

ITEM #105

(Fifth Amendment to the Broward County Civic Arena Amended and Restated Operating Agreement)

**ADDITIONAL MATERIAL
REGULAR MEETING**

DECEMBER 12, 2023

SUBMITTED AT THE REQUEST OF

**FINANCE AND ADMINISTRATIVE
SERVICES DEPARTMENT**

**FIFTH AMENDMENT TO THE BROWARD COUNTY
CIVIC ARENA AMENDED AND RESTATED OPERATING AGREEMENT**

This Fifth Amendment (“Fifth Amendment”) to the Amended and Restated Operating Agreement, (as amended prior to the effective date of this Fifth Amendment, the “Agreement”), is entered into by and among Broward County, Florida, a public body corporate and politic and a political subdivision of the State of Florida (the “County”), Arena Operating Company, Ltd., a Florida limited partnership (“Operator”), Florida Panthers Hockey Club, Ltd., a Florida limited partnership (“Team”), and Sunrise Sports & Entertainment, LLC, a Delaware limited liability company (“SS&E”), collectively referred to as the “Parties.”

RECITALS

- A. On January 12, 2016, the Parties entered into the Agreement amending and restating the Original Operating Agreement (as defined within the Agreement) to clarify, consolidate, and restate the Parties’ respective rights and obligations concerning the management and operation of the Facility (as defined in the Agreement) and the future development of the Project Site (as defined in the Agreement).
- B. As of April 15, 2023, and pursuant to the Fourth Amendment to the Agreement, the Agreement was amended to require Operator to purchase property insurance with windstorm and flood insurance limits that are less than the full replacement value of the Facility (“Named Windstorm and Flood Limits”), without being in default of this Agreement.
- C. County and Operator have determined an amendment is needed to clarify the Named Windstorm and Flood Limits requirements set forth in the Fourth Amendment to the Agreement.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. The Recitals set forth above are true and correct and are incorporated herein as if set forth fully.
- 2. Section 11.1.2 is hereby deleted and replaced as follows:
 - 11.1.2 Notwithstanding anything to the contrary in this Agreement:
 - (a) Effective April 15, 2023, Operator shall purchase parametric property insurance with Named Windstorm limits of \$30 million and conventional Flood insurance with Limits of \$500,000 without being in default of this Agreement provided that, notwithstanding the above-reference limits, Operator agrees to be responsible for the first \$100 million of property damage caused by a windstorm as defined in a traditional windstorm insurance policy and the first \$50 million of property damage caused by a flood as defined in a traditional flood insurance policy (“Operator’s Responsibility”). If

Operator fails to pay any amount within Operator's Responsibility that is uncontested and more than thirty (30) days past due ("Uncontested Past Due Operator's Responsibility"), County shall have the right to draw down on the Letter of Credit set forth in Section 20.1 up to the amount of the unpaid Uncontested Past Due Operator's Responsibility and Operator shall replenish the Letter of Credit to the amount required in Schedule 20.1 within seven (7) business days after the draw down occurs.

- (b) Effective April 15, 2024, Operator shall purchase conventional property insurance with Named Windstorm and Flood Limits that are less than the full replacement value of the Facility without being in default of this Agreement provided that the Named Windstorm and Flood Limits of the purchased policies shall be the greater of (i) \$100 million for Named Windstorm and \$50 million for Flood or (ii) the projected one (1) in two hundred fifty (250) year loss amount, as determined annually by an analytics firm agreeable to both County and Operator. The Named Windstorm insurance coverage shall contain a deductible no greater than ten percent of the replacement value of the Facility. The Flood insurance coverage shall contain a deductible no greater than \$10 million. The deductible amount for both Named Windstorm and Flood shall be included as part of the required limits of insurance. For example, if the replacement value of the Facility is \$400 million and a Named Windstorm results in an insured loss of \$100 million or greater, Operator would be responsible for the 10% deductible which would be \$40 million and the insurance companies would be responsible for \$60 million. Loss amounts within the deductible shall be the responsibility of the Operator ("Revised Operator's Responsibility"). If Operator fails to pay any amount within Revised Operator's Responsibility that is uncontested and more than thirty (30) days past due ("Revised Uncontested Past Due Operator's Responsibility"), County shall have the right to draw down on the Letter of Credit set forth in Section 20.1 up to the amount of the unpaid Revised Uncontested Past Due Operator's Responsibility and Operator shall replenish the Letter of Credit to the amount required in Schedule 20.1 within seven (7) business days after the draw down occurs.

Nothing in this Section 11.1.2 shall modify any other insurance requirements set forth in the Agreement including, but not limited to, other risk and peril coverages.

3. **Ratification.** Except as amended by this Fifth Amendment, all of the terms and conditions of the Agreement continue unmodified and remain in full force and effect.

4. **Miscellaneous.**

4.1 Capitalized terms used herein without definition have the meanings ascribed to them in the Agreement.

4.2 This Fifth Amendment shall be effective upon the date it has been fully executed by all Parties.

4.3 This Fifth Amendment sets forth the entire agreement of the Parties in relation to the subject matter hereof. This Fifth Amendment integrates all the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the Parties with respect to the subject matter hereof. This Fifth Amendment binds and benefits the Parties and their respective heirs, personal

representatives, administrators, legal representatives, permitted successors, and permitted assigns. Except as modified in this Fifth Amendment, the Agreement shall remain in full force and effect.

4.4 The laws of the State of Florida (without giving effect to conflict of laws principles) govern all matters arising out of or relating to this Fifth Amendment and the transactions contemplated hereby.

4.5 Whenever possible, each provision of this Fifth Amendment will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Fifth Amendment is held to be invalid, illegal, or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or the effectiveness or validity of any provision in any other jurisdiction, and this Fifth Amendment will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provision had never been contained herein.

4.6 The Parties may execute this Fifth Amendment in multiple counterparts, each of which is deemed an original, and all of which, collectively, constitute only one (1) agreement. Delivery of an executed counterpart by facsimile, email, or other means of electronic transmission shall be deemed delivery of an originally executed counterpart in all cases.

4.7 Each individual executing this Fifth Amendment on behalf of a party represents and warrants that he or she is, on the date he or she signs this Fifth Amendment, duly authorized by all necessary and appropriate action to execute this Fifth Amendment on behalf of such party and does so with full legal authority.

4.8 This Fifth Amendment has been jointly prepared by the Parties and shall not be construed more strictly against any party.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Fifth Amendment to the Broward County Civic Arena Amended and Restated Operating Agreement, entered into by and among Broward County, Arena Operating Company, Ltd., Florida Panthers Hockey Club, Ltd., and Sunrise Sports & Entertainment, LLC: BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the 12th day of December, 2023; Arena Operating Company, Ltd., signing by and through its Chief Financial Officer; Florida Panthers Hockey Club, Ltd., signing by and through its Chief Financial Officer; and Sunrise Sports & Entertainment, LLC, signing by and through its Chief Financial Officer.

COUNTY

ATTEST:

Broward County Administrator, as
ex officio Clerk of the Broward County

BROWARD COUNTY, by and through its
Board of County Commissioners

By: _____

Board of County Commissioners

____ day of _____, 2023

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600

By: 
Michael J. Kerr (Date)
Deputy County Attorney

FIFTH AMENDMENT TO THE BROWARD COUNTY CIVIC ARENA AMENDED AND RESTATED OPERATING AGREEMENT BETWEEN BROWARD COUNTY, FLORIDA, ARENA OPERATING COMPANY, LTD., FLORIDA PANTHERS HOCKEY CLUB, LTD., AND SUNRISE SPORTS & ENTERTAINMENT, LLC.

OPERATOR

ARENA OPERATING COMPANY, LTD.

WITNESSES:



Witness Signature

Zachary Eisenberg

Witness Print/Type Name

By 

Printed Name: James Suh
Title: Chief Financial Officer.

11 day of December, 2023

FIFTH AMENDMENT TO THE BROWARD COUNTY CIVIC ARENA AMENDED AND RESTATED OPERATING AGREEMENT BETWEEN BROWARD COUNTY, FLORIDA, ARENA OPERATING COMPANY, LTD., FLORIDA PANTHERS HOCKEY CLUB, LTD., AND SUNRISE SPORTS & ENTERTAINMENT, LLC.

TEAM

FLORIDA PANTHERS HOCKEY CLUB, LTD.

WITNESSES:



Witness Signature

Zachary Eisenberg

Witness Print/Type Name

By 

Printed Name: James Suh
Title: Chief Financial Officer.

11 day of December, 2023

FIFTH AMENDMENT TO THE BROWARD COUNTY CIVIC ARENA AMENDED AND RESTATED OPERATING AGREEMENT BETWEEN BROWARD COUNTY, FLORIDA, ARENA OPERATING COMPANY, LTD., FLORIDA PANTHERS HOCKEY CLUB, LTD., AND SUNRISE SPORTS & ENTERTAINMENT, LLC.

SS&E

SUNRISE SPORTS & ENTERTAINMENT, LLC.

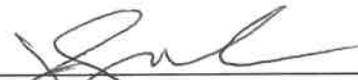
WITNESSES:



Witness Signature

Zachary Eisenberg

Witness Print/Type Name

By  _____

Printed Name: James Suh

Title: Chief Financial Officer.

11 day of December, 2023