the breach or default thereunder by the other party.

(n) Assist the City (or any other third party, as applicable) to secure, all licenses and permits necessary for the operation and use of the Facility for the specific events to be held therein, and for the general occupancy of the Facility, including without limitation all necessary food licenses, and renewals thereof except for the liquor license which shall be obtained and maintained by the City. MEMI shall enter into any appropriate agreements with the City relative to the liquor license necessary to be able to fulfill its obligations hereunder. The City and MEMI shall cooperate in this process to the extent reasonably required, and any costs associated with this process shall be an Operating Expense.

(o) Coordinate with the City public relations and other promotional programs for the Facility.

(p) Maintain and implement on a regular basis, subject to the City's reasonable approval, a marketing plan for the advertising and promotion of the Facility and Facility events, which may contain but not be limited to the following elements:

- (1) market research;
- (2) market position;

- (3) marketing objectives;
- (4) marketing strategies;
- (5) booking priorities;
- (6) targeted events local, regional, national and international;
- (7) targeted meetings, conventions and trade shows;
- (8) industry advertising campaign;
- (9) internal and external support staff;
- (10) advertising opportunities at the local, regional and national level;
- (11) attendance at various trade shows, conventions and seminars;

(q) If requested by the City, MEMI shall coordinate with third parties designated by the City in connection with such third party's efforts to sell, license, or otherwise grant any of the Naming Rights or Concessions at or in connection with the Facility; provided, that if MEMI is selected by the City to sell, license or otherwise grant any of the Naming Rights, it shall use reasonable efforts in connection with such efforts.

(r) Immediately prior to the Opening Date, cause a written inventory to be taken of all furniture, fixtures, office equipment, supplies, tools and vehicles at the Facility, and deliver a written report of the foregoing to the City. MEMI shall document all major damage to, or such inventory during the Term as soon as such damage or loss is discovered by MEMI, and MEMI shall promptly notify the City of such damage or loss and the cost for placement of such items.

(s) After coordination and approval by the City, Purchase, on behalf of the City and with City funds, and maintain during the Term all materials, tools, machinery, equipment and supplies necessary for the operation of the Facility which shall be the sole property of the City.

(t) Coordinate with the City and the City's HR Director/Risk Management specialist in managing the risk management and insurance needs at the Facility.

(u) After coordination and approval by the City, identify and facilitate all routine and minor repairs, maintenance, preventative maintenance, and equipment servicing on behalf of the City. MEMI shall be responsible for ensuring that all repairs, replacements, and Maintenance shall be of a quality and class at least equal to that of the item being repaired, replaced or maintained and substantially consistent with the Quality Operating Standard. Any replacement of an item in inventory, or any new item added to the inventory, which is paid for with City funds or as an Operating Expense or Capital Expenditure, shall be deemed the property of the City.

(v) In addition to the Operating Budgets and the scope of MEMI's authority set forth herein, MEMI shall cause such other acts and things to be done in and about the Facility as determined by MEMI in its reasonable discretion to be necessary for the operation, control, supervision, direction and maintenance of the Facility.

(x) Provide such other services as may reasonably be requested by the City.



**EXHIBIT B**  
**INSURANCE**

At all times during the Term, MEMI shall:

- (a) maintain commercial general liability insurance;
- (b) maintain umbrella or excess liability insurance over all liability policies;
- (c) maintain commercial automobile liability insurance, including coverage for the operation of owned, leased, hired and non-owned vehicles;
- (d) maintain workers compensation and employer's liability insurance as shall be required by and be in conformance with the laws of the State of Ohio;
- (e) maintain professional liability insurance;
- (f) maintain liquor liability insurance; and
- (f) maintain employment practices liability coverage.

Such liability insurance shall be maintained in the following minimum amounts throughout the Term:

Commercial General Liability

\$1,000,000 per occurrence bodily injury and property damage

\$1,000,000 personal and advertising injury

\$2,000,000 general aggregate

\$2,000,000 products completed operations aggregate

- City of Huber Heights, its directors, officers, council members, managers, trustees, employees and volunteers shall be covered as an additional insured with primary/noncontributory coverage.
- The CGL policy shall contain a per-location aggregate endorsement.

Automobile Liability

\$1,000,000 combined single limit, covering liability arising out of owned, non-owned and leased motor vehicles.

- City of Huber Heights, its directors, officers, council members, managers, trustees,

employees and volunteers shall be covered as an additional insured with primary/noncontributory coverage.

Umbrella or Excess Liability Over all Liability Policies

\$19,000,000 combined single limit

- City of Huber Heights, its directors, officers, council members, managers, trustees, employees and volunteers shall be covered as an additional insured.

Workers Compensation

Workers Compensation: Statutory

Employer's Liability:

\$500,000 each accident-bodily injury by accident

\$500,000 policy limit-bodily injury by disease

\$500,000 each employee-bodily injury by disease

Professional Liability/Errors & Omissions (Claims-Made)

\$1,000,000 each occurrence/aggregate

Liquor Liability

\$1,000,000 per occurrence bodily injury and property damage

\$2,000,000 general aggregate

- City of Huber Heights, its directors, officers, council members, managers, trustees, employees and volunteers shall be covered as an additional insured with primary/noncontributory coverage.  
MEMI may meet this requirement by requiring all vendors engaged in the sales and/or service of alcoholic beverages to carry liquor liability insurance. In this instance, both MEMI and the City (and additional parties listed above) must be covered as an additional insured with primary/noncontributory coverage.

**FIDELITY BOND/CRIME**

Fidelity/Third-Party Crime

\$1,000,000 limit

Policy shall cover theft/misappropriation by MEMI employees of City property or funds.