

MUSEUM 'A' AND MUSEUM 'B' CO-OWNERSHIP AGREEMENT

This Co-Ownership Agreement ("Agreement"), dated as of the ___ day of _____, _____, by and between Museum A, with offices at [ADDRESS] ("Museum A"), and Museum B, with offices at [ADDRESS] ("Museum B").

WHEREAS, MUSEUM A and the Museum B (referred to collectively herein as the "Owners") are jointly acquiring those artworks as further described below (the "Works" or "Collection") pursuant to a Joint Purchase and Gift Agreement dated as of the date hereof (the "Purchase Agreement");

WHEREAS, the Owners wish to establish their respective rights and obligations in connection with their joint ownership of the Works;

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

I. Description of the Works

The Works are more fully described in Appendix A (Works to be stored at MUSEUM A) and Appendix B (Works to be stored at the Museum B), attached hereto and incorporated herein by reference, and generally consist of:

[DESCRIPTION]

The current list of Works, as set forth in Appendix A and Appendix B, includes a description of each artist and object, if applicable. Such list may be revised to include items, if any, acquired jointly by the parties hereto after the date hereof as contemplated by Section II hereof.

II. [Future Acquisitions]

[The parties agree that it is in their mutual interest to share opportunities to acquire works of art and other material, in addition to the Works being acquired pursuant to the Purchase Agreement, that either party would consider to be related to and treated as part of the Collection, whether now in existence or hereafter created or published, whether directly from the Seller or from third parties, and whether by purchase or gift, or a combination of purchase and gift. In the event that either party becomes aware of an opportunity for such an acquisition, such party agrees to give the other party written notice thereof. If the other party advises the first party that it is interested in pursuing a joint acquisition of the offered work, by notice in writing within 30 days of receipt of the first party's notice of such opportunity, the parties shall work together in good faith to negotiate the terms of such joint acquisition and to implement such joint acquisition in a manner and during a period of time that conforms to each party's ordinary acquisition and/or approval process. Any such additional jointly acquired works shall be deemed "Works" subject to the terms of this Agreement, and the Appendices hereto shall be appropriately amended. The foregoing obligation to offer the other party an opportunity to jointly acquire a work shall not apply if the terms of a proposed gift to the first party expressly prohibit such joint ownership.]

MUSEUM 'A' AND MUSEUM 'B' CO-OWNERSHIP AGREEMENT

III. Purchase and Ownership; Announcement of Acquisition

The Works are being acquired jointly by the Owners from Seller, with Owners each possessing an undivided fifty percent (50%) interest in the Works, as tenants-in-common. Owners will consult with one another before issuing any public or press announcements regarding the joint acquisition.

IV. Possession

Unless otherwise agreed to in writing between the parties, each Owner will have possession (whether in storage or on display) of approximately 50% of the Works at any time, as indicated in Appendix A and Appendix B. Additionally, each Owner shall be responsible for care of the Works and shall have access to each of the Works equal to its 50% property interest, it being understood that such allocation and any shared costs associated with care shall be on terms mutually agreed from time to time in writing between the Owners as contemplated in Section VI of this Agreement. Because Owners anticipate that the storage, installation, loan and exhibition of the Works, or any portion thereof, will depend on each of their other exhibition priorities and storage limitations, Owners will notify each other in advance of major projects relating to the Works so that each Owner may plan accordingly, unless a shorter time is agreed upon in advance in writing by both Owners.

V. Credit

Whenever any of the Works are exhibited or reproduced with the authority of either of the Owners, an appropriate credit line in English shall appear, together with customary information identifying the Work(s) and acknowledging that the Work(s) are jointly owned by the Owners. The following credit line has been approved by both Owners. In the event that an Owner seeks to use a different credit line, such Owner shall seek the prior written approval of the other Owner, not to be unreasonably withheld, conditioned or delayed; provided that such modification conforms to the requirements with respect to the credit line in the Purchase Agreement.

When the Works are shown, lent or reproduced, the joint credit line shall read as follows, provided however that each Owner shall be entitled to list its institution and its donors first when Works are displayed at its institution, or when on loan while in its custody:

[“Jointly acquired by Museum A and Museum B; partial gift of [DONOR]; partial purchase with funds provided by [DONORS].”]

VI. Operation, Maintenance, Conservation and Repair

Owners will act in the best interests of the Works' safety and long-term preservation and shall consult with one another on related matters as needed. Each Owner shall exercise the same care of the Works as it does in the safekeeping of similar property of its own, when Works are in its custody. The Works shall always be displayed indoors with standard museum precautions taken to protect the Works from hazards, including, but not limited to, fire, theft, mishandling,

MUSEUM 'A' AND MUSEUM 'B' CO-OWNERSHIP AGREEMENT

extremes of light, temperature and humidity, and tampering or vandalism by the public. Each Owner shall receive a copy of any written instructions and specifications, if any, provided by the artist(s) and/or Seller with respect to the installation, maintenance, deinstallation and storage of the Works and shall be responsible for the care of the Works while they are in possession according to these instructions or specifications and professional museum standards.

Should the Works require conservation treatment for any reason, the Owners will consult with one another to draft a treatment proposal subject to the other Owner's written approval, which will not be unreasonably withheld, conditioned or delayed. The Owner arranging conservation will invoice the other Owner for half of any reasonable out-of-pocket conservation costs totaling more than one hundred dollars (\$100). Any conservation that must be outsourced to a third party shall also be subject to a treatment proposal approved in writing by both Owners with all costs split equally, including shipping.

VII. Loans to Third Parties

The Works may be loaned to third parties only with the prior written consent of both Owners, such written consent to be sought and given with sufficient time to process loan requests from borrowers. The Owners agree that the Owner in possession of a Work at the time a loan request for such Work is received shall be responsible for managing and administering the loan of such Work subject to the terms set forth herein; if a borrower requests loans of objects in possession of both Owners, Owners will determine who is managing and administering the request. All of the material terms of any loan shall be outlined in a loan contract or contracts which shall be reviewed and signed by whichever Owner is administering the loan as well as the borrower(s). Approval shall not be unreasonably withheld, conditioned or delayed. The Owner administering the loan shall promptly provide a copy of the fully executed loan contract to the other Owner. Loan terms shall require that the Works be covered by adequate insurance meeting Owners' requirements and standards. Owners shall agree on an insurance valuation reflecting fair market value at the time of loan, which borrower shall be required to accept as the insured value. Any subsequent changes of dates or venues shall also be approved in writing by both Owners. Standard loan fees charged to a borrower to cover administrative expenses will be retained by the Owner that administers such loan request(s) on behalf of both Owners. Each borrower shall be required to provide to Owners a minimum of four (4) copies (two [2] copies for each Owner) of each catalogue, brochure, and other publications commissioned or prepared by borrower in connection with any loan.

VIII. Frames

Each Owner shall be responsible for the cost and labor of matting and framing Works for their own exhibitions. The Owners agree to coordinate efforts with respect to framing to avoid duplication of effort and, upon request and if possible, to share frames with each other in connection with each other's exhibition or loan of any Works. Retention of frames is at the discretion of each Owner.

MUSEUM 'A' AND MUSEUM 'B' CO-OWNERSHIP AGREEMENT

IX. Reproduction Use; Merchandising

- A. Use of Images by Owners.** Owners acknowledge that the copyright and other intellectual property rights in the Works are owned by the artist of each individual Work and that Seller may also own intellectual property rights in the Works or in images of the Works, subject to the license granted to the Owners pursuant to the Purchase Agreement. Each Owner may photograph Works and reproduce images of Works in connection with its own educational, nonprofit programs, including publicity and promotion relating thereto, as well as scholarly and educational publications, and may make images of Works available on its websites and through its agents for viewing by the public and for personal or academic, noncommercial uses. Neither Owner shall use images of Works to develop or merchandise products without the prior written consent of the other Owner. Neither Owner shall use images of Works for other commercial purposes, including catalogues or similar publications, without the prior written consent of the other Owner, such consent not to be unreasonably withheld, conditioned or delayed. In addition, the Owners will cooperate with one another in good faith to share images of Works and to coordinate their use of such images in the interest of efficiency and ensuring the integrity of the use of such images and the accurate depiction and description of the Works. Any use of an image of a Work, and any permission to third parties for any use of an image of a Work, shall include the appropriate credit line set forth above. Each Owner shall comply with the terms of the license set forth in the Purchase Agreement and shall be responsible for obtaining the copyright owner's prior permission in connection with any use of any images of the Works. Each Owner shall indemnify and hold the other Owner harmless from any and all claims of any kind arising as a result of the Owner's violation or infringement of any third party rights in connection with such Owner's reproduction and use of any images of any of the Works.
- B. Third Party Requests for Images.** Each Owner shall handle and process all third-party reproduction requests relating to any of the Works that such Owner receives and shall retain all revenues, including any fees charged to cover direct expenses in processing such requests (e.g., the creation of high-resolution digital images of Works) to which such Owner is entitled from such reproduction requests. Each Owner shall take reasonable steps to ensure that any third party licensed by such Owner or such Owner's agent obtains any and all permissions necessary from the holders of any intellectual property rights in the image requested by such third party and shall indemnify and hold the other Owner harmless from any and all claims of any kind arising as a result of the violation or infringement of any third party rights in connection with such third party's reproduction and use of such image.

X. Sale

No Owner shall have any right or power to sell or otherwise transfer, pledge, hypothecate or otherwise encumber its interest in any of the Works to or in favor of any third party without the prior written consent of the other Owner, which consent may be withheld at its sole discretion. If

MUSEUM 'A' AND MUSEUM 'B' CO-OWNERSHIP AGREEMENT

both Owners agree to sell any Work to a third party, the proceeds from such sale shall be shared equally between them, after deducting all reasonable sales-related costs from the gross sale price.

XI. Warranties and Indemnification

A. Warranties. Each Owner hereby represents, warrants and covenants to the other Owner that: (i) it has the full power and authority to enter into and perform this Agreement, and this Agreement does not conflict with any other agreement to which it is a party or violate any right of any third party; and (ii) no use made by such Owner of the Works (including without limitation any reproduction use) will violate any right of any third party (including without limitation the Seller's and any artist's copyright or moral rights) as they may exist under applicable law.

B. Indemnification. With respect to any breach by either Owner of any of its representations, warranties and covenants hereunder, the breaching Owner hereby indemnifies the other Owner against any loss or damage, including reasonable attorney's fees, incurred by reason of said breach, but only in proportion and to the extent that such loss or damage is due or related to the indemnifying Owner's negligent or intentional acts or omissions.

XII. Fine Arts Insurance

The Owner in physical possession of any of the Works shall insure such Works as part of its permanent collection, under its own "all risk" fine arts policy for 100% of the value mutually agreed on by both Owners in writing. Each Owner's Fine Arts Policy (a) shall be subject to standard exclusions, (b) shall be written with an insurance carrier licensed at all times during the term of this Agreement to do business in the Owner's state and (c) shall be endorsed to name the other Owner as an additional insured as its interest may appear, and to be primary and non-contributing with any other insurance available to the other Owner while the works are in the first Owner's possession or in transit to the first Owner. Upon request at any time during the term of this Agreement, each Owner shall provide the other Owner with a certificate of insurance evidencing that the policy of fine arts insurance required herein is in full force and effect.

When a Work is in transit from one Owner (including from its offsite storage facility) to the other, the receiving Owner, who is primarily responsible for making the transit arrangements pursuant to Section XIV below, shall be responsible for insuring the Works in transit, commencing with the completion of the outgoing condition report, in accordance with the prior paragraph.

Each Owner hereby releases the other Owner, and its trustees, officers, directors, agents and employees (such Owner's "Insurance Parties") from liability for any and all claims arising out of the loss or damage to any of the Works, and agrees that, as between the Owners, each Owner shall look solely to the insurance required to be provided by the insuring Owner hereunder with respect to such loss or damage, and that recovery thereunder shall be subject to the coverage provisions and limits of liability applicable to such insurance, and shall be limited to fifty-percent (50%) of the amount, if any, paid by the insurer(s) with respect to the lost or damaged Works, whether or not such loss or damage was caused by the negligence or other action or

MUSEUM 'A' AND MUSEUM 'B' CO-OWNERSHIP AGREEMENT

omission of an Owner. Museum A and Museum B acknowledge that their respective interests in the Works may not be fully insured for loss or damage directly caused by an earthquake under each other's fine arts insurance policies. Each Owner hereby waives any right of subrogation against the other Owner's Insurance Parties.

In the event of any damage to or loss of any of the Works, the Owner with custody of the damaged or lost Work shall notify the other Owner within two working days of discovery, by telephone or e-mail, and subsequently provide a written incident report. In the event of an insurance claim, Owners will cooperate in working with the insurance companies for the timely and effective resolution of the claim. Owners will be responsible for covering any amount of deductible on their respective policies.

XIII. Record-Keeping and Documentation

Both Owners shall accession the Works into their respective collections, reflecting their respective ownership share in their official registries. Both Owners shall assign an individual accession number which each Owner shall affix to each Work in a suitable manner. Owners will share all records and documentation of the Works with one another so that both parties have a complete set. This shall include any records relating to provenance, exhibition history, loan or display history, publication history, any use of images of the Works for archival, educational, promotional or other purposes, conservation and condition history for Works housed at their facility. Noteworthy new research or published material shall be shared, including digital images. Copies of all original documentation for each Work shall be held by Owner in custody.

XIV. Storage and Access; Shipping

The Owner in custody shall be solely responsible for the expenses of any offsite fine art storage facility, with climate control, as may be required from time to time. Art storage shall always meet museum industry standards or precautions for security, fire, environment, maintenance, and controlled access.

While the Works are in offsite storage, each Owner shall have access with proper notice given to the other Owner. The Owner requiring access shall be responsible for any storage access fees. When the Works are in either Owner's physical custody, access shall be arranged by appointment during normal working hours and shall not be unreasonably withheld by either Owner. Owners shall grant controlled access to qualified researchers consistent with access policies governing the rest of their respective permanent collections. This shall also apply to researchers requesting access to museum records concerning the Works.

Each Owner shall be responsible for making all arrangements for shipping the Works between such Owner's venue and any offsite storage facility, and shall pay all costs associated herewith. The costs of shipping the Works from one Owner's facility (including such Owner's offsite storage facility) to the other Owner shall be shared equally, and the receiving Owner shall be primarily responsible for making all arrangements for such shipping.

MUSEUM 'A' AND MUSEUM 'B' CO-OWNERSHIP AGREEMENT

XV. Term of Agreement

The term of this Agreement shall commence as of the date first set forth above and shall run for as long as the Owners continue to have joint ownership of any of the Works.

XVI. Miscellaneous

- A. No Assignment.** This Agreement is personal to the Owners and, except as expressly set forth elsewhere herein, cannot be assigned or sublicensed by any act of any Owner or by operation of law without the other Owner's prior written consent.
- B. Affiliates.** This Agreement shall be binding upon the Owners' respective affiliates, employees, subcontractors, representatives, agents, and authorized agents.
- C. Relationship.** The Owners are independent of one another, and nothing in this Agreement shall be deemed to constitute either Owner the partner, joint venture, employee, or agent of the other. Except as expressly provided in this Agreement or otherwise agreed in writing, no party shall have any right or power to obligate or bind the other party in any manner.
- D. Construction.** To the maximum extent possible, each provision of this Agreement shall be interpreted so as to be valid and effective under all applicable laws. In the event that any provision is deemed under any applicable law to be prohibited or invalid, that provision shall be deemed ineffective and/or modified to the minimum extent necessary in order to bring it into compliance with the law consistent with the intent of the parties. Neither this Agreement nor any provision hereof shall be construed against an Owner on the ground that it was drafted by that Owner.
- E. Continuing Obligations.** Except as expressly otherwise provided herein, the expiration or termination of this Agreement shall not relieve either Owner of any obligation or liability that accrues hereunder, nor affect or impair any right that arises hereunder, prior to such expiration or termination.
- F. Modifications and Waivers.** This Agreement cannot be amended, modified or waived except in a written document signed by both of the parties hereto. The waiver by any Owner of any breach of this Agreement shall not be considered or operate as a waiver or any prior or subsequent breach.
- G. No Third Party Beneficiary.** Nothing in this Agreement shall create, or be construed to create, any third party beneficiary rights in any person not a signatory to this Agreement.
- H. Entire Agreement.** This Agreement constitutes the entire agreement between the parties, and supersedes all previous agreements, understanding, and discussions relating to the subject matter hereof.

MUSEUM 'A' AND MUSEUM 'B' CO-OWNERSHIP AGREEMENT

XVII. Staff Representatives

The persons responsible for receiving notices hereunder, each of whom shall designate staff responsible for rendering reports or giving approvals as appropriate, as required under this Agreement are:

For Museum A: CONTACT

For the Museum B: CONTACT

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

MUSEUM A

MUSEUM B

By: _____
Name:
Title:

By: _____
Name:
Title: