

**MARGATE CITY SCHOOL DISTRICT
DR. DOMINICK A. POTENA PERFORMING ARTS CENTER**

FACILITY LICENSE AGREEMENT

THIS Facility License Agreement is dated and entered into as of the _____ day of _____
("Effective Date") by and between the Margate Board of Education ("Licensor") and _____
_____ ("Licensee").

LICENSEE CONTACT PERSON:

Position/Title with Licensee:

Mailing Address:

City: _____ State: _____ Zip: _____

Telephone No: _____ Cell Phone: _____

Fax No: _____ Email: _____

LICENSOR CONTACT PERSON:

Position/Title with Licensor:

Mailing Address:

City: _____ State: _____ Zip: _____

Telephone No: _____ Cell Phone: _____

Fax No: _____ Email: _____

BACKGROUND

Licensee seeks to acquire the right to enter upon and use Licensor's premises and facilities known as the Dr. Dominick A. Potena Performing Arts Center (the "Premises") located at 7804 Amherst Ave., Margate, New Jersey 08402 (the "Property") from time to time for the purposes specified in Paragraph 1, below.

NOW THEREFORE, in consideration of mutual covenants entered into between the parties and other good and valuable consideration the parties agree as follows

1. LICENSED PREMISES AND FACILITIES

a. Licensor hereby grants to Licensee during the License Term set forth in Section 2, below, a non-exclusive license (the "License") (i) to enter upon the Property, (ii) to enter upon and use the Premises, which shall include the theater (the "Theater"), ticket booth, lobby/reception area, bathrooms and backstage rehearsal rooms located thereon, and (iii) of ingress and egress to and from the Property and Premises, all from time to time, subject to the terms and conditions herein, all for the purpose of presenting theatre productions and other live entertainment performances, and conducting all rehearsals attendant thereto ("Permitted Use").

b. The dates and times of Licensee's use of the Premises for performances shall be as mutually agreed upon by the parties from time to time during the License Term. The dates and times of rehearsals shall be scheduled as reasonably requested by the Licensee during the License Term, subject however to (i) use by other licensees which is scheduled prior to Licensee's request and (ii) the prior written consent of the Licensor which consent shall not be unreasonably withheld, delayed or conditioned. The schedule for both performances and rehearsals shall be set forth on Exhibit A, and said Exhibit shall be amended from time to time as necessary to reflect updated agreed-upon scheduled performances.

c. Licensor agrees that upon Licensee's reasonable request it shall provide from time to time for use in connection with the Permitted Use such equipment, consumables, technical personnel support, Custodial/Black Seal Support, the lobby/reception area and other space, amenities and facilities which Licensor has available for hire ("Additional Facilities"). The Additional Facilities to be provided hereunder shall be set forth on Exhibit B, and said Exhibit shall be amended from time to time as necessary to reflect updated agreed-upon provision of Additional Facilities

d. Licensee acknowledges and agrees that all equipment, consumables, technical support and Custodial/Black Seal Support included in the Additional Facilities provided hereunder shall be operated and/or dispensed only by Licensor's designated approved personnel, and Licensee acknowledges and agrees that operation or dispensing of Additional Facilities by anyone other than Licensor's designated approved personnel is strictly prohibited. Licensor's designated personnel is set forth on Exhibit C.

e. Licensee acknowledges and agrees that any other use of the Premises except as expressly provided herein, or any access to or use of any other areas of the Property (except as necessary for ingress and egress to the Premises) is strictly prohibited.

f. The License granted hereunder is subject to all existing covenants, conditions, reservations, contracts, leases, licenses, easements, encumbrances, restrictions and rights of way with respect to the Premises, whether or not of record.

2. TERM; TERMINATION

a. This Agreement shall commence on the Effective Date and shall expire on _____, 20__, 11:59 PM, subject, however, to Licensor's right to earlier revoke the License granted hereunder and terminate this Agreement as herein provided.

b. In the event that Licensee, any person acting on its behalf, or any person who is on the Property in connection with Licensee's use of the Premises, including its employees, representatives, agents, volunteers, attendees or invitees ("Licensee Users") (i)

uses the Premises for any purpose other than the Permitted Purpose (ii) uses or accesses any part of the Property other than the Premises, (iii) uses any Additional Facility other than the Additional Facilities listed on Exhibit B, (iv) operates or dispenses Additional Facilities without prior approval of Licensor, (v) fails to pay any amounts due under this Agreement as and when due, (vi) fails have a designated representative present as required under this Agreement, (vii) provides false or misleading information to Licensor in connection with this Agreement, or (viii) fails to comply with any other material term or provision of this Agreement, then in each such event Licensor may revoke the License granted herein and terminate this Agreement immediately upon written notice to Licensee.

c. At the expiration or earlier termination of this Agreement, and/or revocation of the License granted hereunder, all rights of Licensee shall terminate and Licensee shall immediately cease use of the Premises and surrender same to Licensor, along with all Additional Facilities.

3. LICENSE FEES; PAYMENT:

a. As consideration for the License granted hereunder and for use and or consumption of Additional Facilities, Licensee shall pay to Licensor a License Fee computed at such rates for such services and facilities as set forth on Exhibit B. Licensee has determined in good faith, and Licensor acknowledges, that Licensee's estimated use of the Premises and Additional Facilities, and the estimated License Fee is as set forth on Exhibit D.

b. License Fees shall be payable as follows:

i. One half ($\frac{1}{2}$) of the Estimated Total Fees set forth on Exhibit D shall be paid upon execution of this Agreement.

ii. Remaining balance of the Estimated Total Fees for Contract set forth on Exhibit D shall be paid at least five (5) business days prior to Licensee's first performance date set forth on Exhibit A. The payments made under sections 3.b.i above and this section 3.b.ii shall be collectively referred to as the "Fee Deposit".

iii. Licensor shall periodically submit invoices to Licensee setting forth, in reasonable detail, the services and facilities actually provided and used hereunder, and the associated License Fees charged therefore, and payment thereon shall be due within seven (7) business days after the date of each invoice.

iv. Payment of each invoice shall be made from the Fee Deposit, as and when due, and shall be so applied by the Licensor until the Fee Deposit is depleted.

v. Once all of the Fee Deposit has been so depleted, Licensee shall thereafter pay, as and when due, the License Fee balance reflected on each invoice issued by Licensor, it being the intent of the Parties that Licensee shall be liable to pay License Fees based on the actual provision and usage of the Premises and Additional Facilities, and not based on the estimates provided on Exhibit D.

c. Notwithstanding the foregoing, Licensee shall pay Licensor- designated sound and lighting engineers directly. Licensee shall indemnify and hold Licensor harmless from and against any and all loss, cost, damage or expense (including reasonable attorneys fees) suffered or incurred by Licensor in connection with any claim, demand, action, suit or proceeding by a Licensor-designated sound or lighting engineer alleging that Licensee has failed to pay such engineer as and when due and owing.

4. SECURITY DEPOSIT:

a. In addition to the License Fees payable pursuant to Section 3, above the Licensee shall pay to the Licensor upon execution of this Agreement, the sum of _____ Hundred Dollars (\$_____.00) to be held by Licensor as security for the full and faithful performance and observance by Licensee of the provisions of this License Agreement, and not as a deposit or advance of License Fees ("Security Deposit").

b. Licensee shall not be entitled to any interest whatever on the Security Deposit, and Licensor shall have the right to commingle the Security Deposit with its other funds.

c. Licensor may use the whole or any part of the Security Deposit toward the payment of any amount as to which Licensee is in default hereunder or to compensate Licensor for any loss or damage it may suffer by reason of Licensee's use of the Premises or default under this Agreement.

d. The balance of the Security Deposit, if any, remaining after all payments are made under section 4.c., above, shall be returned to Licensee within thirty (30) days after the later of (i) expiration or early termination of this Agreement or (ii) the surrender of the Premises to Licensor.

e. In the event Licensee cancels any performance later than thirty (30) days prior to the scheduled performance date set forth on Exhibit A, Licensee shall be in breach of this Agreement. In such event, at Licensor's option, and in addition to all other remedies available to Licensor at law or equity, the Security Deposit shall be retained by Licensor and forfeited by Licensee.

5. REQUIRED PERSONNEL: Licensee must have a designated representative, with the Authority to act on behalf of the Licensee, to be present at all times indicated on the Event Schedule Form. Licensee hereby designates the following person(s) as representatives(s) with the authority to act on behalf of Licensee:

A. Name: _____

B. Phone: _____

Licensee acknowledges and agrees that (i) it shall be required to provide, at its own cost and expense, all necessary ticket staff, ushers, stage manager, and crew, and (ii) Licensor will provide, at Licensee's cost and expense, an on-site supervisor to be present at all performances.

6. LIMITATION OF LIABILITY; INDEMNIFICATION:

a. Licensor shall not be liable for injury or damage to person or property sustained by Licensee, its employees, agents or representatives, or any other person, for any reason. Licensee hereby assumes all risk of injury or damage to person or property for itself and any other person who enters or is upon the Property or Premises in connection with Licensee's use thereof, and Licensee hereby releases Licensor and its directors, trustees, officers, agents and employees from every claim, liability, or demand of any kind on account of any such injury or damage.

b. In addition to the indemnification under section 3.c., above, Licensee shall indemnify and hold Licensor harmless from and against any and all loss, cost, damage or

expense (including reasonable attorneys fees) (collectively "Loss") suffered or incurred by Licensor in connection with any claim, demand, action, suit or proceeding (collectively "Claim") which arises out of or is in connection with Licensor's use of the Premises and Property, except and to the extent that such Loss arises out of or in connection with the gross negligence or willful misconduct of Licensor. The obligations of indemnity shall survive expiration or termination of this Agreement.

7. ALTERATIONS; DAMAGE TO PROPERTY:

a. Licensee shall not make any alterations, additions, or improvements to the Premises or the Property.

b. If Licensee or anyone acting for or on Licensee's behalf, including any independent contractors or other third parties providing goods or services to Licensee, causes any damage to the Property or the Premises in connection with the exercise of this License, Licensee shall be liable, at its own cost and expense, to repair and restore the Premises and Property to their condition immediately prior to Licensee's use thereof, normal wear and tear excepted. Licensee shall immediately notify Licensor of any damage to the Premises or Property, and shall use its best efforts complete the repairs and restoration as promptly as commercially reasonable. At Licensor's option upon written notice to Licensee within three (3) business days of receiving notice of damage, Licensor may repair and restore or cause such repairs and restoration to be completed, and upon demand from Licensor, Licensee shall immediately reimburse Licensor therefore.

8. RULES AND REGULATIONS: The Licensee undertakes to observe all rules and directions which are imposed by the Licensor generally or specifically in respect to the use of the Premises and entry onto the Property.

9. SAFEGUARDS: Licensee agrees to provide at its own expense the necessary safeguards to protect the Licensee's property when left overnight at the Premises.

10. USE OF PROPERTY: Licensee agrees that the Licensor cannot guarantee an uninterrupted supply of electricity, water, heat, air conditioning or other utility and that Licensor shall not be responsible or liable to Licensee for any interruption in utility service, nor shall such interruption affect the continuation or validity of this Agreement.

11. INSURANCE: The Licensee shall obtain and maintain during the term hereof, at its sole cost and expense,

a. General Liability Insurance in a combined amount of not less than ONE (\$1,000,000) MILLION DOLLARS for bodily injury or death and property damage in respect to activities related to Licensee's use of the Premises or Property.

b. Special Form policy or policies of property insurance, including sprinkler leakage coverage, covering the full replacement value of all of Licensee's property located on or within the Property and Premises.

c. Licensee relieves and hereby waives any rights of recovery against Licensor for injury or loss on account of hazards and risks covered by the insurance which Licensee is required to carry hereunder to the extent of the insurance proceeds Licensee would have received under said insurance if Licensee had maintained all insurance it is required to maintain hereunder.

d. All insurance required hereunder shall be on an occurrence basis, with no aggregate limit. All policies must include the Licensor, and the City of Margate as an Additional Named Insured.

e. The Licensee shall provide the Licensor with proof of the insurance requested in of this Agreement, in the form of a Certificate of Insurance from the Insurance Company providing the coverage. The Certificate of Insurance must be submitted to Licensor at least one month prior to the date use commences in accordance with Section 2 of this Agreement. Said policies shall not be cancelable or reduced without at least thirty (30) days prior written notice to Licensor.

f. The coverage required herein shall not limit the liability of Licensee under this Agreement.

g. Upon prior written notice to Licensee, Licensor may, from time to time, increase the required limits of coverage set forth above to such amounts as Licensor may deem commercially reasonable, in which case Licensee shall obtain such increased coverage within thirty (30) days after receipt of said notice from Licensor.

12. CITY OF MARGATE: The Licensee acknowledges and agrees that the City of Margate is not a party to this Agreement and Licensee shall defend, indemnify and hold harmless the City of Margate from and any and all claims of damages arising out of or in connection with the use of the facilities and equipment under this Agreement.

13. EVENT PROMOTION:

a. Licensee acknowledges and agrees that in connection with the use of the facilities under this Agreement, neither the Margate City Board of Education nor the City of Margate, or any of their respective departments, endorse, sponsor, or support the event(s) for which the Licensee is using the facilities, and the Licensee may not advertise, promote, or suggest in any manner whatsoever that the Licensee's event is authorized, endorsed, sponsored, benefited, or supported by the Licensor, or any of its respective departments, or of the City of Margate.

b. Notwithstanding the foregoing, in all of Licensee's activities and material advertising or promoting its performances to be held at the Premises, Licensee shall prominently refer to the Premises as the venue of its performances, and such reference shall be as follows "The Margate City School District's Performing Arts Center located at 7804 Amherst Ave., Margate, New Jersey."

14. COMPLIANCE WITH LAWS; PERMITS AND REGULATIONS:

a. Licensee shall comply with all laws, statutes, rules, ordinances and regulations applicable to this Agreement or Licensee's activities conducted under this Agreement. Without limiting the foregoing, Licensee shall abide by room capacity limits established by the Fire Department of the City of Margate City.

b. Licensee will not carry on or permit to be carried on any activities which are illegal, immoral or which create a nuisance or an unsafe or unhealthy condition in and about the Property and the Premises.

c. Licensee shall be responsible for securing any approvals, permits or authorizations required by any federal, state or local governmental bodies or agencies in connection with this Agreement or Licensee's use of the Property or Premises.

15. **COVENANT NOT TO INCREASE FIRE HAZARD:** The Licensee agrees that Licensee will not carry on upon the said Premises or permit to be carried on any activity which may increase the fire hazard above the hazard incidental to the ordinary conduct of the activity specified herein, or which may increase the cost of premiums payable for the insurance of the Premises against loss by fire, or which may cause any policy of insurance on said Premises to be void or voidable.

16. **NO ASSIGNMENT.** The Licensee shall not assign this lease agreement or underlet the Premises or any part thereof without the Licensor's consent in writing.

17. **BINDING AGREEMENT:** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

18. **INSISTENCE ON COVENANTS:** The failure of the Licensor to insist upon strict performance of any of the terms of this Agreement shall not be construed as a waiver or relinquishment for the future of any such terms and conditions but the same shall be and remain in full force and effect.

19. **ARBITRATION OF DISPUTES-ADJUDICATED:** In the event of dispute arising between the Licensor and Licensee concerning the terms of this Agreement, such dispute, shall be submitted to arbitration by two arbitrators appointed by the American Arbitration Association. The finding of said arbitrators shall be final and conclusive on any questions or matters so submitted to them. In case an arbitration is not otherwise arranged, either party desiring such submission to arbitration shall notify the other party in writing within 30 days from the termination of this agreement of the matter which it desires to submit to arbitration.

Licensor and Licensee waive any rights that either may have to submit the dispute for judicial determination by the Courts of the State of New Jersey.

20. **LIENS, ENCUMBRANCES PROHIBITED:** Licensee shall not cause or permit any liens to be placed against the Property or the Premises as a result of Licensee's exercise of rights under this Lease. In the event of the filing of any such lien, Licensee shall promptly, and in any event, within thirty (30) days, cause such liens to be removed.

21. **GOVERNING LAW:** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of New Jersey.

22. **CONCESSION ITEMS:** Licensee shall not sell any food, snacks or beverages ("Concession Items") at the Premises without the prior written approval of the District Superintendent and the Director of the Dominick A. Potena Performing Arts Center (the "Director"), and shall only sell Concession Items from areas of the Premises designated by Licensor. Concession Items shall not be permitted in the Theater. Licensee shall notify the audience that (i) only Concession Items sold by Licensee shall be permitted in the Premises and (ii) no Concession Items are permitted in the Theater. For each performance, Licensee shall designate an individual or individuals from its organization who shall, prior to each performance and during any intermission(s), monitor the entrances to the Premises and the Theater, to ensure that the above prohibitions are strictly complied with.

23. **PERFORMANCE LIMITATIONS:** Silly string, confetti and other similar items are not permitted in the Premises. In the event any such items are a necessary part of Licensee's theatrical performance, then Licensee must obtain prior written approval from the Director to use such item during the production, and shall promptly clean-up and properly discard all such items after use.

24. COMPLETE AGREEMENT: This Agreement constitutes the final, complete, and exclusive statement of the terms of this agreement between the parties. This Agreement may be altered, amended, or modified in whole or in part at any time only if in writing signed by all parties hereto.

IN WITNESS WHEREOF, each party hereto has caused this Facility License Agreement to be duly executed by its authorized representative as of the day and year first above written.

Margate City Board of Education

Witness

BY: _____
Name:
Title:

Licensee

Witness

BY: _____
Name:
Title

EXHIBIT A
SCHEDULE OF PERFORMANCES AND REHEARSALS

PERFORMANCE DATES:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

PERFORMANCE TIMES:

- _____
- _____
- _____
- _____
- _____
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- _____

REHEARSAL DATES:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

REHEARSAL TIMES:

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All dates must be coordinated with Director of Facilities.

The above schedule is agreed to by the respective parties.

Licensor's Authorized Representative's Initials: _____ Date: _____

Licensee's Authorized Representative's Initials: _____ Date: _____

EXHIBIT B
PREMISES and ADDITIONAL FACILITIES LICENSED
and
ASSOCIATED LICENSE FEES

SUMMER (Including Memorial Day Weekend through Labor Day Weekend)

PER DATE USED (up to 8 hrs/day):	\$300.00
Lobby/concession area	\$50/performance
Large gym at Tighe	\$200/performance
Small gym at Tighe	\$150/performance
Music room at Tighe	\$75/performance
Black Seal Custodian:	\$50.00 per hour (or prevailing wage, if greater) with a minimum charge for four (4) hours each time used (charges applicable to all rehearsal time and performance time)
Sound Engineer:	\$35.00 per hour (different rates may be negotiated directly with engineer)*
Lighting Engineer:	\$35.00 per hour (different rates may be negotiated directly with engineer)*
Consumables (e.g. batteries):	Prices to be established by Licensor on items as requested/used
On-site Supervisor:	\$30.00 per hour with a minimum charge for four (4) hours each time used (charges applicable to performance time only)

OTHER TIMES OF THE YEAR

PER EVENT (up to 8 hrs/day)	\$100.00
Lobby/concession area	\$50/performance
Large gym at Tighe	\$100/performance
Small gym at Tighe	\$75/performance
Music room at Tighe	\$50/performance
Black Seal Custodian:	\$50.00 per hour (or prevailing wage, if greater) with a minimum charge for four (4) hours each time used (charges applicable to all rehearsal time and performance time)
Sound Engineer:	\$35.00 per hour (different rates may be negotiated directly with engineer)*
Lighting Engineer:	\$35.00 per hour (different rates may be negotiated directly with engineer)*
Consumables (e.g. batteries):	Prices to be established by Licensor on items as requested/used
On-site Supervisor:	\$30.00 per hour with a minimum charge for four (4) hours each time used (charges applicable to performance time only)

EXHIBIT C
LICENSOR DESIGNATED PERSONNEL

Margate Board of Education Approved Sound and Lighting Technicians

1. Dennis Hansen Contact: 609.892.8702 Sound
2. James Erickson Contact: 508-737-0345 Lighting