



**KILLER
BANSHEE
STUDIOS**

kbs@killerbanshee.com
http://www.killerbanshee.com

2201 Curtis Street
Oakland, CA 94607
510.444.2649 (phone)
510.451.1365 (fax)

Contract to Commission an Artwork

AGREEMENT made as of the 20th day of September, 2007, between Eliot K Daughtry (hereinafter referred to as the "Artist"), located at Killer Banshee Studios, 2201 Curtis St., Oakland, CA 94607 and Matthew Moller (hereinafter referred to as the "Collector"), located at 381 Arlington, San Francisco, CA 94131.

WHEREAS, the Artist is a recognized professional artist; and
WHEREAS, the Collector admires the work of the Artist and wishes to commission the Artist to create a work of art ("the Work") in the Artist's own unique style; and
WHEREAS, the parties wish to have the creation of this work of art governed by the mutual obligations, covenants, and conditions herein;
NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter set forth and other valuable considerations, the parties hereto agree as follows:

Title TBA
Medium Red & Black Papercut

Size 24x18
Price \$500

Description Papercut to be done in the style of (and similar balance/color etc) to Robot Occupation. Piece will be delivered in black gallery frame unless otherwise specified.

The Artist shall deliver the preliminary design to the Collector within 45 days of the date hereof. The Collector may, within two weeks of receipt of the preliminary design, demand changes, and the Artist shall make such changes for a fee of \$75 per hour; provided, however, that the Artist shall not be obligated to work more than 6 hours making changes.

2. Progress Payments. Upon the Collector's giving written approval of the preliminary design, if applicable, or, the Artist agrees to proceed with construction of the Work, the Collector agrees to pay the price of \$ 500 for the Work as follows: 50% upon commencement of the work and 50% upon the completion of the Work.

Completion of the Work is to be determined by the Artist, who shall use the Artist's professional judgment to deviate from the preliminary design as the Artist in good faith believes necessary to create the Work. If, upon the Artist presenting the Collector with written notice of any payment being due, the Collector fails to make said payment within two weeks of receipt of notice, interest at the rate of 12% shall accrue upon the balance due.

3. Date of Delivery. The Artist agrees to complete the Work within 45 days of receiving the Collector's signed contract. This completion date shall be extended for such period of time as the Artist may be disabled by illness preventing progress of the Work. The completion date shall also be extended in the event of delays caused by events beyond the control of the Artist, including but not limited to fire, theft, strikes, shortages of materials, and Acts of God. Time shall not be considered of the essence with respect to the completion of the Work.

ART & TECHNOLOGY

4. Insurance, Shipping, and Installation. The Artist agrees to keep the Work fully insured against fire and theft and bear any other risk of loss until delivery to the Collector. In the event of loss caused by fire or theft, the Artist shall use the insurance proceeds to recommence the making of the Work. Upon completion of the Work, it shall be picked up / delivered / shipped (circle one) at the expense of the Collector to the following address specified by the Collector:

5. Termination. This Agreement may be terminated on the following conditions:

(A) If the Collector does not approve the preliminary design, if applicable, pursuant to Paragraph 1, the Artist shall keep all payments made and this Agreement shall terminate.

(B) The Collector may, upon payment of any progress payment due pursuant to Paragraph 2 or upon payment of an amount agreed in writing by the Artist to represent the pro rata portion of the price in relation to the degree of completion of Work, terminate this Agreement. The Artist hereby agrees to give promptly a good faith estimate of the degree of completion of the Work if requested by the Collector to do so.

(C) The Artist shall have the right to terminate this Agreement in the event the Collector is more than sixty days late in making any payment due pursuant to Paragraph 2, provided, however, nothing herein shall prevent the Artist bringing suit based on the Collector's breach of contract.

(D) The Collector shall have the right to terminate this Agreement if the Artist fails without cause to complete the Work within ninety days of the completion date in Paragraph 3. In the event of termination pursuant to this subparagraph, the Artist shall return to the Collector all payments made pursuant to Paragraph 2, but shall not be liable for any additional expenses, damages, or claims of any kind based on the failure to complete the Work.

(E) The Collector shall have a right to terminate this Agreement if, pursuant to Paragraph 3, the illness of the Artist causes a delay of more than six months in the completion date or if events beyond the Artist's control cause a delay of more than one year in the completion date, provided, however, that the Artist shall retain all payments made pursuant to Paragraphs 1 and 2.

(F) This Agreement shall automatically terminate on the death of the Artist, provided, however, that the Artist's estate shall retain all payments made pursuant to Paragraphs 1 and 2.

(G) The exercise of a right of termination under this Paragraph shall be written and set forth the grounds for termination.

6. Ownership. Title to the Work shall remain in the Artist until the Artist is paid in full. In the event of termination of this Agreement pursuant to Subparagraphs (A), (B), (C), or (D) of Paragraph 5, the Artist shall retain all rights of ownership in the Work and shall have the right to complete, exhibit, and sell the Work if the Artist so chooses. In the event of termination of this Agreement pursuant to Paragraph 5 (E) or (F), the Collector shall own the Work in whatever degree of completion and shall have the right to complete, exhibit, and sell the Work if the Collector so chooses. Notwithstanding anything to the contrary herein, the Artist shall retain all rights of ownership and have returned to the Artist the preliminary design, all incidental works made in the creation of the Work, and all copies and reproductions thereof and of the Work itself, provided, however, that in the event of termination pursuant to Paragraph 5 (E) or (F) the Collector shall have a right to keep copies of the preliminary design for the sole purpose of completing the Work.

7. Copyright. The Artist reserves all rights of reproduction and all copyrights in the Work, the preliminary design, and any incidental works made in the creation of the Work. Copyright notice in the name of the Artist shall appear on the Work, and the Artist shall also receive authorship credit in connection with the Work or any reproductions of the Work.

8. Right of Commission on Resale. On resale or other transfer of the Work, the Collector agrees to pay the Artist 10% of the gross sale price received or, if the Work is transferred other than by sale, to pay 10% of the fair market value of the Work as of the date of transfer.

9. Privacy. The Collector gives to the Artist permission to use the Collector's name in all forms and media and in all manners, including but not limited to exhibition, display, advertising, trade, and editorial uses, without violation of the Collector's rights of privacy or any other personal or proprietary rights the Collector may possess in connection with reproduction and sale of the Work, the preliminary design, or any incidental works made in the creation of the Work.

10. Non-Destruction, Alteration, and Maintenance. The Collector agrees that the Collector will not intentionally destroy, damage, alter, modify, or change the Work in any way whatsoever. If any alteration of any kind occurs after receipt by the

Collector, whether intentional or accidental and whether done by the Collector or others, the Work shall no longer be represented to be the Work of the Artist without the Artist's written consent. The Collector agrees to see that the Work is properly maintained.

11. Repairs. All repairs and restorations which are made during the lifetime of the Artist shall have the Artist's approval. To the extent practical, the Artist shall be given the opportunity to accomplish said repairs and restorations at a reasonable fee.

12. Possession. The Collector agrees that the Artist shall have the right to possession of the Work for up to 60 days every 5 years for the purpose of exhibition of the Work to the public, at no expense to the Collector. The Artist shall give the Collector written notice at least 90 days prior to the opening and provide proof of sufficient insurance and prepaid transportation.

13. Non-Assignment. Neither party hereto shall have the right to assign this Agreement without the prior written consent of the other party. The Artist shall, however, retain the right to assign monies due to the Artist under the terms of this Agreement.

14. Heirs and Assigns. This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, and personal representatives, and references to the Artist and the Collector shall include their heirs, successors, assigns, and personal representatives.

15. Integration. This Agreement constitutes the entire understanding between the parties. Its terms can be modified only by an instrument in writing signed by both parties.

16. Waivers. A waiver of any breach of any of the provisions of this Agreement shall not be construed as a continuing waiver of other breaches of the same or other provisions hereof.

17. Notices and Changes of Address. All notices shall be sent to the Artist at the following address: Eliot K Daughtry, Killer Banshee Studios, 2201 Curtis St. Oakland, CA 94607, and to the Collector at the following address: 381 Arlington, San Francisco, CA 94131. Each party shall give written notification of any change of address prior to the date of said change.

18. Governing Law. This Agreement shall be governed by the laws of the State of California, USA.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date first set forth above.



Artist:
Eliot K Daughtry

Collector _____

Collector phone # _____

Collector email: _____