

SECOND AMENDMENT TO USER AGREEMENT

THIS SECOND AMENDMENT TO USER AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, hereinafter referred to as the "City," and **COLORADO SYMPHONY ORCHESTRA ASSOCIATION**, a Colorado nonprofit corporation whose address is 1245 Champa Street, Denver, Colorado 80202, hereinafter referred to as the "Symphony."

WITNESSETH:

WHEREAS, the City and the Symphony entered into a User Agreement dated January 3, 2006, as amended by a User Agreement (Extension) dated August 24, 2010 (together, the "User Agreement"), pursuant to which User books space at the Boettcher Concert Hall (the "Premises"); and

WHEREAS, the City and Symphony are parties to two other agreements: (i) an agreement dated March 9, 2012, relating to the resolution of then outstanding financial obligations of the Symphony to the City (the "Workout Agreement"); and (ii) a lease agreement dated September 25, 2013, relating to the lease of office space by the Symphony at 1245 Champa Street (the "Lease Agreement"); and

WHEREAS, the City and User wish to amend the User Agreement, to amend its term, to amend the user fees payable for the balance of the term, and set forth additional agreements of the parties regarding User's continued occupancy of the Premises;

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

1. Amendment to Term. The introductory sentence of Section 2 of the User Agreement is hereby amended to read as follows: "The term of this User Agreement shall be from January 1, 2006, to May 31, 2015, for the days specified pursuant to the following procedure:"

2. Amendment to User Fee. Subject to the conditions set forth in Section 3 below, effective July 1, 2014, the user fee shall be reduced to \$1 for the balance of the term of the User Agreement, and Section 4(a) of the User Agreement is hereby amended to read as follows:

a) Monthly/annual fees:

<u>Term</u>	<u>Annual Fee</u>	<u>Monthly Fee</u>
1/1/06-8/31/06	\$160,000.00	\$20,000.00
9/1/06-8/31/07	\$246,000.00	\$20,500.00
9/1/07-8/31/08	\$252,150.00	\$21,012.50
9/1/08-8/31/09	\$258,453.75	\$21,537.81
9/1/09-8/31/10	\$264,915.09	\$22,076.26
9/1/10-8/31/11	\$264,915.00	\$22,076.25
9/1/11-8/31/12	\$272,862.00	\$22,738.50
9/1/12-8/31/13	\$281,048.00	\$23,420.67
9/1/13-6/30/14	\$289,479.00	\$24,123.25
7/1/14-5/31/15	\$1.00	\$0
Total Contract Amount	\$2,241,577.34	

Monthly user fees shall be payable on the first day of each month during the Agreement term. Commencing September 1, 2007, and on each September 1 thereafter through September 1, 2013, User shall in addition pay the City 1% of the then applicable Annual Fee for each event in excess of 107 held by User at the Permitted Premises during the preceding 12 months.

3. Conditions. The City’s agreement to amend the Symphony’s user fee is conditioned upon the following (the “Conditions”):

A. The Symphony must be and remain in compliance with all of its obligations pursuant to the User Agreement, the Workout Agreement, and the Lease Agreement.

B. The Symphony shall provide the City with tickets to its performances over the remaining term of the User Agreement, at no cost to the City. The exact number of tickets, the location of seating, the determination of which performances will be subject to the City tickets, and other details concerning the City’s tickets will be agreed upon by the Symphony and the City’s Arts & Venues Division, provided that the face value of the tickets (excluding fees/taxes) granted to the City will be not less than \$170,000. The Symphony shall also provide the City with sponsorship acknowledgment and benefits, in content and form to be determined by agreement of the Symphony and the City’s Arts & Venues Division, but with a value of not less than \$100,000.

The Conditions are both conditions precedent as well as continuing conditions. That is, the monthly user fee amendments set forth in Section 2 above shall not take effect, and the existing

user fee schedule contained in Section 4(a) of the User Agreement shall remain in effect, so long as the Conditions or any of them are not satisfied. Similarly, if at any time during the remaining term of the User Agreement the Conditions are not satisfied, the user fee schedule shall revert to the schedule contained in Section 4(a) of the User Agreement, as if unmodified by this Second Amendment to User Agreement.

4. No Other Changes. Except as amended herein, the User Agreement remains unmodified, and is hereby ratified and reapproved.

Contract Control Number:

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:

By _____


By _____

By _____



Contract Control Number: THTRS-RC55024-02

Contractor Name: Colorado Symphony Orchestra Association

By:  _____

Name: J. H. KERN
(please print)

Title: Chairman + CEO
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

