

**MANAGEMENT AGREEMENT**

**between**

**THE CITY OF MEMPHIS**

**and**

**GLOBAL SPECTRUM, L.P.**

**Effective as of July 1, 2011**

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## MANAGEMENT AGREEMENT

This Management Agreement is entered into on the \_\_\_\_ day of \_\_\_\_\_, 2011, and made effective as of July 1, 2011 (“**Effective Date**”), by and between the City of Memphis, a municipal corporation of the State of Tennessee (“**Owner**”), and Global Spectrum, LP, a Delaware limited partnership (“**Manager**”).

### RECITALS

WHEREAS, Owner owns a multi-purpose stadium, consisting of approximately 62,500 seats, located in Memphis, Tennessee and known as Liberty Bowl Memorial Stadium and Fairgrounds (collectively, and as more fully described below, the “**Facility**”); and

WHEREAS, the Owner desires to engage Manager to manage, operate, promote, and maintain this Facility to maximize the fiscal economic opportunities and results of operations and to provide exemplary service to the public on the behalf of the Owner; and

WHEREAS, the Manager desires to accept such engagement, pursuant to the terms and conditions contained herein; and

NOW THEREFORE, for and in consideration of the foregoing, the mutual covenants and promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

### ARTICLE 1 DEFINITIONS

Section 1.1. Definitions. For purposes of this Agreement, the following terms have the meanings referred to in this Section:

**Affiliate:** A person or company that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified person or company.

**Agreement:** The “Agreement” shall mean this Management Agreement, together with all exhibits attached hereto (each of which are incorporated herein as an integral part of this Agreement).

**Capital Expenditures:** All expenditures for building additions, alterations, repairs or improvements and for purchases of additional or replacement furniture, machinery, or equipment, where the cost of such expenditure is greater than \$5,000 and the depreciable life of the applicable item is, according to generally accepted accounting principles, is in excess of five (5) years.

**Commercial Rights:** Naming rights, pouring rights, advertising, sponsorships, the branding of food and beverage products for resale, premium seating (including suites, club seats and party suites) and memorial gifts at or with respect to the Facility and owned or controlled by the Owner.

**Concession Agreements:** Vendor, concessions and merchandising agreements, user/rental agreements, booking commitments, licenses, and all other contracts or agreements generating revenue for the Facility and entered into in the ordinary course of operating the Facility.

**Consumer Price Index:** The “Consumer Price Index” for the local Memphis area, as published by the United States Department of Labor, Bureau of Labor Statistics or such other successor or similar index.

**Effective Date:** “Effective Date” shall have the meaning ascribed to such term in the opening paragraph of this Agreement.

**Emergency Repair:** The repair of a condition which, if not performed immediately, creates an imminent danger to persons or property and/or an unsafe condition at the Facility threatening persons or property, or interfere with the obligated contractual performance of an event or booking.

**Event Account:** A separate interest-bearing account in the name of the Owner and under the Owner’s Federal ID number in a local qualified public depository, to be designated by the Owner, where advance ticket sale revenue is deposited by Manager.

**Event of Force Majeure:** An act of God, fire, earthquake, hurricane, flood, riot, civil commotion, terrorist act, terrorist threat, storm, washout, wind, lightning, landslide, explosion, epidemic, inability to obtain materials or supplies, accident to machinery or equipment, any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities or war, a labor dispute which results in a strike or work stoppage affecting the Facility or services described in this Agreement, or any other cause or occurrence outside the reasonable control of the party claiming an inability to perform and which by the exercise of due diligence could not be reasonably prevented or overcome.

**Existing Contracts:** Service Contracts, Concession Agreements, and other agreements relating to the day-to-day operation of the Facility existing as of the Effective Date, as set forth on Exhibit B attached hereto.

**Facility:** The “Facility” shall have the meaning ascribed to such term in the Recitals to this Agreement, and shall be deemed to include (i) the entire Liberty Bowl Memorial Stadium, including but not limited to the seating bowl, suite sky boxes, press box area, locker rooms, meeting rooms, box office, common areas, lobby areas, executive and other offices, storage and utility facilities, and the entrances, ground, sidewalks and parking areas immediately surrounding the Facility and adjacent thereto, and (ii) the [describe fairgrounds Global is responsible for managing], all of which is identified on the map of the site attached hereto as Schedule 1, and any structures or site improvements constructed in the future to be included in this agreement at the discretion of the Owner.

**FF&E:** Furniture, fixtures and equipment to be procured for use at the Facility.

**Fixed Management Fee:** The fixed monthly fee the Owner shall pay to Manager under this Agreement, as more fully described in Section 3.1 of this Agreement.

**Food and Beverage Service:** shall have the meaning given to such term in Section 14.1 below.

**General Manager:** The employee of Manager acting as the full-time on-site general manager of the Facility.

**Gross Food and Beverage Benchmark:** The average gross food and beverage sales after taxes for the seasons 2008, 2009, and 2010 which is calculated at \$836,429.

**Gross Food and Beverage Revenue:** gross revenue generated at or from the provision of the Food and Beverage Service at or from the Facility, including all amounts collected by food and beverage sub-contractors, less only taxes.

**Incentive Fee:** The contingent fee the Owner shall pay to Manager under this Agreement, if earned, as more fully described in Section 3.2 below.

**Laws:** federal, state, local and municipal laws, statutes, rules, regulations and ordinances.

**Management-Level Employees:** The General Manager, Assistant General Manager, Business Manager (or employees with different titles performing similar functions), and any department head employed by Manager to perform services at the Facility (including employees performing the functions of the Director of Operations, Director of Sales and Marketing, Director of Security, Finance Director and Event Manager).

**Manager:** The term "Manager" shall have the meaning ascribed to such term in the Recitals to this Agreement.

**Marketing Plan:** A plan for the advertising and promotion of the Facility and Facility events, which may contain but not be limited to the following elements: (i) market research, (ii) market position, (iii) marketing objectives, (iv) marketing strategies, (v) booking priorities, (vi) targeted events - local, regional, national and international, (vii) targeted meetings, conventions and trade shows, (viii) industry advertising campaign, (ix) internal and external support staff, (x) advertising opportunities at the local, regional and national level, (xi) attendance at various trade shows, conventions and seminars, (xii) incentive formulas for multiple event presenters, (xiii) suite and club seat sales, (xiv) merchandising and retail, (xv) food and beverage, (xvi) a plan for the sale of commercial rights, including without limitation naming rights, pouring rights, advertising signage, sponsorships (including event sponsorships), branding of food and beverage products for resale, premium seating (including but not limited to suites and club seats), and memorial gifts, (xvii) a plan

regarding national, regional and local public relations and media relations, (xviii) development of an in-house advertising agency, and (xix) policies regarding the use of trade/barter.

**Operating Account:** A separate interest-bearing account in the name of the Owner and under the Owner's Federal ID number in a local qualified public depository, to be designated by the Owner, where Revenue is deposited and from which Operating Expenses are paid.

**Operating Budget:** A line item document for the Facility of projected annual operating expenditures and revenues for a specified fiscal year.

**Operating Expenses:** All expenses incurred by Manager in connection with its operation, promotion, maintenance and management of the Facility, including but not limited to the following: (i) employee payroll, benefits, relocation costs, severance costs, bonus and related costs, (ii) cost of operating supplies, including general office supplies, (iii) advertising, marketing, group sales, and public relations costs, (iv) cleaning expenses, (v) data processing costs, (vi) dues, subscriptions and membership costs, (vii) the Fixed Management Fee, (viii) printing and stationary costs, (ix) postage and freight costs, (x) equipment rental costs, (xi) minor repairs, maintenance, and equipment servicing, not including expenses relating to performing capital improvements or repairs, (xii) security expenses, (xiii) telephone and communication charges, (xiv) travel and entertainment expenses of Manager employees, (xv) cost of employee uniforms and identification, (xvi) exterminator, snow and trash removal costs, if applicable (xvii) computer, software, hardware and training costs, (xviii) parking expenses, (xix) utility expenses, (xx) office expenses, (xxi) ) audit and accounting fees, (xxii) legal fees, (xxiii) all bond and insurance costs, including but not limited to personal property, liability, and worker's compensation insurance, (xxiv) commissions and all other fees payable to third parties (e.g. commissions relating to food, beverage and merchandise concessions services and commercial rights sales), (xxv) cost of complying with any Laws, (xxvi) costs incurred by Manager to settle or defend any claims asserted against Manager arising out of its operations at the Facility on behalf of Owner; (xxvii) costs incurred under Service Contracts and other agreements relating to Facility operations, (xxviii) Taxes, (xxix) cost of obtaining permits and licenses, including without limitation any liquor or beer permits or licenses; and (xxx) costs of food and beverage products. (xxxii) debt service, (xxxiii) management incentive fee, and (xxxiii) transition costs. Operating expenses does not include "capital expenditures".

**Operating Year:** Each twelve (12) month period during the Term, commencing on the Effective Date and continuing on the anniversary of such date.

**Operations Manual:** Document to be developed by Manager which shall contains terms regarding the management and operation of the Facility, including detailed policies and procedures to be implemented in operating the Facility, as agreed upon by both the Owner and the Manager.

**Revenue:** All revenues generated by Manager's operation of the Facility, including but not limited to event ticket proceeds income, rental and license fee income, merchandise income, gross food and beverage income, gross income from any sale of Commercial Rights, gross service income, equipment rental fees, box office income, and miscellaneous operating income, but shall not include event ticket proceeds held by Manager in trust for a third party and paid to such third party, but shall

not include event ticket proceeds held by Manager in trust for a third party and paid to such third party.

**Service Contracts:** Agreements for services to be provided in connection with the operation of the Facility, including without limitation agreements for ticketing, web development and maintenance, computer support services, FF&E purchasing services, engineering services, electricity, steam, gas, fuel, general maintenance, HVAC maintenance, telephone, staffing personnel including guards, ushers and ticket-takers, extermination, elevators, stage equipment, fire control panel and other safety equipment, snow removal and other services which are deemed by Manager to be either necessary or useful in operating the Facility.

**Taxes:** Any and all governmental assessments, franchise fees, excises, license and permit fees, levies, charges and taxes, of every kind and nature whatsoever, which at any time during the Term may be assessed, levied, or imposed on, or become due and payable out of or in respect of, (i) activities conducted on behalf of the Owner at the Facility, including without limitation the sale of concessions, the sale of tickets, and the performance of events (such as any applicable sales and/or admissions taxes, use taxes, excise taxes, occupancy taxes, employment taxes, and withholding taxes), or (ii) any payments received from any holders of a leasehold interest or license in or to the Facility, from any guests, or from any others using or occupying all or any part of the Facility.

**Term:** The term "Term" shall have the meaning ascribed to such term in Section 4.1 of this Agreement.

**Transition Costs:** shall have the meaning given to such term in Section 9.3 hereof.

**Owner:** The term "Owner" shall have the meaning ascribed to such term in the Recitals to this Agreement.

## ARTICLE 2 SCOPE OF SERVICES

### Section 2.1 Engagement.

(a) Owner hereby engages Manager during the Term to act as the sole and exclusive manager and operator of the Facility, subject to and as more fully described in this Agreement, and, in connection therewith, to perform the services described in Exhibit A attached hereto.

(b) Manager hereby accepts such engagement, and shall perform the services described herein, subject to the limitations expressly set forth in this Agreement and in the Operations Manual.

Section 2.2 Subject to Funding. Manager hereby recognizes this Agreement is subject to funding and that as such, there shall be an annual appropriation of funds by the Owner. In the event funds are not appropriated for any fiscal period by the Owner, this Agreement may terminate without

penalty to or liability of either party to the other by reason of such lack of appropriation and termination.

### **ARTICLE 3 COMPENSATION**

Section 3.1 Fixed Management Fee. In consideration of Manager's performance of its services hereunder, Owner shall pay Manger a Fixed Management Fee. Beginning on the Effective Date and continuing through the first (1<sup>st</sup>) Operating Year, the Fixed Management Fee shall be Eight Thousand Dollars (\$8,000) per month. Beginning in the second (2<sup>nd</sup>) Operating Year, the Fixed Management Fee shall be increased each year over the Fixed Management Fee from the previous Operating Year in accordance with the percentage increase in the Consumer Price Index over the previous twelve (12) month period Year (i.e., the difference, expressed as a percentage, between the value of the CPI Index published most recently prior to the commencement of the preceding Operating Year and the value of the CPI Index published most recently prior to the commencement of the Operating Year for which the CPI adjustment will apply). The Fixed Management Fee shall be payable to Manager in advance, beginning on the Effective Date, and payable on the first (1<sup>st</sup>) day of each month thereafter (prorated as necessary for any partial months). Manager shall be entitled to pay itself such amount from the Operating Account and shall maintain documentation reflecting all such payments.

Section 3.2 Incentive Fee. In addition to the Fixed Management Fee, Manager shall be entitled to receive an Incentive Fee each full or partial Operating Year of the Term. The Incentive Fee shall be equal to ten percent (10%) of Gross Food and Beverage Revenue each year in excess of the Gross Food and Beverage Benchmark, provided that in no event shall the Incentive Fee payable to Manager in any Operating Year exceed the amount of the Fixed Fee for such year. The Incentive Fee earned by Manager shall be paid to Manager no later than ninety (90) days following the end of each Operating Year.

### **ARTICLE 4 TERM; TERMINATION**

Section 4.1 Term. The term of this Agreement (the "Term") shall be for five (5) years, beginning on the Effective Date, and, unless sooner terminated pursuant to the provisions of Section 4.2 below, expiring on June 30, 2016. Notwithstanding the foregoing, Owner shall have the right to terminate this Agreement, without cause, effective on June 30, 2014, by providing written notice of such termination to Manager on or before March 30, 2014.

Section 4.2 Termination.

(a) In addition to the termination right of Owner described in Section 4.1 above, this Agreement may be terminated:

(i) subject to Section 4.3(a) below, by Owner upon thirty (30) days written notice to Manager in the event of a permanent closure of the Facility, the fact of which is certified by the Owner in writing to Manager;

(ii) by either party upon thirty (30) days written notice, if the other party fails to perform or comply with any of the material terms, covenants, agreements or conditions hereof, and such failure is not cured during such thirty (30) day notification period, provided, however, if such failure cannot reasonably be cured within such thirty (30) day period, then a longer period of time shall be afforded to cure such breach, up to a total of ninety (90) days, provided that the party in default is diligently seeking a cure and the non-defaulting party is not irreparably harmed by the extension of the cure period; or

(iii) by either party immediately by written notice upon the other party being judged bankrupt or insolvent, or if any receiver or trustee of all or any part of the business property of the other party shall be appointed and shall not be discharged within one hundred twenty (120) days after appointment, or if either party shall make an assignment of its property for the benefit of creditors or shall file a voluntary petition in bankruptcy or insolvency, or shall apply for bankruptcy under the bankruptcy or insolvency Laws now in force or hereinafter enacted, Federal, State or otherwise, or if such petition shall be filed against either party and shall not be dismissed within one hundred twenty (120) days after such filing.

#### Section 4.3 Effect of Termination

(a) In the event this Agreement is terminated by the Owner pursuant to Section 4.2(a)(i), the Owner shall reimburse Manager for any actual ordinary and necessary expenses incurred by Manager in withdrawing from the provision of services hereunder following such termination. Such ordinary and necessary expenses shall include costs associated with (i) severance pay, not to exceed six (6) months, for each of Manager's Management-Level Employees, (ii) reasonable household relocation expenses for Manager's Management-Level Employees, to the extent any of such individuals had previously relocated to the Facility (or its surrounding areas) in connection with this Agreement and (iii) other reasonable costs actually incurred by Manager in withdrawing from the provision of services hereunder, such as those incurred in connection with the termination and/or assignment of Service Contracts, Concession Agreements, or other contracts or leases entered into by Manager pursuant to this Agreement. The Owner's payment of such expenses will occur only after Manager has provided reasonable evidence of the incurrence of such expenses. Except for the reimbursement of the above stated expenses, Manager shall have no other right or remedy, at law or in equity, against the Owner for a termination pursuant to Section 4.2(a)(i), except that, in the event the Facility re-opens at any time during the Term, this Agreement shall, at the option of Manager, once again become effective and Manager shall manage and operate the Facility under the terms hereof, except that the Term shall be extended for a period of time in which the Facility was closed. Notwithstanding the foregoing, this provision shall not apply in the event funding for the Facility is not made available in accordance with Section 2.2 above and results in a permanent closure of the Facility.

(b) Upon termination or expiration of this Agreement for any reason, (i) Manager shall promptly discontinue the performance of all services hereunder, (ii) the Owner shall promptly (need to define the term “promptly”) pay Manager all fees due Manager up to the date of termination or expiration (subject to proration if the Term ends other than at the end of the Operating Year), (iii) Manager shall make available to the Owner all data, electronic files, documents, procedures, reports, estimates, summaries, and other such information and materials with respect to the Facility as may have been accumulated by Manager in performing its obligations hereunder, whether completed or in process, and (iv) without any further action on part of Manager or Owner, the Owner shall, or shall cause the successor Facility manager to, assume all obligations arising after the date of such termination or expiration, under any Service Contracts, Concession Agreements, booking commitments and any other Facility agreements entered into by Manager in furtherance of its duties hereunder. Any obligations of the parties that are specifically intended to survive expiration or termination of this Agreement shall survive expiration or termination hereof.

## **ARTICLE 5 OWNERSHIP; USE OF THE FACILITY**

Section 5.1 Ownership of Facility, Data, Equipment and Materials. The Owner will at all times retain ownership of the Facility, including but not limited to real estate, technical equipment, furniture, displays, fixtures and similar property, including improvements made during the Term, at the Facility. Any data, equipment or materials furnished by the Owner to Manager or acquired by Manager as an Operating Expense shall remain the property of the Owner, and shall be returned to the Owner when no longer needed by Manager to perform under this Agreement. Notwithstanding the above, Owner shall not have the right to use any third party software licensed by Manager for general use by Manager at the Facility and other facilities managed by Manager, the licensing fee for which is proportionately allocated and charged to the Facility as an Operating Expense; such software may be retained by Manager upon expiration or termination hereof. Furthermore, the Owner recognizes that the Operations Manual to be developed and used by Manager hereunder is proprietary to Manager, and shall belong to Manager at the end of the Term; Owner shall not use or maintain copies thereof upon the end of the Term.

Section 5.2 Right of Use by Manager. The Owner hereby gives Manager the right and license to use the Facility, and Manager accepts such right of use, for the purpose of performing the services herein specified, including the operation and maintenance of all physical and mechanical facilities necessary for, and related to, the operation, maintenance and management of the Facility. The Owner shall provide Manager with a sufficient amount of suitable office space in the Facility and with such office equipment as is reasonably necessary to enable Manager to perform its obligations under this Agreement. In addition, the Owner shall make available to Manager, at no cost, parking spaces adjacent to the Facility for all of Manager’s full-time employees and for the Facility’s event staff.

Section 5.3 Observance of Agreements. The Owner agrees to pay, keep, observe and perform all payments, terms, covenants, conditions and obligations under any leases, bonds,

debentures, loans and other financing and security agreements to which the Owner is bound in connection with its Ownership of the Facility.

Section 5.4 Use by the Owner. Subject to availability, the Owner shall have the right to use the Facility or any part thereof rent-free for meetings, seminars, training classes or other non-commercial uses. Such non-commercial use of the Facility by the Owner shall (i) not compete with or conflict with the dates previously booked by Manager for paying events, (ii) not consist of normally touring attractions (such as concerts and family shows), and (iii) be booked in advance upon reasonable notice to Manager pursuant to the Facilities' approved booking policies, except in the event of an emergency as declared by the City. Upon request of the Owner, Manager shall provide to the Owner a list of available dates for Owner's use of the Facility. To the extent that Manager has an opportunity to book a revenue-producing event on a date which is otherwise reserved for use by the Owner, Manager may propose alternative dates for the Owner's event, and the Owner shall use best efforts to reschedule its event to allow Manager to book the revenue-producing event.

## **ARTICLE 6 PERSONNEL**

Section 6.1 Generally. All Facility staff and other personnel shall be engaged or hired by Manager, and shall be employees, agents or independent contractors of Manager (or an Affiliate thereof), and not of the Owner. Manager shall select, in its sole discretion but subject to Owner's right to approve the Operating Budget, the number, function, qualifications, and compensation, including salary and benefits, of its employees and shall control the terms and conditions of employment (including without limitation termination thereof) relating to such employees. Manager agrees to use reasonable and prudent judgment in the selection and supervision of such personnel. The Owner specifically agrees that Manager shall be entitled to pay its employees, as an Operating Expense, bonuses and benefits in accordance with Manager's then current employee manual and Owner's authorized budget for such Operating Expenses, which may be modified by Manager from time to time in its sole discretion. A copy of Manager's current employee manual shall be provided to the Owner upon request.

Section 6.2 General Manager. Personnel engaged by Manager will include an individual with managerial experience in similar facilities to serve as a full-time on-site General Manager of the Facility. Hiring of the General Manager by Manager shall require the prior approval of the Owner, which approval shall not be unreasonably withheld or delayed; provided, however, in the event of a vacancy in the General Manager position, Manager may, upon notice to the Owner, temporarily fill such position with an interim General Manager for up to ninety (90) days without the necessity of obtaining the Owner's approval. The General Manager will have general supervisory responsibility for Manager and will be responsible for day-to-day operations of the Facility, supervision of employees, and management and coordination of all activities associated with events taking place at the Facility.

Section 6.3 Transition of Existing Facility Employees. Manager may, but shall not be required to, offer positions of employment to any of the staff existing at the Facility prior to the Effective Date.

Section 6.4 Allocation of Certain Employee Costs. The Owner acknowledges that Manager is currently engaged by Memphis Redbirds Baseball Foundation, Inc. (the "Foundation") to provide management services at AutoZone Park in Memphis, Tennessee (the "Ballpark"). The parties acknowledge that Manager currently intends to provide certain services required to be provided hereunder at the Facility with personnel employed by Manager at the Ballpark, such as, for example, finance, marketing, and event coordination services. The costs of employing such personnel are funded by the Foundation, and the Foundation will require that the Owner pay a reasonable portion of such costs in exchange for such personnel being made available to perform services for the benefit of the Facility. Manager shall coordinate with the Foundation and Owner to arrange for a fair and reasonable allocation of such employee costs to be billed to Owner as an Operating Expense, which allocation shall be consistent with the approved Operating Budget. If the parties cannot agree on such allocation, the allocation to Owner shall be generally based on the amount of time such personnel spends performing services at the Facility as a percentage of his/her overall work week, multiplied by the costs incurred by the Foundation of employing such individuals.

Section 6.5 Non-Solicitation/Non-Hiring. During the Term and for a period of one (1) year after the end of the Term, neither Owner nor any of its Affiliates shall solicit for employment, or hire, any of Manager's Management-Level Employees. The Owner acknowledges that Manager will spend a considerable amount of time identifying, hiring and training individuals to work in such positions, and that Manager will suffer substantial damages, the exact amount of which would be difficult to quantify, if the Owner were to breach the terms of this Section by hiring, or soliciting for employment, any of such individuals. Accordingly, in the event of a breach or anticipated breach of this Section by the Owner, Manager shall be entitled (in addition to any other rights and remedies which Manager may have at law or in equity, including money damages) to equitable relief, including an injunction to enjoin and restrain the Owner from continuing such breach, without the necessity of posting a bond.

Section 6.6 Performance. If at any time the Owner has any concerns with the performance of any of Manager's employees, it shall notify Manager of such concerns (including, if applicable, any request by the Owner that such employee be terminated), and Manager shall promptly take all appropriate actions, including, but not by way of limitation, meeting with the Owner to discuss and resolve such concerns. The parties, however, acknowledge that the ultimate right to terminate any of Manager's employees shall reside with Manager.

## **ARTICLE 7**

### **TRANSITION COSTS; OPERATING BUDGET**

Section 7.1 Transition Costs. Owner shall reimburse Manager for Manager's actual and reasonable costs incurred in connection with transitioning the management services for the Facility to

Manager (the “**Transition Costs**”), that is mutually agreed to by both the Owner and Manager. It is understood that the Transition Costs will include reimbursement for the reasonable costs of relocating employees; recruitment and re-branding; computer/website set-up; and corporate travel. The Transition Costs shall be reimbursed to Manager by Owner within thirty (30) days of Manager’s provision of an invoice and sufficient supporting information for such costs.

Section 7.2 Establishment of Operating Budget. Manager will prepare, document, and present an annual operating budget to the City through the DPS within the time line established and published by the City Division of Finance. Each annual Operating Budget shall include Manager’s good faith projection of Revenues and Operating Expenses, presented on a monthly and annual basis, for the upcoming Operating Year. The Owner agrees to provide Manager with all information in its possession necessary to enable Manager to prepare each Operating Budget.

Section 7.3 Approval of Operating Budget. Each annual Operating Budget shall be subject to the review and approval of the Owner, which approval shall not be unreasonably withheld or delayed. In order for the Owner to fully evaluate and analyze such budgets or any other request by Manager relating to income and expenses, Manager agrees to provide to the Owner such reasonable financial information relating to the Facility as may be requested by the Owner from time to time. If events occur during any Operating Year that could not reasonably be contemplated at the time the corresponding Operating Budget was prepared, which events are expected to result in increased Operating Expenses, Manager may submit an amendment to such budget for review and approval by the Owner (which approval shall not be unreasonably withheld or delayed). If the Owner fails to approve any annual Operating Budget (or any proposed amendment thereto), the Owner shall promptly provide Manager the specific reasons therefor and its suggested modifications to Manager’s proposed Operating Budget or amendment in order to make it acceptable. The parties shall then engage in good faith discussions and use reasonable commercial efforts to attempt to resolve the matter to the mutual satisfaction of the parties, including, if applicable, negotiation of a mutually acceptable modification to the economic terms of this Agreement to enable the Manager to achieve the compensation contemplated by its proposed Operating Budget.

Section 7.4 Adherence to Operating Budget. Manager shall use all reasonable efforts to manage and operate the Facility in accordance with the Operating Budget. However, Owner acknowledges that notwithstanding the Manager's experience and expertise in relation to the operation of facilities similar to the Facility, the projections contained in each Operating Budget are subject to and may be affected by changes in financial, economic and other conditions and circumstances beyond the Manager’s control, and that Manager shall have no liability if the numbers within the Operating Budget are not achieved. Manager agrees to notify the Owner within 30 days of any significant change or variance in the bottom line number in the Operating Budget, and any material increase in total Facility expenses from that provided for in the Operating Budget. In either such case and if requested by Owner, Manager agrees to work with Owner to develop and implement a plan (or changes to the then current plan) to limit Operating Expense to be incurred in the remaining months of such Operating Year with the goal of achieving the Operating Budget.

## ARTICLE 8

## **PROCEDURE FOR HANDLING INCOME**

Section 8.1 Event Account. Manager shall deposit as soon as practicable following receipt, in the Event Account, all revenue received from ticket sales and similar event-related revenues which Manager receives in contemplation of, or arising from, an event, pending completion of the event. Such monies will be held in escrow for the protection of ticket purchasers, the Owner and Manager, to provide a source of funds as required for payments to performers and for payments of direct incidental expenses in connection with the presentation of events that must be paid prior to or contemporaneously with such events. Promptly following completion of such events, Manager shall transfer all funds remaining in the Event Account, including any interest accrued thereon, into the Operating Account. Bank service charges, if any, on such account(s) shall be deducted from interest earned.

Section 8.2 Operating Account. Except as provided in Section 8.1, all Revenue derived from operation of the Facility shall be deposited by Manager into the Operating Account as soon as practicable upon receipt (but not less often than once each business day). The specific procedures (and authorized individuals) for making deposits to and withdrawals from such account shall be set forth in the Operations Manual, but the parties specifically agree that Manager shall have authority to sign checks and make withdrawals from such account, subject to the limitation contained in this Agreement, without needing to obtain the co-signature of a Owner employee or representative.

## **ARTICLE 9 FUNDING**

Section 9.1 Source of Funding. Manager shall pay all items of expense for the operation, maintenance, supervision and management of the Facility from the funds in the Operating Account, which Manager may access periodically for this purpose. The Operating Account shall be funded with amounts generated by operation of the Facility (as described in Article 8 above), or otherwise made available by the Owner. To ensure sufficient funds are available in the Operating Account, Owner will deposit in the Operating Account, on or before the Effective Date, the budgeted or otherwise approved expenses for the month beginning on the Effective Date. Manager shall have no liability to the Owner or any third party in the event Manager is unable to perform its obligations hereunder, or under any third party contract entered into pursuant to the terms hereof, due to the fact that sufficient funds are not made available to Manager to pay such expenses in a timely manner.

Section 9.2 Advancement of Funds. Under no circumstances shall Manager be required to pay for or advance any of its own funds to pay for any Operating Expenses. In the event that, notwithstanding the foregoing, Manager agrees to advance its own funds to pay Operating Expenses, Owner shall promptly reimburse Manager for the full amount of such advanced funds, plus interest at a rate to be mutually agreed.

## **ARTICLE 10 FISCAL RESPONSIBILITY; REPORTING**

Section 10.1 Records. Manager agrees to keep and maintain, at its office in the Facility, separate and independent records, in accordance with generally accepted accounting principles, devoted exclusively to its operations in connection with its management of the Facility. Such records (including books, ledgers, journals, and accounts) shall contain all entries reflecting the business operations of Manager under this Agreement. The Owner or its authorized agent shall have the right to audit and inspect such records from time to time during the Term, upon reasonable notice to Manager and during Manager's ordinary business hours.

Section 10.2 Monthly Financial Reports. Manager agrees to provide to the Owner, within thirty (30) days after the end of each month during the Term, financial reports for the Facility including a balance sheet, aging report on accounts receivable, and statement of revenues and expenditures (budget to actual) for such month and year to date in accordance with generally accepted accounting principles. In addition, Manager agrees to provide to the Owner a summary of bookings for each such month, and separate cash receipts and disbursements reports for each event held at the Facility during such month. Additionally, Manager shall submit to the Owner, or shall cause the applicable public depository utilized by Manager to submit to the Owner, on a monthly basis, copies of all bank statements concerning the Event Account and the Operating Account.

Section 10.3 Audit. Manager agrees to provide to the Owner, within one hundred twenty (120) days following the end of each Operating Year, a certified audit report on the accounts and records as kept by Manager for the Facility. Costs associated with obtaining such certified audit report shall be an Operating Expense of the Facility. Such audit shall be performed by an external auditor approved by the Owner, and shall be conducted in accordance with generally accepted auditing standards.

## **ARTICLE 11 CAPITAL IMPROVEMENTS**

Section 11.1 Schedule of Capital Expenditures. Manager shall annually, at the time of submission of the annual Operating Budget to the Owner, provide to the Owner a schedule of proposed capital improvements to be made at the Facility, for the purpose of allowing the Owner to consider such projects and to prepare and update a long-range Capital Expenditure budget.

Section 11.2 Responsibility for Capital Expenditures. The Owner shall be solely responsible for all Capital Expenditures at the Facility; provided, however, the Owner shall be under no obligation to make any Capital Expenditures proposed by Manager, and provided further that Manager shall have no liability for any claims, costs or damages arising out of a failure by the Owner to make any Capital Expenditures. Notwithstanding the foregoing, Manager shall have the right (but not the obligation), upon notice to the Owner, to make Capital Expenditures at the Facility for Emergency Repairs. In such event, the Owner shall promptly reimburse Manager for the cost of such Capital Expenditure.

## **ARTICLE 12 FACILITY CONTRACTS; TRANSACTIONS WITH AFFILIATES**

Section 12.1 Existing Contracts. The Owner shall provide to Manager, on or before the Effective Date, copies of all Existing Contracts. Manager shall administer and assure compliance with such Existing Contracts.

Section 12.2 Execution of Contracts. Manager shall have the right to enter into Service Contracts, Concession Agreements and other contracts related to the operation of the Facility, as agent on behalf of the Owner. Any such material agreements shall contain standard indemnification and insurance obligations on the part of each vendor, licensee or service provider, as is customary for the type of services or obligations being provided or performed by such parties. Manager shall obtain the prior approval of the Owner (which approval shall not be unreasonably withheld or delayed) before entering into any such contract with a term that expires after the Term of this Agreement, unless such contract, by its express terms, can be terminated by Manager or Owner following expiration of the Term without any penalty.

Section 12.3 Transactions with Affiliates. In connection with its obligations hereunder relating to the purchase or procurement of services for the Facility (including without limitation food and beverage services, ticketing services, Commercial Rights sales, web design services and graphic design services), Manager may, subject to Existing Contracts, purchase or procure such services, or otherwise transact business with, an Affiliate of Manager, provided that the prices charged and services rendered by such Affiliate are competitive with those obtainable from any unrelated parties rendering comparable services. Manager shall, at the request of the Owner, provide reasonable evidence establishing the competitive nature of such prices and services, including, if appropriate, competitive bids from other persons seeking to render such services at the Facility.

### **ARTICLE 13 AGREEMENT MONITORING AND GENERAL MANAGER**

Section 13.1 Contract Administrator. Each party shall appoint a contract administrator who shall monitor such party's compliance with the terms of this Agreement. Manager's contract administrator shall be its General Manager at the Facility, unless Manager notifies Owner of a substitute contract administrator in writing. Owner shall notify Manager of the name of its contract administrator within thirty (30) days of execution hereof. Any and all references in this Agreement requiring Manager or Owner participation or approval shall mean the participation or approval of such party's contract administrator.

### **ARTICLE 14 FOOD AND BEVERAGE SERVICE**

Section 14.1 Generally. Manager shall have the sole and exclusive right to manage and perform, and Manager hereby agrees to manage and perform, all food and beverage concession and catering service at the Facility ("**Food and Beverage Service**"). Manager may engage sub-contractors to sell food and beverages at the Facility. Nothing shall restrict or prevent Manager from utilizing (or permitting a licensee from utilizing) outside caterers when determined by Manager in its reasonable discretion to be in the best interests of the Facility.

Manager may utilize the services of its Affiliate Ovations Food Services, L.P. to assist in such food and beverage services, at no incremental cost to Owner.

Section 14.2. Food and Beverage Areas. Manager shall have the exclusive right to use the concession stands, novelty stands, customer serving locations, food preparation areas, vendor commissaries, kitchen and warehouse facilities, and other food service related areas of the Facility, together with the improvements, equipment and personal property upon or within such areas; for the purpose of providing the Food and Beverage Service (and providing other duties required of Manager hereunder). Owner shall, at Owner's cost, provide all smallwares and equipment reasonably required by Manager to perform the Food and Beverage Services.

Section 14.3. Food and Beverage Duties. In connection with its management and provision of the Food and Beverage Service, Manager shall:

(a) Develop and implement all necessary policies and procedures for the food and beverage operations;

(b) Engage, and control the terms of employment of, all employees necessary to perform the Food and Beverage Services, including a Food and Beverage Director responsible for overseeing all food and beverage operations;

(c) Manage the Food and Beverage Service in compliance with and subject to all federal, state and local laws, ordinances and regulations (including, without limitation, health and sanitation codes and regulations with respect to the sanitation and purity of the food and beverage products for sale);

(d) Arrange for all minor repairs and routine maintenance (not requiring a Capital Expenditure) to the equipment used in the operation of the Food and Beverage Service;

(e) Keep the food and beverage facilities and equipment neat, clean and in a sanitary condition;

(f) Undertake appropriate advertising, marketing and promotion of the food and beverage offerings at the Facility;

(g) Develop menus, portions, brands, prices, themes and marketing approaches;

(h) Order, stock, prepare, pay for (as an Operating Expense) and sell appropriate foods and beverages;

(i) Use best efforts to obtain and maintain all licenses and permits necessary for the operation of the Food and Beverage Service, including those required for the on-premise sale of alcoholic beverages. Owner shall offer reasonable assistance to Manager in obtaining such licenses;

(j) Maintain at all times accurate and separate accounting records and adequate financial controls on the operation of the Food and Beverage Services; and

(k) Include in each annual Operating Budget a separate break-out for the food and beverage operation, and each monthly and annual financial statement required to be provided by Manager hereunder shall include a separate profit/loss statement for the Food and Beverage Service.

Section 14.4. Food and Beverage Revenue and Expenses. All revenue to the Facility from operation of the Food and Beverage Service shall be deemed to be Revenue, and shall be deposited by Manager into the Facility Operating Account. All expenses incurred by Manager in connection with the provision by Manager of the Food and Beverage Service shall be Operating Expenses, payable by Manager with funds from the Facility Operating Account.

## **INDEMNIFICATION 15**

Section 15.1 Indemnification by Manager. Manager agrees to defend, indemnify and hold harmless the Owner and its officials, directors, officers, employees, agents, successors and assigns against any claims, causes of action, costs, expenses (including reasonable attorneys' fees) liabilities, or damages (collectively, "**Losses**") suffered by such parties, arising out of or in connection with any (a) negligent act or omission, or intentional misconduct, on the part of Manager or any of its employees or agents in the performance of its obligations under this Agreement, or (b) breach by Manager of any of its representations, covenants or agreements made herein.

Section 15.2 Indemnification by the Owner. To the extent permitted by law, Owner agrees to defend, indemnify and hold harmless Manager, its parent, subsidiary and affiliate companies, and each of their respective directors, officers, employees, agents, successors and assigns, against any Losses suffered by such parties, arising out of or in connection with (a) any negligent act or omission, or intentional misconduct, on the part of Owner or any of its employees or agents in the performance of its obligations under this Agreement, (b) a breach by Owner of any of its representations, covenants or agreements made herein, including without limitation Owner's obligation to pay any budgeted or otherwise approved expenses in a timely manner, (c) failure by Owner to pay any amounts due by Owner or to otherwise perform any obligations of Owner under any third party contracts, licenses or agreements entered into by Manager in furtherance of its duties hereunder as authorized hereby; (d) any environmental condition at the Facility or on or under the premises on which the Facility is located not caused by Manager, its employees or agents, (e) any structural defect with respect to the Facility, and (f) any act or omission carried out by Manager at or pursuant to the direction or instruction of Owner, its agents or employees.

Section 15.3 Conditions to Indemnification. With respect to each separate matter brought by any third party against which a party hereto ("Indemnitee") is indemnified by the other party ("Indemnitor") under this Article 15, the Indemnitor shall be responsible, at its sole cost and expense, for controlling, litigating, defending and/or otherwise attempting to resolve any proceeding, claim, or

cause of action underlying such matter, except that (a) the Indemnitee may, at its option, participate in such defense or resolution at its expense and through counsel of its choice; (b) the Indemnitee may, at its option, assume control of such defense or resolution if the Indemnitor does not promptly and diligently pursue such defense or resolution, provided that the Indemnitor shall continue to be obligated to indemnify the Indemnitee hereunder in connection therewith; and (c) neither Indemnitor nor Indemnitee shall agree to any settlement without the other's prior written consent (which shall not be unreasonably withheld or delayed). In any event, Indemnitor and Indemnitee shall in good faith cooperate with each other and their respective counsel with respect to all such actions or proceedings, at the Indemnitor's expense. With respect to each and every matter with respect to which any indemnification may be sought hereunder, upon receiving notice pertaining to such matter, Indemnitee shall promptly (and in no event more than twenty (20) days after any third party litigation is commenced asserting such claim) give reasonably detailed written notice to the Indemnitor of the nature of such matter and the amount demanded or claimed in connection therewith.

Section 15.4 Survival. The obligations of the parties contained in this Article 15 shall survive the termination or expiration of this Agreement.

## **ARTICLE 16 INSURANCE**

Section 16.1 Types and Amount of Coverage. Manager agrees to obtain insurance coverage in the manner and amounts as set forth in Exhibit D, attached hereto, and shall provide to the Owner upon execution of this Agreement, certificates of insurance evidencing such coverage. Manager shall maintain such referenced insurance coverage at all times during the Term, and will not make any material modification or change from these specifications without the prior approval of the Owner. Each insurance policy shall include a requirement that the insurer provide Manager and the Owner at least thirty (30) days written notice of cancellation or material change in the terms and provisions of the applicable policy. The cost of all such insurance shall be an Operating Expense.

Section 16.2 Rating; Additional Insureds. All insurance policies shall be issued by insurance companies rated no less than A VIII in the most recent "Bests" insurance guide, and licensed in the State of Tennessee or as otherwise agreed by the parties. All such policies shall be in such form and contain such provisions as are generally considered standard for the type of insurance involved. The commercial general liability policy, automobile liability insurance policy and umbrella or excess liability policy to be obtained by Manager hereunder shall name Owner as an additional insured. The workers compensation policy to be obtained by Manager hereunder shall contain a waiver of all rights of subrogation against the Owner. Manager shall require that all third-party users of the Facility, including without limitation third-party licensees, ushers, security personnel and concessionaires, provide certificates of insurance evidencing insurance appropriate for the types of activities in which such user is engaged. If Manager subcontracts any of its obligations under this Agreement, Manager shall either: (a) cover all subcontractors under its policies of insurance, or (b) require each subcontractor not so covered to secure insurance that will protect against applicable hazards or risks of loss as and in the minimum amounts designated herein, and name Manager and the Owner as additional insureds.

**ARTICLE 17**  
**REPRESENTATIONS, WARRANTIES AND COVENANTS**

Section 17.1 Manager Representations and Warranties. Manager hereby represents, warrants and covenants to Owner as follows:

(a) that it has the full legal right, power and authority to enter into this Agreement and to grant the rights and perform the obligations of Manager herein, and that no third party consent or approval is required to grant such rights or perform such obligations hereunder; and

(b) that this Agreement has been duly executed and delivered by Manager and constitutes a valid and binding obligation of Manager, 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.

(c) that Manager will comply with all Laws applicable to its management of the Facility, provided that Manager shall not be required to undertake any compliance activity, nor shall Manager have any liability under this Agreement therefor, if such activity requires any Capital Expenditure.

Section 17.2 Owner Representations, Warranties and Covenants. Owner represents, warrants and covenants to Manager as follows:

(a) that it has the full legal right, power and authority to enter into this Agreement and to grant the rights and perform the obligations of Owner herein, and that no other third party consent or approval is required to grant such rights or perform such obligations hereunder.

(b) that this Agreement has been duly executed and delivered by Owner and constitutes a valid and binding obligation of Owner, 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.

(c) that the Facility is, as of the Effective Date, in compliance in all respects with all applicable Laws relating to the construction, use and operation of the Facility except Title III of the American with Disabilities Act, and that there exist no structural defects or unsound operating conditions at the Facility. Notwithstanding the foregoing, the parties recognize that Owner remains in negotiations with the Department of Justice regarding actions to be undertaken by Owner to bring the Facility in compliance.

**ARTICLE 18**  
**MISCELLANEOUS**

Section 18.1 Confidentiality. Unless a party is required by law to disclose this Agreement or the terms contained herein, this Agreement and its terms, conditions, provisions and contents shall be kept strictly confidential and shall not be disclosed by either party hereto to any person except such party's employees, affiliates, attorney's, accountants, financial advisors, and advertising agencies who have a need to know such information, and except in the case of a proceeding surrounding a dispute under this Agreement or as may otherwise be required by court order, in which case such disclosure shall be conditioned on all reasonable steps being taken to maintain the confidentiality of the economic terms of this Agreement.

Section 18.2 No Discrimination. Manager agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, religion, color, sex, disability, national origin, ancestry, physical handicap, or age, and will take affirmative steps to ensure that applicants are employed, and employees are treated during employment, without regard to race, religion, color, sex, disability, national origin, ancestry, physical handicap, or age.

Section 18.3 Use of Facility Names and Logos. Manager shall have the right to use throughout the Term (and permit others to use in furtherance of Manager's obligations hereunder), for no charge, the name and all logos of the Facility, on Manager's stationary, in its advertising of the Facility, and whenever conducting business of the Facility; provided, that Manager shall take all prudent and appropriate measures to protect the intellectual property rights of the Owner relating to such logos. All intellectual property rights in any Facility logos developed by the Manager or the Owner shall be and at all times remain the sole and exclusive property of the Owner. Manager agrees to execute any documentation requested by the Owner from time to time to establish, protect or convey any such intellectual property rights.

Section 18.4 Facility Advertisements. The Owner agrees that in all advertisements placed by the Owner for the Facility or events at the Facility, whether such advertisements are in print, on radio, television, the internet or otherwise, it shall include a designation that the Facility is a "Global Spectrum managed facility".

Section 18.5 Force Majeure; Casualty Loss.

(a) Neither party shall be liable or responsible to the other party for any delay, loss, damage, failure or inability to perform under this Agreement due to an Event of Force Majeure, provided that the party claiming failure or inability to perform provides written notice to the extent possible to the other party within thirty (30) days of the date on which such party gains actual knowledge of such Event of Force Majeure. Notwithstanding the foregoing, in no event shall a party's failure to make payments due hereunder be excusable due to an Event of Force Majeure.

(b) In the event of damage or destruction to a material portion of the Facility by reason of fire, storm or other casualty loss that renders the Facility (or a material portion thereof) untenable, the Owner shall use reasonable efforts to remedy such situation. If notwithstanding such efforts, such damage or destruction is expected to render the Facility (or a material portion thereof) untenable for a period estimated by an architect selected by the Owner at Manager's

request, of at least one hundred eighty (180) days from the date of such fire, storm or other casualty loss, either party may terminate this Agreement upon written notice to the other, provided that (i) the Owner shall pay to Manager its costs of withdrawing from services hereunder, as described in Section 4.3(a) above, and (ii) in the event the Facility once again becomes tenable at any time during the Term, this Agreement shall, at the option of Manager, once again become effective and Manager shall manage and operate the Facility under the terms hereof, except that the Term shall be extended for a period of time in which the Facility was closed.

Section 18.6 Assignment. Neither party may assign this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed, except that either party may, without the prior written consent of the other party but upon at least 30 days' written notice to the other party, assign this Agreement in connection with a sale of all or substantially all its assets or equity interests, and Manager may assign this Agreement to an affiliate, parent or subsidiary of Manager where such assignment is intended to accomplish an internal corporate purpose of Manager as opposed to materially and substantially altering the method of delivery of services to Owner. Any purported assignment in contravention of this Section shall be void.

Section 18.7 Notices. All notices required or permitted to be given pursuant to this Agreement shall be in writing and delivered personally or sent by registered or certified mail, return receipt requested, or by generally recognized, prepaid, overnight air courier services, to the address and individual set forth below. All such notices to either party shall be deemed to have been provided when delivered, if delivered personally, three (3) days after mailed, if sent by registered or certified mail, or the next business day, if sent by generally recognized, prepaid, overnight air courier services.

If to the Owner:

City of Memphis  
Division of Park Services  
2599 Avery  
Memphis, Tennessee 38112

With a copy to:

City Attorney  
125 North Main, Room 336  
Memphis, Tennessee 38103  
Attn: City Attorney

If to Manager:

Global Spectrum, L.P.  
3601 S. Broad Street  
Philadelphia, PA 19148  
Attn: Chief Operating Officer

With a copy to:

Comcast Spectacor, L.P.  
3601 South Broad Street  
Philadelphia, Pennsylvania 19148-5290  
Attn: General Counsel

The designation of the individuals to be so notified and the addresses of such parties set forth above may be changed from time to time by written notice to the other party in the manner set forth above.

Section 18.8 Severability. If a court of competent jurisdiction determines that any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of this

Agreement (and the application of this Agreement to other circumstances) shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

Section 18.9 Entire Agreement. This Agreement (including the exhibits attached hereto) contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior negotiations, correspondence, conversations, agreements, and understandings concerning the subject matter hereof. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations, agreements or understandings, whether oral or written.

Section 18.10 Governing Law. The Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Tennessee, without regard to its conflict of laws principles.

Section 18.11 Amendments. Neither this Agreement nor any of its terms may be changed or modified, waived, or terminated (unless as otherwise provided hereunder) except by an instrument in writing signed by an authorized representative of the party against whom the enforcement of the change, waiver, or termination is sought.

Section 18.12 Waiver; Remedies. No failure or delay by a party hereto to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent to a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. No waiver of any breach hereunder shall affect or alter the remaining terms of this Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. The remedies provided in this Agreement are cumulative and not exclusive of the remedies provided by law or in equity.

Section 18.13 Relationship of Parties. Manager and Owner acknowledge and agree that they are not joint venturers, partners, or joint owners with respect to the Facility, and nothing contained in this Agreement shall be construed as creating a partnership, joint venture or similar relationship between Owner and Manager. In operating the Facility, entering into contracts, accepting reservations for use of the Facility, and conducting financial transactions for the Facility, Manager acts on behalf of and as agent for Owner (but subject to the limitations on Manager's authority as set out in this Agreement), with the fiduciary duties required by law of a party acting in such capacity.

Section 18.14 Counterparts; Facsimile and Electronic Signatures. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document. This Agreement may be executed by the parties and transmitted by facsimile or electronic transmission, and if so executed and transmitted, shall be effective as if the parties had delivered an executed original of this Agreement.

Section 18.15 Contracting. In carrying out its obligations herein, Manager shall observe all applicable laws concerning the awarding of contracts for services at the Facility.

Section 18.16 MWBE. Manager in performance of its duties and obligations, under this Agreement shall comply with applicable policies of the Owner related to Owner's MWBE Program. Manager shall cooperate with Owner's Contract Compliance Officer to establish a goal for minority participation in all levels of the operation and management of the Facility. The goals of the MWBE Program may be amended at a future date based upon the results of any disparity study that may be conducted by the Owner.

Section 18.17 Local Preference. Manager will work proactively to promote the recruitment and hiring of companies and/or individuals that are locally owned and operated, to the extent there are qualified local companies providing services in the particular respective industry. This Section shall be completely integrated with Section 18.16 above, and therefore the procurement of services pursuant to Manager's operation of the Facility shall continuously and aggressively contemplate the retention of both locally owned and/or minority companies and/or individuals.

Section 18.18 Living Wage. Manager agrees to comply with Owner's Living Wage Ordinance and in accordance therewith, pay all Manager's employees at least \$10.00 with benefits, or \$12.00 an hour without benefits.

IN WITNESS WHEREOF, each party hereto has caused this Management Agreement to be executed on behalf of such party by an authorized representative as of the date first set forth above.

CITY OF MEMPHIS, TENNESSEE

GLOBAL SPECTRUM, L.P.

By: Global Spectrum, Inc., its general partner

By: \_\_\_\_\_  
Name:  
Its:

By: \_\_\_\_\_  
Name:  
Its:

**SCHEDULE 1**  
**MAP OF AREAS TO BE MANAGED BY MANAGER**

[map showing fairgrounds and other outdoor areas to be attached by City]

## **EXHIBIT A MANAGER DUTIES**

Manager's obligations under the Agreement shall consist of the following obligations, all of which are subject to the terms hereof and the controls and restrictions in the Operations Manual:

(a) Manage all aspects of the Facility in accordance with the Operations Manual and the terms of this Agreement, including but not limited to purchasing, payroll, fire prevention, security, crowd control, routine repairs, preventative maintenance, janitorial services, promotions, advertising, energy conservation, security, box office, admission procedures, parking (if applicable), and general user services. In connection with such duties, Manager shall manage, operate and perform all aspects of the food and beverage service at the Facility, as more fully set forth in Article 14 hereof.

(b) Establish and adjust prices, rates and rate schedules for user, license, concessions, occupancy, and advertising agreements, and booking commitments. Manager may deviate from the established rate schedule when entering into any such agreements if determined by Manager, using its reasonable business judgment, to be necessary or appropriate with respect to the specific situation.

(c) Subject to Existing Contracts, procure, negotiate, execute, administer and assure compliance with Service Contracts, Concession Agreements, and other contracts related to the operation of the Facility.

(d) Require that all material vendors and licensees of the Facility execute vendor/license agreements containing standard indemnification and insurance obligations on the part of each such vendor/licensee.

(e) Provide standard form advertising and sponsorship contracts and user/rental agreements for use at or with respect to the Facility. Manager shall submit such form agreements to the Owner for review and comment, and the parties shall work together to finalize such forms. Once finalized, Manager shall use such forms in furtherance of its duties hereunder, and shall not materially deviate from the terms contained in such forms without obtaining the prior approval of the Owner (which shall not be unreasonably withheld). Manager's sole responsibility with regard to providing legal advice or assistance hereunder shall be to provide such standard form contracts.

(f) Operate and maintain the Facility, including the equipment utilized in connection with its operation and any improvements made during the term of this Agreement, in the condition received, normal wear and tear excepted.

(g) Arrange for and otherwise book events at the Facility in accordance with a booking schedule to be developed by Manager.

(h) Hire or otherwise engage, pay, supervise, and direct all personnel Manager deems necessary for the operation of the Facility in accordance with Article 6 of the Agreement, and conduct staff planning, retention and training programs as determined to be necessary by Manager in its sole discretion.

(i) Maintain detailed, accurate and complete financial and other records of all its activities under this Agreement in accordance with generally accepted accounting principles, which records shall be made available to the Owner upon request, in accordance with Section 10.1 of the Agreement.

(j) Submit to the Owner in a timely manner financial and other reports detailing Manager's activities in connection with the Facility, as set forth in Section 10.2 of the Agreement.

(k) Prepare a proposed annual Operating Budget and submit such proposed budget to the Owner, both in accordance with Article 7 of the Agreement.

(l) Pay all Operating Expenses and other expenses incurred in connection with the operation, maintenance, supervision and management of the Facility from the Operating Account or with funds otherwise made available by the Owner.

(m) Secure, or assist the Owner (or any other third party, as applicable) to secure, all licenses and permits necessary for the operation and use of the Facility for the specific events to be held therein, and for the general occupancy of the Facility, including without limitation all necessary food and liquor licenses, and renewals thereof. The Owner shall cooperate in this process to the extent reasonably required. All costs associated with this process shall be Operating Expenses.

(n) Collect, deposit and hold in escrow in the Event Account any ticket sale revenues which it receives in the contemplation of or arising from an event pending the completion of the event, as more fully described in Section 8.1 of the Agreement.

(o) Collect in a timely manner and deposit in the Operating Account all Revenue, as more fully described in Section 8.2 of the Agreement.

(p) Subject to the Owner making available sufficient funds in a timely manner, pay all Taxes.

(q) Plan, prepare, implement, coordinate and supervise all public relations and other promotional programs for the Facility.

(r) Prepare, maintain and implement on a regular basis, subject to the Owner's approval, a Marketing Plan for the Facility.

(s) Manage and oversee the sale of Commercial Rights at or in connection with the Facility, provided that the parties recognize that certain tenants of the Facility have the right to sell commercial rights in connection with their events/games, and Manager shall have no rights or obligations in connection therewith.

(t) On an annual basis, cause a written inventory to be taken of all furniture, fixtures, office equipment, supplies, tools and vehicles at the Facility, and deliver a written report of the

foregoing to Owner. Manager shall document all major damage to, or loss in, such inventory during the Term as soon as such damage or loss is discovered by Manager, and Manager shall promptly notify Owner of any such damage or loss.

(u) Purchase, on behalf of the Owner and with Owner funds, and maintain during the Term, all materials, tools, machinery, equipment and supplies necessary for the operation of the Facility.

(v) As agent for the Owner, manage risk management and Facility insurance needs, as more fully described in Article 15 of the Agreement.

(w) Make and be responsible for all routine and minor repairs, maintenance, preventative maintenance, and equipment servicing. Manager shall be responsible for ensuring that all repairs, replacements, and maintenance shall be of a quality and class at least equal to that of the item being repaired, replaced or maintained. Any replacement of an item in inventory, or any new item added to the inventory, which is paid for by the Owner, shall be deemed the property of the Owner.

(x) Cause such other acts and things to be done with respect to the Facility, as determined by Manager in its reasonable discretion to be necessary for the management and operation of the Facility following the Effective Date.

(y) The City reserves the option to negotiate the terms and conditions with the Southern Heritage Classic, Auto Zone Liberty Bowl Classic, and the University of Memphis.

**EXHIBIT B  
EXISTING CONTRACTS**

[list of existing contracts to be attached by City]

**EXHIBIT C**  
**OPERATING BUDGET (1<sup>ST</sup> OPERATING YEAR)**

[Approved budget for 2011-12 operating year to be attached by Global]

**EXHIBIT D  
INSURANCE**

- At all times during this Agreement, Manager shall:

(a) maintain commercial general liability insurance, including products and completed operations, bodily injury and property damage liability, contractual liability, independent contractors' liability and personal and advertising injury liability against claims occurring on, in, or about the Facility, or otherwise arising under this Agreement;

(b) maintain umbrella or excess liability insurance;

(c) maintain commercial automobile liability insurance, including coverage for the operation of owned, leased, hired and non-owned vehicles;

(d) maintain appropriate workers compensation and employer's liability insurance as shall be required by and be in conformance with the laws of the State of Tennessee; and

(e) maintain professional liability insurance and self-insured employment practices liability coverage;

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

**Commercial General Liability**

\$1,000,000 per occurrence

\$1,000,000 personal and advertising injury

\$1,000,000 products-completed operations aggregate

**Automobile Liability**

\$1,000,000 per accident (PI and PD combined single limit)

\$1,000,000 uninsured/underinsured motorist

**Umbrella or Excess Liability**

\$5,000,000 per occurrence and aggregate

**Workers Compensation**

Workers Compensation: Statutory

Employer's Liability: \$100,000 each accident-bodily injury by accident

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

\$100,000 each employee-bodily injury by disease

**Professional Liability/Errors & Omissions (Claims Made)**

\$1,000,000 each occurrence/aggregate

Policy is to include:

- Entity Coverage

**Crime Insurance**

Coverage on all on-site Manager employees. Limit: \$500,000.00