

TOOTH & NAIL

WINERY

Detailed Booking Agreement

This Venue Booking Agreement (the "Agreement") is made as of the latter of the signature dates below ("Effective Date") by and between Tolliver Ranch Brands, LLC (the "Operator") and MoFunk Band (the "Band") for the services of Band as set forth below.

The parties agree to the following terms and conditions:

1. Description of Show.

Show: MoFunk Band at Tooth & Nail Winery
Venue: Tooth & Nail Winery, 3090 Anderson Road Paso Robles, CA 93446
Date of Show: Friday, April 8, 2022
Hours of Show: 5:00PM – 8:00PM
Load In: At Band's discretion
Load Out: 9:00PM
Sound Check: Optional
Type of Show: Musical performance with content mutually agreed upon by the parties
Show will last of a minimum of 150 minutes or 2.5hrs with downbeat at 5:00PM and final song ending at 8:00PM
Breaks: One (1) thirty (30) minute intermission *or* two (2) fifteen (15) minute intermissions
Sound Services Provided By: Band
Lights Provided By: Band
Phone Number: 805-440-4559 **Email Address:** mb@nanometer.com

2. **Payment.** Compensation for the Show will be four hundred fifty dollars [\$450] (the "Fee"), delivered by check to Band following the conclusion of the Show and Operator's receipt of Band's completed IRS Form W-9. Band understands and agrees that there will be no federal or state taxes withheld from the Fee paid under the terms of this Agreement. Band agrees to make all of its required federal, state and local tax payments, as well as social security, unemployment, disability, and worker's compensation payments required by law or any payments required by any guild or union with respect to Band and any artists or musician or personnel furnished by Band. The parties intend that Band be an "independent contractor" and not an agent, joint venture or employee of Operator. Band is not entitled to participate in any benefits that Operator provides for its employees, including but not limited to workers' compensation, unemployment benefits or medical insurance or similar benefits that Operator provides for its employees. Band agrees not to file unemployment or workers' compensation claims against Operator. Band agrees to indemnify and hold Operator harmless for any claims, costs, losses, fees, penalties, interest, or damages arising out of Operator not withholding taxes from Band's Fee or covering Band under any benefit plan offered to Operator's employees. Any persons employed by Band in connection with the performance of the Show shall be deemed Band's employees and Band shall be fully responsible for them.

3. **Cancellation.** If Band is unable to perform the Show due to sickness of Band, accident involving Band, death of a member of Band's immediate family, if the Show is prevented, rendered impossible, infeasible or unsafe, by regulation of any public authority, or any Force Majeure Event (as defined below), Band will take reasonable measures to provide a suitable alternate band or replacement date approved by Operator's Events Manager before booking. ~~Cancellation cannot occur within two (2) weeks of the Show date without providing a replacement band.~~

Band's timely appearance and performance of all aspects of this Agreement are an integral part of the Show. In the event that Band fails to appear and perform, if applicable, or to otherwise fulfill contracted obligations due hereunder due to no fault of Operator and not as a result of a Force Majeure Event, Operator shall be relieved of any responsibility under this Agreement, and Band shall promptly return to Operator any amounts paid to Band by Operator (if any), ~~as well as all reasonable, documented and actual out of pocket expenses incurred by Operator as a result of such cancellation.~~ Operator reserves the right to pursue any other remedies allowed by law.

Operator shall have the right, upon forty-eight (48) hours prior written notice, to cancel this Agreement if Band has committed a crime of moral turpitude or other act which Operator reasonably believes would negatively affect any Operator's public image or contributed to, caused, or is closely connected in some manner to substantial civil disobedience or civil disorder by others and, in Operator's reasonable judgment, is likely to cause similar civil disobedience or disorder in connection with the Show.

If Operator terminates this Agreement due to no fault of Band less than fifteen (15) days prior to the Show, Operator shall pay half of Fee to Band. If Operator terminates this Agreement due to no fault of Band within seven (7) days of the show, Operator must pay the full Fee.

4. **Force Majeure.** In the event that either party is unable to perform its obligations under this Agreement as a result of an act of God, labor problems, any act or regulation of any public authority or bureau, civil tumult, epidemic, pandemic, war conditions, adverse weather conditions (if the Show is to be held outdoors), or any other emergencies or similar events beyond the reasonable control of the parties (a "Force Majeure Event"), neither party shall be liable to the other for direct or consequential damages resulting from lack of performance. Operator will use all reasonable efforts to notify the Band of the circumstances causing delay or inability to hold the Show at the Venue upon the occurrence of such a Force Majeure Event.
5. **Food and Drink.** Operator will provide Band with one (1) meal per band member and two (2) glasses of wine per Band member. Operator will extend a twenty percent (20%) discount to any additional wine or food purchases by the Band.
6. **Parking.** Operator will secure sufficient parking for Band's cargo van within a reasonably convenient distance to Venue for a minimum period of two (2) hours prior to the Show and lasting until one (1) hour after the Show, or as otherwise mutually agreed upon by the parties.
7. **Security, Health, and Safety.** Operator warrants that Venue will be of sufficient size to safely conduct Show, that Venue is of stable construction and sufficiently protected from weather, and that there will be adequate security and/or emergency medical responders available if foreseeably necessary. Operator maintains sufficient personal injury/property insurance for Venue sufficient to cover foreseeable claims.
8. ~~**Music Rights.** Band shall procure and pay for any additional music, performing rights, and licenses which are required in connection with music utilized by Band during the Show.~~

9. **Content.** Band agrees to perform a first-class Show, the quality and nature of which is comparable to other artists and entertainers engaged by Operator. Band agrees to abide by Operator's normal policy regarding risque or questionable material. Band agrees to refrain from making statements or references that are not of entertainment value and are purely the view, opinion or personal interest of Band. Band agrees to give first-class performances without any disparaging remarks toward any of the Operator or its affiliates.
10. **Conduct and Operator Policies.** Band agrees to comply with, and to cause Band's representatives and any guests to comply with, any and all federal, state and local laws, ordinances, rules and regulations, including any and all rules and regulations established by Operator in relation to the operation and function of the Venue. Band acknowledges and agrees to abide by Operator's policies, including, but not limited to, the following: (i) no weapons are permitted in the Venue or on Operator's premises; (ii) all individuals who are permitted entrance to the Venue and served alcoholic beverages must be at least twenty-one (21) years or older and subject to age verification; (iii) the Venue has a zero-tolerance policy against illegal drug use and possession and any individual found to be in possession of or using any illegal substance, including prescription drugs, shall be trespassed from Operator's premises and any illegal substance will be confiscated and provided to the appropriate government authorities. If Band, any of Band's representatives or guests are found to be engaged in illegal activity during the Show or while at the Venue, all those in violation will be escorted off of the premises immediately, or as circumstances warrant, may be detained until law enforcement officers can respond. If such parties are found to be in violation of any of the Operator's policies or engaged in illegal activity, Operator may withhold the Fee.
11. **Indemnification.** Band shall be liable for any physical damages, legal actions, and/or loss of reputation or business opportunities that Operator may incur as a consequence of the actions of Band. Band hereby indemnifies and holds harmless Operator and its lenders, managers and owners, and each of its and their respective shareholders, members, affiliates, officers, directors, employees, contractors, representatives, agents, successors and assigns, as the case may be (collectively, "Representatives"), from any and all liabilities, losses, damages, actions, suits, claims or other costs (including reasonable attorney's fees) arising out of or in connection with any damage to any property or any injury caused to any person (including death) caused by Band's performance of the Show, including acts or omissions on the part of Band, its employees, officers, directors, independent contractors or other agents. Band shall notify Operator of any damage or injury of which it has knowledge in, to or near the Venue, regardless of the cause of such damage or injury. Operator indemnifies and holds Band harmless for any claims of property damage or bodily injury caused by Show attendees, except to the extent caused by the negligence or willful misconduct of Band.
- ~~12. **LIMITATION OF LIABILITY.** OPERATOR SHALL NOT BE LIABLE TO BAND FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES WHATSOEVER ARISING OUT OF OR ASSOCIATED WITH THIS AGREEMENT REGARDLESS OF HOW THESE ARE CHARACTERIZED. IN NO EVENT SHALL OPERATOR'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AMOUNTS PAID BY OPERATOR TO BAND UNDER THIS AGREEMENT.~~
13. **Confidentiality and Non-Disclosure.** Band acknowledges and agrees that the confidential and proprietary information of Operator or its affiliates which is shared with or made available to Band in connection with the Show shall remain the sole and exclusive property of Operator, and the sale, unauthorized use, or disclosure of any such confidential or proprietary information of Operator or its affiliates by Band is strictly prohibited.

14. Venue's Name and Logo Usage. Any use of the name and logos of the Venue or of Operator or its affiliates is strictly prohibited without express written permission from Winery.

15. Advertising; Taping; Name and Likeness Rights. ~~Band shall not, nor shall Band allow others to, tape, record, broadcast, reproduce, or transmit the Show in or from the Venue, in any manner or by any means, without the prior written approval of Operator. Such prohibition shall not include any recordings or photos taken by the general public in attendance at the Show. Operator has the right, in its sole and absolute discretion, to take or have taken photographs and to create or have created, video and audio recordings of Band at the Show: (i) for the purposes set forth below; and (ii) in connection with routine security procedures or as necessary for compliance with applicable laws.~~

~~Operator may use Band's name and voice, likeness, materials, pictures, photographs, image, or other identification of Band, including those photographs and videos taken in accordance with the subsection immediately above (collectively, "Band's Approved Likeness") in connection with advertising and publicizing of the Show or the Venue. Band grants to Operator and its affiliates a non-exclusive, worldwide, perpetual, irrevocable, royalty free, fully paid up license to display, reproduce and use (or permit others to so display, reproduce or use) Band's Approved Likeness in connection with the advertising and publicizing of the Show and in promoting or marketing the Operator's Venue, brands, products or services. Any use by Operator or its affiliates of Band's Approved Likeness shall not be as an endorsement or indication of use or support of any product or service.~~

16. Governing Law. This Agreement shall be construed in accordance with, and governed in all respects by, the laws of the State of California, without regard to conflicts of law principles. Any action brought hereunder shall be brought in the Superior Court of San Luis Obispo County. Except for claims of equitable relief, if a dispute arises between the parties hereto, a meeting or teleconference shall be held promptly between such parties to attempt in good faith to negotiate a resolution of the dispute. The parties agree to participate in good faith discussion for a period of ten (10) business days. If the parties are not successful in resolving the dispute through good faith discussions, then the parties agree to submit to resolution by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Rules"). Any hearing under the Rules shall take place in San Luis Obispo, California in accordance with Rule 11 of the Rules. The hearing shall be before one arbitrator in accordance with Rule 17 of the Rules. The provisions of Section 1283.05 of the California Code of Civil Procedure are incorporated into and made a part of this Agreement. Any award rendered by the arbitrator pursuant to this Agreement and the Rules shall be enforceable in the Superior Court of the County of San Luis Obispo, in and for the State of California as the court having exclusive jurisdiction over such arbitration. Such arbitration shall be binding and final. In any dispute over this Agreement, the prevailing party shall have the right to collect from the other party its reasonable costs and necessary disbursements and attorneys' fees incurred in enforcing this Agreement.

IN AGREEING TO ARBITRATION, THE PARTIES ACKNOWLEDGE THAT IN THE EVENT OF A DISPUTE ARISING FROM THIS AGREEMENT, EACH PARTY IS GIVING UP THE RIGHT TO HAVE THE DISPUTE DECIDED IN A COURT OF LAW BEFORE A JUDGE OR JURY AND INSTEAD ARE ACCEPTING THE USE OF ARBITRATION FOR RESOLUTION.

17. Severability. If any portion of Agreement is in conflict with any applicable law, such portion will become inoperative, but all other portions of Agreement will remain in force.

18. Entire Agreement. This Agreement constitutes the entire agreement between Band and Operator, and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of the Agreement.

19. **Authority.** The party signing this Agreement on behalf of Band warrants he or she is fully authorized and entitled to enter into this Agreement.

20. **General Provisions.** To the extent that this Agreement conflicts with or is inconsistent with any provision contained in any proposal(s), invoice(s), correspondence or other document provided by one party to the other, the provisions of this Agreement shall prevail, except to the extent an exception is expressly set forth as such in the proposal, invoice, correspondence or other document. This Agreement may not be amended except by an instrument in writing, executed by the parties. Notwithstanding anything to the contrary contained in this Agreement, all provisions of this Agreement which by their nature should survive completion, expiration or termination shall survive the same, including, without limitation, provisions relating to confidentiality and indemnity.

In witness of their understanding of an agreement to the terms and conditions herein contained, the parties affix their signatures below as of the dates set forth below:

Operator:
Tolliver Ranch Brands, LLC
(dba Tooth & Nail Winery)

Band

By: ____Bill Haley____

By: _____

____*Bill Haley*____

Title: __Catering Sales & Event Manager__

Title: _____

Date: _____January 29, 2022_____

Date: _____