

## **CONSIGNMENT AGREEMENT**

THIS AGREEMENT, made and entered into this 01-29-2021, by and between Cosmos Granite Dallas, TX, with its office at 2244 Luna Rd, Suite 100~ Carrollton, TX 75006, hereinafter called "Supplier", and Sharad with its office at Street company plano, Texas 12345 hereinafter called "Buyer".

### WITNESSETH

WHEREAS, Buyer would like to sell the goods of the Supplier, and Supplier is willing to allow Buyer to do so on consignment in accordance with the terms set forth herein:

NOW THEREFORE, for and in consideration of the mutual obligations and undertakings hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties herein, intending to be legally bound, hereby agree as follows:

**1. Creation of Security Interest/Financing Statements.** It is the intent of the parties that the Supplier shall retain title to the Goods delivered to Buyer under this Agreement until Supplier has received payment of the applicable purchase price. To this end, Buyer grants a security interest in the Goods to Supplier for purposes of securing that purchase price (plus interest and costs of collection, if any) due Supplier. Upon Supplier's request, Buyer shall execute and deliver to Supplier any and all Uniform Commercial Code Financing Statements required to reflect this security interest and/or the fact that the Products have been consigned to Buyer.

**1.1** Buyer agrees that it will not apply to its creditors for extension, nor make an assignment for the benefit of creditors, nor seek the appointment of a receiver or trustee of any kind over its property, nor file a petition in bankruptcy, nor fail to report promptly to Supplier any merchandise dispute with its customers or claim arising out of goods or merchandise sold, and further, that the insolvency or involuntary bankruptcy of Buyer shall constitute a default under this Agreement.

**2. Goods.** During the Term of this Agreement, Buyer may from time to time order from Supplier the following goods: Stone products, including, but not limited to, granite and marble slabs and tiles, at such prices and in such quantities to which Supplier and Buyer shall agree in writing on order in the form set forth in Exhibit "A" hereto ("Goods").

**2.1** Orders may be executed and delivered by exchange of facsimile copies showing the signatures of Supplier and Buyer, and those signatures need not be affixed to the same copy. The facsimile copies showing the signatures of Supplier and Buyer shall constitute originally signed copies of the same order requiring no further execution.

**3. Delivery and Risk of Loss.** Supplier will at its expense deliver the goods ordered to Sharad with its office at Street company plano, Texas 12345.

**3.1** Supplier shall assume risk of loss and damage to Goods prior to delivery thereof to Buyer. Upon delivery of the Goods to Buyer, Buyer shall inspect the Goods and shall, upon prompt inspection of the Goods, sign the receipt of delivery acknowledging the Goods have been delivered in an undamaged condition. Any damaged Goods shall be segregated from undamaged Goods by Buyer. Supplier shall arrange for delivery of the damaged Goods to a destination designated by Supplier. Buyer shall assume full responsibility for any loss, damage or deterioration to the Goods

after delivery to Buyer. At all times during the term of this Agreement, the Buyer, at its expense, shall maintain property insurance, in sufficient amounts and naming the Supplier as an additional insured, insuring the invoice value of the consigned Goods. At Supplier's request, Buyer shall deliver a certificate evidencing the required insurance to Supplier. In the event that any of the Goods ordered are not delivered, within two (2) business days, Buyer will furnish Supplier with written notification from one of Buyers' executive officers as to which specific Goods were not delivered. Supplier will promptly replace at its expense any damaged or missing Goods as long as they have it available in the inventory, and otherwise will replace with a mutually agreeable substitute.

**3.2** When the Buyer sign for the delivered Goods, the Buyer accept those Goods, and by accepting those Goods, represent that they have been delivered in an undamaged and acceptable condition.

**3.3** Buyer agrees to keep the Goods, and the proceeds from the sales thereof, separate and capable of identification, as the property of Supplier, to make entries in its books showing that the property is held for the account of Supplier, to report to Supplier the consummation of any sale on a weekly basis as more fully set forth herein; and to furnish the Supplier on demand a true and complete report of the Buyer's sales for any period of time stated by the Supplier.

**3.4** Buyer agrees to keep the goods fully insured at its expense against any and all risks including, but not limited to, breakage, damage or theft. The insurance policies shall be satisfactory to Supplier, and shall be delivered to Supplier promptly upon demand. Any and all insurance proceeds resulting from a claim on Supplier's property shall be made payable to Supplier as its interest may appear.

**3.5** Buyer agrees not to remove any of the Goods subject to this security agreement from the Buyer's address as set forth herein, without the written consent of Supplier, except for purpose of sale and subject to the provisions and conditions herein provided.

**4. Sales by Buyer.** Buyer may sell the Goods to third parties on such terms and at such prices as it reasonably determines. Buyer will comply with all applicable laws, rules and regulations in selling the Goods. Buyer shall also be responsible for and pay for all taxes and other governmental charges which may be assessed against Supplier or against the consigned Goods by reason of the maintenance, storage, withdrawal or use of the consigned Goods at Buyer's facilities or the sale by Supplier to Buyer of the consigned Goods when withdrawn by Buyer.

**5. Payment or Redelivery of Goods/Transfer of Risk of Loss.** At the end of each week, on or before 5.00 p.m on Friday, Buyer shall compile a written list of all Goods sold to third parties, and shall fax that list to Supplier. Upon receipt of the faxed list, Supplier shall issue an invoice for the purchase price of the sold Goods, and shall fax that invoice to the Buyer. Payment shall be made by the Buyer to the Supplier on or before fourteen (14) days from the date of each such invoice. At any time before Buyer pays Supplier the purchase price for any Goods that has not sold, Buyer on its own volition or, may return those Goods undamaged to Supplier at the expense of Buyer. On request of Supplier may arrange to have Goods collected at its expense.

**5.1** Any undamaged Goods that Buyer returns to Supplier shall be delivered to Supplier at 2244 Luna Road Suite 100, Carrollton, TX 75006. All risks of loss and damage to Goods returned to Supplier shall pass to Supplier when those Goods are delivered into the custody of Supplier. If any Goods that Buyer returns to Supplier are damaged, Buyer shall pay the purchase price for each damaged Good.

**5.2** Goods are deemed to be sold if they are used in any way including, but not limited to, if

they are cut, fabricated, broken, damaged or altered.

**6. Default.** If a party fails to perform any of its obligations under this Agreement and that failure continues for a period of ten (10) days after written notice to it, that defaulting party shall be deemed to be in default (an "Event of Default"). Upon the occurrence of any Event of Default, the non-defaulting party shall have the right, at its option to: (1) terminate this Agreement by giving written notice to the defaulting party, which shall be effective as of the date given; (2) if a monetary default by Buyer, the Supplier shall have the additional rights to (a) foreclose its security interest by any available judicial procedure; or (b) lawfully take possession of the goods and merchandise, or such part thereof, as remains in Buyer's possession, and any and all proceeds of such goods and merchandise as have been sold, wherever and in whatever form they may be, and for purposes of repossession, Supplier, or its representatives, may enter any premises without legal process, and Buyer hereby waives and releases Supplier of, and from, any and all claims in connection therewith or arising there from; Buyer agrees, upon demand of Supplier, to assemble the arising the Goods and make them available to Supplier at a place reasonably convenient to both parties. Any parts, equipment or accessories placed upon or attached to any of the Goods shall become component parts thereof and shall inure to the benefit of Supplier; and/or (c) accept the Goods in discharge of the obligations secured by this Agreement. Except in the case where the Supplier accepts the Goods in discharge of the obligations secured by this Agreement, Buyer shall remain liable for any deficiency between the unpaid amount due under this Agreement and the proceeds of such as sale or foreclosure. If any amount owing under this Agreement is not paid when due, such amount shall bear interest at the rate of eighteen (18%) percent per annum from the due date until it is paid. The provisions of this **Section 6** shall survive termination of this Agreement.

**6.1** In any action or proceeding brought to enforce any provision of this Agreement, or where any provision of this Agreement is validly asserted as a defense, the prevailing party shall be entitled to recover reasonable attorneys' fees from the non-prevailing party, in addition to any other available remedy.

**7. Title: Buyer's Assurances.** Title to the Goods shall, at all times, remain in Supplier unless and until Buyer sells them to a bona fide purchaser in the ordinary course of the Buyer's business, or otherwise becomes responsible for the purchase of the Goods (e.g. by damaging a slab), at which time title to the Goods sold will pass to that purchaser. Buyer will not grant a security interest in any of the Goods or the proceeds there from to anyone else and will not otherwise encumber any of the Goods or any of the proceeds there from.

**7.1** Buyer shall take or cause to be taken such action and execute and deliver or cause to be executed and delivered such documents as Supplier may request: (i) in connection with this Agreement and Supplier's rights in the Goods and the proceeds there from; and (ii) to protect and to maintain the protection of Supplier's rights in the Goods and the proceeds there from, including, without limitation, executing and filing financing and other statements under the Uniform Commercial Code in effect in any jurisdiction; and Buyer hereby authorizes Supplier to sign and file any such statement on its behalf or file any such statement without its signature.

**8. Supplier's Limited Warranty.** Supplier's sole obligation with respect to any defect in any of the Goods will be, at Supplier's option, to replace the item or to refund (credit) the purchase price for that item. **SUPPLIER MAKES NO OTHER WARRANTY WHATSOEVER EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS OR WITH RESPECT TO THE MERCHANTABILITY OF THE GOODS OR THE FITNESS OF THE GOODS FOR ANY PARTICULAR OR GENERAL PURPOSE.**

**8.1** To the maximum extent permitted by law, Supplier shall have no liability or

responsibility whatsoever to Buyer aside from the responsibility to delivery Goods as ordered and replace damaged Goods or allow for credits in lieu of Goods; and, without limiting the foregoing, Supplier will not be liable for any loss or expense incurred or for any other direct, incidental or consequential damage, resulting from or arising out of this Agreement, including without limitation loss of profit or business interruptions, however same may be caused. The provisions of **Section 8** shall survive termination of this Agreement.

**9. Termination.** Either Supplier or Buyer may terminate this Agreement at any time by giving five (5) days' written notice of termination to the other party. Termination of this Agreement shall be without prejudice to the rights and obligations accrued to the date of termination. If this Agreement is terminated by Supplier due to Buyer's default, all Goods supplied to Buyer, but not yet conveyed to third party purchasers shall be returned by Buyer, at its expense, to Supplier at Supplier's address noticed in this Agreement. Upon termination by Buyer of this Agreement, Buyer shall promptly and at its own expense return to Supplier all Goods which it has not sold, and shall pay to Supplier the purchase price for any of the Goods that it does not return. Upon termination by Supplier not caused by Buyer's default, the Supplier shall promptly (within 30 days) at its expense have the Goods removed from the premises of the Buyer.

**10. Notice.** Supplier and Buyer each represent to the other that the person executing this Agreement on its behalf has the full power and authority to execute this Agreement and to bind the Supplier and Buyer, as the case may be.

**11. Misc.** This Agreement may only be amended or modified by an instrument in writing signed by Supplier and Buyer, and no provision of this Agreement and no right or obligation of either party under this Agreement may be waived except by an instrument in writing signed by the party waiving the provision, right or obligation. Any failure by Supplier to exercise any rights or privileges hereunder shall in no way affect or impair the rights of Supplier, or its security interest as herein provided or Supplier's liability hereunder. This Agreement constitutes the entire agreement between the parties hereto, and supersedes all prior proposals and agreements, oral or written, and all other communications between the parties with respect to the matter of this Agreement.

This Agreement shall, in all respects, be interpreted, construed, and governed by and in accordance with the laws of the State of North Carolina without regard to its conflicts of law provisions. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. It shall not be necessary for the same counterpart to be executed by all of the parties hereto in order for this instrument to be fully and legally upon any party executing at least one counterpart, provided all of the parties to honor to have duly executed at least one counterpart. If the Agreement is to be signed by two or more parties on behalf of Buyer, it shall be the joint and several obligations of such parties to honor and bound by the terms of this Agreement. Section headings are for convenient reference only and shall not affect the meaning or have any bearing on the interpretation of any provision of this Agreement.

IN WITNESS WHEREOF, Supplier and Buyer have executed this Agreement as of the date first written above.

**Buyer**

Sharad, Street company plano,Texas 12345

**Supplier**

Cosmos Granite Dallas, TX, 2244 Luna Rd,  
Suite 100~ Carrollton, TX 75006

\_\_\_\_\_  
Signature

Sharad

\_\_\_\_\_  
Printed Name

store manager

\_\_\_\_\_  
Title

01-29-2021

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

Dallas, TX

\_\_\_\_\_  
Printed Name

Location Supplier

\_\_\_\_\_  
Title

01-29-2021

\_\_\_\_\_  
Date

In Process

**Addendum I to  
Consignment Agreement with COSMOS GRANITE**

Please keep track of all of your consigned COSMOS slabs and the date which you received them, as we will no longer accept any singles on return which you have had over 90 days. In the case of any consigned single slab remaining on consignee's yard (no matches in Cosmos' inventory), the consignee will have the option to either:

- A. Return the single slab **only** if it is within 90 days of the initial delivery date
- B. Or, if it is past the 90 day delivery date, the consignee will be invoiced for the slab.

As always, we appreciate your business.

Thank You,  
Cosmos Granite

Sharad

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Consignee Signature