

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

FOURTH AMENDMENT to the Management Agreement
by and among the City of Durham, the County of Durham and Global Spectrum, L.P.

This Fourth Amendment ("Fourth Amendment") is dated and entered into as of the ____ day of _____, 2019, between the City of Durham and County of Durham, (collectively, "Owners"), and Global Spectrum, L.P., d/b/a Spectra Venue Management ("Manager"). The Owners and Manager entered into a contract titled, "Management Agreement by and among the City of Durham, the County of Durham and Global Spectrum, L.P.", effective July 1, 2011, which contract was amended on November 2, 2011, March 25, 2013 and March 27, 2015. That contract, as amended, is referred to as the "Original Agreement". The Agreement is now further amended as follows:

1. The Owners and Manager have mutually agreed to extend the term of the Agreement through June 30, 2029. In Article 4.1, entitled, "Term", the first paragraph is deleted and replaced with the following:

"The Term of this Agreement shall begin on July 1, 2011 and, unless sooner terminated pursuant to the provisions herein or Section 4.2, shall expire on June 30, 2029. Following the end of the 2023-24 Operating Year, the parties will, in good faith, discuss potential changes to the formula for Manager earning the Financial Performance component of the Incentive Fee. Such discussion shall include review of Manager's 5-year operating history at the Center. Any changes in the formula will not be made solely to reduce Manager's potential to earn the Financial Performance component, but rather to ensure that increasing Revenues are benefitting both the Owners and Manager equitably. Each party shall negotiate any changes in good faith, acting reasonably, to achieve such goal. In the event that despite such good faith efforts, the parties are unable to agree to any changes following at least a thirty (30) day period of negotiation, either party may terminate this Agreement after at least sixty (60) days prior written notice to the other, subject to Section 4.4 and Owners' obligation to pay the Manager the unamortized portion of the Contribution as set forth below."

2. Beginning with the Operating Year commencing on July 1, 2019, the Flat Management Fee shall be one hundred eight thousand dollars (\$108,000), and shall increase by CPI in each successive Operating Year. In Section 3.1, entitled "Flat Management Fee", the first paragraph is deleted and replaced with the following:

"Flat Management Fee. In consideration of operating the Facility for the Owners, for each year of the Agreement, Manager will be compensated with an annual Flat Management Fee, plus Incentive Fee opportunities as set forth below. The Flat Management Fee shall be set as follows: \$108,000 for the Operating Year from July 1, 2019 through June 30, 2020. For every Operating Year thereafter for the remainder of this Agreement, the Flat Management Fee shall be set as the amount of the prior year's Flat Management Fee multiplied by the percentage

increase during the preceding January to December calendar year of the Consumer Price Index for All Urban Consumers (CPI-U) for the South Region, All Items, as published by the U.S. Bureau of Labor Statistics. However, the annual increase in the Flat Management Fee shall not exceed 4% from one year to the next.”

3. Section 3.2 of the Agreement is hereby amended and restated in its entirety as follows:

“Section 3.2 Incentive Fee. In addition to the Flat Management Fee, Manager shall be entitled to earn an Incentive Fee for each Operating Year of the Term, in accordance with the formula set forth in this section and paid per Section 3.3. The Incentive Fee shall be calculated as follows:

Incentive Fees will be earned based on reaching qualitative and quantitative benchmarks. The Incentive Fees are divided between two categories: Financial Performance and Customer and Corporate Service, as described below. The amount of Incentive Fee Manager may earn under Customer and Corporate Service each Operating Year shall be capped at thirty percent (30%) of the Flat Management Fee for such year. The amount of the total Incentive Fee Manager may earn each Operating Year (Financial Performance plus Customer and Corporate Service) shall not exceed three hundred thousand dollars (\$300,000).

(a) **Financial Performance** – Manager shall be paid a percentage of Revenue each Operating Year, as follows:

<u>Revenue each Operating Year</u>	<u>Percentage to be Paid to Manager</u>
From \$0 to \$2,500,000	0%
From \$2,500,001 to \$2,900,000	25%
In excess of \$2,900,000	30%

(b) **Customer and Corporate Service** – This component of the Incentive Fee shall be earned, based upon the sole, but reasonably exercised, discretion of the Owners, by Manager’s performance in the following four categories of qualitative performance. Each of the following categories can earn Manager up to the percentage of that Operating Year’s Flat Management Fee, as set forth next to the category (for a maximum amount for Customer and Corporate Service incentive of 30% of each Operating Year’s Flat Management Fee).

1. Overall Management Performance (up to 15% of the Flat Management Fee): Evaluated based upon factors including, but not limited to, adherence to Operating Plan and Budget; success of the Facility; ease of working relationship with Owners; transparency; clear reporting to Owners; and effective marketing.

2. Corporate Citizenry (up to 5% of the Flat Management Fee): Evaluated based on the Manager's ability to form a strong business partnership with the Discover Durham, Durham Convention Center Authority Board, as well as other Durham businesses and educational entities. The Owners will award the incentive funds based on an annual evaluation performed by Discover Durham and other stakeholders as identified by the Owners and Authority Board.

3. Customer Service (up to 5% of the Flat Management Fee): Customer Service performance will be measured through an annual customer service survey. This survey will be created and distributed by Manager with approval of content by the Owners. Results will be returned in duplicate to both Manager and Owner. Additional criteria used to judge customer service and the survey results include properly, courteously and promptly resolving all claims and customer complaints arising from use of the Facility.

4. Asset Management (up to 5% of the Flat Management Fee): Evaluated based on Manager's maintenance of the Facility and its contents in good operating condition throughout the year. The criteria used to evaluate Manager's asset management performance shall include but not be limited to:

- a. Cleanliness of the DCC
- b. Providing scheduled maintenance, keeping the facility in good maintenance and repair
- c. Developing a preventive maintenance plan
- d. Providing training of staff in preventive maintenance plan and procedures
- e. Providing Owners regular reports on the preventive maintenance program
- f. Providing Owners periodic reports on energy efficiency measures and results
- g. Adherence to minimum performance standards for the facility's operation, such standards to be jointly developed by Owner and Manager

4. Section 3.4 of the Agreement is hereby deleted and replaced with the following:

"Manager agrees to make a contribution in the amount of Five Hundred Thousand Dollars (\$500,000) (the "Manager Contribution") to be used for projects that increase the value of the operation of the Convention Center. The specific projects/uses of such contribution shall be mutually agreed upon between Manager and Owners. This Manager Contribution is intended to supplement, and not supplant, any current capital provided to the Convention Center by the Owners. The Manager Contribution shall be made in two (2) installments, as follows:

- Between July 1, 2019 and June 30, 2020 - \$250,000 ("Year 1 Installment")
- Between July 1, 2024 and June 30, 2025 - \$250,000 ("Year 6 Installment")

During the term of the agreement, the Owners will not have to repay Manager for the Manager Contribution. The Year 1 Installment will be amortized over a period of ten (10) years, beginning on July 1, 2019. The Year 6 Installment shall be amortized over a period of five (5) years, beginning on July 1, 2024. Should this Agreement terminate for any reason whatsoever (including without limitation if due to a breach or default by Manager, or if terminated by either

party under Section 4.1 of this Agreement) at any time prior to the end of the amortization periods, the Owner shall repay to Manager the unamortized portion of the Contribution. The right of Manager to be repaid for the unamortized portion of the Manager Contribution under this provision shall be unconditional and absolute, and without setoff or counterclaim by Owners.

5. In Section 5.4, entitled, "Use by the Owners", the words "in addition to 3 days per year for community events ("Community Events")" on the 3rd and 4th lines shall be deleted. Further, the words "for either use" on the 4th line shall be deleted; in the 5th sentence, the following words shall be deleted, "for either a Community Event or Owner Event"; in the 6th sentence, the following shall be deleted, "Except for the 3 Community Events," and the "I" of "In" shall be capitalized and become the beginning of the sentence. All other uses of the term "Community Events" in the Agreement shall be deleted. The parties further agree that the following shall apply for all Owner Events:

- The event must be booked within 180 days of the event date and shall be based on availability
- Rental Fees for the event will not be charged
- Labor fees will be charged for any setup and teardown of the event
- Food and beverage will be billed at prevailing menu rates
- Audio Visual (Base Equipment Fees Only) will be provided at a 40% discount
- Third party expenses will be billed at actual cost
- An event insurance coverage policy is required for all self-insured groups to be billed at prevailing rate

6. Except for the changes made herein, the Original Agreement as previously amended shall remain in full force and effect to the extent not inconsistent with this Fourth Amendment. In the event that there is a conflict between the Original Agreement and this Fourth Amendment or any earlier amendment, this Fourth Amendment shall control. All references in the Original Agreement or in any other document to the Original Agreement shall be deemed to be references to the Original Agreement as amended hereby.

[signature page follows]

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

ATTEST:

CITY OF DURHAM

_____, City Clerk

By:_____
_____, City Manager

ATTEST:

COUNTY OF DURHAM

_____, Clerk

By:_____
_____, County Manager

ATTEST:

GLOBAL SPECTRUM, L.P.

Global Spectrum, LLC,
Its general partner

Vice President

By:_____
Title: President

NORTH CAROLINA
COUNTY of DURHAM

ACKNOWLEDGMENT OF COUNTY OF DURHAM

I, a Notary Public in and for the aforesaid County and State certify that _____ personally appeared before me this day, and acknowledged that he or she is the Clerk to the Board of Commissioners for the County of Durham, a political subdivision of the state of North Carolina, and that by the Owner duly given and as the act of the County, the foregoing Amendment was signed in its corporate name by the County Manager, sealed with its corporate seal, and attested by its said Clerk. This the _____ day of _____, 2019.

Notary Public

My commission expires:

State of _____ ACKNOWLEDGMENT BY LIMITED LIABILITY COMPANY
County of _____

I, a notary public in and for the aforesaid county and state, certify that Jim Pekala personally appeared before me this day and stated that he is Vice President of Global Spectrum, LLC, a limited liability company and the general partner of Global Spectrum, L.P, and that by authority duly given and as the act of the corporation, the foregoing Amendment with the City and County of Durham was signed in the limited liability company's name by its President, whose name is Brian Rothenberg, and attested by him as its Vice President. This the _____ day of _____, 2019.

Notary Public

My commission expires:
