



ONEIDA COUNTY BOARD OF LEGISLATORS

ONEIDA COUNTY OFFICE BUILDING ♦ 800 PARK AVENUE ♦ UTICA, N.Y. 13501-2977

Gerald J. Fiorini
Chairman
(315) 798-5900

Mikale Billard
Clerk
(315) 798-5404

George Joseph
Majority Leader

Philip M. Sacco
Minority Leader

ADDITIONAL COMMUNICATIONS FOR DISTRIBUTION
APRIL 12,, 2017

<u>DOCKET NO.</u>	<u>COMMITTEE</u>	<u>PAGES</u>
2017-117.2 . . .	Ways & Means	2-13



ONEIDA COUNTY DEPARTMENT OF LAW

Oneida County Office Building
800 Park Avenue ♦ Utica, New York 13501-2975
(315) 798-5910 ♦ Fax (315) 798-5603

ANTHONY J. PICENTE JR.
COUNTY EXECUTIVE

PETER M. RAYHILL
COUNTY ATTORNEY

April 12, 2017

The Honorable Anthony J. Picente, Jr.
Oneida County Executive
Oneida County Office Building
800 Park Avenue, 10th Floor
Utica, New York 13501

FN 20 17-117.2

WAYS & MEANS

Re: Agreements of Lease
County of Oneida & Upper Mohawk Valley Memorial Auditorium Authority

Dear County Executive Picente:

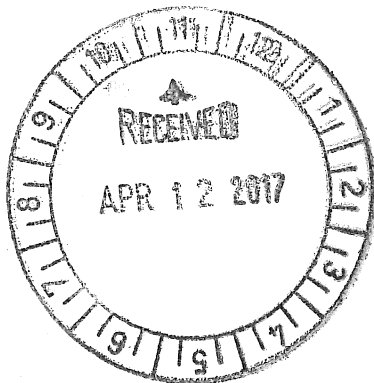
Please find enclosed two leases, one from the County of Oneida to the Upper Mohawk Valley Memorial Auditorium Authority and the other from the Upper Mohawk Valley Memorial Auditorium Authority to the County of Oneida.

Should the enclosed meet with your approval, I respectfully request that you forward the same to the Board of Legislators for action at their next meeting.

Sincerely,

Peter M. Rayhill, Esq.

Enc.



Reviewed and Approved for submittal to the
Oneida County Board of Legislators by

Anthony J. Picente, Jr.
County Executive
Date 4/12/17

2.

AGREEMENT OF LEASE

Agreement of lease (this "Lease") made as of the [#] day of [month], 2017, between the County of Oneida ("Landlord") ("County"), a New York municipal Corporation, having its principal office located at 800 Park Avenue, Utica, New York 13501, and the Upper Mohawk Valley Memorial Auditorium Authority ("Lessee") (the "Authority"), a public benefit corporation created pursuant to the laws of the state of New York, having its principal office located at 400 Oriskany Street West, Utica, NY 13502.

WHEREAS, in 2001, the Authority entered into a Ground Lease with Utica College, granting Utica College the right to possess a 6000 ft.² parcel of the Authority's property for the construction of a locker room facility. The term of the Ground Lease was for 20 years commencing on June 1, 2001 and ending on May 31, 2021 (the "Ground Lease"), and

WHEREAS, the Authority entered into a Lease Agreement with Utica College for use of the Utica Memorial Auditorium for men's and women's varsity collegiate ice hockey (the "Utica College Lease"), and

WHEREAS, on June 11, 2013, the Authority entered into a Lease Agreement with Mohawk Valley Garden, Inc., for use of the Utica Memorial Auditorium to operate and American Hockey League franchise out of the Utica Memorial Auditorium (the "Comets Lease"), and

WHEREAS, on June 11, 2013, the Canucks AHL Limited Partnership ("CALP") entered into an AHL Franchise Operating Agreement with Mohawk Valley Garden Corporation (the "Franchise Agreement"), and

WHEREAS, on June 12, 2013, the Authority entered into an agreement with CALP pertaining to the use and operation of the Utica Memorial Auditorium for CALP's AHL franchise team (the "CALP Agreement"), and

WHEREAS, on October 18, 2013, the Authority entered into a Professional Management Services Agreement with Garden Entertainment, LLC (the "Management Agreement") to operate the Utica Memorial Auditorium.

NOW, THEREFORE, the parties hereto, agreeing to be bound, do hereby covenant and agree as follows:

1. The Authority is the owner of a certain parcel of land and building located on Oriskany Street West in the city of Utica, County of Oneida, and State of New York, more fully described as set forth on **Exhibit A** (the "Premises").

2. By an Agreement of Lease made as of the [#] day of [month], 2017, the Authority did demise and lease to the County the Premises (the "County Lease").

3. For and in consideration of rent of \$410,000.00 to be paid each and every year of this Lease by the Lessee to the Landlord in equal monthly installments of \$37,272.73 and the covenants, promises, and agreements hereinafter set out to be kept and faithfully performed by the Lessee, the County does hereby demise and lease unto the Lessee and the Lessee does hereby lease from the County, the Premises.

A. The rental payment set forth above constitutes an operating expense and shall be included as such by the Authority in all future operating budgets prepared pursuant to the Management Agreement and treated as such by the manager of the Utica Memorial Auditorium, Garden Entertainment, LLC.

B. In accordance with the terms and conditions set forth in Paragraph 7 of the County Lease, this Lease and the covenants, promises and agreements set forth constitutes the written consent to sub-lease under Paragraph 7.

4. The term of this Lease shall be for 20 years commencing on January 1, 2018, and ending on December 31, 2037.

5. The Lessee at all times during the term of this Lease shall maintain the following:

A. Commercial general liability insurance in the amount prescribed by the County, (minimum policy limits of \$1,000,000.00 each occurrence for bodily injury; \$3,000,000.00 annual aggregate; \$1,000,000 property damage; medical payments coverage \$5,000.00 per person), to protect Lessee, and the County from and against any and all injuries to third parties, including sports participants, and event attendees, from bodily injury, mental anguish or humiliation, wherever located, resulting from any action or operation by the Lessee under the terms of this Lease. The general liability insurance shall also include an additional insured endorsement, the Broad Form General Liability Endorsement and Independent Contractors coverage to ensure against claims arising from acts or omissions of the Lessee's contractors and subcontractors.

B. Statutory Workers Compensation and Employer's Liability insurance meeting the State of New York statutory requirements with all states' endorsement, to protect the Lessee from any liability or damages for injuries (including death and dismemberment) to any and all of the Lessee's employees; volunteers, including any and all liability or damage which may arise by virtue of any similar statute or law in force within the State of New York or which may hereinafter be enacted.

C. No material reduction in coverage, cancellation or non-renewal shall be made in any insurance coverage without a 30 day written notice to the County. The Lessee shall furnish the County with a new certificate prior to any change or cancellation date.

D. Should the Lessee fail to provide acceptable evidence of current insurance at any time during the term of this Lease, the County, after giving the Lessee not less than thirty (30) days prior written notice, shall have the absolute right to secure such insurance coverage required herein and recover the cost thereof from the Lessee, and/or terminate the Lease.

E. The County shall be named as an additional insured in the general liability and other policies described in subsection A. above (excepting Workers Compensation) on a primary, non-contributory basis.

6. A. The Lessee and its manager agree to indemnify and hold harmless the County, its officers, agents and all employees and volunteers, from any and all claims for bodily injuries and personal injuries to employees, sports participants, and the public, and for all damages to the property of others, including costs of investigation, all expenses of litigation, including reasonable attorneys' fees and costs of appeals arising out of any such claims or suits, the Lessee's use and the manager's operation of the Premises under the terms of this Lease as well as any and all negligent acts or omissions or commissions by the Lessee or its manager arising out of activities undertaken under this Lease.

B. The County agrees to indemnify and hold harmless the Lessee, its officers, agents and all employees and volunteers, from any and all claims for bodily injuries and personal injuries to employees, sports participants, and the public, and for all damages to the property of others, including costs of investigation, all expenses of litigation, including reasonable attorneys' fees and costs of appeals arising out of any such claims or suits arising from the negligence, omissions, or commissions of the County.

7. If either the Lessee or the County shall fail to comply with any material term or obligation imposed upon the respective parties under this Lease, the other party, after giving the breaching party not less than thirty (30) days prior written notice, shall have the option of terminating this Lease, during the default or asserting any other remedy allowed by law, the determination of which alternative, shall be in the sole discretion of the non-breaching party. In the event that the non-breaching party exercises its right of self cure, all costs and expenses incurred by the non-breaching party, including reasonable attorneys' fees and other costs, will be paid by the breaching party within thirty (30) days after written notice of the amounts due. Any amounts not so paid by the breaching party may be deducted from the amounts otherwise due from the non-breaching party to the breaching party under the terms of this Lease.

8. This Lease may not be assigned, nor shall the Premises be sublet without the prior written consent of the County.

9. Waiver of one or more terms or conditions of the Lease shall not be deemed a modification or waiver of any of the provisions of this Lease. No waiver shall be effective or binding upon a party to this Lease unless it is in writing duly executed by both parties as an amendment to this Lease.

10. The Lessee shall use the Premises in accordance with the Laws of the State of New York. This Lease shall be construed, governed, and enforced by and in accordance with the Laws of the State of New York.

IN WITNESS WHEREOF, the County has caused this instrument to be executed in its name and on its behalf by its County Executive; and the Lessee has caused this instrument to be executed by its Chairperson.

THE COUNTY OF ONEIDA

THE UPPER MOHAWK VALLEY

MEMORIAL AUDITORIUM AUTHORITY

Anthony J. Picente, Jr.

Carl Annese

County Executive

Chair

Garden Entertainment, LLC, a New York Limited Liability Company, with its principal office located at 400 Oriskany Street West, Utica, New York 13502, is obligated to operate and manage the Utica Memorial Auditorium pursuant to that Professional Management Services Agreement dated October 18, 2013 between the Upper Mohawk Valley Memorial Auditorium Authority and Garden Entertainment, LLC. (the "Management Agreement"). Garden Entertainment, LLC does hereby knowledge and accept the terms and conditions set forth in this Agreement of Lease between the County of Oneida, as landlord, and the Upper Mohawk Valley Memorial Auditorium Authority, as Lessee, as those terms may affect the Garden Entertainment, LLC's performance of the Management Agreement, particularly with regard to the inclusion of and treatment of the rental payments as an operating expense of the Utica Memorial Auditorium as that term is utilized in the Management Agreement and the utilization of the Water Authority

Funds to satisfy operating expenses, as well as the obligation to procure and maintain Dram Shop insurance coverage and hereby acknowledges a contractual obligation to name the County of Oneida as an additional insured on any such Dram Shop insurance policy upon the terms set forth in the Management Agreement .

GARDEN ENTERTAINMENT, LLC

Robert Esche

Manager/Member

EXHIBIT A

AGREEMENT OF LEASE

Agreement of lease (this "Lease") made as of the [#] day of [month], 2017, between the Upper Mohawk Valley Memorial Auditorium Authority ("Landlord") (the "Authority"), a public benefit corporation created pursuant to the laws of the state of New York, having its principal office located at 400 Oriskany Street West, Utica, NY 13502 and the County of Oneida ("Lessee") ("County"), a New York municipal Corporation, having its principal office located at 800 Park Avenue, Utica, New York 13501.

WHEREAS, in 2001, the Authority entered into a Ground Lease with Utica College, granting Utica College the right to possess a 6000 ft.² parcel of the Authority's property for the construction of a locker room facility. The term of the Ground Lease was for 20 years commencing on June 1, 2001 and ending on May 31, 2021 (the "Ground Lease"), and

WHEREAS, the Authority entered into a Lease Agreement with Utica College for use of the Utica Memorial Auditorium for men's and women's varsity collegiate ice hockey (the "Utica College Lease"), and

WHEREAS, on June 11, 2013, the Authority entered into a Lease Agreement with Mohawk Valley Garden, Inc., for use of the Utica Memorial Auditorium to operate and American Hockey League franchise out of the Utica Memorial Auditorium (the "Comets Lease"), and

WHEREAS, on June 11, 2013, the Canucks AHL Limited Partnership ("CALP") entered into an AHL Franchise Operating Agreement with Mohawk Valley Garden Corporation (the "Franchise Agreement"), and

WHEREAS, on June 12, 2013, the Authority entered into an agreement with CALP pertaining to the use and operation of the Utica Memorial Auditorium for CALP's AHL franchise team (the "CALP Agreement"), and

WHEREAS, on October 18, 2013, the Authority entered into a Professional Management Services Agreement with Garden Entertainment, LLC (the "Management Agreement") to operate the Utica Memorial Auditorium.

NOW, THEREFORE, the parties hereto, agreeing to be bound, do hereby covenant and agree as follows:

1. The Authority is the owner of a certain parcel of land and building located on Oriskany Street West in the city of Utica, County of Oneida, and State of New York, more fully described as set forth on **Exhibit A** (the "Premises").

2. For and in consideration of rent of \$1.00 to be paid by the Lessee and the covenants, promises, and agreements hereinafter set out to be kept and faithfully performed by the Lessee,

the Authority does hereby demise and lease unto the Lessee and the Lessee does hereby lease from the Authority, the Premises.

3. The term of this Lease shall be for 20 years commencing on January 1, 2018, and ending on December 31, 2037.

4. The Lessee at all times during the term of this Lease shall maintain the following:

A. Commercial general liability insurance in the amount prescribed by the Authority, (minimum policy limits of \$1,000,000.00 each occurrence for bodily injury; \$3,000,000.00 annual aggregate; \$1,000,000 property damage; medical payments coverage \$5,000.00 per person), to protect Lessee, and the Authority from and against any and all injuries to third parties, including sports participants, and event attendees, from bodily injury, mental anguish or humiliation, wherever located, resulting from any action or operation by the Lessee under the terms of this Lease. The general liability insurance shall also include an additional insured endorsement, the Broad Form General Liability Endorsement and Independent Contractors coverage to ensure against claims arising from acts or omissions of the Lessee's contractors and subcontractors.

B. Statutory Workers Compensation and Employer's Liability insurance meeting the State of New York statutory requirements with all states' endorsement, to protect the Lessee from any liability or damages for injuries (including death and dismemberment) to any and all of the Lessee's employees; volunteers, including any and all liability or damage which may arise by virtue of any similar statute or law in force within the State of New York or which may hereinafter be enacted.

C. No material reduction in coverage, cancellation or non-renewal shall be made in any insurance coverage without a 30 day written notice to the Authority. The Lessee shall furnish the Authority with a new certificate prior to any change or cancellation date.

D. Should the Lessee fail to provide acceptable evidence of current insurance at any time during the term of this Lease, the Authority, after giving the Lessee not less than thirty (30) days prior written notice, shall have the absolute right to secure such insurance coverage required herein and recover the cost thereof from the Lessee, and/or terminate the Lease.

E. The Authority shall be named as an additional insured in the general liability and other policies described in subsection A. above (accepting Workers Compensation) on a primary, non-contributory basis.

5. A. The Lessee agrees to indemnify and hold harmless the Authority, its officers, agents and all employees and volunteers, from any and all claims for bodily injuries and personal injuries to employees, sports participants, and the public, and for all damages to the property of

others, including costs of investigation, all expenses of litigation, including reasonable attorneys' fees and costs of appeals arising out of any such claims or suits, the Lessee's use of the Premises under the terms of this Lease as well as any and all negligent acts or omissions or commissions by the Lessee arising out of activities undertaken under this Lease.

B. The Authority agrees to indemnify and hold harmless the Lessee, its officers, agents and all employees and volunteers, from any and all claims for bodily injuries and personal injuries to employees, sports participants, and the public, and for all damages to the property of others, including costs of investigation, all expenses of litigation, including reasonable attorneys' fees and costs of appeals arising out of any such claims or suits arising from the negligence, omissions, or commissions of the Authority.

6. If either the Lessee or the Authority shall fail to comply with any material term or obligation imposed upon the respective parties under this Lease, the other party, after giving the breaching party not less than thirty (30) days prior written notice, shall have the option of terminating this Lease, during the default or asserting any other remedy allowed by law, the determination of which alternative, shall be in the sole discretion of the non-breaching party. In the event that the non-breaching party exercises its right of self cure, all costs and expenses incurred by the non-breaching party, including reasonable attorneys' fees and other costs, will be paid by the breaching party within thirty (30) days after written notice of the amounts due. Any amounts not so paid by the breaching party may be deducted from the amounts otherwise due from the non-breaching party to the breaching party under the terms of this Lease.

7. This Lease may not be assigned, nor shall the Premises be sublet without the prior written consent of the Authority.

8. Waiver of one or more terms or conditions of the Lease shall not be deemed a modification or waiver of any of the provisions of this Lease. No waiver shall be effective or binding upon a party to this Lease unless it is in writing duly executed by both parties as an amendment to this Lease.

9. The Lessee shall use the Premises in accordance with the Laws of the State of New York. This Lease shall be construed, governed, and enforced by and in accordance with the Laws of the State of New York.

IN WITNESS WHEREOF, the Authority has caused this instrument to be executed in its name and on its behalf by its Chairperson; and the Lessee has caused this instrument to be executed by its County Executive.

THE COUNTY OF ONEIDA

THE UPPER MOHAWK VALLEY
MEMORIAL AUDITORIUM AUTHORITY

Anthony J. Picente, Jr.
County Executive

Carl Annese
Chair

EXHIBIT A