

INDEPENDENT DESIGNER/RETAILER APPLICATION AND AGREEMENT



2938 Brown Rd.
 Marshall, Texas 75672
 1.800.700.7873
 1.800.715.6496 (fax)
 www.celebratinghome.com

Spanish
 English

Check sample kit selected
 A B C D

Social Security Number	E-mail		
Name of Independent Representative(s), if a Joint Account (Personal names, please)			Date of Birth
Spouse's Name (If Applicable and not listed as a Joint Account)			Joint Account <input type="checkbox"/> yes <input type="checkbox"/> no
US Mailing Address (where you receive your mail)			Apt. No.
City, Town	State	Zip Code	
County	Shipping Address Tax %	Home Phone ()	Business Phone ()
Shipping Address (No P.O. Boxes)			Apt. No.
City, Town	State	Zip Code	
Sponsoring Designer (Last Name) Giesbers	First Name Tonya	Sponsor's Designer Number 10827071	

AUTHORIZATION AND APPLICATION FEE (includes sample kit).....(Line 1)	\$149.00
(circle one)	Kit A, B, C or D
SHIPPING (\$15 Continental US / Puerto Rico \$25).....(Line 2)	_____
SALES TAX (based on shipping address).....(Line 3)	_____
TOTAL AMOUNT DUE (add lines 1, 2 & 3).....(Line 4)	\$

FOR ACCOUNTING INFORMATION	METHOD OF PAYMENT
<input type="checkbox"/> VISA <input type="checkbox"/> MASTER CARD <input type="checkbox"/> DISCOVER <input type="checkbox"/> CHECK <input type="checkbox"/> MONEY ORDER	
CREDIT CARD # _____	EXP DATE: _____
CHECK/MONEY ORDER #: _____	
(TOTAL AMOUNT (MUST AGREE WITH LINE 4 ABOVE))	\$

I would like to hold _____ parties per week. My initial Hostess and Party Dates are as follows:

Hostess	Party Date
_____	_____
_____	_____
_____	_____

THIS INDEPENDENT DESIGNER/RETAILER APPLICATION AND AGREEMENT (the “Agreement”) between HOME & GARDEN PARTY, LTD. dba CELEBRATING HOME a Texas limited partnership, with its principal office located at 2938 Brown Road, Marshall, Harrison County, Texas 75672, (the “Company”), and the applicant (the “Applicant”), is made effective as of the date that the Applicant submitted his/her Agreement. By acceptance of the Designer Kit (as defined in the Designer Guide) delivered herewith, the Applicant accepts and agrees to the terms of this Agreement.

You (Applicant) agree to be bound by the terms and conditions contained in the Agreement, and you certify that(i) you are at least 18 years of age and have legal capacity to enter into this and other agreements, (ii) you are a citizen or permanent resident of the United States or its territories and that you possess a valid Social Security number that you have already or will supply to the Company, (iii) this Agreement and the transactions it contemplates will not conflict with any agreement or arrangement you have with any third party, (iv) if this Agreement is accepted by the Company, you will abide by all policies and procedures as stated and announced by the Company from time to time, and specifically as noted in this Agreement and the Designer Guide, and (v) you have read, understand and agree to be bound by the terms and conditions of the Independent Designer/Retailer Application and Agreement noted above.

WHEREAS, the Company is engaged in the sale of home decorative accessories (the “Products”).

WHEREAS, the Applicant is an independent contractor and a sole proprietor who wishes to become a “Designer” of the Company. No corporation, partnership, or entity other than a sole proprietorship is permitted unless a personal guarantee drafted by the Company is executed by the Applicant.

NOW, THEREFORE, the Company and the Applicant agree as follows:

SECTION I. DESIGNER UNDERTAKING AND BENEFITS

1.1 The Applicant hereby enters into this Agreement as a Designer. The Applicant may sponsor someone into the business described herein and, the Applicant will receive a sponsoring bonus and override commissions in connection with the sales made by the Designer sponsored by the Applicant as defined in the publication “Designer Guide.” The Applicant is accepting personal responsibility for the training of, and ongoing consulting with, each person the Applicant sponsors into the business. If the Applicant fails to train and consult the sponsored individuals, as determined by the Company in its sole discretion, the Company has the right to move said people to another Designer’s downline. The Designer Guide will change from time to time and Applicant agrees to comply with the updated Designer Guide and all Company policies, including specifically the Privacy Policy.

1.2 Except where precluded by applicable law, the Company shall file for one sales tax number in each state and, in connection therewith, the Company shall (i) pay all required deposits, (ii) collect from the Applicant the sales tax on all sales and (iii) submit the required sales tax reports to each state. The Applicant shall collect the sales tax and remit the sales tax with the orders submitted by the Applicant to the Company. The Applicant agrees to abide by the Company’s decisions regarding the collection and payment of sales tax.

1.3 All charges incurred for special non-standard handling, freight, and shipping, requested by the Applicant, along with any applicable sales or use tax and standard shipping rates, will be paid to the Company by the Applicant. The Company reserves the right to refuse any shipment by refunding the money.

1.4 Commissions are not paid on Designer Cases, sales aides, or other business tools. Nor shall any compensation be paid solely for the act of introducing or recruiting a new Designer into the Company. It is further expressly understood and agreed that any commissions, overrides or other sums payable by the Company to Designer may be reduced by any indebtedness of whatever nature owing by Designer to the

Company.

SECTION II. PRICES AND TERMS

2.1 The Applicant shall order the Products from the Company according to the terms established and set forth in the Master Price List prepared by the Company and in effect at the time of shipment (the "Master Price List"). All orders shall be subject to acceptance by the Company at its principal office located in Marshall, Harrison County, Texas.

2.2 The Company shall have the right to change the Company's prices from time to time and at any time by publishing a new Master Price List. Any such change shall become effective on the date specified in the Master Price List.

2.3 The Applicant shall remit full payment in advance for each order submitted to the Company. The Company reserves the right to apply monies received against past due amounts, charge backs, penalties, fees, NSF checks or any other type of non-payment or cost incurred.

2.4 The Master Price List contains a listing of the Company's suggested retail prices. These listings are provided for convenience and informational purposes only and the Applicant has sole discretion to set the selling price for the Products.

2.5 The Company shall have the right to prohibit the Applicant from selling products in a way the Company deems harmful to the Company or to other Designers. For example, the Company prohibits Designers from maintaining a fixed geographical location at which Designers display for sale and sell any Products (including retail stores and flea markets), and the Company prohibits Designers for displaying for sale or selling any Products via the Internet (like or eBay or some similar site) except in connection with a Company sponsored or approved website.

2.6 All purchases shall be subject to the terms of this Agreement.

SECTION III. DISCLAIMER OF LIABILITY

The Company shall not be liable for any delay or inability to manufacture, sell, or deliver the Products due to labor strikes, accidents, fire, flood, or other acts of God or acts of civil authorities or from any other cause beyond the Company's control. The Applicant understands that all Products ordered shall be subject to availability and the Company does not guarantee availability of the Products.

SECTION IV. WARRANTIES

The only warranty on the sale of the Products for which the Company assumes responsibility is the standard warranty set forth and defined on the customers' order form. The Applicant shall make no further warranty or representation on behalf of the Company. The Company shall have the right from time to time to modify its standard warranty on the Product. The foregoing is in lieu of all warranties, expressed or implied, and all other obligations or liabilities on the part of the Company.

SECTION V. AUTHORIZATION

5.1 The Applicant shall not use the Company's trade names, trademarks, service marks, and emblems ("Intangible Rights") except to solicit orders for sale of the Company's Products. Except for the purposes of Product identification and use on sales order forms, the Applicant agrees not to use the Company's Intangible Rights in any type of advertising, promotional, or any other materials, unless the Company has

provided written permission.

5.2 Such authorization is nonexclusive and the Company retains all rights to sell and license to others the right to sell the Company's Products and to use the Company's Intangible Rights.

5.3 The use by the Applicant of the Company's Intangible Rights shall not create in the Applicant any right, title, or interest in and to any of the Company's Intangible Rights. The Applicant acknowledges that the existence of the Company's Intangible Rights on any Products, literature, supplies and other materials received by the Applicant from the Company shall not create in the Applicant any right, title, or interest in or to any of the Company's Intangible Rights. Upon expiration or termination of this Agreement, the Applicant shall immediately cease and desist from all use of the Company's Intangible Rights. The Applicant will not at any time during the terms of this Agreement, nor after the expiration or termination of this Agreement, adopt or use any word or mark which is deceptively similar to or likely to be confused with any of the Company's Intangible Rights.

5.4 In accepting the terms and conditions of this Agreement, the Applicant grants the Company, its legal representatives and assigns, and those acting with its authority and permission, the absolute right to copyright, use, reuse, publish and republish photographic portraits, pictures, video images, name or other likenesses of the Applicant, without restriction or compensation, worldwide, in perpetuity. Reproduction and use can be made in any medium for any purpose the Company deems fit.

Applicant waives any right to inspect or approve the finished product. Applicant agrees to release and hold the Company harmless from any liability by virtue of distortion or alteration that may occur in the printing of or producing the images.

SECTION VI. USE OF THE COMPANY'S TRADE NAME

6.1 The Applicant acknowledges that the Company's Intangible Rights are the property of the Company. The Applicant agrees as directed by the Company from time to time to cause (i) the letter "R" enclosed within a circle, (ii) the letters "TM," or (iii) the letters "SM," to be used and placed at all times in the lower right hand corner next to the Company's Intangible Rights when used in advertising, promotional, or any other materials disseminated by the Applicant. The Applicant also understands that the use of the Company's Intangible Rights is a privilege and such privilege may be revoked at any time.

6.2 The Applicant understands and agrees that, in addition to monetary damages, the Company may obtain injunctive relief against the Applicant for any violation of the Agreement, and for any violation or misuse of the Company's Intangible Rights.

6.3 The Applicant acknowledges the Company's reputation for honesty, integrity, and good customer service and, in connection with the use of Company's Intangible Rights, the Applicant acknowledges that it is the expectation of the Company that the Applicant conduct all marketing and sales practices of the Applicant in a manner consistent with such reputation.

SECTION VII. TERM AND TERMINATION

7.1 Subject to compliance with local laws, the Company and the Applicant shall have the right to terminate this Agreement at any time with or without cause, by giving written notice to the other party of such termination (written notice shall not be required for the Company to terminate the Agreement if the Applicant's account shall become a Closed Account, as such term is defined in the Designer Guide, by reason of Applicant failing to fulfill the applicable maintenance requirements). Termination of this Agreement shall be without prejudice to the rights of the parties with respect to Products already sold or delivered to the Applicant, and shall not operate as a calculation of indebtedness owing to one party by the

other at the time of such termination.

7.2 Upon termination of this Agreement, for any reason, the Company shall repurchase from the Applicant the unsold Products in the possession of the Applicant at ninety percent (90%) of such Products' net cost to the Applicant less any appropriate set-offs and legal claims against the Applicant including but not limited to: (i) any amounts legally owed by the Applicant to the Company and (ii) any bonuses, overrides, commissions, or other amounts paid or credited to the Applicant on the Products being repurchased by the Company. The Company shall not be obligated to repurchase such Products: (i) where the Products have become discolored, scratched, excessively worn, disfigured, damaged, or are otherwise no longer currently marketable, (ii) where the Products' commercially reasonable, usable, or shelf-life period has passed, or (iii) if the Company clearly discloses to the Applicant prior to the Applicant's purchase of such Products that such Products are seasonal, discontinued, or special promotions which are not subject to this repurchase provision.

SECTION VIII. RELATIONSHIP OF PARTIES

8.1 The relationship established, and intended to be established by this Agreement, between the Company and the Applicant is that of an independent contractor/retailer. The Applicant acknowledges that the Company has no duties or obligations to the Applicant other than those expressly stated herein.

8.2 The Applicant acknowledges and agrees that all references to the Company, "CELEBRATING HOME," or any other Intangible Rights disseminated by the Applicant which are accompanied by the name of the Applicant, shall have "Independent Distributor," "Independent Retailer" or "Independent Designer" placed underneath the name of the Applicant.

8.3 The Applicant acknowledges and agrees that the Applicant is NOT AN EMPLOYEE of the Company and is not entitled to benefits for unemployment or workmen's compensation, and that the Applicant is personally responsible, except as otherwise provided herein, for the payment of all taxes and license requirements attributable to the Applicant's sales activities including, but not by way of limitation, filing all necessary income tax returns to reflect self-employment income as required under any federal or state laws or governmental regulation, and executed and delivered to the Company, resale sales certificate or other documents if requested by the company. **THE APPLICANT WILL NOT BE TREATED AS AN EMPLOYEE FOR FEDERAL OR STATE TAX PURPOSES.**

8.4 The Applicant acknowledges and agrees that as an INDEPENDENT CONTRACTOR/RETAILER, the Applicant solely acts as a reseller of the Company's Products, and has no right or authority to act for or on behalf of the Company or to bind the Company to any agreement of any kind whatsoever. The Applicant further acknowledges and agrees that the Applicant is not an agent for, partner of, or joint venturer with the Company.

8.5 The Applicant shall indemnify and hold the Company harmless from and against all liabilities, claims, demands, costs, and expenses arising in any way from this Agreement or in connection with the Applicant selling or distributing the Company's Products.

8.6 The Applicant acknowledges and agrees that if the Applicant chooses to solicit others to also become authorized independent retailers of the Company's Products, and have such persons become a part of Applicant's downline and train and consult with such downline Designers, Applicant is doing so on his/her own behalf, and not on behalf of the Company as an employee, independent representative, independent contractor or agent of the Company.

8.7 The Company does not and will not restrict the Applicant from being concurrently or subsequently engaged in another occupation, including, but not limited to, selling products other than those purchased from the Company. However, the Company does restrict the Applicant from sponsoring and having a downline if she/he has a downline with another direct sales company. Further, any Applicant attaining the

position of Executive or higher, as such term is defined in the Designer Guide, will be required to acknowledge the terms of an Executive Agreement, which will contain some additional restrictive covenants.

8.8 Customers of the Applicant are not customers of the Company. All dealings and agreements between the Applicant and customers of the Applicant are within their discretion and control, and not restricted in any way by the Company.

8.9 In order to sell Company Products, the Applicant may be required to purchase a business license in its city, county or state. The Company does not purchase business licenses in its normal course of business.

8.10 The Applicant will keep all proprietary data including the names of, and data about, other Designers of the Company confidential and will not disclose such information during or after expiration or termination of this Agreement, nor use the data except in solicitation of sales of the Products for the Company.

8.11 The Applicant will not solicit nor induce any Designer of the Company to terminate its Agreement with the Company during or after Applicant's expiration or termination of this Agreement.

SECTION IX. MISCELLANEOUS

9.1 THIS AGREEMENT IS EFFECTIVE ONLY WHEN ACCEPTED BY THE COMPANY AT ITS PRINCIPAL OFFICE LOCATED IN MARSHALL, HARRISON COUNTY, TEXAS. THIS AGREEMENT IS BEING MADE AND EXECUTED IN, AND PERFORMANCE SHALL BE DEEMED TO HAVE OCCURRED IN, HARRISON COUNTY, TEXAS, AND THIS AGREEMENT SHALL BE GOVERNED, CONSTRUED, INTERPRETED, AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. THE COMPANY AND THE APPLICANT ACKNOWLEDGE SUFFICIENT MINIMUM CONTACTS IN THE STATE OF TEXAS TO WARRANT PERSONAL JURISDICTION IN THE STATE OF TEXAS AND HEREBY DECLARE THAT THEY CONSENT TO AND SUBJECT THEMSELVES TO THE JURISDICTION OF THE COURTS OF LAW LOCATED IN HARRISON COUNTY, TEXAS, IF A DISPUTE ARISES FROM THIS AGREEMENT.

9.2 The rights granted to, and the obligation assumed by, the Applicant hereunder are not transferable or assignable to another party without the prior express written consent of the Company.

9.3 The Applicant shall fully comply with any and all present and future judicial decisions, statues, laws, rulings, rules, regulations, permits, certificates, and ordinances of all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipality, city, or otherwise) whether now or hereafter in existence relating to or arising from this Agreement in any way whatsoever.

9.4 If any provision of this Agreement is unenforceable or invalid, the Agreement shall be ineffective only to the extent of such provision, and such invalidity shall not affect the validity of the remaining provisions of this Agreement.

9.5 This Agreement represents the complete understanding of the parties and supersedes all prior written or oral agreements. All future modifications to this Agreement, by the Applicant, must be in writing signed by the parties hereto. All future modifications to this Agreement, by the Company, will be communicated via the Company Newsletter and via the Company's website (www.celebratinghome.com) and the Applicant will be deemed to have accepted the changes upon placing his/her next order with the Company.

9.6 The waiver at any time by the Company of any right of the Company contained in this Agreement shall not be deemed a continuing waiver and shall not preclude the subsequent enforcement of any such right or any other right. No failure of the Company to exercise any power or right hereunder or to insist upon strict

compliance by the Designer of any obligation or provision herein, and no custom or practice of the parties at variance with this Agreement shall constitute a waiver of Company's right to demand strict compliance with this Agreement. Waiver by the Company can be affected only in writing by an authorized officer of the Company. THE COMPANY SHALL NOT BE LIABLE FOR PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE COMPANY'S LIABILITY TO DESIGNER FOR ANY MATTER ARISING IN CONTRACT, TORT, EQUITY, OR OTHERWISE, EXCEED THE COMPENSATION PAID TO DESIGNER HEREUNDER.