

ARTIST AGREEMENT – LA FLOR DEL PUEBLO DECORATIVE CONCRETE DESIGN

THIS ARTIST AGREEMENT (this “**Agreement**”) is entered into on _____, 20____, by Ariztlan Studios, Inc. (the “**Coordinator**”), and _____ (the “**Artist**”). The Coordinator desires to engage the Artist to design and install one or more public mural art installations at certain locations agreed to by the Coordinator and the Artist (each, a “**Site**”), in connection with the Coordinator’s coordination of a large public mural art installation project (the “**Project**”).

NOW THEREFORE, in consideration of the mutual promises and covenants of the parties in this Agreement, the parties agree as follows:

1. SCOPE OF WORK.

1.1 General. The Coordinator hereby commissions and engages the independent contracting services of the Artist as follows: (i) to create an original physical work of art (the “**Work**”) in accordance with the artistic and technical elements provided by the Coordinator, and to design the Work in accordance with the location shown in exhibit A and timetable agreed to in writing by the Coordinator and the Artist; (ii) to furnish all supplies, material and equipment as necessary for the creation; and (iii) to provide all other services as are customarily provided by creators of public art installations.

1.2 Proposal Review and Approval. Promptly after the parties’ execute this Agreement, the Artist will meet with the Curation Team and Jury to learn about the history of the Grant Park Neighborhood and guidelines of the proposal process. Based on this, the Artist will prepare a proposal that includes 3 design concepts for the Work according to guidelines provided by the Coordinator (the “**Proposal**”). The Artist will present the concepts to a jury and coordination team. Following approval of a design concept by the Coordinator, the Artist will refine the concept based on feedback and present it back to the Coordinator for final feedback. The Artist will finalize their design as directed by the Coordinator. Once the design is finalized the Artist’s fee for work and services will be satisfactorily rendered under this Agreement (the “**Fee**”), all pursuant to a written agreement signed by both parties (which may be by email). The Artist acknowledges and agrees that the Coordinator may, for record-keeping, review with other stakeholders, and archival purposes, photograph, film or videotape any objects and photocopy any printed materials that are part of the Proposal, as well as share those copies with appropriate stakeholders within Coordinator and outside Coordinator. If the Coordinator does not approve the Proposal, then the Coordinator may terminate this Agreement by giving written notice to the Artist and the parties will have no further liabilities or obligations. For a period of 30 days thereafter, the Artist may request the return of any or all objects and printed materials that he/she submitted as part of the Proposal.

1.3 Developing Work. The Artist will create the Work in collaboration with the Coordinator. The Work will be in substantial accordance with the Proposal and the Timetable approved by the Coordinator. The Work will incorporate any revisions reasonably requested by the Coordinator for health, safety or liability reasons, or to ensure compliance with applicable laws (or as otherwise agreed to by the parties). The Coordinator will have the right to review the progress of the Work at reasonable times during its creation and will be entitled to suspend or terminate this Agreement if the Work in progress, in the reasonable opinion of the Coordinator, does not conform with the Proposal. If the Artist employs and/or contracts with any third persons in the performance of this Agreement, the Artist agrees that the Artist will be fully responsible for ensuring compliance with this Agreement and the Artist acknowledges and agrees that the Artist is not an agent of the Coordinator for the purpose of contracting by the Artist with third persons.

1.4 Acceptance and Promotion. The Artist will advise the Coordinator when the Work has been finalized. The Coordinator will promptly either accept or reject the Work. If the Coordinator does not accept the Work, the Coordinator will provide the Artist with a detailed explanation and will give the Artist a reasonable period of time to correct any deficiencies. The Artist will advise the Coordinator when the deficiencies have been corrected, and the parties will repeat the process above. In addition, the Artist will advise the Coordinator on the translation of the design into a set of final construction documents and shop drawings. The Artist is not responsible for installation but will advise and collaborate with the Coordinator on the final installation. The Artist will be reasonably available at such time or times as may be agreed between the Coordinator and the Artist to attend any inauguration or presentation ceremonies.

2. COMPENSATION. [The Fee for the Work shall be \$15,000.] The first half of the Fee will be processed and made after approval of the Proposal and the remaining half of the Fee will be processed and made after acceptance of the Work under Section 1.4 below (the “**Payment Schedule**”). The parties agree (i) that the Fee will be full and final payment for the Artist’s

services and materials furnished under this Agreement, and for the title transferred and the rights and privileges granted to the Coordinator, (ii) that the Coordinator will not be obligated to make any additional payment to the Artist or any other person or entity, (iii) except as specified in this Agreement, that the Artist is solely responsible for all costs and expenses related to the Work, including the costs of contracting with third parties, the costs of compliance with applicable laws, and the costs of all travel by the Artist and the Artist's agents and employees.

3. TIME OF PERFORMANCE. If the Project is suspended by the Coordinator for more than 3 months, or, at the Coordinator's sole discretion, abandoned in whole or in part, the Artist will be compensated for all services performed before the Artist received notice from the Coordinator of such suspension or abandonment, and this Agreement will be deemed terminated. If, for any reason, the Artist does not complete the Work as required under this Agreement, the Coordinator will pay the Artist for all services satisfactorily performed by the Artist and may, at the Coordinator's sole option, cause the Work to be completed. Notwithstanding the foregoing, the Artist will not be relieved of liability to the Coordinator for damages sustained by the Coordinator due to the Artist's failure to complete the Work, and the Coordinator may off-set any such damages against any amounts owed to the Artist under this Agreement.

4. INSURANCE. A Certificate of Liability Insurance

- Ariztlan Studios, Espiritu Loci Incorporated, Coe & Van Loo Consultants, Inc., Coe and Van Loo LLC, Coe and Van Loo II LLC, CVL Consultants as additional insured
- Commercial General Liability to equal:
 - \$1,000,000 each occurrence
 - \$1,000,000 damage to rented premises
 - \$5,000 medical expenses to any one person
 - \$1,000,000 personal and adv injury
 - \$2,000,000 general aggregate
 - \$2,000,000 products
- Automobile Liability to equal \$1,000,000 combined single limit (hired autos only)
- Umbrella Liability to equal:
 - \$1,000,000 each occurrence
 - \$1,000,000 aggregate
- Workers Comp to equal:
 - \$1,000,000 each incident
 - \$1,000,000 disease – each employee
 - \$1,000,000 disease – policy limit
- Professional Liability to equal:
 - \$1,000,000 each claim
 - \$1,000,000 aggregate claim

5. RIGHTS.

5.1 Title and Ownership. Title and copyright to the Work shall be the property of the Coordinator. The Work may be considered to be a "work of visual art" subject to the provisions of the Visual Artists Rights Act of 1990, specifically the rights of certain authors to attribution and integrity, as codified at 17 U.S.C. §106A(a), and any other rights of the same nature granted by U.S. federal, state or foreign laws, including, but not limited to, any laws related to moral rights (collectively, the "**Visual Rights Laws**"). By executing this Agreement, the Artist of his/her own free act hereby waives any rights under the Visual Rights Laws with respect to the uses by the Coordinator of the Work, including specifically, but not limited to, in accordance with the waiver provision of 17 U.S.C. §106A(e)(1). The Artist will ensure that the design contains no material from other artworks or

other copyrighted material without the prior written permission of the owner of such material where such other work is copyrighted (or if permission is otherwise required). The Artist agrees to obtain such permissions in form and content acceptable to the Coordinator. The Artist warrants that the design being commissioned and produced under this Agreement is the original product of the Artist's own creative efforts, the work is unique, it is an edition of one, it has not been accepted for sale elsewhere, and that the design will not be offered for sale elsewhere without the prior written approval of the Coordinator.

5.2 Attribution and Publicity. Upon publication, the Coordinator will use its best efforts to assure that the Artist is given customary and appropriate identification as the creator of the work and the Coordinator may, at its sole discretion, utilize any such publication for the direct production of revenue (*i.e.*, for the sale of photographs, drawings, reproductions or facsimiles of the work) without the Artist's permission. The Coordinator may use or authorize others to use the Artist's name and approved photograph, approved likeness and approved biographical material in connection with the promotion and advertisement of the Work, the Site, or the Project. The Coordinator and the Artist will make reasonable efforts to consult with each other prior to the release or distribution of any written materials or press releases regarding the Work. The Artist understands and agrees that the work will be in a public area in view of the public and that it will be photographed, shared in social media or used in other means that Coordinator nor Artist can foresee or prevent.

6. TERMINATION. If the Coordinator reasonably determines that the Artist has substantially failed to fulfill his/her obligations under this Agreement, the Coordinator will provide the Artist with written notice detailing such failure. If the breach is not cured or if the Coordinator and the Artist cannot agree on a schedule for curing the breach, the Agreement will be deemed terminated on a date specified by the Coordinator (but no earlier than 10 days from the date of issuance of the breach notice). In addition to termination under Section 6.1 above, the Coordinator will have the unilateral right to terminate this Agreement for any reason. In the event of such termination, The Coordinator will compensate the Artist for all services satisfactorily performed up to that stage and for materials and products ordered or procured prior to receipt of written notice of termination and the Coordinator will have the right to all finished or unfinished portions of the Work which the Artist has produced and for which payment has been made, and to have the Work completed by another person or persons.

7. DISPUTES AND REMEDIES. If there is any dispute regarding the interpretation, performance or an alleged breach of the Agreement, either party may give written notice of dispute to the other party and the Coordinator and the Artist, or their representatives, will attempt in good faith and using reasonable efforts to resolve the matter equitably to the satisfaction of both parties. If the parties cannot resolve the dispute within 30 days after the notice of dispute is given the parties may elect to mediate the dispute; provided that if no election is made or the mediation fails, either party may elect to file an action in Maricopa County Superior Court.

8. GENERAL PROVISIONS and CONDITIONS.

8.1 Indemnification; Condition Precedent. The Artist agrees to indemnify, defend, and hold harmless the Coordinator and its agents and employees for, from, and against all acts or failure to act of any kind or nature by the Artist or anyone under the Artist's control or supervision, or the Coordinator's, for any and all claims or causes of action arising from services performed or to be provided or performed under this Agreement, as well as any and all damages resulting to the Site, or for any unforeseen or non-approved use of the work by Coordinator or other parties, to the full extent permitted by law. The parties' obligations under this Agreement are conditioned upon the parties entering into a mutually satisfactory wall agreement with the owner of the Site.

8.2 Notices. All notices, statements and other communications between the parties must be in writing and delivered via hand-delivery, the United States mail, reputable overnight carrier, or electronic mail, to the addresses set forth on the signature page below. Each party will notify the other party of any changes of address. Copies of all notices must be sent to, and all meetings coordinated with, the Coordination Committee set forth on the signature page.

8.3 Successors and Assigns. This Agreement will inure to the benefit of and be binding upon the parties and their respective successors and assigns. Neither party may assign or subcontract this Agreement without the prior written approval of the other party. Any attempted assignment or subcontract in violation of this section shall be null and void.

8.4 Entire Agreement; Amendment; Severability. This Agreement constitutes the entire agreement and understanding between the parties and supersedes any prior agreements and understandings, whether written or oral, relating

to the subject matter of this Agreement. This Agreement may be amended, modified, or supplemented by the parties only if done in writing and signed by an authorized representative of each party. The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision of this Agreement. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same instrument.

8.5 Construction. The terms of this Agreement constitute the written expression of the mutual agreement of the parties and must be construed neutrally as to the parties, and not for or against either party. Headings in this Agreement are for convenience only and may not be used to interpret or construe the provisions herein.

8.6 Governing Law; Venue. The parties agree that this Agreement shall be governed, construed and enforced in accordance with the laws of the State of Arizona, without regard to any state’s laws governing conflicts in or choice of law. Any action arising hereunder shall be brought exclusively in the federal or state courts in Maricopa County, Arizona, and the parties expressly waive any objection to the action being brought or pursued in this forum.

8.7 Waiver of Breach. The waiver of a breach of any provision of this Agreement by either party shall not operate or be construed as a waiver of any subsequent breach by either party. No waiver shall be valid unless it is in writing and signed by an authorized officer of the party granting the waiver.

The parties have executed this Agreement as of the date first set forth above.

COORDINATOR:

Ariztlan Studios, Inc.

By: _____
Name: _____
Title: _____

Address for notices:

Attention: _____
Email: _____

ARTIST:

Name: _____

Address for notices:

Attention: _____
Email: _____

A notice shall be deemed given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, three business days after deposit in the United States mail; in the case of expedited prepaid delivery, upon the first attempted delivery on a business day; in the case of electronic mail, upon receipt by the recipient's mail server. Notices by legal counsel for a party shall constitute notice by that party.

Coordination Committee

Liz Lonetti LLonetti@espirituloci.com	Lyssa Hall lhall@espirituloci.com	Ashley Harder ashley@covarrubiascollection.com	Jim Covarrubias jl.covarrubias01@gmail.com
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