

## AGREEMENT

**THIS AGREEMENT** ("Agreement"), is made and entered into this \_\_\_ day of \_\_\_\_, 2011, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized and existing pursuant to Article XX of the *Constitution of the State of Colorado*, hereinafter referred to as the "City", and **DAN STEINBERG PRESENTS LLC**, a Washington limited liability company whose address is 31004 133RD AVE SE AUBURN, WA 98092 ("Square Peg").

11-363

### RECITALS

**A.** The City, through its Theatres and Arenas Division, operates the following entertainment facilities: Red Rocks Amphitheatre ("Red Rocks"); venues at the Denver Performing Arts Complex ("DPAC"); and the Denver Coliseum ("Coliseum").

**B.** Square Peg has considerable expertise in the entertainment industry, and in the promotion and booking of concerts and live events. The City does not have in-house concert promotion expertise.

**C.** The City wishes to provide Square Peg and other promoters with an incentive to promote and book concerts and live events at the City's venues, because of the resulting financial and other public benefits to the City and its residents of such bookings.

**NOW THEREFORE**, in consideration of the mutual covenants, terms, conditions, privileges and obligations herein set forth, and intending themselves to be legally bound hereby, the City and Square Peg mutually agree as follows:

**SECTION 1: PROMOTER COMMISSION.** The City will pay as a commission to Square Peg a percentage as specified below of the amount paid to City by Square Peg as rent for each "Qualifying Event," as hereafter defined.

**A. Red Rocks.** The City will pay as a commission to Square Peg a percentage as set forth below of the amount paid to City by Square Peg as rent for each Qualifying Event at Red Rocks. A Qualifying Event shall mean any commercial event at Red Rocks during 2011 or 2012 for which Square Peg and the City have executed a City booking agreement and to which 2,000 or more tickets are sold to the public. Where a single booking agreement covers multiple concerts or live events, each concert or live event to which 2,000 or more tickets are sold shall constitute a Qualifying Event (move in or move out days shall not). Concerts or events covered by a booking agreement to which any entity other than Square Peg or a Square Peg Affiliate is a party shall not be Qualifying Events. A Square Peg Affiliate shall mean any corporation, partnership, limited liability company or other entity in which Square Peg owns or controls at least fifty percent (50%) of the beneficial interest or otherwise owns a controlling interest. A Square Peg Affiliate shall not include any entity jointly owned by Square Peg and another promoter with a promoter commission agreement with the City. Square Peg will provide City with notice of any Qualifying Events that are booked by Square Peg Affiliates. To be eligible for a commission in 2011 or 2012, Square Peg (which shall include Square Peg Affiliates) must book not less than five (5) Qualifying Events in the applicable calendar year. The commission

percentage will increase as the number of Qualifying Events increases, as follows: (i) for each Qualifying Event up to and including 20 events, the commission shall be forty percent (40%) of the rental paid (subject to the 5 event minimum); (ii) for Qualifying Events 21 through 30, the commission shall be fifty percent (50%) of the rental paid; and (iii) for Qualifying Events 31 and above, the commission shall be sixty percent (60%) of the rental paid. On or before a date thirty (30) days following the final Qualifying Event in each of the years 2011 and 2012, the City shall send to Square Peg, at the address set forth in section 10.5 below, a list of the applicable year's Qualifying Events, the rent paid to the City by Square Peg for each such event, and a warrant in the amount of the resulting promoter commission for the year.

B. DPAC. The City will pay as a commission to Square Peg twenty-five percent (25%) of the amount paid to City by Square Peg as rent for each Qualifying Event at DPAC. A Qualifying Event shall mean any commercial event at the Buell Theatre, the Ellie Caulkins Opera House, or the Boettcher Concert Hall during 2011 or 2012 for which Square Peg or a Square Peg Affiliate and the City have executed a City booking agreement and to which 750 or more tickets are sold to the public. Where a single booking agreement covers multiple concerts or live events, each concert or live event to which 750 or more tickets are sold shall constitute a Qualifying Event (move in or move out days shall not). Concerts or events covered by a booking agreement to which any entity other than Square Peg or a Square Peg Affiliate is a party shall not be Qualifying Events. To be eligible for a commission in 2011 or 2012, Square Peg must book not less than five (5) Qualifying Events in the applicable calendar year. On or before a date thirty (30) days following the final Qualifying Event in each of the years 2011 and 2012, the City shall send to Square Peg, at the address set forth in section 10.5 below, a list of the applicable year's Qualifying Events, the rent paid to the City by Square Peg for each such event, and a warrant in the amount of the resulting promoter commission for the year.

C. Coliseum. The City will pay as a commission to Square Peg thirty-five percent (35%) of the amount paid to City by Square Peg as rent for each Qualifying Event at the Coliseum. A Qualifying Event shall mean any commercial event at the Coliseum during 2011 or 2012 for which Square Peg and the City have executed a City booking agreement and to which 2,000 or more tickets are sold to the public. Where a single booking agreement covers multiple concerts or live events, each concert or live event to which 2,000 or more tickets are sold shall constitute a Qualifying Event (move in or move out days shall not). Concerts or events covered by a booking agreement to which any entity other than Square Peg is a party shall not be Qualifying Events. On or before a date thirty (30) days following the final Qualifying Event in each of the years 2011 and 2012, the City shall send to Square Peg, at the address set forth in section 10.5 below, a list of the applicable year's Qualifying Event(s), the rent paid to the City by Square Peg for each such event, and a warrant in the amount of the resulting promoter commission for the year.

**SECTION 2: SEPARATE BOOKING AGREEMENTS.** This Agreement shall not be deemed to replace or supplant the City's booking agreements for City venues, which shall be required to be executed for each Qualifying Event, and which shall govern the parties' rights with respect to, without limitation: broadcast and advertising rights; liability, indemnification and insurance; event services; rent; facility fees; and other charges. The City's standard booking policies and procedures shall apply to all events held at City venues, and the City reserves the right to negotiate, approve and disapprove the terms of individual booking agreements in its sole discretion. The City's booking agreements distinguish the amount payable as rent from other charges such as taxes, facility fees and other charges, and the amount payable as rent will be the

only amount on which the commission hereunder will be calculated. Square Peg must have satisfied all material obligations pursuant to the booking agreement for a Qualifying Event in order to receive a commission payment on account of such Qualifying Event.

**SECTION 3: TERM.** The term of this Agreement shall commence on January 1, 2011, and end on December 31, 2012.

**SECTION 4: FUNDING.** Payments to Square Peg hereunder shall be made only after revenue from Qualifying Events is received as provided in section 1 above, and shall not in any event exceed Two Hundred Thousand Dollars (\$200,000.00). It is expressly understood and agreed that the obligation of the City to make any other payments hereunder shall only extend to monies appropriated by the Denver City Council, paid into the Treasury of the City, and encumbered for the purposes of this Agreement. Square Peg acknowledges that (i) the City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. The City shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the City's Revised Municipal Code.

**SECTION 5: EXAMINATION OF RECORDS.** Square Peg agrees that any duly authorized representative of City, including the City Auditor or his representative, shall for three (3) years after the termination of this Agreement, during reasonable business hours and upon prior written notice, have access to and the right to examine any directly pertinent books, documents, papers and records of Square Peg, involving transactions related to the commission payable pursuant to this Agreement.

**SECTION 6: INDEMNIFICATION.** Square Peg shall defend, release, indemnify and save and hold harmless the City, including its officers and employees acting in their official capacity and/or in the scope of their employment, against any and all damages to property or injuries to or death of any person or persons, including property and employees or agents of the City, and shall defend, release, indemnify, and save and hold harmless the City, including its officers and employees acting in their official capacity and/or in the scope of their employment, from any and all claims, demands, suits, actions, liabilities, causes of action or legal or equitable proceedings of any kind or nature, including workers' compensation claims, of or by anyone whomsoever, in any way resulting from or arising out of and to the extent caused by the City's entering into this Agreement or the errors, omissions or other wrongful acts of any of the officers, employees, representatives, suppliers, licensees, subconsultants, subcontractors, or agents of Square Peg in their performance under this Agreement, provided, however, that Square Peg need not defend, release, indemnify and save and hold harmless the City, its officers, agents, and employees from damages proximately resulting from the sole negligence of the City's officers, agents and employees. These indemnification obligations shall survive the termination of this Agreement by expiration of the term hereof or otherwise. This indemnity clause shall not cover City's defense costs in the event that the City, in its sole discretion, elects to provide its own defense. If City elects to control its defense, it shall provide written notice to Square Peg, in which event Square Peg shall be relieved of any further obligation to defend City with respect to such claim; provided, however, City shall not settle any claim for which it is entitled to indemnity from Square Peg without Square Peg's prior written consent. In the event Square Peg desires to settle any claim for which it has agreed to indemnify City, and City, by its City

Attorney, objects to same, Square Peg shall not be liable for any costs of settlement in excess of those for which it asked City to settle, and in the event the actual liability of City is greater than the settlement amount proposed by Square Peg, for any costs of defense of City after the time of such proposed settlement. The provisions of this indemnity obligation shall not be deemed to extend to individual event obligations contained in the City's rental agreements, which have separate indemnity requirements.

**SECTION 7: ASSIGNMENT.** This Agreement, and each of the rights, duties and obligations hereunder, including the right to receive payments, shall not be assigned, pledged, transferred, sublet or otherwise disposed of, in whole or in part, by Square Peg without the express written approval of the City, which shall not be unreasonably be withheld.

**SECTION 8: NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of work under this Agreement, Square Peg agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, gender, age, national origin, military status, sexual orientation, marital status or physical or mental disability; and further agree to insert the foregoing provision in all subcontracts hereunder.

**SECTION 9: MISCELLANEOUS.**

**9.1 No Partnership.** It is understood and agreed that nothing herein contained is intended or shall be construed to in any way create or establish the relationship of partners or a joint venture between the City and Square Peg. None of the officers, agents or employees of Square Peg shall be or be deemed to be employees of the City for any purpose whatsoever.

**9.2 Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the availability or payment to Square Peg of any promoter commission by the City, and no statements, promises or inducements made by either party or agents for either party with respect thereto, not contained in this Agreement, shall be binding or valid.

**9.3 Written Amendments.** This Agreement shall not be altered, modified or amended in whole or in part, except upon agreement of all parties and in writing executed by the parties hereto in the same manner as this Agreement. Written additions, deletions, or changes in the provisions of this Agreement which do not comply with this requirement shall not be binding on either party. No oral modifications, additions, deletions or changes to the Agreement shall have any validity whatsoever.

**9.4 Interpretation.**

(a) **In General.** It is the intention of the parties hereto that the language hereof and all parts of this Agreement shall be in all cases construed simply according to their fair meaning and not strictly for or against any party.

(b) **Law Governing Interpretation.** Square Peg and the City agree that any litigation filed by either as a result of any breach of contract or other matter arising out of this agreement shall be filed exclusively in the District Court in and for the Second Judicial District

of the State of Colorado, and that the interpretation of this Agreement shall be in all respects governed by the laws of the State of Colorado and the Charter and ordinances of the City.

(c) Section and Paragraph Headings. The Section and/or paragraph headings herein and through this Agreement are for the convenience of reference only, and are not intended nor shall they be used to construe the intent of this Agreement or any part thereof, or to modify, amplify, or aid in the interpretation or construction of the provisions thereof.

(d) Gender and Number. The use of any gender herein shall include any or all genders, and use of any number shall be construed as the singular and/or the plural, all as the context may require.

(e) Consent or Approval. Except as may otherwise be expressly provided in this Agreement, whenever under this Agreement of the consent or approval of a party is required, the party so requested shall act reasonably and diligently in making its decision to grant or deny such request and will not unreasonably withhold, or unreasonably delay in responding to the request for, such consent or approval. In addition, in connection with "acting reasonably" the party so requested shall be entitled to consider public and governmental policy, moral and ethical standards as well as business and economic considerations. In every case wherein consent or approval is required, such consent or approval shall be obtained in writing prior to taking the action at issue.

(f) No Third Party Beneficiary. This Agreement is solely for the benefit of the parties hereto and no third party shall be entitled to claim or enforce any rights hereunder.

(g) Severability. If any Section or provision of this Agreement, or any portion of any Section or provision, shall for any reason be held to be void, illegal or otherwise unenforceable, all other portions of this Agreement shall nevertheless remain in full force and effect.

#### 9.5 Notices.

(a) All notices required to be given by Square Peg to the City pursuant to this Agreement shall be in writing and sent by registered or certified mail, to:

Director, Division of Theatres and Arenas  
City and County of Denver  
1245 Champa Street  
Denver, Colorado 80204

or to such other place(s) as the City may from time to time designate in writing.

(b) All notices required to be given by the City to Square Peg pursuant to this Agreement shall be directed in writing and sent by registered or certified mail to:

Dan Steinberg Presents LLC  
31004 133rd Ave. SE  
Auburn, WA 98092

or to such other place(s) as they may from time to time designate in writing to the City.

9.6 Non-Waiver. A failure by either party to take any action with respect to any default or violation by the other of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of such party to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default.

9.7 No Personal Liability. No elected official, director, officer, agent or employee of the City nor any director, officer or employee of Square Peg, shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

9.8 Representations and Warranties of Square Peg. All required approvals have been obtained, and Square Peg has full legal right, power and authority to enter into and perform its obligations hereunder, and this Agreement has been duly executed and delivered by Square Peg, and constitutes a valid and binding obligation, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally, by law or by general equitable principles.

9.9 Compliance with Laws. Square Peg and their officers, agents, servants, employees, and any other persons over which they have control or right of control shall comply with all present and future laws, charter provisions, ordinances, orders, directives, rules and regulations of the United States of America, State of Colorado, and the City and County of Denver applicable to or affecting directly or indirectly their operations and activities on or in connection herewith.

9.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

9.11 Most Favored Nation Clause. In the event that City enters into a multi-event agreement for City venues similar in scope and essential considerations to this Agreement with an unrelated third party on more favorable financial terms than those offered to Square Peg hereunder, City shall promptly notify Square Peg of same and will adjust the terms of this Agreement in writing to match the terms of such other agreement. Furthermore, the parties acknowledge that the intent of this Agreement is not to exclude other entities from presenting events at City venues. However, the City agrees that it will not provide another commercial promoter with rental and/or expense terms more favorable than what Square Peg would enjoy for the same event / artist during the same season.

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IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals at Denver, Colorado as of the day first above written.

Contract Control Number: 201100096

Vendor Name: DAN STEINBERG PRESENTS LLC

By: 

Name: P. Steinberg  
(please print)

Title: CEO  
(please print)



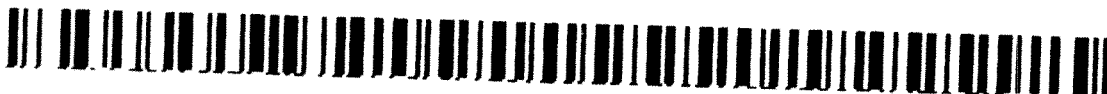
Square Peg Concerts  
2000 1st Ave SE  
Aurora, WA 98002

ATTEST: [if required]

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

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

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



**Contract Control Number:** 201100096

**Vendor Name:** DAN STEINBERG PRESENTS LLC

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

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

DAVID W. Broadwell, Attorney  
for the City and County of Denver

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

