

**Contract # 000**

**ART LICENSING AGREEMENT**

**DISCLAIMER:** This document is provided as a sample only and does not assure its legal validity. It is essential to seek legal counsel to review all contracts before signing them.

This Art Licensing Agreement is entered into by and between [ **Artist** ], with a principal place of business at [ **Address** ] hereinafter referred to as "ARTIST", and [ **Company** ], with a principal place of business at [ **Address** ], hereinafter referred to as [ **Company** ]. This Agreement is entered into as of the last date as signed by the ARTIST and [ COMPANY ](the "Effective Date"). ARTIST and [ COMPANY ]are referred to hereinafter as "Party" or collectively as the "Parties."

**RECITALS**

WHEREAS, Artist exclusively owns or controls the Original Work (as defined below) and wishes to grant to [ COMPANY ] an exclusive license to the Work, and Licensee wishes to obtain an exclusive license to the Work for the uses and purposes described herein, each subject to the terms and conditions set forth herein, NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## 1. SCOPE OF AGREEMENT

**1.1 Licensed Originals.** This Agreement applies to the ARTIST's original works of art submitted to [ COMPANY ] (hereinafter "ORIGINALS" or the "WORK"). ARTIST retains copyrights to the ORIGINALS and all rights not expressly granted in this Agreement.

**1.2 Exclusive License.** ARTIST grants [ COMPANY ] the exclusive worldwide right and license to use, sublicense, assign, publish, reproduce, market, represent, display, and modify the ORIGINALS in connection with the manufacture, promotion, advertising, distribution and sale of Wall Décor and other non-Wall Décor products, as further set forth below. For clarity, ARTIST retains the right to sell the single, tangible, original work of art that embodies any ORIGINAL, but shall not otherwise make any commercial use of any ORIGINAL, unless first approved in writing by [ COMPANY ] . ARTIST agrees not to be represented by or work with other publishers, licensing agents, brokers, or other intermediary parties without prior written consent by [ COMPANY ] .

**1.3 Wall Décor.** The right and license granted by ARTIST to [ COMPANY ] in Section 1.2 above includes, without limitation, the right to reproduce ORIGINALS as wall décor, including but not limited to paper posters, open or limited edition prints, canvas prints, prints on metal, wood, resin, glass, acrylic, or other materials, reproduced through offset, inkjet (giclee), hand-painted, or other means, in two- or three-dimensional formats, with or without additional embellishment or treatments, and all media now known or hereafter devised, to be principally used as decorative art on a

wall ("Wall Décor"). [ COMPANY ]'s license under this Agreement includes the right to produce reproductions of ORIGINALS as Wall Décor in-house, or to sublicense or subcontract the manufacture of reproductions of ORIGINALS as Wall Décor to third parties, including [ Company ]'s customers, using [ Company ]'s digital files of ORIGINALS.

**1.4 Non-Wall Décor products.** ARTIST grants [COMPANY ] the right to seek and secure product license contracts for ORIGINALS. [ COMPANY ] shall use good faith efforts to locate and recruit potential licensees. ARTIST agrees to produce fine quality artwork suitable for licensed products and to accommodate reasonable requests by licensees for artwork in keeping with ARTIST's style. [ COMPANY ] shall negotiate the terms of product license contracts on ARTIST'S behalf, such contracts to be reviewed and signed by ARTIST.

Notwithstanding the foregoing, ARTIST's review and signature will not be required for cases where [ COMPANY ] maintains agreements covering the works of several artists with [ COMPANY ]'S internet-based customers selling licensed products on an individual, make-on-demand basis.

**1.5 Marketing.** [ COMPANY ] shall at its expense have the right to reproduce, use, store and display ORIGINALS, ARTIST's name, bio, signature, and likeness in promotional material, including but not limited to [Company ]'s internet website, advertisements, brochures, mockups, photocopies, proofs, catalogues, invitations, press releases and digital catalogues; and the right to authorize such promotional uses by third parties at their expense. [ COMPANY ] may give away samples free of charge and may approve the use by movie and television production companies without compensation to [ COMPANY ] or ARTIST.

## 2. TERM AND TERMINATION

**2.1 Term.** The term of this Agreement commences as of the Effective Date and, unless terminated earlier as provided herein, will remain in force for a period of four (4) years (the "Term").

**2.2 Renewal.** The parties may renew this Agreement by mutual written consent. If the Term is renewed for any Renewal Term(s) pursuant to this Section, the terms and conditions of this Agreement during each such Renewal Term shall be the same as the terms and conditions in effect immediately prior to such renewal, subject to any change in the fees payable hereunder by Customer during the applicable Renewal Term.

**2.3 Termination.** Either party may terminate this Agreement a) if [ COMPANY ] does not make sales or secure licenses within any twelve (12) month period, or b) if the other party fails to comply with any of the material provisions of this Agreement, and such failure is not cured within thirty (30) days after receipt of notice of such failure.

**2.4 Post Termination.** Upon expiration or termination of this Agreement, for any reason, all rights licensed under this Agreement will revert to Licensor subject to the Wind-Down Period as expressly permitted below.

**2.5. Wind-Down Period.** In accordance with Section 2.4 and upon expiration or termination of this Agreement, Parties may agree by mutual written consent that [ COMPANY ] may represent ARTIST'S ORIGINALS in perpetuity provided ARTIST continues to receive royalties as agreed to in this Agreement. Alternatively, [ COMPANY ] shall have the option to continue to exercise the rights and licenses set forth in Section 1 of this Agreement for a period of one (1) year from the date of such expiration or termination, together with the additional right of [ COMPANY ] and its customers to sell off any inventory of Wall Décor or non-Wall Décor products in their possession, provided ARTIST continues to receive royalties as agreed to in this Agreement. The expiration or termination of this Agreement shall not affect any license contracts (i) entered into by ARTIST prior to such expiration or termination pursuant to Section 1.4, which will remain in force in accordance with their respective

terms; or (ii) under active development by [ Company ] at the time of such expiration or termination, it being the intent of the parties that such development efforts shall continue and such license contract shall be finalized and mutually executed if commercially practical do so. [ COMPANY ] may maintain archive copies of images for record keeping purposes.

### **3. CONSIDERATION**

**3.1 Wall Décor.** ARTIST shall be entitled to royalties of ten percent (10%) of proceeds received by [ COMPANY ] from [ COMPANY ]'S sale or licensing of Wall Décor.

**3.2 Product Licensing.** ARTIST shall be entitled to royalties of forty percent (40%) of proceeds received by [ COMPANY ] from non-wall décor product license contracts obtained by [ COMPANY ].

**3.3 Payments.** [ COMPANY ] shall make royalty payments quarterly for Wall Decor and monthly for non-Wall Decor based on proceeds received by [ COMPANY ] during the immediately preceding calendar quarter or month, respectively, from the sale or licensing of Wall Décor and from non-Wall Décor product license contracts, such payments to be made within thirty (30) days after the completion of such period. Payments to ARTIST shall be accompanied by a statement providing summary information including the total proceeds received by [ COMPANY ] from each customer, and total royalties due to ARTIST. Payments to ARTIST shall be made in the currency of the United States. If the total royalty payment due is less than \$100, no check will be issued for that period, but will be accrued and issued once the accrued amount due to ARTIST exceeds \$100.

**3.4 Billing.** [ COMPANY ] shall be responsible for billings to and collections from customers and shall use reasonable efforts to collect payments due. [ COMPANY ] shall not be responsible for late or nonpayment by customers or licensees. In the event of late or non-payment by customers or licensees, [ COMPANY ] may sue to collect but is not obligated to do so. Any recovery from such suit shall first be applied to cover the costs of such collection, with the remainder deemed proceeds and divided between ARTIST and [ COMPANY ] in accordance with the royalty percentages set forth in this Section 3.

**3.5 Inspection.** ARTIST shall have the right, upon thirty (30) days prior written notice and at times reasonably convenient to [ COMPANY ], to inspect, or engage a

third-party specialist to inspect, [ Company ]'s books and records with respect to sales and licenses of Wall Décor and non-Wall Decor products incorporating ARTIST's artwork. In the event that such inspection reveals a deficiency between owed and paid royalties, [ COMPANY ] shall pay ARTIST such deficiency on demand. In the event that such deficiency is in excess of 5% of the amount due during any twelve (12) month period, [ COMPANY ] shall also reimburse ARTIST for the reasonable costs of such inspection.

#### **4. COPYRIGHT**

**4.1 Attribution.** [ COMPANY ] shall use reasonable efforts to ensure that the ARTIST's Works, including Wall Décor and licensed products is marked with the appropriate **copyright** notices specified by ARTIST in a prominent position in the order and manner provided by ARTIST. [ COMPANY ] shall not use any **copyright** notices that conflict with, confuse, or negate the notices ARTIST provides and requires hereunder.

**4.2 Modifications and Derivative Works.** ARTIST acknowledges that [ COMPANY ] and its customers may modify ARTIST's work for purposes of commercial marketability as determined by [ COMPANY ] in its reasonable judgment. Any derivative works, modifications, or improvements made thereto by [ Company ] will be owned by ARTIST. If [ COMPANY ] acquires any rights in the Work by operation of law or otherwise, [ COMPANY ] hereby irrevocably assigns such rights to ARTIST without further action by either party. [ COMPANY ] agrees not to dispute or challenge or assist any person or entity in disputing or challenging, ARTIST's rights in and to the Work.

**4.3 Protection.** [ COMPANY ] shall use reasonable efforts to protect digital files of ORIGINALS from unauthorized use.

**4.4 Infringement.** [ COMPANY ] at its cost may pursue suspected copyright infringements of ORIGINALS on behalf of ARTIST. In consultation with ARTIST, [ COMPANY ] may but is not obligated to sue for copyright infringement, in which case any recovery from such suit shall first be applied to cover the costs of such legal action, with the remainder divided between ARTIST and [ COMPANY ] in accordance with the royalty percentages set forth in this agreement.

**4.5 Registration.** ARTIST at its cost may but is not obligated to register ORIGINALS and/or reproductions

thereof with the U.S. Copyright Office for the enforcement of its copyrights against infringers

#### **5. WARRANTIES AND INDEMNIFICATIONS**

**5.1 Warranties.** ARTIST warrants and represents:

- 1) that ARTIST is the sole and exclusive owner of the ORIGINALS;
- 2) that ARTIST has not previously licensed, assigned, or otherwise transferred any rights in the ORIGINALS to others;
- 3) that ARTIST has all rights necessary to grant the rights and licenses to [ COMPANY ] set forth in this Agreement.
- 4) that neither the Originals themselves, nor the reproduction, use, sale, license, or distribution of the Originals by [ COMPANY ], its agents, licensees, contractors or customers in any way violates any copyright, license, trademark, right of privacy, right of publicity, or other intellectual property rights of others.

**5.2 Indemnification.** ARTIST shall indemnify, defend, and hold harmless [ COMPANY ], its contractors, customers, licensees and agents including their officers, directors, employees and attorneys from and against any claims, allegations, damages, costs or loss, including attorneys' fees, which may arise or occur in connection with any claimed or actual breach of any of the above warranties.

**5.3 Mutual Representations.** Each Party represents and warrants to the other Party that, as of the Effective Date: (i) it is duly organized, validly existing, and in good standing under the laws of the state or jurisdiction of its organization; (ii) it has the full right, power, and authority to enter into and perform its obligations under this Agreement; (iii) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of such Party; and (iv) when executed and delivered by such Party, this Agreement will constitute the legal, valid, and binding obligation of that Party, enforceable against that Party in accordance with its terms.

#### **6. GENERAL**

**6.1 Governing Law.** This Agreement shall be governed by the laws of the State of [ STATE ] and the parties designate [ STATE ] as the forum of resolution of all disputes arising out of this agreement or the parties' relationship and grant the courts (state and or federal)

in [ STATE ] personal jurisdiction over themselves for these purposes.

**6.2 Confidentiality.** Each Party acknowledges that in connection with this Agreement it may gain access to information that is treated as confidential by the other Party, including information about the other Party's business operations and strategies, goods and services, customers, pricing, marketing, and other sensitive and proprietary information ("Confidential Information"). Each Party shall not disclose or use any Confidential Information of the other Party for any purpose other than as reasonably necessary to exercise its rights or perform its obligations under this Agreement; provided that each Party may disclose Confidential Information to the limited extent required to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order.

**6.3 Independent Contractors.** The parties' relationship shall remain at all times one of independent contractors, and not that of employer/employee, joint venturers, principal and agent, or any other form of relationship.

**6.4 Entirety.** This Agreement together with any attached exhibits constitutes the entire agreement between the parties regarding its subject matter and supersedes any and all prior agreements, understandings, representations or statements of either party, whether by conduct, oral or in writing.

**6.5 Waiver.** No amendment or waiver of rights under this Agreement shall be effective unless made in writing and signed by both parties, and no failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver of those rights.

**6.6 Severability.** If any provision of this Agreement is found illegal or unenforceable, it may be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of this Agreement will not be affected.

**6.7 Headings.** Headings in this Agreement are intended only for convenience and may not be used to construe or interpret this Agreement.

**6.8 Attorney's Fees.** In any action asserted by either party against the other to enforce the terms of this Agreement, the substantially prevailing party shall be entitled to recover its attorney's fees incurred in connection with such action from the substantially non-prevailing party.

**6.9 Assignability.** This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, successors and permitted assigns. [ COMPANY ] may assign this Agreement to a third party without prior notice to or prior consent by ARTIST. As this Agreement is based on ARTIST's unique talents, ARTIST may not assign any of ARTIST's rights or responsibilities under this Agreement to a third party.

**6.10 Limited Liability.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE, OR ENHANCED DAMAGES, OR FOR ANY LOSS OF ACTUAL OR ANTICIPATED PROFITS (REGARDLESS OF HOW THESE ARE CLASSIFIED AS DAMAGES), WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE (INCLUDING THE ENTRY INTO, PERFORMANCE, OR BREACH OF THIS AGREEMENT), REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**6.11 Notices.** All notices under this Agreement will be deemed given when delivered personally, sent by U.S. Certified mail to the address above, or sent by email by either party to the other in accordance with this paragraph.

**6.12 Electronic Signatures.** Each party agrees that the electronic signatures, whether digital or encrypted, of the parties are intended to authenticate and have the same force and effect as manual signatures. Electronic signature means any electronic symbol or process, attached to or logically associated with a record, and executed and adopted by a party with the intent to sign such record.

**SIGNED:**

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**“Artist”**

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**Date**

**SIGNED:**

**Owner & CEO**

**[ Company ]**

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**Date**