

**CONSIGNMENT AGREEMENT
for
ARTWORK**

This Consignment Agreement (the “Agreement”) is made this date: * _____ by and between * _____ (the “Consignor”), The City of Twentynine Palms (the “City”), to provide the terms and conditions under which Consignee will act as Consignor’s exclusive agent for the sale of those certain pieces of artwork, and related materials listed on Schedule “A” attached hereto and incorporated herein (the “Artwork”).

Whereas, Consignor wishes to display Artwork for sale at the Visitor Center or City Hall,

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Consignee and Consignor hereby agree as follows:

1. **CONSIGNMENT; APPOINTMENT OF CONSIGNEE AS EXCLUSIVE AGENT.** Consignor hereby irrevocably consigns the Artwork to Consignee as Consignor’s exclusive agent for the sale of the Artwork, without reservation by Consignor, under the terms of this Agreement. The sale shall be conducted by Consignee.

2. **CONSIGNEE’S ACKNOWLEDGMENT OF RECEIPT AND AGREEMENT TO ACT AS EXCLUSIVE AGENT.** Consignee hereby acknowledges receipt of the Artwork for sale to be conducted by Consignee. Consignor and Consignee agree that the Artwork will be displayed in the Visitor Center located at 73484 Twentynine Palms Highway, Twentynine Palms, CA 92277 or at City Hall located at 6136 Adobe Road Twentynine Palms, CA 92277, for a period of approximately Three months (3), unless other arrangements are made by the parties in writing, or unless the Art Exhibition Program is terminated by Consignee at its sole discretion. Consignee shall bear no responsibility for the condition of the Artwork or damage thereto. Consignee reserves the right to reject any or all of the Artwork consigned pursuant to this Agreement in its sole and absolute discretion.

3. **TITLE.** Title to the Artwork shall remain in Consignor at all times until the Artwork is sold, at which time title shall pass directly from Consignor to the respective buyer(s) of any of the Artwork. Title to the Proceeds (defined below) from any of the Artwork sold shall vest in and remain in Consignor until Consignee accounts for, and remits payment to Consignor, in accordance with Paragraph 7.

4. **SCOPE OF CONSIGNEE’S AUTHORITY.** Consignee shall have the sole right, discretion and authority to determine the nature, extent, method, and procedures to be employed in advertising and promoting the Artwork. Consignee’s good faith determination of the first purchaser of the Artwork shall be final and binding on Consignor. Without

limiting the generality of the foregoing, Consignee shall have the right to conduct the sale in its sole and absolute discretion including, without limitation:

- a. to determine the location in the Visitor Center and City Hall at which the Artwork is displayed;
- b. to determine the operating hours of the Visitor Center and City Hall;
- c. to determine the method of payment by the buyers of any sold Artwork;
- d. to discard packaging, containers, and all such materials that Consignee believes of no further value or use.

5. CONSIGNEE'S OBLIGATIONS. Consignee shall:

- a. Provide reasonable safekeeping for the Artwork, from and after the date Consignee accepts the Artwork;
- b. Prepare the Artwork for sale, including displaying the Artwork in the Visitor Center and at City Hall;
- c. Conduct all sales in good faith;
- d. Obtain and keep current a retail seller's permit, and/or such other permits as may be required by the California Board of Equalization related to the sales of Artwork contemplated by this Agreement; collect and remit sales tax as may be required by law related to the sales of Artwork contemplated by this Agreement; issue Form 1099's to Consignor and City; and issue such other Federal Income Tax forms to Consignor and/or City as may be required by law.
- e. Take all reasonable steps to deliver the Artwork, after the sale, to the buyer of the Artwork and to collect and receive the price paid for the Artwork; and
- f. Make the unsold Artwork reasonably available for pick up by Consignor upon reasonable advance notice to Consignee.

6. PAYMENT FOR THE ARTWORK. Proceeds from the any sale will be distributed within twenty (20) business days from the date of the sale as follows:

- i. Consignor will receive seventy five percent (75%) of the sales price;
- ii. The City will receive twenty-five percent (25%) of the sales price for artwork sold at City Hall.

- iii. The Chamber of Commerce will receive Twenty five percent (25%) of the sales price for artwork sold at the Visitors Center.
- a. For the purposes of this Paragraph, "Proceeds" shall be an amount equal to the total price received from the sale of the Artwork, which shall not include any applicable sales tax, postage, shipping/handling, or insurance fees. Payment to Consignor will only be made after a sale has occurred. Under no circumstances will Consignee advance Consignor any funds in anticipation of a sale.
- b. Consignor agrees and acknowledges that, to the extent Consignee is required to withhold and pay any taxes with respect to any sold Artwork, any tax required to be withheld may be deducted from any amount otherwise payable to Consignor, and that Consignor has no right with respect to recovering such withheld amounts from Consignee.
- c. If any third party claims that Consignor is not the legal owner of or does not have full right, title and interest in and to the Artwork consigned to Consignee, or that Consignor does not have full right and authority to consign the Artwork, or if the Consignee otherwise has reason to believe that Consignor is not the legal owner or has authority to consign the Artwork, then Consignee has the right, in its sole discretion, without advertisement or notice of any kind, to withdraw the Artwork from display at the Visitor Center or City Hall. Consignee is then authorized to hold the Artwork until the identity of the legal owner of the Artwork is determined by court order, or by other means satisfactory to Consignee, at which time Consignee will remit the Artwork to the true owner pursuant to this Agreement.
- d. Unsold Artwork. Consignor agrees that if any Artwork is not sold within the later of two (2) months from the date on which the Artwork was first displayed or a later date determined at the sole discretion of the Consignee, Consignor shall, at his/her sole expense, remove the Artwork from the Visitor Center within ten (10) business days of receiving notice from Consignee, after which Consignee shall be released from all obligations under this Agreement. If Consignor fails to timely pick up Artwork, Consignee is not responsible in any way for the Artwork and may discard it at its sole and complete discretion.

7. **CONSIGNOR'S REPRESENTATIONS AND WARRANTIES.** Consignor represents and warrants to Consignee that:

- a. Consignor is the legal owner of and has full right, title and interest in and to the Artwork consigned to Consignee hereunder as Consignor's separate Artwork free and clear of all liens and encumbrances. During the Term of this Agreement, Consignor will not create or permit the existence of any lien or any security interest in the Artwork;

- b. Consignor personally created the Artwork and has full title to all copyright and other intellectual property rights in the Artwork and has the full right and authority to display the Artwork. Without limiting the foregoing, Consignee may, but is not obligated to, require confirmation of such right and authority from Consignor or any other person. If any third party claims that Consignor does not have full title to all intellectual property rights in the Artwork, Consignor shall be solely responsible for any liability arising out of such infringement. To the extent that Consignee is liable for infringement, Consignor agrees to indemnify Consignee for all costs related to such liability;
 - c. Consignor has full right and authority to consign the Artwork to Consignee for sale hereunder, without the necessity for consent or concurrence of any other party. Without limiting the foregoing, Consignee may, but is not obligated to, require confirmation of such right and authority from Consignor or any other person;
 - d. The Artwork is genuine, authentic, and is marketable as Consignor has represented to Consignee;
 - e. All descriptions and representations of the Artwork given by Consignor are true and correct and Consignee has the right to rely on any descriptions and representations made by Consignor;
 - f. Consignor will, at Consignor's sole cost, defend Consignor's title to the Artwork as represented hereinabove, Consignor's title to all intellectual property rights in the Artwork, and the Artwork's genuineness and authenticity, against any adverse rights or claims whatsoever, and fully indemnify and reimburse Consignee, its principals and employees and any affiliated or related business or government entity of Consignee, on demand, as against all such claims and costs, including attorney fees; and
 - g. Consignor will immediately notify Consignee of any change in his/her address, telephone, or facsimile number.
8. **INSURANCE.** Consignee shall have no responsibility for damage or loss of the Artwork. As such, Consignor may wish to secure his/her own insurance. Consignor shall be solely responsible for the costs of any such coverage.
9. **LOST, STOLEN OR DAMAGED ARTWORK.**
- a. If any Artwork is lost, stolen or damaged while such Artwork is in the possession, custody or control of Consignee, then:
 - i. In the case of damaged Artwork, Consignee may, at its sole option, either:

- (1) sell the Artwork for the same listed sales price, in which case the obligations of the parties hereto will continue as if the Artwork had not been damaged; or
 - (2) return the Artwork to Consignor as is, with no liability for any damage to the Artwork.
 - ii. In the case of lost Artwork, Consignee shall not be obligated to make any payment to Consignor. Consignee shall not be liable in any way to Consignor.
 - b. **Disclaimer of Liability.** *The remedies provided in this Paragraph are exclusive and shall constitute Consignor's sole remedy with respect to any damage to or loss of Artwork consigned to Consignee, regardless of whether or not such damage or loss results from any negligence on the part of Consignee. Consignee hereby disclaims all liability for damages, incidental, consequential or otherwise arising out of or in connection with damage to or loss of Consignor's Artwork.*
10. **JURY WAIVER.** Consignor and Consignee both waive their respective right to a trial by jury.
11. **GENERAL PROVISIONS.**
- a. **Entire Agreement.** This Agreement constitutes the entire Agreement between Consignor and Consignee, superseding all other prior agreements or understandings with respect to the subject matter hereof. This Agreement may only be amended or supplemented by an agreement in writing signed by both parties hereto.
 - b. **Binding Effect: Successors in Interest.** This Agreement inures to the benefit of, and shall be binding upon the heirs, administrators, successors and assignees of the parties hereto.
 - c. **Applicable Law Venue and Jurisdiction.**
 - i. This Agreement shall be governed by and interpreted under the laws of the State of California.
 - ii. Consignor and Consignee each acknowledge and agree that the competent courts of the State of California shall have exclusive jurisdiction over any dispute(s) arising hereunder, and each party to this Agreement hereby agrees that any dispute arising under this Agreement or any of its provisions shall be litigated exclusively in the courts of the State of California and not elsewhere. It is further agreed between Consignor and Consignee, that venue shall be in the Superior Court for San Bernardino County, State of California.

- d. **Authority.** Each person executing this Agreement in a representative capacity represents and warrants that he is empowered to do so.
- e. **Attorney Fees & Costs.** Consignor shall pay to Consignee all costs and expenses of collection of amounts due herein, or to otherwise enforce any or all provisions of this Agreement or the subject matter of this Agreement, including but not limited to reasonable attorney fees and costs incurred before legal action if any, is commenced. Consignor further agrees that in any litigation or other proceeding based upon, arising out of or related to this Agreement, Consignor shall pay to Consignee its attorney fees and other expenses and costs incurred in connection with the litigation or other proceeding if Consignee is the prevailing party.
- f. **Severability.** If any provision of this Agreement is held invalid, void, or unenforceable by any court of competent jurisdiction, the remaining provisions shall continue in full force and effect without being impaired or invalidated in any way.
- g. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one of the same instrument.
- h. **Survival of Warranties and Representations.** The warranties and representations contained in this Agreement are deemed to survive the date of execution by each party herein and the performance of all terms and conditions contained in this Agreement.
- i. **Notice.** Except as provided otherwise in this Agreement, any notice, request, demand, instruction, or other communication to be given to any party hereunder shall be in writing and sent by U.S. certified mail, return receipt requested to the party(ies) at the addresses listed below their respective signatures. Notice or other correspondence shall be deemed completed and received five (5) business days after depositing in the U.S. mail. For any notice or other correspondence to be effective it must be mailed within the Continental United States. Any party hereto may change the address at which it is to be sent notice or other correspondence by notice thereof to the other party(s) as provided herein.
- j. **Execution of Documents.** Each party agrees to execute and deliver such other documents and instruments and take such further actions as may be reasonably necessary to fully carry out the intent and purposed of this Agreement.
- k. **Joint Representation and Warranty.** Each party represents and warrants to the other that no broker(s), finder(s) or other party(s) has been employed or is entitled to a commission or any other compensation in connection with this transaction. Each party agrees to indemnify, hold harmless, and defend the other party from and against loss or liability arising from the act(s) or agreement of the indemnifying party relating to any such commission or compensation.

Artist Name	Title of Art Work	
*	*	
Medium	Size	Retail Price
*	*	*

IN WITNESS WHEREOF, Consignor and Consignee have executed and delivered this Agreement as of the date first written. Date: * _____

Artist Name	Title of Art Work	
*	*	
Medium	Size	Retail Price
*	*	*

CONSIGNOR:

NAME: * _____

Address:

* _____
 * _____
 * _____

Email: * _____

Phone: * _____

* _____

SIGNATURE

CITY/CONSIGNEE:

CITY OF TWENTYNINE PALMS

6136 Adobe Road
 Twentynine Palms, CA 92277
 (760) 367-6197 or 6799 Fax (760) 367-3366

By: _____

Or

Chamber/Consignee:

73484 Twentynine Palms Highway
 Twentynine Palms, Ca 92277
 (760) 367-3445 Fax (760) 367-3366

By: _____