

SOUNDTRACK RECORDING AGREEMENT

THIS AGREEMENT, is made as of the _____ day of _____, 1993 by and between _____ ("Company") and _____ f/s/o _____ and _____ f/s/o _____ in connection with a master sound recording (the "Master") embodying the musical composition entitled _____ (the "Composition "), for possible inclusion in the theatrical motion picture presently entitled _____ (the "Picture"), and in a soundtrack album (the "Album") and any other phonograph records to be derived therefrom. _____ and _____ are hereafter referred to jointly and severally as "Lender", and _____ and _____ are hereafter jointly and severally referred to as "Artist." In consideration of the mutual covenants made herein, Company and Artist hereby agree as follows:

1. SERVICES TO BE PROVIDED: Company hereby employs Lender to cause Artist to render Artist's vocal and/or musical services to record the Master for possible inclusion in the Picture. Artist shall comply with all of Company's instructions and requests in connection with Artist's services hereunder. Artist shall render such services upon the terms and conditions set forth herein and in accordance with a production schedule to be designated by Company in its sole discretion.

2. TERM: The term of this Agreement shall commence as of the date hereof and shall continue thereafter until such time as Artist has fully rendered all of Artist's services required hereunder.

3. OWNERSHIP:

(a) All results and proceeds of Artist's services hereunder shall constitute or contribute to a work specially ordered or commissioned by Company for use as part of a motion picture or other audio-visual work and accordingly all such results and proceeds shall constitute a "work-made-for-hire" (as such term is defined in the United States Copyright Act of 1976). Company shall own the Master, together with the performances embodied thereon and all copyrights therein and thereto, and all the results and proceeds of Artist's services hereunder throughout the universe in perpetuity, free of any and all claims by Lender, Artist or any person, corporation or other entity deriving any rights from Lender or Artist.

(b) Without limiting the generality of clause 3(a) hereof, Company shall have the exclusive, perpetual and worldwide right, but not the obligation, to use and perform the Master, and the results and proceeds of Artist's services hereunder:

(i) in synchronization with the Picture and any other audio-visual works for exploitation in any and all media now known or hereafter devised (including, but not limited to, audio-visual devices), and in advertisements, trailers, "music videos" and other promotional and ancillary uses of the Picture or such other audio-visual work; and

(ii) to manufacture, sell, distribute and advertise the Album and any other

phonograph records embodying the Master by any methods and in any configurations now known or hereafter devised; for the release of same under any trademarks, tradenames or label; to perform the Album and any other phonograph records derived therefrom publicly; and to commit to public performance thereof by radio and/or television, or by any other media now known or hereafter devised, all upon such terms and conditions as Company may approve, and to permit any other person, corporation or other entity to do any or all of the foregoing.

4. NAME AND LIKENESS: Lender hereby grants to Company the irrevocable worldwide right, in perpetuity, to use and permit others to use Lender's or Artist's name, voice, approved photograph, likeness and biographical material concerning Artist in connection with the Picture; Master, Album and any other phonograph records derived therefrom and any promotions and advertisements thereof. Any photograph, likenesses or biographical material submitted or furnished by Lender or Artist to Company shall be deemed approved, and, promptly following the execution of this Agreement, Lender shall submit to Company a reasonable assortment of approved photographs, likenesses and biographical materials for use by Company in connection herewith. All such materials submitted by Company to Lender for approval (which approval shall not be unreasonably withheld) shall be deemed given in the event Lender fails to submit written objections thereto within five (5) days after the applicable photographs, likenesses and/or biographical materials have been submitted to Lender for approval.

5. PRE-RECORDING: Company shall have the right to re-record, edit, mix and re-mix, dub and re-dub the Master in Company's sole discretion, and nothing contained herein shall be construed to obligate Company to employ Artist in connection with same.

6. COMPENSATION:

(a) Provided Lender and Artist fully perform all their material obligations under Clause 1 above, and in full consideration of all rights granted herein, Company shall pay or cause to be paid to Lender, upon the later to occur of the date of the full completion of all of Lender's. or Artist's services hereunder, or the date of Lender's and Artist's execution hereof, an amount equal to the minimum scale amount specified for Artist's recording services hereunder in any applicable union collective bargaining agreements. The provisions of any applicable union collective bargaining contract between Company and any labor organization which are required by the terms of such contract to be included in this Agreement shall be deemed incorporated herein.

(b) It is specifically understood and agreed that the *sums* set forth in this Clause 6 and the record royalties set forth in Clause 7 below shall constitute payment in full to Lender and Artist, and to all persons or entities deriving or aiming rights through either Lender and/or Artist.

7. ROYALTIES:

(a) With respect to the exploitation of the Master if embodied on the Album or other phonograph records derived therefrom, Company shall pay or cause any phonograph record

distributor ("Distributor") of the Album, Single, or phonograph records derived therefrom, to pay to Lender a basic royalty at the rate of five (5%) percent (the "Basic Album Rate") of the applicable suggested retail list price ("SRLP") in respect of net sales of Albums sold through normal retail channels in the United States in the form of black vinyl discs and cassettes, pro-rated by multiplying the applicable royalty rate by a fraction, the numerator of which is the number one (1), and the denominator of which is the total number of master recordings, including the Master, contained on the Album (the "Lender Fraction").

(b) The royalty payable to Lender hereunder for singles, budget records, compact discs, foreign record sales and other sales of records or exploitations of the Master shall be reduced and pro-rated in the same proportion that the basic United States Album rate payable to Company in respect of the Album (the "Basic Distributor Rate") is reduced or pro-rated pursuant to Company's agreement with the applicable Distributor, provided that with respect to such sales of records or exploitations of the Master for which Company receives a royalty which is computed as a flat fee or as a percentage of the Distributor's net receipts from such use, Lender's royalty hereunder in respect of such sale or use shall be equal to the amount of Company's flat fee or net receipts, multiplied by the product of the following:

Basic Album Rate

_____ X Lender Fraction

Basic Distributor Rate

(c) Except as otherwise provided in this Agreement, Lender's royalties hereunder shall be computed, determined, calculated and paid to Lender on the same basis (e.g., packaging deductions, free goods, reserves, definition of suggested retail list price, percentage of sales, discounts, returns policy, taxes, etc.) and at the same times as royalties are paid to Company by the applicable Distributor.

(d) Notwithstanding anything to the contrary contained in this Agreement, (i) Lender shall not be entitled to receive any record royalties at all with respect to records sold prior to the recoupment of all Recording Costs and Conversion Costs from the royalties otherwise payable to Lender hereunder; and (ii) following such recoupment Lender's royalties shall be credited to Lender's account hereunder solely in respect of records thereafter sold which embody the Master. The term "Recording Costs" shall mean all direct costs incurred in the course of producing and recording the Master hereunder including, without limitation, the cost of studio time, musician fees, union payments, instrument rentals, producer's fees and advances and the costs of tape, editing, mixing, re-mixing and mastering and other similar costs customarily regarded as recording costs in the phonograph record industry. The term "Conversion Costs" shall mean all direct costs incurred in connection with the conversion of the Master from use in the Picture to use in the Album and other phonograph records derived therefrom including, without limitation, new-use, re-use, re-mixing, and re-editing costs and all other costs which are now or hereafter recognized as conversion costs in the phonograph record and motion picture industries.

(e) Lender shall be deemed to have consented to all royalty statements and all other

accounts rendered by Company, unless specific objection in writing, stating the basis thereof, is given by Lender to Company within one (1) year from the date such statement is rendered. During this one (1) year period, Lender may, at its expense, but not more than once annually, audit the books and records of Company, solely in connection with royalties payable to Lender pursuant to this Agreement, provided such audit is conducted by a reputable certified public accountant during business hours and upon reasonable written notice. Lender shall be foreclosed from maintaining any action, claim or proceeding against Company in any forum or tribunal with respect to any statement or accounting rendered hereunder unless such action, claim or proceeding is commenced against Company in a court of competent jurisdiction within one (1) year after the date on which Company receives Lender's written objection.

8. CREDITS:

(a) If the Master is contained in the Picture, Company shall accord Artist a credit in substantially the following form in the end titles of release prints of the Picture approximately adjacent to the titles of the Composition:

"WRITTEN BY (name of writer) AND
(name of other, writer)"

"PERFORMED BY (name of performer) AND
(name of other performer)"

The type, size, shape, color, placement, duration and all other characteristics of the credit shall be at Company's sole and absolute discretion. Without limiting the generality of the foregoing, such credit may be shared with and/or adjacent to credits relating to other contributors to the Master and/or the Composition.

(b) No casual or inadvertent failure by Company or any failure by a third party to comply with the provisions of this Clause 8 shall constitute a breach of this Agreement.

9. WARRANTIES: Lender, on its own and on Artist's behalf, hereby warrants and represents that:

(a) it has the full right, power and authority to enter into this Agreement and to grant all rights granted herein, that it is not under nor will it be under, any disability, restriction or prohibition with respect to its rights to fully perform in accordance with the terms and conditions of this Agreement and that there shall be no liens, claims or other interests which may interfere with, impair or be in derogation of the rights granted herein;

(b) the Master shall be freely available for use by Company in the Album, the Single(s) and other phonograph records and in the Picture in all media (whether now known or hereafter devised) in which the Picture is to be distributed (and in any and all advertising therefor), throughout the world including, without limitation, in theaters, free and pay television, in home video devices, and in radio, television and theatrical trailers, without further payment by

Company, except as set forth herein;

(c) any party who may be entitled to Artist's exclusive recording services shall have given a written waiver of such rights in connection with Company's exploitation of the Master as herein provided;

(d) Company shall not be required to make any payments of any nature for, connection with, the acquisition, exercise or exploitation of rights by Company pursuant to this Agreement except as specifically provided in this Agreement;

(e) neither Lender nor Artist shall, prior to the date five (5) years after the delivery of the Master, produce or re-record or authorize the production or rerecording of the Composition for any third party; and

(f) neither the Master, nor the Composition nor any other material supplied Artist will violate or infringe upon any common law or statutory right of any person, firm or corporation including, without limitation, contractual rights, copyrights, and rights of privacy.

INDEMNITY: Lender hereby agrees to indemnify Company, Company's successors, licensees, distributors, sub-distributors and assigns, and the respective officers, directors, agents and employees of each of the foregoing, from and against any damages, liabilities, costs and expenses, including reasonable attorney's fees actually incurred, arising out of or in any way connected with any claim, demand or action inconsistent with this Agreement or any warranty, representation or agreement made by Lender and/or Artist herein.

11. UNIQUE SERVICE: Lender acknowledges that the services performed by Artist hereunder and the rights hereunder granted are of a special, unique, extraordinary and unusual character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, and that any default by Lender and/or Artist will cause Company irreparable harm and injury. Lender agrees that Company shall be entitled to seek injunctive and other equitable relief in addition to Company's remedies at law, in the event of any default by Artist.

12. REMEDIES FOR BREACH: Lender's rights and remedies in the event of a breach or alleged breach of this Agreement by Company shall be limited to Lender's right to recover damages in an action of law and in no event shall Lender be entitled by reason of any such breach or alleged breach to enjoin, restrain, or to seek to enjoin or restrain, the distribution or other exploitation of the Picture, Album, Single, or other work which may embody the Master. This Agreement shall not be deemed to give any right or remedy to any third party whatsoever unless the right or remedy is specifically granted by the parties hereto in writing to the third party. Lender shall execute any further documents necessary to fully effectuate the intent and purposes of this Agreement.

13. ASSIGNMENT: Company shall have the right, at Company's election, to assign any of Company's rights hereunder, in whole or in part, to any person, firm or corporation including, without limitation, any distributor or subdistributor of the Picture, Album or other phonograph

records derived therefrom, or other work which may embody the Master. Lender shall not assign rights without Company's prior written consent and any attempted assignment without such consent shall be void and shall transfer no rights to the purported assignee.

14. ENTIRE AGREEMENT: This Agreement sets forth the entire understanding of the parties thereto relating to the subject matter hereof and supersedes all prior agreements, whether oral or written, pertaining thereto. No modification, amendment, or waiver of this Agreement or any of the terms or provisions hereof shall be binding upon Lender or Company unless confirmed by a written instrument

signed by authorized officers of both Lender and Company. No waiver by Artist or Company of any terms or provisions of this Agreement or of any default hereunder shall affect their respective rights thereafter to enforce such term or provision or to exercise any right or remedy upon any other default, whether or not similar.

15. RIGHT TO CURE: No failure by Company to perform any of Company's obligations hereunder shall be deemed a breach hereof, unless Lender gives Company written notice of such failure and Company fails to cure such nonperformance within thirty (30) days after Company's receipt of such notice.

16. NOTICES: All notices hereunder shall be sent certified mail, return receipt requested, or delivered by hand to the applicable address set forth below; unless and until written notice of a change of address, sent via registered mail is received by the other party.

If to Company: _____. Courtesy copies to: _____.

If to Lender: _____.

Notwithstanding the foregoing, all accounting statements and payments may be sent by regular mail. Except as required by law, the date of mailing of such notice shall be deemed the date upon which such notice was given or sent.

17. APPLICABLE LAW: This Agreement has been entered into in the State of California, and its validity, construction, interpretation and legal effect shall be governed by the laws of the State of California applicable to contracts entered into and performed entirely within the State of California. The California Courts will have jurisdiction in any controversies regarding this Agreement; and, any action

- or other proceeding which involves such a controversy will be brought in the courts located within the State of California and not elsewhere. Any process in any action or proceeding commenced in the courts of the State of California arising out of any such claim, dispute or disagreement, may, among other methods, be served upon Lender by delivering or mailing the same, via registered or certified mail, addressed to Lender at the address first above written or such other address as Lender may designate at the address first above written or such other address as Lender may designate pursuant to clause 16 hereof. Any such delivery or mail service shall be deemed to have the same force and effect as personal service with the State of California. This Agreement shall not become effective until signed by a duly authorized officer of Lender and countersigned by a duly authorized officer of Company.

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

COMPANY

By: _____

Accepted And Agreed To:

LENDER

By _____