

## SMG Rockford USE LICENSE AGREEMENT

THIS **USE LICENSE AGREEMENT** (the "Agreement") is made November 12, 2014 by and between SMG, a Pennsylvania general partnership, with an address at **300 Conshohocken State Road, Suite 770, Conshohocken, PA 19428** ("SMG"), and Harlem High School, with an address at **1 Huskie Circle, Machesney Park, IL 61115** ("LICENSEE")

### **BACKGROUND**

SMG is the manager of a facility commonly known as **BMO Harris Bank Center** (the "**Facility**"), located 300 Elm Street, Rockford, IL 61101. 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:

**GRANT OF LICENSE.** SMG hereby grants LICENSEE, upon the terms and conditions hereinafter expressed, a license:

- a) To use the area(s) of the Facility described here: BMO Harris Bank Center
- b) Solely for the purpose of the presentation of: High School Graduation
- c) Effective on the following dates and times, unless earlier terminated as set forth in the "Default, Termination and Other Remedies" Section of this license or otherwise herein,

<u>Authorized Area</u>	<u>Day, Date and Time of Use</u>	<u>Purpose</u>
BMO Harris Bank Center	Saturday May 23, 2015 10 AM	High School Graduation

The use of the Facility as described in 1) a), b) and c) above shall hereinafter be referred to as the "Event".

**LICENSE FEE AND OTHER EXPENSES.** In consideration of the grant of this license, LICENSEE shall pay to SMG a License Fee and other prescribed amounts, and shall reimburse SMG for certain expenses ("Reimbursable Services Expenses"), as described and prescribed in this section 2), as follows:

**License Fee.** LICENSEE shall pay to SMG \$1,500.00 and will share the date with Hononegah High School.

The License Fee **does not include**, among other exclusions, the following: Event Labor, Cleaning, stagehands (including loaders, laborers, spotlight operators and electricians), stage, Lights, sound, rented furniture or equipment, and Illinois state sales tax on equipment (if applicable).

### **Reimbursable Services Expense:**

SMG shall provide, as required for each Event, the following services and equipment, the expenditure for, and costs of, which are reimbursable by LICENSEE to SMG ("Reimbursable Services Expense") unless otherwise specified herein. These Reimbursable Services Expenses include, but are not limited to, the following expenses, costs and charges: stagehands, forklift operators, runners, truck loaders, electricians, door guards, security, production assistant and any other SMG employee necessary for the preparation and presentation of the Event; contract labor and products and services provided by SMG, including police officer(s), fire marshal(s), EMT(s), catering, food and beverage services, towels (at \$2.00 per towel), security personnel including overnight security, crowd management personnel, utilities, electricians,

scoreboard operations, audio and video production services, armored car delivery fees, rented equipment, any other special Facility-owned equipment, materials, staff or necessary item(s) for the presentation of this Event and any marketing fees, costs and commissions (if applicable). All equipment or services will be billed at prevailing rates and all staff will be billed at prevailing wage rate for positions held and tasks performed for the time period worked as furnished by SMG at the request of LICENSEE or required by SMG to properly prepare for and present the Event. In the event it is necessary for SMG to assist in the handling of props, scenery, supplies or equipment of LICENSEE, LICENSEE shall pay to SMG the cost of such help, and in the case it is necessary for SMG to employ extra help such as stagehands, event staff, janitors, etc., LICENSEE shall pay the cost for said extra help. Payment of Reimbursable Services Expense, by LICENSEE to SMG is due in full at Final Settlement. An estimate of Reimbursable Services Expense is attached hereto and made a part of this Agreement. Said estimate states the rates and charges for labor, services and equipment to be made but is **not intended to be an actual cost** for Reimbursable Services Expense. Actual cost will be determined at Final Settlement. Notwithstanding anything contained herein to the contrary, SMG shall determine the level of staffing necessary for the Event in its sole discretion, after consultation with, and input from, LICENSEE. LICENSEE shall inform SMG at least two weeks in advance of the Event, in writing, of its requirements for services and equipment in support of the Event. In the event LICENSEE fails to so inform SMG, then the decisions of SMG as to necessary services and support shall control.

If LICENSEE cancels the said Event, the LICENSEE shall reimburse SMG for its actual costs and expenses incurred in connection with scheduling personnel and services, and advertising and marketing expenses, if applicable.

**NAMING RIGHTS; REFERENCE TO NAME OF FACILITY.** When referring to the Facility during the term of this Agreement, LICENSEE shall use the name "BMO Harris Bank Center" (or such replacement name, as designated by the Authority) and no other name and shall use reasonable best efforts to require third parties that it contracts with in connection with the Facility to do the same. The use and designation of the Facility's name shall include, but not be limited to, printed materials, advertising, admission tickets and public relations or promotional press releases. Notwithstanding anything to the contrary in this Agreement, the parties hereto acknowledge that upon notice of a Naming Rights partner, LICENSEE will make best effort to accommodate said Naming Rights partner.

#### **INSURANCE.**

- a) LICENSEE shall, at its own expense, secure and deliver to SMG not less than thirty (30) days prior to the Event and shall keep in force at all times during the duration of this Agreement:
- b) A comprehensive general liability insurance policy in a 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 and independent contractors. 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, rap concerts, open floor, performers, volunteers, animals, off-premise activities and fireworks or other pyrotechnical devices;
- c) Comprehensive automotive bodily injury and property damage insurance in a form acceptable to SMG for business use covering all vehicles operated by LICENSEE, its officers, 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
  - i) Applicable workers compensation insurance for LICENSEE's employees, as required by applicable law.

- d) The following shall apply to the insurance policies described in clauses (i) and (ii) above:
- i) **BMO Harris Bank Center, SMG, the City of Rockford and the Rockford Area Venues and Entertainment Authority shall be listed as additional insured there under.** Not less than thirty (30) days prior to the Event, LICENSEE shall deliver to SMG certificates of insurance evidencing the existence thereof, in such a form as SMG may reasonably require. 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 SMG's Risk Management Director at 300 Conshohocken State Road, Suite 770, Conshohocken, PA 19428 and to SMG/Rockford BMO Harris Bank Center Assistant General Manager at 300 Elm Street, Rockford, IL 61101."** If any of the insurance policies covered by the foregoing certificates of insurance will expire prior to or during the time of the Event, LICENSEE shall deliver to SMG at least thirty (30) 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, and not claims made.
  - iii) The coverage limits on such policies shall be on a per-occurrence basis only; there shall be no aggregate limit with respect to the aggregate amount of coverage provided thereunder.
  - 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 the "Indemnification" Section below.
- e) The terms of all insurance policies referred to in this Section shall preclude subrogation claims against SMG and Owner and their respective officers, employees and agents.

**RESERVATION OF RIGHTS.** SMG reserves all rights not specifically granted to LICENSEE under the terms hereof, including but not limited to the sole right to sell or give away food and beverage items and souvenir merchandise, to conduct check rooms, to take photographs and other privileges. LICENSEE shall not engage in, permit to occur or undertake the sale or distribution (either purchased or complimentary) of any of the aforesaid or similar articles or privileges, without the prior written consent of the SMG. SMG is responsible for providing all personnel and/or subcontracted personnel (at SMG's sole discretion) to operate all food and beverage concessions (including the preparation, selling or distribution of any kind), and merchandise sales, and to retain all proceeds from same. SMG will have the sole right to determine whether alcoholic beverages (beer, wine and assorted mixed drinks) will be sold during the Event. LICENSEE shall not cause or permit beer, wine or liquors of any kind to be sold, given away, or brought into the Facility or used upon the Facility except upon prior written permission of SMG.

**PYROTECHNICS.**

- a) Any Pyrotechnics must be approved, in writing, by the Fire Marshal of the City of Rockford and must be demonstrated for the Fire Marshal, as required, on the day of the Event.
- b) LICENSEE is responsible for obtaining, at its own expense, any licenses or permits required by the State or Local Fire Marshal with regard to any use of pyrotechnics no later than thirty (30) days prior to the Event.
- c) LICENSEE is responsible to see that any firm, person or corporation providing pyrotechnics has been granted a certificate of competence, if required, by the State Fire Marshal and has provided proof of financial responsibility and liability insurance as required by Illinois Law. LICENSEE shall furnish SMG with proof of the foregoing.

USE OF THE FACILITY.

- a) In the event LICENSEE desires to use the Authorized Areas specified in Section 1), or any other portion of the Facility, at any time other than during the dates and times specified in 1) above, LICENSEE shall request from SMG prior written permission to use such areas. 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 fair value for use of such additional areas of the Facility during such date(s) and time(s).
- b) In rendering the Facility to LICENSEE, SMG does not relinquish the right to control the management thereof, and to enforce all the necessary and proper rules for the management and operation of the same; and that SMG, their agents, their employees and the General Manager of said Facility may enter the same, and all of the Authorized Areas, at any time and on any occasion. SMG reserves the right, but not the responsibility, through its General Manager and its representatives to eject any objectionable person(s) from said Facility, and upon the exercise of this authority through the General Manager, agents or police, the LICENSEE hereby waives any right and all claims for damages against SMG. Unless otherwise specified in writing, SMG shall be privileged to schedule other similar events both before and after date(s) of the Event specified in this Agreement without notice to LICENSEE.
- c) LICENSEE shall not use the Facility or permit the Facility to be used by any of its officers, agents, employees, guests 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. If SMG, in consultation with local law enforcement, believes, in its sole discretion, that such acts are reasonably likely to occur, or that the event could pose imminent safety risks to artists, patrons, or venue staff, SMG (through its general manager) may in its sole discretion take any legal means to necessary prevent such occurrences, including immediate termination of this Agreement. LICENSEE agrees to indemnify and hold harmless SMG from any claims relating to actions or omissions by SMG in conformity with this Section 10(c).

CONDITION OF FACILITY.

- a) LICENSEE acknowledges that LICENSEE has inspected the Facility and that LICENSEE is satisfied with and has accepted the Facility 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 said LICENSEE shall not injure nor mar, nor in any manner deface, said premises and shall not cause nor permit anything to be done whereby said premises shall be in any manner injured or marred or defaced nor shall LICENSEE drive nor permit to be driven, any nails, hooks, tacks or screws in any part of said Facility nor shall LICENSEE make or allow to be made any alteration of any kind therein. That if said premises, or any portion of said Facility or grounds, during the term of this Agreement shall be damaged by the act, default or negligence of LICENSEE or by the LICENSEE's agents, employees, contractors, subcontractors, patrons or any person or persons admitted to said premises by said LICENSEE, the LICENSEE will pay to SMG upon demand, such sum as shall be necessary to restore said premises to their original condition. LICENSEE hereby assumes full responsibility for the character, acts and conduct of all persons admitted to said Facility, or to any portion of said Facility and grounds by consent of LICENSEE or by or with the consent of LICENSEE's employees or any person acting for or on behalf of said LICENSEE and said LICENSEE agrees to have on hand at all times sufficient security (including but not limited to Facility event staff and door guards, contracted security and/or Rockford Police Department officers) to maintain order and protect persons and property. If SMG deems necessary a refundable damage deposit will withheld during settlement and will be refunded upon a walk through of the Facility if SMG deems no damage has been incurred.

- c) LICENSEE shall not make any alterations or improvements to the Facility without the prior written consent of SMG. Any 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 become the property of Owner.
  - ii) The LICENSEE shall reimburse SMG for any cost SMG incurs in the removal or storage of alterations or improvements not promptly removed by LICENSEE.

#### Floor Plans, Descriptions, and Set-Up

- a) At least two (2) weeks prior to the first Event, Licensee shall provide to SMG, for SMG's review (and/or the review of any consultant or representative engaged by SMG), one (1) copy of 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.
- b) Licensee shall be solely 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 the Facility) caused to SMG, the owner of the Facility, and/or persons and/or property in, on, or near the Facility before, during, or after an Event, by 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. Licensee shall indemnify, defend, and hold harmless SMG from any and all Losses arising out of or in connection with 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. The forgoing indemnity shall not extend to any claims arising from the negligence or willful misconduct of Licensor, its employees, representatives or contractors including without limitation, Licensor's maintenance or use of the building or any structural premises-related defects of the building.
- c) 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. SMG assumes no responsibility whatsoever for any property placed in the Facility, unless claims arise from the negligence or willful misconduct of Licensor, its agents, employees, representatives or contractors.
- d) Licensee shall be solely liable for any and all Losses arising from Licensee's failure to deliver to SMG the materials described in subparagraphs (a) and (b) of this Section 12 within the specified time periods, including, without limitation, overtime pay and short-notice delivery fees.

#### RESPONSIBILITY FOR PROPERTY IN THE FACILITY.

- a) SMG assumes no responsibility whatsoever for any property placed in Facility, and SMG is hereby expressly relieved and discharged from any and all liability for any loss, injury or damage to persons or property that may be sustained by reason of the occupancy of Facility or any part thereof under this Agreement and all watchmen or other protective service desired by LICENSEE must be arranged for by special agreement with SMG. SMG shall have the sole right to collect and have the custody of articles left in the Facility by persons attending any performance, exhibition or entertainment given or held in the demised premises and the LICENSEE or any person in LICENSEE's employ shall not collect nor interfere with the collection or custody of such articles.

- b) In the event that the Authorized Areas of the Facility are not vacated by LICENSEE on the date named at the end of the duration for which said portions of Facility are to be used by LICENSEE in accordance with this Agreement, SMG shall be and is hereby authorized to move from Facility at the expense of the LICENSEE, goods, wares, merchandise and property of any and all kinds and description, which may be then occupying the portion of Facility on which the duration of this Agreement has expired, and SMG shall not be liable for any damages or loss to goods, wares, merchandise or other property which may be sustained, either by reason of such removal or by the place to which it may be removed to and SMG is hereby expressly released from any and all claims for damages of whatever kind or nature. For such additional period beyond the term of this Agreement any effects of LICENSEE remain in the Facility, SMG shall be entitled to charge the sum per day as provided in this Agreement as the payment to be made for time for load in and load out. Vendors are not allowed to load out any materials using land or pushcarts before the event has ended and the general public has cleared the arena floor.

#### INDEMNIFICATION.

- a) LICENSEE shall indemnify, defend, and hold harmless SMG, Owner, and their respective officers, agents and employees from and against any and all losses, arising from:
- i. LICENSEE's failure to comply with any and all federal, state, foreign, local and municipal regulations, ordinances, statutes, rules, laws and constitutional provisions (collectively, the "Laws") applicable to LICENSEE's performance of this Agreement.
  - ii. Any unlawful acts on the part of LICENSEE, its officers, agents, employees, contractors or subcontractors.
  - iii. Personal or bodily injury to or death of persons or damage to the property of SMG or Owner or loss of income to SMG or Owner to the extent caused or alleged to be caused by the negligent acts, errors and/or omissions or the willful misconduct of LICENSEE, its officers, agents, employees, contractors or subcontractors; or LICENSEE, or invitees; provided, however, that LICENSEE's obligations under this Section 14(a) shall not extend to losses solely arising from the willful misconduct (or gross negligence) of SMG.
  - iv. The material breach or default by LICENSEE, its officers, agents, employees, contractors or subcontractors of any provisions of this Agreement.
  - v. SMG shall indemnify, defend and hold harmless LICENSEE, its officers, agents and employees from and against any and all losses arising from:
  - vi. 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 willful misconduct of SMG, its officers or employees; or
  - vii. The material breach or default by SMG, its officers or employees of any provisions of this Agreement; provided, however, that the foregoing indemnification shall not extend to losses to the extent such losses:
    1. Arise from any default or breach by LICENSEE of its obligations under this Agreement, including, without limitation, subparagraph (a), of this Section; or
    2. Are caused by or arise out of the services provided by contractors and other agents retained by Owner in connection with the management of the Facility; or

3. Are caused by or arise out of the services provided by independent contractors used by SMG in connection with the management of the Facility.
- b. The provisions set forth in subparagraphs (a) and (b) of this Section shall survive termination of this Agreement.

DEFAULT, TERMINATION AND OTHER REMEDIES.

a. Default.

- i. LICENSEE shall be in default under this Agreement if any of the following occur:
    1. LICENSEE fails to pay any amount due hereunder (including, without limitation, the LICENSEE Fee, the required deposits, or the Reimbursable Services Expense) when the same are required to be paid hereunder; or
    2. LICENSEE, its officers, employees or agents fails to perform or fulfill any other term, covenant or condition contained in this Agreement and LICENSEE fails to commence a cure thereof within two (2) business days after LICENSEE has been served with written notice of such default; or
    3. LICENSEE makes a general assignment for the benefit of creditors.
  - ii. SMG shall be in default under this Agreement if SMG fails to perform or fulfill any term; covenant or condition contained in this Agreement and SMG fails to commence a cure thereof within two (2) business days after SMG has been served with written notice of such default.
  - iii. 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) in "Indemnification" Section above, if the breach by LICENSEE, its officers, 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 SMG may, in its discretion, require that such breach be cured in less than two (2) business days or immediately.
- b. Termination. Upon a default pursuant to subparagraph (a) above, the non-breaching party may, at its option, upon written notice or demand upon the other party, cancel and terminate this Agreement and the obligations of the parties with respect thereto.
- c. Injunctive Relief. In addition to any other remedy available at law, equity or otherwise, SMG shall have the right to seek to enjoin any breach or threatened breach and/or obtain specific performance of this Agreement by LICENSEE upon meeting its burden of proof of such breach or threatened breach as required by applicable statute or rule of law.
- d. Unique Qualities. The parties agree and acknowledge that the Event is a unique entity and, therefore, the rights and benefits that will accrue to SMG by reason of this Agreement are unique and that SMG cannot be adequately compensated in money damages for LICENSEE's failure to comply with the material obligations of LICENSEE under this Agreement and that therefore SMG shall have the right to seek equitable relief (whether it be injunctive relief, specific performance or otherwise) in the event that LICENSEE fails to fulfill its obligation to hold the Event at the Facility.

- e. Re-Entry By SMG. If the said premises or any part thereof shall become vacant during the said term, SMG or its representative may re-enter the same either by force or otherwise without being liable for any prosecution therefore, and may at its own option re-rent the said premises.
- f. Late Charges. If LICENSEE fails to pay any amounts when due under this Agreement, SMG may choose any or all of the following options, at its sole option, without the restriction or limitation to pursue other remedies:
  - i. Cancel this LICENSEE Agreement,
  - ii. Require LICENSEE to pay, in full, the entire outstanding balance due on all fees, projected expenses, etc., immediately.
  - iii. Require LICENSEE pay to SMG a late charge of one and a half percent (1.5%) per month on the unpaid balance.

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; and
- c. No litigation or pending or threatened claims or 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.

COVENANTS LICENSEE hereby covenants and agrees 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 that arise in respect to the Facility and the use and occupation thereof.
  - i. 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.
  - ii. The following items are prohibited within any areas of the Facility without written permission by SMG:
    1. Propane and propane powered vehicles, equipment and displays.
    2. Possession, application or distribution of any self-adhesive stickers, promotional items, posters or similar items on the ingress or egress of the Event or inside the Facility.
    3. Any self-adhesive material including tape, stickers, etc. in general and specifically not used to display banners and/or posters of any kind for events, radio station promotions, etc.
    4. Guns, knives, electronic shock devices or other weapons that could be used to harm another individual or property.
    5. Food or food products, either for sale or sample distribution (free samples).
    6. Helium or other lighter than air filled balloons.



7. Recording devices (video, audio or photographic) for the intent to distribute or to re-sell.
  8. Laser pens or other laser light-type pointing devices.
- 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 and for such time and in such location as designated by SMG Management. Which permission/consent/approval shall not be unreasonably withheld or delayed. LICENSEE shall take down and remove forthwith all signs, advertisements, show bills, lithographs, posters or cards of any description objected to by SMG.
  - e. 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, display, 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, display 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, Copyright Clearance Center, and other similar agencies. Licensee agrees hereby to obtain and maintain evidence of such reports and any necessary payments, including evidence of compliance with the requirements of this paragraph. Licensee further agrees hereby to provide to SMG any such compliance evidence as may be requested by SMG in advance of or after any such Event. Licensee agrees that the obtaining and maintaining of such evidence by Licensee is a material condition of this Agreement. Licensee agrees to indemnify, defend, protect and hold harmless SMG and all other indemnittees (as that term is 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, display, 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, webcasts, or on-line service providers, satellite or cable, and all other publication, display or performance means whatsoever, whether now known or developed after the date of this Agreement.
  - f. LICENSEE shall not operate or use any equipment or materials belonging to SMG without the prior written approval of SMG.
  - g. 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 exit ways shall be maintained in such manner as to be visible at all times.
  - h. Motor vehicles.
    - i. Storage. Motor vehicles being parked or stored in any area of the Facility during the Event cannot be running during any portion of the Event. All vehicles stored overnight must be approved by SMG in advance and SMG must obtain keys to these vehicles.

ii. Display. Motor vehicles being displayed as in areas accessed by the general public MUST adhere to the following stipulations per order of the Rockford Fire Marshal's office:

1. Gas tank must be filled and gas cap locked and/or taped (i.e. duct tape) shut;
2. Both battery leads must be disconnected and moved so that they will not come in contact with the battery;
3. Vehicle must be locked.

i. Utilities.

i. Electric.

1. Representative of SMG or the approved SMG electrical contractor must make all electrical connections other than one hundred ten (110) volt wall connections. Multiple plugs per standard one hundred ten (110) volt outlet such as twin sockets, cube taps, etc. will not be permitted. All electrical equipment shall be properly wired and meet Fire Underwriters Laboratory specifications.
2. All electrical power and/or hook-ups required for exhibitors for tradeshow or exhibition-type shows shall be provided by SMG at rates as detailed on the Electrical Service Order Form. Additional voltage and/or amperage connections are available for additional fees as indicated on the Electrical Service Order Form. Incremental increases in either amperage or voltage will increase costs based upon request.

ii. Water.

1. SMG agrees to furnish water by means of the appliance installed for ordinary toilet or janitor purposes, but for no other purpose, unless otherwise specifically provided for in this contract. Water closets and water apparatus will not be used for any purpose other than for which they are constructed and no sweepings, rubbish, paper or other substances shall be thrown therein. LICENSEE shall pay any damage resulting to them on account of misuse of any nature or character whatever.
2. Typical cold-water (three quarter inch connector) hook-ups are available for use in small amounts (less than 150 gallons per Event). Larger water supplies will require additional equipment and costs. Drains located throughout the Facility are for water only; any other objects/liquids placed in drains will result in costs to repair or unclog the drain and such work will be charged to LICENSEE.

iii. Lighting. Normal lighting provided by fixed Facility fixtures will be maintained throughout the Event at no additional cost to LICENSEE. Work-level lighting will be provided during load-in and load-out and additional lighting provided at other times as determined to be necessary by SMG.

iv. Telephone/Fax/Data.

1. Analog telephone lines for voice/fax/ data are available from SMG. Cost per line is One Hundred Dollars (\$100.00) for installation plus fifteen cents (\$0.15) per minute long distance (Continental US).
2. High-speed data lines are available through SMG providing DSL access at an additional charge of One Hundred Dollars (\$100.00) per day of use.

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 and Human Rights and opportunities.

AMERICANS WITH DISABILITIES ACT. SMG shall be responsible for ensuring that, within reason based on current structural limitations or equipment and Facility limitations, access into the Facility complies with the Americans With Disabilities Act, as amended ("ADA"). SMG shall also be responsible for ensuring, to the extent reasonably possible, that the common areas inside the Facility (i.e. elevator access, ramp access, restrooms) are accessible to, and usable by, individuals with disabilities to an extent possible within any current limitations of the Facility. With respect to any Event at the Facility, LICENSEE recognizes that it is subject to the provisions of Title III of the ADA. LICENSEE represents that it has viewed or otherwise appraised 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 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, at its sole cost, auxiliary aids and services, including, but not limited to, sign language interpreters for the hearing impaired, 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.

USE OF INFORMATION Licensee hereby acknowledges and agrees that SMG shall 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.

#### 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 United States of America and State of Illinois, and all of the ordinances of the City of Rockford, Illinois and the rules and regulations of SMG for the government and management of said Facility, together with all rules and regulations of the Police and Fire Departments of the City of Rockford , and if the attention of said LICENSEE is called to such violation on the part of the LICENSEE, said LICENSEE will immediately desist from and correct said violation.
- 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 covenants, agreements, terms, provisions and conditions relating to the rights and obligations of SMG and LICENSEE with respect to the Facility. No alterations, amendments or modifications hereof shall be valid unless executed by an instrument in writing by the parties hereto.
- 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.

#### 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 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:
  - v. When delivered personally to the party for whom intended.
  - vi. 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
  - vii. On 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.
- d) Remedies. In the event any action is brought to enforce this Agreement, the non-breaching party shall be entitled to recover from the breaching party all of its costs and expenses incurred in enforcing this Agreement, including without limitation court costs and reasonable attorneys' fees.
- e) Third Party Beneficiary. Owner (City of Rockford) shall be a third party beneficiary to this Agreement.

If to SMG, to:

SMG dba Rockford BMO Harris Bank Center  
300 Elm Street  
Rockford, IL 61101

Attention: General Manager

**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.

**FORCE MAJEURE.** If the Facility is damaged from any cause whatsoever or if any other casualty or unforeseeable cause beyond the control of SMG, including, without limitation, acts of God, fires, floods, epidemics, quarantine restrictions, terrorist acts from a foreign or domestic source, strikes, failure of public utilities or unusually severe weather, prevents occupancy and use, or either, as granted in this Agreement, both parties are excused from performing under this agreement.

**NEW USER.** If LICENSEE has not successfully completed the promotion of two prior Events at the Facility, then LICENSEE shall complete a LICENSEE Information Form, to be submitted with and made part of this Agreement. It is understood and agreed that this Agreement and the execution hereof by SMG evidencing SMG's agreement hereto, are contingent upon SMG's acceptance of such LICENSEE Information Form, in its sole discretion.

**IN WITNESS WHEREOF,** the parties hereto as of the day and year first written above have duly executed this Agreement along with attached Reimbursable Services Expense Estimate, which is hereby made an integral part of this Agreement.

**SMG/ Rockford BMO Harris Bank Center**

**(Harlem High School) ("LICENSEE")**

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

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

Printed Name:

Printed Name:

Title:

Title:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

("SMG")

("LICENSEE")