

**THE BB&T CENTER
USE AGREEMENT**

USER: The School Board of Broward County, Florida
600 SE 3rd Avenue
Ft. Lauderdale, FL 33301

EVENT: Marjory Stoneman Douglas High School and Cypress Bay High School
Commencement Ceremonies

EVENT DATE/TIMES: June 2, 2019
Marjory Stoneman Douglas High School Graduation Ceremony: 10:00 AM
Cypress Bay High School Graduation Ceremony: 3:00 PM

USE FEE: \$90,000.00 – Use Fee – per section 3(a) below

1. **GRANT OF LICENSE; PREMISES.** Subject to the terms and conditions set forth in this Agreement, **Arena Operating Company, Ltd.**, a Florida limited partnership ("Operator"), hereby grants to the above-named User the license to use the Premises (as herein defined) to conduct the above-referenced event (the "Event"). Pursuant to the license granted hereunder, User may use only that portion of BB&T Center ("Arena") that is necessary for the presentation of the Event (the "Premises"). User may use the Premises solely to prepare for and conduct the Event. Operator makes no warranty or representation regarding the physical condition of the Premises, their fitness for any particular use or purpose or the Arena's compliance with applicable laws.

2. **TERM.** User shall be permitted to use the Premises hereunder on the date and at the times set forth above ("Term"). User shall dismantle and/or remove all personal property caused or permitted by User to be brought onto the Premises in connection with the Event and shall vacate the Premises and restore the Premises and any other land or area damaged by any operation of the Event, or related improvements, construction or installation by User, to its condition immediately prior to the commencement of the Term (the "Restoration") prior to the expiration of the Term, time being of the essence in this regard. User shall return the Premises to Operator at the end of the Term in good condition, reasonable wear and tear excepted.

Under this Agreement, User is entitled to use and occupy the Arena from 6:00 am on June 1, 2019 until 11:30 pm on the June 2, 2019, for the purpose of loading in, installing equipment, preparing the premises and equipment for use, packing and removal of equipment afterwards or such other purposes as are reasonably related to the use for which User is being allowed to use the Arena. User may be entitled to use and occupy the Arena for the purpose of loading in, installing equipment, preparing the premises and equipment for use during a mutually agreed upon time on June 1, 2019 provided that Operator does not have another event at Arena on that date such as the Stanley Cup Finals. In no event shall the User enter and use any area, part, service or facility of the Arena without first obtaining the prior approval of the Arena General Manager or his designate. Operator and User shall mutually agree upon any dates and times where User may conduct a walk through of the Arena prior to the Event date, subject to other scheduled events at the Arena.

3. **USE FEE; SECURITY DEPOSIT.**

(a) **Use Fee.** As consideration for User's use of the Premises and the reservation of the Premises for User's use, User shall pay to Operator, exclusive of Reimbursable Expenses (as herein defined), a non-refundable use fee equal to the sum set forth above, (the "Use Fee"), payable to Operator as follows: 100% of the Use Fee \$90,000.00 shall be payable upon the execution of this Agreement. User has tax exempt status, therefore certain taxes shall not be due.

(b) **Security Deposit.** Upon the execution of this Agreement, User shall pay to Operator a security deposit in the amount indicated above (the "Security Deposit"). The Security Deposit shall serve as security for User's payment and other obligations hereunder, including the prompt and full payment of the Reimbursable Expenses (as herein defined) and any damages for which User is responsible hereunder. User's payment of the Security Deposit is a condition precedent to Operator's obligations under this Agreement. Operator shall have the right to set off against the Security Deposit any amounts payable by User hereunder, without notice or demand and without waiving any other right or remedy available to Operator. Upon Operator's receipt of payment in full of all amounts due Operator hereunder and following completion of the Restoration to Operator's satisfaction, Operator shall refund to User any remaining balance of the Security Deposit. No interest shall accrue on the Security Deposit for the benefit of User.

4. **INDEMNIFICATION.** Up to the limits referenced in Section 768.28, Florida Statutes User shall indemnify and hold harmless Arena Operating Company, Ltd., Florida Panthers Hockey Club, Ltd., Sunrise Sports & Entertainment, LLC and Broward County Board of Commissioners and each of their respective officials, officers, directors, partners, members, managers, shareholders, employees (collectively, "Indemnified Parties") from and against any and all loss, expense (including reasonable attorneys' fees) or liability of any kind arising from or in any way related to the negligent act or omission of User or its employees acting within the course and scope of their employment. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable nor shall anything included herein be construed as consent to be sued by third parties in any matters arising out of this Agreement.

5. **INSURANCE.** User acknowledges to be self-insured under the Risk Management Program for General Liability waiver limits of \$200,000 per person and \$300,000 per occurrence; or such limits that may be set by Florida Statutes, Section 768.28. User further acknowledges to be self-insured for Workers' Compensation pursuant to Florida Statutes Chapter 440. User shall provide a certificate of coverage evidencing its self-insurance programs stated herein.

6. **STAFFING; UTILITIES; EQUIPMENT.**

(a) **SEE EXHIBIT A**

7. **REIMBURSABLE EXPENSES.** Intentionally Omitted.
8. **CONCESSIONS; ADVERTISING.** (i) Operator shall have no obligation to operate the Arena concessions during the Event, (ii) Operator reserves all rights to exclusively sell, and to retain all revenues from the sale of, consumable and non-consumable concession novelties, goods and other items and set up and operate all concessions or restaurants, or sell or give away any food, refreshments, beverages, , candies, tobacco products, flowers and other items and User shall not be entitled to any revenue deriving therefrom and (iii) User shall not sell or give away any food, refreshments, alcoholic beverages, beverages, tobacco products, flowers, candies, souvenirs, novelties or other consumable or non-consumable concession items in, at or about the Premises or Arena without approval from Operator. User may not use the names, logos or trademarks of the Arena, Operator or any of the other Indemnified Parties without the prior written approval of Operator. Operator at all times may advertise through any medium in and about the Premises and Operator reserves all rights to sell or lease any advertising in any part of the Premises. Advertising in or about the Premises by User is prohibited absent express written permission by Operator for each advertiser. User shall not have the right to use the Arena scoreboard system or the Arena's public address system without Operator's prior written approval.
9. **USER'S PROPERTY; SAFETY; ALTERATIONS; DAMAGE.** All property caused or permitted to be placed on the Premises or in the Arena by User or any of the other User Parties shall be at their sole risk, and Operator shall have no liability arising therefrom. User shall cause itself and all other User Parties to abide by all Arena rules and regulations. Operator, its employees, agents and contractors are authorized to refuse admission to or cause to be removed from the Premises any person deemed objectionable by Operator. Operator reserves the right to control the management and operation of the Arena and to enforce all necessary rules of its management and operation. Authorized employees, agents and contractors of Operator shall have free access to all parts of the Premises at all times. User shall not: (a) cause or permit the Premises or Arena, or any equipment or other personal property of or located in or about the Premises or Arena to be in any manner damaged, lost, stolen or destroyed; or (b) cause or permit any alteration, modification or improvement in or to the Premises or Arena without the prior written approval of Operator.
10. **COMPLIANCE WITH LAWS; NON-DISCRIMINATION.** User agrees to use and occupy the Premises, and conduct the Event and its activities hereunder, in compliance with all federal, state and local laws, ordinances and regulations, and User shall cause all of the other User Parties to comply therewith. The parties shall not discriminate against any employee or participant in this program because of race, age, religion, color, gender, national origin, marital status, disability, sexual orientation or any other basis prohibited by law.
11. **FORCE MAJEURE.** If either party shall be delayed or hindered in or prevented from the performance required hereunder by reason of an Event of Force Majeure (hereinafter defined), the party shall be excused from performance for the period of time equivalent to such delay or hindrance in or prevention from performance and shall not be liable to User for any damages, loss or liability caused thereby. The term "Event of Force Majeure" shall mean any and all acts of God, strikes or other labor trouble, war or other civil disturbance, inclement weather, hurricanes, floods, fire or other natural casualty, failure of power or accidents to equipment or machinery, threats of bombs or similar interruptions, or any other causes of similar nature not the fault of either party.
12. **DEFAULT.** If either party shall fail to perform or observe any term, covenant, condition or agreement to be performed or observed by the non-defaulting party hereunder, or if any warranty or representation made by either party proves to be untrue, the non-defaulting party may: (a) give written notice of such default and a cure period of three (3) business days with respect to monetary and insurance defaults and ten (10) business days with respect to non-monetary defaults, unless shorter periods are required due to the pending Event Period, terminate this Agreement and any or all of the defaulting party's rights hereunder; (b) in the event of material default of User, Operator may retain the Use Fee as liquidated damages; and/or (c) remove any and all persons or property from the Premises and/or store or dispose of any property of User or the other User Parties on the Premises as a set-off against monies owed by User to Operator hereunder, all at User's expense. Each remedy provided by this Section shall be cumulative to any other rights or remedies. User acknowledges that Operator has reserved the Premises for use by User during the Term and, consequently, Operator is precluded from licensing the Premises to other users or scheduling other events to be held at the Premises during such period. Accordingly, the parties acknowledge and agree that, in the event (i) Operator terminates this Agreement pursuant to subsection (a) of this Section 12 or (ii) User terminates this Agreement or fails or refuses to use, or cancels its use of, the Premises, then User nevertheless shall be fully liable for, and not entitled to a refund of, the Use Fee, in addition to other costs incurred by Operator in connection with this Agreement.
13. **SET-OFF.** In the event that User breaches this Agreement or Operator fails to receive sums due it hereunder, Operator may deduct from and set-off against the Security Deposit and any amounts due and payable to User, including any surplus of pre-paid expenses held by Operator hereunder, any damages, losses, liabilities or expenses sustained by Operator in connection with such breach or failure to receive sums due. Operator is entitled to withhold any payments due User upon such breach or failure until Operator is fully compensated and made whole.
14. **LEGAL PROCEEDINGS.** The prevailing party in any action arising under this Agreement shall be entitled to recover its reasonable attorneys' fees and expenses, including through all appeals. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida. All legal proceedings arising under this Agreement shall be conducted in the courts situated in Broward County, Florida, which courts shall have exclusive venue and jurisdiction.
15. **NOTICES.** Any notice required hereunder shall be in writing and given by (a) hand-delivery by messenger or courier service (including overnight mail service), or (b) certified mail (postage prepaid), return receipt requested, addressed as follows: **If to Operator**, to: the BB&T Center, 2555 Panther Parkway, Sunrise, FL 33323, Attn: VP, Event Programming; **If to User**, to: Superintendent of Schools, The School Board of Broward County, Florida, 600 Southeast Third Avenue, Fort Lauderdale, Florida 33301, **With a copy to:** The School Board of Broward County, Florida Department of Athletics and Student Services 600 SE 3rd Avenue, 3rd Floor, Fort Lauderdale, FL 33301 Attn: Shawn Cerra. Notice shall be deemed delivered on the date of delivery.
16. **MISCELLANEOUS.** (a) The relationship between the parties created by this Agreement is that of independent contractors and there is no agency, partnership or joint venture relationship existing between the parties or arising out of this Agreement. No agent, employee or contractor of User shall be deemed an employee or agent of Operator. (b) If any provision of this Agreement is held invalid or illegal, such provision shall be null and void, and the remainder of this Agreement shall not be affected by such invalidity or illegality. (c) Waiver of one or more terms or conditions of this Agreement by either party shall not be deemed a modification or waiver of any other provisions of this Agreement. The failure or delay of either party at any time to require performance by the other party of any provision of this Agreement shall not affect the right of such party to require performance of that or any other provision hereunder. (d) This Agreement may only be altered or amended by an instrument in writing properly

executed by both parties. (e) This Agreement embodies the entire agreement of the parties hereto and no representation, inducements or agreements, oral or otherwise, between the parties not contained and embodied herein shall be of any force and effect. (f) The parties acknowledge that each of them has reviewed this Agreement and has had the opportunity to have it reviewed by their respective attorneys and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement. (g) User shall not assign this Agreement or any right or obligation herein, nor grant any license with respect to the Arena or any part thereof. (h) All matters not expressly herein provided for shall be in the discretion of Operator and all rights not expressly granted to User are reserved to Operator.

17. NO WAIVER OF SOVEREIGN IMMUNITY. Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

18. EXCESS FUNDS. Any party receiving funds paid by User under this Agreement agrees to promptly notify User of any funds erroneously received from User upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to User.

19. No Third Party Beneficiaries. The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement, with exception to the indemnification expressly stated in paragraph 4 of this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. Except as expressly stated in paragraph 4 of this Agreement, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by User to be sued by third parties in any matter arising out of this Agreement.

20. Public Records. The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. Operator shall keep and maintain public records required by User to perform the services required under this Agreement. Upon request from User's custodian of public records, Operator shall provide User with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. Operator shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if Operator does not transfer the public records to User. Upon completion of the Agreement, Operator shall transfer, at no cost, to User all public records in possession of Operator or keep and maintain public records required by User to perform the services required under the Agreement. If Operator transfers all public records to User upon completion of the Agreement, Operator shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Operator keeps and maintains public records upon completion of the Agreement, Operator shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to User, upon request from User's custodian of public records, in a format that is compatible with User's information technology systems.

IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 754-321-1900, [RECORD REQUESTS@BROWARDSCHOOLS.COM](mailto:RECORDREQUESTS@BROWARDSCHOOLS.COM), RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.

OPERATOR:

Arena Operating Company, Ltd., a Florida limited partnership

By: _____

Name: _____

Title: _____

Date: _____

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FOR USER:

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Heather P. Brinkworth, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Office of the General Counsel

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EXHIBIT A

For the purposes of the Use Agreement with The School Board of Broward County, Florida, the Operator shall provide the following included in the Use Fee:

1. Ushers
2. Police
3. Medical Personnel
4. Security
5. Housekeeping
6. All Other Front of House Event Staffing
7. Clean-Up
8. Utilities
9. Arena owned equipment including spotlights, forklifts, furniture & chairs
10. Arena owned Stage/Barricades/Mixer Riser

The following expenses are not included in the Use Fee and will be paid separately by The School Board of Broward County, Florida, Inc.:

1. Stagehands
2. Conversion
3. Arena Security Sweep
4. Advertising
5. Insurance
6. Catering
7. BMI/ASCAP/SESAC/GMR
8. Camera Operators
9. Furniture/equipment rentals requested by The School Board of Broward County, Florida
10. Any production equipment requested by The School Board of Broward County, Florida