

PHOTOGRAPHY CONSENT AND LICENSE AGREEMENT

THIS PHOTOGRAPHY CONSENT AND LICENSE AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 20__ by and between _____, an individual residing at _____ ("Photographer") and National Aviary in Pittsburgh, Inc., a Pennsylvania non-profit corporation, having its principal place of business at Allegheny Commons West, Pittsburgh, Pennsylvania 15212-5248 ("Aviary");

WITNESSETH:

WHEREAS, Photographer is a professional photographer and Photographer has agreed to serve as a volunteer for Aviary in the capacity of a photographer of the birds, buildings, grounds and other aspects of Aviary (collectively, the "Aviary Birds and/or Facilities"); and

WHEREAS, Aviary is willing to allow Photographer to take photographs of the Aviary Birds and/or Facilities in exchange for granting to Aviary the rights to use such photographs as are set forth herein;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows, each intending to be legally bound hereby:

1. Photographer is hereby appointed by Aviary to serve as a volunteer Photographer. In such capacity, Photographer is hereby authorized to enter upon and photograph the Aviary Birds and/or Facilities, at no charge to Photographer. Aviary reserves the right to restrict which Aviary Birds and/or Facilities Photographer shall be permitted to photograph hereunder as well as the times during which such photographs may be taken. Such appointment shall remain effective until such time as either: (a) Photographer resigns from such position; or (b) Aviary revokes such appointment (with or without cause) in its discretion.

2. Each and every photograph taken by Photographer of the Aviary Birds and/or Facilities (individually and collectively, the "Photographs") automatically shall become subject to the license set forth herein.

3. In consideration of Aviary's grant of permission to Photographer to photograph the Aviary Birds and/or Facilities, Photographer hereby grants to Aviary a perpetual, non-exclusive, royalty-free license to use, reproduce, prepare derivative works from, display, sell or otherwise commercially exploit the Photographs, and to authorize others to do the same, and to retain all proceeds from such commercial exploitations. No additional license fees or payments shall be due or payable by Aviary with respect to its use or commercialization of any of the Photographs. Without limiting the generality of the foregoing, Aviary shall be permitted, with respect to each of the Photographs, to use, re-use, publish, and re-publish the Photographs, in whole or in part, or composite or distorted in character or form, without restriction as to changes or alterations, in conjunction with Aviary's actual or fictitious name, or reproductions thereof in color or otherwise, made through any medium at any location, and in any and all media now or

hereafter known for marketing, promotion, fundraising, advertising, trade, or any other purpose whatsoever desired by Aviary.

4. In further consideration of Aviary's grant of permission to Photographer to photograph the Aviary Birds and/or Facilities, and notwithstanding Photographer's ownership of the Photographs, Photographer agrees that Photographer will not use, nor will Photographer allow any third party to use, any of the Photographs in any manner which would be likely to be derogatory to, or which would otherwise reflect negatively upon, the Aviary, its programs or activities or its trustees or management.

5. Photographer agrees to provide to Aviary digital copies in an agreed upon format or negatives for each of the Photographs in order to allow Aviary to use the Photographs as licensed herein. All negatives to the Photographs shall remain the property of Photographer. Aviary's rights therein shall be limited as set forth herein.

6. Photographer hereby grants to Aviary and its licensees and assignees the right to use and publish, and to authorize others to use and publish, Photographer's name, likeness and biographical materials for use by Aviary in connection with its rights to the Photographs as set forth herein, as well as in connection with any promotional materials for Aviary.

7. Photographer waives Photographer's rights under Section 106A of the U.S. Copyright Act of 1976, as amended, 17 U.S.C. § 101, et seq. (the "Copyright Act"), as to any use, modification, distortion or alteration of the Photographs desired to be made by Aviary in its sole and exclusive discretion. Photographer further waives any of Photographer's rights which might exist under any state "moral rights," "artist's rights" or "droit morale" laws to the extent that such laws are not preempted by the Copyright Act. Photographer hereby waives any right that Photographer may have to inspect or approve the finished product or products and the advertising copy or other matter that may be used in connection therewith or the use to which it may be applied.

8. Photographer represents and warrants to Aviary that: (a) each of the Photographs are or will be original works of authorship not taken from or based upon any other works (except for public domain works) and will not infringe upon the copyright, trademark, right of publicity or any other rights of any person, firm or corporation; and (b) Aviary's use of the Photographs, as authorized herein, will be free and clear of any claims of third parties for any further compensation.

9. Photographer will indemnify and hold Aviary, its officers, members, trustees, employees, volunteers, agents, licensees and assigns, harmless from and against any and all claims, damages, liabilities, costs and expenses, including reasonable attorneys' fees and court costs, which Aviary may suffer or incur by reason of Photographer's breach of any of Photographers warranties, representations and agreements contained in this Agreement.

10. Aviary shall give Photographer a credit line on each of the Photographs that Aviary selects for reproduction. The line shall read as follows:

11.

(a) This Agreement sets forth the entire understanding between the parties with respect to the subject matter of this Agreement and supersedes all prior negotiations or agreements, whether oral or in writing, with respect to the subject matter of this Agreement.

(b) No modifications, amendments, waivers, terminations or discharges of this Agreement will be binding upon either party unless confirmed in a written instrument executed by both parties hereto.

(c) No waiver of any provision of, or default under, this Agreement will affect the rights of the parties to this Agreement to thereafter enforce such provision or to exercise any right or remedy hereunder.

(d) This Agreement shall be governed by and construed and enforced in accordance with the internal substantive laws of the Commonwealth of Pennsylvania, without regard to its conflicts of laws principles. The parties agree that all disputes arising out of or with respect to this Agreement shall be heard exclusively by the courts, state and Federal, located in Pittsburgh, Pennsylvania, and the parties expressly consent to the jurisdiction and venue of such courts.

(e) This Agreement may be executed in multiple counterparts, each of which shall be deemed to be a duplicate original but all of which, when taken together, shall constitute a single instrument.

(f) Photographer hereby warrants that Photographer is of full legal age and has the right to contract in Photographer's own name. This Agreement shall be binding upon Photographer and upon Photographer's heirs, legal representatives, and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first hereinabove set forth.

PHOTOGRAPHER:

Signature

Typed Name

Address

NATIONAL AVIARY IN PITTSBURGH, INC.

By: _____

Title: _____