

## **FIRST AMENDMENT TO USER AGREEMENT**

**THIS FIRST AMENDMENT TO USER AGREEMENT** (this “Amendment”) is entered into by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado (the “City”), and COLORADO SYMPHONY ASSOCIATION, a Colorado nonprofit corporation (the “User”), located at 1245 Champa Street, Denver CO 80204 (the “User”, taken together with the “City”, shall be referred to hereinafter as the “Parties”).

### **RECITALS:**

**WHEREAS**, the Parties entered into that certain User Agreement dated May 9, 2018 (the “Agreement”) related to use of designated portions of the Boettcher Concert Hall located in the City and County of Denver, State of Colorado; and

**WHEREAS**, the City declared a state of local disaster emergency on March 12, 2020 pursuant to C.R.S. 24-33.5-701, *et seq.*, brought on by the spread of COVID-19, the Governor of the State of Colorado declared a Disaster Emergency (D 2020 003) dated March 11, 2020 on the same basis, and the President of the United States issued a Declaration of Emergency on March 13, 2020 due to the COVID-19 crisis;

**WHEREAS**, the Parties expressly acknowledge that state and local health and safety restrictions applicable to the Boettcher Concert Hall are on-going to ensure public safety;

**WHEREAS**, City and User desire to amend the User Agreement to account for COVID-19-related impacts on User and its ability to utilize Boettcher Concert Hall.

**NOW, THEREFORE**, in consideration of the mutual covenants set forth herein, City and User hereby agree as follows:

1. Defined terms not otherwise defined in this Amendment shall have the same meaning as set forth in the Agreement.
2. Paragraph 3 of the Agreement is hereby amended by addition of the following after the second sentence: “Notwithstanding the foregoing, City and User agree that the COVID-19 Crisis, which began affecting City facilities on March 12, 2020, materially affects User’s ‘occupancy and use’ of the Permitted Premises. The Parties agree that at present User is unable to continuously ‘occupy and use’ the Permitted Premises. However, it may be possible for City and User to partially activate the Permitted Premises, beginning in January 2021, by User holding rehearsals

and/or conducting performances without audiences to further its mission and for the benefit of the community, and such use will not constitute ‘occupancy and use’ within the meaning of the Agreement so long as such use does not exceed 10 calendar days per month, but for such limited use User agrees to pay Rent as provided and applicable pursuant to Paragraph 4 of this Amendment below. The parties agree that from January 1, 2021 until June 30, 2021, (a) User does not intend to utilize the Permitted Premises in any form for more than ten (10) calendar days during a calendar month, and (b) any use of the Permitted Premises in excess of ten (10) calendar days in a given month shall constitute ‘occupancy and use’ of the Permitted Premises for which User shall be obligated to pay to City rent in the amount of \$15,000.00 for such calendar month.”

3. Paragraph 4 shall be amended by addition of the following: “Beginning on January 15, 2021 through June 30, 2021, User shall provide to City a written list of dates it will utilize the Permitted Premises on or before the 15<sup>th</sup> of the preceding calendar month. By way of example only, dates User intends to utilize the Permitted Premises in March 2021 shall be provided to City on or before February 15, 2021.”

4. Subparagraph 5(a) of the Agreement is hereby amended by deletion of “\$15,000.00 for each month during the Term” which shall be replaced with “\$15,000 for each month from January 1, 2018 until December 31, 2020, subject to any rent abatement provided in Paragraph 3 of this Agreement. Should User utilize the Permitted Premises more than ten (10) days during any calendar month for the period from January 1, 2021 through June 30, 2021 (“Public Safety Period”), User shall pay \$15,000.00 for that particular month’s rent. However, should User utilize the Permitted Premises during the Public Safety Period for one (1) day or more, up to ten (10) days, in a calendar month, User shall instead pay pro-rated (on a per diem basis) rent based on the actual number of days of usage of the Permitted Premises; and, notwithstanding anything in this Agreement to the contrary, if User does not utilize the Permitted Premises during the Public Safety Period for any days within a calendar month, then no Rent will be due and Rent is deemed fully abated for such months. For each calendar day in a month during which User utilizes the Permitted Premises for one (1) day or more, up to ten (10) days, User shall pay 1/30<sup>th</sup> of \$15,000.00 in rent. By way of example only, should User utilize the Permitted Premises for five (5) days in March 2021, it shall pay rent in the amount of \$2,500 ( $\$15,000/30 \times 5$ ) for that calendar month.”

5. A new paragraph 46 shall be added as follows: “**Payment of Minimum Wage.** To the extent applicable to User under applicable law, User shall comply with, and agrees to be bound by, all requirements, conditions, and City legal determinations regarding the City’s Minimum Wage Ordinance, Sections 20-82 through 20-84 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, User expressly acknowledges that User is aware of the requirements of the City’s Minimum Wage Ordinance and that any failure by User, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.”

6. The effective date of this Amendment shall be as of January 1, 2021 (“Effective Date”).

7. Except as modified by this Amendment, the Agreement shall continue in full force and effect as written. In the event of any inconsistencies between the terms of this Amendment and the Agreement, this Amendment shall control. This Amendment may be executed in counterparts and by email or facsimile signature.

**[REMAINDER OF THIS PAGE SHALL BE BLANK]**

**Contract Control Number:**  
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THTRS-202056811-01 ALFRESCO #THTRS-201839929-

**Contractor Name:**

COLORADO SYMPHONY ASSOCIATION

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
201839929-00  
**Contractor Name:**

THTRS-202056811-01 ALFRESCO # THTRS-  
COLORADO SYMPHONY ASSOCIATION

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

ATTEST: [if required]

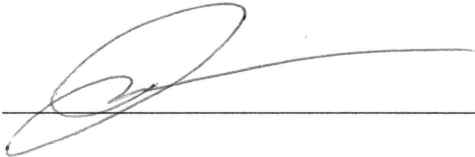
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**Contract Control Number:**  
201839929-00  
**Contractor Name:**

THTRS-202056811-01 ALFRESCO # THTRS-  
COLORADO SYMPHONY ASSOCIATION

By:  \_\_\_\_\_

Name: Jerome H. Kern  
(please print)

Title: CEO & Chair of the Board  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)