

AGREEMENT

THIS IS AN AGREEMENT, entered into on _____, 2021, between:

THE CITY OF FORT LAUDERDALE, a municipal corporation
of the State of Florida, hereinafter referred to as "City"

and

TMF HOLDCO, LLC, a Delaware limited liability company
authorized to transact business in the State of Florida, hereinafter
referred to as "Applicant."

WHEREAS, subject to the terms hereof, Applicant has requested approval from the City to conduct the Tortuga Music Festival, or other title as determined by the Applicant, which includes a three (3) day beachfront music festival featuring multiple artists;

WHEREAS, the event will call attention to and raise funds to benefit the world's oceans, including, without limitation, entertainment, film screenings, exhibits, souvenir sales and concessions collectively hereinafter referred to as the "Event";

WHEREAS, in accordance with the terms hereof, Applicant shall provide the required certificates of insurance and indemnify and hold harmless the City of Fort Lauderdale for any damage to persons or property that occurs as a sole and direct result of the actions or inactions of Applicant in connection with and/or as a result of the operation of said Event; and

WHEREAS, City has been advised that, due to the scope and magnitude of the proposed Event, Applicant desires a contract with City so that Applicant can appropriately plan the commitment of resources, sponsors, subcontractors and finances; and

WHEREAS, City recognizes that the Event is a unique branded event requiring significant capital and time investment and, as such, is willing to entertain extensions to this Agreement beyond the initial term, and agrees that during the term of this Agreement, or during any such extended term, the City will not enter into an Agreement, or approve an event permit, for another event, not produced by the Applicant, which is substantially similar in size, scope, magnitude, and character to the Event as it relates to raising funds to benefit the world's oceans; and

WHEREAS, pursuant to City's Code of Ordinances, in order to conduct such Event, Applicant and City wish to enter into this Agreement for a multi-year, renewable term related to the annual event.

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

1. **RECITALS AND EXHIBITS INCORPORATED.** The foregoing recitals are true and correct and incorporated herein by this reference. Any Exhibits referenced herein are incorporated herein by reference.
2. **DEFINITIONS.** For the purposes of this Agreement and the various covenants, conditions, terms and provisions that follow, the Definitions set forth below are assumed to be true and correct and are therefore agreed upon by the parties.
 - a. “Agreement” means this Agreement between the City and Applicant, including all of the attached and or referenced Exhibits, as the same may be amended in writing from time to time, with an original on file with the City Clerk.
 - b. “Applicant” means TMF Holdco, LLC, a Delaware limited liability company authorized to transact business in the State of Florida.
 - c. “City” means the City of Fort Lauderdale, Florida, a municipal corporation of the State of Florida, of which the City Commission is its governing body.
 - d. “Contract Administrators” means the City of Fort Lauderdale’s City Manager for the City or designee and the authorized designees of TMF Holdco, LLC. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrators. The Contract Administrators may not make any change to this Agreement without the approval and formal amendment to this Agreement in writing by City and Applicant.
 - e. “City Manager” means the City of Fort Lauderdale’s City Manager.
 - f. “Event Impact Areas” means the areas outside the Event Site that are directly impacted by the Event and because of the impact to these areas, mitigating services are provided at the sole cost of the Applicant including, without limitation, police services, emergency medical services, traffic control, crowd control and trash removal. The Event Impact Areas shall be determined by the City in consultation with Applicant and may change over time as the attendance at the event or the use of mass transit service changes. In the event of a disagreement between Applicant and the City regarding the Event Impact Areas, the City Manager’s decision shall be final as to the determined Event Impact Areas.
 - g. “Event Period” means the time periods as mutually agreed upon in writing by City Manager and Applicant with concert performances ending by 10:00 p.m. on each day of the Event. The Event Period for the initial year of this Agreement is more fully described in Exhibit “A”.
 - h. “Event Site” means collectively the area on the barrier island used to hold the Event from the Sheraton Fort Lauderdale Beach extending north to SE 5th Street and A1A to the Atlantic Ocean, as more specifically described in Exhibit “B” as part of the Site Plan.

i. “Maintenance of Traffic Plan” shall have the meaning given to such term in Section 5 of the Agreement.

j. “Public Safety Plan” shall have the meaning given to such term in Section 5 of the Agreement.

k. “Repair” shall mean any work (including all third party labor, supplies, materials and equipment) reasonably necessary to repair, restore, or replace any equipment, building, structure or any other component of the Event Site, if such work is solely necessitated by any damage or destruction, including any damage or destruction resulting from the acts or omissions of other parties, including licensees or invitees of the Applicant, related to the Event. Repairs shall also include work necessitated by damage or destruction caused by the negligence of the Applicant and/or their agents, employees, contractors or subcontractors.

l. “Site Plan” shall have the meaning given to such term in Section 7.

m. “Term” shall have the meaning given to such term in Section 4.

3. **PERMISSION TO USE.** Subject to the terms hereof, Applicant is hereby authorized and entitled to use the Event Site during the Event Period in order to conduct the Event. The actual extent of the area to be used shall be limited by the water line and the Maintenance of Traffic (MOT) Plan and the approval by City of all street closures, including those streets and transportation corridors that are defined as part of the Event Site as allowed by law. The right to use the Event Site does not imply that the Applicant is automatically allowed to close the streets and transportation corridors that are defined as part of the Event Site. Other City properties, if appropriate and mutually agreed upon in writing by the City and Applicant, may also be used for the Event. Upon request, the City Manager or designee shall have the right to approve or deny the use of promotional materials and advertising for the Event, which approval shall not be unreasonably withheld. If, upon review, the City Manager or designee denies the use of certain promotional materials, the City shall identify with specificity the basis for such denial and the Applicant shall use best efforts to remove the specifically restricted materials from future publication.

All alcohol sales during the Event shall be governed in accordance with all applicable Florida Statutes and sections of the City of Fort Lauderdale Code of Ordinances.

4. **TERM:**

a. The Term of this Agreement shall commence upon execution of this Agreement and expire on December 31, 2025, subject to mutual renewal terms herein.

b. Applicant and the City may mutually agree to extend the Term of this Agreement for three (3) additional five-year consecutive renewal terms, provided that both parties mutually agree it is in their best interest to do so. If the Applicant seeks to extend the Term

of this Agreement for an additional Term, the Applicant shall submit a written request for extension at least sixty (60) days prior to the expiration of the Agreement. It is the intent of the parties to make a good faith effort to enter into a long-term relationship taking into account the investment and relationship of the parties. The City may approve or deny the Applicant's request for extension and shall notify the Applicant in writing of such approval or denial within thirty (30) days of the request for extension. If Applicant fails to put on the Event during a given calendar year for reasons other than a Force Majeure Event or a Default by City, City reserves the right to terminate said Agreement as provided herein.

c. If the City approves the request to extend the Term of this Agreement, the terms of such extension shall be documented in an amendment to this Agreement, subject to approval by both parties, and no additional Special Event Permit shall be required.

5. **PUBLIC SAFETY PLAN FOR THE EVENT.** Because of the physical size of the Event and the number of people that may attend, City shall arrange for all necessary personnel to provide public safety at the Event Site and Event Impact Areas. The parties will consult with each other in regard to the levels of security including the scaling down of such services for the set up and breakdown of the Event. City reserves the right to require, in good faith, that additional services be provided, at the sole cost to Applicant, to ensure the appropriate level of public safety. These services shall include, without limitation, crowd control, traffic management, fire rescue, ocean rescue, emergency medical services, and police services. Applicant is required to provide signage, traffic barricades, and cones to facilitate public safety and will set up and remove at no cost to the City.

a. The Applicant shall provide a draft Public Safety Plan to City no later than sixty (60) days prior to the date of each Event, and the Public Safety Plan shall be incorporated into this Agreement and marked as Exhibit "C". This plan shall contain reasonable and customary information which may include, but not be limited to, the Applicant's planned actions to respond to and mitigate various threats and emergency incidents which may occur during the Event. After receiving the final private security and Event Public Safety Plan from the Applicant, the City shall work with the Applicant in order to properly determine the number of personnel necessary to effectively and efficiently carry out the Public Safety Plan. The City shall develop an anticipated budget for the Public Safety Plan and other City services and provide the anticipated budget to the Applicant not more than twenty-one (21) days following receipt of the Public Safety Plan. In the event of a disagreement between Applicant and the City regarding the number of personnel required for the Public Safety Plan and the anticipated budget of the Public Safety Plan, the City Manager shall seek to resolve such disagreement by taking into account the best interest of the public's safety and the reasonable cost for implementing the Public Safety Plan. The City Manager's decision shall be final as to the appropriate level of staffing for the Public Safety Plan and the anticipated budget for the Public Safety Plan. City agrees to include in its anticipated budget to the Applicant the number of proposed on-site City personnel that will be assigned during the Event as allowed by Florida Statute. Due to the sensitive security and safety implications, including related input and responsive staffing plans provided by the City, the Public Safety Plan shall not be available for public or media distribution, as allowed by law.

b. The parties will act in good faith to keep the other party notified of the latest information and any new developments or incidents that might cause additional public safety personnel to be deployed to the Event. Both parties agree that an essential element of the Event's Public Safety Plan includes a procedure, mutually agreed upon in advance, the Applicant must follow during the Event to record the number of participants within the Event Site at any given time. Participant numbers must be real time and verifiable by City public safety personnel. In the event the primary participant count process fails during the Event, the Applicant must have a contingency process in place and readily available for activation to ensure accurate continuation of participant counts. This contingency procedure along with the initial participant verification procedure shall be included and approved by the City in advance or as part of the Public Safety Plan. The Contract Administrator, City police or fire personnel shall have the right to request participant numbers from the Applicant at any time throughout the course of the Event. The City Officials understand that such information is sensitive in nature, and those officials shall use good faith best efforts to share such information on a need to know basis and shall not be available for public or media distribution, unless requested as a public record request.

c. In addition to the Applicant's Public Safety Plan, the City's Police and Fire Departments will author separate comprehensive Incident Action/Operational Plans specific to their duties. Such plans will take into consideration several factors, to include nationally accepted event planning and management guidelines utilizing the National Incident Management System (NIMS) and the Incident Command System (ICS). These plans will be fluid up until the conclusion of the event and may change based on real time intelligence, threat information, and other relevant input. Local representatives and agents from the Federal Bureau of Investigation (FBI) Special Events Unit, the Department of Homeland Security (DHS), and other public safety partners will assist in determining the level and magnitude rating of this event, advise of any potential national security considerations and provide intelligence gathering and event threat assessment assistance. Due to the sensitive security and safety implications of such plans, they will be kept confidential, accessible to City officials and Police/Fire personnel only and shall not be available for public or media distribution.

d. Not less than sixty (60) days prior to the date of the Event, Applicant shall provide to the City a MOT Plan prepared by a certified Traffic Control Technician or Traffic Control Supervisor with proof of certification affixed to the MOT Plan, incorporated into this Agreement and marked as Exhibit "D". The MOT shall contain copies of all approved local, county, and state permits, as applicable, and a construction, automotive, and pedestrian traffic flow schedule detailing the opening and closing times for all streets, lanes, pedestrian walkways and traffic corridors further outlining the use of any and all variable message signs for the City's review and approval. No additional street, lane or traffic corridor closures will be permitted unless included in an updated MOT Plan and approved by the City. Applicant agrees to provide the City with emergency access to all areas included in the Event Site to ensure the safety and welfare of the community.

e. The cost for any additional services or expansion of services requested by Applicant, in writing, shall be an expense to Applicant and City shall be paid for all costs and expenses in association with any such addition or expansion of services provided to Applicant. Expansion of services means enhancements of activities, any changes in the type of activities provided or material changes in parameters of Event or the Event Site, incidental to or requested by Applicant, including physical location and boundaries that result in an increase in the City's cost to provide all necessary services.

f. Should Applicant request non-critical public safety services, such as a police escort, or if such services are beyond the City's ability to provide, Applicant may make such arrangements and coordinate these services with the City. The cost for these additional services shall be an expense to Applicant, and all such costs and expenses shall be paid to City within the time frame as set forth in Section 21.

g. In the event of an emergency or disaster during the Event, at the Event site or as a direct result from the Event activities, that requires public safety resources beyond the original Public Safety Plan, it shall be the responsibility of the Applicant to reimburse the City's reasonable additional cost to respond to such emergency or disaster that the City would not have otherwise incurred had such Event not been taking place. This section shall not apply to any natural disaster, act of terrorism, or act of God that may occur at the Event Site during the Event including, without limitation, a hurricane, lightning strike, tornado or any other such causes whatsoever beyond the control of the parties and unrelated to the Event.

h. Applicant acknowledges that traffic control plans shall accommodate the ingress and egress to residences during the course of the Event.

i. The sellable capacity for each performance day of the Event shall not exceed 40,000 unless otherwise approved by the City Fire Marshal and agreed in writing by the parties. This provision shall be subject to annual review and approval in consultation with the Applicant, provided that the sellable capacity shall not be reduced unless required by law, emergency order or other similar legal limitation.

6. **STREET CLOSINGS:** City reserves the right to approve all street closings, including those streets and transportation corridors that are defined as part of the Event Site, in association with the Event and any requests for street closings should be included with the MOT Plan that is submitted by Applicant. Applicant agrees to coordinate and make the appropriate arrangements with any merchants or residents affected by any street closures to ensure they are provided sufficient and reasonable access to their businesses and residences.

7. **SITE PLAN:** Not less than ninety (90) days prior to the date of the Event, Applicant shall provide to the City the following:

a. For the Event Site and Event Impact Areas, a detailed tentative Site Plan for the Event showing locations that will be designated for Applicant's exclusive use, detailing

the locations of any tents, sanitary facilities, parking, stages, booths, concessions, alcoholic beverage service areas, and other such services together with the boundary lines, including those down to the waterline as allowed by law, of any fences, barriers etc. to be constructed at the Event Site, and the times when such borders, fences and/or facilities will be constructed, operated and dismantled. Such Site Plan shall be subject to the review and approval by the appropriate City departments, such approval not to be unreasonably withheld or delayed. Any additional changes made to the Site Plan by Applicant, after reviewed by the appropriate City departments, must be approved by the City, which such approval will not be unreasonably withheld or delayed. A final inspection will be conducted by the City immediately prior to the Event to ensure that the location of all tents, booths, sanitary facilities, stages, etc. are in accordance with the City approved site plan and code regulations. The Site Plan shall be incorporated into this Agreement and marked as Exhibit "B."

b. A description of all activities and events to occur at the Event Site and Event Impact Areas including activities and any maintenance of the waterline fence, barrier and/or borders during the Event.

c. The cellular and business phone numbers of the individuals in charge of the various aspects of the Event.

d. Copies of all applicable permits and licenses required by the City's Sustainable Development Department and Fire Department. These permits include, but are not limited to, permits necessary for tents, merchandise, food and beverage vendors and electrical connections, FDEP permits and other County or State permits.

8. **NON-PUBLIC SAFETY SERVICES:** City shall provide, as necessary, oversight, coordination and direction, but not supervision, of Applicant's employees or contractors related to Event transportation, setup, storage, maintenance, repair or replacement of property, cleanup and breakdown of Event Site including removal of barricades and safety cones. Applicant shall remain an independent entity at all times.

9. **MAINTENANCE OF EVENT SITE AND EVENT IMPACT AREAS:**

a. Applicant shall be responsible for and shall provide sufficient temporary public sanitary facilities as to meet the requirements established by the Department of Sustainable Development. Applicant shall provide daily service of the facilities at all times during the Event Period. The cost of such temporary public sanitary facilities shall be an expense to Applicant and all costs and expenses for facilities furnished by the City to Applicant shall be paid to City within the time frame as set forth in Section 21.

b. Applicant shall be responsible for all cleanup costs and expenses associated with the removal of trash and debris that accumulates on any portion of Event Site or in the designated Event Impact Areas. All trash shall be collected and removed throughout the Event with final cleanup being completed within twenty-four (24) hours of the completion of take-down of the Event, or within established time frames as agreed to by the parties.

The requirement to remove trash and debris includes street sweeping. Applicant will cover and reimburse City for all costs associated with trash and debris removal within the Event Site and Event Impact Areas.

c. In the event the Applicant wishes to utilize temporary mobile cellular communication (service boosting) towers, which can also benefit public safety by increasing the E-911 capabilities of the specific service provider, the Applicant must notify the City Police and Fire Departments and agrees that the contracted equipment provider with whom they procure such equipment, services will work closely with the City Radio Engineers to confirm the temporary towers will not interfere with the City or County public safety radio frequencies.

d. Applicant will be responsible for the clean-up of all temporary flooring which supports tour buses and equipment.

10. **PARKING AND TRANSIT SERVICES:** It will be the responsibility of Applicant to arrange and coordinate all parking at City facilities and any transit services from these facilities to the Event Site. All proposed shuttle routes and bus stops shall be approved by the City as part of the MOT Plan. City agrees to invoice Applicant, per Section 26-161(e)(10) of the City of Fort Lauderdale Code of Ordinances, which establishes a special event parking rate of Thirty Dollars and 00/100 Cents (\$30.00) per space per day, plus applicable taxes, to use any other public metered parking spaces that are removed from public use as requested by the Applicant and approved by the City. For the 2021 event, the City agrees to invoice the Applicant Ten Dollars and 00/100 Cents (\$10.00) dollars per space on non-event days and Twenty Dollars and 00/100 Cents (\$20.00) per space on the Event days. All parking lot requests must be in writing at least thirty (30) days in advance of the Event. An estimate of parking charges, including any authorized rate reductions, will be provided to Applicant no more than ten (10) days after receiving written requests. Applicant understands that the approved special event parking rate is a daily rate and may not be prorated. Requests to change an issued City parking invoice must be made in writing prior to the end of the Event. The Applicant will be charged for failing to return or disposing of any parking items such as meter bags or parking signs.

11. **CONSTRUCTION OF FACILITIES, STRUCTURES, CANOPIES, TENTS AND CONCESSION STANDS:**

a. Applicant shall be allowed to construct and maintain on the Event Site, such facilities and structures that are necessary for the Event including, but not limited to, fences, barriers, grandstands and signs as approved by the City and at such locations as approved by the City.

b. All such structures, facilities, concession stands, and canopies may be erected and deliveries related thereto may begin on the date specified in Exhibit A. All such structures must be removed by the final date of breakdown as set forth in Exhibit A. Except where such structures, facilities, concession stands, canopies and tents are permitted by this Agreement, the same shall not otherwise interfere with the normal operations of the

property. Any setup or breakdown of such structures at the Event Site shall be in accordance with the terms contained in the City's Noise Ordinance No. C-08-37.

c. Applicant is hereby granted permission to erect canopies, tents, and concession stands, at such locations in accordance with the approved Site Plan. It is further agreed and specifically understood that permission to erect such canopies, tents and concession stands, as aforementioned is conditioned upon Applicant complying with the following:

i. Within ten (10) days of the Event Period, Applicant shall file with the City Manager a detailed Concession Plan specifying the locations, hours, dates and types of concessions that will operate during the Event. The Concession Plan shall identify and list the individuals, corporations, partnerships or other entities that are or will be operating such concessions, tents or canopies at the Event Site. Such information may be subject to change, and will be communicated on a rolling basis, the same as if it were known on execution hereof.

ii. Applicant shall obtain approval by the City Fire Department and file with its application evidence that such canopies, tents, awnings, and concession stands are of fireproof material and will not constitute a fire hazard. City's Sustainable Development Department shall review and approve the proposed use of any temporary structure used in association with the Event in accordance with the standard criteria as outlined in the City's Code of Ordinances and Florida Building Code.

d. All construction, installations, and services, including electrical hook-ups, shall be made at Applicant's expense and approved in advance by the City's Sustainable Development Department. If electricity is required, Applicant shall negotiate arrangements for such service with the City or a licensed contractor. This cost shall be an expense to Applicant and, if furnished by City, shall be paid to City within the time frame as set forth in Section 21.

e. Unless Applicant receives prior specific written permission by the City Manager, no construction or installations shall involve the use of stakes or other material that may break the surface or deface any infrastructure such as asphalt, concrete, brick or any plant material.

f. Applicant shall provide access to the necessary City staff required to work the Event. Applicant and City will agree to the list of passes that will be distributed for such City staff at least ten (10) days prior to the Event. Additionally, Applicant shall provide an operations tent to be utilized by the City of Fort Lauderdale during the Event days. Location of this operations tent shall be determined by the City in consultation with Applicant.

12. **MAINTENANCE OF EVENT SITE AND EVENT IMPACT AREAS AND PAYMENT FOR REPAIRS:**

a. No more than five (5) days prior to the first performance day of the Event, City and Applicant shall inspect and document the condition of the Event Site and Event Impact Areas. It shall be the responsibility of the Applicant during the initial walk-through inspection to point out to the City the areas of disrepair or pre-existing conditions reasonably visible to Applicant upon a cursory inspection and walk-through. Prior to the end of the Event Period on a date and time mutually agreed upon by the parties, City and Applicant shall inspect the condition of the Event Site and Event Impact Areas to ascertain and identify any damages that have occurred to the Event and City shall inform Applicant of all necessary Repairs. Within fourteen (14) days of the Event Applicant shall make all necessary Repairs to restore the Event Site and Event Impact Areas to a condition equal to that existing as of the first date of Set-up as set forth in Exhibit A.

b. Applicant agrees to Repair all, core drilling holes in the asphalt, concrete, and all other paved and unpaved surfaces, made to facilitate the erection of barriers, stages, fences, tents and other improvements to the Event Site and Event Impact Areas, according to City standards, as determined by the City Manager in his sole discretion, within seventy-two (72) hours after the conclusion of the Event.

c. Applicant shall be responsible for damage to all plants, shrubs, trees, other landscaped areas, paved surfaces, and to any and all structures located or situated upon any portion of the Event Site or Event Impact Areas. Applicant shall be responsible for the costs to repair any part of the Event Site or Event Impact areas that are damaged during the Event Period as a result of the negligence or wrongful acts of Applicant or Applicant's agents, employees, contractors, subcontractors, invitees, licensees, or attendees. As between the Applicant and City, Applicant shall be responsible, at Applicant's sole expense, for the repair or loss of Applicant's officers', contractors', subcontractors', and agents' personal property, except for repairs of such property caused by the negligence or willful misconduct of the City or its officers, employees or agents.

d. It is further agreed that if damage is found to exist as a result of the Applicant or its agents, employees, contractors, subcontractors, invitees, licensees, or attendees' negligence during the Event Period, City shall furnish Applicant with a written report of such damage by the close of business on the Friday following the Event. The report shall estimate the cost to remedy such damage. If Applicant arranges for such damages to be repaired by a third party, such cost shall be paid by Applicant to City within fourteen (14) days after Applicant receives the City's invoice of the cost of said damage.

13. **SECURITY OF APPLICANT'S PROPERTY:** All construction materials, equipment, goods, signs and any other personal property of Applicant shall be protected solely by Applicant. Applicant acknowledges and agrees that City assumes no responsibility, whatsoever, for any such item and that the security and protection of any such item from theft, vandalism, the elements, acts of God, or any other cause, are strictly the

responsibility of Applicant.

14. **APPLICANT'S CONTRACTS:** Applicant agrees to be solely responsible for all contracts or agreements of any nature including, without limitation, those for entertainment and vendors for the Event. All contracts for the Event shall be negotiated by Applicant and secured at the sole expense of Applicant. City shall not be named as a party in any contract for the Event and City shall have no obligation to ensure payment to any individual or entity for goods and/or services provided in conjunction with such Event.
15. **SUBLEASES, ASSIGNMENTS, OR TRANSFERS:** Applicant shall not assign, sublease or transfer any of its obligations and/or rights under this Agreement, in whole or in part, to any person, business or entity, without the prior written approval of City, such approval not to be unreasonably withheld or denied. Any such action by Applicant in violation of the provisions of this section may result in immediate cancellation and termination of this Agreement by City.
16. **LICENSES AND PERMITS. COPYRIGHTS, PATENTS, AND TRADEMARKS:** Applicant agrees to secure and pay for all licenses and permits required by any governmental agency having jurisdiction over the Event Site for the protection of sea turtles issued by the appropriate governmental agency. Additionally, if Applicant intends to use any item which is or may be protected from infringement, such as but without limitation, copyrights, patents and trademarks, if requested by City, Applicant shall provide City evidence showing that the applicable licenses, permits, or permission related to the live performance of music in connection with the Event have been secured and, if applicable, that all fees have been paid in full by Applicant. The provisions of this paragraph specifically apply to the American Society of Composers, Authors and Publishers ("ASCAP"), Broadcast Music Incorporated ("BMI") and any other similar organization that may require written permission and payment of a fee for use of protected music. Applicant shall ensure that all performance payments required to be made under such licenses are timely paid in accordance with the terms of such licenses. Evidence of such licenses or payments shall be submitted to City upon request. In the event Applicant fails to submit evidence of such licenses or reports as required herein or the documentation is not satisfactory to City, Applicant shall be responsible for payment to City for all license fees incurred by the City in connection with the Event. City shall have no responsibilities to any performing rights licensing organizations for any performance during the Event.

Upon receipt of approval of City's Habitat Conservation Plan (HCP) from the Florida Fish and Wildlife Conservation Commission (FWC) and U.S. Fish and Wildlife Service (USFWS), Applicant agrees and shall be subject to all requirements associated with the City's Incidental Take Permit (ITP) and HCP for the protection of and to minimize impacts to nesting federally endangered sea turtles protected under the Endangered Species Act of 1973, as amended (87 Stat. 884; 16 U.S.C. 1531 *et seq.*).

17. **STANDARDS OF CONDUCT; COMPLIANCE WITH RULES, REGULATIONS, ORDINANCES:** Applicant agrees that at all times it will conduct its activities with full regard for public safety and will observe and abide by all federal, state and local laws, the federal and state constitutions, and all rules, regulations and ordinances of City and any other governmental agency having jurisdiction including, without limitation, those relating to noise, building, zoning, gambling, fire protection, liquor regulation, sanitation and food facilities and hours of operation. Applicant shall further take all precautions and use due care to conduct its operations in a safe and prudent manner with respect to its agents, employees and visitors to the Event.

18. **INSURANCE:**

As a condition precedent to the effectiveness of this Agreement, during each Event Period of this Agreement (including as part of any renewals or extensions 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 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:

- \$5,000,000 each occurrence and \$5,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$5,000,000 each occurrence and \$5,000,000 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.

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. In the event Applicant uses a contractor for the sale and/or service of alcohol, Applicant shall require contractor to provide evidence of this coverage and applicant will ensure its liability insurance policy provides vicarious and/or host liquor liability coverage.

Active Shooter Insurance

Coverage must be afforded for liability arising out of an actual or threat of an Active Shooter / Deadly Weapon Event in an amount not less than \$5,000,000 per event.

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.

Watercraft Liability

Coverage must be afforded in an amount not less than \$1,000,000 per occurrence and must cover the utilization of watercraft, including Bodily Injury and Property Damage arising out of ownership, maintenance, or use of any watercraft, including owned, non-owned, and hired.

Coverage may be provided in the form of an endorsement to the Commercial General Liability policy, or in the form of a separate policy covering Watercraft Liability or Protection and Indemnity for Bodily Injury and Property Damage.

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 ten (10) days prior to commencement of the Event Period.
- 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 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 Agreement, 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 Applicant shall provide notice of any and all claims or accidents 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.

19. **INDEMNIFICATION AND HOLD HARMLESS:** Except in cases of City, its agents, officers, contractors, and/or employees negligence or willful misconduct, Applicant agrees to indemnify, defend and hold harmless City, its officers, agents and employees, against any and all third party damages, claims, losses, liabilities, damages, and expenses including claims and losses of bodily injury, property damage, illness and/or sickness (including, without limitation, reasonable legal fees and disbursements) (collectively, "Claims") caused by, in connection with, arising out of, or resulting from the use of the Event Site or Impact Area or caused by, in connection with, arising out of, or resulting from any act by Applicant, its partners, employees, officers and agents done in the performance of this Agreement. If called upon by City, Applicant shall defend not only itself, but also City in connection with any such Claim at Applicant's expense, and at no expense whatsoever to City. Applicant further agrees to defend, indemnify, save and hold harmless the City and the City's officers, agents and employees from any Claim, suit, loss,

cost or expense or any damages arising out of or relating to Applicant's failure to obtain all necessary performing rights and licenses for the Event (BMI, ASCAP, etc.). City shall be liable for damages or injuries caused by the City's negligence or willful misconduct to the extent permitted by applicable law. The foregoing sentence 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 Section 768.28, Florida Statutes, as amended or revised.

20. LIMITATION OF LIABILITY:

a. The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of Twenty-Five Thousand Dollars and 00/100 Cents (\$25,000.00). Applicant hereby expresses its consent to enter into this Agreement with Applicant's recovery from the City for any damage action for breach of contract or for any action or claim arising from this Agreement to be limited to a maximum amount of Twenty-Five Thousand Dollars and 00/100 Cents (\$25,000.00).

b. Accordingly, and notwithstanding any other term or condition of this Agreement, Applicant hereby agrees that the City shall not be liable to Applicant for damages in an amount in excess of Twenty-Five Thousand Dollars and 00/100 (\$25,000.00), for any action for breach of contract or for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Article 768.28, Florida Statutes.

21. COSTS AND EXPENSES FOR CITY SERVICES:

a. As provided for in Section 5 above, Applicant shall plan and coordinate with the City for the City's provision of personnel to implement the Public Safety Plan. Applicant agrees to cover all out of pocket costs and expenses incurred by the City for services provided for the Event including, without limitation, public safety, maintenance, cleanup, utility connections, breakdown and removal, storage and Repair or replacement of property, and staff time incurred as a result of the Event. Applicant agrees and understands that the off-duty rate for police personnel for all special events is calculated at a three (3) hour minimum rate. There is a 24-hour cancellation requirement to avoid the three (3) hour minimum payment per officer. All payments will be paid within two (2) weeks of the payroll being submitted. Applicant agrees that positions for all security and supplemental police details for the Event should first be offered to City personnel at the detail rate. If an insufficient number of personnel are available at the detail rate, Applicant shall have the option to utilize outside Florida sworn agencies to fill the deficiency prior to the City mandating personnel to work at the overtime rate, with this request made through and coordinated by the City Police and/or Fire Rescue Departments. The Fort Lauderdale Police Department and Fire Department shall retain the command and control of their respective event operation areas at all times and any mutual aid or assisting agency personnel shall follow such command procedures. Applicant further agrees to be

responsible for any capital improvements that the City must make to accommodate Applicant's request for any building, electrical, plumbing, fire, municipal, or county code requirements. Applicant shall also be responsible for any replacement and restoration costs as set forth in Section 12.

b. If required by the City, Applicant agrees to secure a bond in an amount equal to one hundred ten percent (110%) of the estimated cost of reimbursement for City services, to cover all costs and expenses associated with hosting the Event including, without limitation, public safety, maintenance, cleanup, utility connections, breakdown and removal, storage and Repair or replacement of property. City reserves the right to approve the bonding company or institution issuing the bond and the instrument shall be kept in full force and effect for the period of the Agreement. No later than thirty (30) days prior to the date of permission from City to first use the Event Site, Applicant shall provide the City with a valid payment bond in the amount specified above. The bond shall be written by a corporate surety company holding a Certificate of Authority from the Secretary of Treasury of the United States, executed and issued by a resident agent licensed by and having an office in the State of Florida, representing such corporate surety, providing that if Applicant fails to duly pay for any labor, materials, or other supplies used by Applicant, the surety will pay the same in the amount not exceeding the sum provided in such bond. Applicant shall also have the option to escrow the funds in an amount equal to one hundred ten percent (110%) of the cost of reimbursement for City services (Obligated Amount) in which case a bond would not be required by the City. The Obligated Amount shall be placed into the City of Fort Lauderdale Escrow Account to be held in escrow under the terms and conditions hereinafter set forth ("Escrow Deposit").

c. In the event the Applicant elects to deposit the Obligated Amount with the City, the City of Fort Lauderdale Treasurer, who shall be the Escrow Agent, the Escrow Agent shall promptly deposit, retain and disburse the Escrow Deposit in accordance with the terms hereof or as may be directed in writing by both the Applicant and City Manager on behalf of the City or as may be directed by a court of competent jurisdiction.

d. If the Escrow Agent is in doubt as to his or her duties, the Escrow Agent shall retain the Escrow Deposit until Applicant and City, through its City Manager, collectively agree in writing to the disposition of the funds or until a court of competent jurisdiction has adjudicated the rights of Applicant and the City.

e. Any suit between Applicant and City where Escrow Agent is made a party because of acting as Escrow Agent, or in any suit where Escrow Agent interpleads the Escrow Deposit, Escrow Agent shall recover reasonable attorney's fees and costs from the Escrow Deposit, as between Applicant and City, and such fees and costs shall be charged and assessed against the non-prevailing party.

f. The parties agree that the Escrow Agent shall not be liable to any party or person for misdelivery of the Escrow Deposit or any portion thereof to Applicant or City, unless misdelivery is due to willful breach of the terms hereof or gross negligence on the part of Escrow Agent.

g. Except as provided herein, the Escrow Deposit will be held until all affected departments have submitted their final invoices for the reimbursement of City services. Once the final invoices are received, the Applicant will be notified for approval. Once approved, the Escrow Agent will make payment of the final invoices from the Escrow Deposit, unless City and Applicant agree in writing that Applicant will pay one or more City departments directly. After payment of all such invoices, any remaining Escrow Deposit shall be promptly returned to Applicant. The parties acknowledge that Applicant is currently required to pay public safety officers promptly following the Event and well in advance of the final invoice and release of Escrow Deposit process described herein. Accordingly, an amount equal to the budgeted amount for public safety services will be wired back to the Applicant's bank account on the first business day following the final performance date of each Event.

h. Any action or claim relating to the misuse, fraud, or other intentional misconduct relating to the Escrow Deposit of the Obligated Amount shall not be limited by Paragraph 20 above.

22. REIMBURSEMENT OF COSTS AND EXPENSES:

a. The City shall provide customary backup documentation substantiating all costs and expenses presented by City to Applicant for reimbursement. Subject to the terms hereof, Applicant shall pay City for all costs and expenses incurred by City for which Applicant is responsible hereunder within fourteen (14) days of receipt of any invoice from City. If total amount is not paid within thirty (30) days, the City has the right to assess and apply interest charges at the maximum allowable under Florida Statute.

b. Should Applicant disagree with the invoice provided by the City, it shall state its reason(s) in writing and may request the City Manager to review the charges and render a decision. If Applicant does not agree with the City Manager's decision, Applicant may make a petition to the City Commission. If Applicant does not agree with the results of such review, upon the filing of a lawsuit the parties shall agree to mandatory mediation.

23. AUTHORITY OF CITY MANAGER: Applicant shall coordinate the use of Event Site in accordance with the terms hereof and the approved Site Plan, in consultation with the City Manager. The City Manager shall notify Applicant when, in the City Manager's reasonable opinion, such activities may be or are detrimental to the public or to the City, or if the City has reason to believe that Applicant, its agents, subcontractors, independent contractors or employees have violated any law, rule or ordinance. After consultation with Applicant, and a reasonable opportunity to resolve the situation to the reasonable satisfaction of the parties, City reserves the right to eject or cause to be ejected from the Event Site any person or persons causing a disturbance and neither the 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 of such right. The decision of the City Manager in such regard shall be final and binding.

24. **TERMINATION:**

a. This Agreement may be terminated as follows:

i. Upon the mutual written agreement of the parties.

ii. Applicant may elect, during the Term of this Agreement, to terminate this Agreement and no longer conduct the Event without penalty. If Applicant elects to terminate this Agreement, Applicant shall notify the City in writing of such election one hundred and twenty (120) days prior to the date of the Event. Applicant shall be obligated to reimburse City for any documented out-of-pocket costs and expenses incurred by the City in connection with the fulfillment of the City's obligations under this Agreement.

iii. City may seek to terminate this Agreement if the City determines that termination is necessary to protect the public's health, safety and welfare. If the City seeks to terminate this Agreement, the City shall provide notice to Applicant pursuant to Section 31 of this Agreement. The City's notice shall include the basis for such determination in reasonable detail. Applicant shall have thirty (30) days following Applicant's receipt of such notice to cure the reason for the termination to the exclusive satisfaction of the City, provided that the City may reasonably reduce the cure period if notice is given within thirty (30) days of an Event. If there is an imminent threat to the public's health, safety and welfare, the provisions of Section 24(b) shall govern.

iv. By a party upon the Default of the other party, without limitation of any other available rights or remedies available to such party at law or in equity. "Default" means, after expiration of the applicable notice and cure periods, the failure of a party to comply with or perform any material term, condition, or covenant contained herein which continues for more than thirty (30) business days after the defaulting party's receipt of written notice thereof (or in the event of an allegation of material breach or default not reasonably curable within thirty business days of such notice, if the defaulting party has not begun using diligent efforts to cure such alleged breach or default within such period). If the alleged breach occurs within thirty (30) business days of the start of the Event Period, the cure period may be reasonably reduced given the circumstances and the imminency of the Event, as set forth in such notice.

b. In addition to the termination rights set forth above, the City may seek to suspend or cancel an Event if the City determines, in its reasonable, good faith discretion, that an imminent and legitimate threat or risk to the public's health, safety and welfare exists. Prior to exercising such right, the City will use best efforts to consult with Applicant on a meaningful basis to determine if the parties are reasonably able to mitigate such threat or risk, unless immediate action is required given the circumstances. The City's exercise of the right set forth in this paragraph shall not result in a termination of the Agreement as to any remaining Events, unless otherwise agreed in writing by the parties.

25. **BREACH:** A material, monetary, breach of this Agreement by the Applicant shall be grounds for the City to terminate this Agreement, subject to the provisions of Section 24(a)(iv).
26. **FORCE MAJEURE:** A failure or inability of a party to comply with its obligations set forth herein due to a Force Majeure Event shall not be a breach of this Agreement. "Force Majeure Event" means any condition or circumstance, beyond either party's reasonable control, that renders performance of an Event or this Agreement, impossible, impracticable, unfeasible or unsafe. Force Majeure Events include, without limitation: (a) destruction or material damage to the Event Site; (b) fire; (c) dangerous weather conditions, including threat of a named storm within five hundred (500) miles of the Event Site during the Event Period; (d) legitimate threat(s) or acts(s) act of terrorism; (e) war; (f) act of God; (g) riot or other form of civil disorder in, around or near the Event Site; (h) act, order, rule, or regulation of any court, government agency, or public authority, including, but not limited to, those relating to any public health emergency, epidemic and/or pandemic (including, without limitation with respect to Covid-19); and (i) substantial interruption in, delay or failure of necessary transportation or technical facilities. If an Event is cancelled or postponed due to a Force Majeure Event, such cancellation or postponement shall not result in a termination of the Agreement as to any remaining Events, unless that parties agree in good faith that the Force Majeure Event is of a nature that will materially impact the Event Site or Applicant's ability to present all remaining Events for the duration of the Term of the Agreement. In the event of a cancellation or postponement of an Event, or the termination of the Agreement as provided in this section, each party shall be responsible for their own costs and expenses incurred prior to such cancellation, postponement or termination. Notwithstanding anything contained in the contrary in the previous sentence, if the Force Majeure Event occurs during the Event Period, the Applicant will reimburse City for all actual and documented costs incurred related to the Event, as otherwise provided for hereunder.
27. **GOVERNING LAW:** This Agreement shall be interpreted and construed in accordance with the laws of the State of Florida and shall inure to and be binding upon the parties, their successors and assigns. Venue for any action brought in state court shall be in Broward County, Florida. Venue for any action brought in Federal Court shall be in the Southern District of Florida, Fort Lauderdale Division. The parties consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction.
28. **AMENDMENT:** No modification, amendment, or alteration of the terms or conditions of this Agreement shall be effective unless contained in a written document duly executed by both parties, with the same formality as this Agreement.
29. **WAIVER OF BREACH:** Failure by City to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement.
30. **EXTENT OF AGREEMENT:** This Agreement represents the entire and integrated Agreement between City and Applicant and supersedes all prior negotiations, representations or agreements either written or oral.

31. **NOTICE:** All notices shall be in writing and shall be deemed duly given and received: (a) upon delivery with receipt acknowledged if delivered personally; (b) upon confirmed delivery with signature receipt if sent by certified or registered mail or equivalent by USPS; (c) upon confirmed delivery with signature receipt if sent by nationally recognized courier (e.g. FEDEX, UPS, etc.); or (d) if delivered by email: (i) as acknowledged in email or other writing by the receiving party; or (ii) upon confirmed delivery of a copy given by one of the other means in subsections (a-c). Notices shall be addressed to the parties at the addresses set forth below, or at such other addresses as may be specified by any party in compliance with the provisions of this section. The provisions of this section shall not apply to ordinary business communications between the parties in the normal course of doing business. For the present, the parties designate the following as the respective places for giving notice:

CITY:

City of Fort Lauderdale
Attn: City Manager
100 North Andrews Avenue
Fort Lauderdale, FL 33301

With a courtesy copy to:

City of Fort Lauderdale
City Attorney's Office
100 North Andrews Avenue
Fort Lauderdale, Florida 33301

APPLICANT:

TMF Holdco, LLC
Attn: Brian O'Connell
c/o Live Nation
1201 Villa Place, Suite 200
Nashville, TN 37212

With a courtesy copy to:

Live Nation
Attn: Legal Department – Concerts
9348 Civic Center Drive
Beverly Hills, CA 90210

32. **SEVERANCE:** In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless City or Applicant elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.
33. **NON-DISCRIMINATION:** In the performance of this Agreement, Applicant shall not

discriminate against any vendor, concessionaire, employee, patron, visitor, attendee or customer because of sex, age, race, color, religion, ancestry, national origin or sexual orientation. In addition, to ensure that the Event is a true community event, Applicant will encourage the participation of minority groups in all aspects of the Event, including the organization, planning, implementation, concessions and support services. Applicant agrees to comply with the terms and provisions of the Americans with Disabilities Act and shall make the Event Site and Event Impact Areas accessible for persons with disabilities.

34. **EMERGENCY ACCESS:** Applicant agrees to provide any and all emergency access required by the City and its employees for the safety and welfare of the community and those attending the Event, and proper entrances into any gates which are locked. If, in the course of Applicant's operations, Applicant or City, or their officers, agents and/or employees, become aware of any condition in or about the Event Site or Event Impact Areas which may be dangerous, Applicant will immediately correct such condition or cease operations upon becoming aware or being notified of such condition so as not to endanger persons or property.

35. **MISCELLANEOUS PROVISIONS:**

a. Applicant agrees to exercise a good faith and reasonable effort to work with the City Police Department and representatives of the adjacent Homeowners Associations to implement a plan permitting homeowner's ingress and egress to their residences during the course of the Event. In addition, the Applicant will work with the City Public Affairs Division to disseminate traffic plan information to impacted residents and businesses in the Event Impact Areas, as well as schedule and facilitate a public meeting at a location near the Event Site to communicate general event and traffic plan information to the public. The logistics and date/time of the meeting shall be approved by the City, with the meeting taking place at least sixty (60) days prior to the first performance day of the Event.

b. The use of fireworks shall comply with all applicable state laws and shall require a fireworks permit from the City fire department.

c. Applicant acknowledges that it is solely responsible for all utilities for the Event including, without limitation, electrical, water, and sewer and storm sewer hookup requirements.

d. In the Event that the City is required to file any legal action against Applicant to collect any fees due under this Agreement and prevails in such legal action, City shall be entitled to its costs of collection, attorney's fees and costs and interest at the maximum rate allowable by law.

e. General admission rates for the Event shall be as determined by Applicant, with the range of ticket prices depending upon the artists. Applicant reserves the right to offer special admission and VIP packages for individuals and businesses at various price ranges determined by Applicant.

f. Both parties agree that all revenues including, without limitation, concessions,

ticketing, sponsorships and broadcast rights shall be retained by Applicant.

g. The City shall have no right to use the Festival Marks (as defined herein or as may be amended, added or revised at any time) for any purpose whatsoever without the prior written approval of Applicant in each instance, which approval may be withheld by Applicant in its sole and absolute discretion. For the purposes of this Agreement, "Festival Marks" means the names, logos, symbols, emblems, designs, colors, trademarks, service marks, copyrights or other intellectual property rights of the Event, Applicant or Applicant's affiliated businesses, including without limitation, "Rock The Ocean's Tortuga Music Festival" and the trademarks, service marks, logos, copyrights or other intellectual property rights of Applicant or its affiliated businesses. The City acknowledges and agrees that as between the City and Applicant, all right, title and interest in and to the Festival Marks belongs to Applicant. Nothing in this Agreement is intended to, nor does it convey, to City any ownership, license, or other right in or to the Festival Marks.

h. The Applicant shall be permitted to serve alcoholic beverages as a concession of the Event, and the Applicant may extend this right to permitted third parties, in accordance with all applicable licenses, regulatory requirements and the City of Fort Lauderdale Code of Ordinances.

i. The Applicant, after receiving permission by the City's Contract Administrator, reserves the right to add decor, including, but not limited to signage to the location or cover any existing signage, as authorized by the City of Fort Lauderdale Code of Ordinances.

j. The Applicant, after receiving permission by the City's Contract Administrator (such permission not to be unreasonably withheld or delayed), may conduct filming anywhere at the Event site that is part of this Agreement and shall retain all rights to same.

k. The Applicant will have a right to an independent audit of City's records to confirm the accuracy of the fees and expenses incurred by the City.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGES TO FOLLOW]

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

ATTEST:

CITY OF FORT LAUDERDALE, a
municipal corporation of the State of Florida

Jeffrey A. Modarelli, City Clerk

By: _____
Dean J. Trantalis, Mayor

By: _____
Christopher J. Lagerbloom, ICMA-CM
City Manager

Approved as to form:
ALAIN E. BOILEAU, CITY ATTORNEY

By: _____
Tania M. Amar, Assistant City Attorney

APPLICANT

TMF HOLDCO, LLC, a Delaware Limited Liability Company authorized to transact business in the State of Florida

WITNESSES:

By: CN HOLDCO, LLC, a Delaware Limited Liability Company, its managing member

By: _____
Brian O'Connell, Designee

Witness print/type name

Witness print/type name

STATE OF _____:

COUNTY OF _____:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2021, by BRIAN O'CONNELL as Designee for CN HOLDCO, LLC, a Delaware Limited Liability Company, in its capacity as managing member of TMF HOLDCO, LLC, a Delaware Limited Liability Company authorized to transact business in the State of Florida, on behalf of the company.

SEAL

Notary Public, State of Florida
(Signature of Notary Public)

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

Personally Known ____ OR Produced Identification ____

Type of Identification Produced _____

Exhibit “A”
Event Period

The Event Period for the initial year of this Agreement is as follows:

Set Up: Commencing from 8:00 AM to 9:00 PM on October 25, 2021 - Ground cover on south end of beach (sharing South Beach Lot with the Fort Lauderdale International Boat Show (“Boat Show”))

- November 1, 2021 – Take over south side of FL Beach parking lot (as confirmed with the Boat Show)
- November 5, 2021 – Take over north side of FL Beach parking lot
- November 6, 2021 – Take over HOF/DC Alexander park at SE 5th & A1A (box office)
- Set up continues until Event performance days

Event performance days: Friday, November 12th, 2021
 Saturday, November 13, 2021
 Sunday, November 14, 2021

- Event hours 11 AM through 11:30 PM each day
- Concert music will end by 10:00 PM each day
- Breakdown will end by 11:30 PM on each Event performance day.

Breakdown of Event: beginning promptly following the final performance and continuing until November 19, 2021.

The term “Breakdown” shall mean the use of heavy equipment, machinery or vehicles which use backup alarms in the deconstruction of the event structures in a manner that may produce material noise or otherwise disturb area residents but excludes cleanup or wind-down of Event operations in a manner that does not involve heavy equipment and machinery. Breakdown will not be performed between the hours of 10:00 PM and 7:00 AM, except as otherwise provided above.

The Event Period may be revised upon the mutual consent of the City Manager and the Applicant.