

UNANIMOUS MEMBERSHIP AGREEMENT

THIS AGREEMENT made as of February , 2008.

BETWEEN:

Paved Art and New Media Inc.
("Paved Art")

- and -

Aka Gallery Inc.
("Aka Gallery")

- and -

20 Above Inc., a non-profit corporation
incorporated under the laws of the province of
Saskatchewan.
(the "Corporation")

WHEREAS the Corporation was incorporated under the laws of the province of Saskatchewan on the 28th day of January, 2005;

AND WHEREAS Paved Art and Aka Gallery are the only members of the corporation, each hold a regular membership;

AND WHEREAS the membership of the corporation has agreed to execute and deliver this Agreement as a Unanimous Membership Agreement (Pooling Agreement) pursuant to s. 136 of *The Non-Profit Corporations Act* as they are desirous of entering into certain arrangements regarding the membership contribution and to restrict, in part, the powers of the Directors to manage the business and affairs of the Corporation in the manner hereinafter described.

NOW THEREFORE, in consideration of the provisions of this agreement, the parties agree as follows:

**ARTICLE I
DEFINITIONS**

- 1.1 In this Agreement, the following words and phrases shall have the following respective meanings unless the context otherwise provides:
- (a) **"Agreement"** means this Agreement and any Schedules hereto;
 - (b) **"Common Areas"** means that area of the property which is not a shared area (as defined below) and for which no exclusive use has been granted to any member, individual, organization or entity.
 - (c) **"Common Costs"** means all costs and expenses relating to the operation, maintenance, repair, administration and supervision of the property incurred by the Corporation, and may be related solely to a common area but is not related solely to an exclusive use area;
 - (d) **"Director"** means any director of the board of directors of the Corporation and **"Board of Directors"** means the board of directors of the Corporation;
 - (e) **"Member"** means a regular member of the Corporation,
 - (f) **"Membership"** means all regular members of the Corporation;
 - (g) **"Property"** means the real property situated at 424 20th Street West, Saskatoon, Saskatchewan;
 - (h) **"Shared Areas"** means all areas of the property utilized jointly by the Membership and the Corporation but by no other person, organization or entity.

**ARTICLE II
PURPOSE AND INTENT**

- 2.1 The parties shall cause the Corporation to hold the property for the purpose of providing premises for the members to carry on the affairs of their individual corporations, for providing members equitable benefit (para. 2.2 below) of the property and for the purpose of leasing portions of the property to other individuals, organizations or entities with a view to promoting contemporary art, developing arts and cultural audiences and facilitating stabilization of contemporary arts, arts organizations and its partners.
- 2.2 In determining whether members of the Corporation are receiving equitable benefit of the property, regard shall be given to the following factors, with no one factor being more determinative than another:
- (i) the area of the property occupied solely by the members and the rate of rent paid to the corporation in relation to market value rent,
 - (ii) the labour expended by the members towards the operation of the corporation, ✓
 - (iii) the initial capital investment of the members, ✓
 - (iv) the contribution of the members towards the expenses of the corporation, ✓
 - (v) any other direct or indirect contribution of a member that brings value to the corporation ✓
- 2.3 The members shall irrevocably instruct their nominees and representatives at all the meetings of the membership, and insofar as permitted by law, their nominees or representatives on the Board of Directors, to always vote and act in accordance with the terms of this Agreement so as to give this Agreement full force and effect and to carry out its intent.
- 2.4 The members shall at all times act in good faith towards each other and shall act in good faith to promote and support the interests of the corporation.

**ARTICLE III
PROPERTY USE AND MANAGEMENT**

3.1 The Corporation shall be responsible for granting exclusive occupancy of any portion of the premises to any members, individuals, organizations or entities, in furtherance of the purpose and intent expressed in this agreement provided that such grants of occupancy shall ensure that:

- i) Occupants shall be responsible for all costs and expenses relating solely to the area of their sole occupation; ✓
- ii) Rent paid by the occupants who are members of the corporation shall be determined having regard to the fair rental market value of the property, the square footage of the occupants' exclusive use area in relation to the total square footage of the property and the monthly mortgage costs of the corporation; ✓
- iii) Rent paid by occupants who are not members of the corporation shall be determined by the fair rental market value and such other factors as the board of directors may deem relevant, including but not limited to the fair rental market value of the property, the square footage of the occupants' exclusive use area in relation to the total square footage of the property and the monthly mortgage costs of the corporation; ✓
- iii) Occupants shall be responsible for a proportionate share of all common costs. An occupant's proportionate share shall be a percentage of common costs based upon the square footage of the occupant's exclusive use area in relation to the total square footage of the property. ✓

3.2 All costs and expenses relating to Shared Areas of the premises shall be borne by the corporation unless other agreed in writing by the members. ✓

3.3 Unless agreed to otherwise in writing by the members, and subject to paragraph 3.4 below, all real and personal property acquired in the name of the corporation or with funds of the corporation is deemed to be the property of the corporation.

3.4 If any real or personal property is to be acquired with contributions from both a member and the corporation with the intention that such asset is to be owned by both

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the corporation and a member or members, such acquisition shall be approved by the Board of Directors by way of resolution recording the apportionment of ownership interest between those who have contributed to the acquisition of the asset.

ARTICLE IV ORGANIZATION

4.1 The Corporation shall be organized as follows:

- (a) There shall be four (4) directors on the Board of Directors, consisting of two (2) nominees of each Member.
- (b) A director may be removed from the Board of Directors and replaced by a new director at any time, with the consent of both Members.
- (c) The Corporation shall have two (2) officers, namely, President and Secretary-Treasurer, with each officer being a nominee of each Member to the Board of Directors.
- (d) All cheques and other banking documents, deeds, transfers, contracts, agreements and other documents that are required to be executed by the Corporation from time to time shall be executed on its behalf by both the President and Secretary-Treasurer. *Any two of directors*
Presidents with equal representation of members.
- (e) The bylaws of the Corporation shall provide or shall be deemed hereby to be amended to provide amongst other things, as follows:
 - (i) the presence of two (2) Directors, comprised of a nominee of each Member, shall be required to constitute a quorum at any meeting of the Board of Directors; ✓
 - (ii) any resolution of the Board of Directors shall require affirmative votes of at least two (2) Directors comprised of a nominee of each Member; X

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4?*

- (iii) the presence of both regular members shall constitute a quorum at any meeting of the Membership;
- (iv) any resolution of the Membership shall require the affirmative votes of one hundred percent (100%) of all Members;
- (v) any Director shall have the right at any time and from time to time to call a meeting of the board of directors on not less than fourteen (14) days' notice; ✓
- (vi) any Member shall have the right at any time or from time to time to call a meeting of the Membership on not less than fourteen (14) days' notice; ✓
- (vii) the Chair presiding at meetings of the Board of Directors shall have the right to vote in his/her capacity as Director in the first instance, but shall have no second or casting vote in case of an equality of votes; ✓
- (viii) the Chair presiding at meetings of the Membership shall have the right to vote in the first instance in his/her capacity as a Member or as a proxy if so appointed but shall have no second or casting vote in case of an equality of votes. ✓
- (ix) a meeting of the Board of Directors shall occur on a monthly basis. NO!

**ARTICLE V
CONFLICT RESOLUTION**

- 5.1 Members shall foster a respectful environment for conflict resolution that allows members and directors to express their point of view and which encourages thoughtful consideration of all points of view expressed. ✓
- 5.2 In the event that an equality of votes occurs at a meeting of the Directors resulting in an impasse in decision making, the matter in dispute shall be referred to the Members for resolution and it is hereby agreed that prior to commencement of legal proceedings, the

Members shall in good faith employ mediation to resolve the dispute in the following manner:

- i) any Member desiring resolution of the dispute shall give notice to the other Member of its desire to resolve the dispute ("the dispute resolution notice");
- ii) the Member receiving a dispute resolution notice shall, within fourteen (14) days of receiving the notice, provide to the other Member a list of three persons qualified as mediators in Saskatchewan ("the mediator list") proposed to provide mediation to resolve the conflict;
- iii) the Member receiving the mediator list shall, within fourteen (14) days of receiving the mediator list, retain one mediator from that list to commence mediation and pay to that mediator such retainer fees as may be required. Thereafter, all costs of the mediator's services shall be borne equally by the Members.

5.3. In the event that mediation is not successful despite the good faith effort of the Members, the Members shall contract to employ a collaborative law process to resolve the dispute and shall only commence legal proceeding in the event that the collaborative law process is not successful in resolving the conflict.

ARTICLE VI MEMBERSHIP RESTRICTION

- 6.1 The Directors shall be restricted from increasing the membership of the Corporation until such time as the Members unanimously agree otherwise.
- 6.2 A membership interest is only transferrable with the unanimous agreement of the Membership.

ARTICLE VII LIQUIDATION AND DISSOLUTION

- 7.1 The commencement of bankruptcy, insolvency or similar proceedings of one member shall entitle the other member to demand liquidation and dissolution of the corporation.

ARTICLE VIII RECORDS AND ACCOUNTS

- 8.1 Proper books of account shall be kept by the Corporation, and entries shall be made therein of all such matters, terms, transactions and other things as are usually written and entered in books of account kept by others engaged in an enterprise of a similar nature. Each of the members shall have free access at all times to inspect, examine and copy such books and shall at all times furnish to the other, correct information, accounts and statements of and concerning all such transactions without concealment or suppression.
- 8.2 A separate bank account shall be opened and maintained for the Corporation in the name of the Corporation or in such other name or names as may from time to time be agreed upon by the members, at such bank or banks as the members may from time to time agree upon. All monies received from time to time on account of the business of the Corporation shall be paid immediately into such bank account for the time being in operation and in the same form of drafts, cheques, bills or cash in which they are received and all disbursements on account of the Corporation shall be made by cheque on such bank account.

ARTICLE IX NOTICES

- 9.1 Any notice or other writing required or permitted to be given hereunder or for the purposes hereof (a "Notice") shall be sufficiently given and delivered to the party to whom it is given or mailed, by prepaid registered mail, with delivery confirmation, addressed to such party:
- i) if to Aka Gallery, then to: 424 20th Street West, Saskatoon, SK S7N 0X4;
 - ii) if to Paved Art, then to: 424 20th Street West, Saskatoon, SK S7N 0X4;
 - iii) if to the Corporation, then to: 424 20th Street West, Saskatoon, SK S7N 0X4

or at such other address as the parties to whom such writing is to be given shall have last notified in writing all other parties of a change of address for the purposes of this provision.

ARTICLE X GENERAL PROVISIONS

- 10.1 Time shall be of the essence of this Agreement and every part thereof.
- 10.2 No waiver on behalf of any party or breach of any of the covenants, conditions and provisions herein contained shall be effective or binding upon such party unless the same shall be expressed in writing and any waiver so expressed shall not limit or affect such party's rights with respect to any other future breach.
- 10.3 Each of the parties covenants and agrees that he, his heirs, executors, administrators, successors and assigns will sign such further agreements, assurances, waivers and documents, attend such meetings, enact such bylaws or pass such resolutions and exercise such votes and influence, do and perform or cause to be done and performed such further and other acts and things that may be necessary or desirable from time to time in order to give full effect to this Agreement and every part thereof.
- 10.4 The headings of the sections of this Agreement are inserted for convenience only and do not constitute part of this Agreement.
- 10.5 This Agreement shall be binding upon and enure to the benefit of the parties and their respective heirs, executors, administrators, successors and assigns.
- 10.6 All words and pronouns relating thereto shall be read and construed as the number and gender of the party of parties referred to in each case require and the verb shall be construed as agreeing with the required word and pronoun.
- 10.7 If any covenant or other provision of this Agreement is invalid, illegal or incapable of being enforced by reason of any rule of law or public policy, all other conditions and provisions of this Agreement shall, nonetheless remain in full force and effect and no covenant or provision shall be deemed dependent upon any other covenant or provision unless so expressed herein.

- 10.8 This Agreement expresses the final Agreement between the parties with respect to all matters herein and no representations, inducements, promises or agreements or otherwise between the parties not embodied herein shall be of any force and effect. This Agreement shall not be altered, amended or qualified except by a memorandum in writing, signed by all of the parties, and any alteration, amendment or qualification thereof shall be null and void and shall not be binding upon any such party unless made and recorded as aforesaid.
- 10.9 This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of Province of Saskatchewan.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date and year first above written.

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Paved Art and New Media Inc.

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Aka Gallery Inc.

seal

20 Above Inc.