

**Form of
PLEDGE & PURCHASE AGREEMENT***

[*This Form of Agreement does not represent the actual terms of any specific acquisition, nor is it intended for use as a model for acquisitions of collections. It is included in these materials to illustrate issues that should be considered in connection with acquisitions generally.]

AGREEMENT, dated as of _____, 20__ (“Effective Date”), by and between [**Name and Address of Seller/Donor and/or Foundation**] (“DONOR”), on the one hand, and **MUSEUM A**, a _____ charitable organization with offices at [Address] (“Museum A”) and **MUSEUM B**, a _____ charitable organization with offices at [Address] (“Museum B”), on the other hand.

WHEREAS, Museum A and Museum B (jointly and severally, the “Museums”) wish to acquire from DONOR, through a combination of purchase and gift, the original artworks by [Artist] and [Artist]-related archival materials specified below (collectively, the “Acquired Items”); and DONOR wishes to proceed with such acquisition, upon the terms set forth herein;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the Museums and DONOR hereby agree as follows:

1. Acquired Items

(a) *Categories.* The Acquired Items shall consist of the following (exclusive of any copyrights and other intellectual-property rights therein):

(i) The “Purchased Key Artworks,” which shall mean the finished artworks by [Artist] specified in Exhibit “A.” DONOR shall obtain a “qualified appraisal” (as defined under the Internal Revenue Code of 1986 and applicable regulations) of the Purchased Key Artworks and the Gifted Key Artworks (as defined below) (the “Qualified Appraisal”), a copy of which shall be provided to the Museums on or before delivery of such works to the Museums. (DONOR shall also provide the Museums with a similar appraisal covering the other Acquired Items, when such appraisal is completed.) It is understood and agreed that the Purchased Key Artworks shall have, as of the date of the Qualified Appraisal, a minimum aggregate value of approximately \$___ million.

(ii) The “Gifted Key Artworks,” which shall mean the finished artworks by [Artist] specified in Exhibit “B.” It is understood and agreed that the Gifted Key Artworks shall have, as of the date of the Qualified Appraisal, a minimum aggregate value of approximately \$___ million, i.e., such that the total value of the Purchased Key Artworks together with the Gifted Key Artworks, as reflected in the Qualified Appraisal and as of the date thereof, is at least \$___ million.

(iii) The “Gifted Archive Artworks,” which shall mean a collection of additional finished artworks by [Artist] and by other artists materially conforming to the description set forth in Exhibit “C.”

(iv) The “Gifted Archive Items,” which shall mean a collection of [Artist]-related documentary, archival and other materials materially conforming to the description set forth in Exhibit “D.” The Museums hereby acknowledge that DONOR does not recognize the Gifted Archive Items as finished artworks by [Artist]; and the Museums shall therefore refrain from presenting or identifying any of them as such.

(b) *Acquired Artworks.* The Purchased Key Artworks, the Gifted Key Artworks, and the Gifted Archive Artworks are collectively referred to herein as the “Acquired Artworks.”

(c) *Gifted Materials.* The Gifted Key Artworks, the Gifted Archive Artworks, and the Gifted Archive Items are collectively referred to herein as the “Gifted Materials.”

(d) *Posthumous Exhibition Prints.* Gifted Archive Artworks that constitute exhibition-quality prints of [Artist] images that were printed by DONOR after [Artist]’s death and are not part of any numbered limited edition are collectively referred to herein as “Posthumous Exhibition Prints.”

(e) *Negatives.* The Gifted Archive Items constituting original negatives (or comparable original physical masters, as applicable) for photographs by [Artist] are referred to herein as the “Negatives.”

(f) *Further Specification of Certain Gifted Materials.* It is understood that the Gifted Archive Artworks and the Gifted Archive Items are described in Exhibits “C” and “D” in general terms and presently are not fully specified on a per-item basis, nor have they yet been allocated into the applicable Donation Groups (as defined below) . The final list of the items falling into these two categories, and the Donation Group to which each item will belong, shall be agreed upon by the parties as soon as possible following the execution of this Agreement, and shall be listed on a per-item basis in a written amendment hereto. It is understood that one or more items may be moved from one category to the other based upon DONOR’s good-faith determination, in consultation with the Museums, as to whether or not the item in question qualifies as a finished artwork.

2. Sale of Purchased Key Artworks

(a) *Purchase.* DONOR hereby agrees to sell, transfer and assign to the Museums, and the Museums hereby agree to jointly purchase and accept, all of the Purchased Key Artworks for the sum of ____ Million U.S. Dollars (USD \$____) (the “Purchase Price”), of which ten percent (10%) shall be due no later than ten days following execution of this Agreement and the balance shall be due no later than ten days following completion of delivery of the Purchased Key Artworks and the Gifted Key Artworks, as set forth below.

(b) *Passage of Title.* Title in each Purchased Key Artwork shall pass to the Museums upon (i) payment in full of the Purchase Price and (ii) completion of delivery of such Purchased Key Artwork, with each Museum acquiring an undivided 50% ownership interest, as tenants in common, in each Purchased Key Artwork.

(c) *Bill of Sale.* DONOR shall deliver to the Museums a signed bill of sale, in the form attached hereto as Exhibit “F”, evidencing the transfer of title in the Purchased Key Artworks to the Museums.

3. Pledge of Gifted Materials

(a) *Promised Gifts.* DONOR hereby promises and agrees to make the following gifts, effective no later than the dates set forth below, or if earlier, the date of dissolution, for any reason, of DONOR:

(i) GIFTED KEY ARTWORKS. DONOR shall give, transfer and assign to each Museum an undivided 50% ownership interest, as tenants in common, in the Gifted Key Artworks (constituting all of the Gifted Key Artworks) no later than the date of delivery of the Purchased Key Artworks and Gifted Key Artworks as set forth in Section 4(a), below, and subject to receipt by DONOR of full payment of the Purchase Price.

(ii) GIFTED ARCHIVE ARTWORKS. DONOR shall give, transfer and assign to each Museum an undivided 50% ownership interest, as tenants in common, in each of the following Donation Groups (as defined below) of Gifted Archive Artworks (as specified in Exhibit “C”) no later than the following deadlines:

- First-Year Donation Group..... Upon receipt by DONOR of full payment of the Purchase Price, and completion of delivery of the Purchased Key Artworks and the Gifted Key Artworks in accordance with Section 4(a).
- Five-Year Donation Group..... June 15, ____
- Ten-Year Donation Group..... June 15, ____

(iii) GIFTED ARCHIVE ITEMS. DONOR shall give, transfer and assign to Museum A a 100% ownership interest in each of the following Donation Groups of

Gifted Archive Items (as specified in Exhibit "D"), excluding the Negatives, no later than the following deadlines:

- First-Year Donation Group Upon receipt by DONOR of full payment of the Purchase Price and completion of delivery to Museum A and Museum B of the Purchased Key Artworks and the Gifted Key Artworks in accordance with Section 4(a).
- Five-Year Donation Group..... June 15, ____
- Ten-Year Donation Group..... June 15, ____

(iv) NEGATIVES. DONOR shall give, transfer and assign to Museum A a 100% ownership interest in each of the Negatives on or before the date upon which DONOR dissolves.

(b) *Donation Group Defined.* As used herein, "Donation Group" shall refer to the respective groupings to which the item constituting Gifted Materials are allocated pursuant to Exhibits "C" and "D".

(c) *Deeds of Gift.* No later than the applicable deadline for each Donation Group as specified above (but in the event of the dissolution, for any reason, of DONOR, no later than the effective date of such dissolution), DONOR shall execute and deliver to the applicable recipient(s) a customary deed of gift, substantially in the form set forth in Exhibit "G" hereto, effecting and evidencing the transfer of title of all Gifted Materials included in such Donation Group.

(d) *Insurance Proceeds.* If any item of Gifted Materials is destroyed or permanently lost after delivery but prior to the passage of title hereunder, all resulting insurance proceeds shall be paid to the applicable Museum(s) and shall be expended upon the same basis as is set forth in Section 8(b) below with respect to insurance proceeds payable in connection with accessioned Acquired Items.

4. Delivery

(a) *Delivery Schedule.* The Acquired Items shall be delivered to the Museums as soon as possible after signature of this Agreement; provided, however, that DONOR shall have the right to retain possession of (i) the Negatives until such time as the promised gift of the Negatives is completed pursuant to Section 3(a)(iv) above; and (ii) the contact sheets associated with the Negatives (the "Contact Sheets") for up to five years following execution of this Agreement. The parties shall use reasonable efforts to complete delivery of the Acquired Items no later than July 1, _____, and in any event DONOR shall complete such delivery no later than September 1, _____, other than (i) those Posthumous Exhibition Prints that will be newly printed, which will be delivered no later than three years following the Effective Date; and (ii) the Negatives and Contact Sheets, which shall be delivered as set forth above.

(b) *Procedure.* Each Acquired Item shall be delivered to the Museums by making it available for pick-up at DONOR's storage facility in New York. DONOR shall segregate the Acquired Items into groups corresponding to Exhibits "A", "B", "C", and "D" prior to pick-up. The parties shall negotiate and agree upon suitable procedures and schedules for delivery. DONOR shall provide the Museums with copies of the lists of Acquired Items, as complete as reasonably possible, in electronic form – WORD or EXCEL – a minimum of ten days prior to pick-up.

(c) *Status.* Until such time as title therein passes hereunder, each Acquired Item delivered hereunder shall be deemed to be loaned by DONOR to the Museum having physical custody thereof. In order to ensure the completion of the gift of each of the Gifted Materials as set forth above, DONOR covenants not to sell, transfer, assign, mortgage, pledge, hypothecate, loan (other than through a request to the Museums as set forth elsewhere herein), grant a security interest in, encumber or otherwise restrict any of the Gifted Materials, or any interest therein, or otherwise agree to do any of the foregoing.

(d) *Insurance & Risk of Loss.* The Museum having custody shall maintain customary wall-to-wall insurance coverage of each Acquired Item for its full stated insurance value from the time such Acquired Item is delivered by DONOR until such time as title therein passes, with DONOR included as an additional insured and loss payee to the extent of its interest in the specific Acquired Item(s). Such insurance may be maintained on a basis that is pari passu with the works in the insuring party's permanent collections. Each Acquired Item shall be deemed delivered hereunder when it is released into the custody of the applicable Museum's shipper at DONOR's storage facility in New York.

(e) *Costs.* All costs directly associated with delivery of the Acquired Items, such as packing, shipping, and handling costs, shall be borne by the Museums. Any direct, out-of-pocket costs reasonably incurred by DONOR in this regard shall be reimbursed to DONOR by the Museums, based upon budgets to be agreed upon by the parties in advance. The Museums shall also reimburse DONOR for 50% (not to exceed \$_____) of the actual out-of-pocket cost of obtaining the appraisals contemplated in Section 1(a) above.

5. Announcement

The initial public announcement of the acquisition shall be made as soon as possible following execution of this Agreement. The text of each press release making such announcement shall be subject to the prior written approval of DONOR and the Museums.

6. Initial Exhibition

(a) *Scheduling.* The Museums shall mount a joint exhibition ("Initial Exhibition") consisting of a selection of the Acquired Items as soon as possible and shall use

reasonable best efforts to do so within three years following execution of this Agreement (the “Exhibition Deadline”), provided, however, the Museums shall not be required to mount the Initial Exhibition until all of the Acquired Items have been delivered to the Museums hereunder. Notwithstanding the above, the Museums may, at their sole discretion, exhibit some of the Acquired Items before the Initial Exhibition.

(b) *Holdback*. On or before the first anniversary of the execution of this Agreement, the Museums shall provide DONOR with written notice of the scheduled opening date of the Initial Exhibition. Prior to receipt of such notice, DONOR shall not fund or lend works to any museum exhibition organized by any third party if such exhibition consists primarily of [Artist] works and will open in the greater Los Angeles area (the “Holdback”). If such notice confirms that the Initial Exhibition will open on or before the Exhibition Deadline, the period of the Holdback shall automatically be extended until the close of the Initial Exhibition. If such notice confirms that the Initial Exhibition will open after the Exhibition Deadline, the Holdback shall expire without extension.

7. Donor Recognition

(a) *Credit Lines*. After title in each item of Gifted Materials passes hereunder, whenever any such item is publicly exhibited, displayed, or reproduced, the Museums shall credit DONOR as follows: “*Gift of the [Artist] Foundation.*” Before title therein passes, each such item shall be credited as follows: “*Promised gift of the [Artist] Foundation.*”

(b) *Other Recognition*. DONOR, and such persons as DONOR may reasonably designate, shall be provided with such memberships and other donor recognition as each Museum customarily provides to donors making donations of artwork valued at the level of \$___ million or more.

8. Deaccessioning

(a) *Restrictions*. Museum A shall not deaccession any of the Gifted Archive Items at any time, and the Museums shall not deaccession any of the other Acquired Items prior to the year ____, other than to eliminate duplicates that may occur as the result of subsequent acquisitions (e.g., if a print from the same edition is subsequently received as a donation, the original print may be deaccessioned to avoid duplication). Notwithstanding the foregoing, in no event shall either Museum at any time transfer title in any Posthumous Exhibition Print to any third party.

(b) *Disposition of Proceeds*. If, while it remains subject to the foregoing deaccessioning restriction, any Acquired Item is destroyed or permanently lost, or is sold to eliminate a duplicate, all insurance proceeds payable in connection with such loss or destruction or all resulting sales proceeds, as applicable, shall be used solely to acquire one or more of the following, in the following order of priority based upon what is then reasonably practicable:

(i) First, a [Artist] item that is the same or as close as possible to the Acquired Item that has been destroyed or permanently destroyed (e.g., a work from the same edition if an editioned [Artist] work is destroyed); or

(ii) Second, one or more directly comparable [Artist] items (i.e., a similar [Artist] work or a similar item of [Artist] archival materials, as applicable); or

(iii) Third, any [Artist] work or any archival item of curatorial significance relating to [Artist]; or

(iv) Fourth, any fine-art photograph or any documentary or archival item of curatorial significance relating to [the curatorial collecting area this collection is a part of for the institution].

Each such newly acquired item shall thereafter be deemed an Acquired Item for the purposes of this Agreement and, as appropriate, the terms hereof shall apply to such Acquired Item.

(c) *Transfers Between the Museums.* Notwithstanding the foregoing restriction on deaccessioning, the Museums may transfer or reallocate any or all ownership of any Acquired Item between the Museums themselves at any time after _____. Prior to such time, neither Museum shall transfer any or all of its interest in a jointly owned Acquired Item to the other Museum, nor shall Museum A transfer any or all of its interest in a solely owned Gifted Archive Item to Museum B.

9. Copyrights

No copyrights or other intellectual-property rights in the Acquired Items are transferred hereunder, and all copyrights and intellectual property rights held by DONOR in each Acquired Item as of the date hereof shall remain DONOR's sole and exclusive property, subject only to the reproduction license granted to the Museums pursuant to Section 10 below.

10. Reproduction License

Each Museum shall have the reproduction license set forth in the attached Exhibit "E."

11. Third-Party Privacy & Clearances

Each Museum shall be responsible for obtaining all required consents or clearances with respect to third-party intellectual property rights, on the basis set forth in Section 15(d) below and in Exhibit "E."

12. Sales & Licensing by DONOR

DONOR shall be free, without restriction, to continue (i) selling, exhibiting, and lending all of the [Artist] works that remain in its collection, and (ii) licensing and otherwise exploiting all of the [Artist] copyrights and other intellectual property rights, including, without limitation, authorizing the publication of [Artist] books, granting licenses for the production and sale of [Artist] merchandise, and printing new [Artist] prints in order to complete existing editions, to establish new editions (but only in formats that are materially distinct from any existing limited editions of the same image), to produce 8 x 10 “press prints” or similar materials, and/or to create a reasonable number of new exhibition prints (and to sell, lend, exhibit and otherwise dispose of such prints); provided that exhibition prints shall be clearly marked as such.

13. Use of Parties’ Names

Other than as provided herein, DONOR shall make no use of the name of either Museum (or any of its employees, trustees or agents), and the Museums shall make no use of the name of [Artist] or DONOR (or any of its employees, trustees or agents), alone or in conjunction with any other word or phrase, for any purpose, without the prior written consent of the party being named, including without limitation use for advertising or marketing purposes, except as hereinafter permitted. However, following the initial public announcement of the acquisition contemplated herein, nothing herein shall be deemed to preclude any party from stating in a factual manner in a non-promotional context that the Acquired Items have been acquired by Museum B and/or Museum A, or preclude either Museum from making use of [Artist]’s name for non-commercial archival, documentary, scholarly, educational, publicity or similar purposes relating to such Museum, its collection and/or its programs.

14. Loans

(a) *Coordination of Loans.* It is understood that DONOR regularly supports [Artist] exhibitions around the world by lending works from its own collection. For so long as DONOR continues to actively engage in such lending, the Museums shall advise and consult with DONOR in advance with respect to each [Artist] exhibition organized by either or both Museums, and each loan by either or both Museums to any third party of more than twelve [Artist] works. In addition, the loan by the Museums of more than ten of the Gifted Archive Artworks to any third party shall be subject to DONOR’s prior written approval, not to be unreasonably withheld or delayed. This Section 14(a) shall terminate and be of no further force or effect upon the dissolution of DONOR, notwithstanding the appointment of a Designated Successor (as hereinafter defined).

(b) *Borrowing Rights.* DONOR shall have the right to request that any Acquired Item be loaned for inclusion in any third-party exhibition (or for a comparable purpose) and the Museums shall consider such loan request in good faith and shall not unreasonably withhold, delay or condition any loan so requested. This Section 14(b) shall terminate and be of no further force or effect upon the dissolution of DONOR, notwithstanding the appointment of a Designated Successor.

15. Access to Acquired Items

(a) *Archive.* Museum A shall make the Gifted Archive Items accessible for examination and study by scholars and other members of the public in accordance with Museum A's then-current policies and procedures. If requested by DONOR, Museum A shall provide DONOR with a copy of any Gifted Archive Item, at DONOR's expense and upon reasonable terms to be negotiated provided the total number of Gifted Archive Items for which copies are requested is limited and reasonable. The foregoing provisions of this Section 15(a) shall terminate and be of no further force or effect upon the dissolution of DONOR, notwithstanding the appointment of a Designated Successor.

(b) *Scans & Photographs.* Whenever, after completion of delivery of each Acquired Item, either Museum creates a high-resolution, reproduction-quality scan or digital photograph (a "Scan") documenting such Acquired Item, DONOR shall be provided, free of charge, with a copy of such Scan and shall be free to use and reproduce such Scan in connection with the exercise of DONOR's rights under Section 12, above, or for any other purpose permitted under this Agreement. Similarly, DONOR shall provide the Museums, free of charge, with a copy of each Scan that DONOR has previously created or may create in the future. The party making use of any Scan provided by another party shall have sole responsibility for obtaining any third-party permission or clearances that may be required with respect to any persons or property depicted in the Scans. Subject to any underlying copyrights held by DONOR (or any third party) in the depicted subject matter, any copyright in each Scan created by either Museum hereunder shall be owned as follows: if the Scan primarily depicts an Acquired [Artist] Artwork, any copyright in the Scan shall be jointly owned in equal undivided proportion by Museum A, Museum B and DONOR; and if the Scan primarily depicts a Gifted Archive Item, any copyright in the Scan shall be jointly owned in equal undivided proportion by Museum A and DONOR. DONOR shall retain sole ownership of the copyrights in any Scans created by DONOR and provided to the Museums hereunder, but the Museums shall have the right to make use of Scans in exercise of the Reproduction License granted in Exhibit "E". The parties hereby assign and convey to one another all such interest in each Scan as is necessary to effect the aforementioned joint copyright ownership.

(c) *Databases.* DONOR shall be provided with reasonable access to any database of the Acquired Items that is created and maintained by either or both Museums. This Section 15(c) shall terminate and be of no further force or effect upon the dissolution of DONOR, notwithstanding the appointment of a Designated Successor.

(d) *Sensitive Materials.* It is understood that the Gifted Archive Items may contain materials relating to one or more living persons (a "Subject") that may be of a private, sensitive, and/or embarrassing nature ("Sensitive Materials"). Not later than one year after delivery of the Acquired Items, DONOR shall designate in writing as Sensitive Materials any Gifted Archive Item reasonably identified by DONOR as such and, during the lifetime of the applicable Subject, and after the Museums are notified of such

designation, the Museums shall take reasonable steps to ensure that such Sensitive Materials remain confidential and are not publicly disclosed without the prior express consent of the applicable Subject. In this regard, all letters and correspondence from [_____] to [Artist] shall be deemed Sensitive Materials and, during [_____]’s lifetime, shall not be disclosed to any third party without [_____]’s and DONOR’s prior written consent in each instance. The Museums shall not unreasonably refuse to treat as Sensitive Materials any Gifted Archive Items that DONOR may wish to designate as such after the aforementioned one-year deadline.

16. Frame Designs

It is acknowledged that (i) [Artist] considered the frames used for his works to be of great aesthetic importance and therefore sought to ensure that his works were framed using frame designs that he had created or approved, and that (ii) DONOR has sought to respect the artist’s creative vision by taking steps to ensure that the frames used for all [Artist] works conform to the artist’s original designs and specifications. Accordingly, the Museums shall consult with DONOR with respect to the frame designs and specification to be used by the Museums for framing [Artist] works, and shall give due consideration to making use of the designs and specifications customarily favored by the Artist during his lifetime and by DONOR thereafter.

17. Collaboration Agreement Between Museums

No later than 60 days following the Effective Date, the Museums shall enter into a joint ownership and collaboration agreement that governs their co-ownership of the Acquired Artworks and their collaboration with respect thereto (the “Collaboration Agreement”). It is the essence of this Agreement that the Collaboration Agreement require the Museums to use reasonable efforts (i) to treat the Acquired Items as a functionally unified collection related to [Artist] and his work, and (ii) to seek to collaborate on programming relating to the collection.

18. Exempt Status & Authorized Uses

(a) *Status.* Each Museum shall at all times operate as a charity recognized by the Internal Revenue Service as being exempt from federal income tax under Section 501(a) of the Internal Revenue Code by reason of being an organization described in Section 501(c)(3) thereof (an “Exempt Organization”).

(b) *Uses*

(i) The Gifted Materials shall be used by each Museum solely for purposes that are consistent with the Museum’s aforementioned status as an Exempt Organization, in compliance with the terms of this Agreement.

(ii) The Gifted Archive Items shall be used by Museum A primarily for that program at Museum A known as Museum A library or, if such program is discontinued, a comparable program operated by Museum A.

19. Warranties & Representations

(a) *By DONOR.* DONOR hereby represents, warrants and covenants to the Museums that:

(i) DONOR has good and legal title to each Acquired Item, free of any and all liens, encumbrances, rights and claims of others (with the exception of certain copyrights and intellectual-property rights of third parties, as applicable);

(ii) DONOR has the full power and authority to enter into and perform all the obligations herein in accordance with the terms and provisions of this Agreement, and the execution and delivery of this Agreement has been duly authorized by DONOR's governing board;

(iii) To the best of DONOR's knowledge, no customs laws, tax laws, laws of inheritance, or other laws or regulations applicable to the Acquired Items, their sale, export or import have been broken, and each Acquired Item has been legally exported and imported to and from each and every country through which it has passed; and

(iv) Each Acquired Artwork identified by DONOR as a work by [Artist] is authentic, and, to the best of DONOR's knowledge, each of the other Acquired Artworks and each of the Gifted Archive Items is also authentic; and

(v) To the best of DONOR's knowledge, DONOR is the sole owner of the copyrights in the Acquired Artworks identified by DONOR as works by [Artist], and DONOR has the power and authority to grant the reproduction license set forth in the attached Exhibit "E."

(b) *By Museums.* Each of the Museums severally represents, warrants and covenants to DONOR that:

(i) Such Museum is a duly organized and validly existing charitable California organization that qualifies as an Exempt Organization; and

(ii) The Museum has the full power to enter into and perform the obligations stated herein in accordance with the terms and provisions of the Agreement, and the execution and delivery of this Agreement has been duly authorized by the Museum's governing board.

20. Indemnification

Each party hereby agrees to indemnify and hold harmless each other party, and any affiliate, program, officer, trustee, employee or agent of such party, from and against any and all claims, costs, and liabilities (including, without limitation, reasonable attorney's fees) arising from any breach or alleged breach by the indemnifying party of any of the foregoing representations, warranties or covenants, and/or any provision of this Agreement.

21. Term of Agreement

The term of this Agreement shall commence upon the date hereof and shall continue for so long as any party continues to have any obligation to any other party hereunder. It is understood and agreed that the rights of DONOR hereunder are personal to it and, whether upon dissolution of DONOR or otherwise, shall not inure to the benefit of any third party or to any trustee, successor in interest or assign of DONOR other than the Designated Successor (as defined below).

22. Designated Successor

If and when DONOR dissolves, DONOR shall have the right in its discretion to designate an Exempt Organization to act as DONOR's successor hereunder (the "Designated Successor"). DONOR shall make such designation by giving written notice thereof to the Museums prior to DONOR's dissolution. Such designation shall take effect as of the date stated in such notice or, if no date is so stated, as of the date upon which DONOR dissolves; and this Agreement shall be deemed assigned by DONOR to the Designated Successor as of such effective date. If DONOR fails to designate an Exempt Organization as the Designated Successor, the Designated Successor shall be deemed to be: (i) the Exempt Organization to which this Agreement has been assigned by DONOR; or (ii) if no such assignment has been made, the Exempt Organization to which the [Artist] copyrights held by DONOR have been assigned; or (3) if neither such assignment has been made, the Attorney General of the State of California. If the Exempt Organization serving as the Designated Successor subsequently dissolves or is otherwise unable to continue as the Designated Successor, it shall have the right to appoint a replacement Designated Successor by giving notice according to the foregoing procedure or, if it fails to do so, such replacement shall be deemed appointed on the basis set forth above.

23. Miscellaneous

(a) *Force Majeure*. No party shall be liable for any delay or failure in the performance of its obligations hereunder if such delay or failure arises from the occurrence of events beyond the reasonable control of such party.

(b) *Damages*. In no event shall any party be liable to any other party for any indirect, incidental, special or consequential damages, including, without limitation, any loss of profits, economic loss, or loss of business or goodwill, even if advised in advance of the possibility of such damages.

(c) *Waiver.* The waiver by any party of any instance of breach hereof shall not operate or be construed as a waiver of any other instance of breach.

(d) *Relationship.* The parties are wholly independent of one another, and nothing herein shall be deemed to constitute any party as the partner, joint venturer, or agent of any other party.

(e) *Assignment.* This Agreement is personal to the parties and is not capable of being assigned by any party without the other parties' prior express written consent, other than assignment by DONOR to the Designated Successor (or any subsequent assignment to a replacement Designated Successor) pursuant to Section 22 above.

(f) *Applicable Law & Venue.* This Agreement is made in and shall be governed by the internal substantive laws of the State of _____, without reference to conflicts of laws provisions. Any disputes arising hereunder shall be adjudicated, arbitrated and/or mediated in _____ County in the State of _____, and the parties hereby consent to the jurisdiction of the courts located therein.

(g) *Notices.* All notices permitted or required hereunder shall be sent by a reputable private overnight courier company with established tracking capability (such as FedEx or UPS) postage pre-paid and marked for the next business-day delivery, to the party to be notified, at the applicable address set forth below (or such substitute address as may be subsequently provided in writing by such party):

TO DONOR:

TO MUSEUM B:

TO MUSEUM A:

Notices shall be deemed effective upon receipt, as demonstrated by reasonable proof thereof (such as the customary confirmation provided by the applicable courier).

(h) *Affiliates.* This Agreement shall be binding upon, and, except as set forth in Section 21 above with respect to DONOR, shall inure to the benefit of, the parties' respective successors, trustees, employees, affiliates, representatives, agents and authorized assigns.

(i) *Modifications & Waivers.* This Agreement cannot be amended, modified or waived except pursuant to a written document executed by the party against whom enforcement is sought.

(j) *Construction.* Neither this Agreement nor any provision hereof shall be construed against any party on the grounds that it was drafted by said party. To the

maximum extent possible, each provision hereof shall be interpreted so as to be valid and effective under all applicable laws. If any provision is determined to be legally prohibited or invalid, it shall be deemed ineffective and/or modified to the minimum extent necessary to bring such provision and this Agreement into compliance, consistent with the parties' original intent.

(k) *Counterparts*. This Agreement may be executed in counterparts, each of which shall be deemed an original hereof.

(l) *Entire Agreement*. This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof, superseding any and all prior agreements, understandings and discussions among them in this regard.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

MUSEUM A

**[ARTIST]
FOUNDATION, INC.**

By: _____
Name:
Title:

By: _____
Name:
Title:

MUSEUM B

By: _____
Name:
Title:

EXHIBIT “E”

REPRODUCTION LICENSE

(a) *Grant of Rights.* DONOR hereby grants to the Museums, upon the terms set forth below, an irrevocable, nonexclusive license (the “Reproduction License”) to reproduce each Acquired Item (or portion thereof) in which DONOR holds copyright, and distribute such reproductions in all media and via any devices now known or hereafter devised, for customary non-commercial archival, documentary, educational, scholarly, and publicity purposes directly and solely relating to the Museums and their respective collections and/or programs.

(b) *Term of License.* The License shall remain in force with respect to each Acquired Item for the term of copyright therein; provided, however, if an Acquired Item is deaccessioned or otherwise ceases to be part of the permanent collection of either Museum, the license shall no longer apply to such Acquired Item, except that the Museum shall retain the residual right in perpetuity to exercise the Reproduction License with respect thereto in a limited and reasonable manner solely for historical and archival purposes relating to such Acquired Item’s prior inclusion in the Museum’s collection.

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(e) *Exclusions & Additional Licenses*

(i) The Reproduction License does not apply to the following types of excluded uses, each of which shall require a separate agreement with DONOR, on a case-by-case basis:

(A) The publication of any illustrated book, or any similar illustrated publication, in any medium, that deals solely or primarily with the work of [Artist] and reproduces more than ten [Artist] images; provided, however, that the

Museums shall have the right to publish a customary exhibition catalogue in connection with each [Artist] exhibition organized by either or both Museums, upon terms to be negotiated (it being understood that such terms may include restrictions on the distribution and sale of the catalogue to the trade or similar exploitation in the manner of a commercial book, but will not include the right of DONOR to exercise approval over the catalogue's content or to receive a royalty).

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(D) Reproduction of a Contact Sheet for any public purpose;

(E) Production of any "exhibition print" or similar artwork-quality photographic print; and

(F) Any other commercial uses, i.e., any other use that is primarily commercial in nature in that it tends to enter or preempt an existing or potential commercial market.

(ii) The aforementioned excluded uses shall in each instance require DONOR's written consent and the grant of a separate license. It is understood that, unless differing terms are expressly agreed upon in writing, each such additional license shall be deemed nonexclusive and shall have an indefinite term that may be terminated by either party upon reasonable advance written notice to the other party.

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(g) *Third-Party Clearance.* The Reproduction License applies only to the rights held by DONOR in each Acquired Item, and shall not be deemed to apply to any rights that may be held therein by any third party (such as copyrights in third-party letters or correspondence, third-party trademarks or copyrighted material depicted in artworks or other materials, and the publicity/privacy rights of any persons depicted in artworks or other materials); and the Museums shall have sole responsibility for obtaining any third-party clearances or permissions required with respect to any such third-party rights. Upon request, DONOR shall provide the Museums with a copy of any written releases or permissions that DONOR may have with respect to the depiction in works by [Artist] of any persons or property.

(h) *Copyright Notice.* In all customary and/or legally required circumstances, each reproduction of a copyrighted work by [Artist] shall bear a copyright notice in the form specified by DONOR. Until further notice, the form shall be as follows: “© [Artist Foundation].”

(i) *Other Accessioned [Artist] Works.* The terms of this Reproduction License shall be deemed to apply not only to all of the Acquired Items but also to any and all works by [Artist] accessioned by either or both Museums that do not constitute Acquired Items (in that they are already in either Museum’s collection or are separately acquired by either Museum in the future), to the extent of DONOR’s rights therein.

(j) *Conflicting Prior Licenses.* The terms set forth herein shall supersede any conflicting license terms set forth in any deed of gift, purchase agreement or similar instrument executed by DONOR (or by [Artist] or the executor of his estate) before or after the date of this Agreement, unless such instrument expressly states that the relevant terms thereof are intended to supersede the terms of this Agreement.

EXHIBIT "F"

FORM OF BILL OF SALE

BILL OF SALE

[DONOR], a _____ not-for-profit corporation with offices at [Address] ("Seller"), in consideration of the sum of _____ Dollars paid by the [Museums] (collectively "Buyers"), receipt of which is hereby acknowledged, has bargained, sold, assigned, granted, and conveyed and by these presents does bargain, sell, assign, grant, and convey to Buyers and Buyers' permitted assigns, the goods described in Exhibit "A" of that existing Pledge & Purchase Agreement dated as of _____, between Seller and Buyers (the "Purchase Agreement"), upon the terms set forth therein.

TO HAVE AND TO HOLD said goods unto Buyers and Buyers' permitted assigns forever, pursuant to the terms and conditions of the Purchase Agreement, wherein said goods were sold and assigned against any other person, firm, corporation or association.

IN WITNESS WHEREOF, Seller has made and executed this Bill of Sale on this ____ day of _____, 20____.

[SELLER]

By: _____ [S A M P L E] _____

Name:

Title:

EXHIBIT "G"

FORM OF DEED OF GIFT

Dated as of the ____ day of _____, 20__

To: [Museums]:

This will confirm that:

Donor: [NAME AND ADDRESS]

hereby irrevocably gives and assigns all right, title and interest in and to each item of property described in the attached Exhibit "A" (the "Work") (excluding any copyrights or other intellectual property rights therein), to each of [Museums], each to own an undivided 50% interest therein as tenants in common, and their successors and authorized assigns. Donor agrees that Museum A and Museum B will have full powers of ownership, management, display, conservation, and disposition of the Work, subject to the terms and conditions of that certain Agreement between DONOR, Museum A and Museum B dated as of _____, 20__ (the "Agreement").

DONOR, Museum A and Museum B hereby confirm their respective representations and warranties set forth in Section 19 of the Agreement, with respect to the gift of the Work pursuant to this Deed of Gift.

IN WITNESS WHEREOF, Donor has duly executed this Deed of Gift, by its duly authorized officers or Trustees, this ____ day of _____, 20__.

[DONOR].

By: _____ [S A M P L E]
Name:
Title:

ACCEPTED by Museum A:

By: _____ [S A M P L E]
Name:
Title:

ACCEPTED by Museum B

By: _____ [S A M P L E]
Name:
Title: