



## WAIVER AND RELEASE

This Waiver and Release is for the benefit of Upstairs Circus LLC, Upstairs Circus DTC LLC, Upstairs Circus MPLS LLC, Upstairs Circus ATX LLC and Upstairs Circus DFW LLC, which are Colorado, Minnesota and Texas limited liability companies, ("Upstairs Circus"), and any and all managers, owners, employees or agents thereof. Upstairs Circus is a project studio with a full bar where people gather to create unique do-it-yourself art and design projects. It provides participants the facilities, supplies and tutorials to create take home art and design projects while they simultaneously enjoy the social setting of a bar atmosphere and, at their personal election, may imbibe in the alcoholic offerings of Upstairs Circus ("facilities, services and products"). Upstairs Circus hereby offers its facilities, services and products on the condition that each participant agrees to execute this Waiver and Release. In consideration of the agreement by Upstairs Circus to permit the individual named below (the "Participant") to use its facilities, services and products and participate in activities and programs related thereto, the Participant (and/or the undersigned parent or guardian of the Participant, who shall also be considered a "Participant" hereunder) hereby voluntarily acknowledges and agrees to all of the following terms and conditions:

1. **Participant's Assumption of All Known and Unknown Risks.** Participant understands, acknowledges and agrees that use of the facilities, services and products offered by Upstairs Circus may present certain significant risks or dangers, both known and unknown, to Participant, including but not limited to any or all of the following: risks associated with the use of alcohol; risks associated with the use of alcohol in conjunction with tools or other equipment; risks associated with the use of cutting tools such as knives, scissors, chisels, hand held saws or other types of blades; risks associated with use of sharp tools and other sharp objects such as needles, nails, screws, leather punches, etc.; risks associated with use of high temperature tools such as hot glue guns, clothing irons, soldering irons, irons for melting wax, etc.; risks associated with use of open flames such as candles, matches, lighters, torches, etc.; risks associated with use of hammers; risks associated with use of potentially poisonous, toxic or dangerous substances or chemicals (including the risk of mislabeling and/or misidentification); risks associated with use of tools that could result in electric shock such as irons, drills, lights, etc.; risks associated with improper instruction, guidance or supervision related to the facilities, services and/or products of Upstairs Circus, and any and all other risks that may be otherwise associated with the facilities, services and/or products of Upstairs Circus. These risks include the risk of death, serious bodily injury, emotional harm, property loss or damage and/or other pecuniary harm. **PARTICIPANT'S USE OF THE FACILITIES, SERVICES AND PRODUCTS OF UPSTAIRS CIRCUS IS AT PARTICIPANT'S OWN RISK. PARTICIPANT AND/OR THE UNDERSIGNED PARENT OR GUARDIAN HEREBY ASSUMES FULL AND EXCLUSIVE RESPONSIBILITY FOR ALL RISKS OF BODILY INJURY, DEATH, EMOTIONAL HARM, PROPERTY LOSS OR DAMAGE AND/OR OTHER PECUNIARY HARM INCURRED WHILE PARTICIPANT IS AT THE FACILITIES OF UPSTAIRS CIRCUS OR ARISING DIRECTLY OR INDIRECTLY FROM PARTICIPANT'S USE OF THE FACILITIES, SERVICES AND/OR PRODUCTS OF UPSTAIRS CIRCUS, WHETHER OR NOT CAUSED BY THE ACTS OR OMISSIONS, NEGLIGENT OR OTHERWISE, OF PARTICIPANT, OTHER PARTICIPANTS, UPSTAIRS CIRCUS, ANY MANAGER, OWNER, EMPLOYEE OR AGENT OF UPSTAIRS CIRCUS OR OTHERWISE.**

2. **Waiver and Release of All Claims; Covenant Not to Sue.** In consideration of being permitted access to the facilities, services and products of Upstairs Circus, Participant and/or the undersigned parent or guardian, for himself or herself, and for his or her heirs, executors, successors, assigns, legal representatives, spouse and agents, to the fullest extent allowed by law, expressly intends to release and waive, and by execution of this Waiver and Release does hereby release, waive and forever discharge Upstairs Circus and its affiliates, predecessors, successors, assigns, subsidiaries, managers, members, owners, employees, agents, attorneys, insurers, and representatives (individually and collectively, the "Releasees"), without reservation or condition, from and against any and all liability, claims, demands, actions or causes of action which Participant and/or the undersigned parent or guardian may now have, ever had, hereafter have or claim to have against any or all of the Releasees, known or unknown, in any way related to Participant's use of the facilities, services and/or products of Upstairs Circus, and Participant and/or the undersigned parent or guardian further waives any and all rights he or she may now have, ever had, hereafter have or ever claim to have in the same. Participant and/or the undersigned parent or guardian expressly agree and covenant that, to the extent permitted by applicable local, state and federal law, neither Participant nor the undersigned parent or legal guardian, Participant's heirs, executors, successors, assigns, legal representatives or agents will (i) commence, prosecute, or cause to be commenced or prosecuted against the Releasees, or any of them, any action or other proceeding based upon or related to any claim which is released hereby, or (ii) seek to challenge the validity or enforceability of this Waiver and Release.

3. **Indemnification.** Participant and/or the undersigned parent or guardian hereby agree to fully indemnify Releasees and each of them from and against any and all losses, claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees) (collectively "Claim" or "Claims"), incurred by the Releasees or any of them due to or arising in any way from Participant's use of the facilities, services and products of Upstairs Circus, whether the same is caused by the negligence of any of the Releasees or otherwise, and regardless of whether or not suit is filed in connection therewith.

4. **Use of Facilities, Services and Products.** Participant hereby agrees to comply with all applicable laws and ordinances and all rules, policies and directives of Upstairs Circus while Participant is using the facilities, services and/or products of Upstairs Circus, and Participant hereby agrees to read and comply with any and all rules, regulations and restrictions which may be posted or communicated by Upstairs Circus with respect to the permitted use of its facilities, services and/or products. Participant's compliance with any or all of the foregoing shall not in any way affect the enforceability of this Waiver and Release.

5. **Disclaimer of Warranties; Exclusion of Remedies.** ALL UPSTAIRS CIRCUS PRODUCTS AND SERVICES ARE SOLD "AS IS" TO PARTICIPANT, AND UPSTAIRS CIRCUS HEREBY FOREVER DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO ANY AND ALL OF THE SAME, INCLUDING ANY WARRANTY IMPLIED BY LAW, WHETHER OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND EXCLUDED. PARTICIPANT SHALL NOT BE ENTITLED TO COLLECT, AND IN NO EVENT SHALL UPSTAIRS CIRCUS BE LIABLE FOR, ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, ALL OF WHICH ARE SPECIFICALLY EXCLUDED HEREBY.

6. **Participant's Age.** Participant hereby represents that at the time of execution of this Release and Waiver he or she is eighteen years of age or older; or, if Participant is under the age of eighteen years, the undersigned parent or guardian represents and warrants that he or she is the parent or legal guardian of the Participant with full right and capacity to execute this Waiver and Release on behalf of Participant, and such parent or guardian assumes all responsibility for the safety of Participant, and executes this Waiver and Release both on his or her own behalf, and on behalf of the Participant. The Participant and/or the undersigned parent or guardian expressly agrees to be bound by all of the terms and conditions of this Waiver and Release, including but not limited to Sections 1-5 hereof.

7. **Personal Use & Replication.** All products and art made at Upstairs Circus is for personal use only. Names, logos, and other designs of individuals, businesses, colleges, and other organizations, including those of professional and amateur sports teams, may be protected by the copyrights of those organizations. Replicate at your own risk. The unauthorized reproduction or distribution of those names, logos, or other designs by you, including reproduction or distribution without monetary gain, is illegal and can result in damages assessed against you, and even fines or imprisonment. Upstairs Circus is not responsible for any damages assessed for your reproduction or infringement; refer to 1.

8. **Miscellaneous.** This Waiver and Release shall be governed by the laws of the State of Colorado without regard to conflict of laws principles. Venue for any proceeding relating to the provisions hereof or relating to the Participant's use of the facilities, services and products of Upstairs Circus shall be brought in the District Court in and for the County of Denver, State of Colorado, and Participant and/or the undersigned parent or legal guardian hereby expressly consents to the personal jurisdiction of such court over him or her and the venue of such court. Should any action, dispute or claim arise out of this Waiver and Release, Upstairs Circus, if it is the prevailing party, shall be entitled to recover all of its attorneys' fees and costs associated with the enforcement of this Waiver and Release. This Waiver and Release constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof, and supersedes any and all prior and contemporaneous understandings, agreements, commitments, and representations, whether oral or written. No force or effect shall be accorded any prior written or oral representations, promises, agreements, or understandings which are not contained in this Waiver and Release. If any portion of this Waiver and Release shall be held by a court of proper jurisdiction to be indefinite, invalid or otherwise unenforceable, the entire Waiver and Release shall not fail on account thereof, and the balance of this Waiver and Release shall continue in full force and effect.

PARTICIPANT AND/OR THE UNDERSIGNED PARENT OR GUARDIAN ON BEHALF OF PARTICIPANT HAS CAREFULLY READ THE FOREGOING WAIVER AND RELEASE, UNDERSTANDS ITS CONTENTS, AND SIGNS THIS WAIVER AND RELEASE VOLUNTARILY. PARTICIPANT AND/OR THE UNDERSIGNED PARENT OR GUARDIAN UNDERSTAND AND AGREE THAT THIS WAIVER AND RELEASE IS A BINDING LEGAL CONTRACT, AND THAT BY SIGNING THIS CONTRACT PARTICIPANT AND/OR THE UNDERSIGNED PARENT OR GUARDIAN WAIVES CERTAIN LEGAL RIGHTS HE, SHE OR THEY MAY OTHERWISE HAVE NOW OR IN THE FUTURE AGAINST RELEASEES. PARTICIPANT AND/OR THE UNDERSIGNED PARENT OR GUARDIAN ACKNOWLEDGE AND AGREE THAT THEY HAVE HAD SUFFICIENT OPPORTUNITY TO CONSIDER THE TERMS HEREOF AND TO CONSULT LEGAL COUNSEL PRIOR TO SIGNING THIS WAIVER AND RELEASE IF DESIRED.

**PARTICIPANT:**

IF PARTICIPANT IS UNDER THE AGE OF 18:

\_\_\_\_\_  
Signature  
Name (Please Print):\_\_\_\_\_

\_\_\_\_\_  
Signature of Parent or Legal Guardian  
Name (Please Print):\_\_\_\_\_

Date:\_\_\_\_\_

Date:\_\_\_\_\_