

Concessionaire License

THE PARTIES:

A. _____ (“Theatre Company”) owns and operates the _____ Theatre (“Facility”), which is located at _____.

B. _____ (“Concessionaire”), whose business headquarters are located at _____, is in the business of supervising and operating concession stands in facilities similar to those owned by the Theatre Company, for the purpose of selling food, beverages, souvenirs, and similar merchandise to the patrons of such facilities during regular performance times.

Whereas the Theatre Company desires to grant, and the Concessionaire desires to obtain, an exclusive license to the Concessionaire, to supervise and operate any and all concession and refreshment centers [and cloakroom facilities] in and about the facility, upon the following terms and mutual promises and covenants:

1. The Theatre hereby grants to the Concessionaire the license to supervise and operate any and all concession and refreshment centers/ stands [and cloakroom facilities] in and about the Facility. Such license to begin such operations will begin on _____ and terminate on _____, unless the parties will subsequently agree in writing to terminate sooner.
2. During the term hereof, said license to the Concessionaire will be exclusive. The Theatre will not grant or permit any other persons or entities any rights or licenses to operate any concession stands and/or sell the merchandise listed in paragraph three below in or about its Facility. In the event the Producer or Presenter of any attraction playing at the Facility during the term hereof desires to offer attraction-related merchandise and/or souvenirs to patrons, he will do so only through sales conducted by the Concessionaire, upon terms to be agreed upon between the Producer/Presenter and the Concessionaire.
3. This license confers upon the Concessionaire the right to sell soft drinks, food, candy, alcoholic beverages, and the following merchandise, provided it is related to the attraction playing at the facility: librettos, recordings, wearing apparel, souvenir books, posters, sheet music, and any other souvenir type products (hereinafter collectively “Merchandise”). The Concessionaire may not offer for sale any souvenir type merchandise for any attraction not playing at the facility. The Concessionaire is strictly forbidden at all times to offer, attempt to sell, or sell any illegal, immoral, or improper merchandise of any kind whatsoever. The Theatre Company reserves the right to approve of all products offered for sale by the Concessionaire at its Facility.
4. The Concessionaire will have the sole right to determine the appropriate pricing for each item sold or offered for sale under this license.
5. The Theatre will permit [has available] _____ locations for concession stands/refreshment centers [and cloakroom facilities]. They are located [will be established] at approximately the following places within the Facility: _____

_____.

6. The Concessionaire will be responsible, at its own expense, for obtaining all permits, licenses, and other authorizations, which are required by law, from the government bodies having jurisdiction. The Concessionaire will comply with all city and other state laws governing the sale and handling of all merchandise (including sanitary and health laws governing food and drinks) which it sells from the Facility.

7. In particular, the Concessionaire will collect and remit, and otherwise be responsible, for all sales, employment or other taxes imposed upon its operations by all governmental bodies having jurisdiction hereof. The Concessionaire will hold the Theatre Company harmless and indemnify it for any losses caused by its failure or omission to do so.

8. All revenues earned by the Concessionaire from the sales conducted at the Facility will be divided between the Concessionaire and the Theatre Company on the following basis:

_____ % of [gross] [net] receipts to the Concessionaire; and _____ % of [gross] [net] receipts to the Theatre Company, for all sales of food, soft drinks, alcoholic beverages, and souvenir books;

_____ % of [gross] [net] receipts to the Concessionaire, and _____ % of [gross] [net] receipts to the Theatre Company, for all other souvenir type merchandise.

[Gross] [Net] receipts will be defined as

follows: _____

On or before the _____ day of each month during the term of this license, the Concessionaire will remit all payments due to the Theatre Company for its operations for the month preceding. Each payment will be accompanied by an itemized accounting statement and such other documentation as may be required to support all remittances. Theatre Company or his agents will have the right to audit the Concessionaire's books and records, during normal business hours, to verify and compare the computation of sales and all sums due to the Theatre Company. In the event such verification determines a shortage of more than _____ dollars, the Concessionaire will, in addition to immediately remitting the shortage, be responsible for the costs of the Theatre Company's audit and inspection.

9. Concessionaire will, at all times, obey all of the rules and regulations that may, from time to time, be established by the Theatre Company and will instruct, and be responsible for, its employees to likewise obey all said rules and regulations. Concessionaire and its employees will at all times conduct their business and conduct in an honest manner. Concessionaire will employ only persons of legal age for the activity in which they are engaged and will require all employees to be appropriately attired, as the Theatre Company may, from time to time, require. Concessionaire will be solely responsible for its employees and agents and their conduct hereunder, as well as all wages, workman's compensation, employment taxes, and other matters incidental to their employment by the Concessionaire.

10. The kind, type, and scheduling of attractions and performance days and times will be solely in the discretion of the Theatre Company. The Concessionaire understands that, from time to time, the facility may be "dark," with no attractions or performances scheduled. The Theatre Company, in its discretion, may restrict or limit the times during which the concession stands may be open for business, particularly during the actual performances, and may even prohibit sales during particular performances. The

Concessionaire will have no claim or recourse for expenses or lost profits for any such times in which its operations are restricted or cancelled.

11. The Concessionaire, at its own expense, will purchase public liability, food liability coverage, and property damage insurance covering all patrons, employees, the public, and any other persons and property in connection with its operations on and about the facility. The Concessionaire will name the Theatre Company (and such other persons and entities as the Theatre Company designates) as co-insured and will provide the Theatre Company with evidence of same. Coverages will be in not less than the following amounts:

Injury or death to one person : \$ _____

Injury or death to more than one person: \$ _____

Property Damage (Per occurrence) \$ _____

Property Damage (Aggregate) \$ _____

The Concessionaire will also maintain, at its own expense, such workman's compensation as may be necessary and appropriate for its employees, agents, and other parties under its control.

12. The Theatre will furnish the Concessionaire with waste removal, reasonable utilities and storage space, all without additional charge.

13. In the event of a claim, suit, or other action against the Concessionaire by any person claiming to be injured as a result of its actions, products sold, or omission to act, the Concessionaire, at its sole expense, will defend such proceedings, including providing defense for the Theatre Company, if the Theatre Company is named as a defendant in such action, or if such claim is made against the Theatre Company. Although the Theatre Company agrees to cooperate with the Concessionaire in all such proceedings, the Concessionaire agrees to be solely liable for any judgments, settlements, or other payments to such parties, including their costs and attorney's fees and will hold the Theatre Company harmless and indemnify it therefore. The Theatre Company will, in no event, be responsible for any debts, obligations, judgments, or settlements against the Concessionaire.

14. The Concessionaire agrees to post signs in conspicuous places in and about its concession stands [and cloakrooms], stating that all concession stands [and cloakrooms] are under its sole operation and control.

15. This Agreement will not be construed as creating a joint venture and/or partnership between the parties, and the Theatre Company and the Concessionaire hereby expressly disavow any intention or desire to create same.

16. This Agreement may not be modified, amended, or changed, except by a written instrument signed by the parties hereto.

17. This Agreement will be binding on the parties, their heirs, legal representatives, and assigns.

18. Notwithstanding paragraph 17 above, this agreement may not be assigned by either party except with the consent of the other party.

19. In the event of a dispute, breach, or claim hereunder, which the parties cannot settle, either party may submit the matter to binding arbitration in the County of _____, State of _____, which arbitration will be conducted by a member of the American Arbitration Association, under its Commercial Rules. Any court of competent jurisdiction may enforce judgment awarded thereon by the arbitrator. The arbitrator will

require the losing party to pay the prevailing party's costs and attorney's fees of arbitration.

20. The laws of the State of _____ shall govern this agreement.

21. All notices required hereunder will be mailed by certified mail, return receipt requested, to the parties at the addresses following their names on page one of this Agreement, or at such other address, as either may, in writing, from time to time so notify the other. All notices will be effective on the date of receipt.

In Witness Whereof, the parties have hereunto set their hands and seals.

_____(Theatre Company)

By: _____(Title)

_____(Concessionaire)

By: _____(Title)

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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*.