

**FIRST AMENDMENT TO
CIVIC CENTER MANAGEMENT AGREEMENT**

This First Amendment to the Civic Center Management Agreement (“**First Amendment**”) is made and entered into as of the January __, 2022 (“**Effective Date**”), by and between the **Mayor and Aldermen of the City of Savannah**, a municipal corporation organized under the laws of the State of Georgia (“**City**”), and **OVG Facilities, LLC**, a Delaware _____ limited liability company (“**Manager**”). Collectively, the City and Manager are referenced jointly as the “**Parties**.”

WITNESSETH

WHEREAS, City and Manager are Parties to that certain Civic Center Management Agreement (“**Agreement**”) dated August 29, 2019, regarding real property known as The Savannah Civic Center and more particularly described in the Agreement; and

WHEREAS, City and Manager desire to modify the terms of the Agreement to include additional concessions/food and beverage management services as herein defined and, commencing January 1, 2022, to provide for a reduced scope of services as set forth herein; and

WHEREAS, City and Manager desire to amend the Agreement and to memorialize such revised terms in a written agreement.

NOW, THEREFORE, for good and value consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. **Recitals.** The Recitals set forth above are deemed by the parties to be true and correct and are incorporated herein by this reference to be binding upon the parties the same as if set forth in full in this First Amendment.

2. **Definitions.** Any term not expressly defined in this First Amendment shall have the definition contained in the Agreement.

3. **Additional Civic Center Service Period.** The “Civic Center Service Period” is a defined term pursuant to Article 1 and further provided under Section 3.4 of the Agreement, which ends upon achieving “Substantial Completion” of the “Arena” as defined in Article 1 and further provided under Section 3.4 of the Agreement. The term “Additional Civic Center Service Period” shall mean the period of time between “Substantial Completion” of the “Arena” as defined in Article 1 of the Agreement and the date terminated pursuant to Section 8 of this First Amendment.

4. **Concessions/Food and Beverage Services.** Starting as of January 1, 2022, the Civic Center Services as defined in Article 1 and Section 2.1 (a) of the Agreement, and further enumerated in Sections 3.1 and 3.2 and Exhibit A of the Agreement to be provided during the Civic Center Service Period, are hereby amended to include the provision of Concessions/Food and Beverage Services as described herein. As used herein, “Concessions/Food and Beverage Services” shall mean the acquisition, stocking, preparation, cooking, dispensing, serving, sales,

and clean-up of food and beverages to ticket holders and other attendees of events at the Civic Center and related services as the Parties may mutually agree. Said services shall be provided in accordance with proper food handling, cooking, dispensing, and cleanliness/clean-up standards as required by law and established by industry practices and industry accreditations. Subject to the currently-existing and properly-functioning food service equipment at the Civic Center and Concessionaire's (as defined below) reasonable judgment based on event demand, food and beverage offerings will include, but not be limited to, hot dogs, hot hamburgers, condiments, popcorn, ice cream, hot fried chicken fingers, hot fried potatoes, ice, cold carbonated sodas/pop, varieties of chips and snacks, cold beer, cold wine, and liquor. The sale of alcoholic beverages for on-site consumption must be performed in a manner that conforms and complies with all facility liquor license laws and requirements. The City acknowledges that it does not intend to transfer any alcohol beverage licenses currently held at the Civic Center, and the Concessionaire will be responsible for alcohol service in accordance with all facility liquor license requirements and applicable law. Manager may access, use, and operate the concession stand areas of the Civic Center to provide the Concessions/Food and Beverage services. Manager will use City software (Appetize) as a point of sale and/or inventory control management system. City acknowledges that Manager may use a third-party concessionaire to provide the Concessions/Food and Beverage Services (a "Concessionaire"). Manager shall remain responsible to City for the proper performance of all Concessions/Food and Beverage Services performed by any third-party Concessionaire under the terms of this Agreement.

5. Services Rendered During Additional Civic Center Service Period: During the Additional Civic Center Service Period, the City engages Manager, and the Manager shall provide, the following services (collectively, "Amended Civic Center Services"):

- a) Provide all Civic Center Booking and Event Management Services as defined and described in Section 3.1 and Exhibit A of the Agreement and further defined in Subsections 5(d)-(e) below, solely for events in the Johnny Mercer Theater. Manager shall provide City electronic access to Manager's updated calendar of all Manager sponsored and ticketed events scheduled for the Johnny Mercer Theater. City retains the right to reserve the Johnny Mercer Theater for any City-related or sponsored function if an event is not already booked by Manager at the time of City's Notice of reservation.
- b) Provide all Civic Center Sponsorship Services as defined and described in Section 3.2 of the Agreement solely for sponsorships at the Johnny Mercer Theater.
- c) Provide all Concessions/Food and Beverage Services (as described in Section 4 above, which may be through a Concessionaire, as described therein) during events at the Civic Center, including the sale of alcoholic beverages for on-premises consumption in accordance with licensing requirements of the facility.
- d) Manager shall be solely responsible for providing all aspects of the Services listed in Subsections 5(a)-(c) above, specifically including all Civic Center Booking and Event Management Services and Concessions/Food and Beverage Services, and Manager shall not request or utilize City staff members to execute, perform or facilitate any of the managerial and/or hands-on components of these services for Manager sponsored and ticketed events in the Johnny Mercer Theater.

e) Included as part of its Civic Center Booking and Event Management Services and Concessions/Food and Beverage Services listed in Subsections 5(a) and 5(c) above, Manager shall provide an on-site event manager who is responsible for all aspects of advancing each Manager sponsored and ticketed events in the Johnny Mercer Theater with the promoter or artist and the overall supervision of personnel procured or contracted by Manager to execute all components of each event production, to include, but not limited to, stagehands and any other Back of House personnel, cleaning services (both during and post-show), box office personnel, ushers, ticket takers, house managers and any other Front of House personnel, parking lot attendants, security, police and other emergency response resources, show catering, and concessions. Manager shall also supply all cash inventory and be responsible for all cash settlement functions for parking revenue, concessions, merchandise sales, etc. City shall have no responsibility for cash or cash storage on-site. For each Manager sponsored and ticketed event in the Johnny Mercer Theater, Manager shall also be responsible for procuring all production related rentals to include, but not limited to, production equipment, furnishings and all other items specified in a technical rider and/or as otherwise agreed with the Artist or Promoter for such event. In the event Manager fails to perform any portion of these required Services, City shall have the right to have such Services performed by others and to pay for such services from the Operating Account.

6. **Compensation During Civic Center Service Period.** Starting as of the Effective Date, in addition to the fees set forth in Section 3 of the Agreement providing the consideration for the Civic Center Management Services, City shall pay Manager a Concessions/Food and Beverage Services Fee of \$7,000 per month.

7. **Compensation During Additional Civic Center Service Period.** During the Additional Civic Center Service Period, Manager will be compensated as follows for the Amended Civic Center Services as follows:

(a) **Base Fee for Services.** The base fee payable to Manager for all Amended Civic Center Services shall be \$16,500 per month (the “Base Fee”). The Base Fee shall escalate each calendar year at the rate of 2.5% per year. The Base Fee shall be payable in advance each month, and Manager may pay itself the Base Fee from the Operating Account. Any Net Operating Losses resulting from Manager’s Concessions/Food and Beverage Services described in Sections 4 and 5(c) above in any month will be deducted from Manager’s monthly Base Fee.

(b) **Incentive Fee.** In addition to the Base Fee, City shall pay Manager an incentive fee of 25% of net operating revenues generated per month (“Incentive Fee”) on a monthly basis. Manager may pay itself the Incentive Fee from the Operating Account after the end of each operating month, provided that any Incentive Fee payments shall be subject to the City’s review on an annual basis.

(c) Other than the Base Fee and Incentive Fee described in Subsections (a) and (b) (but without limiting the City’s funding obligations under Section 8 of the Agreement), City shall not be responsible or obligated to pay or reimburse Manager any additional fees or operating or other costs or expenses of Manager, including Reimbursable Expenses as defined in Section 3.3 of the Agreement, for its Services rendered during the Additional Civic Center Service Period as defined in Section 5 above.

8. **Term.** Section 3.4 of the Agreement is hereby amended to provide that the Additional Civic Center Service Period shall automatically terminate after five years from the Substantial Completion of the Arena if not terminated by either party before that date. After the Additional Civic Center Service Period begins, either Party shall be entitled to terminate the Agreement, without cause and for its convenience, and without any penalty or additional cost or fees owed, subject to at least thirty (30) days advanced written notice of the termination to the other party. Parties recognize and acknowledge the Civic Center is an old facility with failing infrastructure, and in the event the facility infrastructure fails and renders the theater unsafe or unsuitable to use and occupy, then this Agreement will automatically terminate.

9. **Miscellaneous.** This Amendment may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument. The parties agree that they may reflect and confirm their agreement to be bound hereby, and their execution and delivery of this Amendment, by transmitting a signed copy hereof, by facsimile or by electronic messaging, to the other party hereto. This Amendment shall govern in the event of any conflict with the Agreement. The Agreement, as amended hereby, is ratified and reaffirmed, constitutes the binding obligation of the parties hereto, and remains in full force and effect. The undersigned have full power and authority to sign on behalf of the respective entity.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to be effective as of the date first set forth above.

CITY:

MANAGER:

**MAYOR AND ALDERMEN OF THE
CITY OF SAVANNAH**

OVG Facilities, LLC,
a Delaware _____ limited
liability company

By: _____

Name:

Title: City Manager

By: _____

Name: _____

Title: _____