

OUTDOOR EVENT AGREEMENT

THIS AGREEMENT is entered into this 4th day of January, 2020 by and between:

CITY OF FORT LAUDERDALE, a Florida municipal corporation
whose address is 100 North Andrews Avenue, Fort Lauderdale, FL
33301, hereinafter, "CITY"

and

BONNET HOUSE, INC., a Florida not for profit corporation whose
address is 900 N. Birch Road, Fort Lauderdale, FL 33304-3326,
hereinafter, "OWNER/OPERATOR",

RECITALS

A. By virtue of that Warranty Deed from The Florida Trust for Historic Preservation, Inc., a Florida not for profit corporation Grantor to OWNER/OPERATOR, Grantee, said deed being executed on March 13, 2020 and recorded on June 1, 2020 in Official Records Instrument No. 116529628, of the Public Records of Broward County Florida, identified as **Exhibit "A-4"** OWNER/OPERATOR became the fee simple owner of certain real property located on the West side of State Road A-1-A in the City of Fort Lauderdale, said real property being referred to herein as **"Bonnet House Property West"** identified as **Parcel "A"** on the Sketch & Description of Parcel "A" as found at **Exhibit "A-1"** to this Agreement.

B. By virtue of the instrument referenced in Paragraph "A" above, OWNER/OPERATOR became the fee simple owner of certain real property located on the East side of State Road A-1-A in the City of Fort Lauderdale, said real property being referred to herein as **"Bonnet House Property East"** and identified as **Parcel "B"** on the Sketch & Description of **Parcel "B"** as found at **Exhibit "A-2"** to this Agreement. **Bonnet House Property West** and **Bonnet House Property East** are referred to herein as **"Bonnet House Property."**

C. A portion of **Bonnet House Property East** is encumbered by an easement which was conveyed to CITY by OWNER/OPERATOR's predecessors in title, Frederic Clay Bartlett and Evelyn Fortune Bartlett, et al., said easement being for "public beach purposes" said deed being dated November 25, 1940, recorded December 18, 1950 and Deed Book 372, Page 360 attached hereto as **Exhibit "B"**.

D. By that instrument entitled "Release of Easement" executed by the CITY on April 29, 1958, the CITY released the easement for public beach purposes flowing from the aforementioned instrument recorded at Deed Book 372, Page 360, said "Release of Easement" being recorded May 2, 1958 at Official Records Book 1213, Page 643, said "Release of Easement" being attached hereto as **Exhibit "C"**.

E. The land referred to herein as **Bonnet House Beach** is that portion of **Bonnet House Property East** owned in fee simple by OWNER/OPERATOR that is not subject to the easement for "public beach purposes," comprising 700 lineal feet as more particularly described

and identified as **Parcel "C"** on the Sketch & Description of **Parcel "C"** as found at **Exhibit "A-3"** to this Agreement.

F. From the **Bonnet House Property East**, OWNER/OPERATOR conveyed to CITY a right-of-way easement, for among other things, Beach Promenade purposes by Easement Deed No. 1681, dated June 22, 1991, recorded June 28, 1991 at Official Records Book 18513, Page 0557.

G. **Bonnet House Property West** contains structures and natural preserves, collectively known as the Bonnet House Museum & Gardens which are listed on the National Register of Historic Places, are designated by the CITY as an historic landmark and are recognized by the National Trust for Historic Preservation as part of the United States Department of Interior's Save America's Treasure program.

H. OWNER/OPERATOR is charged with operating, managing, and maintaining the **Bonnet House Property** which includes the historic Bonnet House and its curtilage, as an historic house museum, open to the public for education, cultural programming, recreation and special events. CITY performs maintenance of the **Bonnet House Property East**, including, but not limited to cleaning, raking, removal of seaweed and debris, picking up trash and grading.

I. The **Bonnet House Property** was conveyed to OWNER/OPERATOR for the purpose of preserving Bonnet House, the art on premises, and the natural environment on the site for the education and pleasure of the public.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Outdoor Event Agreement, and other good and valuable considerations, the adequacy and receipt of which are hereby acknowledged, the parties agree as follows:

1, **Recitals.** The foregoing recitals are true and correct and are hereby ratified and confirmed between the parties and incorporated herein.

2. **Defined Terms.** The following terms, as used and referred to herein, shall have the meanings set forth below, unless the context indicates otherwise.

ADA means the Americans with Disabilities Act of 1990 (42 U.S.C. § 126, et seq.), as same may be amended from time to time, and regulations adopted pursuant thereto, including, but not necessarily limited thereto, 28 CFR Part 35 and 28 CFR Part 16, which, in general terms prohibits the discrimination of handicapped individuals by denying them the right to participate in or benefit from the services provided at any Outdoor Event covered by this Agreement.

Agreement means this Outdoor Event Agreement.

Application means a detailed proposal of the proposed Outdoor Event as set forth in Code § 15-182, as same may be amended from time to time.

Applicant means OWNER/OPERATOR.

Bonnet House Private Beach means that real property located generally East of State Road A-1-A and described as the 700 lineal feet within Bonnet House Property East, more particularly depicted as **Parcel "C"** as more particularly described in the Sketch & Description

for **Parcel "C"** as set forth in **Exhibit "A-3"** attached hereto which is that portion of **Bonnet House Property East** that is not subject to the easement for "public beach purposes" held by the CITY in trust for the public.

Bonnet House Property means all property owned and operated by OWNER/OPERATOR and includes (i) **Bonnet House Property West (Parcel "A"** on the Sketch & Description as set forth in **Exhibit "A-1"**, attached hereto) and (ii) **Bonnet House Property East (Parcel "B"** on the Sketch & Description as set forth in **Exhibit "A-2"**, attached hereto) and (iii) **Bonnet House Private Beach (Parcel "C"** on the Sketch & Description as set forth in **Exhibit "A-3"**, attached hereto).

Bonnet House Property East means OWNER/OPERATOR's real property depicted and described as **Parcel "B"** in the Sketch & Description as set forth in **Exhibit "A-2"**, attached hereto, said property lying generally East of State Road A-1-A.

Bonnet House Property West means OWNER/OPERATOR's real property depicted and described as **Parcel "A"** in the Sketch & Description as set forth in **Exhibit "A-1"**, attached hereto, said property lying generally West of State Road A-1A.

City Commission means the governing body of the CITY.

City Manager means CITY's Chief Executive Officer, its City Manager, or his or her designee.

Code means the CITY Code of Ordinances.

Contract Administrator means the Director, or his or her designee. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator.

Day(s). In computing any period of time expressed in day(s) in this Agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

Director means the Director of the Department of Parks and Recreation for the CITY.

Effective Date means the effective date of this Agreement, which shall be the date upon which (a) the Agreement is executed by OWNER and OPERATOR and (b) the City Commission grants authorization for the proper CITY officials to execute this Agreement.

Event means an Outdoor Event or a Minor Outdoor Activity.

Minor Outdoor Activity means an Outdoor Event, defined below, the standards for which Minor Outdoor Activity are set forth in Code Sec. 15-184 (b), as same may be amended from time to time. A *Minor Outdoor Activity* is an Outdoor Event, but the insurance requirements of City Code Sec. 15-183 (7) shall not be applicable to a *Minor Outdoor Activity*.

Outdoor Event means concerts, festivals, races, walks, triathlons, circuses, carnivals, shows, exhibitions and other similar outdoor events, whether operated totally outdoors, on stage, under tents or with the use of temporary buildings or structures, located within a defined area and to which members of the general public are invited as participants or spectators. Outdoor Events are regulated by Code Chapter 15, Article V, Sections 15-181, et seq., as same may be amended from time to time.

Person means any individual, firm, partnership (general or limited), corporation, company, association, joint venture, joint stock association, estate, trust, business trust, cooperative, limited liability corporation, limited liability partnership, limited liability company or association, or body politic, including any heir, executor, administrator, trustee, receiver, successor or assignee or other person acting in a similar representative capacity for or on behalf of such Person.

Public Beach means the public municipal beach and recreation area of the CITY as set forth in Code Section 8-71(a), as same may be amended from time to time.

Public Beach Easement Area means OWNER/OPERATOR's real property known as **Bonnet House Property East** depicted and described as **Parcel "B"** in the Sketch & Description attached hereto as **Exhibit "A-1"** LESS AND EXCEPT **Bonnet House Private Beach, Bonnet House Private Beach** being otherwise designated as **Parcel "C"** in the Sketch & Description set forth in **Exhibit "A-3"** attached hereto. The Public Beach Easement Area is the remaining portion of **Bonnet House Property East** over which CITY retains an easement for "public beach purposes," as that term "public beach purposes" is more particularly described in Deed Book 372, Page 360 of the Public Records of Broward County, Florida, a copy of which is attached hereto as **Exhibit "B"**.

Schedule One is the list of Outdoor Events approved by the Contract Administrator and City Commission at the commencement of the term of this Agreement, at the commencement of annual renewals thereof and supplemented from time to time with additional Outdoor Events approved by the Contract Administrator in accordance with the terms and conditions of this Agreement.

Sketch & Description means and refers to those certain Sketches & Descriptions prepared by McLaughlin Engineering Co. depicting Bonnet House Property West, Bonnet House Property East and Bonnet House Private Beach as more particularly found in **Exhibits "A-1", "A-2," and "A-3"** attached hereto, said Sketches & Descriptions being, dated April 13, 2015.

3. Term. The initial term of this Agreement is for the period commencing upon the Effective Date hereof and ending December 31, 2025.

(a) On or before September 1st of the calendar year prior to the expiration of the initial five (5) year term ending December 31, 2025 and any subsequent five (5) year renewals of this Agreement, the Applicant shall give Contract Administrator written notice of its intent to seek renewal of this Agreement.

(b) Any five (5) year renewal of this Agreement shall be approved by the City Commission.

(c) Any renewal of this Agreement shall be for a five (5) term and shall extend from January 1st to December 31st of the following five (5) year term.

(d) During the initial five (5) year term and any five (5) year renewal of the term, **Schedule One** may be supplemented with additional Events upon submission of an Application to the Contract Administrator, together with the applicable application fee, at least sixty (60) days in advance of the Event.

4. Public Use of Bonnet House Private Beach and Bonnet House Property East and Preservation of Marine Wildlife. Applicant recognizes the importance of continued public access to Bonnet House Property East and Bonnet House Private Beach and will take every step to ensure that the public has free and open access to said property for "public beach purposes" during times that events contemplated by this Agreement are not occurring; although as private property such access and usage to Bonnet House Private Beach shall be within the sole discretion of OWNER/ OPERATOR. Applicant further recognizes that Bonnet House Property East is a natural, ecologic treasure and is the habitat for a variety of protected flora and fauna. Applicant shall respect any and all federal, state, county, and municipal regulations pertaining to beach usage during the turtle nesting season. Further as to Bonnet House Property East (excluding Bonnet House Private Beach), Applicant shall not engage in any activities that are in derogation of the public's "public beach purposes" easement rights without City Commission approval.

5. Outdoor Events.

(a) This Agreement permits Applicant during the term of this Agreement and any renewals thereof to conduct those Events on Bonnet House Property as set forth in the Event Agreement **Schedule One** attached hereto and incorporated herein. As a condition precedent to any Event being listed on **Schedule One**, Applicant must submit an Application to the Contract Administrator for review by the relevant CITY Departments, together with the Application Fee, and the Application must be approved. For Events to be listed on **Schedule One** for ensuing five (5) year renewal terms, this process of submitting an Application, together with application fee, for review and approval must be followed.

(b) As to the Public Beach Easement Area, Event activities which would be in derogation of the public's "public beach purposes" easement rights are prohibited, except in such cases where Applicant has requested and City Commission has granted Bonnet House's use of Bonnet House Property East in derogation of the public's "public beach purposes" easement rights for a limited period of time and has temporarily waived or suspended, in whole or in part, the public's "public beach purposes" easement rights.

(c) Except as to Events on Bonnet House Property East where there is a Public Beach Easement Area, the Contract Administrator is hereby delegated the authority under this Agreement to approve Events not otherwise set forth on **Schedule One** of the Agreement during the Term of the Agreement and any renewals thereof upon the following conditions:

- (i) Applicant files its Application, together with the applicable Application Fee, for such Event with the Contract Administrator no less than sixty (60) days prior to the date of the event; and
- (ii) Said event is in compliance with the requirements of Section 5 through 26 of this Agreement and Code Chapter 15, Article V, entitled Outdoor Events, §§ 15-181, *et seq.*, as same may be amended from time to time; and
- (iii) The Contract Administrator approves the Application at least fourteen (14) days in advance of such Event.

6. General Requirements For Outdoor Events. Applicant shall comply with the following General Requirements as conditions of hosting Events as approved pursuant to Section 5 of this Agreement. Sixty (60) days in advance of each Event proposed to be held in the ensuing five (5) year term or renewals thereof, Applicant shall submit an Application, together with the applicable application fee, to the Contract Administrator for such proposed Event. CITY staff shall exercise due diligence in reviewing the Application and granting approval for such Events within thirty (30) days of submittal of such Application. Such proposed Event shall not be eligible for listing in **Schedule One** until approved by the Contract Administrator. The general requirements for Outdoor Events shall include the following:

(a) If the Event includes the use of fireworks, in advance of the proposed Event the Applicant shall obtain a fireworks permit from the CITY'S Fire-Rescue Department. The Applicant shall comply with all applicable state laws regarding the use of fireworks.

(b) The Applicant shall provide sanitary facilities for the proposed Event of the type and in a number specified by the requirements established by the CITY'S Department Sustainable Development, Division of Building Services.

(c) The Applicant shall coordinate with staff of the City's Department of Sustainable Development, Division of Building Services and staff shall schedule appropriate CITY staff to conduct electrical inspections of all electrical facilities that will be involved in the proposed Event, whether power is supplied by local utilities or is self-provided by generator systems. The Applicant shall permit the City staff to conduct electrical inspections on all electrical facilities that will be involved in the Event. Applicant shall secure approval of all electrical facilities that will be involved in the proposed Event prior to holding or sponsoring the proposed Event.

(d) If the Event includes the sale or distribution of any food or beverages, the Applicant shall comply with all applicable state, county and CITY food service requirements.

(e) The Applicant shall submit to the Contract Administrator a written plan for review and approval by the CITY Police Department ("FLPD") that addresses crowd control and traffic control. The Applicant shall secure approval by the Police Department prior to holding the Event. The Applicant shall bear the cost of staff necessary to implement the crowd control and traffic control plan. Applicant agrees that for Events involving 25 or more guests that Applicant shall retain the services of security personnel and/or off duty FLPD officers to facilitate pedestrian traffic crossing State Road A-1-A.

(f) If the Event includes the use of tents, awnings, or canopies, the Applicant shall submit to the Contract Administrator for review and approval of the CITY'S Departments of

Sustainable Development, Division of Building Services and the Department of Parks and Recreation prior to holding the Event. Applicant shall also submit to the Contract Administrator current flameproof certificates for review and approval of the CITY'S Fire-Rescue Department.

(g) The Applicant shall submit to the Contract Administrator a written plan that addressed fire safety issues for review and approval by the CITY'S Fire-Rescue Department. The Applicant shall not hold or sponsor the Event until the Fire Rescue Department has provided written approval of Applicant's plan. The Applicant shall bear the cost of Fire-Rescue personnel deemed necessary by the Fire Marshall for fire watch and fire marshal personnel for the Event.

(h) Applicant, subject to compliance with applicable regulations, shall use temporary stanchions (or similar system approved by the Contract Administrator) to cordon off Bonnet House Private Beach during Events. The area "cordoned off" shall not include the area below the Mean High Water mark, which is within the jurisdiction of the State of Florida and held in trust for all the public nor shall it include the public sidewalks along State Road A-1-A.

(i) Applicant shall provide ten (10) days advance notice to the public of such Events by posting appropriate signage on Bonnet House Private Beach and Bonnet House Property East to the extent applicable.

(j) Applicant may serve food and drink, including alcoholic beverages, during Events on Bonnet House Private Beach. No glass drinkware shall be permitted on Bonnet House Private Beach and Bonnet House Property East. Applicant shall ensure that caterers shall return the premises to the state of cleanliness and good repair that existed prior to the event, as determined by the Contract Administrator. Applicant may serve food and drink, including alcoholic beverages during Events on Bonnet House Property East, only upon approval by the City Commission.

(k) The review of each Application for Events listed on Schedule One and for any additional Events to be approved by the Contract Administrator shall follow the same procedures as reviews ordinarily conducted by the Contract Administrator in fulfillment of Code Chapter 15, Article V, entitled "Outdoor Events", §15-181, et seq., as same may be amended from time to time.

(l) For any Events approved for Bonnet House Private Beach, Contract Administrator shall provide the City Commission with ten (10) days advance notice.

7. Minor Outdoor Activities Not Open to the General Public on Bonnet House Private Beach and Bonnet House Property East. Applicant may hold Minor Outdoor Activities to which the general public is not invited on Bonnet House Private Beach and Bonnet House Property East subject to the following conditions:

7.1 For any Minor Outdoor Activities to which the general public is not invited involving 50 or more people, Applicant shall provide the Contract Administrator with fourteen (14) days advance notice.

7.2 Applicant may serve food and drink, including alcoholic beverages on Bonnet House Private Beach during such Minor Outdoor Activities to which the general public is not invited. No glass drinkware shall be permitted. Applicant shall ensure that at the conclusion of the Minor Outdoor Activity the premises will be returned to the state of cleanliness and good repair that existed prior to the event, as determined by the Contract Administrator.

7.3 Applicant, subject to compliance with applicable regulations, shall use temporary stanchions (or similar system approved by the Contract Administrator) to cordon off Bonnet House Private Beach during such Minor Outdoor Activities to which the public is not invited. The area "cordoned off" shall not include the area below the Mean High Water mark, which is within the jurisdiction of the State of Florida and held in trust for all the public nor shall it include the public sidewalks along State Road A-1-A.

7.4 Applicant shall provide not less than ten (10) days advance notice to the public of such Minor Outdoor Activities by posting appropriate signage on Bonnet House Private Beach and Bonnet House Property East to the extent applicable. During Minor Outdoor Activities to which the general public is not invited on Bonnet House Private Beach signage shall be posted in seven (7) days advising the general public of the nature of the Minor Outdoor Activities and private ownership of Bonnet House Beach.

7.5 No Minor Outdoor Activities to which the general public is not invited shall be held on Bonnet House Property East within the Public Beach Easement Area when the Minor Outdoor Activities to which the general public is not invited would be in derogation of the public's "public beach purposes" easement rights, unless such Minor Outdoor Activities to which the general public is not invited are Minor Outdoor Activity to which the general public is not invited approved by the City Commission by separate action.

8. Indemnity.

8.1 Applicant shall protect, defend, indemnify and hold harmless the CITY, its officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses including reasonable attorney's fees actually incurred, or liabilities of every kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations of Applicant under this Agreement, conditions contained therein, the conduct or performance of the Event or the breach or default by Applicant of any covenant or provision of this Agreement except for any occurrence arising out of or resulting from the intentional torts or gross negligence of the CITY, its officers, agents and employees (hereinafter, "claims"). Without limiting the foregoing, any and all such claims, suits, causes of action relating to personal injury, death, or damage to property, alleged infringement of any patents, trademarks, copyrights or of any other tangible or intangible personal or real property right by Applicant, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court by Applicant, is included in the indemnity.

8.2 Applicant further agrees that upon proper and timely notice to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and agrees to bear all other costs and expenses related thereto even if the claim is groundless, false or fraudulent and if called upon by the CITY, Applicant shall assume and defend not only itself but also the CITY in connection with any such claims, suits or causes of action, and any such defense thereof shall be at no cost or expense whatsoever to CITY, provided that the CITY (exercisable by the CITY Attorney) shall retain the right to select counsel of its own choosing. This indemnification shall survive termination, revocation or expiration of this Agreement and shall cover any acts or omissions occurring during the term of the Agreement, including any period after termination, revocation or expiration of the Agreement while any curative acts are undertaken. The foregoing shall not serve as a waiver of the CITY'S sovereign immunity or of

any other legal defense available to the CITY and shall be subject to the limitations contained in Fla. Stat. § 768.28, as same may be amended from time to time.

9. Insurance.

As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement and during any renewal or extension term of this Agreement, the Applicant, at its sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of the Applicant. The Applicant shall provide the City a certificate of insurance evidencing such coverage. The Applicant's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Applicant shall not be interpreted as limiting the Applicant's liability and obligations under this Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in the State of Florida and possess an A.M. Best rating of A-, VII or better, subject to approval by the City's Risk Manager.

The coverages, limits, and/or endorsements required herein protect the interests of the City, and these coverages, limits, and/or endorsements shall in no way be required to be relied upon by the Applicant for assessing the extent or determining appropriate types and limits of coverage to protect the Applicant against any loss exposures, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the City's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Applicant under this Agreement.

The following insurance policies and coverages are required:

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$1,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$1,000,000 each occurrence and \$2,000,000 aggregate for Products and Completed Operations

Policy must include coverage for contractual liability and independent contractors.

The City, a Florida municipal corporation, its officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the Applicant. The coverage shall contain no special limitation on the scope of protection afforded to the City, its officials, employees, and volunteers.

Business Automobile Liability

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than \$1,000,000 combined single limit each accident.

If the Applicant does not own vehicles, the Applicant shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Liquor Liability

Applicant shall provide evidence of coverage for liquor liability in an amount not less than \$1,000,000 per occurrence. If the Commercial General Liability policy covers liquor liability (e.g. host or other coverage), the Applicant shall provide written documentation to confirm that coverage already applies to this Agreement.

Workers' Compensation and Employer's Liability

Coverage must be afforded per Chapter 440, Florida Statutes. Any person or entity performing work for or on behalf of the City must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statute.

The Applicant waives, and the Applicant shall ensure that the Applicant's insurance carrier waives, all subrogation rights against the City, its officials, employees, and volunteers for all losses or damages. The City requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

The Applicant must be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act and the Jones Act, if applicable.

Insurance Certificate Requirements

- a. The Applicant shall provide the City with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of work contemplated in this Agreement.
- b. The Applicant shall provide to the City a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the Applicant to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- d. In the event the Outdoor Event Agreement term goes beyond the expiration date of the insurance policy, the Applicant shall provide the City with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The City reserves the right to suspend the Agreement until this requirement is met.
- e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
- f. The City shall be named as an Additional Insured on all liability policies, with the exception of Workers' Compensation.
- g. The City shall be granted a Waiver of Subrogation on the Applicant's Workers' Compensation insurance policy.
- h. The title of the Outdoor Event Agreement, Bid/Contract number, event dates, or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

The Applicant has the sole responsibility for all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the City as an Additional Insured shall be at the Applicant's expense.

If the Applicant's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, the Applicant may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

The Applicant's insurance coverage shall be primary insurance as respects to the City, a Florida municipal corporation, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, a Florida municipal corporation, its officials, employees, or volunteers shall be non-contributory.

Any exclusion or provision in any insurance policy maintained by the Applicant that excludes coverage required in this Agreement shall be deemed unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the contract work has been accepted by the City, or until this Agreement is terminated, whichever is later. Any lapse in coverage shall be considered breach of contract. In addition, Applicant must provide to the City confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The City reserves the right to review, at any time, coverage forms and limits of Applicant's insurance policies.

The Applicant shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement to the Applicant's insurance company or companies and the City's Risk Management office, as soon as practical.

It is the Applicant's responsibility to ensure that any and all of the Applicant's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of the Applicant.

10. Restoration of Public Property; Property Subject to Easement for Public Beach Purposes or Bonnet House Beach.

10.1 If the Event includes use of public property, Bonnet House Property East and/or Bonnet House Private Beach the Applicant shall be responsible for, and shall maintain, all areas of the referenced property used. Maintenance means the prompt and complete removal of Event generated trash or debris and the repair or restoration of any public property that was damaged as a result of the Event. Public property means real and personal property that is not privately owned and includes, but is not limited to any sidewalk or paved surface, any tree, plan,

shrub, wall, bench, light fixture, traffic signal, sidewalk, curbing, parking meter, trash barrel, or sign or property to which the public has easement rights.

10.2 CITY shall inspect the Event site location(s) for damage within twenty-four (24) hours of the conclusion of the Event and the CITY shall provide the Applicant with a written report of any damage found on the public property. The report shall state the cost of repair(s) necessary to restore the public property. Within fourteen (14) days of the Applicant's receipt of this report, the Applicant shall pay the cost of repair or challenge the CITY'S report in writing addressed to the Director. Resolution of any such challenge shall be made by the City Manager. The Applicant agrees to abide by the City Manager's decision.

11. Reimbursement of Expenses. In the event CITY incurs expenses as a result of the Event or Minor Outdoor Activities to which the public is not invited held on Bonnet House Property East, CITY shall provide the Applicant with an invoice for the expense(s). Within fourteen (14) days of the Applicant's receipt of any invoice for such expense(s), the Applicant shall pay the invoice or challenge the CITY'S invoice in writing addressed to the Director. Resolution of any such challenge shall be made by the City Manager. The Applicant agrees to abide by the City Manager's decision.

12. Authority of the City Manager and Contract Administrator.

12.1 The City Manager or the Contract Administrator, shall have the authority to suspend all or any part of the Event on Bonnet House Property or a Minor Outdoor Activity to which the public is not invited on the Bonnet House Private Beach or Bonnet House Property East when the City Manager or the Contract Administrator determines that the Event, Minor Outdoor Activity to which the public is not invited or its attendees, or its spectators or participants pose(s) an imminent threat to the public health, safety or welfare.

12.2 The Contract Administrator shall notify Applicant when, in his/her reasonable opinion, activities within the Event described in Paragraph 12.1 above may be or are detrimental to the public health, safety or welfare or if the Contract Administrator has reason to believe that Applicant, its agents, employees, subcontractors, or independent contractors have violated any law, rule or ordinance. CITY, through its City Manager or Contract Administrator reserves the right to eject or cause to be ejected from the Event described in Paragraph 12.1 above any person(s) causing a public disturbance and neither CITY nor any of its officers, agents or employees shall be liable to Applicant for any damages that may be sustained by Applicant through the exercise by CITY, through its City Manager or Contract Administrator, of such right. The decision of the City Manager or Contract Administrator in such regard shall be final and binding.

12.3 In the event of any dispute between the CITY regarding actions undertaken by the CITY under Paragraphs 12.1 or 12.2 above and the Applicant, the Applicant shall not raise the defenses of unlawful delegations of a legislative duty.

12.4 Applicant agrees and understands that the authorization to execute this Agreement does not constitute the approval to proceed with the Event. City and/or City Manager, in its sole discretion, shall grant permission to proceed with the Event prior to the Event date and subject to the laws, recommendations, and restrictions resulting from the COVID-19 pandemic.

13. Compliance with laws.

13.1 The Applicant shall at all times comply with all federal, state, county and municipal laws, statutes, rules or regulations promulgated thereby and any other governmental agency having jurisdiction over the subject matter hereof, including, but not limited to, those relating to noise, building, zoning, gambling, fire protection, liquor regulations, and hours of operation. The Applicant shall further take all precautions and use extreme care to conduct its operations in a safe and prudent manner with respect to its agents, employees and visitors to its Event.

13.2 The Applicant shall comply with the applicable sections of the ADA. The Applicant understands that it is responsible for compliance with the ADA. The Applicant guarantees that individuals with disabilities under the ADA will be able to attend, enter and use all the facilities at any Event held under this Agreement.

13.3 The Applicant agrees to secure and pay for all licenses and permits required by any governmental agency having jurisdiction over the subject matter hereof. If the Event includes the use of any item that is or that may be protected from infringement, such as, but not limited to, copyrights, patents and trademarks, the Applicant shall, in advance of the Event, provide CITY with documentation that evidences that the Applicant has obtained the applicable license, permit or permission and that all associated fees have been paid in full. The provisions of this Section 13.3 apply specifically, but not exclusively, to ASCAP, BMI, SESAC, and any other similar organization that may require written permission and payment of a fee for use of the protected material.

14. Termination. It is expressly understood and agreed that CITY, by and through its City Commission, shall have the right to terminate this Agreement upon the breach by the Applicant of its obligations under this Agreement. CITY shall give Applicant at least thirty (30) days advance written notice of its intent to terminate this Agreement.

15. Requirement for Notice. Applicant shall give CITY prompt written notice of any accidents involving injury to persons or damage to property during an Event, including accidents during the physical preparation and dismantling or disassembly of facilities involved in the Event.

16. Notices.

(a) Whenever it is provided herein that notice, demand, request or other communication shall or may be given to, or served upon, either of the parties by the other, or either of the parties shall desire to give or serve upon the other any notice, demand, request or other communication with respect hereto or with respect to any matter set forth in this Agreement, each such notice, demand, request or other communication shall be in writing and any law or statute to the contrary notwithstanding shall not be effective for any purpose unless the same shall be given by hand delivery, or by a nationally recognized overnight courier, or by mailing the same by registered or certified mail, postage prepaid, return receipt requested, addressed to the party at the address set forth below, or at such other address or addresses and to such other person or firm as Applicant may from time to time designate by notice as herein provided.

(b) All notices, demands, requests or other communications hereunder shall be deemed to have been given or served for all purposes hereunder upon receipt if by hand delivery, upon one (1) business day after deposit with such overnight courier as required above, or upon

two (2) business days after deposit with the United States mail, postage prepaid, in the manner aforesaid, provided, however, that for any distance in excess of five hundred (500) miles, air mail service or Federal Express or similar carrier shall be utilized, if available.

AS TO CITY: Director of Parks and Recreation Department
City Fort Lauderdale
701 S. Andrews Avenue
Fort Lauderdale, FL 33316

With copy to: City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301-1016

With copy to: City Attorney
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301-1016

AS TO APPLICANT: CEO Bonnet House & Museum Gardens
900 North Birch Road
Fort Lauderdale, FL 33304

17. Compliance with Laws and Regulations. Applicant shall comply with all applicable statutes, laws, ordinances, rules, regulations and lawful orders of the United States of America, State of Florida and regulatory agencies thereof, Broward County and regulatory agencies thereof and City of Fort Lauderdale, and of any other public authority that may be applicable to this Agreement and the possession, use, occupancy and maintenance of the area within which the Event is held and the conduct of the sponsors, Applicant and attendees of the Event.

18. Entire Agreement. This Agreement, together with any other agreements entered into contemporaneously herewith, constitutes and represents the entire Agreement and any other agreements between the parties hereto and supersedes any prior understandings or Agreements or agreements, written or verbal, between the parties hereto respecting the subject matter herein. This Agreement may be amended, supplemented, modified or discharged only upon an amendment in writing executed by all of the parties hereto. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

19. Interpretation of Agreement; Severability. This Agreement shall be construed in accordance with the laws of the State of Florida. If any provision hereof, or its application to any person or situation, is deemed invalid or unenforceable for any reason and to any extent, the remainder of this Agreement, or the application of the remainder of the provisions, shall not be affected. Rather, this Agreement is to be enforced to the extent permitted by law. The captions, headings and title of this Agreement are solely for convenience of reference and are not to affect its interpretation. Each covenant, term, condition, obligation or other provision of this Agreement is to be construed as a separate and independent covenant of the party who is bound by or who undertakes it, and each is independent of any other provision of this Agreement unless otherwise expressly provided. All terms and words used in this Agreement, regardless of the number or

gender in which they are used, are deemed to include any other number and other gender, as the context requires.

20. Prohibition Against Assignment. This Agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by any party hereto.

21. No Waiver of Sovereign Immunity. Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable.

22. 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, other than the general public to the extent of their collective easement rights as set forth in Paragraph 4 hereof. Other than as set forth herein, none of the parties intend to directly or substantially benefit a third person by this Agreement. Except as set forth herein, the parties agree that there are no third person beneficiaries to this Agreement and that no third person shall be entitled to assert a claim against any of the parties based on this Agreement. Nothing herein shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third persons in any manner arising out of any contract.

23. Non-Discrimination. Applicant shall not in any of its activities, including in the performance of duties, responsibilities, obligations and participation or involvement in any Outdoor Event authorized under this Agreement, discriminate against any person on the basis of race, color, national origin, religion, creed, sex, disability, sexual orientation, gender, gender identity, gender expression, or marital status.

24. Preparation of Agreement. The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort.

25. Waiver. The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and therefore is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

26. Governing Law; Venue; Waiver of Trial by Jury. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida. To that end, the parties hereto expressly waive whatever other privilege to venue it may otherwise have. Further, the parties hereto expressly waive trial by jury.

27. Force Majeure. Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party,

and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds alone on the part of Applicant be deemed Force Majeure.

{REMAINDER OF PAGE INTENTIONALLY LEFT BLANK}

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

ATTEST:



JEFFREY A. MODARELLI
City Clerk

CITY OF FORT LAUDERDALE,
a Florida municipal corporation.

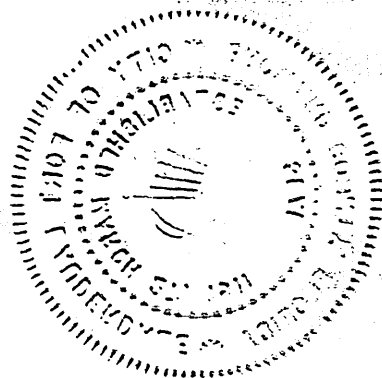


CHRISTOPHER J. LAGERBLOOM, ICMA-CM
City Manager

Approved as to form:
ALAIN E. BOILEAU, City Attorney



KIMBERLY CUNNINGHAM MOSLEY
Assistant City Attorney



OWNER/OPERATOR

WITNESSES

Shannon Morrall

Signature

Shannon Morrall

Print Name

Stacey Males

Signature

Stacey Males

Print Name

BONNET HOUSE, INC., a Florida not for Profit Corporation

By: Elizabeth D. Brady

Signature

Elizabeth D. Brady

Print Name & Title

board chair

By: Patrick Shavloske

Signature

Patrick Shavloske, CEO

Print Name & Title

(CORPORATE SEAL)

STATE OF FLORIDA:
COUNTY OF Broward :

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 17 day of December 2020, by Elizabeth D. Brady as Board Chair and by Patrick Shavloske as CEO for **BONNET HOUSE, INC.** a Florida not for Profit Corporation.

Genyth K. Morgan

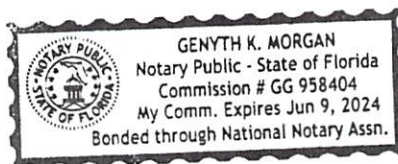
(Signature of Notary Public- State of Florida)

Genyth K. Morgan

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally known ☒ OR Produced Identification _____

Type of Identification Produced _____





COMMISSION AGENDA ITEM
DOCUMENT ROUTING FORM

100
1/5/2021

Today's Date: 12/23/2020

DOCUMENT TITLE: OUTDOOR EVENT AGREEMENT – BONNET HOUSE, INC.

COMM. MTG. DATE: 11/17/2020 CAM #: 20-0830 ITEM #: CM-2 CAM attached: ☒ YES ☐ NO

Routing Origin: CAO Router Name/Ext: K.Nembhard/5001 Action Summary attached: ☒ YES ☐ NO

CIP FUNDED: ☒ YES ☐ NO

Capital Investment / Community Improvement Projects defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, or fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, or real.

1) Dept: CAO Router Name/Ext: K.Nembhard/5001 # of originals routed: 1 Date to CAO: 12/23/2020

2) City Attorney's Office: Documents to be signed/routed? ☒ YES ☐ NO # of originals attached: 1

Is attached Granicus document Final? ☒ YES ☐ NO Approved as to Form: ☒ YES ☐ NO

Date to CCO: 12/23/2020

Kimberly Cunningham Mosley
Attorney's Name

Kgan
Initials

3) City Clerk's Office: # of originals: 1 Routed to: Donna V./Aimee L./CMO Date: 12/23/2020

4) City Manager's Office: CMO LOG #: Dec-61 Document received from: _____

Assigned to: CHRIS LAGERBLOOM ☐ TARLESHA SMITH ☐ GREG CHAVARRIA ☐
CHRIS LAGERBLOOM as CRA Executive Director ☐

☐ APPROVED FOR C. LAGERBLOOM'S SIGNATURE ☐ N/A FOR C. LAGERBLOOM TO SIGN

PER ACM: T. Smith _____ (Initial/Date) PER ACM: G. Chavarria _____ (Initial/Date)

☐ PENDING APPROVAL (See comments below)

Comments/Questions: _____

Forward 1 originals to ☐ Mayor ☒ CCO Date: 1-4-2021

5) Mayor/CRA Chairman: Please sign as indicated. Forward _____ originals to CCO for attestation/City seal (as applicable) Date: _____

6) City Clerk: Forward _____ originals to CAO for FINAL APPROVAL Date: _____

7) CAO forwards _____ originals to CCO Date: _____

8) City Clerk: Scan original and forwards 1 originals to: C.Bean/5348

Attach _____ certified Reso # _____ ☐ YES ☒ NO

Original Route form to K.Nembhard