

Gallery Consignment Agreement

Between: _____ "Artist" AND "Gallery"

Phone: _____
Fax: _____
eMail: _____

Recital

Gallery wishes to sell artist's work (the "Artwork") on consignment.

Agreement

In consideration of the mutual covenants contained herein, the parties agree as follows:

- 1. Consignment:** The Artist hereby consigns to Gallery, subject to the terms of this agreement, the Artwork listed on the initial, signed Inventory sheet which is part of this Agreement and attached hereto as Exhibit A. Additional Inventory sheets will be integrated into this agreement if both parties agree to consignment of additional works. The additional inventory sheets will be dated and signed by both parties.
- 2. Duration of Consignment:** Artist and Gallery agree that the initial term of consignment for each piece of Artwork is to be from _____ until _____. Thereafter, consignment shall continue until this Agreement is terminated pursuant to Article 11 of this agreement.
- 3. Representations and Warranties of Artist:** Artist hereby represents and warrants to Gallery that s/he is the creator of the Artwork; s/he is the sole and exclusive owner of all rights granted to Gallery in this agreement and has all rights to enter into this agreement; s/he has not assigned, pledged or otherwise encumbered the rights granted to Gallery to a third party; the Artwork is original; and the Artwork does not, in whole or in part, infringe any copyright, violate any right to privacy or other personal or property right whatsoever, or contain an libelous or scandalous matter or matter otherwise contrary to law.
- 4. Responsibility for Loss or Damage:** Between date of receipt and tender of artwork, Gallery will incur no liability for damage or loss of artwork other than those caused by Gallery's negligence. Liability of Gallery shall be limited to the amount Artist would receive if the Artwork had been sold.
- 5. Pricing, Gallery's Commission, Terms of Payment:** Gallery shall sell the Artwork at the retail price specified on the Inventory Sheet (s). Gallery's commission shall be fifty percent (50%) and Artist shall be paid the remaining fifty percent (50%) of the stated retail price of each piece of Artwork sold. Payment to Artist on all sales made by Gallery shall be within forty-five (45) days after the date of sale of the Artwork. On installment sales, the proceeds received on each installment shall be paid to Artist and Gallery according to their respective percentage shares. In the event that the Artwork is subsequently returned to Gallery for a refund, Artist shall promptly return to Gallery any fee s/he received for the Artwork or, at Gallery's discretion, Gallery may deduct amount from the next payment due to Artist. Gallery may purchase any piece of Artwork at a price equal to the share of the sales price to which the Artist would be entitled if the sale had been made to a third party. Payment for any such purchase by Gallery shall be made to Artist within forty-five (45) days of such purchase.
- 6. Exclusivity:** The sale of artwork herein consigned to the Gallery is exclusive to the Gallery for the term of the consignment. Should a sale of a consigned piece originate from the Artist or 3rd party occur, the Gallery is entitled to its commission as set forth herein this agreement. Web or catalog offerings of any of the works consigned to the Gallery are considered encumbered per Paragraph 3. It is the Gallery discretion to remove those specific works from this agreement or the works to be unencumbered to the satisfaction of the Gallery. Prior agreements for promotion & sale of consigned works is in conflict with Paragraph 3 of this agreement.
- 7. Promotion:** Promotion of the Works is assigned to the Gallery during the term of the consignment. Promotion and advertising of works or openings is the sole discretion of the gallery. This does not preclude the artist web site, catalog or other methods of displaying for the purpose of the artist portfolio. Other

methods of promotion and or sale of works that are consigned to the Gallery by the artist or third party, either by prior or subsequent agreement must be disclosed to the Gallery.

- 8. Accounting:** Gallery shall maintain accurate books and records reflecting its gross sales and the amount due Artist. Artist, at her/his own expense shall have the right to examine, during regular business hours and upon reasonable notice, Gallery's records that reflect payments to Artist. In the event that an examination of the Gallery's records results in the determination that the amount of payments was miscalculated by more than ten (10%) percent and results in deficiency, then the amount of the miscalculation, including interest at ten percent (10%) per annum, and the cost of such examination (including all reasonable attorney and accounting fees incurred for such examination), shall be paid by Gallery to Artist in the monthly statement following such examination.
- 9. Transportation and Responsibilities:** Packing and shipping charges, insurance costs and other handling expenses incurred in the delivery of Artwork from the Artist to the Gallery, and in their return from Gallery to Artist, shall be the responsibility of, and borne by, Artist. Risk of loss for artwork will shift to Gallery upon delivery of artwork to Gallery.
- 10. Removal of Artwork:** Upon termination of this agreement, risk of loss will shift to Artist when Gallery tenders artwork. Gallery will be obliged to tender artwork at the date set forth in Article 2 of this agreement or upon termination pursuant to Article 14 of this agreement. If Artist fails to remove the work within a period of thirty (30) days following the date set forth in Article 2 of this agreement or within a period of thirty (30) days after the notice to remove the Art works been sent by certified mail to the Artist's last address known to the Gallery. Failure to remove artwork shall terminate the contractual relationship between Gallery and Artist and any rights and obligations under this agreement.
- 11. Title:** Each of the Artworks is trust property in the hands of Gallery, which is a trustee for the benefit of Artist until such Artwork is sold to a bona fide third party, or, if the Artwork is bought by Gallery, until the full price is paid to Artist. Upon any such sale, the proceeds of the sale (including any unpaid receivables) are trust property in the hands of Gallery, which is a trustee for the benefit of Artist until the amount due Artist from the sale has been paid to Artist. The trust relationship described above imposes no duty greater than that expressly provided above and does not give rise to any other fiduciary relationship.
- 12. Promotion:** Gallery may display Artworks in whatever manner Gallery believes appropriate, at its sole discretion. Gallery shall promote the sale of the Artworks in such a manner as it determines, at its sole discretion. When requested, Artist agrees to assist in the promotion of the sale of the Artworks either by providing at the Artist's sole expense, good quality photographs or slides, or in any other way reasonably requested by Gallery.
- 13. Reproduction:** Artist hereby grants Gallery the right to photograph the Artwork and use such photographs for publicity and promotional purposes.
- 14. Termination of Agreement:** Notwithstanding any other provisions of this Agreement, but subject to Article 4, this Agreement may be terminated at any time by either Gallery or Artist by means of a thirty (30) day written notification of termination from either party to the other. In the event of Artist death, the estate of Artist shall be considered to the Artist for purposes of this Agreement. After the notification of termination has been received, Gallery and Artist shall settle all accounts according to the usual process and time limits in this Agreement.
- 15. Assignability:** All assignments of rights or delegation of duties under this agreement are void.
- 16. Notices:** All notices required by this agreement shall be made in writing, postage prepaid, certified mail, return receipt requested, or by facsimile transmission to the addresses or numbers first given above, or by hand delivery. Notice shall be deemed received two (2) days after the date of mailing or the day after it is faxed or hand delivered.
- 17. Attorney's Fees.** In the event that action, suit or legal proceedings are initiated or brought to enforce any or all of the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and disbursements.

18. **Venue:** This Agreement shall be deemed executed in the State of Michigan and shall be interpreted and construed in accordance with the laws of the State of Michigan. Venue shall be proper only in Washtenaw County, in the State of Michigan.
19. **Merger:** The Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, understandings, and proposals (whether written or oral) in respect to the matters specified.
20. **Modification:** No alteration, modification, amendment, addition, deletion, or change to this Agreement shall be effective or binding unless and until such alterations, modifications, amendments, additions, deletions, or changes are properly executed in writing and signed by both parties.
21. **Headings:** All headings used in the Agreement are for reference purposes only and are not intended or deemed to limit or affect, in any way, the meaning or interpretation of any of the terms and provision of this Agreement.
22. **Judicial Rule of Construction:** It is expressly agreed by the parties hereto that the judicial rule of construction that a document should be more strictly construed against the draftsman thereof shall not apply to any provision.
23. **Waiver:** No waiver by either party of any breach or default hereunder shall be considered a waiver of any future breach or default or in any way affect any of the other terms and conditions hereof.
24. **Severability:** If any provisions of this Agreement is judicially declared to be invalid, unenforceable, or void by a court of competent jurisdiction, such decision shall not have the effect of invalidating or voiding the remainder of this Agreement, and the parts or parts of this Agreement so held to be invalid, unenforceable, or void shall be deemed deleted from this Agreement, and the remainder of this Agreement shall have the same force and effect as if such part or parts had never been attached.
25. **Counterparts:** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement.
26. **Effective Date:** The Agreement is effective as of the date all parties hereto have executed this Agreement.

In Witness Whereof, the parties hereto execute and date this agreement.

Artist: _____ _____
Date

Print Name: _____

Fed. Tax I.D. (EIN): _____

Gallery: _____ _____
Date

Print Name: _____

Fed. Tax I.D. (EIN): _____