

**LEVITT TRI-PARTY AGREEMENT  
FOR DEVELOPMENT AND OPERATION OF LEVITT PAVILION FORT LAUDERDALE  
FRIENDS OF LEVITT PAVILION FORT LAUDERDALE/CITY OF FORT LAUDERDALE/  
MORTIMER & MIMI LEVITT FOUNDATION**

THIS AGREEMENT ("**Agreement**") is made and entered into as of the Date of Countersignature set forth on the City's signature page below (the "**Effective Date**"), by and among the CITY OF FORT LAUDERDALE, FLORIDA, a Florida municipal corporation (the "**City**"), FRIENDS OF LEVITT PAVILION FORT LAUDERDALE, a Florida non-profit corporation ("**Levitt Fort Lauderdale**"), and the MORTIMER & MIMI LEVITT FOUNDATION, a New York not-for-profit corporation (the "**Foundation**"). Levitt Fort Lauderdale and the Foundation are referred to herein individually as a "**Levitt Party**" or collectively as the "**Levitt Parties**." The City, Levitt Fort Lauderdale, and the Foundation are referred to herein individually as a "**Party**" or collectively as the "**Parties**."

**RECITALS.**

A. 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 Venue(s)**") across the United States; and

B. 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 (defined below); and

C. Levitt Venues are a growing national network of outdoor performance venues with free programming for the benefit of the public. Levitt Venues are publicly owned facilities located in public spaces, typically parks, with locations across the United States, including Westport, Connecticut; Los Angeles and Pasadena, California; Bethlehem, Pennsylvania; Memphis, Tennessee; Arlington, Texas; and Denver, Colorado, which is scheduled to open in 2017; as well as other locations in early stages of development (collectively, the "**Levitt Network**"). Levitt Venues are reflective of their respective communities and connected by their common purpose of providing free performances and professional concerts for the benefit of the public, mutual support, national recognition, and the assistance they receive from the Foundation; and

D. Each Levitt Venue is managed, programmed and supported by a local Friends of Levitt 501(c)(3) non-profit organization that operates according to the best practices and standards set forth by the Foundation. 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; and

E. Levitt Fort Lauderdale has been organized and incorporated as a Florida non-profit corporation to program, and raise funds for such programming, and to operate a Levitt Venue to be

constructed within the Property (defined below), and to raise funds for the construction of a Levitt Venue consistent with the requirements of this Agreement; and

F. Esplanade Park (the “**Site**”) is a property owned by the City and is located within the City's downtown arts and entertainment area and runs adjacent to and north of the New River and the Riverwalk Linear Park and east of the Broward Center for the Performing Arts. The Site is approximately two (2) acres in size and is bordered by the Broward Center for the Performing Arts on the west, the Riverwalk Linear Park on the south, and SW 2<sup>nd</sup> Street on the north.

G. The Parties believe that the Site is an ideal location for the development and operation of a Levitt Venue, and the Levitt Parties have determined that the Site meets all of their site requirements for developing and operating a Levitt Venue; and

H. The City intends to improve and maintain public areas in the Site within the Property for free public use and benefit; and

I. The Parties recognize that the design of the Site and Levitt Pavilion (defined below) is required to meet the minimum requirements of the Site and Structure Requirements (defined below). The estimated cost to meet such minimum requirements is \$4,000,000 (“**Project Cost**”), which includes the cost of Sound and Lighting Equipment (defined below) for the Levitt Pavilion. However, the Parties recognize that actual costs may meet the cost estimate stated above or may be higher or lower depending on the bids received. In the event that actual costs exceed \$4,000,000, the Parties will meet to discuss options available and determine whether to proceed. If the Parties fail to reach satisfactory terms, the Parties may opt out and this Agreement may be terminated without incurring any additional costs or liability to any of the Parties.

J. The City recognizes the benefits of the Levitt Pavilion at the Property which will expand the arts in the community and will positively activate a public space, and the City desires to partner and support the Levitt Parties in the construction and maintenance of the Levitt Pavilion in accordance with the terms of this Agreement; and

K. The City shall not provide funding to partially fund the design, construction, and construction administration of the Facilities (defined below), including the Levitt Pavilion, within the Property; and

L. Levitt Fort Lauderdale has committed to raising private funds at a minimum amount of \$3,500,000 (“**Private Funds**”) to partially fund the design, construction and construction administration of the Facilities, including the Levitt Pavilion. Such funds will be raised by Levitt Fort Lauderdale, and together with the funds to be provided by the Foundation as set forth in Paragraph M, shall be used by Levitt Fort Lauderdale in designing and constructing the Facilities, including the Levitt Pavilion. Further, such funds shall also cover the cost and installation of the Sound and Lighting Equipment for the Levitt Pavilion as more fully described below. To ensure the Levitt Pavilion is properly designed and constructed to meet the requirements of the Sound and Lighting Equipment, Levitt Fort Lauderdale agrees to coordinate with sound and production consultants during all phases of the project as to the product data and specific requirements of the Sound and Lighting Equipment; and

M. The Foundation desires to provide funding to Levitt Fort Lauderdale to partially fund the design, construction, and operation of the Levitt Pavilion to provide free performances and professional

concerts for the benefit of the public as outlined in this Agreement and to allow Levitt Fort Lauderdale to use the LEVITT Name and Marks; and

N. Design and construction of the Facilities, including the Levitt Pavilion, will proceed in accordance with the construction agreements for the Facilities, including the Levitt Pavilion, to be entered into by Levitt Fort Lauderdale subsequent to this Agreement (the “**Other Agreements**”); and

O. The Parties believe that the Levitt 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 Levitt Fort Lauderdale to support operations at the Facilities.

**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) “**Applicable Law**” shall mean all federal, state, and local laws applicable in the context of the specific matter addressed in this Agreement, including: (i) the constitutions, laws, and rules and regulations of the United States of America and the State of Florida 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; (ii) the City Charter and the Code of Ordinances of Fort Lauderdale, Florida (collectively, the “**City Code**”), as either may be amended from time to time; (iii) rules, regulations, policies and procedures promulgated by the City’s Parks and Recreation Department (the “**Department**”) governing the public’s utilization of City parks (unless expressly modified or waived in this Agreement); (iv) 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; (v) executive orders issued by the Mayor; (vi) any court order, judgment, or decree applicable to this Agreement, the Site, the Property, the Levitt Pavilion, or the Levitt Parties; and (vii) any federal, state, or local administrative decision applicable to this Agreement, the Site, the Property, the Levitt Pavilion, or the Levitt Parties.

(b) “**Director**” shall mean the Director of the Parks and Recreation Department of the City or the Director’s designated representative.

(c) “**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 Property, including the Levitt Pavilion and amenities, including walkways, public restrooms, parking areas and landscaping, to accommodate public use of and access to the Levitt Pavilion as defined in Section 1(f).

(d) “**Levitt Events**” shall mean collectively the Levitt Fundraising Events and each Series.

(e) “**Levitt Fundraising Events**” shall refer to the six (6) or fewer events during each calendar year, that Levitt Fort Lauderdale has first priority to use the Property, including the Levitt Pavilion, as described in Section 9(a).

(f) **“Levitt Pavilion”** shall mean the permanent, outdoor amphitheater to be built by Levitt Fort Lauderdale in accordance with this Agreement at the location approximately shown on **Exhibit A**, attached hereto and incorporated herein by reference. The Levitt Pavilion will consist of a covered stage, a green room, dressing rooms, storage space, interior non-public bathrooms, exterior signage as described in Section 7(d), and other elements, including exterior public bathrooms, as set forth herein and as further described in the Levitt Site and Structure Requirements attached hereto as **Exhibit B** (the **“Site and Structure Requirements”**).

(g) **“Non-Levitt Event”** shall have the meaning given to such term in Section 9(b).

(h) **“Personal Property”** means any furniture, vehicles, supplies, removable fixtures, including Sound and Lighting Equipment and other equipment used for the operation of the Facilities, including the Levitt Pavilion.

(i) **“Project Cost”** is the estimated \$4,000,000 cost to design and build the Facilities, including the Levitt Pavilion. The estimated cost of \$4,000,000 includes the Sound and Lighting Equipment defined in Section 1(m).

(j) **“Property”** shall mean that portion of the Site containing the Levitt Pavilion and surrounding lawn area as conceptually depicted in **Exhibit A**. The geographical area of the Property will be further defined by the Parties during the design and construction process and shall comply with the requirements of the Site and Structure Requirements. Once the geographical area of the Property is so defined, the activities of Levitt Fort Lauderdale contemplated under this Agreement may not be conducted or extended beyond such geographical area.

(k) **“Real Property”** means all property comprising the Facilities, including the Levitt Pavilion, together with all real improvements located thereon and all appurtenances and fixtures which are permanently attached thereto, whether now existing or hereafter acquired or constructed.

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

(m) **“Sound and Lighting Equipment”** shall mean any piece of production equipment that can be removed from the venue for storage during the off-season (cables, speakers, monitors, mics, sound boards, light cans, etc.); estimated purchase price is \$400,000 to \$500,000.

## **2. STATUS AND AUTHORITY OF LEVITT PARTIES.**

(a) Status. The City and Levitt Fort Lauderdale acknowledge and agree that the status of Levitt Fort Lauderdale shall be that of a private, non-profit 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 shall be that of a private foundation and not-for-profit corporation cooperatively working with the City and Levitt Fort Lauderdale 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 City Manager or the City Manager's designee is obtained, and the City Commission, if necessary. 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) Non-profit Status. Levitt Fort Lauderdale has received a ruling and determination letter from the Internal Revenue Service, issued by the United States Department of Treasury, stating that Levitt Fort Lauderdale is an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. Levitt Fort Lauderdale 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 non-profit corporation that qualifies as a tax exempt entity under Section 501(c)(3) of the Internal Revenue Code (or any successor provision).

### 3. 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.

### 4. PERSONNEL.

Levitt Fort Lauderdale Employees. All employees hired or engaged by Levitt Fort Lauderdale to work at the Levitt Pavilion or to perform the services described in this Agreement shall be employees of Levitt Fort Lauderdale ("**Levitt Fort Lauderdale Employees**"). Levitt Fort Lauderdale shall have the sole authority to hire, fix the compensation and benefits of, supervise, train, evaluate, discipline and discharge all Levitt Fort Lauderdale 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 Fort Lauderdale Employees be regarded as employees of the City or the Foundation; however, all Levitt Fort Lauderdale Employees are expected to comply with the terms and conditions of this Agreement.

### 5. DESIGN AND CONSTRUCTION OF FACILITIES AND CONSTRUCTION FUNDING.

(a) **Funding.** The Foundation shall provide to Levitt Fort Lauderdale \$500,000 for Levitt Fort Lauderdale to use to pay a portion of the Project Cost (the "**Capital Grant**") as follows:

(i) the Foundation shall provide to Levitt Fort Lauderdale \$50,000.00 as the first payment of the Capital Grant, to be used solely for direct design costs, upon Levitt Fort Lauderdale evidencing to the reasonable satisfaction of the Foundation that Levitt Fort Lauderdale has received cash contributions equal to twenty-five percent (25%) of the Private Funds; and

(ii) the Foundation shall provide to Levitt Fort Lauderdale \$250,000.00 as the second payment of the Capital Grant upon (a) Levitt Fort Lauderdale evidencing to the reasonable satisfaction of the Foundation that Levitt Fort Lauderdale has received all of the Private Funds; and

(iii) the Foundation shall provide to Levitt Fort Lauderdale \$200,000.00 as the third payment of the Capital Grant upon installation of the Sound and Lighting Equipment at the Levitt Pavilion.

(b) Use of Funds. Levitt Fort Lauderdale agrees that the Capital Grant and the Private Funds shall be used solely for the design, construction and construction administration of the Facilities, along with the Sound and Lighting Equipment, and not for any other purposes.

(c) Fundraising Reports. Levitt Fort Lauderdale shall provide to the Foundation and the City a monthly written report on the status of its fundraising efforts, including expenses and the amounts of actual cash contributions and pledges, including payment schedule of such pledges, beginning one (1) month following the Effective Date.

(d) Design and Construction.

(i) Once Levitt Fort Lauderdale is in receipt of the funds described in Section 5(a)(i), the Parties agree that a design firm will be chosen and will be subject to the mutual written approval of the Parties.

(ii) Upon selection of the design firm, Levitt Fort Lauderdale will enter into an agreement with the chosen design firm to develop design development documents, construction documents, schedule and budget of the Facilities, including the Levitt Pavilion, for the Parties' approval of the final design and Site Plan (the "**Plan**"). The Parties will be engaged throughout the development of the Plan and each Party must approve the final version of the Plan in writing prior to the commencement of construction of the Facilities. Following approval of the final version of the Plan by all Parties, subsequent changes to the Plan will require the mutual written approval of Levitt Fort Lauderdale, the City Manager, and the Foundation.

(iii) Levitt Fort Lauderdale shall not award any bids for any construction, enter into any Other Agreements, disburse funds or commence construction of the Facilities until (a) Levitt Fort Lauderdale has raised all the Private Funds; and (b) the Foundation has provided to Levitt Fort Lauderdale the first and second payments of the Capital Grant.

(iv) Levitt Fort Lauderdale shall fully construct the Facilities in accordance with the Plan and the terms of this Agreement using the Capital Grant and the Private Funds. Levitt Fort Lauderdale, in accordance with state laws and standard City process, agrees to solicit, review and accept competitive proposals and competitive bids and enter into one (1) or more contracts for the construction of the Facilities, including the Levitt Pavilion. Levitt Fort Lauderdale shall be solely responsible for assuring that all phases of construction are properly contracted and performed and that the work done and the materials used are in conformance with all Applicable Laws that govern the performance of the work, including (to the extent applicable) the requirements of the Americans with Disabilities Act and any other federal or state laws requiring access for the disabled to public accommodations.

(v) Levitt Fort Lauderdale will provide the Foundation and the City with a proposed timeline and benchmarks for the design and construction of the Facilities no later than October 1, 2017. Levitt Fort Lauderdale will notify the Foundation and the City of any changes to the timeline and benchmarks in writing as soon as such changes are known.

(vi) Levitt Fort Lauderdale will provide monthly written construction status reports to the Foundation and the City.

(vii) The inventory of Sound and Lighting Equipment for the Levitt Pavilion shall be determined by Levitt Fort Lauderdale in collaboration with the City and shall be approved in writing by the Foundation. The Sound and Lighting Equipment shall meet the high production standards established by Levitt Venues in operation. Such equipment shall be the property of or leased directly to Levitt Fort Lauderdale during the Term of the Agreement.

(viii) The City and Levitt Fort Lauderdale agree to not do anything which would violate the Site and Structure Requirements as set forth by the Foundation. Notwithstanding the previous sentence, changes to the Facilities, including the Levitt Pavilion, require the mutual written approval of Levitt Fort Lauderdale, the City Manager, and the Foundation.

(ix) Subsequent to the completion of construction of the Facilities, no Party shall construct any permanent improvements on the Property, as shown on Exhibit A, or make any permanent changes to the Facilities without the prior written approval of the other Parties. Any such permanent improvements or permanent changes shall be in accordance with the terms of this Agreement.

## **6. OWNERSHIP OF REAL AND PERSONAL PROPERTY.**

(a) Real Property. All Real Property within the Facilities, including the Levitt Pavilion, shall be and shall at all times remain the sole and exclusive property of the City. Levitt Fort Lauderdale shall not permanently affix anything on or in the Property, including the Levitt Pavilion, that does not thereby become the property of the City pursuant to this Section 6(a). Levitt Fort Lauderdale shall have no authority to sell, lease, encumber, hypothecate, or otherwise create or assign a property or financial interest in the Property or the Facilities or any part of the Property or the Facilities. At the expiration of the Term or earlier termination of this Agreement, Levitt Fort Lauderdale shall deliver the Facilities, including the Levitt Pavilion, to the City in substantially the same condition as the Facilities, including the Levitt Pavilion, was at the completion of its construction, ordinary wear and tear excepted.

(b) Personal Property. All items of Personal Property donated to the City or which are purchased in whole or in part with funds expressly provided by the City for such purpose shall be the property of the City, whether now existing or hereafter acquired or constructed, shall be and shall at all times remain the sole and exclusive property of the City. Any Personal Property, including the Sound and Lighting Equipment (not under lease), acquired by Levitt Fort Lauderdale, by gift or with funds, shall be held in legal ownership by Levitt Fort Lauderdale during the Term of the Agreement ("**Levitt Fort Lauderdale 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 Fort Lauderdale may, from time to time (as Levitt Fort Lauderdale determines to be prudent and warranted), replace, lend, or dispose of Levitt Fort Lauderdale Property, through sale, purchase, trade or loan. At the expiration of the Term or earlier

termination of this Agreement, all Levitt Fort Lauderdale Property shall remain the property of Levitt Fort Lauderdale.

(c) Rental Fees to Third Parties. During the Term, Levitt Fort Lauderdale may charge a rental fee, including a fee for lighting and sound technicians, as reasonably determined by Levitt Fort Lauderdale, to any third party, including the City, that requests the use of any Levitt Fort Lauderdale Property for any Non-Levitt Event (defined below).

## **7. USE OF LEVITT NAME AND MARKS; OFFICIAL NAME OF LEVITT PAVILION.**

(a) The Foundation hereby grants Levitt Fort Lauderdale a non-exclusive, nontransferable, royalty-free license to use the LEVITT Name and Marks in connection with the operations of Levitt Fort Lauderdale, the Facilities, including the Levitt Pavilion, and the Property as specified herein.

(b) The official name of the Levitt Pavilion shall be "Levitt Pavilion Fort Lauderdale" (the "Name") during the Term stated in Section 3. The City may, in its discretion, change the Name prior to expiration of the Term if: (i) this Agreement is terminated prior to the end of the Term as a result of default by one (1) or more Levitt Parties; or (ii) if this Agreement is terminated by reason of Levitt Fort Lauderdale's failure to timely obtain the Private Funds as required in this Agreement. If prior to the expiration of said Term stated in Section 3, the Foundation requests in writing that the Name no longer be used, Levitt Fort Lauderdale and the City shall no longer use the Name.

(c) The Parties agree that 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:

(i) Referring to the Levitt Pavilion as "the Pavilion," regardless of the media of communication, is not acceptable; and

(ii) Wherever the Name appears, including electronic communications, print materials, signage, and merchandise, "Levitt" shall be larger or of equal size to "Pavilion;" and

(iii) The Name may, wherever used, be shortened to appear as "Levitt Pavilion" or "Levitt Fort Lauderdale" except as specified herein.

(d) During the period described in Section 7(b), signage with the name "Levitt Pavilion Fort Lauderdale" or "Levitt Pavilion" shall be affixed to the stage of the Levitt Pavilion (once such is constructed) in a prominent manner visible to the audience while viewing performances (the "Sign"). The Sign shall be designed for optimal capture on film and for photography. Placement, size, and material of the Sign shall be agreed upon in writing by Levitt Fort Lauderdale, the Foundation, and the City. 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 at all times. The Name shall be the only name of an entity permanently affixed to the exterior of the Levitt Pavilion, including the stage and roof of the Levitt Pavilion. At no time may the Sign be partially or fully covered.

(e) Throughout the Term, Levitt Fort Lauderdale and the City, either separately or together, will not offer or allow any third party signage on the Facilities or the Property, whether permanent or temporary, of any size or prominence equal to or greater than the Sign.

(f) Throughout the Term, the Name shall be included:

(i) In all print and electronic communications regarding the Levitt Pavilion, Levitt Events, and Non-Levitt Events taking place at the Facilities and the Property including each Party's website, publicity, press releases, media relations, advertising, marketing, fundraising, events, community outreach, artist relations, social media, and e-newsletters; and

(ii) In all Levitt Fort Lauderdale-initiated and Levitt Fort Lauderdale-solicited radio and television spots and all radio and television spots pertaining to Levitt Events and Non-Levitt Events initiated and solicited by any Party; and

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

(iv) In the Levitt Fort Lauderdale logo; and

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

(vi) On all merchandise produced or caused to be produced by Levitt Fort Lauderdale related to the Levitt 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 Fort Lauderdale which would customarily contain the Name.

(g) Each of Levitt Fort Lauderdale and the City shall use, and shall require users, promoters, exhibitors and all other persons or entities contracting with Levitt Fort Lauderdale or the City for use of the Facilities for ticketed or non-ticketed events to use, the Name in all promotional activities and efforts associated with producing such events, including publicity, press releases, media relations, advertising, marketing, and social media.

(h) Levitt Fort Lauderdale shall be responsible, at its cost, for compliance with the terms of this Agreement regarding its use of the Name and for providing oversight to ensure that the Name is used in compliance with the terms of this Agreement and is not used in a detrimental manner or in any manner not compliant with community standards of good taste.

(i) Levitt Fort Lauderdale 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 Fort Lauderdale's use of the LEVITT Name and Marks shall inure to the benefit of the Foundation. Levitt Fort Lauderdale agrees that nothing in this Agreement shall give Levitt Fort Lauderdale 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 this Agreement, and Levitt Fort Lauderdale 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 and thereafter.

(j) Levitt Fort Lauderdale agrees as follows: (i) to comply with any and all guidelines provided by the Foundation concerning Levitt Fort Lauderdale'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 Fort Lauderdale's use of the LEVITT Name and Marks; (iii) to permit the Foundation to inspect Levitt Fort Lauderdale's uses of the LEVITT Name and Marks upon reasonable notice by the Foundation to Levitt Fort Lauderdale; and (iv) to supply the Foundation with specimens showing Levitt Fort Lauderdale's use of the LEVITT Name and Marks, as may be reasonably requested from time to time by the Foundation. Levitt Fort Lauderdale agrees that the nature and quality of all goods and services offered by Levitt Fort Lauderdale 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.

(k) Upon termination of this Agreement or request of the Foundation as set forth in Section 7(b), Levitt Fort Lauderdale 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 this 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.

(l) 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.

**8. FOUNDATION CONTRIBUTION; LEVITT FORT LAUDERDALE OBLIGATIONS; PARTICIPATION IN LEVITT NETWORK; BEST PRACTICES.**

(a) Foundation Contribution.

(i) In consideration of the agreement of Levitt Fort Lauderdale to provide free concerts to the public at the Levitt Pavilion as described in Section 8(b), the Foundation hereby pledges to provide funding to Levitt Fort Lauderdale in the amount of \$1,250,000, payable as follows:

(1) A \$500,000 grant as specified in Sections 5(a)(i), (ii) and (iii) shall be made to Levitt Fort Lauderdale upon (a) Levitt Fort Lauderdale meeting the terms of Sections 5(a)(i), (ii) and (iii), as applicable, and (b) execution of this Agreement by all Parties.

(2) \$750,000 in grants for operational and program support shall be made to Levitt Fort Lauderdale 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 is presented to the public; for the avoidance of doubt, if the first calendar year during which a Series is presented to the public occurs in calendar year 2018, YEAR 1 shall mean calendar year 2018, YEAR 2 shall mean calendar year 2019, YEAR 3 shall mean calendar year 2020, YEAR 4 shall mean calendar year 2021, and YEAR 5 shall mean calendar year 2022. Each annual grant for operational and program support provided to Levitt Fort Lauderdale during the Initial Five Years shall be disbursed in three (3) payments per calendar year on March 15, July 15, and November 15. Levitt Fort Lauderdale's receipt of this funding shall be subject to Levitt Fort Lauderdale completing required reports, as provided by the

Foundation, and submitting supporting documents as requested by the Foundation, and Levitt Fort Lauderdale being in compliance with the terms of this Agreement.

(ii) In addition, prior to the Initial Five Years, Levitt Fort Lauderdale will be eligible to receive grants for a capital campaign consultant, capital campaign materials, board development, and staff professional development. The award of any such grants shall be at the discretion of the Foundation and subject to (a) Levitt Fort Lauderdale meeting the applicable grant requirements set forth by the Foundation and (b) execution of this Agreement by all Parties.

(iii) In addition, the Foundation hereby pledges to provide funding to Levitt Fort Lauderdale of up to \$50,000 in additional grants for capacity building in each of the Initial Five Years subject to Levitt Fort Lauderdale meeting the applicable grant requirements set forth by the Foundation and being in compliance with the terms of this Agreement. Capacity building grants provided to Levitt Fort Lauderdale during the Initial Five Years shall be disbursed in three (3) payments per calendar year on March 15, July 15, and November 15.

(iv) In addition, after the Initial Five Years, the Foundation hereby pledges to provide Levitt Fort Lauderdale \$100,000 for operational and program support, plus up to \$50,000 in capacity building grants, in each calendar year of the Term following the Initial Five Years, which shall be disbursed in three (3) payments per calendar year on March 15, July 15, and November 15. Such funding following the Initial Five Years is subject to Levitt Fort Lauderdale completing required reports, as provided by the Foundation, and submitting supporting documents as requested by the Foundation, meeting the applicable grant requirements set forth by the Foundation, and being in compliance with the terms and conditions of this Agreement. Further, such funding following the Initial Five Years is contingent upon a letter of understanding signed by the Levitt Parties on every fifth anniversary of the Effective Date (the "**Letter**") confirming that (a) both Levitt Parties desire to continue their relationship as outlined in this Agreement; (b) both Levitt Parties have complied with the terms and conditions of this Agreement during the previous period; (c) the expressed terms of this Agreement regarding use, management, maintenance, and name of the Levitt Pavilion and Property remain the same and in effect; and (d) when applicable, within one (1) year prior to the expiration of this Agreement, a renewed agreement between the Parties is executed.

Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge and agree that any terms in the Letter 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 terms to the Letter would require alterations to the Site, the Property, or the Facilities 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 per the terms of this Agreement, such changes shall not be applicable to the Parties or this Agreement.

(v) The funding described in this Section 8(a) shall be paid directly to Levitt Fort Lauderdale by the Foundation and shall be contingent upon Levitt Fort Lauderdale operating in accordance with the terms and conditions of this Agreement and the Other Agreements, and at all times maintaining its status as a tax-exempt corporation under Section 501(c)(3) of the Internal Revenue Code. Levitt Fort Lauderdale acknowledges and understands that not satisfying all terms and conditions of this Agreement, 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 any funds pledged to Levitt

Fort Lauderdale by the Foundation. The Parties agree that any failure by Levitt Fort Lauderdale to comply with Sections 8(d), 8(e)(i)(3–4), and 8(e)(ii)(1–5, 7) will result in the delay of delivery of any remaining funds pledged to Levitt Fort Lauderdale by the Foundation as specified in this Section 8(a) for that calendar year, until such time that Levitt Fort Lauderdale has complied with such terms. The Parties also agree that any failure by Levitt Fort Lauderdale to comply with Sections 8(b)(i–ix), 8(e)(i)(5) and 8(e)(ii)(6) will result in forfeiture of any remaining funds pledged to Levitt Fort Lauderdale by the Foundation as specified in this Section 8(a) for that calendar year.

(b) Concert Series. During the Term of this Agreement, Levitt Fort Lauderdale agrees, at its cost, to present at the Levitt 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.

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

(x) 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.

(c) Promotion. Throughout the Term, Levitt Fort Lauderdale shall, at its cost, actively create awareness of the Levitt Pavilion, promote each Series and maintain stellar reputations for the Levitt Pavilion and Series through marketing, advertising, community outreach, and publicity efforts utilizing standard best practices and appropriate current technology.

(d) Production. Levitt Fort Lauderdale 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 Venues currently in operation, providing a high quality concert experience for both Series performers and attendees.

(e) Participation in the Levitt Network. Levitt Fort Lauderdale 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, Levitt Fort Lauderdale 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 this Agreement. Levitt Fort Lauderdale further agrees and acknowledges that receipt of funding from the Foundation as described in Section 8(a) is contingent upon Levitt Fort Lauderdale operating in accordance with the terms and conditions of this Agreement, including the best practices and standards set forth by the Foundation as outlined in Section 8(g).

(i) Recognition. During the Term, Levitt Fort Lauderdale agrees to acknowledge the Foundation and recognize Levitt Fort Lauderdale's participation in the Levitt Network as follows:

(1) Levitt Fort Lauderdale shall provide notification to the Foundation regarding the date of the Levitt Pavilion's opening ceremony no later than sixty (60) days prior to such ceremony. Content and timing of press releases and public announcements of the Levitt Pavilion's opening ceremony shall be determined collaboratively by the Levitt Parties; and

(2) Levitt Fort Lauderdale shall maintain one (1) website dedicated to both the Series and the Levitt Pavilion. The domain name for such website shall be [www.levittfortlauderdale.org](http://www.levittfortlauderdale.org). Levitt Fort Lauderdale shall point the following domain names, registered in the name of or assigned to Levitt Fort Lauderdale, to [www.levittfortlauderdale.org](http://www.levittfortlauderdale.org):

- (A) [www.levittfortlauderdale.com](http://www.levittfortlauderdale.com)
- (B) [www.levittpavilionfortlauderdale.org](http://www.levittpavilionfortlauderdale.org)
- (C) [www.levittpavilionfortlauderdale.com](http://www.levittpavilionfortlauderdale.com)

Levitt Fort Lauderdale's website shall not link to any web pages or internet sites that are political, religious, indecent, scandalous, immoral or illegal in nature or could reasonably be deemed offensive or not compliant with community standards of good taste.

(3) The Foundation logo shall appear clearly on all Levitt Fort Lauderdale collateral materials including brochures, flyers, and banners and in electronic communications including digital screens, e-newsletters, e-blasts, the Levitt Fort Lauderdale website, and social media, where Levitt Fort Lauderdale, Series, and Levitt Pavilion supporters and/or sponsors are recognized and acknowledged. When appearing on the Levitt Fort Lauderdale website, the Foundation logo shall link to [www.levitt.org](http://www.levitt.org). Throughout the Term when Levitt Fort Lauderdale uses the Foundation logo, Levitt Fort Lauderdale shall present that logo without alteration by Levitt Fort Lauderdale. 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](http://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

(4) 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 Fort Lauderdale 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](http://www.levitt.org); and

(5) Levitt Fort Lauderdale shall include a paragraph regarding Levitt Fort Lauderdale'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

(6) When present at the Facilities, representatives of the Foundation shall have the opportunity to address the audience from the Levitt Pavilion stage, including at the Levitt Pavilion's opening ceremony and during Levitt Events; and

(7) Levitt Fort Lauderdale shall provide the Foundation with a high resolution, most current version of the Levitt Fort Lauderdale logo.

(ii) Reporting and Data Collection. During the Term, Levitt Fort Lauderdale 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)(v).

(1) Levitt Fort Lauderdale 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

(2) In years when a financial audit is conducted for the previous year, Levitt Fort Lauderdale 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

(3) Levitt Fort Lauderdale 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

(4) Levitt Fort Lauderdale shall complete triannual reports, to be provided by the Foundation, and submit such to the Foundation prior to each triannual disbursement of funds; and

(5) At times when Levitt Fort Lauderdale has updated its current or drafted a new strategic plan, Levitt Fort Lauderdale shall submit a copy to the Foundation with its following triannual report; and

(6) Levitt Fort Lauderdale shall cooperate with field researchers contracted by the Foundation to conduct on-site audience surveys during each Series per the parameters set by the Foundation; and

(7) Levitt Fort Lauderdale shall participate in the Foundation's initiatives pertaining to collection of data regarding social and economic impact of the Levitt Network.

(iii) Foundation Fundraising Activities.

(1) Levitt Fort Lauderdale and the Foundation acknowledge and agree that, from time to time (a) 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; (b) 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 (1) or more participants in the Levitt Network, including Levitt Fort Lauderdale; and (c) 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 Fort Lauderdale shall be required of the Foundation in order to so proceed. Notwithstanding the foregoing, the Foundation and Levitt Fort Lauderdale 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 Fort Lauderdale, then the Foundation shall so advise Levitt Fort Lauderdale of such sponsorship opportunity, which shall be coordinated by the Foundation, and Levitt Fort Lauderdale may then consider its participation in such sponsorship opportunity in its sole discretion.

(2) Levitt Fort Lauderdale 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 in the Fort Lauderdale 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 Fort Lauderdale shall be notified by the Foundation and shall inform the Foundation whether Levitt Fort Lauderdale has an existing relationship with such individual. Levitt Fort Lauderdale further acknowledges that the Foundation promotes community support of Levitt Venues and agrees that the Foundation may collect donations on behalf of Levitt Fort Lauderdale. Upon receipt of a donation

provided to the Foundation for support and enhancement of programs and activities conducted by Levitt Fort Lauderdale, the Foundation shall provide such funds and donor information to Levitt Fort Lauderdale.

(f) Foundation Obligations. During the Term, the Foundation shall maintain a website dedicated to the Foundation and its mission and activities. A link to Levitt Fort Lauderdale shall appear on the Locations drop down menu on all pages of the Foundation website. Such link shall point to a page describing Levitt Fort Lauderdale and the Facilities similar to the content currently used to describe the other Levitt Venues and locations on the Foundation website, including display of the Levitt Fort Lauderdale logo and a link to the Levitt Fort Lauderdale website. Content for such page will be collaboratively developed by Levitt Fort Lauderdale and the Foundation. Further, the Foundation shall acknowledge the existence of Levitt Fort Lauderdale and the Levitt Pavilion in all print, electronic communications and other media including press releases, publicity, advertising, and marketing describing, discussing and promoting the Levitt Network.

(g) Best Practices. Throughout the Term, Levitt Fort Lauderdale agrees to operate in accordance with the best practices and standards set forth by the Foundation as follows:

(i) Open Lawn Setting. Levitt Fort Lauderdale acknowledges that all Levitt Venues have an open lawn setting with no permanent seating and agrees that there will be no material changes to the Property or the Facilities that will alter the open lawn in front of the Levitt Pavilion. Levitt Fort Lauderdale 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 Fort Lauderdale further agrees that the footprint of the open lawn in front of the Levitt Pavilion will not be decreased for any reason, including new public amenities.

(ii) Outside Food and Beverage. Levitt Fort Lauderdale 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 beverages to the Series.

(iii) Fundraising. Levitt Fort Lauderdale 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 Fort Lauderdale 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.

(iv) Sponsors. Levitt Fort Lauderdale agrees that it will not permit sponsors for any of its events, including the Series and ticketed events, and it will not permit advertising, promotional products and marketing materials at the Property, including the Facilities and the Levitt Pavilion, 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 Fort Lauderdale agrees that it will not permit any alcohol sponsor to be a title Series sponsor, including beer, wine, and liquor as well as any alcohol-focused stores or brands of any kind.

(v) Artist Relations. Levitt Fort Lauderdale acknowledges that a priority of the Levitt Network is to maintain its artist-friendly reputation and in this spirit, Levitt Fort Lauderdale

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 Fort Lauderdale is providing staff for artist merchandise sales, in which case an appropriate percentage may be deducted.

(vi) Levitt National Tour. Levitt Fort Lauderdale 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 Fort Lauderdale 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 Fort Lauderdale 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 Venues, 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 Fort Lauderdale agrees that it will use its best efforts to schedule its Tour concert on a Friday, Saturday or Sunday. Levitt Fort Lauderdale agrees to recognize the Foundation as the lead sponsor of the Tour, as well as any Tour sponsors secured by the Foundation. Levitt Fort Lauderdale will refrain from securing any additional sponsor(s) for its Tour concert at the Levitt 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 Fort Lauderdale 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.

(vii) Sharing Experience, Expertise and Knowledge. Levitt Fort Lauderdale acknowledges that shared information amongst the Levitt Network strengthens each Friends of Levitt organization and reflects the collaborative ethos of the Levitt Network. Levitt Fort Lauderdale further acknowledges that its experience and expertise in developing and operating the Levitt 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 Venue in their city and in this spirit, Levitt Fort Lauderdale 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.

(viii) Professional Staffing. Levitt Fort Lauderdale acknowledges that to successfully execute the terms and conditions of this Agreement, including all aspects of Series production, outreach, marketing and audience development, and fundraising year-round to support Levitt Fort Lauderdale’s operations and programming, a professional staff of a minimum of four (4) year-round, full-time employees is highly recommended by the Foundation based on the history and experiences of other Friends of Levitt organizations. Levitt Fort Lauderdale agrees to maintain at all times a professional staff of a minimum of three (3) year-round, full-time employees, including an Executive Director.

(ix) Board Support. To contribute to the ongoing financial stability of Levitt Fort Lauderdale and achieve 100% board giving every year, each member of Levitt Fort Lauderdale's board of directors shall annually provide a direct personal contribution to Levitt Fort Lauderdale, independent of support for fundraising events, in-kind donations, professional services provided, sponsorships secured, and gifts solicited.

(x) Availability of Levitt Pavilion for Use by Other Groups. Levitt Fort Lauderdale acknowledges that Levitt Venues are designed for use by groups other than Friends of Levitt organizations and in this spirit, Levitt Fort Lauderdale agrees to make known the availability of the Facilities, including the Levitt Pavilion, for use by other groups on Levitt Fort Lauderdale's website in an easy to find and user-friendly manner.

## **9. LEVITT EVENTS; NON-LEVITT EVENTS.**

(a) Events. The City hereby grants Levitt Fort Lauderdale the right to use the Facilities, including the Levitt Pavilion, and the Property rent free for each Series and the Levitt Fundraising Events (defined below) during the Term, with this right commencing upon completion of the construction of the Facilities.

(i) First Priority. Following completion of construction of the Facilities, subject to Section 9(c), Levitt Fort Lauderdale will have first priority to use the Facilities, including the Levitt Pavilion, and the Property on ninety (90) separate days during each calendar year beginning on January 1 and concluding on December 31 of each calendar year (the "**Series Months**") excluding the first Sunday of each month for the City's Sunday Jazz Brunch, for the purposes of preparing for, including setup and breakdown days and times, and presenting a minimum of fifty (50) free concerts to the public and other events, including up to six (6) ticketed events, for the purpose for which is to raise awareness and funds to support Levitt Fort Lauderdale and the Series (the "**Levitt Fundraising Events**" and, together with the Series, the "**Levitt Events**"). Levitt Fort Lauderdale agrees to work collaboratively with all other events currently scheduled at the Site in such a manner not to interfere with previously scheduled events. Further, Levitt Fort Lauderdale may use the Facilities, including the Levitt Pavilion, and the Property for Levitt Events outside of the Series Months upon written approval of the Director, which shall not be unreasonably withheld.

(ii) Levitt Series Schedule. Levitt Fort Lauderdale will submit to the Director its proposed schedule of dates and times (but not performers/artists) for the Levitt Events, including the extra days for setup and breakdown (the "**Levitt Series Schedule**"), no later than October 1 of each calendar year for the following calendar year. Once the Levitt Series Schedule is submitted, the Facilities and the Property shall be considered booked for use by Levitt Fort Lauderdale on the dates set forth in the Levitt Series Schedule. The Parties acknowledge that scheduling for YEAR 1 will depend on the progress of the Facilities construction, and will make good faith efforts to communicate and establish the Levitt Series Schedule for YEAR 1 as construction allows.

(iii) Changes to Levitt Events. Levitt Fort Lauderdale and the City Manager or the City Manager's designee may, at any time upon written mutual agreement, alter the Series Months without the necessity of modifying this Agreement. Further, should Levitt Fort Lauderdale discover that a previously scheduled date is no longer needed for a Levitt Event, Levitt Fort Lauderdale will notify the Director in writing and will make such date available for use by third parties for a Non-Levitt Event.

(iv) Production. Levitt Fort Lauderdale shall supervise and coordinate setup and breakdown of Levitt Events, including sound equipment, lights, volunteers, stagehands, and the like.

(b) Non-Levitt Events. The Facilities, including the Levitt Pavilion, and the Property shall remain an available performance venue and event space to third parties at times when Levitt Events are not scheduled. The City desires for Levitt Fort Lauderdale, on a year-round basis, to operate and manage the Facilities, book, coordinate, and manage live performances and events at the Facilities at times when Levitt Events are not scheduled ("**Non-Levitt Events**"), and promote the availability of the Facilities for Non-Levitt Events. Levitt Fort Lauderdale hereby agrees to provide such services as further provided in this Agreement. Levitt Fort Lauderdale may contract an outside entity to assist with the operation, management, and promotion of the availability of the Facilities as described in this Section 9(b) and Section 10.

(c) Unavailable for Event Usage. Notwithstanding anything to the contrary contained herein, the City reserves the right to prohibit use of the Facilities and the Property for Levitt Events and Non-Levitt Events due to planned or anticipated work or rest periods at the Site or by mutual agreement of the City and Levitt Fort Lauderdale. The City agrees to consult with Levitt Fort Lauderdale when determining any dates or times the Facilities and the Property may be unavailable for use and will, at minimum, make the Facilities and the Property available for a minimum of ninety (90) separate dates during the Series Months for Levitt Fort Lauderdale to prepare for, including setup and breakdown days and times, and to present the Levitt Events. Following completion of construction of the Levitt Pavilion, the City agrees to notify Levitt Fort Lauderdale in writing, on or before October 1 of each calendar year, of any dates or times during the following calendar year that the Facilities and the Property will be unavailable for Levitt Events and Non-Levitt Events due to planned or anticipated work or rest periods at the Site. In addition, the City reserves the right to prohibit the use of the Facilities and the Property for Levitt Events and Non-Levitt Events at any time due to an unforeseen emergency.

(d) Advertising and Promotional Services. Levitt Fort Lauderdale shall engage in such advertising and promotional activities as may be calculated to develop the full potential of the Facilities and the Property and the cultivation of broad community support. The City agrees to advertise and promote the availability of the Facilities, including the Levitt Pavilion, and the Property as it does for similar City-owned facilities and event spaces. Levitt Fort Lauderdale and the City agree that they shall not permit Sponsorships (defined below), advertising, promotional products and marketing materials within the Facilities and the Property or associated with Levitt Events or Non-Levitt Events in any capacity that promote the sale or use of any of the following: (i) firearms, (ii) pornography, (iii) tobacco, and (iv) illegal activities.

(e) Cooperation. Levitt Fort Lauderdale and the City agree to work cooperatively prior to the first Levitt Event in YEAR 1 in order to adequately prepare for such Levitt Event. Further, Levitt Fort Lauderdale and the City agree to work cooperatively throughout the Term regarding security, street closings, parking, public toilets, and public safety issues relating to Levitt Events and Non-Levitt Events at the Facilities and the Property. Levitt Fort Lauderdale and the City agree to meet as necessary to discuss and resolve any public safety issues that arise or are anticipated to arise during Levitt Events and Non-Levitt Events. The City shall provide access to and shall not charge Levitt Fort Lauderdale for use of water, sewer, and electricity during Levitt Events and Non-Levitt Events.

## **10. MANAGEMENT OF PAVILION.**

(a) Scope of Services. The City hereby engages Levitt Fort Lauderdale to perform and furnish, and Levitt Fort Lauderdale agrees to perform and furnish, such management services as are needed to operate and manage the Facilities and the Property for Levitt Events and Non-Levitt Events alike, and to book, coordinate, and manage Non-Levitt Events. In performing the activities and services contemplated and required by this Section 10, Levitt Fort Lauderdale agrees to comply with all Applicable Laws.

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

(i) Personnel. Provide employees and contractors as are reasonably necessary to satisfactorily perform the services and activities contemplated and required to be performed by Levitt Fort Lauderdale under this Section 10 (including security, stagehands, and sound and lighting technicians). Levitt Fort Lauderdale 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 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 Facilities, including the Levitt Pavilion, and the Property and coordinate and interface with artists, artists' management, promoters, presenting entities, non-profit organizations, event organizers, and the like. In performing this service, Levitt Fort Lauderdale shall:

(1) Provide tours of the Facilities and the Property to interested parties.

(2) Administer and negotiate the terms of booking commitments for Non-Levitt Events at the Facilities and the Property. Booking agreements shall be executed by Levitt Fort Lauderdale in its own name and, subject to Section 10(b)(iii)(7), without prior approval of the City Manager or the City Manager's designee.

(3) Establish to the extent practicable a schedule of reasonable fees and charges for rent, production and incidental expenses to be paid by users of the Facilities and the Property to Levitt Fort Lauderdale pursuant to the booking agreements. In determining such fees and charges, Levitt Fort Lauderdale shall evaluate comparable charges for similar goods and services at similar facilities. Without limiting the foregoing, Levitt Fort Lauderdale maintains the right to establish and retain 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 City Manager, which shall be provided on or before thirty (30) days after receipt of the proposed schedule or else deemed approved.

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

(5) Require that proper certificates and other evidence of insurance indicating compliance with the applicable insurance requirements set forth in the booking agreement

are furnished and kept in force at all times by all entities and persons contracting with Levitt Fort Lauderdale for use of the Facilities and the Property.

(6) Limit the scale and activities of Non-Levitt Events to that which is appropriate for the Facilities and the Property in consideration of the Facilities and the Property's size and character.

(7) Confer with the Director 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 at the Site and that the Facilities and the Property are not unavailable due to planned or anticipated work or rest periods at the Site.

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

(9) Ensure all Non-Levitt Events are family-friendly and appropriate for all ages.

(c) Security and Public Safety. Levitt Fort Lauderdale 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 Fort Lauderdale and the City during Levitt Events and Non-Levitt Events, and shall, upon request, provide a copy of the policies and programs, and any amendments thereto, to the Director. Levitt Fort Lauderdale shall maintain and, upon request of the Director, submit to the Director incident reports, including reports of criminal acts, property damage, and personal injury. Any incidents which involve an insurance claim under Section 19 shall be promptly reported by Levitt Fort Lauderdale to the Director. Levitt Fort Lauderdale 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.

(d) General Maintenance and Repair. The City agrees that it shall be responsible to provide maintenance and repair to the Facilities, including the Levitt Pavilion, in accordance with City policies and procedures. Levitt Fort Lauderdale shall provide, at its own expense, for all cleaning and janitorial services of the Levitt Pavilion non-public interior spaces, including non-public restroom cleaning and replacement of non-public restroom supplies as needed. Levitt Fort Lauderdale shall provide, at its own expense, for all maintenance and repair to the Sound and Lighting Equipment. Levitt Fort Lauderdale shall report any and all damages to the Facilities and the Property in writing immediately to the Director. Any person found by Levitt Fort Lauderdale to be causing damage to the Facilities or the Property shall be immediately reported to law enforcement.

(e) No Discrimination. Levitt Fort Lauderdale shall not discriminate against any person on the basis of race, age, color, religion, military status, gender, national origin, sexual orientation, gender variance, marital status, or physical or mental disability.

(f) Contracting. Levitt Fort Lauderdale may contract with third party vendors and service providers to perform activities and services which Levitt Fort Lauderdale is obligated to perform under this Agreement. Unless a specific waiver is granted in writing by the City Commission, 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 Fort Lauderdale, including insurance and indemnification requirements. Further, no such contract shall relieve Levitt Fort Lauderdale from ensuring that all required activities and services are timely and satisfactorily performed. Compliance with the terms and restrictions of this Section 10(f) is the responsibility of Levitt Fort Lauderdale. Levitt Fort Lauderdale shall, upon request, promptly provide the Director with a copy of any written contract or agreement for work or services provided at the Facilities and the Property.

(g) 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 Facilities and the Property and which is not specifically designated the responsibility of either the City or Levitt Fort Lauderdale under this Agreement, the City and Levitt Fort Lauderdale shall cooperate and coordinate in an effort to evaluate such needs and the associated costs and to develop a strategy and plan to fulfill any such necessary service or action.

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

(a) Structural and Exterior Elements. The City will, at its own expense, maintain, repair and replace (as necessary) structural elements of the Facilities, 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 Property ("**Structural and Exterior Elements**").

(b) Interior Elements. The City will, at its own expense, maintain, repair and replace (as necessary) all interior elements of the Facilities, including windows and window frames; doors and door frames; handles and locks; cabinets and counters; carpet, floor tiles, and other flooring; interior paints and stains; non-structural walls; woodwork, wall paneling and tiles, drywall, and plastering; plumbing items, including sinks, toilets, urinals, and associated above floor or below ceiling pipes and drains; light switches, plugs, and lighting; ceiling tiles; all built in or attached electrical fans; drinking fountains; fences and similar perimeter structures; and items of similar character or use ("**Interior Elements**").

(c) Systems. The City will, at its own expense, 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 ("**Systems**") located at or in the Facilities and the Property. Notwithstanding the previous sentence, Levitt Fort Lauderdale agrees to be responsible for charges relating to monthly phone service as set forth in Section 18.

(d) Property Grounds Maintenance. The City will, at its own expense, maintain the grounds of the Property, including maintenance of pathways, public lighting, the lawn and landscaping, and trash and litter removal ("**Grounds Maintenance**"). After each and every Levitt Event and Non-Levitt Event, the City shall remove trash and debris from the Facilities, the Property and immediately adjacent areas including walkways, public restrooms, and landscape areas. The City will provide temporary garbage carts, cans, and recycling containers as needed throughout the Property during Levitt Events and Non-Levitt Events. As soon as necessary and practicable following each Levitt Event and Non-Levitt Event, the City will remove such temporary containers and dispose of trash and recycling in dumpsters for ultimate removal by the City from the Site.

(e) Public Restrooms. The City shall provide, at its own expense, for cleaning, sanitizing, and supplying public restrooms permanently located within the Property during Levitt Events and Non-Levitt Events and in a manner determined by the City when Levitt Events and Non-Levitt Events are not session. The City likewise shall be responsible for any non-structural repair and maintenance issues and replacement of items (as necessary) that arise with regard to public restrooms permanently located within the Property and any Structural and Exterior Elements, Interior Elements, and Systems with respect to the public restrooms.

(f) Inspection and Repair. The City or its contractors and agents shall have the right to enter into or on the Facilities and the Property at all reasonable times to inspect the Facilities and the Property 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 Sections 11(a–e). Except for emergency situations, the City will make every reasonable effort to timely notify Levitt Fort Lauderdale of any pending work and to coordinate such work so as to minimize any disruption to Levitt Fort Lauderdale’s activities, including Levitt Events and Non-Levitt Events, at the Facilities and the Property.

(g) Process. Levitt Fort Lauderdale will annually by March 1\_of each calendar year during the Term provide to the City a schedule of proposed capital improvements and capital equipment purchases for the purpose of allowing the City to consider such projects and appropriate funds as necessary.

(h) Emergency. In the event of an existing or imminent emergency where the Facilities or public safety are at substantial risk or neighboring property or residents are at substantial risk due to unsafe or unhealthy conditions in the Facilities or in the Property, Levitt Fort Lauderdale shall have the right (not the obligation) upon notice to the City and with the City’s consent, to make capital expenditures at the Facilities for emergency repair; funds expended for such emergency repair shall be reimbursed to Levitt Fort Lauderdale by the City within thirty (30) days.

## **12. GENERAL OPERATIONAL REQUIREMENTS.**

(a) Days and Hours of Operation. The lawn area within the Property shall be open to the general public during Site hours except during times when Levitt Events or Non-Levitt Events are taking place, including rehearsal, load-in and load-out, setup and breakdown times. The Levitt Pavilion, exclusive of service, storage, dressing rooms, green rooms, non-public restrooms, and other non-public areas, shall be open to the general public during Site hours except during times when Levitt Events or Non-Levitt Events are taking place, including rehearsal, load-in and load-out, setup and breakdown times. In addition, any public restrooms located within the Property shall be open to the general public at the sole discretion of the Director, but in all instances during Levitt Events and Non-Levitt Events at the Facilities and the Property. Service, storage, dressing rooms, green rooms, non-public restrooms and other non-public areas of the Levitt Pavilion shall not be accessible to the general public.

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

(c) City Access. The City shall, at all reasonable times, have access to the Levitt Pavilion for the purposes of visitation and inspection; provided, however, that twenty-four (24) hours’

notice shall be provided by the City to Levitt Fort Lauderdale prior to the City visiting or inspecting storage areas within the Levitt Pavilion that are exclusively used by Levitt Fort Lauderdale. Notwithstanding the foregoing, notice shall not be required in the event of an emergency.

**13. STORAGE SPACE.**

The Facilities shall include climate-controlled, secure storage space for the year-round exclusive use of Levitt Fort Lauderdale. The City will maintain the physical structure of the storage space and the maintenance relating to the climate-controlled nature of the storage space.

**14. CONCESSIONS; ALCOHOL.**

(a) Concessions. Levitt Fort Lauderdale shall have the exclusive right to conduct on its own, or contract with third parties to provide for, the operation of concessions for selling food, non-alcoholic beverages, alcoholic beverages (subject to the terms of Section 14(b)), and merchandise at the Facilities and the Property during Levitt Events and Non-Levitt Events. In addition, Levitt Fort Lauderdale shall have the exclusive right to itself provide for, or enter into contracts with vendors allowing for, the sale and service of food, beverages and merchandise from mobile facilities, such as food trucks, food carts and tents or canopies within the Property during Levitt Events and Non-Levitt Events. All proceeds of all concessions sales shall be paid to, and retained by, Levitt Fort Lauderdale. Levitt Fort Lauderdale may establish a fair and uniform set of fees and charges to be collected from vendors for the right to provide food, beverage and merchandise sales and service in and to the Facilities and the Property under its vendor contracts. The City shall not allow or permit any sales of food, beverages or merchandise at the Facilities and the Property other than by Levitt Fort Lauderdale and its vendors during Levitt Events and Non-Levitt Events. All concession agreements shall contain a provision that the agreements may be suspended or terminated, as appropriate, if it is determined by the Director that the concessionaire has (i) failed to comply with applicable health and safety laws (local, state and federal), (ii) failed to pay applicable taxes, fees, fines or charges (local, state or federal), (iii) failed to obtain all necessary permits and pay associated fees, or (iv) failed to substantially conform with other Applicable Law, including applicable licensing requirements.

(b) Alcohol. Levitt Fort Lauderdale may obtain or contract with a third-party vendor to obtain a liquor license for the Facilities and the Property in order to serve and/or sell alcoholic beverages at the Facilities and the Property during Levitt Events and Non-Levitt Events. Levitt Fort Lauderdale, its contractors and other users of the Facilities and the Property may serve and/or sell alcoholic beverages at the Facilities and the Property subject to (i) Levitt Fort Lauderdale or its third-party vendor obtaining any required governmental approvals and licenses for the service or sale of alcoholic beverages and (ii) Levitt Fort Lauderdale or its third-party vendor obtaining and maintaining liquor liability insurance as reasonably required by the Director.

(c) Vendors. Vendors shall be liable to the City for any damages the vendors, their employees, agents, or contractors caused to the Site or are otherwise caused by the operation or activities of the vendors' businesses, and this obligation shall be written into all contracts between Levitt Fort Lauderdale and such vendors. Vehicles permitted in the 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 Site amenities caused by vendors' vehicles shall be paid by such vendor.

**15. GIFTS AND SPONSORSHIPS; GRANTS.**

(a) Gifts and Sponsorships. Levitt Fort Lauderdale shall have the right to accept and utilize, for the benefit and use of Levitt Fort Lauderdale, gifts, donations, and contributions of money and personal property from individuals and for-profit and non-profit entities ("**Gifts**") and money and personal property provided by individuals and for-profit and non-profit entities with certain benefits, recognition, or naming rights being a condition of providing the money or personal property ("**Sponsorships**"). Levitt Fort Lauderdale may, in its discretion, refuse to accept any Gift or Sponsorship if Levitt Fort Lauderdale determines that such Gift or Sponsorship would not be in the best interests of Levitt Fort Lauderdale. Levitt Fort Lauderdale shall develop policies regarding the solicitation and use of Gifts and Sponsorships; the acceptability of and compliance with any terms and conditions of Gifts or Sponsorships; any formal recognition, acknowledgments, or memorials associated with Gifts or Sponsorships, including signs at the Facilities and the Property and the naming of Facilities or features in the Property (provided, however, that the Levitt Pavilion shall not be re-named). These policies and Levitt Fort Lauderdale's implementation of these policies must be in conformance with the terms and conditions of this Agreement and Applicable Law. Levitt Fort Lauderdale agrees that it shall not permit Sponsorships within the Property that promote the sale or use of any of the following: (i) firearms; (ii) pornography; (iii) tobacco; and (iv) illegal activities.

No capital equipment or gifts to be gifted to the City shall be acquired by Levitt Fort Lauderdale without consent and approval of the Director. Any assets to be gifted to the City for use at or in connection with the Facilities shall remain the property of the City but may be used or managed by Levitt Fort Lauderdale to the extent necessary or appropriate in filling Levitt Fort Lauderdale responsibilities.

(b) Grants. Levitt Fort Lauderdale shall have the right to apply for, accept and utilize, for the benefit and use of Levitt Fort Lauderdale, grants and other governmental or private financial assistance ("**Grants**"), subject to compliance with Applicable Law.

(c) Cooperation. Levitt Fort Lauderdale and the City agree to collaborate and support each other's efforts to obtain Gifts, Sponsorships and Grants for the operation and improvement of the Facilities and the Property and the support and enhancement of programs and activities conducted by Levitt Fort Lauderdale at the Facilities and the Property. Any matching funds requirement of a Gift or Grant shall be the responsibility of Levitt Fort Lauderdale unless the City has approved the matching funds requirement in advance of the proposal and appropriated its share of the matching funds. Any Gift, Sponsorship or Grant that requires that certain covenants, conservation easements, or other restrictions be imposed on the Facilities and the Property in whole or part, as a condition of obtaining the Gift, Sponsorship or Grant must be pre-approved in writing by the City Manager or the City Manager's designee.

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

## **16. NAMES AND LOGOS AND PHOTOGRAPHIC RIGHTS.**

(a) Names and Logos of the City. The City grants to Levitt Fort Lauderdale the non-exclusive right to use the names and logos of the City, including City departments in connection with

Levitt Fort Lauderdale's activities at the Facilities and the Property. In no event shall Levitt Fort Lauderdale represent or indicate, by the particular use of a name or logo, that the City is engaged in any joint venture with Levitt Fort Lauderdale with respect to Levitt Fort Lauderdale's activities at the Facilities and the Property. No other intellectual property rights of the City other than those expressly identified herein are being licensed by the City for use by Levitt Fort Lauderdale.

(b) Names and Logos of Levitt Parties. 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 Facilities and the Property; 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. Levitt Fort Lauderdale grants to the City the non-exclusive right to use the names and logos of Levitt Fort Lauderdale's sponsors and affiliates (if any); provided, the City may not use any logos, trademarks, or trade names owned by or licensed to Levitt Fort Lauderdale's sponsors or their affiliates without the prior written approval of Levitt Fort Lauderdale, which may be withheld as Levitt Fort Lauderdale deems appropriate. 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 Facilities and the Property. No other intellectual property rights of the Levitt Parties (or their affiliates' or sponsors') other than those expressly identified herein are being licensed by the Levitt Parties for use by the City.

(c) Photographic Rights Retained. 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 Facilities and the 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 Fort Lauderdale and a third party appearing at the Levitt Pavilion for a Levitt Event or a Non-Levitt Event will disallow or restrict photographing or recording, and in such circumstances the Parties will abide by those terms. Levitt Fort Lauderdale agrees to use its best efforts to secure necessary permissions from any third party appearing at the Levitt Pavilion for a Levitt Event or a Non-Levitt Event for which a Party has interest in making its own photographs, audio and video recordings at least forty-five (45) days prior to such appearance. If Levitt Fort Lauderdale is unable to secure such necessary permission at least forty-five (45) days prior to such appearance after using its best efforts, Levitt Fort Lauderdale agrees to provide the Foundation with the contact information for the third party at least forty-five (45) days prior to the appearance and consents to the Foundation contacting the third party to secure the necessary permissions as discussed herein.

## **17. COST AND EXPENSES; FUNDING.**

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

(b) Levitt Fort Lauderdale Funding. In order for Levitt Fort Lauderdale to perform the activities and obligations required of it under this Agreement and achieve and continue the public purposes of its mission as set forth in this Agreement, Levitt Fort Lauderdale shall retain all of the following funds:

(i) Any and all funds generated during, for, or from Levitt Events at the Facilities and the Property including Gifts, Sponsorships, Grants, concessions, admission fees, and other Levitt Fort Lauderdale revenue generating activities; and

(ii) Any and all funds generated during, for, or from Non-Levitt Events at the Facilities and the Property including concessions, rent of equipment, venue rental fees, administrative fees, payment of incidental expenses, and other revenue generating activities; and

(iii) Donations of money or grants made to the City for the use and benefit of Levitt Fort Lauderdale shall be transferred to the control of Levitt Fort Lauderdale unless the donor or grantor has provided to the contrary, in which event the City agrees to use such donations for the benefit of Levitt Fort Lauderdale in its discretion in collaboration with Levitt Fort Lauderdale.

#### **18. UTILITIES.**

Starting with the first day of occupancy of the Facilities and the Property by Levitt Fort Lauderdale, Levitt Fort Lauderdale shall provide, at its own expense, the following utilities at the Levitt Pavilion as reasonably needed for all activities and obligations to be performed by Levitt Fort Lauderdale under this Agreement: wifi, telephone service and email service. Starting with the first day of occupancy of the Facilities and the Property by Levitt Fort Lauderdale, the City shall provide year-round, at its own expense, the following utilities as reasonably needed to operate and maintain the Facilities and the Property: water, sewer, electricity, and gas.

#### **19. INSURANCE.**

During the term of this Agreement, Levitt Fort Lauderdale at its sole expense, shall provide insurance of such a type and with such terms and limits as noted below. Providing and maintaining adequate insurance coverage is a material obligation of Levitt Fort Lauderdale. Levitt Fort Lauderdale shall provide the Foundation and the City a certificate of insurance evidencing such coverage. Levitt Fort Lauderdale's insurance coverage shall be primary insurance as respects to the Foundation and the City for all applicable policies. The limits of coverage under each policy maintained by Levitt Fort Lauderdale shall not be interpreted as limiting Levitt Fort Lauderdale's liability and obligations under this Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in Florida and possess an A.M. Best rating of A-, VII or better, subject to the approval of the City's Risk Manager.

The coverages, limits and/or endorsements required herein protect the primary interests of the City, and these coverages, limits and/or endorsements shall in no way be required to be relied upon when assessing the extent or determining appropriate types and limits of coverage to protect Levitt Fort Lauderdale against any loss exposures, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the City's review or acknowledgement, is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Levitt Fort Lauderdale under this Agreement.

The following insurance policies/coverages are required:

##### Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$1,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage and Personal and Advertising Injury
- \$1,000,000 each occurrence and \$2,000,000 aggregate for Products and Completed Operations

Policy must include coverage for Contractual Liability and Independent Contractors.

The Foundation and the City, a political subdivision of the State of Florida, and their respective officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of Levitt Fort Lauderdale. The coverage shall contain no special limitation on the scope of protection afforded to the Foundation or the City, and their respective officials, employees, or volunteers.

#### Liquor Liability Coverage

Levitt Fort Lauderdale shall provide evidence of coverage for liquor liability in an amount not less than \$1,000,000 per occurrence. If the Commercial General Liability policy covers liquor liability (e.g. host or other coverage), Levitt Fort Lauderdale shall provide written documentation to confirm that coverage already applies to this Agreement.

#### Business Automobile Liability

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than \$1,000,000 combined single limit each accident.

If Levitt Fort Lauderdale does not own vehicles, they shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

#### Workers' Compensation and Employer's Liability

Limits: Workers' Compensation – Per Chapter 440, Florida Statutes  
Employers' Liability - \$500,000

Any firm performing work on behalf of the City must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statute.

Levitt Fort Lauderdale must be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act or Jones Act, if applicable.

#### Insurance Certificate Requirements

- Levitt Fort Lauderdale shall provide the City and the Foundation with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of work contemplated in this Agreement.
- Levitt Fort Lauderdale shall provide a Certificate of Insurance to the City and the Foundation with a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.

- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of Levitt Fort Lauderdale to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- d. In the event the Agreement term goes beyond the expiration date of the insurance policy, Levitt Fort Lauderdale shall provide the City and the Foundation with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The City reserves the right to suspend the Agreement until this requirement is met.
- e. The certificate shall indicate if coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the certificate will show a retroactive date, which should be the same date of the initial contract or prior.
- f. The Foundation and the City shall be named as an Additional Insured with a Waiver of Subrogation.
- g. The Agreement, Bid/Contract number, event dates, or other identifying reference must be listed on the certificate.

The Certificate Holder should read as follows:

City of Fort Lauderdale  
100 N. Andrews Avenue  
Fort Lauderdale, FL 33301

Mortimer & Mimi Levitt Foundation  
1910 W. Sunset Blvd., Suite 600  
Los Angeles, CA 90026

Levitt Fort Lauderdale has the sole responsibility for all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the Foundation and the City as an Additional Insured shall be at Levitt Fort Lauderdale's expense.

If Levitt Fort Lauderdale's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, Levitt Fort Lauderdale may provide an Umbrella/Excess insurance policy to comply with this requirement.

Levitt Fort Lauderdale's insurance coverage shall be primary insurance as respects to the Foundation and the City, a political subdivision of the State of Florida, and their respective officials, employees, and volunteers. Any insurance or self-insurance maintained by the Foundation and the City, and their respective officials, employees, or volunteers shall be excess of Applicant's insurance and shall be non-contributory.

Any exclusions or provisions in the insurance maintained by Levitt Fort Lauderdale that excludes coverage for work contemplated in this Agreement shall be deemed unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the contract work has been accepted by the City, and any lapse in coverage shall be considered breach of contract. In addition, Levitt Fort Lauderdale

must provide confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The City reserves the right to review, at any time, coverage forms and limits of Levitt Fort Lauderdale's insurance policies.

All notices of any claim/accident (occurrences) associated with work being performed under this Agreement, shall be provided to Levitt Fort Lauderdale's insurance company and the City's Risk Management office as soon as practicable.

It is Levitt Fort Lauderdale's responsibility to ensure that all third-party vendors comply with these insurance requirements. All coverages for subcontractors shall be subject to all of the requirements stated herein. Levitt Fort Lauderdale further confirms that Levitt Fort Lauderdale's insurance will apply as excess over any other valid and collectible coverage of their vendors. Any and all deficiencies are the responsibility of Levitt Fort Lauderdale.

Subject to the limits set under Florida Statute 768.28, the City of Fort Lauderdale is self-insured and is responsible for providing coverage for its own employees and facilities against liability for bodily injury, death and property damage that may arise out of or be based on the use of its facilities.

## **20. DAMAGE AND REPAIR.**

The City shall obtain replacement cost insurance for damage by fire, flood, windstorm, or casualty to the Facilities. If the Facilities, or any portion thereof, is damaged or destroyed during the Term of this Agreement by fire, flood, windstorm, or other casualty, or any other cause, Levitt Fort Lauderdale shall give prompt notice to the City and the Foundation. The City shall, to the extent that there are sufficient insurance proceeds, including any applicable deductible with due diligence, repair, rebuild, or replace the Facilities so that after such repairing, rebuilding, or replacing, it shall be substantially the same, to the extent of insurance proceeds, as prior to such damage or destruction. Levitt Fort Lauderdale shall provide to the Foundation a written estimated schedule for repairing, rebuilding or replacing the Facilities as agreed to between the City and Levitt Fort Lauderdale within thirty (30) days of such damage by fire or casualty occurrence. If the City fails to undertake such work within ninety (90) days after notice of the fire or other casualty, or fails to complete the work diligently, within a reasonable time agreed to between the City and Levitt Fort Lauderdale, the Levitt Parties may, at their option, terminate this Agreement by written notice, signed by both Levitt Parties, to the City effective as of the date sent. If the repairing, rebuilding, or replacing of the Facilities is not completed within one (1) year of the fire or casualty occurrence, the Term shall be automatically extended by the amount of time equal to the date of the fire or casualty occurrence through the date of completion of repair, rebuild, or replacement of the Facilities. Notwithstanding anything to the contrary contained herein, to the extent such loss is not covered by insurance, no Party shall have any obligations for repairing, rebuilding, or replacing the Facilities in the event all or a substantial part of the Facilities shall be destroyed or damaged by fire or other casualty. Further, notwithstanding anything to the contrary contained herein, no Party shall be liable to any other Party for any failure, delay, or interruption in performing its obligations under this Agreement due to damage to the Facilities caused by fire or other casualty.

## **21. INDEMNIFICATION.**

(a) To the maximum extent permitted by law, Levitt Fort Lauderdale hereby agrees to indemnify, hold harmless and defend the City and the Foundation, each Party's respective appointed

and elected officials, officers, directors, employees, volunteers, agents, affiliates, successors, and assigns (collectively, "Indemnified Party"), from and against any and all claims, liabilities, suits, demands or causes of action, obligations, losses or damages of any nature whatsoever, government charges or fines, costs and expenses, including reasonable attorneys' and accountants' fees and costs, to which the Indemnified Party may become subject on account of, arising out of, or related to any act, omission, conduct or activity of Levitt Fort Lauderdale or any of its officers, directors, employees, volunteers, agents, affiliates, successors or assigns, on account of, arising out of or related to this Agreement or the activities contemplated hereunder. Any defense provided by Levitt Fort Lauderdale shall be at no cost or expense whatsoever to the City or to the Foundation, provided that the City (exercisable by the City Attorney) and the Foundation shall reserve the right to select counsel of their own choosing. The provisions of this Section shall survive the Term of this Agreement.

(b) To the maximum extent permitted by law, the Foundation hereby agrees to indemnify, hold harmless and defend Levitt Fort Lauderdale and the City, each Party's respective appointed and elected officials, officers, directors, employees, volunteers, agents, affiliates, successors, and assigns (collectively, "Indemnified Party"), from and against any and all claims, liabilities, suits, demands or causes of action, obligations, losses or damages of any nature whatsoever, government charges or fines, costs and expenses, including reasonable attorneys' and accountants' fees and costs, to which the Indemnified Party may become subject on account of, arising out of, or related to any act, omission, conduct or activity of the Foundation or any of its officers, directors, employees, volunteers, agents, affiliates, successors or assigns, on account of, arising out of or related to this Agreement or the activities contemplated hereunder. Any defense provided by the Foundation shall be at no cost or expense whatsoever to the City or to Levitt Fort Lauderdale, provided that the City (exercisable by the City Attorney) and Levitt Fort Lauderdale shall reserve the right to select counsel of their own choosing. The provisions of this Section shall survive the Term of this Agreement.

## **22. PATENT, TRADEMARK AND COPYRIGHT INDEMNIFICATION.**

Levitt Fort Lauderdale agrees to secure and maintain, or cause to be secured and maintained, licenses for the use of musical works, videos, and other matters protected by intellectual property rights which are used at the Facilities and the Property for Levitt Events (including licenses from ASCAP, BMI, and SESAC). Levitt Fort Lauderdale agrees to protect, defend, indemnify and hold harmless the City and the Foundation, including those parties' respective appointed and elected officials, officers, directors, employees, volunteers, agents, affiliates, successors and assigns, as applicable, against any and all claims or lawsuits based on the violation of any intellectual property right which arises out of Levitt Events at the Facilities and the Property.

## **23. 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 Party related in any way to this Agreement or the actions or activities of a Party related in any way to this Agreement, written notice thereof shall be given to the other Parties, within five (5) 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 Party.

## **24. TAXES; LICENSES; LIENS; DEBTS.**

(a) Taxes. Levitt Fort Lauderdale shall collect and remit all sales taxes and other taxes as required by law (local, state, or federal) which arise from goods or services sold by Levitt Fort Lauderdale, shall promptly pay all such 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 Fort Lauderdale shall take out, keep current, and comply with all licenses, permits, or other authorizations (local, state, or federal) required for the performance of its obligations under this Agreement. The Director will endeavor to facilitate Levitt Fort Lauderdale's effort to obtain any such license, permit, or other authorization.

(c) Liens. Levitt Fort Lauderdale 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 Fort Lauderdale.

(d) Debts. Levitt Fort Lauderdale shall promptly pay, when due, all bills, debts, and obligations incurred in connection with its obligations under this Agreement and shall not permit the same to become delinquent.

(e) Final Adjudication. Levitt Fort Lauderdale 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.

## **25. REPORTS AND AUDITS.**

Levitt Fort Lauderdale shall comply with the following reporting and auditing requirements:

(a) Levitt Fort Lauderdale shall provide to the Director on or before October 1 of each year of the Term a written report of its activities undertaken, contributions and sponsorships received, 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 Fort Lauderdale and the Board Treasurer for Levitt Fort Lauderdale. The first written report shall be due on or before October 1, 2017.

(b) Upon City request, Levitt Fort Lauderdale agrees that any duly authorized representative of the City shall, at 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 Fort Lauderdale shall also provide, or cause its contractors to provide, adequate documentation of expenditures, including invoices and payroll, with respect to any services provided under this Agreement.

## **26. NON-DISCRIMINATION.**

The Levitt Parties each agree to comply with all Applicable Laws 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 Facilities and the Property, and participation in any public program at the Facilities and the Property. In connection with the performance of its obligations under this Agreement, Levitt Fort Lauderdale 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.

## **27. ENVIRONMENTAL COMPLIANCE.**

In the performance of its obligations under this Agreement, Levitt Fort Lauderdale shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency ("EPA"), and any other governmental agency with the authority to promulgate environmental rules and regulations ("**Environmental Laws**"). Within ten (10) days of receipt of an invoice, Levitt Fort Lauderdale shall promptly reimburse the City for any fines or penalties levied against the City because of Levitt Fort Lauderdale's failure to comply with any Environmental Laws as and if required by this Section 27. Levitt Fort Lauderdale shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials (defined below) on, under, in, above, to, or from the Facilities and the Property except in strict compliance with the Environmental Laws. Levitt Fort Lauderdale shall not introduce Hazardous Materials into the Facilities plumbing systems or otherwise release or discharge Hazardous Materials on the Facilities and the Property in violation of the Environmental Laws. Levitt Fort Lauderdale shall not deposit oil, gasoline, grease, lubricants, or any ignitable or hazardous liquids, materials, or substances in the City's storm sewer system or sanitary sewer system or elsewhere on City property in violation of the Environmental Laws. If Levitt Fort Lauderdale uses, stores, generates, or disposes of on, under, in, above, to, or from the Facilities and the Property any Hazardous Materials, or if the Facilities and the Property shall become contaminated in any manner for which Levitt Fort Lauderdale is legally liable, Levitt Fort Lauderdale shall indemnify and hold harmless the City from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses arising during or after the Term and arising as a result of the contamination by Levitt Fort Lauderdale. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal, restoration, or remediation mandated by a federal, state, or local agency or political subdivision. Without limiting the foregoing, if Levitt Fort Lauderdale causes or permits the presence of any Hazardous Materials in the Facilities and the Property that results in contamination of the Facilities and the Property, Levitt Fort Lauderdale shall promptly, at its sole expense, take any and all necessary actions to return the Facilities and the Property, as the case may be, to the condition existing prior to the presence of any Hazardous Materials. Levitt Fort Lauderdale shall obtain the City Manager's and City Attorney's prior written approval for any remedial action. The indemnity obligations of Levitt Fort Lauderdale under this Section 27 shall survive the expiration or termination of this Agreement. As used herein, "**Hazardous Materials**" mean any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under Environmental Laws, including asbestos, polychlorobiphenyls and petroleum and its derivatives.

## **28. TERMINATION.**

(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 Director or non-defaulting Levitt Party specifying the Levitt Party Default (subject to extension as provided in Section 28(c)), the City or non-defaulting Levitt Party may terminate this Agreement. Any such notice from the City to a Levitt Party specifying a Levitt Party Default shall be sent to all Parties.

(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 (subject to extension as provided in Section 28(c)), the Levitt Party may, provided the subject Levitt Party has the prior written approval of the other Levitt Party, terminate this Agreement. Any such notice from a Levitt Party to the City specifying a City Default shall be sent to all Parties.

(c) Extension of Cure Period. Notwithstanding anything to the contrary contained in this Agreement, the time to cure any Levitt Party Default or City Default will be extended so long as the defaulting Party has commenced the cure and (i) the nature of the default is such that it cannot be cured within ninety (90) days and (ii) the defaulting Party continues to diligently pursue the cure to completion. The deadline for any cure under this Section 28 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 Facilities and the Property 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 condition(s) of the Other Agreements, provided each Levitt Party has the prior written approval of the other Levitt Party as long as such approval is not unreasonably withheld. Without limiting the generality of the foregoing, this Agreement may be terminated by a Party if a Party fails to timely raise or contribute funds as required by the terms of this Agreement.

(e) Effect of Termination. Upon termination of this Agreement, the Facilities and the Property, other than the Levitt Fort Lauderdale Property, shall remain the property of the City. Levitt Fort Lauderdale shall take all reasonable measures to turn over the Facilities and the Property, other than the Levitt Fort Lauderdale Property, in a timely manner. Any public funds that have not been used by Levitt Fort Lauderdale under this Agreement and are not needed to cover Levitt Fort Lauderdale's remaining obligations incurred in performing its duties under this Agreement shall be promptly returned to the City. All remaining funds (including funds held by Levitt Fort Lauderdale as endowment, if any) and all Levitt Fort Lauderdale Property shall be used or distributed by Levitt Fort Lauderdale consistent with the duties and obligations of Levitt Fort Lauderdale towards the donors of any such funds or of any personal property and in accordance with Levitt Fort Lauderdale's certificate of formation and bylaws.

## **29. GENERAL PROVISIONS.**

(a) Consents and Approvals. All consents or approvals of the Levitt Parties, the City, the City Manager or the City Manager's designee, and the Director set out herein shall not be

unreasonably withheld, conditioned or delayed unless otherwise expressly specified. All consents and approvals required or permitted herein by any Party shall be given in writing. An approval by the Director or by any other employee or agent of the City does not waive compliance with this Agreement by the Levitt Parties or establish a standard of performance other than that required by this Agreement, except to the extent that the Director pursuant to the terms of this Agreement is given the power to waive or approve compliance with the terms of this Agreement. The Director is not authorized to vary the terms of this Agreement, except as to matters in this Agreement where the Director is expressly given the right to approve thereof.

(b) Good Faith and Non-disparagement. The City and the Levitt Parties agree to work diligently and in good faith to perform and fulfill their respective 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. The 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 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. The provisions of this Section shall survive the Term of this Agreement.

(c) 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.

(d) Contracting or Subcontracting. Any obligation 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. Compliance with this provision shall be the responsibility of the Party who arranged the contract or authorized the subcontract.

(e) 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.

(f) Funds Appropriations. 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 the performance of this Agreement being budgeted, appropriated and otherwise made available. If funds are not budgeted or appropriated for any fiscal year for services under the terms of this Agreement, this Agreement will impose no obligation on the City for payment. This Agreement is null and void except as to annual payments herein agreed upon for which funds have been budgeted or appropriated, and no right of action or damage may accrue to the benefit of the Levitt Parties, its successors, or assignees, for any further payments.

(g) Rights and Remedies Cumulative. All rights, options and remedies of the Parties contained in this Agreement shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and the Parties shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Agreement.

(h) Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Florida, without regard to applicable conflict of laws principles. Venue for any legal action relating to this Agreement shall lie in the Seventeenth Judicial Circuit in and for Broward County, Florida, or, in the event of federal jurisdiction, in the Southern District of Florida, Fort Lauderdale Division.

(i) No Personal Liability. No appointed or elected officials, officers, directors, employees, volunteers, agents or affiliates of a Party shall be charged personally or held contractually liable to the other Parties or their officials, officers, directors, employees, volunteers, agents, affiliates, or successor and assigns under any term or condition of this Agreement or for any breach, default, or violation under this Agreement.

(j) 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. "**Force majeure**" shall mean causes beyond the reasonable control of a Party, including weather conditions, acts of God or the public enemy, terrorism, war, epidemic, national or local calamity, sabotage, strikes, fire or other casualty, or action of government authorities. With the exception of canceled concerts due to inclement weather during the Series, written notice of any claim of a Party's inability to perform or comply due to force majeure must be promptly given to the other Parties.

(k) 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.

(l) No Joint Venture. This Agreement is not intended, nor shall this Agreement be construed, to establish or constitute a joint venture between Levitt Fort Lauderdale and the Foundation. All contracts or agreements made by a Levitt Party shall be in its own name. Each Levitt Party shall have no authority to bind, or to impose liability upon, the other Levitt Party through any contracts or agreements such Levitt Party may make, unless the prior, written approval of the other Levitt Party is obtained.

(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 Fort Lauderdale:

Friends of Levitt Pavilion Fort Lauderdale  
333 N New River Drive E  
Fort Lauderdale, FL 33301  
Attn: Courtney C. Crush  
E-mail: [Ccrush@crushlaw.com](mailto:Ccrush@crushlaw.com)

If to the Foundation:

Mortimer & Mimi Levitt Foundation  
1910 W. Sunset Blvd, Suite 600

Los Angeles, CA 90026  
Attn: Sharon Yazowski  
E-mail: [sharon@levitt.org](mailto:sharon@levitt.org)

If to the City:

City of Fort Lauderdale  
Parks and Recreation Department  
1350 West Broward Blvd.  
Fort Lauderdale, FL 33312  
Attn: Phil Thornburg  
E-mail: [Pthornburg@fortlauderdale.gov](mailto:Pthornburg@fortlauderdale.gov)

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. Postage or delivery charges must be paid by the Party giving notice.

(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 Fort Lauderdale and the Foundation acknowledge that technological advances are likely to occur during the Term and agree to implement the terms of this Agreement utilizing appropriate and customary current technology throughout the Term of this Agreement.

(r) Time. Except as otherwise provided herein, all time limits provided for herein shall run from the Effective Date. Time is of the essence in this Agreement. If the final day of any period of time set forth in any provision of this Agreement falls on a Saturday, Sunday or legal holiday under the laws of Florida, then, in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or such legal holiday.

(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; Words of Inclusion. 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. Words of inclusion herein shall not be construed as terms of limitation, so that references to included matters shall be regarded as non-exclusive, non-characterizing illustrations. Wherever the term "including" or a similar term is used in this Agreement, it shall be read as if it were written "including by the way of example only and without in any way limiting the generality of the clause or concept referred to."

(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.

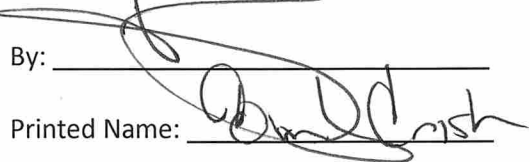
(v) Execution of Agreement. This Agreement shall not be or become effective or binding until it has been approved by ordinance by the City Commission and it has been fully executed by all signatories of the Parties.

(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 (1) Agreement.

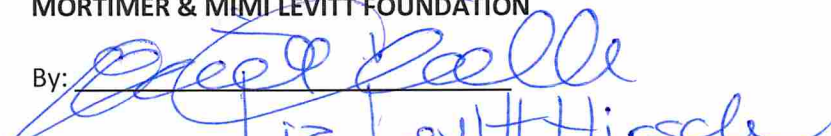
(x) Electronic Signatures and Electronic Records. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the Parties. The Parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because 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.

The Parties have executed this Agreement in multiple counterparts.


~~FRIENDS OF LEVITT PAVILION FORT LAUDERDALE~~

By:   
Printed Name: Donald Crish  
Title: President

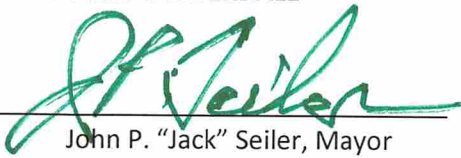
MORTIMER & MIMI LEVITT FOUNDATION


By:   
Printed Name: Liz Levitt Hirsch  
Title: Board President

ATTEST:

  
\_\_\_\_\_  
Jeffrey A. Modarelli, City Clerk

CITY OF FORT LAUDERDALE

  
\_\_\_\_\_  
John P. "Jack" Seiler, Mayor

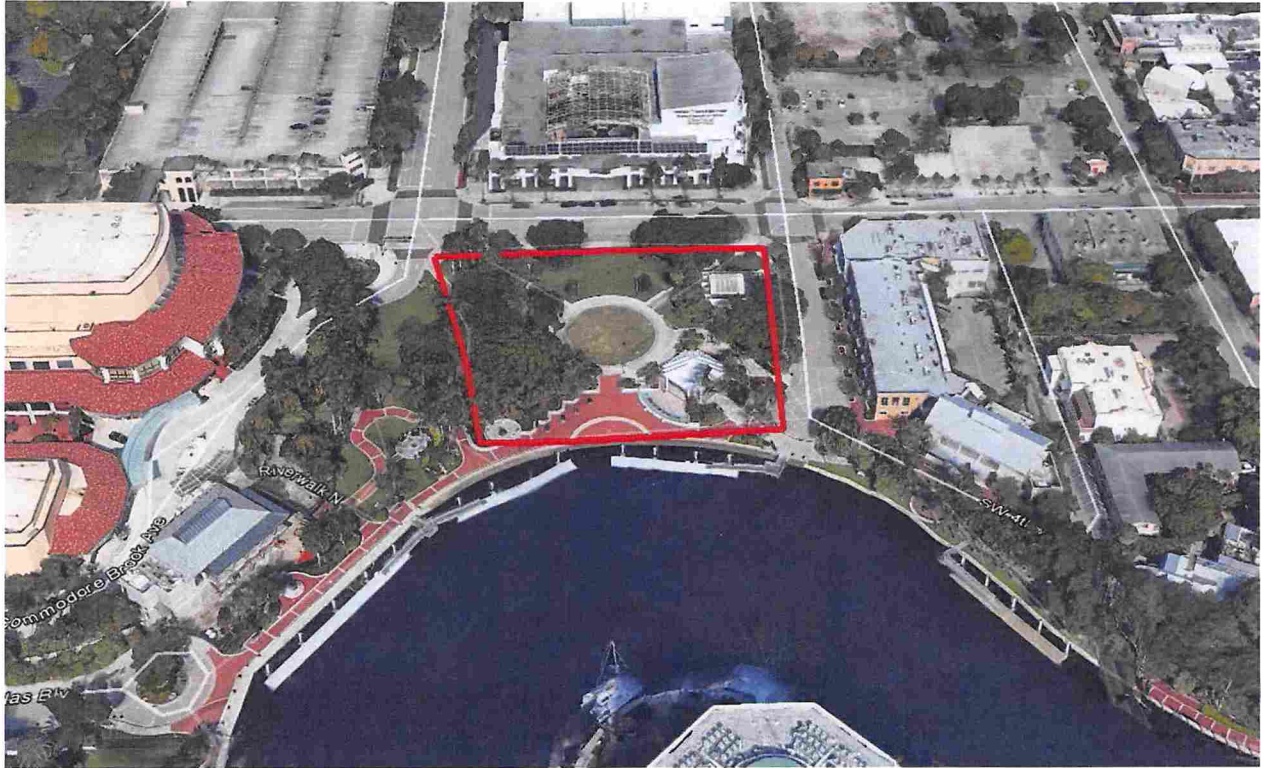
  
\_\_\_\_\_  
Lee R. Feldman, City Manager

Approved as to form:  
Cynthia A. Everett, City Attorney

By:   
\_\_\_\_\_  
Cole J. Copertino  
Assistant City Attorney



**EXHIBIT A**  
**LOCATION MAP**



**EXHIBIT B**  
**SITE AND STRUCTURE REQUIREMENTS**



## **Levitt Foundation Site & Structure Requirements**

### **Site Requirements**

The site requirements for developing a Levitt Pavilion have been designed to create a quality musical experience at a first-rate facility in an aesthetically pleasing and welcoming environment. These requirements reflect the high professional standards that artists and audiences can expect of all Levitt venues. Each element creates an inviting, outdoor performing arts venue that becomes an integral part of community life in your city.

The following site requirements of the Mortimer & Mimi Levitt Foundation are the basis for funding eligibility for Friends of Levitt organizations.

### Seating Capacity

The site must be a minimum of two acres in size designed to accommodate an audience capacity of approximately 5,000 people in an open lawn setting. If permanent seating is required, either because of City codes or ADA requirements, it must be located on the sides or at the back of the lawn, such that access and views to the front of the stage are open to all.

### Parking and Public Transportation

The site must have access to adequate parking and Friends of Levitt must develop a parking plan. Adjoining land, existing surface parking, street parking, parking lots and parking garages in the immediate area within reasonable walking distance are all acceptable options. Private parking spaces that are not normally available to the public may be included in the parking plan if a long-term written agreement with Friends of Levitt and the owner of such private parking spaces permits use during concerts. Immediate access to good quality, well-utilized public transportation can be considered when developing the parking plan. Prior to funding, Friends of Levitt must provide a plan to the City that assures adequate available parking and public transportation, if applicable.

### Landscaping

The site must either have a natural bowl or be graded as a gradual upslope away from the stage to achieve optimum viewing throughout the lawn area. The site must be open with porous borders and no fencing surrounding the site or lawn area nor have any physical barriers to access. Attractive landscaping, appropriate to the site and venue, should include walkways and plantings to enhance a casual and relaxed ambiance. An underground sprinkler system is recommended to maintain four to five inches of topsoil and healthy grass. The site must meet ADA standards.

### Access/Load-in

The venue must be accessible by large vehicles to accommodate load-in and load-out of production equipment. The access way should be concrete and a minimum of 10 feet wide.

### Lighting

Sufficient lighting for safety, at the venue site and in parking areas and along walkways, is required. Ambient lighting at the site is highly recommended. There should also be ample lighting for Friends of Levitt booths, food and beverage vendors, and merchandise vendors. This may require an additional 100 to 150 amps dedicated to grounds lighting.

### Vendor Accommodations

To the sides and back of the lawn, there should be designated areas designed to accommodate Friends of Levitt booths, food and beverage vendors, and merchandise vendors. Such accommodations to include lighting, as mentioned previously, flat surfaces and ample electricity. Vendor areas should be in front of the venue, so vendors and individuals at the booths have views of the stage.

### Public Restrooms

Access to public restrooms is required for Levitt concerts and events. Restrooms may be located at the site or in a nearby building, as long as the facilities are within reasonable walking distance for children and seniors. Restrooms in the backstage area of the venue are only for the use of Levitt personnel and performers.

### Hospitality Area

To ensure successful relationships with Friends of Levitt supporters, a designated hospitality area is required. The hospitality area should be located at either the back of the lawn or the sides of the lawn, so the center and front areas of the lawn remain open to everyone. Throughout the concert season, the hospitality area provides a space for Friends of Levitt to host donors, elected officials, and key stakeholders and for funders and sponsors to entertain their guests. The hospitality area should have, at minimum, a concrete pad to comfortably accommodate tables and chairs for at least 100 individuals and electrical capacity to support catering and sufficient lighting for safety.

### WiFi

Free WiFi capability throughout the venue lawn area is recommended.

## **Structure Requirements**

Whether new construction or renovation of an existing facility, the venue must be designed to include the following basic requirements and must meet ADA standards for accessible design:

- Open air stage with roof – minimum 50 feet wide at the front and 30 feet deep at the center, with minimum approximate square footage of 1,100 square feet; roof must cover at least 70% of stage.
- A minimum of two dressing rooms, at least 130 square feet per room, each equipped with built-in counters, proper lighting, and mirrors for make-up application, and a minimum of one full-length mirror in each dressing room.
- A minimum of two ADA accessible bathrooms located within the backstage area; such bathrooms are only for the use of Levitt personnel and performers and not for use by the general public.

- One artist green room of a minimum of 270 square feet, equipped with built-in counters and kitchenette.
- Climate-control system for all rooms in backstage area.
- Secure and climate-controlled storage space, a minimum of 300 square feet, for sound and lighting equipment.
- Telephone system.
- WiFi capability.
- Standard electrical power for an outdoor performing arts venue – a minimum of 500 amps dedicated to sound and lighting with each system on a separate circuit.
- Overhead beams, lighting grids, and/or side trusses to accommodate professional lighting.
- Prominent permanent, horizontal signage naming the structure “Levitt Pavilion for the Performing Arts” or “Levitt Pavilion City Name” or “Levitt Pavilion” visible to the audience.
- Concrete pad, minimum 8 feet by 8 feet, for a front of house sound station in the lawn area.
- Underground, water-proof duct for conduit to accommodate the front of house station.
- Height of stage between 36 inches and 40 inches to create an intimate environment for the audience and to allow children to experience performers close-up.
- Digital screens, visible to the audience, installed as part of the venue to highlight sponsors and supporters and showcase promotional pieces before and after concerts.

The following design elements are recommended based on the experiences of existing Friends of Levitt organizations. Incorporating these elements into the design of your venue will contribute to successful operations. Recommended venue design elements include:

- Backstage area to include an office, large enough to be functional, for use by Friends of Levitt staff either year-round or specifically during the concert season.
- Backstage area to include one or more showers for performers who travel directly, often long distances, from one engagement to the next.

Friends of Levitt should consult with other arts nonprofits, local schools and universities, other community organizations, concert promoters, various City departments, and other entities that will likely use the venue to ensure the venue is designed to accommodate their use needs as well.

All design components shall be installed to meet or exceed local building codes. The architectural plans shall be acceptable to the Levitt Foundation. The architect of record for the project and Friends of Levitt shall coordinate with the Levitt Foundation to ensure all site and structure requirements are met.

### **Lighting and Sound**

State-of-the-art lighting and sound systems appropriate to the standards of the Levitt Foundation are required. LED lights are highly recommended. It is also highly recommended that recording equipment be included in the sound system. Site plans should include a concrete pad, minimum 8 feet by 8 feet, for a front of house sound station in the lawn area. The exact spot will be the optimal location for highest quality sound production. An acoustician should be consulted to determine the “sweet spot” of your venue site. An underground, waterproof duct for conduit to accommodate the front of house station is required. The duct should be deep enough to allow growth of grass directly above.



COMMISSION AGENDA ITEM  
AGREEMENT DOCUMENT ROUTING FORM

③ ✓ 3/21/17 ④

Today's Date: 3/14/2017

**DOCUMENT TITLE:** Tri-Party Agreement for Improvements to Esplanade Park to build an Outdoor Performance Venue – Friends of Levitt Pavilion Fort Lauderdale/City of CFL/Mortimer & Mimi Levitt Foundation

**COMM. MTG. DATE:** 11/1/2016 **CAM #:** 16-1065 **ITEM #:** CM-7 **CAM attached:** ☒ YES ☐ NO

**Routing Origin:** CAO **Router Name/Ext:** A. Sperling/5001 **Action Summary attached:** ☒ YES ☐ NO

**CIP FUNDED:** ☐ YES ☒ NO

Capital Investment / Community Improvement Projects defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, or fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, or real.

**1) City Attorney's Office:** Documents to be signed/routed? ☒ YES ☐ NO # of originals attached: 3

Is attached Granicus document Final? ☒ YES ☐ NO Approved as to Form: ☒ YES ☐ NO

**Date to CCO:** 3/14/2017

Cole Copertino  
Attorney's Name

AS for Cole  
Initials

**2) City Clerk's Office:** # of originals: 3 **Routed to:** Gina Ri/CMO/X5013 **Date:** 3/14/17

**3) City Manager's Office:** **CMO LOG #:** Mar 50 **Document received from:** CCO

**Assigned to:** L. FELDMAN ☒ S. HAWTHORNE ☐ C. LAGERBLOOM ☐

☐ APPROVED FOR LEE FELDMAN'S SIGNATURE ☐ N/A FOR L. FELDMAN TO SIGN

**PER ACM:** S. HAWTHORNE (Initial/Date) C. LAGERBLOOM (Initial/Date) ☐ **PENDING APPROVAL** (See comments below)

**Comments/Questions:** \_\_\_\_\_

**Forward** 3 originals to ☒ Mayor ☒ CCO **Date:** 3/15/17 3 to CCO: 3/14/17

**4) City Clerk's Office:** Retains 1 original and forwards 2 originals to: Carolyn Bean/Parks and Rec/5348

Original Route form to Astrid Sperling

Rev. 5/6/16