

COOPERATIVE AGREEMENT

BETWEEN

**FRIENDS OF LEVITT PAVILION DENVER,
MORTIMER & MIMI LEVITT FOUNDATION, LEVITT PAVILIONS**

AND

THE CITY AND COUNTY OF DENVER, COLORADO

REGARDING LEVITT PAVILION AT RUBY HILL PARK

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**COOPERATIVE AGREEMENT
LEVITT PAVILION**

THIS COOPERATIVE AGREEMENT (“**Agreement**”) is made and entered into as of the date set forth on the City’s signature page below (the “**Effective Date**”), by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the state of Colorado (the “**City**”), FRIENDS OF LEVITT PAVILION DENVER, a Colorado nonprofit corporation (“**Levitt Denver**”), MORTIMER & MIMI LEVITT FOUNDATION, a New York not-for-profit corporation (the “**Foundation**”), and LEVITT PAVILIONS, a California nonprofit corporation (“**Levitt National**”). Levitt Denver, the Foundation, and Levitt National may sometimes be referred to herein individually as a “**Levitt Party**” or collectively as the “**Levitt Parties**”. The City, Levitt Denver, the Foundation, and Levitt National may sometimes be referred to herein individually as a “**Party**” or collectively as the “**Parties**”.

RECITALS:

A. Ruby Hill Park (the “**Park**”) is a park owned by the City and County of Denver and located southeast of S. Platte River Drive and W. Florida Avenue. The Park offers year round activities for the public and vistas of the mountains, downtown Denver, and the southern metropolitan area. The master plan for the Park contemplates, among other things, an outdoor amphitheatre; and

B. The Mortimer & Mimi Levitt Foundation is a private family foundation, founded in 1963 by Mortimer and Mimi Levitt to support the arts, culture and education. Today, the main philanthropy of the Foundation is to develop and support outdoor performance venues known as Levitt pavilions across the United States; and

C. Levitt pavilions are a growing national network of outdoor performance venues with free programming for the benefit of the public. Levitt pavilions are publicly owned facilities located in public spaces, typically parks, with locations across the United States, including, without limitation, Westport, Connecticut; Los Angeles and Pasadena, California; Bethlehem, Pennsylvania; Memphis Tennessee; and Arlington, Texas. The Levitt pavilions are connected by their common purpose of providing free performances and concerts for the benefit of the public, mutual support, national recognition, and the assistance they receive from the Foundation and Levitt National; and

D. Each Levitt Pavilion is managed and programmed by a local Friends of Levitt Pavilion 501(c)(3) nonprofit organization; and

E. Levitt National is the national support organization for the network of Levitt pavilions and provides, among other things, best practice guidelines and technical and financial assistance to each local Friends of Levitt Pavilion organization. Levitt National acts as the liaison between the Foundation and cities developing Levitt pavilions, and between the Foundation and local Friends of Levitt Pavilion organizations; and

F. The Parties believe that the Park is an ideal location for the development and operation of a Levitt Pavilion and the Levitt Parties have determined that the Park meets all of their site requirements for developing and operating a Levitt Pavilion; and

G. Levitt Denver has been organized and incorporated as a Colorado nonprofit corporation to manage and program, and raise funds for, a Levitt Pavilion to be constructed within the Park, and to raise funds and participate in the design and construction of a Levitt Pavilion consistent with the requirements of the Other Agreements (as such term is defined below); and

H. The qualified and registered voters of the City approved referred question 1G on November 6, 2007, approving the issuance of general obligation bonds (the “**Bonds**”) by the City in the aggregate principal amount of \$70,000,000.00 for the purpose of financing the cost of new cultural facilities; and

I. The City desires to make a part of the proceeds of the Bonds (the “**Bond Proceeds**”) available to construct the Pavilion (as defined below) as more fully described and in accordance with the terms and conditions of that certain Funding Agreement by and between the City and the Levitt Parties (the “**Funding Agreement**”); and

J. Levitt Denver has committed to raising private funds to partially fund the design and construction of the Pavilion; such funds will be raised by Levitt Denver, paid to the City, and used by the City in accordance with the Funding Agreement; and

K. Design and construction of the Pavilion will proceed in accordance with the construction agreement(s) for the Pavilion to be entered into by the City subsequent to this Agreement (together with the Funding Agreement, the “**Other Agreements**”); and

L. The Parties believe that the Pavilion will generate favorable exposure and serve as a recreational and social occasion for the enjoyment of the entire community as well as produce revenue for the City and Levitt Denver to support maintenance and operations of the facility; and

M. By virtue of Section 2.4.4(F) of the Charter of the City and County of Denver (“**City Charter**”), the Manager of the Denver Department of Parks and Recreation, subject to approval by City ordinance, is authorized to conduct negotiations for cooperative agreements with private agencies for the development of park and recreational facilities, programs and activities and for the establishment and maintenance of museums, zoological or other gardens, collections of natural history and observatories, and to delegate the Manager’s authority and responsibility with respect thereto.

NOW, THEREFORE, in consideration of the above recitals and the mutual promises contained herein, and for the purpose of setting forth the relationship between the Levitt Parties and the relationship between the Levitt Parties and the City, it is mutually agreed by the Parties as follows:

1. KEY DEFINITIONS. As used in this Agreement:

(a) “**Admissions Based Event**” shall have the meaning provided in the Parks and Recreation Policy and Procedures for Admissions Based Events, as the same may be amended from time to time.

(b) “**Applicable Law**” shall mean all federal, state, and local laws applicable in the context of the specific matter addressed in this Agreement, including but not limited to: 1) the constitutions, laws, and rules and regulations of the United States of America and the State of Colorado, including, without limitation, federal tax laws and regulations related to tax-exempt government bonds and the Americans with Disabilities Act, the Americans with Disabilities Act Accessibility Guidelines, and any other federal or state laws requiring access for the disabled to public accommodations; 2) the City Charter and the Denver Revised Municipal Code (“**DRMC**”), as either may be amended from time to time; 3) rules, regulations, policies and procedures promulgated by the Department of Parks and Recreation (the “**Department**”) governing the public’s utilization of City parks (unless expressly modified or waived in this Agreement); 4) any rules, regulations, policies and procedures promulgated by other City departments and agencies and applicable to actions and activities of the Levitt Parties under this Agreement; 5) executive orders issued by the Mayor; 6) any court order, judgment, or decree applicable to this Agreement, the Park, the Pavilion Property, the Pavilion, or the Levitt Parties; and 7) any federal, state, or local administrative decision applicable to this Agreement, the Park, the Pavilion Property, the Pavilion, or the Levitt Parties.

(c) “**City**” shall mean the City and County of Denver and those officials and employees with authority to act on behalf of the City.

(d) “**Facilities**” shall mean all permanent improvements and fixtures presently existing, or as may be constructed, expanded, or renovated in the future, on, below or above ground within the boundaries of the Pavilion Property, including the Pavilion (as defined in Section 1(j) below).

(e) “**Levitt Events**” shall mean collectively the Levitt Fundraising Events and the Series events.

(f) “**Levitt Fundraising Events**” shall refer to the five (5) or fewer Admission Based Events during each calendar year that Levitt Denver has first priority to use the Pavilion Property, including the Pavilion, as described in Section 9(a) of this Agreement.

(g) “**Levitt Guidelines**” shall mean the requirements, guidelines, and best practices set forth in **Exhibit B**, attached hereto and incorporated herein by reference. In the event of conflict between the provisions of this Agreement and the Levitt Guidelines provided in Exhibit B, the provisions of this Agreement shall govern and control.

(h) “**Manager**” shall mean the Manager of the Denver Department of Parks and Recreation or the Manager’s designated representative.

(i) “**Non-Levitt Event**” shall mean any performance, concert, or other event that is not a Levitt Event.

(j) “**Pavilion**” shall mean the outdoor amphitheatre to be built by the City in accordance with the Other Agreements at the location approximately shown on **Exhibit A**, attached hereto and incorporated herein by reference. The Pavilion will consist of a covered stage, a green room, dressing rooms, storage space, office space, interior non-public bathrooms, lighting and sound equipment, and other elements (possibly including exterior public bathrooms)

as set forth in the Other Agreements.

(k) “**Pavilion Property**” shall mean that portion of the Park containing the Pavilion and surrounding lawn area as conceptually depicted in **Exhibit A**. The geographical area of the Pavilion Property will be further defined by the Parties during the design and construction process; once the geographical area of the Pavilion Property is so defined, the activities of Levitt Denver contemplated under this Agreement may not be conducted or extended beyond such geographical area.

(l) “**Series**” shall mean the annual concert series to be presented by Levitt Denver consisting of fifty (50) concerts free of charge to the public meeting the requirements set forth in Section 8(b) of this Agreement.

(m) “**Levitt Network**” shall mean the network of outdoor performance venues known as Levitt pavilions across the United States to include existing and future locations as described in Recital C.

2. PUBLIC PURPOSE. The public purpose of this Agreement is to provide for the establishment and maintenance of the Pavilion Property, including the Pavilion, and any related operations and activities, for the use and benefit of the people of the City and the general public through public/private cooperation between the City and the Levitt Parties in conformance with Sections 2.4.4(F) of the City Charter. All uses of the Pavilion Property, including the Pavilion, must be restricted to “park purposes” in conformance with Section 2.4.5 of the City Charter.

3. STATUS AND AUTHORITY OF LEVITT PARTIES.

(a) Status. The City and Levitt Denver acknowledge and agree that the status of Levitt Denver shall be that of a private, nonprofit corporation cooperatively working with the City as an independent entity solely for the purposes set forth in this Agreement, and that the status of the Foundation and Levitt National shall be that of a private foundation and nonprofit corporation, respectively, cooperatively working with the City and Levitt Denver for the purpose of providing funding and assistance as set forth in this Agreement.

(b) Authority. The scope of authority that the Levitt Parties may exercise shall be as expressly delegated, assigned, or allowed under, or necessarily implied in, this Agreement. The Levitt Parties shall have no authority to avoid, modify or waive any applicable City ordinances or regulatory requirements enacted or adopted under the City’s police or taxing powers. This Agreement is not intended, nor shall this Agreement be construed, to establish or constitute a joint venture between the City and any of the Levitt Parties.

(c) Contracts. The authority delegated under this Agreement shall not be construed to grant the Levitt Parties the right or power to bind, or to impose any liability upon, the City through any contracts or agreements a Levitt Party may make, unless the prior, written approval of the Manager is obtained and the contract or agreement is in accordance with all applicable City ordinances and regulatory requirements. All contracts or agreements made by a Levitt Party shall be in its own name and not in the name of the City. Likewise, the City shall have no authority to bind, or to impose liability upon, a Levitt Party through any contracts or agreements the City may make, unless the prior, written approval of the applicable Levitt Party is

obtained.

(d) Nonprofit Status. Levitt Denver has applied for and expects to receive a ruling and determination letter from the Internal Revenue Service, issued by the United States Department of Treasury, stating that Levitt Denver is an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. Until such time, Levitt Denver shall work with a fiscal sponsor currently exempt under Section 501(c)(3) of the Internal Revenue Code in order to receive funds on behalf of Levitt Denver for the purposes set forth in this Agreement and the Other Agreements. Upon securing such ruling and determination letter from the Internal Revenue Service, Levitt Denver shall at all times while this Agreement is in effect take such actions as may be necessary to maintain and preserve, and shall refrain from taking such actions as may be detrimental to, its status as a nonprofit corporation that qualifies as a tax exempt entity under section 501(c)(3) of the Internal Revenue Code (or any successor provision).

4. TERM. This Agreement shall commence as of the Effective Date and shall expire fifty (50) calendar years later (the “**Term**”), unless otherwise sooner terminated as provided in this Agreement. Notwithstanding the foregoing, the City may reopen this Agreement with respect to amending Levitt Denver’s obligation to provide year-round operations and management services at the Pavilion Property, including booking services for Non-Levitt Events, on its fifth (5th) anniversary date and on each fifth (5th) anniversary thereafter by giving written notice to the Levitt Parties not less than one-hundred and twenty (120) days prior to the subject anniversary date. Within thirty (30) days after such written notice is given, Levitt Denver and the City shall meet at a mutually convenient time and date to discuss and reevaluate in good faith the City’s desired amendments to Levitt Denver’s obligation to provide year-round operations and management services. At such time, neither Levitt Denver nor the City shall be under any obligation to enter into any amendments to this Agreement; however, in the event the City and Levitt Denver cannot agree on the terms of the City’s desired amendments, the City may terminate this Agreement with respect to Levitt Denver’s obligation to provide year-round operations and management services, including booking services for Non-Levitt Events, and, in such event, all Parties shall amend the terms and provisions of this Agreement as are necessary to effectuate such partial termination. For the avoidance of doubt, any such partial termination shall not affect Levitt Denver’s right to use the Pavilion Property, including the Pavilion, for the Levitt Events or any of Levitt Denver’s obligations related thereto. Any change to the terms and conditions of this Agreement must be approved and executed by the Parties in the same manner as this Agreement.

5. PERSONNEL.

(a) Levitt Denver Employees. All employees hired or engaged by Levitt Denver to work at the Pavilion or to perform the services described in this Agreement shall be employees of Levitt Denver (“**Levitt Denver Employees**”). Levitt Denver shall have the sole authority to hire, fix the compensation and benefits of, supervise, train, evaluate, discipline and discharge all Levitt Denver Employees, without regard to City personnel classification and pay plans and rules and regulations, but otherwise in conformance with all laws governing private employers. Under no circumstances shall Levitt Denver Employees be regarded as employees of the City; however, all Levitt Denver Employees are expected to comply with the terms and conditions of this Agreement.

(b) Prevailing and Living Wages. Notwithstanding Section 5(a) above, Levitt Denver shall comply with provisions of Sections 20-76, 20-80, and 20-81 of the DRMC, as the same may be amended from time to time, regarding the payment of applicable prevailing wages and living wages.

(c) Personnel Policy. Levitt Denver shall maintain a written personnel policy to govern the conduct and rights of Levitt Denver Employees as Levitt Denver may deem necessary and appropriate. Upon request, Levitt Denver shall provide the Manager a copy of its current personnel rules and regulations and a description of its pay and benefits for Levitt Denver Employees.

(d) Diversity. Levitt Denver herewith endorses the policy of encouraging diversity within members of its work force, at all levels, and it shall strive to achieve diversity among said work force throughout the Term of this Agreement.

6. REAL AND PERSONAL PROPERTY

(a) Real Property. Levitt Denver hereby donates, gives, grants, conveys, and assigns to the City, for the use and benefit of the people of the City, all of its right, title, and interest in and to any Facilities which Levitt Denver now owns or may hereafter acquire during the Term of this Agreement. Levitt Denver shall not permanently affix anything on or in the Pavilion Property, including the Pavilion, that does not thereby become the property of the City pursuant to this Section 6(a). Levitt Denver shall have no authority to sell, lease, encumber, hypothecate, or otherwise create or assign a property or financial interest in the Pavilion Property or its Facilities or any part of the Pavilion Property or its Facilities. At the expiration of the Term or earlier termination of this Agreement, Levitt Denver shall deliver the Pavilion to the City in substantially the same condition as the Pavilion was at the completion of its construction, ordinary wear and tear excepted.

(b) Personal Property. Any equipment, furnishings, supplies, vehicles, or other personal property, including sound and lighting equipment, acquired by Levitt Denver, by gift or with funds, shall be held in legal ownership by Levitt Denver during the Term of this Agreement (“**Levitt Denver Property**”). In the interest of faithfully conforming to the terms and spirit of this Agreement and subject to any restrictions imposed on any gifts, Levitt Denver may, from time to time (as Levitt Denver determines to be prudent and warranted), replace, lend or dispose of Levitt Denver Property, through sale, purchase, trade or loan. At the expiration of the Term or earlier termination of this Agreement, Levitt Denver shall promptly remove all Levitt Denver Property and vacate the Pavilion Property. All Levitt Denver Property not removed from the Pavilion Property upon vacation of the Pavilion Property by Levitt Denver, shall be conclusively deemed to have been abandoned and may be appropriated, sold, stored, destroyed or otherwise disposed of by the City without notice to Levitt Denver or any other person, and without obligation to account therefor, and Levitt Denver shall pay the City all expenses incurred in connection with such property.

(c) Art Work. For so long as Levitt Denver is providing year-round operations and management services at the Pavilion, Levitt Denver shall have control, responsibility, and discretion with respect to the acquisition of works of art for the temporary display in the Pavilion, except that Levitt Denver shall comply with the Public Art Program

contained in Division 4 of Article IV of Chapter 20, DRMC, to the extent applicable with respect to capital improvement projects, and with the Procedure for Acceptance of Works of Art in Article IX of Chapter 2, DRMC, to the extent that donated art work is to be owned by the City. Unless otherwise agreed to in writing by Levitt Denver and the City (which agreement shall not require an amendment to this Agreement), Levitt Denver shall be responsible for any maintenance, insurance, or other obligations related to works of art that are loaned to Levitt Denver for temporary display at the Pavilion, and the City shall be responsible for any maintenance, insurance, or other obligations related to works of art that come under the ownership of the City by virtue of Division 4 of Article IV of Chapter 20 or Article IX of Chapter 2, DRMC.

7. OFFICIAL NAME OF LEVITT PAVILION

(a) Subject to compliance with the Parks and Recreation Policy and Procedures for Naming of Parks and Recreational Facilities, the official name of the Pavilion shall be “Levitt Pavilion for the Performing Arts – Denver, at Ruby Hill Park” (the “Name”) until ninety-nine (99) years from the Effective Date of this Agreement; provided, however, that the City may, at its discretion, change the Name prior to the expiration of said 99-year period: (i) if this Agreement is terminated prior to the end of the Term as a result of a default by one or more of the Levitt Parties; (ii) if this Agreement is terminated by reason of a Levitt Party’s failure to timely obtain and provide funding as required per the Funding Agreement; or (iii) if Mortimer Levitt, the person for whom the Pavilion is named, turns out to be disreputable due to behavior involving theft, fraud or other criminal activity. If prior to the expiration of said 99-year period, the Foundation or Levitt National request that the Name no longer be used, the City shall no longer use the Name. It is expressly agreed that this Section 7(a) shall survive the expiration of the Term or earlier termination of this Agreement.

(b) The Name may wherever used be shortened to appear as “Levitt Pavilion” or “Levitt Pavilion Denver”.

(c) The Parties agree for wherever the Name appears for publicity, marketing, advertising, community outreach, fundraising, merchandise, formal communications with artists, and signage purposes that:

(i) Referring to the Levitt Pavilion as “the Pavilion”, regardless of the media of communication, is not acceptable.

(ii) Wherever the Name appears, including but not limited to electronic communications, print materials, signage, and merchandise, “Levitt” shall be larger or of equal size to “Pavilion.”

(d) During the Term of this Agreement, a sign with the name “Levitt Pavilion for the Performing Arts” or “Levitt Pavilion Denver” or “Levitt Pavilion” shall be affixed to the stage of the Pavilion in a prominent manner visible to the audience while viewing performances. Placement, size, and material of the sign shall be agreed upon in writing by Levitt Denver, Levitt National and the City and such sign shall meet Park and Recreation’s graphic and signage standards. Materials used for display of the sign shall be durable to withstand inclement weather conditions. The City shall be responsible for maintaining the sign so it remains in good

condition and repair throughout the Term of this Agreement. The Name shall be the only name of an entity permanently affixed to the exterior of the Pavilion, including but not limited to the stage of the Pavilion. Unless otherwise approved in writing by Levitt Denver and Levitt National, at no time during the Term of this Agreement, may the sign be partially or fully covered.

(e) During the Term of this Agreement, Levitt Denver shall include the Name:

(i) In all print and electronic communications regarding the Pavilion, Levitt Events, and Non-Levitt Events taking place at the Pavilion Property, including the Pavilion, including but not limited to the Levitt Denver website, publicity, press releases, media relations, advertising, marketing, fundraising, events, community outreach, artist relations, social media, and e-newsletters; and

(ii) In all Levitt Denver-initiated and Levitt Denver-solicited radio and television spots; and

(iii) On the homepage of and throughout Levitt Denver's website promoting the Pavilion and Levitt Events; and

(iv) In the Pavilion logo; and

(v) On all signage referring to the Pavilion; and

(vi) On all merchandise produced or caused to be produced by Levitt Denver related to the Pavilion and Levitt Events irrespective of whether such merchandise is intended to be given away or sold; and

(vii) On any other items produced by Levitt Denver which would customarily contain the Name.

(f) Levitt Denver shall require users, promoters, exhibitors, or other persons or entities contracting with Levitt Denver for use of the Pavilion for ticketed or non-ticketed events to use the Name in all promotional activities and efforts associated with producing such events, including but not limited to publicity, press releases, media relations, advertising, marketing, and social media.

(g) Levitt Denver shall be responsible, at its cost, for ensuring that the Name is used in compliance with the terms of this Agreement and the Other Agreements and is not used in a detrimental manner or in any manner not compliant with community standards of good taste or with Applicable Law.

8. FOUNDATION CONTRIBUTION; LEVITT DENVER OBLIGATIONS; PARTICIPATION IN LEVITT NETWORK

(a) **Foundation Contribution.**

(i) As further set forth in the Funding Agreement, in consideration of

the agreement of Levitt Denver to provide free concerts to the public at the Pavilion as described in Section 8(b) below, the Foundation hereby pledges to pay Levitt Denver One Million One Hundred Fifty Thousand and No/100 Dollars (\$1,150,000.00), payable as follows:

(1) A Four Hundred Thousand and No/100 Dollars (\$400,000.00) capital grant shall be made to Levitt Denver upon (a) satisfaction of the applicable requirements set forth in the Funding Structure, Funding Requirements, and Funding Timeline sections of the Levitt Guidelines attached as Exhibit B and (b) execution of this Agreement and the Funding Agreement.

(2) Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) in grants for operational and program support shall be made to Levitt Denver over the first five (5) calendar years of operation as follows: YEAR 1 - \$200,000; YEAR 2 - \$200,000; YEAR 3 - \$150,000; YEAR 4 - \$100,000; YEAR 5 - \$100,000 (collectively, the “**Initial Five Years**”). YEAR 1 shall be defined as the first calendar year during which a Series meeting the requirements of Section 8(b)(ix) is presented to the public; for the avoidance of doubt, if the first calendar year during which a Series meeting the requirements of Section 8(b)(ix) is presented to the public occurs in calendar year 2016, YEAR 1 shall mean calendar year 2016, YEAR 2 shall mean calendar year 2017, YEAR 3 shall mean calendar year 2018, YEAR 4 shall mean calendar year 2019, and YEAR 5 shall mean calendar year 2020. Levitt Denver’s receipt of this funding shall be subject to its compliance with the applicable requirements set forth in the Funding Structure, Funding Timeline, Annual Funding Eligibility, Levitt Program Guidelines and Best Practices sections of the Levitt Guidelines attached as Exhibit B.

(ii) In addition, prior to the Initial Five Years, Levitt Denver will be eligible to receive annual grants for staff professional development and board development; the award of any such grants shall be at the discretion of Levitt National.

(iii) In addition, the Foundation hereby pledges to pay Levitt Denver up to Fifty Thousand and No/100 Dollars (\$50,000.00) in additional grants in each of the Initial Five Years as provided in and subject to the applicable requirements set forth in the Funding Structure, Annual Funding Eligibility, Levitt Program Guidelines and Best Practices sections of the Levitt Guidelines attached as Exhibit B.

(iv) In addition, the Foundation hereby pledges to provide Levitt Denver One Hundred and No/100 Dollars (\$100,000.00) for operational and program support plus up to Fifty Thousand and No/100 Dollars (\$50,000.00) in additional grants in each calendar year of the Term following the Initial Five Years contingent upon Levitt Denver operating in accordance with the applicable requirements set forth in the most current version of the Levitt Guidelines.

(v) The funding described in this Section 8(a) shall be paid directly to Levitt Denver by either the Foundation or Levitt National.

(vi) The funding described in Section 8(a)(i)(1) shall be contingent upon Levitt Denver operating in accordance with the terms of this Agreement and the Other Agreements and the Levitt Guidelines attached as Exhibit B and either (i) working with a fiscal

sponsor currently exempt under Section 501(c)(3) of the Internal Revenue Code in order to receive funds on behalf of Levitt Denver for the purposes set forth in this Agreement and the Other Agreements or (ii) maintaining its status as a tax exempt corporation under Section 501(c)(3) of the Internal Revenue Code. The funding described in Sections 8(a)(i)(2) through 8(a)(iv) shall be contingent upon Levitt Denver operating in accordance with the terms of this Agreement and the Other Agreements and the most current version of the Levitt Guidelines and at all times maintaining its status as a tax exempt corporation under Section 501(c)(3) of the Internal Revenue Code.

(vii) In the event of any conflict or inconsistency between the provisions of this Section 8(a) and the Funding Agreement, the provisions of the Funding Agreement shall control and govern.

(b) **Levitt Denver Obligations.** During the Term of this Agreement, Levitt Denver agrees, at its cost, to present at the Pavilion an annual concert series consisting of fifty (50) concerts free of charge to the public (“**Series**”), which shall meet the following criteria:

(i) Each Series shall comply with the Levitt Program Guidelines section of the Levitt Guidelines attached as Exhibit B.

(ii) Each Series shall take place over a minimum of ten (10) consecutive weeks and a maximum of sixteen (16) consecutive weeks, with concerts presented a minimum of three (3) days of each week during the Series, with at least one (1) concert taking place Monday, Tuesday, Wednesday, Thursday or Friday and at least one (1) concert taking place on Saturday or Sunday of each week during the Series.

(iii) On days when two (2) concerts are presented, there shall be a minimum of three (3) hours between the start times of each concert. Only up to two (2) concerts presented on one (1) day will be counted towards the required minimum of fifty (50) concerts.

(iv) Every concert of each Series shall be family-friendly and appropriate for all ages.

(v) Each Series shall represent a broad array of music genres and cultures as well as be reflective of the community served.

(vi) Up to ten (10) concerts of each Series may feature acts geared towards children age ten (10) and under.

(vii) Each of the fifty (50) concerts of each Series shall feature a different act so a total of fifty (50) unique concerts are presented annually.

(viii) Each of the fifty (50) acts of each Series must be of professional status and paid for their performance.

(ix) In YEAR 1, and only in YEAR 1, Levitt Denver may present a minimum of thirty (30) free concerts, in accordance with the terms set forth in this Section 8(b), based upon the date of completion of construction of the Pavilion. Levitt Denver and the City

shall each make a good faith effort to encourage and facilitate the completion of construction of the Pavilion, per the Other Agreements, in order to allow Levitt Denver to present fifty (50) free concerts in YEAR 1. Beginning in YEAR 2 and throughout the Term of this Agreement, Levitt Denver shall present a minimum of fifty (50) free concerts in accordance with the terms set forth in this Section 8(b).

(x) Throughout the Term of this Agreement, Levitt Denver shall actively create awareness of the Pavilion, promote each Series and maintain stellar reputations for the Pavilion and Series through marketing, advertising, community outreach, and publicity efforts utilizing standard best practices and appropriate current technology.

(c) **Participation in the Levitt Network.** Throughout the Term of this Agreement, Levitt Denver agrees to participate in the Levitt Network and operate in accordance with the Levitt Guidelines as required of all Friends of Levitt Pavilion organizations which receive funding from the Foundation and Levitt National. During the Term of this Agreement, Levitt Denver also agrees to acknowledge the Foundation and Levitt National and recognize its participation in the Levitt Network as outlined in the Levitt Guidelines. Levitt Denver acknowledges that the Levitt Guidelines are updated every one (1) to three (3) years to include revisions such as but not limited to advances in technology, changes in funding opportunities, Levitt program initiatives, Levitt Network communications strategies, and Levitt National reporting requirements. Levitt Denver further acknowledges that receipt of annual funding from the Foundation and Levitt National is contingent upon Levitt Denver operating in accordance with the most current version of the Levitt Guidelines throughout the Term of this Agreement. Notwithstanding the foregoing, the Parties acknowledge and agree that any changes in the Levitt Guidelines that depart from the express terms of this Agreement, including the exhibits hereto, shall not be imposed upon the City without the City's consent and an amendment to this Agreement. Further, if compliance with any changes to the Levitt Guidelines would require alterations to the Park, the Pavilion Property or its Facilities, including the Pavilion, or impose new or modified obligations on the City, or reduce any rights and benefits to the City, or reduce the amount of funding to be provided by the Foundation and Levitt National per the terms of this Agreement, such changes shall not be applicable to the Parties or this Agreement.

9. LEVITT EVENTS; NON-LEVITT EVENTS

(a) **Levitt Events.** The City hereby grants Levitt Denver a right to use the Pavilion and the Pavilion Property for each Series and the Levitt Fundraising Events (as defined below) during the Term at no charge; this right shall commence upon completion and the City's acceptance of the construction of the Pavilion.

(i) **First Priority.** Following completion and the City's acceptance of construction of the Pavilion, subject to Section 9(c) below, Levitt Denver will have first priority to use the Pavilion and the Pavilion Property on sixty (60) separate days during each calendar year beginning on May 1st and concluding on October 31st of each calendar year (the "**Series Months**") for the purpose of preparing for, including setup and breakdown days and times, and presenting a minimum of fifty (50) free concerts to the public and up to five (5) Admissions Based Events, including, without limitation, ticketed events, or other events the purpose for which is to raise funds to support Levitt Denver and the Series (the "**Levitt Fundraising Events**") and, together with the Series, the "**Levitt Events**"). Should Levitt Denver be unable to

schedule all five (5) Levitt Fundraising Events on dates during the Series Months, Levitt Denver may use the Pavilion Property, including the Pavilion, at no charge for up to an additional five (5) days of each calendar year during months not included in the Series Months; provided, however, that Levitt Denver present no more than a total of five (5) Levitt Fundraising Events at the Pavilion Property, including the Pavilion, in any one (1) calendar year throughout the Term of this Agreement. In the event Levitt Denver does not require the use of the Pavilion for any of the sixty (60) days for which it is given priority use as provided herein, such days shall be made available for Non-Levitt Events (as defined in Section 9(b) below).

(ii) Levitt Series Schedule Approval. Levitt Denver will submit to the Manager its proposed schedule of dates and times (but not performers/artists) for the Series, including the five (5) extra days for setup and breakdown (the "**Levitt Series Schedule**"), no later than October 1st of each calendar year for the following calendar year. If timely submitted, the Manager shall approve the Levitt Series Schedule in writing, on or before thirty (30) days after receipt of the proposed Levitt Series Schedule or else such schedule shall be deemed approved. The Parties acknowledge that scheduling for YEAR 1 will depend on the progress of Pavilion construction, and will make good faith efforts to communicate and establish the Levitt Series Schedule for YEAR 1 as construction allows.

(iii) Levitt Fundraising Events Approval. For each Levitt Fundraising Event, Levitt Denver will submit to the Manager and the Director of Denver Arts & Venues ("**DAV**") its proposed date no later than ninety (90) days prior to such date. For Levitt Fundraising Events submitted prior to October 1st, the Manager and Director of DAV shall approve such dates in writing, on or before thirty (30) days after receipt of the proposed dates, provided that the Levitt Fundraising Events (i) comply with the restrictions for Festival Permit Sites, general restrictions, and seat tax (also referred to as the "**Facilities Development Admissions Tax**" or "**FDA Tax**") requirements set forth in the Parks and Recreation Policy and Procedures for Admissions Based Events (as the same may be amended from time to time, the "**ABE Policy**") and (ii) do not compete as determined by music genre, in the Director of DAV's reasonable discretion, with events scheduled at the City performance venues operated by DAV. If the Manager and Director fail to provide their written approval or disapproval within said 30-day period, the dates shall be deemed approved (provided the dates comply with the restrictions for Festival Permit Sites, general restrictions, and FDA Tax requirements set forth in the ABE Policy). For Levitt Fundraising Events submitted after October 1st, the Manager and Director of DAV shall approve such dates in writing, on or before thirty (30) days after receipt of the proposed dates, provided that the Levitt Fundraising Events (i) are proposed for dates that remain available, (ii) comply with the restrictions for Festival Permit Sites, general restrictions, and FDA Tax requirements set forth in the ABE Policy, and (iii) do not compete as determined by music genre, in the Director of DAV's reasonable discretion, with events scheduled at the City performance venues operated by DAV. If the Manager and Director fail to provide their written approval or disapproval within said 30-day period, the dates shall be deemed approved (provided the dates comply with the restrictions for Festival Permit Sites, general restrictions, and FDA Tax requirements set forth in the ABE Policy). Notwithstanding the foregoing, Levitt Denver shall not be required to obtain from the City Admission Based Event permits for the Levitt Fundraising Events nor shall Levitt Denver be required to pay Admission Based Event permit fees for the Levitt Fundraising Events. The Parties acknowledge that Levitt Denver's fundraising purposes will be well-served by the ability to schedule Levitt Fundraising Events that feature well-known artists, and the Director of DAV will consider such purposes in good faith

when assessing potential competition with performance venues operated by DAV.

(iv) Changes to Levitt Events. Levitt Denver and the City may, at any time upon written mutual agreement, alter an approved Levitt Series Schedule or an approved Levitt Fundraising Event date without the necessity of modifying this Agreement. Further, should Levitt Denver discover that a previously scheduled date is no longer needed for a Levitt Event, Levitt Denver will make such date available for use by the City or third parties for a Non-Levitt Event (as defined in Section 9(b) below).

(b) Non-Levitt Events. The Pavilion shall remain an available performance venue to the City and third parties at times when Levitt Events are not scheduled. The City desires for Levitt Denver, on a year-round basis, to operate, manage, and maintain the Pavilion, book, coordinate, and manage live performances and events at the Pavilion at times when Levitt Events are not scheduled (“**Non-Levitt Events**”), and promote the availability of the Pavilion for Non-Levitt Events. Levitt Denver hereby agrees to provide such services as further provided in this Agreement. For the avoidance of doubt, each free concert in excess of the fifty (50) free concerts that are presented by Levitt Denver as part of the Series and each fundraising event the purpose of which is to raise funds to support Levitt Denver and the Series in excess of the five (5) Levitt Fundraising Events contemplated in Section 9(a)(i) shall be treated as a Non-Levitt Event and shall be subject to all fees and requirements related thereto.

(c) Unavailable for Event Usage. Notwithstanding anything to the contrary contained herein, the City reserves the right to prohibit use of the Pavilion Property, including the Pavilion, for Levitt Events and Non-Levitt Events due to planned or anticipated park work or rest periods in the Park or by mutual agreement of the City and Levitt Denver. The City agrees to consult with Levitt Denver when determining any dates or times the Pavilion Property, including the Pavilion, may be unavailable for use and will, at minimum, make the Pavilion Property, including the Pavilion, available for a minimum of sixty (60) separate dates during the Series Months for Levitt Denver to prepare for, including setup and breakdown days and times, and to present the Levitt Events. Following completion of construction of the Pavilion, the City agrees to notify Levitt Denver in writing, on or before September 1st of each calendar year, of any dates or times during the Series Months for the following calendar year that the Pavilion Property, including the Pavilion, will be unavailable for Levitt Events due to planned or anticipated park work or rest periods. The City agrees to provide reasonable notice to Levitt Denver of any dates or times during months not included in the Series Months that the Pavilion Property, including the Pavilion, will be unavailable for Non-Levitt Events and Levitt Fundraising Events due to planned or anticipated park work or rest periods. In addition, the City reserves the right to prohibit use of the Pavilion Property, including the Pavilion, for Levitt Events and Non-Levitt Events at any time due to an unforeseen emergency.

10. SCOPE OF SERVICES.

(a) Scope of Services. Levitt Denver agrees to perform and furnish such management services and systems as are needed to operate, manage, and maintain the Pavilion for Levitt Events and Non-Levitt Events alike, book, coordinate, and manage Non-Levitt Events, and promote the availability of the Pavilion for Non-Levitt Events in a manner consistent with the operations of other similar public outdoor amphitheatres and in accordance with the terms and conditions of this Agreement. In performing the activities and services contemplated and

required by this Agreement, Levitt Denver agrees to comply with all Applicable Law and Department standards now in existence and from time to time hereafter established by the City.

(b) Specific Services. Without limiting the generality of the foregoing, Levitt Denver shall:

(i) Personnel. Provide employees and contractors as are necessary to satisfactorily perform the services and activities contemplated and required to be performed by Levitt Denver under this Agreement (including, without limitation, security, stagehands, and sound and lighting technicians). Levitt Denver shall supervise and direct all of its employees and contractors consistent with the terms and conditions of this Agreement.

(ii) Administrative Services. Provide day-to-day administrative services in support of its management activities including, but not limited to, the acquisition of services, equipment, and supplies; internal budgeting and accounting; management of maintenance; property management; personnel management; record-keeping; collections and billing; and similar services.

(iii) Non-Levitt Event Bookings. Book all Non-Levitt Events in the Pavilion and coordinate and interface with artists, artists' management, promoters, presenting entities, and the like. In performing this service, Levitt Denver shall:

(1) Comply with all Department permitting requirements, as the same may be amended from time to time, including, without limitation, event scheduling opening dates and deadlines, the ABE Policy (as further set forth subsection (11) below), and the City and County of Denver Department of Parks and Recreation Alcohol Policy (the "**Alcohol Policy**").

(2) Provide tours of the Pavilion Property to interested parties.

(3) Administer and negotiate the terms of booking commitments for Non-Levitt Events at the Pavilion; provided, however, that Levitt Denver shall use the form of booking agreement attached hereto and incorporated herein as **Exhibit C** when booking Non-Levitt Events. Notwithstanding the foregoing, the Parties acknowledge that the form of booking agreement may be revised by the City prior to any use by Levitt Denver, and any such revision will be undertaken in consultation with Levitt Denver. Booking agreements shall be executed by Levitt Denver in its own name and, subject to subsection (10) below, without prior approval of the City; provided, however, that any modifications, amendments, or waivers to the form of booking agreement proposed by Levitt Denver shall be pre-approved in writing by the Manager in consultation with the City Attorney. The Manager agrees to provide his or her decision on the requested modification, amendment, or waiver on or before fifteen (15) days after receipt of a written request for the same or else such request shall be deemed approved (provided such changes otherwise comply with the requirements of this Agreement). The City, through the Manager and the City Attorney, reserves the right, in its discretion, to modify and amend the form of booking agreement attached hereto from time to time, and any such modifications and amendments will be made in consultation with Levitt Denver. Any modification, amendment, or waiver to the form of booking agreement, may be approved by the City without necessitating an amendment to this Agreement.

(4) Assess and collect, and remit on a quarterly basis to the City, all rental (or permit) fees adopted by the Manager and approved by City ordinance, including any fees for Admission Based Events and fees for permits under the Alcohol Policy. No portion of any such rental (or permit) fees may be retained by Levitt Denver; however, Levitt Denver may retain funding from the sources identified in Section 20(b) below.

(5) Assess, collect, and remit to the City Manager of Finance, or cause to be assessed, collected, and remitted to the City Manager of Finance, as applicable, the FDA Tax in accordance with Article VII of Title II of the Denver Revised Municipal Code (D.R.M.C.), as the same may be amended from time to time.

(6) Establish to the extent practicable a schedule of reasonable fees and charges for Incidental Expenses (as such term is defined in the form of booking agreement attached hereto as Exhibit C), to be paid by users of the Pavilion Property, including the Pavilion, pursuant to the booking agreements. In determining such fees and charges, Levitt Denver shall evaluate comparable charges for similar goods and services at similar and/or competing facilities. Without limiting the foregoing, Levitt Denver maintains the right to establish administrative fees and charges to offset its overall, year-round administrative expenses. Such fee schedule and any future modifications or amendments thereto shall be subject to the prior written approval of the Manager, which shall be provided on or before thirty (30) days after receipt of the proposed schedule or else deemed approved. Notwithstanding the foregoing, Levitt Denver acknowledges that such fee schedule and any future modifications or amendments thereto may, if required by law, be subject to the approval of the City Council in which event, the City and Manager make no representation or guarantee as to the timeframe within which such approval will be provided to Levitt Denver.

(7) Maintain a master set of all booking records and schedules.

(8) Require that proper certificates and other evidence of insurance indicating compliance with the insurance requirements set forth in the form of booking agreement are furnished and kept in force at all times by all entities and persons contracting with Levitt Denver for use of the Pavilion Property, including the Pavilion.

(9) Limit the scale and activities at Non-Levitt Events to that which is appropriate for the Pavilion Property in consideration of the Pavilion Property's size and character, but no more than what is allowable by City ordinance or regulations and the ABE Policy.

(10) Confer with the Department's Facility Use Permit Office prior to booking and entering into a booking agreement for each Non-Levitt Event to ensure that Non-Levitt Events are consistent, in use and activities, with other events, uses, and activities permitted or allowed by the City in the Park and that the Pavilion Property is not unavailable due to planned or anticipated park work or rest periods in the Park. In addition, with respect to Non-Levitt Events that are also Admission Based Events, Levitt Denver shall confer with the Director of DAV prior to booking and entering into booking agreements for such events to ensure such events do not compete, as determined by music genre, in the Director of DAV's reasonable discretion, with events scheduled at the City performance venues operated by DAV.

(11) In booking Non-Levitt Events that are Admissions Based Events, Levitt Denver shall comply with the ABE Policy as follows:

a. Levitt Denver shall comply with the restrictions for Festival Permit Sites and general restrictions set forth in the ABE Policy; and

b. Levitt Denver shall be required to collect Admission Based Event permit fees and shall remit such fees on a quarterly basis to the Manager; and

c. Levitt Denver shall perform the duties and functions of the Department's Facility Use Permit Office and the Manager with respect to implementing the Permitting Procedures and Review Criteria set forth in the ABE Policy; provided, however, that third parties shall be permitted to use the Pavilion Property, including the Pavilion, for Admissions Based Events by virtue of entering into booking agreements with Levitt Denver and separate Admissions Based Event permits from the Department shall not be required; and

d. Levitt Denver shall be responsible for coordinating the scheduling of Admissions Based Events, including Levitt Fundraising Events, at the Pavilion Property with other Admissions Based Events scheduled by the Department within other areas of the Park to ensure compliance with the ABE Policy; and

e. Levitt Denver shall comply with and shall ensure compliance of third parties with Article VII of Title II of the DRMC regarding the FDA Tax.

(12) All Non-Levitt Events must be family-friendly and appropriate for all ages.

(iv) Advertising and Promotional Services. Subject to Applicable Law and the requirements of this Agreement (including Sections 18 and 19 below), Levitt Denver shall engage in such advertising, solicitation, and promotional activities as may be calculated to develop the full potential of the Pavilion and the cultivation of broad community support. Levitt Denver agrees that it shall not permit Sponsorships (as defined below), advertising, promotional products and marketing materials within the Pavilion Property, including the Pavilion, or associated with its operation and maintenance of the Pavilion Property, including the Pavilion, that promote the sale or use of any of the following: (i) firearms, (ii) fireworks, (iii) pornography, (iv) tobacco, (v) marijuana, and (vi) illegal activities.

(v) Security and Public Safety. Levitt Denver shall develop and implement safety policies and programs, consistent with applicable City standards and policies, to help assure the safety of the general public and employees, officers, officials, contractors, and other agents of Levitt Denver and the City, and shall, upon request, provide a copy of the policies and programs, and any amendments thereto, to the Manager. Levitt Denver shall maintain and, upon request of the Manager, submit to the Manager incident reports, including reports of

criminal acts, property damage, and personal injury. Any incidents which involve an insurance claim under Section 22 shall be promptly reported by Levitt Denver to the Manager and the City's Risk Management Office. Levitt Denver shall be solely responsible for engaging all security and public safety personnel needed for Levitt Events and Non-Levitt Events consistent with applicable City standards and policies. Levitt Denver and the City agree to meet as necessary to discuss and resolve any public safety issues which arise or are anticipated to arise during Levitt Events and Non-Levitt Events.

(vi) Production. Supervise and coordinate setup and breakdown of Levitt Events and Non-Levitt Events, including sound equipment, lights, volunteers, stagehands, and the like.

(vii) Portable Toilets. Provide portable toilets consistent with Parks sanitation standards that include hand sanitizer dispensers and are clean and free of waste, are in working condition, unclogged and draining properly, in such amount as are reasonably needed, during the Levitt Events and Non-Levitt Events.

(viii) Trash and Recycling. Provide temporary garbage carts, cans, and recycling containers as needed throughout the Pavilion Property during the Levitt Events and Non-Levitt Events. Consistent with applicable City standards and policies, immediately following each Levitt Event and Non-Levitt Event, remove such temporary containers and dispose of trash and recycling in locked Levitt Denver dumpsters for ultimate removal by Levitt Denver or its contractor(s) from the Park. If Levitt Denver dumpsters are overflowing after a Levitt Event or Non-Levitt Event, Levitt Denver shall arrange for trash and recycling pickup within 12 hours of the end of the subject event. Further, if City dumpsters are consistently overflowing after Levitt Events and Non-Levitt Events, Levitt Denver and the City will work in good faith to resolve the issue.

(ix) Parking. At the time of execution of this Agreement, the City is developing a parking plan for the Park (the "**City Parking Plan**"), which the City anticipates will be finalized by March 31, 2014. Upon completion of the City Parking Plan, Levitt Denver will prepare and submit for the Manager's written approval (which shall not be unreasonably withheld) a written plan (the "**Levitt Parking Plan**") demonstrating how Levitt Denver will satisfy the parking requirements set forth for the Pavilion Property in the City Parking Plan. The Manager agrees to provide his or her written decision on the Levitt Parking Plan on or before forty-five (45) days after receipt of the Levitt Parking Plan or else such plan shall be deemed approved (provided the Levitt Parking Plan complies with the City Parking Plan). Notwithstanding the foregoing, if the Manager determines, in his or her sole discretion, that a review of the Levitt Parking Plan requires a public process, the Manager agrees to provide his or her written decision on the Levitt Parking Plan on or before one-hundred twenty (120) days after receipt of the Levitt Parking Plan or else such plan shall be deemed approved (provided the Levitt Parking Plan complies with the City Parking Plan). The Manager's approval of the Levitt Parking Plan is required before the first Levitt Event or Non-Levitt Event may take place at the Pavilion Property. The City Parking Plan may be amended over time, and any such changes (and any accompanying changes to the Levitt Parking Plan) shall not require an amendment to this Agreement. Any changes to the City Parking Plan which pertain to the Pavilion Property or affect the Levitt Parking Plan will be made in consultation with Levitt Denver. Levitt Denver agrees to promptly amend the Levitt Parking Plan consistent with changes to the City Parking

Plan and the Manager agrees to promptly review and approve or disapprove any such amendments to the Levitt Parking Plan; however, the Parties shall not be bound the timeframes set forth in this provision for initial approval.

(x) General Maintenance and Repair.

(1) Pavilion Services. Except as otherwise expressly provided in this Agreement with respect to the City's obligations, Levitt Denver shall maintain public and non-public areas within the Pavilion in safe condition and good repair.

(2) Pavilion Property Services. After each and every Levitt Event and Non-Levitt Event at the Pavilion, Levitt Denver shall conduct a walkthrough of, and remove trash and debris from the those areas of the Park depicted on **Exhibit D**, including, without limitation, driveways, walkways, bathrooms, landscape areas, and parking lots within the Park, and parking lots located outside the Park used for Levitt Events and Non-Levitt Events. Any minor damages to the Facilities or landscape areas located within the areas of the Park depicted on Exhibit D that are identified during such post-event walkthroughs shall be repaired by Levitt Denver within a reasonable timeframe. Levitt Denver shall report any and all other damages immediately to the Manager. Any person found by Levitt Denver to be causing damage to the Park or the Pavilion Property, including the Pavilion, shall be immediately reported to law enforcement. Storage of patrons' belongings shall not be allowed at the Pavilion Property. The Manager and Levitt Denver may mutually agree to modify and amend Exhibit D from time to time to better capture the areas of the Park impacted by Levitt Events and Non-Levitt Events, and any such modifications and amendments shall be in writing and may be made without necessitating an amendment to this Agreement.

(xi) Maintenance, Repair, and Capital Improvements Obligations of Levitt Denver. Except as expressly provided in Section 11 below, Levitt Denver agrees that it shall be its responsibility to keep and maintain the Pavilion in good physical and working condition. Levitt Denver shall provide, at its own expense, for all cleaning and sanitation for the Pavilion, including without limitation all janitorial services, window washing, floor and wall cleaning, non-public restroom cleaning, and replacement of non-public restroom supplies. Levitt Denver shall also provide, at its own expense, for cleaning, sanitizing, and supplying public restrooms permanently located within the Pavilion Property during and immediately following Levitt Events and Non-Levitt Events, provided that such public restrooms are open during the subject events. Levitt Denver likewise shall address, at its expense, any non-structural repair and maintenance issues that arise with regard to permanent public restrooms during and immediately following Levitt Events and Non-Levitt Events, provided that such public restrooms are open during the subject events. For the avoidance of doubt, "non-structural repair and maintenance issues" shall be limited to matters falling within the items described in 1) through 11) of this Section 10(b)(xi) and items of similar character or use. Levitt Denver shall provide a report (which may be by email) of the public restrooms' condition to the individual or department designated by the City after each Levitt Event and Non-Levitt Event, provided such public restrooms are open during the subject events. All other repair, maintenance, and improvements required with regard to permanent public restrooms located within the Pavilion Property shall be the responsibility of the City as set forth in Section 11 below. Notwithstanding the foregoing, Levitt Denver may, with respect to permanent public restrooms, conduct emergency repairs or maintenance otherwise falling within the City's responsibility as set forth in Section 12 below.

Levitt Denver shall cause all garbage and trash to be regularly removed from the Pavilion to locked Levitt Denver dumpsters and ultimately removed from the Park, and Levitt Denver shall maintain the Pavilion free of rodents and pests. The grounds within the Pavilion Property as well as the areas identified in Exhibit D shall be policed for litter immediately following each and every Levitt Event and Non-Levitt Event. Levitt Denver shall, at its own expense, maintain, repair, or replace any of the following damaged or broken items: 1) interior windows and window frames; 2) interior doors and door frames; 3) interior handles and locks; 4) cabinets and counters; 5) carpet, floor tiles, and other flooring; 6) interior paints and stains; 7) non-structural walls, woodwork, wall paneling and tiles, drywall, and plastering; 8) plumbing items, including sinks, toilets, urinals, and associated above floor or below ceiling pipes and drains; 9) light switches, plugs, and lighting; 10) ceiling tiles; 11) all built in or attached electrical fans; 12) refrigerator or refrigeration units; 13) interior drinking fountains; 14) telephones, televisions, and other communication devices; 15) furnishings and furniture; 16) computer, sound, lighting, and similar equipment; 17) fences and similar perimeter structures; and 18) items of similar character or use. Replacements shall be of at least equal quality and functionality as the replaced items were when they were new. Levitt Denver shall be responsible for any repairs or replacements of Structural and Exterior Features and Systems, as defined in Section 11 below that are damaged or broken by the willful or negligent actions of Levitt Denver or its employees, invitees, suppliers and agents. Such repairs or replacements shall, at the City's option, be performed by Levitt Denver or the City subject to reimbursement by Levitt Denver; if performed by Levitt Denver, such repairs or replacements shall be completed within a reasonable time period specified in a written notice from the City.

(c) No Discrimination. With respect to allowing attendance at events and performances at the Pavilion Property, Levitt Denver shall not discriminate against any person on the basis of race, age, color, religion, sex, national origin, disability, or sexual orientation.

(d) Contracting. Levitt Denver may contract with third party vendors and service providers to perform activities and services which Levitt Denver is obligated to perform under this Section 10, except that the Non-Levitt Event booking services set forth in Section 10(b)(iii) shall be performed solely by Levitt Denver. Unless a specific waiver is granted in writing by the Manager, all such vendors and service providers shall be subject to each and every provision of this Agreement that would apply to such activity or service were it performed by Levitt Denver including, without limitation, insurance and indemnification requirements. Further, no such contract shall relieve Levitt Denver from ensuring that all required activities and services are timely and satisfactorily performed. Any such contract shall also be subject to all Applicable Law, including prevailing and living wages. Compliance with the terms and restrictions of this Section 10(d) is the responsibility of Levitt Denver. Levitt Denver shall, upon request, promptly provide the City with a copy of any written contract or agreement for work or services provided at the Pavilion Property, including the Pavilion.

(e) Other Services. The Parties acknowledge and agree that for any service or action which is reasonably necessary for the smooth and efficient year-round operation and management of the Pavilion and which is not specifically designated the responsibility of either the City or Levitt Denver under this Agreement, the City and Levitt Denver shall cooperate and coordinate in an effort to evaluate such needs and the associated costs and to develop a strategy and plans for procuring funds necessary to fulfill any such necessary service or action.

11. MAINTENANCE, REPAIR, AND CAPITAL IMPROVEMENTS OBLIGATIONS OF CITY.

(a) Structural and Exterior Elements. Subject to Section 11(f) below and the availability of appropriated funds, the City will, at its own expense, maintain, repair and replace (as necessary) structural elements of the Pavilion and public restrooms permanently located within the Pavilion Property, including foundations, roof and roof supports, structural walls, ceiling and floor structural elements, exterior windows and window frames, exterior doors and door frames, exterior handles and locks, and similar or related features and paved areas within the Pavilion Property (“**Structural and Exterior Elements**”).

(b) Systems. Subject to Section 11(f) below and the availability of appropriated funds, the City will maintain, repair and replace (as necessary) heating and air conditioning, water, sewer, drainage, electrical, plumbing, natural gas, fire protection, and telephone systems, including associated tubes, ducts, pipes, lines, mains, wires, conduits, boxes, grates, valves, meters, and associated equipment and appurtenances but not including items set forth in Section 10(b)(xi) above (“**Systems**”) located at or in the Pavilion Property, including the Pavilion and public restrooms permanently located within the Pavilion Property.

(c) Pavilion Property Grounds Maintenance. Subject to Section 11(f) below and the availability of appropriated funds, the City will, at its own expense, maintain the grounds of the Pavilion Property, including, without limitation, maintenance of pathways, public lighting, the lawn and landscaping, trash and litter removal (except as expressly provided in Section 10(b)(viii), Section 10(b)(x)(2), and Section 10(b)(xi)) (“**Grounds Maintenance**”), and all permanent improvements and fixtures presently existing or as may be constructed, expanded or renovated by the City in the future on, below or above ground within the boundaries of the Pavilion Property (but not including permanent improvements and fixtures within the Pavilion itself as maintenance responsibilities for the Pavilion are described elsewhere in this Section). Notwithstanding the foregoing, it shall be Levitt Denver’s responsibility to cause the trash disposed of within the Levitt Denver dumpsters located at the Pavilion to be removed from the Park.

(d) Public Restrooms. The City shall provide, at its own expense, for cleaning, sanitizing, and supplying public restrooms permanently located within the Pavilion Property at all times except during and immediately following Levitt Events and Non-Levitt Events, provided such public restrooms are open during the subject events; in such circumstances Levitt Denver shall be responsible for the same in accordance with Section 10(b)(xi) above. The City likewise shall be responsible for any non-structural repair and maintenance issues that arise with regard to public restrooms permanently located within the Pavilion Property at all times except during and immediately following Levitt Events and Non-Levitt Events, provided such public restrooms are open during the subject events; in such circumstances Levitt Denver shall be responsible for the same in accordance with Section 10(b)(xi) above, and any Structural and Exterior Elements and Systems with respect to the public restrooms.

(e) Inspection and Repair. The City or its contractors and agents shall have the right to enter into or on the Pavilion at all reasonable times to inspect the Pavilion and/or take such actions as may, in the opinion of the City, be deemed necessary or advisable to perform such work as provided in subsections (2)a, (2)b, (2)c, and (2)d above. Except for emergency

situations, the City will make every reasonable effort to timely notify Levitt Denver of any pending work and to coordinate such work so as to minimize any disruption to Levitt Denver's activities.

(f) Process. The Parties understand and agree that, except to the extent provided in the Other Agreements, Levitt Denver is under no obligation to make or pay for any Structural and Exterior Elements, Systems, or Grounds Maintenance. In the event that the City and/or Levitt Denver, jointly or individually, determine that maintenance, repair or replacement of Structural and Exterior Elements or Systems are needed, the City and Levitt Denver shall cooperate and coordinate in an effort to develop plans to evaluate such needs and the associated costs and to develop a strategy and plans for procuring funds necessary to complete the required maintenance, repair or replacement in a timely and efficient manner. Notwithstanding the foregoing, subject to Section 9(c), the City may, at its sole discretion, improve, expand, or replace Structural and Exterior Elements and Systems. The City will consult with Levitt Denver regarding any changes or developments to the Pavilion Property, including the Pavilion, that could adversely affect Levitt Denver and the Levitt Events, including but not limited to replacement of the open lawn setting with benches or seats or other changes to landscaping and walkways.

12. EMERGENCY. In the event of an existing or imminent emergency where existing Facilities, other improvements in the Pavilion, or public safety are at substantial risk or neighboring property or residents are at substantial risk due to unsafe or unhealthy conditions in existing Facilities or elsewhere in the Pavilion, either the City or Levitt Denver is authorized, without notice to the other Party, to take such prompt and prudent measures as necessary to secure, protect, and preserve the Facilities, the Pavilion, the Pavilion Property, neighboring property, and public health and safety. Notice shall be provided as soon as reasonably possible to the other Party as to the reasons for the emergency work, the time, place, and manner of the emergency work, and the costs incurred due to the emergency work. The City and Levitt Denver shall communicate and work, in good faith, for the resolution of the payment of the incurred costs for the emergency work; provided, however, that, if the unsafe or unhealthy condition giving rise to the emergency work resulted from a Party's failure to comply with its maintenance, repair, or other obligations set forth in this Agreement, such Party shall be responsible for the cost of such emergency work.

13. GENERAL OPERATIONAL REQUIREMENTS.

(a) Days and Hours of Operation. The lawn area within the Pavilion Property shall be open to the general public during Park hours except during times when Admission Based Events and Levitt Fundraising Events are taking place, or during other times when the lawn area is closed to the public under the discretion of the Manager. The Pavilion, exclusive of service, storage, and office areas, dressing rooms, green rooms, non-public restrooms, and other non-public areas, shall be open to the general public during Park hours except during times when events or performances are taking place, including rehearsal, load-in, and load-out times, or other times when public areas of the Pavilion are closed to the public at the discretion of the Manager. In addition, any public restrooms located within the Pavilion Property shall be open to the general public at the sole discretion of the Manager. Service, storage, and office areas, dressing rooms, green rooms, non-public restrooms and other non-public areas of the Pavilion shall not be accessible to the general public.

(b) Rules and Regulations. The public’s right to use the lawn area within the Pavilion Property and the public areas of the Pavilion shall be subject to any rules and regulations promulgated by the Manager governing utilization of City parks, except to the extent expressly modified in this Agreement.

(c) Political Activity. No City or Scientific and Cultural Facilities District (“SCFD”) funds shall be used by Levitt Denver in connection with any activities of a political nature, including, but not limited to, any activity to further the appointment, election, defeat, or removal of any applicant, incumbent, or candidate for public office or any activity undertaken to influence the passage, defeat, or final content of any legislation or ballot proposal. A strict accounting of all other funds used by Levitt Denver for political activity shall be maintained and available for public review. Levitt Denver may post appropriate signs recognizing the financial support of SCFD.

(d) Governance. Levitt Denver shall be governed by its bylaws, a current copy of which is attached hereto as **Exhibit E** and is incorporated herein by reference (“**Bylaws**”). Levitt Denver agrees that at all times during the Term of this Agreement, the Manager of Parks and Recreation or the Manager’s designee, the Director of DAV or the Director’s designee, and the City council member from City Council District #7 or his or her designee (collectively, the “**City Members**”) shall be *ex officio* (non-voting) members of the board of directors for Levitt Denver entitled to attend and participate in all meetings and committee meetings of said board and shall be provided with all written materials provided to other members of the board, including (without limitation) meeting agendas and minutes; provided, however, that Levitt Denver and the City Members may mutually agree in writing to change these *ex officio* requirements, and any such change shall not require an amendment to this Agreement. Any change to Levitt Denver’s Bylaws, articles of incorporation and other material policy documents must be in conformance with this Agreement; any such changes shall not require an amendment to this Agreement. Levitt Denver herewith endorses the policy of encouraging diversity within its Board of Directors, and it shall strive to achieve such diversity so long as this Agreement is in effect.

(e) Cooperative Statement. Levitt Denver and the City acknowledge that the following is an accurate summary of the basis for this Agreement:

Levitt Pavilion for the Performing Arts – Denver, at Ruby Hill Park is operated and maintained by Friends of Levitt Pavilion Denver, a Colorado nonprofit corporation, for the people of the City and County of Denver and for the general public in cooperation with the Denver Parks and Recreation Department.

Accordingly, Levitt Denver shall include the foregoing statement (or such modification thereof as the Manager shall approve, which approval shall not unreasonably be withheld so long as the essence of the statement is incorporated) in postings and signs at the Pavilion and documentation prepared for the Pavilion where it is appropriate to acknowledge the nature of the relationship, including annual reports, newsletters, guides to or information pamphlets about the Pavilion, periodicals, grant applications, and other materials distributed generally by Levitt Denver to organizations, institutions, Levitt Denver’s Board of Directors, and the public. It is understood

that Levitt Denver may, from time to time, be expected or obligated to include other statements of support and cooperation (e.g., by SCFD or specific donors) and Levitt Denver may combine the above statement with such other statements of support and cooperation. For purposes of letterhead and fundraising materials, it is understood that the following shorter version of the cooperative statement may be used in lieu of that set forth above:

In Cooperation with the City and County of Denver.

Postings at the Pavilion Property, including the Pavilion, shall conform, in graphic design and quality, to uniform standards established by Levitt Denver and approved in writing by the Manager. Postings at the Pavilion Property that will be displayed solely during the day of a Levitt Event or Non-Levitt Event will be approved or disapproved by the Manager in writing on or before fifteen (15) days of the Manager's receipt of the proposed postings or else such posting shall be deemed approved. All other postings at the Pavilion Property will be expeditiously approved or disapproved by the Manager in writing no more than sixty (60) days of the Manager's receipt of the proposed postings or else such posting shall be deemed approved. The Manager may, in the Manager's sole discretion, waive all or any of the requirements of this Section 13(e), subject to such terms or conditions as the Manager may specify.

(f) City Access. The Mayor, members of the City Council, the Manager, and other representatives of appropriate City departments shall, at all reasonable times, have access to the Pavilion for the purposes of visitation and inspection; provided, however, that twenty-four (24) hours' notice shall be provided to Levitt Denver prior to visiting or inspecting storage areas and office areas within the Pavilion that are exclusively used by Levitt Denver. Notwithstanding the foregoing, notice shall not be required in the event of an emergency.

14. OFFICE & STORAGE SPACE. For so long as Levitt Denver provides year-round management and operations at the Pavilion, Levitt Denver shall have exclusive use of the storage space and office space in the Pavilion. In the event Levitt Denver ceases providing year-round management and operations at the Pavilion, Levitt Denver shall have exclusive use of the storage space and office space in the Pavilion only during the Series Months. The office space to be furnished to Levitt Denver shall be for administrative and office purposes related specifically to the services and activities to be performed by Levitt Denver pursuant to this Agreement. Levitt Denver's use of such office space for any other purpose, without the prior written approval of the Manager, shall be grounds for termination of this Agreement.

15. CONCESSIONS. Levitt Denver shall have the right to conduct on its own, or provide by agreement(s) between Levitt Denver and a qualified concessionaire(s) for, the operation of long-term or seasonal concessions for selling food, non-alcoholic beverages, alcoholic beverages, and merchandise, consistent with this Agreement. Concession facilities within the Pavilion Property, including the Pavilion, shall be located only within areas designated for such use on the approved design and construction plans for the Pavilion Property, including the Pavilion, unless alternative locations are approved in writing by Levitt Denver and the Manager. General liability and other insurance appropriate for the concession shall be required as a condition to operate a concession, and evidence of that insurance, including liquor liability insurance if alcoholic beverages are served or sold, must be provided to the Manager prior to the commencement of concession sales. All concession agreements shall contain a provision that the agreements may be suspended or terminated, as appropriate, if it is determined

by the Manager that the concessionaire has (1) failed to comply with applicable health and safety laws (local, state, and federal), (2) failed to pay applicable taxes, fees, fines, or charges (local, state, and federal), or (3) failed to substantially conform with other Applicable Law, including applicable licensing requirements. The Manager shall give written notice to Levitt Denver stating with specificity the reasons for a proposed termination and providing for a thirty (30) calendar day period in which the violation may be rectified. Levitt Denver shall inform the concessionaire of the Manager's notice in a timely manner so as to assure that any corrective action on the part of the concessionaire can be completed within the specified 30-day period. Failure to make such correction within the 30-day period may, at the Manager's discretion, result in the termination of the concession agreement.

16. ALCOHOL. Levitt Denver may obtain or contract with a third-party vendor to obtain a liquor license for the Pavilion Property in order to serve and or sell alcoholic beverages at the Pavilion Property during Levitt Events and Non-Levitt Events, subject to (i) Levitt Denver or its third-party vendor obtaining any required State and Denver Excise and Licenses approvals and licenses for the service of alcoholic beverages, (ii) the Levitt Guidelines, (iii) the Alcohol Policy, and (iv) Levitt Denver or its third-party vendor, as applicable, obtaining and maintaining liquor liability insurance as required by the City's Risk Management Office. In addition, Levitt Denver shall, prior to applying or causing a third-party vendor to apply for a liquor license, obtain the Manager's written approval of the geographic locations within the Pavilion Property for which the liquor license, if approved by state and local regulators, would apply (the "**Licensed Premises**"). The Manager will approve or disapprove the proposed geographic locations in writing on or before sixty (60) days after receipt of the proposed locations, or else such proposal shall be deemed approved. In the event Levitt Denver or its third-party vendor obtains a liquor license for the Licensed Premises, Levitt Denver shall not be required to obtain permits from the Department under the Alcohol Policy.

In the event, Levitt Denver does not obtain, or does not cause a third-party vendor to obtain, a liquor license for specific geographic locations within the Pavilion Property, Levitt Denver, its agent, or other users of the Pavilion Property may serve and or sell alcohol at the Pavilion Property subject to (i) Levitt Denver or its third-party vendor obtaining any required State and Denver Excise and Licenses approvals and licenses for the service of alcoholic beverages, (ii) the Levitt Guidelines, (iii) the Alcohol Policy (including the Alcohol Policy's permitting requirements), and (iv) Levitt Denver or its third-party vendor, as applicable, obtaining and maintaining liquor liability insurance as required by the City's Risk Management Office.

Levitt Denver shall indemnify, hold harmless, and defend the City, and shall cause its third-party vendor(s) or agent(s), if any, and any other users of the Pavilion Property to indemnify, hold harmless, and defend the City, for damages, injuries, penalties, fines, or other costs resulting from or associated with such sale or service of alcoholic beverages within the Pavilion Property.

Unless otherwise requested or approved in writing by the City, under no circumstance may alcohol be served or sold at the Pavilion Property except during Levitt Events or Non-Levitt Events.

17. MOBILE FOOD AND BEVERAGE FACILITIES. Subject to the terms and conditions below, Levitt Denver may enter into contracts with vendors allowing for the sale and service of food and non-alcoholic beverages from Mobile Facilities (as defined below) within the Pavilion Property during Levitt Events or Non-Levitt Events.

(a) Service Sites. Such food and beverage sales and service may occur at the locations shown on the design and construction plans for the Pavilion Property and approved in writing by the Manager (the “**Service Sites**”). All vendors contracted by Levitt Denver shall strictly limit their food and beverage sales and service to the interior of the Service Sites and shall access the Service Sites only by way of the accesses shown on the approved design and construction plans for the Pavilion Property. Any issues as to the geographic limits or boundaries of the Service Sites shall be determined solely by the Manager. No more than one vendor shall operate in a designated Service Site. In the event the number of vendors providing services at the Pavilion Property exceeds the number of Service Sites, Levitt Denver shall, upon notification by the Manager, take prompt action to reduce the number of vendors in the Pavilion Property to or below the authorized number.

(b) Food and Beverage Service. Any vendor contracted by Levitt Denver to provide food and beverage sales and service in the Pavilion Property shall have the non-exclusive and non-transferable right to engage in the sale and service of food and beverages within the Service Site specified by Levitt Denver during Levitt Events and/or Non-Levitt Events specified by Levitt Denver. All food and beverage sales and service shall be provided by means of mobile facilities, such as a food service truck or carts or under tents or canopies, situated or set up within a Service Site (“**Mobile Facilities**”). The Mobile Facilities must be removed daily from the Pavilion Property during Park hours. The sale or service of alcoholic beverages of any kind from the Mobile Facilities is strictly prohibited (unless otherwise approved in accordance with Section 16 above). No products may be served or sold in glass containers. Good quality, fresh food and beverage products shall be served and shall be provisioned on a daily basis. All cooked foods shall be prepared either in the Mobile Facilities within the Service Sites by qualified and experienced cooks or at an approved commissary or other food preparation center authorized to cook and dispense foods for public consumption (i.e., no home-cooked foods). Prepackaged food products must be provided in individual servings, labeled as to ingredients, dated for expiration of product, transported in individual servings, and stored under proper conditions. All state and local laws, regulations, and orders regarding food handling shall be complied with, and all required food service permits and licenses shall be obtained, kept current and shown to the Manager upon request. The right of access to and inspection of all Mobile Facilities shall not be denied to City inspectors acting in the course of their authorized duties.

(c) Sanitation; Trash; Recycling. All Mobile Facilities, Service Sites and surrounding areas in the Pavilion Property and the immediately adjacent areas of the Park shall be maintained by the vendors in a clean, safe, and sanitary condition. The vendors shall actively police the area within one hundred feet (100’) of their Service Sites in order to remove trash and clean up any waste, and shall cooperate with the City, Levitt Denver, and other vendors in assuring the Park remains a clean and inviting place for the public. The vendors shall provide, and maintain within their Service Sites, sufficient trash and recycling receptacles to adequately serve the needs of their sales and service, and the vendors shall remove and lawfully dispose of all such collected trash, waste and debris from their Service Sites on a daily basis; vendors shall dispose of the same away from the Park. The vendors should be encouraged by Levitt Denver to use their best efforts to implement sustainable practices including but not limited to composting, reducing waste stream, and recycling packaging and other trash generated by their business.

(d) Department Rules and Regulations. All vendors must comply, and require

their employees, agents, and contractors to comply, with all applicable policies, rules and regulations adopted by the Department now and in the future, including curfew and any design or appearance standards applicable to vendors operating in Denver parks.

(e) Damages. Vendors shall be liable to the City for any damages the vendors, their employees, agents, or contractors caused to the Park or are otherwise caused by the operations or activities of the vendors' businesses, and this obligation shall be written into all contracts between Levitt Denver and such vendors. Vehicles permitted in the Pavilion Property to support the vendors' businesses must be driven on hard surfaces, and any costs incurred by the City to repair damage to turf, vegetation or park amenities caused by vendors' vehicles shall be promptly paid by Levitt Denver.

(f) Fees and Charges. Levitt Denver may establish a fair and uniform set of fees and charges to be collected from vendors for the right to provide food and beverage sales and service in the Pavilion Property under its vendor contracts. Such fees and charges must be stated, including any right to increase such fees and charges, in the vendor contracts and shall be subject to the prior written approval of the Manager, which approval shall be provided on or before thirty (30) days after receipt of the proposed fees and charges or else deemed approved. Notwithstanding the foregoing, Levitt Denver acknowledges that such fee schedule and any future modifications or amendments thereto may, if required by law, be subject to the approval of the City Council in which event, the City and Manager make no representation or guarantee as to the timeframe within which such approval will be provided to Levitt Denver. All permit or related fees that the Department might typically charge vendors for operations and activities in parks are hereby waived for any vendors with which Levitt Denver has entered into vendor contracts and from which Levitt Denver is collecting fees and charges.

18. GIFTS; SPONSORSHIPS; and GRANTS.

(a) Gifts and Sponsorships. Levitt Denver shall have the right to accept and utilize, for the benefit and use of Levitt Denver and the Pavilion Property, including the Pavilion, gifts, donations, and contributions of money and personal property ("**Gifts**") and money and personal property provided by for-profit and nonprofit entities with certain benefits, recognition, or naming rights being a condition of providing the money or personal property ("**Sponsorships**"). Levitt Denver may, in its discretion, refuse to accept any Gift or Sponsorship if Levitt Denver determines that such Gift or Sponsorship would not be in the best interests of Levitt Denver or the Pavilion Property, including the Pavilion. Levitt Denver shall develop policies regarding: the solicitation and use of Gifts and Sponsorships; the acceptability of and compliance with any terms and conditions on Gifts or Sponsorships; any formal recognition, acknowledgments, or memorials associated with Gifts or Sponsorships, including but not limited to signs in the Pavilion Property or its Facilities, including the Pavilion, and the naming of Facilities or features in the Pavilion Property, including the Pavilion (provided, however, that neither the Park nor the Pavilion shall be re-named). These policies and Levitt Denver's implementation of these policies must be in conformance with the terms and conditions of this Agreement, the Levitt Guidelines, and Applicable Law, including, without limitation, federal tax laws and regulations related to tax-exempt government bonds and rules, regulations, policies and procedures promulgated by the Department (such as, the Department's Corporate Sponsorship Policies and Procedures and the Department's Policy and Procedures for Naming of Parks and Recreational Facilities). Levitt Denver shall provide a current version of these policies to the

City, and in the event of amendment or revision, shall provide the City with an updated version of the same.

Notwithstanding the foregoing, Levitt Denver shall obtain the Manager's prior written approval of all policies related to on-site recognition of Gifts and Sponsorships including, without limitation, policies related to recognition by signage or naming of Facilities or features within the Pavilion Property, including the Pavilion; the Manager's decision on such policies shall be provided on or before sixty (60) days of the Manager's receipt of the proposed policies or else such policies shall be deemed approved (provided that such policies otherwise comply with the requirements of this Agreement). Levitt Denver shall not provide on-site recognition of Gifts and Sponsorships unless and until written approval of the same has been provided by the Manager.

(b) Grants. Levitt Denver shall have the right to apply for, accept and utilize, for the benefit and use of Levitt Denver and the Pavilion Property, including the Pavilion, grants and other governmental or private financial assistance ("**Grants**"), subject to compliance with Applicable Law. Levitt Denver and the City agree to collaborate and support each other's efforts to obtain Grants for the improvement of the Pavilion Property, including the Pavilion, and the support and enhancement of programs and activities conducted by Levitt Denver at the Pavilion Property. Any matching fund requirement of a Grant shall be the responsibility of Levitt Denver unless the City has approved the matching fund requirement in advance of the grant application in accordance with City ordinance and appropriated its share of the matching funds. Any Grant that requires that certain covenants, conservation easements, or other restrictions be imposed on the Pavilion Property, including the Pavilion, in whole or part, as a condition of obtaining the Grant must be pre-approved by the City through the City's established contract process.

(c) Compliance. For all Gifts, Sponsorships, and Grants accepted and utilized by Levitt Denver, including any donations of money and grant money received by the City for the Pavilion Property, including the Pavilion, and turned over to Levitt Denver, Levitt Denver shall be responsible for complying with the terms and conditions of those Gifts, Sponsorships, and Grants.

19. NAMES AND LOGOS AND PHOTOGRAPHIC RIGHTS.

(a) Names and Logos of the City and Department of Parks and Recreation. The City grants to Levitt Denver the non-exclusive right to use the names and logos of the City and the Department in connection with Levitt Denver's operation and maintenance of the Pavilion Property, including the Pavilion, for use as a live performance outdoor amphitheatre; provided that such use of (i) the City's trademarked name or logos shall be subject to the prior written approval of the Director for the Mayor's Office of Economic Development – Denver Marketing Office or such future office of the City responsible for overseeing the use of the City's name and logos; and (ii) the Department's trademarked name(s) or logo(s) shall be subject to the prior written approval of the Manager, which approval or disapproval shall be provided on or before thirty (30) days of the Manager's receipt of Levitt Denver's proposed use of the Department's name(s) or logo(s) or else such proposal shall be deemed approved (provided such use otherwise complies with this Agreement and applicable City policies). In no event shall Levitt Denver represent or indicate, by the particular use of a name or logo, that the City is engaged in any joint venture with Levitt Denver with respect to Levitt Denver's operation and maintenance of the Pavilion Property, including the Pavilion. No other intellectual property

rights of the City other than those expressly identified herein are being licensed by the City for use by Levitt Denver.

(b) Names and Logos of Levitt Denver. The Levitt Parties grant to the City the non-exclusive right to use the names and logos of the Levitt Parties in connection with their association with and use of the Pavilion Property, including the Pavilion; provided, the City may not use the name of the Levitt Parties or any logos, trademarks, or trade names owned by or licensed to the Levitt Parties without the prior written approval of the applicable Levitt Party, which shall not be unreasonably withheld. Levitt Denver grants to the City the non-exclusive right to use the names and logos of Levitt Denver's sponsors and affiliates (if any); provided, the City may not use any logos, trademarks, or trade names owned by or licensed to Levitt Denver's sponsors or their affiliates without the prior written approval of Levitt Denver, which may be withheld as Levitt Denver deems appropriate. Levitt Denver agrees to indemnify and hold the City harmless from any and all claims, losses, or expenses asserted by Levitt Denver's sponsors or their affiliates with regard to the uses approved by Levitt Denver herein. In no event shall the City represent or indicate, by the particular use of a name or logo, that any of the Levitt Parties is a partner with the City or engaged in any joint venture with the City with respect to the Levitt Parties' association with and use of the Pavilion Property, including the Pavilion. No other intellectual property rights of the Levitt Parties other than those expressly identified herein are being licensed by the Levitt Parties for use by the City.

(c) Photographic Rights Retained by the City. The City and the Levitt Parties acknowledge and agree that each Party shall have a right to make its own photographs, audio and video recordings in the Pavilion Property during the Levitt Events and Non-Levitt Events for that Party's sole use for customary advertising and publicity and other non-commercial uses; provided, however, that the Parties shall not engage in photographing or recording in violation of copyright laws. The Parties acknowledge that in some circumstances an agreement between Levitt Denver and a third party appearing at the Pavilion for a Levitt Event or Non-Levitt Event will disallow or restrict photographing or recording, and in such circumstances the Parties will abide by those terms.

20. COST AND EXPENSES; FUNDING.

(a) Cost and Expenses. Levitt Denver agrees that it shall pay, at its sole cost and expense, all cost and expense incurred for all activities and services to be performed by Levitt Denver under this Agreement.

(b) Levitt Denver Funding. In order for Levitt Denver to perform the activities and services required of it under this Agreement and achieve and continue the public purposes of its mission and this Agreement, funding from the following sources shall be provided to or permitted to be expended by Levitt Denver for the purposes stated in this Agreement:

(i) Any and all funds generated during, for, or from Series events and Levitt Fundraising Events at the Pavilion Property, including the Pavilion, whether by donations, sponsorships, concessions, grants, admission fees or other net operating revenues; provided, however, that all FDA Tax revenues from the Levitt Fundraising Events shall be collected by Levitt Denver and remitted to the City as provided in Section 10(b)(iii)(5) above.

(ii) Any and all funds generated during and from Non-Levitt Events at the Pavilion Property, including the Pavilion, from Incidental Expenses (as such term is defined in the form of booking agreement attached as Exhibit C), as set forth in the applicable booking agreements, and concession revenues; provided, however, that all rental (or permit) fees for and FDA Tax revenues from Non-Levitt Events shall be collected by Levitt Denver and remitted to the City as provided in Sections 10(b)(iii)(4) and 10(b)(iii)(5), respectively, above.

(iii) Any appropriations that may be authorized from time to time by the City in its discretion for use at the Pavilion Property, including the Pavilion; provided that any such funds shall be applied by the City in the manner specified in the appropriations.

(iv) Taxes, if any, collected pursuant to the provisions of the Scientific and Cultural Facilities District Act (C.R.S. § 32-13-101 *et seq.*) as revised, renewed or amended (“SCFD Act”), and allocated for the benefit of Levitt Denver, shall be, so long as Levitt Denver is retained by the City to maintain, manage, operate, and control the Pavilion, received directly by Levitt Denver for the benefit and use for and activities at the Pavilion and utilized in accordance with the SCFD Act.

(v) Donations of money or grants made to the City for the use and benefit of the Pavilion Property, including the Pavilion, shall be transferred to the control of Levitt Denver unless the donor or grantee has provided to the contrary, in which event the City agrees to use such donations for the benefit of the Pavilion Property, including the Pavilion, in its sole discretion. Any such donation or grant not transferred to the control of Levitt Denver shall be set aside in a fund established by the City for the use and benefit of the Pavilion.

(c) Guaranteed City Revenues. In order to generate FDA Tax revenues to help alleviate the maintenance, repair, capital improvement, and utility costs to the City associated with the Pavilion Property, including the Pavilion, Levitt Denver shall guarantee that at least one (1) Admissions Based Event will take place during each of YEAR 1, YEAR 2, and YEAR 3, and that at least two (2) Admissions Based Events will take place during YEAR 4 and each year thereafter for the duration of the Term. If the permit (or rental) fees and the FDA Tax revenues generated at the Pavilion Property by the end of the Series Months during YEAR 1, YEAR 2, or YEAR 3 do not equal or exceed Fourteen Thousand and No/100 Dollars (\$14,000.00), then Levitt Denver shall, on or before November 30th of the subject year, pay to the City the difference between \$14,000.00 and the actual amount of permit fees and FDA Tax revenues paid to the City. If the FDA Tax revenues generated at the Pavilion Property by the end of the Series Months during YEAR 4 and each year thereafter do not equal or exceed Twenty-Eight Thousand and No/100 Dollars (\$28,000.00), then Levitt Denver shall, on or before November 30th of the subject year, pay to the City the difference between \$28,000.00 and the actual amount of FDA Tax revenues paid to the City. Notwithstanding the foregoing, in the event Levitt Denver does not have the funds available to make such gap payments to the City, Levitt Denver may, on or before November 30th of the subject year, submit a written request, with documented evidence of such insufficient funds, to the Manager for a reduction in or waiver of the amount owed to the City; in such instances, the Manager may, in his or her sole discretion, agree to reduce or waive the amount owed to the City for the subject year.

(d) Except as provided in Section 20(c), it is understood that neither the City nor Levitt Denver is hereby obligated to provide any specific level of funding for the purposes set forth in this Agreement, and if the City or Levitt Denver for any reason reduces any funding previously provided, the other Party shall not be obligated to increase its funding as a result thereof. Notwithstanding the foregoing, for the avoidance of doubt, the Levitt Parties shall be required to provide funding as set forth in the Funding Agreement and the Foundation and Levitt National shall be required to provide funding as set forth in Section 8(a) of this Agreement.

21. UTILITIES. Starting with the first day of occupancy of the Pavilion by Levitt Denver, Levitt Denver shall provide, at its own expense, the following utilities as reasonably needed to operate and maintain the Pavilion year-round and provide the services set forth in this Agreement: electricity, telephone service, internet service, and email service. Levitt Denver shall be required to maintain year-round at the Pavilion a landline telephone service and shall provide the Manager with the telephone number for such line. The City shall provide, at its own expense, the following utilities as reasonably needed to operate the Pavilion and Pavilion Property as set forth in this Agreement: water, sewer, and gas. Levitt Denver shall, consistent with the proper maintenance of the Pavilion Property and the Facilities, including the Pavilion, and the safety of the public, use reasonable efforts to conserve water and energy use consistent with the City's Greenprint Denver Action Agenda and other conservation policies adopted by the City. Levitt Denver shall submit to the Manager such reports of its water and energy conservation programs as the Manager may reasonably request.

22. INSURANCE.

(a) City Provided Insurance. The City shall purchase and maintain or, in its discretion, cause to be provided through the City's policy of self-insurance or self-finance, during the Term of this Agreement, an All-Risk property insurance provided on a replacement cost basis with a deductible as determined appropriate by Risk Management. Contents covered will not include the personal property of Levitt Denver officials, employees, volunteers, agents, and contractors. Levitt Denver shall comply with all requirements and conditions imposed by the insurer or Risk Management as a condition of coverage and shall cooperate with the City and the insurer in the event a claim for loss is made.

(b) Levitt Denver Provided Insurance.

(i) General Conditions: Levitt Denver agrees to secure, at or before the time deadlines set forth in this Section with respect to each coverage requirement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Levitt Denver shall keep the required insurance coverage in force at all times during the Term of this Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of this Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies are canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to

such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Levitt Denver shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by Levitt Denver. Levitt Denver shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of Levitt Denver. Levitt Denver shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

(ii) Proof of Insurance: Levitt Denver shall provide a copy of this Agreement to its insurance agent or broker. Levitt Denver may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. Levitt Denver certifies that the certificate of insurance attached as **Exhibit F**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Levitt Denver's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

(iii) Additional Insureds: For Commercial General Liability, Auto Liability, and Liquor Liability, Levitt Denver and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

(iv) Waiver of Subrogation: For all coverages required under this Agreement, Levitt Denver's insurer shall waive subrogation rights against the City, it being the intention that the required insurance policies shall protect all the Parties and be primary coverage for all losses covered by the policies.

(v) Subcontractors and Subconsultants: All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of Levitt Denver. Levitt Denver shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages and include both Levitt Denver and the City and County of Denver as additional insured on their policies. Levitt Denver agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

(vi) Workers' Compensation/Employer's Liability Insurance: **The Parties recognize and agree that Levitt Denver is engaged in an independent occupation and profession and is free from control and direction in the performance of the services contracted for herein consistent with that mandated by C.R.S. 8-40-202(2)(a). It is**

understood and agreed by the Parties that the City does not (1) require Levitt Denver to work exclusively for the City, provided that Levitt Denver may have elected to work exclusively for the City for the period of time specified in the Term of this Agreement; (2) establish a quality standard for Levitt Denver, provided that the Parties agree that while the City may provide plans regarding its expectancy of the work to be performed by Levitt Denver, the City will not oversee the actual work of Levitt Denver or instruct Levitt Denver as to how the work will be performed; (3) pay a salary or hourly wage to Levitt Denver instead of the fixed contract rate stated herein; (4) terminate the work of Levitt Denver for cause during the Term of this Agreement unless Levitt Denver violates the terms of the Agreement or fails to produce a work product or result that meets the specific terms provided in the Agreement; (5) provide any training for Levitt Denver other than minimal orientation to the site or other parameters of Levitt Denver activity; (6) provide tools or benefits to Levitt Denver; (7) dictate the time of performance; except that the Agreement completion date together with the range of negotiated and mutually agreeable work hours has been established herein; (8) pay any person personally instead of making City warrants payable to the professional name of Levitt Denver; and (9) combine the regular operation of the City in any way with the professional or business operations of Levitt Denver instead of maintaining office operations separately and distinctly.

These provisions are separately stated in Exhibit G, “Separate Declaration Regarding Independent Status”, constituting the writing mandated by C.R.S. 8-40-202(2)(b), which must be signed and notarized by Levitt Denver and the Manager. The Mayor hereby delegates to the Manager the authority to execute on behalf of the City Exhibit G, “Separate Declaration Regarding Independent Status.”

Notwithstanding the foregoing, upon hiring employees or otherwise becoming subject to workers’ compensation and employers liability requirements, Levitt Denver shall obtain and thereafter maintain the coverage as required by statute for each work location and shall maintain Employer’s Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. At such time, Levitt Denver shall be deemed to have expressly represented to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of Levitt Denver’s officers or employees who may be eligible under any statute or law to reject Workers’ Compensation Insurance shall effect such rejection during any part of the Term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Levitt Denver executes this Agreement. Proof of the foregoing insurance shall be provided to the City promptly upon Levitt Denver’s obtaining the same.

(vii) Commercial General Liability: Levitt Denver shall secure, at or before the time of execution of this Agreement, and shall thereafter maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

(viii) Personal Automobile Liability: Levitt Denver shall ensure personal automobile insurance is in force with limits of \$100,000 bodily injury per person; \$300,000 bodily injury per accident; \$50,000 property damage for all vehicles used in performing services under this Agreement. Any such policies will include a business use

endorsement. Levitt Denver represents, as material representations upon which the City is relying, that Levitt Denver does not own any motor vehicles and that in performing Services under the Agreement, Levitt Denver's owners, officers, directors, and employees use their personal vehicles. Levitt Denver shall ensure that any person operating a motor vehicle in performing services under this Agreement shall keep in full force Personal Auto Liability coverage with the foregoing minimum required limits.

(ix) Liquor Legal Liability: In the event Levitt Denver desires to sell and serve, or to serve, alcoholic beverages and/or 3.2 beer anywhere within the Pavilion Property and Levitt Denver has obtained the appropriate state and local licenses and permits, Levitt Denver shall obtain and thereafter maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit, and proof of such insurance shall be provided to the City prior to any sale or service of alcoholic beverages and/or 3.2 beer at the Pavilion Property.

(x) Directors & Officers/Employment Practices Insurance ("D&O"): Levitt Denver shall secure, at or before the time of execution of this agreement, and shall thereafter maintain D&O insurance in an amount no less than \$1,000,000.

(xi) Additional Provisions:

(1) For Commercial General Liability, the policies must provide the following:

- a. That this Agreement is an Insured Contract under the policy;
- b. Defense costs are outside the limits of liability;
- c. A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
- d. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(2) For claims-made coverage: The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

(3) Levitt Denver shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, Levitt Denver will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

23. CASUALTY. If on or before thirty (30) years from the Effective Date of this Agreement, the Pavilion, or any portion thereof, shall be damaged or destroyed by fire, flood, windstorm or other casualty ("**Casualty**"), Levitt Denver shall notify the other Parties

immediately. In the event of such Casualty, Levitt Denver and the City, to the extent net insurance proceeds are within their respective control, shall cause such net insurance proceeds to be applied to the prompt repair, restoration, modification, improvement or replacement of the Pavilion. If the net insurance proceeds are insufficient to pay in full the cost of any repair, restoration, modification, improvement or replacement of the Pavilion, the City may, in its sole discretion and subject to the availability of appropriated funds, elect to complete the subject repair, restoration, modification, improvement or replacement of the Pavilion. Likewise, Levitt Denver, Levitt National, and/or the Levitt Foundation may, in its sole discretion, elect to provide funds to complete the subject repair, restoration, modification, improvement or replacement of the Pavilion.

If net insurance proceeds are insufficient to pay in full the cost of any repair, restoration, modification, improvement, or replacement of the Pavilion and no Party has agreed to provide funds to complete the subject repair, restoration, modification, improvement, or replacement, or if a Casualty occurs after the first thirty (30) years of the Term of this Agreement, any Party may cancel and terminate this Agreement by giving written notice to the other Parties of the terminating Party's election to do so within ninety (90) days after the occurrence of the Casualty.

For purposes of this Agreement, net insurance proceeds shall be, without limitation, net insurance proceeds actually received less all expenses, fees, and costs (including, without limitation, attorney's fees and costs) incurred in the collection of such proceeds or award.

Notwithstanding anything to the contrary contained in this Agreement, no Party shall be liable to any other Party for any failure, delay, or interruption in performing its obligations under this Agreement due to a Casualty.

24. INDEMNIFICATION.

(a) The Levitt Parties each hereby agree to defend, indemnify, reimburse and hold harmless the City, its appointed and elected officials, agents and employees for, from, and against all liabilities, claims, judgments, suits, or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“**Claims**”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify the City for any acts or omissions of a Levitt Party or its subcontractors either passive or active, irrespective of fault, including the City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.

(b) Each Levitt Party's duty to defend and indemnify the City shall arise at the time written notice of the Claim is first provided to the City regardless of whether claimant has filed suit on the Claim. Each Levitt Party's duty to defend and indemnify the City shall arise even if the City is the only party sued by claimant and/or claimant alleges that the City's negligence or willful misconduct was the sole cause of claimant's damages.

(c) Each Levitt Party will defend any and all Claims which may be brought or threatened against the City and will pay on behalf of the City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and

investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of the City shall be in addition to any other legal remedies available to the City and shall not be considered the City's exclusive remedy.

(d) Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Levitt Parties under the terms of this indemnification obligation. Each Levitt Party shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

(e) This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

25. PATENT, TRADEMARK AND COPYRIGHT INDEMNIFICATION.

Levitt Denver agrees to secure and maintain, or to require users of the Pavilion to secure and maintain, licenses for the use of musical works, videos, and other matters protected by intellectual property rights which are used at the Pavilion (including, without limitation, licenses from ASCAP, BMI, and SESAC) and agrees to assign to the City any such existing licenses which it secures or maintains at the termination or expiration of this Agreement. Levitt Denver agrees to protect, defend, indemnify and hold harmless the City, its officers and employees against any and all claims or lawsuits based on the violation of any intellectual property right which arises out of activities at the Pavilion within Levitt Denver's control, including but not limited to violations of intellectual property rights by other users of the Pavilion during the Term of this Agreement.

26. CLAIMS. In the event that any claim, demand, suit, or other action is made or brought in writing by any person, firm, corporation, or other entity against a Levitt Party related in any way to this Agreement or the actions or activities of a Levitt Party, written notice thereof shall be given to the City and the other Levitt Parties, within fifteen (15) working days after being notified, of such claim, demand, suit, or other action. Such notice shall state the date and hour of notification and shall include a copy of any such claim, demand, suit, or other action received by the subject Levitt Party.

27. IMMUNITY. The Parties hereto understand and agree that the City is relying upon, and has not waived, any applicable monetary limitations, rights, immunities and protection provided by the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S., and any other applicable law.

28. TAXES; LICENSES; LIENS, and DEBTS.

(a) Taxes. Levitt Denver shall collect and remit all sales taxes and other taxes as required by law (local, state, or federal), shall promptly pay all taxes and excise and license fees of whatever nature applicable to this Agreement, and shall not permit any of said taxes and excise and license fees to become delinquent.

(b) Licenses. Levitt Denver shall take out, keep current, and comply with all licenses, permits, or other authorizations (local, state, or federal) required for the performance of this Agreement. The Manager will endeavor to facilitate Levitt Denver's effort to obtain any

such license, permit, or other authorization. When feasible, the Manager will seek to obtain fee waivers from City departments and agencies for City licenses, permits, or other authorizations.

(c) Liens. Levitt Denver shall not permit any mechanic's or materialman's lien or any other lien to be imposed and remain for more than ninety (90) days upon the property of the City, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any person, partnership, association, company, corporation, or other entity to or for Levitt Denver, either pursuant to C.R.S. § 38-26-107, as amended, or by other authority.

(d) Debts. Levitt Denver shall promptly pay, when due, all bills, debts, and obligations incurred in connection with its management or administration of the Pavilion and shall not permit the same to become delinquent. Levitt shall suffer no lien, mortgage, judgment, execution, or adjudication of bankruptcy that would, in any way, impair the rights of the City under this Agreement or its rights to the Pavilion Property and its Facilities, including the Pavilion.

(e) Final Adjudication. Levitt Denver may, diligently and in good faith, resist or contest the application or imposition of any such tax, fee, lien, debt, or obligation, in which case the same shall not be considered due, owing or imposed for the purposes of this Agreement until final adjudication of validity. Levitt Denver may likewise, diligently and in good faith, appeal any judgment, execution, or adjudication of bankruptcy, in which case the same shall not be regarded as impairing the City's rights until final adjudication. Levitt Denver shall not undertake or assert any defense, counterclaim, cross claim, or third party claim with respect to the application or imposition of any such tax, fee, lien, debt, or obligation that is contrary to the rights, interests and protections of the City under this Agreement.

29. REPORTS; AUDITS. Levitt Denver shall comply with the following reporting and auditing requirements:

(a) Levitt Denver shall provide to the Manager on or before January 31st of each year of the Term a comprehensive written report of its activities undertaken, revenues generated, and expenditures incurred pursuant to this Agreement during the preceding calendar year. This annual written report shall be signed by an authorized representative of Levitt Denver and the Board Treasurer for Levitt Denver. The first written report shall be due on or before January 31, 2014.

(b) Levitt Denver shall provide to the Manager on or before March 31st of each year of the Term an audited financial report of all receipts of public and private funds related to the preceding calendar year, including but not limited to all fees or other charges for access to or use of the Pavilion Property and its Facilities, including the Pavilion, or participation in programs or activities, concession receipts, Gifts, Sponsorships, and Grants. Notwithstanding the foregoing, the first audited financial report of revenues shall be due on or before March 31, 2017; provided, however, if no Levitt Events or Non-Levitt Events take place during the 2016 calendar year, then the first audited financial report of revenues shall not be due until on or before March 31, 2018.

(c) Levitt Denver shall provide to the Manager on or before March 31st of

each third year of the Term an audited financial report of all expenditures of public and private funds related to Levitt Denver's exercise of its rights and obligations under this Agreement.. The first audited financial report of expenditures shall be due on or before March 31, 2019.

Levitt Denver agrees that any duly authorized representative of the City (including the City Auditor) shall, at the City's own expense and until three (3) years after termination of this Agreement, have the right to perform whatever audit or check the City may require, including a financial audit and a check for compliance with this Agreement. Upon request, Levitt Denver shall also provide, or cause its contractors to provide, adequate documentation of expenditures, including invoices and payroll, with respect to any improvement project or services at the Pavilion.

30. NON-DISCRIMINATION. The Levitt Parties each agree to comply with all Applicable Law concerning non-discrimination against persons because of their race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability in connection with membership on such parties' boards, access to the Pavilion Property and its Facilities, and participation in any public program at the Pavilion Property and its Facilities. In connection with the performance of work under this Agreement, Levitt Denver agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all contracts, subcontracts, or agreements it may enter.

31. ALCOHOL & DRUGS POLICY; SMOKING POLICY.

(a) Levitt Denver shall cooperate and comply with the provisions of Executive Order No. 13, which prohibits the sale or advertisement of tobacco products on City owned property and in facilities owned or operated or controlled by the City. "Sale" includes promotional distribution, whether for consideration or not, as well as commercial transactions for consideration. "Advertising" includes the display of commercial and noncommercial promotion of the purchase or use of tobacco products through any medium whatsoever, but does not include any advertising and sponsoring which is a part of a performance or show or any event displayed or held in City facilities.

(b) Levitt Denver, its directors, officers, agents, and employees shall cooperate with the provisions of Executive Order No. 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Refusal to cooperate with implementation of the policy can result in the City barring Levitt Denver from City facilities or participating in City operations. Levitt Denver, as an employer, shall adhere to the federal, state, and local laws regarding alcohol and drug abuse. Levitt Denver shall, through its personnel rules and regulations, or otherwise, maintain a policy against the possession, use or sale of illegal drugs or the unauthorized use by employees of alcohol in the workplace in order to promote safe, healthful, and efficient operations. Levitt Denver agrees not to use any funds received from the City under this Agreement for the purchase, acquisition, or receipt of consumable alcohol.

(c) Levitt Denver agrees to adopt and enforce a "no smoking" policy for all areas of the Pavilion Property except in designated smoking areas to be approved in writing by

the City. Levitt Denver's written smoking policy shall be in conformance with Executive Order No. 99 and any rules, regulations, or policies adopted by the Manager and generally applicable to specified facilities under the auspices of the Department.

32. ENVIRONMENTAL COMPLIANCE. Levitt Denver shall obtain all federal, state, and local environmental permits necessary for the work and shall comply with all applicable federal, state, and local environmental permit requirements. Levitt Denver shall comply with all applicable local, state, and federal environmental guidelines, rules, regulations, statutes, laws, and orders (collectively, "**Environmental Requirements**"), including but not limited to Environmental Requirements regarding the storage, use, transportation, and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment. The term "**Hazardous Materials**" shall mean asbestos, asbestos-containing soils, and asbestos-containing materials, special wastes, polychlorinated biphenyls (PCBs), any petroleum products, natural gas, radioactive source material, pesticides, any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, and chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, any Colorado statutes serving a similar purpose for environmental regulation, and any guidelines issued and rules or regulations promulgated pursuant to such statutes or any other applicable federal or state statute.

33. TERMINATION. Other than as provided in Section 4, this Agreement may be terminated only as follows:

(a) **Levitt Party Default.** In the event that a Levitt Party shall default or breach, on its part, in the performance or fulfillment of one (1) or more material term(s), promise(s), or condition(s) of this Agreement ("**Levitt Party Default**") and shall fail to cure, such Levitt Party Default within ninety (90) days following delivery of written notice from the Manager specifying the Levitt Party Default and the date on which the City may exercise its right to terminate the Agreement if such Levitt Party Default is not cured, the City may, in its reasonable discretion, terminate this Agreement. Any such notice from the City to a Levitt Party specifying a Levitt Party Default shall be sent to all Levitt Parties. Upon written request of the subject Levitt Party submitted not less than thirty (30) days prior to termination date, the City shall provide said Levitt Party with an opportunity to be heard on the matter before the Mayor and the City Council prior to the termination date or any extension date agreed to in accordance with Section 33(c). If, after notice and an opportunity to be heard, the Mayor decides to terminate the Agreement if the Levitt Party Default is not cured by the termination date or any extension date, then the Manager shall so notify the Levitt Parties that the provisions of Section 33(e) shall be effective on the later of these two (2) dates. As used in this Section 33(a), the term "Mayor" shall also mean the Deputy Mayor exercising such authority as provided in Article II of the City Charter.

(b) **City Default.** In the event that the City shall default or breach, on its part, in the performance or fulfillment of one (1) or more material term(s), promise(s), or condition(s) of this Agreement ("**City Default**") and shall fail to cure such City Default within ninety (90) days following delivery of written notice from a Levitt Party specifying the City Default and the date on which the Levitt Party may exercise its right to terminate the Agreement if such City Default is not cured, the Levitt Party may, provided the subject Levitt Party has the prior written

approval of the other Levitt Parties, terminate this Agreement. Any such notice from a Levitt Party to the City specifying a City Default shall be sent to all Levitt Parties. If the City Default is not cured or some other resolution is not reached at least thirty (30) days prior to the termination date or any extension date agreed to in accordance with Section 33(c), the subject Levitt Party, provided the subject Levitt Party has the prior written approval of the other Levitt Parties, shall so notify the Manager that the provisions of Section 33(e) shall be effective on the later of these two (2) dates if the City Default is not cured.

(c) Other. Upon mutual agreement of the Parties, the time to cure any Levitt Party Default or City Default will be extended to a date certain if (i) the nature of the default is such that it cannot be cured within 90 days; and (ii) the defaulting Party has made reasonable progress toward cure. Without limiting the foregoing, upon mutual agreement of the Parties, the time to cure any other Levitt Party Default or City Default may be extended to a date certain and the manner and extent of cure may be modified. The deadline for any cure under this Section 33 shall not excuse the obligation of any defaulting Party to take timely and proper action to prevent, stop, mitigate, or alleviate any recent or impending damage to the Pavilion Property, its Facilities, including the Pavilion, or neighboring property or any existing or imminent threat to public health and safety.

(d) Failure to Comply with Other Agreements. Any of the Parties may terminate this Agreement in the event a Party fails to comply with the material term(s), promise(s), or conditions(s) of the Other Agreements. Without limiting the generality of the foregoing, this Agreement may be terminated by a Party if a Party fails to timely raise funds as required by the Funding Agreement or if construction is not completed in accordance with the Other Agreements.

(e) Effect of Termination. Upon termination of this Agreement, including termination or expiration of this Agreement as provided in Section 4, the Pavilion Property and its Facilities, including the Pavilion, and all other permanent improvements contained therein shall remain the property of the City. Levitt Denver shall take all reasonable measures to turn over the Pavilion Property and its Facilities, including the Pavilion, in a timely manner and in reasonably good operating condition. Any public funds that have not been used by Levitt Denver under this Agreement and not needed to cover Levitt Denver's remaining obligations incurred in performing its duties under this Agreement shall be promptly returned to the City. All remaining funds (including, without limitation, funds held by Levitt Denver as endowment, if any) and other personal property held by Levitt Denver not otherwise conveyed to the City shall be used or distributed by Levitt Denver consistent with the duties and obligations of Levitt Denver towards the donors of any such funds or of any personal property and in accordance with Levitt Denver's articles of incorporation and Bylaws.

34. GENERAL PROVISIONS.

(a) Manager Disapprovals. Whenever the Manager denies a request for an approval required under this Agreement, the Manager shall provide written reasons for his or her decision. Within thirty (30) days following receipt of such decision, the subject Levitt Party may resubmit the approval request, whereupon the Manager will make his or her decision on the resubmittal within the time frame specified in this Agreement with respect to the initial approval request. If the subject Levitt Party does not resubmit the approval request within said 30-day

period, the request will be deemed withdrawn. This process shall repeat itself until the approval request is approved, deemed approved, or deemed withdrawn.

(b) Appropriation. Notwithstanding any provision of this Agreement to the contrary, any financial obligation of the City, if any, under this Agreement is contingent upon all funds necessary for performance under this Agreement being budgeted, appropriated and otherwise made available, and any commitments by the City to provide services is contingent upon the necessary funds being budgeted, appropriated, and otherwise made available and the necessary discretionary actions being taken by the City Council and the Mayor. The Parties acknowledge that this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

(c) Good Faith. The City and the Levitt Parties agree to work diligently and in good faith to perform and fulfill the duties and obligations and achieve the purposes of this Agreement and to resolve any unforeseen issues or disputes under this Agreement as quickly and fairly as possible.

(d) Assignment. The Parties shall not assign, encumber, or otherwise transfer any rights or interests granted by this Agreement, in whole or in part, without the prior written consent of the other Parties, and unless the assignee or transferee (1) shall agree to assume, and can reasonably demonstrate the ability to perform, the obligations of said Party under this Agreement and (2) shall agree to be bound by the terms, covenants, and conditions contained in this Agreement to be performed or satisfied by said Party with the like force and effect as though such assignee or transferee had been originally named hereunder. No assignment, encumbrance, or transfer of any kind shall be permitted that would extend or be effective beyond the Term of this Agreement. Any assignment, encumbrance, or transfer must be approved and executed in the same manner as this Agreement.

(e) Contracting or Subcontracting. Any work that is allowed to be contracted or subcontracted under this Agreement shall be subject, by the terms of the contract or subcontract, to every applicable provision of this Agreement; provided, however, that the provisions of this Agreement shall be construed as applicable to such contracts and subcontracts whenever possible. Compliance with this provision shall be the responsibility of the Levitt Party who arranged the contract or authorized the subcontract. Such Levitt Party shall, upon request, provide to the Manager a copy of any written contract or subcontract entered by the Levitt Party for work or services covered by this Agreement.

(f) Non-waiver. No Party shall be excused from complying with any provision of this Agreement by the failure of another Party to insist upon or to seek compliance. No assent, expressed or implied, to any failure by a Party to comply with a provision of this Agreement shall be deemed or taken to be a waiver of any other failure to comply by said Party.

(g) Applicable Law. The Parties agree to comply with all Applicable Law in existence as of the Effective Date of this Agreement or as may be subsequently enacted or adopted and applicable to this Agreement. The Manager agrees to provide Levitt Denver with reasonable notice of and an opportunity to review and comment on any changes proposed by the Manager in City ordinances and the Department rules, regulations, and policies and procedures applicable to the Pavilion Property and its Facilities, including the Pavilion, before such changes

are enacted or adopted. In addition, without limiting the generality of the foregoing, the Levitt Parties acknowledge that the Pavilion will be financed in part with proceeds of the City's tax-exempt obligations. It is specifically understood that the City intends to comply with the Internal Revenue Service laws, regulations, rulings, notices or procedures that are applicable to tax-exempt obligations (the "IRS Requirements") in order to preserve the exclusion from gross income of interest on such obligations to the holders thereof. Notwithstanding any other provision of this Agreement, if any of the contract provisions conflict with IRS Requirements, or if bond counsel to the City determines that an amendment to this Agreement is necessary in order to satisfy the IRS Requirements, then the Parties agree to amend this Agreement to the extent so required.

(h) Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the United States, the State of Colorado, and the applicable provisions of the Charter and Revised Municipal Code of the City and County of Denver. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver.

(i) Conflict of Interest. The Parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein, and the Levitt Parties further agree not to hire or contract for services any official, officer or employee of the City or any other person which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.9 and 1.2.12.

(j) No Personal Liability. No official, officer, agent, or employee of a Party shall be charged personally or held contractually liable to the other Parties or their officials, officers, agents, or employees under any term or condition of this Agreement or for any breach, default, or violation under this Agreement.

(k) Force Majeure. No Party shall be liable for delay or failure to perform hereunder, despite best efforts to perform, if such delay or failure is the result of *force majeure*. Notices of the occurrence and the end of such delay shall be provided by the Party asserting *force majeure* to the other Parties. "*Force majeure*" shall mean causes beyond the reasonable control of a Party such as, but not limited to, extreme weather conditions, acts of God or the public enemy, strikes, work stoppages, unavailability of or delay in receiving labor or materials, faults by contractors, subcontractors, utility companies or third parties, fire or other casualty, or action of government authorities. Written notice of any claim of inability to perform or comply due to *force majeure* must be promptly given.

(l) No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties; and nothing contained in this Agreement shall give or allow any such claim or right of action by any other entity or third person on such agreements. It is the express intention of the Parties that any person or entity other than the Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

(m) Notices. All notices, demands or consents required or permitted under this

Agreement shall be in writing and shall be deemed delivered upon receipt, if delivered personally or by electronic mail with confirmation of receipt or upon the third day following posting by certified mail, return receipt requested, to the following addresses:

If to Levitt Denver: Friends of Levitt Pavilion Denver
2648 Eudora Street
Denver, CO 80207

Attn: Chris Zacher
E-mail: chris@levittdenver.org

If to Foundation: Mortimer & Mimi Levitt Foundation
9951 Kip Drive
Beverly Hills, CA 90210
Attn: Elizabeth Levitt Hirsch
E-mail: liz@levittpavilions.org

If to Levitt National: Levitt Pavilions
9951 Kip Drive
Beverly Hills, CA 90210
Attn: Sharon Yazowski
E-mail: sharon@levittpavilions.org

If to the City or the Manager: Manager of Parks and Recreation
City and County of Denver
201 West Colfax, Dept. 601
Denver, Colorado 80202
E-mail:

The address for any Party set forth above may be changed at any time by written notice in the manner provided herein to all other Parties.

(n) Entire Agreement. This Agreement, including the exhibits which are hereby incorporated into this Agreement by reference, constitutes the entire Agreement of the Parties. The Parties agree there have been no representations, oral or written, other than those contained herein and that the various promises and covenants contained herein are mutually agreed upon and are in consideration for one another.

(o) Amendment. Except as expressly provided in this Agreement, this Agreement must be amended, modified, or changed, in whole or in part, only by written agreement executed by the Parties in the same manner as this Agreement.

(p) Severability. Should any one or more provisions of this Agreement be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the Parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a term or condition that will legally achieve the original intent and purposes of the Parties hereunder.

(q) Technological Advances. Levitt Denver and Levitt National acknowledge that technological advances are likely to occur during the Term of this Agreement and agree to implement the terms of this Agreement utilizing appropriate and customary current technology throughout the Term of this Agreement.

(r) No Employment of Illegal Aliens to Perform Work Under this Agreement:

(i) This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments thereto that may occur from time to time (the “**Certification Ordinance**”).

(ii) Levitt Denver certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(2) It will participate in the E-Verify Program, as defined in § 8 17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(iii) Levitt Denver also agrees and represents that:

(1) It shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

(2) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to Levitt Denver that it shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

(3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

(4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under this Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. Levitt Denver will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three- (3) day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.

(6) It will comply with any reasonable request made in the

course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. 20-90.3.

(iv) Levitt Denver is liable for any violations as provided in the Certification Ordinance. If Levitt Denver violates any provision of this Section or the Certification Ordinance, the City may terminate this Agreement for a breach of this Agreement. If this Agreement is so terminated, Levitt Denver shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this Section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Levitt Denver from submitting bids or proposals for future contracts with the City.

(s) No Construction against Drafting Party. The Parties acknowledge that each of them and their respective counsel have had the opportunity to review this Agreement and that this Agreement shall not be construed against any Party merely because this Agreement or any of its provisions have been prepared by a particular Party.

(t) Headings for Convenience. Headings and titles contained herein are intended for the convenience and reference of the Parties only and are not intended to combine, limit, or describe the scope or intent of any provision of this Agreement.

(u) Authority. Each Party represents and warrants that it has taken all actions that are necessary or that are required by applicable law to legally authorize the undersigned signatories to execute this Agreement on behalf of the Party and to bind the Party to its terms. The person(s) executing this Agreement on behalf of each Party warrants that he/she/they have full authorization to execute this Agreement. Without limiting the foregoing, to the extent the following authorizations are required by Levitt Denver's fiscal sponsor, the Levitt Parties represent and warrant that they have taken all actions necessary and required by Levitt Denver's fiscal sponsor to legally authorize the undersigned signatories to execute this Agreement on behalf of Levitt Denver and the person(s) executing this Agreement on behalf of Levitt Denver warrants that he/she/they have full authorization from Levitt Denver's fiscal sponsor to execute this Agreement. The City shall have the right, in its discretion, to either temporarily suspend or permanently terminate this Agreement if there is any dispute as to the legal authority of either entity or the person signing the Agreement for a Party to enter into this Agreement.

(v) Execution of Agreement. This Agreement shall not be or become effective or binding until it has been approved by ordinance by the City Council and it has been fully executed by all signatories of the Parties.

(w) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one Agreement.

(x) Electronic Signatures and Electronic Records. The Foundation, Levitt National, and Levitt Denver each consent to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an

electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**[REMAINDER OF PAGE DELIBERATELY LEFT BLANK.
SIGNATURE PAGES FOLLOW.]**

Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

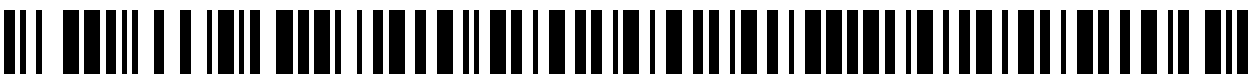
APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____


By _____

By _____

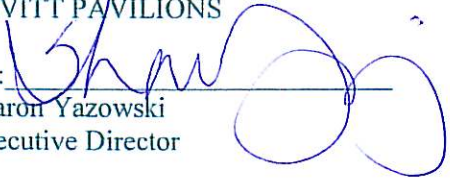


Contract control number: PARKS-201313473-00

MORTIMER & MIMI LEVITT FOUNDATION

By: 
Elizabeth Levitt Hirsch
President

LEVITT PAVILIONS

By: 
Sharon Yazowski
Executive Director

FRIENDS OF LEVITT PAVILION DENVER

By: 
Chris Zacher
Executive Director



Contract control number: PARKS-201313473-00

MORTIMER & MIMI LEVITT FOUNDATION

By: _____
Elizabeth Levitt Hirsch
President

LEVITT PAVILIONS

By: _____
Sharon Yazowski
Executive Director

FRIENDS OF LEVITT PAVILION DENVER

By: _____
Chris Zacher
Executive Director

EXHIBIT A
LOCATION MAP
(ATTACHED)



Ruby Hill Park

Levitt Pavilion and Lawn Area



EXHIBIT B
LEVITT GUIDELINES
(ATTACHED)

Exhibit B

Levitt Pavilions

Funding Requirements, Program Guidelines, Best Practices

Introduction

Levitt Pavilions Funding Requirements, Program Guidelines, Best Practices assists Friends of Levitt in creating quality experiences for your audiences and performers and developing a cohesive community fabric at your Levitt Pavilion. The content of this document is based on the experiences of existing Friends of Levitt organizations and is designed to position your Friends of Levitt for ongoing success and to ensure the inclusivity of your entire community.

Public/Private Partnership

Each Levitt Pavilion is a City-owned facility, managed and programmed by a local Friends of Levitt Pavilion nonprofit organization. The success of a Levitt Pavilion arises from the close collaboration of the local Friends of Levitt organization, City government, and the Mortimer & Mimi Levitt Foundation together with the national Levitt Pavilions organization.

At the helm is Friends of Levitt engaging civic leadership and mobilizing the community to support the new pavilion. Full support and enthusiastic participation of public officials, City government, and the community's private leadership are key components in developing this asset for your community. Acting in concerted effort, each participant plays an integral role in the creation and sustenance of the new pavilion.

In the development phase, Friends of Levitt and City government jointly determine the site and collaborate throughout the construction of the pavilion. Friends of Levitt leads the capital campaign while also raising funds to support the organization's first year of operations. The City provides partial funding for construction and grants use of the venue for the annual Levitt concert series. The Mortimer & Mimi Levitt Foundation and the national Levitt Pavilions organization serve as a catalyst by providing matching funds, a proven model and best practices and guidelines.

Beyond the development phase, the public/private partnership remains essential to the success of the annual Levitt concert series and pavilion operations. The City works closely with Friends of Levitt in maintaining the pavilion, facilitating year-round use of the pavilion, and providing resources for a successful annual concert series, as defined by a written agreement. Friends of Levitt continues to secure support from the private sector to ensure the program's long-term sustainability. The Mortimer & Mimi Levitt Foundation provides annual core operating grants and additional grant opportunities, and the national Levitt Pavilions organization provides continuous support, assistance and guidance.

Through this innovative public/private partnership, resources are leveraged to revitalize underused public places, reclaim green spaces, and provide high quality arts programming accessible to all.

Funding Eligibility

Site

Selecting the site for the new pavilion is a collaborative process involving your community, City government, the Mortimer & Mimi Levitt Foundation, and Levitt Pavilions. The site must be on public land. It may have an existing facility that is in need of renovation or be an open space for new construction. The identified site for the new pavilion must be approved by Levitt Pavilions and meet the site requirements outlined in this document. All

necessary local approvals must be in place prior to the Mortimer & Mimi Levitt Foundation providing funding to Friends of Levitt.

Population

Your city and surrounding metro-area must have a combined minimum population of 400,000. A population of this size provides a substantial donor base from which to draw for funding support and ensures a large enough audience base to attract an average of 1,500 people or more per concert during the annual series, once established.

Access

The Levitt program provides access to arts and cultural experiences to those with limited financial means. Your community must be economically diverse to ensure inclusion of families and individuals who typically cannot afford to participate in the arts.

Leadership

Your community must have sufficient affluence to support the new local 501(c)(3) nonprofit organization, Friends of Levitt Pavilion – (City Name), established to produce the annual concert series. A 501(c)(3) nonprofit organization specifically dedicated to the annual Levitt concert series ensures financial stability, ongoing community ownership and overall long-term sustainability of the program. The board of directors of this new nonprofit should be comprised of leadership committed to fundraising and building community support.

Local Government

To maximize the benefits of the Levitt program for your community, support from City officials and local government is essential. Each Levitt Pavilion is a City-owned facility, typically located in a public park. Friends of Levitt is responsible for producing and financing the annual Levitt concert series. The 50 concerts provide consistent professional programming, free of charge to the community, which otherwise would not occur. It is expected that the City will be a committed partner and provide support for a successful Levitt program, as defined by a written agreement. The pavilion is available for use outside the Levitt concert series, providing the community and other nonprofit organizations with a state-of-the-art outdoor venue for additional performances, events, festivals and community functions. City government and Friends of Levitt enter into a long-term written agreement that defines their respective roles in maintenance and facilitating year-round use of the venue.

Funding Structure

The Mortimer & Mimi Levitt Foundation provides a capital contribution towards the development of a new Levitt Pavilion, as well as partial funding for operational support. In addition, grant opportunities are available for capacity building support, such as board development and staff professional development. Funding from the Mortimer & Mimi Levitt Foundation and Levitt Pavilions is provided directly to Friends of Levitt. Funding as described below is contingent upon Friends of Levitt operating in accordance with the most current version of *Levitt Pavilions Funding Requirements, Program Guidelines, Best Practices* and at all times maintaining its status as a tax-exempt corporation under Section 501(c)(3) of the Internal Revenue Code.

Donations from the Mortimer & Mimi Levitt Foundation are made to Friends of Levitt as follows:

Capital Grant

Up to \$400,000 is available as a matching grant to be used for capital expenditures associated with the construction of a new pavilion or renovation of an existing facility. Raising the balance of the funds necessary to construct or renovate the pavilion is the responsibility of Friends of Levitt.

Core Operating Grants

\$750,000 is available from the Mortimer & Mimi Levitt Foundation for core operating support, payable over the first five years of operation as follows: Year 1 – \$200,000; Year 2 – \$200,000; Year 3 – \$150,000; Year 4 – \$100,000; Year 5 – \$100,000. Year 1 is defined as the first year Friends of Levitt presents the concert series as outlined in the Levitt Program Guidelines section of this document. Tiered giving provides substantial funding in the initial years of operation as prospective funders get to know your Levitt program. With each year of operation, it is expected that Friends of Levitt will expand its donor base and increase support from other funding sources as the amount received from the Mortimer & Mimi Levitt Foundation is reduced.

The operating budget for Friends of Levitt organizations averages between \$500,000 and \$600,000 annually. Friends of Levitt must raise the balance of funding for producing the concerts and operating the organization from a combination of funders. Funding sources include individual donations, corporate and local business sponsorships, grants, events, and contributions from other private foundations. Friends of Levitt may also earn revenue from facility and lighting and sound equipment rentals, vendors at the concerts and Levitt-branded merchandise sales.

Beyond the first five years of operation, an annual grant in the amount of \$100,000 is provided to Friends of Levitt organizations for core operating support.

Additional Grants

Throughout the development of the new pavilion, Friends of Levitt may be eligible to receive grants for staff professional development and board development.

During the first five years of operation and beyond, up to \$50,000 in additional grants is made available to Friends of Levitt for capacity building support. Specific grant opportunities are available from Levitt Pavilions upon request.

Funding Requirements

Prior to receiving funds from the Mortimer & Mimi Levitt Foundation to develop a Levitt Pavilion in your city, the following requirements must be met:

1. A written agreement between the Mortimer & Mimi Levitt Foundation, Levitt Pavilions, Friends of Levitt, and the City confirming permanent naming of the new pavilion as “Levitt Pavilion for the Performing Arts – City Name”. Such written agreement shall state that all Levitt Pavilions site and structure requirements will be met and that Friends of Levitt shall operate in accordance with the most current version of the *Levitt Pavilions Funding Requirements, Program Guidelines, Best Practices* and that at all times Friends of Levitt shall maintain its status as a tax-exempt corporation under Section 501(c)(3) of the Internal Revenue Code in order to be eligible to receive funding from the Mortimer & Mimi Levitt Foundation and support from Levitt Pavilions. Such written agreement shall grant use of the site and pavilion to Friends of Levitt for the annual Levitt concert series and shall spell out services and resources to be provided by the City to Friends of Levitt in the form of a long-term cooperative agreement acceptable to the Mortimer & Mimi Levitt Foundation and Levitt Pavilions.
2. Creation of a 501(c)(3) entity called Friends of Levitt Pavilion – City Name (“Friends of Levitt”). This organization will have the overall responsibility for producing the annual Levitt concert series, fundraising to support the annual Levitt concert series and annual operations, and will be responsible for accepting and administering grants from the Mortimer & Mimi Levitt Foundation and Levitt Pavilions.
3. Establishment of the Friends of Levitt Board of Directors which will take responsibility for raising the

additional funds necessary to develop the new Levitt Pavilion and support the annual Levitt concert series and operations. The Friends of Levitt Board of Directors will also take responsibility for hiring an executive director, working in partnership with the executive director to achieve the organization's goals, and evaluating the executive director on an annual basis.

4. A business plan developed by Friends of Levitt which includes a detailed fundraising strategy for the capital campaign and the first five years of operation and displays the capacity to raise the necessary funds to launch and sustain the new Levitt Pavilion.

Funding Timeline

Positioning Friends of Levitt organizations for long-term sustainability is a priority of the Mortimer & Mimi Levitt Foundation and Levitt Pavilions. Funding is structured to ensure a broad base of financial support for your Levitt program in its development stages and beyond. Funding is made available to Friends of Levitt upon completion of all funding requirements outlined in the previous section and according to fundraising benchmarks, allowing your Friends of Levitt to begin its first year of operations with a firm financial foundation upon which to build.

The capital grant is provided to Friends of Levitt according to the terms and timeline outlined in the written agreement between the Mortimer & Mimi Levitt Foundation, Levitt Pavilions, Friends of Levitt, and the City.

The first core operating grant is provided to Friends of Levitt in the fourth quarter of the year preceding Year 1, as defined in the Funding Structure section of this document, and upon Friends of Levitt raising a minimum of 50% of the balance needed beyond the Mortimer & Mimi Levitt Foundation funding to meet the Year 1 operating budget. Such funds must be fully received from other funding sources. Subsequent core operating grants will be distributed quarterly within each year of operation.

Additional grants pledged by the Mortimer & Mimi Levitt Foundation will be provided to Friends of Levitt in good standing on a quarterly basis. Implementing best practices and meeting the requirements and guidelines outlined throughout this document are the basis for continued funding eligibility during the first five years of operation and beyond.

Annual Funding Eligibility

Growth and Community Impact

Friends of Levitt shall submit an annual report to Levitt Pavilions regarding all areas of operations and the growth and community impact of your local Levitt program. Levitt Pavilions will outline the structure for the annual report which will provide the Mortimer & Mimi Levitt Foundation and Levitt Pavilions with information about your Friends of Levitt such as attendance, income and expenses, funding sources, audience demographics, programming, outreach efforts, marketing initiatives, community partners, organizational structure and governance, and volunteer participation.

Financial Stability

To ensure ongoing communication with the Mortimer & Mimi Levitt Foundation and Levitt Pavilions regarding the financial health of your organization, Friends of Levitt shall submit monthly and annual financial statements throughout the development of the new pavilion, and quarterly and annual financial statements, as well as the budget and quarterly cash flow projections for the following the year, during the first five years of operation. Beyond the first five years of operation, Friends of Levitt shall submit annual financial statements and the budget for the following year. Friends of Levitt shall also submit a financial audit to Levitt Pavilions for years when an audit is conducted.

Annual Executive Directors Summit

Friends of Levitt executive directors are required to attend the Annual Executive Directors Summit coordinated and hosted by Levitt Pavilions. This annual summit provides a forum for executive directors to share their experiences and exchange ideas for programming, partnerships, community engagement and fundraising as well as discuss opportunities and resources Levitt Pavilions can provide to Friends of Levitt organizations. The agenda for the summit is created through a collaborative process to ensure inclusion of current issues that matter most to each executive director. Expenses for participation at the annual summit are reimbursed by the Mortimer & Mimi Levitt Foundation.

Friends of Levitt Pavilion Board of Directors

Developing a Levitt Pavilion and successfully sustaining a dynamic concert series stems from the strength of your Friends of Levitt Board of Directors. The primary responsibility of the board is to ensure adequate resources, financially and professionally, to fulfill the organization's mission.

To contribute to the ongoing financial stability of Friends of Levitt, members of your board are expected to collectively contribute a minimum of \$25,000 annually. These direct donations must be independent of support for fundraising events, in-kind donations, professional services provided, sponsorships secured, and gifts solicited. This requirement is criteria for Friends of Levitt in good standing.

Having a strong board will position your organization to receive grants from various funding sources. When reviewing grant requests, foundations and public agencies consider board contributions an indicator of the organization's financial health. Organizations with 100% direct board support have more competitive grant applications.

Friends of Levitt are structured as professional organizations. Day to day operations, management issues and implementing all aspects of programming are expected to be handled by Friends of Levitt paid professional staff. It is the board's responsibility to provide strategic vision; ensure adequate financial resources; select, support and evaluate the executive director; monitor the effectiveness of marketing, outreach and public relations efforts; provide financial oversight; recruit board members; ensure legal and ethical integrity; and enhance the organization's public standing.

Recommended individual responsibilities for Friends of Levitt board members include:

- Provide a minimum annual personal contribution to Friends of Levitt
- Attend board meetings throughout the year
- Participate actively on one or more committees
- Support fundraising events with a sponsorship or by selling tickets
- Attend concerts each year at the Levitt Pavilion
- Bring potential supporters to concerts at the Levitt Pavilion
- Serve as an advocate for the Levitt Pavilion in the community

Grant Opportunity for New Friends of Levitt

An annual grant in the amount of \$5,000 is available to Friends of Levitt to support board retreats and strategic planning sessions prior to Year 1 of operations. Board retreats at this stage of a new organization's development contribute to effective financial planning and strategic organization development. A well-designed and facilitated retreat can assist the new board in understanding the organization's vision and their role in helping to realize that vision. Grants for board development are available on an annual basis. Levitt Pavilions will provide specific guidelines for board development grant opportunities upon request.

Lighting and Sound

To ensure high quality performances year after year, state-of-the-art lighting and sound systems appropriate to the standards of the Mortimer & Mimi Levitt Foundation and Levitt Pavilions are required to be maintained by Friends of Levitt. It is highly recommended that recording equipment be included in the sound system.

Levitt Program Guidelines

The following requirements create programming that ensures the inclusivity of your entire community and provides access to a broad spectrum of music and cultural experiences, creating a long-lasting asset for your city. Programming designed to appeal to all ages, backgrounds and tastes brings people from all walks of life together to enjoy a shared experience of great music, a warm and friendly ambience, and a true feeling of community.

Compliance with the following program guidelines is the basis for Friends of Levitt funding eligibility:

1. A minimum of 50 concerts must be presented per year, free of charge to the public.
2. The 50 concerts must take place over a minimum of ten consecutive weeks and a maximum of sixteen consecutive weeks, with concerts presented a minimum of three days of each week, with at least one concert taking place Monday, Tuesday, Wednesday, Thursday or Friday and at least one concert taking place on Saturday or Sunday of each week during the annual concert series.
3. On days when two concerts are presented, there must be a minimum of three hours between the start times of each concert. Only up to two concerts presented on one day will be counted towards the required minimum of 50 concerts.
4. Every concert must be family-friendly and appropriate for all ages.
5. Each annual series of 50 concerts must represent a broad array of music genres and cultures as well as be reflective of the community served.
6. Up to ten concerts each year may feature acts geared towards children ages ten and under.
7. Each of the 50 concerts must feature a different act so a minimum of 50 unique concerts are presented annually.
8. All 50 acts presented annually must be of professional status and paid for their performance.

Each city and each Levitt Pavilion is unique, and the interpretation of the following will vary to reflect the needs specific to your community.

- Series Programming
The 50 concerts presented annually may be structured with series programming. Series can include a wide range of programming and be reflective of the community served. Series formats can highlight a specific genre, feature a theme or be concept driven. Examples of series that highlight a specific genre are Música Latina and Jazz. Series that feature a theme include American Roots, featuring genres of music conceived on American soil, or Music Café, featuring a variety of upbeat rhythms. Examples of concept driven series include Celebrating Local Legends, featuring performers or the music of performers who are revered locally, and Patchwork of America, featuring American singer-songwriters of diverse ethnic backgrounds. Series can change from year to year.
- Genres Presented

The broad assortment of music presented can include any genre that is family-friendly. This allows for a wide variety of programming. Just a few examples of family-friendly music genres include Latin, jazz, blues, world music, country, bluegrass, folk, gospel, cabaret, and classical, including opera. Friends of Levitt is asked to include music genres that reflect local customs and tastes to celebrate the unique character of their city.

Professional Staffing and Conferences

Professional Staffing

Friends of Levitt is required to maintain a minimum staff of three year-round, full-time equivalent employees. A staff of four year-round, full-time equivalent employees is strongly recommended. It is expected that staff members will receive full compensation packages to include benefits such as holidays, paid vacation, sick days and health care.

Friends of Levitt must employ a year-round, full-time executive director. Highly recommended additional staff positions include a director of development and a production manager. Other positions may include a community relations & outreach manager or an administrative assistant. One or more staff members must have significant development experience. Levitt Pavilions will provide sample job descriptions upon request.

Staff is responsible for booking artists and all aspects of producing the annual Levitt concert series, overseeing the venue, general administration, coordinating outreach and marketing efforts including social media, building and maintaining the organization's infrastructure, managing various community and civic relations, writing grants, and working closely with the board in fundraising efforts including securing funders and coordinating benefit events.

If Friends of Levitt has responsibility for managing the Levitt Pavilion year-round, a staff of four year-round, full-time equivalent employees is necessary. Coordinating community use of the pavilion, managing rentals and providing onsite services requires substantial staff time.

Conferences

It is recommended that senior staff members attend a minimum of one professional conference relevant to their position annually. For executive directors, this is in addition to attending the annual summit. Opportunities include the music industry's most respected booking conferences and festivals, including the Association of Performing Arts Presenters conference in New York City and South by Southwest in Austin, Texas. Professional development conferences include the IEG conference in Chicago produced by the worldwide authority on sponsorships and the National Arts Marketing Project conference produced by Americans for the Arts, the nation's leading organization for advancing the arts in America. Grants for attendance at conferences and other professional development opportunities are provided by the Mortimer & Mimi Levitt Foundation and approved by Levitt Pavilions on an annual basis. A complete list of conferences and professional development opportunities is available upon request.

Marketing

Logo

Friends of Levitt must create a logo that includes "Levitt Pavilion" and "City Name". It is highly recommended that the logo design be reflective of the venue architecture or symbolic of your city.

Branding

Marketing efforts must brand the annual 50 concerts as the "Levitt Concert Series." This includes print materials, such as brochures, ads, and posters, as well as electronic media, including radio and television spots, and your

website, social media, and other online marketing. The Mortimer & Mimi Levitt Foundation logo and the Levitt Pavilions logo must appear on all Friends of Levitt collateral materials as well as on your website, social media, and other online marketing.

Friends of Levitt can co-brand the Levitt concert series with a major sponsor. For example, “Company ABC and Friends of Levitt present the 20XX Levitt Concert Series.” Different series within the annual concert series can also be co-branded. For example, “Company ABC Children’s Night at Levitt Pavilion” or “Company XYZ presents World Music at Levitt Pavilion.” Sponsorship levels for co-branding individual series typically range from \$20,000 to \$40,000 per year. Sponsorship levels for co-branding the entire series of 50 concerts typically range from \$60,000 to \$100,000 annually.

Website

Friends of Levitt must develop a website, [www.levitt\(yourCity\).org](http://www.levitt(yourCity).org), that will be launched prior to Year 1 of operations. The website will have a calendar of the annual Levitt concert series with links to performers’ websites. Content will include information about Friends of Levitt and your local Levitt program. The website will also include the Mortimer & Mimi Levitt Foundation history and information about Levitt Pavilions and the national Levitt network with links to www.levittpavilions.org. Features of the website should include a page to make a donation online and a link to subscribe to your Friends of Levitt e-newsletter. Levitt Pavilions will provide a standard website outline upon request.

Social Media

Friends of Levitt must develop and implement a social media plan that includes such popular websites as Facebook, Twitter, and YouTube to drive awareness of the concerts, develop audience and build a donor base. Additionally, Friends of Levitt should leverage the Internet by posting the concert schedule online in calendar listings and on websites that serve your community. Levitt Pavilions can assist Friends of Levitt in creating an effective online and social media plan.

Bilingual Marketing

If your Levitt program serves a population of which a high percentage speaks a language other than English, make your website and marketing materials bilingual too.

Levitt Pavilions Participation

Levitt Pavilions is the national support organization that leverages the network of pavilions to benefit existing and future Friends of Levitt organizations. The network of Levitt pavilions is a valuable support system. Friends of Levitt benefit from inter-pavilion events, shared best practices, collaborative special programs, technical assistance and networking opportunities coordinated by Levitt Pavilions. Taking part in national initiatives and working in partnership with Levitt Pavilions provides additional funding, increased visibility, and expanded resources that contribute to the success of your local Levitt program. Friends of Levitt are expected to participate in regional and national programs coordinated by Levitt Pavilions and maintain an open dialogue, providing feedback and ideas for national initiatives and support resources.

Community Outreach

Building your audience and garnering donor support depends upon effective outreach initiatives and creating series programming inclusive of local traditions and tastes. Understanding area demographics is key to implementing strategic outreach and programming concerts that resonate with your city.

A community advisory council comprised of community stakeholders assists Friends of Levitt in engaging the community, recruiting volunteers, developing partnerships with local organizations, and building relationships

with schools and area businesses. Community advisory council members help implement grassroots marketing efforts and establish partnerships that increase audience attendance.

The Levitt program provides free access to the performing arts to many families and individuals who typically cannot afford cultural arts experiences. A number of those who regularly attend concerts would benefit from learning about resources and services available in your community. A community partners program provides valuable information to Levitt audiences. For example, a local health center can have a booth onsite during the concerts and distribute materials about free cholesterol or blood pressure testing. A community partners program also connects audience members with volunteer opportunities, inspiring community engagement beyond the Levitt concert series. For example, organizations such as Habitat for Humanity or Big Brothers Big Sisters can distribute information about their programs and sign-up volunteers at concerts.

Friends of Levitt are encouraged to develop partnerships with local media groups including radio stations, television channels, and print communications. Media partnerships can provide free advertising and beneficial media exposure. Friends of Levitt should cultivate media relationships during the development stages of the new pavilion.

Coordinating a community advisory council, managing a community partners program, recruiting volunteers, building relationships with community stakeholders, and securing media partnerships require substantial staff time. Friends of Levitt should structure staffing to achieve successful outreach efforts. Levitt Pavilions can assist your organization in creating an outreach plan.

Lawn Experience

The open lawn at a Levitt Pavilion creates an inviting and joyful atmosphere for building community. People of all ages and backgrounds sit together, for a shared experience of live music. Everyone feels welcome to find their perfect spot, whether it be close to the stage, towards the back of the audience, or somewhere in between. The casual, relaxed environment creates space for a variety of activities. Picnicking with family and neighbors, relaxing on a blanket while gazing at stars, dancing to upbeat rhythms, and making new friends are all part of the Levitt experience. The setting is ideal for families with children of all ages. Free of an assigned seat, children can run to the stage to experience performances close up, dance spontaneously and play throughout the concert.

To ensure a comfortable experience, inform your audience of items to bring, such as lawn chairs and blankets. Suggest bringing a picnic and provide information regarding onsite food and beverage options. Your website and marketing materials should communicate smoking and alcohol policies, rules regarding pets at concerts, and general park policies. It is also helpful to share this information with your audience during pre-show announcements.

It is recommended that Friends of Levitt limit the use of roped-off VIP sections. Encourage your VIPs to get the authentic Levitt concert experience by sitting with the audience. If necessary, Friends of Levitt can save space for major sponsors or donors by setting up an area of lawn chairs or blankets. Arrange this area at the sides or rear of the lawn, so the center lawn remains open to everyone. If space remains available once the concert is underway, open the VIP area to all.

Fundraising at Concerts

Fundraising at concerts builds awareness that Friends of Levitt is a nonprofit organization that relies on community support. Most Friends of Levitt collect donations onsite before, during and after each concert. Volunteers walk through the audience mid-performance with baskets. People enjoying the music and Levitt

atmosphere are likely to donate. Immediately after concerts, volunteers collect donations at exit points. Total annual contributions over the 50 concerts often range from \$25,000 to \$40,000. During pre-show announcements, Friends of Levitt should provide information about upcoming fundraisers and ways to support the organization year-round. Those who have experienced a concert are primed to become supporters and ambassadors for the Levitt program throughout your city.

Volunteers

Volunteers are essential to Friends of Levitt. The enthusiasm and dedication of volunteers enhance the audience experience and contribute significantly to the enjoyment of Levitt concerts. Community involvement through a volunteer program creates local ownership and support for your Levitt program. It is recommended that Friends of Levitt begin recruiting volunteers during the development stages of the new pavilion. Partnering with other nonprofits and volunteer-focused organizations, such as local senior and student community service organizations, is an effective way to build a volunteer base.

Volunteers assist during the concert season and throughout the year in a variety of roles. At the concerts, they set-up and maintain the information booth, sell Levitt-branded merchandise, collect donations, count the audience, assist with artist hospitality, distribute brochures, conduct surveys and assist with nightly breakdown and cleanup, amongst other duties. Throughout the year, volunteers can assist with office tasks, fundraising events, and ongoing outreach. In addition to performing specific tasks, volunteers are spokespeople for Friends of Levitt. It is important to provide volunteer orientation sessions so they learn about the Levitt program and are adequately trained for their assignments.

Friends of Levitt should acknowledge and thank volunteers from stage and express appreciation for their service by providing refreshments and Levitt t-shirts. It is recommended that Friends of Levitt coordinate a volunteer appreciation event annually. The best recruiters for your volunteer program and the best ambassadors for the Levitt concert series are volunteers who feel appreciated for making a difference in their community and have an overall positive experience as a Levitt volunteer.

Artist Relations

The national Levitt network has a stellar reputation with artists, agents and managers nationwide. Levitt pavilions are known as venues with top quality sound and lighting, first-rate professional crews, and exceptionally well-run operations. Artists, many of whom spend long periods of time on the road, appreciate the warm hospitality and welcoming audiences they encounter at Levitt venues. Priority should be given to ensuring that performers have a positive experience from before they arrive at the pavilion through to their departure. Hospitality should include hot and cold meal options, beverages, and privacy backstage, including private dressing rooms and bathrooms. It is important that your Levitt Pavilion maintain the high standards of professionalism artists have come to expect of Levitt venues.

Friends of Levitt allow artists to sell their CDs and other merchandise such as t-shirts and posters before, during and after their performance. Artists should be responsible for their own sales and should keep 100% of the proceeds. Artists' ability to profit from sales of their merchandise helps keep booking fees low and aligns with Levitt's value of being an artist-friendly organization.

Artists who perform at your pavilion become ambassadors for all Levitt pavilions and will share their experience with other performers and industry professionals. In addition to providing an inviting atmosphere and well-run venue, speak with artists about your local Levitt program and the national Levitt network before each performance. Request that artists speak about your Levitt concert series from stage and invite the audience to attend future Levitt shows. Inform artists that Friends of Levitt is a nonprofit community-based

organization that relies on local support to present the annual series of 50 concerts, free of charge. Ask artists to encourage audience support. When artists speak enthusiastically and knowledgeably about your Levitt program from stage, onsite donations typically increase significantly.

Food and Beverage Vendors

Food and beverage vendors create a festive atmosphere and make the concerts enjoyable for the audience. Management of concessions is at the discretion of each Friends of Levitt. Options include managing concessions directly, partnering with community organizations, or contracting local vendors (taking a percentage of their sales or charging a flat fee). Some Friends of Levitt offer refreshments such as ice cream, lemonade, and pretzels while others offer gourmet picnic dinners and ethnic foods. Income generated from concessions is modest, though offering concessions greatly enhances the concert experience. Policies regarding food and beverage vendors are determined by Friends of Levitt in cooperation with the parks department and in accordance with health department regulations. Levitt Pavilions will provide information regarding food and beverage programs at operating pavilions upon request.

Alcohol Policies

Permitting the presence of alcohol at the pavilion is at the discretion of Friends of Levitt, determined in accordance with City regulations and parks department policies. If alcohol is allowed onsite, its presence must remain understated and not a focal point of the concert experience.

Friends of Levitt may, if desired, sell beer and wine at concerts, except at children's entertainment concerts. The sale of any other alcohol product at performances that are part of the annual Levitt concert series is prohibited. Alcohol sales must be coordinated in cooperation with the City and parks department and in accordance with local laws.

With the exception of children's entertainment concerts, wine and beer sponsors are permitted for Levitt concerts. Onsite presence of these sponsors must be kept to a minimum. Signage shall appear no larger and no more prominently displayed than signage of other sponsors. Wine and beer sponsor logos and company names shall appear no larger than other sponsors in Levitt concert series advertising and marketing, both in print and online.

Alcohol sponsors of any kind are permissible for Friends of Levitt fundraisers such as ticketed concerts, donor cultivation events, and galas. Sponsor presence at these events is at the discretion of Friends of Levitt.

Tobacco sponsors are prohibited for all Friends of Levitt activities.

Merchandise Sales

Friends of Levitt are encouraged to sell their own branded merchandise at concerts and online. Branded merchandise generates modest income, though extends the Levitt experience for the audience and builds awareness of the annual concert series. Merchandise may include t-shirts, posters, hats, blankets, umbrellas and lawn chairs in addition to other branded items.

Friends of Levitt may arrange for additional vendors at the concerts, charging each a fee to be onsite. Vendors such as artisans, face painters, balloon sculptors, and jewelry makers add to the festive atmosphere and enhance the audience experience.

EXHIBIT C
FORM OF BOOKING AGREEMENT
(ATTACHED)

**SAMPLE FORM OF BOOKING AGREEMENT
LEVITT PAVILION**

THIS USER AGREEMENT (this "**Agreement**") is made and entered as of _____, by and between Friends of Levitt Pavilion Denver, a Colorado nonprofit corporation, located at _____ ("**Levitt**"), and _____, a _____ ("**User**"), located at _____.

RECITALS

- A. Levitt manages, operates, and maintains the outdoor amphitheatre known as Levitt Pavilion for the Performing Arts – Denver, at Ruby Hill Park (together with the lawn seating area, the "**Permitted Premises**") located at southeast of S. Platte River Drive and W. Florida Avenue in the City and County of Denver, Colorado (the "**Park**"), on behalf of the City and County of Denver, a municipal corporation organized and existing by virtue of Article XX of the Colorado Constitution (the "**City**"), under rights granted by and obligations imposed under that certain Cooperative Agreement Between Friends of Levitt Pavilion Denver, Mortimer & Mimi Levitt Foundation, Levitt Pavilions and the City and County of Denver, Colorado.
- B. User desires to use the Permitted Premises for the purpose and upon the terms hereinafter provided.

NOW, THEREFORE, Levitt hereby permits User to use the Permitted Premises, and User agrees to use the Permitted Premises, for the Term, at the fees and upon the terms, covenants, and conditions hereinafter set forth:

- 1. **Permitted Premises.** User acknowledges and agrees that during the Term of this Agreement other events, productions, exhibits, and uses (including public use) may be held and occur in those portions of the Park that are not included in the Permitted Premises. User further acknowledges that other events, productions, exhibits, and uses (including public use) may be held and occur in the Permitted Premises during the Term provided that such events, productions, exhibits, or uses take place outside of the times set forth in Section 2 below, and provided that the lawn seating area of the Permitted Premises shall remain open and available for use by the public except when such area requires the exclusive use by User.
- 2. **Term.** The term of this Agreement is for the following day or days and the period(s) during each day as shown (collectively, the "**Term**"):
 - a. Date(s) and time(s) for set up: _____
 - b. Date(s) and time(s) for rehearsal: _____
 - c. Date(s) and time(s) of the actual performance, event, occasion, or the like: _____
 - d. Date(s) and time(s) for tear down/cleanup: _____

The earliest date set forth in this **Section 2** shall be referred to herein as the "**Event Date**."

- 3. **Event Information.** User shall have the right to occupy and use the Permitted Premises for the following purposes and no others (together with associated set up, rehearsal, tear down, and cleanup activities, the "**Event**"):
 - a. Name of the Event: _____
 - b. Brief Description of the Event: _____
 - c. Estimated Number of Participants: _____
- 4. **Event Coordinator.** User may, upon written notice to Levitt, designate an event coordinator or event planner to coordinate with Levitt in the planning and preparation of the Event; provided, however, that User shall remain fully liable and responsible for all requirements and obligations of User under this Agreement.

5. Permit Fee. User shall pay to Levitt a permit fee equal to \$ _____ (the "Permit Fee") in accordance with the following:

- a. The Permit Fee shall be paid upon execution of this Agreement.
- b. This Permit Fee covers and includes:
 - (i) Use by the User of the Permitted Premises during the Term.
 - (ii) Use by the User of the following equipment and services:

[To be determined in the future by Levitt Denver and approved by the City in accordance with the Cooperative Agreement.]

c. Any equipment or services provided by Levitt for the Event in excess of the items set forth in **Sections 5.b(ii)** shall be Incidental Expenses and shall be paid for by User in accordance with **Section 6** below. Notwithstanding the foregoing and except as otherwise provided in this Agreement, User acknowledges and understands that it is User's responsibility to supply, without limitation, at its sole cost and expense, all equipment, supplies, food, beverages, and entertainment, and the labor related thereto, for the Event.

6. Incidental Expenses.

a. In addition to the Permit Fee, User shall pay Levitt for the following incidental expenses (collectively, the "Incidental Expenses"):

- (i) Except as otherwise provided in **Section 5.b** above, the cost and expenses for any and all (w) labor utilized by Levitt for setting up, staging, operating, and striking of the Event, and (x) special facilities, equipment, and materials (collectively, "Special Equipment") furnished by Levitt for setting up, operating, and striking the Event.
- (ii) An administrative fee equal to \$ _____.
- (iii) The cost and expenses for security or Denver police, fire, and paramedic personnel to attend and work the Event.
- (iv) A ten percent (10%) Facilities Development Admissions Tax (the "FDA Tax") for each admission purchased for the Event in accordance with Article VII of Title II of the Denver Revised Municipal Code (the "DRMC"). Article VII defines "admission" as "the right to an entrance and an occupancy of a seat or an entrance alone, of a person who, for a consideration by whatever name known, including voluntary 'contributions,' uses, possesses or has the right to use or possess entrance and occupancy of a seat or an entrance alone to any entertainment, amusement, athletic event, exhibition or other production or assembly staged, produced, convened or held at or on any facility or property owned or leased by the city." Per Article VII, User is required at the time of making the sale of an admission to collect the FDA Tax from the purchaser, and User, as trustee for and on account of Levitt, shall be liable to Levitt for the collection and return thereof. The FDA Tax shall be conspicuously, indelibly and separately stated and charged from the sale price on the ticket or card evidencing the sale and shown separately from the sale price on any record made thereof at the time of the sale or at the time when evidence of the sale is first issued or employed by the User. If admission is charged for the Event, User shall keep and preserve a true, accurate, and complete account of all sales made and monies received, and such other books and records or accounts as may be necessary to determine the amount of the FDA Tax collectible or payable as required herein and by the DRMC. Such records shall be kept and preserved for a period of four (4) years following the due date of the return (as provided in Article II, Title VII, of the DRMC) or the payment of the FDA Tax, and the City's Manager of Finance, the City's

Auditor, the Manager of Department of General Services, Levitt, and their duly authorized agents, shall at all times have the right to audit such accounts and any records pertaining thereto.

- b. User shall file with Levitt, on or before ____ days prior to the Event Date, a full and detailed outline of all equipment and services required for the Event, including any staging requirements, table and chair set up, lighting and sound requirements, and such other information required by Levitt. On or before ____ days after Levitt's receipt of this information (provided such information is sufficient in Levitt's sole discretion), Levitt shall provide User with an estimate of the Incidental Expenses (which estimate shall be deemed a part of and incorporated into this Agreement). User shall pay to Levitt the amount of such estimate (the "**Incidental Expenses Payment**") on or before ____ days prior to the Event Date. The Incidental Expenses Payment will be applied to amounts owed to Levitt in accordance with **Section 8** below.
7. Damages; Damage Deposit. User shall be responsible for all damage to the Permitted Premises, other areas in the vicinity of the Permitted Premises, and any and all equipment, supplies, art, crafts, sculptures, displays, etc. located therein, arising or resulting from the Event, whether such damage is caused by User, members of the public, uninvited persons, or User's guests, vendors, or other representatives. User shall pay to Levitt on or before ____ days before the Event, a damage deposit equal to \$_____ (the "**Damage Deposit**") to ensure adequate funding is in place in the event (i) of damage or disrepair to, among other things, the Permitted Premises, other areas in the vicinity of the Permitted Premises, equipment or supplies, or artwork or other displays within the Permitted Premises, or (ii) User fails to adequately clean the Permitted Premises (and other areas in the vicinity of the Permitted Premises impacted by the Event) upon completion of the Event. Levitt shall not be required to keep the Damage Deposit separate from its own funds and User shall not be entitled to interest on the Damage Deposit. The Damage Deposit shall not be a limitation on Levitt's damages or other rights under this Agreement.
8. Event Reconciliation.
 - a. For ticketed or other admissions-based events only: Prior to leaving the Permitted Premises on the last date set forth in **Section 2.c** above, User shall provide Levitt with a written statement of all receipts of any kind whatsoever received in connection with the Event, and an authenticated ticket manifest showing the number and types of tickets printed, sold, unsold, lost, stolen, missing, and complimentary; the statement and manifest shall be certified by the User to be correct. User shall provide Levitt with the unsold tickets (commonly referred to as deadwood) for verification upon Levitt's request. User shall be responsible for ticket security; therefore, any tickets that are lost, stolen, or missing shall be considered sold for purposes of computing gross receipts and FDA Taxes.
 - b. For all events: On or before ____ days after the expiration of the Term, Levitt shall send to User a final settlement statement and invoice for the Event (the "**Final Settlement Statement**"). The Final Settlement Statement shall include a final tally of Incidental Expenses, including, without limitation, any cost and expenses incurred by Levitt to remedy any damage or disrepair to, among other things, the Permitted Premises, other areas in the vicinity of the Permitted Premises impacted by the Event, City or City-contractor equipment or supplies, or artwork or other displays within or in the vicinity of the Permitted Premises, or to clean the Permitted Premises or other areas in the vicinity of the Permitted Premises impacted by the Event. The Incidental Expenses Payment paid to Levitt as set forth in **Section 6.b** above shall be deducted from the fees and charges owed to Levitt as set forth on the Final Settlement Statement. All remaining fees and charges owed to Levitt shall be due within ____ days of invoice. Levitt may, at its option, deduct and retain from the Damage Deposit an amount equal to all or a portion of the cost and expenses that are due and payable to Levitt as reflected in the Final Settlement Statement, and/or include an invoice for such cost and expenses in the Final Settlement Statement. Upon Levitt's receipt of all outstanding cost and expenses, Levitt will return to User any remaining funds from the Damage Deposit and Incidental Expenses Payment.
9. Late Charges. Any payments not made to Levitt within ____ days of invoice billing shall accrue interest at the rate of ____ percent (___%) per annum, commencing on the ____ calendar day after the date such amount is due and owing and accruing until paid to Levitt.

10. Cancellation.

- a. If the User cancels the Event _____ () days or less before the Event Date, Levitt may retain as liquidated damages (i) the Permit Fee and (ii) such amount from the Incidental Expenses Payment and Damage Deposit as is necessary to cover the actual cost and expenses incurred by Levitt in connection with the cancelled Event. In the event the Incidental Expenses Payment and Damage Deposit have not yet been paid or are not sufficient to cover the actual cost and expenses incurred by Levitt in connection with the cancelled Event, Levitt shall provide User with an invoice for the outstanding amount due and payable to Levitt and User shall pay Levitt the same within ____ () days of invoice.
- b. If User cancels the Event by notifying Levitt in writing _____ () days or more before the Event Date, Levitt may retain as liquidated damages from the Permit Fee and, if previously paid, from the Incidental Expenses Payment and/or Damage Deposit, only such amount as is necessary to cover the actual cost and expenses incurred by Levitt in connection with the cancelled Event. Any amounts remaining from the Permit Fee and, if previously paid, from the Incidental Expenses Payment and/or Damage Deposit, shall be returned to User. In the event the Incidental Expenses Payment and Damage Deposit have not yet been paid or are not sufficient to cover the actual cost and expenses incurred by Levitt in connection with the cancelled Event, Levitt shall provide User with an invoice for the outstanding amount due and payable to Levitt and User shall pay Levitt the same within ____ () days of invoice.

11. Name. User shall use and incorporate the name “Levitt Pavilion for the Performing Arts – Denver, at Ruby Hill Park”, “Levitt Pavilion”, or “Levitt Pavilion Denver” in all promotional activities and efforts associated with producing the Event, including but not limited to publicity, press releases, media relations, advertising, marketing, and social media.

12. Sponsorship & Advertising; Photographic Rights. Levitt and the City each have the right to make photographs, audio and video recordings in the Permitted Premises at its option to use for customary advertising and publicity and non-commercial uses. Event sponsorship signage and temporary advertising signage are permissible only with the prior written approval of the Manager of Parks and Recreation or his or her designee (the “**Manager**”), which approval shall be in the Manager’s sole discretion. All sponsorship and temporary advertising signage must comply with all applicable laws and Parks rules, regulations, and policies.

13. Compliance with All Laws. User shall use and occupy the Permitted Premises and perform its rights and obligations hereunder in a safe and careful manner and in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado, with the rules, regulations, and policies of the Department of Parks and Recreation, and with the Charter, DRMC, ordinances, rules, regulations, and executive orders of the City and County of Denver.

14. Prohibited Acts. User shall not use the Permitted Premises or any part thereof for the possession, storage, serving, or sale of liquor (except as otherwise provided in **Section 16** hereof), or for any unlawful purpose or in any manner so as to injure persons or property in, on, or near the Permitted Premises. User shall not do any act or suffer any act to be done during the term of this Agreement, which will in any way mar, deface, alter, or injure any part of the City’s property or facilities.

15. Enforcement Rights. It is understood and agreed that Levitt and the City reserve the right to control and manage the Permitted Premises, and to enforce all necessary and proper rules for the management and operation of the same and for its authorized representatives to enter the Permitted Premises, at any time and on any occasion. Levitt and the City also reserve the right, but not the duty, through such party’s duly appointed representatives, to eject any objectionable person or persons from the Permitted Premises and User hereby waives any and all claims for damages against Levitt and the City any any and all of such party’s officers, agents or employees resulting from the exercise of this authority.

16. Alcoholic Beverages.

[To be determined in the future by Levitt Denver and approved by the City.]

17. Sales of Merchandise.

[To be determined in the future by Levitt Denver and approved by the City.]

18. Seating Capacity. User shall not sell, allow, or cause to be sold or issued, admission tickets in excess of the seating capacity of, or admit a larger number of persons to the Permitted Premises than can be properly and safely seated and move about in seating area of the Permitted Premises, based on applicable law and the rules, regulations, and policies of the Department.
19. Ingress and Egress. All portions of the sidewalks, entrances, passages, vestibules, halls and all ways of access to public utilities on the Permitted Premises shall be kept unobstructed by User and shall not be used for any purpose other than ingress or egress to and from the Permitted Premises. The doors, stairways or openings into any place in the Levitt Pavilion, including hallways, corridors and passageways, also house lighting attachments, shall in no way be obstructed by User.
20. Indemnification; Insurance. *[These requirements to be updated as required by the City.]* The User hereby agrees to defend, indemnify, reimburse and hold harmless the City, and the City's appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the operation, use, or occupation of the Permitted Premises ("City Claims"), unless such City Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of User or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

Further, the User hereby agrees to defend, indemnify, reimburse and hold harmless Levitt, and Levitt's directors, officers, contractors, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the operation, use, or occupation of the Permitted Premises ("Levitt Claims"), unless such Levitt Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of Levitt. This indemnity shall be interpreted in the broadest possible manner to indemnify Levitt for any acts or omissions of User or its subcontractors either passive or active, irrespective of fault, including Levitt's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of Levitt.

User further agrees to execute and deliver to Levitt a certificate of insurance evidencing the following required coverages no later than thirty (30) days prior to the Event Date:

- a. **Workers' Compensation/Employer's Liability Insurance:** Unless exempt pursuant to applicable Colorado law*, User shall maintain Workers' Compensation coverage for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.
- b. **General Liability:** User shall maintain limits of \$1,000,000 for each occurrence and in the aggregate.
- c. **Automobile Liability:** User shall maintain Business Auto Liability minimum limits of \$1,000,000 combined single limit applicable to all vehicles used in performing services under this Agreement. If User does not maintain this type of insurance, User shall provide proof of personal auto insurance. Additionally, User ensures that any subcontractor operating a motor vehicle in providing services related to this Agreement shall maintain auto liability insurance.
- d. **[(If applicable) Liquor Legal Liability:** User shall maintain or cause its third-party bartender or caterer to maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit.]

- e. **Additional Insureds:** For General Liability, User's insurer shall name "The City and County of Denver, its officers, officials, and employees as owners of the premises" and "Friends of Levitt Pavilion Denver, its directors, officers, contractors, agents and employees" as Additional Insureds.
- f. **Waiver of Subrogation:** For all coverages, User's insurer shall waive subrogation rights against the Additional Insureds.
- g. **Subcontractors and subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services desired or required by this Agreement) shall be subject to all of the requirements herein. User shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. User agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

If User fails to provide Levitt with a certificate of insurance demonstrating compliance with the requirements set forth herein, Levitt reserves the right to cancel this Agreement, in which event Levitt shall be entitled to the liquidated damages set forth in **Section 10.a** above. Each required policy shall contain a valid provision or endorsement requiring notification to Levitt in the event any of the required policies are canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to Levitt at the address set forth in the Notices section of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, User shall provide written notice of cancellation, non-renewal, or any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) referencing the contract number set forth herein. For commercial general liability and business auto liability, User's policies must provide: that this Agreement is an Insured Contract under the policy; defense costs are in excess of policy limits; a severability of interest, separation of insureds or cross liability provision; and a provision that coverage is primary and non-contributory with other coverage or self insurance maintained by the City or Levitt. User certifies that the certificate of insurance provided per this Agreement, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. Levitt's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of the User's breach of this Agreement or of any of Levitt's or the City's rights or remedies under this Agreement or otherwise provided by law or equity.

*Business entities exempt from carrying Workers' Compensation/Employer's Liability insurance will deliver to Levitt a copy of the Rejection of Coverage letter submitted with the State of Colorado Department of Workers' Compensation.

Insurance coverage specified herein constitutes the minimum requirements and said requirements shall in no way lessen or limit the liability of User under the terms of this Agreement. User shall procure and maintain, at its own cost and expense, any additional kinds and amounts of insurance that, in its own judgment, may be necessary for its proper protection for the operations hereunder.

- 21. Vacation of Permitted Premises. On or before the expiration of the Term, User shall deliver to Levitt the Permitted Premises in as good a condition and repair as the same existed prior to the beginning of the Term, except for normal wear and tear. In the event any portion of the Permitted Premises is not vacated by the expiration of the Term, then Levitt shall be and is hereby authorized to remove from the Permitted Premises, at the expense of User, all goods, wares, merchandise and property of any kind or description which may be then occupying a portion of the Permitted Premises. Levitt shall not be liable for any damage to or loss of such goods, wares, merchandise or property sustained either during the removal or storage of the same and Levitt, its directors, officers, contractors, agents and employees are hereby expressly released from any and all claims for such damage or loss. Levitt shall notify User of any equipment or articles left at the Permitted Premises by the User and provide the User with a reasonable opportunity to remove the same prior to their removal or disposal by Levitt. Without limiting the foregoing, any property left on the Permitted Premises by the User shall, after a

period of _____ () days from the expiration of the Term, be deemed abandoned and, at Levitt's sole option, become the property of Levitt, without further notice.

Levitt shall have the sole right to collect and have custody of all articles left on the Permitted Premises by persons attending any function held on the Permitted Premises.

22. Levitt & City Responsibility. Neither Levitt nor the City assume any responsibility for any property placed in the Permitted Premises, and Levitt and the City are hereby expressly released and discharged from any and all liabilities for any loss, injury, or damages to any person or property that may be sustained by reason of the occupancy of the Permitted Premises under this Agreement. All watchmen or other protective services desired by User must be arranged for by special agreement with Levitt, and any cost and expenses incurred by Levitt therefor shall be paid by User to Levitt as an Incidental Expense. In the receipt, handling, care or custody of property of any kind shipped or otherwise delivered to Levitt, either prior to, during, or subsequent to the use by User of the Permitted Premises, Levitt and its directors, officers, contractors, agents, volunteers and employees shall act solely for the accommodation of User and neither Levitt nor its directors, officers, contractors, agents, volunteers, or employees shall be liable for any loss, damage, or injury to such property.
23. Force majeure and casualty. User hereby expressly waives any and all claims for compensation for any and all loss or damage sustained by reason of any defect, deficiency, failure, or impairment of the water supply system, drainage system, heating system, steam system, electrical system, ventilation system, or refrigeration system on or related to the Permitted Premises. In the event the Permitted Premises or any part of the Levitt Pavilion is damaged by fire, or if for any other reason, including strikes, failure of utilities or any act of God which, in the judgment of Levitt or the Manager, renders the fulfillment of this Agreement by Levitt impossible, User hereby expressly releases and discharges Levitt and the City and Levitt's and the City's agents from any and all demands, claims, actions, and causes of actions arising from any of the causes aforesaid.
[Refund policy to be determined in the future by Levitt Denver and approved by the City.]
24. Notices. Any notice or communication to be given under this Agreement shall be deemed to have been duly given upon the delivery or receipt thereof if the same be in writing and (i) hand delivered, (ii) sent by overnight delivery by a nationally recognized delivery service, (iii) mailed by certified mail, postage prepaid, return receipt requested, (iv) mailed via United States mail, postage prepaid, or (v) sent by electronic mail transmission in uneditable format (e.g., Adobe PDF), as applicable, to the addresses of User and Levitt as specified on Page One hereof, or at the latest address submitted in writing to the other party by User or Levitt (as applicable).
25. Time of the Essence. Time is of the essence with reference to all payments. Any extra time desired by User not provided for by this Agreement must be first allowed and approved in writing by Levitt.
26. Taxes and Fees. User agrees to pay promptly all taxes, excise or license fees of whatever nature applicable to this occupancy and to take out all permits and licenses, Municipal, State, or Federal, required for the usage herein permitted, and further agrees to furnish Levitt, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment of all taxes and fees above referred to, and showing that all required permits and licenses are in effect. Appropriate records shall be maintained, and made available per the requirements set forth herein. If User is incorporated, it must be registered and in good standing with the Office of the Colorado Secretary of State. User agrees that the City's Auditor, or authorized representative(s), may inspect any tax data provided to the Department of Finance as required by DRMC, Chapter 53, Taxation and Miscellaneous Revenue and any related audit reports and data generated by the Department of Finance. Such records may include taxpayer's returns or reports, accompanying schedules and data, and associated audit data and information generated by authorized representatives of the City's Manager of Finance.
27. NO DISCRIMINATION IN EMPLOYMENT. In connection with the performance of work under this Agreement, User agrees not to refuse to hire, discharge, promote, or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability; and User further agrees to insert the foregoing provision in all subcontracts hereunder.

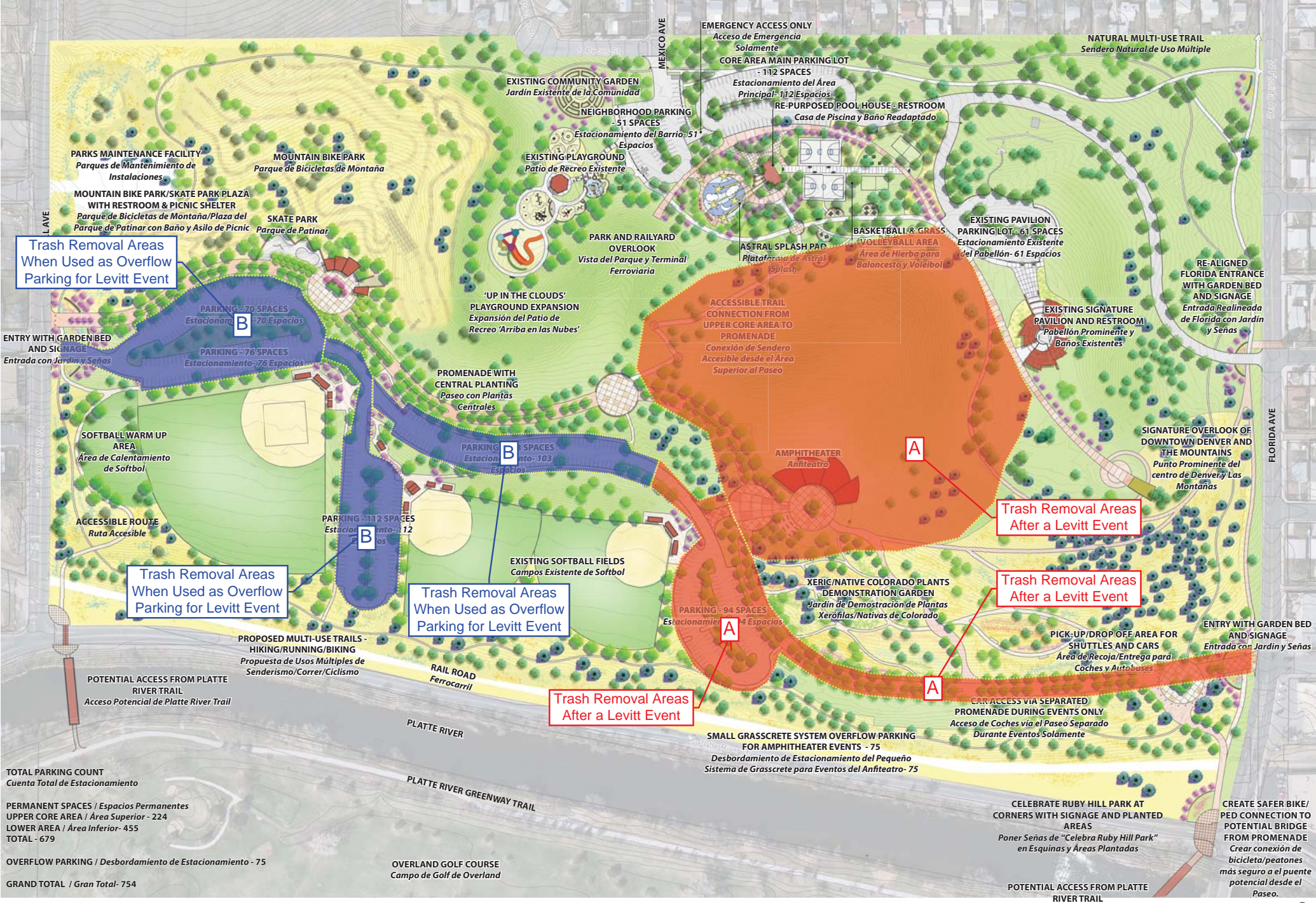
28. Pyrotechnics. Special stage effects involving pyrotechnic displays (including fireworks and flash powders) are prohibited unless approved in advance and in writing by Levitt, the Manager, and the Denver Fire Department, and use of such special stage effects shall be subject to any and all terms, conditions, and standards imposed by Levitt, the Manager, and the Denver Fire Department in their sole discretion. If a pyrotechnician and/or additional firemen are required, User shall make arrangements, at its cost and expense, for the same with the Denver Fire Department. Pyrotechnics may only be discharged at the Permitted Premises by a licensed and insured pyrotechnic.
29. Rigging. If rigging is required for the Event, it shall be approved in advance and in writing by Levitt and the Manager, and subject to any and all terms, conditions, and standards imposed by Levitt and the Manager in their sole discretion. Any cost and expense related to such rigging shall be at User's cost and expense.
30. Governing Law; Venue. This Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, the DRMC, ordinances, rules, regulations and Executive Orders of the City and County of Denver, and rules, regulations, and policies of the Department, which are expressly incorporated into this Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to this Agreement will be in the District Court of the State of Colorado, Second Judicial District.
31. Licensing. User warrants that all copyrighted material to be performed has been duly licensed and authorized by the copyright owners or their representatives. User will assume all costs, expenses, and damages arising from the use of patented, trademarked, franchised, or copyrighted, materials, devices, processes or dramatic rights used at or incorporated in the Event. User agrees to indemnify, defend, and hold harmless (i) the City and County of Denver, its officers, agents, volunteers, and employees and (ii) Levitt and its directors, officers, contractors, agents and employees from any and all claims, losses, or expenses, including legal fees, which might arise from use of any such material. Logos of the City and County of Denver may not be used on any promotional material without the express written consent of the Manager, and logos of Levitt may not be used on any promotional material without Levitt's written consent. .
32. House Tickets. Levitt retains the use [] tickets for the Event.
33. ADA – Americans with Disability Act Requirements. The parties acknowledge that the City is subject to the provisions of Title II of the Americans with Disabilities Act (“ADA”) and that the User is subject to the provisions of Title III of the ADA (including all revised regulations dated September 15, 2010 and effective March 15, 2011). Concerning compliance with the ADA and all regulations thereunder, Levitt is responsible for the permanent building access requirements; such as wheelchair ramps, elevators, restrooms, doors and walkways. User is responsible for the non-permanent accessibility standards and requirements, such as, but not limited to, seating accessibility, ticketing, ticket pricing, sign language interpreters, signage and all other auxiliary aids and services customarily provided by the User. User and User's ticketing company (if any) shall comply with the ADA and all regulations thereunder. Tickets for unsold accessible seating may be released for sale to individuals without disabilities when: (i) all non-accessible tickets (excluding luxury boxes, club boxes, or suites) have been sold; (ii) all non-accessible tickets in a designated seating area have been sold and the tickets for accessible seating are being released in the same designated area; or (iii) all non-accessible tickets in a designated price category have been sold and the tickets for accessible seating are being released within the same designated price category. User represents that it has viewed or otherwise appraised itself of the access to the premises and common areas and accepts such access, common areas, and other conditions of the premises as adequate for the User's responsibilities under the ADA. User shall be responsible for ensuring that the space rented by Levitt to the User complies and continues to comply in all respects with the ADA, including accessibility, usability, and configuration insofar as User modifies, rearranges, or sets up in the Permitted Premises in order to accommodate the Event. User shall be responsible for any violations of the ADA that arise from User's configuration of the seating areas or modification of other portions of the premises in order to accommodate the Event. User shall be responsible for providing auxiliary aids and services that are ancillary to its production and for ensuring that the policies, practices and procedures it applies in its production are in compliance with the ADA. In the event User already has a ticketing policy in place it must at a minimum match the criteria set forth in the ADA and all the regulations thereunder and the City policy.

34. Assignment, Subcontracting, and Subleasing. User shall not voluntarily or involuntarily assign any of its rights or obligations under this Agreement, subcontract performance of its obligations under this Agreement, or sublease its rights to the Permitted Premises, without obtaining Levitt's prior written consent. Any assignment, subcontracting, or subleasing without such consent will be ineffective and void, and shall be cause for termination of this Agreement by Levitt. Levitt has sole and absolute discretion whether to consent to any assignment, subcontracting, or subleasing, or to terminate this Agreement because of unauthorized assignment, subcontracting, or subleasing. In the event of any unauthorized assignment, subcontracting, or subleasing: (i) User shall remain responsible to Levitt; and (ii) no contractual relationship shall be created between Levitt and any subconsultant, subcontractor, subtenant, or assign.
35. Inurement. The rights and obligations of the parties to this Agreement inure to the benefit of and shall be binding upon the parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of this Agreement.
36. No Third Party Beneficiary. Enforcement of the terms of this Agreement and all rights of action relating to enforcement are strictly reserved to the parties to this Agreement and the City and County of Denver. Nothing contained in this Agreement gives or allows any claim or right of action to any third person or entity except for the City and County of Denver. Any person or entity other than Levitt, the User, or the City receiving services or benefits pursuant to this Agreement is an incidental beneficiary only.
37. No Authority to Bind City to Contracts. User lacks any authority to bind the City or Levitt on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the DRMC.
38. Legal Authority. User represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement. Each person signing and executing this Agreement on behalf of User represents and warrants that he or she has been fully authorized by User to execute this Agreement on behalf of User and to validly and legally bind User to all the terms, performances and provisions of this Agreement. Levitt shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of either User or the person signing this Agreement to enter into this Agreement.
39. Agreement as Complete Integration; Amendments. This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other Agreement properly executed by the parties. This Agreement and all and each of its terms and conditions shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, personal representatives, successors, and assigns.
40. Conflict of Interest. The parties agree that no employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein. The User further agrees not to hire or contract for services with any employee or officer of the City in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.9 and 1.2.12.
41. Severability. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
42. No Construction Against Drafting Party. The parties and their respective counsel have had the opportunity to review this Agreement, and this Agreement will not be construed against any party merely because any provisions of this Agreement were prepared by a particular party.

43. Survival of Certain Provisions. The terms of this Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of this Agreement survive this Agreement and will continue to be enforceable. Without limiting the generality of this provision, User's obligations to provide insurance and to indemnify the City, Levitt and any other persons as provided in Section 20 will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.
44. Examination of Records. Any authorized agent of the Levitt or the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of the User, involving transactions related to this Agreement until the latter of three (3) years after the final payment under this Agreement or expiration of the applicable statute of limitations.
45. When Rights and Remedies Not Waived. In no event will any payment or other action by Levitt constitute or be construed to be a waiver by Levitt of any breach of covenant or default that may then exist on the part of Contractor. No payment, other action, or inaction by Levitt when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of this Agreement constitutes a waiver of any other breach.
46. Prohibition on Sale and Advertising of Tobacco. User shall cooperate and comply with the provisions of Executive Order No. 13, which prohibits the sale or advertisement of tobacco products on City owned property and in facilities owned or operated or controlled by the City. "Sale" includes promotional distribution, whether for consideration or not, as well as commercial transactions for consideration. "Advertising" includes the display of commercial and noncommercial promotion of the purchase or use of tobacco products through any medium whatsoever, but does not include any advertising and sponsoring which is a part of a performance or show or any event displayed or held in City facilities.

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EXHIBIT D
CLEAN UP AREAS
(ATTACHED)



A = Always Cleaned after Levitt Event

B = Cleaned after Levitt Event when used for Overflow Parking

TOTAL PARKING COUNT
 Cuenta Total de Estacionamiento

PERMANENT SPACES / Espacios Permanentes
 UPPER CORE AREA / Área Superior - 224
 LOWER AREA / Área Inferior - 455
 TOTAL - 679

OVERFLOW PARKING / Desbordamiento de Estacionamiento - 75

GRAND TOTAL / Gran Total - 754

EXHIBIT E
BYLAWS
(ATTACHED)

**AMENDED AND RESTATED BYLAWS
OF
FRIENDS OF LEVITT PAVILION DENVER**

**ARTICLE 1
PURPOSES**

Friends of Levitt Pavilion Denver (“Corporation”) is organized and shall be operated exclusively for religious, charitable, scientific and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (“Code”). Subject to the foregoing, the specific purposes and objectives of the Corporation shall include the following:

- (a) To develop and construct a forum for conducting musical and arts events to be open to the general public;
- (b) To produce a series of free concerts and performing arts events to be open to the general public largely at no-cost;
- (c) To provide a forum that can be used within the Colorado community for arts and music education and outreach; and
- (d) To operate according to the guidelines and best practices set forth by Levitt Pavilions and the Mortimer Levitt Foundation.

**ARTICLE 2
OFFICES**

Section 2.1 Business Offices. The principal office of the Corporation shall be located at 2648 Eudora Street, Denver, Colorado 80207. The Corporation may have such other offices, either within or outside Colorado, as the Board may designate or as the affairs of the Corporation may require from time to time.

Section 2.2 Registered Office. The registered office of the Corporation required by the Colorado Nonprofit Corporation Act (“Act”) to be maintained in Colorado may be, but need not be, the same as the principal office if in Colorado, and the address of the registered office may be changed from time to time by the Board or by the officers of the Corporation.

**ARTICLE 3
NO MEMBERS**

The Corporation shall have no members.

**ARTICLE 4
BOARD OF DIRECTORS**

Section 4.1 General Powers. The business and affairs of the Corporation shall be managed by its board of directors ("Board"), except as otherwise provided in the Act, the Amended and Restated Articles of Incorporation of the Corporation ("Articles") or these Bylaws.

Section 4.2 Number, Classification, Election and Tenure. The Corporation's Board shall be self-perpetuating. The Board shall initially have fifteen (15) directors. However, the Board shall never have less than three (3) and no more than twenty-five (25) directors at any time. Any action of the Board to increase or decrease the number of directors, whether expressly by resolution or by implication through the election of additional directors, shall constitute an amendment of these Bylaws effecting such increase or decrease.

Section 4.2.1. Initial Directors. Five of the Corporation's initial 15 directors shall serve one (1) three (3) year term; five of the Corporation's initial directors shall serve one (1) two (2) year term; and five of the Corporation's initial directors shall serve one (1) one (1) year term. Following the completion of each initial director's initial term, each initial director shall be eligible to serve two (2) additional two (2) year terms.

Section 4.2.2. Executive Director Board Position. The Executive Director of the Corporation (whose role is set forth more fully in Section 7 of these Bylaws) shall serve on the Board. At any time in which the role of Executive Director is vacant, the Executive Director's seat on the Board shall remain vacant. The Executive Director shall be entitled to participate and vote with respect to matters considered by the Board except that the Executive Director shall not participate in any portion of any Board meeting in which any matter relating to the Executive Director's employment by the Corporation is considered. Prior to the consideration by the Board of any matter relating to the Executive Director's employment by the Corporation, the Board shall request that the Executive Director recuse himself from the Board meeting by motion of any two (2) directors.

Section 4.2.3. Tenure and Election of New Directors. Each director shall hold office until the director's term expires and thereafter until the director's successor shall have been elected and qualified, or until the director's earlier death, resignation or removal. Other than as qualified in Section 4.2.1 with respect to the Board's initial directors, members of the Board may serve a maximum of three (3) two (2) year terms.

Directors may by majority vote elect a director to serve on the Board or to serve for a renewed term, or, elect director(s) to fill any vacancies.

Section 4.3 Ex-Officio or Honorary Members. The Board may, but is not required to, appoint one or more ex-officio or honorary members to the Board, who shall be entitled to attend and participate in meetings of the Board, but shall have no voting rights and shall not be counted in determining whether there is a quorum present at a meeting of the Board. For the avoidance of doubt, the phrase "members of the Board (of Directors)" in these Bylaws does not include ex officio or honorary members.

Section 4.4 Vacancies. Any director may resign at any time by giving written notice to the president or to the secretary of the Corporation. Such resignation shall take effect at such date as elected by the president of the Corporation or specified therein, whichever is first to occur. Any vacancy occurring in the Board may be filled by the then remaining Directors by majority vote. A director elected to fill a vacancy shall be elected for the unexpired term of such director's predecessor in office.

Section 4.5 Regular Meetings. A regular annual meeting of the Board shall be held at the time and place, either within or outside Colorado, determined by the chair of the Board, for the purpose of electing directors and officers and for the transaction of such other business as may come before the meeting. The chair of the Board may provide by resolution the time and place, either within or outside Colorado, for the holding of additional regular meetings.

Section 4.6 Special Meetings. Special meetings of the Board may be called by or at the request of the president or any two (2) directors. The person or persons authorized to call special meetings of the Board may fix any place in the City of Denver, Colorado or in Denver County, Colorado, as the place for holding any special meeting of the Board called by them.

Section 4.7 Executive Session. The Board may elect to go into "executive session" and exclude non-board members from attendance when sensitive personnel issues or confidential matters must be discussed, or upon advice of legal counsel or upon vote by majority of the Board or determination by the chair that an executive session is warranted.

Section 4.8 Notice. Notice of each meeting of the Board stating the place, day and hour of the meeting shall be given to each director at the director's business address at least five (5) days prior thereto by the mailing of written notice by first class, certified or registered mail or at least two (2) days prior thereto by personal delivery of written notice or by telephonic, telegraphic, telex, electronic means, or facsimile notice (and the method of notice need not be the same as to each director). If mailed, such notice shall be deemed to be given when deposited in the United States mail, with postage thereon prepaid. If transmitted by telex, electronic means, or facsimile, such notice shall be deemed to be given when the transmission is completed. Any director may waive notice of any meeting before, at or after such meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director

attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of, any meeting of the Board need be specified in the notice or waiver of notice of such meeting unless otherwise required by statute.

Section 4.9 Presumption of Assent. A director of the Corporation who is present at a meeting of the Board at which action on any matter is taken shall be presumed to have assented to the action taken unless such director's dissent shall be entered in the minutes of the meeting or unless the director shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 4.10 Quorum and Voting. A majority of the directors shall constitute a quorum for the transaction of business at any meeting of the Board, and the vote of a majority of the directors present in person at a meeting at which a quorum is present shall be the act of the Board. If less than a quorum is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice other than an announcement at the meeting, until a quorum shall be present. No director may vote or act by proxy at any meeting of the Board.

Section 4.11 Compensation. Directors shall not receive compensation for their services as such, although the reasonable expenses of directors for attendance at Board meetings may be paid or reimbursed by the Corporation. Directors shall not be disqualified to receive reasonable compensation for services rendered to or for the benefit of the Corporation in any other capacity.

Section 4.12 Meetings by Telephone. Members of the Board or any committee thereof may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at the meeting.

Section 4.13 Action Without a Meeting.

Section 4.13.1 Any action required or permitted to be taken at a meeting of the Board or any committee thereof may be taken without a meeting if written notice is transmitted to each member of the Board or committee and each such member either: (a) votes in writing for such action; or (b) (i) votes in writing against such action, abstains in writing from voting, or fails to respond or vote by the time stated in the notice, and (ii) fails to demand in writing that action not be taken without a meeting. Each director or committee member who delivers a writing described in this Section 4.13 to the Corporation shall be deemed to have waived the right to demand that action not be taken without a meeting.

Section 4.13.2 Action is taken under this Section 4.13 only if at the end of the time stated in the notice, the affirmative vote for such action equals or exceeds the minimum number of votes that would be necessary to take such action at a meeting at which all of the directors then in office were present and voted.

Section 4.13.3 The notice required by Section 4.13 shall state (a) the action to be taken; (b) the time by which a member of the Board or committee must respond; and (c) that failure to respond by the time stated in the notice will have the same effect as abstaining in writing by the time stated in the notice and failing to demand in writing by the time stated in the notice that action not be taken without a meeting. Unless such notice states a different effective date, action taken pursuant to this Section 4.13 shall be effective at the end of the time stated in the notice.

Section 4.13.4 Any director or committee member who has signed a writing pursuant to this Section 4.13 may revoke such writing by a writing signed and dated by the member of the Board or committee describing the action and stating that the prior vote of the member of the Board or committee with respect thereto is revoked, if such writing is received by the Corporation before the last writing necessary to effect the action is received by the Corporation.

Section 4.13.5 All communications under this Section 4.13 may be transmitted or received by the Corporation by electronically transmitted facsimile, email, or other form of wire or wireless communication. For purposes of this Section 4.13, communications to the Corporation are not effective until received.

Section 4.13.6 Action taken pursuant to this Section 4.13 has the same effect as action taken at a meeting of the Board and may be described as such in any document.

Section 4.13.7 All signed written instruments necessary for any action taken pursuant to this Section 4.13 shall be filed with the minutes of the meetings of the Board.

ARTICLE 5 OFFICERS AND AGENTS OF THE BOARD OF DIRECTORS

Section 5.1 Officers of the Board of Directors. The officers of the Board shall be a Board Chair, a Board Vice-Chair, a Board Secretary, and a Board Treasurer ("Officers" or "Officer"). Each Officer shall be elected by the Board to serve for a term of two (2) years and until a successor shall be elected. Any Director, as an Officer, may hold more than one office; provided, however, that no one person shall, at the same time, hold the office of Board President and Treasurer. There shall be no term limits for Officers elected for successive terms to the same office other than those imposed upon Directors of the Corporation by Section 4.3(c) of these Amended and Restated Bylaws.

Section 5.2 Removal of Officers. Upon an affirmative vote of a majority of the members of the Board, any Officer may be removed, either with or without cause, and his or her successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 5.3 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise may be filled by a majority vote of the members of the Board.

Section 5.4 President. The President shall preside at all meetings of the Board and shall act as a senior executive of the Corporation when required to effect the business of the Corporation. He or she shall have the power to appoint committees from among the members of the Board, from time to time as he or she may, in his or her discretion, decide is appropriate to assist in the conduct of the affairs of the Corporation. He or she shall serve as a voting member upon all such committees except the nominating committee, if such a committee exists. He or she shall have power and authority to sign and make all contracts and agreements in the name of the Corporation. He or she shall have power and authority to enforce these Amended and Restated Bylaws and perform all of the duties incident to the position and office and which are required by law.

Section 5.5 Vice President. The Vice President shall have the powers and authority and shall perform all functions and duties of the President in the absence of the President or his or her inability, for any reason, to exercise such powers and functions or perform such duties. The Vice President of the Board shall also chair the nomination's committee, if such a committee is created by the Board.

Section 5.6 Secretary. The Secretary shall keep all minutes of the meetings of the Board and minutes of all meetings of the Corporation; he or she shall have charge of such record and papers as the Board may direct; and he or she shall, in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the President or by the Board.

Section 5.7 Treasurer. The Treasurer shall have the responsibility for supervising the Corporation's funds and shall be responsible for supervising all receipts and disbursements in books belonging to the Corporation. He or she shall, in general, perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the President or by the Board.

Section 5.8 Other Officers. The other Officers of the Corporation, if any, shall exercise such powers and perform such duties as the Board shall prescribe.

Section 5.9 Agreements, Deeds, Checks, Etc. All agreements, deeds, leases, checks and other instruments of the Corporation shall be executed by any Officer of the Corporation or by any other person or persons designated by the Board.

Section 5.10 Compensation. The Officers of the Board shall not receive compensation for their services as such, although the reasonable expenses of Officers of the Board of attendance at Board meetings may be paid or reimbursed by the Corporation. Officers of the Board shall not be disqualified to receive reasonable compensation for services rendered to or for the benefit of the Corporation in any other capacity.

Section 5.11 Executive Staff. The Board may employ executive staff members and delegate to such executive staff members the responsibility for management of the Corporation as the Board sees fit. Executive staff may be given the necessary authority and responsibilities to operate the Corporation subject to such policies as may be issued by the president and the Board. The Board may authorize an appointed executive director of the Corporation or another member of the executive staff to act as the duly authorized agent of the Corporation in matters within the ordinary course of business of the Corporation.

ARTICLE 6 COMMITTEES

Section 6.1 Appointment. The Board may establish standing, special, and or ad hoc committees as may be determined necessary except that the establishment of standing committees shall require approval of the Board. Authority to appoint or replace the members and the chair of any such committee shall rest with the Board.

Section 6.2 Composition and Functions. The President of the Board shall appoint the chair of each committee, and other members of any committee he or she desires to appoint immediately following the chair's election at the annual meeting. The committee chair and other committee members shall serve at the pleasure of the chair and may be reappointed as often as requested or required. A committee chair shall be a member of the Board of the Corporation. Each committee shall have and exercise such powers, in addition to those set forth by these Bylaws, as shall be conferred by resolution of the Board. A majority of any such committee may determine its action and may fix the time and place of its meetings, unless provided otherwise by the Board. Vacancies in any such committee shall be filled by appointments made by the chair of the Board. Each such committee shall keep a written record of its acts and proceedings and shall submit such record to the Board on request.

ARTICLE 7 EXECUTIVE DIRECTOR

Section 7.1 Appointment. An Executive Director shall be hired by the Board, and shall be primarily responsible for the day-to-day operations of the Corporation and shall perform

such other duties as the Board shall designate, including, but not limited to, carrying out the organization's goals and policies and representation of the interests of the Corporation in dealing with affiliated organizations, all subject to the direction of the Board. The Executive Director shall serve on the Board as set forth in Section 4.2.2 of these Bylaws. The Executive Director will attend all Board meetings, report on the progress of the organization, answer questions of the Board members, and carry out the duties assigned by the Board.

Section 7.2 Evaluation. The Board will evaluate the Executive Director on an annual basis in order to determine his/her continued competence to assure the performance of the duties and responsibilities of his/her position. The evaluation will occur at least annually after the hiring of the Executive Director and will contain the following elements:

- (a) demonstration of leadership ability:
 - (1) organizationally; and
 - (2) within the community;
- (b) provision of organizational direction;
- (c) oversight of the budget process and maintenance of effective fiscal controls; and
- (d) analytical ability and judgment.

The evaluation will be conducted by an executive committee of the Board, if authorized, or, at the election of the Board, by the entire membership of the Board through discussion of the above elements. Upon completion of the discussion, the comments will be reviewed with the President and the entire activity will be documented in writing and signed by the chairman of the Board and the President.

Section 7.3 Replacement. When, as a result of retirement, resignation, dismissal or any other reason, a decision is made by the Board that a replacement of the Executive Director is necessary, the following procedure will become effective:

- (a) The Board will appoint a subcommittee, entitled the search committee, to organize efforts to locate and hire a replacement Executive Director. The subcommittee will be composed of at least one Board member and at least one executive staff member selected by the Board.
- (b) The search committee will review qualified applicants.
- (c) Upon selection of the most qualified applicants, these individuals will be interviewed by the search committee in order to select the finalist for the position.

(d) The finalist for the position will be interviewed by quorum of the Board in order to determine if the appointment can occur.

(e) If the approval of the appointment is not accomplished, then the search committee will reconvene to select another applicant.

Section 7.4 Compensation. At the close of each fiscal year of the Corporation, the Board shall review the compensation paid to the Executive Director, and to other senior staff members of the Corporation as the Board deems appropriate, and the compensation paid to such individuals for the following fiscal year of the Corporation shall be determined based upon such review and in conjunction with the advice of counsel to the Corporation as sought by the Board.

ARTICLE 8 CONTRACTS, LOANS, CHECKS, AND DEPOSITS

Section 8.1 Contracts. The Board may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 8.2 Loans. No loans shall be contracted on behalf of the Corporation and no evidence of indebtedness shall be issued in its name unless authorized by resolution of the Board. Such authority may be general or confined to specific instances.

Section 8.3 Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board.

Section 8.4 Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories, or otherwise invested, as the Board may elect.

ARTICLE 9 INDEMNIFICATION

Section 9.1 Definitions. For purposes of this Article 9, the following terms shall have the meanings set forth below:

(a) “Corporation” means the Corporation and, in addition to the resulting or surviving corporation, any domestic or foreign predecessor entity of the Corporation in a merger, consolidation or other transaction in which the predecessor’s existence ceased upon consummation of the transaction.

(b) “Expenses” means reasonable expenses, including attorneys’ fees, incurred by a party in connection with a proceeding.

(c) “Liability” means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to a private foundation or an employee benefit plan) or expense incurred with respect to a proceeding.

(d) “Official capacity” when used with respect to a director of the Corporation means the office of director in the Corporation, and when used with respect to a person in a capacity other than as a director (even if such person is also a director) means the office in the Corporation held by the officer or the employment relationship undertaken by the employee on behalf of the Corporation in the performance of his or her duties in his or her capacity as such officer or employee. “Official capacity” does not include service for any other foreign or domestic corporation or for any partnership, joint venture, trust, other enterprise or employee benefit plan when acting directly on behalf of such other corporation, partnership, joint venture, trust, enterprise or plan as a director, officer, employee, fiduciary or agent thereof.

(e) “Party” means any person who was, is, or is threatened to be made, a named defendant or respondent in a proceeding by reason of the fact that such person is or was a director, officer or employee of the Corporation, and any person who, while a director, officer or employee of the Corporation, is or was serving at the request of the Corporation as a director, officer, partner, director, employee, fiduciary or agent of any other foreign or domestic corporation or of any partnership, joint venture, trust, other enterprise or employee benefit plan. A party shall be considered to be serving an employee benefit plan at the Corporation’s request if such party’s duties to the Corporation also impose duties on or otherwise involve services by such party to the plan or to participants in or beneficiaries of the plan.

(f) “Proceeding” means any threatened, pending or completed action, suit or proceeding, or any appeal therein, whether civil, criminal, administrative, arbitral or investigative (including an action by the Corporation) and whether formal or informal.

Section 9.2 General Provisions. The Corporation shall indemnify any person who is or was a party or is threatened to be made a party to any proceeding by reason of the fact that such person is or was a director or officer of the Corporation, against expenses (including attorneys' fees), liability, judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with such proceeding if such person (a) acted in good faith; (b) reasonably believed, in the case of conduct in an official capacity with the Corporation, that the conduct was in the best interests of the Corporation, and, in all other cases, that the conduct was at least not opposed to the best interests of the Corporation; and (c) with respect to any criminal proceeding, had no reasonable cause to believe that the conduct was unlawful. However, no person shall be entitled to indemnification under this Section 9.2 either (i) in connection with a proceeding brought by or in the right of the Corporation in which the director or officer was adjudged liable to the Corporation; or (ii) in connection with any other

proceeding charging improper personal benefit to the director or officer, whether or not involving action in that person's official capacity, in which the officer or director is ultimately adjudged liable on the basis that the director or officer improperly received personal benefit. Indemnification under this Section 9.2 in connection with a proceeding brought by or in the right of the Corporation shall be limited to reasonable expenses incurred in connection with the proceeding. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction or upon a plea of solo contender or its equivalent shall not of itself be determinative that the person did not meet the standard of conduct set forth in this Section 9.2.

Section 9.3 Successful Defense on the Merits; Expenses. To the extent that a director or officer of the Corporation has been wholly successful on the merits in defense of any proceeding to which he or she was a party, such person shall be indemnified against reasonable expenses (including attorneys' fees) actually and reasonably incurred in connection with such proceeding.

Section 9.4 Determination of Right to Indemnification. Any indemnification under Section 9.2 of this Article IX (unless ordered by a court) shall be made by the Corporation only as authorized in each specific case upon a determination that indemnification of the director or officer is permissible under the circumstances because such person met the applicable standard of conduct set forth in Section 9.2. Such determination shall be made (a) by the Board by a majority vote of a quorum of disinterested directors who at the time of the vote are not, were not, and are not threatened to be made parties to the proceeding; or (b) if such a quorum cannot be obtained by the vote of a majority of the members of a committee of the Board designated by the Board, which committee shall consist of two (2) or more directors who are not parties to the proceeding (directors who are parties to the proceeding may participate in the designation of directors to serve on such committee); or (c) if such a quorum of the Board cannot be obtained or such a committee cannot be established, or even if such a quorum is obtained or such a committee is so designated, but such quorum or committee so directs, then by independent legal counsel selected by the Board in accordance with the preceding procedures. Authorization of indemnification and evaluation as to the reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that, if the determination that indemnification is permissible is made by independent legal counsel, authorization of indemnification and evaluation of legal expenses shall be made by the body that selected such counsel.

Section 9.5 Advance Payment of Expenses; Undertaking to Repay. The Corporation shall pay for or reimburse the reasonable expenses (including attorneys' fees) incurred by a director or officer who is a party to the proceeding in advance of the final disposition of the proceeding if (a) the director or officer furnishes the Corporation a written affirmation of the director's or officer's good faith belief that the person has met the standard of conduct set forth in Section 9.2; (b) the director or officer furnishes the Corporation with a written undertaking, executed personally or on the director's or officer's behalf, to repay the advance if it is determined that the person did not meet the standard of conduct set forth in

Section 9.2, which undertaking shall be an unlimited general obligation of the director or officer but which need not be secured and which may be accepted without reference to financial ability to make repayment; and (c) a determination is made by the body authorizing indemnification that the facts then known to such body would not preclude indemnification.

Section 9.6 Other Employees and Agents. The Corporation shall indemnify such other employees and agents of the Corporation to the same extent and in the same manner as is provided above in Section 9.2 with respect to directors and officers, by adopting a resolution by a majority of the members of the Board specifically identifying by name or by position the employees or agents entitled to indemnification.

Section 9.7 Insurance. The Board may exercise the Corporation's power to purchase and maintain insurance (including, without limitation, insurance for legal expenses and costs incurred in connection with defending any claim, proceeding, or lawsuit) on behalf of any person who is or was a director, officer, employee, fiduciary, agent or was serving as a director, officer, partner, member, director, employee, fiduciary of another domestic or foreign corporation, nonprofit corporation or other person or an employee benefit plan of the Corporation against any liability asserted against the person or incurred by the person in any such capacity or arising out of the person's status as such, whether or not the Corporation would have the power to indemnify that person against such liability under the provisions of this Article 8.

Section 9.8 Nonexclusivity of Article. The indemnification provided by this Article 8 shall not be deemed exclusive of any other rights and procedures to which one indemnified may be entitled under the Articles, any bylaw, agreement, resolution of disinterested directors, or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director or officer, and shall inure to the benefit of such person's heirs, executors, and administrators.

ARTICLE 10 DIVERSITY AND NONDISCRIMINATION

The organization shall celebrate the diversity of cultural and human experience, and shall not discriminate against any person on account of race, creed, color, religion, national origin, sex, sexual orientation, gender expression, marital status, age, height, weight, physical or mental ability, ancestry, citizenship, veteran status or military obligations. The Corporation shall not discriminate against any person on the basis of any of the above characteristics with respect to participation in any of its activities including, but not limited to, the admission to any meeting or event, the hiring and/or firing of staff, the selection of volunteers, and the provision of services.

ARTICLE 11 CONFLICT OF INTEREST POLICY

The Board shall adopt, and amend from time to time as it deems appropriate, a conflict of interest policy applicable to directors, principal officers, senior staff members, and other persons responsible for the Corporation and its affairs. A copy of the conflict of interest policy of the Corporation shall be furnished to each director, officer, senior staff member, and other responsible person who is presently serving the Corporation, or who may hereafter become associated with the Corporation. This policy shall be executed annually by the directors, officers, senior staff members, and other responsible persons. All new directors, officers, senior staff members, and other responsible persons shall be advised of and execute the policy upon undertaking the duties of such office. Senior staff members shall include those persons having significant decision-making authority on behalf of the Corporation.

ARTICLE 12 MISCELLANEOUS

Section 12.1 Calendar Year. The Corporation's taxable year shall be the calendar year, beginning January 1 of each year and ending December 31 of each year.

Section 12.2 Dissolution or Merger. A dissolution or merger of the Corporation must be approved by a majority of the total Board at a special meeting called for that purpose and then only if in accordance with the laws of the State of Colorado. If the Corporation shall be dissolved, all assets, property, claims, accumulated income and all other property rights of whatever description shall be distributed to an organization or organizations the Internal Revenue Service has qualified as exempt under Section 501(c)(3) of the Code, or as hereafter amended, such organization or organizations to be selected by a majority of the Board.

Section 12.3 Account Books, Minutes, Etc. The Corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its Board and committees. All books and records of the Corporation may be inspected by any director, or the director's authorized agent or attorney, for any proper purpose at any reasonable time.

Section 12.4 Conveyances and Encumbrances. Property of the Corporation may be assigned, conveyed or encumbered by such officers of the Corporation as may be authorized to do so by the Board, and such authorized persons shall have power to execute and deliver any and all instruments of assignment, conveyance and encumbrance; however, the sale, exchange, lease or other disposition of all or substantially all of the property and assets of the Corporation shall be authorized only in the manner prescribed by these Bylaws and applicable statute.

Section 12.5 Designated Contributions. The Corporation may accept any designated contribution, grant, bequest or devise consistent with its general tax-exempt purposes, as set forth in the Articles. As so limited, donor-designated contributions will be accepted for special funds,

purposes or uses, and such designations generally will be honored. However, the Corporation shall reserve all right, title and interest in and to and control of such contributions, as well as full discretion as to the ultimate expenditure or distribution thereof in connection with any such special fund, purpose or use. Further, the Corporation shall acquire and retain sufficient control over all donated funds (including designated contributions) to assure that funds will be used to carry out the Corporation's tax-exempt purposes.

Section 12.6 Loans to Directors and Officers Prohibited. No loans shall be made by the Corporation to any of its directors or officers. Any director or officer who assents to or participates in the making of any such loan shall be liable to the Corporation for the amount of such loan until it is repaid.

Section 12.7 Bylaws. These Bylaws may be changed, revised, or repealed by the Board by the affirmative vote of a majority of the members of the Board. Notice of the proposed amendment shall be delivered to the Board with notice of the meeting at which the proposed amendment, alteration, or repeal will be presented to the Board for action.

Section 12.8 Severability. The invalidity of any provision of these Bylaws shall not affect the other provisions hereof, and in such event these Bylaws shall be construed in all respects as if such invalid provision were omitted.

Section 12.9 Gender. Unless the context requires otherwise, the singular includes the plural and any gender includes all genders.

CERTIFICATE

The undersigned Secretary of **Friends of Levitt Pavilion Denver**, a Colorado nonprofit corporation, hereby certifies and affirms that the board of directors of the Corporation has approved and adopted these Bylaws regulating the conduct and affairs of the Corporation effective as of June 14, 2013.

FRIENDS OF LEVITT PAVILION DENVER,

a Colorado nonprofit corporation

By: _____

Name: Valerie Kerns

Title: Secretary, Board of Directors

EXHIBIT F
CERTIFICATE OF INSURANCE
(ATTACHED)



CERTIFICATE OF LIABILITY INSURANCE

FRIEN-1

OP ID: CS

DATE (MM/DD/YYYY)

10/28/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Henry Ham Agency, Inc. P.O. Box 100547 645 E. Evans Ave. Denver, CO 80250 Christine Simmons		Phone: 303-744-1341 Fax: 303-744-0654	CONTACT NAME: Christine Simmons PHONE (A/C, No, Ext): 303-744-1341 FAX (A/C, No): 303-744-0654 E-MAIL ADDRESS: christine@henryham.com
INSURED Friends of Levitt Pavilion 2648 Eudora St Denver, CO 80207		INSURER(S) AFFORDING COVERAGE INSURER A: USF Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**


THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	X		USPG10262013	10/26/2013	10/26/2014	EACH OCCURRENCE \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

City & County of Denver, Its appointed and elected officials, employees and volunteers are listed as Additional Insured regarding General Liability

CERTIFICATE HOLDER**CANCELLATION**

CITYD City & County of Denver 1437 Bannock St Denver, CO 80202	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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EXHIBIT G
INDEPENDENT STATUS DECLARATION
(ATTACHED)

EXHIBIT G

Separate Declaration Regarding Independent Status

It is understood and agreed by and between **FRIENDS OF LEVITT PAVILION DENVER**, a Colorado nonprofit corporation (“**Levitt Denver**”), and the **CITY AND COUNTY OF DENVER** that the status of the Levitt Denver shall be that of an independent contractor and of a person retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.1(E)(x) of the Charter of the City and it is not intended, nor shall it be construed, that Levitt Denver or any of its employees or subcontractors is an employee, officer, or agent of the City under Chapter 18 of the Denver Revised Municipal Code for purposes of unemployment compensation, workers’ compensation, or for any purpose whatsoever.

Without limiting the foregoing, the parties hereby specifically acknowledge that Levitt Denver is not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by Levitt Denver or some other entity besides the City, that Levitt Denver is not entitled to workers’ compensation benefits from the City, and that Levitt Denver is obligated to pay federal and state income taxes on any monies earned pursuant to this Agreement.

The parties recognize and agree that Levitt Denver is engaged in an independent occupation and profession and is free from control and direction in the performance of the services contracted for herein consistent with that mandated by C.R.S. 8-40-202(2)(a). It is understood and agreed by the parties that the City does not (a) require Levitt Denver to work exclusively for the City, provided that Levitt Denver may have elected to work for exclusively for the City for the period of time specified in the term of this Agreement; (b) establish a quality standard for Levitt Denver, provided that the parties agree that while the City may provide plans regarding its expectancy of the work to be performed by Levitt Denver, the City will not oversee the actual work of Levitt Denver or instruct Levitt Denver as to how the work will be performed; (c) pay a salary or hourly wage to Levitt Denver instead of the fixed contract rate stated herein; (d) terminate the work of Levitt Denver for cause during the term of this Agreement unless Levitt Denver violates the terms of this Agreement or fails to produce a work product or result that meets the specific terms provided in the Agreement; (e) provide any training for Levitt Denver other than minimal orientation to the site or other parameters of Levitt Denver activity; (f) provide tools or benefits to Levitt Denver; (g) dictate the time of performance, except that the Agreement completion date together with the range of negotiated and mutually agreeable work hours has been established herein; (h) pay Levitt Denver personally instead of making City warrants payable to the professional name of Levitt Denver, except that in this Agreement Levitt Denver is an individual and sole proprietor; and (i) combine the regular operations of the City in any way with the professional or business operations of Levitt Denver instead of maintaining office operations separately and distinctly.

[Signature Pages Follow]

PARKS AND RECREATION:

By: *Lauri Dannemiller*
Name: Lauri
Its: Dannemiller

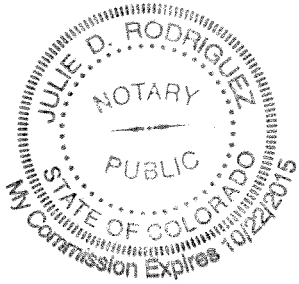
STATE OF COLORADO)
CITY AND) ss
COUNTY OF DENVER)

Subscribed and sworn to before me this 4 day of Nov, 2013, by
Lauri Dannemiller, as Manager of Department of Parks and Recreation.

Witness my hand and official seal.

My commission expires: 10/22/15

Julie D. Rodriguez
Notary Public
201 W. Colfax Ave. Suite 2000
Address



LEVITT DENVER:

By: *Christopher Zacher*
Name: Christopher Zacher
Its: Executive Director

STATE OF Colorado)
CITY AND) ss
COUNTY OF Denver)

Subscribed and sworn to before me this 25th day of October,
2013 by Christopher Zacher, as Executive Director of Friends of Levitt Pavilion Denver.

Witness my hand and official seal.

My commission expires: 12/17/16

Heather Lindsay Wilson
Notary Public
2850 Quebec St., Denver, CO.
Address *80207*

