

FACILITIES USE AGREEMENT

ELYRIA HIGH SCHOOL PERFORMING ARTS CENTER

This Agreement is made between the Elyria City School District Board of Education, c/o Elyria High School Performing Arts Center, 601 Middle Avenue, Elyria, Ohio 44035 ("ECSD") and _____, a corporation licensed in the State of Ohio, whose address is _____, Ohio, together with its officers, directors, trustees, members, employees, insurers, successors and assigns (all of which are collectively referred to as "User").

RECITALS

- A. ECSD owns and operates the Elyria High School Performing Arts Center, consisting of approximately 3,200 square feet of space, at 601 Middle Avenue, Elyria, Ohio 44035 ("PAC") and in connection therewith, may permit outside users to use PAC; and
- B. User desires to use the PAC for the purposes set forth herein; and
- C. ECSD has made PAC available for such purposes as a service to the community incident to its other operations.

TERMS

In consideration of the mutual promises and agreements contained herein, and for other good and valuable consideration, the parties agree as follows:

1. For the term below (and only commencing upon payment of the required fees below and other compliance with all terms, conditions, covenants, provisions and limitations set forth herein), ECSD grants permission and license for the use of the PAC. User shall not use any other area or building space beyond the PAC. User shall enter the PAC using two doors designated for such use next to the overhead door on the west side of the building and the lobby doors. User shall utilize only the parking spaces specifically identified for PAC use on the south and west sides of the building.
2. User shall have use of the following equipment and furnishings located in the PAC: stage, seating area, lobby, box office, coat room, concession stand, basic lighting, basic sound, dressing rooms and warm-up rooms.

User shall not remove any equipment or furnishings from the PAC and shall repair or replace any and all equipment or furnishings damaged, destroyed, injured or otherwise altered as a result of User's use. User shall supply all additional furnishings and equipment required for its use of the PAC. All equipment and furnishings supplied

by User shall conform to all federal, state and local laws, regulations, ordinances and standards with respect to use and occupancy of the PAC.

3. User will conform to and comply with all applicable federal, state, and local laws, ordinances, regulations and codes in its use of the PAC, and will not use or permit the PAC to be used in any manner in contravention of any federal, state or local law, ordinance, rule, regulation, code or standard, including but not limited to fire, health and safety codes and requirements. User shall forthwith and immediately obey the instructions and orders of any federal, state, or local authorities or agencies charged with the enforcement of any laws, regulations, ordinances, or codes, including but not limited to fire, safety and health codes or ordinances. Any penalty and/or fine assessed against User or ECSD for any violation as a result of the use of PAC by User will be paid by User. User will comply with all rules, policies and procedures of ECSD including but not limited to facilities use policies. A copy of the specific facilities use policy for the PAC is attached hereto as Exhibit A.

4. User has examined the PAC prior to signing this Agreement, knows the condition thereof, and acknowledges that it has received the PAC in good order and condition, and that no representation or warranty as to the condition or repair of the PAC or any equipment and furnishings have been made by ECSD. Upon User's completion of the use of the PAC, User shall leave the PAC, equipment and furnishings provided pursuant to this Agreement in as good order and condition as when the same were received by User.

5. User will not make, suffer or permit any alterations, additions or improvements to be made in or about the PAC without first obtaining the written consent of ECSD. Any alterations, additions or improvements shall be done at User's own expense, and User shall ensure that no liens of mechanics, materialmen, laborers, architects, artisans, contractors, subcontractors or others of any kind shall be created against or imposed upon the PAC or any part thereof.

6. Nothing contained in this Agreement shall be construed to create any form of tenancy in User, or the relationship of landlord and tenant between ECSD and User.

7. User shall pay the sum of \$_____ to ECSD no later than ten (10) days in advance of the intended use and term stated below unless otherwise agreed in writing by ECSD. The failure to make the payment as called for herein shall result in the immediate termination of this Agreement, and the immediate termination of any license or right to use the PAC in accordance herewith.

8. Purpose. The PAC shall be used solely for the following purposes and no other by User: _____

_____.

Any use by User not permitted herein shall result in the immediate termination of User's right to use and license for the PAC.

9. User may not assign or encumber any rights pursuant to this Agreement.

10. User's right to use and license for the PAC shall commence _____, 20____, at _____m. and conclude on _____, 20____, at _____m.

11. User will not use, permit to be used, or permit the presence of any alcohol, alcoholic beverage, controlled substance, tobacco, illegal drug or narcotic at the PAC or in any other area of Elyria High School, the exterior areas of Elyria High School or parking lots of Elyria High School.

12. Any personal property, equipment, furnishings or materials brought into PAC or any ECSD facilities by User shall be at User's sole risk and ECSD shall not be liable for any theft, loss or damage to said items.

13. User shall indemnify and hold ECSD, its administrators, board members, employees, insurers, agents, successors and assigns, harmless from and against any loss, damage, cost, fine, penalty, judgment, expense or charge, including attorney's fees, incurred, paid, demanded or charged against ECSD in connection with any claims and liabilities for injury to person or property, including loss of life, property damage, theft, or otherwise, sustained by User, its officers, trustees, members, employees, agents, guests, invitees, or persons entering onto the premises of ECSD or PAC or in any other manner sustained as a result of or pursuant to this Agreement or User's use of PAC or in any other way connected with this Agreement. User's agreement to indemnify and hold harmless shall include injury to person or property, loss, and death resulting from crime or theft occurring during the course of the use of the PAC or entry onto the property of ECSD pursuant to or in conjunction with this Agreement.

14. User will carry and maintain in full force and effect during the term of this Agreement and any extension or renewal thereof, at User's expense, public liability insurance covering bodily injury, death and property damage liability, in a form and with an insurance company acceptable to ECSD, with limits coverage of not less than \$1 million for each person and \$2 million in the aggregate for bodily injury or death liability, and \$500,000.00 individually or in the aggregate for property damage liability, for the benefit of both ECSD and User against all liability claims arising from User's use of PAC or entry onto ECSD property. ECSD shall be named as an additional insured on such policy of insurance, and a copy and certificate thereof shall be delivered to ECSD no less than ten (10) days prior to the commencement of the term of this Agreement. Such insurance shall be primary payer insurance and not contributory to any other insurance available to ECSD with respect to claims arising out of this Agreement. Insurance maintained by ECSD shall be considered excess insurance only as to the responsibilities of User pursuant to this Agreement.

15. To the extent that any fee, charge, cost or payment received by User generates an obligation to pay federal, state or local tax of any kind, User shall pay same at the time it shall become due and payable.

16. Nothing herein shall permit User to maintain possession, use or control of PAC beyond the term for any reason and User shall not be considered to be a hold-over tenant for any reason.

17. User shall not erect or maintain any sign, lettering, poster, banner or other printed material on or about PAC or ECSD property without the prior written approval of ECSD as to location, type, size, style, design, color, appearance and message. Upon conclusion of the term of this Agreement, User shall remove all such signs, banners, posters, materials, and writings and repair any damage caused thereby at User's expense.

18. User agrees to comply with all applicable federal, state, local and ECSD rules, regulations, laws, policies, executive orders, and procedures concerning discrimination in any manner on the basis of race, sex, creed, age, color, national origin, religious belief, disability, status as a disabled veteran, or as a veteran of the Vietnam era, and to comply with all non-discriminatory laws and policies ECSD promulgates; provided, however, that ECSD expressly agrees that it shall be responsible for all use and modification of PAC to comply with the Americans with Disabilities Act.

19. ECSD reserves the right to terminate this Agreement for any reason, including due to unforeseen circumstances which make it necessary to close PAC, Elyria High School or the property on which they are located. In the event of such termination, a proportionate part of the fee specified in this Agreement shall be refunded.

20. Nothing contained herein shall limit or restrict ECSD's ability to enter PAC or any portion thereof at any time for any reason.

21. In the event any key, access code or instrument providing access to a portion of PAC or ECSD property is provided to User, same shall be returned upon termination of this Agreement.

22. This Agreement shall immediately terminate upon User making an assignment for benefit of creditors or being adjudged as bankrupt, either by voluntary or involuntary proceedings, or if a receiver should be appointed by any court of competent jurisdiction for User for insolvency. In no event shall this Agreement be deemed to be an asset of User for any purpose, including bankruptcy, appointment of a receiver, or assignment for the benefit of creditors.

23. In the event of a failure to make payment of any fee, provide any certificate or information, or otherwise perform any portion of this Agreement by User, ECSD may, at the option of ECSD, immediately terminate this Agreement and all of

User's rights hereunder upon written notice to User. In the event such termination results in a claim for damages, User agrees that such damages shall be limited to a return of User's deposit as liquidated damages. The parties agree that any damages for termination by ECSD would be difficult to ascertain or establish, and such liquidated damage amount represents the reasonable amount of damages able to be ascertained by discussion and agreement of the parties.

24. The failure of either party to exercise its rights under this Agreement for a breach hereof shall not be deemed to be a waiver of such rights, nor shall the same be deemed to be a waiver of any subsequent breach, either of the same provision or otherwise. Any and all remedies provided to ECSD for the enforcement of this Agreement are cumulative and not exclusive, and ECSD shall be entitled to pursue either the rights enumerated in this Agreement or remedies authorized by law, or both.

25. This Agreement and its attachments, if any, constitute the entire agreement between the parties with respect to the subject matter hereof and may be amended only by a writing signed by both parties.

26. Any notice to either party hereunder must be in a writing signed by the party giving it and shall be delivered either personally or by registered or certified U.S. Mail to the party at the address listed below such party's signature or such other address as may be designated by the party in writing hereafter.

27. This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of Ohio. The parties stipulate and agreed to the jurisdiction and venue of the courts of Lorain County, Ohio for the adjudication of any claims, demands, actions or suits arising between the parties, whether from this Agreement or otherwise from User's use of PAC or access to ECSD property.

28. User access to PAC and ECSD property shall be at such times and upon such hours as determined by ECSD. Time, place and method of deliveries shall be coordinated by User with ECSD staff.

29. User agrees to utilize employees, independent contractors and volunteers who are courteous to the public and whose conduct is at all times above reproach. If the Director of Theatre Operations of PAC shall notify User that the conduct of any of User's employees, independent contractors or volunteers is unsatisfactory, User shall immediately remove such objectionable individual and replace them with satisfactory ones.

30. User may not sell or distribute souvenirs, materials or items of merchandise without the express written approval of the Director of Theatre Operations of ECSD. If the Director of Theatre Operations of ECSD disapproves any of such items, User will immediately withdraw them from PAC and ECSD property.

IN WITNESS WHEREOF, the parties have signed duplicate originals of this Agreement on the dates written below their respective names. The individual signing on behalf of User agrees to all the foregoing on behalf of himself/herself personally, and in his/her capacity as an officer or authorized signer of User, having full legal authority to act on behalf of User. Upon request by ECSD, the individual signing on behalf of User will provide evidence of such authority satisfactory to ECSD.

USER: _____
(Full organization title including State of incorporation)

By: _____
(Signature of Authorized Signer)

Its: _____
(Title of Authorized Signer)

Print authorized signer name

Date: _____

Address: _____

(Post Office box not acceptable as address)

ELYRIA CITY SCHOOL DISTRICT BOARD OF
EDUCATION

By: _____
Joy Clickenger, Treasurer
42101 Griswold Rd.
Elyria, Ohio 44035