



**COMMUNITY ARTS PARTNERSHIP USE LICENSE AGREEMENT**

Between

**SMG**

And

**LEGAL ENTITY NAME**

Attention: **PROMOTER NAME**

Event: **EVENT NAME**

Event Date: **DATE**



**THIS USE LICENSE AGREEMENT** (together with the Exhibits attached hereto, the “**Agreement**”) is dated as of this **DATE** by and between SMG, a Pennsylvania general partnership acting as agent for **Capital One Tysons Block C Owner, LLC**, with an office at **300 Conshohocken State Road, Suite 770, West Conshohocken, PA 19428** (“**SMG**”), and **LEGAL ENTITY NAME**, whose current address is **ADDRESS** (the “**Licensee**”).

## BACKGROUND

SMG is the manager of a facility commonly known as **Capital One Hall** (the “**Facility**”), located at **7750 Capital One Tower Drive, McLean, VA 22102**, which owned by Capital One Tysons Block C Owner, LLC . 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. **Grant of License**

- 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 parking areas controlled by SMG, improvements, furniture, fixtures, easements, rights of ingress and egress, and appurtenances thereto, during the dates and times set forth on **Exhibit A** (each such date and time, an “**Event**”) (the “**License**”). 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 License Fee, 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 plus 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**”). Licensee hereby agrees that SMG shall not be responsible in any way for the acts and/or omissions of any one or all of the Third-Party Contractors.
- d) The Facility is to be used solely for the purpose of the “**Event**” and for no other purpose whatsoever.

2. **Use of the Facility**

a) Purpose- The Main Performance Hall, Vault, and Classrooms are to be used solely by **LEGAL ENTITY NAME** for the purpose of:

a) **Performance and Rehearsal** XXXX,XX,XXX

Notwithstanding the foregoing Authorized Use, Licensee shall not use the facility, or permit the facility to be used by any of its 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 or in any manner which is in violation of the Covenants contained in this agreement.

- 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 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, 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 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 20(m) hereof (relating to intellectual property matters), Section 21 hereof (relating to the Civil Rights Act), and Section 22 hereof (relating to the Americans with Disabilities Act), and (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.
- 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. SMG's general rules and regulations, including fire and safety rules as required by SMG and/or local fire regulations, as such may exist from time-to-time. 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 may, in its sole discretion, take any legal means necessary to 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 2(b).
- d) Without limiting the foregoing, Licensee shall obtain prior written approval from SMG for any pyrotechnic displays which Licensee anticipates may be performed at the Facility during the term of this Agreement.
- i. Any such pyrotechnics must be approved, in writing, by the Fire Marshal of Fairfax County and/or the Commonwealth of Virginia, and must be demonstrated for the Fire Marshal on the day of the Event.
  - ii. Licensee is responsible for obtaining, no later than thirty (30) days prior to the Event, at its own expense, any licenses or permits required by the State or Local Fire Marshal, or by Commonwealth or Local laws and regulations, with regard to any use of pyrotechnics,.
  - iii. Licensee is responsible to insure that any firm, person or corporation providing and operating pyrotechnics has been granted a certificate of competence, if required, by the Commonwealth and/or Local Fire Marshal, and has provided proof of financial responsibility and liability

insurance as required by law or regulation. Upon request, Licensee shall furnish SMG with proof of the foregoing.

- e) 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. In that regard, SMG, its agents, representatives and employees, including the General Manager of said Facility, may enter the same, and all of the Authorized Areas, at any time and on any occasion without prior notice. Licensee agrees that it will not allow, at, in or about the Facility, any officer, agent, employee, representative, licensee or invitee, who's presence, upon reasonable grounds, shall be objected to by SMG, and such person's license to use or enter the Facility may be revoked immediately by SMG.
- f) Unless otherwise specified in writing, SMG shall have the right to schedule other similar events both before and after the Event specified in this Agreement without notice to Licensee and without limitation.

### 3. 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 the failure by SMG to accomplish the foregoing, said failure resulting from circumstances beyond the control of SMG, shall not be considered a breach of this Agreement by SMG.
- c) Licensee shall not injure nor mar, nor in any manner deface, the Facility, and shall not cause or permit anything to be done whereby the Facility shall be in any manner injured or marred or defaced, nor shall Licensee drive or permit to be driven, any nails, hooks, tacks or screws in any part of the Facility. **Additionally, the use of tape or adhesive type products of any kind may not be used on any Facility structure, equipment, fixtures, or furniture without approval of venue management.** If the Facility, or any portion of the 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, invitees or any person or persons admitted to the Facility by the Licensee, the Licensee will pay to SMG upon demand, such sum as shall be necessary to restore said Facility to its original condition. Licensee hereby assumes full responsibility for the character, acts and conduct of all persons admitted to the Facility, or to any portion of said Facility and grounds, by or with the consent of Licensee, or by or with the consent of Licensee's employees or any person acting for or on behalf of the Licensee. 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 Fairfax County Police Department officers) to maintain order and protect persons and property. If SMG deems it to be necessary, in its sole discretion, a refundable damage deposit will withheld during Final Settlement and will be refunded upon a walk-through of the Facility only if SMG deems no damage has been incurred. Any damages to the Facility and its appurtenances or grounds 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.
- d) Licensee shall not make any alterations or improvements to the Facility without the prior written consent of SMG. Any alterations or improvements of whatsoever 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. The Licensee shall reimburse SMG for any cost SMG incurs in the removal or storage of alterations or improvements not promptly removed by Licensee.
- e) Notwithstanding anything to the contrary set forth herein, Licensee shall be solely responsible and liable for any and all Losses arising out of (i) any and all rigging from or to the physical structure of the Facility or any fixture thereto, (ii) set-up or tear-down, or (iii) alterations and/or improvements at or to the Facility, necessitated by and/or performed with respect to the Event.

4. **Responsibility for Property in the Facility**

- a) SMG assumes no responsibility whatsoever for any property placed in Facility by Licensee, and SMG is hereby expressly relieved and discharged from any and all liability for any loss, injury or damage to such property that may be sustained by reason of the occupancy by Licensee of Facility or any part thereof under this Agreement. All watchmen or other protective services, with respect to the property of the Licensee in the Facility, desired by Licensee, must be arranged by special agreement with SMG. 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.
- b) SMG shall have the sole right to collect and have the custody of articles left in the Facility by persons attending any Event, and neither the Licensee nor any person in Licensee's employ or control shall collect nor interfere with the collection or custody of such articles.
- c) In the event that the Authorized Areas of the Facility are not vacated by Licensee on or before the Expiration Time, 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 then be occupying any portion of Facility beyond the Expiration Time, and SMG shall not be liable for any damages to or loss of goods, wares, merchandise, property or other effects of Licensee which may be sustained, either by reason of such removal or by the place to which it may be removed, and SMG is hereby expressly released from any and all claims for damages of whatever kind or nature. For any such additional period beyond the Expiration Time, with respect to any such goods, wares, merchandise, property or effects of Licensee that remain in the Facility, SMG shall be entitled to charge a fee per day established in SMG's sole discretion or as specified in Exhibit B to this Agreement.
- d) Neither Licensee, nor its employees, agents, representatives, vendors, licensees or subcontractors, shall load-out any materials using hand or pushcarts before the Event has ended and the general public has cleared the Facility floor.

5. **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 18, until the date and time set forth on Exhibit A.

6. **License Fee, Merchandising Fees, Broadcast Fees, and Reimbursable Services Expense** – In consideration of the grant of the license in Section 1 above, Licensee shall pay to SMG a license fees of **\$1,950 per day for the main performance hall, \$500 per day for the Vault, and \$100 per day for the classroom**, ("License Fee"), merchandising fees, Broadcast Fee, and other prescribed amounts, and shall reimburse SMG for certain service expenditures, all as calculated in accordance with the provisions set forth below and in **EXHIBIT B**, and payable in accordance with the schedule set forth in **EXHIBIT B**.

- a) **Main Performance Hall License Fee**. License Fee: Licensee shall pay to SMG a flat, "all in" License Fee in the amount of One Thousand Nine Hundred and Fifty Dollars (\$1,950.00) ("License Fee") for use in the Main Performance Hall per day and will include: Police/EMT services (if deemed appropriate), Event Security (up to 3 people for 6 hours), Bag Checkers (up to 4 people for 4 hours), Usage of Existing In-House Equipment, Sound Equipment Operation (up to 1 person for 10 hours), Lighting Equipment Operation (up to 1 person for 10 hours), Ushers/Ticket Takers (up to 6 people for 4 hours), Box Office (up to 2 people for 4 hours), Operations (up to 1 person for 10 hours), Housekeepers/clean up labor (up to 1 person for 6 hours), and Housekeeping Fee (up to \$1,000.00).
- b) **Vault: License Fee**: Licensee shall pay to SMG a flat, "all in" License Fee in the amount of Five Hundred Dollars (\$500.00) per day ("License Fee") for use of the Vault (the Black Box Theater), which shall include the following: police/EMT service (if deemed appropriate), Event Security (up to 3 people for 6 hours), Bag Checkers (up to 2 people for 4 hours), usage of Existing In-House Equipment, Lighting Equipment Operation (up to 1 person for 10 hours), Sound Equipment Operation (up to 1 person for 10 hours), Ushers/Ticket

Takers (up to 4 people for 3 hours each), Box Office (up to 1 person for 5 hours), Operations (1 person for 5 hours), and Housekeeping Fee (up to \$500.00) (as escalated by in accordance with Section IV.b of the Agreement ).

- c) **Classrooms: Rental Fee:** [\$100/whole day/\$50.00/half day] (includes use of In-House Equipment and labor charges (1 person for up to 4 hours of aggregate general production operations, house-keeping and/or cleaning services)). The Expense Fee is due at execution of this Agreement.
- i. The License Fee **does not include**, among other exclusions, the following: event marketing, public relations, and advertising costs and expenses (advertising, marketing, and public relations services to be negotiated pursuant to sub-section I. below), ASCAP/BMI/SESAC or other similar licensing fees, box office credit card fees and expenses at the Facility box office, backstage catering, phones and service, long distance charges, high speed internet service, police, EMT, runners, towels, crowd management staff, uniformed security including overnight security, traffic control officers, stagehands (including loaders, electricians, property and wardrobe), ticket printing or inside charges, armored car delivery fees, floor carpeting, other rented furniture or equipment, and State of Virginia sales tax on equipment.
    1. Credit Card Expense. Additionally, SMG shall be paid an amount equal to *two point fifty five percent (2.55%)* of the total revenues from credit card ticket purchases at the Facility box office.
    2. 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. This Reimbursable Services Expense includes, but is not limited to, the following expenses, costs and charges: event services staff; traffic control officers; stagehands; forklift operators; truck loaders; stage electricians; ticket takers; door guards; supervisors; Event receptionists; production assistants; runners; box office services; ticket sellers; general laborers; ushers; usher supervisors; medical services for Event attendees, which services shall include ambulances, doctors, nurses, medical operations personnel and supervisors, and paramedics; Event backstage catering and food and beverage services; 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; Event custodial services; equipment, materials, or extra services furnished by SMG at the request of Licensee 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), and EMT(s); towels; security personnel including overnight security and crowd management personnel; communications expenses including internet access, telephone lines, long distance (including, intrastate and interlata) services; 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 the Event; Ticketmaster printing/inside charges; and any marketing or group sales fees, costs and commissions (if applicable). All equipment and services will be billed at prevailing rates and all staff furnished by SMG will be billed at prevailing wage rate for positions held and tasks performed for the time period worked, either 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, and in the case it is necessary for SMG to employ extra personnel such as wardrobe personnel, stagehands, event staff, janitors, etc., then Licensee shall pay the cost for said extra help. Payment of the Reimbursable Services Expense, by Licensee to SMG, is

due in full at Final Settlement. An estimate of the Reimbursable Services Expense is attached hereto and made a part of this Agreement as Exhibit B. 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 which Final Settlement shall take place as soon as possible but in no event more than one week after completion of the Event.

- d) 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 acknowledges and understands that many of the services are contracted services, the costs of which are subject to change. 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.
- e) It is understood and agreed that there will be food and beverage and alcoholic beverage sales during the Event, and that SMG, or its designated concessionaire, shall retain exclusively any and all revenues from the sale thereof, and Licensee shall have no rights to or claims thereon. It is further understood and agreed that SMG or SMG's designated concessionaire has the exclusive rights to any and all catering, including backstage catering, done in the Facility.
- f) It is understood and agreed that a Facility restoration fee ("Facility Fee") part of EXHIBIT A will not be charged to Capital One Hall Community Arts Partners.
- g) Licensee shall pay to SMG a non-refundable deposit in the form of a cashier's check, wire transfer, cash, or other immediately negotiable form by **DATE**, which deposit is due, along with both copies of this Agreement, executed by Licensee. This agreement must be fully executed by **DATE**. Upon receipt by SMG, a fully executed copy of this Agreement will then be forwarded to Licensee. Any remaining amounts due to SMG hereunder for License Fees, Reimbursable Services Expense, or other amounts as specified herein, will be due upon Final Settlement.
- h) Licensee shall pay sales, ticket, or amusement taxes as described in EXHIBIT A in which tax shall be collected and retained by SMG at Final Settlement and remitted by SMG to the appropriate taxing authority.
- i) All Event merchandise, including apparel, novelties, programs, on-site recorded CDs or DVDs, recorded media, and the like, shall be sold by Licensee, and SMG will not charge a merchandise fee or percentage of sales. Licensee must pay all applicable taxes, security expenses, and credit card expenses.
- j) If Licensee cancels the 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, and SMG shall retain the deposit as described above.
- k) If Licensee desires the use of SMG's marketing department for marketing, public relations, or advertising services for the Event, an advertising commission will not be charged.
- l) If Licensee utilizes SMG's group sales department for the Event, then Licensee shall pay to SMG a commission of ten percent (10%) on all group tickets sold. Such commission and any and all out-of-pocket costs incurred by SMG in providing the aforesaid services shall be included as a Reimbursable Services Expense and paid by Licensee at Final Settlement.
- m) SMG will waive its television, film, radio and/or recording rights of any kind to any Licensee's Events.

## 7. **Advertising, Branding & Logo Usage**

- a) Sponsorships & Naming Rights Licensee, having been so informed by SMG, understands that SMG has entered into and/or may hereafter (prior to the Event) enter into agreements with parties other than Licensee providing for, among other things, exclusive naming rights, exclusive category sponsorship and advertising rights, exclusive signage and display rights and/or exclusive product brand, pouring and/or service rights in and relating to the Facility and that SMG may be required, pursuant to one or more of such other agreements, to give notice of all booked events in the Facility to the holders of such rights for the purpose of initiating consideration and communications, at the option of such holders, regarding sponsorship of events, including

Licensee's Event. With such understanding, Licensee acknowledges and agrees (i) that Licensee and its officers, employees, agents, contractors and subcontractors, including but not limited to all persons producing, promoting, advertising, staging, directing, performing, presenting, conducting and/or otherwise participating in the Event, shall cooperate fully with SMG in its adherence to and performance of such other agreements and comply with all requirements imposed by SMG arising from or relating to such other agreements in connection with Licensee's use of the Facility.

- b) Capital One Hall Logo Usage – Licensee will have the right and the obligation to use Capital One Hall's logo (the "Facility Logo") and/or corresponding event space logos as laid out in the **Capital One Hall Event Marketing Style Guide** 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. Any deviation to the style guide will need to be approved by the designated SMG representative in writing after review of corresponding collateral.

#### 8. **Box Office and Tickets.**

- a) All admission tickets sold and/or issued for access to the Facility relating to the presentation of the Event shall be exclusively controlled by the Facility's box office. Only employees under the direct control and supervision of SMG shall be permitted access to, and use of, the box office facilities. Licensee shall deliver to the Facility box office all information required for the sale of such tickets no later than **eight (8) weeks** prior to the anticipated on-sale date.
- b) All admission tickets will be made available for sale at the Facility box office during normal operation box office hours; through the charge-by-phone, internet and retail outlet ticketing locations (if any) pursuant to the ticketing service provided by the Facility's ticketing agency; and by any other method determined by SMG.
- c) SMG will provide regular sales reports as requested by Licensee
- d) Licensee shall be solely responsible for the refund of the price of any tickets and applicable service charges and/or convenience charges, to any Event that is canceled. All refunds are made at the place of purchase.
- e) Unless otherwise agreed upon in writing, SMG does not issue or distribute tickets on consignment, and all tickets must be paid for prior to printing and distribution. It is understood and agreed that the Facility has an exclusive agreement for ticketing with **Ticketmaster**. Licensee will be allowed to sell its tickets on consignment but must sign a consignment agreement with Licensor. Licensee will be limited to a hundred (100) tickets in the Main Hall and fifty (50) in the Vault.
- f) Customers purchasing tickets at locations other than the Facility box office may be required to pay a service or convenience charge, or other charges or fees, which are added to the price of the ticket and collected by the Facility's ticketing agency (i.e. Ticketmaster). Such prevailing fees and charges are subject to change at any time without notice.
- g) No cash advances based on box office receipts will be made prior to headlining performers taking the stage.
- h) In no event shall tickets to the Event by Licensee, be sold or disposed of in excess of seating capacity of the house. Unless otherwise agreed to in writing, no patrons will be admitted to the Facility without an admission ticket.
- i) SMG shall receive up to twenty-four (24) complimentary (at no charge), top-priced tickets per performance of the Event in the Main Performance Hall and six (6) complimentary (at no charge) tickets in the Vault for the exclusive use of SMG. Any unused tickets will be returned to open status for sale to the general public a minimum of three (3) days prior to event.
- j) Licensee shall be limited to one hundred (100) tickets in the main theater and fifty (50) in the Vault Theater at no charge (complimentary tickets) unless otherwise agreed upon by SMG.

#### 9. **Event Financial Settlement**

- a) A minimum of forty-eight (48) business hours after the closing of the Facility box office for the Event, SMG shall furnish Licensee with a financial settlement statement and box office statement, and settle with Licensee in accordance with this Agreement (the "**Final Settlement**"). Licensee agrees to pay SMG, at the time of Final



Settlement, any amounts shown to be due SMG which were not paid to SMG by the application of box office receipts and deposits.

- b) All deposits and box office receipts, after applicable sales or amusement taxes are deducted, shall be held by SMG and applied in accordance with the provisions of this Agreement. SMG will remit to the appropriate taxing authority, any sales, amusement or similar tax due. Remaining deposits and box office receipts shall be applied as follows: (i) SMG shall retain any amounts as may be necessary to satisfy any obligation or liability of Licensee to SMG under this Agreement or otherwise, including, without limitation, any damages, whether stipulated herein or not, to which SMG may be entitled by reason of any breach of this Agreement by Licensee, (ii) any remaining deposits and box office receipts shall be paid to Licensee. Notwithstanding the foregoing, if the Facility was damaged as a result of the presentation of the Event therein, SMG, in its sole discretion, shall be entitled to withhold from the amount otherwise due Licensee a reasonable amount to pay for any such damage

#### 10. **Advance Deposits**

- a) On the date that is fourteen (14) days prior to the Event, if, in the sole discretion of SMG, the anticipated Gross Box Office Receipts (GBOR) for such Event will be inadequate to cover the estimated Event-related Facility expenses, including, but not limited to, License Fees, Broadcast Fees and Reimbursable Services Expense, Licensee shall pay, in escrow, in immediately negotiable funds, to SMG, an amount equal to the SMG's estimate of such shortage. In addition, Licensee may, in the sole discretion of SMG, be required by SMG to provide evidence of Licensee's financial capacity to pay other Event-related expenses, including, but not limited to, production costs and talent fees.
- b) Additionally, at SMG's sole discretion, SMG may require, not later than seven (7) business days prior to the Event, that Licensee place additional funds, in the form of a deposit in cash, in escrow with SMG, to cover the total estimated Event-related Facility expenses regardless of the GBOR.
- c) In the event that Licensee fails promptly to comply with any of the above deposit requirements, such failure shall constitute an act of default hereunder, and SMG may, upon written notice to Licensee, immediately terminate this Agreement without liability or obligation to Licensee.

11. **Taxes.** SMG shall not be liable for the payment of taxes, late charges, or penalties of any nature relating to the Event or otherwise, or any revenue received by or payments made to Licensee in respect of the Event, except as provided by law or as otherwise specified herein. 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.

12. **Naming Rights; Reference to Name of Facility.** When referring to the Facility during the term of this Agreement, Licensee shall use the name "Capital One Hall" (or such replacement name, as designated by SMG) 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.

13. **Revenues and Costs.** Capital One Center shall retain one hundred percent (100%) of all revenues generated in connection with parking area fees or charges at the Facility, whether collected at the parking area, pursuant to a purchase along with an event ticket or included in the price of the ticket. In addition to payment of the Reimbursable Services Expense 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.

**14. Records, Reports, and Audits.**

- a) Records. Licensee shall maintain accurate books and records with respect to its activities at the Facility, including, but not limited to, the costs and revenues of each Event. Licensee shall keep and preserve such books and records at all times during the term of this Agreement and for at least three (3) years following the expiration or termination hereof.
- b) Audits. Licensee shall give SMG and its representatives access to the books and records Licensee maintains pursuant to Section 14.(a) above at any time when so requested by SMG. Licensee shall also provide, at Licensee's own expense, a copy of any such book or record upon request.

**15. 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, unless otherwise agreed upon herein. SMG will have the sole right to determine whether alcoholic beverages (beer, wine, assorted mixed drinks and other alcoholic beverages) will be sold during the Event. Licensee shall not cause or permit beer, wine, liquors or alcoholic beverages 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

**16. Insurance.**

- a) Licensee shall, at its own expense, secure and deliver to SMG not less than thirty (30) days prior to the first Event set forth on Exhibit A, and shall keep in force at all times during the term of this Agreement:
  - i. a comprehensive general liability insurance policy in a form acceptable to SMG, including liability for bodily injury and death 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 activities or issues related to the Event hereunder, sporting events, high risk events (including, without limitation, rap concerts and electronic dance music Events), performers, volunteers, animals, off-premise activities, and fireworks or other pyrotechnical devices;
  - ii. 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, 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 of hired and non-owned coverage); and
  - iii. applicable workers' compensation insurance for Licensee's employees, as required by applicable law, including employers liability coverage of at least One Million Dollars (\$1,000,000)
- b) The following shall apply to the insurance policies described in clauses (i) and (ii) above:
  - iv. **SMG and Owner shall be named as additional insureds thereunder.** Not less than thirty (30) days prior to the first Event set forth on Exhibit A, Licensee shall deliver to SMG certificates of insurance evidencing the existence thereof, all in such 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 each of (i) SMG, Risk Management Director, 300 Conshohocken State Road, Suite 770, West Conshohocken, PA 19428; (ii) Capital One Hall, 7750 Capital One Tower Road, Tysons, VA 22120 Attention General Manager.** 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 fourteen (14) days prior to such expiration a certificate of insurance evidencing the renewal of such policy or policies

- v. The coverage and limits provided under such policies shall be occurrence-based, not claims made.
  - vi. 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 17. Below
- c) The terms of all insurance policies referred to in this Section 16. 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 16. shall be a material breach of this Agreement and shall, notwithstanding any cure period set forth in Section 18. below, preclude the Event from taking place.

**17. Indemnification**

- a) Licensee shall indemnify, defend, and hold harmless SMG and the Owner, and their respective officers, directors, agents, and employees (the "**Indemnitees**") from and against any and all Losses arising from (i) the matters described in Section 1 hereof, (ii) the matters described in Section 2(b) hereof, and/or (iii) personal or bodily injury to or death of persons or damage to the property of SMG, Owner or third parties to the extent caused by the negligent acts, errors and/or omissions or the willful misconduct of Licensee 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.

**18. Default, Termination and Other Remedies.**

- a) Default. Licensee shall be in default under this Agreement if any of the following occur:
  - i. Licensee fails (a) to pay any amount due hereunder (including, without limitation, the Licensee Fees, Broadcast Fee, or the Reimbursable Services Expense) when the same are required to be paid hereunder, or (b) to provide the security in the form of the deposits required under Section 10. hereof by the date when due, or
  - ii. Licensee or any of its officers, directors, 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
  - iii. Licensee makes a general assignment for the benefit of creditors.
- b) 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 five (5) business days after SMG has been served with written notice of such default.
- c) Nothing herein shall be construed as excusing either party from diligently commencing and pursuing a cure within a lesser time if reasonably possible.
- d) Notwithstanding clause (a) (ii) above, if the breach by Licensee 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 SMG may, in its discretion, require that such breach be cured in less than two (2) business days or immediately.
- e) Termination by Reason of Default. Upon a default pursuant to Section 18(a) or (b) hereof, the non-breaching 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 provisions of this Agreement, SMG may, in its sole 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.

- f) 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.
- g) 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.
- h) Unique Qualities. The parties agree and acknowledge that the Licensee 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 may not 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, at its option, shall have the right to pursue any remedy available at law, equity, or otherwise, including the recovery of money damages and/or the right to seek equitable relief (whether it be injunctive relief, specific performance or otherwise) in the event that Licensee violates its obligation to hold an Event at the Facility, or to provide evidence of fulfillment of its obligations under Section 20(m) of this Agreement.

19. **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.

20. **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) The following items are prohibited within any areas of the Facility without written permission by SMG:
  - i. Propane and propane powered vehicles, equipment and displays.
  - ii. 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.
  - iii. 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.
  - iv. Guns, knives, electronic shock devices or other weapons that could be used to harm another individual or property.
  - v. Food or food products, either for sale or sample distribution (free samples).
  - vi. Helium or other lighter than air filled balloons.
  - vii. Recording devices (video, audio or photographic) for the intent to distribute or to re-sell.
  - viii. Laser pens or other laser light-type pointing devices.
  - ix. Lit cigars, cigarettes, e-cigarettes, or the like.

- x. Controlled substances of any kind unless pursuant to a doctor's prescription.
- e) 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. Licensee shall take down and remove forthwith all signs, advertisements, show bills, lithographs, posters or cards of any description objected to by SMG.
- 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, employees, agents, members or other representatives shall not re-sell admission tickets to the general public except as otherwise provided for herein, nor shall they re-sell the tickets for an amount greater than the face value (otherwise known as "scalping"), to the extent prohibited by applicable law. Licensee and its representatives shall 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 exit ways shall be maintained in such manner as to be visible at all times.
- j) 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 the 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 unless an alternative or flat license fee has been agreed upon.
- k) Licensee shall abide by and conform to all rules and regulations adopted or prescribed by SMG from time-to-time.
- l) 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.
- m) 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. Notwithstanding anything herein to the contrary, in the event Licensee fails to provide satisfactory evidence of the aforesaid compliance to SMG, SMG may, but is under no obligation to, in its absolute discretion, undertake the aforesaid compliance on behalf of the Licensee and to deduct any and all costs of such compliance from the final settlement with Licensee. Licensee agrees to indemnify, defend, protect and hold harmless SMG and all other Indemnitees (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.

- n) Licensee shall not engage in the sale and/or distribution of food and/or beverages at the Facility other than to allow personal water and snacks to be carried in and consumed by individuals associated with the Licensee. All backstage catering and/or reception catering must be advanced with Facility. Facility reserves the right to discard any unauthorized food and/or beverages. Facility will provide Licensee with a list of approved vendors from whom to obtain catering services. A catering buyout fee of \$15.00 per person will be applied for use of non-preferred vendors.

Licensee shall use the Facility's logo (the "**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 20(o), Licensee shall use only the form of the Facility Logo as provided by SMG to Licensee in any artwork or other depiction thereof

o) 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 Fire Marshal's office: Batteries shall be disconnected. Fuel-electric hybrid vehicles shall be safeguarded to prevent operation of the vehicle.
  - Fuel tanks shall contain a minimal amount of fuel not exceeding one-quarter (1/4) tank or 5 gallons (19 L), whichever is least. (314.2 #1)
  - Tanks containing a gas or liquefied-gas fuel should have a means of determining the actual quantity of fuel such as a gauge or level. (314.2 #2)
  - All vehicle fuel tanks and fill openings shall be closed and sealed in an approved manner to prevent tampering and the potential escape of fuel vapors. (314.2 #3)
  - Fueling or de-fueling of vehicles shall be prohibited inside the building. (314.2 #4)
  - Operation and/or repair of vehicles shall be prohibited inside the building. (313.1)
  - A minimum of one 2A:20B:C fire extinguisher shall be provided within 50 feet of any vehicle on display. (906.1)
  - The permit shall be conspicuously displayed on the vehicle at all times. (108.3.5)

p) Utility Usage Requirements.

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 or cube taps 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 established rates. Additional voltage and/or amperage connections may be available for additional fees. Incremental increases in either amperage or voltage will increase costs.

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 Agreement. 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.
    1. Normal lighting provided by fixed Facility fixtures will be maintained throughout the Event at no additional cost to Licensee.
    2. 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. High-speed data or wireless lines are available through SMG providing internet access at an additional charge based on the rate in Exhibit A.
21. **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.
22. **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 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, including, without limitation, those 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.
23. **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.
24. **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 the State of Virginia, and all of the laws and ordinances of the Fairfax County, VA, without giving effect to the conflict of law principles thereof. Additionally, Licensee is subject to the rules and regulations of SMG for the governance and management of the facility, together with all rules and regulations of the Fairfax County, VA Police and Fire Departments, and if the attention of said Licensee is called to a violation of such rules and regulations on the part of Licensee, then said Licensee will immediately desist from and correct such 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 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.

## 25. 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. To the extent Owner retains another management company to manage the Facility, any references to SMG herein shall be deemed changed to reference such management company, as agent for Owner
- 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.

If to SMG: SMG  
7750 Capital One Tower Road, Tysons, VA 22102  
Attention: General Manager

with a copy to: ASM Global  
300 Conshohocken State Rd., Suite 770  
West Conshohocken, PA 19428  
Attention: Director of Risk Management

If to Licensee:

- d) Non-Exclusive Use. SMG shall have the right during the Event, in its sole discretion, to use on its own behalf, or permit the use by any person, firm or other entity, of any portion of the Facility, other than the Authorized Areas, regardless of the nature of the use of such other space
- e) Force Majeure. Unless otherwise agreed in the contract between the parties expressly or impliedly, where a party to a contract fails to perform one or more of its contractual duties, the consequences set out in this clause will follow if and to the extent that that party proves: (a) that its failure to perform was caused by an impediment beyond its reasonable control; (b) that it could not reasonably have been expected to have taken the occurrence of the impediment into account at the time of the conclusion of the contract; and (c) that it could not reasonably have avoided or overcome the effects of the impediment ("Force Majeure Event"). A party invoking this clause shall be presumed to have established the conditions described in the preceding paragraph in the case of the occurrence of one or more of the following impediments:
- i. war (whether declared or not), armed conflict or the serious threat of the same (including but not limited to hostile attack, blockade, military embargo), hostilities, invasion, act of a foreign enemy, extensive military mobilization; or
  - ii. civil war, riot, rebellion, revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience; or
  - iii. act of terrorism, sabotage or piracy; or
  - iv. plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions;
  - v. act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalization; or
  - vi. act of God or natural disaster such as but not limited to violent storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage or destruction by lightning, drought; or
  - vii. explosion, fire, destruction of machines, equipment, factories and of any kind of installation, prolonged break-down of transport, telecommunication or electric current; or
  - viii. general labor disturbance such as but not limited to boycott, strike and lock-out, go-slow, occupation of factories and premises; or
  - ix. shortage or inability to obtain critical material or supplies to the extent not subject to the reasonable control of the subject party.

This provision shall become effective only if the party failing to perform notifies the other party within a reasonable time of the extent and nature of the Force Majeure Event, limits delay in performance to that required by the Force Majeure Event and takes all reasonable steps to minimize damages and resume performance.

- f) Acts and Omissions of Third Parties. SMG shall not 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 SMG in connection with the sale of tickets for any Event.
- g) If Licensee fails to pay any amounts when due under this Agreement, Licensee shall pay to SMG a late charge of 1.5% per month on the unpaid balance.

**26. Additional Provisions:**

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

**For SMG**

**For Licensee:**

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:



**COMMUNITY ARTS PARTNERSHIP - EXHIBIT A**

**Licensee:**

**Event:**

**Dates /Authorized Areas:**

**Expiration Time:**

**Fees, Taxes, and Estimated Reimbursable Service Expenses:**

**Merchandise Split: 100 / 0 - PROMOTER SELLS**

**Parking:** Staff, Volunteers, and Employees of Licensee are permitted to park in the assigned lot at no charge to Licensee. Any person attending the show as a patron will park in the designated patron parking lot and pay the \$15.00 show parking fee (i.e. parents/guardians/other driving a performer to the show do not qualify to park in the same location as Staff, Volunteers, and Employees of Licensee).

**By signing this agreement, the Licensee acknowledges that they have reviewed the following materials.**

- Capital One Hall Marketing Services
- Ticket Build Form Sample
- Season Orientation Presentation
- Capital One Hall Tech Packet
- Community Arts Partnership Checklist

## COMMUNITY ARTS PARTERSHIP FEE SCHEDULE – EXHIBIT B

### Main Theater Rent - \$1,950

Included under Rent:

- Police: (1) if required
- EMT: (1) if required
- Event Security: up to 3 people for 6 hours
- Bag Checkers: up to 4 people for 4 hours each
- Ushers/Ticket Takers: up to 6 people for 4 hours each
- Existing In-House Sound & Lighting Equipment
- Box Office: up to 2 people for 4 hours each
- Event House Keeping: up to 1 person for 6 hours
- Post Show Cleaning: up to \$1,000
- Sound Technician: up to 1 person for 10 hours
- Lighting Technician: up to 1 person for 10 hours
- Operations: up to 1 person for 10 hours
- Use of Orchestra Shell and (4) Stagehand Hours to Move the Orchestra Shell (if applicable)

### The Vault Rent - \$500

Included under Rent:

- Police: (1) if required
- EMT: (1) if required
- Event Security: up to 3 people for 6 hours
- Bag Checkers: up to 2 people for 4 hours
- Ushers/Ticket Takers: up to 4 people for 3 hours each
- Operations: up to 1 person for 10 hours
- Existing In-House Sound & Lighting Equipment
- Sound Technician: up to 1 person for 10 hours
- Lighting Technician: up to 1 person for 10 hours
- Box Office: up to 1 person for 5 hours
- Post Show Cleaning: up to \$500

### Classrooms - \$100 full day; \$50 half day slot – 6:00am to Noon or Noon to 6pm. Variant of ½ day slot is full day rate.

Included under Rent:

- Production/Cleaning – up to 1 person for 4 hours
- Post Show Cleaning: up to \$100

### Staffing Rates

- Ushers / Ticket Takers- \$25 per hour
- House Managers - \$30 per hour
- Box Office - \$25 per hour
- Security Manager - \$52 per hour
- Security/Bag Checkers - \$35 per hour
- Security/Bag Checkers Supervisor - \$40 per hour
- Audio/Lighting Engineers - \$65 per hour (10hr Min)
- Audio/Lighting Assistants - \$45 per hour (10hr Min)
- Stagehands - \$40 per hour (4hr Min)
- Production Supervisor - \$75 per hour
- Production Manager - \$100 per hour
- Operations Staff - \$25 per hour
- Operations Supervisor - \$26 per hour
- Weight Loader - \$55 per hour
- Fly Rail Operator/Rigging - \$75 per hour
- Event Cleaning - \$25 per hour
- Post Show Clean Up - up to \$1,000.00 (Main Theater)
- Post Show Clean Up - up to \$500.00 (Vault Theater)
- Stage Manager - \$65 per hour
- Grand Piano Tuning - \$350
- Upright Piano Tuning - \$250
- Change Fee - \$250 (for major changes to approved furniture/stage arrangements)

**For SMG**

By:

Name:

Title:

Date:

**For Licensee:**

By:

Name:

Title:

Date: