

2013-28276

7/17/13

MANAGEMENT AGREEMENT  
BETWEEN  
THE CITY OF MIAMI BEACH, FLORIDA  
AND  
GLOBAL SPECTRUM, L.P.  
FOR THE MIAMI BEACH CONVENTION CENTER  
AND  
COLONY THEATRE

Dated as of October 7, 2013

## MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT (this "Agreement") is dated as of the 7<sup>th</sup> day of October, 2013, by and between the CITY OF MIAMI BEACH, a Florida municipal corporation, having its principal office at City Hall, 1700 Convention Center Drive, Miami Beach, Florida 33139 (the City), and GLOBAL SPECTRUM, L.P., a Delaware limited partnership, whose current address is 3601 S. Broad Street, Philadelphia, Pennsylvania 19148 (Global).

### RECITALS

Whereas, the City is the owner of the Miami Beach Convention Center (the Convention Center), and the Colony Theatre (the Colony), including therein, without limitation, all respective adjacent grounds, sidewalks, rights-of-way and marshaling areas; located in the City of Miami Beach, Florida (individually, the Convention Center and the Colony may also be referred to herein, as a Facility or, collectively, as the Facilities).

Whereas, the City and Global are parties to a Management Agreement dated October 1, 2008, pursuant to which the City engaged Global to manage and operate the Facilities through September 30, 2013 ("Original Agreement").

WHEREAS, on July 17, 2013, the Mayor and City Commission adopted Resolution No. 2013-28276, waiving by 5/7<sup>th</sup> vote, the competitive bidding requirement finding such waiver to be in the best interest of the City, and authorizing the City and Global to negotiate and execute a new Management Agreement (the "New Agreement" or the "Agreement"); and

Whereas, accordingly, the City and Global have negotiated the following Agreement, whereby the City wishes to again engage Global, and Global hereby accepts such engagement, to provide management services for the Facilities on the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual premises, covenants and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

#### **1. Definitions**

For purposes of this Agreement, the following terms have the meanings referred to in this Section 1:

"Advisory Board" -- the Miami Beach Convention Center Advisory Board, or such other successor entity as may be established by the City Commission.

"Affiliate" -- a person or entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified person. For purposes of this definition, "control" means ownership of equity securities or other ownership interests which represent more than 10% of the voting

power in the controlled person or entity. Notwithstanding the preceding definition, for purposes of this Agreement, Messe Schweiz of Basel Switzerland (hereinafter, Messe Schweiz or M.S.), and/or its successors or assigns, shall also be deemed to be an Affiliate.

“Applicable Percentage” -- as defined in Section 4.3 of this Agreement.

“Approved Budget” -- any budget submitted by Global, as approved by the City pursuant to Section 5 hereof.

“Capital Contribution – as defined in Section 5.10(a).

“Capital Equipment” -- any and all furniture, fixtures, machinery or equipment, either additional or replacement, having a per item original cost of \$500 or more or an expected useful life of more than one year.

“Capital Improvements” -- any and all building additions, alterations, renovations, repairs or improvements that have an initial dollar cost of not less than \$500 per project.

“City” -- as defined in the first paragraph of this Agreement.

“City Agreements” -- those agreements between the City and a third party relating to the Facilities and listed in **Exhibit “A”** attached hereto.

“City Commission” – the governing legislative body of the City.

“City Manager” -- the chief executive officer of the City, or such person as may from time to time be authorized in writing by such administrative official to act for him/her with respect to any or all matters pertaining to this Agreement.

“Colony Theatre” (Colony) -- as defined in the Recitals section of this Agreement.

“Commencement Date” – as defined in Section 3.1 hereof.

“Contract Year” – each one (1) year period during the Term of this Agreement, beginning on October 1, and ending on September 30.

“Convention Center” -- as defined in the Recitals section of this Agreement.

“Event” – all uses of a Facility which involve a scheduled beginning and ending time. For Events at the Convention Center this shall typically mean the period commencing upon “load-in” of the Event; the Event itself; and ending upon conclusion of “load-out” of the Event. For Events at the Colony, this shall mean Events occurring all within the same day (or for evening Events, commencing in the evening and concluding

before 1:00 AM of the succeeding day, unless otherwise approved, in writing, by the City Manager.

“Event Expenses” — any and all expenses incurred or payments made by Global in connection with the occurrence of Events at the Facilities, including, without limitation, costs for Event staffing (including ushers, ticket takers, security and other Event staff), and costs relating to set-up and clean-up.

“Executive Compensation Amount” — as defined in Section 4.2(a).

“Executive Employee Benefit/Bonus Amount” – the aggregate amount of bonuses payable to, and the cost of benefits accruing to, Executive Level Employees of Global and any Related Party of Global at the Facilities for a Fiscal Year, which amount shall be mutually determined and agreed upon, in writing, by the City and Global as part of the development of each annual operating budget for a Fiscal Year pursuant to Section 5.3.

“Executive Employee Salaries” – salaries and wages of Executive Level Employees of Global and any Related Party of Global at the Facility for a Fiscal Year.

“Executive Level Employees” – unless otherwise determined by bond counsel for the City that the term “Executive Level Employees” shall include and/or exclude other employees, “Executive Level Employees” shall mean the General Manager, Assistant General Manager, Director of Operations, Director of Finance, Director of Marketing, Director of Sales, and Director of Event Services.

“Facility” and/or “Facilities” -- as defined in the Recitals section of this Agreement, and which, further, (i) as to the Convention Center, shall include the entire Facility complex including, without limitation, the exhibit halls, meeting rooms, common areas, lobby areas, executive offices, storage and utility facilities, and the entrances and loading dock areas; and (ii) as to the Colony, shall include, without limitation, the lobby areas, common areas, audience chambers, backstage areas, dressing rooms, stage areas, rehearsal halls, entrances, and loading areas. If, during the Term, the City elects to have Global manage, promote, and operate other City facilities pursuant to Section 2.2(b) hereof (the “Additional Facilities”), such other facilities shall also be deemed included within the definition of Facility and/or Facilities hereunder.

“Fiscal Year” -- a one year period beginning October 1, and ending September 30.

“Global Spectrum, L.P. (Global) – as defined in the first paragraph of this Agreement.

“Global Capital Contributions” – collectively, the Capital Contribution, the scholarship contribution, as defined in Section 5.10(c), and any other capital contributions as may be mutually agreed to by Global and the City.

“Management Fee” – as defined in Section 4.1(a).

“Net Operating Loss/Profit” -- with respect to a Fiscal Year, the excess, if any, of Operating Expenses for such Fiscal Year over Operating Revenues for such Fiscal Year, in the case of a loss; and the excess, if any, of Operating Revenues for such Fiscal Year over Operating Expenses for such Fiscal Year, in the case of a profit.

“Operating Expenses” – (a) any and all expenses and expenditures of whatever kind or nature incurred, directly or indirectly, by Global in managing, operating, maintaining, promoting and marketing the Facilities, including, without limitation: employee compensation and related expenses (e.g., base salaries, bonuses, car allowances and severance pay [in accordance with Global’s established policy, a copy of which will be provided to the City on or before the Commencement Date of this Agreement, except that severance pay shall not be considered an Operating Expense if paid by Global to its employees as a result of early termination of this Agreement due to a default by Global]); employee benefits and related costs (e.g., relocation and other related expenses pursuant to Global’s relocation policy (a copy of which will be provided to the City on or before the Commencement Date of this Agreement); parking and other fringe benefits) (including, without limitation, Executive Employee Salaries and the Executive Employee Benefit/Bonus Amount); supplies, material and parts costs; costs of any contractors; advertising, marketing and public relations costs and commissions; janitorial and cleaning expenses; data processing costs; dues, subscriptions and membership costs; the amortized amount of the Capital Contribution; the costs of procuring and maintaining the insurance required to be obtained by Global under this Agreement; amounts expended to procure and maintain permits and licenses; taxes and excises; professional fees; printing and stationery costs; Event Expenses; postage and freight costs; equipment rental costs; computer equipment leases and line charges; telephone switch and telecommunications services; repairs and maintenance costs (e.g., elevators and HVAC); security expenses; utility and telephone charges; travel and entertainment expenses (in accordance with the “Runzheimer Meal-Lodging Cost Index” or a comparable index); the cost of employee uniforms; safety and medical expenses; exterminator and waste disposal costs; costs relating to the maintenance of signage inventory and systems; the cost of annual independent audits of the Facilities; the cost of compliance with Laws (as defined in Section 11.2); the internal service charges assessed by the City to the Facilities pursuant to Approved Budgets (which charges include, without limitation, property insurance premium costs, sewer charges, and communication/information technology charges); costs incurred under agreements, commitments, licenses and contracts executed as provided in Sections 2.3(b), (d), and (e) hereof; and the Management Fee payable to Global pursuant to Section 4.1(a) hereof, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis; (provided that Operating Expenses **shall not** include expenses or expenditures in connection with Capital Improvements and Capital Equipment purchases, the Incentive Fee payable to Global pursuant to Section 4.3 hereof, and any expenses relating to Global personnel based in Global’s corporate headquarters in Philadelphia, Pennsylvania, or its regional field locations (other than the

reasonable costs of travel by such corporate or regional personnel in connection with Global's management of the Facilities, which costs shall be Operating Expenses).

(b) Solely for purposes of calculating Net Operating Loss/Profit hereunder, (i) the internal service charges assessed by the City to the Facilities pursuant to Approved Budgets, and (ii) emergency expenditures pursuant to Section 2.3(v) hereof, to the extent not included in the Approved Budgets, shall not be deemed Operating Expenses hereunder. In addition, and solely for purposes of (i) calculating Net Operating Loss/Profit hereunder, and (ii) identifying Operating Expenses which will be budgeted in Approved Budgets, (A) all extraordinary expenses and all interest, income tax, depreciation and amortization expenses including, without limitation, depreciation and amortization on Global's Capital Contribution, and (B) the Management Fee, shall not be deemed Operating Expenses hereunder.

"Operating Revenues" – (a) any and all revenues of every kind or nature derived from owning, operating, managing, maintaining, promoting, or marketing the Facilities including, without limitation: license, lease and concession fees and rentals; service revenues; revenues from merchandise sales; advertising sales; naming and sponsorship rights (as provided in Section 2.3(o)); equipment rentals; utility revenues; revenues from operation of the Convention Center's telephone switch and telecommunications services; box office revenues; food and beverage service and concession revenues; commissions or other revenues from decoration and set-up; security and other subcontractors; miscellaneous operating revenues; and interest revenues, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis. The parties acknowledge that revenues from the sale of tickets for Events at the Facilities are **not** Operating Revenues, but are instead revenues of the promoter and/or performer of each such Event (as the case may be); provided, however, that to the extent that Global collects such ticket sale revenues on behalf of Event promoters and/or performers, such ticket sale revenues shall be the source of funds from which Global collects the rental charges and other Event reimbursements due by such promoters and/or performers for use of the Facility (which such charges and reimbursements **are** deemed Operating Revenues hereunder).

(b) Solely for purposes of (i) calculating Net Operating Loss/Profit, and (ii) identifying Operating Revenues which will be budgeted in Approved Budgets, Operating Revenues from all Events at the Facilities will be calculated to exclude sales taxes generated in connection with such Events. In addition, solely for purposes of calculating Net Operating Loss/Profit, any Convention Development Tax monies and any interest earned thereon, **shall not** be deemed Operating Revenues hereunder.

"Related Party" or "Related Parties" has the meaning provided in § 1.150-1 of the Income Tax Regulations promulgated by the United States Department of the Treasury pursuant to the Code.

“Renewal Term” – as defined in Section 3.2 of this Agreement.

“Term” – as defined in Section 3.1 of this Agreement; provided however, if this Agreement is extended for a Renewal Term, all references to “Term” contained herein shall also include such Renewal Term.

## **2. Engagement of Global; Scope of Services.**

### **2.1 Engagement.**

(a) General Scope. The City hereby engages Global to manage, operate, maintain, promote, and market the Facilities during the Term, upon the terms and conditions set forth in this Agreement. Global hereby accepts such engagement and shall perform the services described herein, subject to the terms and conditions in this Agreement.

(b) Manager of the Facilities. Subject to the terms and conditions of this Agreement, Global shall be the sole and exclusive manager of the City to manage, operate, maintain, promote, and market the Facilities during the Term. In such capacity, and except as otherwise expressly reserved under this Agreement to the City, and/or except for such matters as are subject to the approval of the City Commission or City Manager, Global shall have exclusive authority over the day-to-day operation of the Facilities and all activities therein; provided that Global shall follow all policies and guidelines of the City, as may exist as of the Commencement Date of this Agreement, and as may be hereinafter established or amended by the City, in its sole judgment and discretion.

### **2.2 Scope of Services.**

(a) General. Global shall perform and furnish such services, personnel, and systems, supplies, and materials, as necessary to manage, operate, maintain, promote, and market the Facilities in a manner consistent with the management, operation, maintenance, promotion, and marketing of other first-class facilities comparable to the Facilities.

(b) Additional Facilities. Subject to Section 4.1(d) hereof, the City may elect, upon sixty (60) days prior written notice to Global, at any time during the Term, to have Global operate, manage, maintain, promote, and market other City facilities. Such facilities are referred to herein, as elected by the City, as the “Additional Facilities”.

(c) Convention Center Booking Policies. The Greater Miami Convention and Visitors Bureau (GMCVB) has the primary responsibility for marketing the Convention Center for conventions and trade shows and, to carry out this responsibility, the GMCVB shall have control over bookings more than twenty-four (24) months in advance (i.e. long term bookings). However, all such long term bookings shall be coordinated with Global before commitment. Global will work pro-actively with the GMCVB in connection with the long term bookings. The GMCVB may also book

conventions and trade shows into the Convention Center with less than twenty-four (24) months' lead time (i) if the dates have not been confirmed to other users; and (ii) subject to the prior written approval of Global. Additionally, subject to compliance with the Convention Center Booking Policies, attached as **Exhibit "B"** hereto, and as same may be amended from time to time in the City's sole judgment and discretion (Exhibit "B" and any amendments thereto, hereinafter referred to as the "Convention Center Booking Policies"), Global may book conventions, trade shows and any other Event at the Convention Center with more than twenty-four (24) months' lead time if the dates have not been confirmed to other users. Global shall first consult with the GMCVB to verify whether a specific date (or dates) has(or have) not been confirmed (by the GMCVB) to another user, prior to Global booking such conventions, trade shows, and/or other Events.

Global shall have the primary responsibility and sole authority, subject to the Convention Center Booking Policies, to approve the scheduling of any Event in the Convention Center within the twenty-four (24) month booking window.

(d) Colony Booking Policies. Global shall have the primary responsibility and sole authority for booking Events into the Colony, subject to compliance with the booking policies for the Colony, attached as **Exhibit "C"** hereto, and as same may be amended from time to time, in the City's sole judgment and discretion (Exhibit "C" and any amendments thereto, hereinafter referred to as the "Colony Booking Policies").

### 2.3 Specific Services

Without limiting the generality of the foregoing, and except as otherwise expressly noted in this Agreement, Global shall have the primary responsibility and sole authority to:

(a) Hire or otherwise engage, pay, train, supervise, and direct all employees and personnel it deems necessary for the management, operation, maintenance, promotion, and marketing of the Facilities in accordance with the provisions of this Agreement, and in a manner consistent with the management, operation, maintenance, promotion, and marketing of other first-class facilities comparable to the Facilities;

(b) Administer, manage, and assure compliance with all City Agreements (including, without limitation, the City's agreement with the food and beverage concessionaire at the Convention Center) and, to the extent the City Manager deems necessary or desirable, participate in any and all negotiations, renewals and extensions relating to such City Agreements;

(c) Provide, or cause to be provided, to the Advisory Board, periodic status reports as to the food and beverage concessionaire's performance, and provide (or cause to be provided) recommendations for improvements. The City Manager shall



require that, during the Term of this Agreement, a member of Global's Executive Level Employees, have food & beverage experience and be charged (among his/her duties) with supervising, monitoring, and ensuring consistent performance, quality standards, and compliance under the City's agreement with the food and beverage concessionaire;

(d) Except as otherwise provided in subsection 10.2(c), negotiate; execute in its name, as agent for the City; deliver; administer; manage; and assure compliance with any and all leases, license agreements, occupancy agreements, rental agreements, booking commitments, concession agreements, supplier agreements, service contracts (including, without limitation, contracts for cleaning, decorating, set-up, emergency services, general maintenance, maintenance and inspection of HVAC systems, elevators, stage equipment, fire control panels and other safety equipment, staffing and personnel needs, including guards and ushers, telephone, extermination, and other services which are necessary or appropriate), and any and all other contracts and agreements in connection with the management, operation, promotion, and marketing of the Facilities. For purposes of the following subsections 2.3 (d) (1) and (2), the preceding agreements shall be referred to as the "Facilities Agreements."

(1) Provided that (A) if any such Facilities Agreement or Agreements (other than those involving the license, lease, or rental of the Facilities for Events) has a term that extends beyond the remaining Term, and/or is of a non-traditional nature (such as, by example, co-promotion agreements), such Facilities Agreement (or Agreements) must be approved and executed by the City Manager; and (B) if any Facilities Agreement or Agreements (other than those involving the license, lease or rental of the Facilities for Events) is to be renewed or entered into at the commencement of a Fiscal Year, such Facilities Agreement (or Agreements) shall be reviewed in conjunction with the annual budget review process described in Section 5.3 hereof

(2) Provided further, that any contract entered into between Global and an Affiliate of Global, **and/or** a subsidiary, parent company, **and/or** sister company (i.e. a company owned by an entity which is an owner or Affiliate of Global) of Global shall be: (A) subject to the prior written approval of the City Manager; (B) shall be at terms and for prices customarily charged for comparable goods and/or services elsewhere; and (C) shall be competitive within the industry, subject to submittal of documentation evidencing the competitive nature of the goods and/or services submitted.

(3) Bond Financing. Global acknowledges that the Convention Center is financed in part with the proceeds of one or more series of tax-exempt bonds, and that, during the Term hereof, the City may choose, at its option, to finance additional improvements (whether to the Convention Center or to any or all of the other Facilities) with tax-exempt bonds (collectively, any present and future tax-exempt bonds encumbering a Facility or the Facilities shall be referred to as the "Bonds"). In order for the City to ensure that it is preserving the tax-exempt nature of the Bonds and complying with applicable Treasury regulations (the "Treasury Regulations") promulgated under the Internal Revenue Code of 1986, as amended (the "Code"),

Global acknowledges and agrees that in addition to any other contracts requiring the approval of the City Manager, each of the following described contracts must be approved by the City Manager, in writing, before execution thereof by Global:

(i) Any contract relating to the Facilities which grants a leasehold interest or other real estate interest in the Facilities (other than a short term lease, license or rental for an Event at a Facility), or grants a right to use the Facilities on a basis different from that of the general public, unless such use satisfies a short-term use exception as described in Section 1.141-3(d)(3) of the Treasury Regulations.

(ii) Any contract for the use of the Facilities for Events where the term of such use exceeds fifty (50) days in the aggregate, including all renewal options.

(iii) Any other contract relating to the Facilities which grants special legal entitlements to beneficial use of the Facilities or special economic benefits, within the meaning of Section 1.141-3(b)(7) of the Treasury Regulations, unless such contract satisfies an exception set forth in the Treasury Regulations.

(e) To the extent the City Agreements, and such other licenses, agreements, commitments, and/or contracts, as contemplated in Section 2.3 (d) hereof, are not already procured, or if such existing contracts expire or are terminated, procure, negotiate, execute (as agent for the City), administer, and assure compliance with all subsequent new licenses, agreements, commitments, and/or contracts with respect to the Facilities.

(f) Notwithstanding Sections 2.3 (b), (d), and (e) hereof, or any other provision of the Agreement, Global shall obtain the prior written approval of the City Manager before entering into any contract that is a Material Contract. For purposes of this Agreement, a "Material Contract" is defined as (1) any agreement that requires payments in excess of Twenty Five Thousand Dollars (\$25,000) in any Fiscal Year; (2) any contract that permits or grants to any vendor or other party any right to (A) exclusively provide goods or services to a Facility or to the Facilities; or (B) advertise or market its role as an exclusive or official provider of goods or services for a Facility or the Facilities; (3) any contract that has a term that expires after the end of the Term; (4) contracts for Events that are owned, operated, promoted, or co-promoted by Global or any of its Affiliates or subsidiaries, its parent company, or a sister company, or wherein the revenues generated by an Event are otherwise shared with Global or any of its Affiliates or subsidiaries, its parent company, or a sister company; (5) any contract between Global and any of its Affiliates or subsidiaries, its parent company, or a sister company; (6) a contract for the use, rental or occupancy of space in a Facility that is not substantially in the form of the City's standard form agreement for each Facility (attached as **Exhibit "E"** hereto); and (7) a contract for an M.S. owned show or Event and/or any show or Event brought to the City by M.S., in accordance with the provisions of Section 10.2(c) hereof (which contract shall also be executed by the City Manager). Additionally, a Material Contract shall also include any contract pursuant to which

Global is sub-contracting with a third party for goods or services which Global is charged with supplying and/or performing under this Agreement;

(g) Follow each Facility's booking policies and hold the master set of all booking records and schedules (for each Facility). Global shall, from time to time, review the booking policies for each Facility and recommend changes, if any, to the City. Global's recommended changes to the Convention Center Booking Policies shall be subject to the review and recommendation of the Advisory Board. Notwithstanding the preceding, any changes and or other amendments to any Facility's booking policies shall be subject to prior review by the City Manager and final approval by the City Commission;

(h) (1) Maintain the Facilities (including, without limitation, all structural components thereof and all electrical, HVAC, life safety, mechanical, plumbing and other systems and equipment) in a good and clean condition consistent with other similar first class facilities managed by Global, and in compliance with all Laws, ordinary wear and tear excepted. Maintenance responsibilities shall include, without limitation, repairs and replacements (structural, non-structural capital, and non-capital, but not including Capital Equipment and Capital Improvements unless funded by the City), and preventive maintenance, and equipment servicing.

(2) Global shall be responsible for ensuring that all maintenance, repairs, and replacements, shall be of a quality and class at least equal to that of the item being maintained, repaired, or replaced; provided that the City shall be responsible for, with cooperation and assistance of Global, undertaking all Capital Improvements and Capital Equipment purchases, as provided in Section 5.8.

(3) Notwithstanding anything in this subsection 2.3(h) or in the Agreement, at no time shall the maintenance of a Facility fall below the minimum standards required by **Exhibit "F"**, attached hereto.

(4) At all times during the Term hereof, Global shall maintain in full force and effect service contracts with qualified and licensed service providers with respect to HVAC, roof, and elevator systems.

(5) Global shall keep on-site maintenance manuals and records reflecting its maintenance activities at each Facility, all of which shall be available for inspection, upon request, by the City Manager.

(6) Global shall submit to the City Manager, as part of its reporting requirements pursuant to Section 6.3 hereof, monthly reports specifying all maintenance work performed during such period, which reports shall be used and relied upon by the City (through its Property Management Division or an independent consultant retained by the City) as part of annual Facility maintenance inspections and reviews.

(7) Global warrants and represents to the City that, prior to the Commencement Date, Global has inspected each Facility and hereby accepts each Facility "AS-IS, WHERE-IS and with ALL FAULTS."

(i) Rent, lease, or purchase all equipment and maintenance supplies necessary for the operation and maintenance of the Facilities; provided that the City shall be responsible for, with direction, cooperation and assistance of Global, undertaking all Capital Improvements and Capital Equipment purchases as provided in Section 5.8;

(j) Establish and adjust prices, rates, and rate schedules, for the aforesaid licenses, agreements and contracts, and any other commitments relating to the Facilities and to be negotiated by Global in the course of its management, operation, maintenance, promotion and marketing of the Facilities. In determining such prices, rates, and rate schedules, Global shall evaluate comparable charges for similar goods and services at similar and/or competing facilities in order to establish a range of prices and rates.

Global shall consult with the City Manager about any proposed adjustments to the rate schedules at the Facilities. Global shall also consult with the Advisory Board and the GMCVB on any Global-proposed adjustments to the rate schedules at the Convention Center. The current rate schedules for the Convention Center (including the Convention Center Rent Waiver/Discount Policy) and Colony are attached as **Exhibit "G"** hereto. Notwithstanding the preceding sentence or anything contained in this Agreement, any change in the rate schedules for any of the Facilities shall be subject to the prior review and approval of the Mayor and City Commission, and no proposed change shall be effective unless approved by the City Commission;

(k) Pay, when due, on behalf of the City, all Operating Expenses from accounts established pursuant to Sections 5.6 and 5.7 hereof;

(l) After consultation with the City Manager and the City Attorney, and subject to the prior written approval of the City Attorney, institute, as agent for the City, and at the reasonable expense of the City, such legal actions or proceedings necessary or appropriate in connection with the operation of the Facilities, including, without limitation, to collect charges, rents or other revenues due to the City, or to cancel, terminate or sue for damages under any license, agreement, commitment or contract, for the breach thereof or default thereunder;

(m) Provide day-to-day administrative services in support of its management activities consistent with such supervisory services as necessary to ensure that the Facilities shall be operated in a first class manner and with standards comparable to other first class facilities comparable to the Facilities including, without limitation, the acquisition of services, equipment, supplies and facilities, internal

budgeting and accounting, maintenance and property management, personnel management, record-keeping, collections and billing, and similar services;

(n) Engage in such advertising, solicitation, and such other marketing and promotional activities, as Global deems necessary to promote and market the Facilities for, as to the Convention Center, conventions, trade shows, and other Events, and, as to the Colony, public entertainment shows and other Events. Global shall work with the GMCVB (as to the Convention Center), Facility users, and/or such City boards, agencies, and committees as may be determined by the City Manager, in his sole judgment and discretion, to market and promote the Facilities, and engage in all future activities necessary to develop and maintain current and relevant strategic marketing plans. Global also shall submit to the City, no later than October 1 of each Contract Year, an update to the strategic five (5) year plan for marketing and promotion of each Facility, as required in Section 6.4 hereof;

(o) Notwithstanding subsection (n) above, or any other provision of this Agreement, Global shall not engage in the selling of sponsorships, advertising inventory, product rights, or naming rights for the Facilities without the prior written approval of the City Manager or (if required pursuant to the City Code) of the City Commission. The City reserves all name-in-title rights (i.e. the right to name the Facilities or portions thereof), and all revenues derived therefrom, to any and all exterior portions of the Facilities including, without limitation, any sponsorship names and/or rights in connection with such name-in-title rights. The City also reserves approval over all name-in-title-rights to any and all interior portions of the Facilities including, without limitation, any sponsorship names and/or rights in connection with such name-in-title rights, and all revenues derived therefrom; except that revenues from interior naming rights and/or sponsorship agreements negotiated by Global which (as provided in the terms contained therein) are intended to be effective for a limited number of years (as opposed to on an indefinite or permanent basis), which may or may not exceed the Term, may be included by Global as Operating Revenues, but only as received, on a year to year basis. Notwithstanding anything in this subsection (o), Global shall not be precluded from allowing Event sponsors from using temporary banners and temporary signage in the exterior and/or interior portions of the Facilities throughout the duration of the Event, subject to the prior written approval of the City Manager. Notwithstanding anything in this subsection (o) or in this Agreement, no sponsorships, advertising, product rights, and/or naming rights negotiated by Global, and/or temporary banners or temporary signage negotiated by Global for Event sponsors, shall include the names of any company selling the following types of products ("Prohibited Names"): guns, tobacco, or sexual products;

(p) Operate the Convention Center's telephone switch and telecommunications services;

(q) As required by and provided in the City's standard form agreement for each Facility, provide to the City Manager complementary tickets for each Event at a Facility as follows:

- (i) Convention Center – a minimum of twenty –six (26) tickets; and
- (ii) Colony – minimum of fourteen (14) tickets;
- (r) Maintain ongoing relationships with various boards and committees of the City, including, without limitation, the Advisory Board;
- (s) Maintain on ongoing relationship with the GMCVB;
- (t) Act as a collection agent for the City on sales taxes, and remit such sales taxes to the State of Florida such;
- (u) Immediately inform the City of any condition of which Global becomes aware which Global believes impairs the structural soundness or sound operating condition of a Facility. It is understood that the City will make its own determination as to the structural soundness of a Facility, or any other defect that might be noted by Global, and as to the necessity for repair. The City may, subject to appropriation, make available funds necessary to correct such a condition, as, where, if, and to the extent that the City deems any repair or correction is necessary; provided, however, that to the extent that such a condition materially interferes with Global's ability to manage the Facility, Global shall have the right to terminate the Agreement pursuant to Section 12.2 hereof;
- (v) Global shall have the right to act without consent of the City in situations which Global determines to be an emergency with respect to the health, safety, welfare, and protection of the general public, including spending or committing funds held in a Facility account described in Section 5.6 hereof, even if such expenses are not budgeted; provided, however, Global shall have no obligation under any circumstance to spend or commit funds, other than funds then available in such Facility account, for any such purpose. Immediately following such action, Global shall inform the City Manager of the emergency situation and the action taken, and the City shall pay Global, or deposit into such Facility account, the amount of funds, if any, spent or committed by Global pursuant to this subsection (v), in excess of budgeted amounts.
- (w) Global shall not sub-lease or license any portion of a Facility to other than short-term users. Without limiting Global's and/or the City's rights to require any and all necessary agreements and documentation from users of a Facility, Global shall require that all users of the Facility provide certificates of insurance evidencing appropriate insurance, as required by "Insurance Requirements for Users/Lessees of the Facilities," attached as **Exhibit "H"** hereto. Copies of these certificates are to be furnished to the City Manager. Such insurance is to be kept in force at all times by all lessees, licensees, users, and concessionaires. All such liability policies shall name the City of Miami Beach, Florida, and Global as additional insureds. Without limiting Global's and/or the City's rights to require any and all necessary agreements and documentation from users of a Facility, Global shall utilize the City's standard form

agreements for the use, rental or occupancy of space in each Facility (as attached in Exhibit "E" hereto).

2.4 [Intentionally Omitted]

2.5 Right of Entry Reserved.

Representatives of the City shall have the right, upon reasonable notice to Global, to enter all portions of a Facility to inspect same; to observe the performance of Global of its obligations under this Agreement; to install, remove, adjust, repair, replace or otherwise handle any equipment, utility lines, or other matters in, on, or about the Facilities; or to do any act or thing which the City may be obligated or have the right to do under this Agreement or otherwise (i.e. acting in its proprietary and/or regulatory capacity). The City shall not unreasonably interfere with the operations of Global hereunder, and the City shall use reasonable commercial efforts to ensure that its actions are conducted such that disruption of Global's operations shall be kept to a minimum. Nothing contained in this Section is intended or shall be construed to limit any other rights of the City under this Agreement. Nothing in this Section shall impose or be construed to impose upon the City any independent obligation to construct, maintain or make repairs, replacements, alterations, additions or improvements, or create any independent liability for any failure to do so.

### **3. Term and Renewal Term.**

3.1 Term.

The Term of this Agreement shall commence at 12:01 A.M. on October 1, 2013 (Commencement Date), and end at midnight on September 30, 2016, unless earlier terminated pursuant to the provisions of this Agreement.

3.2 Renewal Term.

The City shall have the right, at its sole option and discretion, to extend this Agreement for two (2) successive one (1) year terms (each, a "Renewal Term") by giving written notice to Global of such intention not less than ninety (90) days prior to the expiration of the Term or an exercised Renewal Term (as the case may be).

### **4. Global's Compensation.**

4.1 Management Fee

(a) As consideration to Global for providing the services herein, the City shall pay Global during the Term hereof, an annual management fee for the performance of the services hereunder with respect to each Fiscal Year, in the amount of \$258,300 (the "Management Fee"). The Management Fee shall be adjusted upward on the first day of each Fiscal Year during the Term hereof (other than the first Fiscal Year ending September 30, 2009), by the percentage change in the Consumer Price

Index – All Urban Consumers (CPI-U) – U.S. City Average – All Items, during the one year period ending September 30, immediately preceding such Fiscal Year, as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or of any revised or successor index hereafter published by the Bureau of Labor Statistics or other agency of the United States Government succeeding to its functions (“CPI”), but in no event exceeding three percent (3%) in any one Fiscal Year.

(b) The Management Fee will be allocated for each Facility as follows:

(i) Convention Center - \$241,600; and

(ii) Colony - \$16,700.

(c) The Management Fee shall be payable in equal monthly installments due on or before the last day of each month during the Fiscal Year, and Global shall be entitled to draw such amounts from the account described in Section 5.6.

(d) The Management Fee shall be subject to further upward adjustment, as mutually agreed to by the parties, in the event the City elects to have Global operate, manage, maintenance, market, and promote Additional Facilities, as provided in Section 2.2(b) hereof.

#### 4.2 Executive Compensation.

(a) Executive Compensation Amount. As part of the development of each annual operating budget for a Fiscal Year pursuant to Section 5.3 hereof, the City and Global agree to determine and set, in writing, the amounts of Executive Employee Salaries for Executive Level Employees of Global and any Related Party of Global at the Facilities to be paid in any such Fiscal Year, which amounts shall be binding against the City and Global (the “Executive Compensation Amount”); provided that the compensation amounts in subsequent Fiscal Years shall not exceed the amounts for the immediately preceding Fiscal Year by more than ten (10%) percent.

The Executive Compensation Amount shall be paid to applicable Executive Level Employees from the account described in Section 5.6 on the same basis as those of other employees of Global at the Facilities are paid.

(b) Executive Employee Benefit/Bonus Amount. The Executive Level Employees of Global and any Related Party of Global at the Facilities shall be entitled to receive the Executive Employee Benefit/Bonus Amount, which Amount shall be paid or shall accrue, as applicable, to the Executive Level Employees, on the same basis as those of other employees of Global at the Facilities are paid or accrue. Under no circumstances shall any portion of the Executive Employee Benefit/Bonus Amount be based to any extent on the net profits of any Facility managed by Global pursuant to this Agreement.



#### 4.3 Incentive Fee.

(a) Amount. In addition to the Management Fee, and provided Global has met the criteria, as set forth in subsection (b) below, and subject further to Section 8.4 (b) hereof, Global shall be entitled to receive an annual incentive fee (Incentive Fee) during the Term of the Agreement, in an amount equal to the product of (i) the aggregate amount of the Management Fee for a Contract Year, and (ii) the Applicable Percentage. The Applicable Percentage shall be defined as a percentage equal to the sum of the percentage points which Global earns based on the criteria in Section 4.3 (b) below for such Contract Year; provided that in no event shall the Applicable Percentage exceed 100%.

Promptly following the end of a Contract Year during the Term hereof, the City Manager, shall assess and total the percentage points which the City Manager has determined that Global has earned during the preceding Contract Year, based on the criteria in Section 4.3(b) below. The City Manager shall provide Global with a written report with respect thereto.

#### (b) Incentive Fee Criteria/Calculation.

##### 1. Customer Satisfaction.

A. Customer Satisfaction. A total of up to thirty (30) percentage points will be awarded subject to the following criteria:

(i) Survey Results. A total of up to twenty-five (25) percentage points will be awarded based on the average survey score for each of the following ten (10) departments (Global shall be awarded up to 2.5 points per department, for a total possible score of 25):

- Sales
- Event Management
- Operations
- Food & Beverage
- IT/Telecommunications
- Audio Visual
- Valet Parking Services
- Business Center
- Visit Miami Beach
- Fire Inspector

If a department's average survey score is 93% or higher, Global shall be awarded 2.5 points for such department (out of 25)

If a departments' average survey score is from 90% to 92.99%, Global shall be awarded 1 point for such department (out of 25)

If a departments' average survey score is less than 90%, Global shall be awarded 0 points for such department (out of 25)

The survey shall be administered by an independent third party jointly selected by the City, the GMCVB, and Global (the cost of which shall be an Operating Expense).

(ii) Completion of evaluations by clients: A total of up to five (5) percentage points will be awarded based upon the percentage of completed customer satisfaction surveys (which survey form shall be subject to the prior written approval of the City Manager) out of total potential surveys (of which there shall be one per Event) received from all Events that use the Facilities as detailed below:

|               |           |
|---------------|-----------|
| 70% completed | 5 points  |
| 65% completed | 3 points  |
| 55% completed | 1 points  |
| Less than 55% | 0 points. |

2. Financial Performance. A total of up to fifty (50) percentage points will be awarded based upon the percentage of annual Operating Revenue generated as detailed below:

|                          |           |
|--------------------------|-----------|
| \$17,500,000 or more     | 50 points |
| 17,250,000 to 17,499,999 | 35 points |
| 17,000,000 to 17,249,999 | 25 points |
| 16,999,999 or less       | 0 points  |

3. Maintenance and Improvement of Facility and its Capital Equipment. A total of up to fifteen (15) percentage points will be awarded if Global has met or exceeded the maintenance standards set forth in Section 2.3(h) and Exhibit F hereof (including, without limitation, the Comprehensive Preventive Maintenance Program and maintenance of Capital Equipment, as may be amended from time to time during the Term by the City). The City Manager's evaluation pursuant to this subsection shall also, without limitation, take into account the annual review by the City's Property Management Division and/or a yearly review by an outside independent consultant retained by the City Manager.

4. Discretionary. A total of up to 5 percentage points may be awarded, as determined by the City Manager, in his sole and absolute discretion.

(c) Payment. The Incentive Fee shall be payable to Global within 120 days of the end of a Fiscal Year. Global will thereupon be entitled to deduct the amount of such Fee from the account described in Section 5.6 hereof; provided that, to the extent that Global projects that such a deduction would leave insufficient funds in such account to cover Operating Expenses for the remainder of the then-current fiscal quarter, Global shall be entitled not to deduct all or a portion of such fee from such account, and, upon

notice thereof from Global, the City shall promptly pay Global the amount of the Fee that has not been deducted from such account.

4.4 Limitation. Notwithstanding anything to the contrary set forth herein, in no event shall the sum of (i) the Incentive Fee, plus (ii) the Executive Employee Benefit/Bonus Amount payable with respect to any Fiscal Year, exceed the sum of (x) the Management Fee, plus (y) the Executive Compensation Amount payable with respect to such Fiscal Year.

## 5. **Funding; Budgets; Bank Accounts.**

### 5.1 Operating Funds.

Subject to Section 5.2 hereof, following the approval of the annual operating budget for a Fiscal Year (including, without limitation, any annual operating budget applicable to the first Fiscal Year during the Term hereof), the City shall make available to Global funds necessary to pay all Operating Expenses incurred or accrued in such Fiscal Year. To the extent that Operating Revenues during a calendar month are insufficient, , to cover Operating Expenses and with respect to the first quarter of a Fiscal Year, the amount of the projected Incentive Fee payable pursuant to Section 4.3 hereof for the prior Fiscal Year (“Cash Flow Shortfall”) for such period, the City shall advance funds to Global as follows: Within thirty (30) days following the end of a month, Global will submit to the City Manager, for his approval, a statement/invoice summarizing the deficit or surplus in a Facility account (described in Section 5.6 hereof) over the agreed upon imprest combined Facility account balance for the Convention Center and Colony. Such imprest amount will be \$500,000, and will represent the combined balance of all Facility accounts (Convention Center and Colony) at the end of each month. If, at the end of such month, the combined operating balance is greater than \$500,000, the surplus amount over \$500,000 will be given back to the City in the form of a check, accompanied by a statement/invoice with appropriate bank reconciliations for both operating accounts as back up. If, at the end of such month, the combined operating balance is less than \$500,000, the deficit and the appropriate bank reconciliations documenting such deficit will be invoiced to the City for payment.

### 5.2 Non-Funding.

(a) The City shall have no obligation to provide funds for the payment of Operating Expenses incurred or committed for after the date Global receives written notice (an “Appropriation Deficiency Notice”) of the fact that insufficient funds or no funds have been appropriated for a Facility or Facilities.

(b) If the Appropriation Deficiency Notice is of insufficient funds, the City shall pay all Operating Expenses incurred or committed for after such date which are within the aggregate level of appropriated funds specified in the Appropriation Deficiency Notice. The City shall pay all Operating Expenses incurred or committed for

prior to the date Global receives the Appropriation Deficiency Notice. Any failure by the City to provide funds (beyond the aggregate level of appropriated funds) for the payment of Operating Expenses incurred or committed for after Global receives an Appropriation Deficiency Notice shall not be a breach of or default under this Agreement by the City.

(c) If the City appropriates funds at (or reduces appropriated funds to) a level that, in Global's reasonable business judgment and discretion, materially renders its continued management of a Facility not economically viable for Global, Global may, at its option, either (i) continue management of the Facility at the appropriated reduced funding reduced level; or (ii) terminate this Agreement pursuant to Section 12.2 (a) (with the effect set forth in Section 12.3).

### 5.3 Annual Budget; Cash Flow Budget.

(a) As part of the Annual Management Plan described in Section 6.2 hereof, on or before the date specified by the City Manager each year, , Global will prepare an annual operating budget for each Facility for the next Fiscal Year to meet the scope of services under this Agreement. Such budget shall contain appropriate line items for revenues and expenses and the projected net operating deficit or surplus. Each such budget shall be submitted together with details, including, without limitation, salary ranges for each Fiscal Year, and the benefits package's to be offered to Global employees and funded by the City as an Operating Expense.

(b) Global shall prepare and submit to the City Manager, prior to June 1<sup>st</sup> of each Fiscal Year, an annual cash flow budget for the succeeding Fiscal Year based upon the approved operating budget for such Fiscal Year. The City shall transfer to Global, on a monthly basis, those funds so approved and necessary for the operation, management, maintenance, marketing, and promotion of each Facility (including, without limitation, the Operating Expenses for such month), and Global shall deposit such funds, together with Operating Revenues of the respective Facility collected by Global, in that Facility's account.

(c) The annual budgets referred to in Sections 5.3 (a) and (b) hereof shall be reviewed by, and are subject to the approval of, the City Manager, and the Mayor and the City Commission, respectively. Global recognizes that the City is a municipal corporation created pursuant to the laws of the State of Florida and is bound by general and special laws pertaining to its budget process and the appropriation and expenditure of funds. Therefore, Global shall participate in the City's budget process, including, without limitation, an administrative review, a review by the City's Budget Advisory Committee, City Commission review, and review and comment by citizens at two(2) public hearings in the month of September, prior to approval of any proposed Facility operating budget. During the Term of this Agreement, the City Manager shall notify Global of any changes to the annual operating budget and the cash flow funding budget of a Facility for the succeeding Fiscal Year, proposed by Global (and with such changes, if any, as are made by the City prior to October 1<sup>st</sup> of each Fiscal Year). Such

budgets shall be the Approved Budgets for the following Fiscal Year; provided that if the annual operating budget or the annual cash flow budget of a Facility, as proposed by Global, is modified or reduced by the City in a manner which, in Global's reasonable business judgment and discretion, would materially impair Global's ability to manage the Facility, then Global shall have the right to terminate this Agreement pursuant to Section 12.2 (a) (with the effect set forth in Section 12.3).

(d) The parties acknowledge that, prior to the Commencement Date of this Agreement, Global has provided to the City a proposed Operating Budget for the first Fiscal Year. Such proposed budget shall be treated in the same manner and create the same rights as obtained following the submission of annual budgets as described in Section 5.3(c) hereof, including the approval rights set forth in such section. Once approved, such budget (with such changes as are made to such budget through the approval process) shall become the Operating Budget for the first Fiscal Year.

#### 5.4 Budget Modifications Initiated by Global.

Global may submit to the City Manager, for review and approval by the City Manager and the Mayor and the City Commission, respectively, at any time prior to the close of a Fiscal Year, a supplemental or revised annual operating budget or cash flow budget for such Fiscal Year. Upon the approval of the City Manager and the Mayor and the City Commission of such supplemental or revised budget, the Approved Budget for such Fiscal Year shall be deemed amended to incorporate such supplemental or revised budget. The Approved Budget may only be amended as set forth in Sections 5.3 (e) and 5.5 hereof, or in the two preceding sentences, except that Global shall have the right to amend the Approved Budget as may be necessary or appropriate as the result of the scheduling by Global of additional Events at a Facility (and the incurrence of additional Operating Expenses arising from the scheduling of additional Events at that Facility) as long as, prior to the scheduling of such Event(s), Global has a reasonable expectation that the projected Net Operating Loss for the Fiscal Year, as set forth in the Approved Budget, would not be increased, or that the Net Operating Profit for the Fiscal Year, as set forth in the Approved Budgets, would not be decreased, as a result of such additional Event(s).

#### 5.5 Budget Modifications Initiated by the City.

In the event that it appears reasonably likely, in any Fiscal Year during the Term hereof, that the actual Net Operating Loss for such Fiscal Year will be larger than projected in the annual operating budget for such Fiscal Year, or that the actual Net Operating Profit for such Fiscal Year will be less than projected in the annual operating budget for such Fiscal Year, the City Manager may request from Global a plan for reduction of Operating Expenses to a level consistent with the budgeted Net Operating Loss/Profit amounts. Global shall forthwith comply with any such expense reduction requested by the City Manager, and the Approved Budget for such Fiscal Year shall be modified accordingly; provided that if the annual operating budget or annual cash flow

budget is modified in a manner which, in Global's reasonable business judgment and discretion, would materially impair Global's ability to manage the Facility, Global shall have the right to terminate this Agreement pursuant to Section 12.2(a) (with the effect set forth in Section 12.3), and provided further that Global shall not be construed to have breached its obligations under this Agreement if such alleged breach has been caused by the limitations in the Fiscal Year's budget.

#### 5.6 Receipts and Disbursements.

Global shall establish and maintain, in one or more depositories of a banking institution in Miami Beach designated by the City Manager, one or more operating bank accounts for each Facility, in the name of the City, with Global as agent, and with signature authority in such employees of Global as Global shall determine. All revenues collected by Global from the operation of a respective Facility shall be deposited into such accounts and Operating Expenses (other than Operating Expenses to be paid from an account described in Section 5.7 hereof) shall be paid by Global as agent for the City from such accounts. All revenues collected by Global arising from operation of a Facility, including, without limitation, revenues from box office sales, Facility or equipment rentals, utility rental agreements, food and beverage concessions, or any other source, are the sole property of the City (except for box office sale revenues from third party Events, which are not deemed property of the City), held in trust by Global for the City for application as provided herein. Any amounts remaining in such accounts upon termination of this Agreement (for any reason), after payment of all outstanding Operating Expenses, shall be promptly paid by Global to the City.

#### 5.7 Ticket Sales Revenues.

Global shall establish, maintain, and hold, for each Facility, in a separate interest-bearing account in a depository of a banking institution in Miami Beach designated by the City Manager, any ticket sale revenues which it receives with respect to an Event to be held at the Facility, pending the completion of the Event. Such monies are to be held for the protection of ticket purchasers, the City and Global, and to provide a source of funds, as required for payments to performers and promoters and for payments of Operating Expenses in connection with the presentation of the Events, as may be required to be paid contemporaneously with the Event. Following the satisfactory completion of the Event, Global shall make a deposit into the operating account(s) established pursuant to Section 5.6 hereof of the amount in such account, and shall pay from the operating account Event Expenses and provide the City with a full Event settlement report. Interest which accrues on amounts deposited in the operating account(s) referred to in Section 5.6 hereof, and the ticket account referred to herein, shall be considered Operating Revenues. Bank service charges, if any, on such account(s) shall be considered Operating Expenses. Upon receipt thereof from the depository bank, Global shall promptly submit to the City, copies of all bank statements concerning the account(s) established by Global pursuant to Section 5.6 hereof and the ticket account referred to herein.

5.8 Capital Improvements; Capital Equipment.

The obligation to pay for, and authority to perform, direct and supervise, Capital Improvements and Capital Equipment purchases shall remain with the City (except for Global's obligation to pay the Capital Contribution in Section 5.10 hereof), and will not be considered Operating Expenses. The Annual Management Plan submitted pursuant to Section 6.2 hereof shall include Global's recommendation for Capital Improvements and Capital Equipment purchases to be accomplished during the year and shall be accompanied by an estimate of the cost of all such items and projects and a request that the City budget funds therefore. Notwithstanding the preceding or anything contained in this Agreement, the City shall retain the sole discretion and authority to determine whether, and to what level, to fund Capital Improvements and Capital Equipment purchases for a Facility.

Notwithstanding the preceding paragraph or anything contained in this Agreement, Global shall, at the request of the City Manager, pro-actively participate, at a corporate level, and including the general manager, with (and/or, where requested, on behalf of) the City in future discussions relating to any proposed long term expansion and/or improvements for the Convention Center.

5.9 Limitation of Global Liability.

Notwithstanding any provision herein to the contrary, and except for Global's express indemnification undertakings in Section 8.1 hereof, its express reimbursement undertakings in Section 6.1(b), and the Global Capital Contribution and scholarship fund contribution in Section 5.10, Global shall have no obligation to fund any cost, expense or liability with respect to the operation, management, marketing, and promotion of the Facilities. Furthermore, the parties agree that Global's obligations under this Agreement are subject in all respects to the limitations of the City approved Operating and Capital Budgets, and are contingent upon and subject to the City making available, in a timely fashion, the funds budgeted for and/or reasonably required by Global to carry out such obligations during the Term. Furthermore, Global shall have no liability with respect to the failure of the terms of this Agreement to comply with the Code or the Treasury Regulations. Notwithstanding the preceding sentence, nothing in this Section 5.9 shall be deemed to waive any liability that Global may have as a result of any act, omission, or failure to perform by Global under this Agreement, which results in non-compliance with the Code or the Treasury Regulations.

5.10 Global Capital Contribution/Scholarship Contribution/Public Benefits/Green Initiatives.

(a) Within thirty (30) days of execution of the Agreement by the parties, Global shall pay to the City the sum of Two Hundred Thousand Dollars (\$200,000) (the Capital Contribution), which sum shall be used at the sole discretion of the City.

(b) Amortization of the Global Capital Contribution. The amount of the Capital Contribution shall be amortized on a straight-line, non-cash basis over a period of sixty (60) months, commencing on the Commencement Date (the Amortization Period). In the event of expiration or termination of this Agreement prior to completion of the Amortization Period, the City shall pay to Global, upon such expiration or termination, the un-amortized portion of the Capital Contribution.

(c) Scholarships. Global shall contribute Fifteen Thousand Dollars (\$15,000) annually during the Term hereof toward the establishment of a scholarship fund for qualifying in-need Miami Beach residents pursuing a career in facility management and/or the hospitality and tourism industry (the Scholarship Contribution). Said fund will be administered by the City and applicants will be reviewed and recommended by Global. Payment of the Scholarship Contribution shall be made, as to the first payment, within thirty (30) days of execution of the Agreement by the parties and, as to subsequent payments, within thirty (30) days of the commencement of each Contract Year during the Term hereof.

(d) Other Public Benefit(s) to be Provided by Global/"Senior Dances".

(1) Global shall produce a minimum of four (4) dances each Contract Year during the Term hereof targeted to City of Miami Beach senior citizens (a "Senior Dance" or the "Senior Dances").

A. Senior Dances shall be considered a City Use pursuant to Section 13.1(a), except that, additionally the City shall not be responsible for any direct out-of-pocket (or other) expenses incurred in connection with these events; provided, however, Global shall not be charged any expense for utilities in connection with these events.

(2) Senior Dances shall be free and open to the public.

(3) Global shall provide all staffing for the Dances.

(4) Each Senior Dance shall be counted as a Use Day.

(5) Global shall have the ability to secure sponsors or other revenue generating activities or events which would be considered Operating Revenue; provided that such activities and/or events are ancillary to, related to, and/or otherwise compliment the Senior Dances (i.e. senior lifestyle exhibits, health and fitness expo, etc.),.

(e) Green Initiatives.

(1) Global shall implement the "Use of Green" cleaning chemicals.



(2) Global shall replace paper products with products manufactured from recycled waste.

(3) Global shall maintain a full recycling program including paper, cardboard, glass, cans, and plastics.

(4) Global shall work with the food and beverage provider on using biodegradable food and beverage products and reuse of cooking oils.

(5) Global shall establish strategic marketing relationship(s) with energy provider(s) to reduce energy costs at the Facilities, in return for advertising and marketing consideration.

(6) Global shall maintain its "Step-Up" Program.

(f) If requested by the City, Global agrees to participate, at a corporate level, including the Convention Center's General Manager, in discussions with the City relating to the City's proposed expansion and renovation of the Convention Center.

## **6. Records, Audits and Reports.**

### **6.1 Records and Audits.**

(a) Global shall keep full and accurate accounting records relating to its activities at the Facilities, in accordance with generally accepted accounting principles. Global shall maintain a system of bookkeeping adequate for its operations hereunder. Global shall give the City's authorized representatives access to such books and records, all of which will be maintained at the Convention Center, during reasonable business hours and upon reasonable advance notice. Global shall keep and preserve for at least three (3) years following each Fiscal Year, or for as long as such records are required to be retained pursuant to Florida Public Records Law (whichever is longer), all sales slips, rental and/or other use agreements, purchase orders, sales books, credit card invoices, bank books or duplicate deposit slips, and other evidence of Operating Revenues and Operating Expenses for such period. In addition, on or before October 31<sup>st</sup> following each Fiscal Year during the Term hereof, and as required by the City pursuant to its annual financial audit(s) of the Facilities, Global shall furnish to the City unaudited financial statements, including a balance sheet, a statement of profit and loss, and a statement of cash flow, for each Facility, for the preceding Fiscal Year, prepared in accordance with generally accepted accounting principles. The City shall thereafter cause such statements to be audited by, or on behalf of, the City, which audit shall contain an opinion expressed by the independent auditor of the accuracy of the financial records kept by Global and of amounts due to the City. The audit shall also provide a certification of Operating Revenues and Operating Expenses for such Fiscal Year. The City audit shall be conducted by a reputable firm selected by the City. Notwithstanding anything to the contrary herein, the cost of such audit shall be deemed an Operating Expense.

(b) Notwithstanding subsection (a) above, the City Manager shall have the right, at any time (and from time to time), to cause nationally recognized independent auditors to audit all of the books of Global relating to Operating Revenues and Operating Expenses, including, without limitation, cash register tapes, credit card invoices, duplicate deposit tapes, and invoices. The costs incurred by the City in conducting such audit shall be for the City's account and shall not be considered an Operating Expense, except as otherwise provided in the remainder of this paragraph. If any such audit demonstrates that the Operating Revenues or Operating Expenses reflected in any financial statements prepared by Global and audited as specified in subsection (a) above, are understated (in the case of Operating Expenses) or overstated (in the case of Operating Revenues), in either case by more than five percent (5%), Global shall promptly pay to the City the reasonable cost of such audit and shall promptly refund to the City any portion which is attributable to the overstatement or understatement, or both, as the case may be. The City specifically reserves the right to withhold or delay any funds to Global if the previous audited findings have not been satisfactorily resolved.

## 6.2 Annual Management Plan.

(a) Global shall provide to the City, on or before June 1 of each Fiscal Year during the Term hereof, an Annual Management Plan addressing each Facility, which shall include, without limitation, the annual operating budget (described in Section 5.3 hereof) for the next Fiscal Year, information regarding Global's anticipated operations for such Fiscal Year, including revenue projections, planned operating maintenance activities by Global, requested Capital Improvements and Capital Equipment purchases (and an anticipated budget therefore), anticipated Events, anticipated sales, marketing and promotional activities; planned equipment and furnishings purchases; and an updated inventory of all Capital Equipment (including, without limitation, furniture, fixtures and equipment) at each Facility.

The Annual Plan shall be subject to review, comment, and approval by the City Manager. Global shall have thirty (30) days from receipt of the revised Plan from the City to incorporate the City's comments into the Plan. Upon approval by the City Manager of the final Plan, such Annual Management Plan shall constitute the operating program for Global for the following Fiscal Year.

## 6.3 Reports.

(a) By the twenty-fifth day of each month during the Term hereof, Global shall provide to the City a written monthly report, in a form approved by the City Manager (which form may be similar to that used in other Global-managed facilities), setting forth each Facility's anticipated activities and financial condition for the upcoming month, and reporting on the prior month's activities and finances. Such monthly report shall include, without limitation:

(i) 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. Such records and reports shall also include a comparison of Operating Revenues and Operating Expenses for the corresponding months in the prior two (2) Fiscal Years;

(ii) Summary of Events held and future bookings scheduled for such month, and separate cash receipts and disbursements reports for each Event held at a Facility during such month. In addition, a summary of all exit conferences for Events at the Convention Center, and House Manager reports following each Event at the Colony ; completed customer satisfaction surveys; and sales and marketing reports, and any updates thereto, as also required pursuant to the Marketing and Promotion Plan in Section 6.4 hereof. A copy of the portion of the monthly report pertaining to the Convention Center also shall be provided to the Advisory Board.

(iii) A report specifying all maintenance work performed at each Facility during such period including, without limitation, with respect to the Comprehensive Preventive Maintenance Program and the maintenance of Capital Equipment, in accordance with the Minimum Operating and Maintenance Standards (attached hereto as **Exhibit "F"**). A copy of the portion of the monthly report pertaining to the Convention Center shall also be provided to the Advisory Board.

(iv) A listing of any incentives given, or fees waived, by Event, at each Facility; and

(v) Disclosure of any third party commissions (whether paid or exchanged for in-kind services) and report of any trades and/or barterers.

(b) Quarterly status reports as to the Convention Center food and beverage concessionaire's performance under its agreement with the City.

(c) On or before June 1st of each Fiscal Year during the Term hereof, Global shall provide, or cause to be provided, to the City, as part of its Annual Management Plan required pursuant to Section 6.2 hereof, an inventory of Capital Equipment for each Facility.

(d) Upon receipt thereof from the depository bank(s) described in Sections 5.6 and 5.7 hereof, Global shall provide, or cause to be provided, to the City (on a monthly basis), copies of all bank statements concerning (respectively) a Facility operating account and the ticket sale revenues account.

#### 6.4 Five Year Marketing/Promotion Plan.

(a) On or before January 1, 2014, Global shall submit, for review, comment, and approval by the City Manager, a strategic Five (5) Year Marketing and Promotion Plan that individually addresses each Facility's marketing and promotional strategy.

An update of the Marketing and Promotion Plan shall be submitted to the City annually on October 1<sup>st</sup> of each Contract Year.

Global will collaborate with the City on the development of (and all updates to) the Marketing and Promotion Plan, and shall solicit comments from the City Manager, as well as the Advisory Board and the GMCVB (as to the portion of the Plan addressing the Convention Center), and such other agencies, boards and committees as the City Manager may deem necessary, in his sole discretion and judgment.

(b) The Marketing and Promotion Plan shall address, in detail, Global's approaches, efforts, and timelines for accomplishing the following marketing and promotional obligations (as part of Global's comprehensive approach to marketing the Facilities):

- 1) Global to provide continuously during the Term hereof, an in-house ad-agency capability to place Event-related advertising.
- 2) Global to provide a report on sales and marketing efforts, as provided for in Section 6.3.
- 3) Global to develop an advertising buy program that will offer preferred (discount) pricing for each Facility's users on select Comcast services including, without limitation:
  - A. In-market ROS advertising on Comcast channels;
  - B. On Demand;
  - C. Comcast.net; and
  - D. Cross-channel marketing opportunities.
- 4) Global to provide assistance in obtaining discount pricing for advertising buys for the City and Facility users in out-of-market Comcast service areas.
- 5) Global to secure CNN Headline News Comcast - "Newsmakers" for Facilities including, without limitation:
  - A. A minimum of four (4) "Newsmaker" shows per Contract Year during the Term hereof. Each "Newsmaker" show shall consist of a five (5) minute interview format of approximately 21 airings during a one-week period (42 total times per month) on CNN Headline News; and
  - B. Segments provided to the Convention Center, to be used by the City and Convention Center users.
  - C. Best efforts to secure additional Newsmaker show opportunities.
- 6) Global to secure Comcast Bill Envelope Messaging including, without limitation:

- A. A minimum of two (2) times per Contract Year, the City or Convention Center users shall be provided with the ability to send messaging to Comcast subscribers in Miami-Dade, Broward and Monroe Counties on the monthly Comcast Bill Envelope (900,000 bills per month); and
  - B. Best efforts to secure additional Comcast Bill Envelope Messaging opportunities.
- 7) Global to secure Comcast Bill Messaging including, without limitation:
- A. A minimum of four (4) times per Contract Year, the City or Convention Center users will be provided the ability to send messaging to Comcast subscribers in Miami-Dade, Broward and Monroe Counties on the monthly Comcast Bill (900,000 bills per month); and
  - B. Best efforts to secure additional Comcast Bill Messaging opportunities.

#### 6.5 Special Reports.

Global shall prepare special reports from time to time, at the request of the City Manager, to the extent that such reports shall cover subject matter which is/are within the normal scope of Global's services under this Agreement.

### 7. **Employees.**

#### 7.1 Global Employees.

(a) Global shall select, hire, train, and employ such number of employees as Global deems necessary or appropriate to satisfy its responsibilities under this Agreement. Global shall use its best efforts to recruit employees who will be proficient, productive, and courteous to patrons consistent with standards employed at comparable first class facilities. Global shall have authority to hire, terminate and discipline any and all such personnel working at the Facilities.

(b) General Manager. Global shall assign a competent, full-time general manager to oversee Global's responsibilities under this Agreement, who shall be based at the Convention Center. As of the Commencement Date, the general manager shall be Bob Balsam. Prior to Global's appointment of any replacement general manager, Global shall consult with the City Manager with respect to the qualifications of any proposed candidate(s). The City Manager shall have prior written approval of any replacement general manager hired by Global (prior to Global finalizing any such hiring).

(c) Neither the general manager nor any and all other Global employees (whether based at the Facilities or not) shall, for any purpose, be considered to be employees of the City, and Global shall be solely responsible for their supervision and daily direction and control, and for setting and paying (as an Operating Expense) their compensation, federal income tax withholding, and any employee benefits.

## **8. Indemnification and Insurance.**

### **8.1 Indemnification.**

(a) Global shall indemnify, hold harmless and defend the City, its officers, 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 Global, its officers, agents, servants or employees, in the performance of services under this Agreement.

(b) In addition, Global shall indemnify, hold harmless and defend the City, its officers, agents, servants and employees, from and against any claim, demand or cause of action of whatsoever kind or nature arising out of any misconduct of Global, its officers, agents, servants or employees, not included in subsection (a) above and for which the City, its officers, agents, servants or employees, are alleged to be liable.

(c) The indemnification provisions of this subsection 8.1 shall survive termination and/or expiration of this Agreement.

### **8.2 Liability Insurance.**

(a) For each Facility covered under this Agreement, Global shall secure and deliver to the City Manager on or before the Commencement Date, and shall keep in force at all times during the Term of this Agreement, a commercial liability insurance policy, including public liability and property damage, covering the premises and the operations thereunder, in the amount of One Million Dollars (\$1,000,000.00) for bodily injury, and One Million Dollars (\$1,000,000.00) for property damage, including products and completed operations and independent contractors. Global shall also maintain Umbrella liability insurance with a limit of Five Million Dollars (\$5,000,000).

(b) Global shall also maintain comprehensive automotive bodily injury and property damage insurance for business use covering all vehicles operated by Global, and/or its officers, agents, and employees, in connection with the Facilities, whether owned by Global, the City, or otherwise, with a combined single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence (including an extension of hired and non-owned coverage).

(c) On or before the Commencement Date, and continuing thereafter during the Term hereof, Global shall also maintain:

(i) professional liability insurance with coverage of at least One Million Dollars (\$1,000,000.00) for claims of negligent errors, acts or omissions by Global;

(ii) employment practices liability insurance with coverage of at least One Million Dollars (\$1,000,000.00) for claims relating to the employment practices of Global at the Facilities pertaining to its employees;

(iii) contingent liquor liability insurance, in the amount of One Million Dollars (\$1,000,000.00); and

(iv) personal advertising liability insurance, in the amount of One Million Dollars (\$1,000,000.00).

(d) Global shall be the named insured under all such insurance policies. The City of Miami Beach, Florida shall be an additional insured under the insurance policies described in Sections 8.2(a) and (b) hereof, as its interests may appear. All of the insurance policies described in this Section 8.2 shall contain a provision affirming Global's indemnification obligations under Section 8.1 hereof.

(e) Certificates evidencing the existence of the above insurance policies, all in such form as the City Manager may reasonably require, shall be delivered to the City Manager on or before the Commencement Date.

(f) Notwithstanding the provisions of this Section 8.2, the parties hereto acknowledge that the above insurance policies may contain exclusions from coverage which are reasonable and customary for policies of such type.

(g) Each such insurance policy or certificate shall contain a valid provision or endorsement stating, "This policy will not be canceled or materially changed or altered without first giving thirty (30) days' written notice thereof to the City Manager, 1700 Convention Center Drive, Miami Beach, FL 33139, sent by certified mail, return receipt requested."

(h) A renewal binder of coverage (or satisfactory evidence of such renewal) shall be delivered to the City Manager at least twenty (20) days after an insurance policy's expiration date except for any policy expiring on the termination date of this Agreement or thereafter.

(i) Except as provided in Sections 8.5(b) and 8.6 hereof, all insurance procured by Global in accordance with the requirements of this Agreement shall be primary over any insurance carried by the City and not require contribution by the City.

### 8.3 Workers Compensation Insurance.

Global shall at all times during the Term hereof maintain worker's compensation insurance (including occupational disease hazards) with an authorized

insurance company, through the Florida State Compensation Insurance Fund, or through an authorized self-insurance plan approved by the State of Florida, insuring its employees at the Facilities in amounts equal to or greater than required under law.

#### 8.4 Crime Insurance and Performance Guarantees.

(a) Crime Insurance. Global shall provide to the City, during the Term of this Agreement, crime insurance coverage covering all of Global's employees under this Agreement, in the amount of Five Hundred Thousand Dollars (\$500,000.00) for each loss, to reimburse the City for losses experienced due to the dishonest acts of Global's employees.

(b) For any Contract Year in which (a) a Net Operating Profit is projected in the Approved Budget, if the actual Net Operating Profit achieved for such year is more than \$50,000 less than the Net Operating Profit projected in such Approved Budget; or (b) a Net Operating Loss is projected in the Approved Budget, if the actual Net Operating Loss achieved for such year is more than \$50,000 greater than the Net Operating Loss projected in the Approved Budget, then the Incentive Fee earned by Global for such Contract Year shall be reduced by fifty cents (\$.50) for every dollar of Shortfall, up to the Cap. For purposes of this subsection, "Shortfall", with respect to any Contract Year, shall mean either (i) if the Approved Budget reflects a projected Net Operating Profit, the amount by which the Net Operating Profit projected in the Approved Budget, less \$50,000, exceeds the actual Net Operating Profit in such year; or (ii) if the Approved Budget reflects a projected Net Operating Loss, the amount by which the actual Net Operating Loss projected in the Approved Budget, plus an additional \$50,000 of Net Operating Loss, exceeds the actual Net Operating Loss in such year. The "Cap" shall mean fifty percent (50%) of the Incentive Fee actually earned by Global in the applicable Contract Year. Notwithstanding the foregoing, the Incentive Fee shall not be reduced to the extent Global's failure to achieve the applicable benchmark is due to reasons outside Global's reasonable control, such as a Force Majeure (as defined in Section 13.5 hereof) affecting the Facility, or new operating or maintenance requirements imposed by the City after finalization of the Approved Budget.

#### 8.5 Property Insurance.

(a) The City shall, subject to Section 5.2 hereof, maintain its current property and hazard insurance covering the premises of each Facility and the City's personal property located thereon. In addition, the City shall, with respect to the losses covered by such property and hazard insurance, waive any subrogation rights that it may have against Global, and its officers, employees and agents, whether or not the City self-insures for the losses covered by such insurance. Nothing in this Agreement is



intended to require Global to maintain property and hazard insurance covering the premises at the Facilities or the City's personal property thereon.

(b) The original or a certified copies of the policies referred to in Section 8.5(a) (with all required policy endorsements), plus certificates evidencing the existence thereof, shall be delivered to Global on or prior to the Commencement Date. Notwithstanding the provisions of Section 8.5(a), the parties hereto acknowledge that the above policies may contain exclusions from coverage which are reasonable and customary for policies of such type. Each such policy or certificate shall contain a valid provision or endorsement stating, "This policy will not be canceled or materially changed or altered without first giving thirty (30) days' written notice thereof to "Global Spectrum, L.P., Risk Management Director, 3601 South Broad Street, Philadelphia, PA, 19148, sent by certified mail, return receipt requested."

(c) A renewal binder of coverage (or satisfactory evidence of such renewal) shall be delivered to Global at least twenty (20) days after a policy's expiration date, except for any policy expiring on the termination date of this Agreement or thereafter.

#### **8.6 Certain Other Insurance.**

If any of the City Agreements consist of agreements with independent contractors to provide services at a Facility (or at the Facilities), in renewing any such City Agreement, the City Manager shall use reasonable efforts to cause such contractors to name Global as an additional insured under any insurance maintained by such contractors pursuant to the terms of such City Agreements and, in such event, to deliver to Global promptly after request therefore a certified copy of such policy and a certificate evidencing the existence thereof. In addition, if Global enters into any agreements during the Term of this Agreement with any independent contractors for the provision of services at a Facility (or at the Facilities), Global shall have the right to reasonably require such contractors to name Global (in addition to naming the City of Miami Beach, Florida) as an additional insured under any insurance required by Global thereunder and to deliver to Global, prior to the performance of such services, a certified copy of such policy, and a certificate evidencing the existence thereof.

#### **9. Ownership of Assets.**

##### **9.1 Ownership.**

The ownership of buildings and real estate, technical and office equipment and facilities, furniture, displays, fixtures, vehicles and similar tangible property located at each Facility shall remain with the City. Ownership of and title to all intellectual property rights of whatsoever value, held in the City's name, shall remain in the name of the City. The ownership of consumable assets (such as office supplies and cleaning materials) purchased with Operating Revenues or City funds shall remain with the City, but such assets may be utilized and consumed by Global in its performance of services

under this Agreement. The ownership of data processing programs and software owned by the City shall remain with the City, and the ownership of data processing programs and software owned by Global shall remain with Global. Global shall not take or use, for its own purposes, customer or exhibitor lists or similar materials developed by, or on behalf of, the City for the use of the Facilities, unless prior written consent is granted by the City Manager. Ownership of equipment, furnishings, materials, or fixtures not considered to be real property and other personal property purchased by Global with City funds for use at (and for) a Facility, shall vest in the City automatically and immediately upon purchase or acquisition. Any assets of the City including, without limitation, those described herein, shall not be pledged, liened, encumbered or otherwise alienated or assigned.

## 9.2 City Obligations.

(a) Throughout the Term of this Agreement, the City will maintain full beneficial use and ownership of the Facilities and will pay, keep, observe and perform all payments, terms, covenants, conditions and obligations under any bonds, debentures or other security agreements or contracts, relating to a respective Facility, to which the City may be bound.

(b) The City shall provide Global with necessary office space at the Convention Center and such furniture, fixtures, and equipment as is available as of the Commencement Date in that Facility.

(c) The City shall provide Global with unrestricted egress and ingress to each Facility and shall make available to Global, at no cost, parking spaces adjacent to the Convention Center, or located on City property in the immediate environs.

## 10. **Assignment; Affiliates.**

### 10.1 Assignment.

10.2 Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either party hereto without the prior written consent of the other party hereto. For purposes of this subsection 10.1, the City's consent shall be defined as requiring the consent of the Mayor and City Commission.

### 10.3 Global Affiliates.

(a) Transactions with Affiliates, Subsidiaries, Parent Company, or Sister Companies. In connection with its management responsibilities hereunder relating to the purchase and/or procurement of equipment, materials, supplies, inventories, and/or services for a Facility, Global shall have the right, but not the obligation, to purchase and/or procure from an Affiliate, subsidiary, parent company, or sister company of Global. In the event Global purchases and/or procures from an Affiliate, subsidiary, parent company, or sister company of Global, the City Manager's

prior written approval must be obtained. In determining whether to grant his consent or not, the City Manager may, at a minimum, require that the prices charged for such goods and/or services be competitive with those obtainable from others providing comparable goods and/or rendering comparable services. To ensure compliance in this respect, the City Manager may require Global to obtain at least two (2) other competitive bids from persons (other than an Affiliate, subsidiaries, parent company, or sister companies of Global) whenever Global proposes to transact business with an Affiliate, subsidiary, parent company, or sister company for the provision of goods and/or services hereunder.

(b) Conflicts of Interest. The City acknowledges that Global manages other public assembly facilities which may, from time to time, be in competition with a Facility or the Facilities. The management of competing facilities will not, in and of itself, be deemed a conflict of interest or breach of Global's duties hereunder; provided, however, in all instances in which a Facility is in competition with other public assembly facilities managed by Global for the solicitation of certain events, Global shall not involve its corporate or regional offices on behalf of any such other facility in an attempt to influence the decision-making process regarding the selection of a site by such events.

The primary purpose of this Agreement is for the management, operation, promotion and marketing of the Facilities. Global shall not use and/or otherwise exploit the logo, trademark, identity, and overall "brand" of the Facilities and/or of the City of Miami Beach, without the prior written consent of the City Manager. This shall include, without limitation, the use of the Convention Center, Colony, and/or any City logo, trademark, identity, and/or "brand."

(c) Messe Schweiz (M.S.) Participation and Obligations.

1. M.S. required to actively participate in Agreement. "Active participation" shall be defined as and, at a minimum, shall include:

- a) Provide Global with on-going advice, as requested, regarding the management, marketing and operation of the Convention Center;
- b) Participation by M.S. on a Convention Center user group;
- c) Continued cooperation by M.S. in providing international sales and referrals of interested European/International show producers to Global during the Term;
- d) Continue to explore the possibility of producing additional M.S. shows at the Convention Center subject to date availability and commercial viability as determined solely by Global and M.S.) M.S. shall be responsible for its air fare and any other travel costs for travel to Miami Beach related to its participation in

this Agreement, as set forth herein, and any and all such costs shall not be considered as Operating Expenses.

2. City shall have principal oversight, supervision, and control over certain M.S. activities at the Facilities as follows:

(a) City shall have primary and final oversight/review/approval of any proposed business terms, including without limitation, Convention Center (and/or any of the other Facilities) lease terms and/or any and all other incentives and/or City proposals, commitments, initiations, etc., related to Art Basel Miami Beach.

(b) Same provisions in subsection (a) above would apply to new M.S. owned shows or events and/or any shows or events (including international shows) brought to the City by M.S.

(c) M.S. shall be required to submit any proposed business and/or other terms for proposed M.S. owned and/or new (including international) shows or events to City Manager, for his prior approval of said business and other terms, prior to any such deal being made (provided City Manager shall not veto any shows or events based on show/event content or theme, and that City Manager review is limited to business terms).

3. No City Compensation to M.S.: It is understood the City is not entering into an Agreement with M.S. All compensation to M.S. (if any) shall be made by Global from the Management Fee. MS is not entitled to sales commissions.

## **11. Laws and Permits.**

### **11.1 Permits, Licenses, Taxes and Liens.**

Global shall be solely responsible for procuring any permits and licenses required for the business to be conducted by it hereunder. The City shall reasonably cooperate with Global in applying for such permits and licenses. Global shall deliver copies of all such permits and licenses to the City Manager. Global shall promptly pay, out of the accounts specified in Section 5.6 hereof, all taxes, excises, license fees and permit fees of whatever nature arising from its operation, management, maintenance, promotion, and marketing of the Facilities. Global shall not let any mechanic's or materialman's or any other lien become attached to any premises or improvements at a Facility, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any mechanic or materialman, so long as the work, labor or material was provided at Global's direction.

## 11.2 Governmental Compliance.

Global, shall comply with all federal, State, Miami-Dade County and City regulations, ordinances, statutes, rules, laws and constitutional provisions (collectively, Laws) applicable to Global's management of the Facilities hereunder, including, without limitation, Title III of the ADA and the provision of such auxiliary aids or alternate services as may be required by the ADA.

Nothing in this Section 11.2 or elsewhere in this Agreement shall, however, require Global to undertake any ADA compliance activity, nor shall Global have any liability under this Agreement therefore, if (a) such activity requires any Capital Improvements or Capital Equipment purchases, unless the City provides funds for same pursuant to Section 5.8 hereof, or (b) any City Agreement for use, occupancy, rental, and/or lease of a Facility fails to require lessee, tenant, promoter or user (collectively, a "user") of the Facility to comply, and to be financially responsible for compliance, with Title III of the ADA, in connection with any activities of user at that Facility. Furthermore, Global shall have the right to require any user of a Facility to comply, and to be financially responsible for compliance, with Title III of the ADA in connection with any activities of such user at that Facility.

## 11.3 No Discrimination in Employment.

In connection with the performance of work/services under this Agreement, Global shall not refuse to hire, discharge, refuse to promote, demote, or discriminate in matters of compensation against, any person otherwise qualified, solely because of race, color, religion, gender, age, national origin, military status, sexual orientation, marital status, or physical or mental disability.

## 11.4 Living Wage.

This Agreement is subject to, and Global shall be required to comply throughout the Term hereof with, the provisions of the City's Living Wage requirements, as codified in Sections 2-407 through 2-410 of the City Code (as same may be amended from time to time).

## 11.5 Equal Benefits for Domestic Partners.

This Agreement is subject to, and Global shall be required to comply throughout the Term hereof with, the requirements of Section 2-373 of the City Code entitled, "Requirement for city contractors to provide equal benefits for domestic partners" (as same may be amended from time to time). The Agreement is deemed to be a "covered contract," as defined in Section 2-373(a)(6) of the City Code, and shall require Global to provide its employees working pursuant to this Agreement (whether working within the City of Miami Beach city limits, or within the United States, but outside the City limits, if such employees are directly performing work pursuant to this Agreement) "Equal Benefits" (as defined in Section 2-373(a)(8) of the City Code) to its

employees with spouses and its employees with "domestic partners" (as defined in Section 2-373(a)(7) of the City Code). Failure by Global to comply with the requirements of Section 2-373 of the City Code (as same may be amended from time to time) shall be deemed to be a material breach of this Agreement which may result in termination of the Agreement, with all monies due or to become due under the Agreement to be returned by the City. The City may also pursue any and all remedies at law or in equity for such breach. Failure to comply with Section 2-373 may also subject Global to debarment, in accordance with the procedures provided in Sections 2-397 through 2-406 of the City Code.

## **12. Termination.**

### **12.1 Termination Upon Default.**

Either party may terminate this Agreement upon a default by the other party hereunder. A party shall be in default hereunder if (i) such party fails to pay any sum payable hereunder within thirty (30) days after same is due and payable, or (ii) such party fails in any material respect to perform or comply with any of the other terms, covenants, agreements or conditions hereof and such failure continues for more than sixty (60) days after written notice thereof from the other party. In the event that a default (other than a default in the payment of money) is not reasonably susceptible to being cured within the sixty (60) day period, the defaulting party shall not be considered in default if it shall, within such sixty (60) day period, have commenced with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence in the curing of such default; provided, however, that in no event shall a cure period pursuant to this Section 12.1 exceed a maximum total of 120 days after the initial notice of default therefore.

### **12.2 Termination Other than Upon Default.**

(a) Global shall have the right to terminate this Agreement upon sixty (60) days written notice to the City (i) under the circumstances described in Sections 5.2, 5.3 or 5.5 hereof, or (ii) if the City fails to make Capital Improvements or Capital Equipment purchases at a Facility or to correct any condition at a Facility noted by Global pursuant to Section 2.3(u) hereof, to the extent that such condition materially impairs the ability of Global to manage that Facility.

(b) Either party shall have the right to terminate this Agreement under the circumstances specified in Section 13.5(c) hereof.

(c) Partial Termination for Convenience by City. In addition to the rights and options to terminate pursuant to Sections 12.1 and 12.2 (a) and (b) hereof, or any other provision in this Agreement, the City reserves and retains the right, at its sole option and discretion, to terminate this Agreement, in part, without cause and without penalty, with regard to Global's rights and responsibilities with respect to the operation, management, maintenance, promotion and marketing of the Colony, said partial

termination to become effective upon sixty (60) days prior written notice to Global. In the event of a partial termination pursuant to this subsection (c), the Management Fee shall be adjusted to reflect such reduction pursuant to the allocation set forth in Section 4.1(b) (excluding the portion of the Fee allocated for the Colony), and this Agreement shall remain in full force and effect with respect to the Convention Center (and, as the case may be, any Additional Facility(ies)).

### 12.3 Effect of Termination.

In the event this Agreement expires or is terminated: (i) all Operating Expenses incurred or committed for prior to the date of expiration or termination shall be paid using funds on deposit in the account(s) described in Sections 5.6 and 5.7 hereof and, to the extent such funds are not sufficient, the City shall pay all such Operating Expenses; and (ii) the City shall promptly pay Global all fees earned to the date of expiration or termination (the fees described in Section 4 hereof being subject to proration), provided that the City shall be entitled to offset against such unpaid fees any damages directly incurred by the City in remedying any default by Global hereunder which resulted in such termination (other than the fees or expenses of any replacement manager for the Facilities); and provided further that, in the event of termination or expiration of the Agreement prior to completion of the initial Term, and where such termination or expiration is not caused by a default of the City or a Force Majeure, the City shall also be entitled to offset against such unpaid fees any costs incurred by the City to relocate Global employees to the Facility to perform under this Agreement, subject to proration based on the number of days such employees worked at the Facility out of 1,095. Upon the expiration of this Agreement or a termination pursuant to Section 12.1 or 12.2 hereof, all further obligations of the parties hereunder shall terminate except for the obligations in this Section 12.3 and in Sections 8.1 and 12.4 hereof.

### 12.4 Surrender of Premises.

Upon termination of this Agreement (termination shall, for all purposes in this Agreement, include termination pursuant to the terms of this Section 12 and any expiration during the Term hereof), Global shall surrender and vacate the Facilities upon the effective date of such termination. The Facilities, and all furnishings, fixtures, and equipment thereon, shall be returned to the City in good repair, reasonable wear and tear excepted. All reports, records (including financial records), and any and all other documents maintained by Global relating to this Agreement, other than materials containing Global's proprietary information, shall be immediately surrendered to the City by Global upon termination.

## **13. Miscellaneous.**

### 13.1 City Use of a Facility/Facilities.

(a) The City shall have the right to use each Facility, or any part thereof, upon reasonable advance notice and subject to availability, for such public uses including, without limitation, meetings, seminars, training classes, or such other public uses, as may be determined by the City Manager, free of charge, except that direct out-of-pocket expenses incurred in connection with such use(s) shall be paid by the City.

(b) The City shall not schedule use of a Facility pursuant to subsection (a) above if such use will conflict with paying events booked by Global.

(c) Notwithstanding subsections (a) and (b) above, Global acknowledges that the Convention Center is a high visibility City-owned building. In the case of any type of emergency situation or natural disaster, including, without limitation, a hurricane or other extreme weather event, the City Manager may determine that the City's use of the Facility is necessary to protect the health, safety, and welfare of the residents and visitors of the City. Upon that determination (which determination shall be within the sole authority of the City Manager and shall be based upon the best information and knowledge regarding the particular emergency that the City Manager has available to him at the time of making such determination), and upon verbal or written notice to the general manager, Global shall promptly cede use of the Convention Center, or any portion thereof, for City use, free of charge (except that direct out-of-pocket expenses incurred in connection with such use shall be paid by the City), during the pendency of the emergency event and/or natural disaster (including, without limitation, the time period(s) immediately preceding and following the actual occurrence of such event).

### 13.2 Venue/Waiver of Jury Trial.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principals of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami-Dade County, Florida, if in state court, and the U.S. District Court, Southern District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, CITY AND GLOBAL EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

### 13.3 Relationship of Parties.

Nothing herein contained is intended or shall be construed in any way as creating a partnership, joint venture, employee, or similar relationship between the City and Global. In operating the Facilities, entering into Facilities contracts, accepting reservations, and conducting financial transactions for the Facilities, Global acts on behalf of and as agent for City (but subject to the limitations on Global's authority as set out in this Agreement) with the fiduciary duties required of one acting in such capacity.

Global shall have exclusive control of and the exclusive right to manage and operate the



Facility pursuant to this Agreement and shall be solely responsible for the acts and omissions of its officers, agents, and employees. No person performing any of the work or services described hereunder shall be considered an officer, servant or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

#### 13.4 Written Amendments.

This Agreement shall not be altered, modified or amended in whole or in part, except in writing executed by each of the parties hereto.

#### 13.5 Force Majeure.

(a) No party will be liable or responsible to the other party for any delay, damage, loss, failure, or inability to perform caused by "Force Majeure" if notice is provided to the other party within ten (10) days of the date on which such party gains actual knowledge of the event of "Force Majeure" that such party is unable to perform. The term "Force Majeure," as used in this Agreement, means the following: an act of God, strike, war, public rioting, lightning, fire, storm, flood, explosions, epidemics, landslides, lightening storms, earthquakes, floods, storms, washouts, civil disturbances, explosions, and any other cause (whether of the kinds specifically enumerated above or otherwise) which is not reasonably within the control of the party whose performance is to be excused and which by the exercise of due diligence could not be reasonably prevented or overcome (it being acknowledged that under no circumstances shall a failure to pay amounts due and payable hereunder be excusable due to a Force Majeure).

(b) Neither party hereto shall be under any obligation to supply any service or services if and to the extent and during any period that the supplying of any such service or services or the provision of any component necessary therefore shall be prohibited or rationed by any Law.

(c) In the event of damage to or destruction of a Facility or of the Facilities by reason of fire, storm or other casualty or occurrence of any nature or any regulatory action or requirements that, in either case, is expected to render the Facility or Facilities materially untenable, for a period of at least one hundred eighty (180) days from the happening of the fire, other casualty or any other such event, either party may terminate this Agreement upon written notice to the other; provided, however, if the damage or destruction does not render the Convention Center materially untenable for such period of time, either party may terminate this Agreement solely with respect to the other Facility(ies) rendered untenable, and this Agreement shall continue in effect with respect to the Convention Center and any other Facility not so affected, provided that the Management Fee shall be adjusted to reflect such reduction pursuant to the allocation set forth in Section 4.1(b) (excluding the portion of the Fee allocated for the Facility [or Facilities] being terminated).

(d) Global may suspend performance required under this Agreement, without any further liability, in the event of any act of God or other occurrence, which act or occurrence is of such effect and duration as to effectively curtail the use of a Facility or of the Facilities so as to effect a substantial reduction in the need for the services provided by Global for a period in excess of 180 days; provided, however, that for the purposes of this subsection, Global shall have the right to suspend performance retroactively effective as of the date of the use of a Facility or of the Facilities was effectively curtailed. "Substantial reduction in the need for these services provided by Global" shall mean such a reduction as shall make the provision of any services by Global economically impractical. No payment of the Management Fee otherwise due and payable to Global shall be made by the City during the period of suspension. In lieu thereof, the City and Global may agree to a reduced Management Fee payment for the period of reduction in services required.

### 13.6 Binding Upon Successors and Assigns; No Third-Party Beneficiaries.

(a) This Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon, the parties hereto and each of their respective successors and permitted assigns.

(b) This Agreement shall not be construed as giving any person, other than the parties hereto and their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any of the provisions herein contained, this Agreement and all provisions and conditions hereof being intended to be, and being, for the sole and exclusive benefit of such parties and their successors and permitted assigns and for the benefit of no other person or entity.

### 13.7 Notices.

Any notice, consent or other communication given pursuant to this Agreement will be in writing and will be effective either (a) when delivered personally to the party for whom intended, (b) on the second business day following mailing by an overnight courier service that is generally recognized as reliable, (c) on the fifth day following mailing by certified or registered mail, return receipt requested, postage prepaid, or (d) on the date transmitted by telecopy as shown on the telecopy confirmation therefore as long as such telecopy transmission is followed by mailing of such notice by certified or registered mail, return receipt requested, postage prepaid, in any case addressed to such party as set forth below or as a party may designate by written notice given to the other party in accordance herewith.

#### To the City:

City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, FL 33139  
Attn: Jimmy Morales, City Manager

Telecopy: \_\_\_\_\_

AND

City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, FL 33139  
Attn: Jose Smith\_, City Attorney  
Telecopy: \_\_\_\_\_

AND

City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida  
Attn: Max Sklar, Tourism, Culture, & Economic Development Director  
Telecopy:

To Global:  
Global Spectrum, L.P.  
3601 S. Broad Street  
Philadelphia, PA 19148  
Attn: Chief Operating Officer  
Telecopy: 215-389-5424

AND

Comcast Spectacor, LP  
3601 S. Broad Street  
Philadelphia, PA 19147  
Attn: General Counsel  
Telecopy: 215-389-9461

### 13.8 Section Headings and Defined Terms.

The section headings contained herein are for reference purposes only and shall not in any way affect the meaning and interpretation of this Agreement. The terms defined herein and in any agreement executed in connection herewith include the plural as well as the singular and the singular as well as the plural, and the use of masculine pronouns shall include the feminine and neuter. Except as otherwise indicated, all agreements defined herein refer to the same as from time to time amended or supplemented or the terms thereof waived or modified in accordance herewith and therewith. The parties to this Agreement have all participated fully in the negotiation and preparation hereof; and, accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto.

### 13.9 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original copy of this Agreement, and all of which, when taken together, shall be deemed to constitute but one and the same agreement.

### 13.10 Severability.

The invalidity or unenforceability of any particular provision, or part of any provision, of this Agreement shall not affect the other provisions or parts hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions or parts were omitted.

### 13.11 Non-Waiver.

A failure by either party to take any action with respect to any default or violation by the other of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of such party to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default.

### 13.12 Certain Representations and Warranties.

(a) The City represents, warrants, and covenants to Global the following: (i) all required approvals have been obtained, and the City has full legal right, power and authority to enter into and perform its obligations hereunder; and (ii) this Agreement has been duly executed and delivered by the City and constitutes a valid and binding obligation of the City, 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.

(b) Global represents and warrants to the City the following: (i) all required approvals have been obtained, and Global has full legal right, power and authority to enter into and perform its obligations hereunder, and (ii) this Agreement has been duly executed and delivered by Global and constitutes a valid and binding obligation of Global, 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.

### 13.13 Approvals.

Whenever any matter set forth herein is made subject to the approval of the City or Global, the approval shall be expressed in writing and the City or Global (as applicable) shall not unreasonably withhold, delay or condition any such approval.

### 13.14 Contractor's Compliance with Florida Public Records Law.

To the extent that Global is acting on behalf of the City, as provided under Section 119.011(2), Florida Statutes, this Agreement shall be subject to Florida Public Records Law including, without limitation, Chapter 119, Florida Statutes, as same may be amended from time to time.

As required pursuant to Section 119.0701, Florida Statutes, Global shall comply with public records law; specifically to:

- (a) keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service;
- (b) provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;
- (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and
- (d) meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract, and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

Global's failure to comply with this Section, or to comply with a public records request brought pursuant to this Section, may be deemed by the City to be an event of default under this Agreement.

### 13.15 Entire Agreement.

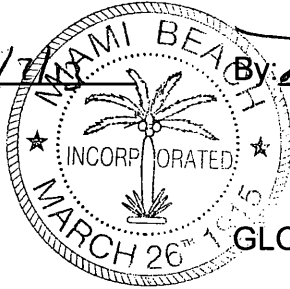
This Agreement and the Exhibits attached hereto contain the entire agreement between the parties with respect to the subject matter hereof and supersedes and replaces any prior agreements, understandings and commitments of the parties hereto, except that any obligations accruing under the Original Agreement (such as indemnity and payment obligations) that are not satisfied as of the date hereof shall continue in effect and survive termination hereof. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first above written.

ATTEST:

CITY OF MIAMI BEACH, FLORIDA

         <sup>6/5/13</sup>          By:          *Mattie H. Bowers*



GLOBAL SPECTRUM, L.P.

ATTEST:

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

By: \_\_\_\_\_  
Name: *John Pye*  
Title: *COO*

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

                  *9/23/13*  
City Attorney Date

**EXHIBIT "A"**  
**CITY AGREEMENTS**

**EXHIBIT "B"**

**CONVENTION CENTER BOOKING POLICIES**



**EXHIBIT "C"**

**COLONY THEATRE BOOKING POLICIES**

**EXHIBIT "D"  
INTENTIONALLY OMITTED  
EXHIBIT "E"**

**STANDARD CITY – FORM USE AGREEMENTS FOR:**

- 1. Convention Center**
  - a) Trade Shows**
  - b) Consumer Shows**
  
- 2. Colony Theatre**

**EXHIBIT "F"**

**MINIMUM FACILITIES MAINTENANCE STANDARDS**

**EXHIBIT "G"**

**FACILITIES RATE SCHEDULES**  
**(in effect as of Commencement Date)**

**EXHIBIT "H"**

**INSURANCE REQUIREMENTS FOR USERS/LESSEES OF THE FACILITIES**

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## **EXHIBITS**

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**EXHIBIT "B" – CONVENTION CENTER BOOKING POLICIES**

**EXHIBIT "C" – COLONY THEATRE BOOKING POLICIES**

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**EXHIBIT "F" – MINIMUM FACILITIES MAINTENANCE STANDARDS**

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**EXHIBIT "H" – INSURANCE REQUIREMENTS FOR USERS/LESSEES OF THE FACILITIES**