

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.:

AMAL KABBANI, VICTOR GADINO,
SANTIAGO PEREDO, SARA ARROYO,
REBECCA YU, BARRY DUCEMAN, ARLENE
RAMSINGH, LUZ SALDARRIAGA, EUGENE
WALTON, FRAN FENTON, MARTIN FENTON,
MIGUEL GARCIA, CLAUDIA ROUSSEL, and
EMILY PHILLIPS,

Plaintiffs,

vs.

THE CITY OF MIAMI,

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, Amal Kabbani, Victor Gadino, Santiago Peredo, Sara Arroyo, Rebecca Yu, Barry Duceman, Arlene Ramsingh, Luz Saldarriaga, Eugene Walton, Fran Fenton, Martin Fenton, Miguel Garcia, Emily Phillips, and Claudia Roussel, all residents of the City of Miami and Miami-Dade County, Florida, bring this action against Defendant, the City of Miami (“City”), and state:

GENERAL ALLEGATIONS

1. This is an action for declaratory and injunctive relief pursuant to Sections 26.012, 86.011, 86.111, Florida Statutes, as well as Section C of the City of Miami Charter, Citizens Bill of Rights. This Court has subject matter jurisdiction over this case.
2. The City is a municipality located within Miami-Dade County, Florida.

3. Venue is proper in this Court pursuant to section 47.011, Florida Statutes.
4. All conditions precedent to the bringing of this action have occurred or have been waived.
5. Plaintiffs seek a declaration that the City of Miami violated its Charter, violated the City Code, and approved an illegal nuisance by voting 3-2 on July 25, 2019, to “approve” a Resolution (RE-4, later R-19-0321), which purports to authorize the Ultra Music Festival (“Ultra”) to generate harmful levels of noise and (a) violates the City Charter’s guarantees against “excessive and unnecessary noise;” (b) creates an abatable nuisance; (c) violates the Charter’s requirement for competitive bidding, independent appraisals, payment of fair market value, and reasonable access to the bay and the park in conveyances of public waterfront land; and (d) violates the City Code’s requirement for a four-fifths vote to waive competitive sealed bidding. Plaintiffs also seek a permanent injunction to prevent the City from implementing the Resolution in violation of its Charter, the Code, and State law.
6. Between 2012 and 2018, the City allowed Ultra to conduct music festivals in Bayfront Park, and blast catastrophic volumes of noise into Plaintiffs’ and other Downtown Miami residents’ homes depriving them of the quiet enjoyment of their homes, and also depriving Plaintiffs and other Downtown residents access to Bayfront Park for several months each year.
7. All Plaintiffs have standing to bring this action. All Plaintiffs are residents of the City and have standing to challenge the City’s Charter and Code violations under Section C of the City of Miami Charter, Citizens Bill of Rights. In addition, all Plaintiffs reside in buildings located directly across from or in close proximity to Bayfront Park, and would suffer injuries

different in kind than the harm suffered by the community at large from the City's Charter and Code violations.

FACTUAL BACKGROUND

8. On July 25, 2019, the Miami City Commission voted 3-2 to "approve" Resolution RE-4 (File No. 6097)("RE-4"), which purports to authorize the City Manager to present an offer to Event Entertainment Group, Inc.,¹ and subsequently negotiate and execute a "Revocable License Agreement" to produce the Ultra Music Festival at Bayfront Park in Downtown Miami. RE-4 references "terms and conditions more particularly described" in a proposed draft agreement published as part of the Commission agenda for the July 25 meeting. Resolution RE-4 is attached as Exhibit 1 and the proposed draft agreement accompanying RE-4 is attached as Exhibit 2 ("Proposed Agreement").

9. Despite voting on July 25, 2019 to "approve" RE-4, the City did not publish a final version of the Resolution until August 23, 2019, when it provided the Downtown Neighbors Alliance, Inc. ("DNA") with a modified resolution indicating that it was signed by the City Attorney on August 15, 2019, now titled R-19-0321 (hereafter, RE-4 and R-19-0321 are collectively referred to as "the Resolution.")² Exhibits 3, 4. The City has acknowledged in response to repeated public records requests by counsel for the DNA and media reports that in the five (5)-plus months since the vote, that no final executed agreement exists as of the date and time of this Complaint.

¹ Event Entertainment Group, Inc. ("EEG") is an affiliate of Ultra Enterprises, Inc. ("Ultra"), and is the entity with which the City has contracted for Ultra Music Festivals in the past. Ultra and EEG are used interchangeably in this Complaint.

² The DNA is a not-for-profit Florida corporation comprised of ten (10) condominium associations and other entities located in Downtown Miami, along Biscayne Boulevard near Bayfront Park and Maurice A. Ferre (formerly Bicentennial Park and Museum Park). Several of the named Plaintiffs live in buildings whose associations are members of the DNA.

10. The Proposed Agreement would convey exclusive possession of Bayfront Park to Ultra for eleven (11) days, and deny access to the bay front and most of the park itself for twenty-eight (28) days for a “yearly event” beginning in March 2020, that would renew every year unless terminated by either party within 60 days of an event.³ The Proposed Agreement would also authorize Ultra to set up six sound stages and generate noise “not to exceed a maximum level of one hundred two (102) decibels measured 60 feet away from each stage,” for three concert days and nights (4:00 pm to midnight on Friday, Noon to midnight Saturday, and Noon to 10:00 pm on Sunday), and to conduct three (3) days and nights of seriously disruptive sound and light checks preceding the event. The Proposed Agreement allows Ultra to place the stages in areas in Bayfront Park in close proximity to the Plaintiffs’ residences, as it has in previous years. Exhibits 5 and 6 show Ultra stage locations in 2018.

11. Under the Resolution, Ultra would pay the City a total of \$2 million for the year 2020 and for each of the next two years. In setting the \$2 million payment, the City did not conduct any appraisals to ascertain the “fair market value” or “fair value” of Ultra’s total occupancy of Bayfront Park.

12. Engineering Study of Noise from 2018 Ultra Concert Documents Severe Harm to Residents. The management of the 50 Biscayne Condominium commissioned the acoustical engineering firm of Brooks Acoustics Corporation (“BAC”) to measure the noise produced by the 2018 Ultra concert in Bayfront Park. During Ultra’s performances on March 23, 24, and 25,

³ Under the Proposed Agreement, Ultra would allow access to three small park spaces during 17 of the 28 days immediately before and after the eleven (11) days of exclusive possession of the entire park. In addition, the Proposed Agreement would allow Ultra until June 1 following each event, approximately six (6) additional weeks, to replace the grass in Bayfront Park, because the stages, walkways, and dance floors erected for Ultra destroy virtually all of the grass in the park. Exhibit 2, ¶5.2.

BAC took sound measurements at several locations at the 50 Biscayne building, including the pool deck and common rooms (10th floor), several management offices, Unit 2802 dining room and balcony, and the roof on the 55th floor. BAC summarized its conclusions:

During the time that the Ultra Music Festival was operating, the rhythmic, thumping bass and drum sounds from the venue at Bayfront Park were plainly audible, distinctly noticeable, and highly intrusive above the ambient background.

The sound survey results show that the musical devices in use at the Ultra Music Festival events generated and emitted sound that can and did “**disturb the quiet, comfort, or repose of persons in any dwelling, hotel, or other type of residence.**” (p. 1)

(Bold in original).

13. BAC documented noise levels that are damaging to residents’ health and property, including but not limited to the following data points:

The objective data show that the disruptive nature of these significantly intrusive bass sounds can disturb the peace, quiet and comfort, and consequently seriously degrade the quality of life, and cause negative health effects for residents.

The bass content intrusion greatly exceeds the criteria of 15 dB, known to result in widespread complaints. It also represents an over 150 fold increase in sound intensity in the bass frequency range above the background levels. This intrusion is like having a boom box in your living room for the entire day and evening.

The A-weighted Ultra event sound level on the pool deck was 96 dBA. This is a level known to cause hearing damage. The overall intrusion level was 96 dBA – 57 dBA = 39 dBA. This intrusion also greatly exceeds the criteria of 15 dB, known to result in widespread complaints. This intrusion is like having a power saw operating in your living room for the entire day and evening.

These test results show that the sound levels produced by the Ultra event are high enough and persist long enough to cause hearing damage for residents located at the Associations common elements, including the pool deck and on private property at the 50 Biscayne Condominium.

These high measured sound levels consistently exceed the WHO health criteria of 70 dBA, which indicates the likelihood that the Ultra noise will produce other

negative health effects, related to hypertension and ischemic heart disease, among other adverse outcomes.

The noise induced vibration of windows and blinds and other building features such as light fixtures caused rattling to be noticeable. A comparison with criteria developed by NASA for the potential damage to housing structures due to rocket takeoffs show that the Ultra event can cause levels of noise which exceed the NASA guidelines.

According to the NASA criteria, these high levels of noise are likely to vibrate nearby buildings, causing minor damage to the fixtures, finishes and possibly the structure. This was confirmed by observations that the building was perceptibly vibrating during the Ultra event.

(Bold supplied).

14. The entire BAC Study was submitted into the record of the City Commission meetings on September 27, 2018, June 27, 2019, and July 25, 2019, by the DNA's representative in opposition to the Commission's consideration of allowing Ultra to return to Bayfront Park in 2019 and thereafter. Exhibit 7.

15. BAC Principal Bennett Brooks, PE, FASA, INCE, addressed the Commission on September 27, 2018, when it was considering a resolution to renew Ultra's return to Bayfront Park for 2019. He stated:

Good morning, Commissioners. My name is Bennett Brooks, from Brooks Acoustics Corp., 49 North Federal Highway, Pompano Beach, 33062. As a point of order, counsel for the residents has requested that I get four minutes to speak, so I thank you for that. I'd like to submit a copy of my remarks to the Clerk.

This testimony is a summary of the sound test report for the Ultra Festival that was submitted into the record. I was the engineer that was posted at the 50 Biscayne during the Ultra Festival, and I'm here to provide scientific information for the Commissioners' use in making their decision. From an objective viewpoint, it seems that the -- if the goal of Ultra Festival was to deliver gut-shaking intense sound levels to their audience, then they succeeded.

The effect of this gut-shaking sound on the community is to disrupt the rhythm of life; people with small children at home, people who work at home, people who must get sleep in the daytime or the evening; so-called normal

residents, who come home after work, after a long day or on a weekend; people who want to have the quiet enjoyment -- a legal term -- of their home during the day and into the night. So we have objective data to support all that.

By all acoustical parameters, the Ultra Festival seriously degrades the quality of life for the downtown residents. In my over 30 years in environmental noise testing and measurement, this was by far the most intense music source of all, by orders of magnitude. We measured up to 119 dB (decibel) for bass at 50 Biscayne. For human hearing, we measured in the 90s to 104 at 50 Biscayne. To give this experience a concrete analogy, this is like having boom box cars parked and running and blasting music in your living room and in your bedroom, with a power saw operating simultaneously, all day and into the night. In terms of community acceptance, standard soundscape science principles state that any sound source, even at a low level, must be consistent for people within the context of their living situation, and the meaning that it may have to their lives. The Ultra Festival is completely out of place and inconsistent within the Miami residential community. In terms of physical effects of the intruding Ultra sound levels on the people that are exposed, we can describe them in terms of going from lower to higher sound levels.

Even at lower levels from Ultra, this highly disturbing noise can cause serious annoyance. Ultra is far above the widespread annoyance and complaints noise level that's been established for many years. The next step in sound level are physiological effects, such as stress, sleep deprivation, hypertension, cardiovascular disease, and ischemic heart disease. And again, by World Health Organization's standard, noise from Ultra is way over the limit for negative health effects. Next up in level are the noise levels from Ultra at the residence that can cause hearing damage. The measured Ultra sound levels at the residences can cause hearing damage in just a little over an hour of exposure, so that could be an hour over three or four days when they're doing sound tests, even.

And finally, the measured Ultra sound levels are shown to be well above the criteria for sound-induced vibrations in building structures, established by NASA (National Aeronautics and Space Administration), for damage to dwellings due to noise from rocket launches. So at least minor building damage can occur due to the Ultra Festival noise. And consistent with those observations are the ones made at 50 Biscayne. It showed the building shaking, and noise-induced vibrations to windows, blinds, and other building features, such as light fixtures. So based on the objective evidence, we can say the Ultra Festival is truly an acoustical bombardment and a sonic assault on the Miami residential community. Thank you for your attention.

16. BAC documented the excessive and intrusive noise caused by the 2018 Ultra Festival, including measurements inside the living room of an apartment on the 28th floor of 50

Biscayne, at 64 A-weighted decibels, and the level of low frequency, or Bass sound, at 91 decibels. Further, these noise levels far exceed the legal limits for commercial music adopted by other major cities such as New York City, which limits noise measured from the point of impact, i.e. “inside any receiving property dwelling unit.” These facts were presented to the City Commission and placed in the meeting record on July 25, 2019.

17. ENT Analysis Shows Sound Levels in 2018 Cause Hearing Loss. Dr. Ariel Grobman, a board certified otolaryngologist (ENT), advised the City Commission that based on the noise levels measured by BAC in 2018 and time periods the noise lasted, Ultra posed a threat of hearing loss to residents:

That study was a very sound study, very well done, and there are a few points I'd like to highlight about the correlation between the noise that's present and potential harm to residents.

One thing is that we typically use the OSHA (Occupational Safety and Health Administration) standard, or even the newer CDC (Center for Disease Control) standard, to delineate how long people can be exposed to loud noises, and what level, before permanent damage occurs. Throughout the weekend, not only is the noise going up from Friday to Sunday, but there are certain areas in the building where residents can only be present for about an hour before levels exceed those that can cause temporary or permanent hearing loss.

There's a typical high proportion of bass notes in electronic music, and these bass notes will actually sensitize the ear and predispose it to more hearing loss from the remainder of the music, so having the bass going on all that time will predispose people in the building.

From the sound study we saw that the music shut off was at 1 a.m. and was resumed again as early as 8 or 9 a.m. That's certainly not enough time, from both human and animal studies, to allow the inner ear to recover from the damage that happens from noise-induced hearing loss. Something called “free radicals” . . . you might have heard that term – they accumulate, and that is just not enough time to allow someone's ear to heal from that exposure.

And finally, the people that are most predisposed to noise-induced hearing loss are people with pre-existing hearing loss, and the elderly, and people with diabetes. So, the population is already predisposed, and then they are getting a second hit from all this music exposure.

Minutes of Miami City Commission Meeting, June 27, 2019, at 31-32, also submitted for the record of the July 25, 2019 City Commission Meeting. Exhibit 8.

18. Individual Residents Suffer Debilitating Noise Intrusion from Ultra. Several Plaintiffs spoke before the City Commission on September 12, 2018, June 27, 2019, and July 25, 2019, and described the egregious and debilitating levels of noise generated by Ultra in Bayfront Park in 2018 and previous years. They cited “unbearable noise,” “sonic blasts,” and “loss of sleep,” with bass (low frequency) noise so loud that it made their “windows and plates shake.” The noise persisted for prolonged periods of time, which caused stress, anxiety, and panic attacks, among other injuries, to Plaintiffs, as described below.

19. According to Plaintiff Victor Gadino, the 2018 Ultra Music Festival caused “unbearable noise level” at his apartment on the 33rd floor of the 50 Biscayne Building:

I’m a freelance illustrator and I work out of my apartment. I found it impossible to concentrate on my work with the constant pounding beat, screaming DJs and endless vibration of my windows. In fact, everything in my apartment was vibrating the entire three days. I had to ask my doctor if I could increase my blood pressure medication, because my head was pounding and my entire body felt stressed. I felt trapped with no escape. It was difficult to have visitors and I was uncomfortable even leaving my building. The streets were overcrowded with groups of ruckus drunk partygoers or stoned looking zombies with vacant eyes. I just didn’t feel safe. It was very unpleasant and very ugly!

[E]very day I can see the destruction to the park’s trees and bushes from all the public urination. In just 15 minutes from the pool level of 50 Biscayne I witnessed a dozen guys urinating on a row of bushes because they didn’t want to wait on the bathroom lines. . . . Those very bushes now look almost dead.

20. According to Plaintiffs Barry Duceman and Arlene Ramsingh, who reside on the 32nd floor at 50 Biscayne, Ultra’s “sonic blast” of noise in 2018 made their home virtually uninhabitable.

The volume of the music generated during Ultra causes a continual stressful environment in our home. Throughout its duration, we are subjected to

the full sonic blast of the concert. The sound permeates our living space and, as a result, our home becomes virtually uninhabitable. The volume generated by the multitude of speakers on the concert's seven sound stages is unbearable and makes it impossible to focus on any activity – whether it be work or play.

The noise generated by the actual concert would seem bad enough but the anxiety and stress caused by that event is heightened greatly by the racket generated during the three weeks required to transform Bayfront Park into a concert venue and the two weeks needed after the event to tear the stages back down. That work, both day *and* night, produces a lot of loud construction noise which adversely impacts daily life and frequently results in loss of sleep. Additionally, prior to the concert, we are subjected to frequent “sound checks”, which occur intermittently without warning and are loud enough to startle. In summary, the noise generated by the three-day Ultra concert, along with that generated during weeks of setting up / tearing down the concert's stages, has a deleterious effect on the quality of our life and has the potential to damage our physical and mental health due to the accompanying loss of sleep, anxiety and stress.

21. According to Plaintiff Sara Arroyo, who resides on the 33rd Floor in the 50 Biscayne Building, Ultra's calamitous noise in 2018 made her windows shake continuously and caused panic attacks for her dog. The entire event also made her a “prisoner in her own home” as she had to navigate around construction materials and closed and broken sidewalks for at least a month every year when Ultra is setting up and breaking down, and accompanying vagrancy during the extended days of the concerts:

Prisoner at my home for 3 days: The only times I can leave my apartment is to walk my dogs (which I have no other choice!). When doing so, I needed to request company of a 50 Biscayne guard, only because there are weirdos floating around everywhere (wish you had seen “The Revenant” men). The sad thing is that they usually don't leave immediately after Ultra ends, they are left roaming our streets for approximately 2 weeks later.

Loud noise: It comes from everywhere, through my windows and walls. The music is so loud my windows shake consistently, caused panic attacks on my pinscher with an aftermath of almost 2 weeks after Ultra ends.

Sick-making urine smell: For weeks after Ultra ends there is a terrible urine smell in the area where the latrines are located. The terrible smell is pervasive and you can't walk close to it without getting nausea. Great for the tourists!

22. Plaintiff Santiago Peredo also resides on the 33rd Floor in the 50 Biscayne Building, and describes his experience from Ultra in 2018 and previous years:

I have been a resident of Downtown Miami for over 7 years now. My first 3 years were as a renter in One Miami and my last 4 have been as an owner at 50 Biscayne. Ultra is extremely disruptive to the people that live in the area. The park is closed over 5 weeks with certain areas for over 6 weeks. I have two dogs and one of the main reasons I live in downtown is to have access to a beautiful park. Ultra, with its set up, break down, and rehabilitation time eliminates more than a month of use. The concert damages the premises and it takes far too long for the park to be back to normal; it is covered in mulch instead of grass for 2 to 3 months. The same applies to other parts of the park e.g. the sidewalks, dog stations etc. I have a picture showing cracks on the sidewalks (in front of the Intercontinental Hotel) also some of the pet stations were removed and never re-installed. The last time they hosted the event at Bayfront Park, the restroom area still smelled and they left some of the leaks untouched for way past two months after the event. In addition, garbage such as plastic bottles and plastic caps can be found on the premises way after the event.

The value of the property is affected by these events as people are not able to use and benefit from the park for a big part of the year. The decline in values could not be offset by the economic impact of ultra. It is important to note that I am not against Ultra, I am only against Ultra being hosted in Bayfront Park.

My wife and I are about to have a baby (January 9th) and cannot imagine trying to put him to bed with the noise that is generated. That on top of the fact that it has been scientifically proven that the noise level is in fact damaging for anyone that is exposed for long periods of time to the decibels generated by Ultra. The most probable thing is that my family and I would have to leave home for the weekend and bear the cost of traveling (with a newborn), I am sure we will not be the only ones doing so.

23. Plaintiff Eugene Walton resides at 900 Biscayne Blvd, on the 43rd Floor. He describes his experience in 2018:

The distance from my apartment to the main stage at Ultra was three-quarters of a mile.

The noise starts several days before the Ultra Fest starts. Sound checks meant to check the clarity and volume of the voice intros and electronic music begin as early as 9 am and I'm jolted to hear the first checks. My storm resistant glass doors are closed but I can hear the loud clear voices from the stages. Then

the low level thumping bass starts. Thumping, I can't get away from as it goes right through the glass and rattles the apartment. As the sound check advances, the sound is turned down, then up again. It's intermittent. When it stops, you think that it's a break or is finished. Then it starts again. For several hours it's like this before the afternoon and the lighting check begins.

At 4 pm the first day of the show, the intro begins at an ear splitting level and I know its time. I can't read - even with headphones. I can't watch television - even with the sound turned up. The low level bass is just always in the background. You can't escape. It's torture. A small issue makes me angry because that bass is always there. With that bass and noise and given enough time, you really can go crazy. And I'm angry. And this can go on from 4pm until the noise and lights stop at midnight. For three days. I can't stay in the apartment with this invasion. It's an assault.

Mr. Walton made similar comments to the City Commission on May 24, 2018, as well as on September 27, 2018.

24. Rebecca Yu is a resident of 50 Biscayne. At the July 25, 2019 City Commission meeting, she spoke against RE-4:

I'm a resident of 50 Biscayne, in downtown Miami. I am here to talk about Ultra. We're not opposed to Ultra, but its scale and noise level is no longer suitable for the downtown area. With 60,000 people in one day in attendance, it is the capacity of a large stadium. Do you really think that Bayfront Park can really fit a stadium? With that said, we think a stadium in the Miami area is more suitable for the Ultra Festival. We want to keep Ultra in Miami, but the Mayor also talked about the high quality of life. We have no quality of life while Ultra is here. People came here, talking about music playing by the boats on the river. We have a speaker pointed at us, three days straight. This is our Central Park. Bayfront Park is our Central Park. It will be unheard of to close the entire Central Park in New York for months on end, from January to May. Why do you think that Miami residents should suffer as such?

[L]et me just paint a picture for you what having Ultra is like. Two months before the concert, parts of the park start to close down; there are giant machines coming in, like alien invasion; dust everywhere; trucks beeping all day long; nails on the sidewalks and the street; humans and dogs cannot walk on the sidewalks, and we have personally had two flat tires in different years because of Ultra. Also, two weeks before, the entire park is closed; no access to children's playground; not a patch of green grass for the dogs; we have to walk half a mile north or south; and also, the homeless start to move out of the park to the corners of Flagler and the sidewalks on our streets.

25. Plaintiff Claudia Roussel lives at 10 Museum Park, on 11th Street and Biscayne Boulevard. She spoke at the July 25, 2019 City Commission meeting in opposition to RE-4:

Once again, the downtown residents stand in front of you asking to do the right thing. And once and for all, say “no” to Ultra in Bayfront Park. Nobody is saying “no” to Ultra in Miami, but not in an already densely packed neighborhood, which is becoming more and more a home for families. Why is it that we have continually to fight for basic rights, like quiet enjoyment of our homes and use of our parks, which are reasons we decided to live here in the first place? Ultra, plain and simple, outgrew Bayfront Park. It needs to find a new home. Times and situations are constantly changing in a city, and responsible City leaders understand that fact and act accordingly. I hope you will, too. A final point, to add insult to injury, the downtown community is being told that all the money being generated by Ultra will go into the general City fund, so our community suffers and gets nothing in return. We are being told the Park Trust has no money for security, the upkeep of our parks, and mediocre at best, due to low staffing. And Maurice Ferré Park still is waiting for a long-promised children playground, but Bayfront Park is being given away for free.

26. Plaintiff Fran Fenton lives at One Miami, immediately to the south of Bayfront Park, on the ninth floor, with her husband, Plaintiff Martin Fenton. She describes her experience as follows:

Our apartment unit faces South, away from the park, so that while we can hear music or the bass, we do not experience the assault to our senses that others in the direct line suffer from. However, our exercise location was moved to Museum Park because Bayfront Park was closed due to Ultra in 2018. When we were returning to our home, making our way down Biscayne Boulevard, the sound check was getting under way. By the time we passed the park, we were exposed to very loud levels of noise. I have a serious problem with loud noise, and therefore never put myself in a circumstance when I would have to listen to it. This is more than a matter of taste; my ears actually physically hurt when the decibels reach a certain level. That morning the decibel level reached what was an unacceptable level, and I experienced pain. This can't be good for me. It is torture for me to be exposed to this noise. We made our way home and stayed inside the remainder of the weekend, on what is traditionally one of the most delightful weekends of the year weather wise. The decision of the City to host Ultra in Bayfront Park, makes me a prisoner of my condo and deprives me of the right to enjoy my surroundings.

In addition, this three-day music festival impacts us for between 40 and 45 days, not three. The park is shut off; enclosed by tall fences, creating an eyesore,

where there should be a green space. Even the Bay Walk is blocked to pedestrian traffic. It hurts Bayside Market Place as we stop going there when we can't access it from the Bay Walk. We get cheated out of a lovely stroll along Biscayne Bay, while the park is destroyed to create stages for Ultra.

Ms. Fenton spoke at the July 25, 2019 City Commission meeting in opposition to RE-4.

27. Plaintiff Amal Kabbani resides in the 50 Biscayne Building. She is the President of the Downtown Neighbors Alliance, Inc. She addressed the City Commission on September 27, 2018 and June 27, 2019 in opposition to resolutions to allow Ultra to return to Bayfront Park, and on July 25, 2019 in opposition to RE-4. Her opposition is based in part on her personal loss of access to Bayfront Park for substantial periods of time caused by Ultra concerts, the only green space primarily serving the Downtown Miami residents south of the American Airlines Arena, including the devastation to the park for nearly seven months after the event. She also opposed RE-4 because of the broad objections by her neighbors and other Downtown residents to the unbearable noise and disturbances they suffered from Ultra concerts in 2012-2018.

Most importantly, Ms. Kabbani, a resident and elector in the City of Miami, Kabbani, who is active in governmental affairs, strenuously objects to the City government's actions to allow a private, for-profit entity to usurp public space without complying with the protections established in the Charter and Code, such as the manipulation of the Code's requirements for approval of the item at the eleventh hour, contrary to the City's laws and precedent, by caveat of the City Administration, to provide that instead of the four-fifths vote required by the Code and the City's precedents, only three votes would be required to approve the Ultra concert under the Resolution.

28. Plaintiff Miguel Garcia, a busy professional and resident of Three Tequesta Point on Brickell Key, decides to leave town every year during Ultra because he cannot work, study, read, rest or simply host family or guests at his property due to piercing noise pollution and

repetitive vibrations from the Ultra Festival. On Sunday March 25, 2018, in the understanding that the festival noise ended at midnight, he had just arrived home ready to go to sleep and prepare for a demanding week at work, when to his dismay, the Ultra organizers and entourage decided to start an even louder disco music party until 4:30 am in the morning of Monday March 26. He made phone calls to the police and Bayfront Park to no avail. Videos were taken and Garcia sent them to city authorities but was ignored. Garcia stated that during the concerts, “the sound waves travel from Bayfront Park to the 1st floor and the 40th floor of these buildings, due to the laws of physics....it appears city officials are in the middle ages in regards to science and public health , but have updated technology when it comes to collecting taxes.”

29. Plaintiff Emily Phillips resides in the One Tequesta Point Building on Brickell Key, across the Miami River, in a condominium that faces Bayfront Park. She describes her experiences from previous Ultra concerts:

I am self-employed attorney with my office at One Biscayne Tower which is across the street from Bayfront Park. Ultra music festival disrupts my entire work week. My employees and I have to leave the building early and cannot work an entire business day due to the test runs that start during the week, when it is very difficult to work. I always have to leave town the weekend of the Ultra festival because I cannot work at my office or in my home on the other side of the River. The noise pollution is so loud that I get headaches. The festival is harmful to human health and truly disrupts my life.

30. Several other City of Miami residents who live across from or in close proximity to Bayfront Park spoke at the July 25, 2019 Commission meeting in opposition to RE-4. For example, Randy Holingworth, who lives at 848 Brickell Key Drive, south of the Miami River but directly facing Bayfront Park, stated:

I'm not only a resident of downtown, which so many people here are saying they're residents of downtown -- Ultra is in my front yard. I am here not to oppose Ultra; I'm here to oppose Ultra being in my front yard. This is an event that -- earlier, someone said, you know, “We're gentrifying downtown, and we're

moving to Ultra.” No, that's not true. I have lived with my family on Brickell Key for 11 years. Ultra came to Bayfront Park after I moved. They were in Bicentennial Park, facing north, towards the -- at that time, the newspaper. There was very, very few residents. It was really unobtrusive. When they moved to Bayfront Park, they turned their stage in my direction, in the middle of that circle that you see on that drawing. We listened to 31 hours of constant pounding music. It's intolerable. It starts not on Friday; it starts on Thursday night, when they start doing the sound checks. We get those for three or four hours on Thursday night, and then from 12 -- from 4 o'clock to 12 o'clock, from noon to 12 o'clock, and from noon to 11 o'clock. It's intolerable. We close our doors. We try to go to the bathroom, because that's the only room without windows, and it comes through the vents; it's so loud. You cannot stand the noise for three days straight, nonstop. They don't take breaks.

Transcript of City of Miami Commission Meeting, July 25, 2019, pages 43-44.

31. Another resident, airline pilot George Polonius, spoke against RE-4 at the July 25, 2019 City Commission meeting:

My name is George Polonius. I'm a resident, also right next to Bayfront Park. I've lived here for seven years. And you have no idea how our whole neighborhood breathed a sigh of relief last year when you unanimously moved the concert from one venue to another

I'm sorry. I'm an airline pilot. I have a very unregulated schedule. When this thing goes -- pounds on and on, how rested do you gentlemen think I am at work? And if I make a mistake, that'll definitely make the news.

So I ask you -- We have reasons for zoning. There are industrial zoning, because that's where industrial things happen. There are residential zonings, because that's where residential happens. Bayfront Park, over the years, has been built one high-rise after another; people have moved there. They have children. They have dogs. This neighborhood is no longer compatible with this kind of three-day venue that takes months to set up and months to clean up. Meantime, the only green space we have in downtown is completely blocked off from all the taxpayers who live there; that is unfair.

Transcript of City of Miami Commission Meeting, July 25, 2019, page 45.

32. Matilda Kalaveshi, who lives at 50 Biscayne, attended a City Commission meeting on May 24, 2018, which included a discussion about Ultra's future:

I'm a resident of 50 Biscayne. I am a new mom, so my experience is from a family perspective. . . . [T]he Ultra Music Festival . . . literally forces many of us to uproot from our own homes. This year my family and I had to move my three-month-old daughter out of our home. I don't know if you have any kids, but the logistics of moving and traveling with a newborn baby are pretty overwhelming. The stress that it imposes on a baby is heartwrenching. You add on the financial burden of finding a hotel room, staying for three days, then you're -- it becomes a taxing weekend, not only financially, but also emotionally. But it's just not the -- this event that really disrupts us; it's every event that starts with a setup at the early morning hours; the beeping of the trucks; the pounding of the music that's way above the approved limit; the megaphone announcement; the spotlights in our own -- very own bedrooms that wake us up at all hours of the night. Oftentimes, my daughter has to sleep with her stroller inside our closet, because that's the only place where the noise is not really bad. I don't know if you have kids, but I -- and I don't know if this sounds normal to you, but it's not.

Transcript of City of Miami Commission Meeting, May 24, 2018, page 67.

33. Downtown resident Idania Loureiro also opposed RE-4 at the July 25, 2019 City Commission meeting. She stated:

I was here at the last meeting, and I'm here again to please ask you to vote "no" for the Ultra. I disagree with some of the previous people that spoke; that said that, you know, "When you came to downtown to move" -- you know, "to live there, that you should have known what you were getting into." I've been living in downtown for 15 and a half years, and downtown has grown incredibly. There was noth -- I mean, there was hardly any people walking in the park. There were no families. Now it's a huge community, and it will keep on growing.

And, you know, they said about the economical impact that three days have, the Ultra, but let me tell you, the economical impact, we also have in downtown, because I -- just like my neighbors that are here today, we spend money in downtown. We eat in downtown. We go to the movies downtown. We try to do everything there. You know, there's no space in that park once they close it, before and after. It's going to be closed for two months. There's no space to walk on the sidewalk; they block them. There's no space for the children to play. The sound is -- it doesn't stop for three days.

So, you know, I'm not against Ultra, but please, take it somewhere else. There's lots of room in the City to take it somewhere else. And again, I've never worked for Ultra. I know it's a lot of people from different countries that come together, but it's not a good thing for downtown. There's urine everywhere. There's nails everywhere. There's people -- when you wake up in the morning -- when I wake up to walk my dog, there's people still up from that festival, and they're not exactly on beer. It's -- I'm just here to ask you to please, please, don't

put this back into downtown. You are going to hurt downtown by bringing it back.

Transcript of City of Miami Commission Meeting, July 25, 2019, page 44-45.

34. Steve Cakov is a resident of Brickell Key. He and his wife both own independent businesses downtown. He spoke against RE-4 at the July 25, 2019 City Commission meeting:

[T]here was another comment from another individual, and I take some affront to this, because -- I quote -- the comment was, "You made the decision to buy there, and you live with it." Well, when I bought my property about 11, 12 years ago, Ultra was not at Bayfront, and it was certainly a smaller event when it was, you know, at its previous location. On a personal note, my wife and I have independent businesses downtown, and we need to close our businesses. My wife has clients that need to come to her, and they refuse to come because of the traffic situation, the noise, the parking, all of that. So in closing, I would ask -- I hope that you will have the wisdom and the courage to make the same decision that you did last year. Again, I'm not against Ultra, but I think it's in the wrong place.

Transcript of City of Miami Commission Meeting, July 25, 2019, page 54.

35. On July 25, 2019, the City Commission voted 3-2 to allow Ultra to generate 102 dB of sound measured from 60 feet from six sound stages in the 2020 concert. The Bayfront Park management Trust (BPMT) acquired sound level test data at these sound stage locations during the 2018 Ultra Festival. These data showed that the measured sound level was 102 dB or less for most of the festival. That is, there will be no significant difference between the sound levels that BPMT measured in 2018 and what the City Commission will allow for the 2020 concert. By allowing the same high sound levels at the stages in 2020 the City Commission is ensuring that the same excessive noise will inflict substantial negative impacts on the residents. That excessive noise will persist for 8 hours, 12 hours and 10 hours over the three (3) days of the concert, plus three (3) days of intermittent sound checks prior to the event at the same level.

36. As a separate and equally dangerous matter, the Commission did *not* limit or set parameters of any kind on the allowable level of low-frequency bass sound Ultra could generate during the 2020 concert. Not only is the bass level generated by Ultra extremely deleterious to Plaintiffs' and other residents' ability to live and function in their homes, as Doctor Grobman testified, "[t]here's a typical high proportion of bass notes in electronic music, and these bass notes will actually sensitize the ear and predispose it to more hearing loss from the remainder of the music, so having the bass going on all that time will predispose people in the building."

37. The sound level "maximum" approved by the City for Ultra in 2020, 102 dB measured 60 feet from each sound stage, like the sound generated in 2018, would cause noise levels that are harmful to the health and property of Plaintiffs and other Downtown residents, cause massive disruption with Plaintiffs' and other Downtown residents' quiet enjoyment of their homes, and harm business owners and their customers as well.

COUNT I --

DECLARATORY JUDGMENT THAT THE RESOLUTION VIOLATES ARTICLE A, SECTIONS 6 AND 7 OF THE CITY OF MIAMI CHARTER CITIZENS BILL OF RIGHTS

38. Plaintiffs repeat and reallege Paragraphs 1-37 above as if fully set forth herein.

39. The noise levels the City Commission voted (by a 3-2 vote) to allow Ultra to generate in 2020 would violate Articles A6 and A7 of the Miami City Charter Citizens Bill of Rights, which guarantees residents "freedom from excessive noise" and obligates the City to prevent "excessive and unnecessary noise." Those articles provide:

(A) This government has been created to protect the governed, not the governing. In order to provide the public with full and accurate information, to promote efficient administrative management, to make government more accountable, and to insure all persons fair and equitable treatment, *the City of Miami* adopts the provisions of the Miami-Dade County Citizens' Bill of Rights

as applied to municipal governments located in Miami-Dade County and *guarantees the following additional rights to its Citizens:*

6. Environmental Protection. The City shall promote the right of the people to clean air, pure water, *freedom from excessive and unnecessary noise*, and the natural, scenic, historic and aesthetic qualities of the environment.

7. Natural Resources and Scenic Beauty. It shall be the policy of the City to conserve and protect its natural resources and scenic beauty, which policy shall include *the abatement of air and water pollution, and excessive and unnecessary noise*.

(Emphases supplied).

40. By purporting to authorize Ultra to occupy Bayfront Park for a concert that would generate noise exceeding World Health Organization (WHO), National Aeronautics and Space Administration (NASA), and Occupational Safety and Health Administration (OSHA) standards, and which is documented to cause hearing damage, hypertension, anxiety, sleep deprivation, ischemic heart disease, tinnitus, disruption of normal sleep cycles, property damage, and severe harms to the Residents' ability to function normally in their homes, the City has violated Sections A6 and A7 of the City Charter, rendering the Resolution and any resulting agreement ultra vires, illegal, and void.

WHEREFORE, Plaintiffs seek entry of (1) a declaratory judgment that the Resolution would, if implemented, violate Articles A6 and A7 of the City Charter, rendering the resolution ultra vires, illegal, and void, and (2) an order enjoining the City from taking any steps to implement the Resolution.

COUNT II –

DECLARATORY JUDGMENT AND INJUNCTION AGAINST IMPLEMENTATION OF THE RESOLUTION WHICH WOULD RESULT IN A LEGAL NUISANCE TO PLAINTIFFS

41. Plaintiffs' repeat and reallege Paragraphs 1- 37 and 39-40 above as if fully set forth herein.

42. As documented in this Complaint, the Ultra Festival in previous years from 2012 through 2018 caused catastrophic levels of noise and negative impacts on Plaintiffs and other Downtown residents, clearly constituting a nuisance to the neighborhood. Ultra events in past years have caused noise levels in excess of those documented to cause hearing damage, hypertension, anxiety, sleep deprivation, ischemic heart disease, tinnitus, disruption of normal sleep cycles, property damage, and severe harms to Plaintiffs' and other Downtown residents' ability to function normally in their homes, which constitute a legal nuisance.

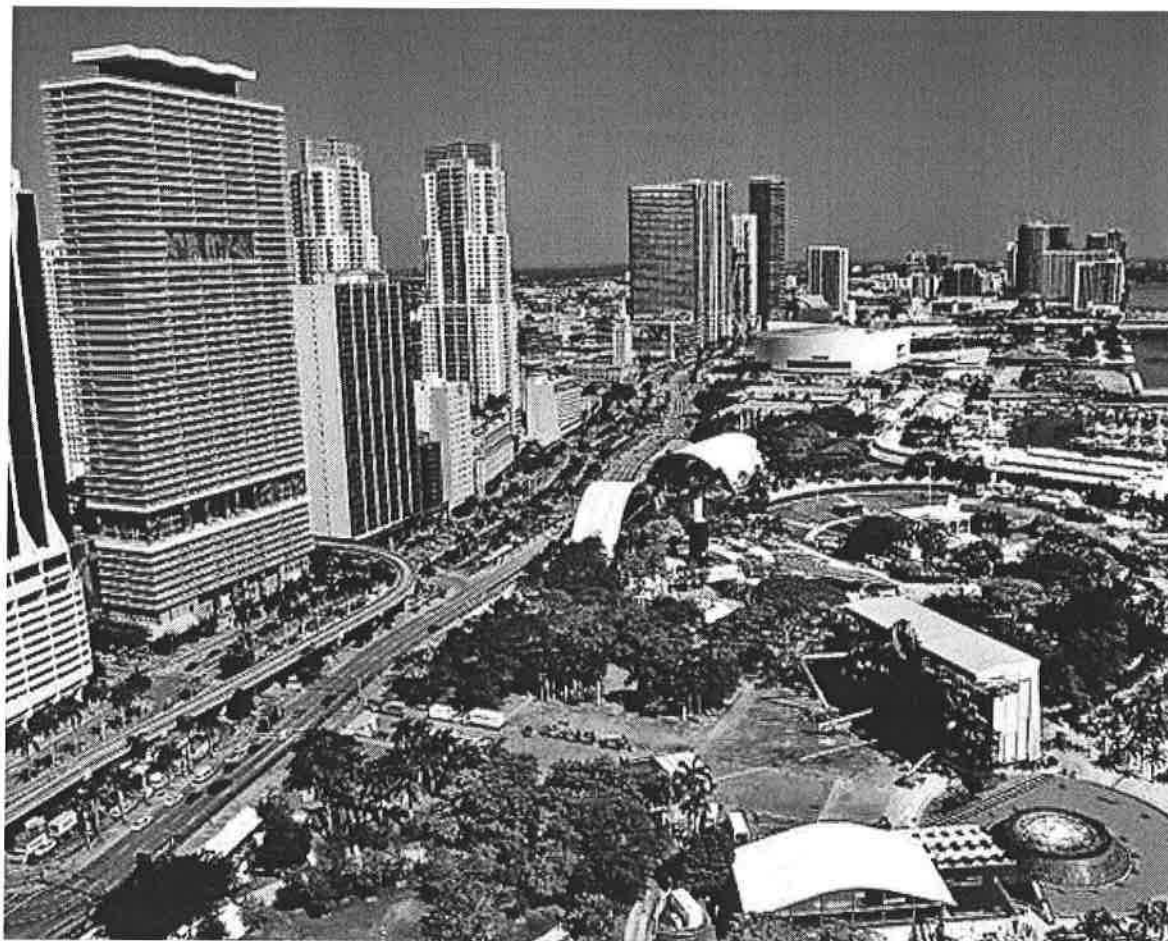
43. Under Florida law, “[a]nything that annoys or disturbs enjoyment of private property rights, including excessive noise, is a legal nuisance and may be restrained.” *Town of Surfside v. County Line Land Co.*, 340 So.2d 1287, 1289 (Fla. 3d DCA 1977); *City of Miami v. City of Coral Gables*, 233 So.2d 7 (Fla. 3d DCA 1970)(“Anything which annoys or disturbs one in the free use, possession, or enjoyment of his property, or which renders its ordinary use or occupation physically uncomfortable, is a ‘nuisance’ and may be restrained.”). For nearly a century, the Florida courts have recognized their responsibility to protect residents from being subjected to excessive levels of noise by outside sources, be they governmental or private activities. *Bartlett v. Moats*, 120 Fla. 61 (1935)(“That mere noise may be so great at certain times and under certain circumstances as to amount to an actionable nuisance and entitle the party subjected to it to the preventive remedy of the court of equity is thoroughly established.”).

44. The City Commission can not authorize activities that constitute a legal nuisance. “An activity can constitute a judicially abatable nuisance notwithstanding full compliance with

either legislation or administrative rule.” *Lake Hamilton Lakeshore Owners Ass’n, Inc., v. Neidlinger*, 182 So.3d 738, 741 (Fla. 2d DCA 2015); *State ex rel. Gardner v. Sailboat Key, Inc.*, 295 So.2d 658, 662 (Fla. 3d DCA 1974)(on rehearing)(“a given activity may constitute a judicially abatable nuisance notwithstanding its compliance with a municipal ordinance.”).

45. Under Florida law, the Courts can and must enjoin a planned activity which is documented, with a high level of certainty, to impose burdens on the Plaintiffs which constitute a legal nuisance. *AIA Mobile Home Park, Inc. v. Brevard County*, 246 So.2d 126 (1971)(“An injunction may issue to restrain a threatened or anticipated nuisance when it clearly appears that a nuisance will necessarily result from the contemplated act or thing sought to be enjoined.”); *National Container Corp. v. State ex rel Stockton*, 138 Fla. 32, 189 So. 4 (1939)(courts will enjoin “threatened nuisance,” defined as “the beginning of construction or the proceeding with plans which, if consummated, will necessarily result in the creation of a public nuisance.”).

46. The City Commission voted 3-2, in RE-4 (later denominated R-19-0321), to allow the Ultra Music Festival to occupy Bayfront Park in 2020 and indefinitely thereafter, across the street from or in close proximity to Plaintiffs, under conditions shown in past years to constitute a legal nuisance, which this Court has the power and obligation to enjoin.





WHEREFORE, Plaintiffs seek entry of (1) a declaratory judgment that the Resolution would, if implemented result in an abatable nuisance, and (2) an order enjoining the City from taking any steps to implement the Resolution to prevent the City from allowing a nuisance that destroys Plaintiffs' quiet enjoyment of their homes.

COUNT III --

DECLARATORY JUDGMENT THAT THE RESOLUTION VIOLATES SECTIONS 29-A, 29-B, AND 3(F)(iii) OF THE CITY OF MIAMI CHARTER

47. Plaintiffs repeat and reallege Paragraphs 1-37, 39-40, and 42-46 above as if fully set forth herein.

48. The Resolution would violate Sections 29-A, 29-B, and 3(f)(iii) of the City of Miami Charter, which collectively *require* competitive bidding, independent appraisals, a return to the City of fair market value, reasonable public access to the water and the property, and *prohibit* agreements longer than five (5) years and automatic renewals, in a lease or conveyance of an interest in, or contract to manage, public waterfront land. Charter Section 29-A(b) provides:

Sales and leases of real property; prohibition. Except as otherwise provided in this section, *there shall be no sale, conveyance, or disposition of any interest, including any leasehold, in real property owned by the city, the department of off-street parking, or the downtown development authority, unless there has been prior public notice and a prior opportunity given to the public to compete for said real property or interest. Any such sale, conveyance, or disposition shall be conditioned upon compliance with this section. . . . Further, no right, title, or interest shall vest in the transferee of such property unless the sale, conveyance, or disposition is made to the highest responsible bidder*

(Emphasis supplied).

49. The City violated Charter Section 29-A(b) by approving the Resolution, which purports to convey or dispose of an interest in Bayfront Park, waterfront property owned by the City, without prior public notice and an opportunity given to the public to compete for such real property or interest.

50. Charter Section 29-B prohibits the City Commission “from favorably considering any sale or lease of property owned by the City” that does not result from an advertised competitive bidding process, and that does not return fair market value to the city:

Notwithstanding any provision to the contrary contained in this Charter or the City Code, and except as provided below, the city commission is prohibited from favorably considering any sale or lease of property owned by the city unless there is a return to the city of fair market value under such proposed sale or lease. The city commission is also prohibited from favorably considering any sale or lease of city-owned property unless (a) there shall have been, prior to the date of the city commission’s consideration of such sale or lease, an advertisement soliciting proposals for said sale or lease published in a daily newspaper of

general paid circulation in the city, allowing not less than ninety (90) days for the city's receipt of proposals from prospective purchasers or lessees

(Emphasis supplied).

51. The City violated Charter Section 29-B by “favorably considering” the Resolution, which purports to lease or convey an interest in property owned by the City without soliciting proposals, without ensuring a return of “fair market value,” and without publishing an advertisement soliciting proposals in a daily newspaper of general paid circulation or receiving proposals from prospective lessees.

52. Charter Section 3(f)(iii) governs any “lease or contract for the management of any of the city’s waterfront property,” which includes Bayfront Park. Section 3(f)(iii) requires the City to comply with all other Charter provisions, i.e. Section 29-A and 29-B, *as well as* to allow “reasonable public access to the water and reasonable public use of the property,” to obtain “a fair return to the city based on two independent appraisals,” and to observe all Code procurement requirements. Section 3(f)(iii)(E) also limits any contract to five years and prohibits “an automatic renewal or termination penalty,” which the Resolution purports to allow. If these requirements are not satisfied, any such contract would have to be approved in a referendum, which the City did not hold.

53. Charter Section 3(f)(iii) provides:

Sec. 3. Powers.

The City of Miami shall have power to:

(a)—(e) – [Reserved]

(f) *Acquisition and disposition of property and services:*

.....

(iii) To lease or contract with entities for the management of any of the city's waterfront property, but only in compliance with the other requirements of this charter and on the condition that:

(A) *the terms of the contract allow reasonable public access to the water and reasonable public use of the property, and comply with the other charter waterfront setback and view-corridor requirements; and*

(B) *the terms of the contract result in a fair return to the city based on two independent appraisals; and*

(C) the use is authorized under the then-existing master plan of the city;

(D) the procurement methods prescribed by ordinances are observed;

(E) *the contract does not exceed five years and does not contain an automatic renewal or termination penalty.*

Any such lease or management agreement or proposed extension or modification of an existing such lease or management agreement which does not comply with each of the above conditions shall not be valid unless it has first been approved by a majority of the voters of the city.

(Emphases supplied).

54. The Resolution violates Charter Section 3(f)(iii) because the transaction it purports to authorize does not comply with Charter Sections 29-A(b) and 29-B, does not result in a fair return to the City based on two independent appraisals, does not allow reasonable public access to the water and reasonable public use of Bayfront Park.⁴ In addition, it would exceed five (5) years and contains an automatic renewal provision. Inasmuch as the City did not conduct a

⁴ The Resolution acknowledges, by waiving Code Section 38-113, that Ultra's occupancy would deny public access to Bayfront Park. Code Section 38-113 provides: "Bayfront Park shall be reserved eighty-five percent (85%) of the days of each fiscal year for free access and use by the general public." Resolution RE-4 (and R-19-0321) cite the need for a waiver because Section 38-113 "require[s] public access to the property at least eighty-five percent (85%) of each year." The waiver is required because, with other events previously scheduled for 2020, Ultra's multi-week occupancy of the Park would result in the City's failure to meet the 85% public access requirement. Exhibit 1.

referendum in which a majority of voters approved these deviations from Section 3(f)(iii)'s requirements, the Resolution is "not valid;" it is ultra vires, illegal, and void.⁵

55. The Resolution is subject to the requirements of Charter Sections 29-A, 29-B, and 3(f)(iii) because it purports to authorize a lease, or conveyance or disposition of an interest in, or contract for the management of, City-owned waterfront property. A *lease* is defined in Black's Law Dictionary § 829 (5th ed. 1979) as a "*contract for exclusive possession of lands or tenements for a determinate period:*"

Contract for exclusive possession of lands or tenements for determinate period. Contract for possession and profits of lands and tenements either for life, or for certain period of time, or during the pleasure of the parties. . . Conveyance of interest in real property for specified period or at will. Conveyance or grant of estate in real property for limited term with conditions attached.

(Emphasis supplied). The Resolution indisputably purports to authorize Ultra to have *exclusive possession* of Bayfront Park for eleven (11) days, a "certain period of time."

56. The Third District Court of Appeal and other Florida appellate courts hold that a governmental agreement that allows private parties to exclusively occupy public land for a defined period of time constitutes a lease, or conveyance of an interest in land, for purposes of competitive bidding laws. *Homestead-Miami Speedway, LLC v. City of Miami*, 828 So.2d 411 (Fla. 3d DCA 2002)(agreement granting car race operator exclusive possession of Bayfront Park and Biscayne Boulevard for *three (3) days* every year was a lease, and was invalid because the City did not conduct competitive bidding as required by Charter Sections 29-A and 3(f)(iii)); *Outdoor Media of Pensacola, Inc. v. Santa Rosa County*, 554 So.2d 613 (Fla. 1st DCA 1989) (county's grant of exclusive right to use right-of-way for billboard was a lease subject to

⁵ As explained in Count IV, the City also did not comply with the procurement requirements of Chapter 18, Article V.

competitive bidding procedures under state law); *Randall Indus., Inc. v. Lee County*, 307 So.2d 499 (Fla. 2d DCA 1975) (agreement which gave taxi company exclusive use of airport parking spaces was a lease which required competitive bidding under state law).

57. In a transparent attempt to circumvent the requirements of the Charter, the Resolution purports to label the transaction voted on by the Commission as a “revocable license agreement” and “not a lease.” Exhibit 1.⁶ The draft agreement attached to RE-4 on July 25, 2019, repeatedly uses the phrases “revocable license agreement” or “RLA.” However, the City’s repeated use of the term “revocable license” does not determine the legal character of the transaction.

58. According to Black’s Law Dictionary, Section 829 (5th ed. 1979): “A license is not a contract between the state and the licensee, but is a mere personal permit. License, with respect to real property, is a privilege to go on premises for a certain purpose, but does not operate to confer on, or vest in, licensee any title, interest, or estate in such property.” Despite the City’s willingness to violate the Charter by attempting to label the Ultra transaction a “license,” the law is clear that the conveyance of the exclusive right to occupy public land for a defined period of time is a conveyance of an interest in land, a lease, and not merely “a privilege to go on premises for a certain purpose,” i.e. it is not a “license.”

59. The Third District Court of Appeal has specifically held that just because the parties use verbiage labeling a transaction as a “license,” it is the substance of the transaction, and not the label applied by the parties, that governs its legal effect:

Of course, the mere fact that an agreement is entitled a “license” or contains a conclusory provision that the parties have a relationship of licensor and licensee,

⁶ For example, Section 3.1 states: “The parties hereby agree that the provisions of this Agreement do not constitute a lease or confer any leasehold rights or estate.”

is not determinative. Rather, the proper characterization of the agreement is discerned by the actual terms, conditions, rights and obligations expressly set forth in the agreement.”

Ryan v. National Marine Mfrs. Ass’n, 103 So.3d 1001, 1005 and note 5 (Fla. 3d DCA 2012), citing *Jabour v. Toppino*, 293 So.2d 123 (Fla. 3d DCA 1974); and *Napoleon v. Glass*, 229 So.2d 883 (Fla. 3d DCA 1969). In *Ryan*, the court held that the City of Miami Beach’s agreement granting the exclusive right to park trailer tractors in public lot during the international boat show conveyed a “controlling interest in real property . . . [a] contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration, and was a lease, despite the use of the term ‘license.’”

60. The City Commission violated Charter Sections 29-A and 29-B, by voting 3-2 to approve the Resolution purporting to authorize Ultra to exclusively occupy all of Bayfront Park for at least eleven (11) days every year without conducting competitive bidding, and without requiring payment of fair market value. The Commission also violated Charter Section 3(f)(iii) by failing to obtain at least two independent appraisals, failing to charge Ultra fair value, failing to guarantee public bay and park access for 28 days, and allowing the agreement to automatically renew. The Resolution, and any resulting “Agreement” is therefore ultra vires, illegal, void, and must be enjoined from implementation by this Court.

61. The City Charter, the City’s constitution, imposes specific requirements on the Commission’s ability to lease or convey an interest in public waterfront property, to protect the residents’ right of access to public spaces and the waterfront, and to prevent public parks and waterfront spaces from being bargained away, with no competitive protections, for a private company to profit at the general financial expense of all residents, and in this case specifically injure Plaintiffs by generating massive levels of noise that will harm their health and property

and eliminate their access to the park and the bay. It is this Court's responsibility to enforce the Charter and enjoin violations such as those the City has attempted in the Resolution.

WHEREFORE, Plaintiffs seek entry of (1) a declaratory judgment that the Resolution would, if implemented, violate Sections 29-A, 29-B, and 3(f)(iii) of the City Charter, rendering the resolution ultra vires, illegal, and void, and (2) an order enjoining the City from taking any steps to implement the Resolution.

COUNT IV --

DECLARATORY JUDGMENT THAT THE RESOLUTION VIOLATES THE COMPETITIVE BIDDING REQUIREMENTS OF CITY CODE

62. Plaintiffs repeat and reallege Paragraphs 1-37, and 39-40, 42-46, and 48-61 above as if fully set forth herein.

63. After the previous Ultra agreement expired in 2018, the City Administration opined that any renewal was not governed by Sections 29-A, 29-B, and 3(f)(iii) of the Charter, but was subject to Chapter 18, Article V of the City Code, which requires competitive bidding when the City enters into any kind of "use agreement" for private use of public land, *even if* the transaction is not controlled by Charter Sections 29-A, 29-B, and 3(f)(iii). If such a transaction, including a "license agreement," exceeds \$25,000 in value or deviates from a published schedule by \$25,000, it must be let under competitive sealed bidding unless the City Manager finds competitive sealed bidding is not in the City's best interest, and the Commission approves the waiver by a four-fifths vote under Code Section 18-85(a): ⁷

⁷ Plaintiffs and other Downtown residents never accepted the City Administration's position that a new Ultra agreement could be approved without compliance with Charter Sections 29-A, 29-B, and 3(f)(iii). Nevertheless, the City avoided competitive bidding by relying on the waiver provisions of Code Section 18-85(a).

[T]he city manager may waive competitive sealed bidding methods by making a written finding which shall contain reasons supporting the conclusion that competitive sealed bidding is not practicable or is not advantageous to the city, which finding must be ratified and the award approved by an affirmative vote of four-fifths of the city commission

64. In September 2018, in connection with a proposed new agreement for Ultra in 2019, the City Manager wrote:

The BPMT [Bayfront Park Management Trust] respectfully requests your approval and action of the Miami City Commission by a 4/5ths affirmative vote, after an advertised public hearing ratifying, approving, and confirming the City Manager's (and the Bayfront Park Management Trust's Executive Director) recommendation, and finding that competitive bidding/negotiation methods are not practicable or advantageous to the City of Miami ("City"), pursuant to Section 18-85(a) of the Code of the City of Miami, waiving the requirements for said procedures; authorizing the City Manager to enter into a Use Agreement, in substantially the attached form, with the BPMT and Event Entertainment Group, Inc., a Florida for profit corporation, subject to City Commission approval.

65. Similarly, the Clerk's Notice of Public Hearing cited the four-fifths requirement to waive competitive bidding under Section 18-85, stating that the Commission would consider a resolution:

by a four-fifth's affirmative vote after an advertised public hearing, ratifying, confirming, and approving the City Manager's recommendation and written findings, pursuant to Section 18-85 of the Code of the City of Miami, Florida, as amended; waiving the requirements for competitive sealed bidding methods as not being practicable or advantageous to the City of Miami . . . to enter into a Bayfront Park Use Agreement with Event Entertainment Group, Inc. ("User) for the presentation of an annual Ultra Music Festival,

66. On September 12, 2018, the City Commission voted 5-0 to *reject* a new agreement for Ultra to conduct its festival in Bayfront Park in 2019, based primarily on Downtown residents' opposition to Ultra's catastrophic noise, health and property damage, and near total elimination of access to Bayfront Park.

67. On November 15, 2018, the City Commission considered an agreement to allow Ultra to conduct its 2019 concert on City-owned property on Virginia Key. The City

Administration opined that any Ultra agreement for Virginia Key required a waiver of competitive bidding, which had to be approved by a four-fifths majority of the Commission under Code Section 18-85(a). The measure passed with four (4) votes.

68. The Ultra concert at Virginia Key in 2019 did not fulfill Ultra's aspirations and Ultra informed the City in May 2019 that it would not renew the contract for Virginia Key. Instead, Ultra proposed a return to Bayfront Park in 2020 even though the Commission had voted unanimously against Ultra returning to Bayfront Park only six months earlier, leading to Commission consideration of the Resolution.

69. When the Resolution was submitted to the City Commission for a vote on July 25, 2019, the City Administration changed its previous position and opined that an Ultra agreement for Bayfront Park could be approved by a simple majority (3/5) vote, not the 4/5 vote previously required under Code Section 18-85(a). On July 25, 2019, the measure passed by a mere 3-2 vote. The City Administration not only illegally failed to submit the agreement for competitive bidding and meet the other requirements of Charter Sections 29-A, 29-B, and 3(f)(iii), but illegally advised the Commission that it could allow Ultra to occupy Bayfront Park in March 2020 exclusively for 11 days, and deny public access to the bay and park for at least 28 days, with a simple 3/5 vote.

70. Prior to presenting RE-4 for a vote on July 25, 2019, the City Administration opined that for *any* agreement with a private party to use city property for an amount that varies from a prescribed fee under the Code by \$25,000 or more, the transaction is either governed by the Charter or "there needs to be a 4/5th bid waiver."

[A]nytime a user/ proposer is offering less or more than the charges prescribed by law there is arguably a procurement issue and if the divergence results in 25K or more (up or down) there needs to be a 4/5th bid waiver.

If it is something that was not built or intended for that use , and there is no Code provision or regulation prescribing charges for such use, then you need a 4/5th bid waiver (*unless preempted by the Charter then no waiver - you must procure*). For example major roads in the City where not built for the Indianapolis 500, city parks were not designed for use by for profit companies as lockers or storage areas, city golf course were not built for shopping malls or hotels.

Email from Assistant City Attorney Rafael Suarez Rivas dated October 23, 2018, submitted for the record of the July 25, 2019 City Commission Meeting. Exhibit 9.

71. Prior to the July 25 vote, it had been the City Administration's position that the 4/5 vote requirement applies *even if the agreement is called a "RLA," or "revocable at will license agreement,"* when the transaction is for multiple years, provides for exclusivity, is cancellable only for cause, *or* does not require payment of fair market value (FMV):

The NMMA Boat Show Revocable License Agreement("RLA") was done following the requirements of the old JOB/ AQJ III Opinions on RLAs which you have. The gist of those opinions is if there is no defined term, no exclusivity, no tenancy, and no assignability is conferred, and it can be revoked at any time. There is no defined interest conferred that needs to be waived by 4/5th or otherwise. If you wish to establish a more conservative legal policy that for the reasons the CA [City Attorney] stated *today multi-year or multi-event / multi-year agreements involve a "bundle of rights" being conferred or when there is exclusivity or a fixed term or assignability or cancellation only for cause or a non-FMV payment then require a 4/5th even if it is an RLA.* Simply be uniform.

Id. (Emphases supplied).

72. In the weeks leading up to the Ultra vote, the City Administration had consistently opined that any proposed agreement for Ultra, even for one year, would require four out of five votes to be approved. Text messages of City Attorney Victoria Mendez, submitted for the record of the July 25, 2019 City Commission Meeting.

73. The Resolution purports to grant Ultra exclusive occupancy of Bayfront Park, for a fixed term, does not require payment of fair market value, would allow for a use not intended by the original purpose of the property, is valued in excess of \$25,000, has no Code provision

prescribing charges for such use, and was not approved under Sections 29-A, 29-B, and 3(f)(iii). Therefore, it could only be approved by a waiver of competitive bidding approved by a 4/5 vote, under section 18-85(a). The City's purported approval of the Resolution by three (3) votes is ultra vires, illegal, and void.


WHEREFORE, Plaintiffs seek entry of (1) a declaratory judgment that the Resolution would, if implemented, violate Section 18, Article V of the City Code, rendering the measure ultra vires, illegal, and void, and (2) an order enjoining the City from taking any steps to implement the Resolution.

DATED: January 14, 2020

Respectfully submitted,

DUBBIN & KRAVETZ, LLP
Samuel J. Dubbin, P.A.
Fla. Bar No. 328189
1200 Anastasia Avenue, Ste. 300
Coral Gables, Florida 33134
Telephone: (305) 357-9004
Email: sdubbin@dubbinkravetz.com

By:


Samuel J. Dubbin, P.A.

Attorneys for Plaintiffs

VERIFICATION

Under penalty of perjury, I declare that the assertions of the facts set forth in the foregoing Verified Complaint for Declaratory and Injunctive Relief attributed to me are true and correct.

Dated: January 13, 2020.

Amal Solh Kabbeni


VERIFICATION

Under penalty of perjury, I declare that the assertions of the facts set forth in the foregoing Verified Complaint for Declaratory and Injunctive Relief attributed to me are true and correct.

Dated: January 13, 2020.

Victor Padua

VERIFICATION

Under penalty of perjury, I declare that the assertions of the facts set forth in the foregoing Verified Complaint for Declaratory and Injunctive Relief attributed to me are true and correct.

Dated: January 13, 2020.

A handwritten signature in blue ink, appearing to be "Santiago Paredo", written over a horizontal line.

Santiago Paredo

VERIFICATION

Under penalty of perjury, I declare that the assertions of the facts set forth in the foregoing Verified Complaint for Declaratory and Injunctive Relief attributed to me are true and correct.

Dated: January 13, 2020.


SARA ARROYO.

VERIFICATION

Under penalty of perjury, I declare that the assertions of the facts set forth in the foregoing Verified Complaint for Declaratory and Injunctive Relief attributed to me are true and correct.

Dated: January 13, 2020.

A handwritten signature in black ink that reads "Barry Duceman". The signature is written in a cursive style with a large initial 'B' and a long, sweeping underline.

Barry Duceman

VERIFICATION

Under penalty of perjury, I declare that the assertions of the facts set forth in the foregoing Verified Complaint for Declaratory and Injunctive Relief attributed to me are true and correct.

Dated: January 13, 2020.



(Arlene Ramsingh)

VERIFICATION

Under penalty of perjury, I declare that the assertions of the facts set forth in the foregoing Verified Complaint for Declaratory and Injunctive Relief attributed to me are true and correct.

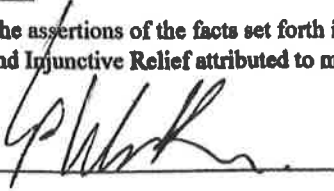
Dated: January 13, 2020.

By M Saldaniaga

VERIFICATION

Under penalty of perjury, I declare that the assertions of the facts set forth in the foregoing Verified Complaint for Declaratory and Injunctive Relief attributed to me are true and correct.



Dated: January 13, 2020.

A handwritten signature in black ink, appearing to be "G. W. K.", is written over a horizontal line.

VERIFICATION

Under penalty of perjury, I declare that the assertions of the facts set forth in the foregoing Verified Complaint for Declaratory and Injunctive Relief attributed to me are true and correct.

Dated: January 13, 2020.

 
FRAN FENTON MARTIN FENTON

VERIFICATION

Under penalty of perjury, I declare that the assertions of the facts set forth in the foregoing Verified Complaint for Declaratory and Injunctive Relief attributed to me are true and correct.

Dated: January 13, 2020.

Claudia Russell

EXHIBIT 1



AGENDA ITEM COVER PAGE

File ID: #6097

Resolution

Sponsored by: Commissioner Keon Hardemon

A RESOLUTION OF THE MIAMI CITY COMMISSION AUTHORIZING THE CITY MANAGER TO PRESENT AN OFFER TO EVENT ENTERTAINMENT GROUP, LLC, IN THE FORM OF A REVOCABLE LICENSE AGREEMENT ("LICENSE"), FOR THE PRESENTATION OF THE ULTRA MUSIC FESTIVAL AT BAYFRONT PARK; FURTHER AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE SUCH LICENSE, SUBJECT TO REVIEW AND APPROVAL BY THE CITY ATTORNEY, AS TO LEGAL FORM AND CORRECTNESS.



City of Miami
Legislation
Resolution

City Hall
3500 Pan American Drive
Miami, FL 33133
www.miamigov.com

File Number: 6097

Final Action Date:

A RESOLUTION OF THE MIAMI CITY COMMISSION AUTHORIZING THE CITY MANAGER TO PRESENT AN OFFER TO EVENT ENTERTAINMENT GROUP, LLC, IN THE FORM OF A REVOCABLE LICENSE AGREEMENT ("LICENSE"), FOR THE PRESENTATION OF THE ULTRA MUSIC FESTIVAL AT BAYFRONT PARK; FURTHER AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE SUCH LICENSE, SUBJECT TO REVIEW AND APPROVAL BY THE CITY ATTORNEY, AS TO LEGAL FORM AND CORRECTNESS.

WHEREAS, the City of Miami ("City") is the owner and the Bayfront Park Management Trust is the manager and operator of the real property known as Bayfront Park located at 301 Biscayne Boulevard, Miami, Florida ("Property"); and

WHEREAS, Event Entertainment Group, Inc., a Florida Corporation ("Licensee"), is the producer of the world's premier electronic music festival known as the Ultra Music Festival ("Event"); and

WHEREAS, as to the Event's worldwide status, in 2018, 36 events were produced on 6 continents, with over 300 million viewers having viewed live stream and 40 million listeners having tuned in to UMF Radio globally; and

WHEREAS, for over 20 years, the Event has been produced in the greater Miami area, of which 19 have been produced in the City; and

WHEREAS, the Licensee has previously staged the Event at the Property between 2013 and 2018, during which time the Licensee expended substantial resources toward the direct promotion and marketing of the City; and

WHEREAS, since 2012, the Event has generated approximately \$995 million of economic impact, generating \$168 million and creating 1,834 jobs in 2018 alone; and

WHEREAS, the 2019 Event was attended by patrons representing more than 105 countries and was live streamed to over 30 million viewers worldwide; and

WHEREAS, today, the Event remains a Miami-based production and the Event is the flagship event for all worldwide operations; and

WHEREAS, on November 15, 2018, by Resolution No. 18-0523, the City Commission authorized the City Manager to enter into a separate revocable license agreement with the Licensee for the production of the Event at Virginia Key; and

WHEREAS, the Licensee exercised its option to terminate the revocable license agreement at Virginia Key; and

WHEREAS, the City wishes to offer to the Licensee to have the Event return to the Property ("Proposal"); and

WHEREAS, the Proposal is provided in the form of the attached Revocable License Agreement ("License"); and

WHEREAS, the License is not assignable, is not for a fixed term, and is revocable at-will, for convenience, and without consent of the Licensee; and

WHEREAS, the License does not transfer any interest in real property, including any leasehold interest in real property owned by the City; and

WHEREAS, the License permits only certain enumerated, specific, and listed permitted uses on specified dates and does not permit anything further; and

WHEREAS, formal action and approval by the City Commission is required to authorize the City Manager to extend the Proposal and to execute the License and such authorization is a condition precedent to the License's legal efficacy and validity;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

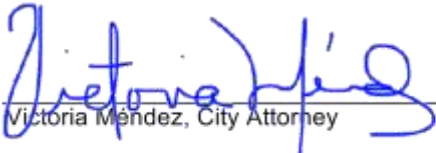
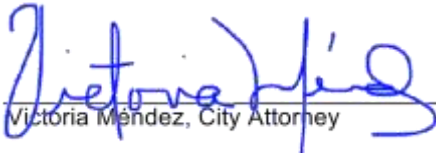
Section 1. The recitals and findings contained in the Preamble to this Resolution are adopted by reference and incorporated as fully set forth in this Section.

Section 2. The City Manager is authorized¹ to present an offer to the Licensee and subsequently negotiate and execute the License, in a form acceptable to the City Attorney, between the City and the Licensee for the purpose of producing the Event on the Property with the terms and conditions more particularly described in the License.

Section 4. The City Manager is authorized¹ to make non-substantive amendments to such License as needed, subject to the City Attorney's approval as to legal form and correctness.

Section 5. This Resolution shall become effective immediately upon adoption and signature of the mayor.²

APPROVED AS TO FORM AND CORRECTNESS:

	
Victoria Mendez, City Attorney	Victoria Mendez, City Attorney
6/18/2019	7/16/2019

¹ The herein authorization is further subject to compliance with all requirements that may be imposed by the City Attorney, including but not limited to, those prescribed by applicable City Charter and City Code provisions.
² If the Mayor does not sign this Resolution, it shall become effective at the end of ten (10) calendar days from the date it was passed and adopted. If the Mayor vetoes this Resolution, it shall become effective immediately upon override of the veto by the City Commission.

EXHIBIT 2

REVOCABLE LICENSE AGREEMENT

THIS REVOCABLE LICENSE AGREEMENT hereinafter referred to as this "Agreement," made this ____ day of _____ 2019, by and between the CITY OF MIAMI, a municipal corporation, with offices at 3500 Pan American Drive, Miami, Florida 33133, hereinafter referred to as the "City," and EVENT ENTERTAINMENT GROUP, INC., a Florida for-profit corporation, with offices located at 201 S. Biscayne Blvd., Suite 800, Miami, Florida 33131, hereinafter referred to as "Licensee" (collectively, the "Parties").

RECITALS

WHEREAS, the City is the owner of certain real property throughout Downtown Miami, including but not limited to 301 Biscayne Boulevard, Miami, FL 33132; and

WHEREAS, the Bayfront Park Management Trust is a limited agency and instrumentality of the City with responsibility to oversee and manage Bayfront Park, located at 301 Biscayne Boulevard, Miami, FL 33132, subject to City Commission approval; and

WHEREAS, Licensee hosts an annual electronic music festival ("Ultra Music Festival") and has previously staged the Ultra Music Festival at the Property during the period between 2013 and 2018, and during which time, Licensee expended substantial resources toward the direct promotion and marketing of the City of Miami; and

WHEREAS, Licensor desires to have Licensee stage the Ultra Music Festival at the Property (as defined in Section 2.13) commencing in 2020 and Licensee is desirous of foregoing certain business opportunities in exchange for the benefits expressed in the Agreement; and

WHEREAS, formal action by the City of Miami City Commission is required to authorize and accept this Agreement, and is a condition precedent to this Agreement's legal efficacy and validity;

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the receipt and sufficiency of which is acknowledged by the parties, the City hereby grants unto Licensee the privilege of entry upon and use of the Property, for the production of the Event and for uses incidental thereto, on the terms and conditions set forth in this Agreement.

1. **RECITALS:**

The above Recitals are true and correct and hereby incorporated into and made a part of this Agreement.

2. **DEFINITIONS:**

When used in this Agreement, the following terms shall have the specified meanings:

2.1 **ADDITIONAL CHARGES** have the meaning given to such term in Section 7.4 and as outlined in Exhibit C, attached and incorporated hereto.

2.2 **AGREEMENT** has the meaning given to such term in the preamble to this Agreement.

2.3 **AMPHITHEATER** means the Klipsch Amphitheater.

2.4 **CITY** means the City of Miami.

2.5 **CITY COMMISSION** is the local legislative body of the City of Miami who has ultimate control

of the PROPERTY and the events held therein.

- 2.6** **EFFECTIVE DATE** has the meaning given to it in Section 3.3.
- 2.7** **EVENT** means the Ultra Music Festival, to take place annually at the Property on the Friday through Sunday on any weekend of March during the Term as described herein with operating hours of 4:00 p.m. on Friday to 12:00 a.m. on Saturday; 12:00 p.m. on Saturday to 12:00 a.m. on Sunday; and 12:00 p.m. on Sunday to 10:00 p.m. on Sunday. The hours described herein are firm unless an amendment thereto is mutually agreed upon by the Parties, and subject to any applicable laws, rules, and regulations.
- 2.8** **INDEMNITEES** mean the City, the Bayfront Park Management Trust, and all the City's and the Bayfront Park Management Trust's respective members, officials, officers, agents, assigns, successors, personnel, and employees.
- 2.9** **LIABILITIES** means all losses, costs, penalties, fines, damages, claims, expenses (including attorney's fees, interest, and costs), and liabilities.
- 2.10** **LICENSEE** has the meaning given to such term in the preamble to this Agreement.
- 2.11** **PERMITTED USES** has the meaning given to it in Section 3.1.
- 2.12** **PREMISES** means the entire Property, as defined in Section 2.11 and depicted in Exhibits A, and such open spaces that may be required by the Licensee for the Event, and other such facilities of the Property as may be authorized by the City.
- 2.13** **PROPERTY** collectively refers to the event space, and specifically includes the Amphitheater, located generally at 301 Biscayne Boulevard, Miami, FL 33132, as shown on the attached Exhibit A.
- 2.14** **TICKET SURCHARGE** means the fees to be paid in accordance with the ticket surcharge rates expressly provided in Section 53-1 of the Code of the City of Miami, Florida, as amended.
- 2.15** **USE FEE** means the sum of Two Million Dollars (\$2,000,000.00), that the Licensee shall pay the City for each yearly Event produced at the Property and Premises. The Use Fee shall be increased annually by three percent (3%) commencing upon the production of the third (3rd) Event and such Use Fee includes the Ticket Surcharge. Such Use Fee is more particularly described in Section 7 herein.
- 2.16** **USE PERIOD** means the twenty-eight (28) day period inclusive of load in and load out and ancillary preparations and removals. In no event will the entire Property be closed to the public for more than eleven (11) days (including Event days). These dates are subject to mutual agreement of the parties on an annual basis, as more particularly set forth in Section 3.2.

3. EVENT AND USE PERIOD:

3.1 Purpose:

The Property shall be used and occupied by the Licensee solely for the purposes of producing the Event and for undertaking any and all uses ancillary and incidental thereto, selling, using or displaying any goods and/or products related to the Event, and to grant to third parties the right to

sell, use or display any goods or products on, to, or from the Property (collectively the "Permitted Uses"). Licensee may request written consent from the City Manager or their designee to use the Property for other allowed uses but shall not be authorized until Licensee has received the written consent of the City Manager or their designee, which consent may not be unreasonably conditioned, withheld or delayed. Unless otherwise expressly and specifically provided hereunder, Licensee shall be solely responsible for the production, coordination and management of the Event, at its sole cost and expense.

This Agreement solely authorizes Licensee to the temporary use of the Property for the limited purposes set forth herein and for no other purpose. The Parties hereby agree that, the provisions of this Agreement do not constitute a lease or confer any leasehold rights or estate. The rights of Licensee hereunder are not those of a tenant, but merely authorization to do certain acts of a temporary character on the Property and to use the Property, subject to the terms of this Agreement. The City retains dominion, possession and control of the Property. Licensee does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Property by virtue of this Agreement, its use of the Property, or by virtue of any expenditure of funds by the Licensee for improvements, construction, repairs, partitions, or alterations to the Property which may be authorized by the City Manager or his/her designee.

3.2 Event Use Period:

The Event will, at the option of Licensee, take place annually at the Property on the Friday through Sunday on any weekend of March, or other date mutually agreed upon by the Licensee and City Manager, for each Event year. The specific weekend for the Event shall be designated by Licensee and City in conjunction with the notice Licensee is required to deliver to the City pursuant to Section 9.4 described herein. The operating hours for the Event days shall be: from 4:00 p.m. on Friday to 12:00 a.m. on Saturday; 12:00 p.m. on Saturday to 12:00 a.m. on Sunday; and 12:00 p.m. on Sunday to 10:00 p.m. on Sunday. The aforementioned times shall be fixed and apply to the Event throughout the Term of this Agreement. Licensee will occupy the Property for no more than twenty-eight (28) days including load in to load out. Set-up for the Event will begin at the commencement of the Use Period and tear-down will terminate no later than the end of the Use Period each year. In no event will the entire Property be closed to the public for more than eleven (11) days (including event days). Any use of the word "day" or "days" throughout this Agreement shall mean calendar days, unless specifically stated otherwise. Notwithstanding the foregoing, the Use Period shall not constitute a violation of Section 38-113 of the City of Miami Code of Ordinances. The City hereby waives any application of any limitations to the contrary as set forth in Section 38-113.

3.3 Term:

There is no stated or expressed term for this Agreement. As a revocable license, it may be terminated or revoked for convenience at the will of the City Manager and as otherwise provided in this Agreement. The Effective Date of this Agreement is the execution date of the Agreement by the last of the Parties and shall continue until terminated by any means available in this Agreement. Licensee acknowledges that this is a revocable license agreement authorizing a specific use for a limited time per year, subject to various other limitations specified herein; and that it does not convey, pledge, hypothecate, or confer any right, title or interest in any City-owned real property.

3.4 Termination

3.4.1 With Cause: Each party agrees to abide by every term and condition of this Agreement. If either party materially breaches the terms, restrictions or conditions of this Agreement, then the nonbreaching party shall give the breaching party twenty (20) days written notice

within which to cease such violation or correct such deficiencies. Upon the breaching party's failure to do so, the nonbreaching party may cancel this Agreement upon giving ten (10) days written notice to the breaching party and thereafter the Agreement shall be automatically canceled without the necessity for further action by the nonbreaching party. Termination for cause shall include, without limitation, any one of the following acts or omissions: (a) Failure to pay any payment or any portion thereof within ten (10) days of due date; (b) Failure to carry insurance as required in this Agreement; or (c) Failure to comply with any material terms or conditions of this Agreement, including, but not limited to, conditions expressly set forth in Sections 5, 6, and 13.

3.4.2 Without Cause: Licensee or City may, at their respective option and without the other party's consent, terminate this Agreement upon at least three hundred and five (305) days' notice prior to the next subsequent Event.

3.5 Reasonable Efforts:

For purposes of this Agreement, the Parties shall use commercially reasonable efforts to assist and facilitate future productions of the Event to take place on the Property.

4. PREMISES:

4.1 Amphitheater:

Licensee shall not be required to pay any additional amount to the City or any other party for the use of the Amphitheater. The City shall cause the Amphitheater to be available to Licensee during the Use Period as described below, at no additional cost to Licensee beyond the Use Fee described in Section 7.1. The Use Period for the Amphitheater for each calendar year shall be determined by Licensee giving the City written notice by July 1 of each calendar year during the term, of the 15 consecutive days during the following March during which Licensee will utilize as its Use Period for the Amphitheater for the following calendar year. The election of the dates for the Use Period for the Amphitheater shall be made at the same time Licensee notifies the City of Licensee's intention to use the Property in the following year. If Licensee requests such dates after July 1, the City shall confirm or deny such desired dates, at its sole discretion, within ten (10) days of the City's receipt of Licensee's notice.

4.2 Restroom Facilities:

Licensee hereby agrees to provide adequate portable restroom facilities, which shall be open and operational during the Use Period.

4.3 Control of Access:

Licensee hereby agrees that the staff and management of the City, in consultation with the Miami Police Department and Licensee, have complete control as to when gates to Events are opened. Licensee hereby agrees to respond to any reasonable City request during the Use Period of the Event.

4.4 Sound Checks:

Licensee hereby agrees that there will be no sound checks before the Tuesday of the Event week. Sound checks may occur only on the following dates and times: (1) Tuesday of the Event week between the hours of 5:00 p.m. and 9:00 p.m. (2) Wednesday of the Event week between the hours of 5:00 p.m. and 9:00 p.m.; (3) Thursday of the Event week between the hours of 5:00 p.m. and 9:00 p.m.; and (4) Friday being the first event day from 3:00 to 4:00 p.m. Soundchecks will be conducted not to exceed a maximum level of one hundred four (104) decibels measured sixty (60) feet away from each stage.

4.5 Light Checks:

Licensee hereby agrees that there will be no light checks before the Tuesday of the Event week. Light checks may occur only on the following dates and times: (1) Tuesday of the Event week between the hours of 5:00 p.m. and 12:00 a.m.; (2) Wednesday of the Event week between the hours of 5:00 p.m. and 12:00 a.m.; (3) Thursday, Friday, Saturday and Sunday of the Event week with no time limitation except that on the Sunday of the Event, light checks shall end at 10:00 p.m.

4.6 Sound Level:

Licensee's Event may not exceed a maximum level of one hundred four (104) decibels measured sixty (60) feet away from each stage. Failure to cure each incident of sound level non-compliance within five (5) minutes of notification by a City designee will result in a fee of \$1,000.00 per each incident. Each incident shall constitute a separate event of non-compliance. Licensee shall tune each stage at the Event to reduce the signature of low and very low frequency bass. Further, with respect to that certain stage that was historically located on Biscayne Boulevard facing due West, Licensee shall remove such stage from Biscayne Boulevard, or shall relocate or reconfigure such stage in a manner that significantly minimizes noise that would otherwise impact adjacent residential areas.

4.7 Time of Event:

Licensee hereby agrees the Event must end by 12:00 a.m. on Friday and Saturday of the Event, and 10:00 p.m. on the Sunday of the Event. Licensee shall pay a time overage fee of \$1,000.00 for every single minute, or a fraction thereof, if the Event continues beyond the time designated each Event day. This overage fee is in addition to all other fees and costs for which Licensee is responsible under this Agreement. Each minute shall constitute a separate event of non-compliance

4.8 Alcohol Wrist Band Policy:

Licensee hereby agrees that if alcoholic beverages are vended at the Event, Licensee will use alcohol wrist-banding staff to ensure consumers of alcohol are of the appropriate legal drinking age. Licensee or Licensee's concessionaire shall obtain all required permits required by law. Failure to comply with this rule, whether by the concessionaire or their representative, may result in the immediate cancellation of alcohol sales and breach of this Agreement, as determined by the City Manager or City Manager's designee.

4.9 Dispensing of Alcoholic and Non-alcoholic Beverages:

4.9.1 Licensee shall not sell beverages, alcoholic or non-alcoholic, in glass or polystyrene foam containers of any size.

4.9.2 Licensee hereby agrees to dispense a maximum of two (2) alcoholic beverages per person at time of purchase.

4.9.3 Licensee hereby agrees that sales of alcoholic beverages will stop sixty (60) minutes prior to the end of the Event. Sales of non-alcoholic beverages shall not be subject to this restriction.

4.9.4 Licensee is responsible to secure all governmental permits and approvals required by applicable laws and regulations for the sale and dispensation of alcoholic beverages. All required liquor permits shall be filed with the City Manager at least ten (10) days before the commencement of the Event.

4.10 Sponsor’s Signage and Banner Placement:

City hereby agrees that Licensee may place signage and banners in the Property during the Use Period subject to the approval of the City’s Director of Real Estate and Asset Management and such approval may not be unreasonably withheld, delayed or conditioned. Licensee shall ensure that all signage and banners are permitted and comply with City and County Sign and Zoning Regulations. Licensee shall secure all required permits and approvals for such signage and banners and shall remove all signage and banners prior to the end of the Use Period.

4.11 Non-Exclusivity:

This Agreement confers no exclusive possession of the Property, provided however, the City agrees not to enter into another License or Use Agreement on this Property that would interfere with Licensee’s ability to operate for the Permitted Uses on the Property according to the terms of this Agreement. The City agrees not to use or permit others to use the Property under the control of the City during the Use Period except as mutually agreed by the City and Licensee. Licensee recognizes and agrees that the Property is a public site and during the entirety of the Use Period, the Licensee will cooperate with the City to maximize public access to the Property. This will not be construed to prevent the Licensee from restricting access to the Event.

4.12 Improvements:

Licensee shall not make any permanent improvements or erect any permanent structures whatsoever to or on the Property without the prior written approval of the City, which may be refused or conditioned in the City’s sole discretion. As of the Effective Date and throughout the Use Period, all buildings and permanent improvements thereon are vested in the City. Furthermore, title to permanent improvements and all alterations made in or to the Property, whether or not by or at the expense of Licensee, shall, unless otherwise provided by written agreement, immediately upon their completion, become the property of the City and shall remain with the Property. Licensee shall leave the Premises in a condition equal to or better than provided prior to each Event, as further detailed in Section 5 below.

4.13 Traffic Management Plan:

One Hundred and Twenty (120) days prior to each Event, Licensee shall prepare and submit to the City Manager for City’s review and written approval, a maintenance of traffic plan setting forth the operational strategies for managing event-generated and background traffic on the day(s) of the Event within the Property and general region to ensure safe means of access to the site and to minimize traffic disruptions on Biscayne Boulevard. The City shall not unreasonably delay, condition and/or deny such approval.

4.14 Safety and Security Plan:

One Hundred and Twenty (120) days prior to each Event, Licensee shall prepare and make available to the City Manager for City’s review and written approval, a Safety and Security Plan setting forth the various efforts to be undertaken by Licensee to ensure the safety and security of the patrons of the Event. The City shall not unreasonably delay, condition and/or deny such approval. The Safety and Security Plan shall include, without limitation: (1) a mass evacuation plan, (2) stage locations, (3) fencing locations, (4) security and emergency operations personnel requirements, (5) emergency vehicle access routes, (6) communications plan, and (7) any other necessary safety and security components required by the City’s Police and Fire departments. Licensee shall also engage a security consultant for each Event and such consultant shall engaged for no more than twenty-five thousand dollars (\$25,000) for each Event.

5. CONDITION OF PREMISES AND REQUIRED RENOVATIONS:

- 5.1 Licensee has inspected, or has been given the opportunity to inspect, the Premises, prior to execution of this Agreement, and accepts it in its present condition and agrees to restore and return the same in the pre-load-in condition. The City shall maintain the Property on a year-round basis and shall be responsible for replacing and restoring elements on the Property which are damaged (unrelated to Licensee’s use). Specifically, Licensee agrees that it shall replace or restore to their original condition, any and all components of the Property, including but not limited to infrastructure, electrical or fiber-optic cables/lines, grass or trees, including necessary irrigation, if any, and decorative and play structures, which are damaged due to the Event or Licensee’s actions during the Use Period. All replacement or restoration shall be in a manner satisfactory to the City, in the City’s sole discretion.
- 5.2 Licensee shall repair and make the Property available for public use immediately after the Use Period and no later than June 1 following each Event, annually. Licensee understands that if the Property is not cleared of any and all production equipment, including electronics, supplies, and personal property by the expiration of the Use Period following notification to Licensee and, unless it has made other written arrangements with the City Manager or designee, a \$10,000.00 per day fee may be imposed until the Premises has been cleared
- 5.3 Licensee shall have the option to either elect to (i) pay the cost of re-installing damaged sod based on the square footage of sod requiring replacement or (ii) undertake to re-install the damaged sod. Licensee shall also have the option to either elect to (i) pay the costs and expenses of mulch removal based on the square footage of mulch required or (ii) undertake to directly remove mulch.
- 5.4 The Parties acknowledge that Licensee upon occasion shall have the right, but not the obligation, to make certain temporary renovations to the Property in order to produce the Event, with such temporary renovations occurring at Licensee’s sole cost and expense. The City shall not have any obligation to Licensee, financial, contractual or otherwise, arising out of temporary renovations. Any temporary renovations shall be performed in a manner acceptable to the City and shall minimize impacts to visitors of the Property.
- 5.5 Licensee will use reasonable efforts to maintain the Property and surrounding areas clean from any waste during the Use Period.

6. COMPLIANCE WITH PERMITS AND LAWS:

- 6.1 Licensee represents and warrants that during the term of this Agreement, in connection with the Event, it will obtain and maintain all required permits and approvals. The City will assist Licensee in obtaining permit(s) from governmental agencies including the Police and Fire Departments of the City of Miami. Police Department and Fire Department manpower requirements shall be determined by the respective Department and presented to Licensee at least ten (10) business days prior to the Event.
- 6.2 Licensee represents and warrants that during the term of this Agreement, it will not use or employ the Premises, or any other City owned property, to handle, transport, store or dispose of any hazardous materials and that it will not conduct any activity on the Premises or other City-owned property in violation of any applicable environmental laws.
- 6.3 Licensee represents and covenants that it will comply, and require its concessionaires to comply, with all applicable laws, codes and ordinances, including, but not limited to, the Americans with Disabilities Act (“ADA”), the Florida Building Code, all laws prohibiting discrimination, planning, zoning, traffic, environmental laws, and regulations.

- 6.4 Licensee represents and warrants that it is aware of the restrictions contained in Sections 22-180 through 22-185 of the Code of the City of Miami entitled “Handbills” and that it will comply with all of the requirements therein with respect to the distribution of commercial handbills. Should Licensee fail to comply, it shall be responsible for the payment of any fine the City may impose upon the City. Payment for fines imposed must be made within ten (10) days of receipt thereof.
- 6.5 Licensee accepts this Agreement and hereby acknowledges that Licensee's strict compliance with all applicable federal, state and local laws, permits, approvals, ordinances, rules, and regulations (collectively sometimes referred to as: “law” or “laws”) is a condition of this Agreement, and Licensee, and any of its employees, agents or performers, shall comply therewith as the same presently exist and as they may be amended hereafter. This Agreement shall be construed and enforced according to the laws of the State of Florida.

7. **USE FEE:**

- 7.1 The Use Fee that is hereby agreed to by Licensee, to be paid by Licensee to the City is Two Million Dollars (\$2,000,000.00) for each Event that occurs on the Property under the terms of this Agreement, subject to an increase of three percent (3%) annually commencing upon the production of the third (3rd) Event, such increase applying yearly to each Event thereafter through the termination of this Agreement.
- 7.2 The Use Fee includes the Ticket Surcharge as defined in Section 2 of this Agreement. The Use Fee is an unconditional and absolute payment due the City regardless of any ticket shortfalls, reductions in ticket sales, ticket price or sale fluctuations, or the number of tickets sold by the Licensee for the Event. The Use Fee is due as a net payment to the City without any deductions made for service charges, utilities, taxes, allowable offsets, Additional Charges as described herein, and any similar credits. The Ticket Surcharge as described herein and outlined in Section 53-1 of the Code of the City of Miami, as amended, shall be applicable to all Event tickets sold. In the event the Ticket Surcharge due to the City in accordance with Code Section 53-1 exceeds the Use Fee, the City shall be entitled to the greater of the Ticket Surcharge or the Use Fee. Notwithstanding any language to the contrary, under no circumstances will the City ever receive less than the Use Fee. For example, if the Ticket Surcharge in effect at any time would result in Ticket Surcharge collections of \$2,700,000 for an Event, and the Use Fee payable to the City under Section 7.1 for that Event is \$2,000,000, then Licensee would pay the City \$2,700,000 in full satisfaction of Licensee’s obligations under both Sections 7.1 and 10.1.
- 7.3 In consideration of the use of the Property, Licensee shall be responsible for all costs and expenditures associated with the production of the Event, and Licensee shall compensate the City by payment of the Use Fee as defined in this Agreement. The Use Fee shall include fees for use of the Premises on load-in and load-out days and Event Days, the Ticket Surcharge and fees for use of the Property.
- 7.4 The Use Fee shall cover all fees associated with the use of the Property by Licensee. The Use Fee is for the temporary use of the Property, as specified in this Agreement, and does not include any services provided by the City, and specifically excludes Additional Charges, which may be incurred by Licensee, such as agreed-upon clean-up services, police, fire-rescue, sanitation, and other charges set forth in Exhibit C (“Additional Charges”). The final cost of any Additional Charges that are usual and customary for the Event shall be determined by the City and agreed upon by Licensee following a prior estimate by the City of the various service providers, as applicable. Any Additional Charges not estimated by the Parties, such as unanticipated necessary

overtime expenses, shall be finalized and agreed-upon in good faith by the Parties and paid in the manner contemplated by Section 8.2 below.

- 7.5 Under no circumstances will the City be liable for any costs or expenses incurred by Licensee under this Agreement or as a result of its operations or related activities beyond those that are expressly and specifically set forth in this Agreement. Licensee shall be responsible for all costs involved in the production of the Event, including without limitation: all BMI and ASCAP copyright and license fees, any intellectual property fees, all staffing and all charges for police, fire rescue, inspectors, building and/or assembly permits, security, insurance, all utilities, supplies, equipment rental, ticket surcharge, all applicable taxes, including State of Florida Sales and Use Tax, any other governmental levies and impositions imposed by law, and other services. Licensee may engage any vendor(s) it elects to contract with, and Licensee is not required to use City-approved vendors, except as otherwise specifically provided by law or in this Agreement. The preceding sentence does not apply to service furnished by City employees.
- 7.6 Notwithstanding any language in this Agreement to the contrary, Licensee and City shall use good faith diligent efforts to resolve the outstanding Additional Charges owed to the City by Licensee from the 2019 Event held at Virginia Key (the "Outstanding Fees"). Licensee shall pay all undisputed amounts on or before July 25, 2019. Additionally, should the Parties fail to reach a mutually agreed resolution of the disputed Outstanding Fees on or before August 31, 2019, then the parties hereby agree to attempt resolution of same through non-binding mediation, with a mutually agreed-upon mediator. Should such mediation fail to resolve the disputed Outstanding Fees, each party reserves any and all rights against the other in law or equity.
- 7.7 The City reserves the right to interrupt, curtail, or suspend the provision of any utility service, including but not limited to, heating, ventilating and air conditioning systems and equipment serving the Property, to which Licensee may be entitled hereunder, when necessary by reason of accident or emergency, or for repairs, alterations or improvements in the judgment of the City Manager desirable or necessary to be made or due to difficulty in obtaining supplies or labor, or for any other cause beyond the reasonable control of the City. The work of such repairs, alterations or improvements shall be prosecuted with reasonable diligence, and to the extent that substantial repairs, alterations, improvements and/or construction is contemplated or scheduled to occur during the Use Period, Licensee shall be promptly notified by the City of such scheduled repairs, alterations, improvements and/or construction. The City shall in no respect be liable for any failure of the utility companies or governmental authorities to supply utility service to Licensee or for any limitation of supply resulting from governmental orders or directives. Licensee shall not claim any damages by reason of the City's or other individual's interruption, curtailment or suspension of a utility service, nor shall this Agreement or any of Licensee's obligations hereunder be affected or reduced thereby.

8. TERMS OF PAYMENT:

- 8.1 Licensee shall submit to the City, by wire transfer, cashier's check, or money order, and in any event no later than 5:00 p.m., two (2) days prior to the commencement of the Use Period, fifty percent (50%) of the Use Fee as well as any estimated Additional Charges, and Licensee shall have fully and timely replenished the Damage & Security Deposit. Licensee shall submit to the City, by wire transfer, cashier's check, or money order, and in any event no later than 5:00 p.m., two (2) days prior to the commencement of the Event, the remaining fifty percent (50%) of the Use Fee.
- 8.2 All amounts due to the City in excess of the Use Fee or in excess of the estimated Additional

Charges, including all pass-through costs, shall be remitted to the City the later of (i) thirty (30) days following the conclusion of the Event or (ii) ten (10) days after Licensee's receipt of such invoice(s).

- 8.3** If any installment of the Use Fee or any other undisputed sum due from Licensee shall not be received by the City on the date such undisputed sum is due, Licensee shall pay to the City an interest rate equal to five percent (5%) per annum of such overdue amount. If the undisputed sum due is not received by the City within fifteen (15) days after the date on which such undisputed sum is due, the Five percent (5%) interest rate will be replaced with an interest rate equal to Eleven and One Half (11.5%) per annum of such overdue amount. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs the City will incur by reason of late payment by Licensee. Acceptance of such late charge by the City shall not constitute a waiver of the Licensee's default with respect to such overdue amount, nor prevent the City from exercising any of its other rights and remedies granted hereunder or at law or in equity. The terms of this Section shall not apply to any charges which are the subject of a good faith dispute which are controverted in writing, setting forth with reasonable specificity all pertinent details by the party seeking to avoid payment, within ten (10) days of the due date.

9. DAMAGE & SECURITY DEPOSIT; DATE DESIGNATIONS:

- 9.1** The Damage & Security Deposit shall be in the amount of Two Hundred and Fifty Thousand dollars (\$250,000.00) and shall be subject to the applicable terms of this Agreement. The Damage & Security Deposit is intended to secure performance of all of Licensee's obligations hereunder, including but not limited to the repair and restoration of the Property after the Event. In addition, the Damage & Security Deposit is intended to secure Licensee's request for future dates through the end of the term of this Agreement. The Damage & Security Deposit shall be due immediately prior to the Use Period in the manner specified by Section 8.1 above.
- 9.2** A joint inspection of the Premises by the parties will be made within Two (2) business days after the completion of each Event and/or upon the expiration of the Use Period, wherein the short-term and long-term repairs to the Property will be identified. The Damage & Security Deposit will be held by the City until such time as all the repairs are completed or it is depleted by Licensee's failure to complete the restoration within the allotted time. The Damage & Security Deposit shall also be applied toward payment of any fees, liens, costs or other assessments against the Property or the City for activities and operations of Licensee directly resulting from or related to the Event. In the event the amount necessary to repair the damages or satisfy Licensee's obligations hereunder exceeds the Damage & Security Deposit, then Licensee agrees to pay the balance to the City within Ten (10) business days of the City's written request.
- 9.3** Nothing in this Agreement shall be construed as constituting the consent or request of the City, expressed or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials, for any specific work on the Property nor as giving the Licensee the right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any liens against the City's interest in the Property. If any liens shall at any time be filed against the Property, the Licensee shall initiate steps to cause it to be discharged of record within thirty (30) days after the date that it has notice of its filing. Licensee's failure to comply with this Section shall be a material breach of this Agreement by Licensee for cause.
- 9.4** Licensee further agrees to inform the City by July 1 of every subsequent Event year, of the requested dates on which the Event shall be scheduled, or otherwise shall inform the City of its

intentions not to produce the Event during the Use Period for the subsequent dates for the immediately following year. If Licensee does not affirm its intention of not holding the Event, the Damage & Security Deposit will be held to secure performance of all Licensee's obligations. Licensee's failure to inform the City of Licensee's intention to not hold the Event by the above-stated deadlines, shall be deemed an affirmation by Licensee of its intention to continue to use the Property so long as the License is in effect. Cancellation of the Event after Licensee's affirmation to the City of its intention to use the Property shall result in forfeiture of the Damage & Security Deposit.

- 9.5 Similarly, in the event the Damage & Security Deposit falls below \$250,000.00 after Licensee completes all necessary repairs to the Property, Licensee shall timely and fully replenish up to the full amount of \$250,000.00 one (1) day prior to the following Event's Use Period.
- 9.6 If Licensee fails to remove any personal property, equipment and fixtures from the Property within Twenty-Four (24) days following the close of the Use Period and notification by the City to Licensee and following Licensee's failure to remove such personal property, equipment and fixtures from the Property, then said property shall be deemed abandoned and thereupon shall become the sole personal property of the City. The City, at its sole discretion and without liability shall remove the same and Licensee shall reimburse the City for all costs associated with such removal and disposal within Ten (10) business days following such removal. Licensee will be liable for any costs, including removal and/or storage, incurred by the City for Licensee's failure to timely remove personal property, equipment and fixtures from the Property.
- 9.7 Licensee shall not be entitled to receive any interest on the Damage & Security Deposit. As this Agreement is a license, the Parties stipulate that Chapter 83, Florida Statutes, does not apply to the Damage & Security Deposit, and this is not a lease agreement.

10. **TICKETS:**

10.1 **Ticket Surcharge:**

For purposes of this Agreement, the City acknowledges and agrees that all applicable ticket surcharges as stated in Section 53-1, of the Code of the City of Miami, as may be amended, that are due to the City are inclusive in the Use Fee, unless the total Ticket Surcharge due to the City under such Code Section 53-1 exceeds the Use Fee. Licensee shall pay to City all Ticket Surcharge fees to the extent that they exceed the Use Fee, as provided in Sections 7.1 and 7.2 herein. Licensee agrees to pay all applicable taxes, merchant, and service charges related to tickets.

10.2 **Complimentary Tickets:**

Subject to those terms set forth in Section 7, Licensee shall have the right to distribute complimentary tickets per each Event day for promotional use without payment of a ticket surcharge.

10.3 **Ticket Policy:**

10.3.1 Licensee agrees that all ticketed events in the Property, including the Event will be audited by the City Manager's designee relating to tickets sold by Licensee. There will be no exceptions.

10.3.2 Licensee agrees to submit a valid ticket manifest prior to the opening of the gates. There will be no exceptions. The City Manager's designee will report compliance or lack of compliance to the City prior to the gates being opened on the day of the Event.

10.3.3 Failure to provide a valid ticket manifest may result in a non-compliance fee as outlined below. Fees shall be assessed as follows: 1,000 to 9,999 tickets - \$1,000.00 non-compliance fee; 10,000 to 19,999 tickets - \$2,000.00 non-compliance fee; and 20,000 + tickets - \$3,000.00 non-compliance fee

10.4 Ticket Scanning:

In the event that Licensee employs a ticket scanning method (including barcode, RFID and other scanning technologies), City ticket scanning personnel will not tear tickets in half and a drop count will not be used. Additionally, Licensee shall provide sufficient back-up scanners in the event of any scanner malfunction. In the event of a complete scanner failure, the City may use alternative methods to maintain accurate counts of patrons attending the Event. Licensee will provide the City with a laptop loaded with a ticketing program that will track the scanned tickets making it possible to know how many patrons are in the facility at any time. In the event that the show's tickets are sold out, the City and Licensee agree that ticket counting staff will not be required.

10.5 Capacity:

The current minimum capacity for the Event is 55,000 persons. Licensee shall have the right to increase the capacity for the Event subject to the City's reasonable discretion. The City agrees to use its best efforts to cooperate with Licensee in the event that Licensee elects to increase the number of tickets that may be issued for, and the total attendance at, the Event.

11. ADVERTISING:

All advertising for Event must state (i) Miami, FL; Bayfront Park; (ii) Bayfront Park, 301 Biscayne Boulevard, Miami, FL 33132, or some other derivative specifically acknowledging the City of Miami and Bayfront Park. Licensee shall not permit any signs or advertising matter to be placed upon the exterior of the Property without having first obtained the written approval of the City Manager or their designee, which approval may not be unreasonably withheld, delayed or conditioned. Licensee shall, at its sole cost and expense, install, provide, maintain such sign, decoration, advertising matter or other things as may be permitted hereunder in good condition and repair at all times. Licensee must further obtain approval from all governmental authorities having jurisdiction and must comply with all applicable requirements set forth in the Sign Regulations in the City of Miami Code and Zoning Ordinance and the Miami-Dade County Sign Code, as applicable. Upon the end of each Use Period, Licensee shall, at its sole cost and expense, remove any sign, decoration, advertising matter or other item permitted hereunder from the Property. Licensee hereby understands and agrees that the City may, at its sole discretion, erect or place upon the Property an appropriate sign indicating City's having entered into this Agreement.

12. FOOD & ARTS & MERCHANDISE LOCATIONS:

Not later than sixty (60) days prior to the Use Period, the Licensee shall make available to the City, for the City Manager's approval, which approval shall not be unreasonably withheld, delayed or conditioned, a preliminary site plan setting forth the location of Licensee's installations and equipment on the Property, including, without restriction, the location of the Licensee's tents, ticket box office, concession and food stands, and vans. Final Site Plan shall be due to the City not later than thirty (30) days prior to the Use Period. The City Manager, or his designee, shall approve or disapprove, which disapproval shall state the reasons within five (5) business days after its receipt. The City and the City's Fire Department reserve the right to remove or revise the location of booths for the Event to the extent necessary for public health, safety and security during the Event.

13. SECURITY:

Licensee shall provide, at Licensee's cost, all necessary perimeter/t-shirt event security and police officers to be determined by the City of Miami Police Department and the City, including, but not limited to, an on-site special response team on site throughout the duration of the Event. In addition, the City may require extra fencing or security if it deems it necessary. The Licensee shall maintain access for City of Miami emergency vehicles on the Property at all times.

14. INSURANCE:

Licensee shall obtain and maintain in force for the Use Period, insurance policies and coverages, as may be reasonably amended from time to time by the City's Director of Risk Management or designee using commercially reasonable standards, and as set forth on Exhibits B-1 and B-2 (B-1 is for the Licensee; B-2 is for the caterer), which is attached hereto and made a part of this Agreement. The City and the Bayfront Park Management Trust shall be named "Additional Insured" on all policies. Any questions regarding insurance should be directed to the City. Licensee shall furnish all required insurance certificates no later than ten (10) days prior to the commencement of the Use Period.

15. INDEMNIFICATION:

Licensee agrees to indemnify, defend (at its own cost and expense), covenant not to sue, and hold harmless the City, their respective officers, officials, employees, personnel, volunteers, agents, assigns, representatives, and successors, and the Bayfront Park Management Trust, their respective officers, officials, employees, personnel, volunteers, agents, assigns, representatives, and successors and the U.S. Army Corps of Engineers (hereinafter collectively referred to as the "Indemnitees") from and against all Liabilities to the extent arising out of, resulting from, or in connection with (i) the Event, the use of the Premises and/or performance of any renovation to the Premises, (ii) the performance or non-performance of this Agreement, whether it is, or is alleged to be, directly or indirectly caused, in whole or in part, by any act, omission, default or negligence (whether active or passive) of the Indemnitees, or any of them (except for the intentional, criminal or wrongful acts, or gross negligence or willful misconduct committed by such Indemnitees), (iii) the use of any products sold, advertised, provided, or otherwise distributed by Licensee to users, invitees, guests, employees, agents, the general public, or any other individual or (iv) the failure of Licensee to comply with any of the provisions contained herein, or to conform to statutes, ordinances, or other rules, conditions of approval, permits or regulations or requirements of any governmental authority, local, federal or state, in connection with the performance of this Agreement, including, without limitation all actions and omissions by the Licensee taken as a result of or in connection with this Agreement. This Indemnification shall cover liabilities in tort, liabilities in contract, liabilities alleging statutory or regulatory violations including, but not limited to claims resulting from noise, light, nuisance, traffic, and/or liabilities derived from any other actions or omissions alleged to impact the quiet enjoyment of residents, tenants, or commercial entities in the surrounding neighborhoods, or otherwise who reside within one (1) mile of the Property. Licensee expressly agrees that this indemnification shall include all employees/personnel of the City, on and off-duty police officers, fire, and other emergency/medical service employees/personnel rendering services or support in connection with the Event. In addition, Licensee expressly agrees to indemnify, covenant not to sue, and hold harmless the Indemnitees, or any of them, from and against all Liabilities which may be asserted by an employee or former employee of Licensee, or any of its contractors, subcontractors, agents, representatives, concessionaires, vendors, invitees, guests, or consultants as provided above, for which Licensee's liability to such employee or former employee would otherwise be limited to payments under state Workers' Compensation or similar laws. This Indemnification provision shall survive the expiration, termination, or cancellation of this Agreement and shall continue in effect until the expiration of the corresponding statute of limitations or the tolling thereof. The word Liabilities used in this Section includes claims and actions relative to the Liabilities. Granting of this Agreement is freely acknowledged by the Licensee as good and sufficient independent consideration for this Indemnification. To the extent that Licensee undertakes any indemnification obligations under this Section 16, and notwithstanding any provision herein to the contrary, Licensee shall have its choice of counsel for a defense and control resolution of the claim(s) provided the Indemnitees are

not required to admit any liability or to make any payments. The City hereby consents to the common representation of the Indemnitees and Licensee by any competent and adequate legal counsel reasonably selected by Licensee in defense of the indemnified claims and agree to sign any other written consent reasonably required by legal counsel in accordance with the rules of professional conduct or any other rules of ethics governing common representation by legal counsel. If, however, the interest of the respective parties diverges such that the parties may not be represented by one counsel, then Licensee shall retain separate counsel on behalf of the Indemnitees. The City and Licensee hereby waive any claim of conflict of interest (and shall confirm such waiver to the law firms selected by Licensee to undertake their common defense) arising from the defense of the indemnified claim in the manner set forth above.

16. RISK OF LOSS:

Except as set forth in the following sentence, the Indemnitees as described above, assume no responsibility whatsoever for any person or property that enters the Premises as a result of, or in connection with, the Event. In consideration of the execution of this Agreement by the City, Licensee releases the Indemnitees from any and all liability for any loss, injury, death, theft, damage or destruction to any persons or property to include, without limitation, those described above in Section 15 Indemnification, which may occur in or about the Premises and which loss, injury, theft, damage or destruction to any persons or property arises from Licensee's negligent acts or omissions. To the extent allowed by Florida Statute 768.28, Licensee does not release the City for any and all liability to the extent such liability is determined to be due to the intentional or willful misconduct or gross negligence of the City.

17. DEFAULT PROVISION:

In the event Licensee shall fail to comply with any material term and condition of this Agreement or shall fail to perform any of the material terms and conditions contained herein, then the City, at its sole option and in addition to all other rights and legal remedies available to it by law, upon written notice to Licensee, may cancel and terminate this Agreement [after providing Licensee with written notice of any material breach by Licensee and after allowing Licensee an opportunity of Twenty (20) days to cure such material breach or default] and all payments made by Licensee pursuant to this Agreement, shall be retained by the City. Licensee shall have no recourse against the City or Bayfront Park Management Trust from the provisions of this Section.

18. AWARD OF AGREEMENT:

Licensee represents and warrants to the City that it has not employed or retained any person or company employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon the award of this Agreement.

19. PUBLIC RECORDS:

Licensee understands that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the City and the public to all documents subject to disclosure under applicable laws. Licensee's failure or refusal to comply with the provisions of this section shall result in the City's immediate cancellation of this Agreement. Licensee acknowledges that this termination is not subject to cure provisions contained elsewhere in this Agreement.

IF THE LICENSEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LICENSEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS BY PHONE AT 305-

416-1883; BY EMAIL AT PUBLCRECORDS@MIAMIGOV.COM; OR IN PERSON AT 444 SW 2ND AVENUE, 9TH FLOOR, MIAMI, FLORIDA 33130.

20. NON-DISCRIMINATION:

Licensee shall not discriminate against any persons on account of race, color, sex, sexual orientation, gender, religion, creed, ancestry, national origin, age, disability, or marital status in the use of the Premises.

21. AUTHORIZED PERSONNEL:

The City shall have authorized representatives with decision making authority, reasonably available at all reasonable times throughout the Use Period for consultation with Licensee, as requested.

22. AUTHORITY TO EXECUTE AGREEMENT:

Each party represents to the other that it has the power to enter into this Agreement and that the consent of no other person or entity is required in connection therewith, except as otherwise provided, and this Agreement constitutes a valid and binding obligation of each party in accordance with the terms hereof. This Agreement is subject to the separate review and approval of the Miami City Commission as an express condition precedent to its validity.

23. RELATIONSHIP OF PARTIES:

This Agreement shall not be deemed or construed to create any landlord tenant relationship, leasehold estate, rights of exclusive occupancy and possession of the Property and Premises during the Use Period, or agency relationship, partnership, or joint venture between the City and Licensee. The City is not a guarantor of any debt, default or miscarriage of the Licensee.

The City enters into this Agreement with Licensee to provide Licensee with a limited use of the Property for the Event, and does so in a proprietary sense as landowner, not in its regulatory capacity. Any approvals herein shall not be considered approvals or waivers of any applicable laws, or otherwise relieve Licensee of any obligation it may have at law to submit applications with any department of the City or any other governmental authority having jurisdiction.

24. NOTICES:

Notices required under this Agreement shall be deemed to be given when hand-delivered (with receipt therefore) or mailed by registered or certified mail, postage prepaid, return receipt requested.

AS TO LICENSEE:

General Counsel
Event Entertainment Group, Inc.
201 S. Biscayne Blvd., #800
Miami, Florida 33131

AS TO THE CITY:

City Manager
City of Miami
3500 Pan American Drive
Miami, Florida 33133

WITH A COPY TO:

City Attorney
City of Miami
444 SW 2nd Avenue, Suite 945
Miami, Florida 33130

WITH A COPY TO:

Director of Real Estate & Asset Management
City of Miami
444 SW 2nd Avenue, 3rd Floor
Miami, Florida 33130

25. GOVERNING LAW/VENUE; ATTORNEYS FEES:

This Agreement shall be construed according to the laws of the State of Florida and venue for any and all claims or controversies that may arise as a result of this Agreement shall be heard in a court of competent jurisdiction in Miami-Dade County, Florida. Each party shall bear their own respective attorney's fees and costs.

26. CONFLICT OF INTEREST:

Licensee is aware of the conflict of interest laws of the City of Miami (Code of the City of Miami, Florida, Chapter 2, Article V), of Miami-Dade County, Florida (Code of Miami-Dade County, Florida, Section 2-11.1) and of the State of Florida (as set forth in Florida Statutes) and agrees it will fully comply in all respects with the terms of said laws and any future amendments.

27. FORCE MAJEURE:

The Parties shall not be liable to the other and shall excuse the other from their respective obligations hereunder for any failure to perform their respective obligations where such failure is caused by Force Majeure, which is defined herein as any event whereby the Property, or any portion thereof, shall be destroyed or damaged, as a result of any event beyond human control, including but not limited to acts of national security, national emergency, acts of God, war, act or threats of terrorism, domestic government regulations, strikes (other than strikes of Licensee's employees), fire or other natural calamity, disorder, civil disobedience, curtailment of transportation facilities or service, or any occurrence which makes it illegal or impossible for Licensee to perform its obligations under this Agreement.

28. ASSIGNMENT:

The City has relied on the extensive and unique reputation and experience of Licensee in granting this License. Licensee shall not sell, grant, confer, or assign this License or any part thereof to any other party, person, or entity. The License granted by this License is personal to the Licensee. Any attempted assignment of this License contrary to the foregoing provision, whether voluntary or involuntary, shall be void and shall confer no right upon such assignee, shall constitute a default under this License, and shall result in an automatic revocation of the License and the forfeiture of the rights of Licensee hereunder following notification to Licensee.

29. SEVERABILITY

It is the express intent of the Parties that this Agreement constitutes a license and not a lease. To further this intent, the Parties agree as follows: (i) if any provision of this Agreement, or the application thereof to any circumstance, suggest that a lease, rather than a license, has been created, then such provision shall be interpreted in the light most favorable to the creation of a license and (ii) if any provision of this Agreement, or the application thereof to any circumstance, is determined by a court of competent jurisdiction to have created a lease rather than a license, then such provision shall be stricken and, to the fullest extent possible, the remaining provisions of this Agreement shall not be affected thereby and shall continue to operate and remain in full force and effect.

With regard to those provisions which do not affect the Parties intent for this Agreement to serve as a license, should any provision, section, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida or the City of Miami, such provision, section, paragraph, sentence, word or phrase shall be deemed modified to the minimum extent necessary to accomplish the intent of this

Agreement to the maximum extent allowable without violating any applicable laws; or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

30. AMENDMENTS

No alterations, amendments or modifications hereof shall be valid unless executed by an instrument in writing by the Parties with the same formality as this License. Neither this License, nor any term hereof, can be changed, modified, or abandoned, in whole or in part, except by an instrument in writing, and no prior or subsequent oral agreement shall have any validity whatsoever. Notwithstanding any language to the contrary, the City Manager is authorized to administratively execute non-substantive or operational amendments, not involving material terms, to this License without the necessity of further action by the City Commission.

31. CITY ACCESS

The City and its authorized representative(s) shall at all times have access to the Property. The City will maintain a complete set of keys to the Property. Licensee, at its sole cost and expense, may duplicate or change key locks to the Property but not until first receiving written approval from the City Manager for such work. In the event Licensee changes key locks as approved by the City Manager, Licensee, at its sole cost and expense, must also provide to the City a copy or copies of said keys, if more than one copy is required.

The City shall have access to and entry into the Property at any time to: (a) inspect the Property; (b) to perform any obligations of Licensee hereunder which Licensee has failed to perform after written notice thereof to Licensee, Licensee not having cured such matter within ten (10) days of such notice, and without the City waiving any legal rights or remedies; (c) to assure Licensee's compliance with the terms and provisions of this Agreement and all applicable laws, ordinances, rules and regulations; (d) to show the Property to prospective purchasers, tenants or others; and (e) for other purposes as may be deemed necessary by the City Manager or his/her authorized designee in the furtherance of the City's corporate purpose. The City shall not be liable for any loss, cost or damage to the Licensee by reason of the exercise by the City of the right of entry described herein for the purposes listed above. The making of periodic inspections or the failure to do so shall not operate to impose upon the City any liability of any kind whatsoever nor relieve the Licensee of any responsibility, obligations or liability assumed under this Agreement.

32. INDEPENDENT AUDITOR GENERAL-ACCESS TO DOCUMENTS

The City of Miami has established the Office of the Independent Auditor General ("IAG"), to provide the City Commission with independent oversight of audit and analytical functions of the City. The IAG shall have the power to audit, and to make copies of or extracts from all records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to the Event, Use Period, and this Agreement but only to the extent necessary to ensure compliance with the terms expressly set forth in this Agreement. The IAG shall only have access to Licensee's records to the minimum extent required to ensure such compliance, and such records shall not include Licensee's internal financial and accounting records unrelated to the Event and this Agreement.

Any information deemed to be confidential, proprietary, or a trade secret under Florida law, but integral to completing audit procedures, will be timely made available for review but will be excluded from the audit work papers. Licensee shall, at all times during the term of this Agreement and for a period of five (5) years after the termination of this Agreement, maintain such records, together with such supporting or underlying

documents and materials available in a location within Miami-Dade County, Florida as may be requested by the City. Nothing in this Section shall impair any independent right of the City of Miami, pursuant to applicable laws and regulations, to conduct audits or investigate its activities. The provisions of this Section are neither intended nor shall they be construed to impose any liability on the City of Miami by the Licensee or third parties.

(SIGNATURE PAGE FOLLOWS)

DRAFT

IN WITNESS WHEREOF, the parties hereto have individually and through their proper corporate official executed this Agreement, this the day and year first written.

“CITY”

ATTEST:

CITY OF MIAMI, A Florida Municipal Corporation

Todd B. Hannon
City Clerk

Emilio T. Gonzalez, Ph.D.
City Manager

Approved as to Legal Form
And Correctness by:

Approved as to Insurance
Requirements by:

Victoria Méndez,
City Attorney

Ann-Marie Sharpe
Director of Risk Management

Approved as to Business Terms:

Daniel Rotenberg
Director of Real Estate &
Asset Management

“LICENSEE”

ATTEST:

EVENT ENTERTAINMENT GROUP, INC.

Witness, sign above & print name below

Witness, sign above & print name below

EXHIBIT A

PROPERTY – BAYFRONT PARK

301 Biscayne Boulevard, Miami, FL 33132

DRAFT

EXHIBIT B

INSURANCE REQUIREMENTS FOR A CERTIFICATE OF INSURANCE-EVENT ENTERTAINMENT GROUP, INC.

I. Commercial General Liability

A. Limits of Liability

Bodily Injury and Property Damage Liability	
Each Occurrence	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Operations	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Damage to Rented Premises	\$1,000,000

B. Endorsements Required

City of Miami, Bayfront Park Management Trust, and each of the respective instrumentalities, Members, Partners, Affiliates, each of their respective Officers, Directors, Shareholders, Employees, Volunteers, Agents and Representatives and the Army Corp of Engineers listed as an additional insured

Contingent and Contractual Liability
Premises and Operations Liability
Primary Insurance Clause Endorsement
Explosion, Collapse and Underground Hazards
Terrorism Coverage Included
Liquor Liability Included
Waiver of Subrogation

II. Business Automobile Liability

A. Limits of Liability

Bodily Injury and Property Damage Liability	
Combined Single Limit	
Any Auto, Owned Autos	
Including Hired, Borrowed or Non-Owned Autos	
Any One Accident	\$ 1,000,000

B. Endorsements Required

City of Miami, Bayfront Park Management Trust, and each of the respective instrumentalities, Members, Partners, Affiliates, each of their respective Officers, Directors, Shareholders, Employees, Volunteers, Agents and Representatives and the Army Corp of Engineers listed as an additional insured

III. Worker’s Compensation

Limits of Liability
Statutory-State of Florida
Waiver of subrogation

Employer’s Liability

- A. Limits of Liability
 - \$1,000,000 for bodily injury caused by an accident, each accident.
 - \$1,000,000 for bodily injury caused by disease, each employee
 - \$1,000,000 for bodily injury caused by disease, policy limit

V. Umbrella Policy/Excess Liability

- A. Limits of Liability
 - Bodily Injury and Property Damage Liability
 - Each Occurrence \$ 10,000,000
 - Aggregate \$ 10,000,000

City of Miami, Bayfront Park Management Trust, and each of the respective instrumentalities, Members, Partners, Affiliates, each of their respective Officers, Directors, Shareholders, Employees, Volunteers, Agents and Representatives and the Army Corp of Engineers listed as an additional insured

Coverage is excess over all applicable liability policies contained herein including terrorism and liquor liability.

The above policies shall provide the City of Miami with written notice of cancellation or material change from the insurer not less than (30) days prior to any such cancellation or material change, or in accordance to policy provisions.

Companies authorized to do business in the State of Florida, with the following qualifications, shall issue all insurance policies required above:

The company must be rated no less than “A-” as to management, and no less than “Class V” as to Financial Strength, by the latest edition of Best’s Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent. All policies and /or certificates of insurance are subject to review and verification by Risk Management prior to insurance approval.

EXHIBIT B-2

**INSURANCE REQUIREMENTS FOR A CERTIFICATE OF INSURANCE-EVENT
ENTERTAINMENT GROUP, INC.
(CATERING COMPANY)**

I. Commercial General Liability

A. Limits of Liability

Bodily Injury and Property Damage Liability	
Each Occurrence	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Operations	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Damage to Rented Premises	\$50,000

B. Endorsements Required

City of Miami, Bayfront Park Management Trust, and each of the respective instrumentalities, Members, Partners, Affiliates, each of their respective Officers, Directors, Shareholders, Employees, Volunteers, Agents and Representatives and the Army Corp of Engineers listed as an additional insured

Contingent and Contractual Liability
Premises and Operations Liability
Primary Insurance Clause Endorsement
Explosion, Collapse and Underground Hazards
Terrorism Coverage Included
Waiver of Subrogation

II. Business Automobile Liability

A. Limits of Liability

Bodily Injury and Property Damage Liability Combined Single Limit	
Any Auto, Owned Autos	
Including Hired, Borrowed or Non-Owned Autos	
Any One Accident	\$ 1,000,000

B. Endorsements Required

City of Miami, Bayfront Park Management Trust, and each of the respective instrumentalities, Members, Partners, Affiliates, each of their respective Officers, Directors, Shareholders, Employees, Volunteers, Agents and Representatives and the Army Corp of Engineers listed as an additional insured

III. Worker’s Compensation

Limits of Liability
Statutory-State of Florida
Waiver of subrogation

Employer’s Liability

Limits of Liability
\$1,000,000 for bodily injury caused by an accident, each accident.
\$1,000,000 for bodily injury caused by disease, each employee
\$1,000,000 for bodily injury caused by disease, policy limit

IV. Umbrella Policy/Excess Liability

Limits of Liability
Bodily Injury and Property Damage Liability
Each Occurrence \$10,000,000
Aggregate \$10,000,000

City of Miami, Bayfront Park Management Trust, and each of the respective instrumentalities, Members, Partners, Affiliates, each of their respective Officers, Directors, Shareholders, Employees, Volunteers, Agents and Representatives and the Army Corp of Engineers listed as an additional insured

Coverage is excess over all applicable liability policies contained herein including liquor liability.

V. Liquor Liability

Limits of Liability
Each Occurrence \$1,000,000
Aggregate \$1,000,000

City of Miami, Bayfront Park Management Trust, and each of the respective instrumentalities, Members, Partners, Affiliates, each of their respective Officers, Directors, Shareholders, Employees, Volunteers, Agents and Representatives and the Army Corp of Engineers listed as an additional insured

The above policies shall provide the City of Miami with written notice of cancellation or material change from the insurer not less than (30) days prior to any such cancellation or material change, or in accordance to policy provisions.

Companies authorized to do business in the State of Florida, with the following qualifications, shall issue all insurance policies required above:

The company must be rated no less than “A-” as to management, and no less than “Class V” as to Financial Strength, by the latest edition of Best’s Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent. All policies and /or certificates of insurance are subject to review and verification by Risk Management prior to insurance approval.

EXHIBIT C

ADDITIONAL CHARGES (TO THE EXTENT APPLICABLE)

1. City of Miami Police personnel
2. City of Miami Fire Rescue personnel
3. Light Pole, Benches, Bike Racks Removal/Reinstall
4. Chain Link Fence Removal
5. Solid Waste Downtown
6. Solid Waste Trash Hauling
7. Taxes
8. Trash Bags
9. Drums/oil containers and/or disposal fees

DRAFT

EXHIBIT 3



City of Miami

Legislation

Resolution: R-19-0321

City Hall
3500 Pan American Drive
Miami, FL 33133
www.miamigov.com

File Number: 6097

Final Action Date: 7/25/2019

A RESOLUTION OF THE MIAMI CITY COMMISSION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A REVOCABLE LICENSE AGREEMENT ("LICENSE"), IN A FORM ACCEPTABLE TO THE CITY ATTORNEY, WITH EVENT ENTERTAINMENT GROUP, LLC FOR THE PRESENTATION OF THE ULTRA MUSIC FESTIVAL AT BAYFRONT PARK; FURTHER WAIVING THE REQUIREMENTS OF SECTION 38-113 OF THE CODE OF THE CITY OF MIAMI, AS AMENDED.

SPONSOR(S): Commissioner Keon Hardemon

WHEREAS, the City of Miami ("City") is the owner and the Bayfront Park Management Trust is the manager and operator of the real property known as Bayfront Park, located at 301 Biscayne Boulevard, Miami, Florida ("Property"); and

WHEREAS, Event Entertainment Group, Inc., a Florida Corporation ("Licensee"), is the producer of the world's premier electronic music festival known as the Ultra Music Festival ("Event"); and

WHEREAS, as to the Event's worldwide status, in 2018, 36 events were produced on six (6) continents, with over 300 million viewers having viewed live stream and 40 million listeners having tuned into UMF Radio globally; and

WHEREAS, for over 20 years, the Event has been produced in the greater Miami area, of which 19 have been produced in the City; and

WHEREAS, the Licensee has previously staged the Event at the Property between 2013 and 2018, during which time the Licensee expended substantial resources toward the direct promotion and marketing of the City; and

WHEREAS, since 2012, the Event has generated approximately \$995 million of economic impact, generating \$168 million and creating 1,834 jobs in 2018 alone; and

WHEREAS, the 2019 Event was attended by patrons representing more than 105 countries and was live streamed to over 30 million viewers worldwide; and

WHEREAS, today, the Event remains a Miami-based production and the Event is the flagship event for all worldwide operations; and

WHEREAS, the City wishes to continue having the Event at the Property ("Proposal"); and

WHEREAS, the Proposal is provided in the form of the attached Revocable License Agreement ("License"); and

WHEREAS, the License is not assignable, is not for a fixed term, and is revocable at-will, for convenience, and without consent of the Licensee; and

WHEREAS, the License does not transfer any interest in real property, including any leasehold interest in real property owned by the City; and

WHEREAS, the License permits only certain enumerated, specific, and listed permitted uses on specified dates and does not permit anything further; and

WHEREAS, the City Commission may waive the requirements of Section 38-113 of the Code of the City of Miami, as amended ("City Code"), requiring public access to the property at least eighty-five percent (85%) of each year; and

WHEREAS, the City Commission has determined that the requirements relating to trust fund payments for mass transit provided for in Section 35-254 of the City Code shall not apply to the use fee payments under the License; and

WHEREAS, in order to assist the Virginia Key Beach Park Trust with the creation and establishment of the African American Museum, One Million Dollars (\$1,000,000.00) of the use fee payable for the 2020 Event will be allocated to the Virginia Key Beach Park Trust in a separate account for the African American Museum to be constructed at Historic Virginia Key Beach Park;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

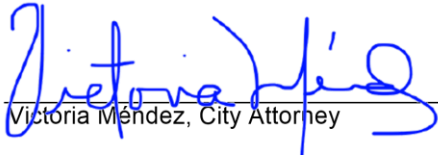
Section 1. The recitals and findings contained in the Preamble to this Resolution are adopted by reference and incorporated as fully set forth in this Section.

Section 2. The City Manager is authorized¹ negotiate and execute the License, in a form acceptable to the City Attorney, between the City and the Licensee for the purpose of producing the Event on the Property with the terms and conditions more particularly described in the License.

Section 3. The requirements set forth in Section 38-113 of the City Code are hereby waived.

Section 4. This Resolution shall become effective immediately upon adoption and signature of the Mayor.¹

APPROVED AS TO FORM AND CORRECTNESS:


Victoria Mendez, City Attorney 8/15/2019

¹ If the Mayor does not sign this Resolution, it shall become effective at the end of ten (10) calendar days from the date it was passed and adopted. If the Mayor vetoes this Resolution, it shall become effective immediately upon override of the veto by the City Commission.

EXHIBIT 4



City of Miami

Legislation

Resolution: R-19-0321

City Hall
3500 Pan American Drive
Miami, FL 33133
www.miamigov.com

File Number: 6097

Final Action Date: 7/25/2019

A RESOLUTION OF THE MIAMI CITY COMMISSION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A REVOCABLE LICENSE AGREEMENT ("LICENSE"), IN A FORM ACCEPTABLE TO THE CITY ATTORNEY, WITH EVENT ENTERTAINMENT GROUP, LLC FOR THE PRESENTATION OF THE ULTRA MUSIC FESTIVAL AT BAYFRONT PARK; FURTHER WAIVING THE REQUIREMENTS OF SECTION 38-113 OF THE CODE OF THE CITY OF MIAMI, AS AMENDED.

SPONSOR(S): Commissioner Keon Hardemon

WHEREAS, the City of Miami ("City") is the owner and the Bayfront Park Management Trust is the manager and operator of the real property known as Bayfront Park, located at 301 Biscayne Boulevard, Miami, Florida ("Property"); and

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WHEREAS, the Licensee has previously staged the Event at the Property between 2013 and 2018, during which time the Licensee expended substantial resources toward the direct promotion and marketing of the City; and

WHEREAS, since 2012, the Event has generated approximately \$995 million of economic impact, generating \$168 million and creating 1,834 jobs in 2018 alone; and

WHEREAS, the 2019 Event was attended by patrons representing more than 105 countries and was live streamed to over 30 million viewers worldwide; and

WHEREAS, today, the Event remains a Miami-based production and the Event is the flagship event for all worldwide operations; and

WHEREAS, the City wishes to continue having the Event at the Property ("Proposal"); and

WHEREAS, the Proposal is provided in the form of the attached Revocable License Agreement ("License"); and

WHEREAS, the License is not assignable, is not for a fixed term, and is revocable at-will, for convenience, and without consent of the Licensee; and

WHEREAS, the License does not transfer any interest in real property, including any leasehold interest in real property owned by the City; and

WHEREAS, the License permits only certain enumerated, specific, and listed permitted uses on specified dates and does not permit anything further; and

WHEREAS, the City Commission may waive the requirements of Section 38-113 of the Code of the City of Miami, as amended ("City Code"), requiring public access to the property at least eighty-five percent (85%) of each year; and

WHEREAS, the City Commission has determined that the requirements relating to trust fund payments for mass transit provided for in Section 35-254 of the City Code shall not apply to the use fee payments under the License; and

WHEREAS, in order to assist the Virginia Key Beach Park Trust with the creation and establishment of the African American Museum, One Million Dollars (\$1,000,000.00) of the use fee payable for the 2020 Event will be allocated to the Virginia Key Beach Park Trust in a separate account for the African American Museum to be constructed at Historic Virginia Key Beach Park;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

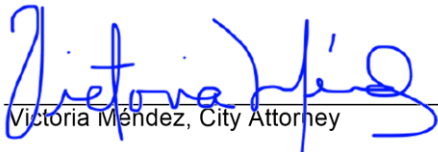
Section 1. The recitals and findings contained in the Preamble to this Resolution are adopted by reference and incorporated as fully set forth in this Section.

Section 2. The City Manager is authorized¹ negotiate and execute the License, in a form acceptable to the City Attorney, between the City and the Licensee for the purpose of producing the Event on the Property with the terms and conditions more particularly described in the License.

Section 3. The requirements set forth in Section 38-113 of the City Code are hereby waived.

Section 4. This Resolution shall become effective immediately upon adoption and signature of the Mayor.¹

APPROVED AS TO FORM AND CORRECTNESS:


Victoria Mendez, City Attorney 8/15/2019

¹ If the Mayor does not sign this Resolution, it shall become effective at the end of ten (10) calendar days from the date it was passed and adopted. If the Mayor vetoes this Resolution, it shall become effective immediately upon override of the veto by the City Commission.



City of Miami

Master Report

City Hall
3500 Pan American Drive
Miami, FL 33133
www.miamigov.com

Enactment Number: R-19-0321

File Number: 6097 **File Type:** Resolution **Status:** **ADOPTED WITH MODIFICATION(S)**

Revision: B **Controlling Body:** City Commission

File Name: License Agreement - Ultra Music Festival **Introduced:** 6/18/2019

Requesting Dept: Commissioners and Mayor **Final Action Date:** 7/25/2019

Title: A RESOLUTION OF THE MIAMI CITY COMMISSION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A REVOCABLE LICENSE AGREEMENT (“LICENSE”), IN A FORM ACCEPTABLE TO THE CITY ATTORNEY, WITH EVENT ENTERTAINMENT GROUP, LLC FOR THE PRESENTATION OF THE ULTRA MUSIC FESTIVAL AT BAYFRONT PARK; FURTHER WAIVING THE REQUIREMENTS OF SECTION 38-113 OF THE CODE OF THE CITY OF MIAMI, AS AMENDED.

Sponsor(s): Commissioner Keon Hardemon

Notes:

Links:

- Attachments:** 6097 Back-Up Document CC MTG 7-25-19 (PDF)
6097 Back-Up Documents CC MTG 6-27-19 (PDF)
6097-Submittal-Itai Benosh-Promoter’s Information Kit(PDF)
6097-Submittal-Sam Dubbin-Opposition Letter and Information Packet (PDF)
6097-Submittal-Jacqueline Lorenzo-Inter-Office Memo (PDF)
6097-Submittal-City Manager-Ultra 2019 Fees (PDF)
6097-Submittal-Dylan Finger-Letter Regarding Ultra in Wynwood (PDF)
6097-Submittal-Commissioner Reyes-City Attorney Memo RE Ultra Agreement (PDF)
6097-Miguel De Grandy-Letters of Support (PDF)
6097-Submittal-Sam Dubbin-Letter in Opposition to proposed Agreement RE Ultra Music Festival (PDF)
6097-Submittal-Sam Dubbin-Supplemental letter in opposition to Ultra Music Festival (PDF)
6097-Submittal-Randy Hollingworth-Photo (PDF)

History of Legislative File:

Revision:	Acting Body:	Date:	Action:	Result:
	Victoria Méndez	6/18/2019	Approved Form and Correctness	Completed
	City Commission	6/27/2019	Meeting	Completed
	City Commission	6/27/2019	CONTINUED	Passed
A	Victoria Méndez	7/16/2019	Approved Form and Correctness	Completed
A	City Commission	7/25/2019	Meeting	Completed
A	City Commission	7/25/2019	ADOPTED WITH MODIFICATION(S)	Passed
B	Mayor’s Office	8/2/2019	Unsigned by the Mayor	Completed
B	City Clerk’s Office	8/2/2019	Signed and Attested by the City Clerk	Completed
B	Victoria Méndez	8/15/2019	Approved Form and Correctness with Modification(s)	Completed
B	City Clerk’s Office	8/16/2019	Rendered	Completed



City of Miami

Master Report

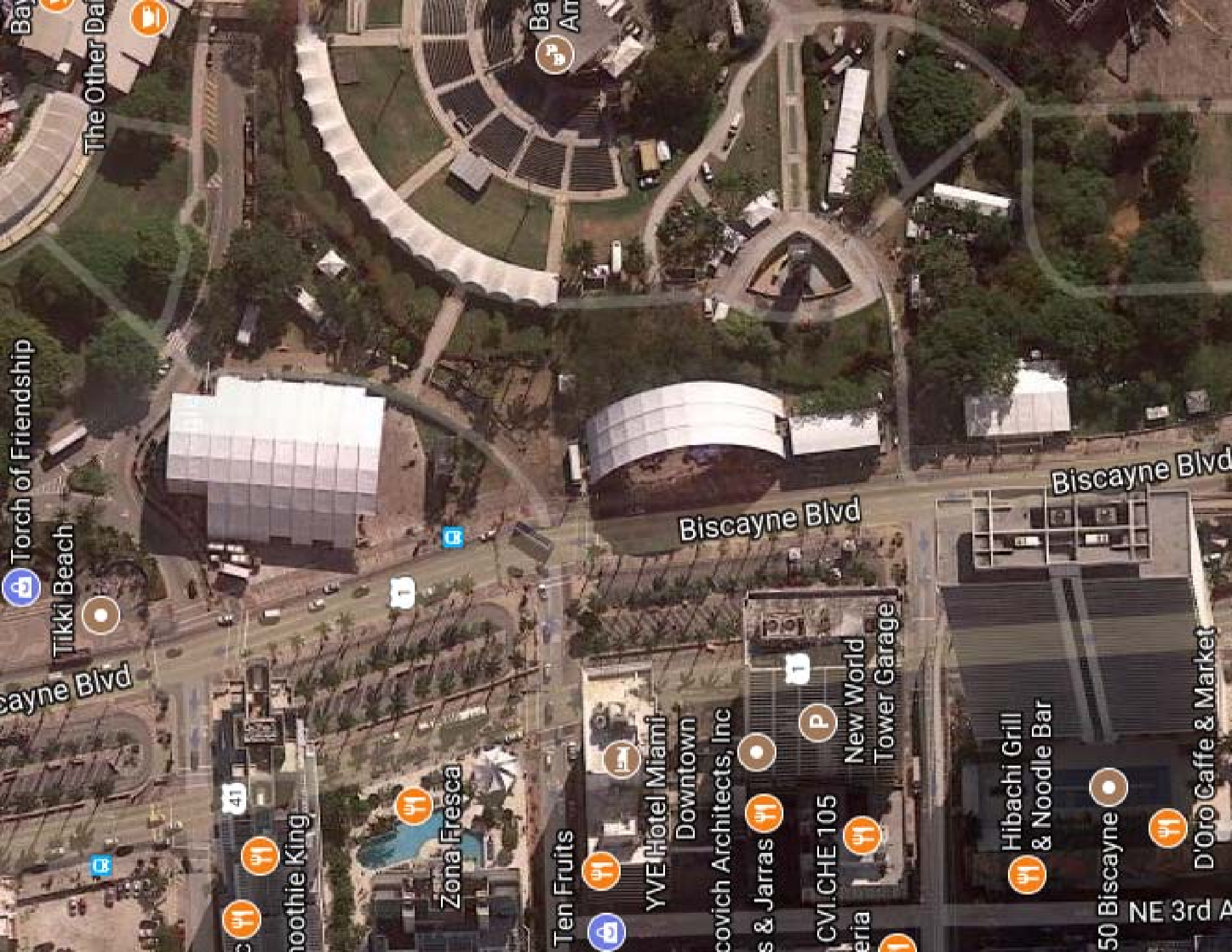
Enactment Number: R-19-0321

City Hall
3500 Pan American Drive
Miami, FL 33133
www.miamigov.com

EXHIBIT 5



EXHIBIT 6



Torch of Friendship

Tikki Beach

Biscayne Blvd

smoothie King

Zona Fresca

Ten Fruits

YVE Hotel Miami

Downtown

covich Architects, Inc

s & Jarras

CVI.CHE 105

eria

New World

Tower Garage

Hibachi Grill
& Noodle Bar

50 Biscayne

NE 3rd A

D'Oro Caffe & Market

Biscayne Blvd

Biscayne Blvd

EXHIBIT 7



Brooks Acoustics Corporation

49 N. Federal Hwy Pompano Beach, FL 33062 754.229.1450

Mr. Itai Benosh
Board Member and Treasurer
50 Biscayne Condominium Association, Inc.
Treasurer, Downtown Neighbors Alliance, Inc.
50 Biscayne Boulevard
Miami, FL 33132

21 May 2018
PJ2018-1252-L01

Subject: Ultra Music Festival Sound Survey Tests

Dear Mr. Benosh:

As requested, Brooks Acoustics Corporation (BAC) has conducted an acoustical engineering sound survey to measure the sound levels that are emitted by the Ultra Music Festival (Ultra) located at Bayfront Park near the 50 Biscayne Condominium and other residential buildings that are part of the Downtown Neighbors Alliance.

Sound monitoring was conducted before, during and after the Ultra events, from the evening of Thursday, March 22, 2018 to the morning of Tuesday March 27, 2018. The Ultra event was open to the public from Friday, March 23 to Sunday, March 25. However, considerable activity occurred in Bayfront Park and the surrounding area for many days before and after, including construction of the stages, sound tests and tear down of the festival equipment afterward.

For this study, continuous sound monitoring at three (3) separate outdoor locations was conducted in the 50 Biscayne residential building. These included the Pool Deck (10th floor), the Unit 2802 balcony, and the Roof (55th floor).

In addition, short term tests at various indoor locations were conducted during the Ultra Festival operating hours, and also when the Festival was not operating for direct comparison. These included the Pool Deck informal party room, Unit 2802 dining room, and several management offices.

A focus of the testing was to measure broadband sound, in particular the low frequency (bass, thumping) sounds that are emitted by the multiple electronic dance music (EDM) disk jockeys (DJs) at the Festival.

During the entire time that the Ultra Music Festival was operating, the rhythmic, thumping bass and drum sounds from the venue at Bayfront Park were plainly audible, distinctly noticeable and highly intrusive above the ambient background.

The sound survey results show that the musical devices in use at the Ultra Music Festival events generated and emitted sound that can and did **“disturb the quiet, comfort or repose of persons in any dwelling, hotel or other type of residence.”**

Importantly, the objective sound measurements obtained during this survey demonstrated that the low frequency rhythmic bass and drum thumping sounds generated by the Ultra events **constitute a substantial intrusion** which penetrates well above the ambient background.

The objective data show that the **disruptive nature** of these **significantly intrusive bass sounds** can disturb the peace, quiet and comfort, and consequently **seriously degrade the quality of life**, and cause **negative health effects** for residents, and minor vibration induced damage to the buildings in the proximity of the Ultra events.

The sound survey tests are summarized herein.

Sound Level Standards

Community Noise Standards

Many communities have determined that excessive noise is detrimental to the quality of life of their citizens. Therefore, they have enacted standards which protect the health, safety and welfare of their community with regard to noise. An example of such a standard is given by the World Health Organization (WHO).¹ The sound level limits in the WHO guidelines have also been adopted by many communities in the United States.

The WHO guidelines state that to protect a majority of people from being seriously annoyed during the daytime, the sound pressure level on balconies, terraces and outdoor living areas should not exceed 55 dB LAeq (55 dBA average level) for a steady continuous noise. At night, sound pressure levels at the outside facades of the living spaces should not exceed 45 dB LAeq (45 dBA average level) and 60 dB LAm_{ax} (60 dBA maximum), so that people may sleep with bedroom windows open.

In addition, standard criteria have been developed for the design and practice of outdoor concert venues.² These criteria state that to minimize the impact on outdoor concert neighbors the occasional sound interference from the concert should not exceed the ambient background sound level by more than 5 dB. If this difference exceeds 15 dB, then the concert facility will be generally audible with widespread complaints.

Hearing Conservation Standards

The US Centers for Disease Control (CDC) through the National Institute for Occupational Safety and Health (NIOSH) has developed standards for limiting noise exposure that can cause hearing damage. The NIOSH recommended exposure limit (REL) for occupational noise exposure is 85 decibels, A-weighted, as an 8-hour time-weighted average [85 dBA as an 8-hr TWA].³

It is well known that hearing damage is a cumulative effect that occurs for exposure to high sound levels over a period of time. The level of the sound exposure is related to the amount of time before damage occurs. The higher the level, the shorter the time before damage. According to NIOSH, the amount of time is cut in half for every 3 dB increase in sound level.

Health Effects Standards

High levels of noise are known to be biological stressors. Numerous studies show that additional negative health effects can be caused by the high noise levels produced by the Ultra events. These negative effects include sleep deprivation, hypertension, cardio-vascular disease, and other adverse outcomes.^{4, 5}

The sound levels which can cause these negative effects are generally less than those which cause hearing damage, but greater than those that cause annoyance. There is sufficient evidence to show that continuous sound levels above 70 dBA can cause hypertension and ischemic heart disease.

Noise Induced Vibration Standards

Criteria were developed by NASA to assess the potential of noise induced damage to housing structures due to rocket takeoffs.⁶ These criteria compare measured noise levels to a set of criteria curves to determine the vibration induced in housing structures ranging from windows to walls to floors. Noise induced vibration can range from annoying rattles to levels which may cause minor damage to buildings.

Intrusiveness and Acceptability Standards

Many recent studies using the science of soundscape analysis have been conducted. These have determined that what people find acceptable in terms of sound depends on the context of that sound to their living situation, and the meaning that it may have to their lives.⁷ If people think that a given sound is appropriate to the context and provides meaning, then it is considered to enhance their well-being and be acceptable. If not then the sound is out of place and it will be considered intrusive.

For example, a hand-held electric drill or saw (~100 dBA) is considered acceptable on a construction site, but not in a quiet restaurant dining room. A normal conversation nearby (~65 dBA) is considered acceptable in a coffee shop, but not in a library. Generally speaking, activities which produce high levels of sound that are out of place to the context which they are in will be considered intrusive, and will likely cause annoyance.

¹ Guidelines for community noise / edited by Birgitta Berglund, Thomas Lindvall & Dietrich H. Schwela. Geneva: World Health Organization. 1999.

² Hot topics in noise. (Interdisciplinary Hot Topics) ASA 141st Meeting, Chicago, June 2001, J. Acoust. Soc. Am. 109 (5, pt. 2), 2424. 2000

³ US Dept. of Health and Human Services (NIOSH) Publication No. 98-126. 1998

⁴ Noise Exposure and Public Health, Willy Passchier-Vermeer and Wim F. Passchier, Environmental Health Perspectives Vol 108, Supplement I, March 2000

⁵ Babisch. Stress hormones in the research on cardiovascular effects of noise. Noise Health 5:1–11. 2003.

⁶ Hubbard & Shepherd. J. Acoust. Soc. Am. 89 (6). 1991 & NASA TM-83288

⁷ Brooks, Schulte-Fortkamp, Voigt & Case. Exploring Our Sonic Environment through Soundscape Research & Theory. Acoustics Today. Winter 2014.

So the tests conducted on between 22 March and 27 March had a focus to determine whether or not generated sounds from the Ultra events were contained sufficiently within Bayfront Park such that they would not ***disturb the quiet, comfort or repose of persons in any dwelling, hotel or other type of residence.***

These tests had a purpose to determine the level of noise intrusion created by the Ultra events. Recent advances in technology have enabled the measurement of the noise intrusion of outdoor entertainment events on communities. This capability is discussed in detail in the Data Analysis section of the report, below.

Further, the tests also were conducted to determine if the Ultra events could cause adverse hearing or health outcomes.

Sound survey test procedure

A sound survey was conducted at locations in the 50 Biscayne Condominium building, directly across Biscayne Boulevard from the Ultra event site between the evening of Thursday, 22 March 2018 and the morning of 27 March 2018. The surrounding area includes residential uses. These surveys were conducted by Bennett Brooks of BAC. Field measurements of sound levels were performed in accordance with the requirements of accepted standard methods of environmental sound measurement.

Two types of sound survey tests were conducted. Continuous **long term sound tests** were conducted using sound level analyzers which were installed at three (3) locations for this survey. The long term tests measured and logged the sound level characteristics and the recorded the sound at those locations for periods of time which ranged from about 3 ½ to 4 ½ days during the Ultra event.

The other type of tests were **short term sound surveys** at mobile locations at and around the 50 Biscayne Condominium. For those short term tests, a handheld sound analyzer was transported to each of four (4) locations and mounted on a tripod. Sound test records at these location were made for time periods which ranged from about 2 to 60 minutes.

The **long term and short term sound survey test positions** were selected at locations in the 50 Biscayne building near the Ultra event venue which fairly represent the baseline and event sound with respect to nearby residences.

All of the test locations were on the east side of the building facing Bayfront Park, the venue for the Ultra events.

The long term survey test positions were located as follows:

- L1. On the balcony of Unit 2802
- L2. On the roof (55th floor)
- L3. On the pool deck near the informal party room

The long term survey test positions bracket the various levels in the building where residents live. The pool deck on the 10th floor represents the residents on the lower levels just below and above that height. The position on the Unit 2802 balcony represents the mid-level residents, and the roof position represents the residents on the upper levels.

The short term survey test positions were located as follows:

1. In the living / dining room of Unit 2802
2. In the Management offices of the building (Blanca's office)
3. In the Management offices of the building (Tish's office)
4. In the informal party room

All test locations directly faced the Ultra event venue. Short term Position 1 (Unit 2802 living / dining room) and Position 4 (informal party room) were directly adjacent to the corresponding long term survey locations, for a direct comparison between the outdoor and indoor noise exposure from the Ultra event.

The microphone height at each test position was 5.3 feet. Photographs of the 50 Biscayne building, showing its relation to the Bayfront Park site of the Ultra events, and of the test site and survey positions are given in Figure 1.

The sound tests were conducted between the evening of Thursday, 22 March 2018 and the morning of 27 March 2018.

The temperature at 4:12 pm, 23 March 2018 was 71 degrees F, with a relative humidity of 37%. The wind was variable at 0 to 3 mph at each outdoor (long term test) microphone location. The sky condition was partly cloudy.

The temperature at 12:55 pm, 24 March 2018 was 72 degrees F, with a relative humidity of 45%. The sky condition was partly cloudy.

Temperatures at the indoor locations generally ranged from 71 to 80 degrees F.

Microphone windscreens were used to minimize the effects of wind on the test. Wind conditions were monitored using an anemometer. The wind was calm or light, and within acceptable speeds at the microphone locations during the test surveys.

The wind speed started to increase on 24 March, so two of the long term test monitors were relocated to avoid the wind.

About 2 pm, 24 March long term test Monitor 1 on the Unit 2802 balcony was moved from the balcony rail to a position closer to the wall. The wind speed at that time was about 4 to 7 mph at the rail, and about 0 to 2 mph closer to the wall.

About 12 pm, 24 March long term test Monitor 3 on the pool deck balcony was moved from the balcony rail on the northeast corner to a position closer to the east wall (Monitor 3A). The wind speed at that time was about 8 to 11 mph at the rail, and about 1 to 4 mph closer to the wall.

Long term test Monitor 2 on the roof remained at its position throughout the survey. The wind speed at 3 pm, 24 March was about 1 to 5 mph at the microphone location.

The **long term test** field acoustic measurement systems were digital (Type 1) integrating logging sound level analyzers (Rion NL-52). These systems had microphones which were mounted on a tripod and wired to the sound analyzer placed in a weather tight, locked box. These systems were used to record sound levels and the sound waveforms at the long term test positions.

The **short term test** field acoustic measurement system was a digital (Type 1) integrating logging sound level analyzer (Norsonic Nor140). The hand-held analyzer system was mounted on a tripod and was transported to each field survey test position in sequence. This system was used to record the sound levels and the sound waveforms at the short term test positions.

The field acoustic measurement systems were calibrated with equipment directly traceable to the U.S. National Institute for Standards and Technology (NIST). The nominal accuracy for these measurement systems is ± 1.5 dB. Calibration certificates for these instruments are available upon request. The acoustic measurement systems were field calibrated before and after the sound test surveys to confirm accuracy and proper data acquisition. A listing of the test instrument components is given in Table 1.

The acoustics measurement **test protocol** for the each instrument system was set to ANSI standard A-weighting (human hearing) and Z-weighting (unweighted) for frequency, with slow and fast time weighting. The short term test periods were about 2 to 60 minutes in duration. The long term test periods were from about 3 ½ to 4 ½ days in duration. The internal clock of each analyzer was synchronized with the NIST atomic clock to within a tolerance of 1 second.

During these tests, the test instruments continuously recorded the sound level every second and computed the energy average level. Also, the instrument stored statistical and spectral acoustic parameters for the test period, updating those values every second.

During the sound test survey, observation logs and notes were written identifying test procedures and also significant sound generating events and sources. Also, during this test survey, weather conditions were documented and include: temperature, relative humidity, wind speed and direction, and sky cover. Acoustical test equipment operating parameters were recorded by the measurement systems.

Data analysis

In this analysis, measured sound levels are given in terms of standard decibels, or “dB”. These sound levels were both unweighted (linear) and also A-weighted. Sound level measurements which apply A-weighting are designated by the symbol “dBA”. A-weighting mimics human hearing and removes much of the low frequency (bass) part of the sound signal. Further, sound temporal (time history), statistical and spectral information were analyzed.

Time history analysis

Detailed sound test results for each baseline ambient sound survey are given in the form of a **Time History Chart**, which shows the change in sound level over time for each test record.

Time history analysis of sound data can be very helpful for understanding the character of the tested acoustical environment. Simply stated, the sound level time history indicates the sound level that is measured at any given moment of time during the test period. In this analysis, the sound time history for the test is represented by a chart showing how the measured sound levels varied with time. A steady sound such as a constant fan will appear to be more of a flat line on the chart, while variable sounds such as passing vehicles will appear as a series of peaks and valleys on the chart.

Statistical analysis

Measured sound survey data are presented in terms of statistically derived sound level parameters, in order to quantify the background sound level at the property.

For a particular test period, sound levels may fluctuate due to the variation of sound source signals which are received at that location. In the case of these sound surveys, sound level fluctuations occurred due to variations in the Ultra event music sources, and also during times when the music was not present, to nearby or distant machinery, road traffic and aircraft.

Also, an analysis was conducted to provide statistically derived acoustic data quantities, in a similar way for each short term test record. These statistical quantities are useful for characterizing environmental sound in terms of its steadiness, or variation with time.

An example of a statistically derived quantity is the L_{01} level, also called the L1 level. This is the sound pressure level that is exceeded 1 percent of the time over the duration of the data sample period. The **L_{01} level is defined as the intrusion sound level.**

Another example of a statistically derived quantity is the L_{90} level, also called the L90 level. This is the sound pressure level that is exceeded 90 percent of the time over the duration of the data sample period. The **L_{90} level is defined as the ambient background sound level.**

Note that the L1 intrusion level represents the noise levels near the peaks, while the L90 background level represents the sound levels near the valleys over the survey period.

Standard design criteria for outdoor entertainment facilities dictate that the noise intrusion on communities be measured by the difference between the occasional noise interference level, which occurs 1 percent of the time (L1), and the background ambient sound level (L90).

For the criteria of **L1 minus L90**, the following results may be expected:

L1 – L90 less than 5 dB: Facility rarely audible with minimal complaints.

L1 – L90 between 5 and 15 dB: Facility sometimes audible with significant complaints.

L1 – L90 greater than **15 dB**: Facility **generally audible** with **widespread complaints**.

These objectively defined criteria may be applied to the measured data to determine the intrusion of the noise generated by the Ultra Event.

Spectral analysis – 1/3 Octave Bands

Included in this report are spectral sound data. These data are the result of a spectral analysis of the measured sound. In this analysis, the measured sound of the test record is divided into bands, known as 1/3 octave bands, which range from low frequency (bass) to high frequency (treble) sounds. The sound levels associated with each of these frequency bands can be shown on a **spectrum chart** ranging from low pitch on the left to high pitch on the right, similar to the arrangement of a piano keyboard.

The Ultra Event music program material was rich in **percussion and bass low frequency content**. Therefore, a spectral analysis is useful in identifying the low frequency content of the sound survey test data.

Based on hearing science, music production practices and loudspeaker design standards, the range of frequencies for bass content can be determined. For the purposes of this study analysis, the bass content of each test record is defined as the sum of the sound energy in the 1/3 octave bands from **40 Hz to 125 Hz** inclusive.

Further, the statistical criteria which determine the degree of noise intrusion (based on L1 – L90), as described above, were applied to both the overall (A-weighted) sound level and to the low frequency (bass) content of the sound from the Ultra Festival.

Sound survey analysis

The sound survey results are given by presenting the test data in the form of summary tables, time history charts and spectral charts, which all include sound frequency and statistical analyses of the data.

Test Summary Tables

A summary of the sound survey test data is given in Table 2. The sound level data are shown for each test position, along with observations made during the test record.

The data for the short term test position is given in Table 2a. This table shows the L1 noise intrusion levels for each test, which are characterized as the LA1, A-weighted intrusion level and the L1-Bass, bass content intrusion level.

During the Ultra event at 11:25 pm on 3/24 the sound levels for the test at Position 1, inside the Unit 2802 living / dining room, were measured. The background sound level was measured at 1:50 pm on 3/23, before the event started that day.

The bass content (L1-Bass) sound level due to the Ultra event was **91 dB**. This music level was significantly higher than the L90 background bass content level, which was 48 dB. These data indicate that the **bass intrusion** at this location was **extremely high at 43 dB**.

This bass content intrusion greatly exceeds the criteria of 15 dB, known to result in widespread complaints. It also represents an over 150 fold increase in sound intensity in the bass frequency range above the background levels. This intrusion is like having a boom box car in your living room for the entire day and evening.

The A-weighted **overall intrusion level** was $64 \text{ dBA} - 32 \text{ dBA} = \mathbf{32 \text{ dB}}$. This intrusion also greatly exceeds the criteria of 15 dB, known to result in widespread complaints.

Similar results are seen for the long term test locations on the Pool Deck, Position 3 (NE corner) and Position 3A (E side). One hour averages were compared for this outdoor location. The Ultra event sound levels were taken on 3/24 at from 11 pm to 12 midnight. The background sound levels were taken after the event had closed on 3/26 during the same hour of the day. The Ultra bass sound level was extremely high at 118 dB. The bass intrusion was 49 dB.

The A-weighted Ultra event sound level on the pool deck was 96 dBA. This is a level known to cause hearing damage. The **overall intrusion level** was $96 \text{ dBA} - 57 \text{ dBA} = \mathbf{39 \text{ dB}}$. This intrusion also greatly exceeds the criteria of 15 dB, known to result in widespread complaints. This intrusion is like having a power saw operating in your living room for the entire day and evening.

Similar results are shown for the long term test locations, in Tables 2b, 2c and 2d.

The magnitude of the Ultra event music **bass intrusion was very significant, from 40 to 49 dB**.

The magnitude of the Ultra event music **A-weighted intrusion level was also very significant, from 31 to 42 dB**.

The test results from these tests **consistently show high levels of noise intrusion** to the nearby residents, which can “disturb the quiet, comfort or repose of persons in any dwelling”.

Time history charts

Time history charts were analyzed. These charts show how the sound levels varied with each moment in time over the noise survey test periods.

Unit 2802 balcony

The sound level time history charts are attached for long term survey tests conducted at Position 1, located on the **Unit 2802 balcony** representing the residents on the mid-level floors. This chart shows the **bass content (40 to 125 Hz)** which was measured, analyzed and recorded hourly. The calculated statistical bass content levels are shown, including the L1-Bass intrusion levels and the L90-Bass ambient background level. The L1-Bass intrusion levels were calculated for each hour. The L90-Bass ambient level was calculated as an average of the measured L90 levels for the hours when music was not playing.

The first chart shows the measured bass content data from 10 pm on Thursday, 3/22 to 2 pm on Saturday, 3/24. The second chart shows the measured bass content data from 2 pm on Saturday, 3/24 to 10 am on Monday, 3/26.

Note that when the music was being played at the Ultra event the measured L1-Bass sound levels are much higher than they are when there is no music. The lower levels represent the sound of road traffic and other activities in the area.

The highest level L1 bass content on the Unit 2802 balcony caused by the Ultra event on Friday 3/23 was for the hour between 11 pm and 12 midnight, at 96 dB. This can be compared with the average L90 bass ambient background level of 64 dB. **This constitutes an intrusion of 32 dB.**

The highest level L1 bass content on the Unit 2802 balcony caused by the Ultra event on Saturday 3/24 was for the hour between 5 pm and 6 pm, at 100 dB. The highest level L1 bass content caused by the Ultra event on Sunday 3/25 was for the hour between 8 and 9 pm, at 104 dB. This can be compared with the average L90 bass ambient background level of 65 dB. Note that the background level is consistent between the days, within 1 dB. **The intrusion of 104 dB compared to 65 dB background constitutes an intrusion of 39 dB on the Unit 2802 balcony.**

Similar results are shown for the A-weighted time history data for Unit 2802.

Roof

The sound level time history chart is attached for the long term survey tests conducted at Position 2, located on the building **roof** and representing the residents on the upper floors. This chart shows the measured **bass content (40 to 125 Hz)**.

The highest level L1 bass content on the roof caused by the Ultra event was on Saturday 3/24 for the hour between 10 pm and 11 pm, at 108 dB. This can be compared with the average L90 bass ambient background level of 68 dB. **The intrusion of 108 dB compared to 65 dB background constitutes an intrusion of 43 dB.**

Similar results are shown for the A-weighted time history data for the roof.

Pool Deck

The sound level time history charts are attached for long term survey tests conducted at Position 3, located on the **pool deck** and representing the residents on the lower floors. This chart shows the measured **bass content (40 to 125 Hz)**.

The highest level L1 bass content on the pool deck caused by the Ultra event on Friday 3/23 was for the hour between 10 and 11 pm, at **115 dB**. This can be compared with the average L90 bass ambient background level of 71 dB. **This constitutes an intrusion of 44 dB.**

The highest level L1 bass content on the pool deck caused by the Ultra event on Saturday 3/24 was for the hours between 10 pm and 12 midnight, at **118 dB**. The highest level L1 bass content caused

by the Ultra event on Sunday 3/25 was for the hour between 10 and 11 pm, also at **118 dB**. This can be compared with the average L90 bass ambient background level of 72 dB. **The intrusion of 118 dB compared to 72 dB background constitutes an intrusion of 46 dB.**

Similar results are shown for the A-weighted time history data for the pool deck.

These time history data confirm the statistical analyses of the test records shown in the summary tables, discussed above. A trend is noted that the closer the test location is to ground level, the higher the measured sound data.

Spectrum charts

Spectral analyses were conducted for selected test records taken during this sound survey, to illustrate the dominance of the bass heavy Ultra event music on the test data.

Spectral analysis results – inside the building

A comparison was made of the measured sound levels, both with and without the Ultra Festival operating, at the test location inside the 50 Biscayne building in the Unit 2802 living room and dining room area.

The sound comparison is shown graphically in spectrum Comparison Chart 1, attached.

Note on the spectrum comparison chart that the solid red line representing the Ultra intrusion sound levels, was significantly higher than the dotted green line representing the background sound levels.

Importantly, the low frequency (bass) sound levels of the Ultra event were the highest levels that were measured.

The bass content L1-Bass Ultra music level was 91 dB. This music level was significantly higher than the L90 background bass content level, which was 48 dB. These data indicate that the **bass intrusion** at this location was **extremely high at 43 dB**.

This bass content intrusion greatly exceeds the criteria of 15 dB, known to result in widespread complaints. It also represents an over 150 fold increase in sound intensity in the bass frequency range above the background levels.

The A-weighted **overall intrusion level** was $64 \text{ dBA} - 32 \text{ dBA} = \mathbf{32 \text{ dB}}$. This intrusion also greatly exceeds the criteria of 15 dB, known to result in widespread complaints.

Furthermore, these high sound levels inside a residence are very likely to cause negative health effects, including at the least sleep deprivation and potentially cardio-vascular events and other stress induced damage. (See References 1, 4 & 5 above)

Spectral analysis results – outside the building

An analysis of sound levels at an outdoor survey location, the Pool Deck, was done both with and without the Ultra Festival operating.

The sound comparison is shown graphically in spectrum Comparison Chart 2, attached.

Again, the solid red line on the chart representing the Ultra intrusion sound levels, was significantly higher than the dotted green line representing the background sound levels.

The measured low frequency (bass) sound levels of the Ultra event were extremely high. It is seen that the intrusions caused by the Ultra Festival outside are as much, or more than the intrusions at the indoor locations.

The bass content L1-Bass Ultra music level was 118 dB. This music level was considerably higher than the L90 background bass content level at that same time of day, which was 69 dB. These data indicate that the **bass intrusion** at this location was **extremely high at 49 dB**.

This bass content intrusion outside also greatly exceeds the criteria of 15 dB, known to result in widespread complaints. It represents almost a 300 fold increase in sound intensity in the bass frequency range above the background levels.

The A-weighted **overall intrusion level** was 96 dBA – 57 dBA = **39 dB**. This intrusion also greatly exceeds the criteria of 15 dB, known to result in widespread complaints.

Negative health effects and vibration damage

Hearing damage

The US Centers for Disease Control (CDC) through the National Institute for Occupational Safety and Health (NIOSH) has developed standards for limiting noise exposure that can cause hearing damage. The NIOSH recommended exposure limit (REL) for occupational noise exposure is 85 decibels, A-weighted, as an 8-hour time-weighted average [85 dBA as an 8-hr TWA].³

It is well known that hearing damage is a cumulative effect that occurs for exposure to high sound levels over a period of time. The level of the sound exposure is related to the amount of time before damage occurs. The higher the level, the shorter the time before damage. According to NIOSH, the amount of time is cut in half for every 3 dB increase in sound level.

Measured time weighted averages for 8 hour periods during which the Ultra music was operating are summarized in Table 3.

Time weighted averages were measured on the Unit 2802 balcony for 8 hour periods during which the Ultra music was operating. The measured 8-hour time-weighted-average (8-hr TWA) on the Unit 2802 balcony for Friday 3/23 was **88.4 dBA**. This exceeds the recommended hearing protection limit

by 3 dB. This means that a person on the balcony will receive the maximum noise dose in a period of 4 hours, after which hearing damage can occur.

The measured 8-hour time-weighted-average (8-hr TWA) on the Unit 2802 balcony for Saturday 3/24 was **91.5 dBA**. This exceeds the recommended hearing protection limit by 6 dB. This means that a person on the balcony will receive the maximum noise dose in a period of 2 hours, after which hearing damage can occur.

The measured 8-hour time-weighted-average (8-hr TWA) on the Unit 2802 balcony for Sunday 3/25 was **93.1 dBA**. This exceeds the recommended hearing protection limit by over 8 dB. This means that a person on the balcony will receive the maximum noise dose in a period of a little over 1 ¼ hour, after which hearing damage can occur.

Similar results were found at the other test locations.

With regard to negative health outcomes, the Ultra event sound levels are consistently higher than the WHO recommended guidelines for adverse health effects. As the TWA data above indicate, the sound levels at all common element and private property outdoor locations in 50 Biscayne building are well above the WHO 70 dBA threshold.

Vibration damage

During the short term sound tests, the noise induced vibration of windows and blinds and other building features such as light fixtures caused rattling to be noticeable.

A comparison with criteria developed by NASA for the potential damage to housing structures due to rocket takeoffs show that the Ultra event can cause levels of noise which exceed the NASA guidelines. This noise induced vibration, can not only be annoying, but can also can cause minor building damage.

The comparison between Ultra event test data measured on the pool deck and the NASA noise induced vibration criteria is shown in Comparison Graph 3, attached. The L1 sound level significantly exceeds the NASA criteria for noise induced floor vibration. A high level of noise energy is needed to move housing floor elements, and the Ultra event noise exceeds those levels.

According to the NASA criteria, these high levels of noise are likely to vibrate nearby buildings, causing minor damage to the fixtures, finishes and possibly the structure. This was confirmed by observations in the building that it was perceptibly vibrating during the Ultra event.

Comparison with sound level standards

Standard **community noise guidelines** state that daytime noise levels should not exceed 55 dBA and that nighttime noise levels should not exceed 45 dBA for resident comfort. Exceeding these levels will likely induce annoyance in the majority of people.

The noise levels from the Ultra events greatly exceed these annoyance guidelines, by as much as 50 dBA at night. This ensures that the nearby population will be **highly annoyed** by the Ultra event.

The standard **design criteria for outdoor entertainment facilities** dictate that the noise intrusion on communities be measured by the difference between the occasional noise interference level, which occurs 1 percent of the time (L1), and the background ambient sound level (L90).

For the criteria of **L1 minus L90**, the following results may be expected:

L1 – L90 less than 5 dB: Facility rarely audible with minimal complaints.

L1 – L90 between 5 and 15 dB: Facility sometimes audible with significant complaints.

L1 – L90 greater than **15 dB**: Facility **generally audible** with **widespread complaints**.

The differences between the Ultra event L1 A-weighted noise levels and the background sound levels are as high as **42 dBA**. Therefore, the Ultra event noise levels **significantly exceeded** the background sound levels, by much more than 15 dB, and would be expected to be deeply intrusive and generate widespread complaints.

The measured bass content in the Ultra event noise (L1) ranging from 96 to 118 dB **significantly exceeded** the background sound levels, by **almost 50 dB**.

The sound level data for the **inside** of a **resident unit** show similar high **noise intrusion** exceedance levels as were measured on the unit balcony.

A similar example of this type of inappropriate, out of context intrusion would be running a power saw and a boom box car simultaneously in the living room or bedroom of one's home continuously.

Based on this objective analysis the event noise would be expected to be deeply intrusive and generate widespread complaints, with a **major negative impact** on the surrounding community.

A comparison of the sound levels emitted by the Ultra events with **standard hearing conservation criteria** show that the Ultra sound levels are dangerous and can damage hearing. Time weighted average (8-hr TWA) levels are in the 93 dBA range on the pool deck and resident balconies. At this level hearing damage can occur after exposure to the noise for about 1 ¼ hours.

These test results show that the sound levels produced by the Ultra event are high enough and persist long enough to cause hearing damage for residents located at the Associations common elements, including the pool deck and on private property at the 50 Biscayne Condominium.

These high measured sound levels consistently exceed the **WHO health criteria** of 70 dBA, which indicates the likelihood that the Ultra noise will produce other negative health effects, related to hypertension and ischemic heart disease, among other adverse outcomes.

With regard to the **NASA noise induced vibration criteria**, the Ultra generated sound levels are consistently higher than the levels which can cause vibration to occur in building floors. These high levels of noise are likely to vibrate nearby buildings, causing minor damage to the fixtures, finishes and possibly the structure.

Sound survey results summary

The sound survey results show that the sounds of musical devices at the Ultra Events **significantly intrude** on the ambient background which otherwise exists at those residences.

Therefore, the Ultra event noise will disturb the peace, quiet and comfort of the neighboring inhabitants in the nearby residential dwellings.

Importantly, the survey data demonstrated that the low frequency rhythmic bass and drum thumping sounds generated by the **Ultra event constitute a substantial intrusion** which penetrates well above the ambient background.

The **disruptive nature** of these **significantly intrusive bass sounds** are likely to be highly annoying and can seriously degrade the quality of life for residents in the proximity of the Ultra Music Festival.

Negative health effects are likely outcomes for nearby residents of the Ultra events, based on an evaluation of Ultra event sound levels, hearing damage criteria and other health criteria.

Finally, physical damage to nearby buildings can be caused by the noise induced vibrations generated by the Ultra noise emissions.

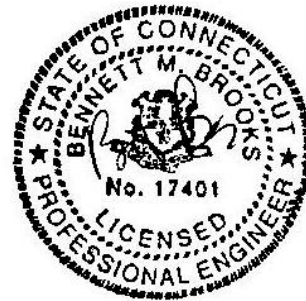
Please contact me if you have any questions about these findings.

Very truly yours,
BROOKS ACOUSTICS CORPORATION



Bennett M. Brooks, PE, FASA, INCE
President

Attachments



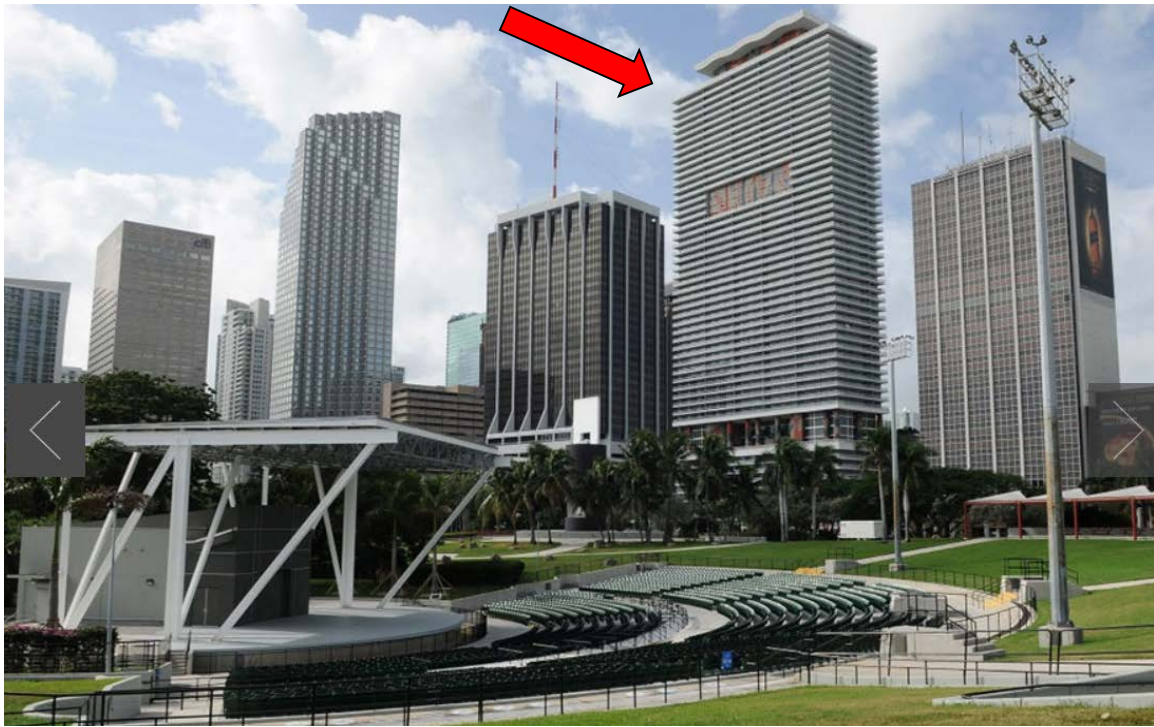


Figure 1 - 1. View of 50 Biscayne Condominium building from Bayfront Park amphitheater, one of the Ultra Music Festival stages.



Figure 1 - 2. View of 50 Biscayne Condominium building from bay, after festival during removal of Ultra equipment, showing outside test locations.



Figure 1, a. Long Term Test Position L1 - Unit 2802 balcony. Several Ultra Music Festival stages visible in Bayfront Park.



Figure 1, b. Long Term Test Position L1 - Unit 2802 balcony. Microphone mounted on tripod, with analyzer in locked box. 1) original position 2) modified position.

2) modified position.



Figure 1, c. Short Term Test Position 1 - Unit 2802 dining room. Analyzer on tripod. Long term monitor visible on balcony.



Figure 1, d. Short Term Test Position 1 - Unit 2802 dining room. Ultra Festival main stage visible below.



Figure 1, e. Long Term Test Position L2 - building roof (55th floor).



Figure 1, f. Long Term Test Position L2 - building roof.



Figure 1, g. Long Term Test Position L2 - building roof. View of Ultra main stage and other stages. Afternoon performance lightly attended.



Figure 1, h. Long Term Test Position L2 - building roof. View of Ultra Festival additional stages. Afternoon performance lightly attended.



Figure 1, i. Long Term Test Position L3 - Pool Deck (10th floor). Original location at northeast corner. View of Ultra Festival additional stages during set up.



Figure 1, j. Long Term Test Position L3A - Pool Deck (10th floor). Modified location in middle of informal party room balcony.



Figure 1, k. Short Term Test Position 4 - Informal party room (10th floor pool deck). Analyzer on tripod. Long term monitor visible on balcony. Ultra main stage visible.



Figure 1, l. Short Term Test Position 4 - Informal party room (10th floor pool deck). Analyzer on tripod.



Figure 1, m. View of Ultra Festival stages from Long Term Position L3 (Pool Deck 10th floor). Evening performance heavily attended.



Figure 1, n. View of Ultra Festival stages from Long Term Position L3 (Pool Deck 10th floor). Evening performance heavily attended.

50 Biscayne
 Ultra Noise Survey
 Miami, FL

Table 1

ACOUSTIC INSTRUMENTATION SYSTEMS

Noise Survey – 22 to 27 March 2018

Data Acquisition Equipment

1. Norsonic Instruments - Digital Precision Sound Level Analyzer – Class 1
 Model NOR140, S/N 1403462*
 - Microphone - Model 1225, S/N 98505*
 - Acoustical Calibrator - Model 1251, S/N 32064*

2. Rion
 - Digital Precision Sound Level Analyzer – Class 1
 Model NL-52, S/N 00375623 [Position L1]*
 - Microphone - Model UC-59, S/N 11098
 - Preamplifier - Model NH-25, S/N 65750

 - Digital Precision Sound Level Analyzer – Class 1
 Model NL-52, S/N 00331834 [Position L2]*
 - Microphone - Model UC-59, S/N 05046
 - Preamplifier - Model NH-25, S/N 21785

 - Digital Precision Sound Level Analyzer – Class 1
 Model NL-52, S/N 00921170 [Position L3]*
 - Microphone - Model UC-59, S/N 04202
 - Preamplifier - Model NH-25, S/N 21212

 - Digital Precision Sound Level Analyzer – Class 1
 Model NL-52, S/N 00843243 [Position L3A]*
 - Microphone - Model UC-59, S/N 06881
 - Preamplifier - Model NH-25, S/N 43257

3. Extech Instruments - Mini Thermo-Anemometer – Model 45158, S/N 13260

Laboratory Playback and Analysis Equipment

1. Norsonic Instruments - NorXfer Analyzer Software, ver. 6.0
2. Lenovo - Computer workstation with USB & SD interfaces
3. Microsoft - Excel 2013 Spreadsheet Program
4. Brooks Acoustics - BAC Proprietary Data Analysis Software

*Note: Certificates of Calibration available upon request.

50 Biscayne
Ultra Noise Survey
Miami Beach, FL

Table 2a**Summary -- Measured Sound Data - 50 Biscayne Condominium****Ultra Event Noise Survey**

22-27 March 2018

Short Term Test Periods

Test Position	Date	Location	LA1	L1-Bass*	Observations
1	3/24/2018	Unit 2802 dining / living room Residence interior	64	91	Music at Ultra Events
1	3/23/2018	Unit 2802 dining / living room Residence interior	LA90=32	LBass90=48	Ambient background sound Music shut down before event
3	3/24/2018 11:00 PM	Pool deck NE corner - outdoors	96	118	Music at Ultra Events
3A	3/26/2018 11:00 PM	Pool deck E side - outdoors	LA90=57	LBass90=69	Ambient background sound Music shut down after event

Notes: L- Bass is sum of 40 to 125 Hz 1/3 Octave Band unweighted levels
Ambient background sound level applies L90 metric

50 Biscayne
Ultra Noise Survey
Miami Beach, FL

Table 2b**Summary -- Measured Sound Data - 50 Biscayne Condominium****Ultra Event Noise Survey**

22-27 March 2018

Long Term Test Periods

Test Position	Date	Location	LA1	L1-Bass*	Observations
L1	3/23/2018	Unit 2802 balcony Residence balcony	96	112	Music at Ultra Events
L1	3/23/2018	Unit 2802 balcony Residence balcony	LA90=64	LBass90=68	Ambient background sound Music shut down after event
L1	3/24-26	Unit 2802 balcony Residence balcony	104	114	Music at Ultra Events
L1	3/24-26	Unit 2802 balcony Residence balcony	LA90=65	LBass90=72	Ambient background sound Music shut down after event

Notes: L- Bass is sum of 40 to 125 Hz 1/3 Octave Band unweighted levels
Ambient background sound level applies L90 metric

50 Biscayne
Ultra Noise Survey
Miami Beach, FL

Table 2c

Summary -- Measured Sound Data - 50 Biscayne Condominium

Ultra Event Noise Survey

22-27 March 2018

Long Term Test Periods

Test Position	Date	Location	LA1	L1-Bass*	Observations
L2	3/22-27	Roof E side	93	108	Music at Ultra Events
L2	3/22-27	Roof E side	LA90=62	LBass90=68	Ambient background sound Music shut down after event

Notes: L- Bass is sum of 40 to 125 Hz 1/3 Octave Band unweighted levels
Ambient background sound level applies L90 metric

50 Biscayne
Ultra Noise Survey
Miami Beach, FL

Table 2d**Summary -- Measured Sound Data - 50 Biscayne Condominium****Ultra Event Noise Survey**

22-27 March 2018

Long Term Test Periods

Test Position	Date	Location	LA1	L1-Bass*	Observations
L3	3/23/2018	Pool deck NE corner	97	115	Music at Ultra Events
L3	3/23/2018	Pool deck NE corner	LA90=63	LBass90=71	Ambient background sound Music shut down after event
L3A	3/24-27	Pool deck E side	104	119	Music at Ultra Events
L3A	3/24-27	Pool deck E side	LA90=62	LBass90=72	Ambient background sound Music shut down after event

Notes: L- Bass is sum of 40 to 125 Hz 1/3 Octave Band unweighted levels
Ambient background sound level applies L90 metric

50 Biscayne
Ultra Noise Survey
Miami Beach, FL

Table 3**Summary -- Measured Sound Data - 50 Biscayne Condominium*****Ultra Event Noise Survey hearing damage assessment***

22-27 March 2018

**8-hour Time Weighted Average sound levels (LAeq 8-hr TWA)
During Ultra Festival operation**

Test Position	Date	Location	LAeq 8-hr TWA	Exposure time before hearing damage *
L1	3/23/2018	Unit 2802 balcony	88	4 hours
L1	3/24/2018	Unit 2802 balcony	91	2 hours
L1	3/25/2018	Unit 2802 balcony	93	1 hour 16 minutes
L2	3/23/2018	Roof	83	12 hours 42 minutes
L2	3/24/2018	Roof	85	8 hours
L2	3/25/2018	Roof	84	10 hours 5 minutes
L3	3/23/2018	Pool deck	89	3 hours 10 minutes
L3A	3/24/2018	Pool deck	93	1 hour 16 minutes
L3A	3/25/2018	Pool deck	93	1 hour 16 minutes

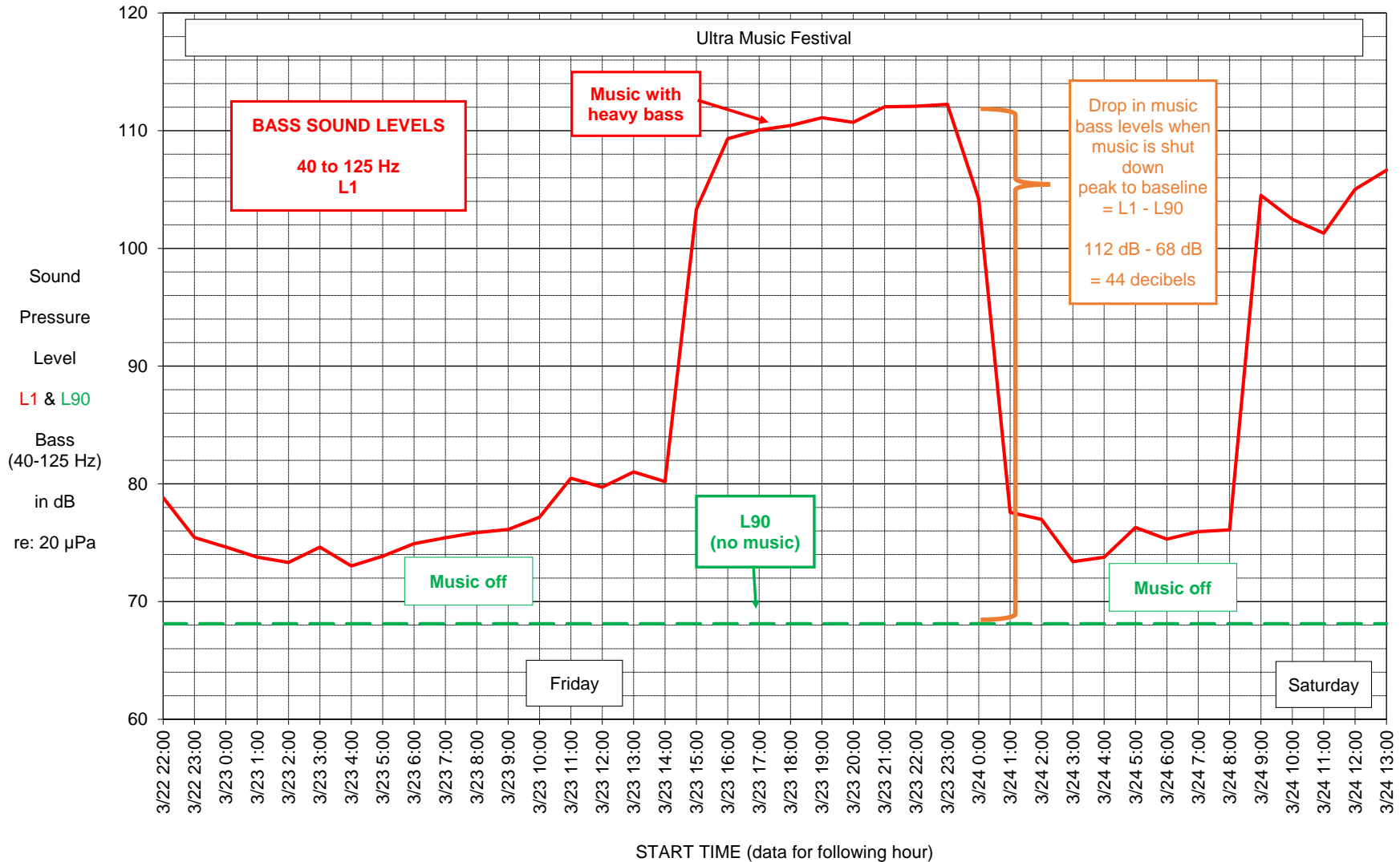
*Note - Per NIOSH criteria

50 Biscayne
Ultra Noise Survey
Miami, FL

Ultra Music Festival Noise Survey

Residence Unit 2802 Balcony
Low Frequency (BASS) Sound Levels

Date: 22 Mar 18
Time: 10:00 PM
Position: L1



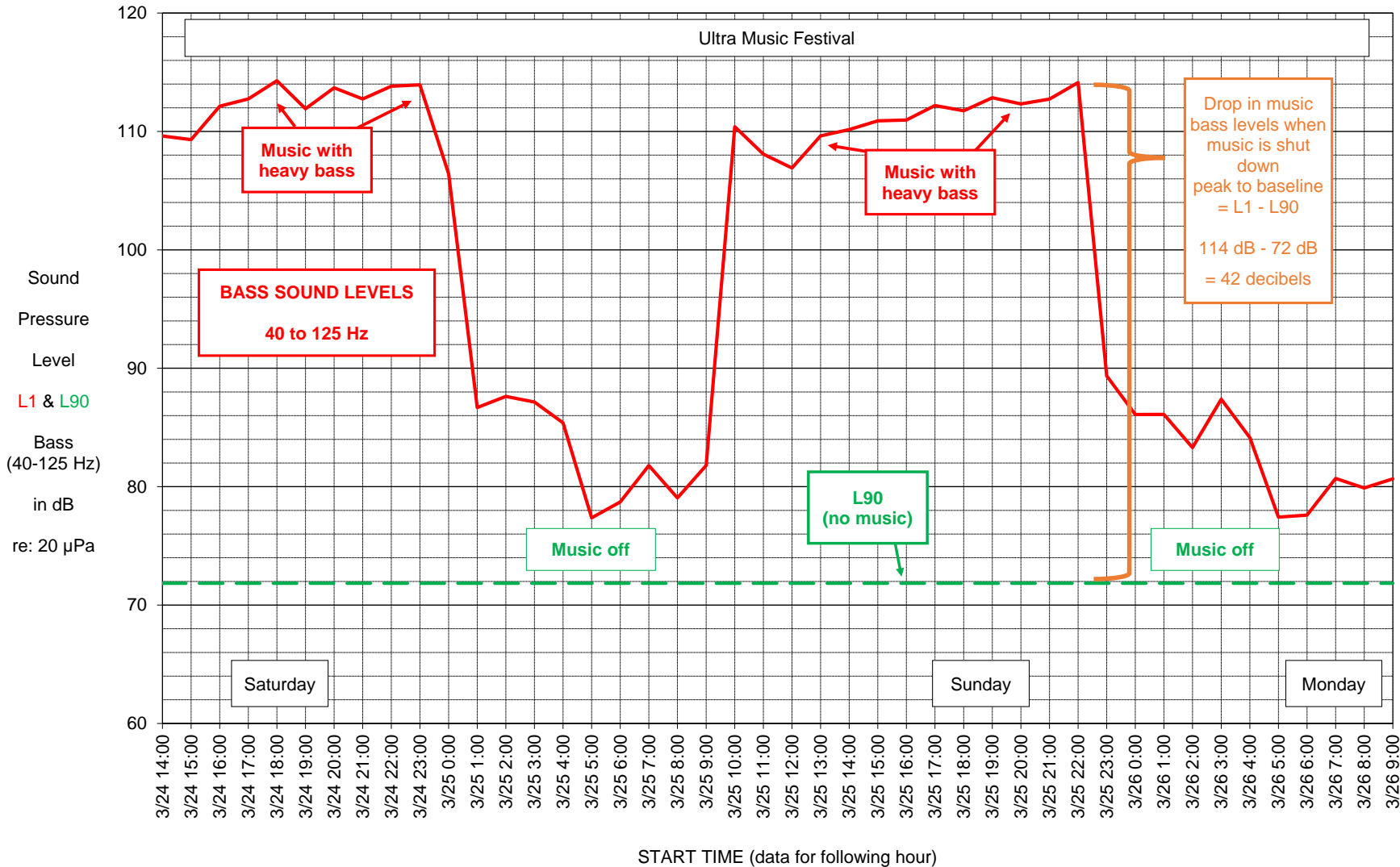
BAC Time History LTH2018-0322 Pos L1 L-bass (40 - 125 Hz).

50 Biscayne
Ultra Noise Survey
Miami, FL

Ultra Music Festival Noise Survey

Residence Unit 2802 Balcony
Low Frequency (BASS) Sound Levels

Date: 24 Mar 18
Time: 2:00 PM
Position: L1



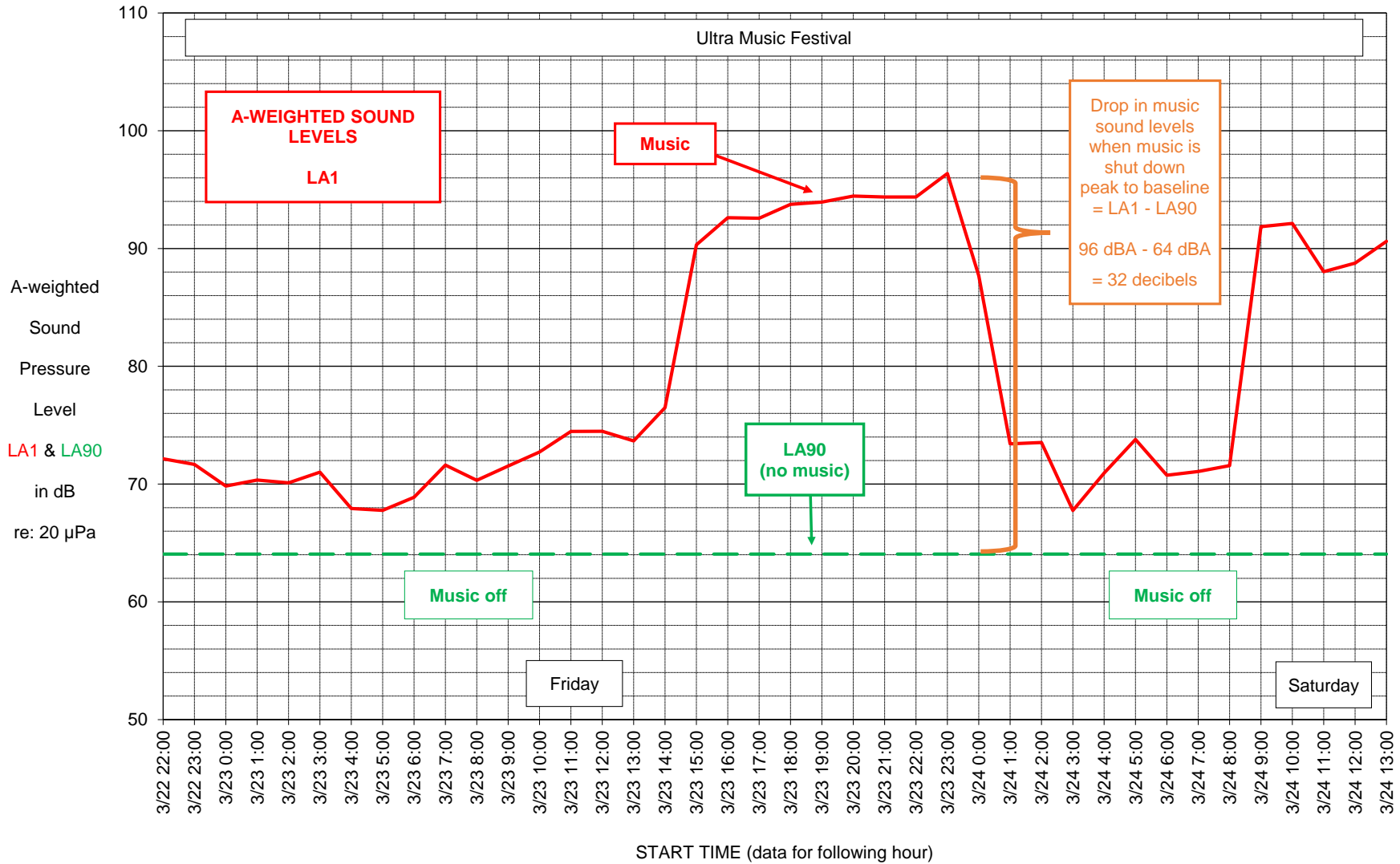
BAC Time History LTH2018-0324 Pos L1 L-bass (40 - 125 Hz).

50 Biscayne
Ultra Noise Survey
Miami, FL

Ultra Music Festival Noise Survey

Residence Unit 2802 Balcony
A-weighted Sound Levels

Date: 22 Mar 18
Time: 10:00 PM
Position: L1



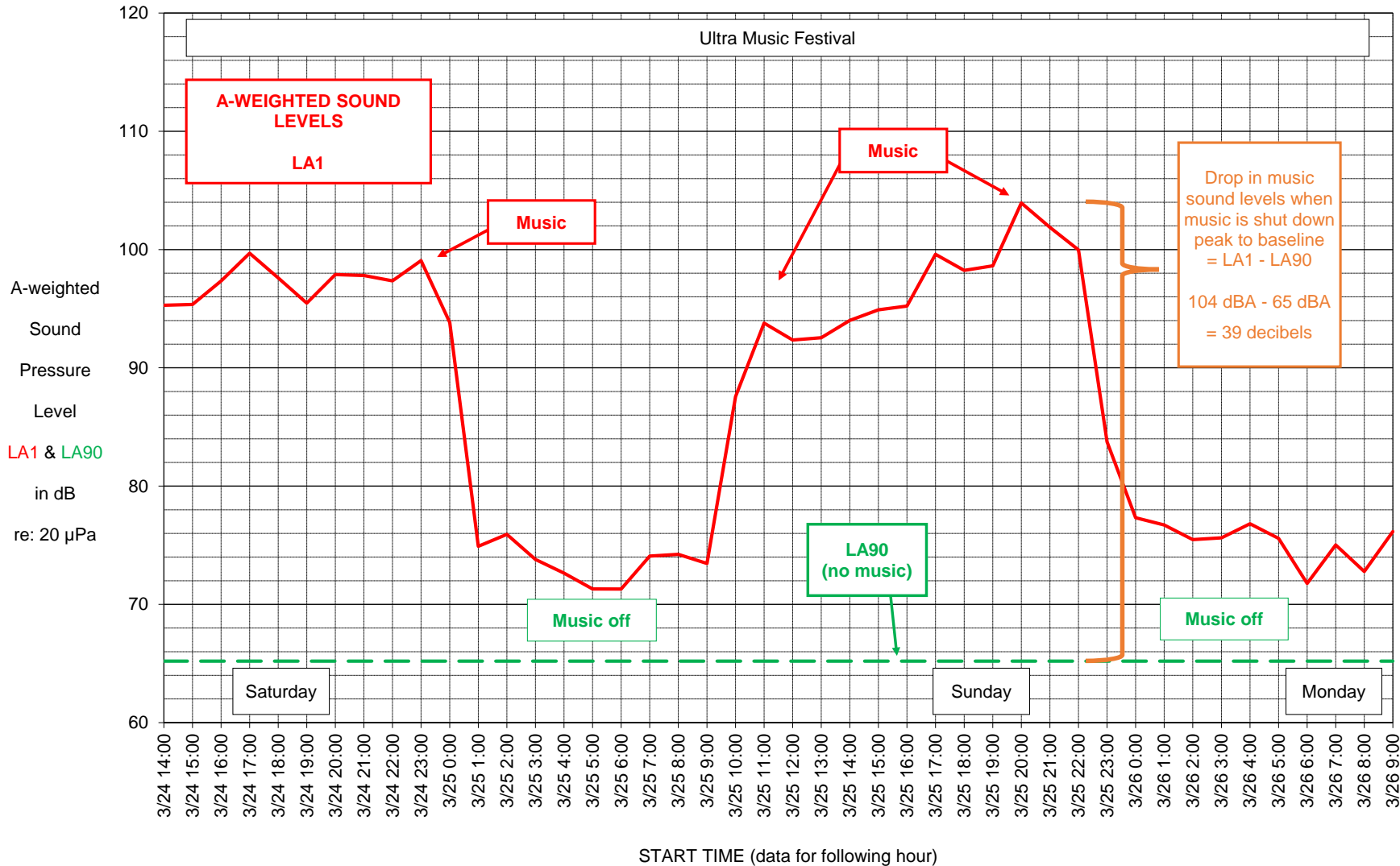
BAC Time History LTH2018-0322 Pos L1 A-weighted levels.

50 Biscayne
Ultra Noise Survey
Miami, FL

Ultra Music Festival Noise Survey

Residence Unit 2802 Balcony
A-weighted Sound Levels

Date: 24 Mar 18
Time: 2:00 PM
Position: L1



BAC Time History LTH2018-0324 Pos L1 A-weighted levels.

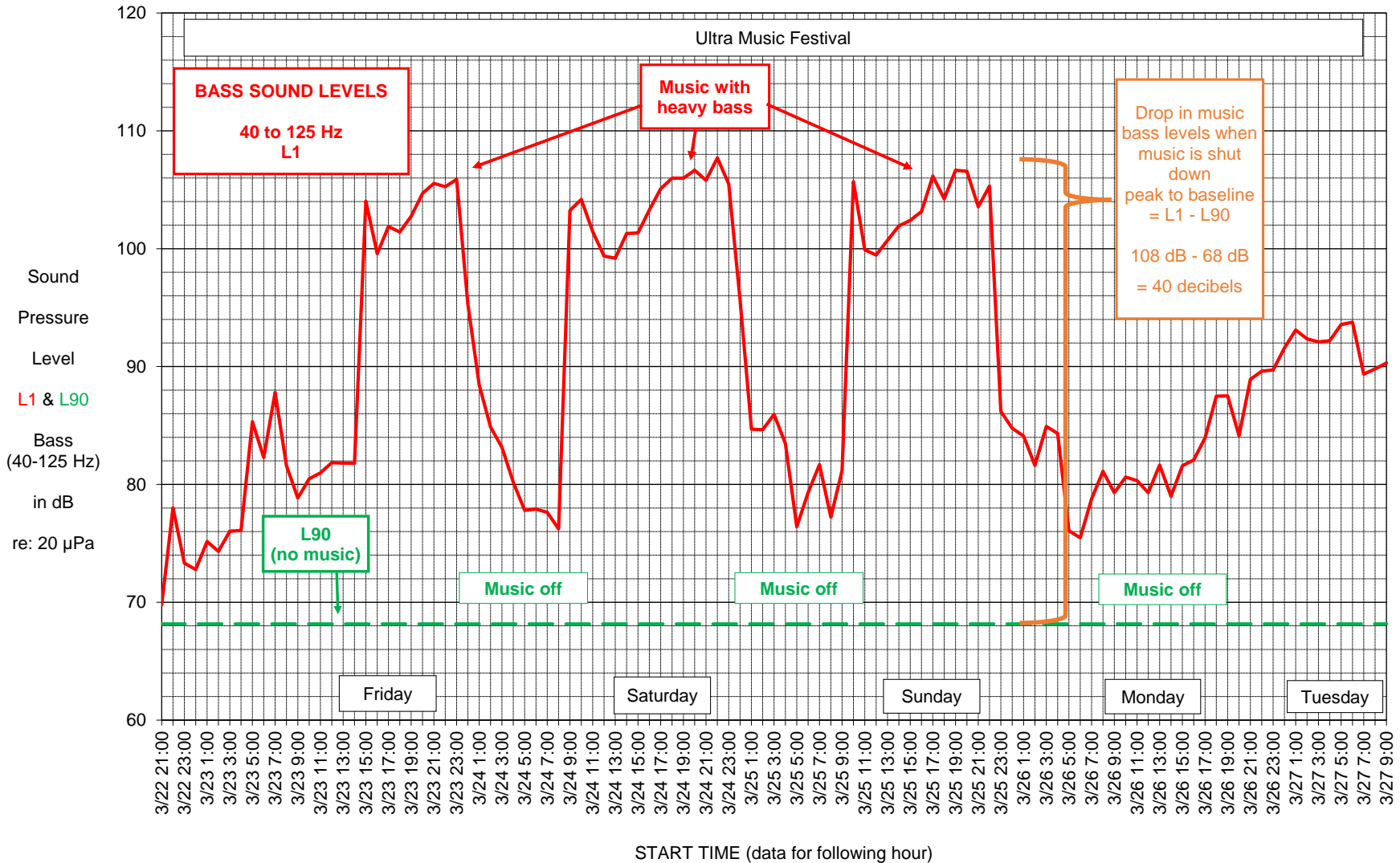
50 Biscayne
Ultra Noise Survey
Miami, FL

Ultra Music Festival Noise Survey

Roof - near center facing Bayfront Park

Low Frequency (BASS) Sound Levels

Date: 22 Mar 18
Time: 9:00 PM
Position: L2



BAC Time History LTH2018-0322 Pos L1 L-bass (40 - 125 Hz).

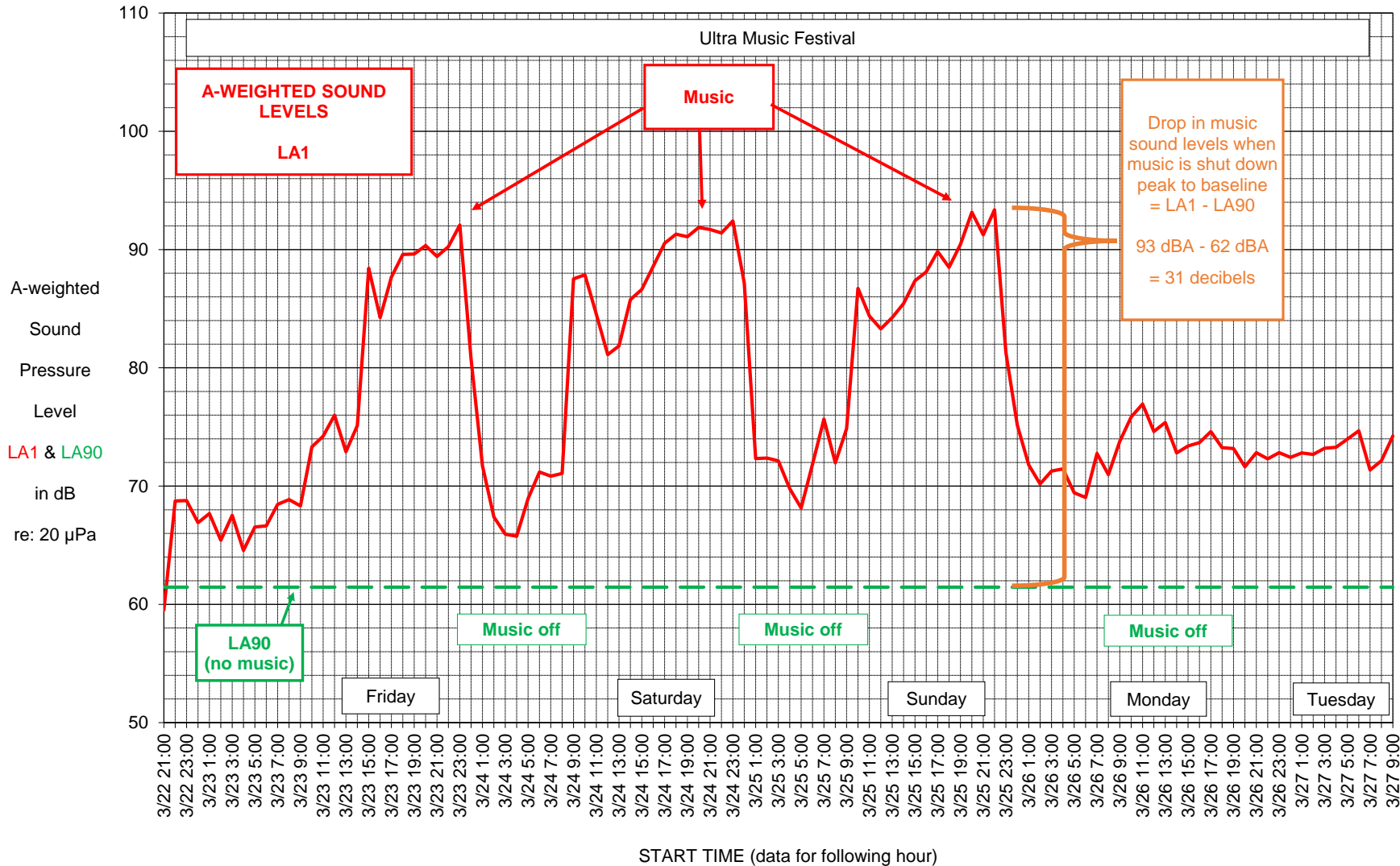
50 Biscayne
Ultra Noise Survey
Miami, FL

Ultra Music Festival Noise Survey

Roof - near center facing Bayfront Park

A-weighted Sound Levels

Date: 22 Mar 18
Time: 9:00 PM
Position: L2



START TIME (data for following hour)

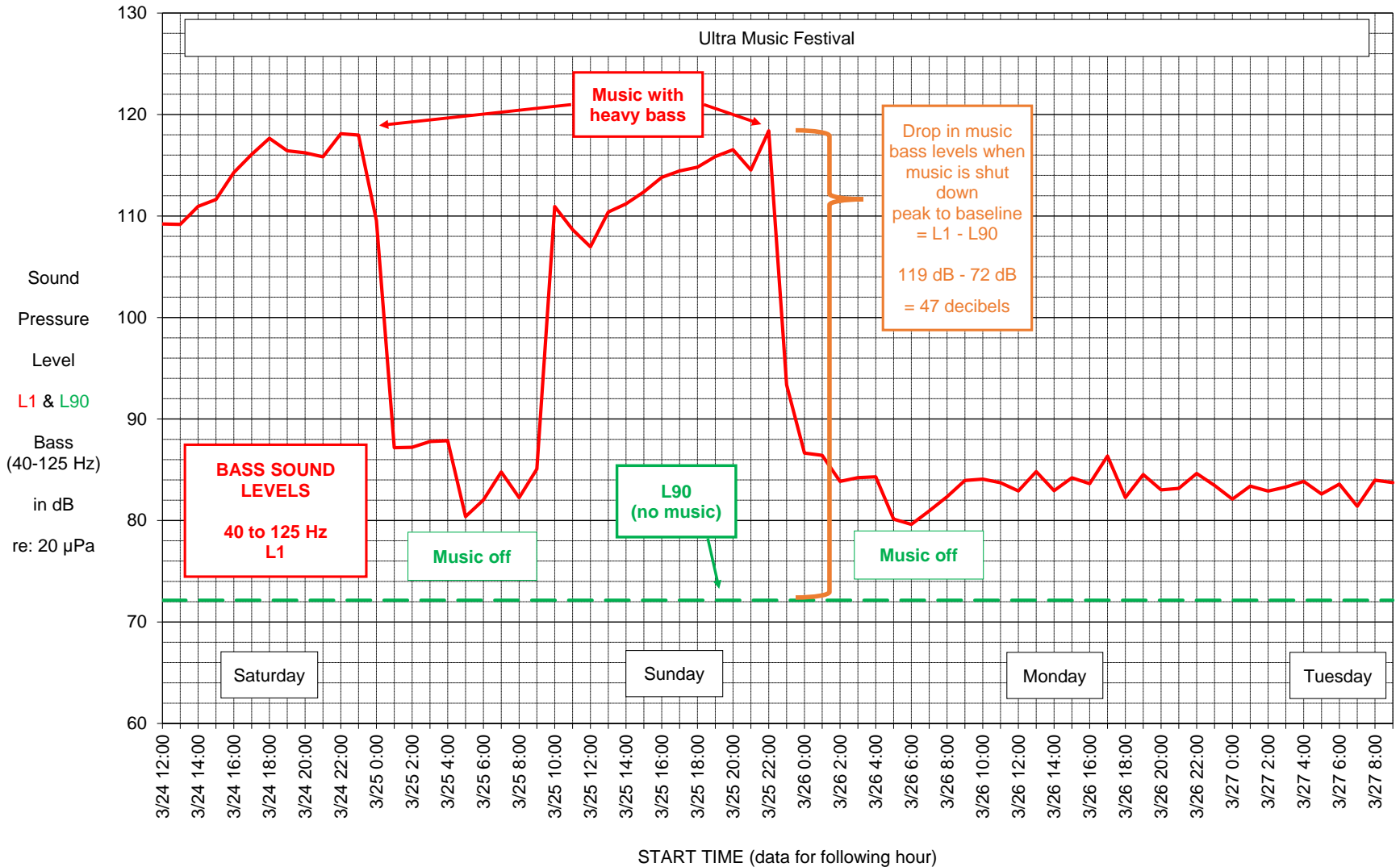
BAC Time History LTH2018-0322 Pos L2 A-weighted.

50 Biscayne
Ultra Noise Survey
Miami, FL

Ultra Music Festival Noise Survey

Pool Deck - E side middle of informal party room (10th floor)
Low Frequency (BASS) Sound Levels

Date: 24 Mar 18
Time: 12:00 PM
Position: L3-A

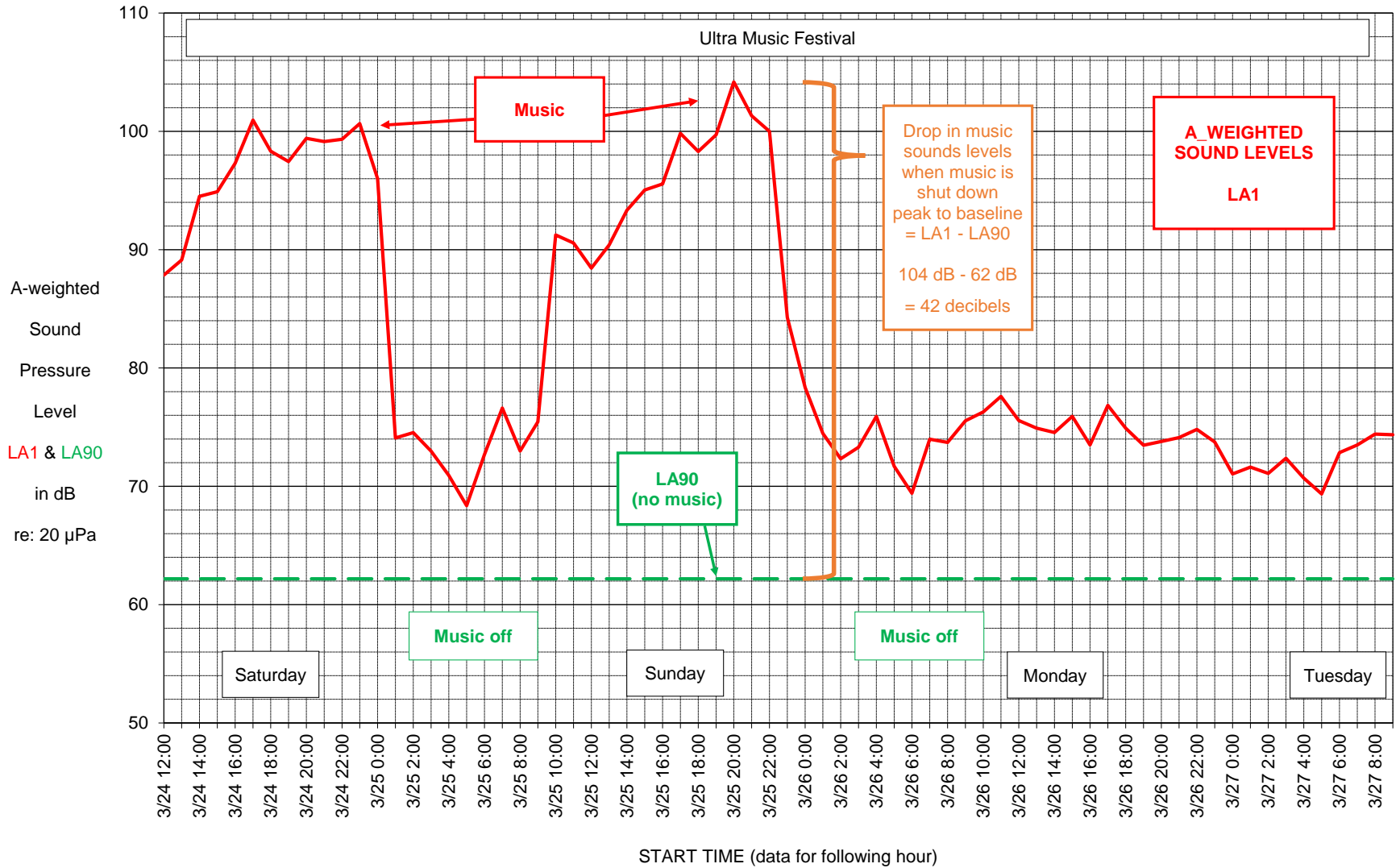


50 Biscayne
Ultra Noise Survey
Miami, FL

Ultra Music Festival Noise Survey

Pool Deck - E side middle of informal party room (10th floor)
A-weighted Sound Levels

Date: 24 Mar 18
Time: 12:00 PM
Position: L3-A



50 Biscayne
Ultra Noise Survey
Miami, FL

Ultra Music Festival Sound Survey - Comparison

Ultra Event compared with background

Unit 2802 - Living / Dining Room

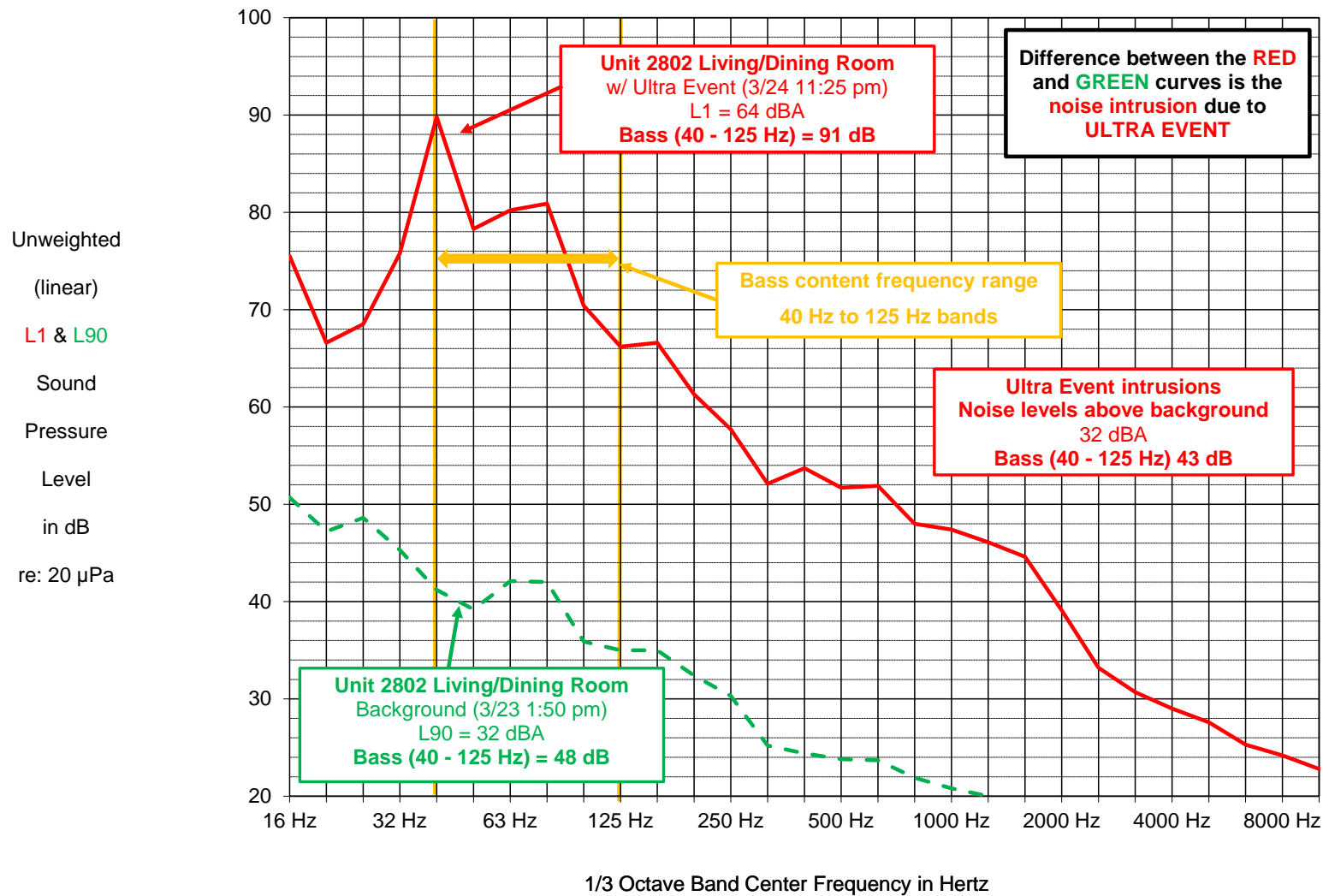
Unit 2802 LA1 = 64 w/ Ultra

Unit 2802 LA90 = 32 Background

Date: 23/24 Mar 2018

Time: various

Position: 1



50 Biscayne
Ultra Noise Survey
Miami, FL

Ultra Music Festival Sound Survey - Comparison

Ultra Event compared with background

Pool Deck - outdoor

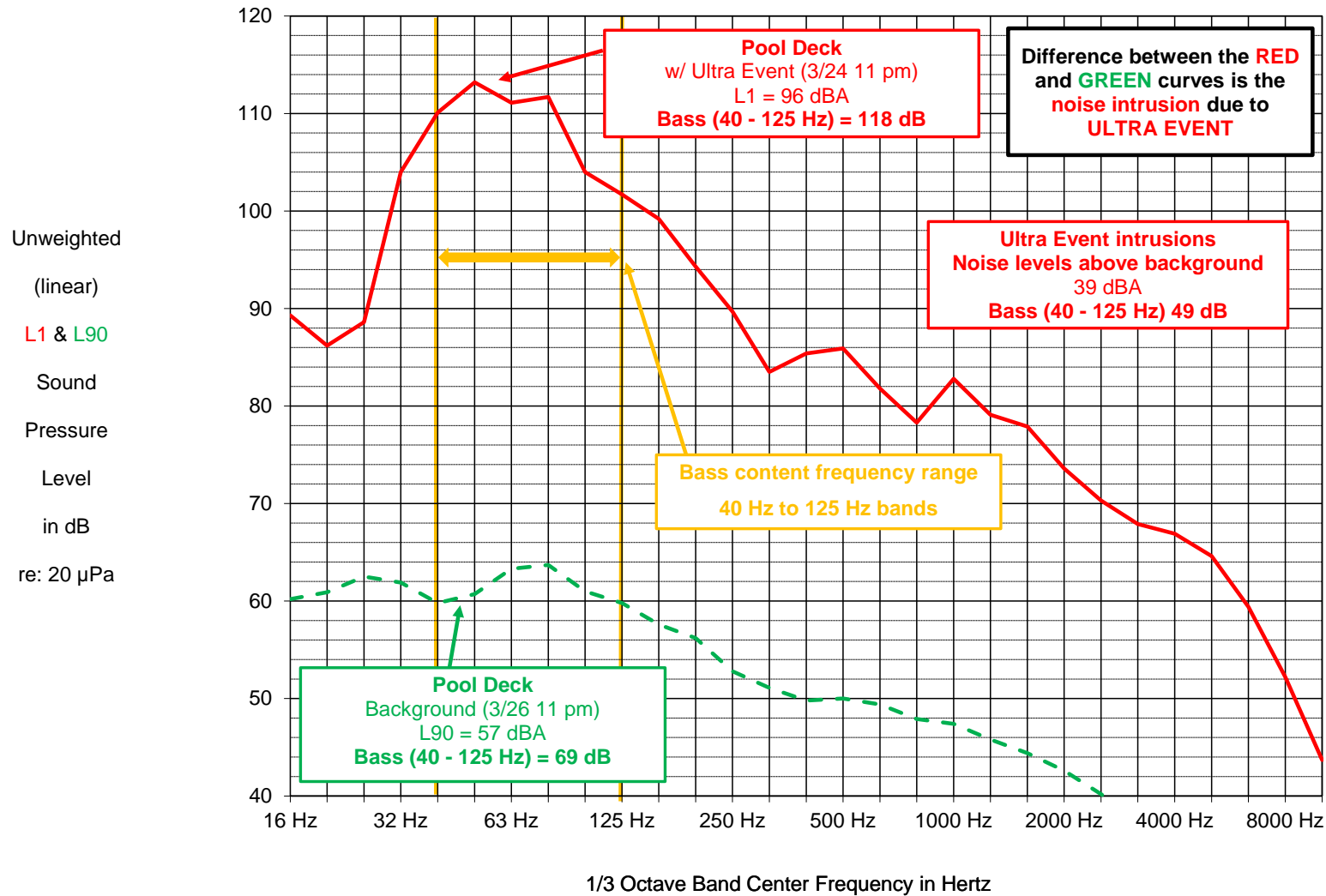
Pool Deck LA1 = 96 w/ Ultra

Pool Deck LA90 = 57 Background

Date: 24/26 Mar 2018

Time: 23:00

Position: 3a



50 Biscayne
Ultra Noise Survey
Miami, FL

Ultra Music Festival Sound Survey - Comparison Ultra Event compared with NASA Noise Induced vibration Criteria

Pool Deck - outdoor
Pool Deck LA1 = 96 dBA w/Ultra

Date: 24 Mar 2018
Time: 23:00
Position: 3A

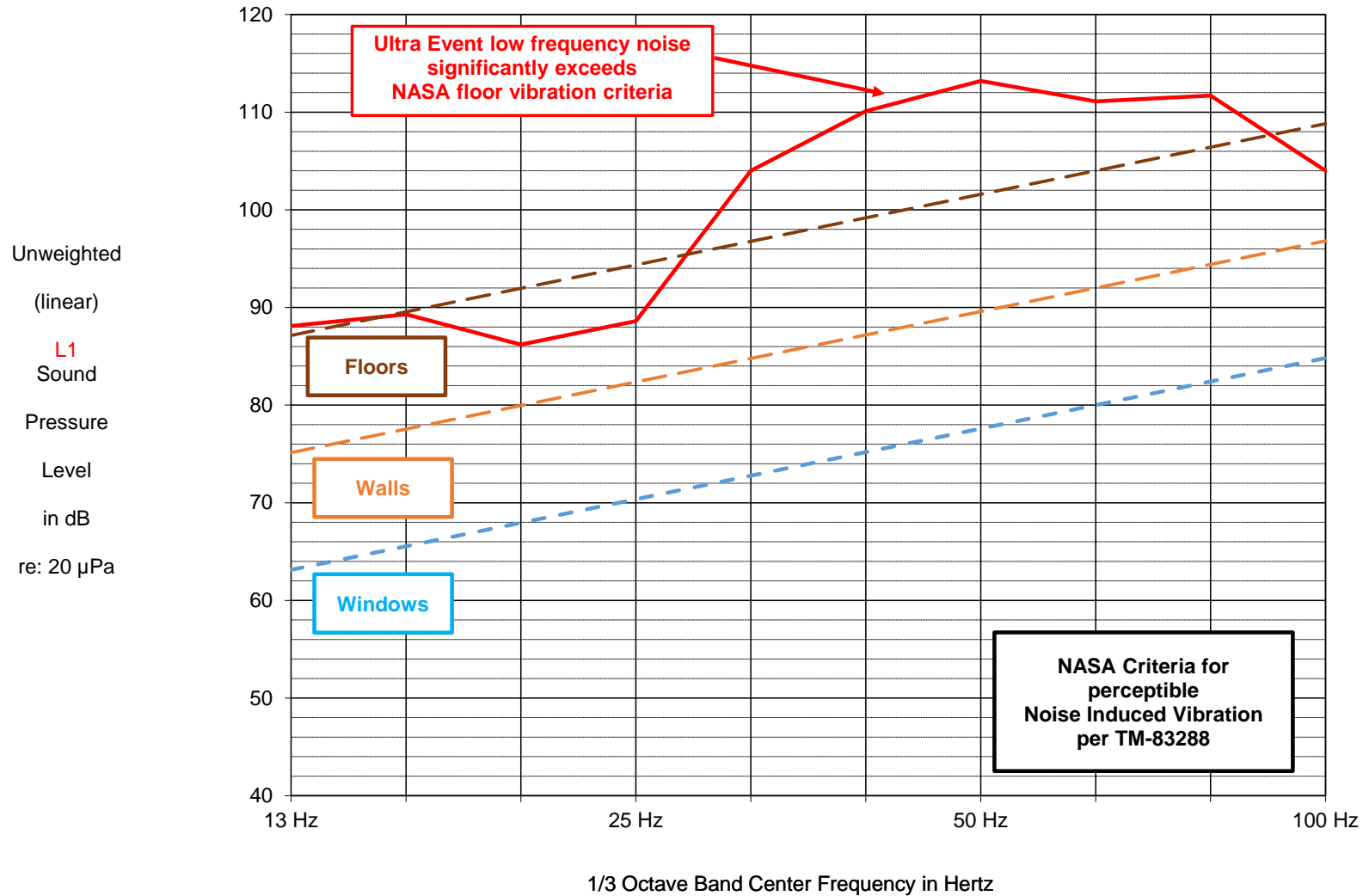


EXHIBIT 8



Care Center 2

Lawrence Grobman, M.D. • Vijay Zaveri, M.D. • Abraham Jaguan, M.D.
Eamon McLaughlin, M.D. • Ariel Grobman, M.D.

July 13, 2019

Hon. Mayor Francis Suarez and
City Commissioners Ken Russell,
Willy Gort, Keon Hardemon,
Joe Carollo, and Manolo Reyes
3500 Pan American Way
Miami, Florida

Subject: Impact on Human Hearing of Noise Levels Identified in Brooks Acoustic Corporation Sound Study of 2018 Ultra Music Festival

Dear Mr. Mayor and Commissioners:

I am a board-certified Otolaryngologist also known as an ENT specialist. I am a Miami native, I trained at the University of Miami School of Medicine for nine years, and now practice at Mercy Hospital. I care for many patients in our community with permanent hearing loss from noise exposure. Noise-induced hearing loss can be devastating and change the course of peoples' lives. I appeared before the City Commission on June 27, 2019, to present my opinion about the effect of the noise that was documented in the Brooks Acoustic Corporation Sound Study of the 2018 Ultra Music Festival on human hearing.

I will be traveling on July 25, 2019, when I understand the Commission will consider the possibility of entering into an agreement for Ultra to return to Bayfront Park. I am attaching a transcript of my comments from the Commission meeting on June 27, which accurately reflect my opinions at the time, and continues to reflect my opinions today. I request that this letter and the attached statement be entered into the meeting record on July 25, and to be considered by the Commission and the Mayor in your deliberations.

Thank you very much.

Respectfully,

Ariel B. Grobman, M.D.

Dr. Ariel Grobman Statement at June 27, 2019 City Commission Meeting

My name is Dr. Ariel Grobman. I am a board-certified Otolaryngologist, Ear Nose and Throat specialist. I am University of Miami trained, and work at Mercy Hospital. I was asked by the 50 Biscayne Condominium Association to review the sound study and shed some light on the effects of the noise exposure from the Ultra Music Festival to the residents in the area.

That study was a very (scientifically) sound study, very well done, and there are a few points I'd like to highlight about the correlation between the noise that is presented (from Ultra) and potential harm to residents.

We (experts in hearing and noise induced hearing-loss) typically use the OSHA standard, and the newer CDC standard, to delineate how long people can be exposed to loud noises, and what level (in decibels), before permanent damage occurs. Throughout the (Ultra) weekend, not only is the noise going up from Friday to Sunday, but there are certain areas in the building where residents can only be present for about an hour before levels exceed those that can cause temporary or permanent hearing loss.

****Of note, this applies to many areas in the building: balconies, the pool deck and the rooftop**

There's a typical high proportion of bass notes in electronic music, and these bass notes will actually sensitize the ear and predispose it to more hearing loss from the remainder of the music. So, having the bass going on all the time (aside from being extremely bothersome) will predispose people in the building to even more hearing loss than would be expected.

From the sound study we saw that the music shut off was at 1 a.m. and was resumed again as early as 8 or 9 a.m. That is certainly not enough time, (as evidenced both by human and animal studies), to allow the inner ear to recover from the damage that happens from noise-induced hearing loss. Noise damage leads to a build-up of "free radicals" . . . you may have heard that term before— they accumulate in the ear (and cause irreversible cell damage), and 8 hours between noise exposures is just not enough time to allow someone's body to heal from noise induced free radicals.

Finally, the people that are most predisposed to noise-induced hearing loss are people with pre-existing hearing loss, the elderly, and people with diabetes. This group of people are the most sensitive to damage from hearing loss to start with, and therefore have the most to lose. They are taking a hit from all this music exposure (which can certainly lead to irreversible cell damage and permanent inner ear dysfunction).

****Healthy people have a higher regenerative capability, but these at-risk populations are very vulnerable to the type of noise exposure delivered by Ultra's overpowering speakers.**

Thank you for your time.

EXHIBIT 9

From: Suarez-Rivas, Rafael

Sent: Tuesday, October 23, 2018 6:26 PM

To: Gomez, Marta; Jackson, Robin Jones; Velez, Pablo; Diaz, Daniel D.; Min, Barnaby; Alban, Xavier E.

Cc: Mendez, Victoria

Subject: RE: yacht show meeting tomorrow at 1:30pm at City Hall/ 18-2737/general

My opinion :

- If it is a the rental of a special purpose facility or special purpose venue for the prescribed rates there is no procurement issue. That is why such facilities were erected. For example, dockage rates at City Marinas under Chapter 50, Article V; Stadium and Convention Center Rates under Chapter 53, Articles I, II and IV; Bayfront Park prescribed charges under Chapter 38, Article III, etc.; however anytime a user/ proposer is offering less or more than the charges prescribed by law there is arguably a procurement issue and if the divergence results in 25K or more (up or down) there needs to be a 4/5th bid waiver.
- If it is something that was not built or intended for that use , and there is no Code provision or regulation prescribing charges for such use ,then you need a 4/5th bid waiver(unless preempted by the Charter then no waiver- you must procure). For example major roads in the City where not built for the Indianapolis 500, city parks were not designed for use by for profit companies as lockers or storage areas, city golf course were not built for shopping malls or hotels.
- The NMMA Boat Show Revocable License Agreement(“RLA”) was done following the requirements of the old JOB/ AQJ III Opinions on RLAs which you have. The gist of those opinions is there is no defined term, no exclusivity, no tenancy , and no assignability is conferred , and it can be revoked at any time. There is no defined interest conferred that needs to be waived by 4/5th or otherwise. If you wish to establish a more conservative legal policy that for the reasons the CA stated today multi-year or multi-event / multi-year agreements involve a “bundle of rights “ being conferred or when there is exclusivity or a fixed term or assignability or cancellation only for cause or a non-FMV payment then require a 4/5th even if it is an RLA. Simply be uniform.
- *Attributes of an RLA are(from a random sample RLA):*

Occupancy and Use Period.

This License is effective as of _____, 2013 (“Effective Date”) and shall expire on the earlier of- shall continue on a month to month basis with no fixed term or duration and may be cancelled as follows:

- (a) Cancellation or termination by the express written License of the parties hereto;*
or
- (b) Cancellation or termination by request of either of the parties hereto, subject to the thirty (30) day notice provision of Paragraph 16, “Cancellation By Request of Either of The Parties Without Cause”; or*
- (c) Cancellation pursuant to Paragraph 17, “Termination by City Manager for Cause”, subject to the ten(10) day notice provision of Paragraph 17 ; or*

(d) Completion of the park landscaping and installation .

3. Interest Conferred By This License.

Licensee agrees that this License has been issued by the City to authorize Licensee to use the Property solely for the limited purpose of the Permitted Use and no other purpose. The parties hereby agree that the provisions of this License do not constitute a lease and the rights of Licensee hereunder are not those of a tenant but are a mere personal privilege to do certain acts of a temporary character and to otherwise use the Property subject to the terms of this License. No leasehold or tenancy interest in the Property is conferred upon Licensee under the provisions hereof and Licensee does not and shall not claim at any time any leasehold estate or ownership interest in the Property by virtue of this License or its use of the Property hereunder. Additionally, Licensee does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Property by virtue of any expenditure of funds by the Licensee for improvements, construction, repairs, partitions, or alterations to the Property even if such improvements, construction, repairs, partitions, or alterations are authorized by the City.

Rafael Suarez-Rivas, Chief Assistant City Attorney



Board Certified, City, County and
Local Government Law
City of Miami Office of the City Attorney
Telephone: 305-416-1818
Facsimile: 305-416-1801
rsuarez-rivas@miamigov.com



Daylet Diaz, Administrative Assistant I, (305) 416-1842

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Please consider the environment before printing this e-mail.



From: Gomez, Marta
Sent: Tuesday, October 23, 2018 5:59 PM
To: Suarez-Rivas, Rafael <RSuarez-Rivas@miamigov.com>; Jackson, Robin Jones <RJonesJackson@miamigov.com>; Velez, Pablo <pvelez@miamigov.com>; Diaz, Daniel D. <DDDiaz@miamigov.com>; Min, Barnaby <bmin@miamigov.com>; Alban, Xavier E. <XEAlban@miamigov.com>
Cc: Mendez, Victoria <VMendez@miamigov.com>
Subject: yacht show meeting tomorrow at 1:30pm at City Hall
Importance: High

Reminder- The City Attorney needs a response to the issues raised today. She would like an answer by tomorrow morning.

Marta Gomez
Assistant to Victoria Méndez, City Attorney
and Legislative Division Supervisor



City of Miami
Office of the City Attorney
Telephone: 305-416-1844
Facsimile: 305-416-1801
martagomez@miamigov.com

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Sunday 6:56 PM

We agree that Bayfront can approve a use agreement for one year for ultra?

Yes one time one year no problem

Does it have to be 4/5 since it's a venue? I guess to be consistent yes? Let's look this ya Monday. What have I said on the record

Tuesday

Maybe no since it's a venue

4/5 th yes because the big \$\$\$ and because the time

4/5 th yes because the big \$\$\$ and because the time is not just 4?day event but load in and load out yes Like their normal use agreement but more money insurance
Dubbin could challenge not meritoriously in my cute they would indemnity us

In my view I meant

So 4/5

Yes to be consistent and for the reasons I suggested
The 4/5 th is by bpmt remember per code all boards serve in lieu of cc fir bid waivers (unless multi year)

Tue, Jun 4, 10:06 AM

Victoria Mendez

Number changed to Primary

[Redacted]

Also min and Greco. I need to talk ultra



Kevin Jones

[Redacted]

Number changed to Primary

I'm here

Victoria Mendez

John - I will be a little late to mediation- have to attend a meeting. Francisco and Joe R will be there at start.

Ok. Thanks for letting me know

Tue, May 28, 5:43 PM

Spoke to Rick. He was concerned about the 4/5 rule. We will circle back tomorrow.

Rafael and I told him our position

Thanks John

Wed, May 29, 9:54 AM

Do you still want to meet on ultra?