

OPTION AND PURCHASE AGREEMENT—UNDERLYING RIGHTS

THIS AGREEMENT, effective as of _____, ____, is made by and between _____ [name of producer] (“Producer”) whose address is [PHYSICAL ADDRESS] and _____ [name of owner] (“Owner”) whose address is [PHYSICAL ADDRESS] concerning the rights to a _____ [e.g., book, play, unpublished story] entitled “_____” and the materials upon which it is based. The following terms and conditions shall apply:

1. DEFINITION OF “WORK”: For purposes of this Agreement, “Work” means the _____ [book/play/magazine article] entitled “_____” written by _____ and any and all other literary materials, titles, themes, formats, formulas, incidents, action, story, dialogue, ideas, plots, phrases, slogans, catchwords, art, designs, compositions, sketches, drawings, characters, characterizations, names, and trademarks now contained therein, as well as such elements as may at any time hereafter be added or incorporated therein, and all versions thereof in any form.

2. GRANT OF OPTION: In consideration of the mutual promises contained herein, and the payment to Owner of \$_____ (the “Option Price”), which shall be applicable against the Purchase Price, Owner hereby grants to Producer the exclusive, irrevocable right and option (the “Option”) for _____ months (the “Option Period”) to acquire the exclusive motion picture, television, videocassette, and all subsidiary, allied, and ancillary rights in and to the Work pursuant to the terms set forth below.

3. EXTENSION OF OPTION:

(a) Producer shall have the right to extend the Option Period for one (1) period of _____ months for \$_____ which shall be non-applicable against the Purchase Price. For the right to the extension of the first Option Period there must be one of the following:

- (i) letter of commitment to direct from an established director;
- (ii) the project is set up at a company, major studio, or mini-major studio able to fund the project;
- (iii) substantial negotiations in progress for complete financing of the film;
- (iv) letter of commitment to act in the film from one star;

or

(v) a full-length feature-film script has been completed.

(b) Producer shall have the right to extend the Option Period for one (1) additional _____ month period for \$_____ which shall be non-applicable against the Purchase Price. In order to have a right to a second extension,

Producer must secure at least two (2) of the above five (5) items.

4. EXERCISE OF OPTION: Producer may exercise this Option at any time during the Option Period, as it may be extended, by giving written notice of such exercise to Owner and delivery to Owner of the minimum Purchase Price as set forth below. In the event Producer does not exercise said Option during the period as it may be extended, this Agreement shall be of no further force or effect whatsoever. All rights granted hereunder become property of Owner. Upon exercise of the Option, Producer shall have the right to file the Assignment, Exhibit A, with the Copyright Office.

5. PENDING EXERCISE OF OPTION: Producer shall have the right to engage in all customary development and pre-production activities during the Option Period as it may be extended.

6. GRANT OF RIGHTS: Effective upon Producer's exercise of the Option, Writer hereby exclusively sells, grants and assigns to Producer, Producer's successors, licenses and assigns all rights in and to the Work not reserved by Writer, throughout the universe, in perpetuity, in any and all media and by any means now known or hereafter devised, including, without limitation, all forms of theatrical and non-theatrical distribution and exhibition (including without limitation, free broadcast, pay television, cable, subscription, pay-per-view, video-on-demand, DVD and Internet), including without limitation the following: all motion picture rights, including the right to make remakes, new versions or adaptations of the Work or any part thereof; to make series and serials of the Work or any part thereof; the right, for advertising and publicity purposes only, to prepare, broadcast, exhibit and publish in any form or media, any synopses, excerpts, novelizations, serializations, dramatizations, summaries and stories of the Work, or any part thereof; and all rights of every kind and character whatsoever in and to the Work and all the characters and elements contained therein.

7. PURCHASE PRICE: As consideration for all rights and property herein granted, and all warranties and covenants herein made by Owner, Producer agrees to pay Owner the following sums not later than the commencement of principal photography of a production:

- (a) \$_____ if the final budget for the motion picture (less contingencies, financing costs, and bank fees) based on the Work does not exceed two million dollars (\$2,000,000), less any moneys paid as option exercise money and less the option payment for the initial period;
- (b) If the final budget exceeds two million dollars (\$2,000,000), one percent (1%) of the final budget for the motion picture (less contingencies, financing costs, and bank fees) based on the Work less any amounts paid for option exercise; however, in no event shall the amount of such payment exceed fifty-thousand dollars (\$50,000).

8. ADDITIONAL COMPENSATION:

- (a) **Contingent Compensation:** Producer also agrees to pay Owner ___ percent (___%) of one hundred percent (100%) of the producer's share of proceeds from

any production based on the Work for which Owner receives any other payment under this Agreement. "Producer's Share of Proceeds" shall be defined, accounted for, and paid in the same manner for Owner as for Producer, whether Producer's contingent compensation is called Net Profits, Adjusted Gross Profits, or otherwise.

- (b) **Bonus Compensation:** Producer shall pay Owner \$_____ in addition to any other money due Owner under this agreement upon the happening of the following: _____.

9. CREDITS:

- (a) In the event a motion picture based substantially on the Work is produced hereunder, Owner shall receive credit in the following form:

Based on the novel by _____

or if the film has a different title from the Work, then:

Based on the novel "_____" by _____

- (b) Such credit shall be accorded on a single card in the main titles on all positive prints of the picture and in all paid advertising in which the director has received credit, subject to Producer's and any distributor's usual and customary exclusions. All other matters regarding prominence, placement, size, style and color of said credits shall be in Producer's sole discretion. Nothing herein shall be construed to prevent so-called award or congratulatory or other similar advertising with respect to the material or Picture which omits the name of the Writer.
- (c) No casual or inadvertent failure of Producer to comply with the credit provisions hereof shall be deemed a breach of this Agreement. Within a reasonable time after receipt of written notice from Owner specifying a failure to accord proper credit in accordance with this Paragraph, Producer shall use good faith efforts to cure prospectively any such failure with regard to positive prints and/or advertising materials created after the date of Producer's receipt of such notice. Producer will contractually obligate third party licensees and sub-distributors with whom Producer is in privity of contract to comply with the credit obligations set forth herein, but shall not be responsible or liable to Owner for the failure of any such third party to comply with the same.

10. RESERVED RIGHTS: All publication rights are reserved to Owner for Owner's use and disposition, including but not limited to the right to publish and distribute printed versions of the Work and author-written sequels thereof (owned or controlled by Owner) in book form, whether hardcover or softcover, and in magazines or other periodicals, comics or coloring books, whether in installments or otherwise, subject to Producer's limited rights to use up to 10,000 words to promote and advertise the motion picture. Producer shall have the right of first negotiation and

last refusal to enter an agreement such as this one with regard to any works created by Owner pursuant to this paragraph.

11. RIGHT OF FIRST NEGOTIATION: If Owner desires to dispose of or exercise a particular right reserved to Owner herein (“Reserved Right”), then Owner shall notify Producer in writing and immediately negotiate with Producer regarding such Reserved Right. If, after the expiration of thirty (30) days following the receipt of such notice, no agreement has been reached, then Owner may negotiate with third parties regarding such Reserved Right subject to the next paragraph.

12. RIGHT OF LAST REFUSAL: If Producer and Owner fail to reach an agreement pursuant to Producer’s right of first negotiation, and Owner makes and/or receives any bona fide offer to license and/or purchase the particular Reserved Right or any interest therein in a context other than an auction (“Third Party Offer”), Owner shall notify Producer, if Owner proposes to accept such Third Party Offer, of the name of the offeror, the proposed purchase price, and other such terms of Third Party Offer. During the period of ten (10) days after Producer’s receipt of such notice, Producer shall have the exclusive option to license and/or purchase said Reserved Right upon the same terms and conditions of said Third Party Offer. If Producer elects to exercise the right to purchase such Reserved Right, Producer shall notify Owner of the exercise thereof within said ten (10) day period, failing which Owner shall be free to accept such Third Party Offer. If any such proposed license and/or sale is not consummated with a third party within thirty (30) days following the expiration of the aforesaid ten- (10-) day period, Producer’s Right of Last Refusal shall revive and shall apply to each and every further offer or offers at any time received by Owner relating to the particular Reserved Right or any interest therein; provided, further, that Producer’s option shall continue in full force and effect, upon all of the terms and conditions of this Clause, so long as Owner retains any rights, title, or interests in or to the particular Reserved Right.

13. NO OBLIGATION TO PRODUCE: While Producer shall use best efforts to effect a production hereunder, nothing herein shall be construed to obligate Producer to produce, distribute, release, perform or exhibit a film based upon the Work, in whole or in part, or otherwise to exercise, exploit or make any use of the rights, license, privileges or property gained herein to Producer.

14. REPRESENTATIONS AND WARRANTIES:

- (a) The Work itself is original with Owner and no part of the Work is in the public domain other than the extent to which historical facts are, by their nature, in the public domain;
- (b) Owner has the right, authority and legal capacity to grant the rights granted to Producer herein;
- (c) The work is not subject to any claim, arbitration, mediation, or litigation.
- (d) The Work does not, and no use thereof will, infringe upon or violate any personal, proprietary or other right of any third party, including, without limitation,

defamation, libel, slander or violation of any right of privacy or publicity or any copyright in underlying material; and

- (e) Owner shall not exploit the Work in a manner inconsistent with the terms of this Agreement, specifically, to not sell, license, exploit or transfer any rights in the Work.

15. REMEDIES: Owner recognizes and confirms that in the event of a failure or omission by Producer constituting a breach of its obligations under this Agreement, whether or not material, the damage, if any, caused Owner is not irreparable or sufficient to entitle Owner to injunctive or other equitable relief. Consequently, Owner's rights and remedies shall be limited to the right, if any, to obtain damages at law and Owner shall not have any right in such event to terminate or rescind this Agreement or any of the rights granted to Producer hereunder or to enjoin or restrain the development, production, advertising, promotion, distribution, exhibition or exploitation of the Picture and/or any of Producer's rights pursuant to this Agreement.

16. MISCELLANEOUS:

- (a) Arbitration. Disputes under this Agreement shall be settled pursuant to binding arbitration under the rules of the Independent Film and Television Alliance ("IFTA") in [STATE]. The prevailing party will be entitled to reasonable attorney fees and costs.
- (b) Indemnification. Owner shall indemnify and defend Producer from and against any and all claims and damages arising from the breach of any representation or warranty of Owner hereunder to the extent such claim or damage does not arise out of a breach by Producer hereunder. Producer shall indemnify and defend Owner from and against any and all claims and damages arising from the production, distribution, exhibition or exploitation of the Picture, or any element thereof, to the extent such claim or damage does not arise out of a breach by Owner hereunder.
- (c) Accounting. Producer agrees to keep and maintain complete and accurate books and records relating to the Picture and the proceeds derived therefrom.
- (d) Assignment. Owner may not assign its rights or obligations hereunder. Producer may freely assign its rights and obligations hereunder.
- (e) Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of [STATE].
- (f) Notices. All notices under this Agreement shall be in writing addressed to the addresses first set forth above, or at such other address as either party may designate from time to time by written notice to the other. All notices shall be served by facsimile and U.S. mail, electronic mail, recognized courier services such as Federal Express or DHL or personal delivery addressed as specified above. The date of receipt by facsimile, electronic mail or courier, as the case may

be, shall be the date of service of notice.

- (g) This agreement may be signed in counterparts. Facsimile and scanned copies shall be deemed originals for all purposes.
- (h) Further Documents. Owner agrees to execute, acknowledge, and deliver to Producer and to procure the execution, acknowledgment, and delivery to Producer of any additional documents or instruments which Producer may reasonably require to effectuate fully and carry out the intent and purposes of this Agreement. If Owner shall fail to execute and deliver any such documents or other instruments, within ten (10) calendar days after such documents are delivered to Owner, Producer shall be deemed to be, and Owner irrevocably appoints Producer, the true and lawful attorney-in-fact of Owner, to execute and deliver any and all such documents and other instruments in the name of Owner, which right is coupled with an interest.
- (i) This Agreement constitutes the entire agreement between the parties hereto with respect to all of the matters herein and its execution has not been induced by, nor do any of the parties hereto rely upon or regard as material, any representations or writing whatsoever not incorporated herein and made a part hereof. No amendment or modification hereto shall be valid unless set forth in a writing signed by both parties.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

PRODUCER

OWNER

By: _____ SSN: _____

Its: Managing Member