

CONTRACT NAME: AGREEMENT BETWEEN INTERSTATE MANAGEMENT COMPANY LLC AS AGENT FOR BW TT LLC dba THE GALLIVANT TIMES SQUARE AND DAVIS JOINT UNIFIED SCHOOL DISTRICT

BRIEF DESCRIPTION OF CONTRACT: This agreement provides group lodging for the Davis Senior High School Madrigal trip to New York City, February 5, to February 10, 2020.

FISCAL IMPACT: The cost of the lodging for the trip is covered by donations from the Madrigals Booster group.



# THE GALLIVANT TIMES SQUARE

234 West 48<sup>th</sup> Street | New York, NY 10036

## Group Sales Agreement for Davis High School Choir

**Davis HS Madrigal Choir: Thursday, February 6, 2020 to Monday, February 10, 2020**

This Agreement is made and entered into as of **Tuesday, July 23, 2019**, by and between Interstate Management Company LLC as agent for BW TT LLC doing business as **The Gallivant Times Square** (hereinafter referred to as "Hotel") and **Davis High School Choir** (hereinafter referred to as "Group"). Group agrees that the terms of this Agreement are based upon the information provided by **Davis HS Madrigal Choir** below. In the event that the information provided by Group materially change or is incorrect, then this Agreement may be terminated pursuant to Section 5.

### DESCRIPTION OF THE EVENT

<b>Company:</b>	Davis HS Madrigal	<b>Hotel:</b>	The Gallivant Times Square
<b>Group:</b>	<b>Davis Senior High School</b>		
<b>Contact:</b>	Dr. Karen Gardias /Amy Kapatkin	<b>Contact:</b>	Cassio De Almeida
<b>Title:</b>	Director/Parent Coordinator	<b>Title:</b>	Sales Manager
<b>Address:</b>	Davis Senior High School 315 W 14th St, Davis, CA 95616	<b>Address:</b>	234 W 48th Street New York, NY 10036
<b>Tel:</b>	530-574-4382	<b>Tel:</b>	(212) 632-9050
<b>Fax:</b>		<b>Fax:</b>	(212) 974-3922
<b>Email:</b>	askapatkin@ucdavis.edu	<b>Email:</b>	cassio.dealmeida@thegallivantnyc.com

### GROUP ROOM RESERVATIONS

**Guest Room Accommodations:** For the dates **Thursday, February 6, 2020 to Monday, February 10, 2020** Hotel agrees to hold room nights. Unless as indicated in this Agreement, Hotel does not guarantee any particular rooms nor does it guarantee that rooms will be in proximity to each other.

### RATES

		Thu 02/06/2020		Fri 02/07/2020		Sat 02/08/2020	
	Occupancy	Rooms	Rate	Rooms	Rate	Rooms	Rate
<b>Deluxe Queen</b>	S	3	\$120.00	3	\$120.00	3	\$120.00
	D	0	\$120.00	0	\$120.00	0	\$120.00
	T	0	\$0.00	0	\$0.00	0	\$0.00
	Q	0	\$0.00	0	\$0.00	0	\$0.00
<b>Family Room</b>	S	2	\$175.00	2	\$175.00	2	\$175.00
	D	0	\$175.00	0	\$175.00	0	\$175.00
	T	0	\$175.00	0	\$175.00	0	\$175.00
	Q	0	\$175.00	0	\$175.00	0	\$175.00
<b>Penthouse Suite</b>	S	1	\$379.00	1	\$379.00	1	\$379.00
	D	0	\$379.00	0	\$379.00	0	\$379.00
	T	0	\$379.00	0	\$379.00	0	\$379.00
	Q	0	\$379.00	0	\$379.00	0	\$379.00
<b>Premium Room</b>	S	5	\$155.00	5	\$155.00	5	\$155.00
	D	0	\$155.00	0	\$155.00	0	\$155.00
	T	0	\$155.00	0	\$155.00	0	\$155.00

	Q	0	\$155.00	0	\$155.00	0	\$155.00
Twin-Twin	S	8	\$130.00	8	\$130.00	8	\$130.00
	D	0	\$130.00	0	\$130.00	0	\$130.00
	T	0	\$0.00	0	\$0.00	0	\$0.00
	Q	0	\$0.00	0	\$0.00	0	\$0.00
		<b>Sun</b> <b>02/09/2020</b>					
	<b>Occupancy</b>	<b>Rooms</b>	<b>Rate</b>				
Deluxe Queen	S	3	\$120.00				
	D	0	\$120.00				
	T	0	\$0.00				
	Q	0	\$0.00				
Family Room	S	2	\$175.00				
	D	0	\$175.00				
	T	0	\$175.00				
	Q	0	\$175.00				
Penthouse Suite	S	1	\$379.00				
	D	0	\$379.00				
	T	0	\$379.00				
	Q	0	\$379.00				
Premium Room	S	5	\$155.00				
	D	0	\$155.00				
	T	0	\$155.00				
	Q	0	\$155.00				
Twin-Twin	S	8	\$130.00				
	D	0	\$130.00				
	T	0	\$0.00				
	Q	0	\$0.00				

#### **TAXES**

The above **Net, Non-commissionable** rates do not include any applicable state or municipal taxes, fees or assessments. Group shall be responsible for any applicable taxes, fees or assessments, the amounts of which are subject to change by applicable government agencies with or without notice. If Group is claiming tax-exempt status, then

1. Group must present all documentation required by Hotel and pay in the manner specified by Hotel and
2. Group hereby accepts all liability and agrees to indemnify Hotel for all taxes paid and all costs incurred, including attorney fees, if a taxing authority requires that Hotel remit tax for the room nights covered by this Agreement.

The rates above are subject to 8.875% New York State tax, 5.875% New York City hotel tax, \$1.50 per room per night New York City Development tax; \$2.00 per room per night New York Occupancy tax. All taxes are subject to change without prior notice.

#### **SMOKING POLICY**

The Hotel is a 100% smoke free hotel. Non-smoking areas include all guest rooms and public space including outside patios & courtyards. It is the responsibility of the group coordinator to inform their guests on our Non-smoking Policy. A \$250.00 Cleaning Fee will be charged to any guest or meeting room found to be in violation of the smoking policy.

#### **Wi-Fi**

Complimentary Wi-Fi is provided throughout the hotel for the group.

#### **BREAKFAST**

Daily Continental breakfast is offered at \$17.36 Inclusive, per person.

Daily Full American breakfast is offered at \$21.72 Inclusive, per person.  
The breakfast rates quoted are not included in the room rates above.

**CUT-OFF DATE: Tuesday, January 7, 2020.**

The cut-off Date for accepting reservations into this room block is **Tuesday, January 7, 2020**. Reservation requests received after 5:00 PM local time at the Hotel on the Cut-off Date will be accepted on a space and/or rate availability basis. Hotel reserves the right to release for general sale any unused portion of the room block. The release of rooms for general sale following the Cut-off Date shall not alter, release or negate the Group's obligations regarding attrition and/or cancellation under this Agreement and any such released room shall be considered an "unused" room for such purposes.

Group may request that rooms be held after the Cut-off Date by providing Hotel a written guarantee of payment for such rooms on or before the Cut-Off Date for the length of stay designated in the Guest Room Block clause.

**STORAGE FEE**

The Hotel will apply a storage fee of \$5.00 per day per box for boxes arriving prior to the guest's check-in date.

**COMPLIMENTARY ROOMS**

The group will receive **01** complimentary guest room night for every **40** occupied, revenue producing guestrooms on a cumulative basis. Unused complimentary guestrooms are non-transferrable; have no independent, redeemable value and will not be credited to the Master Account. Complimentary rooms issued by the Hotel must be used during the contracted event.

If Group does not earn the requested number of complimentary rooms, the appropriate room and tax charges will be added to the Master Account.

**GROUP PORTERAGE**

There is a mandatory portage charge of \$6.00 round trip per person for all groups of 6 or more guests arriving at the same time. Portage charge are based on 2 bags per person.

**RESERVATIONS**

**RESERVATION METHOD:**

**Rooming List**

**Please forward the final rooming list no later than Tuesday, January 7, 2020 (30 days prior to arrival date).**

After that date, we reserve the right to offer unused rooms held in your block to other customers to reduce our losses and your obligations under the performance clause. Reservations requested after this date will be accepted at the discretion of the hotel based upon rate and space availability.

The rooming list should indicate the names, room type, arrival & departure dates.

**ROOMING LIST:** Group must submit a room list to Hotel by **Tuesday, January 7, 2020**. This list must indicate the name and "share-with" of each guest, the types of sleeping rooms desired (single, double), the arrival and departure dates for each guest. Reservations made by rooming list will only be allowed if Group is approved for a Master Account pursuant to Section 4.1.

All reservations made by rooming list will be automatically guaranteed for late arrival by Group. If guests identified on the rooming list do not check in, Group's Master Account will be charged for the first night of all no-shows and cancellations that occur prior to 72 hours of arrival.

**BILLING/CREDIT PROCEDURES**

**GUESTROOM PAYMENT:**

**ROOM, TAX, PORTERAGE & BREAKFAST TO MASTER: Davis HS Madrigal school choir** will be responsible for room, tax, portage and breakfast (if applicable) charges for all attendees. Incidentals will be the responsibility of each individual but guaranteed to the tour leaders credit card.

All rooms in this block must be guaranteed for incidentals prior to the room keys being distributed. This may be done prior to arrival or at check-in. Should your travelers be responsible for settling their own incidental charges, each individual is responsible to settle these charges at checkout.

#### **METHOD OF PAYMENT & DEPOSIT SCHEDULE**

##### **REGARDLESS OF PAYMENT METHOD**

Upon return of the signed Agreement, a completed credit card authorization form (attached) along with a copy of the front & back of the card and corresponding photo ID is required. This card will be held as guarantee of the group against cancellation and attrition.

##### **CHARGES TO MASTER ACCOUNT**

Pre-payment of your total estimated master account will be due prior to your arrival, in accordance with the Deposit Schedule noted below.

The following items shall be charged to the Master Account: sleeping rooms, tax, portorage fees, breakfast (if applicable), attrition charges, cancellation charges, and any other charges billed to the Master Account at the request of the authorized representative of the group, as designated by the group in advance of your arrival.

The following items shall be charged to the Individual: Incidentals

Hotel will credit the Deposits against the Master Account. Hotel will return any unused portion of the Deposit to Group no later than thirty (30) days after the Program or application of any Cancellation Fee, as applicable. Hotel may cancel the Program and terminate the Agreement immediately and without liability if Group fails to make any Deposit payment required by this Agreement. Hotel reserves the right to invoice Group for any amount by which the Master Account exceeds the total of any Deposit made by Group.

##### **CREDIT CARD**

The method of payment will be by Credit Card. Please complete the enclosed credit card authorization form and return to our accounting department.

##### **WIRE TRANSFER**

The method of payment will be via wire transfer:

##### **COMPANY CHECK**

The method of payment will be by company check which will only be accepted if received with enough time to allow for processing by the bank. Please allow at least Fifteen (15) days, prior to the due date of the payment, for processing.

##### **DEPOSIT SCHEDULE (REQUIRED):**

The Group will adhere to the following deposit/payment schedule:

1st deposit	25% of total room and tax	90 days prior to the group's arrival
2nd deposit	25% of total room and tax	Due 60 days prior to the group's arrival
Final Payment	Remainder of balance	Due 30 days prior to the group's arrival

##### **HOTEL'S CANCELLATION**

If Hotel cancels this Agreement or is unable to provide the requested rooms or meeting space, the Hotel will work with Group to arrange alternative accommodations and space at the prices set forth herein. Hotel will arrange for comparable space in the same vicinity of the Hotel and shall provide, without charge, necessary transportation between the alternative site and the Hotel. Hotel's liability is limited to these remedies and Hotel shall not be liable for any consequential, punitive or special damages.

##### **ATTRITION**

Hotel considers the Total Room Nights set forth in the Guest Room Block clause to be confirmed, sold reservations over the contracted dates. Hotel will waive its right to seek damages for failure to achieve the Total Room Nights if Group achieves at least **80%** of the Total Room Nights, or **60** Minimum Room Nights over the contracted dates. Should Group fall below this amount, Group will pay the difference between the **60** Minimum Room Nights minus the paid room nights actualized, based on the contracted room rate.

The Hotel and the Group agree that the payment described above is a reasonable estimate of the Hotel's damages resulting from the non-use of the room block, and that the payment does not constitute a penalty. This amount will be placed on the Group's master account.

#### **CANCELLATION BY GROUP**

The following table contains an estimate (which the parties acknowledge and agree is reasonable) of the revenue to be generated from this Event. The table itself is not intended to warrant that the Event will generate these amounts of revenue. Neither is the table intended to prevent Hotel from generating more than these amounts of revenue from the Event.

The Group and the Hotel have entered into a binding commitment. The Hotel is committed to providing the rooms and services specified in this Agreement and the Hotel has offered special rates and other concessions based upon anticipated revenues for Group's event. The anticipated revenue includes the revenue from the total number of sleeping rooms the Group has requested along with any ancillary services, such as in-room movies, telephone tolls, room service and other charges.

If the Group decides to cancel this Agreement or reduce the size of the block, the Group agrees that the Hotel will suffer damages. Such damages will be a result of the Hotel's inability to offer the unused rooms to another group and/or cost to the Hotel of trying to resell the rooms. The exact amount of damages will be difficult to determine. Therefore, the Group agrees that the following liquidated damages clause is a reasonable effort by the parties to agree in advance on the amount of damages. It is agreed that these amounts will be due regardless of the Hotel's ultimate ability to resell some or all of the rooms.

#### **CANCELLATION**

Group agrees that if it cancels this Agreement for any reason, the Hotel will suffer damages. The closer in time the cancellation occurs, the greater the damages will be. Therefore, Group agrees to pay Hotel at the time of cancellation liquidated damages, as follows:

<b>DATE OF CANCELLATION</b>	<b>AMOUNT OWED</b>
Before November 7 <sup>th</sup> , 2019	0% of total
On or after November 7 <sup>th</sup> , 2019	25% of total
On or after December 6 <sup>th</sup> , 2019	50% of total
On or after January 7 <sup>th</sup> , 2020	Full balance

#### **SIGNS AND DISPLAYS / USE OF HOTEL'S NAME**

Group shall not display signs in Hotel or use the name or logo of the Hotel or any franchisor of Hotel in any promotional materials without prior written approval of the General Manager of the Hotel. Group further agrees that no sign, banner or display shall be affixed to any part of the Hotel without the prior written consent of Hotel. Group will be responsible for the cost of repairing any damages caused to the walls, fixtures or carpet caused by any such sign, banner or display.

#### **SECURITY**

Hotel may, in its sole and absolute discretion, require additional security procedures, at Group's sole expense, because of the size or nature of the Event or any Function. These procedures may include the assignment by Hotel of additional security personnel employed by Hotel or Hotel's independent contractor (which may be the local police department). Hotel may allow Group to retain an outside security service provider that is approved in writing by Hotel prior to the Event or the applicable Function. If Group hires an outside security service provider, Group must provide Hotel with a copy of its agreement with the service provider, which shall indemnify Hotel, its owner, its management company and their respective parents, subsidiaries and affiliates, and all of their respective owners, members, partners, directors, officers, employees, representatives and agents, from and against any liabilities related to the security services. Under no circumstances shall any armed security personnel be

permitted onto the premises of Hotel without Hotel's advanced written approval, which Hotel may withhold in its sole and absolute discretion.

### **SHIPPING & PACKAGES**

In the event the Group will be shipping packages to the Hotel, the Group must notify the Hotel at least one week in advance. All packages sent to Hotel must include the name of Group; date of program and number of items being shipped. Shipment should arrive no earlier than three (3) days prior to the event. Hotel has no liability for the delivery, security or condition of the packages

### **DISPUTE RESOLUTION**

- a. The parties shall exercise commercially reasonable efforts to informally and timely resolve any dispute arising under or related to this Agreement before commencing litigation, unless the litigation seeks emergency injunctive relief.
- b. Any action between the parties arising out of or related to this Agreement shall be filed solely in the United States District Court for the district in which the premises of Hotel is located or, if subject matter jurisdiction in that court is lacking, in a state court in whose jurisdiction Hotel is located. Each of the parties hereby consents to the personal jurisdiction of these courts and venue of any such action in these courts, and hereby waives any objection based on the doctrine of *forum non conveniens* to any such action being adjudicated by any such court.
- c. If any action by either party against the other to enforce its rights under this Agreement, including (without limitation) any litigation and/or other efforts to collect any payments due under this Agreement, the non-prevailing party shall be responsible for the prevailing party's costs related to such action, including (without limitation) reasonable attorneys' fees and expenses, collection costs and pre- and post-judgment interest.
- d. The parties hereby knowingly, voluntarily, intentionally and mutually waive any right to a trial by jury in any civil action based on, arising from or in connection with this agreement, the event, or any course of conduct, course of dealing, statements (verbal or written) or actions by the parties.

### **INDEMNIFICATION**

Group shall indemnify, defend and hold harmless Hotel, its owner, its management company, their respective affiliates and all of their respective officers, directors, partners, members and employees from and against all demands, suits, judgments, settlements, claims, damages to persons and/or property, fines, liens, losses and other liabilities, including reasonable attorneys' fees (collectively "**Claims**") arising out of or related to the negligence or intentional misconduct of Group, its contractors or exhibitors, or their respective employees, agents, contractors or attendees. Group does not waive, by reason of this section, any defense that it may have with respect to such Claims.

### **DAMAGE CLAUSE**

In the event that damage to any Hotel property occurs as a result of any guest related to Group, the Group assumes all liability and expense and agrees that, in addition to any other rights as against such guest or others, Hotel may charge Group's Master Account or directly bill Group for all such charges. Group shall indemnify, defend and hold harmless Hotel and its officers, directors, partners, affiliates, members and employees from and against all demands, claims, damages to persons and/or property, losses and liabilities, including reasonable attorney fees (collectively "**Claims**") arising out of or caused by Group's negligence or intentional misconduct. Group does not waive, by reason of this paragraph, any defense that it may have with respect to such Claims.

### **GROUP'S PROPERTY**

Group agrees Hotel will not be responsible for the safe-keeping of equipment, supplies, written material or other valuable items left in function rooms, guest rooms or anywhere on Hotel property other than the Hotel safe. State laws will govern Hotel's liability for items stolen in guestrooms or items kept in Hotel's safe. Group is responsible for securing any such aforementioned items and hereby assumes responsibility for loss thereof. Group may not rely on any verbal or written assurances provided by Hotel staff, other than as provided in this Agreement.

**INSURANCE**

Property of Group is the sole responsibility of the Group and/or its owner. Group agrees that it has procured sufficient insurance to cover the loss of such property and waives any claims under Hotel's insurance policy for the loss of Group's property or the property of any of its attendees or invitees.

**FORCE MAJEURE**

The performance of this Agreement is subject to any circumstances making it illegal or impossible to provide or use Hotel facilities, including Acts of God, war, government regulations, disaster, strikes, civil disorder or curtailment of transportation facilities. This Agreement may be terminated for any one of the above reasons by written notice from Hotel.

**HOTEL CONTACT/NOTICES**

All notices, offers, acceptances, requests and other communications hereunder shall be in writing and shall be deemed to delivered if Hand delivered or sent by Federal Express, or certified or registered mail to the Group contact on the first page of this Agreement, or, if to Hotel, to the following address: Hotel Address: The Gallivant Times Square 234 West 48 Street, New York, NY 10036; Attn: Chris Hosmer. Hotel may change Hotel's designated contact at any time upon notice. Hotel will not be bound by any notice unless delivered to Hotel in the manner specified herein.

**COMPLIANCE WITH LAWS**

Group shall comply with all Federal, State and local laws, rules and regulations with respect to its activities on Hotel property, including obtaining any permits required for Group's activities during the event. Hotel may require Group to present proof of such compliance prior to the event. Group relies upon Group's attendance projections in reserving the appropriate room(s) and in observing all federal, state and local regulations regarding room capacity limitations and health, safety and fire codes. Hotel reserves the right to take all necessary actions to cause the event to be in compliance with all laws, rules and regulations, including (1) closing the Event, (2) requiring certain guests to leave the event, (3) restricting access to the event, (4) restricting the consumption of alcoholic beverages, and (5) monitoring the event. If the Hotel decides, in its discretion, to take any of the actions above, it shall do so without penalty and Group shall remain liable for all obligations under this Agreement.

**RIGHT OF INSPECTION/ENTRY**

Hotel will have the right to enter and inspect all functions. If Hotel observes any illegal activity or activity that may result in harm to persons or objects, Hotel has the right to immediately cancel the event, in which case all of Group's guests and invitees must immediately vacate the meeting room premises. In such event, Group will remain liable for all fees and charges related to the function pursuant to the terms of this Agreement.

**PAYMENT**

Payment of all invoices is due upon receipt. Invoices remaining unpaid after 30 days of the invoice date will incur an interest charge of the lessor of 23% or the highest amount allowed by law. Group shall be responsible for all collection and/or attorney fees or other costs in collecting all amounts due hereunder. No payment by Group or receipt by Hotel of a lesser amount than any amount due shall be deemed to be other than on account of the amount due, and no endorsement or statement on any check or any letter accompanying any payment shall be deemed an accord and satisfaction, and Hotel may accept such check or payment without prejudice to Hotel's right to recover the balance of all amounts due or pursue any other remedies available to Hotel under this Agreement or in law or in equity.

**ENTIRE AGREEMENT**

This Agreement and any exhibits hereto constitute the entire agreement between the parties and supersedes any previous communications, representations or agreements, whether written or oral. Any changes to this Agreement must be made in writing and signed by authorized representative of each party.

**NO ASSIGNMENT**

Group may not assign or transfer this Agreement or any part thereof without the written consent of Hotel. Any attempted assignment or transfer by Group without such consent may, at the option of Hotel, be deemed to be a



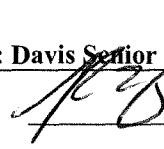
cancellation of this Agreement by Group, in which case Group shall remain liable for all cancellation charges set forth herein.

#### MISCELLANEOUS

Each person signing this Agreement warrants that he or she is authorized to bind the party for which he or she is signing. Any provision of this Agreement that is deemed unenforceable shall be ineffective to the extent of such unenforceability without invalidating or rendering the remainder of this Agreement invalid. Each party shall execute such other and further documents as may be necessary to carry out the intention as well as to comply with the provisions of this Agreement. The failure of either party to insist, at any time, on strict performance of any terms or conditions of this Agreement, or to exercise any option, right or remedy contained in this Agreement, shall not be construed as a waiver or as a relinquishment for the future of such term, condition, option, right or remedy. No waiver by either party of any term or condition hereof shall be deemed to have been made unless expressed in writing and signed by such party.

If all terms and conditions meet with your approval, please sign and return this Agreement via email to [cassio.dealmeida@thegallivantnyc.com](mailto:cassio.dealmeida@thegallivantnyc.com) by no later than **Tuesday, July 30<sup>th</sup>, 2019**. The hotel agrees to hold the space as outlined in this Agreement on a tentative basis until **Tuesday, July 30<sup>th</sup>, 2019**. If the Hotel and the Group do not have a fully executed Agreement by the date stated above, the Hotel will release the space for sale to the public. Hotel retains the right to contract with another party without any further notice to Group.

IN WITNESS WHEREOF, Hotel and Group have executed this Agreement in manner and form sufficient to bind them as of the date and year set forth on page one of this Agreement. Once the signed Agreement is received, I will in turn countersign and return a copy to you, therefore confirming our definite Agreement.

<b>FOR: Interstate Management Company LLC as agent for, BW TT LLC dba The Gallivant Times Square</b>	<b>FOR: Davis Senior High School</b>
<b>By:</b> _____	<b>By:</b> 
<b>Name:</b> <u>Cassio De Almeida</u>	<b>Name:</b> <u>Mr. Bruce Colby</u>
<b>Title:</b> <u>Sales Manager</u>	<b>Title:</b> <u>Chief Business Officer, DTUSD</u>
<b>Date:</b> _____	<b>Date:</b> <u>8-1-19</u>

**DIRECTOR OF SALES:** \_\_\_\_\_ Initial