

## FACILITY MANAGEMENT AGREEMENT

Contract # 14-033  
Ord # 12546/14

This Facility Management Agreement is Between the City of Warren, an Ohio Municipal Corporation (hereafter referred to as "City,") and JAC Management Group, LLC, an Ohio Limited Liability Company (hereafter referred to as "JAC" or "Manager).

### BACKGROUND

The City is the owner of a venue known as Packard Music Hall with a capacity of approximately 2418 seats and includes the surrounding real estate, improvements, and parking lots generally located at 1703 Mahoning Avenue NW, Warren - Trumbull County, Ohio. ("Facility"). The City desires to engage JAC to provide quality management services including all operations related to day to day operations, food and beverage, scheduling events and marketing services for the express purpose of enhancing the public use and enjoyment of the Facility.

JAC has represented it has the necessary experience in the business of providing management services including the operation and marketing of a public facility. The City will rely upon the management services of JAC for the operation and marketing services for the Facility.

City has advised JAC that the operation of the Facility is subject to the terms of the "Packard Trust". City shall provide JAC a copy of the trust so that JAC is able to review the terms contained therein and operate Facility in accordance with the terms. JAC shall be afforded a thirty (30) day period of time to review the trust after receipt of same. If this agreement has been executed prior to or within JAC's thirty (30) day review period, JAC shall have the right to terminate this agreement if it determines that any term of the trust makes successful or profitable operation unreasonably difficult.

It is the intent of the parties to structure an agreement wherein City pays JAC a predetermined management fee to offset operational costs and limit City's exposure as it relates to the operational costs associated with Facility. To that end, JAC shall be entitled to use the management fee to operate facility and any profit realized is the property of JAC and any loss is the responsibility of JAC.

NOW THEREFORE, in consideration of the mutual promise and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency which is hereby acknowledged the parties agree as follows:

### **Article 1 -Appointment of Manager**

#### **1. Engagement of JAC:**

The City hereby engages JAC and authorizes it to take sole, entire, exclusive charge of the Facility, subject to mandates required by the Packard Trust. The Manager hereby accepts the engagement and authorization and agrees to use skills and best efforts as Manager to effectively operate the Facility.

1.1 Performance of Manager Duties:

Manager agrees to render capable and competent services and to exercise due care in accordance with the standard practices acceptable and common in the industry.

1.2 In its capacity as Manager, JAC shall have authority over the day to day operations of the Facility, food and beverage operations contained within the facility and all activities therein.

1.3 Independent Contractor Status:

It is acknowledged that the expressed intent of City to Manager is that this Agreement shall be so construed that the rights and duties hereunder granted by City to Manager are those of an independent contractor. Further, the City retains title and ownership of the Facility and Manager will not acquire title to or any security interest in the Facility.

1.4 Consultant Agreement:

Manager is hereby authorized to enter into a consultant agreement for consulting and supplemental management services to maximize the utilization and profitability of the Facility, cost of which shall be Manager's responsibility.

## **Article 2 -Duties of Manager**

2. Manager, at Manager's cost, shall take such actions and perform such duties, as Manager deems necessary and desirable for the care, protection, operation, maintenance, repair and replacement, subject to the provisions hereof, of the Facility including, but not limited to the following:

2.1 Management Office:

City shall provide adequate space in the Facility for management offices at the Facility. Manager shall be authorized to use all furnishings, equipment, supplies and other personal property located at the Facility. Manager shall hold regular business hours and shall be reasonably accessible to City after regular business hours by cellular phone.

2.2 Employment of Personnel:

(a) During the management term and the renewal term, if any, JAC, at JAC's sole cost, shall select, train, and employ at the Facility such number of employees, as JAC deems necessary or appropriate to satisfy its responsibilities hereunder. JAC shall have authority to hire, terminate, discipline and discharge any and all personnel working at the Facility.

(b) JAC employees at the Facility shall not be considered to be employees of City, and JAC shall be solely responsible for their supervision and daily direction and control. JAC shall be solely responsible for paying, processing and disbursing payroll checks to Facility employees.

(c) Manager agrees that it shall not discriminate against any employee or applicant for employment because of race, religion, national ancestry, age or sex.

2.3 Event Bookings and Rentals:

Manager shall be exclusively responsible for event bookings and rentals at Facility. Manager shall collect (and give receipts for) all rents, charges and other amounts receivable in connection with the management and operation of the Facility. All such payments shall be payable as designated by Manager and accounted for with appropriate accounting practices. City is aware that the principal of JAC, Eric Ryan, is also the principal of Eric Ryan Productions, LLC. JAC is expressly permitted to enter into rental agreements with Eric Ryan Productions, LLC.

2.4 Scheduling:

Manager shall develop and maintain all schedules for events held at the Facility. All scheduling shall be accomplished in a manner so as to maximize the use of the Facility, make the facility more accessible to the community, and generate the maximum revenue to the Facility, all subject to the mandates of the Packard Trust. The parties understand and agree that Manager shall be empowered to negotiate Event Rental Agreements, which may deviate from the standard rate when such negotiation is deemed by Manager to be appropriate.

2.5 Property Security:

Manager shall be responsible for hiring and supervising all security services for the Facility. Manager acknowledges that security is an important component of the operation of the Facility and the Manager will use its best efforts to make sure proper security is in place at all times for the protection of the Facility and the tenants therein. The cost of such security will be paid by Manager.

2.6 Cleaning, Maintenance and Emergency Repairs:

(a) The Manager shall be responsible for providing and supervising all cleaning services and routine maintenance and repair to the Facility. Expenses to be incurred for any one (1) item of maintenance that exceeds \$3,000.00 shall be the responsibility of City and must be approved by the City prior to incurring the expense.

(b) Manager is authorized to make, cause to be made, or enter into agreements with subcontractors to effect all ordinary repairs, replacements, and maintenance reasonable and necessary to preserve the Facility in its present condition and for the efficient operation of the Facility, and to effect all alterations required to comply with lease requirements, government regulations or insurance requirements. City shall be responsible for any repair, replacement, maintenance or alteration expense in excess of \$3,000.00. Manager shall garner the approval of City prior to incurring any such expense.

(c) Where repairs are immediately necessary for the preservation and safety of the Facility, or to avoid the suspension of any essential service to the Facility, or to avoid danger to life or property, or to comply with federal, state or local law, such emergency repair shall be made by Manager at City's expense without prior approval, only after Manager first using its best efforts to notify City and seeking City's approval.

2.7 Workers' Compensation Insurance:

Manager shall provide City with a certificate that Manager's employees are covered by Workers' Compensation Insurance.

2.8 Food Services:

(a) JAC shall have the right to operate the Food Services including Club Restaurant Services, Suite Services, Concession Services, Vending Services and the service and sale of Alcoholic Beverages, at all areas of the Facility.

(b) JAC shall clean and provide normal day-to-day maintenance and repair as necessary, to equipment, leasehold improvements and fixtures used by JAC. Maintenance and repair in excess of \$3,000.00 shall be the responsibility of City. Manager shall obtain prior written approval from City before entering into any agreement that obligates the City as described herein.

(c) JAC shall comply with and observe all federal, state and local laws, ordinances and regulations as to sanitation and the purity of food and beverages or otherwise relating to its operations.

(d) City agrees to transfer its liquor licenses associated with Facility to JAC at JAC expense. JAC understands that it is "holding" the liquor licenses for the facility and that City will maintain all ownership interest in same. In the event of termination of this Agreement, JAC shall cooperate in the transfer of liquor licenses to the City, at City expense, or its designee.

2.9 Operational Services:

Manager shall direct all services required to stage (set-up and tear-down) the Facility for each event including, without limitation, services involving the stage area, event floor, sound system, lighting system, stage rigging, dressing area, stage equipment, loading in and loading out. Manager shall hire and manage all management staff, ticket sales personnel, ushers, and other personnel required for the operation of the Facility including; but not limited to, ticket-taking, novelty sales, program distribution and assistance to patrons generally, including the handicapped.

2.10 Negotiate with Third Parties:

Manager may negotiate, execute, deliver and administer any and all licenses, occupancy agreements, rental agreements, booking commitments, advertising and sponsorship agreements, catering and concession agreements, decorating agreements, supplier agreements, service contracts and all other contracts and agreements in connection with the management, promotion and operation of the Facility, provided that if any such license, agreement, commitment or contract other than those involving the license, lease or rental of any of the Facility (or any portion thereof) in the ordinary course has a term that extends beyond the remaining management term, such license, agreement,

commitment or contract shall be approved in advance by City (which approval shall not be unreasonably withheld). Manager shall not be permitted to enter into any agreement regarding the naming rights of the Facility.

2.11 Utilities:

JAC shall be responsible for the day to day operational costs associated with Facility, including, but not limited to, utilities expenses. All utilities shall remain in the name of City for the benefit of bulk purchase pricing. City shall delineate utilities associated with Facility and timely forward to JAC for payment. JAC shall timely remit payment for such expenses.

### **Article 3 -Term**

3. Terms of this Agreement shall commence on September 1, 2014 for a three (3) year period ending on August 31, 2017, unless earlier terminated pursuant to the provisions of this Agreement.

3.1 At the sole and exclusive option of JAC, this Agreement may be renewed for an additional two (2) year period commencing September 1, 2017. JAC shall provide written notice to City on or before June 1, 2017 of its intent not to renew this Agreement, if applicable.

3.2 Continued Obligation:

Notwithstanding anything contained herein to the contrary, no termination of this Agreement shall release either party from any obligations or liability arising under the terms and provisions hereunder that occur prior to the date of such termination pursuant to continuing contracts or commitments according to the terms and provisions hereof.

### **Article 4 – Fiscal Matters**

4. Management Fee Paid by City:

(a) The City shall pay to JAC a yearly management fee pursuant to the below schedule as an offset to the day to day expenses to operate the Facility. The management fee schedule shall be as follows:

September 1, 2014 – August 31, 2015 - \$300,000.00

September 1, 2015 – August 31, 2016 - \$250,000.00

September 1, 2016 – August 31, 2017 - \$200,000.00

(b) Yearly management fee paid during the renewal period shall continue at \$150,000.00 for fiscal year beginning September 1, 2017 and \$100,000.00 for fiscal year beginning September 1, 2018.

(c) Yearly Management fee to be paid in three equal installments during each contract year and any applicable renewal contract year pursuant to the following schedule:



Payment 1 – Prior to September 1 of the applicable contract year

Payment 2 – Prior to January 1 of the applicable contract year

Payment 3 – Prior to May 1 of the applicable contract year

(d) In the event this contract is terminated prior to the conclusion of a contract year, JAC shall return a pro rata portion of the most recently paid management fee payment to City, unless it is mutually determined by the parties or by a trier of fact that due to unusual or excessive expenses to operate the Facility in that or the immediately previous contract year it became necessary to spend an amount greater than a pro rata share of the management fee payment.

(e) Except as provided in 4(d) above, JAC shall have no obligation to return or repay City for management fee paid to JAC.

(f) City shall have no obligation towards the day to day operational expenses in excess of the yearly management fee paid by City to JAC.

(g) Manager shall appropriate funds provided by City by using and employing reasonable business practices.

(h) City shall be responsible for all costs incurred by Facility prior to JAC taking control on September 1, 2014. JAC shall promptly forward any bills it receives for services prior to September 1, 2014 to City for payment.

(i) JAC shall provide to City a yearly itemization of Facility expenses and verification of payment of same.

4.1 Remuneration of Manager:

JAC, as an independent contractor, shall receive remuneration for services rendered the net profit derived from the operation of Facility, after first paying such amounts required to be paid for all expenses of every kind whatsoever related directly or indirectly to or incidental to the operation of the Facility, including sales taxes, employee wages, withholdings, supplies, inventory, permits, utilities, advertising, and any other costs or expenses of whatever kind and nature whatsoever, including liquor license renewal fees. If there is no net profit during the term of this Agreement, then Manager shall not be entitled to any remuneration for services rendered pursuant to this Agreement, except that JAC shall still be obligated to pay all amounts and comply with all provisions of this Agreement. JAC shall collect all funds pursuant to its operation of the Facility.

4.2 Capital Equipment and Capital Improvements:

The obligation to pay for, and authority to perform, direct and supervise capital equipment and capital improvements purchases shall remain with City. JAC shall submit a yearly report with recommendations for capital equipment and capital improvement purchases to be accomplished during the year and shall be accompanied by an estimate of the cost of all such items and projects and a request that City budget funds therefore. City

shall retain the discretion to determine whether and to what level to fund capital equipment and capital improvements purchases to the Facility.

4.3 Establishment of Capital Improvement Fund:

Manager shall collect a fee in the amount of twenty-five cents (.25¢) per ticket sold in Year 1 and Year 2 of the contract term and deposit same into an escrow account designated by City and to be allocated as a facility capital improvement fund. All capital improvements to the facility shall be authorized by City and paid for first by using funds available in the capital improvement fund. The fee per ticket sold shall increase to thirty-five cents (.35¢) in Year 3 of the contract term and to fifty cents (.50¢) in Years 4 and 5 of the renewal term, if applicable, and deposited and designated as described herein. City shall be permitted a yearly ticket sales audit to ensure compliance with the terms contained in this Paragraph 4.3.

4.4 Establishment of Parking Fund:

Manager, at its sole discretion, may charge for event parking that will be considered a source of revenue for Manager. Manager shall pay to the city 10% of net revenue realized from said charge. Net revenue shall be defined as the gross receipts directly related to parking revenue, minus any expense directly related to parking services, including, but not limited to, parking attendants, etc. City shall be permitted a yearly parking revenue audit to ensure compliance with the terms contained in this Paragraph 4.4.

4.5 Limitation of JAC Liability:

Notwithstanding any provision herein to the contrary and except for JAC's express indemnification undertakings in Article 6, responsibility for cleaning and maintenance in Article 2.6 and requirement to pay day to day operational expenses in Article 4.1, JAC shall have no obligation to fund any cost, expense or liability with respect to the design, development, construction, repair or rehabilitation of the Facility.

### **Article 5 -Responsibilities of City**

5. Contract Execution:

City may, at its discretion if requested by Manager, contract for services with a third party.

5.1 Payments to Manager:

City covenants and agrees that it shall provide to Manager such sums as it is required to pay to Manager pursuant to Article 4 hereof, as well other covenants contained herein with no further obligation otherwise.

### **Article 6 - Indemnification and Insurance**

6. Indemnification:

JAC shall indemnify, defend and hold harmless the City, its officers, agents and employees from and against all losses arising from any material default or breach by

JAC of its obligations specified herein; provided, however that the foregoing indemnification shall not extend to losses to the extent such losses (i) arise from any breach or default by the City of its obligations under Article 6.1, (ii) are of the type that are or would normally be covered by commercial insurance covering (A) the Facility and its premises and the City's personal property located therein for physical damage or other loss, and (B) business interruption and extra expense, irrespective of the decision of the City to carry or not to carry such insurance, (iii) are caused by or arise out of the services provided by the architects, engineers, and other agents (other than JAC) retained by the City in Connection with Capital Equipment and Capital Improvements purchases at the Facility, or (iv) relate to or arise from occupational related diseases of any City employees who provide any services at the Facility (whether as an employee of the City or as a part-time employee of JAC). Notwithstanding the foregoing, to the extent that such occupational disease described in clause (iv) above is demonstrated to be directly related to the work of such City employee at the Facility, then the provisions of clause (iv) shall not apply to the extent thereof.

- 6.1 The City shall indemnify, defend and hold harmless JAC, its partners, officers, agents, and employees from and against any and all losses arising from (i) any material default or breach by the City of its obligations specified herein, (ii) the fact that at any time prior to, as of, or after the commencement of the management term hereunder the Facility has not operated, or the Facility and its premises are not or have not been, in compliance with all laws, including, but not limited to, the ADA, (iii) the fact that prior to, as of, or arising from the premises occupied by the Facility which might, under any law, give rise to liability or which would or may require any "repose," "removal" or "remedial action" (as such terms are defined under CERCLA) (iv) structural defect or unsound operating condition with respect to the Facility or the premises occupied by the Facility prior to, as of or after the commencement of the management term, hereunder, (v) any obligation or liability under or in respect of any contract, agreement or other instrument executed by JAC as agent for the City as authorized herein, (vi) any obligation or liability for physical damage or other loss to any real property and personal property assets located at the Facility or intended to be incorporated therein, whether such assets are insured by the City or whether the City decides not to insure for such damage and losses (including without limitation damages or losses falling within any insurance deductible), unless such damage and loss directly result from JAC's negligence (vii) any non-compliance with any Pre-Existing Agreement on or prior to the commencement of the management term, or (viii) any act or omission carried out by JAC at or pursuant to the direction or instruction of City, its agents or employees; provided however, that the foregoing indemnification under clauses (i) and (ii) above shall not extend to losses to extent such losses arise from any default or breach by JAC of its obligations specified herein.
- 6.2 The indemnity obligations of the parties hereunder shall survive the expiration or termination of this Agreement. Other than lost profits of manager, neither party shall be liable or responsible for any indirect, incidental, punitive or special damages, whether based upon breach of contract or warranty, negligence, strict tort liability or otherwise, and each party's liability for damages or losses hereunder shall be strictly limited to direct damages that are actually incurred by the party.



- 6.3 City shall be required to maintain at its cost Property Insurance and General Liability Insurance, naming JAC as an additional insured on the policy. JAC shall be required to maintain at its cost General Liability Insurance and Liquor Liability Insurance, naming City as an additional insured on the policies. JAC's General Liability Insurance shall include automobile, employee fidelity, and such other coverage as may be applicable from the nature of the operations of the Facility. JAC shall be required to secure workers compensation for the Facility's employees. The cost of said Insurance premiums and deductibles are to be paid by JAC. Copies of the insurance policy and workers' compensation certificate shall be provided to the City and the City shall be named an additional insured. The policy of the party primarily responsible for any insurance claim shall be designated as the primary insurance policy on such claim.
- 6.4 General Liability Insurance  
JAC shall purchase and maintain, during this Agreement, commercial general liability insurance on a per occurrence and aggregate basis with limits of liability not less than \$1,000,000.00 per occurrence and \$5,000,000.00 aggregate for bodily injury, personal injury, and property damage with a \$4,000,000.00 umbrella.
- 6.5 Attached hereto and made a part of this Agreement as Exhibit A are the more definitive requirements of the insurance to be maintained by City and Manager.

#### **Article 7 -Termination**

7. Either party may terminate this Agreement upon a default by the other party hereunder. A party shall be in default hereunder if (i) such party fails to pay any sum payable hereunder within thirty (30) days after same is due and payable, or (ii) such party fails in any material respect to perform or comply with any of the other terms, covenants, agreements or conditions hereof and such failure continues for more than sixty (60) days after written notice thereof from the other party. In the event that a default (other than a default in the payment of money) is not reasonably susceptible to being cured within a sixty (60) day period, the defaulting party shall not be considered in default if it shall within such sixty (60) day period have commenced with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default.
- 7.1 The parties may mutually agree one to the other with (30) days written notice to terminate this Agreement.
- 7.2 JAC unreservedly retains a right from time to time to discontinue use of the Facility for public events if it is determined that a periodic closing is a sound financial decision to avoid loss of profits, subject to the mandates required by the Packard Trust. Prior to any periodic closing of the Facility, JAC shall advise City of its intention to do so, the time period of such closure and the rationale of such closure.

7.3 In the event of termination, without cause, the Manager shall be paid as liquidated damages, an amount equal to the management fee payment required in Article 4 for the remainder of the then current fiscal year and the following fiscal year, not to exceed an eighteen (18) month time period. Additionally, at JAC's option, JAC shall be permitted up to a six (6) month wind down period under the same terms contained herein.

7.4. Termination Upon Default:

This Agreement may be terminated by the City immediately for cause. For this purpose, "cause" shall mean:

- (a) Manager's conviction of a felony.
- (b) Manager's gross neglect of its duties or commission of an act of dishonesty towards City's business.
- (c) Manager's filing of a petition to be adjudicated bankrupt, or for reorganization or arrangement under the Bankruptcy Laws of any state or the United States.
- (d) An assignment for the benefit of creditors made by Manager.

7.5 Duties Upon Termination

Upon termination of this agreement, by normal expiration or otherwise, the parties hereto agree that:

- (a) Manager shall deliver to City or any person or agent designated by City
  - i) executed copies of all leases and contracts related to the Facility and all related files;
  - ii) all funds, if any held by Manager for the benefit of City;
  - iii) all other papers or items of any kind held by Manager relating to Facility.
  - iv) Upon termination or expiration of this Agreement, JAC shall surrender and vacate the Facility upon the effective date of such termination or expiration. The Facility and all equipment and furnishings owned by City shall be returned to the City in good repair, reasonable wear and tear excepted. All reports, records, including financial records and documents maintained by JAC at the Facility relating to this Agreement other than JAC's proprietary information or property shall be immediately surrendered to City by JAC upon termination or expiration.
- (b) In connection with any termination of this Agreement, Manager shall assign to City, if the same are assignable, all contracts and other agreements, if any, executed in the name of Manager, relating to the operation and management of the Property.
- (c) Manager shall, in addition to other requirements placed on Manager pursuant to this article, furnish all additional information and take such further actions, as City shall reasonable require in order to effectuate an orderly and systematic termination of Manager's duties and activities with regard to the facility.

## **Article 8 -Assignment**

8. This Agreement is personal in nature as to JAC, which has been selected for its expertise. As a result, this Agreement is not assignable by JAC without the City's prior written approval. The City's approval of assignment of this Agreement by JAC will not relieve JAC of any liability incurred under its terms.
- 8.1 The City's right as the contracting party to assign is absolute and it may assign its interest to any successor in interest that may acquire title to the Facility provided, however, that the City has complied with the terms and provisions of its agreements.

## **Article 9 Miscellaneous**

### **9.1 Representations and Execution:**

- (A) As to execution, City represents and warrants to JAC the following:
- (i) all required approvals have been obtained, and City has full legal right, power and authority to enter into and perform its obligations hereunder;
  - (ii) this Agreement has been duly executed and delivered by City and constitutes a valid and binding obligation of City, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles, and;
  - (iii) the execution and delivery of this Agreement will not violate or cause a breach (with or without notice or the passage of time) under any agreement to which City is a party, including, without limitation, the Agreement.
- (B) JAC represents and warrants to City the following:
- (i) all required approvals have been obtained, and JAC has full legal right, power and authority to enter into and perform its obligations hereunder, and;
  - (ii) this Agreement has been duly executed and delivered by JAC and constitutes a valid and binding obligation by JAC, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

9.2 Notice:

Any notices required or authorized by this Agreement shall be made by mail, postage prepaid, registered or certified mail, return receipt requested, when mailed to the following addresses or to such other addresses as the parties hereto may designate, in writing, and in accordance with the provisions hereof, or personal service shall be deemed effective when delivered to:

As to City: Finance Director  
Warren City Hall  
391 Mahoning Avenue NW  
Warren, Ohio 44483

And

Safety Service Director  
Warren City Hall  
391 Mahoning Avenue NW  
Warren, Ohio 44483

With a Copy To: Law Director  
Warren City Hall  
391 Mahoning Avenue NW  
Warren, Ohio 44483

As to Manager: Eric Ryan  
JAC Management Group, LLC  
89 Hopewell Dr.  
Struthers, OH 44471

With a Copy To: Melone Law Offices LLC  
James Melone, Esq.  
700 Fifth Street  
Struthers, OH 44471

9.3 Amendment:

Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by instrument in writing signed by both parties hereto.

9.4 Severability:

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under Ohio law, but if any provision of this Agreement shall be prohibited by or be invalid under such law, such provision shall be



ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

9.5 Entire Agreement:

This Agreement, and other documents executed in connection with the Facility, constitutes and expresses the entire agreement of the parties hereto and no agreements, warranties, representations or covenants not herein expressed shall be binding upon the parties.

9.6 Counterparts:

This Agreement may be executed in several counterparts, each of which will be deemed an original and all of which counterparts together shall constitute on and the same instrument.

9.7 Captions:

Captions appearing before sections and articles in this Agreement have been inserted solely for the purposes of convenience and ready reference. They do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the section or articles to which they pertain.

9.8 Governing Law:

This Agreement shall be governed by and interpreted under the laws of the State of Ohio. For all purposes hereunder, jurisdiction and venue shall be accepted and acknowledged by the parties to the appropriate state or federal court covering Trumbull County, Ohio.

9.9 No Partnership or Joint Venture:

Nothing herein contained is intended or shall be construed in any way to create or establish the relationship of partners or a joint venture between City and JAC.

9.10 Non-Waiver:

A failure by either party to take any action with respect to any default or violation by the other of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of such party to act with respect to any prior contemporaneous; or subsequent violation or default or with respect to any continuation or repetition of the original violation or default.

9.11 Force Majeure:

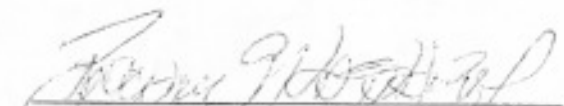
Any delays in the performance of any obligation of Manager under this Agreement shall be excused to the extent that such delays are caused by wars, national emergencies, natural disasters, strikes, labor disputes, utility failures, governmental regulations, riots, adverse weather, and other similar causes not within the control of Manager, and any time periods required for the performance shall be extended accordingly.

9.12 Documents:

Manager shall, on the City's behalf, send a form letter advising all tenants and service providers, if any, presently under contract regarding the Facility of the change in management of the Facility. Manager shall provide a draft of said form letter to be reviewed and approved by City.


- 9.13 Subject to the terms and conditions herein provided, each of the parties hereto shall execute and deliver such documents as the other party shall reasonably request in order to consummate and make effective the transaction contemplated by this Agreement; provided, however, that execution and delivery of such documents by such party shall not result in any additional liability or cost to such party.
- 9.14 It is agreed that both parties shall perform their respective duties under the terms of this Agreement in good faith.
- 9.15 It is agreed that each party hereto have been represented by counsel and each party shall be considered to have equally participated in the drafting of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties and is effective as of the 9th of June, 2014.




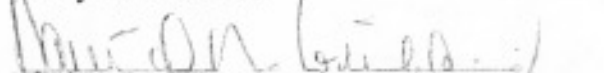

APPROVED AS TO FORM

  
Greg Hicks, Esq., Law Director

THE CITY OF WARREN, OHIO  
By Its Board of Control

  
William D. Franklin, Mayor

  
Enzo Cantalamessa, Director of Public  
Safety and Services

  
David Griffing, Finance Director

JAC MANAGEMENT GROUP, LLC  
By Its Principal

  
Eric Ryan

## "EXHIBIT A"

### Insurance

- (a) JAC shall secure and deliver to City prior to the commencement of the Management Term hereunder and shall keep in force at all times during the Management Term and the Renewal Term, if any:
  - (i) a commercial liability insurance policy, including, independent contractors, contractual liability, products and completed operations, liquor liability (as long JAC is providing the food and beverage and catering services hereunder; otherwise, it should be contingent liquor liability), personal and advertising injury, public liability and property damage, covering the premises, the operations hereunder, in the amount of One Million Dollars (\$1,000,000.00) per occurrence/Five Million Dollars (\$5,000,000.00) aggregate for bodily injury and property damage;
  - (ii) an aggregate umbrella liability insurance policy with a limit of Four Million Dollars (\$4,000,000.00);
  - (iii) a comprehensive automotive bodily injury and property damage insurance policy for business use covering all vehicles operated by JAC officers, employees in connection with the Facility, whether owned by JAC, or otherwise, with a combined single limit of not less than One Million (\$1,000,000.00) per occurrence (including an extension of hired and non-owned coverage);
- (b) JAC shall provide worker's compensation insurance through the Ohio State Compensation Insurance Fund;
- (c) City and JAC shall each be named as an additional insured under all of the other's general liability, property and hazard insurance policies covering or relating to the Facility. Nothing in this Agreement is intended to require JAC to maintain property and hazard insurance covering the premises at the Facility or business interruption insurance covering interruption of operations by or for whatever cause at the Facility.
- (d) The terms of all insurance policies referred to in sections 6.3 and 6.4 of the Agreement and on this Exhibit "B" shall preclude subrogation claims against JAC, the City and their respective partners, members, officers, directors, employees and agents, if the subject policy so permits.
- (e) JAC shall be the named insured(s) under all of the liability described in paragraph (a) above. The City shall be an additional insured under the insurance described in paragraph (a)(i), (ii) and through (iii) above. The insurance maintained by each

party hereunder shall contain a provision covering the parties' indemnification liabilities to each other, if the subject policy so permits.

- (f) Certificates evidencing the existence of the above policies shall be delivered by each party to the other prior to the commencement of the Management Term. Notwithstanding the provisions of Sections 6.3 and 6.4 and this Exhibit "B", the parties hereto acknowledge that the above insurance may contain exclusions from coverage which are reasonable and customary for insurance of such type.
- (g) A renewal binder of coverage shall be delivered by the named insured to the other party at least twenty (20) days after a policy's expiration date, with a complete copy of such renewal insurances to follow.



**ADDENDUM TO FACILITY MANAGEMENT AGREEMENT  
DATED JUNE 9, 2014**

This Addendum to Facility Management Agreement is made and entered into as of this 15<sup>th</sup> day of August, 2014, by and between the City of Warren, an Ohio Municipal Corporation (hereafter referred to as "City") and JAC Management Group LLC, an Ohio Limited Liability Company (hereafter referred to as "JAC" or "Manager").

**WITNESSETH:**

9 **WHEREAS**, City and JAC entered into a Facility Management Agreement on June 9, 2014, which provided for JAC to manage operations of the facility located at 1703 Mahoning Avenue NW, Warren, Ohio and commonly known as the Packard Music Hall (the "Facility"); and

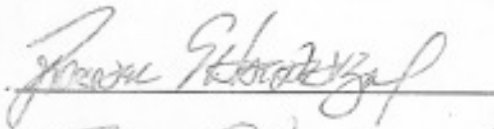
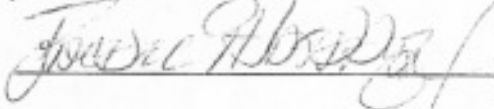
**WHEREAS**, City and JAC are in agreement that certain modifications to the original contract are necessary for clarification purposes;


**NOW THEREFORE**, in consideration of the mutual promises and covenants contained herein, the original Facility Management Agreement dated June 9, 2014 shall be amended to include the following:

1. The Facility Management Agreement shall be modified to be made by and between the City of Warren, an Ohio Municipal Corporation (referred to throughout the Agreement as "City") and JAC Management Group Packard LLC, an Ohio Limited Liability Company (referred to throughout the Agreement as "JAC" or "Manager"). There shall be no contract existing with JAC Management Group LLC.
2. Paragraph 2.8(d) relating to the transfer of liquor license shall be struck in its entirety and shall be replaced with the following:

City agrees to transfer its liquor licenses associated with Facility to JAC at JAC expense. In the event of termination of this Agreement or at the conclusion of the term, JAC shall cooperate in the transfer of liquor licenses to the City or its designee, at City expense.
3. Paragraph 4.4 shall be modified to include the following sentences at the end of the paragraph as follows: "JAC shall be permitted to charge for Event Parking only in the areas designated as Packard Music Hall. Packard Music Hall Parking shall be designated and described by the map attached hereto and made a part hereof as Exhibit A.


IN WITNESS WHEREOF, this Addendum has been executed by the parties and is effective as of the 15<sup>th</sup> day of August, 2014.




APPROVED AS TO FORM

  
Greg Hicks, Esq., Law Director



THE CITY OF WARREN, OHIO  
By Its Board of Control

  
William D. Franklin, Mayor

  
Enzo Cantalamessa, Director of Public  
Safety and Services

  
David Griffing, Finance Director

JAC MGMT GROUP PACKARD LLC  
By Its Principal

  
Eric Ryan