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5 Attorneys for Petitioners
BRANDON FLOWERS, an individual;
6 RONNIE VANNUCCI, JR., an
individual; DAVE KEUNING, an
7 individual; MARK STOERMER, an
individual, collectively and professionally
8 known as "THE KILLERS"

9
10 **DIVISION OF LABOR STANDARDS ENFORCEMENT**

11 **DEPARTMENT OF INDUSTRIAL RELATIONS**

12 **STATE OF CALIFORNIA**

13 BRANDON FLOWERS, an individual; RONNIE)
VANNUCCI, JR., an individual; DAVE KEUNING,)
14 an individual; MARK STOERMER, an individual,)
collectively and professionally known as "THE)
15 KILLERS,")

16 Petitioners,

17 v.

18 FROM THE FUTURE, LLC, a California limited)
liability company; BRADEN MERRICK, an)
19 individual)

20 Respondents.

Case No. TAC 10-06

**SECOND AMENDED PETITION
TO DETERMINE CONTROVERSY**

21
22 Petitioners Brandon Flowers, Ronnie Vannucci, Jr., Dave Keuning, Mark Stoermer,
23 collectively and professionally known as "The Killers" (collectively "Petitioners") hereby file this
24 First Amended Petition and allege as follows:

25 1. This is the classic story of an incompetent manager who abandoned his clients at a
26 critical juncture of their careers, and now seeks to cash in on their success. This is also the story
27 of a manager, Braden Merrick, who purported to act as a talent agent by procuring performances
28

1 on behalf of his clients (the members of a successful rock band called “The Killers”) – in direct
2 violation of California law.

3 2. Merrick was often a derelict and absent manager who failed to perform even the
4 most rudimentary functions required by managers. Far from being “available upon reasonable
5 notice at reasonable times to advise and counsel” his clients, as required by the management
6 agreement, Merrick was incommunicado when his clients needed him most. It was later
7 discovered that, during the time Merrick was supposed to be acting as the band’s exclusive
8 manager, he was posing and acting as the band’s talent agent without a requisite license under the
9 California Talent Agency Act. If that weren’t enough, during this same period, Merrick was
10 “double dealing” by secretly working for, and being paid by, the band’s own A&R representative
11 at the band’s record label

12 3. Merrick was fired because the band concluded that he was grossly incompetent,
13 dishonest, a double dealer who breached his fiduciary duties, and was unable or unwilling to
14 perform the most rudimentary tasks required of him. Rather than accept responsibility for his
15 misdeeds, Merrick filed a frivolous federal court action against the band members and their
16 attorney in an attempt to blame the victims and ignore that it was *he* who breached the agreement.
17 Merrick’s claims will be proven false. Contrary to the false and defamatory allegations Merrick
18 has made, the band and their lawyer, Robert Reynolds, did all they could to preserve the
19 relationship with Merrick and to persuade Merrick to take his obligations seriously.

20 4. Merrick might have fooled himself into thinking that he could act as a talent agent
21 without the requisite license and that he could act as the record label’s A&R representative
22 without breaching his fiduciary duties to the band, but he could certainly not fool the band nor
23 third parties that such acts were appropriate or that he was a competent manager.

24 5. Merrick’s repeated acts to procure performances for the band renders the agreement
25 unenforceable and *void ab initio* under California law.

1
2 **Background Allegations**

3 6. This Petition is filed pursuant to the authority of Section 1700 *et seq.* of the Labor
4 Code of the State of California.

5 7. Petitioners are, and at all times material hereto have been, individuals residing in
6 the County of Las Vegas, State of Nevada, and are and, at all times material hereto, were “artists”
7 as that term is defined in Section 1700.4 of the Labor Code in that they are recording artists,
8 musical artists, composers, lyricists, and performers.

9 8. Petitioners are informed and believe and thereon allege that Respondent Braden
10 Merrick (“Merrick”), at all times material hereto, has been an individual residing and doing
11 business in the County of San Francisco, State of California.

12 9. Petitioners are informed and believe and thereon allege that From the Future, LLC
13 (“From the Future”) is a limited liability corporation organized and existing pursuant to the laws
14 of the State of California, and conducting business in the State of California. For purposes of this
15 Petition, Merrick and From the Future are sometimes collectively referred to as “Respondents.”

16 10. Petitioners are informed and believe and thereon allege that each of the
17 Respondents was the agent of each of the other Respondents herein, and that at all times herein
18 mentioned, each of the Respondents was acting within the course and scope of such agency and
19 that each of the Respondents is responsible for the damages hereinafter alleged.

20 **Respondents Procured Employment In Violation Of The Talent Agency Act**

21 11. Commencing on or about April 8, 2003, Petitioners and Respondents entered into a
22 written management agreement (hereinafter the “Agreement”), a copy of which is attached hereto
23 as Exhibit “A.” Pursuant to the Agreement, Respondents acted as the exclusive Personal Manager
24 for Petitioners, and rendered services to Petitioners which included, *inter alia*, seeking to procure
25 and attempting to procure employment for Petitioners as artists in exchange for valuable
26 consideration.

27 12. The Agreement provides, among other things, that Respondents would receive
28 certain commissions of the Gross Compensation received by Petitioners (less the Exclusions

1 required in the Agreement) in connection with activities “in the entertainment industry throughout
2 the world.” Thereafter, Respondents commenced to render services to Petitioners as Petitioners’
3 personal manager and *de facto* talent agent.

4 13. Petitioners are informed and believe and thereon allege that, at various times herein
5 mentioned, Respondents performed unlawful activities as unlicensed talent agents seeking to
6 solicit and procure employment for “artists” as that term is defined in Labor Code §1700.4,
7 without being licensed to do so. Petitioners are further informed and believe that at all material
8 times, Respondents were not licensed talent agents as required by § 1700.4 of the California Labor
9 Code, and that at no time have Respondents obtained a talent license from the California Labor
10 Commission. In particular, Petitioners are informed and believes and thereon alleges that at all
11 material times, the functions, activities, and actions allegedly undertaken by Respondents on
12 behalf of Petitioners were undertaken in the capacity of an unlicensed talent agent engaged in
13 soliciting, procuring, offering, promising or attempting to procure employment or engagements for
14 Petitioners as an artist in the entertainment industry. Petitioners are further informed and believe
15 and thereon alleges that the aforesaid wrongful and unlawful procurement activities by
16 Respondents, acting in the capacity of a *de facto* talent agent, were not done as part of a
17 cooperative effort in conjunction with or at the request of any licensed talent agent, and that said
18 wrongful and unlawful procurement activities establish a *prima facie* violation of the licensing
19 requirements set forth in the Talent Agencies Act.

20 14. Petitioners are informed and believe that Merrick is a California resident and his
21 business office is located in San Francisco, California. Petitioners are informed and believe that
22 From the Future is a California limited liability company, doing business in California. Petitioners
23 are informed and believe that both members of From the Future are California residents and that
24 the entity is registered and/or incorporated in California. Petitioners are informed and believe that
25 Merrick committed all of the unlawful procurement activities and other violations of the Talent
26 Agencies Act, as alleged herein, from his business office in California. California, therefore, has
27 personal jurisdiction over Respondents, and Respondents are subject to the provisions of the
28 Talent Agencies Act.

1 15. Further, the Agreement itself explicitly recognizes that Respondents are bound by
2 the Talent Agencies Act. Paragraph four of the Agreement warrants and represents that
3 Respondents will comply with the Talent Agencies Act and will not act as an unlicensed talent
4 agency within the meaning of section 1700.4 of the California Labor Code.

5 16. The unlawful procurement activities and other violations of the Talent Agencies
6 Act alleged herein which were engaged in by Respondents permeated and tainted the entire
7 business and contractual relationship, if any, between Petitioners, on the one hand, and
8 Respondents, on the other hand, thus invalidating the Agreement, and any purported contractual
9 relationships arising from or based thereon. Petitioners are informed and believe and thereon
10 allege that the conduct of the Respondents in violating the Talent Agencies Act was unlawful,
11 illegal and in violation of and contrary to the public policy of the State of California and, as such,
12 the Agreement pursuant to which Respondents claim to be entitled to receive certain commissions
13 of the Gross Compensation received by Petitioners for Petitioners' activities in the entertainment
14 industry is void and unenforceable, and should be deemed *void ab initio*. Employment which
15 Respondents procured and negotiated, and sought to procure for Petitioners as artists (i.e., as
16 singers, songwriters, and performers) included, among other things, various performances of the
17 band "The Killers" before live audiences.

18 17. Petitioners are informed and believe and thereon allege that Respondents violated
19 the Talent Agencies Act as defined in California Labor Code Section 1700 *et seq.*, by the
20 following:

21 18. Acting in the capacity of a talent agent as defined in Labor Code Section 1700.4 by
22 procuring, offering, promising and/or attempting to procure employment, public appearances
23 and/or live engagements on behalf of Petitioners as "artists" under the Talent Agencies Act,
24 without first obtaining a talent agent license from the California Labor Commissioner as expressly
25 required by Section 1700.5 of the California Labor Code. These public appearances and/or live
26 engagements are:

- 27 (i) Respondents' procurement of Petitioners' performance at the Rothko venue
28 sponsored by Spin Magazine on June 24, 2004;

- 1 (ii) Respondents' procurement of Petitioners' performance (and/or promise,
2 offer, or attempt to procure performances) at "Popscene" on August 21,
3 2003 and March 11, 2004;
- 4 (iii) Respondents' procurement of Petitioners' performance at "Mobfest" on
5 June 25, 2003;
- 6 (iv) Respondents' procurement of Petitioners' performance at the Huntridge on
7 or about August 5, 2003;
- 8 (v) Respondents' procurement of Petitioners' performance at the Radio 1
9 concert at the Bowery Ballroom on or about January 29, 2004, including
10 without limitation, Respondents' promise, attempt, or promise to have
11 Radio 1 to change the date of Petitioners' performance to January 31, 2004;
- 12 (vi) Respondents' procurement of Petitioners' performance on KROQ's Weenie
13 Roast on or about May 21, 2005;
- 14 (vii) Respondents' procurement of Petitioners' performance as disc jockeys at
15 the Live 105 after party on or about June 11, 2004;
- 16 (viii) Respondents' procurement of Petitioners' performance on the Jimmy
17 Kimmel show on or about June 15, 2004;
- 18 (ix) Respondents' promise, offer, or attempt to procure Petitioners' performance
19 on the Fearless Music television show in about June 2004;
- 20 (x) Respondents' promise, offer, or attempt to procure Petitioners' performance
21 at The Edge 102.1 FM radio station on or about July 14, 2004;
- 22 (xi) Respondents' promise, offer, or attempt to procure Petitioners' performance
23 on the KFMA Arizona radio station.

24 19. Additionally, Respondents acted without regard to the best interests of Petitioners
25 and in breach of the fiduciary duties owed by Respondents to Petitioners in procuring these
26 engagements in violation of the Talent Agencies Act. Specifically, Respondents procured,
27 offered, promised, and attempted to procure engagements for Petitioners at a time in which
28 Merrick was secretly employed, or seeking to be employed, as an A&R consultant for the band's

1 record label and, therefore, owed divided loyalties to the label and to the band. Based on
2 information and belief, this divided loyalty influenced the engagements that Respondents booked
3 for Petitioners and demonstrates precisely the reason why the Talent Agencies Act prohibits
4 unlicensed managers from procuring engagements on behalf of artists.

5 20. Petitioners are informed and believes and thereon alleges that the foregoing
6 activities by Respondents are in direct contravention of Labor Code Section 1700.5 of the Talent
7 Agency Act.

8 21. Petitioners reserve the right to demonstrate additional violations of the Talent
9 Agencies Act based on the documents that will be brought to the hearing in response to
10 Petitioners' subpoenas and based on the testimonial evidence that will be adduced.

11
12 **The Agreement Should Be Declared Void And Unenforceable Ab Initio**

13 22. Based on the wrongful acts and conduct of Respondents as alleged herein,
14 including the violations of Labor Code Sections 1700 *et seq.*, the Agreement should be declared
15 void and unenforceable *ab initio*.

16 23. Respondents should be required to provide full restitution and disgorgement to
17 Petitioners by repaying all sums and/or other consideration paid by Petitioners to Respondents
18 within 12 months of the filing of the initial Petition to Determine Controversy, in the amount of at
19 least \$65,000 plus interest.

20 24. Petitioners are also entitled to a full and complete accounting from Respondents
21 and any other related entities concerning all monies received by Respondents directly or indirectly,
22 in connection with any and all contracts, employment, engagements or activities pertaining in any
23 way to the personal services of Petitioners as artists in the entertainment industry, or otherwise
24 relating to any services performed or to be performed pursuant to the Agreement, or pursuant to
25 any express or implied agreement between Petitioners on the one hand, and Respondents on the
26 other hand, including but not limited to, any and all commissions, fees, profits, advances or other
27 monies.

1 25. On or about May 19, 2005, Petitioners gave notice to Respondents that the
2 Agreement was being terminated and disaffirmed by Petitioners.

3 26. An actual controversy has arisen and now exists between Petitioners and
4 Respondents because of the foregoing, and Petitioners respectfully request the Labor
5 Commissioner to determine the controversy pursuant to Labor Code Section 1700 *et seq.*

6 27. Petitioners respectfully request a hearing on the Petition in Los Angeles, California.
7 A Request for Hearing in Los Angeles has already been submitted to the Labor Commissioner.

8 **WHEREFORE**, Petitioners seek the following relief:

9 1. An order determining that Respondents have violated Section 1700 *et seq.* of the
10 California Labor Code;

11 2. A determination that the Agreement is void *ab initio* and unenforceable, and that
12 Petitioners have no liability thereon to Respondents, and Respondents have no rights or privileges
13 thereunder;

14 3. An accounting from Respondents concerning any and all monies, consideration, or
15 things of value, received directly or indirectly by Respondents in connection with any services
16 rendered or to be rendered by Petitioners, or relating in any way to any services performed or to be
17 performed by Petitioners, pursuant to the Agreement or pursuant to any express or implied
18 agreement between Petitioners, on the one hand, and Respondents, on the other hand;

19 4. An order requiring Respondents to disgorge and repay to Petitioners any and all
20 monies, consideration, or things of value received by Respondents, directly or indirectly, pursuant
21 to the Agreement, including, but not limited to, any and all commissions, fees, profits, advances,
22 expenses, costs or other monies, paid to Respondents within 12 months of the filing of the initial
23 Petition to Determine Controversy, plus interest thereon at a rate of 10% per annum;

24 5. A determination denying Respondents any claims or offset based on the alleged
25 value of any services allegedly rendered by Respondents on behalf of Petitioners;

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- 6. Costs and reasonable attorneys' fees incurred hereon; and
- 7. Such other and further relief as the Labor Commissioner may deem just and proper.

DATED: July 31, 2007

PROSKAUER ROSE LLP
BERT H. DEIXLER
NAVID SOLEYMANI

By: *Navid Soleymani*
NAVID SOLEYMANI

Attorneys for Petitioners
BRANDON FLOWERS, an individual;
RONNIE VANNUCCI, JR., an individual;
DAVE KEUNING, an individual;
MARK STOERMER, an individual,
professionally known as "THE KILLERS"



TMZ

EXHIBIT A

EXCLUSIVE MANAGEMENT AGREEMENT made as of this 8th day of April, 2003, by and between From The Future, LLC (hereinafter referred to as "Manager"), 3872 24th Street San Francisco, CA, 94114, and Brandon Flowers, Dave Keuning, Mark Stoermer, and Ronnie Vannucci, collectively and professionally known as "The Killers" (hereinafter individually and collectively referred to as "Artist"), located at 1316 Wheatland Way, Las Vegas, Nevada 89128.

Term:

(a) (i) Artist hereby engages Manager as Artist's sole and exclusive personal manager in the entertainment industry throughout the world during the Term (hereinafter defined) commencing on the date hereof and continuing for one (1) year thereafter (the "Initial Period").

(ii) Subject to the provisions of subparagraphs 1(d)(i) and 1(d)(ii) below, Artist hereby irrevocably grants Manager three (3) separate options to extend the Term on the same terms and conditions as are set forth herein with respect to the Initial Period for three (3) consecutive one (1) year periods (the "First Option Period," the "Second Option Period," and the "Third Option Period," respectively).

(b) (i) Subject to the provisions of subparagraph 1(d)(i) below, the option to extend the Term for the First Option Period shall be deemed automatically exercised by Manager upon expiration of the Initial Period unless Manager, by written notice to Artist no later than thirty (30) days prior to the date that the Initial Period would otherwise expire, informs Artist that Manager does not wish to exercise such option.

(ii) The First Option Period shall commence immediately upon the expiration of the Initial Period and each successive Option Period shall commence immediately upon conclusion of the preceding Option Period unless Manager gives written notice of its intention to not exercise such Option prior to the expiration of the Initial Period or the then-current Option Period.

(c) Notwithstanding the foregoing,

(i) Artist shall have the right to terminate the Term on thirty (30) days written notice given to Manager if a Recording Agreement is not entered into during the Initial Period; and

(ii) Artist shall have the right to terminate the Term on thirty (30) days written notice given to Manager within thirty (30) days after one (1) year from the date of execution of the Recording Agreement if Artist has not earned an aggregate amount of at least \$500,000 in Gross Compensation during such year.

(d) Manager hereby accepts that engagement as Artist's personal manager subject to the terms herein set forth. The Initial Period, the First Option Period, if any, the Second Option Period, if any, and the Third Option Period, if any, are hereinafter referred to as the "Term."

(e) As used herein, the term "Recording Agreement" shall refer to any recording agreement entered into between Artist or any company furnishing Artist's services, on the one hand, and any Major Record Label (hereinafter defined), on the other hand, during the Term hereof, for our recording services as a featured recording artist. As used herein, the term "Major Record Label" shall mean any one of the following: BMG, Sony, WEA, Universal or Capitol/EMI or any record label distributed exclusively by any of the foregoing through normal retail channels.

2. Services: Manager shall be available upon reasonable notice at reasonable times to advise and to counsel Artist in the entertainment industry throughout the world, including, without limitation, in the selection of artistic talent to work with and musical and other material to be performed by Artist; in matters pertaining to publicity, public relations, and advertising for Artist; and with regard to general practices, including compensation and terms of contracts, in the entertainment industry. Manager shall render all services customarily

rendered by managers in the United States music business, including acting as a liaison between the record label and Artist and supervising and coordinating touring, press and promotional activities of Artist (if applicable and if reasonable). Manager shall not be obligated to travel away from Manager's primary place of business in connection with Artist's career, except that upon Artist's reasonable request, at Artist's expense, and subject to Manager's reasonable availability, Manager shall attend meetings concerning Artist's career in the entertainment industry. Manager shall use all reasonable efforts to further Artist's career and shall cooperate with Artist to further Artist's career as and when Artist reasonably requests. Artist understands that Manager's services hereunder are not exclusive to Artist and that Manager shall at all times be free to perform similar or dissimilar services for others as well as to engage in any and all other business activities. Artist agrees that Artist's failure during the Term to continue to seek Manager's services shall not affect Artist's obligation to pay commissions and other money to Manager as set forth herein.

3. Key Person: Manager recognizes, understands and agrees that Braden Merrick is a material reason why Artist has elected to enter into this Agreement. In the event that Braden Merrick dies, becomes no longer employed by Manager or otherwise ceases to be the primary individual responsible for the performance of Manager's obligations under this Agreement, Artist shall have the right, but not the obligation, to terminate this Agreement upon written notice to Manager.

4. Not an Agent: Artist agrees that Manager is not expected to nor shall Manager procure, offer, or attempt to procure employment or engagements for Artist. Manager is not an employment agency or theatrical agency, or "artist's manager" as that term is defined in Section 1700.4 of the California Labor Code. Manager does not engage in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for artists; and Manager does not perform any services which might require Manager to have a professional license. Artist agrees to utilize proper theatrical or other employment agencies to obtain engagements and employment for Artist, and Artist agrees to consult with Manager before obtaining the service of any such theatrical or employment agency. Artist agrees to submit all offers of employment to Manager for Manager's advice and counsel.

5. Authority: Subject to express prior approval by Artist, Manager is hereby authorized:

(a) to approve and permit any and all publicity and advertising for Artist; approve and permit the use of Artist's name, photograph, likeness, voice, sound effects, caricatures and other identifying features and characteristics, and literary, and musical material for purposes of merchandising, tie-ins, sponsorships, advertising and publicity and in the promotion and advertising of any and all products and services or otherwise;

(b) to prepare, negotiate, consummate, sign, execute and deliver for Artist, in Artist's name or on Artist's behalf, any and all agreements, documents and contracts relating to Artist's personal appearances (only as a part of an ongoing tour or otherwise for approved appearances in the entertainment industry), for periods of two (2) consecutive days or less only, and to alter, renegotiate, modify, extend and/or terminate any and all such agreements; and

(c) to direct for Artist, and in Artist's name, accountants, business managers, auditors, talent agents, attorneys, publicists and others in connections with Artist's career; provided, however, that Artist and Manager shall mutually agree upon the selection of a business manager ("Business Manager"), which Business Manager shall be a certified public accountant and whom Artist shall engage at Artist's sole expense. Manager agrees that Manager's approval of any Business Manager shall not be unreasonably withheld.

6. Accounting:

(a) Gross Compensation (as "Gross Compensation" is defined in paragraph 7 below) shall be paid directly to Artist's business manager ("Business Manager") and then paid to Manager in accordance with the provisions hereof. Artist will cause Business Manager to account for and pay to Manager on a monthly basis all compensation payable to Manager hereunder, including, without limitation, all monies payable to Manager pursuant to paragraphs 6 and 7 below;

(b) If Manager shall collect or otherwise directly receive any Gross Compensation, Manager shall promptly remit the full amount thereof to Business Manager without deduction or offset (unless Artist otherwise agrees or instructs Manager);

(c) At any time when a mutually agreed upon Business Manager has not been designated by Manager and Artist, Artist shall authorize and direct all third parties who are obligated to pay Artist Gross Compensation to deduct Manager's commission therefrom and to account for and pay that compensation directly to Manager, as and when Gross Compensation shall be payable by any such third party to Artist. In order to effectuate the foregoing, Artist shall execute any and all documents deemed reasonably necessary or desirable by Manager and third party payor;

(d) Within ten (10) days after the close of each calendar month during the Term and thereafter as long as Artist or Business Manager collects or receives any Gross Compensation subject hereto, Artist shall direct Business Manager to render a written accounting statement to Manager (or if there is no Business Manager, then Artist shall render such statement) setting forth all such Gross Compensation payable on Artist's behalf hereunder during the preceding calendar month, specifying the source thereof and the deductions therefrom. Each such accounting statement shall be accompanied by payment to Manager of all monies due to Manager for such accounting period. Without limiting Manager's rights and remedies in such event, if Artist should receive any Gross Compensation directly, Artist shall comply with this subparagraph 6(d) as if Artist were Business Manager, and

(e) Manager and its representatives (provided that such representatives are not being paid on a contingent basis based on the outcome of the audit) may inspect and audit Artist's and Business Manager's books and records to ascertain the amounts due Manager, and Artist and its representatives (provided that such representatives are not being paid on a contingent basis based on the outcome of the audit) may inspect and audit those portions of Manager's books and records (as "books and records" are defined below) which concern Artist. The aforementioned audits and/or inspections, if any, shall be conducted upon reasonable notice to the party to be audited or inspected, no more often than once during any calendar year, no more than once with respect to any particular statement and within two (2) years after receipt of the particular statement to be audited. "Books and records" as used herein shall include ledgers, journals, receipt books, checks and all other records concerning Artist's financial matters as they relate to Gross Compensation and Artist's entertainment career.

7. Commission

(a) In full consideration for Manager's services hereunder, Manager shall be entitled to receive, as and when earned by Artist a commission equal to (the "Commission") fifteen percent (15%) of the "Gross Compensation" of Artist as set forth in subparagraphs 7(b)-(c) below;

(b) "Gross Compensation", as used herein, shall mean all monies or other consideration (in any form, including, without limitation, stocks, bonds, real or personal property or otherwise) directly or indirectly earned at any time and in perpetuity from Artist's services in the entertainment field throughout the universe during the Term, whether as a recording artist, musician, songwriter, performer, producer, engineer, mixer, publisher, singer, supervisor, composer, commercial endorser, lyricist, executive, director or otherwise, or from the sale or other disposition of any creative or intellectual property (excluding any such disposition from Artist to Manager), or from any and all judgments, awards, settlements, payments, damages and proceeds relating to any suits, claims, actions, proceedings, or arbitration proceedings arising out of any alleged or actual breach, nonperformance or infringement by others of any contracts or employment referred to herein for which Manager is otherwise entitled to receive a Commission hereunder after deduction of all costs Artist incurs in connection with such suits, claims, actions and proceedings, including, without limitation, legal costs, or other rights, or from any payments for termination of Artist's activities otherwise subject to Commission hereunder, or as a result of creative, intellectual or other tangible or intangible property initially created during the Term including recordings commenced during the Term or Compositions written, in whole or in part, during the Term. Gross Compensation shall also include all such monies or other consideration received by Artist after the Term, as a result of personal appearance services rendered

pursuant to an agreement, engagement, employment or contract Artist may enter into during the Term or within six (6) months after the expiration of the Term with any person or firm with whom negotiations had been substantially completed during the Term. Further, Gross Compensation shall include all such monies or other consideration described in this paragraph earned by Artist (or by any designee, assignee, legatee, executor, heir, administrator, trustee, conservator or successor of Artist), to whomever paid (all those rights and services and the results and proceeds of those rights and services are collectively hereinafter referred to as "Property"). In the event that Artist receives as all or part of its compensation for activities hereunder stock or the right to buy stock in any corporation, or if Artist becomes the packager or owner of all or part of an entertainment property, whether as an individual proprietor, stockholder, partner, joint venturer, or otherwise, Manager's percentage shall apply to Artist's said stock, right to buy stock, individual proprietorship, partnership, joint venture, or other forms of interest, and Manager shall be entitled to your percentage share thereof. Should Artist be required to make any payment of such interest, Manager shall pay his percentage share of such payment, unless he does not want his percentage share thereof.

(c) Notwithstanding the foregoing, Gross Compensation shall not include:

(i) Monies paid by or on behalf of Artist to any unrelated third party and actually expended in connection with recording costs for or licensing of master recordings embodying Artist's performances as a featured recording artist (other than fees, including union session fees, paid to Artist in connection with the foregoing);

(ii) Royalties, advances or other payments actually made to any producer, mixer or engineer (other than Artist) of master recordings embodying Artist's performances as a featured recording artist payable as a result of the reproduction or other exploitation of those master recordings;

(iii) Monies actually paid by or on behalf of Artist (in connection with personal appearances by Artist) to opening acts, and for sound and light equipment and technicians, and all sums paid to Artist as actual reimbursement by a concert promoter for the cost of sound and light equipment and technicians or similar reimbursement in connection with a concert appearance by Artist;

(iv) Monies payable to Artist as "deficit tour support" (as that term is generally understood in the recording industry) and paid to Artist and/or on Artist's behalf to reimburse Artist to the extent that monies generated from a particular concert tour are less than the monies payable to Artist or on Artist's behalf to any unrelated third party in connection with that concert tour. Monies payable as compensation and/or salary (including, without limitation, so-called "per diems") for Artist's services in connection therewith shall not be deemed "deficit tour support";

(v) All recoupable monies payable to or on behalf of Artist and actually paid for independent promotion, independent marketing or publicity (which such expenditures shall be subject to Manager's prior approval) by the Major Record Label with which Artist is a party to a recording or similar agreement or by a third party. To the extent that Artist has or shall have the right to approve such expenditures, such expenditures shall be subject to Manager's prior approval; and

(vi) Monies payable to unrelated third party authors, composers and/or co-publishers to the extent that such monies are deducted from monies otherwise payable to Artist.

(d) Notwithstanding anything to the contrary contained herein, in consideration of Manager's fees recouped under a separate Production Agreement with Artist, Manager shall not be entitled to commission for the following:

- (i) record royalties for the first 500,000 units sold of the First album;
- (ii) record royalties for the first 335,000 units sold of the Second album; and
- (iii) record royalties for the first 165,000 units sold of the Third album.

(e) For the avoidance of doubt, Manager's right to Commission with respect to Property created during the Term shall continue after the Term in perpetuity, and

(f) Notwithstanding anything to the contrary contained in the foregoing, unless Manager has been terminated for a breach under this Agreement, and in lieu of the amount set forth in subparagraph 7(a) above, Manager shall be entitled to receive the following percentages of Gross Compensation earned by Artist after the Term as a result of the exploitation of Post-Term Property (as the term "Post Term Property" is defined below) created during the following periods:

(i) Fifteen percent (15%) from the first six (6) month period after termination (the "First Post-Term Period");

(ii) Ten percent (10%) for the second six (6) month period after termination (the "Second Post-Term Period"); and

(iii) Five percent (5%) for the third six (6) month period after termination (the "Third Post-Term Period").

As used herein, the term "Post-Term Property" shall mean Property created after the Term, but pursuant to any employment or contract in existence or entered into or negotiated for during the Term or under any extension, modification, addition or renewal of such contract or employment, regardless of when entered into, or under any substitute, direct or indirect, for such contract or employment, including, without limiting the foregoing, a contract or employment with an employer or contracting party entered into within six (6) months after the termination of a previous contract or employment if such contract or employment is commissionable hereunder.

8. Loans, Advances & Expenses: Artist shall pay the costs attributable to all of Artist's activities including, but not limited to, the cost of material, equipment, facilities, transportation, lodging and living expenses, costumes, makeup, accounting and legal fees, and Manager shall not have any liability whatsoever in connection therewith. All expenses (other than Manager's office expenses) incurred by Manager in performing services hereunder, including, without limiting the foregoing, transportation and living expenses approved by Artist or incurred by Manager at Artist's request, shall be paid or reimbursed by Artist. Manager shall not, however, incur expenses in excess of Two Hundred Fifty Dollars (\$250.00) for any one (1) calendar month during the Term without Artist's prior consent, provided that such consent shall not be unreasonably withheld. Artist acknowledges that Manager is not required to make any loans or advances to Artist, but in the event Manager does so, Artist agrees to repay such loans or advances to Manager promptly, or to instruct Business Manager to repay such loans or advances to Manager or Manager is authorized to deduct the amount of such loans or advances from any sums Manager may receive for Artist's account.

9. Artist: As used in this agreement, "Artist" shall include any corporation providing Artist's services owned (partly or wholly) or controlled (directly or indirectly) by Artist or Artist's family, and Artist agrees, upon Manager's request, to cause any such corporation to enter into an agreement with Manager on the same terms as contained herein. "Artist" also shall refer to the group comprised of all members of Artist who are signatories hereto (including any future members of Artist (whom Artist shall cause to execute this Agreement at such time as such person becomes a member of Artist)), as well as to each individual member of the group who is a signatory hereto, and this Agreement shall be binding jointly and severally upon said persons, and said group. Furthermore, each and all representations, warranties, agreements and obligations herein contained shall be and are deemed to be the joint and several representations, warranties, agreements and obligations of said persons, said group, and each of them. Wherever required, the singular includes the plural and, unless the context otherwise requires, the masculine gender includes the feminine and the neuter. This Agreement shall be binding upon the group as an entity, and for such purposes, the earnings of the group shall be construed to require each individual member thereof to pay all commissions and other sums which are due to the Manager from the entire group.

10. Leaving Member: If one or more members leave the group, voluntarily or for any other reason, Manager shall continue to represent the group and the leaving members as separate entities in accordance with the terms hereof unless Manager shall give the remaining group and/or the leaving members notice, within thirty (30) days after Manager's receipt of written notice that members have left the group, that Manager elects to treat this Agreement as terminated by the remaining group and/or such members, in which event this Agreement shall be deemed terminated as to the party or parties to whom such notice is given. The parties to whom such notice is given shall remain obligated to pay Manager the Commission or other sums owed or accrued to the Manager's account prior to such termination and thereafter as provided herein.

11. Artist's Career: Artist shall at all times utilize proper theatrical or other employment agencies to obtain engagements and employment for Artist except as may otherwise be permitted by law. Artist shall endeavor to discuss all offers of employment with Manager and shall refer any inquiries or offers concerning Artist's services to Manager as well as to Artist's licensed talent agent. Artist shall use reasonable efforts to instruct irrevocably any theatrical or other employment agent engaged by Artist to remit directly to Business Manager all monies that may become due to Artist that are received by such agent.

12. Life Insurance: Manager shall have the right during the Term to obtain life insurance on Artist's life at Manager's cost, with Manager being the sole beneficiary thereof and for an amount to be determined by Manager in Manager's sole discretion. Artist shall cooperate fully in connection with obtaining such insurance, and Artist shall submit to a physical examination and promptly complete all documents necessary or desirable for such insurance. Artist hereby acknowledges that neither Artist nor Artist's estate shall have any right to claim the benefits of any such policy obtained by Manager.

13. Scope: This Agreement shall not constitute a joint venture or partnership between Manager and Artist, it being understood that Manager is acting hereunder as an independent contractor. Neither party may assign this agreement or delegate any of its obligations hereunder, in whole or in part.

14. Warranties and Indemnification: Each party hereto is free to enter into this Agreement and to perform all of its obligations hereunder. Artist and Manager each has not heretofore made and will not hereafter enter into or accept any engagement or commitment with any person, firm or corporation which will, can or may interfere with the full and faithful performance by such party of the covenants, terms and conditions of this Agreement. Each party agrees to indemnify and hold such other party harmless from any loss, cost or liability (including legal costs and attorneys' fees) arising out of any claim, demand or action which is inconsistent with any of such party's representations, warranties or covenants contained herein. Artist agrees to add Manager as a named insured to Artist's governing insurance policies. Artist warrants and agrees that Artist will at all times actively pursue Artist's career and do all things necessary and desirable to promote Artist's career and earnings therefrom.

15. Notice: Except as otherwise specifically provided herein, all notices hereunder shall be in writing and shall be given by registered or certified mail or by personal delivery at the respective addresses hereinabove set forth, or such other address or addresses as may be designated by either party. Notices shall be deemed given when mailed, except that notice of change of address shall be effective only from the date of its receipt. A copy of all notices to Manager shall be simultaneously sent to King, Purlich, Holmes, Paterno & Berliner, LLP, 1900 Avenue of the Stars, 25th Floor, Los Angeles, California 90067, Attn: Peter Paterno Esq. A copy of all notices to Artist shall be simultaneously sent to Callister & Reynolds, 823 Las Vegas Blvd. South, Las Vegas, NV 89101, Attn: Robert Reynolds, Esq.

16. Miscellaneous:

(a) This Agreement shall not constitute a joint venture or partnership between Manager and Artist, it being understood that Manager is acting hereunder as an independent contractor;

(b) This Agreement sets forth the entire agreement between the parties hereto, and replaces and supersedes all other agreements relating to the subject matter hereof. A waiver by either party of a breach of any provision hereof shall not be deemed a waiver of any subsequent breach, nor a permanent modification of such

provision. This Agreement cannot be modified, altered, or otherwise changed except by an agreement in writing signed by the parties hereto;

(c) If any provision of this Agreement shall be held void, invalid or inoperative, no other provision of this Agreement shall be affected as a result thereof, and, accordingly, the remaining provisions of this Agreement shall remain in full force and effect as though such void, invalid or inoperative provision had not been contained therein;

(d) Expiration of this Agreement shall not effect Manager's right, in accordance with the terms and provisions hereof, to payment with respect to this Agreement in any way;

(e) In order to make Manager's obligations hereunder as specific and definite as possible and to eliminate, if possible, any controversy which might otherwise arise hereunder, Artist agrees that if at any time Artist feels that the terms of this Agreement are not being performed by Manager, as herein provided, Artist will so advise Manager in writing by certified or registered mail, return receipt requested, of the specific nature of any such claimed non-performance and shall allow Manager a period of thirty (30) days after the receipt thereof within which to cure the same. If so cured, such claimed non-performance shall not be deemed a breach of this Agreement. Artist agrees that no such claimed non-performance by Manager of the terms hereof, unless intentionally dishonest, will be construed as an incurable breach of this Agreement. No arbitration or litigation proceeding may commence prior to the expiration of the aforesaid thirty (30) day period, and no such proceeding shall be based upon any claimed non-performance by Manager except one contained in Artist's aforesaid notice to Manager.

(f) Except as otherwise provided herein, all rights and remedies herein or otherwise shall be cumulative and none of them shall be in limitation of any other right or remedy;

(g) Paragraph headings are for convenience only and shall not be considered in interpreting the meaning, effect and/or application of any of the provisions hereof, and

(h) You represent and warrant that you have been advised of your right to seek legal counsel of your own choosing in connection with the negotiation and execution of this agreement and that you have, in fact, received legal counsel.

17. Choice of Law: This Agreement shall be construed and interpreted in accordance with the laws of the State of Nevada. The venue for any action, suit or proceeding arising from or based upon this Agreement shall be the appropriate state and federal courts located in the County of Clark, in the State of Nevada. Accordingly, Artist and Manager each agree to submit to and be bound by such jurisdiction.

IN WITNESS WHEREOF, the parties hereunder set their hands on the day and year first above written.

"MANAGER" - Braden Merrick c/o From The Future, LLC

By: Braden Merrick
An Authorized Signatory

"ARTIST" - The Killers

Mark Stoermer
Mark Stoermer

Brandon Flowers
Brandon Flowers

David Keating
David Keating
Ronnie Varrucci
Ronnie Varrucci

TMZ

PROOF OF SERVICE

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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I declare that: I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 2049 Century Park East, Suite 3200, Los Angeles, California 90067-3206.

On July 31, 2007, I served the foregoing document described as:

SECOND AMENDED PETITION TO DETERMINE CONTROVERSY

on the interested parties in this action:

by placing the original a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

(By Mail) I am "readily familiar" with the Firm's practice of collection and processing correspondence for mailing. Under that practice, the envelope would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

(By Fax) By transmitting a true and correct copy thereof via facsimile transmission to:

(By Email) By transmitting a true and correct copy thereof via electronic transmission to:

SEE ATTACHED SERVICE LIST

(By Overnight Courier) By causing such envelope to be delivered the next business day to the office of the addressees via Federal Express or other similar overnight delivery service.

(By Personal Service)

By personally delivering such envelope to the office of the addressees.

By causing such envelope to be delivered by messenger to the office of the addressees.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 31, 2007 at Los Angeles, California.



Patty Hays

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Los Angeles, CA 90067

