



808 Park Ave SW
Albuquerque NM 87102
www.OFFCenterarts.org
(505) 247-1172

OFFCenter Artist Gallery Contract | 20 ____

Full Name _____

Street: _____

City: _____ State: _____ Zip Code: _____

Phone: _____ Email: _____

This contract is made effective as of date, _____ by and between OFFCenter Community Arts Project, 808 Park Avenue SW, Albuquerque, New Mexico 87102 and the Gallery artist named above.

The parties agree as follows:

1. RIGHT TO SELL The artist grants OFFCenter Community Arts Project (hereafter, "OFFCenter"), per this contract, exclusive rights to sell and market any artwork provided by the contracted artist/individual. The artwork under the terms of this contract (any artwork supplied by the artists and on hand at OFFCenter) may not be sold/marketed outside of OFFCenter by any other business/corporation/organization without express written consent by OFFCenter. OFFCenter agrees to devote its best efforts to the sale of the artwork. The artist will determine the sale prices and all sales are final.

2. PROCEEDS OF SALE/COMMISSION OFFCenter will retain a percentage of each sale. The remaining percentage is paid to the artist on a consecutive basis. Current commission is calculated and paid out as follows:

The artist is paid 85% of the net amount from the sale with the remaining 15% retained by OFFCenter as commission. Payment(s) are made to the artist on or before the fifteenth day of the month following the month in which the artwork was sold and monies were obtained.

Checks can be picked up during regular business hours or unless special arrangements have been made. OFFCenter will make three attempts by phone or email to contact the artist to pick up their check or have it mailed. Checks not picked up and deposited within 180 days (6 months) of the date issued, will not be honored by our bank, nor will the check be reissued by OFFCenter.

3. RECORDS The artist will provide an accurate inventory of their artwork that is made available to OFFCenter's gallery (either copies of their own inventory or with the provided inventory form). Inventory should be updated regularly. Records should include, but are not limited to: item description(s), amounts, dates in/out of OFFCenter, price, etcetera. OFFCenter will keep such records on hand where the artist shall have available access to update/inspect at any time during business hours. OFFCenter will provide a written report to the artist that calculates the amount of the commission and the items sold. Descriptions of items sold are determined by the artist (e.g. title), and lack of proper description(s) may result in general or no item description(s) on the report.



4. TITLE TO MERCHANDISE Merchandise shall remain the property of the artist until sold. If merchandise is not sold within 120 days (4 months) on view, OFFCenter reserves the right to remove merchandise from sale and will return merchandise to the artist. OFFCenter will attempt to contact artist three times by phone and/or email for return of unsold merchandise. Artist that do not recover unsold consigned merchandise within 30 days from the third attempted contact, the merchandise will become the property of OFFCenter.

5. RIGHT OF OWNERSHIP. This only applies to the physical item and not the content, image, or intellectual property of the merchandise. OFFCenter makes no agreement in regards to the content/intellectual property of the artwork or merchandise. Merchandise, in the form of physical artwork shall remain the property of the artist until sold. Publishing/marketing rights remain property of the artist outside of OFFCenter's right to use for marketing while on hand and prior to the sale concerning items formally on hand and documented for use in regards to marketing.

6. COPYRIGHT. OFFCenter shall take all steps necessary to insure that the artist's copyright(s) of the works on hand are protected, including but not limited to requiring copyright notices on all reproductions of the works used for any purpose whatsoever.

Copyright Permission. Artist grants to OFFCenter: **(a)** the right to display the Artwork in the Gallery; and **(b)** the irrevocable right to use images of the Artwork in materials about or relating to the exhibition of the Artwork and/or OFFCenter, and to allow others to do so, in all media now known or later developed and including the Internet and the World Wide Web, provided that such use shall not be for commercial purposes. This grant shall survive the termination of this Agreement.

Personality Rights. Artist grants OFFCenter the irrevocable right to use Artist's name, photograph, likeness, and biography in connection with OFFCenter's exercise of the rights granted in this Agreement. The grant shall survive the termination of this Agreement.

7. CONDITION OF ARTWORK UPON DELIVERY The absence of any notation on this contract, or its attachments as to the condition of the Artwork at the time it was received by OFFCenter shall not mean it was in good condition on receipt. Attributions, data, valuations, or price, and any other information shown on the artwork, attachments or Artwork Inventory List are provided by the Artist unless otherwise specified.

8. CARE OF ARTWORK OFFCenter shall use reasonable efforts to maintain artwork in the condition it was received upon delivery and in accordance with the artist's care instructions. Except with the artist's permission, OFFCenter shall not unframe or remove the artwork from any mat, mount, or base, or attempt repairs to the artwork. OFFCenter has the right to execute any emergency preservation measure without Artist's permission if such measure, in the sole discretion of OFFCenter, is required to protect the Artwork or other property, or to protect the health and safety of OFFCenter personnel or the public. OFFCenter shall contact the Artist if any Artwork becomes damaged. The Artwork shall be removed from the gallery and shall be replaced when the Artist fixes the consigned merchandise. **OFFCenter is not liable for any loss or damage to artwork.**

9. SURRENDER AND REMOVAL The Artwork will be returned only to Artist or to Artist's authorized agent or representative, or, in the event of the death of Artist, to the authorized legal representative of the estate of Artist. OFFCenter may request removal of the Artwork at any time by contacting Artist by mail, email or phone.



10. SECURITY, RISK AND INDEMNIFICATION OFFCenter shall exercise as much care in respect to the Artwork as OFFCenter does in safeguarding its own property. Notwithstanding the foregoing, the Artist acknowledges and agrees that OFFCenter will provide no additional security for the Artwork. Artist bears sole responsibility for obtaining and maintaining insurance for the Artwork while it is being installed or uninstalled, and on exhibit. Artist agrees that the value they selects for insurance purposes is the true value of the Artwork.

Artist agrees to indemnify, defend and hold OFFCenter harmless from any liability (including attorney's fees and the costs of defending any actions) arising out of any claim by any individual, institution, or other person claiming full or partial title or copyright to the Artwork. Artist accepts all risk associated with the Artwork being on display or stored at OFFCenter, and hereby releases all claims and subrogation against OFFCenter for any loss or damage to the Artwork, however caused. The Artists agrees not to hold OFFCenter responsible for any shortages, loss, or damage, while the merchandise is under the control of OFFCenter

11. DEFAULTS If OFFCenter Community Arts Project fails to abide by the obligations of this Agreement, including the obligation to remit the consignment payment to the Artist when due, the Artist shall have the option to cancel this Agreement at will. OFFCenter Community Arts Project shall have the option of preventing the termination of this Agreement by taking corrective action that cures the default, if such corrective action is taken prior to the end of the period stated in the previous sentence, and if there are no other defaults during such time period.

12. DISPUTE RESOLUTION. The parties will attempt to resolve any dispute arising out of or relating to this Agreement through friendly negotiations amongst the parties. If the matter is not resolved by negotiation, the parties will resolve the dispute using the below Alternative Dispute Resolution (ADR) procedure. Any controversies or disputes arising out of or relating to this Agreement will be submitted to mediation in accordance with any statutory rules of mediation. If mediation does not successfully resolve the dispute, the parties may proceed to seek an alternative form of resolution in accordance with any other rights and remedies afforded to them by law.

13. WARRANTIES AND REPRESENTATIONS. Artist represents and warrants that he or she: (a) is the sole creator of the Artwork; (b) is the owner of the Artwork and all of the rights under copyright in the Artwork; (c) has full authority to loan the Artwork and grant the rights provided in this Agreement. Artist further represents and warrants that nothing in the Artwork defames any person or entity, infringes any copyright, or otherwise violates the rights of any third party.

14. TRANSFER OF RIGHTS. This Agreement shall be binding on any successors of the parties. Neither party shall have the right to assign its interests in this Agreement unless the prior written consent of the other party is obtained.

15. TERMINATION. Either party may terminate this Agreement by providing 30 days' written notice to the other party.

16. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement and there are no other promises or conditions in any other agreement, whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties with respect to the subject matter of this agreement.

17. AMENDMENT. This Agreement may be modified or amended, if the amendment is made in writing and is signed by both parties.



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18. SEVERABILITY. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

19. WAIVER OF CONTRACTUAL RIGHT. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

20. APPLICABLE LAW. This Agreement shall be governed by the laws of the State of New Mexico.

21. SIGNATORIES. This Agreement shall be signed by the Artist and on behalf of OFFCenter Community Arts Project by Staff Name. This Agreement is effective as of the date first written above.

Artist/Client Signature:

Print Full Name

Artist Signature

Date: _____

OFFICE USE ONLY

Staff on Duty, Print Full Name

Staff Position

Staff Signature

Date: _____

GLOSSARY OF TERMS

Net Proceeds	Amount of the sale of merchandise, excluding sales taxes. OFFCenter does not pay sales tax. Net proceeds therefore is the sale amount.
Clauses	Numbered sections.
Title of Merchandise	Ownership of artwork
Defaults	Failure to fulfill an obligation stated in the contract.
Warranties	The artist made the artwork, and it does not infringe on anyone’s copyright.
Transfer of Rights	In the case of illness or death, this contract would transfer to whomever becomes your guardian or executor. You cannot pass your ownership of your artwork to someone else unless OFFCenter is notified.
Severability	Refers to a provision in a contract, which states that if clause of the contract are illegal or otherwise unenforceable, the clause of the contract still applies.
Waiver of Contractual Rights	If one part of this contract is not enforced, it means that all other parts of this contract are enforceable. For example: If your artwork breaks after it is sold, OFFCenter is still obliged to pay you for the sale (Proceeds of Sale).
Subrogation	A term describing a legal right held by most insurance carriers to legally pursue a third party that caused an insurance loss to the insured. This is done in order to recover the amount of the claim paid by the insurance carrier to the insured for the loss.
Indemnify	To guarantee against any loss which another might suffer. Example: two parties settle a dispute over a contract, and one of them may agree to pay any claims, which may arise from the contract, holding the other harmless.
Marketing	“the content, design, and quantity of publicity including print mailings, print and electronic media advertisements/announcements, content of publicity releases, posters, website and social media announcements, and the choices and presentation of reproductions in publicity.”