

INDEPENDENT ARTIST AGREEMENT

This INDEPENDENT ARTIST AGREEMENT (“Agreement”) made and entered into as of _____, 20___, is by and between the University of South Alabama (the “University”) and _____ (“Artist”).

WITNESSETH:

WHEREAS, the University’s Department of Art and Art History (the “Department”) offers a Bachelors of Fine Arts degree with a concentration in glass (the “Glass Program”);

WHEREAS, the Glass Program desires to host a fundraising event on _____, 20___, during which it will sell glass pumpkins or other glass artwork to the general public as a fundraiser for the University (the “Event”);

WHEREAS, the pumpkins or other glass artwork sold at the Event will be produced at the University prior to the Event by University faculty and alumni using University equipment and materials (the “Production”);

WHEREAS, Artist is a graduate of the University and desires to assist with the Event and the Production;

WHEREAS, Artist and the University desire to memorialize the understanding between the parties as to their obligations and responsibilities in conjunction with the Event and the Production.

NOW, THEREFORE, in consideration of the premises and of the following mutual promises, covenants, and conditions and any sums to be paid, Artist and the University agree as follows:

1. Description of Use; Term of Use.

(a) The University does hereby grant to the Artist access to and use of the glass furnace and related University equipment and tools, including, but not limited to, reheating ovens / glory holes, annealers, pipe warmers, torches, belt sanders, flat grinding wheels, benches, tool benches, shields, yokes, jacks, tweezers, shears, marvers, blow pipes, and punty rods (collectively, the “Equipment”), located within the Department for a period beginning on 20___, and ending on _____, 20___ (the “Production Period”), solely for the purpose of the Production and solely in accordance with a schedule produced by the University and provided to Artist in advance of the Production Period.

(b) During the Production Period, the Artist shall have non-exclusive access to and use of University’s materials required for the Production, including, but not limited to, soda lime glass, wax, pumice, and cerium (the “Materials”), solely for the purpose of the Production. The Artist shall have access to and use of the Materials on a first-come, first-served basis, provided that University faculty members and students shall have priority over the Artist if the University does not have sufficient quantities of Materials to satisfy all such requests.

2. Usage Fee; Consideration. In consideration for use of the glass furnace, Equipment, and Materials during the Production Period, the Artist shall:

(1) Allow any glass wares or goods produced by Artist using the furnace, Equipment, or the Materials to be sold by the University during the Event at prices determined by the University in its sole discretion; provided that Artist shall be entitled to receive, within thirty (30) days of the Event, _____ percent (____%) of the sale price of any such glass wares or goods produced by Artist that are sold during the Event. All glass wares or goods produced by Artist for the Event that are unsold at the Event's conclusion will become the sole property of the Artist; and

(2) Be available on the day of the Event to display his/her glass wares or goods produced for the Event; and

(3) Remit to the University a usage fee of _____ (the "Usage Fee"), which represents the fair market value set by the University for use of the glass furnace, Equipment, and Materials during the Production Period. The Usage Fee shall be payable by the Artist at the time of execution of this Agreement.

3. Termination of Use. Upon the expiration of the Production Period or earlier termination as provided for herein, the Artist will no longer have access to the Department or use of the glass furnace, Equipment, or Materials. Should this Agreement terminate prior to the Event, the Artist shall not receive a refund of the Usage Fee.

4. No Agency. The relationship of the parties under this Agreement is that of independent contractors. Neither party shall act as the agent, employee, or servant of the other party in relation to the specific use of the glass furnace, Equipment, or Materials during the Production Period or at the Event. Accordingly, while engaged in the use of glass furnace, Equipment, or Materials, the Artist shall not be considered the employee or agent of the University for any purpose, including for purposes of determination whether Artist is entitled to compensation for an on-the-job injury occurring on the premises of the University. The University shall not be responsible for payment of taxes or any required withholdings on behalf of the Artist.

5. Assignment. This Agreement is not assignable. This Agreement contains the entire understanding of both parties as to the subjects covered herein and shall not be altered, amended, or modified except by an agreement in writing executed by both parties.

6. Governing Law. The laws of Alabama shall govern the validity and interpretation of the provisions, terms, and conditions of the Agreement.

7. Waiver. Failure to insist upon compliance with any of the terms and conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall remain at all times in full force and effect.

8. Force Majeure. In the event that the Artist or the University shall be delayed, hindered in, or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, governmental laws or regulations, epidemic or pandemic, riots, insurrection, the act, failure to act, or default of the other

party, war, or other reason beyond their control, the period for the performance of any such act shall be extended for a period not to exceed the period of such delay.

9. Indemnification. The Artist agrees to indemnify, defend, and hold harmless the University against any claims, damages, expenses of any nature (including reasonable attorneys' fees), obligations, or suits connected with the use of the glass furnace, Equipment, or Materials or the Event and/or arising out of or caused by acts of the Artist, his/her assigns, invitees, or customers, or any of them, including, but not limited to, any and all claims for injury or death to persons from any source, including, but not limited to, COVID-19, except any claims, damages, obligations, or suits arising out of negligent acts by the University, its assigns, invitees, lessees, servants, students, employees, or agents, or any of them.

10. Disclaimer of Liability. Use of the glass furnace, Equipment, or Materials are being provided to the Artist on an "as is" basis, and the Artist uses them at his/her own risk. The University makes no warranties or representations or covenants regarding the glass furnace, Equipment, or Materials. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL THE UNIVERSITY BE LIABLE IN TORT, CONTRACT, OR OTHERWISE FOR ANY DAMAGES IN ANY FORM, WHETHER DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL, ARISING OUT OF THIS AGREEMENT OR OTHERWISE IN CONNECTION WITH THE ARTIST'S USE OF THE FURNANCE, EQUIPMENT, OR MATERIALS OR PARTICIPATION IN THE EVENT, EVEN IF THE UNIVERSITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. Survival. Those terms that by their nature necessarily survive termination of this Agreement shall survive, including, but not limited to, those provisions dealing with indemnification.

12. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one agreement by each of the parties on the dates respectively indicated. Signatures transmitted by facsimile or electronic mail shall be treated as and deemed to be original signatures for all purposes and will have the same binding effect as if they were original, signed instruments delivered in person.

13. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the parties agree that the court making the determination of invalidity or unenforceability shall have the power to reduce the scope, duration, or area of the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified after the expiration of time within which the judgment may be appealed.

[signature page to follow]

IN WITNESS WHEREOF, the parties have hereunto signed this Agreement in their official capacities on the day and the year last listed below.

UNIVERSITY OF SOUTH ALABAMA

ARTIST

Contract Officer

Name: _____

Date: _____

Date: _____