

## CONVENTION CENTER OPERATING AGREEMENT

This Convention Center Operating Agreement (the "Agreement") is executed on the date set forth on the signature page hereof and is effective as of January 1, 2015 (the "Effective Date") by and between the City of Overland Park, Kansas, a municipal corporation, hereinafter referred to as the "City", and Global Spectrum, LP, a Delaware limited partnership, hereinafter referred to as the "Operator".

### RECITALS

WHEREAS, the City and Operator were parties to that certain Convention Center Operating Agreement dated as of November 20, 2000 ("Original Agreement"), pursuant to which the City engaged Operator to manage and operate the Facility (as defined below), on behalf and for the benefit of the City, such services having commenced on the opening date of the Facility, November 17, 2002; and

WHEREAS, the Original Agreement provided for a five (5) year term from and after the opening date, plus optional extensions by the City for two additional one-year terms which the City exercised, and the City and the Operator also agreed that the term would extend to the end of the calendar year, December 31, rather than ending in November; and

WHEREAS, the Original Agreement was deemed by the parties to have expired on December 31, 2009, and the parties entered into an Agreement commencing on January 1, 2010, pursuant to which the City re-engaged Operator to manage and operate the Facility for an additional period of four (4) years plus an additional one (1) year term which the City exercised (the "2010 Agreement"); and

WHEREAS, the 2010 Agreement will expire on December 31, 2014; and

WHEREAS, the City desires to continue to engage the Operator to manage and operate the Facility pursuant to this Agreement for an additional seven (7) year term, plus an optional extension by the City for one additional three year term; and

WHEREAS, the Operator has accepted the engagement pursuant to the terms and conditions outlined herein.

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 all is hereby recognized, the parties agree as follows:

## SECTION 1

### DEFINITIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provision which follow, the definitions and identifications set forth below are considered to be correct and true and are agreed upon by the parties.

***CPI Index:*** “CPI Index” or “Index” means the monthly Consumer Price Index – All Items – All Urban Consumers (base year 1982-1984 - 100) for the West Urban Region – Size A (more than 1,500,000) for the United States, published by the United States Department of Labor. If the CPI Index is changed so that the base year differs from that in effect on the Effective Date, the CPI Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI Index is discontinued or revised during the Operating Term, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI Index had not been discontinued or revised.

***Capital Expenditures:*** All expenditures for building additions, alterations, or improvements and for purchases of additional or replacement furniture, machinery, or equipment, the depreciable life of which, according to generally accepted accounting principles, is in excess of one (1) year and any other item of expense that, according to generally accepted accounting principles, is not properly deducted as a current expense on the books of the Operator, but rather should be capitalized.

***Contract Administrator:*** The City Manager or his/her designee.

***Concessionaire:*** A company engaged at the Facility to provide products and services on a recurring basis to users of the Facility. “Concessionaire” shall not include the Food and Beverage Provider.

***Facility:*** The Overland Park Convention Center located at 6000 College Boulevard, Overland Park, Kansas, 66211, including entrances, ground, sidewalks, and parking areas surrounding it and adjacent thereto. The Convention Center includes exhibit halls, ballrooms, meeting rooms, common areas, lobby areas, offices, storage and utility facilities, and other spaces. A diagram of the Facility is attached hereto as Exhibit A.

***Facility Lock Box Account:*** The bank account by that name established as the depository of the daily Facility revenues pursuant to Section 12 of this Agreement. The Facility Lock Box Account shall be in the name of the City.

***Facility Operating Account(s):*** The bank account by that name established to hold the funds to cover the operation of the Facility pursuant to Section 12 of this Agreement.

***Food and Beverage Provider:*** Any entity which has an exclusive contract with the City to operate the food services at the Facility, including but not limited to the service and sale of alcoholic beverages, provision of catering services and provision of concession services. As of the date of this Agreement, Aramark Sports and Entertainment Services, LLC is the Food and Beverage Provider.

***General Manager:*** An individual named by the Operator who is qualified and has experience in the management of similar facilities.

***Operating Budget:*** The line item budget for the Facility with projected sources of income and applications of expense that is annually submitted by the Operator and approved by the City as established in Section 11 of this Agreement.

***Operating Expenses:*** Those expenses incurred by the Operator in managing, operating, staffing, promoting, marketing and maintaining the Facility, as more fully defined in Section 13.13.

***Operating Term:*** The period commencing on the Effective Date of this Agreement and expiring at 11:59 p.m. on December 31, 2021.

***Operating Year:*** The twelve (12) month period of time during which the Facility is operated, commencing on January 1st and ending on December 31st, and each twelve month period of time thereafter.

***Revenues:*** All income collected by Operator from the operation of the Facility, as more fully described in Section 13 of this Agreement.

***Senior Executive Personnel:*** The individuals employed from time to time as the general manager, the director of finance/administration, the director of sales, the director of events and the director of operations of the Facility (or serving such functions, regardless of the specific titles given to such individuals).

## **SECTION 2**

### **SCOPE OF SERVICES**

2.1 City hereby engages Operator as an independent contractor to perform the services hereinafter described, provided that in operating the Facility, entering into contracts (where applicable), accepting reservations for use of the Facility, and conducting financial transactions for the Facility, to the extent such actions are taken in accordance with the authority expressly delegated to Operator under this Agreement, Operator acts on behalf of and as agent for the City (but

subject to the limitations on Operator's authority as set out in this Agreement), with the fiduciary duties required by law of a party acting in such capacity.

2.2 The Operator will make a \$600,000 capital contribution to the City for the City's use at the Facility within ten (10) days after the Effective Date. This capital contribution will be amortized without interest over a period of ten (10) years, commencing on the Effective Date. In the event this Agreement expires (including if such expiration is due to the City electing to not renew the Agreement at the end of the Operating Term (as provided in Section 3.2), or otherwise terminates for any reason whatsoever (including without limitation by the convenience of the City as provided in Section 4, or due to the breach or default of Operator under Section 5, any portion of the capital contribution that remains unamortized as of the date of such expiration or termination shall be repaid to the Operator, without setoff or deduction, within sixty (60) days of such date of expiration or termination.

2.3 Operator agrees to perform and furnish management services, systems and materials needed to operate, supervise, manage and maintain the Facility in the most efficient manner consistent with the operations of other similar facilities. It is the intent of the parties that the Operator will be delegated authority by the City over the day-to-day operation of the Facility, and all activities therein, but subject to existing contracts and subject to policies, procedures, budgets and guidelines established by the City. The Operator's authority shall be subject to contract and City policies and procedures, which, from time to time, hereafter may be established or modified by the City.

The Operator's obligations shall include, but not be limited to, the performance of the following obligations, subject to controls and restrictions as stated elsewhere in the Agreement and in the Operations Manual previously prepared by the Operator and approved by the Contract Administrator, and as the same may hereafter be amended (the "Operations Manual"). The Operations Manual may hereafter be amended pursuant to such procedures as are set forth therein for such amendment, subject in all respects to the approval of the Contract Administrator. Upon its approval by the Contract Administrator, the Operations Manual, and any amendment thereto, shall be deemed to be a part of this Agreement and is incorporated herein by reference.

2.3.1 Manage the Facility in accordance with the Operations Manual and the terms of this Agreement, including, but not limited to, purchasing, payroll, fire prevention, security, routine repairs, preventative maintenance, janitorial services, promotions, advertising, energy conservation, security, admission procedures, and general user services. Means and methods of management will effectively accommodate the needs of the mobility impaired and handicapped patrons.

2.3.2 Administer, assure compliance with, negotiate and execute in the City's name service contracts, vendor agreements, user/rental agreements, booking commitments, licenses, and all other documents required in the ordinary course of business in operating the Facility.

2.3.3 Obtain prior approval from the City before entering into service contracts with the Operator's parent, affiliates, or related entities for necessary services. Any contract entered into between the Operator and its subsidiary and/or affiliate or related entity shall be at terms and for prices customarily charged by such parent, affiliate or subsidiary company for comparable goods and services elsewhere and which are competitive within the industry. Documentation shall be submitted in a timely manner to the Contract Administrator evidencing the competitive nature of the goods or services obtained.

2.3.4 Require that all users of the Facility execute rental/user agreements in accordance with the requirements of Section 17 herein.

2.3.5 Cause such acts and things to be done in and about the Facility as shall be necessary to its operation, control, supervision and maintenance, all in compliance with all statutes, ordinances, laws, rules, regulations and requirements under Federal, State, City and other local authority.

2.3.6 Operate and maintain the Facility, including the equipment and security and any improvements made during the term of this Agreement, in a manner consistent with other similar facilities. At the conclusion of the term of this Agreement, or any extensions thereto, the City shall retain ownership of the Facility, including all equipment and any improvements made during the term of the Agreement. All losses in inventory of the City-owned equipment shall be documented by the Operator as soon as such losses are discovered by the Operator and the City shall be promptly notified.

2.3.7 Maintain the Facility in as good condition and repair as received at the beginning of the Term, excepting usual wear and tear. At all times equipment maintenance shall meet or exceed manufacturer's recommendations. The Operator shall provide the Contract Administrator a report within seven days of the last day of each quarter of all Facility maintenance that was performed during the preceding quarter and all Facility maintenance scheduled for the following quarter. This report shall include a list of breakdowns of all major pieces of installed and portable equipment for that quarter. In addition, the Operator shall provide at the request of the Contract Administrator, an annual preventative maintenance schedule for the Facility. The Operator shall provide the City with access to the Facility for routine maintenance inspections.

2.3.8 Establish and adjust prices, rates and rate schedules for user and occupancy agreements to be negotiated by the Operator in the course of its management of the Facility. Any rates established for the use of the Facility shall be comparable to rates charged for similar facilities.

2.3.9 Schedule events at the Facility in accordance with a priority booking procedure.

2.3.10 Supervise and direct all the Operator's employees at the Facility, and oversee the Facility Concessionaires, including, but not limited to the audio visual service provider.

2.3.11 Take the lead in coordinating operations with the Food and Beverage Provider, including but not limited to sales and service to clients, management of events and coordinating client billing and financial reporting for the Facility.

2.3.12 Maintain detailed, accurate and complete financial and other records of all its activities under this Agreement in accordance with generally accepted accounting principles. The City shall have access to such records. In furtherance of its services to be provided, pursuant to this subparagraph and elsewhere in this Agreement, the Operator may use its own proprietary computer software that, in such event, shall remain the sole property of the Operator.

2.3.13 Include in gross revenues for the Facility all revenues that are generated from the operation of Facility within the term of this Agreement.

2.3.14 Submit a written report to the Contract Administrator at least monthly, or as otherwise voluntarily agreed to between the parties, no later than the close of the following month concerning its activities in the operation, management and supervision of the Facility. Such report shall, among other things, set forth bookings, receipts from all sources, expenditures and such other and further information as the City may require or request.

2.3.15 Prepare a proposed annual operating budget in accordance with the City's approved format and submit it to the City in accordance with an established City schedule.

2.3.16 Comply with the spending limitations imposed upon such budget, including any amendment(s) thereto as authorized. However, if extraordinary events occur which could not reasonably be contemplated at the time the budget was prepared, the Operator may submit an amendment to the budget to the City for review and approval or denial.

2.3.17 Pay all operating and related expenses for the Facility from the City accounts established under this Agreement.

2.3.18 With prior approval from the Contract Administrator and the City Attorney, institute for the City at the reasonable expense of the City, any and all legal actions or proceedings to collect charges, rentals or other income generated by and due to the City, or to cancel or terminate any license, use or concession agreement for the breach thereof or default thereunder by any licensee, user, advertiser, or by a Concessionaire of the City, or by the Food and Beverage Provider. With prior approval from the Contract Administrator legal expenses for actions approved under the terms of this paragraph shall be included as an operating expense of the Facility.

2.3.19 Deposit in the Lock Box Account or such other interest-bearing account in a local qualified public depository as the City shall direct, 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 provided in Section 12.1, and in the Operations Manual.

2.3.20 Require the local qualified public depository utilized by the Operator to submit to the City on a monthly basis copies of all bank statements concerning all trust accounts established pursuant to this Agreement.

2.3.21 Establish and have an ongoing relationship with various boards and committees and departments of the City and of the Overland Park Convention & Visitors Bureau and any other organization as designated by the City.

2.3.22 Provide an annual update of the Operator's short-term marketing plan with input from the Overland Park Convention & Visitors Bureau and area hotels for the promotion of the Facility and Facility events, which shall contain but not be limited to the following elements:

1. Situation Analysis of Current State of Affairs

- a. Demographics
- b. Event Mix (booking types)
- c. Profitability (by booking types)
- d. Economic Impact (by booking types)
- e. Occupancy Trends
- f. SWOT Analysis
- g. Competition

2. Define Desired State of Affairs

- a. Event Mix (booking types)
- b. Profitability (by booking types)
- c. Economic Impact (by booking types)
- d. Occupancy Trends

3. Plan Development

- a. Introduction
- b. Branding
- c. Target Markets (by booking type)
- d. Objectives (by booking type)
- e. Tactics (by booking type)
  - i. Direct Sales
  - ii. Advertising
  - iii. Public Relations
  - iv. Relationships
  - v. Social Networking
  - vi. Employee Recognition Program
  - vii. Website
  - viii. Themes
- f. Budget
- g. Implementation (Smart Goals)

4. Evaluation and Performance Measures (Actual Results vs. Smart Goals)

2.3.23 Maintain the annual scholarship fund in the amount of \$2,500 in partnership with the Johnson County Community College.

2.3.24 Conduct staff planning, retention, and training.

2.3.25 Manage risk management and Facility insurance needs.

2.3.26 Manage ticket office and parking services, and administer related contracts.

**SECTION 3**

**TERM OF THE AGREEMENT**

3.1 Unless sooner terminated pursuant to the provisions of Sections 4, 5, and 21, the initial term of this Agreement shall be the Operating Term defined in Section 1 of this Agreement or as otherwise extended by the City under Section 3.2.



3.2 The City shall have the right to extend the Operating Term for one additional three-year period commencing at the end of the Operating Term and ending three years from the end of the Operating Term.

3.3 Upon termination of this Agreement, whether at the conclusion of the final Operating Term of this Agreement or upon the effective date of a termination notice terminating this Agreement pursuant to Section 4 or Section 5, the Operator shall (unless a termination notice, if any, directs otherwise); (i) promptly discontinue all services and (ii) deliver or otherwise make available to the City all data, documents, procedures, reports, estimates, summaries, and other such information and materials as may have been accumulated by the Operator in performing its obligations, whether completed or in process unless said information is considered proprietary for the Operator. The Operator shall advise the City of the general nature of all information it considers proprietary and shall provide the City with an explanation of why it reasonably considers the information to be proprietary. The City has the right to challenge the Operator's designation of information as proprietary. Upon termination of this Agreement, the City shall, or shall cause the successor Facility manager to, honor reservations confirmed for the Facility in the ordinary course of business with reservation dates after the effective date of a termination notice for which agreements are in place, provided that the Facility remains in operation on such reservation date(s). Also, upon termination of this Agreement, the City shall, or shall cause the successor Facility manager to, assume the responsibility of the Operator hereunder to administer and perform under all contracts, leases, licenses, maintenance and service contracts and other agreements which have been entered into on behalf of the City pursuant to this Agreement and which are in effect with respect to the Facility as of the date of termination of this Agreement, subject in all respects to the City's determination in its sole discretion to terminate any such agreement, subject to the terms of such agreement.

## **SECTION 4**

### **TERMINATION FOR CONVENIENCE**

4.1 The City may without reason or without cause terminate this Agreement at any time for the convenience of the City. The City shall notify the Operator in writing at least one hundred twenty (120) days prior to the termination date if it decides to terminate the Agreement pursuant to this Section 4.1.

4.2 In the event of termination pursuant to Section 4.1, the City shall be responsible for payment of financial commitments made to third parties pursuant to the terms of this Agreement.

4.3 In the event termination pursuant to Section 4.1 above or under Section 9 below is effected by the City, the Operator will be paid for work performed to date of termination plus actual ordinary and necessary expenses, if any, incurred by Operator in connection with its withdrawal from the Facility, such expenses not to exceed two hundred forty thousand dollars (\$240,000). Such "Ordinary and Necessary Expenses" shall be defined as costs associated with (i) severance pay not to exceed six (6) months for the General Manager, (ii) severance pay not to exceed three (3) months for four (4) department heads of the Operator, and (iii) household relocations for no more than five (5) employees of Operator. The City's payment of such Ordinary and Necessary Expenses will occur following receipt and review of written documentation of expenses by the Operator.

## **SECTION 5**

### **TERMINATION FOR DEFAULT**

5.1 The City shall have the right to terminate this Agreement if the Operator fails to perform or comply with any of the terms, covenants, agreements or conditions hereof (including, without limitation, if the Operator pays or attempts to pay from the Facility Operating Account expenses that are not in the approved budget and/or do not qualify as operating expenses under Sections 13.13 and/or 13.14 of this Agreement) and (a) such failure continues for more than thirty (30) days after written notice thereof from the City, or (b) if more than once in any 24-month period Operator pays or attempts to pay from the Facility Operating Account expenses that are not in the approved budget and/or do not qualify as operating expenses under Sections 13.13 and/or 13.14 of this Agreement. The City shall have the right to terminate this Agreement immediately upon an event of default specified in Section 5.4.

5.2 In the event termination pursuant to Section 5.1 above is effected by the City, the Operator will be paid for work performed to the date of termination, plus any expenses incurred to date of termination, less the cost to the City of making good any deficiencies, and correcting all work improperly performed.

5.3 In the event of termination pursuant to Section 5.1 above, the City may, in its discretion, assume the work and see that the same is completed by agreement with another party, including subcontractors of the Operator, or otherwise, all without liability to the Operator.

5.4 In addition to the events of default set forth in Section 5.1, the following shall constitute events of default upon the occurrence of which the City may immediately terminate this Agreement:

5.4.1 The occurrence of any act or omission on the part of the Operator that deprives it of the rights, powers, licenses, permits, and

authorizations necessary for the lawful and proper conduct and operation of the services and activities authorized;

5.4.2 The filing by or against the Operator of any petitions in bankruptcy;

5.4.3 The abandonment or discontinuance by the Operator, without written consent of the City, of any or all of the operations and services permitted or required; and

5.4.4 The commission of any criminal or fraudulent act by the Operator.

5.5 The exercise by the City or Operator of remedies and rights provided herein shall in no way affect any other right or remedy available to the City or Operator.

## SECTION 6

### COMPENSATION

6.1 Total Compensation. As total compensation to pay for its services, the City shall pay to Operator a fee composed of a Fixed Fee and an Incentive Fee, as defined below.

6.2 Fixed Fee. The City shall pay the Operator an annual Fixed Fee, which shall be \$23,333.33 per month during the first Operating Year, and will be adjusted upward or downward by the CPI Index, but not to exceed an increase of three percent (3.0%) in each subsequent Operating Year after the first Operating Year (the "Fixed Fee"). In no event shall the Fixed Fee be adjusted below \$23,333.33 per month during the Term. The Fixed Fee will be payable monthly as an operating expense, and the Operator shall be entitled to pay itself such amount from the Facility Operating Account.

6.3 Incentive Fee. In any Operating Year in which the Revenue Benchmark, as defined below, has been achieved, the Operator will be entitled to an Incentive Fee based on the achievement of certain qualitative targets, as described below (the "Incentive Fee"). The Revenue Benchmark and Incentive Fee will be calculated as follows:

6.3.1 *Revenue Benchmark.* The Revenue Benchmark will be ninety-five percent (95%) of the budgeted Revenues from the Facility for the Operating Year. The Revenue Benchmark figure will be established annually by the City as a part of the budget process for the applicable Operating Year.

6.3.2 *Incentive Fee.* The Incentive Fee will be based on qualitative factors, measured on the Operator’s performance with respect to the following qualitative criteria during the Operating Year. The Incentive Fee will be calculated as twenty five percent (25%) of the Fixed Fee, subject to the limitations outlined in Section 6.5.

(a) Level of Customer Service (up to 50% of total Incentive Fee): The service factor will be measured by formal customer survey scores and percentage of repeat business, augmented by testimonials and anecdotal evidence that can be documented. The portion of the Incentive Fee earnable by Operator for Customer Service shall be measured by the results of the customer survey scores, as follows (with the highest score achievable on each survey being 5 and the lowest score being 0):

<u>Average Score</u>	<u>Rating</u>	<u>Percentage of Fee Available for Customer Service Earned by Operator</u>
4.4 to 5	Excellent	100%
3.95 to 4.39	Very Good	80%
3.2 to 3.949	Good	50%
Under 3.19	Poor	0%

(b) Level of Facility Maintenance (up to 25% of total Incentive Fee): The maintenance factor will be measured by adherence to service schedules, written quarterly preventative maintenance reports and other regular reports to the Contract Administrator regarding scheduled maintenance and repairs, and timely execution of capital projects.

(c) Level of participation in market related endeavors (up to 25% of total Incentive Fee): The participation in market endeavors factor will be determined by three qualitative components, each of which is weighted equally:

- 1) *Room Nights.* Operator will carefully track its participation in the recruitment of room nights and the actions taken to secure them.
- 2) *Joint Marketing.* Operator will track its participation in marketing with industry partners, including the OPCVB, local hotels, and local chambers of commerce; attracting business to Overland Park from other Global Spectrum facilities; and assisting clients to drive higher

attendance through sponsorships, advertisements, media spots, and marketing collaterals.

- 3) *OPCC Stakeholder.* Operator will track its actions as an industry partner in Overland Park, the greater Kansas City area, and adjacent to the Sheraton Overland Park Hotel as evidenced by its memberships and active participation in hospitality and community organizations (e.g. chambers of commerce, etc), maintaining an active relationship with Johnson County Community College, hosting programs for hospitality students or professionals, joint sponsorships with partners, and concessions made to assist hospitality partners in securing business (such as discounts off rent, food, or amenities; hosting an activity; scheduling OPCC events to accommodate partners, etc.).

6.3.3 The Incentive Fee, if any, will be payable as a single payment for services performed by the Operator during the Operating Year after measurement by the City of the Operator's performance with respect to the above qualitative criteria. The City will conduct such measurement at the end of the Operating Year following the availability of the annual financial statements pursuant to the procedures set forth in the Operations Manual, and will pay the Operator the Incentive Fee for such Operating Year, if any, within thirty (30) days of the availability of the certified audit report as required in Section 13.3.

6.4 Operating Expenses. In the event that operating expenses in an Operating Year exceed the amount budgeted for such operating expenses in the Operating Budget, the City reserves the right to reopen discussions with Operator on the method for calculating the Incentive Fee for any subsequent Operating Year, in which case the parties shall in good faith discuss possible changes to such Incentive Fee calculation for subsequent Operating Years.

6.5 Fee Limitation. In no event shall the total Incentive Fee paid for services performed in any Operating Year exceed twenty-five percent (25%) of the Adjusted Fixed Fee Amount. The Adjusted Fixed Fee Amount is equal to the Fixed Fee paid for services performed during such Operating Year plus the Senior Executive Personnel Performance Compensation Pool attributable to such Operating Year, as described in Section 6.6.1, less the amortized amount of the Operator's capital contribution attributable to such Operating Year, as described in Section 2.2. By way of example, the Adjusted Fixed Fee Amount for the 2015 Operating Year is \$295,000 (calculated as  $280,000 + \$75,000 - \$60,000 = \$295,000$ ).

In no event shall the Incentive Fee exceed twenty percent (20%) of the sum of the Incentive Fee and Adjusted Fixed Fee Amount during any Operating Year.

## 6.6 Performance Compensation to Senior Executive Personnel.

6.6.1 *Determination of Senior Executive Personnel Performance Compensation Pool.* The Senior Executive Personnel Performance Compensation Pool shall accrue in an Operating Year and shall be payable in the following Operating Year. The Operator shall be paid an amount in accordance with Exhibit E as the Senior Executive Personnel Performance Compensation Pool.

6.6.2 *Schedule of Compensation.* As part of the annual budgeting process, the Operator shall deliver to the City a schedule of Performance Compensation (as defined below) it intends to pay to Senior Executive Personnel, it being understood that each such schedule shall set forth the names of each of the Senior Executive Personnel and the amount of the Performance Compensation budgeted for each of the Senior Executive Personnel (the "**Schedule of Performance Compensation**"). The amount of the Schedule of Performance Compensation shall be computed on a basis comparable to the compensation generally paid to similarly situated employees of the Operator at other comparable facilities managed based upon the performance of such other comparable facilities. If the Schedule of Performance Compensation varies from the amount of the Senior Executive Personnel Performance Compensation Pool for such Operating Year by more than 5%, the City and the Operator shall meet to discuss such variance and may mutually agree to amend the amount of the Senior Executive Personnel Performance Compensation Pool set forth in 6.7.1 above; provided however, that neither party shall be obligated to agree to any such amendment.

For purposes of this Agreement, the term Performance Compensation shall mean: "Annual compensation paid to Senior Executive Personnel that is based upon the performance of the Facility, whether discretionary or based upon a predefined formula (and excluding, for avoidance of doubt, (1) base salary, (2) participation in employee benefit plans and programs (including any equity-based plans (to the extent based on equity in the Operator generally and not the Facility specifically)), and (3) relocation and severance payments)."

6.6.3 *Increases to Senior Executive Personnel Performance Compensation Pool.* In the event that approved Performance Compensation of the Senior Executive Personnel during an Operating Year exceeds the Senior Executive Personnel Performance Compensation Pool for such Operating Year, then the Senior Executive Personnel Performance Compensation Pool for such Operating Year shall be increased by the amount

by which the Performance Compensation exceeds the Senior Executive Personnel Performance Compensation Pool for such Operating Year, but in no event will such increase to the Senior Executive Personnel Performance Compensation Pool (a) exceed an amount which combined with the total Incentive Fee paid in such Operating Year exceeds twenty-five percent (25%) of the Adjusted Fixed Fee Amount for such Operating Year; and (b) be based upon the profitability of the Facility. Compensation to Senior Executive Personnel shall be payable solely from the Senior Executive Personnel Performance Compensation Pool and to the extent the Senior Executive Personnel Performance Compensation Pool is insufficient, such insufficiency shall not be paid directly or indirectly from any Gross Operating Revenues of the Facility.

6.6.4 *Payment of Senior Executive Personnel Performance Compensation Pool.* An amount equal to one-twelfth of the Senior Executive Personnel Performance Compensation Pool for an Operating Year shall be payable directly to the Operator from the Facility Operating Account each month. To the extent the amount of the Senior Executive Personnel Performance Compensation Pool is increased in accordance with Section 6.6.2 or 6.6.3 above, the amount of such withdrawal shall be increased so that the total amount of the Senior Executive Personnel Performance Compensation Pool for such Operating Year shall be paid to the Operator during such Operating Year.

## **SECTION 7**

### **OWNERSHIP**

The City will retain ownership of the Facility, including but not limited to real estate, technical and office equipment and facilities, furniture, displays, fixtures and similar property. Ownership of assets purchased with revenues or any other City funds is and shall remain the property of the City. The City shall own all data and other electronic files generated by Operator through the use of either the City's or Operator's data process programs and software in operating the Facility. Property rights will not accrue to Operator.

Operator may not take or use, for its own purposes, customer or exhibitor lists or similar materials developed by the City for the use of the Facility unless written consent is granted by the City.

## **SECTION 8**

### **USE BY THE CITY**

The City shall have the right to use the Facility or any part thereof based on the booking priority schedule established by the City without the payment of any rental or use fee, except that direct out-of-pocket expenses incurred in connection with such uses and not included in the approved budget for the Facility shall be paid by the City. City uses of the Facility shall not compete with, nor conflict with, paying events booked by the Operator, on behalf of the City and shall be booked in advance upon reasonable notice. Upon request of the City, the Operator shall provide a list of available dates for the City use based on booking priority schedules.

## **SECTION 9**

### **CASH BASIS LAW**

The City shall only be obligated, and shall not be in breach of this Agreement for failure, to appropriate funds in an amount equal to 100% of the accrued revenue of the current fiscal year plus any balance carried forward and cash reserves, all from the operating revenues of the Facility. If the City fails to appropriate the necessary funds for the operation of the Facility, this Agreement shall terminate with no penalty or further obligation by the City other than ( as set forth in the provisions of this Agreement relating to termination for convenience of the City.

## **SECTION 10**

### **EXPENDABLE SUPPLIES**

The Operator will be responsible for purchasing all expendable supplies for the operation of the Facility. The Operator will exercise prudent judgment in the purchase of said supplies within budget provided to the Operator.

## **SECTION 11**

### **OPERATING BUDGET**

11.1 The Operator agrees that it will each year in accordance with the City's schedule prepare and present a line item budget for the Facility which budget will follow and comply with the existing City budget process or such other procedures which the City may require. Said budget shall include, at a minimum, a projected income and expense statement and statement of projected sources and applications of funds. Additionally, the budget shall include but not be limited to the following detailed projections, presented on a monthly and annual basis:



- 1) Gross revenues;
- 2) Operating expenses;
- 3) Incomes;
- 4) Administrative and general expenses;
- 5) Marketing, advertising, and promotion expenses;
- 6) Energy costs; and
- 7) Repairs and maintenance.

The Operator shall ensure that its representatives are present at all necessary meetings of the budget approval process related to the Facility.

11.2 The annual operating budget for the Facility shall receive the prior approval of the City.

11.3 The Operator shall have an approved budget effective January 1st of each fiscal year. The Operator shall not exceed, commit or contract to expend any sums in excess of those amounts allowed in the approved budget without the approval of the Contract Administrator.

## **SECTION 12**

### **PROCEDURE FOR HANDLING INCOME**

12.1 Revenues derived from operation of the Facility, such as parking, rental fees, advertising, exhibitor services, ticket office, etc., will be deposited into the Facility Lockbox Account as soon as practicable upon receipt (but not less often than once each business day, and in any event within one (1) business day of receipt). The funds in the City's Facility Lockbox Account may be swept by the City on each business day or at such other time as may be provided in the Operations Manual. In the event any ticketed event is cancelled and refunds are due to the ticket purchasers, the City shall promptly pay such amounts back to the Operator so that the Operator can make the refunds to the ticket buyers.

12.2 The Facility Operating Account will be maintained in a separate bank account controlled by the Operator. The Operator shall use funds in the Facility Operating Account to cover the operation of the Facility. The City will transfer to and/or retain in the Facility Operating Account at least once each quarter upon written request by the Operator, or at such other time as may be provided in the Operations Manual, the budgeted operating costs for the quarter, which may be accessed periodically by the Operator for the purpose of paying operating expenses.

Such costs shall include all amounts due to the promoter of an event (such as ticket proceeds previously deposited into the Facility Lock Box Account), or any other third party, upon settlement of the event.

12.3 The City's Facility Operating Account and any other account established hereunder or pursuant to the Operations Manual for Facility operations, will be in the City's name and have two authorized City signatories, however the Operator shall have access to such accounts and shall designate up to four (4) Operator employees to be authorized signatories on the accounts.

12.4 It is the intent of this Agreement that cash control for Facility operations shall be accomplished through a combination of rigid accounting procedures and internal audit tests and an annual audit by an independent public accounting firm selected by the City. Payrolls shall be processed through a separate bank account in the name of the Operator, reconciled monthly and tested via internal audit procedures. Each event shall be accounted for using an event accounting system, recorded in the financial statements as provided in the Operations Manual, and reimbursable expenses for each event shall be coded for accurate accumulation to ensure all applicable costs shall be paid by the users of the Facility. Advance deposits covering rentals and estimated costs shall be required as provided in the Operations Manual to minimize collection programs. Credit references shall be checked on any new or questionable clients.

## **SECTION 13**

### **FISCAL RESPONSIBILITY**

13.1 The Operator 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 Facility management operations in the City of Overland Park, Kansas. Said books, ledgers, journals, accounts, and records shall contain all entries reflecting the business operations of the Operator under this Agreement. All of the foregoing records shall be open for examination and audit by the Contract Administrator or City designated and authorized agents or personnel during the Operator's ordinary business hours.

13.2 The Operator agrees to render, within thirty (30) days after the end of each month, financial reports for the Facility including a balance sheet, aging report on accounts receivable, and statement of revenues and expenditures (budget to actual) for the current month and year to date in accordance with generally accepted accounting principles. In addition, the Operator will immediately upon request by the City provide information on the Facility Operating Account and the Facility Lockbox Account.

13.3 The Operator agrees to meet with the Contract Administrator to answer questions relating to the operation of the Facility and the financial reports. In addition, Operator agrees within sixty (60) days following the end of each fiscal year to provide or cause to be provided to the City a certified audit report on the accounts and records as kept by the Operator for the Facility. This certified audit report will be paid from appropriate funds set aside in the operating budget. The Operator shall utilize an external auditor approved by the City to conduct this audit of the accounts and records of the Facility in accordance with generally accepted auditing standards. A letter from said accounting firm expressing its opinion as to the effectiveness of internal controls and a management letter will accompany the audit report. At the option of the City and at its expense, additional audits may be performed.

13.4 The Operator agrees to use forms, accounting methods, internal controls and procedures for its reports that are acceptable to the City and in particular report in conformance with the chart of accounts attached hereto as Exhibit B.

13.5 The City may request additional financial or statistical reports with respect to the Facility, and the Operator shall promptly provide same. It is agreed that such requests by the City will be reasonable with respect to timing and frequency. Any and all costs for such reports shall be included as an operating expense.

13.6 The City will make immediately available to the Operator for the operation, maintenance, supervision, and management of the Facility, all funds necessary to pay all budgeted items of expense, subject to Section 9. To the extent the Operator is unable to perform under this Agreement due to the fact that required budgeted funds are not made available by the City, the Operator will not be considered in breach of this Agreement nor shall such failure to perform for lack of funds be considered an event of default.

13.7 The Operator shall conduct regular inventories of all expendable supplies in accordance with the Operations Manual. The Operator will also work with the Contract Administrator to conduct an annual inventory of equipment, fixed assets and controlled assets of the Facility in accordance with procedures outlined in the Operations Manual.

13.8 Any data, equipment or materials furnished by the City to the Operator and any such data, equipment or materials that may be acquired for the City by the Operator to be used at the Facility shall remain the property of the City, and when no longer needed for the performance of this Agreement, shall be returned to the City.

13.9 The City shall provide those goods and services customarily supplied or provided from the City. The costs of these services will be considered operating expenses as identified in Section 13.13. Such services shall not include those that are deemed to be the responsibility of the Operator as stated in this Agreement.

13.10 The parties agree that in the event the Operator requests a capital improvement, the City will give reasonable consideration to such request(s) in formulating its budget in light of competing financial considerations in accordance with Section 14.

13.11 All Operator employees shall be sufficiently bonded under the corporate crime policy as an Operating Expense to protect the Operator's and the City's interests. Such policy shall be in an amount as set forth in Exhibit C and shall name the City as loss payee as its interest may appear.

13.12 Revenues for the Facility shall be defined to include, but are not limited to:

- 1) Rental income;
- 2) Food and beverage sales income;
- 3) Audio-visual services income;
- 4) Equipment rental fees;
- 5) Ticket Office income;
- 6) Miscellaneous operating income;
- 7) Parking income; and
- 8) Sponsorship and/or advertising sales income.

Revenues do not include applicable excise, sales, occupancy and use taxes, or similar government taxes, duties, levies or charges collected directly from patrons or guests, or as a part of the sales price of any goods, services, or displays, such as gross receipts, admission, cabaret, or similar or equivalent taxes, nor any gratuities collected (or to be collected) for the benefit of and paid to any of the Operator's personnel. Further, Revenues do not include moneys collected (or to be collected) for the benefit of and paid to third parties such as event promoters.

13.13 Operating expenses will be paid from Facility Operating Account based on the City approved budget, and shall include, but are not limited to:

- 1) On-site payroll, benefits, relocation costs, bonus (for non-Senior Executive Personnel), and related costs;
- 2) Operating supplies for the Facility;
- 3) Advertising for the Facility, which shall be subject to City approval;
- 4) Cleaning of the Facility;
- 5) Data processing that occurs at the Facility;
- 6) Dues, subscriptions and memberships for Operator's employees at the Facility;
- 7) The Fixed Fee and the Incentive Fee to be paid under this Agreement;
- 8) Printing and stationary costs for activities at the Facility;
- 9) Postage and freight costs for activities at the Facility;
- 10) Equipment and rental costs for activities at the Facility;
- 11) Minor repairs and maintenance at the Facility, not inclusive of expenses relating to performing capital improvements, as further defined in Section 14;
- 12) Security expenses at the Facility;
- 13) Cost of office supplies at the Facility;
- 14) Telephone charges at the Facility;
- 15) Travel and entertainment expenses for Operator's employees at the Facility;
- 16) Cost of employee uniforms at the Facility;
- 17) Exterminator and trash removal costs at the Facility;
- 18) Parking expenses at the Facility;
- 19) Facility utility expenses;

- 20) Audit of the Facility; and
- 21) Insurance costs. The maximum reimbursement for workers' compensation insurance, cost, and expenses will be calculated by utilizing the most recent Kansas Assigned Risk Rates as published by the National Council on Compensation Insurance, Inc. multiplied by 1/100<sup>th</sup> of the estimated payrolls.

Operating expenses do not include Performance Compensation (as defined in Section 6.6) paid to Senior Executive Personnel (but do include bonuses paid to non-Senior Executive Personnel).

13.14 All current and future corporate charges, fees, charge-backs and surcharges, including but not limited to national marketing, payroll processing, technology (e.g. Helpdesk, staff support and hosting for payroll software, network fees, and financial software fees), insurance fees/charges or other services, fees, processing charges/fees, and initiatives not directly attributed to the operations of the Facility, including but not limited to any formula or allocation-based "charge backs" or administrative fees from the Operator, any of its subsidiaries, or third parties, shall be subject to the annual approval of the City, and shall not be included in operating expenses for any Operating Year unless approved by the City. Any such costs and expenses that have been approved by the City shall be clearly indicated by a separate line-item in the annual operating budget. Operator shall not engage any affiliate company (including any parent company or company owned by any parent company or Operator itself) to perform services at the Facility, the cost of which is charged to the Facility Operating Account, without the prior written approval of the City. All travel and professional expenses of the Operator's employees shall be paid when included in the approved annual budget of the Facility. Such expenses shall be prorated if the Operator's employees conduct business on behalf of the Operator or other facilities. All non-budgeted travel and professional expenses shall be paid only with the prior written approval of the City.

13.15 Operating expenses incurred by the Operator for which the Operator submits invoices to the City for reimbursement shall be forwarded to the Contract Administrator for payment. All such payments shall be operating expenses in accordance with the approved budget.

## **SECTION 14**

### **CAPITAL IMPROVEMENTS**

14.1 The City will retain the responsibility for capital improvements to the Facility; however, the City is under no obligation to make such improvements. The City shall, at its sole discretion, determine Capital Expenditures for repairs,

improvements and maintenance. The Operator agrees to annually provide to the Contract Administrator, in accordance with the Operator's requirements, a schedule of items that can be reasonably anticipated as necessary capital expenditures. The purpose of such a schedule is to allow the Contract Administrator to consider for inclusion such projects in its budget for the ensuing year and to prepare and update a long-range (five year) capital expenditure budget. The Operator's failure to list particular items or projects shall not be deemed a waiver of City's responsibility to make such capital improvements. All routine and minor repairs, maintenance, preventative maintenance, and equipment servicing shall be the responsibility of the Operator as an operating expense in accordance with the approved budget.

14.2 The Operator shall obtain prior approval of the City for repairs or Capital Expenditures that are made to the Facility the cost of which exceeds Two Thousand Five Hundred Dollars (\$2,500.00) or such greater amount approved by the Contract Administrator. The Operator shall further cause all necessary minor repairs and improvements to be made to the Facility from those moneys available in the annual operating budget.

14.3 The cost of all repairs shall be paid by the Operator from that line of the operating budget allocated for repairs. In the event repairs exceed the above stated amount, such repairs must be pre-approved by the City as an amendment to the approved budget. Additionally, the Operator shall be responsible for ensuring that all repairs, replacements, and maintenance shall be of a quality and class at least equal to the original work. Any replacement of an item contained on the inventory schedule to be prepared prior to Facility opening or any new item added to the inventory shall be deemed the property of the City.

14.4 If any repairs are of an emergency nature, the Operator shall make such repairs in accordance with the following provisions:

The City shall reimburse the Operator for the full amount of the emergency repair. An emergency repair is defined herein as 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 and was not the result of lack of preventative maintenance or improper operation. The cost of any emergency repairs shall be reimbursed to the Operator from the capital or operating budgets.

## **SECTION 15**

### **PERSONNEL**

15.1 All personnel employed at the Facility shall be employees of the Operator and not of the City. The Operator shall select the number, function,

qualifications, and compensation, including salary and benefits, of its employees and shall control the terms and conditions of employment relating to such employees. The City may request the removal of any of the Operator's employees and approval of said request will not be unreasonably withheld. The Operator's current benefit program, which may be amended at the Operator's sole discretion, is attached as Exhibit D. The Operator shall notify the Contract Administrator of relevant changes.

15.2 The Operator's General Manager shall be responsible for the total operation by the Operator of the Facility.

15.3 The City shall not hire any of the senior management employees of the Operator as City employees without the Operator's approval for the duration of this Agreement and for one-year period after the end of this Agreement. In the event that the City hires Operator's employees, the City shall immediately compensate the Operator an amount equal to one (1) year's salary for each employee hired. This clause shall apply to the General Manager, Assistant General Manager and to department heads.

## **SECTION 16**

### **AGREEMENT MONITORING AND GENERAL MANAGER**

16.1 The City shall monitor the Operator's compliance with the term of this Agreement through the Contract Administrator. The Operator also agrees to name a specific individual to monitor the Agreement.

16.2 The City's Contract Administrator shall be the City Manager or his/her designee and shall have such authority as set forth in this Agreement. Any and all references in this Agreement requiring City participation shall mean the Contract Administrator. The City's Contract Administrator:

16.2.1 Shall be the liaison between the Operator and the City on all matters relating to this Agreement.

16.2.2 Shall be responsible for ensuring that any information supplied by the Operator is properly distributed to the appropriate City Departments.

16.2.3 Shall be responsible for the monitoring and assessment of the quality of services provided by the Operator and contract compliance by the Operator.

16.3 The Operator agrees to name a qualified individual with experience in the management of similar facilities as the General Manager of the Facility. The General Manager:



16.3.1 Shall be the day-to-day liaison between the City and the Operator on all matters relating to this Agreement.

16.3.2 Shall be responsible for the day-to-day management and supervision of the Facility.

16.3.3 Shall be responsible for providing supervision and direction to Operator's employees at the Facility.

16.4 Complaints received by the City regarding the conduct or manner of operation of the Facility by the General Manager shall be addressed by the Operator.

## **SECTION 17**

### **USER/RENTAL AGREEMENTS**

17.1 The Operator's General Manager shall have the authority to execute user/rental agreements for the use of the Facility in substantially the form approved by the Contract Administrator as the standard Facility License Agreement. Such agreements shall include indemnification and insurance requirements. Any occupancy agreement not in substantially the form of the standard agreement shall require the prior approval of the Contract Administrator. The Operator shall establish and charge such rates for the Facility as is comparable with rates charged for similar facilities.

## **SECTION 18**

### **INDEMNIFICATION AND INSURANCE**

18.1 The Operator shall indemnify, hold harmless and defend the City, its agents, servants, and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of error, omission or negligent act of Operator, its agents, servants or employees in the performance of services under this Agreement.

18.2 The Operator further agrees to indemnify, hold harmless and defend the City, its agents, servants and employees from and against any claim, demand or cause of action of whatever kind or nature arising out of any conduct or misconduct of the Operator not included in subsection 18.1 above and for which the City, its agents, servants or employees are alleged to be liable.

18.3 The execution of this Agreement by the Operator shall obligate the Operator to comply with the foregoing indemnification provision. Notwithstanding any other term or condition of this Agreement, the above indemnification provision shall survive the termination of this Agreement.

18.4 The Operator agrees to obtain insurance coverage in the manner and amounts as set forth in Exhibit C that is attached hereto.

18.4.1 The Operator agrees to maintain such referenced insurance during the life of this Agreement. No modification or change from these specifications shall be made without the City's approval.

18.4.2 All insurance policies shall be rated no less than A VIII, in the most recent "Best" insurance guide and shall be licensed in the state of Kansas or as otherwise agreed by the parties, and shall be in such form and contain such provisions as are generally considered standard for the type of insurance involved to the extent not otherwise required by this Agreement.

18.4.3 The commercial general liability policy, automobile liability insurance policy and umbrella or excess liability policy shall name City as an additional insured. The workers compensation policy shall contain a waiver of all rights of subrogation against City.

18.4.4 Each insurance policy shall include a requirement that the insurer provide at least thirty (30) days' written notice of cancellation or material change in the terms and provisions of the applicable policy.

18.4.5 If Operator subcontracts any of the Services provided for under this Agreement, Operator shall either:

- Cover all subcontractors under its policies of insurance;
- or
- 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.

Whichever option is chosen, Operator shall indemnify and hold harmless City as to any and all damages, claims or losses, including attorney's fees, arising out of the negligence or other actionable fault of its subcontractors.

## **SECTION 19**

### **COMPLIANCE WITH EQUAL OPPORTUNITY LAWS, REGULATIONS AND RULES AND OTHER LAWS**

19.1 Operator shall observe the provisions of the Kansas Act Against Discrimination, K.S.A. 44-1001 et seq., as amended, and shall not discriminate

against any person in the performance of work under the present Agreement because of race, religion, color, sex, disability, national origin ancestry, or age;

19.2 In all solicitations or advertisements for employees, Operator shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);

19.3 If Operator fails to comply with the manner in which Operator reports to the Commission in accordance with the provision of K.S.A. 44-1031 and amendments thereto, Operator shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City;

19.4 If Operator is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, Operator shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City; and

19.5 Operator shall include the provisions of paragraphs 19.1 through 19.4 above in every subcontract so that such provisions will be binding upon such subcontractor.

19.6 Operator further agrees that the Operator shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision in the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all federal, state, and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

## **SECTION 20**

### **PROHIBITION AGAINST CONTINGENT FEES**

20.1 Operator warrants that it has not employed or retained any company or person, other than a bona fide employee working for Operator, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City may terminate this Agreement without liability or may, in its discretion, deduct from the Agreement Price or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

20.2 Operator warrants that it will not accept any fee, commission, percentage, gift, or other consideration from any third party for the performance of any work under the Agreement.

## **SECTION 21**

### **FORCE MAJEURE**

Except as otherwise provided herein, neither party shall be obligated to perform, and neither party shall be deemed to be in default of its performance, if prevented by: (a) fire not caused by negligence of the party claiming the inability to perform, earthquake, hurricane, wind, flood, act of God, riot, or civil commotion occurring at the Facility, or; (b) any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities, war, or governmental law and regulation; or (c) labor dispute which results in a strike or work stoppage affecting the Facility or services described in this Agreement other than those occurring as a result of an act or omission of the party claiming the inability to perform.

## **SECTION 22**

### **ASSIGNMENT**

The qualifications and identity of the Operator and its management are of particular concern to the City. The City is entering into this Agreement in recognition of and in reliance on the expertise, reliability, and competence of the Operator and its management in matters pertinent thereto. Neither this Agreement nor the performance of the obligations imposed upon the Operator under this Agreement will be assignable by the Operator to any other party unless the City, within its sole discretion, consents to said assignment in writing. Any purported assignment in contravention of this Section shall be void.

## **SECTION 23**

### **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. All such notices to either party shall be deemed to have been provided when delivered, if delivered personally to individuals or entities addressed below. The designation of the individuals to be so notified and the addresses of such persons or entities for the purpose of notice may be changed from time to time by written notice to the other party which shall be deemed effective ten (10) days after such notice of change is furnished to the other party.

For City of Overland Park, Kansas:

City Manager  
8500 Santa Fe Drive  
Overland Park, KS 66212

City Attorney  
8500 Santa Fe Drive  
Overland Park, KS 66212

For Operator:

Global Spectrum, LP  
c/o John Page  
3601 South Broad Street  
Philadelphia, Pennsylvania 19148

Philip I. Weinberg, Esquire  
Comcast – Spectacor  
3601 South Broad Street  
Philadelphia, Pennsylvania 19148-5290

**SECTION 24**

**SEVERABILITY**

If a court of competent jurisdiction or an arbitrator 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 25**

**ALL PRIOR AGREEMENTS SUPERSEDED**

This document supersedes and replaces the Original Agreement (except that any liabilities accrued under the Original Agreement shall survive execution of this Agreement); and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

**SECTION 26**

**APPLICABLE 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 Kansas.

**SECTION 27**

**INDEPENDENT CONTRACTOR**

Operator is an independent contractor and as such is not an employee of the City. Operator is responsible for any and all federal, state and local taxes.

**SECTION 28**

**AMENDMENTS TO AGREEMENT**

No alteration or variation of terms shall be valid unless made in writing and signed by both parties, and no oral understanding or agreement not incorporated therein shall be binding on any of the parties.

**SECTION 29**

**CITY AND CONVENTION CENTER NAMES AND LOGOS**

The Operator shall have the right to use, for the term of this Agreement, the City's and Facility's name and logo on stationery, in advertising and whenever conducting business for the Facility. The design, format, font and overall appearance of said stationery and the purposes to its usages are subject to the prior approval of the City.

**SECTION 30**

**WAIVERS, MODIFICATIONS, REMEDIES**

No failure or delay by a Party to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent on a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. 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 the Party against whom the enforcement of the change, waiver, or termination is sought. No waiver of any breach shall affect or alter 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.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in triplicate this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

CITY OF OVERLAND PARK

APPROVED AS TO FORM:

\_\_\_\_\_  
Tammy M. Owens  
Deputy City Attorney

By: \_\_\_\_\_  
Carl Gerlach, Mayor

\_\_\_\_\_  
Kathryn P. Peters  
Kutak Rock LLP

ATTEST:

\_\_\_\_\_  
Marian Cook, City Clerk

GLOBAL SPECTRUM, L.P

ATTEST:

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Title: \_\_\_\_\_



CORPORATE ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )

) ss.

COUNTY OF \_\_\_\_\_ )

BE IT REMEMBERED, That on this \_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_ a corporation duly organized, incorporated and existing under and by virtue of the laws of \_\_\_\_\_; and \_\_\_\_\_, Secretary of said corporation, who are personally known to me to be such officers and who are personally known to me to be the same persons who executed as such officers the within instrument on behalf of said Corporation, and such persons duly acknowledged the execution of the same to be the act and deed of said Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

\_\_\_\_\_

My Appointment Expires:

Notary Public

**CONVENTION CENTER OPERATING AGREEMENT  
EXHIBIT A**

**DIAGRAM OF FACILITY**

**CONVENTION CENTER OPERATING AGREEMENT  
EXHIBIT B**

**CHART OF ACCOUNTS**

# CONVENTION CENTER OPERATING AGREEMENT EXHIBIT C

## INSURANCE

At all times during this Agreement, Operator shall:

- a) maintain commercial general liability insurance, including products and completed operations, bodily injury and property damage liability, liquor liability, contractual liability, independent contractors' liability and personal and advertising injury liability against claims occurring on, in, or about the Convention Center, 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 Kansas; and
- e) maintain professional liability including employment practices.

The following are a summary of the minimum liability insurance requirements as of the Effective Date:

### **Commercial General Liability**

\$1,000,000 per occurrence

\$1,000,000 personal and advertising injury

\$2,000,000 general aggregate

\$2,000,000 products-completed operations aggregate

### **Automobile Liability**

\$1,000,000 per accident (BI 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
- ⌘ Employment Practices Liability

**Crime**

Type: Coverage on all Operator on-site employees

Limit: \$1,000,000 per loss

**CONVENTION CENTER OPERATING AGREEMENT  
EXHIBIT D**

**OPERATOR'S CURRENT BENEFIT PROGRAM**

**CONVENTION CENTER OPERATING AGREEMENT  
EXHIBIT E**

**SENIOR EXECUTIVE PERSONNEL COMPENSATION POOL  
SCHEDULE**

<b>Operating Year</b>	<b>Amount Not to Exceed</b>
2015	\$75,000
2016	\$80,250
2017	\$85,868
2018	\$91,878
2019	\$98,310
2020	\$105,191
2021	\$112,555