

STATE OF GEORGIA)
)
COUNTY OF CHATHAM)

USAGE AGREEMENT

THIS USAGE AGREEMENT is made and entered into effective October 1, 2015, by and between THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH, GEORGIA, a municipal corporation created and existing under the laws of the State of Georgia, hereinafter referred to as "City," and Fans First Entertainment, LLC hereinafter referred to as "Tenant":

WITNESSETH:

1. Premises. The City, for and in consideration of the rents reserved to be paid and the covenants to be performed by Tenant, as recited below, has leased and by these presents does lease unto Tenant, for the term stated in Paragraph 2, certain premises and improvements in the City of Savannah, Chatham County, Georgia, known as Grayson Stadium, in Daffin Park, with a non-exclusive easement in and to the real property adjacent to said Stadium to be used for purposes of parking motor vehicles during the term hereof. All such areas are described on the plat attached hereto as Exhibit "A." The property and improvements covered by this Usage are hereinafter referred to as "the Premises". The City warrants that it has clear title to the Premises and that its execution and performance of this Usage Agreement will not violate any law, rule, regulation or order, or any agreement by which the City is bound. The City further warrants that upon the Tenant's paying of all amounts due hereunder and observing and performing all of the material terms and covenants on the Tenant's part to be observed and performed, the Tenant shall and may peaceably and quietly hold

and enjoy the Premises for the term hereof, and that any successor in interest to the City (whether by sale or otherwise) shall be bound by the terms of this Usage Agreement.

2. Term. The Tenant shall have and hold the premises under the terms of this Usage Agreement from the 1st day of October 2015, until and through the 30th day of September 2018, said later date being referred to herein as the "expiration date" of the primary term of this Usage.

Option to Renew. Provided that Tenant is not then in default, beyond any applicable cure period of the terms of this Usage, Tenant shall have the option to extend this Usage for two successive one (1) year periods, each such one (1) year period herein sometimes referred to as an Extended Term as follows:

First Extended Term: October 1, 2018 - September 30, 2019

Second Extended Term: October 1, 2019 – September 30, 2020

In order for each one (1) year extension to be exercised, Tenant must give written notice to the City of its intent to extend this Usage not later than ninety (90) days prior to the expiration of the then existing term.

In the event that Tenant extends the Usage as provided in this section, all terms and conditions of this Usage shall continue in effect.

3. Use of the Premises. Subject to the right of use reserved unto the City, as stated immediately below, the Tenant shall have exclusive right to use and occupy the Premises during the term of this Usage and any extensions hereof; provided, however, that the City does reserve unto itself the right to use and occupy the Premises at such times that same are not being used by the Tenant for practice sessions or scheduled

baseball games or other associated events Tenant has scheduled for the Premises. The City shall have the duty and obligation to determine in advance that its planned usage of the Premises does not conflict with any scheduled event(s) of the Tenant.

4. Rent. Tenant shall pay to the City the sum of \$20,000 per annum, in equal monthly installments of \$1,666.66 per month, as the minimum annual rent for said Premises. All rents payable hereunder by Tenant, as provided above, shall be paid by Tenant to the City by the 20th day of each month for the preceding month.

5. Additional Rights of Tenant. The Tenant shall have the following additional rights in connection with its use of the premises:

- (a) Tenant shall have the exclusive right to rent or use all advertising spaces in the Premises, as well as advertising spaces in any publications it sells on the Premises; and
- (b) Tenant shall have the exclusive right to use the Premises, lease the same, or make them available for the purpose of any and all radio and television broadcasts of events Tenant schedules in the Premises; and
- (c) Tenant shall have the exclusive right of the sale of food, beverages, and merchandise, or concessions for the same; provided, however, that if the City schedules and conducts an event in the Premises, as provided in Paragraph 3 above, then the following special terms shall be applicable, to-wit:

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(i) City shall be solely responsible for the conduct of such event, and shall hold Tenant harmless and free from any loss or damage arising out of same;

(ii) City shall receive and retain all the admission charges collected in connection with such event;

6. Utilities. The City shall pay all charges for water and electricity services used, rendered, or supplied upon or in connection with the Premises for the benefit of the Tenant, and the Tenant shall pay all charges for any and all other utilities rendered or supplied upon or in connection with the Premises for the benefit of the Tenant.

7. Responsibilities of City. During the term of this agreement, including any extensions hereof, City shall assume responsibility for the Premises as follows:

(a) Will make repairs to the Grand stand, stadium water, electric and light fixtures, for the benefit of the Tenant.

(b) Other than on Saturday and Sunday and holidays, to keep clean the passageways, seating areas, lavatories, and other public areas utilized by the general public attending events in the Premises; provided, however, that this will in no way relieve Tenant from its responsibility and liabilities for inspecting the same and for any damages or injuries arising from the use thereof. Tenant shall have the duty to ascertain that the concession areas, offices, and other facilities in the premises which are utilized by its employees, agents, sub-tenants, and invitees, shall be maintained in a clean and safe condition.

- (c) To repair such defects in the lavatory facilities as shall be reported to the City by the Tenant.
- (d) At its election, to paint the seats, restrooms, fronts of the concession stands, and other painted surfaces where, in the reasonable opinion of City, such painting is necessary to improve and/or maintain the appearance of the Premises.
- (e) To furnish and install all necessary light bulbs in the established lighting fixtures both on the playing field and elsewhere within the Premises as necessary to insure that all lighting is operative, and to fully maintain the lighting system throughout the term of this Usage to meet the required standards of the league in which Tenant's baseball team plays.
- (f) City shall maintain the playing field during the season in a good and proper condition and furnish all playing field maintenance. City shall provide the necessary maintenance equipment to keep the playing field in the above-specified condition. City shall have the responsibility to furnish required supplies and materials for such maintenance. The City shall provide game day field preparations for all Tenants games. The City will also provide game day field preparations for non-tenant games (high school, college, etc.) at a rate of \$100.00 per game.

8. Responsibilities of Tenant. During the term of this Usage Agreement the Tenant shall assume responsibilities for the premises as follows:

- (a) To provide security personnel via Savannah-Chatham Metropolitan Police Department (SCMPD) inside of the Premises during Tenant's scheduled and conducted events, as necessary to maintain in good order and to protect the property owned by City. It is understood and agreed that it shall be the responsibility of City to provide such security within the Premises at events it schedules and conducts.
- (b) At the expiration of this Usage Agreement, to return the Premises to the City in the same condition in which possession was first received, except for reasonable wear and tear or damage by storm, fire, or other acts of God.
- (c) To maintain liability insurance for injury to persons and property in an amount not less than \$100,000 per person, or \$3,000,000 per incident, and \$1,000,000 of property damage; said insurance policy to name the City as a certificate holder. A certificate evidencing such insurance coverage shall be filed with the Clerk of Council of the City, and any notice of cancellation of the policy shall be promptly transmitted to the City.
- (d) To make full and proper restitution to the City for any and all damages to the Premises caused by Home/Visiting teams (to include Tenant Rentals) or other invitees of the Tenant.
- (e) To arrange with a concessionaire to provide and operate concessions at all City's scheduled and conducted events.

9. Damage to or Destruction of the Premises. In the event that any incident or casualty occurs during the term of this agreement which causes damage to the Premises to the extent that same will require the expenditure to \$100,000 or more for the repair of same, then and in such event the City may, at its option and with five (5) days' written notice to the Tenant, elect either to repair the damage or to terminate this Usage Agreement; provided, however, that in the event City does not maintain such insurance as will reimburse it for the costs of said repairs, the dollar limitation as specified herein shall then be applicable to any deductible or co-insurance expenditures placed upon City shall elect to terminate this agreement rather than repair the damages, then Tenant may, at its sole option, elect to repair the damage and avoid such termination of this Usage Agreement. Also, in the event that such casualty does occur for which the City does not elect to terminate this agreement and the repair of the Premises shall render the same inoperable or unusable for a period of more than ten (10) days, then Tenant, at its sole option, may elect upon ten (10) days' written notice to the City to terminate this Usage Agreement. Any period of time as specified herein shall commence to run from the date upon which the casualty causing the particular damage shall occur.

10. Alterations. The Tenant shall make no alterations to the Premises, except as provided for herein, or as consented to in a separate writing signed by an authorized representative of the City, which consent shall not be unreasonably withheld.

11. Sub-Agreement. The Tenant shall have the right to assign or sublet all or any part of the Premises, but only with the written consent of the City, which consent

shall not be unreasonably withheld; provided, that any such agreement shall only be for uses and purposes which are not prohibited hereunder, and only if such uses and purposes are not unlawful, dangerous, noxious, or offensive. No assignment or sub-agreement by Tenant shall affect the usage or the obligation of Tenant to perform all of the covenants required to be performed by Tenant pursuant to the terms of this Usage Agreement. Each sub-agreement shall provide that it is subject and subordinate to the rights of City under this Usage Agreement and any renewal, amendment, or modification thereof.

12. Indemnification. The Tenant shall indemnify and hold harmless the City from and against any liability or loss arising out of injury to any person or damage to any property belonging either to the Tenant or to any other person(s); except where such damage or loss results from the sole negligence or intentional misconduct of City, its officials, employees, agents, invitees or licensees (excluding Tenant).

13. Defaults. Each and every term and condition of this Usage Agreement is hereby declared to be a covenant of the same, and the failure of either party to abide by any covenant herein contained shall constitute a default in the performance of this Agreement. If a party is in default as to any covenant contained in this Usage Agreement, then the other party, at its sole option, shall have the right to notify the defaulting party in writing of said default, identifying such default in the notice and requesting the party in default to correct the specified default within said time period, then this Usage Agreement may be terminated by the party who has given such notice; or, at its election, the non-defaulting party may correct and remedy the particular condition of default and charge the expense of such correction to the defaulting party,

which amount shall be reimbursed within thirty (30) days after receipt of an invoice detailing the costs of repairs. The failure of a party to notify the other party of a particular default shall not constitute waiver or any breach or covenants or conditions in this Usage Agreement, nor shall such non-action be considered as a continuing waiver hereunder and shall not operate as a bar nor prevent the non-defaulting party from declaring a default for any succeeding breach of the same covenant or otherwise.

14. Notices. Any notice required pursuant to this Usage Agreement must be in writing and must be transmitted either by certified mail or hand-delivered to the last address of the party to whom the notice is to be given. The City hereby designates its address as Post Office Box 1027, Savannah, Georgia 31402; and the Tenant hereby designates its address as Post Office Box 2672 Gastonia, North Carolina 28053.

Either party may change its designated address by giving written notice of its new address to the other party in the manner herein provided.

15. Entire Agreement, Supplements, and Conflicts. This Usage Agreement and any attachment or supplement hereto shall constitute the entire agreement between the parties. No prior, nor subsequent oral or written representations, modifications, changes, or interpretations shall be deemed to be a part of this Usage Agreement unless reduced to writing which makes a specific reference to this particular agreement and which is then executed with equal formality as this agreement. Tenant, at its option, may file a short-form memorandum of this Usage Agreement with appropriate recording authorities. This Usage Agreement is hereby declared to be executed in the

State of Georgia and is to be construed and interpreted pursuant to the laws of that State.

16. Binding Upon Successors. This Usage Agreement shall be binding upon and shall insure to the benefit of the parties, their successors, and assigns.

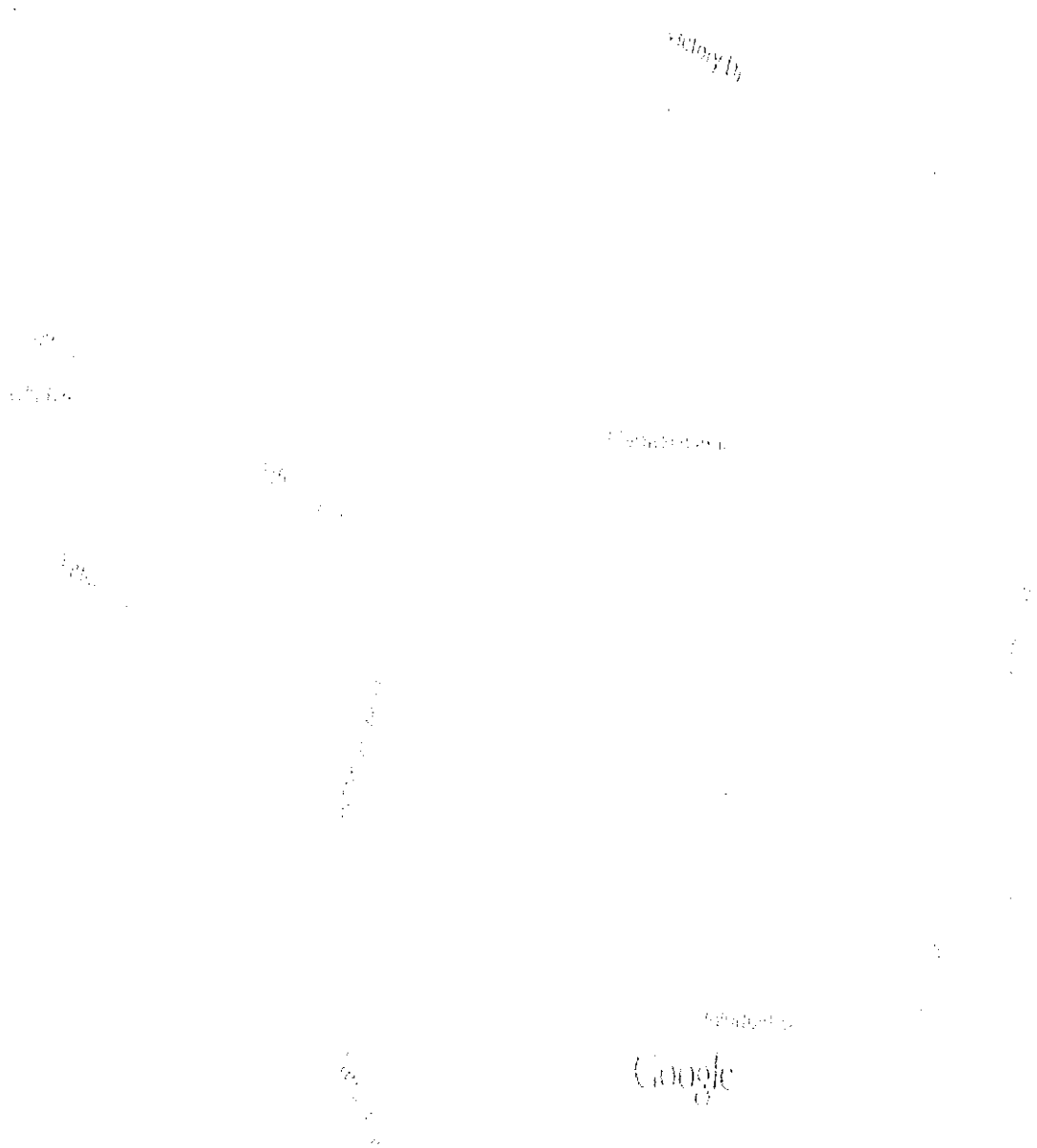
17. No Third Party Beneficiaries. Owner and Consultant are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

18. Governing Law; Consent To Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia without regard to principles of conflicts of law. Any action to enforce or otherwise arising from this Agreement shall be brought in the Superior Court of Chatham County Georgia or the United States District Court for the Southern District of Georgia only.

19. Severability. The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

20. Waiver. The failure of the City to enforce any provision of this Agreement shall not constitute a waiver by the City of that or any other provision.

Exhibit "A"



IN WITNESS WHEREOF, the parties have caused these presents to be duly executed by their authorized officers.

Executed as to THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH, GEORGIA, this the _____ day of _____.

BY: *Stephen J. Cutler*
CITY MANAGER

ATTEST: *Sharon C. Reese*
CLERK OF COUNCIL

Executed as to the Fans First Entertainment

this the 1 day of September 2015.

BY: *Jesse Cole*
JESSE COLE
Fans First Entertainment, LLC

ATTEST: _____