

Short Film Owner's Agreement – “Build Your Own” DVD

_____, 2006

This letter (the “Agreement”), when signed by you (the “Owner”), will serve to confirm the complete understanding between _____ (the “Curator”) and you regarding Curator’s use of the film(s) or video(s) described in Attachment A (the “Film(s)”).

1. **“Build Your Own” DVD (BYO DVD).** The BYO DVD service is a collection of films and/or videos that is being made available for sale on the Internet by a third party, CustomFlix. This service allows customers to purchase custom-made DVD compilations that may include selected films and/or videos of their choosing.
 - a. Curator intends to include films and/or videos as part of the CustomFlix short film collection. These films will be listed online as part of a collection of films to be sold on DVD under the terms below. Customers may select any of the Films in the collection, for purchase separately and/or as part of a Compilation on DVD.
 - b. Each Compilation DVD may contain multiple films (typically up to 10). DVDs will initially be sold for \$19.95, but the price may be adjusted in the future.

2. **Licenses.** Owner grants to Curator, its successors and assigns the rights described here (the “License”).
 - a. The exclusive right and license, but not the obligation, to make available and sell the Film(s) as part of the CustomFlix “Build Your Own DVD” collection as described in section 1.
 - b. The nonexclusive right and license, but not the obligation, to make available and sell the Film(s) in both physical formats (including but not limited to DVD and VHS), and electronic/downloadable formats (including but not limited to Internet video on demand, etc.)
 - c. The nonexclusive right and license, but not the obligation, to use portions of the Film(s) at no charge for promotional purposes (i.e. to promote the Film(s), test new delivery technologies, promote the Curator brands, etc.).
 - d. The nonexclusive right, but not the obligation, to sublicense the Film(s) to CustomFlix for the uses as described above.
 - e. The License granted herein includes, without limiting the generality of the foregoing, (a) the rights to all music (recording, composition, reproduction and public performance rights), (b) the title of the Property, literary elements, names and likenesses, photographs, performances, graphics and other content in or used as part of the Properties necessary for Curator to exercise its rights hereunder, (c) the right to advertise and promote the Property and/or Curator and to enter into commercial tie-ins relating to the Property (and to use the name, image and likeness of any individual that rendered services in or in connection with the Property in connection with such advertising, promotion and commercial tie-ins; provided no individual shall be shown as directly endorsing any Film(s) or service without such individual's consent) in any medium now known or later developed, as well as (d) the right to receive any and all damages, penalties, settlements and profits relating to or arising from any interference with or infringement of any of the rights hereby licensed to Curator. Without limiting the generality of the foregoing, the License also includes Owner hereby waives any and all moral rights in connection with the Property the exercise of which would be inconsistent with full exploitation of the License.

3. **Financial Arrangements.** As Owner’s sole consideration in connection with use of the Film as described herein, Curator or CustomFlix will pay Owner a share of the sale.
 - a. From stand-alone sales of the Film(s), twenty five percent (25%) of sale price will be paid to Owner.
 - b. From Compilation sales, twenty five percent (25%) of sale price, pro-rated based on duration of films, will be split equally between each Owner whose film is included on the sold Compilation. For example, if a DVD containing 90 minutes of material is sold for \$19.95, and films by Owner account for 40 minutes, Owner will be paid \$2.22 (25% of \$19.95, pro-rated at 40 of 90 minutes).
 - c. From sublicensing under section 2d, Owner will receive twenty five percent (25%) of Gross Receipts, as received by Curator as a result of the sale of the Film(s) from such sublicense. In the event that multiple Film(s) are sublicensed, revenue will be distributed to the Owner(s) of the Films pro-rated by running time.

Each month Owner will receive a profit check, for the balance owed at the end of the previous month. Minimum check amount is \$10.00. If Owner is owed less than \$10.00, the balance will accumulate until it reaches \$10.00 or more.. Owner will be solely responsible for any and all taxes payable as a result of the payments made hereunder.

4. Term; Termination. The term of this Agreement will commence on the date of Owner's signature below (the "Effective Date") and expire three (3) years thereafter, subject to automatic renewal for consecutive one (1) year terms unless either party terminates the Agreement in writing. The following sections will survive any expiration or termination of this Agreement: 3 ("Financial Arrangements"); 6 ("Representation and Warranties"); 7 ("Indemnity"); 9 ("Disclaimer"); and 10 ("General Provisions").

5. Ownership/Assignment: Except as specifically provided herein, Owner shall retain all ownership and rights, including copyrights, in and to the Property. Any license, transfer, encumbrance or mortgage of any of the foregoing shall be subject to, and subordinate to, Curator's rights under this Agreement. Curator, its successors and assigns may assign any or all rights and/or delegate any or all obligations arising pursuant to this Agreement freely to any third party(ies), either throughout the Term or for a limited period of time, in Curator's sole discretion.

6. Representations and Warranties. Owner represents and warrants that (i) it has not given or sold rights in or to the Films to any other party; (ii) the Films are free and clear of any liens, encumbrances, restrictions, or other claims of rights inconsistent with, or which could adversely affect, any of the rights granted herein to Curator, (ii) all rights to music, story, names, likenesses, pictures, characters, dialogue, voice-overs, and literary materials upon which each Film is based, and any other materials of any nature whatsoever appearing, used or recorded in such Film, have been obtained in proper form for the free and unrestricted use and exploitation of the Compilation as contemplated by this Agreement; (iii) all rights, releases, clearances and/or licenses with respect to all materials and elements in, and all persons participating in or performing services on each Film have been secured by Owner for duplication, promotion, distribution, sale and performance as contemplated by this Agreement; (iv) each Film is and will be an original work that does not and will not infringe or misappropriate any Intellectual Property Rights, or contain any illegal or obscene material or any information that violates any entity's or person's rights or reputation, or require a payment by Curator to any third party whatsoever; and (v) Owner has the right to issue and authorize publicity regarding persons appearing in the Film, has a right to use, reproduce, transmit, broadcast, exploit, publicize and exhibit their names, photographs, likenesses, voices, and other sound effects, as well as recordings, transcriptions, films and other reproductions thereof in connection with the rights granted herein to Curator.

7. Release; Indemnity. Owner will have no claim (including without limitation claims based on invasion of privacy, defamation, or right of publicity) arising out of any use of the Films by or for Curator under this Agreement, and Owner hereby releases, indemnifies and holds Curator and its affiliates and partners harmless from any and all claims, liabilities, losses, damages, expenses, demands, residuals, royalties, credits and/or other obligations arising from Owner's breach of this Agreement (including without limitation Section 6) or any claim arising from Curator's use of the Film.

8. Waiver. Owner understands and agrees that Curator is proceeding in express reliance upon the representations and warranties made by Owner, and the rights granted, in this Agreement, and Owner therefore acknowledges that it shall not have the right to terminate this Agreement or to enjoin or restrain the distribution or other exploitation of the rights granted to Curator herein.

9. DISCLAIMER. NEITHER CURATOR NOR ANY OF ITS PARTNERS MAKES ANY WARRANTY WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT, AND CURATOR HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

10. General Provisions.

10.1 Assignment. Curator may assign this Agreement in whole or in part, in connection with any merger, sale of assets, reorganization or other change of control. This Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and permitted assigns.

10.2 Notice. Any notice under this agreement must be in writing and will be deemed given when delivered personally or sent by mail, postage prepaid, to each party at the address listed above (marked to the attention of such party's legal department), or to such other address as either party shall have communicated to the other in accordance with the provisions of this paragraph.

10.3 Limitation of Remedies. No failure of Curator to perform its obligations under this Agreement shall constitute a breach of this Agreement, unless Owner has given Curator written notice of such non-performance and Curator fails to cure such non-performance within thirty (30) business days after receipt of such notice. Owner's rights and remedies in the event of breach or alleged breach of this Agreement will be limited to Owner's right, if any, to

recover damages in an action at law and in no event shall Owner be entitled by reason of any breach or alleged breach to enjoin, restrain, or seek to enjoin or restrain the reproduction, exhibition, distribution or other means of exploitation of the Compilation.

10.4 Rules of Construction. If any provision in this Agreement will be subject to an interpretation under which it would be void or unenforceable, such provisions will be construed so as to constitute it as a valid and enforceable provision to the fullest extent possible, and in the event that it cannot be so construed, it will, to that extent, be deemed deleted and separable from the other provisions of this Agreement, which will remain in full force and effect and will be construed to effectuate its purposes to the maximum legal extent. The headings of the sections of this Agreement are provided for convenience only and will not be used to limit or construe the contents of this Agreement. As this Agreement is a negotiated agreement, there will be no presumption against any party on the ground that such party was responsible for preparing this Agreement or any part of it. Capitalized terms as used in this Agreement shall have the meanings specified in this Agreement.

10.5 Governing Law. This Agreement will be construed in accordance with the substantive laws of the State of California, excluding its conflict of law rules.

10.6 Complete Agreement, Waiver, and Modification. This Agreement, once duly executed, constitutes the complete and exclusive understanding between the parties with respect to the subject matter hereof, superseding all prior and contemporaneous negotiations, agreements, correspondence or understandings, written or oral. No waiver or modification of any provision of this Agreement will be binding unless it is in writing and signed by each of the parties. No waiver of a breach hereof will be deemed to constitute a waiver of a further breach, whether of a similar or dissimilar nature.

This Agreement shall serve as a full and binding agreement between the parties. Any modifications to this Agreement shall be made in a writing signed by an authorized representative of both parties. All notices shall be sent to Curator at the address above and to Owner at the address below.

AGREED TO AND ACCEPTED BY:

Owner

By: _____

Name: _____

Date: _____

Email: _____

Phone: _____

Address:

Curator

By: _____

Name: _____

Date: _____

Email: _____

Phone: _____

Address:

Attachment A: Film Title and Description

Title:

Duration (max 30 minutes):

Copyright notice:

Release Year:

Director:

Producer:

Writer(s):

Primary Actor(s):

Awards:

Film Festival Screenings:

Description:

Note: Film(s) must be submitted on MiniDV, BetaSP, DigiBeta, or DVCAM, with 30 seconds of timecoded lead-in and trailer. Do not use LP mode. Tapes will not be returned unless a prepaid return mailer is provided.

Attach copies of this page for additional films, if any.