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Marcu Music Company, Inc.
7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 MARCU MUSIC COMPANY, INC., a
12 Louisiana corporation,

13 Plaintiff,

14 v.

15 PEN MUSIC GROUP, INC. a/k/a
Songs of Pensive Music, a Colorado
16 corporation,

17 Defendant.
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CASE NO.

**PLAINTIFF MARCU MUSIC
COMPANY, INC.'S COMPLAINT
FOR:**

1. DECLARATORY JUDGMENT

2. BREACH OF CONTRACT

3. ACCOUNTING

[Demand For Jury Trial]

1 Plaintiff Marcu Music Company, Inc. (“Marcu”) avers as follows:

2 **NATURE OF THE ACTION**

3 1. This action arises out of the improper conduct of Defendant PEN
4 Music Group, Inc. (“PEN”), a music publishing company that is wrongfully
5 withholding rights and monies due, owing, and belonging to Marcu in connection
6 with Marcu’s publishing catalog; in particular, the musical composition “(I’ve
7 Had) The Time Of My Life” (the “Composition”) and other compositions.

8 2. In 1987, the Composition captured the World’s attention as the theme
9 song for the hit film *Dirty Dancing*, then rose to the top of several charts
10 worldwide, and won the Academy Award for Best Original Song, a Golden Globe
11 Award, and a Grammy Award. More than 30 years later, the Composition remains
12 evergreen, as a highly valuable cultural work frequently sought to be licensed in a
13 variety of media, from television to film to advertising.

14 3. Donald J. Markowitz (“Markowitz”) is a composer of the
15 Composition and co-owner of Marcu, which owns a 12.5% copyright interest in
16 the Composition (“Marcu’s Interest”). As discussed below, Marcu’s Interest in the
17 Composition previously was administered under a publishing administration
18 agreement with Defendant PEN (the “PEN Administration Agreement”).¹

19 4. In late March 2017, Marcu provided to PEN notice of termination of
20 the PEN Administration Agreement.

21 5. Thereafter, on or around November 30, 2017, Markowitz and PEN
22 were parties to a settlement agreement in a related matter, through which, among
23 other things, PEN released all of its claims against Markowitz, his affiliates, and
24 his transferees, including Marcu.

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28 ¹ The PEN Administration Agreement also granted PEN certain rights in and to the
composition entitled “The Time (Dirty Bit),” as well as certain other songs written,
composed, co-written, or co-composed by Markowitz prior to or during the term of
the PEN Administration Agreement (collectively, with the Composition, the
“Compositions”).

6. Accordingly, on December 15, 2017, consistent with Marcu's rights and the prior termination of the PEN Administration Agreement, Marcu entered into a new publishing administration agreement with Kobalt Music Services America, Inc. ("Kobalt"), granting Kobalt the right, among other things, to license and otherwise exploit Marcu's Interest in the Compositions.

7. Nonetheless, without regard for Marcu's rights, the unambiguous termination of the PEN administration agreement, and PEN's subsequent release of Marcu, PEN has placed in jeopardy Marcu's agreement with Kobalt. Due to issues PEN has created with the American Society of Composers, Authors and Publishers ("ASCAP"), *Kobalt was only able to collect two dollars and nine cents (\$2.09) in royalties for the fourth quarter of 2017 and the first quarter of 2018.*

8. Moreover, despite its claims that it continues to be the administrator of the Composition, since December 2017 PEN has failed to account to Marcu or to pay any amounts owing to Marcu – holding hostage both Marcu's Interest in the Compositions and the monies owed to Marcu, in an obvious ploy to try to leverage a further term of administration. As a music publisher promoting its services for the representation of songwriters, this is an appalling display of bad faith and self-serving conduct.

9. Accordingly, Marcu brings this action seeking, *inter alia*, a declaratory judgment that PEN has no right to administer Marcu's Interest in the Compositions. As set forth below, Marcu is entitled to declaratory relief, compensatory damages, legal fees, an accounting, and other remedies.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds the sum or value of \$75,000, and the action is between citizens of different states (*i.e.*, Louisiana and Colorado).

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

A. Marcu Enters Into the PEN Administration Agreement

15. On or about January 1, 2011, Marcu and PEN entered into the PEN Administration Agreement. A true and correct copy of the PEN Administration Agreement is attached hereto as **Exhibit 1** and incorporated herein by this reference.

16. Under the terms of the PEN Administration Agreement, PEN agreed to pay an advance to Marcu of \$500,000 against revenues earned from exploitation of Marcu's Interest in the Compositions.

17. Under the PEN Administration Agreement, during the Term (defined below), PEN was granted the sole and exclusive right to administer and license the use of the Compositions throughout the world, as well as to execute, in its own name or that of Marcu, subject to Marcu's prior written consent, any and all licenses and agreements whatsoever affecting or respecting the Compositions, including but not limited to licenses for mechanical reproduction, public performance, synchronization uses, grand rights and sub-publication rights, and the right to assign or license such rights to others (collectively, the "Rights").

18. The PEN Administration Agreement required PEN to pay to Marcu 100% of the net income actually received, credited to, or derived by PEN from the Compositions, less (a) songwriter royalties and other sums paid by PEN to any other co-author or co-writer of the Compositions; (b) collection or other fees actually charged by and paid to any collection agent; and (c) an administration fee.

19. Pursuant to Paragraph 7 of the PEN Administration Agreement, PEN agreed to provide Marcu an accounting of the royalties received from exploitation of the Compositions, with statements to be sent to Marcu on a quarterly basis within 45 days after the close of each calendar quarter of the Term, to be accompanied by appropriate payments. Paragraph 7 further granted Marcu the

1 right, either on its own or through a certified public accountant on its behalf, to
 2 examine PEN's books pertaining to the Compositions, once per calendar year and
 3 once per statement rendered. Paragraph 7 further stated that, in the event such an
 4 audit reveals an underpayment to Marcu of 5% or more of the sums received by or
 5 credited to PEN and due to Marcu, then Marcu is to be reimbursed for the
 6 reasonable costs incurred relating to such an audit.

7 20. Paragraph 13 of the PEN Administration Agreement provides that,
 8 upon termination of the PEN Administration Agreement, PEN shall be granted a
 9 one-year post-Term collection period during which to collect any and all income
 10 earned by the Compositions during the Term, but which had not yet been received
 11 or credited as of the effective date of termination (the "Post-Term Royalties").

12 21. Additionally, pursuant to Paragraph 16, if, after termination of the
 13 PEN Administration Agreement and after the running of the one-year post-Term
 14 collections period, PEN continued, through no fault of its own, to receive fees and
 15 royalties derived from the use/exploitation of the Compositions, PEN was required
 16 to continue to account to Marcu for 100% of any and all monies received, subject
 17 to deduction of fees set forth in Paragraph 4(c) of the PEN Administration
 18 Agreement.

19 22. The PEN Administration Agreement had an initial term of January 1,
 20 2011 to December 31, 2015. On or around November 28, 2012, the PEN
 21 Administration Agreement was amended (the "Amendment"), with the term
 22 extended through April 1, 2017, for an overall term of six years and three months
 23 (the "Term").² Accordingly, the unambiguous end of the Term, as contemplated
 24 by the PEN Administration Agreement and Amendment, was April 1, 2017.³ As
 25 consideration for the extension stated in the Amendment, PEN paid an additional

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 27 ² A true and correct copy of the Amendment is attached hereto as **Exhibit 2** and
 incorporated herein by this reference.

28 ³ Hereinafter, unless otherwise noted, references to the PEN Administration
 Agreement are to that agreement as amended by the Amendment.

1 \$150,000 advance to Marcu. Thus, at the time the Amendment was executed, PEN
2 had paid a total advance to Marcu of approximately \$650,000.⁴

3 23. Paragraph 2 of the Amendment stated that the Term would extend
4 beyond April 1, 2017 if the Advance was not fully recouped by the close of the
5 third calendar quarter of the sixth year of the term (*i.e.*, by September 30, 2016).

6 24. As confirmed by PEN's accounting statements to Marcu, the Advance
7 was fully recouped long before September 30, 2016. In fact, PEN acknowledged
8 recoupment as of the 4th Quarter 2014.

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10 **B. Marcu Terminates the PEN Administration Agreement**

11 25. On or about March 29, 2017, Marcu sent to PEN a written notice of
12 termination of the PEN Administration Agreement. Accordingly, the PEN
13 Administration Agreement terminated on April 1, 2017; or, in the alternative and at
14 minimum, no later than June 30, 2017.⁵

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16 **C. PEN and Eames Execute the Settlement Agreement**

17 26. In November 2017, Markowitz owed certain outstanding debts to his
18 former spouse, Debra Wise ("Wise"), arising out of judgments entered in their
19 divorce litigation, in the total amount of approximately \$247,000 (the
20 "Judgments"). At the same time, Markowitz owed a separate home loan debt in
21 the amount of \$200,425 to City National Bank (the "City National Debt"), which
22 was secured by a deed of trust encumbering Markowitz's and Wise's former
23

24 ⁴ The initial, \$500,000 advance and the \$150,000 extension advance shall
hereinafter be referred to collectively as the "Advance."

25 ⁵ See Amendment, Paragraph 2: "[T]he Term shall nonetheless automatically
26 continue on a calendar quarterly basis until either Company or Administrator
27 furnishes written notice to the other party expressing its desire to terminate this
Agreement at least thirty (30) days prior to the expiration of the then-current
28 calendar quarterly period." As such, even if the March 29 notice were not
effective termination as of April 1, 2017, it was certainly effective as of the end of
the following calendar quarter (*i.e.*, June 30, 2017).

1 family home, which Wise now occupies. During the summer of 2017, City
2 National Bank threatened to foreclose on the deed of trust.

3 27. In November 2017, Wise and Markowitz came to an agreement to
4 avoid foreclosure of the home, under which Wise agreed to accept \$200,000 in
5 satisfaction of the Judgments. Markowitz in turn agreed to pay the full amount due
6 on the City National Debt, inclusive of all interest, penalties, and all other charges
7 accrued as of the date of payment. These terms were memorialized in a written
8 settlement agreement executed on or around November 30, 2017 (the “Settlement
9 Agreement”).

10 28. Prior to the date of the Settlement Agreement, certain debts arising out
11 of the Markowitz-Wise divorce (including for Wise’s divorce attorney’s fees) had
12 resulted in liens being placed on Marcu’s revenues at PEN. Thus, in order to
13 protect their interests, PEN and its owner, Michael Eames (“Eames”), agreed to
14 pay the entire settlement amounts on behalf of Markowitz. For that reason, PEN
15 and Eames were parties to the Settlement Agreement.

16 29. Paragraph 4b of the Settlement Agreement contained a General
17 Release, which released the “Parties” (defined as Markowitz, Wise, Eames, and
18 PEN), as well as their affiliates and their transferees, “from any and all causes of
19 action, claims, demands, damages, expenditures, costs, attorney fees, liens,
20 obligations, and liabilities of any type or nature, arising from or pertaining to the
21 divorce case, or any other dealings with one another of any nature.”

22 30. Marcu is a transferee of Markowitz’s interest in the Compositions,
23 and thus is a beneficiary of PEN’s and Eames’ releases in the Settlement
24 Agreement.

25 31. On or about December 20, 2017, Marcu caused a wire transfer in the
26 amount of \$216,772.61 to be made to PEN’s account. This payment, together with
27 the \$183,652.13 in Q1-Q4 2017 Marcu royalties held by PEN under the liens filed
28 by Wise, constituted full and final payment of all monies loaned by PEN to Marcu

(which totaled \$400,424.74) in connection with the Settlement Agreement. Accordingly, by December 20, 2017, all liens against the Compositions had been satisfied and all monies loaned by PEN had been reimbursed to PEN. None of these financial transactions in connection with the Settlement Agreement in any way altered the terms of the PEN Administration Agreement or the Amendment.

D. PEN Fails To Account or Pay Royalties to Marcu, and Interferes With the Kobalt Agreement

32. In December 2017, following the termination of the PEN Administration Agreement and the execution of the Settlement Agreement, Marcu engaged another music publisher, Kobalt, as the new administrator for Marcu's Interest in the Compositions, pursuant to a written agreement dated December 15, 2017 (the "Kobalt Agreement").

33. Despite the clear and undisputed termination of the PEN Administration Agreement well prior to that date, PEN contends that the PEN Administration Agreement was never terminated and remains in full force and effect. Consequently, PEN claims that it still is entitled to further exploit and receive royalties pertaining to the Compositions (beyond collection of the Post-Term Royalties), and has threatened Marcu with several baseless claims – none of which has been brought – while simultaneously failing to pay monies due to Marcu. This is, to say the least, a highly disgraceful and improper way for a music publisher to treat a songwriter who depends on such monies to make a living.

34. PEN continues to be listed as publisher and administrator of the Composition with ASCAP, and so potential licensees who rely on ASCAP to provide publisher information are being directed to PEN rather than to Kobalt, the

1 true administrator of Marcu's Interest in the Compositions.⁶ As such, in *the fourth*
 2 *quarter of 2017 and the first quarter of 2018, Kobalt only was able to collect two*
 3 *dollars and nine cents (\$2.09) in royalties on behalf of Marcu.*

4 35. Nonetheless, despite PEN's claims that it is the rightful administrator
 5 of the Compositions, since December 17, 2017, Marcu has not received from PEN
 6 any accountings regarding the Compositions, nor any royalties arising out of the
 7 exploitation of the Compositions, for the period between October 1, 2017 and
 8 March 31, 2018 (*i.e.*, the fourth quarter of 2017 and first quarter of 2018).⁷ While
 9 Marcu is presently unable to ascertain the precise amount of unaccounted and
 10 unpaid royalties for this period (since such information and royalty monies are in
 11 the sole possession of PEN), based on prior, recent royalties paid for the
 12 Composition for similar lengths of time, Marcu expects that the total amount is no
 13 less than \$100,000.⁸

14 36. Additionally, because the Composition remains evergreen as a highly
 15 valuable cultural work, it is frequently sought to be licensed in a variety of media,
 16 from television to film to advertising. Therefore, year after year, the Composition
 17 generates a significant amount of revenue to which Marcu is entitled. As such,
 18 Marcu's damages include not only the past royalties which have not been
 19 accounted for or paid, but also future royalties which the Composition will
 20 generate, which will be directed to PEN until this dispute can be resolved.

21
 22 _____
 23 ⁶ In April 2018, Eames explicitly told ASCAP that PEN remained the administrator
 24 of the Composition.

25 ⁷ On August 15, 2018, Marcu is due to receive from PEN an accounting statement
 26 for royalties for the second quarter of 2018. Marcu does not expect to receive that
 27 accounting statement, either.

28 ⁸ In the first quarters of 2016 and 2017, Marcu received \$94,055.01 and
 \$119,695.04 in net royalties, respectively, relating to the Composition. In the
 second quarters of 2016 and 2017, Marcu received \$12,808.29 and \$67,398.32,
 respectively. Thus, for the past two years, the average Q1 royalties are
 \$106,875.03 (Q1 2016 and 2017) and the average Q2 royalties are \$40,103.31 (Q2
 2016 and 2017). Based on these historical numbers, Marcu expects that the
 amounts owed by PEN for the first two quarters of 2018 will exceed \$100,000.

FIRST CLAIM FOR RELIEF
DECLARATORY JUDGMENT

37. Marcu realleges each of the allegations in paragraphs 1 through 36, inclusive, and incorporates them by reference herein as if set forth fully herein.

38. Marcu brings this claim for a declaratory judgment, seeking a declaration that: (1) PEN has no right to administer the Compositions; (2) the PEN Administration Agreement has been terminated; and (3) Marcu was released by PEN under the Settlement Agreement (which includes PEN's release of all rights under the PEN Administration Agreement and the Amendment)

39. An actual and substantial controversy has arisen between Marcu, on the one hand, and PEN, on the other hand. Marcu avers that the PEN Administration Agreement has been terminated and that PEN has no present right under any other purported agreement to administer the Compositions. PEN, on the other hand, contends that the PEN Administration Agreement has not been terminated and/or that PEN has a present right to administer the Compositions based on some other purported administration right.

40. A judicial declaration is necessary and appropriate at this time in order to determine whether PEN has any right to administer the Compositions.

41. Thus, Marcu seeks a judicial declaration that PEN does not have any right to administer the Compositions, that the PEN Administration Agreement was terminated, and that Marcu was released by PEN under the Settlement Agreement (which includes PEN's release of all rights under the PEN Administration Agreement).

42. Additionally, pursuant to Paragraph 18 of the PEN Administration Agreement, Marcu will be entitled to its costs and reasonable attorneys' fees as the prevailing party in this action.

SECOND CLAIM FOR RELIEF

BREACH OF CONTRACT

43. Marcu realleges each of the allegations in paragraphs 1 through 42, inclusive, and incorporates them by reference herein as if set forth fully herein.

44. On or around January 1, 2011, Marcu and PEN entered into the PEN Administration Agreement, which was amended and extended on or about November 28, 2012. In exchange for the \$650,000 Advance, Marcu granted PEN the Rights in the Compositions. The PEN Administration Agreement, *inter alia*, required PEN to account to Marcu for all royalties earned arising out of exploitation of the Compositions, including for Post-Term Royalties, less certain identified fees and expenses, as well as to remit all appropriate payments owed to Marcu.

45. Marcu has fulfilled all of its obligations under the PEN Administration Agreement.

46. PEN breached the PEN Administration Agreement by, among other things, failing to fully account and pay to Marcu all royalties and revenue received, including the Post-Term Royalties earned from PEN's exploitation of the Compositions.⁹

47. As a direct and proximate result of PEN's breaches and conduct described above, Marcu has suffered and continues to suffer substantial damages, including, without limitation, incidental and consequential damages arising out of PEN's continuing failure to account for and pay to Marcu all royalties and revenues PEN has received and that are owed to Marcu, including Post-Term Royalties as required under Paragraph 13 of the PEN Administration Agreement.

⁹ PEN has a history of late accountings under the PEN Administration Agreement ranging from 532 days late (Q3 2015) to 6 days late (Q2 2015). Indeed, the accountings for every Quarter from Q1 2013 to Q3 2017 were rendered late.

PRAYER FOR RELIEF

WHEREFORE, as to all Claims for Relief in this Complaint, Marcu requests that this Court enter a judgment and declaration in favor of Marcu and against PEN, including but not limited to an Order:

55. Declaring that: (1) PEN does not have any right to administer the Compositions; (2) the PEN Administration Agreement was terminated; and (3) Marcu was released by PEN under the Settlement Agreement (which includes PEN's release of all rights under the PEN Administration Agreement and Amendment);

56. Requiring PEN to provide Marcu with an accounting of any and all revenues and royalties, received by PEN, arising out of exploitation of the Compositions, including but not limited to the Post-Term Royalties;

57. Awarding Marcu general and consequential damages arising out of PEN's breach of the PEN Administration Agreement and the Release, including payment of unpaid and unaccounted-for royalties (including but not limited to the Post-Term Royalties);

58. Awarding Marcu its full costs and reasonable attorneys' fees pursuant to Paragraph 18 of the PEN Administration Agreement, in connection with its causes of action for declaratory judgment, breach of contract, and for an accounting;

59. Imposing a constructive trust over the proceeds unjustly obtained by PEN through the exploitation of the Compositions; and

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1 60. Awarding such other and further relief as this Court may deem just
2 and appropriate.

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4 DATED: July 30, 2018

MITCHELL SILBERBERG & KNUPP LLP
ANDREW C. SPITSER
MARK C. HUMPHREY

5
6
7 By: /s/ Andrew C. Spitzer
8 Andrew C. Spitzer
9 Attorneys for Plaintiff
10 Marcu Music Company, Inc.

JURY DEMAND

Plaintiff Marcu Music Company, Inc. hereby demands a trial by jury on all matters and issues so triable.

DATED: July 30, 2018

MITCHELL SILBERBERG & KNUPP LLP
ANDREW C. SPITSER
MARK C. HUMPHREY

By: /s/ Andrew C. Spitser
Andrew C. Spitser
Attorneys for Plaintiff
Marcu Music Company, Inc.

EXHIBIT 1

ADMINISTRATION AGREEMENT

This Agreement is made and entered into this 1st day of January, 2011 (the "Effective Date"), by and between **Marcu Music Company, Inc. (ASCAP)**, 3817 Napoleon Avenue, New Orleans, LA 70125 (hereinafter referred to as "Company"), and **PEN Music Group, Inc. d/b/a Pensive Music (ASCAP)**, 12456 Ventura Blvd., Suite 3, Studio City, CA 91604 (hereinafter referred to as "Administrator"), and **Artist Capital Finance, L.L.C.**, a North Dakota Limited Liability Company, 2700 12th Ave. South, Suite A, Fargo, ND 58103 (hereinafter referred to as "Lender").

WHEREAS, it is the intention of Company and Administrator that Company shall solely own each and all of the interest of **Donald J. Markowitz** (herein Composer) in and to all of the existing musical compositions which have at any time been written, composed, co-written or co-composed by Composer that are not subject to the previous music publishing agreement with Disney Music Publishing, including, without limitation, "(I've Had The) Time of My Life" and "The Time (Dirty Bit)", and any other songs that shall be written, composed, co-written or co-composed by Composer during the Term hereof. All of the musical compositions subject hereto are hereinafter individually and collectively referred to as the "**Compositions.**" For the avoidance of doubt, the Compositions hereunder shall include the above-mentioned pre-existing musical compositions entitled "(I've Had The) Time of My Life" and "The Time (Dirty Bit)".

WHEREAS, the interest of Composer and Company in and to the above referenced Compositions entitled "(I've Had The) Time of My Life" is an undivided twelve and one-half (12.5%) percent and "The Time (Dirty Bit)" is an undivided eight and one-third (8 1/3%) percent interest in all rights including all copyrights therein and thereto throughout the universe in perpetuity. Accordingly, the rights granted hereunder and subject hereto as to those songs, refer to not the entirety of those songs but instead the respective percentages set forth herein;

WHEREAS, the Compositions shall be registered for copyright in the name of Company in the Copyright Office of the UNITED STATES OF AMERICA; and

WHEREAS, it is the intention of Company and Administrator that Administrator shall endeavor to market, promote and exploit the Compositions and the master recordings thereof (the "Masters") if applicable which are written, composed, co-written or co-composed by Composer and which are owned and controlled by Company in whole or in part during the Term (as hereinafter defined) hereof.

NOW, THEREFORE, based upon the mutual covenants and conditions herein contained, Company, Lender and Administrator agree as follows:

1. **GRANT OF RIGHTS.** During the Term, Administrator shall have the sole and exclusive right, subject to the limitations and restrictions herein provided, to administer and license the use of the Compositions throughout the world, and to execute in its own name or that of Company, subject to the limitations and restrictions herein provided, any and all licenses and agreements whatsoever affecting or respecting the Compositions, including but not limited to licenses for mechanical reproduction, public performance, synchronization uses, grand rights and sub-publication rights, and to assign or license such rights to others (subject to Para. 8 herein). It is agreed that no license or agreement (other than customary full rate mechanical licenses for other than "first usages") shall be entered into without

Company's prior written consent, such consent not to be unreasonably withheld or delayed, unless otherwise expressly provided herein. Accordingly, Company shall have absolute prior written approval over the issuance of any such license, including without limitation: licenses for films, television programs and advertisements; ringtones or other mobile digital media; synchronization licenses; parodies; translations; any proposed changes in or additions to lyrics, titles and/or melody lines; adaptations, dramatizations or animations using any of the Compositions; creation of any derivative works of or any other changes to any of the Compositions; granting any third party a copyright or income interest in or to the Compositions; giving any translator any interest in the Compositions; first use licenses; mechanical licenses issued for less than 100% of statutory rate; so-called "sample" licenses; merchandising uses; using the title of a Composition separately from the Composition; as well as exclusive licenses to third parties. Administrator shall be entitled to receive and collect, and shall receive and collect, all gross receipts derived from the Compositions as herein provided but specifically excluding the 'writer's share' of public performance income paid directly to Composer by Composer's performing rights society. "Gross Receipts" is defined as any and all revenue, income and sums derived from the Compositions, including advances, or which accrues as the result of the exploitation of the Compositions during the Term hereof.

In the event that Composer and/or Company is engaged to compose all or part of the score of a film or television program ("Score") and as a condition of such engagement all or part of the copyright in the results of such services is required to be conveyed to the producer of such film or television program (or such producer's music publishing designee), such conveyance shall not constitute a breach of this Agreement on Company's part and the portion so conveyed shall be excluded from the scope of this Agreement. In addition, Administrator agrees that to the extent any creative fees received by Company in connection therewith are not in lieu of mechanical, performance or print royalties which would otherwise be payable to the publisher of such Score, Administrator shall not be entitled to share in such creative fees. Notwithstanding the foregoing, should Company retain some or all of the copyright in the Score, same shall be subject hereto and all income to which Company is therefore entitled (excluding such creative fees and the writer's share of public performance income collected by the performing rights societies) from such Score shall be payable to Administrator and shall be included as Gross Receipts hereunder and Company shall use its best efforts to provide in the agreement with the production company that Administrator shall collect all income arising out of Company's copyright interest in the Score, if any) directly from all sources.

Subject to paragraph 4(c)(iii) below, Administrator may enter into subpublishing agreements with, or assign or license any of its rights hereunder, to one or more persons, firms or corporations for any one or more countries of the world, but not for longer than the Term set forth below and the Post-Term Collection Period set forth in Para. 13 herein.

Company acknowledges that Administrator has the right to administer and publish compositions other than the Compositions, provided however, that Administrator agrees to devote its reasonable efforts to exploit the Compositions and further provided that if Michael Eames is no longer involved in the day to day affairs of Administrator, Company shall have the right to terminate this Agreement upon repayment of any outstanding unrecouped Advance, if any, and any other fees associated therewith as set forth in

this Agreement.

Administrator shall not do any of the following without Company's prior written consent in each instance, which consent, unless expressly provided otherwise, shall not be unreasonably withheld or denied by Company:

(a) Authorize any change in the English-language title and/or lyric of any of the Compositions, alter the harmonic structure of any of the Compositions, or alter the melody of any of the Compositions (except insubstantial changes necessary to accommodate the syllabic requirements of foreign languages) or license any foreign translation, arrangement, adaptation or transposition of any of the Compositions (which consent may be withheld in Company's sole and absolute discretion); provided, however, if, with Company's consent, a Composition is translated into a language other than the English language, Company's royalties on exploitation of those non-English versions of the Compositions shall be reduced only to the minimum extent prescribed by foreign mechanical and performance right societies. The copyright to such foreign translation shall be registered with the appropriate foreign societies and governmental agencies in Company's name, and the foreign translator shall not be entitled to any royalties earned by the English version of the Composition(s). Company shall be provided an advance copy of the intended translation for its review and approval prior to its release; and

(b) Issue a mechanical license for the use of any of the Compositions at less than the prevailing minimum statutory or society rate, except in connection with those types of uses for which reduced-rate licenses are customarily granted in the country in question; provided, however, that Administrator will issue mechanical, synchronization and other licenses as required by the terms of the "controlled compositions" and related clauses (e.g., dealing with promo videos and home audiovisual devices) of any agreement with a record company in respect of Composer's services as a recording artist and/or producer, as well as with the corresponding clauses of that agreement or any future recording agreement in respect of Composer's services, which provide for a rate of no less than 3/4ths of the minimum U.S. statutory mechanical copyright rate (and the prevailing Canadian equivalent rate) as of the date of timely delivery of specific recordings with maximums of at least 10 times such 3/4 rate on LPs, 3 times such 3/4 rate on 12" singles, and 2 times such 3/4 rate on 7" singles; and

(c) Issue a "first-use" mechanical license for each of the Compositions unless the recording embodies Composer's performance as the featured artist (in which event consent may be withheld by Company in its sole and absolute discretion); and

(d) Authorize the use of all or part of any of the Compositions as a so-called "sample" (consent may be withheld in Company's sole and absolute discretion).

2. TERM. The Term of this Agreement shall commence as of the Effective Date and shall continue for five (5) years from the Effective Date or, should the Advance defined hereinbelow not be fully recouped by the close of the second calendar quarter of the fifth year of the Term, then the Term shall automatically continue until the close of three (3) calendar quarters following the calendar quarter

in which the Advance shall be recouped by Administrator from Company's Net Income as hereinafter defined. At such time as the Advance has been fully recouped and the Term as hereinabove defined is completed, the Term shall nonetheless automatically continue on a calendar quarterly basis until either Company or Administrator furnishes written notice to the other party expressing its desire to terminate this Agreement at least thirty (30) days prior to the expiration of the then-current calendar quarterly period. Following such notice the parties shall prepare a mutually agreed statement of all Compositions subject to this Agreement and following the preparation of same and termination of the Term of this Agreement, Administrator shall promptly notify all licensees, performing rights societies, mechanical collection societies and any other third parties dealing with the Compositions as of the date of termination of the Term of this Agreement and with a direction that all inquiries, monies, royalties or notices shall thereafter be directed to Company, provided that the foregoing is not intended to and shall not interfere with Administrator's Post Term Collection Period as set forth in Para. 13 herein. Notwithstanding the foregoing, the parties agree that in the event that the Internal Revenue Service shall levy or establish a lien against Company for any reason, the Term shall automatically extend for the additional period of time during which the levy or lien is imposed on Company.

Notwithstanding anything to the contrary herein, Company shall have the right to terminate the Term (as such Term may be extended as set forth above) during the period of the Term commencing on January 1, 2016, prior to recoupment of the Advance by making payment to the Administrator of an amount which is equal to one hundred thirty percent (130%) of the then unrecouped balance (including a bona fide estimate of the so-called "pipeline income" reducing the unrecouped balance) of the Advance or other advances at any time following the said date of January 1, 2016. In such event, the Term shall automatically expire at the end of the accounting period in which such repayment by Company to Administrator takes place. For the avoidance of doubt, the Post-Term Collection Period (as defined in Para. 13 below) shall follow any such termination of the Term.

3. ADVANCE. Lender, on Administrator's behalf, shall provide Company with a fully recoupable advance against all earnings of Company from and in respect of the Compositions as set forth in this Agreement, in the amount of Five Hundred Thousand Dollars (\$500,000.00) (the "Advance"), which shall be payable as follows: (a) Three Hundred Thousand Dollars (\$300,000.00) by wire transfer upon execution of this Agreement by Company, and (b) Two Hundred Thousand Dollars (\$200,000.00) on April 1, 2012; provided that such second payment of Two Hundred Thousand Dollars (\$200,000.00) shall not be due and payable in the event that Composer has not therefore resolved any currently outstanding (as of April 2011) or then outstanding claims from the Internal Revenue Service and/or state tax authorities by agreeing to an Offer In Compromise or installment payments with such authorities, and further that the amount of such second payment shall be reduced by the amount of Net Income paid to Company hereunder in excess of the Advance described in paragraph 3(a) above, if any. Notwithstanding anything to the contrary contained herein, except as otherwise set forth in Paras. 2 and 16 of this Agreement, in the event that Lender advances any monies to Composer or Company during the Term, including without limitation, the Advance, no matter the purpose or manner of such advances, the Term of this Agreement shall continue and shall not be terminable by Composer or Company until such Advances have been fully recouped from the Net Income of Company after deduction of Administrator's fees. In any event, Lender shall maintain a security interest in and to the underlying

Gross Receipts and Net Income and the Compositions to the extent of any monies advanced by Lender that have not then been returned to Lender. Upon full recoupment of the Advance or the payment of 130% of the outstanding Advance as set forth in Para. 2 above, Lender shall promptly remove and rescind any UCC or other security filings and provide proof to Company of such removal or rescission. Further, Composer and Company shall fully cooperate with Administrator's efforts to exploit the Compositions and Masters in an effort to recoup the Advance in as timely a manner as possible.

4. PAYMENTS/ADMINISTRATION FEE. Subject to the full recoupment of the Advance, Administrator shall pay to Company one hundred percent (100%) of the net income actually received, credited to and derived by Administrator from the Compositions, except as otherwise provided herein. "Net Income" is defined as the Gross Receipts collected by Administrator, less the following:

(a) songwriter royalties and other sums which shall be paid by Administrator to any other co-author or co-writer of any of the Compositions;

(b) collection or other fees actually charged by and paid to the Harry Fox Agency, Inc. or any other collection agent which may be designated by Administrator. However, it is the intent of Administrator in the U.S. to license all uses directly (except in the case of small performing rights);

(c) An administration fee, which shall be paid to and retained by Administrator in accordance with the following:

(i) with respect to a use of any of the Compositions in the United States which existed prior to this Agreement or occurs during the Term hereof which is not a result of the written documented efforts of Administrator, an administration fee of **twenty percent (20%)** of the gross receipts derived from each such use of any of the Compositions (including, but not limited to, synchronization fees, mechanical royalties, publisher's share of performance royalties, etc. but specifically excluding the writer's share of performance royalties);

(ii) with respect to a use of any of the Compositions which is secured during the Term hereof as a result of the written documented efforts of Administrator, an administration fee of **thirty percent (30%)** of the gross receipts derived from each such use in the United States of any of the Compositions (including, but not limited to, synchronization fees, mechanical royalties, etc. but excluding the publisher's share of public performance and the writer's share of public performance);

(iii) with respect to the publisher's share of public performance income in the United States generated specifically by a use of any of the Compositions which is secured during the Term hereof as a result of the written documented efforts of Administrator:

(A) an administration fee of **thirty percent (30%)** for a Composition recorded by another artist as a result of Administrator's written documented efforts that is subsequently promoted as a single to radio stations; and

(B) an administration fee of **fifty percent (50%)** for a Composition used in a film, television project or commercial/advertisement as a result of Administrator's efforts;

(iv) Royalties earned outside the United States shall be received directly by or credited to and in the name of Administrator. Administrator shall then account to Company for **seventy-five percent (75%)** of these gross royalties calculated on an at-source basis (i.e. no matter in what country of the world outside the United States these royalties are earned and/or paid in, Administrator and its international representatives combined cannot retain more than twenty-five percent (25%) of these gross royalties, but this at-source basis does not include any withholding taxes that may be taken depending on the relevant taxation agreements in place between the United States and the country in question) for income which existed prior to this Agreement or occurs during the Term hereof which is not a result of the written documented efforts of Administrator. Notwithstanding the preceding sentence, for all income earned outside the U.S. and generated by the written documented efforts of Administrator as outlined above in Item 4(c)(ii) [but excluding the publisher's share of public performance income], Administrator shall account to Company for **sixty-five percent (65%)** of the gross royalties calculated on an at-source basis (but this at-source basis does not include any withholding taxes that may be taken depending on the relevant taxation agreements in place between the United States and the country in question). Notwithstanding the immediately preceding sentence, for the publisher's share of performance income generated by the documented efforts of Administrator as outlined in 4(c)(ii) above, Administrator shall account to Company for **fifty percent (50%)** of the gross royalties calculated on an at-source basis (but this at-source basis does not include any withholding taxes that may be taken depending on the relevant taxation agreements in place between the United States and the country in question);

(d) Reasonable third party attorney's fees, if any, actually paid by Administrator for any agreements (other than this Agreement) affecting the Compositions. Company must give its prior written approval, not to be unreasonably withheld, before Administrator engages the services of an attorney whose fees Administrator intends to charge back to Company;

(e) The fee for registration of Copyright applications (Administrator shall prepare and file all U. S. Copyright applications for the Compositions at no charge other than the application fee required by the U.S. Copyright Office then in effect) and promotional material (to be prepared solely with Company's prior written consent) and promotional albums relative to the Compositions;

(f) Any other costs of any nature that are pre-approved in writing by Company as costs that can be recouped out of income due Company hereunder.

5. SMALL PERFORMING RIGHTS. Small performing rights in and to the Compositions, to the extent permitted by law, shall be assigned to and licensed by ASCAP. ASCAP shall be and hereby is authorized to collect and receive all monies earned from the public performance of the Compositions and to pay directly to Administrator one hundred percent (100%) of the amount allocated by said society as the publisher's share of public performance fees, which shall be computed and disbursed in accordance with the terms herein. One hundred percent (100%) of the 'writer's' share of public

performance income shall be paid directly to Composer and if Administrator receives any amounts of 'writer's' share of public performance income, such share shall be immediately paid to Composer without any right of setoff.

6. FIRST NEGOTIATION. If, during the period of Administrator's rights in any Compositions hereunder, Company shall desire to sell, transfer, assign or otherwise dispose of any or all of its interest in the copyright of any Composition, before negotiating with any third party, Company shall first give Administrator written notice of Company's desire to dispose of Company's interest and shall engage in prompt continuous good faith negotiations with Administrator concerning the material terms of sale. If the parties are unable to reach agreement on the material terms of such sale within thirty (30) days after Company's notice to Administrator, Company may elect to discontinue the negotiations by written notice to Administrator. Thereafter, Company may dispose of its interest in the Compositions (subject in all cases to Administrator's right to administer the Compositions hereunder) to any third party upon such terms as may be agreeable to Company.

If, during the period of Administrator's rights in any Compositions hereunder, Company shall receive an unsolicited bona fide offer to acquire any or all interest in the Composition(s) from a financially responsible third party, which offer is acceptable to Company, before accepting any such offer, Company shall first offer to Administrator the right to buy or acquire such interest at the same bona fide price and pursuant to the same bona fide material terms as may be offered to Company by said third party. Company agrees to give Administrator written notice of any such bona fide and acceptable offer as described above (which notice shall set forth the name of the prospective purchaser, the price, and all other material terms of such offer), and Administrator shall have seven (7) business days after receipt of such notice in which to notify Company whether or not it desires to acquire such interest in the copyright of such Composition(s) at the price and pursuant to the terms set forth in said notice. In the event Administrator fails to give Company written notice within said seven (7) business day period that it is exercising its option to buy or acquire such interest, Company shall have the right to accept the bona fide offer by the prospective purchaser (subject in all cases to Administrator's right to administer the Compositions hereunder), but only as set forth in Company's notice to Administrator, provided, however that if Company does not accept such bona fide offer from such prospective purchaser within ninety (90) days after expiration of said seven (7) business day period, the procedure set forth in this paragraph shall again be followed by Company before Company may dispose of such interest in the copyright of such Composition(s) to such third party.

7. ACCOUNTING. Statements as to royalties earned and/or monies payable hereunder shall be sent by Administrator to Company on a quarterly basis within forty-five (45) days after each calendar quarter of the Term. Statements shall be accompanied by appropriate payments. Company shall be deemed to have consented to all royalty statements and other accounts rendered by Administrator to Company and such statements shall not be subject to any objection for any reason, unless specific objection in writing, setting forth the basis thereof, is given by Company to Administrator within three (3) years from the date each quarterly statement was rendered. Company, or a certified public accountant on its behalf, may, once in any calendar year hereunder and only once per statement rendered, examine the books of Administrator pertaining to the Compositions during Administrator's

usual business hours and upon ten (10) business days' written notice. In the event that any such audit reveals an underpayment to Company of five percent (5%) or more of the sums received by or credited to the Administrator and due to Company for the Accounting Periods which are the subject of such audit, then Administrator shall reimburse Company for the reasonable costs incurred relating to such audit.

"Black Box Funds" shall mean The Relevant Percentage (as defined below) of gross monies collected or received by Administrator from any so-called "black box" funds or any funds paid by any collection society or otherwise to Administrator by way of general distribution on a country by country basis. In the event that such funds are not wholly identifiable and attributable to the Compositions then the proportion of such funds to which this sub-clause shall apply shall be calculated by multiplying such funds by a fraction the numerator of which shall be the total at source revenue received by Administrator arising from the applicable country in Territory in respect of the Compositions for the preceding twelve (12) month period and the denominator of which shall be the total income received by Administrator arising from the applicable country in Territory in respect of the Compositions and any other compositions not the subject of this Agreement for the preceding twelve (12) month period (the "Black Box Percentage") such computation to be made on a twelve (12) monthly basis and otherwise accounted pursuant to the terms hereof.

The Relevant Percentage shall be the average royalty rate accounted to Company by Administrator for all the Compositions during the relevant twelve (12) month period from all forms of exploitation hereunder arising from the Territory excluding "Black Box" funds. For the avoidance of doubt no representation is made by Administrator to Company hereunder that Administrator will be entitled to such "Black Box" funds during the Term and will not be otherwise accountable for such funds save as arise hereunder. Notwithstanding the provisions set out above if the Black Box Percentage as computed above would be less than five per cent (5%) for the relevant period of computation of the total at source revenue received by Administrator arising from the applicable country in Territory then no "Black Box" funds will be allocated or accounted to Company in respect of such period of computation.

8. ASSIGNMENT. During any period in which the Advance remains unrecouped, the Administrator, by the Fee Sharing Agreement (defined below), may be required to assign this Agreement to Lender. Notwithstanding the foregoing, in the event all cure provisions as set forth in paragraph 16 below have been exhausted by Administrator and Administrator has been unable or unwilling to cure any material breach of the Fee Sharing Agreement dated April 27, 2011 by and between Lender and Administrator (the "Fee Sharing Agreement"), then and only then shall this Agreement be assignable to Lender. Administrator shall provide Company with written notice of such impending assignment and Company shall have the right to exercise its "buy back" right as set forth in Para. 2 above, regardless of the timing of the impending assignment (i.e., whether prior to or after January 1, 2016). In such an event, if Company does not exercise its "buy back" right, Lender may assume or assign this Agreement to another qualified music publishing administrator of similar or greater status in the music publishing industry, provided however, such assignment shall be only with Company's prior written consent, such consent to be solely within Company's discretion and control,

and further provided commercially reasonable accommodations are made to ensure consistency with the intent and purpose of this Agreement.. In the event of an assignment under this paragraph, nothing in the assignment shall change the terms and conditions of this Agreement or place Company in a position that is less advantageous than as provided for in this Agreement.

After full recoupment of the Advance, Administrator may assign this Agreement only with the prior written consent of Company, and in the event of such assignment, this Agreement shall remain binding upon Administrator and inure to the benefit of any such assignee; provided, however, that upon any such assignment by Administrator, Administrator shall remain secondarily liable for its obligations under this Agreement unless such assignment is to: (a) a so-called "major" music publishing company or other financially responsible party which assumes in writing all of Administrator's obligations under this Agreement; (b) an entity into which Administrator merges or is consolidated; (c) an entity which acquires all or substantially all of Administrator's business and assets; or (d) a person or entity which is controlled by, under common control with, or controls Administrator; in which event Administrator shall be relieved of its obligations hereunder. Notwithstanding the foregoing, Administrator may assign this Agreement to another qualified music publishing administrator of similar or greater status in the music publishing industry, provided however, such assignment shall be only with Company's prior written consent, such consent to be solely within Company's discretion and control, and further provided that commercially reasonable accommodations are made to ensure consistency with the intent and purpose of this Agreement. Company agrees that except as provided in this Agreement, Company shall not have the right to assign this Agreement or delegate the performance of its obligations to any person or entity and any such purported assignment or delegation shall be void, provided however, Company may assign the right to receive income under this Agreement to a third party.

9. REPRESENTATIONS AND WARRANTIES. Company hereby warrants and represents that it has the right to enter into this Agreement and to grant to Administrator all of the rights granted herein, and that the exercise by Administrator of any or all of the rights granted to Administrator in this Agreement will not violate or infringe upon any common law or statutory rights of any person, firm or corporation, including without limitation, contractual rights, copyrights and rights of privacy. The rights granted herein are free and clear of any claims, demands, liens or encumbrances.

Company further represents and warrants the following:

- a) That it is a corporation in good standing and/or will diligently cure and remedy any defect or omissions affecting its ability or standing with any state of incorporation or state of operation providing such cure or remedy is retroactive;
- b) That it has filed and paid any and all applicable federal, state and local tax returns and liabilities and/or will diligently cure and/or remedy any defective filing, omission or payment forthwith;
- c) That its sole shareholder and President is Donald Markowitz, and that Company was duly authorized to enter into this Agreement, including any and all related agreements or Letters of Direction;

d) That it is unaware of any unresolved liens, judgments, suits, causes of action, or claims adversely affecting Company's ability to enter into this Agreement;

e) That with the limited exception of Disney Music Publishing, no other creditor, lender, individual or entity maintains an adverse interest or claim on the subject property.

Administrator and Lender warrant and represent the following:

(a) Administrator and Lender are free to enter this Agreement;

(b) Administrator is and shall remain during the Term and all other applicable periods during which Administrator has rights in respect of the Compositions:

(i) a member (or the relevant sub-publisher or sub-administrator appointed or engaged by Administrator is a member) of any and all performing rights societies and mechanical rights societies in the relevant portion of the Territory; and

(ii) an active music publishing administrator, as that expression is commonly understood in the music publishing industry.

10. INDEMNIFICATION.

(a) Company, Administrator and Lender agree to and do hereby indemnify, save and hold each other harmless from and against any and all loss and damage up to the amount of the Advance (including reasonable, outside attorney's fees) arising out of or in connection with any claim by a third party which is inconsistent with any of the warranties, representations or agreements made by each party in this Agreement, resulting in a final, non-appealable adverse judgment from a court of competent jurisdiction, or settled with the other party's prior written consent, which consent shall not be unreasonably withheld or delayed. Each party shall give the other prompt written notice of any and all claims and the notified party shall be entitled to defend same with counsel of its own choice and its own expense.

(b) With Company's written consent, not to be unreasonably withheld, or at Company's written request, Administrator shall have the right, or if so requested by Company, the obligation to prosecute, defend, settle and compromise all suits and actions respecting the Compositions, and generally to do and perform all things necessary concerning the same and the copyrights therein, to prevent and restrain the infringement of copyrights or other rights with respect to the Compositions. In addition, Administrator will not transfer or assign any copyright interest in a Composition without Company's prior written consent, which may be withheld for any reason whatsoever. In the event of the recovery by Administrator of any monies as a result of a judgment or settlement, such monies shall be computed and disbursed in accordance with the terms herein as "gross receipts" (i.e., Administrator shall be entitled to the administration fee as set forth in Para. 4), after first deducting the actual, reasonable

out-of-pocket expenses (approved in writing by Company prior to incurring) of obtaining said monies, including third party, reasonable counsel fees. Company shall have the right to provide counsel for itself, but at its own expense, to assist in any such matter. Any judgments against Administrator and any settlements by Administrator of claims against it respecting the Compositions, together with costs and expenses, including third party reasonable counsel fees, shall be covered by the indemnity provisions hereof, and Company's indemnity payment thereunder shall be paid to Administrator promptly upon demand and may also be recouped by Administrator from any and all sums that may become due to Company hereunder. If Administrator does not defend the Composition(s) or prosecute any claim for infringement and Company successfully does so, any judgment awarded and received by Company shall be solely Company's.

11. NOTICES. The respective addresses of the Parties for all purposes of this Agreement shall be as set forth at the beginning of this Agreement, until notice of a new address shall be duly given, such notice shall be in writing and shall be sent by overnight courier or certified mail, return receipt requested, in the United States mail, postage prepaid. A courtesy copy of all notices served on Company shall be provided to Janna Glasser, Esq, Two Mariners Cove, Edgewater, NJ 07020 (provided that inadvertent failure to do so shall not invalidate the original notice hereunder).

12. FURTHER DOCUMENTS. The parties hereto shall execute any further documents, including Exhibits "A" and "B" hereto, and do all acts necessary to fully effectuate the terms and provisions of this Agreement.

13. POST-TERM COLLECTION PERIOD. Upon the termination of this Agreement, Administrator shall be granted a one (1) year post-term collection period ("Collection Period") during which to collect any and all income earned by the Compositions during the Term, but not yet received or credited as of the effective date of termination. Administrator shall not have the right to enter into any new licenses or agreements with third parties with respect to the Compositions during the Collection Period.

14. COMPOSER SERVICES.

(a) Should Composer be engaged during the Term to write new musical composition(s) on a work-for-hire basis not through Administrator's direct efforts, then Company shall have the option (i.e. not the obligation) to appoint Administrator to negotiate the terms of the work-for-hire agreement (subject to Company's written approval of the terms thereof) and in that case Administrator will then be entitled to a ten percent (10%) commission on Company's share of the work-for-hire fee paid, provided that Administrator or Lender is not affiliated with the third party work-for-hire entity. However, should Company additionally be successful in retaining a co-publishing interest in any of these work-for-hire compositions and additionally be permitted to administer its own share, then that co-publishing share will be subject to the administration terms hereunder and the new composition will be added to the Schedule B hereof;

(b) Should Composer be engaged during the Term to write musical composition(s) on a

work-for-hire basis specifically through Administrator's direct and pro-active efforts, then Administrator will negotiate the terms of the work-for-hire agreement (subject to Company's written approval of the terms thereof) and be entitled to a twenty percent (20%) commission on Composer's share of the work-for-hire fee paid, provided that Administrator or Lender is not affiliated with the third party work-for-hire entity. Should Company additionally be successful in retaining a co-publishing interest in any of these work-for-hire compositions and additionally be permitted to administer his own share, then that co-publishing share will be subject to the administration terms hereunder and the new composition will be added to the Schedule B hereof.

15. MASTERS. To the extent that Company owns and controls any of the master recordings of any of the Compositions hereunder (the "Master(s)"), Company specifically hereby grants to Administrator the ability to promote such Master(s) and should Administrator procure a use of any of them through its own direct and proactive efforts, Administrator shall be entitled to license and commission the income generated by such Master(s) in the same percentage as outlined above in Item 4(c)(ii), subject to all the same written approval required herein for use of the Compositions. The same accounting provisions detailed herein will also apply to income generated by Administrator on the Master(s). Also, for the sake of clarification, the income generated by Administrator on the Master(s) will also be included in the recoupment of the Advance.

16. TERMINATION/CURE. Subject only to the recoupment of the Advance and related fees associated therewith as set forth in this Agreement:

(a) Notwithstanding the provisions herein, if any of the parties materially default in the performance of any of their respective material obligations or duties under this Agreement and such default continues for a period of forty-five (45) days (except that in the case of non-payment of monies hereunder, such period shall be ten (10) business days) after receipt by the other party of notice in writing from such party alleging such default, such party shall be entitled to terminate the Term and Collection Period of this Agreement immediately thereafter without prejudice to any and all other remedies that may be available to it.

(b) Company shall have a right to terminate the Term and Collection Period of this Agreement forthwith if:

(i) Administrator (or Lender prior to April 1, 2012) enters into administrative receivership or has a receiver or trustee in bankruptcy appointed over all of its assets which is not discharged within sixty (60) days of its institution;

(ii) Administrator (or Lender prior to April 1, 2012) enters into any voluntary arrangement with its creditor(s) which is not discharged within sixty (60) days of its institution or ceases to carry on its business.

(c) Administrator agrees that it shall relinquish its claims at the societies in respect of the Compositions following the expiration of its rights hereunder, with it being acknowledged that such

societies' acknowledgement and action upon such relinquishment is out of Administrator's control. It is Company's responsibility to make the necessary arrangements for post Collection Period payments to be made directly to Company by the relevant third parties (as the case may be) and at Company's request the Administrator shall give its timely reasonable assistance to give effect to the same in line with industry practice.

(d) Notwithstanding the foregoing, in the event that following the expiration of all the rights of Administrator hereunder (including the right of Administrator to collect monies during the Collection Period), Administrator shall continue, through no fault of Administrator, to receive fees and royalties derived from the use and/or exploitation of the Compositions, Administrator shall account to Company as provided herein for one hundred percent (100%) of any and all such monies received subject to the deduction of the administration fee set forth in Para. 4(c) to which Administrator would be entitled had such monies been collected by Administrator during the Term/Collection Period.

17. INDEPENDENT COUNSEL. The parties hereto acknowledge and agree that each party and its counsel reviewed and negotiated the terms and provisions of this Agreement and have contributed to its revision; and the terms and provisions of this Agreement shall be construed fairly as to all parties, regardless of which party was generally responsible for the preparation of this Agreement.

18. MISCELLANEOUS. This Agreement sets forth the entire understanding between the parties, and cannot be changed, modified or cancelled except by an instrument signed by all parties hereto. This Agreement shall be governed by and construed under the laws of the State of California applicable to agreements executed and wholly performed therein. Each party hereto shall give the other the equal benefits of any warranties or representations it has obtained or will obtain under any agreements affecting the Compositions.

This Agreement shall not constitute a partnership or joint venture between the parties.

This Agreement and the Schedules hereto, which are hereby incorporated by reference, constitute the entire agreement between the parties. This Agreement supersedes any and all prior negotiations understandings and agreements between the parties with respect to the subject matter of this Agreement. Each of the parties acknowledges and agrees that neither party has made any representations or promises in connection with this Agreement or its subject matter which is not contained in this Agreement. No modification, amendment, waiver, termination, or discharge of this Agreement or of any provision hereof shall be effective unless confirmed by a written instrument signed by all parties hereto.

The prevailing party in any legal action (after all appeals have been taken or the time for taking such appeals has expired) brought by one party against the other and arising out of this Agreement shall be entitled, in addition to any other rights and remedies available to it at law or in equity, to reimbursement for its documented costs and expenses (including court costs and reasonable outside fees for attorneys and expert witnesses) incurred with respect to bringing and maintaining any such action. The term "prevailing party" for the purposes of this paragraph shall include a defendant who has by motion, final judgment, verdict or dismissal by the court, successfully defended against any claim that has been


asserted against it.

19. GUARANTEE OF REPAYMENT TO LENDER BY COMPANY AND COMPOSER. Notwithstanding any provision to the contrary herein, including but not limited to the failure of performance of Administrator, the termination of this Agreement by Company or Composer for any reason, or any breach by any party, Composer and Company for the express benefit of Lender, hereby grant Lender a security interest in and to the underlying Gross Receipts and Net Income and the Compositions as contemplated by this Agreement. As such, Composer and Company shall allow Lender to perfect its security interest as is applicable. For clarity's sake, the security interest does not apply to the "writer's share" of public performance income. As set forth in Para. 3 above, upon full recoupment of the Advance or the "buy back" payment of 130% of the outstanding Advance as set forth in Para. 2 above, Lender shall promptly remove and rescind any UCC or other security filings and provide proof to Company of such removal or rescission.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

PEN Music Group, Inc. d/b/a
d/b/a Pensive Music (ASCAP)
("Administrator")

Marcu Music Company, Inc.
("Company")

By: 


Michael Eames

By: 

Donald Markowitz

Artist Capital Finance, L.L.C.
("Lender")

By: _____
Doug Barry



Donald Markowitz, as Composer
(only insofar as this Agreement relates to
obligations of Composer)

Exhibit "A"
ASCAP LETTER OF DIRECTION

DATE: January 1, 2011

TO: ASCAP
7920 Sunset Blvd., 3rd Floor
Los Angeles, CA 90046

RE: **Letter of Direction / Marcu Music Company, Inc.**

You are hereby authorized and directed to pay to **Artist Capital Finance, LLC c/o PEN Music Group, Inc.** 12456 Ventura Blvd., Suite 3, Studio City, CA 91604, any and all monies payable from and after the above date, which accrue and/or are payable to the undersigned, as the publisher's share of performance royalties (both domestic and foreign) earned by all musical compositions owned and controlled by Marcu Music Company, Inc.

This letter of direction is based upon the undersigned entering into an Administration Agreement pertaining to these musical compositions which are owned or controlled by the undersigned. This authorization shall continue unless and until modified or terminated by written notice to you, which has been signed by the undersigned.

Very truly yours,

By: 

Donald Markowitz
Marcu Music Company, Inc.

Exhibit "B"
LETTER OF DIRECTION

January 1, 2011

TO WHOM IT MAY CONCERN:

Effective as of the above date, Marcu Music Company, Inc. has entered into a worldwide publishing administration agreement with PEN Music Group, Inc. for all songs owned and controlled by Marcu Music Company, Inc.

You are hereby instructed to pay to Artist Capital Finance, LLC c/o PEN Music Group, Inc. any income that has accrued or will become payable to Marcu Music Company, Inc. The income should be sent to:

Artist Capital Finance, LLC
c/o PEN Music Group, Inc.
12456 Ventura Blvd., Suite 3
Studio City, CA 91604

Any questions regarding this instruction should be directed to Michael Eames at the above address and at:

818-766-9200 x 101 phone
818-766-9201 fax
michael@penmusic.com

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to be "Donald Markowitz", written over a horizontal line.

Donald Markowitz
Marcu Music Company, Inc.

EXHIBIT 2



12456 Ventura Blvd • Ste 3 • Studio City, CA 91604-2484 • Phone: 818-766-9200 • Fax: 818-766-9201 • penmusic.com

November 28, 2012

Donald J. Markowitz
MARCUS MUSIC COMPANY, INC.
3817 Napoleon Ave.
New Orleans, LA 70125

Re: Agreement Extension

Dear Donny:

Reference is hereby made to that administration agreement dated January 1, 2011 between Marcus Music Company, Inc. on the one hand and PEN Music Group, Inc. & Artist Capital Finance, LLC on the other (the "Agreement").

With our signatures below, this will confirm as follows:

- all parties have agreed that, in exchange for the payment of an additional advance of \$150,000 (the "Extension Advance"), the term of the Agreement is hereby extended by five (5) calendar quarters such that the earliest that the Term will now end is no earlier than April 1, 2017. The Extension Advance will be payable \$75,000 now and \$75,000 on February 15, 2013;
- the clause 2 of the Agreement (the TERM) is hereby replaced in its entirety with the following language:

2. TERM. The Term of this Agreement shall commence as of the Effective Date and shall continue for six (6) years and three (3) months from the Effective Date or, should the Advance defined hereinbelow not be fully recouped by the close of the third calendar quarter of the sixth year of the Term, then the Term shall automatically continue until the close of three (3) calendar quarters following the calendar quarter in which the Advance shall be recouped by Administrator from Company's Net Income as hereinafter defined. At such time as the Advance has been fully recouped and the Term as hereinabove defined is completed, the Term shall nonetheless automatically continue on a calendar quarterly basis until either Company or Administrator furnishes written notice to the other party expressing its desire to terminate this Agreement at least thirty (30) days prior to the expiration of the then-current calendar quarterly period. Following such notice the parties shall prepare a mutually agreed

Mr. Donald Markowitz

November 28, 2012

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statement of all Compositions subject to this Agreement and following the preparation of same and termination of the Term of this Agreement, Administrator shall promptly notify all licensees, performing rights societies, mechanical collection societies and any other third parties dealing with the Compositions as of the date of termination of the Term of this Agreement and with a direction that all inquiries, monies, royalties or notices shall thereafter be directed to Company, provided that the foregoing is not intended to and shall not interfere with Administrator's Post Term Collection Period as set forth in Para. 13 herein. Notwithstanding the foregoing, the parties agree that in the event that the Internal Revenue Service shall levy or establish a lien against Company for any reason, the Term shall automatically extend for the additional period of time during which the levy or lien is imposed on Company.

Notwithstanding anything to the contrary herein, Company shall have the right to terminate the Term (as such Term may be extended as set forth above) during the period of the Term commencing on April 1, 2017, prior to recoupment of the Advance by making payment to the Administrator of an amount which is equal to one hundred thirty percent (130%) of the then unrecouped balance (including a bona fide estimate of the so-called "pipeline income" reducing the unrecouped balance) of the Advance or other advances at any time following the said date of April 1, 2017. In such event, the Term shall automatically expire at the end of the accounting period in which such repayment by Company to Administrator takes place. For the avoidance of doubt, the Post-Term Collection Period (as defined in Para. 13 below) shall follow any such termination of the Term.

- regarding clause 3 of the Agreement (the ADVANCE), it is agreed that commencing on line 12 of such clause beginning with "Notwithstanding anything to the contrary contained here,...", any subsequent mention of the term 'Advance' will herein be deemed to read 'Advance and the Extension Advance.'

All other terms of the Agreement remain intact and in force.

Sincerely,

Michael Eames
President

ACKNOWLEDGED AND AGREED:



Donald J. Markowitz
Marcu Music Company, Inc.

Doug Barry
Artist Capital Finance, LLC