

**USE AGREEMENT BY AND BETWEEN THE CITY OF MEMPHIS  
AND THE UNIVERSITY OF MEMPHIS FOR USE OF  
THE LIBERTY BOWL MEMORIAL STADIUM**

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**THIS AGREEMENT**, entered into this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the City of Memphis, a duly incorporated municipal corporation, hereinafter referred to as CITY, and the University of Memphis, Memphis, Tennessee, 38152, hereinafter referred to as "UNIVERSITY."

**WITNESSETH:**

**WHEREAS**, CITY at all necessary times owns and operates a Stadium and Parking Area in Memphis, Tennessee, being more particularly described as the Liberty Bowl Memorial Stadium; and

**WHEREAS**, the UNIVERSITY is an institution of higher learning located in Memphis, Tennessee that desires to conduct its home football games at Liberty Bowl Memorial Stadium; and

**WHEREAS**, CITY and UNIVERSITY desire to enter into an Agreement specifying the terms and conditions under which UNIVERSITY will use the Stadium and Parking Area for home football games.

**NOW, THEREFORE**, in consideration of the mutual covenants, conditions, and promises, herein contained, CITY and UNIVERSITY agree as follows:

**SECTION 1 - TERM**

The initial term of this Agreement shall be for a period of six (6) years from the above referenced date and expiring, unless sooner terminated, on January 1, 2015 or the end of the 2014 football season, whichever comes sooner, ("the Term"), or such other time period as may be mutually agreed by the parties.

**SECTION 2 - RIGHT TO USE PREMISES**

A. Use of Stadium for Home Games. During the term of this Agreement, UNIVERSITY agrees to play all regular season home football games during each college football season at Liberty Bowl Memorial Stadium.

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B. Use of Stadium for Scrimmages and/or Intra-squad Games. Subject to the provisions of this Agreement, UNIVERSITY shall have the right to conduct practices, scrimmages, the Spring Game, FanFest, and Intra-squad games at Liberty Bowl Memorial Stadium. UNIVERSITY agrees to reimburse CITY for all actual additional costs beyond those normally incurred for every day stadium operations, with no markups for opening and operating the Stadium for such use. CITY reserves the right to approve the date and time of each event with such approval not to be unreasonably withheld.

C. Use of Stadium on Each Game Day. Subject to the provisions of this agreement the UNIVERSITY shall have access to and right to use the Stadium on each Game Day.

D. Game Day Entertainment. Subject to the provisions of this Agreement, UNIVERSITY shall have the right to provide, or permit others to provide, at the sole cost and expense of the UNIVERSITY, pre-game, half-time and post-game entertainment in connection with such games; provided, however, that UNIVERSITY shall notify the CITY of the nature of such entertainment at least five (5) calendar days prior to the date of each such Game and such entertainment shall be subject to the approval of the City with such approval not to be unreasonably withheld.

E. Use of Stadium on Day Prior to Day of Game. In connection with the use of the Stadium on each Game Day, it is understood that both participating teams shall each have the right to use the Stadium for a walk-through for one (1) hour on the day prior to the Game Day. UNIVERSITY reserves the right to select the time for the walk-through and provide CITY forty-eight (48) hours notice of said time. In no event, shall the walk-through occur at night without UNIVERSITY reimbursing the CITY for all actual costs and expenses of night operations.

F. Game Day Activities. On each Game Day, and such additional times as may be requested by UNIVERSITY and approved by the CITY (such approval not to be unreasonably withheld), UNIVERSITY shall have the right to use the Stadium (which includes the area immediately surrounding the stadium) and the Parking Area for the installation of equipment and other preparation activities including, without limitation, temporary chairback seating within the Stadium, advertising signs, etc. and hospitality and/or sponsor tents and access and parking for television and radio production vehicles. All such requests must be submitted in writing on Monday, prior to the event. University shall be responsible for all additional costs associated with the approved game day activities, including any repair costs for damage caused by the University.

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G. Reservation of Available Regular Season Game Dates and Conference USA Championship Game Date. The UNIVERSITY shall have the exclusive right and license to use the Stadium and the Parking Area to conduct Home Games on such dates during the term of this Agreement as the UNIVERSITY may reserve, and to reserve same for use by Conference USA for a conference championship game, in the event such game is held in Memphis. On or before one hundred and twenty (120) calendar days immediately preceding any season during the term of this Agreement, the UNIVERSITY shall notify the City in writing of the Regular Season Game Dates and Conference USA Championship Game Date during the ensuing calendar year on which the UNIVERSITY intends to conduct such games and the CITY shall reserve the Stadium for the exclusive use of the UNIVERSITY for such purpose on each such scheduled date except for those game dates previously reserved by Summitt Management Corporation as reflected on Appendix A attached hereto.

H. Schedule Changes. In the event the UNIVERSITY desires to change the date reserved by the UNIVERSITY for the conduct of any regular season Game, including any such change made to accommodate a television broadcast of such Game, the UNIVERSITY shall have the exclusive right and license to use the Stadium and the Parking Area to conduct such Game on the date to which such Game is to be changed unless the City has previously reserved the Stadium and the Parking Area on such date. In the event the date reserved by the UNIVERSITY for the conduct of any Game is changed pursuant to this paragraph, then subject to the provisions of the immediately preceding sentence, the CITY shall have no duty to continue to reserve the Stadium and the Parking Area for the exclusive use of the UNIVERSITY on the date previously reserved. Notwithstanding the foregoing, the parties acknowledge that the Stadium will be undergoing certain construction for the purposes of making "ADA" seating improvements based upon the Settlement Agreement between the City of Memphis and the United States Department of Justice ("DOJ"), and that such construction may interfere with UNIVERSITY'S use of all of the Stadium for scheduled games during the month of September 2011. UNIVERSITY further acknowledges that such construction shall commence prior to the 2011 season and that materials and equipment may remain on site throughout the completion of the construction. Both parties agree and recognize that the year of the construction of ADA seating improvements may change subject to the final approval of the DOJ. CITY will notify UNIVERSITY in writing by February 1, 2011, regarding the phase of the construction and indicate the number of seats, if any, that may be affected during UNIVERSITY'S 2011 season. City further agrees to use its best efforts to ensure that such seating does not exceed 1,000.

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I. Ancillary Uses. In addition to those uses contained in this Agreement, upon written approval by "City," UNIVERSITY may use the Stadium (which includes the area immediately surrounding the stadium) and Parking Area before, during and after Games (on Game Days), for the following ancillary-type events and uses: stage events on field and in parking areas; tailgate parties in parking area and other hospitality events; pre-game, half-time and post-game events; sponsor representation and presence; and pyrotechnics. In no event shall the City be responsible for any additional cost associated with an approved ancillary event. The University shall be responsible for any resulting damages or costs associated with University-sponsored events. Approval by the City for such events shall not be unreasonably withheld.

**SECTION 3 - CITY OF MEMPHIS OBLIGATIONS**

A. City of Memphis to Furnish Stadium. On each Game Day, the City shall furnish and make available to UNIVERSITY the stadium fully equipped, operating and staffed for a football game. The City's obligation hereunder is to provide: (i) the playing field and surrounding areas with proper line markings and numbers required for a collegiate football field; (ii) goal posts in position; (iii) reasonably effective stadium signs; (iv) field benches; (v) such training rooms and locker rooms as shall exist in the stadium; (vi) complete and effective lighting system, which is in good working order; (vii) public address and loud speaker systems; (viii) phone hook-up from each bench on field to respective coaches in the Press Box; (ix) appropriate technology for all media and hookups for radio and television equipment, as customary at college stadiums; (x) event staff that includes security, ticket takers and ushers; (xi) the complete use of all scoreboards and video boards; and (xii) all other special equipment and facilities usually provided for the performance and exhibition of football games at Liberty Bowl Memorial Stadium.

It is understood that the field and end zone designs as mutually determined, shall identify the "University," and shall include the University's logo, if desired by the UNIVERSITY. It is additionally understood that the field and end zone designs shall be for the entire season. The UNIVERSITY shall bear all expenses for the placement of all field decorations and the removal thereof at the end of the season.

B. City of Memphis to Furnish Parking Area. On each Game Day, the CITY shall furnish and make available for the use of spectators the parking area. All privileged parking provided by CITY in the portion of the Parking Area adjoining the Stadium and Armory as set forth below shall be identified and marked by the CITY.

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The UNIVERSITY shall be entitled to print and distribute by August 1 of each year parking passes for the following areas, provided that the UNIVERSITY provide CITY with documentation regarding passes printed and manifests supporting pass distribution:

- (1) five hundred-fifty (550) parking passes in the Armory Parking Lots immediately adjacent to and north of the Stadium; The handicap spaces in the Armory Lot will be reserved for use by CITY;
- (2) ninety-six (96) media parking passes in the Media Lot adjacent to the south of the Stadium;
- (3) three hundred fifty (350) parking spaces for Lot A;
- (4) one hundred and twelve (112) parking spaces for Lot B;
- (5) all stadium interior parking spaces, including four (4) reserve spaces on the south side of the press box elevator. By August 1 of each year, the UNIVERSITY and the CITY shall work together to insure those employees with a legitimate job-related need to park within this area, including the Mayor and his or her senior staff, are issued passes to be used by these individuals for parking privileges within this area;
- (6) thirty-five (35) parking spaces in Lot C;
- (7) twenty (20) parking spaces in Lot D; and
- (8) twelve hundred (1,200) parking spots, if available, will be assigned to UNIVERSITY to attempt to sell in the pre-season to season ticket holders and other University sponsors. Such parking spots shall be offered for sale at TEN AND NO / 100 DOLLARS (\$10.00). On or before one hundred and twenty (120) calendar days immediately preceding any season during the term of this agreement, the CITY will notify UNIVERSITY of the charge for the parking spaces provided for in this paragraph. In no event will the cost for the parking spots designated herein exceed the sum of ten dollars (\$10.00)/spot over the life of this contract. Payment for said parking actually sold will be due to the CITY no later than sixty (60) days after first schedule game.

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All parking listed in items (1) through (7) shall be provided at no additional charge to UNIVERSITY. As upgrades and improvements are made to the Stadium and the surrounding area, there may be shifts in these parking areas which affect the number of available parking spaces. City will make every effort to provide the spaces as set forth above and shall not be deemed in breach of its contract with UNIVERSITY in the event it fails to provide such parking. UNIVERSITY further acknowledges that CITY may authorize the use of the Fairgrounds by a third party to host an outside fair. In such event, City shall preserve all pass parking areas used by the UNIVERSITY. General parking shall be available for purchase by those people attending the UNIVERSITY's game as well as the fair.

The CITY shall provide a parking schematic which shall be attached hereto as Appendix B.

C. Game Day Parking. The "City" shall maintain and operate parking operations at the UNIVERSITY games and shall retain all revenue from such operations.

D. Student and Band Seating. UNIVERSITY shall decide on the best placement of band and student seating, which placement shall be in compliance with the Americans with Disabilities Act (hereafter "ADA") as set forth in Section 13 herein. The CITY will rope these areas off prior to each game.

**SECTION 4 - RENT AND OTHER EXPENSES**

A. Base Rent UNIVERSITY agrees to pay to the CITY as base rental for services listed herein for each of said games (regular season and Conference USA Championship Game) played at the Stadium a flat rate of thirty-five thousand dollars (\$35,000.00). Base Rent and License Fee (see Section 10(c), below) are due and owing no later than sixty (60) calendar days after receipt of invoice from the CITY for the first 4 games hosted by UNIVERSITY, and sixty (60) calendar days after receipt of an invoice from the CITY for the remainder of the UNIVERSITY games.

B. Suite License. UNIVERSITY shall have an Exclusive License to market, sell and retain all revenue generated from the sale of thirty-one (twelve-seat) suites and seven (sixteen-seat) suites designated by CITY during UNIVERSITY home football games for \$200 per suite used by UNIVERSITY for each game. City hereby retains for its use Suites 105 and 203.

C. Ancillary Expenses. The UNIVERSITY shall be responsible for the cost

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of footballs used for the game; two (2) ambulance standby service for spectators; concession items ordered by the UNIVERSITY to be provided in the Press Box; Levels 2, 3 and 4 designated for UNIVERSITY's use at cost; on-field chainmen and the officials' fees and expenses. UNIVERSITY shall also be responsible for expenses incurred for the installation and removal of signs for its games. Any ancillary expenses incurred by UNIVERSITY will be due sixty (60) calendar days after receipt of invoice.

D. Interest. The UNIVERSITY agrees that if any sum it is obligated hereunder to pay to the CITY is not paid when due, it will pay the CITY interest on said sum from the date due until payment is received in an amount equal to the lesser of 1.5 % per month, which is an annual charge of 18 % or the maximum rate of interest allowed by applicable law. This provision shall only apply to sums that become due after the execution of this contract.

E. Suite Maintenance Obligations. During the term of this agreement, UNIVERSITY shall be responsible for and, at its cost, shall make all repairs to Suites that are damaged or destroyed during UNIVERSITY home football games. During the term of this agreement, CITY shall be responsible for, and shall undertake all normal and routine maintenance of Suites.

**SECTION 5 - SUBJECT TO FUNDING**

This Agreement is subject to annual appropriations of funds by the Memphis City Council. In the event sufficient funds for this Agreement are not appropriated by Memphis City Council for any of its fiscal periods during the term hereof, this Agreement will be terminated.

The UNIVERSITY may terminate this Agreement at the end of any fiscal year (June 30<sup>th</sup>) in the event that sufficient funds are not appropriated by the General Assembly and/or budgeted for continuation of the Agreement.

**SECTION 6- THIRD PARTY MANAGEMENT OF FACILITY**

UNIVERSITY hereby acknowledges that CITY has engaged the services of SMG, a private company specializing in management of public facilities, to promote, operate and manage the Stadium for the benefit of the CITY.

### **SECTION 7- INSURANCE**

A. The CITY covenants at all times of this Agreement, at its own cost and expense, to carry and maintain insurance against loss or damage of the premises of the Stadium (hereafter "Use Premises") caused by fire, theft and such other causes of loss as are usually and customarily covered by vandalism and malicious mischief endorsements and by "extended coverage endorsement," including boiler explosion, flood, and earthquake insurance in an amount equal to 90% of the replacement value of the Use Premises or to make other arrangements, (including self-insurance) to provide for a repair or a replacement in the event of such loss or damage. CITY hereby acknowledges the self-insured status of UNIVERSITY as a state entity. Notwithstanding the foregoing, UNIVERSITY's self-insured coverage as applicable hereunder shall be primary to, and not contribute with, any insurance or self-insurance maintained by the City of Memphis or SMG, City's management entity, subject to the terms and limits set forth in Tenn. Code Ann. § 9-8-307.

### **SECTION 8- INDEMNITY**

Neither the CITY, SMG, or UNIVERSITY shall be responsible for personal injury or property damage or loss, except that resulting from its own negligence or the negligence of its employees or others for whom it is legally responsible. Any act of negligence caused by the UNIVERSITY as set forth above resulting in claims, suits, actions, liabilities, costs and expenses to all persons including, but not limited to, guests, patrons, invitees, contractors, officers, agents and employees of the CITY, as well as damage to the property of the stadium shall be the legal liability of the UNIVERSITY. Notwithstanding the foregoing, SMG shall remain obligated to indemnify City in accordance with the provisions set forth in the management agreement referenced in Section 6 therein.

Any and all claims against the State of Tennessee, including the UNIVERSITY or its employees, for injury, damages, expenses or attorney fees shall be heard and determined by the Tennessee Claims Commission in the manner prescribed by law. To the extent that insurance is not obtained by the UNIVERSITY, its agents or licensees, damages recoverable against the UNIVERSITY shall be limited expressly to claims paid by the Claims Commission pursuant to T.C.A. section 9-8-301 *et seq.*

### **SECTION 9- CONCESSIONS**

A. Novelty Concessions. The right to sell and/or distribute UNIVERSITY Game Programs and novelty concessions, including but not limited to clothing, in the

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Stadium shall belong exclusively to the UNIVERSITY. UNIVERSITY's exclusive novelty and program sales rights include the Stadium and all Fairground Parking Areas (bordered by Southern, Hollywood, Central, and East Parkway) during, as well as immediately before and after, games. No rights fees shall be paid on program or novelty sales. Further, UNIVERSITY itself or through any UNIVERSITY sponsor, or designee, shall have the non-exclusive right to cater or provide a sponsor's product for non-public consumption at no additional fee or rental charge in the locker rooms, Stadium Club, Press Box rooms, hospitality areas and suites.

B. Game Day Food Concession. The CITY shall maintain and operate food and beverage operations in the stadium at all UNIVERSITY home football games in a manner consistent with other college football facilities. The CITY shall retain all revenue from the operation of such concession operations.

C. Temporary Chairback Seating Sales. The UNIVERSITY shall have the right to market and sell temporary chairback seating on a season and single-game day basis. The UNIVERSITY shall retain all revenue received from the sale of such seating, on a season basis. The UNIVERSITY will provide vendor with credentials which must be worn at all times inside the stadium.

**SECTION 10- ADVERTISING**

A. Stadium Fixed Signage. At all times during the UNIVERSITY football games, UNIVERSITY shall have the sole and exclusive control of all announcements, acknowledgments, promotions, messages, displays, banners, sponsor signs and advertising (collectively "Advertising") on the scoreboard(s) and elsewhere in the Stadium. UNIVERSITY shall have the right to install panels on the video board during games as defined herein at its sole expense, which may be used for advertising. In addition, the scoreboard will include a "Tigervision" sign, which will only be removed if requested by a representative of the Southern Heritage or Liberty Bowl classic or any other similar game booked at the Liberty Bowl Stadium. In no event, shall the UNIVERSITY display, promote, advertise in any form or manner advertisement that conflicts with prior sponsorship agreements between the CITY and Coca-Cola. UNIVERSITY is responsible for all costs incurred in the erection or removal of signs, banners or advertising.

B. Message Center. The UNIVERSITY may use the public address system, scoreboard message center and stadium Video Display System, if any, during its Home Games. All advertising to be displayed or announced on message center, stadium Video Display System or public address system shall be coordinated with Stadium

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management personnel and shall be subject to reasonable approval by the CITY to assure compliance with its policies. UNIVERSITY shall be responsible for all cost associated with the production of videos displayed on the Video Display System.

C. Revenue and License Fee. The UNIVERSITY shall be entitled to all of the revenue from sponsorships or Advertising solicited by the UNIVERSITY for display as fixed or temporary signage, all announcements on the message center, Video Display System, or public address system during the Games, and all other sponsorship activities that occur during UNIVERSITY football games. For the rights and privileges set forth in this section, the University agrees to pay to CITY a fee of twenty five thousand dollars (\$25,000.00) per home football game, which license fee shall be reduced to zero once the debt service for the Video Display System is satisfied.

**SECTION 11- STADIUM CLUB AND TICKETS**

A. Stadium Club. The Stadium Club (Level 1 of the Press Box) shall be furnished to UNIVERSITY for its exclusive use at no additional charge. All seating in Level 2 of the Press Box (working press) shall be designated by UNIVERSITY. All seating on Level 3 of the Press Box, with the exception of Box 6 and 7 which will be used by the CITY, shall be used as designated by UNIVERSITY. All booths on Level 4 of the Press Box, except booths 4 which will be used by the CITY, shall be reserved for use by the UNIVERSITY as working areas, i.e., radio, film, scouting, etc., or provided to the visiting team. The UNIVERSITY will print appropriate season passes for these boxes one month prior to the first game of the season and regulate their use throughout the season.

B. Location and Number of Tickets. The UNIVERSITY will select the location and number of tickets to be sold on a season ticket basis. The UNIVERSITY will also select the number and location of tickets to be sold to the general public.

C. Admission Passes. The City or its management company shall provide a list to the University of all persons to be admitted without a ticket, i.e., working employees and all vendors, except concessionaires, and the University shall print and distribute credentials for those people who have a legitimate game-related reason to be admitted without charge or without a ticket. The City shall print concession vendor passes. All remaining admission passes shall be printed and distributed by the UNIVERSITY consistent with its policies and procedures. The CITY and UNIVERSITY agree that only persons having a legitimate game related reason to be admitted without charge or without a ticket will receive passes.

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D. Complimentary Tickets/passes. The UNIVERSITY agrees to provide the City, on or before the beginning of each college football season, fifty (50) complimentary game day tickets to each game for use by the City. Additionally, UNIVERSITY agrees to provide CITY with complimentary tickets or passes for all seats in suites and the press box reserved for exclusive use by CITY.

**SECTION 12- MEDIA RIGHTS**

All Media Rights are hereby reserved to, and shall be the property of UNIVERSITY.

A. The CITY shall cooperate fully and coordinate its efforts with media representatives so as to permit such media representatives to fulfill their contractual obligations and duties. At all reasonable times during the term of this Agreement, the CITY shall provide reasonable access to the Stadium to broadcasters designated by UNIVERSITY for the purpose of broadcasting the Games or UNIVERSITY Football Events.

B. Subject to the prior approval and inspection of the CITY, authorized broadcasters may, without additional charge, install on or in the Stadium, operate, maintain and remove such broadcast and associated production equipment as they may require (including cameras, cables, platforms, announcer booths, sound equipment, graphic units, microphones, and lighting) and shall have the right to utilize their own employees or employees of their contractors for such activities without being required to utilize or pay any employees, agents or contractors of the CITY in connection with such work; provided that the CITY shall be reimbursed for all reasonable costs and expenses associated with work which it performs at UNIVERSITY's request in connection therewith.

**SECTION 13 – COMPLIANCE**

University shall perform its obligations under this Agreement at all times in conformity with applicable federal, state and local laws. UNIVERSITY specifically agrees to comply with the ADA in the coordination, organization, and operational activities of its games at the Stadium.

**SECTION 14- MUTUAL DEFAULT**

If either party fails to observe or perform any of the provisions of this Agreement

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and such failure is not cured within thirty (30) calendar days after notice by the other party, then the breaching party shall be in default and without further notice, the other party may at any time thereafter: (i) terminate this Agreement; (ii) continue this Agreement and recover damages resulting from the default; or (iii) effect a cure on the breaching party's behalf, and reasonable costs and expenses so incurred by the other party together with interest at the rate of ten percent (10 0/0) per annum (or such lower rate as may be the highest rate permitted by law) shall be due and payable by the breaching party on demand by the other party.

**SECTION 15- MISCELLANEOUS**

Each party shall maintain documentation for all charges against the other party under this Agreement. The books, records and documents of the parties, insofar as they relate to this Agreement, shall be maintained in conformity with generally accepted accounting principles for a period of three (3) full years from the date of the final payment, and shall be subject to audit, at the party requesting the audit's expense, at any reasonable time and upon reasonable notice by the requesting party or its duly appointed representatives, or a licensed independent public accountant. It is understood any costs associated with the audit will be the responsibility of the requesting party. In addition, the UNIVERSITY shall maintain, and provide to the CITY, the parking manifest described in Section 3.

The parties agree to comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Executive Order 11,246, the Americans with Disabilities Act of 1990 and the related regulations to each. Each party assures that it will not discriminate against any individual including, but not limited to employees or applicants for jobs based on race, creed, color, sex, age, disability, veteran status or national origin. UNIVERSITY shall in no event, however, be required to make any improvements to the Stadium in order to cause the Stadium to comply with the Americans with Disabilities Act.

The parties also agree to take affirmative action to ensure that applicants are employed and that employees are treated during the employment without regard to their race, religion, creed, color, sex, age, disability, veteran status or national origin. Such action shall include, but not limited by, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection available to employees and applicants for employment.

Assignment. Neither party shall assign, transfer, let or sublet, mortgage, pledge

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or hypothecate this Agreement without the prior written consent of the other, such consent not to be unreasonably withheld.

Meetings: The parties shall conduct at least one pre-season meeting just before the start of the season and at least one post-season meeting immediately after the season ends, at which they should discuss all pending issues which could significant affect the other party. This obligation is in addition to the meetings which occur during the season to address plans for the upcoming game.

**SECTION 16- NOTICE**

All notices hereunder shall be in writing and shall be deemed to be duly given, upon receipt, if given by personal delivery, nationally recognized overnight courier, certified or registered mail (return receipt requested), postage prepaid, or facsimile transmission to the parties at their respective addresses set forth below, or at such other address or addresses as may be designated by any party by like notice.

**If to the City of Memphis:**

City of Memphis  
Division of Park Services  
2599 Avery Avenue  
Memphis, Tennessee 38112  
Attention: Director of Park Services

With a copy to: Law Division  
City Attorney's Office  
125 N. Main, Room 336  
Memphis, Tennessee 38103

**If to the University:**

University of Memphis  
Memphis, Tennessee 38152  
Attention: R. C. Johnson  
Athletic Director

With a copy to: Sheri Lipman  
University Counsel  
University of Memphis  
Office of Legal Counsel  
201 Administration Building  
Memphis, Tennessee 38152-3370

### **SECTION 17- SEVERABILITY**

If any provision of this Agreement is determined to be illegal by a court of competent jurisdiction, this Agreement shall remain valid as if such provision had not been contained therein unless the omission of such provision materially changes the substance of this Agreement as a whole, in which event, either party may terminate this Agreement upon written notice to the other within thirty (30) calendar days after the determination that the provision is illegal.

### **SECTION 18- FORCE MAJEURE**

If either party shall be unable to perform hereunder as a result of acts of God, war, national disasters, strikes or other work stoppage, fire and other comparable events, or as a result of any lawful order issued by the United States Government or any official of the State of Tennessee, or for any reason beyond the reasonable control of parties (financial inability excluded), then this Agreement shall be suspended during such period and for as long as such conditions shall exist. In the event of such suspensions, the term hereof shall not be extended to take into account the period of such suspension. If the force majeure only affects the UNIVERSITY's performance, the CITY shall have the right to use the Stadium for any other purposes during the period of the force majeure. If as a consequence of such force majeure, the Stadium should be destroyed or rendered unfit or unavailable for the purpose of this Agreement, UNIVERSITY shall have the right to play its Games in any other stadium during the term such conditions continue to exist. Any Fees or other sums incurred by the UNIVERSITY prior to the suspension of this Agreement due to a force majeure, shall be paid to the CITY by the UNIVERSITY when due, but no additional Fees shall be incurred during the suspension period.

### **SECTION 19- INTERPRETATION**

This Agreement is an integrated contract which contains the complete understanding of the parties as to all matters herein. There are no oral or written statements, representations, agreements, understandings or surrounding circumstances which modify, amend or vary, or purport to modify, amend or vary, any of the provisions hereof. All prior and contemporaneous representations, negotiations and agreements are superseded and replaced hereby. All exhibits and schedules referenced herein and attached hereto shall be deemed to have been incorporated herein so as to become a part of this Agreement. This Agreement may be altered, amended or revoked only by an instrument in writing duly executed by all parties hereto. No waiver by either party of

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any provision hereof, nor the failure of the aggrieved party to seek redress for a violation, shall be considered to be a waiver of such provision or of any subsequent breach thereof. The parties hereto mutually understand and declare that time is of the essence of this Agreement. The provisions for default and/or termination shall operate promptly upon the expiration of the time limits specified herein. This Agreement shall be interpreted under the laws of the State of Tennessee.

**SECTION 20- DEFINITIONS**

In addition to other terms which are defined elsewhere in this Agreement, the following terms for purposes of this Agreement, shall have the meanings set forth in this section:

"Complimentary Tickets" shall mean Tickets distributed by the University without charge or the expectation or actual receipt of any money therefore as described in Section 11, Paragraph D.

"Games" shall mean college football contests between the University of Memphis and any other college football team.

"Home Games" shall mean those Games during the UNIVERSITY's regular season schedule for which the Home Team is the host team responsible for procuring the playing site.

"Media Rights" shall mean, with respect to radio, television, Internet or World Wide Web (including by video streaming), audio-visual program transmission or retransmission, satellite, and any and all other communications media, whether presently existing or hereafter developed and regardless of the method of transmission or retransmission, the following (except in the case of clause (c) hereof ) exclusive rights: (a) the broadcasting, transmission, retransmission or other dissemination of all or any part of all Games and all activities related thereto; (b) the broadcasting, transmission, retransmission or other dissemination of Games and by any means of VHF, UHF, Internet, or any other method of transmission, retransmission or other dissemination whether presently existing or hereafter developed (whether broadcast, cable, microwave, satellite, over-the-air, fiber optics or otherwise), of television, audio, visual or other sensory signals, and shall be deemed to include, without limitation, premium and basic television service, cable television, over-the-air pay television, broadcast network, weblet, multipoint and multichannel distribution system television, direct broadcast satellite television, subscription television, pay-per view television, master antenna and satellite master antenna television, low power television, closed

USE AGREEMENT BY AND BETWEEN THE CITY OF MEMPHIS  
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THE LIBERTY BOWL MEMORIAL STADIUM

circuit television and any other electronic or digital media such as computer distribution or computer on-line application; (c) the non-exclusive, royalty-free license to use name, likeness and historical material of the Stadium solely in connection with the rights enumerated in clauses (a) and (b) hereof; (d) the right (i) to display banners in camera visible and other locations as any broadcaster of Games shall determine, in and around the stadium and the playing field, advertising such broadcaster, and (ii) unfettered electronic insertion and deletion rights with respect to the broadcast, transmission, retransmission or other dissemination of Games; and (e) subject to any specific provision of this Agreement to the contrary, the right to select and control all production facilities and personnel necessary to exercise the rights enumerated in clauses (a), (b), (c) and (d) hereof. Media Rights shall also include the exclusive right to photographing, filming, television taping, radio broadcasting and recording in analog, digital or other forms or recording, whether presently existing or hereafter developed.

"Parking Area" shall mean those areas under the control of the CITY in the fairgrounds adjacent to the Stadium which are designated by the CITY from time to time for the parking of vehicles during the Games and as further described in Section 3 (B).

"Suites" shall mean a private seating area that requires a special ticket to gain admission.

"Stadium" shall mean with respect to the Liberty Bowl Memorial Stadium, Memphis Tennessee, the playing field, stadium lighting, seats, stairs, walkways, ramps, public restrooms, press box, home and visiting team locker rooms, coaches offices, weight room, equipment room, training room, meeting room, Skyboxes, Suites, and such other areas, if any, as customarily are designated by the City from time to time for use at football games. Stadium lighting shall include if necessary, the installation, replacement, refurbishment and/or the modification of existing lighting to provide the necessary candlepower for a college football game.

"Ticket" shall mean the certificate, license, badge, pass or other indicia by which admission to the Stadium is permitted and controlled.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

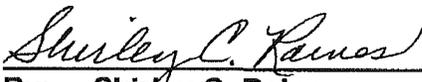
USE AGREEMENT BY AND BETWEEN THE CITY OF MEMPHIS  
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IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto by their duly authorized representative:

**CITY OF MEMPHIS:**

**UNIVERSITY OF MEMPHIS:**

\_\_\_\_\_  
By: **Willie Herenton**  
Mayor

  
\_\_\_\_\_  
By: **Shirley C. Raines**  
President

\_\_\_\_\_  
By: **Cindy Buchanan**  
Director of Park Services

  
\_\_\_\_\_  
By: **R.C. Johnson**  
Athletic Director

Attest:

Approved:

**Tennessee Board of Regents**

\_\_\_\_\_  
Comptroller

\_\_\_\_\_  
Chancellor **Charles Manning**

Approved As To Form:

\_\_\_\_\_  
By: **Elbert Jefferson, Jr.**  
City Attorney

**USE AGREEMENT BY AND BETWEEN THE CITY OF MEMPHIS  
AND THE UNIVERSITY OF MEMPHIS FOR USE OF  
THE LIBERTY BOWL MEMORIAL STADIUM**

**APPENDIX A**

September 12, 2009

September 11, 2010

September 10, 2011

September 8, 2012

September 14, 2013

September 13, 2014

September 12, 2015

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**APPENDIX B**

(Insert Schematic Diagram)