

LEASE AGREEMENT

FOR THE RENTAL OF ARTISTIC WORKS

Background

In May 2009, the Saskatchewan government passed a new law called *The Arts Professions Act* (the “APA”). The APA will come into force and apply on and after June 1, 2010. The APA serves to recognize artists, including by affirming and recognizing:

- the important contribution of artists to the cultural, social, economic and educational enrichment of Saskatchewan;
- the value of artistic creativity in advancing Saskatchewan’s cultural, social, economic and educational life;
- the valuable contribution of artists to Saskatchewan’s cultural heritage and development; and
- the importance of fair compensation to professional artists for the creation and use of their artistic works.

To achieve these purposes, the APA requires a written agreement whenever a person (called an “engager” in the APA) intends to hire a “professional artist”: (1) to produce an artistic work or production; (2) to present an artistic work or production to the public; or (3) to engage in the circulation or dissemination of artistic works to the public (whether by lease, exchange, deposit, exhibition, publication, publicly presenting or other similar fashion). Under the APA, each contract between a professional artist and an engager must contain certain terms. Further information on *The Arts Professions Act* of Saskatchewan is available from the Government of Saskatchewan online at www.tpcs.gov.sk.ca/arts-professions-act.

The CARFAC Saskatchewan Model Agreements

CARFAC Saskatchewan has always recognized the value of artists entering into written contracts; but CARFAC Saskatchewan also recognizes that artists are not always in a position to develop and maintain a body of contracts that meet all the requirements of the APA. To simplify matters, CARFAC Saskatchewan has worked with its lawyers to develop a set of model agreements that meet all the criteria set out in the APA and are pleased to provide this model agreement for reference.

Please note that CARFAC Saskatchewan prepared each of the foregoing model agreements to address the general requirements for a contract in the circumstances generally described by the title to the agreement. In other words, a model agreement contains only the most basic terms that might arise in the context identified by the title to the agreement. The model agreements are not comprehensive in nature; they do not contemplate anything beyond the most basic model for the relationship in question.

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Questions about the Model Agreements?

Please feel free to contact CARFAC Saskatchewan if you have questions about the General Terms or about the model agreements in general. If we are unable to help you, or if you are looking for legal advice that only a lawyer can provide, CARFAC Saskatchewan will be happy to refer you to one of our recommended lawyers.

Notice and Disclaimer

CARFAC Saskatchewan is hopeful that the model agreements will benefit artists. This introduction and all of the model agreements published or distributed by CARFAC Saskatchewan on its website or otherwise are © CARFAC Saskatchewan. All rights reserved. The model agreements were prepared by CARFAC Saskatchewan with the assistance of McDougall Gauley LLP, Barristers and Solicitors.

The model agreements have been adapted (with permission and under licence) from the work "Artists' Contracts: Agreements for Visual and Media Artists" by Paul Sanderson and Ronald N. Hier, © CARFAC Ontario, 2006. Copies of the book "Artists' Contracts: Agreements for Visual and Media Artists" may be purchased from CARFAC Ontario (www.carfaontario.ca), CARFAC National (www.carfac.ca) or CARFAC Saskatchewan (www.carfac.sk.ca).

This introduction and the model agreements are subject to an express and limited copyright licence. No part of this introduction, nor any model agreement may be reproduced or transmitted in any form or by any means, electronic or mechanical, without the prior written permission of CARFAC Saskatchewan. Notwithstanding this restriction, an authorized user or purchaser of one or more of the model agreements provided by CARFAC Saskatchewan may reproduce any part of the text of such model agreement or agreements without charge for the limited purpose of use in the user's or purchaser's business, personal, or professional practice.

The information contained in this document is intended to provide guidance and advice of a general nature to Saskatchewan artists and related businesses and individuals. Every effort has been made to provide accurate and up-to-date information, however, CARFAC Saskatchewan, CARFAC Ontario and the authors cannot accept liability for errors or omissions.

All artists and the public may access the CARFAC Saskatchewan model agreements to meet the requirements of The Arts Professional Act (Saskatchewan) or otherwise; however, those persons who do so ("you") acknowledge that CARFAC Saskatchewan created the model agreements and the accompanying notes to provide artists and others with information of a general nature only. The model agreements and accompanying notes are not intended as a substitute for professional legal consultation and legal advice in any particular case. CARFAC Saskatchewan is not entitled to, and does not by providing the template model agreements, provide legal advice. CARFAC Saskatchewan cautions you not to rely on any model agreement as professional legal advice.

CARFAC Saskatchewan encourages you to seek detailed legal advice before acting or relying upon any information contained in any model agreement or accompanying notes. While the model agreements and notes are based on information that was accurate and up-to-date as at the date of drafting, the accuracy and currency of any information will change over time. CARFAC Saskatchewan makes no representations whatsoever as to the applicability or suitability of any model agreement or any accompanying notes to any particular person or circumstance. CARFAC Saskatchewan disclaims any and all liability for any reliance by anyone upon any model agreement and the accompanying notes, if any.

You must seek the advice of a lawyer if you have any questions or concerns about the use of any model agreement.

LEASE AGREEMENT

THIS AGREEMENT (this “**Agreement**”) made effective the ___ day of _____, 20___,

BETWEEN:

_____ (the “**Artist**”)

AND:

_____ (the “**Lessee**”)

WITNESSES THAT WHEREAS the Artist is the creator and exclusive owner of certain paintings, drawings, maps, charts, plans, photographs, engravings, sculptures, works of artistic craftsmanship, architectural works, digital files and compilations of artistic works (“**Artistic Works**”) and all Intellectual Property Rights therein;

AND WHEREAS the Lessee wishes to lease certain Artistic Works from the Artist;

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Artist and the Lessee (together the “**Parties**” and each a “**Party**”), the Parties agree and covenant as follows:

1. Definitions and Interpretation

- 1.1 The definitions for words and terms not otherwise defined in the body of this Agreement are found in Schedule “A” attached to this Agreement.
- 1.2 The general provisions set forth in Schedule “A” are hereby incorporated into and form a part of this Agreement.

2. Lease

- 2.1 The Artist shall lease to the Lessee certain Artist Works which are described in Schedule “B” attached to this Agreement (the “**Leased Works**”) for the Term.
- 2.2 During the Term the Leased Works will be kept at _____ (the “**Location**”) and the Lessee shall not move the Leased Works from the Location without the prior written consent of the Artist.

3. Option to Purchase

- 3.1 Provided the Lessee is not in default of any of its obligations under this Agreement, the Lessee shall have the option during the Term to purchase any or all of the Leased Works at the purchase price listed in Schedule “B” attached to this Agreement.

- 3.2 If the Lessee wishes to exercise its option, the Lessee shall provide written notice to the Artist of the Leased Works the Lessee wishes to purchase and the Lessee shall pay to the Artist the purchase price of the optioned work listed in Schedule "B" attached to this Agreement.
- 3.3 The Lessee agrees that the purchase of a Leased Work shall be subject to the following terms:
- a. the Artist has, on thirty (30) days written notice, the right to possession of that purchased Leased Work (the "**Purchased Work**") for a period of sixty (60) consecutive days every five (5) years, from the date the Purchased Work is purchased. The Artist shall procure all-risks insurance coverage for the days the Artist possesses such Purchased Work and shall pay all costs related to the transportation of the Purchased Work;
 - b. the Lessee will use its best efforts to maintain and repair the Purchased Work and will bear responsibility and costs for same;
 - c. if any maintenance or repair of the Purchased Work is required that affects the artistic integrity of the Purchased Work, the Lessee agrees to contact and consult with the Artist before effecting any maintenance or repair, and to give the Artist the first opportunity to carry out such maintenance and repair;
 - d. should the Artist be unavailable, unwilling or unable to carry out such maintenance and repair, the Lessee shall make all reasonable efforts to maintain the artistic integrity of the Purchased Work in any maintenance or repair it undertakes;
 - e. the Artist shall retain all copyright and all other Intellectual Property Rights in and to the Purchased Work; and
 - f. the Artist reserves all moral rights in the Purchased Work and the Lessee acknowledges that the Artist has not waived his or her moral rights in the Purchased Work.
- 3.4 The selling price of the Purchased Work shall not include any taxes, levies, or duties. All such taxes, levies or duties shall be paid by the Lessee on the exercise of the option.
- 3.5 The Lessee shall pay the balance of the purchase price and all taxes, duties, and levies applicable within fourteen (14) days of the exercise of the option to purchase the Purchased Work.
4. Maintenance of Leased Works
- 4.1 The Artist shall have the sole right to determine if the Leased Works are in need of maintenance, cleaning, restoration or repairs. The Artist shall have the sole right to decide who is to perform any maintenance, cleaning, restoration or repairs. All such costs shall be paid by the Lessee.
- 4.2 The Lessee shall permit the Artist to inspect the Leased Works on twenty-four (24) hours' written notice.
- 4.3 The Lessee is solely responsible for the proper storage of the Leased Works, and agrees and covenants to be responsible for any harm, damage, or loss caused by improper storage of the Leased Works.
- 4.4 The Lessee agrees not to remove the Leased Works from its frame, base or other mounting material. The Lessee further agrees not to alter any frame, base or other mounting material of the Leased Works.

4.5 All Leased Works shall be framed or mounted by the Artist at the Artist's expense prior to the commencement of the Term.

5. Installation and Removal

5.1 If required by the Lessee or if the Artist deems it necessary, the Artist shall assist the Lessee in the installation or removal of the Leased Works.

5.2 If the Leased Works are not returned upon expiry or other termination of the Term, the Artist, his or her servants or agents shall have the right to enter the Location and remove the Leased Works without liability for trespassing.

6. Fees

6.1 The lease fee payable to the Artist shall be \$_____ per month (the "**Monthly Fee**"), exclusive of any applicable taxes, and shall be payable together with any applicable taxes on or before the 1st day of each month. The first month's Monthly Fee shall be payable on the _____ day of _____, 20_____, and thereafter Monthly Fees shall be paid on the on or before the 1st day of each month.

6.2 The Artist acknowledges receipt from the Lessee of the sum of \$_____ to be credited against the first month's rent.

6.3 The Artist acknowledges receipt from the Lessee the sum of \$_____ representing the security deposit for the Leased Works (the "**Security Deposit**"). Provided the Leased Works are returned to the Artist in the same condition as when delivered to the Lessee, or purchased from the Artist pursuant to the option in this Agreement, the Artist will refund the Security Deposit to the Lessee upon the end or early expiry of the Term. If the Leased Works are not returned to the Artist in the same condition, the Lessee forfeits the entire Security Deposit to the Artist.

6.4 Overdue and unpaid amounts owing to the Artist by the Lessee shall bear interest at the rate of twelve percent (12%) *per annum*, compounded monthly, until actual payment to the Artist.

7. Transportation and Delivery

7.1 The Lessee is responsible for and shall pay all costs of crating and shipping the Leased Works from the Artist's studio to the Location and upon expiry of the term or other termination of this Agreement, crating and shipping the Leased Works to the Artist.

7.2 Upon receipt of the Leased Works, the Lessee shall immediately notify the Artist if the Leased Works are not in a good state of repair. If the Leased Works require repair, repairs and restoration shall take place pursuant to paragraph 4.1 of this Agreement.

7.3 The Lessee shall return the Leased Works to the Artist in a condition not materially differing from their condition at the commencement of the Term.

8. Insurance and Risk of Loss

- 8.1 The Lessee shall be responsible for and indemnify the Artist for all risk of loss or damage to the Leased Works from the time the Leased Works are picked up at the Artist's studio by the Lessee or the Lessee's agent until the time the Leased Works are returned to the Artist. The Lessee agrees to pay the Artist the agreed valuation of each Leased Work lost, stolen, damaged or destroyed as such value is specified in Schedule "B" attached to this Agreement.
- 8.2 The Lessee shall obtain all-risks insurance coverage to be in effect from the time the Leased Works leave the Artist's studio until the time the Leased Works are returned to the Artist. The insurance shall be in an amount not less than the total insurance value of all Leased Works described in Schedule "B" attached to this Agreement. At the request of the Artist, or upon any change to the insurance policy, the Lessee shall provide the Artist with a copy of the insurance policy.
- 8.3 The Lessee agrees and covenants that the Lessee is solely responsible for the payment of any deductible related to an insurance claim, and agrees that the amount of the deductible, if any, shall not be deducted from the amount payable to the Artist in the event of loss or damage to the Leased Work.

9. Lessee's Use of Work

- 9.1 The Lessee agrees that the Leased Works are being rented solely for the personal use of the Lessee. The Works shall not be used for monetary profit, public exhibition or any other commercial purpose, without written consent of the Artist and payment of a fee to be established solely by the Artist.

10. Intellectual Property

- 10.1 The Artist retains all copyright and all other Intellectual Property Rights in and to the Leased Works.
- 10.2 The Artist reserves all moral rights in the Leased Works. The Lessee acknowledges that the Artist has not waived any moral rights in the Leased Works.
- 10.3 All rights not specifically granted to the Lessee pursuant to this Agreement are reserved by the Artist. The Artist may negotiate a separate agreement with the Lessee to license part or parts of the copyright in the Leased Works, however any such negotiation shall be subject to a separate agreement between the parties. If the right the Lessee seeks to obtain is administered by a copyright collective of which the Artist is a member, the Lessee shall obtain any license required from the collective at the license fee currently applicable.
- 10.4 Upon termination of this Agreement, all rights or licenses granted to the Lessee under this Agreement shall revert to the Artist.

11. Security Interest

- 11.1 The Lessee acknowledges and agrees that:

- a. the Artist shall have a security interest in the Leased Works with all of the rights granted to the holder of a security interest under *The Personal Property Security Act* of the Province of Saskatchewan;
- b. title to the Leased Works is reserved to the Artist until such time as the purchase price of any Purchased Work purchased by the Lessee is paid in full, at which time title in the Purchased Work shall pass to the Lessee;
- c. the Lessee shall not pledge or encumber, or allow the encumbrance of the Leased Works; and
- d. the Lessee will execute and deliver to the Artist any documentation and do all such other things required by the Artist to perfect the Artist's security interest in the Leased Works.

13. Warranty

13.1 The Artist represents and warrants that:

- a. the Artist is the sole author of the Leased Works;
- b. the Leased Works are original and do not infringe any existing Intellectual Property Rights of a third party;
- c. the Artist is the exclusive owner of the rights conveyed to the Lessee and the Artist has full power and authority to grant the rights to the Lessee; and
- d. the Artist has not previously assigned, pledged or otherwise encumbered the rights granted under this Agreement, except as may be described below:

14. Term and Termination

14.1 This Agreement shall be in effect from the date first written above and shall terminate on the ____ day of _____, 20____ (the "Term").

14.2 This Agreement may be renewed within thirty (30) days of the expiration date by mutual agreement of the Parties, in writing.

14.3 Either Party may terminate this Agreement by giving thirty (30) days written notice.

14.4 This Agreement shall terminate automatically and without notice upon:

- a. the death or incapacity of a Party who is an individual;
- b. the dissolution or winding up of a Party who is a corporate body; or
- c. the commencement of bankruptcy proceedings in respect of a Party or the date on which a receiver, custodian, liquidator, sequestrator, monitor, receiver and manager or any other person with similar powers is appointed for a Party or for any substantial part of a Party's property or any substantial part of a Party's property is seized by another person.

- 14.5 In the case of a breach of a term of this Agreement, the non-breaching Party may terminate, at its sole option, by giving the other Party ten (10) days written notice. If the breach is cured to the satisfaction of the non-breaching Party within the ten (10) day notice period, then this Agreement may continue in force, at the sole discretion of the non-breaching Party.
- 14.6 Upon termination of this Agreement, the Lessee shall return, at the Lessee's expense, all Leased Works in the possession or control of the Lessee to the Artist.
- 14.7 The Lessee's obligation to pay the Artist any fee or payment pursuant to this Agreement shall survive the termination or expiry of this Agreement.

15. Notice

- 15.1 Any notice required or permitted to be given under this Agreement will be in writing and may be given by delivering, sending by electronic facsimile transmission or other means of electronic communication capable of producing a printed copy, or sending by prepaid registered mail posted in Canada, the notice to the following address or number (or to such other address or number as either Party may specify by notice in writing to the other Party):

If to Artist, to the Artist at: _____

Facsimile No.: _____; Email Address: _____

If to the Lessee, to the Lessee at: _____

Facsimile No.: _____; Email Address: _____

- 15.2 Any notice delivered or sent by electronic facsimile transmission or other means of electronic communication on a business day will be deemed conclusively to have been effectively given on the day the notice was delivered, or the transmission was sent successfully to the number or address set out above, as the case may be.
- 15.3 Any notice sent by prepaid registered mail will be deemed conclusively to have been effectively given on the third business day after posting; but if at the time of posting or between the time of posting and the third business day thereafter there is a strike, lockout, or other labour disturbance affecting postal service, then the notice will not be effectively given until actually delivered.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF the Parties have hereunto executed this Agreement as of the date first above written.

X _____
Signature of Witness

X _____
Signature of Artist

ARTIST NAME: _____

X _____
Signature of Witness

X _____
*Signature of Lessee or
Authorized Signatory of Lessee*

LESSEE NAME: _____

SCHEDULE "A"
Interpretation and General Provisions

A. **Definitions**

When used in the body of this Agreement, the following words and terms shall have the following meanings:

1. **"Intellectual Property Rights"** means any and all existing and future legal protection recognized by law (whether by statute, in equity, at common law or otherwise) anywhere in the world in respect of the Artistic Works, including trade secret and confidential information protection, patents, copyright and copyright registration, industrial design registration and trade-marks and trade-mark registrations and other registrations or grants of rights analogous thereto;
2. **"including"**, when following any general statement, term or matter, is not to be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather is to be construed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter; and
3. **"person"** shall be construed as a reference to any individual, firm, company, corporation, joint venture, joint-stock company, trust, unincorporated organization, government or state entity or any association or a partnership (whether or not having separate legal personality) or two or more of the foregoing.

B. **General Provisions**

1. The Parties are independent contractors under the Agreement. The Parties are not engaged in a joint venture or partnership or employment relationship.
2. Any approval or consent to be given pursuant to the Agreement or any variation, alteration or waiver of any of the rights and obligations of the Parties under the Agreement must be in writing and signed by both Parties; however, the Artist retains the right to assign monies due to the Artist under the Agreement and to assign the copyright in all Artistic Works without the consent of any other person.
3. If the Artist is an Aboriginal person in Canada, the Parties agree that the protocols respecting the use of Aboriginal symbols or artefacts or matters of importance to Aboriginal peoples have been considered and adhered to by the Parties. The Parties covenant and agree that the Aboriginal protocols do not prevent either Party from entering into the Agreement nor from abiding by the terms and conditions of the Agreement. Any Aboriginal procedures, protocols or conditions applicable to this Agreement are listed and described in detail in Schedule "C" attached to this Agreement.

4. The waiver by a Party of strict compliance or performance of any of the terms and conditions of the Agreement or of any breach hereof on the part of the other Party shall not be held or deemed to be a waiver of any subsequent failure to comply strictly with or perform the same or any other term or condition of the Agreement or of any breach thereof.
5. The Agreement, and any other documents and instruments delivered pursuant to the Agreement, shall be governed by and construed in accordance with the laws of Saskatchewan and the laws of Canada applicable therein.
6. Each Party accepts and attorns to the exclusive jurisdiction of the Courts of Saskatchewan and all courts of appeal therefrom for any and all actions or matters arising out of or otherwise concerning the Agreement, without reference to conflict of laws rules, and the Parties further agree that, in addition to any other manner of service provided for by law, any and all pleadings and other documents, including those of an originating nature, to be served on the other Party, may be served on the Parties in the manner contemplated for notices under the Agreement and the Parties agree that such service shall be deemed for all purposes to be good and sufficient service of such pleading or other document, as the case may be.
7. The Parties agree to use their best efforts to settle any disagreements as to the meaning of the Agreement. If the Parties are unable to settle a dispute within fourteen (14) days, they agree, subject to the Agreement, to mediation using a single mediator acceptable to the Parties. If the Parties cannot agree on a mediator, then the Parties may request that CARFAC Saskatchewan appoint a mediator with respect to their dispute. If the mediation is unsuccessful, the disagreement will be subject to arbitration pursuant to *The Arbitration Act, 1992* (Saskatchewan), as may be amended. The Parties shall agree on an arbitrator. If the Parties cannot agree on an arbitrator, then the Parties may request that CARFAC Saskatchewan appoint an arbitrator with respect to their dispute. The cost of mediation and arbitration shall be borne equally by the Parties.
8. The invalidity of any provision of the Agreement or any term, condition or covenant therein contained on the part of any Party shall not affect the validity of any other provision or covenant thereof or therein contained as each such covenant and provision is separate and distinct.
9. The provisions contained in the Agreement and all Schedules attached to this Agreement constitute the entire agreement between the Parties and supersede all previous communications, representations, and agreements, whether oral or written, between the Parties with respect to the subject matter thereof, there being no representations, warranties, terms, conditions, undertakings, or collateral agreements (express, implied, or statutory), between the Parties other than as expressly set forth in the Agreement.
10. The Agreement may be executed in several counterparts and delivered by electronic facsimile transmission or other means of electronic communication capable of producing a printed copy, each of which shall be deemed to be an original and all of which shall together constitute one and the same instrument.

11. Time is of the essence of the Agreement.
12. The Agreement, and any other documents and instruments given pursuant thereto shall enure to the benefit of and be binding upon the Parties and the respective heirs, executors, administrators, successors and permitted assigns, as the case may be.
13. The Parties shall from time to time execute and deliver all such other and further deeds, documents, instruments and assurances as may be necessary or required to carry into force and effect the purpose and intent of the Agreement.

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Schedule "B"
Leased Works

List and provide a detailed description of all Leased Works below, including a description of materials/medium, dimensions, theme, the purchase price or valuation per work, rental price per work and any other relevant information.

X _____
Signature of Artist

X _____
*Signature of Lessee or
Authorized Signatory of Lessee*

Schedule "C"
Aboriginal Procedures, Protocol or Conditions

If applicable, list and describe below all Aboriginal procedures, protocols or conditions applicable to this Agreement.

X _____
Signature of Artist

X _____
*Signature of Lessee or
Authorized Signatory of Lessee*