



Huntsville, Alabama

305 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 5/14/2026

File ID: 2026-500

Department: Administration

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into an Asset Purchase and Contract Termination Agreement among the City, Huntsville Venue Group F&B, LLC ("F&B"), and Huntsville Venue Group Amphitheater, LLC, ("HVGA"), for the City's purchase from F&B of its food and beverage concession assets used at Orion Amphitheater and the Food Village (together, "Orion"), an Amended and Restated Operating Agreement between the City and HVGA respecting the operation and management of Orion, and various other related documents and actions.

Resolution No.

Finance Information:

Account Number: N/A

City Cost Amount: TBD

Total Cost: TBD

Special Circumstances:

Grant Funded: N/A

Grant Title - CFDA or granting Agency: N/A

Resolution #: N/A

Location: (list below)

Address:

District: District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

Additional Comments:

RESOLUTION NO. 26-_____

WHEREAS, Huntsville Venue Group F&B, LLC ("F&B") owns and leases certain personal property and assets located within the Orion Amphitheater used by F&B and/or HVGA (defined below) for certain food, beverage, and related services within Orion Amphitheatre (the "F&B Orion Assets"); and

WHEREAS, F&B also owns and leases certain personal property, structures, equipment, and other assets located on real property adjacent to the Orion Amphitheater and leased from the City under a Ground Sublease Agreement dated September 1, 2022, as amended (the "Ground Sublease") that F&B uses to provide food, beverage, and related services within what is commonly referred to as the "Food Village" (the "F&B Food Village Assets" and, together with the F&B Orion Assets, the "F&B Assets"); and

WHEREAS, the City and Huntsville Venue Group Amphitheater, LLC ("HVGA") are parties to that certain Amended and Restated Operating and Management Agreement dated September 1, 2022, as amended (the "Operating Agreement"), under which HVGA manages, operates, and markets Orion Amphitheater and the Food Village including, among other things, the booking and management of concerts, shows and other events, the provision of food, beverages, and other services, and various other functions and activities within Orion Amphitheater and the Food Village; and

WHEREAS, in connection with its obligations under the Operating Agreement, HVGA and F&B entered a Concessions Agreement dated April 1, 2022, as amended (the "Concessions Agreement"), pursuant to which F&B provides food, beverage, and concession services at Orion Amphitheater and the Food Village; and

WHEREAS, F&B and HVGA, which are affiliated entities, have approached the City proposing that the City purchase and acquire the F&B Assets, that all food, beverage and related services (which presently are being carried-out under the Concessions Agreement by F&B) be undertaken solely and directly by HVGA (under the terms of the Amended Operating Agreement described below), and that the Concessions Agreement be terminated, at and for a price of approximately \$12,000,000 to be paid by the City to F&B; and

WHEREAS, in order to undertake, and in connection with, the foregoing, it will be necessary to modify and change certain provisions of the Operating Agreement; and

WHEREAS, the City has determined that its purchase of the F&B Assets and the management, operation and provision of food, beverage and related services directly by HVGA, and that certain changes and amendments to the Operating Agreement resulting from the same, all as reflected and more particularly described in the form agreements attached as Exhibit I and Exhibit II hereto, will foster more efficient and economical management and operations of Orion Amphitheater and the Food Village, and inure to the long-term success of such facilities for the benefit of the City and its citizens.

NOW, THEREFORE, BE IT RESOLVED, that the Council does hereby authorize and approve, and does hereby authorize the Mayor to execute, by and on behalf of the City, an Asset

Purchase and Contract Termination Agreement among the City, HVGA and F&B, in such form as attached as Exhibit I hereto and with such changes as may be determined by the Mayor, acting on behalf of the City (the "Purchase and Termination Agreement"), respecting the City's purchase of the F&B Assets, the termination of the Concessions Agreement, the payment by the City to F&B of \$12,000,000 for the same, the termination of the Ground Sublease Agreement, and various other related items and actions, and that the City Clerk is hereby authorized to execute, attest, and affix the corporate seal of the City to the Purchase and Termination Agreement; and

FURTHER RESOLVED, that the Council does hereby authorize and approve, and does hereby authorize the Mayor to execute, by and on behalf of the City, an Orion Amphitheater Operating and Management Agreement between the City and HVGA, in such form as attached as Exhibit II hereto, and with such changes as may be determined by the Mayor, acting on behalf of the City (the "Amended Operating Agreement"), respecting the management and operation of Orion Amphitheater and the Food Village solely and directly by HVGA, and that the City Clerk is hereby authorized to execute, attest, and affix the corporate seal of the City to the Amended Operating Agreement; and

FURTHER RESOLVED, that the Council does hereby further approve the Disclosure Schedule that, per the terms of the Purchase and Termination Agreement, is to be delivered by F&B to the City and become a part of the Purchase and Termination Agreement, a copy of which Disclosure Schedule is attached as Exhibit III hereto; and

FURTHER RESOLVED, that the Council does hereby authorize and approve, and the Mayor is hereby authorized to execute, by and on behalf of the City, such additional agreements, filings, instruments, notices, and other documents as may be necessary or desirable in connection with the Purchase and Termination Agreement, the Amended Operating Agreement, and the transactions and arrangements contemplated thereby (collectively, the "Ancillary Documents"), as well as such amendments to the Purchase and Termination Agreement, the Amended Operating Agreement, and the Ancillary Documents as may be deemed necessary or desirable by the Mayor, and the City Clerk is hereby authorized to execute, attest and affix the corporate seal of the City to any of the foregoing.

ADOPTED this the 14th day of May, 2026

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 14th day of May, 2026

Mayor of the City of
Huntsville, Alabama

EXHIBIT I
FORM OF ASSET PURCHASE AND CONTRACT TERMINATION AGREEMENT

ASSET PURCHASE AND CONTRACT TERMINATION AGREEMENT

by and among

HUNTSVILLE VENUE GROUP F&B, LLC,

HUNTSVILLE VENUE GROUP AMPHITHEATER, LLC,

and

THE CITY OF HUNTSVILLE, ALABAMA

May 15, 2026

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Exhibits

Exhibit A – Definitions

Exhibit B – Form of Second Amended and Restated Operating Agreement

ASSET PURCHASE AND CONTRACT TERMINATION AGREEMENT

THIS ASSET PURCHASE AND CONTRACT TERMINATION AGREEMENT (this "**Agreement**"), dated as of May 15, 2026, is by and among the City of Huntsville, Alabama, a municipal corporation organized under the laws of the State of Alabama ("**Buyer**"), Huntsville Venue Group F&B LLC, a Delaware limited liability company ("**Seller**"), and Huntsville Venue Group Amphitheater LLC, a Delaware limited liability company ("**HVGA**"). Each of Seller, Buyer, and HVGA are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. Seller owns and leases certain personal property and assets located within the Orion Amphitheater and used in and for the provision of food, beverage, entertainment, and other services and activities, whether conducted directly or through third parties (collectively, the "**Orion Assets**"), and Seller owns and operates various facilities, structures, equipment, and other assets located on certain real property adjacent to the Orion Amphitheater commonly known as the "**Food Village**" and used in connection with Seller's provision of food, beverage, entertainment and other services and activities (collectively, the "**Food Village Assets**" and, together with the Orion Assets, all operations of Seller involving or in connection with the Orion Assets and the Food Village Assets, and all other assets of Seller used in connection with any operations or activities at the Orion Amphitheater and the Food Village, the "**Business**").

B. HVGA and Buyer are parties to that certain Amended and Restated Operating and Management Agreement dated September 1, 2022, as amended or otherwise modified (the "**Operating Agreement**") under and pursuant to which HVGA manages, operates, and markets the Orion Amphitheater and the Food Village including, among other things, the booking and management of concerts, shows and other events, the provision of food, beverages and other services, and various other functions and activities within the Orion Amphitheater and the Food Village.

C. HVGA and Seller are affiliates of each other under common control and ownership, and, further, are parties to that certain Concessions Agreement dated April 1, 2022, as amended or otherwise modified (the "**Concessions Agreement**"), pursuant to which Seller provides food, beverage, and concessions services at the Orion Amphitheater and the Food Village.

D. Seller and Buyer are parties to that certain Ground Sublease Agreement dated September 1, 2022, as amended or otherwise modified (the "**Sublease Agreement**") pursuant to which Seller leases from Buyer the real property constituting the site of the Food Village and upon which Seller has located various Food Village Assets.

E. HVGA and Seller have approached Buyer proposing that (i) Buyer purchase and acquire the Business, including without limitation the Orion Assets, the Food Village Assets, and any other assets of Seller used in connection with the Business (hereinafter defined as the "**Purchased Assets**"), (ii) Seller and HVGA terminate the Concessions Agreement such that all food, beverage and other operations at the Orion Amphitheater and the Food Village are conducted directly by HVGA, (iii) Buyer and HVGA enter into a Second Amended and Restated Operating Agreement (as defined below), and (iv) Buyer and Seller terminate the Sublease Agreement, all as more particularly described and on the terms and conditions herein.

AGREEMENT

In consideration of the foregoing, the mutual agreements contained herein and other good and valuable consideration, the receipt, sufficiency and adequacy of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Defined Terms. Capitalized terms used in this Agreement and not defined in the body of this Agreement have the meanings assigned to such terms on Exhibit A.

Section 1.2 Rules of Construction. The following rules of construction shall apply to this Agreement:

(a) “including” and other words or phrases of inclusion, if any, shall not be construed as terms of limitation; references to “included” matters shall be regarded as non-exclusive, non-characterizing illustrations and equivalent to the terms “including, but not limited to,” and “including, without limitation;” “or” is disjunctive but not necessarily exclusive;

(b) the terms “hereof,” “herein,” “hereunder,” “hereto” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement and not to any particular provision of this Agreement; all article, section, paragraph, annex, exhibit and schedule references are to the articles, sections, paragraphs, annexes, exhibits and schedules of or to this Agreement unless otherwise specified;

(c) any accounting term used in this Agreement shall have, unless otherwise specifically provided herein, the meaning customarily given such term in accordance with GAAP, and all financial computations hereunder will be computed, unless otherwise specifically provided herein, in accordance with GAAP; all references herein to “dollars” or “\$” are to United States dollars; all references herein to any period of days shall mean the relevant number of calendar days unless otherwise specified;

(d) words in the singular shall be held to include the plural and vice versa; words of one gender shall be held to include the other genders as the context requires;

(e) any document, list or other item shall be deemed to have been “made available,” “delivered,” or “furnished” to Buyer for all purposes of this Agreement only if such document, list or other item was provided to Representatives of Buyer via email or available in the electronic data room established by or on behalf of Seller in connection with the transactions contemplated by this Agreement and Buyer was given full access to such document, list or other item at least two (2) Business Days prior to the date hereof;

(f) titles and headings to the articles and sections herein are inserted for convenience of reference only, and are not intended to be a part of or to affect the meaning or interpretation of this Agreement; and

(g) the Parties have participated jointly in the negotiation and drafting of this Agreement. In the event of an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.

Section 1.3 Disclosure Schedule. The disclosure schedule referred to herein and delivered by Seller pursuant to this Agreement (the “**Disclosure Schedule**”) is an integral part of this Agreement. The Disclosure Schedule with respect to Article III of this Agreement will be arranged in sections and sub-sections corresponding to the numbered and lettered sections and sub-sections contained in Article III of this Agreement, and the information disclosed in any numbered or lettered part shall be deemed to relate to and to qualify only: (a) the particular representation and warranty set forth in the corresponding numbered or lettered section or sub-section of Article III; and (b) any other representation and warranty set forth in Article III if and to the extent that it is readily apparent on the face of such disclosure (without reference to any document(s) referenced therein) that such disclosure applies to such other representation and warranty.

ARTICLE II PURCHASE AND SALE

Section 2.1 Purchase and Sale. Upon the terms and subject to the conditions of this Agreement, at the Closing, Seller shall sell, assign, transfer, convey and deliver to Buyer all of Seller’s right, title and interest in, to and under the Purchased Assets, free and clear of all Encumbrances (other than Permitted Encumbrances), and Buyer shall purchase, acquire and accept the Purchased Assets and assume the Assumed Liabilities. The “**Purchased Assets**” are all of the Orion Assets, the Food Village Assets and all other assets, properties, and businesses of Seller of every kind, nature and description, real, personal and mixed, tangible and intangible (including goodwill), wherever located (other than the Excluded Assets), which relate to, or are used or held for use in connection with, the Business, including, without limitation, the following:

- (a) all rights, benefits and interests of Seller in, to or under all of the Contracts (including leases) described on Section 2.1(a) of the Disclosure Schedule (the “**Assigned Contracts**”);
- (b) the Improvements (as defined below);
- (c) all structures, fixtures, furnishings, furniture, equipment, machinery, computer hardware, tools, vehicles, parts, spare parts, supplies and other tangible personal property of every kind, owned, leased, used or held for use by Seller in connection with the Business, whether or not located on the site of the Orion Amphitheater and the Food Village (the “**Tangible Personal Property**”), including without limitation the items listed or described in Section 2.1(c) of the Disclosure Schedule;
- (d) all supplies, work-in-progress, finished goods and other inventories used or held for use by Seller and related to the Business (the “**Inventory**”);
- (e) the books of account, invoices, customers’ and suppliers’ lists and billing records and other records of Seller and relating to the Business, including, without limitation, all login rights, user names, passwords, and other internet credentials associated therewith;
- (f) all insurance benefits, including rights and proceeds, arising from or relating to the Purchased Assets or the Assumed Liabilities;
- (g) the Owned Intellectual Property, all of which is set forth on Section 2.1(g) of the Disclosure Schedule;
- (h) to the extent transferable, all express or implied manufacturers’ or other warranties relating to the Purchased Assets, or any component thereof, and all maintenance records and other documents relating thereto;

(i) all rights and interests of Seller relating to credits, prepaid expenses, advance payments, vendor allowances, deferred charges, sureties, security and similar deposits, negotiable and non-negotiable instruments in favor of the Business and prepaid items, including volume and promotional incentive allowances, prepaid interest, deposits and any other credits received by or accruing to such persons from lessors, suppliers or utilities (together with security interests or liens from third parties relating thereto), in each case, which relate to the Purchased Assets, the Assumed Liabilities or the Business;

(j) all rights, privileges, judgments, demands, causes of action, claims in bankruptcy, indemnification agreements with, and indemnification rights against, third parties, warranty claims, reimbursements, offsets and other claims of any nature, known or unknown, contingent or non-contingent, whether arising by way of counterclaim or otherwise, relating to the Purchased Assets, the Assumed Liabilities or the Business, including all claims related to the value, condition or title to the Purchased Assets; and

(k) all goodwill associated with the Business and the Purchased Assets.

Section 2.2 Excluded Assets. Notwithstanding anything contained in Section 2.1 to the contrary, Seller is not selling, and Buyer is not purchasing, the following assets, all of which shall be retained by Seller and shall be excluded from the Purchased Assets (collectively, the “**Excluded Assets**”):

(a) all of Seller’s cash, cash equivalents and marketable securities;

(b) all Contracts other than the Assigned Contracts (the “**Excluded Contracts**”);

(c) all rights of Seller under this Agreement and the Ancillary Agreements;

(d) all Permits (hereinafter defined) held by Seller relating to the Business, including those described on Section 2.2(d) of the Disclosure Schedule (the “**Business Permits**”);

(e) any interest in or right to any refund of Taxes relating to the Business, the Purchased Assets or the Assumed Liabilities for, or applicable to, any taxable period (or portion thereof) ending on or prior to the Closing Date, other than to the extent such Taxes were included in Assumed Liabilities; and

(f) the assets of Seller set forth on Section 2.2(f) of the Disclosure Schedule.

Section 2.3 Assumed Liabilities. In connection with the purchase and sale of the Purchased Assets pursuant to this Agreement, upon the terms and subject to the conditions of this Agreement, at the Closing, except for the Excluded Liabilities, Buyer shall assume, and shall pay, discharge, perform or otherwise satisfy, as and when due, only the Liabilities of Seller arising out of, pursuant to or under the Assigned Contracts or arising out of, pursuant to or under the Purchased Assets (collectively, the “**Assumed Liabilities**”), provided that such Liabilities shall be Assumed Liabilities only to the extent that such Liabilities are to be performed after the Closing Date, were incurred by Seller in the ordinary course of business and do not relate to any failure to perform, improper performance, warranty or other breach, default or violation by Seller on or prior to the Closing Date. Notwithstanding any provision of this Agreement to the contrary, the Buyer shall not assume or become liable to Seller or any other Person for any Liabilities of Seller or any of its Affiliates (whether accrued, absolute, contingent or otherwise), except for the Assumed Liabilities specifically described in this Section 2.3.

Section 2.4 Excluded Liabilities. Notwithstanding any other provision of this Agreement to the contrary, Buyer is not assuming, and Seller shall pay, perform or otherwise satisfy, as and when due,

all Liabilities of Seller or the Business other than the Assumed Liabilities (whether direct or indirect, matured or unmatured, known or unknown, absolute, accrued, contingent or otherwise, whether now existing or hereafter arising) (the “*Excluded Liabilities*”), including, without limitation, the following:

(a) any Liability incurred in connection with the negotiation, preparation, investigation and performance of this Agreement and the transactions contemplated hereby, including the fees and expenses of counsel, accountants, consultants, bankers, advisors and others;

(b) all Taxes of Seller, including any Taxes arising (i) from or with respect to the Purchased Assets or the operation of the Business, in each instance, that are incurred in or are attributable to any period, or any portion of any period, ending on or before the Closing Date or (ii) out of the consummation of the transactions contemplated hereby;

(c) any Liability with respect to any pending or threatened Action arising out of, relating to or otherwise with respect to the ownership or operation of the Business or the Purchased Assets to the extent such Action relates to the ownership or operation of the Business or the Purchased Assets on or prior to the Closing Date;

(d) any Liability of Seller pursuant to any Environmental Law arising from or relating to any Action, event, circumstance or condition occurring or existing on or before the Closing Date;

(e) any product Liability or similar claim for injury to a Person or property which arises out of or is based upon any express or implied representation, warranty, agreement, product specification or guaranty made by Seller, or by reason of the improper performance of a product, or other related product defects of any products at any time manufactured or sold or any service performed by Seller;

(f) any recall, design defect or similar claims of any products manufactured or sold or any service performed by Seller;

(g) any Indebtedness;

(h) any Transaction Expenses of Seller; and

(i) any Liability relating to an Excluded Asset.

Section 2.5 Consents to Assignments.

(a) Notwithstanding anything in this Agreement or any Ancillary Agreement to the contrary, this Agreement and the Ancillary Agreements shall not constitute an agreement to transfer or assign any Purchased Asset, Business Permit, claim or right or any benefit arising thereunder or resulting therefrom if an attempted assignment thereof, without the consent of a third party, would constitute a breach or other contravention of applicable Law or under any Contract to which Seller is a party or by which Seller, or the applicable Purchased Asset, is bound. Seller shall use its reasonable efforts to obtain any Required Consents, without any conditions to such transfer or changes or modifications of terms thereunder unless Buyer provides their prior written consent to such condition, changes or modifications requested by the applicable third party.

(b) If any Required Consent is not obtained prior to Closing and as a result thereof Buyer shall be prevented by such third party from receiving the rights and benefits with respect to such Purchased Asset intended to be transferred hereunder, or if any attempted assignment would adversely affect the rights of Seller thereunder so that Buyer would not in fact receive all such rights or Seller would

forfeit or otherwise lose the benefit of rights that Seller is entitled to retain, Seller and Buyer shall cooperate in any lawful and commercially reasonable arrangement, as Buyer or Seller reasonably requests, under which Buyer would, to the extent practicable, obtain the economic claims, rights and benefits under such asset and assume the economic burdens and obligations (only to the extent they are Assumed Liabilities) with respect thereto in accordance with this Agreement, including by subcontracting, sublicensing or subleasing to Buyer. Seller shall promptly pay to Buyer when received all monies received by Seller under such Purchased Asset or any claim or right or any benefit arising thereunder and Buyer shall promptly pay Seller for all Assumed Liabilities (if any) associated with such Purchased Asset to the extent Buyer receives the economic claims, rights and benefits under such Purchased Assets. Seller shall be solely responsible for the payment of any costs or fees required in order to obtain any consents to assignment or resulting from the failure to obtain such assignment.

Section 2.6 Purchase Price. The aggregate purchase price for the Purchased Assets (the “**Purchase Price**”) shall equal (a) Twelve Million and No/100 Dollars (\$12,000,000) (the “**Purchase Price**”), as may be adjusted pursuant to Section 2.7, plus the value of the Inventory purchased by Buyer as determined pursuant to Section 2.11(b) (the “**Inventory Value**”). The Purchase Price shall be paid at Closing by wire transfer of immediately available funds to an account or accounts designated by Seller. Notwithstanding the foregoing, at the Closing, Buyer shall withhold from the amount otherwise payable to Seller an amount equal to the Holdback Amount (as defined in Section 2.13), which shall be retained by Buyer and released (or applied against indemnification claims pursuant to Article VII or any Deficit pursuant to Section 2.7(e)(i)) in accordance with Section 2.13.

Section 2.7 Purchase Price Adjustments.

(a) **Closing Adjustment.** At the Closing, the Purchase Price shall be adjusted in the following manner:

(i) a decrease by the outstanding Indebtedness of Seller which is related to the Business or is secured by an Encumbrance on any of the Purchased Assets as of the Effective Time (without taking into account payments made by the Buyer pursuant to this Agreement) (such amount, the “**Closing Indebtedness**”); and

(ii) a decrease by the amount of unpaid Transaction Expenses of Seller as of the Effective Time (without taking into account payments made by the Buyer pursuant to this Agreement) (such amount, the “**Closing Transaction Expenses**”).

The net amount of the Purchase Price after giving effect to the adjustments in Section 2.7(a)(i)-(ii) above, less the Holdback Amount, shall be the “**Closing Date Payment**.”

(b) **Post-Closing Adjustment.**

(i) Within sixty (60) calendar days after the Closing, Buyer shall prepare and deliver to Seller a statement (the “**Closing Statement**”) setting forth its calculation of (A) Closing Indebtedness, and (B) Closing Transaction Expenses, and the resulting recalculation of the Closing Date Payment (the “**Final Closing Payment**”).

(ii) The post-closing adjustment to the Purchase Price shall be an amount equal to the Final Closing Payment minus the Closing Date Payment (determined pursuant to Section 2.7(a)) (the “**Post-Closing Adjustment**”).

(c) *Examination and Review.* The determination of the Post-Closing Adjustment shall become final and binding upon the Parties on the thirtieth (30th) calendar day following receipt by Seller of the Closing Statement unless Seller delivers to Buyer prior to such date written notice of dispute setting forth in reasonable detail the items set forth on the Closing Statement with which Seller disagrees and its calculation thereof (“*Notice of Dispute*”). During the thirty (30) calendar day period following receipt by Seller of the Closing Statement, Buyer shall promptly provide all supporting information for Buyer's calculation of the Final Closing Payment reasonably requested by Seller. During the fifteen (15) day period following delivery of a Notice of Dispute by Seller to Buyer (the “*Resolution Period*”), the Parties in good faith shall seek to resolve in writing any differences that they may have with respect to the matters specified therein. During the Resolution Period, Seller shall cooperate with Buyer and its Representatives to provide them with any information used in preparing the Notice of Dispute reasonably requested by Buyer or its Representatives. Any disputed items resolved in writing between Buyer and Seller within the Resolution Period shall be final and binding with respect to such items, and if Seller and Buyer agree in writing on the resolution of each disputed item specified by Seller in the Notice of Dispute and the amount of the Post-Closing Adjustment, the amount so determined shall be final and binding on the Parties for all purposes hereunder.

(d) *Disputes.* If Seller and Buyer have not resolved all such differences by the end of the Resolution Period, Seller and Buyer shall submit, in writing, to an independent nationally recognized firm of certified public accountants mutually agreed upon by Seller and Buyer (the “*Independent Accounting Firm*”), their briefs detailing their views as to the correct nature and amount of each item remaining in dispute and the amount of the Post-Closing Adjustment, and the Independent Accounting Firm shall make a written determination as to each such disputed item and the amount of the Post-Closing Adjustment, which determination shall be final and binding on the Parties for all purposes hereunder. The determination of the Independent Accounting Firm shall be accompanied by a certificate of the Independent Accounting Firm that it reached such determination in accordance with the provisions of this Section 2.7(d). Seller and Buyer shall use their commercially reasonable efforts to cause the Independent Accounting Firm to render a written decision resolving the matters submitted to it within twenty (20) Business Days following the submission thereof. The Independent Accounting Firm shall be authorized to resolve only those items remaining in dispute between the parties in accordance with the provisions of this Section 2.7(d), within the range of the difference between Buyer's position with respect thereto and Seller's position with respect thereto. The Parties agree that judgment may be entered upon the written determination of the Independent Accounting Firm in any court referred to in Section 9.8. The costs of any dispute resolution pursuant to this Section 2.7(d), including the fees and expenses of the Independent Accounting Firm and of any enforcement of the determination thereof, shall be borne by the Parties in inverse proportion as they may prevail on the matters resolved by the Independent Accounting Firm, which proportionate allocation shall be calculated on an aggregate basis based on the relative dollar values of the amounts in dispute and shall be determined by the Independent Accounting Firm at the time the determination of such Independent Accounting Firm is rendered on the merits of the matters submitted. The fees and disbursements of the Representatives of each Party incurred in connection with their preparation or review of the Closing Statement and preparation or review of any Notice of Dispute, as applicable, shall be borne by such Party.

(e) *Payments of Post-Closing Adjustment.*

(i) If the Post-Closing Adjustment is a negative number (the absolute value of such amount, the “*Deficit*”), (x) Buyer shall have the right to retain and to receive from the Holdback Amount an amount in cash equal to the Deficit and (y) to the extent that the Deficit exceeds the Holdback Amount or the Holdback Amount has been released in accordance with Section 2.13, within five (5) Business Days after the final determination of the Post-Closing Adjustment, Seller shall pay to Buyer by wire transfer of immediately available funds the amount of such excess; provided, that if Seller fails to

make such payment when due, Buyer shall have the right to retain the amount of such Deficit (or the remaining portion thereof) from any amounts owed by Buyer to HVGA pursuant to the Second Amended and Restated Operating Agreement.

(ii) If the Post-Closing Adjustment is a positive number, within five (5) Business Days after the final determination of the Post-Closing Adjustment, Buyer shall disburse or shall cause to be disbursed by wire transfer of immediately available funds to Seller the amount of the Post-Closing Adjustment.

(f) *Adjustments for Tax Purposes.* Any payments made pursuant to Section 2.7 shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law.

Section 2.8 Closing. Subject to the terms and conditions of this Agreement, the sale and purchase of the Purchased Assets and the assumption of the Assumed Liabilities contemplated by this Agreement shall take place at a closing (the "**Closing**") to be held remotely via electronic exchange of documents and wire of funds on the date hereof (the "**Closing Date**"). Closing shall be effective as of 11:59 p.m. Central time on the Closing Date.

Section 2.9 Closing Deliverables by Seller. At the Closing, Seller shall deliver or cause to be delivered to Buyer the following:

(a) counterparts to each Ancillary Agreement to which Seller is a party, duly executed by Seller;

(b) an IRS Form W-9;

(c) a settlement statement setting forth the distribution of the portion of the Purchase Price payable on the Closing Date, and the payments of the expenses and prorations of the personal property Taxes, real property Taxes and other items to be prorated as provided in this Agreement (the "**Settlement Statement**"), duly executed by Seller;

(d) a certificate for each of Seller and HVGA, dated as of the Closing Date and executed by an officer or manager of Seller or HVGA, as applicable, certifying as to true, accurate and complete copies of (A) the Organizational Documents of Seller or HVGA, as applicable, and (B) a copy of the resolutions adopted by the members and the managers of Seller or HVGA, as applicable, duly authorizing the execution, delivery and performance of this Agreement and each of the Ancillary Agreements to which Seller or HVGA, as applicable, is a party, and the consummation of the transactions contemplated hereby and thereby;

(e) certificates of good standing or their equivalent, dated not more than ten (10) days prior to the Closing Date, from its jurisdiction of organization;

(f) tax clearance certificates (or their equivalents) for Seller from the taxing authorities in each jurisdiction in which Seller is required to file Tax Returns or in which any of the Purchased Assets are located, together with evidence of the payment in full or other satisfaction of any Taxes owed by Seller in each such jurisdiction;

(g) payoff letters or similar documents (the "**Payoff Letters**"), each in form and substance reasonably satisfactory to Buyer, duly executed by each of the creditors for the Closing Indebtedness (collectively, the "**Creditors**"), specifying (i) the amounts required to pay off in full at the

Closing all Closing Indebtedness owing to such Creditor (including the outstanding principal, accrued and unpaid interest and prepayment and other penalties) and wire transfer information for such payment and (ii) the written commitment of each such Creditor to release all Encumbrances, if any, which such Creditor may hold on any of the Purchased Assets;

(h) any documentation, including exemption certificates, required in order to support any sales, use or other similar Tax exemption for any Purchased Assets that qualify for such exemption;

(i) with respect to any Encumbrances encumbering the Purchased Assets other than Permitted Encumbrances and except for Encumbrances subject to Section 2.9, releases or termination statements of such Encumbrances, each in form and substance reasonably acceptable to Buyer to the extent such evidence of a termination or release is available prior to Closing;

(j) all Required Consents, each in form and substance reasonably acceptable to Buyer;

(k) evidence of termination of any Mortgage encumbering the Purchased assets, in form and substance reasonably acceptable to Buyer; and

(l) such other documents and instruments of transfer, duly executed by Seller, covering such matters as Buyer may reasonably request to consummate the transactions contemplated by this Agreement.

Section 2.10 Closing Deliverables by Buyer. At the Closing, Buyer shall deliver or cause to be delivered to Seller the following:

(a) payment of the Closing Date Payment by wire transfer of immediately available funds to an account designated by Seller in writing;

(b) counterparts to each Ancillary Agreement to which Buyer is a party, duly executed by Buyer;

(c) pay or cause to be paid, on behalf of Seller, the Closing Indebtedness to such accounts designated in any Payoff Letters (which shall be delivered to Buyer at least two (2) Business Days prior to the Closing Date), the amounts set forth in such Payoff Letters by wire transfer of immediately available funds

(d) pay or cause to be paid, on behalf of Seller, the Closing Transaction Expenses to such accounts designated in any Settlement Statement (which shall be delivered to Buyer at least two (2) Business Days prior to the Closing Date), the amounts set forth in such Settlement Statement by wire transfer of immediately available funds;

(e) the Settlement Statement, duly executed by Buyer; and

(f) evidence of authorization of the transactions contemplated by this Agreement by the City Council of the City of Huntsville, Alabama, in form and substance reasonably acceptable to Seller.

Section 2.11 Inventory.

(a) *Inventory Statement.* On the Closing Date or within five (5) days prior to the Closing Date, Seller shall deliver to Buyer a statement of its inventory at the Orion Amphitheater and the Food Village in the form provided by Seller's Inventory software (the "*Inventory Statement*"), together

with all backup documentation as reasonably requested by Buyer. The Inventory Statement shall be subject to the approval by Representatives of both Parties and memorialized in a mutually executed inventory reconciliation that lists the items and quantities of Inventory on hand as of the Closing.

(b) *Inventory Valuation.* The value of the Inventory purchased by Buyer (the “*Inventory Value*”) shall be determined from the Inventory Statement based on Seller’s actual out-of-pocket acquisition cost for each item Inventory on hand and unused as of the date of the Inventory Statement, as evidenced by reasonable supporting documentation, excluding any obsolete, expired, damaged, or unsalable items.

(c) *Post-Closing Invoicing and Payment.* Within thirty (30) days after the Closing Date, Seller shall deliver to HVGA, with a copy to Buyer, an invoice for the Inventory Value, together with reasonable supporting documentation evidencing the calculation contemplated by Section 2.11(b). Payment of the invoiced Inventory Value shall be made by HVGA on Buyer’s behalf in accordance with the Second Amended and Restated Operating Agreement.

(d) *Disputes.* Any dispute regarding the Joint Inventory or the Inventory Value shall be resolved in accordance with the procedures set for in Section 2.7(d).

Section 2.12 Prorations. Seller and Buyer will apportion the rents, real estate, personal property and ad valorem Taxes with respect to the Purchased Assets, water and sewer rents, and utilities and prepaid liabilities based upon the number of days before and after the Closing Date. Seller shall be responsible for all such costs and Taxes with respect to the Purchased Assets for periods before the Closing Date and Buyer shall be responsible for all such costs for periods at or after the Closing Date. If the final prorated amounts are not known as of the Closing Date, such amounts shall be estimated and adjustments thereto shall be made not more than 120 days after the Closing Date or, if later, at such time as they are known to the Parties.

Section 2.13 Holdback Amount. On the Closing Date, Buyer shall retain an amount equal to Five Hundred Thousand and No/100 Dollars (\$500,000) (the “*Holdback Amount*”), in accordance with the terms of this Agreement. On the expiration of the One Hundred Twenty (120) day period following the Closing Date (the “*Holdback Period*”), Buyer shall release the Holdback Amount (to the extent not utilized to pay Buyer for any indemnification claims pursuant to Article VII or applied against any Deficit pursuant to Section 2.7(e)(i)) to Seller, except that Buyer shall retain an amount (up to the total amount then held by Buyer) equal to the amount of claims for indemnification under Article VII asserted prior to the expiration of the Holdback Period but not yet resolved (“*Unresolved Claims*”), and except that, if the Post-Closing Adjustment has not been finally determined pursuant to Section 2.7 as of the expiration of the Holdback Period, Buyer shall retain an amount equal to the Deficit set forth on the Closing Statement (or if a Notice of Dispute has been delivered, the amount in dispute) until the Post-Closing Adjustment has been finally determined, at which time such retained amount shall be applied against any Deficit or released to Seller, as applicable. The Holdback Amount retained for Unresolved Claims shall be released by Buyer (to the extent not utilized to pay Buyer for any such claims resolved in favor of Buyer) upon their resolution in accordance with Article VII.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as follows:

Section 3.1 Organization; Qualification; Ownership. Seller is duly organized, validly existing, and in good standing under the Laws of the State of Delaware. Seller has all power and authority necessary to own, lease and operate its properties and otherwise to conduct the Business as it is presently conducted.

Seller has duly qualified as a foreign company, and is in good standing, under the Laws of all jurisdictions where it is required to be so qualified under applicable Law.

Section 3.2 Authority. Seller has full power and authority to execute and deliver this Agreement and each of the Ancillary Agreements and other agreements and instruments to which it will be a party pursuant hereto, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and each of the Ancillary Agreements and other agreements and instruments to which it will be a party pursuant hereto and the consummation by Seller of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary limited liability company action of Seller. This Agreement has been, and upon their execution each of the Ancillary Agreements and other agreements and instruments to which Seller will be a party pursuant hereto will have been, duly executed and validly delivered by Seller. This Agreement constitutes, and upon their execution of each of the Ancillary Agreements and other agreements and instruments to which Seller will be a party pursuant hereto will constitute, the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether considered in a proceeding in equity or at law).

Section 3.3 No Conflict; Filings and Consents.

(a) The execution, delivery and performance by Seller of this Agreement and each of the Ancillary Agreements and other agreements and instruments to which Seller will be a party pursuant hereto, and the consummation of the transactions contemplated hereby and thereby, do not and will not:

- (i) conflict with or violate any Organizational Document of Seller;
- (ii) materially conflict with or violate any Law applicable to Seller, the Business, or any of the Purchased Assets or by which Seller, the Business, or any of the Purchased Assets may be bound or affected; or
- (iii) except with respect to the Required Consents, each of which is set forth on Section 3.3(a) of the Disclosure Schedule, conflict with, result in any material breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, require any consent of, or notice to, any Person pursuant to, or give to others any rights of termination, acceleration, modification or cancellation of, any Assigned Contract, Permit or any other Purchased Asset.

(b) Except as set forth on Section 3.3(b) of the Disclosure Schedule, Seller is not required to file, seek or obtain any notice, authorization, approval, order, permit or consent of or with any Governmental Authority in connection with the execution, delivery and performance by Seller of this Agreement and each of the Ancillary Agreements and other agreements and instruments to which Seller will be a party pursuant hereto or the consummation of the transactions contemplated hereby or thereby or in order to prevent the termination of any right, privilege, license or qualification of the Business or related to the Purchased Assets.

Section 3.4 Title and Condition of Purchased Assets.

(a) Seller has (i) good and marketable title to the Purchased Assets, which it owns, free and clear of any and all Encumbrances, except for Permitted Encumbrances, and (ii) valid leaseholds to all leased Purchased Assets.

(b) This Agreement and the instruments and documents to be delivered by Seller and to Buyer at the Closing shall be adequate and sufficient to transfer Seller's entire right, title and interest in and to the Purchased Assets to Buyer, subject to Section 2.5. As of the Effective Time, the Purchased Assets will provide Buyer with all assets, properties, Contracts, rights and interests, subject to Section 2.5, necessary for Buyer to conduct the Business as it has been conducted by Seller in the ordinary course of business consistent with past practice.

(c) Each item of Tangible Personal Property included in the Purchased Assets is in good operating condition and in a good state of maintenance and repair, ordinary wear and tear excepted, and is usable in the ordinary course of business consistent with Seller's past practices.

Section 3.5 Compliance with Law; Permits.

(a) Except as set forth on Section 3.5(a) of the Disclosure Schedule, (i) Seller has at all times been in compliance in all material respects with all applicable Laws related to the Business or the Purchased Assets and (ii) Seller has not received notice of any material violation of any Law, or any potential material liability under any Law, relating to the operation of the Business or to the Purchased Assets, which have not been cured or otherwise satisfactorily disposed of, nor, to Seller's Knowledge, is there any basis for such violation or potential liability; provided that each notice of a material violation that Seller has received related to the Business or the Purchased Assets within the three (3) year period prior to the Closing Date is set forth on Section 3.5(a)(iii) of the Disclosure Schedule, regardless of whether or not such violation has been cured or otherwise satisfactorily disposed of.

(b) Seller is in possession of all permits, Environmental Permits, licenses, franchises, approvals, certificates, consents, waivers, concessions, exemptions, Orders, registrations, notices, entitlements or other authorizations of any Governmental Authority (each, a "***Permit***") necessary for it to own, use, lease and operate the Purchased Assets and to carry on Business as currently conducted and as presently proposed to be conducted, each of which is listed on Section 2.2(d) of the Disclosure Schedule

Section 3.6 No Actions. Except as disclosed on Section 3.6 of the Disclosure Schedule, there is no Action by or against Seller or any other Person in connection with the Business or the Purchased Assets pending, or to the Knowledge of Seller, threatened, nor has any such Action been pending, or to Seller's Knowledge, threatened, within the three (3) year period prior to the date hereof.

Section 3.7 Real Property. Seller does not own, lease or sublease, and has never owned or leased, any real property that is used in the Business except for the property subleased by Seller pursuant to the Sublease Agreement. There are no facts or conditions affecting any of the buildings, structures, fixtures and improvements (collectively, the "***Improvements***") located at the Orion Amphitheater or the Food Village that, individually or in the aggregate, would reasonably be expected to substantially interfere with Seller's current use, occupancy or operation thereof.

Section 3.8 Taxes. Solely as relates to the Business or the Purchased Assets: Seller has timely filed with the appropriate Governmental Authority all Tax Returns required to be filed by or with respect to it, the Business and the Purchased Assets, and all such Tax Returns were true, correct, and complete in all material respects and were prepared in compliance with all applicable Laws. Seller has timely paid all material Taxes that are due and payable with respect to the Business and the Purchased Assets, and Seller has withheld or collected and timely paid to the appropriate Governmental Authority (and maintained all required records and complied with all information reporting requirements with respect to such amounts), from each payment made to each of its employees and independent contractors, the amount of all material Taxes required to be withheld or collected, and are not liable for any material amount of arrears of wages, Taxes, penalties or other sums for failure to comply with any of the foregoing. There are no liens with

respect to Taxes (except for Permitted Encumbrances) upon any of the Purchased Assets. Seller has not been audited by any Governmental Authority or notified in writing that any Governmental Authority contemplates such an audit. Seller has not signed any extension agreement or waiver of any statute or period of limitations with respect to any Tax with any Governmental Authority that is currently in effect. Seller has withheld or collected and timely paid to the appropriate Governmental Authority all material sales or use Taxes with respect to all sales of products, goods, or services. Seller has obtained and maintains in its books and records properly completed resale or other appropriate exemption certificates with respect to each customer that has purchased products, goods, or services from Seller and for which no withholdings for sales or use Taxes were made.

Section 3.9 Environmental Matters.

(a) Except as set forth on Section 3.9(a) of the Disclosure Schedule, (i) Seller is, and at all times since January 1, 2023 has been, in material compliance with all applicable Environmental Laws in connection with the Business or any of the Purchased Assets and has obtained, and Seller and the Purchased Assets are, and at all times since January 1, 2023 have been, in material compliance with, all Environmental Permits in connection with the conduct or operation of the Business and the ownership or use of the Purchased Assets and (ii) there are no Actions pursuant to any Environmental Law pending or threatened, against Seller in connection with the conduct or operation of the Business or the ownership or use of the Purchased Assets. There has not occurred any event or circumstance that has or may result in a material violation of any Environmental Laws by Seller or in connection with the Business or the ownership or use of the Purchased Assets.

(b) To the Seller's Knowledge, neither Seller nor any Purchased Assets are subject to any Order, or any requirement to provide or demonstrate compliance with any financial assurance, pursuant to any Environmental Law.

(c) Seller has not stored, disposed of or arranged for disposal of any Hazardous Materials, except in material compliance with applicable Environmental Laws, nor does Seller have any Knowledge of such storage, disposal or arrangement for disposal by any other Person.

(d) Seller has not entered into and is not otherwise subject to any Contract pursuant to which it has agreed to indemnify or otherwise assume any Liability pursuant to Environmental Law or with respect to Hazardous Materials, with respect to the Business.

(e) To the Seller's Knowledge, there have been no actions, activities, circumstances, conditions, events or incidents, including, without limitation, the release, emission, discharge, presence or disposal of any Hazardous Materials, that could form the basis of any Action against Seller or the Business.

Section 3.10 Assigned Contracts. Each Assigned Contract is valid and binding on Seller in accordance with its terms and is in full force and effect. Except as set forth on Section 2.1(a) of the Disclosure Schedule, none of Seller or, to Seller's knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of any intention to terminate, any Assigned Contract. To the Seller's Knowledge, no event or circumstance has occurred that, with or without notice or lapse of time or both, would constitute an event of default under any Assigned Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of benefit thereunder. Complete and correct copies of each Assigned Contract have been made available to Buyer. There are no disputes pending or threatened under any Assigned Contract.

Section 3.11 Intellectual Property.

(a) Section 2.1(g) of the Disclosure Schedule sets forth a correct, true, and complete list of all Owned Intellectual Property. Except as set forth on Section 2.1(g) of the Disclosure Schedule, Seller does not own any Intellectual Property that is used in, held for use in, or necessary for the conduct or operation of the Business. The use of the Owned Intellectual Property in the conduct of the Business as currently conducted does not infringe upon, misappropriate or otherwise violate any Intellectual Property rights of any third party. There is no Action pending or, to Seller's Knowledge, threatened against Seller alleging any infringement, misappropriation, or violation of any Intellectual Property right of any third party in connection with the Owned Intellectual Property. To the extent that Seller has created any Intellectual Property used or useful in the Business, all such Intellectual Property so created has been created for HVGA on behalf of Buyer and is owned by Buyer.

(b) Section 3.11(b) of the Disclosure Schedule sets forth a correct, true, and complete list of all Licensed Intellectual Property (including the licensor of such Licensed Intellectual Property), granted to or used by Seller in the conduct of the Business, including, without limitation, point-of-sale software, back-of-house software and tools, content, menus or recipes subject to third-party rights, and any branding, trademarks, or trade dress used by Seller in the Business under license or other grant of rights from a third party.

(c) Seller has a valid and enforceable right to use the Licensed Intellectual Property in the conduct of the Business as currently conducted, and each license identified on Section 3.11(b) of the Disclosure Schedule is in full force and effect and enforceable against Seller and, to the Seller's Knowledge, the licensor thereto, in accordance with its terms. Seller is not in default under any such license, and, to Seller's Knowledge, no other party thereto is in default thereunder. Seller has not received written notice of termination, non-renewal, or breach under any such license.

(d) To Seller's Knowledge, the use of the Licensed Intellectual Property by Seller in the conduct of the Business as currently conducted has not and does not infringe, misappropriate, or otherwise violate any Intellectual Property rights of any third party. There is no Action pending or, to Seller's Knowledge, threatened against Seller alleging any such infringement, misappropriation, or violation with respect to the Licensed Intellectual Property.

(e) To the extent any Licensed Intellectual Property is provided to Seller under a Contract that is included among the Assigned Contracts, such Contract is assignable to Buyer at Closing or, where a third-party consent is required for assignment, such consent is included among the Required Consents.

Section 3.12 Affiliate Transactions. Except as set forth on Section 3.12 of the Disclosure Schedule or as terminated by this Agreement, there are no (a) Contracts relating to the Business or included in the Purchased Assets between Seller, on the one hand, and any of its Affiliates, officers, directors, managers, members, direct or indirect owners, consultants or employees, on the other hand, and (b) no Affiliate, employee, officer, director, manager, direct or indirect owner, equity holder, partner or member of Seller or any member of his or her immediate family or any of their respective Affiliates ("**Related Persons**"), in each case, related to or in connection with the Business: (i) owes any amount to Seller, nor does Seller owe any amount to, or has Seller committed to make any loan or extend or guarantee credit to or for the benefit of, any Related Person; (ii) is involved in any business arrangement or other relationship with Seller relating to the Business (whether written or oral); (iii) owns any property or right, tangible or intangible, that is used by Seller in its operation of the Business; (iv) has any claim or cause of action against Seller; or (v) owns any direct or indirect interest of any kind in, or controls or is a manager, director, officer, employee, independent contractor or partner of, or consultant to, or lender to or borrower from, or has the

rights to participate in the profits of, any Person that is a competitor, supplier, service provider, customer, client, landlord, tenant, creditor or debtor of Seller.

Section 3.13 Material Suppliers. Set forth on Section 3.13 of the Disclosure Schedule is (i) each supplier of the Business to whom Seller has paid consideration for goods or services rendered in connection with the Business in an amount greater than or equal to \$10,000 for either of the two (2) most recent fiscal years (collectively, the “**Material Suppliers**”); and (ii) the amount of purchases from each Material Supplier during such periods. Seller is not engaged in any dispute with any Material Supplier. None of the Material Suppliers have either provided written notice or otherwise notified Seller that it intends to terminate or reduce its business relations with Seller or the Business, and no event or dispute has occurred that could reasonably result in any Material Supplier terminating or reducing its business relationship with Seller or the Business after the Closing.

Section 3.14 Inventory. All Inventory included in the Purchased Assets: (a) consists of a quality merchantable, usable and salable in the ordinary course of business of the Business consistent with past practice; (b) was acquired and has been maintained in the ordinary course of business; (c) is located at the Orion Amphitheater or Food Village; and (d) represents adequate levels of inventory for the immediate continuation of the operation of the Business in the ordinary course by Buyer immediately following the Closing.

Section 3.15 Brokers. Except as set forth on Section 3.15 of the Disclosure Schedule, no broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of Seller.

Section 3.16 Full Disclosure. No representation or warranty by Seller in this Agreement and no statement contained in the Disclosure Schedule to this Agreement or any certificate or other document furnished or to be furnished to the Buyer pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as follows:

Section 4.1 Organization and Qualification. Buyer is a municipal corporation that is duly organized and validly existing under the Laws of the State of Alabama. Buyer has delivered to Seller complete and correct copies of its Organizational Documents now in effect. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action of Buyer, including any required approval of the City Council of the City of Huntsville, Alabama.

Section 4.2 Authority. Buyer has full power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which it will be a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and each of the Ancillary Agreements to which it will be a party and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary action of Buyer, including any required approval of the City Council of the City of Huntsville, Alabama. This Agreement has been, and upon their execution each of the Ancillary Agreements to which Buyer will be a party will have been, duly executed and validly delivered by Buyer. This Agreement constitutes, and upon their execution of each of the Ancillary Agreements to

which Buyer will be a party will constitute, the legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether considered in a proceeding in equity or at law).

Section 4.3 No Conflict; Filings and Consents.

(a) The execution, delivery and performance by Buyer of this Agreement and each of the Ancillary Agreements to which Buyer will be a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not:

- (i) conflict with or violate any of the Organizational Documents of Buyer;
- (ii) materially conflict with or violate any Law applicable to Buyer or by which any property or asset of Buyer is bound or affected; or
- (iii) conflict with, result in any material breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, require any consent of any Person pursuant to, or give to others any rights of termination, acceleration or cancellation of, any material contract or agreement to which Buyer is a party.

(b) Buyer is not required to file, seek or obtain any notice, authorization, approval, order, permit or consent of or with any Governmental Authority in connection with the execution, delivery and performance by Buyer of this Agreement and each of the Ancillary Agreements to which it will be party or the consummation of the transactions contemplated hereby or thereby or in order to prevent the termination of any right, privilege, license or qualification of Buyer, except as may be necessary as a result of any facts or circumstances relating to Seller or any of its Affiliates.

Section 4.4 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of Buyer.

Section 4.5 No Actions. There is no Action by or against Buyer or any Affiliate of Buyer pending, or to the Knowledge of Buyer, threatened, nor has any such Action been pending, or to Seller's Knowledge, threatened, within the three (3) year period prior to the date hereof that would prevent Buyer from consummating the transactions contemplated herein and in the Ancillary Agreements.

Section 4.6 Independent Investigation. Buyer has conducted its own independent investigation, review and analysis of the Business and the Purchaser Assets, and Buyer acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of Seller for such purpose. Buyer acknowledges and agrees that neither Seller nor any other Person has made any representation or warranty as to Seller, the Business, the Purchased Assets or this Agreement, except as expressly set forth in Article III of this Agreement (including the related portions of the Disclosure Schedule), it being acknowledged and agreed by Seller that Buyer's representations set forth in this Section 4.6 shall not serve as a defense by Seller to any claim of Fraud or intentional misrepresentation.

ARTICLE V COVENANTS

Section 5.1 Confidentiality.

(a) From and after the Closing Date, Seller shall, and shall cause its Affiliates and Representatives to hold in confidence and not disclose any and all information, whether written or oral, concerning the Business, or the Purchased Assets (the “**Confidential Information**”). The obligations of Seller under this Section 5.1 shall not apply to Confidential Information which (i) is or becomes generally available to the public without breach of the commitment provided in this Section 5.1; or (ii) is required to be disclosed by judicial or administrative process or by other requirements of Law. If Seller or any of its Affiliates or Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, such Person shall promptly notify Buyer in writing prior to making such disclosure (if permitted by Law) to allow Buyer to seek an appropriate protective order or otherwise preserve the confidentiality of such Confidential Information, at Buyer's sole cost and expense. If Seller or any of its Affiliates or Representatives remain compelled to disclose any Confidential Information, such Person shall disclose only that portion of such information which such Person is advised by its counsel in writing is legally required to be disclosed.

Section 5.2 Refunds and Remittances. From and after the Closing: (a) if Seller or any of its Affiliates receive any refund or other amount that is applicable to a Purchased Asset or is otherwise properly due and owing to Buyer in accordance with the terms of this Agreement, Seller shall promptly remit, or shall cause to be remitted, such amount to Buyer; (b) if Buyer or any of its Affiliates receive any refund or other amount that is properly due and owing to Seller in accordance with the terms of this Agreement, Buyer promptly shall remit, or shall cause to be remitted, such amount to Seller; and (c) Seller must refer to Buyer all calls or inquiries that it or its Affiliates receive related to the purchase of products or services from the Business.

Section 5.3 Restrictive Covenants.

(a) Seller agrees that for a period of five (5) years following the Closing Date (the “**Restricted Period**”), Seller shall not, and shall not permit any of its Affiliates to, directly or indirectly, either for Seller’s own benefit or purposes or for the benefit or purposes of any other Person, (i) engage in any Competitive Activity (as defined herein) within fifty (50) miles of the city limits of the City of Huntsville, Alabama, but excluding the City of Huntsville (the “**Territory**”) or (ii) allow the establishment or operation by any third party of any business or facility engaged in any Competitive Activity on any real property owned, leased or controlled by Seller or any Affiliates thereof within the Territory. As used herein, the term “**Competitive Activity**” means any participation in, employment by, provision of services to, funding of, ownership of any interest in or assistance to or promotion or organization of any Person, that, directly or indirectly, is engaged in any activities that compete, in whole or in part, with the Business, whether Seller is acting as an agent, independent contractor, consultant, investor, partner, shareholder, member, proprietor or in any other individual or representative capacity.

(b) Without limiting the foregoing, Seller agrees that, for a period of two (2) years following the Closing Date, Seller shall not, directly or indirectly:

(i) induce or attempt to induce any Person engaged or employed by Buyer (whether part-time or full-time and whether as an officer, employee, consultant, agent, advisor or independent contractor) (each, a “**Buyer Employee**”) to leave the employ of or engagement with Buyer or to cease providing services to or on behalf of Buyer, provided that the foregoing will not prevent Seller from engaging in general solicitations to the public or general advertising not targeted to Buyer Employees;

(ii) engage or employ, solicit for employment, or attempt to engage or employ, any Buyer Employee (whether or not for compensation), or any Person whose status as a Buyer Employee has terminated within the one-year period prior to the Closing Date or employs, solicits for employment, or attempts to engage or employ such Person, as an officer, employee, consultant, agent, adviser or independent contractor, provided that the foregoing will not prevent Seller from engaging in general solicitations to the public or general advertising not targeted to Buyer Employees; or

(iii) induce or attempt to induce any customer, supplier, distributor, licensee or other business relation of Buyer to cease doing business with Buyer.

(c) From and after the Closing, Seller shall not publicly disparage or encourage or induce others to publicly disparage Buyer or its products, services or past and present officers, directors, shareholders, members, managers, agents and employees and Buyer shall not publicly disparage or encourage or induce others to publicly disparage Seller, its Affiliates, its services or past and present officers, directors, shareholders, members, managers, agents and employees. For purposes of this Agreement, the term "disparage" includes, without limitation, comments or statements to the press or the employees or, contractors or any customer, supplier, distributor, licensee or other business relation of Buyer in connection with the Business or Seller, in each case which could be reasonably expected to adversely affect in any manner (i) the conduct of the Business of Buyer (including, without limitation, any business plans or prospects related to the Business) or the business of the Seller and its Affiliates, or (ii) the business reputation of Buyer or Seller and its Affiliates.

(d) Seller acknowledges and agrees that it has carefully read and considered the restrictions contained in this Section 5.3 (the "**Restrictive Covenants**") and that, in view of the nature of the businesses in which Buyer and the Business are engaged, the Restrictive Covenants are reasonable and necessary in order to protect the legitimate interests of Buyer.

(e) If a judicial or arbitral determination is made that any of the provisions of this Section 5.3 constitute an unreasonable or otherwise unenforceable restriction against Seller, the provisions of this Section 5.3 shall be rendered void only to the most limited extent that such judicial or arbitral determination finds such provisions to be unreasonable or otherwise unenforceable with respect to Seller. In this regard, the Parties hereby agree that any judicial or arbitral authority construing this Agreement shall be empowered to sever or modify any portion of the Territory, any prohibited business activity or any time period from the coverage of this Section 5.3 and to apply the provisions of this Section 5.3 to the remaining portion of the Territory, the remaining business activities and the remaining time period not so severed or modified by such judicial or arbitral authority. The time period during which the prohibitions set forth in this Section 5.3 shall apply to Seller shall be tolled and suspended for a period equal to the aggregate time during which Seller violates such prohibitions in any respect. Seller hereby agrees that any remedy at Law for any breach of the provisions contained in Section 5.3 shall be inadequate and that Buyer shall be entitled to injunctive relief for a breach by Seller in addition to any other remedy that Buyer might have under this Agreement

Section 5.4 Intellectual Property License. Within thirty (30) days of Closing, Buyer and HVGA shall enter into a mutually agreeable license for HVGA's use and exploitation, outside the Territory and within the Orion Amphitheater and Food Village, during the term of the Second Amended and Restated Operating Agreement of all brands, marks and other Intellectual Property owned by the Buyer as of the Closing and used by Seller or HVGA in connection with the Business, including without limitation the Intellectual Property set forth on Section 5.4 of the Disclosure Schedule, under the terms reasonably acceptable to Buyer and HVGA. Until such license agreement is executed, Buyer hereby grants such license to HVGA.

Section 5.5 Further Assurances. Each Party hereto will, when requested by any other Parties hereto from time to time after the Closing, and at its own expense, execute and deliver, or cause to be executed and delivered, to such other Party such further assumption agreements, consents, deeds, bills of sale and assignments, documents of title and other instruments reasonably necessary to evidence or clarify the transactions contemplated by this Agreement, subject to this Section 5.5.

Section 5.6 UCC Terminations. If evidence of any UCC financing termination statement filed in connection with the Closing is not available at Closing, Seller shall as soon as reasonably practicable following Closing provide evidence thereof.

Section 5.7 Transfer of Excluded Assets to HVGA. From and after the Closing, Seller shall use its best efforts to ensure that any Excluded Assets and any other assets used in connection with the Business that are not transferred to Buyer under this Agreement, excluding cash, are transferred, conveyed and delivered to HVGA, to the extent such assets are transferrable under applicable Law and the terms of any Contract, license or other instrument governing such assets. Seller shall execute and deliver, or cause to be executed and delivered, such bills of sale, assignments, consents and other instruments as may be reasonably necessary to effectuate such transfer to HVGA. For the avoidance of doubt, nothing in this Section 5.7 shall relieve Seller of any of its obligations under this Agreement with respect to the Excluded Liabilities or otherwise modify the rights of Buyer hereunder.

Section 5.8 Obligation of HVGA: Joint and Several Liability with Seller. HVGA shall be jointly and severally liable for the payment of any amounts owed or deemed to be owed by Seller to Buyer hereunder and not timely paid by Seller. Without limiting the generality of the foregoing, if HVGA does not timely pay amounts owed by it to Buyer under this Agreement then, in addition to all other rights of Buyer to pursue such payment, Buyer may, in its discretion, elect to apply amounts owed by it to HVGA under the Second Amended and Restated Operating Agreement to cover such due and unpaid amount to Buyer subject to Section 7.4.

ARTICLE VI TAX MATTERS

Section 6.1 Purchase Price Allocation. The sum of the Purchase Price and the amount of Assumed Liabilities treated as consideration for the Purchased Assets for Tax purposes (collectively, the “**Total Consideration**”) represents the amount agreed upon by Seller and Buyer to be the aggregate fair market value of the Purchased Assets. The Parties agree to allocate the Total Consideration among the Purchased Assets for income tax purposes in accordance with Code Section 1060 and the Treasury Regulation promulgated thereunder, if required by applicable law, in a manner as determined by Seller. Notwithstanding the foregoing, the Buyer agrees not to take a position with respect to the allocation of the Purchase Price that is inconsistent with the position taken by Seller.

Section 6.2 Cooperation on Tax Matters. Buyer and Seller shall furnish or cause to be furnished to each other, at the requesting party’s reasonable expense, as promptly as practicable, such information and assistance relating to the Business, the Purchased Assets and the Assumed Liabilities as is reasonably necessary for the preparation and filing of any Tax Return, claim for refund or other filings relating to Tax matters, for the preparation for any Tax audit, for the preparation for any Tax protest, or for the prosecution or defense of any suit or other proceeding relating to Tax matters.

Section 6.3 Voluntary Disclosures. Without the prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), Seller shall not (or cause or permit any other Person to) (a) enter into any voluntary disclosure or similar Tax-related filings with any Governmental Authority regarding any Tax or Tax Returns of Seller with respect to any tax period or portion thereof

beginning prior to the Closing Date or (b) file any Tax Returns with respect to any tax period or portion thereof beginning prior to the Closing Date in any state or local jurisdiction where Seller has not previously filed Tax Returns. Without the prior written consent of the Seller (which consent shall not be unreasonably withheld, conditioned or delayed), Buyer shall not (or cause or permit any other Person to) (a) enter into any voluntary disclosure or similar Tax-related filings with any Governmental Authority regarding any Tax or Tax Returns of Seller with respect to any tax period or portion thereof beginning prior to the Closing Date or (b) file any Tax Returns with respect to any tax period or portion thereof beginning prior to the Closing Date in any state or local jurisdiction where the Seller has not previously filed Tax Returns if such voluntary disclosure would give rise to an indemnification or Tax obligation of Seller.

ARTICLE VII INDEMNIFICATION

Section 7.1 Survival. The representations and warranties of the Parties contained in this Agreement shall survive the Closing for a period of eighteen (18) months after the Closing Date, except that all representations and warranties contained in Section 3.1 (Organization and Qualification), Section 3.2 (Authority), Section 3.4 (Purchased Assets), Section 3.8 (Taxes), Section 3.15 (Brokers), Section 4.1 (Organization and Qualification), Section 4.2 (Authority) and Section 4.4 (Brokers) (collectively, the “**Fundamental Representations**”) shall survive the Closing and remain operative and in full force and effect indefinitely. The covenants and agreements of the Parties contained in this Agreement shall survive the Closing without limitation except as expressly limited therein. Any claim that is asserted and submitted in writing to the Indemnifying Party before the applicable survival period expires will survive until fully and finally resolved.

Section 7.2 Indemnification of Buyer Indemnified Parties. Seller shall save, defend, indemnify and hold harmless Buyer and its Affiliates and the respective Representatives, successors and assigns of each of the foregoing (collectively, the “**Buyer Indemnified Parties**”) from and against any and all losses, damages, Liabilities, deficiencies, claims, interest, awards, judgments, penalties, costs and expenses (including reasonable attorneys’ fees, costs and other out-of-pocket expenses incurred in investigating, preparing or defending the foregoing) (hereinafter collectively, “**Losses**”) to the extent arising out of or resulting from:

(a) any breach of any representation or warranty made by Seller contained in this Agreement or any certificate delivered pursuant hereto;

(b) any breach of any covenant or agreement by Seller contained in this Agreement or any certificate delivered pursuant hereto; and

(c) any Excluded Liability.

Section 7.3 Procedures.

(a) In order for a Buyer Indemnified Party to be entitled to any indemnification provided for under this Agreement in respect of, arising out of or involving a Loss or a claim or demand made by any third party against a Buyer Indemnified Party (a “**Buyer Third Party Claim**”), such Buyer Indemnified Party shall deliver notice thereof to the party against whom indemnity is sought (the “**Indemnifying Party**”) promptly after receipt by such Buyer Indemnified Party of written notice of the Buyer Third Party Claim, describing in reasonable detail the facts giving rise to any claim for indemnification hereunder, the amount or method of computation of the amount of such claim (if known) and such other information with respect thereto as the Indemnifying Party may reasonably request. The failure to provide such notice, however, shall not release the Indemnifying Party from any of its obligations

under this Article VII except to the extent that the Indemnifying Party is materially adversely prejudiced by such failure.

(b) The Indemnifying Party shall have the right, upon written notice to the Buyer Indemnified Party within thirty (30) days of receipt of notice from the Buyer Indemnified Party of the commencement of such Third Party Claim, to assume the defense thereof at the expense of the Indemnifying Party with counsel selected by the Indemnifying Party and reasonably satisfactory to the Buyer Indemnified Party, provided that the Indemnifying Party must acknowledge and agree in such writing that it is responsible for indemnifying the Buyer Indemnified Party for all Losses related to such Third Party Claims. If the Indemnifying Party assumes the defense of such Third Party Claim, the Buyer Indemnified Party shall have the right to employ separate counsel and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the Buyer Indemnified Party, provided that the Buyer Indemnified Party may employ separate counsel at the expense of the Indemnifying Party if, in the opinion of counsel to the Buyer Indemnified Party, the Buyer Indemnified Party may have one or more defenses available to it that are not available to the Indemnifying Party, the Third Party Claim seeks recourse other than monetary damages or the representation of the Buyer Indemnified Party and the Indemnifying Party by the same counsel may result in a conflict of interest. Whether or not the Indemnifying Party assumes the defense of a Third Party Claim, neither the Buyer Indemnified Party nor the Indemnifying Party shall admit any liability with respect to, or settle, compromise or discharge, or offer to settle, compromise or discharge, such Third Party Claim without the other party's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed).

(a) Whether or not the Indemnifying Party assumes the defense of a Third Party Claim, the Indemnifying Party shall not admit any liability with respect to, or settle, compromise or discharge, or offer to settle, compromise or discharge, such Third Party Claim without the other party's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed).

Section 7.4 Indemnification Cap. The aggregate amount of Losses for which the Buyer Indemnified Parties collectively shall be entitled to recover under this Article VII (a) in respect of a breach of a representation and warranty made herein by the Seller that are not Fundamental Representations shall not exceed \$2,500,000 (the "**Cap Amount**") and (b) in respect of any breach of a Fundamental Representation made herein by Seller, shall not exceed the Purchase Price.

Section 7.5 Indemnification Basket. Notwithstanding the other provisions of this Article VII, Seller shall have liability to the Buyer Indemnified Parties collectively with respect to any claims under this Agreement only if the sum the Losses related to a breach of a representation and warranty made herein exceeds \$200,000 in the aggregate (the "**Basket**"), after which the Buyer Indemnified parties shall be indemnified for all such Losses up to the Cap Amount, including the amount of the Basket.

Section 7.6 Payments. Subject to Section 7.4, once a Loss is agreed to in writing by the Indemnifying Party or finally adjudicated to be payable pursuant to this Article VII, the Indemnifying Party shall satisfy its obligations within thirty (30) Business Days of such agreement or final, non-appealable adjudication by wire transfer of immediately available funds; provided, however, Buyer shall first have the right to retain and to receive from the Holdback Amount an amount in cash equal to such Loss, and to the extent such Loss exceeds the Holdback Amount or the Holdback Amount has been released in accordance with Section 2.13, Buyer shall withhold from the fee owed by Buyer to HVGA under the Second Amended and Restated Operating Agreement the amount of such excess, without further required action by Seller or any other Person. The parties hereto agree that should the Indemnifying Party not make full payment of any such obligations to any Buyer Indemnified Party within such thirty (30) Business Day period, any amount payable shall accrue interest from and including the date of agreement of the Indemnifying Party or final, non-appealable adjudication to the date such payment has been made at a rate per annum equal to five

percent (5%) per annum. Such interest shall be calculated daily on the basis of a 365-day year and the actual number of days elapsed.

Section 7.7 Adjustments to Purchase Price. Any payments pursuant to this Article VII shall constitute an adjustment to the Purchase Price for all federal Tax purposes. Payments by an Indemnifying Party pursuant to this Article VII in respect of any Loss shall be reduced by an amount equal to any Tax benefit realized or reasonably expected to be realized as a result of such Loss by the Indemnified Party.

Section 7.8 Limitations. Each of the representations and warranties other than Section 3.8 (Taxes) that contains any “material” or similar materiality qualifications shall be read as though such qualifications were not contained therein, including for the purposes of determining whether a breach occurred and the amount of Losses to which such Indemnified Party may be entitled under this Article VII.

ARTICLE VIII CONTRACT TERMINATION

Section 8.1 Termination of Contracts.

(a) HVGA and Seller do hereby terminate the Concessions Agreement, which such agreement is hereby declared to be null and void and of no further force or effect as of the Closing Date. HVGA and Seller do hereby further covenant and agree to execute and deliver to Buyer at the Closing such documents or agreements as shall be reasonably requested by Buyer to further evidence termination of the Concessions Agreement (collectively, the “*Further Evidence of Concessions Agreement Termination Documents*”).

(b) Seller and Buyer do hereby terminate the Sublease Agreement, effective upon the Closing Date. Seller and Buyer do hereby agree and covenant to execute and deliver on the Closing Date a memorandum of sublease agreement termination, in form recordable in the Office of the Judge of Probate of Madison County, and such other documents as shall be reasonably necessary or desirable by either Seller or City to evidence such termination.

Section 8.2 Representations of HVGA. HVGA hereby represents and warrants to Buyer and Seller that:

(a) it is duly organized, validly existing, and in good standing as a limited liability company under the Laws of the State of Delaware, and has duly authorized its execution, delivery and performance of this Agreement;

(b) neither the execution and delivery of this Agreement, nor the performance hereof, by HVGA requires any consent of, filing with or approval of, or notice to, or hearing with any Person (including, but not limited to, any Governmental Authority), except for such consents, filings, notices and hearings described herein, or already held or maintained;

(c) neither the authorization, execution and delivery of, nor the performance of, this Agreement by HVGA, violates, constitutes a default under or a breach of (i) HVGA’s Organizational Documents, (ii) any Contract to which HVGA is a party or to which HVGA or its assets are subject, or (iii) any judgment, decree, Order, ordinance, regulation, consent or resolution applicable to HVGA or any of its assets;

(d) the Concessions Agreement is in full force and effect, HVGA is not in material breach or default thereunder, and HVGA has full power and authority to terminate the Concessions Agreement as contemplated by this Agreement without the consent of any third party;

(e) the Operating Agreement is in full force and effect, HVGA is not in material breach or default thereunder, and HVGA has full power and authority to enter into the Second Amended and Restated Operating Agreement and to perform its obligations thereunder; and

(f) there is not now pending nor, to the Knowledge of HVGA, threatened, any litigation affecting HVGA which questions the validity or organization of HVGA, or any of the representations and warranties of HVGA contained herein.

ARTICLE IX GENERAL PROVISIONS

Section 9.1 Fees and Expenses. Except as otherwise provided herein, all fees and expenses incurred in connection with or related to this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby shall be paid by the Party incurring such fees or expenses, whether or not such transactions are consummated.

Section 9.2 Amendment and Modification. This Agreement may not be amended, modified or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing signed by Seller, Buyer, and HVGA and otherwise as expressly set forth herein.

Section 9.3 Waiver. No failure or delay of any Party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. Except as otherwise provided herein, the rights and remedies of the Parties hereunder are cumulative and are not exclusive of any rights or remedies which they would otherwise have hereunder. Any agreement on the part of any Party to any such waiver shall be valid only if set forth in a written instrument duly executed and delivered by such Party.

Section 9.4 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally, (b) on the date of delivery if delivered via e-mail, (c) on the first Business Day following the date of dispatch if delivered utilizing a next-day service by a recognized next-day courier or (d) on the earlier of confirmed receipt or the fifth Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered to the addresses set forth below, or pursuant to such other instructions as may be designated in writing by the Party to receive such notice:

If to Seller, to:

Huntsville Venue Group F&B LLC
36 East 12th St,
New York, NY 10003
Attn: Daniel Pine
Email: daniel.pine@tvghospitality.com

With a copy (which shall not constitute notice) to:

Withers Bergman LLP
430 Park Avenue Floor 10,
New York, NY 10022
Attention: David Guin; Connor Sullivan
Email: David.Guin@withersworldwide.com;
Connor.Sullivan@withersworldwide.com

If to HVGA, to:

Huntsville Venue Group Amphitheater LLC
36 East 12th St,
New York, NY 10003
Attn: Daniel Pine
Email: daniel.pine@tvghospitality.com

With a copy (which shall not constitute notice) to:

Withers Bergman LLP
430 Park Avenue Floor 10,
New York, NY 10022
Email: David.Guin@withersworldwide.com;
Connor.Sullivan@withersworldwide.com
Attention: David Guin; Connor Sullivan

If to Buyer, to:

The City of Huntsville, Alabama
308 Fountain Circle
Huntsville, AL 35801
Attn: City Administrator
Email: John.hamilton@huntsvilleal.gov

With a copy (which shall not constitute notice) to:

Bradley Arant Boult Cummings LLP
1819 Fifth Avenue North
Birmingham, Alabama 35203
Attention: Rod Kanter
Email: skanter@bradley.com

Section 9.5 Entire Agreement. This Agreement (including the Exhibits and Schedules hereto), the Ancillary Agreements, and the other instruments delivered at Closing constitute the entire agreement, and supersede all prior written agreements, arrangements, communications and understandings and all prior and contemporaneous oral agreements, arrangements, communications and understandings among the Parties with respect to the subject matter of this Agreement.

Section 9.6 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person other than the Parties and their respective successors and permitted assigns any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement, except as provided in Article VII.

Section 9.7 Governing Law. This Agreement and all disputes or controversies arising out of or relating to this Agreement or the transactions contemplated hereby shall be governed by, and construed in accordance with, the internal Laws of the State of Alabama, without regard to the Laws of any other jurisdiction that might be applied because of the conflicts of laws principles of the State of Alabama.

Section 9.8 Submission to Jurisdiction. Each of the Parties irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement or for recognition and enforcement of any judgment in respect hereof brought by the other party or its successors or assigns shall be brought and determined in the federal and state courts located in Madison County, Alabama, and each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the aforesaid court for itself and with respect to its property, generally and unconditionally, with regard to any such action or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby (and agrees not to commence any action, suit or proceeding relating thereto except in such courts). Each of the Parties further agrees to accept service of process in any manner permitted by such courts. Each of the Parties hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, in any action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby, (a) any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason other than the failure lawfully to serve process, (b) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) to the fullest extent permitted by Law, that (i) the suit, action or proceeding in any such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts.

Section 9.9 Assignment; Successors. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of Law or otherwise, by any Party without the prior written consent of the other Parties, and any such assignment without such prior written consent shall be null and void.

Section 9.10 Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein.

Section 9.11 Waiver of Jury Trial. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 9.12 Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by all of the Parties.

Section 9.13 Facsimile Signature. Delivery of a copy of this Agreement bearing a signature by facsimile transmission or by electronic mail in “portable document format” shall have the same effect as physical delivery of the paper document bearing the original signature.

Section 9.14 Time of Essence. Time is of the essence with regard to all dates and time periods set forth or referred to in this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase and Contract Termination Agreement to be duly executed and delivered as of the date first written above.

SELLER:

Huntsville Venue Group F&B LLC

By: _____

Name:

Title:

(cont.)

IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase and Contract Termination Agreement to be duly executed and delivered as of the date first written above.

BUYER:

The City of Huntsville, Alabama

By: _____

Name:

Title:

IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase and Contract Termination Agreement to be duly executed and delivered as of the date first written above.

HVGA:

Huntsville Venue Group Amphitheater LLC

By: _____

Name:

Title:

Exhibit A

Definitions

"Action" means any claim, action, suit, audit, arbitration, investigation, inquiry, or proceeding by or before any Governmental Authority.

"Affiliate", with respect to any specified Person, means any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person.

"Ancillary Agreements" means the Second Amended and Restated Operating Agreement, the Further Evidence of Concessions Agreement Termination Documents, and all other documents, agreements and instruments described in Section 2.9 and Section 2.10.

"Business Day" means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in Birmingham, Alabama.

"Code" means the Internal Revenue Code of 1986, as amended.

"Contract" means any written or oral commitment, agreement, note, letter of credit, mortgage, indenture, lease (whether for real or personal property), license, arrangement, contract, subcontract, undertaking, understanding or obligation of any kind or character.

"Control", including the terms **"controlled by"** and **"under common control with"**, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, as trustee or executor, as general partner or managing member, by contract or otherwise.

"Encumbrance" means any charge, claim, mortgage, lien, lease, option, pledge, security interest or other restriction of any kind or nature.

"Environmental Laws" means any Laws of any Governmental Authority relating to pollution, protection of the environment, or protection of health and human safety.

"Environmental Permits" means all Permits under any Environmental Law.

"GAAP" means generally accepted accounting principles in the United States in effect from time to time, applied on a consistent basis throughout the periods included.

"Governmental Authority" means any federal, state, local, foreign or other governmental, regulatory or administrative authority, agency or commission or any judicial or arbitral body.

"Hazardous Materials" means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, the presence of which requires investigation, control or remediation under any Environmental Laws or that is hazardous, acutely hazardous, a pollutant, toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic or words of similar import or regulatory effect under Environmental Laws and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls.

“Indebtedness” means, with respect to Seller, all (a) indebtedness for borrowed money; (b) obligations for the deferred purchase price of property or services; (c) long or short-term obligations evidenced by notes, bonds, debentures or other similar instruments; (d) obligations under any interest rate, currency swap or other hedging agreement or arrangement; (e) all obligations relating to leases of Tangible Personal Property required to be capitalized in accordance with GAAP; (f) reimbursement obligations under any letter of credit, banker’s acceptance or similar credit transactions; (g) all obligations for the reimbursement of any obligor on any letter of credit, banker’s acceptance, surety bond, performance bond or similar credit transaction; (h) all vendor or customer financing arrangements; (i) all obligations under interest rate or currency swap transactions or commodity hedges (valued at the termination value thereof); (j) prepayment or redemption premiums and penalties (if any), unpaid fees or expenses and other monetary obligations in respect of any redeemable preferred stock (or other equity); (k) guarantees made by Seller on behalf of any third party in respect of obligations of the kind referred to in the foregoing clauses (a) through (j); and (l) any unpaid interest, prepayment penalties, premiums, costs and fees that would arise or become due as a result of the prepayment of any of the obligations referred to in the foregoing clauses (a) through (k); provided, however, that Accounts Payable incurred in the ordinary course shall not be considered Indebtedness.

“Intellectual Property” means any and all of the following in any jurisdiction throughout the world: (i) trademarks and service marks, including all applications and registrations and the goodwill connected with the use of and symbolized by the foregoing; (ii) copyrights, including all applications and registrations related to the foregoing; (iii) trade secrets and confidential know-how; (iv) patents and patent applications; (v) internet domain name registrations; (vi) computer programs, software, operating systems, applications, firmware and other code, including all source code, object code, application programming interfaces, data files, databases, protocols, specifications and other documentation thereof; and (vii) other intellectual property and related proprietary rights, interests and protections.

“IRS” means the Internal Revenue Service of the United States.

“Knowledge”, with respect to Seller, means the actual knowledge, after reasonable inquiry, of any of Daniel Pine, Benjamin Lovett, Ryan Murphy and Alex Craig.

“Law” means any statute, law, ordinance, regulation, rule, code, injunction, judgment, decree or Order of any Governmental Authority.

“Liability” means any liability, debt, obligation, Tax, penalty, fine or other loss, cost or expense of any kind or nature whatsoever, whether asserted or unasserted, absolute or contingent, known or unknown, accrued or unaccrued, liquidated or unliquidated, and whether due or to become due.

“Licensed Intellectual Property” means any Intellectual Property owned by a third party and licensed, sublicensed, or otherwise made available to Seller for use in the Business.

“Order” means any writ, judgment, decision, decree, injunction or similar order of any Governmental Authority or arbitrator or arbitration panel, in each case, whether preliminary or final, or any agreement entered into in any administrative, judicial or arbitration proceeding with any Governmental Authority.

“Organizational Documents” means (a) the articles or certificates of incorporation, the bylaws, and any shareholders’ agreement of a corporation, (b) the partnership agreement and any statement of partnership of a general partnership, (c) the limited partnership agreement and the certificate of limited partnership of a limited partnership, (d) the operating or limited liability company agreement and the certificate of formation or articles of organization of a limited liability company, (e) any charter, joint

venture agreement or similar document adopted or filed in connection with the creation, formation or organization of a Person, (f) with respect to a municipal corporation, its articles or certificate of incorporation and its bylaws, regulations or similar governing instruments required by the Laws of its jurisdiction of formation or organization, and (g) any amendment to or equivalent of any of the foregoing.

“Orion Amphitheater” means the approximately 8,000 seat outdoor amphitheater located at 701 Amphitheater Dr NW, Huntsville, Alabama 35806, including the adjacent property and structures.

“Owned Intellectual Property” means all Intellectual Property owned by Seller that is used in connection with the Business or Purchased Assets.

“Permitted Encumbrance” means (a) statutory liens for current Taxes not yet due or delinquent (or which may be paid without interest or penalties) or the validity or amount of which is being contested in good faith by appropriate proceedings and for which appropriate reserves have been established in accordance with GAAP, (b) any right as a lessor or (c) mechanics’, carriers’, workers’, repairers’ and other similar liens arising or incurred in the ordinary course of business relating to obligations as to which there is no default on the part of Seller for a period greater than sixty (60) days, or the validity or amount of which is being contested in good faith by appropriate proceedings, or pledges, deposits or other liens securing the performance of bids, trade contracts, leases or statutory obligations (including workers’ compensation, unemployment insurance or other social security legislation). Notwithstanding the foregoing, in no event shall “Permitted Encumbrances” include (a) any lien or other Encumbrance to secure borrowed money by Seller on the Purchased Assets, or (b) any capitalized lease obligations with respect to the Tangible Personal Property.

“Person” means an individual, corporation, partnership, limited liability company, limited liability partnership, syndicate, person, trust, association, organization, or other entity, including any Governmental Authority, and including any successor, by merger or otherwise, of any of the foregoing.

“Representatives” mean, with respect to a specified Person, the directors, managers officers, employees, agents, accountants, advisors, bankers, lawyers and other representatives of such Person.

“Required Consent” means any notice to or consent of a third party (including any Governmental Authority) which are required to be obtained to transfer any of the Purchased Assets or which is otherwise required for Seller to consummate the transactions contemplated by this Agreement and the Ancillary Agreements.

“Second Amended and Restated Operating Agreement” means that certain Amended and Restated Operating Agreement to be entered into at Closing by and between HVGA and Buyer, the form of which is attached hereto as Exhibit B.

“Tax” or “Taxes” means (a) all taxes, fees, levies or other assessments, however denominated, including any interest, penalties or other additions to taxes that may become payable in respect thereof, imposed by any Governmental Authority, which shall include, without limiting the generality of the foregoing, all income or profits taxes (including, but not limited to, federal income taxes and state income taxes), unrelated business income taxes, payroll and employee withholding taxes, unemployment insurance, social security taxes, sales and use taxes, ad valorem taxes, excise taxes, taxes under Code Section 4958, franchise taxes, gross receipts taxes, business license taxes, occupation taxes, property taxes, stamp taxes, environmental taxes, transfer taxes, workers’ compensation, alternative or add on minimum estimated or other taxes, and other obligations having the same nature or a nature similar to any of the foregoing.

“Tax Return” means any return, declaration, disclosure, report, or claim for refund relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Transaction Expenses” means all unpaid (whether or not accrued) fees or other payments or obligations owed to third parties by Seller, arising from or in connection with the negotiation, preparation, execution, delivery and performance of this Agreement, the transactions contemplated hereby and any due diligence requests or activity related to such transactions, including (a) financial advisors’, attorneys’, accountants’ and other professional fees and expenses; (b) any and all payments arising from retention, severance, “stay,” sale, transaction or sign-on bonuses, as well as any deferred compensation payable to employees of Seller and any other similar payments to employees and Representatives, including Seller’s portion of employment and similar Taxes associated with such items; (c) any costs or expenses, including any license transfer fees, payable to any third party in connection with the assignment or assumption of any Contract; (d) any severance, sale, change of control or similar bonuses payable to current employees of Seller at or following the Closing as a result of the consummation of the transactions contemplated by this Agreement (including as a result of Buyer’s election to not retain any such employee as of, or promptly following, the Closing) and the employer portion of any related employment and/or payroll Taxes payable with respect thereto (assuming for purposes of computing such Taxes with respect to any such bonus payable to a Company employee, that such employee’s full annual salary was paid prior to the payment of such bonus); (f) any and all fees, expenses, break costs (including costs calculated based on difference in swap and current rates) payments or other costs related to the termination of any swap agreements, derivative transactions or similar arrangements; and (g) any costs or expenses payable to a third party for UCC, litigation, bankruptcy, judgment, tax, or other searches and any related reports with respect to Seller.

Exhibit B
Form of Second Amended and Restated Operating Agreement

[See attached]

EXHIBIT II
FORM OF AMENDED OPERATING AGREEMENT

ORION AMPHITHEATER OPERATING AND MANAGEMENT AGREEMENT

THIS AMPHITHEATER OPERATING AND MANAGEMENT AGREEMENT (the “Agreement”) is made and entered into effective as of the 14th day of May, 2026, between the City of Huntsville, a public corporation under the laws of the State of Alabama (the “City”), and Huntsville Venue Group Amphitheater, LLC, a Delaware limited liability company (the “Manager”). The City and the Manager are collectively referred to herein from time to time as the “Parties” and each, from time to time, as a “Party”.

W I T N E S S E T H

WHEREAS, the Public Building Authority of Huntsville, Alabama (the “PBA”) was formed and incorporated by the City of Huntsville (the “City”) pursuant to Section 11-56-2, et seq. of the Code of Alabama 1975, as amended, for the purpose of fostering the financing, development, construction and operation of certain public facilities within the City of Huntsville; and

WHEREAS, the City has determined to cause the financing, construction and development by the PBA of an approximately 8,000 capacity amphitheater (the “Amphitheater”) in order to provide entertainment opportunities for City residents and visitors to the City; and

WHEREAS, the City has conveyed certain real property to the PBA in order to permit the construction of the Amphitheater in 2020 and purchase of the adjacent pavilion and secondary structure in 2026, including the real property, both land and improvements shown as the Amphitheater Site on Exhibit A hereto (the “Amphitheater Site”); and

WHEREAS, the City leased the Amphitheater Site from the PBA in 2021, and sought to cause the Principal Amphitheater to be operated in a professional manner with the objectives of providing a vehicle for the presentation of a variety of cultural, educational, entertainment, social, and other music entertainment and activities; stimulating the economy of the City, and, in general, maximizing the utilization of the Amphitheater for the benefit of the citizens of the City, while minimizing, to the extent practicable, the net cost to the City and the public; and

WHEREAS, the City has previously determined that it is in the best interest of the City and the public that the management and operation of the Amphitheater be delegated to a company with experience and expertise in the management, operation and marketing of amphitheaters and other entertainment venues; and

WHEREAS, the City, heretofore circulated that certain Request for Statement of Qualifications and Proposal for Leasing, Management, Operations and Related Services for the Huntsville Regional Amphitheater RFP # 28-2018-56-3, on February 19, 2019 (the “RFP”) to solicit proposals from qualified entities for the management, operation and marketing of the Premises (hereinafter defined), and after receiving and considering various proposals the Manager was determined as the most qualified firm to provide management and operational services for the City; and

WHEREAS, the City and the Manager previously entered into that certain “Amphitheater Operating and Management Agreement: on November 7, 2019 pursuant to Resolution No. 19-1070 of the Huntsville City Council; and

WHEREAS, the City and the Manager have subsequently executed modifications to the said Agreement on June 25, 2020 (Resolution No. 20-548) and October 22, 2020 (Resolution No. 20-959); and

WHEREAS, the Manager is an organization whose principals have substantial experience and expertise in the management, operation and marketing of amphitheaters, music halls, and outdoor music festivals; and

WHEREAS, the City determined to grant to the Manager, and the Manager agreed to accept, the authority and responsibility to manage, operate and market the Premises and the parties entered into an operating agreement on November 7, 2019 with two subsequent modifications to the agreement on June 25, 2020 and October 22, 2020; and

WHEREAS, the City and HVG-A, LLC seek to amend the agreement in order to acknowledge and account for changes in the scope of operations of the Amphitheater.

NOW, THEREFORE, in consideration of the promises included herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

ARTICLE I. DEFINITIONS

Section 1.01 Definitions. The following terms shall have the meanings given in this section:

(a) “Affiliate” means any person or entity that, directly or indirectly, controls, is controlled by or is under common control with Manager. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, direct or indirect, or the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.

(b) “Alcohol Licensing” means the Special Retail (more than 30 days) license issued by the Alcoholic Beverage Control Board of the State of Alabama, and the Special Retail (more than 30 days) license issued by the City of Huntsville, Alabama respecting the sale of alcoholic beverages on the Premises and on other areas subject to this Agreement.

(c) “Applicable Law” shall mean any applicable constitution, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, award, permit, license, authorization, or requirement of any court, board, agency, commission, office, division, subdivision, department, body, authority of the United States, the State of Alabama, the City, the PBA and any other governmental unit.

(d) “Applicable Standard” means:

(i) Except as defined in subsection ii below, a standard of performance, operation (including bookings) and maintenance equal to or exceeding those generally applicable to Comparable Facilities in the United States.

(ii) With respect to prices, regulation of the advertising and serving of alcoholic beverages and products, the standard shall be equal to Comparable Facilities.

(e) “Authorized Representative” shall mean any officer, agent, employee of or independent contractor retained or employed by either Party, acting within the scope of authority given such person by such Party.

(f) “Budget” shall mean any budget to be prepared by Manager under the provisions of Article IV.

(g) “Capital Expenditures” shall mean all expenditures of Five Thousand Dollars (\$5,000.00) or more for building additions, alterations or improvements, and for purchases of additional or replacement furniture, machinery or equipment, the depreciable life of which, according to generally accepted accounting principles, is in excess of one (1) year and expenditures for maintenance or repairs of Five Thousand Dollars (\$5,000.00) or more which extend the useful life of the assets being maintained or repaired for a period in excess of one (1) year.

(h) “Community and Cultural Events” means public events, festivals, theatrical and musical performances, farmers markets, holiday-themed events, charitable benefits, art shows, craft shows, fundraising events, educational events, sporting and fitness events, dances, public meetings, lectures, ceremonies or other gatherings offered in furtherance of the community’s cultural enrichment and arts-based quality-of-life opportunities. Particular emphasis shall be placed on events that advance exposure and education surrounding musical performance and production skills. These events shall generally be offered at below market rate costs for organizers and attendees.

(i) “Comparable Facilities” means comparable first-class amphitheater facilities throughout the United States.

(j) “Concert and Private Hire Events” means all events (whether single or multi-day) held, conducted or presented at the Premises, which are generally offered as ticketed or controlled access events at market-based pricing. By way of illustration and not by limitation, events featuring the following types of entertainment and artists shall be included within the definition of Concert and Private Hire Events”:

(i) Contemporary music, rock and roll music, classical music, hip-hop, rap, pops music and jazz music;

(ii) Adult contemporary performers;

(iii) Theatrical performances and national Broadway Tours;

(iv) Country Music;

- (v) Rhythm and Blues Music;
- (vi) Gospel and contemporary Christian Music;
- (vii) Music Festivals;
- (viii) Electronic dance music;
- (ix) Children's shows and entertainment;
- (x) Sporting events and competitions;
- (xi) Video gaming events and competitions;
- (xii) Comedy Performances; and
- (xiii) Other private events for which the premises are leased at market rates.

(k) "Damages" shall mean all claims, liabilities, demands, impositions, suits, causes of action, losses, investigations, proceedings, damages, penalties, fines, assessments, deficiencies, interest, expenses and judgments, including reasonable attorneys' fees, litigation expenses, court costs and disbursements and arbitration fees and awards.

(l) "Depository" shall mean the SAFE Qualified financial institution selected by the Manager in which the bank accounts for the funds required to be maintained under this Agreement are to be deposited.

(m) "Emergency Expenditure" shall mean any expenditure to the extent not included within a Budget and not expected by the Manager to be incurred but which is necessary to correct any condition that jeopardizes the structural soundness of the Amphitheater, violates Applicable Law or threatens public safety.

(n) "Fiscal Year" shall mean a period of time beginning on October 1 and ending on the immediately following September 30, inclusive.

(o) "General Manager" shall mean the chief operating officer of the Manager at the Premises.

(p) "Greenspace" means the public greenspace adjacent to the Amphitheater as shown in the area circled in light green and designated as "Greenspace" on Exhibit A hereto.

(q) "Lease Agreements" means the Amphitheater Lease Agreement.

(r) "Amphitheater Lease Agreement" means the Lease Agreement dated March 18, 2021, between the PBA and the City, as the same may hereafter be amended, whereby the City leases the Amphitheater from the PBA.

(s) "Management Fees" shall mean those fees payable to the Manager under,

Section 7.01 and Section 7.02.

(t) "Manager" means Huntsville Venue Group Amphitheater, LLC, a Delaware limited liability company. Acts of Manager's agents, officers, employees and other authorized representatives acting within the scope of their authority or employment shall be deemed to be acts of Manager for purposes of binding Manager to any obligation or duty hereunder.

(u) "Music Festival" shall mean a ticketed event, normally on a market-rate general admission basis, involving multiple musical acts and stages/performance areas over the course of one to several days running consecutively. These events shall be accounted for in all financial reports as a "Concert and Private Hire Event".

(v) "Non-Profit Event" shall mean either a ticketed event or non-ticket event managed, produced and financed by a non-profit organization whose purpose is to raise either funds or awareness for the mission of the non-profit organization. These events shall be accounted for in all financial reports as a "Community and Cultural Event".

(w) "Off-Site Parking" shall mean parking spaces located on property other than the Amphitheater Site.

(x) "Off-Site Parking Expenses" shall mean and include all expenditures or obligations of whatever kind or nature made or incurred by the Manager to manage the Off-Site Parking. All Off-Site Parking Expenses shall constitute Operating Expenses.

(y) "Off-Site Parking Revenues" shall mean and include all receipts, revenues, income, and cash received or collected, as determined on an accrual basis, by the Manager from Off-Site Parking. Off-Site Parking Revenues shall constitute Operating Revenues.

(z) "Operating Expenses" shall mean and include all expenditures or obligations of whatever kind or nature made or incurred by the Manager in any specified period during the Term of this Agreement, within the scope of Manager's authority or responsibility under this Agreement, including, but not limited to, all payments made or liabilities incurred to obtain Operating Revenues, salaries, wages and benefits of personnel working at or on behalf of the Premises; human resources support services; contract labor; maintenance and repairs; utilities; deposits for utilities; telephone; telescreen and/or scoreboard operations; dues, memberships and subscriptions; security; audit fees; legal fees; other professional fees; fees payable to concessionaires or other subcontractors; refuse removal; cleaning; sales, use, or any other taxes or impositions applicable to the operation of the Premises; building supplies; ticket commissions; premiums for insurance maintained under Article VIII; data processing; advertising; marketing; public relations; pest control; travel, lodging and related out-of-pocket expenses and Premises related entertainment; office supplies; employment fees; freight and delivery; lease of equipment; Master Card, VISA and other credit and debit facilities and telecheck fees and expenses; professional development and training expenses, travel, lodging and related out-of-pocket expenses of officers and directors of Manager properly allocable to the performance of Manager's obligations under this Agreement; all damages, losses or expenses suffered or paid by Manager or its Authorized Representatives as the result of any and all claims, demands, suits, causes of action,

proceedings, judgments and liabilities, including reasonable attorneys' fees incurred in litigation or otherwise, assessed, incurred or sustained by or against any of them including under or pursuant to contracts executed by Manager in accordance with the authority granted to it hereunder;

Notwithstanding anything to the contrary contained herein, Capital Expenditures, expenditures other than Capital Expenditures paid out of the CapEx Contribution, amortization, depreciation, and other non-cash charges shall not be Operating Expenses, and the following costs and expenses shall not be Operating Expenses and shall be borne by Manager: (i) wages, salaries and other compensation paid to offsite employees not directly related to the operation and management of the Premises, (ii) any cost or expense incurred which violates this Agreement or arises in connection with a transaction, contract or agreement, which violates this Agreement, (iii) any Damages arising or resulting from Manager's (or any of its agents', contractors' or employees') negligence, misconduct, malfeasance or violation of this Agreement which are not covered by any insurance policy maintained pursuant to Section 8.02, (iv) seminar expenses for the education and training of Manager's offsite employees not directly related to the operation and management of the Premises, (v) any transaction in which Manager or any of its Affiliates derives an improper personal benefit, (vi) legal fees or costs incurred by Manager in connection with (A) the preparation, negotiation or enforcement of this Agreement or any amendment, modification, extension or early termination hereof, or (B) any of the matters listed in items (i) through and including (vi) of this sentence.

(aa) "Operating Income" shall mean, for any fiscal period, the positive difference between Operating Revenues and Operating Expenses.

(bb) "Operating Revenues" shall mean all receipts (including, without limitation, seat user fees and surcharges, rental revenues, concession revenues, parking revenues, merchandise sales revenue, advertising sales revenues, box office income, suite sales, the portion of sponsorship revenues as provided in Article III(b), the portion of Component Title Sponsorships revenues as provided in Article III(c), licensing fees and revenues, promotional fees, interest income, and equipment rental fees), revenues, income, and cash received or collected, as determined on an accrual basis, by the Manager:

(i) for the use of, operation, or admission to (excluding the Facility Fee), the Premises or any portion thereof,

(ii) for the right to sell, or in respect of the sale of, any product of advertisement in the Premises including all rents, royalties, and concessions from tenants, vendors (including, but not limited to, food trucks), concessionaires, and licensees;

(iii) from interest on or proceeds of investment of any accounts required to be maintained under Article V;

(iv) for rental or use of the Premises equipment; or

(v) as fees for services rendered at the Premises, including parking; but excluding, in all events, sums received or collected by the Manager, including any portion of ticket sales payable to the performers in or promoters of any event in the Premises or the portion of such ticket sales, if any, payable as a commission to any entity or person

providing ticket distribution services, for and on behalf of and actually paid to a user of the Premises. Any payments by the City or other public entity related to the City under Section 4.06 and payments into the Working Capital Fund by the City or other public entity related to the City shall not be considered Operating Revenues.

(cc) "Performance Season" means the period commencing on the date of the first event following January 1st and ending after the last event preceding December 31st of each year. The Manager will use commercially reasonable efforts to ensure the season shall commence no later than April 1st or end no sooner than October 31st of any calendar year.

(dd) "Premises" means the Amphitheater site as shown in Exhibit A.

(ee) "Private Hires" shall mean either a ticketed event or non-ticket event for invited guests that is privately produced and managed for a limited private audience. These events shall be accounted for in all financial reports as a "Concert and Private Hire Event".

(ff) "Qualifying Event" shall mean a paid, ticketed Concert Event or Music Festival which the Manager can reasonably expect to attract market-rate ticket sales at or near sell-out of the Venue Capacity. Minimum venue capacity for a qualifying event shall be no less than 6,500.

(gg) "SAFE Qualified" shall mean a financial institution in the State of Alabama that is qualified to serve as depositories for public funds pursuant to the Security for Alabama Funds Enhancement Program established pursuant to Title 41, Chapter 14A, Code of Alabama 1975, as amended.

(hh) "Seasonal Festival" shall mean a non-ticketed festival event highlighting a particular season or holiday with themed activities, vendors and entertainment with small ancillary event/attraction specific fees. Examples of Seasonal Festivals are Spring Harvest Festival, Halloween Weekend Festival and Winter Wonderland Festival. These events shall be accounted for in all financial reports as a "Community and Cultural Event".

(ii) "Selling, General, and Administrative Expenses" (SG&A) means the indirect operating costs required to operate the Amphitheater on a day-to-day basis undergirding facility-wide operations not attributable to individual events.

(jj) "Venue Capacity" shall mean the total ticketed capacity of the Premises determined by the agreement between the Manager and the promoter of each Qualifying Event (recognizing that capacity may vary based on changes to venue configuration for each show).

Other capitalized terms not referenced or defined above shall have the meanings indicated where such terms first appear in this Agreement.

ARTICLE II. INTRODUCTION

Section 2.01 Grant of Authority. To enable Manager to perform and furnish or cause to

be performed and furnished, all management, operation, and administration of the Premises, on the terms and subject to the limitations of this Agreement, the City hereby grants to the Manager, and the Manager hereby accepts, the exclusive right and obligation, in its own name, as an independent contractor and not as an agent of the City, to manage, operate, use, possess, and occupy the Premises.

Section 2.02 Nature of Relationship. The Parties agree that the only relationship created by this Agreement is that between the City, as leaseholder, and the Manager, as an independent contractor, for management and operating services and that the Manager is an independent contractor, not an agent, employee, joint venturer or partner of the City.

Section 2.03 Term. The term ("Initial Term") of this Agreement commenced on November 7, 2019 and, unless earlier terminated as provided herein, shall end on May 31, 2032 which is the last day of the month which is 120 months following the Opening Date (the "Expiration Date"). At the conclusion of the ten (10) year Initial Term, the Manager shall have the option to extend this Agreement for three additional five (5) year terms (each an "Extension Term," with the Initial Term and all applicable Extension Terms referred to herein as the "Term"), provided that each such Extension Term must be approved by the City as provided in this Section 2.03. The Manager shall notify the City by providing written notice to the Mayor (with a copy to the City Attorney) at least 270 days prior to the expiration of the then current Term of its intent to extend the Term. In the event the average of the number of Qualified Events during the three (3) year period prior to the expiration of the then current Term exceeds the performance standard set forth in Section 3.02(c)(iv), and Manager is not in Material Default of the Agreement (collectively the "Extension Conditions"), then the Mayor shall approve the extension on behalf of the City. If the Manager has failed to meet the Extension Conditions, then the granting of the extension shall be in the City's sole discretion. The Mayor shall notify the Manager of the City's decision on the extension at least sixty (60) days prior to the expiration of the then current Term. The terms and conditions of all Extension Terms shall be the same as set forth in this Agreement.

ARTICLE III. RESPONSIBILITIES OF MANAGER

(a) Negotiate contracts with vendors for the Premises after first seeking and receiving approval from the City (including the sale of souvenirs, novelty items, and programs) and all other service contractors for the Premises. The City must then approve the final terms of any such agreements prior to execution of the agreements by the parties;

(b) Develop and implement sponsorship agreements that maximize sponsorship revenues. Prior to entering any agreements or contracts for services marketing and selling sponsorships, Manager shall gain City approval of fees, commissions or revenue-sharing structures for those services and the portion of the revenues from the sponsorship agreements that shall constitute Operating Revenues;

(c) Market and seek agreement for the sale of facility-wide marketing partnerships (the "Foundational Sponsorship"), the naming or sponsorship of physical/architectural components of the Amphitheater where possible (the "Component Title Sponsorships"), and marketing partnerships with beverage vendors/suppliers ("Beverage Company Sponsorships"). Ensure this program is nested with the broader sponsorship and

marketing program. The revenues derived from Foundational Sponsorships, less marketing expenses shall be remitted to the City directly and shall not be included in Operating Revenues or Operating Income for the Premises. Marketing expenses for Foundational Sponsorships shall be budgeted as an SG&A expense at 5% of any cash proceeds received. The revenues derived from any Component Title Sponsorships shall be included in Operating Revenues. The full amount of any Beverage Company Sponsorships shall be remitted directly to the City and shall not be included in Operating Revenues or Operating Income for the Premises.

Section 3.02 Ongoing Operations. The Manager shall have the following responsibilities for the ongoing operation of the Amphitheater:

(a) Subject to the limitations set forth in this Agreement, the Manager shall exercise its diligent, good faith efforts in managing and operating the Premises so as to minimize Operating Expenses and maximize Operating Revenues, subject, however, to the Manager's right to act in light of the objectives stated in the Recitals to this Agreement. In this connection, the Parties agree that the Manager, in establishing and implementing its booking policies, may schedule not only those events that generate substantial direct revenue to the Premises, but also those events that produce less direct revenue but, in the Manager's good faith judgment, generate either a significant economic, cultural, or other benefit to the City or otherwise serve the public interest; provided that no use of the Premises shall be permitted without a reasonable charge for such use.

(b) The Manager holds primary responsibility for the amphitheater's day to day maintenance, building systems, utilities, programming, and event related operations, while the City of Huntsville—through its General Services, Landscape, and Parking Departments—provides secondary support in designated areas such as fire systems, security systems, access controls, landscaping, and parking operations. Detailed responsibilities and primary/secondary roles are outlined in the Responsibility Matrix attached as Exhibit "B".

(c) Subject to the limitations set forth in this Agreement, the Manager, or person or persons designated by the Manager, shall do the following (or cause the same to be performed):

(i) Manage and operate the Premises and any facilities ancillary thereto and contract for its use in a manner that will promote and further the purposes for which the Premises is to be constructed, as set forth in the Recitals to this Agreement;

(ii) Operate the Premises as an 'open room' facility, ensuring all local and national promoters are welcome to program and promote shows within the Premises at consistent rates offering no preferential pricing amongst particular promoters;

(iii) Negotiate, execute, and perform contracts, use agreements, licenses and other agreements (A) with persons who desire to schedule events, performances, telecasts, broadcasts or other transmissions in, from or to the Premises or who desire otherwise to use the Premises or any part thereof or (B) that otherwise pertain to the use, operation and occupancy of the Premises or any part thereof;

(iv) Schedule Qualifying Events, at the Premises such that programming

of Year 5 (Fiscal Year 2026) and for each year thereafter shall include not less than eighteen (18) Qualifying Events in the “Concerts and Private Hire Events” category, and programming shall also include not less than forty (40) total events. Manager and the City shall meet on an annual basis to agree on target artist lists for the Qualifying Events (Concerts) for upcoming seasons. The target list will be developed from relevant music industry knowledge, national artist touring demand, and local demand from the public of Huntsville. The City acknowledges that Manager met all obligations for the quantity of Qualifying and other events during Years 1 – 4 of the operating period.

(v) Coordinate all advertising, licensing, promotional activities, marketing, and public relations for the Premises;

(vi) Negotiate, execute, and perform contracts, use agreements, licenses and other agreements (A) for the use of advertising space in or about the Premises and all advertising rights of whatever kind or nature related to the Premises or (B) for the sale, promotion, marketing and use of all names, trademarks, tradenames, logos and similar intangible property relating to the Premises;

(vii) Enter into Foundational Sponsorship agreements and any agreements for Component Title Sponsorships; provided, however, that any such agreement must terminate upon the termination of this Agreement, unless approved by the City in writing prior to executing the agreement. Provided, however, that Manager shall not permit any name to be given to or used in connection with the Premises or any portion thereof that violates any local, state or federal law;

(viii) With case-by-case pre-approval by the City, manage for the Premises, through vendors selected by Manager, the sale of souvenirs, novelties and programs;

(ix) Coordinate the efforts of all parties involved in the operation of the Premises and establish and maintain consistent procedures for cost estimating and reporting, maintenance and payment of invoices, including preparation of Budgets and reports as contemplated by Article IV;

(x) Plan, coordinate, and administer operation of the Premises and continue to identify, select, and train the Premises’ staff;

(xi) Retain legal counsel in connection with the discharge of its duties hereunder and cause such counsel to coordinate with the Legal Department of the City of Huntsville where necessary or appropriate;

(xii) Coordinate the work of all parties performing work in connection with operating the Premises;

(xiii) Monitor actual and projected Operating Expenses and advise the City if projected costs exceed the amounts set forth in the Budgets;

(xiv) Furnish all services, personnel, materials, tools, machinery, equipment and other items necessary to accomplish the foregoing requirements of this Section;

(xv) Devise and implement procedures (including preventive maintenance procedures) reasonably designed to keep the Premises in good order and condition, subject to ordinary wear and tear, and maintain the Premises in such order and condition;

(xvi) Require that all persons using the Premises or attending events therein comply with all legal requirements of all governmental authorities having jurisdiction over the Premises;

(xvii) Not create, assume or suffer to exist any mortgage, pledge, lien, charge or security interest or other encumbrance of any nature whatsoever relating to this Agreement or its rights and obligations under this Agreement, except any pledge or other encumbrance of the fees due to Manager pursuant to this Agreement; and

(xviii) Promptly and fully discharge and pay all of its obligations under this Agreement at or prior to the time specified for performance or payment thereof, including without limitation, the payment of all Operating Expenses from the funds available for that purpose under Article V; provided, however, that nothing herein shall prohibit Manager from contesting in good faith the validity of any claim against Manager in accordance with the provisions of Section 6.08; and, provided, further, the Manager shall promptly pay any amount found due and owing by Manager upon the conclusion of such dispute by final non-appealable judgment.

Section 3.03 Compliance with Applicable Law; Duty. The Manager shall comply with Applicable Law relating to the use and operation of the Premises, including but not limited to the Americans with Disabilities Act and the Fair Labor Standards Act. The parties agree that the Manager will be acting as an independent contractor and not an agent of the City in acquiring all equipment, goods and services for the Premises and therefore shall not be required to comply with the public procurement requirements contained in Sections 39-1-1 *et seq.* and 41-16-1 *et seq.* of the Code of Alabama, Sections 2-181, *et seq.* of the Code of Ordinances of the City, and any regulations promulgated thereunder. The Manager shall owe to the City a duty to perform its obligations under this Agreement and to conduct the management and operating of the Premises at all times with integrity and good faith and in a manner which is in the best interests of the Premises and the City and consistent with the terms of this Agreement. The Manager shall operate, and shall cause Manager's subcontractors, concessionaires, vendors, licensees, users, broadcasters and others using the Premises, to operate and use, the Premises in conformance with the Applicable Standard. Manager shall require by contract that all contractors operating in the Premises under Manager operate to the Applicable Standard, and shall enforce such requirement against all contractors.

Section 3.04 Funding Limitations. The City recognizes and agrees that performance by Manager of its responsibilities under Article III and otherwise under this Agreement is subject to the City's provision of funds to Manager for such purposes as hereinafter provided, and is limited by the Budgets approved by the City from time to time. Manager shall operate within the constraints of City-approved Budgets at all times or timely gain City approval for material deviations from the previously approved annual Budget.

Section 3.05 Facility Fee. Manager shall collect a facility fee for every ticketed event held at the Premises (the "Facility Fee"). The initial Facility Fee shall be in the amount of Five

and No/100 Dollars (\$5.00) per ticket. The Facility Fee cannot be increased, decreased or waived by Manager without the approval of the City. The Facility Fee shall be paid to the City in whole no later than the 20th day of the month following the month within which the fee was collected.

	Current	2030	2035	2040
Facility Fee (per ticket)	\$5	\$5	\$6	\$7

Section 3.06 CapEx Fee. Built into the rental fee of the Amphitheater will be a contribution (the “CapEx Contribution”) dedicated for the payment of (i) Capital Expenditures to the Amphitheater, and (ii) other repairs to the Amphitheater that do not fall within the definition of "Capital Expenditures" under this Agreement ("Repairs"). The initial CapEx Contribution shall be Five Thousand Dollars (\$5,000) for Concerts or Music Festivals, One Thousand and Five Hundred Dollars (\$1,500) for Private Hires and Non-Profit Events, Five Hundred Dollars (\$500) for Community and Cultural Events. The CapEx Contribution cannot be increased, or decreased without the approval of the City. The CapEx Contribution shall be placed in the Capital Expenditures Fund and utilized solely for the funding of Capital Expenditures and Repairs at the Amphitheater. These fees shall escalate in future years using the following schedule:

CAPEX Fee	Current	CY2030	CY2035	CY2040
Concert/Music Festivals	\$5,000	\$6,000	\$6,500	\$7,200
Private Hires, Civic Events, & Non-profit events	\$1,500	\$1,800	\$2,000	\$2,250
Farmers Markets & Seasonal events	\$500	\$600	\$750	\$900

Section 3.07 Times of Operation for Concert Events. In addition to those limitations as to noise as are or may be imposed under applicable law (including, without limitation, the City's noise ordinance), no Concert Event involving external sound amplification audible outside the Greenspace shall start before 9:00 a.m. nor end after 11:00 p.m. on any day of the week; provided, however, that if a Concert Event is delayed or disrupted by Force Majeure or artist delay, then the end time may be extended to midnight but under no circumstances shall any amplified Concert Event audible outside the surrounding Greenspace end later than midnight. Manager shall use good-faith commercially-feasible efforts to mitigate and minimize any such delays. This limitation shall not apply to “after-concert parties” and/or similar nonpublic, indoor gatherings following Concert Events, so long as such events do not involve external sound amplification and are not audible outside the Greenspace.

ARTICLE IV. RECORDS, ACCOUNTS AND REPORTS

Section 4.01 Books. The Manager shall maintain adequate books of account with respect to its management and operation of the Premises in accordance with generally accepted accounting principles, proper internal control and industry standards. Financial results for the Amphitheater shall be determined and provided in a format distinguishing between “Concerts and Private Hire Events” and “Community and Cultural Events”. Event-specific revenues and expenses for each shall be accounted for solely within these two categories of events. SG&A expenses and any

facility-wide revenues not attributable to individual events shall be accounted for separately with the net of these shared as a separate line-item expense by the two separate categories of events with 70% allocated to “Concerts and Private Hire Events” and 30% allocated to “Community and Cultural Events”. The City of Huntsville Director of Finance shall provide final approval of the formatting of all required financial reports.

Section 4.02 Access to Information. The City shall have the unqualified right to obtain from the Manager, at any time upon reasonable request, such information and to inspect and audit such books and records concerning the management and operation of the Premises as may be necessary to inform the City concerning the Premises and its operations.

Section 4.03 Annual Audit. No later than 3 months from the close of each Fiscal Year, the Manager shall furnish to the City a balance sheet, a statement of the profit or loss and a statement of changes in financial condition, prepared in accordance with generally accepted accounting principles and accompanied by an auditor’s report containing an opinion of the independent certified public accountant preparing the report, which shall be a firm of national reputation selected by the Manager. Manager shall provide written notice to the City of Manager’s selection of such firm and the City shall have fifteen (15) days following receipt of such notice to approve or disapprove the same, which approval shall not be unreasonably withheld. Not later than four (4) months after the fiscal year end, the Manager and City shall meet to review the annual report and discuss any financial implications.

Section 4.04 Monthly Reports. Within twenty (20) days following the end of each month, the Manager shall furnish to the City a report in the form agreed to by the City and the Manager.

Section 4.05 Monthly Meetings. At an agreed upon time and place the City and the Manager shall meet to review the following interim statements

- a. Monthly and Year-to-Date (YTD); Budget to Actuals line-item detail for operating revenue and expenses for the most recent month closed.
- b. Month and Year to Date comparison to immediate prior year and, all prior years starting with FY 2025.
- c. Balance Sheet as of the immediate prior month end.
- d. Event listing – All, divided into “Concert and Private Hire Events” and “Community and Cultural Events” booked.
- e. Concert and Private Hire Events Profit and Loss for the immediate prior Month and YTD.
- f. Community and Cultural Events Profit and Loss statement for the immediate prior month and YTD.
- g. Sponsorships listing separately reflecting Foundational, Component Title, and Beverage Company payments cash and in-kind contributions.

- h. Facility Fee reconciliation with ticket sales/counts.
- i. Cap Ex Budget to Actual detail with running balance.
- j. Bank Balance both actual and reconciled for all Investments and Cash Accounts.
- k. Funding – Payments by the City.
- l. Additions and Deletions to and from this list may occur from time to time as agreed upon by the City and Manager.

Section 4.06 Capital Improvements Budget. Not later than ninety (90) days before the beginning of each Fiscal Year, the Manager shall submit a budget for projected Capital Expenditures for such Fiscal Year. This budget shall be subject to the procedures customarily employed in connection with the development, approval, and implementation of capital budgets for the City.

Section 4.07 Annual Operating Budget. Not later than July 1 of each year, the Manager shall submit to the City an annual operating Budget for the Premises for the upcoming Fiscal Year, listing all projected Operating Revenues and Operating Expenses by category, including the salary and benefits of any full-time, permanent employees of the Manager funded within the subject Budget. The Manager may at any time submit to the City for its approval amendments to a Budget to reflect unanticipated revenues or expenses or other changes.

Section 4.08 Budget Approval. The City shall promptly review all proposed Budgets and amendments thereto and promptly communicate to the Manager any comments or suggested revisions thereto. The City shall, in any event, complete its Budget review and deliver its comments in accordance with the City's budget calendar. Final approval of any Budget shall, except for amendments thereto that are not material, be completed in accordance with procedures applicable to the general City budget which is to be adopted by October 1 of each Fiscal Year. In the event a proposed Budget has not been approved in a manner which permits its incorporation into the general City budget for approval on or before October 1, the Budget for the previous period shall continue to control.

ARTICLE V. FUNDS AND ACCOUNTS

Section 5.01 Operating Revenue Account. The Manager shall collect all Operating Revenues and deposit them in an account maintained in the Depository by the Manager in the name of the City (the "Operating Fund"). The Manager shall have sole and complete control and authority as to the Operating Fund, subject only to the provisions of this Article V. Moneys in the Operating Fund and any interest thereon shall be applied first to the payment of Management Fees accrued through the end of the prior month and thereafter to any other Operating Expenses then accrued. The balance shall be retained in the Operating Fund as reserve for payment of future Operating Expenses. If, at the end of any Fiscal Year, there shall be a balance in the Operating Fund in an amount in excess of the anticipated working capital and Operating Expenses for the

first month of the ensuing year, the Manager shall disburse such excess to the City on or before the fifteenth (15) day of such month.

Section 5.02 Working Capital Fund. In order to provide the working capital necessary for Manager to perform its obligations hereunder with respect to Operating Expenses not funded by the Operating Fund, the City shall advance to the Manager for deposit in an interest-bearing account in the Depository in the name of the City to be held and administered by the Manager (the "Working Capital Fund"), a minimum amount equal to the aggregate of the projected Operating Expenses for three (3) months of the City-approved Budget then in effect, as provided below:

(a) Working Capital Fund. By no later than the first day of each Fiscal Year the City shall advance to the Manager such amount as is necessary to replenish the Working Capital Fund to a minimum amount equal to the aggregate of projected Operating Expenses for the first three (3) months of the approved Budget then in effect; provided, that in no event shall the aggregate of such contributions in any Fiscal Year exceed the amount of Operating Expenses set forth in the Budget.

(b) Application to Unfunded Operating Loss. If after the first day of any month the amount of moneys on deposit in the Operating Fund and available for that purpose shall be insufficient for the payment of Operating Expenses then due or budgeted to become due during such month, the Manager may advance the amount of such insufficiency from the Working Capital Fund to the Operating Fund. The Manager shall immediately notify the City of any such advance, and the City shall promptly, but in no event later than the tenth (10th) day following the giving of such notice, restore to the Manager for deposit in the Working Capital Fund the amount of such advance.

(c) Application to Emergency Needs. If at any time or from time to time, by reason of any occurrence of an Emergency Expenditure, moneys on deposit in the Operating Fund are not sufficient for payment of Operating Expenses then due or to fund capital improvements, replacements or repairs necessary to correct any condition that jeopardizes the structural soundness of the Premises, the public safety, the imminent threat of damage to property, or to prevent a violation of Applicable Law, the Manager may advance from the Working Capital Fund to the Operating Fund the amount of such insufficiency. The Manager shall immediately notify the City of such advance, and the City shall promptly, but in no event later than the thirtieth (30th) day following the giving of such notice, restore to the Manager for deposit in the Working Capital Fund the amount of such advance.

(d) Capital Expenditures Fund. The Manager shall collect CapEx Contribution and deposit it in an account maintained in the Depository by the Manager in the name of the City (the "Capital Expenditures Fund"). The Manager shall have sole and complete control and authority as to the Capital Expenditures Fund, subject only to the provisions of this Article V. Moneys in the Capital Expenditures Fund and any interest thereon shall be applied to the payment of any then accrued Capital Expenditures approved pursuant to Section 4.06 and Section 5.02(c). The balance shall be retained in the Capital Expenditures Fund as reserve for payment of future Capital Expenditures.

Section 5.03 Security for and Investment of Funds. All funds and accounts required to

be maintained by the Manager under this Article V are and shall be the property of the City and shall be maintained in the Depository, which shall be a bank or branch located in the City. The Manager shall require of the Depository that all funds held in any account maintained under this Article V be secured to such an extent and in such a manner as is required by Applicable Law in connection with the deposit of funds of the City. Money on deposit in the Operating Fund or the Working Capital Fund may be retained uninvested and on deposit in fully secured demand deposit accounts or may be invested in accordance with guidelines provided by the City from time to time.

Section 5.04 No Obligation of Manager to Advance Funds. The City is solely responsible for and shall promptly pay, or provide funds to the Manager to enable the Manager to pay all Operating Expenses, Emergency Expenditures, and Capital Expenditures. The Manager shall not be obligated to make any advance of its own funds to or for the account of the City or to pay any sums incurred for the performance of services or goods delivered to the Premises, nor shall the Manager be obligated to incur any liability or obligation for the account of the City.

ARTICLE VI. POWER AND FUNCTIONS

Section 6.01 Authority of Manager. The Manager shall have the exclusive right and authority to exercise, or delegate the exercise of, all rights, powers and duties conferred or imposed on the Manager in this Agreement; provided, Manager understands and acknowledges that the City has not designated or otherwise used or permitted use of any portion of the Premises as a public forum for organized events, and nothing in this Section 6.01 or otherwise in this Agreement shall constitute the consent or approval by the City for the Manager to operate any portion of the Premises as a public forum for organized events.

Section 6.02 Sale of Property. Although the Manager shall have authority to sell or otherwise dispose of all movable property that the Manager, in its discretion, believes to be surplus to the needs of the Amphitheater (so long as the same is accomplished in accordance with procedures established by the City of which Manager has been advised in writing and that apply generally to the sale of property by the City), the Manager shall have no authority to sell or otherwise alienate any portion of the Amphitheater consisting of immovable property.

Section 6.03 Capital Improvements. Subject to the following sentence hereof, the Manager shall have no authority to make any material alterations or any capital improvements to the Amphitheater without the prior written consent of the City. Notwithstanding the foregoing or the limitations of any Budget, Manager shall have the right to make capital improvements to the Principal Amphitheater which cost, for any single improvement, not more than \$25,000 if Manager in the exercise of its judgment believes the same to be necessary or appropriate for the efficient operation of the Premises.

Section 6.04 Contracts.

(a) The Manager shall have no authority, without the prior written consent of the City, to enter into any contract for the provision of goods and services to the Premises at any time beyond the date for the expiration of the Initial Term of this Agreement or, if the Initial Term has been extended, the date fixed for the expiration of the Term; provided, that, the City agrees to cooperate with Manager in connection with the execution of such contracts that would extend

beyond the Term of this Agreement by executing and delivering agreements with the providers of such goods and services whereby the City agrees to honor and observe such contracts following termination of this Agreement. Manager shall have the right to enter into, execute, and deliver contracts with users of the Premises which extend beyond or relate to dates falling after the expiration of the Term of this Agreement. All contracts entered into by Manager requiring the consent of the City under this Agreement shall contain an express provision acknowledging that the same is subject to the City's approval. All contracts respecting the Amphitheater and all contracts respecting the Remaining Area entered into by Manager shall provide that the same are assignable to the City and, notwithstanding any contrary provision hereof, upon termination of this Agreement for any reason, Manager shall assign to the City and the City shall assume in writing, all then outstanding contracts respecting the Amphitheater and all contracts respecting the Remaining Area; provided, however, the City shall not be obligated to assume any contracts or agreements entered into by Manager in violation of this Agreement. Furthermore, notwithstanding the foregoing, the City shall not assume and shall not have responsibility for any acts or omissions of Manager with regard to such contracts or agreements prior to the termination of this Agreement except as a consequence to the City's failure to provide funds under this Agreement.

(b) The Manager shall enter into no contracts greater in duration than three (3) years without the prior, written approval of the City.

(c) Consistently with its obligations under this Agreement, the Manager shall have complete and absolute discretion to administer, perform, and resolve disagreements arising out of or relating to the contracts the Manager enters into pursuant to this Agreement.

Section 6.05 Employees.

(a) Employees hired by the Manager shall be employees of the Manager and not of the City, although the employment costs of such employees (including, without limitation, wages, salary, benefits, and the costs of complying with local, state, and federal employment laws) shall be part of the Operating Expenses. The Manager shall have complete and absolute discretion and authority with respect to the number, functions, qualifications, compensation and other terms and conditions employees, subject only to the provisions of Section 4.07 and Article IX of this Agreement.

(b) Manager shall select the General Manager who will be placed on site at the Premises and shall notify the City of its selection prior to such placement. The City shall have ten (10) days following receipt of such notice to notify Manager of the City's approval or disapproval of Manager's choice, such approval not to be unreasonably withheld. Manager shall have the sole right to terminate the General Manager's employment but any replacement shall be approved by the City in accordance with the foregoing. Any General Manager selected by Manager shall have not less than ten (10) years' experience in the industry of management of facilities similar to the Premises.

Section 6.06 Purchase of Supplies and Services. The Manager shall have full authority and discretion to enter into contracts for the purchase of all equipment, materials, supplies, services, and inventories reasonably required by it but shall endeavor to make all such purchases at the best price available as known to the Manager, considering the quantities required and the

quality desired, at the time available for the delivery and the sources of supply whenever possible as part of a volume purchase by the Manager. The Manager may acquire property or services from or otherwise transact business with its Affiliates for any of the goods to be purchased or services to be performed by it under this Agreement but only if the prices charged and services rendered are competitive with those obtainable from others rendering comparable services in the field. All purchases of furniture, fixtures, and equipment and all Capital Expenditures shall be conveyed to the City at no cost to the City on or before the end of the Term. Manager shall establish an inventory control system to account for all such purchases. The City shall have the right to inspect the books and records of Manager to verify Manager's compliance with the provisions of this section.

Section 6.07 Expenditures in Excess of Budget. The Manager shall not, without written authorization by the City, knowingly incur in any Fiscal Year obligations for Operating Expenses aggregating in excess of the amount of total Operating Expenses contemplated by a Budget approved by the City, except for Emergency Expenditures and expenses for services provided to the Premises by third parties, the costs of which are not within the reasonable control of Manager such as, by way of illustration but not limitation, costs of utilities, costs of insurance and necessary and reasonable expenses which vary with increases in revenue generation and Premises usage. Manager shall have the right, however, to expend savings achieved in any line item of the Budget to offset any overruns in other line items of the Budget or for any other purposes deemed necessary or desirable by Manager for the efficient operation of the Premises. If Manager incurs any expense not provided for in the Budget, excluding Emergency Expenditures and those expenses not within the reasonable control of Manager as aforesaid, and the same is not approved by the City, Manager shall be responsible for such excess expenditure.

With respect to Emergency Expenditures respecting the Amphitheater, Manager shall have the right to make the same, up to \$50,000 per item, without prior approval from the City. If any Emergency Expenditure will exceed \$50,000, Manager shall submit the same to the City for the City's prior written approval unless doing so would present a risk of serious personal injury or significant property damage. The City agrees to respond to any request of Manager for an Emergency Expenditure within 24 hours from the receipt of the request therefor, or within such lesser time as is appropriate under the circumstances.

Section 6.08 Settlement of Claims. Manager has been advised by the City (and the City shall continually keep Manager apprised of) the City's procedures and requirements with respect to settlement of third-party claims filed against Manager (to the extent related to the Premises), the City, or with respect to the Premises. Manager agrees to comply with such settlement claims and procedures as it has been advised of in writing by the City. In the event any such claims are covered by insurance required to be maintained hereunder, such claim and the settlement and defense thereof shall be the responsibility of such insurance carrier. To the extent any claims shall not be covered by insurance, in addition to Manager's obligations under Section 3.02(c)(xi), Manager and the City agree to cause their respective legal counsel to coordinate with one another in connection with the settlement of claims, all costs and expenses thereof, including the settlement thereof, penalties, and interest thereon, to be deemed an Operating Expense in accordance with the terms and provisions of this Agreement.

Section 6.09 Food and Beverage Sales. Manager shall retain internal to manager's organization all aspects of food and beverage operations within the premises and shall reflect all

aspects of the financial accounting derived from food and beverage operations within the budgeting and financial statements of the facility. Anything in the foregoing or otherwise in this Agreement to the contrary notwithstanding, whether express or implied, in no event shall Manager take any action, or permit any action to be taken, that would result in a suspension, termination, revocation, rescission, non-renewal, expiration, moratorium of, or other adverse action involving the Alcohol Licensing or any similar licensing respecting the Premises, or any portion thereof. Manager may manage food and beverage sales through an ancillary company within its corporate structure provided all provisions of this paragraph are met as relates to capturing of all food and beverage related revenues and expenses within the operating budgets and financial performance of the Amphitheater.

ARTICLE VII. FEES AND EXPENSES

Section 7.01 Operating Period Base Management Fees. For services to be performed by the Manager during the Operating Period, the City shall pay to the Manager quarterly in arrears on or before the thirtieth (30th) day following the Manager's last monthly report for that quarter, an amount equal to eight percent (8%) of the total Operating Revenues received during the previous quarter as shown on the Manager's monthly reports ("Base Management Fees"). Within ten (10) days following receipt of the annual audit report for the subject year as required by Section 4.03, the Manager shall provide the City a statement of the total Operating Revenues received during the year as shown in the audit report. In the event such statement shows an overpayment or underpayment of the Base Management Fees for the subject year, any overpayment shall be refunded to the City and any underpayment shall be paid by the City within thirty (30) days thereafter.

Section 7.02 Performance Incentive Management Fees. In addition to the base management fee provided for in Section 7.01, Manager shall be entitled to receive an additional performance incentive management fee upon successfully meeting the minimum performance standards as outlined in this Section 7.02 (the "Performance Incentive Fee"). The amount of the annual Performance Incentive Fee shall be determined each year as described in subparagraphs (a) and (b) below. Manager must meet the minimum scheduling requirements as established in Section 3.02(c)(iv) and must complete timely submission of all financial reports as directed in Article IV of this agreement to qualify for the incentive fee. For the Qualifying Event component of the performance requirements, an average will be taken from the 18 best-selling Qualifying Events. The aggregate total of tickets sold for those 18 Qualifying Events must meet or exceed 75% of the total sellable Venue Capacity for those events. The total Venue Capacity shall be the sum of the capacity determined for each Qualifying Event. The Performance Incentive Fee shall be the total of the amounts calculated as follows:

(a) To the extent the Operating Income for the "Concerts and Private Hire Events" category of operations during the Fiscal Year exceeds Zero and No/100 Dollars (\$0.00) up to and including One Million Dollars (\$1,000,000.00), twenty percent (20%) of that amount; and

(b) To the extent the Operating Income during the Fiscal Year exceeds One Million Dollars (\$1,000,000.00) thirty percent (30%) of the amount in excess of \$1,000,000.

For example, in a Fiscal Year in which Operating Income equals \$1,283,455.00, the Performance Incentive Fee shall be calculated as follows:

$$\$1,000,000.00 \times 20\% = \$200,000.00$$

$$\underline{\$283,455.00 \times 30\% = \$85,036.50}$$

Total	\$285,036.50
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ARTICLE VIII. INSURANCE

Section 8.01 Insurance to be Maintained by the City. The City shall at all times during the Operating Period, maintain an "All Risk of Physical Loss" form of policy (with Replacement Cost Endorsement), in each case insuring all movable and immovable property constituting the Amphitheater excluding the foundation (including the expense of the removal of debris of such property as a result of damage by an insured peril), subject to the terms and conditions of the insuring agreements, including coverage for loss or damage by water and flood, with such sub-limits as are mutually agreed upon by the Manager and the City. Coverage shall be written on as broad an "All Risk of Physical Damage" form as is commercially available. The Amphitheater and its contents shall be insured to full insurable value.

Section 8.02 Insurance to be Maintained by the Manager. The Manager shall obtain and maintain (or cause to be obtained and maintained) in effect the following policies of insurance respecting all of the Premises, the cost of which shall be an Operating Expense:

(a) *Workers' Compensation.* Such workers' compensation insurance coverage providing statutory benefits in compliance with Applicable Law;

(b) *Employer's Liability.* Employer's liability insurance with limits not less than: bodily injury by accident, \$2,000,000 each accident; bodily injury by disease, \$2,000,000 each employee; and bodily injury by disease, \$2,000,000 policy limit.

(c) *Commercial General Liability.* Commercial general liability insurance coverage for the Premises for the protection of the Manager and the City for risks customarily covered by such insurance (including, but not limited to, coverage for premises/operation, products and completed operations, independent contractors, broad form property damage, liquor legal liability, and personal injury, including coverage for false arrest, false imprisonment, malicious prosecution, libel, slander, defamation and advertising) to the extent caused by Manager or its employees, agents, contractors or invitees with a combined single limit of \$2,000,000 and \$5,000,000 in the aggregate;

(d) *Dram Shop Liability.* Liquor liability insurance with a combined single limit of \$1,000,000 and \$5,000,000 in the aggregate;

(e) *Business Automobile Policy*. At least \$2,000,000 of coverage, including bodily injury and property damage, arising out of the operations, maintenance or use of owned and non-owned automobiles or other vehicles;

(f) *Excess Insurance*. At least \$9,000,000 of excess coverage written on an occurrence basis in excess of each liability coverage required in this section.

(g) *Crime and Fidelity Coverage*. At least \$500,000 per occurrence of coverage for (i) employee dishonesty, (ii) forgery or alteration, (iii) theft, disappearance and destruction inside and outside the Premises; and (iv) robbery and safe burglary inside and outside the Premises; and

(h) Such other coverages as the City, in its discretion, may deem prudent or necessary.

Section 8.03 Insurance Requirements. The City, the PBA and the board members of the PBA shall be named additional insured parties on all policies (other than Workers' Compensation and Employers' Liability) with respect to Manager's use of the Premises, as its interests may appear. The Manager shall provide, prior to commencing performance under this Agreement, all certificates of insurance and policy endorsements showing the coverages required hereunder. In the event of any dispute that could be reasonably covered by a policy of insurance required by this Agreement, the Manager shall provide a copy of such policy to the City upon the City's request. All primary coverage shall be written by an insurer that is licensed to do business in the State of Alabama with a policyholder's rating of at least A/VIII, as listed from time to time by A.M. Best Insurance Reports. Each policy to provide that it may not be cancelled, terminated, reduced or materially changed unless at least thirty (30) days prior notice thereof has been provided to the City, except in case of cancellation or termination due to lapse for nonpayment, in which case only ten (10) days' notice shall be required. All liability insurance shall, to the extent available: (i) contain a "cross-liability" endorsement or a "severability of interests" endorsement providing that coverage, to the maximum amount of the policy, shall be available despite any suit between the insured and any additional insured under such policy, and (ii) an endorsement specifying this Agreement is an "insured contract."

Section 8.04 Waiver of Subrogation. The Parties release each other and their respective representatives, from any claims for Damages to any person, the Premises or any fixtures, personal property, improvements and alterations of either Party in or about the Premises that are caused by or result from risks insured under any insurance policies required to be carried by the Parties under this Agreement. The Parties agree to cause the issuers of the insurance policies required to be maintained by them hereunder to include waivers of the rights of recovery and subrogation.

Section 8.05 Proceeds of Casualty Insurance. If the Amphitheater or any part thereof is damaged or destroyed by fire or other casualty, the City will determine whether or not repairs and restoration are practicable and feasible and will inform Manager in writing of its election to make or not make any such repairs and restoration within thirty (30) days following the date of such damage or destruction. All proceeds of any casualty insurance paid for by the City shall be the exclusive property of the City and Manager shall have no rights to receive any sums therefrom.

ARTICLE IX. TERMINATION

Section 9.01 Surrender of Premises. Upon expiration or termination of this Agreement, Manager shall promptly surrender the Amphitheater and the Remaining Area "Greenspace" to the City, leaving all equipment, supplies, manuals, books, records, and, inventories that are the property of the City or that have been purchased from Operating Revenues or from funds made available by the City, and Manager hereby quitclaims, transfers, sells, assigns, and conveys to the City, without recourse, representation, or warranty, all right, title, and interest that Manager may have to all improvements made to the Amphitheater and all equipment, materials, supplies, inventories and all other property so purchased. Manager agrees to execute any and all documents necessary to evidence such transfer promptly upon request therefore by the City. Within thirty (30) days after receiving a written request from the City, the Manager shall also deliver all documents, records, and other non-proprietary work product generated by Manager for the City during the Term of this Agreement. The surrender of the Ancillary Area shall be governed by the Ancillary Area Site Sublease Agreement.

Section 9.02 Continuation of Performance. In the event of termination of this Agreement, Manager, at the City's option, shall continue to perform under the provisions of this Agreement for a reasonable time as determined by the Parties to enable the City to make arrangements for a successor as operator of the Premises; provided however, that Manager shall not be required to perform for a period of time during which the Manager's actual Operating Expenses and the Management Fees payable under this Agreement are not promptly and timely funded and paid by the City and in no event for more than six (6) months following such termination.

Section 9.03 Termination by City for Lack of Funding. Should the City elect to terminate funding for the operation and maintenance of the Premises, the City shall have the right to terminate this Agreement upon written notice to Manager, such termination to be effective on the ninetieth (90th) day after such election to terminate. If the termination is effective as of the end of a Fiscal Year, the City shall pay to Manager all fees and other sums due to Manager hereunder through and including the end of a Fiscal Year, plus an amount equal to three twelfths (3/12) of the Management Fees paid to the Manager under Section 7.01 and Section 7.02 during the current Fiscal Year. If the termination is effective during a Fiscal Year, the City shall pay the Manager an amount equal to the unpaid balance of the Management Fee that was approved by the City in the annual Budget for the current Fiscal Year.

ARTICLE X. BREACH

Section 10.01 Material Breach. Each of the following shall constitute a "Material Breach" under this Agreement:

- (a) Failure to pay when due any amount required under this Agreement, if the failure continues for ten (10) days after notice has been given to the breaching Party;
- (b) Failure to perform any other obligation under this Agreement (including Manager's failure to meet the standards imposed by Section 3.02 and Section 3.03, with the exception of the performance criteria for the Manager set forth in Section 3.02(c)(iv), if the failure

to perform is not cured within thirty (30) days after notice has been given to the breaching Party, except that if the breach cannot reasonably be cured within thirty days, a Material Breach shall not be deemed to have occurred if the breaching Party begins to cure the breach within the thirty (30) day period and diligently and in good faith continues to pursue the cure of the breach;

(c) Failure to meet the performance criteria for the Manager set forth in Section 3.02(c)(iv) for two (2) consecutive Performance Seasons.

Section 10.02 Interest on Delinquent Payments. Interest shall accrue on any sums not paid when due from the date on which a default notice is given until paid at an annual rate equal to one percent (1%) over the prime rate described in the Wall Street Journal for the last business day of the calendar month immediately preceding the late payment. In no event, however, shall the charges permitted under this section or elsewhere in this Agreement, to the extent they are considered to be interest under law, exceed the maximum lawful rate of interest.

Section 10.03 Non-curable Material Breach by Manager. Each of the following shall constitute a non-curable Material Breach of Manager under this Agreement:

(a) Any representation or warranty of Manager contained herein which shall be knowingly false or misleading in any material respect as of the date made or deemed to have been made; or

(b) Failure to meet the performance criteria for the Manager set forth in Section 3.02(c)(iv) for two (2) consecutive Performance Seasons.

(c) The Manager shall (A) admit in writing its inability to pay its debts as they become due or (B) file a petition in bankruptcy or for the reorganization or for the adoption of an arrangement under the Bankruptcy Code as now or in the future amended, or file a pleading asking for such relief, or have or suffer to be filed an involuntary petition in bankruptcy against it which is not contested and discharged within sixty (60) days, or (C) make an assignment for the benefit of creditors, or (D) consent to an appointment of a trustee or receiver for all or a major portion of its property, or (E) be finally adjudicated a bankrupt or insolvent under any federal or state law, or (F) suffer the entry of a court order, any federal or state law appointing a receiver or trustee for all or a major part of its property or ordering the winding up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, as now or in the future amended, which order, if not consented to it shall not be vacated, denied, set aside or stayed within sixty (60) days after the date of its entry, or (G) suffer the entry of a final judgment for the payment of money and the same shall not be discharged or a provision made for its discharge within thirty (30) days from the date of entry thereof or an appeal or other appropriate proceeding for review thereof shall not be taken within said period and a stay of execution pending such appeal shall not be obtained, or (H) suffer a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property and such writ or warrant of attachment or similar process is not stayed or is not released within forty-five (45) days after its entry or levy or after any stay is vacated or set aside, or (I) suffer the placing of a judgment lien on its property and failure to cause such lien to be released and discharged within forty-five (45) days from the date such lien took effect; or

(d) Manager shall not conceal, remove or permit to be concealed or removed, any part of its property with the intent to hinder, delay or defraud its creditors or shall make any transfer of any of its property to, or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or suffer or permit while insolvent any creditor to obtain a lien upon its property through legal proceedings, which lien is not vacated within thirty (30) days from the date thereof.

Section 10.04 Breach Notices. The City shall promptly notify the Manager of any acts or omissions believed by the City to be a breach by the Manager under this Agreement. In order to be effective for purposes of Section 10.01 or Section 10.02, a notice of a breach must be timely given, must state that it is a notice of breach and must specify in detail the acts or omissions alleged to constitute a breach of this Agreement.

Section 10.05 Rights of Non-Breaching Party. If a Material Breach occurs and is not waived in writing by the non-breaching Party, then the non-breaching Party shall have the following remedies which are not exclusive but cumulative in addition to any other remedies now or later allowed by Applicable Law:

- (a) The right to cure, at the breaching Party's cost and expense, any breach;
- (b) The right to sue to collect any sums not paid when due, together with interest accrued thereon as provided in Section 10.02;
- (c) The right to sue to collect damages suffered by the non-breaching Party by reason of the occurrence of a willful Material Breach other than breach in the payment of money;
- (d) The right to terminate this Agreement; or
- (e) The right to seek specific performance of the breached obligation.

ARTICLE XI. MISCELLANEOUS

Section 11.01 Remaining Area/Greenspace Scheduling. The City shall have sole discretion with respect to the scheduling of events and activities within the Greenspace. The City shall have the right to keep the Greenspace open to the public at all times, excluding times when Concert Events are scheduled requiring controlled access provisions, consistent with its duly-adopted greenspace policies, subject only to the limitations expressed in this paragraph. Manager may request to reserve the Greenspace in accordance with the City's normal reservation practices but shall have no special rights with respect to such reservation requests.

Section 11.02 Signage. Manager shall create a plan for signage on and throughout the Premises supporting the marketing and sponsorship programs. City shall retain approval authority over the signage plan, including size, content, and location on or within the Premises. Manager shall not permit signage of any nature within the Premises that depicts or includes any images or text of: (1) tobacco products or manufacturers or distributors thereof; (2) sexually oriented businesses or sexually oriented products (e.g., pornographic materials, sex toys, etc.), as defined by Applicable Law; or be of a prohibited racial or discriminatory nature, as defined by Applicable Law. Manager shall submit the signage plan to the City for approval or disapproval. The City shall

respond to such request within fifteen (15) days following receipt of the same, failing which the City shall be deemed to have approved the same.

Section 11.03 Intellectual Property Rights.

(a) Pursuant to the terms of this Agreement, the Manager has agreed to advertise, promote activities, market and conduct public relations for the Premises. Manager covenants and agrees, subject to the reasonable consent of the City, to develop all intellectual property required for the advertisement, promotional activities, marketing and public relations for the Premises, the cost of all of which shall be an Operating Expense. Any and all intellectual property including, without limitation, all names and logos for the Premises, shall be the sole and exclusive property of the City, subject to paragraph (b) below. Manager hereby conveys to the City, without recourse, representation or warranty, any right, title and interest that Manager may have in and to any such intellectual property rights, including, without limitation, all rights of common law, copyrights, rights of copyright renewal, trademarks and trademark rights, and Manager agrees to execute any documentation reasonably required by the City to evidence such transfer.

(b) The City hereby grants to Manager an exclusive license during the Term of this Agreement to use and to grant to others the right to use the intellectual property in connection with the advertising, promotional activities, marketing and public relations for the Premises. Manager, in order to maximize Operating Revenues of the Premises, may, from time to time, grant exclusive rights to providers of goods and services and advertisers to use the intellectual property associated with the Premises. The City agrees not to grant the right to any other party to use the intellectual property rights for any commercial purpose and in no event shall the City grant rights to use such intellectual property to any party in violation of any exclusive rights granted by Manager.

Section 11.04 Assignment. This Agreement may not be assigned, in whole or in part, by either Party without the written consent of the other Party, such consent not to be unreasonably withheld, conditioned or delayed. To be a valid assignment under this Agreement, any assignee must succeed to all of the rights and interests and assume all of the liabilities and obligations (including, without limitation, all operating losses) of the assignor under this Agreement, and the assignee must agree to cure any prior default of this Agreement committed by the assignor, all in writing to the reasonable satisfaction of the non-assigning Party. No agreement that Manager is authorized or empowered to enter into under this Agreement, including, without limitation, any concessionaire agreement, ticketing agreement, Foundational Sponsorship, Component Title Sponsorship, Beverage Company Sponsorship, other sponsorship agreement, or service agreement, shall be an assignment of this Agreement or a default under this paragraph.

Section 11.05 Force Majeure. Should any matter or condition ("Force Majeure") beyond the reasonable control of the City or Manager, such as, but not limited to, war, public emergency or calamity, fire, earthquake, flood, severe weather conditions, Act of God, strikes or labor disturbances, civil disturbances or riots, or any governmental restriction, prevent or delay performance of this Agreement in accordance with provisions hereof, in whole or in part, after the employment of all reasonably available and economically feasible means to overcome such condition, avoid delay and mitigate the effects thereof, performance of this Agreement by the Party

affected thereby shall be suspended or excused to the extent commensurate with such interfering occurrence; provided that the Party availing itself of this section shall notify the other Party within twenty-one (21) days of its actual knowledge of commencement of such occurrence of the event of Force Majeure; and provided further that the time of suspension or excuse shall not extend beyond that reasonably necessitated by the occurrence of the event of Force Majeure.

Section 11.06 Merger, Integration and Amendment. The recitals set forth above are substantive terms of this Agreement and incorporated herein by reference. Except as otherwise expressly stated or referenced herein, this Agreement is the entire integrated agreement of the Parties. No other agreement, oral or written, prior or contemporaneous, except the Agreement, shall be deemed to exist between the Parties. No subsequent agreement or any amendment of this Agreement shall be binding upon the Parties unless it is contained in a written document executed by properly authorized representatives of each Party.

Section 11.07 Approvals; Waiver. (a) Except as otherwise expressly provided, whenever provision of this Agreement requires a review, determination or approval of a Party, such review, determination and approval (or notice of disapproval) shall be in writing and shall not be unreasonably withheld or delayed (except where such review, determination or approval is expressly made subject to the sole discretion or determination of a Party), and shall in any event be made within any time limit specified therefore or within thirty (30) days if no time limit is specified. No consent or waiver, express or implied, by either Party to or of any breach of any covenant, condition or duty of the other, shall be construed as consent to or a waiver of any other breach of the same, or any other covenant, condition or duty. No approval or review by the City hereunder, or any right of approval or review by the City, as to any matter or under any circumstances shall be deemed to constitute Manager as an agent for or acting on behalf of the City.

(b) The City hereby authorizes and designates the City Administrator of the City to serve as agent of the City for the provision of any approvals by, and for the receipt of submissions or other deliverables to, the City pursuant to this Agreement, other than for purposes of approving and modifications or amendments of this Agreement which shall require the approval of the City Council of the City of Huntsville, Alabama.

Section 11.08 Notices. Unless otherwise provided herein, any notice, tender or delivery to be given hereunder by either Party to the other Party shall be in writing and shall be delivered by personal delivery, including messenger service or overnight courier or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed delivered upon receipt or refusal to accept delivery at the address specified in this paragraph, but each Party may change its address by written notice given in accordance with this paragraph.

To the City:

The City of Huntsville
305 Fountain Circle
Huntsville, Alabama 35801
Attn: City Administrator

To the Manager: Huntsville Venue Group Amphitheater, LLC
701 Amphitheater Drive, NW,
Huntsville, Alabama 35896

Attn: General Manager

Section 11.09 Time of the Essence. Time is of the essence of this Agreement.

Section 11.10 Additional Documents. Each of the Parties to this Agreement, without further consideration, shall execute and deliver such additional documents and shall take other actions as may be reasonably required in order to fully effectuate all of the terms and provisions of this Agreement.

Section 11.11 Construction of Agreement.

(a) This Agreement is the result of the joint efforts and negotiations of the Parties hereto, and no single Party is the author or drafter hereof. All of the Parties assume joint responsibility for the form and position of each and all of the contents of this Agreement, and they agree that this Agreement shall be interpreted as though each of the Parties participated in the composition of this Agreement and each and every part thereof.

(b) This Agreement sets forth the obligations and understandings of the Parties hereto, may only be amended by written agreement of the Parties hereto, and shall not be modified or otherwise changed by the terms of other agreements or documents, whether respecting activities to occur on the Premises. No Joint Venture. It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by the City and Manager and that Manager is an independent contractor and not an agent of the City. The City and Manager hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City, on one hand, and Manager, its owners or Affiliates, on the other hand, as joint venturers or partners. Manager is an independent contractor with the rights and obligations provided in this Agreement. The Parties acknowledge that the City negotiated and executed this Contract for Manager's management skills.

Section 11.12 Amphitheater Not To Be Used As Security. Manager shall not pledge or permit the Amphitheater or the Remaining Area to be used, directly or indirectly, as security for any loan or obligation of Manager and shall not permit the filing of any lien against the Amphitheater Site or the Remaining Area on account of any work performed by or for Manager or any contract to which Manager is a party. In the event a lien is filed against the Amphitheater Site or the Remaining Area, or any part thereof relating to any agreement made by Manager, Manager shall promptly cause such lien to be removed by filing an appropriate bond. This Agreement shall be subordinate to the Lease Agreements.

Section 11.13 Choice of Law, Jurisdiction and Venue. Any lawsuit relating to this Agreement shall be filed in a court of competent jurisdiction in Madison County, Alabama. Alabama law, without application of Alabama conflicts of laws principles, shall govern any

dispute between the City and Manager. The Parties hereby consent to personal jurisdiction in such courts and irrevocably waive any objection and any right of immunity on the ground of venue, the convenience of forum or the jurisdiction of such courts.

Section 11.14 Remaining Area. The City agrees to consult with and obtain input from Manager as to any material landscaping or material physical improvements to be made by the City on the Remaining Area, it being the understanding of the Parties that (i) the City retains the full and sole discretion to make such landscaping and material physical improvements on the Remaining Area as the City shall determine to make, and (ii) in no event does this Section 11.15 obligate the Manager to pay the costs of such any such landscaping or physical improvements made by the City on the Remaining Area.

Section 11.15 Limitations on Legal Requirements. Notwithstanding anything to the contrary contained herein, Manager acknowledges and agrees that the power and authority to adopt, rescind, or amend laws for the City resides with the City Council of the City and that nothing contained herein shall in any way obligate the said City Council to advocate for the adoption, rescission, or amendment of Applicable Law, or subject the City to any liability on account of the failure by the City Council of the City of Huntsville to adopt, rescind or amend any Applicable Law.

Section 11.16 Eminent Domain. In the event that the Premises or any material part thereof is taken by any governmental or other permitted authority using the power of eminent domain (or any conveyance in lieu thereof is effected) such that performance by either Party under this Agreement is rendered economically infeasible or a Party will be materially prevented from realizing the economic benefit of this Agreement absent such taking, then such Party may terminate this Agreement without further liability to the other Party. In the event of a taking, the City shall receive the entire award or other compensation for (i) the land on which the Premises is situated and (ii) all improvements paid for by the City or PBA. Manager may separately pursue a claim against the condemnor for Manager's personal property that Manager is entitled to remove under this Agreement and such other costs to which Manager may be entitled by Applicable Law.

Section 11.17 Access by City Personnel. Officers, employees, agents and other authorized persons of the City in the performance of their official duties shall have access to the Premises at all reasonable times.

Section 11.18 Indemnification.

(a) Manager agrees to indemnify, defend and hold harmless the City, its agents, officers, employees, representatives and members and the PBA and the PBA's board members (the "City Indemnitees"), from and against any and all Damages that arise out of, or are incurred in connection with any and all claims, demands, suits, actions or proceedings which may be made or brought against the City or any of the City Indemnitees by reason of or as a result of:

(i) Any contracts, agreements, licenses, use permits or other obligations incurred by Manager hereunder, provided however, Manager shall not be required to indemnify the City or any of the City Indemnitees for any claim arising from demands, suits, actions or proceedings which are based on compliance with the public procurement requirements contained

in Sections 39-1-1 *et seq.* and 41-1-1 *et seq.* of the Code of Alabama, Sections 2-181, *et seq.* of the Code of Ordinances of the City, and any regulations promulgated thereunder;

(ii) The lack of exercise of reasonable care by Manager in the employment of any of its employees or the lack of reasonable care in the direction and supervision of Manager's employees in the management, operation and maintenance of the Premises;

(iii) The willful or negligent act or omission of Manager, its agents, officers, employees, directors or others in privity with Manager; or

(iv) The failure or omission of Manager to observe and perform any of its material obligations, covenants and conditions to be observed and performed by it under this Agreement which result in a default after applicable notice and cure periods

(b) To the fullest extent permitted by applicable law, the City agrees to indemnify, defend and hold harmless the Manager, its agents, officers, employees, and representatives from and against any and all Damages that arise out of, or are incurred in connection with any and all claims, demands, suits, actions or proceedings which are based on compliance with the public procurement requirements contained in Sections 39-1-1 *et seq.* and 41-16-1 *et seq.* of the Code of Alabama, Sections 2-181, *et seq.* of the Code of Ordinances of the City, and any regulations promulgated thereunder.

Section 11.19 Termination of Prior Agreements. The Parties agree that this Agreement amends and restates, in its entirety, that certain Amphitheater Operating and Management Agreement dated November 7, 2019, as amended by Modification 1 on June 25, 2020 and Modification 2 on October 22, 2020, between the Parties (the "2019 Agreement"). Without limiting the generality of the foregoing, the 2019 Agreement is hereby terminated and shall be of no further force or effect. Furthermore, the Parties agree this Agreement amends and restates, in its entirety, that certain Amphitheater Operating and Management Agreement dated September 1, 2022.

Section 11.20 Attorneys' Fees. If either the City or the Manager commences or engages in any legal action against the other Party which arises out of or in connection with this Agreement, the prevailing Party in such legal action shall be entitled to recover from the non- prevailing Party its reasonable attorneys' fees, litigation expenses and other costs incurred in connection with such action, including, amounts incurred in preparation for such action, amounts incurred in connection with any appeals relating thereto and amounts incurred in enforcing any judgments rendered in connection therewith.

Section 11.21 Estoppel Certificate. Each Party shall, from time to time, upon the request of the other Party, execute and deliver to the requesting Party, or the requesting Party's designee a statement, satisfactory to the requesting Party in form and substance, certifying, to the extent true and ascertainable: (a) that this Agreement constitutes the entire agreement between the City and Manager and is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications); (b) the date to which the Management Fee hereunder has been paid; (c) that the requesting Party is not in default under the Agreement and that, to the best of the Party's knowledge, no circumstance exists which, with

the giving of notice, the passage of time, or both, would constitute a default by the requesting Party hereunder; (d) the Effective Date and the Expiration Date; and (e) any other matters relating to the status of this Agreement or the condition of the Premises that the requesting Party may reasonably request. Such statement shall be delivered to the requesting Party or the requesting Party's designee no later than twenty (20) business days after the requesting Party's reasonable request therefor.

Section 11.22 Severability. If any covenant or provision hereof is determined to be void or unenforceable in whole or in part, it shall not be deemed to affect or impair the invalidity of any other covenant or provision, each of which is hereby declared to be separate and distinct. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable. If any provision of this Agreement is declared invalid or unenforceable for any reason other than overbreadth, the offending provision will be modified so as to maintain the essential benefits of the bargain among the Parties hereto to the maximum extent possible, consistent with Applicable Law and public policy.

Section 11.23 Multiple Counterparts, Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding upon the Parties. A signed copy of this Agreement shall be deemed an original for all purposes.

Section 11.24 Interpretation and Construction. Each of the Parties has agreed to the use of the particular language of the provisions of this Agreement, and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the draftsman, but rather in accordance with the fair meaning thereof, having due regard to the benefits and rights intended to be conferred upon the Parties hereto and the limitations and restrictions upon such rights and benefits intended to be provided.

Section 11.25 Exhibits. The City and Manager hereby acknowledge and agree that all Exhibits referenced in this Agreement are attached hereto and incorporated herein by reference.

[Signatures on following pages]

IN WITNESS WHEREFORE the undersigned have executed this Agreement as of the Effective Date.

City:

CITY OF HUNTSVILLE, a public corporation
under the laws of the State of Alabama

By: _____

Name: _____

Title: _____

MANAGER:

HUNTSVILLE VENUE GROUP
AMPHITHEATER, LLC, a Delaware limited
liability company

By: _____

Name: _____

Title: _____

**EXHIBIT A
AMPHITHEATER SITE**

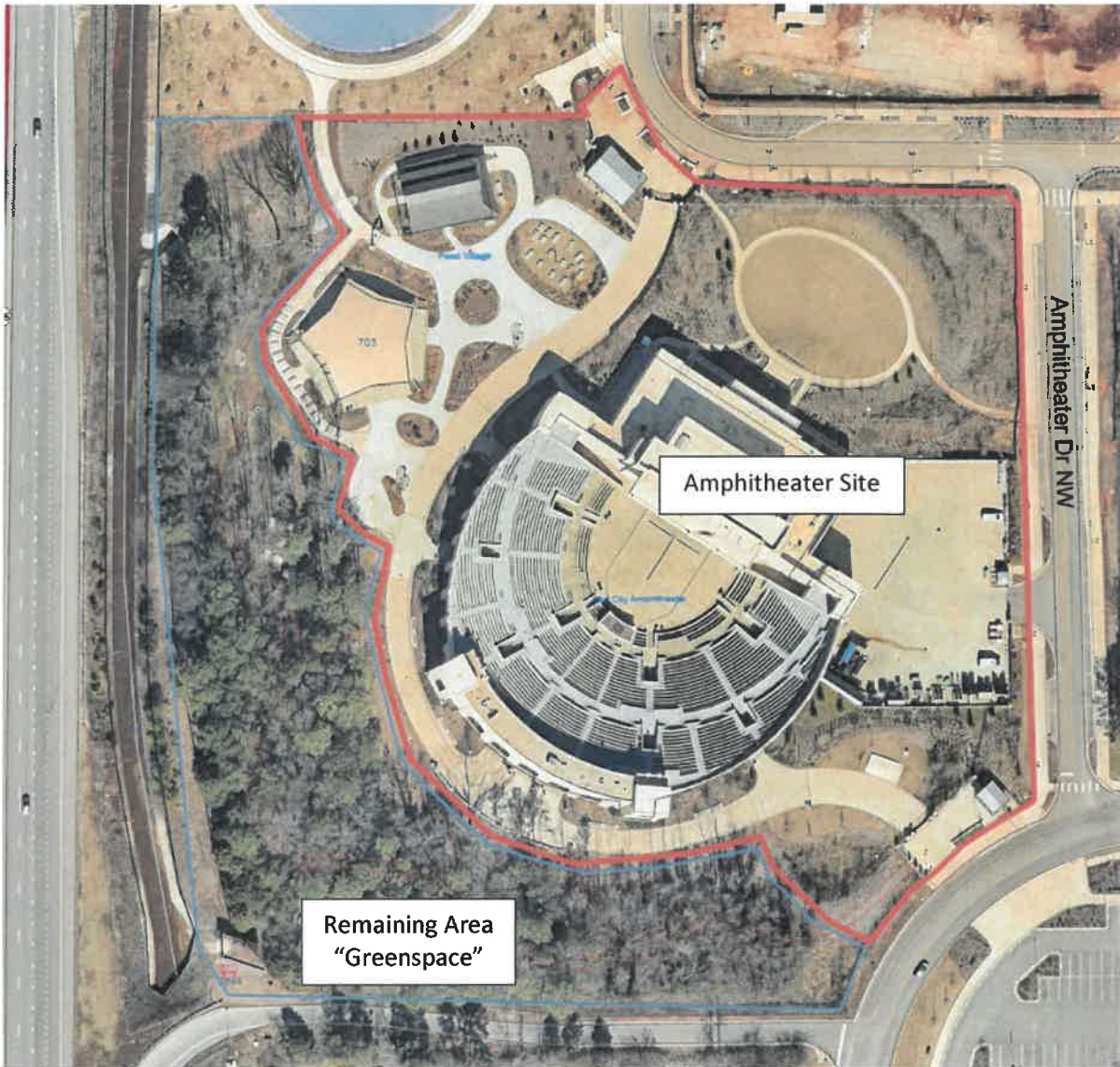


EXHIBIT B
Facilities Maintenance Responsibilities Matrix

	Operator	CoH - GS	CoH - Landscape	CoH - Parking
Day-to-Day Maintenance				
HVAC	Primary			
Electrical	Primary			
Plumbing	Primary			
Janitorial	Primary			
Dumpster & Recycling Services	Primary			
Pest Control	Primary	Secondary		
Fire System Services	Primary	Secondary		
Food Service Equipment & Appliances	Primary			
Building Access Controls	Primary	Secondary		
Building HVAC Controls	Primary	Secondary		
Building Security	Primary			
Security Camera & CCTV Systems	Primary	Secondary		
Exterior/Façade	Primary			
Interior/Finishes	Primary			
Building Equipment (OH doors)	Primary	Secondary		
Furniture	Primary			
AV Systems	Primary			
Elevator	Primary	Secondary		
Fire Extinguishers	Primary			
Keys/Hardware/Access Cards		Primary		
Generator	Primary	Secondary		
Southeast Parking Lot Operations				Primary
Traffic Control	Primary			
Event Security - Site	Primary			
Temporary Restrooms - Port-a-lets	Primary			
Southeast Parking Lot Lighting				Primary
Capital Maintenance Replacement *				
Structural		Primary		
Elevator		Primary		
Roofing		Primary		
HVAC		Primary		
Generator		Primary		
Utilities				
Amphitheater	Primary			
South Park		Primary		
Southeast Parking Lot				Primary

Ancillary Structures	Primary			
Insurance				
Insurance - Building & Contents		Primary		
Insurance - WC, Emp. Liability, CGL, Auto	Primary			
Grounds, Landscaping & Irrigation				
Amphitheater			Primary	
South Park			Primary	
Park Fencing		Primary		
Park Lighting		Primary		
Park Walkways			Primary	
Southeast Parking Lot			Primary	
Ancillary Structures and Grounds	Primary			
Programming/Scheduling				
Amphitheater	Primary			
Southeast Parking Lot	Primary			Primary

* Via Capital Expenditures Fund per Operating and Management Agreement

EXHIBIT III
DISCLOSURE SCHEDULE

DISCLOSURE SCHEDULE
to the
ASSET PURCHASE AND CONTRACT TERMINATION AGREEMENT
by and among
HUNTSVILLE VENUE GROUP F&B, LLC,
HUNTSVILLE VENUE GROUP AMPHITHEATER, LLC,
and
THE CITY OF HUNTSVILLE, ALABAMA
May 15, 2026

This Disclosure Schedule is made and given pursuant to the Asset Purchase and Contract Termination Agreement dated as of May 15, 2026 (the “**Agreement**”), by and among City of Huntsville, Alabama, a municipal corporation organized under the laws of the State of Alabama (the “**Buyer**”), Huntsville Venue Group F&B LLC, a Delaware limited liability company (the “**Seller**”), and Huntsville Venue Group Amphitheater LLC, a Delaware limited liability company (“**HVGA**”). All capitalized terms used but not defined herein shall have the meanings as defined in the Agreement, unless otherwise provided. The section numbers below correspond to the section numbers in the Agreement; provided, however, that any information disclosed herein under any section number shall be deemed to be disclosed and incorporated into any other section number under the Agreement where such disclosure would be appropriate and such appropriateness is reasonably apparent from a reading of such disclosure.

Nothing in these Disclosure Schedules is intended to independently constitute a representation or warranty or to create any covenant. Unless otherwise required by a particular representation or warranty being disclosed against, inclusion of any item in these Disclosure Schedules (a) does not represent a determination that such item is material or establish a standard of materiality, (b) does not represent a determination that such item did not arise in the Ordinary Course of Business, and (c) shall not constitute, or be deemed to be, an admission to any third party concerning such item. To the extent that these Disclosure Schedules include brief descriptions or summaries of certain agreements and instruments, copies of such agreements or instruments have been made available to the Buyer and are available upon reasonable request.

Subject to applicable Law, this information is disclosed in confidence for the purposes contemplated in the Agreement and is subject to the confidentiality obligations between or among any of the Parties to the Agreement.

Information provided in any schedule, exhibit, appendix or attachment to these Disclosure Schedules forms an integral part of these Disclosure Schedules and is incorporated herein by reference as if set forth fully herein.

List of Sections

Section 2.1(a)	Assigned Contracts
Section 2.1(c)	Tangible Personal Property
Section 2.1(g)	Owned Intellectual Property
Section 2.2(d)	Business Permits
Section 2.2(f)	Excluded Assets
Schedule 3.3	No Conflict; Filings and Consents
Section 3.5	Compliance with Law; Permits
Schedule 3.6	No Actions
Schedule 3.9	Environmental Matters
Schedule 3.11(b)	Licensed Intellectual Property
Schedule 3.12	Affiliate Transactions
Schedule 3.13	Material Suppliers
Schedule 3.15	Brokers
Schedule 5.4	Intellectual Property License

Section 2.1(a)

Assigned Contracts

None.

Section 2.1(c)

Tangible Personal Property

(i) Owned Assets

Item	Qty
Beverage Air Freezer	2
True Air LowBoy	5
Beverage Air LowBoy	44
Ikon LowBoy	8
Regency Lock Cabinet	2
Beverage-Air Stand Up Single Door	4
Doube Door Motak	2
Spaceman Slushy	2
Beverage Air MarketMax Two Door	2
Beverage Air Marketeer	2
Spaceman Cart	2
Icemachine Manitowoc - Indigo NXT	8
Icemachine Ben Manitowoc	8
Ozark River Portable Sink	2
Three Part Sink Portable	1
Beverage Air Ove Section Refrigerator	1
Black Bar Wood	4
Grey Bar Plastic	5
IRP Tanker Display Cooler	11
IRP Ice Hawk Portable Tub	2
V- Boat PlatStorm Truck	2

Magliner Convertible Hand Truck	5
Keg Hand Truck	1
Standard Hand truck	2
Uline Utility Cart	7
Choice Bus Cart	2
Uline Service Cart	3
11 Foot Keg Cooler Rack	4
Beverage Air MT53-1-5DW 2 Glass Door	1
Reagency Grean Wire Security Cage	17
True STGIF-15-HC 1 Section Freezer	4
8x12 Freezer	1
Tool Box	1
Pop Up Tents	2
Distro Walkin Cooler	1
Beverage Air Single Door Lowboy	2
Krowne 18-18RD Liquor Display	2
Crathco I PRO 2E Slushy Machine	1
Beverage Air HR3HC-15 3 Door Refrigerator	2
Liquor Cage	17
Liquor RIse Display	30
Wireshelves 72x24x72	12
Wireshelves 24x24x72	10
Ice Machine Ice-O-Matic	4
Wells (Perlick)	65
Perlick Side Well Cabinet	130

Micro Matic MMPP4303- PKG Glycel Power Pack	5
Smoker	1
Vulcan 6 Burver Stove	1
Vulcan Double Oven	2
Alto-SHAAM Ovan (Boilerless)	2
Alto- SHAAM Holding Cabinet Double	5
Alto-SHAAM 6 Pan Holding Cabinet	3
Turbo Air 2 Door Solid Door Refrigerator	1
Henny Penny OFG-323 2 Well Fryer	1
Henny Penny OFG-323 3 Well Fryer	1
Vulcan VCRG26-T 36" Gas Griddle	1
Vulcan VCRB 36-1 36" Charbroiler	1
HOBBAAT HL600 Fleeer Mixer	1
True Chef Base 4 Drawers	1
36 inch Stainless Steel Table	5
66 Inch Stainless Steel Table	2
Hatco GR25O5-42 D Countertop Heated Display	3
60 Inch Stainless Steel Table with Draws	1
48 Inch Stainless Steel Table with Draws	2
60 Inch Stainless Steel Table with Wheels	2
84 Inch Stainless Steel Table with Wheels	1
Vulcan 4 Bruiner Gas Range	1
Vulcan VCRB25 Charbroiler	1
Vulcan VCCG24-AC Gas Griddle	1
Hunry Peany FDS100 Fryer Dump Station	2

Mo Rak MUF-28-X Vidercounter Freezer	3
Ice O Matic CIM0826FA49 Ice Machine	1
Perluck BB584-BS-L-STK 84 inch Bar Refrigerator	2
Mo Tak Two Door Glass Refrigerator 39inch	7
Sheet Pan Rack	11
Turbo Air MST-28-N Door Sandwich Prep Refrigerator	2
Duke E302 Hot Food Table	1
Star 536TGF 36" Electric Griddle	1
True TRCB-52-HC Chef Base Two Drawers	1
11x14 Refrigerator	1
11x10 Freezer	1
8x8 Refrigerator	1
9x6 Freezer	1
DJI Pocket 2 Gimbal + Camera	1
MVPC Mobile Plan Center - Heavy Duty Vertical Blueprint storage	1
Heavy Duty Print Clamps	4
iPad	3

(ii) Leased Assets

Name of Lessor	Type of Equipment	Quantity
Holston Gases	Cylinder Cage	1
Holston Gases	50lb Beverage Grade CO2	11
Holston Gases	20lb Beverage Grade CO2	5

Section 2.1(g)

Owned Intellectual Property

None.

Section 2.2(d)

Business Permits

License/Permit Type	Issuer	License No.	Expiration Date
Liquor License	Alabama Beverage Control Board	11723945	09/30/2026
Business License	City of Huntsville	421138	12/31/2026
Sales Tax License	Alabama Department of Revenue	R011176703	12/31/2026
Food Permit	Alabama Department of Public Health	47-7885	08/31/2026
Food Permit	Alabama Department of Public Health	47-7705	08/31/2026
Food Permit	Alabama Department of Public Health	47-7884	08/31/2026
Food Permit	Alabama Department of Public Health	47-7887	08/31/2026
Food Permit	Alabama Department of Public Health	47-7888	08/31/2026
Food Permit	Alabama Department of Public Health	47-7889	08/31/2026
Food Permit	Alabama Department of Public Health	47-7890	08/31/2026
Food Permit	Alabama Department of Public Health	47-7891	08/31/2026
Food Permit	Alabama Department of Public Health	47-7892	08/31/2026
Food Permit	Alabama Department of Public Health	47-7959	08/31/2026
Food Permit	Alabama Department of Public Health	47-7960	08/31/2026
Food Permit	Alabama Department of Public Health	47-7961	08/31/2026

Food Permit	Alabama Department of Public Health	47-7963	08/31/2026
Food Permit	Alabama Department of Public Health	47-8011	12/31/2026
Food Permit	Alabama Department of Public Health	47-8620	08/31/2026
Food Permit	Alabama Department of Public Health	47-8622	08/31/2026
Food Permit	Alabama Department of Public Health	47-8623	08/31/2026
Food Permit	Alabama Department of Public Health	47-8624	12/31/2026

Section 2.2(f)

Excluded Assets

1. The Business Permits listed in Section 2.2(d) of this Disclosure Schedule are incorporated by reference herein.
2. The Licensed Intellectual Property listed in Section 3.11(b) of this Disclosure Schedule is incorporated by reference herein.
3. Big Spring Water Sponsorship Agreement, by and between Seller and Yellowhammer Brewing Inc., dated March 1, 2026.
4. Beer Sponsorship Agreement, by and between Seller and Yellowhammer Brewing Inc., dated March 1, 2026, and the rights to use Yellowhammer Brewing Inc.'s intellectual property granted therein.
5. Sponsorship Agreement, by and between Seller and Fifth Generation, Inc., dated March 19, 2025, and the rights to use Fifth Generation, Inc.'s intellectual property granted therein.
6. Sponsorship Agreement, by and between Seller and Chambers Bottling Co., LLC, dated April 1, 2025.
7. Partnership Agreement, by and between Seller and Fow Wow Designs, LLC, dated May 1, 2026.
8. POS Hardware as follows:

Hardware Type	Quantity
POS Terminal	95
POS Wall Screen	12
POS Printer	15

Section 3.3

No Conflict; Filings and Consents

(a)(iii)

None.

(b)

None.

Section 3.5

Compliance with Law; Permits

(a)

(i)

None.

(ii)

None.

(iii)

None.

Section 3.6

No Action

None.

Section 3.9

Environmental Matters

(a)

(i)

None.

(ii)

None.

Section 3.11(b)

Licensed Intellectual Property

1. Toast Merchant Agreement Initial Order Form by and between Seller and Toast Inc., dated as of February 21, 2022, for a software subscription, hardware and implementation.
2. Merchant Agreement (Toast POS), to supplement the Toast Merchant Agreement Initial Order Form, updated as of September 10, 2025.
3. MarketMan SaaS Subscription Agreement and Terms of Service, between Seller and MarketMan Ltd.

Section 3.12

Affiliate Transactions

(a)

1. Concessions Agreement, by and between HVGA and Seller, dated April 1, 2022.

(b)

(i)

None.

(ii)

The following documents entered into by Seller to secure obligations of Huntsville Venue Group, LLC in connection with a loan from Bank Independent (the "Loan"). The Loan will be paid at closing and the following documents and all other loan documents will be terminated, released and of no force and effect.

1. The Security Agreement, dated as of May 13, 2022, by Huntsville Venue Group, LLC, HVGA, Venue Group LLC, Huntsville Venue Group Lumberyard LLC, and Seller, in favor of the Bank Independent.

2. The Assignment of Contract Documents, dated as of May 13, 2022, between Seller and the Bank Independent.

3. The Accommodation Pledge Agreement, dated effective July 30, 2025, and executed by Seller.

(iii)

None.

(iv)

None.

(v)

None.

Section 3.13

Material Suppliers

(i) and (ii)

Supplier (2024)	Invoice Total
Alabama Alcohol Beverage Control	\$15,390.89
Alabev (D)	\$22,078.00
Turner Beverage Company	\$23,115.50

Supplier (2025)	Invoice Total
Alabama Alcohol Beverage Control	\$66,639.23
Alabev (D)	\$12,532.50

Section 3.15

Brokers

None.

Section 5.4

Intellectual Property License

Trademarks / Tradenames - Unregistered

1. El Cohete
2. Teal Monkey
3. Isadora's
4. Murphy Law
5. Madkin & Weeden
6. Distillery
7. Hop House Co.
8. Red Stone Junction
9. Sky Bar