

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: January 23, 2018

Consent

Regular

Ordinance

Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: the following original executed Sponsorship Agreements:

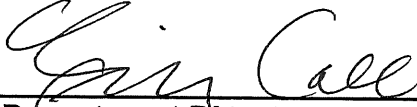
- A) Food Truck Invasion Inc., cash sponsorship of a series of twenty three Family Night with Food Truck Invasion events, Sunset Cove Amphitheater, for the period October 18, 2017, through September 19, 2018; and
- B) Boynton Beach Associates XVIII, LLLP, cash sponsorship of a series of nine Canyon Amphitheater Music and Movie Nights events at Canyon Amphitheater, for the period January 6, 2018, through December 30, 2018.

Summary: In accordance with County PPM CW-O-051, all delegated contracts/agreements/grants must be submitted by the initiating Department as a Receive and File agenda item. The Sponsorship Agreements have been fully executed on behalf of the Board of County Commissioners (Board) by the Director of the Parks and Recreation Department and the County Administrator in accordance with Resolution 2008-0442, amended by Resolution 2017-0102 and are now being submitted to the Board to receive and file. These sponsored events help offer a balanced schedule of events which promote the quality of life in the communities we serve. District 5 (AH)

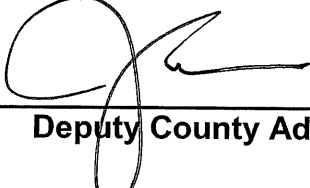
Background and Justification: The Sponsorship Agreement (Resolution 2008-0442, amended by Resolution 2017-0102) was adopted by the Board for the provision of benefits to a sponsor when an event or program is hosted by the Parks and Recreation Department. The Department customarily budgets operating funds to host a variety of leisure activities and seeks donations to supplement these events. Sponsors often request a reciprocal relationship with the County and in response to these requests the Board adopted Resolution 2008-0442, amended by Resolution 2017-0102 and the Department established a Donations/Sponsorships PPM. This PPM dictates procedures for the acceptance of donations and sponsorships from the public for Palm Beach County Parks and Recreation purposes, wherein the sponsor provides cash and/or in-kind services to the Department in return for access to commercial and/or marketing potential through a Sponsorship Agreement. The Board granted the Director of Parks and Recreation authority to execute Sponsorship Agreements not-to-exceed \$10,000, with Sponsorship Agreements between \$10,000 and \$50,000 requiring the County Administrator's approval and Sponsorship Agreements over \$50,000 requiring Board approval.

The Agreements attached have been executed on behalf of the Board by the Director of Parks and Recreation Department and the County Administrator in accordance with the authority delegated by the Board, and are now being submitted to the Board to receive and file.

Attachments: Sponsorship Agreements (2)

Recommended by: 
Department Director

12/21/17
Date

Approved by: 
Deputy County Administrator

1/2/18
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2018	2019	2020	2021	2022
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>15,360</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>(33,400)</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	*<u>(18,040)</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>				

Is Item Included in Current Budget? Yes X No _____
 Does this item include the use of federal funds? Yes _____ No X

Budget Account No.: Fund 0001 Department 580 Unit 5206
 Object various / Revenue 6600 Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

	Sponsor	Revenue	Expense
A	Food Truck Invasion, Inc.	19,000	5,360
B	Boynton Beach Associates XVIII, LLLP	14,400	10,000
	Totals	\$33,400	\$15,360

*Estimated net revenue for this agreement is \$18,040. Actual operating costs will be determined at the termination of the agreement.

C. Departmental Fiscal Review: 

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

 12/22/17
 OFMB 12/22/17
 Contract Development and Control
 12/28/17 JIA

B. Legal Sufficiency:
Anne Helgen 12-29-17
 Assistant County Attorney

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment

**AGREEMENT BETWEEN PALM BEACH COUNTY
AND FOOD TRUCK INVASION, INC
FOR A SPONSORSHIP AGREEMENT**

THIS SPONSORSHIP AGREEMENT, hereinafter referred to as the "Agreement," is made and entered into on 18th day of October, 2017, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as "COUNTY," and Food Truck Invasion, Inc , a Florida Profit Corporation, authorized to conduct business in the State of Florida, hereinafter referred to as "SPONSOR".

WITNESSETH:

WHEREAS, COUNTY, by and through its Parks and Recreation Department, hereinafter referred to as the "Department," desires to enhance its services offered to the public with the least amount of financial impact to its citizens; and

WHEREAS, COUNTY established a sponsorship program, which earns revenue through SPONSORS who receive sponsorship benefit appropriations pursuant to the terms and conditions of this Agreement; and

WHEREAS, COUNTY desires to generate revenue by allowing SPONSOR to become a COUNTY SPONSOR; and

WHEREAS, SPONSOR desires to sponsor COUNTY and receive sponsorship benefits in accordance with this Agreement; and

WHEREAS, generating revenue through sponsorships serves a public purpose; and

WHEREAS, both parties desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, COUNTY and SPONSOR hereby agree as follows:

1. **Term:** This Agreement shall commence on every first and third Wednesday beginning on Wednesday, October 18, 2017 (excluding July 4, 2018), and shall terminate on September 19, 2018.
2. **Location:** The SPONSOR hereby sponsors the following described Sunset Pavilion, as more particularly depicted in **Exhibit "A"**, (the "Family Nights with Food Truck Invasion") to have and hold under the conditions set forth herein:

Family Nights with Food Truck Invasion at Sunset Pavilion

3. **Payment:** The total non-refundable amount payable to COUNTY by SPONSOR under this Agreement shall be Nineteen Thousand dollars (\$19,000.00). SPONSOR shall make payment to COUNTY (1) payment of \$4,750.00 by Monday, October 16, 2017, (1) payment of \$4,750.00 by Wednesday, December 6, 2017, (1) payment of \$4,750.00 by Wednesday, February 14, 2018 and (1) payment of \$4,750.00 by Wednesday, May 9, 2018 . Failure by SPONSOR to make full payment within the specific time frame may result in termination of this Agreement. Please make check payable to: "Board of County Commissioners" Payment shall be mailed to:

Palm Beach County Parks and Recreation Department

Attn: Director, Financial & Support Services Division
2700 6th Avenue S
Lake Worth, FL 33461

4. **Sponsorship Benefits:** COUNTY shall provide SPONSOR with benefits as more particularly described in **Exhibit "B"**, which is attached hereto and incorporated herein by reference.
5. **Advertising Standards/Criteria:**
 - a) COUNTY prohibits logos, advertisements, or a manner of presentation which negatively impact the COUNTY, promote a product, service, or activity offensive to the general public, or which negatively impact, disrupt, intrude upon or interfere in any manner, with the efficient and cost effective operation and administration of the COUNTY, or any other advertising the COUNTY determines to be inappropriate or likely to hinder or interfere with the goal of earning revenue from long term commercial advertisements.
 - b) COUNTY prohibits logos or advertisements that are false, misleading or deceptive statements or material; relates to an illegal activity; include explicit sexual material, obscene material, or material harmful to minors; advertises tobacco products or electronic cigarettes; includes language that is obscene, vulgar, profane or scatological; relates to instruments, devices, items, projects, or paraphernalia that are designed for use in connection with specific sexual activities; depicts violence and/or anti-social behavior.
 - c) COUNTY has sole discretion to approve or deny the SPONSOR's use or display of any logos or advertisements. COUNTY's approval of SPONSOR's logos or advertisements shall not be construed as promotion or endorsement of SPONSOR's business, products, or services.
6. **Termination by COUNTY:** In addition to the termination rights provided in Article 8 below, COUNTY reserves the right to terminate this Agreement without cause, following its signing by COUNTY, effective upon delivery of written notice of termination to SPONSOR at least Five (5) days prior to the effective date hereof. In such event, this Agreement will terminate without further action or payment and at the consideration of the Department Director the COUNTY may return to SPONSOR, a percentage of any payment that has been made to COUNTY. Effective upon termination all sponsorship benefits provided in Article 4, above shall immediately cease. COUNTY will not be held liable for any damages resulting from such termination.
7. **Termination by SPONSOR:** SPONSOR may terminate this Agreement without cause subject to COUNTY approval, following its signing by COUNTY, effective upon delivery of written notice of termination to COUNTY at least Sixty (60) days prior to the effective date hereof provided, however, such termination shall not be effective until the value of goods/services exchanged by COUNTY and SPONSOR is equal. In such event, this Agreement will terminate without further action or payment and at the consideration of the Department Director the COUNTY may return to SPONSOR, a percentage of any payment that has been made to COUNTY. Effective upon termination all sponsorship benefits provided in Article 4, above shall immediately cease.
8. **Default:** If SPONSOR or COUNTY, at any time during the initial term or any additional term of this Agreement, should be in default (i.e. commit a material breach) of this Agreement, and shall fail to remedy such default within Fourteen (14) days after written notice of such default from the other party, then the non-defaulting party may, at its option, terminate this Agreement by giving the defaulting party written notice of its election to terminate this Agreement, and specifying the effective date thereof, after the expiration of such Third (3rd) day opportunity to cure, and at least Three (3) days prior to the effective date of said termination.
9. **No Assignment:** SPONSOR may not assign any rights, responsibilities, or obligations required under this Agreement. Any such attempted assignment is a material breach of this Agreement and cause for immediate termination.

10. **Department Representative:** The Department's authorized representative for this Agreement is:

Name: Donald Perez Phone Number: 561-966-7030.

11. **Insurance Requirements:** If applicable, it is the responsibility of SPONSOR to provide proof of the required insurance coverages specified on Insurance Requirements, attached hereto as **Exhibit "C"**.

12. **Indemnification:** SPONSOR shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels-or otherwise, arising during and as a result of their performance of the terms of this Agreement or due to the acts or omissions of SPONSOR. Additionally, sponsors, advertisers and/or any agent of SPONSOR or advertiser will indemnify the COUNTY from all liability for actions or loss arising from but not limited to: injuries or damage arising from the placement or presence of promotional materials; content, trademark and copyrighted infringement; placement, installation, or maintenance; graffiti on, damage to, or defacement of promotional materials. The obligations arising under this provision will survive the expiration or termination of this Agreement.

13. **Notices:** All notices required by this Agreement are to be hand delivered or sent by certified mail, return receipt requested to:

If sent to COUNTY, such notices are to be addressed:

Palm Beach County Parks and Recreation Department
Attn: Special Facilities Director
2700 6th Avenue South
Lake Worth, Florida 33461

If sent to SPONSOR, such notices are to be addressed:

Food Truck Invasion Inc.
Attn: PO BOX 56-2019
Pinecrest, FL 33256-2019
Attn: Carilyn Simon

14. **Remedies:** This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in a court of competent jurisdiction located in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

15. **No Third Party Beneficiaries:** No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the COUNTY and/or SPONSOR.

16. **Availability of Funds:** The fulfillment of this Agreement and all obligations of COUNTY hereunder are subject to and contingent upon annual budgetary appropriations by the Board of County Commissioners.
17. **Arrears:** SPONSOR is not to pledge or attempt to pledge COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. SPONSOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.
18. **Authorization:** This Agreement is executed by an individual legally authorized to fully bind SPONSOR to all terms and conditions of this Agreement.
19. **Public Entity Crimes:** As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, SPONSOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).
20. **Severability:** In the event any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will not be affected, and every other term and provision of this Agreement will be deemed valid and enforceable to the extent permitted by law.
21. **Access and Audits:**
Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed COUNTY contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of SPONSOR, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.
- Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.
22. **Waiver:** The failure of COUNTY to insist upon strict performance of any of the agreements, terms, covenants or conditions of this Agreement, does not constitute a waiver of any rights or remedies that COUNTY may have for any subsequent breach, default, or non-performance, and COUNTY's right to insist on strict performance of this Agreement will not be affected by any previous waiver of course or dealing.
23. **Nondiscrimination:** SPONSOR warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

SPONSOR has submitted to County a copy of its non-discrimination policy which is consistent with the above paragraph, as contained in Resolution R-2014-1421, as amended, or in the alternative, if the SPONSOR does not have a written non-discrimination policy or one that conforms to the County's policy, it has acknowledged through a signed statement provided to COUNTY that SPONSOR will conform to the County's non-discrimination policy as provided in R-2014-1421, as amended.

24. **Regulation; Licensing Requirements:** SPONSOR agrees to comply with all laws, ordinances and regulations applicable to its use of the premises. SPONSOR is presumed to be familiar with all applicable federal, state, and local laws, ordinances, codes and regulations.
25. **Criminal History Records Check:** If SPONSOR's employees or subcontractors are required under this contract to enter a "critical facility," as identified in Resolution R-2003-1274, the SPONSOR shall comply with the provisions of Chapter 2, Article IX of the Palm Beach County Code ("Criminal History Records Check" section). The SPONSOR acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the SPONSOR shall be solely responsible for the financial, schedule, and staffing implications associated in complying with this section of the Palm Beach County Code.
26. **Entirety of Agreement:** COUNTY and SPONSOR agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS:**

By: 
Director / Assistant Director
Palm Beach County Parks and Recreation Department

**If Agreement Value
Exceeds \$15,000.00, But Not More Than \$50,000.00:**

County Administrator

By: _____

**If Agreement Value
Exceeds \$50,000.00:**


**COUNTY:
Board of County Commissioners**

By: _____
Mayor


**ATTEST:
Clerk & Comptroller**

By: _____
Deputy Clerk

WITNESS

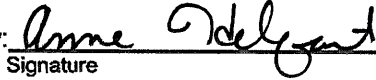
By:  9/21/17
Signature Date
Carilyn Simon
Print

SPONSOR - Food Truck Invasion Inc.

By:  9/21/17
Signature Date
Steve Simon
Print
Vice President
Title

**APPROVED AS TO
FORM AND LEGAL SUFFICIENCY:**

County Attorney

By: 
Signature Date

APPROVED AS TO CONTRACT REVIEW:

OFMB/CDC

By: _____
Signature Date

**APPROVED AS TO
TERMS & CONDITIONS:**

Division Director

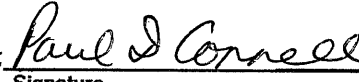
By:  10/17/17
Signature Date

EXHIBIT "A"
SPONSORSHIP AGREEMENT

Premises/Program

COUNTY is hosting the Family Nights with Food Truck Invasion, twice each month (excluding July 2018) in, October, November, December 2017 and January, February, March, April, May, June, July (excluding July 4, 2018), August and September 2018, at the Venue.

EXHIBIT "B"

(1 of 1)

SPONSORSHIP AGREEMENT

Sponsorship Benefits during the term of this Agreement

- a) Distribution of Family Food Truck Series promotional materials to Amphitheater email database.
- b) Posting of Family Food Truck Series promotional materials on Palm Beach County website and the Sunset Cove Amphitheater Facebook Page.

County shall supply sponsor with a black and white logo in Vector based EPS format OR TIFF, 300 resolution OR higher format OR JPEG format via email.

EXHIBIT "C"

(1 of 2)

SPONSORSHIP AGREEMENT

Insurance Requirements

SPONSOR will maintain in full force and effect, on a primary basis and at its sole expense, at all times during the life of this Agreement, insurance coverages and limits (including endorsements) as described herein. Failure to maintain the required insurance will be considered default of this Agreement. The requirements contained herein, as well as COUNTY's review or acceptance of insurance maintained by SPONSOR, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by SPONSOR under the Agreement. SPONSOR agrees to provide the COUNTY with at least thirty (30) days prior notice of any cancellation, non-renewal or material change to the insurance coverages.

Palm Beach County Parks & Recreation Department Representative to mark as applicable:

No Insurance Required: Based on scope of services, SPONSOR shall not be required to provide insurance.

Commercial General Liability: SPONSOR shall maintain Commercial General Liability at a limit of liability not less than **\$1,000,000** Each Occurrence. Coverage shall not contain any endorsement(s) excluding Contractual Liability or Cross Liability.

Liquor Liability: if alcoholic beverages (including beer, wine, and spirits) are for sale at the event, the SPONSOR AND VENDOR shall maintain Liquor Liability coverage and the Certificate of Insurance must state that Liquor Liability coverage is included with a minimum limit of liability of **\$1,000,000** Each Occurrence. The policy must not exclude either Personal Injury/Advertising Injury, Damage to Rented Premises, or Products/Completed Operations.

If no admission or similar fee is charged at any type of event and alcoholic beverages are served at no charge, the Certificate of Insurance must state that Host Liquor Liability Coverage has been secured with a minimum limit of liability of **\$1,000,000** Each Occurrence.

Participant Liability: SPONSOR shall maintain Participant Liability at a limit of liability not less than **\$25,000** Each Occurrence.

Auto Liability: SPONSOR shall maintain Business Auto Liability at a limit of liability not less than **\$500,000** Each Occurrence for all owned, non-owned, and hired automobiles. In the event SPONSOR owns no automobiles, the Business Auto Liability requirement shall be amended allowing SPONSOR to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form.

Workers' Compensation Insurance & Employer's Liability: SPONSOR shall maintain Workers' Compensation & Employer's Liability in accordance with Florida Statute Chapter 440.

EXHIBIT "C"

(2 of 2)

Professional Liability: SPONSOR shall maintain Professional Liability or equivalent Errors & Omissions Liability at a limit of liability not less than **\$1,000,000** Each Claim. When a self-insured retention (SIR) or deductible exceeds **\$10,000**, COUNTY reserves the right, but not the obligation, to review and request a copy of SPONSOR's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, SPONSOR shall maintain a Retroactive Date prior to or equal to the effective date of this Agreement. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims – made" form. If coverage is provided on a "claims-made" form the Certificate of Insurance must also clearly indicate the "retroactive date" of coverage. In the event the policy is canceled, not renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Agreement, SPONSOR shall purchase a SERP with a minimum reporting period not less than three (3) years.

Additional Insured Clause: Except as to Business Auto, Workers' Compensation and Employer's Liability (and Professional Liability, when applicable) the Certificate(s) of Insurance shall clearly confirm that coverage required by this Agreement has been endorsed to include COUNTY as Additional Insured. As such, said Certificate(s) shall specifically include: "Palm Beach County, a Political Subdivision of the State of Florida, its Officers, Employees, and Agents."

Waiver of Subrogation: SPONSOR hereby waives any and all rights of Subrogation against the COUNTY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then SPONSOR shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy specifically prohibiting such an endorsement or voids coverage should SPONSOR enter into such an agreement on a pre-loss basis.

Certificates of Insurance: Prior to execution of the Agreement, the SPONSOR shall deliver to the COUNTY Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage required by this Agreement have been obtained and are in full force and effect. In addition, the SPONSOR shall provide this evidence to the COUNTY prior to the expiration date of any such insurance required herein. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation of coverage. Certificates of Insurance are to be sent to:

Palm Beach County Board of County Commissioners
C/O Parks and Recreation Department
Attn: Special Facilities Director
2700 Sixth Avenue South
Lake Worth, Florida 33461

Umbrella or Excess Liability: If necessary, SPONSOR may satisfy the minimum limits required above for Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

Right to Revise or Reject: COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject, or accept any required policies of insurance, including limits, coverage, or endorsements, herein from time to time throughout the term of this Agreement. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

**AGREEMENT BETWEEN PALM BEACH COUNTY
AND BOYNTON BEACH ASSOCIATES XVIII, LLLP
FOR A SPONSORSHIP AGREEMENT**

THIS SPONSORSHIP AGREEMENT, hereinafter referred to as the "Agreement," is made and entered into on 19th day of September 2017, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as "COUNTY," and Boynton Beach Associates XVIII, LLLP, a Florida Limited Partnership, authorized to conduct business in the State of Florida, hereinafter referred to as "SPONSOR".

WITNESSETH:

WHEREAS, COUNTY, by and through its Parks and Recreation Department, hereinafter referred to as the "Department," desires to enhance its services offered to the public with the least amount of financial impact to its citizens; and

WHEREAS, COUNTY established a sponsorship program, which earns revenue through SPONSORs who receive sponsorship benefit appropriations pursuant to the terms and conditions of this Agreement; and

WHEREAS, COUNTY desires to generate revenue by allowing SPONSOR to become a COUNTY SPONSOR; and

WHEREAS, SPONSOR desires to sponsor COUNTY and receive sponsorship benefits in accordance with this Agreement; and

WHEREAS, generating revenue through sponsorships serves a public purpose; and

WHEREAS, both parties desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, COUNTY and SPONSOR hereby agree as follows:

1. **Term:** This Agreement shall commence on January 6, 2018, and shall terminate on December 30, 2018.
2. **Location:** The SPONSOR hereby sponsors the following described Canyon Amphitheater, as more particularly depicted in **Exhibit "A"**, (the "Canyon Amphitheater Music and Movie Nights Series") to have and hold under the conditions set forth herein:

Canyon Amphitheater Music and Movie Nights Series at Canyon Amphitheater

3. **Payment:** The total non-refundable amount payable to COUNTY by SPONSOR under this Agreement shall be **(Fourteen thousand four hundred dollars** dollars (**\$14,400.00**). SPONSOR shall make payment to COUNTY by January 6, 2018 (\$7,200.00) and by April 11, 2018 (\$7,200.00). Failure by SPONSOR to make full payment within the specific time frame may result in termination of this Agreement. Please make check payable to: "Board of County Commissioners" Payment shall be mailed to:

Palm Beach County Parks and Recreation Department
Attn: Director, Financial & Support Services Division
2700 6th Avenue S
Lake Worth, FL 33461

4. **Sponsorship Benefits:** COUNTY shall provide SPONSOR with benefits as more particularly described in **Exhibit "B"**, which is attached hereto and incorporated herein by reference.
5. **Advertising Standards/Criteria:**
 - a) COUNTY prohibits logos, advertisements, or a manner of presentation which negatively impact the COUNTY, promote a product, service, or activity offensive to the general public, or which negatively impact, disrupt, intrude upon or interfere in any manner, with the efficient and cost effective operation and administration of the COUNTY, or any other advertising the COUNTY determines to be inappropriate or likely to hinder or interfere with the goal of earning revenue from long term commercial advertisements.
 - b) COUNTY prohibits logos or advertisements that are false, misleading or deceptive statements or material; relates to an illegal activity; include explicit sexual material, obscene material, or material harmful to minors; advertises tobacco products or electronic cigarettes; includes language that is obscene, vulgar, profane or scatological; relates to instruments, devises, items, projects, or paraphernalia that are designed for use in connection with specific sexual activities; depicts violence and/or anti-social behavior.
 - c) COUNTY has sole discretion to approve or deny the SPONSOR's use or display of any logos or advertisements. COUNTY's approval of SPONSOR's logos or advertisements shall not be construed as promotion or endorsement of SPONSOR's business, products, or services.
6. **Termination by COUNTY:** In addition to the termination rights provided in Article 8 below, COUNTY reserves the right to terminate this Agreement without cause, following its signing by COUNTY, effective upon delivery of written notice of termination to SPONSOR at least Five (5) days prior to the effective date hereof. In such event, this Agreement will terminate without further action or payment and at the consideration of the Department Director the COUNTY may return to SPONSOR, a percentage of any payment that has been made to COUNTY. Effective upon termination all sponsorship benefits provided in Article 4, above shall immediately cease. COUNTY will not be held liable for any damages resulting from such termination.
7. **Termination by SPONSOR:** SPONSOR may terminate this Agreement without cause subject to COUNTY approval, following its signing by COUNTY, effective upon delivery of written notice of termination to COUNTY at least Sixty (60) days prior to the effective date hereof provided, however, such termination shall not be effective until the value of goods/services exchanged by COUNTY and SPONSOR is equal. In such event, this Agreement will terminate without further action or payment and at the consideration of the Department Director the COUNTY may return to SPONSOR, a percentage of any payment that has been made to COUNTY. Effective upon termination all sponsorship benefits provided in Article 4, above shall immediately cease.
8. **Default:** If SPONSOR or COUNTY, at any time during the initial term or any additional term of this Agreement, should be in default (i.e. commit a material breach) of this Agreement, and shall fail to remedy such default within fourteen (14) days after written notice of such default from the other party, then the non-defaulting party may, at its option, terminate this Agreement by giving the defaulting party written notice of its election to terminate this Agreement, and specifying the effective date thereof, after the expiration of such third (3rd) day opportunity to cure, and at least three (3) days prior to the effective date of said termination.

9. **No Assignment:** SPONSOR may not assign any rights, responsibilities, or obligations required under this Agreement. Any such attempted assignment is a material breach of this Agreement and cause for immediate termination.
10. **Department Representative:** The Department's authorized representative for this Agreement is:
- Name: Donald M. Perez Phone Number: 561-966-7030.
11. **Insurance Requirements:** If applicable, it is the responsibility of SPONSOR to provide proof of the required insurance coverages specified on Insurance Requirements, attached hereto as **Exhibit "C"**.
12. **Indemnification:** SPONSOR shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Agreement or due to the acts or omissions of SPONSOR. Additionally, sponsors, advertisers and/or any agent of SPONSOR or advertiser will indemnify the COUNTY from all liability for actions or loss arising from but not limited to: injuries or damage arising from the placement or presence of promotional materials; content, trademark and copyrighted infringement; placement, installation, or maintenance; graffiti on, damage to, or defacement of promotional materials. The obligations arising under this provision will survive the expiration or termination of this Agreement.
13. **Notices:** All notices required by this Agreement are to be hand delivered or sent by certified mail, return receipt requested to:

If sent to COUNTY, such notices are to be addressed:

Palm Beach County Parks and Recreation Department
Attn: Special Facilities Director
2700 6th Avenue South
Lake Worth, Florida 33461

If sent to SPONSOR, such notices are to be addressed:

Boynton Beach Associates XVIII, LLLP
Attn: Michael Friedman
1600 Sawgrass Corp. Parkway, Ste 400
Sunrise, FL 33323

14. **Remedies:** This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in a court of competent jurisdiction located in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

15. **No Third Party Beneficiaries:** No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the COUNTY and/or SPONSOR.
16. **Availability of Funds:** The fulfillment of this Agreement and all obligations of COUNTY hereunder are subject to and contingent upon annual budgetary appropriations by the Board of County Commissioners.
17. **Arrears:** SPONSOR is not to pledge or attempt to pledge COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. SPONSOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.
18. **Authorization:** This Agreement is executed by an individual legally authorized to fully bind SPONSOR to all terms and conditions of this Agreement.
19. **Public Entity Crimes:** As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, SPONSOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).
20. **Severability:** In the event any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will not be affected, and every other term and provision of this Agreement will be deemed valid and enforceable to the extent permitted by law.
21. **Access and Audits:**

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed COUNTY contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of SPONSOR, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.
22. **Waiver:** The failure of COUNTY to insist upon strict performance of any of the agreements, terms, covenants or conditions of this Agreement, does not constitute a waiver of any rights or remedies that COUNTY may have for any subsequent breach, default, or non-performance, and COUNTY's right to insist on strict performance of this Agreement will not be affected by any previous waiver of course or dealing.
23. **Nondiscrimination:** SPONSOR warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

SPONSOR has submitted to County a copy of its non-discrimination policy which is consistent with the above paragraph, as contained in Resolution R-2014-1421, as amended, or in the alternative, if the SPONSOR does not have a written non-discrimination policy or one that conforms to the County's policy, it has acknowledged through a signed statement provided to COUNTY that SPONSOR will conform to the County's non-discrimination policy as provided in R-2014-1421, as amended.

24. **Regulation; Licensing Requirements:** SPONSOR agrees to comply with all laws, ordinances and regulations applicable to its use of the premises. SPONSOR is presumed to be familiar with all applicable federal, state, and local laws, ordinances, codes and regulations.

25. **Criminal History Records Check:** If SPONSOR's employees or subcontractors are required under this contract to enter a "critical facility," as identified in Resolution R-2003-1274, the SPONSOR shall comply with the provisions of Chapter 2, Article IX of the Palm Beach County Code ("Criminal History Records Check" section). The SPONSOR acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the SPONSOR shall be solely responsible for the financial, schedule, and staffing implications associated in complying with this section of the Palm Beach County Code.

26. **Entirety of Agreement:** COUNTY and SPONSOR agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS:**

By: 
Director / Assistant Director
Palm Beach County Parks and Recreation Department

**If Agreement Value
Exceeds \$15,000.00, But Not More Than \$50,000.00:**

County Administrator

By: _____

**If Agreement Value
Exceeds \$50,000.00:**

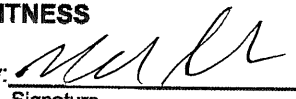
**COUNTY:
Board of County Commissioners**

By: _____
Mayor

**ATTEST:
Clerk & Comptroller**


By: _____
Deputy Clerk

WITNESS

By:  8/30/17
Signature Date

MICHIENER FRIEDMAN
Print

SPONSOR - Boynton Beach Associates XVIII, LLLP

By:  8/30/17
Signature Date

Misha Ezrati
Print

President
Title

**APPROVED AS TO
FORM AND LEGAL SUFFICIENCY:**

County Attorney

By:  9/14/17
Signature Date

**APPROVED AS TO
TERMS & CONDITIONS:**

Division Director


By: 
Signature Date

EXHIBIT "A"
SPONSORSHIP AGREEMENT

Premises/Program

COUNTY is hosting the Canyon Concert Series, once each month in, January, February, March, April, May, September, October, November and December 2018 at the Venue; and each concert being hereafter individually referred to as an "Event" and collectively referred to as the "Events"

EXHIBIT "B"

(1 of 1)

SPONSORSHIP AGREEMENT

Sponsorship Benefits during the term of this Agreement

The Sponsor logo will be included in the following print media:

- a) All flyers created for distribution to the Canyon Town Center email database. The flyer will be released via email to 870 homeowners, community TV channels and placed in common areas.
- b) Palm Beach County website and the Canyon Amphitheater Facebook Page as an event listing.
- c) Public Acknowledgement and thank you over PA system during events.

SPONSOR shall be considered a sponsor during each of the nine concert events, to be held at Canyon Town Center Amphitheater for the months of January, February, March, April, May, September, October, November and December 2018

The SPONSOR shall receive a waiver of Canyon Town Center Amphitheater rental fees for use of the facility, exclusively for the showing of movies, twenty-nine (29) times during the term of this Agreement. Approval of movie by COUNTY is required prior to each requested movie date.

EXHIBIT "C"

(1 of 2)

SPONSORSHIP AGREEMENT

Insurance Requirements

SPONSOR will maintain in full force and effect, on a primary basis and at its sole expense, at all times during the life of this Agreement, insurance coverages and limits (including endorsements) as described herein. Failure to maintain the required insurance will be considered default of this Agreement. The requirements contained herein, as well as COUNTY's review or acceptance of insurance maintained by SPONSOR, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by SPONSOR under the Agreement. SPONSOR agrees to provide the COUNTY with at least sixty (60) days prior notice of any cancellation, non-renewal or material change to the insurance coverages.

Palm Beach County Parks & Recreation Department Representative to mark as applicable:

No Insurance Required: Based on scope of services, SPONSOR shall not be required to provide insurance.

Commercial General Liability: SPONSOR shall maintain Commercial General Liability at a limit of liability not less than **\$1,000,000** Each Occurrence. Coverage shall not contain any endorsement(s) excluding Contractual Liability or Cross Liability.

Liquor Liability: if alcoholic beverages (including beer, wine, and spirits) are for sale at the event, the SPONSOR AND VENDOR shall maintain Liquor Liability coverage and the Certificate of Insurance must state that Liquor Liability coverage is included with a minimum limit of liability of **\$1,000,000** Each Occurrence. The policy must not exclude either Personal Injury/Advertising Injury, Damage to Rented Premises, or Products/Completed Operations.

If no admission or similar fee is charged at any type of event and alcoholic beverages are served at no charge, the Certificate of Insurance must state that Host Liquor Liability Coverage has been secured with a minimum limit of liability of **\$1,000,000** Each Occurrence.

Participant Liability: SPONSOR shall maintain Participant Liability at a limit of liability not less than **\$25,000** Each Occurrence.

Auto Liability: SPONSOR shall maintain Business Auto Liability at a limit of liability not less than **\$500,000** Each Occurrence for all owned, non-owned, and hired automobiles. In the event SPONSOR owns no automobiles, the Business Auto Liability requirement shall be amended allowing SPONSOR to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form.

Workers' Compensation Insurance & Employer's Liability: SPONSOR shall maintain Workers' Compensation & Employer's Liability in accordance with Florida Statute Chapter 440.

EXHIBIT "C"

(2 of 2)

- Professional Liability:** SPONSOR shall maintain Professional Liability or equivalent Errors & Omissions Liability at a limit of liability not less than **\$1,000,000** Each Claim. When a self-insured retention (SIR) or deductible exceeds **\$10,000**, COUNTY reserves the right, but not the obligation, to review and request a copy of SPONSOR's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, SPONSOR shall maintain a Retroactive Date prior to or equal to the effective date of this Agreement. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims – made" form. If coverage is provided on a "claims-made" form the Certificate of Insurance must also clearly indicate the "retroactive date" of coverage. In the event the policy is canceled, not renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Agreement, SPONSOR shall purchase a SERP with a minimum reporting period not less than three (3) years.
- Additional Insured Clause:** Except as to Business Auto, Workers' Compensation and Employer's Liability (and Professional Liability, when applicable) the Certificate(s) of Insurance shall clearly confirm that coverage required by this Agreement has been endorsed to include COUNTY as Additional Insured. As such, said Certificate(s) shall specifically include: "Palm Beach County, a Political Subdivision of the State of Florida, its Officers, Employees, and Agents."
- Waiver of Subrogation:** SPONSOR hereby waives any and all rights of Subrogation against the COUNTY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then SPONSOR shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy specifically prohibiting such an endorsement or voids coverage should SPONSOR enter into such an agreement on a pre-loss basis.
- Certificates of Insurance:** Prior to execution of the Agreement, the SPONSOR shall deliver to the COUNTY Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage required by this Agreement have been obtained and are in full force and effect. In addition, the SPONSOR shall provide this evidence to the COUNTY prior to the expiration date of any such insurance required herein. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation of coverage. Certificates of Insurance are to be sent to:
- Palm Beach County Board of County Commissioners
C/O Parks and Recreation Department
Attn: Special Facilities Director
2700 Sixth Avenue South
Lake Worth, Florida 33461
- Umbrella or Excess Liability:** If necessary, SPONSOR may satisfy the minimum limits required above for Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.
- Right to Revise or Reject:** COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject, or accept any required policies of insurance, including limits, coverage, or endorsements, herein from time to time throughout the term of this Agreement. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.