

Option For Underlying Rights (Musical)

This Agreement entered into this _____ day of _____, 20____, by and between _____ [Adaptors] [Producer] and _____ (Owner) for the adaptation of the owner's copyrighted _____ [Novel] [Play] [Screenplay] [Short story], entitled _____ ("Underlying Work") which the _____ [Adaptors] [Producer] intends to develop into a musical ("Musical") for the live stage.

For the mutual covenants and considerations contained herein, the parties agree as follows:

1. (A) The Owner hereby grants to the _____ [adaptors] [producer] the right to adapt the underlying work into the musical. This right is exclusive during the term of this agreement (and any production agreements resulting herefrom). The owner will not grant this right to any other persons or entities. All other rights not expressly granted herein are reserved by the owner.

(B) The scope of rights the owner hereby grants will consist of _____.

(C) The materials contained in the underlying work will merge with the musical upon the happening of _____ and will thereafter remain with the musical forever. After merger occurs as aforesaid, the owner will not be entitled to remove any of the materials contained in the underlying work which merged with the musical. This in no way restricts the owner's right to exploit or otherwise use his underlying work in any way he sees fit, and same will continue to exist as a separate work.

2. The adaptors may adapt the underlying work alone or may bring in other collaborators [without further approval by the owner] [subject to the approval of the owner, which approval will not be unreasonably withheld.]

[Alternate]

[The producer may engage one or more playwrights (book writer), composers, and lyricists (collectively the "Adaptors") to adapt the underlying work into a script suitable for the live stage. The choice of playwright, composer, and lyricist will be in the producer's sole discretion. [The choice of playwright, composer, and lyricist will be subject to the approval of the owner, which approval will not be unreasonably withheld.]]

3. The adaptors will have until _____ to complete the musical, which will consist of: a book containing a minimum of _____ manuscript pages and a music score consisting of the music and lyrics for at least _____ songs. The adaptors [producer] will further have until _____ to arrange a staged reading of the musical. In consideration thereof, the adaptors [producer] will pay to the owner the sum of _____, due and payable at the time of the signing of this agreement. This sum will be nonrefundable. However, it will be recoupable against any royalties due to the owner (as described in paragraph 12 below.)

4. The adaptors [producer] will notify the owner of the date, time, and place of the staged reading and will invite the owner thereto.

5. The owner will have _____ days after the staged reading to signify approval of the musical. If the owner fails to approve of the musical or to give timely notice of approval, all of the adaptors' [producer's] rights will terminate and revert back to the owner. The owner will then be free to negotiate with and grant the same or different rights to third parties without liability or payment to the adaptors [producer]. The book writer [producer] will not use any material created from the underlying work in any other play, musical, screenplay, novel, or other project whatsoever. Notwithstanding the foregoing, the composer and/or lyricist may use any music and/or lyrics created for the musical in any other way they see fit, provided same do not specifically refer to or incorporate material contained in the underlying work.

6. If the owner approves of the musical following the staged reading, as aforesaid, the adaptors [producer] will have the right (but not the obligation) to extend the option period until _____ months after the owner approves of the musical, for the purpose of presenting a staged production. In such event, the adaptors [producer] will pay to the owner the additional, nonrefundable sum of _____, which is recoupable from any royalties due the owner under paragraph 12 herein. This will be known as the second option period.

7. The adaptors [producer] will have the right (but not the obligation) to further extend the term of this agreement for a third option period, provided the following conditions are met prior to expiration of the second option period:

A. The adaptors pay to the owner the nonrefundable sum of _____, which will be recoupable against royalties due the owner under paragraph 12; and at least ____ of the following conditions are met:

i) A director of stature agrees to direct the musical;

ii) A star of stature agrees to perform in the musical;

iii) A theater company agrees in writing to present the musical;

[iv] A financially responsible third party agrees in writing to produce the musical.]

[Alternate]

[iv] The producer commits to produce the musical by entering into a production agreement with the owner.]

This third option period will commence immediately upon expiration of the second option period and will be for a period of _____ months.

8. The Owner will not have any rights of approval of the cast, director, choreographer, designers, or other personnel necessary to present any readings, and/or staged/full productions of the Musical. Said rights of approval will belong only to the book writer, composer, and lyricist.

9. The Owner represents and warrants that [he] [she] is the legal Owner to the Work, and has the full and complete power and authority to convey the rights herein granted; that [he] [she] has not hitherto conveyed, licensed, or otherwise transferred these rights to any other person, or entity; that there are no claims or liens against the title to the Work that would interfere with, restrict, or otherwise limit the use, enjoyment, and commercial exploitation of the [adaptors'] [producer's] rights hereunder.

10. In the event the adaptors fail to present a staged reading, or a staged production, within the respective time limits aforesaid, their rights hereunder will terminate, without notice, and revert to the owner.

[Alternative]

[In the event the producer fails to present a staged reading or a staged production, or, fails to enter into a production agreement with the owner within the time aforesaid, his rights hereunder will terminate, without notice, and revert to the owner.]

11. The author of the underlying work will receive billing credit in all places and at all times in which the adaptors receive credit and will appear in substantially the following form:

“Based on _____ by _____”

Said billing will appear immediately following the name of the adaptors and will be in type size no less than _____ of the size of the adaptors’ billing.

[“And by arrangement with _____.”]

12. The owner will receive a royalty in the amount of _____ percent of the gross weekly box office receipts. Gross weekly box office receipts will include ticket sales of all kinds and from all sources, less sales taxes and commissions. Said royalties may be calculated on the basis of a royalty pool. Royalties will be due and payable on the same day of the week as the royalties paid to the adaptors.

13. (A) The adaptors may, in their sole discretion, exploit all subsidiary rights in the musical upon such terms as they will deem appropriate without approval or agreement by the underlying rights owner. The underlying rights owner, however, will share in all money earned by the adaptors, as provided in paragraph 14 below.

(B) The adaptors will have the unequivocal right to make such arrangements with agents, producers, directors, stars, and other personnel, as the adaptors will deem necessary with respect to the exploitation of all subsidiary rights to the musical, including giving a share of same as appropriate or the payment of sales commissions. Said shares or sales commissions will in turn reduce the owner’s earnings therefrom proportionately, as further described in paragraph 14 below.

14. (A) In addition to the weekly royalties as aforesaid, the owner will be entitled to receive _____ percent of the adaptors’ net earnings from the sale or other exploitation of all subsidiary rights. “Net earnings” will be the total adaptors’ money remaining after deducting sales commissions, the producer’s share, and any other shares the adaptors have granted to other personnel (as described paragraph 13 (b) above). All payments to the owner will be due and payable immediately upon the adaptors’ receipt thereof.

(B) The owner’s share of the subsidiary rights will be limited only to earnings from the “grand rights” to the work. The owner will not receive any earnings from the “small performing right,” publication, synchronization, mechanical reproduction, or any other rights to the music and lyrics contained within the show.

15. The owner or his representative will have the unequivocal right, during reasonable business hours, to examine all books of the production and the adaptors’ books, for the purpose of verifying that correct payments have been made in accordance with paragraphs twelve through fourteen above.

16. Copyright to the book of the musical will belong solely to the book writer and taken out solely in his name. Copyright to any music and lyrics which become part of the musical will belong, respectively, to the composer and lyricist respectively, or their assignees.

17. The parties expressly deny and disavow any intention to form a partnership or joint venture, and this agreement will not be construed or interpreted to create same.

18. This Agreement is intended to create a mere option on the underlying rights to the work. At such time as the adaptors, in their sole discretion, choose to commercially exploit the work (prior to the expiration dates set forth herein), the parties intend to negotiate, in good faith, a more formal agreement embodying all of the standard industry terms normally contained in a production agreement for underlying rights in a dramatic musical. Until that time, this agreement will remain in effect and be binding on the parties thereto, their successors, heirs, administrators, and assigns.

19. This agreement may not be assigned by any of the parties without the prior written consent of the other party.

[Alternative: to be used if the purchaser of the option is a producer and not the adaptors]
[It is understood that, since the producer will not also be the adaptors, that, upon his acceptance of the musical for production, the producer will assign his rights hereunder to the adaptors, as their sole property, now and forever, and same will be bound hereto.]

20. All notices required hereunder will be in writing and will be directed to the parties at the addresses following their names. Notices will be sent by certified mail, return receipt requested, and will be effective upon mailing.

21. This agreement will be governed by the laws of the State of _____.

22. This is the entire agreement between the parties. No modification thereof will be effective unless entered into in writing and signed by the parties hereto.

23. In the event of a dispute over the terms of this agreement, the parties agree to submit same to a member of the American Association of Arbitrators. The Arbitrator shall require the losing party to pay the reasonable costs and attorney's fees of the prevailing party. Any court of competent jurisdiction may enter judgment upon any award given thereby.

24. The parties represent and warrant to each other that they have full authority and power to enter into this agreement and will mutually hold each other harmless and indemnify each other for any judgments, costs, attorney's fees, or other expenses incurred by any breach of the covenants hereunder. The Owner hereby represents and warrants that he has the sole power and authority to grant the rights herein granted; that no one else has any right or interest therein; and that there are no liens or encumbrances upon the rights.

25. Notices required herein shall be directed to the parties at the following addresses:

_____ (Producer)

_____ (Owner)

_____ [Adaptors] [Producer]

_____ Owner

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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*.