

CITY OF DALLAS/ DALLAS SYMPHONY ASSOCIATION

City of Dallas/Dallas Symphony Association Contract

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between the City and the Dallas Symphony Association, Inc.
(Resolution No. 85-3068, Approved September 18, 1985)

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11-19-87

THE STATE OF TEXAS)
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COUNTY OF DALLAS)

USE AGREEMENT FOR THE MORTON H. MEYERSON
SYMPHONY CENTER

THIS AGREEMENT is between the CITY OF DALLAS, a municipal corporation, of Dallas County, Texas ("City") acting by and through its PARK AND RECREATION BOARD ("Park Board"), and the DALLAS SYMPHONY ASSOCIATION, INC., ("Association"), a Texas nonprofit corporation with its principal place of business at Music Hall at Fair Park, First Street at Perry, Dallas, Dallas County, Texas.

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, the City and the Association have entered into a Memorandum of Agreement dated October 13, 1982, as amended, whereby they have agreed to undertake financing of the construction of a symphony center ("symphony center") as a performing arts facility for the citizens of Dallas to be known as the Morton H. Meyerson Symphony Center; and

WHEREAS, the symphony center is to be located upon real estate approximately as shown in Exhibit A which is attached and made a part of this Agreement; and

WHEREAS, the City and the Association intend that the symphony center will 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 desire to enter into an agreement whereby the Association would be the primary user of the symphony center with scheduling priority as defined in this document;

NOW, THEREFORE, the City and the Association agree as follows:

SECTION 1. PURPOSE; CONCERT HALL DEFINED

(a) The purpose of this Agreement is to state the terms and conditions under which the Association will use and occupy the symphony center and to describe the responsibilities of the City in the operation and management of the symphony center.

(b) As used in this Agreement "symphony center" means the entire structure, the basement garage, rights to the adjoining garage, and the grounds surrounding the building as shown in Exhibit A. The "concert hall" means the performance platform, backstage and audience chamber. The "exclusive areas" means the areas identified in Exhibit B which is attached and made a part of this Agreement.

SECTION 2. LEASE OF SYMPHONY CENTER

The City hereby leases to the Association, in accordance with the use and occupancy provisions of this Agreement, those facilities and areas within the symphony center that are 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.

SECTION 3. TERM AND TERMINATION

(a) The term of this Agreement is for a period beginning on the date the Association takes beneficial occupancy of any portion of the symphony center, pursuant to written authorization from the City's Director of Public Works, and continuing for an initial term of twenty (20) years, and continuing after the initial term for so long thereafter as the Association uses the symphony center for the various activities as contemplated in Section 2 hereof, unless earlier cancelled, as provided herein. At the end of the initial term (and any renewal terms), unless notice to the contrary is previously given by either party hereto, this Agreement shall be automatically renewed for a period of ten (10) additional years; provided, the foregoing shall not limit the term of this Agreement as otherwise established in this Section.

(b) The City may cancel this Agreement if:

(1) the Association fails to make any payment required under this Agreement within 90 days after written notification of delinquency of payment by the City; or

(2) the Association violates any other provision of this Agreement and fails to begin correction of the violation within 60 days of written notification of the violation from the City and fails to accomplish correction within a reasonable period thereafter.

(c) The Association may cancel this Agreement by giving the City written notice twelve months or more in advance of the cancellation date.

SECTION 4. USE AND OCCUPANCY BY THE ASSOCIATION

(a) Priority User and Primary Tenant. The Association is considered the priority user and primary tenant of the symphony center and has priority in the selection of dates and times for rehearsals, concert performances, and other events and uses in accordance with this section.

(b) Scheduled Use of the Concert Hall. The Association agrees to notify the City in September of each year of the dates and times that the Association will require for the performances, rehearsals, and other events for the year beginning the September that is 12 months following. After the City receives the Association's schedule, the City may schedule

other events for any dates and times not scheduled by the Association. After the schedule notification deadline, the City will accommodate any written request of the Association for changes or additions in concert hall use unless the City receives from another organization a deposit for use of that date on or before the tenth business day after the Association's request.

(c) Exclusive areas. The Association has the exclusive use of those areas in the symphony center as designated in Exhibit B.

(d) Use of other areas. The Association has priority in scheduling other areas of the symphony center. The City will accommodate any written request of the Association for periodic use of such areas unless the City receives from another organization a deposit for use of that date on or before the tenth business day after the Association's request.

(e) Ticket areas. The Association has full time exclusive use of all ticket sale windows, display windows, and the private office behind the ticket sale window area, except that, on the dates of performances by another user, at least two ticket sale windows will be made available by the Association to the other user, and three hours prior to a concert or program by another user, three ticket windows shall be available to that user.

(f) Parking spaces.

(1) The City will make available and the Association will have the right to use and occupy 140 parking spaces in the symphony center garage for the Association's officers, employees, and guests. A fee established by the City will be charged for parking in these spaces. This fee will be the lesser of the prevailing market rate for comparable parking or the amount required to cover the principal plus debt service on the garage certificates of obligation plus appropriate garage operating and maintenance costs, as reasonably determined by the City Manager, until such time as all certificates of obligation associated with this garage are retired, and repayment to the General Capital Reserve Fund for garage debt service has been made. After that time a fee will be charged to the Association which will be the lesser of the prevailing market rate or the amount required to cover appropriate garage operating and maintenance costs, as reasonably determined by the City Manager. Parking by the general public will be allowed in these spaces when their availability is not necessary for Association purposes. All revenue derived from parking belongs to the City. The symphony center garage shall be operated by the City or its selected independent garage operator. The City will consult with the Association on all policy matters regarding parking garage operations to ensure access to the symphony center garage by Association officers, employees, and guests, but not including concert patrons.

(2) To the extent allowable under the terms of its lease arrangements with adjacent property owners existing as of January, 1986, the City will also make available approximately 1200 subsurface parking spaces adjacent to the symphony center as paid parking for the use of

concert patrons and the general public on an unassigned, unreserved first-come first-served basis. With respect to the lease arrangements with adjacent property owners, the City agrees that such lease arrangements will not materially impair the availability of such sub-surface parking spaces.

SECTION 5. USE AND OCCUPANCY BY THE CITY

(a) Scheduling other events. Other than the dates and times when the Association has scheduled an event in accordance with Section 4, the City has the right to schedule other events in the symphony center compatible with a symphony concert hall. When the City schedules an intervening event between two identical Association activities which maintain the same concert hall set-up, the City and the Association will each pay half the total cost of removing and replacing the Association's performance equipment and instruments in the concert hall. The City shall reimburse the Association for the City's share of these costs on a monthly basis. The responsibility for physically moving the Association's performance equipment and instruments will rest with the Association.

(b) Concessions.

(1) The City reserves the exclusive right to offer for sale on, in, or about the symphony center, food and beverages for all events for which tickets are sold to the general public. After agreement by the City and the Association on a program and specifications for food and beverage service operation in the symphony center, the City may lease concession rights to any party or parties. The City, at its expense, shall provide or cause to be provided restaurant and bar concession services at the symphony center. The City agrees that each person employed or associated with concession services in the symphony center will be required to maintain a neat, clean appearance and conduct himself/herself in a professional manner. All revenues derived from these concession services belong to the City.

(2) It is agreed that the Association, its agents or guests, will not bring into the symphony center any food for sale, whether prepared, or unprepared, or beverages for sale, including but not limited to alcoholic beverages, except for business, social or other events of the Association or its committees or subsidiaries for which tickets are not sold to the general public or except for fund-raising or other galas or meetings of the Association, its committees or subsidiaries for which invitations are distributed or sold, so long as such events do not include performances. However, the Association shall have no rights with respect to use of the kitchen or restaurant facilities or equipment, or any utensils, pots, pans, silverware, dishware, glassware or other food and beverage service items belonging to or under the control of the City, the symphony center manager or concessionaire used by the City.

(3) The Association shall have the right to operate its sales boutique during all hours that the symphony center is open to the public. In addition, the Association shall have the right to operate sales kiosks during all hours that the symphony center is open to the public, except when a non-Association user is in the hall, unless the symphony center manager has given permission to operate the kiosks. Notwithstanding the provisions of paragraph (2) above, the Association shall be permitted to offer for sale prepackaged food items and merchandise in the boutique and sales kiosks. Neither the boutique nor the sales kiosks shall be sublet to any other party without the prior written approval of the Park Board.

(c) Parking. The City shall operate and control the adjacent sub-surface parking facilities (as designated in Exhibit A) or may contract with another to operate the facilities. These parking spaces may be used by Association patrons, along with the general public, on an unassigned, unreserved first-come first-served basis. A fee established by the City Council will be charged for parking in these facilities. All revenue derived from parking belongs to the City.

(d) Control of the symphony center. The City retains the right to control the management of the symphony center and to enforce all necessary rules for its management and operation, and the City, through its policemen, firemen, and other designated representatives, reserves the right at any time to enter any portion of the symphony center for emergency purposes and the Association upon request will grant entry during usual and ordinary hours of operation.

SECTION 6. MANAGEMENT

The City will:

(a) manage and operate the symphony center as a first class facility for concert and recital performances and other events compatible with a symphony concert hall; and

(b) assure that all events scheduled in the symphony center are compatible with a symphony concert hall; and

(c) provide professional management to schedule and promote the use of the symphony center; and

(d) provide ticket takers, ushers, security guards and other personnel necessary for the operation of the symphony center; and

(e) establish operating policies and procedures for the symphony center after consultation with the Association; and

(f) establish a committee consisting of one member of the Park Board, one member of the Association's Board of Governors (each appointed by the respective boards), the Park Director or his designee, the Executive Director of the Association or his designee, and one member selected by

mutual agreement of the aforementioned members, to periodically conduct a review of results of the previous year and plans and policies for the upcoming year. The symphony center manager will be invited to these meetings as appropriate. This committee will have its first meeting at least one year prior to the anticipated opening.

SECTION 7. RENTAL

(a) The Association shall pay to the City as rent, reasonable fees for its use of all areas of the symphony center according to a schedule of fees approved annually by the Park Board after consultation with the Association.

(b) The Association agrees to pay the fees for symphony center use on a quarterly basis on January 1, April 1, July 1 and October 1 for the previous 3 months' uses and any reserved times not used. Notwithstanding the foregoing, the Association will not be required to pay the fee for a date, time, or space cancelled if:

(1) the Association gives the City 12 months' notice of the cancellation; or

(2) the Association and the City, acting through its symphony center manager, are able to mutually agree on a rescheduled date or time; or

(3) the symphony center manager is able to schedule another user of the symphony center for that date and time which will generate a fee equal to that owed by the Association.

(c) Notwithstanding the above provisions, the Association shall have the right to cancel without fee, 12 scheduled uses per year, provided, however, any actual costs incurred by the City will be reimbursed by the Association.

(d) The City recognizes the Association's \$39,000,000 Capital Gift to the City for the construction of the symphony center. The City intends to continue its present cultural policy of annually contracting with the Association for Symphony performances as provided for by annual City Council appropriations. It is the City's intention to fund at a level that will at least equal the fees paid under this section which are attributable to the Association's use of the symphony center. If the City's annual funding does not meet the level described above, then the Park Board will reevaluate the fees to take into consideration the reduced funding. The City's payments will begin each December 1 to cover fees charged to the Association for the previous 2 months and will continue on a monthly basis for the remainder of the City's fiscal year.

SECTION 8. OTHER PERSONNEL

The Association shall provide at its own expense, ticket sellers for its performances or events. If the Association desires to use and operate City-owned equipment including but not limited to lighting and sound systems, then the Association shall obtain approval from the City for the use of the Association's technicians. The City will respond to requests for approval in a timely fashion and will not unreasonably withhold approval. The cost of repair for any damage to the equipment from improper use of the equipment by the Association shall be the responsibility of the Association. However, the Association shall not be responsible for consequential damages resulting from inability to use the equipment. The Association agrees that each person employed by the Association to provide services in the symphony center will be required to maintain a neat, clean appearance and conduct himself/herself in a professional manner; and the Association will cooperate with the City to assure that the required appearance and conduct is at all times maintained.

SECTION 9. UTILITIES

The City shall provide and pay for all water, air conditioning, heat, and electricity incurred in the symphony center. The Association shall pay for its own telephone service. Notwithstanding the foregoing, after the tenth year of this Agreement, the Association shall be responsible annually for 10% of the utilities' costs, multiplied by the actual number of dates the Association uses the concert hall, divided by 365; and after the fifteenth year of the Agreement, the Association shall be responsible annually for 15% of the utilities' costs, multiplied by the actual number of dates the Association uses the concert hall, divided by 365; and after the twentieth year of this Agreement, the Association shall be responsible annually for 25% of the utilities' costs (or the percentage specified in the then-existing City of Dallas Cultural Policy, if other than 25%) multiplied by the actual number of dates the Association uses the concert hall, divided by 365.

SECTION 10. MAINTENANCE SERVICES

(a) The City shall provide:

(1) routine janitorial service and maintain the interior of the symphony center in a clean condition [except for the exclusive areas, identified in Section 1(b)];

(2) maintenance of the heating, ventilation, and cooling system in the symphony center; and

(3) maintenance of the symphony center grounds and structure in reasonably good condition and in compliance with applicable laws.

(b) The Association shall have the option of reimbursing the City for janitorial service in its exclusive use areas or providing custodial services by other means.

SECTION 11. OWNERSHIP OF PROPERTY

(a) The symphony center and all improvements to the symphony center are the property of the City. All personal property owned by the City and placed in the symphony center remains the property of the City.

(b) All personal property owned by the Association and placed in the symphony center remains the property of the Association.

(c) All personal property owned by a sublessee, contractor, or concessionaire of the Association or the City and placed in the symphony center remains the property of the sublessee, concessionaire, or contractor, respectively, unless otherwise provided in the sublease, concession contract, or contractor's contract.

SECTION 12. ACKNOWLEDGEMENTS IN PRINTED MATERIALS

The Association agrees to acknowledge the Dallas Park and Recreation Department, Division of Cultural Affairs, and the City for their support of the symphony center and the Association in all appropriate printed materials. This acknowledgement shall be substantially in the following form: "This (facility, project, program, performance) is supported, in part, by funds from the Division of Cultural Affairs of the Dallas Park and Recreation Department." The City may from time to time change the form of this acknowledgement after consultation with the Association.

SECTION 13. INSURANCE

(a) Before the date of beneficial occupancy of the symphony center, the Association shall procure, pay for, and maintain the following insurance written by companies licensed in the State of Texas or meeting the surplus lines requirements of Texas law and acceptable to the Park Board. The insurance shall be evidenced by delivery of executed certificates of insurance and certified copies of the policies to the Park Board and the City Manager. The insurance requirements shall remain in effect throughout the term of this Agreement. After consultation with the Association, the Park Board 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.

(1) Workers' Compensation as required by law; Employers Liability Insurance of not less than \$100,000 for each accident. This requirement may be waived or modified by the Park Board, if the Association should become a qualified self-insurer under the laws of the State of Texas.

(2) Comprehensive General Liability Insurance, including Personal Injury Liability, Independent Contractor's Liability, Premises Operations Liability, and Contractual Liability, covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement, with limits of liability for bodily injury, death, and property damage of not less than \$500,000. Coverage must be on an "occurrence" basis, and the policy must include Broad Form Property Damage Coverage, with Fire Legal Liability of not less than \$500,000 per occurrence.

(3) Comprehensive Automobile and Truck Liability Insurance, covering owned, hired and non-owned vehicles, with minimum limits of \$500,000, each occurrence, for bodily injury, death, and property damage, such insurance to include coverage for loading and unloading hazards.

(4) \$7,000,000 combined single limits bodily injury and property damage liability insurance, including death, as an excess of all the primary coverages required above.

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

(1) The City must be named as an additional insured.

(2) Each policy must require that 60 days before the cancellation, nonrenewal, or any material change in coverage, a notice thereof shall be given to the City by certified mail to: Director, Park and Recreation Department, City of Dallas, City Hall 6FN, 1500 Marilla Street, Dallas, Texas 75201; and City Attorney, City of Dallas, City Hall, 1500 Marilla Street, Dallas, Texas 75201.

(3) 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.

(4) 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.

(5) The policy clause "Other Insurance" shall not apply to the City where the City is an additional named insured on the policy.

(c) 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 lease 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 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 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.

(d) The Association shall use best efforts for security precautions necessary for the protection of its property. The City shall be liable for any damage to or loss of Association property used or stored on, in, or about the symphony center, arising from negligence of the City or its agents. However, the City shall not be responsible for any damage or loss not arising from the negligence of the City or its agents.

(e) Insurance required under this section must be furnished annually for the duration of this Agreement which includes the period from the date of beneficial occupancy through the period allowed for removal of property. Executed certificates of insurance must also be delivered annually.

(f) To the extent reasonably obtainable, the City will secure fire and extended coverage insurance on the symphony center 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 to limits as close as possible to its replacement cost. In the event all or any portion of the symphony center is damaged or destroyed by fire or other casualty, the City shall, at its cost and expense (limited to a maximum expenditure of the amount of insurance proceeds, if any, available to the City 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.

SECTION 14. ABATEMENT OF NUISANCES

The Association shall promptly comply with all governmental orders and directives for the correction, prevention, and abatement of nuisances caused by the Association, its officers, agents, or employees, in or upon or connected with the symphony center, and shall pay for the costs of compliance.

SECTION 15. ALTERATIONS, ADDITIONS, AND IMPROVEMENTS

(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. All contractors of the Association shall carry sufficient and appropriate insurance as may be required by the City. However, with the exception of temporary alterations, improvements or additions in the stage area, the Association shall secure prior approval of the Directors of the City's Departments of Park and Recreation and Public Works for any 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.

SECTION 16. 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) occurring in or upon any portion of the symphony center 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 or occupancy of the symphony center or from any breach by the Association of any condition 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 of the symphony center except to the extent such claims are the result of the gross negligence or willful misconduct of the City, its officers,

employees, representatives, agents, licensees or contractors. 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 nor to provide any right for any person, firm, corporation, or association who is not a party to this Agreement.

(b) The City shall be responsible for its acts of negligence causing injuries to persons (including death) or damage to property, including portions of the symphony center; and to the extent authorized by law, the City shall indemnify and defend the Association, its officers and employees, from and against any claims or lawsuits arising out of such negligent acts. However, the provisions of this section are not for the benefit of any third parties nor to provide any right for any person, firm, corporation, or association who is not a party to this Agreement.

(c) The City shall provide in its contracts with the symphony center garage operator and the symphony center manager that both the City and the Association be named as co-indemnitees, under the indemnification provisions therein, and that both parties be named as additional insureds, under the applicable liability insurances required.

SECTION 17. BONDS

The Association agrees to cause its contractors to provide, before commencing any work or construction in its designated areas, a performance bond and labor and material bond for any capital improvements undertaken by the Association during the term of this Agreement, in a sum equal to the full amount of the construction contract award, with the City and the Association named as joint obligees.

SECTION 18. NON-DISCRIMINATION

During the term of this Agreement, the Association shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion; nor shall any person be denied admittance to any Association sponsored public performance or activity because of race, age, color, sex, physical or mental handicap, religion, ancestry, national origin, or place of birth. Should the Association violate the provisions of this section, the City may terminate this Agreement if the Association fails to correct the violations within 60 days of written notice of the violation by the City.

SECTION 19. AUDITS

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 with its proposed annual operating budget submission to the Park Board. 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 Park Board. 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 20. RESOLUTION OF CONFLICTS

If a conflict arises regarding operational procedures, payment of fees or scheduling, a committee consisting of two members of the Park Board, and two members of the Association Board of Governors, appointed by the respective Boards, and one member selected by mutual agreement of the aforementioned members, shall resolve the differences. If no resolution is reached within a reasonable time, this committee shall refer the matter to the Park Board, which shall decide the matter within 30 days. If the decision of the Park Board is unacceptable to the Association, it may within 30 days of the decision, appeal the matter to the City Council. All parties in the resolution of conflicts shall act in good faith in seeking a reasonable resolution.

SECTION 21. ASSIGNMENT

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. 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.

SECTION 22. NOTICES

Any notice, payment, statement, or demand required or permitted to be given by either party to the other may be effected by personal delivery, actual receipt via regular mail, or by certified mail, postage prepaid, return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section.

If intended for the City, to:

Director
Park and Recreation Department
City of Dallas
City Hall, 6FN
1500 Marilla Street
Dallas, Texas 75201

If intended for the Association, to:

Executive Director
 Dallas Symphony Association, Inc.
Music Hall at Fair Park, First Street at Perry
 Dallas, Texas 75226

SECTION 23. APPROVALS

(a) Whenever in this Agreement the approval of the City is required for any purpose, the Association shall file the appropriate documents with the Park Board with notice of the action proposed to be taken, and the Park Board agrees to notify the Association of its approval or disapproval within 60 days of the filing thereof.

(b) Approval shall be by the City Council where required by the City Charter. Approval shall be by the Park Board where required by the City Charter. The Park Board may delegate approval authority to the Director of the Park and Recreation Department of the City or his authorized representative where permitted by the City charter or ordinances, and notify the Association of such delegation.

SECTION 24. 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.

SECTION 25. APPLICABLE LAWS

This Agreement is made subject to the charter and ordinances of City, as amended, and all applicable laws of the State of Texas.

SECTION 26. 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.

SECTION 27. NO PARTNERSHIP OR JOINT VENTURE

Nothing contained in this Agreement shall be deemed to constitute the City and the Association partners or joint venturers with each other.

SECTION 28. NO WAIVER

No waiver by the City or the Association of any default or breach of any term, covenant, or condition of this Agreement shall be treated as a waiver of any subsequent default or breach of the same or any other term, covenant, or condition of this Agreement.

SECTION 29. FORCE MAJEURE

(a) If (1) the symphony center or any portion of it shall be destroyed or damaged by fire or other calamity so as to prevent the use of the premises for the purposes and during the periods specified in this Agreement, or (2) the use of the symphony center by the Association is prevented by act of God, strike or lock-out against the City, the Association or any third party, material or labor restrictions by any governmental authority, civil riot, flood or other cause beyond the control of the City, then, depending on the extent of damage to the symphony center, the City shall notify the Association within 24 hours, or as soon as reasonably practical, that the parties shall be excused from performance of the Agreement for such period of time as is reasonably necessary to remedy the effects of the occurrence and, at the option of the City, this Agreement shall terminate and the City shall not be liable for any claim by the Association for damage or loss by reason of the termination. Notwithstanding the above, the Agreement shall not be terminated until at least two years following the occurrence of the force majeure, during which time the City and the Association will make every reasonable effort to remedy or circumvent the force majeure.

(b) Neither the City nor the Association shall be liable to the other party for any delay in the construction of the symphony center or for any delay or interruption in the construction of adjacent parking facilities. The City will use reasonable efforts to assure construction of the symphony center.

SECTION 30. VENUE

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

SECTION 31. LEGAL CONSTRUCTION

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.

SECTION 32. LANDLORD LIEN

The City hereby waives any landlord's liens to which it may be entitled, statutorially or otherwise, against the property of the Association.

SECTION 33. CAPTIONS

The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

SECTION 34. ORGAN

The City and the Association shall establish rules and regulations for the use of the permanently installed organ in the symphony center. The City shall advise the Association whenever another user requests use of the organ and the Association shall have the right to advise the symphony center manager and the outside user of the capabilities, limitations and procedures for operation of the organ.

EXECUTED as of this 18th day of September, 1985, by the CITY OF DALLAS, signing by its City Manager, authorized by Resolution No. 85-3068, approved on September 18, 1985, and by the PARK AND RECREATION BOARD of the City of Dallas signing by its President and attested by its Secretary, and by the DALLAS SYMPHONY ASSOCIATION, INC., signing by its authorized President and Executive Director, ~~and attested by its Corporate Secretary.~~

CITY OF DALLAS
 CHARLES S. ANDERSON, City Manager

BY *Charles S. Anderson*
 Assistant City Manager

APPROVED AS TO FORM:

Ana Leslie Muncy
 ANALESIE MUNCY, City Attorney

ATTEST:

Jean Craft
 JEAN CRAFT, Secretary

~~XXXXXXXXXX~~

~~XX
 XXX~~

PARK AND RECREATION BOARD
 OF THE CITY OF DALLAS

BY *Billy R. Allen* PCS
 BILLY R. ALLEN, President

DALLAS SYMPHONY ASSOCIATION, INC.

BY *Mina Lerner*
 , President

BY *Leonard David Stone*
 LEONARD DAVID STONE,
 Executive Director

57120
 9/19/85

EXHIBIT A

Description of "Symphony Center"

"Symphony Center" means: the entire structure, the grounds surrounding the entire structure and the basement garage, as described by the following plans:

- * Dallas Concert Hall Site Plan (marked and attached)

Dated 1-30-85 Issued for Construction

A-1

- * Dallas Concert Hall Architectural Plans

Dated 1-30-85 Issued for Construction

A-101	A-104	A-107	A-110
A-102	A-105	A-108	A-111
A-103	A-106	A-109	A-112

as well as public parking related rights in connection with the adjacent Arts District Garage in City Block 530.

Attachments (1)

EXHIBIT B

Spaces Used Exclusively
by the
Dallas Symphony Association, Inc.
in the
Morton H. Meyerson Symphony Center

1. The Music Director's Suite
2. The Orchestra Personnel Manager's Office
3. Administration (located on 2 floors)
4. The Board Room
5. Orchestra Instrument Storage
6. Percussion Storage and Warm Up Room
7. The Music Library
8. The Boutique
9. The Box Office private Office
10. Stage Manager's Office
11. The Musicians' Lockers in Dressing Rooms
12. Instrument Lockers
13. Piano Storage Backstage
14. 50% of General Storage Areas
15. Two (2) of four (4) Meeting Rooms in the First Basement
16. Performer's Lounge (subject to City's use upon reasonable notice)

*Je B.R.A.
City of D.S.
CWS/AM*

[Signature]
LDS : DSA

The exclusive use areas listed above are more particularly described by Dallas Concert Hall plans A-103, A-105, A-106, A-107, A-108 (dated 1-30-85 Issued for Construction) which are attached hereto and made a part of Exhibit B. Completion of certain areas shown is subject to future funding.

*Je B.R.A.
City of D.S.
CWS/AM*

[Signature]
LDS : DSA

Attachments (5)