



Order Filed on June 18, 2024
by Clerk,
U.S. Bankruptcy Court
District of New Jersey

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)
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Proposed Counsel to Debtors and Debtors in Possession

In re:

SAM ASH MUSIC CORPORATION, et al.

Debtors.¹

Chapter 11

Case No. 24-14727 (SLM)

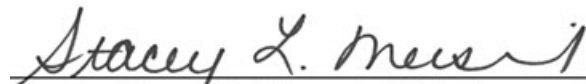
Judge: Stacey L. Meisel

(Jointly Administered)

ORDER GRANTING DEBTORS' APPLICATION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE RETENTION AND EMPLOYMENT OF CAPSTONE CAPITAL MARKETS, LLC AS INVESTMENT BANKER TO THE DEBTORS AND DEBTORS IN POSSESSION EFFECTIVE AS OF THE PETITION DATE, (II) WAIVING CERTAIN TIMEKEEPING REQUIREMENTS, AND (III) GRANTING RELATED RELIEF

The relief set forth on the following pages, number two (2) through eleven (11), is
ORDERED.

DATED: June 18, 2024


Honorable Stacey L. Meisel
United States Bankruptcy Judge

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Sam Ash Music Corporation (3915); Samson Technologies Corp. (4062); Sam Ash Megastores, LLC (9955); Sam Ash California Megastores, LLC (3598); Sam Ash Florida Megastores, LLC (7276); Sam Ash Illinois Megastores, LLC (8966); Sam Ash Nevada Megastores, LLC (6399); Sam Ash New York Megastores, LLC (7753); Sam Ash New Jersey Megastores, LLC (8788); Sam Ash CT, LLC (5932); Sam Ash Music Marketing, LLC (2024); and Sam Ash Quikship Corp. (7410). The location of debtor Sam Ash Music Corporation's principal place of business is 278 Duffy Avenue, P.O. Box 9047, Hicksville, NY 11802.

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Case No. 24-14727 (SLM)

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Upon the *Debtors Application for Entry of an Order (I) Authorizing the Retention and Employment of Capstone Capital Markets, LLC as Investment Banker to the Debtors and Debtors in Possession Effective as of the Petition Date, (II) Waiving Certain Timekeeping Requirements, and (III) Granting Related Relief* (the “Application”)¹ of the above-captioned debtors and debtors in possession (collectively, the “Debtors”),² for entry of an order (this “Order”): (a) authorizing the Debtors to retain and employ Capstone Capital Markets, LLC (“Capstone”) as their investment banker, effective as of the Petition Date, in accordance with that certain engagement letter, dated as of April 16, 2024, a copy of which is attached hereto as **Exhibit 1**; (b) waiving certain timekeeping requirements pursuant to Local Rule 2016-1, the U.S. Trustee Guidelines, and any other applicable procedures and orders of this Court in connection with Capstone’s engagement; and (c) granting related relief, all as more fully set forth in the Application; and upon the Lisac Declaration; and this Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing Order of Reference to the Bankruptcy Court Under Title 11 of the United States District Court for the District of New Jersey, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.); and this Court having found that venue of this proceeding and the Application in this district is proper pursuant to

¹ Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Application.

² A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.donlinrecano.com/careismatic>. The location of Debtor Careismatic Brands, LLC’s principal place of business and the Debtors’ service address in these chapter 11 cases is: 1119 Colorado Avenue, Santa Monica, California 90401.

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28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Application was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Application and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor **IT IS HEREBY ORDERED THAT:**

1. The Application is **GRANTED** on a basis as set forth herein.
2. Pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016, and Local Rules 2014-1 and 2016-1, the Debtors are hereby authorized to retain Capstone as investment banker to the Debtors in these chapter 11 cases effective as of the Petition Date on the terms and conditions set forth in the Application and the Engagement Letter attached hereto as **Exhibit 1**, to the extent approved herein.
3. Capstone shall be compensated for fees and reimbursed for its reasonable, documented out-of-pocket expenses by the Debtors in accordance with the terms of the Engagement Letter (together with all attachments thereto), as modified herein, and all fees and out-of-pocket expense reimbursements to be paid to Capstone, including the Transaction Fee and Expert Valuation Work Fee, are approved pursuant to section 328(a) of the Bankruptcy Code, and the Debtors are authorized and directed to perform their payment, reimbursement, contribution, and indemnification obligations and their non-monetary obligations in accordance with the terms and conditions, and at the times specified, in the Engagement Letter. All compensation and

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reimbursement of expenses payable under the Engagement Letter shall be subject to review only pursuant to the standards set forth in section 328(a) of the Bankruptcy Code, except as expressly set forth herein.

4. Notwithstanding anything in the Application, Lisac Declaration, or Engagement Letter to the contrary, Capstone shall apply any remaining amounts of any prepetition retainers or advances as a credit toward postpetition fees and expenses, after such postpetition fees and expenses are approved pursuant to an order of the Court awarding fees and expenses to Capstone. Capstone is authorized without further order of the Court to apply amounts from any prepetition retainer or advance that would otherwise be applied toward payment of postpetition fees and expenses as are necessary and appropriate to compensate and reimburse Capstone for fees or expenses incurred on or prior to the Petition Date consistent with its ordinary course billing practices. At the conclusion of Capstone's engagement by the Debtors, if the amount of any prepetition retainer or advance held by Capstone is in excess of the amount of Capstone's outstanding and estimated fees, expenses, and costs, Capstone will pay to the Debtors the amount by which any prepetition advance or retainer exceeds such fees, expenses, and costs, in each case in accordance with the Application and Engagement Letter.

5. Notwithstanding anything to the contrary contained herein or in the Application and/or Engagement Letter, Capstone shall file interim and final fee applications for allowance of compensation and reimbursement of its out-of-pocket expenses incurred pursuant to sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the U.S. Trustee Guidelines and any other procedures or orders of the Bankruptcy Court; *provided, however*, the

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compensation, fees, and expenses payable to Capstone pursuant to the Engagement Agreement shall be subject to review only pursuant to the standards set forth in section 328(a) of the Bankruptcy Code, and shall not be subject to any other standard of review set forth in section 330 of the Bankruptcy Code, except, notwithstanding any provisions to the contrary in this Order, the U.S. Trustee shall retain the right and be entitled to object to Capstone's fees, expenses and other compensation based on the reasonableness standard provided for in section 330 of the Bankruptcy Code. Capstone shall be entitled to seek interim allowance and payment of any Capital Raising Fee and/or Restructuring Fee by filing an application in accordance with the "Compensation Procedures" set forth in paragraph 2.A. of the any order granting the *Debtors' Motion for Entry of an Administrative Fee Order Establishing Procedures for the Allowance and Payment of Interim Compensation and Reimbursement of Expenses of Professionals Retained by Order of this Court* [[Docket No. 70](#)] (the "Interim Compensation Order"), provided that Capstone shall be entitled to file and serve such application in respect of any Transaction Fee immediately upon the consummation of such transaction. Notwithstanding the foregoing, the full amount of each Transaction Fee will be escrowed upon the consummation of the applicable transaction until such amounts are permitted to be paid to Capstone pursuant to this Order, the Interim Compensation Order or a further order of this Court. Capstone shall not be required to file monthly fee statements as required by the Interim Compensation Order.

6. Notwithstanding paragraphs 3 and 5 hereof, the U.S. Trustee shall retain the right to object to the compensation, fees, and expenses to be paid to Capstone pursuant to the Application and the Engagement Agreement, including the Transaction Fee, based on the

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reasonableness standard provided for in section 330 of the Bankruptcy Code; *provided*, that reasonableness for this purpose shall include, among other things, an evaluation by comparing the fees payable in this case to the fees paid to other investment banking firms for comparable services in other chapter 11 cases and outside of chapter 11 cases, and shall not be evaluated solely on the basis of time committed or the length of these cases. Accordingly, nothing in this Order or the record shall constitute a finding of fact or conclusion of law binding on the U.S. Trustee, on appeal or otherwise, with respect to the reasonableness of Capstone's compensation. This Order and the record relating to this Court's consideration of the Application shall not prejudice or otherwise affect the rights of the U.S. Trustee to challenge the reasonableness of Capstone's compensation, fees, and expenses under the standard set forth in the preceding sentence. Accordingly, nothing in this Order or such record shall constitute a finding of fact or conclusion of law binding the U.S. Trustee, on appeal or otherwise, with respect to the reasonableness of Capstone's fees.

7. Capstone shall file interim and final fee applications for the allowance of compensation for services rendered and reimbursement of expenses incurred in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any applicable orders of this Court. Capstone is hereby authorized to keep reasonably detailed time records in half-hour increments, and shall not be required to keep time records on a "project category" basis or conform to any schedule of hourly rates, and will submit, with any interim or final fee application, together with the time records, a narrative summary of services rendered and will identify each professional rendering services and the total amount of compensation requested by Capstone.

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8. Capstone will review its files periodically during the pendency of these chapter 11 cases to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new relevant facts or relationships are discovered or arise, Capstone will promptly file a supplemental declaration, as required by Bankruptcy Rule 2014(a).

9. The indemnification, contribution, and reimbursement provisions set forth in the Indemnification are approved, subject, during the pendency of these chapter 11 cases, to the following modifications:

- a. Capstone shall not be entitled to indemnification, exculpation, contribution, or reimbursement set forth in the Engagement Letter and/or Indemnification, unless such indemnification, contribution, or reimbursement is approved by this Court;
- b. Notwithstanding any provision of the Engagement Letter and/or the Indemnification to the contrary, the Debtors shall have no obligation to indemnify Capstone, or provide contribution or reimbursement to Capstone, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from Capstone's gross negligence, fraud, willful misconduct, bad faith or self-dealing to which the Debtors have not consented; (ii) for a contractual dispute in which the Debtors allege breach of Capstone's obligations under the Engagement Letter and/or Indemnification, unless the Court determines that indemnification, contribution or reimbursement would be permissible pursuant to *In re United Artists Theatre Co.*, [315 F.3d 217 \(3d Cir. 2003\)](#); or (iii) settled without the Debtors' consent prior to a judicial determination as to Capstone's gross negligence, fraud, willful misconduct, bad faith or self-dealing but determined by this Court, after notice and a hearing, to be a claim or expense for which Capstone should not receive indemnity, contribution or reimbursement under the terms of the Engagement Letter and/or the Indemnification, as modified by this Order;

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- c. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these chapter 11 cases (that order having become a final order no longer subject to appeal) and (ii) the entry of an order closing these chapter 11 cases, Capstone or the Capstone Indemnified Person believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, and/or reimbursement obligations under the Indemnification (as modified by the Order approving this Application), including without limitation, the advancement of defense costs, Capstone or the applicable Capstone Indemnified Person must file an application therefor in this Court, and the Debtors may not pay any such amounts to Capstone before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time during which this Court shall have jurisdiction over any request for indemnification, contribution, and/or reimbursement by Capstone or any Capstone Indemnified Person, and is not a provision limiting the duration of the Debtors' obligation to indemnify, or make contributions or reimbursements to, Capstone or the applicable Capstone Indemnified Person; and
- d. Any limitation of liability provisions in the Engagement Letter and/or the Indemnification shall not apply as to any losses, claims, damages, or liabilities for which the Capstone Indemnified Person would not be entitled to indemnification under the provisions of this Order. Notwithstanding any provision in the Indemnification to the contrary, the contribution obligation of the Capstone shall not be limited to the aggregate amount of fees actually received by Capstone from the Debtors pursuant to the Engagement Letter.

10. Capstone shall use its best efforts to avoid any duplication of services provided by any of the Debtors' other retained professionals in these chapter 11 cases.

11. Notwithstanding anything to the contrary in the Application, Lisac Declaration or the Engagement Letter, all fees paid to Capstone by the Debtors pursuant to the Engagement Letter

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during these chapter 11 cases are subject to disgorgement unless and until they are approved by the Court on a final basis, after submission of Capstone's final fee application.

12. Notwithstanding anything to the contrary in the Application, the Lisac Declaration or the Engagement Letter, this Court shall have exclusive jurisdiction over Capstone's engagement during the pendency of these chapter 11 cases.

13. To the extent there is any inconsistency between the terms of the Engagement Letter, the Application, the Lisac Declaration, and this Order, the terms of this Order shall govern.

14. To the extent the Debtors wish to expand the scope of Capstone's services beyond those services set forth in or contemplated in the Engagement Letter or this Order (and as to which additional compensation would otherwise be payable), the Debtors shall be required to seek further approval from this Court. The Debtors shall file notice of any proposed additional services and any underlying engagement agreement with the Court and serve such notice on the U.S. Trustee, counsel for any committee appointed in these chapter 11 cases, and any party requesting notice under Bankruptcy Rule 2002. If no such party files an objection within fourteen days of the Debtors filing such notice, such additional services and any underlying engagement agreement may be approved by the Court by further order without further notice or hearing.

15. Notwithstanding anything in the Application, the Lisac Declaration, or the Engagement Letter to the contrary: (a) Capstone shall, to the extent that Capstone uses the services of independent contractors or subcontractors (collectively, the "Contractors") in these cases, (i) pass through the cost of such Contractors to the Debtors at the same rate that Capstone pays the Contractors, (ii) seek reimbursement for actual costs only, (iii) ensure that the Contractors perform

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the conflicts check required by Bankruptcy Rule 2014 , (iv) file such disclosures required by Bankruptcy Rule 2014 with the Court; and (v) attach any such Contractor invoices to its interim fee applications and/or final fee applications filed in these cases. In the event Capstone seeks to use any of its affiliates to perform services for the Debtors (separate for the services being provided under the Engagement Letter), the Debtors shall seek the separate retention of any such affiliates.

16. In the event that, during the pendency of these cases, Capstone seeks reimbursement for any attorneys' fees and/or expenses, the invoices and supporting time records from such attorneys, appropriately redacted to preserve applicable privileges, shall be included in Capstone's fee applications and such invoices and time records shall be in compliance with the Local Rules, the U.S. Trustee Guidelines, and approval of the Court under the standards of sections 330 and 331 of the Bankruptcy Code, without regard to whether such attorney has been retained under section 327 of the Bankruptcy Code and without regard to whether such attorney's services satisfy section 330(a)(3)(C) of the Bankruptcy Code.

17. Notwithstanding the foregoing, Capstone shall only be reimbursed for any legal fees incurred in connection with these chapter 11 cases to the extent permitted under applicable law; provided, however, that Capstone shall not seek reimbursement from the Debtors' estates for any fees incurred in defending any of Capstone's fee applications in these chapter 11 cases.

18. Notwithstanding anything in the Application or any supporting declarations to the contrary, Capstone shall seek reimbursement from the Debtors' estates for its engagement-related expenses at the firm's actual cost.

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19. None of the fees payable to Capstone shall constitute a “bonus” or fee enhancement under applicable law.

20. Such services other than set forth in the Application that the Debtors may request that Capstone provide during the course of these chapter 11 cases, and as agreed to by Capstone, shall be subject to separate application and order of this Court.

21. To the extent that there may be any inconsistency between the terms of the Engagement Letter, the Application, the Lisac Declaration, and this Order, the terms of this Order shall govern.

22. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Application.

23. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Order shall be effective and enforceable immediately upon entry hereof.

24. Notice of the Application as provided therein shall be deemed good and sufficient notice of such Application and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

25. Notwithstanding anything to the contrary in the Application, the Lisac Declaration or the Engagement Letter, this Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of the Engagement Letter and this Order.

Exhibit 1

Engagement Letter



TRANSACTION ENGAGEMENT AGREEMENT

This Transaction Engagement Agreement (the “Agreement”) dated April 5, 2024 (the “Effective Date”) is made by and between Sam Ash Music Corporation, including all related subsidiaries and affiliates outlined below in **Appendix A**, whose principal place of business is 278 Duffy Ave, Hicksville, NY 11801 (together with all of its related subsidiaries, affiliates, successors and assigns, the “Company” or “its”), and Capstone Capital Markets, LLC, whose headquarters is located at 176 Federal St., 3rd Floor, Boston, MA 02110 (“Capstone”). In consideration of the mutual promises set forth below, the Company and Capstone agree as follows:

Section 1: Engagement. The Company hereby engages Capstone to act as its sole and exclusive investment banking advisor in connection with the sale of all or substantially all of the Company (including some or all of its subsidiaries) by means of a merger, consolidation, recapitalization, business combination, reorganization pursuant to a Chapter 11 plan, including as a result of a credit bid issued in accordance with section 363(k) of title 11 of the United States Code (the “Bankruptcy Code”), spin-off, exchange offer, tender offer, sale of stock or assets, or other similar transactions (any of the foregoing, a “Transaction”); provided, that, for the avoidance of doubt, other than a credit bid as set forth in Section 3.(ii)(c), the Transaction shall not include any fee-based or equity/guarantee third-party inventory liquidation and/or store closing sales.

Section 2: Scope of Services. Capstone’s services may include assisting and advising the Company with:

- (i) formulating a market strategy for a Transaction;
- (ii) preparing a Confidential Information Memorandum, management presentations, and other marketing materials for use in the Transaction process;
- (iii) identifying and contacting potential strategic and/or financial acquirers (“Prospective Acquirers”);
- (iv) coordinating the receipt and comparison of any offers or proposals forthcoming from Prospective Acquirers;
- (v) assessing and analyzing proposed valuations, transaction structures and related terms and conditions;
- (vi) providing the Company (and its stakeholders) with periodic status reports and be available to the Company and its advisors at all reasonable times to discuss any matters relating to the Transaction;
- (vii) conducting an auction, if necessary, under Section 363 of the Bankruptcy Code;
- (viii) negotiating and consummating definitive agreements, including where appropriate, responding to the Company’s reasonable requests for assistance in coordinating the due diligence and transaction closing processes;
- (ix) providing Bankruptcy Court (as hereinafter defined) testimony and/or witness services with respect to the Transaction process and its completeness; and
- (x) provide such other advisory services as are customarily provided in connection with the analysis and negotiation of a transaction similar to a potential Transaction, as requested and mutually agreed (collectively, the “Transaction Services”).

The Company understands that by this Agreement, Capstone does not guarantee the consummation of a Transaction. Capstone, for all purposes hereunder, shall be an independent contractor and any duties of Capstone arising out of its engagement pursuant to this Agreement shall be owed solely to the Company. This Agreement is not intended in any way to create the relationship of principal or agent between the Company and Capstone, nor shall this Agreement be deemed to have established a partnership or joint venture. The Company shall have the sole and absolute right to accept or reject any offer received from Prospective Acquirers, and any Transaction Fee (as defined in Section 3 below) payable hereunder shall be paid by the Company to Capstone only if a Transaction is consummated.



The Company acknowledges that Capstone has been retained hereunder solely as an advisor to the Company, and not as an advisor to or agent of any other person, and that the engagement of Capstone is as an independent contractor and not in any other capacity including as a fiduciary. Neither this agreement nor Capstone's performance hereunder nor any previous or existing relationship between Capstone and the Company will be deemed to create any fiduciary relationship. The Company further acknowledges that it is not relying on the advice of Capstone for tax, legal or accounting matters, and will rely on the advice of its own professionals and advisors for such matters and will make an independent analysis and decision regarding any Transaction based upon such advice.

It is understood that any information or advice rendered by Capstone or any of its representatives in connection with this Transaction is for the confidential use of the Company and its Board of Directors and will not be reproduced, disseminated, summarized, described, quoted or referred to or given to any other person at any time, in any manner or for any purpose without Capstone's prior written consent.

Section 3: Professional Fees. As compensation for the Transaction Services rendered hereunder by Capstone, the Company agrees to pay Capstone:

- (i) Engagement Retainer: a non-refundable retainer of \$75,000 payable upon the execution of this Agreement (the "Retainer"). The Retainer paid by the Company to Capstone shall be fully credited against the Transaction Fee (as defined in (ii) below); provided, however, that Capstone shall be entitled to the Minimum Transaction Fee (as defined below) or the Alternative Minimum Transaction Fee (as defined below), as applicable.
- (ii) Transaction Fee: In the case of an out-of-court restructuring, upon the closing of a Transaction, or in the case of an in-court restructuring, upon the consummation of a Transaction pursuant to an Order of the Bankruptcy Court or other applicable court, Capstone shall receive a cash fee (the "Transaction Fee") equal to the following:
 - a. 3.0% of the Aggregate Transaction Value (as defined in Section 4 below); provided, that, under no circumstances shall the Transaction Fee be less than \$850,000 even after the application of any Retainer credit (the "Minimum Transaction Fee");
 - b. In the event that a Prospective Acquirer listed on **Appendix B** is successful in consummating the Transaction, the Transaction Fee shall be reduced by 25% provided that under no circumstances shall the Transaction Fee payable at closing be less than \$700,000 even after the application of any Retainer credit if one of the Prospective Acquirers on **Appendix B** is the successful acquirer (the "Alternative Minimum Transaction Fee").
 - c. In the event that the Company's senior secured lender, Tiger Finance, LLC ("Tiger") (or its designee) is successful in consummating a Transaction as a credit bidder in the Company's bankruptcy proceedings, and no other party outbids Tiger in connection with consummation of that Transaction, the Transaction Fee shall be the Retainer plus \$300,000. If a party outbids Tiger, but Tiger is nonetheless the successful bidder and consummates a Transaction as a credit bidder in the Company's bankruptcy proceedings, the Transaction Fee shall be determined pursuant to subsections a. or b., above as applicable.
- (iii) Expert Valuation Work Fee: To the extent a scope of work is requested by the Company outside of the Transaction Services, Capstone shall be separately compensated at its current hourly rates described below for, by way of example, any expert valuation work, including diligence and drafting an expert valuation report in connection therewith.

Managing Director	\$775 - \$875
Director	\$675 - \$725



Vice President	\$625 - \$675
Associate	\$550 - \$625
Analyst	\$450 - \$500

During the Term (as defined below) of this Agreement, the Transaction Fee, if earned by Capstone pursuant to the terms herein, shall be payable to Capstone regardless of whether or not the Prospective Acquirer was introduced to the Company by Capstone or otherwise.

In addition, the Company agrees to reimburse Capstone for all reasonable and documented out-of-pocket expenses incurred related to the Transaction Services and Transaction described herein.

The Company acknowledges that there are no brokers, financial representatives, or other persons who have an interest in compensation due to Capstone from the Transaction Services and Transaction contemplated herein. During the term of this Agreement, the Company agrees not to hire or authorize any other person or party to act as investment banking advisor to the Company in connection with the Transaction Services and/or related matters covered by this Agreement.

Section 4: Transaction Value. For the purpose of calculating the Transaction Fee, the Transaction Value shall be the gross proceeds and other consideration paid to, or received by, or to be paid to or received by, any entity comprising the Company, or any of its equity or debt holders, or other parties in interest, including, without limitation, holders of warrants and convertible securities, and holders of options or stock appreciation rights, whether or not vested (collectively "Constituents"), in connection with the relevant Transaction. Such proceeds and consideration shall be deemed to include, without limitation, the following to the extent paid or assumed by purchaser: amounts in escrow and any deposits or other amounts forfeited by any investor; cash, notes, securities, and other property; payments made in installments; change of control bonuses, retention payments, or similar arrangements; Contingent Payments (as defined below); and/or insurance proceeds upon the occurrence of an insurable event that diminishes the consideration paid for the Company. Upon the closing of a Transaction in which less than 100% of the ownership of the equity interests are sold, the Transaction Value shall be calculated as if 100% of the ownership of the equity interests of the Company on a fully diluted basis had been sold by dividing (i) the total consideration, whether in cash, securities, notes or other forms of consideration, received or receivable by the Company and/or its Constituents by (ii) the percentage of ownership which is sold. If, in the Transaction, no consideration is being paid in respect of the existing equity, Transaction Value of the retained equity shall be determined by the good faith agreement of the parties as to the value of such retained equity implied by the Transaction. In addition, if any of the liabilities of any entity comprising the Company are assumed, decreased (but only to the extent of such decrease), reinstated, satisfied or otherwise paid off in conjunction with a Transaction (by any entity comprising the Company or any investor, in the form of "cure" payments or otherwise), or any of the assets of any entity comprising the Company are sold or otherwise transferred outside of the Company's ordinary course of business to another party prior to the closing of a Transaction (including, without limitation, any dividends or distributions paid to security holders or amounts paid to repurchase any securities) or are retained by any entity comprising the Company after the closing of the Transaction, the Transaction Value will be increased to reflect the face value of any such liabilities and the fair market value of any such assets (adjusted as appropriate so as not to double count any reduction in the face value of liabilities to the extent such liabilities are (i) paid off in cash using gross proceeds from a Transaction or (ii) already included in the calculation of Transaction Value pursuant to this Section 4). For purposes of calculating the Transaction Fee, the term "Contingent Payments" shall mean the consideration received by the Company, or any of its Constituents and/or any other parties in the form of deferred performance-based payments, "earn-outs", or other contingent payments based upon the performance of any entity comprising the Company, or any of its businesses or assets. For the sake of clarity, Contingent Payments shall only be included in the Transaction Value if the Contingent Payments are actually made to and received by, the Company.

Section 5: Term and Termination. This Agreement shall be in effect from the Effective Date and will continue until the earlier of consummation of a Transaction or thirty (30) days after either Company or Capstone shall have notified the other party in writing of the termination of this Agreement; termination for cause by either party will occur



immediately following such written notice (the “Term”). The Company and Capstone expressly acknowledge and agree that the provisions of Sections 3 through 12, inclusive, shall survive any termination of this Agreement.

Notwithstanding the termination of this Agreement for any reason, the Company will remain obligated to pay to Capstone the Transaction Fee if the Company within 12 months after the date of such termination, enters into an agreement with respect to a Transaction that subsequently is consummated involving a Prospective Acquirer that prior to termination of this Agreement had been: (a) contacted with respect to a Transaction; (b) made aware of a Transaction through the efforts of or material produced by Capstone, either directly or indirectly; (c) identified as a potential interested party and the Company instructed Capstone not to contact that party; or (d) otherwise expressed interest in a Transaction with the Company (the “Tail Fee”). All Prospective Acquirers referred to in the preceding sentence shall be listed in a report given to the Company within 10 days of termination of this Agreement and no Transaction Fee shall be payable with respect to any acquirer not listed; provided, that, (x) no Tail Fee shall be payable pursuant to the foregoing sentence in the event Capstone is terminated in writing for Cause; “Cause” shall mean a final judicial determination of the gross negligence, willful misconduct, fraud or bad faith of Capstone in performing the services that are the subject of this Agreement; and (y) no Tail Fee shall be payable to Capstone following the occurrence of a restructuring and payment of the Transaction Fee to Capstone.

Section 6: Representations. The Company represents and warrants that the Company, to the best of its knowledge, is now and shall remain in material compliance with all local, state, and federal laws, rules, and regulations materially affecting the operation of the Company. The Company further represents and warrants, to the best of its knowledge, that all facts, figures, information and additional supporting documentation pertaining to the Company that have been or will be provided to Capstone by the Company are true and accurate in all material respects. The Company understands that Capstone will rely on such facts, figures and other information when describing and promoting a Transaction to potential Prospective Acquirers without making an investigation into the accuracy of such representations by the Company. As such, the Company will actively participate in the preparation of any descriptive materials related to a Transaction and assume sole responsibility for the content of said materials.

In the event that during the Term of this Agreement, the Company or any of its officers, directors, employees or agents is contacted by or on behalf of any prospective purchaser or other third party concerning the possibility of a Transaction, the Company will promptly so inform Capstone and will refer any such persons to Capstone.

Section 7: Indemnification. The Company, or its survivor, shall: (i) indemnify and hold harmless Capstone, its officers, directors, members, managers, employees, affiliates, consultants and agents or assignees (collectively the “Capstone Indemnified Persons”) from and against any and all losses, claims, damages or liabilities to which any Capstone Indemnified Person may become subject arising in any manner out of or in connection with the rendering of services by Capstone hereunder unless it is finally determined by a court or arbitral tribunal that such losses, claims, damages or liabilities are solely the result of Capstone’s gross negligence or willful misconduct; and (ii) reimburse each Capstone Indemnified Person promptly for all legal and other expenses reasonably incurred by it in connection with investigating, preparing to defend or defending, or providing evidence in or preparing to serve or serving as a witness with respect to, any lawsuits, investigations, claims or other proceedings arising in any manner out of or in connection with the rendering of services by Capstone hereunder.

The Company agrees that the indemnification and reimbursement commitments set forth in this Section 8 shall apply whether or not Capstone or any Capstone Indemnified Person is a formal party to any lawsuit, investigation, claim or other proceeding and whether or not any such Capstone Indemnified Person is at the time affiliated with Capstone. The Company further agrees that, without Capstone’s prior written consent, such consent not to be unreasonably withheld or delayed, the Company will not enter into any settlement of a lawsuit, claim or other proceeding arising out of the transactions contemplated by this Agreement to which Capstone or any Capstone Indemnified Person is an actual party or, in the reasonable judgment of such party, is a potential party, unless such settlement includes an explicit and unconditional release from the party bringing such lawsuit, claim or other proceeding of Capstone and/or all Capstone Indemnified Persons.

If indemnification is to be sought hereunder, then the party seeking indemnification shall notify the Company of the



commencement of any action or proceeding in respect thereof; provided, however, that the failure to so notify the Company shall not relieve the Company from any liability that it may have to such party seeking indemnification pursuant to this Section 8 except to the extent the Company has been prejudiced in any material respect by such failure or from any liability that the Company may have to the party seeking indemnification other than pursuant to this Section 8. Notwithstanding the above, following such notification, the Company may elect in writing to assume the defense of such action or proceeding, and, upon such election, the Company shall not be liable for any legal costs subsequently incurred by such party seeking indemnification (other than reasonable costs of investigation and providing evidence) in connection therewith, unless (i) the Company has failed to provide counsel reasonably satisfactory to such party seeking indemnification in a timely manner, (ii) counsel which has been provided by the Company reasonably determines that its representation of such party seeking indemnification would present it with a conflict of interest or (iii) the party seeking indemnification reasonably determines that there may be legal defenses available to it which are different from or in addition to those available to the Company and such party seeking indemnification reasonably determines that the counsel which has been provided by the Company would have a conflict of interest with respect to such legal defenses.

The Company and Capstone agree that if any indemnification or reimbursement sought pursuant to the preceding paragraph is for any reason unavailable or insufficient to hold it harmless, then the Company and Capstone shall contribute to the losses, claims, damages, judgments, assessments, costs and other liabilities and related expenses for which such indemnification is held unenforceable as is appropriate to reflect (i) the relative benefits to the Company on the one hand and Capstone on the other hand, in connection with the transaction to which such indemnification or reimbursement relates, (ii) the relative fault of the parties, and (iii) other equitable considerations; provided, however, that in no event shall the amount to be contributed by Capstone exceed the fees actually received by Capstone under this engagement. The Company agrees that for the purposes of this paragraph the relative benefits to the Company and any Indemnified Party shall be deemed to be in same proportion that the aggregate cash consideration and value of securities or any other property payable, exchangeable or transferable in such transaction bears to the fees paid or payable to Capstone under this Agreement.

Section 8: Disclosure. The Company agrees that upon consummation of the Transaction contemplated herein, Capstone may, at Capstone's expense, advertise and otherwise disclose its role in effecting the Transaction.

Subject to the Company's guidance and approval, the Company authorizes Capstone to negotiate on the Company's behalf confidentiality agreements with potential parties to a Transaction and to deliver confidential memoranda or other data furnished to Capstone by the Company for distribution to such parties.

Section 9: Important Information about Establishing a Relationship with Capstone. To help the government fight the funding of terrorism and money laundering activities, FINRA Rule 3310 (Anti-Money Laundering Compliance Program) requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. (<https://www.finra.org/rules-guidance/rulebooks/finra-rules/3310>) For purposes of this federal law, engaging Capstone as an investment banker is considered the equivalent of opening an account. Accordingly, in connection with the Company's engagement of Capstone, Capstone will ask for the Company's formation documents and other information that will allow Capstone to verify its identity. Capstone will also ask for the name, address, date of birth and other information for certain individual beneficial owners of the Company that will allow Capstone to identify those individuals. Capstone may also ask to see the driver's license or other identifying documents for those individuals. The 2023 Report on FINRA's new material findings and effective practices can be reviewed using the following link and more specifically on page 10 as it relates to the establishment of a relationship with a client. (<https://www.finra.org/media-center/finra-unscripted/podcast-2023-report-exam-risk-monitoring-program>)

Section 10: Forbearance. Any forbearance by Capstone or the Company in exercising any of its rights under this Agreement shall not be considered a waiver of such right(s). Any waiver must be expressly granted in writing and a waiver on any one occasion shall not be construed as a waiver on any future occasion.



Section 11: Notification. Any notices pursuant to this Agreement shall be in writing and shall be deemed sufficiently given when sent and on the date of posting, by certified mail, return receipt requested, overnight delivery or similar messenger service, to the respective addresses of the Company and Capstone set forth above, or to any other address specified by any party by written notice to the other party.

Section 12: Governance. This Agreement incorporates the entire understanding between the Company and Capstone and supersedes all previous agreements relating to the subject matter hereof. This Agreement may not be amended or modified except in a writing signed by the Company and Capstone. This Agreement shall be binding upon and inure to the benefit of the Company and Capstone and their respective successors and assigns. If any term or provision of this Agreement shall to any extent be deemed illegal, invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York. The Company and Capstone hereby irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the United States District Court located in the City of New York City and, in the event such United States District Court does not have jurisdiction over the parties hereto, then to the courts of New York City for any lawsuits, actions or other proceedings arising out of or relating to this Agreement and agree not to commence any such lawsuit, action or other proceeding except in such courts. The Company and Capstone further agree that service of any process, summons, notice or document by mail to their respective addresses set forth above shall be effective service of process for any lawsuit, action or other proceeding brought against either party in any such court. The Company and Capstone hereby irrevocably and unconditionally waive any objection to the laying of venue of any lawsuit, action or other proceeding arising out of or relating to this Agreement in the courts of New York City or the United States District Court located in the City of New York City, and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such lawsuit, action or other proceeding brought in any such court has been brought in an inconvenient forum. Any right to trial by jury with respect to any lawsuit, claim or other proceeding arising out of or relating to this Agreement or the services to be rendered by Capstone hereunder is expressly and irrevocably waived.

This Agreement has been and is made solely for the benefit of the Company, Capstone and their respective successors and assignees, and no other person shall acquire or have any right under or by virtue of this Agreement. By signing below, both parties hereby understand and agree to the full terms, conditions and provisions of this Agreement and further represent and warrant that the undersigned constitute all, or the authorized representative of all, of the owners, partners and shareholders of the Company and Capstone, respectively, and that they are duly authorized to enter into this Agreement which shall be binding and enforceable in accordance with its terms.

Section 13: Chapter 11. In the event that the Company is or becomes a debtor under Chapter 11:

(i) the Company shall use its best efforts to promptly apply to the bankruptcy court having jurisdiction over the Chapter 11 case or cases (the "Bankruptcy Court") for the approval pursuant to sections 327 and 328 of the Bankruptcy Code of (A) this Agreement, and (B) Capstone's retention by the Company under the terms of this Agreement and subject to the standard of review provided in section 328(a) of the Bankruptcy Code and not subject to any other standard of review under section 330 of the Bankruptcy Code. The Company shall supply Capstone with a draft of such application and any proposed order authorizing Capstone's retention sufficiently in advance of the filing of such application and proposed order to enable Capstone to review and comment thereon.

(ii) Capstone shall have no obligation to provide any services under this Agreement in the event that the Company becomes a debtor under Chapter 11 unless Capstone's retention under the terms of this Agreement is approved under section 328(a) of the Bankruptcy Code by a final order entered by the Bankruptcy Court that is no longer subject to appeal, rehearing, reconsideration or petition for certiorari, and which order is acceptable to Capstone in all respects.

(iii) The Company will use its commercially reasonable efforts to ensure that Capstone's post-petition compensation and expense reimbursements shall be entitled to priority as expenses of administration under sections



503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code; provided, however, Capstone shall not be entitled to receive any such compensation or expense reimbursements until Tiger has either: (A) successfully consummated a transaction pursuant to a credit bid in the bankruptcy case, (B) provided written consent to a Transaction which results in less than full payment of all obligations owed by the Company to Tiger, or (C) confirmed receipt of payment in full for all of the obligations owed by the Company to Tiger.

(iv) Capstone acknowledges that in the event that the Bankruptcy Court approves its retention by the Company, Capstone's fees and expenses shall be subject to the jurisdiction and approval of the Bankruptcy Court under section 328(a) of the Bankruptcy Code and any applicable fee and expense guideline orders; provided, however, that, to the extent time records are required, Capstone will keep them in one-half hour increments.

Section 14: Communications with Tiger as Senior Secured Lender. Capstone acknowledges that Tiger is the Company's senior secured lender. Capstone further acknowledges and agrees that the Company has authorized, and hereby does direct, Capstone to communicate directly with Tiger regarding all matters relating to the Transaction, including but not limited to providing Tiger with copies of all reports, term sheets, letters of intent (whether preliminary, interim or final in form and content) and other information prepared, received or reviewed by Capstone in connection with the Transaction.



SAM ASH MUSIC CORPORATION

By: 

Name: jordan meyers

Title: CRO

Date: 4/16/2024

CAPSTONE CAPITAL MARKETS, LLC

By: _____

Name: Paul E. Janson

Title: Head of Investment Banking

Date: _____

By: _____

Name: Jamie Lisac

Title: Managing Director

Date: _____



SAM ASH MUSIC CORPORATION

DocuSigned by:
By: David Charles Ash
D59DA7723A3642D...

Name: David Ash

Title: Chief Executive Officer & General Counsel

Date: April 16, 2024

CAPSTONE CAPITAL MARKETS, LLC

DocuSigned by:
By: Paul E Janson
729368FFEB31480...

Name: Paul E. Janson

Title: Head of Investment Banking

Date: April 16, 2024

By: _____

Name: Jamie Lisac

Title: Managing Director

Date: April 16, 2024



SAM ASH MUSIC CORPORATION

By: _____

Name: _____

Title: _____

Date: _____

CAPSTONE CAPITAL MARKETS, LLC

By: _____

Name: Paul E. Janson

Title: Head of Investment Banking

Date: _____

By:  _____

Name: Jamie Lisac

Title: Managing Director

Date: April 16, 2024 _____



Appendix A

Sam Ash CT, LLC

Samson Technologies Corp

Sam Ash Megastores, LLC

Sam Ash Nevada Megastores, LLC

Sam Ash Florida Megastores, LLC

Sam Ash New York Megastores, LLC

Sam Ash Illinois Megastores, LLC

Sam Ash New Jersey Megastores, LLC

Sam Ash Quikship Corp.

Sam Ash California Megastores, LLC

Sam Ash Music Marketing, LLC



Appendix B

Atar Capital LLC

Balmoral Funds LLC

Regent, LP

Providence Equity LLC

DCC PLC

Stern Partners Inc.

Architect Equity Management, LLC

BBRC Private Equity