

## LICENSE AGREEMENT

**THIS LICENSE AGREEMENT** (this “License”) is made effective as of the \_\_\_ day of February, 2023 (the “Effective Date”), by and between ORANGE BEACH CITY BOARD OF EDUCATION, a city school system established by the City of Orange Beach, Alabama, pursuant to *Code of Alabama* §16-11-1 *et seq.*, (1975), as amended (“Licensor”) and the CITY OF ORANGE BEACH, ALABAMA, an Alabama municipal corporation (“Licensee”).

WHEREAS, Licensor owns and operates a high school and middle school (the “School”) on the land located in the City of Orange Beach, Baldwin County, Alabama, and more particularly described on Exhibit A attached hereto and made a part hereof (the “Land”); and

WHEREAS, Licensor recently acquired the Land and the School from the Baldwin County Board of Education (“BCBE”); and

WHEREAS, BCBE recently constructed the School; and

WHEREAS, the Licensee contributed a significant amount of funds for the construction of the School and of various amenities and components thereof, including paying substantially all of the cost for the construction of the Performing Arts Center located on the Land (the “Performing Arts Center”), in the area shown on Exhibit B attached hereto and made a part hereof; and

WHEREAS, BCBE and Licensee were parties to an agreement whereby Licensee was expressly permitted to use the Performing Arts Center, and pursuant to which Licensee contributed \$10,167,603 towards the construction of the Performing Arts Center (such amount, together with the amount of any future expenditures by the Licensee for capital improvements to the Performing Arts Center, including those under Section 15 hereof, the “Contribution Amount”), and Licensee continues to provide financial support to Licensor for the Performing Arts Center; and

WHEREAS, the Licensor received the benefit of the Licensee’s financial contribution to the construction of the School and the Performing Arts Center in connection with its acquisition of the Land and School through a reduction of purchase price for the acquisition of the School and the Performing Arts Center, and continues to receive the benefit of financial support from Licensee in relation to the Performing Arts Center; and

WHEREAS, the parties desire to set forth the terms and conditions by which the Licensee shall be allowed to continue to use the Performing Arts Center.

NOW THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements set forth herein, the parties hereto do hereby agree as follows:

**1. AGREEMENT TO LICENSE.** Licensor grants to Licensee the right of possession, occupancy and use with respect to the Performing Arts Center under the terms and conditions stated herein. The license granted hereunder is coupled with an interest.

2. **TERM.** The term of this License shall commence as of the Effective Date, and shall continue for a period of ninety-nine (99) years, except that the Licensee shall have the unilateral right to terminate this License upon providing written notice of termination to the Licensor at any time.

3. **LICENSE FEE.** Licensee shall pay a fixed license fee to Licensor in the amount of \$100.00 per year.

4. **USE OF PERFORMING ARTS CENTER DURING OPERATIONAL HOURS.** Daily Monday through Friday until 5:00 p.m. on the days when school is in session, including summer school (the “Operational Hours”), the Licensor shall have primary use and control of the Performing Arts Center. The Licensee may, however, request to use the Performing Arts Center during Operational Hours if the proposed use does not interfere with normal educational activities and such use is approved by the Superintendent, such approval not to be unreasonably withheld. The Operational Hours schedule shall be maintained by the Superintendent, or such staff member as may be designated in writing by the Superintendent. All requests by the Licensee to use the Performing Arts Center during Operational Hours shall be made by the City Administrator, or such other person designated in writing by the Mayor. All written designations shall be furnished to the School Principal, the Superintendent, the Mayor, the City Administrator, and such person the subject of such designation. Except as otherwise provided herein, the Licensee shall provide as much advance notice as reasonably possible, but in no event less than 24-hours’ notice of any requested usage of the Performing Arts Center during Operational Hours.

5. **USE OF PERFORMING ARTS CENTER OUTSIDE OF OPERATIONAL HOURS.** Outside of Operational Hours (including Saturdays and Sundays, summers, holidays and any other time the school is not in session), the Licensee shall have primary use and control of the Performing Arts Center, and during such times that the Licensee does so use it, such use shall be an exclusive right of occupancy of the Performing Arts Center. For the avoidance of doubt, the use by the Licensee shall include the right to use the parking lots, drive aisles, driveways, sidewalks, walkways and other similar facilities on the Land that are reasonably necessary for the access and use of the Performing Arts Center in accordance with its intended purpose. The Licensor may, however, request to use the Performing Arts Center outside of Operational Hours if the proposed use does not interfere with the Licensee’s activities, and such use is approved by the City Administrator or Mayor; such approval not to be unreasonably withheld. The outside Operational Hours schedule shall be maintained by the City Administrator or such other person designated in writing by the Mayor. All requests by the Licensor to use the Performing Arts Center outside of Operational Hours shall be made by the School Principal or the Superintendent. The Licensor shall provide as much advance notice as reasonably possible, but in no event less than 24-hours’ notice of any requested usage of the Performing Arts Center outside of Operational Hours.

6. **CONDITIONS FOR LICENSEE’S USE OF PERFORMING ARTS CENTER.** Regardless of timing, the Licensee’s use of the Performing Arts Center shall be solely and exclusively for the promotion and advancement of education, music, the arts,

recreation and any other use serving a public purpose. Notwithstanding the foregoing, the Licensee: (i) may use or allow third-party designees to use the Performing Arts Center for fundraising events; (ii) may charge admission fees; and (iii) may offer concessions for sale during all Licensee or Licensee-sponsored events.

(a) The Licensee's use shall at all times be under the direction, supervision and control of agents and employees of the Licensee. The Licensor shall not be responsible for supervision of any activities involving the Licensee's use thereof.

(b) The Licensee's use shall be at no additional cost or expense; provided, however, following any period of use by the Licensee, the Licensee shall restore the Performing Arts Center to the condition that existed immediately prior to the use thereof, reasonable wear and tear excepted.

(c) The Licensee will be afforded access to the administrative offices in the Performing Arts Center during Operational Hours as needed to facilitate and coordinate its use of the Performing Arts Center. The City Administrator shall be provided keys to the Performing Arts Center and any other information needed (security codes as applicable) to gain access and use. All Licensee personnel accessing the facility shall be subject to the Licensor's reasonable rules, such as background checks and other reasonable requirements for non-school system personnel to have access to the School.

#### **6.1 SPECIAL USE PROVISIONS.**

(a) Designated Office. The Licensee shall be provided with a designated office in the Performing Arts Center for the Licensee's creative arts director (or such other similar position that the Licensee may designate in the future), on a full-time basis (regardless of Operational Hours). Licensee shall have exclusive rights of occupancy as to such office, and shall be furnished the keys to such office and any other information needed (security codes as applicable) to gain access and use, and shall be afforded access to and from such office at all times.

(b) Connecting Corridor. It is acknowledged that the interior passageway connecting the Performing Arts Center to the School (the "Connecting Corridor") was designed and constructed as a "safe room" to be able to withstand high winds and storms. In the event of a serious storm or threat thereof, Licensee shall be permitted to use the Connecting Corridor for its essential, rescue and safety personnel, and shall be afforded keys to such Connecting Corridor (if any special or different keys are required other than the keys to the Performing Arts Center) and any other information needed (security codes as applicable) to gain access and use, and shall be afforded access to such Connecting Corridor in the event of a serious storm or threat thereof.

**7. LICENSEE'S INSURANCE OBLIGATIONS.** At all times that the Licensee utilizes the Performing Arts Center, it shall maintain, at its sole cost, general liability insurance with such coverages and in such amounts as mutually agreed upon by the Licensee and the Licensor. All insurance shall be carried by insurance companies authorized to transact business

in the State of Alabama, selected by the Licensee. The Licensor shall be named as an additional insured on all policies purchased in satisfaction of the requirements contained in this Section.

**8. LICENSOR'S INSURANCE OBLIGATIONS.** The Licensor shall obtain and keep in force replacement cost value coverage through the Alabama Department of Risk Management State Insurance Fund (the "Fund") on the Performing Arts Center and all appurtenances thereto. The Licensor shall furnish the Licensee evidence that such policy is in full force and effect, upon request from time to time by the Licensee. Such policy shall contain a customary provision affording the Licensee notice in writing in advance of any cancellation or lapse of coverage. To the extent permitted by the Fund, the Licensor waives any and all rights to recover against the Licensee or any of its officers or employees, for any loss or damage arising from any cause covered by any insurance carried by the Licensor.

**9. CODE COMPLIANCE.** The Licensor will be solely responsible for the compliance of the Performing Arts Center (including all parking lots, drive aisles, driveways, sidewalks and walkways), with all applicable building codes, laws, ordinances, orders, rules and regulations whether local, state, federal, or promulgated by other agencies or bodies having jurisdiction over the Performing Arts Center, including the Americans with Disabilities Act.

**10. SYSTEMS MAINTENANCE.** The Licensor will, at its sole cost and expense, maintain the Performing Arts Center and make repairs, restorations and replacements to the Performing Arts Center, including the heating systems, ventilating systems, air conditioning systems, mechanical systems, electrical systems, plumbing systems, speaker systems, signs, fire sprinklers (including heads and pipes), structural systems, roof, walls, ceilings, windows, doors, plate glass, lateral supports, foundations, restrooms, parking areas, sidewalks, gutters, downspouts, drains, sewer and storm water pipes, utility lines and pipes, entrance areas, dumpster areas, indoor and outdoor lighting, lawns, shrubbery and other landscaping, and all fixtures and appurtenances to the Performing Arts Center as and when needed to preserve them in the same general condition as they were as of the date of substantial completion thereof, normal wear and tear, casualty and condemnation excepted, and regardless of whether the repairs, restorations, and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or noncapital.

(a) All repairs, restorations and replacements will be in quality and class equal to or better than the original work or installations.

(b) In furtherance thereof, the Licensor shall (i) maintain the Performing Arts Center in a clean and attractive condition, (ii) replace promptly any cracked or broken glass of the Performing Arts Center with glass of like grade and quality; (iii) maintain a pest extermination program for the Performing Arts Center, (iv) maintain a termite and wood infestation prevention program for the Performing Arts Center, and (v) maintain an HVAC maintenance program. The Licensor agrees to keep the parking areas and sidewalks clean and in good repair.

**11. JANITORIAL SERVICES.** The Licensor will provide janitorial services for the Performing Arts Center during Operational Hours and following periods of usage by the

Licensor pursuant to Section 5 above. The Licensee will provide janitorial services for the Performing Arts Center outside of Operational Hours and following periods of usage by the Licensee during Operational Hours pursuant to Section 4 above.

**12. UTILITIES.** The Licensor shall ensure that water, sewer, electricity, gas and telecommunications utility services are available to the Performing Arts Center, and shall be responsible for the payment of the utility charges therefor, including the reasonable usage of the Performing Arts Center by the Licensee.

**13. CASUALTY LOSS.** If the Performing Arts Center is damaged or destroyed by fire, wind, hurricane or other casualty, the Licensor shall restore the Performing Arts Center to substantially the same condition as before the damage occurred as soon as practicable unless otherwise agreed upon in writing by the parties hereto.

**14. CONDEMNATION.** In the event all or any portion of the Performing Arts Center is taken in condemnation proceedings, the condemnation proceeds shall be used to reimburse the Licensee for the Contribution Amount, and upon payment in full to the Licensee of the Contribution Amount, any remaining condemnation proceeds shall be the property of the Licensor.

**15. ALTERATIONS AND IMPROVEMENTS.** Neither party will make any alterations or improvements to the Performing Arts Center without the prior written consent of the other party, which consent will not be unreasonably withheld.

Notwithstanding the foregoing, the Licensee shall be allowed to renovate the lobby of the Performing Arts Center, at its cost and expense. The Licensee shall be responsible for the design and construction, with such architects and contractors of its choosing. The Licensee shall submit pre-construction plans to the Licensor for review. Licensee agrees to use good faith efforts to minimize any interference or disruption with school activities or events.

**15.1 PERFORMANCE SETS, PROPS AND STORAGE.** The parties agree to work together to coordinate any production sets or props which are intended to remain on stage for a period longer than a one-time or single production use (an "Extended Set"). If a party desires to place an Extended Set on stage, such party shall notify the other party at least two (2) weeks in advance of the nature of the Extended Set and the anticipated timeframe in which such Extended Set would remain on stage. A party will not be permitted to keep an Extended Set on stage in excess of 60 days without the prior written consent of the other party, such consent not to be unreasonably withheld. All production props, costumes and other performance related items shall be stored away when not in use so as not to interfere with the other party's use of the Performing Arts Center. Any items which cannot be stored away according to this Section must be removed unless both parties provide written approval in writing otherwise.

**16. SIGNAGE.** The signage for the Performing Arts Center shall be subject to mutual approval by both parties.

**17. EVENTS OF DEFAULT.** The following occurrences are each an “Event of Default” on the part of the Licensee: (a) Licensee shall fail to pay the annual license fee when and as due, and the default continues for thirty (30) days after written notice from Licensor; or (b) Licensee breaches any of the other agreements, terms, covenants, or conditions that this License requires Licensee to perform, and the breach continues for a period of ninety (90) days after written notice by Licensor to Licensee.

**18. REMEDIES.** Upon the occurrence of an uncured Event of Default, then Licensor may, as its sole and exclusive remedy, terminate this License, in which event Licensee shall promptly surrender possession of the Performing Arts Center to Licensor. However, Licensor shall not be entitled to terminate this License due to such an uncured Event of Default, unless the written notice of such default (i) contains a conspicuous statement that Licensor will terminate the License if such default is not cured within such cure period, and (ii) is conclusively shown to have been delivered to and received by both the Mayor and the City Administrator, at the Orange Beach City Hall.

**19. COVENANT OF QUIET ENJOYMENT.** Licensee’s possession of the Performing Arts Center will not be disturbed by Licensor or any persons claiming by or through Licensor.

**20. LIABILITY OF LICENSOR.** Licensor shall not be liable for any loss, damage, or injury of any kind or character to any person or property arising from any use of the Performing Arts Center by Licensee, its agents, employees or invitees or caused by or arising from any act or omission of Licensee, or any of its agents, employees or invitees, unless such loss, damage or injury is a result of the gross negligence or willful misconduct of Licensor.

**21. RIGHT OF FIRST REFUSAL.** In the event that the Licensor desires to sell, transfer, convey, exchange or grant (a “Transfer”) the Performing Arts Center to a third party (a “Proposed Transferee”), the Licensor shall provide the Licensee with a copy of any bona fide, written offer (the “Offer”) from such Proposed Transferee, setting forth the material terms and conditions of the Transfer. The Licensee shall have the right for a period of twenty (20) days following receipt of the Offer, to elect to acquire the interest proposed to be transferred from the Licensor to the Proposed Transferee (the “Right of First Refusal”) on the terms and conditions set forth in the Offer, except as otherwise provided herein. The Licensee shall exercise its Right of First Refusal by giving written notice to the Licensor, specifying a date not more than sixty (60) days after the date of exercise of the Right of First Refusal, on which the Licensee and Licensor will complete the closing on the Transfer. The Licensee shall receive a credit against the purchase price in an amount equal to the Contribution Amount. Additionally, the conveyance to the Licensee shall include either fee simple to the parking areas, drive aisles, driveways, sidewalks and walkways which generally serve the Performing Arts Center (or appropriate easements therefor), as well as any reasonably necessary easements for utilities, egress and ingress. In the event that the Licensee does not timely elect to exercise its Right of First Refusal, the Licensor shall be free to complete the Transfer to the Proposed Transferee in substantial accordance with the Offer. Upon any Transfer (to a party other than the Licensee), this Agreement shall remain in force and effect. If the Licensee proceeds to closing pursuant to the Right of First Refusal, the Licensor shall deliver to the Licensee a statutory warranty deed

against delivery of the purchase price for the property (taking into account the credit described above), subject to the following exceptions to title: (i) any matters which are in existence on the date that the Licensor acquired title to the Land, (ii) any matters shown on the subdivision plat for the Land, if applicable, (iii) liens for ad valorem taxes and general and special assessments not yet due and payable, (iv) utility, access, drainage and other easements and rights of way, mineral rights, restrictions and exceptions none of the foregoing of which, individually or in the aggregate, materially interfere with or impair the use of the Performing Arts Center, and (v) such other minor defects, irregularities, encumbrances, easements, rights of way and clouds on title (including zoning and other similar restrictions and regulations) as customarily exist with respect to properties similar in character to the Performing Arts Center and would not in the aggregate materially impair the title or interest of the Licensee in acquiring the Performing Arts Center.

22. **RECORDING.** The Licensee shall have the right to record this Agreement or a memorandum hereof (in such form as it reasonably determines) against the Performing Arts Center in the real estate records of the Office of the Judge of Probate of Baldwin County, Alabama.

23. **CONSTRUCTION.** “Including” or “include” shall mean including (or include) without limitation.

24. **COUNTERPARTS.** This License may be executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

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**IN WITNESS WHEREOF**, Licensor and Licensee have caused this License Agreement to be duly executed by its duly authorized representative effective as of the Effective Date.

**LICENSEE:**

CITY OF ORANGE BEACH, ALABAMA

By: \_\_\_\_\_  
Tony Kennon, Mayor

Attest:

\_\_\_\_\_  
City Clerk

**LICENSOR:**

ORANGE BEACH CITY BOARD OF  
EDUCATION

By: \_\_\_\_\_  
Randy Wilkes, Superintendent

[ACKNOWLEDGMENTS ON FOLLOWING PAGE]



STATE OF ALABAMA     )  
BALDWIN COUNTY        )

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Tony Kennon, whose name as Mayor of the CITY OF ORANGE BEACH, ALABAMA, an Alabama municipal corporation, is signed to the foregoing License Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said License Agreement, he, as such Mayor and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

Given under my hand and official seal this the \_\_\_\_ day of February, 2023.

[SEAL]

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF ALABAMA     )  
BALDWIN COUNTY        )

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Randy Wilkes, whose name as Superintendent of the ORANGE BEACH CITY BOARD OF EDUCATION, a city school system established by the City of Orange Beach, Alabama, is signed to the foregoing License Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said License Agreement, he, as such Superintendent and with full authority, executed the same voluntarily for and as the act of said Board of Education.

Given under my hand and official seal this the \_\_\_\_ day of February, 2023.

[SEAL]

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**Exhibit A**

**Description of the Land**

COMMENCING AT THE SOUTHWEST CORNER OF LOT 21, SWEETWATER BAYOU, AS RECORDED AS SLIDE 2017-A, IN THE OFFICE OF THE JUDGE OF PROBATE, BALDWIN COUNTY, ALABAMA; THENCE RUN S89°53'37"E, ALONG THE SOUTH LINE OF SAID SWEETWATER BAYOU, AN EXTENSION THEREOF, 698.38 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF SWEETWATER DRIVE AND THE POINT OF BEGINNING. THENCE RUN N00°11'47"E, ALONG SAID EAST RIGHT-OF-WAY LINE, 1260.43 FEET TO THE POINT OF INTERSECTION OF SAID EAST RIGHT-OF-WAY LINE AND THE SOUTH RIGHT-OF-WAY LINE OF ALABAMA STATE HIGHWAY NUMBER 180; THENCE RUN N89°49'32"E, LEAVING SAID EAST RIGHT-OF-WAY LINE AND ALONG SAID SOUTH RIGHT-OF-WAY LINE, 1335.75 FEET TO A POINT; THENCE RUN S64°23'45"E, LEAVING SAID SOUTH RIGHT-OF-WAY LINE, 58.15 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF WILLIAM SILVERS PARKWAY; THENCE RUN S00°01'18"E, ALONG SAID WEST RIGHT-OF-WAY LINE, 1229.81 FEET TO A POINT; THENCE RUN S89°36'26"W, LEAVING SAID WEST RIGHT-OF-WAY LINE, 1393.00 FEET TO THE POINT OF BEGINNING.

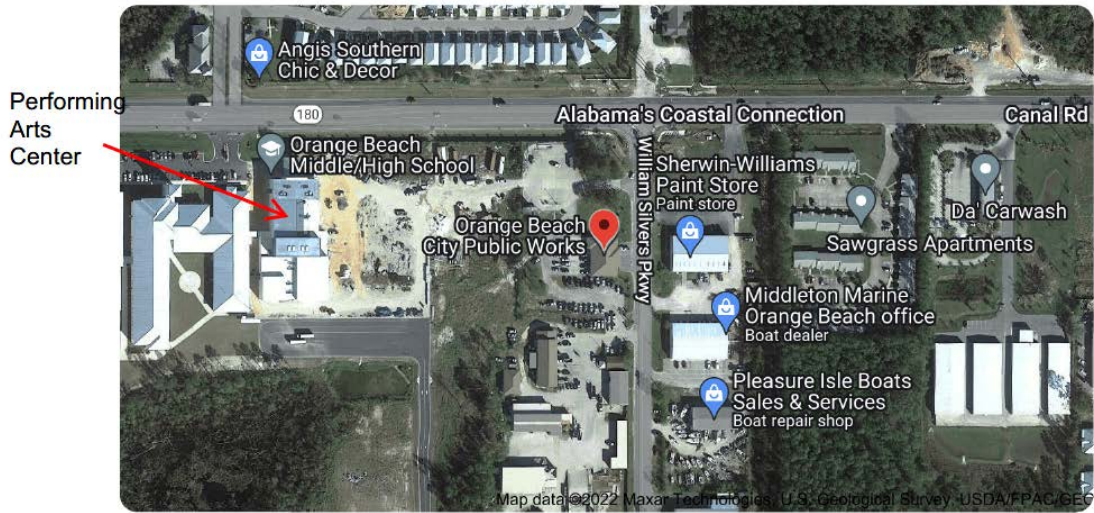
LESS AND EXCEPT THE FOLLOWING:

LOT 1, CROWN COMMUNICATIONS TOWER SUBDIVISION, AS RECORDED AT SLIDE 2057-C, IN THE OFFICE OF THE JUDGE OF PROBATE, BALDWIN COUNTY, ALABAMA.

THE ABOVE DESCRIBED PROPERTY ALSO BEING THAT SAME PROPERTY AS DESCRIBED IN INSTRUMENT NUMBER 1764335, IN THE OFFICE OF THE JUDGE OF PROBATE, BALDWIN COUNTY, ALABAMA. CONTAINING 39.91 ACRES MORE OR LESS AND LYING IN SECTION 1, TOWNSHIP 9 SOUTH, RANGE 4 EAST, BALDWIN COUNTY, ALABAMA.

**Exhibit B**

**Aerial View**



23908 Canal Rd  
Orange Beach, AL 36561