



PROPOSED
FORT WAYNE PARK AND RECREATION DEPARTMENT FACILITY
LICENSE AGREEMENT FOR USE OF FOELLINGER THEATRE

This Facility License Agreement ("Agreement") for use of Foellinger Theatre is made and entered into this [DAY] day of [MONTH], 2026 by and between the City of Fort Wayne, Indiana, by its Board of Park Commissioners with its principal office located at 705 E. State Boulevard, Fort Wayne, Indiana 46805, and through its designated representative, hereinafter designated Fort Wayne Park and Recreation Department ("Park Department"), and, _____, hereinafter designated ("Licensee"), collectively referred to as ("Parties").

The Parties hereto, intending to be legally bound, and in consideration of the mutual covenants hereinafter contained, agree as follows:

Section 1. SCHEDULE. Park Department grants Licensee a temporary license to use, occupy and hold an event ("Event") at the Foellinger Theatre located at 3411 Sherman Boulevard, Fort Wayne, Indiana 46808, and its appurtenant facilities ("Premises"), commencing at [TIME], on dates listed below and terminating at 11:59 PM EST, on dates listed below, for concerts by:

[Parties and Dates]

Section 2. FEES, EXPENSES AND SETTLEMENT. Prior to the Event, Park Department will complete an estimated expense statement with Licensee. This estimate is for planning purposes only and all expenses will be charged at actual rates incurred per the attached Foellinger Fee Schedule.

Licensee shall pay Park Department the following fees including, but not limited to:

- A stage rental fee of \$4,700.00
- A per show day security and safety fee of \$4,300.00
- A daily house production staff fee of \$1,200.00
- A daily house staff fee of \$1,000
- A per show day cleaning fee of \$800.00
- A box office services fee of \$500.00

The purchase by Park Department of production labor, equipment rental, catering, or other goods and services on behalf of Licensee will be reimbursed to Park Department at cost at the time of settlement of fees. Settlement final amount becomes indisputable by the Licensee thirty (30) days after the settlement statement is emailed to Licensee.

Section 3. SECURITY DEPOSIT. Upon execution of this Agreement, Licensee shall pay a security deposit in the amount of \$2,350.00 per show date to Park Department as a guaranty against damages to the Premises and surrounding areas caused by performers and patrons. Upon breach of this Agreement, including without limitation a failure to return the Premises to its original condition, the Park Department may, at its option, use any or all of the security deposit for the payment of any amount which Park Department may in its reasonable estimate pay or become obligated to pay by reason of such breach, or to compensate Park Department for any loss or damage which Park Department may suffer by reason of such breach. If Park Department concludes that there is no breach, the security deposit or any balance shall be returned to Licensee with the net box office revenues disbursements within four (4) weeks after Licensee vacates the Premises.

Section 4. ACT CONTRACT. Licensee warrants and represents to have a valid and properly executed contract with the performers whose services form the basis to use the Premises. Licensee shall submit to Park Department a copy of said contract, including terms of payment, and all attachments including technical and hospitality requirements ("Performance Rider"), forty- five (45) days prior to the Event or at the time of the execution of this Agreement, at the discretion of Park Department.

Park Department retains the right to approve the Event under this Agreement. Licensee understands that no Event shall be held if Park Department objects on the grounds that the Event does not uphold to the advertising claims or there is a violation of Event content restrictions agreed to by both Parties at the time of the execution of this Agreement. At no times shall lewd or indecent actions, conduct, language, pictures or portrayals be permitted by Licensee or its contracted performers on the Premises.

Section 5. BOX OFFICE AND TICKET SALES. Licensee is required to use Park Department's current ticketing system, Ticketmaster, for any programs requiring paid admission. Park Department will be the exclusive provider of ticket sales and will provide ticket sales services through the following methods: online; by phone; in office; and through box office sales. Park Department requires fifty (50) complimentary seats without charge. One-hundred (100) complimentary tickets may be used by Licensee with no charge incurred. A facility fee of \$4.00 per complimentary ticket requested by Licensee outside of the One-Hundred (100) may be assessed by Park Department.

Licensee shall pay Park Department the following expenses in conjunction with ticket sales:

- A facility fee of \$4.00 per ticket sold;

The following fees will be assessed to all tickets sold on Ticketmaster.com

\$35.00 and below = \$2.90 per ticket fee

\$35.01 to \$55.00 = \$4.40 per ticket fee

\$55.01 and above= \$5.40 per ticket fee

All monies collected by the box office shall be held by Park Department until all monies due from Licensee pursuant to this Agreement have been paid.

Licensee has the prerogative to include a promoter bump in addition to the base ticket price. All promoter bump fees over \$3.50 will have all amounts in excess of \$3.50 split 50% with Ticketmaster.

Park Department retains the right to make determination of ticket refunds for cause, which includes, but is not limited to, seats blocked by equipment when exchange for comparable location is not possible, failure of equipment or failure of performer(s) to go on stage within a reasonable time of the schedule provided by Licensee. Further, Park Department shall have no responsibility for refunds of ticket sales, and Licensee shall indemnify, hold Park Department harmless from any claims for refunds on ticket sales, provided, however gross receipts may be applied by Park Department to ticket refunds to the extent available in the event of cancellation or non-performance.

At the conclusion of the Event, Park Department will provide Licensee with a box office statement for tickets sold.

Notwithstanding the foregoing, Licensee agrees that Park Department will use reasonable efforts to conduct ticket sales through the box office. Licensee agrees that Park Department will not be liable to Licensee in the event the box office is unable to sell tickets for any reason.

Section 6. PERFORMANCE SECURITY. Licensee shall post a performance bond in form and substance satisfactory to Park Department and in an amount equal to the maximum receipts anticipated from ticket sales. Such performance bond shall be by a duly accredited bonding company and must be received prior to the disbursement of any draw. The terms of such bond will protect the right to refunds of ticket holders and the right to indemnify Park Department on claims for refunds of ticket holders.

Section 7. CANCELLATION OR NONPERFORMANCE. In the event that the contracted Event is canceled, does not occur for any reason other than the sole fault of Park Department, or Licensee fails to take possession of or use the Premises as herein agreed, Licensee forfeits the security deposit, which will be retained by Park Department as liquidated damages, not a penalty reflecting the time and efforts Park Department spent preparing for the Event. In addition, Licensee agrees to promptly pay any expenses incurred by Park Department in connection with the Event as of the date of cancellation (including non-cancellable expenses) and to indemnify Park Department for all claims for refunds by ticket holders.

Section 8. SET-UP AND PERFORMANCE. Licensee must provide sections of the Performance Rider pertaining to the set-up and performance to Park Department upon execution of this Agreement.

Licensee is responsible for employing all required and optional services. Required services include the following: stagehands, electricians, sound technicians, and spotlight operators. Optional services include assistance in the handling of baggage, scenery, supplies, or equipment

of Licensee. Licensee may contract with the Park Department to provide the above services upon written agreement provided Licensee has obtained written agreement from band management of negotiated Performance Rider items. Such services will be deducted from show settlement per the Foellinger Fee Schedule.

Park Department reserves the right to approve any person(s) employed or engaged by Licensee for purpose of handling, using, or operating any and all sound and/or light equipment and facilities. If Licensee uses any equipment owned by Park Department, then Licensee must hire qualified and experienced light and/or sound technician(s). All show power must be connected by either a Facility technician or a licensed electrician at the sole expense of Licensee and as directed by the Premises Theatre Manager.

Licensee agrees to remove from the Premises no later than 3:00 A.M. following the date of use, all goods, wares, properties, costumes and all other equipment and merchandise belonging to and/or used by Licensee in connection with its use of the Premises.

Section 9. SECURITY. Security and EMT is required for every Event. The amount and extent of required security will be determined by Park Department. All costs and expenses of providing security and EMT will be the responsibility of Licensee. Refer to Foellinger Fee Schedule for current rates. Additional security; including, but not limited to, overnight and fire watch may be added per Foellinger Fee Schedule.

Park Department reserves the right, through its manager or representative, to eject or cause to be ejected from the premises, any person or persons engaging in disruptive, belligerent or threatening conduct. Additionally, Park Department reserves the right to refuse admission to any person displaying the above behaviors or who appear intoxicated. This authority may be exercised through its manager, agents or police.

Section 10. TECHNICIANS/EQUIPMENT USE. Technical services will be charged per the Foellinger Fee Schedule.

Section 11. PROTECTION OF EGRESS. Sound cables, looms, or snakes must be placed in such a manner as to minimize barriers to public escape of the facility in the case of emergency. Placement must be approved by the Theatre Manager. Licensee should expect a snake run of a minimum of 250 feet; 300 feet is recommended.

Section 12. CONTROL OF PREMISES. During the course of the Event, Park Department does not relinquish the right to control the management of the Premises. Park Department reserves the right to enter the Premises and enforce all rules for the management and operation. Additionally, Park Department, through its designated representatives, may enter at any time for any reason and on any occasion (*i.e.* inclement weather). Further, if necessary, a fire inspector may be called by Park Department to inspect any Event at Licensee's expense.

When using the Premises, Licensee shall not permit chairs or removable seats to be placed or remain in passageways, and will keep all passageways clear at all times. Licensee, however, shall at its own expense, place watch people at exits or entrances as required by law or fire inspectors. At no time shall Licensee place its own or any additional locks on any portions of the Premises.

Licensee agrees to immediately notify Park Department of any dangerous condition on the Premises upon discovery. Licensee further agrees to protect all persons from injury or damage until such time as the condition is corrected. Licensee further agrees to warn all persons known to be upon the Premises of any and all dangers peculiar to Licensee's operation which are not known or obvious to such persons. Licensee shall indemnify and hold Park Department harmless for breach of this Section.

Section 13. DEFACEMENT OF PREMISES. Licensee shall not injure, mar, or deface the Premises in any way. This includes driving, or permit to be driven any nails, hooks, tacks, or screws in any part of the Premises, or make, or allow to be made, any alteration of any kind therein without specific approval in writing by Park Department. If the Premises is damaged, whether by an overt act or by negligence of Licensee, or by Licensee's agent, employee or employees, patrons or any person admitted to Premises by Licensee, Licensee will pay Park Department such sum as Park Department deems necessary to restore the Premises to its prior condition. Licensee hereby assumes full responsibility for the character, acts and conduct of all persons including its patrons, agents, or employees, admitted to the Premises by the consent of said Licensee, or by or with the consent of Licensee's employees or agents. Licensee agrees to hold Park Department harmless from any claim for damages because of the acts or neglect of any such persons.

Section 14. ALCOHOLIC BEVERAGES. Licensee shall not permit any alcoholic beverages to be brought onto the Premises except by the licensed house alcohol provider as determined by Park Department. Sales of all alcoholic beverages are by Park Department or its agent. Licensee shall be entitled to receive a promoter premium of \$2 per alcoholic beverage sold during the Event upon Settlement.

Should a performance be scheduled without an intermission, a "No Intermission Fee" of \$2,000 or ten percent (10%) of gross bar sales, whichever is greater, will be assessed to the Lessee as part of the final settlement.

The purpose of this fee is to offset lost concession and beverage revenue that would typically occur during intermission periods. The determination of projected gross bar sales shall be based on historical averages of per-capita concession revenue for comparable events and attendance levels.

Section 15. CONCESSIONS. No food and beverage concessions shall be permitted on the Premises without the specific written consent of the Board of Park Commissioners.

Section 16. LIMITATION OF LIABILITY. Except for Sections 20 and 22, in no event shall Park Department's liability in connection with this Agreement exceed the amount of money actually paid to Park Department pursuant to this Agreement, regardless of type or theory of claims or damages.

Section 17. PROGRAMS, SOUVENIRS AND MERCHANDISE. Licensee shall have the sole right to print and sell programs, souvenirs, and merchandise for the Event on its own behalf or as represented by contracted talent. Licensee shall pay all expenses in connection with on-site sales. Licensee shall pay Park Department a fee of 10% of gross sales for recorded material and 20% of gross sales for hard merchandise payable upon the completion of the Event.

Section 18. LIABILITY INSURANCE. Licensee, at its sole expense, shall obtain, maintain, and provide proof at all times during this Agreement a \$2,000,000 general liability insurance policy coverage for bodily injury and property damage claims covering the Event and provide a Certificate of Insurance ("COI") naming the City of Fort Wayne as "additional insured" and specifying the name of the event performer, date, time and venue. The COI is due at the time of the execution of this Agreement. To obtain a COI, contact your organization's liability insurance agent. The COI must be acceptable to the City of Fort Wayne in form and substance and must be received 30 days prior to the Event.

Section 19. ASSUMPTION OF RISK. Licensee, its officers, employees, agents, invitees, customers and guests assume all risk of loss to its property or equipment. Additionally, Licensee assumes all responsibility for supervising its officers, employees, agents, invitees, customers and guests while they are on the Premises.

Section 20. HOLD HARMLESS. Licensee agrees to indemnify, defend, and hold Park Department, its agents and employees, harmless from and against actual damages incurred by Park Department for any and all claims, liability, damages, loss and expenses (including attorney's fees and court costs) resulting from third-party claims for bodily injury or property damage arising out of the use of the facility by Licensee, Licensee's guests or invitees; provided, however, that Licensee shall not be liable for the gross negligence or willful misconduct of Park Department, its agents and/or its employees.

Park Department shall to indemnify, defend, and hold Licensee, its agents, volunteers, and employees, harmless from and against actual damages incurred for any and all claims, liability, damages, loss and expenses (including attorney's fees and court costs) resulting from third-party claims for bodily injury or property damage arising out of the use of the facility by Licensee, Licensee's guests or invitees which are the result of Park Department's gross negligence and/or willful misconduct.

The obligations contained in this section shall survive the expiration of this Agreement.

Section 21. COMPLIANCE WITH LAWS. Licensee agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances and all provisions required thereby, whether now existing or hereafter enacted, which are included and incorporated by reference herein, in the management and operation of the Facility and in Licensee's performance under this Agreement.

Pursuant to J.C. 22-9-1-10 and the Civil Rights Act of 1964, Licensee shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to the hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of such person's race, color, religion, sex, disability, national origin, handicap or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.

Licensee affirms under the penalties of perjury that Licensee does not knowingly employ an unauthorized alien. Licensee affirms under the penalties of perjury that Licensee has enrolled and is participating in the E-Verify program as defined in IC 22-5-1.7-3. Licensee agrees to provide documentation to the State of Indiana that Licensee has enrolled and is participating in the E-Verify

program. Additionally, Licensee is not required to participate if Licensee is self-employed and does not employ any employees. Park Department may terminate for default if Licensee fails to cure a breach of this provision no later than thirty (30) days after being notified by Park Department.

If Licensee fails to correct any violation of law, Park Department shall have the right to terminate the Agreement and immediately cancel the Event. Under this circumstance, Park Department will not be required to refund patrons their admission fee or for any loss that may be sustained by Licensee, its agents or employees.

Section 22. LICENSEE PROPERTY. Park Department assumes no responsibility for any personal property of Licensee, and Park Department is hereby expressly relieved and discharged from any and all liability for any loss, injury or damage to persons or property that may be sustained by reason of occupancy of the Premises or any part thereof under this Agreement; provided, however, that such damage to personal property is not caused by Park Department's gross negligence or willful misconduct. All watchmen or other protective service (other than security provided in Section 9) must be arranged for by special agreement with Park Department or independently by Licensee.

Section 23. COPYRIGHT COMPLIANCE. Licensee shall assume and be solely responsible for all costs actually incurred, including required license fees, arising from the use of patented, trademarked, franchised or copyrighted music, material, devices, processes or dramatic rights, used in connection with or incorporated in the Event. Licensee shall indemnify, defend and hold Park Department harmless from and against any losses, claims, damages, awards, penalties, injuries, or expenses incurred (including attorney's fees, court costs, and consequential damages) which arise from any third-party claim of an alleged infringement of copyright or any other violation of property rights arising out of the Event.

Section 24. ASSIGNMENT. Licensee shall not assign any interest in this License Agreement or otherwise transfer or sublicense the Premises or any part thereof or permit the use of the Premises to any party other than the party Licensee has contracted with, without written consent of Park Department.

Section 25. FORCE MAJEURE. If the Premises are rendered unsuitable for the conduct of the Event by reason of Force Majeure, Park Department and Licensee are released from their obligations as they pertain to the Event. "Force Majeure" shall mean fire or other casualty, earthquake, flood, act of God, epidemic or pandemic, strikes, work stoppages, or other labor disturbance, riots or civil commotions, war or other act of any foreign nation, power of government, or any other cause like or unlike any cause mentioned which is beyond the control of Park Department.

Section 26. GOVERNING LAW. This Agreement shall be governed by the laws of the state of Indiana. Licensee agrees that any dispute arising from or related to this Agreement shall be litigated in the state or federal courts having jurisdiction in Allen County, Indiana.

Section 27. DEFAULT. Should Licensee default in the performance of any of the terms and conditions of this Agreement, the facility manager or Park Department shall promptly notify Licensee of said default and permit Licensee a reasonable opportunity to cure. In the event that

Licensee does not promptly cure, the facility manager or Park Department may terminate the same, in which event Licensee shall be liable for the full amount of the rent provided herein. Any deposit made by Licensee shall be retained by Park Department and considered as liquidated damages.

Section 28. SEVERABILITY. If any provision of this Agreement shall be held or deemed to be inoperative, for whatever reason, by a court of competent jurisdiction, such circumstance shall not have the effect of rendering any other provisions contained herein invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or paragraphs contained in this Agreement shall not affect the remaining portions of this Agreement or any part thereof.

Section 29. MISCELLANEOUS. Any matters not herein expressly provided for shall be in the discretion of the Board of Park Commissioners or Park Department, and shall be in writing before effective, signed by each party to this Agreement and attached hereto as an Addendum. This Agreement covers the entire agreement between the Parties and shall be conclusive as to all terms addressed.

IN WITNESS WHEREOF, the Parties hereby execute this License Agreement as of the date and year first above written.

LICENSEE

By: _____
[Name], [Title]

Date: _____
[Address]

BOARD OF PARK COMMISSIONERS
Fort Wayne Park and Recreation

By: _____
Steve McDaniel, Director
Date: _____
Fort Wayne Park & Recreation Department
705 E. State Blvd.
Fort Wayne, IN 46805
Phone: (260) 427-6441



PROPOSED

FORT WAYNE PARK AND RECREATION DEPARTMENT FACILITY LICENSE AGREEMENT FOR USE OF FOELLINGER THEATRE BY A FORT WAYNE NON-PROFIT ORGANIZATION

This Facility License Agreement ("Agreement") for use of Foellinger Theatre is made and entered into this [DAY] day of [MONTH], 2026 by and between the City of Fort Wayne, Indiana, by its Board of Park Commissioners with its principal office located at 705 E. State Boulevard, Fort Wayne, Indiana 46805, and through its designated representative, hereinafter designated Fort Wayne Park and Recreation Department ("Park Department"), and, _____, hereinafter designated ("Licensee"), collectively referred to as ("Parties").

The Parties hereto, intending to be legally bound, and in consideration of the mutual covenants hereinafter contained, agree as follows:

Section 1. SCHEDULE. Park Department grants Licensee a temporary license to use, occupy and hold an event ("Event") at the Foellinger Theatre located at 3411 Sherman Boulevard, Fort Wayne, Indiana 46808, and its appurtenant facilities ("Premises"), commencing at [TIME], on dates listed below and terminating at 11:59 PM EST, on dates listed below, for concerts by:

[Parties and Dates]

Section 2. FEES, EXPENSES AND SETTLEMENT. Prior to the Event, Park Department will complete an estimated expense statement with Licensee. This estimate is for planning purposes only and all expenses will be charged at actual rates incurred per the attached Foellinger Fee Schedule.

Licensee shall pay Park Department the following fees including, but not limited to:

- A stage rental fee of \$4,200.00
- A per show day security and safety fee of \$3,300.00
- A daily house production staff fee of \$1,000.00
- A daily house staff fee of \$750
- A per show day cleaning fee of \$800.00
- A box office services fee of \$500.00

The purchase by Park Department of production labor, equipment rental, catering, or other goods and services on behalf of Licensee will be reimbursed to Park Department at cost at the time of settlement of fees. Settlement final amount becomes indisputable by the Licensee thirty (30) days after the settlement statement is emailed to Licensee.

Section 3. SECURITY DEPOSIT. Upon execution of this Agreement, Licensee shall pay a security deposit in the amount of \$2,100.00 per show date to Park Department as a guaranty against damages to the Premises and surrounding areas caused by performers and patrons. Upon breach of this Agreement, including without limitation a failure to return the Premises to its original condition, the Park Department may, at its option, use any or all of the security deposit for the payment of any amount which Park Department may in its reasonable estimate pay or become obligated to pay by reason of such breach, or to compensate Park Department for any loss or damage which Park Department may suffer by reason of such breach. If Park Department concludes that there is no breach, the security deposit or any balance shall be returned to Licensee with the net box office revenues disbursements within four (4) weeks after Licensee vacates the Premises.

Section 4. ACT CONTRACT. Licensee warrants and represents to have a valid and properly executed contract with the performers whose services form the basis to use the Premises. Licensee shall submit to Park Department a copy of said contract, including terms of payment, and all attachments including technical and hospitality requirements ("Performance Rider"), forty- five (45) days prior to the Event or at the time of the execution of this Agreement, at the discretion of Park Department.

Park Department retains the right to approve the Event under this Agreement. Licensee understands that no Event shall be held if Park Department objects on the grounds that the Event does not uphold to the advertising claims or there is a violation of Event content restrictions agreed to by both Patties at the time of the execution of this Agreement. At no times shall lewd or indecent actions, conduct, language, pictures or portrayals be permitted by Licensee or its contracted performers on the Premises.

Section 5. BOX OFFICE AND TICKET SALES. Licensee is required to use Park Department's current ticketing system, Ticketmaster, for any programs requiring paid admission. Park Department will be the exclusive provider of ticket sales and will provide ticket sales services through the following methods: online; by phone; in office; and through box office sales. Park Department requires fifty (50) complimentary seats without charge. One-hundred (100) complimentary tickets may be used by Licensee with no charge incurred. A facility fee of \$4.00 per complimentary ticket requested by Licensee outside of the One-Hundred (100) may be assessed by Park Department.

Licensee shall pay Park Department the following expenses in conjunction with ticket sales:

- A facility fee of \$4.00 per ticket sold;

The following fees will be assessed to all tickets sold on Ticketmaster.com

\$35.00 and below = \$2.90 per ticket fee

\$35.01 to \$55.00 = \$4.40 per ticket fee

\$55.01 and above= \$5.40 per ticket fee

All monies collected by the box office shall be held by Park Department until all monies due from Licensee pursuant to this Agreement have been paid.

Licensee has the prerogative to include a promoter bump in addition to the base ticket price. All promoter bump fees over \$3.50 will have all amounts in excess of \$3.50 split 50% with Ticketmaster.

Park Department retains the right to make determination of ticket refunds for cause, which includes, but is not limited to, seats blocked by equipment when exchange for comparable location is not possible, failure of equipment or failure of performer(s) to go on stage within a reasonable time of the schedule provided by Licensee. Further, Park Department shall have no responsibility for refunds of ticket sales, and Licensee shall indemnify, hold Park Department harmless from any claims for refunds on ticket sales, provided, however gross receipts may be applied by Park Department to ticket refunds to the extent available in the event of cancellation or non-performance.

At the conclusion of the Event, Park Department will provide Licensee with a box office statement for tickets sold.

Notwithstanding the foregoing, Licensee agrees that Park Department will use reasonable efforts to conduct ticket sales through the box office. Licensee agrees that Park Department will not be liable to Licensee in the event the box office is unable to sell tickets for any reason.

Section 6. PERFORMANCE SECURITY. Licensee shall post a performance bond in form and substance satisfactory to Park Department and in an amount equal to the maximum receipts anticipated from ticket sales. Such performance bond shall be by a duly accredited bonding company and must be received prior to the disbursement of any draw. The terms of such bond will protect the right to refunds of ticket holders and the right to indemnify Park Department on claims for refunds of ticket holders.

Section 7. CANCELLATION OR NONPERFORMANCE. In the event that the contracted Event is canceled, does not occur for any reason other than the sole fault of Park Department, or Licensee fails to take possession of or use the Premises as herein agreed, Licensee forfeits the security deposit, which will be retained by Park Department as liquidated damages, not a penalty reflecting the time and efforts Park Department spent preparing for the Event. In addition, Licensee agrees to promptly pay any expenses incurred by Park Department in connection with the Event as of the date of cancellation (including non-cancellable expenses) and to indemnify Park Department for all claims for refunds by ticket holders.

Section 8. SET-UP AND PERFORMANCE. Licensee must provide sections of the Performance Rider pertaining to the set-up and performance to Park Department upon execution of this Agreement.

Licensee is responsible for employing all required and optional services. Required services include the following: stagehands, electricians, sound technicians, and spotlight operators. Optional services include assistance in the handling of baggage, scenery, supplies, or equipment

of Licensee. Licensee may contract with the Park Department to provide the above services upon written agreement provided Licensee has obtained written agreement from band management of negotiated Performance Rider items. Such services will be deducted from show settlement per the Foellinger Fee Schedule.

Park Department reserves the right to approve any person(s) employed or engaged by Licensee for purpose of handling, using, or operating any and all sound and/or light equipment and facilities. If Licensee uses any equipment owned by Park Department, then Licensee must hire qualified and experienced light and/or sound technician(s). All show power must be connected by either a Facility technician or a licensed electrician at the sole expense of Licensee and as directed by the Premises Theatre Manager.

Licensee agrees to remove from the Premises no later than 3:00 A.M. following the date of use, all goods, wares, properties, costumes and all other equipment and merchandise belonging to and/or used by Licensee in connection with its use of the Premises.

Section 9. SECURITY. Security and EMT is required for every Event. The amount and extent of required security will be determined by Park Department. All costs and expenses of providing security and EMT will be the responsibility of Licensee. Refer to Foellinger Fee Schedule for current rates. Additional security; including, but not limited to, overnight and fire watch may be added per Foellinger Fee Schedule.

Park Department reserves the right, through its manager or representative, to eject or cause to be ejected from the premises, any person or persons engaging in disruptive, belligerent or threatening conduct. Additionally, Park Department reserves the right to refuse admission to any person displaying the above behaviors or who appear intoxicated. This authority may be exercised through its manager, agents or police.

Section 10. TECHNICIANS/EQUIPMENT USE. Technical services will be charged per the Foellinger Fee Schedule.

Section 11. PROTECTION OF EGRESS. Sound cables, looms, or snakes must be placed in such a manner as to minimize barriers to public escape of the facility in the case of emergency. Placement must be approved by the Theatre Manager. Licensee should expect a snake run of a minimum of 250 feet; 300 feet is recommended.

Section 12. CONTROL OF PREMISES. During the course of the Event, Park Department does not relinquish the right to control the management of the Premises. Park Department reserves the right to enter the Premises and enforce all rules for the management and operation. Additionally, Park Department, through its designated representatives, may enter at any time for any reason and on any occasion (*i.e.* inclement weather). Further, if necessary, a fire inspector may be called by Park Department to inspect any Event at Licensee's expense.

When using the Premises, Licensee shall not permit chairs or removable seats to be placed or remain in passageways, and will keep all passageways clear at all times. Licensee, however, shall at its own expense, place watch people at exits or entrances as required by law or fire inspectors. At no time shall Licensee place its own or any additional locks on any portions of the Premises.

Licensee agrees to immediately notify Park Department of any dangerous condition on the Premises upon discovery. Licensee further agrees to protect all persons from injury or damage until such time as the condition is corrected. Licensee further agrees to warn all persons known to be upon the Premises of any and all dangers peculiar to Licensee's operation which are not known or obvious to such persons. Licensee shall indemnify and hold Park Department harmless for breach of this Section.

Section 13. DEFACEMENT OF PREMISES. Licensee shall not injure, mar, or deface the Premises in any way. This includes driving, or permit to be driven any nails, hooks, tacks, or screws in any part of the Premises, or make, or allow to be made, any alteration of any kind therein without specific approval in writing by Park Department. If the Premises is damaged, whether by an overt act or by negligence of Licensee, or by Licensee's agent, employee or employees, patrons or any person admitted to Premises by Licensee, Licensee will pay Park Department such sum as Park Departments deems necessary to restore the Premises to its prior condition. Licensee hereby assumes full responsibility for the character, acts and conduct of all persons including its patrons, agents, or employees, admitted to the Premises by the consent of said Licensee, or by or with the consent of Licensee's employees or agents. Licensee agrees to hold Park Department harmless from any claim for damages because of the acts or neglect of any such persons.

Section 14. ALCOHOLIC BEVERAGES. Licensee shall not permit any alcoholic beverages to be brought onto the Premises except by the licensed house alcohol provider as determined by Park Department. Sales of all alcoholic beverages are by Park Department or its agent. Licensee shall be entitled to receive a promoter premium of \$2 per alcoholic beverage sold during the Event upon Settlement.

Section 15. CONCESSIONS. No food and beverage concessions shall be permitted on the Premises without the specific written consent of the Board of Park Commissioners.

Section 16. LIMITATION OF LIABILITY. Except for Sections 20 and 22, in no event shall Park Department's liability in connection with this Agreement exceed the amount of money actually paid to Park Department pursuant to this Agreement, regardless of type or theory of claims or damages.

Section 17. PROGRAMS, SOUVENIRS AND MERCHANDISE. Licensee shall have the sole right to print and sell programs, souvenirs, and merchandise for the Event on its own behalf or as represented by contracted talent. Licensee shall pay all expenses in connection with on-site sales. Licensee shall pay Park Department a fee of 10% of gross sales for recorded material and 20% of gross sales for hard merchandise payable upon the completion of the Event.

Section 18. LIABILITY INSURANCE. Licensee, at its sole expense, shall obtain, maintain, and provide proof at all times during this Agreement a \$2,000,000 general liability

insurance policy coverage for bodily injury and property damage claims covering the Event and provide a Certificate of Insurance ("COI") naming the City of Fort Wayne as "additional insured" and specifying the name of the event performer, date, time and venue. The COI is due at the time of the execution of this Agreement. To obtain a COI, contact your organization's liability insurance agent. The COI must be acceptable to the City of Fort Wayne in form and substance and must be received 30 days prior to the Event.

Section 19. ASSUMPTION OF RISK. Licensee, its officers, employees, agents, invitees, customers and guests assume all risk of loss to its property or equipment. Additionally, Licensee assumes all responsibility for supervising its officers, employees, agents, invitees, customers and guests while they are on the Premises.

Section 20. HOLD HARMLESS. Licensee agrees to indemnify, defend, and hold Park Department, its agents and employees, harmless from and against actual damages incurred by Park Department for any and all claims, liability, damages, loss and expenses (including attorney's fees and court costs) resulting from third-party claims for bodily injury or property damage arising out of the use of the facility by Licensee, Licensee's guests or invites; provided, however, that Licensee shall not be liable for the gross negligence or willful misconduct of Park Department, its agents and/or its employees.

Park Department shall to indemnify, defend, and hold Licensee, its agents, volunteers, and employees, harmless from and against actual damages incurred for any and all claims, liability, damages, loss and expenses (including attorney's fees and court costs) resulting from third-party claims for bodily injury or property damage arising out of the use of the facility by Licensee, Licensee's guests or invites which are the result of Park Department's gross negligence and/or willful misconduct.

The obligations contained in this section shall survive the expiration of this Agreement.

Section 21. COMPLIANCE WITH LAWS. Licensee agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances and all provisions required thereby, whether now existing or hereafter enacted, which are included and incorporated by reference herein, in the management and operation of the Facility and in Licensee's performance under this Agreement.

Pursuant to J.C. 22-9-1-10 and the Civil Rights Act of 1964, Licensee shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to the hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of such person's race, color, religion, sex, disability, national origin, handicap or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.

Licensee affirms under the penalties of perjury that Licensee does not knowingly employ an unauthorized alien. Licensee affirms under the penalties of perjury that Licensee has enrolled and is participating in the E-Verify program as defined in IC 22-5-1.7-3. Licensee agrees to provide documentation to the State of Indiana that Licensee has enrolled and is participating in the E-Verify program. Additionally, Licensee is not required to participate if Licensee is self-employed and does

not employ any employees. Park Department may terminate for default if Licensee fails to cure a breach of this provision no later than thirty (30) days after being notified by Park Department.

If Licensee fails to correct any violation of law, Park Department shall have the right to terminate the Agreement and immediately cancel the Event. Under this circumstance, Park Department will not be required to refund patrons their admission fee or for any loss that may be sustained by Licensee, its agents or employees.

Section 22. LICENSEE PROPERTY. Park Department assumes no responsibility for any personal property of Licensee, and Park Department is hereby expressly relieved and discharged from any and all liability for any loss, injury or damage to persons or property that may be sustained by reason of occupancy of the Premises or any part thereof under this Agreement; provided, however, that such damage to personal property is not caused by Park Department's gross negligence or willful misconduct. All watchmen or other protective service (other than security provided in Section 9) must be arranged for by special agreement with Park Department or independently by Licensee.

Section 23. COPYRIGHT COMPLIANCE. Licensee shall assume and be solely responsible for all costs actually incurred, including required license fees, arising from the use of patented, trademarked, franchised or copyrighted music, material, devices, processes or dramatic rights, used in connection with or incorporated in the Event. Licensee shall indemnify, defend and hold Park Department harmless from and against any losses, claims, damages, awards, penalties, injuries, or expenses incurred (including attorney's fees, court costs, and consequential damages) which arise from any third-party claim of an alleged infringement of copyright or any other violation of property rights arising out of the Event.

Section 24. ASSIGNMENT. Licensee shall not assign any interest in this License Agreement or otherwise transfer or sublicense the Premises or any part thereof or permit the use of the Premises to any party other than the party Licensee has contracted with, without written consent of Park Department.

Section 25. FORCE MAJEURE. If the Premises are rendered unsuitable for the conduct of the Event by reason of Force Majeure, Park Department and Licensee are released from their obligations as they pertain to the Event. "Force Majeure" shall mean fire or other casualty, earthquake, flood, act of God, epidemic or pandemic, strikes, work stoppages, or other labor disturbance, riots or civil commotions, war or other act of any foreign nation, power of government, or any other cause like or unlike any cause mentioned which is beyond the control of Park Department.

Section 26. GOVERNING LAW. This Agreement shall be governed by the laws of the state of Indiana. Licensee agrees that any dispute arising from or related to this Agreement shall be litigated in the state or federal courts having jurisdiction in Allen County, Indiana.

Section 27. DEFAULT. Should Licensee default in the performance of any of the terms and conditions of this Agreement, the facility manager or Park Department shall promptly notify Licensee of said default and permit Licensee a reasonable opportunity to cure. In the event that Licensee does not promptly cure, the facility manager or Park Department may terminate the same, in which event Licensee shall be liable for the full amount of the rent provided herein. Any deposit

made by Licensee shall be retained by Park Department and considered as liquidated damages.

Section 28. SEVERABILITY. If any provision of this Agreement shall be held or deemed to be inoperative, for whatever reason, by a court of competent jurisdiction, such circumstance shall not have the effect of rendering any other provisions contained herein invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or paragraphs contained in this Agreement shall not affect the remaining portions of this Agreement or any part thereof.

Section 29. MISCELLANEOUS. Any matters not herein expressly provided for shall be in the discretion of the Board of Park Commissioners or Park Department, and shall be in writing before effective, signed by each party to this Agreement and attached hereto as an Addendum. This Agreement covers the entire agreement between the Parties and shall be conclusive as to all terms addressed.

IN WITNESS WHEREOF, the Parties hereby execute this License Agreement as of the date and year first above written.

LICENSEE
(Attach 501c3)

By: _____
[Name], [Title]

Date: _____
[Address]

BOARD OF PARK COMMISSIONERS
Fort Wayne Park and Recreation

By: _____
Steve McDaniel, Director
Date: _____
Fort Wayne Park & Recreation Department
705 E. State Blvd.
Fort Wayne, IN 46805
Phone: (260) 427-6441