MANAGEMENT AND OPERATION AGREEMENT
BETWEEN
SHELBY COUNTY GOVERNMENT, SHELBY COUNTY SCHOOLS
AND
MEMPHIS SOCCER EDUCATION, INC.

THIS AGREEMENT is made by and between the government of Shelby County, Tennessee ("Shelby County"), Shelby County Schools ("SCS") and the Memphis Soccer Education, Inc. ("Association"), a Tennessee non-profit corporation, currently classified under 501(c) (3).

RECITALS:

1. Shelby County and SCS own certain real property located at 4041 Long Creek (adjacent to Southwind Middle School) in the County of Shelby and in the State of Tennessee, known locally as LOWRANCE ROAD PARK; which is dedicated for use as public park areas with the agreement of SCG and SCS, under the control of the Shelby County Conservation Board (the "Property").

2. Shelby County, Shelby County Schools and the (Association) will work to operate and maintain use of the Property as a baseball/softball complex, playground, walking park and also as required to the related improvements and facilities.

3. This is an 18 acre park open to all citizens for various recreational functions. The primary amenities include two lighted multipurpose ball fields; two unlighted football/soccer fields with goals; picnic pavilion with tables and barbeque grill; designated playground area with multiple play stations; designated asphalt parking area (lighted); and, one asphalt walking trail (approx. .95 miles) and is hereinafter referred to as the "Lowrance Road Park".

4. The Lowrance Road Park facility is currently operated and maintained by or under the supervision of the Shelby County Conservation Board.

5. The (Association) desires to be primarily responsible for funding, operation, use and maintenance of the Lowrance Road Park Complex in accordance with the terms and conditions set forth herein, and to coordinate with other community non-profit groups and associations operating in the area to allow them use of the facilities consistently with or similar to their present use.

NOW, THEREFORE, for and in consideration of the above stated purposes, the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT:

1. **Description of the Lowrance Road Park Area.** The Property, which comprises Lowrance Road Park, is subject to this Agreement and is more particularly described by metes and bounds in Exhibit A attached hereto and incorporated herein by reference, and is also specifically designated on the map attached hereto as Exhibit B and incorporated herein by reference. The parties hereby acknowledge that approximately fifteen (15) acres of Lowrance Road Park is currently developed. Any future development must be approved by Shelby County and SCS, provided that the Association maintains and insures the entire property.

The present improvements subject to this Agreement for the management and operation of the park, are described as follows:

Specifically, the used portion of the premises includes two (2) lighted baseball/softball/multi purpose fields, a concessions building with restrooms, a rest shelter with restroom, a 0.95 mile asphalt walking trail and playground unit with multiple activities, paved parking, and appropriate roadways for access, circulation and maintenance. (Hereinafter the "Improvements").

In addition to the present "Improvements" (Association) may construct additional

improvements to the Lowrance Road Park Complex, upon any or all of the entire eighteen (18) acres tract, at its cost, and subject to the approval of the County and SCS. All improvements revert to the County and SCS to the extent of ownership of the land owned by SCS or the County upon any breach or termination of this Agreement. Lowrance Road Park Complex shall remain open and available for use by the general public subject to fees and conditions necessary to fund the operation and maintenance, as determined by the (Association). Shelby County and SCS retain the right to review any fees and conditions set by the (Association), provided that in lieu of agreement, the matter shall be determined by the Conservation Board Director.

2. **Operation and Maintenance of the Lowrance Road Park Complex.**

2.01. **County Improvements to be Accepted in "As Is" condition.** The Athletic Association agrees to accept the subject premises in their present state and condition, provided however, Shelby County acknowledges and agrees to: (1) maintain roads and drives; (2) solely maintain insurance or self-insurance on premises, if any, not used by the Association, but within the park complex.

2.02. **Operation and Maintenance of Premises and Facilities.**

The (Association) hereby agrees to assume full responsibility and liability for the operation and maintenance of the Lowrance Road Park Complex in a safe and cost-efficient manner, remaining OPEN TO ALL CITIZENS OF SHELBY COUNTY, as provided herein. Failure to maintain either safe, reasonable or cost efficient operation shall be deemed grounds for default. (Association) shall operate and maintain the Park Complex and Improvements and premises at a similar level and condition at which the Association accepts the premises. However, the Association shall not be required to comply with the Shelby County Purchasing Policies and Procedures. The

(Association) will make good faith efforts to allow other non-profit organizations and the general public to use the Improvements similar to the use of a public park, subject to reasonable fees for use of the baseball fields, and other fees after review by the Shelby County Conservation Board. The parties agree that a reasonable effort will be made to accommodate use by the general public at a level of use similar to their prior use, subject to reasonable fees. The County retains the right to allow usage by said organizations, provided that the cost of their use shall cover the expenses and pro-rata funding for the operation and maintenance by the Association. Any recommendation by the County as to the use by any other entity is subject to final decision by the County Mayor or his designee.

3. **Financial Terms for the Use Agreement for the Park and County Improvements.**

There shall be no monetary consideration paid by the Association for the Management and Operation of the County Improvements; provided however, that the parties acknowledge that the obligations of the (Association) contained herein relating to the facilities and the public use thereby confers a benefit and consideration to Shelby County.

No funds for the operation and maintenance of the Lowrance Road Park Complex shall be provided by Shelby County, Shelby County Schools, the Shelby County Conservation Board or any other Shelby County Governmental entity. However, Shelby County and Shelby County Conservation Board shall be responsible for providing funding for improvements to the infrastructure, including roadway and parking area repaving. No monies will be budgeted by Shelby County Government, Shelby County Schools or the Shelby County Board of Commissioners for encumbrances and/or expenditures attributable to the Lowrance Road Park Complex, except as specifically stated herein or unless this Agreement is modified, in writing. The appropriation, if any,

of monies to repair conditions in need of repair at the time of execution of the Agreement is excluded. The Association covenants and agrees to obtain prior approval from the County and Shelby County Schools for any alterations or improvements to the Property, regardless of any funding source, including donations and gifts. Any such improvements shall be reviewed and approved by the Shelby County Engineer prior to submission to SCG and SCS.

The obligation of the Association for the payment of any funds, and all other covenants and terms related to operation and maintenance of the Improvements and Park Complex areas, are specifically limited to the obligation contained herein and are made in good faith by the (Association) for the purposes intended herein, including furthering the benefit of the Association, Shelby County, Tennessee and the citizens of Shelby County. The benefits of this Agreement inure to any and all citizens of Shelby County, Tennessee, provided that Shelby County Government and SCS retain the right to enforce the terms as provided herein. It is expressly understood between and agreed to by the County and the Association that there shall be no personal liability of the present members of the (Association) or of the individuals who serve on its board of directors for any of the financial obligations of the Association set forth herein. However, the Association shall provide a sufficient Letter of Credit, Performance Bond, or Insurance, as may be required by Shelby County Finance Department and SCS for the faithful performance of its duties as outlined herein.

Shelby County retains no obligation to operate and maintain the Park area, or provide any funding or assistance, except compliance with this Agreement, interim inspections and review of any requested alterations and improvements.

4. **Contingent Obligations.** All obligations of Shelby County under this Agreement, other than provisions related to remedies, are subject to the appropriation of the funding for same by the

Shelby County Board of Commissioners. Maintenance of the 501(c)(3) status by the (Association) is mandatory.

5. **Property Uses.** The parties acknowledge that the Improvements provided herein are consistent with planned uses for the Lowrance Road Park Complex as determined by the Shelby County Conservation Board, Shelby County Schools and the Tennessee Department of Environment and Conservation, to which reference is made. Shelby County shall diligently assist (Association) in ensuring that the Lowrance Road Park Complex fulfills its purpose for the benefit of Shelby County citizens, limited however, to the terms herein.

6. **Management and Operation of Lowrance Road Park Complex.**

6.01. **Management and Operation.** Shelby County hereby grants to (Association) the exclusive right to manage, operate and maintain the Lowrance Road Park Complex on the terms and conditions, including limitations, set forth herein. (Association) hereby accepts such grant and agrees to operate and maintain the Lowrance Road Park Complex pursuant to this Agreement, in a manner acceptable to Shelby County and SCS, as an area Park Complex with playgrounds, walking trails, baseball/softball/multi purpose facilities, and within their discretion, for other sports play, training and spectator accommodation. The Association will take all actions necessary to operate and maintain the Lowrance Road Park Complex in a safe and orderly fashion for all players, spectators, staff, employees, tenants, contractors, vendors, patrons and visitors. The Association shall maintain adequate Liability and General Insurance as provided herein.

6.02 **Shelby County Usage.** Shelby County, or its designee, and all citizens, shall have the right to use the Park, upon the same terms and conditions as the General Public, subject to fees and prior notice.

6.03 **Shelby County Schools Usage**. Shelby County Schools shall be granted priority of use of the park during the hours of 7:30 a.m. to 4:00 p.m. Mondays through Fridays when school is in session. All fees and charges pertaining to use of the park shall be waived as to Shelby County Schools.

6.04 **Income from Operations.** Subject to audit by the County, (Association) shall be entitled to receive and retain all monies generated by or from the operations of the Lowrance Road Park Complex. Financial records shall be kept and maintained for four (4) calendar years and shall be made available to County upon request.

6.05. **Sponsorship and Advertising Payments.** (Association) shall have the right to sell sponsorships and advertising to and within the Lowrance Road Park Complex, provided however that all proposed sponsorships or advertising must be approved by the Conservation Board Director and SCS and comply with federal, state and local laws.

6.06 **Tax Status.** Shelby County and Shelby County Schools retain ownership of the fee to the respective demised premises, and the real estate remains tax exempt. Nothing in this agreement shall be construed to waive or limit the right, title or interest of SCG or SCS in any respective portion of the park owned by either party. PERSONAL PROPERTY: To the extent that the Association is assessed with or required to pay any PERSONAL property taxes, (Association) is fully responsible for such tax. (Association) shall be solely responsible for payment of any and all sales or use taxes due to or assessed by the State of Tennessee relating to (Association)'s activities hereunder, including but not limited to sales or use tax on utilities.

7. **Expenses.** (Association) shall pay all expenses incurred with respect to this Agreement and its management, operation and maintenance of the Lowrance Road Park Complex hereunder,

including without limitation, all expenses associated with personnel (including security personnel), maintenance, labor, repair parts, materials, supplies, machinery and equipment (including security equipment). The Association shall also pay all utilities costs associated with operation and maintenance of the Lowrance Road Park Complex, including all electrical energy and demand charges, water, sewer user fees and solid waste pick-up fees. Such utilities currently are and will remain during the term hereof in the name and account of Shelby County. The Athletic Association and Shelby County will cooperate in arranging for the direct payment by the Association of all amounts billed to Shelby County for utilities. Neither Shelby County nor SCS will have any obligation to fund or pay any utility expenses during the term of this Agreement.

8. **Maintenance.** (Association)'s maintenance obligations hereunder include, without limitation, the following:

1. Mowing, fertilizing, reseeding, general maintenance and watering of grass and landscape areas,
2. Litter control and disposal,
3. Custodial and interior maintenance and cleaning of buildings,
4. Relamping of all sports fields and parking lot lighting,
5. Purchase, maintenance, repair and replacement of all necessary machinery and equipment,
6. Maintenance, repair and replacement of all buildings and improvements, including all replacement and major repairs to the walls, floors, ceilings, roofs, infrastructure and structural parts; as well as to mechanical, plumbing, irrigation and electrical systems, including field lighting,

7. Monitoring and maintaining the safety and security of the Lowrance Road Park Complex and all persons therein.

Shelby County shall have the obligation to maintain, repair and replace all asphalt roadway and parking areas, excluding the pedestrian walkways and fencing and the cleaning and striping of pavement areas, within or forming part of the boundary of the Lowrance Road Park Complex.

9. **Operation of the Lowrance Road Park Complex.** (Association) shall operate the Lowrance Road Park Complex in regard to: (i) scheduling use of all facilities therein, and (ii) establishing and collecting all charges, fees and payments associated with all Permitted Uses.

9.01. **Scheduling.** (Association) shall establish all operating hours for the Lowrance Road Park Complex, and shall develop and publish rules, regulations and procedures for scheduling and reserving use of all facilities thereon. (Association) also shall develop and publish such rules and restrictions as are reasonably necessary to assure that the Lowrance Road Park Complex is operated as a safe and orderly premises.

9.02. **Allowable Charges.** The Association may establish and collect charges and fees for all Permitted Uses of the Lowrance Road Park Complex, except that any such charges and fees shall be waived as to Shelby County Schools. Shelby County retains the right to review any fees to be charged by the Athletic Association, after fifteen (15) days notice to the County, given to the Conservation Board Director. If the County fails to respond to a Notice of Intent to institute or modify any fees not currently being or previously charged by the Athletic Association prior to the execution of this License Agreement, then the fee is deemed to be approved, and the (Association) may charge for revenue producing events. Shelby County shall have the right to review the fees and charges to be assessed by (Association) with respect to parking and admission to any facilities.

However, the Association shall have the sole right to determine the fees and charges to be assessed for products and services to be offered at the concession and food court and vending locations.

The initial list of Allowable Charges will be established by the Association no later than thirty (30) days after the execution of this Agreement. Upon notice to Shelby County, the initial list of Allowable Charges will be attached hereto and incorporated herein by reference as Exhibit 12.02. On or before June 30 of each year thereafter, Association may, if it so elects, revise the list of Allowable Charges and submit same to Shelby County, through its chief Administrative Officer for review and comment. Failure by Shelby County to provide written notice of any objections or dissent within the fifteen (15) day period, the charges shall be deemed accepted by Shelby County. Shelby County and the Association shall make a good faith effort to resolve any County objections to any proposed list of Allowable Charges. If no such resolution can be reached, then the proposed list of Allowable Charges will be referred to the Contract Administrator or her duly authorized designee, whose decision regarding same will be final.

The Association shall, however, have the right, under any circumstances, to increase Allowable Charges by not more than a fixed factor of 1.05 each year during the term hereof (i.e. may not increase the existing Allowable Charges by more than 5% per year). The Association may not be required to decrease Allowable Charges without its consent, and may also, in its sole discretion, establish actual charges less than the maximum Allowable Charges.

9.03. **Food and Beverage Vending and Concessions.** The Association shall have the exclusive right to conduct all food and beverage concession and vending operations at the Lowrance Road Park Complex, unless otherwise permitted. No alcoholic beverages, including, but not limited to beer and wine, shall be sold or permitted to be consumed in the Lowrance Road Park

Complex. The Association shall observe all directives and procedures that may be established by Shelby County from time to time to prevent the sale of alcoholic beverages to minors.

9.04. **Intellectual Property and Advertising.** The Association will be responsible for all advertising, promotional activities, marketing and public relations for the Lowrance Road Park Complex, and may develop intellectual property rights thereof as may be expressly approved by the County. No advertisements shall be placed on the property that relate to alcoholic beverages, gambling, tobacco products or any type of sexual aid or drug, or any type of an advertisement bearing any type of sexual connotation.

10. **Term.**

10.01. **Initial Term.** This Agreement shall become effective on upon execution. The initial term of this Agreement shall be five (5) years from the effective date hereof (the "Initial Term").

10.02. **Renewal Options.** In the event, prior to the expiration of the Initial Term,

(Association) shall have satisfied all obligations hereunder, the Association may request to extend the Initial Term of five (5) years for an additional option of three (3) additional renewal terms of five (5) years each on the same terms and conditions applicable to the Initial Term except as provided herein. The option to extend this Agreement shall require mutual written consent of all parties to this Agreement.

To exercise any renewal request, (Association) shall serve written notice of its intention to renew on Shelby County and the (Association) not less than one hundred twenty (120) days before the expiration of the then current term.

11. **Termination.** Either Shelby County or (Association) may terminate this Agreement if the other party fails to fund or pay any monetary obligations hereunder when such funding or payment is due and such non-payment continues for ten (10) business days after notice of nonpayment has been given the defaulting party. Either Shelby County or (Association) may terminate this Agreement if the other party fails to perform any other material obligation created by this Agreement and fails or refuses for thirty (30) days after notice of default has been given the defaulting party to take all steps necessary to cure and rectify same to the reasonable satisfaction of the non-defaulting party. The thirty (30) day period may be extended by either Shelby County or (Association) for an additional period of time, not to exceed ninety (90) days.

Shelby County shall have the option of terminating this Agreement immediately upon written notice to Association due to: (i) the lapse or cessation of the Association's non-profit §501(c)(3) status, (ii) the insolvency of Association or the execution of an assignment for the benefit of creditors, (iii) the filing by Association for reorganization under any law relating to bankruptcy or insolvency, which is not dismissed within sixty (60) days from the date of filing, (iv) the appointment of a receiver or trustee to take possession of substantially all of Association's assets located at the Lowrance Road Park Complex, (v) any representation or warranty contained herein, or in any certificate made herein, shall be knowingly false or misleading in any material respect as of the date made or deemed to have been made, or (vi) the cessation of operations and maintenance activities by Association, including but not limited to, vacating or abandoning the Lowrance Road Park Complex for a period of thirty (30) consecutive days or more. Notwithstanding the foregoing, the parties acknowledge that proper maintenance hereunder may require closure of the fields in the Lowrance Road Park Complex for extended periods of time to allow recovery from extensive use or

adverse weather conditions, and the parties agree that any such closure for up to ninety (90) non-consecutive days per year will not constitute an abandonment or a vacating of the Lowrance Road Park Complex for purposes of termination of this Agreement.

Notwithstanding the foregoing, the parties acknowledge that Shelby County Schools may terminate this agreement as to that particular property described herein that belongs to Shelby County School System, without cause or reason, upon thirty (30) days notice to Shelby County Government and the Association. Upon such notice of cancellation by Shelby County Schools, Shelby County Government reserves the right to terminate this entire agreement if in the sole discretion of Shelby County Government it is deemed to be in the best interests of park planning to discontinue use of the property as public parkland.

The Association shall, within thirty (30) days from the effective date of this Agreement, apply for any permits necessary to operate the facilities and Lowrance Road Park Complex. In the event the Association fails to obtain all necessary approvals of the Permitted Uses to be carried out on the Property within sixty (60) days of the execution of this Agreement, or in the event, for any reason other than the negligence of the Association, any of the permitted uses, once approved, cease to be permitted within the first four (4) years of the term hereof, then the Association shall have the option, exercisable upon written notice to Shelby County within thirty (30) days thereof, to terminate this Agreement without further obligation on its part, except that it shall return to the County the premises in substantially the same condition in which it was received, ordinary wear and tear excepted.

12. **Employees.** All persons employed at the Lowrance Road Park Complex, either on a full or part time basis, during the term of this Agreement or any renewal hereof, will be

Association's employees or will be employees of Association's permitted subcontractors and neither Shelby County nor Shelby County Schools shall have responsibility for the payment of any wages, salary, taxes and other employment benefits related to any such employees.

Association will employ adequate qualified personnel to perform all services required under this Agreement. All operations under this Agreement will be supervised by the Association.

All persons employed at the Lowrance Road Park Complex, either on a full or part time basis, during the term of this Agreement or any renewal hereof shall supply a fingerprint sample and submit to a criminal history records check to be conducted by the Tennessee Bureau of Investigation and the Federal Bureau of Investigation prior to the commencement of their employment. If an applicant or employee is or has been convicted of a sexual offense or a violent sexual offense as defined in T.C.A. §40-39-202, the applicant shall not be hired, and the employee shall not be permitted to work on the Lowrance Road Park Complex grounds.

13. **Ownership of the Property and Improvements.** The Property upon which the Lowrance Road Park Complex is located is and shall remain the property of Shelby County and Shelby County Schools. Association's interest in the Lowrance Road Park Complex is a management, operation and maintenance interest only. All permanent improvements, including but not limited to grading, paving, utility infrastructure, buildings, fixtures, and equipment paid for in whole or in part by Association during any term of this Agreement, shall similarly become the property of Shelby County and SCS to the extent of their ownership in the land upon which the improvements have been made, upon the expiration of this Agreement. This Agreement is subject to any easements or encumbrances upon the property at the time of the execution of the Agreement granted herein, including utility easements. Shelby County Government retains the

right to grant access and easements to the land for any purpose which would not frustrate the original intent of this Agreement including but not limited to utility right of way, cell phone towers, general access entries for improvements to adjoining properties. Any proceeds from grant of easements remain with Shelby County Government.

14. **Inspection Rights and Accounting Obligations.**

14.01 **Site Inspections.** Shelby County and SCS shall have the right, through its authorized employees or agents, to inspect the Lowrance Road Park Complex, both improved and unimproved, from time to time to determine if it is being operated and maintained in accordance with this Agreement. Upon notice to the Association, Shelby County and SCS will be allowed ready entry and access to all buildings, premises and areas of the Lowrance Road Park Complex in order to conduct such inspections. Inspections shall be conducted by the Conservation Board Director in conjunction with the office of the County Engineer.

All improvements pertaining to the demised premises shall be in accordance with this Agreement and Shelby County Ordinances, including Shelby County Building Codes. Violation and liability for the violation of these covenants, agreement and laws are the responsibility of the Association. The Association shall consult with the Shelby County Engineering Office on operation, maintenance and improvements, and the parties will make good faith efforts to agree as to whether adjustments should be made.

14.02. **Books and Records.** The Association will maintain all books, documents, papers, accounting records and other documentation pertaining to all monies received or paid hereunder, and will make such materials available at their offices located in Shelby County, Tennessee at all reasonable times during the period of this Agreement and for four (4) years from the

date of payment or receipt, for inspection by Shelby County or by any other governmental entity or agency participating in the funding of this Agreement, or any authorized agents thereof. All such inspections or audits will be conducted during normal working hours, and on mutually agreeable dates and locations.

14.03. **Accounting and Operations Reports.** The parties agree that the Association shall provide the County and SCS sufficient records, as requested, for the sake of financial audits of the operation of the Association said audit may be prepared internally by the County or by a certified public accountant in accordance with GAAP, within six (6) months after the end of Association's fiscal year.

The Association shall also provide Shelby County and SCS an annual report on the use and operations of the Lowrance Road Park Complex. Such reports shall be prepared on the basis of Shelby County's fiscal year.

15. **Insurance.** The Association will maintain the following minimum insurance:

a. Commercial General Liability coverage with limits of a minimum of $1,000,000.00 single limit per occurrence/$2,000,000 annual aggregate; $2,000,000 aggregate products-completed operations. Coverage is to be included for premises-operations/products-completed operations, and includes coverage for spectators and participants.. This policy is to include coverage for sexual abuse and molestation and assault and battery. The Athletic Association's insurance coverage shall be the primary liability coverage and the County's liability coverage or self-insurance on the premises shall be secondary. Shelby County, Shelby County Schools, its elected officials, appointees, agents and employees will be named as additional insureds. The policy will provide for 30 day notice to Shelby County of cancellation or material change in

coverage.

b. Business Automobile Liability - Minimum of $ 1,000,000.00 single limit automobile liability for any one accident or loss on all owned, hired or non-owned vehicles. Shelby County, its elected officials, appointees, agents and employees will be included as additional insureds. . The policy will provide for 30 day notice to Shelby County of cancellation or material change in coverage

c. Directors and officers Liability in a minimum limit of $1,000,000 per occurrence. The policy will provide for 30 day notice to Shelby County of cancellation or material change in coverage

d. Worker's Compensation and Employers Liability Coverage as required by Tennessee statutes. The policy will provide for 30 day notice to Shelby County of cancellation or material change in coverage

e. The Association shall maintain all risk property insurance, on real property at 4014 Long Creek, Memphis, Tennessee, including the ball fields and concessions area, and all improvements and betterments thereon. The Association will be responsible for paying its own deductible, if applicable to a claim. County Government shall be listed as an additional insured on all coverage maintained by the Association.

f. The Association will establish an insurance program to ensure that participants in all organized sports activities have insurance coverage for either medical/accidental injury insurance or a special risk accident policy, at either the participants' or the Association's expense.

g. Shelby County does not waive its right of subrogation against the Association or any permitted sub lessees, contractors or vendors that (Association) engages hereunder.

h. The Association shall also require all permitted contractors (construction or otherwise) or vendors it engages, to carry and maintain during the term of their said engagement the insurance specified as provided herein above or in any part of this Lease Agreement, where relevant. And to this end, the Association shall provide to and for the benefit of the County, its elected officials, appointees and employees, an authorized rider and certificate of insurance naming the County its elected officials, appointees, agents and employees as additional insures and certificate holders under this policy. The limits of this rider shall remain the same in form and manner as the original contract.

16. **Indemnity.**

16.01. The Association shall indemnify, defend, save and hold harmless Shelby County and SCS and their respective elected officials, appointees, officers, agents, and employees from all suits, claims, actions or damages of any nature brought because of, arising out of or due to the breach of this Agreement by the Association, its subcontractors, agents or employees or due to any negligent act or occurrence of omission or commission of the Association, its subcontractors, agents, or employees which occurs pursuant to the performance of this Agreement and this indemnification shall survive the termination or expiration of this Agreement. Neither the Association nor its employees will be liable under this paragraph for damages arising out of injury or damage to persons or property directly caused by or resulting from the negligence of Shelby County or the Association or any of their respective officers, agents or employees.

16.02. Neither Shelby County nor SCS shall have any obligation to provide legal counsel or defense to the Association or its subcontractors, agents or employees in the event that a suit, claim, or action of any character is brought by any person not party to this Agreement against

the Association or its subcontractors, agents or employees as a result of or relating to the Association's obligations under this Agreement.

16.03. Neither Shelby County nor SCS shall have any obligation for the payment of any judgments or the settlement of any claims against the Association or its subcontractors, agents or employees as a result of or relating to Association's obligations under this Agreement.

16.04. The Association shall immediately notify **Shelby County, c/o Shelby County Government, Contracts Administration, 160 N. Main St., Suite 550, Memphis, Tennessee, 38103**, of any written claim or suit made or filed against the Association or its subcontractors, agents or employees regarding any matter resulting from or relating to the Association's obligations under this Agreement, and will cooperate, assist, and consult with Shelby County in the defense or investigation of any written claim, suit or action made or filed against Shelby County as a result of or relating to the Association's performance under this Agreement.

17. **Representations and Warranties.**

17.01. Each party represents to the other with respect to itself that the execution and performance of this Agreement has been duly authorized by all necessary resolutions and corporate or partnership or other such action, and this Agreement constitutes the valid and enforceable obligations of Shelby County and the Association.

17.02. The Association certifies that it is qualified to do business in the State of Tennessee and that it has obtained certification from the Internal Revenue Service as a §501(c)(3) not for profit organization.

17.03 The Association certifies that it will take such actions as, from time to time, maybe necessary to remain qualified to do business in the State of Tennessee and it shall obtain, at

its expense, all leases, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under this Agreement..

17.04. The Association warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Association, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bonafide employee working solely for Association any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, Shelby County and SCS will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift or other consideration.

17.05. Shelby County represents and warrants that to the best of its knowledge, information and belief there are no environmental hazards on or affecting the Property which would limit or restrict the Association's ability to perform this Agreement including the Permissible Uses as contemplated herein.

18. **Assignment.** Assignment or transfer of all or part of (Association)'s interest in and to this Agreement is prohibited unless by prior written consent of Shelby County and SCS.

19. **Amendment.** This Agreement may be modified only by amendment made in writing and signed by all parties.

20. **Notices.** All notices and approvals required or permitted hereunder shall be written and shall be delivered by: a) fax or by a nationally recognized overnight delivery service; and b) by U.S. certified mail, return receipt requested, to the following addresses or such other addresses of which any of the parties shall give notice from time to time during the term hereof:

To: Shelby County Government
Conservation Board Director
Shelby County Schools

With a copy to: Contract Administrator Shelby County Government 160 N. Main Street, Suite 550, Memphis, Tennessee 38103 Fax: (901) 545-3999; and Shelby County Public Works Director, 160 N. Main Street, Suite 850, Memphis, TN 38103 Fax: (901) 545-3796.

To: Shelby County Schools
c/o Dr. Bobby G. Webb, Superintendent
160 South Hollywood
Memphis, TN 38112
901-321-2642

To: Tim Ballard, President
Memphis Soccer Education, Inc.
Phone: 901-818-4121
Cell: 901-830-0549
Fax: 901-818-4233

21. **Independent Contractor.** Nothing in this Agreement shall be deemed to represent that the Association, or any of its employees or agents, are the agents, representatives, or employees of Shelby County or SCS. The Association will be an independent contractor over the details and means for performing its business. Anything in this Agreement which may appear to give Shelby County the right to direct the Association as to the details of the performance of its business or to exercise a measure of control over the Association is for purposes of compliance with local, state and federal regulations and means that the Association will follow the desires of Shelby County only as to the intended results of the scope of this Agreement.

22. **Nondiscrimination.** The Association hereby agrees, warrants, and assures compliance with the provisions of Title VI and VII of the Civil Rights Act of 1964 and all other

federal statutory laws which provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Association on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee State Constitutional or statutory law. The Association shall upon request show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

Contractor shall comply with the Americans with Disabilities Act (ADA), 42 USC § 12101 *et. seq.* and applicable regulations. To the extent required by the ADA, the Association's facilities, services, and programs shall be accessible to persons with disabilities. Contractor shall bear sole responsibility for assuring that its activities under this Agreement conform to the ADA. Contractor shall indemnify and hold the County harmless in any administrative proceeding or other action brought pursuant to the ADA for all damages, attorney fees, litigation expenses and costs, if such action or proceeding arises from the acts of Contractor, Contractor's employees, agents or subcontractors.

23. **Conflict of Interest.** (Association) covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of its obligations under this Agreement. The Association may in the future, through affiliated entities, operate, manage or develop other multi-sport complexes within the United States of America or internationally. The Association warrants that no part of any contract amount provided herein, nor any part of operating funds created or expended in the operation of the Lowrance Road Park Complex, shall be paid directly or indirectly to any officer or employee

of Shelby County as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to the Association in connection with any work contemplated or performed relative to this Agreement.

24. **Choice of Law.** The Association is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state and local laws, ordinances, and regulations in any manner affecting the conduct of the work. This Agreement will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Agreement, Shelby County and the Association agree that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement will be instituted and litigated in the Courts of the State of Tennessee, or in the United States District Court, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Agreement submit to the jurisdiction of such courts in Shelby County, Tennessee.

25. **Subject to Funding**. This Contract is subject to annual appropriations of funds by the Shelby County Government. In the event sufficient funds for this Contract are not appropriated by Shelby County Government for any of its fiscal period during the Term hereof, then this Contract will be terminated

26. **Entire Agreement.** This Agreement contains the entire understanding among the parties with respect to the Lowrance Road Park Complex and there are no other promises or conditions in any other agreements between the parties, whether oral or written, related to the Lowrance Road Park Complex. This Agreement supersedes any prior written or oral agreements between or among all or any of the parties with respect to the Property, the Lowrance Road Park Complex, except the Lowrance Road Park Complex Maintenance Agreement, which continues to

govern the rights and obligations of the parties with respect to the Lowrance Road Park Complex.

27. **Act of God.** No party shall be liable to any other party or parties for any delay or damage or any failure to act (other than payment of money) as a result of strikes, acts of God or other causes beyond the control of the parties, and delay as a result of the above causes shall not be deemed to be a breach of or failure to perform under this Agreement.

28. **Severability.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a Court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to have been written, construed and enforced as so limited.

29 . **No Waiver.** The failure of any party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

30. **Approvals.** In all instances referenced in this Agreement in which an approval of one party is required, such approval shall be neither unreasonably withheld, delayed nor conditioned.

31. **Relationship.** Nothing in this Agreement shall be deemed to create a joint venture or partnership between or among any of the parties. The parties acknowledge that the (Association) enters into this Agreement solely for purposes of its obligations contained in this Agreement. The (Association) waives any and all claims hereunder to any right, title or interest in or to the Lowrance Road Park Complex.

32. **Counterparts.** This Agreement may be executed in any number of counterparts, each

of which shall be an original, and all such counterparts together shall constitute but one and the same instrument.

33. **Living Wage Ordinance.** In accordance with Ordinance Number 328, commonly referred to as the Living Wage Ordinance, all persons/entities engaged in service contracts with the County, including but not limited to both prime and subcontractors, shall pay a Living Wage to employees for all work performed on said service contract, as defined in the Living Wage Ordinance. Proof of such compensation must be evidenced as required in the Living Wage Ordinance.

34. **Contracting with Locally Owned Small Businesses**. All parties to this Contract shall take affirmative action to assure that Locally Owned Small Businesses that have been certified by the County are utilized when possible as sources of supplies and equipment, construction and services related to this Agreement.

IN WITNESS WHEREOF, the parties, by and through their duly authorized representatives, have executed this Agreement.

COUNTY OF SHELBY, TENNESSEE

By: _____
A C Wharton, Jr., Mayor of Shelby County

Date: _____

Memphis Soccer Education, Inc.

Tim Ballard
Tim Ballard, President

Date: 2/27/09

Diane Taylor
2-27-09

SHELBY COUNTY SHCOOLS

By: _____
John S. Aitken, Acting Superintendent of Shelby County Schools

MY COMMISSION EXPIRES:
April 28, 2010

DIANE E. TAYLOR
STATE OF TENNESSEE NOTARY PUBLIC
SHELBY COUNTY

APPROVED AS TO FORM:

_____
Assistant County Attorney
Contracts Administration