



Dated: June 23, 2008

*Charles G. Case, II*  
CHARLES G. CASE, II  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

DISTRICT OF ARIZONA

In re  
TODD McFARLANE PRODUCTIONS,  
INC., an Arizona corporation,  
  
Debtor.

Chapter 11

Case No. 2:04-bk-21755-CGC

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER CONFIRMING  
THIRD AMENDED PLAN OF  
REORGANIZATION**

**I. BACKGROUND**

**A. Plan and Disclosure Statement**

1. The Debtor and Todd McFarlane (“**Proponents**”) filed their “Third Amended Plan of Reorganization,” dated June 22, 2007 [D.E. 422] (“**Plan**”),<sup>1</sup> and now seek confirmation under Bankruptcy Code § 1129 of the Plan as modified pursuant to the “Notice of: (A) Rescheduled Hearing on Confirmation of Plan of Reorganization; and, (B) Non-Material Modification of Plan and Capital Contribution Agreement” [D.E. 486] (“**Notice**”).

2. On June 26, 2007, the Court entered its “Order Approving: (A) Disclosure Statement; (B) Notice and Objection Procedures for Confirmation of Plan; (C) Ballots and Procedures for Solicitation and Tabulation of Votes on Plan; and, (D) Notices and Procedures for Notice of Executory Contracts and Unexpired Leases to be Assumed, Assumed and Assigned, and Rejected Under Plan” [D.E. 429] (“**Solicitation Order**”), which approved the Debtor’s

<sup>1</sup> Capitalized terms not defined in this Order have the meanings given to them in the Plan as amended by this Order.

1 “Second Amended Disclosure Statement Related to Third Amended Plan of Reorganization,”  
2 dated June 22, 2007 (“**Disclosure Statement**”) [Docket No. 423].

3 **B. Solicitation and Voting**

4 3. There are eight Classes of Claims or Interests under the Plan as follows:

5	Class 1	Secured Lender Claim
6	Class 2	Other Priority Claims
7	Class 3	Twist Claim
8	Class 4	Gaiman Claim
9	Class 5	General Unsecured Claims
10	Class 6	Indemnity Claim
11	Class 7	Affiliate Claim
	Class 8	Interests

12 4. The Solicitation Order found and concluded that Classes 2 and 3 are unimpaired  
13 and presumed to accept the Plan conclusively without voting. Solicitation Order, ¶ 11.

14 5. The Debtor used the Disclosure Statement to solicit votes to accept or reject the  
15 Plan. The Debtor mailed, among other things, copies of the Plan, the Disclosure Statement, the  
16 Solicitation Order, and ballots to be used by holders of Allowed Claims and Allowed Interests  
17 under the Plan (“**Ballots**”) to all parties required to receive such solicitation packets under the  
18 Solicitation Order.

19 6. The Debtor solicited votes to accept or reject the Plan from holders of Allowed  
20 Claims in Classes 1, 4, 5, 6, and 7, and from holders of Allowed Interests in Class 8. *See*  
21 “Affidavit of Karen Graves Regarding Tabulation of Votes in Connection with the Third  
22 Amended Plan of Reorganization” dated September 7, 2007 [D.E. 460] (“**Affidavit**”).

23 7. Voting on the Plan concluded on August 27, 2007. *See* Affidavit. The Affidavit  
24 contains a ballot report indicating that all Classes entitled to vote on the Plan voted to accept the  
25 Plan except Class 4, which consists of a single vote of creditor Neil Gaiman (“**Gaiman**”).  
26 Subsequently, Gaiman stated on the record in this Court, through counsel, that he supports  
27 confirmation of the Plan as modified pursuant to the Notice. *See* Procedural History below.

1           **C. Procedural History**

2           8.       In support of confirmation of the Plan, the Debtor filed the Ballot Report, the  
3       “Debtor’s Report on Status of Reorganization Plan and Response to Objections to Confirmation  
4       of Plan” dated October 1, 2007 [D.E. 465] (“**Status Report**”), the “Declaration of Stephen R.  
5       Peterson in Support of Confirmation of Third Amended Plan of Reorganization” dated October  
6       1, 2007 [D.E. 466] (“**First Peterson Declaration**”), and the “Declaration of Stephen R. Peterson  
7       Regarding Feasibility of Plan of Reorganization” dated November 30, 2007 [D.E. 487] (“**Second**  
8       **Peterson Declaration**”).

9           9.       The Court received three objections to confirmation of the Plan as follows:

10           (a)       Docket Entry 456, filed by Gaiman, pertains to feasibility of the Plan and  
11       enforcement of the Capital Contribution Agreement (“**Gaiman Objection**”);

12           (b)       Docket Entry 415, filed by Film Roman LLC (“**Film Roman**”), seeks  
13       clarification of whether a contract between Film Roman and the Debtor (“**Contract**”) is assumed  
14       or rejected under the Plan (“**Film Roman Request For Clarification**”);<sup>2</sup> and,

15           (c)       Docket Entry 468, also filed by Film Roman, pertains to feasibility of the  
16       Plan in connection with alleged damages arising from the Debtor’s rejection of the Contract  
17       (“**Film Roman Feasibility Objection**”).<sup>3</sup>

18           10.       On October 2, 2007, the Court conducted a preliminary hearing under Bankruptcy  
19       Code § 1128 and Bankruptcy Rule 3020(b)(2) to consider confirmation of the Plan. At that  
20       hearing, statements of counsel for the Debtor, Gaiman, and Film Roman were heard regarding  
21       confirmation of the Plan.

22           11.       The Court conducted a continued hearing on confirmation of the Plan on  
23       December 12, 2007. At that hearing, counsel for Gaiman represented to the Court that the

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25 <sup>2</sup> The Film Roman Request For Clarification has been resolved by the Debtor rejecting the Contract under  
26 Bankruptcy Code § 365(a), which rejection was approved by order of the Court dated October 5, 2007 [D.E. 475].

27 <sup>3</sup> In this regard, Film Roman filed a proof of claim for rejection damages on October 17, 2007 [Claims Register,  
Claim No. 8] (“**Rejection Claim**”). The Proponents filed an objection to the Rejection Claim on January 22, 2008  
[D.E. 512] (“**Objection To Rejection Claim**”).

1 Gaiman Objection has been resolved by the Proponents and Gaiman having agreed on  
2 amendments to the Plan and the Capital Contribution Agreement, with the agreed amended  
3 language being included in Sections III.C and III.D of this Order. In addition, counsel for  
4 Gaiman represented to the Court that Gaiman supports confirmation of the Plan, as modified by  
5 the agreed amended language, notwithstanding Gaiman's earlier vote to reject the Plan.

6 12. Also at the December 12 hearing, counsel for the Debtor represented to the Court  
7 that the Proponents and Film Roman were negotiating a settlement of the Film Roman Feasibility  
8 Objection and Rejection Claim. Accordingly, the Court continued the confirmation hearing to  
9 December 20, 2007.

10 13. Subsequently, the Proponents and Film Roman agreed that the Court would need  
11 to determine the amount of the Rejection Claim in order to assess feasibility of the Plan.  
12 Accordingly, the Court postponed the confirmation hearing pending resolution of the Rejection  
13 Claim and the Objection To Rejection Claim. See "Order Regarding: (1) Procedure For  
14 Determination Of Film Roman Rejection Claims; (2) Continued Confirmation Hearing; And (3)  
15 Other Related Matters" dated December 26, 2007 [D.E. 501].

16 14. Film Roman and the Debtor resolved the issues relating to the Film Roman  
17 Request For Clarification and Film Roman Feasibility Objection, which resolution was approved  
18 by this Court's "Order Approving Settlement And Option Agreement" dated May 8, 2008 (D.E.  
19 541). As a result, the Film Roman objections to confirmation of the Plan, and the Film Roman  
20 Rejection Claim, were withdrawn.

21 15. Based on the Plan, the testimony contained in the First Peterson Declaration, the  
22 Second Peterson Declaration, the Ballot Report, the Notice, the statements made in support of  
23 confirmation of the Plan, and the entire record before the Court, the Court makes the following  
24 findings of fact and conclusions of law and issues the following orders:  
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1     **II.     FINDINGS OF FACT AND CONCLUSIONS OF LAW**

2             **A.   Jurisdiction and Venue**

3             16.     The Court has jurisdiction over this Chapter 11 case under 28 U.S.C. §§ 157 and  
4     1334. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue in this  
5     Court is proper under 28 U.S.C. §§ 1408 and 1409.

6             17.     The Court’s retention of jurisdiction as set forth in Article X of the Plan comports  
7     with 28 U.S.C. § 157.

8             **B.   Contents of the Plan**

9             18.     In accordance with Bankruptcy Code § 1123(a), the Plan: (a) designates Classes  
10    of Claims and Interests, other than claims of a kind specified in Bankruptcy Code §§ 507(a)(2),  
11    507(a)(3) and 507(a)(8), and the classification complies with Bankruptcy Code § 1122;  
12    (b) specifies Classes of Claims that are not impaired under the Plan; (c) specifies the treatment of  
13    Classes of Claims and Interests that are impaired under the Plan; (d) provides the same treatment  
14    for each Claim or Interest of a particular Class, unless the holder of a particular Claim or Interest  
15    agrees to less favorable treatment of the particular Claim or Interest; (e) provides for adequate  
16    means for the Plan’s implementation; (f) provides for the inclusion in the charter of the Debtor of  
17    a provision prohibiting the issuance of nonvoting equity securities, and provides an appropriate  
18    distribution of voting power; and (g) contains only provisions that are consistent with the  
19    interests of creditors and equity security holders and with public policy.

20            19.     As permitted by Bankruptcy Code § 1123(b), the Plan: (a) impairs or leaves  
21    unimpaired Classes of Claims and Interests; (b) provides for the assumption, rejection, or  
22    assumption and assignment of the Debtor’s executory contracts and unexpired leases;  
23    (c) provides for the retention and enforcement by Reorganized Debtor of the Litigation Claims  
24    and any claim or interest belonging to the Debtor or its estate; (d) modifies the rights of the  
25    secured Lender; and (e) includes other appropriate provisions not inconsistent with the applicable  
26    provisions of the Bankruptcy Code.

1           **C. Notice, Solicitation, and Acceptance**

2           20.     In accordance with Bankruptcy Rule 2002, the Court finds and concludes that  
3     adequate notice of the time for filing objections to confirmation of the Plan and adequate notice  
4     of the Confirmation Hearing were provided to parties in interest. No additional notice of the  
5     Confirmation Hearing or the opportunity to be heard with respect to confirmation of the Plan is  
6     required or appropriate under applicable Bankruptcy Rules or the Solicitation Order.

7           21.     In accordance with Bankruptcy Code § 1126(b): (a) the solicitation of votes to  
8     accept or reject the Plan complied with all applicable nonbankruptcy law, rules, and regulations  
9     governing the adequacy of disclosure in connection with the solicitation; and (b) the solicitation  
10    was conducted after disclosure of adequate information, as defined in Bankruptcy Code  
11    § 1125(a), and in accordance with the Solicitation Order.

12          22.     The Debtor and its counsel solicited votes to accept or reject the Plan in good  
13    faith and in compliance with the applicable provisions of the Bankruptcy Code and are,  
14    therefore, entitled to the protections afforded by Bankruptcy Code § 1125(e).

15          23.     With respect to all Classes under the Plan: (a) Classes 2 and 3 are not impaired  
16    and are deemed to have accepted the Plan without voting under Bankruptcy Code § 1126(f);  
17    (b) Classes 1, 5, 6 and 7 voted to accept the Plan by satisfying the voting requirements in  
18    Bankruptcy Code § 1126(c); (c) Class 8 voted to accept the Plan by satisfying the voting  
19    requirements in Bankruptcy Code § 1126(d); and (d) notwithstanding the fact that Class 4 voted  
20    to reject the Plan, the sole member of Class 4 supports confirmation of the Plan as amended by  
21    this Order.

22           **D. Compliance with the Requirements of Bankruptcy Code § 1129(a)**

23          24.     In accordance with Bankruptcy Code § 1129(a)(1), the Plan complies with the  
24    applicable provisions of the Bankruptcy Code.

25          25.     In accordance with Bankruptcy Code § 1129(a)(2), the Proponents have complied  
26    with the applicable provisions of the Bankruptcy Code.

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1           26.     In accordance with Bankruptcy Code § 1129(a)(3), the Proponents proposed the  
2 Plan in good faith and not by any means forbidden by law.

3           27.     In accordance with Bankruptcy Code § 1129(a)(4), all payments made or to be  
4 made by the Proponents or by any person acquiring property under the Plan, for services or for  
5 costs and expenses in, or in connection with, the Chapter 11 Case or the Plan, have been  
6 approved by, or are subject to approval of, the Court as reasonable.

7           28.     In accordance with Bankruptcy Code § 1129(a)(5): (a) the Proponents have  
8 disclosed the identities and affiliations of all individuals that will serve, after confirmation of the  
9 Plan, as officers and directors of Reorganized Debtor; (b) the appointment or continuance of  
10 those individuals as officers and directors is consistent with the interests of the creditors, equity  
11 security holders and with public policy; and (c) the Proponents have disclosed the identities of,  
12 and the nature of any compensation for, all insiders that will be employed by Reorganized  
13 Debtor.

14           29.     The Plan does not provide for any rate change subject to governmental regulation  
15 for purposes of Bankruptcy Code § 1129(a)(6).

16           30.     In accordance with Bankruptcy Code § 1129(a)(7), with respect to each impaired  
17 Class of Claims or Interests, each holder of a Claim or Interest of such Class has accepted the  
18 Plan or will receive or retain under the Plan on account of such Claim or Interest property of a  
19 value, as of the Effective Date, that is not less than the amount that the holder would receive or  
20 retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code.

21           31.     Classes 2 and 3 are not impaired under the Plan and, therefore, are deemed to  
22 have accepted the Plan. Classes 1, 5, 6, 7 and 8 are impaired under the Plan and voted to accept  
23 the Plan. Class 4 is impaired and voted to reject the Plan. Accordingly, this Order addresses the  
24 requirements of Bankruptcy Code § 1129(b), below, with respect to Class 4.

25           32.     In accordance with Bankruptcy Code § 1129(a)(9)(A), the Plan provides that on  
26 the Distribution Date (or as soon as reasonably practicable thereafter), each holder of an Allowed  
27 Administrative Claim (other than a Professional Fee Claim) will receive, in full and complete

1 satisfaction of such Claim, (i) Cash equal to the unpaid portion of such Allowed Administrative  
2 Claim or (ii) such other treatment as to which the Debtor or the Reorganized Debtor, as the case  
3 may be, and such holder shall have agreed upon in writing; provided, however, that Allowed  
4 Administrative Claims with respect to liabilities incurred by the Debtor in the ordinary course of  
5 business during the Chapter 11 Case will be paid in the ordinary course of business in  
6 accordance with the terms and conditions of any agreements relating thereto. As set forth in  
7 Section 1.28 of the Plan, the Distribution Date for the Allowed Administrative Claims (other  
8 than the Professional Fee Claims) is the latest of (i) the Effective Date, (ii) the date such Claim  
9 becomes an Allowed Claim, and (iii) the date such Claim becomes payable pursuant to any  
10 agreement between the Debtor or the Reorganized Debtor, as the case may be, and the holder of  
11 such Claim.

12         33. Also in accordance with Bankruptcy Code § 1129(a)(9)(A), the Plan provides that  
13 on the applicable Distribution Dates (or as soon as reasonably practicable thereafter), each holder  
14 of an Allowed Professional Fee Claim will receive, in full and complete satisfaction of such  
15 Claim, two equal Cash payments of an aggregate value equal to the Allowed amount of such  
16 Claim. As set forth in Section 1.28 of the Plan, the first payment will be made on the first  
17 Business Day of the month immediately following the Effective Date, and the second payment  
18 will be made on the first Business Day of the month that is three months after the first payment.  
19 All holders of Professional Fee Claims have consented to this treatment under the Plan.

20         34. In accordance with Bankruptcy Code § 1129(a)(9)(B), the Plan provides that on  
21 the Distribution Date (or as soon as reasonably practicable thereafter), each holder of an  
22 Allowed Other Priority Claim will receive, in full and complete satisfaction of such Claim, (a)  
23 Cash equal to the unpaid portion of such Allowed Other Priority Claim or (b) such other  
24 treatment as to which the Debtor or the Reorganized Debtor, as the case may be, and such  
25 holder shall have agreed upon in writing. As set forth in Section 1.28 of the Plan, the  
26 Distribution Date for the Allowed Other Priority Claims is the latest of (i) the Effective Date,  
27 (ii) the date such Claim becomes an Allowed Claim, and (iii) the date such Claim becomes



1 payable pursuant to any agreement between the Debtor or the Reorganized Debtor, as the case  
2 may be, and the holder of such Claim.

3 35. In accordance with Bankruptcy Code § 1129(a)(9)(C), the Plan provides that on  
4 the Distribution Date (or as soon as reasonably practicable thereafter), each holder of an Allowed  
5 Priority Tax Claim will receive, in full and complete satisfaction of such Claim, (i) Cash equal to  
6 the unpaid portion of such Allowed Priority Tax Claim or (ii) such other treatment as to which  
7 the Debtor or the Reorganized Debtor, as the case may be, and such holder shall have agreed  
8 upon in writing. As set forth in Section 1.28 of the Plan, the Distribution Date for the Allowed  
9 Priority Tax Claims is the latest of (i) the Effective Date, (ii) the date such Claim becomes an  
10 Allowed Claim, and (iii) the date such Claim becomes payable pursuant to any agreement  
11 between the Debtor or the Reorganized Debtor, as the case may be, and the holder of such Claim.

12 36. In accordance with Bankruptcy Code § 1129(a)(10), at least one Class of Claims  
13 that is impaired under the Plan has accepted the Plan, determined without including any  
14 acceptance of the Plan by any insider.

15 37. In accordance with Bankruptcy Code § 1129(a)(11), confirmation of the Plan is  
16 not likely to be followed by the liquidation, or the need for further financial reorganization, of  
17 the Debtor or Reorganized Debtor.

18 38. In accordance with Bankruptcy Code § 1129(a)(12), if all fees payable to the  
19 United States Trustee under 28 U.S.C. § 1930(a)(6) have not been paid, the Plan provides for the  
20 payment of all those fees on the Effective Date or as they come due after the Effective Date.

21 39. In accordance with Bankruptcy Code § 1129(a)(13), the Plan provides for the  
22 continuation after the Effective Date of all retiree benefits, as that term is defined in Bankruptcy  
23 Code § 1114, at the levels and for the duration of the period the Debtor has obligated itself to  
24 provide such benefits.

25 40. For purposes of Bankruptcy Code § 1129(a)(14), the Debtor is not subject to any  
26 judicial or administrative order, or by statute, to pay any domestic support obligation.

27 41. For purposes of Bankruptcy Code § 1129(a)(15), the Debtor is not an individual.

1           42. For purposes of Bankruptcy Code § 1129(a)(16), there are no “provisions of  
2 nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a  
3 moneyed, business, or commercial corporation or trust” that apply to the Debtor, since the  
4 Debtor is a commercial corporation.

5           43. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of  
6 the application of Section 5 of the Securities Act, and no objection has been filed by any  
7 governmental unit asserting such avoidance. The Plan, therefore, complies with Bankruptcy  
8 Code § 1129(d).

9           **E. Compliance with the Requirements of Bankruptcy Code § 1129(b)**

10           44. Class 4 is the only impaired Class under the Plan that has not accepted the Plan.  
11 Accordingly, Proponents have requested that the Court confirm the Plan notwithstanding the  
12 requirements of Bankruptcy Code § 1129(a)(8).

13           45. In accordance with Bankruptcy Code § 1129(b), the Court finds and concludes  
14 that the Plan does not discriminate unfairly, and is fair and equitable, with respect to Class 4  
15 based on, among other things, the following:

16           (a) Under the Plan as amended by this Order, on, or no later than 30 days  
17 after, the Distribution Date, the holder of the Allowed Gaiman Claim will receive, in full and  
18 complete satisfaction of such Claim, Cash equal to the unpaid portion of the Allowed Gaiman  
19 Claim, plus interest (at the federal judgment rate of interest established under 28 U.S.C. § 1961  
20 for the date such Claim is Allowed) from the date such Claim is Allowed until paid, which  
21 amount shall be payable from (i) Cash available from the operations of the Reorganized Debtor  
22 (including, as necessary, Cash received by or otherwise available to the Reorganized Debtor  
23 pursuant to the Capital Contribution Agreement), (ii) the Gaiman Insurance Proceeds,<sup>4</sup> and (iii)  
24 the Gaiman Litigation Bond;

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26  
27           <sup>4</sup> The term “Gaiman Insurance Proceeds” has the meaning given to it in the Plan as amended by this Order.

1 (b) As set forth in Section 1.28 of the Plan, the Distribution Date for the  
2 Allowed Gaiman Claim is the later of (i) the Effective Date, (ii) the date such Claim becomes an  
3 Allowed Claim pursuant to a Final Order entered in the Gaiman Litigation and a Final Order as  
4 to setoff issues entered in the Gaiman Adversary; and

5 (c) Notwithstanding the fact that Gaiman voted to reject the Plan, Gaiman  
6 supports confirmation of the Plan as amended by this Order and has asked the Court to confirm  
7 the Plan as so amended.

#### 8 **F. Satisfaction of Conditions to Confirmation**

9 46. The conditions to confirmation of the Plan set forth in Section 9.1 of the Plan  
10 have been satisfied.

#### 11 **G. Transactions Under the Plan**

12 47. Without further application to or order of the Court, or need for further corporate  
13 action, the Proponents and Reorganized Debtor are authorized to enter into, implement, and  
14 effect all transactions contemplated in the Plan.

15 48. The assumption or rejection of executory contracts and unexpired leases under the  
16 Plan is a reasonable exercise of the Debtor's business judgment and is in the best interests of the  
17 Debtor and the Estate.

#### 18 **H. Miscellaneous**

19 49. Entry of this Order makes valid and enforceable each provision of the Plan (as  
20 modified in this Order) in accordance with its terms.

21 50. In satisfaction of Bankruptcy Rule 3016(a), the Plan is dated, and the entities  
22 submitting it are identified.

### 23 **III. ORDER**

24 In light of the foregoing Findings of Fact and Conclusions of Law, **IT IS ORDERED**  
25 that:

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**A. Integration**

51. The findings of this Court set forth in this Order constitute findings of fact and conclusions of law under Bankruptcy Rule 7052, applicable to this matter under Bankruptcy Rule 9014. If any findings of fact constitute conclusions of law, they are adopted as such. If any conclusions of law constitute findings of fact, they are adopted as such.

**B. Confirmation**

52. The Plan is CONFIRMED.

53. Notwithstanding Bankruptcy Rule 3020(e) and any otherwise applicable law, immediately on the entry of this Order, the terms of the Plan and this Order will be binding on and inure to the benefit of the Debtor, all holders of Claims or Interests, Reorganized Debtor, and the respective successors and assigns of all the foregoing.

54. In accordance with Bankruptcy Code § 1123(b)(3)(B), Reorganized Debtor is appointed as the representative and agent of the Estate to prosecute, compromise, or abandon the Litigation Claims in accordance with the Plan.

**C. Amendments to Plan**

55. Section 1.11 of the Plan is replaced entirely with the following:

**“Capital Contribution Agreement”** means that certain Capital Contribution Agreement, substantially in the form Filed not less than five Business Days prior to the hearing on the approval of the Disclosure Statement, to be entered into by the Reorganized Debtor and McFarlane on the Effective Date, whereby McFarlane agrees to make cash contributions to the Reorganized Debtor up to an aggregate amount of \$1,600,000.

The Plan confirmed by this Order contains Section 1.11 as amended by this Paragraph 55.

56. A new section 1.12.1 is added to the Plan as follows:

**1.12.1 “CCA Enforcement Agent”** means Edward M. Burr Jr. of Sierra Consulting LLC or his successor(s) as described in Section 5.14(c) of the Plan. A copy of Mr. Burr’s curriculum vitae is attached as Plan Exhibit C.

The Plan confirmed by this Order contains Section 1.12.1 as set forth in this Paragraph 56.

1           57.    Section 1.37 of the Plan is replaced entirely with the following:

2                   **“Gaiman Insurance Proceeds”** means \$382,000 (and interest  
3                   earned thereon) of the funds received from the defendant insurer  
4                   pursuant to a Final Order approving settlement of the Insurance  
5                   Claim in Todd McFarlane Productions, Inc. et al. v. American  
6                   International Specialty Lines Insurance Co., Adv. Pro. No. 2:05-  
7                   ap-00345-CGC, which shall be maintained in a segregated,  
8                   interest-bearing account of the Debtor and Reorganized Debtor  
9                   (“**Account**”) for the sole purpose of payment of the Gaiman Claim  
10                  if and to the extent needed for full payment of the Gaiman Claim,  
11                  in which the Debtor grants to Gaiman a first priority security  
12                  interest collateralizing the Gaiman Claim; provided, however, that  
13                  no payment of any Gaiman Insurance Proceeds shall be made to  
14                  Gaiman until the Gaiman Claim is determined to be an Allowed  
15                  Claim pursuant to a Final Order entered in the Gaiman Litigation  
16                  and a Final Order as to setoff issues entered in the Gaiman  
17                  Adversary, and provided further that the latter such Final Order  
18                  shall direct the depository institution in which the Account is  
19                  maintained to disburse all funds in the Account consistent with its  
20                  order.

21           The Plan confirmed by this Order contains Section 1.37 as amended by this Paragraph 57.

22           58.    Section 3.5 of the Plan is replaced entirely with the following:

23                   **Class 4 (Gaiman Claim).** On, or no later than thirty (30) days  
24                   after, the Distribution Date, the holder of the Allowed Gaiman  
25                   Claim shall receive, in full and complete satisfaction of such  
26                   Claim, Cash equal to the unpaid portion of the Allowed Gaiman  
27                   Claim, plus interest (at the federal judgment rate of interest  
                    established under 28 U.S.C. § 1961 for the date such Claim is  
                    Allowed) from the date such Claim is Allowed until paid, which  
                    amount shall be payable from (a) Cash available from the  
                    operations of the Reorganized Debtor (including, as necessary,  
                    Cash received by or otherwise available to the Reorganized Debtor  
                    pursuant to the Capital Contribution Agreement), (b) the Gaiman  
                    Insurance Proceeds, and (c) the Gaiman Litigation Bond. Gaiman  
                    shall release his security interest in the Gaiman Insurance  
                    Proceeds, and the Gaiman Litigation Bond shall be exonerated,  
                    upon any of the following events: (i) full payment of the Allowed  
                    Gaiman Claim; (ii) the Gaiman Claim is Allowed in the amount of  
                    \$0.00; or (iii) entry of a Final Order disallowing the Gaiman Claim  
                    in its entirety. Class 4 is Impaired by the Plan.

28           The Plan confirmed by this Order contains Section 3.5 as amended by this Paragraph 58.

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59. Section 5.12 of the Plan is replaced entirely with the following:

**Exculpation.** None of the Plan Proponents, the Reorganized Debtor, the CCA Enforcement Agent, or any of the foregoing respective current or former officers, directors, subsidiaries, affiliates, members, managers, shareholders, partners, representatives, employees, attorneys, financial advisors, accountants and agents, or any of their respective successors and assigns, or any of their respective property, shall have or incur any liability to any holder of a Claim or Interest, or any other party in interest, or any of their respective officers, directors, subsidiaries, affiliates, members, managers, shareholders, partners, representatives, employees, attorneys, financial advisors and agents, or any of their respective successors and assigns, and their respective property, for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Case, the solicitation of acceptances of the Plan, the pursuit of Confirmation, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except (i) for their gross negligence or willful misconduct, and (ii) solely in the case of attorneys, to the extent that such exculpation would violate any applicable professional disciplinary rules, including Disciplinary Rule 6-102 of the Code of Professional Conduct.

The Plan confirmed by this Order contains Section 5.12 as amended by this Paragraph 59.

60. A new Section 5.14 is added to the Plan as follows:

**5.14 CCA Enforcement Agent**

(a) Duties

From the Effective Date until termination of the CCA Enforcement Agent under Section 5.14(d) of the Plan, any holder of an Allowed Claim may request that the CCA Enforcement Agent evaluate whether there has been a default under the Capital Contribution Agreement. All such requests must be in writing and served on the CCA Enforcement Agent with copies to the Plan Proponents in accordance with Section 11.11 of the Plan. The CCA Enforcement Agent shall determine within 30 days thereafter if a default has occurred which adversely impacts the holder of the Allowed Claim making such request, and notify the Plan Proponents and the holder of the Allowed Claim requesting the evaluation. If the CCA Enforcement Agent determines that such a default has occurred, then the CCA Enforcement Agent shall have the exclusive and non-revocable authority to make demand under the Capital Contribution Agreement on behalf of the Reorganized

1 Debtor, and shall do so within five (5) Business Days after  
2 determining that a default has occurred. All such demands must be  
3 in writing and served on McFarlane with a copy to the  
4 Reorganized Debtor in accordance with Section 11.11 of the Plan.  
5 If payment is not made under the Capital Contribution Agreement  
6 within five (5) Business Days of such demand (“**Demand**  
7 **Deadline**”), then the CCA Enforcement Agent shall bring an  
8 action before the Bankruptcy Court on behalf of the Reorganized  
9 Debtor to enforce the Capital Contribution Agreement within ten  
10 (10) Business Days after the Demand Deadline, and shall prosecute  
11 any such action diligently in good faith to collect all amounts due  
12 plus attorneys’ fees and costs incurred as promptly as possible.

13 (b) Compensation

14 The Reorganized Debtor shall compensate the CCA  
15 Enforcement Agent at the rate of \$295 per hour, plus reasonable  
16 expenses, for services rendered under Section 5.14(a) of the Plan.  
17 In addition, all reasonable attorney’s fees incurred by the CCA  
18 Enforcement Agent in the performance of his duties under Section  
19 5.14(a) of the Plan shall be paid by the Reorganized Debtor,  
20 without prejudice to recovery from McFarlane in any litigation  
21 pursuant to Section 5.14(a).

22 (c) Successor

23 The CCA Enforcement Agent may resign for any reason by  
24 filing a notice of resignation with the Bankruptcy Court. In the  
25 event of the resignation or incapacity of the CCA Enforcement  
26 Agent, a successor shall be appointed by the following procedure:  
27 (i) Gaiman and the Reorganized Debtor will mutually agree on a  
successor; or (ii) if Gaiman and the Reorganized Debtor cannot  
mutually agree on a successor, then Gaiman and the Reorganized  
Debtor shall each propose one candidate as successor, and the  
Bankruptcy Court shall determine which of the two candidates  
becomes the successor.

(d) Termination

Upon payment in full of the Allowed Gaiman Claim in  
accordance with Section 3.5 of the Plan, the CCA Enforcement  
Agent’s title, rights and duties under the Plan shall terminate;  
provided, however, that the CCA Enforcement Agent’s rights  
under Section 5.12 of the Plan and his rights to any unpaid  
compensation under Section 5.14(b) of the Plan shall survive such  
termination.

1 The Plan as confirmed by this Order contains Section 5.14 as set forth in this Paragraph 60.

2  
3 61. Article X of the Plan is replaced entirely as follows:

4 **RETENTION OF JURISDICTION**

5 Under sections 105(a) and 1142 of the Bankruptcy Code, and  
6 notwithstanding entry of the Confirmation Order and occurrence of  
7 the Effective Date, the Bankruptcy Court shall retain exclusive  
8 jurisdiction over all matters arising out of, or related to, the  
9 Chapter 11 Case and the Plan to the fullest extent permitted by  
10 law, and over which the Bankruptcy Court would otherwise have  
11 been able to exercise original jurisdiction, including, among other  
12 things, jurisdiction to:

13 (a) Allow, disallow, determine, liquidate, classify, estimate or  
14 establish the priority or secured or unsecured status of any Claim  
15 not otherwise allowed under the Plan, including the resolution of  
16 any request for payment of any Administrative Claim and the  
17 resolution of any objections to the allowance or priority of Claims  
18 or Interests;

19 (b) Hear and determine all applications for compensation and  
20 reimbursement of expenses of Professionals under the Plan or  
21 under sections 330, 331, 503(b), 1103 and 1129(a)(4) of the  
22 Bankruptcy Code; provided, however, that from and after the  
23 Effective Date, the payment of the fees and expenses of the  
24 retained Professionals of the Reorganized Debtor shall be made in  
25 the ordinary course of business and shall not be subject to the  
26 approval of the Bankruptcy Court;

27 (c) Hear and determine all matters with respect to the  
assumption or rejection of any executory contract or unexpired  
lease to which the Debtor is a party or with respect to which the  
Debtor may be liable, including, if necessary, the nature or amount  
of any required Cure or the liquidation or allowance of any Claims  
arising therefrom;

(d) Effectuate performance of and payments under the  
provisions of the Plan;

(e) Hear and determine any and all adversary proceedings,  
motions, applications, and contested or litigated matters arising out  
of, under, or related to, the Chapter 11 Case, including, without  
limitation, the Litigation Claims;



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(f) Hear and determine all matters with respect to the Policies;

(g) Enter such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, the Disclosure Statement or the Confirmation Order;

(h) Hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Plan, including disputes arising under agreements, documents or instruments executed in connection with the Plan;

(i) Consider any modifications of the Plan, cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(j) Issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, consummation, or enforcement of the Plan or the Confirmation Order;

(k) Enter and implement such orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified, or vacated;

(l) Hear and determine any matters arising in connection with or relating to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order;

(m) Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Case;

(n) Except as otherwise limited herein, recover all assets of the Debtor and property of the Estate, wherever located;

(o) Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

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- (p) Hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code;
- (q) Hear and determine any action brought by the CCA Enforcement Agent in accordance with Section 5.14(a) of the Plan;
- (r) Choose the successor of the CCA Enforcement Agent in accordance with Section 5.14(c) of the Plan; and
- (s) Enter a final decree closing the Chapter 11 Case.

The Plan confirmed by this Order contains Article X as amended by this Paragraph 61.

62. Section 11.11 of the Plan is replaced entirely with the following:

**Notices.** Any notice, request, or demand required or permitted to be made or provided to or upon the Plan Proponents or the CCA Enforcement Agent under the Plan shall be (a) in writing, (b) served by (i) certified mail, return receipt requested, (ii) hand delivery, (iii) overnight delivery service, (iv) first class mail, or (v) facsimile transmission, and (c) deemed to have been duly given or made when first received by the party or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

To Plan Proponents:

Todd McFarlane Productions, Inc.  
1711 W. Greentree Drive, Suite 208  
Tempe, Arizona 85284  
Attn: Debra L. Ziola

-with a copy to-

Thomas J. Salerno, Esq.  
SQUIRE, SANDERS & DEMPSEY L.L.P.  
Two Renaissance Square, Suite 2700  
40 North Central Avenue  
Phoenix, Arizona 85004  
Telephone: (602) 528-4000  
Facsimile: (602) 253-8129

-and-

Todd McFarlane  
c/o Todd McFarlane Productions, Inc.

1 1711 W. Greentree Drive, Suite 208  
2 Tempe, Arizona 85284

3 -with a copy to-

4 Robert J. Miller, Esq.  
5 BRYAN CAVE LLP  
6 Two North Central Avenue, Suite 2200  
7 Phoenix, Arizona 85004-4406  
8 Telephone: (602) 364-7000  
9 Facsimile: (602) 364-7070

10 To CCA Enforcement Agent:

11 Edward M. Burr, Jr.  
12 c/o Sierra Consulting Group, LLC  
13 One Renaissance Square  
14 Two North Central Ave., Suite 700  
15 Phoenix, Arizona 85224

16 The Plan as confirmed by this Order contains Section 11.11 as amended by this Paragraph 62.

17 63. The curriculum vitae of Edward M. Burr Jr. that is attached to the Notice is added  
18 to the Plan as an exhibit titled "Plan Exhibit C." The Plan confirmed by this Order includes Plan  
19 Exhibit C as set forth in this Paragraph 63.

20 **D. Amendments to Capital Contribution Agreement**

21 64. Section 2.3(a)(i) of the Capital Contribution Agreement is replaced in its entirety  
22 as follows: "The Effective Date does not occur on or before July 11, 2008."

23 65. Section 2.5 of the Capital Contribution Agreement is replaced in its entirety as  
24 follows:

25 Assignability. This Agreement shall be binding upon, and inure to  
26 the benefit of, the parties hereto and their respective successors and  
27 assigns. This Agreement is not assignable by TMP or McFarlane  
without the written consent of the other, which consent shall not be  
unreasonably withheld, and the approval of the Bankruptcy Court.  
Any assignment or attempted assignment of this Agreement not  
permitted hereby shall be null and void and of no force or effect.

1           **E. Bar Dates**

2           66. All requests for payment of an Administrative Claim (other than a Professional  
3 Fee Claim) must be Filed and served on counsel for the Reorganized Debtor no later than 30  
4 days after the Effective Date (“**Administrative Claims Bar Date**”). Any holder of an  
5 Administrative Claim (other than a Professional Fee Claim) that fails to file and serve its request  
6 by the Administrative Claims Bar Date is forever barred from asserting its Administrative Claim  
7 against either the Debtor or the Reorganized Debtor.

8           67. All applications for payment of Professional Fee Claims must be Filed and served  
9 on counsel for the Reorganized Debtor no later than 45 days after the Effective Date, unless  
10 otherwise ordered by the Bankruptcy Court (“**Professional Fee Claims Bar Date**”). Any holder  
11 of a Professional Fee Claim that fails to file and serve its application by the Professional Fee  
12 Claims Bar Date is forever barred from asserting its Professional Fee Claim against either the  
13 Debtor or the Reorganized Debtor.

14           68. All Proofs of Claim arising from the rejection of any executory contract or  
15 unexpired lease under the Plan must be Filed and served on counsel for the Reorganized Debtor  
16 no later than 30 days after the Effective Date (“**Rejection Damages Bar Date**”). Any holder of  
17 a Claim arising from the rejection of any executory contract or unexpired lease under the Plan  
18 that fails to file and serve its Proof of Claim by the Rejection Damages Bar Date is forever  
19 barred from asserting such Claim against either the Debtor or the Reorganized Debtor.

20           **F. Retention of Jurisdiction**

21           69. This Court’s retention of jurisdiction as set forth in Article X of the Plan is  
22 APPROVED. Such retention of jurisdiction does not affect the finality of this Order, which the  
23 Court now expressly directs the Clerk of the Bankruptcy Court to enter immediately.

24           **G. Miscellaneous**

25           70. Pursuant to Bankruptcy Code § 1146, any transfers pursuant to or in conjunction  
26 with the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee,  
27 intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording

1 tax or other similar tax or governmental assessment. All state or local governmental officials or  
2 agents are directed to forego the collection of any such tax or governmental assessment and to  
3 accept for filing and recordation any of the foregoing instruments or other documents without the  
4 payment of any such tax or governmental assessment.

5 71. Under Bankruptcy Code §§ 1123(a) and 1142(a), this Order and the Plan apply  
6 and are enforceable notwithstanding any otherwise applicable nonbankruptcy law.

7 72. The failure to include specifically any particular provision of the Plan in this  
8 Order does not diminish or impair the efficacy of that provision; the Court intends by this Order  
9 to confirm and approve the Plan and all its provisions in their entirety, as modified only by this  
10 Order.

11 73. The Proponents and their counsel are authorized and directed to do any acts and to  
12 execute any documents necessary and appropriate to implement the terms of the Plan.

13 74. All objections to confirmation of the Plan, to the extent not already withdrawn or  
14 resolved by this Order and its revisions to the Plan, are OVERRULED.

15 75. The provisions of this Order are nonseverable and mutually dependent.

16 76. The form of escrow agreement attached hereto as Exhibit A is approved and  
17 deemed in compliance with the Plan.

18 Dated: \_\_\_\_\_  
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21 \_\_\_\_\_  
22 HON. CHARLES G. CASE II  
23 UNITED STATES BANKRUPTCY JUDGE  
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**Exhibit A**  
**(Form of Escrow Agreement)**

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## ESCROW AGREEMENT

This Escrow Agreement (this "Agreement") is dated as of the \_\_\_ day of June, 2008, among **TODD MCFARLANE PRODUCTIONS, INC.**, an Arizona corporation (the "Debtor"); **NEIL GAIMAN**, an individual domiciled in \_\_\_\_\_ (the "Secured Party") and U.S. Bank National Association, a national banking association organized and existing under the laws of the United States of America (the "Escrow Agent").

### WITNESSETH:

WHEREAS, the Debtor is currently a debtor in possession in a Chapter 11 bankruptcy case pending in the United States Bankruptcy Court for the District of Arizona ("Bankruptcy Court"), Case No. 2:04-bk-21755-CGC ("Bankruptcy Case");

WHEREAS, the Debtor's plan of reorganization provides for the Debtor to deposit Three Hundred Eighty-Two Thousand Dollars (\$382,000.00) of insurance proceeds, along with the interest earned thereon, into an escrow account in order to secure payment of the Secured Party's claim;

WHEREAS, the Debtor and the Secured Party wish to deliver to the Escrow Agent the Escrow Payment (as hereinafter defined), to be held and released by Escrow Agent in accordance with the terms and conditions of this Agreement; and

WHEREAS, the Escrow Agent is willing to serve as escrow agent pursuant to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual premises contained herein, the parties agree as follows:

## ARTICLE I

### INTERPRETATION

1.1 Definitions. Whenever used in this Agreement, the following terms shall have the meanings set forth below.

(a) "Business Day" means any day other than a Saturday, Sunday, or Legal Holiday.

(b) "Counsel" means, with regard to each of the Debtor and the Secured Party, each of their respective counsel listed in Section 5.2.

(c) "Disbursement Certificate" means a certificate signed by the Secured Party and its Counsel or an officer of the Debtor and its Counsel: (A) stating that the Bankruptcy Court has issued its order on the Secured Party's claim (the "Order"); (B) stating that either the Order is final and non-appealable or that the parties have waived their right to appeal; (C) attaching a copy of the Order; and (D) attaching an opinion of Counsel that the Order is now final and non-appealable.

(d) “Dollars” means United States dollars.

(e) “Escrow Amount” means the Escrow Payment, plus all interest earned thereon, minus the aggregate money disbursed in accordance with this Agreement.

(f) “Escrow Payment” means Three Hundred Eighty-Two Thousand Dollars (\$382,000.00).

(f) “Legal Holiday” means New Year’s Day, Birthday of Martin Luther King, Jr., Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the state of Arizona.

(g) “Objection Deadline” means the first Business Day that is at least five (5) days after the Escrow Agent receives the Disbursement Certificate from the Secured Party or the Debtor in accordance with Section 3.1(a).

1.2 Entire Agreement. This Agreement constitutes the entire agreement among the parties with respect to the arrangement with the Escrow Agent and supersedes all prior agreements, understandings, negotiations and discussions of the parties, whether oral or written with respect to the arrangement with the Escrow Agent. There are no warranties, representations and other agreements made by the parties in connection with the arrangement with the Escrow Agent except as specifically set forth in this Agreement.

1.3 Extended Meanings. In this Agreement words importing the singular number include the plural and vice versa; words importing the masculine gender include the feminine and neuter genders. The word “person” includes an individual, body corporate, partnership, trustee or trust or unincorporated association, executor, administrator or legal representative.

1.4 Waivers and Amendments. This Agreement may be amended, modified, superseded, cancelled, renewed or extended, and the terms and conditions hereof may be waived, in each case only by a written instrument signed by the Debtor, the Secured Party and the Escrow Agent, or, in the case of a waiver, by the party waiving compliance. Except as expressly stated herein, no delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any right, power or privilege hereunder preclude any other or future exercise of any other right, power or privilege hereunder.

1.5 Headings. The division of this Agreement into articles, sections, subsections and paragraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.6 Law Governing this Agreement; Consent to Jurisdiction. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARIZONA WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. With respect to any suit, action or proceeding relating specifically to the terms of this Agreement (“Proceedings”), each party hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of Arizona and United States District courts located in the State of Arizona. Each party hereto hereby irrevocably and unconditionally (a) waives trial by jury in



any proceeding and for any related counterclaim and (b) waives any objection which it may have at any time to the laying of venue of any proceeding brought in any such court, waives any claim that such proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such proceedings, that such court does not have jurisdiction over such party. In the event that any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, then the remainder of this Agreement shall not be affected and shall remain in full force and effect.

## ARTICLE II

### APPOINTMENT OF AND DELIVERIES TO THE ESCROW AGENT

2.1 Appointment. The Debtor and the Secured Party hereby irrevocably designate and appoint the Escrow Agent as their escrow agent for the purposes set forth herein, and the Escrow Agent by its execution and delivery of this Agreement hereby accepts such appointment under the terms and conditions set forth herein.

2.2 Delivery of Escrow Payment to Escrow Agent. Promptly upon execution of this Agreement, the Debtor shall deliver to the Escrow Agent the Escrow Payment. At such time, the Escrow Agent shall hold the Escrow Payment as agent for the Debtor and the Secured Party, subject to the terms and conditions of this Agreement.

2.3 Intention to Create Escrow Over the Escrowed Payment. The Debtor and the Secured Party intend that the Escrow Amount shall be held in escrow by the Escrow Agent and released from escrow by the Escrow Agent only in accordance with the terms and conditions of this Agreement.

## ARTICLE III

### RELEASE OF ESCROW

3.1 Release of Escrow. Subject to the provisions of Section 4.2, the Escrow Agent shall release the Escrow Payment from escrow as follows:

(a) Upon receipt of the Order, the Secured Party or Debtor shall deliver a Disbursement Certificate to the Escrow Agent, along with a duplicate copy of such Disbursement Certificate to the other party. Upon receipt of such Disbursement Certificate, the Escrow Agent shall make delivery of all or a portion of the Escrow Amount, if any, to the Secured Party in accordance with the Order, provided that the other party has not delivered a written objection to the claim made in the Disbursement Certificate that the Order is final and non-appealable, to the Escrow Agent by the Objection Deadline.

(b) Upon distribution of all or a portion of the Escrow Amount to the Secured Party pursuant to the Disbursement Certificate, the Escrow Agent shall immediately disburse the remainder of the Escrow Amount, if any, to the Debtor.

3.2 Acknowledgement of the Debtor and the Secured Party; Disputes. The Debtor and the Secured Party acknowledge that the only terms and conditions upon which the Escrow Payment is to be released from escrow are as set forth in Article III of this Agreement. The Debtor and the Secured Party reaffirm their agreement to abide by the terms and conditions of this Agreement with respect to the release of the Escrow Payment.

## ARTICLE IV

### CONCERNING THE ESCROW AGENT

4.1 Duties and Responsibilities of the Escrow Agent. The Escrow Agent's duties and responsibilities shall be subject to the following terms and conditions:

(a) The Secured Party and the Debtor acknowledge and agree that the Escrow Agent (i) shall not be required to inquire into whether the Secured Party, the Debtor or any third-party is entitled to receipt of any portion of the Escrow Payment; (ii) shall not be called upon to construe or review any document, instrument or agreement entered into in connection therewith; (iii) shall be obligated only for the performance of such duties as are specifically assumed by the Escrow Agent pursuant to this Agreement; (iv) may rely on and shall be protected in acting or refraining from acting upon any written notice, instruction, instrument, statement, request or document furnished to it hereunder and reasonably believed by the Escrow Agent in good faith to be genuine and to have been signed or presented by the proper person or party, without being required to determine the authenticity or correctness of any fact stated therein or the propriety or validity or the service thereof; (v) may assume that any person purporting to give notice or make any statement or execute any document in connection with the provisions hereof has been duly authorized to do so; (vi) shall not be responsible for the identity, authority or rights of any person, firm or company executing or delivering or purporting to execute or deliver this Agreement or any funds deposited hereunder or any endorsement thereon or assignment thereof; (vii) shall not be under any duty to give the property held by Escrow Agent hereunder any greater degree of care than Escrow Agent gives its own similar property; and (viii) may consult counsel satisfactory to Escrow Agent, the opinion of such counsel to be full and complete authorization and protection in respect of any action taken, suffered or omitted by Escrow Agent hereunder in good faith and in accordance with the opinion of such counsel.

(b) The Secured Party and the Debtor acknowledge that the Escrow Agent is acting solely as a stakeholder at their request and that the Escrow Agent shall not be liable for any action taken by Escrow Agent in good faith and reasonably believed by Escrow Agent to be authorized or within the rights or powers conferred upon Escrow Agent by this Agreement other than any such action resulting from the Escrow Agent's gross negligence or willful misconduct. The Secured Party and the Debtor hereby, jointly and severally, indemnify and hold harmless the Escrow Agent and any of Escrow Agent's partners, employees, agents and representatives from and against any and all actions taken or omitted to be taken by Escrow Agent or any of them hereunder and any and all claims, losses, liabilities, costs, damages and expenses suffered and/or incurred by the Escrow Agent arising in any manner whatsoever out of the transactions contemplated by

this Agreement and/or any transaction related in any way hereto, including the fees of outside counsel and other costs and expenses of defending itself against any claims, losses, liabilities, costs, damages and expenses arising in any manner whatsoever out of the transactions contemplated by this Agreement and/or any transaction related in any way hereto, except for such claims, losses, liabilities, costs, damages and expenses incurred by reason of the Escrow Agent's gross negligence or willful misconduct. The Escrow Agent shall owe a duty only to the Secured Party and the Debtor under this Agreement and to no other person.

(c) The Escrow Agent may at any time resign as Escrow Agent hereunder by giving five (5) business days prior written notice of resignation to the Secured Party and the Debtor. Prior to the effective date of resignation as specified in such notice, the Secured Party and the Debtor will issue to the Escrow Agent a joint instruction authorizing delivery of the Escrow Amount to a substitute escrow agent selected by the Secured Party and the Debtor. If no successor escrow agent is named by the Secured Party and the Debtor, the Escrow Agent may apply to a court of competent jurisdiction in the State of Arizona for appointment of a successor escrow agent, and deposit the Escrow Payment (or any portion of the Escrow Payment then remaining) with the clerk of any such court, and/or otherwise commence an interpleader or similar action for a determination of where to deposit the same.

(d) The Escrow Agent does not have and will not have any interest in the Escrow Payment, but is serving only as escrow agent, having only possession thereof.

(e) The Escrow Agent shall not be liable for any reasonable mistake of fact or error of judgment or for any acts or omissions of any kind except to the extent any such liability arose from its own willful misconduct or gross negligence.

(f) This Agreement sets forth exclusively the duties of the Escrow Agent with respect to any and all matters pertinent thereto and no implied duties or obligations shall be read into this Agreement.

(g) The provisions of this Section 4.1 shall survive the resignation of the Escrow Agent or the termination of this Agreement.

4.2 Fees and Expenses. In consideration for its services hereunder, the Debtor agrees to pay the administrative escrow fee of the Escrow Agent, which totals [\$3,000]. All other fees, costs, charges and expenses of the Escrow Agent, if any, including reasonable attorneys' fees, which are incurred in connection with the performance of its duties and obligations hereunder will be paid by the Debtor. The Escrow Agent will submit written information (including copies of receipts) to the Debtor with respect to the nature and amount of all expenses which it may incur prior to payment of same.

## ARTICLE V

### GENERAL MATTERS

5.1 Termination. This Agreement and the escrow shall terminate upon disbursement of the Escrow Amount in accordance with the terms of this Agreement or earlier upon the agreement in writing of the Secured Party and the Debtor or upon the resignation of the Escrow Agent in accordance with the terms hereof.

5.2 Notices. All notices, requests, demands and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given one (1) day after being sent by telecopy (with copy delivered by overnight courier, regular or certified mail):

If to the Debtor, to: Todd McFarlane Productions, Inc.  
1711 West Greentree Drive, Suite 208  
Tempe, Arizona 85284  
Attn: Debra L. Ziola

With a copy to: Thomas J. Salerno, Esq.  
Squire, Sanders & Dempsey L.L.P.  
Two Renaissance Square, Suite 2700  
40 North Central Avenue  
Phoenix, Arizona 85004  
Telephone: (602) 528-4000  
Facsimile: (602) 253-8129

If to the Secured Party, to: Neil Gaiman  
c/o Kenneth F. Levin, Esq.  
20 North Wacker Drive, Suite 4200  
Chicago, Illinois 60606  
Telephone: (312) 827-9000  
Facsimile: (312) 827-9001

With a copy to: Susan M. Freeman, Esq.  
Lewis and Roca LLP  
40 North Central Avenue  
Phoenix, Arizona 85004-4429  
Telephone: (602) 262-5756  
Facsimile: (602) 734-3824

If to the Escrow Agent, to: U.S. Bank National Association  
Corporate Trust Services  
Attn: Mary Ambriz-Reyes  
101 North 1st Avenue, Suite 1600  
Phoenix, Arizona 85003  
Telephone: (602) 257-5430  
Facsimile: (602) 257-5433

or to such other address as any of them shall give to the others by notice made pursuant to this Section 5.2.

5.3 Interest. The Escrow Payment shall be placed in an interest bearing account and such interest will be added to the Escrow Amount to be distributed to the Secured Party and the Debtor, as applicable, in accordance with the provisions of Article III.

5.4 Patriot Act. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust or other legal entity the Escrow Agent will ask for documentation to verify its formation and existence as a legal entity. The Escrow Agent may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

5.5 Assignment; Binding Agreement. Neither this Agreement nor any right or obligation hereunder shall be assignable by any party without the prior written consent of the other parties hereto. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns.

5.6 Invalidity. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal, or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be in any way impaired thereby, it being intended that all of the rights and privileges of the parties hereto shall be enforceable to the fullest extent permitted by law.

5.7 Counterparts/Execution. This Agreement may be executed in any number of counterparts and by different signatories hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same agreement. This Agreement may be executed by facsimile transmission.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE FOLLOWS]

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

**DEBTOR:**

TODD MCFARLANE PRODUCTIONS, INC.

By: \_\_\_\_\_  
[Name, Title]

**SECURED PARTY:**

NEIL GAIMAN

By: \_\_\_\_\_  
Neil Gaiman, an individual

**ESCROW AGENT:**

U.S. BANK NATIONAL ASSOCIATION

By: \_\_\_\_\_  
[Name, Title]