



CLERK OF THE COURT

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16 DISTRICT COURT

17 CLARK COUNTY, NEVADA

18 TRUE GAMES INTERACTIVE, a California  
19 corporation,

20 Plaintiff,

21 v.

21 PETROGLYPH GAMES, INC., a Nevada  
22 corporation; and DOES 1-20.

23 Defendants.

Case No. **A- 10- 615820- B**  
**XXV**

Dept. No. \_\_\_\_\_

**COMPLAINT**

ARBITRATION EXEMPT  
(Action seeks equitable relief, and an  
amount in controversy greater than  
\$50,000)

**BUSINESS COURT**

**JURY DEMANDED**

1 Plaintiff True Games Interactive ("TGI"), complains against defendants Petroglyph  
2 Games, Inc. ("Petroglyph"), and Does 1 through 20, as follows:

3 **INTRODUCTION**

4 1. TGI is a video game publisher, and Petroglyph is a video game developer.

5 2. In late 2007, Petroglyph embarked on a joint venture with TGI to develop and  
6 publish what became known as Mytheon, a massively multiplayer online real time strategy  
7 ("MMORTS") game. A massively multiplayer online game (also called "MMO") is a video  
8 game, generally played on the Internet, which is capable of supporting hundreds or thousands of  
9 players simultaneously. In MMORTS games, players often assume the role of a general, king, or  
10 other type of figurehead leading an army into battle while maintaining the resources needed for  
11 such warfare.

12 3. TGI contributed to the venture, among other things, the concept of the Mytheon  
13 game, millions of dollars in funding for development, certain artwork and intellectual property,  
14 marketing, and expertise in publishing. Petroglyph was to write the software code, which would  
15 consist of original code as well as what Petroglyph described as its proprietary "MMORTS  
16 technology," and provide live technical support after the game has been commercially released,  
17 (i.e., after the game is commercially available to be played by the public on the Internet), at the  
18 rate of \$11,000 per person per month paid by TGI, with a minimum commitment of four people  
19 per month for the first twelve months post commercial release.

20 4. By April 2010, TGI had advanced Petroglyph nearly \$5,000,000 in connection  
21 with the development of Mytheon. TGI had also invested significant resources in marketing  
22 Mytheon around the world. When Petroglyph told TGI that the game would be complete by the  
23 end of March 2010, TGI announced a commercial release date of late May 2010.

24 5. The parties agreed to share the profits from the game, with Petroglyph receiving a  
25 35% share of profits after TGI recouped its costs. Throughout the development, Petroglyph  
26 represented that the money that TGI had paid it was not enough to cover its costs, that  
27 Petroglyph was risking a loss, and that it was relying on receiving a share in the profits from the  
28 venture.

1           6.       The original contract between TGI and Petroglyph listed nineteen milestones, for  
2       which Petroglyph was required to deliver certain components of the game to TGI, and, if those  
3       milestones were met, then TGI would advance funds to Petroglyph. As the release date for  
4       Mytheon approached, however, Petroglyph began claiming that cost overruns and Petroglyph's  
5       inabilities to make its own payroll threatened the viability of the game. While TGI continued to  
6       provide Petroglyph with emergency funding and advances (even when required milestones had  
7       not been met), Petroglyph slowed down its final edits to the programming of the game and made  
8       increasing demands for additional concessions along with veiled, and sometimes blatant, threats  
9       that the game would not be completed if those demands were not met.

10          7.       In late April 2010, Petroglyph submitted an "open beta" build of Mytheon to TGI.  
11       Open beta builds are provisionally released on the Internet to allow for live testing prior to the  
12       commercial release of a MMORTS game. The open beta of Mytheon was online from April 28  
13       through May 2, 2010. It was so unstable, however, and prone to errors, crashes, and bugs, that it  
14       became obvious that either Petroglyph did not have the skills to complete the game (which, given  
15       the background of its principals, seemed unlikely), or that Petroglyph was intentionally delaying  
16       and/or failing to produce a quality product as a means of squeezing more money and concessions  
17       out of TGI. Increasingly during the month of April 2010, Petroglyph stopped engaging in  
18       meaningful communications with TGI regarding the status of the project, and instead began  
19       making demands that the parties' agreements be changed in ways that would provide more  
20       money to Petroglyph, such as asking TGI to buy Petroglyph's interest in the joint product, or  
21       asking TGI to commit to funding Petroglyph's operation of a much larger live support team than  
22       originally contemplated in the parties' agreements.

23          8.       TGI indicated that it was open to some changes in the parties' agreements, and  
24       requested that Petroglyph put the source code of the game in escrow, as is standard in the  
25       industry, so that the parties' investment could be properly marketed, licensed, and serviced, and  
26       so that third party licensees could be assured that the game could be maintained if anything  
27       happened to any of the parties involved. Petroglyph interpreted the request to escrow the source  
28       code as another opportunity to squeeze more money out of TGI, and demanded more money.

9. By May 2010, Petroglyph's demands made their strategy clear. It completed just enough of the game so that TGI would pay it millions of dollars, but not enough so that the game could be published. The open beta was not as successful as it should have been, and Petroglyph made no indication that it would fix the problems under the terms of the parties' agreements. Worse still, Petroglyph held the source code hostage, making it impossible for TGI to complete Mythcon without bowing to Petroglyph's demands. Knowing that TGI had committed millions of dollars to the venture, and knowing that TGI needed to make commitments to potential licensees around the world to monetize the venture, Petroglyph's actions threatened the entire venture.

10. Petroglyph's demands were improper. They were designed to sabotage the venture's sole asset, and make it impossible to complete the project. TGI has no alternative remedy other than to file this action and seek relief from the Court, because even if TGI gave into Petroglyph's demands, nothing would prevent Petroglyph from sabotaging the venture if later demands were not met.

## THE PARTIES

11. Plaintiff TGI is a California corporation, with its principal place of business in Austin, Texas.

12. Plaintiff is informed and believes, and based thereon alleges, that defendant Petroglyph is a Nevada corporation, with its principal place of business in Clark County, Nevada.

13. Plaintiff does not know the true names and capacities of defendants Does 1 through 20, and therefore sues these defendants by such fictitious names. Plaintiff will seek leave of the Court to amend this complaint to show their true names and capacities when they have been ascertained. Plaintiff is informed and believes, and based thereon alleges, that the Doe defendants are responsible for the actions and omissions alleged in this complaint.

14. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein, each of the defendants was the agent, servant, employee, alter-ego and/or co-conspirator of each of the other defendants, and in doing the things herein alleged was acting

1 within the scope of his, her or its authority as agent, servant, employee, alter-ego and/or co-  
2 conspirator and with the permission and consent of each of the other defendants.

### 3 GENERAL ALLEGATIONS

4 15. In late 2007, TGI, on the one hand, and Petroglyph, on the other, began discussing  
5 the development of what would eventually become the game Mytheon, and drafting a letter of  
6 intent (the "LOI"). Early drafts of the LOI indicated that the parties were working towards a  
7 definitive agreement "containing reasonable and customary covenants, representations and  
8 warranties found in agreements of such nature."

9 16. Effective June 18, 2008, TGI and Petroglyph entered into a Game Development  
10 Agreement (the "Agreement"). The Agreement is not attached to this complaint, because it  
11 contains confidential terms. The Agreement required Petroglyph to deliver a "Gold Master"  
12 version of Mytheon to TGI by November 15, 2009. The "Gold Master" is defined to include a  
13 version of the game that has passed TGI's quality assurance procedures to verify that the game  
14 complies with specifications "embodying the Software, Content, Publisher Materials, Developer  
15 Proprietary Technology, and Improvements to Developer Proprietary Technology." The term  
16 Software is defined to include all source code, and the term Content is defined to include  
17 Software. Accordingly, Petroglyph's obligations to deliver the Gold Master version of the game  
18 required Petroglyph to deliver sufficient information so that TGI could test Petroglyph's source  
19 code for all parts of the game, including that which Petroglyph claims is its own proprietary  
20 technology, such as the MMORTS technology.

21 17. Effective September 12, 2008, TGI and Petroglyph entered into an amendment to  
22 the Agreement (the "First Amendment"). The First Amendment provides additional detail  
23 regarding the scope of the game, and extended the deadline for delivery of the final Gold Master  
24 milestone to February 1, 2010.

25 18. On October 22, 2008, Michael Legg ("Legg"), one of the principals of  
26 Petroglyph, wrote an email to Jeff Lujan ("Lujan"), CEO and founder of TGI, and others, in  
27 which he wrote that "It is a delight to be partnered with you, and we look forward to more great  
28 times to come."

1           19.     On December 10, 2008, Chuck Kroegel ("Kroegel"), the CEO and General  
2 Manager of Petroglyph, sent an email to Lujan with a proposed amendment to the parties'  
3 agreement. The amendment contained Lujan's signature, which Kroegel had included on the  
4 agreement – to make it appear as if Lujan had signed it – without Lujan's permission or  
5 authorization. When Lujan emailed Kroegel to ask how his signature appeared on the document,  
6 Kroegel replied in an email with a single word: "voodoo."

7           20.     Effective on or about December 12, 2008, TGI and Petroglyph entered into a  
8 second amendment to the Agreement (the "Second Amendment"). The Second Amendment  
9 extended the deadline for delivery of one of the last milestones of the game to February 15,  
10 2010. While the Second Amendment does not state the date on which the Gold Master would be  
11 due, the context of the amendment implies that the Gold Master would be completed at or about  
12 that time, because that milestone (assuming that the rest of the game worked properly) should  
13 have been one of the last parts of the game to be delivered to TGI.

14           21.     On January 13, 2009, Kroegel, on behalf of Petroglyph, sent an email to Lujan at  
15 TGI regarding a telephone message. In the email, Kroegel wrote: "The partners are very  
16 disturbed by your behavior." Lujan responded to the email that same day, copying Legg and  
17 others, listing concerns about Petroglyph's lack of progress. Kroegel responded to Lujan's email  
18 that day, adding Steve Tall ("Tall"), another one of the principals of Petroglyph, and others to the  
19 list of recipients. In his response, Kroegel wrote the following about Mytheon: "It was NEVER  
20 conceived to be a full blown MMO [Massively Multiplayer Online game], which costs upwards  
21 of \$15 million and three to five years to complete. The trend, however, over the last months has  
22 been to move this game to the scope of a full blown MMO." Kroegel's claim that a "full blown  
23 MMO" was never contemplated was contrary to the parties' express expectations, because, from  
24 the early drafts of the original LOI, the parties had expressed their intention to develop and  
25 publish "a real time strategy massively multiplayer on-line computer game based."

26           22.     On March 12, 2009, Tall wrote an email to Lujan, copying Kroegel, Legg and  
27 others, confirming that this was indeed a joint venture, which stated: "Petroglyph is already  
28

1 funding an overrun on Mytheon, which we are willing to do given the nature of our partnership  
2 with True Games and the potential upside for us on the back end.”

3 23. On June 12, 2009, Kroegel of Petroglyph wrote an email to Lujan of TGI and  
4 others, in which he asked TGI to either pay millions of dollars more for Mytheon, or provide  
5 other concessions to Petroglyph as a requirement of Petroglyph completing the game. Kroegel  
6 threatened delays if his demands were not met, writing: “Failing a resolution by the beginning of  
7 July, Petroglyph will be compelled to take action to control costs, which will delay the release  
8 date by five months or more.” Lujan responded that day by stating that TGI would review  
9 Kroegel’s requests, but that: “I see your requests come only at the concessions/expense of True  
10 Games and Im [sic] positive that is not reasonable.” In his response later that day, Kroegel  
11 emphasized that Petroglyph’s relationship with TGI went beyond the scope of the contract. He  
12 wrote: “Yes, we can all review the contract, but let’s keep in mind that Mytheon will be a great  
13 game, bringing in worthwhile profits, if we place a high priority on the relationship of True  
14 Games and Petroglyph . . . . . such a thing is not found in any contract in my opinion.” (Ellipses  
15 in original.) Those emails demonstrate that Petroglyph continued to treat the project as a joint  
16 venture, in which the duties and obligations of the parties went beyond that set forth in the  
17 contract, and that Petroglyph had fiduciary duties to complete the project for the mutual profit of  
18 TGI and Petroglyph.

19 24. On June 22, 2009, Kroegel sent an email to Bob Drobish (“Drobish”), then CEO  
20 of TGI, and others, purporting to report on Kroegel’s “understanding” of a meeting in which  
21 Kroegel claimed that he understood TGI would provide significantly more funding to  
22 Petroglyph. Drobish responded that day by writing “This is not an accurate representation of the  
23 conversation that we had. Spinning good faith conversations is not conducive to long-term  
24 partnerships.” Kroegel responded by writing “I sincerely apologize if I misunderstood or had the  
25 incorrect take away. It would seem we have more to discuss to clarify.”

26 25. On February 22, 2010, Kroegel sent an email to Lujan at TGI, and again  
27 demanded additional funding while threatening an end to the venture. Kroegel wrote: “Can you  
28

1 get the \$100K wired over to us in the next two days? The people on Mytheon will not get a  
2 paycheck at the end of the week if we don't."

3 26. On March 15, 2010, Kroegel sent an email to Lujan at TGI, again threatening to  
4 destroy the venture if TGI failed to pay Petroglyph more money. Kroegel wrote: "We are  
5 dangerously close once again to missing payroll for the Mytheon team. The issue is that the time  
6 period between March 31st and release needs to be financially covered one way or another by  
7 TGI."

8 27. On March 16, 2010, Kroegel represented that the Gold Master would be  
9 completed by the end of March 2010. He wrote: "The end of March milestone gets us to Gold  
10 from our view." Later that day, Kroegel reaffirmed that "We are on top of the bugs. By the end  
11 of March they will be down to a publishable level for sure. . . . Petroglyph is ready for release at  
12 the end of March." Petroglyph, however, failed to submit any Gold Master candidate by the end  
13 of March.

14 28. On April 7, 2010, Kroegel wrote to Lujan at TGI and claimed "we really have  
15 delivered a publishable game...yes it can always be better...but it is at a good quality to merit  
16 going to OPEN BETA. [¶] That is the key thing here Jeff. Let's to go to live team with OPEN  
17 BETA. Our current delivery gets you that and more. [¶] We can't go on without cash...just like  
18 you. The bottom line is that we need to switch over to the live team for cash flow reasons."  
19 Petroglyph had no right under the contract to receive payments for live support at that time,  
20 because there had not been a commercial release of the game.

21 29. By April 15, 2010, TGI had discussed with Petroglyph that the game would be  
22 released commercially in late May 2010, and Petroglyph did not object to that date, or claim that  
23 it could not be ready in time.

24 30. Shortly after TGI announced a commercial release date, Petroglyph continued to  
25 demonstrate its ability to delay and derail production of Mytheon. For example, TGI was  
26 holding daily triage meetings, during which open issues and problems were discussed, and plans  
27 were put in place for resolution. Such triage meetings are common in the video game industry,  
28 especially as games approach commercial release. While TGI staffed these meetings with as



1 many as eleven senior TGI personnel, Petroglyph (when it sent anyone at all) sent only one  
2 junior employee to the triage meetings, and that employee was unable to address the vast number  
3 of problems that needed to be resolved. On April 21, 2010, Lujan of TGI wrote to Legg and  
4 Kroegel regarding the lack of appropriate staffing from Petroglyph at the triage meetings, but  
5 Petroglyph refused to remedy the problem.

6 31. On April 25, 2010, Petroglyph offered to amend the parties' Agreement, such that  
7 TGI would be required to fund a team of ten Petroglyph personnel, at the rate of \$11,000 per  
8 month each, to provide live support for Mytheon commencing *before* the game was  
9 commercially released, with the first payment due immediately upon signing the proposed  
10 amended agreement.

11 32. On April 28, 2010, an open beta test of the game commenced. The game  
12 experienced instability and frequent crashes based on the code that Petroglyph had been paid to  
13 write. The next day, on April 29, 2010, Lujan from TGI wrote to Kroegel at Petroglyph and  
14 asked how, in light of the "severe defects and missing content," Kroegel could have thought that  
15 the game was "publishable" three weeks before. Kroegel did not respond to the email.

16 33. On May 3, 2010, David Silverstein of TGI wrote to Kroegel and others at  
17 Petroglyph to resolve ongoing problems with the product. Silverstein asked to work onsite at  
18 Petroglyph to resolve these problems. In response, Kroegel wrote that Silverstein could help  
19 onsite "assuming" that Petroglyph's attempts to renegotiate its contractual obligations with TGI  
20 went well. Here again, Petroglyph was conditioning its continued work on the project, and even  
21 the ability of TGI personnel to assist in completing the project, on demands from Petroglyph for  
22 additional concessions from TGI. Petroglyph also conditioned providing critical documentation  
23 necessary for testing the game on the results of its attempt to renegotiate the parties' agreement.

24 34. The repeated, unreasonable demands by Petroglyph for additional funds and  
25 concessions, combined with Petroglyph's apparent unwillingness or inability to deliver the final  
26 product, poisoned the working relationship between TGI and Petroglyph, such that the entire  
27 multi-million dollar venture is in danger of collapsing.  
28

1 **FIRST CAUSE OF ACTION**

2 **Breach of Fiduciary Duties**

3 (By Plaintiff TGI Against Defendant Petroglyph)

4 35. Plaintiff incorporates herein by reference paragraphs 1 through 34 of this  
5 complaint.

6 36. Beginning in late 2007, TGI entered into a joint venture with Petroglyph, the  
7 purpose of which was to conduct the business enterprise of developing and marketing what was  
8 to become the Mytheon game. TGI and Petroglyph agreed to develop and market the game, and  
9 share in profits and losses pursuant to the formulas and conditions set forth in the parties'  
10 Agreement.

11 37. "[A] joint venture is 'a contractual relationship in the nature of an informal  
12 partnership wherein two or more persons conduct some business enterprise, agreeing to share  
13 jointly, or in proportion to capital contributed, in profits and losses.' [Citation.] A joint venture  
14 is a less formal relationship than a partnership and is typically an association entered into to  
15 perform a more limited business objective for a more brief period of time. [Citation.] A joint  
16 venture is less permanent than a partnership and is usually limited to a single business project."  
17 *Hook v. Gluricich*, 823 P.2d 294, 296 (Nev. 1992).

18 38. The Agreement demonstrates that the parties' entered into a joint venture, because  
19 TGI and Petroglyph had a contractual relationship to develop the Mytheon game, with each  
20 entity responsible for specific duties. Petroglyph was responsible providing development and  
21 programming services for the game, TGI was responsible for marketing the game for  
22 distribution, and the parties would jointly own the intellectual property. In addition, TGI was  
23 responsible for advancing funds to Petroglyph when certain deliverables were completed and  
24 approved.

25 39. TGI and Petroglyph understood the synergistic effect of their respective  
26 contributions to the joint venture and its potential for profit. What neither could accomplish  
27 alone, the two could accomplish together as joint venturers. TGI and Petroglyph both agreed  
28

1 upon the roles they were to assume in accomplishing the mutually beneficial purposes of the  
2 joint venture.

3 40. As further evidence of the joint venture, Petroglyph repeatedly emphasized in  
4 communications that it was developing Mytheon at a loss, and that it expected to recover that  
5 loss from the profits once the game was released. Petroglyph also exercised control over the  
6 venture, by, among other things, having contractual rights to consult with TGI on the marketing  
7 and promotion of the game, and the right to speak with the press about the game.

8 41. Under Nevada law, it "is well established that the relation between joint  
9 adventurers is fiduciary in its character, and the utmost good faith is required of the trustee, to  
10 whom the deal or property may be entrusted, and that such trustee will be held strictly to account  
11 to his coadventurers, and that he will not be permitted by reason of the possession of the property  
12 or profits, whichever the case may be, to enjoy an unfair advantage, or have any greater rights in  
13 the property by reason of the fact that he is in possession of the property or profits as trustee than  
14 his coadventurers are entitled to. The mere fact that he is intrusted with the rights of his  
15 coadventurers imposes upon him the sacred duty of guarding their rights equally with his own  
16 and he is required to account strictly to his coadventurers, and, if he is recreant to his trust, any  
17 rights they may be denied are recoverable." *Chadbourne V. Hanchett*, 35 Nev. 319, 342 (Nev.  
18 1912).

19 42. TGI provided Petroglyph with millions of dollars in funding, while relying on the  
20 integrity, confidence, and competence of Petroglyph, and Petroglyph voluntarily accepted and  
21 assumed a position of trust and confidence with TGI.

22 43. TGI trusted Petroglyph to maintain the source code for Mytheon, and to perfect it  
23 in a timely manner so that it could be used to their mutual profit. Petroglyph agreed to be  
24 entrusted with that property throughout the development of the game. Petroglyph then tried to  
25 take unfair advantage by seeking additional funding, concessions, and profits from the venture,  
26 by delaying the production of the game, and by refusing to produce a version of the game that  
27 worked properly without errors unless TGI conceded to Petroglyph's demands.  
28

1           44.     In reliance of their relationship, and the trust and confidence that Petroglyph  
2 agreed to assume, TGI: (a) sought and received what was represented to be skilled services from  
3 Petroglyph, including development of parts of the Mytheon game; (b) provided millions of  
4 dollars of funding to Petroglyph, including emergency funding at times when Petroglyph claimed  
5 that it could not otherwise meet its payroll; (c) provided Petroglyph with confidential trade  
6 secrets to be used in developing Mytheon; and (d) provided Petroglyph with the opportunity to  
7 make a substantial return from profits of the game, if it becomes profitable.

8           45.     Petroglyph breached its fiduciary duties to TGI by failing to complete Mytheon in  
9 a timely manner, by failing to produce a game without significant and material defects, by  
10 repeatedly demanding more money and concessions from TGI, by failing to appropriately staff  
11 the development of the game and triage meetings, and by becoming unresponsive and  
12 threatening to derail the venture when its demands were not met.

13           46.     As a proximate result of Petroglyph's breach of its fiduciary duties to TGI, the  
14 plaintiff has suffered damages in an amount that exceeds the jurisdictional minimums of this  
15 Court, and to be proven at trial.

16           47.     As a further proximate result of the breach, Petroglyph has been unjustly enriched  
17 by receiving nearly \$5,000,000 from TGI.

18           48.     Plaintiff is informed and believes, and based thereon alleges, that: The  
19 aforementioned acts of Petroglyph were willful and malicious, in that Petroglyph knew that TGI  
20 was relying on its trust and confidence and Petroglyph actively misled TGI by claiming at first  
21 that it could deliver its share of the project within a certain budget and in a specified time frame,  
22 and then later claiming that it could not do so without millions of additional dollars in funding,  
23 when, in fact, Petroglyph was incapable of meeting its obligations to TGI. Plaintiff is therefore  
24 entitled to punitive damages.

25           49.     Due to Petroglyph's breach of fiduciary duties, it can no longer be entrusted to be  
26 the sole possessor of the source code for the game. Unless and until enjoined and restrained by  
27 order of the Court, Petroglyph's sole possession of the source code will cause irreparable injury  
28 to the plaintiff's businesses, in that the plaintiff will be unable to complete the game at a

1 reasonable cost without Petroglyph's cooperation, which is not forthcoming due to Petroglyph's  
2 unreasonable and unjustified demands for additional funding and concessions from TGI, and due  
3 to Petroglyph's apparent inability to develop a stable, scalable, and commercially viable game.

4 50. The plaintiff has no adequate remedy at law for the injuries that it is suffering  
5 from the defendant's continued breach of fiduciary duties, and is therefore entitled to injunctive  
6 and other equitable relief to prevent the defendant from using, keeping, altering, or destroying  
7 the source code, and to permit TGI to use the source code to complete, maintain, and provide  
8 support for the game on an ongoing basis.

## 9 **SECOND CAUSE OF ACTION**

### 10 **Breach of Contract**

11 (By Plaintiff TGI Against Defendant Petroglyph)

12 51. Plaintiff incorporates herein by reference paragraphs 1 through 34 of this  
13 complaint.

14 52. On or about June 18, 2008, plaintiff TGI and defendant Petroglyph entered into a  
15 written contract for the development of the online video game that eventually became known as  
16 Mythcon. The Agreement was amended twice by the parties.

17 53. Pursuant to the Agreement, TGI advanced Petroglyph nearly \$5,000,000.

18 54. The Agreement required Petroglyph to deliver to TGI a "Gold Master" by no later  
19 than November 15, 2009. A Gold Mater is defined as "the version of the Game that has passed  
20 Publisher's reasonable quality assurance testing procedures to verify that the Game complies  
21 with the Specifications, embodying the Software, Content, Publisher Materials, Developer  
22 Proprietary Technology, and Improvements to Developer Proprietary Technology for a particular  
23 Platform(s) specified on Appendices A, B & C."

24 55. The Agreement defines Software to "mean any and/or all computer source code,  
25 generic code, object code, executable code, or other code format."

26 56. The First Amendment extended Petroglyph's deadline to create a Gold Master  
27 date to February 1, 2010.

1           57.     The Second Amendment extended Petroglyph's deadline for certain deliverables  
2 to February 15, 2010.

3           58.     In mid-March 2010, Petroglyph announced that it anticipated producing a Gold  
4 Master by the end of March, and sought a commitment from TGI for additional funding.

5           59.     TGI has duly performed all the conditions of the contract to be performed by TGI,  
6 except those that it was prevented or excused from performing. TGI has at all times been ready,  
7 willing and able to perform and has offered to perform all the conditions of the contract to be  
8 performed by it.

9           60.     Petroglyph breached the parties' Agreement by failing and refusing to deliver  
10 even a candidate for Gold Master to TGI. Moreover, Petroglyph has categorically refused to  
11 deliver the Software, including the source code, for testing. Without delivering the Software,  
12 TGI cannot test any proposed Gold Master candidate to determine whether Petroglyph has met  
13 its contractual obligations.

14           61.     The failure of Petroglyph to perform its obligations under the contract has  
15 damaged TGI in that Petroglyph received millions of dollars from TGI without fulfilling its  
16 obligations under the Agreement. Plaintiff suffered, and continues to suffer, general damages,  
17 special damages, and incidental and consequential damages of at least \$5,000,000 and in an  
18 amount according to proof.

19           62.     The contract contains an attorneys' fees provision, which will entitle TGI to its  
20 attorneys' fees and costs upon the successful resolution of this action.

21                               **THIRD CAUSE OF ACTION**

22                               **Breach of the Covenant of Good Faith and Fair Dealing**

23                                (BY Plaintiff TGI Against Defendant Petroglyph)

24           63.     Plaintiff incorporates herein by reference paragraphs 1 through 50 of this  
25 complaint.

26           64.     The law implies a covenant of good faith and fair dealing by which Petroglyph  
27 promised to perform fairly, honestly, and reasonably the terms and conditions of the Agreement,  
28 including the terms set forth above.

1           65.     Petroglyph agreed to use commercially reasonable efforts to develop and program  
2 the Mytheon game at a budget of \$4,500,000, to report at least monthly on the general status of  
3 the game, and to complete the milestones set forth in the contract on a timely basis.

4           66.     Petroglyph failed to perform the terms of the agreement in a fair, honest, and  
5 reasonable manner, and acted in a way that frustrated the purpose of the contract, by repeatedly  
6 delaying completion of milestones and the entire project (such that the open beta was not as  
7 successful as it should have been at that stage, and a Gold Master candidate still has not even  
8 been released to TGI for testing), demanding additional cash advances, demanding an increased  
9 size of a live support team to be funded by TGI, failing repeatedly to produce a commercially  
10 viable product free of material defects, and threatening repeatedly to abandon the contract if  
11 Petroglyph's demands for more money and concessions were not met.

12           67.     The foregoing acts are contrary to the parties' purpose of the contract, which was  
13 to produce and publish a high quality game, within budget, and within a time schedule.  
14 Petroglyph engaged in wrongful conduct separate and apart from, and contrary to, the  
15 performance of its obligations under the Agreement. Petroglyph's actions described above were  
16 carried out in bad faith, arbitrarily and unfairly, and for the purpose of depriving TGI of its rights  
17 and benefits under the Agreement.

18           68.     As a direct, foreseeable and proximate result of the breach by the defendant of the  
19 implied covenant of good faith and fair dealing, TGI suffered, and continues to suffer, general  
20 damages, special damages, and incidental and consequential damages of at least \$5,000,000 and  
21 in an amount according to proof.

22           69.     Due to Petroglyph's breach of the implied covenant of good faith and fair dealing,  
23 it can no longer be entrusted to be the sole possessor of the source code for the game. Unless  
24 and until enjoined and restrained by order of the Court, Petroglyph's sole possession of the  
25 source code will cause irreparable injury to the plaintiff's businesses, in that the plaintiff will be  
26 unable to complete the game without Petroglyph's cooperation, which is not forthcoming due to  
27 defendant's unreasonable and unjustified demands for additional funding and concessions from  
28 TGI.

70. The plaintiff has no adequate remedy at law for the injuries that it is suffering from Petroglyph's continued breach of the implied covenant of good faith and fair dealing, and is therefore entitled to injunctive and other equitable relief to prevent the defendant from using, keeping, altering, or destroying the source code, and to permit TGI to use the source code to complete, maintain, and provide support for the game on an ongoing basis.

#### FOURTH CAUSE OF ACTION

**(Declaratory Relief)**

(By Plaintiff TGI Against All Defendants)

71. Plaintiff incorporates herein by reference paragraphs 1 through 34 of this complaint.

72. An actual, present and judiciable controversy has arisen between plaintiff TGI, on the one hand, and defendant Petroglyph and the Doe defendants, on the other, relating to their respective duties and obligations related to the Mytheon game, including the source code for that game, and whether TGI has the right to immediately receive and access the source code for Mytheon so that it can complete and market the game.

73. TGI is informed and believes, and on that basis alleges, that Petroglyph and the Doe defendants dispute TGI's right to receive the source code for the game.

74. TGI further seeks entry of a declaratory judgment in its favor that declares the defendants' wrongful conduct as described herein to be unlawful, and which provides for recovery of all sums determined by this Court to be owed by the defendants to TGI.

75. TGI seeks injunctive and other equitable relief requiring Petroglyph to produce the source code and documentation for the game, so that TGI can complete production of the game, and prohibiting the defendants from using any intellectual property, source code, documents, information, data, or anything of value derived from the plaintiff to compete with the plaintiff.

76. TGI also seeks entry of an order that will require the source code for Mytheon to be held in escrow, so that the defendants can no longer have the ability to threaten to derail



1 completion of the game unreasonably, based solely on the fact that Petroglyph agreed to hold a  
2 position of trust as the repository of the source code.

3 77. TGI further seeks an order appointing a receiver, so that the Mythcon game can  
4 be finished and marketed in a commercially reasonable manner for the benefit of both Petroglyph  
5 and TGI.

6 78. For said reasons, a judicial determination of this controversy is necessary and  
7 appropriate for the parties to ascertain their rights, duties, and obligations.

### 8 **FIFTH CAUSE OF ACTION**

#### 9 **(Dissolution of Joint Venture)**

10 (By Plaintiff TGI Against Defendant Petroglyph)

11 79. Plaintiff incorporates herein by reference paragraphs 1 through 50 of this  
12 complaint.

13 80. Petroglyph, as alleged above, has been guilty of gross misconduct in the  
14 performance of its obligations in connection with the joint venture, and its actions have frustrated  
15 the purpose of the joint venture.

16 81. TGI seeks to dissolve the joint venture, while preserving its assets.

17 82. TGI therefore seeks entry of a restraining order against Petroglyph, preventing it  
18 and any entity working with it from taking any action that violates TGI's rights in the joint  
19 venture.

20 83. TGI seeks injunctive and other equitable relief requiring Petroglyph to produce  
21 the source code and documentation for the game, so that TGI can complete production of the  
22 game, and prohibiting the defendant from using any intellectual property, source code,  
23 documents, information, data, or anything of value derived from the plaintiff to compete with the  
24 plaintiff.

25 84. TGI also seeks entry of an order that will require the source code for Mythcon to  
26 be held in escrow, so that the defendant can no longer have the ability to threaten to derail  
27 completion of the game unreasonably, based solely on the fact that Petroglyph agreed to hold a  
28 position of trust as the repository of the source code.

1           85.     TGI further seeks an order appointing a receiver, so that the Mytheon game can  
2 be finished and marketed in a commercially reasonable manner for the benefit of both Petroglyph  
3 and TGI.

4           WHEREFORE, plaintiff prays for relief against defendants as follows:

5           1.     For an order requiring defendants to show cause, if they have any, why they  
6 should not be enjoined as hereinafter set forth, during the pendency of this action;

7           2.     For a temporary restraining order, preliminary injunction, and a permanent  
8 injunction, all requiring defendants and their agents, employees, and all persons acting under, in  
9 concert with, or for them:

10           a.     To not access, change, or destroy any intellectual property created or used  
11 in connection with their relationship with TGI in any manner;

12           b.     To immediately provide, to counsel for the plaintiff, all copies of all  
13 intellectual property, source code, and documentation related in any way to Mytheon, including  
14 but not limited to the source code that the defendants claim to be Petroglyph's MMORTS  
15 technology, so that plaintiff can complete and effectively market Mytheon;

16           3.     For the immediate appointment of a receiver to see to it that the Mytheon game is  
17 completed and marketed in a timely manner;

18           4.     For general damages according to proof.

19           5.     For an amount necessary to prevent the unjust enrichment of the defendants;

20           6.     For punitive damages;

21           7.     For attorneys' fees pursuant to contract;

22           8.     For costs; and  
23  
24  
25  
26  
27  
28

COMPLAINT