

## BY WESTERN HANDS CONSIGNMENT AGREEMENT

This Consignment Agreement ("**Agreement**") made and entered into effective the 1st day of June, 202\_\_ ("**Effective Date**"), by and between \_\_\_\_\_], as consignor ("**Artisan**"), and BY WESTERN HANDS, a Wyoming non-profit public benefit corporation, as consignee ("**BWH**"). Artisan and BWH are sometimes referred to individually as "Party" and collectively as "Parties" to this Agreement.

### RECITALS

- A. Artisan has been selected as a BWH Artisan and is a designer, craftsman, maker and owner of original and authentic pieces of functional art in the style of Western design and craftsmanship (collectively "**Works**"). Artisan agrees to deliver possession of and consign certain Selected Works, chosen by BWH and specifically identified, **in a Member Intake Form** for each Selected Work. , The Selected Works shall be available to BWH for exhibition and display for the benefit and education of the public as original and authentic Works in gallery and exhibition space maintained by BWH in Cody, Wyoming ("**BWH Gallery**"), be featured on the **BWH Website** for sale to the public, and in Regional Shows as provided in this Agreement.
- B. BWH agrees to accept Selected Works identified on Member Intake Forms on consignment for exhibition, photography and display to the public at BWH Gallery, BWH Website, and Regional Shows away from Cody, Wyoming subject to sale by Artisan on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual agreements set forth in this Agreement, the parties agree as follows,

1. **Term.** The term of this Agreement shall commence on the Effective Date shown above and shall remain in effect for the year or portion of the year beginning on the Effective Date and ending May 31, 202\_\_ (the "**Initial Term**"). Following the Initial Term this Agreement shall automatically renew for a period of one year beginning on June 1 immediately following the end of the Initial Term and ending on the next following May 31, (a "**Renewal Term**").
- (a) During the Initial Term and any Renewal Term either Party may terminate the Agreement upon thirty (30) days advance written notice of termination to the other Party.
- (b) In the event of any termination of this Agreement, the terms and conditions of this Agreement shall remain in effect with respect to any Works or Selected Works that are subject to this Agreement at the time of notice of termination until possession of any and all of such Works or Selected Works has been delivered by BWH from the BWH Gallery to Artisan and deleted from the BWH Website.

2. **Selection of Works for Consignment.** BWH will only accept consignment of Selected Works. Artisan is responsible for submitting each Work offered by Artisan for selection by BWH to BWH for approval and acceptance as a Selected Work prior to delivery to BWH Gallery and/or listing on the BWH Website.

- (a) Artisan is responsible for allowing BWH to inspect all Works offered for selection and for providing detailed specifications of each Work.
- (b) Artisan represents and warrants that all Selected Works delivered by Artisan to BWH for consignment in the BWH Gallery or for sale on the BWH Website ("**Consigned Works**") will be of the design and construction quality that meets the quality standards of BWH and will meet the criteria for being selected as suitable for exhibit and display in BWH Gallery.
- (c) BWH is under no obligation to approve or accept any Work as a Consigned Work as determined in its sole discretion, including but not limited to any Work that: (1) does not satisfy its standards of Western design, construction or craftsmanship as determined by BWH, (2) does not carry out its mission to inform and educate the public, or (3) is inappropriate politically or socially distasteful as determined by BWH.
- (d) It is imperative that BWH continuously ensures that the BWH Gallery and BWH Website are managed efficiently and effectively. As such, Artisans pieces may be reviewed to accommodate a balanced inventory in the BWH Gallery and on the BWH Website, and therefore Works may be delisted, and if located in the BWH Gallery returned to the possession of the Artisan, and/or removed from the BWH Website. In the event that a Work is delisted, the consignment is terminated.
- (e) All Consigned Works accepted by BWH for consignment shall be listed on **Member Intake Form**. The Parties shall amend or amend and restate **Member Intake Form** from time to time and as often as required to update and maintain a complete and accurate list of all Consigned Works on consignment and to remove all Works delisted and for which consignment is terminated.
- (f) All Consigned Works shall have affixed a BWH Medallion provided by BWH.

3. **Delivery of Works for Consignment in BWH Gallery.** BWH will accept delivery of Works at the BWH Gallery only if the Works are Consigned Works and if: (1) they are delivered in person by Artisan or (2) delivered by commercial freight carrier or common carrier with freight and delivery charges fully prepaid by Artisan and notice of delivery in writing is given by Artisan to BWH prior to delivery.

4. **Condition of Works for Consignment.** All Consigned Works will be in good and marketable condition and ready for exhibit and display and, if for sale, also in suitable condition for sale, when delivered by Artisan to BWH Gallery or photographed for the

BWH Website. BWH is not obligated to accept delivery of any Consigned Work that does not satisfy the quality standards of BWH set forth in this Agreement.

5. **Packing, Shipping and Delivery.** All cost and expense of shipping and delivery of Consigned Works for the BWH Gallery, choice of shipping method and packaging, and risk of loss of and damage to Consigned Works for delivery to the BWH Gallery are the sole responsibility of Artisan. Artisan shall be solely responsible for unpacking and inspecting the condition of all Consigned Works delivered by commercial freight or common carrier to BWH Gallery unless Artisan notifies and authorizes BWH, in writing, to unpack and inspect a Consigned Work when delivered to BWH Gallery. BWH will promptly notify Artisan of any loss or damage to the Consigned Work that is apparent to BWH on inspection. BWH shall be solely responsible for packing all Consigned Works for delivery by commercial freight or common carrier from BWH and BWH will accommodate packing and shipping directly from the BWH Gallery.

- (a) In the event any Consigned Work is sold by Artisan while consigned to and located at the BWH Galle, BWH will cooperate with Artisan to accommodate packing and shipping directly from the BWH Gallery to a purchaser of the Consigned Work.
- (b) Regardless of the method of packing, shipping and delivery of any Consigned Work at the BWH Gallery to a purchaser of the Consigned Work, the purchaser shall be and remain solely responsible and liable for all loss and damage to the Consigned Work, for delivery of the Consigned Work to the purchaser, and for all costs of packing, shipping and delivery of the Consigned Work to the purchaser.
- (c) In the event any sale is made through the BWH Website packing, shipping and delivery of the work to a purchaser, the purchaser assumes and shall be and remain solely responsible and liable for all loss and damage to the Work, for delivery of the Work to the purchaser, and for all costs of packing, shipping and delivery of the Work to the purchaser.

6. **Loss and Damage.** BWH will bear the risk of loss and be responsible for damage for any Consigned Work that is in the possession of BWH at the BWH Gallery, if and only after the Consigned Work has been identified, inspected and accepted by BWH and is listed on **Member Intake Form**. In the event that any Consigned Work is damaged in transit or delivered to BWH in damaged condition, BWH will immediately notify Artisan. BWH will assist Artisan in making claims for any Consigned Work that is damaged in transit or delivered in damaged condition; however, all responsibility for making claims for loss of or damage to any Consigned Work delivered to BWH Gallery shall remain the sole responsibility of Artisan.

7. **Consignment and Title.** All Consigned Works are and shall remain the property of Artisan while the Consigned Works are on consignment. If a Consigned Work is sold, Artisan agrees that, when sold, Artisan will be solely responsible for transferring and

conveying good and marketable title to the Consigned Work to the purchaser, subject to receipt of the purchase price from the purchaser and satisfaction other terms of sale.

8. **Security Interest in Consigned Works.** To the extent the delivery of Consigned Works to BWH by Artisan is subject to Article 9 of the Uniform Commercial Code, or other applicable law, BWH hereby grants to Artisan, a security interest in the Consigned Works, subject to all provisions of the Uniform Commercial Code or other applicable law, and authorizes Artisan to file a financing statement or other documents necessary in the sole discretion of Artisan to perfect Artisan's security interest in the Consigned Works, at the sole expense of Artisan.

9. **Retained Consigned Works.** Possession of any of Consigned Work or Works by BWH at the time of the execution of this Agreement for the Initial Term or any Renewal Term may be retained by BWH subject to the terms and conditions of this Agreement unless otherwise mutually agreed in writing by both BWH and Artisan; provided that all such retained Consigned Works are listed on **Member Intake Form**.

10. **Sale of Consigned Works.** Artisan offers for sale all Consigned Work while the Consigned Work is consigned to and in possession of BWH at BWH Gallery, on BWH Website and at Regional Shows.

- (a) **Selling Price for Consigned Works.** For each Consigned Work that Artisan intends to offer for sale, Artisan and BWH shall agree to a Member Payout Price set forth on the Member Intake Form for each Selected Works. BWH and Artisan may adjust the Member Payout Price by agreeing to a new Member Intake Form for the Consigned Work.
- (b) **Expressions of Interest in Purchase.** BWH will do the following in the absence of the Artisan from the BWH Gallery: (1) to communicate to any prospective purchaser or any member of the public, who asks about the sale and purchase of any Consigned Work, the sale price of the Consigned Work as listed on the Member Intake Form, if any, and the contact information for the Artisan; and (2) to notify Artisan of an expression of interest in purchasing a Consigned Work by a prospective purchaser or any member of the public.
- (c) **Receipt of Sales Proceeds in BWH Gallery.** In the event of sale of any Consigned Work at the BWH Gallery, Artisan authorizes BWH, in the absence of Artisan from the BWH Gallery, to accept sales proceeds from a purchaser of any Consigned Work that Artisan agrees to sell at the sale price listed on Member Intake Form.
- (d) **Receipt of Sales Proceeds from BWH Gallery.** In the event of sale of any Consigned Work from the BWH Website, Artisan authorized BWH to accept the sales proceeds from a purchaser of any Consigned Work at the sale price listed on the Member Intake Form.
- (e) **Remittance of Sales Proceeds.** BWH will remit to Artisan all proceeds received from a purchaser within **ten (10) business days** following receipt of

payment for any Consigned Work by the purchaser as reflected in the invoice for any Consigned Work to the purchaser less the amount of any consignment fee due to BWH with respect to the sale of the Consigned Work.

- (f) **Sales Tax.** Sales tax shall be collected by BWH at the time of a sale of a Consigned Work, funded to appropriate tax authorities and reported on each sales receipt.
- (g) **Reporting.** BWH will notify Artisan by facsimile or e-mail no later than the close of business on the tenth (10th) business day following any sale of any Consigned Work at the BWH Gallery or from the BWH Website. BWH is authorized to use the fax number and e-mail address are shown at the end of this Agreement.
- (h) **Amount of Consignment Fee.** Unless otherwise agreed in writing by BWH and Artisan, the Consignment Fee for each Consigned Work is an amount equal to thirty percent (30%) of the selling price paid by the purchaser for the Consigned Work.
- (i) **Trade Program.** BWH offers a Trade Program to design professionals accepted through an application process. . Accepted members of the Trade Program receive a total 10% discount on eligible purchases. Artisan agrees to providing design professionals a 5% discount on certain Consigned Works that the Artisan agrees to on the Member Intake Form.

11. **No Agency.** BWH is not an agent or representative of Artisan for the purpose of or in connection with any sale of a Consigned Work by Artisan to any prospective purchaser or purchaser or for any other purpose.

12. **Consignment Fees:** BWH is entitled to receive and Artisan is obligated to pay to BWH a consignment fee with respect to and at the time of the sale of any Consigned Work. The consignment fee is due and payable to BWH by the Artisan at the time the purchaser pays for the Consigned Work and Artisan shall pay BWH at the time payment of the purchase price is received by the Artisan; provided, however, that, if BWH accepts payment of the sale price of any Consigned Work from the purchaser, Artisan authorizes BWH to deduct the consignment fee from the amount collected from the purchaser by BWH if Artisan requests and authorizes BWH to collect the sales price from the purchaser of the Consigned Work; and in any event, the consignment fee shall have been received by BWH before the Consigned Work is delivered or shipped to the purchaser.

13. **Returned Works.** BWH is not authorized and is not responsible for accepting or taking delivery of any Consigned Work that is returned or attempted to be returned by a purchaser unless by mutual agreement in writing with Artisan before a return is authorized or accepted by BWH.

14. **Storage and Disposition of Inbound Products.** During the time that the Works are in possession of BWH, BWH shall be responsible for any and all damage and/or loss to the Works caused at any time for any reason.

15. **Physical Inspection of Works.** Artisan may visit BWH Gallery and inspect Consigned Works at any time during regular business hours.

16. **Insurance.** BWH shall be responsible for insurance coverage for the Consigned Works at all times while the Consigned Works are under control, custody or possession of BWH at the BWH Gallery and at Regional Shows at sole expense of BWH. The insurance policy shall specifically include coverage for, but shall not be limited to fire, theft and physical damage on an "all risk" basis in an amount equal to the Member Payout Price specified for each Consigned Work set forth on a Member Intake Form. Artisan will accept the Member Payout Price for each Consigned Work as listed on the Member Intake Form in lieu of accepting a return of the Consigned Work.

17. **Works Returned to Artisan.** BWH agrees to keep each Consigned Work on exhibit and display and Artisan agrees to leave each Consigned Work on exhibit and display for a minimum of period of three (3) months and for a maximum period of twelve (12) months before returning the Consigned Work to Artisan. Artisan may request to take possession of any Consigned Work from BWH at any time after three (3) months: provided that Artisan gives BWH not less than ten (10) days written notice. Artisan will be responsible for all return expenses, i.e., packing, shipping, freight, insurance, etc., unless otherwise mutually agreed by both BWH and Artisan in advance and in writing. BWH is not responsible for any loss or damage to any Consigned Work after delivering possession of the Consigned Work to Artisan.

18. **Termination of Consignment.** Artisan is required to take possession of and remove from BWH Gallery any Work for which consignment has terminated for any reason at the sole expense of Artisan.

19. **Severability.** If any term or provision of this Agreement shall be held to be invalid, illegal or unenforceable in any respect or in any jurisdiction, then such invalidity, illegality or unenforceability shall not affect any other provision hereof and such provisions shall be limited and construed in such jurisdiction as if such invalid, illegal or unenforceable term or provision were not contained herein.

20. **Governing Law.** The law of the State of Wyoming shall govern the construction, interpretation and performance of this agreement. The parties agree that the sole venue for filing actions to enforce or construe this Agreement, or any provisions hereof, shall be in the District Court, Fifth Judicial District, Park County, Wyoming, and all parties hereby submit themselves to the jurisdiction of such courts relative to any such actions.

21. **Successors and Assigns.** BWH may not assign its rights and obligations under this Agreement without the prior written consent of Artisan. Artisan may not assign any of its rights or obligations under this Agreement without the prior written consent of BWH. If Artisan is permitted to assign its rights under this Agreement: (1) the provisions of this

Agreement shall be binding upon the assignee and its successors and permitted assigns; and (2) assignor and assignee shall enter into written assignment rights and assumption of the obligations and liabilities of Artisan under this Agreement by the permitted assignee.

22. **Execution in Counterparts.** This Agreement may be executed and delivered by the Parties in counterparts (each of which shall be considered for all purposes an original) and by facsimile and when a counterpart has been executed and delivered by each of the Parties, by facsimile or otherwise, all such counterparts and facsimiles shall together constitute one Agreement.

23. **Attorneys Fees.** In the event either Party must take legal action to enforce the terms of this Agreement, the prevailing party is entitled to recover its attorney's fees, expenses and costs.

24. **Entire Agreement.** This Agreement contains the entire Agreement between the parties and supersedes all previous negotiations, commitments and writings. This Agreement may not be altered, amended or modified except in writing signed by both Parties.

[Signature Page Follows]

CONSIGNMENT AGREEMENT

Signature Page

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year indicated below.

**Artisan:** \_\_\_\_\_  
[name of Artisan or business name]

Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
FAX: \_\_\_\_\_  
Attn: \_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Artisan*  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Consignee: BY WESTERN HANDS**

Physical Address: 1007 12<sup>th</sup> Street  
Mailing Address: P.O. Box 1661  
Cody, WY 82414

Phone: \_\_\_\_\_  
E-Mail: \_\_\_\_\_  
FAX: \_\_\_\_\_  
Attn: \_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Officer  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_