

3.3 Effect of Non-Use. Except as expressly set forth herein, Sponsor acknowledges and agrees that it is not entitled to any credit, deduction, rebate or refund of any kind for any right or Benefit that is not fully used by Sponsor.

4. Trademarks.

4.1 Sponsor's Marks. During the Term, Sponsor grants to DC the limited, non-exclusive right to use the trademarks, trade names, service marks, and logos owned by it (the "Sponsor Marks") in identifying it as the Presenting Sponsor of the Concert in any activities, promotions, or advertising reasonably incidental thereto.

4.2 DC Marks/Concert Marks. During the Term, DC grants Sponsor the limited, non-exclusive right to use the trademarks, trade names, service marks, and logos for (a) the Concert (the "Concert Marks") and (b) the Facility (the "DC Marks," and together with the Sponsor Marks and the Concert Marks, the "Marks") in connection with the promotion of the Concert and Sponsor's role as Presenting Sponsor in accordance with the terms and conditions of this Agreement.

4.3 Website Linkage. Each party (for purposes of this paragraph, the "Website Owner") hereby grants the other party (for purposes of this paragraph, the "Linked Website Owner") the nonexclusive, nontransferable, nonassignable right during the Term to copy, transmit, distribute and display the Owner Icon (defined below), trade name, service marks and trademarks, website name, copyrighted works and related textual and graphic material provided by the Website Owner (collectively, the "Website Material") solely on the Linked Website Owner's website (the "Linked Site") and solely for the purposes authorized herein, provided that the Linked Site does not state or imply that the Website Owner sponsors, authorizes or is the source or origin of the Linked Site, and does not disparage the Website Owner, its services, products, members or affiliates. The Website Owner shall furnish to the Linked Website Owner as soon as reasonably possible after execution of this Agreement one color digital representation of a graphical icon representing the Website Owner (the "Owner Icon") in a graphics format reasonably requested by the Linked Website Owner (or in "GIF or JPEG" format, if the Linked Website Owner has not designated a format). The appearance and all use of the Owner Icon shall be subject to the reasonable approval of Website Owner. During the Term, the Linked Website Owner shall display the Owner Icon in HTML pages accessible through the World Wide Web on the home page of the Linked Site as a hyperlink to take visitors from the Linked Site to the Website Owner's website using the distinct URL supplied by the Website Owner exclusively for linking.

4.4 Limited Right Only. Neither party has an interest in or right to the use of the other party's Marks or Website Material except for the limited right of usage which each grants the other in this Agreement and each such grant is expressly limited to the Concert and any activities, promotions or advertising reasonably incidental thereto. It is mutually understood that improper use of the Marks or the Website Material by the other party may cause immediate and irreparable harm and shall entitle the non-defaulting party to seek injunctive relief without the necessity of posting a bond or other security.

5. Advertising Approvals. Any advertising or other material prepared by one party that contains the other party's Marks must be provided to the other party for its review in advance of publication. All such materials must receive the written approval of the other party prior to any publication of it, such approval not to be unreasonably withheld or delayed. Each party agrees that any material submitted to it for approval as provided herein may be deemed by the other to have been approved if the same is not disapproved in writing with ten (10) days after such party's receipt. Each party acknowledges that any use previously approved by it or deemed approved by the other shall be deemed approved and accepted for any and all future use unless the other party is informed otherwise in writing.

6. Provision of Artwork; Signage Matters.

6.1 Provision of Artwork. In connection with the advertising benefits listed Exhibit A, Sponsor must provide camera-ready artwork by the date or dates specified by DC. Such artwork is subject to (a) DC's editing, which is subject to Sponsor's approval, which approval may not be unreasonably withheld, and (b) DC's approval, which approval shall not be unreasonably withheld unless another standard is designated, and DC is not responsible for any errors or misprints therein. Sponsor shall have no right to approve or disapprove any matter or item unrelated to Sponsor included in the Concert related material in which Sponsor's name or Sponsor Marks appear.

6.2 Signage. Any and all signage at the Facility bearing Sponsor's name or Sponsor's Marks shall be created by DC at DC's expense and in conformance with DC's then-current specifications for such signage. DC shall own all such signage. All signage will be installed, maintained in good repair and removed by DC at its expense.

7. Default; Remedies.

7.1 Event of Default. The following events shall constitute an event of default ("Event of Default") under this Agreement regardless of whether any such event shall be voluntary or involuntary or shall result from the operation of applicable laws, rules or regulations or shall be pursuant to or in compliance with any judgment, decree or order of any court of competent jurisdiction:

(a) Either party shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief under any bankruptcy, insolvency or similar law, or shall make a general assignment for the benefit of creditors, or shall have an involuntary case or other proceeding instituted against it seeking similar relief; or

(b) Sponsor does not timely pay in full the Sponsorship Fee; or

(c) Either party shall otherwise fail to perform or observe any other material covenant, material representation, or material condition set forth herein and

such failure shall continue unremedied for a period of ten (10) days after the receipt of written notice thereof from the nondefaulting party.

7.2 Actions after Occurrence. Upon the occurrence of an Event of Default, and at any time thereafter so long as the same shall be continuing, the nondefaulting party may declare, at its option, this Agreement to be in default and (a) may immediately terminate this Agreement without any liability whatsoever other than liabilities accrued to such date; (b) may seek enforcement by appropriate court action of the terms hereof and recover actual damages (which shall not include punitive, speculative or consequential damages, such as loss of business opportunities or profit); (c) may exercise any other right or remedy available to it under law or in equity; or (d) may seek any permitted combination of such remedies. Notwithstanding the foregoing, an Event of Default specified in subparagraph 7.1(b) shall result in the immediate termination of this Agreement without any action being taken by either party. No remedy is intended to be exclusive, but each shall be cumulative and the exercise of any such remedy shall not preclude the simultaneous or later exercise of any other remedy.

8. Governing Law; Dispute Resolution. This Agreement will be governed by and construed in accordance with California law. The parties agree that the procedures as set forth herein will be the exclusive means for resolving any dispute related to this Agreement. Any dispute arising under this Agreement will be first referred for resolution to each party's respective management designee. To the extent that such designees cannot resolve the dispute within five (5) business days of referral to them, the parties agree to submit the dispute to arbitration and further agree the arbitration process will be the exclusive means for resolving disputes that the parties cannot resolve as provided above. Any arbitration hereunder will be conducted under the Dispute Resolution Rules of JAMS as modified herein. Arbitration proceedings will take place in Riverside County, California, before a single arbitrator who shall be a lawyer. All arbitration proceedings will be confidential. Neither party will disclose any information about the evidence produced by the other party in the arbitration proceedings, except in the course of judicial, regulatory, or arbitration proceedings, or as may be demanded by government authority or as may be required under the Public Records Act. Before making any disclosure permitted by the preceding sentence, a party will give the other party reasonable advance written notice of the intended disclosure and an opportunity to prevent disclosure. In connection with any arbitration provision hereunder, each party will have the right to take the deposition of one individual and any expert witness retained by the other party. Additional discovery may be had only where the arbitrator so orders, upon a showing of substantial need. Only evidence that is directly relevant to the issues may be obtained in discovery. Each party bears the burden of persuasion of any claim or counterclaim raised by that party.

The arbitration provisions of this Agreement will not prevent any party from obtaining injunctive or other equitable relief from a court of competent jurisdiction to enforce the obligations for which such party may obtain provisional relief pending a decision on the merits by the arbitrator. Each of the parties hereby consents to the jurisdiction of California courts for such purpose. The arbitrator will have authority to award any remedy or relief that a court of the State of California could grant in conformity to applicable law, except that the arbitrator will have no authority to award attorneys' fees or punitive, speculative, consequential or special damages. A written

statement containing a summary of the issues in controversy, a description of the award, and an explanation of the reasons for the award will accompany any arbitration award. The arbitrator's award will be final and any court may enter judgment upon such award.

9. Events of Interruption.

9.1 Force Majeure. Notwithstanding anything to the contrary contained herein, no delay or failure of DC to perform any of its obligations under this Agreement shall be considered a breach of this Agreement if such delay or failure results from any cause beyond the control of DC, including, without limitation, any act of God, fire, flood, strike, lockout or other labor dispute, natural catastrophe, weather or other climatic conditions, public emergency, insurrection, riot, war, act or threat of terrorism, transportation shortage, delay of a common carrier, or actions of governmental authorities (individually, a "Force Majeure Event").

9.2 Acknowledgment. Without limiting the generality of the foregoing, Sponsor acknowledges that (a) the Concert is an outdoor event and agrees that it may be canceled or rescheduled due to inclement weather, climatic conditions and/or other Force Majeure Events and (b) the Concert is subject to cancellation, rescheduling or curtailment due to performer illness and/or other reasons, replacement of one or more performers, and other matters not with DC's control that might change the timing, nature or quality of the Concert. Any of the results contemplated by the preceding sentence shall be considered a Force Majeure Event and not be an Event of Default hereunder.

9.3 Cancellation/Rescheduling. If the Concert is canceled in its entirety, Sponsor will receive a refund of the Sponsorship Fee within ten (10) days after cancelation of the Concert. If the Concert is rescheduled, Sponsor will remain the Presenting Sponsor and for the rescheduled Concert will receive all of the rights and Benefits specified in this Agreement.

10. Indemnity/Insurance.

10.1 Indemnity.

(a) Sponsor agrees to indemnify, defend and hold DC and Garden of Champions LLC, a California limited liability company and an affiliate of DC ("GOC"), and each of their respective subsidiaries, affiliates, members, directors, officers, employees, agents and professional representatives (collectively, DC, GOC, and the foregoing being the "DC Indemnified Parties") harmless from and against any and all expenses, damages, claims, suits, losses, actions, judgments, liabilities and costs whatsoever (including attorney fees) (collectively, "Losses") arising out of: (i) Sponsor's breach, misrepresentation or non-performance under this Agreement or Sponsor's employee's or agent's gross negligence or willful misconduct; or (ii) DC's use (in conformance with the terms of this Agreement) of Sponsor Marks. Notwithstanding the foregoing, Sponsor will not be required to so indemnify the DC Indemnified Parties for any Losses to the extent they arise from the gross negligence or willful misconduct of any

of the DC Indemnified Parties. This paragraph shall survive expiration or earlier termination of this Agreement.

(b) DC agrees to indemnify, defend and hold Sponsor harmless from and against any and all Losses arising out of: (i) DC's breach, misrepresentation or non-performance under this Agreement or DC's employee's or agent's gross negligence or willful misconduct; (ii) any claim or action for personal injury death, bodily injury, property damage or otherwise suffered by participants, patrons, or others at the Concert; (iii) any advertising or promotional material furnished by or on behalf of DC for the Concert; (iv) Sponsor's use (in conformance with the terms of this Agreement) of Sponsor Marks; (v) any payment owed by DC to persons or entities associated with the Concert; (vi) DC's failure to comply with any third party obligations or any applicable local, state, federal or site laws, rules or regulations regarding any and all promotions or activities it conducts in connection with the Concert. Notwithstanding the foregoing, DC will not be required to so indemnify Sponsor for any Losses to the extent they arise from the gross negligence or willful misconduct of Sponsor or any its employees or agents. This paragraph shall survive expiration or earlier termination of this Agreement.

10.2 Insurance.

(a) Sponsor will provide evidence of self-insurance or obtain and maintain at its own expense throughout the Term: (i) general liability insurance (including products liability insurance) having limits of no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (ii) automobile liability insurance having limits of no less than \$1,000,000 per occurrence; and (iii) workers compensation insurance in statutory coverage amounts, with a minimum of \$1,000,000 employer's liability. DC and GOC shall each be named as an additional insured with respect to items (i) and (ii). Sponsor shall provide DC with a certificate evidencing all insurance required under this Agreement within fourteen (14) days after execution and delivery of this Agreement. The foregoing insurance shall be primary and non-contributory and must provide that the insurer shall not terminate or materially modify such policy or remove DC or GOC as an additional insured without prior written notice to DC at least fourteen (14) days in advance thereof.

(b) DC will provide evidence of self-insurance or obtain and maintain at its own expense throughout the Term: (i) general liability insurance (including products liability insurance) having limits of no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (ii) automobile liability insurance having limits of no less than \$1,000,000 per occurrence; (iii) workers compensation insurance in statutory coverage amounts, with a minimum of \$1,000,000 employer's liability; and (iv) property insurance covering all property owned or in the care, custody, and control of DC. Sponsor shall each be named as an additional insured with respect to items (i) and (ii) and as a loss payee as applicable with respect to item (iv). DC shall provide Sponsor with a certificate evidencing all insurance required under this Agreement within fourteen (14) days after execution and delivery of this Agreement. The foregoing insurance shall be

primary and non-contributory and must provide that the insurer shall not terminate or materially modify such policy or remove Sponsor as an additional insured without prior written notice to Sponsor at least fourteen (14) days in advance thereof.

11. Limitation of Liability. In no event shall either party be liable for any punitive, speculative, consequential or special damages, whether or not such party has been advised about the possibility thereof.

12. Notices. All notices, statements and payments required under this Agreement will be sent by overnight courier—signature required (in which case receipt will be deemed to occur one business day after mailing) or Certified or Registered mail, Return Receipt Requested (in which case receipt will be deemed to occur two (2) business days after mailing), or by confirmed facsimile (in which case receipt is deemed to occur on the date of delivery if during business hours and otherwise on the first business day after delivery) to the parties at their addresses indicated below:

To Sponsor: City of Indian Wells
44-950 Eldorado Drive
Indian Wells, CA 92210
Attention: Wade McKinney
Fax No. (760) 346-0407
Email: wmckinney@indianwells.com

To DC: Desert Champions LLC
78-200 Miles Avenue
Indian Wells, California 92210
Attention: Raymond J. Moore
Facsimile No.: (760) 200-8441
Email: rmoore@iwatg.net

13. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between Sponsor and DC in respect to the subject matter of this. This Agreement may only be amended, modified or changed by a writing signed by the parties hereto.

14. Severability. If any court of competent jurisdiction finds any provision of this Agreement to be unenforceable or invalid, then such provision shall be ineffective to the extent of the court's finding without affecting the enforceability or validity of the Agreement's remaining provisions.

15. Assignment. Except as expressly provided herein, this Agreement and the rights granted and benefits provided are non-assignable by Sponsor, may not be resold by Sponsor and do not inure to the benefit of Sponsor's successors.

16. Independence. The parties shall at all times act independently. Nothing contained in this Agreement shall be construed to make one party the partner, joint venture, principal, agent or

employee of the other party hereto. Neither party shall have any right to obligate or bind the other party in any manner whatsoever.

17. Approval Standard. Unless otherwise provided in this Agreement, a party's right to approve or disapprove any action or thing, or to take any action, or to make a unilateral determination shall be exercised in its sole and absolute discretion. Furthermore, throughout this Agreement reference to "sole discretion" shall be deemed to mean "sole and absolute discretion."

18. Exhibits. All exhibits to this Agreement are incorporated by reference and form a part of this Agreement.

19. Execution and Delivery Required. This instrument shall not be considered to be an agreement or contract nor shall it create any obligation whatsoever on the part of DC or Sponsor, or either of them, unless and until it has been signed by representatives of DC and Sponsor and delivery has been made of a fully signed original. Notwithstanding the foregoing, this Agreement may be executed in counterparts, each of which shall constitute an original instrument and all of which together shall constitute the same instrument. Facsimile and electronically transmitted copies of signatures to this Agreement shall be deemed authentic and original for all purposes.

If the foregoing accurately sets forth the understanding, please sign the enclosed copy of this letter and return it to me, and this letter will then constitute our agreement.

CITY OF INDIAN WELLS, a charter city
duly organized under the Constitution and
laws of the State of California

DESERT CHAMPIONS LLC, a California limited
liability company

By: Wade G. McKinney
Name: Wade McKinney
Title: City Manager

By: Raymond J. Moore
Name: Raymond J. Moore
Title: Chief Executive Officer

ATTEST
CITY CLERK

By: Anne Grundy
Name: Anne Grundy
Title: City Clerk

APPROVED AS TO FORM

By: _____
Name: _____
Title: City Attorney

Sponsor's Initials

RMJ
DC's Initials

employee of the other party hereto. Neither party shall have any right to obligate or bind the other party in any manner whatsoever.

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By: _____
Name: Wade McKinney
Title: City Manager

By: Raymond J. Moore
Name: Raymond J. Moore
Title: Chief Executive Officer

ATTEST
CITY CLERK

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM

By: Stephen P. Deitsch
Name: STEPHEN P. DEITSCH
Title: City Attorney

Sponsor's Initials

Raymond J. Moore
DC's Initials

**EXHIBIT A
TO
CITY OF INDIAN WELLS
DESERT LEXUS JAZZ PRESENTING SPONSORSHIP AGREEMENT**

In furtherance of the grant contained in Section 2 and in consideration for payment of the Sponsorship Fee and Sponsor's timely performance of its obligations under this Agreement, without additional cost to Sponsor DC shall provide Sponsor with the following rights and benefits for the Concert during the Term hereof (individually, a "Benefit" and, collectively, the "Benefits"). References below to sections, paragraphs and subparagraphs are with respect to the body of this Agreement and not this Exhibit A:

1. Recognition.

1.2 Name. The Concert will be called the "Desert Lexus Jazz Presented by the City of Indian Wells."

1.2 Media Recognition Elements. Sponsor will be recognized as the Presenting Sponsor of the Concert in all advertising and promotions for the Concert including, without limitation, advertising in local and regional media, advertisements in the Official Tournament Program for the 2016 BNP Paribas Open, press releases about the Concert, and e-blasts sent about the Concert.

1.3 Editorial Recognition. Sponsor will be recognized as the Presenting Sponsor of the Concert whenever appropriate and/or applicable in interviews and on-air mentions of the Concert by Jim Fitzgerald (including the "Fitz in the Morning" show on CV 104.3 FM) and/or a DC employee.

1.4 Social Media Recognition. Sponsor will be recognized as the Presenting Sponsor of the Concert in all social media posts generated by DC about the Concert on <https://www.facebook.com/IndianWellsTennisGarden/> and <https://www.facebook.com/Desert-Lexus-Jazz-at-Indian-Wells-Tennis-Garden-265463643631150/?fref=ts>.

2. Hospitality.

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6.1 VIP Tables. Sponsor will receive tickets for two (2) nine (9) seat VIP tables for the Concert in a location selected by DC.

6.2 Resident Ticket Notification. Residents of the City of Indian Wells may go online to purchase tickets starting at 10:00 am on Monday, February 15, 2016 and Sponsor may notify its residents of this opportunity through a link provided by Sponsor on its website and/or email

blasts sent by Sponsor to its residents. Concert tickets will go on-sale to past Desert Lexus Jazz concert patrons on Wednesday, February 17 and to the general public on Thursday, February 18, 2016.

6.3 Resident Hospitality Area. An exclusive pre-Concert hospitality area will be set up for residents of the City of Indian Wells who have purchased tickets and are attending the Concert.