

MEMORANDUM OF AGREEMENT

MEMORANDUM OF AGREEMENT by and between the United Scenic Artists, USA Local 829, IATSE ("USA" or the "Union") and The Broadway League (the "League") on behalf of its producer members, made this 28th day of April, 2009.

WHEREAS, the League and the Union are parties to a 2003-2006 collective bargaining agreement that expired according to its terms on December 31, 2006; and

WHEREAS, the League and the Union have engaged in good faith negotiations for a successor agreement; and

WHEREAS, the parties have reached agreement on the terms and conditions of a successor agreement (the "Agreement"), subject to the ratification by the members of the bargaining unit ("hereinafter referred to as "ratification").

NOW, THEREFORE, in consideration of the mutual promises and obligations contained herein, the parties agree as follows:

1. The term of the Agreement shall be five (5) years, commencing January 1, 2007 though and including December 31, 2011.

2. Alternative Touring Program (ATP)

As an option to the existing terms of the Agreement, a Producer may choose to utilize the following terms and conditions for eligible touring productions, which shall be known as the Alternative Touring Program ("ATP"):

A. Eligibility for the ATP:

A Producer may choose to utilize the ATP terms for a touring Musical production where the production is subsequent to a New York production and covered under Article IV(E)(4)₂ under the following conditions:

- i. The touring production shall qualify for a tier under the "Tiered Touring Provisions" of the League/Actors Equity Association ("AEA") Production Contract or under the League/AEA Short Engagement Touring ("SET") Agreement, and the touring production shall be produced under the terms of either of those agreements between the League and the AEA.
- ii. All of the information that the Producer provides to AEA in order to establish qualification of the production for the terms less than the full Production Contract shall be provided to USA.

- iii. The touring production shall qualify under the terms of the Experimental Touring Program in the 2004-2008 Agreement between the League and the AEA, except that the "guarantee" caps at which a touring production may qualify under this Agreement shall be in accordance with those provided in the 2008-2011 League/AEA Production Contract and the League/AEA SET Agreement. USA has agreed to accept the credit to the qualifying guarantee of 50% of the average weekly transportation cost of up to 6 trucks plus 1 advance truck agreed to by AEA and the League in their recent negotiations. USA shall not unreasonably deny a touring production such other modifications to the qualifying provisions as may have been made by the League and AEA in their recent negotiations.
- iv. USA shall not unreasonably deny a Producer the ability to utilize the ATP terms with respect to Dramatic Productions.
- v. With respect to touring productions that are running at the time that this Agreement is ratified by USA, the ATP terms may be applied with agreement of the individual Designer.

B. Terms:

- i. All then current minimum fees, advances and daily payments provided for in the Agreement (IV(A) and IV(E)(2, 3 and 4)) for the Designer/Production categories for Musical productions shall be reduced for tours that qualify for the ATP. The minimum daily rate in IV(E)(2) shall be then current daily rate reduced by the percentages below. The minimum fees in IV(E)(3) and IV(E)(4) shall be the then current Article IV(A) rates reduced by the following percentages:

| <u>Scenic and Lighting Designer</u> | | <u>Costume Designer</u> | |
|-------------------------------------|-----|----------------------------|-----|
| Single Set Production | 15% | Cast of 1 to 20 persons | 15% |
| Unit Set Production | 20% | Cast of 21 to 35 persons | 15% |
| Multi-Set Production | 20% | Cast of 36 or more persons | 20% |

- ii. Minimum Additional Weekly Compensation provided for in the Agreement (IV(B)) shall be adjusted as follows:

a. Pre-Recoupment:

Musicals: The current structure under Article IV(B)(2)(a), except minimum shall be, under subsection (i) \$236 or (ii) \$277 or .425% of weekly, whichever is greater.

Dramatic: The current structure under Article IV(B)(2)(b), except minimum shall be \$224 per week.

- b. Post-Recoupment: The current structure under Article 4(B)(2), with weekly minimum AWC as per the full contract terms.

c. After 150% of Recoupment:

Same as in (ii)(b) above, except for Musicals, where if NOP option is selected as the method of AWC payment, .5% of weekly NOP 'against' \$296, whichever is greater.

- d. The dollar amounts in (B)(ii)(a), (b) and (c) above shall be increased and compounded year-over-year by the same percentage that other minimum wages, fees, advances and AWC are increased under the Agreement, per Section 16 below.
- iii. Under the ATP, if any Designer of a Musical production receives AWC that is based on NOP, all of the other Designers of that production shall have the option to receive AWC based on NOP, as well. The option shall be elected prior to the subsequent/touring production's first paid public performance.
- iv. Where a Designer's AWC rate for a touring production is less than three (3) times the regular, non-discounted, minimum rate of Article IV(B) of the Agreement, and the touring production plays: Boston, Chicago, Las Vegas, Los Angeles, San Francisco, Toronto or Washington D.C. for more than four (4) consecutive weeks, the Designer shall receive additional AWC in an amount equal to the difference between the minimum Design rate for the tour and the regular, non-discounted rate of Article IV(B) of the Agreement for all consecutive weeks and fractions of consecutive weeks that the production plays such city.
- v. If a touring production plays New York City and a Designer's AWC rate for a touring production is less than the regular, non-discounted, minimum rate of Article IV(B) of the Agreement, the Designer shall receive additional AWC in an amount equal to the difference between the Design rate for the tour and the regular, non-discounted rate of Article IV(B) of the Agreement for all consecutive weeks and fractions of consecutive weeks that the production plays New York City.
- vi. The 2006 (expired) wage rate for Assistant Designers will remain unchanged from 1/1/07 though and including 12/31/09, and shall then increase by 3.1% on 1/1/10 and by 3.4% on 1/1/11.

C. The Union shall have the right to prepare the first draft of the provisions of the ATP.

3. Right of First Refusal and Subsequent Use

A. Article XV(G) of the Agreement shall be modified as follows:

It is agreed that the original Designer shall have the right of first refusal for any subsequent production of the Company by the original Producer. The Designer shall be given a minimum of two (2) weeks to decide. In the event the original designer declines to perform the work, the Producer shall select a substitute Designer subject to the approval of the original Designer, which shall not be unreasonably withheld. The fee of the original Designer shall be reduced by the amount of the fee paid to the substitute Designer; however, the original Designer shall receive no less than the minimum fee and AWC due under the applicable terms of the Agreement. Any fee or AWC that the

substitute Designer may receive shall not be subject to the minimum terms of the Agreement.

B. The parties shall enter into a side letter that provides as follows:

During the negotiation for a successor agreement to the 2003-2006 Agreement, the parties recognized that Article XV(G) applies to touring productions, including touring productions that are produced under the terms of the ATP.

In addition, the parties confirmed that under the terms of Article XV(G), where a Designer in the exercise of his/her right of first refusal, declines to perform the additional work for a subsequent production, the Designer's designs and design concepts may be utilized in the subsequent production.

4. Sitdowns in Small Theatres

The parties agreed to form a committee to study the issue and to make recommendations to the bargaining parties for inclusion in the Agreement.

5. Royalty Waivers and Deferrals

A. The number of Royalty Waiver weeks provided in Article IV(B)(2)(c) shall be increased from six (6) weeks to eight (8) weeks. The number of weeks shall be further increased to match the number allowed by SSDC, if SSDC agrees to more than eight (8) weeks in the successor agreement to its 2004-2008 Agreement with the League. The limit of four (4) consecutive weeks shall remain, except that the number of consecutive weeks shall be increased to match the number allowed by SSDC, if SSDC agrees to more than four (4) consecutive weeks in its successor agreement with the League.

B. Upon ratification, a production may defer the payment of royalties and/or AWC under Article IV(B)(2)(c) as follows:

- i. There will be two deferral periods in each calendar year. The first period will be from the Monday following January 1st to the observed Memorial Day, and the second period will be from the day after the observed Memorial Day to the Sunday following January 1st.
- ii. During each deferral period, a production may defer royalties and/or AWC below the applicable minimum provided in Article IV(B) of the Agreement during losing weeks for up to a total of eight weeks (8) weeks of which not more than four (4) weeks may be consecutive weeks, provided that all of the Designers of the production who are engaged under the League/USA Agreement are included in the deferral. During any deferral period, the total number of waiver weeks and deferral weeks combined shall not equal more than eight (8).
- iii. Deferrals in the first deferral period must be repaid by the observed Labor Day of the calendar year in which the deferral occurs, and deferrals in the second deferral period must be repaid by January 31st of the calendar year immediately following the calendar year in which the deferral occurs. A production may not defer royalties or AWC in any deferral period until all previous deferrals have been repaid.

- iv. A deferral that is not repaid by a production on or before the applicable deadline (Labor Day or January 31st, respectively) will automatically and irrevocably convert to a royalty waiver under Article IV(B)(2)(c) of the Agreement. Except as provided in (B)(vi) below, a production may only defer royalties and AWC under this provision to the extent that the production has unused waiver weeks available.
 - v. The production shall notify each Designer, in writing, with a copy to the Union of the taking of such deferral on or before the tenth (10th) business day following the last performance of the week in which the deferral occurs (or the last week in a series of consecutive deferral weeks). Absent such timely notice, the Union can disallow the deferral. Otherwise, the Union cannot refuse to allow the deferral.
 - vi. When a production has exhausted its waiver weeks as provided in Article IV(B)(2)(c) of the Agreement, it may still defer royalties and/or AWC under the terms of this provision for up to four (4) weeks per deferral period only, provided that all of the following, who have a royalty or AWC interest in the production agree, in writing (with a copy to the Union as provided in (B)(v) above), to participate in the deferral: the Designers of the production (including but not limited to the Set Designer, Costume Designer, Lighting Designer, Sound Designer and Projection Designer) and any Director and/or Choreographer who also has a royalty or AWC interest in the production.
 - vii. If at the time the deferral is requested by the production, all of the above named parties also agree, the production shall not be required to repay the deferral if the production closes before the applicable repayment deadline (Labor Day or January 31st, respectively).
 - viii. A Designer's agreement to participate in such a deferral shall not be pre-negotiated in the Designer's Article V *Individual Agreement*.
 - ix. The current practice whereby Designers agree to waive or defer royalties (but not below minimum Article IV(B) AWC) shall not be affected by this provision.
- C. USA shall have the right to prepare the first draft of these provisions of the parties' new agreement.
6. The League's proposal 4. in negotiations entitled "Expedited Arbitration" was withdrawn without prejudice to the League's position.
 7. The parties shall enter into a Side Letter that provides as follows:
 - A. The General Manager of a production is not an "Employer" under the League/USA collective bargaining agreement and is neither a party to, nor bound by, the League/USA collective bargaining agreement ("the Agreement") unless the General Manager is both a Producer of such production and a Producer under the Agreement.
 - B. In accordance with past practice, a General Manager can execute an *individual agreement* between a Producer and a Designer or an Assistant Designer pursuant to the Agreement as the agent of the Producer and thereby bind the Producer, to such

individual agreement. The Union (USA) has expressed its preference that such agreements be executed by the Producer, and the League shall so inform the members of the League.

- C. Notwithstanding any language in any individual contract for employment, a General Manager is not bound personally to either the *individual agreement* or to the Agreement by having executed the *individual agreement* as agent for and on behalf of the Producer. This provision shall be retroactively effective to include all closed productions, currently running productions, and future revivals of productions.
- D. When a General Manager or other representative executes an *individual agreement* on behalf of a Producer, the General Manager does so not only on behalf of the corporation, partnership or company that is producing the production, but also on behalf of the individual League member(s) who are general partners, managing members, or other principals of the producing entity, and whose names shall be included in the information that the Producer is required to report to the Union in compliance requirements of the League/USA collective bargaining agreement.

8. Per Diem

The current payment structure of Article VI(F) shall be replaced by a "hotel plus" arrangement.

A. Hotel plus \$75 per day for the Designer.

B. For the Assistant Designer, hotel plus:

| | | |
|----|--------------------------|---------------|
| i. | <u>Upon Ratification</u> | <u>1/1/11</u> |
| | \$60 | \$65 |

ii. In Boston, Philadelphia, Los Angeles, San Francisco, Washington D.C., Chicago and Toronto, hotel plus:

| | | |
|--|--------------------------|---------------|
| | <u>Upon Ratification</u> | <u>1/1/11</u> |
| | \$65 | \$70 |

9. Dismissal Due to Director Change.

New Article XIV(C), applicable to individual contracts executed after ratification:

- A. Prior to the first public performance, where the Producer discharges the Director and hires a new Director, the Producer may replace a Designer without just cause. In such circumstances, the replaced Designer shall not have the right of first refusal (as provided in Articles XV(G), IV(E)(4), (6), (7) and (8)) for any subsequent production or use Producer, and therefore, the Producer shall have no obligation to pay AWC or to make any other payment in connection with any subsequent production or use.
- B. The replaced Designer will receive the full agreed upon compensation for the Broadway run of the show, including both fees and AWC.

10. Producer's Reporting Requirements

- A. The Producer or his/her authorized representatives shall file with the Union documentation or reports of the following information, as and when they become available:
 - i. The name of the show.
 - ii. The name of the production company.
 - iii. The names of the persons who are authorized by the Producer to execute individual agreements, contracts and other documents.
 - iv. The name of all Producers, who are the General Partners of a Limited Partnership (LP) and/or managing members of a Limited Liability Company (LLC).
- B. For those productions on which a Designer is entitled to AWC based on either Weekly Net Operating Profit or Gross Weekly Box Office Receipts, the Producer or authorized representative shall provide the Union documentation or reports of the following information, as and when they become available:
 - i. Itemized statements of any royalty payment due, showing how the payment was calculated;
 - ii. Cyclical profit-and-loss statements that include operating expenses.
- C. The Producer shall notify the Union of recoupment, where recoupment will affect a Designer's compensation.
- D. No later than two weeks after the closing of the production, a subsequent company or a tour, the Producer shall inform the Union of the closing date.
- E. For those productions on which a Designer is entitled to AWC based on either weekly Net Operating Profit or Gross Weekly Box Office Receipts, and upon reasonable notice to Producer, the Union shall have the right hereunder to audit Producer's financial books and records once during any 24-month period, at the Union's expense.

11. Standard Contract

- A. Article V(A) shall be modified to read as follows:

All individual agreements made pursuant to this Agreement shall be made on either the Standard Design Agreement form or the Standard Assistant Designer Agreement form, whichever may be applicable. An individual agreement shall be signed by the Producer and the Designer for Scenic Design, for Costume Design, for Lighting Design and for Assistant Designer(s). The Union shall provide the League with copies of any proposed changes to the Standard Design Agreements for the League's review and prior approval of any such changes.

- B. The current Paragraph IV (Individual Signature) of the Standard Design Agreement and the Standard Assistant Design Agreement shall be deleted, and a new Paragraph IV shall be inserted, which shall provide as follows:

When the person who signs this contract does so on behalf of the "Producer," he/she does so as the authorized agent of the Producer(s) and, in doing so, binds the Producer(s) to the terms and conditions and to the performance thereof.

12. Article IV(E) Modifications.

A. Article IV(E)(6) shall be modified to read as follows:

If the Producer undertakes to sell, lease or license Producer's production or the production rights to any subsequent production of the play to another producer, which specify the use of the use of the Designer's original designs, and such sale, lease or license provides for the use of the scenery, costumes and/or lighting for the original production, or the use of the Designer's designs for the original production, the original Producer shall give prior written notice to the Union and the Designer of such negotiations for sale, lease or license. At no time shall the use of the Designer's original designs be included in the negotiations without such prior written notice, and the subsequent producer shall be responsible for any applicable payments due the Designer.

B. Article IV(E)(7) shall be modified to reflect that the applicable 10% payment to the Designer shall be increased to 15% where all of the following conditions are in place:

- i. The entity that owns, and subsequently sells or rents the sets or costumes, has recouped.
- ii. The underlying production is a Musical.
- iii. The agreement to sell or rent is entered into after ratification.

C. A new Article IV(E)(8) shall be included, as follows:

If the Producer licenses to another producer the production rights to the Producer's production or to any subsequent production or company of the play and such license does not provide for the use of the scenery, costumes and/or lighting from the Producer's production, the Producer shall inform the licensee in writing with a copy to the Designer and the Union, that the license does not include the use of the Designer's original designs. When such notice has been provided, neither Designer nor the Union shall have any recourse or remedy of any kind against the Producer(s), nor shall the Producer have any responsibility or liability of any kind to the Designer in connection with such license.

13. Annuity

A. Annuity shall be paid on fees and AWC up to the following percentage of minimum scale:

| <u>Effective</u> | <u>1/1/07</u> | <u>1/1/08</u> | <u>1/1/09</u> | <u>1/1/10</u> | <u>1/1/11</u> |
|------------------|---------------|---------------|---------------|---------------|---------------|
| | 100% | 100% | 100% | 110% | 120% |

B. Subject to the applicable caps in Section 13(A) above, the percentage of compensation (fees and AWC) that shall be contributed to the IATSE Annuity Fund on behalf of Designers and Assistant Designers shall be increased to 2.75% effective 1/1/08, and to 3% effective 1/1/09. Retroactive payments, however, shall be made in accordance with Section 16(C) below.

14. Pension and Health Contributions

Subject to the applicable caps in Section 15. below,

A. the percentage of compensation (fees and AWC) that shall be contributed to the United Scenic Artists Pension Fund shall be increased to 6% on 1/1/07. Retroactive payments, however, shall be made effective/commencing 1/1/08, in accordance with Section 16(C) below.

B. the percentage of compensation (fees and AWC) that shall be contributed to the United Scenic Artists Health Fund shall be increased to 9.8% effective 1/1/10, and to 10% effective 1/1/11.

15. The Pension and Health contribution caps shall be as follows:

| <u>Article:</u> | <u>1/1/08</u> | <u>1/1/09</u> | <u>1/1/10</u> | <u>1/1/11</u> |
|-----------------|---------------|---------------|---------------|---------------|
| IV(B)(4): | \$85 | \$90 | — | \$95 |
| XII(A)(1)(c): | \$4,800 | \$4,900 | \$5,000 | \$5,100 |
| XII(E): | \$30 | — | \$35 | — |

16. Compensation

A. Applicable minimum fees in the agreement shall be increased and compounded year-over-year by the following percentages:

| | <u>1/1/07</u> | <u>1/1/08</u> | <u>1/1/09</u> | <u>1/1/10</u> | <u>1/1/11</u> |
|------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| | <u>to 12/31/07</u> | <u>to 12/31/08</u> | <u>to 12/31/09</u> | <u>to 12/31/10</u> | <u>to 12/31/11</u> |
| Assistants | 2.0% | 3.0% | 3.25% | 3.1% | 3.4% |
| Designers | 2.0% | 3.0% | 3.25% | 2.6% | 2.7% |

- B. The minimum AWC in Article IV(B)(2)(a) and (b) shall increase annually by the percentage increase for Designers in Section 16(A) above, rounded to the nearest \$5.
- C. Those wage increases due in the first year of the agreement (effective 1/1/07) shall not be paid retroactively, but such wage increase shall be included in calculating the compounded rates effective 1/1/08 and beyond. Wages and benefit contribution (pension, health (if any, as a result of the increase in weekly or annual caps) and annuity) increases in this Agreement shall be paid effective/retroactive to 1/1/08, except for productions that have closed as of ratification. The League shall encourage productions that have closed as of ratification to make applicable retroactive benefit contributions.

17. Weekly AWC caps in Article IV(B)(2)(a)(ii) shall be:

| <u>At Ratification</u> | <u>1/1/10</u> | <u>1/1/11</u> |
|------------------------|---------------|---------------|
| \$1,200 | \$1,250 | \$1,300 |

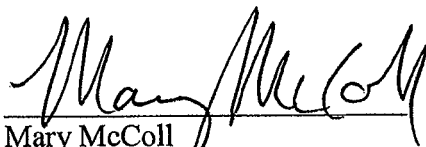
18. The parties' Agreement shall provide that it is between the Union and the League on behalf of the League's "producer" members.


19. LORT Enhancement

The bargaining history from our most recent negotiation reflects that the parties discussed and agreed not to change their current practices with respect to pre-Broadway productions that convert from LORT productions to Broadway productions and confirmed their understanding that the League/USA Agreement does not apply to the pre-Broadway/developmental productions at LORT Theaters.

The bargaining history also reflects that the parties did not agree on the practice or the terms and conditions that apply when a production at a LORT Theater immediately thereafter converts to a commercial touring production, and each party maintained its respective position on the matter.

20. The parties shall use best efforts to commence negotiations no later than 90 days before the expiration of the new Agreement.


 Mary McColl
 Director of Labor Relations
 The Broadway League


 Michael W. McBride
 National Business Agent
 United Scenic Artists,
 USA Local 829, IATSE