

LICENSE AGREEMENT

This TRADEMARK LICENSE AGREEMENT (the "Agreement") is effective as of the ____ day of ____, 202__ (the "Effective Date"), by and between the City of Manhattan Beach, a California municipal corporation ("City" or "Licensor"), and _____, a _____ ("Licensee").

RECITALS

WHEREAS, Licensor owns all right, title and interest in, to, and under the Manhattan Beach design mark show below (the "Licensed Mark"), together with trademark registration for the mark, as well as all goodwill associated therewith:



WHEREAS, Licensee desires to use the Licensed Mark in connection with [briefly describe purpose] pursuant to the terms of this Agreement; and

WHEREAS, Licensor is willing to grant Licensee such a license, pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Licensee and Licensor agree as follows:

AGREEMENT

1. Grant of License. On the Effective Date and subject to the restrictions, limitations, reservations, terms and conditions of this Agreement, City hereby grants to Licensee and Licensee hereby accepts during the Term a non-exclusive, non-sublicensable, limited, and revocable license to use the Licensed Mark on the following merchandise (the "Goods").

- [insert description of Goods (e.g., shirt, water bottles, key chains, etc.)]

2. Royalty.

(a) Licensee agrees to pay [\$ negotiated fee] as a nonrefundable advance against royalties earned through [_____, 20__] payable upon execution of this Agreement.

(b) Licensee shall recover the advance royalty payment by [_____, 20__] offsetting royalties earned against said advance until the advance is recouped and shall thereafter make the royalty payments to Licensor as set forth herein.

As of the Effective Date of this Agreement, Licensee agrees to pay to Licensor royalties in the amount of [_____] of Licensee's Actual Wholesale Price (defined below) if sold by Licensee at wholesale; or [_____] of Licensee's Actual Selling Price (defined below), if sold other than at wholesale, including but not limited to by Mail Order Sales, for each unit of Goods sold, in United States dollars, computed upon the total number of units sold at retail, shipped, or otherwise distributed by Licensee or any of its representatives or affiliated, associated, or subsidiary. Each of Licensee's representatives and affiliated, associated, or subsidiary companies is referred to in this Agreement as a "Related Company."

Royalties will accrue when the Goods are invoiced or shipped, whichever occurs first, and shall be payable concurrently with the periodic statements required in paragraph 3 of this Agreement.

No deductions shall be permitted, including, without limitation, deductions for bad debt, cost of shipping, cost of packaging, advertising or promotional expenses, cash or volume discounts, or other costs.

"Actual Wholesale Price" as used herein shall mean the invoiced price charged by Licensee, or by any of its Related Companies, to unaffiliated third parties for retail sale of the Goods described in paragraph 2, hereof.

"Actual Selling Price" as used herein shall mean the actual price charged by Licensee, or by any of its Related Companies, for sale at retail of the Goods described in paragraph 2 of this Agreement.

"Mail Order Sales" shall mean sales of Goods by Licensee directly to the consumer through direct mail solicitation or catalogues.

3. Payment and Reporting. Not later than the thirtieth (30th) day after the close of every month, the Licensee shall pay to the Licensor the amounts described in Section 2 of this Agreement and furnish to the Licensor a full and complete statement showing the number of Goods which have been sold by the Licensee and the Actual Wholesale Price or Actual Selling Price, as applicable, thereof during the preceding month. Payments to the Licensor shall be made by [cashier's check or company check] made payable to the City of Manhattan Beach at 1400 Highland Avenue, Manhattan Beach, CA 90266. All late payments shall be subject to a 1% per month (12% annual rate) late charge on all such outstanding amounts.

4. Term. The term of this Agreement shall be the period beginning upon the Effective Date and ending on December 31, [20____]. The City Manager or his designee may extend the term of this Agreement in writing for two additional one-year terms or such other term not to exceed two years from the date of termination pursuant to the same terms and conditions of this Agreement. Licensee agrees to cease all use of the Licensed Mark immediately after the Term is complete.

5. Quality Control and Use.

5.1 Licensee shall only use the Licensed Mark in connection with the Goods.

5.2 All use of the Licensed Mark by Licensee shall be conducted in strict accordance with the standards, rules and procedures set by Licensor, including, but not limited to

Licensee's brand style guidelines which contain specified PMS colors, which Licensor may unilaterally change from time to time. Licensee shall not modify, alter or change the Licensed Mark in any manner.

5.3 Licensee acknowledges that if the Goods manufactured and sold by it are of inferior quality in material and workmanship, the substantial goodwill which the Licensor has built up and now possesses in the Licensed Mark will be impaired. Accordingly, Licensee warrants that the Goods will be of high standard and of such appearance and quality as shall be reasonably adequate and suited to their exploitation and best advantage.

5.4 Licensee shall submit to Licensor finished samples of all Goods to be manufactured, together with its cartons and containers, including packaging and wrapping material, which shall be approved in writing by the Licensor before the Goods are advertised, distributed or sold. Licensee acknowledges that the image associated with the Licensed Mark requires that any Goods must be in good taste and meet high standards of quality. Because judgments of taste and quality may be subjective, Licensee agrees that Licensor may grant or deny any approval or consent required under this section in its sole and absolute discretion. After samples of the Goods have been approved pursuant to this paragraph, Licensee shall not depart therefrom without prior written consent from Licensor. Licensor shall have the right at any time to inspect the Goods. In the event there is a departure from the approved sample of the Goods made or distributed by Licensee, or in the event there is an occurrence connected with the Goods which reflect unfavorably upon Licensor, the Licensor shall have the right, in the reasonable exercise of its sole discretion, to withdraw its approval of such Goods, at which time this Agreement shall automatically terminate with respect to such Goods. Thereupon, Licensee shall cease the use of the Licensed Mark in the sale, advertising, distribution, or use of such Goods immediately upon notice from Licensor; and within 10 days thereafter shall pay all amounts due to Licensor hereunder. If there are other Goods under this Agreement not covered or affected by the foregoing two sentences of this paragraph, Licensor may elect, in its sole discretion, to continue this Agreement as to those other Goods. Licensee shall immediately notify Licensor if there is an event or occurrence relating to Licensee of the Goods that may reflect unfavorably on the Goods or the City.

5.5 All use of the Licensed Mark by Licensee shall be in a manner and form that protects Licensor's ownership interest therein.

5.6 All use of the Licensed Mark and the provision of goods and services relating to the Goods shall be rendered, provided, advertised, and promoted solely in accordance with all applicable federal, state and local laws and regulations.

5.7 Licensee acknowledges, understands and agrees that it shall not perform, do, or cause any act to be done, or fail to take any action, or assist any third party in performing, doing and/or causing any act to be done, which would in any way or manner be detrimental to, injure or impair in any way or to any degree: (i) the Licensed Mark; (ii) any applications for registration and/or registrations therefor; (iii) the respective goodwill related to the Licensed Mark; (iv) Licensor's federal, state and/or common law and other rights in or to the Licensed Mark; (v) Licensor's right, title, interest, and ownership in and to the Licensed Mark; or (vi) the validity and enforceability of the any of the foregoing.

5.8 When providing the goods and services relating to the Goods, Licensee shall not use the Licensed Mark (i) in any manner that implies an endorsement, affiliation or promotion by the Licensor of any goods or service without additional prior written approval by Licensor, or (ii) for any political purpose.

5.9 Licensee agrees and understands that Licensor may, from time to time, at its sole discretion, change, revise, amend, and/or modify its quality control standards and requirements.

6. Advertising. All advertisements and promotional material which Licensee intends to use to promote Goods shall be submitted to Licensor for its written approval prior to publication or distribution. Licensor shall have twenty-one (21) days from the date of receipt of said material in which to approve or disapprove it, such approval not to be unreasonably withheld.

7. Samples. Licensee shall supply Licensor with ten (10) samples of each of the completed Goods, promptly after completion. Licensor shall have the right to purchase additional samples at the actual cost of the Goods.

8. Books & Records.

8.1 The Licensee shall keep full, complete, and accurate books of account and records covering all transactions relating to the subject matter of this Agreement. Licensor, through its authorized representative, shall have the right to examine such books of account and records and other documents and material in Licensee's possession or under its control insofar as they relate to the manufacture and sale of Goods. The Licensor shall have free and full access thereto at any reasonable hour of the day during which the Licensee's offices are open and in any reasonable manner. In the event an examination of Licensee's books and/or records reveals a deficiency in royalties paid to Licensor of more than three hundred dollars (\$300) Licensee shall pay all expenses related to the performance of the examination and shall immediately pay the deficient amount to Licensor.

8.2 Licensee shall ensure that all invoices for the sale of the Goods will include the quantity and description of each of the Goods itemized by version, style, and with the name of Licensed Mark within the invoice item description.

9. For audit purposes, Licensee must provide the auditor the detail of each period's reported Net Sales and Returns, to the invoice/credit memo level, in Excel format. Each sale/return must detail the License number, invoice/credit memo number, date, customer name, ship to address, product number and description, gross sale and discounts, FOB point of shipment, units sold/returned, and royalty rate.

10. Goodwill. Licensee acknowledges Licensor's exclusive rights in the Licensed Mark and further acknowledges the value of the goodwill associated with the Licensed Mark, that the Licensed Mark and all ultimate rights therein belong exclusively to the City. Licensee agrees that the Licensed Mark is, and shall remain, the property of Licensor and that Licensee obtains no right, title, or interest in or to the Licensed Mark except for the limited rights to use the Licensed Mark as set forth in this Agreement. Licensee acknowledges and agrees that any goodwill generated by Licensee's use of the Licensed Mark shall inure exclusively to the benefit of Licensor.

Licensee shall not manufacture, market, or sell any confusingly similar unlicensed products that are intended to, or that consumers would reasonably believe to, trade off the goodwill of the Licensed Mark licensed hereunder. Licensee shall not, during the term of the Agreement or at any time thereafter, dispute or contest, directly or indirectly, the Licensor's ownership of the Licensed Mark; the Licensor's exclusive right (subject to valid licenses granted by Licensor) to use the Licensed Mark; the validity of any trademark registrations pertaining to the Licensed Mark or the Licensor's ownership thereof, nor shall the Licensee assist or aid others in doing so. At the Licensor's request the Licensee shall cooperate with the Licensor in preventing or stopping any infringement or unfair use by any third party of the Goods or Licensed Mark. The Licensor shall determine what action, if any, it elects to pursue in regard to preventing or stopping any infringement or unfair use by any third party of the Goods or Licensed Mark and shall be under no obligation whatsoever to take action at Licensee's request.

11. Ownership; Enforcement; Protection.

11.1 Ownership. Licensee acknowledges that Licensor is the sole and exclusive owner of all right, title and interest in and to the Licensed Mark and all goodwill associated therewith, and that all use of the Licensed Mark and all goodwill generated thereby will inure solely to the benefit of Licensor. Licensor shall have the right, in its sole discretion, to apply to register the Licensed Mark in Licensor's name in any and all jurisdictions.

11.2 Enforcement. Licensee will cooperate with Licensor in protecting the Licensed Mark against infringement by third parties. If Licensee becomes aware of any actual or reasonably suspected infringement or unauthorized use of the same by any third party, it will promptly advise Licensor thereof. Licensor will have the option, but not the obligation, to take any action to address or remedy any infringement or unauthorized use of the Licensed Mark. In the event Licensor elects not to enforce the Licensed Mark, Licensee may, in its sole discretion and for its sole benefit, take any action to address or remedy such infringement or unauthorized use of the Licensed Mark; provided, however, such action by Licensee shall not alter or vary Licensor's sole and exclusive ownership of the Licensed Mark as set forth in Section 3.1.

11.3 Protection of Licensed Mark. Licensee agrees to assist Licensor, at Licensor's request, in taking any actions Licensor deems necessary to protect the Licensed Mark and/or to confirm and/or vest Licensor's exclusive ownership, right, title, and interest in, to, and under the Licensed Mark. In connection therewith, Licensee agrees to execute and deliver to Licensor in such form as Licensor may request all instruments necessary to effectuate or confirm Licensor's ownership and rights in, to, and under the Licensed Mark wherever and whenever necessary or advisable, in Licensor's sole discretion. If Licensee fails to execute any such instruments, Licensee hereby irrevocably appoints Licensor as its attorney-in-fact to do so in Licensee's name and on Licensee's behalf.

11.4 Notice of Trademark. Licensee warrants that it will provide a legally sufficient trademark notice by prominently displaying the sign TM against every occurrence of the Licensed Mark on the Goods and against every occurrence of the Licensed Mark on packaging, wrapping, advertising, and promotional material for the Goods.

12. Limitation of Warranties; Damages; Indemnification by Licensee.

12.1 Limitation of Warranties. The rights granted under the terms of this Agreement are provided “as is” without warranties of any kind, either express or implied. Licensor disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, non-infringement or other violation of rights. Licensor does not warrant or make any representations regarding the use, validity, accuracy, or reliability of, or the results of the use of, or otherwise respecting, the licensed rights.

12.2 Limitation of Damages. UNDER NO CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, SHALL LICENSOR BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE, OR THE INABILITY TO USE, ANY OF THE LICENSED TRADEMARKS, EVEN IF LICENSOR OR A LICENSOR AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12.3 Indemnification by Licensee. Licensee agrees to indemnify and hold Licensor harmless from any and all liability, costs, fees and expenses (including attorneys' fees) for any cause of action or other claim arising from Licensee's use of the Licensed Mark.

13. Right of Termination. Without prejudice to any other rights, Licensor shall have the right to terminate this Agreement, or a portion thereof, upon written notice to Licensee, at any time that the following may occur:

(a) If Licensee shall fail to make any payment due hereunder or to deliver any of the statements herein referred to, and if such default shall continue for a period of five (5) business days after written notice of such default is sent by Licensor to Licensee.

(b) If Licensee is involved in any act of bankruptcy or insolvency, then Licensor shall have the right to terminate this Agreement. Notwithstanding the foregoing, Licensor shall, at any time during the term of this Agreement, have the option of demanding an assurance from Licensee of Licensee's ongoing ability to perform the provisions of this Agreement. Unless reasonable and adequate assurance is received by Licensor from Licensee concerning Licensee's ability to perform, Licensor shall have the right to terminate this Agreement.

(c) Upon any other material breach, failure and/or refusal by Licensee to comply with the term of this Agreement.

(d) Without cause by giving 90 days written notice to Licensee.

(e) Upon any termination of this Agreement, the following shall apply: (a) Licensee shall immediately and forever cease all use of the Licensed Mark; and (b) the respective rights and obligations of each party hereto under Sections 2 and 3, together with all other provisions that may reasonably be construed to survive, will survive the termination or expiration of the Term.

14. Sales after Expiration. Upon expiration or termination (for whatever reason) of this Agreement, Licensee shall not be permitted to sell or ship its remaining inventory of Goods following the termination date of this Agreement without the express written consent from the Licensor. Upon expiration or termination, Licensee shall provide Licensor with a complete

accounting statement of all remaining inventory of Goods within five business days. The Licensee shall not, without prior written consent of the Licensor, sell or ship any such remaining Goods as distress merchandise, or to unaffiliated third parties for eventual resale, or otherwise than in the ordinary course of business. Licensee shall not stockpile inventory prior to expiration or termination of this Agreement for purposes of sale or shipment thereafter. For purposes of this Agreement, a distress sale shall be defined as one in which the merchandise is sold for less than 50% of the normal wholesale selling price. Licensor shall have the right to buy at cost remaining inventory of Goods upon expiration or termination of this Agreement.

15. No Assignment. The license hereby granted is and shall be personal to the Licensee and shall not be assignable by any action of the Licensee or by operation of the law, and any attempt at such assignment shall be null and void. This Agreement shall inure to the benefit of and shall be binding upon Licensor's successors and assigns.

16. Miscellaneous.

16.1 Amendments and Waivers. The provisions of this Agreement may be amended only by the written agreement of the parties hereto. Any waiver, permit, consent or approval of any kind or character on the part of any party of any provisions or conditions of this Agreement must be made in writing and will be effective only to the extent specifically set forth in such writing. Any consent, waiver or excuse by either party of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by such other party.

16.2 Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

16.3 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given: (a) on the day of service if served personally on the party to whom notice is to be given; (b) on the day of transmission if sent via email during regular business hours on a business day, and if not, then on the following business day; or (c) on the day of delivery (if a business day, and if not a business day, on the next business day) if sent by Federal Express or similar overnight courier or United States mail. All notices shall be addressed as follows:

Any notices to Licensor will be addressed to:

City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266
Attn: [INSERT]
Email: [INSERT]

Any notices to Licensee will be addressed to:

[INSERT]

16.4 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. Each counterpart shall become binding once signed by each of the parties. This Agreement may be executed through the exchange of facsimile or pdf e-mail signature pages, which shall have the same legal effect as original signatures.

16.5 Entire Agreement. This Agreement, together with the schedules, exhibits and attachments to this Agreement and those documents expressly referred to in this Agreement, constitute the final agreement of the parties concerning the matters referred to in this Agreement, and supersede all prior agreements and understandings.

16.6 Rule of Construction. The parties hereto acknowledge and agree that each has negotiated and reviewed the terms of this Agreement, assisted by such legal counsel as they desired, and has contributed to its revisions. The parties hereto further agree that the rule of construction that any ambiguities are resolved against the drafting party will be subordinated to the principle that the terms and provisions of this Agreement will be construed fairly as to all parties and not in favor of or against any party. The terms “including”, “includes”, “include” and words of like import shall be construed broadly as if followed by the words “without limitation” or “but not limited to.” The terms “herein”, “hereunder”, “hereof” and words of like import refer to this entire Agreement instead of just the provision in which they are found.

16.7 Headings. The headings contained in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.

16.8 Representation and Warranty. Each of the parties represents and warrants to the other that the representing party has the full power and authority to enter into this Agreement, and to fully and effectively perform its obligations hereunder without violating any rights of any third party, and that no consent or approval of any other person or entity is required.

The undersigned parties have executed this Trademark License Agreement this ____ day of _____, 202__, effective as of the Effective Date.

Licensor:

CITY OF MANHATTAN BEACH

By: _____

Name: _____

Title: _____

Licensee:

[INSERT]

By: _____

Name: _____

Title: _____

SCHEDULE A
Licensed Mark

[INSERT MARK OR MARKS TO BE LICENSED]