DEFERRED PAYMENT RENEWAL AGREEMENT AND CONTRACT
WITH STUDENT FOR INSTRUCTION

I,_____ of_____

hereby enroll and agree to take a course of_____ lessons, and I further agree to pay tuition for said lessons in the amount of_____ Dollars.

I agree to pay_____ Dollars at the time of signing this agreement and I agree to pay the balance of the down payment as follows:_____

and the balance of_____ Dollars in the manner set forth in "negotiable note given for tuition" numbered_____ and executed at the time of signing this agreement.

The Arthur Murray School of Dancing agrees that it will give the above mentioned_____ lessons within the period covered by this contract.

It is further agreed and understood that I shall not be relieved of my obligation to pay said tuition herein agreed upon, and that no deduction allowance or refunds for any tuition paid and due under this agreement shall be made by reason of my absence or withdrawal. I UNDERSTAND THAT NO REFUNDS WILL BE MADE UNDER THE TERMS OF THIS CONTRACT.

It is further agreed that all lessons shall be arranged for by definite time, and that in the event I wish to cancel any appointment, I agree to notify the Arthur Murray School of Dancing at least 24 hours in advance of my appointment in order to make arrangements for taking the lesson at a later date. Proof of illness excepted. I understand that if I do not cancel my appointment 24 hours in advance as stated above, I shall be considered absent and the lesson will be forfeited.

I acknowledge that I have received a copy of this contract and a copy of the "negotiable note given for tuition" at the time of their execution.

I FURTHER UNDERSTAND THAT THE LESSONS CALLED FOR UNDER THIS CONTRACT ARE TO BE TAKEN BY ME PERSONALLY AND THAT THIS CONTRACT OR THE LESSONS CALLED FOR THEREIN CANNOT BE BY ME ASSIGNED. I UNDERSTAND THAT THIS COURSE OF_____ HOURS OF DANCING LESSONS EXPIRES ON_____

Signed this_____ day of_____ 19__

ARTHUR MURRAY SCHOOL OF DANCING

Execution and delivery of copy

verified by_____

Pupil_____

Registrar_____

NON-ASSIGNABLE - NON-CANCELLABLE CONTRACT

EXHIBIT 20-T

ACME NO. 4

NEGOTIABLE CONTRACT NOTE GIVEN FOR TUITION AND SCHOLARSHIP

201

[fol. 111] EXHIBIT 20-T TO STIPULATION OF FACTS

ORIGINAL

ARTHUR MURRAY STUDIO

[fol. 112] EXHIBIT 21-U TO STIPULATION OF FACTS

724 Pierce
Sioux City, Ia
6-3597

309 So 19th Street
Omaha, Nebr
JAckson 2270

1238 M Street
Lincoln, Nebr.
2 5800

318 D-W 18th Street
Sioux Falls, South Dakota
47795

No of Hrs
Amt Sale
Down Payment
Bal to Finance

ALL QUESTIONS MUST BE ANSWERED
If words "No" or "None" apply, please so indicate

Please TYPEWRITE all papers and have they signed in INK

Name _____ Nationality Age Height Weight Married or Single

Home address, No and Street _____ How long

If Rural address give the following information

Number miles Direction and Number miles Direction of City State

Former address _____ How long

Business address _____ Phone No
(No. Street or Building)

Name of employer _____ Occupation (If self what business) How long

Salary (Other Income) Banks with

Real estate owned Encumbered for

Father or Mother Address

Wife's Father or Mother Address

References

1 Address

2 Address

Date 194 Applicant's signature

No. _____ $ _____

Omaha, Nebraska, _____ 19____

For value received, we jointly and severally promise to pay to the order of _____
(Dealer's Name)

_____ DOLLARS
(Total Amount of Note in Words)

as follows:

Payable in _____ equal installments of $_____ each and _____ installments
(No. of Even Payments) (No. of Uneven Payments, if Any)

$_____ each. Payments due on _____ day of every _____ month, beginning _____ 19____
(Month)

until the principal sum with interest at the highest legal rate after maturity is paid at the office of the First National Bank of Omaha, Nebraska.

If any installment of this note is not paid when due or place specified, the entire amount unpaid shall be due and payable forthwith at the election of the holder of the note. The failure to exercise promptly the foregoing option or promptly demand payment of any installment or installments shall not be considered a waiver of the terms of the foregoing clause or the establishment of any custom to the contrary.

In the event of suit on this note, the maker agrees that a reasonable attorney's fee shall be taxed as part of the costs of suit.

If the purchaser is a married woman, she agrees that the execution of this note is for the benefit of her individual estate and upon the faith and credit thereof and with the intention to charge for the payment of the obligation, her separate property, whether now owned or hereafter acquired.

The undersigned acknowledge receipt of a copy of this note on the date hereof

NEGOTIABLE INSTRUMENT.

Negotiable Note Given for Tuition

Salesman Sign as Witness _____

Witness _____

EXHIBIT 21-U

[fol. 113]

IN THE TAX COURT OF THE UNITED STATES

SUPPLEMENTAL STIPULATION OF FACTS IN DOCKET Nos. 62109, 69591, 69592, AND 69593—Filed April 8, 1958

At the trial of the above-captioned case, the parties, through their respective counsel, agreed to stipulate the amount of tuition paid other Arthur Murray Dance Studios for giving lessons contracted to be given by the Arthur Murray Dance Studios operated by the petitioners.

It is hereby stipulated that the tuition paid to other studios during the taxable years ending March 31, 1950 to March 31, 1954, inclusive, is as follows:

Taxable year ended March 31, 1950	$ 592.00
Taxable year ended March 31, 1951	751.10
Taxable year ended March 31, 1952	825.00
Taxable year ended March 31, 1953	1,328.13
Taxable year ended March 31, 1954	1,955.32

Robert Ash, Attorney for Petitioners.

Arch M. Cantrall, Chief Counsel, Internal Revenue Service.

[fol. 114]

IN THE TAX COURT OF THE UNITED STATES

Docket No. 62109,
Docket No. 69591,
Docket No. 69592,
Docket No. 69593.

MARK E. SCHLUDE and MARZALIE SCHLUDE, MARK E. SCHLUDE, MARZALIE SCHLUDE, MARK E. SCHLUDE and MARZALIE SCHLUDE, Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

North Courtroom,
U. S. Post Office Building,
Omaha, Nebraska.

March 24, 1958,
Monday, 10:30 a. m.

Met Pursuant to Notice.

Before: Honorable Eugene Black, Judge.

Appearances: Carl F. Bauersfeld, Attorney at Law, 922 Eye Street, Northwest, Washington 6, D. C., and Einar Viren, Attorney at Law, 904 City National Bank Building, Omaha, Nebraska, appearing on behalf of Mark E. Schlude and Marzalie Schlude, petitioners.

William E. McCormick, Special Attorney, Omaha Region, Internal Revenue Service, Omaha, Nebraska (Honorable John Potts Barnes, Chief Counsel, Internal Revenue Service), appearing on behalf of Commissioner of Internal Revenue, respondent.

Transcript of Proceedings

[fol. 115] The Clerk: Docket No. 62109, Mark E. Schlude and Marzalie Schlude; Docket No. 69591, Mark E. Schlude; Docket No. 69592, Marzalie Schlude; and Docket No. 69593, Mark E. Schlude and Marzalie Schlude. Will counsel state their appearances. For the petitioners?

Mr. Bauersfeld: Carl F. Bauersfeld and Einar Viren for petitioners.

The Clerk: For the respondent?

Mr. McCormick: William E. McCormick for the respondent.

The Court: Now, petitioners' counsel, are you ready at this time?

Mr. Bauersfeld: We are ready.

MOTION TO CONSOLIDATE GRANTED

The Court: Have these cases been consolidated?

Mr. Bauersfeld: There is a motion pending before the Court at this time.

The Court: To consolidate them?

Mr. Bauersfeld: Yes, Your Honor, a written motion.

The Court: The motion to consolidate is granted and petitioners' counsel may make his opening statement at this time.

OPENING STATEMENT ON BEHALF OF THE PETITIONERS

By Mr. Bauersfeld:

Mr. Bauersfeld: May it please the Court. These cases have been consolidated for trial and involve deficiencies in income tax as follows: In Docket No. 62109, the petitioners are Mark E. Schlude and Marzalie Schlude, involving the year 1950, and the amount of the deficiency is $15,819.14; in Docket No. 69591, the petitioner is Mark E. Schlude, the year involved is 1952, and the amount of the deficiency is $9,264.69; in Docket No. 69592, the petitioner is Marzalie Schlude, the year involved is 1952, and the amount of the deficiency is $8,971.55; in Docket No. 69593, the petitioners are Mark E. Schlude and Marzalie Schlude, [fol. 116] the years involved are 1953 and 1954, and the amount of the deficiency is $83,395.82 for the year 1953 and $11,544.32 for the year 1954.

The case presents two issues. There are a number of other issues in adjustments in the notices of deficiency.

They are all minor and petitioners have not made an assignment of error regarding those and is not pressing them.

The two issues pressed here are these:

Petitioners—Mark E. Schlude and Marzalie Schlude as partners operate the local Arthur Murray Dance Studios in Nebraska and Omaha and surrounding territory. The partnership keeps its books on the accrual method of accounting. It enters into contracts with students and treats prepaid tuition fees as deferred income. It reports as income each year that portion of the fees which represents lessons taught or cancelled during the year. In other words, the partnership reports the income it received from the dancing business when it was earned. The respondent determined the partnership must report as income the amount agreed to be paid by the student in the contract for dancing instruction. In other words, it is respondent's position that the mere execution of a contract for dancing instruction results in the recognition of the entire amount as income at the time the contract is executed. The question for decision is: Have the taxpayers reported their "true" income.

For the year 1950, there is one other issue which involves the statute of limitations. The determination of a deficiency for the year 1950 was made more than three years from date of filing petitioners' return for 1950 but less than five years. The question presented is: Does the statute of limitations bar the alleged deficiency for 1950?

The facts in a little more detail are these. On June 18, 1946, Mark E. and Marzalie Schlude formed a partnership for the purpose of conducting Arthur Murray Dance Studios in territories authorized by various franchise agreements received from Arthur Murray, Inc., New York, New York. The first studio was opened in Omaha, Nebraska, and subsequently during the years here involved, dance studios were opened in Lincoln, Nebraska; Sioux City, Iowa; Sioux Falls, South Dakota; and Grand Island, Nebraska.

[fol. 117] From the inception of the business, the partnership has maintained its books of account on a fiscal year ending March 31, and has used the accrual method of accounting. The partners report their income on a calendar-year basis.

The partnership, Arthur Murray Dance Studios, contracts with students to give them a course of dance instruction. Some of the contracts extend beyond the end of the taxable year in which the contract was made. Students paid the partnership either in cash or by cash and deferred payment. When the deferred payment plan was used, the partnership received a note from the student which it transferred to a bank with full recourse. The bank would pay the partnership approximately 50 percent of the face of the note and hold the balance until the student liquidated the note in its entirety.

The dance courses sold are primarily for private instruction of a specific number of hours or lessons. The partnership maintains a complete double-entry set of books and records including an individual record card for each student.

At the end of each fiscal year, an audit is conducted by a Certified Public Accountant and a complete analysis of each course sold is prepared. This analysis reflects among other things the gain or loss resulting from the cancellations, the amount of untaught hours and applicable deferred income at the end of the year. The earned income account is adjusted to the audit report as is the deferred income at the end of the year and the cancellations during the year. Each course having a beginning balance or sold during the year is completely accounted for and audited.

At various times during the year, the partnership is required to decrease the amount of some of the courses sold and re-write the contracts for smaller amounts. On other occasions it becomes necessary for the partnership to cancel the contract because of lack of student activity. If refunds of cash received are made, they are charged to deferred income and the unpaid balance of the contract is charged against the deferred income. Gain on cancellation of contracts is taken into account each year represented by the difference between payments received by the [fol. 118] partnership and income earned to the date of cancellation.

To give a course of instruction, it cost the partnership during the years here involved between approximately $7.00 and $8.50 per hour. The advance payments received for a course of dance instruction must be used to defray the operating costs and expenses applicable to the course of instruction for which the payment was received. The amount of profit involved in an advance payment for dance instruction is undeterminable until subsequent events indicate the amount of the operating cost and expense applicable thereto.

In the case at bar, the Commissioner has treated as income the yearly increases in deferred income on the books of the partnership. The effect of the Commissioner's action is to require the partnership to report as income the amount set forth in the contract with the student at the date it is executed.

It is the taxpayers' position that this case does not fall within the "claim of right" doctrine because that doctrine is applicable to cases dealing with the question of whether an item is or is not income. The question here involved is not whether the item is income but when the income shall be taken into account. In addition, the petitioners say that the "claim of right" doctrine can have no application in the instant case because it applies only when the actual cash money is received. Here the partnership did not receive all cash—although some cash was received. The "claim of right" doctrine has never been stretched to apply to a situation where the taxpayer did not actually receive cash money, as in this instance. It is further taxpayers' position that the partnership has reported its true income and that the method of accounting employed consistently and properly reflects its true income and is the only practical business way of keeping its books and reporting its income. The accounting method employed reflects the consistent application of generally accepted accounting principles and that the petitioners have reported their "true" income.

The Court: All right, Mr. McCormick, you may make your statement.

[fol. 119]

OPENING STATEMENT ON BEHALF OF THE RESPONDENT

By Mr. McCormick:

Mr. McCormick: Summarizing the deficiencies, the respondent has determined the deficiencies were in income tax for the years 1950, 1952 and 1953 and 1954, in the total amount of $128,995.52. Petitioners are equal partners in the Arthur Murray Dance Studio which has its principal place of business here in Omaha and the deficiencies here resulted mainly from the respondent increasing partnership income and consequently the amount of the partners' distributive shares.

The partnership contracted with students to give dancing lessons, the lessons to be paid for by three methods: (1) cash payments to the studio; (2) deferred payments to the studio; and (3) the giving of a negotiable note to the studio.

The studio discounted the notes with a bank, the bank giving the partnership 50 percent of the discounted proceeds and holding the other 50 percent in a reserve account until the notes were fully paid. The cash payments received directly from the students, the amount received at the time notes were negotiated to the bank, and the amounts in the reserve fund after notes were fully paid were either deposited or credited to the partnership general bank account without restriction as to use.

During the years involved here the partnership, which used the accrual method of accounting, deferred from inclusion in income on its books and returns amount of the contract prices allegedly representing uninstructed hours of dancing lessons.

The respondent acting under the authority of Section 41 of the Internal Revenue Code of 1939 determined that the method of accounting employed by the partnership did not correctly reflect income and accordingly increased partnership income by the amount of the increases in the deferred income account from year to year. The petitioners dispute the correctness of this change and thus the primary issue is whether partnership income and consequently distributive shares should be increased by the amount of the increases

in the year and the balances shown in the partnership deferred income account. As already pointed out, this deferred income included prepaid receipts and accounts and notes receivable.

[fol. 120] Since the evidence will show that the prepaid receipts were without restriction as to use (except for the bank reserve fund) respondent contends that such amounts should be reported as income in the year of receipt. Respondent further contends that the amounts of deferred income representing accounts and notes receivable are properly income to an accrual-basis taxpayer for the period in which they arise.

One other issue for the year 1950 relates to whether the statute of limitations for assessment expired prior to the mailing of the notice of deficiency. Since the evidence will show that petitioners omitted from their gross income for the taxable year an amount properly includable therein in excess of 25 percent of the gross income stated in the return filed, respondent contends that under Section 275 (c) of the Internal Revenue Code of 1939 the determination of a deficiency is not barred.

At this time I'd like to offer for filing with the Court a stipulation of facts with attached exhibits.

The Court: All right, the stipulation of facts, together with exhibits attached thereto, is received in evidence.

Mr. McCormick: The exhibits, Your Honor, are Nos. 1-A through 21-U.

The Court: All right. Mr. Bauersfeld, you may present your oral testimony.

Mr. Bauersfeld: Thank you, Your Honor. I will call Mr. Davis.

Whereupon,

ROBERT J. DAVIS, called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

Direct examination.

The Clerk: Would you be seated and state your name and address, please.

The Witness: Robert J. Davis, 1111 City National Bank Building, Omaha, Nebraska.

The Clerk: Thank you.

[fol. 121] By Mr. Bauersfeld:

Q. What is your profession, Mr. Davis?

A. Public accounting.

Q. And how long have you been engaged in public accounting?

A. About 13 years.

Q. Are you a Certified Public Accountant?

A. Yes, sir, since 1948.

Q. And where is your business located?

A. Omaha, Nebraska, and surrounding territory.

Q. Have you ever taught accounting?

A. Yes, sir, at Boyles Business College for about three years.

Q. Do you belong to any professional societies?

A. Yes, sir, Nebraska Association of Certified Public Accountants.

Q. Do you know the petitioners, Mark E. Schlude and Marzalie Schlude?

A. Yes, sir.

Q. How long have you known them?

A. Since about 1946.

Q. How did you come to meet them?

A. When I was associated with Irwin-Imig Company, Certified Public Accountants, I was delegated to design and install the books of account for Mr. and Mrs. Schlude.

Q. What was the name of the company?

A. Irwin-Imig Company.

Q. Would you spell that?

A. I-r-w-i-n - I-m-i-g.

Q. What business were Mr. and Mrs. Schlude in?

Q. They had just received their franchise from Arthur Murray of New York to operate an Arthur Murray Dance Studio; at that time they came to have their records properly designed and installed.

Q. Will you describe the nature of the business?

A. The nature of the business is the operation of sell-

ing and teaching dance lessons in accordance with methods prescribed by Arthur Murray.

Q. I hand you exhibits Nos. 15-O to 20-T of the stipulation of facts, which are contracts that are entered into by the Arthur Murray Dance Studios with students and ask you to explain when each of these contracts is used.

A. There are basically two types of contracts entered into between the partnership and students, the cash plan of selling dance courses and the deferred-payment plan of selling of dance courses. The exhibit marked No. 15-O [fol. 122] refers to a cash course on an original course of dance instruction. The exhibit marked No. 16-P refers to a course on the extended plan of selling dance lessons. Exhibit No. 17-Q refers to a renewal course sold on the cash plan. Exhibit No. 18-R refers to a deferred payment renewal agreement on the original sale of dance lessons and exhibit No. 19-S refers to a deferred payment extension course and exhibit No. 20-T refers to a deferred payment renewal course.

Q. What is the difference between an original course, an extension course, and a renewal course?

A. An original course, as the name implies, is the first course of dance instructions sold to a student. The extension course is an extension privilege that is given to a student providing an extension of his course prior to the fifth hour of instruction on the original course. If the student extends his course prior to the fifth hour on the original course, he gets the privilege of enlarging his course on a lesser rate. The renewal course is the repeat sale to a student originally enrolled under the original agreement.

Q. I hand you exhibit No. 21-U, which is attached to the stipulation of facts, and ask you what the partnership does with notes of this type when received from students?

A. These notes are transferred to the bank after having been properly filled out.

Q. And at that time, what occurs?

A. After the bank deducts its interest charge from the face amount of the note, 50 percent of that balance is transmitted to the Studio and 50 percent is held back in reserve by the bank and not made available for withdrawal

by the Studio. The note is transferred with recourse to the bank. At the time these notes were first put into effect with the bank the Studio actually entered into an arrangement with the bank where the Cashier's Check would be made out for the entire amount of the note made payable to the Studio and student and the student had to endorse that check before the Studio could deposit that to the Bank account. The whole purpose of that was that rather than a sale, this transaction took the form of a sale but actually it was a collection procedure. The whole purpose of transferring these notes to the bank [fol. 123] was that psychologically they believed the student would be more likely to pay the bank than the Studio. The bank makes no credit investigation insofar as the student's ability to repay. The notes are transferred to the bank with complete recourse against the Studio.

Mr. Bauersfeld: At this time, if the Court please, I'd like to offer in evidence as petitioners' exhibit No. 22-V, a photostatic copy of the franchise agreement dated June 18, 1946, between Arthur Murray, Inc., and Mark E. Schlude and Marzalie Schlude. I understand there is no objection.

Mr. McCormick: No objection.

The Court: Well, if it's not a joint exhibit, it will be Petitioner's Exhibit No. 22. It will be received.

Mr. Bauersfeld: Yes.

(The agreement referred to was marked and received in evidence as Petitioner's Exhibit No. 22.)

PETITIONER'S EXHIBIT 22

Agreement made in New York, N. Y., as of the 18 day of June, 1946, between Arthur Murray, Inc., of 11 East 43rd Street, New York City, hereinafter referred to as "Licensor", and Mark E. Stevens and Marzalie Stevens, hereinafter referred to as "Licensee"

Witnesseth:

Whereas, Licensor and its predecessors have for many years been engaged in conducting and supervising dancing schools and have developed unique and successful ways

of teaching dancing and conducting such schools and now supervise nationally known dancing schools of the highest reputation and excellence, with studios in the City of New York and elsewhere known as "Arthur Murray's," "Arthur Murray's Studio," "Arthur Murray School of Dancing," and/or otherwise, and

Whereas, the Licensee is desirous of personally conducting a dancing school in the City of Omaha, State of Nebraska, and it is desirous of using the "Arthur Murray Method" and the name "Arthur Murray" in connection therewith;

[fol. 124] Now, Therefore, in consideration of the premises and for other good and valuable considerations, the receipt of which is hereby mutually acknowledged, and in further consideration of the mutual promises of the parties hereto, it is agreed as follows:

1. The Licensor hereby grants a license to the Licensee to use the "Arthur Murray Method" and name in connection with a dancing school or schools to be conducted by Licensee, in the City of Omaha, at such place or places within said City as shall be approved by Licensor in writing. The terms school, studio or dancing school, as herein used, includes any branch or branches thereof, or any studio or studios operated or managed by Licensee. The Licensee shall reside in said City or its suburbs and agrees to devote his full time, and attention, and best efforts exclusively to the conduct of the said dancing school or schools under the name "Arthur Murray Dance Studio of Omaha," and agrees to register or file statements of his use of such name in the proper office of any County in which such dancing school, or studio, or any branch thereof may be located, and in any other Governmental office where it is mandatory or permissive that such a statement be filed, and agrees within twenty (20) days after the execution of this agreement, or within twenty (20) days after the filing of such a statement is permitted by the laws of the State, Territory and Municipality in which this license is effective to furnish Licensor with proof, satisfactory to Licensor, that such statements have been duly filed.

2. The Licensee agrees to pay the Licensor as long as Licensee conducts a dancing school as aforesaid under said name, or any similar name in weekly payments on Friday of each week, ten (10%) per centum of the gross receipts of such dancing school, or schools, so maintained by the Licensee for the preceding calendar week for which Licensor agrees to advise Licensee with respect to the establishment and necessary for the proper conduct of said dancing school and will furnish the Licensee with its latest and most available data and information concerning the methods of teaching dancing in accordance with the Arthur Murray Method; and Licensee agrees to conduct the said schools in accordance therewith.

[fol. 125] Licensor will furnish Licensee with copies of promotion material and publicity originated and used by the Licensor in connection with the schools operated by the Licensor together with cuts of art work and circulars and other material originated and used by the Licensor, which said material will be furnished to Licensee at cost. Such cost is to be remitted by Licensee to Licensor on demand.

3. The parties hereto agree that it is of the utmost importance to the success of the Arthur Murray System and to all persons operating dancing schools under franchise from the Licensor, and to pupils enrolled at all Arthur Murray Dancing Studios or Schools that steps, methods of instruction and tuition rates be uniform at all Arthur Murray studios. Licensee agrees to establish and maintain the minimum hourly tuition rates established and promulgated by the Licensor, and to conduct the studio, or studios, to be maintained and managed by Licensee in accordance with the general policies of the Licensor as established from time to time, and to see to it that the methods of teaching and the steps taught are in accordance with the latest methods and steps promulgated by Licensor from time to time. Licensor will at such times, and as often as Licensor finds it necessary, inform Licensee of such policies, steps, methods and rates. Failure of the Licensee after being informed of such policies, methods or rates to maintain such policies, methods or rates shall be sufficient cause for cancellation of this license by the Licensor.

4. The Licensee agrees to honor the unused portion of paid courses of lessons of dancing pupils enrolled in any other Arthur Murray Dancing School owned or licensed by the Licensor, by giving dancing instructions to such pupils, and the Licensee shall be entitled to receive therefor the sum of $1.50 per hour for each hour of dancing instruction so given by the Licensee on account of said unused lessons, and this payment shall be made by the Arthur Murray Dancing School which originally enrolled said dancing pupil or, at the option of the Licensor, by the Licensor. Licensee, however, need not honor the unused portion of paid courses where the school which enrolled said pupil is then thirty (30) days or more in arrears in making payments for lessons given on its behalf.

[fol. 126] 5. The Licensor agrees that Licensor will likewise honor, or use Licensor's best efforts to cause to be honored, in any other Arthur Murray Dancing School unused courses of lessons of any dancing pupil, who may subscribe and pay for same in the Licensee's said dance school, and Licensee agrees to pay the sum of $1.50 per hour for each hour of dance instruction given by the Licensor or such other Arthur Murray Dancing School, promptly upon being apprised of the amount due.

6. In order to protect and indemnify the Licensor from any and all claims (of whatsoever nature) which may be made or arise against Licensor as a result of the granting of this license to Licensee, and/or the expense of litigation, and to provide a fund out of which refunds may be made for unused lessons, payment for which has theretofore been made to the Licensee by Licensee's pupils, or, to reimburse Licensor or Licensor's other Licensee for redeeming same, the Licensee shall on Friday of each week, transmit to Licensor five per centum (5%) of Licensee's gross receipts for the preceding calendar week (in addition to the other payments herein specified to be made by Licensee) to be held by Licensor in escrow, as hereinafter set forth. Said fund may be held by Licensor on deposit in any bank in the City of New York selected by Licensor but separate and apart from other monies of Licensor or may be invested by Licensor in any type of bond, note or other certificate

of indebtedness issued by the United States Government. Licensee shall be credited periodically with such proportionate part of the income of such investments as Licensor shall determine should be properly allocated to Licensee. Licensor shall not be liable for any error of judgment or discretion or for anything other than bad faith or fraud in the handling of said fund or funds. ~~Such payments shall continue for the six (6) operating years next following the date hereof. Thereafter no further payments need be made to Licensee's Escrow Fund unless said fund is depleted by payments therefrom, in which case payments shall be continued or resumed by Licensee until said Fund amounts to the aforesaid percentage of Licensee's gross receipts for the six (6) operating years next following the date of this agreement.~~ Upon termination of this agreement (or any renewal or extension hereof) or the termination of the relationship contemplated hereby between [fol. 127] Licensor, and Licensee (or their respective assigns) or in the event that Licensee's school shall be permanently discontinued, Licensor shall account to Licensee within fourteen (14) months after the happening of either of such events for the fund remaining in Licensor's hands, if any, and shall pay to Licensee the amount remaining on hand after deducting: (1) all debts and obligations due Licensor; (2) all sums due Licensor's other Licensees for redemption of lessons sold by Licensee to Licensee's pupils; (3) any payments Licensor may have made or expenses or liability incurred as a result of claims or litigations against Licensor arising out of Licensee's conduct of the enterprise contemplated hereby and (4) two dollars per hour for all lessons for which Licensee has been paid but which are still unused, which amount shall be retained by and become the property of Licensor, subject, however, to the liability of Licensor to account to holders of unused lessons sold by Licensee, to the extent of the amount retained by Licensor under provision (4) hereof. Licensor is authorized to adjust and pay any such claims or settle any such litigation on such terms as Licensor deems advisable. Final payments to Licensee and periodic accountings shall be made by Licensor upon certification of Licensor's Certified Public Accountants, the expense of which certification, if any, shall