

# Entertainment Law New Jersey



*Entertainment Law  
Lecture Series*

**MUSIC, FILM & TELEVISION**

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# MUSIC

## I. HOW TO ACQUIRE CLIENTS

1. **Advertising in trade publications/annuals.** (A)
  - a. Billboard
  - b. Music Connection
  - c. Aquarian Newspaper
  - d. Time Out New York
  - e. Steppin' Out
  - f. Village Voice
  - g. Other Music Industry specific publications
  - h. Billboard's Touring Guide
  - I. Musician Magazine's Atlas
  - j. Recording Industry Source Book
  - k. Pollstar's Annual Directory
  - l. Other Annual Trade magazine issues.
  
2. **Website Creation** - (Do search engine optimization)
  
3. **Web Presence**
  - a. Same industry publications have website directories usually.
  - b. Other website listing services. Simply *google* "Music Entertainment Lawyer" and you get a list of attorneys and places you should be. (B)
  
4. **Trade Events**  
 Each year there are numerous Music Industry Trade Events. Some of the bigger ones are SXSW, MIDEM, CMJ, BillBoard Events, etc... (A) (C)

## II. RETAINER AGREEMENT

The music industry employs several types of agreements to retain the service of a lawyer. Understand that a term agreement is not generally accepted, that is, an agreement that locks a client into using you as his only attorney. The forms are:

1. Hourly fee retainer agreement
2. Percentage retainer agreement (usually 7% of gross income)
3. Finders fees (used in conjunction with 1 and 2 above or independently through a third party payee clause in the ultimate contract)

## III. CLIENT'S NEEDS

1. **Intra-Band / Team Issues.**
  - a. ***Business formation.*** Every business has a legal structure. Which you chose for your client is up to you and the client. The options are as follows:
    - **Sole proprietorship.** In a sole proprietorship, you own and operate the band by yourself and are personally liable for business debts. You pay the other band members, either as employees or as independent contractors. You don't file separate business tax return. You report business income on your

individual tax return. (This type of arraignment is referred to as a “pass-through” entity because the income passes through the business to the owners before it is taxed.)

- **Partnership.** If you form a partnership, your band splits the profits and losses among the band members, and each member is personally liable for all partnership debts. The partnership is also a pass-through tax entity (see above).
- **Limited liability company (LLC).** To form an LLC, your band must file papers with the state government. The LLC operates like a partnership—profits and losses are shared, and income is reported on each partner’s individual tax return. But, unlike a partnership, each band member is shielded from personal liability for many business debts— a legal theory knows as “limited liability.”
- **Corporation.** To create a corporation, the band must file papers with the state government. Your band will have to file a corporate tax return (and pay taxes at corporate tax rates). (A corporation is not a pass-through entity.) The band members (who are shareholders in the corporation) have limited liability for band-related debts. **(D)**

By default, most bands are partnerships— an informal business entity that’s easy to form and manage. Since your client’s band is likely to be a partnership I have presented a model band partnership agreement (BPA). **(E)**

b. **Protection**

I. *Trademarks*

- ii. *Copyrights* - You will hear your client say he has “copyright” in a song or they will ask you to copyright their song, music or the like. When its done, it means the musician, as the author of the song, is protected under federal copyright laws. These laws protect the creators of music, literature, visual arts, or other art forms. The creator of a song is the original copyright owner. However, over time the copyright may be bought or sold, which transfers ownership of the rights to the song to other people. For example, Michael Jackson bought and his estate currently owns copyright in many Beatles songs. Copyright literally refers to the “right to copy.” The owner of a song controls this right (as well as a number of other rights). The owner grants others permission to use the song and can sue anyone who uses the song without permission. With one important exception, (works made for hire) the first owner of a song is the songwriter (the “author” under copyright law). The songwriter may then sell the copyright to a music publisher in return for cash payments and continuing royalties. In this way, a song copyright is like other forms of property: It can be bought and sold. When there is more than one writer, there are special rules regarding dividing income and selling song copyrights. These are complicated “joint ownership” rules. **(F)**

c. ***Management Agreement***

A manager (a/k/a personal manger) secures opportunities for earning money, develops a career plan for the band, acts as a liaison between record companies and the band, and shields the band from business pressures. When a manager is doing everything right, all things happen. But when a manger is not effective, it could ruin a bands career.

The arrangement between the manager and the band is known as the management agreement. A band’s arrangement with the manager is almost always exclusive. That is, you can sign with only one manger at a time. Managers, on the other hand, can, and often do, represent more than one band. This can create what we know as “conflicts of interests.” (G)

The manager’s compensation (commission) is negotiated at the beginning of the relationship between the band and the manager. Most managers earn a commission of between 15% and 25% (15% to 20% is most common) of the band’s income after certain deductions have been subtracted. Many management agreements state that the commission is a percentage of “gross revenues,” which is slightly misleading. The term “gross revenues” often refers to total income with no deductions taken out. However, in management agreements with bands, the term “gross revenues” often refers to band income after deductions.

A personal manger is generally one person. However, sometimes a manager works for a management company that consists of many personal mangers. If a band signs with a management company, it can preserve its relationship with an individual manager through a contract provision known as a “key person” provision. (H) &(I)

2. **External Issues**

- a. “Shopping”
- b. Production Deals
- c. Record / Distribution Contracts (J), (K) &(L)

**IV. OTHER ISSUES & CONTRACTS**

1. Merchandise
2. Touring
3. Music Video
4. Manufacturing
5. Producers Agreements

**V. MUSIC PUBLISHING**

1. ***Mechanical royalties:*** Each time a song is reproduced on a recording, whether on a CD or as a digital download, the song owner is entitled to a payment from the company doing the reproduction—usually the record company. (Digital downloads are officially referred to as digital permanent downloads or DPDs.) This payment is called a mechanical royalty because it’s paid each time the song is mechanically reproduced (as opposed to being performed). Federal law has established a uniform mechanical royalty, which is currently 9.1 cents per copy of the song. Therefore, if 100 copies of a song are pressed (or downloaded), the song owner is entitled to approximately \$9.10.

2. **Music publisher:** A music publisher is a company that owns song copyrights. A music publisher will control how a song is used and collect money from people who sell, perform, or modify the song. A songwriter either sells the songs to an established music publisher or creates his or her own music publishing company. A music publisher acquires ownership of a song copyright by signing a music publishing agreement with the songwriter. Usually the music publishing agreement provides for the songwriter to continue receiving income as the song earns money. The songwriter's portion usually ranges from 60% to 75% of the total song income.
3. **Performance royalties:** Every time a song is played on the radio, in live concert, in a business establishment, on television, or on a website, the party playing the song must pay for the performance. Radio and television stations must pay for the right to play a song. How much is paid? As a general rule, FM or AM radio performances result in payments between five cents and 15 cents per play per song, depending on the station's signal power (how far it broadcasts), advertising revenues, and audience size. When a song is played on a national television program such as *Saturday Night Live*, a songwriter receives between \$5 and \$9 per individual television station broadcasting the song (again depending on the broadcast signal and size of the audience). The music publisher does not collect this money directly. It's collected by the performing rights organizations, who pass it on to the music publisher and songwriter. For this reason, every music publisher and songwriter must affiliate with a performing rights organization, so that the performing rights organization knows what songs to collect royalties for and who should receive those royalties.
4. **Performance rights organization:** An organization that monitors radio and television stations, nightclubs, websites, and other entities that play music, collects royalties from these places, and pays the royalties to the appropriate music publishers. The three performance rights organizations are BMI, ASCAP, and SESAC. All music publishers must register with a performance rights organization so that the performance rights organization knows which songs are published by its affiliated publishers, and thus knows who should receive royalties it collects. Performing rights organizations also collect and distribute money from streaming non-interactive webcasters (a non interactive webcast is one in which listeners cannot select the songs). These nonprofit organizations collect fees from U.S. radio and TV stations, as well as other establishments where music is played, such as concert halls, clubs, clothing stores, taverns, and restaurants. The money is then distributed to songwriters and music publishers who have registered with these organizations. A songwriter can affiliate with only one of these organizations. One of the many quirky rules of music publishing is that performance royalties are not paid in full to music publishers. BMI and ASCAP generally divide performance royalties earned by a song in half and pay half to the music publisher and half to the songwriter. This system ensures that songwriters will receive income directly from performances and not have to wait while it is filtered through the music publisher.
5. **Sync licenses:** A song earns money if it is used in a movie or television commercial. The copyright law provides for a special payment when the song is synchronized (or linked) with a moving image. There are no fixed fees for this synchronization right, and usually the music publisher negotiates a fee and signs an agreement known as a "sync license."

## VI. FUTURE OF MUSIC - DIGITAL WORLD “MUSIC 3.0”

The History of the music business can be broken down into five distinct stages. Each stage is readily apparent, although exact beginning and ending may not be. In order to understand where we are now, and where the future of music is leading us, it is important to look briefly at the other stages to spot changes and the new opportunities that present themselves.

### 1. Music 1.0: *Beginnings of Music Business*

Here the record label holds all the power. The artist is isolated from the fans. Radio is the key element to hits. Artist is provided with multiple release opportunities for long term development. Singles are key but the album makes more money.

ARTIST → RECORD COMPANY → RECORD STORE → CONSUMER

ARTIST → RECORD COMPANY → RADIO → CONSUMER

ARTIST → RECORD COMPANY → INDY PROMOTION → RADIO → CONSUMER

### 2. Music 1.5: *Enter Big Business*

It's about 1982, CD's are new, videos are new and record companies are seeing huge profits with the end user reacquiring their record collection on CD. Here, major labels are owned by conglomerates. Quarterly profits take precedence over art. Many albums are jammed with filler songs that follow only one hit. MTV is created and has a significant role in record sales. Image becomes more important than art.

### 3. Music 2.0: *Digital World*

It's about 1994 and the first MP3 is used, although no one was aware of what was going on at the time. This first use would be the nuclear bomb that changed the music industry and brought big business to devastation. Digital music arrives. Peer to peer music pirating arrives. Digital music trading begins. CD ripping/burning/sharing takes huge chunks out of record company sales while the record companies sit around not knowing what to do.

### 4. Music 2.5: *Paying for Digital Music*

Music industry woke up and digital music is monetized. (Metallica is a huge force in making this happen but they took a lot of crap for it at the time.) Sales start to focus on singles again, without an album put behind it as filler. Artist management takes on new roles. Diversity grows by leaps and bounds. Apple's iTunes provides the business model for the sale of digital music when Napster drops the ball. Record labels, having lost money from sales of CD's and the like, seek to sign artists to “360” deals, where the record label shares in the income from all income streams including publishing, merchandise and touring. Labels become like artist managers, getting a piece of all the artist makes.

### 5. Music 3.0: *Artist - Consumer Contact*

This is where we are, and are going more and more in the future. It is where the Artist has direct contact and communication with his fans. There are no more middlemen. Direct sales can be made from the artist to the fan. Artist does not need record company contracts, dollars, manufacturing or promotion to move its product to the fan but uses direct marketing.

This results in a stratified audience with so very many options to choose from since the record companies are no longer needed to filter what you hear and don't hear.

ARTIST → FAN

In M3.0 singles are more important than albums. Album filler is rejected. The audience has a shorter attention span. Highly specific targeted demographic is developed and stratified tastes are created.

# TELEVISION & FILM

## I. HOW TO ACQUIRE CLIENTS

### 1. Advertising in trade publications/annuals/websites.

- a. Backstage.com
- b. Ross Reports Television & Film
- c. Henderson's Casting Director's Guide
- d. The Personal Managers Directory
- e. New York Agencies
- f. Village Voice
- g. The Agencies: What the Actor Needs to Know
- h. Casting Director Guide
- i. Theatrical Index
- j. Variety ([www.variety.com](http://www.variety.com))
- k. Hollywood Reporter ([www.hollywoodreporter.com](http://www.hollywoodreporter.com))
- l. Playbill
- m. Dramatics Magazine
- n. Season Overview
- o. New York Times

### 2. Associate with Agents

Get a list of Agents from the "Ross Reports" guides or from the annual issue of Variety and send each a blanket letter advertising your practice and that you welcomes referrals from the agent's clients when they need this type of specific legal work in the Film and Television industry.

### 3. Attend Industry Film Events

- a. Sundance Film Festival
- b. Tribeca Film Festival
- c. Cannes Film Festival
- d. Dubia Film Festival

## II. GETTING STARTED

By the time an actor comes to you they should already have the "getting started" steps all completed, however, here is just a short recital of what is needed.

1. **Picture.** Headshots and other locations and "style" pictures. Picture is "IT." It is what first sells and must show you for who you are. Duplication must be done.
2. **Resume.** Is an outline of your experience and training and should always accompany your headshot. Staples the 8x10 resume to the back of your photo or print on each side. You may also elect to use the "photo resume." The resume should include your name, union affiliations, credits and the like. **(M)**
3. **Video.** If your client has done some work in film or TV already, he may have some film to attach. This video should be a DVD and be about one minute of the segments of film and

TV that the client has been in. The client should clearly “title” on the screen where each is from and the year of production. If the client has not done any work yet in the public domain, then they can create a DVD demo of about the same length to showcase their talent and acting abilities. Another common form for use is the CD for voice over or announcer style actors. Finally, the actor should always be prepared with mp4 type internet clips to send to a casting director immediately should he/she demand same.

#### IV. PROFESSIONAL ORGANIZATIONS

To grow their network, you should advise clients to join any number of professional organizations that might aid them in getting jobs. As an attorney, you may wish to join or affiliate with as many of these organizations as you can. While not all have a place for us attorneys, you may want to offer lecturing their membership or “free legal consultations” to their membership as a perk. This may put you in contact with many more *potential* clients. These organizations are as follows:

1. National Academy of Television Arts and Sciences ([www.nyemmys.org](http://www.nyemmys.org))
2. New York Women in Film & TV ([www.nywift.org](http://www.nywift.org)) and Women in Film ([www.wif.org](http://www.wif.org))
3. Women in Theater
4. The Lambs (Oldest theatrical club in America)
5. Episcopal Actors Guild
6. Hispanic Organization of Latin Actors (HOLA)

#### V. TALENT AGENTS

A Talent Agent SELLS your actor/client. Therefore, it is your job to work with the Agent when discussing deals and options for your client. Usually the Agent will get the work and then forward the contract over to you for review.

1. **Attorney as Agent.** Despite all the stories you hear about the powerful superagent: The agent does not get the client the job. It’s the client that gets the job. Agents find out about jobs through their long-established contacts or relationships with producers, directors, and casting directors; via the Internet; or through descriptions supplied (at some cost) by Breakdown Services, Ltd. and its competitors. Agents then try to find clients who are right for the roles being cast. The agent only opens the door. When the client gets the job, or usually the “offer,” the attorney comes in and seals the deal. Some times, attorneys can act as agents for their clients. If they do, they must understand the role of the agent. An agent can submit you, by sending your picture and résumé (that’s called “hard copy”) or electronically, via e-mail, to the person or persons casting the project. If the person to whom your client’s name is submitted agrees to see you, the agent can then arrange an appointment for an interview or an audition. If the client gets the job, the agent/attorney may then negotiate salary, billing, and other terms of the agreement (if it is an “over scale” job, meaning it pays about union scale). For handling all of these arrangements, the agent will usually be entitled to 10 percent of the actors earnings for that job. Agents get paid after the actor is been paid. Agents work only on commission. The legal commission an agent may charge a client is 10 percent. As attorneys, we can charge for an hourly fee for the work that we do. Depending on the role that may be more or less than what an agent would make with his 10%.

2. **Attorney adverse to his/her client's Agent (Know what *they* know)**

The following are things an attorney needs to know about how agents work and what their clients can expect as “normal” from their relationship with their agents. Knowing these things give the attorney the framework to then know when the agent is complying with industry standard rules or when he has gone too far or is non compliant and your client is being hurt.

Talent agencies are doubly regulated: They are licensed by the states in which they operate, and they are required to sign franchise agreements with Actors' Equity Association (AEA) and American Federation of Television and Radio Artists (AFTRA), the unions in which they endeavor to find work for their clients. To obtain a franchise, the agent must have a certain amount of previous experience and an excellent reputation in the business. The franchise agreement permits an agent to submit clients for work in theater, television, and commercials.

Until recently, the Screen Actors Guild (SAG) also required franchise agreements with agents. However, during the 2002 franchise agreement negotiations, agents and the union were unable to agree on terms. As a result, a number of agents currently offer general service agreements to performers they represent for motion pictures. In April 2007, the Guild took its first steps in a new attempt to regulate Hollywood agents.

Some talent agencies specialize. For example, an office may work exclusively on commercials. Other offices, usually those with several sub-agents, are active in all fields. The majority of agencies work only with signed clients, a select number of performers whose work they know very well and whose names and credentials they submit for all jobs that might be right for these actors. Other agencies handle only freelance talent. They will submit the name of any performer whose work they know, for any job they think the actor can handle. As freelancers, these actors have not signed with any other agencies for that field of work. There are also agencies that work with both freelance and signed clients. When none of their signed clients is suitable for a role they suggest freelance performers whose work they know.

A performer may sign with only one agent at a time in a particular field such as commercials. That same performer may then sign with another office for legitimate theater and TV if the office is large and active in all areas, a performer may be represented by three people within the same agency. If you hear an actor say, “I'm with William Morris across the board,” that means the performer has a contract with a large, powerful agency and is represented by its staff in all areas.

Once your client has signed with an agent, he cannot accept “go-sees,” or audition calls, from other agencies. He may, and indeed should, continue to seek work on his own, but always refer any contacts he makes to the agent with whom he has signed.

Agents encourage even signed clients to keep track of the people they have met, and occasionally send them reminders to that effect, as part of their business. Many agents also let their clients know they should stay in touch.

## VI. UNIONS

Professional actors belong to three unions, listed below. These three are members of an umbrella organization, the Associated Actors and Artistes of America, known as the “Four A’s,” chartered by the AFL-CIO.

1. **Actors’ Equity Association (AEA, or just “Equity”)** - Equity has jurisdiction over performers and stage managers in live theater. ([www.actorsequity.org](http://www.actorsequity.org))
2. **Screen Actors Guild (SAG)** - SAG covers appearances on film, some areas of what remains of work on tape, and some commercials. ([www.sag.org](http://www.sag.org))
3. **American Federation of Television and Radio Artists (AFTRA)** - AFTRA’s jurisdiction includes live and taped television shows, soap operas, cable, commercials, radio and recordings, as well as emerging areas of the new media. In addition to actors, singers, and dancers, AFTRA’s membership includes announcers, disc jockeys, talk show hosts, stunt people, sportscasters, and news persons. ([www.aftra.org](http://www.aftra.org))

### a. **What the Unions Do?:**

Like other unionized industries (sanitation workers, bus drivers, airline pilots), actors (and singers, dancers, announcers, stunt people, sportscasters, and news persons) have found that by belonging to a union they gain a measure of clout. Through the process known as collective bargaining, representatives of performers (unions) and employers (producers, networks, and advertising agencies) arrive at agreements regarding performers’ wages and working conditions. The resulting contracts establish the minimum salaries, or scale payments, for performances on stage, film, records, television cable or radio for a stated length of time usually these agreements are for a period of three years

“Wireless,” the “Internet” and everything that comes under the heading a of New Media has yet to be negotiated. As neither the employers nor the artists have any idea how broadcasting or narrow-casting (which implies that programming also called *content* may be delivered to a specific audience, selected for certain attributes) will deliver program material, or how they will be able to measure what anybody is looking at, both sides have agreed to freeze contracts for two years, to gain some insight as to how the pieces may fit together.

Other agreements cover what is known as non-theatrical employment, such as industrial shows, educational or documentary films, and material recorded for purposes other than commercial broadcast. These are negotiated separately.

Today’s union members are the beneficiaries of all the gains their predecessors risked their careers to obtain. The high unemployment rate notwithstanding, union scale would appear to be acceptable compensation: \$126 for extras, \$759 for principals per day’s work in film; \$737 for principals on a thirty-minute soap opera; \$844 for an hour-long soap; \$567.10 for shooting a TV commercial; \$1,465 a week for a Broadway show. With health insurance, pension coverage, and cost-of-living adjustments (COLAS), all history-making benefits when they were first achieved—it’s easy for newcomers to think that there’s nothing more a union can “do” for them. After all, their representative, not a union, will negotiate any over-scale payment.

**b. How the Unions Work?:**

Equity, SAG, and AFTRA are unique in that they are governed by the members. Their specific structures differ, but essentially they are run by councils, or boards of directors, whose elected members are performers who serve with no remuneration. Policies determined by these bodies in weekly or monthly meetings are then executed by a staff of paid, professional executives.

Contract demands are formulated by volunteer committees made up of performers active within each field. Their proposals for wages and working conditions are presented to the union's highest governing body—the convention or meeting of elected delegates and the local and national boards—where they are accepted, rejected, or modified. The executive staff then attempts to negotiate the union demands with representatives of management.

Actors' Equity, AFTRA, and SAG customarily negotiate three-year agreements. Because so many contracts are needed to cover all areas of employment, the unions inevitably have to “stagger” the contracts, so that they expire on different dates. Therefore, different contracts come up for negotiation every year. During these negotiations, the unions try to make their contract demands reflect the needs expressed to them by their members working in each job category.

The unions cannot get jobs for performers. What unions can do is protect all performers in their relations with employers. By negotiating and then policing their contracts, the unions guarantee minimum salaries and the conditions under which performers will work. Union reps regularly visit studios, production centers, and location shoots to make certain that contract provisions are observed and that union members are being employed. It is our job as attorneys to monitor those agreements and conditions as well and step in when a union representative may not be taking the action she should.

Performer safety is also a concern. As the so-called “reality” shows proliferate, even soaps search for outrageous situations and dangerous, exotic locales in which to place their main characters. Pressure to be a “good guy” and do your own stunts can be heavy, though trained persons are required to be on the set at all times to perform those feats.

Field reps also deal with member complaints about the day's work. These are handled with absolute secrecy as to the identity of the complainant. No actor who voices a legitimate complaint need ever fear reprisals.

Union contracts also guarantee that performers will be paid within a certain time after their performance; otherwise a late payment penalty is invoked. You should never have to call an employer to find out when or if your check is in the mail.

It used to be that commercials were replayed endlessly without provisions for compensation for the performers. The advertisers received repetitive exposure, but the performer got paid only once. Unions have won “reuse” (residual) payments for these types of recorded material. Old-time movies, such as the comedies of Abbott and Costello, were televised repeatedly on Saturday mornings, for the kiddies to watch while Mom did the laundry, yet many former stars received nothing from those uses. The life of a performance in commercial or program material is now protected through a system of use and reuse fees. The unions have departments devoted to processing residual checks and monitoring reruns of recorded material. As attorneys we need to keep contact with our clients' union reps to make sure these fees are being accounted for.

Unions have also fought for and won health and retirement plans for their members. These are plans financed by employer contributions based on a specified percentage of each performer's salary, original payments, and reuse fees. The retirement plans manage to offer a modicum of financial security to retired performers, based upon their earnings and length of employment. With group medical coverage (and life insurance), for which members qualify by earning a certain amount in the union's jurisdiction each year performers are freed from the terrible fear that unexpected medical expenses will bankrupt their families.

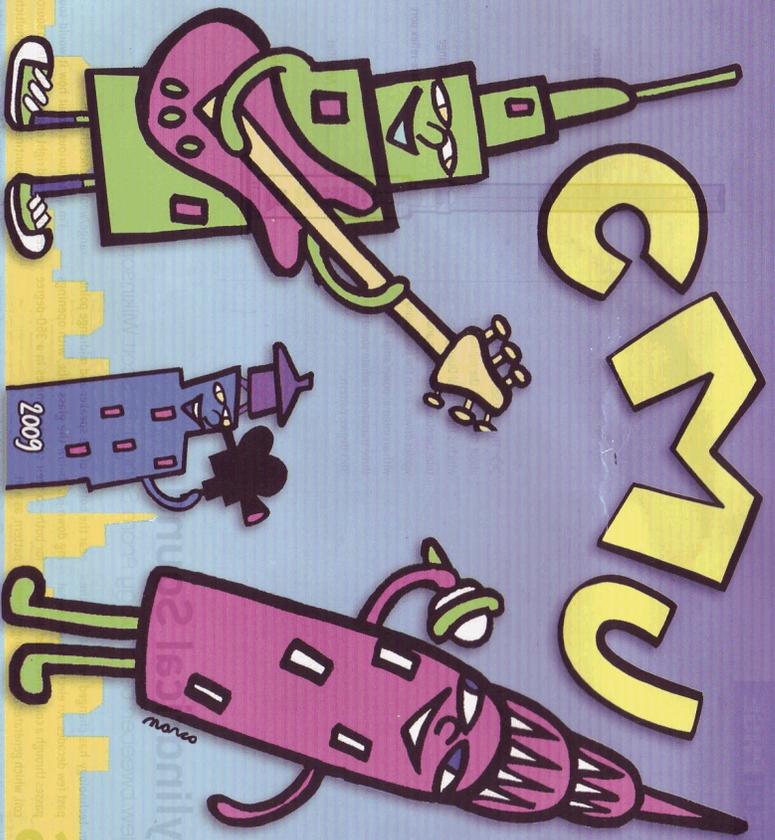
## VII. FILM AND TELEVISION CONTRACTS AN ATTORNEY MAY SEE

The following is a listing of film and television contract that may be presented to your client. It is important to understand the basic "standard form agreements" that are presented here, so that you know to look for deviations from same in the contract your client is presented. Understand that these contracts are NOT just for the actor/client. They are also for the movie studio client, the music supervisor client, and for various other areas of the film and television industries. As a film and television attorney, you may spend more time working for industry companies, than you do for actual talent (actors). The scope of these contracts will provide you with a frame work to understand what else is out there and where the film and television attorney is also needed.

1. **Name and Likeness Releases**
  - a. Depiction Release (Grant with Reversion) **(N)**
  - b. Photo Release **(O)**
2. **Literary Submission and Sale**
  - a. Submission Release **(P)**
  - b. Non-Disclosure Agreement **(Q)**
  - c. Literary Option and Purchase Agreement **(R)**
3. **Employment Agreements**
  - a. Writer Employment Agreement (Theatrical WGA Agreement) **(S)**
  - b. Writer Employment Agreement (Low-Budget, Non-Union) **(T)**
  - c. Director Employment Agreement **(U)**
  - d. Actor Employment Agreement (SAG weekly Theatrical) **(V)**
  - e. Actor Employment Agreement (Low Budget, Non-Union Day Player) **(W)**
  - f. Writer Collaboration Agreement **(X)**
  - g. Co-Production Agreement **(Y)**
  - h. SAG Motion Picture/Television Agency Contract **(Z)**
4. **Soundtrack Agreements**
  - a. TV Music Rights License **(AA)**
  - b. Soundtrack Recording Agreement **(BB)**
5. **Financing Agreements**
  - a. Finder Agreement **(CC)**
  - b. Private Placement Memorandum **(DD)**
  - c. Limited Partnership Agreement **(EE)**
6. **Production Agreements**
  - a. Line Producer Employment Agreement **(FF)**
  - b. Casting Director Employment Agreement **(GG)**

- c. Crew Deal Memo Salaried On-Call Exempt Employees **(HH)**
  - d. Production Services Agreement **(II)**
  - e. Location Agreement **(JJ)**
7. **Distribution Agreements**
- a. Theatrical Acquisition/Distribution Agreement **(KK)**
  - b. Television Distribution Agreement **(LL)**
  - c. Home Video Licensing Agreement **(MM)**

EXHIBIT - A



# CMJ

## MUSIC MARATHON & FILM FESTIVAL

### OCTOBER 20-24 · NYC

1,300+ ARTISTS - 75+ VENUES - 120,000+ FANS - REGISTER NOW!

### CMJ09

MUSIC MARATHON & FILM FESTIVAL  
OCT 20-24 NYC | CMJ.COM/MARATHON



*[Faint background text and graphics]*

**The Hollywood Reporter** **Billboard**

# FILM AND TV MUSIC CONFERENCE

★ OCTOBER 29-30, 2009  
BEVERLY HILTON  
LOS ANGELES

**SPECIAL RATE**  
for New Music Seminar Attendees!  
\$325  
Promo Code: NMS  
Expires August 1st

3RD ANNUAL

# NEW ENGLAND MUSIC SEMINAR

BATTLE OF THE BANDS  
SHOWCASE

PRESENTED BY BASSO PRODUCTIONS

## SIX BANDS

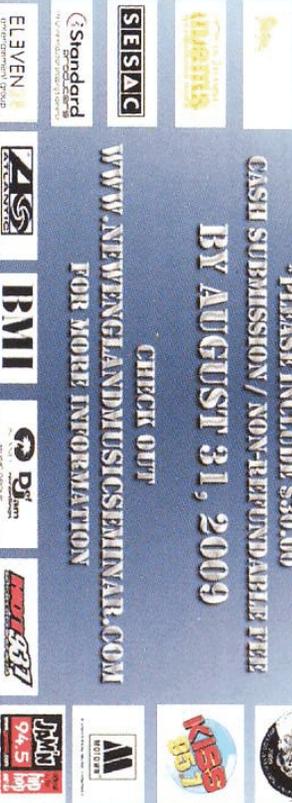
WILL GET 30 MINUTES TO PERFORM  
BEFORE A PANEL OF PROMINENT MUSIC  
INDUSTRY TASTEMAKERS  
AT THE MGM GRAND FOXWOODS  
RESORT AND CASINO

THINK YOUR BAND CAN MAKE THE CUT?  
SEND YOUR SUBMISSION TO:

ELEVEN2B ENTERTAINMENT GROUP  
P.O. BOX 221 HARTFORD, CT 06141

\*PLEASE INCLUDE \$30.00  
CASH SUBMISSION / NON-REFUNDABLE FEE  
BY AUGUST 31, 2009

CHECK OUT  
[WWW.NEWENGLANDMUSICSEMINAR.COM](http://WWW.NEWENGLANDMUSICSEMINAR.COM)  
FOR MORE INFORMATION



**VOICE THE NINTH ANNUAL  
STARBUCKS  
2009  
MUSIC  
FESTIVAL  
AT CONEY ISLAND, NYC**

**SATURDAY, JULY 18 ★ NOON-9PM**

**FREE ★ ALL AGES ★ RAIN OR SHINE**

**VillageVoice.com/SREAN**

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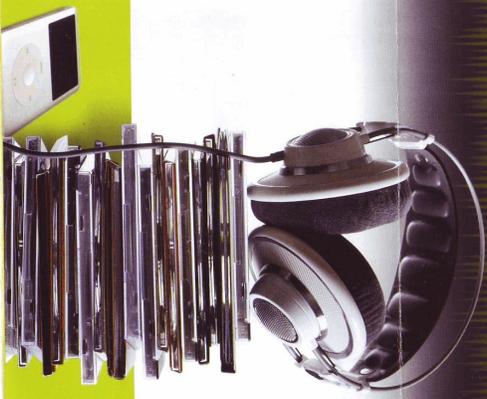
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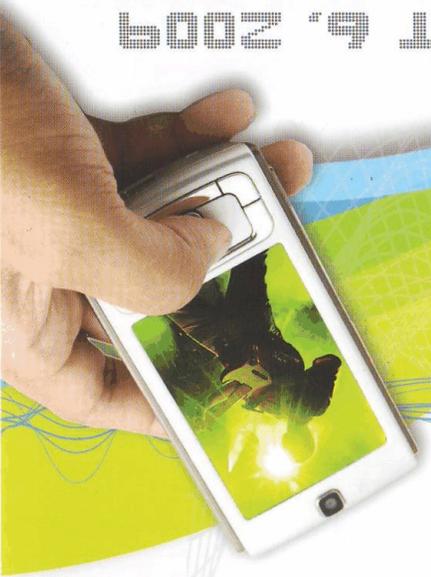
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EXHIBIT - **D**

# Application for Employer Identification Number

(For use by employers, corporations, partnerships, trusts, estates, churches, government agencies, Indian tribal entities, certain individuals, and others.)

▶ See separate instructions for each line. ▶ Keep a copy for your records.

OMB No. 1545-0003

EIN

Type or print clearly.	1 Legal name of entity (or individual) for whom the EIN is being requested		
	2 Trade name of business (if different from name on line 1)	3 Executor, administrator, trustee, "care of" name	
	4a Mailing address (room, apt., suite no. and street, or P.O. box)	5a Street address (if different) (Do not enter a P.O. box.)	
	4b City, state, and ZIP code	5b City, state, and ZIP code	
	6 County and state where principal business is located		
	7a Name of principal officer, general partner, grantor, owner, or trustor	7b SSN, ITIN, or EIN	
<b>8a Type of entity</b> (check only one box) <input type="checkbox"/> Sole proprietor (SSN) _____ <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation (enter form number to be filed) ▶ _____ <input type="checkbox"/> Personal service corporation <input type="checkbox"/> Church or church-controlled organization <input type="checkbox"/> Other nonprofit organization (specify) ▶ _____ <input type="checkbox"/> Other (specify) ▶ _____			<input type="checkbox"/> Estate (SSN of decedent) _____ <input type="checkbox"/> Plan administrator (SSN) _____ <input type="checkbox"/> Trust (SSN of grantor) _____ <input type="checkbox"/> National Guard <input type="checkbox"/> Farmers' cooperative <input type="checkbox"/> REMIC <input type="checkbox"/> State/local government <input type="checkbox"/> Federal government/military <input type="checkbox"/> Indian tribal governments/enterprises Group Exemption Number (GEN) ▶ _____
8b If a corporation, name the state or foreign country (if applicable) where incorporated	State	Foreign country	
<b>9 Reason for applying</b> (check only one box) <input type="checkbox"/> Started new business (specify type) ▶ _____ <input type="checkbox"/> Hired employees (Check the box and see line 12.) <input type="checkbox"/> Compliance with IRS withholding regulations <input type="checkbox"/> Other (specify) ▶ _____			<input type="checkbox"/> Banking purpose (specify purpose) ▶ _____ <input type="checkbox"/> Changed type of organization (specify new type) ▶ _____ <input type="checkbox"/> Purchased going business <input type="checkbox"/> Created a trust (specify type) ▶ _____ <input type="checkbox"/> Created a pension plan (specify type) ▶ _____
10 Date business started or acquired (month, day, year). See instructions.	11 Closing month of accounting year		
12 First date wages or annuities were paid (month, day, year). <b>Note.</b> If applicant is a withholding agent, enter date income will first be paid to nonresident alien. (month, day, year) . . . . . ▶			
13 Highest number of employees expected in the next 12 months (enter -0- if none). Do you expect to have \$1,000 or less in employment tax liability for the calendar year? <input type="checkbox"/> Yes <input type="checkbox"/> No. (If you expect to pay \$4,000 or less in wages, you can mark yes.)			Agricultural Household Other
<b>14 Check one box that best describes the principal activity of your business.</b> <input type="checkbox"/> Construction <input type="checkbox"/> Rental & leasing <input type="checkbox"/> Transportation & warehousing <input type="checkbox"/> Accommodation & food service <input type="checkbox"/> Wholesale-agent/broker <input type="checkbox"/> Real estate <input type="checkbox"/> Manufacturing <input type="checkbox"/> Finance & insurance <input type="checkbox"/> Other (specify) <input type="checkbox"/> Wholesale-other <input type="checkbox"/> Retail			
15 Indicate principal line of merchandise sold, specific construction work done, products produced, or services provided.			
<b>16a</b> Has the applicant ever applied for an employer identification number for this or any other business? . . . . <input type="checkbox"/> Yes <input type="checkbox"/> No <b>Note.</b> If "Yes," please complete lines 16b and 16c.			
<b>16b</b> If you checked "Yes" on line 16a, give applicant's legal name and trade name shown on prior application if different from line 1 or 2 above. Legal name ▶ _____ Trade name ▶ _____			
<b>16c</b> Approximate date when, and city and state where, the application was filed. Enter previous employer identification number if known. Approximate date when filed (mo., day, year) _____ City and state where filed _____ Previous EIN _____			
Third Party Designee	Complete this section <b>only</b> if you want to authorize the named individual to receive the entity's EIN and answer questions about the completion of this form.		
	Designee's name		Designee's telephone number (include area code) ( )
	Address and ZIP code		Designee's fax number (include area code) ( )
Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete.			Applicant's telephone number (include area code) ( )
Name and title (type or print clearly) ▶ _____			Applicant's fax number (include area code) ( )
Signature ▶ _____			Date ▶ _____

## Do I Need an EIN?

File Form SS-4 if the applicant entity does not already have an EIN but is required to show an EIN on any return, statement, or other document.<sup>1</sup> See also the separate instructions for each line on Form SS-4.

IF the applicant...	AND...	THEN...
Started a new business	Does not currently have (nor expect to have) employees	Complete lines 1, 2, 4a-8a, 8b (if applicable), and 9-16c.
Hired (or will hire) employees, including household employees	Does not already have an EIN	Complete lines 1, 2, 4a-6, 7a-b (if applicable), 8a, 8b (if applicable), and 9-16c.
Opened a bank account	Needs an EIN for banking purposes only	Complete lines 1-5b, 7a-b (if applicable), 8a, 9, and 16a-c.
Changed type of organization	Either the legal character of the organization or its ownership changed (for example, you incorporate a sole proprietorship or form a partnership) <sup>2</sup>	Complete lines 1-16c (as applicable).
Purchased a going business <sup>3</sup>	Does not already have an EIN	Complete lines 1-16c (as applicable).
Created a trust	The trust is other than a grantor trust or an IRA trust <sup>4</sup>	Complete lines 1-16c (as applicable).
Created a pension plan as a plan administrator <sup>5</sup>	Needs an EIN for reporting purposes	Complete lines 1, 3, 4a-b, 8a, 9, and 16a-c.
Is a foreign person needing an EIN to comply with IRS withholding regulations	Needs an EIN to complete a Form W-8 (other than Form W-8ECI), avoid withholding on portfolio assets, or claim tax treaty benefits <sup>6</sup>	Complete lines 1-5b, 7a-b (SSN or ITIN optional), 8a-9, and 16a-c.
Is administering an estate	Needs an EIN to report estate income on Form 1041	Complete lines 1, 2, 3, 4a-6, 8a, 9-11, 12-15 (if applicable), and 16a-c.
Is a withholding agent for taxes on non-wage income paid to an alien (i.e., individual, corporation, or partnership, etc.)	Is an agent, broker, fiduciary, manager, tenant, or spouse who is required to file Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons	Complete lines 1, 2, 3 (if applicable), 4a-5b, 7a-b (if applicable), 8a, 9, and 16a-c.
Is a state or local agency	Serves as a tax reporting agent for public assistance recipients under Rev. Proc. 80-4, 1980-1 C.B. 581 <sup>7</sup>	Complete lines 1, 2, 4a-5b, 8a, 9, and 16a-c.
Is a single-member LLC	Needs an EIN to file Form 8832, Entity Classification Election, for filing employment tax returns, <b>or</b> for state reporting purposes <sup>8</sup>	Complete lines 1-16c (as applicable).
Is an S corporation	Needs an EIN to file Form 2553, Election by a Small Business Corporation <sup>9</sup>	Complete lines 1-16c (as applicable).

<sup>1</sup> For example, a sole proprietorship or self-employed farmer who establishes a qualified retirement plan, or is required to file excise, employment, alcohol, tobacco, or firearms returns, must have an EIN. A partnership, corporation, REMIC (real estate mortgage investment conduit), nonprofit organization (church, club, etc.), or farmers' cooperative must use an EIN for any tax-related purpose even if the entity does not have employees.

<sup>2</sup> However, do not apply for a new EIN if the existing entity only (a) changed its business name, (b) elected on Form 8832 to change the way it is taxed (or is covered by the default rules), or (c) terminated its partnership status because at least 50% of the total interests in partnership capital and profits were sold or exchanged within a 12-month period. The EIN of the terminated partnership should continue to be used. See Regulations section 301.6109-1(d)(2)(iii).

<sup>3</sup> Do not use the EIN of the prior business unless you became the "owner" of a corporation by acquiring its stock.

<sup>4</sup> However, grantor trusts that do not file using Optional Method 1 and IRA trusts that are required to file Form 990-T, Exempt Organization Business Income Tax Return, must have an EIN. For more information on grantor trusts, see the Instructions for Form 1041.

<sup>5</sup> A plan administrator is the person or group of persons specified as the administrator by the instrument under which the plan is operated.

<sup>6</sup> Entities applying to be a Qualified Intermediary (QI) need a QI-EIN even if they already have an EIN. See Rev. Proc. 2000-12.

<sup>7</sup> See also *Household employer* on page 3. **Note.** State or local agencies may need an EIN for other reasons, for example, hired employees.

<sup>8</sup> Most LLCs do not need to file Form 8832. See *Limited liability company (LLC)* on page 4 for details on completing Form SS-4 for an LLC.

<sup>9</sup> An existing corporation that is electing or revoking S corporation status should use its previously-assigned EIN.

EXHIBIT - **E**

# Band Partnership Agreement

Introduction. This Band Partnership Agreement (the "Agreement") is made by and between \_\_\_\_\_ (collectively referred to as "Band," individually referred to as "Band Partners"). This agreement will be effective as of the date of the last signature below (the "Effective Date"). The Band Partners agree as follows:

The Band Partnership. The Band Partners establish themselves as a general partnership (the "Band Partnership") to be known as \_\_\_\_\_ under the laws of \_\_\_\_\_ for the purposes of musical and related entertainment activities. The Band Partnership will commence on the Effective Date and will continue until it is ended according to this Agreement. The principal place of business of the Band Partnership will be at \_\_\_\_\_ or at any other place the Band Partners determine.

Band Partner Services. In order to fulfill the Band Partnership purposes, each Band Partner will contribute musical entertainment services to the Band Partnership. Such contributions will include, but not be limited to, services:

- as a recording artist with respect to sound recordings
- as a musical performer in all media and on the live stage, and
- related to merchandising rights solely with respect to activities as a member of the Band.

Nonband Partnership Activities. Each Band Partner is permitted to engage in one or more businesses, including other musical entertainment efforts, but only to the extent that such activities do not directly interfere with the business and obligations of the Band Partnership. Neither the Band Partnership nor any other Band Partner will have any right to any income or profit derived by a Band Partner from any nonband Partnership business activity permitted under this paragraph.

Name and Logo. The Band Partnership will do business under the name \_\_\_\_\_ (the "Band Name") as an assumed name and as its trademark and service mark.

[*Check if applicable and fill in.*]

[  ] The Band also uses the following logo (the "Band Logo") as a trademark and service mark:

[*Insert logo.*]

[  ] The Band also owns and uses the following domain name: \_\_\_\_\_.

Each Band Partner acknowledges that the Band Name as well as any Domain Name and Logo the Band may have are [*check one*]:

[  ] the exclusive property of the Partnership and not owned by any individual member, and, unless otherwise authorized in writing, departing Band Partners will have no interest whatsoever in the Band Name, Domain Name, and Logo, apart from the limited right to be known as an ex-member of the Band. If the Partnership dissolves, no individual member will have a right to use the Band Name, Domain Name, and Logo, apart from the limited right to be known as an ex-member of the Band.

[  ] the exclusive property of the Partnership and not owned by any individual member, except that if \_\_\_\_\_ and \_\_\_\_\_ cease to be members of the Partnership, the Partnership will cease use of the Band Name, Domain Name, and Logo (including "formerly [band name]" or similar references) in connection with any offering of entertainment services. Departing Band Partners will have no interest whatsoever in the Band Name, Domain Name and Logo, apart from the limited right to be known as a former member of the Band. In the event that the Partnership dissolves, no individual member will have a right to use the Band Name, Domain Name, and Logo, apart from the limited right to be known as an ex-member of the Band.

[  ] not assets of the Band Partnership, but rather are the sole and exclusive property of \_\_\_\_\_ [*name of person who owns Band Name, Domain Name, and Logo*] and, unless otherwise authorized in writing, will remain that person's sole and exclusive property

during and after the term of this Agreement. The other Band Partners will have no interest whatsoever in the Band Name, Domain Name, and Logo, apart from the limited right to be known as former members of the Band.

**Warranties.** Each Band Partner warrants that the Band Partner:

- is free to enter into this Agreement
- is under no restriction that will interfere with this Agreement
- has not done nor will do any act or thing that might hurt the Band Partnership
- will not sell or transfer any interest in the Band Partnership without the prior written consent of the other Band Partners, and
- will refrain from activities that could prohibit the Band Partner from performing.

Each Band Partner indemnifies each other Band Partner from all claims that may arise from any breach of these warranties.

**Profits and Losses.** Unless agreed otherwise in writing by the Band Partners, the Band Partners will share equally in all of the Net Profits, losses, rights, and obligations of the Band Partnership. "Net Profits" will mean all payments that are paid to the Band Partnership or to any Band Partner as a result of Band Partnership activities, after deducting Band Partnership expenses (that is, reasonable salaries, rent, promotional costs, travel costs, office expenditures, telephone costs, and accounting and legal fees). The Net Profits will be distributed in cash to the Band Partners.

**Ownership of Recorded Compositions.** The Band Partners [*choose one*: will/will not] create a publishing entity (the "Band Partnership Publishing Company") that will own all rights to "Recorded Compositions." Recorded Compositions are songs:

- recorded by the Band
- released for sale on sound recordings under the Band Name, and
- that were written or cowritten in whole or in part by one or more Band Partners.

Each Band Partner agrees to assign any ownership interest in each Recorded Composition to the Band Partnership Publishing Company and to sign any documents necessary to

show the transfer of ownership to the Band Partnership Publishing Company.

**Division of Publishing Revenue.** Revenue from the Band Partnership Publishing Company, if such publishing company has been created, will be distributed as follows:

[ ] All music publishing income derived from Recorded Compositions, including both writer's and publisher's shares, will be divided equally among the band members.

[ ] The Band Partners will share equally in the publishing income from all Recorded Compositions. The writers of each Recorded Composition will receive an equal prorata share of the songwriters' income with respect to each Recorded Composition. By way of example, if two Band Partners write a Recorded Composition, each will share equally in the songwriters' income from that song. The publishing income from that song will be distributed equally to all Band Partners.

[ ] All revenue derived from Recorded Compositions will be pooled (whether it is characterized as publishing or songwriter revenue). Each Band Partner will receive one credit for performing on each Recorded Composition. The writers of each Recorded Composition will receive one credit for writing each Recorded Composition. Each Band Partner's total number of credits equals the numerator (top number of a fraction). The total number of credits equals the denominator or bottom number of a fraction. Each Band Partner then receives this fraction of the song income. By way of example, if all four Band Partners perform on a song and one Band Partner has written that song, the songwriter Band Partner would receive 2/5 of the revenue and the other three band members would each receive 1/5 of the revenue.

**Publishing Administration.** The Band Partnership Publishing Company, if such company has been created, will have the worldwide, exclusive right to:

- administer and control the copyright ownership to the Recorded Compositions
- designate all persons to administer the copyrights to the Recorded Compositions, and
- enter into agreements to copublish, subpublish, or otherwise deal with the copyrights in the Recorded Compositions.

In the event that one of the Band Partners leaves the Band Partnership (a "Leaving Member"), the control of the jointly owned copyrights will vest exclusively in the

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remaining Band Partners for the term of this Band Partnership.

The Leaving Member's interest in the Band Partnership Publishing Company will extend only to those Recorded Compositions which were commercially released for sale during the Leaving Member's period as a Band Partner ("Leaving Member Recorded Compositions"). The Leaving Member will receive semiannual accountings and payments with respect to any income due on Leaving Member Recorded Compositions.

**Meetings and Voting.** Each Band Partner has the right to participate in the business of the Band Partnership. Meetings of the Band Partners can be called by any member of the Band Partnership on reasonable notice.

[Check either "unanimous vote" or "majority vote" for each issue]

	<i>Unanimous Vote</i>	<i>Majority Vote</i>
Expelling a Band Partner		
(unanimous except for party to be expelled):	[ ]	[ ]
Admission of a new Band Partner:	[ ]	[ ]
Entering into any agreement that		
binds the Band Partnership for		
more than one year:	[ ]	[ ]
Additional capital contributions		
by any Band Partner:	[ ]	[ ]
Receipt of any bonus or goods or		
other assets of the Band Partnership		
in excess of that received by any other		
Band Partner:	[ ]	[ ]
Any expenditure in excess of \$_____:	[ ]	[ ]
Incurring any major obligation such as		
borrowing or lending money:	[ ]	[ ]
Selling, leasing, or transferring any		
Band Partnership property:	[ ]	[ ]
Entering into any contract that takes		
less than a year to complete:	[ ]	[ ]

Check-signing rights: [ ] [ ]  
Amendment of this Agreement: [ ] [ ]  
Dissolving the Band Partnership: [ ] [ ]

*[Check and fill in blanks if applicable]*

[ ] In matters that require a majority vote, \_\_\_\_\_ shall be entitled to extra voting power, in the amount of \_\_\_\_\_ votes for every other Band Partner's single vote.

[ ] In the event that a majority cannot be achieved, the decision of \_\_\_\_\_ will prevail.

**Books of Account and Records.** The books of the Band Partnership and all other documents relating to the business of the Band Partnership will be maintained at its principal place of business and be available for inspection at reasonable times by any Band Partner (or any designated representative of any Band Partner). The fiscal year of the Band Partnership ends on December 31. The Band Partnership will provide an accounting statement to each Band Partner twice a year, at the end of June and December.

**Ending the Partnership.** This Agreement and the Band Partnership will not terminate if a Band Partner leaves the Partnership. If a member leaves, the Band Partnership will remain in full force among the remaining members.

This Agreement will terminate, and the Band Partnership will end, on the first to occur of the following events:

- the written agreement of the Band Partners to end the Band Partnership, or
- by operation of law, except as otherwise provided in this Agreement.

*[Check and fill in blank if applicable.]*

[ ] If \_\_\_\_\_ leaves the Band Partnership, the Band Partnership will end. The addition of a new Band Partner will not end the Partnership, and it will remain in full force among the remaining Band Partners.

**Distribution of Band Assets After Termination.**

**Income and Debts.** After termination of the Band Partnership, any income that is owed to the Band Partnership will be collected and used first to pay off debts to people outside the Band (creditors), and any remaining money will be used to pay debts (loans in excess of capital contributions) to Band Partners. If money remains after paying off these debts to Band Partners, it will be distributed equally to the Band Partners.

**Band Property.** Any property owned or controlled by the Band Partnership (for example, musical equipment) will not be sold but will be evaluated, by an accountant if necessary. The property will then be distributed as nearly as possible, in equal shares among the Band Partners.

**Royalties and Future Income.** If, at the time of termination, the Band is entitled to royalties or owns property that is generating income or royalties, the Band Partnership will vote to either establish an administrative trust or designate an individual (for example, an accountant) to collect and distribute the royalties on an ongoing basis to the Band Partners according to their respective interests.

**Addition of a Band Partner.** Each new Band Partner must agree to be bound by all of the provisions in this Agreement. A new Band Partner has no rights to the Band Partnership property or assets existing at the time of admission to the Band Partnership ("Existing Property") or in any of the proceeds derived from the Existing Property (for example, revenue or royalties generated by recorded compositions, sound recordings, or other materials created prior to the new Band Partner's admission).

**Leaving Members.** A Band Partner may leave the Band Partnership (a "Leaving Member") voluntarily (by resignation) or involuntarily (by reason of death, disability, or being expelled). A Band Partner who resigns must give thirty (30) days' prior written notice. The Band Partnership will provide thirty (30) days' written notice if it expels a Partner. The Band has, at its option, the right to immediately exclude any expelled partners from live or recorded performances during this 30-day notice period. A Leaving Member is entitled to:

- the Leaving Member's proportionate share of the net worth of the Band Partnership as

of the date of disassociation.

- the Leaving Member's share of any royalties, commissions, or licensing fees earned from sound recordings that include the Leaving Member's performance. These payments will be made when actually received by the Band Partnership and after subtracting a proportionate deduction of expenses. The Leaving Member's record royalties will be paid only after the record company has recouped the band's recording costs for the respective recording.

An expelled Partner will be entitled to receive the value of his or her interest in the partnership according to the provisions of this Agreement.

*[Check and fill in blank if applicable.]*

A Band Partner may be expelled from the Partnership if:

- the Band Partner seeks protection under the federal bankruptcy code
- the Band Partner makes an assignment for the benefit of creditors, or
- \_\_\_\_\_.

**Determination of Net Worth.** If the Leaving Member and the Band Partnership cannot agree on the net worth of the Band Partnership, then it will be determined by a mutually agreed-on accountant. The net worth will be determined as of the date thirty (30) days after receiving written notice of leaving, whether voluntary or involuntary. The Leaving Member's share will be paid in installments starting one month after determining the net worth and be payable as follows:

- If the share is less than \$10,000, it will be paid in 12 monthly installments.
- If the share is more than \$10,000 but less than \$25,000, it will be paid in 24 monthly installments.
- If the share is more than \$25,000, it will be paid in 36 monthly installments.

The share payments will include interest at the prime interest rate.

**Notices.** All accountings and notices required under this Agreement will be given in writing by personal delivery, mail, or fax at the addresses of the Band Partners set forth below (or at any other addresses designated by a Band Partner).

**Band Partnership Bank Account.** A Band Partnership bank account may be opened by the Band Partners \_\_\_\_\_ has the right to sign any checks drawn on the Band Partnership bank account, endorse checks for deposit, or make any withdrawals from the Band Partnership bank account.

**Mediation; Arbitration.** If a dispute arises under this Agreement, the parties agree to first try to resolve the dispute with the help of a mutually agreed-on mediator in \_\_\_\_\_ . Any costs and fees other than attorney fees will be shared equally by the parties. If it is impossible to arrive at a mutually satisfactory solution within a reasonable time, the parties agree to submit the dispute to binding arbitration in the same city or region, conducted on a confidential basis pursuant to: [Check one]

[  ] the Commercial Arbitration Rules of the American Arbitration Association, or  
[  ] the rules of \_\_\_\_\_ .

Any decision or award as a result of any arbitration proceeding will include the assessment of costs, expenses, and reasonable attorney's fees and a written determination by the arbitrators. Absent an agreement to the contrary, any such arbitration will be conducted by an arbitrator experienced in music industry law. An award of arbitration is final and binding on the Band Partners and may be confirmed in a court of competent jurisdiction. The prevailing party has the right to collect from the other party its reasonable costs and attorney fees incurred in enforcing this agreement.

**General.** This Agreement may not be amended except in a writing signed by all Band Partners. No waiver by any Band Partner of any right under this Agreement will be construed as a waiver of any other right. If a court finds any provision of this Agreement invalid or unenforceable as applied to any circumstance, the remainder of this Agreement will be interpreted to best carry out the intent of the parties. This Agreement is governed by and interpreted in accordance with the laws of \_\_\_\_\_. The provisions of this Agreement are binding on the successors and assigns of the Band Partners. In the event of any dispute arising from or related to this Agreement, the prevailing party is entitled to attorney fees.

Signatures.

MY SIGNATURE BELOW INDICATES THAT I HAVE READ AND UNDERSTOOD  
THIS AGREEMENT AND HAVE BEEN ADVISED OF MY RIGHT TO SEEK  
INDEPENDENT LEGAL REPRESENTATION REGARDING THIS AGREEMENT.

---

Band Member Signature

Address: \_\_\_\_\_

Date: \_\_\_\_\_

Soc. Sec. #: \_\_\_\_\_

---

Band Member Signature

Address: \_\_\_\_\_

Date: \_\_\_\_\_

Soc. Sec. #: \_\_\_\_\_

EXHIBIT - **F**



## APPLICATION FOR COPYRIGHT REGISTRATION

\* Designates Required Fields

### 1 WORK BEING REGISTERED

1a. \* Type of work being registered (Fill in one only)

- Literary work       Performing arts work
- Visual arts work       Motion picture/audiovisual work
- Sound recording       Single serial issue

ApplicationForCopyrightRegistration

1b. \* Title of this work (one title per space)

Remove

WorkTitles

Click here to create space to add an additional title

1c. For a serial issue: Volume  Number  Issue  ISSN

Frequency of publication:   Other

1d. Previous or alternative title

1e. \* Year of completion

**Publication** (If this work has not been published, skip to section 2)

1f. Date of publication  (mm/dd/yyyy)      1g. ISBN

1h. Nation of publication     United States     Other     Other

1i. Published as a contribution in a larger work entitled

1j. If line 1i above names a serial issue    Volume     Number     Issue

On pages

1k. If work was preregistered    Number PRE-



Print Form

Clear Form

**For Office Use Only**

WorkBeingRegistered

## 2 AUTHOR INFORMATION - Entry Number

Remove Item

**2a. Personal name** \* *complete either 2a or 2b*

First Name	Middle	Last
<input type="text"/>	<input type="text"/>	<input type="text"/>

**2b. Organization name**

**2c. Doing business as**

**2d. Year of birth**

**2e. Year of death**

<b>2f. *</b> <input type="checkbox"/> Citizenship	<input type="radio"/> United States	<input type="radio"/> Other	Other	<input type="text"/>	<input type="button" value="Clear"/>
<input type="checkbox"/> Domicile	<input type="radio"/> United States	<input type="radio"/> Other	Other	<input type="text"/>	<input type="button" value="Clear"/>

**2g. Author's contribution:**  Made for hire     Anonymous

Pseudonymous    (Pseudonym is: )

**Continuation of Author Information**

**2h. \*** This author created *(Fill in only the authorship that applies to this author)*

- |   |  |   |  |
|---|--|---|--|
| <input type="checkbox"/> Text/poetry      | <input type="checkbox"/> Compilation           | <input type="checkbox"/> Map/technical drawing  | <input type="checkbox"/> Music                       |
| <input type="checkbox"/> Editing          | <input type="checkbox"/> Sculpture             | <input type="checkbox"/> Architectural work     | <input type="checkbox"/> Lyrics                      |
| <input type="checkbox"/> Computer program | <input type="checkbox"/> Jewelry design        | <input type="checkbox"/> Photography            | <input type="checkbox"/> Motion picture/audiovisual  |
| <input type="checkbox"/> Collective work  | <input type="checkbox"/> 2-dimensional artwork | <input type="checkbox"/> Script/play/screenplay | <input type="checkbox"/> Sound recording/performance |

Other:

**For Office Use Only**

AuthorInformation



Print Form

Clear Form

[Click here to create space to add an additional author](#)

## 3 COPYRIGHT CLAIMANT INFORMATION - Entry Number

Remove Item

Clear Section

### Claimant

**\* complete either 3a or 3b** - If you do not know the address for a claimant, enter "not known" in the Street address and City fields.

#### 3a. Personal name

First Name

Middle

Last

#### 3b. Organization name

#### 3c. Doing business as

#### 3d. Street address \*

Street address (line 2)

City \*

State

ZIP / Postal code

Country

Email

Phone number

(Add "+" and country code for foreign numbers)

3e. If claimant is **not** an author, copyright ownership acquired by:  Written agreement  Will or inheritance  Other

Clear

Other

### For Office Use Only

CopyrightClaimantInformation

[Click here to create space to add an additional claimant](#)

## 4 LIMITATION OF COPYRIGHT CLAIM

Skip section 4 if this work is all new.

4a. Material excluded from this claim (Material previously registered, previously published, or not owned by this claimant)

Text  Artwork  Music  Sound recording/performance  Motion picture/audiovisual

Other:







Print Form

Clear Form

7b. Name of organization

7c. Street address \*

Street address (line 2)

City \*

State

ZIP / Postal code

Country

### For Office Use Only

MailCertificateTo

## 8 CERTIFICATION

17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

I certify that I am the author, copyright claimant, or owner of exclusive rights, or the authorized agent of the author, copyright claimant, or owner of exclusive rights, of this work, and that the information given in this application is correct to the best of my knowledge.



8a. Handwritten signature

8b. Printed name

Today's date  Write date by hand

8c. Date signed

8d. Deposit account number      Account holder

8e. Applicant's internal tracking number (optional)



Print Form

Clear Form

**For Office Use Only**

Certification

EXHIBIT - **G**

**CONTROVERSIES**

OF THE

**Music  
Industry**



**RICHARD D. BARNET  
LARRY L. BURRISS**

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## "I'll See You in Court": The Strange Relationship between Managers and Artists

The relationship between recording artists and their managers is somewhat like a marriage: Both require an extremely high level of trust, respect, and loyalty. Unfortunately, like the many couples who end their marriages in divorce court, many performers terminate the relationship with their manager through the judicial system. The model of musicians and their business associates settling their disputes in the courts can be traced back to the eighteenth century. As the husband-and-wife team of economists William and Hilda Baumol noted, Prince Karl Lichnowsky filed a lawsuit against Wolfgang Amadeus Mozart in 1791. Prince Lichnowsky was awarded a considerable judgment in what might be considered the first legal showdown between a performing artist and the business person behind his career (Kelleher, 1992).

An artist and manager typically have a contractual agreement, analogous to marriage vows, that tithes a percentage of the artist's income to the manager for long periods of time. Dissolving that agreement, and dividing past, present, and future income, is almost always traumatic. History has shown that managers frequently understand the business environments surrounding the music industry much better than nubian recording artists do. Because of this imbalance of knowledge, managers too often have the ability to take advantage of the artists they work with. Conversely, many managers have helped artists struggle through the start-up phase of their career only to be cast aside in exchange for a more prestigious manager as soon as the artist finds success in the industry.

One thing is certain: Legal battles between artists and managers are not uncommon. Nor are these battles unique to one genre of music. Well-known performing artists who have had legal struggles with their man-

agers include Collective Soul, Billy Joel, Al Kooper, Clint Black, Bruce Springsteen, Jefferson Airplane (aka Jefferson Starship and later simply Starship), Prince (aka The Artist), 'N Sync, the Backstreet Boys, Ozzy Osbourne, Fleetwood Mac, TLC, Mindy McCree, Toni Braxton, the Beatles, Jewell, John Fogerty, and Creedence Clearwater Revival.

Contentious litigation between an artist and a manager affects many more people than one might expect. When management commissions come under question, record companies and publishers may not distribute royalties until all lawsuits, countersuits, and appeals have been extinguished. The process could take many years, and royalties could remain in escrow or trust accounts the entire time. Members of Jefferson Airplane were embroiled in numerous lawsuits that lasted over twenty years. During much of that period, RCA/BMG withheld royalties while numerous audits and hearings were conducted.

### THE ROLE OF A MANAGER

In an ideal relationship, a manager directs the career development of a recording artist and oversees many of the artist's business functions. That way, the artist is free to concentrate on creative activities such as writing songs, recording albums, and performing in concert settings. The manager helps procure contracts with record companies, publishers, and booking agencies on behalf of the artist. Because artists need to spend much time away from home, they must trust their manager to sign contractual agreements for them. In order to negotiate and enter into contractual agreements with third parties on behalf of the artist, the manager is usually given limited power of attorney for the artist. That power of attorney is an artist's legal way of saying, "I trust you to handle my money."

Although a manager is crucial to the success or failure of a recording artist, many emerging artists sign management contracts without fully understanding the terms of the agreement. Because experienced managers know the legal and business aspects of the music industry better than the typical band member or singer-songwriter, they have the upper hand during contract negotiations. In addition, most emerging artists have difficulty finding experienced full-time managers. Therefore, when they do find a manager, many artists are eager to sign any contract placed before them for fear of "blowing the deal."

A management contract is conceptually very simple. Unfortunately, in practice it becomes a complicated document written by attorneys to be understood by other attorneys. An agreement between an artist and a manager specifies the following:

1. An explanation of duties the manager will perform;
2. A statement that the manager may represent (manage) other artists;
3. A statement that the manager is the sole personal manager for the artist;
4. A grant of limited power of attorney to the manager in order to sign certain types of contracts for the artist;
5. A detailed section that explains the duration of the management agreement and the terms for renewal of the contract;
6. A description of compensation the manager will receive in the form of commissions, and what types of artist income are subject to a commission;
7. A list of the types of expenses for which the manager will be reimbursed; and
8. An explanation of what happens if the manager or the artist does not live up to promises made in the contract.

Although not specifically discussed in the contract, other things are assumed. It is assumed, for instance, that a manager will make informed decisions that are in the best interest of the artist's career. It is also assumed that the manager will spend the artist's money only on bona fide expenses, not on luxuries to benefit the manager or his friends. It is further assumed that the manager will be honest and not divert money or gifts intended for the artist into the hands of friends, relatives, or himself.

Conversely, the manager assumes that the artist will act in an equally professional manner. The manager should expect the artist to pay the agreed-upon commission for all music related income that is due the manager. The artist should also take the advice of the manager and use it to make logical decisions that are good for their mutual careers. Most of all, the artist should not ignore contractual promises in order to get a new manager before the current contract expires.

It is important to note that a manager often experiences a negative cash flow during the first stage of an artist's career. While artists are in the process of seeking a recording contract, they must spend a great deal of money producing demo recordings and performing showcases. Many emerging acts do not have the funds to invest in these necessary activities; therefore, it is not uncommon for a manager to loan the artist money to get started on the road to success. Even if a manager has negotiated the typical 20 percent commission, an act's commissionable income might be negligible for the first two or three years.

Because managers play a key role in organizing concert tours, their sudden departure as a result of being fired and/or sued usually causes

disruptions. For a major artist, touring is a form of promotional support for an album release. Therefore, a canceled tour can also force a label to delay release of the album. As the trickle-down effect manifests itself, income from record royalties, publishing royalties, and concert ticket sales is negatively affected. As one might expect, several corporate entities and their employees are hurt by the diminished flow of money from the artist.

Media, especially trade publications, seem to report artist-manager breakups with the same fervor as artists' divorces. Occasionally, artists and managers feed information to media in an attempt to protect their professional image in the music industry. Not so surprisingly, comments that fly back and forth between artists, managers, publicists, and attorneys grow increasingly more inflammatory as litigation drags on.

After country artist Clint Black terminated his relationship with his manager Bill Ham in 1992, he took advantage of the celebrity status he and his wife, actress Lisa Hartman, held. Black retained his mother-in-law's firm, T. J. Hartman Public Relations, to distribute press releases critical of Ham. As media attention escalated, Ham issued a statement describing his disappointment that Black did not allow their legal issues to "quietly work their way through the court in responsible silence" (Morris, 1992). Ham is not alone in his frustration; most managers prefer to let attorneys argue legal issues in private venues rather than in the media.

#### **ISSUES THAT LEAD TO ARTIST-MANAGER DISCORD**

Artists file lawsuits to change managers much more often than managers sue to drop an artist from their management roster. It is intuitively logical that a manager who is not pleased with an artist will simply stop exerting much effort in the artist's behalf. Therefore, whenever a manager is obviously not interested in continuing the management relationship, an artist is ill-advised to fight the breakup.

Managers occasionally file lawsuits to force artists to pay commissions that have not been forthcoming. With the complex network of revenue streams from which an artist's income—and the manager's commissions—come, determining income that is due the manager is not always easy. In order to recover commissions, a manager might have to conduct accounting audits of the record label and publishing company financial records. Only after an accurate picture of the artist's income is available can the amount due to the manager be determined. Even then, the artist might argue that some of the income is not "commissionable" and therefore not subject to the manager's commission.

If large numbers of artists have sought to dissolve their management

contracts in court, one must ask, Why have they become discontented with their managers? Entertainment attorney Jim Zumwalt answers that question with the more rhetorical question, "Why do husbands sue wives and wives sue husbands?" He goes on to explain that "artists generally sue managers for several reasons: To seek relief from the term of the management agreement; for mismanagement; or, for some form of misconduct." Entertainment attorney Douglas C. Anton believes, "Artists sue their managers because they think they are getting ripped-off or the manager is not doing what they should." He adds, "Managers sue because the band has breached the contract or has ceased working with the manager" (Anton, 1999).

"I appreciate all your hard work and financial support while I got my recording career started, but I've found a better manager. You're fired!" Sad as it sounds, those words describe a scenario that happens too often in the music industry. An artist might place confidence in a manager while moving from lounge singer to recording artist, but later the artist comes to believe that the manager is not as knowledgeable as other managers in the business. In reality, the manager may be very competent, but other persons—label executives, attorneys, family members—convince the artist that he or she needs a new manager. Of course, sometimes it is sadly apparent that the manager is truly not up to par and is harming the artist's career.

Another reason an artist might seek to drop the manager is simple capitalism. "In business generally, anytime an entity goes from zero or negative earnings to millions of dollars of income, you have the potential for disgruntled participants not getting their fair share or getting cut out of the participation," says Zumwalt. It is not uncommon for artists to resent paying a large portion of their income, in the form of manager commissions, after they have become stars. In such cases, the artists will try to terminate the agreement or have the rate of commission reduced.

Artists who become tremendously successful tend to forget that managers invested much time and money in the early years of their career. A manager who believed in an artist and worked without much compensation during the developmental stage of the artist's career feels quite justified in making millions of dollars after the artist attains superstar status. Artists argue that it is unfair for managers to make more money than the artist simply because of a contract they signed early in their career. It should be noted that in the case of a band, it is not uncommon for the manager to net more money than each individual member of the band. A manager who also retains a percentage of publishing royalties would likely make a great deal more than any one band member.

Artists may also feel as though they have "outgrown" the ability of their manager at some point in their career. In most cases, these artists find someone else—a more experienced manager or a management

firm—whom they would rather have represent them. If the new manager is able to negotiate a buyout of the original manager's contract, the transition can be smooth and peaceful. But if the original manager is unwilling to be bought out of the contract, the transition will take a great deal of time and cause a lot of anxiety for all parties involved.

Should the manager not agree to any type of contract settlement, the artist has another option: to make little money so the manager will get little or no commissions. Of course, this tactic is akin to starving oneself in order to kill an intestinal parasite. This strategy might work if the manager finds another artist and decides that fighting the old artist is a waste of time. It is more effective, though, if the time left on the contract is running out in a matter of months rather than years.

### LEGAL RECOURSE FOR MANAGERS AND ARTISTS

Few states have enacted laws to regulate artist managers in this country. Although California and New York have created laws that affect managers, the statutes they enacted are basically intended to help distinguish between booking agents and managers. The main effect the laws have had on managers is to prevent them from procuring employment, such as booking concert performances, for the artists they manage. This impact is minimal because most managers prefer to leave booking to agents so they themselves can concentrate on interfacing with the artist's record label and publisher.

Because artists have little statutory protection to rely on, they most often rely on contract or tort claims when dealing with management contracts (Gilenson, 1990, p. 515). A tort claim is under civil rather than criminal law and revolves around an act that has harmed the artist in some way—usually some form of financial loss to the artist. Contract law, another area of civil law, seeks to enforce and interpret the promises made by all parties who entered into a legal contract. Breach of contract is the legal terminology for not fulfilling one's promises in a legal contract. If an artist signed a legal contractual agreement that promised the manager 25 percent of the artist's gross income in exchange for career advice, then the artist is bound to that promise for the duration of the agreement. Therefore, when a manager alleges that an artist is in breach of contract, the suit is generally a straightforward legal question: Has the artist paid the manager the agreed-upon 25 percent of all income?

An artist claiming that the manager is in breach of contract is in a somewhat more difficult position. If the manager has promised to "advise and counsel in matters related to the artist's career in the music industry," the burden of proof will be on the artist to demonstrate that the manager did not provide adequate advice. Artists have tried, usually unsuccessfully, to demonstrate that the manager's advice caused them

to fail in their career. In response, managers can easily point to the high failure rate in the industry and blame a myriad of other factors for the artist's lack of success. If the act has enjoyed some relative success and merely wants to switch to a different manager, the argument for management incompetence becomes even more difficult to argue. Imagine the reaction of a judge when an artist says, "Yes, I earned \$20 million over the past three years, but my manager gave me bad career advice." Therefore, one might conclude that "claiming that a personal manager's poor advice and guidance caused the artist's lack of success is not a judicious argument" (Gilenson, 1990, p. 516).

An artist might try to demonstrate in court that the management contract was "unconscionable" when it was created. If the terms of the agreement were unreasonably favorable to one party (manager) over the other (artist), the court system might decide that it was substantively unconscionable and, therefore, should be voided. Artists could also attempt to prove that they were deceived or pressured into signing the contract. If deception or undue pressure can be proven in court, the contract will probably be considered procedurally unconscionable and unenforceable.

In practice, though, managers employ an attorney familiar with the entertainment industry to represent them in contract negotiations. In addition, most managers and their attorneys insist that the artist also have competent legal counsel familiar with industry protocol. The possibility of one attorney pressuring an artist, through the artist's attorney, to sign an "unconscionable contract" is quite unlikely. In addition, the bargaining points of a management contract are fairly consistent throughout the industry. Therefore, an artist attempting to dissolve a management contract based on the argument that it is substantively or procedurally unconscionable will have to assemble very strong evidence.

### MANAGERS AND CONFLICT OF INTEREST

An artist might be more likely to prevail in court, and thus escape a management agreement, through a claim based on tort law rather than contract law. The most common tort claims have revolved around the "fiduciary duties" of a manager. Because a manager handles an artist's money and enters into contracts with third parties on behalf of the artist, the level of trust is assumed to be extremely high. In fact, the term "fiduciary" is derived from the Latin term *fiducia*, or "trust." "A breach of fiduciary duties may arise when a personal manager obtains an interest in a recording or publishing company, thus creating a conflict of interest (Gilenson, 1990, p. 519).

A conflict of interest occurs, for example, when a manager is motivated to make decisions that are not in the best interest of the artist. The motivation is likely to come from financial or political gain the manager

could receive by altering decisions. On July 16, 1991, Peter Mensch, who has managed Def Leppard, Metallica, and Queensryche, told aspiring artist managers at a New Music Seminar panel called "Perfect Managers: Do They Really Exist?" not to be "afraid to make dumb mistakes, [and] don't be afraid to fail." He did, however, stress that managers should fear one thing: conflicts of interest in their relationships with the artists they manage (O'Connor, 1991).

The need to develop strong industry alliances leads some managers into conflicts of interest. A manager's success depends on networking with important decision makers in the industry. The gatekeepers of booking agencies, law firms, music publishing companies, and record labels must be constantly cultivated to ensure their receptivity to a manager's new acts. Ken Kragen, often cited as the most successful manager in history, is so vehement about the importance of networking that he titled a book about his professional success *Life Is a Contact Sport: Ten Great Career Strategies That Work*. Because managers work diligently to develop favorable relationships with industry power brokers, they are susceptible to mixed allegiances. At some point in time, a manager is faced with the unsettling question, "What is more important for my career, becoming a close working friend of this industry heavyweight or getting a slightly better deal for an artist I represent?" The conflict of interest is quite obvious if the manager advises the artist to accept a professional friend's offer even though it is not the best deal available.

Once artists become financially successful, the integrity of their managers is put to a test. Many industry entities—booking agencies, record labels, publishers—try to influence the actions of artists through their managers. Those efforts to influence a manager's decisions are characteristically ethical and legal. Unfortunately, in rare instances those efforts to influence a manager cross the line and are not legal. If a company offers a valuable incentive to the manager in exchange for influencing the artist's decision, for example, that action is considered a bribe or kickback. A bribe is quite obvious: The company pays a manager to advise the artist in a certain way in exchange for something of value, usually money. A kickback is sharing the benefits of a deal with the manager in exchange for the manager advising the artist a specific way. A publisher might, for instance, "kick back" a portion of royalties to the manager for helping sign the artist to the company. In either situation—bribe or kickback—the manager is suddenly faced with a moral dilemma: Should the manager advise the artist to do something that is best for the artist's career or advise the artist to do something that is not necessarily a good career move but is financially profitable for the manager? If an artist proves that the manager benefited financially to the detriment of the artist, the manager will probably face a tort action claiming a violation of "fiduciary responsibility" to the artist.

Another situation that can potentially create a conflict of interest is when the manager assumes more than one role in the artist's career. A manager may, for example, ask for publishing rights to the artist's songs as a part of their deal. Or a manager may own all or part of a record label and ask the artist to sign a recording contract with that particular company. More recently, attorneys have entered the conflict-of-interest arena. Some entertainment attorneys who begin as artists' lawyers later ask for management deals from the same artists. It should be noted that not all instances of a manager's assuming multiple roles create illegal or unethical conflicts of interest.

The problem with a manager owning a publishing company, law firm, or record label is the lack of objectivity in their role as advisor. In an ideal business relationship, the manager is expected to find the *best* recording contract, law firm, and publishing deal for the artist. A manager who owns part or all of a record label may not be aggressive when "shopping" for the best deal. One might consider the occasions when an artist's manager writes a check to the record label on behalf of the artist. "If the manager owns all or part of the label," says Daniel Reynolds, former director of Programs for Leadership Music and former executive with DreamWorks Records, "it is like one hand writing a check and the other hand cashing it."

Entertainment attorney Douglas C. Anton offers the following hypothetical situation to illustrate the ethical dilemma faced by a manager who owns a financial interest in the record label to which the artist is signed:

The record deal does not contain a "greatest hits" option for Band X. The record company proposes to release a "greatest hits" record for the holiday season. As is customary industry practice, the band won't receive very much money for the use of their previously released songs used on the "greatest hits" album. The members of Band X believe that they, and their music, are already suffering from the over-exposure of their popular hits. Therefore, re-releasing their most popular songs at this time might be overkill. The label will probably make a substantial profit on a holiday release, but the band will not make much money. In fact, the band might be hurt by over-saturating the market with their music. If the manager has a financial interest in the label, a classic conflict-of-interest scenario exists. (Anton, 1999)

Publishing and record companies owned by managers are sometimes referred to as "desk drawer" companies because they are rarely full-service enterprises. Instead, they are sometimes simply a legal means to keep a percentage of royalties earned by an artist in addition to garnering

management commissions. In a desk drawer publishing scenario, the manager's publishing company keeps a portion of the publishing rights and brokers a copublishing deal with an actual full-service publishing company. This type of publishing deal is obviously quite good for the manager, but it may not be the best publishing deal for the artist. Perhaps a better publishing company told the manager it wouldn't share publishing royalties. If the manager advised the artist to avoid that publishing company's offer—a better deal for the artist—then a conflict of interest harmed the artist.

Conflict-of-interest debates were extremely heated when MCA Entertainment acquired Front Line Management, an artist management firm, on May 7, 1986. To make matters more controversial, Irving Azoff, then president of MCA Records, owned a majority interest in the management firm. Sidney J. Steinberg, MCA Entertainment's president and CEO at the time, defended the label's ownership of a management firm by stating, "The personal management firm does not negotiate recording deals" (Knoedelseder, 1986). He implied that attorneys, not managers, are responsible for artists' acquiring recording contracts. Steinberg's rationale revolved around an ongoing argument: Do managers "shop" for recording and publishing contracts, or do attorneys actually find them their deals?

David Geffen, a successful artist manager who left management to start his own record label, vehemently disapproved of MCA's ownership of a management firm. Geffen asked, "How can a manager get the best deal he can for his client if the manager also works for the record company? It's very disturbing. If it's legal, it shouldn't be" (Knoedelseder, 1986). He summarized his views on the matter by stating, "You cannot be in the record business and manage artists on your own label—it's a conflict of interest."

### **MANAGERS ACCUSED OF STEALING**

That managers would steal from the artists they manage is difficult to believe, but allegations of theft are not uncommon in the music industry. One assumes that an artist knows a manager quite well before signing a binding contract. Artists who suspect their manager of taking more than his fair share argue that they didn't really know the manager well enough when they signed a management deal or that the temptation of money gradually corrupted the manager.

Managers are responsible for a tremendous amount of income earned by the artist. The best line of defense an artist can use to keep a manager honest is to employ a business manager. A business manager can be thought of as a hybrid accountant. Often business managers are certified public accountants (CPAs) and undergo annual audits of their financial records. A business manager protects both the artist and the manager by

making sure that the manager is paid commissions and reimbursements for expenses and protecting against additional money being diverted by the manager.

Another person who helps keep an eye on the manager's behavior is the artist's entertainment attorney, who must review all contracts before an artist signs them. That way, if a manager attempts to involve the artist in dubious investments, especially those that might benefit the manager, the attorney can alert the artist. The impartial judgment of an attorney and a competent business manager is the best insurance against unethical behavior by a manager. Like good insurance, however, a good business manager and a good attorney cost money.

Even after securing a business manager and an entertainment attorney, some artists suffer financial losses. One of the most contentious and protracted legal battles developed when Billy Joel charged his former manager, Frank Weber, with fraud, breach of fiduciary duty, and federal racketeering statute violations. Joel alleged that Weber double-billed him for music videos and improperly mortgaged Joel's copyrights (Grein, 1989). Frank Weber countered Billy Joel's legal action and alleged that Joel was in breach of contract. Joel was awarded a summary judgment in 1990 and was awarded initial damages of \$2 million from Weber. Unfortunately, Frank Weber paid Joel only \$250,000 before filing for bankruptcy (Duffy, 1992). Joel continued his relentless pursuit of Weber and was awarded a second summary judgment, this one for \$675,670.68, on February 25, 1995.

What made Billy Joel's situation even more upsetting to other artists was his allegation that his former manager worked in consort with the accounting firm Berman, Shaffet and Schain to defraud him of \$30 million (MacMinn, 1991). If that weren't enough trauma for one artist, Joel took legal action against Weber's attorney, Frank Conforti, accusing him of having a role in the improper transfer of \$1.5 million of Joel's assets. The last thing Joel did in this ongoing battle against his handlers was to sue his former attorney, industry heavyweight Alan Grubman, for fraud and breach of fiduciary duty.

Billy Joel's bizarre story has an equally unusual ending. Sony Music, Joel's label, paid the singer-songwriter \$3 million to settle his suit against attorney Grubman. A reporter for the *Wall Street Journal* speculated that Sony "stepped in to end the lawsuit to avoid other recording artists from filing similar suits" (Trachtenberg, 1995). Not so surprisingly, Joel has remained self-managed since his split from Weber.

#### ARTISTS ACCUSED OF INFIDELITY

The typical nightmare for a manager is working to make an artist successful, then watching the artist move to another manager after becoming financially successful. Lou "Big Poppa" Pearlman has probably



Billy Joel spent many years in litigation with attorneys, accountants, and his original manager. Joel prevailed after many years of persistence and has remained self-managed ever since. (Maritime Music/Sony Music)

had that very nightmare more than once since creating and managing two superstar acts: the Backstreet Boys and 'N Sync. The Backstreet Boys sold out a fifty-three-show tour in one day and sold 500,000 copies of their CD *Millennium* in the first day of its release. Their mirror image, 'N Sync, sold 7 million copies of their debut album.

If these two groups sound and look similar, it is not by coincidence. Pearlman had a formula for creating his "boy bands." He auditioned dozens of young singers and selected four young men to create his first multiracial vocal group. He then hired voice teachers, choreographers, and producers to cultivate a modern pop sound new to teenagers more familiar with rap music (Moore, 1999). The Backstreet Boys' first record release was not very successful in the United States, so Big Poppa financed a tour of Europe and Asia for the boys. After they established themselves as a successful overseas act, the boys returned to the United States in style. Their concerts sold out and their albums went platinum many times over (Carlson, 1999). Pearlman sensed that other acts would probably emulate the Backstreet Boys' successful style, so he decided to beat any competitors to the marketplace. He followed his boy band formula and created a group he named 'N Sync. Like the Backstreet Boys, 'N Sync quickly became a pop sensation at the box office. But as if in unison, both acts decided to leave Poppa's nest.

In May 1998 the Backstreet Boys filed a lawsuit against Pearlman in an attempt to escape their management contract as well as their recording contract with RCA. In October 1999 the members of 'N Sync decided to leave their label, RCA, and they charged Big Poppa with fraud (Carlson, 1999). Both bands believed that Pearlman had negotiated numerous deals between the bands and the companies in which he held a financial interest. Each band sought to prevent Pearlman from earning as much money from them as he had been. Members of both bands felt that Pearlman was receiving too much income from their efforts. Yet, in the contracts they signed, each had agreed to give Pearlman a hefty percentage of their income from recordings, concert ticket sales, and publishing royalties. The boys were also upset that their manager was getting a large amount of their merchandising sales. They shouldn't have been too surprised, though, because Pearlman had created the band names and had even registered the trademark for the name 'N Sync. Indeed, Big Poppa never attempted to shroud the blessing of wealth he received from his boy bands. As of January 1, 2000, Pearlman had launched eight more bands modeled on the success of the Backstreet Boys and 'N Sync. His ten acts have generated an estimated gross income of about \$2 billion. "I have three Rolls-Royces and a limousine. Life is good," according to Pearlman (Carlson, 1999).

Speaking for Pearlman's company, Trans Continental Entertainment, Michael Friedman said, "You can't just skip out on an eight-album deal

because someone comes along with another offer" (Pollack, 1999). His point is well taken: Should a group of professional musicians feel justified in ignoring their contractual promises because they resent their manager's tremendous income? Keep in mind that as Big Poppa became extremely wealthy by earning a percentage of each band's income, the band members kept the remaining percentage and also became wealthy. The issue is, of course, "Who should become richer?"

From a manager's perspective, Pearlman literally invented each band and took a great risk each time he contributed all their start-up funds from his own savings. Isn't he entitled to a large portion of the subsequent income as is any other entrepreneur? Band members see it differently. They feel like indentured servants who unwittingly signed contracts that they did not fully understand at a time when they were new to the industry. To them, their manager is not the fatherly figure his nickname implies; he is just another greedy music industry shark who lives the good life at the expense of hardworking performers.

### TOPICS FOR DISCUSSION

1. What are some reasons artists take legal action to dissolve the contract with their manager? Which of these reasons do you think are valid? Which do you think are less than ethical?
2. Do managers have more power in the relationship between them and the artists they manage? Does the level of power seem to shift as an artist becomes more successful?
3. Some very intelligent artists have signed management agreements that they later regretted. Why do you think they accepted contracts that were not in their best interest? What things might an artist do to prevent getting involved with an unethical manager?
4. Do you think it is a conflict of interest for an attorney to manage an artist and also provide legal counsel for that artist? Do you think it is ethical for an attorney to also act as publisher for an artist he or she represents?
5. What things might an artist and manager do to resolve their differences instead of filing lawsuits? What persons might they ask to help resolve their disagreements? Do you think that entertainment attorneys might advise artists to file suit too often? Who benefits most from a lawsuit: artist, manager, or attorneys?

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- Frasco, Xavier M., Jr., and H. Lee Hetherington (1997). *This Business of Artist Management*, 3rd ed. New York: Billboard Books, an imprint of Watson-Guptill Publications, a division of BPI Communications, Inc. (This is the only book that deals with artist management in the music industry. The authors are both attorneys, and their advice is based on good legal research as well as many years of experience.)
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### Organizations to Contact

The following bar associations are helpful in contacting attorneys whose practice includes entertainment law. They are located in the three major centers for music industry activities.

Association of the Bar of the City of New York  
42 West 44th Street  
New York, NY 10036  
web: [www.abcny.org/homepg.htm](http://www.abcny.org/homepg.htm)

Beverly Hills Bar Association, Entertainment Section  
300 South Beverly Drive, Suite 201  
P.O. Box 7277  
Beverly Hills, CA 90212  
Phone: (310) 553-6644  
web: [www.bhba.org/entertainment\\_law.htm](http://www.bhba.org/entertainment_law.htm)

Nashville Bar Association  
221 4th Avenue North  
Nashville, TN 37219-2111  
Phone: (615) 242-9272

### Web Sites

[www.cybershowbiz.com/ncopm/index.html](http://www.cybershowbiz.com/ncopm/index.html)  
National Conference of Personal Managers  
This organization has a statement of ethics that members must accept; the statement is displayed on their web site.

# Controversies of the Music Industry

RICHARD D. BARNET and LARRY L. BURRISS

This work presents 12 of the most volatile ethical issues facing the music industry. Real-life examples depict different sides of each controversy, and the list of resources provides tools for readers who wish to pursue the controversies further. Primary sources, including court cases and excerpts from speeches, help students build critical thinking skills in current issues, persuasive writing, and debate classes. Among the controversies noted is the growing oligopoly of a few multinational music companies and the independent labels that are attempting to survive this market dominance. In addition, the depiction of drug abuse and violence in music is discussed, as is the influence of violence on young listeners. These issues and many more are outlined in detail.

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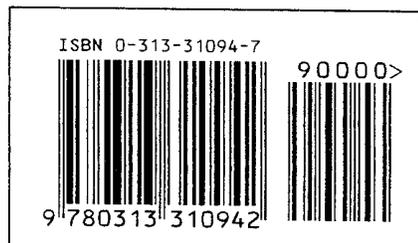


EXHIBIT - **H**

# ENTERTAINMENT LAW SEMINAR SERIES

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## DRAFTING AND NEGOTIATING ARTIST/MANAGEMENT AGREEMENTS



**General Topics Covered:**  
Attorney-In-Fact Clauses  
Gross vs. Net Earnings  
Industry standard terms  
Advances / Recoupments  
Term / Renewals  
Percentage / Compensation  
Negotiable items

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### ARTIST/MANAGEMENT AGREEMENTS OUTLINE

#### I. PRELIMINARY CONSIDERATIONS

While the majority of the time you will be dealing with Artists and the Artist will bring you a contract that his/her/their prospective future manager has presented them with, a welcome change is when you are asked by a management company to draft and negotiate all of their artist/management agreements with prospective artist and their attorneys. To that end, it is important to know what you will look for and argue for depending on which side in this epic battle you represent. While there is not a great deal of room to move within the confines of additions to the artist/management agreement, the terms within the body of the agreement leave plenty of room for negotiation. It is important to keep up with current issues regarding management and artist relations so that you are always aware of changing industry or legal terms and standards. A copy of a recent article is attached to the end of this packet.

#### II. RECITALS

- A. Manager - "Keyman" - sometimes you will argue on behalf of the artist that the manager he signs with is the actual person or "keyman" that will handle him/her/them, and not some one else within the company.
- B. Artist - The artist will sign as an individual and as a member of the group to protect the manager

from loss due to the band breaking up or a very popular member going solo, etc...

- C. Contacts - When negotiating for an artist, use the managers "contacts, experience and background", or lack thereof, as a tool to lower the compensation percentage. Remember though, don't throw away deals, negotiate them. A manager does not have to be a superstar who speaks with record companies on a daily basis. A hard working college kid could be, and has been, great managers. But use these facts to negotiate the terms of the contract.
- D. All encompassing - Manager will provide artist with services in every possible areas where the artist's talent may be exploited. If you have an artist like Jon Bon Jovi, who has a music and film career, you may want to negotiate these areas down to only one sector of the entertainment industry so that Jon could get the best music manager in the world for his music career and the best movie manager in the world for his film career. I have yet to meet one manager who is equally qualified in both areas.
- E. Management duties - ¶ 1(a)(b)(c) - manager to supervise, give advise and counsel, be available, approve use of name and likeness.

### III. TERM [¶ 2]

- A. Initial term - the initial terms is one year.
- B. Manager has X irrevocable option periods of one year each. Manager negotiates them up to 5, Artist wants to negotiate them down to a reasonable amount. You never want to go lower than necessary or the manager will get nervous and not put his whole company and heart into the game. The Artist will lose out because he/she/they will be locked into a contract with a manager that does not want to take any chances.
- C. Only manager has right to exercise renewals so for the artist, if the original term is 1 year and there are 5 irrevocable options, THIS IS A SIX YEAR CONTRACT! Manager only has to exercise when he will not continue, not when he will continue.

### IV. COMPENSATION [¶ 3]

- A. Manager gets X percent for his services. This percentage can range from 10% to 35% with the usual average for a pretty decent and well established manager to be 25%. For a manger with no contacts but just a hard worker look to give him 12% to 15% and for Doc McGhee or Doug Thaler (in the late 1980's) look that they are going to ask for and get 30% - 35% because they where controlling all the big bands.
- B. Manager also gets X percent after the contract is up if the things he worked on are still producing revenue.
- C. Gross - Manager gets his percentage of gross earnings as defined in the contract. That means X percent of EVERYTHING, no matter who receives it on behalf of artist. I have only once been able to negotiate this to NET but I think both the manager and the manager's attorney simply read past it and did not know what its legal implications were. At the end of the fist month when money was due, and the phone calls started coming in 15 a day, I conveniently took a weeks vacation with my girlfriend. By the time I have returned I popped out a letter referring to the terms of the contract. It went smoothly thereafter. However, if it would have hurt the way the manager was going to

perform his duties, I would have negotiated that back to Gross to keep the manager hard at work. Well, maybe "gross" but not an all inclusive gross.

- D. Artist Corporation - In the 1980's, swift artist attorneys decided to get out of paying so much money to managers by having the artist form a corporation and have the corporation received 50% and some times more of their money. Since the corporation did not contract with the manager, the manager did not get his percentage of that money. This clause effectually eliminates that possibility.
- E. Monies paid to manager - Monies get paid to manager, but if received by artist, its in trust for manager. "*What's mine is mine and what's yours is mine.*"

#### V. ARTIST WILL BE A "GOOD BOY" [¶ 4]

Here is where the artist promises that he will do his best and cooperate with manager. It is important to put this in if for no other reason then when the artist is acting stubborn the manager reminds him of this clause.

#### VI. MANGER IS DIFFERENT THAN BOOKING AGENCIES [¶ 5]

A manager is NOT a booking agency, and the artist should not rely on the manager to get employment for the artist. The manger only seeks to advance the career of artist via record sales and the like. A booking agency must be hired by artist to get employment (gigs). Sometimes artists think that when they get a personal manager the manager will get them gigs. This clause is here so that there is no misunderstanding. Also, many states make it illegal and punishable for a manager to act and/or charge fees in this dual capacity. See the article attached re: California's laws.

#### VII. MANAGER CAN REPRESENT MORE THAN ONE ARTIST [¶ 6]

- A. A manager can represent several artists. An artist can have only one manager (some exceptions). A manager might even represent two bands both in the same music genre, both identical, both trying to get the same record contract with the same record company.
- B. Manager also has the right to have other people in his company work with the artist. However, see "Keyman" issue above. If artist likes the "head" manager of a management company, you should include a "Keyman" clause in the agreement.

#### VIII. ONLY ONE MANAGER [¶ 7]

- A. I don't often run across a manager who does not mind being one of a bunch, that is why this clause exists. An artist can only have one manager, and that manager is the artists sole and exclusive personal manager, save all others in the entire world.
- B. As well, artist must give up the right to act as his own manager. It gets confusing otherwise. Artist agrees not to perform any of the same services that manager will. If the artist is a serious artist he will enjoy this clause to the fullest - Artist plays music, Manger does business.

#### IX. POWER OF ATTORNEY [¶ 8]

- A. This is the most important clause of the agreement. Artist will want to limit it considerably and manager will want to have it a broad as possible. It gives the manager the right to *contract* on behalf

of the artist.

- B. As long as the terms “reasonably related” such as in paragraph C remain in the contract the artist is protected to some extent from the manager going crazy with this power of attorney. You will also want to limit it to acting for the band and not individually. (Pornography Example)

**X. WHO PAYS FOR EVERYTHING ELSE? - ARTIST PAYS! [¶ 9]**

Artist will come to realize that artist is responsible for all of artist other fees, as well as the compensation to manager. These fees can include lawyers, booking agencies, publicity, etc... As well, artist is responsible to pay all of managers expenses in doing his job. If you represent the artist you will try to negotiate in that manager must get artists approval before making any one single expenditure of fifty dollars (\$50.00) or more. This way the artist won't go broke all in one month and has some control. However, don't stifle you manager if it is a reasonable expense that may produce results. Remember artist is a “good boy” and wants to work with his manager.

**XI. ARTIST IS FREE FROM ALL OTHERS [¶ 10]**

Much like when a man marries a woman, the man wants to know that the woman (and vice versa) is not attached already and coming to the deal with baggage. So does the manager want to know that this artist is free and clear of all others and is free to enter into this contract and if he is not that he will indemnify the manager when some third party, (the wifes ex-husband but the divorce was not legally done) comes back claiming a piece of the pie. If you represent the manager, NEVER take this out. This also allows manager to hold any money needed to enforced this clause and its terms.

**XII. ACCOUNTING [¶ 11]**

As with any business, manager should keep accurate records and books. As well, artist should have the availability to view them, after all it's their money. Sometimes though you get the nosey artist who wants to have his parent *live* in the books. If you represent the manager, go with the clause as written. If you represent he artist, negotiate it to 4 times a year, upon 10 days notice, by anyone.

**XIII. BREACH BY ARTIST [¶ 12]**

This is an important clause for the manager. It says that the relationship created by this agreement is so special that if the artist breaches or even threatens a breach, that money alone will not adequately compensate the manager for his loss and that the manager has the ability to get injunctive relief to stop the artist from contracting with another manager or with anyone. Sometimes you can even stop the artist from playing gigs.

**XIV. SPECIAL BUT NOT BOUND [¶ 13]**

While the section above says that the relationship is special, the legal relationship is really that of an independent contractor and no partnership or joint venture is formed.

**XV. NOTICES [¶ 14]**

In the beginning or end of the agreement indicate which address will be used for manager and which ONE address will be used for Artist and stick to those.

## **XVI. TERMINATION [¶ 15]**

The agreement may terminate upon the happening of certain events:

- A. It expires - naturally or by managers exercising notice option to terminate
- B. Manager dies - if no "keyman" clause, the company that employed manager may continue.
- C. Death or disability of artist - however manager still makes his money and still represents other artists in the agreement.
- D. Agreement to terminate.

## **XVII. INSURANCE [¶ 16]**

Manager is spending a lot of time and money on artist for the first year usually without any return. Manager must protect his investment. Artist thinks that manager is going to "knock him off".

## **XVIII. HIRE & FIRE [¶ 17]**

This paragraph (17) and the next paragraph (18) you will not find in any other management contract. These were created by me due to my experiences as a manager. I found that what was bringing some of my bands down, giving them access to drugs and alcohol, was the roadies, and extras they would hire to hang around them all day. Such as the case with the entourage that followed Mike Tyson. A bunch of lackey's there for the free ride. An artist is most often unable to see how this is bringing him down and more importantly for the manager, bringing down the bottom line. If you represent the manager, tell him/her of my tales and see if they want this clause in.

## **XIX. GOVERN STAGE AREA [¶ 18]**

Same thing here, this is one of my clauses. Bands I represented used to play nice guy and have all sorts of people jump up on stage or stand on the side of the stage while they were playing. One time, a drunk friend of the band came from the wings onto center stage and held up his beer to incite the crowd. The band loved it and encouraged it, but in doing so he tripped over some electrical spaghetti (chords) that were on stage, pulling over a unique amplifier and it exploded, destroyed the performance, and when security and fans came on stage to get the idiot off, he cracked the bottle over the fans head and the band and manager (me) got sued for thousands, and had to settle. Take my advise, if you represent the manager, try to put something like this in the agreement, it is for the bands own good and for the managers own financial good.

## **XX. ASSIGNMENT [¶ 19]**

Although no artist wants to hear this, they are a "product" to be sold and exploited. So the manager can assign his contract with the band but the artist cannot. If you represent the artist, don't try to convince a manager or his attorney that the band should also be allowed to assign, simply request the clause be taken out, or effectively take out the clause by use of the "keyman" clause cited earlier.

## **XXI. STANDARD CLAUSES [¶ 20]**

These are pretty much the standard clauses in any contract:

- A. Contract governed by State of New Jersey
- B. This is entire contract.
- C. Any alteration or change must be in writing and signed.

- D. Effective when everyone signs.
- E. References to singular means plural, he means she, etc..
- F. Artist had opportunity to see a lawyer.
- G. Notice of breach and opportunity to cure must be given.

## **XXII. SIGNATURES**

Make sure that all members of the band sign the agreement, that they are of age (18), and that they give you their social security numbers on the agreement.

## **XXIII. NOTARY**

ALWAYS NOTARIZE THESE CONTRACTS.

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# EXHIBIT - **I**



the date hereof.

**b.** Manager shall have six (6) irrevocable option periods in which to renew this Agreement for additional one (1) year terms, which options shall be automatically exercised by the passage of time unless and until Manager gives Artist written notification within thirty (30) days prior to the end of the original term or preceding option term, whichever is applicable, of his desire and intent not to exercise said option.

**3. a.** As compensation for services to be rendered hereunder, Manager shall receive from Artist a sum of money equal to twenty-five percent (25%) of Artist's gross monthly earnings during the term of this Agreement, as well as fifteen percent (15%) of all monies earned and received by Artist following the termination or expiration of this Agreement, which monies were or will be received by Artist as a result, directly or indirectly, of Manager's services rendered during the term of this Agreement.

**b.** The term "Gross Monthly Earnings" as used herein refers to the total of all earnings and receipts, whether in the form of salary, bonus, mechanical and performance royalties, artist royalties, interest, advances against royalties or any other type of income which is reasonably related to Artist's career in the entertainment, amusement, music, recording, motion picture, television, radio and advertising fields, whether now known or hereafter devised, listed here or not, in which Artist's artistic talents, name and/or likeness are exploited, which monies are received during any calendar month by Artist or by any of his heirs, executors, administrators, assigns or by any person, firm or corporation on his behalf.

**c.** In the event Artist forms a corporation during the term hereof for the purpose of furnishing and exploiting his artistic talents, Artist agrees that said corporation will be subject to the terms of this Agreement, and that the gross monthly receipts of such corporation shall be included in Artist's gross monthly earnings as defined in this Agreement for the purpose of determining the compensation due Manager.

**d.** Artist agrees that all gross monthly earnings as herein defined shall be paid directly to Manager by all persons, firms or corporations, and shall not be paid to Artist, and that Manager may withhold Manager's compensation therefrom as well as expenses incurred by Manager on Artist's behalf as defined herein. In the event that Artist nevertheless receives gross monthly earnings directly, Artist shall be deemed to hold in trust for Manager that portion of Artist's gross monthly earnings considered Manager's compensation and reimbursement for Manager's costs and expenses.

**4.** Artist agrees to exert his best efforts in the furtherance of his career during the term of this Agreement, and to cooperate with Manager to the fullest extent possible in the interest of promoting Artist's career.

**5.** Artist understands that Manager is not a talent agency, but that Manager has been engaged solely as a personal manager and therefore will not be responsible for obtaining and procuring employment for Artist.

**6.** Manager is not required to render his exclusive services to Artist, or to devote his entire time to Artist's affairs. Nothing herein shall be construed as limiting Manager's rights to represent other individuals whose talents may be similar to or who may be in competition with Artist, or to have and pursue business interests which may be similar to or may compete with those of Artist. It is further understood and agreed that Manager shall have the right to delegate management powers and responsibilities to others under his supervision and control.

**7.** Artist hereby appoints Manager as his sole and exclusive personal manager throughout the entire world to render services set forth in this Agreement and Artist agrees to seek such services from Manager solely and exclusively and further agrees not to engage any other agent, representative or manager to render similar services and Artist agrees not to perform said services on his own behalf and will not negotiate, accept or execute any agreement concerning his career without Manager's express prior consent. Furthermore, Artist agrees to devote his full time and attention to the development and enhancement of his artistic career.

**8. a.** Artist hereby irrevocably appoints Manager for the term of this Agreement as his true and lawful attorney-in-fact to sign, execute and deliver any and all contracts in Artist's name, to make, execute, endorse, accept, collect, and deliver any and all checks and notes as Artist's said attorney, to demand, sue, collect, recover and receive goods, claims, money, interest, or other items that may be due to Artist or belongs to Artist; and to make, execute, and deliver receipts, releases and other discharges therefor under sale or otherwise; and to defend, settle, adjust, compound, submit to arbitration and compromise, all actions, suits, accounts, claims and demands whatsoever that are or shall be pending in such manner and in all respects as Manager in his sole discretion shall deem advisable; and without in any way limiting the foregoing generally to do, execute and perform any other act, deed or thing whatsoever that reasonably ought to be done, executed and performed of any and every nature as fully and effectively as Artist could do if personally present; and Artist hereby ratifies and affirms all acts performed by Manager by virtue of this power of attorney.

**b.** Artist expressly agrees that he will not exert any of the powers herein granted to Manager without express prior written consent of Manager.

**c.** It is expressly understood that the foregoing power of attorney is limited to matters reasonably related to Artist's career in the entertainment industry.

**d.** Artist agrees and understands that the grant of power of attorney to Manager is coupled with an interest, which Artist irrevocably grants to Manager, in Artist's career, artistic talents and the products of said career and talents.

**9.** Artist shall be solely responsible for payment of all booking agency fees, union dues, publicity costs, promotional costs, accounting and legal fees, telephone, telex and telefax fees, copying, postage, printing, tape copying, photos, and any and all out-of-pocket expenses incurred by Manager arising out of the performance of his services hereunder. Artist further agrees to be responsible for any traveling expenses, including meals, travel and accommodations associated with Manager's performance of his services to Artist.

**10.** Artist warrants that he is under no disability, restriction or prohibition with respect to his right to execute this Agreement and perform its terms and conditions. Artist warrants and represents that no act or omission by Artist hereunder will violate any right or interest of any person or firm or will subject Manager to any liability to any person or firm. Artist further agrees to indemnify Manager and hold him harmless against any damages, costs, expenses, fees (including all attorneys fees) incurred by Manager in any claim, suit or proceedings instituted against Manager and arising out of any breach or claimed breach by Artist of any warranty, representation or covenant of Artist. Artist authorizes Manager to withhold any and all sums due Artist to satisfy any claims or judgments rendered, on any fees incurred during the pendency of any legal proceeding brought against Artist and/or Manager.

**11.** Manager agrees to maintain accurate books and records of all transactions concerning Artist, which books and records may be inspected during normal business hours by a Certified Public Accountant designated by and paid for by Artist upon sixty (60) business days notice to Manager, but in no event shall Artist examine said books and records more than once per calendar year.

**12.** Artist acknowledges and agrees that (a) Manager's right to represent Artist, as Artist's sole and exclusive personal manager, and Artist's obligation to solely and exclusively use Manager in such capacity, is unique, irreplaceable and extraordinary, and (b) any breach or threatened breach by Artist thereof may be material and shall cause Manager immediate and irreparable damage which cannot be adequately compensated for by money judgment. Accordingly, should Artist breach any of the terms and conditions of this Agreement, Manager will be entitled to seek and obtain, in addition to all other forms of relief which may be available, injunctive relief prohibiting and preventing Artist from engaging the services and abilities of any other person or firm in the capacity of personal manager or acting as personal manager himself, until and unless all of the terms and conditions of this Agreement have been satisfied.

**13.** This Agreement does not and shall not be construed to create a partnership or joint venture between the parties hereto, it being specifically understood and agreed that Manager is an independent contractor.

**14.** All written correspondence and notification shall be sent by Certified Mail, return receipt requested, to the respective addresses set forth above, and shall be considered received by said other party upon deposit in the United States Mail.

**15.** This Agreement shall terminate upon the happening of one of the following events:

- a.** natural expiration of the original term and/or option periods;
- b.** death or medically diagnosed disability of Artist, in which event Manager will continue to receive all sums due Manager from exploitation of Artist's career in the entertainment industry prior to Artist's death or disability; (however, Manager may still, for the term of this agreement, exploit Artist in any way possible so as to derive benefit or income from doing same)
- c.** written consent of both parties.

**16.** Artist acknowledges that Manager has an insurable interest in the life of Artist, and therefore Artist agrees that should Manager, at Manager's own expense, elect to secure a life insurance policy on Artist with Manager as beneficiary, Artist will assist Manger in obtaining such a policy, including by submitting to a physical examination, and/or drug testing.

**17. a.** Artist agrees that Manager alone reserves the right to hire and fire, at will, stage crew workers, technicians, and/or other individuals involved and/or associated with Artist as per Artists performance and/or involvement within the scope of this agreement; whether individual is a compensated worker or a volunteer.

**b.** Artist agrees that in all capacities and in all cases, Manager shall have the final say in deciding who works for, or with the Artist. Artist in no way or form is to contract individually with any person or entity which would directly or indirectly effect the terms of this agreement. All such dealings are to be made through Manager. Artist agrees to release its individual contracting capacity to Manager who shall be the sole contracting agent for the Artist; unless Manager assigns this right in a signed writing. In the case that Manager does assign this right, the assignment is to be construed as temporary and revokable upon Managers desire to revoke, demonstrated by another dated signed writing. Any attempt by Artist to contract individually without Manager and/or Manager's assignment of said right will constitute a violation of this clause and may cause the Manager to incur damages.

**18.** Artist agrees that Manager alone, acting as final decision maker, reserves the right to "govern" the stage area, including but not limited to the performance stage and backstage area, while Artist is either performing or acting within the scope of this agreement. This governing is to include, but is not limited to restricting certain individuals from the aforementioned areas, removing same, either by venue management and security or Police action, and limiting access to certain individuals to the aforementioned areas. Artist agrees that Manager alone has full, undisputable governing power. Artist agrees that any attempt by Artist to obstruct any of these governing actions will constitute a violation of this clause and may cause the Manager to incur damages.

**19.** Manager shall have the right to assign this Agreement or any part hereof. Artist may not assign any of his rights and/or obligations hereunder without the express written permission of Manager.

**20. a.** This Agreement and all amendments or modifications hereof shall be governed by and interpreted in accordance with the laws of the State of New Jersey applicable to contracts executed and to be fully performed in said state. The invalidity of any clause, part or provision of this Agreement shall be restrictive in effect to said clause, part or provision, and shall not be deemed to affect the validity of the entire Agreement.

**b.** This Agreement embodies all the representations, terms and conditions of the parties' agreement, and there is no other collateral agreement, oral or written, between us in any manner relating to the subject matter hereof.

**c.** No alteration, amendment or modification hereof shall be binding unless set

forth in a writing signed by all of the parties hereto.

d. This Agreement shall not take effect until fully executed by all of the parties hereto.

e. Any reference herein to the singular shall be deemed to include the plural if the context so requires, and any reference to the masculine pronoun shall be deemed to include the feminine if the context so requires.

f. Artist hereby acknowledges that Artist was permitted the opportunity to consult an attorney of his own choosing and has either consulted with such attorney prior to executing this Agreement or has voluntarily waived such right and entered into this Agreement freely, without coercion or any duress. INITIALS OF ARTIST \_\_\_\_\_

g. No breach of this Agreement on the part of Manager or Artist shall be deemed material, unless the party alleging such breach shall have given the other party notice of such breach, and said other party shall fail to discontinue the practice complained of or otherwise cure such breach, within thirty (30) days after receipt of such notice, if such breach is reasonably capable of being fully cured within such thirty (30) day period, or if such breach is not reasonably capable of being fully cured within such thirty (30) day period, if Manager or Artist commences to cure such breach within such thirty (30) day period and proceeds with reasonable diligence to complete the curing of such breach. However, the provisions of this Paragraph 20(g) shall in no way limit or postpone the implementation or exercise of either party's rights under Paragraphs 7, 8, 10 and 12 hereof. Finally, regardless of the breach, any breach that takes longer than ninety (90) days to cure shall be considered incurable.

**IN WITNESS WHEREOF**, the parties have hereunto placed their seals the day and year first written above.

Accepted and agreed to by:

**MANAGER:**

**ARTIST:**

\_\_\_\_\_  
For [redacted] Management

\_\_\_\_\_  
SS#  
\*notarization page is attached

**ACKNOWLEDGMENT**

STATE OF NEW JERSEY

COUNTY OF \_\_\_\_\_

Before me, a Notary Public of the State and County aforesaid, personally appeared \_\_\_\_\_, the within named Artist, with whom I am personally acquainted, and who acknowledged that he executed the foregoing Management Agreement for the purposes therein contained.

WITNESS my hand and official seal on this \_\_\_\_\_ ( ) day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

EXHIBIT - **J**



## RECORD CONTRACT BASICS

Record contracts come in many forms. This stems from the fact that there are hundreds of different record companies. From the so-called "major labels" (EMI, Sony, Warner, PolyGram, BMG or one of their related corporations) to "mini-majors" (A&M, Island and Virgin, in the days of their independence, were the most obvious examples) to the "independents" (4AD, Lava, and hundreds of others), the contract depends largely on the type of record company offering it.

When you first see your contract, if you are like most bands, you immediately sit down and read it. However, you soon realize that it is written in a manner which defies grammatical English. Sentences run on for 14 lines, with little if any punctuation. There are terms and words which you have never encountered. Finally, the sentences constantly make reference to each other ("pursuant to 1(A)3(c)(ii)"). Where do you begin? The first place is with someone familiar with record contracts. This is usually an entertainment attorney.

Often, a band will be aware of and have already negotiated the "deal points" prior to retaining independent counsel on their behalf. Deal points are the basics of the contract: the advance, number of albums and royalty rate. However, the problem is in the details.

In all record contracts, you will be signing an exclusive agreement. This means that you will not be able to record for anyone else other than the record company during the "term" of your contract. The term is how long the contract lasts. Contrary to popular belief, record companies do not sign you and guarantee you seven albums. It may be a seven album deal, but nothing obligates the label to record seven albums. The seven albums means that the record label has the option to record seven albums. Typically, a record company will record one album and see how it does. If it sells well, they will exercise their option to record a second album. If the first album does not do well, the label usually drops you. Record companies require long term option contracts because if the band does do well, the label wants to make sure that the band stays with their company. Since they invested so much and signed the band in the first place, they want to be able to share the success of the band over a long period of time. For example, REM recently finished out the last of their options with their record company. REM's new contract guarantees a \$10 million advance per album in the future. Try getting that advance for your first contract! It rarely happens. Finally, the "territory" of most contracts is world-wide meaning that the record company has exclusive rights to your services as a band throughout the world.

I find that almost all bands initially form to make music, as opposed to make money. Think back to when you began, it was for the love of music and not money that was the motivating factor. However, when it comes to a record contract, it is about money. A record company puts a record out to make money. Creativity and integrity play a part, but it is a financial relationship.

In many contracts, the financial terms will run over 15 pages. The rule in record contracts is what the record company gives you with one hand, it takes away with the other. The fundamental touchstone of record

contracts are "points." Points refer to how many percentage points a band will receive as their royalty rate. On a major label, this will run between 10 and 15 percent and typically 9 to 12 percent on a smaller label. The percent royalty rate is just the beginning however. The first question you should ask is, "a percentage of what?"

Generally, the royalty rate is based on a percentage of the standard retail selling price. You will get your full royalty rate for each full price CD or tape you sell through normal retail channels. Normal retail channels are usually record stores like Tower Records or Sam Goody. What about other places you sell your CD's? Record companies will pay you a fraction of your royalty rate for sales not through normal retail channels. For example, you may receive 75% of your royalty rate for sales outside the United States, 60% of your royalty rate for CD's sold below standard retail price (i.e. albums sold at a discount) and 50% of your royalty rate for sales through record clubs. In fact, most of your CD's will not be sold through normal retail channels. Although you may have a 12% royalty rate, you will only get a 6% royalty rate on record club sales. Confused yet?

Record companies try to make the royalty rate paid to artists as attractive as possible. They may give you a generous royalty rate. However, in addition to the reduced royalty rate on CD's sold outside normal retail channels, there are also many reductions in your royalty rate. I said that the financial terms are often 15 pages or more. Well, your royalty rate is on the first page and the remaining pages are all the reductions. It is impossible to determine how much a band will get for selling a CD without a calculator. When I represent a band negotiating a record contract, I sit down with them and show them the calculations to determine how much (or little) they will receive for each CD and tape sold.

There are entire chapters in books written about all the various deductions. I will mention but a few here. First, you get no royalties on records given away free for promotional purposes. A large deduction is the so-called "packaging" deduction. The theory behind this deduction is that the band pays for the packaging of the CD and tape. Typically, these deductions range from 15 to 30 percent of your royalty rate. In effect, a 12% royalty rate and a 25% packaging deduction lowers your rate to 9%. In addition, your royalty rate is often an "all-in" royalty rate which means that you must pay the producer out of your royalties. Typically, a producer will take 3 points (3%) which lowers your royalty rate even further. Your royalty rate is meaningless unless it is viewed in the context of all the deductions. A band can expect an average of \$1.00 in royalties for each full-priced (\$16.98) CD sold through normal retail channels.

Did I say the band was going to actually receive royalties? Not so fast. The other major concept involved in record contracts is the term "recoupment". Recoupment is a fancy word for pay back. Record companies expend a lot of money on bands. They pay for all the studio time, give the band an advance, promote the band, etc. All of this money is a loan to the band which the band must pay back. This is recoupment. The band pays back the record label out of their royalties. For example, if a major label spends \$250,000 to record an album, the band must make over \$250,000 in royalties until they receive their first royalty check. Once a band sells enough records to pay back the amount to the record label, the band has recouped and will receive royalties on future record sales. Approximately 80% of albums never reach this point which means that most bands NEVER receive any royalty checks. Do the math yourself, if you owe the record company \$250,000 and you make \$1.00 per CD, that is a quarter of a million CD's you must sell before you collect royalties. The one redeeming feature is if the band does not sell enough CD's to recoup, they don't have to pay the record company back. It does not come out of the band's personal pocketbook.

There are other places a band can make money when they have a record out other than royalties. In past articles, I have discussed publishing. There is also money from live personal performances (concerts). This is money that the band gets to keep-most of the time that is. Some record company contracts, particularly small independent labels who cannot afford to lose as much money as the major labels, allow the label to

recoup money from other sources, such as publishing. Although this should be called robbery, the practice actually has a name and is called "cross-collateralization". This term means the band will not receive ANY money until the label gets paid back, i.e. the band is recouped. Of course, you don't need to sell as many albums to become recouped on an independent label, but this can come as quite a shock.

Now for the topic everyone asks about: "How much is my advance?" Not surprisingly, this question is also not as simple as it seems. In the past, record labels would sign a band and write a check to the band as a signing bonus and then pay and record an album. Some bands abused this and went over-budget on recording, much to the record company's dissatisfaction. To remedy this abuse, record companies developed the "recording fund." The recording fund is the recording budget AND the advance rolled into one. The contract states that you have one lump sum to record your album, and if you are under-budget, anything left over is your advance. If you want to stay at the Ritz and waste time in the studio, that means less money for you for your advance. This has proved a marvelous incentive for bands to be efficient in the studio.

How much of an advance is good? Once again, this depends on the label and the circumstances of your signing. Generally speaking, the larger the label, the more of an advance you should expect. In addition, the more interest in the band, the higher the price becomes. However, is a large advance always the best? There is much disagreement on this issue. Keep in mind, the more money you get as an advance, the more money you have to pay back (remember recoupment?) before you receive royalties. If you take a huge advance and your album does not live up to expectations, a label may be quicker to drop you and cut its losses. On the other hand, most bands who sign record contracts never reach recoupment so the advance may be the only money they ever get from the label so why not take as much as possible? There is no right or wrong answer to the size of the advance and I try to get a sense from my clients as to their feelings. Some have a "show me the money" attitude and others think about longevity within the industry.

These are a few of the main points in record contracts. Often, a contract will be over 40 pages long. Needless to say, there is a lot more in there than I have had a chance to get into. However, I hope this column has given you a better sense of how record contracts operate. Don't think that you have finally "made it" simply because you get offered a record contract. Often, it is a deal with the devil. There are many attendant drawbacks to signing a record contract. Most importantly, however, is to have someone knowledgeable about record contracts negotiate the agreement on your behalf. Record contracts are routinely negotiated. A slight change in wording here and there can have a huge financial impact for a band.

EXHIBIT - **K**

# ENTERTAINMENT LAW SEMINAR SERIES

*Brought to you by:*

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## OVERVIEW OF DRAFTING AND NEGOTIATING RECORDING INDUSTRY CONTRACTS



### General Topics Covered:

Preliminary artist considerations  
Differences between Major & Independent label deals  
Industry standard terms  
Advances / Recoupments  
Term / Percentage  
Negotiable items

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## RECORDING ARTIST AGREEMENTS OUTLINE

### I. DEMO SHOPPING

#### A. Target Labels

The first decision to be made by the Artist and attorney is what labels should be targeted for shopping. Whether it is the Artist or the attorney who will be approaching the record companies, a decision must be made as to which labels are most likely to be interested in the Artist's style and recordings.

#### B. Record Demo

The first, and possibly last, impression the labels will have is based on the demo and accompanying materials. While it is not necessary to spend a fortune on the package, it is important to have a professional look and sound.

1. Professional studio. Although many demo tapes are recorded on home four track or eight track units, because the competition is so heavy, the songs must "jump off the track" -

and are best produced and received if they are professionally recorded. However, with new software on the market, it is getting easier for an Artist to professionally record at home or in a moderate studio.

2. Content of tape. A demo tape should typically contain three to five songs. The best song from a "commercial" viewpoint should be first on the tape with the songs then alternating in tempo. All songs on the tape should be the same genre of music. In other words, rock, country and jazz should not be combined on the same tape. If the Artist is truly outstanding in several styles of music, it would be best to shop the different styles to different labels.
3. Lyric sheets. It is helpful for the A& R person listening to the tape to have lyric sheets on each song to look at if desired. This is especially true if the lyrics are hard to understand or if the songwriter is particularly poetic and the lyrics are important to the project.
4. Promo material. The package should also include an 8 x 10 glossy of the Artist as well as any newspaper articles, reviews, etc. that are available and complimentary.

#### C. **Solicited v. Unsolicited**

Is the tape unsolicited? Many Artists are unable to get record companies to open and/or listen to the tapes sent directly by the Artists. The record companies prefer to have an industry professional, e.g., a producer, manager or attorney that they have had previous contact with to present the projects. This is to give the A&R department a screening process prior to their listening to the tapes. It is believed that if an Artist is sufficiently talented he/she/it will get the attention of a producer, manager or attorney to assist in the shopping process.

## II **TYPES OF RECORDING AGREEMENTS**

Record companies will enter into agreements either directly with the Artist or through a production company. For negotiation purposes, what type of record company, i.e., independent or major, will become a factor but common rules below apply to both.

#### A. **Artist/Record Company Agreement**

The record company will directly sign an Artist and it will then be the Artist's responsibility to hire the producer and pay the producer's royalty from royalties received from the record company. On occasion, the record company will pay the producer directly but the cost of the producer's fees and/or royalties ultimately comes from the Artist as does payments for the rest of the Artists team (attorneys, managers, agents, etc...)

#### B. **Production Company/Record Company Agreement**

A production company often enters into an agreement with an upcoming Artist to produce master and/or demo recordings. The Artist is signed to the production company and then the production company takes the tapes and attempts to enter into a contract with a record label.

## III. **MAJOR TERMS OF A RECORD CONTRACT FOR AN UNKNOWN OR NON-SUPERSTAR ARTIST**

## A. **Term and Territory; Options**

The territory is either on a country by country, territory by territory or worldwide (Universal) basis. As in all other areas of recording contracts, this is always negotiable but is likely to be on a worldwide basis for a new Artist. The Artist may try to have a reversion for certain territories if the record company does not release the product within a certain period of time. (See paragraphs 1-5 and 32(k) of sample Recording Agreement)

1. A "typical" recording contract extends for one year with the company having four additional one year options. This period has been extended lately to a seven year agreement in many circumstances. It is to the Artist's advantage to keep the agreement as short as possible while the record company will try to extend the contract indefinitely. (See paragraphs 1-5 of sample Recording Agreement).
2. The modern trend is for the record company to require the delivery of a certain number of masters or LP's rather than for a certain number of years. See MCA Records, Inc. v Newton-John, 90 Cal. App. 3d 18, 153 Cal. Rptr. 153 (1979). The typical seven year maximum is based on a seven-year personal service contract limitation provided for in the California Labor Code, (See paragraphs 4 and 5 of sample Recording Agreement), which has been the trend setter for the rest of the music industry for many years.
3. The seven year maximum under the California Labor Code may be extended to run from a re-negotiated date if the new contract provides for new consideration; is not intended by the employer to intentionally deprive the employee of the seven-year limitation and, specifically, discharges the earlier contract. See Melissa Manchester v. ARISTA Records Inc., CV 81-2134-RJK (Kx) (CD Gal. Sept, 27, 1981).
4. In most other states, including New Jersey, the recording contract of the 1990's are made to be at least a six year deal whether that term get expressed in record company options or in outright terms of years, and the compensation from same can extend even past that six year term.

## B. **Product Commitment**

A typical recording agreement requires the delivery of one or two albums per option period. From an Artist's perspective, there should be a requirement that the album be released before the record company can exercise its next option. (See paragraph 6(b) of sample Recording Agreement). Since these option periods are exercised by the record company only, the Artist should try to negotiate a non exercising clause which would release the artist within a certain period of time if the record company chooses not to exercise an option.

## C. **Royalties**

1. A new Artist will typically earn from 7% to 10% of suggested retail list price ("SRLP") plus the producer's royalty. A producer typically earns 3% -4% of SRLP (See paragraphs 12, 13 and 32(m) of sample Recording Agreement)
2. The calculation of royalties is based on 85%, 90% or 100% of net sales depending on the record company and the method of allowance for free goods deductions (See paragraph 12 (a) of sample Recording Agreement).

3. Each recording agreement will call for the reduction of royalties for packaging deductions. These deductions typically range from 10% to 25% of SRLP. (See paragraph 13 sample Recording Agreement).
4. There is typically a lower royalty rate paid for singles, 12 inch singles, EP's, CD's, etc. The amount of the reduction is negotiable. (See paragraph 13 of sample Recording Agreement).
5. There is also a reduction in royalties for countries outside of the United States. Depending on the country, the rates run from 50% to 85% of the U.S. rate. (See paragraph 13 of sample Recording Agreement).
6. Records that are distributed by the record company as "free goods" typically earn no royalties. The amount of free goods that a record company can distribute without paying royalties is a subject of negotiations between the parties. The Artist should try to limit the percentage of free goods to 15% if it is at all possible. (See paragraph 13 of sample Recording Agreement).

#### D. Recording Costs

1. Recording cost budget. A record company may contractually require themselves to pay all recording costs up to a certain dollar amount that is contained in the recording agreement. If the actual recording costs go above that budget, the Artist will be responsible for paying those costs unless the company agrees at the time to pay costs in excess of the originally approved budget. If the actual recording costs come in under budget, the record company has saved money and the Artist will be able to earn royalties sooner as there will be less recording costs to recoup from the Artist's royalties. The record company could also decide to pay the additional costs and require immediate recoupment from other sources of Artists income such as live shows and public appearances. (See paragraph 6(d) of sample Recording Agreement).
2. Recording fund. A recording fund is an agreed upon maximum to be spent on recording costs. In the event the actual recording costs are less than the recording fund, the balance is paid to the recording Artist upon delivery and acceptance of the masters. On occasion, the Artist will be paid all of the funds in advance or in stages and the Artist may then keep all recording funds not spent on actual recording costs. In this case, the full amount of the recording fund is recoupable from the Artist's royalties.
3. The Artist should negotiate, if possible, for increases in the recording budget or recording fund based on sales of the earlier albums released. A record company will often agree to a floor/ceiling arrangement whereby a minimum recording fund or budget is agreed to with a maximum ceiling based on approximately 65% of the royalties paid on the previous album released.

#### E. Advances

An advance is when the recording company pays "cash" to an artist up front as sort of an inducement to sign with that record company. In the 1980's when there were a great deal of bidding wars between record companies to get the next popular Heavy Metal or hot dance artist, the companies would battle by offering greater advances than the next. Advances, were like signing bonuses and

used to be around \$20,000.00 to \$50,000.00 from an independent label and up to \$150,000.00 from major label. In the 1990's, large advances are not seen except in the rarest of cases. What is typically scene is a more skillfully crafted agreement so that the band gets less of an advance but will start earning money a lot quicker. Advances are always recoupable against royalties and there have been several cases where a band who received a \$150,000.00 bonus and a \$70,000.00 recoding budget could sell a "gold" record and still be in debt. Advances are good, but not in spite of other more important areas of the agreement.

**F. Promotional Commitment**

While record companies are reluctant to commit to any specific promotion (dollar amount) in the recording agreement, video funds and/or tour support should be considered. It is then a matter of negotiation whether the cost of videos and/or tour support is considered an advance and, therefore, recoupable or whether it is strictly promotional and non-recoupable. The early 1990's trend in the industry with respect to videos was to make 1/2 of the video budget recoupable from record royalties and the balance of the video budget recoupable from video income, if any. In the late 1990's recording companies are always pushing for complete recoupability from any source of income, to cover their financial investment. (See paragraph 19 of sample Recording Agreement) .

**G. Artistic Control**

An area that most Artists are concerned with is artistic control. For a new Artist, the record company will typically require that the product be "commercially satisfactory" according to the record company's standards. The Artist should attempt to change that standard to "technically satisfactory" in order to retain artistic control. (See paragraph 6(a) of sample Recording Agreement).

**H. Controlled Compositions.**

Most record companies will require that an Artist, if he/she/it also writes the compositions recorded, grant the record company a mechanical license at 75% of the then current compulsory rate. In addition, the record company will normally place a maximum of 10 times the 75% rate as the most they will pay in mechanical royalties on an album. The Artist should attempt to negotiate this multiple higher, particularly if they expect to use several outside writers on their project. (See paragraph 17 (b) of sample Recording Agreement). Mechanical royalties are an animal of their own and cannot be addressed fully in this seminar. An upcoming seminar will address mechanical royalties.

EXHIBIT - **L**

## EXCLUSIVE ARTIST RECORDING AGREEMENT

This Agreement made and entered into as of this \_\_\_\_\_ ( ) day of \_\_\_\_\_, 200\_\_\_\_, by and between [REDACTED] ENTERTAINMENT GROUP, L.L.C., (hereinafter "Company"), and \_\_\_\_\_, individually (or as any group) p/k/a \_\_\_\_\_, a/k/a \_\_\_\_\_, (hereinafter "Artist").

**WHEREAS**, Artist wishes to render exclusive services to Company as recording artist and Company wishes to produce recordings by Artist with a view toward exploiting, distributing and marketing records, compact disks, and all other medium, including but not limited to digital formats and other, on any world wide medium, including Internet,

**NOW, THEREFORE**, in consideration of the premises, it is hereby agreed as follows:

1. Company hereby engages Artist to render such services as it may require in the production and recording of records and Artist hereby accepts such engagement and agrees to render such services exclusively to Company for an Initial Period commencing on the date first written above and terminating two (2) years following the date Company receives "completed" master(s) as hereinafter defined, plus the additional period or periods, if any, by which such Initial Period may be extended through Company's exercise of one or more of the options granted to Company herein. The Initial Period as same may be extended is hereinafter called the "Term". Artist shall not be permitted to exercise any of the rights granted to Company in this agreement without the express written consent of Company.

2. Artist hereby grants to Company five (5) consecutive separate options to extend the Term for further periods of One (1) year each ("Option Periods"), each upon the same terms and conditions applicable to the Initial Period, except as otherwise hereinafter set forth. The Initial Period and every Option Period for which Company has exercised its option are hereinafter sometimes referred to together as the "Term". Each such Option Period shall begin automatically upon the expiration of the prior period, unless Company sends written notice to Artist of Company's intention not to exercise such option at least thirty (30) days prior to such expiration.

3. In the event that Company decides to release records itself and not enter into an Agreement with a distributing company, which would have provided, among other things, for the distribution of records derived from Master Recordings made herein (the "Distribution Agreement"), within two (2) years of the date Company receives "completed" master(s) as hereinafter defined, and Company has not released, through independent distribution channels, at least a Single, then, the Term of this Agreement shall automatically terminate. If, however, Company has received a bona fide offer to enter into an agreement with a DRC (the Distributing Record Company or "DRC") within two (2) years of the date Company receives "completed" master(s) as hereinafter defined, Company shall have a reasonable period of time to complete said negotiations and, if an agreement is reached, this Agreement shall not terminate. Said reasonable time shall not exceed six (6) months.

4. (a) Company and Artist acknowledge that Company plans to enter into a royalty agreement (as opposed to a so-called "Pressing and Distribution Agreement") with an established phonograph record/distribution company (the Distributing Record Company or "DRC") whereby

Company delivers Artist's recordings to the DRC for release on the DRC's label (the "Distribution Agreement"). In this regard, and notwithstanding anything to the contrary contained in Paragraphs 1 and 2 or any other relevant Paragraphs of this Agreement, the Initial Period and each Option Period of this Agreement shall be deemed extended so to expire thirty (30) days after the date that the respective period of the Record Company Agreement expires, provided that in no event shall the term of this Agreement be extended pursuant to this Paragraph 4 so as to exceed seven (7) years in length.

(b) If Company deems it is unable to secure an agreement with an established DRC, or if Company chooses to independently release records or singles on its own, it may, as an alternative, elect to enter into a pressing and distribution agreement with another company, or finally it may elect to release the record itself, independently. All alternatives are subject to the same time and term restrictions in this agreement.

(c) Upon the signing of the agreement both Company and Artist understand and agree that Company will begin this contractual relationship with Artist by independently releasing, if it so chooses, one or more singles as hereinafter defined to garner some interest in the Artist with the public and attempt to establish a market for the Artist. Once the Artist becomes established to some extent, Company may then wish to release full recordings, CD's, Cassettes, Video's etc... of the Artist as would be done in the normal course of the recording industry, subject to the terms of this agreement. Company alone holds these exclusive options.

5. In the event Company does enter into a Distribution Agreement, and in the event that said Distribution Agreement shall expire or be terminated prior to the date on which this Agreement would expire if all the options pursuant to Paragraphs 1 or 2 hereof were exercised, then Company shall have the right to enter into subsequent Distribution Agreements or maintain independent and act in said capacity above; and if a subsequent DRC requires a term commitment from Company which would cause this Agreement to exceed the Initial Period of two (2) years and the five (5) Option Periods of one (1) year each, then this Agreement shall be deemed to be extended so as to expire upon the expiration or termination of such subsequent Distribution Agreement (with the addition of applicable option periods), provided that in no event shall the term of this Agreement be extended pursuant to this Paragraph 5 so as to exceed seven (7) years in length.

6. (a) During the Term Artist agrees to perform for the recording of Sides, embodying Compositions not heretofore recorded by Artist, in recording studios chosen by Company, at such times as Company may designate or approve, and Company agrees to record Artist's performances. Company shall have the right and opportunity to have representatives attend each recording session. The Compositions to be recorded shall be chosen or agreed upon by the Company and each recording shall be subject to Company's approval as commercially satisfactory for the manufacture and sale of phonograph records. Upon the request of Company, Artist shall re-record any Composition until a commercially satisfactory master record shall have been obtained. Should Artist fail to appear at any recording session of which Artist has been given reasonable notice for any reason, the minimum recording obligation provided for in sub-paragraph (b) below for the Initial Period may, at Company's option, be reduced by the number of Sides which were scheduled to have been recorded at such session, and Company shall have the right to charge any of its out-of-pocket expenses in respect of such session against Artist's royalties if and when earned.

If royalties are never earned, Company reserves the right to bill and charge Artist personally for these and other expenses later discussed. Artist acknowledges and accepts joint and several personal responsibility to pay back all costs and expenses paid by Company to or for Artist if this agreement does not provide for enough economic gain for Company to recoup those costs and expenses, including advances. Therefore, Artist understands that not only are any and all costs and expenses recoupable by Company but they are also returnable to Company upon demand as if same were a loan. This contingency applies to each and every paragraph of this agreement whether mentioned specifically or not.

(b) During each period of the Term, Company shall request and Artist shall perform for the recording of a minimum of a single in the beginning as explained in paragraph 4(c) above, and thereafter a minimum of two (2) Sides. It is agreed that the foregoing is a minimum and that during each period of the Term, Company may request, and upon such request Artist shall perform for, the recording of such number of additional Sides as Company may request, but no more than shall be sufficient for two (2) LP's.

(c) Notwithstanding anything to the contrary contained in this Agreement, Company shall have no less than one hundred and fifty (150) days following the date of completion of and acceptance by Company in accordance with all of the terms and conditions of this Agreement of all of the masters required to be recorded and completed during any contract Period within which to exercise its immediately succeeding option to extend the Term pursuant to Paragraph 2 hereof and the then current Period of the Term and the dates for the exercise by Company of its options to extend the Term pursuant to Paragraph 2 hereof and the date(s) of commencement of subsequent Option Periods shall be deemed extended accordingly.

(d) Upon receipt of invoices therefor, Company agrees to pay all recording costs actually incurred in the production of the masters required to be recorded and delivered hereunder, provided such costs have been approved by Company in writing. All recording costs incurred in excess of the budget approved by Company shall be Artist's sole responsibility and Artist hereby agrees to forthwith pay and discharge all such excess costs. In the event Company agrees to pay any such excess costs on Artist's behalf, Artist shall, upon demand, reimburse Company for such excess costs or in lieu of requesting reimbursement, Company may deduct such excess costs from any and all monies due to Artist under this agreement. All recording costs paid by Company pursuant to this sub-paragraph 6(d) shall be advances against and recoupable by Company out of all royalties becoming payable to Artist pursuant to this or any other agreement between Artist and Company or its affiliates and or treated as a loan pursuant to 6 (a) above.

(e) Company may also choose, instead of recording new product on the Artist, to acquire all the rights to recordings/masters that were recorded by Artist at any time before the date of this agreement. If Company does so, which is its complete right to do and Artist hereby grants Company the right to do same whenever that ability is within the province of the Artist, Company may elect to release or re-release, repackage, alter, work with, change or modify this product, master, sides or recordings under Companies name and record label. Artist hereby releases and grants to Company each and every and all rights, ownership, title, and authority, it holds or may have once held, individually, jointly, or as a business member or entity, in said previous recorded product, and agrees to deliver the masters, dat and any other format existing upon the signing of this agreement, and all accompanying materials, to Company upon the signing of this agreement. Artist understands

that all these previously recorded masters, sides, recordings, etc... will totally and completely become the sole and exclusive property of Company in perpetuity, to exploit as Company wills, pursuant to the compensation clauses in this agreement to Artist, subject to no other persons, firms, companies, or any other entities, contracts or claims, for Company to do with as it wishes. Company takes these previous works free and clear from all past dealings and ownerships and title to same and all rights accompanying same are transferred forever to Company and Artist hereby indemnifies Company against harm caused by any third parties claim to these rights at any time. These previous recordings, works, songs, sides, masters, etc... shall be defined as "delivered", "written" or "recorded", during the term of this agreement, for purposes of this agreement.

7. All Sides recorded during the Term and all derivatives manufactured therefrom, together with the performances embodied thereon, including those materials discussed in 6(e) above, shall, from the inception of their creation, be entirely and forever the property of Company, for the territory, free from any claims whatsoever by Artist or any person, firm or corporation deriving any rights or interests from Artist; and Company shall have the right to copyright the Sides in Company's name as the owner thereof and to secure any and all renewals of such copyright. Without limiting the generality of the foregoing, Company and/or its subsidiaries, affiliates, assignees and licensees, shall have the exclusive and unlimited right to all the products of the services of Artist hereunder, including, but not limited to, the exclusive and unlimited right throughout the world:

(a) To manufacture, produce, advertise, publicize, sell, distribute, lease, license, or otherwise use or dispose of the Sides and phonograph records and other reproductions embodying the Sides in any or all fields of use, by any method now or hereafter known, upon such terms and conditions as Company may elect or, in its sole discretion, to refrain therefrom;

(b) To use and publish and to permit others to use and publish the name, professional name (including any professional name heretofore or hereafter adopted by Artist), photographs and likeness of Artist and biographical material concerning the Artist, for advertising, purposes of trade and otherwise without restriction in connection with the phonograph records made pursuant hereto. If, after signing this Agreement, the Artist's name is changed to a new name not now known, Company will have the right to use the new name in connection with the release and advertising of any recordings associated with this Agreement;

(c) To release derivatives of any one or more of the Sides on any medium or device now or hereafter known, under any name, trademark or label which Company and/or its subsidiaries, affiliates, assignees and licensees may from time to time elect;

(d) To perform the Sides publicly and to permit the public performance thereof by means of radio broadcast, television and/or by any method now or hereafter known;

(e) To incorporate without cost to Artist, from time to time, in phonograph records to be made hereunder, instrumentations, orchestrations and arrangements owned by Artist of Compositions to be recorded hereunder;

(f) To obtain copyrights and renewals thereof in sound recordings recorded by Artist during the Term, including those materials discussed in 6(e) above, in Company's name as owner and employer-for-hire of such sound recordings or to allow Company's assigns, to obtain such

Copyrights and renewals.

8. Artist warrants and agrees that:

(a) During the Term, Artist shall not perform for the purpose of making records for anyone other than Company, or for distribution, in the Territory and Artist shall not authorize the use of Artist's name, likeness or other identification for the purpose of distributing, selling, advertising or exploiting records for anyone other than Company in the Territory.

(b) Artist shall not perform any selection recorded hereunder for the purpose of making records for anyone other than Company for distribution in the Territory (i) for a period of ten (10) years after the initial date of release of the respective record containing such selection or (ii) for a period of five (5) years after the expiration or other termination of this Agreement, whichever is later ("Re-recording Restriction").

(c) Should Artist make any sound recording during the Term for motion pictures, television, electrical transcriptions or any other medium or should Artist after the Term perform for any such purpose any selection recorded hereunder to which the Re-recording Restriction then applies, Artist will do so only pursuant to a written agreement prohibiting the use of such recordings, directly or indirectly, for any or all fields of home use, by any method now or hereafter known, but not without express written consent of the Company. Artist shall furnish to Company a copy of the provisions of any such contract relating to the foregoing.

(d) Should Artist so perform or should a licensed or consented to use of Artist's Identification by any one or more third parties occur in connection with any such Composition during the period referred to above, then in addition to any of Company's other rights or remedies, Company shall have no further obligation to pay royalties to Artist which otherwise would accrue to Artist hereunder for sales of records which contain Artist's performance of such Composition.

9. Artist recognizes that the sale of records is speculative and agrees that the judgment of Company with regard to any matter affecting the sale, distribution or exploitation of such records shall be binding and conclusive upon Artist. Nothing contained in this Agreement shall obligate Company to make, sell, license, or distribute records manufactured from masters delivered hereunder.

10. All monies paid to Artist or on behalf of Artist or to or on behalf of any person, firm or corporation representing Artist, other than royalties payable pursuant to Paragraph 12 of this Agreement, shall constitute advances recoupable by Company from any monies payable to Artist under this or any other agreement between Artist and Company or its affiliates, unless Company shall otherwise consent in writing. Same shall also constitute a loan as set for the in paragraph 6(a) above.

11. (a) Each master delivered hereunder shall be produced by a producer selected or approved by Company. Artist shall participate in decision-making discussions regarding choice of music, producers, arrangements, etc. as necessary under this Agreement. However, it is fully understood by Artist that if Artist and Company are unable to agree, all final decision making authority rests with Company. The base royalty rate of individual producers of any Masters

hereunder shall be deemed to be three (3%) percent of the suggested retail list price computed, reduced, adjusted and prorated in the same manner as Artist's royalties are computed, reduced, adjusted and prorated, calculated from the first record sold. This three (3%) percent shall come out of the Artist's percentage as set forth below, and not from Company.

(b) In the event Artist seeks to obtain the services of a Personal Manager for his career, during the Term of this Agreement, the manager must be one that is mutually agreed to by the parties hereto.

12. Conditioned upon Artist's full and faithful performance of each and all of the terms hereof, Company shall pay to Artist the following royalties for the sale by Company, its assigns or licensees in respect of phonograph records derived from the Sides subject to this Agreement:

(a) Ten (10%) percent of any and all net royalty payments received by Company for records sold under the this agreement in connection with the Masters produced hereunder, for one hundred (100%) percent of records sold which are paid for and not returned. This royalty rate shall be based on ninety (90%) percent of records sold which are paid for and not returned if Company is accounted to on the basis of ninety (90%) percent (rather than one hundred (100%) percent) of records sold by any DRC, if one is contracted with at the time. Company shall, however, use its best efforts to cause said DRC to pay royalties on the basis of one hundred (100%) percent of records sold. Net royalties are as defined in Paragraph 32 of this Agreement.

(b) As to masters embodying performances of Artist together with the performances of another artist or artists, the royalty rate otherwise payable hereunder with respect to sales of any record derived from any such master and the recording costs and/or advances otherwise payable by Company hereunder with respect to any such master shall be prorated by multiplying such royalty rate or recording costs and/or advances by a fraction, the numerator of which is one and the denominator of which is the total number of artists whose performances are embodied on each master.

(c) No royalties shall be payable to Artist unless and until Company has recouped all Recording Costs and each and every other cost and or expense, and Advances from the royalties payable to Artist under this or any other agreement between Artist and Company or its affiliates.

13. In the event Company elects not to distribute records recorded hereunder pursuant to a Distribution Agreement with a DRC in any particular territory, but elects to act as a so-called "manufacturer", the royalties payable, and related provisions applicable to Artist shall be as follows:

(a) (i) During the Initial Period a royalty of ten (10%) percent in respect to retail sales in the United States of records derived from masters required to be recorded and/or delivered during the Term;

(ii) During the first Option Period and all subsequent Option Periods a royalty of twelve (12%) percent in respect of retail sales in the United States of records derived from masters required to be recorded and delivered during the Term;

(iii) The royalty rate hereinabove set forth in subparagraph 13(a)(i) and (ii)

shall be hereinafter referred to as the applicable "Basic U.S. Rate".

(b) (i) A royalty of one-half ( $\frac{1}{2}$ ) of the then applicable Basic U.S. Rate shall be paid in respect of retail sales outside the United States of records derived from masters required to be recorded and delivered during the Term;

(ii) The royalty rate hereinabove set forth in subparagraph 13(b)(i) shall be hereinafter referred to as the "Basic Foreign Rate".

(iii) Royalties in respect of sales of records outside the United States shall be computed in the same national currency as Company is accounted to by its licensees and shall be paid to Artist at the same rate of exchange as Company is paid. It is understood that such royalties will not be due and payable until payment thereof is received by Company in the United States of America. In the event Company is unable to receive payment in United States dollars in the United States due to governmental regulations or other hold up from any source, royalties therefor shall not be credited to Artist's account during the continuance of such inability except that (i) if any accounting rendered to Artist hereunder during the continuance of such inability shows Artist's account to be in credit position, Company will, after Artist's request and at Artist's expense, if Company is able to do so, deposit such royalties to Artist's credit in the applicable foreign currency in a foreign depository, or (ii) if the royalties not credited to Artist's account exceed the amount, if any, by which Artist's account is a debit position, then Company will, after Artist's request and at Artist's expense, and if Company is able to do so, deposit such excess royalties to Artist's credit in the applicable foreign currency in a foreign depository. Deposits as aforesaid shall fulfill Company's obligations under this Agreement as to record sales to which such royalty payments are applicable.

(c) With respect to records sold (i) through any direct mail or mail order distribution method, including, without limitation, record club distribution, (ii) by distribution through retail outlets in conjunction with special advertisements on radio or television or any internet or the like, application, or (iii) by any combination of the methods set forth above, the royalty payable in connection therewith shall be (i) one-half ( $\frac{1}{2}$ ) of Company's net earned royalty receipts in respect of reported sales through such channels or (ii) one-half ( $\frac{1}{2}$ ) of the Basic U.S. Rate or the Basic Foreign Rate, as the case may be, whichever of (i) or (ii) is less. No royalties shall be payable with respect to records given away as "bonus" or "free" records as a result of joining a record club or plan or of purchasing a required number of records or with respect to records received by members of any such club operation either in an introductory offer in connection with joining such club or upon recommending that another join such club operation.

(d) With respect to sales of LP's on which the retail list price is at least Two (\$2.00) Dollars less (or the equivalent in foreign currency with respect to sales outside the United States) than Company's or its licensee(s)' then current retail list price for "top-line" LP's, the royalty rate shall be one-half ( $\frac{1}{2}$ ) the Basic U.S. Rate or Basic Foreign Rate, as the case may be.

(e) The royalty rate payable for records sold to the United States government, its subdivisions, departments and agencies, and to educational institutions and libraries shall be one-half ( $\frac{1}{2}$ ) of the Basic U.S. Rate and shall be based upon the retail list price (Post Exchange list price where applicable) of such records.

(f) the royalty rate payable for records sold as "premiums" shall be one-half ( $\frac{1}{2}$ ) the Basic U.S. Rate or Basic Foreign Rate, as the case may be, and the retail list price for such records shall be deemed to be Company's actual sales price. It is understood that Company shall have the right to use Artist's name or likeness in connection with any such "premium" record as an endorsement of any product or service.

(g) The royalty rate payable for records sold in the form of Singles or "12-inch singles", or CD singles or cassette singles, or MP3's or any other digital or other medium singles, etc., shall be one-half ( $\frac{1}{2}$ ) the applicable royalty rate otherwise payable.

(h) As to records not consisting entirely of masters recorded and/or delivered hereunder, the royalty rate otherwise payable to Artist hereunder with respect to sales of any such record shall be prorated by multiplying such royalty rate by a fraction, the numerator of which is the number of masters recorded and delivered hereunder embodied on such record and the denominator of which is the total number of masters embodied thereon.

(i) As to masters embodying performances of Artist together with the performances of another artist or artists, the royalty rate otherwise payable hereunder with respect to sales of any record derived from any such master and the recording costs and/or advances otherwise payable by Company hereunder with respect to any such master shall be prorated by multiplying such royalty rate or recording costs and/or advances by a fraction, the numerator of which is one and the denominator of which is the total number of artists whose performances are embodied on such master.

(j) Company shall have the right to include or to license others to include any one or more of the masters in promotional records on which such masters and other recordings are included (with a limit of two (2) such masters per record), which promotional records are designed for sale at a substantially lower price than the regular price of Company's LP's. No royalties shall be payable on sales of such promotional records.

(k) No royalties shall be payable in respect of: (i) records given away or furnished on a "no-charge" basis to "one-stops", rack jobbers, distributors or dealers, whether or not affiliated with Company; (ii) records given away or sold at below stated wholesale prices for promotional purposes to disc jockeys, record reviewers, radio and television stations and networks, motion picture companies, music publishers, Company's employees, distributor, Artist or other customary recipients of promotional records or for use on transportation facilities; (iii) records sold as scrap, salvage, overstock or "cut-outs"; (iv) records sold below cost; (v) records released over internet or other world wide digital medium by Company for free. No royalties shall be payable on any sales by Company licensees or assigns until payment has been received by Company in the United States.

(l) As to records sold at a discount to "onestops", rack jobbers, distributors or dealers, whether or not affiliated with Company, in lieu of the records given away or furnished on a "no-charge" basis as provided in subparagraph 12(k)(i) above, the applicable royalty rate otherwise payable hereunder with respect to such records shall be reduced in the proportion that said discount wholesale price bears to the usual stated wholesale price.

(m) The royalty rates provided for in this Paragraph 13 shall be applied against the

retail list price (less Company's container/packaging deductions, excise taxes, duties and other applicable taxes) for one hundred percent (100%) of records sold which are paid for and not returned. The retail list price for records sold in the United States shall be the manufacturer's suggested retail price in the United States except that the retail list price for a "12-inch single" shall be deemed to be twice the manufacturer's suggested retail list price for Singles and the retail list price for compact discs shall be deemed to be the manufacturer's suggested retail list price for CD's. For records sold outside the United States, the retail list price shall be the manufacturer's suggested retail price in the country of manufacture or sale, as Company is paid. In those countries where a manufacturer's suggested list price is not utilized or permitted, the generally accepted retail price shall be utilized. In computing sales, Company shall have the right to deduct all returns made at any time and for any reason. Regardless of the above, the SRLP of any format sold will be the standard SRLP in the music industry at the time of sale. Notwithstanding the aforementioned, if Company sells records for less than the SRLP, it is the actual sale price on which all royalties will be based.

(n) Company's container deductions shall be a sum equal to ten (10%) percent of the retail list price for records in disc form, fifteen (15%) percent of the retail list price for LP's in disc form in "doublefold" album jackets or covers or in album jackets which contain an insert or any other special elements, and twenty (20%) percent of the retail list price for pre-recorded tape, compact disc and cartridge boxes or containers, or any other form of package, container or box other than as described herein or any other medium.

14. Notwithstanding anything to the contrary contained within this Exclusive Artist Recording Agreement, in the event Company obtains a Distribution Agreement with regard to Masters recorded by Artist under this Agreement, then the terms and conditions, other than those relating to royalty rates, contained in such Distribution Agreement relating to the Artist, including, without limitation the number of Master recordings to be delivered, the time of delivery of such Master recordings, the term of such agreement, the amount of mechanical royalties that will be paid by the DRC, packaging deductions to be charged, the manner in which royalties are accounted to Company and the time and method of such royalty accountings, free good provisions, foreign deductions, suspension or extension of the term due to Artist's refusal or failure to perform, any release requirements and re-recording restrictions, shall be deemed to be contained and embodied in this Agreement and Artist agrees to abide by such terms and conditions as if, where applicable, they were so contained in this Agreement. (It is understood that in such event, references in the Distribution Agreement to the DRC shall be deemed to be to Company and references to Company in such Major Record Company Agreement shall be deemed to be to Artist).

15. Accountings as to royalties payable hereunder shall be made by Company to Artist semi-annually within the sixty (60) days following the accounting by the DRC to Company, together with payment of accrued royalties, if any, earned by Artist during the preceding half year if said DRC is being used. If not, then same time period applies from Company to Artist. No statements need to be rendered for any such semi-annual period after the expiration of the Term hereof for which there are no sales of records derived from masters hereunder. All payments shall be made to the order of Artist and shall be sent to Artist at the address as indicated below. Company may maintain reasonable reserves to provide for returns of records sold hereunder. Royalties are paid only after full recoupment/repayment is completed.

Artist shall be deemed to have consented to all accountings rendered by Company

hereunder and said accountings shall be binding upon Artist and not subject to any objection by Artist for any reason unless specific objection, in writing, stating the basis thereof, is given to Company within two (2) months after the date rendered, and after such written objection, unless suit is instituted within six (6) months after the date upon which Company notifies Artist that it denies the validity of the objection.

16. Artist shall have the right to appoint a certified public accountant or attorney, who is not then currently engaged in an outstanding audit of Company, to inspect the books and records of Company insofar as the same pertain to the subject matter of this agreement; provided, however, that such inspection shall take place only upon reasonable notice (30 days), not more frequently than once in any calendar year during which Artist receives a statement, shall take place at Company's office during normal business hours, shall be for a reasonable duration and at the sole expense of Artist.

17. (a) Company shall be responsible for payment of mechanical copyright royalties for the United States directly to the copyright proprietors of the selections embodied in the Masters. Artist shall cause the copyright proprietors to issue to Company mechanical licenses for the United States for all selections embodied in Masters delivered hereunder which are first recordings. Such mechanical licenses except as to "Controlled Compositions (as hereinafter defined) shall be at rates and upon terms no less favorable to Company than those contained in the then-current standard mechanical license issued by The Harry Fox Agency, Inc. The licenses shall name Company as licensee and copies thereof shall be delivered to Company concurrently with the delivery to Company of the Masters to which they relate.

(b) All musical compositions or material written or delivered, including those items detailed in section 6(e) above, during the Term of this Agreement or recorded pursuant to this Agreement which are written or composed, in whole or in part by Artist or any individual member of Artist or which are owned or controlled, directly or indirectly, in whole or in part, by Artist or any individual member of Artist (herein called "Controlled Compositions") shall be and are hereby licensed to Company for the United States at the statutory royalty rate then in affect, per selection. Notwithstanding the foregoing, the maximum aggregate mechanical royalty rate which Company shall be required to pay in respect of any Single, "12-inch" single or LP hereunder, regardless of the total number of all compositions contained therein, shall not exceed twice the statutory royalty rate. In this connection, it is specifically understood that in the event that any Single, "12-inch" single or LP contains other compositions in addition to the Controlled Compositions and the aggregate mechanical royalty rate for said Single, "12-inch" single or LP shall exceed the applicable rate provided in this Paragraph 12, the aggregate rate for the Controlled Compositions contained thereon shall be reduced by the aforesaid excess over said applicable rate. Additionally, Company shall have the right with respect to any Single, "12-inch" single or LP, the aggregate mechanical royalty rate for which exceeds the applicable rate provided in this Paragraph 12 to deduct such excess payable thereon from any and all monies payable to Artist pursuant to this Agreement. In the event the U.S. Copyright Act is hereafter amended to provide for an increase in the compulsory mechanical license rate, then with respect only to Controlled Compositions embodied on masters on which recording was commenced after the effective date of such amendment, (A) the per selection royalty rate for LPs solely embodying said masters shall be increased to seventy-five (75%) percent of the new minimum per selection statutory copyright royalty rate without regard to playing time and (B) the maximum aggregate royalty rate for LPs solely embodying said masters shall not exceed five (5) times the per selection rate set forth in Paragraph 16 (A) hereof. All mechanical royalties payable hereunder shall

be paid on the basis of net records sold hereunder for which royalties are payable to Artist pursuant to this Agreement. Controlled Compositions which are arranged versions of any musical compositions in the public domain, when furnished by Artist for recording hereunder, shall be free of copyright royalties. Any assignment of the ownership or administration of copyright in any Controlled Composition shall be made subject to the provisions hereof.

18. Artist hereby grants to Company seventy five (75%) percent of each and every Controlled Composition written, delivered or recorded during the Term of this Agreement and Artist agrees to execute an Exclusive Songwriter's Agreement and an Assignment of Copyright regarding each such Controlled Composition to a publisher designated by Company or to Company itself, granting exclusive administration rights to said designated publisher or Company, or its licensees or assigns and granting ownership of the copyrights to the publisher designated by Company or Company itself.

If Artist refuses or neglects to execute such Exclusive Songwriter's Agreement or such Assignment of Copyright, it is hereby agreed that Artist shall be deemed to have executed an assignment of each Composition written or recorded during the term of this agreement and/or including but not limited to those on the assignment form attached hereto as Exhibit "A" and Company is hereby granted a power of attorney to execute said assignment on Artist's behalf. Said power of attorney is coupled with an interest and is irrevocable. Artist will not collaborate in the writing or arranging of any Composition without Company's express written consent, unless such person is free, jointly with Artist, to assign the rights in such Composition and agrees to do so if and as required under this Paragraph. As used in this Paragraph, the word "Composition" means every original musical work (music and/or lyrics) Artist writes or collaborates in writing during the Term hereof. Pursuant to this Paragraph, the publisher designated by Company or Company itself, will administer twenty five (25%) percent of the copyright in said Compositions and will own seventy five (75%) percent of the copyright in said Compositions. Company shall have the right to copyright the Compositions in its designated publisher's name or Company's name, and to secure any and all renewals of such copyright in the United States and throughout the world. Artist shall not administer its twenty five (25%) percent at any time without the express written permission of Company.

19. Artist shall, upon Company's request, appear on dates and at film studios or other locations designated by Company upon reasonable notice to Artist for the filming, taping or other permanent fixation of audio-visual recordings of Artist's performances (each such recording referred to as a "Video" herein). Company shall have the right, at Company's election, to utilize each Video subject to the terms and conditions set forth herein below:

(a) Company shall consult with Artist with respect to the selection(s) to be embodied in each Video and the general "concept" or "story" thereof.

(b) Company shall engage the producer, director and other production personnel for each Video, and shall be responsible for and shall pay the production costs of each Video in an amount not in excess of a budget to be established in advance by Company, after consultation with Artist (the "Production Budget"). Artist shall be responsible for and shall pay the production costs for each Video which are in excess of the Production Budget therefor if such excess is incurred as a result of Artist's acts or omissions. Notwithstanding the foregoing, in the event that Company shall pay any such excess production costs (which Company shall have no obligation to do), Artist shall

promptly reimburse Company for such excess costs upon demand and, without limiting Company's other rights and remedies in such event, Company may deduct an amount equal to such excess costs from any monies payable by Company to Artist hereunder. All of the production costs in connection with the Video shall be recoupable from record royalties payable to Artist hereunder, and/or recoupable from Gross Video Receipts (hereinafter defined).

(i) Notwithstanding anything to the contrary contained herein, in respect of Company's commercial exploitation of Videos Company shall credit Artist's royalty account hereunder with ten (10%) percent of Company's Net Video Receipts (hereinafter defined). As used herein, "commercial exploitation" of a Video means any use for which Company is paid monetary consideration in excess of a reasonable reimbursement for transaction costs in connection with such use, such as tape, copy costs, shipping, handling and insurance.

(ii) As used herein, the term "Gross Video Receipts" shall mean one hundred (100%) percent of monies actually earned and received or credited to Company's account against advances previously received by Company in the United States from the commercial exploitation of Videos; provided, that monies actually received by Company shall be subject to adjustment for returns, refunds, credits, settlements, allowances, rebates and discounts.

(iii) As used herein, the term "Net Video Receipts" shall mean Gross Video Receipts less:

(A) All production costs (hereinafter defined) paid or incurred by Company in connection with Videos and not theretofore recouped from record royalties pursuant to Paragraph 19(b) above;

(B) All distribution costs (hereinafter defined) paid or incurred by Company in connection with Videos;

(C) Any and all payments required to be made to third parties, including, without limitation, unions or guilds and publishers of compositions (but expressly excluding any "Royalty Participant" as such term is hereinafter defined) in connection with the production and/or exploitation of Videos; and

(D) All sales, gross receipts, foreign withholding, excise, use, value added, personal property or similar taxes payable with respect to or arising out of the production or exploitation of Videos; provided, however, in the event Company shall receive credit in the United States in respect of any such taxes, Company shall credit to Artist's royalty account hereunder an amount equal to that portion of such credit received by Company allocable to Artist's share of Net Video Receipts hereunder.

(iv) As used herein, (A) "distribution costs" of Videos shall include all direct, out-of-pocket costs paid or incurred by Company in connection with the marketing, advertising, licensing or other distribution of Videos including Company's general overhead expenses, including, without limitation, any distribution fee or sales commission charged by any third party acting as sales agent or distributor of the Videos, advertising expenses, costs of videotape or other copies, shipping, handling and insurance costs, etc...; and (B) "production costs" of Videos means all direct costs

incurred in the production of Videos through the final 1-inch master tape or film or digital medium, including, without limitation, all sums paid to or for third party production companies (including, without limitation, payments to or for producers, directors, writers, associate producers and staff); payments to or for technical crews (including without limitation, payments to or for camera, video, audio, lighting and set construction crews and materials); location and police permits and fees (including hall and studio rental); cartage; equipment rental; transportation costs, hotel expenses, living expenses and per diems incurred in connection with location scouting and Artist's attendance, attendance of other artists and all production personnel at pre-production, production and post-production sessions for Videos and the preparation therefor; insurance premiums paid in connection with the production of Videos; taxes; payments for tape, film or other stock; payments for on-line and off-line editing, mixing, special effects, color correction, audio track transfer or dubbing, title cards and similar functions; creation of one (1) 3/4-inch videocassette with SMPTE code from the 1-inch master videotape or digital medium; payments to all extras, sidemen and other persons appearing in Videos in respect of the production and use thereof; payments to any union or guild or union or guild trustee or fund in respect of Videos; Internet distribution or home page creation, and all other costs and expenses incurred with respect to Videos which are now or hereafter generally recognized as production and/or distribution costs of audio-visual programs.

(vi) In the event Company couples Videos with videos which are not Videos hereunder, the amounts otherwise includable in Gross Video Receipts hereunder with respect to such coupled Videos shall be multiplied by a fraction, the numerator of which is the number of Videos involved and the denominator of which is the aggregate number of videos (including Videos) involved, and each selection embodied on each Video or video involved shall count as one (1) Video or video for such purposes.

(c) Company shall be the sole owner of all worldwide rights in and to each Video (including the worldwide copyrights therein and thereto) to the same extent that Company owns the Masters. Company will have the exclusive right to manufacture Videograms of the Video and to rent, sell, distribute, transfer, sublicense or otherwise deal in such Videograms under any trademarks, trade names and labels; to exploit the Video by any means now or hereafter known or developed; or to refrain from any such exploitation, throughout the world. As used herein, "Videograms" mean Videocassettes, Videodiscs, compact laser discs, digital versatile discs, other digital means, or any other devices, now or hereafter known or developed, that enable the Video to be perceived visually, with or without sound, when used in combination with or as a part of a piece of electronic, mechanical or other apparatus.

(d) Artist shall issue (or shall cause the music publishing companies having the right to do so to issue) (i) worldwide, perpetual synchronization licenses, and (ii) perpetual licenses for public performance in the United States (to the extent that ASCAP and BMI are unable to issue same), to Company at no cost for the use of all Controlled Compositions in Videos effective as of the commencement of production of the applicable Video (and Artist's execution of this agreement shall constitute the issuance of such licenses by any music publishing company which is owned or controlled by Artist or by any person owned or controlled by Artist). In the event that Artist shall fail to cause any such music publishing company to issue any such license to Company, and if Company shall thereupon pay any fee to such music publishing company in order to obtain any such license, then Company shall have the right to deduct the amount of such license fee from any monies payable to Artist hereunder.

(e) Company shall have the right to use and allow others to use each Video for advertising and promotional purposes with no payment to Artist or the Producer. As used herein, "Advertising and promotional purposes" shall mean all uses for which Company receives no monetary consideration from licensees in excess of a reasonable amount as reimbursement for transaction costs incurred by Company in connection with such uses, such as tape, duplication costs, shipping, handling and insurance costs.

(f) Company shall have the right to use and publish, and to permit others to use and publish, Artist's name, likeness and biographical material concerning Artist in each Video and for advertising and purposes of trade in connection with the Videos.

20. (a) In the event that Artist for any reason fails to timely fulfill any of its recording commitments hereunder in accordance with the provisions of Paragraph 6, then, in addition to any other rights or remedies which Company may have, Company shall have the right, upon written notice to Artist at any time prior to the expiration of the then current Period, (i) to terminate this Agreement without further obligation to Artist as to unrecorded or uncompleted masters, (ii) to reduce the minimum number of masters required to be recorded and completed during the then current Period to the number which have been timely recorded and completed during such Period, or (iii) to extend the then current Period of the Term for the duration of such default plus one hundred and fifty (150) days with the dates for the exercise by Company of its options to extend the Term and the dates of commencement of subsequent Option Periods deemed extended accordingly. Company's obligations hereunder shall be suspended for the duration of any such default. The provisions of this subparagraph shall not result in an extension of the Term for a period in excess of the period permitted by applicable law, if any, for the enforcement of personal services agreements.

(b) Company reserves the right, at its election, to suspend the operation of this Agreement for the duration of any of the following contingencies, if by reason of any such contingency, it is materially hampered in the performance of its obligations under this Agreement or its normal business operations are delayed or become impossible or commercially impracticable: Act of God, fire, catastrophe, labor disagreement, acts of government, its agencies or officers, any order, regulation, ruling or action of any labor union or association of artists, musicians, composers or employees affecting Company or the industry in which it is engaged, delays in the delivery of materials and supplies, by reason of sickness, injury, accident or refusal to work by the Artist, or any other cause beyond Company's control. Any such suspension due to a labor controversy which involves only Company shall be limited to a period of six (6) months. Such suspension shall last for the duration of any such contingency. At Company's election, a period of time equal to the duration of such suspension may be added at the end of the then current period of the Term, and such period and the Term hereof shall be accordingly extended.

(c) If Artist's voice or Artist's ability to perform as an instrumentalist should be medically diagnosed as materially or permanently impaired, then in addition to any other rights or remedies which Company may have, Company shall have the right, upon written notice to Artist, to terminate this Agreement and shall thereby be relieved of any liability in connection with uncompleted masters.

21. Artist expressly acknowledges that Artist's services hereunder are of a special, unique and

intellectual character which gives them peculiar value, and that in the event of a breach or threatened breach by Artist of any term, condition or covenant hereof, Company will be caused immediate irreparable injury. Artist expressly agrees that Company shall be entitled to injunctive and other equitable relief, as permitted by law, to prevent a breach or threatened breach of this Agreement by Artist, or any portion thereof, which relief shall be in addition to any other rights or remedies, for damages or otherwise, available to Company.

22. (a) Artist warrants and represents that Artist is under no disability, restriction or prohibition, whether contractual or otherwise, with respect to Artist's right to execute this Agreement or Artist's rights to perform its terms and conditions. Without limiting the foregoing, Artist specifically warrants and represents that no prior obligations, contracts or agreements of any kind undertaken or entered into by Artist will interfere in any manner with the complete performance of this Agreement by Company or Artist or with Artist's right to record any and all selections hereunder. Artist warrants and represents that, there are now in existence no prior released or unreleased masters embodying Artist's performances, except for those specified in section 6(e) above, and that neither Artist nor any third party shall release nor authorize nor permit the release of such masters in the Territory.

(b) Artist warrants and represents that no materials, or any use thereof, will violate any law or infringe upon or violate the rights of any third party. "Materials", as used in this subparagraph 22(b) shall include: (i) all Controlled Compositions, (ii) each name used by Artist, in connection with masters recorded hereunder, and (iii) all other materials, ideas, other intellectual properties or elements furnished or selected by Artist and contained in or used in connection with any masters recorded hereunder or the packaging, sale, distribution, advertising, publicizing or other exploitation thereof.

(c) Artist has the right to use Artist's name and professional name and grants to Company during the Term the exclusive right to use and to allow others to use said names and any professional name adopted by Artist for phonograph record, print and video purposes and the exclusive right to such use thereafter in connection with the recordings subject hereto; Artist warrants and represents that Company's use of such names in accordance with the terms hereof will not infringe upon the rights of any third party. Same is applicable with Artist's likeness.

(d) Artist agrees to and does hereby indemnify, save and hold Company harmless from any and all loss and damage (including court costs and actual attorney's fees) arising out of, connected with, or as a result of any inconsistency with, failure of, or breach or threatened breach by Artist of any warranty, representation, agreement, undertaking or covenant contained in this Agreement including, without limitation, any claims by any third party in connection with the foregoing. In addition to any other rights or remedies Company may have by reason of any such inconsistency, failure, breach, threatened breach or claim, Artist shall reimburse Company, on demand, for any payment made by Company at any time after the date hereof with respect to any loss, damage or liability resulting therefrom and in addition thereto Company shall have the right to deduct from any and all monies otherwise payable to Artist hereunder or under any other agreement between the parties hereto a sum(s) equal to such loss, damage and liability (including anticipated and actual court costs and actual attorneys' fees). Company shall give Artist notice of any third party claim to which the foregoing indemnity applies and Artist shall have the right to participate in the defense of any such claim through counsel of Artist's own choice and at Artist's expense. Pending

the determination of any such claim, Company may withhold payment of all monies hereunder in any amount consistent with such claim.

23. Artist agrees that in all of Artist's endeavors in the entertainment field, Artist will exert best efforts to be billed, advertised and described as a " \_\_\_\_\_", " \_\_\_\_\_", " \_\_\_\_\_" and/or " \_\_\_\_\_."

24. During the Term, Artist warrants and represents that Artist may become and remain a member in good standing of any labor union(s) with which the Company may at any time have agreements lawfully requiring such union membership, including, but not limited to, the American Federation of Musicians and the American Federation of Television and Radio Artists.

25. (a) All notices to Artist may be served upon a principal or officer of Artist by letter, by depositing the same, postage prepaid, by registered or certified mail, return receipt requested, in any mail box, chute, or other receptacle authorized by the United States Postal Service for mail, addressed to Artist at the address first below written.

(b) All notices to Company shall be in writing and shall be sent postage prepaid by registered or certified mail, return receipt requested, and addressed to Company at Company address below written with a simultaneous copy to Douglas C. Anton, Esq., 3 University Plaza Drive, Suite Number 207, Hackensack, New Jersey 07601.

(c) Notices will be deemed incomplete and invalid if not made in exact accordance with the directions in paragraph 25 sub parts (a) & (b), above, including simultaneous attorney copy.

26. Any payments made to Artist for recording services, if at all, as well as all payments to any other individuals rendering services in connection with the recording of Sides, all other payments which are required to be made by Company pursuant to any applicable law or regulation or the provisions of any collective bargaining agreement between Company and any union or guild representing Artist or any such other individuals rendering services in connection with the recording of the Sides (including, without limitation, payroll taxes and payments to union pension and welfare funds), all amounts paid or incurred by Company for studio or hall rentals, tape, engineering, editing, instrument rental and cartage, mastering, transportation, accommodations, immigration clearances, and so-called "per diems" in respect of any individuals (including Artist) rendering services in connection with the recording of the masters, together with any and all other Recording Costs paid or incurred by Company in connection with the recording of the Sides shall be recoupable from royalties earned by Artist hereunder or under any other agreement between Artist and Company or its affiliates. If no such monies exist from which to recoup, all the above are returnable in accordance with paragraph 6 (a), above.

27. During the Term, Artist will from time to time, at Company's request, whenever the same will not unreasonably interfere with other professional activities of Artist, appear for photography, poster and cover art, etc., under the direction of Company or its nominees and will appear for interviews with representatives of the communications media and Company's publicity personnel and will perform other reasonable promotional services.

28. Wherever in this Agreement Artist's approval or consent is required, such approval or

consent shall not be unreasonably withheld. Company may require Artist to formally give or withhold such approval or consent by giving Artist written notice requesting same and by furnishing Artist with the information or material in respect of which such approval or consent is sought. Artist shall give Company written notice of approval or disapproval within three (3) days after such notice is received by Artist. Artist shall not hinder nor delay the scheduled release of any record hereunder. In the event of disapproval or no consent, the reasons therefor shall be stated. Failure to give such notice to Company as aforesaid, or if same is unreasonable, it shall be deemed to be consent or approval.

29. Company and Artist acknowledge and understand that throughout the course of working together in the contractual relationship established by this agreement, that for purposes of exploiting the Artist under the terms of this agreement, it will be beneficial for the Company to utilize merchandising marketing. Artist hereby grants to Company, for the term of this agreement and any extensions thereof, the sole and exclusive right to design, manufacture and sell, i.e., Merchandise, the Artists name, likeness, persona etc.... in all of its possible forms, individually and as a group in any and all areas of merchandising to include but not be limited to stickers, posters, tee-shirts, hats, buttons, banners, clothing, digital means, and every other possible merchandise item, etc...

(a) Company may license these rights out to others from time to time for money or for free, if for promotional purposes.

(b) Company shall bare the cost of manufacturing and designing all materials related to merchandising including shipping, boxing, printing, screening, duplicating, manufacturing and producing the items. All these costs and expenses will be recoupable and/or returnable, depending on the circumstances as detailed in paragraph 6(a) above, from any and all Gross Income or Gross profits of Artist, no matter from what source.

(c) Once all moneys have been recouped by Company, after all expenses and costs are paid, Artist will be paid ten percent (10%) of any and all net profits from the sale of merchandise where profits are made.

(d) Nothing contained herein shall mean that Company must undertake merchandising for the Artist. However, it is understood that Company alone has the sole and exclusive right and no one else can merchandise for the Artist for pay or not, not even Artist, without the express written consent of Company.

30. (a) Artist shall cause any corporation, partnership, or other business entity which Artist now owns or controls or may hereafter own or control or in which Artist has a direct or indirect interest of any nature or sort, or which is directly or indirectly controlled by Artist or under the common control of Artist and others (hereinafter "firm") and which firm has a right to Artist's services, to enter into an agreement with Company on the same terms and conditions as contained in this Agreement. Any agreement with such firm shall provide that such firm has a right to furnish Artist's services on the same terms and conditions set forth in this Agreement and the firm shall become a party to this Agreement. Artist shall personally guarantee the obligation of any such firm. Any such firm must have written permission from Company to act in any capacity, directly or indirectly for or on behalf of Artist.

It is hereby acknowledged and agreed that Company shall have the sole and exclusive right to be the production company of any and all members of any and all present and future musical or other groups of which Artist is now or may hereafter become a member and any replacement group therefor but only if such member(s) is a participant with Artist in gross or net receipts derived from the services of Artist and such member(s) (collectively called "Group"). In furtherance of the foregoing, it is further agreed that if Artist intends to form or to become part of a Group, Artist shall inform all present and future members thereof of this Agreement and of the requirement that all such members of the Group (or any replacement Group thereof) must execute an Agreement with Company in this form. Artist shall immediately inform Company of the names and addresses of all such prospective members of the Group, and shall immediately cause each such member of the Group to execute an Exclusive Artist Recording Agreement with Company in this form and containing the same terms and conditions as herein contained, and/or such other documents as Company deems reasonably necessary or expedient to evidence or enforce its sole and exclusive rights with respect to each such member of the Group. In the further event that at any time hereafter a new member is intended to be added to any such Group as a replacement or substitute for or in addition to Artist and/or any other then-current member of the Group (collectively the "replacement member(s)"), Artist shall immediately inform any such prospective replacement member of this Agreement and all of its terms and of Company's exclusive rights and shall immediately inform Company of the name and address of any such prospective replacement member of the Group (or any replacement Group therefor), and shall immediately cause any such prospective replacement member to execute an Exclusive Artists Recording Agreement with Company in this form and containing the same terms and conditions as herein contained (except those terms peculiar to Artist hereunder), and/or such other documents and/or terms as Company deems reasonably necessary or expedient to evidence or enforce its sole and exclusive rights with respect to each such replacement member. Artist specifically agrees that Artist will not form or join any group unless such group and each member thereof engages Company as its and their exclusive production company and each member of such group executes a written agreement with Company in this form under the terms and conditions herein contained (other than those particular terms applicable solely to Artist).

Company shall own the name of the group and any name any individual member may use that is not his birth name. Company shall have the sole and exclusive right to trademark, for Company, those names, at its own expense and the right to renew any such trademarks thereof. If any of the above mentioned names are already trademarked, Artist shall transfer complete ownership in each, to Company for the consideration of \$1.00 each. Failure of Artist to transfer any existing trademarks to Company, when requested to do so, means, and has the same effect, that Artist consents to their immediate transfer and automatically acknowledges receipt of the consideration listed above for each name.

Each member of Artist and/or the Group acknowledges and agrees that the warranties and representations made by Artist hereunder are joint and several. If for any reason any member shall leave the Group, the leaving member shall not use the Group name or any other confusingly similar name in any manner thereafter.

(b) In the event any individual member of the group shall, during the term hereof, cease to be an actively performing member of the group (any such individual being hereinafter sometimes referred to as a "Leaving Member"), Artist shall promptly give Company written notice thereof by certified or registered mail, return receipt requested. Artist shall, at Company's election,

designate a replacement member for such Leaving Member and Company shall have the right to approve any such replacement member, which approval Company shall have the right to withhold for any reason. Artist shall cause any such individual so approved by Company as a replacement member to be bound by all of the terms and provisions of this Agreement, and Artist shall, upon Company request, cause such individual to execute and deliver to Company such documents as Company may deem necessary or expedient to evidence such individual's agreement to be so bound. Pending such individual's execution and delivery to Company of any such documents, Company shall have no obligation to pay Artist any amounts which would otherwise be payable to Artist hereunder.

(c) Company shall have the irrevocable option to utilize the exclusive recording services of any Leaving Member. Such option may be exercised by Company by written notice given to such Leaving Member at Artist's address hereunder no later than one hundred and eighty (180) days after the date upon which Company shall have received the written notice required to be served by Artist pursuant to subparagraph (b). If Company shall so exercise such option with respect to any such Leaving Member, such Leaving Member shall be deemed to have executed an exclusive recording contract with Company pursuant to which such Leaving Member agrees to render his exclusive recording services to Company on the same terms and provisions as are specified herein for the Term of this Agreement, except as hereinafter provided:

(i) the term of Company's exclusive recording contract with such Leaving Member shall be for an initial Contract Period (the "Initial Leaving Member Period"), commencing as of the date of Company's written notice to him pursuant to subparagraph (c) above, and Company shall have such number of separate irrevocable options for additional Contract Periods with respect to such Leaving Member as equal the number of yet unexercised renewal Contract Periods remaining hereunder pursuant to paragraph 2 above as of the date such individual shall have become a Leaving Member, but in no event shall the number of options be less than two (2). Such renewal Contract Periods terms shall run consecutively beginning at the expiration of such Initial Leaving Member Period, all upon the same terms and provisions applicable to the immediately preceding Contract Period;

(ii) At Company's request, Artist shall cause any such Leaving Member to execute and deliver to Company any and all documents as Company may deem necessary or expedient to evidence the foregoing, including, without limitation, an exclusive recording contract with Company relating to Artist recording services. Company shall have the right to recoup from any royalties payable under this paragraph in respect of such Leaving Member any unrecouped advances and charges under this contract.

(d) Notwithstanding any of the foregoing, in the event any member of the group shall be a Leaving Member or in the event the group shall completely disband, Company shall have the right, at Company's election, in addition to all of Company's other rights or remedies which Company may have in such event, to (i) terminate this contract by written notice to Artist and shall thereby be relieved of any and all obligations hereunder except Company's obligations with respect to Masters recorded hereunder prior to such termination; and/or (ii) continue the "Group" under the same name by acquiring as many new members as is needed to take the place of the old, leaving or disband, members, said new group will continue under a new agreement with Company and have the sole and exclusive right to use the original groups name, likeness and established reputation, if

one exists. In the event Company elect to so terminate this contract, subparagraph (c) above shall be deemed applicable to each member of the group as if each such member were a Leaving Member.

(e) Artist hereby warrants, represents and agrees that:

(i) Artist is the sole and exclusive owner of all rights in and to any professional name used (hereinafter referred to as the "Group Name"), including without limitation, the right to transfer ownership to, utilize or to permit others to utilize the Group Name for purposes of trade, and otherwise without restriction, in connection with the master recordings recorded by Artist hereunder, the phonograph records derived therefrom, and Company's record business.

(ii) during the term hereof, the Group Name shall not be changed without Company's prior written consent.

(f) In the event any member of the group shall become a Leaving Member but Company does not exercise Company's option as provided in this paragraph with respect to such Leaving Member, such Leaving Member shall not have the right thereafter during the term hereof to use any professional name utilized by the group (including, without limitation, the Group Name) or any name similar thereto, or to prevent, prohibit or interfere with Company or Artist use of the Group Name or any other professional name utilized by the group.

(g) Artist \_\_\_\_\_ can never be defined as a leaving member but will always be bound by this agreement alone, under its terms applicable to him, which constitutes the entire agreement.

31. This Agreement shall inure to the benefit of and be binding upon the successors, permitted assigns, executors, administrators, representatives, heirs and estates of the parties hereto. Company may, at its election, assign this Agreement or any of its rights hereunder. In fact, it is specifically understood that Company may elect to not only assign this agreement to a Major Recording Company, but may in fact sell the entire agreement and all rights and understandings contained herein, to a Major Recording Company and remove itself from this agreement completely. Artist understands that this is a possibility at any time in the agreement term or any extension thereof and specifically agrees to same. Company is free to contract with any Major Recording Company freely and to sell this contract for any price that it may deem appropriate. Artist shall not have the right to assign this Agreement without Company's prior express written consent.

32. For purposes of this Agreement the following Definitions shall apply:

(a) "Master" or "Side" means the equivalent of a 7-inch, 45 rpm single-sided recording of not less than 3-1/2 minutes of playing time embodying the recorded performances of the Artist and intended for use in the manufacture and sale of phonograph records. "Side" means, in general terms, song or several songs. "Masters" means, in general terms, a song, including any configuration it is recorded on.

(b) "Single" means a seven (7") inch 45 rpm double-sided record embodying thereon one or two (2) masters. A "12-inch Single" is a twelve (12") inch double-sided record embodying thereon one or two (2) masters. Single or 12 inch single also mean a CD single or cassette single,

each embodying one or two Masters.

(c) "LP" means a twelve (12") inch 33-1/3 rpm double-sided long-playing record, CD or Cassette, of not less than 35 minutes of playing time. Multiple sets which consist of more than one (1) LP, CD or Cassette, intended to be released, packaged and sold together for a single overall price, shall be deemed to be the equivalent of one (1) LP for the purposes of this Agreement, but shall not be recorded or delivered hereunder without Company's prior written consent.

(d) "Records", "phonograph records", "recordings", "derivatives" and "sound recordings" mean and include all forms of recording and reproduction by which sound may be recorded now known or which may hereafter become known, manufactured or sold primarily for home use, juke box use, and/or use on or in means of transportation, including, without limiting the foregoing, magnetic recording tape, compact disc, mini disc, DVD, cassette, digital recording of any kind, internet applications, film, video, electronic video recordings and any other medium or device for the production of artistic performances manufactured or sold primarily for home use, juke box use and/or use on or in means of transportation, whether embodying (i) sound alone or (ii) sound synchronized with visual images, e.g., "sight and sound" devices or any other use now known or hereinafter created. Section 32(a) - (d) above also apply to any digital or other medium now known or hereinafter devised, forever.

(e) "Retail list price" means the retail list price or applicable list price in, at Company's election, the country of manufacture or sale (exclusive of all taxes, discounts, duties and packaging).

(f) "Compositions" means a musical composition or medley consisting of words and/or music, whether in the form of instrumental and/or vocal music.

(g) "Controlled Composition" is a composition written, owned or controlled by Artist and/or any person in which Artist has a direct or indirect interest.

(h) "Union Scale" means the applicable minimum payments required to be made to Artist under the applicable collective bargaining agreement as may be in force from time to time and controlling with respect to this agreement. If, at any time, there is no such collective bargaining agreement in force, then union scale shall mean the union scale in the collective bargaining agreement last in effect.

(i) "Recording Costs" means all costs incurred for and with respect to the production of Sides embodying Artist's performances. Recording Costs include, without limitation, union scale, the costs of all instruments, musicians, vocalists, conductors, arrangers, orchestrators, copyists, engineers, etc., payments to a trustee or fund based on wages to the extent required by any agreement between Company and any labor organization or trustee, all studio costs, including costs occasioned by the cancellation of any scheduled recording session, tape, editing, mixing, mastering, engineering, travel and per diems for individuals involved in production of the Sides, rehearsal halls, costs of non-studio facilities and equipment, dubbing, transportation of instruments, producer's fees and other costs and expenses incurred in producing the Sides hereunder, from time to time, and which are customarily recognized as Recording Costs in the phonograph record industry. Also included are any and all costs spend on any other matter reasonably related, directly or indirectly, to the eventual

benefit and/or exploitation of Artist's recorded product.

(j) "Completed" means fully mixed, leaedered and edited masters comprising each LP, commercially satisfactory to Company and ready for Company's manufacture of records, together with all materials, consents, approvals, licenses and permissions.

(k) "Territory" means the universe and everything in it.

(l) "Company" means, ██████████ Entertainment Group, LLC., its licensees, lessees, affiliates, subsidiaries and assigns.

(m) "Net Royalties" means the royalties remaining after Company pays all payments and/or royalties due to third party production companies and after Company pays all producer's royalties, and any other charge mentioned in this agreement.

(n) "Video" includes but is not limited to all motion picture production or reproduction mediums such as digital signals, DVD's, VHS, Super 8 and any and all digital or other Internet applications.

33. This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof. No modification, amendment, waiver, termination or discharge of this Agreement, shall be binding upon Company unless confirmed by a written and notarized instrument signed by two separate officer's of Company. A waiver by Company of any term or condition of this Agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All of Company's rights and remedies in this Agreement shall be cumulative and none of them shall be in limitation of any other remedy or right available to Company. Should any provision of this Agreement be adjudicated by a court of competent jurisdiction as void, invalid or inoperative, such decision shall not affect any other provision hereof, and the remainder of this Agreement shall be effective as though such void, invalid or inoperative provision had not been contained herein. Artist has been advised by Company and hereby acknowledges that Company recommends that Artist seek and obtain independent legal counsel for purposes of reviewing this Agreement prior to its execution. Artist has either retained and been represented by legal counsel or has knowingly and voluntarily waived its right to such legal counsel and desires to enter into this Agreement without the benefit of independent legal representation. It is agreed that all accountings and payments required herein, and all grants made herein, shall survive and continue beyond the expiration or earlier termination of this Agreement. No breach of this Agreement by Company shall be deemed material unless within thirty (30) days after Artist learns of such breach, Artist serves written notice thereof on Company specifying the nature thereof and Company fails to attempt to cure such breach, if any, within sixty (60) days after receipt thereof.

34. This Agreement shall be deemed to have been made in the State of New Jersey and its validity, construction, performance and breach shall be governed by the laws of the State of New Jersey applicable to agreements made therein. Any service of process in any action or proceeding arising out of this Agreement may be made, among other methods, by registered or certified mail, return receipt requested, and the time to respond to such process shall be thirty (30) days from the date of receipt of such process, unless otherwise provided for specifically herein. Artist agrees to

submit itself to the jurisdiction of the Federal or State courts located in New Jersey in any action which may arise out of this Agreement. Nothing contained herein shall limit Company's rights to institute suit in jurisdictions other than New Jersey or constitute a waiver of any other remedies available to Company.

35. It is expressly understood and agreed to that Artist is signing this agreement in his/her/their individual, personal capacity and on behalf of the group any/or any business entity they may have. Artist hereby agrees that each will be held jointly and severally personally liable to the full extent of damages if same are ever awarded by a court of competent jurisdiction.

**IN WITNESS WHEREOF**, the parties hereto have executed this Exclusive Artist Recording Agreement this thirteenth ( ) day of \_\_\_\_\_, 200\_\_.

**ARTIST:**

**COMPANY:**

\_\_\_\_\_

\_\_\_\_\_

Legal Name

\_\_\_\_\_, President

p/k/a

\_\_\_\_\_ Entertainment Group, LLC.

a/k/a

**Address:**

SS#

\_\_\_\_\_ boulevard

**Address:**

Suite \_\_\_\_\_

\_\_\_\_\_, New Jersey \_\_\_\_\_

**STATE OF NEW JERSEY**

**COUNTY OF \_\_\_\_\_**

On this \_\_\_\_\_ (\_\_\_\_\_) day of \_\_\_\_\_, 200\_, before me personally appeared the above-named person(s) \_\_\_\_\_, known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and all its attachments and acknowledged that he/she/they executed the same.

Notary Public

My Commission Expires: \_\_\_\_\_

**STATE OF NEW JERSEY**

**COUNTY OF BERGEN**

On this \_\_\_\_\_ (\_\_\_\_\_) day of \_\_\_\_\_, 200\_, before me personally appeared the above-named person(s), \_\_\_\_\_, known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and all its attachments and acknowledged that he/she/they executed the same.

Notary Public

My Commission Expires: \_\_\_\_\_

**EXHIBIT "A" - PRIOR RELEASED OR UNRELEASED MASTERS**



**EXHIBIT - M**

# Amanda Jones

AEA, AFTRA



**EYES**  
Blue-Green

**HEIGHT**  
5' 3", slender build

"It is not easy to find the chill in Genet's play... but the Cocteau production manages it. Credit an eye-opening turn by Ms. Jones. She is beautiful and scary, rational and deranged, somehow all at the same time. If your nanny-cam captured her, you would certainly have her fired, but you'd also keep the tape, just to study Ms. Jones's performance."

- Neil Genzlinger,  
*The New York Times*,  
"The Maids"

## THEATRE

### OFF-BROADWAY

*Walking Down Broadway*  
*The Maids*  
*Uncle Vanya*  
*The Importance of Being Earnest*

Elsie  
Solange  
Sonya  
Cecily

Mint Theater (Steven Williford)  
Cocteau Rep (Ernest Johns)  
Cocteau Rep (Eve Adamson)  
Cocteau Rep (Ernest Johns)

### OFF-OFF-BROADWAY

*Fool*  
*Travesties*  
*Seven Reece Mews*  
*Ah, My Dear Andersen*  
*Hamlet*  
*You Are Here*  
*Romeo and Juliet*

Nika  
Gwendolyn  
Nora  
Various  
Ophelia  
Rosie  
Juliet

Gorilla Rep (Michael Lew)  
Perkasie Theater (Steve Keim)  
Monday Morning Productions  
Russian-American Theater  
Million Stories (J. Michaels)  
TSI (Marc Bruni)  
Genesis Rep (J. Arellano)

### REGIONAL

*Business is Business (Brian Murray)*  
Hampton  
*A Christmas Carol*  
*Engaged*  
*Arsenic and Old Lace*  
*Bell, Book and Candle*  
*Picnic*  
*Sylvia*  
*On the Verge*  
*Magnificent Ambersons*  
*The Man Who Came to Dinner*  
*Abel*

Germaine  
Belinda Cratchit  
Minnie  
Elaine  
Gillian  
Madge  
Sylvia  
Alex  
Lucy  
June  
Wife

Playwrights Thtr. Of E.  
North Shore Music Theater  
Depot Thtr (Christopher Jones)  
Depot Theater (Chris Clavelli)  
Sierra Repertory (Dennis Jones)  
Sierra Repertory (Frank Latson)  
Tri-State Actors Theater  
Tri-State Actors Theater  
Oldcastle Theater (F. Latson)  
Oldcastle Theater (E. Peterson)  
Moore Theater (Pavol Liska)

### FILM AND TV

*One Life to Live*  
*Black Mary*  
*My Stuffed Animal Is a Monster*  
*Fisherboy (short)*  
*Harry Otter (short)*  
*Old Fashion Romance (short)*  
*Marley's Angels (industrial)*

Under 5 (Twice)  
Supporting  
Supporting  
Lead  
Supporting  
Lead  
Supporting

ABC  
Roman Moher Productions  
Joe Fiorello Films  
NYU  
Ember Productions  
NYFA  
NYU/HEOPOP

### EDUCATION

BA in Theatre and Government (double major) from Dartmouth College

### TRAINING

Acting: Karen Kohlhaas, Clarke McCarthy, Charles Tuthill  
Commercial Technique: David Cady  
Improv: Billy Meritt/Upright Citizens Brigade  
Singing: Sharon Powers

### SKILLS

Fluent German, conversational Russian and Japanese; English, Irish, Scottish, Russian, Polish, German, American South and Midwest dialects; knitting; ballroom, belly, jazz, ballet and Irish step dancing; valid driver's license

### SPORTS

skiing (snow and water); skating (ice and inline); soccer

EXHIBIT - N

# DEPICTION RELEASE (GRANT WITH REVERSION)

## CONSENT AND RELEASE

To: Very Big Productions, Inc., a California Corporation

I understand that you desire to use all or parts of the events of my life in order to have one or more teleplays or screenplays written, and to produce, distribute, exhibit and exploit one or more television programs and/or motion pictures of any length in any media now known or hereafter devised and sound recordings in any media now known or hereafter devised. I have agreed to grant you certain rights in that connection. This Consent and Release confirms our agreement as follows:

**1. CONSIDERATION; GRANT OF RIGHTS:** In consideration of your efforts to produce my story, payment to me of \$\_\_\_\_\_, upon the beginning of principal photography of a full-length feature film, and/or \$\_\_\_\_\_ upon the beginning of production of a television movie, and/or \$\_\_\_\_\_ upon the beginning of production of a pilot program and a royalty of \$\_\_\_\_\_ for each episode, and for other valuable consideration, with full knowledge I hereby grant you, perpetually and irrevocably, the unconditional and exclusive right throughout the world to use, simulate and portray my name, likeness, voice, personality, personal identification and personal experiences, incidents, situations and events which heretofore occurred or hereafter occur (in whole or in part) based upon or taken from my life or otherwise in and in connection with motion pictures, sound recordings, publications and any other media of any nature at all, whether now known or hereafter devised. Without limiting the generality of the foregoing, it is understood and agreed that said exclusive right includes theatrical, television, dramatic stage, radio, sound recording, music, publishing, commercial tie-up, merchandising, advertising and publicity rights in all media of every nature whatsoever, whether now known or hereafter devised. I reserve no rights with respect to such uses. (All said rights are after this called the "Granted Rights"). It is further understood and agreed that the Granted Rights may be used in any manner and by any means, whether now known or unknown, and either factually or with such fictionalization, portrayal, impersonation, simulation and/or imitation or other modification as you, your successors and assigns, determine in your sole discretion. I further acknowledge that I am to receive no further payment with respect to any matter referred to herein. Any and all of the Granted Rights shall be freely assignable by you.

**2. PAYMENT OF CONSIDERATION; REVERSION OF RIGHTS:** I understand that you shall make the payments mentioned in paragraph 1 only if you begin production of a feature film or television movie or television pilot. In the event that you do not begin such a production within three years of the date this agreement was executed, all rights granted by me under this agreement shall revert to me. I understand that if you do begin production within three years of the date this agreement was executed, all rights granted by me under this agreement shall be perpetual.

**3. RELEASE:** I agree hereby to release and discharge you, your employees, agents, licensees, successors and assigns from any and all claims, demands or causes of actions that I may now have or may hereafter have for libel, defamation, invasion of privacy or right of publicity, infringement of copyright or violation of any other right arising out of or relating to any utilization of the Granted Rights or based upon any failure or omission to make use thereof.

**4. NAME - PSEUDONYM:** You have informed me and I agree that in exercising the Granted Rights, you, if you so elect, may refrain from using my real name and may use a pseudonym which will be dissimilar to my real name. However, such

agreement does not preclude you from the use of my real name should you in your sole discretion elect and in connection therewith I shall have no claim arising out of the so-called right of privacy and/or right of publicity.

**5. FURTHER DOCUMENTS:** I agree to execute such further documents and instruments as you may reasonably request to effectuate the terms and intentions of this Consent and Release, and in the event I fail or am unable to execute any such documents or instruments, I hereby appoint you as my irrevocable attorney-in- fact to execute any such documents and instruments, if said documents and instruments shall not be inconsistent with the terms and conditions of this Consent and Release. Your rights under this Clause 4 constitute a power coupled with an interest and are irrevocable.

**6. REMEDIES:** No breach of this Consent and Release shall entitle me to terminate or rescind the rights granted to you herein, and I hereby waive the right, in the event of any such breach, to equitable relief or to enjoin, restrain or interfere with the production, distribution, exploitation, exhibition or use of any of the Granted Rights granted, it being my understanding that my sole remedy shall be the right to recover damages with respect to any such breach.

**7. PUBLIC DOMAIN MATERIAL:** Nothing in this Consent and Release shall ever be construed to restrict, diminish or impair the rights of either you or me to use freely, in any work or media, any story, idea, pilot, theme, sequence, scene, episode, incident, name, characterization or dialogue which may be in the public domain from whatever source derived.

**8. ENTIRE UNDERSTANDING:** This Consent and Release expresses the entire understanding between you and me, and I agree that no oral understandings have been made with regard thereto. This Consent and Release may be amended only by written instrument signed by you and me. I acknowledge that in granting the Granted Rights I have not been induced to do so by any representations or assurances, whether written or oral, by you or your representatives concerning the manner in which the Granted Rights may be exercised and I agree that you are under no obligation to exercise any of the Granted Rights and agree I have not received any promises or inducements other than as herein set forth. The provisions hereof shall be binding upon me and my heirs, executors, administrators and successors. I acknowledge that you have explained to me that this Consent and Release has been prepared by your attorney and that you have recommended to me that I consult with my attorney concerning this Consent and Release. This Consent and Release shall be construed according to the laws of the State of California applicable to agreements which are fully signed and performed within the State of California and I hereby waive any rights I may have, known or unknown, pursuant to Section 1542 of the California Civil code which provides:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

In witness hereof and in full understanding of the foregoing, I have signed this Consent and Release on this    day of    , 19\_\_.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name, please print)

\_\_\_\_\_  
(Address)

AGREED: \_\_\_\_\_

EXHIBIT - 0

## PHOTO RELEASE

\_\_\_\_\_ Corporation

Owner: \_\_\_\_\_

Fee: \$ \_\_\_\_\_

Subject hereby grants to \_\_\_\_\_ Corporation ("Company") the exclusive right to use the photograph(s) depicting subject listed in Exhibit A, attached hereto, for all merchandising purposes. Subject acknowledges that the depiction of him in the Photo may be duplicated and distributed in any and all manner and media throughout the world in perpetuity.

Subject grants Company the exclusive right, license and privilege to utilize the names, characters, artist's portrayal of characters, likeness, and visual representations in the Photo in connection with the manufacture, advertising, distribution and sale of any articles or products. Such granted rights include the unconditional and exclusive right throughout the world to use, simulate and portray subject's likeness, voice, personality, personal identification and personal experiences, incidents, situations and events which heretofore occurred or hereafter occur (in whole or in part) in any and all other media of any nature whatsoever, whether now known or hereafter devised. Subject agrees that Company may elect to refrain from using subject's real name and may use a pseudonym.

Subject hereby releases and discharges Company, its employees, agents, licensees, successors and assigns from any and all claims, demands or causes of actions that it may have or may in the future have for libel, defamation, invasion of privacy or right of publicity, infringement of copyright or trademark, or violation of any other right arising out of or relating to any utilization of the rights granted under this agreement.

Subject warrants and represents that Subject possesses all rights necessary for the grant of this license, and will indemnify and hold Company, its licensees and assigns, harmless from and against any and all claims, damages, liabilities, costs and expenses arising out of a breach of the foregoing warranty. Subject agrees that Company shall have the unlimited right to vary, change, alter, modify, add to and/or delete from his depiction in the Photo, and to rearrange and/or transpose his depiction, and to use a portion or portions of his depiction or character together with any other literary, dramatic or other material of any kind.

Subject has not committed or omitted to perform any act by which such rights could or will be encumbered, diminished or impaired; Subject further represents



EXHIBIT - **P**

## SUBMISSION RELEASE

Paul Producer  
1219 LaVine Ave  
Hollywood, CA 90088

Dear Mr. Producer:

I am submitting the enclosed material ("said material") to you:  
\_\_\_\_\_, an original screenplay. WGA REGISTRATION  
NO. \_\_\_\_\_. Copyright Registration No. \_\_\_\_\_.

The material is submitted on the following conditions:

1. I acknowledge that because of your position in the entertainment industry you receive numerous unsolicited submissions of ideas, formats, stories, suggestions and the like and that many such submissions received by you are similar to or identical to those developed by you or your employees or otherwise available to you. I agree that I will not be entitled to any compensation because of the use by you of any such similar or identical material.
2. I further understand that you would refuse to accept and evaluate said material in the absence of my acceptance of each and all of the provisions of this agreement. I shall retain all rights to submit this or similar material to persons other than you. I acknowledge that no fiduciary or confidential relationship now exists between you and me, and I further acknowledge that no such relationships are established between you and me by reason of this agreement or by reason of my submission to you of said material.
3. I request that you read and evaluate said material with a view to deciding whether you will undertake to acquire it.
4. I represent and warrant that I am the author of said material, having acquired said material as the employer-for-hire of all writers thereof; that I am the present and sole owner of all right, title and interest in and to said material; that I have the exclusive, unconditional right and authority to submit and/or convey said material to you upon the terms and conditions set forth herein; that no third party is entitled to any payment or other consideration as a condition of the exploitation of said material.
5. I agree to indemnify you from and against any and all claims, expenses, losses, or liabilities (including, without limitation, reasonable attorneys' fees and punitive damages) that may be asserted against you or incurred by you at any time in connection with said material, or any use thereof, including without limitation those arising from any breach of the warranties and promises given by me herein.
6. You may use without any obligation or payment to me any of said material which is not protectable as literary property under the laws of plagiarism, or which a third person would be free to use if the material had not been submitted to him or had not been the subject of any agreement with him, or which is in the public domain. Any of said material which, in accordance with the preceding sentence, you are entitled to use without obligation to me is hereinafter referred to as "unprotected material." If all or any part of said material does not fall in

the category of unprotected material it is hereinafter referred to as "protected material."

7. You agree that if you use or cause to be used any protected material provided it has not been obtained from, or independently created by, another source, you will pay or cause to be paid to me an amount which is comparable to the compensation customarily paid for similar material.

8. I agree to give you written notice by registered mail of any claim arising in connection with said material or arising in connection with this agreement, within sixty (60) calendar days after I acquire knowledge of such claim, or of your breach or failure to perform the provisions of this agreement, or if it be sooner, within sixty (60) calendar days after I acquire knowledge of facts sufficient to put me on notice of any such claim, or breach or failure to perform; my failure to so give you written notice will be deemed an irrevocable waiver of any rights I might otherwise have with respect to such claim, breach or failure to perform. You shall have sixty (60) calendar days after receipt of said notice to attempt to cure any alleged breach or failure to perform prior to the time that I may file a Demand for Arbitration.

9. In the event of any dispute concerning said material or concerning any claim of any kind or nature arising in connection with said material or arising in connection with this agreement, such dispute will be submitted to binding arbitration. Each party hereby waives any and all rights and benefits which he or it may otherwise have or be entitled to under the laws of the State of California to litigate any such dispute in court, it being the intention of the parties to arbitrate all such disputes. Either party may commence arbitration proceedings by giving the other party written notice thereof by registered mail and proceeding thereafter in accordance with the rules and procedures of the American Arbitration Association. The arbitration shall be conducted in the County of Los Angeles, State of California, and shall be governed by and subject to the laws of the State of California and the then prevailing rules of the American Arbitration Association. The arbitrators' award shall be final and binding and a judgment upon the award may be enforced by any court of competent jurisdiction.

10. I have retained at least one copy of said material, and I release you from any and all liability for loss or other damage to the copies of said material submitted to you hereunder.

11. Either party to this agreement may assign or license its or their rights hereunder, but such assignment or license shall not relieve such party of its or their obligations hereunder. This agreement shall inure to the benefit of the parties hereto and their heirs, successors, representatives, assigns and licensees, and any such heir, successor, representative, assign or licensee shall be deemed a third party beneficiary under this agreement.

12. I hereby acknowledge and agree that there are no prior or contemporaneous oral agreements in effect between you and me pertaining to said material, or pertaining to any material (including, but not limited to, agreements pertaining to the submission by me of any ideas, formats, plots, characters, or the like). I further agree that no other obligations exist or shall exist or be deemed to exist unless and until a formal written agreement has been prepared and entered into by both you and me, and then your and my rights and obligations shall be only such as are expressed in said formal written agreement.



# EXHIBIT - Q

## NON-DISCLOSURE AGREEMENT

This agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between: \_\_\_\_\_, ("Writer"), and \_\_\_\_\_ ("Producer"), \_\_\_\_\_.

WHEREAS, Writer has written a script ("Submission") for a possible future theatrical or motion picture production.

WHEREAS, Writer wishes Producer to evaluate said "Submission" for the sole purpose of determining whether said Submission may be further developed into a motion picture ("Project").

NOW, THEREAFTER, in consideration of the premises and mutual covenants herein contained, the parties agree as follows:

1. All information disclosed by Writer to Producer, in writing, whether or not such information is also disclosed orally, that relates or refers, directly or indirectly, to the Submission, including the Submission itself, shall be deemed confidential and shall constitute Confidential Information, and shall include (i) all documents generated by Producer which contain, comment upon, or relate in any way to any Confidential Information received from Writer, and (ii) any written samples of the Submission received from Writer together with any information derived by Producer therefrom.

2. Confidential Information shall not include any information:

(i) That Producer can show by documentary evidence was known to Producer or prior to the date of its disclosure to Producer by Writer or

(ii) That becomes publicly known, by publication or otherwise, not due to any unauthorized act or omission of Producer or any other party having an obligation of confidentiality to Writer; or,

(iii) That is subsequently disclosed by Writer to any person, firm or corporation on a non-confidential basis; or

(iv) That Producer can conclusively show by documentary evidence that such information was developed independent of any access to the Confidential Information.

3. Writer will disclose the Confidential Information to Producer solely for the purpose of allowing Producer to evaluate the Submission to determine, in its sole discretion, whether the Submission may be further developed into a Project.

4. Producer agrees to accept disclosure of the Confidential Information and to exercise the same degree of care to maintain the Confidential Information secret

and confidential as is employed by Producer to preserve and safeguard its own materials and confidential information.

5. The Confidential Information shall remain the property of Writer and shall not be disclosed or revealed by Producer or to anyone else except employees of Producer who have a need to know the information in connection with Producer's evaluation of the Submission, and who have entered into a secrecy agreement with Producer under which such employees are required to keep confidential the Confidential Information of Writer, and such employees shall be advised by Producer of the confidential nature of the information and that the information shall be treated accordingly. Producer shall be liable for any improper disclosure of the Confidential Information by its employees.

6. (i) Producer shall notify Writer of any determination it may arrive at with respect to the further development of the Submission, provided, however, that, in doing so, Producer shall not directly or indirectly disclose any Confidential Information to any third party, without the consent of Writer.

(ii) If Producer determines that the Submission cannot be further developed into a Project, within [...] months of the receipt of the Submission, Producer shall within five (5) business days after such determination return any and all Confidential Information to Writer, along with all copies or derivatives thereof and all writings generated by Producer in connection with Producer's evaluation of the Submission or the Confidential Information.

7. If Producer determines that the Submission is suitable for further development into a Project, Producer and Writer will attempt to agree on a schedule for development, and compensation to Writer for the Submission.

8. Other than as specifically provided herein, Producer will not use the Confidential Information for any purpose whatsoever other than for the sole purpose permitted in paragraph 3 hereof, unless and until a further executed agreement is first made between the parties setting forth the terms and conditions under which rights to the Submission and the Confidential Information are to be licensed to, or acquired by, Producer.

9. Writer agrees that it will not contact any party or parties other than Producer concerning the Confidential Information without prior written authorization from Producer during the term of this agreement.

10. Producer's obligations under paragraphs 3, 4, and 8 of this agreement shall extend from the date of this agreement and shall survive the expiration or termination of this agreement, provided, however, that Producer's obligations under paragraphs 3 and 4 of this agreement shall terminate immediately in the event that Writer shall purposefully disclose the Confidential Information to any other person, firm, or corporation on a non-confidential basis, during the term of this Agreement.

11. Writer hereby expressly warrants that it has the full right and authority to disclose the Confidential Information to Producer, and that no prior public non-confidential disclosure of the Confidential Information has been made by Writer nor, to the best of Writer's knowledge, by any other party.

12. Nothing in this agreement shall be deemed a sale or offer for sale of the Submission, and nothing contained herein shall in any way obligate Writer to grant to Producer a license or any other rights, directly or by implication, estoppel or

otherwise to the Confidential Information or the Submission.

13. Subject to paragraph 10 above, this agreement shall terminate \_\_\_\_\_ years from the date of this agreement, unless extended by mutual agreement of the parties. This agreement may be terminated prior to the expiration of \_\_\_\_\_ from the date of this agreement by either Writer or Producer upon thirty (30) days' written notice to the other parties of an intention to terminate.

14. This agreement sets forth the entire agreement between the parties and may not be amended or modified except by a writing signed by all of the parties.

15. This agreement shall be governed by the laws of the State of California without regard to the conflict of laws provisions thereof.

16. This agreement may be executed in counterparts.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

WRITER

PRODUCER

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

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

Name:

Name:

Title:

Date: \_\_\_\_\_

Date:

**EXHIBIT - R**

## LITERARY OPTION AND PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into as of \_\_\_\_\_ (date), by and between \_\_\_\_\_ (name and address of seller) ("Seller") and \_\_\_\_\_ (name and address of buyer) ("Buyer").

### 1. SELLER'S REPRESENTATIONS AND WARRANTIES:

(a) Sole Proprietor: Seller represents and warrants to Buyer that Seller is the sole and exclusive proprietor, throughout the world of that certain original literary material written by \_\_\_\_\_ entitled \_\_\_\_\_ ("the Literary Material").

(b) Facts: Seller represents and warrants to Buyer that the following statements are true and correct in all respects with respect to said literary material:

(i) Seller is the sole author of the Literary Material.

(ii) The Literary Material was first published on (date) by \_\_\_\_\_, under the title \_\_\_\_\_, and was registered for copyright in the name of \_\_\_\_\_, under copyright registration number \_\_\_\_\_, in the Office of the United States Register of Copyrights, Washington, D.C.

No Motion Picture or dramatic version of the Literary Property, or any part of it, has been manufactured, produced, presented or authorized; no radio or television development, presentation or program based on the Literary Property, or any part of it, has been manufactured, produced, presented, broadcast or authorized; and no written or oral agreements or commitments at all with respect to the Literary Property or with respect to any right therein, have previously been made or entered into by or on behalf of Seller (except with respect to the publication of the Literary Material as set forth above).

(c) No Infringement or Violation of Third Party Rights: Seller represents and warrants to Buyer that Seller has not adapted the Literary Property from any other literary, dramatic or other material of any kind, nature or description, nor, excepting for material which is in the public domain, has Seller copied or used in the Literary Property the plot, scenes, sequence or story of any other literary, dramatic or other material; that the Literary Property does not infringe upon any common law or statutory rights in any other literary, dramatic, or other material; that to the best of Seller's knowledge, no material in the Literary Property is libelous or violative of the right of privacy of any person and the full use of the rights in the Literary Property which are covered by the within option would not violate any rights of any person, firm or corporation; and that the Literary Property is not in the public domain in any country in the world where copyright protection is available.

(d) No Impairment of Rights: Seller represents and warrants to Buyer that Seller is the exclusive proprietor, throughout the world, of the rights in the Literary Property which are covered by the within option; that Seller has not assigned, licensed nor in any manner encumbered, diminished or impaired these rights; that Seller has not committed nor omitted to perform any act by which these rights could or will be encumbered, diminished or impaired; and that there is no outstanding claim or litigation pending against or involving the title, ownership and/or copyright in the Literary Property, or in any part of it, or in the

rights which are covered by the within option. Seller further represents and warrants that no attempt hereafter will be made to encumber, diminish or impair any of the rights herein granted and that all appropriate protections of such rights will continue to be maintained by Seller.

Without limiting any other rights Buyer may have in the premises, Seller agrees that if there is any claim and/or litigation involving any breach or alleged breach of any such representations and warranties of Seller, the option period granted hereunder and any periods within which Buyer may, pursuant to the provisions of Clause 3 hereof, extend the option, shall automatically be extended until no claim and/or litigation involving any breach or alleged breach of any such representation and warranties of seller is outstanding, but in any event for a period not more than one (1) additional year. Any time after the occurrence of such a claim and/or litigation until the expiration of the option period, as extended, Buyer may, besides any other rights and remedies Buyer may have in the premises, rescind this agreement and in such event, despite anything else to the contrary contained herein, Seller agrees to repay Buyer any monies paid by Buyer to Seller hereunder concerning the Property and any reasonable amounts expended by Buyer in developing or exploiting the Property. Without limiting the generality of the foregoing, Seller agrees that Seller will not, any time during the option period, exercise or authorize or permit the exercise by others of any of the rights covered by the option or any of the rights reserved by Seller under the provisions of Exhibit A which are not to be exercised or licensed to others during any period therein specified.

**2. CONSIDERATION FOR OPTION:** In consideration of the payment to Seller of the sum of \$ \_\_\_\_\_, receipt of which is hereby acknowledged, Seller agrees to and does hereby give and grant to Buyer the exclusive and irrevocable option to purchase from Seller the rights in the Property as described in Exhibit A for the total purchase price specified and payable as provided in Exhibit A, provided that any sums paid under this Clause 2 or any other provision of this agreement with respect to the option shall be credited against the first sums payable on account of such purchase price. If Buyer shall fail to exercise this option, then the sums paid to Seller hereunder with respect to the option shall be and remain the sole property of Seller.

**3. OPTION PERIOD:** The within option shall be effective during the period commencing on the date hereof and ending \_\_\_\_\_ ("the Initial Option Period"). The Initial Option Period may be extended for an additional \_\_\_\_\_ months by the payment of \$ \_\_\_\_\_ on or before the expiration date specified above ("the Second Option Period").

**4. EXERCISE OF OPTION:**

(a) Notice of Exercise: If Buyer elects to exercise the within option, Buyer (any time during the Option Period) shall serve upon Seller written notice of the exercise of it by addressing such notice to Seller at his address as specified in Exhibit A and by depositing such notice, so addressed by certified mail, return receipt requested with postage prepaid, in the United States mail. The deposit of such notice in the United States mail as herein specified shall constitute service of it, and the date of such deposit shall be deemed to be the date of service of such notice.

(b) The purchase price shall be paid to Seller according to Exhibit A.

(c) The option may be exercised only by notice in writing as aforesaid; no other action or oral statement by Buyer or his agents, representatives or employees shall constitute an exercise of the option.

(d) Additional Documents: If Buyer exercises the within option, Seller, without cost to Buyer (other than the consideration provided for herein or in Exhibit A) shall execute, acknowledge and deliver to Buyer, or shall cause the execution, acknowledgement and delivery to Buyer of, such further instruments as Buyer may reasonably require to confirm unto Buyer the rights, licenses, privileges and property which are the subject of the within option. If Seller shall fail to execute and deliver or to cause the execution and delivery to Buyer of any such instruments, Buyer is hereby irrevocably granted the power coupled with an interest to execute such instruments and to take such other steps and proceedings as may be necessary concerning it in the name and on behalf of Seller and as Seller's attorney-in-fact. Seller shall supply all supporting agreements and documentation requested by Buyer.

(e) Failure to Execute Documents: If Seller shall fail to execute, acknowledge or deliver to Buyer any agreements, assignments or other instruments to be executed, acknowledged and delivered by Seller hereunder, then Buyer is hereby irrevocably appointed Seller's attorney-in-fact with full right, power and authority to execute, acknowledge and deliver the same in the name of and on behalf of Seller, Seller acknowledging that the authority and agency given Buyer is a power coupled with an interest. If the property has not been published or registered for copyright in the United States Copyright Office, and as a result thereof Exhibits "A," "B" and "C," attached hereto, have not been completed with respect to the publication and copyright data and other data, then Buyer is authorized and instructed by Seller to insert the correct publication and copyright data in the appropriate blanks in Exhibits "A," "B" and "C" or after the property has been published and registered for copyright, and in this connection Seller agrees to notify Buyer promptly in writing of the publication and registration of the Property for copyright, specifying in such notice the name of the publisher, the date and place of publication, the name of the copyright proprietor and the date and entry number of the copyright registration in the United States Copyright Office, all of which information may be inserted by Buyer in the appropriate blanks in such documents.

**5. EFFECTIVENESS OF EXHIBITS "A," "B" AND "C":** Concurrently with the execution of this agreement Seller has executed Exhibits A (Literary Purchase Agreement), B (Short Form Option Agreement for Recordation) and C (Assignment of the Copyright), which are undated, and it is agreed that if Buyer shall exercise the option (but not otherwise) then the signature of Seller to Exhibits A, B and C shall be deemed to be effective and these Exhibits shall constitute valid and binding agreements and assignment effective as of the date of exercise of such option, and Buyer is hereby authorized and empowered to date such instruments accordingly. If Buyer shall fail to exercise the option, then the signature of Seller to Exhibits A, B and C shall be void and of no further force or effect whatever, and Buyer shall not be deemed to have acquired any rights in or to the Property other than the option hereinabove provided for. If Buyer exercises the option, Buyer will execute and deliver to Seller copies of Exhibit A, dated as of the date of the exercise of the option, and Seller will, if so requested by Buyer, execute and deliver to Buyer additional copies of Exhibits A, B and C. Notwithstanding the failure or omission of either party to execute and/or deliver such additional documents, it is agreed that upon the exercise

of the option by Buyer all rights in and to the Property agreed to be transferred to Buyer pursuant to the provisions of Exhibit A shall be deemed vested in Buyer, effective as of the date of exercise of the option, which rights shall be irrevocable.

**6. RIGHT TO ENGAGE IN PREPRODUCTION:** Seller acknowledges that Buyer may, at its own expense, during the option period, undertake preproduction activities in connection with any of the rights to be acquired hereunder including, without limitation, the preparation and submission of treatments and/or screenplays based on the Property.

**7. RESTRICTIONS:** During the Option Period, Seller shall not exercise or otherwise use any of the rights herein granted to Buyer and as more particularly described in Exhibit A hereof nor the rights reserved to Seller pursuant to Clause 2 (Rights Reserved) of Exhibit A, nor shall Seller permit the use of nor shall Seller use any other right Seller has reserved in a way that would in any manner or for any purpose unfairly compete with, interfere with or conflict with the full and unrestricted use of the rights herein granted to Buyer and as described in Exhibit A.

**8. ASSIGNMENT:** This Option Agreement and the rights granted hereunder may be assigned by Buyer to any other person, firm or corporation.

**9. OPTION REVERSION AND TURNAROUND RIGHT:**

(a) If the Buyer does not timely exercise the option during its original or extended term and timely pay the purchase price, the option shall end and all rights in the Literary Property shall immediately revert to the seller. The seller shall retain all sums therefore paid. Buyer shall immediately execute and deliver to seller any assignments and documents required to effectuate the Reversion. If Buyer shall fail or be unable to do so, Buyer hereby grants seller a power coupled with an interest to execute and deliver such documents as Buyer's attorney-in-fact.

(b) If the option is timely exercised and the purchase price paid and if a motion picture company does not produce a motion picture based on the Literary Property within \_\_\_\_\_ years from purchase of the Literary Property, seller shall have a turnaround right to reacquire and set up the Literary Property elsewhere and upon obtaining such other commitment to reimburse the Buyer or Motion Picture company for its actual direct out-of-pocket development costs in connection with the Literary Property, such as fees to scriptwriters, but excluding payments to Seller and any payments to Buyer not directly related to scripting services.

(c) In addition, if Buyer decides not to exercise the option in Clause 1, above, any time before the expiration of the Option Period, or decides not to extend such option for \_\_\_\_\_, Buyer agrees to notify Seller of such decision as soon as reasonably possible, but in no event later than the applicable option or extension deadline. When such notice is given, the option granted hereunder to Buyer shall automatically revert to Seller.

**10. FORCE MAJEURE:** "Force Majeure" means any fire, flood, earthquake, or public disaster; strike, labor dispute or unrest; embargo, riot, war, insurrection or civil unrest; any act of God, any act of legally constituted authority; or any other cause beyond the buyer's control which would excuse buyer's performance as a matter of law. If because of force majeure, buyer's performance

hereunder is delayed or prevented then the option period provided herein and any performance by purchase shall be extended for the time of such delay or prevention.

**11. SECTION HEADINGS:** The headings of paragraphs, sections and other subdivisions of this agreement are for convenient reference only. They shall not be used in any way to govern, limit, modify, construe this agreement or any part or provision of it.

**12. ARBITRATION:** Any controversy or claim arising out of or relating to this agreement or any breach thereof shall be settled by arbitration in accordance with the Rules of the American Arbitration Association; and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled to reimbursement for costs and reasonable attorney's fees. The determination of the arbitrator in such proceeding shall be final, binding and non-appealable.

**13. ENTIRE AGREEMENT:** This agreement, including the Exhibits attached hereto, contains the complete understanding and agreement between the parties with respect to the within subject matter, and supersedes all other agreements between the parties whether written or oral relating thereto, and may not be modified or amended except by written instrument executed by both of the parties hereto. This agreement shall in all respects be subject to the laws of the State of \_\_\_\_\_ applicable to agreements executed and wholly performed within such State. All the rights, licenses, privileges and property herein granted to Buyer are irrevocable and not subject to rescission, restraint, or injunction under any or all circumstances.

IN WITNESS WHEREOF, the parties hereto have signed this Option Agreement as of the day and year first hereinabove written.

SELLER:

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BUYER:

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## EXHIBIT A

This Agreement made on \_\_\_\_\_ (date) by and between \_\_\_\_\_ ("Seller") and \_\_\_\_\_ ("Buyer").

### W I T N E S S E T H

WHEREAS, Seller is the sole and exclusive seller throughout the world of all rights in and to the literary work entitled: \_\_\_\_\_, written by \_\_\_\_\_, which work has been filed in the United States Copyright Office under Copyright Registration Number \_\_\_\_\_; this work including all adaptations and/or versions, the titles, characters, plots, themes and storyline is collectively called the "Property"; and

WHEREAS, Buyer wants to acquire certain rights of the Seller in consideration for the purchase price provided herein and in reliance upon the Seller's representations and warranties;

NOW, THEREFORE, the parties agree to as follows:

**1. RIGHTS GRANTED:** Seller hereby sells, grants, conveys and assigns to Buyer, its successors, licensees and assigns exclusively and forever, all motion picture rights (including all silent, sound dialogue and musical motion picture rights), all television motion picture and other television rights, with limited radio broadcasting rights and 7,500 word publication rights for advertisement, publicity and exploitation purposes, and certain incidental and allied rights, throughout the world, in and to the Property and in and to the copyright of it and all renewals and extensions of copyright. Included among the rights granted to Buyer hereunder (without in any way limiting the grant of rights hereinabove made) are the following sole and exclusive rights throughout the world:

(a) To make, produce, adapt and copyright one or more motion picture adaptations or versions, whether fixed on film, tape, disc, wire, audio-visual cartridge, cassette or through any other technical process whether now known or from now on devised, based in whole or in part on the Property, of every size, gauge, color or type, including, but not limited to, musical motion pictures and remakes of and sequels to any motion picture produced hereunder and motion pictures in series or serial form, and for such purposes to record and reproduce and license others to record and reproduce, in synchronization with such motion pictures, spoken words taken from or based upon the text or theme of the Property and any kinds of music, musical accompaniments and/or lyrics to be performed or sung by the performers in any such motion picture and any other kinds of sound and sound effects.

(b) To exhibit, perform, rent, lease and generally deal in and with any motion picture produced hereunder:

(i) by all means or technical processes whatsoever, whether now known or from now on devised including, by way of example only, film, tape, disc, wire, audio-visual cartridge, cassette or television (including commercially sponsored, sustaining and subscription or pay-per-view television, or any derivative of it); and

(ii) anywhere whatsoever, including homes, theaters and elsewhere, and whether a fee is charged, directly or indirectly, for viewing any such motion picture.

(c) To broadcast, transmit or reproduce the Property or any adaptation or version of it (including without limitations any motion picture produced hereunder and/or any script or other material based on or using the Property or any of the characters, themes or plots of it), by means of television or any process analogous thereto whether now known or from now on devised (including commercially sponsored, sustaining and subscription or pay-per-view television), by motion pictures produced on films or by means of magnetic tape, wire, disc, audio-visual cartridge or any other device now known or from now on devised and including such television productions presented in series or serial form, and the exclusive right generally to exercise for television purposes all the rights granted to Buyer hereunder for motion picture purposes.

(d) Without limiting any other rights granted Buyer, to broadcast and/or transmit by television or radio or any process analogous thereto whether now known or from now on devised, all or any part of the Property or any adaptation or version of it, including any motion picture or any other version or versions of it, and announcements about said motion picture or other version or versions, for advertising, publicizing or exploiting such motion picture or other version or versions, which broadcasts or transmissions may be accomplished with living actors performing simultaneously with such broadcast or transmission or by any other method or means including the use of motion pictures (including trailers) reproduced on film or by means of magnetic tape or wire or through other recordings or transcriptions.

(e) To publish and copyright or cause to be published and copyrighted in the name of Buyer or its nominee in any languages throughout the world, in any form or media, synopses, novelizations, serializations, dramatizations, abridged and/or revised versions of the Property, not exceeding 7,500 words each, adapted from the Property or from any motion picture and/or other version of the Property for advertising, publicizing and/or exploiting any such motion picture and/or other version.

(f) For the foregoing purposes to use all or any part of the Property and any of the characters, plots, themes and/or ideas contained therein, and the title of the Property and any title or subtitle of any component of the Property, and to use said titles or subtitles for any motion picture or other version of adaptation whether the same is based on or adapted from the Property and/or as the title of any musical composition contained in any such motion picture or other version or adaptation.

(g) To use and exploit commercial or merchandise tie-ups and recordings of any sort and nature arising out of or connected with the Property and/or its motion picture or other versions and/or the title or titles of it and/or the characters of it and/or their names or characteristics.

All rights, licenses, privileges and property herein granted Buyer shall be cumulative and Buyer may exercise or use any or all said rights, licenses, privileges or property simultaneously with or in connection with or separately and apart from the exercise of any other of said rights, licenses, privileges and property. If Seller from now on makes or publishes or permits to be made or published any revision, adaptation, translation or dramatization or other versions of the Property, then Buyer shall have and Seller hereby grants to Buyer without payment therefore all of the same rights therein as are herein granted Buyer. The terms "Picture" and "Pictures" as used herein shall be deemed to mean or include any present or future kind of motion picture production based upon the

Property, with or without sound recorded and reproduced synchronously with it, whether the same is produced on film or by any other method or means now or from now on used for the production, exhibition and/or transmission of any kind of motion picture productions.

**2. RIGHTS RESERVED:** The following rights are reserved to Seller for Seller's use and disposition, subject, however, to the provisions of this agreement:

(a) Publication Rights: The right to publish and distribute printed versions of the Property owned or controlled by Seller in book form, whether hardcover or softcover, and in magazine or other periodicals, whether in installments or otherwise subject to Buyer's rights as provided for in Clause 1 supra.

(b) Stage Rights: The right to perform the Property or adaptations of it on the spoken stage with actors appearing in person in the immediate presence of the audience, provided no broadcast, telecast, recording, photography or other reproduction of such performance is made. Seller agrees not to exercise, or permit any other person to exercise, said stage rights earlier than \_\_\_\_\_ years after the first general release or telecast, if earlier, of the first Picture produced hereunder, or \_\_\_\_\_ years after the date of exercise of the buyer's option to acquire the property, whichever is earlier.

(c) Radio Rights: The right to broadcast the Property by sound (as distinguished from visually) by radio, subject however to Buyer's right always to: (i) exercise its radio rights provided in Clause 1 supra for advertising and exploitation purposes by living actors or otherwise, by using excerpts from or condensations of the Property or any Picture produced hereunder; and (ii) in any event to broadcast any Picture produced hereunder by radio. Seller agrees not to exercise, or permit any other person to exercise, Seller's radio rights earlier than \_\_\_\_\_ years after the first general release or initial telecast, if earlier, of the first Picture produced hereunder or \_\_\_\_\_ years after the date of exercise of buyer's option to acquire the property, whichever is earlier.

(d) Author-Written Sequel: A literary property (story, novel, drama or otherwise), whether written before or after the Property and whether written by Seller or by a successor in interest of Seller, using one or more of the characters appearing in the Property, participating in different events from those found in the Property, and whose plot is substantially different from that of the Property. Seller shall have the right to exercise publication rights (i.e., in book or magazine form) any time. Seller agrees not to exercise, or permit any other person to exercise, any other rights (including but not limited to motion picture or allied rights) of any kind in or to any author-written sequel earlier than \_\_\_\_\_ years after the first general release of the first Picture produced hereunder, or \_\_\_\_\_ years after the date of exercise of buyer's option to acquire the property, whichever is earlier, provided such restriction on Seller's exercise of said author-written sequel rights shall be extended to any period during which there is in effect, in any particular country or territory, a network television broadcasting agreement for a television motion picture, (i) based upon the Property, or (ii) based upon any Picture produced in the exercise of rights assigned herein, or (iii) using a character or characters of the Property, plus one (1) year, which shall also be a restricted period in such country or territory, whether such period occurs wholly or partly during or entirely after the \_\_\_\_\_ year period first referred to in this clause. Any disposition of motion picture or allied rights in an author-written sequel made to any person or company other than Buyer shall be made subject to the following limitations and restrictions:

(e) Since the characters of the Property are included in the exclusive grant of motion picture rights to Buyer, no sequel rights or television series rights may be granted to such other person or company, but such characters from the Property which are contained in the author-written sequel may be used in a motion picture and remakes of it whose plot is based substantially on the plot of the respective author-written sequel.

It is expressly agreed that Seller's reserved rights under this subclause relate only to material written or authorized by Seller and not to any revision, adaptation, sequel, translation or dramatization written or authorized by Buyer, although the same may contain characters or other elements contained in the Property.

**3. RIGHT TO MAKE CHANGES:** Seller agrees that Buyer shall have the unlimited right to vary, change, alter, modify, add to and/or delete from the Property, and to rearrange and/or transpose the Property and change the sequence of it and the characters and descriptions of the characters contained in the Property, and to use a portion or portions of the property or the characters, plots, or theme of it with any other literary, dramatic or other material of any kind. Seller hereby waives the benefits of any provisions of law known as the "droit moral" or any similar law in any country of the world and agrees not to permit or prosecute any action or lawsuit on the ground that any Picture or other version of the Property produced or exhibited by Buyer, its assigns or licensees, in any way constitutes an infringement of any of the Seller's droit moral or is in any way a defamation or mutilation of the Property or any part of it or contains unauthorized variations, alterations, modifications, changes or translations.

**4. DURATION AND EXTENT OF RIGHTS GRANTED:** Buyer shall enjoy, solely and exclusively, all the rights, licenses, privileges and property granted hereunder throughout the world, in perpetuity, as long as any rights in the Property are recognized in law or equity, except as far as such period of perpetuity may be shortened due to any now existing or future copyright by Seller of the Property and/or any adaptations of it, in which case Buyer shall enjoy its sole and exclusive rights, licenses, privileges and property hereunder to the fullest extent permissible under and for the full duration of such copyright or copyrights, whether common law or statutory, and any renewals and/or extensions of it, and shall after that enjoy all such rights, licenses, privileges and property non-exclusively in perpetuity throughout the world. The rights granted herein are in addition to and shall not be construed in derogation of any rights which Buyer may have as a member of the public or pursuant to any other agreement. All rights, licenses, privileges and property granted herein to Buyer are irrevocable and not subject to rescission, restraint or injunction under any circumstances.

**5. CONSIDERATION:** As consideration for all rights granted and assigned to Buyer and for seller's representations and warranties, Buyer agrees to pay to Seller, and Seller agrees to accept:

(a) For a theatrical or television motion picture \$\_\_\_\_\_ besides any sums paid in connection with the option periods so payable upon exercise of the option to acquire the Property.

(b) For any mini-series, \$\_\_\_\_\_ per hour, pro-rated for part hours.

(c) For any sequel or remake of a theatrical or television motion picture based on the Property, one-half and one-third, respectively, of the amount paid

for the initial motion picture, payable upon commencement of principal photography of the subsequent production.

(d) For any television series produced, based on the Property, Buyer will pay the following royalties per initial production upon completion of production of each program: up to 30 minutes \$\_\_\_\_\_; over 30, but not more than 60, minutes \$\_\_\_\_\_; over 60 minutes \$\_\_\_\_\_; and in addition to the foregoing, as a buy-out of all royalty obligations, one hundred percent (100%) of the applicable initial royalty amount, in equal installments over five (5) reruns, payable within thirty (30) days after each such rerun.

As and for contingent compensation \_\_\_\_\_ percent of one hundred percent of the net profits (including allied and ancillary rights) of each motion picture and television program or series based on the Property, in whole or in part, with profits defined according to the same definition obtained by Buyer; provided, however, that Seller's percentage shall not be subject to any reductions or preconditions whatsoever.

## **6. REPRESENTATIONS AND WARRANTIES:**

(a) Sole Proprietor: Seller represents and warrants to Buyer that Seller is the sole and exclusive proprietor, throughout the universe, of that certain original literary material written by Seller entitled "\_\_\_\_\_."

(b) Facts: Seller represents and warrants to Buyer as follows:

(i) Seller is the sole author and creator of the Property.

(ii) The Property was first published in 19\_\_ by \_\_\_\_\_ (publisher) under the title \_\_\_\_\_, and was registered for copyright in the name of \_\_\_\_\_, under copyright registration number \_\_\_\_\_, in the Office of the United States Register of Copyrights, Washington, D.C.

(iii) No motion picture or dramatic version of the Property, or any part of it, has been manufactured, produced, presented or authorized; no radio or television development, presentation, or program based on the Property, or any part of it, has been manufactured, produced, presented, broadcast or authorized; and no written or oral agreements or commitments at all with respect to the Property, or with respect to any rights therein, have been made or entered by or on behalf of Seller (except with respect to the Publication of the Property as set forth above).

(iv) None of the rights herein granted and assigned to Buyer have been granted and/or assigned to any person, firm or corporation other than Buyer.

(c) No Infringement or Violation of Third Party Rights: Seller represents and warrants to Buyer that Seller has not adapted the Property from any other literary, dramatic or other material of any kind, nature or description, nor, except material which is in the public domain, has Seller copied or used in the Property the plot, scenes, sequence or story of any other literary, dramatic or other material; that the Property does not infringe upon any common law or statutory rights in any other literary, dramatic or other material; that no material contained in the Property is libelous or violative of the right of privacy of any person; that the full utilization of any and all rights in and to the Property granted by Seller pursuant to this Agreement will not violate the rights of any person, firm or corporation; and that the Property is not in the public domain in any country in the world where copyright protection is available.

(d) No Impairment of Rights: Seller represents and warrants to Buyer that Seller is the exclusive proprietor, throughout the universe, of all rights in and to the Property granted herein to Buyer; that Seller has not assigned, licensed or in any manner encumbered, diminished or impaired any such rights; that Seller has not committed or omitted to perform any act by which such rights could or will be encumbered, diminished or impaired; and that there is no outstanding claim or litigation pending against or involving the title, ownership and/or copyright in the Property, or in any part thereof, or in any rights granted herein to Buyer. Seller further represents and warrants that no attempt shall be made hereafter to encumber, diminish or impair any of the rights granted herein and that all appropriate protection of such rights will continue to be maintained by Seller.

**7. INDEMNIFICATION:**

(a) Seller agrees to indemnify Buyer against all judgments, liability, damages, penalties, losses and expense (including reasonable attorneys' fees) which may be suffered or assumed by or obtained against Buyer by reason of any breach or failure of any warranty or agreement herein made by Seller.

(b) Buyer shall not be liable to Seller for damages of any kind in connection with any Picture it may produce, distribute or exhibit, or for damages for any breach of this agreement (except failure to pay the money consideration herein specified) occurring or accruing before Buyer has had reasonable notice and opportunity to adjust or correct such matters.

(c) All rights, licenses and privileges herein granted to Buyer are irrevocable and not subject to rescission, restraint or injunction under any circumstances.

**8. PROTECTION OF RIGHTS GRANTED:** Seller hereby grants to Buyer the free and unrestricted right, but at Buyer's own cost and expense, to institute in the name and on behalf of Seller, or Seller and Buyer jointly, any and all suits and proceedings at law or in equity, to enjoin and restrain any infringements of the rights herein granted, and hereby assigns and sets over to Buyer any and all causes of action relative to or based upon any such infringement, as well as any and all recoveries obtained thereon. Seller will not compromise, settle or in any manner interfere with such litigation if brought; and Buyer agrees to indemnify and hold Seller harmless from any costs, expenses or damages which Seller may suffer as a result of any such suit or proceeding.

**9. COPYRIGHT:** Regarding the copyright in and to the Property, Seller agrees that:

(a) Seller will prevent the Property and any arrangements, revisions, translations, novelizations, dramatizations or new versions thereof whether published or unpublished and whether copyrighted or not copyrighted, from vesting in the public domain, and will take or cause to be taken any and all steps and proceedings required for copyright or similar protection in any and all countries in which the same may be published or offered for sale, insofar as such countries now or hereafter provide for copyright or similar protection. Any contract or agreement entered into by Seller authorizing or permitting the publication of the Property or any arrangements, revisions, translations, novelizations, dramatizations or new versions thereof in any country will contain appropriate provisions requiring such publisher to comply with all the provisions of this clause.

(b) Without limiting the generality of the foregoing, if the Property or any arrangement, revision, translation, novelization, dramatization or new version thereof is published in the United States or in any other country in which registration is required for copyright or similar protection in accordance with the laws and regulations of such country, Seller agrees to affix or cause to be affixed to each copy of the Property or any arrangement, revision, translation, novelization, dramatization or new version thereof which is published or offered for sale such notice or notices as may be required for copyright or similar protection in any country in which such publication or sale occurs.

(c) At least \_\_\_\_\_ months prior to the expiration of any copyright required by this provision for the protection of the Property, Seller will renew (or cause to be renewed) such copyright, as permitted by applicable law, and any and all rights granted Buyer hereunder shall be deemed granted to Buyer throughout the full period of such renewed copyright, without the payment of any additional consideration, it being agreed that the consideration payable to Seller under this agreement shall be deemed to include full consideration for the grant of such rights to Buyer throughout the period of such renewed copyright.

(d) If the Property, or any arrangement, revision, translation, novelization, dramatization or new version thereof, shall ever enter the public domain, then nothing contained in this agreement shall impair any rights or privileges that the Buyer might be entitled to as a member of the public; thus, the Buyer may exercise any and all such rights and privileges as though this agreement were not in existence. The rights granted herein by Seller to Buyer, and the representations, warranties, undertakings and agreements made hereunder by Seller shall endure in perpetuity and shall be in addition to any rights, licenses, privileges or property of Buyer referred to in this subclause (d).

**10. CREDIT OBLIGATIONS:** Buyer shall have the right to publish, advertise, announce and use, in any manner or medium, the name, biography and photographs or likenesses of Seller in connection with any exercise by Buyer of its rights hereunder, provided such use shall not constitute an endorsement of any product or service.

During the term of the Writer's Guild of America Minimum Basic Agreement ("WGA Agreement"), as it may be amended, the credit provisions of the WGA Agreement shall govern the determination of credits, if any, which the Buyer shall accord the Seller hereunder in connection with photoplays.

Subject to the foregoing, Seller shall be accorded the following credit on a single card on screen and in paid ads controlled by Buyer and in which any other writer is accorded credit, and in size of type (as to height, width, thickness and boldness) equal to the largest size of type in which any other writer is accorded credit:

(a) If the title of the Picture is the same as the title of the Property "\_\_\_\_\_"; or

(b) If the title of the Picture differs from the title of the Work, "\_\_\_\_\_".

Additionally, if Buyer shall exploit any other rights in and to the Property, then Buyer agrees to give appropriate source material credit to the Property, to the extent that such source material credits are customarily given in connection with the exploitation of such rights.

No casual or inadvertent failure to comply with any of the provisions of this clause shall be deemed a breach of this agreement by the Buyer. Seller hereby expressly acknowledges that in the event of a failure or omission constituting a breach of the provisions of this paragraph, the damage (if any) caused Seller thereby is not irreparable or sufficient to entitle Seller to injunctive or other equitable relief. Consequently, Seller's rights and remedies in the event of such breach shall be limited to the right to recover damages in an action at law. Buyer agrees to provide in its contracts with distributors of the Picture that such distributors shall honor Buyer's contractual credit commitments and agrees to inform such distributors of the credit provisions herein.

**11. RIGHT OF FIRST NEGOTIATION:** The term "Right of First Negotiation" means that if, after the expiration of an applicable time limitation, Seller desires to dispose of or exercise a particular right reserved to Seller herein ("Reserved Right"), whether directly or indirectly, then Seller shall notify Buyer in writing and immediately negotiate with Buyer regarding such Reserved Right. If, after the expiration of \_\_\_\_\_ days following the receipt of such notice, no agreement has been reached, then Seller may negotiate with third parties regarding such Reserved Right subject to Clause 12 infra.

**12. RIGHT OF LAST REFUSAL:** The term "Right of Last Refusal" means that if Buyer and Seller fail to reach an agreement pursuant to Buyer's right of first negotiation, and Seller makes and/or receives any bona fide offer to license, lease and/or purchase the particular Reserved Right or any interest therein ("Third Party Offer"), and if the proposed purchase price and other material terms of a Third Party Offer are no more favorable to Seller than the terms which were acceptable to Buyer during the first negotiation period, Seller shall notify Buyer, by registered mail or telegram, if Seller proposes to accept such Third Party Offer, the name of the offerer, the proposed purchase price, and other terms of such Third Party Offer. During the period of \_\_\_\_\_ days after Buyer's receipt of such notice, Buyer shall have the exclusive option to license, lease and/or purchase, as the case may be, the particular Reserved Right or interest referred to in such Third Party Offer, at the same purchase price and upon the same terms and conditions as set forth in such notice. If Buyer elects to exercise thereof by registered mail or telegram within such \_\_\_\_\_ day period, failing which Seller shall be free to accept such Third Party Offer; provided that if any such proposed license, lease and/or sale is not consummated with a third party within \_\_\_\_\_ days following the expiration of the aforesaid \_\_\_\_\_ day period, Buyer's Right of last refusal shall revive and shall apply to each and every further offer or offers at any time received by Seller relating to the particular Reserved Right or any interest therein; provided, further, that Buyer's option shall continue in full force and effect, upon all of the terms and conditions of this paragraph, so long as Seller retains any rights, title or interests in or to the particular Reserved Right. Buyer's Right of Last Refusal shall inure to the benefit of Buyer, its successors and assigns, and shall bind Seller and Seller's heirs, successors and assigns.

**13. NO OBLIGATION TO PRODUCE:** Nothing herein shall be construed to obligate Buyer to produce, distribute, release, perform or exhibit any motion picture, television, theatrical or other production based upon, adapted from or suggested by the Property, in whole or in part, or otherwise to exercise, exploit or make any use of any rights, licenses, privileges or property granted herein to Buyer.

**14. ASSIGNMENT:** Buyer may assign and transfer this agreement or all or any part of its rights hereunder to any person, firm or corporation without limitation, and this agreement shall be binding upon and inure to the benefit of the parties hereto and their successors, representatives and assigns forever.

**15. NO PUBLICITY:** Seller will not, without Buyer's prior written consent in each instance, issue or authorize the issuance or publication of any news story or publicity relating to (i) this Agreement, (ii) the subject matter or terms hereof.

**16. AGENT COMMISSIONS:** Buyer shall not be liable for any compensation or fee to any agent of Seller in connection with this Agreement.

**17. ADDITIONAL DOCUMENTATION:** Seller agrees to execute and procure any other and further instruments necessary to transfer, convey, assign and copy-right all rights in the Property granted herein by Seller to Buyer in any country throughout the world. If it shall be necessary under the laws of any country that copyright registration be acquired in the name of Seller, Buyer is hereby authorized by Seller to apply for said copyright registration thereof; and, in such event, Seller shall and does hereby assign and transfer the same unto Buyer, subject to the rights in the Property reserved hereunder by Seller. Seller further agrees, upon request, to duly execute, acknowledge, procure and deliver to Buyer such short form assignments as may be requested by Buyer for the purpose of copyright recordation in any country, or otherwise. If Seller shall fail to so execute and deliver, or cause to be executed and delivered, the assignments or other instruments herein referred to, Buyer is hereby irrevocably granted the power coupled with an interest to execute such assignments and instruments in the name of Seller and as Seller's attorney-in-fact.

**18. NOTICES:** All notices to Buyer under this agreement shall be sent by United States registered mail, postage prepaid, or by telegram addressed to Buyer at \_\_\_\_\_(address) with a courtesy copy to \_\_\_\_\_(Buyer's attorney), and all notices to Seller under this agreement shall be sent by United States registered mail, postage prepaid, or by telegram addressed to at \_\_\_\_\_(address) seller with a courtesy copy to \_\_\_\_\_(Seller's attorney). The deposit of such notice in the United States mail or the delivery of the telegram message to the telegraph office shall constitute service thereof, and the date of such deposit shall be deemed to be the date of service of such notice.

**19. ARBITRATION:** Any controversy or claim arising out of or relating to this agreement or any breach thereof shall be settled by arbitration in accordance with the Rules of the American Arbitration Association; and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled to reimbursement for costs and reasonable attorney's fees. The determination of the arbitrator in such proceeding shall be final, binding and non-appealable.

**20. MISCELLANEOUS:**

(a) Relationship: This agreement between the parties does not constitute a joint venture or partnership of any kind.

(b) Cumulative Rights and Remedies: All rights, remedies, licenses, undertakings, obligations, covenants, privileges and other property granted herein shall be cumulative, and Buyer may exercise or use any of them separately or in conjunction with any one or more of the others.

(c) Waiver: A waiver by either party of any term or condition of this agreement in any instance shall not be deemed or construed to be a waiver of such term or condition for the future, or any subsequent breach thereof.

(d) Severability: If any provision of this agreement as applied to either party or any circumstances shall be adjudged by a court to be void and unenforceable, such shall in no way affect any other provision of this agreement, the application of such provision in any other circumstance, or the validity or enforceability of this agreement.

(e) Governing Law: This agreement shall be construed in accordance with the laws of the State of \_\_\_\_\_ applicable to agreements which are executed and fully performed within said State.

(f) Captions: Captions are inserted for reference and convenience only and in no way define, limit or describe the scope of this agreement or intent of any provision.

(g) Entire Understanding: This agreement contains the entire understanding of the parties relating to the subject matter, and this agreement cannot be changed except by written agreement executed by the party to be bound.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the day and year first above written.

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("Seller")

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("Buyer")

**EXHIBIT B**

**OPTION AGREEMENT  
(SHORT FORM FOR RECORDATION AT U.S. COPYRIGHT OFFICE)**

For good and valuable consideration, receipt of which is hereby acknowledged, the undersigned hereby grants to \_\_\_\_\_ (the "BUYER"), its successors and assigns, the sole and exclusive option to purchase all motion picture and certain allied rights, in the original literary and/or dramatic work (the "Work") described as follows:

Title:  
Author:  
Publisher:  
Date of Publication:  
Copyright Registration:

The Work includes but is not limited to: (i) all contents; (ii) all present and future adaptations and versions; (iii) the title, characters and theme; and (iv) the copyright and all renewals and extensions of copyright.

This instrument is executed in accordance with and is subject to the agreement (the "Option Agreement") between the undersigned and the Buyer dated as of \_\_\_\_\_ (date) relating to the option granted to the Buyer to purchase the above-mentioned rights in the Work, which rights are more fully described in the Purchase Agreement, attached to the Option Agreement.

Date: \_\_\_\_\_

Attest \_\_\_\_\_  
(name of witness) (name of seller)



EXHIBIT - **S**

# WRITER EMPLOYMENT AGREEMENT (THEATRICAL WGA AGREEMENT)

Agreement dated \_\_\_\_\_ between \_\_\_\_\_ (“Writer”), and \_\_\_\_\_ Films (“Production Company”).

**1. EMPLOYMENT:** Production Company agrees to employ Writer to perform and Writer agrees to perform, upon the terms and conditions herein specified, writing services for the proposed Theatrical Motion Picture currently entitled \_\_\_\_\_ (“Picture”), based upon a screenplay of the same name supplied by Production Company (“Basic Property”). [Writer shall perform such writing services in collaboration with Writer \_\_\_\_\_ pursuant to the Employment Agreement dated \_\_\_\_\_, between \_\_\_\_\_ and Production Company (“Agreement”). Writer and \_\_\_\_\_ are hereinafter collectively referred to as the “Doe/Roe Team”.]

**2. THE PRODUCT AGREEMENT WITH OPTIONS:** The completed results of Writer’s services hereunder shall be deemed collectively the “Product” and individually the “Product Form,” and shall be created as follows:

First Draft screenplay with option for one Revision/Draft thereof and dependent option for one polish.

**3. COMMENCEMENT OF SERVICES:** Writer shall commence services in writing the first draft of the screenplay upon execution of this agreement and Production Company becoming a signatory of the Writers Guild of America. Writer shall commence writing each subsequent Product Form on a date to be designated by Production Company, which date may be earlier, but shall not be later than the first business day after expiration of the then current Reading Period or Option Period, as the case may be, described in Clause 4.

**4. TIME REQUIREMENTS** (Agreement with Options): Writer’s services shall be rendered pursuant to the following time requirements:

(a) Delivery Periods: Writer shall deliver each Product Form within the period (“Delivery Period”) which commences on the date Writer is obligated to commence writing each designated Product Form and which ends upon expiration of the applicable time period listed in Clause 4(e).

(b) Reading Periods: Each time Writer delivers any Product Form, if Writer’s engagement herein requires additional writing services, Production Company shall have a period (“Reading Period”), which commences on the first business day following the delivery of such Product Form and which continues for the length of time listed in Clause 4(e) opposite the description of the Product Form delivered within which to read such Product Form and advise Writer to commence writing the next Product Form.

(c) Postponement of Services: If Production Company does not exercise its right to require Writer to commence writing either the first set of revisions or the polish within the applicable Reading Period, Production Company may nonetheless require Writer to render such services at any time within the one (1) year period commencing upon delivery of the immediately preceding Product Form, subject to Writer’s availability and provided: 1) Writer’s services are to be rendered during the one year period, and 2) Production Company shall furnish Writer with thirty (30) days’ prior written notice of the date designated

for the commencement of such services, and 3) that Production Company has paid Writer in a timely manner for the postponed product forms as those services were timely rendered.

(d) Option Periods: Each Option, if any, under Clause 4(e), shall be exercised, if at all, in writing within the period ("Option Period") which commences on the first business day following the delivery of the Product Form immediately preceding that for which an Option may be exercised, or upon the expiration of the Delivery Period applicable to such Product Form, whichever is later, and which continues for the length of time listed in Clause 4(e) opposite the description of the Product Form delivered.

(e) Length of Periods: Delivery, Reading and Option Periods shall be the following lengths:

Product Form	Delivery Period	Reading/Option Period
First Draft Screenplay	8 weeks	2 weeks
First Revision/ Second Draft Screenplay	4 weeks	2 weeks
Polish of Screenplay	2 weeks	2 weeks

#### **5. DELIVERY: TIME OF THE ESSENCE:**

(a) Effective Delivery: Delivery of Product Form to any person other than \_\_\_\_\_ shall not constitute delivery of such Product Form as required by this Agreement.

(b) Time of the Essence: Writer shall write and deliver each Product Form for which Writer is engaged as soon as reasonably possible after commencement of Writer's services thereon, but not later than the date upon which the applicable Delivery Period expires. Time of delivery is of the essence.

(c) Revisions: For each Product Form which is in the nature of a Revision, Writer's services shall include the writing and delivery of such changes as may be required by Production Company within a reasonable time prior to the expiration of the Delivery Period applicable to such Product Form.

#### **6. COMPENSATION:**

(a) Fixed Compensation: Production Company shall pay Writer as set forth below for Writer's services and all rights granted by Writer:

(i) For First Draft Screenplay: \$\_\_\_\_\_, payable half upon commencement, half upon delivery.

(ii) For First Revision/Second Draft Screenplay: \$\_\_\_\_\_, payable half upon commencement, half upon delivery.

(iii) For Polish of Screenplay: \$\_\_\_\_\_, payable half upon commencement, half upon delivery.

(b) Payment: Production Company shall have no obligation to pay Writer any compensation with respect to any Product Form for which Production Company has failed to exercise its Option under Clause 4.

(c) Bonus Compensation: Subject to the production and release of the Picture, and to the Writer not being in material default hereunder, in addition to the Fixed Compensation set forth above, Writer shall be entitled to be paid the following:

(i) If Writer receives sole or shared screenplay credit pursuant to final Writer's Guild of America ("WGA") credit determination with respect to the Picture, Writer shall be entitled to receive as Bonus Compensation the sum of \$25,000 over the compensation provided by Clause 6(a), less the aggregate of all sums paid to Writer pursuant to Clause 6(a) above, and shall be payable upon commencement of principal photography.

(ii) If the production budget is above \$700,000, the bonus payment shall escalate \$2,500 per \$100,000 increase. If the production budget exceeds \$1 million dollars, the production bonus will be \$50,000. The sums payable under this section, shall be less the aggregate of all sums (not already deducted) paid to Writer pursuant to Clause 6 (a) and 6 (c) above and shall be payable 60 days after completion of principal photography.

(iii) Repayment: If Bonus Compensation set forth in Clause 6(c) above is paid to Writer as set forth hereinabove, and if Writer receives neither sole screenplay credit nor shared screenplay credit pursuant to final WGA credit determination for the Picture, the Writer shall repay to Production Company such sum so paid to Writer within five (5) days of such determination.

(d) Contingent Compensation: Subject to the production and release of the Picture and subject to Writer not being in default of his obligations hereunder, in addition to the Fixed Compensation and Bonus Compensation set forth above, Writer shall be entitled to be paid the following:

(i) Sole Screenplay Credit: If the Doe/Roe writing Team receives sole screenplay credit pursuant to final WGA credit determination for the Picture, Writer shall be entitled to receive as Contingent Compensation an amount equal to two and one-half percent (2-1/2%) of one hundred percent (100%) of the Net Profits of the Picture.

(ii) Shared Screenplay Credit: If the Doe/Roe Writing Team receives shared screenplay credit pursuant to final WGA credit determination for the Picture, Writer shall be entitled to receive as Contingent Compensation an amount equal to one and one-quarter percent (1-1/4%) of one hundred percent (100%) of the Net Profits of the Picture.

(e) For purposes of this Agreement, "Net Profits" shall be computed, determined and paid in accordance with definition of net profits defined in the production/distribution agreement between production company and the distributor of the Picture, provided that Writer's definition shall be as favorable as any other net profit participant.

(f) Additional payments to Writer for Sequel, Remake and Television Use

of the Work; Right of First Negotiation: Subject to the provisions of Clauses 6(g) and 6(h) below, and subject to the production and release of the Picture and the performance of all obligations of Writer hereunder:

(i) Sequel Theatrical Motion Picture: If the Doe/Roe Writing Team receives sole/shared screenplay credit or is accorded separation of rights pursuant to applicable WGA determination with respect to the Picture, then for each Sequel Theatrical Motion Picture based on the Picture produced and released, Writer shall be entitled to be paid an amount equal to fifty percent (50%) of one hundred percent (100%) of the sum paid to Writer as Compensation pursuant to Clause 6(a) and 6(c) supra, and a percentage participation in the Net Profits of such Sequel Theatrical Motion Picture in an amount equal to fifty percent (50%) of one hundred percent (100%) of the rate of percentage participation in Net Profits of the Picture payable to Writer as Contingent Compensation pursuant to Clauses 6(d)(i) or 6(d)(ii) above, if any.

(ii) Theatrical Remakes: If the Doe/Roe Writing Team receives sole/shared screenplay credit or is accorded separation of rights pursuant to applicable WGA determination for the Picture, then for each Theatrical Remake of the Picture produced and released by, Writer shall be entitled to be paid an amount equal to thirty three percent (33%) of one hundred percent (100%) of the sum paid to Writer as Compensation pursuant to Clause 6(a) and 6(c) supra, and thirty three percent (33%) of one hundred percent (100%) of the percentage participation in Net Profits of the Picture payable to Writer as Contingent Compensation pursuant to Clauses 6(d)(i) or 6(d)(ii) above, if any.

(iii) Sequel Television Motion Pictures and Television Remakes:

(A) Pilot and Series: If Writer is accorded separation of rights pursuant to applicable WGA determination with respect to the Picture, then for each Studio Sequel Television Motion Picture based upon the Picture and/or Television Remake of the Picture which is produced and licensed for exhibition by Production Company and which is a Pilot or an episode of an episodic or anthology television series (collectively "TV Program"), Writer shall be entitled to receive the following royalties:

(1) \$\_\_\_ for each TV Program of not more than thirty (30) minutes in length.

(2) \$\_\_\_ for each TV Program in excess of thirty (30) minutes but not more than sixty (60) minutes in length.

(3) \$\_\_\_ for each TV Program in excess of sixty (60) minutes in length.

(4) If any TV Program is rerun, Writer shall be paid twenty percent (20%) of the applicable sum initially paid Writer pursuant to Subclauses (1), (2) or (3) above for the second run, third run, fourth run, fifth run, and sixth run respectively. No further rerun payments shall be due or payable for any rerun after the sixth run.

(B) Movies of the Week and Mini-Series: If Writer is accorded separation of rights pursuant to applicable WGA determination for the Picture, then for each Sequel Television Motion Picture or Television Remake of the Picture which is produced and licensed for exhibition by Production Company and which is a so-called "Movie of the Week" or so-called "Mini-Series," Writer shall be entitled to receive the following royalties which sum shall constitute full payment for all rerun use and/or other exploitation thereof:

(1) \_\_\_\_\_ for the first two (2) hours of running time of each such Movie of the Week and/or each such Mini-Series.

(2) \$\_\_\_\_\_ for every hour of running time, if any, exceeding the first two (2) hours of running time of such Movie of the Week and/or such Mini-Series up to a maximum of \$40,000.

(vi) Definitions — The following terms as utilized in connection with this Agreement, shall be defined as set forth below:

(A) "Television Remake": A remake primarily intended to be initially distributed for free-television exhibition.

(B) "Television Studio Sequel Motion Picture": A studio sequel motion picture primarily intended to be initially distributed for free-television exhibition.

(C) "Theatrical Remake": A remake primarily intended to be initially distributed for theatrical exhibition.

(D) "Theatrical Studio Sequel Motion Picture": A studio sequel motion picture primarily intended to be initially distributed for theatrical exhibition.

(E) WGA Agreement: All sums payable to Writer pursuant to this Agreement shall be in lieu of, and not in addition to, any similar payment to which Writer may be entitled pursuant to the current Writers Guild of America Theatrical and Television Agreement ("WGA Agreement").

## **7. CONDITIONS AFFECTING OR RELATED TO COMPENSATION:**

(a) Method of Payment: All compensation which shall become due to Writer hereunder shall be sent to Writer at the address provided in Clause 26. Such address may be changed to such other address as Writer may hereafter notify Production Company in accordance with Clause 26.

(b) Performance: Production Company's obligation to pay compensation or otherwise perform hereunder shall be conditioned upon Writer not being in default of his obligations under the Agreement. No compensation shall accrue to Writer during Writer's inability, failure or refusal to perform, according to the terms and conditions of this Agreement, the services contracted for herein, nor shall compensation accrue during any period of Force Majeure, Suspension or upon Termination except as otherwise herein provided.

(c) Governmental Limitation: No withholding, deduction, reduction or limitation of compensation by Production Company which is required or authorized by law ("Governmental Limitation") shall be a breach of this Agreement by Production Company or relieve Writer from Writer's obligations hereunder. Payment of compensation as permitted pursuant to the Governmental Limitation shall continue while such Governmental Limitation is in effect and shall be deemed to constitute full performance by Production Company of its obligation to pay compensation hereunder.

(d) Garnishment/Attachment: If Production Company is required, because of the service of any garnishment, writ of execution or lien, or by the terms of any contract or assignment executed by Writer to withhold, or to pay all or any portion of the compensation due Writer hereunder to any other person, firm or corporation, the withholding or payment of such compensation or portion thereof, pursuant to the requirements of any such garnishment, writ of execution, lien, contract or assignment shall not be construed as a breach by Production Company of this Agreement.

(e) Overpayment/Offset: If Production Company makes any overpayment to Writer hereunder for any reason or if Writer is indebted to Production Company for any reason, Writer shall pay Production Company such overpayment or indebtedness on demand, or at the election of Production Company may deduct and retain for its own account an amount equal to all or any part of such overpayment or indebtedness from any sums that may be due or become due or payable by Production Company to Writer or for the account of Writer and such deduction or retention shall not be deemed a breach of this Agreement.

(f) Pay or Play: Production Company shall not be obligated to use Writer's services for the Picture, nor shall Production Company be obligated to produce, release, distribute, advertise, exploit or otherwise make use of the results and proceeds of Writer's services if such services are used. Production Company may elect to terminate Writer's services at any time without legal justification or excuse provided that the Fixed Compensation provided in Clause 6(a), which shall have been earned and accrued prior to such termination shall be paid to Writer. In the event of such termination, all other rights of Writer herein shall be deemed void ab initio except such rights as may have accrued to Writer in accordance with the terms of Clauses 21 (relating to Guilds and Unions), 22 (relating to Credits) and 6(c) (relating to bonus compensation).

**8. PERFORMANCE STANDARDS:** Writer's services hereunder shall be rendered promptly [in collaboration with \_\_\_\_\_] in a diligent, conscientious, artistic and efficient manner to Writer's best ability. Writer shall devote all of Writer's time and shall render Writer's services exclusively (during writing periods only) to Production Company in performing the writing services contemplated hereunder, and shall not render services for any other party during the period of Writer's engagement. Writer's services shall be rendered in such manner as Production Company may direct pursuant to the instructions, suggestions and ideas of and under the control of and at the times and places required by Production Company's authorized representatives. Writer shall, as and when requested by Production Company, consult with Production Company's daily authorized representatives and shall be available for conferences in person or by telephone with such representatives for such purposes at such times during Writer's engagement as may be required by such representatives.

## **9. RESULTS AND PROCEEDS OF SERVICES:**

(a) Ownership: Production Company shall solely and exclusively own the Product, each Product Form and all of the results and proceeds thereof, in whatever stage of completion as may exist from time to time (including but not limited to all rights of whatever kind and character, throughout the world, in perpetuity, in any and all languages of copyright, trademark, patent, production, manufacture, recordation, reproduction, transcription, performance, broadcast and exhibition by any art, method or device, not known or hereafter devised, including without limitation radio broadcast, theatrical and non-theatrical exhibition, and television exhibition or otherwise) whether such results and proceeds consist of literary, dramatic, musical, motion picture, mechanical or any other form or works, themes, ideas, compositions, creations or products. Production Company's acquisition hereunder shall also include all rights generally known in the field of literary and musical endeavor as the "moral rights of authors" in and/or to the Product, each Product Form, and any musical and literary proceeds of Writer's services. Production Company shall have the right but not the obligation, with respect to the Product, each Product Form, the results and proceeds thereof, to add to, subtract from, change, arrange, revise, adapt, rearrange, make variations, and to translate the same into any and all languages, change the sequence, change the characters and the descriptions thereof contained therein, change the title of the same, record and photograph the same with or without sound (including spoken words, dialogue and music synchronously recorded), use said title or any of its components in connection with works or motion pictures wholly or partially independent thereof, to sell, copy and publish the same as Production Company may desire and to use all or any part thereof in new versions, adaptations and sequels in any and all languages and to obtain copyright therein throughout the world. Writer hereby expressly waives any and all rights which Writer may have, either in law, in equity, or otherwise, which Writer may have or claim to have as a result of any alleged infringements of Writer's so-called "moral rights of authors." Writer acknowledges that the results and proceeds of Writer's services are works specially ordered by Production Company for use as part of a motion picture and the results and proceeds of Writer's services shall be considered to be works made for hire for Production Company, and, therefore, Production Company shall be the author and copyright owner of the results and proceeds of Writer's services.

(b) Assignment and Vesting of Rights: All rights granted or agreed to be granted to Production Company hereunder shall vest in Production Company immediately and shall remain vested whether this Agreement expires in normal course or is terminated for any cause or reason, or whether Writer executes the Certificate of Authorship required infra. All material created, composed, submitted, added or interpolated by Writer hereunder shall automatically become Production Company's property, and Production Company, for this purpose, shall be deemed author thereof with Writer acting entirely as Production Company's employee. Writer does hereby assign and transfer to Production Company all of the foregoing without reservation, condition or limitation, and no right of any kind, nature or description is reserved by Writer. The said assignment and transfer to Production Company by Writer are subject to the limitations contained in the current Writer's Guild of America Theatrical and Television Film Basic Agreement ("WGA Agreement").

(c) Execution of Other Documents:

(i) Certificate of Authorship: Writer further agrees, if Production Com-

pany requests Writer to do so, to execute and deliver to Production Company, in connection with all material written by writer hereunder, a Certificate of Authorship in substantially the following form:

I hereby certify that I wrote the manuscript hereto attached, entitled \_\_\_\_\_ [based upon a screenplay of the same name written by \_\_\_\_\_], as an employee of \_\_\_\_\_ Films which furnished my services pursuant to an employment Agreement between \_\_\_\_\_ and \_\_\_\_\_ Films dated \_\_\_\_\_, in performance of my duties thereunder an in the regular course of my employment, and that Production Company is the author thereof and entitled to the copyright therein and thereto, with the right to make such changes therein and such uses thereof as it may from time to time determine as such author.

IN WITNESS WHEREOF, I have hereto set my hand this \_\_\_\_\_ (date).

If Production Company desires to secure separate assignments or Certificates of Authorship of or for any of the foregoing, Writer agrees to execute such certificate upon Production Company's request therefor. Writer irrevocably grant(s) Production Company the power coupled with an interest to execute such separate assignments or Certificates of Authorship in Writer's name and as Writer's attorney-in-fact.

(ii) Writer recognizes that the provisions in Clause 9(c)(iii) dealing with any other documents to be signed by Writer are not to be construed in derogation of Production Company's rights arising from the employer-employee relationship but are included because in certain jurisdictions and in special circumstances the rights in and to the material which flow from the employer-employee relationship may not be sufficient in and of themselves to vest ownership in Production Company.

(iii) If Production Company desires to secure further documents covering, quitclaiming or assigning all or any of the results and proceeds of Writer's services, or all or any rights in and to the same, then Writer agrees to execute and deliver to Production Company any such documents at any time and from time to time upon Production Company's request, and in such form as may be prescribed by Production Company; without limiting the generality of the foregoing, Writer agrees to execute and deliver to Production Company upon Production Company's request therefor an assignment of all rights, it being agreed that all of the representations, warranties and agreements made and to be made by Writer under this Exhibit shall be deemed made by Writer as part of this agreement. If Writer shall fail or refuse to execute and deliver the certificate above described and/or any such documents within ten business days of a written request, the Writer hereby irrevocably grants Production Company the power coupled with an interest to execute this certificate and/or documents in Writer's name and as Writer's attorney-in-fact. Writer's failure to execute this certificate and/or documents shall not affect or limit any of Production Company's rights in and to the results and proceeds of Writer's services.

(iv) Separation of Rights: Since Writer has been assigned material, he is not expected to be entitled to separation of rights under the WGA Agreement. Notwithstanding anything to the contrary contained herein, Production Company shall have the right to publish and copyright, or

cause to be published and copyrighted, screenplays, teleplays and scripts adapted from or based upon the Product and the novelization of screenplays, teleplays and scripts adapted from or based upon the Product or any Product Form created hereunder.

**10. WRITER'S WARRANTIES:**

Subject to Article 28 of the WGA basic agreement Writer warrants:

(a) that, except as provided in the next sentence hereof, all material composed and/or submitted by Writer for or to Production Company shall be wholly original with Writer and shall not infringe upon or violate the right of privacy of, nor constitute a libel or slander against, nor violate any common law rights or any other rights of any person, firm or corporation. The same agreements and warranties are made by Writer regarding any and all material, incidents, treatments, characters and action which Writer may add to or interpolate in any material assigned by Production Company to Writer for preparation, but are not made regarding violations or infringements contained in the material so assigned by Production Company to Writer. The said agreements and warranties on Writer's part are subject to the limitations contained in the WGA Agreement.

(b) Further Warranties: Writer hereby warrants that Writer is under no obligation or disability, created by law or otherwise, which would in any manner or to any extent prevent or restrict Writer from entering into and fully performing this Agreement, and Writer hereby accepts the obligations hereunder. Writer warrants that Writer has not entered into any agreement or commitment that would prevent his fulfilling Writer's commitments with Production Company hereunder and that Writer will not enter into any such agreement or commitment without Production Company's specific approval. Writer hereby agrees that Writer shall devote his entire time and attention and best talents and ability exclusively to Production Company as specified herein and observe and be governed by the rules of conduct established by Production Company for the conduct of its employees.

(c) Indemnification: Writer agrees to indemnify Production Company, its successors, assigns, licensees, officers, directors and employees, and hold them harmless from and against any and all claims, liability, losses, damages, costs, expenses (including but not limited to attorneys' fees), judgments and penalties arising out of Writer's breach of warranties under this Agreement. Production Company agrees to indemnify Writer, its successors, assigns, licensees, and employees, and hold them harmless from and against any and all claims, liability, losses, damages, costs, expenses (including but not limited to attorneys' fees), judgments and penalties arising out of any suit against Writer (arising from Writer's employment under this agreement) not based on Writer's breach of his warranties under this Agreement.

**11. NAME AND LIKENESS:** Production Company shall always have the right to use and display Writer's name and likeness for advertising, publicizing and exploiting the Picture or the Product. However, such advertising may not include the direct endorsement of any product (other than the Picture) without Writer's prior written consent. Exhibition, advertising, publicizing or exploiting the Picture by any media, even through a part of or in connection with a product or a commercially-sponsored program, shall not be deemed an endorsement of any nature.

**12. PUBLICITY RESTRICTIONS:** Writer shall not, individually or jointly, or by

any means of press agents or publicity or advertising agencies or others, employed or paid by Writer or otherwise, circulate, publish or otherwise disseminate any news stories or articles, books or other publicity, containing Writer's name relating directly or indirectly to Writer's employment by Production Company, the subject matter of this Agreement, the Picture, or the services to be rendered by Writer or others for the Picture, unless first approved by Production Company. Writer shall not transfer or attempt to transfer any right, privilege, title or interest in or to any of the aforesaid things, nor shall Writer willingly permit any infringement upon the exclusive rights granted to Production Company. Writer authorizes Production Company, at Production Company's expense, in Writer's name or otherwise, to institute any proper legal proceedings to prevent such infringement.

### **13. REMEDIES:**

(a) Remedies Cumulative: All remedies of Production Company or Writer shall be cumulative, and no one such remedy shall be exclusive of any other. Without waiving any rights or remedies under this Agreement or otherwise, Production Company may from time to time recover, by action, any damages arising out of any breach of this Agreement by Writer and may institute and maintain subsequent actions for additional damages which may arise from the same or other breaches. The commencement or maintaining of any such action or actions by Production Company shall not constitute or result in the termination of Writer's engagement hereunder unless Production Company shall expressly so elect by written notice to Writer. The pursuit by Production Company or Writer of any remedy under this Agreement or otherwise shall not be deemed to waive any other or different remedy which may be available under this Agreement or otherwise.

(b) Services Unique: Writer acknowledges that Writer's services to be furnished hereunder and the rights herein granted are of a special, unique, unusual, extraordinary and intellectual character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action at law, and that Writer's Default will cause Production Company irreparable injury and damage. Writer agrees that Production Company shall be entitled to injunctive and other equitable relief to prevent default by Writer. In addition to such equitable relief, Production Company shall be entitled to such other remedies as may be available at law, including damages.

### **14. FORCE MAJEURE:**

(a) Suspension: If, (i) by reason of fire, earthquake, labor dispute or strike, act of God or public enemy, any municipal ordinance, any state or federal law, governmental order or regulation, or other cause beyond Production Company's control, Production Company is prevented from or hampered in the production of the Picture, or if, (ii) by reason of the closing of substantially all the theatres in the United States for any of the aforesaid or other causes which would excuse Production Company's performance as a matter of law, Production Company's production of the Picture is postponed or suspended, or if, (iii) by reason of any of the aforesaid contingencies or any other cause or occurrence not within Production Company's control, including but not limited to the death, illness or incapacity of any principal member of the cast of the Picture or the director or individual producer, the preparation, commencement, production or completion of the Picture is hampered, interrupted or interfered with, and/or if, (iv) Production Company's normal business operations are hampered or otherwise interfered with by virtue of any disruptive events which are beyond

Production Company's control ("Production Company Disability"), then Production Company may postpone the commencement of or suspend the rendition of Writer's services and the running of time hereunder for such time as the Production Company Disability continues; and no compensation shall accrue or become payable to Writer hereunder during such suspension. Such suspension shall end upon the cessation of the cause thereof.

(b) Termination:

(i) Production Company Termination Right: If a Production Company Disability continues for a period of eight (8) weeks, Production Company may terminate this Agreement upon written notice to Writer.

(ii) Writer's Termination Right: If a Production Company Disability results in the payment of compensation being suspended hereunder for a period exceeding eight (8) weeks, Writer may terminate this Agreement upon written notice to Production Company.

(iii) Production Company Re-Establishment Right: Despite Writer's election to terminate this Agreement, within five (5) business days after Production Company's actual receipt of such written notice from Writer, Production Company may elect to re-establish the operation of this Agreement.

**15. WRITER'S INCAPACITY:** If, by reason of mental or physical disability, Writer shall be incapacitated from performing or complying with any of the terms or conditions hereof ("Writer's Incapacity") for a consecutive period exceeding fifteen days or thirty days cumulatively, during the performance of Writer's services, then:

(a) Suspension: Production Company may suspend the rendition of services by Writer and the running of time hereunder so long as Writer's Incapacity shall continue.

(b) Termination: Production Company may terminate this Agreement and all of Production Company's obligations and liabilities hereunder upon written notice to Writer.

(c) Right of Examination: If any claim of mental or physical disability is made by Writer or on Writer's behalf, the Production Company may have Writer examined by such physicians as Production Company may designate at Production Company's expense. Writer's physician may be present at such examination, but shall not interfere therewith. Any tests performed on Writer shall be related to and be customary for the treatment, diagnosis or examination to be performed in connection with Writer's claim.

**16. WRITER DEFAULT:** If Writer fails or refuses to write, complete and deliver to Production Company the Product Form provided for herein within the respective periods specified or if Writer otherwise fails or refuses to perform or comply with any of the terms or conditions hereof (other than by reason of Writer's Incapacity) ("Writer's Default"), then:

(a) Suspension: Production Company may suspend the rendition of services by Writer and the running of time hereunder as long as the Writer Default shall continue.

(b) Termination: Production Company may terminate this Agreement and all of Production Company's obligations and liabilities hereunder upon written notice to Writer.

(c) Writer Default shall not include any failure or refusal of Writer to per-

form or comply with the material terms of this Agreement by reason of a breach or action by Production Company which makes the performance by Writer of his services impossible.

(d) Prior to termination of this Agreement by Production Company based upon Writer Default, Production Company shall notify Writer specifying the nature of the Writer Default and Writer shall have a period of 72 hours after giving of such notice to cure the Writer Default. If the Writer Default is not cured within said period, Production Company may terminate this Agreement forthwith.

**17. EFFECT OF TERMINATION:** Termination of this Agreement, whether by lapse of time, mutual consent, operation of law, exercise of right of termination or otherwise shall:

(a) Compensation: Terminate Production Company's obligation to pay Writer any further compensation. Nevertheless, if the termination is not for Writer Default, Production Company shall pay Writer any compensation due and unpaid prior to termination;

(b) Refund/Delivery: If termination occurs pursuant to Clauses 14, 15, or 16, prior to Writer's delivery to Production Company of the Product Form on which Writer is then currently working, then Writer (or in the event of Writer's death, Writer's estate) shall, as Production Company requests, either forthwith refund to Production Company the compensation which may have been paid to Writer as of that time for such Product Form, or immediately deliver to Production Company all of the Product then completed or in progress, in whatever stage of completion it may be.

**18. EFFECT OF SUSPENSION:** No compensation shall accrue to Writer during any suspension. During any period of suspension hereunder, Writer shall not render services for any party other than Production Company. However, Writer shall have the right to render services to third parties during any period of suspension based upon a Production Company Disability subject, however, to Production Company's right to require Writer to resume the rendition of services hereunder upon three (3) days prior notice. Production Company shall have the right (exercisable at any time) to extend the period of services of Writer hereunder for a period equal to the period of such suspension. If Production Company shall have paid compensation to Writer during any period of Writer's Incapacity or Writer Default, then Production Company shall have the right (exercisable at any time) to require Writer to render services hereunder without compensation for a period equal to that period of Writer's Incapacity or Default.

**19. WRITER'S RIGHT TO CURE:** Any Writer's Incapacity or Writer Default shall be deemed to continue until Production Company's receipt of written notice from Writer specifying that Writer is ready, willing and able to perform the services required hereunder; provided that any such notice from Writer to Production Company shall not preclude Production Company from exercising any rights or remedies Production Company may have hereunder or at law or in equity by reason of Writer's Incapacity or Writer Default.

**20. TEAM OF WRITERS:** The obligations of the Doe/Roe Team of Writers under this Agreement shall be joint and several, and references in this Agreement to Writer shall be deemed to refer to the Team of Writers jointly and severally. Should any right of termination arise as a result of the Incapacity or Default of any one of the Team of Writers, the remedies of the Production Company may be exercised either as to such Writer or as to the Team of Writers; at Produc-

tion Company's election. Should Production Company elect to exercise its remedies only as to the Writer affected, the engagement of the other Writer or Writers shall continue and such remaining Writer shall receive only his share of the compensation provided herein.

## **21. GUILDS AND UNIONS:**

(a) Membership: During Writer's engagement hereunder, as Production Company may lawfully require, Writer at Writer's sole cost and expense (and at Production Company's request) shall remain or become and remain a member in good standing of the then properly designated labor organization or organizations (as defined and determined under the then applicable law) representing persons performing services of the type and character required to be performed by Writer hereunder.

(b) Superseding Effect of Guild Arrangements: Nothing contained in this Agreement shall be construed so as to require the violation of the applicable WGA Agreement, which by its terms is controlling with respect to this Agreement; and whenever there is any conflict between any provision of this Agreement and any such WGA Agreement, the latter shall prevail. In such event the provisions of this Agreement shall be curtailed and limited only to the extent necessary to permit compliance with such WGA Agreement.

## **22. CREDITS:**

(a) Billing: Provided that Writer fully performs all of Writer's obligations hereunder and the Picture is completed and distributed, Production Company agrees that credits for authorship by Writer shall be determined and accorded pursuant to the provisions of the WGA Agreement in effect at the time of such determination.

(b) Inadvertent Non-Compliance: Subject to the foregoing provisions, Production Company shall determine, in Production Company's discretion, the manner of presenting such credits. No casual or inadvertent failure to comply with the provisions of this clause, nor any failure of any other person, firm or corporation to comply with its agreements with Production Company relating to such credits, shall constitute a breach by Production Company of Production Company's obligations under this clause. Writer hereby agrees that if through inadvertence Production Company breaches its obligations pursuant to this Paragraph, the damages (if any) caused Writer by Production Company are not irreparable or sufficient to entitle Writer to injunctive or other equitable relief. Consequently, Writer's rights and remedies in such event, shall be limited to Writer's rights, if any, to recover damages in an action at law, and Writer shall not be entitled to rescind this Agreement or any of the rights granted to Production Company hereunder, or to enjoin or restrain the distribution or exhibition of the Picture or any other rights granted to Production Company. Production Company agrees upon receipt of notice from Writer of Production Company's failure to comply with the provisions of this Paragraph, to take such steps as are reasonably practicable to cure such failure on future prints and advertisements.

**23. INSURANCE:** Production Company may secure life, health, accident, cast or other insurance covering Writer, the cost of which shall be included as a direct charge of the Picture. Such insurance shall be for Production Company's sole benefit and Production Company shall be the beneficiary thereof, and Writer shall have no interest in the proceeds thereof. Writer shall assist in procuring such in-

surance by submitting to required examinations and tests and by preparing, signing and delivering such applications and other documents as may be reasonably required. Writer shall, to the best of Writer's ability, observe all terms and conditions of such insurance of which Production Company notifies Writer as necessary for continuing such insurance in effect.

**24. EMPLOYMENT OF OTHERS:** Writer agrees not to employ any person to serve in any capacity, nor contract for the purchase or renting of any article or material, nor make any agreement committing Production Company to pay any sum of money for any reason whatsoever in connection with the Picture or services to be rendered by Writer hereunder, or otherwise, without written approval first being obtained from Production Company.

**25. ASSIGNMENT AND LENDING:**

(a) Assignability: This Agreement is non-assignable by Writer. Production Company and any subsequent assignee may freely assign this Agreement and grant its rights hereunder, in whole or in part to any person, firm, or corporation provided that such party assumes and agrees in writing to keep and perform all of the executory obligations of Production Company hereunder. Upon such assumption, Production Company is hereby released from all further obligations to Writer hereunder, except that unless the assignee or borrower is a so-called major motion picture company, or mini-major, Production Company shall remain secondarily liable under this agreement.

(b) Right to Lend to Others: Writer understands and acknowledges that the actual production entity of a motion picture to be made from the Product may be a party other than Production Company. In such event, Writer's services shall be rendered hereunder for the actual production entity but without releasing Production Company from its obligations hereunder.

**26. NOTICES:**

(a) Writer's Address: All notices from Production Company to Writer, in connection with this Agreement, may be given in writing by addressing the same to Writer c/o \_\_\_\_\_. Production Company may deliver such notice to Writer personally, either orally or in writing. A courtesy copy shall be given to \_\_\_\_\_ at the address above. If such notice is sent by mail, the date of mailing shall be deemed to be the date of service of such notice.

(b) Writing Requirement: Any oral notice given in respect to any right of termination, suspension or extension under this Agreement shall be confirmed in writing. If any notice is delivered to Writer personally, a copy of such notice shall be sent to Writer at the above address.

(c) Producer's Address: All notices from Writer to Production Company hereunder shall be given in writing addressed to Production Company as follows: \_\_\_\_\_ and by depositing the same, so addressed, postage prepaid, in the mail. A courtesy copy shall be given to \_\_\_\_\_, Attorney at Law, \_\_\_\_\_. Unless otherwise expressly provided, the date of mailing shall be deemed to be the date of service of such notice.

**27. TRANSPORTATION AND EXPENSES:** When Writer's services are required by Production Company to be rendered hereunder at a place more than fifty (50) miles from Writer's domicile, Production Company shall furnish Writer transportation to and from such places and meals and lodging accommodations while Writer is on location to render Writer's services.

**28. GOVERNING LAW:** This Agreement shall be construed in accordance with the laws of the State of California applicable to agreements which are executed and fully performed within said State.

**29. CAPTIONS:** The captions used in connection with the clauses and subclauses of this Agreement are inserted only for the purpose of reference. Such captions shall not be deemed to govern, limit, modify, or in any other manner affect the scope, meaning or intent of the provisions of this Agreement or any part thereof; nor shall such captions otherwise be given any legal effect.

**30. SERVICE OF PROCESS:** In any action or proceeding commenced in any court in the State of California for the purpose of enforcing this Agreement or any right granted herein or growing out hereof, or any order or decree predicated thereon, any summons, order to show cause, writ, judgment, decree, or other process, issued by such court, may be delivered to Writer personally without the State of California; and when so delivered, Writer shall be subject to the jurisdiction of such court as though the same had been served within the State of California, but outside the county in which such action or proceeding is pending.

**31. ILLEGALITY:** Nothing contained herein shall require the commission of any act or the payment of any compensation which is contrary to an express provision of law or contrary to the policy of express law. If there shall exist any conflict between any provision contained herein and any such law or policy, the latter shall prevail; and the provision or provisions herein affected shall be curtailed, limited or eliminated to the extent (but only to the extent) necessary to remove such conflict; and as so modified the remaining provisions of this Agreement shall continue in full force and effect.

**32. EMPLOYMENT ELIGIBILITY:** All of Production Company's obligations herein are expressly conditioned upon Writer's completion, to Production Company's satisfaction, of the I-9 form (Employee Eligibility Verification Form), and upon Writer's submission to Production Company of original documents satisfactory to demonstrate to Production Company Writer's employment eligibility.

**36. ENTIRE AGREEMENT:** This Agreement contains the entire agreement of the parties and all previous agreements, warranties and representations, if any, are merged herein.

By signing in the spaces provided below, Writer and Production Company accept and agree to all of the terms and conditions of this Agreement.

\_\_\_\_\_  
("Writer")                      Date:

\_\_\_\_\_ Films  
("Production Company")

By: \_\_\_\_\_ Date:  
Its President.

EXHIBIT - **T**

**WRITER EMPLOYMENT AGREEMENT  
(LOW-BUDGET, NON-UNION)**

**WRITER EMPLOYMENT AGREEMENT**

Agreement effective \_\_\_\_\_, 19\_\_\_\_, between \_\_\_\_\_ Productions, a California Corporation ("Producer"), and \_\_\_\_\_ ("Writer").

**1. EMPLOYMENT:** Producer employs Writer to perform and Writer agrees to perform writing services for Producer's proposed motion picture currently entitled \_\_\_\_\_ ("The Picture"), based on an original story by Producer. All of Producer's obligations under this Agreement are expressly conditioned upon Writer's completion, to Producer's satisfaction, of Form I-9 (Employment Eligibility Verification Form) and Writer's submission to Producer of original documents satisfactory to Producer to prove Writer's employment eligibility.

**2. SERVICES/FORM OF WORK:** The completed results and product of Writer's services (including all material created, added, interpolated and submitted by Writer) shall be deemed the "Work" which shall be created in each of the applicable forms listed below ("Form of Work"):

FORMS OF WORK:        Screenplay  
   One rewrite

(a) Use of Work: In Producer's sole, absolute and unfettered discretion, Producer may use or not use the Work and may make any changes in, deletions from or additions to the Work.

(b) Underlying Property: If the Work is based on an original idea or material ("Property") created by Writer, Writer hereby grants Producer the same rights in the Property as Producer is acquiring hereunder in the Work. The compensation payable to Writer pursuant to Paragraph 5 includes payment for said rights in the Property and for the writing services of Writer hereunder.

**[(c) Option to direct: In the event the Picture is produced for a production budget of less than three hundred thousand dollar (\$300,00), financed by \_\_\_\_\_ Productions, Writer shall have the option to direct the picture. Compensation and terms for directing services shall be pursuant to the director's employment agreement attached hereto as "Exhibit A."]**

**3. DELIVERY:** Writer agrees to complete and deliver each Form of Work and the Work, including any changes and revisions required by Producer as follows: Screenplay due: \_\_\_\_\_. Rewrite due:\_\_\_\_\_.

**4. PERFORMANCE STANDARDS:** All of Writer's services shall be rendered promptly in a diligent, conscientious, artistic and efficient manner and Writer shall devote Writer's entire time and attention and best talents and abilities to the services to be rendered, either alone or in collaboration with others. Writer's services shall be rendered in such manner as Producer may reasonably direct pursuant to the instructions, suggestions and ideas of, and under the control of, and at the times and places reasonably required by, Producer's duly authorized representatives. Writer, as and when reasonably requested by Producer, shall consult with Producer's duly authorized representatives and shall be available for

conferences with such representatives for such purposes at such times and places during Writer's employment as may be required by such representatives.

**5. COMPENSATION:** Conditioned upon Writer's full performance of all of Writer's obligations hereunder, Producer will pay Writer as full compensation for all services rendered and rights granted as follows:

(a) Fixed compensation: \_\_\_\_\_ thousand dollars which shall be paid one half upon execution of this agreement, and one-half upon delivery of the last Form of Work due Producer. Plus:

(b) Bonus compensation as follows:

(i) If a motion picture is produced based on the Work with a final production budget of three hundred thousand dollars (\$300,000) or less, and if Writer receives sole or shared screenplay credit, a bonus of \$\_\_\_\_\_ thousand dollars (\$ ), shall be paid to Writer, payable on the first day of principal photography, or

(ii) If a motion picture is produced based on the Work with a final production budget more than three hundred thousand dollars (\$300,000) but less than five hundred thousand dollars (\$500,000), and if Writer receives sole or shared screenplay credit, a bonus of \$\_\_\_\_\_ thousand dollars (\$ ), shall be paid to Writer, payable on the first day of principal photography, or

(iii) If a motion picture is produced based on the Work with a final production budget of five hundred thousand dollars (\$500,000) or more, but less than one million dollars (\$1,000,000), and if Writer receives sole or shared screenplay credit, a bonus of \$\_\_\_\_\_ thousand dollars (\$ ), shall be paid to Writer, payable on the first day of principal photography, or

(iv) If a motion picture is produced based on the Work with a final production budget of one million dollars or more, but less than one and one-half million dollars (\$1,500,000), and if Writer receives sole or shared screenplay credit, a bonus of \$\_\_\_\_\_ thousand dollars (\$ ), shall be paid to Writer, payable on the first day of principal photography, or

(v) If a motion picture is produced based on the Work with a final production budget of one and one-half million dollars (\$1,500,000) or more, but less than two million dollars (\$2,000,000) and if Writer receives sole or shared screenplay credit, an additional \_\_\_\_\_ thousand dollars (\$ ), shall be paid to Writer, payable on the first day of principal photography, or

(vi) If a motion picture is produced based on the Work with a final production budget of two million dollars (\$2,000,000) or more, and if Writer receives sole or shared screenplay credit, an additional \_\_\_\_\_ thousand dollars (\$ ), shall be paid to Writer, payable on the first day of principal photography.

(c) Contingent Compensation: In addition to the Fixed Compensation payable under Clause 5(a), and any Bonus Compensation payable under Clause 5(b), subject to the production and release of the Picture and subject to the performance of Writer's obligations hereunder Writer shall be entitled to receive as Contingent Compensation an amount equal to \_\_\_\_\_ percent of one hundred

percent (100%) of the Net Profits of the Picture, if any.

(d) Net Profits Definition: Net Profits shall be computed, determined and paid in accordance with the distribution agreements entered into by Producer and any distributor.

(e) Sequels and Remakes: If Writer pursuant to final credit determination, receives sole or shared screenplay credit, and Producer produces a sequel of a theatrical motion picture based on the Property, Producer shall pay Writer an additional payment equal to one half (1/2) of the total fixed and bonus compensation paid to Writer for the Original work. If Writer pursuant to final credit determination receives sole or shared screenplay credit, and Producer produces a remake of a theatrical motion picture based on the Property, an additional payment equal to one third (1/3) of the total fixed and bonus compensation paid to Writer for the Original Work. Said payments are payable on the first day of principal photography for said sequel or remake, and are payable only for the first sequel or remake.

(f) Series spin-off: If Producer produces and licenses a Series based on the Work and Writer, pursuant to final credit determination, receives sole or shared screenplay credit, Producer will pay Writer the applicable royalties as follows:

(i) Pilot program: \_\_\_\_\_ thousand dollars.

(ii) Additional episodes of any length: \_\_\_\_\_ dollars per episode.

(iii) Reruns payments: twenty percent (20%) of the payment for original broadcast for each rerun, up to five runs. Thereafter no payments.

These payments under (i) and (ii) shall be made within thirty (30) days of completion of principal photography of any pilot or episode.

## **6. WARRANTIES, REPRESENTATIONS, INDEMNITIES:**

(a) Writer Warranties and Representations: Writer warrants and represents that each Form of Work and the Work shall be wholly original with Writer, except as to matters within the public domain and except as to material inserted by Writer pursuant to specific instructions of Producer, and shall not infringe upon or violate the rights of privacy or publicity of, or constitute a libel or slander against, or violate any common law or any other rights of, any person, firm or corporation.

(b) Writer's Indemnities: Writer shall indemnify Producer and Producer's licensees and assigns and its or their officers, agents and employees, from all liabilities, actions, suits or other claims arising out of any breach by Writer of Writer's warranties and representations and/or out of the use by Producer of the Work and from reasonable attorneys' fees and costs in defending against the same. The foregoing shall apply only to material created or furnished by Writer, and shall not extend to changes or additions made therein by Producer, or to claims for defamation or invasion of the privacy of any person unless Writer knowingly uses the name or personality of such person or should have known, in the exercise of reasonable prudence, that such person would or might claim that such person's personality was used in the Work.

(c) Producer's Indemnities: Producer shall indemnify Writer to the same extent that Writer indemnifies Producer hereunder, as to any material supplied by Producer to Writer for incorporation into the Work.

(d) Notice and Pendency of Claims: The party receiving notice of any claim

or action subject to indemnity hereunder shall promptly notify the other party.

**7. OWNERSHIP:** As Writer's employer, Producer shall solely and exclusively own throughout the world in perpetuity all rights of every kind and nature in the Work, and all of the results and proceeds thereof in whatever stage of completion as may exist from time to time, together with the rights generally known as the "moral rights of authors." Writer acknowledges that the Work is being written by Writer for use as a Motion Picture and that each Form of Work is being written by Writer as a "work made for hire" within the scope of Writer's employment by Producer, and, therefore, Producer shall be the author and copyright owner of the Work.

**8. FCC:** Writer understands that, as to any Television Program based on the Work, it is a Federal offense, unless disclosed prior to broadcast to Producer or to the station or licensee which broadcasts the Program, to:

(a) Give or agree to give any member of the production staff, anyone associated in any manner with the Program or any representative of the Producer, the station or network, any portion of compensation payable to Writer or anything else of value for arranging Writer's employment in connection with the Program.

(b) Accept or agree to accept anything of value, other than compensation payable to Writer under this Agreement, to promote any product, service or venture on the air, or to incorporate any material containing such a promotion in the Program.

Writer is aware that Producer prohibits such conduct with or without disclosure to Producer, and any such conduct or failure to disclose shall be a material breach of this Agreement.

**9. NOTICES/PAYMENT:**

(a) To Writer: All notices from Producer to Writer may be given in writing by mailing the notice to Writer, postage prepaid, or at Producer's option, Producer may deliver such notice to Writer personally, either orally or in writing. The date of mailing or of personal delivery shall be deemed to be the date of service. Payments and written notice to Writer shall be sent to Writer at

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(b) To Producer: All notices from Writer to Producer shall be given in writing by mail, messenger, cable, telex or telecopier addressed as indicated below. The date of mailing, messengering, cabling, telexing or telecopying shall be deemed to be the date of service.

Mail:

FAX:

(c) Change of Address: The address of Writer and of Producer set forth herein may be changed to such other address as Writer or Producer may hereafter specify by written notice given to the other Party.

**10. ASSIGNMENT:** This Agreement is non-assignable by Writer. This Agreement shall inure to the benefit of Producer's successors, assigns, licensees and grantees and associated, affiliated and subsidiary companies. Producer and any subsequent assign may freely assign this Agreement, in whole or in part, to any party provided that such party assumes and agrees in writing to keep and perform all of the executory obligations of Producer hereunder.

**11. NAME AND LIKENESS:** Producer shall have the right to use and permit others (including any exhibitor or sponsor of the Program or Series) to use Writer's name and likeness for the purpose of advertising and publicizing the Work, any Program based on the Work, and any of exhibitor's or sponsor's products and services, but not as an endorsement or testimonial.

**12. PAY OR PLAY:** The rights in this Paragraph shall be in addition to, and shall not in any way diminish or detract from, Producer's rights as otherwise set forth. Producer shall not be obligated to use Writer's services, nor use the results and product of Writers services, nor produce, release, distribute, exhibit, advertise, exploit or otherwise make use of the Program. Producer may at any time, without legal justification or excuse, elect not to use Writer's services. If Producer elects not to use Writer's services pursuant to this Paragraph, Writer shall be paid the Compensation set forth in Paragraph 5 (a) if Writer performs those services.

**13. CREDIT:**

(a) The writing credits shall read: "Story by \_\_\_\_\_," and "Written by \_\_\_\_\_," (or another name chosen by Writer), if a substantial amount of Writer's work is incorporated in the Picture. In determining whether Writer is awarded sole, shared or no writing credit, reference shall be made to the principles of the WGA credit arbitration rules. Although Producer is not a WGA signatory, to the extent possible, the principles of the WGA credit arbitration rules shall be followed by the parties. In the event of a credit dispute, the arbitrator of such a dispute shall follow the WGA credit rules to the extent they do not conflict with the rules of the American Arbitration Association.

(b) In the event that writer also directs the picture, writer shall receive an appropriate directing credit in accordance with the rules of the DGA. Although Producer is not a DGA signatory, and writer is not a DGA member, to the extent possible, the principles of the DGA credit rules shall be followed by the parties. In the event of a credit dispute, the arbitrator of such a dispute shall follow the DGA credit rules to the extent they do not conflict with the rules of the American Arbitration Association.

**14. CONDITIONS AFFECTING OR RELATED TO COMPENSATION :**

(a) Method of Payment: All compensation which shall become due to Writer shall be paid by Producer by check and sent to Writer at the address provided in the Notices and Payments provision of this Agreement.

(b) Governmental Limitation: No withholding, deduction, reduction or limitation of compensation by Producer which is required or authorized by law ("Governmental Limitation") shall be a breach by Producer or relieve Writer from Writer's obligations. Payment of compensation as permitted pursuant to the Governmental Limitation shall continue while such Governmental Limitation is in effect and shall be deemed to constitute full performance by Producer of its obligations respecting the payment of compensation. The foregoing notwithstanding, if at such time as the Governmental Limitation is no longer in effect there is compensation remaining unpaid to Writer, Producer shall cooperate with Writer in connection with the processing of any applications relative to the payment of such unpaid compensation and Producer shall pay such compensation to Writer at such time as Producer is legally permitted to do so.

(c) Garnishment/Attachment: If Producer shall be required, because of the

service of any garnishment, attachment, writ of execution, or lien, or by the terms of any contract or assignment executed by Writer, to withhold, or to pay to any other Party all or any portion of the compensation due Writer, the withholding or payment of such compensation or any portion thereof in accordance with the requirements of any such attachment, garnishment, writ of execution, lien, contract or assignment shall not be construed as a breach by Producer.

(d) Overpayment/Offset: If Producer makes any overpayment to Writer for any reason or if Writer is indebted to Producer for any reason, Writer shall pay Producer such overpayment or indebtedness on demand, or at the election of Producer, Producer may deduct and retain for its own account an amount equal to all or any part of such overpayment or indebtedness from any sums that may be due or become due or payable by Producer to Writer or for the account of Writer and such deduction or retention shall not be construed as a breach by Producer.

**15. ARBITRATION:** Any controversy or claim arising out of or relating to this agreement or any breach thereof shall be settled by arbitration in accordance with the Rules of the American Arbitration Association; and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled to reimbursement for costs and reasonable attorneys' fees.

Signed and agreed to by the undersigned as of \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_ on behalf of  
\_\_\_\_\_ Productions  
("Producer")

\_\_\_\_\_  
("Writer")

Social Security #

EXHIBIT - **U**

# DIRECTOR EMPLOYMENT AGREEMENT

## AGREEMENT

Agreement dated \_\_\_\_\_ between \_\_\_\_\_ ("Director") and \_\_\_\_\_ ("Production Company").

**1. EMPLOYMENT:** Production Company agrees to employ Director to perform and Director agrees to perform, upon the terms and conditions herein specified, directing services in connection with the Theatrical Motion Picture currently entitled \_\_\_\_\_ ("Picture").

**2. TERM:** The Term of this agreement shall commence on \_\_\_\_\_ and shall continue until the completion of all of Director's required services on the Picture.

**3. SERVICES:**

(a) Pre-Production: Director shall be available and undertake a location search on or about \_\_\_\_\_.

(b) Photography: Director's exclusive services for the Picture shall commence \_\_\_\_\_ weeks prior to the start of principal photography and shall be rendered exclusively after that until completion of all photography. The start date of principal photography shall be mutually approved by Production Company and Director. The scheduled start date of principal photography is \_\_\_\_\_.

(c) Post-Production: Director's post-production services shall be rendered on a non-exclusive but first-call basis, if Production Company so requires, in order to work during the post-production period with the editor until completion of the final corrected answer print. Director's other undertakings shall not interfere with director's post-production services hereunder.

(i) Cooperation with Editor: Director hereby warrants and agrees that Director will do nothing to hinder or delay the assemblage of film by the editor during the photography of the Picture so that the assembled sequences will be completed immediately following the completion of principal photography.

(ii) Post-Production Schedule: Attached hereto marked Exhibit "S" and by this reference incorporated herein is a schedule for the post-production work on the Picture which has been agreed to by Director and Production Company. Director agrees that this schedule will be followed by Director.

(iii) Final Cutting Authority: \_\_\_\_\_ is designated as the Production Company Executive with final cutting authority over the Picture. The foregoing shall be subject to applicable guild and union requirements, if any.

(d) Dailies: Production Company shall have the right to view the dailies during the production of the Picture, the rough cut and all subsequent cuts of the Picture.

(e) Television Cover Shots: Director shall furnish Production Company with protective cover shots necessary for the release of the Picture on television, based

on network continuity standards in existence at the time of commencement of principal photography.

(f) Additional Post-Production Services: If, after the completion of principal photography, Production Company requires retakes, changes, dubbing, transparencies, added scenes, further photography, trailers, sound track, process shots or other language versions (herein collectively called "retakes, etc.") for the Picture, Director shall report to Production Company for such retakes, etc., at such place or places and on such consecutive or non-consecutive days as Production Company may designate, Subject to Director's professional availability. Director shall cooperate to make such services available to Production Company at the earliest possible date.

**4. COMPENSATION:** As full and complete consideration for Director's services and Director's undertakings hereunder and for all rights granted to Production Company hereunder, and subject to Director's full compliance with the terms and conditions of this Agreement, Production Company agrees to pay Director as follows:

(a) Fixed Compensation:

(i) The total sum of \_\_\_\_\_ payable:

(A) \$\_\_\_\_\_ upon approval of the Budgeted Negative Cost for production of the Picture.

(B) \$\_\_\_\_\_ prorated commencing \_\_\_\_ weeks prior to the start of principal photography of the Picture.

(C) \$\_\_\_\_\_ payable in equal weekly installments over the scheduled period of principal photography.

(D) \$\_\_\_\_\_ upon delivery of the director's cut.

(E) \$\_\_\_\_\_ upon the completion of the final answer print of the Picture.

(ii) Flat Fee Basis: Production Company and Director hereby mutually acknowledge that the Fixed Compensation as hereinabove specified is a "flat fee" and Director shall not be entitled to any additional and/or so-called "overage" compensation for any services rendered by Director during the development, pre-production, production or post-production phases, or for additional post-production services rendered by Director. Without limiting the generality of the foregoing, no additional compensation shall be payable to Director under Clause 4(a)(i)(C) above if the actual principal photography period for the Picture exceeds the scheduled principal photography period, nor for any services rendered pursuant to Clause 3(f).

(b) Deferred Compensation: In addition to the Fixed Compensation payable under Clause 4(a), subject to the production and release of the Picture and subject to the performance of all obligations of Director hereunder, Director shall be entitled to receive the sum of \_\_\_\_\_ which shall be deferred and paid pro rata with all similar deferments of compensation payable \_\_\_\_\_ at the point just preceding the payment of percentage participations in the Net Profits of the Picture.

(c) Contingent Compensation: In addition to the Fixed Compensation payable under Clause 4(a), and any Deferred Compensation payable under Clause

4(b), subject to the production and release of the Picture and subject to the performance of Director's obligations hereunder Director shall be entitled to receive as Contingent Compensation an amount equal to \_\_\_\_\_ percent of the Net Profits of the Picture, if any.

(d) Net Profits Definition: Net Profits shall be computed, determined and paid in accordance with Exhibit \_\_\_ attached hereto and by this reference incorporated herein.

(e) Conditions Related to Compensation: Notwithstanding anything to the contrary contained in any of the above compensation provisions:

(i) Performance: No compensation shall accrue or become payable to Director during Director's inability, failure or refusal to perform the services contracted for herein according to the terms and conditions of this Agreement.

(ii) Pay or Play: Production Company shall not be obligated to use Director's services on the Picture, nor shall Production Company be obligated to produce, release, distribute, advertise, exploit or otherwise make use of the Picture; provided, however, that the full amount of the Fixed Compensation hereinabove specified shall be paid to Director should Production Company without legal justification or excuse (as provided elsewhere in this Agreement or by operation of law), elect not to utilize Director's services.

(f) Vesting: The Fixed Compensation and Contingent Compensation hereinabove specified shall be deemed fully vested if, notwithstanding the termination of Director's services due to Producer Disability or Director's incapacity or Director default, Director shall be entitled to receive "Directed by" credit pursuant to the Director's Guild of America Basic Agreement of 1973, as same may be amended from time to time ("Basic Agreement").

If the services of Director are terminated by Production Company due to Production Disability or Director's Incapacity or Director Default, as defined below, and Director is not entitled to receive credit pursuant to the Basic Agreement, then the Fixed Compensation shall vest and accrue in the same manner as set forth herein and the Contingent Compensation shall accrue and vest in the same ratio that the number of linear feet in the completed Picture as released, which was directed by Director, bears to the total number of linear feet in the completed Picture as released. Notwithstanding the foregoing, if principal photography has not commenced on the scheduled start date as set forth in Clause 3(b) hereof, then the total Fixed Compensation shall vest and accrue on the aforesaid scheduled start date and production of the Picture is thereafter terminated prior to completion of principal photography and/or delivery of the final answer print to Production Company, then that portion of the Fixed Compensation not theretofore accrued shall fully vest and accrue on the date of such termination. If Production Company terminates this Agreement by reason of a Director Default, notwithstanding any vesting of Fixed Compensation and/or Contingent Compensation as set forth above, such vesting shall be subject to any and all the rights accorded to Production Company at law and in equity.

(g) Mitigation: If Production Company elects to exercise its pay or play right as set forth above and/or fails to produce the Picture, Director shall have no obligation to mitigate damages.

## **5. CREDITS:**

(a) Credit: Subject to the production and release of the Picture and provided Director performs his material obligations hereunder, then Production Company shall accord Director credit in connection with the Picture in accordance with the requirements of the Directors Guild of America, Inc. Basic Agreement of 1973 immediately after the main title which shall be fifty percent (50%) of the size of the title, on a separate card.

(b) Artwork Title Exception: If both a regular (or repeat) title and an artwork title are used, the position and percentage requirements above, as they relate to the title of the Picture, shall relate to the regular (or repeat) title. If only an artwork title is used, the percentage requirements above, as they relate to the title, shall be not less than 15 percent (15%) of the average size of the letters used in the artwork title.

(c) Credit Limitation: Production Company agrees that no other individual and/or entity (other than members of the cast receiving "starring" billing before or after the title of the Picture or the company distributing and/or financing the Picture) shall receive credit larger than that used to display the credit accorded to Director.

(d) Inadvertent Non-Compliance: No casual or inadvertent failure to comply with the provisions of this Paragraph shall be deemed to be a breach of this Agreement by Production Company. Director hereby recognizes and confirms that in the event of a failure or omission by Production Company constituting a breach of Production Company obligations under this Paragraph, the damages, if any, caused Director by Production Company are not irreparable or sufficient to entitle Director to injunctive or other equitable relief. Consequently, Director's rights and remedies hereunder shall be limited to the right, if any, to obtain damages at law and Director shall have no right in such event to rescind this Agreement or any of the rights assigned to Production Company hereunder or to enjoin or restrain the distribution or exhibition of the Picture. Production Company agrees to advise its assignees and licensees of the credit requirements herein. If Production Company shall learn of such failure of a third party to give such credit, Production Company shall notify such party of such failure and Production Company may, but shall not be obligated to, take action to cause such party to prospectively cure such failure.

**6. TRANSPORTATION AND EXPENSES:** If, at Production Company's request, Director's services are required to be rendered on location more than (e.g., fifty) miles from the City of Los Angeles, Production Company shall furnish Director first-class round trip transportation for (e.g., one) and Production Company shall reimburse Director for Director's living expenses in the amount of \$\_\_\_\_\_ per week. If Director can demonstrate to Production Company's satisfaction that said living expense allowance is insufficient for any particular location, Production Company shall, at such time, give good faith consideration to an increase. For any period week which is less than one (1) week, said reimbursement shall be upon the pro rata basis that one (1) day is equal to one-seventh (1/7) of one (1) week. Director shall furnish Production Company with itemized detailed accountings of such living expenses, including vouchers, bills, receipts and statements satisfactory to meet the requirements and regulations of the Internal Revenue Service.

**7. PERFORMANCE STANDARDS:** Except as specifically provided to the contrary herein, during the Term of this Agreement, Director shall render his directing

services exclusively to Production Company and, to such extent as Production Company may require, in otherwise assisting in the production of the Picture. Said services shall be rendered either alone or in collaboration with another or other artists in such manner as Production Company may direct, pursuant to the instructions, controls and schedules established by Production Company, and at the times, places and in the manner required by Production Company. Such manners, instructions, directions, and controls shall be exercised by Production Company in accordance with standards of reasonableness and also with what is customary practice in the Motion Picture industry. Such services shall be rendered in an artistic, conscientious, efficient and punctual manner, to the best of Director's ability and with full regard to the careful, efficient, economical and expeditious production of the Picture within the budget and shooting schedule established by Production Company immediately prior to the commencement of principal photography, it being further understood that the production of motion pictures by Production Company involves matters of discretion to be exercised by Production Company with respect to art and taste, and Director's services and the manner of rendition thereof is to be governed entirely by Production Company.

**8. UNIQUE SERVICES:** Except as specifically provided to the contrary hereinabove, Director's services shall be rendered exclusively to Production Company until expiration of the Term of this Agreement, it being mutually understood that said services are extraordinary, unique and not replaceable, and that there is no adequate remedy at law for breach of this contract by Director, and that Production Company, in the event of such breach by Director, shall be entitled to equitable relief by way of injunction or otherwise to prevent default by Director.

**9. RESULTS AND PROCEEDS OF SERVICES:** Production Company shall be entitled to and shall solely and exclusively own, in addition to Director's services hereunder, all results and proceeds thereof (including but not limited to all rights, throughout the world, of copyright, trademark, patent, production, manufacture, recordation, reproduction, transcription, performance, broadcast and exhibition of any art or method now known or hereafter devised, including radio broadcasting, theatrical and nontheatrical exhibition, and exhibition by the medium of television or otherwise), whether such results and proceeds consist of literary, dramatic, musical, motion picture, mechanical or any other forms of works, themes, ideas, compositions, creations or production, together with the rights generally known in the field of literary and musical endeavor as the "moral rights of authors" in and/or to any musical and/or literary proceeds of Director's services, including but not limited to the right to add to, subtract from, arrange, revise, adapt, rearrange, make variations of the property, and to translate the same into any and all languages, change the sequence, change the characters and the descriptions thereof contained in the property, change the title of the same, [record and photocopy the same with or without sound (including spoken words, dialogue and music synchronously recorded), use this title or any of its components in connection with works or motion pictures wholly or partially independent of said property, and to use all or any part of the property in new versions, adaptations and sequels in any and all languages, and to obtain copyright therein throughout the world, and Director does assign and transfer to Production Company all the foregoing without reservation, condition, or limitations, and no right of any kind, nature, or description is reserved by Director. If Production Company shall desire separate assignments or other documents to implement the foregoing, Director shall execute the same upon Pro-

duction Company's request, and if Director fails or refuses to execute and deliver any such separate assignments or other documents, Production Company shall have and is granted the right and authority to execute the same in Director's name and as Director's attorney-in-fact. Production Company shall supply Director with a copy of any document so executed.

**10. WARRANTIES RELATED TO CREATED MATERIAL:** Director hereby warrants and agrees that all material, works, writings, idea, "gags" or dialogue written, composed, prepared, submitted or interpolated by; Director in connection with the Picture or its preparation or production, shall be wholly original with Director and shall not be copied in whole or in part from any other work, except that submitted to Director by Production Company as a basis for such material. Director further warrants that neither the said material nor any part thereof will, to the best of Director's knowledge, violate the rights of privacy or constitute a libel or slander against any person, firm, or corporation, and that the material will not infringe upon the copyright, literary, dramatic or photoplay rights of any person. Director further warrants and agrees to hold Production Company and its successors, licensees, and assigns harmless against all liability or loss which they or any of them may suffer by reason of the breach of any of the terms or warranties of this Clause.

**11. VESTING OF PRODUCTION COMPANY'S RIGHTS:** All rights granted or agreed to be granted to Production Company hereunder shall vest in Production Company immediately and shall remain so vested whether this Agreement expires in normal course or is terminated for any cause or reason.

**12. NAME AND LIKENESS:** Production Company shall always have the right to use and display Director's name and likeness for advertising, publicizing, and exploiting the picture. However, such advertising may not include the direct endorsement of any product (other than the Picture) without Director's consent. Exhibition, advertising, publicizing or exploiting the Picture by any media, even though a part of or in connection with a product or a commercially sponsored program, shall not be deemed an endorsement of any nature.

**13. PUBLICITY RESTRICTIONS:** Director shall not, individually or by means of press agents or publicity or advertising agencies or others employed or paid by Director or otherwise, circulate, publish or otherwise disseminate any news stories or articles, books or other publicity containing Director's name relating to Director's employment by Production Company, the subject matter of this contract, the Picture or the services to be rendered by Director or others in connection with the Picture unless first approved by Production Company. Director shall not transfer any right, privilege, title, or interest in or to any of the things above specified, nor shall Director authorize or willingly permit infringement upon the exclusive rights granted to Production Company, and Director authorizes Production Company, at Production Company's expense, in Director's name or otherwise, to institute any proper legal proceedings to prevent any infringement.

**14. FORCE MAJEURE:**

(a) Suspension: If, by reason of fire, earthquake, labor dispute or strike, act of God or public enemy, any municipal ordinance, any state or federal law, governmental order or regulation, or other cause beyond Production Company's control which would excuse Production Company's performance as a matter of law, Production Company is prevented from or hampered in the production of the Picture, or if, by reason of the closing of substantially all theaters in the

United States, which would excuse Production Company's performance as a matter of law Production Company's production of the Picture is postponed or suspended, or if, by reason of any of the aforesaid contingencies or any other cause or occurrence not within Production Company's control, including but not limited to the death, illness or incapability of any principal member of the cast of the Picture, the preparation or production of the Picture is interrupted or delayed and/or, if Production Company's normal business operations are interrupted or otherwise interfered with by virtue of any disruptive events which are beyond Production Company's control ("Production Company Disability"), then Production Company may postpone the commencement of or suspend the rendition of services by Director and the running of time hereunder for such time as the Production Company Disability shall continue; and no compensation shall accrue or become payable to Director hereunder during the period of such suspension. Such suspension shall end upon the cessation of the cause thereof.

(b) Termination:

(i) Production Company Termination Right: If a Production Company Disability continues for a period in excess of six (6) weeks, Production Company shall have the right to terminate this Agreement upon written notice to Director.

(ii) Director's Termination Right: If a Production Company Disability results in compensation being suspended hereunder for a period in excess of six (6) weeks, Director shall have the right to terminate this Agreement upon written notice to Production Company.

(iii) Production Company Re-Establishment Right: Despite Director's election to terminate this Agreement, within \_\_\_\_\_ days after Production Company's actual receipt of such written notice from Director, Production Company shall have the right to elect to re-establish the operation of this Agreement by giving Director written notice and resuming payment of compensation.

**15. DIRECTOR'S INCAPACITY:**

(a) Effect of Director's Incapacity: If, by reason of mental or physical disability, Director is incapacitated from performing or complying with any of the terms of conditions hereof ("Director's Incapacity") for a consecutive period in excess of seven (7) days or aggregate period in excess of ten (10) days, then Production Company shall have the right to terminate this Agreement upon written notice to Director.

(b) Right of Examination: If any claim of mental or physical disability is made by Director or on Director's behalf, Production Company shall have the right to have Director examined by such physicians as Production Company may designate. Director's physician may be present at such examination but shall not interfere therewith. Any tests performed on Director shall be related to and customary for the treatment, diagnosis or examination to be performed in connection with Director's claim.

**16. DIRECTOR'S DEFAULT:** If Director fails or refuses to perform or comply with any of the material terms or conditions hereof (other than by reason of Director's Incapacity) ("Director's Default"), then Production Company may terminate this Agreement upon written notice to Director. Director's Default shall not include any failure or refusal of Director to perform or comply with the ma-

terial terms of this Agreement due to a breach or action by Production Company which makes the performance by Director of his services impossible. Prior to termination of this Agreement by Production Company based upon Director's Default, Production Company shall notify Director specifying the nature of the Director's Default and Director shall have a period of 48 hours to cure the Director Default. If the Director Default is not cured within said 48 hour period, Production Company may terminate this Agreement forthwith.

**17. EFFECT OF TERMINATION:** Termination of this Agreement, whether by lapse of time, mutual consent, operation of law, exercise of a right of termination or otherwise, shall:

(a) Terminate Production Company's obligation to pay Director any further compensation. Nevertheless, if the termination is not for Director's Default, Production Company shall pay Director any compensation due and unpaid prior to the termination, and;

(b) Production Company shall not be deemed to have waived any other rights it may have or alter Production Company's rights or any of Director's agreements or warranties relating to the rendition of Director's services prior to termination.

**18. PRODUCTION COMPANY RIGHT TO SUSPEND:** In the event of Director's Incapacity or Director's Default, Production Company may upon written notice postpone the commencement of or suspend the rendition of services by Director and the running of time hereunder so long as any Director's Disability or Director's Default shall continue; and no compensation shall accrue or become payable to Director during the period of such suspension.

(a) Director's Right to Cure: Any Director's Incapacity or Director's Default shall be deemed to continue until Production Company's receipt of written notice from Director specifying that Director is ready, willing and able to perform the services required hereunder; provided that any such notice from Director to Production Company shall not preclude Production Company from exercising any rights or remedies Production Company may have hereunder or at law or in equity by reason of Director's Incapacity or Director's Default.

(b) Alternative Services Restricted: During any period of suspension hereunder, Director shall not render services for any person, firm or corporation other than Production Company. However, Director shall have the right to render services to third parties during any period of suspension based upon a Production Company Disability, subject, however, to Production Company's right to require Director to resume the rendition of services hereunder upon 24 hours prior notice.

(c) Production Company Right to Extend: If Production Company elects to suspend the rendition of services by Director as herein specified, then Production Company shall have the right (exercisable at any time) to extend the period of services of Director hereunder for a period equal to the period of such suspension.

(d) Additional Services: If Production Company shall have paid compensation to Director during any period of Director's Incapacity or Director's Default, then Production Company shall have the right (exercisable at any time) to require Director to render services hereunder without compensation for a period equal to the period for which Production Company shall have paid compensation to Director during such Director's Incapacity or Director's Default.

**19. FURTHER WARRANTIES:** Director hereby warrants that Director is not under any obligation or disability, created by law or otherwise, which would in any manner or to any extent prevent or restrict Director from entering into and fully performing this Agreement; Director warrants that Director has not entered into any agreement or commitment that would prevent Director's fulfilling Director's commitments with Production Company hereunder and that Director will not enter into any such agreement or commitment without Production Company's specific approval and Director hereby accepts the obligation hereunder and agrees to devote Director's entire time and attention and best talents and abilities exclusively to Production Company as specified herein, and to observe and to be governed by the rules of conduct established by Production Company for the conduct of its employees.

(a) Indemnity: Director shall at all times indemnify Production Company, its successors, assigns and licensees, from and against any and all costs, expenses, losses, damages, judgments and attorneys' fees arising out of or connected with or resulting from any claims, demands or causes of action by any person or entity which is inconsistent with any of Director's representations, warranties or agreements hereunder. Director will reimburse Production Company on demand for any payment made by Production Company at any time after the date hereof in respect of any liability, loss, damage, cost or expense to which the foregoing indemnity relates.

**20. REMEDIES:** All remedies accorded herein or otherwise available to either Production Company or Director shall be cumulative, and no one such remedy shall be exclusive of any other. Without waiving any rights or remedies under this Agreement or otherwise, Production Company may from time to time recover, by action, any damages arising out of any breach of this Agreement by Director, and may institute and maintain subsequent actions for additional damages which may arise from the same or other breaches. The commencement or maintenance of any such action or actions by Production Company shall not constitute an election on Production Company's part to terminate this Agreement nor constitute or result in termination of Director's services hereunder unless Production Company shall expressly so elect by written notice to Director. The pursuit by either Production Company or Director of any remedy under this Agreement or otherwise shall not be deemed to waive any other or different remedy which may be available under this Agreement or otherwise, either at law or in equity.

**21. INSURANCE:**

(a) Production Company may secure life, health, accident, cast, or other insurance covering Director, the cost of which shall be included as a Direct Charge of the Picture. Such insurance shall be for Production Company's sole benefit and Production Company shall be the beneficiary thereof, and Director shall have no interest in the proceeds thereof. Director shall assist in procuring such insurance by submitting to required examinations and tests and by preparing, signing, and delivering such applications and other documents as may be reasonably required. Director shall, to the best of Director's ability, observe all terms and conditions of such insurance of which Production Company notifies Director as necessary for continuing such insurance in effect.

(b) If Production Company is unable to obtain pre-production or cast insurance covering Director at prevailing standard rates and without any exclusions, restrictions, conditions, or exceptions of any kind, Director shall have the

right to pay any premium in excess of the prevailing standard rate in order for Production Company to obtain such insurance. If Director fails, refuses to pay such excess premium, or if, Production Company having obtained such insurance, Director fails to observe all terms and conditions necessary to maintain such insurance in effect, Production Company shall have the right to terminate this Agreement without any obligation to Director by giving Director written notice of termination.

**22. EMPLOYMENT OF OTHERS:** Director agrees not to employ any person to serve in any capacity, nor contract for the purchase or renting of any article or material, nor make any agreement committing Production Company to pay any sum of money for any reason whatsoever in connection with the Picture or services to be rendered by Director hereunder or otherwise, without written approval first being asked and obtained from Production Company.

**23. ASSIGNMENT:** This Agreement, at the election of Production Company, shall inure to the benefit of Production Company's administrators, successors, assigns, licensees, grantees, and associated, affiliated and subsidiary companies, and Director agrees that Production Company and any subsequent assignee may freely assign this Agreement and grant its rights hereunder, in whole or in part, to any person, firm or corporation, provided that such person, firm or corporation assumes and agrees in writing to keep and perform all of the executory obligations of Production Company hereunder.

**24. ARBITRATION:** Any controversy or claim arising out of or relating to this agreement or any breach thereof shall be settled by arbitration in accordance with the Rules of the American Arbitration Association; and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled to reimbursement for costs and reasonable attorneys' fees.

Signed and agreed to by the undersigned as of \_\_\_\_\_199\_.

---

John Doe on behalf of  
Big Productions Inc.  
("Production Company")

---

Henry Smith  
("Director")

EXHIBIT - **V**

**ACTOR EMPLOYMENT AGREEMENT  
(SAG WEEKLY THEATRICAL)**

Continuous Employment  
Weekly Basis  
Weekly Salary

One Week Minimum Employment

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_, between \_\_\_\_\_, hereafter called "Producer", and \_\_\_\_\_, hereafter called "Player."

**1. PHOToplay, ROLE, SALARY AND GUARANTEE:** Producer hereby engages Player to render services as such in the role of \_\_\_\_\_, in a photoplay, the working title of which is now \_\_\_\_\_, at the salary of \$\_\_\_\_\_ Dollars per "studio week" (Schedule B Players must receive an additional overtime payment of four (4) hours at straight time rate for each overnight location Saturday.) Player accepts such engagement upon the terms herein specified. Producer guarantees that it will furnish Player not less than \_\_\_\_\_ weeks employment (if this blank is not filled in, the guarantee shall be one week). Player shall be paid pro rata for each additional day beyond guarantee until dismissal.

**2. TERM:** The term of employment hereunder shall begin on or about \_\_\_\_\_, and shall continue thereafter until the completion of the photography and recordation of said role.

**3. BASIC CONTRACT:** All provisions of the collective bargaining agreement between Screen Actors Guild, Inc. and Producer, relating to theatrical motion pictures, which are applicable to the employment of the Player hereunder, shall be deemed incorporated herein.

**4. PLAYER'S ADDRESS:** All notices which the Producer is required or may desire to give to the Player may be given either by mailing the same addressed to the Player at \_\_\_\_\_, or such notice may be given to the Player personally, either orally or in writing.

**5. PLAYER'S TELEPHONE:** The Player must keep the Producer's casting office or the assistant director of said photoplay advised as to where the Player may be reached by telephone without unreasonable delay. The current telephone number of the Player is \_\_\_\_\_.

**6. MOTION PICTURE RELIEF FUND:** The Player does not hereby authorize the Producer to deduct from the compensation hereinabove specified an amount equal to \_\_\_\_\_ per cent of each installment of compensation due the Player hereunder, and to pay the amount so deducted to the Motion Picture and Television Relief Fund of America, Inc.

**7. FURNISHING OF WARDROBE:** The Player agrees to furnish all modern wardrobe and wearing apparel reasonably necessary for the portrayal of said role; it being agreed, however, that should so-called "character" or "period" costumes be required, the Producer shall supply the same. When Player furnishes any wardrobe, Player shall receive the cleaning allowance and reimbursement, if any, specified in the basic contract.

Number of outfits furnished by Player:

\_\_\_\_\_ @ \$ \_\_\_\_\_

(formal) \_\_\_\_\_ @ \$ \_\_\_\_\_

**8. ARBITRATION OF DISPUTES:** Should any dispute or controversy arise between the parties hereto with reference to this contract, or the employment herein provided for, such dispute or controversy shall be settled and determined by conciliation and arbitration in accordance with the conciliation and arbitration provisions of the collective bargaining agreement between the Producer and Screen Actors Guild relating to theatrical motion pictures, and such provisions are hereby referred to and by such reference incorporated herein and made a part of this Agreement with the same effect as though the same were set forth herein in detail.

**9. NEXT STARTING DATE:** The starting date of Player's next engagement is: \_\_\_\_\_.

**10.** The Player may not waive any provision of this contract without the written consent of the Screen Actors Guild, Inc.

**11.** Producer makes the material representation that either it is presently a signatory to the Screen Actors Guild collective bargaining agreement covering the employment contracted for herein, or, that the above-referred-to photoplay is covered by such collective bargaining agreement under the Independent Production provisions of the General Provisions of the Producer-Screen Actors Guild Codified Basic Agreement of 1983 as the same may be supplemented and/or amended.

**12.** Producer shall have the exclusive right to make one or more promotional films of thirty (30) minutes or less and to utilize the results and proceeds of Player's services therein upon all of the terms and provisions set forth in the SAG Agreement. Player agrees to render such services for said promotional films during the term of his employment hereunder as Producer may request and Player further agrees to use by Producer of film clips and behind-the-scenes shots in which Player appears in such promotional films. Provided Player appears therein, Producer shall pay to Player the sum specified by the SAG Agreement of \_\_\_\_\_ within ten (10) days after the first use of each such promotional film on television or before a paying audience.

**13.** Producer shall have the exclusive right to use and to license the use of Player's name, sobriquet, photograph, likeness, voice and/or caricature and shall have the right to simulate Player's voice, signature and appearance by any means in and in connection with the film and the advertising, publicizing, exhibition, and/or other exploitation thereof in any manner and by any means and in connection with commercial advertising and publicity tie-ups.

**14.** Producer is also granted the further exclusive right and license, but only in connection with the role portrayed by Player in the film to use and to license the use of Player's name, sobriquet, photograph, likeness, caricature and/or signature (collectively referred to herein as "name and likeness") in and in connection with any merchandising and/or publishing undertakings. In consideration therefore, Producer shall pay Player a pro rata share (payable among all players whose name, etc. is used) of two-and-a-half percent (2½%) of the gross monies actually derived by Producer after deducting therefrom a distribution fee

of fifty percent (50%) and a sum equal to all Producer's actual out-of-pocket expenses in connection therewith, for the use of such name or likeness on merchandising and publishing items which utilize Player's name and likeness, other than in a listing of cast credits.

**15.** Producer is also granted the further and exclusive right to use and to license the use of and to advertise and publicize the use of Player's voice from the soundtrack of the film on commercial phonograph records and albums and the exclusive right to use Player's name and likeness on jackets and labels of such commercial phonograph records and albums. If Producer issues or authorizes the issuance of such record or album using Player's voice, Producer shall pay to Player a sum equal to applicable AFTRA scale.

**16. EMPLOYMENT ELIGIBILITY:** All of Production Company's obligation herein are expressly conditioned upon Performer's completion, to Production Company's satisfaction, of the I-9 form (Employee Eligibility Verification Form), and upon Performer's submission to Production Company of original documents satisfactory to demonstrate to Production Company Performer's employment eligibility.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

Producer\_\_\_\_\_

By\_\_\_\_\_

Player\_\_\_\_\_

Social Security No.\_\_\_\_\_

EXHIBIT - **W**

**ACTOR EMPLOYMENT AGREEMENT  
(LOW-BUDGET, NON-UNION DAY PLAYER)<sup>1</sup>**

THIS AGREEMENT is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 1993, by and between Big Deal Entertainment, Inc., a California corporation, (hereinafter "Producer"), and \_\_\_\_\_ (hereinafter "Player").

A. Producer intends to produce a theatrical motion picture (hereinafter the "Picture") based upon that certain screenplay tentatively entitled "\_\_\_\_\_" (hereinafter the "Screenplay") which Picture is intended for initial theatrical exhibition.

B. Producer wishes to utilize the services of Player in connection with the Picture upon the terms and conditions herein contained.

ACCORDINGLY, IT IS AGREED AS FOLLOWS:

**1. PHOTOPLAY, ROLE, SALARY AND GUARANTEE:** Producer hereby engages Player to render services as such in the role of \_\_\_\_\_, in the screenplay, at the salary of \$\_\_\_\_\_ dollars per day. Player accepts such engagement upon the terms herein specified. Producer guarantees that it will furnish Player not less than \_\_\_\_\_ day's employment.

**2. TERM:** The term of employment hereunder shall begin on or about \_\_\_\_\_, 199\_ (the "Start Date") and continue until \_\_\_\_\_, 199\_, or until the completion of the photography and recordation of said role.

**3. PLAYER'S ADDRESS:** All notices which the Producer is required or may desire to give to the Player may be given either by mailing the same addressed to the Player at the address listed at the end of this agreement, or such notice may be given to the Player personally, either orally or in writing.

**4. PLAYER'S TELEPHONE:** The Player must keep the Producer's casting office or the assistant director of said photoplay advised as to where the Player may be reached by telephone without unreasonable delay. The current telephone number of the Player is listed at the end of this agreement.

**5. FURNISHING OF WARDROBE:** The Player agrees to furnish all modern wardrobe and wearing apparel reasonably necessary for the portrayal of said role; it being agreed, however, that should so-called "character" or "period" costumes be required, the Producer shall supply the same. When Player furnishes any wardrobe, Player shall receive a reasonable cleaning allowance and reimbursement for any soiled or damaged clothes.

Number of outfits furnished by Player:

\_\_\_\_\_ @ \$ \_\_\_\_\_

\_\_\_\_\_ @ \$ \_\_\_\_\_

**6. NEXT STARTING DATE:** The starting date of Player's next engagement is: \_\_\_\_\_.

---

<sup>1</sup> This contract is less favorable to the Actor than the preceding SAG contract.

**7. NON-UNION PICTURE:** Producer makes the material representation that it is not a signatory to the Screen Actors Guild collective bargaining agreement or any other union or guild agreement. Player warrants that Player is not a member of any union or guild, memberships in which would prevent Player from working in this picture.

**8. PROMOTIONAL FILM:** Producer shall have the exclusive right to make one or more promotional films of thirty (30) minutes or less and to utilize the results and proceeds of Player's services therein. Player agrees to render such services for said promotional films during the term of his employment hereunder as Producer may request and Player further agrees to use by Producer of film clips and behind-the-scenes shots in which Player appears in such promotional films. Provided Player appears therein, Producer shall pay to Player the sum of one hundred dollars (\$100) within ten (10) days after the first use of each such promotional film on television or before a paying audience.

**9. NAME AND LIKENESS:** Producer shall have the exclusive right to use and to license the use of Player's name, sobriquet, photograph, likeness, voice and/or caricature and shall have the right to simulate Player's voice, signature and appearance by any means in and in connection with the film and the advertising, publicizing, exhibition, and/or other exploitation thereof in any manner and by any means and in connection with commercial advertising and publicity tie-ups.

**10. MERCHANDISING:** Producer is also granted the further exclusive right and license, but only in connection with the role portrayed by Player in the film to use and to license the use of Player's name, sobriquet, photograph, likeness, caricature and/or signature (collectively referred to herein as "name and likeness") in and in connection with any merchandising and/or publishing undertakings. In consideration therefore, Producer shall pay Player a pro rata share (payable among all players whose name, etc. is used) of two-and-a-half percent (2½%) of the gross monies actually derived by Producer after deducting therefrom a distribution fee of fifty percent (50%) thereof and a sum equal to all Producer's actual out-of-pocket expenses in connection therewith, for the use of such name or likeness on merchandising and publishing items which utilize Player's name and likeness, other than in a listing of cast credits.

**11. TRAVEL EXPENSES:** Any right of Player to transportation and expenses pursuant to this Agreement shall be effective when and only when Player is required by Producer to render services more than seventy-five (75) miles from Player's principal place of residence. Any weekly expense allowance provided Employee under this Agreement shall be prorated at one-seventh (1/7th) thereof per day. Player shall be reimbursed at the rate of \_\_\_\_\_ per mile for use of Player's car to travel to distant locations.

**12. INCLUSIVE PAYMENTS:** All payments to Player hereunder shall be deemed to be equitable and inclusive remuneration for all services rendered by Player in connection with the Picture and to be paid by way of a complete buy-out of all rights granted to Producer hereunder and no further sums shall be payable to Player by Producer by reason of the exploitation of the Picture and all results and proceeds of Player's services hereunder in any and all media throughout the universe pursuant to any collective bargaining agreement, if any, or otherwise, by way of residuals, repeat fees, pension contributions, or any other monies whatsoever.

**13. ARBITRATION:** Any controversy or claim arising out of or relating to this agreement or any breach thereof shall be settled by arbitration in accordance with the Rules of the American Arbitration Association; and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled to reimbursement for costs and reasonable attorney's fees. The determination of the arbitrator in such proceeding shall be final, binding and non-appealable.

**14. EMPLOYMENT ELIGIBILITY:** All of Production Producer's obligation herein are expressly conditioned upon Performer's completion, to Production Producer's satisfaction, of the I-9 form (Employee Eligibility Verification Form), and upon Performer's submission to Production Producer of original documents satisfactory to demonstrate to Production Producer Performer's employment eligibility.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

AGREED TO AND ACCEPTED:

\_\_\_\_\_ (signature)

\_\_\_\_\_ (print name),  
"Player"

Player address: \_\_\_\_\_

Player Phone number: \_\_\_\_\_

Player Social Security # \_\_\_\_\_

AGREED TO AND ACCEPTED:

Big Deal Entertainment, Inc.,

By: \_\_\_\_\_  
Pat Producer, its President

EXHIBIT - **X**

## WRITER COLLABORATION AGREEMENT

This Agreement between \_\_\_\_\_, residing at \_\_\_\_\_, (herein called Writer A), and \_\_\_\_\_, residing at \_\_\_\_\_, (herein called Writer B).

WITNESSETH

The parties desire to collaborate in the writing of a screenplay, on the terms hereinafter set forth.

NOW THEREFORE, in consideration of the premises, and of the mutual undertakings herein contained, and for other good and valuable considerations, the parties agree as follows:

1. The parties hereby undertake to collaborate in the writing of a certain original feature-length screenplay (herein called the Screenplay or Work) dealing with a \_\_\_\_\_, and provisionally entitled \_\_\_\_\_.
2. The parties shall collaborate in the writing of the work and upon completion thereof shall be the joint owners of the work sharing all rights equally.
3. The parties contemplate that they will complete the manuscript of the Screenplay by \_\_\_\_\_. However, failure to complete the screenplay by such date shall not be construed as a breach of this Agreement on the part of either party.
4. If, prior to the completion of the work, either party shall voluntarily withdraw from the collaboration, then the other party shall have the right to complete the work alone or in conjunction with another collaborator or collaborators, and in such event the percentage of ownership, as hereinbefore provided in paragraph 2, shall be revised by mutual agreement in writing or, failing such agreement, by arbitration in accordance with the procedures hereinafter prescribed.
5. If, prior to the completion of the Work, there shall be a dispute of any kind with respect to the Work, then either party may terminate this Collaboration Agreement by written notice to the other party, and should they fail to agree upon the terms of such termination agreement, they shall submit the dispute for arbitration in accordance with the procedures hereinafter prescribed.
6. Any contract for the sale or other disposition of the Work, where the Work has been completed by the Parties in accordance herewith, shall require that the story and writing credits shall be equally shared by the parties, unless the parties agree otherwise.
7. Neither party shall sell, or otherwise voluntarily dispose of the Work, or his share therein, without the written consent of the other, which consent, however, shall not be unreasonably withheld.
8. Both parties agree that each shall be responsible for its own expenses incurred in the preparation of the Work.
9. The parties agree that all income received from the world-wide sale of motion picture and/or television (all markets and media) rights (including but not limited to all sequel, remake and television spin-off rights, novelization, merchandising, play, radio and audio rights) to the screenplay shall be shared equally.

**10.** Should the Work be sold or otherwise disposed of and, as an incident thereto, the Parties be employed to revise the Work, the total compensation provided for in such employment agreement shall be shared equally by the parties.

**11.** If either party shall be unavailable for the purposes of collaborating on such revision, then the Party who is available shall be permitted to do such revision and shall be entitled to the full amount of compensation in connection therewith.

**12.** If either party hereto shall desire to use the Work, or any right therein or with respect thereto, in any venture in which such Party shall have a financial interest, whether direct or indirect, the Party desiring so to do shall notify the other Party of that fact and shall afford such other Party the opportunity to participate in the venture in the proportion of such other Party's interest in the Work. If such other Party shall be unwilling to participate in such venture, the Party shall desiring to proceed therein shall be required to pay such other Party an amount equal to that which such other Party would have received if the Work or right, as the case may be, intended to be so used had been sold to a disinterested person at the price at which the same shall last have been offered, or if it shall not have been offered, at its fair market value which, in the absence of mutual agreement of the Parties, shall be determined by arbitration.

**13.** The copyright in the Work shall be obtained in the names of both parties, and shall be held jointly by them.

**14.** If either party (herein called the First Party) desires to transfer his rights to a third person, he shall give written notice by registered mail to the other party (herein called the Second Party) of his intention to do so.

(a) In such case the Second Party shall have an option for a period of 30 days to purchase the First Party's share at a price and upon such terms indicated in the written notice.

(b) If the Second Party fails to exercise his option in writing within the aforesaid period of 30 days, or if, having exercised it, fails to complete the purchase upon the terms stated in the notice, the First Party may transfer his rights to the third person at the price and upon the identical terms stated in the notice; and he shall forthwith send to the Second Party a copy of the contract of sale of such rights, with a statement that the transfer has been made.

(c) If the First Party fails for any reason to make such transfer to the third person, and if he desires to make a subsequent transfer to someone else, the Second Party's option shall apply to such proposed subsequent transfer.

**15.** Nothing herein contained shall be construed to create a partnership between the parties. Their relation shall be one of collaboration on a single work.

**16.** This agreement shall continue for the life of the copyright therein.

**17.** If either party dies before the completion of the screenplay, the survivor shall have the right to complete the same, to make changes in the text previously prepared, to negotiate and contract for sale or production and for the disposition of any of the subsidiary rights, and generally to act with regard thereto as though he were the sole author, except that (a) the name of the decedent shall always receive credit as agreed herein; and (b) the survivor shall cause the decedent's share of the proceeds to be paid to his estate, and shall furnish to the estate true copies of all contracts made by the survivor pertaining to the Work.

**18.** If either party dies after the completion of the screenplay, the survivor shall have the right to negotiate and contract for sale and/or production (if not theretofore arranged) and for the disposition of any of the subsidiary rights, to make revisions in any subsequent drafts, and generally to act with regard thereto as if he were the sole author, subject only to the conditions set forth in subdivisions (a) and (b) of clause 14.

**19.** Any controversy or claim arising out of or relating to this agreement or any breach thereof shall be settled by arbitration in accordance with the Rules of the American Arbitration Association; and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled to reimbursement for costs and reasonable attorneys' fees.

**20.** This agreement shall inure to the benefit of, and shall be binding upon, the executors, administrators and assigns of the parties.

**21.** This agreement constitutes the entire understanding of the parties.

**22.** This agreement is governed by and construed in accordance with the laws of the State of California.

**23.** If any provision of this Agreement or the application thereof to any Person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

IN WITNESS WHEREOF, the parties hereunto set their respective hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Writer A

\_\_\_\_\_  
Writer B

EXHIBIT - **Y**

## CO-PRODUCTION AGREEMENT

This letter confirms the understanding between \_\_\_\_\_ ("Doe"), residing at \_\_\_\_\_, and \_\_\_\_\_ dba Big Film Productions ("Big") whose office is at \_\_\_\_\_, with respect to co-production of a television program in a series about \_\_\_\_\_, tentatively titled \_\_\_\_\_ (The "Series"). The program is tentatively titled \_\_\_\_\_.

**1. FINANCING:** Big will use its best efforts to obtain financing for the program and shall exercise sole and exclusive control over the disbursement of monies for all production, marketing and distribution expenses. Big shall arrange for the facilities, equipment and personnel needed for the production of the program, within the limits of the budget as set forth in Exhibit A, attached hereto. Nothing in this agreement shall obligate Big to produce the series.

**2. SERVICES PROVIDED:** Doe shall provide consultative and administrative services and shall serve as liaison with artists, museums and galleries and enlist their support and participation in the Series. Doe shall:

a) Procure historical data, photographs, audio tapes and literature from artists and organizations participating in the series,

b) Procure a signed depiction and location release at no expense to Big on forms supplied by Big for each museum and any persons appearing in the series.

c) Use his best efforts to arrange for the sale of the broadcast, cable, home video and ancillary rights to the series in the United States and foreign territories, and

d) Use his best efforts to recruit advertising sponsors for the series.

**3. COMPENSATION:** As full and complete consideration for his services, Doe shall be entitled to receive twenty-five percent (25%) of all net profits derived from the programs in which he serves as co-producer and in which he performs that function. Net profits shall be that amount of revenue remaining after all production, marketing and distribution expenses (and a reasonable reserve) have been recouped and accounted for in accordance with industry custom and practice.

At Doe's option, he may invest any amounts due him under this agreement for the production of future episodes of the series. In the event he does contribute such amounts, he will be entitled to a greater share of net profits from the episodes to which he contributes financing in accordance with the following formula:

For every one percent of the entire budget Doe contributes, he shall be entitled to one-quarter percent (1/4%) increment in his share of net profits, but in no event shall Doe's share of profits exceed a total of forty percent (40%).

By way of example, if Doe contributes four thousand dollars (\$4,000) to the production of a future episode produced on a budget of ten thousand dollars (\$10,000), then Doe would have contributed forty percent (40%) of the entire budget and would be entitled to an additional ten percent (10%) of net profits as well as his customary twenty-five percent (25%) of net profits for a total of thirty-five percent (35%) of net profits.

In calculating Doe's share according to the abovementioned formula, contributions shall be rounded to the nearest percentile.

Profits shall be payable annually.

**4. CREDIT:** For each program which Doe co-produces, on a single card following the introduction of the program, the credit shall read: "Produced by \_\_\_\_\_ and \_\_\_\_\_."

**5. COPYRIGHT:** Big shall be the sole copyright holder for the series. Doe shall be considered an employee-for-hire for all work done for the series.

**6. ACCOUNTING:** Doe shall have the right to inspect and copy the books and records maintained by Big at all times upon reasonable notice. At Doe's request, Big shall retain a Certified Public Accountant to prepare an annual financial report for all expenditures and revenues from the program. Big shall provide Doe with quarterly accounting statements from the time the series begins to produce revenue.

**7. ASSIGNMENT:** Neither party may assign its rights and obligations pursuant to this Agreement without the prior written consent of the other.

**8. AGENCY:** The parties are entering into this Agreement as independent contractors, and neither party shall have the right to bind the other without the express written consent of the party to be bound.

**9. WARRANTIES:** Doe warrants and represents that he is free to enter into this agreement; and that to the best of his knowledge and belief all the rights and releases necessary for production of the series have been or will be secured; and that the production of this series will not violate or infringe the rights of any person, company or corporation. Both parties agree that they shall not accept any promotional consideration unless disclosed and approved by the other party. Both parties agree to hold each other harmless and indemnify each other for any breach of the warranties in this paragraph, including claims, damages and reasonable attorneys' fees.

**10. BREACH:** In the event Doe breaches his obligations under this agreement, Big shall have the right to terminate this agreement after Big gives written notice to Doe of his breach and Doe does not cure the breach within 30 days of his receipt of said notice. In the event of an uncured breach, Doe shall continue to be entitled to receive compensation for programs previously produced but shall not receive any compensation from future programs produced. In the event Big breaches its obligations under this agreement, Doe shall be entitled to monetary damages but no injunctive relief.

**11. ARBITRATION:** Any controversy or claim arising of or relating to this Agreement, shall be settled by binding arbitration in accordance with the arbitration service of California Lawyers for the Arts, and judgment upon the award may be entered into in any court of law. The prevailing party shall be entitled to reimbursement of all costs and reasonable attorneys' fees.

**12. ENTIRE UNDERSTANDING:** This Agreement contains the entire understanding of the parties with respect to the subject matter hereof; it may not be changed or amended except in writing signed by the parties; and it shall be construed and governed in accordance with the laws of the State of California. This Agreement shall inure to the benefit of, and shall be binding upon, the successors, heirs, executors and administrators of the parties.

AGREED TO AND ACCEPTED:

\_\_\_\_\_  
dba Big Productions

Date:

\_\_\_\_\_  
Doe

Date:

EXHIBIT - **Z**

**SAG MOTION PICTURE / TELEVISION  
AGENCY CONTRACT**

THIS AGREEMENT, made and entered into at \_\_\_\_\_, by and between \_\_\_\_\_, a talent agent, hereinafter called the "Agent", and \_\_\_\_\_, \_\_\_\_\_ (social security number) hereinafter called the "Actor".

WITNESSETH:

(1) The Actor engages the Agent as his agent for the following fields as defined in Screen Actors Guild Codified Agency. Regulations, Rule 16(g) and the Agent accepts such engagement:

[Theatrical Motion Pictures] [Television Motion Pictures]

If television motion pictures are included herein for purposes of representation and if during the term of this agency contract, the Actor enters into a series or term employment contract for services in television motion pictures, under which he agrees also to render services in program commercials or spots, this agency contract shall include representation of the Actor in connection with his employment in said commercials, and representation of the Actor in said commercials shall not be deemed included in any separate agency contract which the Actor may have entered into covering commercials.

This contract is limited to motion pictures in the above-designated field(s) and to contracts of the Actor as an actor in such motion pictures, and any reference herein to contracts or employment whereby Actor renders his services refers to contracts or employment in such motion pictures unless otherwise specifically stated.

(2) The term of this contract shall be for a period of \_\_\_\_\_, commencing \_\_\_\_\_, 199\_.

(3) (a) The Actor agrees to pay to the Agent as commissions a sum equal to \_\_\_\_\_ percent of all moneys or other consideration received by the Actor, directly or indirectly, under contracts of employment (or in connection with his employment under said employment contracts) entered into during the term specified in Paragraph (2) or in existence when this agency contract is entered into except to such extent as the Actor may be obligated to pay commissions on such existing employment contract to another agent. Commissions shall be payable when and as such moneys or other consideration are received by the Actor, or by anyone else for or on the Actor's behalf. Commission payments are subject to the limitations of Rule 16(g).

(b) Commissions on compensation paid to Actors for domestic reruns, theatrical exhibition, foreign exhibition or supplementary market exhibition of television motion pictures are subject to the provisions of Rule 16(g).

(c) Commissions on commercials included herein under paragraph (1) above shall be subject to the rules governing commercials provided by Rule 16(g).

(d) No commissions shall be payable on any of the following:

(i) Separate amounts paid to Actor not as compensation but for travel or living expenses incurred by Actor;

(ii) Separate amounts paid to Actor not as compensation but as reimbursement for necessary expenditures actually incurred by Actor in connection with Actor's employment, such as for damage to or loss of wardrobe, special hairdress, etc.;

(iii) Amounts paid to Actor as penalties for violations by Producer of any of the provisions of the SAG collective bargaining contracts, such as meal period violations, rest period violations, penalties or interest on delinquent payments;

(iv) Sums payable to Actors for the release on free television or for supplemental market exhibition of theatrical motion pictures produced after January 31, 1960, under the provisions of the applicable collective bargaining agreement providing for such payment; however, if an Actor's individual theatrical motion picture employment contract provides for compensation in the event the motion picture made for theatrical exhibition is exhibited over free television or in supplemental market exhibition, in excess of the minimum compensation payable under the applicable collective bargaining agreement in effect at the time the employment contract was executed, commissions shall be payable on such compensation.

(v) Sums payable to Actors for foreign telecasting on free television of television motion pictures and commercials under the provisions of the applicable collective bargaining agreements; however, if an individual Actor's contract provides for compensation in excess of minimum under the applicable collective bargaining agreements in effect at the time of employment, commissions shall be payable on such sums.

(vi) On any employment contract which is in violation of SAG collective bargaining agreements. For example, employment contracts providing for 'free days,' 'free rehearsal,' 'free looping,' "a break in consecutive employment," etc., shall not be commissionable. This paragraph is not subject to SAG waiver.

(vii) On any employment contract for television motion pictures which provide for any prepayment or buyout of domestic or foreign residuals or theatrical release, or supplemental market fees, other than those permitted by the appropriate SAG collective bargaining agreement, unless such provisions of individual employment contracts are expressly approved by SAG.

(e) Any moneys or other consideration received by the Actor, or by anyone for or on his behalf, in connection with any termination of any contract of the Actor by virtue of which the Agent would otherwise be entitled to receive commission, or in connection with the settlement of any such contract, or any litigation arising out of any such contract, shall also be moneys in connection with which the Agent is entitled to the aforesaid percentage; provided, however, that in such event the Actor shall be entitled to deduct attorneys' fees, expenses and court costs before computing the amount upon which the Agent is entitled to his percentage. The Actor shall also be entitled to deduct reasonable legal expenses in connection with the collection of moneys or other consideration due the Actor arising out of an employment contract in motion pictures before computing the amount upon which the Agent is entitled to his percentage.

(f) The aforesaid percentage shall be payable by the Actor to the Agent during the term of this contract and thereafter only where specifically provided herein and in the Regulations.

(g) The Agent shall be entitled to the aforesaid percentage after the expiration of the term specified in Paragraph (2) for so long a period thereafter as the Actor continues to receive moneys or other consideration under or upon employment contracts entered into by the Actor during the term specified in Paragraph (2) hereof, including moneys or other consideration received by the Actor under the extended term of any such employment contract, resulting from the exercise of an option or options under such an employment contract, extending the term of such employment contract, whether such options be exercised prior to or after the expiration of the term specified in Paragraph (2), subject, however, to the applicable limitations set forth in the Regulations.

(h) If during the period the Agent is entitled to commissions a contract of employment of the Actor be terminated before the expiration of the term thereof, as said term has been extended by the exercise of options therein contained, by joint action of the Actor and employer, or by the action of either of them, other than on account of Act of God, illness, or the like, and the Actor enters into a new contract of employment with said employer within a period of sixty (60) days, such new contract shall be deemed to be in substitution of the contract terminated as aforesaid, subject, however, to the applicable limitations set forth in the Regulations. No contract entered into after said sixty (60) day period shall be deemed to be in substitution of the contract terminated as aforesaid. Contracts of substitution have the same effect as contracts for which they were substituted; provided, however, any increase or additional salary, bonus or other compensation payable to the actor thereunder over and above the amounts payable under the contract of employment which was terminated shall be deemed an adjustment and, unless the Agent shall have a valid agency contract in effect at the time of such adjustment, the Agent shall not be entitled to any commissions on any such additional or increased amounts. In no event may a contract of substitution with an employer extend the period of time during which the Agent is entitled to commission beyond the period that the Agent would have been entitled to commission had no substitution taken place. A change in form of an employer for the purpose of evading this provision or a change in the corporate form of an employer resulting from reorganization or the like shall not preclude the application of these provisions.

(i) So long as the Agent receives commissions from the Actor, the Agent shall be obliged to service the Actor and perform the obligations of this agency contract with respect to the services of the Actor on which such commissions are based, unless the Agent is relieved therefrom under express provisions of the Regulations.

(j) The Agent has no right to receive money unless the Actor receives the same, or unless the same is received for or on his behalf, and then only in the above percentage when and as received. Money paid pursuant to legal process to the Actor's creditors, or by virtue of assignment or direction of the Actor, and deductions from the Actor's compensation made pursuant to law in the nature of a collection or tax at the source, such as Social Security, Old Age Pension taxes, State Disability taxes or income taxes shall be treated as compensation received for or on the Actor's behalf.

(4) Should the Agent, during the term specified in Paragraph (2), negotiate a contract of employment for the Actor and secure for the Actor a bona fide offer of employment, which offer is communicated by the Agent to the Actor in reasonable detail and in writing or by other corroborative action, which offer the Actor declines, and if, within sixty (60) days after the date upon which the Agent gives such information to the Actor, the Actor accepts said offer of em-

ployment on substantially the same terms, then the Actor shall be required to pay commissions to the Agent upon such contract of employment. If an agent engaged under a prior agency contract is entitled to collect commissions under the foregoing circumstances, the Agent with whom this contract is executed waives his commission to the extent that the prior agent is entitled to collect the same.

(5) (a) The Agent may represent other persons who render services in motion pictures, or in other branches of the entertainment industry.

(b) Unless and until prohibited by the Actor, the Agent may make known the fact that he is the sole and exclusive representative of the Actor in the motion picture fields covered hereby. However, it is expressly understood that even though the Agent has not breached the contract the Actor may at any time with or without discharging the Agent, and regardless of whether he has legal grounds for discharge of the Agent, by written notice to the Agent prohibit him from rendering further services for the Actor or from holding himself out as the Actor's Agent, and such action shall not give Agent any rights or remedies against Actor, the Agent's rights under this paragraph continuing only as long as Actor consents thereto but this does not apply to the Agent's right to commissions. In the event of any such written notice to the Agent the 91-day period set forth in Paragraph (6) of this agency contract is suspended and extended by the period of time that the Agent is prohibited from rendering services for the Actor.

(6) (a) If this is an initial agency contract and if actor fails to be employed and receive, or be entitled to receive compensation for ten (10) days' employment in the initial 151 days of the contract, provided further that if no bona fide offer of employment is received by the Actor within any consecutive period of 120 days during the initial 151 day period, or if during any other period of 91 days immediately preceding the giving of the notice of termination hereinafter mentioned in this paragraph, the Actor fails to be employed and receive, or be entitled to receive compensation for ten (10) days' employment, whether such employment is from fields under SAG's jurisdiction or any other branch of the entertainment industry in which the Agent may be authorized by written contract to represent the Actor, then either the Actor or Agent may terminate the engagement of the Agent hereunder by written notice to the other party, subject to the qualifications hereinafter in this paragraph set forth. Each day the Actor renders services or may be required to render services in motion pictures shall count as one (1) day's employment. For the purpose of determining what is a day's employment in other fields of the entertainment industry the following rules shall govern:

(i) Each separate original radio broadcast (including rehearsal time), whether live or recorded, and each transcribed program shall be considered a day's employment.

(ii) Each separate live television broadcast shall be considered a minimum of two (2) days' employment. However, each day spent in rehearsal over the minimum of two (2) days inclusive of the day of telecast, shall be considered an additional one-half (1/2) day's employment.

(iii) A rebroadcast, whether recorded or live, or by an off the line recording, or by a prior recording, or time spent in rehearsal for any employment in the radio broadcasting or radio transcription industry shall not be considered such employment. A retelecast of a live television program and a rerun of television motion picture entertainment film or commercial shall likewise not be considered such employment.

(iv) Each master phonograph record recorded by the Actor shall be one (1) day's employment.

(v) In all other branches of the entertainment industry, except as set forth above, each day the Actor renders services or may be required to render services for compensation shall count as one (1) day's employment.

(b) The 91 day period which is the basis of termination shall be extended by the amount of employment the Actor would have received from calls for his services in any other branch of the entertainment industry in which the Actor is a recognized performer and at or near the Actor's usual places of employment at a salary and from an employer commensurate with the Actor's prestige, which calls are actually received by the Agent and reported to the Actor in writing or by other corroborative action, when the Actor is in such a locality (away from his usual places of employment) that he cannot return in response to such a call, or when the Actor is unable to respond to such a call by reason of physical or mental incapacity or any other reason beyond his control, or by reason of another engagement in a field in which the Actor is not represented by the Agent; provided, however, that if the Actor is rendering services in another engagement in a field in which the Agent is authorized to represent the Actor, then the time spent in such engagement shall not be added to the 91 day period. Regardless of whether or not the Agent is authorized to represent the Actor on the legitimate stage, if the Actor accepts an engagement on the legitimate stage under a run of the play contract, the 91 day period which is the basis of termination shall be extended by the length of such run of the play contract including rehearsals. The 91 day period which is the basis of termination shall also be extended for any period of time during which the Actor has declared himself to be unavailable and has so notified the Agent in writing or by other corroborative action or has confirmed in writing or by other corroborative action a communication from the Agent to such effect.

(c) In the event that the Agent has given the Actor notice in writing or by other corroborative action, of a bona fide offer of employment as an actor in any branch of the entertainment industry in which the Actor is a recognized performer at or near his usual place of employment at a salary and from an employer commensurate with the Actor's prestige (and there is in fact such an offer), which notice sets forth in detail the terms of the proposed employment and the Actor refuses or fails within a reasonable time after receipt of such notice to accept such proffered employment, then the period of guaranteed employment in said offer shall be deemed as time worked by the Actor in computing time worked with reference to the right of the Actor to terminate under the provisions of this paragraph.

(d) The Actor may not exercise the right of termination if at the time he attempts to do so:

The Actor is under a contract or contracts for the rendition of his services in the entertainment industry, in any or all fields in which the Agent is authorized by written contract to represent the Actor, which contract or contracts in the aggregate guarantee the Actor:

(i) compensation for such services of Seventy Thousand (\$70,000.00) Dollars or more, or

(ii) Fifty (50) or more days' employment, during the 91 days in question plus the succeeding 273 days after said 91 day period.

(e) Saturdays, Sundays and holidays are included in counting days elapsed during the 91 and 273 day periods provided.

(f) No termination hereunder shall deprive the Agent of the right to receive commission or compensation on moneys earned or received by the Actor prior to the date of termination, or earned or received by the Actor after the date of termination of the Agent's engagement, on contracts for the Actor's services entered into by the Actor prior to the effective date of any, such termination.

(g) Periods of lay-off, leave of absence, or any periods during which the Actor is not performing and is prohibited from rendering services for others in the motion picture field under and during the term of any motion picture employment contract shall not be deemed periods of unemployment hereunder. The "term of any motion picture employment contract" as used in this subparagraph shall not include any unexercised options.

(h) Where the Actor does not actually render his services for which he has been employed but nevertheless is compensated therefor, the same shall be considered as employment hereunder. This shall not apply to employment on live television shows, which employment is computed according to the formula set forth in subparagraph (a) (ii) hereof.

(i) If, at any time during the term of the agency contract, the production of motion pictures in general (as distinguished from production at one or more studios) should be suspended, thereupon the 91-day period herein mentioned shall be extended by the period of such suspension.

(j) If the Actor is under an employment contract which provides that any part of the Actor's guaranteed compensation shall be deferred or if said compensation is spread over a period prior or subsequent to the time of the actual performance of Actor's services under said employment contract, then for the purpose of determining the Actor's right to terminate under the provisions of subparagraph (d) hereof, the guaranteed compensation shall be deemed to have been paid to the actor during the period of \*the actual performance of Actor's services under said employment contract.

(k) Anything herein to the contrary notwithstanding, if the Agent submits to the Actor a bona fide offer of employment in writing or by other corroborative action, as defined in Paragraph (6) subparagraph (c), after the right of termination has accrued under Paragraph (6) but the Actor has not yet terminated the agency contract, and if the Actor thereafter terminates the agency contract pursuant to Paragraph (6) and thereafter accepts the offer within sixty (60) days of the date of submission of the offer to the Actor by the agent, the Actor shall pay the Agent commission on the compensation received by the Actor pursuant to such offer.

(l) Other than in cases of initial agency contracts subject to the 151 day clause provided by the first paragraph of this paragraph (6), the right of termination provided by the 91 day termination provisions of this Paragraph (6), the Actor shall also have the right of termination beginning with the 82nd day of the 91 day period whenever it becomes apparent that the Agent will be unable to procure the required employment pursuant to this Paragraph (6) during such 91 day period. In considering whether it has become so apparent, the possibility that after the Actor exercises the right of termination, the Agent might preclude exercise of the right by compliance with subparagraphs (b), (c) or (d) hereof, shall be disregarded. To illustrate: If the Actor has had no employment for 82 days, Actor may terminate on the 82nd day, since only 9 days remain,

and Agent cannot obtain 10 days' employment for the Actor in such period. If Actor received one day's employment in 83 days, Actor may terminate on the 83rd day, since only 8 days remain, and Agent cannot obtain 10 days' employment for Actor in such period.

(m) Employment at SAG minimum shall be deemed "employment" and/or "work" for purposes of this Paragraph (6).

(7) Rule 16(g) of the Screen Actors Guild, Inc. which contains regulations governing the relations of its members to talent agents is hereby referred to and by this reference hereby incorporated herein and made a part of this contract. The provisions of said Rule are herein sometimes referred to as the "Regulations" and the Screen Actors Guild, Inc. is herein sometimes referred to as "SAG."

(8) The Agent agrees that during the term of this contract the following persons only shall have the responsibility of personally supervising the Actor's business and of servicing and being available to the Actor. The name of one of the persons shall be inserted in the Actor's own handwriting.

*(This italicized provision is a note from SAG to the Actor and not a part of the contract. If the Actor is executing this contract in reliance on the fact that a particular person is connected with the Agent, then the Actor should insert only such person's name in the space following. If the Actor is not executing this contract in reliance on such fact, then the Agent shall insert not more than one name, and the Actor shall insert one name.)*

The Agent upon request of the Actor, shall assign either one of such persons who may be available (and at least one of them always shall be upon reasonable notice from the Actor) and whom the Actor may designate to conduct negotiations for the Actor at such city or its environs and such person shall do so; it being understood that sub-agents employed by the Agent who are not named herein may handle agency matters for the Actor or may aid either of the named persons in handling agency matters for the Actor. In the event both of the persons above named shall cease to be active in the affairs of the Agent by reason of death, disability, retirement or any other reason, the Actor shall have the right to terminate this contract upon written notice to the Agent. The rights of the parties in such case are governed by Sections XI and XII of the Regulations.

9) The Agent agrees to maintain telephone service and an office open during all reasonable business hours (emergencies such as sudden illness or death excepted) within the city of \_\_\_\_\_, or its environs, throughout the term of this agreement and that some representative of the Agent will be present at such office during such business hours. This contract is void unless the blank in this paragraph is filled in with the name of a city at which the Agent does maintain an office to render services to actors.

(10) If the Actor is employed under a series or term contract the Actor shall have the right to terminate this contract during the 30day period immediately following any annual anniversary date of the series or term contract then in effect by giving the Agent 30 days' written notice of his intention to so terminate this contract. Exercise of this termination right shall not affect the Actor's commissions obligation hereunder.

(11) Any controversy under this contract, or under any contract executed in renewal or extension hereof or in substitution hereof or alleged to have been so executed, or as to the existence, execution or validity hereof or thereof, or the right of either party to void this or any such contract or alleged contract

on any grounds, or the construction, performance, nonperformance, operation, breach, continuance or termination of this or any such contract, shall be submitted to arbitration in accordance with the arbitration provisions in the Regulations regardless of whether either party has terminated or purported to terminate this or any such contract or alleged contract. Under this contract the Agent undertakes to endeavor to secure employment for the Actor. This provision is inserted in this contract pursuant to a rule of the SAG, a bona fide labor union, which Rule regulates the relations of its members to talent agents. Reasonable written notice shall be given to the Labor Commissioner of the State of California of the time and place of any arbitration hearing hereunder. The Labor Commissioner of the State of California, or his authorized representative, has the right to attend all arbitration hearings. The clauses relating to the Labor Commissioner of the State of California shall not be applicable to cases not failing under the provisions of Section 1700.45 of the Labor Code of the State of California.

(12) Both parties hereto state and agree that they are bound by the Regulations and by all of the modifications heretofore or hereafter made thereto pursuant to the Basic Contract and by all waivers granted by SAG pursuant to said Basic Contract or to the Regulations.

(13) (a) Anything herein to the contrary notwithstanding, if the Regulations should be held invalid, all references thereto in this contract shall be eliminated; all limitations of the Regulations on any of the provisions of this contract shall be released. and the portions of this contract including, but not limited to Paragraphs (8) and (11) which depend upon reference to the Regulations shall be deleted, and the provisions of this contract otherwise shall remain valid and enforceable.

(b) Likewise, if any portion of the Regulations should be held invalid, such holding shall not affect the validity of remaining portions of the Regulations or of this contract; and if the portion of the Regulations so held invalid should be a portion specifically referred to in this contract, then such references shall be eliminated herefrom in the same manner and with like force and effect as herein provided in the event the Regulations are held invalid; and the provisions of this contract otherwise shall remain valid and enforceable.

Whether or not the Agent is the Actor's agent at the time this contract is executed, it is understood that in executing this contract each party has independent access to the Regulations and has relied exclusively upon his own knowledge thereof.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Actor

\_\_\_\_\_  
Agent

By:

This talent agent is licensed by the Labor Commissioner of the State of California.

This talent agent is franchised by the Screen Actors Guild, Inc.  
The form of this contract has been approved by the State Labor Commissioner  
of the State of California on January 11, 1991.

This form of contract has been approved by the Screen Actors Guild, Inc.

EXHIBIT - AA

## TV MUSIC RIGHTS LICENSE

1. In consideration of the payment of \_\_\_\_\_, and upon the payment of it to the undersigned, the undersigned does hereby grant to Licensee the non-exclusive, irrevocable right and license to record the following copyrighted musical composition(s) (the "Compositions") in synchronization or timed-relation with a picture produced by Licensee (the "Picture") for television broadcast and exhibition only, and known as:

Title:

Composer:

Publisher:

Length of Composition & Manner of Use:

2. This is a license to record only, and the exercise of the recording rights herein granted is conditioned upon performance of the Composition(s) over television stations having valid licenses from the copyright owner ("the Owner"), or from the person, firm, corporation or other entity having the legal right to issue performance rights licenses for the Owner in the respective territories in which the Composition(s) shall be performed. The Composition(s) shall not be used in any manner and media or be recorded for any other purpose, except those specifically set forth herein, without the express written consent of the Owner. No sound recordings produced pursuant to this license are to be manufactured, sold and/or used separately from the Picture; and the Picture shall not be exhibited in or televised into theaters or other public places of amusement where motion pictures are customarily exhibited.

3. This license is granted for the following territory: The United States, its territories and possessions.

4. This license shall end on \_\_\_\_\_. Upon such date rights herein granted shall immediately cease and end, and the right derived from this license to make or authorize any further use or distribution of the Picture with the licensed music shall also cease and end upon such date.

5. This license cannot be assigned or transferred without the express written consent of the undersigned.

6. The undersigned warrants, on behalf of the principal for whom the undersigned is acting, that it is the owner of the recording rights herein licensed, and this license is given without other warranty or recourse, except to repay the consideration paid for this license if said warranty shall be breached. The undersigned's warranty is limited to the amount of consideration paid for this license; and the undersigned further reserves all rights and uses in and to the Composition(s) not herein specifically granted.

\_\_\_\_\_  
Publisher

AGREED AND ACCEPTED:

\_\_\_\_\_  
Producer

EXHIBIT - **BB**

## SOUNDTRACK RECORDING AGREEMENT

THIS AGREEMENT, is made as of the \_\_\_ day of \_\_\_\_\_, 1993 by and between \_\_\_\_\_ ("Company") and \_\_\_\_\_ f/s/o \_\_\_\_\_ and \_\_\_\_\_ f/s/o \_\_\_\_\_ in connection with a master sound recording (the "Master") embodying the musical composition entitled \_\_\_\_\_ (the "Composition"), for possible inclusion in the theatrical motion picture presently entitled \_\_\_\_\_ (the "Picture"), and in a soundtrack album (the "Album") and any other phonograph records to be derived therefrom. \_\_\_\_\_ and \_\_\_\_\_ are hereafter referred to jointly and severally as "Lender", and \_\_\_\_\_ and \_\_\_\_\_ are hereafter jointly and severally referred to as "Artist." In consideration of the mutual covenants made herein, Company and Artist hereby agree as follows:

**1. SERVICES TO BE PROVIDED:** Company hereby employs Lender to cause Artist to render Artist's vocal and/or musical services to record the Master for possible inclusion in the Picture. Artist shall comply with all of Company's instructions and requests in connection with Artist's services hereunder. Artist shall render such services upon the terms and conditions set forth herein and in accordance with a production schedule to be designated by Company in its sole discretion.

**2. TERM:** The term of this Agreement shall commence as of the date hereof and shall continue thereafter until such time as Artist has fully rendered all of Artist's services required hereunder.

**3. OWNERSHIP:**

(a) All results and proceeds of Artist's services hereunder shall constitute or contribute to a work specially ordered or commissioned by Company for use as part of a motion picture or other audio-visual work and accordingly all such results and proceeds shall constitute a "work-made-for-hire" (as such term is defined in the United States Copyright Act of 1976). Company shall own the Master, together with the performances embodied thereon and all copyrights therein and thereto, and all the results and proceeds of Artist's services hereunder throughout the universe in perpetuity, free of any and all claims by Lender, Artist or any person, corporation or other entity deriving any rights from Lender or Artist.

(b) Without limiting the generality of clause 3(a) hereof, Company shall have the exclusive, perpetual and worldwide right, but not the obligation, to use and perform the Master, and the results and proceeds of Artist's services hereunder:

(i) in synchronization with the Picture and any other audio-visual works for exploitation in any and all media now known or hereafter devised (including, but not limited to, audio-visual devices), and in advertisements, trailers, "music videos" and other promotional and ancillary uses of the Picture or such other audio-visual work; and

(ii) to manufacture, sell, distribute and advertise the Album and any other phonograph records embodying the Master by any methods and in any configurations now known or hereafter devised; for the release of same under any trademarks, tradenames or label; to perform the Album and any other phonograph records derived therefrom publicly; and to commit to public performance thereof by radio and/or television, or by any other media now known or hereafter devised, all upon such terms and conditions as Company may approve, and to permit any other person, corporation or other entity to do any or all of the foregoing.

**4. NAME AND LIKENESS:** Lender hereby grants to Company the irrevocable worldwide right, in perpetuity, to use and permit others to use Lender's or Artist's name, voice, approved photograph, likeness and biographical material concerning Artist in connection with the Picture, Master, Album and any other phonograph records derived therefrom and any promotions and advertisements thereof. Any photograph, likenesses or biographical material submitted or furnished by Lender or Artist to Company shall be deemed approved, and, promptly following the execution of this Agreement, Lender shall submit to Company a reasonable assortment of approved photographs, likenesses and biographical materials for use by Company in connection herewith. All such materials submitted by Company to Lender for approval (which approval shall not be unreasonably withheld) shall be deemed given in the event Lender fails to submit written objections thereto within five (5) days after the applicable photographs, likenesses and/or biographical materials have been submitted to Lender for approval.

**5. PRE-RECORDING:** Company shall have the right to re-record, edit, mix and re-mix, dub and re-dub the Master in Company's sole discretion, and nothing contained herein shall be construed to obligate Company to employ Artist in connection with same.

**6. COMPENSATION:**

(a) Provided Lender and Artist fully perform all their material obligations under Clause 1 above, and in full consideration of all rights granted herein, Company shall pay or cause to be paid to Lender, upon the later to occur of the date of the full completion of all of Lender's or Artist's services hereunder, or the date of Lender's and Artist's execution hereof, an amount equal to the minimum scale amount specified for Artist's recording services hereunder in any applicable union collective bargaining agreements. The provisions of any applicable union collective bargaining contract between Company and any labor organization which are required by the terms of such contract to be included in this Agreement shall be deemed incorporated herein.

(b) It is specifically understood and agreed that the sums set forth in this Clause 6 and the record royalties set forth in Clause 7 below shall constitute

payment in full to Lender and Artist, and to all persons or entities deriving or claiming rights through either Lender and/or Artist.

## 7. ROYALTIES:

(a) With respect to the exploitation of the Master if embodied on the Album or other phonograph records derived therefrom, Company shall pay or cause any phonograph record distributor ("Distributor") of the Album, Single or phonograph records derived therefrom, to pay to Lender a basic royalty at the rate of five (5%) percent (the "Basic Album Rate") of the applicable suggested retail list price ("SRLP") in respect of net sales of Albums sold through normal retail channels in the United States in the form of black vinyl discs and cassettes, pro-rated by multiplying the applicable royalty rate by a fraction, the numerator of which is the number one (1), and the denominator of which is the total number of master recordings, including the Master, contained on the Album (the "Lender Fraction").

(b) The royalty payable to Lender hereunder for singles, budget records, compact discs, foreign record sales and other sales of records or exploitations of the Master shall be reduced and pro-rated in the same proportion that the basic United States Album rate payable to Company in respect of the Album (the "Basic Distributor Rate") is reduced or pro-rated pursuant to Company's agreement with the applicable Distributor, provided that with respect to such sales of records or exploitations of the Master for which Company receives a royalty which is computed as a flat fee or as a percentage of the Distributor's net receipts from such use, Lender's royalty hereunder in respect of such sale or use shall be equal to the amount of Company's flat fee or net receipts, multiplied by the product of the following:

$$\frac{\text{Basic Album Rate}}{\text{Basic Distributor Rate}} \times \text{Lender Fraction}$$

(c) Except as otherwise provided in this Agreement, Lender's royalties hereunder shall be computed, determined, calculated and paid to Lender on the same basis (e.g., packaging deductions, free goods, reserves, definition of suggested retail list price, percentage of sales, discounts, returns policy, taxes, etc.) and at the same times as royalties are paid to Company by the applicable Distributor.

(d) Notwithstanding anything to the contrary contained in this Agreement, (i) Lender shall not be entitled to receive any record royalties at all with respect to records sold prior to the recoupment of all Recording Costs and Conversion Costs from the royalties otherwise payable to Lender hereunder; and (ii) following such recoupment Lender's royalties shall be credited to Lender's account hereunder solely in respect of records thereafter sold which embody the Master. The term "Recording Costs" shall mean all direct costs incurred in the course of producing and recording the Master hereunder including, without limitation, the cost of studio time, musician fees, union payments, instrument rentals, producer's fees and advances and the costs of tape, editing, mixing, re-mixing and mastering and other similar costs customarily regarded as recording costs in the phonograph record industry. The term "Conversion Costs" shall mean all direct costs incurred in connection with the conversion of the Master from use in the Picture to use in the Album and other phonograph records derived therefrom including, without limitation, new-use, re-use, re-mixing, and re-editing costs and all other costs which are now or hereafter recognized as conversion costs in the phonograph record and motion picture industries.

(e) Lender shall be deemed to have consented to all royalty statements and all other accounts rendered by Company, unless specific objection in writing, stating the basis thereof, is given by Leader to Company within one (1) year from the date such statement is rendered. During this one (1) year period, Lender may, at its expense, but not more than once annually, audit the books and records of Company, solely in connection with royalties payable to Lender pursuant to this Agreement, provided such audit is conducted by a reputable certified public accountant during business hours and upon reasonable written notice. Lender shall be foreclosed from maintaining any action, claim or proceeding against Company in any forum or tribunal with respect to any statement or accounting rendered hereunder unless such action, claim or proceeding is commenced against Company in a court of competent jurisdiction within one (1) year after the date on which Company receives Lender's written objection.

#### **8. CREDITS:**

(a) If the Master is contained in the Picture, Company shall accord Artist a credit in substantially the following form in the end titles of release prints of the Picture approximately adjacent to the titles of the Composition:

“WRITTEN BY (name of writer ) AND  
(name of other, writer )”

“PERFORMED BY (name of performer ) AND  
(name of other performer )”

The type, size, shape, color, placement, duration and all other characteristics of the credit shall be at Company's sole and absolute discretion. Without limiting the generality of the foregoing, such credit may be shared with and/or adjacent to credits relating to other contributors to the Master and/or the Composition.

(b) No casual or inadvertent failure by Company or any failure by a third party to comply with the provisions of this Clause 8 shall constitute a breach of this Agreement.

**9. WARRANTIES:** Lender, on its own and on Artist's behalf, hereby warrants and represents that:

(a) it has the full right, power and authority to enter into this Agreement and to grant all rights granted herein, that it is not under nor will it be under, any disability, restriction or prohibition with respect to its rights to fully perform in accordance with the terms and conditions of this Agreement and that there shall be no liens, claims or other interests which may interfere with, impair or be in derogation of the fights granted herein;

(b) the Master shall be freely available for use by Company in the Album, the Single(s) and other phonograph records and in the Picture in all media (whether now known or hereafter devised) in which the Picture is to be distributed (and in any and all advertising therefor), throughout the world including, without limitation, in theaters, free and pay television, in home video devices, and in radio, television and theatrical trailers, without further payment by Company, except as set forth herein;

(c) any party who may be entitled to Artist's exclusive recording services shall have given a written waiver of such rights in connection with Company's exploitation of the Master as herein provided;

(d) Company shall not be required to make any payments of any nature for, or in connection with, the acquisition, exercise or exploitation of rights by Company pursuant to this Agreement except as specifically provided in this Agreement;

(e) neither Lender nor Artist shall, prior to the date five (5) years after the delivery of the Master, produce or re-record or authorize the production or re-recording of the Composition for any third party; and

(f) neither the Master, nor the Composition nor any other material supplied by Artist will violate or infringe upon any common law or statutory right of any person, firm or corporation including, without limitation, contractual rights, copyrights, and rights of privacy.

**10. INDEMNITY:** Lender hereby agrees to indemnify Company, Company's successors, licensees, distributors, sub-distributors and assigns, and the respective officers, directors, agents and employees of each of the foregoing, from and against any damages, liabilities, costs and expenses, including reasonable attorneys' fees actually incurred, arising out of or in any way connected with any claim, demand or action inconsistent with this Agreement or any warranty, representation or agreement made by Lender and/or Artist herein.

**11. UNIQUE SERVICE:** Lender acknowledges that the services performed by Artist hereunder and the rights hereunder granted are of a special, unique, extraordinary and unusual character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, and that any default by Lender and/or Artist will cause Company irreparable harm and injury. Lender agrees that Company shall be entitled to seek injunctive and other equitable relief in addition to Company's remedies at law, in the event of any default by Artist.

**12. REMEDIES FOR BREACH:** Lender's rights and remedies in the event of a breach or alleged breach of this Agreement by Company shall be limited to Lender's right to recover damages in an action of law and in no event shall Lender be entitled by reason of any such breach or alleged breach to enjoin, restrain, or to seek to enjoin or restrain, the distribution or other exploitation of the Picture, Album, Single, or other work which may embody the Master. This Agreement shall not be deemed to give any right or remedy to any third party whatsoever unless the right or remedy is specifically granted by the parties hereto in writing to the third party. Lender shall execute any further documents necessary to fully effectuate the intent and purposes of this Agreement.

**13. ASSIGNMENT:** Company shall have the right, at Company's election, to assign any of Company's rights hereunder, in whole or in part, to any person, firm or corporation including, without limitation, any distributor or subdistributor of the Picture, Album or other phonograph records derived therefrom, or other work which may embody the Master. Lender shall not assign rights without Company's prior written consent and any attempted assignment without such consent shall be void and shall transfer no rights to the purported assignee.

**14. ENTIRE AGREEMENT:** This Agreement sets forth the entire understanding of the parties thereto relating to the subject matter hereof and supersedes all prior agreements, whether oral or written, pertaining thereto. No modification, amendment, or waiver of this Agreement or any of the terms or provisions hereof shall be binding upon Lender or Company unless confirmed by a written instrument signed by authorized officers of both Lender and Company. No waiver by Artist

or Company of any terms or provisions of this Agreement or of any default hereunder shall affect their respective rights thereafter to enforce such term or provision or to exercise any right or remedy upon any other default, whether or not similar.

**15. RIGHT TO CURE:** No failure by Company to perform any of Company's obligations hereunder shall be deemed a breach hereof, unless Lender gives Company written notice of such failure and Company fails to cure such nonperformance within thirty (30) days after Company's receipt of such notice.

**16. NOTICES:** All notices hereunder shall be sent certified mail, return receipt requested, or delivered by hand to the applicable address set forth below; unless and until written notice of a change of address, sent via registered mail is received by the other party.

If to Company: \_\_\_\_\_ . Courtesy copies to: \_\_\_\_\_ .

If to Lender: \_\_\_\_\_ .

Notwithstanding the foregoing, all accounting statements and payments may be sent by regular mail. Except as required by law, the date of mailing of such notice shall be deemed the date upon which such notice was given or sent.

**17. APPLICABLE LAW:** This Agreement has been entered into in the State of California, and its validity, construction, interpretation and legal effect shall be governed by the laws of the State of California applicable to contracts entered into and performed entirely within the State of California. The California Courts will have jurisdiction in any controversies regarding this Agreement; and, any action or other proceeding which involves such a controversy will be brought in the courts located within the State of California and not elsewhere. Any process in any action or proceeding commenced in the courts of the State of California arising out of any such claim, dispute or disagreement, may, among other methods, be served upon Lender by delivering or mailing the same, via registered or certified mail, addressed to Lender at the address first above written or such other address as Lender may designate at the address first above written or such other address as Lender may designate pursuant to clause 16 hereof. Any such delivery or mail service shall be deemed to have the same force and effect as personal service with the State of California. This Agreement shall not become effective until signed by a duly authorized officer of Lender and countersigned by a duly authorized officer of Company.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the year and date first above written.

COMPANY

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

Accepted And Agreed To:

LENDER

By \_\_\_\_\_

## INDUCEMENT AGREEMENT

In order to induce \_\_\_\_\_ ("Company") to enter into the foregoing agreement ("Agreement") with (name of first artist's loan-out company) and (name of second artist's loan-out company), the undersigned hereby:

(a) acknowledges that he has read and is familiar with all the terms and conditions of the Agreement;

(b) assents to the execution of the Agreement and agrees to be bound by those provisions of the Agreement that relate to the undersigned in any way, including the services to be rendered thereunder by the undersigned and restrictions imposed upon the undersigned in accordance with the provisions of the Agreement;

(c) acknowledges and agrees that Company shall be under no obligation to make any payments to the undersigned or otherwise, for or in connection with this inducement and for or in connection with the services rendered by the undersigned or in connection with the rights granted to Company thereunder and the fulfillment of the undersigned's obligations pursuant to the Agreement, and that the undersigned shall look solely to (name of artist's loan-out company) for payment of any sums due him in connection with his services under the Agreement.

---

Artist

EXHIBIT - CC

## FINDER AGREEMENT

THIS AGREEMENT, made and entered into as of \_\_\_\_\_, by and between \_\_\_\_\_, Inc. (Finder) and \_\_\_\_\_ Productions (Producer) with respect to the following facts:

A. Producer owns, controls or otherwise has the right to produce a screenplay tentatively entitled \_\_\_\_\_ ("Picture") written by \_\_\_\_\_ as an employee for hire of \_\_\_\_\_ Productions.

B. Finder is a company engaged in financing and distribution activities in the motion picture business.

C. The parties want to enter an agreement whereby Finder would be encouraged to introduce Producer to third parties (herein collectively referred to as the "Financier" or "Financiers"), who may be interested in lending for, investing in, or in any other way financing all or a portion of development, production and/or distribution of the Picture.

WHEREFORE, for good and valuable consideration, the parties agree as follows:

**1. SERVICES; TERM:** Commencing on the date hereof, and continuing until the earlier of (a) termination by either party of this Agreement, or (b) the concluding of an agreement between Producer (or any designee, assignee, transferee, or other successor-in-interest of Producer in or to the Screenplay and/or Picture, collectively referred to hereinafter as "Producer") and a Financier, Finder shall use its best efforts to introduce Producer to parties who may be interested in financing, investing or lending money with respect to the production of the Picture or otherwise in becoming a Financier. The foregoing period of time is hereinafter referred to as the "Term."

**2. COMPENSATION:** If at any time during the Term or any time thereafter, Producer enters into any agreement with any Financier to invest in, lend for, or finance production and/or distribution of the Picture, then Finder shall receive an amount equal to five percent of the amount of any funds, credits or other consideration paid or lent by Financiers to Producer and used by Producer in the development and Production of the Picture, provided, that the amounts paid to Finder shall not exceed a total of forty-five thousand dollars (\$45,000). [Moreover, if Finder obtains ninety percent (90%) or more of the total financing needed to produce the Picture, \_\_\_\_\_ and \_\_\_\_\_ shall receive "Executive Producer" credits] Finder shall receive the Commission when Producer has the right to use the amounts.

**3. NO OBLIGATION:** Nothing in this agreement shall obligate Producer to enter into an agreement with any Financiers.

**4. NO SALE OF SECURITIES:** Finder agrees not to sell or offer to sell securities related to investing in the development and/or production of the Picture. Finder agrees to indemnify and hold Producer harmless from all damage and expense (including reasonable attorneys' fees) upon a breach or claim of breach of this provision.

**5. RELATIONSHIP OF THE PARTIES:** Finder is an independent contractor and shall not act as an employee, agent or broker of Producer.

**6. FINDER'S REPRESENTATIONS AND WARRANTIES:** Finder represents and warrants to Producer that the following statements are true and correct in all respects:

(a) Finder is in the business of arranging financing and international distribution of motion pictures, has substantial experience in said business, is not insolvent or in any danger of insolvency or bankruptcy, and is not in dissolution proceedings.

(b) Finder represents and warrants to Producer that he has the full and complete authority to enter into this agreement, and that there are no outstanding claims or litigation pending against Finder.

If Finder breaches any of its warranties and representations, or otherwise breaches this agreement, Producer, in addition to its other equitable and legal remedies, may rescind this agreement and recover any reasonable amounts expended by Producer in developing or exploiting this property with Finder, and reasonable attorney' fees. Finder shall at all times indemnify and hold Producer, its licensees, assigns, officers, employees and agents harmless against and from any and all claims, damages, liabilities cost and expenses, including reasonable attorneys' fees arising out of any breach or alleged breach by Finder of any of representation, warranty or other provision hereof.

**7. DISTRIBUTION RIGHTS:** If Producer licenses foreign theatrical distribution rights to Finder pursuant to paragraph 2 above, the following provisions shall be included in any agreement between Producer ("Licensor") and Finder ("Licensee"):

(a) "Security Interest: As security for the payment to Licensor of fees due under this agreement, Licensee does hereby grant, assign and convey a continuing security interest in all Licensee's right, title and interest in all properties and revenues relating to the Picture, including but not limited to the following: the Picture, all distribution, sub-distribution and exhibition contracts, rentals, rights and revenues, whether now existing or owned or hereafter entered into, or acquired by Licensee and all sums due or to become due from the foregoing in any form and from any source (all of which are hereinafter referred to as "Collateral"). Licensor's security interest in collateral shall be prior to the rights of all other parties in such collateral."

(b) "Licensor agrees to commit and spend a minimum of one million dollars (\$1,000,000) to advertise and publicize the Picture."

(c) "Licensee shall pay late charges of one and one-half (1 1/2%) per month on any amounts due Licensor that are more than ten days delinquent."

(d) "The occurrence of any of the following events shall constitute a default:

(i) Any material misrepresentation or breach of warranty in this agreement.

(ii) Nonpayment, when due, of any amount payable hereunder or failure of Licensee to perform any obligation contained herein.

(iii) Insolvency of Licensee, assignment for the benefit of creditors by Licensee, or institution of any proceeding by or against Licensee alleging that Licensee is insolvent.

(iv) Dissolution, merger or consolidation of Licensee or transfer of a substantial part of its property.

On any default hereunder, Licenser shall have the option of making all remaining installments on the note immediately due and payable.

No delay by Licenser in the exercise of any right under this agreement shall operate as a waiver thereof and no partial exercise by Licenser of any right or remedy hereunder shall preclude further exercise of any other right or remedy.

If suit is commenced by Licenser to collect any payment, Licensee shall pay to Licenser a reasonable attorneys' fee. Licensee shall pay a reasonable collection charge should collection be referred to a collection agency. Licensee hereby waives (1) presentment, demand, protest, notice of dishonor and/or protest and notice of non-payment."

(e) Distribution fee: Licensee shall receive 30% of receipts as a distribution fee. Any sub-distributors, sales agents or other distributors engaged by Licensee shall be compensated by Licensee entirely from its 30% distribution fee.

**8. ADDITIONAL DOCUMENTS:** Finder agrees to execute, acknowledge and deliver to Producer and to procure the execution, acknowledgement and delivery to Producer of any additional documents or instruments which Producer may reasonably require to fully effectuate and carry out the intent and purposes of this agreement.

**9. ARBITRATION:** Any controversy or claim arising out of or relating to this Agreement or the validity, construction or performance of this Agreement or the breach thereof, shall be resolved by arbitration according to the rules and procedures of the American Arbitration Association, as they may be amended. Such rules and procedures are incorporated herein and made a part of this Agreement by reference. The parties agree that they will abide by and perform any award rendered in any such arbitration and that any court having jurisdiction may issue a judgment based upon the award. Moreover, the prevailing party shall be entitled to reimbursement of reasonable attorneys' fees and costs.

**10. ASSIGNMENT:** Finder shall not have the right to assign this agreement or any part hereof.

**11. SECTION HEADINGS:** The headings of paragraphs, sections and other subdivisions of this agreement are for convenient reference only. They shall not be used in any way to govern, limit, modify, construe this agreement or any part or provision thereof or otherwise be given any legal effect.

**12. ENTIRE AGREEMENT:** This agreement contains the full and complete understanding and agreement between the parties with respect to the within subject matter, and supersedes all other agreements between the parties whether written or oral relating thereto, and may not be modified or amended except by written instrument executed by both of the parties hereto. This agreement

shall in all respects be subject to the laws of the State of California applicable to agreements executed and wholly performed within such State.

AGREED TO AND ACCEPTED:

\_\_\_\_\_  
"Finder"

\_\_\_\_\_  
"Producer"

EXHIBIT - **DD**

# PRIVATE PLACEMENT MEMORANDUM

Jane Doe PRODUCTIONS

a California limited partnership to be formed

Dated:

THESE SECURITIES INVOLVE A HIGH DEGREE OF RISK  
AND SHOULD NOT BE PURCHASED BY PERSONS WHO  
CANNOT AFFORD THE LOSS OF THEIR ENTIRE INVESTMENT

Jane Doe and JOHN DOE  
General Partners

offer \$24,500

of limited partnership interests

of \$500.00 each

to finance the equity-waiver production of

“ \_\_\_\_\_ ”

By \_\_\_\_\_

By Jane Doe Productions,  
a California limited partnership to be formed

THESE SECURITIES ARE BEING OFFERED UNDER AN EXEMPTION FROM  
REGISTRATION PURSUANT TO SECURITIES AND EXCHANGE COMMISSION  
RULE 504 AND CALIFORNIA CORPORATIONS CODE SECTION 25102(f).  
WHETHER THESE SECURITIES ARE EXEMPT FROM REGISTRATION PURSU-  
ANT TO RULE 504 OR OTHERWISE HAS NOT BEEN PASSED UPON BY THE  
SECURITIES AND EXCHANGE COMMISSION, THE DEPARTMENT OF CORPO-

RATIONS OF THE STATE OF CALIFORNIA OR ANY OTHER REGULATORY AGENCY NOR HAS ANY SUCH AGENCY PASSED UPON THE MERITS OF THIS OFFERING. ANY REPRESENTATION TO THE CONTRARY OR ANY REPRESENTATION THAT ANY REGULATORY AGENCY HAS PASSED UPON THE ACCURACY OR COMPLETENESS OF THIS MEMORANDUM OR THE LIMITED PARTNERSHIP AGREEMENT ACCOMPANYING IT IS A CRIMINAL OFFENSE.

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## A. THE OFFERING

Jane Doe and John Doe (the "Producers") intend to present "\_\_\_\_\_" (the "Play") in a limited nine-week engagement in the \_\_\_\_\_ Theatre 99-seat equity-waiver theatre in Los Angeles starting \_\_\_\_\_.

The Producers have obtained from the author of the play an option for the exclusive right and license to produce the play in Los Angeles to open on or before \_\_\_\_\_. After presenting the play for an initial run in Los Angeles, the Producers have the option to present the play as a First-Class production or as an off-Broadway or off-off-Broadway or regional theatre presentation in the United States and Canada. The Producers will obtain a five percent (5%) interest in the subsidiary rights to the play if the play is presented by producers for 49 or more performances in accordance with the terms of the Literary Option Agreement (Attached as Exhibit A to the Limited Partnership Agreement).

Jane Doe and John Doe intend to form a limited partnership (the "Partnership") under the name of "JANE DOE PRODUCTIONS, A CALIFORNIA LIMITED PARTNERSHIP." The net profits (as defined in the Partnership Agreement) will be distributed as follows:

1. Jane Doe shall receive twenty-five percent (25%) of the net profits as General Partner and Producer of the Partnership;
2. John Doe shall receive twenty-five percent (25%) of the net profits as General Partner and Producer of the Partnership;
3. The remaining fifty percent (50%) of the net profits will be distributed to the Limited Partners in proportion to their respective contributions. If there are no net profits, the Limited Partners will bear the risk of loss to the entire extent of their respective contributions. Any loss in excess of that amount will be borne by the General Partners. The General Partners may elect to purchase Limited Partnership interests in the Partnership and as such will be entitled to their pro rata share of Limited Partnership profits and losses. Any other profits derived by the Partnership will be distributed in the same manner.

The minimum fixed amount that each individual Limited Partner must contribute is \$500.00. A contribution of \$500.00 entitles a Limited Partner to one and two hundredth's percent (1.02%) of the net profits. There shall be no call for additional contributions from the Limited Partners.

The rights and obligations of the General and Limited Partners are set forth in the Limited Partnership Agreement. This must be signed by all the Limited Partners with the investor questionnaire. All forms may be obtained from Jane Doe at \_\_\_\_\_.

## B. RISK TO INVESTORS

1. The sole business of the Partnership will be the equity waiver production of the Play. In such a venture, the risk of loss is especially high in comparison with the prospect for any profits. The Partnership interests should not be purchased unless the investor is prepared for the possibility of total loss of the investment.

2. On the basis of a nine-week run and 37 performances, and on the basis of the estimated expenses as of the date of this Offering, capital recoupment of the investment will occur at 73% of theatre capacity.

3. The General Partners, at their absolute discretion, may abandon the production of the Play at any time, for any reason whatsoever.

4. If the General Partners arrange for loans or themselves loan money to the Partnership or arrange for a letter of credit which is called, those monies must be repaid before the repayment of any Limited Partner's contributions or the distribution of net profits.

5. If the production start date is extended beyond March 10, the Limited Partners' contributions may be held without interest until as late as December 31, 1988 when, if the full \$24,500, has not been raised or the difference loaned to the Partnership, such contributions will be returned without interest to the Limited Partners, except to the extent that such return has been individually waived by any Limited Partners.

6. The success or failure of a play depends heavily upon reviews.

7. The potential gross ticket sales presented in this Offering Memorandum are based upon a \$10.00 and \$15.00 ticket price. This is a typical ticket price for equity-waiver theatre in Los Angeles in 1988.

8. As this is an equity-waiver production, the cast may not be under contract. Therefore, any cast member may abandon the production at any time.

C. SUBSCRIPTIONS:

1. Offers to purchase Limited Partnership interests are subject to acceptance by the General Partners. A questionnaire in the form attached hereto as Exhibit A must be completed by each proposed Limited Partner. Contributions by the prospective Limited Partner are to be made in cash or by check at the time of the signing of the Limited Partnership Agreement. All contributions will be kept in a special bank account until applied towards Partnership expenses.

2. The securities represented by the Limited Partnership interests are being offered pursuant to an exemption from registration under the Federal Securities Act of 1933, as amended, and under Section 25102(f) of the California Corporations Code. As such, such interests may not be resold or transferred without registration under federal and state securities laws, or an exemption from the provisions thereof.

D. MONIES ADVANCED BY THE GENERAL PARTNERS:

To the extent that the General Partners advance funds for production expenses, they will be reimbursed upon the formation of the Partnership (unless such expenditures are for the purchase of contributions to the Limited Partnership interests). As of the date of this Offering Memorandum, expenses paid to date total approximately \$3,000.00.

E. THE PRODUCERS:

(producer bios)

F. THE PLAY

1. General Background:

THE AUTHOR

(author bio)

2. Present Production. The equity waiver production to be mounted by the Partnership marks the world premiere of the Play. The production will be mounted on or about \_\_\_\_\_19\_\_ for a nine-week period in a 99-seat theatre. The Producers may extend the production beyond the nine (9) weeks, move it to another theatre or mount a first class production in a mid-sized house in Los Angeles or elsewhere.

3. Story and Talent”. Although \_\_\_\_\_ has not been performed before (other than the workshop presentation previously mentioned), it has already achieved some critical notoriety. The Actors Theatre of \_\_\_\_\_ awarded \_\_\_\_\_ finalist honors in its \_\_\_\_\_ contest.

(play synopsis)

(director bio)

(composer bio)

(actor bios)

4. The Theatre and Production Schedule: The Producers are under contract to produce \_\_\_\_\_ at the \_\_\_\_\_ Theatre in Los Angeles. The theatre has 99 seats. A nine-week lease was signed with an option to extend. Rental is estimated at \$750.00 for the Preview week, \$1,750.00 for the opening and closing weeks, and \$750.00 plus a percentage of the boxoffice receipts for the remaining middle weeks. The full rental must be paid prior to production occupancy.

The Partnership intends to produce the Play by \_\_\_\_\_, 19\_\_\_\_. There will be 4 performances per week. Week #1 will be at preview prices of \$10.00. On week #2 there will be five performances: the Wednesday performance of that week will be at the preview price. There will be a total of 37 performances. This schedule is subject to change and will depend upon audience demand and the cooperation of the 13-member cast who are working without pay under special arrangements with Actor's Equity.

If the production is successful, the Producers intend to extend the run, to move to another theatre or to mount a first class production.

5. Estimated Production Expenses: The proceeds of this Offering will be used for the payment of certain production expenses. The following are estimated expenses of production. There is no assurance that these estimates will meet actual costs:

Estimated Production Expenses

Business expenses	\$125.00
Office supplies	150.00
Scripts	20.00
Casting expenses	165.00
Rehearsal space	40.00
Stage Manager	450.00
Set Designer	500.00
Lighting Designer	100.00
Costume Designer	200.00
Publicity Fee	1,200.00
Advertising	1,700.00
Printing (flyers, programs, etc.)	1,250.00
Photography	500.00
Sets	2,000.00
Props	250.00
Sound	250.00
Lighting	400.00
Costumes	500.00
Mailing	1,000.00
Construction Crew	200.00
Opening Weekend	750.00
Legal and Accounting	1,500.00
Subtotal	13,250.00
Theatre rental	<u>11,250.00</u> + % of the boxoffice receipts
TOTAL	\$24,500.00 +

6. Running Expenses: The running expenses of the show over a nine-week period will vary depending upon personnel costs. An average budget is presented:

Nine-Week Running Expenses

Stage Manager	550.00
Lighting Board Operator	800.00
Author's Royalties	150.00
Advertising	<u>2,000.00</u>
TOTAL	\$3,500.00

7. Author's Royalty: As his royalty, the author will receive for equity-waiver performances \$\_\_\_\_\_ for the first regular performance and \$\_\_\_\_\_ for every other performance thereafter, but no royalty for preview performances. If the play is subsequently presented as a First Class production or Off-Broadway production, the author shall receive a royalty of five percent (5%) of the gross weekly box office receipts. The author has informally agreed to waive 90% of his royalty for the initial nine-week equity-waiver run in Los Angeles.

8. Potential Weekly Gross: The potential weekly gross of the Play at 100% capacity for four performances per week is as follows:

$$99 \times \$15 = \$1,485 \times 4 = \$5,940 \quad -\$1,782.00 = \$4,158.00$$

$$\begin{array}{l} \text{Seats x Price} = \text{Total} \times \# \text{ Performances} = \text{Total} - 20\% = \text{Total} \\ \text{Per Week} \qquad \qquad \qquad \text{Theatre} \quad \text{Earnings} \quad \text{Rental} \end{array}$$

At four performances per week the potential weekly gross at 100% capacity is \$4,158.00 for weeks #3 through #8. On week #2 and week #9 of the run there will be no theatre percentage out of the boxoffice for the theatre. The total gross per week for weeks #2 and #9 would be \$5,940.00. There will be four preview performances in week #1 and one preview performance in week #2 at the reduced ticket price of \$10.00 for a gross of \$2,970.00. This total includes percentage to the theatre rental.

Potential Weekly Gross for 100% Capacity

Week #1	Previews	\$2,970.00	\$ 2,970.00
Weeks 2/9	Opening, Closing	5,940.00 x2	11,880.00
Weeks #3-8	Run	4,158.00 x6	<u>24,948.00</u>
TOTAL FOR NINE-WEEK RUN 100% CAPACITY:			\$39,798.00

9. Potential Profits: Assuming 100% capacity for 37 performances, including five previews, gross revenues would amount to \$39,798.00. At 75% capacity, the production would gross \$30,150.00, thereby generating \$1,850.00 to the Partnership after nine weeks.

In order to meet the production expenses and return the initial capital of \$24,500.00, the production must reach 73% of capacity for 37 performances.

G. EXTENSION OF THE RUN OR RELOCATION:

In the event that there is sufficient audience demand, the Producers have an option to extend at the \_\_\_\_\_ Theatre or mount a first-class production in a theatre of 300 seats or more.

H. FIRST CLASS PRODUCTION AND THE PARTNERSHIP'S FUTURE INTEREST:

If the Play is well received, the General Partners may mount a first-class production in a theatre of 300 seats or greater. A new limited partnership will be formed to finance the first class production which will cost roughly \$180,000. Limited partners in this Limited Partnership will have the first right to participate in the first-class production and will have an interest in the first-class production, regardless of whether or not they elect to participate in the first-class production. That future interest will be a percentage of the General Partners' net profit participation in the first class production. The details of this future participation are defined in the Limited Partnership Agreement.

I. SALE OF OPTION ON THEATRICAL RIGHTS TO THE PLAY:

In the event that another producer wishes to produce the Play in California within the period in which the Partnership holds the rights to the produc-

tion, the Producers may elect to sell those rights. The proceeds of such sale will be assigned to the Partnership and distributed in the same manner as other revenues of the Partnership.

J. SUBSIDIARY RIGHTS

The General Partners may become entitled to subsidiary rights in the Play pursuant to the terms and conditions of the Literary Option Agreement (Exhibit A to Limited Partnership Agreement). The General Partners are entitled to receive five percent of net receipts (regardless of when paid) if the Play has been produced for 49 performances before the expiration of five years from the date of the last paid performance of the Play in Los Angeles. Such rights include worldwide motion picture rights, and Continental United States and Canadian rights to radio, television, touring performances, stock performances, Broadway performances, Off-Broadway performances, amateur performances, foreign language performances, condensed tabloid versions, so-called concert tour versions, commercial and merchandising uses, and audio and video cassettes and discs as follows.

In the event the General Partners acquire such subsidiary rights and receive monies from the Author's exploitation of such rights, such monies shall be an asset of the partnership and shall be divided between the General and Limited Partners like other partnership revenue.

K. FINANCIAL STATEMENTS:

The issuer of the securities represented hereby will be the Partnership which is yet to be formed. Accordingly, no financial statements are presently available. After the formation of the Partnership, all financial statements will be prepared and distributed by the General Partners in accordance with the requirements of California law.

L. LIABILITY OF THE PARTNERSHIP GENERAL PARTNERS:

The General Partners will not be liable to the Partnership or to the Limited Partners for any omissions or acts performed by them in good faith on behalf of the Partnership or in the furtherance of the Partnership interest. The General Partners will be liable only for fraud, bad faith or gross negligence.

M. ADDITIONAL INFORMATION:

This Offering is intended to summarize the significant aspects of the various documents, including the Limited Partnership Agreement. Statements contained herein regarding the documents are not necessarily complete and whatever reference is made to any document shall be deemed to be qualified and implied by the provisions of the document itself. All of the documents will be on file in the offices of the Partnership c/o Jane Doe, \_\_\_\_\_.

Acting on Behalf of the Partnership:

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JANE DOE PRODUCTIONS

PURCHASER QUESTIONNAIRE

(All information will be treated confidentially)

1. Name: \_\_\_\_\_ Age: \_\_\_\_\_

Marital Status: \_\_\_\_\_

2. Home Address: \_\_\_\_\_

Telephone Number: (\_\_\_\_) \_\_\_\_\_

3. Occupation: \_\_\_\_\_ Title: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Business Address: \_\_\_\_\_

Telephone Number: (\_\_\_\_) \_\_\_\_\_

Describe the nature of your current employment and position(s) held (include firm name and your title(s)).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ How long? \_\_\_\_\_

4. List all business or professional education, indicating degrees received, if any.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Please indicate your preferred mailing address.

( ) Residential ( ) Business

6. I represent that my net worth at the present time is in excess of \$\_\_\_\_\_.

7. Have you or will you use the services of one or more purchaser representatives (lawyer, accountant, investment advisor) in connection with this investment to assist you in evaluating the merits and risks of this investment?

Yes                       No

If yes, please list name, address and telephone number of each person.

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone Number \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone Number \_\_\_\_\_

In addition, please describe the knowledge and experience in financial and investment matters of each such person.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If there is any family relationship between you and any such of these persons, please describe:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Do you customarily rely on any of these persons for investment recommendations or decisions?

Yes                       No

If yes, please give details:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Do you compensate any of these persons for providing investment recommendations or decisions?

Yes                       No

If yes, please give details:

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8. Bank References (please include name and address of Bank and name of an officer):

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9. Have you had a pre-existing personal or business relationship with either Jane Doe or John Doe?

Yes                       No

If yes, please identify the person, describe the relationship and indicate the time period of the relationship.

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10. I understand that the information herein is being relied upon in connection with the offer and sale of securities pursuant to an exemption from registration under Regulation D of the United States Securities and Exchange Commission and under Section 25102(f) of the California Corporations code, and I represent that all such information is true, correct and complete as of the date hereof. I agree to notify the Limited Partnership immediately of any material change in the status of any of the information set forth herein.

\_\_\_\_\_  
Signature of Purchaser

\_\_\_\_\_  
Print or type name of Purchaser

\_\_\_\_\_  
Date this Questionnaire Signed

EXHIBIT - **EE**

# LIMITED PARTNERSHIP AGREEMENT

THIS AGREEMENT is made in Los Angeles, California, as of \_\_\_\_\_, 19\_\_\_\_, by and among Jane Doe and John Doe (the "General Partners") and such other persons as shall become signatories hereto (the "Limited Partners").

**1. FORMATION OF THE PARTNERSHIP:** The parties hereto hereby form a limited partnership (the "Partnership") pursuant to the provisions of Sections 15611 through 15723 of the California Corporations Code (the "California Revised Limited Partnership Act"), for the purpose of presenting an equity-waiver production of \_\_\_\_\_ (the "Play") written by \_\_\_\_\_.

The General Partners have acquired the rights to produce and perform the Play in Los Angeles from its Author, pursuant to the attached "Literary Option Agreement, attached as "Exhibit A." The General Partners also have the option to present the play as a First Class production, Off-Broadway production, Off-Off Broadway Production, or regional theatre presentation, anywhere in the United States or Canada, in addition to an initial four week run in Los Angeles, as provided by said agreement.

**2. PARTNERSHIP NAME AND PRINCIPAL OFFICE:** The Partnership shall be conducted under the name "Jane Doe Productions, A California limited partnership." The principal office of the Partnership shall be in care of Jane Doe, \_\_\_\_\_. The General Partners shall notify the Limited Partners in writing of any change in location of the office of the Partnership.

**3. PARTNERSHIP CERTIFICATES:** Upon the formation of the Partnership, a Certificate of Limited Partnership shall be signed and acknowledged by each of the Partners, or through an attorney-in-fact as provided in Paragraph 18, and recorded by the General Partners pursuant to the California Revised Limited Partnership Act.

**4. BUSINESS OF THE PARTNERSHIP:** The Partnership business and activities shall be limited to the presentation of the Play. Producer credit shall be given to the General Partners and/or such other persons or entities as the General Partners may determine in their sole discretion. The General Partners may enter into agreements with other persons as co-producers and/or associate producers whose sole purpose is the raising of capital for the production.

**5. TERM:** The Partnership shall commence upon the filing of a Certificate of Limited Partnership and shall continue until the General Partners shall have terminated all Partnership activities, at which time they shall so notify each of the Limited Partners, and the Partnership shall be terminated on such date as the General Partners may designate. As of the date so fixed, the term of the Partnership shall end and the General Partners shall liquidate the affairs thereof as provided in this Agreement.

Regardless of the foregoing, the term of the Partnership shall come to an end on the disability or bankruptcy of the General Partners or ten (10) years

from the date hereof, whichever shall first occur. If a Limited Partner shall die, his executors or administrators, or, if he shall become insane, his conservators or other representatives, shall have the same rights that the Limited Partner would have had if he or she had not died or become insane and the share of such Limited Partner in the assets of the Partnership shall be subject to all the terms and conditions of this Agreement as if such Limited Partner had not died or become insane. The Limited Partners are prohibited from assigning or otherwise transferring their interest in the Partnership unless the General Partners consent thereto. The General Partners will not be obligated to give such consent and if they do give such consent in one instance, that shall not operate to prevent the General Partners from withholding consent to any other such assignment.

**6. CAPITAL CONTRIBUTIONS:** The General Partners shall make no capital contribution to the Partnership, except that, to the extent they may deem desirable, the General Partners may make contribution(s) as a Limited Partner(s), and with respect to such contribution, they shall be treated in all respects as a Limited Partner. Each of the parties signatory hereto as a Limited Partner shall contribute to the capital of the Partnership at the commencement thereof the respective sum set forth next to said party's name. Said contribution shall be payable in full to the General Partners at the time of execution of this Agreement by the General Partners. Offers to subscribe to Limited Partnership interests are subject to acceptance by the General Partners.

Except as otherwise provided herein, the original capital of the Limited Partnership shall be in the total sum of \_\_\_\_\_ dollars.

**7. LOANS BY GENERAL PARTNERS:** If the General Partners believe that additional funds are necessary for the carrying on of the Partnership affairs, they shall have the right, in their sole discretion, to advance or to cause to be advanced or to borrow in the Partnership's name, the amount which they deem necessary on such terms (including interest) as they shall deem fit, except that there shall be no interest charged by the General Partners for any loans to the Partnership which they make. In such event, the money so advanced or caused to be advanced, or borrowed, shall be repaid before any of the contributions are repaid to any of the Limited Partners

**8. DEFINITIONS:** For the purposes of this Agreement, the following terms shall have the following meanings:

(a) The term "Net Profits" shall be deemed to mean the excess of Gross Receipts over all Production Expenses, Running Expenses and Other Expenses of the business of the Limited Partnership in connection with the Play.

(b) The term "Gross Receipts" shall be deemed to mean all sums derived by the Partnership from the presentation of the Play and from physical assets acquired with the funds of the Partnership.

(c) The term "Production Expenses" shall be deemed to mean the total expenses, charges and disbursements of whatsoever kind incurred by the Partnership in connection with the production of the Play preliminary to its first public performance including, without limitation, audition expenses (including casting assistant, audition staff), fees of the director, set director, sound designer, costume designer and other persons performing creative or administrative services, script printing, publicity and promotion, scenery, set design, design, construction of sets, sound equipment, properties, rehearsal expenses (including assistant stage manager, crew, rehearsal hall and miscellaneous), theatre rental security deposit,

props, legal and auditing expenses, taxes of whatsoever kind or nature, expenses for replacement or substitution of any of the foregoing items and any and all other expenses usually included in the term "Production Expenses" and moving expenses for the purpose of continuing the waiver production.

(d) The term "Running Expenses" shall be deemed to mean expenses, charges, disbursements of whatsoever kind, including, without limitation, salaries of lighting technicians, house manager, general manager, stage manager and assistant stage manager, ongoing expenses of advertising, publicity and promotion, box office personnel and services, legal and auditing expenses, miscellaneous supplies, taxes of whatsoever kind and nature and any and all other expenses usually included in the term "Running Expenses."

(e) The term "Other Expenses" shall be deemed to mean all expenses of whatsoever kind or nature, other than those referred to in c) and d) above (and whether or not similar thereto) incurred in connection with or by reason of the operation of the business of the Partnership, including closing expenses, monies paid or payable in connection with claims for plagiarism, libel or negligence and other claims of a similar or dissimilar nature.

#### **9. ALLOCATION OF NET PROFITS:**

(a) Each Limited Partner shall receive that proportion of fifty (50) percent of the Net Profit as the amount of his or her contribution bears to the aggregate Limited Partnership contributions to the Partnership. The General Partners shall be entitled to receive the remaining fifty (50%) percent of the Net Profits. The General Partners reserve the right for any reason whatsoever to pay to individual investors or parties rendering services to the Partnership or others, a participation in Net Profits, which such participation shall be paid solely out of such General Partners' share of Net Profits.

(b) Such part of the Net Profits of the Partnership as can be paid in cash and still leave the Partnership with sufficient cash reserves for the payment of debts, liabilities and ongoing Partnership expenses shall, in the sole discretion of the General Partners, be paid not less frequently than quarterly to the General Partners and the Limited Partners.

**10. ALLOCATION OF LOSSES:** Until Net Profits shall have been earned, losses suffered and incurred by the Partnership up to but not exceeding the aggregate contributions of the Limited Partners shall be borne entirely by the Limited Partners in proportion to their respective contributions. After Net Profits shall have been earned, then to the extent of such Net Profits, the General Partners and Limited Partners shall share such losses pro rata in the same percentages as they are entitled to share in Net Profits pursuant to the provisions of Paragraph 9 hereof. No Limited Partner (other than a Partner who is both a Limited Partner and a General Partner) shall be personally liable for any debts, obligations or losses of the Partnership in any event, except to the extent of the capital contributed by said Limited Partner hereunder. The provisions of this Paragraph 10 shall not affect the obligations of the Limited Partners to return capital contributions or Net Profits theretofore paid to them, together with interest therein, actually received by them as provided in Paragraph 11 b) of this Agreement.

**11. CASH DISTRIBUTION. RETURN OF CAPITAL AND NET PROFITS:** Unless agreed in writing, the capital contributions of the Limited Partners shall be returned as follows:

a) Upon the closing of the production and the abandonment of further intention of producing same, the assets of the Partnership shall (subject to the provisions of the following subparagraphs hereof) be liquidated as promptly as possible and the cash proceeds shall be applied as follows:

(i) to the payment of all debts, taxes, obligations and liabilities of the Partnership and the necessary expenses of liquidation. Where there is a contingent debt, obligation or liability, a reserve shall be set up to meet same.

(ii) to the repayment of the capital contributed by the Limited Partners (if any shall then remain unpaid) or such portion thereof as can be paid out of liquidation of the assets of the Partnership then remaining; said Limited Partners' payments to be in proportion to their respective cash contributions if the said assets shall not be sufficient to pay such contributions in full.

(iii) the surplus, if any, of the said assets then remaining shall be divided among the General and Limited Partners in the proportion that they share in Net Profits.

(b) If any repayment of contributions or distribution of Net Profits shall have been made prior to or subsequent to the termination date of the Partnership, and, if at anytime subsequent thereto, there shall be any unpaid debts, taxes, liabilities or obligations of the Partnership and the Partnership shall not have sufficient assets to meet them, then each Limited Partner and the General Partners shall be obligated to repay to the Partnership such an amount, not in excess of the capital so returned to him or her and Net Profits so distributed to him or her, as the General Partners deem necessary for such purposes. In such event, the Limited Partners and the General Partners shall first repay any Net Profits theretofore distributed to them, such repayment by them to be made in proportion to the amounts of such Net Profits theretofore distributed to them, respectively. If such distributed Net Profits shall be insufficient, the Limited Partners shall return contributions of capital which may have been repaid to them, such return by the Limited Partners to be made in proportion to the amounts of the contributions that may have been repaid, respectively. All such returns shall be made promptly after receipt by each Limited Partner from the General Partners of a written notice requesting such repayment.

(c) In liquidating assets, all physical assets which have a saleable value shall be sold at such price and upon such terms as the General Partners, in good faith, deem fair and equitable.

(d) The Limited Partners shall have no right to receive property other than cash.

**12. BANK ACCOUNTS:** The General Partners will, in the name of the Partnership, open and maintain a bank account or accounts in which shall be deposited all of the capital of the Partnership and all of the Gross Receipts (and no other funds). Any interest earned on such funds shall be an asset of the Partnership. All monies received from the offer and sale of Limited Partnership interests pursuant to this Agreement will be held in said bank account until actually employed for pre-production or production purposes (unless otherwise authorized by any Limited Partner) or returned to the Limited Partners, unless such return is waived by a Limited Partner. Withdrawals from any such bank account or accounts shall be made upon such signature or signatures as the General Partners may desig-

nate. In any event, the funds held in such account shall be used solely for the business of the Partnership.

**13. BOOKS, RECORDS, ACCOUNTS:** At all times during the continuance of the Partnership, the General Partners shall keep or cause to be kept full and faithful books of account in which shall be entered fully and accurately each transaction of the Partnership. All of the said books of account and all boxoffice statements received by any theatres shall at any reasonable times be open to the inspection and examination of the Limited Partners, or their representatives. The General Partners agree to deliver to the Limited Partners, not later than ninety (90) days after the opening of the Play, a complete statement of Production Expenses. The General Partners further agree that as long as the Play is being presented by the Partnership, an annual statement of operations prepared by a certified public accountant and such other financial statements as may be required by law will be delivered to the Limited Partners. The General Partners shall deliver to each Limited Partner all information necessary for preparation of federal and state income tax returns, including copies of Partnership tax returns.

**14. RIGHTS AND POWERS OF THE GENERAL PARTNER:** The Limited Partners may take no part in the conduct of or control of the business or creative affairs of the Partnership, such conduct and control being vested exclusively in the General Partners. In this connection, the General Partners agree to render, and shall be the sole parties rendering, the services customarily and usually rendered by theatrical producers in connection with a theatrical production and shall have full authority in connection therewith. Without in any way limiting the foregoing, the General Partners shall have the right to abandon the production of the Play at anytime, including prior to its first public showing in Los Angeles. The General Partners will devote as much time to the business of the Partnership as may be necessary, it being understood, of course, that the Partnership may employ such assistants as may be necessary. It is agreed that the General Partner shall not be responsible to the Partnership or to the Limited Partners for any action they may take in good faith within the scope of their authority as General Partners or for their inability to render services as General Partners for causes beyond their control.

The General Partners and each Limited Partner shall have the right, prior to, during and subsequent to the term of this Agreement to be engaged or interested in other enterprises, including, without limitation, theatrical enterprises, whether or not such other theatrical enterprises shall be in competition with the Play and each of them also has the right to render his or her services to other persons or entities.

**15. ASSIGNMENT OF CONTRACTS:** It is recognized and agreed that the General Partners will assign to the Partnership all contracts made by the General Partners to the Partnership, including the agreement with the Play's Author. The Partnership will reimburse the General Partners for any monies advanced in connection with such contracts.

**16. AMENDMENT OR MODIFICATION:** If at anytime during the continuance of the Partnership, the parties shall deem it necessary or expedient to make any alteration, amendment or addition hereto, for the more advantageous or satisfactory management of the Partnership business, such alteration, amendment or addition may be done by any writing supplementary to this Agreement; and all of such alterations, amendments and additions shall be adhered to and unless oth-

erwise therein provided shall have the same effect as if the same had been originally embodied in and formed a part of this Agreement. This Agreement may not be changed orally.

**17. FIRST CLASS RIGHTS:** The General Partners have the right to mount a First Class production of \_\_\_\_\_ as provided in the Literary Option Agreement (Exhibit A). The General Partners have the sole discretionary power to exercise such rights or to assign such rights.

In the event that the General Partners elect to mount a First Class production, alone or in association with others, they intend to form a separate limited partnership for that purpose ("First Class Partnership") and further intend to raise monies therefor. Such monies will be obtained by admitting "Class B Limited Partners" to the First Class Partnership, some or all of whom may be the Limited Partners of this Partnership (referred to as "Class A Limited Partners"). Each Class A Limited Partner shall have the right, but not the obligation, prior to the admission of any Class B Limited Partners, to become a Class B Limited Partner by contributing to the First Class Partnership an amount which bears the same ratio to the total capital determined to be contributed by the Class B Limited Partners as such Class A Limited Partner's contribution to this Partnership bears to the total capital contributions of all Class A Limited Partners. Unless otherwise specified in the First Class Partnership Agreement, such contributions by the Class A Limited Partners must be made within thirty (30) days of receipt of written notice from the General Partners of their intent to form a First Class Limited Partnership.

(a) ALLOCATION OF PROFITS, FIRST CLASS PRODUCTION. In consideration for the capital contribution by the Class A Limited Partners in the equity-waiver production, such Class A Limited Partners will have an ongoing share in the Net Profits of the First Class Partnership, regardless of whether or not they choose to make a capital contribution to the First Class Partnership.

(i) Net Profits of the First Class Partnership shall, subject to the following terms and conditions, be allocated thirty-five (35%) percent to the General Partners, fifteen (15%) percent to the Class A Limited Partners and fifty (50%) percent to the Class B Limited Partners.

(ii) If the Class A Limited Partners have theretofore received distributions from this Partnership sufficient to repay their initial contributions (or such other sum as determined hereunder), then their share of the Net Profits from the First Class Partnership shall be reduced from fifteen (15%) percent to seven-and-one-half (7.5%) percent. If the Class A Limited Partners have received distributions from this Partnership to repay part, but not all of their initial contributions, their share of the Net Profits from the First Class Partnership as set forth in subparagraph i), above, shall be reduced proportionately to the amounts repaid.

(iii) Notwithstanding anything herein to the contrary, if the General Partners admit additional general partners to the First Class Partnership and such additional general partners shall be entitled to share in Net Profits of the First Class Partnership, then the Class A Limited Partners' share of such Net Profits as set forth in this paragraph shall be further reduced to the extent of such additional general partners' share; provided, however, in no event shall the Class A Limited Partners' share be reduced more than the proportionate reduction of the original General Partners' share of net profits.

**18. SALE OF PRODUCTION RIGHTS:** In the event that the General Partners elect to sell their rights to the Play, the proceeds of such sale will be distributed to the Partnership.

**19. SUBSIDIARY RIGHTS:** The General Partners may become entitled to subsidiary rights to the Play pursuant to certain terms and conditions of the Literary Option Agreement (Exhibit A). The General Partners are entitled to receive five percent of net receipts (regardless of when paid) specified below if the Play has been produced for 49 performances before the expiration of five years subsequent to the date of the last paid performance of the Play in Los Angeles. Such rights include worldwide motion picture rights, and Continental United States and Canadian rights to radio, television, touring performances, stock performances, Broadway performances, Off-Broadway performances, amateur performances, foreign language performances, condensed tabloid versions, so-called concert tour versions, commercial and merchandising uses, and audio and video cassettes and discs as follows.

In the event the General Partners acquire such rights, and receive monies from the Author's exploitation of such rights, such monies shall be an asset of the partnership and shall be divided between the General and Limited Partners like any other partnership revenue.

**20. FILING OF CERTIFICATES:** Each undersigned Limited Partner makes, constitutes and appoints the General Partners his or her true and lawful attorneys-in-fact in his or her name, place and stead, to make, execute, sign, acknowledge and file:

(a) A Certificate of Limited Partnership, as required under the laws of the State of California;

(b) A Certificate of Dissolution of the Partnership; and

(c) Such other instruments as may be necessary or deemed desirable by said attorney-in-fact, upon the termination of the Partnership.

**21. EXECUTION OF COUNTERPARTS:** This Agreement may be executed in counterpart originals, all of which taken together shall be deemed one original. The General Partners and each of the Limited Partners agree that one original of this Agreement (or set of original counterparts) shall be held at the office of the Partnership; that a Certificate of Limited Partnership shall be filed in the office of the Secretary of State of California and a duplicate original of said Certificate shall be held at the office of the Partnership and that there shall be distributed to each Partner a conformed copy of this Agreement.

**22. ENTIRE AGREEMENT:** This instrument incorporates the entire agreement between the parties hereto, regardless of anything to the contrary contained in the Certificate of Limited Partnership to be filed pursuant to this Agreement.

**23. NOTICES:** Unless otherwise notified in writing, the address of each party hereto for all purposes shall be that set forth next to his signature at the bottom hereof, and all notices hereunder shall be sent to each party, postage prepaid, at the address so indicated.

**24. TERMINATION PRIOR TO OPENING:** If \_\_\_\_\_ Thousand Dollars has not been contributed to the capital of the Partnership by December 31, 19\_\_, the Partnership will not be formed and all contributions will be returned in full, unless the General Partners shall decide, in their sole discretion, to make loans or oth-

erwise borrow funds, in the name of the Partnership, in an amount equal to the difference between the sums theretofore contributed and \_\_\_\_\_ Thousand Dollars, which such loans shall be in all respect subject to Paragraphs 7 and 12 or unless each Limited Partner, on an individual basis, shall waive his or her right thereunder, in which case such Limited Partner's proceeds will be used for such purposes related to the production as the General Partners shall deem necessary. In this event, all references herein to \_\_\_\_\_ Thousand Dollars shall be deemed to mean instead the actual limited contributions.

**25. WARRANTIES OF LIMITED PARTNERS:** Each Limited Partner represents and warrants that he is over twenty-one (21) years of age and a resident of the U.S.A. and has no present intention of transferring or assigning his Limited Partnership interest and is acquiring such interest for investment purposes only and not with a view to the resale or other distribution thereof. Each Limited Partner further represents: (a) that he has read and understands this Agreement and has sufficient knowledge and experience to evaluate the risks and merits of any investment made herein, or that he has consulted with an attorney, C.P.A. or certified investment adviser in connection herewith; (b) that he understands that the transaction represented hereby has not been registered with state or federal securities agencies; and (c) that he has sufficient net worth and/or annual income so that if he lost his entire investment, he will not suffer any material adverse change in financial condition.

**26. SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, administrators, executors, distributees, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the day and year first above written.

GENERAL PARTNERS

Signature

Address

\_\_\_\_\_  
Jane Doe

\_\_\_\_\_  
John Doe

LIMITED PARTNERS

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Amount Contributed

\_\_\_\_\_  
Address

\_\_\_\_\_  
% of Profits

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Social Security No.

EXHIBIT - **FF**

## LINE PRODUCER EMPLOYMENT AGREEMENT

THIS AGREEMENT is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between \_\_\_\_\_ Entertainment, Inc., A California corporation, (hereinafter "Production Company"), and \_\_\_\_\_ (hereinafter "Employee").

This Agreement is entered into with reference to the following facts:

A. Production company intends to produce a theatrical motion picture (hereinafter the "Picture") based upon that certain screenplay tentatively entitled "\_\_\_\_\_" (hereinafter the "Screenplay") which Picture is intended for initial theatrical exhibition.

B. Production company wishes to utilize the services of Employee as line producer in connection with the production and delivery of the Picture upon the terms and conditions herein contained.

ACCORDINGLY, IT IS AGREED AS FOLLOWS:

**1. ENGAGEMENT:** Subject to events of force majeure, default, or the disability or death of Employee, Production company hereby engages the services of Employee on a "pay or "play" basis, and Employee agrees to render exclusive services as line producer, in connection with the production of the Picture upon the terms and conditions herein contained. Subject to Production Company's final approval, Employee shall supervise and be responsible for the preparation of the budget and the production schedule of the Picture, the testing of persons proposed for the cast, scouting for shooting locations, assembling the crew, the supervision of the photography of the Picture, the supervision of the editing and sound mixing, assisting in the selection of music, the supervision of the final dubbing and scoring, the supervision of all other post-production requirements of the Picture, the delivery of the final answer print and all other customary delivery items to Production company and its principal distributors, foreign and domestic, and perform such other services as are reasonably required by Production Company and are usually and customarily performed by producers in the motion picture industry. Employee will report to such place(s) as are reasonably designated by Production company, and will be available at all times and for such periods of time as are reasonably designated by Production Company. Employee will advise Production Company of Employee 's whereabouts so that Employee may be reached at any reasonable hour of the night or day. During the term of employment, Employee will render his services at all places and at all times reasonably required by Production Company, including nights, Saturdays, Sundays, and holidays.

In addition, Employee shall assist in the preparation and delivery to Production Company of a fully detailed and comprehensive preliminary and final below-the-line budget ("Budget") for the Picture, which Budget shall not exceed the sum of \_\_\_\_\_, exclusive of contingency, completion bond fee, insurance, and any "above the line costs." Employee shall also consult with and assist Production Company, as and when requested by Production Company, in connection with Production Company's negotiations for the services of the production personnel and cast for the Picture.

**2. TERM:** Employee shall render the services required of him as set forth in paragraph 1 hereof during the period commencing on \_\_\_\_\_ 19\_\_, and continuing thereafter for such time as required for pre-production, principal photography, and customary post-production and delivery of the Picture as required by Production Company. It is contemplated that principal photography of the Picture will commence approximately on \_\_\_\_\_, 19\_\_, and subject to extension for events beyond Production company's control and other events of force majeure, Employee 's exclusive services shall not be required beyond \_\_\_\_\_ 19\_\_, but he shall nevertheless supervise the delivery of the Picture hereunder.

**3. COMPENSATION:** In consideration for all of the services to be rendered by Employee hereunder and for all of the rights granted by Employee to Production Company, and on condition that Employee is not in default hereunder, and subject to the terms and conditions specified herein, Production Company agrees to pay Employee, and Employee agrees to accept: \$ \_\_\_\_\_, contingent compensation as described in subparagraph (a) below and other valuable consideration. Payment of the \_\_\_\_\_ shall be within ten days of execution of this agreement.

(a) Contingent Compensation: If employee is entitled to a line producer credit in accordance with paragraph 9 of this agreement, Production company shall pay employee five percent of one hundred percent (5% of 100%) of the "net profit" in accordance with Production Company's agreement with the Domestic Distributor of the Picture. Notwithstanding the foregoing, "Net Profit" shall be the monies remaining, if any, after all customary deductions, including but not limited to all production expenses, interest, overhead, debts, deferred expenses and the cost of prints, advertising and marketing are deducted in accordance with Production Company's distribution agreement. Production Company shall only be obliged to pay Producer his share of "net profits" upon receipt of same from the distributor. Disbursements of contingent compensation shall be on a semi-annual basis, on a pro rata basis, beginning no later than six months after completion of the picture.

**4. SERVICES:** At all times during the term of Employee 's services hereunder, Employee will promptly and faithfully comply with all of Production company's reasonable instructions, directions, requests, rules and regulations. Employee will perform his services conscientiously and to the full limit of his talents and capabilities when and wherever reasonably required or desired by Production company and in accordance with Production company's reasonable instructions and directions in all matters, including those involving artistic taste and judgment. Employee will perform such service as Production Company may reasonably require of him, and as customarily and usually rendered by and required of producers employed to produce low-budget theatrical motion pictures in the motion picture industry.

**5. INSURANCE:** Employee agrees that Production Company may at any time or times, either in Production Company's name or otherwise, but at Production company's expense and for Production Company's own benefit, apply for, and take out life, health, accident, and other insurance covering Employee, whether independently or together with others in, any reasonable amount which Production Company may deem necessary to protect Production Company's interests hereunder. Production Company shall own all rights in and to such insurance and in the cash values and proceeds thereof and Employee shall not have any right, title, or interest therein. Employee agrees to the customary examinations and correctly prepare, sign and deliver such applications and other documents as may be reasonably required.

**6. CONTROL:** Production Company shall have complete control of the production of the Picture including, but not limited to, all artistic controls and the right to cut, edit, add to, subtract from, arrange, rearrange, and revise the Picture in any manner. Production Company shall not be obligated to make any actual use of Employee's services or to produce or to release or to continue the distribution or release of the Picture once released.

**7. RIGHTS:** In addition to Employee's services as a line producer, Production Company shall be entitled to and shall own all of the results and proceeds thereof throughout the world in perpetuity (including, but not limited to, all rights throughout the world of production, public performance, manufacture, television, recordation, and reproduction by any art or method, whether now known or hereafter devised, copyright, trademark and patent) whether such results and proceeds consist of literary, dramatic, musical, motion picture, mechanical or any other form of works, ideas, themes, compositions, creations, or products and without obligation to pay any fees, royalties or other amounts except those expressly provided for in this Agreement. Specifically, but without in any way limiting the generality of the foregoing, Production Company shall own all rights of every kind and character in and to any and all acts, poses, plays and appearances of any and all kinds which Employee may write, suggest, direct or produce during the term hereof. In the event that Production Company shall desire to secure separate assignments of any of the foregoing, Employee agrees to execute them upon Production Company's request therefore. All rights granted or agreed to be granted to Production Company hereunder shall vest in Production Company immediately and shall remain vested in Production Company and Production Company's successors and assigns whether this Agreement expires in normal course or whether Employee's engagement hereunder is sooner terminated for any cause or reason. Production Company shall have the right to use and authorize others to use the name, voice and likeness of Employee, and any results and proceeds of his services hereunder, to advertise and publicize the Picture, including, but not limited to, the right to use the same in the credits of the Picture, in trailers, in commercial tie-ups, and in all other forms and media of advertising and publicity including merchandising, publications, records and commercial advertising and publicity tie-ups derived from or relating to the Picture.

**8. REPRESENTATIONS, WARRANTIES AND INDEMNITY:**

(a) Employee represents and warrants that all material of every kind authored, written, prepared, composed, and/or submitted by Employee hereunder for or to Production Company shall be wholly original with him, and shall not infringe or violate the right of privacy of, or constitute libel against, or violate any copyright, common law right or any other right of any person, firm or

corporation. The foregoing warranties shall not apply to any material not authored, written, prepared, composed or submitted by Employee , but shall apply to all material, incidents and characterizations which Employee may add to or incorporate in or cause to be added to or incorporated in such material. Employee further represents and warrants that Employee is free to enter into this Agreement and to render the required services hereunder and that Employee is not subject to any obligations or disability which will or might interfere with Employee 's fully complying with this Agreement; that Employee has not made, and will not make any grant or assignment which might interfere with the complete enjoyment of the rights granted to Production Company hereunder; and that Employee will not at any time render any services or do any acts which shall derogate from the value of Employee 's services rendered pursuant to this Agreement or which shall interfere with the performance of any of Employee's covenants or obligations pursuant to this Agreement. Employee hereby indemnifies Production Company, its successors, assigns, licensees, officers and employees, and holds it harmless from and against any and all liability losses, damages and expenses (including attorneys' fees) arising out of (i) the use of any materials furnished by Employee for the Picture, or (ii) any breach by Employee of any warranty or agreement made by Employee hereunder.

(b) Production Company represents and warrants that Production Company has the right to enter into this Agreement, and to render the required obligations hereunder, and that Production Company is not subject to any other obligations or disabilities which will or might interfere with Production Company's fully complying with this Agreement; that Production Company has not made, and will not make, any grant or assignment which might interfere with the complete enjoyment of the compensation granted to Employee hereunder; that Production Company has secured all necessary financing to make all payments hereunder, and complete the Picture as budgeted; and that Production Company will not at any time render any services or do any acts which shall derogate from the value of Production Company's obligations pursuant to this Agreement, or which shall interfere with the performance of any of Production Company's covenants or obligations pursuant to this Agreement. Production Company hereby indemnifies Employee and his successors and assigns, and holds them harmless from and against any and all liability, losses, damages, and expenses (including reasonable attorneys' fees) arising out of any breach by Production Company of any warranty or agreement made by Production Company hereunder.

**9. CREDIT:** Provided that Employee shall fully and completely keep and perform all of his obligations and agreements hereunder, and if the Picture has been produced substantially with the use of Employee 's services hereunder, Employee shall receive a line producing credit on the positive prints and/or tape for the Picture in the main titles thereof, and in all paid advertisements (subject to customary distributor exclusions). Production Company shall determine in its sole discretion the manner of presenting and the size of such credits. No casual or inadvertent failure to comply with the provisions of this paragraph or failure of any third party to comply with same shall be deemed to be a breach of this Agreement by Production Company. In the event of a failure or omission by Production Company constituting a breach of its credit obligations under this Agreement, Employee's rights shall be limited to the right, if any, to seek damages at law, and Employee shall not have any right in such event to rescind this Agreement or any of the rights granted to Production Company hereunder, or to enjoin the distribution, exhibition, or other exploitation of the Picture or the advertising or pub-

licizing thereof. Production Company shall, however, upon receipt of written notice of any such breach of its credit obligations, cure such breach on a prospective basis on materials to be created in the future.

**10. CONTINGENCIES:** If Employee shall become incapacitated or prevented from fully performing his services hereunder by reason of illness, accident, or mental and physical disability and/or if the production of the Picture is hampered or interrupted or interfered with for any event or reason beyond the control of Production Company or any other event of force majeure (hereinafter collectively referred to as "incapacity"), Production Company shall have the right to suspend Employee's services and the compensation payable to Employee during the continuance of any such incapacity. In the event any such incapacity continues for a period of seven (7) consecutive days or for an aggregate period of twenty-one (21) days, Production Company shall have the right to terminate Employee's engagement hereunder. In the event that Employee should fail, refuse or neglect, other than because of incapacity, to perform any of his required services hereunder, Production Company shall have the right at any time to suspend Employee's services and the compensation payable to Employee during the continuance of such default, and Production Company shall have the right at any time to terminate Employee's engagement hereunder by reason of such default.

**11. NO RIGHT TO CONTRACT:** Employee acknowledges and agrees that he has no right or authority to and will not employ any person to serve in any capacity, nor contract for the purchase or rental of any article or material, nor make any commitment or agreement whereby Production Company shall be required to pay any monies or other consideration or which shall otherwise obligate Production Company, without Production Company's express prior written consent.

**12. TRAVEL AND EXPENSES:** If Production Company shall require Employee to render his services on location at any place(s) more than fifty (50) miles from his residence, Production Company shall furnish Employee with transportation from his residence to such place(s) and return, or reimburse employee 25 cents per mile if employee uses his own means of transportation. Production Company shall also furnish Employee with or reimburse Employee for actual reasonable expenses for each day Production Company requires Employee to render services away from Employee's residence on a no-less favorable basis than the expense allowance accorded the director. All transportation expenditures shall require the prior approval in writing by Production Company or its designee. Any miscellaneous expenses that employee incurs relating to his employment, shall be reimbursed by Production Company within seven days after receipts are submitted to Production Company.

**13. ASSIGNMENT:** Production Company may transfer and assign this Agreement or all or any of its rights hereunder to any person, firm or corporation, but no such assignment or transfer shall relieve Production Company of its executory obligations hereunder. This Agreement shall inure to the benefit of Production Company's successors, licensees and assigns. Employee shall not assign or transfer this Agreement, or any of his rights or obligations hereunder, it being understood that the obligations and duties of Employee are personal to Employee, and any purported assignment shall be void. Employee may, however, assign his right to receive any monies hereunder.

**14. LIMITATION OF REMEDY:** All rights assigned by this Agreement shall be

irrevocable under all or any circumstances and shall not be subject to reversion, rescission, termination or injunction. Employee agrees that he shall not have the right to enjoin the exhibition, distribution or exploitation of any motion picture produced hereunder or to enjoin, rescind or terminate any rights granted to Production Company hereunder. Employee further agrees that Employee's sole remedy in the event of any default by Production Company hereunder, including the failure by Production Company to pay Employee any consideration payable to Employee pursuant hereto, or to accord Employee credit (to the extent that Production Company is obligated to accord Employee such credit) pursuant hereto, shall be an action at law for damages and/or for an accounting (if applicable). At all times, the Production Company shall have all rights and remedies which it has at law or in equity, pursuant hereto or otherwise.

**15. PRODUCTION BUDGET AND SCHEDULE:** Employee represents and warrants that Employee has read the Screenplay for the Picture, and based upon Employee's substantial experience in the production of motion pictures, Employee has advised Production Company that based upon the current Screenplay, and an anticipated \_\_\_\_\_ week schedule for principal photography the Picture can be produced for a below-the-line cost of \$\_\_\_\_\_, excluding any contingencies, completion bond fees, insurance, events of force majeure and all "above the line" costs. It is of the essence of this Agreement that Employee produce the Picture in accordance with the approved production schedule and for a below-the-line cost not exceeding \_\_\_\_\_ thousand dollars (\$\_\_\_\_\_). Employee agrees to timely notify Production Company of any potential over-budget situations and further agrees not to proceed with any production cost overages without the prior written consent of Production Company. If, after such notification, the below-the-line cost of the Picture exceeds the \_\_\_\_\_ dollars (\$\_\_\_\_\_), or the approved production schedule through no fault of Employee, then Production Company shall be solely responsible for said cost overruns. If, however, Employee fails to give such timely notification, and/or proceeds with production cost overages without the written consent of Production Company, and as a result it reasonably appears, based upon Production Company's good faith judgment, that the below-the-line cost of the Picture will exceed the \_\_\_\_\_ dollars, or the approved production schedule by Five Percent (5%), then Production Company may, in addition to any other rights or remedies which Production Company may have at law or in equity, terminate this Agreement, and any further payments or other obligations due Employee hereunder. Under no circumstances will the Employee be personally liable for any cost overruns.

**16. FURTHER DOCUMENTS:** Employee agrees to execute any and all additional and further documents and instruments required by Production Company to further the intents and purposes of this Agreement and to vest in Production Company all right, title, and interest in and to the Picture. In the event Employee fails or refuses to execute such document or instrument, Employee hereby irrevocably appoints Production Company his attorney-in-fact (such appointment being coupled with an interest) to execute such documents or instruments on behalf of Employee.

**17. NOTICES:** All notices or payments which Production company may be required to give or make to Employee hereunder may be delivered personally or sent by certified or registered mail or telegraph, or by fax, to Employee at \_\_\_\_\_.

All notices which Employee may wish to give to Production company here-

under may be delivered personally or sent by certified or registered mail or telegraph, or fax, to Production company at: \_\_\_\_\_.

The date of delivery, or attempted delivery, as the case may be, of any notice or payment hereunder shall be deemed to be the date of service of such notice or payment.

**18. SECTION HEADINGS:** The headings of paragraphs, sections or other subdivisions of this Agreement are for convenience of reference only. They will not be used in any way to govern, limit, modify, construe or otherwise be given any legal effect.

**19. ARBITRATION:** Any controversy or claim arising out of or relating to this agreement or any breach thereof shall be settled by arbitration in accordance with the Rules of the American Arbitration Association; and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled to reimbursement for costs and reasonable attorneys' fees. The determination of the arbitrator in such proceeding shall be final, binding and non-appealable.

**20. ENTIRE AGREEMENT:** This Agreement represents the entire understanding between the parties hereto with respect to the subject matter hereof, and this Agreement supersedes all previous representations, understandings or agreements, oral or written, between the parties with respect to the subject matter hereof, and cannot be modified except by written instrument signed by the parties hereto. This Agreement shall be governed by and construed in accordance with the laws of the State of California, and the exclusive venue for resolution of any dispute arising out of, or in connection with this Agreement shall be in Los Angeles, California.

AGREED TO AND ACCEPTED:

\_\_\_\_\_  
Employee

AGREED TO AND ACCEPTED:

\_\_\_\_\_ Entertainment, Inc.,

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

EXHIBIT - **GG**

# CASTING DIRECTOR EMPLOYMENT AGREEMENT

(DATE)

(ADDRESS OF CASTING COMPANY)

Re: (Name of Picture)

Dear:

This letter will confirm the terms of the agreement between \_\_\_\_\_ Casting ("Company") for the services of \_\_\_\_\_ ("Smith") and \_\_\_\_\_ Jones ("Jones") (collectively "Smith & Jones"), and Producer Pictures, Inc. ("Producer"), regarding Smith & Jones's services as Casting Director for the above-referenced theatrical motion picture (the "Picture") to be produced by Producer. Company understands and agrees that Smith and Jones will be the primary persons rendering the casting services hereunder.

## 1. EMPLOYMENT:

(a) Producer hereby engages Smith & Jones, commencing on a date in \_\_\_\_\_, 199\_ to be mutually agreed upon for a period of ten (10) weeks plus two (2) free weeks (which may include hiatus periods to be mutually agreed upon) to render all necessary casting services as Casting Director for the Picture. Such services will be those customarily provided in the motion picture industry by first class casting directors and shall include all re-casting an/or replacement casting, if necessary. Said services shall be rendered primarily in Los Angeles but may include travel to \_\_\_\_\_ (location). As full compensation for Smith & Jones's services Producer shall pay Company on a pay or play basis (subject only to default, disability, or events of force majeure) the sum of thirty thousand dollars (\$30,000.). Such compensation shall be payable fifteen thousand dollars (\$15,000.) on commencement of services, seven thousand, five hundred dollars (\$7,500.) on Producer's regular pay day during the fifth (5th) week of casting; three thousand, seven hundred fifty dollars (\$3,750.) on Producer's regular pay day during the tenth (10th) week of casting, and three thousand, seven hundred fifty dollars (\$3,750.) upon completion of casting or commencement of principal photography, whichever is earlier. If the free weeks are required, Producer shall also reimburse Company for a casting assistant at the rate of five hundred dollars (\$500.) per week.

(b) Smith & Jones's services hereunder shall be on a non-exclusive but first priority basis. Company agrees to make Smith & Jones available after the casting for the Picture is completed for all re-casting or replacement casting reasonably required by Producer. In the event that Casting Director's services are required substantially beyond the employment term referred to above, Company and Producer shall negotiate in good faith reasonable overages for the additional time required to cast the Picture.

**2. CONTINGENT DEFERMENT:** Provided Smith & Jones fully performs all services required hereunder and is not in material breach of this Agreement, Company shall be entitled to a contingent deferment of twenty thousand dollars (\$20,000.) payable pari passu and pro rata with all other contingent deferments respecting the Picture payable after Producer recoups 1.5 times the actual negative cost of the Picture, plus accrued interest thereon at the prime rate of interest plus four percent.

**3. CREDIT:** Provided Smith & Jones actually renders services as Casting Director on the Picture, and provided Smith & Jones is not in default hereof, Company will receive the following credit on a single in the main titles of the Picture, substantially as follows:

Casting by \_\_\_\_\_

Producer shall provide an "associate"/"assistant" casting credit in the end titles of the Picture to the casting associate/assistant.

No casual or inadvertent failure to accord such credits shall be deemed a breach of this Agreement.

**4. BUSINESS CONTROLS:** Company, Smith & Jones and Producer acknowledge that Smith & Jones does not have and shall not have hereunder any authority to enter into oral or written agreements or commitments on behalf of Producer without Producer's prior approval.

**5. AFFIRMATIVE ACTION POLICY:** Company and Smith & Jones are aware of and shall comply with Producer's policy not to discriminate against any prospective or actual cast member because of race, color, religion, sex, national origin, age, medical condition, sexual orientation, veteran's status or handicap and which policy includes a prohibition against sexual harassment. This nondiscrimination policy applies to all terms and conditions of the employment relationship, including, but not limited to, hiring, wages and benefits.

**6. REIMBURSEMENT OF EXPENSES; OFFICE SPACE:** During the period of Company's engagement hereunder, Producer shall reimburse Company for reasonable actual out-of-pocket casting expenses, i.e. messengers, photocopying, long distance calls, etc. Company and Smith & Jones acknowledge that the budget for the Picture is modest and shall conserve expenses as much as possible. Company shall furnish its own office space in Los Angeles for the casting services required hereunder.

**7. TRAVEL:** In the event Smith & Jones is required to travel to \_\_\_\_\_ for casting services, they will be furnished with first class (if available) air transportation, airport transfers, hotel accommodations, and per diem of \$75.00 per day each.

**8. CONTINGENCIES:** If both Smith & Jones shall become incapacitated or prevented from fully performing their services hereunder by reason of illness, death, accident, or mental and physical disability and/or if the production of the Picture is hampered or interrupted or interfered with by reason of force majeure (as that term is understood in the entertainment industry), Producer shall have the right to suspend Smith & Jones's services and the compensation payable to Company during the continuance of any such incapacity. In the event any such incapacity continues for a period of seven (7) consecutive days, or for an aggregate period of twenty-one (21) days, Producer shall have the right to terminate Smith & Jones's engagement and any unpaid compensation hereunder. In

the event that Smith & Jones should fail, refuse or neglect other than because of incapacity to perform any of Smith & Jones's required services hereunder, Producer shall have the right at any time to suspend Smith & Jones's services and the compensation payable to Company during the continuance of such default, and Producer shall also have the right at any time to terminate Company's engagement hereunder and any unpaid compensation due hereunder by reason of such default.

**9. VIDEO CASSETTE:** Producer shall furnish Company with a video cassette of the Picture when it is commercially available.

**10. ARBITRATION:** Any controversy or claim arising out of or relating to this agreement or any breach thereof shall be settled by arbitration in accordance with the Rules of the American Arbitration Association; and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled to reimbursement for costs and reasonable attorneys fees.

This memorandum of agreement shall be deemed a binding agreement between the parties and any modification or amendment shall require the written consent of the parties hereto.

Please have Company and Smith & Jones indicate acceptance of these terms by signing the original and two (2) copies of this letter of agreement and returning them to me for counter-signature. I will thereafter send you a fully executed copy for your files.

Sincerely,

\_\_\_\_\_  
Attorney for  
Producer Pictures, Inc.

AGREED TO AND ACCEPTED:

\_\_\_\_\_ Casting                      Producer Pictures, Inc.

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

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

I have read this agreement and agree as an express inducement to the parties entering into the agreement to render all services and observe all requirements of Producer under this agreement. If I fail to do so, Producer will have the same rights vis-a-vis me personally as if I had entered into the agreement directly with Producer. I agree to look solely to Company as my employer for payment of compensation for my services and the discharge of all other obligations.

Smith: \_\_\_\_\_

Jones: \_\_\_\_\_

EXHIBIT - **HH**

**CREW DEAL MEMO  
SALARIED ON-CALL  
EXEMPT EMPLOYEES**

Producer: \_\_\_\_\_

MOTION PICTURE: \_\_\_\_\_

START DATE: \_\_\_\_\_ POSITION: \_\_\_\_\_

EMPLOYEE NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE: Home: \_\_\_\_\_ Work: \_\_\_\_\_

SOCIAL SECURITY # \_\_\_\_\_ FED I.D. # \_\_\_\_\_

\*\*\*\*\*

(items below to be completed by production company only)

WEEKLY RATE: \$ \_\_\_\_\_ PRO-RATED DAILY RATE: \$ \_\_\_\_\_

RENTALS: \_\_\_\_\_

EMPLOYEE BOX AND EQUIPMENT IS SOLE RESPONSIBILITY  
OF EMPLOYEE. PRODUCTION ASSUMES NO RESPONSIBILITY FOR SAME.

OTHER TERMS: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

SALARIED/ON CALL  
EXEMPT EMPLOYEES  
TERMS AND CONDITIONS OF EMPLOYMENT

**1. PAYMENT OF WAGES:** Wages shall be paid to all employees no later than Friday following the week in which services were performed. Pay date may be delayed by reason of an intervening federal or state holiday. Employee is responsible for submitting her/his time card at the end of the work week to insure timely payment. No employee will be paid without fully completing these forms. Weekly rates are payment for a 6-day work week.

**2. EXEMPT EMPLOYEES:** Exempt employees shall not be beneficiary of additional overtime, turnaround or other hourly payments except as expressly provided in this deal memo.

**3. NIGHTS, WEEKENDS, HOLIDAYS, WORK TIME:** Unless expressly provided elsewhere in this deal memo, no increased or additional compensation shall accrue or be payable to employee for the rendering of services at night or on weekends or holidays, or after the expiration of any particular number of hours of service in any period.

**4.** The Producer will provide meal breaks and/or food service at approximately six (6) hour intervals.

**5. IMMIGRATION REFORM AND CONTROL ACT OF 1986 (IRCA):** Employment (or the engagement of services) hereunder is subject to employee providing the requisite documents required by IRCA and completing and signing the required Form I-9 pursuant to IRCA Section 274a.2. Employee shall comply with the immigration verification employment eligibility provisions required by law.

**6.** Kit Rentals are subject to W2 or 1099 reporting. No mileage payments or car allowances will be paid. Kit rentals will be prorated for partial weeks. Invoices for rentals should be attached to employees timecard and completed in accordance with instructions from Accounting department. Employee is responsible for liability and collision insurance and deductibles on her/his personal vehicle used in conjunction with their employment.

**7.** Use of alcohol or drugs during hours of employment will result in employee's immediate termination.

**8.** Employee will be held personally responsible for purchases, rentals and expenses not approved in advance by production.

**9.** Employee's services are on an exclusive basis to the production of the motion picture (the "Picture") referred to in this deal memo for such period of time as required unless otherwise specified in this deal memo.

**10.** Unless otherwise specified in this deal memo, screen credit is at Producer's discretion subject to employee's performing all services required through completion of term.

**11.** Unless expressly provided elsewhere in this agreement, employee's employment hereunder shall not be for a "run of the show" or for any guaranteed period of employment. Producer reserves the right to discharge employee at any time, subject only to the obligation to pay the balance of any guaranteed compensation due. Producer will attempt to notify employees a minimum of twenty-four (24) hours in advance of layoff. This agreement is subject to immediate suspension and/or termination (at Producer's election) without further obligation on the part of Producer in the event of any incapacity or default of employee or in the case of any suspension, postponement or interference with the production by reason of labor controversy, strike, earthquake, act of God, governmental action, regulation, or decree or for any other customary force majeure reason.

**12.** The terms and conditions of this deal memo are binding on Producer and employee and shall not be waived or altered by any method. Any added conditions on the front of this deal memo inconsistent with these conditions of employment shall be null and void.

**13.** Producer shall be the owner of all of the results and proceeds of employee's services and shall have the right to use employee's name, voice, picture and likeness in connection with the Picture, the advertising and publicizing thereof, and any promotional films or clips respecting the Picture without additional compensation therefore.

**14.** Employee shall not directly or indirectly circulate, publish or otherwise disseminate any news story, article, book or other publicity concerning the Picture, or employee's or others' services without Producer's prior written consent, provided that employee may issue personal publicity mentioning the Picture so long as such references are not derogatory. Employee has permission to show a videotape of Picture in connection with seeking future employment.

**15.** Employee will receive one VHS tape of the Picture within 90 days of completion of post-production.

**16. Arbitration:** Any controversy or claim arising out of or relating to this agreement or any breach thereof shall be settled by arbitration in accordance with the Rules of the American Arbitration Association; and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled to reimbursement for costs and reasonable attorneys' fees.

EMPLOYEE ACCEPTS ALL CONDITIONS OF EMPLOYMENT AS DESCRIBED ABOVE

AGREED TO AND ACCEPTED:

EMPLOYEE SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

PRODUCER SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

EXHIBIT - **II**

# PRODUCTION SERVICES AGREEMENT

THIS PRODUCTION SERVICES AGREEMENT is entered into as of \_\_\_\_\_, 19\_\_\_\_, between \_\_\_\_\_, a United Kingdom corporation ("Financier") and \_\_\_\_\_ PRODUCTIONS, Inc., a California corporation, ("Service Company"), and is made with reference to the following facts.

WHEREAS, Financier owns the right to produce and exploit a theatrical motion picture (the "Picture") based on the original screenplay entitled "\_\_\_\_\_" ("Screenplay") written by \_\_\_\_\_; and

WHEREAS, Financier has requested Service Company to supervise the production of the Screenplay in the State of California; and

WHEREAS, to that end, Service Company has arranged for the directing services of \_\_\_\_\_, and the producing services of \_\_\_\_\_ and \_\_\_\_\_, all in accordance with a mutually approved budget and a production schedule which have been previously approved by Financier and Service Company; and

WHEREAS, Financier desires to finance and arrange for the production of the Picture, and Service Company desires to furnish the services set forth herein on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the promises and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

## **1. PRODUCTION OF THE PICTURE:**

(a) Subject to the terms and conditions hereinafter set forth, Financier agrees to furnish or cause a third party to furnish to Service Company on a mutually approved cash flow schedule ("Cash Flow Schedule"), the amount of financing which Service Company represents will be required to finance the production of the Picture, and Service Company shall use all sums advanced hereunder for the sole purpose of furnishing the production services for the Picture in accordance with the approved screenplay, budget and production schedule, subject only to deviations therefrom caused by the exigencies of production and approved in writing by Financier. All obligations of Financier shall be subject to Financier first obtaining a completion bond from a reputable company, which in form and substance shall be subject to Financier's approval. All sums advanced hereunder shall be deposited in a production account that has been designated, approved and controlled by Financier, and until such funds have been expended in the production of the Picture such funds shall be and remain the sole and exclusive property of Financier.

(b) Delivery shall be complete when Service Company has delivered to

Financier in accordance with this Agreement all physical elements of the Picture, and which Financier reasonably requires to cause the Picture to be distributed throughout the world.

(c) Financier shall have the right of designation and approval in relation to all business, creative and other elements, including without limitation, cast, director, production personnel, music, locations, film laboratories, sound stages, post production facilities and all expenditures and other production matters in connection with the Picture, subject only to third party approvals and controls which are consented to by Financier and are contained in said third parties' written contract.

(d) Service Company shall perform all of its obligations hereunder to the best of its ability and in a workmanlike manner. Upon the first to occur of: (i) delivery of the Picture hereunder, (ii) Financier's exercise of takeover rights hereinafter set forth, or (iii) Financier's request following completion of the Picture, Service Company shall irrevocably and without further action assign and transfer to Financier all of Service Company's rights in and to all past, present and future "elements" of the Picture and all rights and benefits actually acquired by Service Company pursuant to any agreements with third parties in a form substantially as set forth in Exhibit "A" annexed hereto and made a part hereof. Service Company shall execute Exhibit "A" upon execution of this Agreement and hereby authorizes Financier to date it upon the occurrence of any of the foregoing events. As used herein, the term "elements" shall include, without limitation, all literary material written for the Picture, if any, acquired by Service Company, all stills, artwork and designs used in connection with the Picture, all film clips, recordings, trailers, sound tracks, and all other tangible and intangible property relating to the Picture, and all rights in and to the foregoing, exercisable throughout the universe, in perpetuity, and all subsidiary, ancillary and related rights, performing rights, publishing rights, merchandising and commercial tie-up rights, and the right to use the names, likenesses, and voices of all persons rendering services in connection with the Picture. Service Company shall include in its contracts with third parties engaged to render services on the Picture a provision that the results and proceeds of all the services rendered in connection with the Picture shall upon rendition automatically be the sole property of Service Company. Service Company's rights under any Agreement in connection with the Picture shall be freely assignable and upon Financier's request, Service Company agrees to execute, acknowledge and deliver such assignments and other documents and instruments as may be necessary or appropriate to evidence Financier's acquisition of rights hereunder. The Picture shall contain such production or presentation or release credit to Financier as Financier shall determine. Additionally, the end titles shall contain a copyright notice in the following form: "Copyright 19\_\_ \_\_\_\_\_, Ltd. All rights reserved", or such other notice as Financier shall designate.

(e) Upon Financier's acquisition of all right, title and interest in and to the Picture as provided above, Financier shall assume, or cause the distributor of the Picture to contractually adhere to, the executory obligations of all contracts undertaken by Service Company in the normal course of business to produce the Picture.

(f) If Service Company shall fail to execute any instrument or document which Financier may reasonably require to implement any term hereof or to perfect its rights hereunder, Financier shall have the right to execute such document or instrument on Service Company's behalf, such right being an irrevocable power coupled with an interest.

**2. PRODUCTION CONTRACTS:** All contracts for personnel, studio hire, purchase of goods and services, laboratory work and all other licenses, contracts and obligations in connection with the production of the Picture by Service Company, shall be made and entered into by Service Company in its own name as principal and not as agent for Financier and no obligations whatsoever shall be imposed upon Financier thereunder. All such contracts or undertakings shall be consistent with the provisions of this Agreement and industry custom and practice. Such contracts and undertakings shall not be terminated, canceled, modified or rescinded in any manner which would or might prejudice the rights of Financier hereunder. All such contracts shall be assignable to Financier without restriction. Service Company shall have all responsibilities of an employer with respect to those personnel locally engaged by Service Company in the United States, including those arising under any present or future legal requirements relating to Workers' Compensation, insurance, social security, tax withholding, pension, health and welfare plans under any legal requirements or any applicable collective bargaining agreement, if any, although upon delivery of the Picture and completion of all obligations required hereunder of Service Company, Financier shall assume or cause the distributor of the Picture to assume such obligations and hold Service Company harmless therefrom. Service Company shall use due care in the selection and purchase of any items to be used in connection with the production of the Picture and shall assign Financier on demand all rights which Service Company shall obtain, by warranty and otherwise, from the supplier of such items.

**3. INSURANCE:** Service Company shall carry and pay for appropriate insurance, consistent with the requirements of Financier, to cover all customary risks in connection with the performance of its obligations hereunder only with respect to those persons engaged in the United States, including, without limitation, public liability, cast, and Workers' Compensation, which insurance shall specifically name Financier as an insured party (and beneficiary), and (as a condition to any payment hereunder) shall furnish Financier with certificates of insurance stating and certifying the amount and type of insurance and that Financier is an insured party thereunder and with copies of all said policies.

**4. CONTRACT PRICE:** Except as provided in Paragraph 15 below, on the condition that Service Company fully and completely performs all of its obligations hereunder, Financier shall pay Service Company for services rendered \$\_\_\_\_\_.

**5. PRODUCTION SCHEDULE:** It is of the essence of this Agreement that Service Company furnish the production services respecting services and the Picture and all other elements required hereunder in accordance with the mutually approved production schedule ("Production Schedule").

**6. DISTRIBUTION:** The Picture shall be distributed in such manner as Financier shall determine in its sole discretion.

**7. SERVICE COMPANY REPRESENTATIONS AND WARRANTIES:** Service Company hereby represents, warrants and agrees as follows:

(a) Service Company is a corporation, duly organized and existing under the laws of the State of California, and has the right to grant all rights granted herein, and is free to enter into and fully perform this Agreement.

(b) No liens, encumbrances, attachments or other matters constituting or possibly constituting any impediment to the clear marketable title and unrestricted commercial exploitation or disposition of the Picture or any rights therein

or pertaining thereto shall be permitted to occur which shall or may arise by reason of any acts, omissions or activities of Service Company in connection with the performance or enforcement of this Agreement, or attachments by Service Company in connection with any litigation in which Service Company shall be plaintiff against Financier or any other party whatsoever. Service Company will not create, make, cause or permit any lien, encumbrance, pledge (except as may be required by a film processing laboratory), hypothecation or assignment of or claim against the Picture, or any rights therein, or upon the copyrights thereof, or upon the literary material upon which the Picture is based, or the release, distribution, exploitation or exhibition rights therein, or upon any proceeds therefrom or any other rights, interests or property therein or pertaining thereto.

(c) Service Company shall at all times indemnify, defend, and hold harmless Financier, and its partners, officers, directors, employees, licensees, shareholders, subsidiaries, and agents, and their heirs, executors, administrators, successors and assigns, from and against any and all claims, damages, liabilities, actions, causes of action, costs and expenses, including reasonable attorneys' fees, judgments, penalties of any kind or nature whatsoever arising out of (i) Service Company's production and delivery of the Picture; (ii) any act or omission by Service Company or any person whose services or facilities shall be furnished by Service Company in connection with the Picture; and (iii) any breach by Service Company of any representation, warranty or agreement made by Service Company hereunder.

**8. GOOD FAITH ASSURANCE:** Neither party has, nor will without the other's prior written consent: (i) enter into any agreement, commitment or other arrangement, grant any rights or do any act or thing which could or might prevent or interfere with the production and completion of the Picture or prevent or impede the performance of all of the respective party's obligations hereunder; (ii) do or fail to do any act which might or could interfere with or otherwise prevent such party from fully complying with all of the terms hereof; or (iii) engage in any conduct inconsistent with this Agreement or the other party's rights hereunder. The foregoing shall not be interpreted as impairing or preventing Financier's absolute right to abandon production of the Picture at anytime and/or to refrain from or cause the termination of the distribution of the Picture, all as provided in greater detail in Paragraph 15 below.

**9. DEFAULT:** Service Company specifically waives all rights and remedies, if available to Service Company, of rescission, injunction, restraint and specific performance and agrees in this regard that it shall have no right to revoke, terminate or rescind any rights acquired by Financier hereunder nor to restrain production, completion or distribution of the Picture and shall have no right to compel specific performance of any of Financier's obligations hereunder. Service Company understands and agrees that its sole remedy hereunder shall be for monetary damages, if any, in the event of breach by Financier.

**10. SECURITY INTEREST:** As security for the delivery of the Picture hereunder, Service Company hereby mortgages, sells, assigns, pledges, hypothecates, and sets over to Financier as collateral all of Service Company's right, title and interest, if any, in and to the following:

(a) The Picture, in whatever form it may now exist or hereafter exist, including the negative, sound material and copyright thereto.

(b) The literary, dramatic and music material upon which the Picture is based or to be based including, without limitation, the Screenplay and all of Service

Company's right, title and interest in and to the copyrights to the foregoing.

(c) All of Service Company's right, title and interest in and to any properties or things of value pertaining to rights, contract rights, claims, properties and material set forth in (a) and (b) above, whether now in existence or hereafter acquired by Service Company.

(d) Any other rights Service Company may have in or relating to the Picture.

It is intended that the security granted above is and shall be a "security interest" as such term is defined in the Uniform Commercial Code and Service Company hereby agrees to execute and deliver a financing statement in form and substance which complies with the Uniform Commercial Code of any and all states which Financier may hereafter require. Service Company hereby authorizes Financier or its representative to file such financing statement(s) and to execute any continuation statements as well as to perform any and all other acts Financier may deem appropriate to perfect and continue Financier's security interest in the collateral. Service Company warrants and represents that there shall be no lien or charge or encumbrance in whole or in part upon the collateral (other than a customary laboratory lien for processing services, a lien to secure obligations under a Collective Bargaining Agreement) or proceeds derived therefrom which are equal or superior to the lien and security interest above granted and that Financier's security interest shall at all times be and remain a first and continuing lien and security interest on the collateral until Financier is repaid the entire sum herein elsewhere provided. Service Company shall at all times keep Financier advised as to the location of all collateral herein pledged.

**11. TAKEOVER RIGHTS:** At any time after the occurrence of any of the events hereinafter set forth, Financier shall have the right, to be exercised in its sole and exclusive discretion, to either issue directions and instructions regarding production of the Picture, or to take over production of the Picture. The events entitling Financier to exercise the aforesaid rights shall be the following:

(a) If the project cost of production in Financier's good faith judgment reasonably appears to exceed the approved budget by 5% (excluding overbudget costs that are reimbursed by insurance, or caused by force majeure or a direct consequence of a third party breach of contract that is not induced or encouraged by Service Company);

(b) An event which might permit a takeover by the company issuing the completion bond;

(c) Service Company fails to substantially carry out any instructions which Financier may issue to Service Company in keeping herewith; or

(d) Service Company breaches any of the material terms and conditions hereof.

If Financier exercises its right to issue directions and instruction in keeping with the foregoing, Service Company shall fully and faithfully abide by and follow all such instructions issued in connection with the production of the Picture and Service Company shall have no further creative approval and/or other production rights concerning production, post-production and/or distribution of the Picture. If Financier exercises its takeover rights as aforesaid, Service Company shall immediately do all that is necessary to place at Financier's disposal and under Financier's control, all persons production funds and other items of and concerning production of the Picture. For such purpose, Service Company hereby irre-

vocably constitutes and appoints Financier as Service Company's attorney-in-fact with full power of substitution and revocation, to act in Service Company's name and stead to make withdrawals from any production account or other bank accounts relating to the Picture and to expend funds from such account and to further carry out and fully perform, at Financier's discretion, any and all agreements, or to modify, amend, compromise or terminate any such contract and to further engage or discharge personnel and to acquire, release and dispose of any equipment, real or other property relating to the Picture and to endorse, collect and deposit any checks or other instruments payable to Service Company as a result of the Picture and in general to do any and all acts which Service Company could otherwise have done had Financier not exercised its takeover rights. Service Company specifically acknowledges that if Financier takes over the Picture in keeping with the foregoing, Financier may abandon the Picture or complete production as Financier may at such time determine. Notwithstanding the foregoing to the contrary, Financier's rights concerning production of the Picture shall be subject to creative and other approvals and controls that are contained in those agreements between Service Company and third parties that were entered into with Financier's knowledge and which are not terminated by Financier.

**12. FORCE MAJEURE:** The date for performance of either party's obligations hereunder shall be postponed to the extent any event of force majeure delays the commencement of production or the performance of the obligations of either party hereunder.

**13. STATUS OF PARTIES:** The parties hereto expressly agree, each for the other, that the relationship between them hereunder is that of two principals dealing with each other as independent contractors for the sole and specific purpose that Service Company shall produce and deliver the Picture, subject to the terms and conditions of this Agreement. At no time, past, present or future, shall the relationship of the parties herein be deemed or intended to constitute a relationship with the characteristics of an agency, partnership, joint venture, or of a collaboration for the purposes of sharing any profits or ownership in common. Neither party shall have the right, power or authority at any time to act on behalf of, or represent, the other party, but each party hereto shall be separately and entirely liable for its own respective debts in all respects. This Agreement is not for the benefit of any person who is not a party signatory hereto or specifically named as a beneficiary herein. Financier may assign or license its rights hereunder in whole or in part to any person, firm or corporation. Except for assignment to Financier, Service Company may not assign or license any of its rights or obligations hereunder, or under any agreement entered into by Service Company with any third party. Subject to the foregoing, the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, administrators, executors, successors and assigns, and any past, present or future parent, subsidiary or affiliate company.

**14. NOTICES:** Any and all notices, communications and demands required or desired to be given hereunder by either party hereto shall be in writing and shall be validly given or made if served either personally or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice or demand be served personally, service shall be conclusively deemed made at the time of such personal service. If such notice or demand be served by registered or certified mail in the manner herein provided, service shall be conclusively deemed made two business days after the deposit thereof in the United States mail addressed to the party to whom such notice or demand is to be given as hereinafter set forth:

Financier:

Service Company:

Any party hereto may change its address for the purpose of receiving notices or demands as herein provided by a written notice given in the manner aforesaid to the other party hereto, which notice of change of address shall not become effective, however, until the actual receipt thereof by the other party.

**15. ABANDONMENT:** Financier shall have no obligation to finance, release, broadcast, distribute, complete production of, not abandon or otherwise exploit the Picture, provided Financier indemnifies Service Company against any loss from contracts entered into with Financier's prior consent and knowledge.

**16. MISCELLANEOUS:**

(a) This Agreement shall be construed, interpreted and enforced in accordance with and shall be governed by the laws of the State of California applicable to agreements entered into and to be wholly performed therein. In the event of any conflict between any provisions hereof and any applicable laws to the contrary, the latter shall prevail, but this Agreement shall be deemed modified only to the extent necessary to remove such conflicts.

(b) Each of the parties hereto shall execute and deliver any and all additional documents, and shall do any and all acts and things reasonably required in connection with the performance of the obligations undertaken hereunder and to effectuate the extent of the parties thereto.

(c) This Agreement constitutes the entire agreement of the parties hereto and supersedes all oral and written agreements and understandings made or entered into by the parties hereto prior to the date hereof. No amendment, change or modification of this Agreement shall be valid unless it is made in writing and signed by both parties hereto, and any waiver of a failure to perform or a breach shall not operate to waive any subsequent failure to perform or breach.

(d) The captions appearing at the commencement of the paragraphs hereof are descriptive only and for convenience in reference to this Agreement and should there be any conflict between any such heading and the paragraph at the head of which it appears, the paragraph thereof and not such heading shall control and govern in the construction of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

FINANCIER:

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

Print Name:

Its: \_\_\_\_\_

Service Company:

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

Print Name:

Its:

EXHIBIT - **JJ**

## LOCATION AGREEMENT

Agreement entered into this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between \_\_\_\_\_ ("Production Company") and \_\_\_\_\_ ("Grantor").

**1. IDENTITY OF FILMING LOCATION:** Grantor hereby agrees to permit Production Company to use the property located at \_\_\_\_\_ ("Property") in connection with the motion picture currently entitled \_\_\_\_\_ ("Picture") for rehearsing, photographing, filming and recording scenes and sounds for the Picture. Production Company and its licensees, sponsors, assigns and successors may exhibit, advertise and promote the Picture or any portion thereof, whether or not such uses contain audio and/or visual reproductions of the Property and whether or not the Property is identified, in any and all media which currently exist or which may exist in the future in all countries of the world and in perpetuity.

**2. RIGHT OF ACCESS:** Production Company shall have the right to bring personnel and equipment (including props and temporary sets) onto the Property and to remove same after completion of its use of the Property hereunder. Production Company shall have the right but not the obligation to photograph, film and use in the Picture the actual name, if any, connected with the Property or to use any other name for the Property. If Production Company depicts the interior(s) of any structures located on the Property, Grantor agrees that Production Company shall not be required to depict such interior(s) in any particular manner in the Picture.

**3. TIME OF ACCESS:** The permission granted hereunder shall be for the period commencing on or about \_\_\_\_\_ and continuing until \_\_\_\_\_. The period may be extended by Production Company if there are changes in the production schedule or delays due to weather conditions. The within permission shall also apply to future retakes and/or added scenes.

**4. PAYMENT:** For each day the Production Company uses the location, it shall pay Grantor the sum of \$ \_\_\_\_\_ in consideration for the foregoing.

**5. ALTERATIONS TO LOCATION:** Production Company agrees that (with Grantor's permission) if it becomes necessary to change, alter or rearrange any equipment on the Property belonging to Grantor, Production Company shall return and restore said equipment to its original place and condition, or repair it, if necessary. Production Company agrees to indemnify and hold harmless Grantor from and against any and all liabilities, damages and claims of third parties arising from Production Company's use hereunder of the Property (unless such liabilities, damages or claims arise from breach of Grantor's warranty as set forth in the immediately following sentence) (and from any physical damage to the Property proximately caused by Production Company, or any of its representatives, employees, or agents). Grantor warrants that it has the right and authority to enter this Agreement and to grant the rights granted by it herein. Grantor agrees to indemnify and hold harmless Production Company from and against any and all claims relating to breach of its aforesaid warranty.

**6. NO KICKBACKS FOR USE:** Grantor affirms that neither it nor anyone acting

for it gave or agreed to give anything of value to any member of the production staff, anyone associated with the Picture, or any representative of Production Company, or any television station or network for mentioning or displaying the name of Grantor as a shooting location on the Property (except the use of the Property, which was furnished for use solely on or in connection with the Picture.

**7. BILLING CREDIT:** Grantor acknowledges that any identification of the Property which Production Company may furnish shall be at Production Company's sole discretion and in no event shall said identification be beyond that which is reasonably related to the content of the Picture.

**8. RELEASE:** Grantor releases and discharges Production Company, its employees, agents, licensees, successors and assigns from any and all claims, demands or causes of actions that Grantor may now have or may from now on have for libel, defamation, invasion of privacy or right of publicity, infringement of copyright or violation of any other right arising out of or relating to any utilization of the rights granted herein.

The undersigned represents that he/she is empowered to execute this Agreement for Grantor.

IN WITNESS; WHEREOF, the parties have hereunto set their names and signatures:

\_\_\_\_\_  
Production Company

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

\_\_\_\_\_  
Grantor (Name)

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

EXHIBIT - **KK**

# ACQUISITION/DISTRIBUTION AGREEMENT

## THEATRICAL RELEASE

Agreement dated \_\_\_\_\_ between \_\_\_\_\_ ("Production Company")  
a California corporation at \_\_\_\_\_ and  
\_\_\_\_\_ ("Distributor"), a California corporation  
at \_\_\_\_\_.

**1. PICTURE:** The term "Picture" refers to the Theatrical Motion Picture set forth in Schedule "A" hereof.

**2. TERRITORY AND TERM:**

(a) Territory: The territory covered hereby ("Territory") is set forth in Schedule "A."

(b) Distribution Term: The term of this Agreement and the rights granted Distributor hereunder for each country or place of the Territory shall be the period of time specified in Schedule "A" ("Distribution Term"). The term of this Agreement shall commence on the date hereof and expire upon the expiration of the Distribution Term as extended unless sooner terminated as provided herein.

**3. RIGHTS GRANTED:**

(a) Grant: Production Company hereby grants to Distributor throughout the Territory the exercise of all rights of theatrical, television (free, pay and syndication) and home video (cassette and disc) exhibition and distribution with respect to the Picture and Trailers thereof, and excerpts and clips therefrom, in any and all languages and versions, including dubbed, subtitled and narrated versions. The rights granted herein shall include without limit the sole and exclusive right:

(i) Titles: To use the title or titles by which the Picture is or may be known or identified.

(ii) Music and Lyrics: To use and perform any and all music, lyrics and musical compositions contained in the Picture and/or recorded in the soundtrack thereof in connection with the distribution, exhibition, advertising, publicizing and exploiting of the Picture;

(iii) Versions: To make such dubbed and titled versions of the Picture, and the Trailers thereof, including, without limitation, cut-in, synchronized and superimposed versions in any and all languages for use in such parts of the Territory as Distributor may deem advisable.

(iv) Editing: To make such changes, alterations, cuts, additions, interpolations, deletions and eliminations into and from the Picture and trailer subject to prior written approval of Production Company and Director as Distributor may deem necessary or desirable, for the effective marketing, distribution, exploitation or other use of the Picture.

(v) Advertising and Publicity: To publicize, advertise and exploit the Picture throughout the Territory during the Distribution Term, including

without limitation, the exclusive right in the Territory for the purpose of advertising, publicizing and exploiting the Picture to:

(A) Literary Material: Publish and to license and authorize others to publish in any language, and in such forms as Distributor may deem advisable, synopses, summaries, adaptations, novelizations, and stories of and excerpts from the Picture and from any literary or dramatic material included in the Picture or upon which the Picture is based in book form and in newspapers, magazines, trade periodicals, booklets, press books and any other periodicals and in all other media of advertising and publicity whatsoever not exceeding 7,500 words in length taken from the original material;

(B) Radio and Television: Broadcast by radio and television for advertising purposes and to license and authorize others to so broadcast, in any language, or any parts or portions of the Picture not exceeding five minutes in length, and any literary or dramatic material included in the Picture or upon which the Picture was based alone or in conjunction with other literary, dramatic or musical material; and

(C) Names and Likenesses: Use, license and authorize others to use the name, physical likeness and voice (and any simulation or reproduction of any thereof) of any party rendering services in connection with the Picture for the purpose of advertising, publicizing or exploiting the Picture or Distributor, including commercial tie-ins.

(vi) Use of Name and Trademarks: To use Distributor's name and trademark and/or the name and trademark of any of Distributor's licensee's on the positive prints of the Picture and in Trailers thereof, and in all advertising and publicity relating thereto, in such a manner, position, form and substance as Distributor or its licensees may elect.

(vii) Commercials: To permit commercial messages to be exhibited during and after the exhibition of the Picture.

(viii) Trailers: To cause trailers of the Picture and prints thereof and of the Picture to be manufactured, exhibited and distributed by every means, medium, process, method and device now or hereafter known.

(b) Grant of Other Rights: Production Company hereby grants to Distributor throughout the Territory the sole and exclusive right, license and privilege to exercise all literary publishing rights, live television rights, merchandising rights, music publishing rights, soundtrack recording rights, radio rights, additional motion picture rights, remake rights and sequel motion picture rights subject to the terms and conditions of the agreements pursuant to which Production Company acquired the foregoing rights with respect to the literary, dramatic and/or musical material used by Production Company in connection with the Picture. Production Company agrees that at the request of Distributor, Production Company will execute and deliver to Distributor for recordation purposes a separate document pursuant to which Production Company confirms the transfer and assignment to Distributor of said rights.

(c) Rights Free and Clear: The above-stated rights are granted by Production Company to Distributor without qualification and free and clear from any and all restrictions, claims, encumbrances or defects of any nature and Production Company agrees that it will not commit or omit to perform any act by which any of these rights, licenses, privileges and interests could or will be encum-

bered, diminished or impaired, and that Production Company will pay or discharge, and will hold Distributor harmless from, any and all claims that additional payments are due anyone by reason of the distribution, exhibition, telecasting, of re-running of the Picture or the receipt of its proceeds. Production Company further agrees that during the Distribution Term (as extended) with respect to each country or place, Production Company shall neither exercise itself nor grant to any third party the rights granted to Distributor pursuant to the terms hereof.

(d) Production Company's Reservation of Rights: Production Company reserves for its use non-theatrical distribution.

(e) Credits: The statements of credits required to be given pursuant to Exhibit "2" shall conform to Distributor's standard credit provisions for comparable talent, including without limitation Distributor's standard art work title provisions as set forth in Exhibit "3," attached hereto.

**5. PRODUCTION COMPANY'S WARRANTIES AND REPRESENTATIONS:**

Production Company represents and warrants to Distributor, its successors, licensees and assigns as follows:

(a) Quality: The Picture is completely finished, fully edited and titled and fully synchronized with dialogue, sound and music and in all respects ready and of a quality, both artistic and technical, adequate for general theatrical release and commercial public exhibition.

(b) Content: The Picture consists of a continuous and connected series of scenes, telling or presenting a story, free from any obscene material and suitable for exhibition to the general public.

(c) Unrestricted Right to Grant: Production Company is the sole and absolute owner of the Picture, the copyright pertaining thereto and all rights associated with or relating to the distribution, including the absolute right to grant to and vest in Distributor all the rights, licenses and privileges granted to Distributor under this Agreement, and Production Company has not heretofore sold, assigned, licensed, granted, encumbered or utilized the Picture or any of the literary or musical properties used therein in any way that may affect or impair the rights, licenses and privileges granted to Distributor hereunder and Production Company will not sell, assign, license, grant or encumber or utilize the rights, licenses and privileges granted to Distributor hereunder.

(d) Discharge of Obligations: All the following have been fully paid or discharged or will be fully paid and discharged by Production Company or by persons other than Distributor:

(i) All claims and rights of owners of copyright in literary, dramatic and musical rights and other property or rights in or to all stories, plays, scripts, scenarios, themes, incidents, plots, characters, dialogue, music, words, and other material of any nature whatsoever appearing, used or recorded in the Picture;

(ii) All claims and rights of owners of inventions and patent rights with respect to the recording of any and all dialogue, music and other sound effects recorded in the Picture and with respect to the use of all equipment, apparatus, appliances and other materials used in the photographing, recording or otherwise in the manufacture of the Picture;

(iii) All claims and rights with respect to the use, distribution, exhibition, performance and exploitation of the Picture and any music contained therein throughout the Territory, and

(e) No Infringement: To the best of Production Company's knowledge and belief neither the Picture nor any part thereof, nor any materials contained therein or synchronized therewith, nor the title thereof, nor the exercise of any right, license or privilege herein granted, violates or will violate or infringe or will infringe any trademark, trade name, contract, agreement, copyright (whether common law or statutory), patent, any literary, artistic, dramatic, personal, private, civil or property right or right of privacy or "moral rights of authors" or any other right whatsoever of or slanders or libels any person, firm, corporation or association whatsoever. In connection therewith, Production Company shall supply Distributor with a script clearance in a form acceptable to Distributor.

(f) No Advertising Matter: The Picture does not contain any advertising matter for which compensation, direct or indirect, has been or will be received by Production Company or to its knowledge by any other person, firm, corporation or association.

(g) No Impairment of Rights Granted: There are and will be no agreements, commitments or arrangements whatever with any person, firm, corporation or association that may in any manner or to any extent affect Distributor's rights hereunder or Distributor's share of the proceeds of the Picture. Production Company has not and will not exercise any right or take any action which might tend to derogate from, impair or compete with the rights, licenses and privileges herein granted to Distributor.

(h) Contracts: All contracts with artists and personnel, for purchases, licenses and laboratory contracts and all other obligations and undertakings of whatsoever kind connected with the production of the Picture have been made and entered into by Production Company and by no other party and no obligation shall be imposed upon Distributor thereunder and Production Company shall indemnify and hold Distributor harmless from any expense and liability thereunder. All such contracts are in the form customarily in use in the Motion Picture industry and are consistent with the provisions of this Agreement, particularly with reference to the warranties made by Production Company and the rights acquired by Distributor hereunder. Said contracts shall not, without Distributor's prior written consent, be terminated, canceled, modified or rescinded in any manner which would adversely affect Distributor's rights hereunder.

(i) All Considerations Paid: All considerations provided to be paid under each and all the agreements, licenses or other documents relating to the production of the Picture have been paid in full, or otherwise discharged in full, and there is no existing, outstanding obligation whatsoever, either present or future, under any of said contracts, agreements, assignments or other documents, unless disclosed in Schedule "A".

(j) Full Performance: All terms, covenants and conditions required to be kept or performed by Production Company under each and all of the contracts, licenses or other documents relating to the production of the Picture have been kept and performed and will hereafter be kept and performed by Production Company and there is no existing breach or other act of default by Production Company under any such agreement, license or other document, nor will there be any such breach or default during the term hereof.

(k) No Release/No Banning: Neither the Picture nor any part thereof has been released, distributed or exhibited in any media whatsoever in the Territory nor has it been banned by the censors of or refused import permits for any portion of the Territory.

(l) Valid Copyright: The copyright in the Picture and the literary, dramatic and musical material upon which it is based or which is contained in the Picture will be valid and subsisting during the Distribution Term (as extended) with respect to each country or place of the Territory, and no part of any thereof is in the public domain.

(m) Peaceful Enjoyment: Distributor will quietly and peacefully enjoy and possess each and all of the rights, licenses and privileges herein granted or purported to be granted to Distributor throughout the Distribution Term (as extended) for each country or place of the Territory without interference by any third party.

(n) Guild/Union/Performing Rights Society—Participation payments: Any payments required to be made to any performing rights society or to any body or group representing authors, composers, musicians, artists, any other participants in the production of the Picture, publishers or other persons having legal or contractual rights of any kind to participate in the receipts of the Picture or to payments of any kind as a result of the distribution or exhibition of the Picture and any taxes thereon or on the payment thereof will be made by Production Company or by the exhibitors and need not be paid by Distributor.

(o) Music Performing Rights: The performing rights to all musical compositions contained in the Picture are: (i) controlled by the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc., (BMI) or similar organizations in other countries such as the Japanese Society of Rights of Authors and Composers (JASEAC), the Performing Right Society Ltd. (PRS), the Society of European Stage Authors and Composers (SESAC), the Societe des Auteurs Compositeurs Et Editeurs de Musique (SACEM), Gesellschaft für Musikalische Aufführungs und Mechanische Vervielfältigungsrechte (GEMA) or their affiliates, or (ii) in the public domain in the Territory, or (iii) controlled by Production Company to the extent required for the purposes of this Agreement and Production Company similarly controls or has licenses for any necessary synchronization and recording rights.

(p) Television Restriction: The Picture will not be exhibited in or telecast in or cablecast in or into the Territory during the Distribution Term for each country or place of the Territory by anyone other than Distributor or its licensees.

(q) Authority Relative to this Agreement: Production Company has taken all action necessary to duly and validly authorize its signature and performance of this Agreement and the grant of the rights, licenses and privileges herein granted and agreed to be granted.

(r) Financial Condition: Production Company is not presently involved in financial difficulties as evidenced by its not having admitted its inability to pay its debts generally as they become due or otherwise not having acknowledged its insolvency or by its not having filed or consented to a petition in bankruptcy or for reorganization or for the adoption of an arrangement under Federal Bankruptcy Act (or under any similar law of the United States or any other jurisdiction, which relates to liquidation or reorganization of companies or to the modification or alteration of the rights of creditors) or by its not being involved

in any bankruptcy, liquidation, or other similar proceeding relating to Production Company or its assets, whether pursuant to statute or general rule of law, nor does Production Company presently contemplate any such proceeding or have any reason to believe that any such proceeding will be brought against it or its assets.

(s) **Litigation:** To Production Company's knowledge, there is no litigation, proceeding or claim pending or threatened against Production Company which may materially adversely affect Production Company's exclusive rights in and to the Picture, the copyright pertaining thereto or the rights, licenses and privileges granted to Distributor hereunder.

**6. INDEMNITY:** Production Company does hereby and shall at all times indemnify and hold harmless Distributor, its subdistributors and licensees, its and their officers, directors and employees, and its and their exhibitors, licensees and assignees, of and from any and all charges, claims, damages, costs, judgments, decrees, losses, expenses (including reasonable attorneys' fees), penalties, demands, liabilities and causes of action, whether or not groundless, of any kind or nature whatsoever by reason of, based upon, relating to, or arising out of a breach or claim of breach or failure of any of the covenants, agreements, representations or warranties of Production Company hereunder or by reason of any claims, actions or proceedings asserted or instituted, relating to or arising out of any such breach or failure or conduct or activity resulting in a breach or claim of breach. All rights and remedies hereunder shall be cumulative and shall not interfere with or prevent the exercise of any other right or remedy which may be available to Distributor. Upon notice from Distributor of any such claim, demand or action being advanced or commenced, Production Company agrees to adjust, settle or defend the same at the sole cost of Production Company. If Production Company shall fail to do so, Distributor shall have the right and is hereby authorized and empowered by Production Company to appear by its attorneys in any such claim, demand or action, to adjust, settle, compromise, litigate, contest, satisfy judgments and take any other action necessary or desirable for the disposition of such claim, demand or action. In any such case, Production Company, within 20 days after demand by Distributor, shall fully reimburse Distributor for all such payments and expenses, including reasonable attorneys' fees. If Production Company shall fail so to reimburse Distributor, then, without waiving its right to otherwise enforce such reimbursement, Distributor shall have the right to deduct the said amount of such payments and expenses, or any part thereof, from any sums accruing under this Agreement or any other agreement to or for the account of Production Company. Also, in the event of any matter to which the foregoing indemnity relates, Distributor shall have the right to withhold from disbursements to or for the account of Production Company a sum which in Distributor's opinion may be reasonably necessary to satisfy any liability or settlement in connection with such matter, plus a reasonable amount to cover the expenses of contesting or defending such claim and shall have the further right to apply the amount withheld to the satisfaction of such liability or settlement and to reimbursement of such expenses.

#### **7. COPYRIGHT:**

(a) **Ownership:** Production Company warrants that Production Company has not heretofore transferred its ownership in and to all copyrights pertaining to the Picture throughout the world, including without limitation the rights to secure copyright registration anywhere in the world with respect to all copyrights in the Picture and to secure any renewals and extensions thereof wherever and

whenever permitted. Production Company warrants that upon delivery of the Picture to Distributor, Production Company will own all copyrights in the Picture throughout the world for the full period of copyright and all extensions and renewals thereof. The negative of the Picture shall contain a copyright notice complying with all statutory requirements of the copyright laws of the United States or any country which is a party to the Berne Union or Universal Copyright Convention, such notice to appear in the main or end titles of the Picture. Production Company and Distributor shall not have the right to change the copyright notice contained in the Picture.

(b) Defense of Copyright: Distributor hereby agrees to take all reasonable steps to protect such copyrights from infringement by unauthorized parties and in particular, at the request of Production Company, to take such action and proceedings as may be reasonable to prevent any unauthorized use, reproduction, performance, exhibition or exploitation by third Parties of the Picture or any part thereof or the material on which it is based which may be in contravention of the exclusive rights granted to Distributor in respect to the Picture.

For the purpose of permitting Distributor to defend and enforce all rights and remedies granted to Distributor hereunder, and to prevent any unauthorized use, reproduction, performance, exhibition or exploitation of the Picture or any part thereof or the material on which it is based, Production Company hereby irrevocably appoints Distributor its sole and exclusive attorney-in-fact, to act in Production Company name or otherwise. Distributor agrees (consistent with commercially acceptable practices in the Motion Picture industry), in its own name or in the name of Production Company, to take all reasonable steps to enforce and protect the rights, licenses and privileges herein granted, under any law and under any and all copyrights, renewals and extensions thereof, and to prevent the infringement thereof, and to bring, prosecute, defend and appear in suits, actions and proceedings of any nature under or concerning all copyrights in the Picture and to settle claims and collect and receive all damages arising from any infringement of or interference with any and all such rights, and in the sole judgment of Distributor exercised in good faith to join Production Company as a party plaintiff or defendant in such suit, action or proceeding. Production Company hereby irrevocably appoints Distributor as its sole and exclusive attorney-in-fact, during the Term of this Agreement, with full and irrevocable power and authority to secure, register, renew and extend all copyrights in the Picture and all related properties upon each thereof becoming eligible for copyright, registration, renewal and extension.

(c) Limitation of Liability: Distributor shall not be liable, responsible or accountable in damages or otherwise to Production Company for any action or failure to act on behalf of Production Company within the scope of authority conferred on Distributor under this Clause 8, unless such action or omission was performed or omitted fraudulently or in bad faith or constituted wanton and willful misconduct or gross negligence.

**8. ERRORS AND OMISSIONS INSURANCE:** As provided in Exhibit 2, Distributor shall obtain and maintain or cause to be obtained and maintained throughout the Distribution Term (as extended), Motion Picture Distributor Errors and Omissions insurance in a form acceptable to Production Company, from a qualified insurance company acceptable to Production Company naming Distributor and Production Company and each and all the parties indemnified herein as additional named insureds. The amount and coverage shall be for a minimum of \$1,000,000/\$3,000,000 with respect to any one or more claims relating to the

Picture or if Distributor pays an advance, the amount of the advance, whichever shall be greater. The policy shall provide for a deductible no greater than \$10,000 and thirty (30) days' notice to Production Company before any modification, cancellation or termination.

**9. INSTRUMENTS OF FURTHER ASSURANCE:** Production Company shall execute and deliver to Distributor, promptly upon the request of Distributor therefore, any other instruments or documents considered by Distributor to be necessary or desirable to evidence, effectuate or confirm this Agreement, or any of its terms and conditions.

**10. NO DISTRIBUTOR REPRESENTATIONS AND WARRANTIES:** Production Company acknowledges and agrees that Distributor makes no express or implied representation, warranty, guaranty or agreement as to the gross receipts to be derived from the Picture or the distribution, exhibition or exploitation thereof, nor does Distributor guarantee the performance by any subdistributor, licensee or exhibitor of any contract for the distribution, exhibition or exploitation of the Picture, nor does Distributor make any representation, warranty, guaranty or agreement as to any minimum amount of monies to be expended for the distribution, advertising, publicizing and exploitation of the Picture. Production Company recognizes and acknowledges that the amount of gross receipts which may be realized from the distribution, exhibition and exploitation of the Picture is speculative, and agrees that the reasonable business judgment exercised in good faith of Distributor and its subdistributors and licensees regarding any matter affecting the distribution, exhibition and exploitation of the Picture shall be binding and conclusive upon Production Company.

**11. DISTRIBUTION AND EXPLOITATION OF THE PICTURE:** Distributor shall have the complete, exclusive and unqualified control of the distribution, exhibition, exploitation and other disposition of the Picture (directly or by any subdistributor or licensee) in the media granted to Distributor hereunder throughout the Territory during the Distribution Term with respect to each country or place, in accordance with such sales methods, plans, patterns, programs, policies, terms and conditions as Distributor in its reasonable business judgment may determine proper or expedient. The enumeration of the following rights of distribution and exploitation shall in no way limit the generality or effect of the foregoing:

(a) Terms: Distributor may determine the manner and terms upon which the Picture shall be marketed, distributed, licensed, exhibited, exploited or otherwise disposed of and all matters pertaining thereto, and the decision of Distributor on all such matters shall be final and conclusive. Production Company shall have no control whatsoever in or over (i) the manner or extent to which Distributor or its subdistributors or licensees shall exploit the Picture, (ii) the terms and provisions of any licenses granted by Distributor to third Parties or (iii) to the sufficiency or insufficiency of proceeds from the Picture.

(b) Refrain from Distribution, Exhibition or Exploitation. Distributor may refrain from the release, distribution, re-issue or exhibition of the Picture at any time, in any country, place or location of the Territory, in any media, or in any form. Production Company acknowledges that there is no obligation to exploit the soundtrack recording rights or music publishing rights or merchandising rights or literary publishing rights, it being agreed that Distributor may elect to exercise any or all of said rights as Distributor in its sole business judgment exercised in good faith may determine.

(c) "Outright Sales": Distributor may make outright sales of the Picture as Distributor in good faith may determine. Only net monies actually received and earned by Distributor with respect to outright sales of the Picture shall be included within gross film rentals.

(d) Contracts and Settlements: Distributor may distribute the Picture under existing or future franchise or license contracts, which contracts may relate to the Picture separately or to the Picture and one or more other Motion Pictures distributed by or through Distributor. Distributor may, in the exercise of its reasonable business judgment, exercised in good faith, make, alter or cancel contracts with exhibitors, subdistributors and other licensees and adjust and settle disputes, make allowances and adjustments and give credits with respect thereto.

(e) Means of Release: Distributor may exhibit or cause the Picture to be exhibited in theaters or other places owned, controlled, leased or managed by Distributor. Distributor may enter into any agreement or arrangement with any other major distributor for the distribution by such other major distributor of all or a substantial portion of Distributor's theatrical motion pictures. Distributor may also enter into any agreement or arrangement with any other major distributor or any other party for the handling of the shipping and inspection activities of Distributor's exchanges or the handling of other facilities in connection with the distribution of motion pictures.

(f) Time of Release: The initial release of the Picture in any part of the Territory shall commence on such date or dates as Distributor or its subdistributors or licensees in their respective sole judgment and discretion may determine. Such releases shall be subject to the requirements of censorship boards or other governmental authorities, the availability of playing time in key cities, the securing of the requisite number of motion picture copies, and delays caused by reason of events of force majeure or by reason of any cause beyond the control of Distributor or its subdistributors or licensees. If any claim or action is made or instituted against Distributor or any of its subdistributors or licensees as to the Picture, Distributor or such subdistributors or licensees shall have the right to postpone the release of the Picture (if it has not then been released) or to suspend further distribution thereof (if it has been released) until such time as such claim or action shall have been settled or disposed of to the satisfaction of Distributor or such subdistributors or licensees.

(g) Duration of Release: Distribution of the Picture shall be continued in the Territory or any part thereof in which it is released by Distributor or its licensees only for \_\_\_\_\_ years. Distributor shall not be obligated to reissue the Picture at any time in the Territory but shall have the right to do so from time to time as it may deem desirable.

(h) Withdrawal of the Picture: Should Distributor or its subdistributors or licensees deem it inadvisable or unprofitable to distribute, exhibit or exploit the Picture in the Territory or any part thereof, Distributor or its subdistributors or licensees shall have the right to withhold or withdraw the Picture from such Territory or any part thereof.

(i) Banning of Release: If by reason of any law, embargo, decree, regulation or other restriction of any agency or governmental body, the number or type of motion pictures that Distributor is permitted to distribute in the Territory or any part thereof is limited, then Distributor may in its absolute discretion determine which motion pictures then distributed by Distributor will be distributed in the Territory or any part thereof, and Distributor shall not be liable to Production

Company in any manner or to any extent if the Picture is not distributed in the Territory or any part thereof by reason of any such determination.

(j) Collections: Distributor shall in good faith every six months audit, check or verify the computation of any payments and press for the collection of any monies which, if collected, would constitute gross receipts. There shall be no responsibility or liability to Production Company for failure to audit, check, or verify or to collect any monies payable.

(k) Advertising: Distributor agrees to commit a minimum of \$ \_\_\_\_\_ with respect to the advertising and publicity of the Picture.

(l) Expenses: Distributor may incur any expenses which Distributor, in the good faith exercise of its reasonable business judgment, deems appropriate with respect to the Picture or the exercise of any of Distributor's rights hereunder.

(m) No Preferential Treatment: Anything herein contained to the contrary notwithstanding, Production Company agrees that nothing herein shall require Distributor to prefer the Picture over any other motion picture distributed by Distributor or shall restrict or limit in any way Distributor's full right to distribute other motion pictures of any nature or description whether similar or dissimilar to the Picture.

**12. IMPORT PERMITS:** Distributor shall be under no duty to obtain any necessary licenses and permits for the importation and distribution of the Picture in any country or locality nor to utilize for the Picture any licenses or permits available to Distributor in limited quantity. Production Company shall on request use its best efforts to secure for Distributor any such licenses or permits. Distributor shall be entitled to the benefit of all import and/or export licenses and/ or quotas and/or similar benefits of Production Company with respect to the Picture which would entitle the Picture to be imported into any country or territory.

**13. MOTION PICTURE PRINTS:** Distributor shall be entitled to obtain such prints, dupe negatives and master prints of the Picture which Distributor shall deem advisable for distribution of the Picture in the Territory. All such prints shall remain the property of Distributor.

**14. CENSORSHIP OR FORCE MAJEURE:**

(a) Adjustment of Advance: If Distributor is required to pay or advance to Production Company any fixed or other sum before it is collected from the distribution of the Picture, and Distributor is unable to distribute the Picture in any country or area of the Territory for any reason, including, without limitation, censorship, import restriction, force majeure or failure to secure permits, the fixed payment or advance shall be reduced by the amount reasonably allocable to such country or area. The amount allocable to such country or area shall be the amount indicated in Schedule "A" or in the absence of such indication in Schedule "A," or if the country or area where distribution is prevented is one to which no allocation is made or which is a part of a country or area for which an overall allocation is made, then a reasonable allocation shall be made by Distributor for such country or area in which distribution is prevented. If the Picture is classified as unsuitable for children under 18 years of age or suitable for adults only in any country or area, the fixed payment or advance payable for such country or area shall be reduced by \_\_\_\_\_ per cent.

(b) Adjustment of Distribution Expenses: If Distributor is for any reason unable to distribute the Picture in any country or area of the Territory and Distribu-

tor has incurred any Distribution Expenses in connection with the distribution of the Picture in such country or area, Producer will on demand reimburse Distributor therefore or, at Distributor's election, Distributor shall be repaid by Production Company from any sum thereafter due from Distributor to Production Company.

**15. DISTRIBUTOR'S DEFAULT:** Production Company shall not be entitled to bring any action, suit or proceeding of any nature against Distributor or its subdistributors or licensees, whether at law or in equity or otherwise, based upon or arising from in whole or in part any claim that Distributor or its subdistributors or licensees has in any way violated this Agreement, unless the action is brought within one (1) year from the date of Production Company's discovery of such alleged violation. It is agreed that if Distributor breaches this Agreement and fails to begin to remedy such breach within a period of thirty (30) days after receipt by Distributor of written notice from Production Company specifying the alleged breach and fails to cure such breach within sixty days thereafter, or if after delivery of the Picture, Distributor shall fail to make any payments at the time and in the manner provided and Production Company has given Distributor ten (10) days' written notice to that effect, then in either of such events, Production Company shall have the right to proceed against Distributor for monies due to Production Company in accordance with any and all remedies available to Production Company both at law and in equity. In no event, however, shall Production Company have any right to terminate or rescind this Agreement, nor shall the rights acquired by Distributor under this Agreement be subject to revocation, termination or diminution because of any failure or breach of any kind on the part of Distributor or its subdistributors or licensees. In no event shall Production Company be entitled to an injunction to restrain any alleged breach by Distributor or its subdistributors or licensees of any provisions of this Agreement.

**16. ARBITRATION:** Any controversy or claim arising out of or relating to this agreement or any breach thereof shall be settled by arbitration in accordance with the Rules of the American Arbitration Association; and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled to reimbursement for costs and reasonable attorneys' fees. The determination of the arbitrator in such proceeding shall be final, binding and non-appealable.

**17. WAIVER:** No waiver of any breach of any provision of this Agreement shall constitute a waiver of any other breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

**18. RELATIONSHIP OF PARTIES:** Nothing herein contained shall be construed to create a joint venture or partnership between the parties hereto. Neither of the parties shall hold itself out contrary to the terms of this provision, by advertising or otherwise, nor shall Distributor or Production Company be bound or become liable because of any representations, actions or omissions of the other.

**19. ASSIGNMENT:** Distributor may assign this Agreement to and/or may distribute the Picture through any of its subsidiaries, parents, or affiliated corporations or any agent, instrumentality or other means determined by Distributor, provided that Distributor shall not thereby be relieved of the fulfillment of its obligations hereunder. Production Company may assign the right to receive payment hereunder to any third party; provided, however, that Production Company shall not be permitted to assign any of its obligations hereunder.

**20. NOTICES:** All notices from Production Company or Distributor to the other, with respect to this Agreement, shall be given in writing by mailing or telegraphing the notice prepaid, return receipt requested, and addressed to Distributor or Production Company, as appropriate, at the address set forth in the preamble hereof. A courtesy copy of any notice to Production Company shall be sent to \_\_\_\_\_, and a courtesy copy of any notice to Distributor shall be sent to \_\_\_\_\_.

**21. GOVERNING LAW:** This Agreement shall be governed by the laws of the State of California, without giving effect to principles of conflict of laws thereof.

**22. CAPTIONS:** The captions of the various paragraphs and sections of the Agreement are intended to be used solely for convenience of reference and are not intended and shall not be deemed for any purpose whatsoever to modify or explain or to be used as an aid in the construction of any provisions.

**23. AMENDMENTS IN WRITING:** This Agreement cannot be amended, modified or changed in any way whatsoever except by a written instrument duly signed by authorized officers of Production Company and Distributor.

**24. ENTIRE AGREEMENT:** This Agreement, which is comprised of the general terms above ("Main Agreement") and the attached Schedule and Exhibits, represents the entire agreement between the parties with respect to the subject matter hereof and this Agreement supersedes all previous representations, understandings or agreements, oral or written, between the parties regarding the subject matter hereof.

By signing in the spaces provided below, the parties accept and agree to all the terms and conditions of this Agreement as of the date first above written.

\_\_\_\_\_  
("Production Company")  
By  
Its

\_\_\_\_\_  
("Distributor")  
By  
Its

## NET PROFIT DEFINITION

**1. DEFINITION OF PARTIES:** " \_\_\_\_\_ " means \_\_\_\_\_ Inc., a Delaware corporation, and its subsidiaries engaged in the business of distributing motion pictures for exhibition in theatres and for broadcasting over television stations, but shall not include any other persons, firms or corporations licensed by \_\_\_\_\_ to distribute motion pictures in any part of the world. Nor shall such term include: any person, firm or corporation distributing the Picture for purposes other than exhibition in theatres or by television stations; exhibitors or others who may actually exhibit the Picture to the public; radio or television broadcasters; cable operators; manufacturers, wholesalers or retailers of video discs, cassettes or similar devices; book or music publishers; phonograph record producers or distributors; merchandisers, etc., whether or not any of the foregoing are subsidiaries of \_\_\_\_\_. As used herein, a "subsidiary" of \_\_\_\_\_ refers to an entity in which \_\_\_\_\_ has at least a 50% interest.

"Participant" means the party under the foregoing agreement who or which is entitled to participate in the gross receipts or net profits of the Picture, and the successors and permitted assigns of such party.

**2. NET PROFITS:** As between \_\_\_\_\_ and Participant, the "net profits" of the Picture means an amount equal to the excess, if any, of the gross receipts (as defined in 3 hereof) of the Picture over the aggregate of the following, which shall be deducted in the order listed:

- (a) \_\_\_\_\_'s distribution fees set forth in 4 hereof.
- (b) \_\_\_\_\_'s expenses in connection with the distribution of the Picture, as set forth in 5 hereof.
- (c) The cost of production of the Picture, plus an amount equal to interest thereon, all as provided for in 9 hereof, and plus such other costs, if any, as may have been incurred in connection with the financing of the cost of production of the Picture. Said interest and other costs shall be recouped before said cost of production.

(d) All contingent amounts consented to by \_\_\_\_\_ and not included in the cost of production of the Picture payable to Participant or any third party based upon, or computed in respect of, the gross receipts of the Picture (as defined in the relevant agreements), or any portion thereof.

Net profits shall be determined as of the close of each accounting period provided for in 10 hereof.

**3. GROSS RECEIPTS:** As used herein, the term "gross receipts" means the aggregate of:

(a) All film rentals actually received by \_\_\_\_\_ from parties exhibiting the Picture in theatres and on television where \_\_\_\_\_ distributes directly to such parties (hereinafter referred to as "exhibitors").

(b) Where \_\_\_\_\_ grants theatrical distribution rights to a subdistributor on a basis requiring it to account to \_\_\_\_\_ with respect to film rentals, either: (i) the film rentals received by such subdistributor from exhibitors which \_\_\_\_\_ accepts for the purpose of its accountings with such subdistributor; or (ii) \_\_\_\_\_'s share (actually received) of film rentals received by such subdistributor; whichever \_\_\_\_\_ elects from time to time as to each subdistributor.

(c) In respect of licenses of exhibition or distribution rights by means of video discs, cassettes or similar devices, an amount equal to 20% of (i) the gross wholesale rental income therefrom and (ii) the gross wholesale sales income therefrom less a reasonable allowance for returns.

(d) All amounts actually received by \_\_\_\_\_ from the following: (i) trailers (other than trailers advertising television exhibitions of the Picture); (ii) licenses of theatrical distribution rights for a flat sum; (iii) licenses of exhibition or distribution rights other than those referred to in (a), (b), (c) and (d) (ii) of this 3, specifically including licenses to cable operators; (iv) the lease of positive prints (as distinguished from the licensing thereof for a film rental); and from the sale or licensing of advertising accessories, souvenir programs and booklets; and (v) recoveries by \_\_\_\_\_ for infringement of copyrights of the Picture.

(e) All monies actually received by \_\_\_\_\_ on account of direct subsidies, aide or prizes relating specifically to the Picture, net of an amount equal to income taxes based thereon imposed by the country involved, if any. If local laws require use of such monies as a condition to the grant of such subsidy or aide, such monies shall not be included in gross receipts until actually used.

(f) See Exhibits "1," "2" and "3" attached hereto.

In no event shall rentals from the exhibition of the Picture which are contributed to charitable organizations be included in gross receipts.

**4. DISTRIBUTION FEES:** \_\_\_\_\_'s distribution fees shall be as follows:

(a) 30% of the gross receipts of the Picture derived by \_\_\_\_\_ from all sources in the United States and Canada.

(b) 35% of the gross receipts of the Picture derived by \_\_\_\_\_ from all sources in the United Kingdom.

(c) 40% of the gross receipts of the Picture derived by \_\_\_\_\_ from all sources other than those referred to in (a) and (b) above.

(d) Notwithstanding the foregoing; (i) with respect to sums included in the gross receipts pursuant to 3(b)(ii) and 3(d)(ii) hereof, \_\_\_\_\_'s distribution fee shall be 15% of such sums; (ii) if \_\_\_\_\_ shall license the exhibition of the Picture on free television, the aforesaid percentages as to amounts received and collected by \_\_\_\_\_ from sources in the United States, shall be 30% if collected from a network for national network telecasts in prime time; and 35% in all other instances; and, as to amounts received and collected by \_\_\_\_\_ from sources outside the United States 40%; (iii) no distribution fee shall be charged on gross receipts referred to in 3(e) or 3(f) hereof.

All distribution fees shall be calculated on the full gross receipts without any deductions or payments of any kind whatsoever.

**5. DISTRIBUTION EXPENSES:** \_\_\_\_\_'s deductible distribution expenses in connection with the Picture shall include all costs and expenses incurred in connection with the distribution, advertising, exploitation and turning to account of the Picture of whatever kind or nature, or which are customarily treated as distribution expenses under customary accounting procedures in the motion picture industry. If \_\_\_\_\_ reasonably anticipates that additional distribution expenses will be incurred in the future, \_\_\_\_\_ may, for a reasonable time, set up appropriate reserves therefor. Without limiting the generality of the foregoing, the following particular items shall be included in distribution expenses hereunder:

(a) The cost and expense of all duped and dubbed negatives, sound tracks, prints, release prints, tapes, cassettes, duplicating material and facilities and all other material manufactured for use in connection with the Picture, including the cost of inspecting, repairing, checking and renovating film, reels, containers, cassettes, packing, storing and shipping and all other expenses connected therewith and inspecting and checking exhibitors' projection and sound equipment and facilities. \_\_\_\_\_ may manufacture or cause to be manufactured as many or as few duped negatives, positive prints and other material for use in connection with the Picture as it, in its sole discretion, may consider advisable or desirable.

(b) All direct costs and charges for advertisements, press books, artwork, advertising accessories and trailers (other than (i) prints of trailers advertising free television exhibition of the Picture, and (ii) the trailer production costs which are included in the cost of production of the Picture), advertising, publicizing and exploiting the Picture by such means and to such extent as \_\_\_\_\_ may, in its uncontrolled discretion, deem desirable, including, without limitation, pre-release advertising and publicity, so-called cooperative and/or theatre advertising, and/or other advertising engaged in with or for exhibitors, to the extent \_\_\_\_\_ pays, shares in, or is charged with all or a portion of such costs and all other exploitation costs relating to such theatre exhibition. Any re-use fees and costs of recording and manufacturing masters for phonograph records, which \_\_\_\_\_ shall advance in order to assist in the advertising and exploitation of the Picture, shall be treated as costs hereunder to the extent unrecovered by the record company. Where any \_\_\_\_\_ advertising or publicity employee (other than an executive supervisory employee) or facility is used for the Picture, the salary of such employee and the cost of such facility (while so used for the Picture) shall be direct costs hereunder. Any costs and charges referred to in this (b) (and not included in the cost of production of the Picture), expended or incurred prior to delivery of the Picture, shall be included in direct costs under this (b). There shall also be included as an item of cost a sum equal to 10% of

all direct costs referred to in this (b) to cover the indirect cost of \_\_\_\_\_'s advertising and publicity departments, both domestic and foreign.

(c) All costs of preparing and delivering the Picture for distribution (regardless of whether such costs are the salaries and expenses of \_\_\_\_\_'s own employees or employees or parties not regularly employed by \_\_\_\_\_), including, without limitation, all costs incurred in connection with the production of foreign language versions of the Picture, whether dubbed, superimposed or otherwise, as well as any and all costs and expenses in connection with changing the title of the Picture, recutting, re-editing or shortening or lengthening the Picture for release in any territory or for exhibition on television or other media, or in order to conform to the requirements of censorship authorities, or in order to conform to the peculiar national or political prejudices likely to be encountered in any territory, or for any other purpose or reason. The costs referred to in this (c) shall include all studio charges for facilities, labor and material, whether or not incurred at a studio owned or controlled by \_\_\_\_\_.

(d) All sums paid or accrued on account of sales, use, receipts, income, excise, remittance and other taxes (however denominated) to any governmental authority assessed upon the negatives, duplicate negatives, prints or sound records of the Picture, or upon the use or distribution of the Picture, or upon the revenues derived therefrom, or any part thereof, or upon the remittance of such revenues, or any part thereof; any and all sums paid or accrued on account of duties, customs and imposts, costs of acquiring permits, "Kontingents," or any similar authority to secure the entry, licensing, exhibition, performance, use or televising of the Picture in any country or part thereof, regardless of whether such payments or accruals are assessed against the Picture or the proceeds thereof or against a group of motion pictures in which the Picture may be included or the proceeds thereof. In no event shall the deductible amount of any such tax (however denominated) imposed upon \_\_\_\_\_, be decreased (nor the gross receipts increased) because of the manner in which such taxes are elected to be treated by \_\_\_\_\_ in filing net income, corporate franchise, excess profits or similar tax returns. Subject to the foregoing, (i) \_\_\_\_\_'s own United States federal and state income taxes and franchise taxes based on \_\_\_\_\_'s net income; and (ii) income taxes payable to any country or territory by \_\_\_\_\_ based on the net earnings of \_\_\_\_\_ in such country or territory and which is computed and assessed solely by reason of the retention in such country or territory by \_\_\_\_\_ of any portion of the gross receipts shall not be deductible hereunder.

(e) Expenses of transmitting to the United States any funds accruing to \_\_\_\_\_ from the Picture in foreign countries, such as cable expenses, and any discounts from such funds taken to convert such funds directly or indirectly into U.S. dollars.

(f) All costs and expenses, including reasonable attorneys' fees, loss, damage or liability suffered or incurred by \_\_\_\_\_ in connection with: any action taken by \_\_\_\_\_ (whether by litigation or otherwise) in copyrighting, protecting and enforcing the copyright of, and other rights and sources of revenue to be derived from, the Picture; reducing or minimizing the matters referred to in (d) and (e) above, the collection of film rentals; and other sums due \_\_\_\_\_ from exhibitors, subdistributors and others in respect of the Picture or to recover monies due pursuant to any agreement relating to the distribution or the exhibition of the Picture; checking attendance and exhibitors' receipts; preventing and/or recovering damages for unauthorized exhibition or distribu-

tion of the Picture, or any impairment of, encumbrance on or infringement upon, the rights of \_\_\_\_\_ in and to the Picture; prosecuting and defending actions under the antitrust laws, communications laws, and federal, state and local laws, ordinances and regulations (including censorship) affecting the exhibition and/or distribution of the Picture and/or the ability of \_\_\_\_\_ to derive revenue from the Picture and its component parts and by-products; and auditing of books and records of any exhibitor, subdistributor or licensee.

(g) Royalties payable to manufacturers of sound recording and reproducing equipment and dues and assessments of, and contributions by \_\_\_\_\_ to, AMPTP, MPAA, MPEA, the Academy of Motion Picture Arts and Sciences and other trade associations or industry groups comprised of a substantial number of motion picture producers and/or distributors, but only for purposes relating to the production, distribution, export, import, advertising, exploitation and general protection and/or promotion of motion pictures.

(h) In the event any person shall make a claim relating to the Picture against \_\_\_\_\_ or any of its licensees, which claim, in \_\_\_\_\_'s judgment, is of sufficient merit to constitute a reasonable probability of ultimate loss, cost, damage or expense, \_\_\_\_\_ may deduct either this (h) such amount as \_\_\_\_\_ may deem necessary to cover loss, cost, damage or expense which may be suffered as a result thereof. \_\_\_\_\_ shall have the right to settle and pay any such claim. After the settlement of any such claim, or after the final judicial determination thereof, the amount previously deducted hereunder shall be adjusted accordingly with the next accounting statement rendered hereunder. Nothing herein contained shall be construed as a waiver of any of Participant's warranties contained in this Agreement, or a waiver of any right or remedy at law or otherwise which may exist in favor of \_\_\_\_\_, including, but not limited to, the right to require Participant to reimburse \_\_\_\_\_ on demand for any liability, cost, damage or expense arising out of, or resulting from, any breach by Participant of any warranty, undertaking or obligation by Participant, or any right on the part of \_\_\_\_\_ to recoup or recover any such cost or expense out of Participant's share of any monies payable hereunder, rather than treating such costs or expenses as distribution expenses.

(i) All amounts paid or payable to or for the benefit of actors, writers, composers, directors and others, pursuant to applicable collective bargaining agreements and/or any law or governmental regulation or decree now or hereafter in force by reason of, and/or as a condition or consideration for, any exhibition, use, re-use, rerun, performance, sale, license and/or distribution of the Picture and/or copies of all or any part thereof, on television, supplemental markets, or otherwise (all herein called "residuals"), together with all taxes, pension fund contributions and other costs paid or payable in respect of such residuals, and in respect of participations in the gross receipts and net profits of the Picture; provided, however, that if Participant or any principal stockholder of Participant, or any heirs, executors, administrators, successors or assigns of Participant, or any such stockholder, are entitled, either directly or by way of participation in any pension fund, to any such residuals, or to compensation for services rendered beyond any guaranteed period referred to in the foregoing agreement, the amount payable on account thereof shall be treated as an advance against Participant's share of the net profits hereunder.

(j) The cost of all insurance (to the extent that the same is not included in the cost of production of the Picture) covering or relating to the Picture, including, but not limited to, errors and omissions insurance and all insurance on

negatives, positive prints, sound materials or other physical property, it being understood, however, that \_\_\_\_\_ shall not be obligated to take out or maintain any such insurance.

(k) If \_\_\_\_\_ shall proceed under 3(b)(i) hereof, all items deducted by the subdistributor as distribution expenses, and which \_\_\_\_\_ accepts for the purpose of its accountings with such subdistributor, shall be treated as \_\_\_\_\_'s expenditures under the corresponding subdivision of this 5.

**6. FILM RENTALS:** "Film Rentals" shall be determined after all refunds, credits, discounts, allowances and adjustments granted to exhibitors, whether occasioned by condemnation by boards of censorship, settlement of disputes, or otherwise. Until earned, forfeited or applied to the Picture, neither advance payments nor security deposits shall be included in film rentals. No cost (regardless of how incurred, paid or allowed) of \_\_\_\_\_'s share of cooperative and/or theater advertising, shall be deducted in determining film rentals. Where allowances are granted and paid on account of \_\_\_\_\_'s share of cooperative theatre or joint advertising, such payments shall not be deducted in determining film rental, and where \_\_\_\_\_'s share of cooperative theater or joint advertising is deducted by the exhibitor \_\_\_\_\_'s share of cooperative theater or joint advertising shall be added back into the film rental received from such exhibitor, and all such costs, payments, discounts and allowances shall be treated as distribution expenses. Wherever \_\_\_\_\_ exhibits the Picture in a theatre or over a television station owned or controlled by \_\_\_\_\_, or licenses the Picture or rights connected therewith to theatres, television stations or other agencies in which \_\_\_\_\_ has an interest directly or indirectly, or to which \_\_\_\_\_ is obligated to pay a fixed sum for exhibiting the Picture or for the use of its premises or facilities, \_\_\_\_\_ shall include in the film rentals of the Picture such sums, determined in good faith, as may be reasonable and consistent with \_\_\_\_\_'s usual practice in such matters.

**7. ALLOCATIONS:** Wherever \_\_\_\_\_ (i) receives from any license either a flat sum or a percentage of the receipts, or both, for any right to a group of motion pictures (including the Picture) under any agreement (whether or not the same shall provide for the exhibition, lease or delivery of positive prints of any of said motion pictures) which does not specify what portion of the license payments apply to the respective motion pictures in the group (or to such prints or other material, if any, as may be supplied), or (ii) receives foreign currency under 8(ii) or 8(iii) hereof relating to a group of motion pictures (including the Picture), then in any and all such situations \_\_\_\_\_ shall include in, or deduct from, the gross receipts, as the case may be, such sums, determined in good faith, as may be reasonable and consistent with \_\_\_\_\_'s usual practice in such matters. All costs described in 5 hereof shall be fairly apportioned to the Picture if incurred or expended on an industry basis, or in conjunction with other motion picture producers and/or distributors, or with respect to the Picture and other motion pictures distributed by \_\_\_\_\_.

**8. FOREIGN RECEIPTS:** No sums received by \_\_\_\_\_ relating to the Picture shall be included in gross receipts hereunder unless and until such sums have been (i) received by \_\_\_\_\_ in U.S. dollars in the United States, or (ii) used by \_\_\_\_\_ for the production or acquisition of motion pictures or television films which can be lawfully removed from the country or territory involved, in which event they shall be included in gross receipts for the accounting period during which an amount (computed at the official or unofficial rate of exchange, as \_\_\_\_\_ may elect) equal to the amount expended for such

production or acquisition, plus customary interest thereon, has been recouped by \_\_\_\_\_ (in excess of normal distribution fees and distribution expenses) from distribution thereof outside the country or territory involved; or (iii) used by \_\_\_\_\_ for acquisition of tangible personal property which can be and is lawfully exported from the country or territory involved, in which event the U.S. dollar equivalent of the currency utilized to acquire such property shall be included in gross receipts hereunder for the accounting period during which such property was so exported, such U.S. dollar equivalent to be computed at the official or unofficial rate of exchange, as \_\_\_\_\_ may elect, in effect on the date of export. \_\_\_\_\_ will, promptly after receipt of a written request from Participant (but not more frequently than annually) advise Participant in writing as to foreign revenues not included in gross receipts as aforesaid, and \_\_\_\_\_ shall, at the written request and expense of, Participant (subject to any and all limitations, restrictions, laws, rules and regulations affecting such transactions), deposit into a bank designated by Participant in the country involved, or pay to any other party designated by Participant in such country, such part thereof as would have been payable to Participant hereunder. Such deposits or payments to or for Participant shall constitute due remittance to Participant, and \_\_\_\_\_ shall have no further interest therein or responsibility therefor. \_\_\_\_\_ makes no warranties or representations that any part of any such foreign currencies may be converted into U.S. dollars or transferred to the account of Participant in any foreign country. In no event shall \_\_\_\_\_ be obligated to apply gross receipts of any country not actually received by \_\_\_\_\_ in U.S. dollars in the United States to the recoupment of any costs or expenses incurred with respect to the Picture in any other country.

#### **9. COST OF PRODUCTION; INTEREST:**

(a) The "cost of production" of the Picture means the total direct cost of production of the Picture, including the cost of all items listed on \_\_\_\_\_'s standard Delivery Schedule, computed and determined in all respects in the same manner as \_\_\_\_\_ then customarily determines the direct cost of other motion pictures distributed and/or financed by it, plus \_\_\_\_\_'s overhead charge. The determination of what items constitute direct charges and what items are within said overhead charge shall be made in all respects in the same manner as \_\_\_\_\_ customarily determines such matters. The full amount of all direct costs of production of the Picture (whether payable in cash, deferred or accrued) shall be included in the direct cost of the Picture at the time liability therefor is incurred or contracted, regardless of whether the same has actually been paid to the party or parties entitled thereto at the time involved. Deferrals and participations in gross receipts of the Picture consented to by \_\_\_\_\_ (however defined) shall be treated as direct costs of production, whether the same shall be in a definite amount or based on a percentage of the gross receipts, and whether the same are fixed obligations or are contingent upon receipts of the Picture; provided, however, contingent participations based on a percentage of gross receipts as defined in the applicable agreement shall not be included in the direct cost of production beyond recoupment under 2(c) hereof.

(b) \_\_\_\_\_'s overhead charge shall be in an amount equal to 15% of the direct cost of production of the Picture, with the understanding that any production facilities, equipment or personnel supplied by \_\_\_\_\_ or by a studio owned or controlled by \_\_\_\_\_, or in which \_\_\_\_\_ has a substantial financial interest (and which are not furnished within the overhead charge) shall be supplied at \_\_\_\_\_'s usual rental rates charged for such

items, and such charges shall be treated as direct costs of production of the Picture and shall bear said 15% overhead charge. \_\_\_\_\_'s overhead charge shall accrue and be included in the cost of production of the Picture concurrently with the incurring of the respective items of direct cost to which it applies.

(c) The amount equal to interest provided for in 2(c) hereof shall be calculated at a rate per annum equal to 125% of the prime commercial rate of First National Bank of Boston from time to time in effect. Said amount shall be calculated from the respective dates that each item is charged to the Picture until the close of the accounting period during which the cost of production is recouped under 2(c) hereof, except that interest on deferred amounts shall be calculated from the date of payment.

(d) Concurrently with delivery to Participant of the first earnings statement hereunder, \_\_\_\_\_ will (subject to revisions and correction) deliver to Participant an itemized summary of the cost of production of the Picture. Participant shall have the right to audit such statement in accordance with 11 hereof.

**10. EARNINGS STATEMENTS:** \_\_\_\_\_ shall render to Participant periodic statements showing, in summary form, the appropriate calculations under this Agreement. Statements shall be issued for each calendar quarter until the Picture has been in release for 4 years from and including the quarter in which the Picture was first released, and thereafter annually. Each such quarterly or annual period, as the case may be, is herein referred to as an "accounting period." No statements need be rendered for any accounting period during which no receipts are received. Statements rendered by \_\_\_\_\_ may be changed from time to time to give effect to year-end adjustments made by \_\_\_\_\_'s Accounting Department or Public Accountants, or to items overlooked, to correct errors and for similar purposes. If \_\_\_\_\_ shall extend credit to any licensee with respect to the Picture, and if such credit has been included in the gross receipts, and if, in the opinion of \_\_\_\_\_, any such indebtedness shall be uncollectible, the uncollected amount may be deducted in any subsequent earning statement. Should \_\_\_\_\_ make any overpayment to Participant hereunder for any reason, \_\_\_\_\_ shall have the right to deduct and retain for its own account an amount equal to any such overpayment from any sums that may thereafter become due or payable by \_\_\_\_\_ to Participant or for Participant's account, or may demand repayment from Participant, in which event Participant shall repay the same when such demand is made. Any U.S. dollars due and payable to Participant by \_\_\_\_\_ pursuant to any such statement shall be paid to Participant simultaneously with the rendering of such statement; provided, however, that all amounts payable to Participant hereunder shall be subject to all laws and regulations now or hereafter in existence requiring deduction or withholdings for income or other taxes payable by or assessable against Participant. \_\_\_\_\_ shall have the right to make such deductions and withholdings and the payment thereof to the governmental agency concerned in accordance with its interpretation in good faith of such laws and regulations, and shall not be liable to Participant for the making of such deductions or withholdings or the payment thereof to the governmental agency concerned. In any such event Participant shall make and prosecute any and all claims which it may have with respect to the same directly with the governmental agency having jurisdiction in the premises. The right of Participant to receive, and the obligation of \_\_\_\_\_ to account for, any share of the net profits of the Picture shall terminate if the Picture has been made available for exhibition on syndicated television in the U.S.A., and if the first earnings statement issued thereafter shows a deficit under 2 hereof which would require in excess of

\$500,000 of gross receipts before Participant would be entitled to receive any net profits hereunder. In the event a new medium of exhibition shall thereafter be developed and there shall be substantial exhibition and distribution of the Picture by such new medium which is likely to generate gross receipts of \$500,000 or the amount of the deficit, whichever is larger, Participant may audit \_\_\_\_\_'s records for the purpose of determining whether the Picture has earned, or is likely to earn, any net profits, and if, as a result of such audit, it is determined by mutual agreement, or in the event of dispute appropriate legal proceedings, that the Picture has earned, or is likely to earn, net profits as herein defined, accountings hereunder and payments, if required, shall be reinstated.

**11. ACCOUNTING RECORDS RE DISTRIBUTION; AUDIT RIGHTS:**

\_\_\_\_\_ shall keep books of account relating to the distribution of the Picture, together with vouchers, exhibition contracts and similar records supporting the same (all of which are hereinafter referred to as "records"), which shall be kept on the same basis and in the same manner and for the same periods as such records are customarily kept by \_\_\_\_\_. Participant may, at its own expense, audit the applicable records at the place where \_\_\_\_\_ maintains the same in order to verify earnings statements rendered hereunder. Any such audit shall be conducted only by a reputable public accountant during reasonable business hours in such manner as not to interfere with \_\_\_\_\_'s normal business activities. In no event shall an audit with respect to any earnings statement commence later than twenty-four (24) months from the rendition of the earnings statement involved; nor shall any audit continue for longer than thirty (30) consecutive business days; nor shall audits be made hereunder more frequently than once annually; nor shall the records supporting any earnings statement be audited more than once. All earnings statements rendered hereunder shall be binding upon Participant and not subject to objection for any reason unless such objection is made in writing, stating the basis thereof, and delivered to \_\_\_\_\_ within twenty-four (24) months from rendition of the earnings statement, or if an audit is commenced prior thereto, within thirty (30) days from the completion of the relative audit. If \_\_\_\_\_, as a courtesy to Participant, shall include cumulative figures in any earnings or other statement, the time within which Participant may commence any audit or make any objection in respect of any statement shall not be enlarged or extended thereby. Participant's right to examine \_\_\_\_\_'s records is limited to the Picture, and Participant shall have no right to examine records relating to \_\_\_\_\_'s business generally or with respect to any other motion picture for purposes of comparison or otherwise; provided, however, that where any original income or expense document with third parties relates to the Picture and to other motion pictures, Participant shall have the right to examine the entire document without deletions therefrom.

**12. OWNERSHIP:** Participant expressly acknowledges that Participant has and will have no right, title or interest of any kind or character whatsoever in or to the Picture, and no lien thereon or other rights in or to the gross receipts or net profits of the Picture; and that the same shall be and remain \_\_\_\_\_'s sole and exclusive property, and \_\_\_\_\_ shall not be obligated to segregate the same from its other funds, it being the intent and purpose hereof that the net profits or gross receipts after moving breakeven, as the case may be, of the Picture are referred to herein merely as a measure in determining the time and manner of payment to Participant; and that \_\_\_\_\_ shall not be deemed a trustee, pledgeholder or fiduciary. Participant shall have no right, title or interest of any kind or character whatsoever in or to the literary, dramatic or musi-

cal material upon which the Picture is based, or from which it may be adapted; and \_\_\_\_\_ shall have the sole and exclusive right to utilize, sell, license or otherwise dispose of all or any part of its rights in such material upon such terms and conditions as it may deem advisable, all without consulting or advising Participant and without accounting to Participant in any manner with respect thereto.

**13. DISTRIBUTION:** As between Participant and \_\_\_\_\_, \_\_\_\_\_ shall have complete authority to distribute the Picture and license the exhibition thereof throughout the world in accordance with such sales methods, policies and terms as it may, in its uncontrolled discretion, determine. \_\_\_\_\_ shall have the broadest possible latitude in the distribution of the Picture, and the exercise of its judgment in good faith in all matters pertaining thereto shall be final. \_\_\_\_\_ has not made any express or implied representation, warranty, guarantee or agreement as to the amount of proceeds which will be derived from the distribution of the Picture, nor has \_\_\_\_\_ made any express or implied representation, warranty, guarantee or agreement that there will be any sums payable to Participant hereunder, or that the Picture will be favorably received by exhibitors or by the public, or will be distributed continuously. In no event shall \_\_\_\_\_ incur any liability based upon any claim that \_\_\_\_\_ has failed to realize receipts or revenue which should or could have been realized. \_\_\_\_\_ may distribute the Picture either itself or through such distributors, subdistributors and other parties as \_\_\_\_\_ may, in its uncontrolled discretion, determine, and \_\_\_\_\_ may refrain from releasing and/or distributing the Picture in any territory for any reason whatsoever. \_\_\_\_\_ may license the Picture or rights connected therewith to any and all theatres or other agencies in which \_\_\_\_\_ may have an interest directly or indirectly upon such terms and rentals as \_\_\_\_\_ may deem fair and proper under the circumstances. Nothing herein contained shall be construed as a representation or warranty by \_\_\_\_\_ that it now has or will hereafter have or control any theatres or agencies in the United States or elsewhere.

**14. SALE OF PICTURE:** \_\_\_\_\_ shall have the right at any time after completion of the Picture to sell, transfer or assign all or any of its rights in and to the Picture and the negative and copyright thereof. Any such sale, transfer or assignment shall be subject to Participant's rights hereunder, and upon the purchaser, transferee or assignee assuming performance of this agreement in place and stead of \_\_\_\_\_, \_\_\_\_\_ shall be released and discharged of and from any further liability or obligation hereunder. No part of any sale price or other consideration received by, or payable to, \_\_\_\_\_ shall be included in the gross receipts hereunder and Participant shall have no rights in respect of any thereof.

**15. ASSIGNMENTS, ETC.:** Participant shall have the right to sell, transfer or hypothecate (all herein called "assign") all or any part of Participant's right to receive the monies payable to Participant hereunder. Any such assignment shall be subject to all pertinent laws and governmental regulations and to the rights of \_\_\_\_\_ hereunder. In the event of any such assignment by Participant, a Notice of Irrevocable Authority and Distributor's Acceptance in Warner's usual form shall be executed by Participant and by the transferee and delivered to \_\_\_\_\_. If at any time more than three parties shall be entitled to receive payments, which under the terms hereof are to be paid to or for the account of Participant, \_\_\_\_\_ may, at its option, require that all such parties execute and deliver an agreement in \_\_\_\_\_'s usual form appointing a disbursing agent for all such parties.

## MUSIC PUBLISHING INCOME

There shall also be included in gross receipts of the picture:

A sum equal to 25% of the "publisher's share" of mechanical reproduction and performing fees received in U.S. currency by \_\_\_\_\_'s subsidiary or affiliated publisher with respect to music and lyrics written specifically for and synchronized in the picture as released, provided such publisher is vested with all rights therein and all of the "publisher's share" of the receipts therefrom, and provided the party entitled to share in gross receipts or net profits of the picture under the foregoing agreement is not entitled to receive composers' or lyricists' royalties in respect of such music or lyrics. The "publisher's share" of mechanical reproduction fees shall be the full amount paid by the licensee, less composers' share of such fees and less the charges of the publisher or any agent, trustee or administrator acting for the publisher for the collection of such fees, not to exceed 5% thereof. Mechanical reproduction fees do not include synchronization fees.

The "publisher's share" of performing fees shall be the net amount actually received by the publisher from any performing rights society in respect of the music and lyrics involved; or, if \_\_\_\_\_ or the publisher shall administer the collection of all or any part of performance fees, the full amount of all performance fees collected by \_\_\_\_\_ or the publisher, less the composer's share of such fees and all reasonable costs and expenses in administering the collection of such fees.

If the agreement or Exhibit to which this Exhibit is attached provides for distribution fees, no distribution fees shall be charged on amounts included in gross receipts pursuant to this Exhibit.

## SOUND TRACK RECORD INCOME

In the event the party entitled to share in the gross receipts or net profits of the picture under the foregoing agreement is not entitled to receive any artists' royalties in respect of phonograph records derived from the sound track of the picture, then \_\_\_\_\_ agrees to include in the gross receipts of the picture royalties on sound track records, as herein defined, computed at the applicable royalty rate.

As used herein:

The term "sound track records" means and refers to phonograph records, tapes, or other sound recordings which contain either (i) portions of the sound track transferred directly to phonograph record masters from sound records which form a part of the sound track of the picture; or (ii) sound recordings recorded separately but utilizing substantially the same musical score, parts and instrumentation, and essentially the same artists, music and/or dialogue and/or sound effects as is contained in the sound track of the picture; or (iii) a combination of (i) and (ii). Sound track records do not, however, include any recordings produced solely for the purpose of advertising and exploiting the picture and copies of which are not distributed to the public.

The term "applicable royalty rate" means and refers to the following percentages of the prevailing retail price but in no event more than the net royalty actually received and retainable by \_\_\_\_\_ for its own account with respect to the sale of any particular copies—5% of 90% in respect of sound

track records sold in the United States; 2 1/2% of 90% in respect of sound track records sold outside the United States—except that as to sound track records sold pursuant to mail order of “club” plans, the royalty rate shall be one-half of the rate otherwise applicable.

If any sound track records contain selections from other sources, the applicable royalty rate hereunder shall be prorated on the basis of the total number of minutes of selections from the sound track compared to the total number of minutes on such records.

In determining the net royalty retainable by \_\_\_\_\_, all royalties payable to artists, conductors and other third parties in respect to such sound track records shall be deducted from the aggregate royalty payable to \_\_\_\_\_ under the applicable distribution agreement.

The term “prevailing retail price” means and refers to the price generally prevailing in the country of manufacture or sale (as determined by the Record Company), less all taxes, duties and charges for containers.

There shall be deducted from amounts included in gross receipts hereunder a pro rata share of re-use fees and costs of recording and manufacturing masters advanced by \_\_\_\_\_ or the Record Company. Sales shall be determined on the basis of the number of records sold and for which the Record Company has been paid in U.S. currency, after allowing for all returns, cancellations, exchanges, applicable discounts, etc. and reasonable reserves which may be established therefor. No sums shall be included in gross receipts with respect to records given away or sold at less than the Record Company’s cost or for promotional purposes, or as sales inducements or otherwise.

If the agreement or Exhibit to which this Exhibit is attached provides for distribution fees, no distribution fees shall be charged on amounts included in gross receipts pursuant to this Exhibit.

#### MERCHANDISING INCOME

In the event the party entitled to share in gross receipts or net profits of the picture under the foregoing agreement is not entitled to share directly in merchandising revenue, there shall be included in gross receipts of the picture:

(a) A sum equal to 50% of all license fees (in excess of all royalties and participations) received by \_\_\_\_\_ directly as a result of the exercise by \_\_\_\_\_ itself of merchandising license rights. If, however, \_\_\_\_\_ shall sublicense or sub-contract any of such merchandising license rights, \_\_\_\_\_ shall include in the gross receipts hereunder, at its election, either a sum equal to (i) 85% of the net sums (in excess of all royalties and participations) received from such sub-licensee; or (ii) 50% of such sub-licensee’s license fees from the exercise of such licensing rights (from which there shall be deducted all royalties and participations), and out of the remaining 50% thereof \_\_\_\_\_ shall pay and discharge the fees of its sub-licensee.

(b) If the publication rights to the underlying literary material were owned or controlled by the party entitled to share in gross receipts or net profits of the picture under the foregoing agreement (herein called “Participant”) prior to the execution of this agreement, and were acquired by \_\_\_\_\_ pursuant to or in connection with this agreement, then (i) all net sums received by \_\_\_\_\_ from nonaffiliated or nonsubsidiary publishers from the publication of such un-

derlying literary material and of novelizations of the screenplay of the picture, and (ii) a sum equal to 5% of the net receipts of \_\_\_\_\_'s subsidiary or affiliated publishers from the publication of such material and novelizations, less, in either case, royalties paid out of (i) or (ii) to the writers of such material and novelizations.

If the agreement or Exhibit to which this Exhibit is attached provides for distribution fees, no distribution fees shall be charged on amounts included in gross receipts pursuant to this Exhibit.

## GROSS RECEIPTS AFTER BREAKEVEN

**1. DEFINITION OF PARTIES:** "Studio" means Studio Inc., a Delaware corporation, and its subsidiaries engaged in the business of distributing motion pictures for exhibition in theatres and for broadcasting over television stations, but shall not include any other persons, firms or corporations licensed by Studio to distribute motion pictures in any part of the world. Nor shall such term include: any person, firm or corporation distributing the Picture for purposes other than exhibition in theatres or by television stations; exhibitors or others who may actually exhibit the Picture to the public; radio or television broadcasters; cable operators; manufacturers, wholesalers or retailers of video discs, cassettes or similar devices; book or music publishers; phonograph record producers or distributors; merchandisers, etc., whether or not any of the foregoing are subsidiaries of Studio. As used herein, a "subsidiary" of Studio refers to an entity in which Studio has at least a 50% interest.

"Participant" means the party under the foregoing agreement who or which is entitled to participate in the gross receipts of the Picture in excess of breakeven, and the successors and permitted assigns of such party.

**2. BREAKEVEN:** As between Studio and Participant, the Picture shall be deemed to have reached "breakeven" at such time as the gross receipts (as defined in 3 hereof) of the Picture shall equal the following:

(a) Studio's distribution fees set forth in 4 hereof.

(b) Studio's expenses in connection with the distribution of the Picture, as set forth in 5 hereof.

(c) The cost of production of the Picture, plus an amount equal to interest thereon, all as provided for in 9 hereof, and plus such other costs, if any, as may have been incurred in connection with the financing of the cost of production of the Picture. Said interest and other costs shall be recouped before said cost of production.

**3. "GROSS RECEIPTS"** of the Picture means the aggregate of:

(a) All film rentals actually received by Studio from parties exhibiting the Picture in theatres and on television where Studio distributes directly to such parties (hereinafter referred to as "exhibitors").

(b) Where Studio grants theatrical distribution rights to a subdistributor on a basis requiring it to account to Studio with respect to film rentals, either: (i) the film rentals received by such subdistributor from exhibitors which Studio accepts for the purpose of its accountings with such subdistributor; or (ii) Studio's share (actually received) of film rentals received by such subdistributor; whichever Studio elects from time to time as to each subdistributor.

(c) In respect of licenses of exhibition or distribution rights by means of video discs, cassettes or similar devices, an amount equal to 20% of (i) the gross

wholesale rental income therefrom and (ii) the gross wholesale sales income therefrom less a reasonable allowance for returns.

(d) All amounts actually received by Studio from the following: (i) trailers (other than trailers advertising television exhibitions of the Picture); (ii) licenses of theatrical distribution rights for a flat sum; (iii) licenses of exhibition or distribution rights other than those referred to in (a), (b), (c) and (d) (ii) of this 3, specifically including licenses to cable operators; (iv) the lease of positive prints (as distinguished from the licensing thereof for a film rental); and from the sale or licensing of advertising accessories, souvenir programs and booklets; and (v) recoveries by Studio for infringement of copyrights of the Picture.

(e) All monies actually received by Studio on account of direct subsidies, aid or prizes relating specifically to the Picture, net of an amount equal to income taxes based thereon imposed by the country involved, if any. If local laws require use of such monies as a condition to the grant of such subsidy or aide, such monies shall not be included in gross receipts until actually used.

(f) All amounts required to be included under Exhibits "1," "2" and "3" hereof.

All costs incurred in connection with any of the foregoing shall be deemed and treated as recoupable distribution expenses. In no event shall rentals from the exhibition of the Picture which are contributed to charitable organizations be included in gross receipts.

Notwithstanding anything herein contained, after the Picture shall be deemed to have reached "breakeven" as defined in 2 above, gross receipts shall be as defined and this Exhibit shall otherwise be modified as set forth in Schedule 1 attached hereto and incorporated herein by this reference.

**4. DISTRIBUTION FEES:** Studio's distribution fees shall be as follows:

(a) 30% of the gross receipts of the Picture derived by Studio from all sources in the United States and Canada.

(b) 35% of the gross receipts of the Picture derived by Studio from all sources in the United Kingdom.

(c) 40% of the gross receipts of the Picture derived by Studio from all sources other than those referred to in (a) and (b) above.

(d) Notwithstanding the foregoing; (i) with respect to sums included in the gross receipts pursuant to 3(b)(ii) and 3(d)(ii) hereof, Studio's distribution fee shall be 15% of such sums; (ii) if Studio shall license the exhibition of the Picture on free television, the aforesaid percentages as to amounts received and collected by Studio from sources in the United States, shall be 30% if collected from a network for national network telecasts in prime time; and 35% in all other instances; and, as to amounts received and collected by Studio from sources outside the United States 40%; (iii) no distribution fee shall be charged on gross receipts referred to in 3(e) hereof.

All distribution fees shall be calculated on the full gross receipts without any deductions or payments of any kind whatsoever, except as specifically hereinafter provided.

Notwithstanding anything herein contained, it is agreed that for the accounting period in which the Picture shall first reach breakeven, the distribution fees

for the purpose of calculating breakeven shall be calculated only on that portion of the gross receipts in respect of such accounting period which is equal to the sum of the following:

(a) An amount equal to the sums specified in subparagraphs (b) and (c) of paragraph 2 of this Exhibit which are recouped or paid in respect of such accounting period; and

(b) An amount equal to the distribution fees on gross receipts equal to the sum of said deductible items, plus the distribution fees on gross receipts equal to such distribution fee.

**5. DISTRIBUTION EXPENSES:** Studio's deductible distribution expenses in connection with the Picture shall include all costs and expenses incurred in connection with the distribution, advertising, exploitation and turning to account of the Picture of whatever kind or nature, or which are customarily treated as distribution expenses under customary accounting procedures in the motion picture industry. If Studio reasonably anticipates that additional distribution expenses will be incurred in the future, Studio may, for a reasonable time, set up appropriate reserves therefor. Without limiting the generality of the foregoing, the following particular items shall be included in distribution expenses hereunder:

(a) The cost and expense of all duped and dubbed negatives, sound tracks, prints, release prints, tapes, cassettes, duplicating material and facilities and all other material manufactured for use in connection with the Picture, including the cost of inspecting, repairing, checking and renovating film, reels, containers, cassettes, packing, storing and shipping and all other expenses connected therewith and inspecting and checking exhibitors' projection and sound equipment and facilities. Studio may manufacture or cause to be manufactured as many or as few duped negatives, positive prints and other material for use in connection with the Picture as it, in its sole discretion, may consider advisable or desirable.

(b) All direct costs and charges for advertisements, press books, artwork, advertising accessories and trailers (other than (i) prints of trailers advertising free television exhibition of the Picture, and (ii) the trailer production costs which are included in the cost of production of the Picture), advertising, publicizing and exploiting the Picture by such means and to such extent as Studio may, in its uncontrolled discretion, deem desirable, including, without limitation, pre-release advertising and publicity, so-called cooperative and/or theatre advertising, and/or other advertising engaged in with or for exhibitors, to the extent Studio pays, shares in, or is charged with all or a portion of such costs and all other exploitation costs relating to such theatre exhibition. Any re-use fees and costs of recording and manufacturing masters for phonograph records, which Studio shall advance in order to assist in the advertising and exploitation of the Picture, shall be treated as costs hereunder to the extent unrecouped by the record company. Where any Studio advertising or publicity employee (other than an executive supervisory employee) or facility is used for the Picture, the salary of such employee and the cost of such facility (while so used for the Picture) shall be direct costs hereunder. Any costs and charges referred to in this (b) (and not included in the cost of production of the Picture), expended or incurred prior to delivery of the Picture, shall be included in direct costs under this (b). There shall also be included as an item of cost a sum equal to 10% of all direct costs referred to in this (b) to cover the indirect cost of Studio's advertising and publicity departments, both domestic and foreign.

(c) All costs of preparing and delivering the Picture for distribution (regardless of whether such costs are the salaries and expenses of Studio's own employees or employees or parties not regularly employed by Studio), including, without limitation, all costs incurred in connection with the production of foreign language versions of the Picture, whether dubbed, superimposed or otherwise, as well as any and all costs and expenses in connection with changing the title of the Picture, recutting, re-editing or shortening or lengthening the Picture for release in any territory or for exhibition on television or other media, or in order to conform to the requirements of censorship authorities, or in order to conform to the peculiar national or political prejudices likely to be encountered in any territory, or for any other purpose or reason. The costs referred to in this (c) shall include all studio charges for facilities, labor and material, whether or not incurred at a studio owned or controlled by Studio.

(d) All sums paid or accrued on account of sales, use, receipts, income, excise, remittance and other taxes (however denominated) to any governmental authority assessed upon the negatives, duplicate negatives, prints or sound records of the Picture, or upon the use or distribution of the Picture, or upon the revenues derived therefrom, or any part thereof, or upon the remittance of such revenues, or any part thereof; any and all sums paid or accrued on account of duties, customs and imposts, costs of acquiring permits, "Kontingents," and any similar authority to secure the entry, licensing, exhibition, performance, use or televising of the Picture in any country or part thereof, regardless of whether such payments or accruals are assessed against the Picture or the proceeds thereof or against a group of motion pictures in which the Picture may be included or the proceeds thereof. In no event shall the deductible amount of any such tax (however denominated) imposed upon Studio, be decreased (nor the gross receipts increased) because of the manner in which such taxes are elected to be treated by Studio in filing net income, corporate franchise, excess profits or similar tax returns. Subject to the foregoing, (i) Studio's own United States federal and state income taxes and franchise taxes based on Studio's net income; and (ii) income taxes payable to any country or territory by Studio based on the net earnings of Studio in such country or territory and which is computed and assessed solely by reason of the retention in such country or territory by Studio of any portion of the gross receipts shall not be deductible hereunder.

(e) Expenses of transmitting to the United States any funds accruing to Studio from the Picture in foreign countries, such as cable expenses, and any discounts from such funds taken to convert such funds directly or indirectly into U.S. dollars.

(f) All costs and expenses, including reasonable attorneys' fees, loss, damage or liability suffered or incurred by Studio in connection with: any action taken by Studio (whether by litigation or otherwise) in copyrighting, protecting and enforcing the copyright of, and other rights and sources of revenue to be derived from, the Picture; reducing or minimizing the matters referred to in (d) and (e) above, the collection of film rentals, and other sums due Studio from exhibitors, subdistributors and others in respect of the Picture or to recover monies due pursuant to any agreement relating to the distribution or the exhibition of the Picture; checking attendance and exhibitors' receipts; preventing and/or recovering damages for unauthorized exhibition or distribution of the Picture, or any impairment of, encumbrance on, or infringement upon, the rights of Studio in and to the Picture; prosecuting and defending actions under the antitrust laws, communications laws, and federal, state and local laws, ordinances and regulations (including censorship) affecting the exhibition and/or distribu-

tion of the Picture and/or the ability of Studio to derive revenue from the Picture and its component parts and by-products; and auditing of books and records of any exhibitor, subdistributor or licensee.

(g) Royalties payable to manufacturers of sound recording and reproducing equipment and dues and assessments of, and contributions by Studio to, AMPTP, MPAA, MPEA, the Academy of Motion Picture Arts and Sciences and other trade associations or industry groups comprised of a substantial number of motion picture producers and/or distributors, but only for purposes relating to the production, distribution, export, import, advertising, exploitation and general protection and/or promotion of motion pictures.

(h) In the event any person shall make a claim relating to the Picture against Studio or any of its licensees, which claim, in Studio's judgment, is of sufficient merit to constitute a reasonable probability of ultimate loss, cost, damage or expense, Studio may deduct under this (h) such amount as Studio may deem necessary to cover any loss, cost, damage or expense which may be suffered as a result thereof. Studio shall have the right to settle and pay any such claim. After the settlement of any such claim, or after the final judicial determination thereof, the amount previously deducted hereunder shall be adjusted accordingly with the next accounting statement rendered hereunder. Nothing herein contained shall be construed as a waiver of any of Participant's warranties contained in this Agreement, or a waiver of any right or remedy at law or otherwise which may exist in favor of Studio, including, but not limited to, the right to require Participant to reimburse Studio on demand for any liability, cost, damage or expense arising out of, or resulting from, any breach by Participant of any warranty, undertaking or obligation by Participant, or any right on the part of Studio to recoup or recover any such cost or expense out of Participant's share of any monies payable hereunder, rather than treating such costs or expenses as distribution expenses.

(i) All amounts paid or payable to or for the benefit of actors, writers, composers, directors and others, pursuant to applicable collective bargaining agreements and/or any law or governmental regulation or decree now or hereafter in force by reason of, and/or as a condition or consideration for, any exhibition, use, re-use, rerun, performance, sale, license and/or distribution of the Picture and/or copies of all or any part thereof, on television, supplemental markets, or otherwise (all herein called "residuals"), together with all taxes, pension fund contributions and other costs paid or payable in respect of such residuals, and in respect of participations in the gross receipts and net profits of the Picture; provided, however, that if Participant or any principal stockholder of Participant, or any heirs, executors, administrators, successors or assigns of Participant, or any such stockholder, are entitled, either directly or by way of participation in any pension fund, to any such residuals, or to compensation for services rendered beyond any guaranteed period referred to in the foregoing agreement, the amount payable on account thereof shall be treated as an advance against Participant's share of the net profits hereunder.

(j) The cost of all insurance (to the extent that the same is not included in the cost of production of the Picture) covering or relating to the Picture, including, but not limited to, errors and omissions insurance and all insurance on negatives, positive prints, sound materials or other physical property, it being understood, however, that Studio shall not be obligated to take out or maintain any such insurance.

(k) If Studio shall proceed under 3(b)(i) hereof, all items deducted by the

subdistributor as distribution expenses, and which Studio accepts for the purpose of its accountings with such subdistributor, shall be treated as Studio's expenditures under the corresponding subdivision of this 5.

**6. FILM RENTALS:** "Film Rentals" shall be determined after all refunds, credits, discounts, allowances and adjustments granted to exhibitors, whether occasioned by condemnation by boards of censorship, settlement of disputes or otherwise. Until earned, forfeited or applied to the Picture, neither advance payments nor security deposits shall be included in film rentals. No cost (regardless of how incurred, paid or allowed) of Studio's share of cooperative and/or theater advertising shall be deducted in determining film rentals. Where allowances are granted and paid on account of Studio's share of cooperative theatre or joint advertising, such payments shall not be deducted in determining film rental, and where Studio's share of cooperative theater or joint advertising is deducted by the exhibitor, Studio's share of cooperative theater or joint advertising shall be added back into the film rental received from such exhibitor, and all such costs, payments, discounts and allowances shall be treated as distribution expenses. Wherever Studio exhibits the Picture in a theatre or over a television station owned or controlled by Studio, or licenses the Picture or rights connected therewith to theaters, television stations or other agencies in which Studio has an interest, directly or indirectly, or to which Studio is obligated to pay a fixed sum for exhibiting the Picture or for the use of its premises or facilities, Studio shall include in the film rentals of the Picture such sums, determined in good faith, as may be reasonable and consistent with Studio's usual practice in such matters.

**7. ALLOCATIONS:** Wherever Studio (i) receives from any license either a flat sum or a percentage of the receipts, or both, for any right to a group of motion pictures (including the Picture) under any agreement (whether or not the same shall provide for the exhibition, lease or delivery of positive prints of any of said motion pictures) which does not specify what portion of the license payments apply to the respective motion pictures in the group (or to such prints or other material, if any, as may be supplied), or (ii) receives foreign currency under 8 hereof relating to a group of motion pictures (including the Picture), then in any and all such situations Studio shall include in, or deduct from, the gross receipts, as the case may be, such sums, determined in good faith, as may be reasonable and consistent with Studio's usual practice in such matters. All costs described in 5 hereof (and, after breakeven, all deductible items set forth in Schedule 1 hereto) shall be fairly apportioned to the Picture if incurred or expended on an industry basis, or in conjunction with other motion picture producers and/or distributors, or with respect to the Picture and other motion pictures distributed by Studio.

**8. FOREIGN RECEIPTS:** No sums received by Studio relating to the Picture shall be included in gross receipts hereunder unless and until such sums have been (i) received by Studio in U.S. dollars in the United States; or (ii) used by Studio for the production or acquisition of motion pictures or television films which can be lawfully removed from the country or territory involved, in which event they shall be included in gross receipts for the accounting period during which an amount (computed at the official or unofficial rate of exchange, as Studio may elect) equal to the amount expended for such production or acquisition, plus interest thereon, as herein provided, has been recouped by Studio (in excess of normal distribution fees and distribution expenses) from distribution thereof outside the country or territory involved; or (iii) used by Studio for acquisition of tangible personal property which can be and is lawfully exported

from the country or territory involved, in which event the U.S. dollar equivalent of the currency utilized to acquire such property shall be included in gross receipts hereunder for the accounting period during which such property was so exported, such U.S. dollar equivalent to be computed at the official or unofficial rate of exchange, as Studio may elect, in effect on the date of export. Studio will, promptly after receipt of a written request from Participant (but not more frequently than annually) advise Participant in writing as to foreign revenues not included in gross receipts as aforesaid, and Studio shall, at the written request and expense of Participant (subject to any and all limitations, restrictions, laws, rules and regulations affecting such transactions), deposit into a bank designated by Participant in the country involved, or pay to any other party designated by Participant in such country, such part thereof as would have been payable to Participant hereunder. Such deposits or payments to or for Participant shall constitute due remittance to Participant, and Studio shall have no further interest therein or responsibility therefor. Studio makes no warranties or representations that any part of any such foreign currencies may be converted into U.S. dollars or transferred to the account of Participant in any foreign country. In no event shall Studio be obligated to apply gross receipts of any country not actually received by Studio in U.S. dollars in the United States to the recoupment of any costs or expenses incurred with respect to the Picture (or, after breakeven, of any deductible items set forth in Schedule 1 hereto) in any other country.

#### **9. COST OF PRODUCTION; INTEREST:**

(a) The "cost of production" of the Picture means the total direct cost of production of the Picture, including the cost of all items listed on Studio's Standard Delivery Schedule, computed and determined in all respects in the same manner as Studio then customarily determines the direct cost of other motion pictures distributed and/or financed by it, plus Studio's overhead charge. The determination of what items constitute direct charges and what items are within said overhead charge shall be made in all respects in the same manner as Studio customarily determines such matters. The full amount of all direct costs of production of the Picture (whether payable in cash, deferred or accrued) shall be included in the direct cost of the Picture at the time liability therefor is incurred or contracted, regardless of whether the same has actually been paid to the party or parties entitled thereto at the time involved. Deferrals and participations in gross receipts of the Picture consented to by Studio (however defined) shall be treated as direct costs of production, whether the same shall be in a definite amount or based on a percentage of the gross receipts, and whether the same are fixed obligations or are contingent upon receipts of the Picture; provided, however, contingent participations based on a percentage of gross receipts as defined in the applicable agreement shall not be included in the direct cost of production beyond recoupment under 2(c) hereof.

(b) Studio's overhead charge shall be in an amount equal to 15% of the direct cost of production of the Picture, with the understanding that any production facilities, equipment or personnel supplied by Studio or by a studio owned or controlled by Studio, or in which Studio has a substantial financial interest (and which are not furnished within the overhead charge), shall be supplied at Studio's usual rental rates charged for such items, and such charges shall be treated as direct costs of production of the Picture and shall bear said 15% overhead charge. Studio's overhead charge shall accrue and be included in the cost of production of the Picture concurrently with the incurring of the respective items of direct cost to which it applies.

(c) The amount equal to interest provided for in 2(c) hereof shall be calculated at a rate per annum equal to 125% of the rate announced from time to time by the First National Bank of Boston as its prime rate on unsecured loans to its preferred customers. Said amount shall be calculated from the respective dates that each item is charged to the Picture until the close of the accounting period during which the cost of production is recouped under 2(c) hereof, except that interest on deferred amounts shall be calculated from the date of payment.

(d) Concurrently with delivery to Participant of the first earnings statement hereunder, Studio will (subject to revisions and correction) deliver to Participant an itemized summary of the cost of production of the Picture. Participant shall have the right to audit such statement in accordance with 11 hereof.

(e) If the final cost of production shall exceed the budgeted cost by 5% or more, then for the purposes of 2(c) hereof there shall be added to the actual cost of production of the Picture an amount equal to the amount by which the final direct cost exceeds 105% of the budgeted direct cost. For the purposes of this subdivision (e), the final direct cost shall not include costs incurred solely by reason of force majeure events, union increases not reflected in the budget, and overbudget costs incurred at the request of an officer of Studio having the rank of Vice President or higher over the written objection of Participant.

**10. EARNINGS STATEMENTS:** Studio shall render to Participant periodic statements showing, in summary form, the appropriate calculations under this Agreement. Statements shall be issued for each calendar quarter until the Picture has been in release for 4 years from and including the quarter in which the Picture was first released, and thereafter annually. Each such quarterly or annual period, as the case may be, is herein referred to as an "accounting period." No statements need be rendered for any accounting period during which no receipts are received. Statements rendered by Studio may be changed from time to time to give effect to year-end adjustments made by Studio's Accounting Department or Public Accountants, or to items overlooked, to correct errors and for similar purposes. If Studio shall extend credit to any licensee with respect to the Picture and if such credit has been included in the gross receipts, and if, in the opinion of Studio, any such indebtedness shall be uncollectible, the uncollected amount may be deducted in any subsequent earning statement. Should Studio make any overpayment to Participant hereunder for any reason, Studio shall have the right to deduct and retain for its own account an amount equal to any such overpayment from any sums that may thereafter become due or payable by Studio to Participant or for Participant's account, or may demand repayment from Participant, in which event Participant shall repay the same when such demand is made. Any U.S. dollars due and payable to Participant by Studio pursuant to any such statement shall be paid to Participant simultaneously with the rendering of such statement; provided, however, that all amounts payable to Participant hereunder shall be subject to all laws and regulations now or hereafter in existence requiring deductions or withholdings for income or other taxes payable by or assessable against Participant. Studio shall have the right to make such deductions and withholdings and the payment thereof to the governmental agency concerned in accordance with its interpretation in good faith of such laws and regulations, and shall not be liable to Participant for the making of such deductions or withholdings or the payment thereof to the governmental agency concerned. In any such event Participant shall make and prosecute any and all claims which it may have with respect to the same directly with the governmental agency having jurisdiction in the premises. The right of Participant to receive, and the obligation of Studio to account for, any share of the gross receipts of

the Picture shall terminate if the Picture has been made available for exhibition on syndicated television in the U.S.A., and if the first earnings statement issued thereafter shows a deficit under 2 hereof such that at least \$500,000 of gross receipts would be required before Participant would be entitled to receive any gross receipts hereunder. In the event a new medium of exhibition shall thereafter be developed and there shall be substantial exhibition and distribution of the Picture by such new medium which is likely to generate gross receipts of \$500,000 or the amount of the deficit, whichever is larger, Participant may audit Studio's records for the purpose of determining whether the Picture has earned, or is likely to earn, any gross receipts in excess of breakeven, and if, as a result of such audit, it is determined by mutual agreement, or in the event of dispute appropriate legal proceedings, that the Picture has earned, or is likely to earn, gross receipts in excess of breakeven as herein defined, accountings hereunder and payments, if required, shall be reinstated.

**11. ACCOUNTING RECORDS RE DISTRIBUTION; AUDIT RIGHTS:** Studio shall keep books of account relating to the distribution of the Picture, together with vouchers, exhibition contracts and similar records supporting the same (all of which are hereinafter referred to as "records"), which shall be kept on the same basis and in the same manner and for the same periods as such records are customarily kept by Studio. Participant may, at its own expense, audit the applicable records at the place where Studio maintains the same in order to verify earnings statements rendered hereunder. Any such audit shall be conducted only by a reputable public accountant during reasonable business hours in such manner as not to interfere with Studio's normal business activities. In no event shall an audit with respect to any earnings statement commence later than twenty-four (24) months from the rendition of the earnings statement involved; nor shall any audit continue for longer than thirty (30) consecutive business days; nor shall audits be made hereunder more frequently than once annually; nor shall the records supporting any earnings statement be audited more than once. All earnings statements rendered hereunder shall be binding upon Participant and not subject to objection for any reason unless such objection is made in writing, stating the basis thereof and delivered to Studio within twenty-four (24) months from rendition of the earnings statement, or if an audit is commenced prior thereto, within thirty (30) days from the completion of the relative audit. If Studio, as a courtesy to Participant, shall include cumulative figures in any earnings or other statement, the time within which Participant may commence any audit or make any objection in respect of any statement shall not be enlarged or extended thereby. Participant's right to examine Studio's records is limited to the Picture, and Participant shall have no right to examine records relating to Studio's business generally or with respect to any other motion picture for purposes of comparison or otherwise; provided, however, that where any original income or expense document with third parties relates to the Picture and to other motion pictures, Participant shall have the right to examine the entire document without deletions therefrom.

**12. OWNERSHIP:** Participant expressly acknowledges that Participant has and will have no right, title or interest of any kind or character whatsoever in or to the Picture, and no lien thereon or other rights in or to the gross receipts or net profits of the Picture; and that the same shall be and remain Studio's sole and exclusive property, and Studio shall not be obligated to segregate the same from its other funds, it being the intent and purpose hereof that the gross receipts in excess of breakeven of the Picture are referred to herein merely as a measure in determining the time and manner of payment to Participant; and that

Studio shall not be deemed a trustee, pledgeholder or fiduciary. Participant shall have no right, title or interest of any kind or character whatsoever in or to the literary, dramatic or musical material upon which the Picture is based, or from which it may be adapted; and Studio shall have the sole and exclusive right to utilize, sell, license or otherwise dispose of all or any part of its rights in such material upon such terms and conditions as it may deem advisable, all without consulting or advising Participant and without accounting to Participant in any manner with respect thereto.

**13. DISTRIBUTION:** As between Participant and Studio, Studio shall have complete authority to distribute the Picture and to license the exhibition thereof throughout the world in accordance with such sales methods, policies and terms as it may, in its uncontrolled discretion, determine. Studio shall have the broadest possible latitude in the distribution of the Picture, and the exercise of its judgment in good faith in all matters pertaining thereto shall be final. Studio has not made any express or implied representation, warranty, guarantee or agreement as to the amount of proceeds which will be derived from the distribution of the Picture, nor has Studio made any express or implied representation, warranty, guarantee or agreement that there will be any sums payable to Participant hereunder, or that the Picture will be favorably received by exhibitors or by the public, or will be distributed continuously. In no event shall Studio incur any liability based upon any claim that Studio has failed to realize receipts or revenue which should or could have been realized. Studio may distribute the Picture either itself or through such distributors, subdistributors and other parties as Studio may, in its uncontrolled discretion, determine, and Studio may refrain from releasing and/or distributing the Picture in any territory for any reason whatsoever. Studio may license the Picture or rights connected therewith to any and all theatres or other agencies in which Studio may have an interest directly or indirectly upon such terms and rentals as Studio may deem fair and proper under the circumstances. Nothing herein contained shall be construed as a representation or warranty by Studio that it now has or will hereafter have or control any theatres or agencies in the United States or elsewhere.

**14. SALE OF PICTURE:** Studio shall have the right at any time after completion of the Picture to sell, transfer or assign all or any of its rights in and to the Picture and the negative and copyright thereof. Any such sale, transfer or assignment shall be subject to Participant's rights hereunder, and upon the purchaser, transferee or assignee assuming performance of this agreement in place and stead of Studio, Studio shall be released and discharged of and from any further liability or obligation hereunder. No part of any sale price or other consideration received by, or payable to, Studio shall be included in the gross receipts hereunder and Participant shall have no rights in respect of any thereof.

**15. ASSIGNMENTS, ETC.:** Participant shall have the right to sell, assign, transfer or hypothecate (all herein called "assign") all or any part of Participant's right to receive the monies payable to Participant hereunder. Any such assignment shall be subject to all pertinent laws and governmental regulations and to the rights of Studio hereunder. In the event of any such assignment by Participant, a Notice of Irrevocable Authority and Distributor's Acceptance in Studio's usual form shall be executed by Participant and by the transferee and delivered to Studio. If at any time more than three parties shall be entitled to receive payments, which under the terms hereof are to be paid to or for the account of Participant, Studio may, at its option, require that all such parties execute and deliver an agreement in Studio's usual form appointing a disbursing agent for all such parties.

## SCHEDULE 1

1. **"GROSS RECEIPTS"** of the Picture means the aggregate of:

(a) All film rentals actually received by Studio from parties exhibiting the Picture in theatres and on television where Studio distributes directly to such parties (hereinafter referred to as "exhibitors");

(b) In respect of licenses of exhibition or distribution rights by means of video discs, cassettes or similar devices, an amount equal to 20% of (i) the gross wholesale rental income therefrom and (ii) the gross wholesale sales income therefrom less a reasonable allowance for returns;

(c) All sums actually received by Studio from grants or licenses of distribution rights in and to the Picture (in any and all gauges of film, tape and other material) from sources other than those referred to in (a) and (b) above;

(d) All net earnings of Studio from trailers of the Picture (other than trailers advertising the television exhibition of the Picture); and the lease of positive prints, tapes and other material (as distinguished from the licensing thereof for a film rental); and from the sale or licensing of advertising accessories, souvenir programs and booklets;

(e) All net sums derived by Studio from distribution of the Picture on a "road show", "reissue" and "four wall" basis, as such terms are commonly understood in the motion picture industry, whether on fixed or percentage engagements. The term "net sums" means Studio's receipts less all advertising, publicity and other distribution costs incurred directly in connection therewith;

(f) All amounts required to be included under Exhibits X, Y and Z hereof, less the aggregate of:

(i) All sums paid or accrued on account of sales, use, receipts, income, excise, remittance and other taxes (however denominated) to any governmental authority assessed upon the negatives, duplicate negatives, prints or sound records of the Picture, or upon the use or distribution of the Picture, or upon the revenues derived therefrom, or any part thereof, or upon the remittance of such revenues, or any part thereof; any and all sums paid or accrued on account of duties, customs and imposts, costs of acquiring permits, "Kontingents," and any similar authority to secure the entry, licensing, exhibition, performance, use or televising of the Picture in any country or part thereof, regardless of whether such payments or accruals are assessed against the Picture or the proceeds thereof or against a group of motion pictures in which the Picture may be included or the proceeds thereof. In no event shall the deductible amount of any such tax (however denominated) imposed upon Studio, be decreased (nor the gross receipts increased) because of the manner in which such taxes are elected to be treated by Studio in filing net income, corporate franchise, excess profits or similar tax returns. Subject to the foregoing, (i) Studio's own United States federal and state income taxes and franchise taxes based on Studio's net income; and (ii) income taxes payable to any country or territory by Studio based on the net earnings of Studio in such country or territory and which is computed and assessed solely by reason of the retention in such country or territory by Studio of any portion of the gross receipts shall not be deductible hereunder.

(ii) Expenses of transmitting to the United States any funds accruing

to Studio from the Picture in foreign countries, such as cable expenses and any discounts from such funds taken to convert such funds directly or indirectly into U.S. dollars.

(iii) The cost of reducing or minimizing the matters referred to in (i) or (ii) above, which costs shall be fairly apportioned to the Picture if done on an industry basis or with respect to motion pictures distributed by Studio generally.

(iv) All costs of cooperative or other advertising or promotion (excluding trade and institutional advertising or promotion) incurred in connection with exhibitions of the Picture in theatres (or other places where an admission is charged) where Studio pays, shares in or is charged with all or a portion of the promotional or advertising costs relating to any such exhibitions.

(v) All amounts paid or payable to or for the benefit of actors, writers, composers, directors and others, pursuant to applicable collective bargaining agreements and/or any law or governmental regulations or decree now or hereafter in force by reason of, and/or as a condition or consideration for, any exhibition, use, re-use, rerun, performance, sale, license and/or distribution of the Picture and/or copies of all or any part thereof, on television, supplemental markets, or otherwise (all herein called "residuals"), together with all taxes, pension fund contributions and other costs paid or payable in respect of such residuals, and in respect of participations in the gross receipts and net profits of the Picture; provided, however, that if Participant or any principal stockholder of Participant, or any heirs, executors, administrators, successors or assigns of Participant, or any such stockholder, are entitled, either directly or by way of participation in any pension fund, to any such residuals, or to compensation for services rendered beyond any guaranteed period referred to in the foregoing agreement, the amount payable on account thereof shall be treated as an advance against Participant's share of the gross receipts hereunder, and conversely, any gross receipts paid to Participant hereunder shall (to the extent permissible under applicable collective bargaining agreements) constitute an advance against such residuals payable to or for the benefit of Participant or any principal stockholder of Participant, or any such heirs, executors, administrators, successors or assigns.

(vi) Dues and assessments of and contributions by Studio to AMPTP, MPAA, MPEA, the Academy of Motion Picture Arts and Sciences, and other trade associations or industry groups comprised of a substantial number of motion picture producers and/or distributors, but only for purposes relating to the production, distribution, export, import, advertising, exploitation and general protection, including actions under the antitrust laws, and/or promotion of motion pictures.

In no event shall rentals from the exhibition of the Picture which are contributed to charitable organizations be included in gross receipts. If Studio reasonably anticipates taxes, residuals, uncollectible accounts, or any matters relating to the Picture, which, if and when determined, will be deductible hereunder, Studio may, for a reasonable time, set up appropriate reserves therefor.

**2. FILM RENTALS:** In paragraph 6 of the foregoing Exhibit for purposes of computing gross receipts under this Schedule 1, the third and fourth sentences are deleted, and the following substituted: Where the film rental is computed on

the basis of box-office receipts of the Picture, any expenses incurred in checking attendance and/or receipts of such engagements shall be deducted in determining film rentals hereunder. There shall be deducted from film rentals expenses incurred in the collection thereof.

#### MUSIC PUBLISHING INCOME

In the event the party entitled to share in gross receipts or net profits of the Picture under the foregoing agreement is not entitled to share directly in publishing revenues, there shall also be included in gross receipts of the picture:

A sum equal to 75% of the "publisher's share" of mechanical reproduction and performing fees received in U.S. currency by Studio's subsidiary or affiliated publisher with respect to music and lyrics written specifically for and synchronized in the picture as released, provided such publisher is vested with all rights therein and all of the "publisher's share" of the receipts therefrom, and provided the party entitled to share in gross receipts or net profits of the picture under the foregoing agreement is not entitled to receive composers' or lyricists' royalties in respect of such music or lyrics. The "publisher's share" of mechanical reproduction fees shall be the full amount paid by the licensee, less composers' or lyricist's share of such fees and less the charges of the publisher or any agent, trustee or administrator acting for the publisher for the collection of such fees, not to exceed 5% thereof. Mechanical reproduction fees do not include synchronization fees.

The "publisher's share" of performing fees shall be the net amount actually received by the publisher from any performing rights society in respect of the music and lyrics involved; or, if Studio or the publisher shall administer the collection of all or any part of performance fees, the full amount of all performance fees collected by Studio or the publisher, less the composer's or lyricist's share of such fees and all reasonable costs and expenses in administering the collection of such fees.

If the agreement or Exhibit to which this Exhibit is attached provides for distribution fees, no distribution fees shall be charged on amounts included in gross receipts pursuant to this Exhibit.

#### SOUND TRACK RECORD INCOME

In the event the party entitled to share in the gross receipts or net profits of the picture under the foregoing agreement is not entitled to receive any artists' royalties in respect of phonograph records derived from the sound track of the picture, then Studio agrees to include in the gross receipts of the picture royalties on sound track records, as herein defined, computed at the applicable royalty rate.

As used herein:

The term "sound track records" means and refers to phonograph records, tapes, or other sound recordings which contain either (i) portions of the sound track transferred directly to phonograph record masters from sound records which form a part of the sound track of the picture; or (ii) sound recordings recorded separately but utilizing substantially the same musical score, parts and instrumentation, and essentially the same artists, music and/or dialogue and/or sound effects as is contained in the sound track of the picture; or (iii) a combination of (i) and (ii). Sound track records do not, however, include any re-

cordings produced solely for the purpose of advertising and exploiting the picture and copies of which are not distributed to the public.

The term "applicable royalty rate" means and refers to the following percentages of the prevailing retail price but in no event more than the net royalty actually received and retainable by Studio for its own account with respect to the sale of any particular copies: 5% of 90% in respect of sound track records sold in the United States; 2 1/2 of 90% in respect of sound track records sold outside the United States except that as to sound track records sold pursuant to mail order or "club" plans, the royalty rate shall be one-half of the rate otherwise applicable.

If any sound track records contain selections from other sources, the applicable royalty rate hereunder shall be prorated on the basis of the total number of minutes of selections from the sound track compared to the total number of minutes on such records.

In determining the net royalty retainable by Studio, all royalties payable to artists, conductors and other third parties in respect to such sound track records shall be deducted from the aggregate royalty payable to Studio under the applicable distribution agreement.

The term "prevailing retail price" means and refers to the price generally prevailing in the country of manufacture or sale (as determined by the Record Company), less all taxes, duties and charges for containers.

There shall be deducted from amounts included in gross receipts hereunder a pro rata share of re-use fees and costs of recording and manufacturing masters advanced by Studio or the Record Company. Sales shall be determined on the basis of the number of records sold and for which the Record Company has been paid in U.S. currency, after allowing for all returns, cancellations, exchanges, applicable discounts, etc. and reasonable reserves which may be established therefor. No sums shall be included in gross receipts with respect to records given away or sold at less than the Record Company's cost or for promotional purposes or as sales inducements or otherwise.

If the agreement or Exhibit to which this Exhibit is attached provides for distribution fees, no distribution fees shall be charged on amounts included in gross receipts pursuant to this Exhibit.

#### MERCHANDISING INCOME

In the event the party entitled to share in gross receipts or net profits of the picture under the foregoing agreement is not entitled to share directly in merchandising revenue, there shall be included in gross receipts of the picture:

(a) A sum equal to 50% of all license fees (in excess of all royalties and participations) received by Studio directly as a result of the exercise by Studio itself of merchandising license rights. If, however, Studio shall sublicense or subcontract any of such merchandising license rights, Studio shall include in the gross receipts hereunder, at its election, either a sum equal to (i) 85% of the net sums (in excess of all royalties and participations) received from such sublicensee; or (ii) 50% of such sublicensee's license fees from the exercise of such licensing rights (from which there shall be deducted all royalties and participations), and out of the remaining 50% thereof Studio shall pay and discharge the fees of its sublicensee.

(b) If the publication rights to the underlying literary material were owned or controlled by the party entitled to share in gross receipts or net profits of the picture under the foregoing agreement (herein called "participant") prior to the execution of this agreement, and were acquired by Studio pursuant to or in connection with this agreement, then (i) all net sums received by Studio from nonaffiliated or nonsubsidiary publishers from the publication of such underlying literary material and of novelizations of the screenplay of the picture, and (ii) a sum equal to 5% of the net receipts of Studio's subsidiary or affiliated publishers from the publication of such material and novelizations, less, in either case, royalties paid out of (i) or (ii) to the writers of such material and novelizations.

If the agreement or Exhibit to which this Exhibit is attached provides for distribution fees, no distribution fees shall be charged on amounts included in gross receipts pursuant to this Exhibit.

EXHIBIT - **LL**

# TELEVISION DISTRIBUTION AGREEMENT

XYZ Broadcasting Co.  
444 Broadway  
New York, N.Y.

## Summary

Name of Licensee: \_\_\_\_\_

Address of Licensee: \_\_\_\_\_

Station: \_\_\_\_\_

No. of License: \_\_\_\_\_

Picture or Pictures: \_\_\_\_\_

Number of Runs: \_\_\_\_\_

Duration of License: \_\_\_\_\_

License Fee Per Picture: \$ \_\_\_\_\_

Total License Fee: \$ \_\_\_\_\_

Payments: (a) First payment of \$ \_\_\_\_\_ on or before \_\_\_\_\_; and  
(b) \_\_\_\_\_ monthly payments of \$ \_\_\_\_\_ commencing on \_\_\_\_\_  
until the total license fee of \$ \_\_\_\_\_ has been paid.

This application for a license was executed by the Licensee on \_\_\_\_\_.  
Upon acceptance thereof by a duly authorized officer of the Licensor, this application shall constitute a license for the telecast of the aforesaid Picture or Series on the terms and conditions set forth above and in the Schedule hereto annexed and made a part hereof.

[Name of Licensee]

By \_\_\_\_\_  
Authorized Officer

Accepted:

Date \_\_\_\_\_

[Name of Licensor]

By \_\_\_\_\_  
Authorized Officer

## SCHEDULE OF TERMS AND CONDITIONS

**1. LICENSE:** Subject to the prompt payment of the license fees above specified and the due performance by the Licensee of all its obligations hereunder, the Licensor hereby grants to the Licensee, and the Licensee hereby accepts, a limited license to exhibit and broadcast over the facilities of the television station specified in the foregoing Summary the motion picture or the motion pictures therein specified (herein called the Pictures), and to reproduce recorded sound in connection therewith, for the period of time and the maximum number of runs therein specified, and for no other use or purpose.

**2. PAYMENT OF LICENSE FEES:** The Licensor shall pay the license fees specified in the Summary at the time or times therein set forth, without offset, deduction, counterclaim or credit for any claim that the Licensee may have or assert against the Licensor, regardless of whether or not the Licensee has exhibited all the Pictures available to it.

**3. LICENSOR'S WARRANTIES:** The Licensor represents and warrants to the Licensee that:

(a) The performing rights in all musical compositions contained in the Pictures (i) are controlled by the American Society of Composers, Authors and Publishers (ASCAP) or Broadcast Music, Inc. (BMI); or (ii) are in the public domain; or (iii) are controlled by the Licensor;

(b) With respect to music controlled by ASCAP or BMI, the Licensor has obtained the necessary licenses for the inclusion thereof in the Pictures, and the exhibition of the Pictures via television;

(c) The Pictures and the prints thereof to be furnished by the Licensor to the Licensee will be free and clear of any and all liens or encumbrances; and

(d) The Licensor has the full right to grant this license.

**4. LICENSOR'S INDEMNITY:** The Licensor shall indemnify the Licensee against any and all damage or expense (including reasonable attorneys' fees) that the Licensee may suffer or incur as a result of the breach of any of the Licensor's warranties, subject to the following:

(a) The Licensor's indemnity shall not apply unless it is given (i) prompt written notice of any claim; and (ii) full control of the defense thereof, through its own counsel; and (iii) the right to settle the same.

(b) The Licensee shall cooperate fully with the Licensor in the defense or settlement of any claim.

(c) The Licensor's liability on the warranty set forth in subdivision (d) of clause 3 shall be limited as provided in clause 16.

**5. DELIVERY:** The Licensor shall deliver to the Licensee a positive synchronized 16 mm. black and white print of each Picture scheduled for exhibition.

(a) Delivery to the Licensee's premises, or to its agent, or to a common carrier, or to the U. S. Post Office, or to any shipping agent designated by the Licensee, shall be deemed due delivery; and the Licensor shall not be liable for any loss or delay attributable to any intervening agency.

(b) The Licensee shall bear the expenses of delivery.

(c) Unless the Licensee designates a mode of delivery, the Licensor shall have the right to select the same.

(d) The Licensor's failure to deliver any of the Pictures shall not constitute a default hereunder, but the license fee hereunder shall be reduced proportionately in the ratio that the number of runs of each undelivered Picture bears to the total number of runs for all Pictures covered by this agreement.

(e) The Licensor at its own election may substitute a product deemed by it to be equivalent to the Pictures without reduction of the license fee.

**6. EXAMINATION OF PRINTS:** Upon receipt of each positive print, the Licensee shall promptly examine the same to determine whether it is physically suitable for exhibition. If the print is unsuitable, the Licensee shall give immediate notice thereof to the Licensor, specifying the particular defect; and upon receipt of such notice the Licensor shall furnish a substitute print, or in lieu thereof, a print of another Picture that the Licensor deems equivalent. Unless the Licensor receives a notification in writing as to a defect at least 48 hours prior to the scheduled play date, a print received by the Licensee shall be deemed accepted as satisfactory.

**7. RESTRICTIONS ON CUTTING:** The Licensee shall telecast the Pictures in the form submitted by the Licensor, and shall not modify, add to or take from the same without the Licensor's written consent. Among other things, the Licensee shall telecast the screen credits and the Licensor's release credit as incorporated in the prints of the Pictures. The Licensee shall have the right to insert commercials at points selected by it, provided that, prior to redelivery, it restores each print to its original condition.

**8. PLAY DATES:** If no specific play dates are designated in the Summary, the Licensee shall, from time to time but at least fourteen (14) days in advance of any play date, furnish to the Licensor a list of the Pictures that the Licensee intends to telecast, together with the proposed telecast date.

(a) The Licensor shall have the right to designate a particular one of the Pictures to be shown on the proposed telecast date, except that it shall not designate a Picture that may have been previously shown by the Licensee during the term of this agreement.

(b) Not later than ten (10) days after the end of every month during the term of this agreement, the Licensee shall deliver to the Licensor a list of the Pictures that it telecast during the preceding month.

(c) If a scheduled telecast does not take place by reason of the pre-emption of the scheduled time, or for any reason beyond the Licensee's control, the Licensee shall notify the Licensor thereof within twenty-four (24) hours after the scheduled play date.

(d) If the Licensee fails to notify the Licensor as aforesaid, or if it fails to telecast any Picture on the play date for any other reason, it shall be charged with the license fee for the scheduled telecast.

**9. MAXIMUM RUNS:** When the Licensee reaches the maximum number of runs permitted under this license, its right to telecast the Pictures shall forthwith terminate, and the unpaid balance of the total agreed license fee for all the Pictures shall immediately become due and payable. The Licensee's failure to complete the maximum number of runs on or before the expiration date indicated

in the Summary shall not extend the term of this license, nor shall it relieve the Licensee of its obligation to pay the total agreed license fee upon the expiration date.

**10. LICENSEE'S COVENANTS:** The Licensee covenants that:

(a) It will not telecast the Pictures except over the facilities of the station specified in the Summary. If such station suspends its operation for any reason, and the Licensee selects a substitute station, such substitute shall be subject to the Licensor's approval, which shall not be unreasonably withheld.

(b) It will not telecast the Pictures beyond any cut-off dates or in excess of the maximum number of permitted runs; and

(c) It will not permit or allow the Pictures entrusted to it to be exhibited or telecast by any other party.

**11. ADVERTISING MATERIALS:** The Licensor shall make available at reasonable cost to the Licensee [or to any sponsor of the television broadcasts of the Pictures, or to the advertising agencies of such sponsors], any advertising or promotional material owned by the Licensor that is available for distribution.

(a) No advertising, promotional or display material originated by the Licensee or the sponsor of the Pictures or the sponsor's advertising agency shall be used without the Licensor's prior written consent, which shall not be unreasonably withheld.

(b) Any advertising material used by the Licensee that may be copyrightable shall be registered for copyright by the Licensee in the Licensor's name.

(c) The Licensee shall not in any event use, for the purpose of a commercial tie-in or tie-up, the name or likeness of any person (producer, director, star, supporting players, and the like) appearing in or connected with the Picture.

**12. ADVERTISING CREDITS:** The Licensee shall comply with all the Licensor's instructions with respect to the requisite advertising credits, and shall indemnify the Licensor against any damage or expense (including reasonable attorneys' fees) that the Licensor may suffer or incur by reason of the Licensee's failure to observe such instructions.

**13. ADVERTISING PRACTICES:** All advertising utilized by the Licensee in connection with the exhibition of the Pictures shall be in accordance with the code requirements of the National Association of Broadcasters, as well as the applicable orders and regulations of any governmental agency.

**14. RETURN OF PRINTS:** Within forty-eight (48) hours after the broadcast thereof, the Licensee shall return each positive print to the Licensor or to such place or places as the Licensor may from time to time direct. Sundays and holidays shall not be included in the computation of the aforesaid period.

(a) The cost of transportation shall be borne by the Licensee.

(b) Each print shall be returned in good condition, ordinary wear and tear excepted, on the reels and in the containers in which it was received.

(c) If the Licensee fails to return a print as aforesaid, it shall be automatically charged with the laboratory cost of replacing the same, and it shall pay the charge forthwith to the Licensor.

(d) If the Licensee claims that a print has been lost or destroyed, it shall furnish an affidavit to that effect, sworn to by one of its officers.

(e) All prints shall remain the property of the Licensor.

**15. TAXES:** The Licensee shall bear all taxes now or hereafter in effect that are or may be (i) imposed or based upon the Licensee's exhibition, possession or use of the prints of the Pictures, or upon the grant of this license or the exercise thereof; or (ii) measured by the license fees, however determined, paid or payable hereunder.

(a) The word "taxes" as herein used shall include, without limitation, taxes, fees, assessments, charges, imposts, levies and excises, whether designated as sales, gross income, gross receipts, personal property, storage, use, consumption, licensing, compensating, excise or privilege taxes.

(b) To the extent that such taxes are paid by the Licensor, the Licensee shall reimburse the Licensor therefor on demand; and upon its failure to do so, the Licensor shall have all the remedies herein provided for the collection of unpaid license fees, in addition to whatever other remedies it may have by law.

**16. SUBSTITUTION:** If the Licensor's right to grant this license with respect to any Picture is challenged by any third party, the Licensor may, at its option, either substitute a picture that it deems to be equivalent, or terminate this agreement with respect to such Picture. If the Licensor elects to terminate:

(a) The total license fee specified in the Summary shall be reduced proportionately in the ratio that the number of projected runs of the Picture involved bears to the total number of runs of all the Pictures.

(b) The Licensee shall and does waive all claims for damages that may arise from such termination, other than a claim for a refund of all prepaid exhibition fees.

**17. LICENSEE'S DEFAULT:** If the Licensee fails to make payment of the license fees or any part thereof when due, or if it defaults in any of its other obligations hereunder, and fails to make payment or to remedy its default within [10] days after notice from the Licensor, or if the Licensee is adjudicated a bankrupt or becomes insolvent or makes an assignment for the benefit of creditors, or if a receiver, liquidator or trustee is appointed for its assets or affairs, the Licensor shall have the right, in addition to whatever other remedies it may have by law, to terminate this license wholly or in part by written notice to the Licensee, in which event the entire unpaid balance of the total agreed license fee for all the Pictures shall immediately become due and payable.

**18. FORCE MAJEURE:** If the Licensor is delayed in or prevented from making delivery of the Pictures as herein provided, by reason of any act of God, labor difficulties, injunctions, judgments, adverse claims, fire, flood, transportation tie-up, public disaster or any other cause beyond its control, or if the Licensee is delayed in or prevented from telecasting the Pictures or returning the positive prints thereof as herein provided by reason of any of the aforesaid contingencies, neither party shall be liable to the other for the delay or failure so to perform; and the term of this license shall be deemed extended for a period equal to the duration of the contingency.

**19. LICENSOR'S RIGHT TO ASSIGN:** The Licensor shall have the right to hypothecate, pledge or assign this license to obtain loans thereon. The Licensee

recognizes that lenders may be induced to advance substantial sums to the Licensor on the security of this license. Accordingly the Licensee shall pay to any assignee all moneys due to the Licensor without offset, deduction, counterclaim or credit for any claim that the Licensee may have against the Licensor.

**20. NO ASSIGNMENT BY LICENSEE:** This license shall not be assigned by the Licensee without the Licensor's written consent, nor shall it be assignable by operation of law insofar as the Licensee is concerned.

21. ARBITRATION: Any and all disputes arising out of or in connection with this agreement, its interpretation or performance, shall be submitted to arbitration in \_\_\_\_\_ under the then current rules and regulations of the American Arbitration Association. The decision of the arbitrators shall be binding and conclusive upon both parties.

**22. GENERAL PROVISIONS:** The following provisions shall apply:

(a) This license shall not be modified or waived in whole or in part except in writing.

(b) A waiver by either party of any breach or default by the other party shall not be construed as a waiver of any other breach or default.

(c) Any notices given or required to be given hereunder shall be in writing, and shall be sent by certified mail, return receipt requested, to the parties at their respective addresses shown in the Summary.

(d) This license shall be construed under the laws of the State of \_\_\_\_\_.

(e) This license is complete, and embraces the entire understanding of the parties.

EXHIBIT - **MM**

## HOME VIDEO LICENSING AGREEMENT

This Agreement between \_\_\_\_\_, residing at \_\_\_\_\_ (herein called "Licensor"), and \_\_\_\_\_, Inc., (herein called "Distributor"), a California corporation, is for the licensing to the domestic (United States and Canada) home video market for the program "\_\_\_\_\_" (herein "Program") a collection of four titles as set forth in Schedule "A", which is owned equally as tenants in common by the parties.

1. Licensor licenses his interest in the program to Distributor for distribution to the domestic (U.S. & Canada) home video market ("Licensed Territory") for a term of five (5) years and one month from the date this agreement is executed by both parties.
2. Licensor hereby grants Distributor the exclusive and irrevocable right, license and privilege in the Licensed territory (Domestic only) and in the Licensed Field (home video only) to manufacture Video Grams (videocassettes, videodiscs and similar devices) of the program and to sell, lease, license, rent, distribute, reproduce, perform, exploit, advertise and otherwise market such Video Grams during the term hereof. Distributor promises to use its efforts to market and distribute the program.
3. Distributor shall reproduce and incorporate the Program into Video Grams in its entirety in the form delivered by Licensor to Distributor, with no titles, credits, copyright notices, or other material changed, added to, omitted or edited without Licensor's prior written approval, which shall not be unreasonably withheld.
4. All rights not expressly granted hereunder are reserved to Licensor including the use of any Video Grams for viewing in any place of public assembly where an admission fee is charged, for broadcasting by television or cable, whether free or pay, for public exhibition in the traditional non-theatrical market, sequels and remakes, or for theatrical exhibition. Distributor shall only have the right to distribute the Program to the domestic home video market, to be used for exhibition on a television set for private home use only.

5. Licensor is not in any way obliged to license to Distributor any new programs licensor may produce in the future.
6. Distributor shall cause to be stamped or imprinted on the Video Grams or their packaging enclosures a statement substantially to the effect that: "The copyright proprietor has licensed the material contained herein for noncommercial private use only, and prohibits any other use, copying or reproduction in whole or in part."
7. For each Video Gram of the program sold, rented or otherwise vended in the Licensed Territory during the Term Distributor shall pay Licensor a royalty equal to 50% of such gross receipts as Distributor derives therefrom. "Gross receipts" shall be defined, computed, paid and accounted for in accordance with the provisions of Schedule "B" attached and incorporated by this reference. Gross receipts shall include any and all income received from the exploitation of the Program regardless of source.
8. Distributor shall bear all costs and obligations with respect to the distribution of the Program, including but not limited to all salaries, royalties, license fees, service charges, laboratory charges and the like. Licensor shall have no obligation for past, current or future salaries, royalties, residuals, deferments, license fees, service charges, laboratory charges or similar charges.
9. Distributor shall maintain complete books and records with respect to all Video Grams sold, leased, licensed or rented. Distributor will render to Licensor, on a quarterly basis, a written statement of Licensor's royalties following the conclusion of each quarterly accounting period and shall be accompanied by payment of any amount shown to be due Licensor.
10. Licensor shall have the right to examine the books and records of Distributor to the extent they pertain to the Program. Such examination shall be made during reasonable business hours, upon reasonable advance notice, at the regular place of business of Distributor where such books and records are to be maintained.
11. In any instance where revenues are earned or deductions allowed with regard to a group of films or video programs including the Program, Distributor shall make such allocations as are determined by Distributor in good faith, and gross receipts hereunder shall only include the amounts allocated to the Program.
12. All monies due or payable to Licensor shall be deemed held in trust by Distributor for Licensor. Licensor shall be deemed to have a lien or claim on the gross receipts. Distributor's obligation shall include interest at 1.5% per month on any amounts due Licensor when such amounts are 30 days or more past due.
13. Distributor may assign its obligations under this agreement only to a person, corporation or other entity purchasing substantially all of the assets of the Distributor or into which Distributor shall be merged and which assumes Distributor's obligations hereunder. Licensor shall be entitled to assign its right to receive monies hereunder. No assignment shall relieve the assignor of its obligations to the other party hereunder.
14. If either party (herein called the First Party) desires to transfer his rights under this agreement to a third person, he shall give written notice by registered mail to the other party (herein called the Second Party) of his intention to do so.

(a) In such case the Second Party shall have an option for a period of 30 days to purchase the First Party's rights at a price and upon such terms indicated in the written notice.

(b) If the Second Party fails to exercise his option in writing within the aforesaid period of 30 days, or if, having exercised it, he fails to complete the purchase upon the terms stated in the notice, the First Party may transfer his rights to the third person at the price and upon the identical terms stated in the notice; and he shall forthwith send to the Second Party a copy of the contract of sale of such rights, with a statement that the transfer has been made.

(c) If the First Party fails for any reason to make such transfer to the third person, and if he desires to make a subsequent transfer to someone else, the Second Party's option shall apply to such proposed subsequent transfer.

15. Nothing herein contained shall be construed to create a partnership or joint venture by or between the Distributor and \_\_\_\_ or to make either the agent of the other. Each party agrees not to hold itself out as a partner or agent of the other or to otherwise state or imply by advertising or otherwise any relationship that is contrary to the terms of this agreement. Neither party shall become liable or bound by any representation, act, omission or agreement of the other. However, all matters involving the distribution, lease, exhibition, sale, licensing and reissuing of the program, shall be exercised by the Distributor in accordance with sound business judgment and shall be subject to the prior approval of \_\_\_\_, such approval not to be unreasonably withheld.

16. Any controversy or claim arising out of or relating to this agreement or any breach thereof shall be settled by arbitration in accordance with the Rules of the American Arbitration Association; and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled to reimbursement for costs and reasonable attorneys' fees.

17. This agreement shall inure to the benefit of, and shall be binding upon, the executors, administrators and assigns of the parties.

18. This agreement constitutes the entire understanding of the parties.

19. This agreement is governed by and construed in accordance with the laws of the State of \_\_\_\_\_.

20. If any provision of this Agreement or the application thereof to any Person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

21. The parties agree to execute such further documents and instruments as they may reasonably request in order to effectuate the terms and intentions of this agreement, and in the event either party is unable to execute any such documents or instruments, each appoints the other as their irrevocable attorney-in-fact to execute any such documents and instruments, provided that said documents and instruments shall not be inconsistent with the terms and conditions of this agreement. The rights under this Clause constitute a power coupled with an interest and are irrevocable.

22. This agreement expresses the entire understanding between the parties and both agree that no oral understandings have been made with regard thereto. This agreement may be amended only by written instrument signed by both parties. Each party acknowledges that it has not been induced to enter this agreement by any representations or assurances, whether written or oral, and both parties agree that each has not received any promises or inducements other than as herein set forth.

AGREED TO AND ACCEPTED

\_\_\_\_\_ Date:

By:

\_\_\_\_\_  
President

\_\_\_\_\_, Inc. Date:

IN WITNESS WHEREOF, the parties hereunto set their respective hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_

SCHEDULE "A"

SCHEDULE "B"

"Gross Receipts" shall be defined and all monies due hereunder shall be paid in accordance with the following terms:

(a) Definition of Gross Receipts: "Gross Receipts" means all monies (subject to the exclusions in subclause (b) below actually received by Distributor or any of its affiliates from the exploitation by Distributor of the rights granted to Distributor hereunder.

(b) Exclusions from Gross Receipts: Gross receipts shall be determined after all refunds, credits, discounts, allowances and adjustments granted to subdistributors, wholesalers, retailers and other purchasers and licensees. Additionally, gross receipts shall not include:

(i) Any monies derived by any local subdistributor, wholesaler or retailer from sale of Video Grams, whether or not such subdistributor, wholesaler, or retailer is owned, operated, managed or controlled by Distributor; provided, however, that in the event of any such owned, operated or managed subdistributor, wholesaler or retailer, Distributor agrees that the terms of sale or lease of any Video Grams to any such entity shall be substantially the same as the terms of sale or lease of Video

Grams to unrelated entities, in accordance with industry standards. If Distributor derives any rental income hereunder from its exploitation of the Picture, Distributor agrees to negotiate in good faith with Licensor concerning any allocation of the income between the two parties.

(ii) Any sums due, but not paid Distributor; provided that Distributor agrees to use all reasonable efforts consistent with its prudent business judgment to collect such sums owed it.

(iii) The salvage value of any videotape, cassettes or other materials purchased by or manufactured by Distributor and not sold as Video Grams.

(iv) Taxes: Gross receipts shall not include any and all sums paid or accrued on account of sales, use, value added, receipts, excise, remittance and other taxes (however denominated, except income taxes) to any government authority, assessed upon the Video Grams or any other materials relating to the Program.

(v) Any sum paid or accrued on account of freight, shipping, handling and insurance in connection with the sale of Video Grams.

(vi) Royalties paid to author \_\_\_\_\_ or his assigns in accordance with the contract between \_\_\_\_\_ and the same, as set forth in "Schedule C" attached.

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## NET PROFIT DEFINITION

**1. DEFINITION OF PARTIES:** " \_\_\_\_\_ " means \_\_\_\_\_ Inc., a Delaware corporation, and its subsidiaries engaged in the business of distributing motion pictures for exhibition in theatres and for broadcasting over television stations, but shall not include any other persons, firms or corporations licensed by \_\_\_\_\_ to distribute motion pictures in any part of the world. Nor shall such term include: any person, firm or corporation distributing the Picture for purposes other than exhibition in theatres or by television stations; exhibitors or others who may actually exhibit the Picture to the public; radio or television broadcasters; cable operators; manufacturers, wholesalers or retailers of video discs, cassettes or similar devices; book or music publishers; phonograph record producers or distributors; merchandisers, etc., whether or not any of the foregoing are subsidiaries of \_\_\_\_\_. As used herein, a "subsidiary" of \_\_\_\_\_ refers to an entity in which \_\_\_\_\_ has at least a 50% interest.

"Participant" means the party under the foregoing agreement who or which is entitled to participate in the gross receipts or net profits of the Picture, and the successors and permitted assigns of such party.

**2. NET PROFITS:** As between \_\_\_\_\_ and Participant, the "net profits" of the Picture means an amount equal to the excess, if any, of the gross receipts (as defined in 3 hereof) of the Picture over the aggregate of the following, which shall be deducted in the order listed:

- (a) \_\_\_\_\_'s distribution fees set forth in 4 hereof.
- (b) \_\_\_\_\_'s expenses in connection with the distribution of the Picture, as set forth in 5 hereof.
- (c) The cost of production of the Picture, plus an amount equal to interest thereon, all as provided for in 9 hereof, and plus such other costs, if any, as may have been incurred in connection with the financing of the cost of production of the Picture. Said interest and other costs shall be recouped before said cost of production.

(d) All contingent amounts consented to by \_\_\_\_\_ and not included in the cost of production of the Picture payable to Participant or any third party based upon, or computed in respect of, the gross receipts of the Picture (as defined in the relevant agreements), or any portion thereof.

Net profits shall be determined as of the close of each accounting period provided for in 10 hereof.

**3. GROSS RECEIPTS:** As used herein, the term "gross receipts" means the aggregate of:

(a) All film rentals actually received by \_\_\_\_\_ from parties exhibiting the Picture in theatres and on television where \_\_\_\_\_ distributes directly to such parties (hereinafter referred to as "exhibitors").

(b) Where \_\_\_\_\_ grants theatrical distribution rights to a subdistributor on a basis requiring it to account to \_\_\_\_\_ with respect to film rentals, either: (i) the film rentals received by such subdistributor from exhibitors which \_\_\_\_\_ accepts for the purpose of its accountings with such subdistributor; or (ii) \_\_\_\_\_'s share (actually received) of film rentals received by such subdistributor; whichever \_\_\_\_\_ elects from time to time as to each subdistributor.

(c) In respect of licenses of exhibition or distribution rights by means of video discs, cassettes or similar devices, an amount equal to 20% of (i) the gross wholesale rental income therefrom and (ii) the gross wholesale sales income therefrom less a reasonable allowance for returns.

(d) All amounts actually received by \_\_\_\_\_ from the following: (i) trailers (other than trailers advertising television exhibitions of the Picture); (ii) licenses of theatrical distribution rights for a flat sum; (iii) licenses of exhibition or distribution rights other than those referred to in (a), (b), (c) and (d) (ii) of this 3, specifically including licenses to cable operators; (iv) the lease of positive prints (as distinguished from the licensing thereof for a film rental); and from the sale or licensing of advertising accessories, souvenir programs and booklets; and (v) recoveries by \_\_\_\_\_ for infringement of copyrights of the Picture.

(e) All monies actually received by \_\_\_\_\_ on account of direct subsidies, aide or prizes relating specifically to the Picture, net of an amount equal to income taxes based thereon imposed by the country involved, if any. If local laws require use of such monies as a condition to the grant of such subsidy or aide, such monies shall not be included in gross receipts until actually used.

(f) See Exhibits "1," "2" and "3" attached hereto.

In no event shall rentals from the exhibition of the Picture which are contributed to charitable organizations be included in gross receipts.

**4. DISTRIBUTION FEES:** \_\_\_\_\_'s distribution fees shall be as follows:

(a) 30% of the gross receipts of the Picture derived by \_\_\_\_\_ from all sources in the United States and Canada.

(b) 35% of the gross receipts of the Picture derived by \_\_\_\_\_ from all sources in the United Kingdom.

(c) 40% of the gross receipts of the Picture derived by \_\_\_\_\_ from all sources other than those referred to in (a) and (b) above.

(d) Notwithstanding the foregoing; (i) with respect to sums included in the gross receipts pursuant to 3(b)(ii) and 3(d)(ii) hereof, \_\_\_\_\_'s distribution fee shall be 15% of such sums; (ii) if \_\_\_\_\_ shall license the exhibition of the Picture on free television, the aforesaid percentages as to amounts received and collected by \_\_\_\_\_ from sources in the United States, shall be 30% if collected from a network for national network telecasts in prime time; and 35% in all other instances; and, as to amounts received and collected by \_\_\_\_\_ from sources outside the United States 40%; (iii) no distribution fee shall be charged on gross receipts referred to in 3(e) or 3(f) hereof.

All distribution fees shall be calculated on the full gross receipts without any deductions or payments of any kind whatsoever.

**5. DISTRIBUTION EXPENSES:** \_\_\_\_\_'s deductible distribution expenses in connection with the Picture shall include all costs and expenses incurred in connection with the distribution, advertising, exploitation and turning to account of the Picture of whatever kind or nature, or which are customarily treated as distribution expenses under customary accounting procedures in the motion picture industry. If \_\_\_\_\_ reasonably anticipates that additional distribution expenses will be incurred in the future, \_\_\_\_\_ may, for a reasonable time, set up appropriate reserves therefor. Without limiting the generality of the foregoing, the following particular items shall be included in distribution expenses hereunder:

(a) The cost and expense of all duped and dubbed negatives, sound tracks, prints, release prints, tapes, cassettes, duplicating material and facilities and all other material manufactured for use in connection with the Picture, including the cost of inspecting, repairing, checking and renovating film, reels, containers, cassettes, packing, storing and shipping and all other expenses connected therewith and inspecting and checking exhibitors' projection and sound equipment and facilities. \_\_\_\_\_ may manufacture or cause to be manufactured as many or as few duped negatives, positive prints and other material for use in connection with the Picture as it, in its sole discretion, may consider advisable or desirable.

(b) All direct costs and charges for advertisements, press books, artwork, advertising accessories and trailers (other than (i) prints of trailers advertising free television exhibition of the Picture, and (ii) the trailer production costs which are included in the cost of production of the Picture), advertising, publicizing and exploiting the Picture by such means and to such extent as \_\_\_\_\_ may, in its uncontrolled discretion, deem desirable, including, without limitation, pre-release advertising and publicity, so-called cooperative and/or theatre advertising, and/or other advertising engaged in with or for exhibitors, to the extent \_\_\_\_\_ pays, shares in, or is charged with all or a portion of such costs and all other exploitation costs relating to such theatre exhibition. Any re-use fees and costs of recording and manufacturing masters for phonograph records, which \_\_\_\_\_ shall advance in order to assist in the advertising and exploitation of the Picture, shall be treated as costs hereunder to the extent unrecovered by the record company. Where any \_\_\_\_\_ advertising or publicity employee (other than an executive supervisory employee) or facility is used for the Picture, the salary of such employee and the cost of such facility (while so used for the Picture) shall be direct costs hereunder. Any costs and charges referred to in this (b) (and not included in the cost of production of the Picture), expended or incurred prior to delivery of the Picture, shall be included in direct costs under this (b). There shall also be included as an item of cost a sum equal to 10% of

all direct costs referred to in this (b) to cover the indirect cost of \_\_\_\_\_'s advertising and publicity departments, both domestic and foreign.

(c) All costs of preparing and delivering the Picture for distribution (regardless of whether such costs are the salaries and expenses of \_\_\_\_\_'s own employees or employees or parties not regularly employed by \_\_\_\_\_), including, without limitation, all costs incurred in connection with the production of foreign language versions of the Picture, whether dubbed, superimposed or otherwise, as well as any and all costs and expenses in connection with changing the title of the Picture, recutting, re-editing or shortening or lengthening the Picture for release in any territory or for exhibition on television or other media, or in order to conform to the requirements of censorship authorities, or in order to conform to the peculiar national or political prejudices likely to be encountered in any territory, or for any other purpose or reason. The costs referred to in this (c) shall include all studio charges for facilities, labor and material, whether or not incurred at a studio owned or controlled by \_\_\_\_\_.

(d) All sums paid or accrued on account of sales, use, receipts, income, excise, remittance and other taxes (however denominated) to any governmental authority assessed upon the negatives, duplicate negatives, prints or sound records of the Picture, or upon the use or distribution of the Picture, or upon the revenues derived therefrom, or any part thereof, or upon the remittance of such revenues, or any part thereof; any and all sums paid or accrued on account of duties, customs and imposts, costs of acquiring permits, "Kontingents," or any similar authority to secure the entry, licensing, exhibition, performance, use or televising of the Picture in any country or part thereof, regardless of whether such payments or accruals are assessed against the Picture or the proceeds thereof or against a group of motion pictures in which the Picture may be included or the proceeds thereof. In no event shall the deductible amount of any such tax (however denominated) imposed upon \_\_\_\_\_, be decreased (nor the gross receipts increased) because of the manner in which such taxes are elected to be treated by \_\_\_\_\_ in filing net income, corporate franchise, excess profits or similar tax returns. Subject to the foregoing, (i) \_\_\_\_\_'s own United States federal and state income taxes and franchise taxes based on \_\_\_\_\_'s net income; and (ii) income taxes payable to any country or territory by \_\_\_\_\_ based on the net earnings of \_\_\_\_\_ in such country or territory and which is computed and assessed solely by reason of the retention in such country or territory by \_\_\_\_\_ of any portion of the gross receipts shall not be deductible hereunder.

(e) Expenses of transmitting to the United States any funds accruing to \_\_\_\_\_ from the Picture in foreign countries, such as cable expenses, and any discounts from such funds taken to convert such funds directly or indirectly into U.S. dollars.

(f) All costs and expenses, including reasonable attorneys' fees, loss, damage or liability suffered or incurred by \_\_\_\_\_ in connection with: any action taken by \_\_\_\_\_ (whether by litigation or otherwise) in copyrighting, protecting and enforcing the copyright of, and other rights and sources of revenue to be derived from, the Picture; reducing or minimizing the matters referred to in (d) and (e) above, the collection of film rentals; and other sums due \_\_\_\_\_ from exhibitors, subdistributors and others in respect of the Picture or to recover monies due pursuant to any agreement relating to the distribution or the exhibition of the Picture; checking attendance and exhibitors' receipts; preventing and/or recovering damages for unauthorized exhibition or distribu-

tion of the Picture, or any impairment of, encumbrance on or infringement upon, the rights of \_\_\_\_\_ in and to the Picture; prosecuting and defending actions under the antitrust laws, communications laws, and federal, state and local laws, ordinances and regulations (including censorship) affecting the exhibition and/or distribution of the Picture and/or the ability of \_\_\_\_\_ to derive revenue from the Picture and its component parts and by-products; and auditing of books and records of any exhibitor, subdistributor or licensee.

(g) Royalties payable to manufacturers of sound recording and reproducing equipment and dues and assessments of, and contributions by \_\_\_\_\_ to, AMPTP, MPAA, MPEA, the Academy of Motion Picture Arts and Sciences and other trade associations or industry groups comprised of a substantial number of motion picture producers and/or distributors, but only for purposes relating to the production, distribution, export, import, advertising, exploitation and general protection and/or promotion of motion pictures.

(h) In the event any person shall make a claim relating to the Picture against \_\_\_\_\_ or any of its licensees, which claim, in \_\_\_\_\_'s judgment, is of sufficient merit to constitute a reasonable probability of ultimate loss, cost, damage or expense, \_\_\_\_\_ may deduct either this (h) such amount as \_\_\_\_\_ may deem necessary to cover loss, cost, damage or expense which may be suffered as a result thereof. \_\_\_\_\_ shall have the right to settle and pay any such claim. After the settlement of any such claim, or after the final judicial determination thereof, the amount previously deducted hereunder shall be adjusted accordingly with the next accounting statement rendered hereunder. Nothing herein contained shall be construed as a waiver of any of Participant's warranties contained in this Agreement, or a waiver of any right or remedy at law or otherwise which may exist in favor of \_\_\_\_\_, including, but not limited to, the right to require Participant to reimburse \_\_\_\_\_ on demand for any liability, cost, damage or expense arising out of, or resulting from, any breach by Participant of any warranty, undertaking or obligation by Participant, or any right on the part of \_\_\_\_\_ to recoup or recover any such cost or expense out of Participant's share of any monies payable hereunder, rather than treating such costs or expenses as distribution expenses.

(i) All amounts paid or payable to or for the benefit of actors, writers, composers, directors and others, pursuant to applicable collective bargaining agreements and/or any law or governmental regulation or decree now or hereafter in force by reason of, and/or as a condition or consideration for, any exhibition, use, re-use, rerun, performance, sale, license and/or distribution of the Picture and/or copies of all or any part thereof, on television, supplemental markets, or otherwise (all herein called "residuals"), together with all taxes, pension fund contributions and other costs paid or payable in respect of such residuals, and in respect of participations in the gross receipts and net profits of the Picture; provided, however, that if Participant or any principal stockholder of Participant, or any heirs, executors, administrators, successors or assigns of Participant, or any such stockholder, are entitled, either directly or by way of participation in any pension fund, to any such residuals, or to compensation for services rendered beyond any guaranteed period referred to in the foregoing agreement, the amount payable on account thereof shall be treated as an advance against Participant's share of the net profits hereunder.

(j) The cost of all insurance (to the extent that the same is not included in the cost of production of the Picture) covering or relating to the Picture, including, but not limited to, errors and omissions insurance and all insurance on

negatives, positive prints, sound materials or other physical property, it being understood, however, that \_\_\_\_\_ shall not be obligated to take out or maintain any such insurance.

(k) If \_\_\_\_\_ shall proceed under 3(b)(i) hereof, all items deducted by the subdistributor as distribution expenses, and which \_\_\_\_\_ accepts for the purpose of its accountings with such subdistributor, shall be treated as \_\_\_\_\_'s expenditures under the corresponding subdivision of this 5.

**6. FILM RENTALS:** "Film Rentals" shall be determined after all refunds, credits, discounts, allowances and adjustments granted to exhibitors, whether occasioned by condemnation by boards of censorship, settlement of disputes, or otherwise. Until earned, forfeited or applied to the Picture, neither advance payments nor security deposits shall be included in film rentals. No cost (regardless of how incurred, paid or allowed) of \_\_\_\_\_'s share of cooperative and/or theater advertising, shall be deducted in determining film rentals. Where allowances are granted and paid on account of \_\_\_\_\_'s share of cooperative theatre or joint advertising, such payments shall not be deducted in determining film rental, and where \_\_\_\_\_'s share of cooperative theater or joint advertising is deducted by the exhibitor \_\_\_\_\_'s share of cooperative theater or joint advertising shall be added back into the film rental received from such exhibitor, and all such costs, payments, discounts and allowances shall be treated as distribution expenses. Wherever \_\_\_\_\_ exhibits the Picture in a theatre or over a television station owned or controlled by \_\_\_\_\_, or licenses the Picture or rights connected therewith to theatres, television stations or other agencies in which \_\_\_\_\_ has an interest directly or indirectly, or to which \_\_\_\_\_ is obligated to pay a fixed sum for exhibiting the Picture or for the use of its premises or facilities, \_\_\_\_\_ shall include in the film rentals of the Picture such sums, determined in good faith, as may be reasonable and consistent with \_\_\_\_\_'s usual practice in such matters.

**7. ALLOCATIONS:** Wherever \_\_\_\_\_ (i) receives from any license either a flat sum or a percentage of the receipts, or both, for any right to a group of motion pictures (including the Picture) under any agreement (whether or not the same shall provide for the exhibition, lease or delivery of positive prints of any of said motion pictures) which does not specify what portion of the license payments apply to the respective motion pictures in the group (or to such prints or other material, if any, as may be supplied), or (ii) receives foreign currency under 8(ii) or 8(iii) hereof relating to a group of motion pictures (including the Picture), then in any and all such situations \_\_\_\_\_ shall include in, or deduct from, the gross receipts, as the case may be, such sums, determined in good faith, as may be reasonable and consistent with \_\_\_\_\_'s usual practice in such matters. All costs described in 5 hereof shall be fairly apportioned to the Picture if incurred or expended on an industry basis, or in conjunction with other motion picture producers and/or distributors, or with respect to the Picture and other motion pictures distributed by \_\_\_\_\_.

**8. FOREIGN RECEIPTS:** No sums received by \_\_\_\_\_ relating to the Picture shall be included in gross receipts hereunder unless and until such sums have been (i) received by \_\_\_\_\_ in U.S. dollars in the United States, or (ii) used by \_\_\_\_\_ for the production or acquisition of motion pictures or television films which can be lawfully removed from the country or territory involved, in which event they shall be included in gross receipts for the accounting period during which an amount (computed at the official or unofficial rate of exchange, as \_\_\_\_\_ may elect) equal to the amount expended for such

production or acquisition, plus customary interest thereon, has been recouped by \_\_\_\_\_ (in excess of normal distribution fees and distribution expenses) from distribution thereof outside the country or territory involved; or (iii) used by \_\_\_\_\_ for acquisition of tangible personal property which can be and is lawfully exported from the country or territory involved, in which event the U.S. dollar equivalent of the currency utilized to acquire such property shall be included in gross receipts hereunder for the accounting period during which such property was so exported, such U.S. dollar equivalent to be computed at the official or unofficial rate of exchange, as \_\_\_\_\_ may elect, in effect on the date of export. \_\_\_\_\_ will, promptly after receipt of a written request from Participant (but not more frequently than annually) advise Participant in writing as to foreign revenues not included in gross receipts as aforesaid, and \_\_\_\_\_ shall, at the written request and expense of, Participant (subject to any and all limitations, restrictions, laws, rules and regulations affecting such transactions), deposit into a bank designated by Participant in the country involved, or pay to any other party designated by Participant in such country, such part thereof as would have been payable to Participant hereunder. Such deposits or payments to or for Participant shall constitute due remittance to Participant, and \_\_\_\_\_ shall have no further interest therein or responsibility therefor. \_\_\_\_\_ makes no warranties or representations that any part of any such foreign currencies may be converted into U.S. dollars or transferred to the account of Participant in any foreign country. In no event shall \_\_\_\_\_ be obligated to apply gross receipts of any country not actually received by \_\_\_\_\_ in U.S. dollars in the United States to the recoupment of any costs or expenses incurred with respect to the Picture in any other country.

#### **9. COST OF PRODUCTION; INTEREST:**

(a) The "cost of production" of the Picture means the total direct cost of production of the Picture, including the cost of all items listed on \_\_\_\_\_'s standard Delivery Schedule, computed and determined in all respects in the same manner as \_\_\_\_\_ then customarily determines the direct cost of other motion pictures distributed and/or financed by it, plus \_\_\_\_\_'s overhead charge. The determination of what items constitute direct charges and what items are within said overhead charge shall be made in all respects in the same manner as \_\_\_\_\_ customarily determines such matters. The full amount of all direct costs of production of the Picture (whether payable in cash, deferred or accrued) shall be included in the direct cost of the Picture at the time liability therefor is incurred or contracted, regardless of whether the same has actually been paid to the party or parties entitled thereto at the time involved. Deferrals and participations in gross receipts of the Picture consented to by \_\_\_\_\_ (however defined) shall be treated as direct costs of production, whether the same shall be in a definite amount or based on a percentage of the gross receipts, and whether the same are fixed obligations or are contingent upon receipts of the Picture; provided, however, contingent participations based on a percentage of gross receipts as defined in the applicable agreement shall not be included in the direct cost of production beyond recoupment under 2(c) hereof.

(b) \_\_\_\_\_'s overhead charge shall be in an amount equal to 15% of the direct cost of production of the Picture, with the understanding that any production facilities, equipment or personnel supplied by \_\_\_\_\_ or by a studio owned or controlled by \_\_\_\_\_, or in which \_\_\_\_\_ has a substantial financial interest (and which are not furnished within the overhead charge) shall be supplied at \_\_\_\_\_'s usual rental rates charged for such

items, and such charges shall be treated as direct costs of production of the Picture and shall bear said 15% overhead charge. \_\_\_\_\_'s overhead charge shall accrue and be included in the cost of production of the Picture concurrently with the incurring of the respective items of direct cost to which it applies.

(c) The amount equal to interest provided for in 2(c) hereof shall be calculated at a rate per annum equal to 125% of the prime commercial rate of First National Bank of Boston from time to time in effect. Said amount shall be calculated from the respective dates that each item is charged to the Picture until the close of the accounting period during which the cost of production is recouped under 2(c) hereof, except that interest on deferred amounts shall be calculated from the date of payment.

(d) Concurrently with delivery to Participant of the first earnings statement hereunder, \_\_\_\_\_ will (subject to revisions and correction) deliver to Participant an itemized summary of the cost of production of the Picture. Participant shall have the right to audit such statement in accordance with 11 hereof.

**10. EARNINGS STATEMENTS:** \_\_\_\_\_ shall render to Participant periodic statements showing, in summary form, the appropriate calculations under this Agreement. Statements shall be issued for each calendar quarter until the Picture has been in release for 4 years from and including the quarter in which the Picture was first released, and thereafter annually. Each such quarterly or annual period, as the case may be, is herein referred to as an "accounting period." No statements need be rendered for any accounting period during which no receipts are received. Statements rendered by \_\_\_\_\_ may be changed from time to time to give effect to year-end adjustments made by \_\_\_\_\_'s Accounting Department or Public Accountants, or to items overlooked, to correct errors and for similar purposes. If \_\_\_\_\_ shall extend credit to any licensee with respect to the Picture, and if such credit has been included in the gross receipts, and if, in the opinion of \_\_\_\_\_, any such indebtedness shall be uncollectible, the uncollected amount may be deducted in any subsequent earning statement. Should \_\_\_\_\_ make any overpayment to Participant hereunder for any reason, \_\_\_\_\_ shall have the right to deduct and retain for its own account an amount equal to any such overpayment from any sums that may thereafter become due or payable by \_\_\_\_\_ to Participant or for Participant's account, or may demand repayment from Participant, in which event Participant shall repay the same when such demand is made. Any U.S. dollars due and payable to Participant by \_\_\_\_\_ pursuant to any such statement shall be paid to Participant simultaneously with the rendering of such statement; provided, however, that all amounts payable to Participant hereunder shall be subject to all laws and regulations now or hereafter in existence requiring deduction or withholdings for income or other taxes payable by or assessable against Participant. \_\_\_\_\_ shall have the right to make such deductions and withholdings and the payment thereof to the governmental agency concerned in accordance with its interpretation in good faith of such laws and regulations, and shall not be liable to Participant for the making of such deductions or withholdings or the payment thereof to the governmental agency concerned. In any such event Participant shall make and prosecute any and all claims which it may have with respect to the same directly with the governmental agency having jurisdiction in the premises. The right of Participant to receive, and the obligation of \_\_\_\_\_ to account for, any share of the net profits of the Picture shall terminate if the Picture has been made available for exhibition on syndicated television in the U.S.A., and if the first earnings statement issued thereafter shows a deficit under 2 hereof which would require in excess of

\$500,000 of gross receipts before Participant would be entitled to receive any net profits hereunder. In the event a new medium of exhibition shall thereafter be developed and there shall be substantial exhibition and distribution of the Picture by such new medium which is likely to generate gross receipts of \$500,000 or the amount of the deficit, whichever is larger, Participant may audit \_\_\_\_\_'s records for the purpose of determining whether the Picture has earned, or is likely to earn, any net profits, and if, as a result of such audit, it is determined by mutual agreement, or in the event of dispute appropriate legal proceedings, that the Picture has earned, or is likely to earn, net profits as herein defined, accountings hereunder and payments, if required, shall be reinstated.

**11. ACCOUNTING RECORDS RE DISTRIBUTION; AUDIT RIGHTS:**

\_\_\_\_\_ shall keep books of account relating to the distribution of the Picture, together with vouchers, exhibition contracts and similar records supporting the same (all of which are hereinafter referred to as "records"), which shall be kept on the same basis and in the same manner and for the same periods as such records are customarily kept by \_\_\_\_\_. Participant may, at its own expense, audit the applicable records at the place where \_\_\_\_\_ maintains the same in order to verify earnings statements rendered hereunder. Any such audit shall be conducted only by a reputable public accountant during reasonable business hours in such manner as not to interfere with \_\_\_\_\_'s normal business activities. In no event shall an audit with respect to any earnings statement commence later than twenty-four (24) months from the rendition of the earnings statement involved; nor shall any audit continue for longer than thirty (30) consecutive business days; nor shall audits be made hereunder more frequently than once annually; nor shall the records supporting any earnings statement be audited more than once. All earnings statements rendered hereunder shall be binding upon Participant and not subject to objection for any reason unless such objection is made in writing, stating the basis thereof, and delivered to \_\_\_\_\_ within twenty-four (24) months from rendition of the earnings statement, or if an audit is commenced prior thereto, within thirty (30) days from the completion of the relative audit. If \_\_\_\_\_, as a courtesy to Participant, shall include cumulative figures in any earnings or other statement, the time within which Participant may commence any audit or make any objection in respect of any statement shall not be enlarged or extended thereby. Participant's right to examine \_\_\_\_\_'s records is limited to the Picture, and Participant shall have no right to examine records relating to \_\_\_\_\_'s business generally or with respect to any other motion picture for purposes of comparison or otherwise; provided, however, that where any original income or expense document with third parties relates to the Picture and to other motion pictures, Participant shall have the right to examine the entire document without deletions therefrom.

**12. OWNERSHIP:** Participant expressly acknowledges that Participant has and will have no right, title or interest of any kind or character whatsoever in or to the Picture, and no lien thereon or other rights in or to the gross receipts or net profits of the Picture; and that the same shall be and remain \_\_\_\_\_'s sole and exclusive property, and \_\_\_\_\_ shall not be obligated to segregate the same from its other funds, it being the intent and purpose hereof that the net profits or gross receipts after moving breakeven, as the case may be, of the Picture are referred to herein merely as a measure in determining the time and manner of payment to Participant; and that \_\_\_\_\_ shall not be deemed a trustee, pledgeholder or fiduciary. Participant shall have no right, title or interest of any kind or character whatsoever in or to the literary, dramatic or musi-

cal material upon which the Picture is based, or from which it may be adapted; and \_\_\_\_\_ shall have the sole and exclusive right to utilize, sell, license or otherwise dispose of all or any part of its rights in such material upon such terms and conditions as it may deem advisable, all without consulting or advising Participant and without accounting to Participant in any manner with respect thereto.

**13. DISTRIBUTION:** As between Participant and \_\_\_\_\_, \_\_\_\_\_ shall have complete authority to distribute the Picture and license the exhibition thereof throughout the world in accordance with such sales methods, policies and terms as it may, in its uncontrolled discretion, determine. \_\_\_\_\_ shall have the broadest possible latitude in the distribution of the Picture, and the exercise of its judgment in good faith in all matters pertaining thereto shall be final. \_\_\_\_\_ has not made any express or implied representation, warranty, guarantee or agreement as to the amount of proceeds which will be derived from the distribution of the Picture, nor has \_\_\_\_\_ made any express or implied representation, warranty, guarantee or agreement that there will be any sums payable to Participant hereunder, or that the Picture will be favorably received by exhibitors or by the public, or will be distributed continuously. In no event shall \_\_\_\_\_ incur any liability based upon any claim that \_\_\_\_\_ has failed to realize receipts or revenue which should or could have been realized. \_\_\_\_\_ may distribute the Picture either itself or through such distributors, subdistributors and other parties as \_\_\_\_\_ may, in its uncontrolled discretion, determine, and \_\_\_\_\_ may refrain from releasing and/or distributing the Picture in any territory for any reason whatsoever. \_\_\_\_\_ may license the Picture or rights connected therewith to any and all theatres or other agencies in which \_\_\_\_\_ may have an interest directly or indirectly upon such terms and rentals as \_\_\_\_\_ may deem fair and proper under the circumstances. Nothing herein contained shall be construed as a representation or warranty by \_\_\_\_\_ that it now has or will hereafter have or control any theatres or agencies in the United States or elsewhere.

**14. SALE OF PICTURE:** \_\_\_\_\_ shall have the right at any time after completion of the Picture to sell, transfer or assign all or any of its rights in and to the Picture and the negative and copyright thereof. Any such sale, transfer or assignment shall be subject to Participant's rights hereunder, and upon the purchaser, transferee or assignee assuming performance of this agreement in place and stead of \_\_\_\_\_, \_\_\_\_\_ shall be released and discharged of and from any further liability or obligation hereunder. No part of any sale price or other consideration received by, or payable to, \_\_\_\_\_ shall be included in the gross receipts hereunder and Participant shall have no rights in respect of any thereof.

**15. ASSIGNMENTS, ETC.:** Participant shall have the right to sell, transfer or hypothecate (all herein called "assign") all or any part of Participant's right to receive the monies payable to Participant hereunder. Any such assignment shall be subject to all pertinent laws and governmental regulations and to the rights of \_\_\_\_\_ hereunder. In the event of any such assignment by Participant, a Notice of Irrevocable Authority and Distributor's Acceptance in Warner's usual form shall be executed by Participant and by the transferee and delivered to \_\_\_\_\_. If at any time more than three parties shall be entitled to receive payments, which under the terms hereof are to be paid to or for the account of Participant, \_\_\_\_\_ may, at its option, require that all such parties execute and deliver an agreement in \_\_\_\_\_'s usual form appointing a disbursing agent for all such parties.

## MUSIC PUBLISHING INCOME

There shall also be included in gross receipts of the picture:

A sum equal to 25% of the "publisher's share" of mechanical reproduction and performing fees received in U.S. currency by \_\_\_\_\_'s subsidiary or affiliated publisher with respect to music and lyrics written specifically for and synchronized in the picture as released, provided such publisher is vested with all rights therein and all of the "publisher's share" of the receipts therefrom, and provided the party entitled to share in gross receipts or net profits of the picture under the foregoing agreement is not entitled to receive composers' or lyricists' royalties in respect of such music or lyrics. The "publisher's share" of mechanical reproduction fees shall be the full amount paid by the licensee, less composers' share of such fees and less the charges of the publisher or any agent, trustee or administrator acting for the publisher for the collection of such fees, not to exceed 5% thereof. Mechanical reproduction fees do not include synchronization fees.

The "publisher's share" of performing fees shall be the net amount actually received by the publisher from any performing rights society in respect of the music and lyrics involved; or, if \_\_\_\_\_ or the publisher shall administer the collection of all or any part of performance fees, the full amount of all performance fees collected by \_\_\_\_\_ or the publisher, less the composer's share of such fees and all reasonable costs and expenses in administering the collection of such fees.

If the agreement or Exhibit to which this Exhibit is attached provides for distribution fees, no distribution fees shall be charged on amounts included in gross receipts pursuant to this Exhibit.

## SOUND TRACK RECORD INCOME

In the event the party entitled to share in the gross receipts or net profits of the picture under the foregoing agreement is not entitled to receive any artists' royalties in respect of phonograph records derived from the sound track of the picture, then \_\_\_\_\_ agrees to include in the gross receipts of the picture royalties on sound track records, as herein defined, computed at the applicable royalty rate.

As used herein:

The term "sound track records" means and refers to phonograph records, tapes, or other sound recordings which contain either (i) portions of the sound track transferred directly to phonograph record masters from sound records which form a part of the sound track of the picture; or (ii) sound recordings recorded separately but utilizing substantially the same musical score, parts and instrumentation, and essentially the same artists, music and/or dialogue and/or sound effects as is contained in the sound track of the picture; or (iii) a combination of (i) and (ii). Sound track records do not, however, include any recordings produced solely for the purpose of advertising and exploiting the picture and copies of which are not distributed to the public.

The term "applicable royalty rate" means and refers to the following percentages of the prevailing retail price but in no event more than the net royalty actually received and retainable by \_\_\_\_\_ for its own account with respect to the sale of any particular copies—5% of 90% in respect of sound

track records sold in the United States; 2 1/2% of 90% in respect of sound track records sold outside the United States—except that as to sound track records sold pursuant to mail order of “club” plans, the royalty rate shall be one-half of the rate otherwise applicable.

If any sound track records contain selections from other sources, the applicable royalty rate hereunder shall be prorated on the basis of the total number of minutes of selections from the sound track compared to the total number of minutes on such records.

In determining the net royalty retainable by \_\_\_\_\_, all royalties payable to artists, conductors and other third parties in respect to such sound track records shall be deducted from the aggregate royalty payable to \_\_\_\_\_ under the applicable distribution agreement.

The term “prevailing retail price” means and refers to the price generally prevailing in the country of manufacture or sale (as determined by the Record Company), less all taxes, duties and charges for containers.

There shall be deducted from amounts included in gross receipts hereunder a pro rata share of re-use fees and costs of recording and manufacturing masters advanced by \_\_\_\_\_ or the Record Company. Sales shall be determined on the basis of the number of records sold and for which the Record Company has been paid in U.S. currency, after allowing for all returns, cancellations, exchanges, applicable discounts, etc. and reasonable reserves which may be established therefor. No sums shall be included in gross receipts with respect to records given away or sold at less than the Record Company’s cost or for promotional purposes, or as sales inducements or otherwise.

If the agreement or Exhibit to which this Exhibit is attached provides for distribution fees, no distribution fees shall be charged on amounts included in gross receipts pursuant to this Exhibit.

#### MERCHANDISING INCOME

In the event the party entitled to share in gross receipts or net profits of the picture under the foregoing agreement is not entitled to share directly in merchandising revenue, there shall be included in gross receipts of the picture:

(a) A sum equal to 50% of all license fees (in excess of all royalties and participations) received by \_\_\_\_\_ directly as a result of the exercise by \_\_\_\_\_ itself of merchandising license rights. If, however, \_\_\_\_\_ shall sublicense or sub-contract any of such merchandising license rights, \_\_\_\_\_ shall include in the gross receipts hereunder, at its election, either a sum equal to (i) 85% of the net sums (in excess of all royalties and participations) received from such sub-licensee; or (ii) 50% of such sub-licensee’s license fees from the exercise of such licensing rights (from which there shall be deducted all royalties and participations), and out of the remaining 50% thereof \_\_\_\_\_ shall pay and discharge the fees of its sub-licensee.

(b) If the publication rights to the underlying literary material were owned or controlled by the party entitled to share in gross receipts or net profits of the picture under the foregoing agreement (herein called “Participant”) prior to the execution of this agreement, and were acquired by \_\_\_\_\_ pursuant to or in connection with this agreement, then (i) all net sums received by \_\_\_\_\_ from nonaffiliated or nonsubsidiary publishers from the publication of such un-

derlying literary material and of novelizations of the screenplay of the picture, and (ii) a sum equal to 5% of the net receipts of \_\_\_\_\_'s subsidiary or affiliated publishers from the publication of such material and novelizations, less, in either case, royalties paid out of (i) or (ii) to the writers of such material and novelizations.

If the agreement or Exhibit to which this Exhibit is attached provides for distribution fees, no distribution fees shall be charged on amounts included in gross receipts pursuant to this Exhibit.

## GROSS RECEIPTS AFTER BREAKEVEN

**1. DEFINITION OF PARTIES:** "Studio" means Studio Inc., a Delaware corporation, and its subsidiaries engaged in the business of distributing motion pictures for exhibition in theatres and for broadcasting over television stations, but shall not include any other persons, firms or corporations licensed by Studio to distribute motion pictures in any part of the world. Nor shall such term include: any person, firm or corporation distributing the Picture for purposes other than exhibition in theatres or by television stations; exhibitors or others who may actually exhibit the Picture to the public; radio or television broadcasters; cable operators; manufacturers, wholesalers or retailers of video discs, cassettes or similar devices; book or music publishers; phonograph record producers or distributors; merchandisers, etc., whether or not any of the foregoing are subsidiaries of Studio. As used herein, a "subsidiary" of Studio refers to an entity in which Studio has at least a 50% interest.

"Participant" means the party under the foregoing agreement who or which is entitled to participate in the gross receipts of the Picture in excess of breakeven, and the successors and permitted assigns of such party.

**2. BREAKEVEN:** As between Studio and Participant, the Picture shall be deemed to have reached "breakeven" at such time as the gross receipts (as defined in 3 hereof) of the Picture shall equal the following:

(a) Studio's distribution fees set forth in 4 hereof.

(b) Studio's expenses in connection with the distribution of the Picture, as set forth in 5 hereof.

(c) The cost of production of the Picture, plus an amount equal to interest thereon, all as provided for in 9 hereof, and plus such other costs, if any, as may have been incurred in connection with the financing of the cost of production of the Picture. Said interest and other costs shall be recouped before said cost of production.

**3. "GROSS RECEIPTS"** of the Picture means the aggregate of:

(a) All film rentals actually received by Studio from parties exhibiting the Picture in theatres and on television where Studio distributes directly to such parties (hereinafter referred to as "exhibitors").

(b) Where Studio grants theatrical distribution rights to a subdistributor on a basis requiring it to account to Studio with respect to film rentals, either: (i) the film rentals received by such subdistributor from exhibitors which Studio accepts for the purpose of its accountings with such subdistributor; or (ii) Studio's share (actually received) of film rentals received by such subdistributor; whichever Studio elects from time to time as to each subdistributor.

(c) In respect of licenses of exhibition or distribution rights by means of video discs, cassettes or similar devices, an amount equal to 20% of (i) the gross

wholesale rental income therefrom and (ii) the gross wholesale sales income therefrom less a reasonable allowance for returns.

(d) All amounts actually received by Studio from the following: (i) trailers (other than trailers advertising television exhibitions of the Picture); (ii) licenses of theatrical distribution rights for a flat sum; (iii) licenses of exhibition or distribution rights other than those referred to in (a), (b), (c) and (d) (ii) of this 3, specifically including licenses to cable operators; (iv) the lease of positive prints (as distinguished from the licensing thereof for a film rental); and from the sale or licensing of advertising accessories, souvenir programs and booklets; and (v) recoveries by Studio for infringement of copyrights of the Picture.

(e) All monies actually received by Studio on account of direct subsidies, aid or prizes relating specifically to the Picture, net of an amount equal to income taxes based thereon imposed by the country involved, if any. If local laws require use of such monies as a condition to the grant of such subsidy or aide, such monies shall not be included in gross receipts until actually used.

(f) All amounts required to be included under Exhibits "1," "2" and "3" hereof.

All costs incurred in connection with any of the foregoing shall be deemed and treated as recoupable distribution expenses. In no event shall rentals from the exhibition of the Picture which are contributed to charitable organizations be included in gross receipts.

Notwithstanding anything herein contained, after the Picture shall be deemed to have reached "breakeven" as defined in 2 above, gross receipts shall be as defined and this Exhibit shall otherwise be modified as set forth in Schedule 1 attached hereto and incorporated herein by this reference.

**4. DISTRIBUTION FEES:** Studio's distribution fees shall be as follows:

(a) 30% of the gross receipts of the Picture derived by Studio from all sources in the United States and Canada.

(b) 35% of the gross receipts of the Picture derived by Studio from all sources in the United Kingdom.

(c) 40% of the gross receipts of the Picture derived by Studio from all sources other than those referred to in (a) and (b) above.

(d) Notwithstanding the foregoing; (i) with respect to sums included in the gross receipts pursuant to 3(b)(ii) and 3(d)(ii) hereof, Studio's distribution fee shall be 15% of such sums; (ii) if Studio shall license the exhibition of the Picture on free television, the aforesaid percentages as to amounts received and collected by Studio from sources in the United States, shall be 30% if collected from a network for national network telecasts in prime time; and 35% in all other instances; and, as to amounts received and collected by Studio from sources outside the United States 40%; (iii) no distribution fee shall be charged on gross receipts referred to in 3(e) hereof.

All distribution fees shall be calculated on the full gross receipts without any deductions or payments of any kind whatsoever, except as specifically hereinafter provided.

Notwithstanding anything herein contained, it is agreed that for the accounting period in which the Picture shall first reach breakeven, the distribution fees

for the purpose of calculating breakeven shall be calculated only on that portion of the gross receipts in respect of such accounting period which is equal to the sum of the following:

(a) An amount equal to the sums specified in subparagraphs (b) and (c) of paragraph 2 of this Exhibit which are recouped or paid in respect of such accounting period; and

(b) An amount equal to the distribution fees on gross receipts equal to the sum of said deductible items, plus the distribution fees on gross receipts equal to such distribution fee.

**5. DISTRIBUTION EXPENSES:** Studio's deductible distribution expenses in connection with the Picture shall include all costs and expenses incurred in connection with the distribution, advertising, exploitation and turning to account of the Picture of whatever kind or nature, or which are customarily treated as distribution expenses under customary accounting procedures in the motion picture industry. If Studio reasonably anticipates that additional distribution expenses will be incurred in the future, Studio may, for a reasonable time, set up appropriate reserves therefor. Without limiting the generality of the foregoing, the following particular items shall be included in distribution expenses hereunder:

(a) The cost and expense of all duped and dubbed negatives, sound tracks, prints, release prints, tapes, cassettes, duplicating material and facilities and all other material manufactured for use in connection with the Picture, including the cost of inspecting, repairing, checking and renovating film, reels, containers, cassettes, packing, storing and shipping and all other expenses connected therewith and inspecting and checking exhibitors' projection and sound equipment and facilities. Studio may manufacture or cause to be manufactured as many or as few duped negatives, positive prints and other material for use in connection with the Picture as it, in its sole discretion, may consider advisable or desirable.

(b) All direct costs and charges for advertisements, press books, artwork, advertising accessories and trailers (other than (i) prints of trailers advertising free television exhibition of the Picture, and (ii) the trailer production costs which are included in the cost of production of the Picture), advertising, publicizing and exploiting the Picture by such means and to such extent as Studio may, in its uncontrolled discretion, deem desirable, including, without limitation, pre-release advertising and publicity, so-called cooperative and/or theatre advertising, and/or other advertising engaged in with or for exhibitors, to the extent Studio pays, shares in, or is charged with all or a portion of such costs and all other exploitation costs relating to such theatre exhibition. Any re-use fees and costs of recording and manufacturing masters for phonograph records, which Studio shall advance in order to assist in the advertising and exploitation of the Picture, shall be treated as costs hereunder to the extent unrecouped by the record company. Where any Studio advertising or publicity employee (other than an executive supervisory employee) or facility is used for the Picture, the salary of such employee and the cost of such facility (while so used for the Picture) shall be direct costs hereunder. Any costs and charges referred to in this (b) (and not included in the cost of production of the Picture), expended or incurred prior to delivery of the Picture, shall be included in direct costs under this (b). There shall also be included as an item of cost a sum equal to 10% of all direct costs referred to in this (b) to cover the indirect cost of Studio's advertising and publicity departments, both domestic and foreign.

(c) All costs of preparing and delivering the Picture for distribution (regardless of whether such costs are the salaries and expenses of Studio's own employees or employees or parties not regularly employed by Studio), including, without limitation, all costs incurred in connection with the production of foreign language versions of the Picture, whether dubbed, superimposed or otherwise, as well as any and all costs and expenses in connection with changing the title of the Picture, recutting, re-editing or shortening or lengthening the Picture for release in any territory or for exhibition on television or other media, or in order to conform to the requirements of censorship authorities, or in order to conform to the peculiar national or political prejudices likely to be encountered in any territory, or for any other purpose or reason. The costs referred to in this (c) shall include all studio charges for facilities, labor and material, whether or not incurred at a studio owned or controlled by Studio.

(d) All sums paid or accrued on account of sales, use, receipts, income, excise, remittance and other taxes (however denominated) to any governmental authority assessed upon the negatives, duplicate negatives, prints or sound records of the Picture, or upon the use or distribution of the Picture, or upon the revenues derived therefrom, or any part thereof, or upon the remittance of such revenues, or any part thereof; any and all sums paid or accrued on account of duties, customs and imposts, costs of acquiring permits, "Kontingents," and any similar authority to secure the entry, licensing, exhibition, performance, use or televising of the Picture in any country or part thereof, regardless of whether such payments or accruals are assessed against the Picture or the proceeds thereof or against a group of motion pictures in which the Picture may be included or the proceeds thereof. In no event shall the deductible amount of any such tax (however denominated) imposed upon Studio, be decreased (nor the gross receipts increased) because of the manner in which such taxes are elected to be treated by Studio in filing net income, corporate franchise, excess profits or similar tax returns. Subject to the foregoing, (i) Studio's own United States federal and state income taxes and franchise taxes based on Studio's net income; and (ii) income taxes payable to any country or territory by Studio based on the net earnings of Studio in such country or territory and which is computed and assessed solely by reason of the retention in such country or territory by Studio of any portion of the gross receipts shall not be deductible hereunder.

(e) Expenses of transmitting to the United States any funds accruing to Studio from the Picture in foreign countries, such as cable expenses, and any discounts from such funds taken to convert such funds directly or indirectly into U.S. dollars.

(f) All costs and expenses, including reasonable attorneys' fees, loss, damage or liability suffered or incurred by Studio in connection with: any action taken by Studio (whether by litigation or otherwise) in copyrighting, protecting and enforcing the copyright of, and other rights and sources of revenue to be derived from, the Picture; reducing or minimizing the matters referred to in (d) and (e) above, the collection of film rentals, and other sums due Studio from exhibitors, subdistributors and others in respect of the Picture or to recover monies due pursuant to any agreement relating to the distribution or the exhibition of the Picture; checking attendance and exhibitors' receipts; preventing and/or recovering damages for unauthorized exhibition or distribution of the Picture, or any impairment of, encumbrance on, or infringement upon, the rights of Studio in and to the Picture; prosecuting and defending actions under the antitrust laws, communications laws, and federal, state and local laws, ordinances and regulations (including censorship) affecting the exhibition and/or distribu-

tion of the Picture and/or the ability of Studio to derive revenue from the Picture and its component parts and by-products; and auditing of books and records of any exhibitor, subdistributor or licensee.

(g) Royalties payable to manufacturers of sound recording and reproducing equipment and dues and assessments of, and contributions by Studio to, AMPTP, MPAA, MPEA, the Academy of Motion Picture Arts and Sciences and other trade associations or industry groups comprised of a substantial number of motion picture producers and/or distributors, but only for purposes relating to the production, distribution, export, import, advertising, exploitation and general protection and/or promotion of motion pictures.

(h) In the event any person shall make a claim relating to the Picture against Studio or any of its licensees, which claim, in Studio's judgment, is of sufficient merit to constitute a reasonable probability of ultimate loss, cost, damage or expense, Studio may deduct under this (h) such amount as Studio may deem necessary to cover any loss, cost, damage or expense which may be suffered as a result thereof. Studio shall have the right to settle and pay any such claim. After the settlement of any such claim, or after the final judicial determination thereof, the amount previously deducted hereunder shall be adjusted accordingly with the next accounting statement rendered hereunder. Nothing herein contained shall be construed as a waiver of any of Participant's warranties contained in this Agreement, or a waiver of any right or remedy at law or otherwise which may exist in favor of Studio, including, but not limited to, the right to require Participant to reimburse Studio on demand for any liability, cost, damage or expense arising out of, or resulting from, any breach by Participant of any warranty, undertaking or obligation by Participant, or any right on the part of Studio to recoup or recover any such cost or expense out of Participant's share of any monies payable hereunder, rather than treating such costs or expenses as distribution expenses.

(i) All amounts paid or payable to or for the benefit of actors, writers, composers, directors and others, pursuant to applicable collective bargaining agreements and/or any law or governmental regulation or decree now or hereafter in force by reason of, and/or as a condition or consideration for, any exhibition, use, re-use, rerun, performance, sale, license and/or distribution of the Picture and/or copies of all or any part thereof, on television, supplemental markets, or otherwise (all herein called "residuals"), together with all taxes, pension fund contributions and other costs paid or payable in respect of such residuals, and in respect of participations in the gross receipts and net profits of the Picture; provided, however, that if Participant or any principal stockholder of Participant, or any heirs, executors, administrators, successors or assigns of Participant, or any such stockholder, are entitled, either directly or by way of participation in any pension fund, to any such residuals, or to compensation for services rendered beyond any guaranteed period referred to in the foregoing agreement, the amount payable on account thereof shall be treated as an advance against Participant's share of the net profits hereunder.

(j) The cost of all insurance (to the extent that the same is not included in the cost of production of the Picture) covering or relating to the Picture, including, but not limited to, errors and omissions insurance and all insurance on negatives, positive prints, sound materials or other physical property, it being understood, however, that Studio shall not be obligated to take out or maintain any such insurance.

(k) If Studio shall proceed under 3(b)(i) hereof, all items deducted by the

subdistributor as distribution expenses, and which Studio accepts for the purpose of its accountings with such subdistributor, shall be treated as Studio's expenditures under the corresponding subdivision of this 5.

**6. FILM RENTALS:** "Film Rentals" shall be determined after all refunds, credits, discounts, allowances and adjustments granted to exhibitors, whether occasioned by condemnation by boards of censorship, settlement of disputes or otherwise. Until earned, forfeited or applied to the Picture, neither advance payments nor security deposits shall be included in film rentals. No cost (regardless of how incurred, paid or allowed) of Studio's share of cooperative and/or theater advertising shall be deducted in determining film rentals. Where allowances are granted and paid on account of Studio's share of cooperative theatre or joint advertising, such payments shall not be deducted in determining film rental, and where Studio's share of cooperative theater or joint advertising is deducted by the exhibitor, Studio's share of cooperative theater or joint advertising shall be added back into the film rental received from such exhibitor, and all such costs, payments, discounts and allowances shall be treated as distribution expenses. Wherever Studio exhibits the Picture in a theatre or over a television station owned or controlled by Studio, or licenses the Picture or rights connected therewith to theaters, television stations or other agencies in which Studio has an interest, directly or indirectly, or to which Studio is obligated to pay a fixed sum for exhibiting the Picture or for the use of its premises or facilities, Studio shall include in the film rentals of the Picture such sums, determined in good faith, as may be reasonable and consistent with Studio's usual practice in such matters.

**7. ALLOCATIONS:** Wherever Studio (i) receives from any license either a flat sum or a percentage of the receipts, or both, for any right to a group of motion pictures (including the Picture) under any agreement (whether or not the same shall provide for the exhibition, lease or delivery of positive prints of any of said motion pictures) which does not specify what portion of the license payments apply to the respective motion pictures in the group (or to such prints or other material, if any, as may be supplied), or (ii) receives foreign currency under 8 hereof relating to a group of motion pictures (including the Picture), then in any and all such situations Studio shall include in, or deduct from, the gross receipts, as the case may be, such sums, determined in good faith, as may be reasonable and consistent with Studio's usual practice in such matters. All costs described in 5 hereof (and, after breakeven, all deductible items set forth in Schedule 1 hereto) shall be fairly apportioned to the Picture if incurred or expended on an industry basis, or in conjunction with other motion picture producers and/or distributors, or with respect to the Picture and other motion pictures distributed by Studio.

**8. FOREIGN RECEIPTS:** No sums received by Studio relating to the Picture shall be included in gross receipts hereunder unless and until such sums have been (i) received by Studio in U.S. dollars in the United States; or (ii) used by Studio for the production or acquisition of motion pictures or television films which can be lawfully removed from the country or territory involved, in which event they shall be included in gross receipts for the accounting period during which an amount (computed at the official or unofficial rate of exchange, as Studio may elect) equal to the amount expended for such production or acquisition, plus interest thereon, as herein provided, has been recouped by Studio (in excess of normal distribution fees and distribution expenses) from distribution thereof outside the country or territory involved; or (iii) used by Studio for acquisition of tangible personal property which can be and is lawfully exported

from the country or territory involved, in which event the U.S. dollar equivalent of the currency utilized to acquire such property shall be included in gross receipts hereunder for the accounting period during which such property was so exported, such U.S. dollar equivalent to be computed at the official or unofficial rate of exchange, as Studio may elect, in effect on the date of export. Studio will, promptly after receipt of a written request from Participant (but not more frequently than annually) advise Participant in writing as to foreign revenues not included in gross receipts as aforesaid, and Studio shall, at the written request and expense of Participant (subject to any and all limitations, restrictions, laws, rules and regulations affecting such transactions), deposit into a bank designated by Participant in the country involved, or pay to any other party designated by Participant in such country, such part thereof as would have been payable to Participant hereunder. Such deposits or payments to or for Participant shall constitute due remittance to Participant, and Studio shall have no further interest therein or responsibility therefor. Studio makes no warranties or representations that any part of any such foreign currencies may be converted into U.S. dollars or transferred to the account of Participant in any foreign country. In no event shall Studio be obligated to apply gross receipts of any country not actually received by Studio in U.S. dollars in the United States to the recoupment of any costs or expenses incurred with respect to the Picture (or, after breakeven, of any deductible items set forth in Schedule 1 hereto) in any other country.

#### **9. COST OF PRODUCTION; INTEREST:**

(a) The "cost of production" of the Picture means the total direct cost of production of the Picture, including the cost of all items listed on Studio's Standard Delivery Schedule, computed and determined in all respects in the same manner as Studio then customarily determines the direct cost of other motion pictures distributed and/or financed by it, plus Studio's overhead charge. The determination of what items constitute direct charges and what items are within said overhead charge shall be made in all respects in the same manner as Studio customarily determines such matters. The full amount of all direct costs of production of the Picture (whether payable in cash, deferred or accrued) shall be included in the direct cost of the Picture at the time liability therefor is incurred or contracted, regardless of whether the same has actually been paid to the party or parties entitled thereto at the time involved. Deferrals and participations in gross receipts of the Picture consented to by Studio (however defined) shall be treated as direct costs of production, whether the same shall be in a definite amount or based on a percentage of the gross receipts, and whether the same are fixed obligations or are contingent upon receipts of the Picture; provided, however, contingent participations based on a percentage of gross receipts as defined in the applicable agreement shall not be included in the direct cost of production beyond recoupment under 2(c) hereof.

(b) Studio's overhead charge shall be in an amount equal to 15% of the direct cost of production of the Picture, with the understanding that any production facilities, equipment or personnel supplied by Studio or by a studio owned or controlled by Studio, or in which Studio has a substantial financial interest (and which are not furnished within the overhead charge), shall be supplied at Studio's usual rental rates charged for such items, and such charges shall be treated as direct costs of production of the Picture and shall bear said 15% overhead charge. Studio's overhead charge shall accrue and be included in the cost of production of the Picture concurrently with the incurring of the respective items of direct cost to which it applies.

(c) The amount equal to interest provided for in 2(c) hereof shall be calculated at a rate per annum equal to 125% of the rate announced from time to time by the First National Bank of Boston as its prime rate on unsecured loans to its preferred customers. Said amount shall be calculated from the respective dates that each item is charged to the Picture until the close of the accounting period during which the cost of production is recouped under 2(c) hereof, except that interest on deferred amounts shall be calculated from the date of payment.

(d) Concurrently with delivery to Participant of the first earnings statement hereunder, Studio will (subject to revisions and correction) deliver to Participant an itemized summary of the cost of production of the Picture. Participant shall have the right to audit such statement in accordance with 11 hereof.

(e) If the final cost of production shall exceed the budgeted cost by 5% or more, then for the purposes of 2(c) hereof there shall be added to the actual cost of production of the Picture an amount equal to the amount by which the final direct cost exceeds 105% of the budgeted direct cost. For the purposes of this subdivision (e), the final direct cost shall not include costs incurred solely by reason of force majeure events, union increases not reflected in the budget, and overbudget costs incurred at the request of an officer of Studio having the rank of Vice President or higher over the written objection of Participant.

**10. EARNINGS STATEMENTS:** Studio shall render to Participant periodic statements showing, in summary form, the appropriate calculations under this Agreement. Statements shall be issued for each calendar quarter until the Picture has been in release for 4 years from and including the quarter in which the Picture was first released, and thereafter annually. Each such quarterly or annual period, as the case may be, is herein referred to as an "accounting period." No statements need be rendered for any accounting period during which no receipts are received. Statements rendered by Studio may be changed from time to time to give effect to year-end adjustments made by Studio's Accounting Department or Public Accountants, or to items overlooked, to correct errors and for similar purposes. If Studio shall extend credit to any licensee with respect to the Picture and if such credit has been included in the gross receipts, and if, in the opinion of Studio, any such indebtedness shall be uncollectible, the uncollected amount may be deducted in any subsequent earning statement. Should Studio make any overpayment to Participant hereunder for any reason, Studio shall have the right to deduct and retain for its own account an amount equal to any such overpayment from any sums that may thereafter become due or payable by Studio to Participant or for Participant's account, or may demand repayment from Participant, in which event Participant shall repay the same when such demand is made. Any U.S. dollars due and payable to Participant by Studio pursuant to any such statement shall be paid to Participant simultaneously with the rendering of such statement; provided, however, that all amounts payable to Participant hereunder shall be subject to all laws and regulations now or hereafter in existence requiring deductions or withholdings for income or other taxes payable by or assessable against Participant. Studio shall have the right to make such deductions and withholdings and the payment thereof to the governmental agency concerned in accordance with its interpretation in good faith of such laws and regulations, and shall not be liable to Participant for the making of such deductions or withholdings or the payment thereof to the governmental agency concerned. In any such event Participant shall make and prosecute any and all claims which it may have with respect to the same directly with the governmental agency having jurisdiction in the premises. The right of Participant to receive, and the obligation of Studio to account for, any share of the gross receipts of

the Picture shall terminate if the Picture has been made available for exhibition on syndicated television in the U.S.A., and if the first earnings statement issued thereafter shows a deficit under 2 hereof such that at least \$500,000 of gross receipts would be required before Participant would be entitled to receive any gross receipts hereunder. In the event a new medium of exhibition shall thereafter be developed and there shall be substantial exhibition and distribution of the Picture by such new medium which is likely to generate gross receipts of \$500,000 or the amount of the deficit, whichever is larger, Participant may audit Studio's records for the purpose of determining whether the Picture has earned, or is likely to earn, any gross receipts in excess of breakeven, and if, as a result of such audit, it is determined by mutual agreement, or in the event of dispute appropriate legal proceedings, that the Picture has earned, or is likely to earn, gross receipts in excess of breakeven as herein defined, accountings hereunder and payments, if required, shall be reinstated.

**11. ACCOUNTING RECORDS RE DISTRIBUTION; AUDIT RIGHTS:** Studio shall keep books of account relating to the distribution of the Picture, together with vouchers, exhibition contracts and similar records supporting the same (all of which are hereinafter referred to as "records"), which shall be kept on the same basis and in the same manner and for the same periods as such records are customarily kept by Studio. Participant may, at its own expense, audit the applicable records at the place where Studio maintains the same in order to verify earnings statements rendered hereunder. Any such audit shall be conducted only by a reputable public accountant during reasonable business hours in such manner as not to interfere with Studio's normal business activities. In no event shall an audit with respect to any earnings statement commence later than twenty-four (24) months from the rendition of the earnings statement involved; nor shall any audit continue for longer than thirty (30) consecutive business days; nor shall audits be made hereunder more frequently than once annually; nor shall the records supporting any earnings statement be audited more than once. All earnings statements rendered hereunder shall be binding upon Participant and not subject to objection for any reason unless such objection is made in writing, stating the basis thereof and delivered to Studio within twenty-four (24) months from rendition of the earnings statement, or if an audit is commenced prior thereto, within thirty (30) days from the completion of the relative audit. If Studio, as a courtesy to Participant, shall include cumulative figures in any earnings or other statement, the time within which Participant may commence any audit or make any objection in respect of any statement shall not be enlarged or extended thereby. Participant's right to examine Studio's records is limited to the Picture, and Participant shall have no right to examine records relating to Studio's business generally or with respect to any other motion picture for purposes of comparison or otherwise; provided, however, that where any original income or expense document with third parties relates to the Picture and to other motion pictures, Participant shall have the right to examine the entire document without deletions therefrom.

**12. OWNERSHIP:** Participant expressly acknowledges that Participant has and will have no right, title or interest of any kind or character whatsoever in or to the Picture, and no lien thereon or other rights in or to the gross receipts or net profits of the Picture; and that the same shall be and remain Studio's sole and exclusive property, and Studio shall not be obligated to segregate the same from its other funds, it being the intent and purpose hereof that the gross receipts in excess of breakeven of the Picture are referred to herein merely as a measure in determining the time and manner of payment to Participant; and that

Studio shall not be deemed a trustee, pledgeholder or fiduciary. Participant shall have no right, title or interest of any kind or character whatsoever in or to the literary, dramatic or musical material upon which the Picture is based, or from which it may be adapted; and Studio shall have the sole and exclusive right to utilize, sell, license or otherwise dispose of all or any part of its rights in such material upon such terms and conditions as it may deem advisable, all without consulting or advising Participant and without accounting to Participant in any manner with respect thereto.

**13. DISTRIBUTION:** As between Participant and Studio, Studio shall have complete authority to distribute the Picture and to license the exhibition thereof throughout the world in accordance with such sales methods, policies and terms as it may, in its uncontrolled discretion, determine. Studio shall have the broadest possible latitude in the distribution of the Picture, and the exercise of its judgment in good faith in all matters pertaining thereto shall be final. Studio has not made any express or implied representation, warranty, guarantee or agreement as to the amount of proceeds which will be derived from the distribution of the Picture, nor has Studio made any express or implied representation, warranty, guarantee or agreement that there will be any sums payable to Participant hereunder, or that the Picture will be favorably received by exhibitors or by the public, or will be distributed continuously. In no event shall Studio incur any liability based upon any claim that Studio has failed to realize receipts or revenue which should or could have been realized. Studio may distribute the Picture either itself or through such distributors, subdistributors and other parties as Studio may, in its uncontrolled discretion, determine, and Studio may refrain from releasing and/or distributing the Picture in any territory for any reason whatsoever. Studio may license the Picture or rights connected therewith to any and all theatres or other agencies in which Studio may have an interest directly or indirectly upon such terms and rentals as Studio may deem fair and proper under the circumstances. Nothing herein contained shall be construed as a representation or warranty by Studio that it now has or will hereafter have or control any theatres or agencies in the United States or elsewhere.

**14. SALE OF PICTURE:** Studio shall have the right at any time after completion of the Picture to sell, transfer or assign all or any of its rights in and to the Picture and the negative and copyright thereof. Any such sale, transfer or assignment shall be subject to Participant's rights hereunder, and upon the purchaser, transferee or assignee assuming performance of this agreement in place and stead of Studio, Studio shall be released and discharged of and from any further liability or obligation hereunder. No part of any sale price or other consideration received by, or payable to, Studio shall be included in the gross receipts hereunder and Participant shall have no rights in respect of any thereof.

**15. ASSIGNMENTS, ETC.:** Participant shall have the right to sell, assign, transfer or hypothecate (all herein called "assign") all or any part of Participant's right to receive the monies payable to Participant hereunder. Any such assignment shall be subject to all pertinent laws and governmental regulations and to the rights of Studio hereunder. In the event of any such assignment by Participant, a Notice of Irrevocable Authority and Distributor's Acceptance in Studio's usual form shall be executed by Participant and by the transferee and delivered to Studio. If at any time more than three parties shall be entitled to receive payments, which under the terms hereof are to be paid to or for the account of Participant, Studio may, at its option, require that all such parties execute and deliver an agreement in Studio's usual form appointing a disbursing agent for all such parties.

## SCHEDULE 1

1. **“GROSS RECEIPTS”** of the Picture means the aggregate of:

(a) All film rentals actually received by Studio from parties exhibiting the Picture in theatres and on television where Studio distributes directly to such parties (hereinafter referred to as “exhibitors”);

(b) In respect of licenses of exhibition or distribution rights by means of video discs, cassettes or similar devices, an amount equal to 20% of (i) the gross wholesale rental income therefrom and (ii) the gross wholesale sales income therefrom less a reasonable allowance for returns;

(c) All sums actually received by Studio from grants or licenses of distribution rights in and to the Picture (in any and all gauges of film, tape and other material) from sources other than those referred to in (a) and (b) above;

(d) All net earnings of Studio from trailers of the Picture (other than trailers advertising the television exhibition of the Picture); and the lease of positive prints, tapes and other material (as distinguished from the licensing thereof for a film rental); and from the sale or licensing of advertising accessories, souvenir programs and booklets;

(e) All net sums derived by Studio from distribution of the Picture on a “road show”, “reissue” and “four wall” basis, as such terms are commonly understood in the motion picture industry, whether on fixed or percentage engagements. The term “net sums” means Studio’s receipts less all advertising, publicity and other distribution costs incurred directly in connection therewith;

(f) All amounts required to be included under Exhibits X, Y and Z hereof, less the aggregate of:

(i) All sums paid or accrued on account of sales, use, receipts, income, excise, remittance and other taxes (however denominated) to any governmental authority assessed upon the negatives, duplicate negatives, prints or sound records of the Picture, or upon the use or distribution of the Picture, or upon the revenues derived therefrom, or any part thereof, or upon the remittance of such revenues, or any part thereof; any and all sums paid or accrued on account of duties, customs and imposts, costs of acquiring permits, “Kontingents,” and any similar authority to secure the entry, licensing, exhibition, performance, use or televising of the Picture in any country or part thereof, regardless of whether such payments or accruals are assessed against the Picture or the proceeds thereof or against a group of motion pictures in which the Picture may be included or the proceeds thereof. In no event shall the deductible amount of any such tax (however denominated) imposed upon Studio, be decreased (nor the gross receipts increased) because of the manner in which such taxes are elected to be treated by Studio in filing net income, corporate franchise, excess profits or similar tax returns. Subject to the foregoing, (i) Studio’s own United States federal and state income taxes and franchise taxes based on Studio’s net income; and (ii) income taxes payable to any country or territory by Studio based on the net earnings of Studio in such country or territory and which is computed and assessed solely by reason of the retention in such country or territory by Studio of any portion of the gross receipts shall not be deductible hereunder.

(ii) Expenses of transmitting to the United States any funds accruing

to Studio from the Picture in foreign countries, such as cable expenses and any discounts from such funds taken to convert such funds directly or indirectly into U.S. dollars.

(iii) The cost of reducing or minimizing the matters referred to in (i) or (ii) above, which costs shall be fairly apportioned to the Picture if done on an industry basis or with respect to motion pictures distributed by Studio generally.

(iv) All costs of cooperative or other advertising or promotion (excluding trade and institutional advertising or promotion) incurred in connection with exhibitions of the Picture in theatres (or other places where an admission is charged) where Studio pays, shares in or is charged with all or a portion of the promotional or advertising costs relating to any such exhibitions.

(v) All amounts paid or payable to or for the benefit of actors, writers, composers, directors and others, pursuant to applicable collective bargaining agreements and/or any law or governmental regulations or decree now or hereafter in force by reason of, and/or as a condition or consideration for, any exhibition, use, re-use, rerun, performance, sale, license and/or distribution of the Picture and/or copies of all or any part thereof, on television, supplemental markets, or otherwise (all herein called "residuals"), together with all taxes, pension fund contributions and other costs paid or payable in respect of such residuals, and in respect of participations in the gross receipts and net profits of the Picture; provided, however, that if Participant or any principal stockholder of Participant, or any heirs, executors, administrators, successors or assigns of Participant, or any such stockholder, are entitled, either directly or by way of participation in any pension fund, to any such residuals, or to compensation for services rendered beyond any guaranteed period referred to in the foregoing agreement, the amount payable on account thereof shall be treated as an advance against Participant's share of the gross receipts hereunder, and conversely, any gross receipts paid to Participant hereunder shall (to the extent permissible under applicable collective bargaining agreements) constitute an advance against such residuals payable to or for the benefit of Participant or any principal stockholder of Participant, or any such heirs, executors, administrators, successors or assigns.

(vi) Dues and assessments of and contributions by Studio to AMPTP, MPAA, MPEA, the Academy of Motion Picture Arts and Sciences, and other trade associations or industry groups comprised of a substantial number of motion picture producers and/or distributors, but only for purposes relating to the production, distribution, export, import, advertising, exploitation and general protection, including actions under the antitrust laws, and/or promotion of motion pictures.

In no event shall rentals from the exhibition of the Picture which are contributed to charitable organizations be included in gross receipts. If Studio reasonably anticipates taxes, residuals, uncollectible accounts, or any matters relating to the Picture, which, if and when determined, will be deductible hereunder, Studio may, for a reasonable time, set up appropriate reserves therefor.

**2. FILM RENTALS:** In paragraph 6 of the foregoing Exhibit for purposes of computing gross receipts under this Schedule 1, the third and fourth sentences are deleted, and the following substituted: Where the film rental is computed on

the basis of box-office receipts of the Picture, any expenses incurred in checking attendance and/or receipts of such engagements shall be deducted in determining film rentals hereunder. There shall be deducted from film rentals expenses incurred in the collection thereof.

#### MUSIC PUBLISHING INCOME

In the event the party entitled to share in gross receipts or net profits of the Picture under the foregoing agreement is not entitled to share directly in publishing revenues, there shall also be included in gross receipts of the picture:

A sum equal to 75% of the "publisher's share" of mechanical reproduction and performing fees received in U.S. currency by Studio's subsidiary or affiliated publisher with respect to music and lyrics written specifically for and synchronized in the picture as released, provided such publisher is vested with all rights therein and all of the "publisher's share" of the receipts therefrom, and provided the party entitled to share in gross receipts or net profits of the picture under the foregoing agreement is not entitled to receive composers' or lyricists' royalties in respect of such music or lyrics. The "publisher's share" of mechanical reproduction fees shall be the full amount paid by the licensee, less composers' or lyricist's share of such fees and less the charges of the publisher or any agent, trustee or administrator acting for the publisher for the collection of such fees, not to exceed 5% thereof. Mechanical reproduction fees do not include synchronization fees.

The "publisher's share" of performing fees shall be the net amount actually received by the publisher from any performing rights society in respect of the music and lyrics involved; or, if Studio or the publisher shall administer the collection of all or any part of performance fees, the full amount of all performance fees collected by Studio or the publisher, less the composer's or lyricist's share of such fees and all reasonable costs and expenses in administering the collection of such fees.

If the agreement or Exhibit to which this Exhibit is attached provides for distribution fees, no distribution fees shall be charged on amounts included in gross receipts pursuant to this Exhibit.

#### SOUND TRACK RECORD INCOME

In the event the party entitled to share in the gross receipts or net profits of the picture under the foregoing agreement is not entitled to receive any artists' royalties in respect of phonograph records derived from the sound track of the picture, then Studio agrees to include in the gross receipts of the picture royalties on sound track records, as herein defined, computed at the applicable royalty rate.

As used herein:

The term "sound track records" means and refers to phonograph records, tapes, or other sound recordings which contain either (i) portions of the sound track transferred directly to phonograph record masters from sound records which form a part of the sound track of the picture; or (ii) sound recordings recorded separately but utilizing substantially the same musical score, parts and instrumentation, and essentially the same artists, music and/or dialogue and/or sound effects as is contained in the sound track of the picture; or (iii) a combination of (i) and (ii). Sound track records do not, however, include any re-

cordings produced solely for the purpose of advertising and exploiting the picture and copies of which are not distributed to the public.

The term "applicable royalty rate" means and refers to the following percentages of the prevailing retail price but in no event more than the net royalty actually received and retainable by Studio for its own account with respect to the sale of any particular copies: 5% of 90% in respect of sound track records sold in the United States; 2 1/2 of 90% in respect of sound track records sold outside the United States except that as to sound track records sold pursuant to mail order or "club" plans, the royalty rate shall be one-half of the rate otherwise applicable.

If any sound track records contain selections from other sources, the applicable royalty rate hereunder shall be prorated on the basis of the total number of minutes of selections from the sound track compared to the total number of minutes on such records.

In determining the net royalty retainable by Studio, all royalties payable to artists, conductors and other third parties in respect to such sound track records shall be deducted from the aggregate royalty payable to Studio under the applicable distribution agreement.

The term "prevailing retail price" means and refers to the price generally prevailing in the country of manufacture or sale (as determined by the Record Company), less all taxes, duties and charges for containers.

There shall be deducted from amounts included in gross receipts hereunder a pro rata share of re-use fees and costs of recording and manufacturing masters advanced by Studio or the Record Company. Sales shall be determined on the basis of the number of records sold and for which the Record Company has been paid in U.S. currency, after allowing for all returns, cancellations, exchanges, applicable discounts, etc. and reasonable reserves which may be established therefor. No sums shall be included in gross receipts with respect to records given away or sold at less than the Record Company's cost or for promotional purposes or as sales inducements or otherwise.

If the agreement or Exhibit to which this Exhibit is attached provides for distribution fees, no distribution fees shall be charged on amounts included in gross receipts pursuant to this Exhibit.

#### MERCHANDISING INCOME

In the event the party entitled to share in gross receipts or net profits of the picture under the foregoing agreement is not entitled to share directly in merchandising revenue, there shall be included in gross receipts of the picture:

(a) A sum equal to 50% of all license fees (in excess of all royalties and participations) received by Studio directly as a result of the exercise by Studio itself of merchandising license rights. If, however, Studio shall sublicense or subcontract any of such merchandising license rights, Studio shall include in the gross receipts hereunder, at its election, either a sum equal to (i) 85% of the net sums (in excess of all royalties and participations) received from such sublicensee; or (ii) 50% of such sublicensee's license fees from the exercise of such licensing rights (from which there shall be deducted all royalties and participations), and out of the remaining 50% thereof Studio shall pay and discharge the fees of its sublicensee.

(b) If the publication rights to the underlying literary material were owned or controlled by the party entitled to share in gross receipts or net profits of the picture under the foregoing agreement (herein called "participant") prior to the execution of this agreement, and were acquired by Studio pursuant to or in connection with this agreement, then (i) all net sums received by Studio from nonaffiliated or nonsubsidiary publishers from the publication of such underlying literary material and of novelizations of the screenplay of the picture, and (ii) a sum equal to 5% of the net receipts of Studio's subsidiary or affiliated publishers from the publication of such material and novelizations, less, in either case, royalties paid out of (i) or (ii) to the writers of such material and novelizations.

If the agreement or Exhibit to which this Exhibit is attached provides for distribution fees, no distribution fees shall be charged on amounts included in gross receipts pursuant to this Exhibit.

EXHIBIT - **LL**

# TELEVISION DISTRIBUTION AGREEMENT

XYZ Broadcasting Co.  
444 Broadway  
New York, N.Y.

## Summary

Name of Licensee: \_\_\_\_\_

Address of Licensee: \_\_\_\_\_

Station: \_\_\_\_\_

No. of License: \_\_\_\_\_

Picture or Pictures: \_\_\_\_\_

Number of Runs: \_\_\_\_\_

Duration of License: \_\_\_\_\_

License Fee Per Picture: \$ \_\_\_\_\_

Total License Fee: \$ \_\_\_\_\_

Payments: (a) First payment of \$ \_\_\_\_\_ on or before \_\_\_\_\_; and  
(b) \_\_\_\_\_ monthly payments of \$ \_\_\_\_\_ commencing on \_\_\_\_\_  
until the total license fee of \$ \_\_\_\_\_ has been paid.

This application for a license was executed by the Licensee on \_\_\_\_\_.  
Upon acceptance thereof by a duly authorized officer of the Licensor, this application shall constitute a license for the telecast of the aforesaid Picture or Series on the terms and conditions set forth above and in the Schedule hereto annexed and made a part hereof.

[Name of Licensee]

By \_\_\_\_\_  
Authorized Officer

Accepted:

Date \_\_\_\_\_

[Name of Licensor]

By \_\_\_\_\_  
Authorized Officer

## SCHEDULE OF TERMS AND CONDITIONS

**1. LICENSE:** Subject to the prompt payment of the license fees above specified and the due performance by the Licensee of all its obligations hereunder, the Licensor hereby grants to the Licensee, and the Licensee hereby accepts, a limited license to exhibit and broadcast over the facilities of the television station specified in the foregoing Summary the motion picture or the motion pictures therein specified (herein called the Pictures), and to reproduce recorded sound in connection therewith, for the period of time and the maximum number of runs therein specified, and for no other use or purpose.

**2. PAYMENT OF LICENSE FEES:** The Licensor shall pay the license fees specified in the Summary at the time or times therein set forth, without offset, deduction, counterclaim or credit for any claim that the Licensee may have or assert against the Licensor, regardless of whether or not the Licensee has exhibited all the Pictures available to it.

**3. LICENSOR'S WARRANTIES:** The Licensor represents and warrants to the Licensee that:

(a) The performing rights in all musical compositions contained in the Pictures (i) are controlled by the American Society of Composers, Authors and Publishers (ASCAP) or Broadcast Music, Inc. (BMI); or (ii) are in the public domain; or (iii) are controlled by the Licensor;

(b) With respect to music controlled by ASCAP or BMI, the Licensor has obtained the necessary licenses for the inclusion thereof in the Pictures, and the exhibition of the Pictures via television;

(c) The Pictures and the prints thereof to be furnished by the Licensor to the Licensee will be free and clear of any and all liens or encumbrances; and

(d) The Licensor has the full right to grant this license.

**4. LICENSOR'S INDEMNITY:** The Licensor shall indemnify the Licensee against any and all damage or expense (including reasonable attorneys' fees) that the Licensee may suffer or incur as a result of the breach of any of the Licensor's warranties, subject to the following:

(a) The Licensor's indemnity shall not apply unless it is given (i) prompt written notice of any claim; and (ii) full control of the defense thereof, through its own counsel; and (iii) the right to settle the same.

(b) The Licensee shall cooperate fully with the Licensor in the defense or settlement of any claim.

(c) The Licensor's liability on the warranty set forth in subdivision (d) of clause 3 shall be limited as provided in clause 16.

**5. DELIVERY:** The Licensor shall deliver to the Licensee a positive synchronized 16 mm. black and white print of each Picture scheduled for exhibition.

(a) Delivery to the Licensee's premises, or to its agent, or to a common carrier, or to the U. S. Post Office, or to any shipping agent designated by the Licensee, shall be deemed due delivery; and the Licensor shall not be liable for any loss or delay attributable to any intervening agency.

(b) The Licensee shall bear the expenses of delivery.

(c) Unless the Licensee designates a mode of delivery, the Licensor shall have the right to select the same.

(d) The Licensor's failure to deliver any of the Pictures shall not constitute a default hereunder, but the license fee hereunder shall be reduced proportionately in the ratio that the number of runs of each undelivered Picture bears to the total number of runs for all Pictures covered by this agreement.

(e) The Licensor at its own election may substitute a product deemed by it to be equivalent to the Pictures without reduction of the license fee.

**6. EXAMINATION OF PRINTS:** Upon receipt of each positive print, the Licensee shall promptly examine the same to determine whether it is physically suitable for exhibition. If the print is unsuitable, the Licensee shall give immediate notice thereof to the Licensor, specifying the particular defect; and upon receipt of such notice the Licensor shall furnish a substitute print, or in lieu thereof, a print of another Picture that the Licensor deems equivalent. Unless the Licensor receives a notification in writing as to a defect at least 48 hours prior to the scheduled play date, a print received by the Licensee shall be deemed accepted as satisfactory.

**7. RESTRICTIONS ON CUTTING:** The Licensee shall telecast the Pictures in the form submitted by the Licensor, and shall not modify, add to or take from the same without the Licensor's written consent. Among other things, the Licensee shall telecast the screen credits and the Licensor's release credit as incorporated in the prints of the Pictures. The Licensee shall have the right to insert commercials at points selected by it, provided that, prior to redelivery, it restores each print to its original condition.

**8. PLAY DATES:** If no specific play dates are designated in the Summary, the Licensee shall, from time to time but at least fourteen (14) days in advance of any play date, furnish to the Licensor a list of the Pictures that the Licensee intends to telecast, together with the proposed telecast date.

(a) The Licensor shall have the right to designate a particular one of the Pictures to be shown on the proposed telecast date, except that it shall not designate a Picture that may have been previously shown by the Licensee during the term of this agreement.

(b) Not later than ten (10) days after the end of every month during the term of this agreement, the Licensee shall deliver to the Licensor a list of the Pictures that it telecast during the preceding month.

(c) If a scheduled telecast does not take place by reason of the pre-emption of the scheduled time, or for any reason beyond the Licensee's control, the Licensee shall notify the Licensor thereof within twenty-four (24) hours after the scheduled play date.

(d) If the Licensee fails to notify the Licensor as aforesaid, or if it fails to telecast any Picture on the play date for any other reason, it shall be charged with the license fee for the scheduled telecast.

**9. MAXIMUM RUNS:** When the Licensee reaches the maximum number of runs permitted under this license, its right to telecast the Pictures shall forthwith terminate, and the unpaid balance of the total agreed license fee for all the Pictures shall immediately become due and payable. The Licensee's failure to complete the maximum number of runs on or before the expiration date indicated

in the Summary shall not extend the term of this license, nor shall it relieve the Licensee of its obligation to pay the total agreed license fee upon the expiration date.

**10. LICENSEE'S COVENANTS:** The Licensee covenants that:

(a) It will not telecast the Pictures except over the facilities of the station specified in the Summary. If such station suspends its operation for any reason, and the Licensee selects a substitute station, such substitute shall be subject to the Licensor's approval, which shall not be unreasonably withheld.

(b) It will not telecast the Pictures beyond any cut-off dates or in excess of the maximum number of permitted runs; and

(c) It will not permit or allow the Pictures entrusted to it to be exhibited or telecast by any other party.

**11. ADVERTISING MATERIALS:** The Licensor shall make available at reasonable cost to the Licensee [or to any sponsor of the television broadcasts of the Pictures, or to the advertising agencies of such sponsors], any advertising or promotional material owned by the Licensor that is available for distribution.

(a) No advertising, promotional or display material originated by the Licensee or the sponsor of the Pictures or the sponsor's advertising agency shall be used without the Licensor's prior written consent, which shall not be unreasonably withheld.

(b) Any advertising material used by the Licensee that may be copyrightable shall be registered for copyright by the Licensee in the Licensor's name.

(c) The Licensee shall not in any event use, for the purpose of a commercial tie-in or tie-up, the name or likeness of any person (producer, director, star, supporting players, and the like) appearing in or connected with the Picture.

**12. ADVERTISING CREDITS:** The Licensee shall comply with all the Licensor's instructions with respect to the requisite advertising credits, and shall indemnify the Licensor against any damage or expense (including reasonable attorneys' fees) that the Licensor may suffer or incur by reason of the Licensee's failure to observe such instructions.

**13. ADVERTISING PRACTICES:** All advertising utilized by the Licensee in connection with the exhibition of the Pictures shall be in accordance with the code requirements of the National Association of Broadcasters, as well as the applicable orders and regulations of any governmental agency.

**14. RETURN OF PRINTS:** Within forty-eight (48) hours after the broadcast thereof, the Licensee shall return each positive print to the Licensor or to such place or places as the Licensor may from time to time direct. Sundays and holidays shall not be included in the computation of the aforesaid period.

(a) The cost of transportation shall be borne by the Licensee.

(b) Each print shall be returned in good condition, ordinary wear and tear excepted, on the reels and in the containers in which it was received.

(c) If the Licensee fails to return a print as aforesaid, it shall be automatically charged with the laboratory cost of replacing the same, and it shall pay the charge forthwith to the Licensor.

(d) If the Licensee claims that a print has been lost or destroyed, it shall furnish an affidavit to that effect, sworn to by one of its officers.

(e) All prints shall remain the property of the Licensor.

**15. TAXES:** The Licensee shall bear all taxes now or hereafter in effect that are or may be (i) imposed or based upon the Licensee's exhibition, possession or use of the prints of the Pictures, or upon the grant of this license or the exercise thereof; or (ii) measured by the license fees, however determined, paid or payable hereunder.

(a) The word "taxes" as herein used shall include, without limitation, taxes, fees, assessments, charges, imposts, levies and excises, whether designated as sales, gross income, gross receipts, personal property, storage, use, consumption, licensing, compensating, excise or privilege taxes.

(b) To the extent that such taxes are paid by the Licensor, the Licensee shall reimburse the Licensor therefor on demand; and upon its failure to do so, the Licensor shall have all the remedies herein provided for the collection of unpaid license fees, in addition to whatever other remedies it may have by law.

**16. SUBSTITUTION:** If the Licensor's right to grant this license with respect to any Picture is challenged by any third party, the Licensor may, at its option, either substitute a picture that it deems to be equivalent, or terminate this agreement with respect to such Picture. If the Licensor elects to terminate:

(a) The total license fee specified in the Summary shall be reduced proportionately in the ratio that the number of projected runs of the Picture involved bears to the total number of runs of all the Pictures.

(b) The Licensee shall and does waive all claims for damages that may arise from such termination, other than a claim for a refund of all prepaid exhibition fees.

**17. LICENSEE'S DEFAULT:** If the Licensee fails to make payment of the license fees or any part thereof when due, or if it defaults in any of its other obligations hereunder, and fails to make payment or to remedy its default within [10] days after notice from the Licensor, or if the Licensee is adjudicated a bankrupt or becomes insolvent or makes an assignment for the benefit of creditors, or if a receiver, liquidator or trustee is appointed for its assets or affairs, the Licensor shall have the right, in addition to whatever other remedies it may have by law, to terminate this license wholly or in part by written notice to the Licensee, in which event the entire unpaid balance of the total agreed license fee for all the Pictures shall immediately become due and payable.

**18. FORCE MAJEURE:** If the Licensor is delayed in or prevented from making delivery of the Pictures as herein provided, by reason of any act of God, labor difficulties, injunctions, judgments, adverse claims, fire, flood, transportation tie-up, public disaster or any other cause beyond its control, or if the Licensee is delayed in or prevented from telecasting the Pictures or returning the positive prints thereof as herein provided by reason of any of the aforesaid contingencies, neither party shall be liable to the other for the delay or failure so to perform; and the term of this license shall be deemed extended for a period equal to the duration of the contingency.

**19. LICENSOR'S RIGHT TO ASSIGN:** The Licensor shall have the right to hypothecate, pledge or assign this license to obtain loans thereon. The Licensee

recognizes that lenders may be induced to advance substantial sums to the Licensor on the security of this license. Accordingly the Licensee shall pay to any assignee all moneys due to the Licensor without offset, deduction, counterclaim or credit for any claim that the Licensee may have against the Licensor.

**20. NO ASSIGNMENT BY LICENSEE:** This license shall not be assigned by the Licensee without the Licensor's written consent, nor shall it be assignable by operation of law insofar as the Licensee is concerned.

21. ARBITRATION: Any and all disputes arising out of or in connection with this agreement, its interpretation or performance, shall be submitted to arbitration in \_\_\_\_\_ under the then current rules and regulations of the American Arbitration Association. The decision of the arbitrators shall be binding and conclusive upon both parties.

**22. GENERAL PROVISIONS:** The following provisions shall apply:

(a) This license shall not be modified or waived in whole or in part except in writing.

(b) A waiver by either party of any breach or default by the other party shall not be construed as a waiver of any other breach or default.

(c) Any notices given or required to be given hereunder shall be in writing, and shall be sent by certified mail, return receipt requested, to the parties at their respective addresses shown in the Summary.

(d) This license shall be construed under the laws of the State of \_\_\_\_\_.

(e) This license is complete, and embraces the entire understanding of the parties.

EXHIBIT - **MM**

## HOME VIDEO LICENSING AGREEMENT

This Agreement between \_\_\_\_\_, residing at \_\_\_\_\_ (herein called "Licensor"), and \_\_\_\_\_, Inc., (herein called "Distributor"), a California corporation, is for the licensing to the domestic (United States and Canada) home video market for the program "\_\_\_\_\_" (herein "Program") a collection of four titles as set forth in Schedule "A", which is owned equally as tenants in common by the parties.

1. Licensor licenses his interest in the program to Distributor for distribution to the domestic (U.S. & Canada) home video market ("Licensed Territory") for a term of five (5) years and one month from the date this agreement is executed by both parties.

2. Licensor hereby grants Distributor the exclusive and irrevocable right, license and privilege in the Licensed territory (Domestic only) and in the Licensed Field (home video only) to manufacture Video Grams (videocassettes, videodiscs and similar devices) of the program and to sell, lease, license, rent, distribute, reproduce, perform, exploit, advertise and otherwise market such Video Grams during the term hereof. Distributor promises to use its efforts to market and distribute the program.

3. Distributor shall reproduce and incorporate the Program into Video Grams in its entirety in the form delivered by Licensor to Distributor, with no titles, credits, copyright notices, or other material changed, added to, omitted or edited without Licensor's prior written approval, which shall not be unreasonably withheld.

4. All rights not expressly granted hereunder are reserved to Licensor including the use of any Video Grams for viewing in any place of public assembly where an admission fee is charged, for broadcasting by television or cable, whether free or pay, for public exhibition in the traditional non-theatrical market, sequels and remakes, or for theatrical exhibition. Distributor shall only have the right to distribute the Program to the domestic home video market, to be used for exhibition on a television set for private home use only.

5. Licensor is not in any way obliged to license to Distributor any new programs licensor may produce in the future.
6. Distributor shall cause to be stamped or imprinted on the Video Grams or their packaging enclosures a statement substantially to the effect that: "The copyright proprietor has licensed the material contained herein for noncommercial private use only, and prohibits any other use, copying or reproduction in whole or in part."
7. For each Video Gram of the program sold, rented or otherwise vended in the Licensed Territory during the Term Distributor shall pay Licensor a royalty equal to 50% of such gross receipts as Distributor derives therefrom. "Gross receipts" shall be defined, computed, paid and accounted for in accordance with the provisions of Schedule "B" attached and incorporated by this reference. Gross receipts shall include any and all income received from the exploitation of the Program regardless of source.
8. Distributor shall bear all costs and obligations with respect to the distribution of the Program, including but not limited to all salaries, royalties, license fees, service charges, laboratory charges and the like. Licensor shall have no obligation for past, current or future salaries, royalties, residuals, deferments, license fees, service charges, laboratory charges or similar charges.
9. Distributor shall maintain complete books and records with respect to all Video Grams sold, leased, licensed or rented. Distributor will render to Licensor, on a quarterly basis, a written statement of Licensor's royalties following the conclusion of each quarterly accounting period and shall be accompanied by payment of any amount shown to be due Licensor.
10. Licensor shall have the right to examine the books and records of Distributor to the extent they pertain to the Program. Such examination shall be made during reasonable business hours, upon reasonable advance notice, at the regular place of business of Distributor where such books and records are to be maintained.
11. In any instance where revenues are earned or deductions allowed with regard to a group of films or video programs including the Program, Distributor shall make such allocations as are determined by Distributor in good faith, and gross receipts hereunder shall only include the amounts allocated to the Program.
12. All monies due or payable to Licensor shall be deemed held in trust by Distributor for Licensor. Licensor shall be deemed to have a lien or claim on the gross receipts. Distributor's obligation shall include interest at 1.5% per month on any amounts due Licensor when such amounts are 30 days or more past due.
13. Distributor may assign its obligations under this agreement only to a person, corporation or other entity purchasing substantially all of the assets of the Distributor or into which Distributor shall be merged and which assumes Distributor's obligations hereunder. Licensor shall be entitled to assign its right to receive monies hereunder. No assignment shall relieve the assignor of its obligations to the other party hereunder.
14. If either party (herein called the First Party) desires to transfer his rights under this agreement to a third person, he shall give written notice by registered mail to the other party (herein called the Second Party) of his intention to do so.

(a) In such case the Second Party shall have an option for a period of 30 days to purchase the First Party's rights at a price and upon such terms indicated in the written notice.

(b) If the Second Party fails to exercise his option in writing within the aforesaid period of 30 days, or if, having exercised it, he fails to complete the purchase upon the terms stated in the notice, the First Party may transfer his rights to the third person at the price and upon the identical terms stated in the notice; and he shall forthwith send to the Second Party a copy of the contract of sale of such rights, with a statement that the transfer has been made.

(c) If the First Party fails for any reason to make such transfer to the third person, and if he desires to make a subsequent transfer to someone else, the Second Party's option shall apply to such proposed subsequent transfer.

15. Nothing herein contained shall be construed to create a partnership or joint venture by or between the Distributor and \_\_\_\_ or to make either the agent of the other. Each party agrees not to hold itself out as a partner or agent of the other or to otherwise state or imply by advertising or otherwise any relationship that is contrary to the terms of this agreement. Neither party shall become liable or bound by any representation, act, omission or agreement of the other. However, all matters involving the distribution, lease, exhibition, sale, licensing and reissuing of the program, shall be exercised by the Distributor in accordance with sound business judgment and shall be subject to the prior approval of \_\_\_\_, such approval not to be unreasonably withheld.

16. Any controversy or claim arising out of or relating to this agreement or any breach thereof shall be settled by arbitration in accordance with the Rules of the American Arbitration Association; and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled to reimbursement for costs and reasonable attorneys' fees.

17. This agreement shall inure to the benefit of, and shall be binding upon, the executors, administrators and assigns of the parties.

18. This agreement constitutes the entire understanding of the parties.

19. This agreement is governed by and construed in accordance with the laws of the State of \_\_\_\_\_.

20. If any provision of this Agreement or the application thereof to any Person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

21. The parties agree to execute such further documents and instruments as they may reasonably request in order to effectuate the terms and intentions of this agreement, and in the event either party is unable to execute any such documents or instruments, each appoints the other as their irrevocable attorney-in-fact to execute any such documents and instruments, provided that said documents and instruments shall not be inconsistent with the terms and conditions of this agreement. The rights under this Clause constitute a power coupled with an interest and are irrevocable.

22. This agreement expresses the entire understanding between the parties and both agree that no oral understandings have been made with regard thereto. This agreement may be amended only by written instrument signed by both parties. Each party acknowledges that it has not been induced to enter this agreement by any representations or assurances, whether written or oral, and both parties agree that each has not received any promises or inducements other than as herein set forth.

AGREED TO AND ACCEPTED

\_\_\_\_\_ Date:

By:

\_\_\_\_\_  
President

\_\_\_\_\_, Inc. Date:

IN WITNESS WHEREOF, the parties hereunto set their respective hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_

SCHEDULE "A"

SCHEDULE "B"

"Gross Receipts" shall be defined and all monies due hereunder shall be paid in accordance with the following terms:

(a) Definition of Gross Receipts: "Gross Receipts" means all monies (subject to the exclusions in subclause (b) below actually received by Distributor or any of its affiliates from the exploitation by Distributor of the rights granted to Distributor hereunder.

(b) Exclusions from Gross Receipts: Gross receipts shall be determined after all refunds, credits, discounts, allowances and adjustments granted to subdistributors, wholesalers, retailers and other purchasers and licensees. Additionally, gross receipts shall not include:

(i) Any monies derived by any local subdistributor, wholesaler or retailer from sale of Video Grams, whether or not such subdistributor, wholesaler, or retailer is owned, operated, managed or controlled by Distributor; provided, however, that in the event of any such owned, operated or managed subdistributor, wholesaler or retailer, Distributor agrees that the terms of sale or lease of any Video Grams to any such entity shall be substantially the same as the terms of sale or lease of Video

Grams to unrelated entities, in accordance with industry standards. If Distributor derives any rental income hereunder from its exploitation of the Picture, Distributor agrees to negotiate in good faith with Licensor concerning any allocation of the income between the two parties.

(ii) Any sums due, but not paid Distributor; provided that Distributor agrees to use all reasonable efforts consistent with its prudent business judgment to collect such sums owed it.

(iii) The salvage value of any videotape, cassettes or other materials purchased by or manufactured by Distributor and not sold as Video Grams.

(iv) Taxes: Gross receipts shall not include any and all sums paid or accrued on account of sales, use, value added, receipts, excise, remittance and other taxes (however denominated, except income taxes) to any government authority, assessed upon the Video Grams or any other materials relating to the Program.

(v) Any sum paid or accrued on account of freight, shipping, handling and insurance in connection with the sale of Video Grams.

(vi) Royalties paid to author \_\_\_\_\_ or his assigns in accordance with the contract between \_\_\_\_\_ and the same, as set forth in "Schedule C" attached.

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