

EXHIBITION AGREEMENT

This Agreement between Monroe County Community College, ("College"), and _____ ("Lender"), the creator or owner of the exhibit described under this Agreement (each individually, a "Party," and collectively, the "Parties"), takes effect on the last date signed below ("Effective Date").

BACKGROUND

- College provides educational and other related services to the community.
- Lender has created - or has sufficient right to enter into this Agreement with respect to - each piece of visual art or exhibition element described in more detail in Exhibit 1 (attached and incorporated into this Agreement) ("Exhibit").
- From time-to-time, the College presents exhibits for the enjoyment of the public.
- College intends to display certain exhibits as part of a presentation entitled _____ that begins on _____ (day/month/year) and ends on _____ (day/month/year) ("Exhibition")
- College has the full authority to enter into this Agreement as the owner of the facilities wherein Lender's Exhibit will be exhibited.
- The Parties desire College to have custody and possession of the Exhibit in its exhibition facilities located on the premises of College for the purposes of public display and enjoyment, in addition to conservation and scholarship befitting the Exhibit's unique character.
- The Parties intend this Agreement to set forth the Parties' respective interests in the Exhibit, and procedures and understandings governing the Exhibit's use, custody, protection and public enjoyment.

AGREEMENT

The Parties agree as follows:

I. **Conveyance.**

- A. Under Loan. Lender grants to College a loan of the Exhibit, subject to this Agreement's requirements. Lender retains ownership or other controlling interest in Exhibit not specifically delegated to College under the Agreement.
- B. No Exhibiting Obligation Created. Signing this Agreement does not obligate College to borrow and exhibit Lender's work. If College, after signing this Agreement and before physically borrowing or exhibiting Lender's work, at its sole determination decides that the exhibition is not feasible or that the Exhibit will not be included in the Exhibition, then College:
 - 1. promptly must notify Lender of College's decision to not borrow or exhibit Lender's work, and must return the work; and
 - 2. is under no further obligation to borrow or exhibit the Exhibit.

II. **Term and Termination.**

- A. Duration. "Term" means a period during which the Agreement remains in effect. The Term begins on the Effective Date and ends on _____. College's right physically to take possession of and display the Exhibit for the Exhibition begins on _____. On _____, College will relinquish physical possession of Exhibit to Lender or to another borrower, according to College's written shipping instructions.
- B. Renewal. This Agreement is renewable upon the Parties' determination by mutually-signed writing. The Parties must set forth a specific duration for each renewal.
- C. Termination. This Agreement terminates by any of the following acts or events.
1. *For Convenience.* Either Party has a right to terminate this Agreement for convenience by giving the other Party 60 days written notice.
 2. *By Default.* Upon any involuntary transfer of Lender's interest in this Agreement by operation of law, Lender immediately must notify College of that transfer, and College has a right immediately to terminate the Agreement.
- D. Post-Termination Rights. Upon this Agreement's expiration or termination, College's right to return the Exhibit absolutely accrues. If College, after making all reasonable efforts and through no fault of its own, is unable to return the Exhibit within 60 days after the Term ends, then College has an absolute right to:
1. place the Exhibit in storage;
 2. charge regular storage fees and any related insurance cost; and
 3. perfect and enforce a lien for these fees and costs.

III. **Delivery of Exhibit if in Transit.**

- A. Shipping.
1. *Costs.* Shipping costs to be paid by:
_____ Lender
_____ College
 2. *Instructions.* Lender's shipping and handling instructions are set forth in Exhibit 2 (attached and incorporated into this Agreement)
- C. Possession. College must maintain possession of Exhibit from the time that College obtains possession of the Exhibit until the Exhibition ends, unless the Parties determine in writing otherwise.

IV. **Condition of Exhibit on Arrival to the College.**

- A. Per Lender Disclosure. Lender certifies that Exhibit is in good condition unless and except as specified on Exhibit 3 (attached and incorporated into this Agreement).
- B. Travel-Readiness. Lender warrants that the Exhibit is in a condition suitable for travel and that proper packing procedures will be followed in readying Exhibit for shipment to College.

- C. Site Preparation. Lender must make the Exhibit ready for presentation when it arrives at Exhibition site. Lender must include special written instructions for College's staff with respect to any aspect of Exhibit that requires special care in handling or presentation.
- D. Delivery Condition. If College determines that the Exhibit has been delivered damaged or in a deteriorating condition, then College will notify Lender at once. If any damage occurs in transit, the College will also notify an applicable carrier and save all packing materials for inspection.

V. **Care, Installation and Return of Exhibit by College.**

- A. Personnel. College must cause only responsible personnel to undertake any unpacking, packing or installation of Exhibit. Lender's agents may be present and may direct unpacking, packing, and installation.
- B. Fastening. College must not use any foreign material (*i.e.*, any pin, nail, *etc.*) to fasten Exhibit for any Exhibition purpose.
- C. Nonalteration. College must maintain Exhibit in any condition in which College has received the Exhibit. College must not unframe, unglaze or remove Exhibit from any mat, mount or base, or clean or repair or transport Exhibit in any damaged condition except:
 - 1. with Lender's express written permission; or
 - 2. when imperative with respect to the Exhibit's safety.
- D. Ambient Conditions. Unless Lender grants special permission in writing for outdoor exhibition, College must protect Exhibit at all times against direct sunlight, rain, excessive humidity and excessively dry conditions. In addition, College properly must protect all watercolors, drawings, prints, fabrics and photographs from fading damage due to exposure to direct or reflected sunlight and strong artificial light, fluorescent light or proximity to heat sources.
- E. Security. College at all times must provide suitable protection against theft, fire and damage from any cause. During closed hours, College must cause Exhibition building to be locked.
- F. Display Only. College must use Exhibit solely for display at each site set forth in this Agreement.
- G. Nonalteration. Except in an emergency to preserve Exhibit, College must obtain Lender's written consent before:
 - 1. touching up, reframing, repairing or restoring Exhibit;
 - 2. cleaning, repairing, or removing Exhibit from its frame, or
 - 3. otherwise changing, altering, or disturbing the Exhibit's physical condition.
- H. Return. Upon termination of this Agreement, College must return Exhibit to Lender or ship to next exhibitor in as good condition as when College took possession of the Exhibit, ordinary wear, tear, degradation and inherent vice excepted.

VI. **Emergency Preservation.**

- A. Right to Preserve. College has a right to apply any emergency preservation measure without the Lender's permission if:
1. immediate action is required:
 - a. to protect the Exhibit or to protect other property in College's custody; or
 - b. because the Exhibit has become a hazard to the health or safety of the public or to College's staff or agents, and:
 2. the Parties are not able promptly to determine mutually a solution because:
 - a. College is unable to reach Lender at Lender's last address of record under this Agreement; or
 - b. Lender does not consent to each protective measure that College recommends, yet is unwilling or unable to terminate this Agreement and retrieve the Exhibit.
- B. Recovery Right. If College applies any emergency preservation measure to or disposes of the Exhibit under the preceding paragraph, then:
1. College has a right to perfect a lien on the Exhibit and on any proceed from any disposition of that lien for any related cost that the College incurs;
 2. College is not liable for injury to or loss of the Exhibit if:
 - a. College had a reasonable belief at the time the action was taken that:
 - i. the action was necessary to protect the Exhibit or other property in College's custody; or
 - ii. the Exhibit constituted a hazard to the health and safety of the public or College's staff or agents; or
 - iii. while applying the emergency preservation measure, College exercised reasonable care in choosing and applying that emergency preservation measure.
 3. College must use any insurance proceed to the extent available to cover Lender's loss.

VII. **Reproduction and Examination.**

- A. Scope of Rights. Lender authorizes College to reproduce any Exhibit before and during Exhibition for reporting the Exhibit's condition, documenting installation, and publicizing Exhibition.
- B. Limitation. College has no authority to reproduce Exhibit in the Exhibition for any commercial purpose.
- C. Lender Sample. Lender makes available ___ / does not make available ___ to College a photographic reproduction of the Exhibit available for publicity. Any reproduction that Lender makes available to College is in each format that Lender

has marked as follows: Black-and-white print () Color Print ()
35mm slide () Transparency () Electronic Format ()

VIII. **Identification of Exhibit.**

College must either:

- A. affix or post any label, plate, or other marking that College places adjacent to Exhibit to identify Exhibit as a loan to the College; or
- B. at its own expense, upgrade that marking or provide College's own marking.

IX. **Insurance.**

- A. Exhibit will be insured by College as set forth in Exhibit 4, while in its care, custody and control, at the written valuation suggested by the lender. However, College and or its insurer reserve the right to substantiate the value of any Exhibit, or any article or component of the exhibit, that is damaged prior to settling a claim with the owner of the Exhibit. All objects lent for exhibition will be insured under College's fine arts coverage on an "all risk" basis. College will not be responsible for any loss beyond the scope and limits of coverage provided under its fine arts insurance coverage. Upon any loss or damage, recovery is limited to any amount that the insurer pays, thereby releasing College, its elected and appointed officials, employees, students and agents from liability for any claim arising out of that loss or damage. The College will only provide coverage for the Exhibit while in-transit as indicated below:

_____College shall insure the Exhibit while in-transit from its prior location until received at the College. College shall have the right, but not the obligation, to arrange or approve arrangements for shipping including selection of shipper.

_____College shall insure the Exhibit while in-transit from the College until delivered to the Lender or its next destination. College shall have the right, but not the obligation, to arrange or approve arrangements for shipping including selection of shipper.

- B. If preferred, the lender may continue its own insurance for the period of the loan. It is understood that any lender insuring its own loan automatically waives right of subrogation unless agreed to in writing otherwise before the loan leaves the possession of the lender.
 - C. Any College policy covering this Exhibition contains usual exclusions for loss or damage due to war, invasion, hostilities, rebellion, insurrection, confiscation by order of any government or public authority, risks of contraband or illegal transpiration and/or trade, nuclear damage, wear and tear, gradual deterioration, insects, vermin and inherent vice.
- X. **Force Majeure.** "Force Majeure" means any strike, lockout, labor dispute, act of God, inability to obtain labor or any material or reasonable substitute for that labor or material, governmental restriction, governmental regulation, governmental control, enemy or hostile governmental action, civil commotion, fire or other casualty, or other cause beyond the reasonable control of a Party obligated to perform (except for financial ability). Any prevention, delay or stoppage due to Force Majeure excuses that Party's performance for a period equal to that prevention, delay or stoppage.

XII. **Title and Copyright.** Lender warrants that Lender has full legal title and copyrights to the Exhibit or that Lender is a duly authorized agent of each owner of the Exhibit. Lender will indemnify and defend College against, and hold College harmless from, any liability (including attorney's fees and the costs of defending any actions) arising out of any claim by any individual, institution or other person claiming full or partial title or copyright to the Exhibit.

XIII. **Miscellaneous.**

- A. **No Personal Liability.** No director, trustee, officer, agent, governing board member or employee of College is personally subject to any liability under this Agreement.
- B. **Nondiscrimination.** College must cause Exhibition to be open to the public without restriction as to race, color, religion, national origin or ancestry, age, gender, marital status, disability, genetic information, sexual orientation, gender identity/expression, height, weight, or veteran status.
- C. **Assignment; Delegation.** A Party must obtain the other Party's prior written consent before:
 - 1. assigning this Agreement or of any right accruing under this Agreement, in part or in whole; or
 - 2. delegating any duty arising under this Agreement, in part or in whole.
- D. **Binding Effect.** This Agreement is for the Parties' benefit only and inures to the benefit of and binds the Parties and their respective heirs, legal representatives, successors and assigns.
- E. **Venue; Governing Law.** A Party has a right to institute any legal proceeding between the Parties only in the County of Monroe, State of Michigan court and each Party must submit to that court's jurisdiction. The laws of the State of Michigan govern this Agreement as an agreement to be performed within the State of Michigan.
- F. **No Joint Venture.** Nothing contained in this Agreement is considered to create a joint venture, partnership, or agency relationship between the Parties.
- G. **Severability.** If a court of competent jurisdiction determines any Agreement provision to any extent to be invalid or unenforceable, the remainder of this Agreement is not affected, and each remaining Agreement provision is valid and enforceable to the fullest extent permitted by law. If any Agreement provision is capable of more than one construction, one of which would render the provision void and any other of which would render the provision valid, the provision has the meaning that renders it valid.
- H. **Waiver.** No provision or breach of that provision is considered waived, except by written consent of a Party against whom the waiver is claimed, and any waiver of the breach of any provision is not considered to be a waiver of any other Agreement provision. A Party's acceptance of another Party's performance after the time that performance becomes due does not constitute the accepting Party's waiver of the breach or default of an applicable Agreement provision unless the accepting Party expressly indicates in writing otherwise.

I. Notices.

1. *Required Procedure.* A Party's notice under this Agreement is valid only if in writing and delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. A Party must address each Agreement notice to the other Party at each following address corresponding to that other Party or at any other address that the other Party from time to time directs in writing:

a. If to the College: _____

b. If to the Lender: _____

2. *Delivery Date.* Actual in-person notice, however and from whoever received, is always effective. Any other notice is considered to have been given on the earlier of:

- a. actual delivery or refusal to accept delivery;
- b. the date of mailing by certified mail; or
- c. the day facsimile delivery is verified.

XXI. Entire Agreement. This Agreement, including any attachments, constitutes the entire understanding between Lender and College and supersedes each prior or contemporaneous agreement - whether written or oral - between parties. Any oral representation not contained in the Agreement is binding on the parties only if the parties have acknowledged it in writing. The Parties have not entered any warranty, representation, or other agreement in connection with the Agreement's subject matter unless specifically set forth in the Agreement. Any supplement, amendment, alteration, modification, waiver or termination of this Agreement is binding only if the Parties have entered it in writing.

COLLEGE:

LENDER:

By: _____

(Print Name)

By: _____

Print Name)

Title: _____

Title: _____

Date: _____

Date: _____

Department Supervisor: _____

Exhibit 2

Shipping and Handling Instructions

Lender designates the following shipping addresses with respect to the Exhibit:

Shipped From

Voice: _____

FAX: _____

e-mail: _____

Returned To:

Voice: _____

FAX: _____

e-mail: _____

special shipping or handling instructions:

Lender will () / will not () crate the Exhibit before shipping.

Lender requires () / does not require () assistance from College in packing the Exhibit for shipping.

A case already exists () / does not exist () for the Exhibit

Exhibit 3

Condition of Exhibit:

The Exhibit requires () does not require () cleaning prior to display. The Exhibit and frame, if framed, will be () will not be () in an undamaged condition when crated at lender's location.

Exhibit is framed: yes? () no? ();

Exhibit protected in frame: Glass? () Plexiglas? ()

Exhibit is ready to hang? yes? () no? () if no, please explain:

Any deterioration that has occurred as to Exhibit before College has obtained possession under this Agreement is listed as follows:

Exhibit 4

Insurance value:

Estimated current market value in US\$: _____

Lender will () / will not () carry insurance for the exhibit while on tour?

Insurance company: _____

Policy Number: _____

Lender will () / will not () name College as additional insured.

If Lender will not name College as additional insured, then Lender authorizes () / does not authorize () College to insure the Exhibit.

Original: VP of Administration
Cc: Originating Office
Lender/Artist