

**STATE OF GEORGIA  
COUNTY OF CHATHAM**

**LEASE AND OPERATING AGREEMENT**

THIS LEASE AND OPERATION AGREEMENT ("Agreement") dated August \_\_\_\_, 2020, ("Effective Date") is by and between **THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH**, ("CITY") a Georgia municipal corporation, and **FANS FIRST ENTERTAINMENT, LLC**, ("TENANT") a Georgia limited liability corporation. CITY and TENANT collectively are herein referred to as the Parties.

**WITNESSETH:**

**WHEREAS**, TENANT is a Georgia limited liability corporation engaged in the sports entertainment industry and owns and operates the Savannah Bananas baseball team; and

**WHEREAS**, CITY owns an historic baseball stadium known as Grayson Stadium which is part of the larger 75-acre Daffin Park recreational complex (that includes a variety of recreational amenities in addition to Grayson Stadium such as football and multi-use fields, tennis courts, playgrounds, a pool, and other amenities) located at 1401 Victory Drive; said park identified by the Chatham County Board of Assessors as Property Identification Number 20076-29001; and

**WHEREAS**, Grayson Stadium is a baseball field/stadium (the "Leased Premises") situated at the southwest corner of Victory Drive and Bee Road in the northeastern portion of Daffin Park; said Leased Premises being bounded by walls and fences containing the baseball field (infield, outfield, dugouts, and bullpens); stands, seats, and bleachers; press box; locker rooms; concessions areas; baseball offices; a stadium club modular building; storage areas, and related recreation facilities as depicted on Exhibit A. In addition, TENANT shall have non-exclusive use of any available parking spaces in Daffin Park near the Leased Premises; and

**WHEREAS**, in 2015, TENANT and CITY entered into a prior Use Agreement involving the use and operation of Grayson Stadium to facilitate establishment of a Savannah based baseball team and associated baseball league play, and that prior Use Agreement is set to expire on September 30, 2020; and

**WHEREAS**, § O.C.G.A 36-37-6 governs the disposition (sale and lease) of municipal real property generally and requires real property be disposed to the public by way of auction or sealed bid, subject to conditions and certain specific exceptions. Accordingly, CITY issued a Request for Proposals (RFP) in March 2019 soliciting a well-qualified and experienced operator to operate and manage the Leased Premises after expiration of the prior Agreement; and

**WHEREAS**, the RFP closed in April 2019 and TENANT was the only bidder who responded to the Request for Proposals and submitted a proposal with a sealed bid, and City and Tenant thereafter negotiated mutually-agreeable business terms for this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions set forth herein, the adequacy, sufficiency and receipt of which are hereby acknowledged, the CITY and TENANT agree as follows:

#### **ARTICLE 1 - GRANT OF USE**

1.1 Grant. The CITY hereby grants to TENANT and to its agents, employees, guests and invitees a lease and operating agreement to enter, use, occupy, manage, operate and maintain the Leased Premises for the Intended Use as set forth in Article 3, below.

1.2 Care of Premises. TENANT shall operate and maintain the Leased Premises in a clean, safe, and sanitary condition in accordance with industry best practices and CITY standards. Care and maintenance obligations of TENANT and CITY are more fully discussed in Section 3 of this Agreement.

1.3 Condition of Premises. TENANT accepts the Leased Premises in "AS-IS" Condition.

1.4 Assignment and Sublicensing by TENANT. TENANT may not assign or sub-lease / sub-license the Leased Premises to other occupants/users without the prior written consent of the CITY; whose consent may be withheld at the CITY's sole discretion. Notwithstanding the foregoing, TENANT may license or rent the Leased Premises for use by other third-party baseball teams and/or entertainment operators to host and promote a baseball game, event, or show ("Third-Party Events"). All Third-Party Events should be permitted and approved by the City of Savannah Department of Special Events, Film, and Tourism.

1.5 Use by CITY. The CITY reserves the right to use the Leased Premises at least five times per calendar year and at any time the Leased Premises is not prior scheduled for a TENANT or Third-Party Event; said use of the Leased Premises being at no cost to the CITY.

#### **ARTICLE 2 – TERM**

2.1 Initial Term of Use. The initial term of this Agreement shall commence at 12:00 a.m. on October 1, 2020 and terminate at midnight on September 30, 2025 ("Initial Term"), unless otherwise terminated by the parties to this Agreement.

2.2 Renewal Term(s) of Use. As long as TENANT is not in default of this Agreement, TENANT shall have the option to extend the Agreement for one additional term of five (5) years. If TENANT elects to proceed with a Renewal Term, it shall notify the CITY of the intended renewal at least one hundred twenty (120) days prior to the expiration of the Initial Term.

#### **ARTICLE 3 – USE, CARE, AND MAINTENANCE OF PREMISES**

3.1 The TENANT Uses. TENANT shall use the Leased Premises for the purpose of operating a sports entertainment and recreation facility for professional, amateur, collegiate, high school, and recreational baseball and community entertainment oriented events to provide recreation and



cultural opportunities to the citizens of Savannah, and for related purposes. TENANT must continually during the term of this Agreement own and operate a baseball franchise and provide at least three months of seasonal baseball play involving such franchise team with at least twenty (20) games hosted at the Leased Premises per season. If TENANT fails to own and operate a baseball franchise and host league play and games in accordance with the preceding provisions, then TENANT shall be in default and this Agreement will automatically terminate.

3.2 TENANT Operations and Management. TENANT shall solely be responsible for operating, securing, and managing the Leased Premises in a professional manner according to best industry standards and in compliance with all federal, state, and local legal requirements during the Initial Term and Renewal Term, if so extended. This includes, but is not limited to, scheduling events; promoting events; securing events with police and security personnel; operating ticket booths and ticket sales activities; operating concessions and food and beverage services during events; providing janitorial services and cleanliness operations before, during, and after events; promptly removing and properly disposing of any refuse generated by events; and curing any damages or adverse impacts to Daffin Park resulting from events at the Leased Premises. TENANT is not responsible for janitorial services after in season baseball games. TENANT shall also be solely responsible for the operation, maintenance, repair, and replacement of any food and beverage related equipment in the Concessions areas of the Leased Premises including, but not limited to, refrigerators, freezers, carbonated drink and beer dispensers, fryers; microwave, convection, and conventional ovens; rotisseries, and more.

3.3 CITY Maintenance. CITY will be solely responsible for the repair and maintenance of the stadium and field at the Leased Premises, including repairs and maintenance to the roof, foundation, walls, gates, windows, flooring, decking, air conditioning systems, plumbing systems/fixtures, lights, turf maintenance (including mowing, watering, fertilizing, chemical applications as needed, etc.), and bench and chair seating. In the event CITY has insufficient funds available/appropriated for requisite capital repairs, improvements, or replacements, then CITY reserves the right to delay or not perform the capital improvements until such funding is appropriated and available at CITY's sole discretion.

3.4 Renovations and New Construction. Any proposed renovations or new construction by TENANT at the Leased Premises will be subject to the review and approval of the CITY at the CITY's sole discretion.

3.5 Water, Sewer, and Electric Services. CITY shall provide and pay for water, sewer, and electric services at the Leased Premises.

3.6 Other Utilities. TENANT shall contract for and pay all other utility services required on the Leased Premises in the name of the TENANT and shall be liable for payment of all such utility services received. TENANT shall promptly pay for all other utilities rendered or furnished to the Leased Premises during the Term of the Lease, including but not limited to, natural gas, liquid propane gas, telephone, internet cable, and other such utilities, as well as all taxes assessed thereon.

3.7 Inspection. CITY or its representatives shall have the right to enter the Leased Premises at reasonable hours of any business day during the Lease Term to ascertain if the Leased Premises are in proper repair and condition, but said inspection shall not interfere with operation of Tenant's business.

3.8 Trash and Debris. CITY will work to keep clean the passageways, common areas, bathrooms, seating areas, and other public spaces clean and clear for litter, trash, and debris after in season games. TENANT will work to keep concession areas clear of all garbage, cooking grease, food and beverage related supplies, condiments, etc. and shall be removed and/or stored in order to control the escape of offensive odors and prevent pest and vermin related issues.

3.9 Signs, Banners, and Advertising. TENANT may erect and maintain on the exterior or interior of the Leased Premises signs, banners, and advertising which shall be in compliance with CITY ordinances and be of such size, style and type and in such locations as CITY may approve in writing. TENANT shall keep insured and shall maintain such signs in good condition and repair at all times. If any damage is done to TENANT's signs, TENANT shall initiate repair of same within ten (10) days or CITY, after TENANT's failure to repair and notice from CITY, shall have the right to repair such signs and bill TENANT for cost of the repairs. TENANT further agrees to maintain any such sign, banner, lettering, advertising matter or other things as may be approved by CITY in good condition and repair at all times.

3.10 Trade Fixtures. All trade fixtures and equipment installed by TENANT in the Leased Premises shall be new or completely reconditioned and shall remain the property of the TENANT. TENANT shall obtain the written consent of CITY before installing any fixtures or equipment. Provided TENANT is not in default hereunder, TENANT shall have the right, at the termination of this Lease, to remove any and all trade fixtures, equipment and other items of personal property not constituting a part of the freehold which it may have stored or installed in the Leased Premises, including but not limited to counters, shelving, chairs and movable machinery purchased by TENANT and which are susceptible to being moved without damage to the building, provided this right is exercised before the Lease is terminated and provided that TENANT shall repair any damage to the Leased Premises caused thereby. The right granted TENANT in this Section shall not include the right to remove any plumbing or electrical fixtures or equipment, heating or air-conditioning equipment, floor coverings (including wall-to-wall carpeting) glued or fastened to the floors or any paneling, tile or other materials fastened or attached to the walls or ceilings, all of which shall be deemed to constitute a part of the freehold and, as a matter of course, shall not include the right to remove any fixtures or machinery that were furnished or paid for by CITY. Buildings shall be left in a broom-clean condition. If TENANT shall fail to remove its trade fixtures or other property at the termination of this Lease, such fixtures and other property not removed by TENANT shall be deemed abandoned by TENANT, and, at the option of CITY, shall become the property of the CITY. CITY shall have the right to require TENANT to remove any or all fixtures and equipment installed by or for TENANT upon the termination or expiration of the lease.

3.11 Liens and Mechanics Liens. TENANT will not permit to be created nor to remain undischarged any lien, encumbrance, or charge (arising out of any work of any contractor, mechanic, laborer or materialman or any mortgage, conditional sale, or security agreement) which



might be or become a lien or encumbrance or charge upon the Leased Premises or any part thereof or the income therefrom, and TENANT will not suffer any notice of lien on account of an alleged debt of TENANT or any notice of contract by a party engaged by TENANT or TENANT's contractor to work on the Leased Premises shall be filed against the Leased Premises or any part thereof. Within ten (10) days after TENANT receives notice of the filing of any lien or notice of lien against the Leased Premises, TENANT shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If TENANT shall fail to cause such lien or notice of lien to be discharged within said Ten (10) day period, then, in addition to any other right or remedy, CITY may, but shall not be obligated to, discharge the same either by paying the amounts claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. In any such event CITY shall be entitled, if CITY so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs, attorney's fees and allowances. Any amount so paid by CITY therewith, together with interest thereon at the maximum legal rate from the respective dates of CITY's making of the payment or incurring of the cost and expense shall constitute Additional Rent payable by TENANT under this Lease and shall be paid by TENANT to CITY upon demand.

#### **ARTICLE 4: CONSIDERATION FOR SERVICES RENDERED**

4.1. Fixed Minimum Base Rent. TENANT shall pay to CITY, without demand and without deduction or set-off, at City of Savannah Revenue Department, P.O. Box 1027, Savannah, Georgia, 31402, or at such other address for the rental payment place as CITY may notify TENANT of in writing from time to time.

- a) Fixed Rent (as defined below) shall be payable in equal monthly installments in advance on the first day of each month during the Initial Term and Renewal Term, if so exercised. The Fixed Rent for a Fractional Month (if any) shall be apportioned on a per diem basis, calculated on the basis of a thirty (30)-day month, and shall be payable upon the commencement of the Term. In the event that any check, draft or other instrument of payment given by TENANT is dishonored for any reason, TENANT agrees to pay to CITY the sum of \$50.00 in addition to any Late Payment Charge that may be due.

- (i) *First Year.* Throughout the First Year of the Initial Term, TENANT covenants to pay Fixed Minimum Rent ("Fixed Rent") of \$25,000.00 per year, payable in monthly installments of \$2,083.33 per month.

4.2 Late Payments. In the event TENANT shall fail to pay all rents and all other sums due under this Lease on or before the due date hereof, a late charge of ten (10) percent (10%) of the outstanding sums due, shall be added to the rental and paid to CITY for each such late payment. TENANT further agrees to pay (or to reimburse CITY promptly if CITY elects to pay) any and all attorney's fees and court cost incurred in connection with the collection of delinquent rents and/or any enforcement of any lease provisions due CITY under this Lease.

4.3 Additional Rent. TENANT shall pay to CITY the following Additional Rent for any Third-Party Event or Non-TENANT team game/event:

- a) \$1.00 per ticket sold for any ticket with a face value of \$10.00 or more.
- b) A \$75.00 per day utility fee for any Third-Party Event held by a "For-Profit" individual, partnership, or corporation.
- c) A \$50.00 per day utility fee for any Third-Party Event held by a "Not-For-Profit" corporation.
- d) A \$150 per day field preparation and maintenance fee for any team other than TENANT owned team that plays, practices, or uses the Leased Premises.

TENANT will deliver to the CITY on a quarterly basis an accounting of any and all Third-Party Events and associated payment of the required Additional Rent.

4.4 TENANT Capital Investment. In addition to Base Rent and Additional Rent specified above, TENANT shall make capital investment to improve the Leased Premises, as follows:

- a) During the Initial Term of this Agreement, TENANT shall invest at least \$250,000 in capital improvements to the Leased Premises.
- b) If TENANT exercises the option to renew the Agreement and extend for an additional five year Renewal Term after expiration of the Initial Term, then within sixty (60) days of TENANT's notice to CITY that it intends to extend the Agreement into the Renewal Term, TENANT and CITY will agree upon the dollar amount and scope of capital improvements TENANT will make to the Leased Premises during the Renewal Term. If within sixty (60) days of TENANT's notice to CITY that it intends to extend the Agreement into the Renewal Term, TENANT and CITY cannot agree upon the amount and scope of capital investment to be made by TENANT to the Lease Premises during the Renewal Term, then this lease shall automatically terminate at the expiration of the Initial Term.
- c) Capital improvements to be made with the investment of this capital will be mutually agreed upon by the parties.
- d) If TENANT fails to make the requisite capital improvements or if TENANT and CITY cannot agree upon the improvements to be funded and completed with the investment, then TENANT shall pay CITY the required capital investment as Additional Rent in the Initial Term and Renewal Term, as applicable.
- e) If TENANT fails to make the requisite capital improvement and fails to pay CITY same as additional rent in the event of disagreement, then the failure to pay will be a default of TENANT obligations to be governed by the default provision of this Agreement.

4.5 Season Ticket Allotment. In addition to the Base Rent, Additional Rent, and Capital Contribution specified above, TENANT shall provide the CITY with (4) four annual VIP season tickets/passes.

## **ARTICLE 5 - INDEMNIFICATION**

TENANT shall indemnify, defend and hold harmless the CITY, its officers, agents, partners and employees, from and against any Claim or Claims arising out of or in any way connected with this Agreement, including a Claim or Claims from the CITY, without limit Claims for



loss or damage to any property, or for death or injury to any person or persons but only in proportion to and to the extent that such Claims arise from the negligent or intentional acts or omissions of the TENANT, its officers, agents, or employees.

## **ARTICLE 6 - INSURANCE**

6.1 Insurance. The coverages referred to under Section 6 shall include the CITY as a certificate holder. Such provisions shall apply only in proportion to and to the extent of the negligent acts or omissions of the TENANT, its officers, employees, and agents.

6.2 TENANT, at its own expense, shall insure its activities in connection with this Agreement and obtain, keep in force and maintain insurance as follows:

A. Comprehensive General Liability minimum limits as follows:

|    |                                   |                     |
|----|-----------------------------------|---------------------|
| 1. | Each Occurrence                   | \$ <u>1,000,000</u> |
| 2. | Damage to Rented Premises         | \$ <u>50,000</u>    |
| 3. | Medical Expense                   | \$ <u>5,000</u>     |
| 4. | Personal & Adv Injury             | \$ <u>1,000,000</u> |
| 5. | General Aggregate                 | \$ <u>2,000,000</u> |
| 6. | Products-Completed Ops. Aggregate | \$ <u>2,000,000</u> |

6.3 Workers' Compensation. TENANT shall carry a workers' compensation policy that includes all statutory coverage required by Georgia state law for the minimum employer's liability limits as follows:

1. \$500,000 each accident
2. \$500,000 each employee (disease)
3. \$500,000 policy limit (disease)

6.4 Umbrella/Excess Liability. The TENANT shall carry an umbrella/excess liability policy which must follow form over underlying policies: general liability, auto liability and employer's liability for minimum limits as follows:

1. \$1,000,000 per occurrence
2. \$5,000,000 aggregate

6.5 Certificate of Insurance and Notice of Cancellation. The TENANT, upon the execution of this Agreement, shall furnish the CITY with certificates of insurance evidencing compliance with all requirements stated herein. The TENANT shall provide for a thirty (30) day notice of cancellation in favor of the CITY which must be endorsed to the policy and attached to the certificate. The Certificate Holder Should Read:

City of Savannah

The Mayor and Alderman of the City of Savannah  
P.O. Box 1027  
Savannah, GA 31402

With Copy to:

City of Savannah  
Sr. Director of Real Estate  
P.O. Box 1027  
Savannah, GA 31402

And a Copy to:

City Attorney  
P.O. Box 1027  
Savannah, GA 31402

6.6 Waiver of Subrogation. The TENANT agrees to waive rights of subrogation which any insurer of the TENANT may acquire from TENANT by virtue of any loss. The TENANT agrees to obtain the waiver of subrogation endorsement to the policy in favor of the CITY which shall also be provided and attached to the Certificate of Insurance.

#### **ARTICLE 7 – DAMAGES AND/OR DESTRUCTION**

7.1 Damage or Destruction by Fire or Other Casualty. If the Leased Premises is damaged or destroyed by fire, flood, tornado or by the elements, or through any casualty, or otherwise, after the commencement of the Lease Term, this Agreement shall continue in full force and effect, and CITY at its expense shall attempt to promptly restore, repair or rebuild the Leased Premises to the same condition as it existed when the possession of the Leased Premises were turned over to the TENANT at the commencement of the Lease Term. In the event the CITY has insufficient funds to perform such restoration, repairs, or rebuilding, or otherwise fails to restore the Leased Premises as aforesaid, then this Agreement shall automatically terminate and TENANT shall have no additional recourse. Rent and additional rent, if any, shall abate from the date of such damage or destruction until ten (10) days after CITY has repaired or restored the premises in the manner and in the condition provided in this Section and notified TENANT of such fact. In the event that only a part and not the whole of the Leased Premises is inoperable or incapable of use for the normal conduct of TENANT's business therein, a just and proportionate part of the rent shall be abated from the date of such damage until ten (10) days after CITY has completed repaired same and notified TENANT of such fact. Notwithstanding any of the provisions herein to the contrary, CITY shall have no obligation to rebuild the premises unless the damage or destruction is a result of a casualty covered by TENANT's insurance policy. TENANT shall give to CITY prompt written notice of any damage to or destruction of any portion of the Leased Premises resulting from fire or other casualty.

7.2 Loss or Damage to TENANT's Property. CITY shall not be liable for any damage to property of TENANT or of others located on the Leased Premises, nor for the loss of or damage to any property of TENANT or of others by theft or otherwise. CITY shall not be liable for any



injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow or leaks from any part of the Leased Premises from the pipes, appliances or plumbing works or from any other place or by dampness or by any other cause of whatsoever nature. CITY shall not be liable for any such damage caused by other entities or persons in Leased Premises, occupants of property adjacent to the Leased Premises, or the public, or for damage caused by operations or construction of any private, public or quasi-public work. CITY shall not be liable for any latent defect in the Leased Premises or in the building of which they form a part. All property of TENANT kept or stored on the Leased Premises shall be so kept or stored at the risk of TENANT only, and TENANT shall hold CITY harmless from any claim arising out of damage to the same, including subrogation claims by TENANTs insurance carriers, unless such damage shall be caused by the willful act or gross neglect of CITY.

## **ARTICLE 8 - DEFAULT BY TENANT AND REMEDIES**

8.1 Event of Default. The following events shall constitute events of default by TENANT under this Agreement (hereinafter individually called an "Event of Default", and collectively called "Events of Default"): (i) if TENANT shall violate or breach, or shall fail fully and completely to observe, keep, satisfy, perform and comply with, any agreement, term, covenant, condition, requirement, restriction or provision of this Lease Agreement and shall not cure such failure within ten (10) days after CITY gives TENANT written notice thereof, or, if such failure shall be incapable of cure within ten (10) days, if TENANT shall not commence to cure such failure within such ten (10) day period and continuously prosecute the performance of the same to completion with due diligence; (ii) if TENANT shall be unable to meet its obligations as they become due or becomes insolvent, makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors; (iii) if TENANT files a petition under any section or chapter of the national bankruptcy act, as amended, or under any similar federal or state law or statute, or TENANT or any guarantor of its obligations under this Lease is adjudged bankrupt or insolvent in proceedings filed against TENANT; (iv) if a receiver or trustee is appointed for the Leased Premises or for all or substantially all of the assets of TENANT; (v) if this Lease is assigned or any portion of the Leased Premises sublet other than in accordance with the terms of this Lease; (vi) if TENANT does or permits to be done anything that creates a lien upon the Leased Premises; or (vii) if TENANT vacates, deserts, or abandons the Leased Premises for a period of ninety (90) days.

8.2 Remedies. Upon the occurrence of an Event of Default, in addition to any other remedies which CITY may have at law or in equity, CITY may pursue any one or more of the following alternative remedies:

(i) Without any notice or demand, CITY may take any action or actions permissible at law to ensure performance by TENANT of its covenants and obligations under this Lease. If TENANT deserts or vacates the Leased Premises, CITY may enter upon and take possession in order to protect them from deterioration and continue to demand from TENANT the monthly rentals provided in this Lease, without any obligation to re-let. Moreover, if CITY elects to re-let the Leased Premises, that action shall not be deemed an acceptance of TENANT's surrender of them unless CITY expressly notifies TENANT otherwise in writing as provided below. CITY shall otherwise be re-letting as TENANT's agent. TENANT shall pay CITY on demand any deficiency between the monthly rentals provided in this Lease that are actually collected by CITY.

CITY may enter upon the Leased Premises, by force if necessary, without being liable for prosecution or any claim for damages, and do whatever TENANT is obligated to do under this Lease. TENANT shall reimburse CITY on demand for all expenses incurred by it in effecting compliance with TENANT's obligations hereunder, and CITY shall not be liable for resulting damages to TENANT.

(ii) CITY may terminate this Lease by giving written notice to TENANT. In such event, TENANT shall immediately surrender the Leased Premises to CITY. If TENANT fails to do so, CITY may, without prejudice to any other remedy it may have for possession or arrearages in rent (including any accrued interest due hereunder), enter upon and take possession of the Leased Premises and expel or remove, by force if necessary, TENANT and any other person who is occupying all or a portion of the Leased Premises without being liable for prosecution or any claim for damages. In addition, TENANT shall pay to CITY on demand all loss and damage suffered by it by reason of any termination affected under this subparagraph (ii).

(iii) CITY may do whatever TENANT is obligated to do under the terms of this Lease, in which event TENANT shall reimburse CITY for any expenses, including, without limitation, interest at the lower of the rate of twelve (12%) percent or the maximum rate allowable by law, and reasonable attorneys' fees which CITY may incur in thus effecting satisfaction and performance of or compliance with TENANT's duties and obligations under this Lease. Such sums shall be deemed Additional Rent and shall be paid by TENANT to CITY within ten (10) days of the renditions of any bill or statement to TENANT therefore.

(iv) CITY may demand a final settlement at any time. Upon such demand, TENANT shall pay the difference between the monthly rentals provided in this Lease for the remainder of the Term. The difference shall be discounted to present value at the rate of interest agreed on by the parties, or, if there is no such agreement, at the rate of seven (7%) percent per annum. CITY and TENANT acknowledge that CITY shall be damaged by TENANT's default, that CITY's actual damages are hard to estimate, and that the above amount represents a reasonable pre-estimate of CITY's damages rather than a penalty. If CITY accelerates as provided in this subparagraph, it shall seek another TENANT for Leased Premises and credit any amounts received to the TENANT, less the following: (1) reimbursement for all expenses incurred as a result of TENANT's failure to perform its obligations under the Lease; (2) the costs of securing another TENANT, including, but not limited to, advertising and brokerage commissions; and (3) the costs of altering, dividing, painting, repairing, and replacing Leased Premises to accommodate a new TENANT.

8.3 Non-Waiver Provisions. The failure of CITY to insist upon a strict performance of any of the terms, conditions and covenants herein shall not be deemed to be a waiver of any rights or remedies that CITY may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained except as may be expressly waived in writing. The maintenance of any action or proceeding to recover possession of the Leased Premises, or any installment or installments of rent or other monies that may be due or become due from TENANT to CITY, shall not preclude CITY from thereafter instituting and maintaining subsequent actions or proceedings for the recovery of possession of the Leased Premises or of any



other monies that may be due or become due from TENANT. Any entry or re-entry by CITY shall not be deemed to absolve or discharge TENANT from liability hereunder.

8.4 Force Majeure. If CITY or TENANT is delayed or prevented from performing any of its obligations under this Lease due to strikes, lockouts, labor disputes, acts of God, Emergency Declarations, pestilence or pandemics, inability to obtain services, labor, or materials or reasonable substitutes therefore, governmental actions, civil commotions, fire or other casualty, and any other causes beyond the reasonable control of the CITY (collectively, "Force Majeure"), the period of such delay or such prevention shall be deemed added to the time herein provided for the performance of any such obligation by CITY.

8.5 CITY's Expenses. If TENANT shall at any time be in default hereunder, and if CITY shall deem it necessary to engage attorneys to enforce CITY's rights hereunder, the determination of such necessity to be in the sole discretion of CITY, TENANT will reimburse CITY for the reasonable expenses incurred thereby, including but not limited to court costs and reasonable attorneys' fees. If TENANT's rights hereunder are not terminated, the amount of such expenses shall be deemed to be additional rent hereunder and shall forthwith be due and payable by TENANT to CITY.

8.6 Governing Law. This Lease will be construed according to, and be governed by, the laws of the State of Georgia. Venue shall lie exclusively in the Superior Court of Chatham County or the United States District Court for the Southern District of Georgia.

8.7 Integration. Except for documents specifically referenced herein, this Agreement constitutes the entire agreement between TENANT and CITY regarding this Lease and Operating Agreement and all prior communications, verbal or written, between Tenant and City shall be of no further effect or evidentiary value.

## **ARTICLE 9. RELATIONSHIP OF PARTIES**

Nothing herein contained shall be deemed or construed as creating the relationship of principal and agent or of partnership or joint venture between the parties hereto; it being understood and agreed that neither the method of computing rent nor any other provisions contained herein nor any acts of the parties hereto shall be deemed to create any relationship between the parties other than that of CITY and TENANT.

## **ARTICLE 10 – NOTICES**

All notices, demands and requests which may be given or which are required to be given by either party to the other under this Agreement, and any exercise of a right of termination provided by this Agreement, shall be in writing and shall be deemed effective: (i) immediately, when personally delivered to the intended recipient; (ii) three (3) business days after having been sent, by certified or registered mail, return receipt requested, addressed to the intended recipient at the address specified below; (iii) immediately, when delivered in person to the address set forth below for the party to whom the notice was given; (iv) at noon of the business day next following after having been deposited into the custody of a nationally recognized overnight delivery service, addressed to such party at the address specified below; (v) immediately, if sent during regular business hours or at 8:30

a.m. local time on the next business day next following an after-hours, weekend or holiday notice sent by e-mail, provided that receipt for such e-mail is verified by the sender and followed by a notice sent in accordance with one of the other provisions set forth above; or (vi) immediately, upon actual receipt. Any notice sent as required by this section and refused by recipient shall be deemed delivered as of the date of such refusal. For purposes of this Section, the addresses and e-mail addresses of the parties for all notices are as follows (unless changed by similar notice in writing given by the particular person whose address is to be changed):

**As to the CITY:**

City of Savannah  
City Manager's Office  
P.O. Box 1027  
Savannah, Georgia 31402

**Copy to:**

City of Savannah  
City Attorney's Office  
PO Box 1027  
Savannah, Georgia 31402

**And:**

City of Savannah  
Sr. Director of Real Estate Services  
PO Box 1027  
Savannah, Georgia 31402  
e-mail: [dkeating@savannahga.gov](mailto:dkeating@savannahga.gov)

**As to TENANT:**

Fans First Entertainment, LLC  
Attn: Jesse Cole

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

ATTEST:

THE MAYOR AND ALDERMEN OF  
THE CITY OF SAVANNAH, GEORGIA

\_\_\_\_\_  
CLERK OF COUNCIL

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

Signed, sealed and delivered in the

Presence of:

FANS FIRST ENTERTAINMENT, LLC

\_\_\_\_\_  
Witness

BY:                     *AKG*                    

\_\_\_\_\_  
Notary Public

ITS:                     *owner*                    

Commission expires:

"EXHIBIT A"

