

AMENDED AND RESTATED USE AGREEMENT
MORTON H. MEYERSON SYMPHONY CENTER

between the

CITY OF DALLAS, TEXAS,

and the

DALLAS SYMPHONY ASSOCIATION, INC.

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AMENDED AND RESTATED USE AGREEMENT
(MORTON H. MEYERSON SYMPHONY CENTER)

THIS AMENDED AND RESTATED USE AGREEMENT (this "Agreement") is entered into as of July 1, 2019 ("AR Effective Date"), by and between the CITY OF DALLAS, a municipal corporation, of Dallas County, Texas ("City" and "Lessor"), and the DALLAS SYMPHONY ASSOCIATION, INC., ("Association" and "Lessee"), a Texas nonprofit corporation with its principal place of business at 2301 Flora Street, Dallas, Texas 75201.

WHEREAS, the City has as one of its purposes the establishment, maintenance, promotion, and operation of recreational and cultural facilities for the benefit of the public; and

WHEREAS, City holds title to the property situated in Dallas County, Texas, more particularly described in Exhibit "AR-1" attached hereto and made a part hereof for all purposes (the "Property"), and which is substantially Exhibit A to the Initial Use Agreement; and

WHEREAS, City holds title to all structures, improvements, fixtures, and appurtenances, located upon the Property, other than personality and leasehold improvements owned by Lessee; and

WHEREAS, the City and the Association did enter into that certain Memorandum of Agreement dated October 13, 1982, as amended, whereby they agreed to and did in fact undertake financing of the construction of a Symphony Center on the Property as a performing arts facility for the citizens of Dallas to be known as the Morton H. Meyerson Symphony Center; and

WHEREAS, the City and the Association intended that the Symphony Center would provide a permanent home for the Dallas Symphony Association, Inc., its headquarters office and for performances and rehearsals of the Dallas Symphony Orchestra as well as an outstanding performance facility that will attract other prominent performing groups and individuals to Dallas; and

WHEREAS, the City and the Association entered into that certain Use Agreement dated September 18, 1985, as amended and as further defined below as the Initial Use Agreement, to provide for the terms and conditions under which the Association was established as the priority user and primary tenant to use and occupy the Symphony Center while City had sole responsibility for the operation and management of the Symphony Center; and

WHEREAS, pursuant to the Initial Use Agreement the City leased to the Association, in accordance with the use and occupancy provisions of the Initial Use Agreement, only those facilities and areas within the Symphony Center required by the Association for its various activities including but not limited to performances, rehearsals, auditions, social and fund-raising

activities, meetings, administration, ticket and merchandise sales, library, dressing, and storage; and

WHEREAS, the City and the Association desire and intend that the Symphony Center will continue to provide a permanent home for the Dallas Symphony Association, Inc., its headquarters office and for performances and rehearsals of the Dallas Symphony Orchestra as well as an outstanding performance facility that will attract other prominent performing groups and individuals to Dallas; and

WHEREAS, City and the Association desire to amend the Initial Use Agreement to provide for the City's lease to the Association of the Premises described and defined below, and Association desires and agrees to accept the Premises from the City so that City shall vacate the Premises at an agreed date and turnover the City's management and operational responsibilities of the Premises to Association, and Association with conditions as set forth in this Agreement will for an agreed extended term not only be the primary user and tenant of the Symphony Center with scheduling priority and rights as defined in this Agreement, but also whereby the Association will at the Transition Date be the primary user and the sole tenant, operator and manager of the Premises, under the Initial Use Agreement as amended and restated by this Agreement; and

WHEREAS, Association agrees to use, operate, and manage the Premises in the manner provided for in this Agreement; and

WHEREAS, in accordance with Section 253.011 of the Local Government Code, City is permitted to lease real property to a 501 (c)(3) non-profit organization without complying with governmental notice and bidding requirements set forth in Section 272.001(a) of the Local Government Code or other law provided the lessee shall use the real property in a manner that promotes the public purpose of the City as set forth in this Agreement, and that also provides that if the nonprofit at any time fails to use the property for the specified public purpose, the real property interest will automatically revert to the City; and

WHEREAS, Association is a qualifying nonprofit organization under Section 253.011, and has requested City lease the Premises to Association to enable the Association to be the sole tenant of the Premises to enable Association to use, operate, and manage the Premises to provide for and carry out the City's cultural public purpose in accordance with this Agreement; and

WHEREAS, City hereby desires and has agreed to lease the Premises to Association, and Association hereby desires and agrees to accept from City the Premises so that Association with conditions as set forth in this Agreement will assume City's operational and management responsibilities to enable Association to use and operate the Premises in accordance with the terms of this Agreement; and

WHEREAS, to effect the transfer of the City's operational and management responsibilities of the Premises to Association through a leasehold interest, the City and Association desire to amend and restate the Initial Use Agreement and effect the conveyance by lease to the Association of the Premises pursuant to Texas Local Government Code Section 253.011; and

WHEREAS, by Resolution No. 19-0774 (the "Resolution"), approved by the Dallas City Council on May 22, 2019, attached hereto and made a part hereof as Exhibit "AR-10", City has recognized the need to amend the Initial Use Agreement to redefine the Association's position in the Premises from the primary user and tenant to that of exclusive tenant, operator, and manager of the Premises under the terms of this Agreement; and

WHEREAS, by the Resolution, the Dallas City Council authorized: (1) this Agreement to effect the conveyance of a leasehold interest in the Premises to the Association pursuant to Texas Local Government Code Section 253.011; and (2) the exclusive use, operation, management, and maintenance of the Premises by Association under the terms and conditions set forth in this Agreement; and

WHEREAS, The City and Association desire to enter into this Lease to establish the terms of Association's tenancy in the Premises, including but not limited to outlining the responsibilities between the parties regarding the renovation and maintenance of the Premises, and the manner of operations and management of the Premises by the Association; and

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties, and agreements contained herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the City and the Association agree to amend, restate and convert the Initial Use Agreement to operate as a leasehold as follows:

ARTICLE I

Purpose; Amendment, Restatement, Lease, and Definitions

Section 1.1 Purpose, Incorporation of Recitals.

The purpose of this Agreement is to set forth the terms and conditions under which the Association will lease, use, occupy, manage, operate the Premises, and to set forth various other terms, provisions and agreements between the Association and the City, pertaining to the Premises, as more particularly set forth in this Agreement. The recitals set forth above are incorporated herein and made a part of this lease Agreement to the same extent as if set forth herein in full.

Section 1.2 Amendment, Restatement.

The purpose of this Agreement as an amendment and restatement of the Initial Use Agreement include to consolidate and continue applicable ongoing provisions of the Initial Use Agreement, by incorporation and as amended herein into a Premises lease; and, to simplify and eliminate confusion resulting from an accumulation during a 30 year period of multiple prior amendments to the Initial Use Agreement, and to effect a leasehold tenancy of the Premises by the Association in lieu thereof whereby the Association shall lease, use, occupy, manage, and operate the Premises beyond the date of expiration of the term of the Initial Use Agreement from the year 2049 (with further extension rights) to the year 2118 (with no further extension rights).

Section 1.3 Lease.

This Agreement amends and restates the terms of the Initial Use Agreement by incorporation into the lease conveyance of the Premises by City to Association pursuant to Texas Local Government Code 253.011. The Initial Use Agreement shall be effective only and applicable to matters occurring or arising during the term of the Initial Use Agreement or prior to the AR Term Transition Date; and the Initial Use Agreement shall otherwise not remain in force.

Section 1.4 Defined Terms.

As used in this Agreement, the following defined terms have the meanings ascribed to them below.

- (1) “AR Agreement” means this Agreement.
- (2) “AR Effective Date” has the meaning assigned to it in the preamble of this Agreement.
- (3) “AR Term” means the term of this Agreement from the AR Term Commencement Date through the AR Term Expiration Date.
- (4) “AR Term Commencement Date” means July 1, 2019.
- (5) “AR Term Expiration Date” means June 30, 2118, unless the term of this Agreement is sooner terminated as provided in this Agreement.
- (6) “Association Events” means the following events and uses of the Symphony Center: DSO Events, Commercial Events, and Other Events. Association Events are further described in Section 6.2 and Exhibit AR-5.
- (7) “Association Maintenance Obligations” means the obligations for all deferred, current, and future maintenance, and repair of the Symphony Center, excluding the Association Maintenance Obligations Exclusions.
- (8) “Association Maintenance Obligations Exclusions” means obligations for deferred, current, and future maintenance, and repair of the Symphony Center, comprised of, related to, or resulting from the following.
 - (a) City Maintenance Obligations;
 - (b) City Public Art;
 - (c) City Park;

- (d) Damage caused by or related to fire or other casualty or similar causes, except to the extent which the Association has received proceeds from insurance carried by the City or the Association;
 - (e) Other maintenance, repair and replacement for which the City or third parties are obligated as set forth in this Agreement or other agreements to which the City is a party or which are otherwise binding on the City.
- (9) “Booked 2019-20 Events” means events and uses of the Symphony Center booked by the City under the Initial Use Agreement prior to the AR Term Commencement Date, to occur no later than December 31, 2020, and assigned to the Association in connection with this Agreement. Booked 2019-20 Events are within the definition of Other Events under this Agreement. Booked 2019-20 Events are further described in Section 6.2 and Exhibit AR-5.
 - (10) “Booking Procedures Agreement” means the booking agreement for the Annette Strauss Artists Square providing for a joint plan for annual scheduling that includes no-amplified sound events at the Annette Strauss Artists Square on certain primary dates; and which booking agreement is set forth in Exhibit B to that certain Second Amendment to the Performing Arts Center Use Agreement executed December 10, 2008 by and between the City and DCPAF, and is also set forth in that certain Fourth Amendment to the Initial Use Agreement executed June 30, 2009 by and between the parties pursuant to City Council Resolution No. 09-1105. The current Booking Procedures Agreement is attached to and made a part of this Agreement as Exhibit AR-6. City and the Association agree that, subject to and as provided in this Agreement, the Booking Procedures Agreement, together with all future renewals, modifications or substitutions thereof as may be from time to time be agreed to in writing by the parties thereto, or by DSA, the City, and DCPAF, shall be binding on the parties to this Agreement for the purposes set forth therein.
 - (11) “City Annual Financial Support” has the meaning assigned to it in Section 8.1 of this Agreement.
 - (12) “City Contracts” means the contracts listed on attached Exhibit AR-7, and such other contracts (if any) as the parties may hereafter agree and designate as City contracts that shall remain in place in the City’s name beyond the AR Term Transition Date.
 - (13) “City Deferred Maintenance Obligations” has the meaning assigned to it in Section Section 7.2 and Exhibit AR-4 of this Agreement.

- (14) "City Event Rent" has the meaning ascribed to it in Exhibit AR-5.
- (15) "City Events" means events and uses of the Symphony Center scheduled by the Association at the request of the City, including Inauguration Events. City Events are further described in Section 6.2 and Exhibit AR-5.
- (16) "City Maintenance Obligations" means the City Deferred Maintenance Obligations and the City Ongoing Maintenance Obligations.
- (17) "City Manager" means the chief administrative and executive officer of the City, or his or her designee.
- (18) "City Ongoing Maintenance Obligations" has the meaning assigned to it in Section 7.4 of this Agreement.
- (19) "City Park" means the Betty B. Marcus Park, which is located adjacent to the Symphony Center and owned, operated and maintained by the City of Dallas; provided, however, the City Park is not part of the Premises and shall not be subject to any of the leasehold rights conveyed to the Association under this Agreement.
- (20) "City Public Art" means art owned by the City and located or displayed at, around, or in the Symphony Center, including *Blue Green Black Red* by artist Ellsworth Kelly and *de Musica* by artist Eduardo Chillida, all of which shall remain at the Symphony Center (except as otherwise provided in Section 7.4 with respect to City's repair, maintenance, conservation and preservation requirements); provided, however, the City Public Art is not part of the Premises and shall not be subject to any of the leasehold rights conveyed to the Association under this Agreement.
- (21) "Commercial Events" means events and uses of the Symphony Center pursuant to agreements by or for the benefit of the Association, and designated as such by the Association. Commercial Events are further described in Section 6.2 of this Agreement and Exhibit AR-5.
- (22) "Common Facilities" shall mean the parking areas, parking area lighting, streets, roads, driveways, fire corridors, underground service drives, tunnels, aisles, sidewalks, landscaped areas, utility and sewer lines and systems, and other facilities and service areas for common use, whether or not shown on final development plans of the Premises, and any additions thereto or enlargements thereof, which are located anywhere within the Premises and serve the Premises.

- (23) "Concert Hall" means the performance platform, backstage and audience chamber of the Symphony Center.
- (24) "Condemnation" shall mean a taking of all or part of the real property interests in the Premises, in one or more proceedings by the public authorities exercising the right of condemnation or eminent domain, or one or more conveyances to any public authority which has the power of condemnation or eminent domain and has threatened to exercise such power with respect to the real property interest conveyed.
- (25) "DCPA Manager" means the persons or entities, whether one or more, under contract with the City or otherwise responsible for operating and managing the AT&T Performing Arts Center located at 2403 Flora Street, Dallas, Texas, and the Annette Strauss Artists Square located at 2403 Flora Street, Dallas, Texas. As of the AR Effective Date, the DCPAF is the DCPA Manager.
- (26) "DCPAF" means the Dallas Center for the Performing Arts Foundation, which is currently contracted to City with respect to the operation, management, and ownership of the AT&T Performing Arts Center located at 2403 Flora Street, Dallas, Texas, and the Annette Strauss Artists Square located at 2403 Flora Street, Dallas, Texas.
- (27) "Director" means the director of the City department designated by the City Manager to administer this Agreement on behalf of the City or the director's authorized representatives.
- (28) "DSO" means the symphony orchestra operated by the Association, commonly known as the Dallas Symphony Orchestra
- (29) "DSO Events" means events and uses of the Symphony Center by or affiliated with the DSO and other orchestral or music-related events sponsored by or affiliated with the Association, and not designated as Commercial Events or Other Events by the Association. DSO Events are further described in Section 6.2 and Exhibit AR-5.
- (30) "Environmental Laws" shall mean and include all federal, state, and local environmental, health, and safety statutes, regulations, ordinances, codes, rules, decrees, and other governmental restrictions and requirements relating to the existence, treatment, generation, storage, release, transportation, remediation management, regulation, or disposal of pollutants, water pollutants or process waste water, oil and gasoline products, or otherwise relating in any way to the environment or any Hazardous Substance,

including, but not limited to, (i) CERCLA; (ii) the Resource Conservation and Recovery Act of 1976 (42 USC §6901, et seq.); (iii) the Hazardous Materials Transportation Act (49 USC §1801, et seq.); (iv) the Clean Air Act (42 USC §7401, et. seq.); (v) the Safe Drinking Water Act (42 USC 300f – 300j-26.); (vi) the National Environmental Policy Act of 1969 (42 USC §4321); (vii) the Superfund Amendment and Re-Authorization Act of 1986 (42 USC §9601, et seq.); (viii) all rules and regulations of the United States Environmental Protection Agency; (ix) the Texas Health & Safety Code, and all regulations and permits regarding collection and disposal of solid waste and air quality from the Texas Commission on Environmental Quality (TCEQ); and (x) all rules and regulations of any other federal, state or local department, board, or agency, or any other agency or governmental board or entity having jurisdiction over the Premises, as any of the foregoing have been, or are hereafter, amended

- (31) “Grandfathered Event Rent” has the meaning ascribed to it in Exhibit AR-5.
- (32) “Grandfathered Event Supplemental Terms” has the meaning ascribed to it in Exhibit AR-5.
- (33) “Grandfathered Events” means events and uses of the Symphony Center scheduled by the Association at the request of “Grandfathered Users”. Grandfathered Events are further described in Section 6.2 and Exhibit AR-5.
- (34) “Grandfathered Users” means: Greater Dallas Youth Orchestra, Children’s Chorus of Greater Dallas, Dallas Winds, Dallas Bach Society, Fine Arts Chamber Players, Turtle Creek Chorale, The Black Academy of Arts and Letters (for its annual MLK Celebration), and Dallas-based public independent school districts (high school graduations).
- (35) “Hall Arts Owner” means Hall Lone Star Associates, L.P., a Texas limited partnership, and any and all persons or entities who at any time, or from time to time, during the term of Hall Arts Garage Agreements shall be assigned or shall succeed to the rights, titles, interests, and estate of Hall Arts Owner created therein, including but not limited to primary user and operator of the Hall Arts Garage.
- (36) “Hall Arts Garage” means that certain six (6) level subsurface parking garage and all related improvements, owned by City, as developed and constructed in that certain Garage Tract and containing approximately 1637 parking spaces, as the same may be altered from time to time, subject to the terms of the Hall Arts

Garage Agreements, in which City has granted Hall Arts Owner the right to use all of the parking therein, subject to the rights set forth in the Initial Use Agreement and certain provisions of that certain Three Party Agreement dated as of January 23, 1986 between City, Hall Arts Owner's predecessor in interest, and Thomas Tschoepe, then Bishop of the Roman Catholic Diocese of Dallas..

- (37) "Hall Arts Garage Agreements" means (i) [Garage Lease from Hall Arts Owner to the City], and (ii) that certain Amended and Restated Parking Sublease Agreement executed by and between the City, as landlord, and Hall Arts Owner, as tenant, on March 31, 2009, providing terms for garage parking, including terms to provide the Association with use of 1200 parking spaces during events at the Premises, which garage is managed by Hall Arts Owner pursuant to the Hall Arts Garage Agreements and as further described in Exhibit AR-2 attached hereto and incorporated for the purposes set forth therein as may be applicable to the Association's rights to parking in the Hall Arts Garage.
- (38) "Hazardous Substance" shall mean (i) any substance now or hereafter defined as a "hazardous substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC §9601, et seq.)("CERCLA"), (ii) petroleum, petroleum products, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas, natural gas, and (iii) any other substance, material or product addressed under any Environmental Law or otherwise deemed to be hazardous, harmful, dangerous, toxic, or a pollutant.
- (39) "Inauguration Event" means an inauguration event held at the Symphony Center to inaugurate the Dallas Mayor (when applicable) and members of the Dallas City Council. Inauguration Events are further described in Section 6.2 and Exhibit AR-5.
- (40) "Initial Use Agreement" means collectively the (i) Use Agreement for the Morton H. Meyerson Symphony Center between the City and the Association and dated September 18, 1985; (ii) First Amendment to the Use Agreement for the Morton H. Meyerson Symphony Center between the City and the Association and dated July 20, 1995; (iii) Second Amendment to the Use Agreement for the Morton H. Meyerson Symphony Center between the City and the Association and dated January 13, 1999; (iv) Third Amendment to the Use Agreement for the Morton H. Meyerson Symphony Center between the City and the Association and dated October 1, 2004; and (v) Fourth Amendment to the Use Agreement for the Morton H. Meyerson Symphony Center between the City and the Association and dated June 30, 2009;

- (41) “Institutional Lender” shall mean a bank, an investment bank, real estate finance company, an insurance company, a welfare, pension or retirement fund, or system of a state or municipality or of a corporation whose shares are listed on the New York Stock Exchange, or a real estate investment trust whose shares are listed on the New York Stock Exchange; provided, in each case, such entity is subject to the jurisdiction of the courts of the state where the Premises are located.
- (42) “Lease Year” shall mean a period of time conforming to the following: The first “Lease Year” of the term of this lease shall mean the period beginning on the AR Term Commencement Date on which Association as Tenant shall assume the Premises for business with the public and ending 12 months after the first day of the first month following the AR Term Commencement Date, unless the AR Term Commencement Date is the first day of a month, in which case the first Lease Year shall terminate on the date 12 months after the AR Term Commencement Date, the second Lease Year of the term of this lease shall commence on the day following the last day of the first Lease Year and end 12 months thereafter; and succeeding Lease Years during the term of this lease Agreement shall commence and end on dates corresponding to those on which the second Lease Year begins and ends.
- (43) “Mortgage” shall mean an indenture of mortgage, a deed of trust to a trustee, or any other instrument in the nature thereof creating a lien on or other security interest in the Symphony Center, the Premises, or any part thereof.
- (44) “Other Events” means Booked 2019-20 Events and other events and uses of the Symphony Center not designated as Commercial Events or DSO Events by the Association. Other Events are further described in Section 6.2 and Exhibit AR-5.
- (45) “Premises” means, collectively, the Property, Symphony Center, Symphony Center Garage, Common Facilities, and all other improvements and property of the City now or hereafter located on or appurtenant thereon to all of the foregoing, and all rights and interests of the City therein, including rights to use the Hall Arts Garage; save and except (i) the fee title to the foregoing, (ii) the City Park, (iii) the City Public Art, and (iv) any other rights and interests reserved by the City in this Agreement.
- (46) “Property” has the meaning assigned to it in the recitals of this Agreement.

- (47) "Public Purpose Statute" means Section 253.011 of the Texas Local Government Code.
- (48) "Scheduled Events" means events and uses of the Symphony Center scheduled by the Association, including Association Events, City Events, and Grandfathered Events.
- (49) "Symphony Center" means the symphony center on the Property, including all improvements and components thereof.
- (50) "Symphony Center Garage" means that certain underground parking garage located partially on the tract of land more particularly described in Exhibit B of the Amended and Restated Parking Sublease Agreement described in Exhibit AR-2 attached hereto, which parking garage provides parking for approximately one hundred forty (140) automobiles.
- (51) "Transition Date" means the October 1, 2019.
- (52) "Transition Period" means the period from the AR Term Commencement Date through September 30, 2019, or such other date as the City and the Association may agree, to facilitate the Texas Local Government Code Chapter 252.011 conveyance of a leasehold estate to Association and the transition of management and operation of the Premises entirely from the City to the Association.

ARTICLE II

Premises; Use; Public Purpose Statute; Reverter;
Term; Delivery of Premises; Continued
Possession; and Surrender

Section 2.1 Premises.

City, in consideration of the covenants and agreements to be performed by Association and upon the terms and conditions in this Agreement, does hereby demise and lease unto Association, and Association hereby leases from City, the Premises for the AR Term, together with all the improvements, rights, privileges, easements, and appurtenances belonging to or in any way pertaining to said Premises, to be used for the operation, management, and maintenance of the Premises in accordance with the City's public purpose, and otherwise pursuant to and in accordance with the terms and provisions of this Agreement.

Section 2.2 Use; Public Purpose Statute.

The Association agrees, as required by the Public Purpose Statute, to use the Premises in a manner that primarily promotes orchestral music-related and other musical and cultural events in the City of Dallas, in accordance with this Agreement, which the City and the Association agree is a public purpose of the municipality.

Section 2.3 Reverter.

If the Association fails to use the Symphony Center for the City's public purpose, in violation of the requirements of the Public Purpose Statute, then the Association's lease of the Symphony Center shall terminate and the leasehold estate granted in this Agreement shall automatically revert to the City as required by the Public Purpose Statute.

Section 2.4 Term.

Association shall have and hold the Premises, together with any and all appurtenances belonging or appertaining thereto, and the easements, rights and privileges herein granted to Association, for the AR Term, which shall be a term of approximately 99 years commencing as of the AR Term Commencement Date and terminating as of the AR Term Expiration Date, unless terminated at an earlier date in accordance with the terms of this Agreement. At all times during the lease term, the Association will maintain its status as a non-profit organization exempt from federal taxation under Section 501(c)(3), Internal Revenue Code 1986, as amended.

Section 2.5 Delivery of Premises.

Physical possession of the Symphony Center and the other City previously held portions of the Premises shall be delivered to Association by City on/or before the Transition Date. Failure of City to deliver actual possession of all portions of the Premises to Association on said date shall give Association, in addition to such other rights and remedies as it may be accorded by law or by this Agreement, the right to terminate the term of this Agreement by notifying City of its election so to do at any time prior to such delivery being made and/or the right, as City's agent and at City's expense, to take whatever action is necessary to prepare the Premises to the condition required under this Agreement in order for Association to timely proceed to operate, manage, and maintain the Premises for business in accordance with the City's public purpose, all as more particularly set forth in this Agreement.

Without limiting the City Maintenance Obligations set forth in this Agreement, Association shall take possession of the Premises and accept the Premises for Association's use hereunder on an "AS IS, WHERE IS, WITH ALL FAULTS" condition and basis. Association acknowledges and agrees that City has not made, does not make, and specifically negates and disclaims any representations, promises, covenants, agreements, guaranties or warranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, as to, concerning or with respect to (1) the value, nature, quality, or condition of the Premises, including without limitation, the title, soil, hydraulics, zoning, platting, and utilities, (2) the income to be derived from the Premises, (3) the suitability of the Premises for any and all activities and uses which Association may conduct thereon, (4) the compliance of improvements located at the Premises (or their operation) with any laws, rules, ordinances or regulations of any applicable governmental authority or body, (5) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Premises, (6) the manner or quality of the construction or materials, if any,

incorporated into improvements to the Premises, (7) the manner, quality, state of repair or lack of repair of the improvements made to the Premises, and (8) any other matter with respect to the Premises.

Association specifically acknowledges that City has not made, does not make and specifically disclaims any representations regarding compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including the existence in or on the Premises of Hazardous Substances. Association is relying solely on its own investigation of the Premises and not on any information provided or to be provided by City and agrees to accept the Premises for use in accordance with the terms of this Agreement and waives all objections or claims against City arising from or related to the Premises or for any Hazardous Substances, solid waste, or other materials located on it. Association shall be responsible for undertaking all necessary inspections, investigations, renovations, and improvements, including without limitation any work to address any environmental issues. Association shall, prior to lease commencement, be granted a 90-day inspection period (the "Inspection Period") to conduct such diligence investigation with respect to the Premises as it shall desire. Association shall pay all costs for such investigations and other inspections conducted during the Inspection Period.

Association further acknowledges and agrees that any information provided or to be provided with respect to the Premises was obtained from a variety of sources and that City makes no representations as to the accuracy or completeness of such information. City is not liable for or bound in any manner by any verbal or written statements, representations or information pertaining to the Premises, or the operation thereof, furnished by it or any real estate broker, agent, employee, servant, contractor, or other person.

Provided, however, Association is not by this Agreement assuming or waiving any obligations the City has or may have to third parties.

Section 2.6 Use, Generally.

Without in any way limiting or causing a waiver of the requirements set forth in Section 2.2, Association shall not permit the Premises to be used in any manner contrary to the intended uses provided in this Agreement and which would render the insurance thereon void or the insurance risk more hazardous than the risks presented by the intended uses. Association shall not use or occupy the Premises, or permit the Premises to be used or occupied, contrary to this Agreement or any statute, rule, order, ordinance, requirement, or regulation applicable to the Premises, or in any manner which would violate any certificate of occupancy or permit affecting same, or which would cause structural injury to the improvements, or cause the value or usefulness of the Premises to diminish, or which constitutes a public or private nuisance or waste. Association shall not use or occupy the Premises, or permit the Premises to be used or occupied, in a manner which would be immoral or obscene in violation of applicable legal requirements or create a threat to the health, safety, and welfare of the general public; or, which would constitute an act of public or private discrimination, limitation of use, or exclusion from the Premises on the basis of race, color, religion, gender, age, national origin, citizenship, disability, or sexual orientation.

Section 2.7 Continued Possession.

If Association continues to occupy the Premises after the last day of the AR Term hereof and City elects to accept rent thereafter, a monthly tenancy terminable by either party on not less than one month's notice shall be created, which shall be upon the same terms and conditions, including rent, as those specified in this Agreement which are in effect immediately prior to the termination of such term.

Section 2.8 Title to the Premises.

The parties acknowledge that fee simple title to the Premises is vested in the City, and the parties further acknowledge and agree that for the duration of the AR Term and continued occupancy by the Association as may otherwise be afforded to Association under the terms of this Agreement, any and all improvements to the Premises made by either party shall remain, and when made thereto shall automatically vest in the City without any further action by either party hereto, free and clear of all liens and other encumbrances arising by, through or under Association, other than the leasehold interest created by this Agreement and subleases permitted hereunder, and Association agrees to take no action before, during or after construction that would prejudice City's clear fee simple title, except for such leasehold interests. The improvements on the Premises, including the personal property, furniture, equipment, and trade fixtures therein (which, unless otherwise excepted by the parties as personal property of Association), shall be owned by the City. Upon the expiration or termination of this Agreement, Association shall deliver up the Premises with all additions and improvements thereto, to City as required under surrender provisions of this Agreement; or, if the Agreement is terminated prior to the Transition Date, in good and broom clean condition, except for: (i) ordinary wear and tear; (ii) damages resulting from fire, windstorm, hail, tornado, explosion, and other causes, whether similar or dissimilar, over which Association has no control; and (iii) approved or permitted alterations, additions and improvements made to or upon the Premises pursuant to this Agreement.

Section 2.9 Surrender.

Association shall on the last day of the term of this Agreement, either by expiration or termination, quit and surrender the Premises, and any building, structure, improvements, alterations, additions and building equipment which may on that day be on the Property (other than trade fixtures and equipment and other personal property belonging to the Association which Association shall have the right to remove under the provisions of Article IX hereof captioned "Alterations; Additions and Improvements; Fixtures and Equipment."

ARTICLE III

Title and Quiet Possession; Termination

Section 3.1 Covenant of Title.

City represents and warrants that City has full right and lawful authority to enter into and perform City's obligations under this lease Agreement for the full term hereof and has good and marketable title in fee simple to the land comprising the Property.

Section 3.2 Covenant of Quiet Enjoyment.

City further covenants that if Association shall discharge the obligations herein set forth to be performed by City, Association shall have and enjoy, during the term hereof, the quiet and undisturbed possession of the Premises and all appurtenances appertaining thereto.

Section 3.3 Termination.

(a) The City may terminate this Agreement following the occurrence of an Association Default, subject to and in accordance with Article XIV. The preceding sentence does not limit any other right of termination of the City in accordance with this Agreement.

(b) The Association may terminate this Agreement by giving the City written notice twelve months or more in advance of the termination date. Provided, however, if the City has timely appropriated and used all funds necessary to perform (and has performed) all City Deferred Maintenance Obligations, and has timely appropriated and delivered to the Association all City Direct Financial Support, then the Association shall not provide such written notice and exercise such right of termination before the Association's obligations under Section 9.2 of this Agreement have been performed.

ARTICLE IV

Rent and Other Charges

Section 4.1 Rent.

For good and valuable consideration as set forth in this Agreement, including the Association agreeing to raise additional funds and assuming Association Maintenance Obligations that otherwise under the Initial Use Agreement would have been the obligation of the City, the total rent payable to the City by the Association for its lease of the Premises during the AR Term shall be \$1.00 per year payable on or before January 2 of each Lease Year. The obligation to pay the monthly rental payment is an independent covenant. The failure of Association to pay such amount upon demand shall, at City's option be an event of default hereunder. In the event Tenant's check for the annual rental payment is dishonored, Tenant shall pay to City a processing fee of \$25.00 for each dishonored check. In the event of a late rental payment, Tenant shall pay a late fee equal to three percent (3%) of the late amount.

All annual rental payments to be made by Association to City shall be payable to City of Dallas at the address set out in Section 15.3, or at such other address as may be specified by notice delivered by City, its successors or assigns.

Section 4.2 Utility Charges.

Except as otherwise provided in this Agreement, Association will pay all charges for gas, electricity, water, telephone service and other utilities used on the Premises, during the term of this Agreement, and Association will also pay all sewer charges separately billed or assessed with respect to the Premises for any period included within the term of this Agreement.

ARTICLE V

Taxes

Section 5.1 Definitions Respecting Real Estate Taxes.

(a) The term “taxes,” as used herein, shall mean all ad valorem taxes, sales taxes, income taxes and other government charges, general and special, ordinary and extraordinary, of any kind whatsoever, applicable or attributable to the Premises and/or any occupant’s use and enjoyment thereof, excluding “assessments” as defined below. Association shall pay when due all taxes, if any, commencing with the Transition Date and continuing throughout and including the last year of the term hereof. Taxes (if any) for the year in which the Transition Date occurs shall be prorated, with Association responsible only for taxes (if any) allocable to the period from the Transition Date through December 31 of such year.

(b) The term “assessments,” as used herein, shall mean all governmental assessments for public improvements or benefits which during the term shall be assessed, levied, imposed on, or become due and payable, or a lien upon the Premises, any improvements constructed thereon, the leasehold estate created hereby, or any part thereof. Association shall not cause or suffer the imposition of any assessment upon the Premises, without the prior written consent of City. In the event any assessment is proposed that affects the Premises, Association shall promptly notify City of such proposal after Association has knowledge or receives notice thereof. Any assessment on the Premises shall be made in compliance with all applicable statutes. Association shall pay the total amount of all assessments levied with respect to the Premises and/or the leasehold estate created hereby. In no event shall City be obligated to pay any assessment or any portion thereof levied or created during the term hereof, irrespective of whether such assessment or any portion thereof was specifically allocated to the Premises or City’s reversionary interest therein. No assessment shall be payable in installments without City’s prior written consent, which City may condition upon the posting by Association of a satisfactory bond guaranteeing the payment of such installments as they become due.

Section 5.2 Taxes on Premises.

(a) The parties recognize that under present tax laws, the City is not required to pay real estate taxes on the premises. Should any such taxes at any time due to the Association’s use of the Premises, Association shall be responsible to pay all taxes arising out of Association’s use. City may, at any time, at its expense contest and dispute any real estate taxes and special assessments lawfully levied or assessed against the Premises, and in such case the disputed item need not be paid until finally adjudged to be valid.

(b) All payments by Association of taxes and/or assessments shall be made by Association on or before thirty (30) days before the last day on which such payments or any installments thereof permitted hereunder may be made without penalty or interest. Association shall promptly furnish to City receipts or other appropriate evidence establishing the payment of such amounts.

(c) In the event Association fails to pay any of the expenses or amounts specified in this Article, City may, but shall not be obligated to do so, pay any such amount and the amount so

paid shall immediately be due and payable by Association to City and shall thereafter bear interest at the rate specified below.

Section 5.3 Association as Tenant's Right to Contest.

Association as tenant hereunder shall not be required to pay any tax, assessment, tax lien, or other charges upon or against the Premises, or any part thereof, or the improvements situated thereon, so long as it shall, in good faith and with due diligence, contest the same or the validity thereof by appropriate legal proceeding which shall have the effect of preventing the collection of the tax, assessment, tax lien, or other charges so contested; provided that, pending any such legal proceeding it shall give City such security as may be deemed reasonably satisfactory to City to insure payment of the amount of tax, assessment, tax lien or other charges, and all interest and penalties thereon. City shall cooperate with Association's efforts; provided, however, City shall not have to expend any out-of-pocket funds or bring or join in any suit regarding same, and Association shall indemnify and hold City harmless against and from any loss, liability, or expense resulting from such efforts.

Section 5.4 Creation of Special Assessment District.

If at any time during the term of this lease any governmental subdivision shall undertake to create an improvement or special assessment district, the proposed boundaries of which shall include any portion of the Premises, Association shall be entitled to appear in any proceeding relating thereto and to exercise all rights of City to have the Premises parcel excluded from the proposed improvement or assessment district and to determine the degree of benefit to City's parcel resulting therefrom; provided, however, that nothing herein shall prevent City from taking a different position than Association. City shall promptly advise Association of the receipt of any notice or other information relating to the proposed creation of any such improvement or special assessment district the boundaries of which include any portion of the Premises.

Section 5.5 Personal Property.

All personal property owned by the Association and placed in the Symphony Center or on the Premises, during or prior to the AR Term, remains the property of the Association. The Association is responsible for and shall pay prior to delinquency all ad valorem taxes or property taxes, if any, that may be assessed against, imposed, or otherwise payable on account of such personal property of the Association.

All personal property owned by a sublessee, contractor, or concessionaire of the Association or the City and placed in the Symphony Center or other portions of the Premises remains the property of the sublessee, concessionaire, or contractor, respectively, unless otherwise provided in the sublease, concession contract, or contractor's contract. The respective owners of such personal property are responsible for payment of all ad valorem taxes or property taxes, if any, that may be assessed against, imposed, or otherwise payable on account of the such personal property.

ARTICLE VI

Operation; Management of the Premises

Section 6.1 Operation; Management of the Premises.

(a) Association Responsibility. Effective as of the Transition Date, Association shall, at its sole cost and expense, be responsible for operating, managing, programming and staffing the Premises to carry out the purposes set forth in this Agreement, and for making any payments related thereunder, all in accordance with the terms of this Agreement. Except as otherwise provided in this Agreement, the Association will perform itself, or contract directly with third parties to perform, all management and operational services for the Symphony Center, including but not limited to the following as needed to achieve the City's public purpose:

The Association will:

- (i) manage, maintain, and operate the Symphony Center as a first class facility for concert and recital performances and other events permitted by and in accordance with this Agreement; and
- (ii) assure that all events scheduled in the Symphony Center are permitted by and in accordance with this Agreement; and
- (iii) provide professional management to schedule and promote the use of the Symphony Center; and
- (iv) provide ticket takers, ushers, security guards and other personnel necessary for the operation of the Symphony Center; and
- (v) establish operating policies, procedures, and capital improvement plans, as needed for the successful management, maintenance, and operation of the Symphony Center in accord with the City's public purpose.

(b) Transition Period. During the Transition Period, the Association and the City will each cooperate, at no expense to the other party, by providing transition services as the Association may request, and by otherwise working with each other to achieve an orderly transition of roles and obligations in connection with the Symphony Center and the Premises. Unless the Association shall otherwise elect by written notice to the City to take assignment of existing contracts for the Premises, the City will terminate all contracts pertaining to the Symphony Center and the Premises effective within 60 days following the Transition Date or, if later, within 90 days following the City's delivery of the applicable contracts to the Association. The Association shall designate which contracts shall be terminated by the Transition Date or, if later, within 30 days following the City's delivery of the applicable contracts to the Association. The City agrees to be responsible for any termination costs resultant from City's termination of unassigned contracts, but only through the Transition Date. The Association shall be solely responsible to bid or rebid existing contracts and may select and work with whatever vendors and counterparties as the Association may choose. Unless otherwise required or permitted under this Agreement, or as may be reasonably deemed necessary by City to ensure DSA's compliance in achieving the City's public purpose pursuant to or for compliance with the Public Purpose Statute, or if requested by

Association and agreed to by the City, City shall have no authority or obligation to approve or direct any management, operation or other functions or contracts of the Association.

(c) Existing City Contracts. Existing City contracts have been provided to the Association and include those certain contracts listed on Exhibit AR-7, attached hereto and incorporated for all purposes herein. The parties agree that existing City contracts shall be either assigned to the Association at the Association's election, or be terminated by the City prior to or effective as of the Transition Date. Without limiting the terms of Subsection 6.1(b) above, the parties agree that for those contracts that may not be assignable to the Association, until the Association rebids and is ready to award new contracts for those various goods and services, those non-assignable City contracts will remain in effect and the Association will be financially responsible for those contracts as of the Transition Date and shall either pay the contractual counterparties per the contract terms or reimburse the City for direct payments by the City to the contractual counterparties. In addition, notwithstanding the date the Association shall designate which contracts shall be terminated or which it elects to take assignment, the Association shall be financially responsible for all contracts as of the Transition Date and shall be obligated to reimburse the City for all costs accruing thereafter. The Association agrees to provide a minimum of 60 days' notice to existing city contract vendors to terminate; provided, if longer advance notice to terminate is required under the applicable contract, the Association shall provide the vendor such longer period of advance notice.

Contracts related to booked but not yet performed events at the Symphony Center shall be assigned by the City to the Association for management as of the Transition Date. City shall also take necessary actions to transfer any monies or deposits received and related to any booked but not yet performed event to the Association for Association's management of such booked event. The parties agree that if, as of the AR Effective Date, City is in negotiations with any third party for a future event at the Symphony Center, City is authorized to finalize said negotiations and execute an event contract for a date after the Transition Date; however, City agrees not to initiate any new negotiations without the Association's cooperation and consent, which consent, if no other booking is contemplated, shall not be unreasonably withheld.

(d) City Employees. All personnel engaged by Association shall be considered employees and/or agents of Association and not employees or agents of the City. During the Transition Period, the Association shall have the right but not the obligation to hire those current employees of the City who are assigned to the Symphony Center.

(e) Concessions. Effective as of the AR Term Transition Date, the Association will receive all revenues from all concessions contractors. The Association shall direct all revenues from all concessions contractors to the benefit of the Association's artistic mission and operations as such benefit is related to serving the public purpose.

(f) Business Inclusion and Development – Operation and Management. Association, shall adopt good faith efforts to comply with the City's Business Inclusion and Development (BID) Plan, to the extent feasible, in hiring and contracting with minority and women-owned local businesses certified by the City or the North Central Texas Regional Certification Agency in the operation, management, and maintenance of the Symphony Center and Premises as a whole. Upon

City's request, Association shall include in its required reporting under this Agreement a written report on its good faith efforts to comply with the City's BID Plan.

Section 6.2 Event Scheduling.

The Association shall manage and operate use of the Symphony Center and the Premises, subject to and in accordance with this Agreement, which with regard to events scheduled on the Premises shall adhere to the following:

(a) Rights of Association. Effective as of the Transition Date, the Association shall occupy, maintain, manage, and operate the Premises as the City's sole tenant with all leasehold rights, including but not limited to the obligations and rights to operate the Symphony Center portion of the Premises for its use and others to carry out the City's public purpose in accordance with this Agreement. The Association agrees to schedule and book, subject to the provisions of the Booking Procedures Agreement, dates and times for rehearsals, concert performances, and other events and uses of the Symphony Center in accordance with this Agreement (collectively "Qualifying Uses"). Qualifying Uses shall include the following:

- (i) Association Events, including:
 - (A) DSO Events
 - (B) Commercial Events
 - (C) Other Events, including Booked 2019-20 Events
- (ii) City Events, including Inauguration Events; and
- (iii) Grandfathered Events.

(b) Event Scheduling and Coordination; Event Terms. In scheduling Qualifying Uses for the Premises, the Association shall give due consideration to requested events as follows:

(i) City Events. The City agrees to notify the Association in writing by September 1 of each year of the dates and times that the City requests for City Events for the scheduling year (September 1 – August 31) that begins 12 months following. The City may request each year up to 6 event dates (including an Inauguration Event Date) for events presented by the City itself, and up to 10 additional dates for City-oriented and community-oriented events. The City shall pay City Event Rent (as defined in Exhibit AR-5) for each City Event. City Event requested dates are subject to availability.

(ii) Inauguration Events. One Inauguration Event per year, if requested by the City by September 1 of the year preceding the Inauguration Event, shall have super priority, ahead of Association Events, Grandfathered Events, and other City Events.

(iii) Grandfathered Events. The Association agrees to accept written requests from Grandfathered Users for Grandfathered Events through September 1 of each year, for dates and times that Grandfathered Users request for Grandfathered Events for the

scheduling year (September 1 – August 31) that begins 12 months following. Each Grandfathered User shall pay Grandfathered Event Rent (as defined in Exhibit AR-5), and the Association will extend Grandfathered Event Supplemental Terms (as defined in Exhibit AR-5) through May 31, 2029, for each Grandfathered Event. Grandfathered Events requested dates are subject to availability. However, the Association acknowledges the City recognizes Grandfathered Users are important to the continued success of the Symphony Center and the Association shall in the absence of a conflicting Qualifying Use endeavor to provide availability as requested to Grandfathered Users.

(iv) **Scheduling Priority.** Scheduling priority shall be in the following order:

- (A) Inauguration Events
- (B) Association Events
- (C) Grandfathered Events
- (D) City Events

(v) **Additional Event Requests.** After the Association schedules Association Events, and City Events and Grandfathered Events based on requests received prior to the September 1 request notification deadline, the Association shall notify the City and the City may request additional events. The Association may elect to schedule such additional events on a space available basis.

(vi) **Annette Strauss Artists Square.** With respect to the scheduling of events at the Symphony Center in conjunction with the scheduling of events by the DCPA Manager at the Annette Strauss Artists Square, the Association and the City agree to abide, and the City agrees to use reasonable efforts to cause the DCPA Manager to abide, by the Booking Procedures Agreement.

For the duration of the AR Term: the City shall consult with the Association prior to any modification of the Booking Procedures Agreement between the City and the DCPA Manager; and the City agrees it shall in good faith endeavor to maintain uniformity in the form of the Booking Procedures Agreement between the City and DCPA Manager, and the City and the Association. To the extent permitted by law, the City agrees it shall in good faith endeavor to not take action to modify the Booking Procedures Agreement, as in effect between the City and DCPA Manager, to the detriment of the Association or the Symphony Center operations.

(c) **Annual Program of Association Events.**

(i) DSO Events are expected to include use by the DSO and its musicians to perform 150 concerts per year. Association acknowledges and agrees that City of Dallas independent school districts' students will receive complimentary tickets based on availability for no less than 50 concerts selected by the Association.

(ii) In addition to DSO Events at the Symphony Center, the Association may present and promote Association Events at the Symphony Center, community-oriented,

commercial and non-commercial, and may schedule as many such additional events as the Association determines in its discretion, with a priority equivalent or immediately after the priority given to DSO Events involving DSO and its musicians.

(iii) In addition to DSO Events at the Symphony Center, the DSO and its musicians are expected to schedule and (subject to weather conditions) perform each year a series of no less than four (4) free concerts in City of Dallas parks, or other public locations within the city of Dallas approved by the Director.

Section 6.3 Ticket Surcharge.

(a) General Requirement: The Association shall collect and deposit into an escrow account (as agreed upon by the parties) (the "Surcharge Reserve Account"), for use by the Association a ticket surcharge of \$2.50 per ticket for events at the Symphony Center ("Initial Surcharge"). The Association shall deposit the surcharge into the Surcharge Reserve Account on a quarterly basis within 30 days of the end of each calendar quarter. For all events except Grandfathered Events, beginning five (5) years after the AR Term Commencement Date, the surcharge will be adjusted on each five (5) year anniversary of the AR Term Commencement Date (the "Surcharge Adjustment Date") to reflect increases in the Consumer Price Index for "All Urban Consumers, U. S. City Average, All Items," issued by the Bureau of Labor Statistics of the United States Department of Labor. Adjustments will be determined by multiplying the Initial Surcharge by a fraction, the numerator of which is the index number for the last month before the Surcharge Adjustment Date and the denominator of which is the index number for the month of the AR Term Commencement Date; provided, however, that each adjustment shall be to the nearest twenty-five cent (\$.25) increment so that each surcharge will at all times be increased or decreased only by multiples of twenty-five cents (\$.25). As an example and for illustration purposes only, if the adjustment on the first Surcharge Adjustment Date would increase the Initial Surcharge by thirty-six cents (\$.36), then the surcharge beginning on the five (5) year anniversary of the AR Term Commencement Date would increase to \$2.75 and if the adjustment on the first Surcharge Adjustment Date would increase the Initial Surcharge by thirty-eight cents (\$.38), then the surcharge beginning on the five (5) year anniversary of the AR Term Commencement Date would increase to \$3.00. If the product is greater than the Initial Surcharge, the Association will collect and deposit this greater amount into the Surcharge Reserve Account as the surcharge until the next Surcharge Adjustment Date. The surcharge will never be less than the Initial Surcharge. The Association will notify the City of each adjustment to the surcharge no later than sixty days after the Surcharge Adjustment Date. If the index is converted to a different standard reference base or otherwise revised, the determination of the index shall be made with the use of such conversion factor, formula or table for converting the index that may be published by the Bureau or, if the Bureau does not publish the same, then with the use of such conversion factor, formula or table as is published by any nationally recognized publisher of similar statistical information. If the index ceases to be published, then the Association may substitute for it any independently published index of a reasonably comparable type. The Association shall thereafter retain and expend the amounts in such Surcharge Reserve Account only for Association Maintenance Obligations and for no other purpose. Any funds in the Surcharge Reserve Account upon termination of this Agreement shall become property of the City and the Association shall cooperate with City to execute any legally necessary documentation to facilitate the transfer of said funds to the City. City's audit rights shall extend to the Surcharge Reserve Account.

(b) Grandfathered Events. For Grandfathered Events, beginning ten (10) years after the AR Term Commencement Date, the surcharge will be increased by an amount up to fifty cents (\$.50) but not exceeding the current surcharge for all other events as provided in Subsection 6.3(a) above. In the event the initial surcharge increase does not bring the surcharge for Grandfathered Events in line with the surcharge for all other events, the surcharge for Grandfathered Events shall be increased every two years thereafter by up to fifty cents (\$.50) until such time as the surcharge matches the surcharge rate for all other events. At such time that the surcharge rate for Grandfathered Events matches that for all other events, the provisions for future surcharge adjustments provided in Subsection 6.3(a) above shall apply for the remaining duration of this Agreement.

Section 6.4 Reporting.

Effective as of the AR Term Transition Date and continuing for six (6) Lease Years (i.e., while the City is providing City Annual Financial Support), the Association shall submit to the City a monthly report concerning its operations under this Agreement, including but not limited to: (a) a list of activities and programs; (b) attendance for each activity or program; (c) location of each activity or program presented by the Association; and (d) a Surcharge Reserve Account balance update. This monthly report must be submitted using the report forms provided by the City by the 15th day of each calendar month (reporting the prior month's activities). Following the sixth year, and continuing for the remaining duration of the Agreement, the Association shall submit to the City an annual report that includes with respect to Association activities or programs supported by the City at the Symphony Center or required under this Agreement: (a) a list of activities and programs; (b) attendance for each activity or program; (c) location of each activity or program presented by the Association; and (d) a Surcharge Reserve Account balance update. This annual report must be submitted using the report forms provided by the City by the 30th day of each October (reporting the prior year's activities). In addition, to extent not included in the items described above, the Association shall provide a status of any fundraising required under this Agreement.

Section 6.5 Complimentary Tickets.

The Association shall make available at least four (4) complimentary tickets per event, program, production, exhibition or other activity at the Symphony Center to the City for the purpose of allowing City staff or City board and commission members to assess the management and operation of city-owned facilities within their jurisdiction and to oversee City sponsored events associated with and related to their respective board and commission duties and functions. This requirement applies to the Association Events, Grandfathered Events, and City Events, except that events that are not open to the general public are excluded. Additionally, the Association may provide free tickets to promotional activities to the Director for distribution to the general public at various City facilities.

ARTICLE VII

Maintenance and Repairs

Section 7.1 Association Maintenance Obligations.

Except as otherwise provided in this Agreement, during the AR Term, Association shall, at its sole expense, keep, maintain and repair (including replacements, if necessary) the Premises. Association's responsibilities shall extend to all structural and non-structural portions of the Premises, including but not limited to the roof, exterior walls and exterior doors and windows, footings and foundation, floor slab, and structural walls, columns and beams, the exterior facilities located on the Property, including, without limitation, the parking areas, driveways, sidewalks, landscaping and hardscape, all portions of the mechanical, electrical, plumbing, HVAC, sprinkler, exhaust, and utility systems within the Premises, and all Common Facilities except as otherwise expressly stated herein, all in good condition and repair except any such repairs necessitated by the gross negligence or willful misconduct of City, its employees, agents or contractors or resulting from City's failure to maintain the Premises in accordance with City's obligations under this Agreement. Association, agrees to make all repairs to the Premises and all other improvements, repairs and maintenance necessary to keep the Premises safe and in good condition and repair (ordinary wear and tear expected), at no expense to City and that City shall be absolutely exempt from making any improvements or repairs, or undertaking any maintenance to the Premises or other appurtenances and improvements during the AR Term. Provided, however, City shall perform the City Maintenance Obligations at City's expense in accordance with this Agreement.

Association agrees to allow City, upon reasonable prior notice to Association, to inspect the Premises during Association's normal business hours at City's discretion, to ensure compliance with Associations' maintenance responsibilities set out in this Agreement. City agrees to give Association notice of any observed defects and any need for repairs to the Premises and to provide Association with a reasonable opportunity to make such repairs. Association agrees to exercise reasonable diligence in making repairs so as to not lay waste to the Premises.

Section 7.2 City Maintenance Obligations.

The City agrees to provide City Annual Financial Support, and agrees to use and direct all bond funds appropriated for the Symphony Center, and all other capital non-bond funds as may be appropriated by the City Council for the Symphony Center, to undertake and perform and pay for maintenance, repair and replacement of the below listed items on a single performance basis (the "City Deferred Maintenance Obligations"); but only as may be performed under the appropriated bond funds or other City appropriated funds. Thereafter, the Association shall be solely responsible to undertake maintenance, repair and replacement of the listed items as ongoing Association obligations under this Agreement.

(a) For avoidance of doubt, the parties confirm their specific agreement on the following matters which City agrees comprise the City Deferred Maintenance Obligations, in the order of priority as listed:

- (i) roofing issues (leaks and ceiling repair);

(ii) fire safety system obligations, together with and including to repair, replace and upgrade equipment and components in addition to work previously done to obtain white tag status.

(iii) lobby elevators repair;

(iv) lighting control system; and

(v) reverberation chamber doors, operators and controller system.

The City Deferred Maintenance Obligations are described in more detail in Exhibit AR-4, attached to and incorporated as part of this Agreement. The parties acknowledge that the City Deferred Maintenance Obligations will be further described in additional detail as the City concludes its RFP process and a final scope of work is established by the City.

City Deferred Maintenance Obligations to Association do not generally include causing the physical condition of the Premises to comply with the Americans with Disabilities Act, except to the extent otherwise required as part of the scope of City Deferred Maintenance Obligations established under this Agreement. However, the Association does not assume any obligations of the City to third parties based on any such noncompliance.

Section 7.3 Performance Schedule.

The City Deferred Maintenance Obligations related to roof repairs are anticipated to be completed by June, 2021, all other City Deferred Maintenance Obligations are anticipated to be completed by June, 2022, provided the Association accommodates scheduling of repair work in a timely manner. The City agrees to consult with the Association, and the Association will have the right to participate in, and conduct oversight of the work on the City Maintenance Obligation projects. However, the City will not charge and the Association is not obligated to pay any costs or fees, to the City or any third parties, in connection with or as a condition to the Association's participation in conducting any projects oversight.

Section 7.4 City Public Art; and City Park.

During the AR Term, the City shall, at City's sole cost and expense, perform and pay for maintenance, repair and replacement of the City Public Art and the City Park (collectively the "City Ongoing Maintenance Obligations"). During the AR Term, the City shall cause the City Public Art to remain at the Symphony Center, in its current locations and consistent with its original placement; and provided further, shall be subject to City's removal as may be needed from time to time for City's repair, maintenance, conservation and preservation requirements. The City shall determine whether and to what extent to obtain insurance for the City Public Art and the City Park. The Association shall not be obligated to obtain or provide any such insurance; however, except as to acts of God, the Association shall be responsible to safeguard the City Public Art from damage, and the City Park from damage when used by the Association. The Association shall

indemnify, defend, and hold harmless the City from any claims arising out of the City Public Art while it is on display or the Association is present on the City Park.

ARTICLE VIII

Direct and Indirect Financial Support

Section 8.1 City Funding and Financial Support.

Without limiting any of the terms of this Agreement, and notwithstanding that the Association may pursue other sources of funding for its operational, managerial, and maintenance obligations (e.g., independent fund raising, or as set forth in this Article and Article IX of this Agreement), the parties acknowledge and agree that the Association's operations are dependent on its continued receipt of the financial support from the City for the duration and as provided for in this Agreement and as may be provided to the Association pursuant to an annual cultural service agreement with the City c/o the City's Office of Cultural Affairs (OCA). City funding and financial support during the AR Term are more particularly set forth to include the following:

(a) Direct Financial Support. Subject to annual appropriation, the City will provide annual financial support (the "City Direct Financial Support") for operation and maintenance, including of the Symphony Center, by October 30 of each fiscal year from 2019 through 2024, inclusive, in the amounts indicated on the attached Exhibit AR-3. Prior to City's remittance of any financial support, the Association shall present an invoice of the Association's estimated expense budget by October 1 of each fiscal year from 2019 through 2024. The City shall endeavor to make City Direct Financial Support payments to the Association within thirty (30) days of receipt of the Association's invoice. The Association agrees that a temporary delay (no more than forty-five (45) days from when due and owing by City in making City Direct Financial Support payments due to City's accounting and disbursement procedures) shall not place City in default of this Agreement, and shall not render City liable for any interest or penalty under this Agreement.

(b) Indirect Financial Support. Following the expiration of the City's Direct Financial Support, the City may provide indirect financial support to the Association beginning on October 1, 2025 through its cultural support programs and an annual cultural service agreement with the City c/o the City's Office of Cultural Affairs (OCA) in accordance with the guidelines of each program as may be authorized by the City ("City Indirect Financial Support").

(c) Association's Funding Obligations. Notwithstanding the City's financial support provided to the Association under this Agreement, the Association agrees to be solely responsible to fund the Association's operation, management, and maintenance of the Premises.

ARTICLE IX

Alterations, Additions, and Improvements; Fixtures and Equipment

Section 9.1 Alterations, Additions and Improvements; General Requirements.

(a) To the extent reasonably necessary or desirable for the Association to use and occupy the Symphony Center, the Association may erect or install within the Symphony Center

any alterations, additions, or equipment which do not alter the structural integrity or basic configuration of the Symphony Center. The Association must comply with all applicable governmental laws, statutes, ordinances, codes, and regulations regarding structures. The Association shall require its contractors to carry sufficient insurance for all construction projects in accordance with the City's minimum insurance requirements for construction projects as stated in the attached and incorporated Exhibit AR-8. The City will notify the Association in writing if these insurance requirements change, subject to and in accordance with Article XII. The Association shall secure prior approval of the City for any structural alteration, improvement or addition to the Symphony Center, and such approval will not be unreasonably withheld.

(b) All permanent improvements that are erected within the Symphony Center shall be and remain the property of the City, subject to the use by the Association in accordance with the terms of this Agreement.

(c) No portion of this section shall be construed as to limit the Association's ability to construct temporary sets, designs, staging, lighting and sound systems or other alterations of theatrical or decorative nature in the concert hall which does not alter structural integrity of the building. The Association or its contractors shall carry sufficient and appropriate insurance for such activities as may be required by the City, subject to and in accordance with Article XII.

(d) The Association may remove all such non-City owned alterations, additions, and equipment it installed within the Premises, at the expiration or earlier termination of this Agreement, provided such removal does not cause any material damage to the Premises building.

(e) If the City, with the prior written notice to the Association, agrees to erect or install at its own expense any additional improvements, whether of a temporary or permanent nature, to or within the Premises, the Association agrees such improvements shall be maintained in accordance with the terms of this Agreement; provided however the Association's maintenance shall be conditioned on the City's payment to the Association of such amount attributable to the operating expenses attributable to such improvements.

(f) All improvements of a permanent nature which are presently situated or which may be hereafter be erected within the Premises by either the City or Association under this Agreement, irrespective of how same may have been financed, shall constitute a part of the Premises, and shall be and remain the property of the City, subject to the use by the Association in accordance with the terms of this Agreement.

(g) If the City and the Association join efforts in any Alterations, Additions and Improvements to the Premises, the City and the Association agree to conduct all such joint efforts in accordance with city building ordinance and codes, and all applicable laws.

(h) Business Inclusion and Development – Construction. To extent Association undertakes or causes any construction work to the Premises, Association shall, and Association shall request that its engineers, construction manager and contractors, adopt good faith efforts to comply with the City's Business Inclusion and Development (BID) Plan, to the extent feasible, in

hiring and contracting with minority and women-owned local businesses certified by the City or the North Central Texas Regional Certification Agency in the construction of any improvements for the Premises as a whole.

Section 9.2 Alterations, Additions and Improvements Funding.

(a) Association Funding and Capital Improvements. Without limiting the Association's financial liability for the operations, management, and maintenance of the Premises under the terms of this Agreement, the Association agrees to the following:

(i) the Association agrees it will raise cash or pledges in the amount of \$5,000,000 during the period of DSA fiscal years 2020-2025, which will be earmarked for capital improvements to the Symphony Center, as part of the Association Maintenance Obligations.

(ii) No later than 2029, as part of the Association Maintenance Obligations, the Association will complete capital improvements to the Symphony Center which in the aggregate cost no less than \$5,000,000, using funds of the Association including funds donated to or for the benefit of the Association, and not including and not using funds provided by the City.

(iii) Provided, however, without limitation of City's obligation to perform the City Deferred Maintenance Obligations: to the extent completion of the City Deferred Maintenance Obligations does not occur by June 30, 2022 (with the repairs to the roof being completed by June 30, 2021), the 2025 date in Section 9.2(a)(i) and the 2029 date in Section 9.2(a)(ii) shall be extended beyond December 31 of such years by the number of days from July 1, 2022, through the date of completion of all the City Deferred Maintenance Obligations; and if, to the extent, and so long as the City has failed to appropriate and use all funds necessary to perform (and has performed) all City Deferred Maintenance Obligations, or has failed to appropriate and deliver to the Association all City Direct Financial Support, then the required date(s) for the Association's (and Guarantor's) obligations to fund and perform capital improvements if any under this Agreement shall be extended for a time period equivalent to the City's delay in performing the City Deferred Maintenance Obligations, and any resulting delay in the Association's performance of the Association's Maintenance Obligations and such Association delay shall not constitute a default under this Agreement.

(b) Association Funding Guaranty. Regarding the Association's funding commitments set forth in Subsection 9.2(a) above, the Association has provided the City with a financial guarantee agreement (the "Guaranty") from the Dallas Symphony Foundation, Inc. (the "Guarantor"), evidencing the Guarantor's guarantee of the Associations fundraising obligations for the benefit of the Premises. A copy of the Guaranty is attached and incorporated as part of this Agreement as Exhibit AR-9.

ARTICLE X

Parking; Signs

Section 10.1 Symphony Center Garage.

The Symphony Center Garage is part of the Symphony Center covered by and leased to the Association pursuant to this Agreement. Effective as of the Transition Date, the Association shall operate and manage the Symphony Center Garage. The Association shall pay no parking charges or other costs to the City, and the Association shall be entitled to all revenue from the Symphony Center Garage.

Section 10.2 Hall Arts Garage.

The parties acknowledge and agree that this Agreement, although constituting an amendment and restatement of the Initial Use Agreement, is and remains the Use Agreement contemplated and described in the Hall Arts Agreements. The City and the Association shall cooperate and take whatever actions that may be required to assure and confirm that the Hall Arts Agreements remain in full force and effect and that the Association will continue to have the right to use 1200 parking spaces in the Hall Arts Garage during the AR Term. Without limitation of the foregoing, the City shall continue to exercise its rights and perform its obligations under the Hall Arts Agreements; and shall consult with and obtain prior written consent from the Association (which the Association shall not unreasonably withhold, delay, or condition) before taking any decision or action with respect to the Hall Arts Garage that could adversely affect the rights of the Association to use 1200 parking spaces in the Hall Arts Garage.

Section 10.3 Signs.

Except as may be required by applicable City building ordinances and codes, the Association shall have right to erect signs on the Premises without the City's consent.

ARTICLE XI

Utilities

Section 11.1 Utilities Costs.

Effective as of the Transition Date, Association shall be responsible for and pay the cost of all utility services and any connection charges, including but not limited to all charges for gas, water and electricity serving the Premises.

Section 11.2 Utilities Purchases.

Without limiting the Association's utility obligations set forth in Section 11.1 above, if mutually agreed to by the parties, the City shall enable Association's purchase of utilities (such as water, gas and/or electricity) from or through the City, in which event the Association will reimburse the City or pay for the direct costs of such utilities. Alternatively, the Association may contract directly with utility companies, as the Association may from time to time elect. During such times and from time to time as the Association so elects to purchase utilities pay for or

reimburse the direct costs of utilities from or through the City, and the City agrees to such arrangement, the City shall provide or cause the applicable utility companies to provide all water, gas and/or electricity for the Premises.

ARTICLE XII

Insurance and Indemnification; Damage or Destruction; and Condemnation

Section 12.1 General Requirements.

(a) Unless Association elects to obtain property insurance as described in the following subsection, City will obtain property insurance (including fire and extended coverage insurance) on the Symphony Center and other Premises with coverages and limits reasonably determined by the City, with the intention of the City being to insure the Symphony Center in accordance with limits set by the City's Risk Management Department and as close as possible to its replacement cost. Such property insurance shall be obtained at the cost and expense of the City; provided however, the Association shall for the duration of the AR Term be obligated to, in lieu of paying premiums to an insurance company, instead the Association shall reimburse the City the premiums portion of the City's cost and expense of obtaining such insurance.

(b) If and to the extent the Association elects to obtain property insurance, with respect to any insurance policy period or as otherwise agreed to by the Association and City, the Association shall obtain property insurance (including fire and extended coverage insurance) on the Symphony Center and other Premises with coverages and limits to be determined by the City after consultation with the Association, with the intention of the Association and the City being to insure the Symphony Center in accordance with Exhibit AR-8 to limits as close as possible to its replacement cost. Such property insurance shall be at the cost and expense of the Association.

(c) In addition to the property insurance (including fire and extended coverage insurance), which will be obtained and paid for in accordance with the preceding subsections, the Association shall at all times during the AR Term, obtain and maintain in full force and effect, at Association's sole expense, liability, workers compensation and other insurance as described in Exhibit AR-8, attached hereto. Exhibit AR-8 shall be subject to amendment in accordance with this Agreement and the insurance policies of the City, and any such amendments shall thereafter be effective and controlling as between the parties under this Agreement. The insurance shall be evidenced by delivery of executed certificates of insurance and certified copies of the policies to Assistant Director, Risk Management, 1500 Marilla 6A-South, Dallas, Texas 75201 and the General Manager, the Meyerson Symphony Center, 2301 Flora Street, Dallas, Texas 75201. The insurance requirements shall remain in effect throughout the term of this Agreement. After consultation with the Association, the City reserves the right to modify the kinds of coverages and deductibles required and increase minimum limits of liability of the coverages whenever in its discretion it becomes necessary to conform with the then City policy regarding insurance requirements for this type of Agreement.

(d) Each liability insurance policy must include the following conditions by endorsement to the policy:

- (i) The City must be named as an additional insured.
- (ii) Each policy must require that 60 days before the cancellation, non-renewal, or any material change in coverage, a notice thereof shall be given to the City by certified mail to: Director, Office of Risk Management, 1500 Marilla 6A-South, Dallas, Texas 75201.
- (iii) Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums, assessments, or any deductibles, all of which are at the sole risk of the Association.
- (iv) The term "City" or "City of Dallas" includes all authorities, Boards, Bureaus, Commissions, Divisions, Departments, and offices of the City and the individual members, employees and agents of the City including the City's Symphony Center manager, while acting in their official capacities on behalf of the City.
- (v) The policy clause "Other Insurance" shall not apply to the City where the City is an additional named insured on the policy.
- (e) Each party hereto hereby waives any and every claim which arises or may arise in its favor and against the other party hereto during the term of this Agreement or any extension or renewal thereof for any and all injuries (including death) and loss of, or damage to, any of its property which claim, loss or damage is covered by valid and collectible property insurance (including fire and extended coverage insurance) policies, liability insurance policies, workers' compensation insurance policies, and any other insurance policies which may be in place from time to time, to the extent that such claim, loss or damage is recovered under said insurance policies. Said waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Agreement with respect to any loss, damage or injury (including death) to persons or to property. Inasmuch as the above mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), each party hereto hereby agrees immediately to give each insurance company which has issued to it policies of property insurance (including fire and extended coverage insurance), liability insurance, workers' compensation insurance or such other insurance, written notice of the terms of said mutual waivers, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverages by reason of said waivers.
- (f) As to any insurance required or elected to be provided by the Association, the Association shall provide City with proof of such insurance annually for the duration of this Agreement. Executed certificates of insurance must also be delivered annually. The City shall have the right to request and receive copies of any policy.

Section 12.2

Payment and Disposition of Insurance Proceeds.

Anything herein to the contrary notwithstanding, it is understood and agreed that the policy or policies providing the insurance which a party to this Agreement is obligated to maintain in accordance with the insurance requirements set forth in Exhibit AR-8, or otherwise may cause to be maintained, may be made payable to the holder of any first Mortgage which is a lien upon the

insured property, as its interest may appear, under a standard mortgagee clause, provided such mortgagee is an Institutional Lender and agrees that it will in the event of loss hold the proceeds for payment of the cost of repairing, rebuilding or restoring the damaged premises as may be required pursuant to the provisions of this Article XII hereof captioned ["Insurance and Indemnification; Damage or Destruction; and Condemnation"].

Section 12.3 Evidence of Insurance.

Each party shall deliver to the other party evidence of insurance, if any, as may be required, in accordance with the insurance requirements set forth in Exhibit AR-8.

Section 12.4 Indemnification.

(a) The Association is responsible for any and all claims and demands on account of any injury or death, or damage to property (including, but not limited to, the Symphony Center and the Premises) occurring in or upon any portion of the Symphony Center or the Premises which are caused by the acts or omissions of the Association, its officers, employees, representatives, agents, licensees, sublessees or contractors. The Association shall defend, indemnify and hold harmless the City, its officers, employees, and agents from and against any and all claims, demands, actions, causes of action, penalties, judgments and liabilities of every kind and description (including court costs and reasonable attorneys' fees) for injury to and death of persons, and damage to and loss of property which are caused by, arise from or grow out of the Association's use, occupancy, management, and maintenance of the Symphony Center or the Premises (including the Association's installations and improvements within the Premises), or from any breach by the Association of any condition or any of the terms or provisions of this Agreement, or from any act or omission of the Association, its officers, employees, representatives, agents, licensees, sublessees or contractors. The City shall not be liable for injuries to any person or entity, or for damages to property owned or controlled by the Association, when the claims for damages or injuries are incident to, arise from, or are in any way connected with the Association's use or occupancy, management, and maintenance of the Symphony Center or the Premises except to the extent such claims are resulting from the sole negligence or fault of the City, its officers, employees, representatives, agents, licensees or contractors, and in the event of joint and concurring negligence or fault of both the Association and the City, responsibility, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to the City under Texas law and without waiving any defenses of the parties under Texas law. The City shall also not be liable for any act or omission of the Association, its officers, employees, representatives, agents, licensees, sublessees or contractors. However, the provisions of this section are not for the benefit of any third parties and do not provide any rights to any third party that is not a party to this Agreement.

(b) The obligation to indemnify and defend shall also include any claim for damage that any utility or communication company, whether publicly or privately owned, may sustain or receive by reason of the Association's use of the Symphony Center or the Premises or the Association's improvements and equipment located thereon.

The Association assumes all liability resulting from any and all environmental contamination caused, contributed to, or introduced to the Premises, improvements or grounds by the Association,

its agents, employees, clients or contractors. The Association shall not be responsible for any loss, liability, claim or expense resulting from, or for compliance with any law, order or directive relating to, any environmental contamination or hazardous substances that existed on, in or under the Premises, building or grounds prior to the commencement of the AR Term, to the extent that the Association did not cause, contribute to, or introduce the environmental contamination or hazardous substances.

If City shall, without fault on City's part, be made a party to any litigation commenced by or against the Association or relating to this Agreement or the Premises, the Association shall pay all costs and expenses, including reasonable attorney's fees, incurred by or imposed upon City by and in connection with such litigation; and the Association shall pay all costs and expenses including reasonable attorney's fees that may be incurred by City in enforcing any of the covenants and agreements contained in this Agreement and the amount of all such costs and expenses and reasonable attorney's fees, if paid by City herein, shall be additional rental due from the Association to City.

Section 12.5 Effect of damage or destruction.

In the event all or any portion of the Symphony Center or the Premises is damaged or destroyed by fire or other casualty, the Association shall, at its cost and expense (limited to a maximum expenditure of the amount of insurance proceeds required to be carried by the Association under this Agreement (or by City in lieu of the Association as set forth in Section 12.1 hereinabove), and made available to the Association for such purpose by reason of such fire or other casualty), restore, repair, replace and rebuild the Symphony Center as nearly as possible to its value, condition and character immediately prior to such damage or destruction. All such repair and restoration shall be performed in accordance with the requirements of Article IX.

Association may, but shall not be obligated to, provide funds to repair, restore and rebuild, beyond available insurance proceeds.

There shall be no abatement or reduction in any monetary obligations during such repair, restoration and rebuilding.

Any insurance proceeds payable to the City by reason of such damage or destruction shall be made available by City to pay the cost of such repair, restoration and rebuilding; provided, however, if the Association is in default under the terms of this Agreement at the time such damage or destruction occurs, and if City elects to terminate this Agreement as a result of such default as provided in this Agreement, then City shall thereafter have the right to retain all insurance proceeds payable as a result of such damage or destruction. If this Agreement is not terminated, funds in excess of the cost of such repair, restoration and rebuilding shall be paid to Association for deposit into the Surcharge Reserve Account to be maintained by the Association pursuant to requirements set forth in Section 6.3 of this Agreement.

Section 12.6 Precondition to rebuilding.

Before Association commences any such repair, restoration or rebuilding involving material alterations to the structure of the Premises, building, plans and specifications shall be

submitted to City for approval and Association shall furnish to City (i) an estimate of the cost of the proposed work, which has been certified by the architect; (ii) satisfactory evidence of sufficient contractor's commercial general liability insurance covering the Association, builder's risk insurance, and workers' compensation insurance; (iii) a performance and payment bond satisfactory in form and substance to Association; and (iv) such other security as City may require to insure payment for the completion of all work free and clear of liens.

If Association was carrying the required insurance and if available insurance proceeds are insufficient, then the Association shall provide funding for the work described in this Section, the Association shall deposit any excess cost of any applicable repair, restoration and rebuilding work over the amount of insurance proceeds, prior to commencement of such work. Association shall diligently pursue the repair, restoration and rebuilding of Premises in a good and workmanlike manner, using only high quality workers and materials, and in conformity with the plans and specifications and all applicable laws, ordinances and codes.

Section 12.7 Failure to rebuild.

If Association shall not enter upon and commence actions for the repair, restoration or rebuilding of the improvements (which actions shall at a minimum include securing a contractor satisfactory to the City) within a period of one-hundred twenty (120) days after damage or destruction by fire or otherwise, pursuant to schedule agreed to by the parties under the circumstances, and diligently prosecute the same with reasonable dispatch, then, in addition to whatever other remedies City may have under this Agreement, City shall receive the insurance proceeds from trust, or the balance thereof remaining, as security for the continued performance and observance by Association of the Association's covenants and agreements hereunder; undertake to perform the repairs, restoration or rebuilding itself; or City may terminate this Agreement and then receiving said amount as partial liquidated damages resulting from the failure of Association to comply with the provisions of this Article. Any funds expended or costs incurred by City attributable to repair, restoration or rebuilding of the Premises in excess of the available insurance proceeds shall be at the cost and for the account of the City.

Section 12.8 Condemnation: Taking of whole.

If the whole of the Premises, or so much thereof, including a portion of the improvements, shall be taken or condemned for a public or quasi-public use or purpose (or conveyed in lieu thereof) by any competent authority and as a result thereof the balance of the Premises cannot be used for same uses or purposes as set forth in this Agreement, then, and in either of such event, the AR term shall terminate when possession of the Premises shall be so taken and surrendered, and any award, compensation, or damage, (hereinafter called the "award"), shall be paid to and be the sole property of City, whether such award shall be made as compensation for diminution of the value of the leasehold or the fee of the Premises or otherwise, and Association hereby assigns to City all of Association's right, title and interest in and to any and all such award. Association shall continue to pay all monetary obligations until the AR Term is terminated and any taxes and/or insurance premiums paid by Association, or any tax and insurance premium deposited with City, shall be adjusted between the parties.

Section 12.9 Condemnation: *Partial taking.*

(a) If only a portion of the Premises shall be so taken or condemned, and as a result thereof the balance of the Leased Premises can be used for the same purpose and uses as expressed in this Agreement, this Agreement shall not terminate, and Association, at its sole cost and expense (but limited to the amount of any available condemnation award), shall repair and restore the Premises and all improvements thereon to an operational whole. Association shall promptly and diligently proceed to restore the functionality and utility of the remainder of the Premises and affected improvements first complying with the procedures set forth in Article IX and this Article. For such purpose City shall receive and shall hold in trust the amount of the award relating to the improvements and shall disburse such award to apply on the cost of such repair or restoration in accordance with the procedure set forth in Article IX and this Article. If Association does not make a complete architectural unit of the remainder of the improvements within a reasonable period after such taking or condemnation, pursuant to schedule as shall be agreed to by the parties then, in addition to whatever other remedies available to City, City may undertake such repair and restoration, applying the entire award or the balance thereof remaining in its custody to same. Any portion of such award as may not have to be expended for such repair or restoration shall be paid to City. There shall be no abatement or reduction in any rental because of such taking or condemnation.

Any funds expended or costs incurred by City attributable to repair, restoration or rebuilding of the Premises in excess of the available condemnation award shall be at the cost and for the account of the City.

(b) Efforts to Prevent Taking.

To the extent allowed by law, City shall use its reasonable efforts to cause all other competent authorities with the power of eminent domain to refrain from instituting any condemnation proceedings or exercising any other powers of eminent domain with respect to the Premises, or any part thereof or any interest therein, during the AR Term of this Agreement.

ARTICLE XIII

Naming; Acknowledgements; Copyright

Section 13.1 Donor Recognition; Naming.

(a) Naming of the Premises Building. For and during all or any portion of the AR Term, the Association shall have the right to change the name of the Premises building, including without limitation the right to sell naming rights for the Premises building, subject to the provisions of the City's Cultural Venue Naming Policy as it relates to partner-managed facilities at the time of the proposed naming. The Association shall have the right to name the Premises building, after a natural person, family, corporation, foundation or other entity (the "Recognized Party") designated by a donor in recognition of their contribution commensurate with the naming rights. The Association shall also have the right to name the Premises building after a for-profit commercial entity, provided the Association obtains the prior consent of the City Manager, which consent shall

not be unreasonably withheld or delayed and which consent shall be given without economic compensation to the City or other conditions. A rejection by the City Manager of any such proposed for-profit commercial name shall be given in writing and the reasons shall be specified in reasonable detail. If the City Manager has not delivered a notice rejecting a proposed commercial naming sponsor within thirty days after the Association delivers written notice to the City Manager of such proposed for-profit commercial name, then the Association may complete its arrangements with such proposed donor and the City Manager's right to reject such sponsor shall be deemed terminated. The parties acknowledge that the City Manager's right to reject a proposed commercial sponsor is limited to significant commercial naming sponsors whose business (for example, a sexually oriented business), reputation for business ethics (for example a business that is under public investigation or indictment relating to bribery, public corruption or any similar offense) or similar attributes cause such commercial enterprise to be an improper commercial sponsor for a municipality such as the City of Dallas; provided, however, that such consent is not intended to be withheld by the City for any commercial enterprise primarily because such enterprise then is involved in a commercial dispute with the City, because such enterprise competes with an enterprise that has a commercial relationship with the City or because such enterprise is not located in or headquartered in the City. Any such naming agreements entered into by the Association shall be assumable by the City at its election upon any termination of this Agreement pursuant to which the Association ceases to occupy and use the Symphony Center.

(b) Naming of the Premises Building Components. For and during all or any portion of the AR Term, and without the consent of the City, the Association shall have the right to name a room, facility, fixture, area or other component of the Symphony Center or Premises building.

Section 13.2 Acknowledgements in Printed Materials.

For all purposes that printed materials are utilized in the performance of the Association's obligations under this Agreement during the AR Term, the Association agrees to credit the City for its support of the Symphony Center. The Association in all printed programs and promotional materials (including concert programs, season brochures and community-related fliers) shall specifically credit the City as an institutional partner, or equivalent top tier financial contributor, by displaying a City logo provided by the Director in a conspicuous place consistent with other institutional partners.

Section 13.3 Copyright Indemnification.

The Association assumes full responsibility for complying with the Federal Copyright Law of 1978, as amended, (17 U.S.C. 101, et seq.) and any applicable regulations, including but not limited to the assumption of all responsibilities for paying royalties which are due for the use of copyrighted works in the Association's performances, transmissions or broadcasts, and the Association agrees to defend, indemnify, and hold harmless the City, its officers, employees, and agents, for any claims or damages (including but not limited to court costs and reasonable attorney's fees) growing out of the Association's infringement or violation of the copyright law or regulations.

ARTICLE XIV

Default

Section 14.1 Association's Default and City's Remedies.

An "Association Default" shall mean the occurrence of one or more of the following events:

- (a) failure of the Association to make any payment required under this Agreement within 90 days after written notification of delinquency of payment by the City (or if the payment is disputed and mediated pursuant to Section 15.17 of this Agreement, within 90 days after resolution of the dispute); or
- (b) failure of Association to maintain, in all material respects, any of the insurance or bonds provided for in this Agreement and the failure by Association to cure the failure within thirty (30) days after the City notifies Association in writing of the failure to comply in accordance with the notice provisions under this Agreement;
- (c) failure of Association to comply with any other material term, covenant, or provision of this Agreement, and the failure by Association to commence action to cure the failure within forty-five (45) days after the City notifies Association in writing of the failure to comply in accordance with the notice provisions under this Agreement and the failure by Association to complete the cure of the failure (or to make significant progress towards completion of the cure of the failure, as determined by the City) one hundred eighty (180) days after the City's written notice; and
- (d) appointment of a receiver or trustee to take possession of all or substantially all of the assets of Association; or if any action is taken or suffered by Association pursuant to any insolvency, bankruptcy, or reorganization act; or if Association makes a general assignment for the benefit of its creditors; and such appointment, action, or assignment continues for a period of sixty (60) days.

Section 14.2 Notice.

Notice pursuant to this Section (a "Default Notice"), shall be sent pursuant to Section 15.3. Any opportunity to comply/cure provided herein shall not be required of the City if the same or a substantially similar event has occurred and been the subject of written notice within the previous six (6) months or, with respect to a default under subsections 14.1 (a) or 14.1(c) above, twelve (12) months. Upon the occurrence of an Association Default, the City may pursue any legal or equitable remedy or remedies, including, without limitation, specific performance, actual damages, and termination of this Agreement, provided that in no event shall any party to this Agreement be liable for damages in excess of or in addition to actual damages, including consequential damages, punitive damages, special damages, or indirect damages, and each party to this Agreement waives its rights to the aforesaid damages in excess of or in addition to actual damages. Termination or non-termination of this Agreement upon an Association Default shall not prevent the City from

pursuing its other remedies permitted under this Agreement. The notice of termination by the City shall specify a termination date that is not less than sixty (60) days after the date of the notice of termination.

ARTICLE XV

General Provisions

Section 15.1 Nondiscrimination.

As a condition of this Agreement, the Association covenants that the Association will take all necessary actions to ensure that, in connection with any operations under this Agreement, the Association, its officers, employees and subcontractors, will not engage in discrimination in violation of applicable law. During the term of this Agreement, the Association shall not discriminate against any employee or applicant for employment because of race, age, color, sex, gender identity, sexual orientation, disability status, or religion; nor shall any person be denied admittance to any Association sponsored public performance or activity because of race, age, color, sex, gender identity, sexual orientation, physical or mental handicap, religion, ancestry, national origin, citizen status, or place of birth. The Association shall take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance. This action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Association shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12301-12233, as amended.

(a) The Association agrees to post in conspicuous places a notice, available to employees and applicants, setting forth the provisions of this non-discrimination clause.

(b) The Association shall, in all solicitations or advertisements for employees placed by or on behalf of the Association, state that all qualified applicants will receive consideration for employment without regard to race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance.

(c) Without limitation of Section 15.12 below (which also applies to this Section 15.1), the Association shall furnish all information and reports required by the City Manager or his or her designee and shall permit the City Manager or his or her designee to investigate its payrolls and personnel records which pertain to current professional services contracts with the City for purposes of ascertaining compliance with this equal employment opportunity clause.

(d) The Association shall file compliance reports with the City as may be required by the City Manager or his or her designee. Compliance reports must be filed within the time, must contain information as to the employment practices, policies, programs, and statistics of the Association, and must be in the form that the City Manager or his or her designee prescribes.

(e) If the Association fails to comply with the equal employment opportunity provisions of this Agreement, it is agreed that City at its option may do either or both of the following:

- (i) Cancel, terminate or suspend this Agreement in whole or in part;
- (ii) Declare the Association ineligible for further City approvals regarding development work under this Agreement until it is determined to be in compliance.

Section 15.2 Assignment and Subletting.

(a) Neither the City nor the Association shall assign this Agreement, in whole or in part, without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided however any such assignment shall be in accordance with the City's public purpose. Assignment of this Agreement shall not relieve either party of its obligations under this Agreement. Approval of the City or the Association to one assignment shall not constitute approval to any other or further assignment of this Agreement.

(b) The Association shall not sublet, in whole or in part, any portion of the Premises, without the prior written consent of the City, which consent shall not be unreasonably withheld for designated office spaces, gift shop, and related ancillary spaces; and provided however any such subletting shall be in accordance with the City's public purpose. Subletting by the Association shall not relieve the Association of its obligations under this Agreement. Approval of the City to one subletting shall not constitute approval to any other or further subletting.

(c) Notwithstanding the subletting requirements set forth in subparagraph (b), the Association is permitted, without prior City consent, to sublet portions of the Premises, when such subletting is for purposes related to Association's operation of the Symphony Center and in accordance with the City's public purpose, including for example to entities involved in performances, catering, security, ticketing, and parking.

Section 15.3 Notices.

Any notice required or desired to be given under this Agreement shall be in writing with copies directed as indicated herein and shall be personally served or given by U.S. mail, certified return receipt requested. Any notice given by mail shall be deemed to have been given when deposited in the U.S. mails, certified return receipt requested and postage prepaid, and addressed to the party to be served at the last address given by that party to the other party under the provisions of this Section. Notice given by courier, fax, or other form of personal delivery shall be deemed given only upon actual receipt. Any change in address shall be promptly given in writing to the other party pursuant to this notice provision. The initial addresses for notice are as follows:

If intended for the City, to:

Director, Office of Cultural Affairs
City of Dallas
1925 Elm Street, Suite 500
Dallas, Texas 75201

If intended for the Association, to:

Dallas Symphony Association, Inc.-
Morton H. Meyerson Symphony Center
2301 Flora Street, Schlegel Administrative Suites
Dallas, Texas 75201-2497
Attention: President

Section 15.4 Approvals.

Whenever in this Agreement the approval of the City is required for any purpose, the Association shall file with the Director with notice of the action proposed to be taken, appropriate documents as may be requested and required by the Director, and the Director shall notify the Association of the Director's approval or disapproval within 30 days of the filing thereof. Approval shall be by the City Council where required by the City Charter.

Section 15.5 Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the City and the Association and their respective successors and, except as otherwise provided in this Agreement, their assigns. The covenants, terms and conditions of this Agreement may be changed, modified or discharged only by an instrument in writing signed by the party against whom enforcement of the change, modification or discharge is sought or by such party's duly authorized agent.

Section 15.6 Compliance with Laws and Regulations and Enforceability.

This Agreement is made and entered into subject to and controlled by the Charter and ordinances of City, as amended, and all applicable laws, rules, and regulations of the State of Texas and the Government of the United States of America. The Association and every contractor or agent under the Association's control shall, during the course of performance of this Agreement, comply with all applicable City codes and ordinances, as they may be amended from time to time, and all applicable State and Federal laws, rules and regulations, including environmental protection, pollution, natural resource protection, archeological, or land use laws, rules, regulations, orders or requirements laws and the City's ordinances prescribing conservation measures relating to lawn and landscape irrigation, if applicable. Notwithstanding anything to the contrary contained in this Agreement, the parties acknowledge and agree that this Agreement is enforceable in accordance with its terms under all applicable laws, codes, ordinances, rules and regulations with respect to each of them.

Section 15.7 Relationship of the Parties; No Partnership.

Nothing contained in this Agreement shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or joint venture by the parties hereto, it being understood and agreed that no provision contained in this Agreement nor any acts of the parties hereto shall be deemed to create any relationship other than the relationship of independent contractors. No term or provision of this Agreement or act of Association, its construction manager, contractors, subcontractors, officers, agents and employees or any person under the control of Association in the performance of this Agreement shall be construed as making them the agent, servant or employee of the City, or making them eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

Section 15.8 No Implied Waiver.

The failure of any party hereto to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power or remedy contained in this Agreement shall not be construed as a waiver or relinquishment thereof for the future. The waiver of redress for any violation of any term, covenant, agreement or condition contained in this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. No express waiver shall affect any condition other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

Section 15.9 Force Majeure.

Neither Association nor the City shall be liable to each other for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Agreement due to causes beyond their respective control, including, but not limited to, war, nuclear disaster, strikes, boycotts, labor disputes, embargoes, acts of nature, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage, terrorism, or any other circumstance for which a party is not legally responsible or which is not in its own power to control. The affected party's obligation shall be suspended during the continuance of the inability then claimed, but for no longer a period. To the extent possible, the party shall endeavor to remove or overcome the inability claimed with all reasonable dispatch. Nothing in this Section shall be construed to preclude the use of available insurance proceeds from the Insurance to remove or overcome any event of force majeure.

Section 15.10 Venue.

The obligations of the parties under this Agreement are performable in Dallas County, Texas, and if legal action is necessary in connection with or to enforce any obligations or rights under this Agreement, exclusive venue shall lie in Dallas County, Texas.

Section 15.11 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

Section 15.12 Right of Review and Audit.

The City may review any and all of the services performed by Association under this Agreement. The City is granted the right to audit, at the City's election, all of Association's records relating to the performance of this Agreement. Association agrees to retain such records for a minimum period of ten (10) years. In addition, City shall have the right to provide notice to the Association identifying particular records with respect to which applicable law related to the City's public purpose establishes a longer period of required record retention related to the City's public purpose, in which event the Association shall retain such records for such longer period. The Association shall allow full reasonable access authorized liaisons of City, upon reasonable written request, for purposes of evaluating compliance with this and other provisions of the Agreement. Any payment, settlement, satisfaction, or release provided under this Agreement shall be subject to the City's rights as may be disclosed by such audit.

The Association shall have its financial statements audited on an annual basis by an independent auditing firm of certified public accountants and shall submit a copy of the auditor's report for the preceding fiscal year to the Director. The City reserves the right to require a special audit of the Association's books and records at any time either by City personnel or by an outside independent auditor, if such action is determined necessary by the Director. The City shall pay all expenses related to the special audit, including copying expenses and reasonable cost for Association staff time required in this special audit.

Section 15.13 Conflicts of Interest.

Association and its employees, agents or associates are required to make regular, timely, continual and full disclosures to the Director of all significant outside interests and responsibilities that may give rise to a direct or indirect conflict of interest, including, but not limited to, any and all significant outside interests and responsibilities that could reasonably be expected to impair independence of judgment in Association's performance of all of the services under this Agreement. Such disclosures must be made no later than ten (10) days following the event giving rise to the potential or actual conflict of interest for the duration of the Term. A potential or actual conflict of interest exists when commitments and obligations to the City or widely recognized professional norms are likely to be compromised in Association's performance of its duties under this Agreement by the existence of Association's other professional relationships, contracts, obligations, or commitments. Failure to disclose such a conflict of interest may result in the City's immediate termination of this Agreement by the City Manager.

The following section of the Charter of the City of Dallas shall be one of the conditions, and a part of, the consideration of this Agreement, to wit:

“CHAPTER XXII. Sec. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED –

- (a) No officer or employee shall have any financial interest, direct or indirect, in any contract with the City or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or services, except on behalf of the City as an officer or employee. Any violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit the officer's or employee's office or position with the City. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the City shall render the Agreement involved voidable by the City Manager or the City Council.
- (b) The alleged violations of this section shall be matters to be determined either by the City's Trial Board in the case of employees who have the right to appeal to the Trial Board, and by the City Council in the case of other employees.
- (c) The prohibitions of this section shall not apply to the participation by the City employees in federally-funded housing programs, to the extent permitted by applicable federal or state law."
- (d) This section does not apply to an ownership interest in a mutual or common investment fund that holds securities or other assets unless the person owns more than 10 percent of the value of the fund.
- (e) This section does not apply to non-negotiated, form contracts for general City services or benefits if the City services or benefits are made available to the City official or employee on the same terms that they are made available to the general public.
- (f) This section does not apply to a nominee or member of a City board or commission, including a city appointee to the Dallas Area Rapid Transit Board. A nominee or member of a City board or commission, including a City appointee to the Dallas Area Rapid Transit Board, must comply with any applicable conflict of interest or ethics provisions in the state law and the Dallas City Code. (Amend. of 8-12-89, Prop. No. 1; Amend. of 8-12-89, Prop. No. 15; Amend. of 11-4-14, Prop. Nos. 2 and 9)"

Section 15.14 Gift to Public Servant.

City may terminate this Agreement immediately if Association has offered, or agreed to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting. Association shall not, and shall use commercially reasonable efforts to cause its contractors and agents to not, offer or agree to confer any benefit upon a City employee or official that said City employee or official is prohibited by law from accepting

For purposes of this Agreement, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

Notwithstanding any other legal remedies, City may require Association to remove any employee of Association from the services who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

Section 15.15 Notice of Contract Claim.

This Agreement is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against the City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Agreement as if written word for word in this Agreement. Association, its employees, contractors and agents shall comply with the requirements of this ordinance as a precondition of any claim relating to this Agreement, in addition to all other requirements in this Agreement related to claims and notice of claims.

Section 15.16 Cumulative Remedies.

Each right, power, and remedy of the parties provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise. The exercise or beginning of the exercise by the parties of any one or more of the rights, powers, or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the parties of any or all such other rights, powers, or remedies.

Section 15.17 Mediation/Resolution of Conflicts.

(a) If the parties have any dispute or disagreement arising under this Agreement, it shall first be discussed in good faith between the parties in an attempt to reach an amicable solution. As part of that process, the parties will in good faith seek mediation of any such dispute or disagreement. Nothing contained in this Agreement shall limit any of the parties from obtaining injunctions or seeking other legal or equitable relief from a court of competent jurisdiction.

(b) More specifically, if a conflict arises regarding operational procedures, payment of fees or scheduling, the Director and the Association President or his designee shall resolve the differences. If no resolution is reached within a reasonable time, the matter shall be referred to the City Manager, who shall decide the matter within 30 days. If the decision of City Manager is unacceptable to the Association, it may within 30 days of the decision, appeal the matter to the City Council or request mediation per (i) above. All parties in the resolution of conflicts shall act in good faith in seeking a reasonable resolution.

Section 15.18 Legal Construction; Severability; Survival.

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this

Agreement. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there will be added automatically as part of this Agreement a provision as similar in terms to such unlawful, invalid, or unenforceable provision as may be possible, and be legal, valid, and enforceable. All terms, obligations, and liabilities under this Agreement that contemplate performance or impact after expiration or termination of the AR Term under this Agreement shall survive and remain effective from and after such expiration or termination.

Section 15.19 Landlord Lien; Security Interests.

- (a) The City hereby waives any and all landlord's liens to which it may be entitled, by contract, statute or otherwise, against the property of the Association.
- (b) Association shall not mortgage, pledge, or otherwise encumber its rights and interests under this Agreement, including to secure financing, except with the City's prior written approval, but nothing in this Agreement will prevent Association from obtaining financing based upon funds anticipated to be received by it, including the City's Direct Financial Support to be paid to Association as long as said financing (i) does not involve an assignment, pledge, or other encumbrance of any interest in this Agreement or the Premises; (ii) under no circumstances would constitute a liability or obligation of the City; and (iii) is in all respects subject to and inferior to this Agreement and the City's rights hereunder.

Section 15.20 Late Fee and Interest.

If Association is more than fifteen (15) days late in making any rental payment or other charges assessed under this Agreement due to City, Association shall incur and pay a late fee equal to 10% late amount. If City pays or advances any moneys on behalf of Association under this Agreement, the Association shall reimburse City immediately upon demand. Any rental payments or other amounts not paid shall accrue and Association shall pay interest on said amount from the due date of said rental or the day of City's payment or advance of such sum until paid at the lesser of: ten percent (10%) per annum; or the maximum non-usurious rate allowed by applicable law to be charged. Notwithstanding any provision in this Agreement to the contrary, interest on any amounts owed hereunder shall never exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged or received under law. Any interest in excess of the maximum amount will be credited to the amounts otherwise owed hereunder, or if none is owed, then refunded. Interest, if permitted by law, on any past due amount from the City will be paid in accordance with the Texas Prompt Payment Act, as amended. This provision overrides any conflicting provision in this Agreement.

Section 15.21 Captions.

The captions, section numbers, article numbers, and table of contents appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles of this Agreement, nor in any way affect this Agreement.

Section 15.22 Affiliates of the Association.

Whenever any provision of this Agreement entitles the Association to the priority use of the Concert Hall, the Education and Entertainment Facilities or other space, facilities or equipment in the Symphony Center or to the use thereof without the payment of any rental fees or the making of any security deposit, the term "Association" shall be deemed to include (in addition to the Dallas Symphony Association, Inc.), the Dallas Symphony Chorus, Dallas Symphony Community Outreach, Inc., the Dallas Symphony Foundation, the Dallas Symphony Fund for Excellence, the Dallas Symphony Orchestra Guild, the Dallas Symphony Orchestra League, the Innovators, the Junior Group of the Dallas Symphony Orchestra League and such other foundations auxiliary organizations, boards, committees and other affiliates as the Association has from time to time.

Section 15.23 Conveyance by City.

In the event City or any successor to same shall convey or otherwise dispose of the Premises, then, in such event, provided that such transferee expressly assumes all future obligations and liabilities of City under this Agreement, City herein named (or the then grantor if City herein named shall have previously made such a transfer or conveyance) shall be automatically released of all liability with respect to the performance of any and all obligations on the part of City accruing after such transfer or conveyance (but not those accruing prior to such transfer or conveyance).

Section 15.24 Estoppel Certificates.

Association and City agree, at any time, but not more than twice in any twelve month period, upon not less than thirty (30) days' prior written request by the other party, to execute, acknowledge and deliver to the party making such request, as the case may be, a statement in writing certifying (a) its ownership of the interest of City or Association hereunder (as the case may be), (b) that this Agreement is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (c) to the extent applicable, the dates to which any rental amounts described in this Agreement and any other charges have been paid, and (d) that, to the best knowledge of City or the Association, as the case may be, no default hereunder on the part of the other party exists (except that if any such default does exist, the certifying party shall specify such default).

Section 15.25 Confidentiality of Information; Open Records Request.

With respect to any information, documents, leases and financial statements provided or made available to City by the Association pursuant to this Agreement, City and Association agree that such information may, from time to time, be proprietary and confidential, and the disclosure of such information may be detrimental to the success of the Agreement, and City's and Association's interests therein. City shall use commercially reasonable good faith efforts to limit disclosure of such information to its representatives who reasonably need to know such information. City further covenants and agrees that if it is requested (orally or in writing) in connection with any request or legal proceeding to disclose such confidential or proprietary information, City shall follow the applicable state law provision (the Texas Public Information Act) with respect to any open records request. City will provide the Association with prompt notice

in advance of such disclosure so that the Association may seek such disclosure exemptions, protective orders or other appropriate remedy, and/or waive compliance with this Agreement, and City agrees to cooperate with the Association in pursuing any such course of action.

Section 15.26 Time of Essence.

Time is expressly declared to be of the essence in this Agreement and each and every covenant hereunder (but subject to extension of time for delay beyond the Association's reasonable control).

Section 15.27 Non-Recordation.

Neither this Agreement nor any memorandum thereof shall be recorded in the real property records of Dallas County, Texas.

Section 15.28 Language.

The terms used in this Agreement shall be applicable to one or more persons, as the case may be, and the singular shall include the plural, and the neuter shall include the masculine and feminine, and if there be more than one, the obligations hereof shall be joint and several. The City, and the Association have freely negotiated this Agreement and its terms. Separate legal counsel has represented the parties. The language in all parts of this Agreement shall in all cases be construed as a whole and in accordance with its fair meaning, and shall not be construed more strictly against a party by reason of authorship.

Section 15.29 Entire Agreement.

This Agreement (with all referenced Schedules, Exhibits, attachments, and provisions incorporated by reference) embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties that relate to the subject of this Agreement. Except as otherwise provided elsewhere in this Agreement, this Agreement cannot be modified without written agreement of the parties.

Section 15.30 Authority to Execute and Perform Agreement.

Each party, as to itself only, represents and warrants that it has the full power and authority to enter into this Agreement and perform its obligations under this Agreement.

Section 15.31 Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

(signature page follows)

EXECUTED as of the 13th day of September, 2019, by the CITY OF DALLAS, signing by its City Manager, authorized by Resolution No. 19-0774, approved on May 22, 2019, and by the DALLAS SYMPHONY ASSOCIATION, INC., signing by its authorized officer.

CITY OF DALLAS
T.C. BROADNAX, City Manager

APPROVED AS TO FORM:
Christopher J. Caso, Interim City Attorney

By

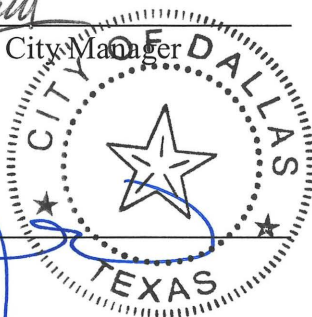
T. Broadnax

Assistant City Manager

Christopher J. Caso
Assistant City Attorney

ATTEST:

[Signature]
City Secretary



[Signature]
Assistant City Attorney

RECOMMENDED BY
DIRECTOR OF CULTURAL AFFAIRS

DALLAS SYMPHONY ASSOCIATION, INC.

BY:

Jennifer Scipio
Director

By

Kim Noltemy

Name: Kim Noltemy

Title: President and Chief Executive Officer

May 22, 2019

WHEREAS, the City of Dallas owns the land and improvements comprising the Morton H. Meyerson Symphony Center premises (the "Meyerson") located at 2301 Flora Street in Dallas County, Texas; and

WHEREAS, in accordance with Section 253.011 of the Local Government Code, City is permitted to convey a real property interest to a non-profit organization exempt from federal taxation under Section 501(c)(3) Internal Revenue Code, 1986, as amended, without complying with governmental notice and bidding requirements set forth in Section 272.001(a) of the Local Government Code or other law provided the lessee shall use the real property in a manner that promotes the public purpose of the City as set forth in the lease, and also provided that if the nonprofit at any time fails to use the property for the specified public purpose, the real property interest will automatically revert to the City; and

WHEREAS, the City and the Dallas Symphony Association, Inc. ("DSA") are currently parties to that certain Use Agreement dated September 18, 1985, as amended, which provides for the terms and conditions under which the DSA is the priority user and primary tenant to use and occupy certain portions of the Meyerson while City has sole responsibility for the operation and management of the entire Meyerson premises; and

WHEREAS, pursuant to the Use Agreement the City leased to the DSA, only those facilities and areas within the Meyerson required by the DSA for its various activities including but not limited to performances, rehearsals, auditions, social and fund-raising activities, meetings, administration, ticket and merchandise sales, library, dressing, and storage; and

WHEREAS, the City and the DSA desire and intend that the Meyerson will continue to provide a permanent home for the DSA, its headquarters office and for performances and rehearsals of the Dallas Symphony Orchestra as well as an outstanding performance facility that will attract other prominent performing groups and individuals to Dallas; and

WHEREAS, City and the DSA desire to amend the Use Agreement to provide for the City's lease of the Meyerson premises to the DSA pursuant to Section 253.011, and DSA desires and agrees to accept the Meyerson premises from the City so that City shall vacate the Meyerson premises at an agreed date and turnover the City's management and operational responsibilities of the Meyerson premises to DSA; and

WHEREAS, the DSA is a qualifying nonprofit organization under Section 253.011 of the Texas Local Government Code, and has requested City lease the Meyerson premises to the DSA to enable the DSA to be the sole tenant of the Meyerson premises to enable DSA to use, operate, and manage the premises to provide for and carry out the City's cultural public purpose in accordance with the lease; and

May 22, 2019

WHEREAS, to effect the transfer of the City's operational and management responsibilities of the Meyerson premises to DSA through a leasehold interest, the City and DSA desire to amend and restate the Use Agreement and consummate the conveyance of the leasehold interest for the entire Meyerson premises to the DSA, subject to a reverter and other requirements pursuant to Section 253.011 of the Texas Local Government Code.

Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the City Manager, upon approval as to form by the City Attorney and attested by the City Secretary, is hereby authorized to execute an Amended and Restated Use Agreement ("Agreement") between the Dallas Symphony Association, Inc. ("DSA"), as lessee, and the City of Dallas, as lessor, to enable the DSA to lease, occupy, manage, and operate the entire Morton H. Meyerson Symphony Center premises for a ninety-nine year term, from July 1, 2019 through June 30, 2118 in accordance with the Agreement, subject to reverter and other requirements of Section 253.011 of the Texas Local Government Code.

SECTION 2. That the special terms and conditions of the Agreement include among other things, the following terms and conditions:

- A. Total rent payable to the City by the DSA for its lease of the entire Meyerson premises during the term shall be \$1.00 per year payable on or before January 2 of each lease year; and
- B. DSA shall be responsible, at its sole cost and expense, for operation, management, maintenance of the Meyerson premise; subject to City's support commitment set forth in subparagraph C below and City's commitment to expend bond proceeds currently appropriated for the Meyerson to perform various deferred capital improvement and maintenance projects; and
- C. City will continue to provide financial support to the DSA for the operation and maintenance of the Meyerson for the initial six-year period of the term, subject to annual appropriations, as follows:

Year 1	\$3,000,000.00;
Year 2	\$3,000,000.00;
Year 3	\$2,500,000.00;
Year 4	\$1,500,000.00;
Year 5	\$ 750,000.00;
Year 6	\$ 750,000.00; and

May 22, 2019

- D. All Public Art in the Meyerson premises will not be conveyed as part of the leasehold under the Agreement but will remain City owned property and will continue to be on display at the Meyerson under the oversight of the City's Office of Cultural Affairs; and
- E. Regarding use of the Annette Strauss Artists Square, the DSA and City will continue to honor and follow the terms of the Booking Rights Agreement between the DSA and the Dallas Center for the Performing Arts Foundation, which agreement shall be incorporated as part of the Agreement for all the purposes set forth therein; and
- F. DSA shall be responsible to raise cash or pledges in the amount of \$5 million during the period of DSA fiscal years 2020-2025, which will be earmarked for capital improvements to the Meyerson, and shall expend those funds for such purpose by 2029; and
- G. DSA and its musicians will perform no less than 150 concerts per year; and
- H. Existing City bookings for 2019 and 2020 will be honored by the DSA; and
- I. Events for Grandfathered Users, which shall be defined to mean the Greater Dallas Youth Orchestra, Children's Chorus of Greater Dallas, Dallas Winds, Dallas Bach Society, Fine Arts Chamber Players, Turtle Creek Chorale, The Black Academy of Arts and Letters (for its annual MLK Celebration), and Dallas-based public independent school districts (high school graduations), shall be at preferred rent rates through May 31, 2029, based on 2018 rent rates through 2029, plus no more than 2.5% annual increases after 2029. In addition, the Grandfathered User will be responsible for all direct costs, e.g., utilities, personnel, security, ticketing services, etc.; and
- J. DSA will comply with monthly and annual reporting consistent with the requirements of Cultural Organizations Program administered through the Office of Cultural Affairs; and
- K. DSA will provide up to six City event dates annually, and for up to an additional ten event dates annually for community-oriented events requested by the City; and
- L. DSA shall provide City of Dallas independent school districts' students with complimentary tickets based on availability for no less than 50 concerts selected by the DSA; and
- M. Bookings for mayoral and city council inaugurations take priority over all other uses of the Meyerson; and

May 22, 2019

- N. DSA shall provide City with a copy of a financial guaranty agreement between the DSA and a private foundation or donor, evidencing the foundation or donor's guarantee of the DSA obligations for the benefit of the Meyerson, namely guaranteeing DSA's commitment to raise the \$5 million in cash or pledges described in subparagraph F above. The foundation or donor's guaranty shall be attached to the Agreement and shall be incorporated thereto for the purposes set forth therein; and
- O. If the DSA fails to use the Meyerson for the City's public purpose, in violation of the requirements of Section 253.011 of the Texas Local Government Code, then the Agreement shall terminate and the leasehold estate granted in the Agreement shall automatically revert to the City.

SECTION 3. That the Chief Financial Officer is hereby authorized to disburse funds in an amount not to exceed \$11,500,000.00 in accordance with the terms and conditions of the Agreement to provide City financial support for operations and maintenance of the Meyerson during the initial six (6) year period of the term (subject to annual appropriations) to the Dallas Symphony Association, Inc. from Contract No. OCA-2019-00010352.

SECTION 4. That the Chief Financial Officer is hereby authorized to receive and deposit all revenues received under the Agreement to the General Fund, Fund 0001, Department OCA, Unit 4820, Revenue Code 7219.

SECTION 5. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

