

FIRST AMENDMENT TO USAGE AGREEMENT

This **FIRST AMENDMENT TO USAGE AGREEMENT** (this "Amendment"), dated as of May ____, 2017 is made by and between **Mayor and Aldermen of the City of Savannah**, a municipal corporation organized under the laws of the State of Georgia ("City") and Fans First Entertainment, LLC, a _____ corporation organized under the laws of the State of _____ ("Tenant").

WITNESSETH:

WHEREAS, the parties entered into that certain Usage Agreement having an effective date of October 1, 2015 (the "Agreement"), with respect to certain real property generally described as the Grayson Baseball Stadium within Daffin Park located at 1401 E. Victory Drive in the City of Savannah, Chatham County, Georgia, also referenced as a portion of PIN 2-0076 -29-001 (the "Premises"); and

WHEREAS, Tenant is seeking to make certain improvements to the Premises to enhance the experience of fans attending events at the Premises; and

WHEREAS, the responsibilities of the City and Tenant in the design, permitting, construction, operation, maintenance, and other aspects of the proposed improvements, among other matters, are set forth in this Amendment.

NOW, THEREFORE, in consideration of these promises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Incorporation of Recitals; Definitions. The foregoing recitals are true and correct and incorporated as if fully set forth herein. Unless otherwise defined herein, capitalized terms used in this Amendment shall have the meanings ascribed to such terms in the Agreement.

2. Tenant Responsibilities. Section 8 of the Agreement is hereby amended to include the following additional responsibilities:

- f) The Tenant will design and construct a club-seating structure (the "VIP Building") near the third base area of the Premises in a manner consistent with City specifications and approvals;
- g) The Tenant will ensure that the selected contractor completes the site review process and complies with all recommendations and requirements set forth by the City;
- h) The Tenant will manage the construction of the VIP Building and be responsible for all payments and invoices to the contractor or his/her sub-contractors and will quickly cure and remove any mechanic liens placed on the Premises;

- i) The Tenant will acquire and install furniture, fixtures, and equipment (“FFE”) within the VIP Building upon completion of construction, subject to pre-approval by the City, which approval shall not be unreasonably withheld;
- j) The Tenant will be responsible for the janitorial cleaning and interior maintenance of the VIP Building in a professional and high-quality manner;
- k) The Tenant will meet with the City’s representative a minimum of twice per month, as scheduled by the City during the Site Development and Construction of the VIP Building so that the City may inspect and approve progress;
- l) The Tenant will provide a construction progress and financial status of the VIP Building construction project to the City representative at least once per month, as scheduled by the City; and
- m) Upon completion of construction, Tenant will furnish the City with all Operations and Maintenance Manuals and all written warranties and guarantees concerning the VIP Building, its fixtures and equipment.

- n) Tenant shall pay all charges for any and all utilities other than water and electricity rendered or supplied upon or in connection with the VIP Building.
- o) Tenant shall be responsible for performing all maintenance on the VIP Building, its fixtures and equipment, which shall be performed in accordance with manufacturer specifications.
- p) Tenant shall obtain and maintain in full force and effect sufficient insurance on the VIP Building and deck. The City shall be named a certificate holder.
- q) To the extent Tenant wishes to affix signage to the VIP Building’s exterior, it must be detachable and approved by the City in advance of installation, which approval shall not be unreasonably withheld.
- r) Tenant shall be responsible for repairs to the interior and exterior of the VIP Building that exceed ordinary wear and tear; however, in no event shall Tenant be liable for damage caused by vandalism, fire which is not caused by Tenant’s negligence, or any act of God .
- s) Tenant specifically acknowledges that any future improvements to the Building, including modifications to appurtenances, may occur only after pre-approval has been obtained from the City.

3. City Responsibilities. Section 7 of the Agreement is hereby amended to include the following additional responsibilities:

- g) The City will reimburse tenant up to one hundred twenty five thousand dollars (\$125,000) for construction and FFE costs associated with developing the VIP Building. Tenant shall provide actual costs submitted by contractors, engineers, architects, suppliers, and other contractors

involved with construction of the VIP Building as evidential support of the reimbursement request.

- h) The City will provide for initial connectivity to and pay all water and electricity services used, rendered or supplied upon or in connection with the VIP Building.
- i) The City will be responsible for any exterior repairs occasioned by ordinary wear and tear to the VIP building upon completion of construction and receipt of a certificate of occupancy.

4. Notices. Section 14 of the Agreement is hereby amended with the following revised contact information for the Tenant.

Jesse Cole
Fans First Entertainment, LLC
Owner
1401 East Victory Drive
Savannah, Georgia 31404
(781) 424-2499
jesse@thesavannahbananas.com

5. Miscellaneous. The parties agree that, except as modified by this Amendment, the Agreement remains in full force and effect in accordance with its terms. In the event of a conflict between this Amendment and the Agreement, the terms of this Amendment shall control. This Amendment shall be governed and construed in accordance with the law of the state in which the Property is located. This Amendment shall inure to the benefit of and be binding upon the permitted heirs, successors and assigns of the parties hereto. This Amendment may be executed in multiple counterparts which, taken as a whole, shall constitute one instrument. This Amendment may be executed by facsimile signature.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Amendment as of the date first above written.

CITY:

Mayor and Aldermen of the City of Savannah

By: _____
Roberto Hernandez, City Manager

TENANT:

Fan First Entertainment LLC

By: _____

Its: _____