

1 3. Plaintiff is informed and believes that defendant Metro-Goldwyn-Mayer Studios, Inc.
2 ("MGM Studios") is a corporation organized under the laws of the State of Delaware and doing
3 business in Los Angeles, California.

4 4. Plaintiff is informed and believes that Defendant Metro-Goldwyn-Mayer Home
5 Entertainment, Inc. ("MGM Home Entertainment") is a corporation organized under the laws of the
6 State of Delaware and doing business in Los Angeles, California.

7 5. MGM Studios and MGM Home Entertainment are collectively referred to as "MGM" or
8 "Defendants."

9 6. The true names and capacities, whether individual, corporate, associate, or otherwise, of
10 Defendants named Does 1 through 50, inclusive, are unknown to Plaintiff at this time.

11 Accordingly, they are sued by such fictitious names. Plaintiff is informed and believes that
12 Defendants Does 1 through 50, inclusive, are in some manner responsible and/or liable for the
13 damages and/or wrongful actions alleged herein. Plaintiff will seek leave of this Court to amend
14 this Complaint to identify their true names and capacities when they are discovered.

15 **FACTS COMMON TO ALL CAUSES OF ACTION**

16 7. *Mister Ed* is a well-known American situation comedy that appeared in syndication, and
17 later on a national television network from 1961-1966. The *Mister Ed* television series was based
18 on a short story and characters authored and created by Walter Brooks ("Mr. Brooks").

19 8. The rights to exploit the original character and stories by Mr. Brooks were retained by
20 Mr. Brooks during his lifetime. After his death, those rights passed to his wife, Ms. Dorothy R.
21 Brooks ("Ms. Brooks") and they became part of her Estate after she passed away. In 1959 Ms.
22 Brooks owned all the rights to the characters and stories upon which the *Mister Ed* television show
23 is based.

24 **A. The Estates' Rights Under The 1959 Agreement.**

25 9. On October 29, 1959, Ms. Brooks entered into a written agreement (the "1959
26 Agreement") with Arthur Lubin ("Lubin") regarding the right to exploit the *Mister Ed* stories and
27 character for television. Pursuant to the 1959 Agreement Ms. Brooks, as the owner of all property
28 rights to the *Mister Ed* short story and characters, granted to Mr. Lubin the exclusive right and

1 license to create derivative works for television and to exploit the Mister Ed character in "television
2 motion pictures." An accurate copy of the 1959 Agreement is attached as **Exhibit A ("Ex. A")**
3 herein.

4 10. The 1959 Agreement authorized the creation of the *Mister Ed* television series. Among
5 the rights granted to Lubin in the 1959 Agreement was a right "[t]o distribute, sell, market, lease,
6 perform, exhibit, publicize, license or sub-license for exhibition, or in any other manner to exploit
7 . . . for profit or otherwise, or dispose of such television motion pictures and sound records." (See
8 **Ex. A** (1959 Agreement), p. 3, ¶ 1(c).)

9 11. Lubin also acquired the right to "record, reproduce and transmit in any and all
10 languages, words, lyrics, speech, dialogue, music, songs, sounds and noises based upon or adapted
11 from the Properties, or any of them, in connection with or in synchronism with the production or
12 exhibition of television motion pictures, by means of any devices now or hereafter known. . . ."
13 (See **Ex. A** (1959 Agreement), p. 2, ¶ 1(b).)

14 12. In exchange for the rights acquired by Lubin under the 1959 Agreement, Lubin agreed
15 to pay certain sums to Ms. Brooks for creation of each of the television films which eventually
16 became part of the television series, and for the broadcasting of each of those films, including the
17 payment of a specific sum for each re-run.

18 13. Article 9 of the 1959 Agreement gave Lubin the "sole and exclusive" right to exploit all
19 "enterprise rights and merchandising rights, . . ." with respect to *Mister Ed*. "Merchandising rights"
20 are defined in the Agreement as "[a]ll accessories, mailing pieces, labels or other items or devices
21 by which any sponsor is able to call to the attention of the public that any picture or pictures of the
22 program, or any character or actor therein are associated with or related to such sponsor's business
23 or the production programs, or the products produced, sold, dealt in or distributed by such sponsor
24 or in the subsidiaries or affiliated companies. . . ." (See **Ex. A** (1959 Agreement), p. 9, ¶ 9.)

25 14. "Enterprise rights" are defined as "[t]he publication of comics, comic books, articles and
26 other literary endeavors, or manufacturing privileges and under which a commodity, product or
27 service is made, manufactured or distributed under the name by which the series is known, the
28 name of a character in the series, or under a name which incorporates any phrase, clause, sentence

1 or expression which is used in the series, and which the general public associates with the series, or
2 the name and likeness of any actor or other person appearing in or in connection with the series. . .
3 .” (See 1959 Agreement, pp, 9-10, ¶ 9.) The sale of DVD discs and VHS tapes comes under the
4 definition of merchandising rights and enterprise rights, as those terms are used in the 1959
5 Agreement.

6 15. In consideration for the right to exploit the merchandising and enterprise rights, Ms.
7 Brooks was to be paid “a portion of the net proceeds.” The 1959 Agreement specifically provides
8 that the Estate shall be entitled to 25% of the net proceeds from the exploitation of those rights.
9 “Net proceeds” are defined in the 1959 Agreement as “[a]ll receipts which Purchaser [Lubin, and
10 now MGM] may receive in the exercise of the enterprise rights and merchandising rights after
11 deducting the cost of licensing which may include, among other things, agents’ commissions, after
12 deducting Purchaser’s [Lubin’s, and now MGM’s] distribution fees in connection therewith, and
13 after deducting percentages of proceeds to which others may become entitled.”

14 **B. MGM Acquires The Benefits and Obligations Under the 1959 Agreement.**

15 16. The 1959 Agreement grants Lubin the right to assign his rights and obligations under
16 the 1959 Agreement. Lubin subsequently transferred his rights and obligations to a joint venture
17 comprised of Lubin, John T. LaFollette (“Folette”), Filmways TV Productions, Inc. (“Filmways”) and
18 Palmas Las, Inc. (“Palmas”), called “The Mr. Ed Company” (the “Mr. Ed Company”).

19 17. On information and belief, the Mr. Ed Company subsequently transferred its rights and
20 obligations under the 1959 Agreement to Orion Pictures (“Orion”). On information and belief,
21 those rights and obligations later were transferred to MGM.

22 18. The Estate recently discovered that within the past several years MGM has exploited the
23 *Mister Ed* television series without providing any payment to the Estate. The Estate is informed
24 that in recent years MGM has released two collections of DVDs featuring the “Best Of” *Mister Ed*.
25 It released Volume One (1), containing 21 episodes, of the series on January 13, 2004. Volume
26 Two (2) was released on March 8, 2005; it contains 20 episodes. On information and belief, on
27 July 26, 2005, MGM also released a single-disc entitled *Mister Ed’s Barnyard Favorites* which
28 contains the first eight episodes featured on Volume One.

1 19. The Estate has demanded that MGM pay the Estate the amount owed under the 1959
2 Agreement for the sales of the DVDs and any VHS tapes. The Estate has also demanded an
3 accounting. MGM has failed to provide an appropriate accounting and has failed to provide
4 payment pursuant to the Estate's demands. On information and belief, MGM owes the Estate at
5 least \$378,396, plus interest, for fees relating to the sales of *Mister Ed* DVDs and VHS tapes.

6 **FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT**

7 **(By Plaintiff against All Defendants)**

8 20. Plaintiff repeats, re-alleges and incorporates by reference all the allegations contained in
9 paragraphs 1 through 19, as though fully set forth herein.

10 21. MGM is the successor-in-interest to Lubin's rights under the 1959 Agreement.
11 Accordingly, pursuant to the terms of the 1959 Agreement, MGM is obligated to properly calculate
12 and pay to the Estate a 25% share of all the "net proceeds" it receives from the exploitation of
13 merchandising rights and enterprise rights related to *Mister Ed*. The 1959 Agreement provides a
14 definition for how the "net proceeds" are to be calculated.

15 22. The Estate has fully performed each and every obligation required to be performed on
16 its part under the 1959 Agreement, except as such performance may have been waived, prevented
17 or excused by the conduct or omission of the Defendants.

18 23. Defendants materially breached the 1959 Agreement and exploited the merchandising
19 rights and enterprise rights under the 1959 Agreement by selling VHS tapes and DVD discs of the
20 *Mister Ed* television show while failing and refusing to pay the Estate any part of the proceeds
21 which are due and owing to it from the exploitation of those rights.

22 24. As a direct and proximate result of Defendants' breaches, Plaintiff has been damaged in
23 a sum of at least \$378,396, plus interest. Plaintiff's damages continue to increase as Defendants'
24 breach of the 1959 Agreement continues. Plaintiff will seek leave to amend this Complaint and to
25 set fourth the full amount of damages when they are fully ascertained.

1 **SECOND CAUSE OF ACTION FOR BREACH OF IMPLIED COVENANT OF**
2 **GOOD FAITH & FAIR DEALING**

3 **(By Plaintiff against All Defendants)**

4 25. Plaintiff repeats, re-alleges and incorporates by reference all the allegations contained in
5 paragraphs 1 through 24, as though fully set forth herein.

6 26. Inherent in every contract, including the 1959 Agreement, is an implied covenant of
7 good faith and fair dealing. Under that covenant, all parties are to refrain from any conduct that
8 will injure the right of any other party to receive any benefit from the Agreement.

9 27. MGM is the successor-in-interest to Lubin's rights under the 1959 Agreement. MGM
10 has materially breached the covenant of good faith and fair dealing contained in the 1959
11 Agreement by, among other things, failing to properly calculate and account for the net proceeds it
12 has received as a result of exploiting the merchandising rights and enterprise rights related to *Mister*
13 *Ed*. It has also violated the covenant by failing and refusing to provide an accounting to the Estate
14 regarding these proceeds, and by failing to pay the Estate the contractually agreed-upon percentage
15 of those net proceeds.

16 28. As a direct and proximate result of Defendants' breaches, Plaintiff has been damaged in
17 a sum of at least \$378,396, plus interest. Plaintiff's damages continue to increase as Defendants'
18 breach of the 1959 Agreement continues. Plaintiff will seek leave to amend this Complaint and to
19 set forth the full amount of damages when they are fully ascertained.

20 **THIRD CAUSE OF ACTION FOR ACCOUNTING**

21 **(By Plaintiff against All Defendants)**

22 29. Plaintiff repeats, re-alleges and incorporates by reference all the allegations contained in
23 paragraphs 1 through 28, as though fully set forth herein.

24 30. The 1959 Agreement provides that the Estate has a right to share in 25% of the "net
25 proceeds" which result from exploitation of the enterprise and merchandising rights as related to
26 the *Mister Ed* character and stories. MGM has exclusive access to and control of the financial
27 records which would reflect all of the net proceeds from the exploitation of such rights. The Estate
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1 has demanded that MGM provide it with an accurate accounting of the monies at issue. MGM has
2 refused to provide an accounting.

3 **FOURTH CAUSE OF ACTION FOR DECLARATORY RELIEF**

4 (By Plaintiff against All Defendants)

5 31. Plaintiff repeats, re-alleges and incorporates by reference all the allegations contained in
6 paragraphs 1 through 30, as though fully set forth herein.

7 32. An actual controversy exists between the parties regarding the legal rights and duties of
8 the parties under the 1959 Agreement. Specifically, an actual controversy exists as to all of the
9 following:

- 10 (a) Whether Article 9 of the 1959 Agreement referring to "merchandising and
11 enterprise rights" applies to the sale of VHS tapes and DVDs, so that MGM is
12 required to make payments to the Estate in accordance with such Article;
- 13 (b) Whether MGM has so defaulted under the 1959 Agreement that MGM no longer
14 has the legal a legal right to continue to exploit the *Mister Ed* television show and
15 the original stories and characters which are licensed to MGM by the 1959
16 Agreement;
- 17 (c) Whether the term "net proceeds" as used in Article 9 of the 1959 Agreement allows
18 MGM to deduct for additional alleged "expenses" which are not explicitly
19 referenced in the 1959 Agreement; and
- 20 (d) Whether the Estate has a right to an accounting from MGM of all of the "net
21 proceeds" received from the exploitation of all of the enterprise and merchandising
22 rights related to *Mister Ed* characters and stories, which include all "net proceeds"
23 which MGM has received from the sale of DVD discs and VHS tapes.

24 33. A judicial declaration is necessary and appropriate at this time so that the parties may
25 proceed in accordance with their actual rights.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
28 follows:

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1. For actual and consequential damages;
2. For pre-judgment and post-judgment interest;
3. For costs of suit;
4. For a declaratory judgment declaring that:
 - (a) Article 9 of the 1959 Agreement referring to "merchandising and enterprise rights" applies to the sale of VHS tapes and DVDs, so that MGM is required to make payments to the Estate in accordance with such Article;
 - (b) MGM has so defaulted under the 1959 Agreement that MGM no longer has the legal right to continue to exploit the *Mister Ed* television show and the original stories and characters which are licensed to MGM by the 1959 Agreement;
 - (c) The term "net proceeds" as used in Article 9 of the 1959 Agreement does not allow MGM to deduct for additional alleged "expenses" which are not expressly referenced in the 1959 Agreement; and
 - (d) The Estate has a right to an accounting from MGM of all of the "net proceeds" received from the exploitation of all of the enterprise and merchandising rights related to *Mister Ed* characters and stories, which include all "net proceeds" which MGM has received from the sale of DVD discs and VHS tapes.
5. For such other and further relief as the Court deems necessary and appropriate.

DATED: June 27, 2008 .

LEADER GORHAM LLP

By 

Gary J. Gorham
Attorneys for Plaintiff
ESTATE OF DOROTHY R. BROOKS

AGREEMENT

THIS AGREEMENT dated this 24th day of October
1959, between GEORGE H. BROOKS, hereinafter called the "Owner", and
ARTHUR LOBIN, hereinafter called the "Purchaser".

The Owner represents and warrants:

(a) That she now has the sole and unencumbered ownership throughout the world to all motion picture rights and all television rights in and to certain published and unpublished stories, hereinafter referred to as the "Properties", written by Walter Brooks, sometimes referred to herein as the "Author", as more fully set forth in Schedule 1 attached hereto and made a part hereof;

(b) That all of the facts and other information contained in said Schedule 1 are true and correct;

(c) That she has the sole and unencumbered ownership throughout the world of the rights, licenses, privileges and property herein granted;

(d) That except for one pilot television motion picture produced pursuant to an agreement between Purchaser and the Author dated October 5, 1957, no television motion pictures have been produced which have been based upon or adapted from, in whole or in part, the Properties, or any of them;

(e) That excepting for the titles, the Properties are or may be validly copyrighted in the United States of America, and are or may be similarly protected throughout the world, so far as the laws of other countries provide for such protection.

(f) That the Properties are wholly original with the Author, and no incident therein, or part thereof, is taken from, based upon, or adapted from, any other material

EXHIBIT "A"

-1-

EAA

not in public domain, and the full use of the Properties, or any thereof, and the exercise of any rights as herein granted, will not, in any way violate or infringe upon any copyright (common law or statutory), or any property rights belonging to, or constitute a libel or defamation, or an invasion of the rights of privacy, or otherwise violate or infringe upon any other right or rights whatsoever of any person, firm or corporation.

The Purchaser desires to acquire the world-wide, complete, sole, exclusive and unencumbered television motion picture rights in and to the Properties.

In consideration of the premises and of the covenants and agreements hereinafter set forth, the parties hereto have agreed, and hereby agree, as follows:

1. The Owner hereby grants to the Purchaser:

(a) The sole and exclusive right to make not less than thirteen (13), nor more than fifty-two (52) television motion pictures, hereinafter sometimes referred to as the "Pictures", based upon or adapted from the Properties set forth in Schedule 1, during a period of one (1) year commencing upon the date of the exercise of the option provided for in the Option Agreement executed concurrently herewith.

(b) The right to record, reproduce and transmit in any and all languages, words, lyrics, speech, dialogue, music, songs, sounds and noises based upon or adapted from the Properties, or any of them, in connection with or in synchronism with the production or exhibition of television motion pictures, by means of any devices now or hereafter known, and to make, by means of direct recordings, or by re-recordings of the sound track of the pictures, or of parts thereof, and by either or both means, or otherwise,

generally in the exercise of the rights elsewhere herein granted, to make any and all new versions of the Properties, adaptations thereof, interpolations therein, or additions thereto, as the Purchaser may desire.

(g) The right to present or portray the leading character or leading characters (including, but not limited to, the character of "ED") of the Properties or of any television motion pictures based upon the Properties, or on any characters therein, in one or more television motion pictures wherein such character or characters participate in substantially or entirely new or different events than those presented or portrayed in the Properties, or in any such television motion pictures based thereon, and generally to make television motion pictures, sequels, serials and continuations of the Properties, or of any such television motion picture version or adaptation of the Properties, and to have and enjoy all the rights, licenses, privileges and property with respect thereto as in this Agreement are granted to the Purchaser in respect of the Properties itself.

(h) The right to produce and distribute, or cause to be produced and distributed, trailers and other forms of short television motion pictures, accompanied or unaccompanied by sound records, synchronized therewith, for exhibition in advance of the exhibition of such television motion pictures.

(i) The right to use the titles by which the Properties have been, or are now, known, or hereafter may be known (or any components of such title or titles) in connection with the Properties;

(j) All rights in the Properties to televise with living actors, and motion picture rights not transferred

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right whatsoever, of the libel or defamation of, any person, firm or corporation, by or on account of any use which the Purchaser, his licensees, sub-licensees, agents, associates, successors or assigns, may make of the Properties or of any part thereof in the exercise of, or attempt to exercise, any of the rights, licenses, privileges or property herein granted. No liability of the Owner under this paragraph shall exceed the amounts theretofore paid him.

4. The Owner will make application for and secure a renewal of the copyrights in the published Properties in the United States at least six (6) months prior to the expiration of the original copyrights therein (or, in the event the present copyright of any property is not the original copyright and the Owner at the time of the expiration of the present copyright may lawfully do so, of the present copyright therein), or if the Owner is not entitled to renew such copyright, the Owner will cause the particular person, firm or corporation entitled so to do, to make application for and to secure a renewal of such copyright in the United States within the period aforesaid, and, in either event, the Owner will promptly notify the Purchaser in writing that such copyright has been applied for or secured.

In the event of the failure of the Owner to do or to cause to be done any and all acts or things necessary to obtain a renewal of the copyrights in the Properties, or any of them, or to effect any such extensions of the copyrights in the Properties, or, in the event of the failure of the Owner to execute and deliver to the Purchaser, or to cause to be executed and delivered to the Purchaser, all such further instrument or

instruments for the purposes aforesaid, the Owner hereby appoints the Purchaser his irrevocable attorney-in-fact, in his name and on his behalf, with the right (but the Purchaser shall not be obligated) to do any and all acts and things necessary for the obtaining of such renewal or extension of copyrights and to execute and deliver all such further instrument or instruments for the purposes aforesaid.

The Owner hereby appoints the Purchaser his irrevocable attorney-in-fact to enforce and protect at Purchaser's own expense, all rights, licenses, privileges or property herein granted in and to the television motion pictures produced hereunder, and all copyrights therein, to prevent, prosecute or terminate any infringements or other violation, or any threatened infringement or threatened violation, of said copyrights as respects any of said rights, licenses, privileges or property, and to litigate, collect and receipt for all damages arising from any such infringement or violation, or from any such threatened infringement or threatened violation, using the name of the Owner or joining with the Owner as party plaintiff or defendant in any such suit or proceeding, in the discretion of the Purchaser. The powers herein conferred on the Purchaser are for the sole benefit of the Purchaser and there shall be no obligation upon the Purchaser to exercise or enforce the same except within his discretion. The Owner will cooperate fully with the Purchaser in any suit or action instituted by the Purchaser hereunder, or in any other course or proceeding adopted by the Purchaser in pursuance of the powers herein conferred.

5. The Purchaser may freely assign this Agreement or any of the rights, licenses, privileges or property herein granted to any person, firm or corporation, without limit.

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(c) Purchaser agrees to pay Owner the sum of Fifty Dollars (\$50.00) for each rerun of each television motion picture made and produced under this Agreement. For the purpose of this Agreement, a rerun shall be defined in the same manner as that term is presently defined in the agreement between Producers and Writers Guild of America, West, Inc.

(d) In the event any picture or pictures referred to in subdivisions (a) or (b) of this paragraph exceed one-half hour in length, then compensation referred to in such subdivisions shall be doubled for such pictures exceeding one-half hour in length.

9. All accessories, mailing pieces, labels or other items or devices by which any sponsor is able to call to the attention of the public that any picture or pictures of the program, or any character or actor therein are associated with or related to such sponsor's business or the produced programs, or the products produced, sold, lent in or distributed by such sponsor, or its subsidiaries or affiliated companies, are hereinafter sometimes for convenience referred to as the 'merchandising rights'.

The publication of comics, comic books, articles and other literary endeavors, or manufacturing privileges and under which a commodity, product or service is made, manufactured or distributed under the name by which the series is known, the name of a character in the series, or under a name which incorporates any phrase, clause, sentence or expression which is used in the series, and which the general public associates with the series, or the name and likeness of any

actor or other person appearing in or in connection with the series, are herein for convenience referred to as the "enterprise rights".

Purchaser shall have the sole and exclusive right to produce and sell, or grant to others the right to produce and sell, or to enter into agreements or licenses with respect to the production, distribution and exploitation of said enterprise rights and merchandising rights, to the extent that the Owner has the right to grant the same.

Upon condition that Owner shall keep and perform all of the covenants, conditions, and obligations on Owner's part to be kept or performed hereunder, Owner shall be entitled to a portion of the net proceeds derived from the exercise of the merchandising rights and the enterprise rights.

All receipts which Purchaser may receive in the exercise of the enterprise rights and merchandising rights after deducting the cost of licensing which may include, among other things, agents' commissions, after deducting Purchaser's distribution fees in connection therewith, and after deducting percentages of proceeds to which others may become entitled, are hereafter referred to as the "net proceeds" of the enterprise rights and merchandising rights. The net proceeds from the enterprise rights and merchandising rights, in which Owner shall be entitled to participate, shall be divided as follows:

(i) Seventy-five per cent (75%) thereof shall be retained by Purchaser as and for Purchaser's absolute property;

(ii) Twenty-five per cent (25%) thereof shall be paid to Owner as and for Owner's absolute property.

10. Purchaser shall have the right to extend the term of this Agreement for such additional yearly periods as it may

desire on the same terms and conditions as provided for in the principal term hereof, during which yearly periods the Purchaser shall have the right to make and produce not less than thirteen (13) pictures nor more than fifty-two (52) during each yearly period. Each of such options may be exercised at any time before the end of the preceding yearly period by a notice in writing to the Owner in the manner hereinafter provided for the sending of notices. In the event that for any reason whatsoever, after the Purchaser has exercised an option, he fails to produce at least thirteen (13) pictures during the respective yearly period, he shall be obligated nevertheless to pay Owner the difference between the compensation theretofore paid Owner for the pictures produced by the Purchaser during such yearly term, and the sum of Three Thousand, Two Hundred and Fifty Dollars (\$3,250.00), which amount is the minimum guaranteed compensation payable to the Owner for the rights herein granted during any yearly period. In the event Owner does not receive the minimum guaranteed payment of Three Thousand, Two Hundred and Fifty Dollars (\$3,250.00) during any yearly period, then all rights of every kind in and to said stories and the characters therein, shall revert to the Owner; provided, however, the Purchaser shall continue to have the right to lease, license, sell and otherwise distribute all of the pictures theretofore made and produced pursuant to this Agreement, in perpetuity.

11. Owner will not create, allow or sanction any dramatization or novelization of said Properties, or any publication of any part of said Properties, or of any such dramatization or novelization, or of any arrangement, translation, revision or new version, in any form, in any part of the world, without first granting to the Purchaser in respect thereof, and without any

further consideration to be paid by the Purchaser, all the rights, licenses, privileges and property therein which under this Agreement are granted to the Purchaser with respect to the Properties themselves.

12. All notices which the Purchaser is required or may desire to give to the Owner under or in connection with this Agreement, and all payments due the Owner in connection with this Agreement, shall be given by addressing the same to the Owner in care of Brandt & Brandt, 101 Park Avenue, New York, New York, or at such other address of which the Owner from time to time gives the Purchaser written notice, and by depositing the same so addressed, postage prepaid, in the United States mail, or by delivering them, toll prepaid, to a telegraph or cable company.

All notices which the Owner is required or may desire to give the Purchaser under or in connection with this Agreement shall be given by addressing the same to the Purchaser in care of Fox, Goldman & Kagan, 242 North Canon Drive, Beverly Hills, California, or at such other address of which the Purchaser from time to time gives the Owner written notice, and by depositing the same, so addressed, postage prepaid, in the United States mail, or by delivering them, toll prepaid, to a telegraph or cable company.

13. Television motion pictures, as the term is used in this Agreement, shall be deemed to mean and to be limited to filmed motion pictures of not to exceed one hour normal running time, or less, for exhibition through television devices to homes or other places of assemblage, whether or not admission is charged, and shall include, without limiting the generality of the foregoing, the right to exhibit such picture by means of so-called Phone Vision, Telemeter, Skiatron, or other similar devices. 4

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A television motion picture shall be deemed to have been "made and produced" upon the commencement of principal photography of such picture.

14. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors and assigns.

15. Nothing herein contained shall be construed as obligating the Purchaser to produce, distribute, release, perform or exhibit any television motion pictures based upon, adapted from, or suggested by, the Properties, in whole or in part, or otherwise to exercise or in any way to make use of, if exercised, any of the rights, licenses, privileges or property herein granted.

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

David R. Brooks
DAVID R. BROOKS Owner

ARTHUR LUBIN Purchaser