

Option to Produce Play (Musical)

THIS AGREEMENT, dated this _____ day of _____, 20____, by and between _____ (“Producer”) and _____ (“Book writer”), and _____ (“Composer”) and _____ (“Lyricist”) (hereinafter collectively the “Authors”) wherein the Producer desires to present on the live speaking stage the World Premiere production (“Production”) of the Musical, created by the Authors, presently entitled _____ (“Musical”). Now, in consideration of the mutual covenants, considerations, and promises contained herein, the parties hereby agree as follows:

1. (A) The Authors hereby grant to the Producer the sole and exclusive right to present on the live speaking stage the World Premiere Production of the Musical during the times, at the level(s) of production, and in the geographic territories, as stated herein. During the term of this agreement and as long as the Producer will retain any rights or options to present the Musical on the live speaking stage and provided that the Producer will not otherwise be in default or breach hereof, the Authors will not grant, license, or permit any other person or entity to present or perform the Musical in any other medium (excluding motion pictures) within the geographic territories stated herein. Nothing contained herein, however, will prevent the Authors, during the term hereof, from entering into any licenses, grants, or other agreements to permit the Production of the Musical by other persons on the live speaking stage, so long as such Productions do not occur during the period in which the Producer retains the right to present the Musical.

(B) Nothing contained in paragraph 1(A) above shall interfere with or in any way restrict the Composer and Lyricist from licensing, using, or otherwise granting the so-called “Small Performing” rights to any or all of the music and lyrics contained within the Musical concurrent with the producer’s presentation of the Musical. “Small performing rights” will be defined as the recording, publishing, synchronization, and use of the music and/or lyrics in any way, other than a dramatic performance.

2. Nothing contained herein will prevent the Authors from entering into the sale of the motion picture rights to the Musical, provided, however, that said motion picture version of the Musical is not released, distributed, or otherwise made available for viewing by the general public during the time herein [and subject to the consent of the Producer, as described in paragraph _____ herein.]

3. Copyright, and any extensions thereof, to the Musical and all elements contained therein will belong solely to the Authors. The Authors will control the disposition of all rights and uses thereto, except as otherwise provided hereunder. All rights not expressly granted to the Producer herein are reserved by the Authors. All ideas, suggestions, modifications, bits of business, dialog and any other material contributed by the Producer or any other Party under his control will belong to the Authors as their sole property, free and clear of any claim, interest, or lien thereon. Producer will be under an affirmative duty to communicate and notify all persons under his control of the Authors' rights in this respect.

4. (A) Except as otherwise provided herein, in all programs, advertising, houseboards, flyers, signs, and other promotional material under the control of the Producer, the Authors will be entitled to billing credit as author of the Musical, substantially as follows:

“Book by _____”

“Music by _____”

“Lyrics by _____”

[“Based on _____ by _____”]

(B) Authors' names will appear in a type face and style that is at least 75% of the size of the title of the Musical, or the size and prominence of the star, whichever is larger. No other names or credits may appear before or be given greater prominence than the Authors' names, except those of a major star or a director of prominence.

(C) The Authors' names may be omitted from billing only in the following case: in teaser, small, or ABC ads in which only the title of the Musical, the name of the theater, and the name of a star of prominence appear. In no event may the Authors' names be omitted from any materials in which the Producer's name appears.

(D) In all advertising, publicity and promotional materials (including marquee signs) the Producer's name may appear before the Authors only in his capacity as a presenter of the Musical—for example:

“_____ [Producer]

Presents

_____” [Title of Musical]

(E) In the event of an error occurring in the Authors' billing, the Producer, upon receipt of written notification by the Authors thereof, will promptly rectify such error.

(F) This being the World Premiere Production of the Musical, the Producer desires billing credit in all programs, flyers, advertising and promotional materials on all future productions, including motion pictures, video, and broadcast television adaptations, and billing credit on all publications of the Musical. Said credit will appear substantially as follows:

“Originally presented on the _____ stage by _____” [Producer]

The Producer recognizes, however, that said credits will not always necessarily be a matter under the Authors' control and authority, but may instead be under the control and authority of third persons or entities not a party to this Agreement. Authors agree, however, to use their best efforts to secure same for the Producer.

(G) Whenever one of the Authors receives billing credit, the other authors shall likewise receive the same billing credit.

5. Each of the Authors, for himself and not the others, represents and warrants that _____ [he] [she] is the sole creator each element contributed by _____ [him] [her] to the Musical; that each element contributed by _____ [him] [her] respectively is original with _____ [him] [her], except for those elements which are in the public domain; that [except as noted below] none of the respective elements of the Musical have been copied in whole or in part from any other copyrighted work; that the Musical does not infringe upon or violate any other person or entity's right of publicity, trademarks, or rights of privacy.

[The Musical is based in whole, or in part, upon the copyrighted work entitled _____, by _____, ownership of which is presently held by _____. The Authors have

obtained full rights and permissions to use elements from _____, or to base the present Musical upon elements and materials contained therein. A copy of said rights and permissions is attached hereto and made a part hereof.]

The Authors further represent and warrant that there are no claims, liens, or other encumbrances upon the Musical or any part hereof. The Authors have not previously granted, assigned, encumbered, or otherwise disposed of any of the rights or interest in the Musical which they are herein granting to the Producer. That there are no claims, liens, grants, dispositions, or exploitations of the Musical, or any interest therein, which would in any way diminish, encumber, or invalidate any of the rights, or the exploitation thereof, herein granted to the Producer.

The Authors have the sole authority and right to enter into this Agreement and to grant the rights conveyed hereby.

The Authors will hold the Producer harmless and indemnify him from any breach or violation of this paragraph of this Agreement, including costs, attorney's fees, judgments, recoveries, and/or settlements (with the Authors' consent) which the Producer may incur.

6. The Producer hereby represents and warrants that he has the capability and the authority to present the Musical in the territories and at the level of Production stated herein. However, by this Agreement, the Producer is taking a mere option to present the Musical upon the terms herein stated. Nothing contained herein is intended or will be construed as a guarantee by the Producer that he will in fact present the Musical in the territories and at the level of production herein stated during the term herein.

7. The Producer's production being the world premiere of the Musical, the Authors will provide services to the Producer as follows:

(I) Deliver a completed draft of the Musical within _____ days after the execution of the Agreement in generally accepted industry manuscript form;

(II) Rewrite and revise the Musical as many times and as much as may be reasonably appropriate and necessary;

(III) Assist with the selection of the Director, Choreographer, Cast, and Designers. The composer will have the sole right to select the musical director, conductor, arrangers, orchestrators, and rehearsal pianist.

(IV) Assist and advise the Producer, Director, and all members of the Production staff with any matters, problems or issues for which it may be appropriate or necessary to consult with the Authors;

(V) Attend rehearsals of the Musical, as well as any preview performances, for the purpose of resolving any problems that may become apparent during same.

8. (A) The Producer will pay the Authors collectively an advance of _____, upon the execution of this Agreement.

(B) In consideration of the payment made in (A) above, the Producer will have the option to present the Musical as a professional production on the live speaking stage on or before

_____ (the "first option period") in the geographic location of _____, at the _____ level of production.

(C) At any time prior to expiration of the first option period, the Producer may purchase a "Second Option Period" by paying to the Authors collectively the sum of

_____. Said second option period will begin _____ [the day after the first option period expires] and terminate on _____.

(D) At any time prior to the expiration of the Second Option Period, the Producer may purchase a Third Option Period by paying to the Authors collectively the sum of _____. The Third Option Period will begin on the _____ [day after the Second Option Period expires] and will terminate on _____.

(E) If, by the expiration of all the option periods purchased by the Producer hereunder, the Producer has not presented the Musical as aforesaid in paragraph (B) above, all of his rights hereunder will terminate and revert back to the Authors.

(F) All advances paid hereunder as described in paragraphs (A) through (D) above will be consideration for the Authors granting the exclusive options for the times as stated herein. Said advances will be nonrefundable, if the Producer fails to present the Musical.

(G) If the Producer presents the Musical, then all advances paid hereunder will be recoupable against royalties due and owing to the authors as described in paragraph nine below.

(H) Notwithstanding the foregoing or any other terms of this agreement, the Producer does not guarantee production of the Musical during the term of the option or any extensions thereof.

(I) Failure to pay advances to the Authors when due and owing will be a material breach of this Agreement.

9. (A) In consideration of all the rights herein granted by the Authors and for the Authors' services in connection with the Producer's Production, as described in Paragraph 7 above, the Producer will pay to the author royalties, on a weekly basis, as follows:

Prior to recoupment:

_____ % of the Gross Weekly Box Office Receipts to the book writer;

_____ % of the Gross Weekly Box Office Receipts to the composer;

_____ % of the Gross Weekly Box Office Receipts to the lyricist;

After Recoupment:

_____ % of the Gross Weekly Box Office Receipts to the book writer;

_____ % of the Gross Weekly Box Office Receipts to the composer;

_____ % of the Gross Weekly Box Office Receipts to the Lyricist

Recoupment will mean the date when the Musical has earned back all of its costs to produce, regardless of whether the Producer has distributed all or any part of the Musical's capitalization back to its investors.

(B) Royalties to the Authors will be due and payable on the Wednesday of the week succeeding the week during which the royalties are earned. Failure to pay royalties in full when due and owing will be a material breach of this agreement.

(C) Gross Weekly Box Office Receipts will be defined as all earnings from the Musical from all sources of ticket sales, including, but not limited to, box office, telephone, mail order, groups, theater parties, ticket brokers, Telecharge, Ticketmaster, discount ticket outlets, and any and all sources of ticket sales, less any taxes and sales commissions due thereon.

(D) Prior to the payment of royalties, Producer will first deduct all advances paid under Paragraphs 8 (A) through (D).

(E) Royalties will be due and payable, based on the full box office price, even on complimentary tickets given away by the Producer, whether as gifts or as part of group or subscription sales promotions. Notwithstanding the foregoing, no royalties will be paid on the following complimentary tickets:

- (i) Tickets given to bona fide members of the press;
 - (ii) Tickets given away for the official opening of the Musical for the purpose of “padding” the house;
 - (iii) Tickets given to the Authors for their personal viewing of the performance.
- (F) Each weekly payment of royalties will be accompanied by a detailed box office statement, for each performance during the subject week, accounting for the disposition of all tickets available for said performance, signed by the treasurer or business manager of the theater in which the Musical is being presented and countersigned by the Producer. If any one of the Authors is a member of the Dramatists Guild, a duplicate copy of each statement will be forwarded to the Guild.
- (G) Authors or their designated representatives may inspect the Producer’s records, during normal business hours, for the purpose of verifying the accuracy of all royalty payments and box office statements.

10. In the event any one of the Authors must travel to a rehearsal or production location more than _____miles from _____[his] [her] respective place of residence, the Producer agrees to pay for the Author’s reasonable costs of travel, including economy airfare, and the Author’s accommodations while at the said rehearsal and/or production locations. Accommodations provided to the Author, at the Producer’s expense, will be at least equivalent in value and living conditions and standards as the Producer’s own accommodations. Accommodations will include the cost of hotel/motel rooms, meals, local calls, and transportation to and from the rehearsal/production location from the Author’s hotel/motel.

11. Authors will be entitled to attend all performances free of charge. In addition thereto, each of the Authors will be entitled to _____pairs of adjoining house seats for each performance, located as fails. Said house seats will be held until _____prior to each evening performance and until _____prior to each matinee performance. After such time, if the particular Author fails to use them, they will be released for sale to the general public. All house seats will be purchased at the regularly established box office price. Authors agree not to resell such tickets at a premium or otherwise; to maintain accurate records therefore; and to comply with all state and/or local laws applicable to the use thereof.

12. The Producer reserves the right to assign his rights under this Agreement to a general partnership, joint venture, limited partnership, or other entity owned or controlled by the Producer, as long as the Producer remains an active principal therein. Any other assignment will require the consent of the Authors in writing.

13. The Authors hereby grant to the Producer the right to present an excerpt or excerpts from the Producer’s Production of the Musical in a radio or television broadcast, whether live, taped, or on motion picture film, for the purpose of promoting and publicizing the Production. Each presentation may not exceed a total of _____[minutes] [seconds]. The Producer may not receive any direct or indirect compensation or profits therefrom, other than reimbursement for expenses incurred in preparing and presenting the broadcast excerpt, including any payments to the cast required by the appropriate unions or otherwise by contract. In all such presentations, the Producer will use his best efforts to assure appropriate billing credit for the Authors.

14. Except as provided in paragraph 13 above, no part of the Musical may be recorded, by audio, video, motion picture film, or any other means, whether now known or

hereinafter invented, for “archival” purposes, “for the archives,” or any other purpose, without the authors additional written consent. Any such unauthorized recording will be, prima facie, a wilful violation of the Authors' individual and respective copyrights.

15. Notwithstanding anything to the contrary contained herein, Authors individually and collectively will have the absolute right (but not the obligation) to attend all rehearsals, auditions and casting sessions, and production meetings, and the Producer will provide the Authors with reasonable advance notice thereof. For purposes of notice herein, telephone or face to face in person notice will suffice. Any attempt to prevent or otherwise deprive any Author of these rights herein by the Producer or any persons under his control or in his employment will be, prima facie, a material breach of this agreement for which monetary damages shall not be a sufficient remedy. In addition to, or in lieu of monetary damages, the Authors, individually or collectively, may seek injunctive relief.

16. [Except for the production license herein granted to the Producer, the Authors own and control all of the rights, uses, and interests in the Musical and may dispose of same in

_____ their sole discretion. However, the parties recognize that Producer’s successful production of the Musical contributes to the value of its uses and rights in other media. By reason thereby, the Authors recognize therefore that the Producer will be entitled to certain percentages of the net receipts paid to the Authors in any or all of the following uses:

worldwide

motion picture rights; net receipts paid to the Authors within the Continental United States and Canada from any or all of the following: touring, Broadway performances, and off Broadway performances; stock, amateur, foreign language productions; concert tours or productions; condensed tabloid productions; commercial and merchandising uses; audio, video, or other visual or sound recordings, whether by means now known or hereinafter invented; radio or television broadcasts (collectively the “subsidiary rights”).

[The parties recognize, however, that the Producer will only be entitled to share in the afore described net receipts under the following conditions:

(A) The Producer’s production must run for at least the following consecutive paid performances in order to entitle the Producer to the following percentages of the aforesaid rights:

_____ performances _____ %
_____ performances _____ %
_____ performances _____ %
_____ performances _____ %

In computing the number of performances, only _____ paid previews may be counted in the computation.

And,

(B) The Authors must enter into the contract for the disposition of the aforesaid rights prior to the expiration of _____ years beginning on the date of the last performance of the Producer’s production. Producer will be entitled to the aforesaid share of the Authors' net receipts whenever thereafter same are earned or received.

(C) Authors will remit the Producer’s share of the net receipts within thirty days after receipt by the Authors, accompanied by a copy of the statements received by the Authors for same.

(D) Producer or his representative may, during normal business hours, inspect the Authors' records to verify the correctness of all payments and accompanying statements.

(E) In the event the Producer fails to make any payments owed to the Authors, individually or collectively, under any of the terms of this Agreement when due and payable, the same will be a material breach hereunder. Upon receipt of written notice by the Authors, individually or collectively, of said failure, the Producer will have thirty days thereafter to rectify the situation. In the event the Producer fails to rectify the situation within said thirty days, all of his rights, interest, and claims to any of the aforesaid net receipts under this paragraph 16 will terminate and he will have no further claim or right hereunder.

(F) Authors' "net receipts" will be defined as Authors' gross receipts less agent's commission.

(G) Nothing contained herein will obligate the Authors to dispose of any of the aforesaid subsidiary rights at any time.]

[Paragraph 16 Alternative #2]

[16. The Producer will not be entitled to any share of the Authors' subsidiary rights.]

17. No changes, additions, deletions, or modifications of any kind may be made to any element of the Musical without the consent of the author of that individual element.

18. The Authors or their designee have the right to approve the choice of director, cast, permanent replacements, and designers, which approval will not be withheld unreasonably. In cases in which any one of the Authors is physically unavailable to give aforesaid approval or not reachable by telephone, the Producer will send to that Author a telegram requesting approval of any of the aforesaid matters. If, after forty-eight hours have expired, the Author has failed to respond, approval will be deemed to have been given.

19. This Agreement will be governed and interpreted by the law of the State of _____.

20. Except as otherwise provided herein, all notices required hereunder will be given to the parties at their respective addresses following their signatures below, by certified mail, return receipt requested. Notice will be effective as of the date of receipt.

21. In the event of a dispute or disagreement arising under this Agreement, the parties agree to submit this matter to binding arbitration before a member of the American Arbitration Association. The Arbitrator will have the right to award attorney's fees and costs to the prevailing party thereunder. Any court of competent jurisdiction may enter judgment thereon.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this day and date.

Producer Address

Book writer Address

Composer Address

Lyricist Address

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Attorney, producer, and playwright Charles Grippo is the author of *Business and Legal Forms for Theater* and *The Stage Producer's Business and Legal Guide*.