

METROPOLITAN EXPOSITION-RECREATION COMMISSION

RESOLUTION NO. 94-39

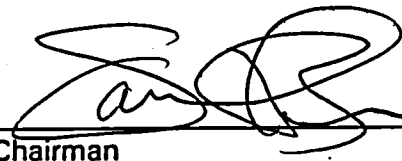
Authorizing the General Manager to execute a Musical Theatre Agreement with Portland Opera/Juamcyn Productions Company.

The Metropolitan Exposition-Recreation Commission finds:

1. That recent experience with "Phantom of the Opera" and other musical theatre productions demonstrates audience support for touring presentations of top quality Musical Theatre, and shows such events to produce significant earned revenue for PCPA;
2. That a subscription series would provide a regular schedule of attractions for interested audiences, along with a framework of scheduling and marketing which makes presentation of such costly touring shows financially viable;
3. That the presenter is a joint effort of an experienced local arts organization and a national organization with significant industry presence; in combination they have the experience, reputation and financial resources necessary to produce a Musical Theatre in this market;
4. That the Commission has the authority to enter into such an agreement through its General Manager;


BE IT THEREFORE RESOLVED that the General Manager is authorized to negotiate and contract with Portland Opera/Juamcyn Productions Company for a Musical Theatre Series Agreement on behalf of the Commission for the Portland Center for the Performing Arts.

Passed by the Commission on July 13, 1994.


Chairman


Secretary/Treasurer

Approved As to Form:
Daniel B. Cooper, General Counsel

By: 
Mark B. Williams
Senior Assistant Counsel

MERC STAFF REPORT

Agenda Item/Issue: **Authorization and Approval of Musical Theatre Series Agreement**

Resolution No. 94-39

Date: July 13, 1994 **Presented By: Harriet Sherburne**

Background and Analysis: In 1982 the Board of Directors of the Portland Opera Association adopted a Mission Statement which included the presentation of high quality professional opera and musical theatre to its audience. Since the 1986-87 season, Portland Opera has had one musical theatre production with four operas in its 5-show annual season. The Jujamcyn Theatre organization became involved with the Portland market through a highly successful presentation of "May Fair Lady" in August, 1993; at that time they established a working relationship with Portland Opera. Since fall, 1993, both organizations have been in conversation with staff and commissioners regarding their long-term interest in presenting a musical theatre series at PCPA facilities. Since early June, 1993, there have been negotiations for such a series to begin in 1995-96; progress in these discussions were reported at the MERC meeting June 8. The General Manager and liaison Commissioners for PCPA have reviewed the potential for a second subscription series, along with the credentials of the presenting partnership to pursue this opportunity for expanded business. It was determined that the Portland Opera/Jujamcyn Production Company have the credentials and resources necessary to undertake a series of the size and quality they have proposed. A non-exclusive agreement has been negotiated for a term beginning July, 1994, and with annual subscription series to be offered for the 1995-96 and 1996-97 seasons. In the first season, the agreement provides for a maximum 4 shows and 5 full weeks of performances; the second season is a maximum 4 weeks of performances.

Fiscal Impact: The presenter will pay \$17,250 per week for \$86,250 in 1995-96 and \$69,000 in 1996-97 guaranteed rent, paid each year in advance. In addition, there will be profit participation for the Commission. Commissions will be paid on sale of all tour merchandise. Standard user fee will be paid on all tickets sold for events.

Discussion with Commission Liaison and/or User Groups: The MERC Commission has been kept abreast of the process through the Liaison Committee and staff reports. Resident Companies and commercial users of PCPA facilities and PCPA Advisory Committee have been informed through correspondence and discussions.

Recommendation: The Committee recommended that the MERC Commission authorize the General Manager to negotiate and execute the Musical Theatre Series Agreement with Portland Opera/Jujamcyn Productions Company, for the Portland Center for the Performing Arts.

MUSICAL THEATRE AGREEMENT

This Agreement is made and entered into this 13th day of July, 1994, by and between the Metropolitan Exposition-Recreation Commission ("Commission," "Metro ERC," or "MERC") and Portland Opera/Juamcyn Productions Company, consisting of Portland Opera Association, an Oregon nonprofit corporation, and Juamcyn Productions Company, a Minnesota limited liability company ("Presenter"), collectively known as, "the Parties."

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WITNESSETH:

RECITALS

1. The Commission is a subdivision of Metro, a municipal corporation.
2. Presenter is an Oregon association.
3. Presenter wishes to present a subscription season of Musical Theatre at the Portland Center for the Performing Arts (PCPA), one of the Commission's facilities.
4. Commission wishes to present quality entertainment to the residents of the Metro region, and wishes to secure successful Musical Theatre productions at the PCPA, in order to defray ongoing budget deficits at the PCPA.
5. Presenter represents to Commission that it possesses the necessary capital, experience, skills, contacts, and expertise to present a subscription season of high quality Musical Theatre at the PCPA that will result in quality entertainment and a desirable financial arrangement for Commission.

NOW, THEREFORE, in consideration of the mutual covenants of the Parties hereto, and upon the express terms and conditions hereinafter set forth, it is agreed by and between them as follows:

1.

DEFINITIONS

The following terms are defined as follows:

- a. "Commission," "Metro ERC," or "MERC," shall mean the Metropolitan Exposition-Recreation Commission, a subdivision of Metro, a municipal corporation organized under the 1992 Metro Charter.
- b. "Director" or "PCPA" director shall mean the individual responsible for the overall day-to-day management of the Portland Center for the Performing Arts.
- c. "General Manager" shall mean the chief executive officer responsible for the overall day-to-day management of the Commission's facilities, as well as any individual to whom the General Manager has delegated any responsibilities.
- d. "Musical Theatre" shall mean any top quality legitimate touring musical attraction, with or without a story line, of professional Broadway caliber. "Broadway Show" shall not include any presentations by Resident Companies of the PCPA.

e. "PCPA" shall mean the Portland Center for the Performing Arts, in Portland, Oregon.

f. "Presentation Year" shall mean the booking season for subscription series established in the scheduling policy.

g. "Presenter" shall mean Portland Opera/Juamcyn Productions Company, the entity responsible for making all arrangements concerning the promoting of a Broadway Show, including assuming any related financial risks.

h. "Resident Companies" shall mean nonprofit groups which have achieved resident company status pursuant to applicable Metro ERC policies.

i. "Scheduling Policy" shall refer to the Civic Auditorium scheduling policy, a copy of which is attached as Exhibit A, including any subsequent revisions of that policy approved by Commission.

j. "Single Tickets" shall mean tickets to a single performance, and not an entire season of shows.

k. "Subscription Season" shall mean:

1. During the 1995-1996 Presentation Year, a maximum of four different eight show per week Musical Theatre presentations, totalling a maximum of five weeks, for which tickets can be purchased at the same time, for the same seats for one performance of each presentation by a subscriber.
2. During the 1996-1997 Presentation Year, any number of different eight show per week Musical Theatre presentations, totalling a maximum of four weeks, for which tickets can be purchased at the same time, for the same seats for one performance of each presentation by a subscriber.

l. "Tour Merchandise" shall mean the official items sold by the tour to the ticket-buyers at each show. These items include but are not limited to t-shirts, sweatshirts, programs, pins, buttons, hats, etc. "Tour Merchandise" does not include "concessions and food service."

m. "User Fee" shall mean a charge levied on each ticket sold to spectator seated events located in the Portland Center for the Performing Arts. The User Fee shall be retained by the Commission. In no event shall the User Fee be considered rent paid by the Presenter. The User Fee shall not apply to unsold or complimentary tickets. The User Fee

shall be included as part of the total ticket price printed on the ticket. Current Commission Resolutions impose the User Fee on all paid admissions as follows:

Tickets priced \$10.00 and under	\$.50 User Fee
Tickets priced \$10.01 to \$22.00	\$1.00 User Fee
Tickets priced \$22.01 and above	\$1.50 User Fee

2.

ENGAGEMENT

Subject to the terms of this Agreement and the direction of the Commission's General Manager or such other Commission personnel as he/she may designate, the Presenter shall promote and present a Musical Theatre Subscription Series at the PCPA. This engagement is further subject to the relevant terms and conditions of any existing and subsequent use agreements between the Commission and Licensees, Users, or Permittees authorized to promote, conduct events at, or otherwise use the PCPA.

3.

RELATIONSHIP OF THE PARTIES

The Commission and the Presenter have entered into this Agreement for the purpose of establishing an independent contractor relationship between the Commission and the Presenter. This Agreement is not, nor should it be construed as, a lease or an agreement in the nature of a lease. In the event that any governmental authority of competent jurisdiction determines that Presenter has a leasehold interest in any of Commission's facilities, Presenter shall be responsible for payment of any property or other taxes which may result. No covenant of quiet enjoyment shall be implied in this Agreement. Any right of use conferred on Presenter shall not be exclusive. It is further understood and agreed by and between the Parties that nothing herein shall constitute or be construed to be an employment, partnership, joint venture, or joint employer relationship between the Commission, its successors or assigns on the one part, and the Presenter, its successors or assigns on the other part. It is further agreed that the Presenter will provide its own Workers' Compensation insurance or self-insurance program as required or permitted by Oregon law. The Presenter shall, subject to the terms and provisions of this Agreement, have complete and independent control and discretion over the operation of the services contemplated by this Agreement. It is further agreed that the Portland Opera Association and Jujamcyn Productions Company shall each be jointly and severally liable for any and all obligations owed to Commission pursuant to this agreement.

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4.

TERM OF THE AGREEMENT

The term of this Agreement shall be from July 1, 1994 until June 30, 1997, unless sooner terminated by the mutual agreement of the Parties or as provided for herein.

5.

PRESENTER PROMOTION RIGHTS AND FINANCIAL ARRANGEMENTS

Subject to the provisions of this Agreement, the Commission shall grant to the Presenter the non-exclusive right to promote Musical Theatre at the PCPA, as follows:

a. Musical Theatre Subscription Series. Presenter shall contract for, promote, arrange, market, and present a Subscription Series of Musical Theatre at the PCPA. It is agreed and understood that said series will take place either at the Civic Auditorium or the Arlene Schnitzer Concert Hall. Presentation of the series or portions thereof at other PCPA venues shall only be permitted if written permission from Commission is obtained, which may be granted at the Commission's sole option and discretion.

b. Scheduling. The Scheduling Policy attached as Exhibit A is incorporated herein, provided that Commission reserves the right to change said policy should it determine that circumstances so warrant. Subject at all times to the Scheduling Policy, Commission will give Presenter scheduling priority equal to that enjoyed by Commission's Resident Companies, consistent with other obligations of the Commission.

c. Rent. Presenter shall pay a flat \$17,250 per eight-show performance week as rent to Commission for the use of either the Civic Auditorium or Arlene Schnitzer Concert Hall, provided, however, that the minimum guaranteed rental payable to Commission by Presenter for the 1995-1996 presentation year shall be \$86,250; for the 1996-1997 presentation year, the minimum guaranteed rental payable to Commission by Presenter shall be \$69,000. The \$86,250 minimum guaranteed rent for the 1995-1996 presentation year shall be paid to the Commission as follows: \$75,000 upon execution of this Agreement and \$11,250 no later than July 1, 1995. The \$69,000 minimum guaranteed rent for the 1996-1997 presentation year shall be paid to the Commission no later than July 1, 1996. The Parties understand and agree that the annual minimum guaranteed rent for each presentation year of this Agreement is due and payable in advance, and shall not be refundable under any circumstances.

d. Ticketing. Presenter may select one or more approved ticketing agencies which have been approved by the Commission and which have entered into contracts with the Commission as the official ticketing services to be used for the sale of subscriptions and single tickets for all shows. All proceeds from ticket sales shall be handled

pursuant to the Commission's standard policies and procedures for ticket sales and box office policies, which are incorporated herein by reference. Commission may change said policies from time to time, and shall notify Presenter in writing in the event of any changes in said procedures. Commission shall place all proceeds from ticket sales in an Oregon bank account. Commission may advance to Presenter portions of said proceeds at such times and upon such terms and conditions as Commission shall designate for the purpose of payment of deposits and other expenses necessary for presentation of the Musical Theatre Subscription Series. In the event that Commission determines that Presenter is in default of any provision of this Agreement, Commission may in addition to any other remedies provided by law or by this Agreement, apply any or all of said proceeds toward any of Presenter's obligations under this Agreement, including any damages incurred by Commission. Commission shall receive for its sole use 50 percent of the interest or other earnings from said accounts. Presenter and Commission shall execute any further forms or documents necessary to effectuate the terms herein. Presenter acknowledges that any current or future agreements between Commission and its approved ticketing agencies shall continue in full force and effect, including but not limited to any provisions entitling Commission to collect certain fees and charges.

e. Commission Profit Participation. Commission's profit participation shall be in addition to any rental or other sums payable to Commission under this Agreement. Presenter shall pay to Commission an amount equal to 15 percent of Presenter's net profits per eight-show performance week. Presenter's net profits shall include all receipts attributable to the Musical Theatre Subscription Series, including but not limited to ticket sales, sponsorship revenue, etc., and shall be determined by subtracting all reasonable show costs typical of presenting Musical Theatre, including but not limited to User Fees, advertising, building expenses, ticket commissions paid by Presenter, stagehand and wardrobe bills, insurance, equipment rentals, talent and royalty payments. Presenter and Commission agree that reasonable business and accounting practices shall be utilized in determining Presenter's net profit. Commission may examine and audit Presenter's books and records at any reasonable time, consistent with Article 9 herein. Presenter shall use its best efforts to attempt to achieve the greatest net profits possible for the Musical Theatre Subscription Series, and shall act in a fiduciary capacity towards Commission in making such business arrangements.

f. Settlement. Standard PCPA procedures for settlement shall apply. The Parties understand that said procedures provide for weekly settlement. Subscription sales revenue and Commission's profit participation shall be included in weekly settlement on a pro-rated basis for that week's performances.

g. Tour Merchandise. Presenter shall have the right to sell tour merchandise at the PCPA during Broadway Show events. During the first two years of this Agreement, Commission shall receive 15 percent of the gross sales of any Tour Merchandise sales. Thereafter, Commission shall receive 20 percent of the gross sales. The PCPA Director may, in his or her discretion, allow changes in these requirements on a case-by-case basis.

h. Sponsorships/Complimentary Tickets. Presenter shall have the right to enter into commercially reasonable sponsorship agreements which mutually benefit the Parties. Presenter shall act reasonably in entering into any such agreements, and shall not do so with the purpose or effect of reducing Commission's net compensation under this Agreement. Any sponsorship revenue shall be included in determining Presenter's net profits, pursuant to Article 5(e), above. Sponsorship revenue shall not include in kind contributions. The Presenter agrees that it will enter into sponsorships which include only purchased tickets (not complimentary) unless with a media sponsor, as part of any sponsorship agreement(s). Commission shall have the right to disapprove any commercially unreasonable issuance of complimentary tickets. Commission shall have the right to draw up to four complimentary tickets for its use for each performance, in accordance with the terms of the Standard PCPA Limited License Agreement.

i. Subscription and Mailing List. To the extent Commission has the power to do so, Commission shall provide, or have its ticketing agency or agencies provide, Presenter with any and all lists of past customers of subscription series' and Broadway presentations Commission has access to for the purpose of procuring new subscribers per this Agreement. It is understood between the Parties that Commission does not have access to the lists maintained by its resident companies, and cannot provide them. Commission shall retain the proprietary rights to any subscription lists that it provides to Presenter, or arranges to be provided to Presenter. Presenter shall have the proprietary right to any subscription lists it subsequently creates on its own. It is further understood between the Parties that Commission can only protect proprietary information of Presenter to the extent permitted by Oregon law.

j. "Mega-Hits" or "Blockbusters". The Parties agree that presentation of such productions at the PCPA is crucial to the PCPA's survival, and therefore Presenter shall cooperate with Commission by releasing scheduled dates in order to allow such productions to appear at the PCPA. Commission shall make reasonable efforts to enable Presenter to sell tickets to any "Mega-Hit" or "Blockbuster" productions at the PCPA. In the event of a dispute between the Parties, the Commission's judgment as to whether a particular production is a "Mega-Hit" or "Blockbuster" shall be final.

6.

DUTIES OF THE PRESENTER

Subject at all times to the terms of this Agreement and the reserved powers of the Commission, the duties of the Presenter shall include the following:

a. Decisions. Presenter shall make all decisions regarding selection of Musical Theatre to be presented, the length of the Subscription Season, (provided, that the length of the Subscription Season shall not be greater than specified herein, unless agreed to

by Commission), subscription budget, and general business decisions related to the Subscription Season.

b. Accounting. All accounting and expense paying for the Subscription Series shall be paid by the Presenter. Presenter shall pay any Commission pass-through costs as per the standard PCPA Limited License Agreement, attached and incorporated herein as Exhibit "A".

c. Advertising. All marketing decisions and execution of advertising shall be done by Presenter. All such expenses shall be borne by Presenter.

d. Ticket Prices/Scaling the House. All ticket pricing and scaling decisions will be made by Presenter, and executed by PCPA.

7.

RESPONSIBILITIES OF THE COMMISSION

The Commission shall be responsible for performing the following duties and functions:

a. The Commission shall furnish the Presenter all necessary event information to adequately plan for all events at the PCPA, to assist the Presenter in accomplishing its services and responsibilities.

b. The Commission shall cooperate with the Presenter in obtaining all necessary licenses and permits.

c. The Commission shall conduct business with the Presenter in an efficient and professional manner.

8.

POWERS RESERVED TO THE COMMISSION

In the event of a dispute between the Presenter and the Commission, the decision of the Commission and/or its designee(s) concerning the operation or management of the PCPA shall be final and binding on both Parties. By way of illustration and not as a limitation, the reserved powers of the Commission include:

a. The final determination of all policies and procedures relative to the operation and management of the PCPA, including determining the appropriate policy to be followed in the event of a contradiction(s) or ambiguity in or between any Commission policy, practice or agreement.

b. Sole discretion to cancel, terminate or interrupt any event, and cause the patrons to be dismissed during any event. The Commission shall not be liable to the Presenter or any third parties for any loss or cost occasioned by any such determination or action by the General Manager, the PCPA Director, or their designee(s) taken in good faith for the benefit or protection of the Commission and the public generally or the PCPA.

c. The power to have access to any areas of the PCPA at any time.

d. The power to terminate or suspend this Agreement for acts of default by the Presenter in accordance with any item of Article 16 herein.

e. The power to change, modify, or increase Commission's User Fee, provided that Commission shall not increase the User Fee applicable to productions for which Presenter has entered into a binding written contract after Presenter has supplied Commission with a copy of such contract. Commission shall notify Presenter in writing prior to any increase in the User Fee.

f. The Commission must approve in advance and in writing any agreements for subcontracting which may be proposed by the Presenter throughout the life of this Agreement.

g. The Commission may, at its discretion, conduct a performance review and/or audit of Presenter's compliance with this Agreement on an annual basis or more frequently as appears necessary to the Commission or its designee(s).

9.

ACCOUNTING

The Presenter shall, with respect to all business done under this Agreement, keep true and accurate accounting records, books, and data, which shall among other things show all gross receipts derived from all tickets sold, and shall establish and maintain accounting procedures that are acceptable to the Commission or its designee(s). The Commission and its designee(s) shall have the right at all reasonable times during normal business hours to inspect all books of accounts and ledgers of the Presenter related to this Agreement, and the right to make or cause to be made audits of these accounts. Further, the Commission reserves the right, and the Presenter agrees to allow its systems, hardware and programs pertaining to this Agreement or business done pursuant to this Agreement to be inspected by the Commission or its designee(s), at any reasonable time.

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INSURANCE, INDEMNIFICATION, AND WAIVER OF SUBROGATION

a. **Indemnification.** Presenter shall defend, indemnify, and hold the City of Portland, the Metropolitan Exposition-Recreation Commission, Metro, their agents, elected and appointed officials, and employees, (the Indemnitees) harmless from any and all claims, demands, damages, actions, losses and expenses, including attorneys' fees, and court costs, arising out of or in any way connected with the fact of this Agreement, Presenter's performance of this Agreement, or any event which was presented or which was supposed to be presented pursuant to this Agreement. In the event that Presenter refuses or fails to defend as required herein, the Indemnitees may, at their sole option, settle or defend any claims, and may maintain an action in any court of competent jurisdiction against Presenter for the full costs of any settlement, judgment, or defense, including all expenses and attorneys' fees.

b. **Insurance.** Presenter shall, at its sole cost and expense, procure and maintain through the term of this Agreement the following insurance requirements:

1. Comprehensive General Liability with the Broad Form Comprehensive General Liability endorsement providing coverage against claims for bodily injury or death and property damage occurring in or upon or resulting from the facilities licensed hereunder, such insurance to offer immediate protection to the limit of not less than \$1,000,000 and such insurance shall include Blanket Contractual Liability coverage which insures contractual liability under the indemnification of the Commission and Metro by Presenter as set forth below.

2. Any Comprehensive General Liability insurance policy required by this Agreement shall name as additional insured: the City of Portland, Metropolitan Exposition-Recreation Commission, Metro, and the members, officers, directors, agents and employees of each entity.

3. Presenter shall maintain with respect to each such policy or agreement evidence of such insurance endorsements as may be required by the Commission and shall at all times deliver and maintain with the Commission a certificate with respect to such insurance in a form acceptable to the Commission.

4. Presenter agrees to provide all required certificates of insurance to the Director of the PCPA within 30 days of the first performance date of each show presented pursuant to this Agreement. Failure to do so shall constitute immediate breach of this Agreement by Presenter. It is agreed in that event that Commission, at its sole option, may terminate this Agreement. Commission may exercise any or all options available to it pursuant to this Agreement.

5. The Parties agree that the specified coverage of limits of insurance in no way limit the liability of the Presenter. Presenter shall obtain the written agreement on the part of each insurance company to notify Commission at least thirty (30) days prior to cancellation or non-renewal of any such insurance.

6. Should Presenter fail to provide and maintain adequate Liability Insurance by the date listed in paragraph b. above, at its option, the Commission may provide adequate coverage under its Special Events policy and/or invoke any or all of its rights under Article 16. Presenter shall be invoiced for the cost of any coverage provided by Commission.

c. Waiver of Subrogation. 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 terms of this Agreement or any extension or renewal thereof for any loss of or damage to any of its property, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies to the extent that such loss or damage is recovered under said insurance policies. Said waivers shall be in addition to, and not in derogation of, any other waiver or release contained in this Agreement with respect to any loss or damage to property of the Parties hereto. Inasmuch as the waiver will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), Presenter is advised to give each insurance company written notice of the terms of such waiver, and to have insurance policies properly endorsed, if necessary.

11.

TAXES AND FEES

Presenter agrees to pay promptly all sales, use, excise and any other taxes required by any governmental authority and shall obtain at its own expense all permits and licenses required by law in connection with its use of the PCPA.

12.

DEFACEMENT OF FACILITY

It is understood and agreed that the Commission provides the authorized areas of the PCPA to Presenter "as is", and that the Presenter will make, at its own expense, all changes, alterations, installations and decorations therein that are previously agreed to by Commission, and that Presenter will restore, at its own expense, the PCPA to the same condition in which it existed prior to any alterations made therein. Presenter shall be responsible for any costs to repair or replace property at the PCPA damaged or lost during the term of this Agreement. Ordinary wear and tear is excepted.

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13.

NON-DISCRIMINATION

Presenter agrees not to discriminate against any employee or applicant for employment because of race, creed, ancestry, sexual orientation, disability, color, sex, marital status, age, religion or national origin, and further agrees not to discriminate for the same aforementioned reasons against any person or persons in connection with admission, services, or privileges offered to or enjoyed by the general public.

14.

IMPOSSIBILITY

The Commission shall not be liable for failure to perform as agreed herein where such performance is rendered impossible or financially impractical due to labor strikes, walkouts, acts of God, inability to obtain necessary materials, products and services, civil commotion, fire, casualty, or similar cause beyond the Control of the Commission. Commission agrees to notify Presenter promptly upon acquiring knowledge of the occurrence of an event or condition which will, or which is likely to, give rise to the likelihood that performance will be rendered impossible or impracticable under this article.

15.

NON-EXCLUSIVE USE

Commission shall have the right to use or permit the use of any portion of the PCPA not granted to Presenter under this Agreement to any person, firm or entity regardless of the nature of the use of such other space. This right shall be subject to Commission's prudent business judgment.

16.

DEFAULT BY PRESENTER AND COMMISSION REMEDIES

Presenter shall be in default of this Agreement if Presenter fails to pay any amounts due under the Agreement or any other written agreement between Presenter and Commission, breaches any provisions of this Agreement or any other written agreement between Presenter and Commission, including payment of fees and maintenance of required insurance in strict accordance with this Agreement, violates any applicable laws or ordinances during its use of the PCPA, violates any Commission rules or policies, or should dissolve or cease doing business as a going concern or become insolvent or bankrupt. Upon such default by Presenter, the Commission may have one or more of the following remedies, in its sole discretion:

a. Declare the entire amount of the balance due per the terms of the Agreement payable.

b. Reenter any licensed area(s) without being liable for damage therefore and relet the licensed area(s) or any portion thereof, or operate the same for the balance of the Agreement's term, receive sums due and apply them first to any expenses of making the Commission whole and, second, to any expenses incurred for reentering the premises and reletting any licensed area(s).

c. Terminate the Agreement by giving the Presenter written notice of such termination, which shall not excuse breaches of the Agreement which have already occurred, and may reenter the licensed area(s) as in b. above.

d. Pursue any other remedies available to the Commission either at law or equity. No single or partial exercise of a right or remedy shall preclude any other or further exercise of a right or remedy.

e. Commission shall have the right, without resorting to any legal action, to withhold from any and all sums, receipts or deposits which may be in the possession of the Commission for or on behalf of Presenter, such sums as are necessary, in Commission's sole opinion, to apply to any claims Commission may have against Presenter, or to protect Commission against any loss, damage, or claim which may result from Presenter's performance or failure to perform under this Agreement.

f. Commission may, at its sole option, also terminate any other contract(s) with Presenter.

17.

ASSIGNMENT

It is agreed and understood between the Parties that Presenter has been chosen by Commission for its unique abilities and services, and therefore Presenter may not assign this Agreement or any interest therein without the prior written approval of the Commission. Any attempted assignment without such written prior approval shall be null and void.

18.

HAZARDOUS SUBSTANCES

Presenter, its officers, employees and agents, and any performers, customers, invitees or other participants in the event(s) covered by the Agreement are prohibited from bringing any hazardous substance into the PCPA or onto Commission property and are prohibited from allowing any hazardous substance to be brought into the PCPA or onto Commission

property. As used in this paragraph, "hazardous substance" has the meaning given that term in ORS 466.540(9). If any governmental authority or other third party demands that a cleanup plan be prepared and that a cleanup be undertaken because of any release of hazardous substances that occurs as a result of Presenter's use of the PCPA or entry on Commission property, Presenter shall, at Presenter's expense, prepare and submit the required plan and all related bonds and other financial assurances, and Presenter shall carry out all such cleanup plans. Presenter agrees to indemnify Metro, Metropolitan Exposition-Recreation Commission, the City of Portland and their respective members, officers, directors, agents, elected and appointed officials, and employees against any claims, costs and expenses of any kind, whether direct or indirect, incurred voluntarily or pursuant to any state or federal law, statute, regulation or order, for the clean up, extraction, detoxification or neutralization of any release of any hazardous substance associated with or arising from the Presenter's use of the Authorized Areas or entry on Commission property. As used in this paragraph, "release" has the meaning given that term in ORS 466.540(4). Presenter's obligations under this paragraph survive termination or expiration of the Agreement.

19.

STANDARD PCPA LIMITED LICENSE AGREEMENT

For each event performed pursuant to this Agreement, Presenter shall execute a standard PCPA Limited License Agreement, a copy of which is attached and incorporated herein by reference as Exhibit "B." Commission reserves the right to make changes in the standard PCPA Limited License Agreement from time to time, as deemed necessary by Commission. Where the terms of the standard PCPA Limited License Agreement vary from the terms of this Agreement, Commission shall determine which provisions apply.

20.

TERMS AND CONDITIONS

Commission's Terms and Conditions and Box Office Policies, are hereby incorporated into this Agreement by reference. Commission reserves the right to change such Terms and Conditions and Box Office Policies from time to time.

21.

ACTIONS AND LAWSUITS

Any actions or lawsuits by one party to the Agreement against the other arising out of the Agreement or of conduct, acts or activities of the Parties hereunder will be governed by Oregon Law and shall be maintained in the Circuit Court of the State of Oregon, in and for Multnomah County, or if jurisdiction is proper, the United States District Court for the District of Oregon. No such action against the Commission may be maintained except in the

State of Oregon. Presenter consents to the maintenance of any such action by the Commission against it in the Circuit Court of the State of Oregon, in and for Multnomah County, or if jurisdiction is proper, the United States District Court for the District of Oregon.

22.

SEVERABILITY

If any provision of this Agreement or the Terms and Conditions, which have been incorporated into the Agreement by reference, shall be declared invalid or unenforceable, the remainder of the provisions shall continue in force and effect to the fullest extent permitted by law.

23.

WAIVER

The failure by the Commission to insist upon strict and prompt performance of the terms and conditions of this Agreement shall not constitute a waiver of the Commission's right to strictly enforce such terms and conditions thereafter. No waiver by the Commission of any default shall operate as a waiver of any other default on a future occasion or the same default. No delay or omission by the Commission in exercising any right or remedy shall operate as a waiver thereof, and no single or partial exercise of a right or remedy shall preclude any other or further exercise thereof, or the exercise of any other right or remedy.

24.

ATTORNEYS' FEES

In case any lawsuit or action is instituted by either party hereto arising out of this Agreement, the prevailing party in such litigation, including any appeal, shall be entitled, in addition to the costs and disbursements provided by statute, to reasonable attorneys' fees as determined by the court on trial or appeal. In the event that either party hereto employs in-house counsel, or if the Commission employs in-house counsel supplied to it by Metro, said prevailing party shall be entitled to recover the full reasonable fair market value of their counsel's services. The prevailing party shall also be entitled to recover its full reasonable costs of litigation, including the expense of depositions and expert witnesses.

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25.

DELIVERY OF NOTICES

Any notice, request, demand, instruction, or any other communications to be given to any party hereunder shall be in writing, sent by registered or certified mail as follows:

To Commission: Metropolitan Exposition-Recreation Commission
Attn: General Manager
P. O. Box 2746
Portland, OR 97208

Copy to: Portland Center for the Performing Arts
Attn: PCPA Director
1111 S.W. Broadway
Portland, OR 97205

Copy to: Metro
Attn: General Counsel
600 N.E. Grand Avenue
Portland, OR 97232

To Presenter: Portland Opera/Juamcyn Theaters
Attn: General Director
1516 S.W. Alder Street
Portland, OR 97205

Copy to: Juamcyn Theaters Corp.
Attn: Vice President & Producing Director
246 West 44th Street
New York, NY 10036

26.

MISCELLANEOUS

a. **Presenter's Assumption of Responsibility.** The Presenter expressly assumes full responsibility for all persons connected with Presenter's use of the Facility, including all its employees, agents, members, invitees and contractors.

b. **Time is of the Essence.** Time is of the essence to this Agreement.

c. **Entire Agreement.** Except as specifically provided herein, this document contains the complete and exclusive agreement between the Parties, and is intended

to be a final expression of their agreement. No promise, representation or covenant not included in this document has been or is relied upon by any party. No modification or amendment of this Agreement shall be in force or effect unless in writing executed by all Parties hereto.

d. Headings. The headings used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the extent of any provision thereof.

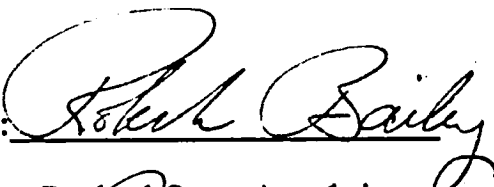
e. No Third Party Beneficiaries. This Agreement is not intended to benefit any individual, corporation, or other legal entity other than Commission, Presenter, and the Indemnitees. This Agreement shall not be deemed to vest any rights in, nor shall it be deemed to be enforceable by, any other parties in any proceeding whatsoever.

f. Parking. Parking is not available at the PCPA, other than whatever on-street or independent garage parking may be available from time to time. Commission makes absolutely no guarantees or representations as to the availability or continued availability of on-street or independent garage parking.

g. Concessions/Food Service. Concessions/Food Service shall be defined as the selling or dispensing of foodstuffs, beverages (alcoholic and non-alcoholic), flowers, tobaccos, or edible products of any kind. The sale and/or distribution of the aforementioned items are solely the exclusive right of the Commission or its contracted agent.


PORTLAND OPERA/JUJAMCYN THEATERS

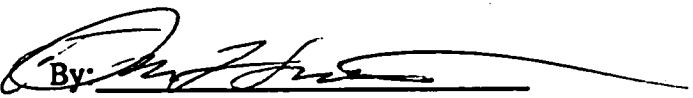
METROPOLITAN EXPOSITION-
RECREATION COMMISSION

By: 


For: Portland Opera Association

By: 
For: Jujamcyn Productions Company

By: 
Sam Brooks, Chair

By: 
Ben Middleton
Secretary/Treasurer

APPROVED AS TO FORM:
Daniel B. Cooper, General Counsel

By: 
Mark B. Williams
Senior Assistant Counsel

gl1192F

THIS POLICY IS EFFECTIVE FOR 30 DAYS, AND IS SUBJECT TO REVIEW AND CHANGE

Scheduling Policy and Procedures for
Broadway and Musical Theatre Series
at Civic Auditorium

When booking events in the Civic Auditorium, first priority in scheduling is given to local, producing, non-profit performing arts organizations which have been accepted under the standards for Resident Company status in that facility. The Metro Exposition-Recreation Commission, at its discretion, may designate commercial presenters of annual series of full-week events for Resident Company status for the purpose of scheduling only, and determine their rank in scheduling priority. The following is the recognized listing having priority for use and scheduling of Civic Auditorium:

1. Portland Opera Association ** (Non-Profit)
2. Oregon Ballet Theatre ** (Non-Profit)
3. Oregon Children's Theatre Company ** (Non-Profit)
4. *Resident Commercial Presenters (equal rank)*
 - * *Dan Bean Presents Broadway Series*
 - * *Portland Opera/Juamcyn Productions Company Musical Theatre Series*
5. Live From the Civic (Non-Profit)
6. One Voice Productions (Non-Profit)

RESIDENT COMPANY BOOKING:

Each major Resident Company (noted ** above) is required to complete booking with firm commitments for dates by January 1 of each year for the performance series which begins June 1 or later in that same year. All remaining dates are claimed and controlled by the Facility for allocation in accordance with policy and business priorities. Immediately after receipt of Resident Company firm bookings, the PCPA shall advise both Resident Commercial presenters of event series of the available full-week dates for the prospective booking season.

RESIDENT COMMERCIAL SERIES BOOKING:

Portland and its performing arts facilities have had an uneven record of success over the past 5 seasons for the presentation of touring musical theatre events. The 1990-91 season offered the highest selection with Musical Theatre of Oregon in its subscription series offering 4 shows with week-long runs, plus a 2-week run of *Les Miserables*, and 4 weeks of shows sponsored by others -- 9 shows with 10 weeks of performances. The following year MTO collapsed and only 1 week-long touring show was presented, plus a scattering of limited engagements. The successful presentation of a 5-week run of "*Phantom of the Opera*" and other week-long show successes in 1993-94 rekindled commercial producer interest in Portland. A 3-year Agreement for 5 shows and 40 performances per year was entered into by MERC in March 1994, to begin presenting in the 1994-95 Season; subsequently, the

July 13, 1994

Portland Opera/Juamcyn Productions Company has proposed a multi-year agreement to present musical theatre productions in the same PCPA facility. Because of the uncertain market for week-long presentations, and unpredictability of the supply of appropriate touring productions from year to year, it is appropriate that MERC undertake affirmative management of the calendar of Civic Auditorium to honor existing commitments and to make reasonable accommodation of the growth in market demand for dates. In the interest of fairness to presenters and to balance events throughout the calendar year, it is also reasonable to establish spacing between shows of each series. The process for scheduling the Broadway Series together with the Musical Theatre Series shall be phased-in and limited to a 3 year period beginning with the 1994-95 season.

1994-95 Season: Dan Bean Presents (DBP) has identified dates and shows to be presented on a subscription series beginning October 1994 and continuing through August 1995. These dates and shows were determined by May 31, 1994. The PCPA Broadway Series by Dan Bean Presents is the sole series for the 1994-95 Season.

MEGA-HIT 1995: A mega-hit has been booked by PCPA to play dates in summer 1995, requiring a total 8 weeks of calendar time and offering a maximum 40 performances. This event has a significant impact on the availability of time for other major events at Civic Auditorium in the 1994-95 Season. Recent history shows that such mega-hits might occur every two years at this facility, creating special demands for the management of dates.

1995-96 and 1996-97 Seasons: Time on the calendar of Civic Auditorium shall be affirmatively managed in order to balance the presentation of Broadway/Musical Theatre throughout the year, and to foster the success of both series. For the purpose of scheduling subscription series, the booking season shall be defined as beginning on June 1 and running through May 31 of the subsequent year. The performance season shall be divided into quarters, as follows:

Summer:	June/July/August
Fall:	September/October/November
Winter:	January/February
Spring:	March/April/May

Each commercial subscription series shall endeavor to spread its bookings throughout the year; however, each series shall have a 9-month period of primary emphasis, as shown below. Each series shall be limited to a maximum of two (2) shows per quarter.

Broadway Series--Fall thru Spring (September - May)
Musical Theatre Series--Summer thru Winter (June - February)

Dates available for full week engagements would be made known to each of the commercial series presenters on a specified date of each year, after non-profit Resident Companies had finalized their respective performance dates. Thereafter, each commercial series may formally request that PCPA reserve specific dates in their name for a period of 75 days, while efforts proceed to book specific shows. Only one series would be named for each available week, at the discretion of PCPA. If after 75 days engagements have not been secured for the reserved weeks, the dates return to control of PCPA for reallocation at their discretion. As shows are secured for the reserved weeks, documentation of control of the show sufficient

July 13, 1994

for a firm contract must be submitted to PCPA for acceptance. Thereafter, the event(s) may be authorized for announcement to the public.

For the 1995-96 Season: Available dates shall be announced on July 5, 1994

For the 1996-97 Season: The time for announcement of available dates shall be determined by PCPA.

In general, PCPA will refer inquiries about date availability from agents or producers of full-week musical theatre events to the Resident Commercial Presenters; however, PCPA reserves the right to hold calendar dates for particular shows seeking to perform at Civic Auditorium. The Agent or Producer may contract with a Resident Commercial Presenter or other qualified presenters to make the event available to Portland audiences, as stipulated by PCPA.

OTHER EVENT BOOKING:

Upon completion of booking dates for Resident Companies and Resident Commercial Series, PCPA will work with the remaining non-profit Resident Companies to book their seasons of events. Also beginning this date, PCPA will accept requests to hold dates from other commercial and standard non-profit presenters for specific shows or events.

MEGA-HIT AND SPECIAL EVENT BOOKING:

Because of the artistic merit, technical complexity, as well as economic importance of mega-hits ("Phantom of the Opera", etc.) PCPA will accept agent or producer requests for reservation of dates (first hold) at Civic Auditorium; reservations may be a maximum 2 years in advance of the run of the show. Other major events (conference, conventions) may also be given priority for advance booking of firm dates.

Subject to the priorities set forth above, the Director may find it necessary to exercise discretion as to the issuance, modification or termination of scheduling commitments.

SPECIAL CONSIDERATIONS:

It is the responsibility of the PCPA management to operate the facilities in a business-like manner in an effort to fulfill its mission and ensure the financial stability of the PCPA. The following factors shall be given consideration when booking and contracting the facilities: **projected revenue** - both in terms of direct rental revenue as well as projected revenue from concessions and other facility charges; potential for **repeat booking; cultural/entertainment value** to the community; projected **overall economic impact** on the community at large. Consequently, PCPA management reserves the right to promote, solicit, develop and make reservations for any activity deemed appropriate to PCPA objectives, and to qualify all activities requesting utilization of the facilities.

July 13, 1994

D R A F T
SUBJECT TO CHANGE AND REVIEW

EXHIBIT "B"

**PORTLAND CENTER FOR THE PERFORMING ARTS
LIMITED LICENSE AGREEMENT**

This Limited License Agreement is made and entered into by and between the Metropolitan Exposition-Recreation Commission, governing body for the Portland Center for the Performing Arts (PCPA), hereinafter referred to as "Commission," whose address is P. O. Box 2746, Portland, OR 97208, and _____, hereinafter referred to as "Licensee," whose address is _____.

Authorized Agent:

Address:

Telephone Number:

FAX Number:

Event Contact:

WITNESSETH:

WHEREAS, Commission operates and maintains the PCPA; and

WHEREAS, Licensee desires to use space in said PCPA;

NOW, THEREFORE, and in consideration of the following promises, covenants and conditions, the parties hereto agree as follows:

1. Dates and Permitted Use of the Facilities. Commission grants Licensee non-assignable permission to use the following PCPA venue(s) at the rate(s) described in paragraph 2 below for the following use:

a. Date(s)/Hours:

NOTE: Additional time for load-ins/rehearsals/performances may be granted at the discretion of the PCPA Director. Should additional time be granted, Licensee agrees to pay all associated costs.

b. Venue(s)/Areas:

NOTE: Commission reserves the right to control all Lobby and Common Areas and will permit Licensee to use those areas of the Lobby and Common Areas as Commission in its discretion deems appropriate for the event.

c. Use:

NOTE: LICENSEE MAY NOT USE THESE AREAS FOR ANY OTHER PURPOSE.

2. Terms. Licensee agrees to furnish everything necessary to said performance(s) not specifically agreed to be furnished by Commission and agrees to pay to Commission, for the use of the specified PCPA venue(s)/areas as follows:

a. License Fee:

Upon request by the Commission, Licensee shall furnish Commission a copy of the ticket printer's manifest before each event.

b. Other Fees and Charges. In addition to the license fee, Licensee shall pay to the Commission the cost of handling stage wardrobe, scenery, supplies or equipment and the cost of providing admissions control functions. Licensee shall pay to the Commission the cost of such personnel which shall include but not be limited to stagehands, ushers, ticket takers, admissions control supervisor(s), stage door security and peer group security, etc. Only employees under the direct control and supervision of the Commission shall be engaged in admissions control functions. Determination of the necessity of required personnel shall be solely the responsibility of the PCPA Director. Charges for personnel employed or supplied by the Commission shall be on gross wages plus applicable overhead and benefits consistent with Commission policy and labor agreements in effect as of event date.

c. Deposits Schedule. Licensee shall pay a nonrefundable advance deposit towards the license fee in the amount of _____ with this limited license agreement. Licensee shall pay the balance of the deposit, if applicable, as follows:

Checks should be made payable to METROPOLITAN EXPOSITION-RECREATION COMMISSION.

d. Collection of Facility Charges. All other fees and charges for the use of PCPA facilities shall be paid upon demand. A deposit to cover such other charges, in addition to the license fee deposit referred to in paragraph 2(c), above, shall be paid in such amount, at such time, and in such form as determined by the PCPA Director. In no event shall access to the facility for load-in or set-up purposes occur unless such deposit(s) are made. Interest will be charged at the rate of 1.5 percent per month on any outstanding

balance after 30 days. Any box office receipts in the possession of Commission may be retained and applied to the payment of any license fee or other charges; Licensee waives all rights to that portion of the box office receipts necessary to pay said license fee and other charges. In the event an invoice is outstanding, the PCPA Director is authorized to apply and withhold excess box office receipts from any other scheduled event by the same Licensee toward the outstanding debt.

e. Failure to make advance deposits as outlined herein shall constitute immediate breach of this Agreement by Licensee. In the event of such failure to make advance payments as required, it is agreed that the Commission may, at its sole discretion, cancel this event and retain all deposits received, apply such amounts to the amounts due and owing to Commission pursuant to paragraph 15, and Commission shall have any and all remedies available to it as outlined in paragraph 15.

f. The Commission will credit deposits paid against the costs of the event at the time the Commission prepares an invoice for the event. Licensee shall pay other event or service costs and the balance of the facility rental charge, if any, immediately on receipt of the Commission invoice. Interest will be assessed and paid at 1.5 percent per month on all balances due after thirty (30) days from the date of the billing.

3. Nature of Agreement. This is a Limited License Agreement. It is not, nor should it be construed as, a lease or an agreement in the nature of a lease. No covenant of quiet enjoyment shall be implied in this limited license agreement. Any right of use conferred on Licensee shall not be exclusive, but shall be always subject to the Commission's right of entry and control. In the event that any governmental authority of competent jurisdiction determines that Presenter has a leasehold interest in PCPA or any part thereof, Presenter shall be responsible for payment of any property or other taxes which may result. It is further understood and agreed by and between the parties that nothing herein shall constitute or be construed to be an employment, partnership, joint venture, or joint employer relationship between the Commission, its successors or assigns on the one part, and the Licensee, its successors or assigns on the other part. It is further agreed that the Licensee shall provide its own Workers' Compensation insurance, if required by law. Licensee shall, subject to the terms and provisions of this Agreement, have complete and independent control and discretion over the operation of the event contemplated by this Agreement.

4. Effective Date. This License Agreement shall be effective only when fully executed by both Licensee and by the Commission. Prior to full execution, this License Agreement shall be null and void in all respects. In the event that Licensee requests that ticket sales begin prior to final approval of this License Agreement, such sales shall be at the sole risk of Licensee. In the event that this License Agreement is not signed, Commission may, at its sole discretion and option, suspend ticket sales and/or order refunds of ticket sales, in addition to any other options the Commission may have.

5. Parking. Parking is not available at PCPA, other than whatever on-street parking may be available from time to time. Commission makes absolutely no guarantees or representations as to the availability or continued availability of on-street parking.

6. Insurance. Licensee shall, at its sole cost and expense, procure and maintain through the term of this Agreement the following insurance requirements:

a. Comprehensive General Liability with the Broad Form Comprehensive General Liability endorsement providing coverage against claims for bodily injury or death and property damage occurring in or upon or resulting from the facilities licensed hereunder, such insurance to offer immediate protection to the limit of not less than \$1,000,000 (\$5,000,000 if attendance is expected to exceed 10,000) and such insurance shall include Blanket Contractual Liability coverage which insures contractual liability under the indemnification of the Commission and Metro by Licensee as set forth below;

b. Any Comprehensive General Liability insurance policy required by this Agreement shall name as additional insured: the City of Portland, Metropolitan Exposition-Recreation Commission, Metro, and the members, officers, directors, agents and employees of each entity.

c. Licensee shall maintain with respect to each such policy or agreement evidence of such insurance endorsements as may be required by the Commission and shall at all times deliver and maintain with the Commission a certificate with respect to such insurance in a form acceptable to the Commission.

d. Licensee agrees to provide all required certificates of insurance to the Director of the PCPA at least thirty (30) days prior to the time of occupancy, which will be _____. Failure to do so shall constitute immediate breach of this Agreement by Licensee. It is agreed in that event that Commission, at its sole option, may terminate this Agreement. Commission may exercise any or all options in paragraph 15.

e. The parties agree that the specified coverage of limits of insurance in no way limit the liability of the Licensee. Licensee shall obtain the written agreement on the part of each insurance company to notify Commission at least thirty (30) days prior to cancellation or non-renewal of any such insurance.

f. Should Licensee fail to provide and maintain adequate Liability Insurance by the date listed in paragraph b. above, at its option, the Commission may provide adequate coverage under its Special Events policy and/or invoke any or all of its rights under paragraph 15. Licensee shall be invoiced for the cost of any coverage provided by Commission.

7. Indemnification. Licensee shall defend, indemnify, and hold the City of Portland, the Metropolitan Exposition-Recreation Commission, Metro, their agents, elected

and appointed officials, and employees; (the Indemnitees) harmless from any and all claims, demands, damages, actions, losses and expenses, including attorneys' fees, arising out of or in any way connected with Licensee's performance of this Agreement or the event which is the subject of this Agreement. In the event that Licensee refuses or fails to defend as required herein, the Indemnitees may, at their sole option, settle or defend any claims, and may maintain an action in any court of competent jurisdiction against Licensee for the full costs of any settlement, judgment, or defense, including all expenses and attorneys' fees.

8. Waiver of Subrogation. 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 terms of this license or any extension or renewal thereof for any loss of or damage to any of its property, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies to the extent that such loss or damage is recovered under said insurance policies. Said waivers shall be in addition to, and not in derogation of, any other waiver or release contained in this Agreement with respect to any loss or damage to property of the parties hereto. Inasmuch as the waiver will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), Licensee is advised to give each insurance company written notice of the terms of such waiver, and to have insurance policies properly endorsed, if necessary.

9. Taxes and Fees. Licensee agrees to pay promptly all sales, use, excise and any other taxes required by any governmental authority and shall obtain at its own expense all permits and licenses required by law in connection with its use of the Facilities.

10. Defacement of Facility. It is understood and agreed that the Commission licenses to Licensee the authorized area(s) in the Facility "as is", and that the Licensee will make, at its own expense, all changes, alterations, installations and decorations therein that are previously agreed to by Commission, and that Licensee will restore, at its own expense, the Facility to the same condition in which it existed prior to any alterations made therein. Licensee shall be responsible for any costs to repair or replace property at the Facility damaged or lost during the term of this Agreement. Ordinary wear and tear is excepted.

11. Novelties/Concessions/Food Service. Novelties/Concessions shall be defined as, but not limited to, the selling or dispensing of printed material, records, tapes, food stuffs, beverages (alcoholic and non-alcoholic), flowers, tobaccos, novelties, souvenirs, clothing, etc. The sale and/or distribution of the aforementioned items are solely the exclusive right of the Commission or its contracted agent. Merchandising and Novelty items must be arranged through the PCPA Director and are subject to his/her approval.

a. Merchandising Agreement:

12. Non-Discrimination. Licensee agrees not to discriminate against any employee or applicant for employment because of race, creed, ancestry, sexual orientation, disability, color, sex, marital status, age, religion or national origin, and further agrees not to

discriminate for the same aforementioned reasons against any person or persons in connection with admission, services, or privileges offered to or enjoyed by the general public.

13. Force Majeure. If the Premises or any part of the Facility is destroyed or damaged by fire or any other cause, or if any other casualty or unforeseen occurrence renders the fulfillment of this Agreement by Commission impossible or impracticable, then this Agreement shall be terminated and the Licensee shall be liable for fees, charges for support personnel and services, additional utility charges which have accrued only as of the time of termination. All other fees paid by Licensee shall be returned by Commission, provided, however, if such impossibility of performance shall be due to the act or omission of Licensee, its agents, employees, members, or invitees, then Licensee shall be liable for all fees charged hereunder as well as any and all accrued charges in addition to such other damages as may result from such acts or omissions. Licensee hereby waives any claim for damages or compensation from Commission on account of such termination.

14. Non-Exclusive Use. Commission shall have the right to use or permit the use of any portion of the Facility not granted to Licensee under this Agreement to any person, firm or entity regardless of the nature of the use of such other space. This right shall be subject to Commission's prudent business judgment.

15. Default by Licensee and Commission Remedies. Licensee shall be in default of this Agreement if Licensee fails to pay any amounts due under the License terms, breaches any provisions of this Agreement or any other written agreement between Licensee and Commission including payment of fees and maintenance of required insurance in strict accordance with this Agreement, violates any applicable laws or ordinances during its use of the Facility, violates any Commission rules or policies, or should dissolve or cease doing business as a going concern or become insolvent or bankrupt. Upon such default by Licensee, the Commission may have one or more of the following remedies, in its sole discretion:

a. Declare the entire amount of the balance due per the terms of the Agreement payable.

b. Reenter the licensed area(s) without being liable for damage therefore and relet the licensed area(s) or any portion thereof, or operate the same for the balance of the License Agreement period, receive sums due and apply them first to any expenses of making the Commission whole and, second, to any expenses incurred for reentering the premises and reletting the licensed area(s).

c. Terminate the Agreement by giving the Licensee written notice of such termination, which shall not excuse breaches of the Agreement which have already occurred, and may reenter the licensed area(s) as in b. above.

d. Pursue any other remedies available to the Commission either at law or equity. No single or partial exercise of a right or remedy shall preclude any other or further exercise of a right or remedy.

e. Commission shall have the right, without resorting to any legal action, to withhold from any and all sums, receipts or deposits which may be in the possession of the Commission for or on behalf of Licensee, such sums as are necessary, in Commission's sole opinion, to apply to any claims Commission may have against Licensee, or to protect Commission against any loss, damage, or claim which may result from Licensee's performance or failure to perform under this Agreement.

f. Commission may, at its sole option, also terminate any other contract(s) with Licensee.

16. Assignment. Licensee may not assign this Agreement or any interest therein or permit the use of the Authorized Areas or any part thereof without the prior written approval of the Commission. Any attempted assignment without such written prior approval shall be null and void.

17. Hazardous Substances. Licensee, its officers, employees and agents, and any exhibitors, customers or other participants in the event(s) covered by the Agreement are prohibited from bringing any hazardous substance into the Authorized Areas or onto Commission property and are prohibited from allowing any hazardous substance to be brought into the Authorized Areas or onto Commission property. As used in this paragraph, "hazardous substance" has the meaning given that term in ORS 466.540(9). If any governmental authority or other third party demands that a cleanup plan be prepared and that a cleanup be undertaken because of any release of hazardous substances that occurs as a result of Licensee's use of the Authorized Areas or entry on Commission property, Licensee shall, at Licensee's expense, prepare and submit the required plan and all related bonds and other financial assurances, and Licensee shall carry out all such cleanup plans. Licensee agrees to indemnify Metro, Metropolitan Exposition-Recreation Commission, the City of Portland and their respective members, officers, directors, agents, elected and appointed officials, and employees against any claims, costs and expenses of any kind, whether direct or indirect, incurred voluntarily or pursuant to any state or federal law, statute, regulation or order, for the clean up, extraction, detoxification or neutralization of any release of any hazardous substance associated with or arising from the Licensee's use of the Authorized Areas or entry on Commission property. As used in this paragraph, "release" has the meaning given that term in ORS 466.540(4). Licensee's obligations under this paragraph survive termination or expiration of the Agreement.

18. Commission Policies. Any applicable policies adopted by the Commission are hereby incorporated into this Agreement by reference. Commission reserves the right to change such policies from time to time.

19. Actions. Any actions by one party to the Agreement against the other arising out of the Agreement or of conduct, acts or activities of the parties hereunder will be governed by Oregon Law and shall be maintained in the Circuit Court of the State of Oregon, in and for Multnomah County, or if jurisdiction is proper, the United States District Court for the District of Oregon. No such action against the Commission may be maintained except in the State of Oregon. Licensee consents to the maintenance of any such action by the Commission against it in the Circuit Court of the State of Oregon, in and for Multnomah County, or if jurisdiction is proper, the United States District Court for the District of Oregon.

20. Severability. If any provision of this Agreement or any policies which have been incorporated into the Agreement by reference, shall be declared invalid or unenforceable, the remainder of the provisions shall continue in force and effect to the fullest extent permitted by law.

21. Waiver. The failure by the Commission to insist upon strict and prompt performance of the terms and conditions of this Agreement shall not constitute a waiver of the Commission's right to strictly enforce such terms and conditions thereafter. No waiver by the Commission of any default shall operate as a waiver of any other default on a future occasion or the same default. No delay or omission by the Commission in exercising any right or remedy shall operate as a waiver thereof, and no single or partial exercise of a right or remedy shall preclude any other or further exercise thereof, or the exercise of any other right or remedy.

22. Attorneys' Fees. In case any suit or action is instituted by either party hereto arising out of this Agreement, the prevailing party in such litigation, including any appeal, shall be entitled, in addition to the costs and disbursements provided by statute, to reasonable attorneys' fees as determined by the court on trial or appeal. In the event that either party hereto employs in-house counsel, or if the Commission employs in-house counsel supplied to it by Metro or the City of Portland, said prevailing party shall be entitled to recover the full reasonable fair market value of their counsel's services. The prevailing party shall also be entitled to recover its full reasonable costs of litigation, including the expense of depositions and expert witnesses.

23. Delivery of Notices. Any notice, request, demand, instruction, or any other communications to be given to any party hereunder shall be in writing, sent by registered or certified mail as follows:

To Commission: in care of the Commission's official at the Facility,
Attention PCPA Director.

To Licensee: at the address provided in the Agreement or at any of the
offices designated in writing and provided to the Civic
Stadium Manager during the term of the Agreement.

24. Licensee's Assumption of Responsibility. The Licensee expressly assumes full responsibility for all persons connected with Licensee's use of the Facility, including all its employees, agents, members, invitees and contractors.

25. Addenda and Attachments. Any addendum, statement of policy, requirements and/or operational items attached hereto are made a part of this Agreement as if copied in full herein.

26. Time is of the Essence. Time is of the essence to this Agreement.

27. Entire Agreement. Except as specifically provided herein, this document contains the complete and exclusive agreement between the parties, and is intended to be a final expression of their agreement. No promise, representation or covenant not included in this document has been or is relied upon by any party. No modification or amendment of this Agreement shall be in force or effect unless in writing executed by all parties hereto.

28. Headings. The headings used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the extent of any provision thereof.

29. Powers Reserved to Commission. In providing space to licensee, Commission retains the right to control the management of the PCPA and/or enforce all necessary and proper rules for the management and operation of the PCPA; the PCPA Director may enter all of the premises at any time and on any occasion. The Commission reserves the right through its PCPA Director and its other representatives to eject any objectionable person(s) from the facility and, upon the exercise of this authority through its Director, its agents or the police, the licensee waives any and all claims for damages against the Commission, its officers, agents and employees. Unless otherwise specified in writing, Commission shall have the right to schedule other similar events both before and after the date of this limited license agreement without notice to licensee. In the event of a dispute as to the meaning or interpretation of this limited license agreement, Commission policies or the operation of the PCPA, the decision of the Commission shall be final and binding on the parties. By way of illustration and not limitation, the reserved powers of the Commission include the following:

a. The final determination of all policies and procedures relative to the operation and management of the PCPA.

b. Sole discretion to cancel, terminate, or interrupt any event, and cause the patrons to be dismissed. The Commission shall not be liable to Licensee for any loss or cost occasioned by any such determination or action by the Commission taken in good faith for the benefit or protection of the Commission, the public generally, or the PCPA.

c. The power to have access to any area of the PCPA at any time.

d. The power to terminate or suspend this Agreement for acts of default by Licensee as stated in accordance with paragraph 15.

30. No Third Party Beneficiaries. This Agreement is not intended to benefit any individual, corporation, or other legal entity other than Commission, Licensee, and the Indemnitees. This Agreement shall not be deemed to vest any rights in, nor shall it be deemed to be enforceable by, any other parties in any proceeding whatsoever.

31. Request for Assurances. Commission in its sole discretion shall have the right at any time to request that licensee provide assurances acceptable to Commission that it is able and willing to comply with all provisions of this limited license agreement, including but not limited to requiring licensee to provide documentation that it has the right to present the event for which this license has been issued, and/or provide proof of licensee's financial ability to comply with all provisions of this limited license agreement. Commission, at its sole discretion, may treat any failure by licensee to provide assurances requested by Commission as a default, and shall have any and all remedies specified in paragraph 15.

32. Ticketing/Box Office Facilities. Box office charges and policies shall be governed by adopted Commission Box Office policies and charges in effect on the date of complete execution of this limited license agreement. Licensee acknowledges that said policies include a requirement that Licensee use one of Commission's authorized ticketing agencies, and that Commission is entitled to certain fees pursuant to its agreement(s) with its authorized ticketing agencies. The Commission may also charge and collect a service charge per ticket from the public for all tickets sold at the Commission's box office whether sold by phone, mail order or over-the-counter. In addition, all phone orders may be subject to a per order handling charge. Only employees under the direct control and supervision of the Commission shall be permitted use of Commission box office facilities. All advertising for all public events in the PCPA shall indicate that tickets are on sale at the Commission's box office facilities in a manner and form acceptable to the Commission. All ticket sales by Licensee shall be subject to Commission box office policies, and all sales shall be through Commission approved ticket outlets/agencies, except as specifically provided for herein.

33. User's Fee. A user's fee per ticket shall be imposed on all paid admissions or tickets sold for all events at the PCPA as follows:

Tickets priced under \$10.00	\$.50 User Fee
Tickets priced \$10.00 to \$21.99	\$1.00 User Fee
Tickets priced \$22.00 and above	\$1.50 User Fee

The user's fee shall be the sole property of the Commission, shall be retained by the Commission in total, and shall not constitute payment by Licensee for any license fees or other charges due pursuant to this limited license agreement. The user's fee shall apply to all sold tickets or paid admissions, whether for cash or on credit and regardless of who shall sell the ticket. The user's fees shall not apply to unsold tickets, or to complimentary or free

admission tickets, provided that any complimentary or free admission tickets have been issued in strict conformance with this limited license agreement. In any advertising for any event in which the ticket or admission prices is stated, Licensee or those acting on behalf of Licensee shall include as part of the total ticket or admission price the amount of the user's fee. Licensee shall, on all tickets for any event, clearly distinguish the established ticket price, the user's fee, and the total ticket price connected with the sale of the ticket. Licensee shall account to the PCPA Director on reporting forms provided by Commission and shall settle for the amount owing for the user's fee after each performance or upon demand by the PCPA Director.

34. Wheelchair Locations. The facility ticket office shall control tickets designated by the Commission as wheel chair locations. Said wheelchair location tickets shall be sold at a mid-range price as determined by Commission. Sale of said tickets shall be limited to wheelchair patrons and one (1) escort per patron, unless otherwise required by applicable law. In the event the wheelchair location tickets are not sold in advance, said wheelchair location tickets will be sold by the facility ticket office over-the-counter at the same price as tickets in the same general location on the day of the event. All proceeds realized from the sale of said tickets will be accounted for on the settlement sheet in the usual manner; the usual tickets offices fee(s) for services will be applied.

35. Refund of Ticket Revenue. Commission retains the right to make determination of ticket refunds in keeping with formal or informal facility policy and retaining public good faith. This shall include but is not limited to seats blocked by equipment when exchange to comparable locations is not possible, failure of projections equipment, failure of act to show or to be on stage with reasonable time by schedule provided by licensee.

36. Intermissions. Licensee agrees that for all programs lasting one hour and fifteen minutes or more, excepting religious services or other engagements specifically excluded, an intermission of not less than twenty (20) minutes shall be held, subject to modification by the PCPA Director when necessary to meet unusual conditions.

37. Souvenirs. Neither the licensee nor licensee's exhibitors nor any other person shall sell or give away any item(s) in the facility without prior written consent of the Commissions. Licensee shall pay to the Commission in addition to other fees and charges herein provided 20 percent of the gross proceeds from any such authorized sales. Commission reserves all rights not specifically granted to Licensee to sell or give away any item(s). The content of any programs or other written material to be sold or given away by licensee shall be subject to prior approval of the PCPA Director.

38. Commission's Access to Events. The Commission retains the right to draw four (4) tickets per performance without charge during the licensee's use of the MERC facility.

39. Handling Funds. In the handling, controlling, and keeping of receipts and funds, whether received through the box office or otherwise, Commission acts for the accommodation of licensee, and as to such receipts and funds, the Commission, its officers, agents and employees shall be responsible only for gross neglect or bad faith.

40. Seating Capacity. Licensee shall not admit to said premises a larger number of persons than can safely and freely move about in said areas. Under no circumstances shall paid admissions, sold tickets or free tickets be issued beyond the stated seating capacity without the prior written consent of the PCPA Director, and the PCPA Director's decision in this regard shall be final. Licensee will permit no chairs or moveable seats to be or remain in any passageway and will keep all passageways clear at all times; no portion of the sidewalks, ground, entries, passages, vestibules, halls elevators, abutting streets or ways of access to public utilities of said building shall be obstructed by licensee or used for any purpose other than for ingress to and egress from the facility.

41. Official Caterer. The Commission may license and/or contract with one or more catering services to serve as authorized facility caterer(s). All food and beverage service catered both backstage and in public lobby spaces must be ordered through a Commission-authorized facility caterer.

42. Copyrights. Licensee represents and warrants that all copyrighted music, plays, or other theatrical performances will be performed or produced with the express permission from the copyright owner. Licensee represents and warrants that any and all obligations under the copyright license shall be performed or completed by licensee. Licensee shall defend, indemnify, and hold the City of Portland, the Metropolitan Exposition-Recreation Commission, Metro, their agents, elected and appointed officials, and employees, (the Indemnitees), harmless from any and all claims, demands, damages, actions, losses and expenses, including attorneys' fees, that may arise out of or are related to a copyright license agreement or copyright infringement lawsuit or both or any representation or warranty made herein. In the event that Licensee refuses or fails to defend as required herein, the Indemnitees may, at their sole option, settle or defend any claims, and may maintain an action in any court of competent jurisdiction against Licensee for the full costs of any settlement, judgment, or defense, including all expenses and attorneys' fees.

43. Law Observance. All agents and employees connected with Licensee's use of the facility shall abide by, conform to and comply with all laws of the United States and the State of Oregon and all ordinances of the City of Portland, Oregon, Metro, and the rules and regulations of the facility for the government and management of the facility, together with all rules and regulations of the Bureau of Fire and Bureau of Policy of the City of Portland. If Licensee's attention is called to any violation by Licensee or any of its agents or employees or by anybody admitted to the facility by Licensee, Licensee shall immediately stop such violation and take necessary steps to prevent further violation.

44. Vacating Premises. In the event Licensee fails to vacate the premises in accordance with this agreement, the Commission is hereby authorized to move from said building at the expense of Licensee goods, wares, merchandise and property of any and all kinds and description which may be then occupying the portion of said building on which the term of license has expired and the Commission, its officers, agents and employees shall not be liable for any damages or loss to said goods, wares, merchandise or other property which may be sustained either by reason of such removal or the place to which it may be removed and the Commission, its officers, agents and employees are hereby expressly released from any and all claims for damages of whatever kind or nature. For such additional period beyond the term of this agreement as any effects of Licensee remain in the building, the Commission shall be entitled to charge the sum per day as provided in this agreement as payment to be made for the time for move-in and move-out.

45. Sign and Posters. Licensee will not post or exhibit nor allow to be posed or exhibited signs, advertisements, show bills, lithographs, posters or cards of any description inside or in front or on any part of said building except in regular locations provided by the Commission therefor and will use, post or exhibit only such signs, advertisements, show bills, lithographs, posters or cards upon said billboard as are related to the performance or exhibit to be given in the premises and for such period of time as designated by the Commission. Licensee shall remove forthwith all signs, advertisements, show bills, lithographs, posters or cards of any description upon vacating the premises or when objected to by the Facility Director. Licensee further agrees not to allow any advertising media, in advertising the event for which Licensee is granted this permit, to imply that the Commission is sponsoring such event.

46. Electricity. Electrical connections may be made only upon prior approval of the Facility Director. All Licensee's electrical equipment shall be properly wired and shall comply with applicable laws, rules and regulations.

47. Water. The Commission shall furnish water by means of the appliances installed for ordinary toilet or janitorial purposes but for no other purpose unless otherwise specifically provided in this agreement. Water closets and water apparatus will not be used for any purpose other than for which they are intended and no sweepings, rubbish, rags, paper or other substances shall be thrown in them. The Commission shall charge Licensee for all damage resulting to water closets and water apparatus on account of misuse of any nature or character.

48. Responsibility for Property in Building. Commission assumes no responsibility whatever for any property placed in said building; the Commission, its officers, agents and employees are hereby expressly relieved and discharged from any and all liability for any loss, injury or damages to persons or property that may be sustained by reason of occupancy of said building, grounds or any part thereof under this agreement.

49. Security Services. All security services including peer group security desired by Licensee shall be arranged for by special agreement with the Commission and shall be paid for by Licensee. The Commission shall have the right to determine the number of security personnel required during the events covered by this agreement and the Licensee shall bear all expenses incurred in providing such personnel.

50. Radio and Television. Licensee shall have the exclusive right to negotiate and enter into agreements for the granting of radio and television rights in connection with the staging of any performance or event under the terms of this license, providing prior written consent is obtained from the Commission.

51. Lost Articles. The Commission shall have the sole right to collect and have custody of articles left in the building by persons attending any performance, exhibition or entertainment given or held in the facility and Licensee or any person in Licensee's employ shall not collect nor interfere with the collection of custody of such articles.

52. Discretionary Matters. Any decision affecting any matter not herein expressly provided for shall rest solely within the discretion of the PCPA Director.

53. Care of Facilities. Licensee shall keep said premises clean and generally cared for during the term of the license except as provided by the regular custodial force employed by the Commission. Further, Licensee agrees that only decorators, custodians, or contractors approved, employed or contracted by the Commission shall be utilized.

54. Re-Entry by Commission. If the premises or any part thereof shall become vacant during the same term, the Commission or its representative may re-enter same either by force or otherwise without being liable for any prosecution therefor and may, at its own option, re-rent said premises as the agent of Licensee and receive the rent therefor, applying the same first to payment of such expenses as may be incurred in re-entering the re-renting said premises and then to the payment of the rent due by the presents; the surplus, if any, shall be paid to Licensee and Licensee covenants and agrees to pay to the Commission on demand the balance remaining, if any, of the rental herein agreed to be paid after deducting the net rental resulting from such re-entering; but nothing herein contained shall be construed as imposing any obligation of the Commission to re-rent or attempt to re-rent said premises