

**METROPOLITAN EXPOSITION-RECREATION COMMISSION**

**RESOLUTION NO. 97-57**

Authorizing the General Manager to Accept Assignment of the Agreement Between the Commission and Dan Bean Presents to Jujamcyn Productions Company, LLC.

Whereas, the Commission has approved a five year Broadway agreement with PACE Theatrical Group, Inc., the Portland Opera Association, and Jujamcyn Productions Company;

Whereas, the Commission has an existing Broadway Series Agreement with Dan Bean Presents, Inc., including the 1997-98 Season;

Whereas, the existing Broadway Agreement between the Commission and Dan Bean Presents, Inc. allows assignment of that agreement by Dan Bean Presents, Inc., only with the written approval of the Commission;


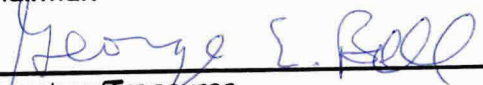
Whereas, Dan Bean Presents, Inc. has requested that the Commission approve an assignment of that agreement by Dan Bean Presents, Inc. to Jujamcyn Productions Company, LLC, the entity formed by PACE Theatrical Group, Inc., and Jujamcyn Theatres Corporation.

Whereas, the Commission finds that allowing the requested assignment to go forward is consistent with the new five year Broadway Series Agreement it has just approved, and is in the public interest.

**BE IT THEREFORE RESOLVED:**

1. The General Manager is authorized to execute the necessary documents allowing the assignment of the Commission's existing agreement with Dan Bean Presents, Inc., to Jujamcyn Productions Company, LLC.
2. The General Manager is directed to ensure that, in any such assignment, the Commission's interests are fully protected. The precise form of the documentation necessary to achieve the assignment shall be as determined by the General Manager, in consultation with Metro's Office of General Counsel.

Passed by the Commission on November 12, 1997.

  
\_\_\_\_\_  
Chairman  
  
\_\_\_\_\_  
Secretary/Treasurer

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

By:   
\_\_\_\_\_  
Kathleen A. Pool  
Senior Assistant Counsel

## **MERC STAFF REPORT**

**Agenda Item/Issue:** Authorization for accepting assignment of the 1994 Broadway Series Agreement with Dan Bean Presents, Inc. to Jujamcyn Productions Company, LLC.

**Resolution No:** 97-57

**Date:** November 12, 1997

**Presented by:** Harriet Sherburne

**BACKGROUND:** The Commission entered into an Agreement with Dan Bean Presents, Inc. in 1994 for presentation of annual Broadway Series at PCPA; the initial 3-year term expired June 30, 1997. The Commission approved a 1-year extension for presentation of the 1997-98 Season of touring Broadway shows, which is currently underway. In recent months, Dan Bean Presents, Inc., has become part of the joint venture which has been selected by the Commission for presenting Broadway at PCPA beginning in the 1998-99 Season. Dan Bean Presents, Inc., has requested Commission approval for assignment of the 1994 Agreement (as amended) to Jujamcyn Productions Company, LLC, the entity through which PACE Theatrical Group, Inc. ("PACE") and Jujamcyn Theatre Corporation ("Jujamcyn") will jointly present the Key Bank Broadway Series for the 1997-98 Season, as outlined in the attached letter. Through the Commission's 1997 Request for Proposals for Broadway Series at PCPA, PACE and Jujamcyn have been found to be well qualified to present Broadway Series at PCPA. The assignment of responsibility for completing the scheduled and contracted Key Bank Broadway Series 1997-98 Season to Jujamcyn Productions Company, LLC ("JPC") becomes the first step toward the joint venture for the future. Under the assignment, JPC becomes responsible to fulfill the requirements of the Agreement, with no adverse impact to the Commission.

**FISCAL IMPACT:** No change in forecast for income or expenses in FY 1997-98.

**RECOMMENDATION:** Staff recommended approval of authorization for the General Manager to accept assignment of the Agreement between the Commission and Dan Bean Presents, Inc., to Jujamcyn Productions Company, LLC.

**PACE**  
ENTERTAINMENT

November 7, 1997

Ms. Katherine A. Pool  
METRO  
600 Northeast Grand Avenue  
Portland, OR

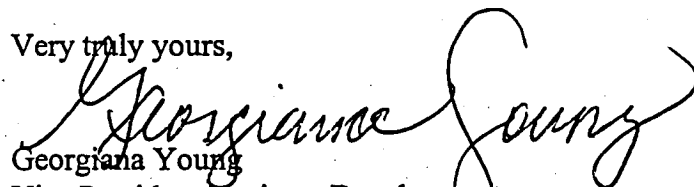
Dear Katherine:


We respectfully request that the Commission approve the assignment of the Dan Bean Presents ("DBP") lease to Jujamcyn Productions Company, LLC, ("JPC") the vehicle through which PACE Theatrical Group, Inc. ("PACE") and Jujamcyn Theatres Corporation ("Jujamcyn") will jointly co-present the Key Bank Broadway Series for the 1997-98 season.

PACE and Jujamcyn, acting through JPC, have agreed to assume all of Dan Bean's obligations to the Commission, and to have all benefits under DBP's agreement with the Commission.

If you require any further documentation, please let me know. Thank you for your assistance in this matter.

Very truly yours,

  
Georgiana Young  
Vice President Business Development  
PACE Theatrical Group, Inc.

  
\_\_\_\_\_  
Dan Bean  
President  
Dan Bean Presents

## BROADWAY SERIES AGREEMENT

This Agreement is made and entered into by and between the Metropolitan Exposition-Recreation Commission ("Commission," "Metro ERC," or "MERC") and Portland Opera Association, an Oregon nonprofit corporation, Jujamcyn Productions Company, a Minnesota limited liability company, and PACE Theatrical Group, Inc., a Texas corporation, a joint venture (hereinafter, "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 joint venture.
3. Presenter wishes to present five annual seasons of Broadway 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 Broadway 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 annual seasons of high quality Broadway 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. "Broadway Theatre" shall mean any top quality legitimate touring musical attraction, with or without a story line, of professional Broadway caliber. "Broadway Show"

presentations by other Principal Tenants of the PCPA shall be subject to the Presenter's right of first refusal, as specified in Article 15(b).

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

f. "Presentation Year" shall mean the booking season for an annual subscription series, and shall normally run from June 1 through May 30 of the following year.

g. "Presenter" shall mean the Portland Opera Association, an Oregon nonprofit corporation, Jujamcyn Productions Company, a Minnesota limited liability company, and PACE Theatrical Group, Inc., a Texas corporation, a joint venture, the entity responsible for making all arrangements concerning the promoting of a Broadway Show, including assuming any related financial risks.

h. "Principal Tenants" shall mean nonprofit groups which have achieved Principal Tenant status pursuant to applicable Metro ERC policies.

i. "Scheduling Policy" shall refer to the Civic Auditorium scheduling policy, 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 Series" or "Subscription Season" shall mean any number of eight show per week Broadway Theatre presentations, totaling a minimum of ten performance weeks, for which tickets can be purchased at the same time, for the same seats for one performance of each presentation by a subscriber, and shall include add-on or special full- or partial-week shows during the same Presentation Year.

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. The User Fee on all paid admissions are as follows:

Presentation Years 1-3	\$1.75 per ticket
Presentation Years 4 & 5	\$2.00 per ticket

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 annual Broadway Theatre Subscription Seasons at the PCPA for the Term of this Agreement. This Agreement 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, Jujamcyn Productions Company, and PACE Theatrical Group, Inc. shall each be jointly and severally liable for any and all obligations owed to Commission pursuant to this agreement.

4.

### **TERM OF THE AGREEMENT**

The term of this Agreement shall commence July 1, 1997, shall continue for five Subscription Seasons, and shall apply to the Presentation Years 1998/99 through 2002/03 unless sooner terminated by the mutual agreement of the Parties or as provided for herein.

This Agreement may be extended for three additional subscription seasons by mutual agreement of the parties, subject to renegotiation of financial terms and conditions, said negotiations to commence in January 2002.

5.

#### **PRESENTER PROMOTION RIGHTS AND FINANCIAL ARRANGEMENTS**

Subject to the provisions of this Agreement including its extensions, if any, the Commission shall grant to the Presenter the exclusive right to promote five annual Broadway Theatre subscription series at the PCPA, as follows:

a. Broadway Theatre Subscription Series. Presenter shall contract for, promote, arrange, market, and present an annual Subscription Season of Broadway Theatre at the PCPA. Subject to Article 7(d), Presenter guarantees the annual subscription series will total a minimum of sixty (60) performance weeks over the term of this Agreement, and no less than ten performance weeks per Presentation Year. It is agreed and understood that series performances will take place at the Civic Auditorium, unless the parties agree to a presentation at the Arlene Schnitzer Concert Hall.

b. Scheduling. Commission will give Presenter scheduling priority equal to that enjoyed by Commission's Principal Tenants, consistent with other obligations of the Commission. Reservation of dates for Broadway Shows, in accordance with the Scheduling Policy, shall take place at an annual meeting of Principal Tenants. Presenter shall use its best efforts to schedule a minimum of three weeks of each subscription series during the months of June, July, and/or August.

c. Rent. Presenter shall pay the flat weekly rent stated in Exhibit "A" per eight-show performance week (pro-rated for partial weeks on the basis of an eight-performance week) to Commission for the use of either the Civic Auditorium or Arlene Schnitzer Concert Hall, provided, however, that ten performance weeks of the minimum guaranteed rental payable to Commission by Presenter for each Presentation Year shall be paid to the Commission no later than the load-in date for the first production of each season. Presenter shall pay weekly rent at the Exhibit "A" Blockbuster rate for any production which has a multiple week engagement of three weeks or longer. 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 unless the Commission fails to make the hall and/or required personnel available.

d. Ticketing. Presenter has selected the Portland Opera Ticket office as the official ticketing service to be used for the sales of subscriptions, group, corporate, benefit and mail order tickets for all shows and will select one of the Commission's authorized ticketing systems as the official ticketing system for telephone and outlet sales for all of its shows. All ticketing shall be subject to the convenience fee charge limitations and Commission revenue



provisions of the Commission's automated ticketing services agreement for PCPA which is in effect at the time of the ticket sale. All proceeds from the sales of subscriptions, group, corporate, benefit shall be maintained and controlled by the Presenter, provided that all of the following shall apply:

(i) Annually, and prior to offering any tickets for sale to the public, Presenter shall provide to Commission a letter of credit from a bank acceptable to the Commission in a form reasonably acceptable to the Commission (the "Annual Base Letter of Credit") in an amount equal to \$200,000 or such lesser amount as Commission may accept in its sole discretion based on any projections of anticipated house costs (the "Annual Base Letter of Credit Amount"). Said Letter of Credit shall be maintained with the Commission and may at all such times be drawn upon by the Commission upon presentation to the issuing bank of a certificate (a "Draw Certificate") signed by a designated representative or agent of the Commission to the effect that one or more of the following circumstances apply.

(a) The expiry date is earlier than thirty days following the last scheduled performance date of the Presentation Year, and the Letter of Credit has not been renewed by the date thirty (30) days prior to the stated expiry date;

(b) The Commission has made the hall and required personnel available, and the Presenter has failed to pay guaranteed Rent in accordance with Article 5(c) of the Broadway Series Agreement;

(c) Presenter has failed to compensate the Commission for the pass-through costs as set forth in Article 6(b) of the Broadway Series Agreement;

(d) Presenter has failed to remit to the Commission ticket proceeds for a canceled performance;

(e) Commission is entitled to draw on the Letter of Credit pursuant to Article 11 of the Broadway Series Agreement;

(f) Commission is entitled to draw on the Letter of Credit pursuant to Article 12 of the Broadway Series Agreement;

(g) Commission is entitled to draw on the Letter of Credit pursuant to Article 16 of the Broadway Series Agreement.

Each Draw Certificate shall state the amount to be drawn under the foregoing provisions. Commission may submit one or more Draw Certificates from time to time. Commission agrees that all draws under the Letter of Credit must be made in good faith. In the event it is shown that the Commission has improperly made a draw under the Letter of Credit, the Commission shall immediately reimburse the Presenter for the amount drawn, together with the

interest thereon and all reasonable fees, costs and attorney's fees incurred by the Presenter in demonstrating the impropriety of such draw, including but not limited to the full reasonable fair market value of any services provided to Presenter by in-house counsel or in-house counsel supplied to Presenter by any successor organization. In the event that it is shown that the Commission's draw was proper, the Presenter shall immediately reimburse the Commission for all reasonable fees, costs, and attorney's fees incurred by the Commission in demonstrating the propriety of such draw, including but not limited to the full reasonable fair market value of any services provided to Commission by in-house counsel or in-house counsel supplied to Commission by Metro or any successor organization.

The obligation of the Presenter to provide the Annual Letter of Credit under this Agreement may be satisfied through either (i) one or more letters of credit or (ii) such other security as may be acceptable to the Commission in its sole discretion.

(ii) At Presenter's request, Commission agrees to transfer to Presenter on a weekly basis an amount equal to all advance ticket sales for each week then in Commission's possession with respect to the Broadway Theatre presentations defined as the Subscription Season, as calculated pursuant to sub-article 5(d)(ii)(a) below. This weekly transfer by the Commission to the Presenter is contingent upon Presenter first providing Commission with a Letter of Credit from a bank acceptable to the Commission in an amount equal to the amount of ticket receipts to be advanced (herein the "Ticket Advancement Letter of Credit"). Any advance ticket sales held by the Presenter shall be invested prudently, or shall be used by Presenter solely and exclusively for the purpose of payment of deposits and other expenses necessary for the presentation of the Broadway Theatre Subscription Series. Presenter shall, at Commission's request, provide information to Commission concerning the investment and distribution of any advance ticket sales held by the Presenter. In advancing ticket receipts, the following provisions shall apply:

(a) The amount to be advanced to Presenter shall be the full amount of all advance ticket receipts then in the possession of Commission, less any ticket service charges paid by the customer in addition to the ticket price.

(b) The transfer of all ticket receipts by Commission to Presenter shall be made without charge to Presenter.

(c) Presenter covenants that in the event any performance(s) is canceled for any reason and is not rescheduled for a later date, then Presenter will immediately reimburse Commission for all advanced amounts for canceled performances. In the event Presenter fails to make the above described reimbursement to Commission, then Commission shall have the right to draw upon all or part of the Ticket Advancement Letter of Credit for any shortfall and Presenter must immediately replenish the Letter of Credit to an amount equal to or greater than the amount of the ticket receipts then advanced. Commission shall also have the

right to draw upon all or part of the Ticket Advancement Letter of Credit upon the same terms applicable to draws made upon the Base Letter of Credit.

(d) At no time shall the aggregate amount of ticket receipts advanced to Presenter for performance that have not yet occurred exceed the total amount of the Ticket Advancement Letter of Credit

(e) Commission shall not be obligated to advance any ticket receipts subsequent to any uncured Event of Default.

(iii) Interest. When the performance schedule for each presentation year is agreed upon, the Presenter and the Commission shall also agree upon a liquidated sum to be credited to the respective parties as part of the weekly settlement. Said sum is intended to compensate the Commission for the loss of interest on ticket sale proceeds and the Presenter for loss of interest on rent advanced, and shall assume the party to be compensated would receive one-half of the interest calculated at the current ninety day U.S. Treasury bill rate.

(iv) Presenter and Commission shall execute any further forms or documents necessary to effectuate the terms of this Article 5(d).

e. Percentage Rent to Commission. Commission's percentage rent shall be in addition to any rental or other sums payable to Commission under this Agreement. Presenter shall pay to Commission percentage rent in an amount equal to zero percent (0%) of Presenter's first \$400,000 weekly gross ticket sale receipts, one and one-half percent (1.5%) of the next \$400,000 weekly gross ticket sale receipts (\$400,001 - \$800,000), and thereafter two percent (2%) of weekly gross ticket sale receipts in excess of \$800,001. Presenter's gross ticket sale receipts shall exclude user fees. 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 gross ticket sale receipts possible for the Broadway Theatre Subscription Series, and shall act in a fiduciary capacity towards Commission in making such business arrangements.

f. Settlement. Procedures for settlement shall be by mutual agreement, and shall include the "Flat Rate Services" charge provided in Exhibit "A". The Parties understand that said procedures provide for weekly settlement. Subscription sales revenue and Commission's percentage rent shall be included in weekly settlement on a pro-rated basis for that week's performances.

g. Tour Merchandise. The Commission may grant the Show Producer the right to sell tour merchandise at the PCPA during Broadway Show events. Presenter hereby acknowledges that it is Commission's sole responsibility to negotiate with each show with respect to the tour merchandise commission which Commission is to receive as the house percentage, and that it is the Commission's intention to negotiate for a 20% merchandising commission. Nothing

set forth herein shall be deemed to make Presenter responsible in any way with respect to the negotiation for such commission, nor shall the Commission's failure to reach an agreement with any producer or producers with respect to a 20% commission be deemed a breach of this Agreement by either Party.

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. The 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.

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 Broadway Theatre to be presented, the length of the Subscription Season, (provided, that the length of the Subscription Season shall not be less than specified herein), season 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 "B," and the "Flat Rate Services" charge provided in Exhibit "A". The Commission will exercise its discretion in implementing this paragraph consistent with an obligation to perform in good faith and fair dealing.

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.

e. Community Education. Presenter will prepare and carry out a program of community outreach and education in the Metro area each Presentation Year, as described in Exhibit "C".

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.
- d. The Commission shall make available sixteen (16) weeks each Presentation Year for Broadway shows at the Civic Auditorium or, by mutual agreement, at the Arlene Schnitzer Concert Hall.

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 shall be binding on both Parties, subject to Articles 20 and 21 of this Agreement. 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. The Commission shall have 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 material default by the Presenter in accordance with any item of Article 16 herein.

e. 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. Contracting for Broadway Show productions shall not be construed as subcontracting.

f. 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). The right to conduct a performance review shall not increase or alter the Commission's rights and remedies hereunder.

g. The Commission shall not require stage labor in excess of the producer's crew order, except as necessary to safeguard the facility, its equipment, employees, or the public, in the reasonable discretion of the Commission.

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 accounting 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.

10.

**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 reasonable 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:

(i) Commercial 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.

(ii) Any Commercial 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.

(iii) 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.

(iv) 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 provided that Presenter has failed to cure this breach within three (3) days of receipt of written notice from Commission. Commission may exercise any or all options available to it pursuant to this Agreement.

(v) 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.

(vi) 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 performance-related permits and licenses required by law in connection with its use of the PCPA. The Commission shall at its own expense obtain all venue-related permits and licenses required by law.

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.

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**

Neither the Commission nor the Presenter shall 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 or the Presenter. Each Party agrees to notify the other 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**

a. 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.

b. The Presenter shall have the right of first refusal for the presentation at the PCPA of Broadway Theatre (as defined above). The Commission shall notify the Presenter ("Notice") in writing of the terms and conditions under which the Commission intends to present and/or contract for the presentation of any such attraction (the "Special Presentation"). To exercise its refusal right, the Presenter must notify the Commission, in writing, within fifteen (15) days of the receipt by the Presenter of the Notice, of its agreement to the terms and conditions specified. Failure of the Presenter to exercise its refusal right within the time and in the manner specified, shall be a waiver of its refusal rights with respect to that particular Special Presentation only. In the event the Presenter elects to participate in a Special Presentation, that Special Presentation shall be treated as part of the Series for purposes of this Agreement unless otherwise agreed to by the Presenter and the Commission in good faith.

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 shall provide Presenter with written notice and an opportunity to cure any such default. Notwithstanding any other provision of this Agreement, said notice may be provided via facsimile transmission to the Presenter as follows:

Pace, New York - (212) 768-7604

Juamcyn Theatres, New York - (212) 944-0708

Juamcyn Productions - (612) 373-0544

Portland Opera - (503) 421-4212

Presenter shall have seven days from the date of facsimile default notice, or until the commencement of load-in of the next Broadway Show, whichever is shorter, to cure such default to the satisfaction of the Commission. Upon failure to cure said default to the satisfaction of the Commission, 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 any of the parties to this Agreement.

g. Commission may also, to the extent permitted by the terms of such letter of credit, draw upon any letter of credit provided to Commission by 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, the terms of this Agreement shall apply.

20.

### **AGREEMENT DOCUMENTS**

The Agreement documents together form the Agreement between Commission and the Presenter. All determination of the precedence of, discrepancy in, or conflicts regarding the Agreement documents shall be in accord with the following order, with the highest precedence item at the top:

- a. This Broadway Series Agreement.
- b. The standard PCPA Limited License Agreement.
- c. Amendment to the Commission's policies and procedures which are in effect as of the date hereof or are enacted subsequent to the date of this Agreement.

21.

### **ARBITRATION, ACTIONS AND LAWSUITS**

Any controversy or claim arising out of or relating in any way to this Agreement or the breach or alleged breach thereof, including but not limited to claims sounding in tort, shall be settled by binding arbitration in Portland, Oregon under ORS Chapter 36; provided, however, that the requirements (including but not limited to notice requirements), limitations, and exclusions of the Oregon Tort Claims Act, ORS 30.260 et seq., shall apply in any arbitration of claims falling under the purview of that Act. The parties shall mutually agree on a single arbitrator, and, if they cannot agree, then an arbitrator shall be appointed by the Presiding Judge of the Circuit Court of the State of Oregon, County of Multnomah. The award may include the costs of arbitration, but shall not include attorney fees. The award may be entered in any Court, state or federal, having jurisdiction thereof. Subject to the foregoing, 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 Limited License Agreement, 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 either Party to insist upon strict and prompt performance of the terms and conditions of this Agreement shall not constitute a waiver of such Party's right to strictly enforce such terms and conditions thereafter. No waiver by either Party 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 either Party 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.

#### **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: c/o Portland Opera  
Attn: Ms. Valeria Ramirez  
1515 S.W. Morrison Street  
Portland, OR 97205

Copy to: Franklin, Weinrib, Rudell & Vassallo, P.C.  
Attn: Elliot H. Brown, Esq.  
488 Madison Avenue  
New York, NY 10022

Copy to: c/o PACE Theatrical Group, Inc.  
Attn: Scott Zeiger  
1515 Broadway, 36th Floor  
New York, NY 10036

Copy to: c/o Jujamcyn Theatres  
Attn: Paul Libin  
246 West 44th Street, Suite 801  
New York, NY 10036

Copy to: c/o Jujamcyn Productions Company  
Attn: Mike Brand  
12 South Sixth Street, Suite 720  
Minneapolis, MN 55402

25.

#### MISCELLANEOUS

a. Assumption of Responsibility. Each Party expressly assumes full responsibility for all persons connected with its 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.

h. Modifications of PCPA Limited License Agreement.

(i) The location of the signer for signed performances under Section 32(c) of the PCPA Limited License Agreement will be determined by the Commission in consultation with the Presenter.

(ii) No intermission will be required pursuant to Section 34 of the PCPA Limited License Agreement, if the normal tour presentation of the performance is without intermission.

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(iii) Standard tour program material shall be deemed approved pursuant to Section 35 of the PCPA Limited License Agreement.

**PRESENTER**

By: \_\_\_\_\_  
For: Portland Opera Association  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
For: Jujamcyn Productions Company  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
For: PACE Theatrical Group, Inc.  
Date: \_\_\_\_\_

**METROPOLITAN EXPOSITION-  
RECREATION COMMISSION**

By: Alice Norris  
Alice Norris, Chair  
Date: 11-12-97

By: George E. Bell  
George Bell, Secretary/Treasurer  
Date: 11-12-97

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

By: Kathleen A. Pool  
Kathleen A. Pool,  
Senior Assistant Counsel  
Date: 11-12-97

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## EXHIBIT A

### 1. Regular Weekly Rent

<u>Presentation Year</u>	<u>Months</u>	<u>Venue</u>	<u>Weekly Rent</u>
1 through 3	June - August	Civic Auditorium	\$15,000
1 through 3	Sept. - May	Civic Auditorium	\$20,000
1 through 3	June - May	Arlene Schnitzer	\$15,000
4 and 5	June - August	Civic Auditorium	\$17,000
4 and 5	Sept. - May	Civic Auditorium	\$22,000
4 and 5	June - May	Arlene Schnitzer	\$17,000

### 2. Blockbuster Weekly Rent - Presentation Year 1 through 5

June - August      \$20,000 plus the first \$10,000 of weekly gross ticket sales over \$600,000

September - May      \$30,000

### 3. Blockbuster Load-In Days

Presentation Year 1 through 3      \$10,000 per week

Presentation Year 4 and 5      \$11,000 per week

### 4. Flat Rate Services Charge -- to include cleaning, equipment rental, front of house staff (ushers and ticket takers), house sound and lighting equipment, all permanently attached stage equipment, ticket printing, security, utilities, follow-spot rental, washer/dryer.

Presentation Year 1 and 2      \$13,000 per week

Presentation Year 3, 4 and 5      \$13,000 plus annual Portland Consumer Price Index (CPI) increase, building cumulatively.

EXHIBIT B

PORTLAND CENTER FOR THE PERFORMING ARTS  
LIMITED LICENSE AGREEMENT

This Limited License Agreement is made and entered into this th day of , 1997, 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 1111 S. W. Broadway, Portland, OR 97205, and , hereinafter referred to as "Licensee," who is identified as follows:

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 event:

a. Event.

NOTE: Licensee may not use these areas for any other event or purpose.

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. The standard configuration for the Arlene Schnitzer Concert Hall from mid-August through mid-June is with the concert orchestra shell in place. If applicable, Licensee shall assume the labor costs of striking and resetting the orchestra shell.

c. Beginning and Ending. Under this agreement, Licensee is entitled to use and occupy above said premises as follows: . Licensee will have further right to access to and a limited use thereof for the purpose of installing equipment, preparing the premises and equipment for use and packing and removal of equipment, by previous arrangement with Facility Director.

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.

Stage Labor. Determination of the number and type of stage labor required for the event shall be solely the responsibility of the PCPA Director. Licensee shall provide all stage labor required for the event except for house department heads provided by the facility. All stage labor must be properly trained and qualified, as demonstrated by prior service as a stagehand at a Commission facility, or completion of enrollment in an apprenticeship program approved by the Oregon Bureau of Labor and Industries or its equivalent. If any stagehand has qualifications other than prior service at a Commission facility or an OBL apprenticeship, PCPA requires two (2) working days to verify the qualifications. Stage labor which, in the sole judgment of the PCPA Director, does not meet Commission qualification requirements will not be allowed to work in the facility.

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 (rent).

b. Deposits Schedule. Licensee shall pay a non-refundable advance deposit towards the license fee in the amount of n/a with this Limited License Agreement. Licensee shall pay the balance of the deposit, if applicable, as follows: n/a. Checks shall be made payable to PORTLAND CENTER FOR THE PERFORMING ARTS.

c. Other Fees and Charges. In addition to the license fee, Licensee shall pay to the Commission the cost of department heads, supplies and 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 house, department heads, ushers, ticket-takers, door attendants, admissions control supervisor(s), stage door security and peer group security, medical technicians, 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, and stage labor charges for IATSE Local 28, if applicable, shall be on gross wages plus applicable overhead and benefits consistent with Commission policy and labor agreements in effect as of event date.

d. Collection of Facility Charges. All other fees and charges for the use of the PCPA facility shall be paid upon demand. A deposit to cover such other charges, in addition to the license fee deposit referred to in paragraph 2c., 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, stage labor costs if applicable 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.

b. Collection of IATSE Local 28 Stage Labor Costs. Licensees who use stage labor from IATSE Local 28 and who do not have a labor contract with Local 28, will have stage labor wages withheld from box office receipts in the possession of PCPA. Licensee shall advise PCPA two (2) business days prior to load-in whether it has a contract with IATSE Local 28. After payment for all facility fees and charges, the Commission will pay stage labor costs withheld pursuant to this section to the business agent for IATSE Local 28.

f. Failure to make advance deposits as outlined herein shall constitute immediate breach of this Limited License 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 14, and Commission shall have any and all remedies available to it as outlined in paragraph 14.

g. 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 hereof, 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 Limited License Agreement, have complete and independent control and discretion over the operation of the event contemplated by this Limited License Agreement.

4. Effective Date. This Limited License Agreement, when executed by Licensee and returned to Commission, shall constitute an offer subject to Commission's acceptance or rejection. This Limited License Agreement shall become effective only when fully executed by both Licensee and by the Commission. Prior to full execution, this Limited License Agreement shall be null and void in all respects.

5. Parking. Parking is not available at PCPA, other than whatever on-street or commercial 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 commercial parking.

6. Insurance. Licensee shall, at its sole cost and expense, procure and maintain through the term of this Limited License 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 \$500,000 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 Limited License 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 form acceptable to the Commission;

d. Licensee agrees to provide all required certificates of insurance to the PCPA Director at least fifteen (15) days prior to the time of occupancy. Failure to do so shall constitute immediate breach of this Limited License Agreement by Licensee. It is agreed in that event that Commission, at its sole option, may terminate this Limited License Agreement and/or exercise any or all options in paragraph 14;

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 prior to cancellation or non-renewal of any such insurance; and

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 14. 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 Limited License Agreement or the event which is the subject of this Limited License 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 Licensee shall, upon demand, pay to Commission 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 the 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 Limited License 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 facility.

10. Defacement of Facility. Licensee shall not injure or in any manner deface premises and shall not cause or allow the premises to be injured or defaced; nor shall Licensee make or allow any alteration of any kind to be made in the facility. If, during the term of this Limited License Agreement, the premises or any portion of the building or grounds are damaged by the act, default or negligence of Licensee or its agents, employees, patrons or any other person or persons admitted to the premises by Licensee or by any person or persons coming on the premises as a result of the activities conducted on the premises by Licensee, Licensee shall pay to the Commission,

upon demand, such sum as shall be necessary to restore the premises to their original condition. Without limiting the foregoing, Licensee shall pay to the Commission upon demand such sum as shall be necessary to restore all glass broken on the premises during the term of this Limited License Agreement with the sole exception of glass broken solely by the negligence or wrongdoing of the Commission and its officers, agents and employees. Licensee hereby assumes full responsibility for the character, acts and conduct of all persons admitted to the facility during the period of this Limited License Agreement with the knowledge or consent of Licensee or its agents or employees or any person acting on behalf of Licensee. In the event that the attraction presented at this event encourages patrons to cause harm or injury to other patrons, or to the facility, Licensee shall be deemed to have breached this Limited License Agreement.

11. **Non-Discrimination.** Licensee agrees not to unlawfully 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.

12. **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 Limited License Agreement by Commission impossible or impracticable, then this Limited License 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 termination pursuant to this paragraph.

13. **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 Limited License 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.

14. **Default by Licensee and Commission Remedies.** Licensee shall be in default of this Limited License Agreement if Licensee fails to pay any amounts due under the License terms, breaches any provisions of this Limited License agreement or any other written agreement between Licensee and Commission including payment of fees and maintenance of required insurance in strict accordance with this Limited License 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 Limited License Agreement payable.

b. Re-enter 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 Limited 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 re-entering the premises and reletting the licensed area(s).

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

d. Pursue any other remedies available to the Commission. 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 Limited License Agreement.

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

15. Assignment. Licensee may not assign this Limited License 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.

16. Hazardous Substances. Licensee, its officers, employees and agents; and any exhibitors, customers or other participants in the event(s) covered by the Limited License 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 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 465.200(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 the 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 465.200(14). Licensee's obligations under this paragraph survive termination or expiration of the Limited License Agreement.

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

18. Arbitration. Any controversy or claim arising out of or relating in any way to this Agreement or the breach or alleged breach thereof, including but not limited to claims sounding in tort, shall be settled by binding arbitration in Portland, Oregon under ORS Chapter 36; provided, however, that the requirements, (including but not limited to notice requirements) limitations, and exclusions of the Oregon Tort Claims Act, ORS 30.260 et. seq shall apply in any arbitration of claims falling under the purview of that Act. The parties shall mutually agree on a single arbitrator, and, if they cannot agree, then an arbitrator shall be appointed by the Presiding Judge of the Circuit Court of the State of Oregon, County of Multnomah. The award may include the costs of arbitration, but shall not include attorney fees. The award may be entered in any Court, state or federal, having jurisdiction thereof.

19. Severability. If any provision of this Limited License Agreement or any policies which have been incorporated into the Limited License 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.

20. Waiver. The failure by the Commission to insist upon strict and prompt performance of the terms and conditions of this Limited License 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.

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

To Commission: In care of the Portland Center for the Performing Arts, 1441 S.W. Broadway, Portland, Oregon 97205, Attention: PCPA Director

To Licensee: at the address provided in the Limited License Agreement or at any of the offices designated in writing and provided to the PCPA Director during the term of the Limited License Agreement.

22. 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.

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

24. Time is of the Essence. Time is of the essence to this Limited License Agreement.

25. 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 Limited License Agreement shall be in force or effect unless in writing executed by all parties hereto.

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

27. 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 PCPA 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 other 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 including 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 Limited License Agreement for acts of default by Licensee as stated in accordance with paragraph 14.

28. No Third Party Beneficiaries. This Limited License Agreement is not intended to benefit any individual, corporation, or other legal entity other than Commission, Licensee, and the Indemnitees. This Limited License 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.

29. 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, ~~and provide documentation of stage labor contract.~~ 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 14.

30. 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 \$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

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 Fee 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. 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.

31. **Ticketing/Box Office Facilities.** Ticket Services charges and policies shall be governed by adopted Commission Ticket Services 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. This Limited License Agreement shall also be subject to the terms and conditions of Commission's automated ticketing services agreement. Licensee shall be informed of any fees charged by Commission. 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 ticket orders may be subject to a per order handling charge. In any advertising for any event in which the ticket or admission prices are stated, Licensee or those acting on behalf of Licensee shall include as part of the total ticket price the amount of the user's fee and outlet service charge. Advertising for sale of tickets must identify "Tickets purchased by telephone subject to additional Service Charges." Only employees under the direct control and supervision of the Commission shall be permitted use of Commission Box Office facilities. All advertising for 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 Ticket Services policies, and all sales shall be through Commission approved ticket outlets/agencies, except as specifically provided for herein.

32. a. **Wheelchair Locations.** In accordance with the American with Disabilities Act, Public Law 101-336, the facility ticket office shall control tickets designated by the Commission as wheelchair locations. Said wheelchair location tickets shall be sold at the lowest priced ticket per seating level that the wheelchair is located if venue has wheelchair locations available on all levels or location tickets shall be sold at a mid-range price as determined by the Commission if wheelchair locations are limited to one seating level. Wheelchair ticket locations will be held for wheelchair patrons until the seating level sells out for venues with wheelchair availabilities on all levels or until the event sells out if wheelchair locations are limited to one seating level. Sale of said wheelchair 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 ticket office fee(s) for services will be applied.

b. **Hearing Impaired Locations for Signed Performances.** In accordance with the American with Disabilities Act, Public Law 101-336, the facility ticket office shall control tickets designated by the Commission as hearing impaired locations. Said hearing impaired location tickets shall be sold at a mid-range price as determined by the Commission. Sale of hearing impaired location tickets shall be limited to hearing impaired patrons and one (1) escort per patron, unless otherwise required by applicable law. In the event there has been no request up to 48 hours prior to event date for a single performance event or one performance during a multi-performance run to be signed, said hearing impaired 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 ticket office fee(s) will be applied.

c. **Signed Performances.** In accordance with the American with Disabilities Act, Public Law 101-336, the Licensee will provide and pay for services rendered for a signer to sign for the hearing impaired if such request is made up to 48 hours prior to event day. The facility will determine the general location of the signer, based on the seating holds, and shall be the final authority regarding all necessary staging requirements including lighting or risers.

d. **Assistive Listening System.** In accordance with the American with Disabilities Act, Public Law 101-336, the Licensee will provide a line feed, when applicable, to the facility's assistive listening system.



33. 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.

34. 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. For programs in Civic Auditorium or Arlene Schnitzer Concert Hall, Licensee shall pay a \$250 fee for any missed intermissions.

35. 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 Commission. Licensee shall pay to the Commission in addition to other fees and charges herein provided twenty (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.

36. 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.

37. 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.

38. 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 movable 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.

39. 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.

40. 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.

41. 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 Police 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.

42. Vacating Premises. In the event Licensee fails to vacate the premises in accordance with this Limited License Agreement, the Commission is hereby authorized to move from said building at the expense of Licensee goods, ware, 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 Limited License 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 Limited License Agreement as payment to be made for the time for move-in and move-out.

43. Signs and Posters. Licensee will not post or exhibit nor allow to be posted 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 PCPA Director. Licensee further agrees not to allow any advertising media, in advertising the event for which Licensee is granted this license, to imply that the Commission is sponsoring such event.

44. Temporary Power Installations. Temporary power installations may be made only upon prior approval of the PCPA Director. All Licensee's electrical equipment shall be properly wired and shall comply with applicable laws, rules and regulations. Temporary power installations may be subject to a City of Portland Permit and Inspection Fee. The amount of the fee will depend upon the amount of power needed and the number of installations. All permit/inspection fees and any additional equipment required to insure that the installation complies with all code requirements will be charged to Licensee at the applicable rates.

45. 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 Limited License 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.

46. 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 Limited License Agreement.

47. 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 and type of security personnel required during the events covered by this Limited License Agreement and the Licensee shall bear all expenses incurred in providing such personnel.

48. 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.

49. 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, exhibit 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 or custody of such articles.

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

51. 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.

52. 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 and 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 or in any way affecting the obligation of Licensee to pay the full amount of said rental in case said premises are not so re-rented.

53. Sound Location Holds and Control. In cases where the Licensee is providing a sound system the facility ~~in cooperation with the Licensee will determine placement of speakers and mixing console as well as sound mix and levels.~~ The facility ticket office shall hold seat locations designated as sound location holds. Said sound location tickets that are not utilized 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.

54. Pyrotechnics/Special Effects Permits and Fees. Pyrotechnics and other special effects such as torches, flash pots, other limited smoke effects and small explosions all require prior approval of the PCPA Director and require permits from both the City of Portland Fire Prevention Division and the Office of State Fire Marshal. Licensee will inform the PCPA Director if the attraction being contracted has any pyrotechnics or special effects that may require a permit and if required, all permit fees will be charged to the Licensee at the applicable rates.

55. Other Special Conditions. If insurance coverage is provided under the Special Events Policy, the cost of this coverage will be \$.00 per performance. Should funds in Box Office be insufficient to cover estimated expenses minus advance deposits, balance shall be due 48 hours prior to load-in, payable by certified check, cash, or money order. In no event shall access to facility occur without such payment. Should ticket sales warrant increased seating capacity, Licensee agrees to pay all associated costs. Technical rider must be received prior to commencement of ticket sales.

METROPOLITAN EXPOSITION-  
RECREATION COMMISSION

\_\_\_\_\_  
Harriet Sherburne  
Title: PCPA Director

Date: \_\_\_\_\_

LICENSEE

\_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT C

### PORTLAND BROADWAY SERIES' EDUCATION AND OUTREACH PROGRAM

*The mission of the Education Initiative of the Portland Broadway Theater Series is to be an educational resource for the Pacific Northwest and to provide experience in the art form of musical theater through exposure, training and participation.*

The Portland Broadway Theater Series Education and Outreach program will conduct comprehensive educational programs to connect children and families to Broadway Theater productions. As an extension of the Portland Opera Education and Outreach Department - a state recognized leader in arts education - we will work in partnership with area arts organizations, school and community groups, the PCPA, and Regional Arts Culture Council to develop and present these programs.

#### Objectives

- To provide access to Broadway performances to under-served school and community populations.
- To develop meaningful education opportunities for students and teachers to explore the relevance of the performing arts, as well as the continuation of life-long learning.
- To expose and engage as many K-12 students and teachers to this performance medium.
- To build bridges in the community by working with a variety of arts and community organizations with the goal of continuing collaborations in the future.

#### Programs

The following is a listing of educational programs that could be implemented in collaboration with show producers and in cooperation with community partnerships in the Portland area.

- "Broadway Artists in the Schools" master classes.
- Additional ad hoc education and outreach services, including: backstage tours, technical workshops, wigs and make-up demonstrations, singing and stage movement workshops, performance previews, production and design seminars, and a variety of presentations by stage directors, designers and performers.
- The league of American Theater and Producers newsletter for students.
- Create a Portland version of the League of American Theaters and Producers "Kids Night on Broadway" at which children and youths receive a free ticket with every one purchased by a parent or guardian.
- Promote a heightened apperception for musical theater among teachers with a "Teachers Night on Broadway" program.

## CONSENT TO ASSIGNMENT

Pursuant to Resolution No. 97-57, the Metropolitan Exposition-Recreation Commission ("the Commission") hereby consents to the assignment to Jujamcyn Productions Company, LLC of the Broadway Series Agreement, dated March 15, 1994, as amended, ("the Agreement") between the Commission and Dan Bean Presents, Inc., as attached as Exhibit A hereto, subject to the condition that Jujamcyn Productions Company LLC agrees to assume without exception all duties of performance owed to Commission pursuant to the Agreement.

DATED this 2nd day of December, 1997.

### METROPOLITAN EXPOSITION-RECREATION COMMISSION

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

Mark B. Williams  
General Manager

THE ASSIGNMENT AND THE CONDITIONS REFERRED TO ABOVE ARE  
HEREBY ACCEPTED:

DATED this \_\_\_\_\_ day of December, 1997.

JUJAMCYN PRODUCTIONS LLC.

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

v.p.