

Art Project Purchase Agreement

THIS AGREEMENT is made and entered into this _____ by and between _____, (“Buyer”), resident of _____, and _____, (“Seller”), a resident of _____.

WITNESSETH

WHEREAS, Seller is an artist and has developed an art project (“Project”);

WHEREAS, Seller Project consists of Seller Intellectual Property as described in Article 1, Section 1.01.(a);

WHEREAS, Buyer is a visual artist and desires to purchase the previously mentioned Project and make Project part of Buyer’s art oeuvre;

WHEREAS, Seller now wishes to sell and transfer all its right, title, and interest to the previously mentioned Project, and Buyer is willing to purchase the previously mentioned Project on the terms described in this Art Project Purchase Agreement (“Agreement”);

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and subject to the terms and conditions of this Agreement, the parties agree as follows:

Article 1. — Definitions

Section 1.01. For purposes of this Agreement, the following words, terms and phrases, where written with an initial capital letter, shall have the following meanings:

(a) “Seller Intellectual Property Rights” shall mean the following rights in and to Project:

(i) All rights, title, and interests in and to the Project idea (“Idea”). The Idea consists of:

(ii) All rights, title, and interests in and to all ideas and trade secrets of the Project arising under the common law, state law, federal law and laws of foreign countries; and

(iii) All rights, title, and interests in and to all copyrights and copyrighted interests, and all other visual, audio, literary property and author rights, whether or not copyrightable; and all rights, title and interests in all copyright registrations; and

(iv) All rights, title, and interests in and to all know-how and show-how whether or not protectable by patent, copyright, trade secret, or as trade mark.

(b) “Software” shall mean all Seller software programs recorded on or in any medium, and whether embedded or in object code or source code form.

Article 2. — Purchase Agreement

Section 2.01. Sale and Purchase of Project. Subject to the terms of this Agreement, at the Closing (defined below), Seller agrees to and shall sell, transfer and deliver to Buyer all of the Seller Project, free and clear of all liens, security interests, liabilities and encumbrances, and Buyer agrees to and shall purchase the Project at the price and in the manner set forth in § 2.02 of this Agreement.

Section 2.02. Purchase Price. The purchase price to be paid by Buyer to Seller for the Project (the “Purchase Price”) shall be \$_____. Buyer shall pay the Purchase Price to Seller at Closing by: (i) issuing and delivering to Seller a personal check. Seller acknowledges and agrees that Buyer is not assuming any other liabilities or obligations of Seller whatsoever, and Seller agrees that Buyer shall not be or become liable for any losses, claims, demands, damages, costs, expenses, liabilities or obligations not expressly assumed by it of any kind whatsoever, whether fixed or contingent, matured or unmatured, known or unknown, including without limitation those arising out of or relating to the Seller’s assets, properties and business prior to the Closing date.

Section 2.03. Closing Date. The closing for the transactions described in this Agreement shall take place contemporaneously with the execution of this Agreement at the offices of the Buyer, or on such other place and date as may be fixed by mutual consent of the parties. The date of such consummation is the Closing date or the Closing referred to in this Agreement.

Article 3. — Covenants, Representations, and Warranties of Seller

Section 3.01. Authority to Execute Agreement. Seller has the legal power and right to enter this agreement.

Section 3.02. Matters Relating to Project. Seller represents, warrants, and covenants as follows with respect to the Seller Intellectual Property Rights:

(a) Seller owns, or is licensed or otherwise possesses legally enforceable rights to use, all domestic and, to the best of its actual knowledge and belief, foreign patents or patent applications, patent licenses, software and software licenses, know-how and know-how licenses, registered or unregistered trademarks and service marks and any applications therefor, registered or unregistered trademarks and service marks and any applications therefor, registered or unregistered copyrights, trade names, and any applications therefor, trade secrets, or other confidential proprietary information used or proposed to be used in the business of Seller as currently conducted or as proposed to be conducted.

(b) Seller, to the best of its actual knowledge and belief, owns all rights, title, and interests in and to Seller Intellectual Property Rights, including but without limitation, the right to make, use, sell, import, assign, and license the same, and sufficient rights to complete the transfer of rights to Buyer.

(c) Seller shall take all actions necessary to ensure that Buyer is granted the rights to use any third-party intellectual property (“Third-Party Intellectual Property”) on the same terms and conditions available to Seller immediately prior to the consummation of the transactions described in this Agreement.

(d) No claim or action with respect to Seller Intellectual Property Rights or Third-Party Intellectual Property (to the extent arising out of any use, reproduction or distribution of such Third-Party Intellectual Property by or through Seller) has been asserted or is pending or, to the knowledge of Seller, is threatened, by any person, nor does Seller know of any valid grounds for any claims: (i) to the effect that the manufacture, sale, licensing or use of any product as now used, sold or licensed or proposed for use, sale or license by Seller infringes on any right of any third party; (ii) regarding infringement, misappropriation or breach with regards to any Seller Intellectual Property Rights; (iii) against the use by Seller of any Seller Intellectual Property Rights; (iv) challenging the ownership, validity or effectiveness of Seller Intellectual Property Rights; or (v) challenging Seller’s license or legally enforceable right to use in any manner whatsoever any Third-Party Intellectual Property Rights. To Seller’s best actual knowledge and belief, Seller will not be, as a result of the execution and delivery of this Agreement by Seller or the performance of Seller’s obligations hereunder in material violation of any license, sublicense or agreement.

(e) There is no unauthorized use, disclosure, infringement or misappropriation of any Seller Intellectual Property Rights by any employee of or consultant to or former employee of or consultant to Seller or, to Seller’s best actual knowledge and belief, by any third party. Seller: (i) has not been sued or charged in writing as a defendant in any claim, suit, action, or proceeding which involves a claim of infringement of any patents, trademarks, service marks, right of publicity, right of privacy, copyrights or violation of any trade secret or other proprietary right of any third

party; and (ii) has no knowledge of any infringement liability with respect to, or infringement or violation by, Seller of any right of another.

(f) No employee of or consultant to Seller is in default under any term of any employment contract, agreement or arrangement relating to Seller Intellectual Property Rights or any noncompetition arrangement, other contract, or any restrictive covenant relating to Seller Intellectual Property Rights. Seller Intellectual Property was developed entirely by the employees or consultants to Seller during the time they were employed by Seller and such Seller Intellectual Property Rights do not include any invention or other intellectual property of such employees or consultants made prior to the time such employees or consultants were employed by Seller, nor any intellectual property of any previous employer of such employees or consultants nor the intellectual property of any other person or entity. Every employee of or consultant to Seller has executed a work-for-hire and proprietary rights assignment agreement in favor of Seller.

(g) No employee of Seller is subject to any judgment, decree or order of any court or administrative agency that would interfere with the use of such employee's best efforts to promote the interests of Seller or that would conflict with Seller's business as now conducted. Neither the execution or the delivery of this Agreement, nor the carrying on of Seller's business by the employees of Seller, will, to Seller's knowledge, conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument under which any of such employees is now obligated.

(h) Seller has taken all reasonable precautions up through the date of this Agreement to preserve and defend the Seller Intellectual Property Rights, including but not limited to requiring all of its employees, contractors and consultants to sign confidentiality agreements and assignments of intellectual property immediately upon their retention by Seller.

(i) Seller agrees that it shall indemnify, hold harmless, and defend (and pay any and all other expenses and attorney's fees in connection therewith) Buyer and its officers, directors, agents, and employees, from and against any and all liability, loss, claims, and/or actions arising from any breach of the representations and warranties set forth in this Agreement including, without limiting the generality of the foregoing, any claim or action brought against Buyer and/or any other person or entity selling or using products embodying Seller Intellectual Property Rights (the "Indemnified Party") which alleges that the Indemnified Party's use of the Seller Intellectual Property Rights infringe any right of publicity, right of privacy, trademark, patent, copyright, trade secret or other intellectual property right of any other person or entity.

Section 3.03. No Litigation or Proceeding Pending or Threatened. Seller is not party to, nor has it been threatened with, any litigation or governmental proceeding which, if decided adversely to it, would have a material adverse effect upon the transaction contemplated by this Agreement, or upon the financial condition, net worth, prospects, or business of Seller, or would create a material liability on its part.

Section 3.04. No Restriction Preventing Transaction. Seller is not subject to any charter, bylaw, deed of trust, lien, lease, agreement, or any other restriction of any kind which would prevent consummation of the transaction contemplated by this agreement.

Section 3.05. Disclosure. At the date of this agreement, Seller has disclosed all events, conditions, and facts materially affecting the Project of Seller. Seller has not withheld knowledge of any such events, conditions, and facts which it knows, or has reasonable ground to know, may materially affect the Project of Seller or the transaction contemplated by this agreement. None of the representations and warranties made by Seller and contained in any electronic mail (e-mail), certificate or other instrument furnished or to be furnished to Buyer pursuant to this Agreement contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary in order to make the statements contained in this Agreement not misleading.

Section 3.06. Buyer will use any information so secured for its own purposes in connection with the consummation of the transaction contemplated by this Agreement, and may divulge the information to any person, persons, or entity not entitled thereto.

Section 3.07. Sale. Seller agrees that Buyer has the right to use or not use the Project and to sell, use, reproduce, re-use, alter, modify, edit, or change the Project as Buyer sees fit and for any purpose without consent of the Seller.

Article 4. — Covenants, Representations, and Warranties of Buyer

Section 4.01. Authority to Execute Agreement. Buyer has the legal power and right to enter this agreement.

Section 4.02. License. Buyer agrees that Seller has the right to use or not use the Project and to sell, use, reproduce, re-use, alter, modify, edit, or change the Project as Seller sees fit and for any purpose without consent of the Buyer.

Article 5. — Consummation of Transaction

Section 5.01. Consideration of Seller. Seller will deliver to Buyer on the Closing date, effective instruments of transfer in a form satisfactory to counsel for Buyer, transferring and delivering to Buyer the Seller Intellectual Property Rights. Seller agrees that, following the Closing, it shall continue to do all acts and things and to make, execute and deliver such additional written instruments as shall be reasonably necessary to carry out the terms and provisions of this Agreement and to transfer to Buyer all rights relating to ownership and use of the Seller Intellectual Property Rights including, without limitation, providing such technical assistance as the Buyer

may reasonably request with respect to use and exploitation of the Seller Intellectual Property Rights.

Section 5.02. Consideration of Buyer. Upon receipt of the consideration referred to in § 5.01, Buyer shall deliver to Seller, on the Closing date, a personal check for the Purchase Price.

Section 5.03. Expenses. Buyer shall pay its own, and Seller shall pay its own, expenses and costs incident to the preparation of this agreement and to its consummation.

Article 6. — Interpretation and Enforcement

Section 6.01. Notices. Any notice or other communication required or permitted hereunder shall be deemed to be properly given when sent via electronic mail (e-mail) or when deposited in the U.S. mails for transmittal by certified or registered mail, postage prepaid, if such communication is addressed:

(a) In the case of Buyer, to: _____, available via e-mail at _____, and residing at _____.

(b) In the case of Seller, to: _____, available via e-mail at _____ and residing at _____.

Section 6.02. Assignment

(a) Except as limited by the provisions of subsection (b), this agreement shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the parties, as well as the parties.

(b) Any assignment of this agreement or the rights hereunder of any of the parties, without the written consent of the other parties, shall be valid.

Section 6.03. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the transaction contemplated by this Agreement and supersedes all prior agreements and understandings between the parties with respect to such transaction. It may be executed in any number of counterparts, each of which shall be deemed an original, but such counterparts together shall constitute only one and the same instrument.

Section 6.04. Controlling Law and Venue. The validity, interpretation, and performance of this agreement shall be controlled by and construed under the laws of the State of New York, the state in which this agreement is being executed. All disputes hereunder shall be resolved in the applicable state or federal courts of New York State. The parties consent to the jurisdiction of such courts, agree to accept service of process by mail, and waive any jurisdictional or venue defenses otherwise available.

Section 6.05. Mediation. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof shall be settled by a mediator in the Kings County, New York, in accordance with the standard procedures for mediation.

Section 6.06. Waiver. No waiver by either party of any default shall be deemed as a waiver of any prior or subsequent default of the same or other provisions of this Agreement.

Section 6.07. Severability. If any provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision and such invalid provision shall be deemed to be severed from the Agreement.

IN WITNESS, the parties have caused this Agreement to be executed as of the day and year first above written.

Buyer:

Seller:
