

**LEASE AGREEMENT
RECREATION BALLPARK**

This LEASE AGREEMENT (this “Lease Agreement”), effective as of the “Effective Date” as defined in Section 4 below, is by and between the CITY OF VISALIA, a Municipal Corporation and charter law city of the State of California (hereinafter, “City” or “Lessor”), and FIRST PITCH ENTERTAINMENT LLC, a Delaware Limited Liability Company qualified to do business in California (hereinafter, “Lessee”). City and Lessee may each be referred to herein individually as a “Party” and may be referred to herein collectively as the “Parties.”

RECITALS

WHEREAS, City owns Recreation Ballpark, the baseball stadium and associated stadium improvements, as defined more fully herein below (hereinafter, the “Premises”); and

WHEREAS, Lessee anticipates acquiring ownership of the professional baseball team known as the Visalia Rawhide, and desires to secure the right to occupy the Premises for the next 10 years for the purpose of conducting professional baseball team activities including hosting games open to the paying public, on the same terms and conditions made available to the prior owner of the Visalia Rawhide team;

WHEREAS, Lessee anticipates securing the cancellation of the lease between the City and the prior owner of the Visalia Rawhide team, such cancellation being subject to execution of this Lease Agreement; and

NOW THEREFORE, for the consideration described herein and performance of the covenants and conditions to be performed by Lessee under this Lease Agreement, Lessor agrees to lease the Premises to Lessee, and Lessee agrees to lease the Premises from Lessor, on the terms and conditions set forth below.

1. PREMISES

Except as expressly provided to the contrary in this Lease Agreement, references to “Premises” shall mean the land described in the attached Exhibit A, which is incorporated herein by this reference, plus any described appurtenances, including any improvements now or hereafter, located on the premises, without regard to whether ownership of the improvements is in Lessor or in Lessee. The Premises includes the entire office complex facing Giddings Avenue at Recreation Ballpark and, as stated herein, Lessee shall have the right to sublease this area and all revenue derived from the use of the Premises, including the sublease of any office space, shall be retained by Lessee. City acknowledges that, as of the Effective Date, it has no other tenants in the office area. The Premises shall include the parking lot highlighted in Exhibit A, which parking lot Lessee shall have the right to use for all events at the Premises. Lessee shall also have the right to use all other public parking lots currently provided for all events at the Premises whether or not included in Exhibit A.

2. FACILITY STANDARDS

Lessor, throughout the Term (hereinafter defined), shall provide a facility on the Premises that complies with all aspects of Major League Rule 58, establishing “Standards for Minor League Playing Facilities” (a copy of which is attached hereto as Exhibit B) or as the same may be amended during the Term (hereinafter, the “Facility Standards”), said Facility Standards being incorporated herein by reference. Acceptable areas of non-compliance must first be agreed upon by both Lessee and Lessee’s MLB affiliate and all applicable baseball governing bodies (collectively, the “Baseball Authorities”). Lessor agrees that if additional renovations are necessary during the Term, then Lessor shall be responsible for the cost of those renovations, up to the Annual Contribution of \$200,000 described in Section 13(b) per year during the Term, in addition to all other Lessor obligations under this Lease Agreement concerning major maintenance or repairs of the Premises; *provided, however*, that if the Baseball Authorities institute new mandates following the expiration of the current Professional Baseball Agreement (“PBA”) requiring new construction projects that are not improvements to the existing Premises, Lessor and Lessee agree to negotiate in good faith regarding their respective responsibilities with respect to the cost of such new construction projects. Lessee acknowledges its obligations with respect to routine maintenance as provided in this Lease Agreement. Lessor represents and warrants that the Premises are in compliance with the Facility Standards as of the Effective Date except as set forth in the 2018 Facility Report prepared by Gould Evans Associates, LC, a copy of which is attached hereto as Exhibit C and incorporated herein by reference.

3. OWNERSHIP OF IMPROVEMENTS

Upon expiration or termination of this Lease Agreement, any and all fixtures as defined in the California Civil Code that are built into the Premises shall become the sole property of Lessor unless otherwise authorized by the Lessor. Personal property not fixtures shall remain the property of Lessee.

4. TERM OF LEASE

The term of this Lease Agreement (the “Term”) shall be for a period of ten (10) years, commencing as of the Effective Date and terminating December 31, 2029 (the “Expiration Date”). Lessee shall provide notice and evidence of the closing of its acquisition of the Visalia Rawhide and the cancellation of the prior lease with Lessee’ predecessor within five business days of the closing, and the Effective Date of this Lease Agreement shall be defined as the date of closing as provided in such notice.

5. BASEBALL SCHEDULE

At the beginning of each calendar year or as soon thereafter as reasonably practicable, Lessee shall provide Lessor with its California League baseball schedule. Lessor understands and agrees that changes to the schedule may be made by either the California League or by the National Association of Professional Baseball Leagues, Inc. (“NAPBL” or “Minor League Baseball”), which are beyond the control of Lessee. Lessee shall have exclusive right to control and manage the use of the Premises during each year of the Term and the scheduling of California League games shall have first priority.

6. CITY RESPONSIBILITIES

- a. City shall maintain responsibility for utility costs, which include electricity, natural gas, water, sewer, and trash. These accounts shall remain in the name of the City of Visalia during the Term. City shall also be responsible for contracting directly or reimbursing Lessee, as stated below, for following items: the annual costs incurred with AT&T (or alternative carrier if necessary) for the telephone lines necessary for the security system, alarm, and elevator; one annual deep cleaning of the Premises; annual service to fire extinguishers and hood systems; annual service costs and monitoring agreement for the alarm on the Premises with STOP Alarm, or alternative alarm company if agreed upon by Lessor and Lessee; and security for the public parking lots during all events conducted at the Premises if deemed necessary by Lessee. Any of the foregoing costs paid for by Lessee after January 1, 2020, shall be reimbursed in due course by Lessor; *provided, however*, that the total maximum amount for which City will be responsible in any calendar year under this Section 6(a) shall not exceed \$100,000 (subject to the terms of the final sentence of this Section 6(a)) and any amount in excess of \$100,000 (subject to the terms of the final sentence of this Section 6(a)) shall be the sole responsibility of Lessee. Any reimbursements under this Section 6(a) shall be based on invoices showing the amount paid and the specific service provided or item that was paid for. Lessee acknowledges that it is responsible for all costs, including utilities, once City pays \$100,000 annually under this Section 6(a). If City overpays in any year, then Lessor may adjust the payments due for the following year or request reimbursement from Lessee. Disputed amounts may be contested by Lessee under the terms of this Agreement.
- b. City shall be responsible for the “Major Maintenance” of the Premises, which shall be defined as, but shall not be limited to, maintenance, repair, and replacement of main systems on the Premises; which shall include, but not be limited to, the HVAC units and all HVAC ducting located on the Premises; the elevator located on the Premises, the roof of each building located on the Premises; repairs, including resurfacing of the paved parking areas contained on the Premises if necessary, significant maintenance, repairs or improvements to the electrical, plumbing or other systems, consisting of work valued at over \$2,500.00; and all other items determined by the Parties to be “Major Maintenance” of the Premises. Lessee shall be responsible for all other costs of maintaining and operating the Premises, as stated below in Section 8(d). All Major Maintenance repairs by City must be conducted solely by City, in a timely fashion, and approved by City and Lessee, so as not to disturb the playing of baseball games, in writing in advance of any work being conducted on the Premises. City and Lessee shall endeavor to itemize City's responsibilities and Lessee's responsibilities in the attached Exhibit D, which is incorporated herein by this reference.
- c. City shall be responsible for any and all real property taxes and assessments levied or assessed against the Premises by any governmental entity before they become delinquent (excluding any taxes or assessments imposed on personal property or fixtures owned or installed by Lessee under the terms of this Lease Agreement). Any assessments imposed for unpaid administrative fines or cost recovery actions against

Lessee shall be the sole responsibility of Lessee.

7. NAMING RIGHTS

- a. Lessee shall have the exclusive right to pursue a naming rights sponsor for the Premises. Lessee has no right to enter into a naming rights agreement for the Premises without the written consent of Lessor, which shall not be unreasonably withheld, conditioned or delayed. Any proposed naming rights agreement shall comply with all rules and regulations of the Baseball Authorities (collectively, the "Baseball Rules") and shall be in good taste.
- b. Lessee shall be entitled to retain all naming rights revenues.

8. USE OF PREMISES

- a. Lessee agrees to use the Premises exclusively in connection with the operation of (i) a minor league baseball facility, (ii) other special events that can take place in an outdoor stadium and (iii) other events as mutually agreed by Lessor and Lessee. Any third party event being conducted at the Premises shall be required to maintain insurance naming the City of Visalia in an amount subject to the approval of the City of Visalia Risk Management department and shall also comply with the City of Visalia Special Events Ordinance, Visalia Municipal Code Chapter 12.48 by obtaining a special events permit prior to the event. Lessee shall be responsible for any damages to the Premises resulting from the use by Lessee.
- b. Lessor shall have the right to access all facilities on the Premises at all times during the Term.
- c. Lessee shall take reasonable steps to ensure that all activities on the Premises, including any third party utilizing the Premises for a special event, shall comply with all statutes, ordinances, regulations, and requirements of all governmental bodies, both federal and state, county or municipal relating to the use and occupancy of the Premises, whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted; *provided, however*, that Lessor shall undertake the obligations set forth in this Section 8(c) with respect to all City events at the Premises.
- d. Lessee shall be responsible for such other costs of operating and maintaining the Premises, including, but not limited to: (i) maintaining the baseball turf, including both the infield and outfield together with all other landscaping on the Premises; and (ii) cleaning and maintaining the concession stands, kitchen areas, bathrooms, and typical maintenance of the interior and exterior of all facilities that are not included in the category of "Major Maintenance" conducted by City as set forth in Section 6(b). Lessee's maintenance responsibilities include the removal of trash and/or graffiti from and around the Premises. As stated in Section 6(b), all Major Maintenance by City must be approved by City and Lessee, so as not to disturb the playing of baseball games, in writing and in advance of any work being conducted on the Premises.
- e. Lessee shall be solely responsible for all taxes, assessments, or other charges, levied or imposed by any government entity on the furniture, trade fixtures, equipment, and any other personal property placed by Lessee on or about the Premises.

9. CONDITION OF PREMISES

- a. Lessee acknowledges that it has had an opportunity to inspect the Premises to determine to what extent the Premises comply with all applicable building requirements. Lessor hereby notifies Lessee that a Certified Access Specialist (CASp) will inspect the Premises and determine whether the Premises comply with all of the applicable construction-related accessibility standards under state and federal law. Although state law does not require a CASp inspection of the Premises, a commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. If either Party seeks a CASp inspection, then the Parties shall mutually agree on the arrangements for the time and manner of a CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.
- b. Lessee accepts the Premises, as well as the improvements located thereon, in their present condition and, except for the items set forth in Exhibit E, which is incorporated herein by this reference, and in Exhibit C, represents to Lessor that the Premises and improvements thereon are in a good, clean, safe and tenantable condition as of the Effective Date. Lessee represents to Lessor that Lessee has inspected the Premises and has been assured by means independent of Lessor or any agent of Lessor of the truth of all facts material to this Lease Agreement.
- c. Lessor represents and warrants that the Premises are in substantial compliance with all applicable state, federal, county and municipal requirements for occupancy and use of the Premises as of the Effective Date or as of the date of the Initial Inspection (defined below in Section 12) if the Initial Inspection is conducted after the Effective Date.

10. NO PARTNERSHIP OR JOINT VENTURE

Nothing in this Lease Agreement shall be construed to render either Party in any way or purpose a partner, joint venturer, or associate in any relationship with the other Party other than that of lessor and lessee, nor shall this Lease Agreement be construed to authorize either Party to act as an agent for the other.

11. MAINTENANCE

Lessee shall be responsible for any baseball game or stadium rental related maintenance, excluding any Major Maintenance items as set forth in Section 6(b) or improvements specified in Section 2, including any set-up and clean-up.

12. INSPECTIONS

- a. At the commencement of this Lease Agreement, Lessor and Lessee shall perform a walk-through of grounds and buildings of the Premises to determine status of

maintenance and inventory (the "Initial Inspection"). The Initial Inspection and inventory will be documented and incorporated as part of this Lease Agreement by this reference.

- b. On or before April 1st of each year during the Term, Lessor and Lessee shall conduct an inspection of the facilities and all equipment owned by Lessor located on the Premises (each, an "Annual Inspection") for the purpose of assuring both Parties that each is conducting the maintenance required by this Lease Agreement, and that the Premises are in a condition comparable to the Annual Inspection conducted in the prior lease year. Lessor shall provide Lessee with reasonable advance notice of the proposed date and time of each Annual Inspection and shall attempt to minimize any disruption to Lessee's business.

13. ALTERATIONS AND IMPROVEMENTS

- a. Lessee shall have the right to make alterations and improvements to the Premises, provided that Lessee obtains the prior written approval of Lessor for any such alterations and improvements, which approval will not be unreasonably withheld, conditioned or delayed. Unless otherwise provided in writing, as stated below, the construction of any such alterations and improvements shall be solely at Lessee's cost and expense. Lessee shall not permit any claims, demands, or mechanics liens of any kind to be filed against Lessor or the Premises as a result of any work performed or failed to be performed, or materials furnished to the Premises at the request of the Lessee. Lessee shall indemnify and hold Lessor free and harmless from any such claims, demands, or liens which arise from said alterations and improvements. All such alterations and improvements shall be kept in good condition and repair and, unless otherwise provided in writing, all such alterations and improvements that are considered fixtures as defined in the California Civil Code shall become the property of Lessor upon the expiration or termination of this Lease Agreement, without right to reimbursement from Lessor to Lessee for such alterations and improvements unless otherwise agreed upon by Lessor.
- b. City shall contribute \$200,000 per calendar year during the Term for Lessee-directed discretionary alterations and improvements to the Premises that improve the fan experience (the "Annual Contribution"). The Annual Contribution shall be in addition to the Major Maintenance obligations under Section 6(b). This obligation is cumulative during the Term so that if an Annual Contribution is not fully expended in one year it carries over and adds to the following year entitlement, and if in any year the costs of such alterations and improvements exceed the Annual Contribution, the excess alterations and improvements shall apply to the following year's entitlement. Prior to receiving any funds from City, Lessee shall prepare a written proposal of the proposed alterations and improvements for approval by City, which shall not be unreasonably withheld, conditioned or delayed. For purposes of clarity and the avoidance of doubt, any non-approval by City shall not be based on City's desire not to make the contribution. Lessee acknowledges that if City is contributing more than a de minimis amount of funds for the construction of the alterations or improvements, then prevailing wage requirements will apply to the alterations or improvements.
- c. City's Annual Contributions shall be made on a calendar year basis and commence

with the 2020 calendar year, and continue through and including the 2029 calendar year. The Parties understand and agree that Lessee's predecessor did not make use of the 2019 calendar year Annual Contribution, and had intended to carry such 2019 calendar year Annual Contribution forward to the 2020 calendar year. City agrees that Lessee shall be provided credit for a full 2019 Annual Contribution in addition to the ten additional Annual Contributions provided by this Agreement, for a total of 11 Annual Contributions, which contributions are subject to the terms of this Paragraph 13 regarding approval of projects and other conditions. Each annual calendar year contribution may be available to Lessee at the beginning of the City's fiscal year, July 1, subject to City Council approval. For example, the 2021 annual contribution shall be available July 1, 2020 and the 2020 annual contribution shall be available on the Effective Date.

14. RIGHT TO ENCUMBER OR ASSIGN

Lessee may not assign this Lease Agreement without the written authorization of Lessor, which authorization shall not be unreasonably withheld, conditioned or delayed; *provided, however*, that Lessor will not withhold its authorization if the assignee is a purchaser of the Visalia franchise approved by the California League and Minor League Baseball. As stated in Section 1, Lessee has the right to sublet sections of the office building or rent the Premises for special events under this Lease Agreement.

15. INDEMNIFICATION AND INSURANCE

- a. Lessee hereby agrees to indemnify and hold Lessor and its property, officers, agents, employees and assigns free and harmless from any and all liability, claims, loss, damages, or expenses (collectively, "Claims"), whether arising before or after completion of work hereunder, or in any manner directly or indirectly caused, occasioned or contributed to, or claimed to be cause, occasioned or contributed to, in whole or in part, by reason of any act or omission, including strict liability or negligence of Lessee or of anyone acting under Lessee's direction or control or on its behalf, or any third party utilizing the Premises as a sublessee, in connection with or incident to, or arising out of Lessee's occupation and use of the Premises and in connection with, or incident to, or arising out of any act or work performed by or on behalf of Lessee under the terms of this Lease Agreement; *provided, however*, that any Claims caused by the act or omission of Lessor shall be excluded from the foregoing indemnity and Lessor shall indemnify and hold Lessee harmless from and against any such Claims.
- b. Without limiting Lessor's right to indemnification, it is agreed that Lessee shall secure, prior to commencing any activities under this Lease Agreement, and continue to maintain during the Term, insurance coverages set forth in the attached Exhibit F, which is incorporated herein by this reference. Within thirty (30) days of the execution of this Lease Agreement, Lessee shall deliver to Lessor insurance certificates confirming the existence of the insurance required by this Lease Agreement, and including the applicable clauses referenced above. Also, within thirty (30) days of the execution date of this Lease Agreement, Lessee shall provide

Lessor endorsements to the above required policies, which add to these policies the applicable clauses referenced above. Said endorsements shall be signed by an authorized representative of the insurance company and shall include the signatory's company affiliation and title. Should it be deemed necessary by Lessor, it shall be Lessee's responsibility to see that Lessor receives documentation acceptable to Lessor which proves that the individual signing said endorsements is indeed authorized to do so by the insurance company. Also, Lessor has the right to demand, and to receive within a reasonable time period, copies of any insurance policies required under this Lease Agreement. In addition to any other remedies Lessor may have, if Lessee fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, Lessor may, at its sole option: (i) obtain such insurance and require the amount of the premiums for such insurance to be paid by Lessee; or (ii) terminate this Lease Agreement.

16. REASONABLE SECURITY/PROTECTION

Lessee shall provide at all home baseball games, at a level reasonably satisfactory to Lessor, sufficient security to ensure reasonable protection of the Premises.

17. DEFAULT

All covenants and agreements contained in this Lease Agreement are declared to be conditions to this Lease Agreement and to the Term. Should Lessee fail to perform any covenant, condition, or agreement contained in this Lease Agreement and the default is not cured within ten (10) days after written notice of the default is served on Lessee by Lessor, then Lessee shall be in default under this Lease Agreement; *provided, however*, that if the claimed default is incapable of being cured within such ten (10) day period, a longer cure period sufficient to allow for the cure shall be granted. The waiver by Lessor of any breach by Lessee of any of the provisions of the Lease Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach by Lessee of either the same or a different provision of this Lease Agreement.

18. AGREEMENT NOT TO VACATE

- a. Lessee agrees that it will not vacate or abandon the Premises prior to the Expiration Date and that Lessee will at all times use the Premises for the purpose of operating a California League professional baseball team under normal California League schedule. Lessee will play all home games of the team at the Premises except in the event: (i) of rainouts that are not rescheduled by the California League; (ii) of a Force Majeure Event; or (iii) that the team is required by the Baseball Authorities to play a home game at a location other than the Premises. Lessee further agrees that it shall not move or attempt to move the team to another city or stadium during the Term, or in any other way fail to conduct a full season (except as set forth in the previous sentence) at the Premises throughout the Term. A failure by Lessee to materially comply with the terms of this Section 18(a) shall be considered a material breach of this Lease Agreement. Lessee will be deemed to be in breach of this Section 18(a) upon any of the following occurrences: (i) an affirmative statement in writing from

Lessee that Lessee intends to vacate the Premises and no longer operate a Class A minor league baseball team at the Premises; (ii) failure of Lessee to provide adequate assurances that it will not vacate the Premises after a request for such assurance is made by Lessor; or (iii) upon actual vacation or non-use of the Premises during the period April 1st through September 15th of any lease year during the Term.

- b. Breach of this Section 18 shall cause Lessee to be liable for the liquidated damages set forth below in Section 19(c).
- c. Notwithstanding the foregoing provisions of this Section 18, Lessee shall not be required to pay liquidated damages or other damages to Lessor if Lessee, without cause or neglect, loses its franchise rights to operate a team in the California League or in the event contraction or realignment of Minor League Baseball results in Lessee losing its right to operate a California League team. Further, Lessor agrees that in the following events it will suffer no financial damage and will not claim liquidated damages or other damages from Lessee: (i) Lessee retains its California League franchise and operates in a different location, but assigns this Lease Agreement to a third party who agrees to conduct a full season (except as set forth in Section 18(a) above) of California League professional baseball operations for the remainder of the Term at the Premises; or (ii) Lessee sells its California League franchise to a third party who accepts an assignment of this Lease Agreement and agrees to conduct full season (except as set forth in Section 18(a) above) Class A California League professional baseball operations for the remainder of the Term at the Premises; or (iii) in the event of reorganization by the California League or Minor League Baseball and Lessee relocates or sells its California League franchise to a third party who relocates Lessee's team to another site, but Lessee or a third party obtains another franchise from a different professional league, accepts assignment of this Lease Agreement and agrees to conduct a full season (except as set forth in Section 18(a) above) of professional baseball operations for the remainder of the Term at the Premises.

19. REMEDIES

- a. In the event Lessee fails to cure a material breach of this Lease Agreement during the applicable cure period, Lessor may terminate this Lease Agreement by written notice to Lessee. Lessor reserves the right to bring an action to recover any amount necessary to compensate Lessor for all actual damages proximately caused by Lessee's breach.
- b. In the event Lessor fails to cure a material breach of this Lease Agreement during the applicable cure period, Lessee may terminate this Lease Agreement by written notice to Lessor. Lessee reserves the right to bring an action to recover any amount necessary to compensate Lessee for all actual damages proximately caused by Lessor's breach.
- c. In the event Lessee fails to cure a material breach of Section 18 of this Lease Agreement, Lessor and Lessee agree that Lessor shall be entitled to damages of \$100,000.00 due upon the expiration of the applicable cure period, as defined in Section 18, such damages to be considered liquidated damages. The Parties expressly acknowledge and agree that damages that would accrue to City by virtue of the breach of Section 18 are impractical and extremely difficult to ascertain in advance

and that the liquidated damages provided by this Section 19(c) are a reasonable attempt to estimate such damages considering the nature of the circumstances. The Parties further acknowledge that such liquidated damages shall not be regarded as a penalty. It is the intent of the Parties, in light of the above acknowledgments, to waive any challenge to the liquidated damages provided by this Section 19(c) that may arise pursuant to Civil Code section 1671.

20. ATTORNEY'S FEES

The Parties agree that, prior to litigation, they shall pursue, in good faith, mediation before a professional mediator. Should any litigation be commenced between the Parties to this Lease Agreement concerning the Premises, this Lease Agreement, or the rights and duties of either in relation thereto, the Party prevailing in that litigation shall be entitled, in addition to any other relief that may be granted in that litigation, to a reasonable sum as and for that Party's attorneys' fees.

21. FORCE MAJEURE

Except as otherwise expressly provided in this Lease Agreement, if the performance of any act required by this Lease Agreement to be performed by either Lessor or Lessee is prevented or delayed by reason of any act of God, strike, lockout, labor trouble, inability to secure materials, restrictive governmental laws or regulations, or any other cause (except financial inability) not the fault of the Party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay will be excused; *provided, however*, that nothing contained in this Section 21 shall excuse the prompt payment of rent by Lessee as required by this Lease Agreement or the performance of any act rendered difficult or impossible solely because of the financial condition of the Party required to perform the act.

22. NOTICES

Except as otherwise expressly provided by law, all notices or other communications required or permitted by law to be served on either Party to this Lease Agreement shall be in writing and shall be deemed duly served and given when personally delivered, or, in lieu of personal service, when deposited in the United States mail by Registered or Certified mail (postage prepaid, return receipt requested) and addressed: (i) if to Lessor, to the City of Visalia at 220 N. Santa Fe Street, Visalia, CA 93291; and (ii) if to Lessee, to First Pitch Entertainment at 300 N. Giddings, Visalia, CA 93291. Either Party may change the address at which it receives notices by notifying the other Party in accordance with the provisions of this Section 22.

23. GOVERNING LAW

This Lease Agreement, and all matters relating to this Lease Agreement, shall be governed by the laws of the State of California in force at the time any need for interpretation of this Lease Agreement or any decision or holding concerning this Lease Agreement arises. The venue for any all matters relating to this Lease Agreement shall be Tulare County. Lessee hereby agrees to waive any rights to change venue under California Code of Civil Procedure section 394.

24. BINDING ON HEIRS AND SUCCESSORS

This Lease Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the Parties, but nothing in this Section 24 shall be construed as a consent by Lessor to any assignment of this Lease Agreement or any interest in this Lease Agreement by Lessee.

25. PARTIAL INVALIDITY

If any provision of this Lease Agreement that is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Lease Agreement shall remain in full force and effect unimpaired by the holding.

26. SOLE AND ONLY AGREEMENT

This instrument constitutes the sole agreement between Lessor and Lessee respecting the Premises, the leasing of the Premises to Lessee by Lessor, and the lease terms set forth in this Lease Agreement, and correctly sets forth the obligations of Lessor and Lessee to each other as of the Effective Date. Any agreements or representations respecting the Premises, the leasing of the Premises to Lessee by Lessor, or any other matter discussed in this Lease Agreement not expressly set forth in this instrument are null and void.

27. TIME OF ESSENCE

Time is expressly declared to be of the essence of this Lease Agreement.

28. CONSTRUCTION

This Lease Agreement is the product of negotiation and compromise on the part of each Party and the Parties agree, notwithstanding Civil Code Section 1654, that in the event of uncertainty the language will not be construed against the Party causing the uncertainty to exist.

29. AUTHORITY

Each signatory to this Lease Agreement represents that it is authorized to enter into this Lease Agreement and to bind the Party to which its signature represents. To the extent that work performed by Lessee or its contractors pursuant to this Lease Agreement is determined to constitute a contract for goods or services that requires competitive bidding pursuant to City's policies, the City Council, by authorizing the City Manager to enter into this Lease Agreement, has determined to waive such policies and has found that the public interest is served by such waiver. Further, to the extent that the work to be performed by Lessee is construed to constitute work for which prevailing wages may be required, the City Council, by authorizing the City Manager to enter into this Lease Agreement, has found that such work constitutes a purely municipal affair and determines that prevailing wages need not be paid for such work.

30. RENT

Lessee shall be obligated to pay to City rent for the Premises in the amount of One Dollar (\$1.00) during each year of the Term. Lessee shall be entitled to receive and keep all revenue derived from Lessee's use of the Premises from whatever source, including, without limitation, tickets, advertising, sponsorship and concessions.

31. PARKING


City currently maintains certain parking lots that provide parking for the Premises. During the Term, City shall continue to make such parking lots available primarily for people attending events at the Premises.

IN WITNESS WHEREOF, the Parties have executed this Lease Agreement as of the Effective Date.


LESSOR, CITY OF VISALIA

FIRST PITCH ENTERTAINMENT, LLC

By: 
Randy Groom, City Manager

By: 
[NAME], Managing Member
C. Elliott Sigal

APPROVED AS TO FORM:

By: 
_____, City Attorney

By: 
_____, Risk Management

EXHIBITS:

- A. Description of Premises
- B. Professional Baseball Agreement (PBA) Facility Standards and MLB Rule 58
- C. 2018 Facility Report prepared by Gould Evans Associates, LC
- D. Major Maintenance Responsibilities
- E. Condition of the Premises
- F. Insurance