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CITY SECRETARY

DALLAS, TEXAS

**FIRST AMENDMENT TO AMENDED AND RESTATED USE AGREEMENT
MORTON H. MEYERSON SYMPHONY CENTER**

THIS FIRST AMENDMENT TO AMENDED AND RESTATED USE AGREEMENT (this “**First Amendment**”) is dated effective March 30, 202¹ and is entered between CITY OF DALLAS, a municipal corporation of the State of Texas (“City” and “Lessor”) and the DALLAS SYMPHONY ASSOCIATION, INC., a Texas nonprofit corporation with its principal place of business at 2301 Flora Street, Dallas, Texas 75201 (the “Association”, “Lessee” and “DSA”).

RECITALS:

A. City and Association are parties to that certain Amended and Restated Use Agreement Morton H. Meyerson Symphony Center dated effective April 1, 2009 (the “Agreement”) for that certain Premises (as defined therein) and commonly known as the Morton H. Meyerson Symphony Center located in the city of Dallas, Dallas County, Texas (the “Meyerson”).

B. In addition to providing for the operation and management of the Premises, the Agreement sets forth a Booking Procedures Agreement for the Annette Strauss Artists Square (“Strauss Square”) providing for a joint plan for annual scheduling that includes no-amplified sound events at Strauss Square and use by Lessee and the Dallas Center for the Performing Arts Foundation (“DCPAF”).

C. The DCPAF is responsible for operating and managing the AT&T Performing Arts Center located in close proximity to the Premises and the Strauss Square.

D. City and Association desire to enter into this First Amendment to amend the Agreement to revise the Booking Procedures Agreement, attached thereto as Exhibit AR-6, to incorporate annual scheduling agreement changes agreed to by the Association and DCPAF as set forth below:

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1) Incorporation of Recitals. The recitals set forth above are incorporated herein and made a part of this First Amendment to the same extent as if set forth herein in full.

2) Capitalized Terms. All capitalized terms in this First Amendment shall have the same meanings as in the Agreement unless expressly provided otherwise herein. As used herein and in the Agreement, the term “Agreement” shall mean the Agreement as modified by this First Amendment.

3) Amendments. City and Association hereby agree Exhibit AR-6 of the Agreement shall be amended to include the following at the end of Exhibit AR-6:

“Notwithstanding any of the foregoing, the DCPAF agrees that when the DSA submits the DSA’s calendar of initial confirmed booking periods no later than September 30 of each year in accordance with the Booking Procedures Agreement, that calendar may include booked weddings at the Meyerson as follows:

- A maximum of one booked wedding per month at the Meyerson, except as agreed to by both parties with the exception of those dates already booked prior to this agreement, with the exception of December, January, and February. During those three months, the DSA may book an unlimited number of weddings at the Meyerson.
- The DSA agrees that after the City’s calendar of initial use periods has been loaded in (no later than October 31 each year in accordance with the Booking Procedures Agreement), the DCPAF may book amplified events in Strauss Square on all scheduled Dallas Symphony Presents and Pops dates; amplified performances are not permissible for classical concerts, Dallas Symphony Orchestra League Debutante Ball or the DSA Gala unless otherwise approved in advance by the DSA.
- The DSA and the DCPAF agree that after the DCPAF submits the DCPAF’s calendar of booked events, and up to 25 Strauss Square Hold Periods (no later than December 15 each year in accordance with The Booking Procedures Agreement), the DSA and the DCPAF will continue to collaborate and coordinate on booking Strauss Square according to the terms of the Booking Procedures Agreement, each party using commercially reasonable efforts to enable DCPAF to maximize its use of Strauss Square and the DSA to maximize its use of the Meyerson.
- During or before September, 2022, the DSA will review with the DCPAF the Booking Procedures Agreement, as hereby amended, to evaluate and determine in mutual good faith if any adjustments should be made for the 2023/2024 season.”

4) Ratification of Sublease/Conflict. All terms and conditions of the Agreement are hereby ratified and affirmed, as modified by this First Amendment.

5) Governing Law. This First Amendment shall be construed and enforced in accordance with the laws of the State of Texas.

6) Entire Agreement. The parties hereto agree and understand that no oral agreements, or understandings, shall be binding, unless reduced to a writing which is signed by said parties. The parties hereto agree and understand that this First Amendment shall be binding on them and their respective successors and assigns.

7) Severability. If any one or more of the provisions in this First Amendment are invalid, illegal, or unenforceable in any jurisdiction, the validity, legality, and enforceability of the remaining provisions of this First Amendment shall not in any way be affected or impaired,

and that invalidity, illegality, or unenforceability in one jurisdiction shall not affect the validity, legality, or enforceability in any other jurisdiction.

8) Counterparts. This First Amendment may be executed, including via certified electronic or facsimile signatures, in any number of counterparts and shall be effective and binding on the parties when all signatories have each fully executed a counterpart and returned a copy to the other party, notwithstanding that the signatories may have executed different counterparts. Counterparts may be compiled, duplicate pages discarded and the remainder assembled as a complete document binding the parties.

[Remainder of page intentionally left blank. Signature pages follow.]

EXECUTED as of the 30 day of March, 2021, by the CITY OF DALLAS, signing by its City Manager, authorized by Resolution No. 20-1698, approved on October 28, 2020, 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, City Attorney

By 
Joey Zapata (Mar 29, 2021 19:43 EDT)
Assistant City Manager

Consuelo R Tankersley
Consuelo R Tankersley (Mar 30, 2021 11:08 CDT)
Assistant City Attorney CRT
CRT

ATTEST:


City Secretary

RECOMMENDED BY
DIRECTOR OF ARTS AND CULTURE

DALLAS SYMPHONY ASSOCIATION, INC.

BY: 
Jennifer Scripps (Mar 29, 2021 18:07 CDT)
Director

By Kim Noltemy
Kim Noltemy (Mar 29, 2021 18:01 CDT)
Name: Kim Noltemy
Title: President and Chief Executive Officer

October 28, 2020

WHEREAS, the City of Dallas (the "City") 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, the City and the Dallas Symphony Association, Inc. ("DSA") were parties to a Use Agreement for the Meyerson dated September 18, 1985 (the "Meyerson Use Agreement"), as amended, which provided for the terms and conditions under which the DSA was the priority user and primary tenant to occupy certain portions of the Meyerson while the City had sole responsibility for the operation and management of the entire Meyerson premises; and

WHEREAS, the City and the Dallas Center for the Performing Arts Foundation ("DCPAF") are parties to a Development and Use Agreement dated September 28, 2005 (the "Performing Arts Center Use Agreement"), as amended, for the construction, development, and long-term possession of a first-class, multi-venue performing arts complex consisting of the Winspear Opera House, the Wylie Theater, the Grand Plaza, a 600-space garage, Annette Strauss Artist Square ("Strauss Square") and supporting infrastructure; and

WHEREAS, on December 10, 2008, City Council authorized the Second Amendment to the Performing Arts Center Use Agreement with DCPAF for the operation and use of Strauss Square, and provided, in part, for the adoption of a plan for scheduling (the "Booking Rights Agreement") at the Meyerson and Strauss Square by Resolution No. 08-3432; and

WHEREAS, on April 22, 2009, City Council authorized the Fourth Amendment to the Meyerson Use Agreement that provided, in part, for the adoption of the Booking Rights Agreement by Resolution No. 09-1105; and

WHEREAS, on May 22, 2019, City Council authorized the Amended and Restated Use Agreement for the Meyerson between the City and DSA (the "Amended and Restated Meyerson Use Agreement"), to amend the Meyerson Use Agreement to enable the DSA to solely lease, occupy, manage, and operate the entire Morton H. Meyerson Symphony Center premises for a ninety-nine year term, subject to reverter and other requirements of Section 253.011 of the Texas Local Government Code by Resolution No. 19-0774; and

WHEREAS, the Amended and Restated Meyerson Use Agreement incorporated and maintained the Booking Rights Agreement; and

WHEREAS, the DSA and DCPAF have mutually agreed to revise the Booking Rights Agreement and are desirous of the City and DSA's concurrent adoption of said revised Booking Rights Agreement as part of the Amended and Restated Meyerson Use Agreement; and

October 28, 2020

WHEREAS, it is now desirable to authorize the First Amendment to the Amended and Restated Meyerson Use Agreement to incorporate a revised Booking Rights Agreement to provide a new plan for scheduling at the Meyerson and Strauss Square, with said revised Booking Rights Agreement being jointly negotiated with the DSA and DCPAF.

Now, Therefore,

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

SECTION 1. That the City Manager is hereby authorized to execute the First Amendment to the Amended and Restated Use Agreement for the Morton H. Meyerson Symphony Center, approved as to form by the City Attorney, to incorporate a revised Booking Rights Agreement, as jointly negotiated with the DSA and DCPAF.

SECTION 2. 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.

APPROVED BY
CITY COUNCIL

OCT 28 2020



CITY SECRETARY