

AGREEMENT

Agreement made and entered into this 22nd of January, 2009 by and between Local 802, Associated Musicians of Greater New York, (hereinafter called "Union") located at 322 West 48th Street, New York, New York 10036 and City Center, Inc. (hereinafter called "Employer") located at 130 West 56th Street, NY, NY 10019 for the production of *Encores! Great American Musicals in Concert* at City Center.

It is agreed as follows:

1. RECOGNITION

The Employer hereby recognizes the Union as the exclusive collective bargaining representative for all musician/employees employed by the Employer. Said musician/employees shall constitute the collective bargaining unit covered by the Agreement.

The Union recognizes the Producer/Employer as the employer of all musicians who perform on the production.

2. UNION SECURITY AND DUES CHECK OFF

Musician/employees covered by this Agreement shall, as a condition of employment, become and remain members in good standing of the Union 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 or become member of the union after the effective date of this agreement shall as a condition of employment remain members in good standing of the Union for the duration of the Agreement.

The Employer agrees to report to the Union within five (5) days the name, Social Security numbers and first day of employment of any new musician/employees. The Employer agrees further that upon receipt of written authorization from each musician/employee to deduct from such musician/employee's salary the amount of his Local 802 work dues and transmit same each month to Local 802 by no later than the 10th day of the following month.

3. WAGE SCALES

A. The minimum wage per musician for six performances or less shall be \$1,270.57 effective January 1, 2009, \$1,295.98 effective January 1, 2010, and \$1,328.37 effective January 1, 2011. The employer shall have the right to substitute two dress rehearsals for two of the performances. Performances shall be three hours in duration except that one of the substituted dress rehearsals may be 3 1/2 hours in duration.

B. rehearsals and audition shall be paid at the rate of \$49.43 per hour effective January 1, 2009, \$50.41 effective January 1, 2010, and \$51.68 effective January 1, 2011 with overtime paid at the rate of \$24.72 per half hour effective January 1, 2009, \$25.21 effective January 1, 2010, and \$25.84 effective January 1, 2011.

C. If a rehearsal other than a dress rehearsal is scheduled at a time which conflicts with the normally scheduled show times of a Broadway show, any Encores! orchestra member who was scheduled to perform in a Broadway show shall receive the wages he/she would have received working the Broadway show or wages he/she would receive as per the terms of this agreement, whichever is higher.

D. Overtime for performances and dress rehearsals shall be in half-hour (½) segments compensable at time and one-half (1 ½) of the regular rate, except that the first ½ hour segment of overtime payment beyond the 3 ½ hour dress rehearsal referred to in 3A above shall be pro-rata the hourly rate.

E. The Musical Director/Conductor or Leader shall receive one hundred percent (100%) additional over and above the appropriate rates specified herein. The concertmaster shall receive fifty percent (50%) additional over and above the appropriate rates specified herein. The first trumpet shall receive twenty percent (20%) additional over and above the appropriate rates specified herein. The drummer shall receive twenty percent (20%) additional over and above the appropriate rates specified herein which shall be inclusive of one doubling premium.

F. Doubling: No member of an orchestra or stage band shall perform on more than one instrument during a performance or rehearsal unless he/she receives additional compensation as set forth herein. The categories of instruments for which doubling premiums are paid shall be as set forth in Article IX Section C, of the agreement between The League of American Theatres and Producers Inc. and Local 802 AFM.

First additional instrument; 10 percent above applicable rates. Second and each additional instrument thereafter, 5 percent above the applicable rates (for each such instrument).

G. The Employer shall be responsible for furnishing all keyboard instruments and percussion instruments other than trap drums. If keyboard or percussion instruments are required to be supplied by a musician, the Employer will pay the musician a negotiated fair rental therefore.

I. Nothing contained in this article shall prevent any individual from negotiating a wage in excess of minimum scale.

4. ORCHESTRA SIZE

The Employer, in accordance with its current practice, will utilize the number of musicians called for in the original/existing orchestrations. The employer agrees not to duplicate or replace string section players or other instrumentalists with synthesizers. The Employer will engage the full string section as required by the orchestration. Compositions written expressly for live musician(s) with synthesized, electronic or pre-recorded sound, but excluding the use of the virtual orchestra machine, will be acceptable.

5. CARTAGE

The Employer shall pay to each musician who transports to the engagement a set of drums, a string bass, a tuba, a sousaphone, a baritone saxophone, a cello, a vibraphone, or a second saxophone (other than a soprano saxophone) a cartage fee of no less than twelve dollars and up to twenty five dollars (\$25.00) upon presentation of a receipt for actual cartage expenses incurred.

6. HEALTH BENEFITS

A. The Employer agrees to contribute to the Musicians' Local 802 Health Plan (HP) an amount consistent with the schedule in Section (C) of this Article on behalf of all its musician/employees in order to provide health benefits for said musicians in accordance with the rules and regulations of the said plan.

B. The Employer agrees to be bound by the provisions of the Agreement and Declaration of Trust of the Local 802 Health Plan (HP) and the Trustees of the Musicians' Local 802 Health Plan (HP) as amended.

C. Effective January 1, 2009 contributions to the Local 802 Health Fund shall be \$29.00 per musician per service, with a cap of \$116.00 for any calendar week, a cap of \$150 for all performances and rehearsals of a given production, and a cap of \$150 per week for the Summer Series.

D. For rehearsal and audition musicians not in conjunction with the orchestra, contributions shall be made in the amount of \$10.50 per service of two hours or less, capped at \$31.50 per day and \$116.00 per week.

E. If the Trustees of the Fund increase eligibility requirements, the employer agrees to increase contributions by the same percentage as the eligibility requirements for Plan A are increased with such increase capped at \$5 per year.

7. PENSION

During each week of employment of one or more musician/employees, the Employer agrees to contribute to the American Federation of Musicians and Employers Pension Fund a sum equal to twelve percent (12%) of each musician's gross wages. Checks to be made payable to the AFM & EP Fund shall be sent to Local 802 along with the names of covered musicians. All such check(s) shall be accompanied by a remittance form identifying each employee

for whom a contribution is made, the musicians name, social security number, date(s) of engagement for which benefits are paid, scale wages on which pension is paid, and the amount of health benefits contributions. The check(s) and remittance information shall be transmitted to Local 802, AFM for forwarding to the Fund(s) within thirty (30) days following the end of the month in which the services were rendered for which such contributions are payable. If the Employer is unincorporated, no contributions will be paid on behalf of any owner or part-owner of the Employer. The Employer agrees to be bound by The Agreement and Declaration of Trust establishing The American Federation of Musicians and Employees Pension Fund, as it may be amended from time to time, which is incorporated by reference into this Agreement.

8. WITHHOLDINGS

All musician/employees are to be considered as employees for the purposes of Social Security, unemployment insurance, workers' compensation and all other withholding and insurance benefits under current law.

9. IDENTITY WITH THE PRODUCT

In the event of a cast album, taping for radio or television broadcast, or radio/television commercial is made by the employer, all members of the orchestra engaged for the live performance shall be offered employment provided that their instruments are utilized in any such activity. In the event a cast album of a production is made by an entity other than the Employer, the Employer agrees that the orchestra contractor for the live performance shall enter into a letter of agreement with Local 802 which will provide that, in the event he or she contracts with a record company to provide musicians for such a cast album, he/she will first offer each musician engaged for the live performance the option of working each recording session. This agreement shall be subject to the record company's having contracted with the contractor for the same or substantially the same orchestra that performed at the live production. Should the record company notify the contractor of its desire to engage musicians other than those engaged for the live production, this should be the subject of discussion between the contractor and the union.

10. NO DISCRIMINATION

Discrimination against any musician/employee because of race, religion, sex, ethnic background, political affiliation, age, affectional preference or union activity is prohibited under this Agreement.

11. DISMISSAL

The Employer shall have the right to dismiss musician employees for just cause provided that such right shall not be exercised in an arbitrary or capricious manner. Any dispute over dismissal shall be subject to the grievance procedure provided in Article 14 herein.

12. GRIEVANCE AND ARBITRATION PROCEDURE

All disputes involving a claim of violation of this Contract (hereinafter referred to as a "grievance") shall be resolved in the following manner:

A. Such grievance shall be discussed by the Union and the Employer.

B. In the event that the grievance is not resolved within 30 days after it has first been presented, either the Employer or the Union may submit the matter to arbitration before a mutually agreeable third party. In the event the Employer and Union are unable to agree upon a third party, the demand for arbitration shall be submitted to the American Arbitration Association in New York City and conducted pursuant to the Voluntary Labor Arbitration rules of the Association.

C. The decision of the arbitrator shall be final and binding upon the parties and their members. In the event of a dismissal or other disciplinary action which causes a musician to lose wages or his/her chair, the arbitrator may award full back wages and reinstatement if it is determined that such disciplinary action was not justified by either just cause or artistic reasons. The cost of any arbitration shall be borne equally by the parties.

13. NO STRIKES - NO LOCKOUTS

The Union agrees not to conduct, cause or permit any strike or picketing against the Employer, during the term of this Agreement, except for failure to pay wages when due or Health Benefits and Pension contributions within ten (10) days after such health benefits and pension contributions become due. The Employer agrees not to lock out musician employees during the term of this Agreement.

14. UNION BUSINESS REPRESENTATIVE

Union Business Representatives shall be permitted to visit the theater to monitor contract enforcement provided, however, that they shall not interfere in any way with a performance or rehearsal, and provided further that Union Representatives shall be neatly attired and shall observe the civilities and decorum of the occasion.

15. UNION CONSTITUTION AND BYLAWS

The Constitution, Bylaws, rules and regulations of Local 802 and 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 Constitution, Bylaws, rules and regulations are not contrary to or in violation of any provisions of this Agreement or law.

16. LOCKER ROOMS

Employer shall make best efforts to provide and maintain in a safe and sanitary condition a secure locker room or dressing room and storage for instruments.

17. POSTING BOND

The union may require a bond sufficient to cover music preparation wages, pension and health benefit costs whenever such costs are anticipated to exceed \$5,000.

18. MUSIC PREPARATION

All orchestration, copying, electronic programming (i.e. synthesizer programming) and other music preparation services for the show shall be paid according to the scales of the Local 802 General Price List for music preparation. All music so prepared shall not be used by the employer for any recorded or electronic medium without payment of the appropriate AFM or Local 802 scales for such uses.

19. SUCCESSORS AND ASSIGNS

In the event the Employer sells, transfers or assigns its business prior to the termination of this Agreement, this Agreement shall be applicable and binding upon the Employer's transferees, successors and assigns and both the Employer and any transferees, successors and assigns guarantee the complete performance of this contract for the full term thereof.

20. OTHER PRODUCTIONS

If the Employer remounts a production in another theatre within the jurisdiction of Local 802 or on Broadway of a show covered by this agreement, either as the producer or with a controlling interest in that production, the Employer agrees the musicians/employees employed for that show will have the right of first refusal for the new production if their instrument is utilized in the new production, and shall be engaged pursuant to an agreement with Local 802.

21. SEPARABILITY

In the event that one or more clauses or terms of this Agreement are found to be in violation of the law, all remaining clauses and terms shall remain in full force and effect.

22. SUBSTITUTION

The right to send a substitute during the rehearsal and performance period shall be considered on a case by case basis, taking into account the musical requirements of the production. With this consideration in mind, the right to substitute shall not be arbitrarily or capriciously denied. This policy may be reviewed by both parties.

23. MUSIC CONTRACTOR

The Employer agrees to employ Seymour Red Press as the Music Contractor for the term of this contract. The Music Contractor shall engage musicians on a show-by-show basis, using similar personnel as established by past practice, with the understanding that the Employer has flexibility in engaging musicians according to the particular needs of the production.

24. FUND RAISING EVENT

Musicians engaged for the Employer's Encores! Concert Event (i.e. "the Bash") shall be paid according to the following terms and conditions: a) Where the Bash includes three performances musicians shall be paid as per Article 3, above, except that in regard to 3.A. the employer shall have the right to substitute two (2) dress rehearsals and one (one) regular rehearsal for a total of three (3) performances; b) Where Bash includes two (2) performances each performance shall be paid at the rate of \$238.07 as of January 1, 2006, \$242.83 as of January 1, 2007, and \$248.90 as of January 1, 2008, and rehearsals shall be paid as per Article 3, above; c) where the Bash includes one (1) performance, the performance and rehearsals shall be paid as per the terms of the Local 802 Single Engagement Club Date Employers Contract.

25. DURATION

The duration of this Agreement shall be January 1, 2009 through December 31, 2011. Sixty days prior to the termination date of this Agreement either party may contact the other for the purpose of negotiating a new agreement.

27. RATIFICATION

Once this Agreement is fully executed it will be subject to the ratification of the Local 802 Executive Board. The Employer will be notified of said ratification.

For Local 802, AFM:

For New York City Center, Inc.

Bill Dennison, Recording Vice President

Mark Litvin, Sr. Vice President and
Managing Director