Rights Managed License Agreement - Winfield Galleries

Last Updated: March 2014

This is a legal agreement ("Agreement") between "You" and Winfield Galleries. You are purchasing the right to use the Licensed Image identified in Section #2 for the purposes defined in this Agreement. This is a binding agreement. The terms of the Agreement may not be altered by you in any way. If You do not agree with all of the terms of this Agreement, the only recourse available to You is to not proceed with the purchasing transaction and payment of the License Fee. By proceeding with the transaction and paying the License Fee, You consent to the terms of this Agreement and affirmatively represent that you are of legal age and capacity to enter into a binding and enforceable contract. This offer is void where prohibited. Winfield Galleries reserves the right to amend the terms of this Agreement at any time without advance notice to you.

1. Definitions

(A) "Licensed Image" means the image which is licensed to You under the terms of this Agreement. The Licensed Image is specifically identified in Section #2, below.

(B) "License Fee" means the fee which is paid by You in order to enter into this Agreement. The License Fee is listed in Section #2, below.

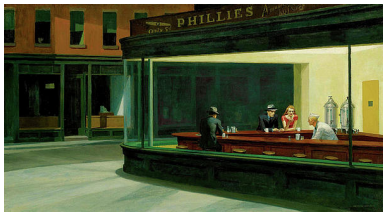
(B) "Licensed Work" refers to any product or service that You create using independent skill and effort and that incorporates a Reproduction of the Licensed Image as well as other material.

(C) "Reproduction" and "Reproduce" refer to any form of copying or publication of the Licensed Image via any medium and by whatever means, in whole or in part, and the creation of any derivative work from, or that incorportes, the Licensed Image.

Sample Agreement

2. Licensed Image

The Licensed Image in this Agreement refers to the following image:



Title:	Nighthawks
Artist:	Edward Hopper
Image Size:	2000 pixels x 1093 pixels
License Fee:	$150.00

The Licensed Image may be viewed online at the following location:

https://winfield-galleries-llc.pixels.com/featured/nighthawks-edward-hopper.html

3. License Grant

Upon paying the License Fee specified in Section #2 and indicating your acceptance of this Agreement by clicking the appropriate checkbox during checkout on winfield-galleries-llc.pixels.com, You are granted a non-exclusive, non-sublicensable, and non-transferable right to use and Reproduce the Licensed Image strictly in the following manner and only to the extent expressly stated in this Agreement and as modified by the scope of license information on the winfield-galleries-llc.pixels.com website:

You may use the Licensed Image as part of a digital publication such as an e-book or e-magazine. The Licensed Image can be used on the cover and/or inside pages of the digital publication.

This license has no time restriction. You can use the Licensed Image in the digital publication forever.

You are restricted to using the Licensed Image in only one digital publication. For example, You could not use the image in two different e-books, nor could You use the Licensed Image in one e-book and one e-magazine.

A separate license must be purchased for each digital publication.

The rights granted to You, above, may be exercised by subcontractors that You use for preparation of the Licensee Work provided that such subcontractors agree to abide by the terms of this Agreement.

4. Prohibited Uses

All uses of the Licensed Image which are not expressly granted to You in Section #3 of the Agreement, above, are prohibited. For additional clarity regarded prohibited uses, all of the following uses are specifically prohibited:

(A) You may NOT make the Licensed Image available in a manner that is likely to allow or invite a third party to download, extract, redistribute, or access the Licensed Image as a standalone file. If the Licensed Image will be displayed on a website, You must post terms and conditions on the website that prohibit downloading, republication, retransmission, reproduction, and all other uses of the Licensed Image as a standalone file.

(B) You may NOT upload, use, or display the Licensed Image on any medium which is designed to induce or involves the sale, license, or other distribution of "On Demand Products". On Demand Products are products in which the Licensed Image is selected by a third party for customization on products which are produced on a made-to-order basis, including, without limitation, greeting cards, mousepads, t-shirts, calendars, posters, canvas prints, screensavers, wallpapers, and similar products.

(C) You may NOT falsely represent, expressly or implied, that You are the original creator of the Licensed Image or of a work that is based substantially on the Licensed Image.

(D) You may NOT use the License Image to produce fine art prints or posters.

(E) You may NOT incorporate the Licensed Image into a logo, corporate ID, trademark, or service mark.

(F) If the Licensed Image contains the likeness of an individual or individuals who may be indentified, You may NOT manipulate the image in a manner that would portray the individuals in an unflattering manner.

(G) You may NOT use the Licensed Image in a pornographic, defamatory, or otherwise unlawful manner.

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5. Use on Social Media and Third-Party Websites

If You include the Licensed Image on any social-media platform or third-party website that uses the Licensed Image contrary to the terms of this Agreement, with or without Your express or implied consent, then Your rights under this Agreement shall automatically be revoked and You shall remove the Licensed Image from such platform or websites at Winfield Galleries's request.

6. Other Provisions

(A) You may have the Licensed Image reproduced by Your agents provided that such agents agree to abide by the provisions of this Agreement.

(B) You agree to be liable for any failure to comply with the terms of this Agreement and/or any failure by your agent(s) to comply with the terms of this Agreement.

(C) If You post the Licensed Image onto a website, You are responsible for ensuring that the Licensed Image is not downloaded by third-parties or otherwise exploited by the website host. You must post terms and conditions on the website that prohibit downloading, republication, retransmission, reproduction, and all other uses of the Licensed Image as a standalone file.

(D) If You are purchasing rights to the Licensed Image for use by a third-party, You represent that You are authorized to act on behalf of the third-party and to bind the third-party to the terms of this Agreement. You may also be held independently liable if You violate the terms of this Agreement.

(E) Your rights under this Agreement do not include the right to use or reproduce the titles, tags, descriptions, or metadata that are associated with the Licensed Image on Winfield Galleries.

(F) If you use the Licensed Image in an editorial context, You must include the following credit line adjacent to the Licensed Image: Edward Hopper / Winfield Galleries. If You omit the credit, Winfield Galleries may impose a fee up to one hundred percent (100%) of the License Fee which will be payable by You. The fee shall be in addition to any other rights or remedies that Winfield Galleries may have under law.

(G) You acknowledge that Winfield Galleries and all of our logos, trademarks, and service marks are the sole property of Winfield Galleries (our "Marks"). You may only use the Winfield Galleries name for the purpose of editorial crediting as defined in Section #6(F), above. You acknowledge that you will never contest the validility of any Winfield Galleries Marks.

(H) Winfield Galleries has stated in Section #3 if it has obtained a model release and/or property release for the Licensed Image. If no such notification is given, then no such model or property release has been obtained. You acknowledge that some jurisdictions provide legal protection and damages in connection with use of a person's image, likeness, or property used for commercial purposes without a valid release. You shall be responsible for payment of any amounts that may be due under such a claim of right and for compliance with any other terms of applicable collective bargaining agreements (such as Screen Actors Guild in the US) as a result of Your use of the Licensed Image.

(I) If Section #3 does not include the right to use an individual's image or a specific trademark or service mark, Winfield Galleries does not grant any right nor make any warranty with regard to the use of names, people, trademarks, trade dress, logos, registered, unregistered, or copyrighted designs or works of art or architecture depicted in the Licensed Image. You shall be solely responsible for determining whether any releases are required in connection with any proposed use of the Licensed Image, and You shall be solely responsible for obtaining all necessary releases.

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7. Ownership of Rights

This Agreement grants you a limited right to use the Licensed Image with specified limitations. You do not own any rights in copyright to the Licensed Image or have any other rights that are not expressly granted to You under this Agreement.

8. Notice of Violations

You agree to immediatly notify Winfield Galleries if you know or should know that any third-party has accessed the Licensed Image in a manner that violates the terms of this Agreement.

9. Warranty and Limitation of Liability

Winfield Galleries represents and warrants that the Licensed Image will be free from material defects at the time that the license is granted and that Winfield Galleries has the necessary rights to grant You the rights to use the Licensed Image under this Agreement, assuming Your full compliance with the terms of the Agreement. Your only remedy in the event of breach of these warranty provisions is a full refund of the License Fee paid to Winfield Galleries in connection with the Licensed Image.

Winfield Galleries makes no other warranties, express or implied, regarding the Licensed Image, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose. Winfield Galleries expressly disclaims any such warranties and expressly licenses the Licensed Image "as is".

Winfield Galleries shall not be liable to You or any other person or entity for any punitive, special, indirect, consequential, incidental, or other similar damages, costs, or losses arising out of this Agreement - even if it has been advised of the possibility of such damages, costs, or losses. Some jurisdictions do not permit the exclusion or limitation of implied warranties or liability for certain categories of damages.

Winfield Galleries shall not be liable for any damages, costs, or losses arising out of or as a result of modifications made to the Licensed Image or as a result of the context in which the Licensed Image is used in a work.

10. Indemnification

You shall pay to defend, indemnify, and hold harmless Winfield Galleries and its subsidiaries, commonly owned or controlled affiliates, content providers and their respective officers, and directors and employees from all damages, losses, and expenses, including reasonable attorneys' fees, arising out of or as a result of claims by third parties relating to Your use of any Licensed Image or any other actual or alleged breach by You of this Agreement. Winfield Galleries may at its discretion, but is under no obligation to, assume the defense of any action arising from Your use of the Licensed Image or from your breach of this Agreement.

11. Unauthorized Use of Licensed Image

If You use the Licensed Image in a manner other than that which is expressly authorized under this Agreement, such use amounts to copyright infringement and entitles Winfield Galleries or its licensors to enforce all rights available to it under U.S. and international copyright laws. In addition and without prejudice to Winfield Galleries's ability to realize other remedies under copyright laws and this Agreement, Winfield Galleries reserves the right to charge and You agree to pay a fee equal to up to five (5) times the License Fee for the unauthorized use of the Licensed Image. In the event that Winfield Galleries has a reasonable basis to believe that You are using the Licensed Image in a manner other than that which is expressly authorized under this Agreement, Winfield Galleries may immediately revoke the license granted under this Agreement, and You agree to (1) stop using the Licensed Image, (2) destroy or order destruction of any copies of the Licensed Image including as incorporated into a secondary work, and (3) return the Licensed Image to Winfield Galleries. This provision does not limit Winfield Galleries's rights to recover damages from You including in the form of indemnification. Your failure to pay Winfield Galleries fully and in accordance with its payment terms for the right to use the Licensed Image constitutes a material breach of this Agreement entitling Winfield Galleries to all remedies available under law and pursuant to this Agreement.

Sample Agreement

12. Audit and Verification Rights

Winfield Galleries or its licensors may request and You must provide evidence of compliance with the terms of this Agreement upon demand with reasonable advance notice. Among the forms of evidence that Winfield Galleries or its licensors is entitled to receive in order to verify Your compliance with the terms of this Agreement are (1) free access to any website or platform where the Licensed Image is reproduced, (2) an audit of records related directly to Your use of the Licensed Image by Winfield Galleries or its designated auditor, (3) receipt and inspection of sample copies of reproductions containing the Licensed Image, and (4) a certificate of compliance signed under oath by You or Your agent in a form acceptable to Winfield Galleries. Should Winfield Galleries or its licensors determine that Your use exceeds what is permitted under this Agreement, You shall pay the costs incurred by Winfield Galleries in its efforts to verify compliance, plus a five percent (5%) surcharge in connection with these efforts.

13. No Modification of Embedded Data

You may not alter the Licensed Image in a manner that removes any copyright notice, name, identification number, or other information embedded in the Licensed Image.

14. Third-Party Claims of Right

Should the Licensed Image be the subject of a claim of infringement by a third-party for which Winfield Galleries may be liable, Winfield Galleries may require You to immediately (1) stop using the Licensed Image, (2) delete the Licensed Image from all storage media, and (3) take steps to insure third-parties cease use or reproduction of the Licensed Image. Winfield Galleries shall provide you with a reasonable substitute image free of charge but subject to the terms and conditions of this Agreement.

15. Governing Law / Forum / Mandatory Arbitration

Disputes relating this Agreement and to any use of the Licensed Image will be governed by the law of the State of Illinois, United States, without respect to its choice of law provisions. Your claims relating to this Agreement or Your use of the Licensed Image shall be determined through the American Arbitration Association before a certified arbitrator and pursuant to the commercial arbitration rules promulgated by the AAA located in Chicago, Illinois. You agree that, notwithstanding any otherwise applicable statute(s) of limitation, any arbitration proceeding to determine Your claims shall be commenced within one year of the acts, events, or occurrences giving rise to the claim or be forever barred.

16. Entire Agreement / No Waiver

This Agreement contains the entire agreement between You and Winfield Galleries, and You acknowledge that there are no other agreements, representations, or warranties pertaining thereto which are not set forth in this document. If any provisions of this Agreement are held to be invalid or unenforceable under present or future laws, such provisions shall be fully severable, whereupon the remainder of this Agreement will be given full force and effect. No action or inaction by Winfield Galleries, other than express written waiver, may be construed as a waiver of any provision of this Agreement In the event of any inconsistency between the terms contained herein and the terms contained on any purchase order or other communication sent by Winfield Galleries, the terms of this Winfield Galleries shall govern.

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This is a sample agreement and is not valid until You pay the License Fee and accept the terms of this Agreement by clicking the appropriate checkbox during the checkout process. After checkout, you will receive a valid version of this Agreement with the watermark and warning language removed.

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