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**USE LICENSE AGREEMENT**

**BY AND BETWEEN**

**SMG**

Averill Park Central School District

**Dated**

**May 8th , 2021**

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## USE LICENSE AGREEMENT

**THIS USE LICENSE AGREEMENT** (together with the Exhibits attached hereto, the “**Agreement**”) is dated as of the 5<sup>th</sup> day of May, 2021, by and between SMG, a Pennsylvania general partnership, with an address at 300 Conshohocken State Rd., West Conshohocken, PA 19428 (hereinafter called “**SMG**”), and Averill Park Cneral School District, 146 Gettle Road, Averill Park, NY 12018, (hereinafter called the “**Licensee**”).

### BACKGROUND

SMG is the manager of a facility commonly known as Time Union Center (the “**Facility**”), located at 51 South Pearl St., Albany, NY, which is owned by the County of Albany, NY (the “**Owner**”). Licensee desires to use all or a portion of the Facility, as set forth below, for the purposes stated herein. Accordingly, SMG desires to grant to Licensee, and Licensee hereby accepts from SMG, a license to use certain areas of the Facility in accordance with the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual promises, covenants, and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Use of the Facility.

(a) SMG hereby grants Licensee, upon the terms and conditions hereinafter expressed, a license to use those areas of the Facility described on Exhibit A attached hereto (the “**Authorized Areas**”), including all improvements, furniture, fixtures, easements, rights of ingress and egress, and appurtenances thereto, during the dates and times set forth on Exhibit A. It is expressly understood by the parties hereto that the Facility shall be vacated by Licensee and all persons participating in or attending an Event hereunder on or prior to the end-time of the last Event listed on Exhibit A hereto (the “**Expiration Time**”) and, as such, Licensee shall arrange to have all Events and activities related thereto cease within a reasonable time prior to the Expiration Time to allow ample time for the Facility to be completely vacated on or prior to the Expiration Time.

(b) In the event Licensee desires to use the Authorized Areas or any other portion of the Facility at any time other than during the dates and times delineated on Exhibit A, Licensee shall request from SMG prior written permission to use such areas of the Facility. In the event such permission is granted, Licensee shall pay as additional rent an amount equal to the sum of SMG’s actual costs for performing its obligations under this Agreement during the date(s) and time(s) requested, and a fee in an amount determined by SMG to represent a fair value for use of such additional areas of the Facility during such date(s) and time(s).

(c) Licensee acknowledges that, in connection with SMG’s management and operation of the Facility, SMG utilizes the services of certain third-party independent contractors (the “**Third-Party Contractors**”).

2. Purpose.

(a) The Facility is to be used solely for the purpose of hosting high school commencement ceremony. Licensee shall not use the Facility, or permit the Facility to be used by any of its officers, directors, agents, employees, licensees, or invitees, for any unlawful or immoral purpose or in any manner so as to injure persons or property in, on, or near the Facility.

(b) Licensee shall be liable for any and all losses, liabilities, claims, damages and expenses (including reasonable costs of investigation and attorneys’ fees) (collectively, the “**Losses**”) occurring at the Facility (whether within or without an Authorized Area) caused to SMG, Owner and/or persons and/or property in, on, or near the Facility before, during, or after an Event, by (i) Licensee’s failure to comply with any and all federal, state, foreign, local, and municipal regulations, ordinances, statutes, rules, laws, constitutional provisions, and common laws (collectively, the “**Laws**”) applicable to Licensee’s performance of this Agreement and/or activities at the Facility, (ii) any unlawful acts on the part of Licensee or its officers, directors, agents, employees, subcontractors, licensees, or invitees, (iii) the negligent acts, errors and/or omissions or the willful misconduct of Licensee or its officers, directors, agents, employees, subcontractors, licensees, or invitees, (iv) the material breach or default by Licensee or its officers, directors, agents, or employees of any provisions of this Agreement, including, without limitation, the provisions of Section 13(l) hereof (relating to intellectual property matters), Section 14 hereof (relating to the Civil Rights Act), and Section 15 hereof (relating to the Americans with Disabilities Act), and

(v) Licensee's Equipment and Systems and/or its installation at the facility, except to the extent caused by, (1) any structural defect of the Facility, or (2) the negligence or willful misconduct of SMG or Owner or the stagehands retained by SMG to assemble the Licensee's Equipment and Systems.

(c) Licensee shall conduct business in the Facility in a dignified and orderly manner with full regard for public safety and in conformity with SMG's General Rules and Regulations for facility users, including fire and safety rules, as may be imposed from time to time by SMG and/or local and/or state authorities.

Licensee shall provide to SMG, for SMG's review and approval (i) a full and complete description of all set-up (including, without limitation, any staging, lighting, video boards, and/or rigging from or to the physical structure of the Facility or any fixture thereto required for the Event), electrical, communications systems, and plumbing work anticipated to be needed for the Event, and (ii) a Licensee Operations Plan in substantially the same form supplied by SMG. Upon mutual agreement, Licensee shall update the Plan from time-to-time as may be necessary or appropriate to address any reasonable changes in operating conditions. Licensor reserves the right in its sole discretion to accept the Plan, or request modifications to ensure compliance with event rules imposed by SMG and all other applicable laws, regulations, codes, ordinances, orders or similar requirements.

Without limiting the foregoing, Licensee shall obtain prior written approval from SMG's General Manager at the Facility for any pyrotechnic displays which Licensee anticipates may be performed at the Facility during the term of this Agreement. Licensee agrees that it will not allow any officer, agent, employee, Licensee or invitee at, in or about the Facility who shall, upon reasonable grounds, be objected to by SMG and such person's right to use the Facility may be revoked immediately by SMG.

3. Condition of Facility.

(a) Licensee acknowledges that Licensee has not inspected the Facility, but is relying upon SMG's representation that the Facility is safe and suitable for the Event in its present condition.

(b) SMG shall have the continuing obligation and responsibility to maintain and keep the Facility in good order and repair, normal wear and tear excepted; provided, however, that any damages to the Facility and its appurtenances caused by Licensee or its officers, directors, agents, employees, subcontractors, licensees, or invitees shall be paid for by Licensee at the actual or estimated cost of repair, as elected by SMG.

(c) Licensee shall not make any alterations or improvements to the Facility without the prior written consent of SMG. Any unauthorized alterations or improvements of whatever nature made or placed by Licensee to or on the Facility, except movable trade fixtures, shall, at the option of SMG, (i) be removed by Licensee, at Licensee's expense, immediately upon the conclusion of the Event, or (ii) become the property of **SMG OR THE COUNTY OF ALBANY**. SMG may, at its election, accept delivery of property addressed to Licensee only as a service to Licensee, and Licensee will indemnify, defend, and hold harmless SMG for any loss or damage to such property in the receipt, handling, care, and custody of such property at any time, except to the extent such loss or damage arises out of SMG's negligence or willful misconduct.

4. Term of License. The license granted in Section 1 above will be effective as of the date and time set forth on Exhibit A and will continue in effect, unless earlier terminated as set forth in Section 11, until the date and time set forth on Exhibit A.

5. License Fee, Merchandising Fee, Reimbursable Service Expenses and Complimentary Tickets. In consideration of the grant of the license in Section 1 above, Licensee shall pay to SMG a license fee, merchandising fee, and shall reimburse SMG for certain service expenditures, all as calculated in accordance with the provisions set forth below and in accordance with generally accepted accounting principles, consistently applied:

(a) License Fee. Licensee shall pay a license fee (the "License Fee") equal to THREE THOUSAND FIVE HUNDRED DOLLAS (\$3,500). Costs related to catering, set up, security, guest services, ambulance and decorating are not included in the License fee. If the event is broadcasted or streamed online any additional costs related to stage hands associated with the union agreement, which requires video rate instead of normal rate, will be charged to Licensee. If there is a continued need to provide additional screening services such as having staff

check attendees' temperature and confirm negative COVID test results or confirm proof of vaccinations upon entering, the additional costs related to staffing needed to supply these services will be billed to Licensee.

(b) Merchandising Fee. Licensee shall pay not be required to pay a merchandising fee, book store and flower sales are permitted. Retail sales must follow NYS COVID Guidelines and multiple set ups will be required to avoid cross over traffic flow.

(c) Reimbursable Service Expenses.

(i) SMG shall provide, as required for each Event, the following services (collectively, the "Services"), the expenditures for which are included in the license fee ("Service Expenses"): ticket takers, box office services, ticket seller labor, ushers, supervisors, and receptionists; medical services for Event attendees, which services shall include EMT's, operations, supervisors, security personnel; utilities, including electricity, gas, lighting, water, heating, ventilating, air conditioning, hot and cold water facilities, and waste removal services; electricians and mechanical plant staff; custodial services; scoreboard operations; audio services; and special facilities, equipment and materials.

(ii) SMG shall determine the level of staffing for such Services at each Event after consultation with, and input from, Licensee. Licensee acknowledges and understands that many of the Services are contracted services, the costs of which are subject to change. Licensee shall reimburse SMG for actual costs incurred by SMG in connection with the Services as provided in Section 7 below, if such Services are not included in the base license fee.

(iii) The Licensee shall employ runner(s) for the show as needed. The Licensee will pay said runner(s) a flat fee of \$200.00 per event day. Licensee will control, direct and supervise said runner(s). N/A

(iv) T-Shirt security required for barricade, dressing room hallway and bus areas as well as walk-thru security requirements based on crowd size and the number of security guards that are requested by the show for these areas plus required security for metal detection areas. N/A

(d) Ticketing. Please see Exhibit B Section 7 for ticketing process and associated costs.

6. Payment Terms.

(a) License Fee, Merchandising Fee and Reimbursable Expenses. The License Fee, Merchandising Fee and Reimbursable Expenses, set forth in Sections 5(a), (b) and (c) of this Agreement shall be paid by Licensee as provided in Exhibit B attached hereto.

7. Revenues and Costs. SMG shall retain one hundred percent (100%) of all revenues generated in connection with the sale of food and beverages at the Facility. In addition to payment of the Reimbursable Service Expenses above, Licensee shall bear all expenses incurred by Licensee in connection with the holding of an Event at the Facility, including, but not limited to, all costs arising from the use of patented, trademarked or copyrighted materials, equipment, devices, processes or dramatic rights used on or incorporated in the conduct of an Event.

8. Taxes. SMG shall not be liable for the payment of taxes, late charges, or penalties of any nature relating to any Event or any revenue received by, or payments made to, Licensee in respect of any Event, except as otherwise provided by law. Licensee shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, damages, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extraordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against this Agreement or any other improvements now or hereafter owned by Licensee.

9. Insurance.

(a) Licensee shall, at its own expense, secure and deliver an insurance certificate to SMG prior to the Event set forth on Exhibit A and shall keep in force at all times during the term of this Agreement:

i) for this event, Licensee will place in effect with insurance companies admitted to do business in the State of New York and with a minimum of an "A" rating in Best's Insurance Guide, the following insurance naming Licensor, Times Union Center, the County of Albany, NY, the New York State Urban Development Corporation and Capital Newspapers Division of the Hearst Corporation and their respective officers,

agents, employees, representative, partners and affiliates as additional insured (excepting Workers' Compensation Insurance) therein;

(ii) a comprehensive general liability insurance policy in form acceptable to SMG, including public liability and property damage, covering its activities hereunder, in an amount not less than One Million Dollars (\$1,000,000) for bodily injury and One Million Dollars (\$1,000,000) for property damage, including blanket contractual liability, independent contractors, and products and completed operations. The foregoing general liability insurance policy shall not contain exclusions from coverage relating to the following participants, legal liability activities or issues related to the Event hereunder: sporting events, high risk events (including, without limitation, rap concerts), performers, volunteers, animals, off-premise activities, and fireworks or other pyrotechnical devices;

(iii) comprehensive automotive bodily injury and property damage insurance in form acceptable to SMG for business use covering all vehicles operated by Licensee, its officers, directors, agents and employees in connection with its activities hereunder, whether owned by Licensee, SMG, or otherwise, with a combined single limit of not less than One Million Dollars (\$1,000,000) (including an extension of hired and non-owned coverage); and

(iv) applicable workers compensation insurance for Licensee's employees, as required by applicable law.

(b) The following shall apply to the insurance policies described in clauses (i) and (ii) above:

(i) Each such policy or certificate shall contain a valid provision or endorsement stating, "This policy will not be canceled or materially changed or altered without first giving thirty (30) days' written notice thereof to each of SMG, Risk Management Director 300 Conshohocken State Rd., West Conshohocken, PA 19428, and Times Union Center, 51 South Pearl St., Albany, NY" If any of the insurance policies covered by the foregoing certificates of insurance will expire prior to or during the time of an Event, Licensee shall deliver to SMG at least ten (10) days prior to such expiration a certificate of insurance evidencing the renewal of such policy or policies.

(ii) The coverage provided under such policies shall be occurrence-based, not claims made.

(iii) The coverage limits contained on such policies shall be on a per-occurrence basis only.

(iv) Licensee hereby acknowledges that the coverage limits contained in any policy, whether such limits are per occurrence or in the aggregate, shall in no way limit the liabilities or obligations of Licensee under this Agreement, including, without limitation, Licensee's indemnification obligations under Section 10 below.

(c) The terms of all insurance policies referred to in this Section 9 shall preclude subrogation claims against SMG and Owner and their respective officers, directors, employees, and agents.

(d) The failure of the Licensee to provide insurance in accordance with this Section 9 shall be a breach of this Agreement and shall, notwithstanding any cure period set forth in Section 11 below, preclude the Event from taking place.

#### 10. Indemnification.

(a) Licensee shall indemnify, defend, and hold harmless SMG, ASM Global Parent, Inc., County of Albany, State of NY, Hearst Corporation, and their respective officers, directors, agents, and employees (the "Indemnitees") from and against any and all third party losses, liabilities, claims, damages and expenses (including reasonable costs of investigation and attorney's fees) (collectively, the "Losses") occurring at the Facility (whether within or without an Authorized Area) caused to SMG, Owner and/or persons and/or property in, on, or near the Facility before, during, or after an Event, by (i) Licensee's failure to comply with any and all federal, state, foreign, local, and municipal regulations, ordinances, statutes, rules, laws, constitutional provisions, and common

laws (collectively, the "Laws") applicable to Licensee's performance of this Agreement and/or activities at the Facility, including without limitation, health and safety laws, the Civil Rights Act, the American with Disabilities Act and intellectual property laws, (ii) any unlawful acts on the part of Licensee or its officers, directors, agents, or employees, subcontractors, licensees, or invitees, (iii) the negligent acts, errors and/or omissions or the willful misconduct of Licensee or its officers, directors, agents, employees, subcontractors, licensees, or invitees, (iv) the material breach or default by Licensee or its officers, directors, agents or employees of any provisions of this Agreement, (v) any and all rigging from or to the physical structure of the Facility or any fixture thereto, set-up, alterations, and/or improvements at or to the Facility necessitated by and/or performed with respect to the Event if such rigging was performed by Licensee or subcontractors of Licensee.

SMG shall indemnify, defend, and hold harmless Licensee, and its member institutions and each of their and its respective officers, directors, agents and employees (the "Licensee Indemnities") from and against any and all third party Losses arising from (i) SMG's failure to comply with any and all federal, state, foreign, local, and municipal regulations, ordinances, statutes, rules, laws, constitutional provisions, and common laws (collectively, the "Laws") applicable to SMG's performance of this Agreement and/or activities at the Facility, including without limitation, health and safety laws, the Civil Rights Act, the American with Disabilities Act and intellectual property laws, (ii) any unlawful acts on the part of SMG or its officers, directors, agents, or employees, subcontractors, licensees, or invitees, (iii) the negligent acts, errors and/or omissions or the willful misconduct of SMG or its officers, directors, agents, employees, subcontractors, licensees, or invitees, (iv) the material breach or default by SMG or its officers, directors, agents or employees of any provisions of this Agreement, (v) any and all rigging from or to the physical structure of the Facility or any fixture thereto, set-up, alterations, and/or improvements at or to the Facility necessitated by and/or performed with respect to the Event if such rigging was performed by SMG or subcontractors of SMG, (vi) the matters described in Section 2(b) hereof, and/or (vii) personal or bodily injury to or death of persons or damage to the property of Licensee to the extent caused by the negligent acts, errors and/or omissions or the willful misconduct of SMG, Owner or its officers, directors, agents, employees, subcontractors, licensees, or invitees.

(b) The provisions set forth in subparagraph (a) above shall survive termination or expiration of this Agreement.

#### 11. Default, Termination and Other Remedies.

(a) Default. Licensee shall be in default under this Agreement if any of the following occur: (i) Licensee fails to pay any amount due hereunder (including, without limitation, the Licensee Fee or the Reimbursable Service Expenses) when the same are required to be paid, (ii) Licensee or any of its officers, directors, employees or agents fails to perform or fulfill any other material term, covenant, or condition contained in this Agreement and Licensee fails to commence a cure thereof within five (5) business days after Licensee has been served with written notice of such default, or (iii) Licensee makes a general assignment for the benefit of creditors. SMG shall be in default under this Agreement if (i) SMG or any of its officers, directors, employees or agents fails to perform or fulfill any material term, covenant, or condition contained in this Agreement and SMG fails to commence a cure thereof within five (5) business days after SMG has been served with written notice of such default, or (ii) SMG makes a general assignment for the benefit of creditors. Nothing herein shall be construed as excusing either party from diligently commencing and pursuing a cure within a lesser time if reasonably possible. Notwithstanding clause (ii) for Licensee above or clause (i) for SMG above, if the breach by such party or any of its officers, directors, employees, or agents of such other term, covenant, or condition is such that it threatens the health, welfare, or safety of any person or property, then the non-breaching party may, in its discretion, require that such breach be cured in less than five (5) business days or immediately.

(b) Termination by Reason of Default. Upon a default pursuant to Section 11(a) hereof, the nonbreaching party may, at its option, upon written notice or demand upon the other party, cancel and terminate the license granted in Section 1 hereof and the obligations of the parties with respect thereto. In addition to the foregoing, if Licensee fails to comply with any of the material provisions of this Agreement, SMG may, in its reasonable discretion, delay and/or withhold payment and/or settlement of all accounts and funds related to monies collected or received by SMG for the benefit of Licensee hereunder until the completion of an investigation relating to such violation.

(c) Termination by Reason of Labor Dispute. In addition to the remedies provided elsewhere in this Agreement, SMG shall have the right to terminate this Agreement in the event that a dispute occurs between Licensee and its employees or between Licensee and any union or group of employees by reason of the union affiliation or lack of union affiliation of persons employed by Licensee or any one with whom Licensee contracts if such dispute materially impairs Licensee's ability to perform its obligations in connection with the Event.

(d) Reserved.

(e) Reserved.

12. Representations and Warranties. Each party hereby represents and warrants to the other party, and agrees as follows:

(a) It has the full power and authority to enter into this Agreement and perform each of its obligations hereunder;

(b) It is legally authorized and has obtained all necessary regulatory approvals for the execution, delivery, and performance of this Agreement;

(c) No litigation or pending or threatened claims of litigation exist which do or might adversely affect its ability to fully perform its obligations hereunder or the rights granted by it to the other party under this Agreement; and

(d) It shall comply with all applicable laws.

13. Covenants. Licensee hereby covenants as follows:

(a) Licensee shall not occupy or use the Facility except as provided in this Agreement.

(b) Licensee shall comply with all legal requirements which arise in respect of the Facility and the use and occupation thereof.

(c) Licensee shall not cause or permit any Hazardous Material to be used, stored, or generated on, or transported to and from the Facility. "**Hazardous Material**" shall mean, without limitation, those substances included within the definitions of "hazardous substances", "hazardous materials", "toxic substances", or "solid waste" in any applicable state or federal environmental law.

(d) Licensee shall not advertise, paint, post, or exhibit, nor allow to be advertised, painted, posted, or exhibited, signs, advertisements, show bills, lithographs, posters, or cards of any description inside or outside or on any part of the Facility except upon written permission of SMG.

(e) Licensee shall not broadcast by television or radio any Event scheduled to be presented in the Facility under the terms of this Agreement without the prior written approval of SMG. If approval is granted by SMG, additional expenses that are incurred due to the broadcast will be the responsibility of the Licensee. Notwithstanding the foregoing, SMG acknowledges, agrees, and hereby grants approval for Licensee to broadcast the event in any media format.

(f) Licensee shall not cause or permit beer, wine, or liquors of any kind to be sold, given away, or used upon the Facility except upon prior written permission of SMG.

(g) Licensee shall not operate any equipment or materials belonging to SMG without the prior written approval of SMG.

(h) Licensee, its officers, directors, employees, agents, members, or other representatives shall not "scalp" tickets for an Event, to the extent applicable. Licensee and its representatives may provide assistance to SMG in its efforts to control and prevent such ticket "scalping".

(i) No portion of any passageway or exit shall be blocked or obstructed in any manner whatsoever, and no exit door or any exit shall be locked, blocked, or bolted while the Facility is in use. Moreover, all designated exitways shall be maintained in such manner as to be visible at all times.

(j) If the Licensee Fee includes a percentage of revenue generated from an Event, then no collections, whether for charity or otherwise, shall be made, attempted, or announced at the Facility, without first having made a written request and received the prior written consent of SMG. In such event, donations or collections are granted by SMG in lieu of an admission ticket, then all such monies received from such collections or donations will be considered as ticket revenues for the purpose of determining the License Fee due to SMG.

(k) Licensee shall not encumber, hypothecate, or otherwise use as security its interests in this Agreement for any purpose whatsoever without the express written consent of SMG.

(l) With respect to any Event at the Facility, Licensee shall comply fully with any and all local, state, and federal laws, regulations, rules, constitutional provisions, common laws, and rights of others applicable to the reproduction or performance of proprietary or copyrighted materials and works of third parties (the "Works"), and to the protection of the intellectual property rights associated with such Works. The fees payable by Licensee under this Agreement do not include royalty, copyright or other payments which may be payable on behalf of third party owners of such Works, and Licensee agrees hereby to make any and all such payments to third parties and/or clearinghouse agencies as may be necessary to lawfully perform, publish or reproduce any such Works. Licensee specifically agrees, undertakes, and assumes the responsibility to make any and all reports to such agencies and/or parties, including specifically by way of example only (and not by way of limitation) ASCAP, BMI, SAG, SESAC and other similar agencies. Licensee agrees hereby to produce evidence of such reports and payments to SMG, including evidence of compliance with the requirements of this paragraph to be provided to SMG in advance of any such Event. Provision of such evidence is a material condition of this Agreement. Licensee agrees to indemnify, defend, protect and hold harmless SMG and all other Indemnitees (as defined in this Agreement) of and from all and all manner of Losses arising in any way from the use by Licensee of proprietary intellectual property of third parties (whether such claims are actual or threatened) under the copyright or other laws of the United States. The foregoing indemnity shall apply regardless of the means of publication or performance by Licensee, and shall include specifically and without limitation the use of recordings, audio broadcasts, video broadcasts, Works on other magnetic media, sounds or images transmitted via the worldwide web, chat rooms, webcast, or on-line service providers, satellite or cable, and all other publication or performance means whatsoever, whether now known or developed after the date of this Agreement.

(m) Licensee shall not engage in the sale and/or distribution of food and/or beverages at the Facility.

(n) Licensee may use the standard Facility Logo in all advertising controlled by or done on behalf of Licensee relating to an Event, including, but not limited to, television, internet, newspaper, magazine, and outdoor advertising. Licensee's right to use the Facility Logo shall be limited to the specific, express purpose set forth in the foregoing sentence and/or as otherwise authorized by SMG in writing prior to the use thereof. In connection with Licensee's use of the Facility Logo as permitted in this Section 13(n), Licensee shall use only the form of the Facility Logo as provided by SMG to Licensee in any artwork or other depiction thereof. Additionally, in connection with all such advertising described in this Section 13(n) and related to any event to occur at the Facility from and after January 1, 2007, Licensee may include (or cause to be included) in such advertising the phrase "Log onto [www.timesunion.com](http://www.timesunion.com) to buy tickets" or such other tagline or phrase as SMG may direct from time to time.

14. Civil Rights Act. During the performance of this Agreement, Licensee shall comply fully with Title VI and Title VII of the Civil Rights Act of 1964, as amended, and all other regulations promulgated thereunder, in addition to all applicable state and local ordinances concerning Civil Rights.

15. Americans With Disabilities Act. With respect to any Event at the Facility, Licensee recognizes that it is subject to the provisions of Title III of the Americans With Disabilities Act, as amended, and all similar applicable state and local laws (collectively, the "ADA"). Licensee represents that it has viewed or otherwise apprised itself of the access into the Facility, together with the common areas inside, and accepts such access, common areas, and other conditions of the Facility as adequate for Licensee's responsibilities under the ADA.



Licensee shall be responsible for ensuring that the Facility complies and continues to comply in all respects with the ADA, including accessibility, usability, and configuration insofar as Licensee modifies, rearranges or sets up in the Facility in order to accommodate Licensee's usage. Licensee shall only be responsible for any violations of the ADA that arise from Licensee's reconfiguration of the seating areas or modification of other portions of the Facility in order to accommodate Licensee's usage. Licensee shall be responsible for providing auxiliary aids and services that are ancillary to its usage and for ensuring that the policies, practices, and procedures it applies in connection with an Event are in compliance with the ADA.

16. Use of Information. Licensee hereby acknowledges and agrees that SMG shall not have the right to disclose to recognized industry sources that track event activity information relating to any Event, including, without limitation, the identity of performers or other participants of the Event, attendance figures, and gross ticket revenue for the Event, without Licensee's prior written consent.

17. Construction of this Agreement

(a) Choice of Law. This Agreement shall be deemed to be made, governed by, and construed in accordance with the laws of the County of Albany, NY, without giving effect to the conflict of law principles thereof. Each of the parties hereby waives trial by jury in any action or legal proceeding relating to or arising out of this Agreement or the transactions contemplated hereby.

(b) Paragraph Headings. The paragraph headings are inserted herein only as a matter of convenience and for reference and in no way are intended to be a part of this Agreement or to define, limit, or describe the scope or intent of this Agreement or the particular paragraphs hereof to which they refer.

(c) Entire Agreement; Amendments. This Agreement (including all Exhibits and other documents and matters annexed hereto or made a part hereof by reference) contains all of the representations, warranties, covenants, agreements, terms, provisions, and conditions relating to the rights and obligations of SMG and Licensee with respect to the Facility and the Event. No alterations, amendments, or modifications hereof shall be valid unless executed by an instrument in writing by the parties hereto. **WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IT IS EXPRESSLY UNDERSTOOD AND AGREED BY THE PARTIES HERETO THAT NO OFFICER, DIRECTOR, EMPLOYEE, AGENT, REPRESENTATIVE, OR SALES PERSON OF EITHER PARTY HERETO, OR OF THE OWNER OR ANY THIRD PARTY HAS THE AUTHORITY TO MAKE, HAS MADE, OR WILL BE DEEMED TO HAVE MADE, ANY REPRESENTATION, WARRANTY, COVENANT, AGREEMENT, GUARANTEE, OR PROMISE WITH RESPECT TO THE FINANCIAL SUCCESS OR PERFORMANCE, AND/OR OTHER SUCCESS, OF THE EVENT. THE LICENSEE HEREBY ACKNOWLEDGES AND AGREES THAT ANY ASSESSMENT OF THE FINANCIAL SUCCESS OR PERFORMANCE, AND/OR OTHER SUCCESS, OF THE EVENT IS SOLELY THAT OF THE LICENSEE'S OWN DETERMINATION AND JUDGMENT.**

(d) Severability. If any provision or a portion of any provision of this Agreement is held to be unenforceable or invalid by a court of competent jurisdiction, the validity and enforceability of the enforceable portion of any such provision and/or the remaining provisions shall not be affected thereby.

(e) Time. Time is of the essence hereof, and every term, covenant, and condition shall be deemed to be of the essence hereof.

(f) Successors. This Agreement shall be binding upon, and shall inure to, the benefit of the successors and assigns of SMG, and to such successors and assigns of Licensee as are permitted to succeed to the Licensee's right upon and subject to the terms hereof.

(g) Independent Contractor; No Partnership. SMG and Licensee shall each be and remain an independent contractor with respect to all rights and obligations arising under this Agreement. Nothing herein contained shall make, or be construed to make, SMG or Licensee a partner of one another, nor shall this Agreement be construed to create a partnership or joint venture between and of the parties hereto or referred to herein.

(h) Singular and Plural. Whenever the context shall so require, the singular shall include the plural, and the plural shall include the singular.

18. Miscellaneous.

(a) Waiver. The failure of any party to enforce any of the provisions of this Agreement, or any rights with respect hereto, or the failure to exercise any election provided for herein, will in no way be considered a waiver of such provisions, rights, or elections, or in any way affect the validity of this Agreement. The failure of any party to enforce any of such provisions, rights, or elections will not prejudice such party from later enforcing or exercising the same or any other provisions, rights, or elections which it may have under this Agreement.

(b) Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned or transferred, except by a parent or affiliate of Licensee under common control, in any manner whatsoever by Licensee without the prior written consent of SMG. SMG shall be entitled to assign its rights and obligations hereunder to Owner or to any other management company retained by Owner to manage the Facility, and in such event, SMG shall have no further liability to Licensee hereunder for the performance of any obligations or duties arising after the date of such assignment.

(c) Notices. Any notice, consent, or other communication given pursuant to this Agreement shall be in writing and shall be effective either (i) when delivered personally to the party for whom intended, (ii) upon delivery by an overnight courier services that is generally recognized as reliable, and the written records maintained by the courier shall be prima facie evidence of delivery, or (iii) on delivery (or attempted delivery) by certified or registered mail, return receipt requested, postage prepaid, as of the date shown by the return receipt; in any case addressed to such party as set forth below or as a party may designate by written notice given to the other party in accordance herewith.

To: SMG: SMG/Times Union Center  
51 SOUTH PEARL ST.  
ALBANY, NY 12207  
Attention: General Manager

To: Licensee: APCSD  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

(d) Non-Exclusive Use. SMG shall have the right, in its sole discretion, to use or permit the use of any portion of the Facility other than the Authorized Areas to any person, firm or other entity regardless of the nature of the use of such other space.

(e) Force Majeure. If the Facility is damaged from any cause whatsoever or if any other casualty or unforeseeable cause beyond the control of the Parties, including, without limitation, acts of God, fires, floods, epidemics, pandemics, quarantine restrictions imposed by government officials, terrorist acts, strikes or labor disputes (though not of the employees of the Licensee), failure of public utilities, or unusually severe weather, prevents occupancy and use, or either, as granted in this Agreement, then the parties shall be relieved of their respective obligations hereunder. In the event performance is excused in accordance with the foregoing provisions, Licensor shall refund to Licensee any deposits paid by Licensee, less any reasonable costs and expenses which have been incurred by SMG up to the time further performance is excused.

(f) Acts and Omissions of Third Parties. Neither party shall be liable in any way for any acts and/or omissions of any third party to this Agreement, including, without limitation, any ticket agency used by a party in connection with the sale of tickets for any Event.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first written above.

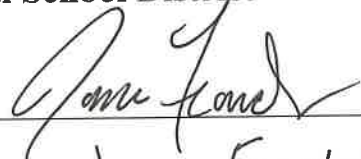
**SMG**

By: \_\_\_\_\_

Name: Bob Belber

Title: General Manager

**Averill Park  
Central School District**

By:  \_\_\_\_\_

Name: James Franchini

Title: Superintendent

EXHIBIT A TO USE LICENSE AGREEMENT

Authorized Area	Day	Date	Time of Use	Purpose
Arena Floor, available dressing rooms, corridors, stairways, walks, concourses, Exhibition Hall, lavatories, sublevels in or about licenses premises	Thursday	June 24, 2021	For the period beginning 3:00pm June <del>26<sup>th</sup></del> <sup>24<sup>th</sup></sup> and ending at <del>8pm</del> <sup>9pm</sup> on June 24 <sup>th</sup> <div style="text-align: right;"> <span style="border: 1px solid black; border-radius: 50%; padding: 2px;">HCA</span>                      5/14/21                 </div>	Set Up And Commencement Ceremony

EXHIBIT B TO USE LICENSE AGREEMENT

**Times Union Center**

1. Additional Service Expenses: At the request of Licensee, the following special facilities, equipment, materials, and extra services will be furnished by SMG and paid for by the Licensee for the Event: Advertising, credit cards (Box Office only @ 3.5%), group sales, forklifts and follow spots, stagehands, parking, phones, insurance, runners and catering.
2. Payment of License and Merchandising Fee.
  - (a) Fixed License Fee: The fixed License Fee set forth in Section 5(a) above shall be paid in accordance with the following schedule (if applicable, otherwise all fees will be collected and/or disbursed at settlement): 50% of estimated rent and expenses is due ten days prior to the event date. Balance owed will be paid within three business days from the completion of the event.
3. Payment of advertising must be made in advance of placement.
4. Per NYS Code, an announcement pertaining to evacuation procedures must be made no more than ten minutes prior to the start of the show.
5. Signed License Agreement is due on or before May 15<sup>th</sup> 2021.
6. It is understood that Licensee will be responsible for paying stage hand union broadcast rates if the event is broadcast or streamed live. The broadcast rates will also be required if the event is taped and later broadcast.
7. Licensee will make available the online ticketing platform for the facility, Ticketmaster. Licensor will be charges a \$3 fee per ticket for use of the online ticketing form distribution.
  - Ticketmaster, and we will be able to set it up to have students claim their allocated family tickets online. The fee that Ticketmaster is charging us, is \$3 per ticket.
  - The student will not be charged during the transaction, Times Union Center will invoice the school directly based on number of tickets issued.
  - Times Union Center will need to use a student number or something similar,
  - Students will go to a specific Ticketmaster link, and enter their student ID number (or any alphanumeric student specific identifier) in the password box on Ticketmaster. This will unlock an offer to select a “pod” of allocated seats (ie. 2 tickets per student) for their family.

- Once they complete the transaction, mobile tickets will be accessible through their Ticketmaster account (existing or created during checkout). The student will then be able to transfer the tickets to their guests who will be using the tickets.
- Information that Times Union Center Box Office will need:
  - Estimated number of students (and guests) attending
  - Timeline of when you would like to make the offer “live” for students and the deadline when offer ends.
  - **One week prior to offer going live**, we will need a list of student ID numbers to upload into TM.
  - The school will be responsible for communicating the Ticketmaster link and instructions to the students.