

## Trademark Consent Agreement

This Trademark Consent ("Agreement"), dated as of April 25, 2019, is by and between New Ravenna, LLC, a Virginia limited liability company, with offices located at 3268 Broad St, Exmore, VA 23350 ("Applicant"), and A Melody, an individual with an address of 3440 Youngfield Street, #353, Wheatridge, COLORADO 80033 ("Registrant").

WHEREAS, Registrant owns all right, title, and interest in the Registration (as defined below) for Registrant's Mark (as defined below) in International Class 019 for the Registrant's Goods (as defined below);

WHEREAS, Applicant is the owner of the Application (as defined below) to register the Applicant's Mark (as defined below) in International Classes 019 and 021 for Applicant's Goods (as defined below);

WHEREAS, in an Office Action dated October 30, 2018, the US Patent & Trademark Office refused registration of Applicant's Mark based on a finding of likelihood of confusion with the Registrant's Mark as shown in the Registration; and

WHEREAS, Registrant and Applicant believe that Applicant's use of Applicant's Mark within the scope of the Application does not and will not create actual or likelihood of confusion with Registrant's use of Registrant's Mark within the scope of the Registration.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:

"Application" means US trademark application Serial Number 88040588.

"Applicant's Goods" means the goods listed in the Application, namely the goods as set forth on Schedule 1.

"Applicant's Mark" means the trademark METAMORPHOSIS shown in the Application.

"Marks" means, as context dictates, either Applicant's Mark or Registrant's Mark or, collectively, Applicant's and Registrant's Marks.

"Registrant's Goods" means the goods listed in the Registration, namely the goods as set forth on Schedule 2.

"Registrant's Mark" means the trademark METAMORPHOSIS QUARTZ.

"Registration" means US trademark Registration Number 3456488.

**"Territory"** means the United States of America and its territories and possessions.

2. **Consent to Use and Registration.** Registrant hereby consents to:

(a) Registration in the US Patent & Trademark Office of Applicant's Mark in International Classes 019 and 021 for Applicant's Goods under the Application.

(b) Applicant's use of Applicant's Mark in the Territory within the scope of the Application.

3. **No Likelihood of Confusion.** The parties acknowledge and agree that there is and will be no likelihood of consumer confusion resulting from the simultaneous use and registration of the Marks for their respective goods as set forth herein because:

(a) Applicant's Mark is for METAMORPHOSIS, and Registrant's Mark is for METAMORPHOSIS QUARTZ, which adds an additional element that is very distinct, and leaves a different commercial impression with the consuming public;

(b) Applicant's Goods do not include the sale of crystals made of quartz, but rather include mosaic, glass, marble, and stone tiles for flooring or other surfaces, whereas Registrant's Goods only include use of Registrant's Mark on crystals made of quartz;

(c) Applicant only markets Applicant's Goods through its website and a network of dealers who offer goods bearing Applicant's Mark, whereas Registrant only markets Registrant's Goods through direct wholesale sales only;

(d) Consumers can only purchase Applicant's Goods through registered dealers, and Applicant's Goods are targeted to residential homeowners at price points in the neighborhood of approximately \$100 per square foot, whereas consumers can only purchase Registrant's Goods through gem and mineral shows among other locations and by other means, and Registrant's Goods are only targeted to individuals and business who are interested in gem and mineral stones of the type identified by the mark at price points ranging from \$3-\$5/Carat for faceted stones and \$5-\$7/Gram for rough material; and

(e) The parties have currently coexisted for almost thirteen years and are not aware of any instances of actual confusion.

4. **Further Efforts to Avoid Confusion.** Each party agrees that it will not advertise or promote its goods under the Marks in a manner that implies that such party or its goods are affiliated or connected with the other party or the other party's goods.

5. **Cooperation in the Event of Actual Confusion.** In the unlikely event that either party becomes aware of any actual consumer confusion resulting from the simultaneous use of the Marks as permitted by this Agreement:

(a) Such party shall advise the other party within 15 business days of the details of such confusion.

(b) The parties shall take commercially reasonable steps to address the



confusion and prevent its future occurrence.

6. No Challenge.

(a) Applicant agrees that Applicant will not use or authorize others to use Applicant's Mark to identify goods that are the same as or substantially similar to Registrant's Goods, or in any way that creates the impression to a reasonable person that Applicant is associated with or has a business relationship with Registrant, or that Applicant offers goods that are the same as or substantially similar to Registrant's Goods.

(b) Applicant further hereby acknowledges the validity and enforceability of Registrant's rights in Registrant's Mark and will not, alone or with anyone else, directly or indirectly knowingly commit any act at any time that divests or attempts to divest the goodwill that Registrant attributes to Registrant's Mark. Furthermore, Applicant agrees not to contest, administratively or judicially, in the United States or elsewhere, Registrant's right to register or maintain rights in Registrant's Mark in connection with Registrant's Goods.

7. Further Assurances. Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances, and assurances, and take such further actions as may be reasonably required to carry out the provisions hereof.

8. Miscellaneous.

(a) This Agreement shall be governed by and construed in accordance with the laws of the United States and the internal laws of the State of Colorado without giving effect to any choice or conflict of law provision or rule (whether of the State of Colorado or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Colorado.

(b) This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

(c) This Agreement, together with all related exhibits and schedules, constitute the sole and entire agreement of the parties with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

(d) If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

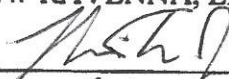
(e) This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto, and any of the terms thereof may be waived only by a written document signed by the party or parties waiving compliance. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(f) This Agreement may be executed in multiple counterparts and by facsimile signature, each of which shall be deemed an original and all of which together shall constitute one instrument. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

(g) All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the receiving party from time to time in accordance with this Section 8(g)). All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), email (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (i) upon receipt by the receiving party, and (ii) if the party giving the Notice has complied with the requirements of this Section 8(g).

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

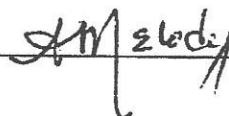
NEW RAVENNA, LLC

By 

Name: *Richard Walters*

Title: *CEO*

A MELODY

By 

**SCHEDULE 1**

**APPLICANT'S GOODS OR SERVICES**

**IC 019. Floor tiles, not of metal; Mosaics made of natural stone and stone tile; Non-metal tiles for walls, floors or ceilings.**

**IC 021. Mosaics of glass and ceramic tiles, not for construction.**

**SCHEDULE 2**

**REGISTRANT'S GOODS OR SERVICES**

IC 019. Stones, namely, quartz.