

AGREEMENT

6/29/10

Agreement made and entered into this 29th day of June, 2010, by and between Local 802, Associated Musicians of Greater New York, (hereinafter the "Union") located at 322 West 48th Street, New York, New York 10036 and The Vineyard Theatre and Workshop Company, Inc., 108 East 15th Street New York, NY 10003-9689 (hereinafter the "Employer") for all of their productions in off-Broadway theatrical houses of 100 to 199 seats:

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, which 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 in their productions.

2. UNION SECURITY AND DUES CHECK OFF

A. The Employer agrees that all musician/employees who are members of the Union shall maintain their membership in the Union as a condition of employment during the term of their employment. If they are not members they are to become members of the Union after the 30th day following the date of their employment and thereafter maintain their membership in the Union.

B. The Employer agrees to report to the Union within ten (10) 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 (3.5%) from such musician/employee's salary the amount of his/her Local 802 work dues and transmit same each month to Local 802 by no later than the 10th day of the following month.

C. 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.

3. WORK WEEK

A. The workweek shall consist of seven (7) performances or less Monday through Sunday with a day off each week. Performances shall be three hours or less. Time worked in excess of three (3) hours shall be compensated at the rate of time and one-half (1 1/2x) of the musician's regular rate of pay. Each additional

performance by a musician over seven (7) within the work week shall be compensated at the rate of time and one-half (1 1/2x) 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 compensated at the rate of time and one-half (1 1/2x) the regular performance rate of pay for musicians. Time and one-half (1 1/2x) premium are to be paid to the musician actually playing the performance regardless of whether it is the regular musician or substitute. Except that during the first week of paid public performances the day off may be waived as long as the week preceding or the week after includes at least two full days off.

C. When the Employer desires to change the show schedule, the Employer shall make best efforts to inform the Theatre Department of Local 802 at least two (2) weeks in advance of such a change.

D. A third performance on any day shall be compensated at time and one-half (1 1/2x) of the regular performance rate of pay.

E. 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 musician/employee shall be paid at the rate of time and one-half (1-1/2).

4. WAGE SCALES

A. Rehearsals: As of July 1, 2010 the minimum weekly wage per musician shall be \$526.08. As of July 1, 2011 the minimum weekly wage per musician shall be \$536.60. As of July 1, 2012, the minimum weekly wage per musician shall be \$552.70, such wages to be paid no later than Thursday of each week. The workweek shall be limited to 36 hours per week over a six-day week with no more than 7 1/2 hours in any one day. Rehearsal overtime of time-and-one-half (1 1/2) shall begin for any work time after thirty six (36) hours in a week or after seven-and-one-half (7 1/2) hours in a day or after 7p.m. Except that during the two technical rehearsal weeks, musicians will be paid at straight time for a maximum of 78 hours over the two week period with no more than 40 hours in any one week. Orchestra rehearsals after the first week of public performances shall be paid on an hourly basis at \$23.39, July 1, 2010; \$23.86, July 1, 2011; and \$24.58, July 1, 2012 per hour with a minimum two- (2) hour call.

B. Performances: As of July 1, 2010 the minimum weekly wage per musician shall be \$526.08. As of July 1, 2011 the minimum weekly wage per musician shall be \$536.60. As of July 1, 2012, the minimum weekly wage per musician shall be \$552.70, such wages to be paid no later than Thursday of each week. These wages shall apply to a maximum run of eight (8) weeks or fifty-six (56) performances.

C. In the event that the production extends performances at the same theatre beginning in the ninth (9th) week of performances all musician/employees shall receive twenty-five percent additional over and above the minimum weekly wage scale as stated in Article 4.

D. In the event that the production moves to another theater, this agreement shall be renegotiated. The Employer agrees to notify the union prior to said change.

E. The Music Director/Conductor or Leader shall receive fifty percent (50%) additional over and above the appropriate minimum weekly scale wages specified herein for performance and rehearsals which shall include the synthesizer premium of twenty-five percent (25%) if the Music Director/Conductor or Leader is also playing a synthesized keyboard. Following the first week of performances, the hourly rehearsal rate shall be \$30.08, July 1, 2010; \$30.68 July 1, 2011; \$31.60, July 1, 2012 per hour, minimum two hour call.

F. The Associate Conductor, if employed, shall receive fifteen percent (15%) additional over and above the minimum weekly scale wages specified herein for all rehearsal work performed prior to the first paid public performance other than orchestra rehearsals, and fifteen percent (15%) additional over and above the appropriate applicable rates set forth herein for orchestra rehearsals and performances.

G. A Designated Contractor shall be required if six (6) or more playing musicians are employed and shall receive fifteen percent (15%) additional over and above the minimum weekly wage.

1. A dress rehearsal shall be paid at the performance rate.

2. A one-(1) hour rehearsal just before or just after a performance shall be paid at the minimum rate of \$25.00.

3. All musician/employees or substitutes that play an instrument during any rehearsal must be paid for the rehearsal pursuant to this section.

4. There shall be a five- (5) minute rest period in each hour or rehearsal except dress rehearsals.

H. 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.

1. First additional instrument: 12 1/2% above the applicable rates.

2. Second and each additional instrument thereafter: 6 1/4% above the applicable rates (for each such instrument).

3. Serving as the Librarian, if employed, on a production shall be compensated at 12 1/2% above the applicable rates.

4. If a synthesizer(s) is utilized in the production, a premium of twenty-five percent (25%) of minimum will be paid to each synthesizer musician.

5. Musicians shall be compensated for being in-costume and or body paint (not just on stage) at 30% of the rates of the Broadway Agreement with Local 802, schedule A.

6. The Employer shall be responsible for furnishing all keyboard, electronic and percussion instruments. If keyboard, electronic or percussion instruments are required to be supplied by a musician, the Employer will pay the musician a negotiated fair rental fee.

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

5. VACATION

A. As of the ninth (9) week of performance the Employer shall pay the sum of six percent (6%) of the weekly gross salary as vacation pay to each musician/employee.

B. Each musician/employee shall have the right to choose the time of his/her vacation, provided, however, that not more than one musician/employee may take a vacation at any one time without the consent of the employer. Two weeks written notice must be submitted to the conductor prior to taking a vacation of one week or more.

6. HEALTH BENEFITS

A. The Employer agrees to contribute into the Musicians' Local 802 Health Benefits Plan (HBP) 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 and shall be contributed on behalf of musicians when on vacation or absent due to illness.

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

C. Contributions shall be in accordance with the following schedule of dates and amounts, and **mailed to Local 802 AFM at 322 West 48th Street, New York, NY 10036** along with the names of covered musicians no later than two (2) weeks after each pay day. Effective July 1, 2010 through June 30, 2011, the contribution shall \$10.28 per call per musician and capped at \$72.00 per musician/employee per week.

Commencing January 1, 2011, if the Trustees of the Fund increase eligibility requirements, the Employer agrees to increase the contributions by the same percentage as the eligibility requirements for Plan A are increased. However, the increase shall be capped at an additional \$2.50 per week per musician per year. The rate per shall continue to be pro-rated.

7. PENSION

A. This is in compliance with the Pension Rehabilitation Plan.

B. Effective July 1, 2010 the Employer agrees to contribute 9.36 % and effective July 1, 2011 to contribute 9.81 % of each musician/employee's wages as defined in Article 4 and Article 5 of this Agreement (which shall be considered to be scale wages) to the American Federation of Musicians and Employers' Pension Fund.

C. All contributions to the Fund shall be made by check payable to the "American Federation of Musicians and Employers' Pension Fund." All such checks shall be accompanied by a remittance form identifying for each musician/employee for whom a contribution is made, the musician/employee's name, social security number, date(s) of engagement for which pension is paid, scale wages on which pension is paid and the amount of pension. The check and remittance information shall be transmitted to Local 802 AFM for forwarding to the Fund within fourteen (14) days following the rendering of services 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.

D. The Employer agrees to be bound by The Agreement and Declaration of Trust establishing The American Federation of Musicians and Employer's 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. 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 and properly maintained.
- D. Employer/Producer shall make best efforts to provide and maintain a safe and sanitary condition, a secure locker room or dressing room and storage for instruments.

10. NOTICE OF CLOSING

Musician/employees shall receive one week or seven- (7) performances notice of closing or layoff. The Union shall receive written notice of closing or layoff. If a production has a temporary layoff due to poor business, musician/employees shall be guaranteed at least two weeks employment upon reopening.

11. IDENTITY WITH THE PRODUCT

All musician/employees, including all music preparation musicians, are hired for the run of the show. In the event a musician/employee leaves the show or is justifiably dismissed, his/her position will be filled by another musician playing the same instrument(s) who will also have run of the show. In the event of a cast album, taping for radio or television broadcast, or radio/television commercials, the members of the current orchestra shall be offered employment provided that their instruments are utilized in any such activity. Music preparation musicians who performed services for the production shall be offered first right of refusal for any additional services required for such recording. All recordings, tapings or other electronic media uses shall be paid for at the appropriate Local 802 or AFM scales for such uses. In the event that a show moves to another theater or to Broadway, the regular members of the orchestra last engaged shall be offered employment if their instruments are utilized in the new production. Music preparation musicians who performed services for the production shall be offered first right of refusal for any additional services required if the show moves to another theatre or to Broadway.

12. SUBSTITUTION

Each musician/employee may substitute another musician acceptable to the Employer from a pool of up to five (5) substitutes which shall be maintained by the musician/employee. Substitution shall be limited to less than fifty percent (50%) of performances. 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 (24th) public performance and the eighth (8th) performance prior to the official opening in order to enable musicians to fulfill engagements for which they have made business commitments. Thereafter the fifty percent (50%) rule shall apply.

13. NO DISCRIMINATION

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

14. DISMISSAL

The Employer shall have the right to dismiss musician/employees for just cause. Any dispute over dismissal shall be subject to the grievance procedure provided in Article 15 herein.

15. 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 90 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 shall 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.
- D. In the event of a dismissal for artistic reasons the musician/employee shall continue in his/her chair unless the dispute is settled in favor of the Employer.

16. 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.

17. UNION BUSINESS REPRESENTATIVE

Union Business Representatives shall be permitted to visit the theatre 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.

18. 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.

19. INVESTORS

The Employer and the Union understand that not-for-profit productions do not allow investors. The Employer 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 production. The Employer further agrees that it 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.

20. POSTING BOND

Employer shall post with the Union a bond equal to one week's wages, pension and health benefits for the orchestra and a bond sufficient enough to cover one week's anticipated Music Preparation wages, pension and health benefits, if applicable, prior to the first day of employment.

21. MINIMUMS

There shall be no required minimum number of musician/employees for this production. However, once a show begins orchestra rehearsals, the instrumentation may not be reduced. There shall be no use whatsoever of any virtual orchestra machine.

22. MUSIC PREPARATION

A. All arranging, orchestration, copying and other music preparation services for productions shall be done under the conditions of the General Price List and shall be paid for at 80% of General Price List.

- 1. All orchestrations and copying must be pre-approved by the producer on a weekly basis.**
- 2. Invoices must be submitted and paid on a weekly or bi-weekly basis.**

B. If the music prepared for this production is used in any other commercial or non-commercial theatre less than 500 seats, the additional 20% of General Price List rates (and appropriate pension and health benefit contributions) shall be paid in full to all music preparation musicians employed under this agreement.

C. If the music prepared for this production is used in a Broadway theatre or a theatre larger than 500 seats, the difference between the amount paid under this agreement and those specified in the Broadway agreement (and appropriate pension and health benefit contributions) shall be paid to all music preparation musicians employed under this agreement.

D. The Employer agrees to contribute an amount equivalent to ten percent (10%) of each employee's wages as defined in the General Price List rules. Payments in behalf of the members shall be paid to the American Federation of Musicians and Employers' Pension Fund (Checks may be made out to AFM & EPF).

E. Health benefit contributions shall be \$25.00 per day or 7.5% of each employees scale wages (whichever is higher) to the Musicians Local 802 Health Benefits Plan (checks may be made out to Local 802, HBP). Payments in behalf of the Music Preparation personnel shall follow the General Price List practice that copyists shall be paid the dollar amount, orchestrators and arrangers shall receive the percentage amount. The Employer agrees to contribute an additional \$21.00 for each music preparation musician who performs services after 6 P.M. There shall be a health benefits contribution cap per production of \$1,000.00 the first year of the Agreement; \$1,100.00 of the second year and \$1,200.00 of the third year.

F. Any music prepared under this agreement shall be limited in use to the original production unless the additional payments are made.

F. The Employer shall deposit a bond with Local 802 in the amount of \$5,000.00 to cover the wages and benefits of music preparation musicians.

H. In the event that a Broadway production is staged, all music preparation musicians providing services under this agreement shall be given the right of first refusal for any additional work required for the Broadway production.

23. SUCCESSORS AND ASSIGNS

In the event the Employer sells, transfers or assigns his/her/its rights to this production, both the original Employer and any transferee or assignee shall be individually and jointly liable for this complete performance of this Agreement.

24. RECORDING

The terms and conditions of Article XXVI IDENTITY WITH THE PRODUCT AND CAST ALBUMS AND T.V. AND RADIO COMMERCIALS; RECORDED MUSIC of the current agreement between Local 802 and the League of American Theatres & Producers, Inc. shall apply for recordings.

25. BROADWAY AGREEMENT

Except as it contradicts the specific terms and conditions of this Agreement, the terms and conditions of the current agreement between Local 802 and the League of American Theaters and Producers shall be incorporated in the Agreement as though they were specified herein.

26. OTHER PRODUCTIONS

In the event the Employer or its successor (pursuant to Article 23 of this Agreement), mounts another production of this show, the Employer agrees that the musician/employees of said production shall be engaged pursuant to an agreement with Local 802 or the American Federation of Musicians (AFM) or another AFM local, whichever is applicable in accordance with AFM rules, regulations and Bylaws.

27. 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.

28. ACKNOWLEDGMENT OF THE UNION

A. The Employer agrees to insert the following line into the program: "The Musicians employed in this production are members of the Associated Musicians of Greater New York, Local 802 of the American Federation of Musicians" and to include the logo of Local 802 when possible.

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

C. The Employer agrees that if the cast is introduced, the musicians will also be acknowledged and when possible, the conductor individually.

29. DURATION

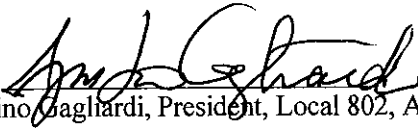
The duration of this Agreement shall be July 1, 2010 through June 30, 2013 except for Article 11, IDENTITY WITH THE PRODUCT, and Article 26, OTHER PRODUCTIONS, which shall remain in effect for three years following the end of any particular production. Sixty (60) days prior to the termination date of this Agreement either party may contact the other for the purpose of negotiating a new agreement.

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30. RATIFICATION

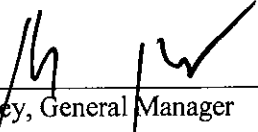
Once this Agreement is fully executed it will be subject to the ratification of the Local 802 Executive Board. The Employer will be notified of said ratification.

For the Union:

Signed: 
Augustino Zagliardi, President, Local 802, AFM

Date: 7/20/10

For the Employer:

Signed: 
Reed Ridgeley, General Manager
Vineyard Theatre

Date: 7/6/2010