



USE LICENSE AGREEMENT

BY AND BETWEEN

SMG AND SCHOOL BOARD OF SANTA ROSA COUNTY, FL

DATED APRIL 15, 2015

USE LICENSE AGREEMENT

THIS USE LICENSE AGREEMENT (together with the Exhibits attached hereto, the "**Agreement**") is dated as of the 15th day of **APRIL, 2015**, by and between SMG, a Pennsylvania general partnership, and **SCHOOL BOARD OF SANTA ROSA COUNTY, FL**, whose current address is **5086 CANAL STREET, MILTON, FL 32570** (the "**Licensee**").

BACKGROUND

SMG is the manager of a facility commonly known as **Pensacola Bay Center** (the "**Facility**"), located at **201 EAST GREGORY ST, PENSACOLA, FL 32502**, which is owned by **Escambia County, Florida** (the "**Owner**"). Licensee desires to use all or a portion of the Facility, as set forth below, for the purposes stated herein. Accordingly, SMG desires to grant to Licensee, and Licensee hereby accepts from SMG, a license to use certain areas of the Facility in accordance with the terms and conditions set forth herein.

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

1. Use of the Facility

- (a) SMG hereby grants Licensee, upon the terms and conditions hereinafter expressed, a license to use those areas of the Facility described on Exhibit A attached hereto (the "**Authorized Areas**"), including all improvements, furniture, fixtures, easements, rights of ingress and egress, and appurtenances thereto, during the dates and times set forth on Exhibit A (each such date and time, an "**Event**"). It is expressly understood by the parties hereto that the Facility shall be vacated by Licensee and all persons participating in or attending an Event hereunder on or prior to the end-time of the last Event listed on Exhibit A hereto (the "**Expiration Time**") and, as such, Licensee shall arrange to have all Events and activities related thereto cease within a reasonable time prior to the Expiration Time to allow ample time for the Facility to be completely vacated on or prior to the Expiration Time.
- (b) In the event Licensee desires to use the Authorized Areas or any other portion of the Facility at any time other than during the dates and times delineated on Exhibit A, Licensee shall request from SMG prior written permission to use such areas of the Facility. In the event such permission is granted, Licensee shall pay as additional rent an amount equal to the sum of SMG's actual costs for performing its obligations under this Agreement during the date(s) and time(s) requested, and a fee in an amount determined by SMG to represent a fair value for use of such additional areas of the Facility during such date(s) and time(s).
- (c) Licensee acknowledges that, in connection with SMG's management and operation of the Facility, SMG utilizes the services of certain third-party independent contractors (the "**Third-Party Contractors**"). 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) Licensee acknowledges that the Facility is one component of a planned complex that includes, without limitation, Arena, Meeting Rooms, and Five (5) parking areas (such other non-Facility areas are collectively referred to herein as the "**Complex**"). Licensee further acknowledges that SMG will use reasonable efforts to minimize for Licensee any inconvenience or disturbance which may result from the operation, construction, expansion, renovation, and/or other use of the Complex, to the extent that the foregoing activities are within SMG's reasonable control. Subject to the limitations set forth in Section 768.28, FL Statutes, Licensee hereby agrees to hold SMG, Owner, and their respective officers, directors, agents, and employees harmless from and against any and all losses, liabilities, claims, damages, and expenses (including reasonable costs of investigation and attorneys' fees) (collectively, the "**Losses**") arising out of any of the foregoing activities occurring at the Complex.
- (e) Floor Plans and Descriptions
 - (i) At least **four (4) weeks** prior to the first Event, Licensee shall provide to SMG information relating to room or hall set-up(s), staging, event personnel requirements, and food and beverage requirements.
 - (ii) Licensee shall be solely liable for any and all Losses arising from Licensee's failure to deliver to SMG the materials described in subparagraphs (i) of this Section 1(e) within the specified time periods, including, without limitation, overtime pay and short-notice delivery fees.

2. Purpose

- (a) The Facility is to be used solely for the purpose of "**SANTA ROSA COUNTY HIGH SCHOOL GRADUATIONS**". Licensee shall not use the Facility, or permit the Facility to be used by any of its officers, directors, agents, employees, licensees, or invitees, for any unlawful or immoral purpose or in any manner so as to injure persons or property in, on, or near the Facility.

- (b) Subject to the limitations set forth in Section 768.28, FL Statutes, 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, foreign, local, and municipal regulations, ordinances, statutes, rules, laws, constitutional provisions, and common laws (collectively, the "**Laws**") applicable to Licensee's performance of this Agreement and/or activities at the Facility, (ii) any unlawful acts on the part of Licensee or its officers, directors, agents, employees, subcontractors, licensees, or invitees, (iii) the negligent acts, errors and/or omissions ~~or the willful misconduct~~ of Licensee or its officers, directors, agents, employees, subcontractors, licensees, or invitees, or (iv) the material breach or default by Licensee or its officers, directors, agents, or employees of any provisions of this Agreement, including, without limitation, the provisions of Section 14(m) hereof (relating to intellectual property matters), Section 15 hereof (relating to the Civil Rights Act), and Section 16 hereof (relating to the Americans with Disabilities Act).
- (c) Licensee shall conduct business in the Facility in a dignified and orderly manner with full regard for public safety and in conformity with SMG's General Rules and Regulations, including fire and safety rules as required by SMG and/or local fire regulations, as such may exist from time to time. Without limiting the foregoing, Licensee shall obtain prior written approval from SMG's General Manager at the Facility for any pyrotechnic displays, which Licensee anticipates, may be performed at the Facility during the term of this Agreement. Licensee agrees that it will not allow any officer, agent, employee, licensee or invitee at, in or about the Facility who shall, upon reasonable, non-discriminatory grounds, be objected to by SMG and such person's right to use the Facility may be revoked immediately by SMG.

3. Condition of Facility

- (a) Licensee acknowledges that Licensee has 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 (i) 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, and (ii) any damages to the Facility and its appurtenances caused by Licensee or its officers, directors, agents, employees, licensees, or invitees shall be paid for by Licensee at the actual or estimated cost of repair.
- (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 (ii) become the property of **Escambia County**. 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. Notwithstanding anything to the contrary set forth herein, Licensee shall be solely responsible and liable for any and all Losses arising out of 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.

4. Term of License

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

5. License Fee, Merchandising Fee, Broadcast Fee, Reimbursable Service Expenses, and Complimentary Tickets.

In consideration of the grant of the license in Section 1 above, Licensee shall pay to SMG a license fee, merchandising fee, broadcast fee, and shall reimburse SMG for certain service expenditures, all as calculated in accordance with the provisions set forth below and in accordance with generally accepted accounting principles, consistently applied:

- (a) License Fee. Licensee shall pay a license fee (the "**License Fee**") equal to (i) **Two Thousand and Five Hundred Dollars (\$2,500.00)**.

- (b) Merchandising Fee. Licensee shall pay a merchandising fee (the "**Merchandising Fee**") equal to ~~N/A~~ of gross novelty and merchandising revenue, less all applicable taxes, generated in connection with the Event. Five Hundred Dollars (\$500.00) per event day in order to sell merchandise at the venue during the event.
- (c) Broadcast Fee. SMG shall retain all television, film, radio, and/or recording rights to any Events which take place in or at the Facility. Licensee may purchase such rights from SMG for a broadcast fee (the "**Broadcast Fee**") equal to the greater of (i) ~~Two Thousand and Five Hundred Dollars (\$2,500)~~, or (ii) in the event that Licensee sells such rights to a third party ~~Thirty Percent (30%)~~ of all amounts received by Licensee from such third party under the applicable written contract between Licensee and such third party. Said contract shall be delivered to SMG not less than 24 hours prior to the commencement of any such television, broadcast, film or recording activity of any Event in or at the Facility, and shall be accompanied by a written and signed statement by Licensee that no other agreement, express or implied, written or oral, has, to its knowledge, been reached or is in the process of being reached wherein Licensee shall receive any additional monies for such rights. ~~N/A~~
- (d) Reimbursable Service Expenses.
 - (i) SMG shall provide, as required for each Event, the following services (collectively, the "**Services**"), the expenditures for which are reimbursable by Licensee to SMG ("**Reimbursable Service Expenses**"): ticket takers, box office services, ticket seller labor, ushers, supervisors, and receptionists; medical services for Event attendees; 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; custodial services; scoreboard operations; audio services; and special facilities, equipment and materials, or extra services furnished by SMG at the request of Licensee [which are set forth on Exhibit B].
 - (ii) SMG shall determine the level of staffing for such Services at each Event after consultation with, and input from, Licensee. Licensee acknowledges and understands that many of the Services are contracted services, the costs of which are subject to change. Licensee shall reimburse SMG for actual costs incurred by SMG in connection with the Services as provided in Section 6 below.
- (e) Complimentary Tickets. In addition to the License Fee, Merchandising Fee, Broadcast Fee, and Reimbursable Service Expenses, complimentary tickets for promotional purposes shall be available as follows: SMG shall be entitled to ~~N/A~~ tickets at no charge.

6. Payment Terms

- (a) License Fee, Merchandising Fee, and Broadcast Fee. The License Fee, Merchandising Fee, and Broadcast Fee set forth in Sections 5(a), (b), and (c) of this Agreement shall be paid by Licensee as provided in Exhibit B attached hereto.
- (b) Reimbursable Service Expenses. Within **Five (5) days** after SMG's receipt of Licensee's report delivered to SMG pursuant to Section 1(e) above, SMG shall deliver to Licensee an expense report estimate ("Expense Report Estimate"), setting forth SMG's estimate of all expenses, which SMG will incur in connection with the Services. Within **Two (2) business days** after the conclusion of an Event, SMG shall deliver to Licensee an expense report setting forth the expenses actually incurred by SMG for the Services ("Actual Expense Report"). Licensee will pay the amount reflected on the actual expense report at the time the report is given to the Licensee. Notwithstanding anything to the contrary set forth in this Agreement, SMG's failure to deliver either the Expense Report Estimate or the Actual Expense Report shall not excuse Licensee's obligation to pay any amounts due hereunder.
- (c) Late Charges. 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.
- (d) Deposit on Payment. In order to ensure the payment to SMG of the License Fee, Merchandising Fee, Broadcast Fee, the Reimbursable Service Expenses, and any other amounts as may accrue from time to time under this Agreement, Licensee shall deliver into the custody of SMG, upon execution of this agreement a check payable to SMG, in the amount of ~~N/A~~. The deposit will be reflected on the Actual Expense Report.

7. Revenues and Costs

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

8. Taxes

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

9. Insurance

- (a) Licensee shall, at its own expense, secure and deliver to SMG not less than thirty (30) days prior to the commencement of this Agreement and shall keep in force at all times during the term of this Agreement:
 - (i) a comprehensive general liability insurance policy in form acceptable to SMG, including public liability and property damage, covering its activities hereunder, in an amount not less than One Million Dollars (\$1,000,000) for bodily injury and One Million Dollars (\$1,000,000) for property damage, including blanket contractual liability, independent contractors, and products and completed operations. The foregoing general liability insurance policy shall not contain exclusions from coverage relating to the following participants, legal liability activities or issues related to the Event hereunder: sporting events, rap concerts, performers, volunteers, animals, off-premise activities, and fireworks or other pyrotechnical devices;
 - (ii) comprehensive automotive bodily injury and property damage insurance in form acceptable to SMG for business use covering all vehicles operated by Licensee, its officers, directors, agents and employees in connection with its activities hereunder, whether owned by Licensee, SMG, or otherwise, with a combined single limit of not less than One Million Dollars (\$1,000,000) (including an extension of hired and non-owned coverage); and
 - (iii) Applicable workers compensation insurance for Licensee's employees, as required by applicable law.
- (b) The following shall apply to the insurance policies described in clauses (i) and (ii) above:
 - (i) SMG, 2) Pensacola Bay Center, 3) Escambia County, FL and 4) Escambia County Board of County Commissioners shall be named as additional insureds thereunder. Not less than thirty (30) days prior to the move-in date 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 SMG, 201 E. Gregory St., Pensacola, Florida 32502." 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 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, not claims made.
 - (iii) The coverage limits contained on such policies shall be on a per-occurrence basis only.
 - (iv) Licensee hereby acknowledges that the coverage limits contained in any policy, whether such limits are per occurrence or in the aggregate, shall in no way limit the liabilities or obligations of Licensee under this Agreement, including, without limitation, Licensee's indemnification obligations under Section 11 below.
- (c) The terms of all insurance policies referred to in this Section 10 shall preclude subrogation claims against SMG and Owner and their respective officers, directors, employees, and agents.

10. Indemnification

- (a) Subject to the limitations set forth in Section 768.28, FL Statutes, Licensee shall indemnify, defend, and hold harmless SMG, 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(e)(iii) 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 or Owner 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 for a period of One (1) year.

11. Default, Termination, and Other Remedies.

- (a) Default. Licensee shall be in default under this Agreement if any of the following occur: (i) Licensee fails (A) to pay any amount due hereunder (including, without limitation, the Licensee Fee or the Reimbursable Service Expenses) when the same are required to be paid hereunder or (B) to provide the security required under Section 6(d) hereof by the date when due, (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 five (5) business days after Licensee has been served with written notice of such default, or (iii) Licensee makes a general assignment for the benefit of creditors. SMG shall be in default under this Agreement if 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. 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) 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 five (5) business days or immediately.
- (b) Termination by Reason of Default. Upon a default pursuant to Section 12(a) hereof, the nonbreaching party may, at its option, upon written notice or demand upon the other party, cancel and terminate the license granted in Section 1 hereof and the obligations of the parties with respect thereto. In addition to the foregoing, if Licensee fails to comply with any of the 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.
- (c) Termination by Reason of Labor Dispute. In addition to the remedies provided elsewhere in this Agreement, SMG shall have the right to terminate this Agreement in the event that a dispute occurs between Licensee and its employees or between Licensee and any union or group of employees by reason of the union affiliation or lack of union affiliation of persons employed by Licensee or any one with whom Licensee contracts.
- (d) 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.
- (e) 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 14(m) of this Agreement.

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

- (a) It has the full power and authority to enter into this Agreement and perform each of its obligations hereunder;
- (b) It is legally authorized and has obtained all necessary regulatory approvals for the execution, delivery, and performance of this Agreement; and
- (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.

13. Covenants. Licensee hereby covenants as follows:

- (a) Licensee shall not occupy or use the Facility except as provided in this Agreement.
- (b) Licensee shall comply with all legal requirements which arise in respect of the Facility and the use and occupation thereof.
- (c) Licensee shall not cause or permit any Hazardous Material to be used, stored, or generated on, or transported to and from the Facility. "Hazardous Material" shall mean, without limitation, those substances included within the definitions of "hazardous substances", "hazardous materials", "toxic substances", or "solid waste" in any applicable state or federal environmental law.

- (d) Licensee shall not advertise, paint, post, or exhibit, nor allow to be advertised, painted, posted, or exhibited, signs, advertisements, show bills, lithographs, posters, or cards of any description inside or outside or on any part of the Facility except upon written permission of SMG.
- (e) Licensee shall not broadcast by television or radio any Event scheduled to be presented in the Facility under the terms of this Agreement without the prior written approval of SMG. If approval is granted by SMG, then all monies received from such broadcast will be considered as broadcast revenues for the purpose of determining the Broadcast Fee due to 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, directors, employees, agents, members, or other representatives shall not "scalp" tickets for an Event, to the extent applicable. 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) If the Licensee Fee includes a percentage of revenue generated from an Event, then no collections, whether for charity or otherwise, shall be made, attempted, or announced at the Facility, without first having made a written request and received the prior written consent of SMG. In such event, donations or collections are granted by SMG in lieu of an admission ticket, then all such monies received from such collections or donations will be considered as ticket revenues for the purpose of determining the License Fee due to SMG.
- (k) Licensee shall not encumber, hypothecate, or otherwise use as security its interests in this Agreement for any purpose whatsoever without the express written consent of SMG.
- (l) With respect to any Event at the Facility, Licensee shall comply fully with any and all local, state, and federal laws, regulations, rules, constitutional provisions, common laws, and rights of others applicable to the reproduction or performance of proprietary or copyrighted materials and works of third parties (the "**Works**"), and to the protection of the intellectual property rights associated with such Works. The fees payable by Licensee under this Agreement do not include royalty, copyright or other payments which may be payable on behalf of third party owners of such Works, and Licensee agrees hereby to make any and all such payments to third parties and/or clearinghouse agencies as may be necessary to lawfully perform, publish or reproduce any such Works. Licensee specifically agrees, undertakes, and assumes the responsibility to make any and all reports to such agencies and/or parties, including specifically by way of example only (and not by way of limitation) ASCAP, BMI, SAG, SESAC and other similar agencies. Licensee agrees hereby to produce evidence of such reports and payments to SMG, including evidence of compliance with the requirements of this paragraph to be provided to SMG in advance of any such Event. Provision of such evidence is a material condition of this Agreement. Licensee agrees to indemnify, defend, protect and hold harmless SMG and all other Indemnitees (as defined in this Agreement) of and from all and all manner of Losses arising in any way from the use by Licensee of proprietary intellectual property of third parties (whether such claims are actual or threatened) under the copyright or other laws of the United States. The foregoing indemnity shall apply regardless of the means of publication or performance by Licensee, and shall include specifically and without limitation the use of recordings, audio broadcasts, video broadcasts, Works on other magnetic media, sounds or images transmitted via the worldwide web, chat rooms, web cast, or on-line service providers, satellite or cable, and all other publication or performance means whatsoever, whether now known or developed after the date of this Agreement.
- (m) Licensee shall not engage in the sale and/or distribution of food and/or beverages at the Facility.
- (n) Licensee 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 13(n), Licensee shall use only the form of the Facility Logo as provided by SMG to Licensee in any artwork or other depiction thereof.

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

15. **Americans With Disabilities Act.** With respect to any Event at the Facility, Licensee recognizes that it is subject to the provisions of Title III of the Americans With Disabilities Act, as amended ("**ADA**"). Licensee represents that it has viewed or otherwise apprised itself of the access into the Facility, together with the common areas inside, and accepts such access, common areas, and other conditions of the Facility as adequate for Licensee's responsibilities under the ADA. Licensee shall be responsible for ensuring that the Facility complies and continues to comply in all respects with the ADA, including accessibility, usability, and configuration insofar as Licensee modifies, rearranges or sets up in the Facility in order to accommodate Licensee's usage. Licensee shall be responsible for any violations of the ADA that arise from Licensee's reconfiguration of the seating areas or modification of other portions of the Facility in order to accommodate Licensee's usage. Licensee shall be responsible for providing auxiliary aids and services that are ancillary to its usage and for ensuring that the policies, practices, and procedures it applies in connection with an Event are in compliance with the ADA.
16. **Use of Information.** Licensee hereby acknowledges and agrees that SMG shall 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.
17. **Construction of this Agreement**
- (a) **Choice of Law.** This Agreement shall be deemed to be made, governed by, and construed in accordance with the laws of Escambia County, Florida, without giving effect to the conflict of law principles thereof.
 - (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.
18. **Miscellaneous.**
- (a) **Waiver.** The failure of any party to enforce any of the provisions of this Agreement, or any rights with respect hereto, or the failure to exercise any election provided for herein, will in no way be considered a waiver of such provisions, rights, or elections, or in any way affect the validity of this Agreement. The failure of any party to enforce any of such provisions, rights, or elections will not prejudice such party from later enforcing or exercising the same or any other provisions, rights, or elections, which it may have under this Agreement.
 - (b) **Assignment.** Neither this Agreement nor any of the rights or obligations hereunder may be assigned or transferred in any manner whatsoever by Licensee without the prior written consent of SMG. SMG shall be entitled to assign its rights and obligations hereunder to Owner or to any other management company retained by Owner to manage the Facility, and in such event, SMG shall have no further liability to Licensee hereunder for the performance of any obligations or duties arising after the date of such assignment.
 - (c) **Notices.** Any notice, consent, or other communication given pursuant to this Agreement shall be in writing and shall be effective either (i) when delivered personally to the party for whom intended, (ii) upon delivery by an overnight courier services that is generally recognized as reliable, and the written records maintained by the courier shall be prima facie evidence of delivery, or (iii) on delivery (or attempted delivery) by certified or registered mail, return receipt requested, postage prepaid, as of the date shown by the return receipt; in any case

addressed to such party as set forth below or as a party may designate by written notice given to the other party in accordance herewith.

If to SMG: SMG
201 E. Gregory St.
Pensacola, FL 32502
Attention: Cyndee Pennington, General Manager

If to Licensee: School Board of Santa Rosa County, FL
5086 Canal Street
Milton, FL 32570
Attention: Buddy Hinote

- (d) Non-Exclusive Use. SMG shall have the right, in its sole discretion, to use or permit the use of any portion of the Facility other than the Authorized Areas to any person, firm, or other entity regardless of the nature of the use of such other space.
- (e) Force Majeure. If the Facility is damaged from any cause whatsoever or if any other casualty or unforeseeable cause beyond the control of SMG, including, without limitation, acts of God, fires, floods, epidemics, quarantine restrictions, terrorist acts, strikes, failure of public utilities, or unusually severe weather, prevents occupancy and use, or either, as granted in this Agreement, SMG is hereby released by Licensee from any damage so caused thereby.

19. Concealed Weapons. The Licensee has the right to decide whether persons with a valid concealed weapons permit are allowed to carry firearms and ammunition into the Event. The Licensee hereby makes the following selection (please check one of the following and initial near the right margin.)

_____	I wish to prohibit persons from carrying firearms and ammunition into the arena during the event even if the person has a concealed weapons permit.	_____ Initial
_____	I wish to allow persons to carry firearms and ammunition into the arena during the event if the person has a concealed weapons permit.	_____ Initial

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

SMG

SCHOOL BOARD OF SANTA ROSA COUNTY, FL

By: _____

By: _____

Name: Cyndee Pennington

Name: _____

Title: General Manager

Title: _____

Attest: _____
Superintendent

EXHIBIT A TO USE LICENSE AGREEMENT

<u>Authorized Area</u>	<u>Day</u>	<u>Date</u>	<u>Time of Use</u>	<u>Purpose</u>
Arena Meeting Room A Parking Lots Dressing Rooms	Saturday	May 23, 2015	TBD	Move In Show Move Out

EXHIBIT B TO USE LICENSE AGREEMENT

1. Additional Reimbursable Service Expenses. At the request of Licensee, the following special facilities, equipment, materials, and extra services will be furnished by SMG for the Event:
SEE CONTRACT SUMMARY
-

2. Payment of License Fee, Merchandising Fee, and Broadcast Fee.

- (a) Fixed License Fee: The fixed License Fee set forth in Section 5(a) above shall be paid in accordance with the following schedule:

<u>Percentage Payable</u>	<u>Payment Due Date</u>
N/A	Upon signing this Use License Agreement
100%	Remaining balance of actual expense report within ten (10) days of receiving expense report.

- (b) Percentage Fee. The percentage Licensee Fee set forth in Section 5(a), ~~Merchandising Fee~~ set forth in Section 5(b), and ~~Broadcast Fee~~ set forth in Section 5(c) above shall be paid no later than ~~Day of Settlement~~ Thirty (30) days after the receipt of the Event Settlement.

CONTRACT SUMMARY

EVENT: SANTA ROSA COUNTY HIGH SCHOOL GRADUATIONS
 DATE(S): MAY 23, 2015
 PROMOTER: SCHOOL BOARD OF SANTA ROSA COUNTY, FL

Please note that this rental structure is based on the information known at this time about the above event. This structure is subject to change should unforeseen major changes take place with the presentation of the event.

1. **ARENA RENT:**

All rates will be charged according to the rate in effect at the time of the event, plus Seven and One Half Percent (7.5%) State Sales Tax. Rent is based on usage per day and includes, but not limited to the following:

Show	Date(s)	Day(s)	Rate per Day	Total
23-May	to 23-May	1	\$2,500.00	\$2,500.00

2. **PARKING LOT RENT:**

All rates will be charged according to the rate in effect at the time of the event, plus Seven and One Half Percent (7.5%) State Sales Tax. Rent is based on usage per day and includes, but not limited to the following:

Show	Date(s)	Day(s)	Rate per Day	Total
23-May	to 23-May	1	\$1,000.00	\$1,000.00

3. **MEETING ROOM RENT:**

All rates will be charged according to the rate in effect at the time of the event, plus Seven and One Half Percent (7.5%) State Sales Tax. Rent is based on usage per day and includes, but not limited to the following:

Room A	Date(s)	Day(s)	Rate per Day	Total
23-May	to 23-May	1	\$487.50	\$0.00

- There will be no Meeting Room Rent charge for the use of Meeting Room A.

4. **IN-HOUSE EQUIPMENT RENT:**

All rates will be charged according to the rate in effect at the time of the event, plus Seven and One Half Percent (7.5%) State Sales Tax. Rent is based on usage and includes, but not limited to the following:

Description	Number	Rate per Event	Total
Backdrop Curtain	1	\$250.00	
House Sound System	1	\$150.00	
Microphone	5	\$75.00	\$775.00

5. **ARENA CONVERSION:**

There will be a fee of One Thousand and Five Hundred Dollars (\$1,500.00). If a backdrop curtain is utilized, there will be an additional fee for rigging the curtain of One Thousand Four Hundred and Sixty dollars (\$1,460.00).

6. **MERCHANDISE:**

The Pensacola Bay Center reserves the right to approve any sale of merchandise at the venue for an event. The rights for any sale of merchandise at the Pensacola Bay Center for the event are subject to a merchandise fee of Five Hundred Dollars (\$500.00) per event day.

7. **CATERING:**

Outside food is not allowed in the venue or the surrounding property for distribution or consumption. Savor Pensacola, catering by SMG is the in-house catering company and if services are needed the catering contact can be reached at 850-432-0800 ext. 238.

8. **LABOR:**

All rates will be charged according to the rate in effect at the time of the event. All labor will incur an additional Seven and One Half Percent (7.5%) State Sales Tax. Stagehand Labor will be charged over time, if utilized before 8:00AM, after 12:00AM, or a continuous period of time lasting longer than Eight (8) hours. All Labor utilized requires at least a Four (4) hour minimum and rates are based per hour. Labor will be based on needs of the promoter, the event, and the venue.

9. **RESTRICTED ITEMS:**

The following items are restricted from the venue:

- i. Glass Items
- ii. Wrapped Gifts
- iii. Helium Balloons

If Helium Balloons are found in the building and released into the building for any reason, there will be a Five Hundred Dollar (\$500.00) retrieval fee per balloon.

10. **CONFETTI OR SILLY STRING:**

If the use of confetti or silly string is found in the building for any reason, there will be a clean up fee of One Hundred Dollars (\$100.00) per school.

11. **INSURANCE:**

See User Agreement for required coverage. An Insurance Certificate must be submitted to or on file with the Pensacola Bay Center prior to the event date with the following four (4) entities listed as Additional Insureds:

- i. Pensacola Bay Center
- ii. SMG
- iii. Escambia County, Florida
- iv. Escambia County Board of County Commissioners

12. **ASCAP/BMI:**

See User Agreement for requirements under item 13 (I). Evidence of compliance for reporting and payment must be submitted to or on file with the Pensacola Bay Center prior to the event date

13. **TAX EXEMPT CERTIFICATION:**

If applicable, the Seven and One Half Percent (7.5%) State Sales Tax will be waived, provided that a current copy of a Consumer's Certificate of Exemption (form DR-14) is submitted to or on file with the Pensacola Bay Center prior to the event date. In order to acquire a DR-14, the promoter must complete a DR-5 application with the Florida Department of Revenue and can be reached at 850-717-6626 or <http://dor.myflorida.com/dor/forms/current/dr5.pdf>. The process takes up to Six (6) weeks. If for any reason the approval is delayed and a DR-14 is not submitted to the Pensacola Bay Center prior to the event, all applicable taxes will be charged at settlement and the consumer can file a DR26s directly with the Florida Department of Revenue for a refund.

AGREED TO BY:

For: School Board of Santa Rosa County, FL

DATE

Attest: Superintendent

DATE

For: SMG
Name: Cyndee Pennington
Title: General Manager

DATE



Pensacola Bay Center Event Estimate

Event: Santa Rosa County High School Graduations
of Shows: 3
Event Day: Saturday
Event Date: May 23, 2015

Promoter: School Board of Santa Rosa County FL

EVENT EXPENSES

Arena Rent	2,500.00
Parking Rent	1,000.00
Meeting Room Rent	0.00
Equipment Rent	775.00
Conversion	2,960.00
House Labor	5,131.00
Medical Labor	1,215.50
Security Labor	1,212.06
Traffic Labor	2,737.50
Stagehand Labor	309.00
Catering	0.00
TOTAL TAXABLE EXPENSES	<u>17,840.06</u>

State Sales Tax (7.50%) 0.00 1

TOTAL ESTIMATE **17,840.06**

EXPENSE PER SCHOOL **5,946.69**

1 - Tax Exempt

Based on the following:

1 Day, 3 Grads per Day

240 West Stage Arena Set, Stage with ADA Ramp, 500 Floor Seats

All Gates open (Gate A, 1, 2, 3, 4)

Day 1

Doors - 9:30a

Grad 1 - 11:00a - 12:30p

Doors - 1:00p

Grad 2 - 2:30p - 4:00p

Doors - 4:30p

Grad 3 - 6:00p - 7:30p