

CONSIGNMENT AGREEMENT

THIS AGREEMENT is made and entered into as of the 1st day of October, 2014, by and between the McKinney Convention and Visitor's Bureau, Inc., a Texas non-profit corporation (hereinafter "MCVB"), and Windy Gallagher, an individual doing business as Made in McKinney (hereinafter "MiM").

WHEREAS, the MCVB has its headquarters and corporate offices (hereinafter the "Storefront Office") at 200 West Virginia Street in McKinney, Texas, and;

WHEREAS, MiM is in the business of designing and producing retail goods promoting the vision of MiM's customers; and

WHEREAS, MiM desires to sell retail goods under a Consignment Agreement within the Storefront Office and through an online website under the terms, conditions and obligations required by this Agreement; and

WHEREAS, MCVB desires to engage MiM under such Consignment Agreement; and

WHEREAS, MiM represents that it is capable of providing an accounting to MCVB of all receipts in accordance with provisions of this Agreement as negotiated by and between MiM and MCVB; and

WHEREAS, MiM assures MCVB that it has developed expertise with respect to successful and efficient management of such business operations and has inspected the Storefront Office for suitability of MiM's operations; and

WHEREAS, MiM has previously successfully operated under a prior Consumer Agreement since May, 2013;

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions herein contained, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

As used herein, the following words and phrases shall have the meanings set forth below:

1.01 **Business Year**

"Business Year" means a fiscal year, commencing October 1 and ending September 30.

1.02. **Chief Financial Officer**

"Chief Financial Officer" means the Chief Financial Officer of the City of McKinney, Texas, and any of his/her authorized representatives.

1.03 **Consignment Area**

"Consignment Area" means the area where MiM's sales are carried out with regard to this Agreement. The Consignment Area shall include that portion of the Storefront Office, as generally depicted on the graphic which is entitled Exhibit A, attached hereto and incorporated by reference herein for all purposes. Should MiM and MCVB disagree regarding whether a particular area shall be considered part of the Consignment Area; the Executive Director's decision shall prevail.

1.04 **Executive Director**

"Executive Director" means the MCVB Executive Director, including, if applicable, any Interim Executive Director, and any of his/her authorized representatives.

1.05 **Gross Receipts**

"Gross Receipts" means MiM's gross revenue from all MiM's sales at the Storefront Office and Online made or provided in connection with MiM's operations, whether made or provided upon the basis of cash payment (including checks) or on credit (whether collected or not); provided, however, there shall be excluded or deducted, as the case may be, from Gross Receipts the following:

1. All sales and use taxes, paid or collected by or payable by MiM, but only if such taxes are added to the sales price and separately stated from the sales price of merchandise, and collected from customers.
2. All bona fide credits or refunds made by MiM to customers in regard to merchandise sold by MiM.
3. All sums or credits received in settlement of claims for loss or damage to merchandise and assets.

1.06 **Online**

"Online" shall mean sales of Retail Products on a separate "Made in McKinney" website owned and maintained by MiM.

1.07 **Operating Expenses**

“Operating Expenses” shall mean all costs and expenses necessary for fulfilling MiM’s obligations under this Agreement in the ordinary course of business, to include, but not be limited to, the following: cost of retail goods; insurance; depreciation; amortization; equipment rental fees and the cost of salaries, wages and benefits to employees of MiM. Operating Expenses shall be the sole responsibility of the MiM.

1.08 **Operations**

“Operations” shall mean the business and commercial operations of MiM conducted in the ordinary course of business at the Storefront Office and Online.

1.09 **Retail Products**

“Retail Products” shall mean goods and wares, including but not limited to clothing, collectibles, and print materials designed for personal use and enjoyment.

1.10 **Software**

“Software” shall mean those necessary computer programs required to make Online sales of Retail Products and produce the financial reports under this Agreement by MiM.

**ARTICLE II
SPECIFIC CONDITIONS**

2.00 **Consignment Area**

A. **MiM's Acceptance of Physical Condition**

MiM acknowledges personal inspection of the Consignment Area and evaluation of the extent to which the physical condition thereof will affect the MiM’s performance under this Agreement. MiM accepts the Consignment Area in its present physical condition and agrees to make no demand upon MCVB for any improvements or alteration thereof.

B. **Approval Required for Alterations**

Any improvements, additions, alterations or changes to the Consignment Area by MiM shall be subject to prior written approval by the Executive Director, and compliance with such terms and conditions as may be imposed thereon by MCVB.

C. **No Property Interest of MiM**

MiM hereby acknowledges no title or interest in and to the Storefront Office or the Consignment Area and the improvements located thereon.

2.01 **MiM Responsibilities**

MiM shall have the right, license, privilege, and duty to sell Retail Products within the Consignment Area, during hours in which the Storefront Office is open, as determined by MCVB, and Online, 24 hours/day. The obligations required of MiM under terms of this Agreement include:

- A. Negotiate, execute in its own name and administer any and all licenses, supplier agreements, service contracts and all other contracts and agreements in connection with the sale of Retail Products in the Consignment Area and Online.
- B. Establish and adjust prices for the Retail Products.
- C. Engage in such creative design, marketing, advertising, solicitation, and promotional activities as MiM deems necessary or appropriate to sell the Retail Products in the Consignment Area and Online. MiM and MCVB shall have weekly meetings to coordinate input on products and marketing. The types of Retail Products sold shall be determined by mutual agreement of the parties.
- D. Deliver and stock Retail Products at the Consignment Area. Maintain Retail Product inventory for shipping to Online customers at a location MiM determines suitable.
- E. Collect and account for all revenues from sales of Retail Products at the Consignment Area and Online.
- F. Make all necessary bank deposits and credit card transactions for retail sales of the Retail Products.
- G. Prepare monthly and annual financial statements.
- H. MiM shall conduct no other operations or activities within the Consignment Area or Online than as are set forth herein.

2.02 **MCVB's Responsibilities**

MCVB shall perform the following:

- A. Administer all terms and conditions of this Agreement, including the determination of Retail Products to be sold by mutual agreement by and with MiM.
- B. Provide the Consignment Area.
- C. Provide staff for transacting sales in the Consignment Area.

2.03 **Term**

The term of this Agreement shall be for a period of one year, commencing on October 1, 2014, (the “Initial Term”), unless mutually extended by written agreement of the parties or unless sooner terminated as provided herein. At the end of the Initial Term, the parties by mutual agreement shall have the option to renew and extend the Initial Term of this Agreement for additional one (1) year terms (referred to as a “Renewal Term”), such renewals being on terms acceptable to the parties. The parties agree and understand that nothing in this Agreement shall be construed to deny the MCVB access to the Consignment Area at any time during the term of this Agreement, and MiM’s rights provided for by this Agreement shall be subject to the rights of the MCVB in the Storefront Office. In the event MCVB elects not to enter into a Renewal Term at the end of the Initial Term, MCVB agrees to purchase any MiM inventory containing “McKinney-logoed designs” thereon and which is located within the Consignment Area on the date of notice of non-renewal; however the purchase shall not exceed \$3,000.00 of inventory (valued by MiM’s cost, not by the retail price thereof).

The provisions of this Section 2.03 are subject to the provisions of Section 2.15, which authorize the MCVB to terminate this Agreement, without penalty or cause, at any time, upon sixty (60) days written notice given to MiM.

2.04 **Marketing, Pricing, Display of Retail Products within the Consignment Area**

MiM shall solely determine the prices charged for the Retail Products. MiM shall be responsible for the appearance and condition of the display of the Retail Products. MiM shall retain a) all title and ownership and b) all risk of loss of the Retail Products throughout the Term of this Agreement as well as the ownership of all intellectual property, trademarks and creative designs produced by MiM under this Agreement.

A. **General**

1. MiM officers and employees, if any, at the Storefront Office shall not be, for any purpose, considered to be employees of the MCVB, and MiM shall be solely responsible for their supervision, daily direction and control, and for setting and paying their compensation and any employee benefits.
2. MiM shall be fully responsible for the collection of all Retail Product sales receipts, and all other monies associated with the Operation. MiM shall be solely responsible for maintaining its own bank account for the fees collected, including account reconciliations and bookkeeping related to the sales revenues.
3. MiM shall keep complete records of account(s) and sales with regard to all monies collected hereunder. All accounting records and starting sheets shall at all times be completely available for examination by the Executive Director, the Chief Financial Officer or an authorized representative.

4. MiM shall have full use of the Consignment Area during normal business hours of the Storefront Office, as follows:

| | |
|---------------|-------------------------|
| Monday-Friday | 8:00 a.m. to 5:00 p.m. |
| Saturday | 11:00 a.m. to 4:00 p.m. |

B. Merchandise

1. MCVB reserves the right to prohibit the sale of any item of merchandise which is deemed objectionable or beyond the scope of this Agreement, as determined by the Executive Director in his/her sole discretion. MiM's Retail Products shall not contain City of McKinney logos, branding materials or any City of McKinney trademarks unless mutually agreed by the parties, with the consent of the City of McKinney. MiM's products designs shall not diminish or dilute the City of McKinney's logos, branding materials or trademarks, as it determines in its sole discretion.
2. MiM shall offer for sale only goods of premium quality.
3. MiM shall submit a complete, written price list, and a list of the inventory of merchandise to be sold, to the Executive Director within ten (10) days after the start of MiM's Operations. Thereafter and throughout the term of this Agreement, MiM shall submit written notification to the Executive Director prior to changes to prices, both for the Consignment Area and Online.

C. Advertising and Promotional Materials

1. MiM and MCVB shall mutually determine any advertising or promotional materials. Such materials include, but are not limited to, advertising in newspapers, internet, magazines, and radio and/or television commercials.
2. MiM shall, as a part of this Agreement, work with the Executive Director in promoting MCVB events, including providing Retail Products at such events.

2.05 Storefront Office

A. MiM's Displays and Fixtures

MiM shall not execute any security agreement pertaining to any display or fixtures in the Consignment Area without the prior written consent of the Executive Director. Upon expiration or earlier termination of this Agreement, MiM shall surrender the Consignment Area to MCVB in a good state of repair, reasonable wear and tear excepted, and MiM shall repair any damage to the Consignment Area caused by MiM, or its personnel, to the satisfaction of the

Executive Director. MiM shall be responsible for any damage caused by any risk which MiM is required to insure against pursuant to Section 2.14.

B. Maintenance and Repair

MCVB shall be solely responsible for the maintenance and repair of the Storefront Office, equipment and appurtenances thereto, at the level it deems appropriate. MiM shall supply, insure and maintain its own displays and fixtures for the sale of the Retail Products.

C. Utilities

MiM shall have no obligation for utilities for use of the Consignment Area.

2.06 MiM Online Personnel and Sales Personnel

MiM shall staff its Online operation with personnel to conduct all operations authorized hereunder, in sufficient number to meet the obligations of this Agreement. MCVB staff shall conduct retail sales transactions as a secondary obligation to their primary functions under the MCVB Bylaws and governing ordinance. Upon request by MiM and approval by MCVB, MiM may provide retail sales transaction personnel to supplement MCVB staff.

2.07 Consignment Payments

MiM shall remit to the MCVB a payment of twenty-five (25%) percent of the monthly Gross Receipts, as defined in Section 1.05, on the 5th business day of the month following each month of this Agreement and throughout the term of this Agreement. Sums paid hereunder are subject to reconciliation and adjustment as provided in Section 2.10 hereto. In the event of any renewal of this Agreement pursuant to Section 2.03, MiM shall continue to pay MCVB the consignment payment pursuant to the terms of this Agreement for such renewal period, unless otherwise agreed to by MCVB and MiM. MiM shall submit all such payments to the MCVB, by check or wire transfer. Any payment made by check shall be payable to the order of the MCVB.

2.08 Records and Reports

MiM shall prepare and maintain an adequate set of records, in detail and methodology satisfactory to the Executive Director and the Chief Financial Officer, documenting all Gross Receipts, as defined in Section 1.05 pursuant to this Agreement. Such method shall include retention of the following records:

- A. Regular books of accounting, such as general ledgers;
- B. Cash receipts and cash disbursements journals, including any supporting and underlying documents such as invoices, vouchers, checks, tickets, bank statements, etc.;

- C. Federal income tax returns and sales tax returns and checks and other documents proving payment of sums shown, which MCVB shall keep in confidence to the extent allowed by law;
- D. Daily cash sale reports (cash, check, and credit card) from the Storefront Office and daily Online sale reports (credit card). Daily reports shall be retained so that daily sales can be identified. MiM, through MCVB staff, shall record all sales by means of point of sale software acceptable to the Executive Director and the Chief Financial Officer. Beginning and ending cash readings shall be made a matter of daily record. In the event of a technical or computer failure, MiM, through MCVB staff, shall record by hand all collections and issue a sequentially pre-numbered customer's receipt in like manner. Under no circumstances shall MiM conduct sales which are not recorded or for which customer receipts are not issued.
- E. Any other reporting records that the Executive Director deems necessary for proper reporting of receipts and credits. If at any time the Executive Director or the Chief Financial Officer deems MiM's accounting practices or procedures inadequate or not in accordance with the City of McKinney's financial policies or procedures, MiM shall make requested adjustments to its practices and procedures. Concurrent with its remittal of the monthly Consignment Payment, MiM shall submit to the Executive Director a written report, in a format and in detail satisfactory to the Executive Director, of all MiM's gross receipts from all operations at the Storefront Office and Online during the preceding month. Such report shall include, without limitation, a daily breakdown of such gross receipts.

Accounting records and preparation of annual financial statements of the Operation shall be performed in accordance with generally accepted accounting principles (GAAP).

2.09 **Financial Statement and Miscellaneous Reports**

In addition to such other reports as may be required by this Agreement, MiM shall submit the following reports to MCVB:

A. **Financial Statement**

Within forty-five (45) days following the last day of this Agreement, or at any early termination of this Agreement prior to the end of the term, MiM shall submit a financial statement covering all business transacted by it at the Storefront Office and Online during such period, and all Gross Receipts, commissions and other income derived by MiM therefrom. Such financial statement shall be in a format, and in detail, satisfactory to the Finance Executive Director. Such accounting shall include a balance sheet, income statement, and statement of cash flows.

B. Miscellaneous Reports

Any other financial or statistical reports reasonably requested by the Chief Financial Officer or Executive Director from time to time during the term hereof shall be provided by the MiM, without cost to the MCVB, within a reasonable period of time.

2.10 Reconciliation of Operating Payments

MiM is required to provide the MCVB with a monthly report concurrently with its Consignment Payment. The MCVB will reconcile this report with other source documents to determine if all gross receipts have been included in the report. If an error is found, the MCVB will contact the MiM immediately. The resulting difference will either be added to or subtracted from the subsequent month's Consignment Payment from MiM to the MCVB.

2.11 Retention of Records

MiM shall retain all its books and records of account consistent with the MCVB's record retention policy and in no event less than two (2) calendar years following the last day of the term of this Agreement, or any extension thereof. Such books and records of account shall show all MiM's gross receipts, commissions, and other income derived from its operations, pursuant to this Agreement, all deductions therefrom, supporting documents, and all other information required by this Agreement. MiM shall retain such books and records of account, and such reports and records as may be required of it, or requested by MCVB, pursuant to this Agreement, at a location within the City of McKinney, and shall keep and maintain the same in accordance with generally accepted accounting principles.

2.12 Audit and Access to MiM's Records

Upon written notification by MCVB, MiM shall make all of its financial records available to MCVB at the business office of MiM including, but not limited to, general ledger, original entry journals, cancelled checks, invoices, bank statements, federal and state payroll and income tax filings and financial statements. MiM shall provide such access to its records for MCVB's purposes in verifying information submitted by MiM in any report or financial statement required or requested of MiM pursuant to this Agreement, and for MCVB's purposes in verifying MiM's compliance with the terms of this Agreement, but for no other purpose.

Further, at any time within two (2) calendar years following the last day of the term hereof, upon written notification to MiM, MCVB may, at its sole cost and expense, inspect, audit, and copy MiM's books, records of account, and supporting documentation relating to MiM's Operations. MCVB, its agents, or the Chief Financial Officer may inspect, audit, and copy such books, records of account, and supporting documentation for MCVB's purposes.

2.13 Permits and Licenses

MiM shall obtain and maintain in full force and effect throughout the term of this Agreement any and all applicable permits and business licenses which may be required by any law, including administrative regulations and local ordinances, for the conduct of MiM's operations hereunder.

2.14 Insurance Requirements

MiM shall, at its own expense, procure, pay for and maintain the following insurance written by companies approved by the state of Texas and acceptable to the MCVB. Within ten (10) calendar days following award of this Agreement, the MiM shall furnish to the Executive Director certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, deductibles, expiration dates and compliance with all applicable required provisions. Certificates shall reference the Consignment Agreement and be addressed as follows:

MCVB
c/o Dee-Dee Guerra, Executive Director
200 West Virginia Street, McKinney, TX 75069
Or email to: dguerra@visitmckinney.com

Commercial General Liability insurance, including, but not limited to Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability, with minimum combined single limits of \$500,000 per occurrence, \$500,000 Products/Completed Operations Aggregate and \$500,000 general aggregate. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per location basis.

Business Automobile Liability insurance covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$500,000 per occurrence.

With reference to the foregoing required insurance, the MiM shall have applicable insurance policies endorsed as follows:

The MCVB, its officials, employees, officers, agents and volunteers shall be named as additional insureds on the Commercial General Liability policy by using endorsement CG2026 or broader. All insurance policies shall be endorsed to the effect that MCVB will receive at least thirty (30) days' notice prior to cancellation, non-renewal, termination, or material change of the policies. However, ten (10) days' advance written notice of cancellation is permitted for non-payment of premium. All insurance shall be purchased from an insurance company that meets a financial rating of B+VI or better as assigned by A.M. Best Company or equivalent.

2.15 **Early Termination of Agreement**

- A. Except as otherwise provided, if MiM defaults in the performance of any promise, term, condition, or covenant required of it herein, and fails to cure such default within ten (10) calendar days following notice thereof from the Executive Director, unless a longer cure period is approved in writing by Executive Director, this Agreement shall terminate: provided, however, the MCVB shall be authorized to immediately terminate this Agreement, without serving such notice of default to MiM, upon the happening of any of the following events:
1. The failure of MiM to maintain in full force and effect all forms of insurance required hereunder.
 2. Any sale, transfer, or assignment by MiM of any right, license, privilege, or duty granted to or imposed upon it hereunder.
 3. A major breach of service including, but not limited to, health or safety violations which cause or may cause closure of all or any part thereof of the Storefront Office.
 4. Knowing falsification of any written documents or records.
 5. Carrying anything within the Storefront Office that can be considered a dangerous weapon, without a lawful permit.
 6. Refusal to follow instructions of the Executive Director with regard to building access, location of Retail Products, delivery of products or security procedures.
 7. Theft, willful destruction of the Storefront Office, or intentional misuse of equipment or causing personal injury while committing an unsafe act.
 8. Knowingly entering an unauthorized area of the Storefront Office.
- B. If, in the event MiM cannot or does not operate in accordance with the terms and conditions stated herein, and the MCVB terminates this Agreement, the Executive Director may take immediate possession of the Consignment Area in any manner deemed appropriate by the Executive Director for MCVB's benefit without any liability therefore to MiM. All sales of Retail Products through the date of termination under this Section 2.15 shall be calculated, and a Consignment Payment therefor shall be made immediately to MCVB.

2.16 **MCVB Right to Terminate Agreement**

Notwithstanding any provision herein to the contrary, including the period of the term set forth in Section 2.03, if the MCVB determines it to be in the best interests of the MCVB to

terminate this Agreement, or any renewal term thereof, the MCVB may, acting through its Board of Directors, terminate this Agreement and the term thereof, without penalty or cause, in the MCVB's sole discretion upon sixty (60) days' written notice of intent to terminate given to MiM. Notwithstanding any provision of this Agreement to the contrary, in the event operating and maintenance funds for the Storefront Office are not appropriated by the McKinney City Council to the MCVB for the next fiscal year, the MCVB retains the right to terminate this Agreement at the expiration of each MCVB budget period (September 30) during the term of this Agreement, without prior notice.

Should MiM fail, after ten (10) days' notice from MCVB of the need thereof, to perform its obligations required hereunder, MCVB may, but shall not be obligated to, (in addition to all other available remedies) exercise its right to terminate this Agreement as provided herein.

2.17 **MiM's Default**

- A. If the Executive Director determines that there is a default in MiM's performance of the Operations authorized and required herein, the Executive Director will provide, as specified in Section 2.16 herein, a written notice to the MiM to correct said default within specified time frames.
- B. In the event that MiM fails to cure the default within the prescribed time frames the Executive Director may, at his/her option exercise its right of termination pursuant to Section 2.16 herein.

2.18 **Nonassignability**

MiM shall have no right, authority, or power whatsoever to sell, assign, or transfer any right, license, privilege, or duty granted to or imposed upon it hereunder. Such right, license, privilege, and duty are granted and imposed solely and personally to and upon MiM, and any such sale, assignment, or transfer shall result in immediate termination hereof.

2.19 **Conflict of Interest**

MiM represents that neither it nor any of its officers, partners or employees have a financial interest in the subject matter of this Agreement, other than the right to receive payment for the Retail Products sold.

**ARTICLE III
GENERAL CONDITIONS**

3.01 **Authority of Executive Director**

The Executive Director shall administer this agreement on behalf of MCVB. With respect to matters hereunder subject to the approval, satisfaction, or discretion of MCVB or the Executive Director, the decision of the Board of Directors of the MCVB in such matters shall be final.

3.02 **Time of the Essence**

Time is of the essence in the performance of this Agreement.

3.03 **Independent Contractor**

- A. It is understood and agreed that MiM (including MiM's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. MiM's personnel shall not be entitled to any benefits payable to employees of MCVB. As an independent contractor, MiM hereby indemnifies and holds MCVB harmless from any and all claims that may be made against MCVB based upon any contention by any third party that an employer-employee relationship exists by reason of this agreement.
- B. If in the performance of this agreement, any third persons are employed by MiM, such persons shall be entirely and exclusively under the employment, direction, supervision, and control of MiM. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by MiM.
- C. It is further understood and agreed that as an independent contractor and not an employee of MCVB, neither the MiM nor MiM's assigned personnel shall have any entitlement as a MCVB employee, right to act on behalf of MCVB in any capacity whatsoever as agent, nor to bind MCVB to any obligation whatsoever.

3.04 **Indemnification of MCVB**

THE MiM SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS, PROTECT AND DEFEND THE MCVB, ITS OFFICERS, AGENTS, EMPLOYEES, AND REPRESENTATIVES FROM ANY AND ALL CLAIMS, LOSSES, LIABILITIES, OR DAMAGES, DEMANDS, COSTS AND EXPENSES, INCLUDING PAYMENT OF REASONABLE ATTORNEYS' FEES, THAT OCCUR OR ARE ALLEGED TO HAVE OCCURRED IN WHOLE OR IN PART AS A RESULT OF THE NEGLIGENCE OR FAULT OF MIM, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, AND CONSULTANTS, WHETHER SUCH CLAIMS, LOSSES, LIABILITIES, DAMAGES, COSTS, AND EXPENSES ARE CAUSED IN PART BY AN INDIVIDUAL OR ENTITY INDEMNIFIED UNDER THIS AGREEMENT. MiM'S INDEMNIFICATION OBLIGATION SHALL NOT INCLUDE INDEMNIFICATION FOR AN INDEMNITEE'S OWN NEGLIGENCE NOR SHALL IT INCLUDE THE DUTY TO DEFEND FOR CONCURRENT NEGLIGENCE CLAIMS AGAINST BOTH MiM AND THE MCVB.

3.05 **Release of Liability**

MCVB shall not be liable for, and is hereby released from, any and all liability to MiM, MiM's insurance carrier, or to any person claiming under or through MiM, for any loss or damage whatsoever to the Retail Products, displays, other personal property or effects of MiM resulting from the discharge of water, or other substance, from pipes, sprinklers, conduits, containers, appurtenances thereof or fixtures thereto, or from any damage resulting from the discharge or failure of electric current, regardless of cause or origin. MiM expressly releases the MCVB, its officers, employees, agents and attorneys from any claims, including negligence and willful acts, regarding the sales transactions of the Retail Products. MCVB shall have no liability for cash received from MiM customers at the Storefront Office. Further, MiM shall be solely responsible for the safety and security of Retail Products, property, equipment, supplies, merchandise, and commodities used or offered for sale by MiM at the Storefront Office. MCVB shall have no liability or responsibility whatsoever, and MiM shall make no claim against MCVB, with respect to such matters.

3.06 **Signs**

MiM shall place no sign, emblem, or advertising, of any kind or character, at the Storefront Office without the advance written approval of the Executive Director. MiM and MCVB may mutually determine that advertising signage shall be placed within the interior or upon the exterior of the Storefront Offices.

3.07 **Notices**

Any notice, demand, request, consent, or approval, that either party may or is required to give the other, shall be in writing and shall be either personally delivered, sent by certified mail, return receipt requested or sent by prepaid first class mail addressed as follows:

To MiM: Windy Gallagher
 749 S. Floyd Road
 Richardson TX 75080
 Cell: 214-202-8158

To MCVB: MCVB
 200 West Virginia Street
 McKinney, TX 75069
 Attention: Executive Director

With Copy to: Mark S. Houser
 MCVB Attorney
 Brown & Hofmeister, LLP
 740 E. Campbell Road, Suite 800
 Richardson, Texas 75081

3.08 **Notice of Claims and Suit**

MCVB and MiM shall each give the other prompt and timely written notice of any personal injury or accident and of any claim or lawsuit coming to its knowledge, when either such claim or lawsuit arises out of or is in any way connected with the operations of MiM hereunder, Online sales, the Consignment Area which in any way, directly or indirectly, contingently or otherwise, might reasonably affect the parties' relationship under this Agreement.

Such notice shall be deemed prompt and timely if given within thirty (30) calendar days following the date of receipt of such claim by an officer, agent, or employee of either party, and, if given within ten (10) calendar days following the date of service of process upon either party with respect to any such lawsuit.

3.09 **Parking**

Vehicular parking for MiM customers shall be allowed only in public parking areas.

3.10 **Applicable Law**

This Agreement shall be interpreted and enforced in accordance with the laws of the State of Texas, and shall be deemed to have been made, and shall be performed, in the State of Texas. Venue shall be in Collin County, Texas.

3.11 **Nondiscrimination Clause**

MiM shall not discriminate in the sale of Retail Products or the provision of services because of color, race, creed, national origin, religion, sex, sexual orientation, age, or physical or mental handicap in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d), the American with Disabilities Act (42 U.S.C. Section 12131 et seq.), and all other applicable laws and regulations requiring no discrimination.

3.12 **Compliance**

MiM shall comply with all applicable federal, state, and local laws and ordinances, regulations, and this Agreement shall be deemed to be executed and performed wholly within Collin County, State of Texas and construed with and governed by the laws of the State of Texas.

3.13 **Entire Agreement**

This Agreement, together with all exhibits attached hereto, constitutes the entire Agreement between the parties hereto, and all other representations or statements heretofore made, verbal or written, including the Term Sheet, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the parties hereto. Notwithstanding anything herein to the contrary, execution of this Agreement does not

relieve MiM of reporting, accounting, and records retentions obligations imposed under prior consignment agreements with MCVB, and it is expressly recognized that those obligations continue and are not altered or voided by this Agreement.

3.14 **Captions**

The captions of the articles and sections of this Agreement are inserted only as a matter of convenience and for reference and do not define or limit the scope of intent of any provisions of this Agreement, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

**McKINNEY CONVENTION AND
VISITOR'S BUREAU**
a Texas non-profit corporation

By: _____
DEE-DEE GUERRA,
Executive Director

Date: _____

**WINDY GALLAGHER, dba MADE IN
MCKINNEY**
an individual

Date: _____

APPROVED AS TO FORM:

MARK S. HOUSER
MCVB Attorney

EXHIBIT "A": Consignment Area

