

THE LEAGUE OF AMERICAN THEATRES AND PRODUCERS, INC. AND
ASSOCIATED MUSICIANS OF GREATER NEW YORK, LOCAL 802

AGREEMENT

AGREEMENT made as of the 11th day of March, 2003, by and between THE LEAGUE OF AMERICAN THEATRES AND PRODUCERS, INC., hereinafter called the "League," having its principal office at 226 West 47th Street, New York, New York, for and on behalf of its labor members, hereinafter called the "Employer/Producer," and the ASSOCIATED MUSICIANS OF GREATER NEW YORK, LOCAL 802, AMERICAN FEDERATION OF MUSICIANS, hereinafter called "Local 802," having its principal office at 322 West 48th Street, New York, New York.

WITNESSETH; WHEREAS, the parties desire to continue the collective bargaining relations that have existed between them for many years, and to set forth the terms and conditions of employment of musicians employed by the Employer/Producer during the next four years, terminating March 4, 2007.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter contained, it is hereby agreed by and between the parties hereto as follows:

I UNION SECURITY & DUES CHECKOFF

- A. All musicians covered by this Agreement, as a condition of employment, shall be members in good standing of Local 802 no later than the thirtieth day following the beginning of employment hereunder; provided, however, that those musicians who are members of the Union as of the effective date of this Agreement shall remain members in good standing of the Union for the duration of this Agreement.
- B. The Employer/Producer shall provide the Union with names, social security numbers, passport numbers, if applicable, and salaries of all musicians employed in self-contained units.
- C. Local 802 agrees that during the term of this Agreement it will permit its members to enter into the employ of the Employer/Producer upon the terms and conditions hereinafter set forth. The Employer/Producer agree that upon receipt of written authorization from each musician they will deduct from each musician's salary the amount of the musician's Local 802 work dues and transmit such amount each month to Local 802 by no later than the 10th day of the following month.

II HIRING PRACTICES

- A. (1) The Employer/Producer shall engage all musicians required by them through Contractors, as heretofore. The Contractor for each show shall be selected by the Producer and Theatre Owner in consultation with Local 802. The Executive Board of Local 802 shall be immediately notified of each such selection and all such selections shall be subject to review by the Executive Board of Local 802 for the sole purpose of determining whether the Contractor has engaged in any conduct inimical to Local 802. The Contractor shall be a playing musician in the orchestra for the run of the show.

(2) The person chosen as Contractor shall perform the duties of Designated Contractor and be on the theatre payroll but shall not serve as Associate Conductor or Librarian. In the event the show moves to another theatre, the Contractor shall move with the show and assume the duties of Designated Contractor in the new theatre. If, for any reason, the Contractor leaves the show during its run, a new Designated Contractor shall be selected from the existing orchestra by the Theatre Owner and Producer for the remaining run of the show. The new Contractor shall be subject to review by the Executive Board of Local 802 in the same manner as the original contractor.

(3) The departing Contractor's chair shall be filled by a musician playing the identical instrument(s).

(4) Notwithstanding the foregoing, the Employer/Producer or the Union may re-assign the Designated Contractor's duties to another member of the playing orchestra for cause, subject to review by Joint Grievance Committee Procedures established pursuant to Article XXIII herein.

(5) In the event that the Employer/Producer or the Union determines that no other member of the playing orchestra can competently carry out the duties of Designated Contractor, then a new Designated Contractor shall be engaged who is not a member of the playing orchestra and shall be paid at the minimum side musician's rates hereinafter provided.

B. Where an orchestra consists of more than the minimum number of musicians specified in this contract, the Employer/Producer shall have the right to reduce the number of musicians to not less than the minimum under the following conditions:

All musicians above the minimum shall be advised at the time of hiring (on the validation form as provided in Paragraph D of this section) whether or not they are deemed to be employed for the run of the show in New York and the Union shall also be advised. Effective no earlier than the end of the tenth week of the run and upon two weeks' prior notice, one, or more, or all of the musicians above the minimum may be dismissed. If at any time the Employer/Producer wishes to reengage a musician for that position, the Employer/Producer shall offer the position to the member who played such position prior to being disengaged. Furthermore, if a vacancy occurs in the orchestra at any time during the run of the show requiring an instrument played by a dismissed cuts list musician, same shall be filled by a dismissed cuts list musician, if available.

C. (1) Whenever members of Local 802 are engaged as an orchestra of four (4) or more under the terms of this Agreement, the orchestra shall elect from among its members one person who shall represent the orchestra as a Shop Steward. The Shop Steward's duties shall in no way infringe upon the authority of the Contractor.

(2) The Employer/Producer shall provide one (1) hour for each of two (2) Union meetings. The purpose of these meetings is to give the Union an opportunity to discuss the provisions of this Agreement with the musicians and elect a Union representative if they so choose. The first meeting shall be within 5 days of the first cast rehearsal for rehearsal and audition musicians. The second meeting shall be within the first 5 days of orchestra rehearsals for orchestra musicians. The Employer/Producer shall provide appropriate space for these

meetings at the rehearsal site. These meetings shall be contiguous with scheduled rehearsals and shall not be compensated time.

- D. A validation form shall constitute evidence of engagement of a musician, and a copy of the validation form shall be given to the musician and the Union. No musician shall perform unless a copy of the form is in the musician's possession prior to the first rehearsal, except if Local 802 otherwise agrees.
- E. Any complaint that a member of the orchestra (including Music Preparation personnel of that production) has been subject to job related harassment by a person engaged in the hiring process of musicians, other than by the producer, general manager, house manager, company manager and composer, shall be referred directly to the Grievance Committee for resolution. It is understood that the foregoing sentence shall include harassment of a musician regarding prospective employment for that production. If the Grievance Committee sustains the complaint and it is found that the person engaged in the hiring practice has harassed a member of the orchestra, as defined above, such finding shall constitute cause for dismissal of said person and the Employer/Producer agrees to terminate that person's services.
- F. Effective after the eighth service, no musician may be dismissed except for just cause. The Employer/Producer shall have the right to request extensions of this period, which the Union shall not unreasonably deny.
- G. In the event of a resignation or a justifiable dismissal, the position in question shall be immediately filled by a musician playing the same instrument as the departing musician. The newly engaged member shall be guaranteed the remaining run of the show.
- H. No musicians shall be engaged who are the theatre owner, producer, general manager, relative or employee of the theatre owner, producer, contractor or any Local 802 official, the spouse of the general manager, producer, theatre owner or the contractor or any Local 802 official.

III WAGE SCALES

The following shall be the minimum weekly wages to be paid to musicians performing in musical shows or actually playing a musical instrument during the term of this Agreement:

- A. (1) In New York City:

| | | | | | | | |
|-------------------|-------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| 3/11/03 | 9/1/03 | 3/1/04 | 9/6/04 | 3/7/05 | 9/5/05 | 3/6/06 | 9/4/06 |
| <u>to 8/31/03</u> | <u>to 2/29/04</u> | <u>to 9/5/04</u> | <u>to 3/6/05</u> | <u>to 9/4/05</u> | <u>to 3/5/06</u> | <u>to 9/3/06</u> | <u>to 3/4/07</u> |
| \$1,320.00 | \$1,335.00 | \$1,355.00 | \$1,370.00 | \$1,390.00 | \$1,410.00 | \$1,430.00 | \$1,450.00 |

- (2) Instrument Maintenance – For each chair in the orchestra, the instrument maintenance shall be \$50 per week.

- (3) Instrument Maintenance for Harpists - Harpists who provide their own instruments shall be compensated an additional \$50 per week plus the amount in paragraph A(2) above to be paid for their utilization of a harp owned (not rented) by the harpist.

(4) Out of Town Break-In For a Week's Work: Each musician shall receive the New York wage scale plus a separate check for expenses in the amount of \$919.23 per week (\$131.31 per day) effective March 11, 2003; \$929.71 per week (\$132.81 per day) effective September 1, 2003; \$943.66 per week (\$134.80 per day) effective March 1, 2004; \$954.13 per week (\$136.30 per day) effective September 6, 2004; \$968.06 per week (\$138.29 per day) effective March 7, 2005; \$982.00 per week (\$140.28 per day) effective September 5, 2005; \$995.95 per week (\$142.27 per day) effective March 6, 2006; and \$1,009.89 per week (\$144.26 per day) effective September 4, 2006.

For one performance on one day: \$266.85

| | | | | | | | |
|-------------------|-------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| <u>3/11/03</u> | <u>9/1/03</u> | <u>3/1/04</u> | <u>9/6/04</u> | <u>3/7/05</u> | <u>9/5/05</u> | <u>3/6/06</u> | <u>9/4/06</u> |
| <u>to 8/31/03</u> | <u>to 2/29/04</u> | <u>to 9/5/04</u> | <u>to 3/6/05</u> | <u>to 9/4/05</u> | <u>to 3/5/06</u> | <u>to 9/3/06</u> | <u>to 3/4/07</u> |
| \$270.96 | \$274.05 | \$278.16 | \$281.25 | \$285.35 | \$289.46 | \$293.57 | \$297.68 |

For two performances on one day: \$442.82

| | | | | | | | |
|-------------------|-------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| <u>3/11/03</u> | <u>9/1/03</u> | <u>3/1/04</u> | <u>9/6/04</u> | <u>3/7/05</u> | <u>9/5/05</u> | <u>3/6/06</u> | <u>9/4/06</u> |
| <u>to 8/31/03</u> | <u>to 2/29/04</u> | <u>to 9/5/04</u> | <u>to 3/6/05</u> | <u>to 9/4/05</u> | <u>to 3/5/06</u> | <u>to 9/3/06</u> | <u>to 3/4/07</u> |
| \$449.64 | \$454.77 | \$461.59 | \$466.71 | \$473.52 | \$480.34 | \$487.16 | \$493.98 |

- B. The Contractor shall receive fifty (50%) percent additional, and the Conductor shall receive seventy-five (75%) percent additional over and above the appropriate applicable rates set forth herein.
- C. (1) An Associate Conductor shall be employed for all musical shows and be given billing together with the credits on the credits page of the theatre program.
- (2) The Associate Conductor will be designated at or prior to the start of the first full cast rehearsal and an executed validation form shall be given to the musician and the Union as per Article II D.
- (3) The Associate Conductor shall receive a premium of 15% additional over and above the appropriate rates set forth herein for all rehearsal work performed prior to the first paid public performance other than orchestra rehearsals.
- (4) The Associate Conductor shall receive a premium of 30% additional over and above the appropriate applicable rates set forth herein for orchestra rehearsals and performances.
- (5) For cast rehearsals after the first paid public performance at which the Conductor is not present, any musician other than the Conductor who performs any of the following duties shall be paid a premium of 30%.
- (a) vocal rehearsals requiring the teaching and coaching of vocal parts;
 - (b) understudy run-throughs, i.e. run-through rehearsals of the entire show to maintain the understudies' performance;

(c) put-in rehearsals or final dress rehearsals, at which a new cast member is integrated into the show with the other cast members;

(d) brush-up rehearsals at which the original Director and/or Choreographer is present.

(6) No premium is due to musicians working rehearsals which do not require the expertise of an Associate Conductor such as blocking, staging, and dance rehearsals.

(7) A premium of 30% shall be paid for any cast rehearsal in which a specific member of the music department (associate conductor/rehearsal pianist) is required (given the proper notice) by the Employer/Producer because of his/her expertise, regardless of whether a Conductor is present.

(8) The Employer/Producer and Conductor shall use reasonable, best efforts to ensure that at least two members of each orchestra and/or substitutes for the Associate Conductor are familiar with the score and are competent to fill-in for the Associate Conductor. Only a musician who has learned the score and who has the ability to conduct shall be eligible to receive an Associate Conductor premium.

D. The Librarian payment (i.e., one "double" as in the past) shall apply through the official opening and only thereafter for the week in which the Librarian function is performed.

E. Musicians taken out-of-town for the full period to break-in a musical shall receive pay between the end of the break-in and the New York opening, but rehearsal in lieu of performance (not overtime) will be credited.

F. (1) Unless otherwise hereafter provided, any musician required to play outside the pit and in view of the audience shall receive the additional payment listed in the attached Schedule A, except in the cases of special non-legitimate theatrical attractions (i.e. "concerts") where no on-stage premium shall be paid. No additional payment shall be required:

(a) In the event that the foregoing condition is made necessary by reason of lack of room in the pit provided such lack of room in the pit is not due to the covering over of the pit or the placement of machinery, obstruction, or amplifiers according to Article XIII, Paragraph (G) hereof; or

(b) In the event that musicians play outside of the pit and not in view of the audience, the Employer/Producer shall either prominently display in the lobby a poster (approximately 2 feet by 3 feet) with the names of the regular orchestra members or display in the lobby a photograph of the regular orchestra members with their instruments and names. In the event of the latter choice, the photograph will be taken during orchestra rehearsals when the musicians are dressed in accordance with the prescribed dress code.

(2) Any musician required to play outside the pit, in view of the audience and in costume shall receive, in addition to the premium set forth in Paragraph (F) (1) above, a further additional payment as listed in the attached Schedule A over and above the appropriate applicable rates set forth herein. A "costume" shall be defined as anything other than a suit or

tuxedo, even if a special fitting is not required. Musicians shall not bring books or other reading material other than the score of the show into the orchestra pit and shall wear jackets and ties during performances unless otherwise permitted by Employer/Producer.

(3) In the event a musician after entering the orchestra pit is required to move during the course of a show from the pit to another part of the theatre, including the auditorium and the stage, the musician shall be paid an amount equal to the payment for On Stage as listed in Schedule A unless the musician is being paid in accordance with paragraph F(1) above.

- G. Nothing contained in this Article III shall prevent any individual from negotiating a wage in excess of the minimum wage.
- H. All musicians engaged for a first-class production pre-Broadway, en route to Broadway, or on Broadway shall have the run of the show in New York City. A leave of absence must be requested in writing by the musician and the Employer/Producer shall have the right to grant or reject such request. The Employer/Producer shall have the right to require a musician to engage not more than one (1) substitute to be responsible for performances during his/her leave of absence.
- I. All additional payments and percentage increments provided for in this Agreement (such as payments for Conductor, Contractor, and Associate Conductor) shall apply to all persons covered by this Agreement on a pro rata basis for rehearsals, auditions and performances.
- J. If any announcement is made prior to the curtain, an announcement shall also be made identifying the Conductor of the orchestra. "The (name of show) orchestra is being conducted by (name of Conductor)." It is agreed that the Conductor's name will be posted in the lobby at all times.

IV REHEARSAL CONDITIONS

1. Orchestra Musicians

A. Orchestra Rehearsal Rates and Conditions Before and After Official Opening

(1) The musicians and the Union shall receive not less than seven (7) days prior notice of the date of the first reading rehearsal as well as the starting time of all scheduled rehearsals, except during the final seven days of rehearsal prior to the day of the first paid public performance, when the starting time of scheduled rehearsals may be changed upon 12 hours notice.

Musicians may not send substitutes to rehearsals during this final seven-day period so long as the Employer/Producer has given proper rehearsal notice as provided in this paragraph.

Once the rehearsals have commenced and until the conclusion thereof, the musicians shall be paid the rehearsal rate except if a rehearsal does not occur and a hiatus results, the musicians shall receive one-eighth (1/8) [two-eighths (2/8) on a matinee day] of the weekly wage for each work day during such hiatus.

(2) Rehearsals terminating after 6:30 p.m. shall be paid at the performance rate. Dress rehearsals shall also be paid at the performance rate.

(3) There shall be a five (5) minute rest period in each hour of rehearsal except during dress rehearsals.

(4) A three (3) hour rehearsal may be substituted in lieu of a performance. When such a rehearsal occurs in the afternoon to be followed by an evening service, it shall terminate no later than 6:00 p.m. In the event that extreme emergency makes it necessary to continue a rehearsal beyond 6:00 p.m., such continuous rehearsal shall be paid at double time rates in half-hour segments. The evening service following shall then begin no sooner than 8:00 p.m. allowing one and one-half (1-1/2) hours for dinner. Such evening service shall be either a rehearsal or a performance, but not a combination of both.

(5) If a member of the regular orchestra is required to work a rehearsal or audition while a show is being performed, that musician shall be paid his/her full performance rate (including premiums) for the first three (3) hours of the rehearsal or audition. Any rehearsal or audition time in excess of the three (3) hours shall be compensated at the applicable rehearsal rate.

(6) Picture calls commencing at 11:00 p.m. or later shall be paid at the rate of \$141.35 for 2 hours or less effective March 11, 2003; \$142.97 effective September 1, 2003; \$145.11 effective March 1, 2004; \$146.72 effective September 6, 2004; \$148.86 effective March 7, 2005; \$151.01 effective September 5, 2005; \$153.15 effective March 6, 2006; and \$155.29 effective September 4, 2006. Overtime shall be in 15-minute segments payable at the rate of \$26.50 effective March 11, 2003; \$26.80 effective September 1, 2003; \$27.21 effective March 1, 2004; \$27.51 effective September 6, 2004; \$27.91 effective March 7, 2005; \$28.31 effective September 5, 2005; \$28.71 effective March 6, 2006; and \$29.11 effective September 4, 2006.

B. Orchestra Rehearsals Before Official Opening

(1) Rehearsals terminating not later than 6:30 p.m., shall be paid at the minimum rate of \$74.79 for two and one-half (2 1/2) hours or less effective March 11, 2003; \$75.65 effective September 1, 2003; \$76.78 effective March 1, 2004; \$77.63 effective September 6, 2004; \$78.77 effective March 7, 2005; \$79.90 effective September 5, 2005; \$81.04 effective March 6, 2006; and \$82.17 effective September 4, 2006.

(2) Overtime ending by 6:30 p.m. for orchestra rehearsals referred to in (1) above shall be paid at a minimum rate of \$14.96 for each 30 minutes or less of such overtime effective March 11, 2003; \$15.13 effective September 1, 2003; \$15.35 effective March 1, 2004; \$15.52 effective September 6, 2004; \$15.75 effective March 7, 2005; \$15.98 effective September 5, 2005; \$16.21 effective March 6, 2006; and \$16.43 effective September 4, 2006.

(3) A one-hour rehearsal before an evening performance shall be paid at the minimum rate of \$44.87 effective March 11, 2003; \$45.38 effective September 1, 2003; \$46.06 effective March 1, 2004; \$46.57 effective September 6, 2004; \$47.25 effective March 7, 2005; \$47.93 effective September 5, 2005; \$48.62 effective March 6, 2006; and \$49.30 effective September 4, 2006.

(4) A one-hour rehearsal on a two-performance day before or after matinee performance shall be paid at the minimum rate of \$54.12 effective March 11, 2003; \$54.74 effective September 1, 2003; \$55.56 effective March 1, 2004; \$56.18 effective September 6, 2004; \$57.00 effective March 7, 2005; \$57.82 effective September 5, 2005; \$58.64 effective March 6, 2006; and \$59.46 effective September 4, 2006.

(5) A one-hour rehearsal terminating before or after midnight may be called immediately after an evening performance prior to opening and shall be paid at the minimum rate of \$52.35 effective March 11, 2003; \$52.95 effective September 1, 2003; \$53.75 effective March 1, 2004; \$54.34 effective September 6, 2004; \$55.14 effective March 7, 2005; \$55.93 effective September 5, 2005; \$56.72 effective March 6, 2006; and \$57.52 effective September 4, 2006.

Said one-hour rehearsal may start after a ten (10) minute break with the usual five (5) minute intermission during rehearsal thereafter.

(6) Prior to the first performance or rehearsal in the theatre in New York where safe storage of instruments in the theatre is available, cartage shall be paid at the rate of up to \$25.00 per round trip, provided an actual expense voucher approved by the Employer/Producer has been submitted by musicians who are required to transport each of the following instruments: Cello, Double Bass, Contrabassoon, Bass Clarinet, Baritone Saxophone, Bass Trombone, Tuba, Sousaphone, and/or amplifier. Actual cost of cartage shall be paid to musicians transporting Celesta, Drum Set, Electronic Musical Set-ups, Harp, Harpsichord, Keyboard, Marimba, Timpani, Vibraphone, Xylophone and other comparably bulky instruments.

C. Orchestra Rehearsals After Official Opening

(1) Rehearsals terminating not later than 6:30 p.m. shall be paid at the minimum rate of \$124.28 for two and one-half (2-1/2) hours or less effective March 11, 2003; \$125.70 effective September 1, 2003; \$127.59 effective March 1, 2004; \$129.00 effective September 6, 2004; \$130.89 effective March 7, 2005; \$132.77 effective September 5, 2005; \$134.66 effective March 6, 2006; and \$136.54 effective September 4, 2006.

(2) Overtime ending by 6:30 p.m. for orchestra rehearsals referred to in (1) above shall be paid at a minimum rate of \$24.87 for each 30 minutes or less of such overtime effective March 11, 2003; \$25.15 effective September 1, 2003; \$25.53 effective March 1, 2004; \$25.81 effective September 6, 2004; \$26.19 effective March 7, 2005; \$26.57 effective September 5, 2005; \$26.94 effective March 6, 2006; and \$27.32 effective September 4, 2006.

(3) A one-hour rehearsal before an evening performance shall be paid at the minimum rate of \$56.11 effective March 11, 2003; \$56.75 effective September 1, 2003; \$57.60 effective March 1, 2004; \$58.24 effective September 6, 2004; \$59.09 effective March 7, 2005; \$59.94 effective September 5, 2005; \$60.79 effective March 6, 2006; and \$61.64 effective September 4, 2006.

(4) A one-hour rehearsal on a two-performance day before or after a matinee performance shall be paid at the minimum rate of \$67.62 effective March 11, 2003; \$68.39 effective September 1, 2003; \$69.41 effective March 1, 2004; \$70.18 effective September 6, 2004;

\$71.21 effective March 7, 2005; \$72.23 effective September 5, 2005; \$73.26 effective March 6, 2006; and \$74.28 effective September 4, 2006.

(5) Orchestra rehearsals starting at or after midnight for one (1) hour or less shall be paid at the minimum rate of \$52.35 effective March 11, 2003; \$52.95 effective September 1, 2003; \$53.75 effective March 1, 2004; \$54.34 effective September 6, 2004; \$55.14 effective March 7, 2005; \$55.93 effective September 5, 2005; \$56.72 effective March 6, 2006; and \$57.52 effective September 4, 2006. Overtime shall be in fifteen (15) minute segments.

2. Rehearsal and Audition Musicians

A. (1) Rehearsal for all shows preparatory to opening and not in conjunction with orchestra shall be paid at the following rates for a six (6) day, forty (40) hour week (inclusive of Sundays).

| | | | | | | | |
|-------------------|-------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| 3/11/03 | 9/1/03 | 3/1/04 | 9/6/04 | 3/7/05 | 9/5/05 | 3/6/06 | 9/4/06 |
| <u>to 8/31/03</u> | <u>to 2/29/04</u> | <u>to 9/5/04</u> | <u>to 3/6/05</u> | <u>to 9/4/05</u> | <u>to 3/5/06</u> | <u>to 9/3/06</u> | <u>to 3/4/07</u> |
| \$1,379.68 | \$1,395.41 | \$1,416.34 | \$1,432.07 | \$1,452.97 | \$1,473.90 | \$1,494.83 | \$1,515.75 |

(2) Overtime after eight hours in any day or after forty hours prior to midnight for each fifteen (15) minutes or part thereof shall be paid at the minimum rate of \$12.93 effective March 11, 2003; \$13.07 effective September 1, 2003; \$13.27 effective March 1, 2004; \$13.42 effective September 6, 2004; \$13.62 effective March 7, 2005; \$13.81 effective September 5, 2005; \$14.00 effective March 6, 2006; and \$14.20 effective September 4, 2006.

(3) Overtime after midnight for each fifteen (15) minute segment shall be paid at the minimum rate of \$17.24 effective March 11, 2003; \$17.44 effective September 1, 2003; \$17.70 effective March 1, 2004; \$17.90 effective September 6, 2004; \$18.16 effective March 7, 2005; \$18.42 effective September 5, 2005; \$18.68 effective March 6, 2006; and \$18.94 effective September 4, 2006.

B. Seventh consecutive day rehearsals or auditions of eight hours or less shall be paid according to the rates in Paragraph D. below.

C. Rest Periods

(1) Except on the final day before the first paid public performance, there shall be a rest period of not less than twelve (12) hours [ten (10) hours on days before matinees] between the end of employment on one day and the beginning of employment on the next day. The rest period preceding a call on the day of the first paid public performance shall be not less than nine (9) hours. Any invasion of the rest period shall be paid at the rate of time and one-half for each half hour or part thereof.

(2) There shall be a break of five (5) minutes after each fifty-five (55) minutes or ten (10) minutes after each eighty (80) minutes of rehearsal for each rehearsal and audition musician.

D. Day Rates

Rehearsal musicians employed by the day shall be paid at the minimum rate of \$106.92 for two hours or less effective March 11, 2003; \$108.14 effective September 1, 2003; \$109.76 effective March 1, 2004; \$110.98 effective September 6, 2004; \$112.60 effective March 7, 2005; \$114.22 effective September 5, 2005; \$115.84 effective March 6, 2006; and \$117.47 effective September 4, 2006. Overtime beyond eight (8) hours in a day shall be paid at the rate of time and one half (1 1/2) the hourly rate in half hour segments. Overtime after midnight for each one-half (1/2) hour or less shall be paid at the minimum rate of \$53.46 effective March 11, 2003; \$54.07 effective September 1, 2003; \$54.88 effective March 1, 2004; \$55.49 effective September 6, 2004; \$56.30 effective March 7, 2005; \$57.11 effective September 5, 2005; \$57.92 effective March 6, 2006; and \$58.73 effective September 4, 2006.

- E. Payments for all services by rehearsal and audition musicians shall be made by checks delivered to the Union unless services are performed out of town in which event the check shall be given to the individual musician.
- F. Rehearsal and audition musicians required to work out of town shall be guaranteed a minimum call of eight hours at the rates as specified in Paragraph D. above plus travel expenses.
- G. Rehearsal and audition work required after official opening shall be offered first to the musicians who were engaged for the full pre-opening rehearsal period and/or to members of the regular orchestra, if available, and then to other musicians.
- H. Within thirty (30) days after the official opening a legible piano-vocal score shall be provided the rehearsal musician. This provision shall not obligate the Employer/Producer to re-copy the full score.

V MINIMUMS IN MUSICAL SHOWS OTHER THAN
NON-LEGITIMATE ATTRACTIONS AND SELF-CONTAINED UNITS

- A. The following minimum number of musicians shall be employed at the following theatres (all figures include leader):

Broadway, Minskoff, St. James and Marquis - 19

Majestic, Palace, Lunt-Fontanne, Imperial, Gershwin, Shubert and Winter Garden - 18

Neil Simon, Al Hirschfeld (formerly Martin Beck) and Richard Rodgers - 14

August Wilson (formerly Virginia) and Broadhurst - 12

Barrymore, Music Box and Gerald Schoenfeld (formerly Plymouth) - 9

Brooks Atkinson, Eugene O'Neill and Bernard Jacobs (formerly Royale) - 8

Longacre and Nederlander - 4

- B. The following minimum number of musicians (including leader) shall be employed for productions by a League producer at the New Amsterdam Theatre or the Ford Center for the Performing Arts – 19.
- C. The following minimum number (including leader) shall be employed for productions by BVTVI at the New Amsterdam Theatre or for productions by MRI at the Ford Center for the Performing Arts – 19.
- D. The following minimum number of musicians (including leader) shall be employed at any new legitimate theatre or venue – the number set forth above for a similar theatre, but no more than 19.
- E. The minimum provisions set forth in paragraphs A – D above shall survive the expiration of the agreement and shall remain in effect until March 4, 2013.
- F. In the event that a revival is presented in a Broadway theatre, the minimum number of musicians to be employed shall be the number scored for the original Broadway production or the minimum of the theatre in which the revival performs, whichever is less.
- G. Special Situations

In the event that the Employer/Producer believes that there are demonstrable reasons for a musical production (including a revival) to be presented with an orchestra composed of fewer musicians than the minimum required for the theatre in which the production is to be presented, the Employer/Producer shall so advise the Union in writing as soon as possible but in no event later than the date upon which the Orchestrator's contract for the Broadway production is filed with the Union. In such event, the issue shall be promptly submitted to a Committee consisting of two (2) members from the League, two (2) members from the union and, depending upon availability, either one (1) or three (3) of the following "neutral" persons on a rotating basis: Sargent Aborn, Theodore S. Chapin, Zelda Fischandler, Robert Ferguson, Freddie Gershon, Jane Hermann, Harvey Lichtenstein, Joseph Melillo, and Victoria Traube. Within a reasonable time after ratification, the Union may object to one or more of these proposed neutrals, after which the employers may add an equal number to replace them. The Union may also propose names, to which the employers may object pursuant to the same procedure, which shall continue until all names are agreed. No person who has a business or personal relationship with either of the parties shall be permitted to serve as a neutral if that relationship makes it impossible for him or her to function as a neutral. Additional mutually agreed upon neutral persons may be added to this list. If either party hereto objects to the appointment of one of the above named neutrals for a particular application based upon an alleged business or personal relationship as set forth above, that neutral shall be recused, and the next neutral in line shall serve in his/her stead for that application.

The Committee shall meet as promptly as possible, but in no event later than seven (7) calendar days after the Union's receipt of the aforesaid written notice from the Employer/Producer. The Employer/Producer, the Union, and/or any member of the Committee may call witnesses and present any evidence in support of their position as they see fit. The Committee shall render a written decision explaining in detail the basis for its

conclusions within forty-eight (48) hours after the submission of the parties' positions. Each Committee member shall have one vote by secret ballot, and a majority vote shall prevail. In the event that the Employer/Producer or the Union does not agree with the Committee's determination, either party may submit the matter to binding arbitration before an arbitrator selected pursuant to the Voluntary Labor Arbitration rules of the American Arbitration Association. Members of the Committee may not be called as witnesses at the arbitration.

The Committee shall decide the issue based primarily on artistic considerations. If a production meets the criteria set forth in any of the following categories, it shall qualify as a Special Situation and shall be permitted to perform with the requested smaller orchestra. The criteria for determining whether a production calls for a smaller orchestra are: (i) the musical concept expressed by the composer and/or orchestrator; (ii) whether the production is of a definable musical genre different from a traditional Broadway musical; (iii) the production concept expressed by the director and/or choreographer; and/or (iv) whether the production re-creates a pre-existing size band or band's sound (on or offstage).

Other considerations which shall be taken into account but which would not necessarily be determinative include but are not limited to: whether the show was previously presented with a smaller orchestra in a production of a professional caliber comparable to Broadway (*e.g.* London's West End), or whether the production was required to book a theatre with a minimum higher than the intended number of musicians due to change of theatre. A production which meets the criteria set forth in this paragraph may be denied Special Situation status only for demonstrable reasons.

The following are examples of productions that would call for a smaller orchestra under this provision and that may be cited by the Committee for that purpose: *Rent* (1996); *Five Guys Named Moe* (1992); *Ain't Misbehavin'* (1978); *Chicago* (1975; 1996); *The Best Little Whorehouse in Texas* (1977); *Buddy* (1990); *The Who's Tommy* (1993); *Candide* (1973); *Hairspray* (2002); *Smokey Joe's Cafe* (1994); *Mamma Mia!* (2001); *Seussical* (2000); *Aida* (2000); *Urban Cowboy* (2003); *Jelly's Last Jam* (1992); *Civil War* (1999); *On The Town* (1998); and *Little Shop of Horrors* (2003).

If a Special Situations request is denied or granted in part, the production shall utilize playing musicians up to at least the applicable minimum, or the number of playing musicians determined pursuant to the procedures set forth above, and shall not subsequently assign musician duties to actors, singers or stage personnel for the purpose of satisfying the applicable house minimum.

Once it has reached a decision, the Committee shall retain jurisdiction to consider any appropriate matters concerning, for example, either the implementation of its decision or any change in concept of the production at issue, which, *inter alia*, might lead to a reconsideration of its prior decision.

- H. The minimums in effect as of the expiration date of the prior agreement shall continue to apply to all shows scheduled to open before the cutoff date for Tony eligibility this season (currently May 6, 2003) or May 31, 2003, whichever comes first.

VI NON-LEGITIMATE ATTRACTIONS AND SELF-CONTAINED UNITS

- A. For special non-legitimate theatrical attractions (e.g., any production without a book) and self-contained units there shall be no minimums required. [See Article XIV C. for use of synthesizers.]
- B. For self-contained groups booked into League theatres, the theatre owner shall incorporate a clause in the booking contract which shall require the producer and/or lessee to furnish the Union with the names, addresses, and social security numbers of all musicians scheduled to perform not later than two (2) weeks prior to the attraction's first New York performance or rehearsal, or as soon thereafter as the booking is confirmed.

VII DRAMATIC SHOWS

- A. (1) A drama utilizing live music shall employ the number of playing musicians as required. Productions employing one playing musician shall pay the musician twenty-five percent (25%) additional over and above the minimum weekly wage as a leader. Productions employing two playing musicians shall pay one musician fifty percent (50%) additional over and above the minimum weekly wage as a leader. Productions employing three or more playing musicians shall pay one playing musician seventy-five percent (75%) additional over and above the minimum weekly wage as a leader. A Designated Contractor shall be required if six or more playing musicians are employed and shall receive fifty percent (50%) additional over and above the minimum weekly wage.

(2) Each playing musician shall be paid an additional \$50.00 weekly for instrument maintenance.
- B. Where live music is utilized as musical accompaniment to a production with a corps de ballet, grand opera, vaudeville, or choral singing with musical accompaniment, where such live music is in excess of an aggregate of sixteen (16) measures per performance, or where live music accompanies regular or interpretive dancing, the appropriate minimum weekly wage set forth in Article III shall be paid and a minimum of six (6) musicians shall be employed.
- C. The Employer/Producer and the League shall notify the Union in advance of the first rehearsal involving the use of any kind or type of mechanical music or musical reproduction.
- D. In the event any music is recorded for use in a production which does not emanate from outside the United States or Canada, then such recording will be made pursuant to the appropriate A F of M recording agreement.
- E. If any specific situations arise under Article VII that are not covered by the provisions of this Article, the terms and conditions for musicians shall be negotiated between the League and Union and shall not be subject to the Grievance procedure.

VIII WORKWEEK

- A. The workweek shall consist of eight (8) performances or less Monday through Sunday with a day off in each week. A performance shall be three hours or less. Each additional perform-

ance by a musician over eight within the workweek shall be compensable at the rate of time and one-half (1½) of the musician's regular performance rate of pay.

- B. All performances played on the seventh consecutive day of the work week as defined in sub-paragraph (A) above whether or not in excess of eight performances shall be compensable at the rate of time and one-half (1½) of the regular performance rate of pay for musicians.

Time and one-half (1½) premium is to be paid to the musician actually playing the performance regardless of whether it is the regular musician or a substitute.

- C. Any performance on the day off may be played only after notice and consultation in person by the Employer/Producer before the Executive Board of Local 802.

- D. There shall be no Sunday premium for a single performance. If a production gives two performances on a Sunday, each musician (including Contractors, Conductors, Assistant Conductors, Doubles, etc.) shall receive time and one-half for the second performance. The time and one-half premium for the second Sunday performance is to be paid to the musician actually playing the second Sunday performance regardless of whether it is the regular musician or a substitute.

- E. A third performance on any day shall be compensable at the rate of time and one-half (1 1/2) of the regular performance rate. A third performance on Sunday shall be compensable at the rate of double time of the regular performance rate of pay.

- F. Overtime before midnight shall be in half hour (1/2) segments, compensable at time and one-half of the pro rata performance rate, except for productions running prior to September 10, 1990, for which such overtime segments shall be paid at the performance rate.

- G. Overtime after midnight shall be in fifteen (15) minute segments compensable at time and one-half the pro rata performance rate.

- H. If a show's first paid public performance is in the middle of the week, musicians shall be paid pro rata the weekly wage for each performance occurring during the opening week.

- I. If a show lasts three weeks or more and closes before the end of the week, the musicians shall receive a full week's pay for their services during any portion of the last week.

- J. Less than one (1) week's notice of closing may be given where a show runs less than three (3) weeks and closes before the end of the work week, provided any one of the following events occurs:

(1) The show closes prior to the official opening night performance. In such event the musicians shall be entitled to be paid to the end of the week.

(2) The show closes after the first, second, third, or fourth performance of the opening week. In such event the musicians shall be paid at the performance rate for each performance worked. If the show closes after the fifth performance of the opening week, the musicians shall be paid to the end of the week.

(3) If a show closes on the Monday immediately following a Sunday night opening performance, musicians shall be entitled to be paid through the Sunday night opening performance.

K. Substitutions

(1) The League and Local 802 have entered into an agreement regarding permissible substitutes for playing musicians. The intent of this agreement is to allow musicians to absent themselves for the following reasons which include, but are not limited to:

- (a) Obtaining occasional outside employment of limited duration;
- (b) Avoiding boredom, which may occur in a long running show;
- (c) Avoiding loss of identity in the marketplace.

(2) Prior to the actual date on which all regular members of the orchestra become eligible to absent themselves as set forth below, each member shall furnish the Conductor with a list of available substitutes for such member's chair. The Conductor shall review each member's list to determine whether each of the substitutes is acceptable. If the Conductor finds any substitute unacceptable, the member shall replace such substitute with an acceptable substitute.

(3) Commencing eight performances after the official opening, the Employer/Producer shall have the right to terminate the employment of any musician who has been replaced by a substitute more than fifty (50%) percent of the performances within each period of 104 consecutive performances, unless ill, on vacation, or on approved leave of absence.

(4) (a) Once the name of a substitute has been proposed, the substitute becomes subject to the Conductor's approval by virtue of the substitute's performance. The disapproval of a substitute by a Conductor shall not be arbitrary or capricious. While the scheduling of performance by the substitute shall be subject to the Conductor's approval, no regular orchestra member shall be unreasonably denied the right to absent himself, subject to the provisions of this article.

(b) A musician who elects to send in a substitute shall advise the Designated Contractor of the member's reason for absence and shall specify whether it is for work, illness, vacation or personal leave.

(c) A musician who wishes to engage a substitute must notify the Designated Contractor no later than 10 AM on the day of the performance unless unforeseen illness, accident, or other emergency prevents such notification. The musician must notify the Designated Contractor of the name of the substitute; that the substitute has been notified by the musician and that the substitute will perform. The Designated Contractor shall have the right to confirm the notification; shall put the substitute on the payroll and inform the Conductor accordingly.

(d) Each musician shall have not more than five (5) approved substitutes. The list of approved substitutes shall be furnished to the Designated Contractor for use in case

of emergency. If none of the approved substitutes is available, then the musician originally hired for the chair must render his or her services. The musician shall thereafter make replacements in the substitute list as required in accordance with the foregoing procedures.

(5) (a) No more than one new substitute shall be allowed in any given section during each performance. For purposes of this paragraph, the determination of what instruments shall be grouped to form each section shall be made separately for each show by the Conductor, Local 802, and the Employer/Producer.

(b) Not later than ninety-six (96) performances after the first paid public performance of any production, a meeting between the Conductor, Contractor, principal players and representatives of the Union and the Employer/Producer shall take place to determine how many substitutes may appear in each section of the orchestra at any performance. The formula arrived at shall be subject to a review to be conducted at not more than one additional such meeting during the run of the show. In the event that the participants in such meeting are unable to agree upon a formula, the matter shall be decided, after a hearing in which all said participants shall be invited by the Union's Executive Board.

(c) Implementing the formula arrived at pursuant to 5 (b) above, the Conductor shall nominate one or more of each musician's substitutes as "designated" substitutes and may set the order of call. In the event that the Conductor declines to so nominate any substitutes from a musician's list, the Conductor shall nominate another substitute(s) for addition to said list as "designated" substitutes. After having made such nomination(s), the Conductor may revise the "designated" nomination and order of call of any musician's substitutes, but such revision shall not be arbitrary or capricious. A regular musician may be required to call substitute(s) in the agreed upon order for all performances from which the regular musician will be absent.

For the purposes of computing the number of permissible substitutions per section pursuant to subsection 5 (b) above, "designated" substitutes will be counted as regular musicians. If a "designated" substitute cannot appear, the regular player must appear for performance if the number of substitutes in the section as provided for in 5 (b) would otherwise be exceeded.

(d) Musicians who absent themselves for two (2) or more performances in a week may be required to engage no more than two (2) different substitute musicians during such week.

(6) No substitute shall have any right to render services if at any time the Conductor shall find him or her unacceptable. The Conductor shall have the right to maintain the musical integrity of the orchestra at all times.

(7) During the first twenty-four (24) public performances a regular member's right to send in a substitute may be withheld. In addition, the right to send in a substitute may be withheld during the eight (8) performances prior to the official opening (and any other performances at which the critics shall be present, provided seven (7) days notice to the musicians is given) and the seven (7) performances following the official opening. Reasonable substitutions shall

be allowed during performances occurring between the twenty-fourth public performance and the eighth performance prior to the official opening in order to enable musicians to fulfill engagements for which they have made business commitments.

(8) The Conductor shall have the right to waive any restrictions set forth above if, in the Conductor's discretion, it is determined that the musical integrity of the orchestra is not impaired.

(9) Subject to the provisions of this Article, the right of substitution shall be granted. The League and Local 802 shall endeavor to maintain the ethnic composition of the orchestra. The parties hereto affirm their commitment to a policy that employment hereunder shall be without discrimination on the basis of age, religion, sex, sexual preference, race, ethnic background, political affiliation or persuasion, or disability not related to the employee's competence to perform his or her duties.

L. All musicians shall be in place, properly attired and ready to play at the start of the performance.

IX DOUBLING

A. Except as provided in paragraph (C) below, no member of an orchestra or stage band shall perform on more than one (1) instrument during any performance or rehearsal unless the member receives the additional compensation hereinafter set forth.

B. If, in addition to playing his or her regular instrument, a member of the orchestra or stage band is required to play one (1) additional unrelated instrument, such member shall receive an additional payment as listed in the attached Schedule A in addition to the regular weekly wage. If, in addition to playing such one (1) additional unrelated instrument, the member is required to play an additional instrument or instruments, such member shall receive, a further additional payment as listed in the attached Schedule A for each such additional instrument that the member is required to play.

C. Doubling charges need not be paid where a musician is required to play instruments in any one of the following categories:

- (1) Saxophone and members of the saxophone family;
- (2) Bassoon and contra-bassoon;
- (3) Tuba and sousaphone;
- (4) Drums, consisting of bass drum, small drum, tom toms, cymbals, gongs, and traps;
- (5) Tympani;
- (6) Mallet played instruments: xylophone, bells, vibraphone, chimes and marimba;
- (7) Latin American rhythm instruments: bongos, timbales and conga drums shall be considered as one instrument.

D. If the bass saxophone is played as a double it shall be paid for at the doubling rate.

- E. First Chair Trumpet Premium - A \$75.00 per week premium shall be paid to the first chair trumpet player of the orchestra.
- F. Instrument Rental - Employer/Producer shall be responsible for furnishing all keyboard, electronic (e.g., synthesizers, amplifiers and loudspeakers) and percussion instruments other than trap drums. If special percussion instruments are required to be supplied by a musician, the Employer/Producer will either furnish such percussion instruments or pay the musician a negotiated fair rental therefor.

X VACATION

- A. Each Employer/Producer shall pay vacation money in a sum equal to six and one eighth percent (6 1/8%) of the weekly gross wages of each musician during the term of this Agreement (including the Librarian). Said payments shall be made for each week of the musician's employment, commencing with the first date of employment under this Agreement. For purposes of this paragraph, "weekly gross wages" shall include rehearsal pay.
- B. All authorized vacation money (withheld) shall be deposited weekly in the Actors Federal Credit Union.
- C. Two weeks written notice must be submitted to the Conductor as to the period for vacation time only when one week or more is taken. (See Article III, Paragraph H. for request for leave of absence).
- D. Each musician shall take the earned vacation time during each year of his or her employment in one show. The individual shall be given the right to choose his or her vacation time.

XI LAYOFFS AND NOTICE OF CLOSING

- A. Except as provided in Article VIII Paragraph J., musicians shall be given at least one (1) week's prior notice of closing of a show. Notice shall be given to the Designated Contractor no later than the first day of the last working week. However, if the notice of closing given to members of other Unions, such as Actors' Equity Association or IATSE, shall be greater than one (1) week, then such greater notice shall be applicable to the musicians. This paragraph is not intended to enlarge the prevailing requirements for the giving of notice.
- B. During the run of a show there shall be no temporary closing and no layoffs of musicians except for the following reasons and under the following conditions:
 - (1) Where a star's contract permits the star to take a vacation, the show may be closed for the period of such vacation provided, however:
 - (a) No layoff shall last longer than two (2) weeks during one (1) year from the time of the show's opening in New York, and no layoff shall take place unless twenty-five (25) weeks have accrued for each week of layoff;
 - (b) The layoff period may be accumulated so that there may be a layoff of four (4) weeks in two (2) years after one hundred (100) weeks of employment have accrued;

(c) If a show is closed during Easter Week or Christmas Week it shall be deemed part of the said two (2) weeks. Christmas Week shall be defined as the week ending the Saturday before Christmas, except when Christmas falls on Saturday. Easter Week shall be defined as the week prior to Easter Sunday;

(d) Local 802 and the musicians employed as part of the opening orchestra shall be notified prior to employment of any star's contract which provides for vacations;

(e) In the event a star replacement is engaged before the New York City opening, Local 802 and the affected musicians shall be notified of any changes in the vacation plans previously announced. Any such changes can be implemented without penalty;

(f) In the event the star in a musical attraction shall fail to renew the contract, or as a condition of renewal shall be afforded a vacation, or should the star be replaced by another star whose contract shall contain a vacation provision, the Employer/Producer shall have the right to suspend the run of the show for the period of the star or replacement star's vacation, as the case may be, upon payment of the fifty percent (50%) of weekly wage for a period of two (2) weeks plus full payments of all benefits and entitlements during such vacation period, provided that notice is given to those affected musicians within two (2) weeks of either the signing of the extension of the original star's contract or the signing of the contract with the replacement star;

(g) For special non-legitimate theatrical attractions, if upon renegotiation of the star's contract after the New York opening the star wishes to add vacation time to the new contract, Local 802 must be notified within one week of the signing of the star's new contract. If notice is given earlier to other theatrical unions, Local 802 must be notified at such earlier time. Musicians shall be paid fifty percent (50%) of the weekly wage for a maximum of two weeks vacation plus full payment of all benefits and entitlements during such vacation period. No layoff shall last longer than two (2) weeks during one (1) year from the date of the star's new contract and no layoff shall take place before twelve (12) weeks of work have accrued under the star's new contract.

(2) A show may be closed temporarily because of poor business and a layoff up to, but not exceeding, eight (8) weeks during the months of January, February and September only, upon obtaining the consent of Local 802, which consent shall not be unreasonably withheld. In order to avail the Employer/Producer such layoff, the Employer/Producer shall show to Local 802 true financial statements establishing that the show's share of the gross box office receipts is less than its operating expenses or there is a reasonable anticipation of such a situation developing.

(3) If a show is closed temporarily because of poor business the musicians shall be given at least two (2) weeks' notice of layoff. After the start of the layoff each musician shall have the option of leaving the engagement by giving the Employer/Producer notice. On the reopening of a show after such a closing, the musicians shall be guaranteed at least two (2) weeks employment.

XII SOCIAL SECURITY AND UNEMPLOYMENT INSURANCE

It is understood and agreed the theatre owner, and/or operator or producer shall be deemed to be the Employer/Producer of all musicians employed under or pursuant to the terms of this Agreement, and that such Employer/Producer will pay the applicable social security and unemployment insurance taxes plus all fringe benefits for musicians employed during the term of this Agreement.

XIII WORKING CONDITIONS

- A. The Employer/Producer shall use their best efforts to maintain the temperature in the theatre at 65-75 degrees Fahrenheit.
- B. Adequate lighting shall be provided for each musician, including rehearsal musicians.
- C. Pianos in the theatre shall be tuned weekly and properly maintained.
- D. Employer/Producer shall provide proper and convenient dressing rooms, consistent with existing facilities, rest rooms, lockers and sanitary washrooms, for the musicians and shall also provide soap, toilet paper and paper towels in washrooms and toilets. Locker rooms and playing areas shall be cleaned daily.
- E. Orchestra parts, when not in use during a performance or rehearsal, shall be stored by the Librarian in a trunk or locker provided by the Employer/Producer and located outside of the performance area, such trunk or locker to be accessible to orchestra musicians and music preparation personnel.
- F. Employer/Producer shall turn on air conditioning in each theatre at least one-half (1/2) hour prior to curtain time and have it remain on throughout the performance.
- G. No machinery, obstructions, construction, or amplifiers (other than amplifiers attached to and used in conjunction with musical instruments) which shall reduce substantially the area available for the musicians from the area that would otherwise be available without such machinery, obstructions, construction or amplifiers shall be placed in the orchestra pit prior to consultation with Local 802 in order that Local 802's suggestions and/or objections may be ascertained. Any placements in the orchestra pit without prior consultation may be subject to removal.
- H. The parties shall appoint a Standing Committee to assure adherence to the provisions contained in this Article.
- I. Health and Safety

The Employer/Producer shall make best efforts to provide a safe workplace. Any workplace hazard will be addressed by the Employer/Producer as expeditiously as possible. The Employer/Producer agrees to continue to comply with all applicable federal, New York State and New York City health and safety laws and regulations.

(1) Prototype Productions

The following prototype studies involving sound levels and smoke and fog abatement proved to be successful:

High Society at the St. James for sound control

Les Miserables at the Imperial for glycol smoke/fog effects

The Phantom of the Opera at the Majestic for dry ice smoke/fog effects

The parties recognize, however, that the combined effect of production, theatre and effect may be different for every show and that a remedy for a problem for one theatre or production may not apply to another. The procedure set forth below shall therefore apply to all current and future productions.

(2) Current and Future Productions

(a) The Employer/Producer agrees to notify the Union if smoke, fog, and/or pyrotechnics are scheduled to be used. Such notification shall be given, in writing, as soon as the Employer/Producer makes the decision to use these materials. If the Union requests a meeting, it will be scheduled within a reasonable time and shall include representative(s) of Local 802, representative(s) of the Employer/Producer, and representative(s) of the League at which meeting the parties will discuss any planned special effects such as smoke/fog and/or pyrotechnics and/or any other health and safety problem that either party feels might arise in the production.

The Employer/Producer agrees that as soon as technical decisions regarding sound are made and before the orchestra pit for a new production has been set up, there shall be a meeting that includes representative(s) of Local 802, representative(s) of the Employer/Producer, and representative(s) of the League. The Music Director/Conductor, Sound Designer, and musicians may participate at the request of either party. At such meeting the parties will discuss any changes made or contemplated in the size and shape of the pit, sound design and related issues of amplification and potential problems with space and/or sound levels. At this meeting the parties shall attempt to forestall problems from occurring. The Union and Employer/Producer may jointly agree to engage consultants to advise them with the cost thereof shared equally by the Employer/Producer and Local 802. If the matter remains unresolved forty-five (45) days after official opening, the parties shall, upon the written request of the Union, invoke the procedure outlined below.

(b) Local 802 and the League shall establish a standing Committee, consisting of two (2) persons from each side, to review, on a show by show basis, the resolution of any complaints by the Union relating to decibel levels in the orchestra performance area, temperature levels, drafts, and the like, including the use of smoke, fog, and/or pyrotechnics. The Committee shall investigate and evaluate such complaints and, where appropriate, recommend solutions that seek to maintain a healthy workplace. The Committee shall meet within seven (7) days of any written complaint, and, where warranted, authorize either the implementation of appropriate remedial techniques or devices which have been successfully utilized at other theatres or the use of other techniques or devices if the conditions of a production so require. The Committee

shall be authorized to engage consultants and/or to provide for appropriate testing, sampling or monitoring, if necessary to advise the Committee. In its deliberations, the Committee may consider, in addition to federal, state or city health and safety regulations, other applicable health standards. The costs thereof shall be shared equally by the Employer/Producer and Local 802. If the Committee cannot agree upon a solution after appropriate deliberations, either party may request final and binding arbitration before a panel of experts consisting of two (2) persons designated by the Union, two (2) persons designated by the League and one (1) person designated by these four, who shall be a qualified professional in the area under consideration. Should the parties disagree on the selection of the fifth member, the procedures of the American Arbitration Association shall be utilized to select the fifth member from a list of qualified professionals submitted by each party. The cost of the arbitration shall be shared equally by the parties. In considering this matter, it shall be understood that every show and every theatre may be different and that a remedy for a problem at one theatre may not necessarily apply to another. Neither the Committee nor the arbitrator may affect or alter audience seating, number of instruments, scenic elements of the show (other than smoke, fog, pyrotechnics that enter orchestra performing areas) or architectural features of the theatres. Once an agreement is reached or a determination is made by an arbitrator, the resolution of the complaint shall be implemented as expeditiously as possible. The cost of any remedial measures shall be paid by the Employer/Producer.

Any claimed violation of the procedures outlined in this paragraph 2(b) shall be submitted to the expedited arbitration procedures of the American Arbitration Association.

(c) The Employer/Producer shall conduct Right to Know sessions for musicians prior to the first public performance to make them aware of any substances to which they might be exposed in the course of their work. Such sessions shall be scheduled contiguous to a rehearsal and shall not be compensated time. The Employer/Producer shall also provide to Local 802 a copy of Material Safety Data Sheets (MSDS).

(3) Review and Readjustment – No initial determination of a successful resolution of a problem shall preclude the review and readjustment, if necessary, in accordance with the procedure set forth in 2(b) above, of any such prior resolution if there are changes in the sound levels or amount or type of smoke, fog and/or pyrotechnics.

XIV ELECTRONIC MUSIC

A. (1) Recorded music or electronic instruments such as the Yamaha DX series, Moog, Roland, Oberheim, Fairlight, Kurzweil, and Synclavier, and other devices now known, or which shall hereafter become known, may be used in performances of musical shows provided that the minimum numbers of musicians specified in Article V of this Agreement are engaged. Players of such instruments shall be engaged as performing musicians except:

(a) When the orchestra is on stage, is an integral part of the staging, and when space and scenic considerations prevent the utilization of the full complement as playing musicians;

OR

(b) When there is a lack of room in the orchestra pit due to considerations other than those referred to in Article XIII G. of this Agreement.

(c) If the conditions referred to in either subparagraph (a) or (b) shall occur, a specific number of understudies to be mutually agreed upon shall be employed unless at least (80%) of the appropriate orchestra minimum is engaged as playing musicians (such number not to be rounded), in which event no mutual agreement shall be required.

(2) Electronic instruments, except for rhythm/percussion synthesizers, may be used in rehearsals for musical shows.

(3) Any musician operating an electronic instrument(s) in musical shows shall receive a premium of twenty-five percent (25%) of the basic scale wage in addition thereto and shall be permitted to operate any number of electronic instruments and acoustic keyboard instruments (including modules or any other connecting devices). Other than the foregoing premium, there shall be no doubling premium paid regardless of the number of electronic instruments operated by said musician.

(4) A joint subcommittee shall be appointed by the parties to explore the effect of the use of electronic musical set-ups in the theatre.

(5) In the event an electronic instrument is utilized in a production, the trade name and model number of the instrument shall be indicated on the individual musician's contract submitted to the Union.

B. The Employer/Producer shall not use or permit the use of any tapes or recordings for any rehearsal, except with the prior written consent of the Executive Board of Local 802. Said consent shall be obtained before the first rehearsal of any production.

C. If there is a synthesizer utilized in either a self-contained unit or non-legitimate attraction, a premium of one hundred and fifty percent (150%) of minimum will be paid to each synthesizer musician. This premium will be reduced accordingly if the following number of non-synthesizing musicians are engaged as part of the self-contained unit or non-legitimate attraction:

| | |
|--|--|
| Up to 10 non-synthesizing musicians | - 150% premium for each synthesizer musician |
| Between 11 and 15 non-synthesizing musicians | - 125% premium for each synthesizer musician |
| Between 16 and 20 non-synthesizing musicians | - 100% premium for each synthesizer musician |
| Between 21 and 25 non-synthesizing musicians | - 75% premium for each synthesizer musician |

| | |
|--|---|
| Between 26 and 30 non-synthesizing musicians | - 50% premium for each synthesizer musician |
| 31 or more non-synthesizing musicians | - 25% premium for each synthesizer musician |

XV PENSION AND WELFARE BENEFITS

- A. During each week of the term of this Agreement the Employer/Producer shall pay into a Musicians' Pension Fund to be established in accordance with applicable provisions of law not less than five percent (5%) of the gross weekly payroll of all musicians covered by this Agreement.
- B. (1) The provisions of the arbitration award of Burton Turkus, dated April 26, 1963, are incorporated into this Agreement with respect to the musicians covered by this Agreement.
- (2) The Employer/Producer agree that whatever the amounts allocable to the Musicians' Pension Fund under that award may be, when musicians are working in New York City they will pay a minimum of five percent (5%) of the gross weekly payroll of the musicians covered by this Agreement to the Musicians' Pension Fund.
- (3) An eight percent (8%) pension contribution shall be paid by the Employer/Producer for those musicians employed in a production which is otherwise covered by this Agreement but on whose behalf contributions are not made pursuant to the arbitration award referred to in subparagraph (1) herein.
- (4) Prior to the opening of a production which is eligible for the .045 Tax Relief Fund share for Local 802 musicians referred to in subparagraph (1) herein, the Employer/Producer shall pay its pension contributions into an escrow account designated as the Tax Relief Fund Escrow account. Once such production opens on Broadway to the extent the .045 Tax Relief Fund share for Local 802 musicians exceeds the required pension contributions, such excess shall be applied as a credit against the pension contributions held in escrow, with any excess returned to the Employer/Producer from the escrow account, within a reasonable time after such excess is determined. [See Schedule B. Pension (12) for Music Preparation.]
- C. Each musician shall be entitled to eight (8) performances sick leave to be accumulated at the rate of one (1) performance sick leave for every fifty-two (52) performances of employment from Labor Day to Labor Day. The Trustees of the Sick Pay Fund, a jointly administered fund, shall be authorized to accumulate sick leave up to a maximum of two (2) years if, in their judgment, the Fund revenues permit such increase. The Employer/Producer shall contribute each week one percent (1%) of the total payroll of musicians to the Sick Pay Fund, for the purpose of paying sick leave remuneration hereunder.

D. Health Benefits

- (1) (a) The Employer/Producer shall pay to the Local 802 Musicians' Health Benefits Plan (HBP) \$58.00 per week on behalf of each orchestra musician.

Every six months thereafter, the actuary shall determine whether any additional contribution is necessary to maintain current benefits. If an increase is required, such increase may be up to \$4.00 per week, but in no event greater than \$4.00 per week.

- (b) Contributions shall be made for each chair per week and shall be made on behalf of a regular orchestra musician when on vacation (up to three (3) weeks or twenty-four (24) performances), or when absent due to illness (up to a maximum of eight (8) performances).

- (2) (a) Contributions on behalf of rehearsal and audition musicians employed by the week shall be paid at the same rates as described in Paragraph D. (1)(a) above.

- (b) Contributions on behalf of a rehearsal or audition musician engaged on a daily basis shall be \$5.80 for the first two (2) hours of employment and thereafter \$5.80 for additional employment beyond two (2) hours for a total of \$11.60 per day with a maximum contribution up to the weekly amount described in Paragraph D. (1) (a) above for the week. However, the rehearsal pianist or a musician who is performing as a substitute keyboard player in the orchestra will not be subject to the weekly cap of \$58 per week.

Every six months thereafter the actuary shall determine whether any additional contribution is necessary to maintain the current benefits. If an increase is required, such increase may be up to .40 (forty cents) per two hours, but in no event greater than .40 (forty cents) per two hours.

- (c) Contributions on behalf of those musicians engaged to play in the orchestra on a weekly basis who are also contracted to perform musical services at an audition or rehearsal shall be made at the same rates as specified in Paragraph (2)(b) above with a maximum contribution not to exceed the weekly amount described in Paragraph D. (1)(a) above for the week.

- E. In lieu of establishing a separate trust fund for the aforesaid welfare benefits for musicians covered by this Agreement, the Employer/Producer agree to be bound by the provisions of the Agreement and Declaration of Trust made the 22nd day of April, 1954, by the Hotelmen's Committee for Hotel Users of Music, the Restaurant League of New York, Local 802 and the Trustees of the H.B.P as amended.

- F. The Employer/Producers shall provide individual coverage for a Hospitalization Plan to be jointly administered by the League and the Union at the rate of \$29.91 per musician per week. In the event there is an increase in the cost of the existing plan as determined by the Trustees, the Employer/Producers agree to contribute the actual cost of the increase up to an additional \$5.00 per musician per week in each contract year commencing March 1, 2004; March 7, 2005; and March 6, 2006, should additional monies be required.

XVI LEAGUE MEMBERSHIP

This Agreement shall be binding upon each and every labor member of the League, whose names and addresses are on file at the League and shall be supplied to the Union upon request. All labor members of the League at the time of the execution of this Agreement and all persons, firms and corporations becoming members thereof subsequent to execution of this Agreement shall be and continue to remain bound by this Agreement for and during the term thereof, irrespective of whether said member shall cease to be a member of the League prior to the date set for the expiration of this Agreement. The League shall notify Local 802 of all changes in and additions to the list of its labor members as they may occur, as well as all cases of resignations, suspensions and expulsions from the League. In the case of newly admitted members the League shall also submit to Local 802 the names of the officers of such members as are corporations and the individual names of such members as are co-partners.

XVII ACTORS' FUND PERFORMANCES

Actors' Fund Benefit performances may be held on any day and the musicians agree to donate their services for Actors' Fund Benefit performances. The Theatre Department of Local 802 is to be notified four (4) weeks in advance of any Actors' Fund Performances.

XVIII NO STRIKE, NO LOCKOUT

During the term of this Agreement there shall be no collective cessation of work by employees covered by this Agreement for any reason or cause whatsoever except for a breach of this Agreement, nor shall there be any general lockout of the said employees by the Employer/Producer for any reason or cause whatsoever except for a breach of this Agreement.

XIX IMPLEMENTATION OF AGREEMENT

This Agreement is binding upon Local 802, the League, the Employer/Producer and upon their successors, executors, administrators and assigns. Local 802 agrees that it will use its best efforts to see to it that its members will perform their services in good faith, conscientiously and efficiently, and will abide in all respects by the terms of this Agreement and the rules and regulations of the Employer/Producer not in conflict with the purpose or intent of this Agreement. The League agrees that it will use its best efforts to see to it that its members will carry out all obligations assumed by them under this Agreement. In no event, however, shall the League, as such, be liable for any financial defaults of its members, nor shall the default of any one member of the League affect the rights and obligations of any other member of the League. Nothing herein contained shall be deemed to deprive Local 802 of the right to refuse to furnish its members to any Employer/Producer who will use their services, either directly or indirectly, in the interests of any Employer/Producer who are in default hereunder or who have breached this Agreement.

XX MORE FAVORABLE CONDITIONS

In the event Local 802 grants more favorable terms and conditions to any Employer/Producer employing musicians in a theatrical production on Broadway, then, in such event, such more favorable terms and conditions shall also be granted to Employer/Producer under this Agreement and this Agreement shall, at the Employer/Producer's option, be deemed amended accordingly.

XXI DURATION

The terms and conditions of this Agreement shall commence on March 11, 2003, and shall remain in full force and effect until midnight March 4, 2007.

XXII INVESTORS

The Employer/Producer agrees that:

- A. Those of them acting as producers will not engage any musician as an instrumentalist, conductor, leader, contractor, and/or personnel manager, arranger, copyist or librarian, if such musician invests in the musical or dramatic production produced by them;
- B. They will not permit any musician employed by them to invest in any musical or dramatic show in which the musician is employed in any legitimate theatre under the jurisdiction of Local 802;
- C. They will not permit any such investment through or under the name of a corporation or other business entity and/or agent, nominee or member of the family of any musician employed hereunder.

XXIII SETTLEMENT OF DISPUTES

Except as provided for in Article XIII of this Agreement, all disputes, differences or controversies (hereafter referred to as "grievances") which may arise between the parties under the terms of this Agreement shall be resolved in the following manner:

- A. All grievances shall be referred by either the Union or the Employer/Producers to a Grievance Committee consisting of up to five (5) League representatives and up to five (5) Union representatives. Said Committee shall meet promptly to consider the grievance. In rendering decisions the Employer/Producer representatives and the Union representatives shall each cast in the aggregate one (1) vote. The decision of the Grievance Committee with respect to a grievance shall be final and binding.
- B. In resolving any grievance, the Grievance Committee members shall not be bound by any decision or ruling by the Board or organization they represent, but shall fashion an appropriate remedy based on the provisions of the Collective Bargaining Agreement.
- C. In the event that the grievance is not resolved by the Grievance Committee, either the Employer/Producer or the Union may submit the matter to arbitration before the American Arbitration Association.
- D. The decision of the arbitrator shall be final and binding upon the parties and their members, and shall not be subject to Court review except that either party may petition an appropriate Court for the enforcement of an award, if necessary. The costs of any arbitration shall be borne equally by both parties except that the arbitrator shall be empowered to assign a higher percentage of costs to one party for cause.

XXIV UNION CONSTITUTIONS AND BY-LAWS

The Constitutions, By-Laws, rules and regulations of Local 802 and of the American Federation of Musicians are hereby incorporated and made a part of this Agreement as if specifically set forth herein, but only to the extent that such Constitutions, By-Laws, rules and regulations are not contrary to or in violation of any applicable provisions of this Agreement or law and more particularly of the Labor-Management Act as amended. Any By-Law change enacted by the Union subsequent to September 10, 1990 shall not be binding upon the League unless agreed to by the League.

XXV DISCRIMINATION

The Employer/Producer agree that they will not discriminate against any employee hereunder, or in the hiring of any musician, because of age, religion, sex, sexual preference, race, ethnic background, political affiliation or persuasion, or disability not related to the employee's competence to perform his or her duties.

XXVI IDENTITY WITH THE PRODUCT AND CAST ALBUMS AND T.V. AND RADIO COMMERCIALS; RECORDED MUSIC

- A. The Employer/Producer agree to guarantee the offer of employment to members of the orchestra of a production working in or under the jurisdiction of Local 802 in the event such production is filmed or taped for television narrow casting (as such term is commonly understood in the television industry) by means of basic cable, pay cable, pay per view, or any other device, or recorded for showing by means of video disc, video cassette or any other device, during the period commencing four (4) weeks prior to the first paid public performance in New York City and ending no sooner than sixteen (16) weeks after the close of the New York City run, subject to the provisions of paragraph (D) of this article. This offer of employment shall apply to the Local 802 musicians employed in the case of a musical show, or of a dramatic show with Local 802 performing musicians in which essentially the same music is used for the aforesaid filming, taping or recording as was used in the theatre. Compensation for such services shall be negotiated between Local 802 and the League unless first broadcast or marketed more than one year after the close of the New York City run, in which latter event compensation shall be under the jurisdiction of the A F of M. In the event that the aforesaid filming, taping or recording shall occur prior to four (4) weeks in advance of the first paid public performance in New York City and Local 802 musicians shall be traveling with the production, the Employer/Producers agree to guarantee the offer of employment to the traveling Local 802 musicians whose instruments (or music preparation services) are used in the making of such filming, taping, or recording. In the event that the aforesaid, filming, taping, or recording shall take place outside of New York City and the musicians entitled to the offers of employment provided above accept said offer, the Employer/Producer shall have no responsibility for the musician's transportation, hotel and per diem expenses in connection with the filming, taping or recording.
- B. (1) In the event that an original cast album is made of a musical show or of a dramatic show with performing musicians in which essentially the same music is used for the

recording as was used in the theatre during the period commencing four (4) weeks prior to the first paid public performance in New York City, the Employer/Producers agree to guarantee the offer of employment in the recording of the original cast album to the Local 802 musicians employed for the run of the show and extra performing musicians, including the Designated Contractor.

(2) In the event that the recording of the original cast album shall occur prior to four (4) weeks in advance of the first paid public performance in New York City and Local 802 musicians shall be traveling with the production, the Employer/Producer agree to guarantee the offer of employment in the recording of the original cast album to the traveling Local 802 musicians and to make payment in accordance with A F of M rates.

(3) In the event portions of an original cast album are recorded by Local 802 members and are used for a radio or television commercial of the show the Local 802 musicians who recorded the original album shall be compensated in the same manner as if they had been engaged to record the radio or television commercial.

(4) In the event that a radio or television commercial for a musical or dramatic production is made within the jurisdiction of Local 802, the Employer/Producer agree to guarantee the offer of employment in the making of the commercial to the Local 802 members with the run of the show whose instruments are used in the making of the commercial. It is understood that the full orchestra need not be employed to make the commercial.

- C. In the event that a radio or television commercial using music shall be made outside the jurisdiction of Local 802 during the period prior to the first paid public performance in New York City and Local 802 musicians shall be traveling with the production, the Employer/Producers agree to guarantee the offer of employment to those traveling Local 802 musicians whose instruments are used in the making of the commercial.
- D. It is understood that if the Employer/Producer have the right to participate in the revenues derived from the exploitation of the rights referred to in this Article by reason of their production contract(s) with the authors, composers, and lyricists, the Employer/Producer agree to guarantee the offer of employment to the Local 802 musicians with the run of the show. Offers of employment shall remain as specified in other clauses of this Article. If the Employer/Producer assign or dispose of said rights all Employer/Producer's obligations set forth in this agreement to Local 802 musicians shall be included in such assignment or disposition.
- E. Whenever recorded music is procured by the Employer/Producer to be used in conjunction with the performance of any production, they shall pay each member of the orchestra the current phonograph recording scale for such recorded music, unless such member of the orchestra was employed in the making of such recording or unless the recording was done by members of another A.F. of M. local with A.F. of M. consent.
- F. Whenever an offer of employment is referred to in this Article the Employer/Producer shall give an affected musician at least fourteen (14) days notice of the offer of employment and the musician shall respond regarding his or her availability therefor within seven (7) days after the giving of said notice.

G. B-Roll Footage

(1) B-Roll footage may be used without additional compensation for the following uses:

(a) Press Reels: The Employer/Producer can use clips of up to a total of three minutes of performance and/or rehearsal footage (of which no continuous sequence shall exceed 30 seconds) for each production included on the Press Reel.

(b) News and Current Affairs Programs: The Employer/Producer can use clips for up to three minutes in total time on each show so long as the film or tape does not contain an entire number.

(c) Entertainment Talk Shows: The Employer/Producer can use clips for up to three minutes as part of an interview so long as the film or tape does not contain an entire number.

(2) B-Roll footage may be used for the following purpose upon a one time buy out payment of \$65:

Web Sites: Up to a total of three minutes of rehearsal and/or performance footage (of which no continuous sequence shall exceed 30 seconds) may be used either in a directory or multiple Broadway show format (i.e., "I Love New York" format) or by an individual Employer/Producer on behalf of a particular show or group of shows. Neither merchandise promotions nor ticket sales information shall be presented on the same "page" as the foregoing, but may be presented on a separate "page." However, the page containing B-Roll may indicate how to get to the page which does have information about merchandise or tickets. It is also understood that there may be no promotion of any other product(s) on the "page" where the B-Roll footage will be seen without Local 802's prior written consent.

(3) The Employer/Producer shall be permitted to cut (or lift) three commercials from B-Roll footage upon payment of a single session "jingle" fee.

The parties agree to discuss with the AFM a similar agreement for three lifts from original commercial footage.

H. Group Sales and Industry Promotions

When a musician is employed for group sales or industry promotion, the musician shall be paid \$110 for such event for a minimum of two hours plus a pension contribution of 10%. Overtime shall be paid in one-half hour segments at pro rata the hourly rate.

Rehearsal for such event shall be paid at the applicable rehearsal rate (set forth in Article IV 2. A. weekly or D. daily/hourly), as appropriate.

XXVII INSURANCE

Each orchestra will receive coverage during the performance and between shows (and for twenty-four (24) hours for non-portable instruments) of \$100,000 for each occurrence regardless of the number of instruments, less \$50 deductible.

XXVIII RESPONSIBILITY FOR WAGE AND FRINGE BENEFITS

When a show returns to New York City after a tryout engagement and beginning with the initial rehearsal, the Employer/Producer shall be responsible for all wages due the musicians, excluding the Conductor, up to a maximum of one (1) week's wages. Fringe benefit payments covering all musicians and Conductor shall be remitted to the Theatre Department of Local 802 by the Employer/Producer. Fringe benefits shall be payable for the work week in which the first day of work occurs.

XXIX CHANGE IN SHOW SCHEDULE

- A. When the Employer/Producer desires to change the show schedule the Employer/Producer shall be required to inform the Theatre Department of Local 802 at the time of ordering tickets for the schedule change.
- B. If a performance is shifted to a holiday matinee or if a matinee is performed on a Monday which is designated a holiday by federal law, the musicians shall be paid at the rate of a performance and one-half.

XXX PLAYBILL LISTING

The names of the regular orchestra members will be included in the Playbill listing in a type no smaller than that afforded the understudies and placed either immediately after the understudies' listing or immediately preceding the "Who's Who in the Cast."

XXXI ENDANGERED THEATRES

It is agreed that during the term of this agreement the WALTER KERR, BELASCO, NEDERLANDER and LYCEUM shall be designated as endangered theatres. The salary, rehearsal rates, doubling payments and premiums for Local 802 members shall be eighty-five percent (85%) of minimum in designated endangered theatres. To qualify for this reduction in salary, tickets for a show in such theatre shall be sold at prices at a discount of at least twenty percent (20%) from the average orchestra price of tickets of musical shows in theatres covered by this Agreement which are not designated as endangered, but there shall be no limitation on the number of seats that may be sold to the public. After six months the regular scale shall apply unless Local 802 and Local One and other unions agree to extend such period.

XXXII MUSIC PREPARATION

The terms and conditions applicable to music preparation shall be contained in Schedule B and Schedule C of this Agreement and shall be separately executed and incorporated herein by reference. The terms and conditions of this Agreement shall not apply to music preparation

unless specifically so provided. (For example, hours of rehearsal and performance, pension contributions and the like).

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals below.

LEAGUE OF AMERICAN THEATRES AND PRODUCERS, INC.

By /s/Seth Popper, Director, Labor Relations

Date

ASSOCIATED MUSICIANS OF GREATER NEW YORK (Local 802)

By /s/David Lennon, President

Date

SCHEDULE A

The rates listed below shall apply for the term of the Agreement.

Librarian - 1/8 basic scale through official opening and then in any week when performing librarian duties.

1 Double - 1/8 basic scale.

Each additional Double - 1/16 basic scale.

On Stage - payment shall be \$64.15 per week effective March 11, 2003; \$64.88 effective September 1, 2003; \$65.86 effective March 1, 2004; \$66.59 effective September 6, 2004; \$67.56 effective March 7, 2005; \$68.53 effective September 5, 2005; \$69.51 effective March 6, 2006; and \$70.48 effective September 4, 2006.

In Costume - Payment shall be \$42.78 per week effective March 11, 2003; \$43.27 effective September 1, 2003; \$43.92 effective March 1, 2004; \$44.40 effective September 6, 2004; \$45.05 effective March 7, 2005; \$45.70 effective September 5, 2005; \$46.35 effective March 6, 2006; and \$47.00 effective September 4, 2006.

Choreography - For productions utilizing choreography for musicians, the amount will be negotiated between the League and Local 802. In no event shall this amount exceed \$42.78 per week effective March 11, 2003; \$43.26 effective September 1, 2003; \$43.91 effective March 1, 2004; \$44.40 effective September 6, 2004; \$45.05 effective March 7, 2005; \$45.69 effective September 5, 2005; \$46.34 effective March 6, 2006; and \$46.99 effective September 4, 2006.

Body Paint - Payment shall be \$62.02 per week effective March 11, 2003; \$62.73 effective September 1, 2003; \$63.67 effective March 1, 2004; \$64.37 effective September 6, 2004; \$65.31 effective March 7, 2005; \$66.26 effective September 5, 2005; \$67.20 effective March 6, 2006; and \$68.14 effective September 4, 2006, whenever a musician must use body paint.

SCHEDULE B

- A. This Schedule shall cover and relate to personnel who render Music Preparation Services for a Broadway show from the pre-production period through the run of the show on Broadway. For purposes of this Agreement, "Music Preparation Services" shall be defined as Arrangements and Orchestrations, the "personnel" being the Arrangers and Orchestrators. This Schedule shall not apply to Copyists, or to any personnel rendering Music Copying related services, such as Proof-readers and Librarians; applicable terms and conditions are set forth in Schedule C. While the production is appearing on Broadway and for the recording of all cast albums, any Music Preparation Services required will be rendered by the original Music Preparation personnel. This in no way obligates the Producer to use the services of the original Music Preparation personnel in the formation of road shows or any future productions beyond the Broadway run.
- B. The Employer/Producer agrees that all Music Preparation Services shall be rendered only by Music Preparation personnel in accordance with the wage rates, terms and conditions of this Agreement. At the discretion of the Musical Director minor changes, e.g. a single note change, a repeat sign around a bar, or instructions for a "tacet" may be dictated to the orchestra at a rehearsal.
- C. (1) If the arrangements or orchestrations of a Broadway Show, or any part thereof, are used in any category other than a live theatrical performance, e.g. cast album, live/tape television, radio/television commercial announcement, pay/cable TV, video cassette, video disk, either by the Employer/Producer and/or Composer or with their authorization, the minimum Local 802 or A.F. of M. scale shall apply, including supervision fee, applicable for that category and shall be paid by the Employer/Producer and/or Composer to all members who have rendered Music Preparation Services.
- (2) Rental publication will be paid at the rate of 80% of the minimum Local 802 scale for material used for rental publication. However, if Employer/Producer elects within 90 days from the official opening to pre-pay for such rental publication, said rate shall be reduced to 25%.
- D. Arrangements and orchestrations previously made for a use other than a Broadway production shall be paid for by the Employer/Producer hereunder when first used for a Broadway production, except as hereafter provided:
- (1) Music prepared and performed for a live performance, concert, or "concept album" (e.g., *Jesus Christ Superstar*) may be used in a Broadway production without additional compensation.
- (2) For Off-Broadway productions where the music was prepared pursuant to an agreement with Local 802, the Employer/Producer shall pay the difference between the amount paid and the appropriate minimum Local 802 Broadway rates, for material actually used in the Broadway production.
- (3) In the absence of a Supervisor Orchestrator, all Orchestrators shall be paid Broadway scale plus twenty-five percent (25%).

(4) Upon application to the Local 802 Music Preparation Department, an Employer/Producer may be eligible to pay for music prepared by bargaining unit Music Preparation personnel for productions which begin outside of New York City but within the United States or Canada at 80% of the Local 802 Broadway rates. The Local 802 Music Preparation Department, in deciding this matter, shall do so in accordance with the following criteria among others: (1) that the production is not a Broadway production in its pre-Broadway aspect, as defined below, or a Pamphlet B production; (2) the actors in the production are not covered by the AEA production contract; (3) the employer of musicians for the production is outside of Local 802's jurisdiction; (4) the employer is a non-profit entity; and (5) there exists a developmental aspect to the production. If such music is subsequently imported for use in a Broadway production, the Employer/Producer shall pay the difference between the amounts previously paid and 100% of the appropriate minimum Local 802 Broadway rates for music used for the Broadway production. However, in no case shall this payment be less than 10% of the original total cost. All Music Preparation personnel providing services under this provision shall be given the right of first refusal for any additional work required for the Broadway production. The provisions of this paragraph shall not apply to a pre-Broadway production, which shall be defined as a production produced under an AEA production contract which operates in continuous performances prior to its New York City opening, under the same management, and for which musicians are not engaged under an AFM Pamphlet B contract. Music Preparation Services performed for a pre-Broadway production shall be paid at the applicable Local 802 Broadway rates.

In the event that the production does not appear on Broadway, the provisions of Schedule B, paragraph C. shall nevertheless apply.

In the event that the Employer/Producer sells, transfers, or assigns his/her/its rights in a production and the production is subsequently presented on Broadway, both the original Employer/Producer and any transferee or assignee shall be individually and jointly liable for payment of the aforesaid difference between amounts previously paid and the amount due under this provision.

(5) If Music Preparation Services are performed outside of New York City but within the United States or Canada and if such services are not performed by a member of Local 802, such services shall be compensated for in accordance with applicable local area standards for such work.

- E. The Employer/Producer shall assume the responsibility for notification of a New Use and shall immediately notify Local 802 of such New Use.
- F. The substance and intent of the aforesaid paragraphs shall be incorporated in all agreements in which the Employer(s)/Producer(s) shall grant any rights to use any of the Music Preparation Services provided herein.

SECTION I

ALL CLASSES

(1) General Rules

- (a) All Music Arrangers and Orchestrators working in this jurisdiction shall be members in good standing of Local 802, or, if not members, shall make application for membership within thirty days of employment.
- (b) No Producer may use music that has not been arranged and orchestrated by Music Preparation personnel working under conditions which comply with standards in the area for such work.
- (c) All rules and regulations of the Constitutions and By-laws of Local 802 and of the A.F. of M. shall apply pursuant to Article XXIV of this agreement.
- (d) All prices specified in the following price schedules are minimum charges ONLY.
- (e) In cases where work is not classified, the Executive Board of Local 802 will set the price thereof.
- (f) A Music Arranger or Orchestrator shall not invest in a production for which that musician is working and an Employer/Producer may not request or accept any such investment.
- (g) Arranging or orchestrating on contingency is strictly forbidden.

(2) Contracts

- (a) Contracts for all work must be deposited with Local 802 in advance.
- (b) In addition to signing a contract in advance of the work to be done, an Employer/Producer, or any party representing a Producer or musical production(s), upon demand of Local 802, shall deposit in escrow with Local 802 sufficient sums at such times as the Supervisor of Music Preparation Services of Local 802 may deem proper to cover all charges for Music Preparation Services.
- (c) Music Preparation Services performed shall at no time exceed the amount deposited in escrow at Local 802.
- (d) All bills must be presented to the Company Manager in time for payment on the regular weekly company payroll day and must be paid on that day.
- (e) All claims for Music Preparation Services delivered and not paid for upon expiration of the time limit must be filed with the Supervisor of Music Preparation Services of Local 802.

- (f) To insure collection by the Union, contracts must be on file, work must be delivered accompanied by an itemized bill, and a copy of the signed bill sent to the Supervisor of Music Preparation Services of Local 802.

(3) Conditions

- (a) Music Preparation personnel shall be paid not less than the rates set forth below, and the conditions set forth shall apply.
- (b) Straight time shall apply from 9:00 a.m. to 6:00 p.m. Monday through Saturday, if required by Employer/Producer to work during such time.
- (c) Time and one-half shall apply from 6:00 p.m. to 12 midnight Monday through Saturday, if required by Employer/Producer to work during such time.
- (d) Double time shall apply from 12:00 midnight Monday through Saturday, all day Sunday, and the following holidays: New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas, if required by Employer/Producer to work during such time.
- (e) Overtime rates shall continue until dismissal and shall resume upon return call unless at least nine (9) hours have elapsed.
- (f) Music Preparation personnel must be paid time and one-half after eight (8) hours in any given day; and, in addition, time and a half must be paid after forty (40) hours of work per week.
- (g) Orchestrators shall be guaranteed a minimum call of four (4) hours, at the applicable hourly rate.
- (h) No less than the applicable hourly rates shall be paid when an Orchestrator is requested to travel from one place of business to another to receive or deliver work or is requested to attend orchestra performances, rehearsals, etc.

(4) Materials & Facilities

- (a) All paper, necessary working materials, and printing shall be supplied by the Employer/Producer or furnished by the Arranger or Orchestrator at cost. The Employer/Producer shall have the option to provide adequate facilities for the Music Preparation personnel. All facilities provided by the Music Preparation personnel shall be paid for by the Employer/Producer at the rate of \$120.92 per day through March 11, 2004; the percentage increase in each succeeding year of this Agreement shall be the average percentage established by the rent stabilization guidelines for New York City for one and two year leases of residential apartments. Messenger service (pickup and delivery) shall be paid for by the Employer/Producer.
- (b) All digital data in any storage medium (including but not limited to optical drives, hard drives, DAT, disk, etc.) to generate computer scores shall be the sole property of the Employer/Producer and may be used for purposes other than the originally contracted

for purposes upon payment provided herein; except that no digital data in disk form may be used to generate a sequenced file for use in the United States or Canada. A bond of \$50,000.00 shall be deposited with Local 802 by the League to be held against payments due in the event of unauthorized use.

- (c) When out-of-town, all paper, necessary working materials, printing of duplicate parts, and facilities shall be supplied by the Employer/Producer or furnished by the Arranger and Orchestrator at cost. Messenger service (pickup and delivery) shall be paid for by the Employer/Producer.
- (d) No office space charge or commissions shall be deducted from wages.

(5) Supervision – Orchestrators

- (a) In all theatrical productions there must be a Supervisor Orchestrator. The duties of the Supervisor Orchestrator shall include, but not be limited to, assigning work to and conferring with other Orchestrators, conferring with the Director, Composer, Conductor, Contractor, Supervisor Copyist, etc. The Supervisor Orchestrator must orchestrate to an extent greater than any other single Orchestrator. In the event that an additional orchestrator or orchestrators provide services, the Employer/Producer shall have the right of approval of such orchestrators, who shall be designated Associate Orchestrator(s).
- (b) The Supervisor Orchestrator shall be responsible for giving out and collecting work, supervising and/or giving instructions with regard to the assignments, and any other such duties as may be required in preparation of the music for performance.
- (c) For the above-mentioned services the Supervisor Orchestrator must receive a sum of no less than twenty-five percent (25%) over and above the total amount of monies for work coming under his/her supervision, including all work done by the Supervisor Orchestrator.
- (d) Associate Orchestrators shall not be required to assume the functions of the Supervisor Orchestrator.
- (e) Associate Orchestrators must invoice the Producer directly at the Supervisor Orchestrator's page rate. The twenty-five percent (25%) supervisory fee shall be paid to the Supervisor Orchestrator on the invoiced amount.

(7) Limitations

- (a) (i) No Orchestrator of a given production may serve as Orchestra Contractor, Supervisor Copyist, Copyist or Instrumentalist on that production.

(ii) Except in theatres where the required minimum number of musicians is five (5) or less, no Orchestrator of a given production may serve as Conductor on that production, unless music for that production has been orchestrated for Off-Broadway or for an out of town venue more than three months prior to the first paid public performance on Broadway. In such event the orchestrator who has been the Conductor of the original

production may continue as Conductor for the Broadway run; provided that any new orchestration work required in connection with the Broadway presentation must be performed by another orchestrator. One month notice, unless Local 802 waives this requirement, shall be given to Local 802 when such transfer is anticipated.

- (b) No Conductor, Orchestra Contractor, or Instrumentalist on a given production may serve as Orchestrator or Copyist on that production.

(8) Special Work

- (a) Special routine work where two (2) or more scores or orchestral parts must be used or referred to, shall be charged for at forty percent (40%) above the regular rate. However, when such work is done on the computer, it shall be charged for at the applicable computer copying hourly rate.
- (b) Modulations, new introductions, endings, interpolations, etc. shall be charged for at orchestration prices, plus regular time rates for cutting, pasting, marking, fixing, etc. However, when such work is done on the computer, it shall be charged for at the copying hourly rate.

(9) Billing

- (a) Whenever billing is accorded a Musical Director or Conductor, billing in like degree shall be accorded the Supervisor Orchestrator.
- (b) When an Associate Orchestrator or Associate Orchestrators are also engaged they shall receive credit in the staff listing in the Playbill. This credit may not be waived.
- (c) Where biographies appear in the program the Employer/Producer shall use best efforts to insure that the Supervisor Orchestrator receives space approximately equal to that given the set, lighting, sound, and costume designers.
- (d) The term "Orchestral Arrangements," or any such term employing the words "Orchestra," "Orchestral," etc. may not be used in billing except by the Supervisor Orchestrator. Furthermore, the terms "Arrangements" and "Arranging," etc. are reserved to the Orchestrator except for the following: Dance Arrangements (or Dance Arranger) and Vocal Arrangements (or Vocal Arranger).

(10) Out-of-Town

- (a) All work done out-of-town or en route shall be charged for at book rates plus twenty-five percent (25%).
- (b) Employer/Producer must guarantee all Arrangers and Orchestrators a minimum of four (4) hours per calendar day at the time rate plus the 25% out-of-town premium (in return for four (4) hours of stand-by).
- (c) Producer must pay all Arrangers and Orchestrators, \$151.48 per calendar day for personal travel expenses effective March 11, 2003; \$153.20 effective September 1,

2003; \$155.50 effective March 1, 2004; \$157.23 effective September 6, 2004; \$159.52 effective March 7, 2005; \$161.82 effective September 5, 2005; \$164.12 effective March 6, 2006; and \$166.42 effective September 4, 2006.

(d) On all out-of-town calls:

(i) Employer/Producer must guarantee a two (2) day minimum for cities at a distance greater than 250 miles from New York City, including travel days.

(ii) There must be a twelve (12) hour notice of dismissal from a show.

(iii) Employer/Producer may not give notice of dismissal to an Associate Orchestrator except through his or her Supervisor. Any disputes relating to this provision shall be determined by the Supervisor of Music Preparation Services of Local 802.

(e) Employer/Producer shall provide round trip transportation. Air transportation shall be economy class on regularly scheduled airlines. Rail transportation shall be coach class. Producer shall provide rental cars when the above forms of transportation do not suffice or shall reimburse travel by personal car when requested by the Producer at the rate of thirty-two and one-half (32.5) cents per mile (or the latest IRS rate) for actual miles driven.

(f) Incurred expenses shall be reimbursed from point of departure (train station or air line terminal) to point of out-of-town employment and return to New York City.

(g) The costs of transporting and insuring a computer(s) for out-of-town work shall be borne by the Employer/Producer provided the computer(s) is/are under the Employer/Producer's care, custody and control.

(11) Travel Time

Travel time shall be paid at no less than the daily guarantee.

(12) Pension

Pension contributions on behalf of Music Preparation personnel (Arrangers and Orchestrators) shall be made as follows:

(a) While the show is in pre-production and during its pre-Broadway performances the Employer/Producer shall pay eight percent (8%) of scale wages to the Union Pension Trust Fund. In no event shall such pension contributions be taken from the .045 Tax Relief Fund unless credit is earned as provided in subparagraphs (c) and (d).

(b) The period of time, if any, that Music Preparation personnel work in New York before the first paid public performance shall be considered as though the show were not in New York and pension contributions shall be made as provided in subparagraph (a).

(c) If Music Preparation personnel perform services after the first paid public performance in New York, such personnel shall, during said period of employment be entitled to pension credit from the .045 Tax Relief Fund in the same manner as members of the orchestra. Whenever this pension credit is applicable the eight percent (8%) pension contribution shall not be required. The eight percent (8%) contribution however, shall be required for those Music Preparation personnel employed in a production which is otherwise covered by this Agreement but on whose behalf contributions are not made to the .045 Tax Relief Fund.

(d) To the extent the .045 Tax Relief Fund share for Local 802 personnel exceeds eight percent (8%) of scale wages, such excess shall be applied as a credit against the pension contributions made by the Employer/Producer on behalf of the Music Preparation personnel prior to the first paid public performance. If such credit cannot be repaid because of the method of bookkeeping, the Employer/Producer shall be entitled to be reimbursed from the box office receipts that would otherwise be allocated to the musicians' portion of the .045 Tax Relief Fund.

(13) Health

All personnel who perform Music Preparation Services shall be covered by Local 802 H.B.P. benefits.

(a) Contributions on behalf of each Music Orchestrator shall be \$38.50 per day. In each succeeding six (6) month period, contributions shall increase by the amount required by the H.B.P. Trustees not to exceed \$2.50.

(b) In the event the Employer/Producer makes contributions on behalf of Music Preparation Employees/Personnel in an amount which equals the eligibility requirements for six (6) months welfare coverage in Plan A the Employer/Producer need not make any additional payments for said Music Preparation Employees/Personnel. [See Article XV D. (1)(a) for maximum contribution amounts.]

(14) Vacation

Producer shall pay all Music Preparation personnel a vacation payment of three percent (3%) of scale wages.

SECTION II

RULES FOR ORCHESTRATION

(1) (a) The wages specified herein are minimum charges and members of Local 802 and of other A.F. of M. locals in all their engagements and transactions must strictly observe and conform to the following wage schedules and their requirements.

(b) Although the terms "Arrange, Arranger and Arrangement" have long been used loosely to describe any and all forms of orchestration, for purposes of clarification it is hereby established that the art of Arranging, including, as it does, the creative work of

harmonic, melodic, rhythmic, and contrapuntal nature, belongs to the province of creative work and the following wages and conditions are based solely upon the labor of orchestration.

- (c) Wages quoted refer only to orchestration and must not be interpreted as to include Arranging (reharmonization, paraphrasing, development, etc.). Prices for arranging are left to the discretion of the person doing the work, provided, however, that the price charged shall never be less than the minimum wage for orchestrating.
- (2) Orchestrating is defined as the art of scoring the various voices of an already written composition complete in form. A composition is considered complete in form when it fully represents the melodic, harmonic and rhythmic structures.
- (3) A complete score for extraction is one in which all parts appear exactly as they will be copied, with the following exceptions:
 - (a) Normal *come sopras*. (*Come sopras* which involve continued references from page to page for the insertion of short passages are not to be considered "normal.")
 - (b) Col passages where no transposition is involved, i.e., unisons requiring the copying of identical notes.
 - (c) Piano parts to be constructed by combining exact copy of the guitar part for the right hand and exact copy of the bass part for the left hand.
 - (d) Bass part to be extracted from the piano part by copying the left hand exactly as written.
- (4) A score page is to consist of four (4) measures, and shall be computed on the basis of a minimum of ten (10) parts or less.
- (5) Voice and conductor parts written by the Orchestrator into the score shall be computed as instrumental parts.
- (6) A pickup shall be computed as a full measure.
- (7) (a) *Divisi* parts shall count as separate lines.
 - (b) Piano parts consisting of chord symbols and bass parts shall count as two lines.
 - (c) Piano parts entirely written out in notes shall count as three lines.
 - (d) Piano parts entirely written out with added chord symbols shall also count as three lines.
 - (e) Synthesizer parts shall be written as a minimum of three lines.
 - (f) The word "piano" is to be construed as including harp, keyboard instruments and all instruments normally written as two staves, e.g. organ, celeste, accordion, etc.

- (8) *Come sopras* shall be paid for at the score page rate.
- (9) It shall be a violation to make repeats within a chorus in order to circumvent the price; repeats, *Dal Segno*, etc. which appear in the composition shall be allowed.
- (10) If the last page consists of two (2) measures or less it shall be computed on a half-page basis; if more than two (2) measures, on a full-page basis.
- (11) Lyrics, when included in the score at the Producer's request, shall count as one line per set.
- (12) The following wage rates do not include proofreading.

ORCHESTRATION WAGE RATES

- (1) Ten (10) lines or fewer, per score page:

| | | | | | | | |
|-------------------------------------|------------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|
| <u>3/11/03</u> to <u>8/31/03</u> | <u>9/1/03</u> to <u>2/29/04</u> | <u>3/1/04</u> to <u>9/5/04</u> | <u>9/6/04</u> to <u>3/6/05</u> | <u>3/7/05</u> to <u>9/4/05</u> | <u>9/5/05</u> to <u>3/5/06</u> | <u>3/6/06</u> to <u>9/3/06</u> | <u>9/4/06</u> to <u>3/4/07</u> |
| \$25.49 | \$25.78 | \$26.16 | \$26.45 | \$26.84 | \$27.23 | \$27.61 | \$28.00 |

- (2) For each additional line beyond ten (10), add per score page:

| | | | | | | | |
|-------------------------------------|------------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|
| <u>3/11/03</u> to <u>8/31/03</u> | <u>9/1/03</u> to <u>2/29/04</u> | <u>3/1/04</u> to <u>9/5/04</u> | <u>9/6/04</u> to <u>3/6/05</u> | <u>3/7/05</u> to <u>9/4/05</u> | <u>9/5/05</u> to <u>3/5/06</u> | <u>3/6/06</u> to <u>9/3/06</u> | <u>9/4/06</u> to <u>3/4/07</u> |
| \$1.39 | \$1.41 | \$1.43 | \$1.44 | \$1.46 | \$1.49 | \$1.51 | \$1.53 |

- (3) Preparing a sketch for an orchestration is payable at fifty percent (50%) of the ten-line page rate:

| | | | | | | | |
|-------------------------------------|------------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|
| <u>3/11/03</u> to <u>8/31/03</u> | <u>9/1/03</u> to <u>2/29/04</u> | <u>3/1/04</u> to <u>9/5/04</u> | <u>9/6/04</u> to <u>3/6/05</u> | <u>3/7/05</u> to <u>9/4/05</u> | <u>9/5/05</u> to <u>3/5/06</u> | <u>3/6/06</u> to <u>9/3/06</u> | <u>9/4/06</u> to <u>3/4/07</u> |
| \$12.74 | \$12.89 | \$13.08 | \$13.23 | \$13.42 | \$13.61 | \$13.81 | 14.00 |

- (4) Adding parts to an existing score, per score page, per line:

| | | | | | | | |
|-------------------------------------|------------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|
| <u>3/11/03</u> to <u>8/31/03</u> | <u>9/1/03</u> to <u>2/29/04</u> | <u>3/1/04</u> to <u>9/5/04</u> | <u>9/6/04</u> to <u>3/6/05</u> | <u>3/7/05</u> to <u>9/4/05</u> | <u>9/5/05</u> to <u>3/5/06</u> | <u>3/6/06</u> to <u>9/3/06</u> | <u>9/4/06</u> to <u>3/4/07</u> |
| \$1.39 | \$1.41 | \$1.43 | \$1.44 | \$1.46 | \$1.49 | \$1.51 | \$1.53 |

- (5) Orchestrating in the parts (without score) shall be paid at the combined price of orchestrating and copying.
- (6) (a) Transcribing a melody from voice, instrument, or mechanical device, including chord symbols and lyric (one staff):

1st page (up to 32 measures):

| | | | | | | | |
|-------------------|-------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| 3/11/03 | 9/1/03 | 3/1/04 | 9/6/04 | 3/7/05 | 9/5/05 | 3/6/06 | 9/4/06 |
| <u>to 8/31/03</u> | <u>to 2/29/04</u> | <u>to 9/5/04</u> | <u>to 3/6/05</u> | <u>to 9/4/05</u> | <u>to 3/5/06</u> | <u>to 9/3/06</u> | <u>to 3/4/07</u> |
| \$82.85 | \$83.79 | \$85.05 | \$85.99 | \$87.25 | \$88.50 | \$89.76 | \$91.02 |

Each additional page (up to 32 measures):

| | | | | | | | |
|-------------------|-------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| 3/11/03 | 9/1/03 | 3/1/04 | 9/6/04 | 3/7/05 | 9/5/05 | 3/6/06 | 9/4/06 |
| <u>to 8/31/03</u> | <u>to 2/29/04</u> | <u>to 9/5/04</u> | <u>to 3/6/05</u> | <u>to 9/4/05</u> | <u>to 3/5/06</u> | <u>to 9/3/06</u> | <u>to 3/4/07</u> |
| \$49.71 | \$50.28 | \$51.03 | \$51.60 | \$52.35 | \$53.11 | \$53.86 | \$54.62 |

- (b) Transcribing lead lines from a mechanical device and recreating an orchestration with similar voicing is to be paid at applicable orchestration scale plus:

| | | | | | | | |
|-------------------|-------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| 3/11/03 | 9/1/03 | 3/1/04 | 9/6/04 | 3/7/05 | 9/5/05 | 3/6/06 | 9/4/06 |
| <u>to 8/31/03</u> | <u>to 2/29/04</u> | <u>to 9/5/04</u> | <u>to 3/6/05</u> | <u>to 9/4/05</u> | <u>to 3/5/06</u> | <u>to 9/3/06</u> | <u>to 3/4/07</u> |
| \$7.34 | \$7.43 | \$7.54 | \$7.62 | \$7.73 | \$7.84 | \$7.95 | \$8.07 |

- (c) Exact transcription of all parts of a composition from a mechanical device, and recreating the orchestration, shall be paid at double the applicable orchestration scale.

(7) Time Work

- (a) Time work may be charged only where the page rate does not apply, e.g. for routining, adjustments to orchestrations (including new introductions or endings, modulations, etc.), travel, rehearsals, conferences, sound checks, and so forth.
- (b) The basic daytime hourly rate for time work shall be double the minimum page rate (including any applicable charges for additional lines).
- (c) Time work shall be computed in increments of one-half (1/2) hour.

SCHEDULE C

A. General Rules

(1) This Schedule establishes employment terms and conditions for Copyists hired by an Employer/Producer within the jurisdiction of Local 802 (the five boroughs of New York City, Nassau and Suffolk Counties) to render music copying services for a Broadway production. An Employer/Producer may, for a Broadway, road or other production, employ and/or subcontract music copying work to Copyists from outside the jurisdiction of Local 802, in which event this Schedule shall not apply. Copyists hired pursuant to this schedule will provide music copying services for the run of the production unless the Employer/Producer provides written notice stating the reason, e.g., cost, quality or timeliness, for discontinuing a Copyist's services. Such decisions shall be subject to the grievance procedure, but may be overturned in arbitration only if the Union demonstrates that the reason stated was false and made in bad faith. The arbitrator may not in any circumstances question the importance of the reason or substitute his/her business or artistic judgment for that of the Employer/Producer.

(2) All Copyists, including Supervisor Copyists, hired within Local 802's jurisdiction shall be members in good standing of the Union or shall make application for membership within thirty days of employment. All rules and regulations of the Constitutions and By-laws of Local 802 and the American Federation of Musicians shall apply pursuant to Article XXIV of this Agreement.

(3) Prices specified in the schedules set forth below are minimums only. In cases where work is not classified, the price will be set pursuant to negotiation between the Employer/Producer and Local 802. Copying on contingency is strictly forbidden.

(4) At the discretion of the Musical Director, minor changes (e.g. a single note change, a repeat sign around a bar or instructions for a "tacet") may be dictated to the orchestra at rehearsal.

(5) A Copyist shall not invest in a production for which that musician is working and an Employer/Producer may not request or accept any such investment.

(6) No Copyist hired pursuant to this Schedule for a given production may serve as Orchestrator, Conductor, Orchestra Contractor, or Instrumentalist for that production. No Orchestrator, Conductor, Orchestra Contractor or Instrumentalist on a given production may serve as a Copyist on that production. This provision shall not prohibit an orchestrator from providing an Employer/Producer with orchestrations in digital data form; however, any extraction of instrumental parts from such orchestrations shall be performed by a Copyist.

(7) There must be a Supervisor Copyist for all theatrical productions. The Supervisor Copyist shall be responsible for giving out and collecting work, supervising and/or giving instructions concerning assignments, and any other duties required to prepare the music for performance. The Supervisor Copyist shall be paid not less than twenty-five percent (25%) above the total amount paid for the work he or she supervises, including all work done by the Supervisor. The additional Copyists shall not be required to assume the

functions of the Supervisor Copyist. The Supervisor Copyist shall receive program credit on the production credit list.

B. Contracts

(1) Original Score: The Employer/Producer shall furnish to the Supervisor Copyist in writing a complete song list, instrumentation and bar count for the Original Score of the show. As soon as possible, the Supervisor Copyist shall furnish to the Employer/Producer a written estimate of the total cost of copying the Original Score. At the request of the Employer/Producer, the estimate shall be furnished based on Page Rates, on Hourly Rates or both. A Page Rate estimate will be guaranteed by the Supervisor Copyist provided that the song list, instrumentation and bar count do not change. Work shall not begin before the Employer/Producer or his/her designee gives written approval of the Supervisor Copyist's estimate, including a stipulation as to whether copying shall be done based on Page Rates or Copying Hourly Rates.

(2) Changes or Additions to Original Score, New Music and Change Orders: If changes to the Original Score must be made, or if new songs or musical sequences must be added, the procedures set forth in B.(1) above shall apply to each such change or addition. Before any work begins, the Employer/Producer or his/her designee must give written approval thereof. Any work exceeding the cost of the initial estimate must be approved before work continues.

(3) It is the essence of this Agreement that no music copying services will be paid for unless the Employer/Producer or his/her designee has given prior written approval. All contracts must list the designees of the Employer/Producer who are authorized to give the approvals required by this Schedule, e.g., estimates, overtime etc.

(4) Contracts for all work must be signed in advance and deposited with Local 802 and must state whether the work is to be done at the Page Rates or Hourly Rates. An Employer/Producer or any party representing an Employer/Producer shall, if requested by Local 802, deposit in escrow with the Union sufficient and reasonable sums at such times as the Union's Supervisor of Music Preparation Services deems proper to cover charges for music copying services. Music copying services performed shall at no time exceed the escrow deposit.

(5) All bills must be presented to the Company Manager in time for payment on the regular weekly company payroll and must be paid on the regular weekly payday.

(6) All claims for copying services delivered and billed but not paid for on the regular weekly pay day must be filed with the Supervisor of Music Preparation Services of Local 802.

(7) To insure collection by the union, contracts must be on file, work must be delivered accompanied by an itemized bill, and a copy of the signed bill sent to the Supervisor of Music Preparation Services of Local 802.

C. Rates For Copying

The rates set forth below include bar numbering, clefs, key signatures, time signatures, chord symbols, lyrics, etc.

(1) Page Rates

(a) Reeds, brass, single-line strings, and similar (one line, one note on a line): \$12.50, increased to \$13.00 effective March 7, 2005 and to \$13.25 effective March 6, 2006.

(b) Piano, harp, synthesizer, group vocals, drums, percussion, guitar, strings, lead sheets (double line parts or more than one note on a line): \$25.00, increased to \$26.00 effective March 7, 2005 and to \$26.50 effective March 6, 2006.

(c) Piano-vocal (Piano part with vocal lines on top): \$30.00, increased to \$31.00 effective March 7, 2005 and to \$31.75 effective March 6, 2006.

(d) Piano-conductor (piano part with vocals and orchestral reduction "conductor" line): \$34.00, increased to \$35.00 effective March 7, 2005 and to \$36.00 effective March 6, 2006.

(2) Hourly Rates

(a) Library Rate (including rehearsals, proofreading, transposing, collating, binding parts and scores, hard copy cut-and-paste revisions, pencil-marking fixed, attendance at rehearsals and performances, and all work other than copying and/or editing): \$30.00 per hour, increased to \$31.00 effective March 7, 2005 and to \$31.75 effective March 6, 2006.

(b) Copying-Editing Rate: \$45.00 per hour, increased to \$46.50 effective March 7, 2005 and to \$47.50 effective March 6, 2006.

(3) Overtime at the rate of time and one-half of the applicable rate shall be paid for work in excess either of eight (8) hours in one day or forty (40) hours at straight time in a work week (Monday through Sunday); for hours worked after midnight and before 8:00 a.m.; for hours worked on a Sunday; and for work performed on Martin Luther King's birthday, President's Day, Memorial Day, Independence Day and Labor Day. Double time shall be paid for work performed on New Years Day, Easter Sunday, Thanksgiving Day, and Christmas Day. Written consent of the Employer/Producer or his/her designee must be obtained before overtime may be worked. There shall be no pyramiding of overtime.

(4) Overtime rates shall continue until dismissal and shall resume upon return call unless at least nine (9) hours have elapsed.

(5) Copyist shall be guaranteed a minimum call of four (4) hours at the Library Hourly Rate. No less than the Library Hourly rate shall be paid for travel time when a

copyist is requested to travel from one place of business to another to receive or deliver work, or is requested to attend orchestra performances, rehearsals, etc.

D. Rules For Copying

- (1) Rates for copying or extracting do not include any proofreading services.
- (2) Proofreading parts against the score shall be charged at the Hourly Library Rate.
- (3) When music copying services are performed pursuant to this schedule, all parts must include the Copyist's union number, local and year.
- (4) All parts shall be written on ten (10) stave paper. Parts requiring three (3) or more staves may, if practical, be written on twelve (12) stave paper.
- (5) Parts copied at Page Rates shall be computed by pages and half pages except that the first page shall be paid at the one-half page rate (1/2) unless the page extends beyond five (5) lines, in which case the full page rate shall be paid.
- (6) An average of four (4) measures or more per stave shall prevail.
- (7) Recopying of a full orchestra score, making a full score from individual instrumental parts or creating instrumental parts from a sketch score shall be charged for at the Copying Hourly Rate.
- (8) Translating data of a digitally constructed score or sequencer file into midi tracks or notation files or parts, quantization of a sequencer file or midi tracks (i.e. correcting data translation errors), shall be paid for at the Copying Hourly Rate.
- (9) Transferring files via modem, null-modem, or ISDN (or similar method), translation of files from one computer format or platform to another, and copying and/or compressing files for transfer to removable media shall be charged at the Hourly Library Rate.

E. Other Uses

- (1) If orchestral parts of a Broadway production or any part thereof that were prepared by Copyists covered by this Schedule are used by the Employer/Producer and/or Composer or with their authorization in a category other than live theatrical performance, i.e., a "New Use" (e.g. cast album, live/tape television, radio/television commercial announcement, pay/cable TV, video cassette, video disk, etc.), the Copyists who prepared the parts shall be paid the minimum, applicable Local 802 or American Federation of Musicians scale (including any applicable supervision fee.) The New Use payment for an original cast album shall cover any music copying work required by the Employer/Producer at the recording session(s). Any additional work required that is performed prior to the sessions(s) shall be paid for under the terms of the Sound Recording Labor Agreement.

(2) Paragraph E.(1) notwithstanding, neither the Employer/Producer nor the Composer shall be required to make a New Use or any other additional payment if orchestral parts of a Broadway production are used for rental publication, provided, however, that the terms of this Schedule shall apply to changes and/or additions made for that purpose.

(3) For Off-Broadway productions where the music was prepared in New York City pursuant to an agreement with Local 802, the Employer/Producer shall pay the difference between the amount paid and the appropriate minimum Local 802 Broadway rates for material actually used in the Broadway production.

(4) Orchestral parts made for a use other than a Broadway production maybe used in a Broadway production without additional compensation.

(5) The Employer/Producer shall immediately notify Local 802 of any New Use.

(6) The substance and intent of this Section shall be incorporated in agreements by which an Employer/Producer grants rights to use orchestral parts copied under this Schedule.

F. Materials and Facilities

(1) All paper, necessary working materials, and printing of duplicate parts shall be supplied by the Employer/Producer or furnished by the Supervisor at cost. The Employer/Producer shall have the option to provide adequate facilities for Copyists. All facilities provided by Copyists shall be paid for by the Employer Producer at the rate of \$120.92 per day through March 11, 2004; the percentage increase in each succeeding year of this Agreement shall be the average percentage established by the rent stabilization guidelines for New York City for one and two year leases of residential apartments. Messenger service (pickup and delivery), postage and shipping shall be paid for by the Employer/Producer.

(2) All digital data in any storage medium (including but not limited to optical drives, hard drives, DAT, disk, etc.) to generate computer scores shall be the sole property of the Employer/Producer and may be used for purposes other than the originally contracted for purposes upon payment provided herein, if applicable.

(3) When out-of-town, all paper, necessary working materials, printing of duplicate parts, and facilities shall be supplied by the Employer/Producer or furnished by the Supervisor Copyist at cost. At no time shall the facilities be part of the living quarters of the Copyist. Messenger service (pickup and delivery) shall be paid for by the Employer/Producer.

(4) No office space charge or commissions shall be deducted from wages.

G. Out-of-Town

(1) If a Copyist is required by the Employer/Producer to work out-of-town, the Employer/Producer shall pay for and furnish the Copyist with economy-class round-trip

air, rail or bus transportation from and to New York City. Such travel shall be on carriers and at times determined by the Employer/Producer in its sole discretion. The Employer/Producer shall provide rental cars when the above forms of transportation do not suffice or shall reimburse travel by personal car when requested by the Employer/Producer at the rate of thirty-two and one-half (32.5) cents per mile (or the latest IRS rate) for actual miles driven. In addition, for each day that a Copyist is required to work out-of-town, the Employer/Producer shall furnish and pay for single-room accommodations (including applicable taxes) in a first-class hotel of Employer/Producer's choice, and pay to the Copyist Fifty Dollars (\$50.00) per day, except for travel days when the Copyist returns New York City before 12:00 p.m. The Copyist shall be responsible for any room service, laundry, cleaning or other incidental hotel charges.

(2) For each day that a Copyist is required by the Employer/Producer to perform out-of-town work, the Copyist shall be guaranteed a minimum six (6) hours per day at the Hourly Library Rate, which shall be offset against any actual work performed. This minimum payment shall not be made on the day designated forty-eight (48) hours in advance by the Employer/Producer as the "day off" for that Copyist. The designated day off may be changed on forty eight (48) hours notice.

(3) Travel time shall be paid at no less than the daily guarantee unless travel occurs on an employee's designated day off.

(4) The Employer/Producer shall guarantee a two (2) day minimum for travel to cities more than 250 miles from New York City, including travel days.

(5) A Copyist working out-of town whose employment is terminated after 6:00 p.m. shall be paid the minimum for the following day.

(6) Incurred expenses shall be reimbursed from point of departure (train station or air line terminal) to point of out-of-town employment and return to New York City.

(7) The costs of transporting and insuring a computer(s) for out-of-town work shall be borne by the Employer/Producer provided the computer(s) is/are under the Employer/Producer's care, custody and control.

H. Pension

Pension contributions on behalf of Copyists shall be made as follows:

(1) During pre-production and pre-Broadway performances, the Employer/ Producer shall pay eight percent (8%) of scale wages to the Union Pension Trust Fund. In no event shall such pension contributions be taken from the .045 Tax Relief Fund unless credit is earned as provided in Sections H.(3) and (4).

(2) The period of time, if any, that Copyists work in New York City before the first paid public performance shall be as though the show were not in New York City and pension contributions shall be made as provided in Section H.(1).

(3) Copyists who perform services after the first paid public performance in New York City shall be entitled during said employment to pension credit from the .045 Tax Relief Fund in the same manner as members of the orchestra. When this credit is applicable the eight percent (8%) pension contribution shall not be required. The eight percent (8%) contribution shall be required for Copyists employed in a production otherwise covered by this Agreement but on whose behalf contributions are not made to the .045 Relief Fund.

(4) To the extent the .045 Tax Relief Fund share for Local 802 personnel exceeds eight percent (8%) of the scale wages, such excess shall be applied as a credit against the pension contributions made by the Employer/Producer on behalf of Copyists prior to the first paid public performance. If such credit cannot be repaid because of the method of bookkeeping, the Employer/Producer shall be entitled to be reimbursed from the box office receipts that would otherwise be allocated to the musicians' portion of the .045 Tax Relief Fund.

I. Health

Copyists shall be covered by Local 802 H.B.P. benefits as follows:

(1) Contributions on behalf of each Copyist shall be \$38.50 per day.

(2) In each succeeding six (6) month period, contributions shall increase by the amount required by the H.B.P. Trustees not to exceed \$2.50.

(3) In the event the Employer/Producer makes contributions on behalf of Copyists in an amount which equals the eligibility requirements for six (6) months welfare coverage in Plan A, the Employer/Producer need not make any additional payments for said Copyists.

J. Vacation

Copyists shall receive a vacation payment of three percent (3%) of scale wages.

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