

AMENDMENT TO COOPERATIVE AGREEMENT

THIS AMENDMENT TO THE AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“**City**”), and **FRIENDS OF LEVITT PAVILION DENVER**, a Colorado nonprofit corporation, (“**Levitt Denver**”); and **MORTIMER & MIMI LEVITT FOUNDATION**, a New York not-for-profit corporation (“**Foundation**”). The City, Levitt Denver and the Foundation may sometimes be referred to herein individually as a “**Party**” or collectively as the “**Parties**”.

WITNESSETH:

WHEREAS, the City, Levitt Denver, Foundation and Levitt National entered into a cooperative agreement dated November 22, 2013, (“**Cooperative Agreement**”) for the establishment and maintenance of the Pavilion Property, as defined in the Cooperative Agreement, and any related operation and activities for the use and benefit of the people of the City and the general public; and

WHEREAS, Levitt Denver has provided certain operation and event-related services which the Parties agree should be examined and assessed; and

WHEREAS, Levitt Denver and the Foundation have completed certain corporate changes affecting Levitt Denver’s and the Foundation’s rights, responsibilities and obligations that will be reflected in the Cooperative Agreement; and

WHEREAS, after review and assessment of the use and operation of the Pavilion Property, the Parties desire to clarify certain operational requirements under the Cooperative Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and obligations herein set forth, the Parties agree as follows:

1. “Exhibit A” is hereby replaced by the Exhibit A-1 attached hereto and incorporated herein by this reference.
2. “Exhibit B” is hereby replaced by the Exhibit B-1 attached hereto and incorporated herein by this reference.
3. On or about May 10, 2016, the corporate entity Levitt Pavilions, originally a party to the Cooperative Agreement and identified as “Levitt National”, was dissolved. In accordance

with Section 34(d) of the Cooperative Agreement, the Parties consent to assignment and transfer of Levitt National's obligations to the Foundation, and the Foundation agrees to be bound by the terms, covenants, and conditions contained in the Cooperative Agreement, as amended.

4. All references to "**Admissions Based Event**" or "**Admission Based Event**" shall be replaced by "**Ticketed Events**". Levitt Denver's obligations described as "ABE Policy" in the Cooperative Agreement shall no longer apply EXCEPT Levitt Denver shall continue to be obligated to comply with FDA Tax Requirements as set forth in the Cooperative Agreement; and shall continue to be limited to Seven Thousand Five Hundred (7,500) tickets sold per applicable event. Levitt Denver may sell more than 7,500 tickets for a Ticketed Event only with the express prior written authorization from Parks Executive Director.

5. Paragraph 1(a) of the Cooperative Agreement shall be amended as follows:

"**Ticketed Events**' shall mean any event occurring on the Pavilion Property for which there is a charge for the sale of a ticket for entrance. For the avoidance of doubt, Ticketed Events shall include Levitt Fundraising Events for which tickets are sold; and any event wherein Levitt Denver rents the facility to or issues a permit to a third party and for which tickets are sold. All rentals or issuances of a permit by Levitt Denver is on behalf of Levitt Denver, and not on behalf of the City and County of Denver. Any Ticketed Event under this agreement shall be limited to four (4) events in any calendar month."

6. Paragraph 1(e) of the Cooperative Agreement shall be amended to read as follows:

"**Levitt Events**' shall mean collectively the Levitt Fundraising Events and the Series events. Regardless of the event type, Levitt Denver shall hold no more than four (4) Ticketed Events per calendar month."

7. Paragraph 1(f) shall be amended to read as follows:

"**Levitt Fundraising Events**' shall refer to those events for fundraising purposes to which Levitt Denver has first priority for use of the Pavilion Property, including the Pavilion, as described in Section 9(a) of this Agreement. Levitt Fundraising Events shall count towards the limit of four (4) or fewer Ticketed Events per calendar month. Levitt Denver shall be entitled to five (5) Levitt Fundraising Events during each calendar year with no permit fees. Permit fees shall be applicable to Levitt Fundraising Events in excess of five (5) per year."

8. Paragraph 8(b)(ii) of the Cooperative Agreement is amended to read as follows:

"Each series shall comply with the concert schedule set forth by the Foundation. Levitt Denver shall comply with any and all applicable City rules, regulations

and laws governing events, except as may be modified by this Agreement. However, the City has no obligation by contract, agreement, law, regulation or otherwise to comply with Foundation requirements or the Foundation's requirements imposed upon Levitt Denver. Any uncured breach by Levitt Denver of its agreement with or obligations to the Foundation may be grounds for the City to suspend its performance of the Cooperative Agreement or to terminate the Cooperative Agreement."

9. Paragraph 9(a)(iii) of the Cooperative Agreement is amended to read as follows:

"For each Levitt Fundraising Event, Levitt Denver will submit to the Manager its proposed date no later than thirty (30) days prior to such date. For Levitt Fundraising Events submitted prior to October 1st, the Manager shall approve such dates in writing, on or before seven (7) days after receipt of the proposed dates, provided that the Levitt Fundraising Events comply with all requirements and restrictions contained in the Agreement, 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. If the Manager fails to provide their written approval or disapproval within said 7-day period, the dates shall be deemed approved (provided the dates comply with all requirements and restrictions contained in this Agreement, and FDA Tax requirements). For Levitt Fundraising Events submitted after October 1st, the Manager shall approve such dates in writing, on or before seven (7) days after receipt of the proposed dates, provided that the Levitt Fundraising Events (i) are proposed for dates that remain available, and (ii) comply with all requirements and restrictions contained in this Agreement, and FDA Tax requirements. If the Manager fails to provide their written approval or disapproval within said 7-day period, the dates shall be deemed approved (provided the dates comply with the requirements and restrictions contained in this Agreement, and FDA Tax requirements). Notwithstanding the foregoing, Levitt Denver shall not be required to obtain from the City Admission Based Event permits or Public Event permits for the Levitt Fundraising Events, nor shall Levitt Denver be required to pay Admission Based Event permit fees or Public 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. The City reserves the right to impose additional, reasonable restrictions on future bookings and use. Furthermore, for each Levitt Fundraising Event, Levitt Denver shall confer with the Department's Parks Operations staff within a reasonable timeframe prior to each Levitt Fundraising Event concerning event size, venue type, stages, and other details requested by DPR and comply with all reasonable requirements and restrictions requested by DPR."

10. Paragraph 9(a)(v), which shall be entitled Site Maps, is added to the Cooperative Agreement to read as follows:

"Levitt Denver shall provide Site Maps depicting all temporary and permanent infrastructure within the Pavilion Property. Site Maps shall include number of,

type, and location of temporary structures (such as storage containers) for each season. Levitt Denver and the Department shall mutually agree on the number of Site Maps needed for each season. All events and activities must substantially comply with the Site Maps provided. Site Maps shall be provided no later than sixty (60) days prior to the first event of each year. The Department shall approve or disapprove the Site Maps within thirty (30) days of receipt. Any proposed modifications to the Site Maps during the course of each season shall be submitted to the Department no later than thirty (30) days prior to desired implementation of the modification and must be approved by the Department prior to implementation.”

11. Paragraph 9(d), which shall be entitled Overland Music Festival, is added to the Cooperative Agreement to read as follows:

“During any year of the music festival intended to be held at the Overland Golf Course during the years 2019 through 2022, Levitt Denver shall either (1) hold no concerts, Series, Levitt Fundraising Events, Non-Levitt Events, or other events during the same dates and times of the music festival; or (2) exercise the option to negotiate with the music festival contractor to participate as a venue for the music festival. The music festival is generally intended to be held the second or third weekend of September. The City shall provide Levitt Denver notice of the music festival dates each year it is intended to occur, within 7 business days of the City’s knowledge of such music festival dates. The City makes no warranty or representation, and shall make no requirement, that Levitt Denver and the music festival contractor provide joint events or programming in accordance with this Paragraph 9(d).”

12. Paragraph 10(b)(iii)(4) of the Cooperative Agreement is amended to read as follows:

“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 Ticketed Events, and fees for permits under the Alcohol Policy. FDA Taxes shall be collected and reported in accordance with the deadlines and other requirements under Article VII, Chapter 53, DRMC. Levitt Denver shall include a description and breakdown of collected fees with the quarterly fees remittance. 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.”

13. Paragraph 10(b)(iii)(10) of the Cooperative Agreement is amended to read as follows:

“Subject to DPR’s authority to approve or deny events, confer with the Department’s Parks Operations staff 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.”

14. Paragraph 10(b)(ix)(1) is added to the Cooperative Agreement to read as follows:

“In no instance is Levitt Denver allowed to issue permits for or otherwise reserve for patrons or charge for individual parking spaces in the parking lots. Levitt Denver may utilize the parking lots and spaces for Levitt Events per the approved Parking Plan, but Levitt Denver shall not charge for parking or charge any additional Levitt Event fees for parking.”

15. Paragraph 10(f), which shall be entitled Fencing, is added to the Cooperative Agreement to read as follows:

“Levitt Denver shall obtain written approval from the Department prior to installing any temporary fencing. Levitt Denver shall be responsible for installing the fencing, and shall be responsible for all costs, fees, and expenses associated with the fencing. All fencing must be temporary in nature; Levitt Denver is not allowed to install any permanent fencing unless otherwise agreed to in writing by the Department. Levitt Denver may install fencing no sooner than seven (7) days prior to the first day of each Event Season; may allow the fencing to remain during the extent of the event season; and must remove all fencing by no later than seven (7) days after the last day of each Event Season.”

16. Paragraph 10(b)(ix) of the Cooperative Agreement, entitled Parking, is amended to read as follows:

“At the time of execution of this Agreement, the City is developing a parking plan for the Park (the “**City Parking Plan**”). 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 sixty (60) days after completion of the public process 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. The Manager agrees to review and approve or disapprove any amendments to the Levitt Parking Plan on or before thirty (30) days after receipt or else such amendment shall be deemed approved (provided the Levitt Parking Plan amendment complies with the City Parking Plan). Levitt Denver must enforce and comply with the approved Levitt Parking Plan and any approved amendments to the Levitt Parking Plan.”

17. Paragraph 10(b)(xi) of the Cooperative Agreement, entitled Maintenance, Repair, and Capital Improvements Obligations of Levitt Denver, is amended to read as follows:

“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, normal wear and tear excepted. 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. For Levitt Events and Non-Levitt Events, including events where Levitt Denver rents the facility to, or issues a permit to a third party, Levitt Denver shall be responsible for all matters under this Paragraph 10(b)(xi) enumerated as Levitt Denver’s responsibility, including but not limited to damage and associated liability. When renting the facility or issuing a permit to third parties, Levitt Denver may set any damage deposit amounts it sees fit to mitigate against the risk of damage and repairs. 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, patrons 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. Levitt Denver shall be responsible for the cost of any service that is performed by the City but is the responsibility of Levitt Denver."

18. Paragraph 11(c) of the Cooperative Agreement, entitled Pavilion Property Grounds Maintenance, is amended to read as follows:

"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, sod, turf 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."

19. Paragraph 11(g), which shall be entitled City Services Performed, is added to the Cooperative Agreement to read as follows:

"Levitt Denver shall reimburse the City for any services requested by Levitt Denver from the City that are not an obligation of the City to perform under this Agreement. Such services will be performed at such rates and/or fees established

by the City and provided to Levitt Denver in writing in advance of the performance of such services. If Levitt Denver desires to utilize the City's services, Levitt Denver shall request such services in writing within a reasonable timeframe, no later than fourteen (14) days prior to the event date."

20. Paragraph 32(a), which shall be entitled No Soil Disturbance; Levitt Denver Responsibility for Liability, Costs, Expenses, Fines, is added to the Cooperative Agreement to read as follows:

"Levitt Denver is strictly prohibited from performing any work, act or activity resulting in penetration into or any disturbance of soil in any manner. Work, act or activity includes but is not limited to installation of any kind into the soil for fences, barricades, tents, stages, booths; or digging, removing or moving of soil for any purpose. Levitt Denver shall notify the City of any proposal for any work, act or activity that may result in the penetration into or disturbance of the soil prior to commencement of the work, act or activity. Levitt Denver shall be responsible for all costs, fees and expenses associated with the work, act or activity resulting in penetration or disturbance of soil and that requires additional assistance and oversight, whether from a City agency or third-party contractor, in addition to any other costs for which Levitt Denver is responsible under this Agreement. Additionally, Levitt Denver shall be responsible for all liability, costs, expenses, fees and damages because of any violation of environmental laws, rules or regulations caused by Levitt Denver or its employees, agents, volunteers or contractors. Levitt Denver's staff shall annually complete training in Regulated Asbestos Contaminated Soils and provide proof of such annual training to the Department by May 1st each year. Levitt Denver and the Department shall mutually agree on the Levitt Denver staff who shall complete the training each year."

21. Paragraph 32(b), which shall be entitled Applicability and Enforcement of Noise Ordinance, is added to the Cooperative Agreement to read as follows:

"DRMC Sections 36-1 through 36-10 regarding Noise Control ("Noise Ordinance") shall be applicable and enforced as to sound levels for Series and events at the Pavilion Property. The Denver Department of Public Health and Environment and the Chief of the Denver Police Department, or appropriate designated representative, shall conduct tests and inspections in accordance with the Noise Ordinance. The Department has performed at its own cost a sound study to develop recommendations for optimal sound and noise control. The Department shall provide Levitt a copy of the final study along with the City's recommendations, and Levitt Denver shall be required to adopt and implement the City's recommendations. Levitt Denver will be required to comply with instructions to adjust house sound systems in adherence with the Noise Ordinance and complaints. Subject to the Manager's discretion and available appropriations, the Department shall construct and install certain physical improvements as a result

of the sound study.”

22. Paragraph 8(b)(xi), which shall be entitled Walk-Through Inspections and Records, is added to the Cooperative Agreement to read as follows:

“A Levitt Denver representative and a Department representative shall arrange times for walk-throughs as specified herein. The pre-season walk-through will be conducted no later than one (1) week prior to the first day of setup each calendar year; and the post-season walk-through will be conducted immediately following load-out of the last event each calendar year, or as otherwise mutually scheduled between Levitt Denver and the Department. A report of the condition of the Pavilion Property, including contemporaneous pictures, shall be prepared and signed by both representatives after the pre-season and post-season walk-throughs. These reports shall provide the basis for determining what clean-up, repairs and replacements are appropriate for Levitt Denver to perform or for which the City will seek reimbursement. At its sole discretion, the City is entitled to, but not obligated to, perform spot walk-through inspections during each event season to review compliance with requirements under this Agreement, requirements under City Ordinance, or requirements set forth in the required Plans or Site Maps. Levitt Denver shall participate in the spot walk-through inspections and shall be required to correct any deficiencies and failures to comply, within a reasonable timeframe or if material, per Section 33(a) of this Agreement, found during a spot walk-through inspection. The City is not imposing any reporting requirements for spot walk-throughs.”

23. Paragraph 10(b)(xii), which shall be entitled Plans, is added to the Cooperative Agreement to read as follows:

“All Plans listed below and required by the Department for the Park (the “**Plans**”) shall be incorporated into and made part of this Agreement upon final approval of the Plans by the Manager.

(1) Emergency Evacuation Plan. An Emergency Evacuation Plan (the "**Evacuation Plan**") shall be submitted each year to the Manager of Parks and Recreation for review and approval no later than March 1st. The Manager shall review and provide to Levitt Denver in writing no later than thirty (30) calendar days after Levitt Denver's submittal of such Evacuation Plan to the Manager either: (i) an approval of such Evacuation Plan, or (ii) if not approved, a list of all requested modifications to the Evacuation Plan. If the Manager fails to provide such written approval or list of required modifications of the Evacuation Plan to Levitt Denver by the above-referenced date, such Evacuation Plan shall be deemed approved as submitted. The Manager agrees to review and respond in writing to all required submittals to modify the Evacuation Plan by Levitt Denver within fifteen (15) calendar days of Levitt Denver's submission of such modified plans, or the modified plans as submitted by Levitt Denver shall be deemed approved. At a minimum, the Evacuation Plan shall identify in detail, all measures Levitt Denver shall take to

proactively identify potential hazards and evacuate the Pavilion Property in case of an emergency such as a severe storm.

(2) Public Safety Plans. Prior to February 1st each year, Levitt Denver shall initiate coordination with the Department of Parks and Recreation and/or the Department of Safety to determine whether Levitt Denver is required to prepare a Fire Plan, Emergency Services Plan and/or Security Plan (“Safety Plans”). The City and the Department of Parks and Recreation reserve the right to request additional information not set forth in this Agreement in order to assist coordination efforts. The criteria for requiring any Safety Plan will include but are not limited to anticipated attendance; type of event; anticipated media coverage; and anticipated risks. Any Plans, requirements or directions provided to Levitt Denver shall be regarded as a material term of this Agreement and subject to all the City’s rights and remedies for Levitt Denver’s failure to abide by any Plans, requirements or directions. If Safety Plans are deemed required for any given year, the Safety Plans shall be submitted to the Manager of Parks and Recreation for review and approval no later than March 1st, and the Manager shall review and provide to Levitt Denver in writing no later than thirty (30) calendar days after Levitt Denver’s submittal of such Safety Plan(s) to the Manager either: (i) an approval of such Safety Plan(s), or (ii) if not approved, a list of all requested modifications to the Safety Plan(s). If the Manager fails to provide such written approval or list of required modifications of the Safety Plan(s) to Levitt Denver by the above-referenced date, such Safety Plan(s) shall be deemed approved as submitted. The Manager agrees to review and respond in writing to all required submittals to modify the Safety Plan(s) by Levitt Denver within fifteen (15) calendar days of Levitt Denver’s submission of such modified plans, or the modified plans as submitted by Levitt Denver shall be deemed approved.”

24. Paragraph 10(b)(xiii), which shall be entitled Additional Facilities or Infrastructure, is added to the Cooperative Agreement to read as follows:

“No additional Facilities or infrastructure may be brought into or installed in the Park by Levitt Denver or any third parties unless: 1) the Facilities or infrastructure has been previously approved in accordance with the Site Maps as described in Paragraph 9(a)(v); or 2) Levitt Denver provides no less than sixty (60) days’ notice to the City, and the City approves the addition. The City shall provide approval or disapproval of the Facilities or infrastructure within fifteen (15) days of Levitt Denver’s notice.”

25. Paragraph 29(a) is amended to read as follows:

“Levitt Denver shall, on an annual basis no later than May 15th of each year of this Agreement, provide to the City a comprehensive written report of its activities undertaken, revenues generated, and expenditures incurred from the preceding year, and/or upcoming year as applicable (the “Annual Report”). This annual written report shall be signed by an authorized representative of Levitt Denver and

the Board Treasurer for Levitt Denver. The Annual Report shall contain the following:

- (i) A comprehensive written report of its activities undertaken, revenues generated, and expenditures incurred pursuant to this Agreement during the preceding calendar year (Paragraph 29(a));
- (ii) 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 (Paragraph 29(b));
- (iii) Proposed changes to the schedule of administrative and/or incidental expenses fees and charges, or a statement of no changes, for the upcoming year (Paragraph 10(b)(iii)(6));
- (iv) Any proposed changes to postings at the Pavilion Property, and/or proposed changes to the postings graphic design standards for the upcoming year, or a statement of no changes (Paragraph 13(e));
- (v) Any proposed changes to the geographic location(s) for which Levitt Denver's liquor license would apply for the upcoming year, or a statement of no changes (Paragraph 16);
- (vi) Any proposed changes to the location of food and beverage sales and service for the upcoming year, or a statement of no changes (Paragraph 17(a));
- (vii) Any proposed changes or amendments to Levitt Denver's gifts and sponsorship policy(ies) for the upcoming year, or a statement of no changes (Paragraph 18(a));
- (viii) Any proposed uses of the City's and/or Department's trademarked names or logos for the upcoming year, or a statement indicating no proposed uses (Paragraph 19(a)); and
- (ix) A water and energy conservation programs report for the preceding calendar year (Paragraph 21).

26. Paragraph 13(h), which shall be entitled Training, is added to the Cooperative Agreement to read as follows:

“Levitt Denver staff shall complete annual trainings prior to May 1st each year as may be required by the Department, with such training topics determined by the Department. Levitt Denver and the Department shall mutually agree on the Levitt Denver staff who shall complete the training(s) each year.”

27. Except as herein amended, the Agreement is affirmed and ratified in each and every particular.

[SIGNATURE PAGES FOLLOW]

Contract Control Number: PARKS-201313473-01 / 201950470
Contractor Name: FRIENDS OF LEVITT PAVILION DENVER

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:

Attorney for the City and County of Denver

By:

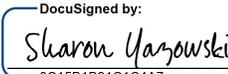
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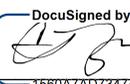
Contract Control Number:

PARKS-201313473-01 / 201950470

MORTIMER & MIMI LEVITT FOUNDATION

DocuSigned by:
By: 
0C45B1B91C1C4A7...
Sharon Yazowski
Executive Director

FRIENDS OF LEVITT PAVILION DENVER

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By: 
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Chris Zacher
Executive Director



Ruby Hill Park

Levitt Pavilion and Lawn Area
1380 West Florida Avenue, Denver, CO 80223



Exhibit B-1

COOPERATIVE AGREEMENT

BETWEEN

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

AND

THE CITY AND COUNTY OF DENVER, COLORADO

REGARDING LEVITT PAVILION AT RUBY HILL PARK

REVISED EXHIBIT B – LEVITT GUIDELINES – 12.15.17

The Mortimer & Mimi Levitt Foundation (the “**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 support access to the performing arts for the benefit of the public through various programs, including the development and support of outdoor performance venues, each individually known as Levitt Pavilion or Levitt Shell (“**Levitt pavilions**”) across the United States; and

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, Los Angeles, California; Denver, Colorado; Westport, Connecticut; Bethlehem, Pennsylvania; Memphis Tennessee; and Arlington, Texas; as well as other Levitt pavilions in various stages of development (the “**Levitt Network**”). The Levitt pavilions are reflective of their respective communities and connected by their common mission of building community through music; and

Each of the Levitt pavilions is managed, programmed and supported by a local Friends of Levitt Pavilion 501(c)(3) nonprofit organization that operates according to the best practices and standards reasonably established by the Foundation as outlined in the Cooperative Agreement, including this Revised Exhibit B. Friends of Levitt organizations are connected by their common purpose of providing a minimum of fifty (50) free performances and professional concerts annually for the benefit of the public, mutual support, national recognition, and the assistance they receive from the Foundation.

1. PARTICIPATION IN THE LEVITT NETWORK.

Levitt Denver acknowledges and agrees as to its inclusion and participation in the Levitt Network as coordinated under the auspices of the Foundation, including the Foundation’s marketing, advertising, publicity, programming, and fundraising efforts. Throughout the Term of the Cooperative Agreement, Levitt Denver agrees to participate in the Levitt Network as a grantee that receives funding and assistance from the Foundation including Levitt program initiatives, Levitt Network growth, communications efforts for the Levitt Network, and reporting requirements set forth by the Foundation as outlined in the Cooperative Agreement, including this Revised Exhibit B. Levitt Denver further

acknowledges that receipt of funding from the Foundation as described in Section 8(a) of the Cooperative Agreement is contingent upon Levitt Denver operating in accordance with the best practices and standards reasonably established by the Foundation as outlined in the Cooperative Agreement, including this Revised Exhibit B. The Foundation shall maintain a website dedicated to the Foundation and its mission and activities, and a link to Levitt Denver shall appear on the Locations drop down menu on all pages of the Foundation website. Such link shall point to a page describing Levitt Denver and the Pavilion, including display of the Levitt Denver logo and a link to the Levitt Denver website. Content for such page will be collaboratively developed by Levitt Denver and the Foundation. Further, the Foundation shall acknowledge the existence of Levitt Denver and the Pavilion in all print and electronic communications and other media including press releases, publicity, advertising, and marketing describing, discussing and promoting the Levitt Network.

A. Recognition. Levitt Denver agrees to acknowledge the Foundation and recognize Levitt Denver's participation in the Levitt Network as follows:

- (i) The Foundation logo shall appear clearly on all Levitt Denver collateral materials including, but not limited to, brochures, flyers, and banners and in electronic communications including, but not limited to, digital screens, e-newsletters, e-blasts, the Levitt Denver website, and social media, where Levitt Denver, Series, and Pavilion supporters and/or sponsors are recognized and acknowledged. When appearing on the Levitt Denver website, the Foundation logo shall link to www.levitt.org. Throughout the Term of the Cooperative Agreement when Levitt Denver uses the Foundation logo, Levitt Denver shall present that logo without alteration by Levitt Denver. In instances when supporter and/or sponsor names are listed instead of logos, then "Mortimer & Mimi Levitt Foundation" shall be listed and linked to www.levitt.org. The Foundation logo and/or name shall always appear in the highest dollar amount and/or recognition category. In the event there is a title Series sponsor (first tier recognition with only that sole sponsor), the Foundation logo and/or name shall appear in the second tier category of Series supporters and/or sponsors; and
- (ii) A section dedicated to the Foundation and the Levitt Network shall appear on the About page, or comparable page should an About page not exist, of the Levitt Denver website. Content for this section will be provided and updated annually by the Foundation. This section shall include the Foundation logo which shall link to www.levitt.org; and
- (iii) Levitt Denver shall include a paragraph regarding Levitt Denver's participation in the Levitt Network in the Series brochure, or comparable collateral material should a brochure not be printed. Such paragraph shall be legible and the Foundation logo shall appear clearly next to such paragraph. Content for such paragraph will be provided by the Foundation annually; and
- (iv) When present at the Pavilion, representatives of the Foundation shall have the opportunity to address the audience from the Pavilion stage; and

- (v) Levitt Denver shall provide the Foundation with a high resolution, most current version of the Levitt Denver logo; and
- (vi) Levitt Denver shall maintain one (1) website dedicated to both the Series and the Pavilion. The domain name for such website shall be www.levittdenver.org, with the following domain names always actively pointing to the website: www.levittpaviliondenver.org; www.levittpaviliondenver.com; and www.levittdenver.com; and
- (vii) During the Term of the Cooperative 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 (the “Sign”). Placement, size, and material of the Sign shall be agreed upon in writing by Levitt Denver, the Foundation, and the City and the 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 the Cooperative 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, and at no time shall there be a name of an entity placed on the roof of the Pavilion. With the exception of temporary signage acknowledging a Series title sponsor (first tier recognition with only that sole sponsor), Levitt Denver and/or the City will not offer or allow any third party signage, whether permanent or temporary, of any size or prominence equal to or greater than the Sign as affixed to the Pavilion. Unless otherwise approved in writing by Levitt Denver and the Foundation, at no time during the Term of the Cooperative Agreement, may the Sign be partially or fully covered; and
- (viii) The Name, as defined in the Cooperative Agreement, may wherever used, be shortened to appear as “Levitt Pavilion Denver” or “Levitt Pavilion” or “Levitt Denver,” including wherever the Name appears for publicity, marketing, advertising, community outreach, fundraising, merchandise, formal communications with artists, signage, and any other use of the Name in the public realm.

B. Reporting and Data Collection. Throughout the Term of the Cooperative Agreement, Levitt Denver shall meet the annual reporting requirements of the Foundation and participate in the Foundation’s annual collection of Levitt Network data as set forth below. Failure to comply with such reporting requirements will result in delay or forfeiture of funds in that calendar year as specified in Section 8(a)(vi) of the Cooperative Agreement and Section 3 of this Revised Exhibit B; provided however, there shall be no “claw-back” of any funds previously paid to Levitt Denver.

- (i) Levitt Denver shall submit annual financial statements showing the organization’s actual income and expenses for the previous year and

approved budget for the current year to the Foundation no later than March 1; and

- (ii) In years when a financial audit is conducted for the previous year, Levitt Denver shall submit a copy of the financial audit for the previous year to the Foundation or advise the Foundation that no audit was conducted for the previous year no later than June 30; and
- (iii) Levitt Denver shall complete the annual Levitt Network survey report, to be provided by the Foundation, for the previous year and submit such to the Foundation along with required supporting documents no later than March 1; and
- (iv) Levitt Denver shall complete triannual reports, to be provided by the Foundation, and submit such to the Foundation prior to each triannual disbursement of funds; and
- (v) At times when Levitt Denver has updated its current or drafted a new strategic plan, Levitt Denver shall submit a copy to the Foundation with its following triannual report; and
- (vi) Levitt Denver shall conduct on-site audience surveys during the Series per the parameters set by the Foundation and deliver such surveys to the Foundation within one (1) week of the close of the Series; and
- (vii) Levitt Denver shall participate in the Foundation's initiatives pertaining to collection of data regarding social and economic impact of the Levitt Network.

C. Foundation Fundraising Activities. Levitt Denver and the Foundation acknowledge and agree that, from time to time (i) the Foundation may, in its discretion, periodically evaluate or otherwise consider options for securing sponsorship support of the Foundation itself, the Foundation's programs, and/or the Levitt Network; (ii) in the course of developing and/or evaluating such options, the Foundation may, in its discretion, acknowledge and reference to third parties its historic and ongoing support and involvement with one or more participants in the Levitt Network, including Levitt Denver; and (iii) the Foundation shall be free in its discretion to conclude any sponsorship arrangements that are specific to the Foundation itself and its programs, and that no further consents, permissions or approvals from Levitt Denver shall be required of the Foundation in order to so proceed. Notwithstanding the foregoing, the Foundation and Levitt Denver also agree that, to the extent that the Foundation in the course of discussing potential sponsorship arrangements receives an expression of interest from a potential sponsor interested in sponsoring the activities of the Levitt Network as a whole or other subset of organizations within the Levitt Network, including Levitt Denver, then the Foundation shall so advise Levitt Denver of such sponsorship opportunity, which shall be coordinated by the Foundation, and Levitt Denver may then consider its participation in such sponsorship opportunity in its sole discretion.

Levitt Denver acknowledges that the Foundation collects donations through print and electronic communications in support of the Foundation itself and the Foundation's programs, though the Foundation shall not send direct mail solicitations for support of the Foundation itself to any individual who resides in the Denver metro area, unless such individual is a current donor of the Foundation, has an existing relationship with the Foundation or is connected to the Foundation through a board member or national advisory council member, in which case Levitt Denver shall be notified by the Foundation and shall inform the Foundation whether Levitt Denver has an existing relationship with such individual. Levitt Denver further acknowledges that the Foundation promotes community support of Levitt pavilions and agrees that the Foundation may collect donations on behalf of Levitt Denver. Upon receipt of a donation provided to the Foundation for support and enhancement of programs and activities conducted by Levitt Denver, the Foundation shall provide such funds and donor information to Levitt Denver.

- D. Photographic and Filming Rights. 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. Levitt Denver agrees that upon request from the Foundation, Levitt Denver will provide the Foundation with the contact information for a third party either performing at the Pavilion or utilizing the Pavilion at least forty-five (45) days prior to such appearance or use and consents to the Foundation contacting the third party to secure the necessary permissions to make its own photographs, audio and video recordings at the Pavilion.

2. CONCERT SERIES.

- A. Programming. During the Term of the Cooperative Agreement, Levitt Denver agrees, at its cost, to present at the Pavilion an annual concert series consisting of a minimum of fifty (50) concerts free of charge to the public ("Series"), which shall meet the following criteria:
- (i) Each Series shall take place over a minimum of ten (10) consecutive weeks, which may be divided into a minimum of four (4) consecutive weeks during one (1) season of the year and the remaining number of consecutive weeks in another season of the same year.
 - (ii) A minimum of forty (40) concerts within each Series shall be presented a minimum of three (3) days per week of the Series, with at least one (1) concert taking place on Monday, Tuesday, Wednesday, Thursday or Friday and at least one (1) concert taking place on Saturday or Sunday.
 - (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 of each Series.

- (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 minimum fifty (50) concerts of each Series shall feature a different act so a minimum 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) If there is a weather event which prevents one (1) or more of the fifty (50) free concerts of a Series from being presented and rescheduled, the Parties agree that this will be considered a force majeure event and will still qualify as one (1) of the fifty (50) free concerts required.

B. Promotion. Throughout the Term of the Cooperative Agreement, Levitt Denver shall, at its cost, 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. Production. Levitt Denver shall, at its cost, produce the Series using high quality sound and lighting equipment and a professional production crew to ensure presentation of each Series meets the high production standards established by Levitt pavilions currently in operation, providing a high quality concert experience for both Series performers and attendees.

3. FUNDING SCHEDULE.

A. Each annual grant for operational and program support and additional grants (now defined as “**Capacity Building Grants**” per this Revised Exhibit B), as outlined in Section 8 of the Cooperative Agreement, provided to Levitt Denver during the Initial Five Years and beyond shall be disbursed in three (3) payments per calendar year on March 15, July 15, and November 15. Levitt Denver’s receipt of this funding shall be contingent upon Levitt Denver completing required reports as provided by the Foundation, Levitt Denver meeting the applicable Capacity Building Grant requirements as set forth by the Foundation, Levitt Denver submitting supporting documents as requested by the Foundation, and Levitt Denver being in compliance with the terms of the Cooperative Agreement, including this Revised Exhibit B.

- B. The funding described in Sections 8(a)(i)(2) through 8(a)(iv) of the Cooperative Agreement shall be contingent upon Levitt Denver operating in accordance with the terms of the Cooperative Agreement, including this Revised Exhibit B, 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. Further, Levitt Denver acknowledges and understands that not satisfying all terms and conditions of the Cooperative Agreement, including this Revised Exhibit B, including the timely submission of any required reports and documents in form and content acceptable to the Foundation, may delay or forfeit the delivery of funds to Levitt Denver by the Foundation. The Parties agree that any failure by Levitt Denver to comply with the terms of Sections 1.A.(i-ii), 1.B.(i-v, vii), and 2.C. of this Revised Exhibit B will result in the delay of delivery of any remaining funds to Levitt Denver by the Foundation as specified in Section 8 of the Cooperative Agreement for that calendar year, until such time that Levitt Denver has complied with such terms. The Parties also agree that any failure by Levitt Denver to comply with the terms of Sections 1.A.(iii), 1.B.(vi), and 2.A.(i-viii) of this Revised Exhibit B will result in forfeiture of any remaining funds to Levitt Denver by the Foundation as specified in Section 8 of the Cooperative Agreement for that calendar year; provided however, there shall be no “claw-back” of any funds previously paid to Levitt Denver.
- C. Every fifth (5th) anniversary following the conclusion of the Initial Five Years, a letter of understanding shall be signed by the Levitt Parties (the “Letter”) confirming that (a) both Levitt Parties desire to continue their relationship as outlined in the Cooperative Agreement and this Revised Exhibit B; (b) both Levitt Parties have complied with the terms and conditions of the Cooperative Agreement, including this Revised Exhibit B, during the previous period; (c) the expressed terms of the Cooperative Agreement regarding use, management, maintenance, and name of the Pavilion and Pavilion Property remain the same and in effect; and (d) when applicable, within one (1) year prior to the expiration of the Cooperative Agreement, a renewed agreement between the Parties is executed.

4. BEST PRACTICES.

Throughout the Term of the Cooperative Agreement, Levitt Denver agrees to operate in accordance with the best practices and standards reasonably established by the Foundation as outlined below:

- A. Open Lawn Setting. Levitt Denver acknowledges that all Levitt pavilions have an opening lawn setting with no permanent seating and agrees that there will be no material changes to the Pavilion Property that will alter the open lawn in front of the Pavilion. Levitt Denver acknowledges that the open lawn setting creates a welcoming atmosphere for all Series attendees and in this spirit, hospitality areas for donors, sponsors, elected officials, and similar groups of designated importance, shall be set up at the sides or rear areas of the lawn so the front and center areas of the lawn remain open to all Series attendees. Levitt Denver further agrees that the footprint of the open lawn in front of the Pavilion will not be decreased for any reason, including new public amenities.

- B. Outside Food and Beverage. Levitt Denver acknowledges that Series attendees represent a range of socioeconomic groups and agrees that at no time will Series attendees be prohibited from bringing outside food and non-alcoholic beverages to the Series.
- C. Alcohol. Levitt Denver agrees that the presence of alcohol during the Series shall remain understated and not a focal point of the Series and concert experience. The presence of alcohol, including beer, wine and liquor, at the Pavilion is at the discretion of Levitt Denver, determined in accordance with City regulations and policies. Levitt Denver may sell beer, wine and liquor at the Pavilion. Alcohol sales must be coordinated in cooperation with the City and in accordance with local laws.
- D. Fundraising. Levitt Denver acknowledges that Series attendees represent a range of socioeconomic groups and that everyone regardless of ability to pay should feel welcome to attend the Series and in this spirit, Levitt Denver agrees that while it will collect donations on-site during the Series, it will not promote a suggested donation of a specific amount on-site during the Series.
- E. Sponsors. Levitt Denver agrees that it will not permit sponsors for any Levitt Events or Non-Levitt Events, and it will not permit advertising, promotional products and marketing materials at the Pavilion and the Pavilion Property in any capacity that promote the sale or use of any of the following: (i) firearms, (ii) pornography, (iii) tobacco, and (iv) illegal activities. Further, Levitt Denver agrees that it will not permit any cannabis, vape, or alcohol sponsor, including beer, wine and liquor, to be a title Series sponsor, as well as any alcohol-focused stores or brands, or cannabis-focused stores or brands, or vape-focused stores or brands, of any kind.
- F. Artist Relations. Levitt Denver acknowledges that a priority of the Levitt Network is to maintain its artist-friendly reputation and in this spirit, Levitt Denver agrees to provide hospitality for Series performers as well as a designated area for Series performers to sell merchandise immediately before, during and after their concert with the ability to keep 100% of their sales, unless Levitt Denver is providing staff for artist merchandise sales, in which case an appropriate percentage may be deducted.
- G. Levitt National Tour. Levitt Denver acknowledges that its participation in the Levitt Network through program initiatives celebrates the common purpose and shared mission of Friends of Levitt organizations and highlights the impact of the Levitt Network in communities across the country and in this spirit, Levitt Denver agrees to its participation in the Levitt National Tour (the “**Tour**”) as part of the Series in years when a Tour is scheduled. The Foundation will inform Levitt Denver as to whether a Tour will occur no later than February 1 of the year such Tour is taking place. The Tour will feature an artist (“**Tour Artist**”) who will perform at multiple Levitt pavilions, and may perform at other sites funded by the Foundation, within a designated timeframe. The Tour Artist shall be selected through the collective participation of the Levitt Network in collaboration with the Foundation as follows: Friends of Levitt organizations shall submit suggestions for the Tour Artist for the following year no later than

March 31 of the current year; the Foundation shall compile and provide such suggestions, along with the Foundation's suggestions, to the Levitt Network no later than April 5; the Levitt Network shall provide feedback regarding Tour Artist suggestions to the Foundation no later than April 30; the Foundation shall then confirm the Tour Artist and coordinate Tour logistics with the Levitt Network. Levitt Denver agrees that it will use its best efforts to schedule its Tour concert on a Friday, Saturday or Sunday. Levitt Denver agrees to recognize the Foundation as the lead sponsor of the Tour, as well as any Tour sponsors secured by the Foundation. Levitt Denver will refrain from securing any additional sponsor(s) for its Tour concert at the Pavilion until after February 1 of the year such Tour is taking place and any such additional sponsorship(s) shall be in accordance with the Tour sponsor agreement(s) as secured by the Foundation. Levitt Denver further agrees to participate in all Foundation-led promotional efforts to support the Tour. The Foundation will cover the following Tour expenses: the artist fee, promotion and non-typical production costs.

- H. Sharing Experience, Expertise and Knowledge. Levitt Denver acknowledges that shared information amongst the Levitt Network strengthens each Friends of Levitt organization and reflects the collaborative ethos of the Levitt Network. Levitt Denver further acknowledges that its experience and expertise in operating the Pavilion is valuable knowledge for other Friends of Levitt organizations as well as individuals, from both the public and private sectors, either contemplating or committed to developing a Levitt pavilion in their city and in this spirit, Levitt Denver agrees to be an ambassador for the Foundation and a contributor to the Levitt Network by sharing its experience, expertise and knowledge with such individuals and with other Friends of Levitt organizations.
- I. Professional Staffing. To successfully execute the terms and conditions of the Cooperative Agreement, including this Revised Exhibit B, Levitt Denver agrees to maintain at all times a professional staff of a minimum of four (4) year-round, full-time equivalent employees, including an Executive Director.
- J. Board Support. To contribute to the ongoing financial stability of Levitt Denver and achieve 100% board giving every year, each member of Levitt Denver's board of directors shall annually provide a direct personal contribution to Levitt Denver, independent of support for fundraising events, in-kind donations, professional services provided, sponsorships secured, and gifts solicited.
- K. Availability of Levitt Pavilion for Use by Other Groups. Levitt Denver acknowledges that Levitt pavilions are designed for use by groups other than Friends of Levitt organizations and in this spirit, Levitt Denver agrees to make known the availability of the Pavilion and the Pavilion Property for use by other groups on Levitt Denver's website in an easy to find and user-friendly manner.
- L. Website. Levitt Denver's website shall not link to any web pages or internet sites that are political, religious, indecent, scandalous, immoral or illegal in nature.

5. USE OF LEVITT NAME AND MARKS.

- A. The Foundation is the owner of rights of publicity and trademark rights associated with the LEVITT name and mark, the LEVITT FOUNDATION mark,

the LEVITT FOUNDATION & Design mark, the LEVITT PAVILION and LEVITT SHELL marks and the LEVITT PAVILIONS & Design mark (collectively “LEVITT Name and Marks”) in connection with, *inter alia*, its programs and the Levitt Network, and has allowed Levitt Denver to use the LEVITT Name and Marks since 2012.

- B. The Foundation hereby grants Levitt Denver a non-exclusive, nontransferable, royalty-free license to use the LEVITT Name and Marks in connection with the operations of Levitt Denver, the Facilities, including the Pavilion, and the Pavilion Property as specified herein.
- C. Levitt Denver acknowledges the Foundation’s exclusive ownership of the LEVITT Name and Marks, agrees that it will do nothing inconsistent with such ownership and that Levitt Denver’s use of the LEVITT Name and Marks shall inure to the benefit of the Foundation. Levitt Denver agrees that nothing in the Cooperative Agreement or this Revised Exhibit B shall give Levitt Denver any right, title or interest in the LEVITT Name and Marks other than the right to use the LEVITT Name and Marks in accordance with the Cooperative Agreement, including this Revised Exhibit B, and Levitt Denver agrees that it will not challenge the Foundation’s title to the LEVITT Name and Marks or challenge the validity of the LEVITT Name and Marks during the Term of the Cooperative Agreement and thereafter.
 - (i) Levitt Denver agrees as follows: (i) to comply with any and all guidelines provided by the Foundation concerning Levitt Denver’s use of the LEVITT Name and Marks, which may be modified from time to time by the Foundation; (ii) to cooperate with the Foundation in facilitating the Foundation’s control of Levitt Denver’s use of the LEVITT Name and Marks; (iii) to permit the Foundation to inspect Levitt Denver’s uses of the LEVITT Name and Marks upon reasonable notice by the Foundation to Levitt Denver; and (iv) to supply the Foundation with specimens showing Levitt Denver’s use of the LEVITT Name and Marks, as may be reasonably requested from time to time by the Foundation. Levitt Denver agrees that the nature and quality of all goods and services offered by Levitt Denver in connection with the LEVITT Name and Marks shall be advertised, offered and provided in a high quality manner and consistent with the quality control standards established by the Foundation.
 - (ii) Upon termination of the Cooperative Agreement or request of the Foundation as set forth in Section 7(a) of the Cooperative Agreement, Levitt Denver agrees to immediately discontinue all use of the LEVITT Name and Marks and any term confusingly similar thereto, and to delete the same from its corporate or business name, to cooperate with the Foundation or its appointed agent to apply to the appropriate authorities to cancel recording of the Cooperative Agreement from all government records, to destroy all printed material bearing the LEVITT Name and Marks, and that all rights in the LEVITT Name and Marks and the good will connected therewith shall remain the property of the Foundation.
 - (iii) Nothing herein shall limit the Foundation’s right to offer any programs, performances, events, goods or services of any kind under the LEVITT

Name and Marks outside of a 75 mile radius from the City of Denver, Colorado.

6. COOPERATION AND NON-DISPARAGEMENT.

Levitt Denver and the Foundation agree to work together in a friendly, close and conscientious manner for mutual benefit and to adhere to both the letter and the spirit of the Cooperative Agreement, including this Revised Exhibit B. The Levitt Parties also recognize the need to maintain continued harmonious relationships with their funders, affiliates, directors, employees, the public, and the communities in which they conduct their activities. The Levitt Parties therefore agree not to make or publish any critical, denigrating, or disparaging written or oral statements about each other, or their respective directors, officers, employees, volunteers, agents, affiliates, successors, and assigns.

7. INSURANCE.

Levitt Denver shall, at Levitt Denver's sole expense, name the Foundation as an additional insured on each original policy, as outlined in Section 22 of the Cooperative Agreement, and all renewals or replacements during the Term of the Cooperative Agreement.

FRIENDS OF LEVITT PAVILION DENVER

By: 

Printed Name: CHRIS ZACHER

Title: EXECUTIVE DIRECTOR

Date: 01.02.2018

MORTIMER & MIMI LEVITT FOUNDATION

By: 

Printed Name: Liz Levitt Hirsch

Title: Board President

Date: 1/2/18