

AMENDMENT TO MANAGEMENT AGREEMENT

This Amendment to Management Agreement (this "Amendment") is made as of the 21st day of May, 2019, by and between the City of Grand Forks, North Dakota, a municipal corporation, doing business as the Alerus Center ("City"), and Global Spectrum, LP, a Delaware limited partnership d/b/a Spectra Venue Management ("Manager").

RECITALS

WHEREAS, the City and Manager are parties to a Management Agreement dated July 1, 2017, pursuant to which City engaged Manager to manage and operate the Alerus Center in Grand Forks, North Dakota (the "Facility"); and

WHEREAS, the parties wish to amend the Agreement, in part, as set forth herein.

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

AMENDMENTS

- I. Section 3.2 of the Management Agreement shall be amended to provide as follows:

Section 3.2 Incentive Fee. In addition to the Fixed Management Fee, Manager is eligible to receive an Incentive Fee for each full or partial Operating Year of the Term, starting with the 2018 Operating Year (no Incentive Fee shall be paid for the period of July 1, 2017 to December 31, 2017). The Incentive Fee shall be comprised of both a qualitative based fee ("Qualitative Fee") and a quantitative based fee ("Quantitative Fee"), as follows:

- (a) Qualitative Fee. Manager is eligible to earn a Qualitative Fee of up to Twenty-five Thousand Dollars (\$25,000.00) in each Operating Year, prorated for any Operating Years of less than a full 12 months based on the actual number of days elapsed in such Operating Year out of 365, starting with the 2018 Operating Year. The payment of a Qualitative Fee shall be discretionary on the part of the City based on the City's reasonable and good faith evaluation of Manager's performance during each Operating Year Manager must perform at an exceptional level in the following six qualitative categories:

- (1) Results of customer service surveys ("Customer Satisfaction");
- (2) Facility appearance, cleanliness, and maintenance

- (3) (“Maintenance/Upkeep”);
- (3) Community Involvement/Stakeholder Relations (“Community Involvement”);
- (4) Facility User Satisfaction (“User Satisfaction”) surveys, letters, emails;
- (5) Creative Event Marketing Efforts (“Marketing”); and
- (6) Food & Beverage Quality (“Food Quality”).

The City, through the Alerus Center Commission, shall determine through a performance rating for each category, rated on a scale from 1 to 5 with 5 being the highest (for a maximum total score of 30). Once annually at Operating Year-end, Manager shall present the year in review for each category and each Member of the Commission shall assign a performance rating for each category to be compiled by the Commission Chair or such other designated person to determine a total score. Beginning with the 2019 Operating Year, in order to earn a Qualitative Fee for any particular category, the score for such category shall be at least 3.5 out of 5. Once the total score is determined for each category in which the score was at least 3.5, that total score shall be divided by 30 to determine the percentage of the Qualitative Fee Manager shall earn. By way of example, assume in any Operating Year that Manager scored 2 points on Customer Satisfaction, 3 points on Maintenance/Upkeep, 4 points on Community Involvement, 4 points on User Satisfaction, 4 points on Marketing, and 5 points on Food Quality. Manager would not be eligible to earn any Qualitative Fee for the Customer Satisfaction and Maintenance/Upkeep categories. For the remaining categories, the total points would equal 17. When divided by 30, the percentage would be 56.67%. Consequently, the Qualitative Fee for that Operating Year would be \$14,167.50 (\$25,000 x .5667).

- (b) Quantitative Fee. Except as otherwise provided in this section (Section 3.2), Manager shall receive a percentage of the amount by which Revenue in any Operating Year (starting with the 2018 Operating Year), as adjusted below, exceeds the Revenue Benchmark, as follows:

<u>Revenue</u>	<u>Percentage Due Manager in excess of the Revenue Benchmark</u>
\$0 to \$250,000	17.5%
\$250,000 to \$500,000	22.5%
In excess of \$500,000	27.5%

- (c) Beginning with the 2019 Operating Year, the Revenue Benchmark shall

mean the average Revenue from years 2016, 2017 and 2018, as determined by the year-end audit for such years, including the same Revenue categories as are included in the term "Revenue" as defined herein. Notwithstanding anything to the contrary contained herein, the parties agree that, for purposes of calculating the Quantitative Fee, the following revenue items shall be excluded from both the Revenue Benchmark and from actual Revenue generated by Manager: (1) revenue from the sale of Commercial Rights, (2) the Hospitality Tax, and (3) reimbursement by University of North Dakota for cost of the football turf. Upon completion of the audit for 2018, the parties shall determine the Revenue Benchmark based upon the above definition and confirm such benchmark in writing. For any Operating Years of less than a full 12-months, the Revenue Benchmark shall be prorated based on the actual number of days elapsed in such Operating Year out of 365. For years after 2019, the Revenue Benchmark shall be based upon the 2019 Benchmark adjusted annually by the percentage increase in CPI, if any.

- (d) With regard to the 2018 Operating Year, the parties agree that the Incentive Fee earned by Manager is \$306,128.50. Such Incentive Fee shall be paid to Manager no later than May 31, 2019.
- (e) Beginning with the 2019 Operating Year, the total Incentive Fee (Qualitative Fee plus Quantitative Fee) Manager may earn in any Operating Year shall not exceed the Incentive Fee Cap. The "Incentive Fee Cap" for the 2019 Operating Year shall be \$139,050. For years after 2019, the Incentive Fee Cap shall be adjusted by the percentage increase in CPI. Also beginning with the 2019 Operating Year, the total Incentive Fee (Qualitative Fee plus Quantitative Fee) Manager may earn in any Operating Year shall not result in a net loss (defined as Operating Expenses plus earned Incentive Fee exceeding revenue) for the Facility for that year. In the event payment of any Incentive Fees in any Operating Year results in the Facility experiencing a net loss in such Operating Year, the earned Incentive Fee for such year shall be reduced on a dollar-for-dollar basis to the extent necessary to bring the net loss to zero dollars (\$0.00). In no event, however, shall the Incentive Fees be reduced below zero dollars (\$0.00).
- (f) Any Incentive Fee payable to Manager (both the Qualitative Fee and Quantitative Fee) shall be paid to Manager no later than ninety (90) days following the end of each Operating Year for which the Incentive Fee was earned.
- (g) Manager agrees to make a capital contribution to the City no later than May 15, 2019 in the amount of \$171,128.50.

II. Section 10.3 of the Management Agreement shall be amended to provide as follows:

Section 10.3 Audit. Manager agrees to provide to the City following the end of each Operating Year, a certified audit report on the accounts and records as kept by Manager for the Facility. Manager shall endeavor to provide such audit report within 90 days following the end of each Operating Year, but Manager shall not be liable for delays caused by the auditors. Costs associated with obtaining such certified audit report shall be an Operating Expense of the Facility. Such audit shall be performed by an external auditor approved by the City, and shall be conducted in accordance with generally accepted auditing standards.

III. Section 4.1 of the Management Agreement shall be amended to provide as follows:

Section 4.1 Term. The initial term of this Agreement (the "Initial Term") shall begin on the Effective Date, and, unless sooner terminated pursuant to the provisions of Section 4.2 below, shall expire on December 31, 2025. The City may in its discretion extend this Agreement following the Initial Term for an additional two (2) years, ending on December 31, 2027, by providing written notice to Manager of such extension no later than August 31, 2025. The Initial Term plus any such extension is referred to herein as the "Term".

IV. Capitalized terms used herein but not defined herein shall have the meanings given to such terms in the Management Agreement.


V. Except as specifically set forth herein, the Agreement shall remain unchanged and in full force and effect. Any references to the Agreement in this Amendment, or in any other document, shall refer to the Agreement as amended hereby. In the event of any inconsistencies between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment shall control.

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

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

CITY OF GRAND FORKS, BY AND THROUGH ITS
EVENT CENTER COMMISSION

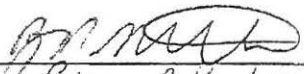
By:


_____, Its Chair

GLOBAL SPECTRUM, L.P.,
d/b/a Spectra Venue Management

By: Global Spectrum, LLC, its general partner

By:



Name: Brian Lethenby
Its: President

