Art sale agreement

AGREEMENT OF ORIGINAL TRANSFER WORK OF DIGITAL ART

1. Definitions

“ARTIST” means, Shiqing He, the digital artist who created the Work, and who is associated with the Gallery Account in which the Digital Property recording the Work originated.

“ASSOCIATED INFORMATION” means information, other than a Work, placed in the Bitmark Property System. The minimum Associated Information for a Digital Property containing a Work is this Agreement, the price or value (as defined below) for each transfer of the Work, and any commission due to the Artist for each transfer of the Work after the initial transfer to the first Collector.

“BITMARK CERTIFICATE” means a unique record created by the Bitmark Property System and containing a unique identifier associated with a Work in the Bitmark Property System.

“BITMARK PROPERTY SYSTEM” means a distributed, publicly available registry and ledger system which uses blockchain technology to allow holders of Gallery Accounts to create unique records (the Bitmark Certificate) to claim ownership of Works identified in the Bitmark Certificate.

“COLLECTOR” means a purchaser of the Work recorded in the Digital Property originating with the Artist, and who is associated with the Gallery Account to which such Digital Property has been transferred.

“DIGITAL PROPERTY” means a Work and Associated Information, recorded together within a Bitmark Certificate, in the Bitmark Property System.

“GALLERY ACCOUNT” means an account in the Bitmark Property System consisting of a public and private key pair, established through the Gallery Service. The public key is the “Gallery Account Number”.

“WORK” the specific copy of the digital artwork created by Artist and entitled Endless Monologue, sold to Collector under the terms of this Agreement, and identified as part of a Digital Property together with this Agreement in the Bitmark Property System.

2. Purchase and sale

The Artist hereby sells to Collector and Collector hereby purchases the Work from Artist, subject to all the covenants herein set forth.

3. Future transfers

Collector covenants that in the event Collector shall hereafter sell, give, grant, barter, exchange, assign, transfer, convey or alienate the Work in any manner whatsoever or if the Work shall pass by inheritance or bequest or by operation of law, or if the Work shall be destroyed and insurance proceeds paid therefor, Collector or Collector’s personal representative shall:
(a) Record such event in the Bitmark Property System and, through the Bitmark Property System and any other contact method provided by the Artist, notify the Artist within thirty days of such transfer, distribution, or payment of insurance proceeds, and shall
(b) Pay a sum equal to ten percent (10%) of the Subsequent Sale Price (as hereinafter defined), if any, occasioned by such transfer or distribution or payment of insurance proceeds to Artist within thirty days of such transfer, distribution, or payment of insurance proceeds. For editions issued after May 01, 2021, five percent (5%) of the Subsequent Sale Price shall be transferred to Feral File for transactions executed with Feral File.

4. Price/value

The “Subsequent Sale Price” in each case shall be: (a) the actual selling price if the Work is sold for money; (b) the money value of the consideration if the Work is bartered or exchanged for a valuable consideration; or (c) the fair market value of the Work if it is transferred in any other manner.

5. Recording Subsequent Sale Prices

Subsequent Sale Prices shall be recorded in the Bitmark Property System at the time of the event under Section 3 to which the Subsequent Sale Price pertains. If a recordable event under Section 3 is not timely recorded in the Bitmark Property System, the Subsequent Sale Price shall nonetheless be recorded at the time of the discovery of the recordable event and payment promptly made as if such recordation had been timely completed.

6. Transferees to ratify agreement

Collector hereby covenants that they will not hereafter sell, give, grant, barter, exchange, assign, transfer, convey or alienate the Work in any manner whatsoever or permit the Work to pass by inheritance or bequest or by operation of law to any person without procuring such transferee's ratification and affirmation of all the terms of this Agreement and transferee's agreement to obtain a Gallery Account, to be bound hereby and to perform and fulfill all of the Collector's covenants set forth herein, said ratification, affirmation and agreement to be evidenced by the recording in the Bitmark Property System of the transfer of the Digital Property identifying the Work and containing a copy of this Agreement.

7. Provenance

The parties intend that each and every transfer of the Work be recorded in the Bitmark Property System in order to furnish a definitive provenance and history of the Work.

8. Exhibition

Artist and Collector mutually covenant that
(a) Collector shall give Artist written notice of Collector's intention to cause or permit the Work to be exhibited to the public, advising Artist of all details of such proposed exhibition which shall have been made known to Collector by the exhibitor. Said notice shall be given for each such exhibition prior to any communication to the exhibitor or the public of Collector's intention to cause or permit the Work to be exhibited to the public, Artist shall forthwith communicate to Collector and the exhibitor any and all advice or requests that he may have regarding the proposed exhibition of the Work. Collector shall not cause or permit the Work to be exhibited to the public except upon compliance with the terms of this article.
(b) Collector shall not cause or permit any public exhibition of the Work except with the consent of the Artist to each such exhibition.
(c) Artist's failure timely to respond to Collector's timely notice shall be deemed a waiver of Artist's rights under this article, in respect to such exhibition and shall operate as a consent to such exhibition and to all details thereof of which Artist shall have been given timely notice.

9. Artist's possession

Artist and Collector mutually covenant that Artist shall have the right, upon written notice and demand to Collector made not later than 120 days prior to the proposed shipping date therefor, to permit the display of the Work for one or more period not to exceed a total of sixty (60) days every five (5) years solely for the purpose of exhibition of the Work to the public at and by a public or non-profit institution, at no expense to Collector.

10. Non-destruction

Collector covenants that Collector will not intentionally destroy, damage, alter, modify or change the Work in any way whatsoever.

11. Rents

In the event that Collector shall become entitled to any monies as rent or other compensation for the use of the Work at public exhibition, the Collector shall pay a sum equal to one-half of said monies to Artist within thirty (30) days of the date when Collector shall become entitled to such monies.

12. Reproduction

Artist hereby reserves all rights whatsoever to copy or reproduce the Work. Artist shall not unreasonably refuse permission to reproduce the Work in catalogues and the like incidental to public exhibition of the Work.

13. Non-assignability

No rights created in the Artist and for the Artist's benefit by the terms of this Agreement shall be assignable by Artist during the Artist's lifetime, except that nothing herein contained shall be construed as a limitation on Artist's rights under any copyright laws to which the Work may be subject.

14. Notice

Collector covenants that they will not remove or alter any notice of the existence of this Agreement embedded in the metadata or otherwise accompanying a copy of the Work.

15. Transferees bound

In the event the Work shall hereafter be transferred or otherwise alienated from Collector or Collector's estate in any manner whatsoever, any transferee taking the Work with notice of this Agreement shall in every respect be bound and liable to perform and fulfill each and every covenant herein.

16. Expiration

This Agreement and the covenants herein shall be binding upon the parties, their heirs, legatees, executors, administrators, assigns, transferees and all other successors in interest and the Collector's covenants do attach and run with the Work and shall be binding until the expiration of the copyright in the Work, except that the covenants set forth in Sections 7 through 9 herein shall be binding only during the life of the Artist.

17. Waivers not continuing

Any waiver by either party of any provision of this Agreement, or of any right hereunder, shall not be deemed a continuing waiver and shall not prevent or stop such party from thereafter enforcing such provision or right, and the failure of either party to insist in any one or more instances upon the strict performance of any of the terms or provisions of this Agreement by the other party shall not be construed as a waiver or relinquishment for the future of any such terms or provisions, but the same shall continue in full force and effect.

18. Amendment in writing

This Agreement shall not be subject to amendment, modification, or termination, except in writing signed by both parties.

19. Attorney's Fees

In the event that either party shall hereafter bring any action upon any default in performance or observance of any covenant herein, the party aggrieved may recover reasonable attorney's fees in addition to whatever remedies may be available to him or her.