

FIRST AMENDATORY AGREEMENT

THIS FIRST AMENDATORY AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City"), and **THE ESTATE OF CLYFFORD E. STILL**, Deceased, c/o LaRue G. Lennon, Esq. and The Law Offices of William O'Brien Finch, Jr. with an address of 197 East Main Street, Westminster, Maryland 21157, hereinafter referred to as the "Grantor", the "Estate", or "it".

WITNESSETH:

WHEREAS, the City and the Grantor previously entered into a Clyfford Still Collection Donation Agreement dated September 20, 2004 (the "Donation Agreement") relating to a grant and transfer to the City from the Grantor of a Collection of art created by Clyfford Still (the "Collection" as defined in Exhibit A to the Donation Agreement) for placement, maintenance, and comprehensive exhibition as provided therein; and

WHEREAS, the Grantor during the pendency of the creation of a museum as called for in the Donation Agreement has sold one piece of art from the Collection with the permission of the Maryland Court; and

WHEREAS, the parties desire to amend language related to copyright in order to ensure that rights and remedies are clear and well defined; and

WHEREAS, upon final execution of this First Amendatory Agreement, the Donation Agreement and First Amendatory Agreement shall collectively be known as the "Donation Agreement";

NOW, THEREFORE, in consideration of the premises and the mutual covenants and obligations herein set forth, the parties agree as follows:

1. Paragraph 4 of the Donation Agreement, entitled "GRANTOR DEDICATION AND WAIVER OF RIGHTS," is amended to read as follows:

"4. GRANTOR DEDICATION AND WAIVER OF RIGHTS

a. Subject to the provisions of the Donation Agreement the Grantor does hereby donate, grant, convey, assign and deliver to the City for the use and benefit of the people of Denver, all of right, title and interest of the Grantor in and to the Collection which Grantor now owns or may hereafter acquire for the purposes of this Donation Agreement. Grantor hereby assigns, donates, and forever relinquishes to the City all of Grantor's right, title and interest in the Collection including, but not

limited to, any and all copyrights in or otherwise granted under 17 U.S.C. §101, et seq., as amended, or other basis under which an artist, or and artist's heirs, successors and assigns, may claim a continuing interest in works of art and in the ownership of all other rights in the Collection.

b. Subject to the limitations in the terms of Paragraph 8 and Exhibit B, the parties understand that the Grantor conveys to the City all of Grantor's rights to make reproductions, including digital or other electronic reproductions and other forms of reproduction now known or hereafter developed of the Collection for commercial and non-commercial purposes. This conveyance includes the rights to the City to license the rights to make reproductions and digital or other electronic reproductions of the Collection for commercial and non-commercial purposes, subject to the limitations in Paragraph 8(t) of the Donation Agreement as amended. The City, in undertaking such activities, agrees not to violate the artist's rights of attribution, integrity of any individual work, and integrity of the Collection. The City or any licensee which undertakes reproductions of the art in the Collection shall require the reproduction to be faithful to the original piece and such reproduction shall not depict any alteration of the artwork which would discredit the work or infringe upon the copyright under 17 USC 101 et seq. or the Berne Convention, as either have been amended, including but not limited to placing writing of any other image superimposed on the image of the original painting or cropping the painting image or altering on the image the original colors used by Clyfford Still, to the extent commercially reasonable. Notwithstanding the preceding sentence, a portion of a work may be permitted to be shown as "details", if the entire image is shown concurrently. The parties are using the standards of infringement as set forth in 17 USC 101 et seq. and the Berne Convention as either have been amended, but the parties affirmatively state and agree that the copyright in the Collection was intended to and effectively was transferred to the City in the September 20, 2004 Donation Agreement. All reproductions created by the City shall contain a permanent identification of the numbered title of the work and Clyfford Still as the artist. The City shall contractually require that any licensee or sub-licensee of the City shall comply with the terms of this sub-paragraph 4(b) as a condition of the license.

c. Subject to other applicable provisions of this Donation Agreement, it is further understood and agreed by Grantor that the City may fulfill the mission of the museum to display, store, or remove from public display any items in the Collection only upon approval of the Curator of the Collection as hereinafter identified. The City agrees that it will not intentionally damage, alter, modify or change the Collection.

d. While termination rights as may exist by operation of law under 17 U.S.C. 203, the parties agree that to the extent such rights are held in the Grantor, termination is waived in its entirety as all rights have been transferred to the City. In the event that the City or any City licensee reproduces a work in a manner which breaches the terms of this Donation Agreement, Grantor's remedy is to directly compel the offending party to remove the offending reproduction and to destroy the offending reproduction of works in the Collection. In addition, Grantor reserves its rights to commence injunction proceedings, as it deems appropriate. Grantor

acknowledges it may not seek attorney's fees or legal costs from the City; however, the Donation Agreement is not intended to and shall not operate as a waiver by the Grantor to seek such fees or costs from the City's licensees.

2. Paragraph 6 of the Donation Agreement, entitled "CONDITIONS OF GRANT DONATION OF THE COLLECTION," sub-paragraph d entitled "Curatorial Position" is amended to read as follows:

d. Curatorial Position: The City has contracted with the Clyfford Still Museum, an independent non-profit entity which has produced to the City a determination letter from the Internal Revenue Service that it is a 501(c)(3) corporation to act as the City's agent for the construction and operation of the museum quarters to house and exhibit the Collection. The Clyfford Still Museum, is the agent of the City and it is responsible for the hiring of a Curator of the Collection ("Curator") as a full time curatorial position to oversee the Collection and to fulfill the duties of the Curator required under the terms of this Donation Agreement. In the event the Clyfford Still Museum does not have a Curator employed, the City's Director of Arts and Venues Denver shall serve as Curator unless and until there is a Curator employed by the Clyfford Still Museum.

3. Paragraph 8 of the Donation Agreement, entitled "HANDLING OF THE COLLECTION," sub-paragraphs p, r, s, and t are amended to read as follows:

"8. HANDLING OF THE COLLECTION:

p. Reproductions and digital or other electronic reproductions of the Collection for commercial and non-commercial purposes shall be published in the items original color only, regardless of format of the publication; however, so long as it does not violate the terms of the Will, the City may grant permission to licensees to reproduce one or more images in black and white so long as the proposed licensee has made representation(s) that (1) he or she is using the reproduction for scholarly purposes(2) the images will not be used for commercial purposes, and (3) the scholar does not have funds to reproduce the images in color or the publication medium does not provide for color format. The City may also license to the Museum the ability to grant this limited permission for black and white reproduction by scholars under the same conditions herein, so long as it does not violate the terms of the Will.

r. The parties agree that the City's rights to make, or license to third parties the right to make, reproductions of the Collection for commercial and non-commercial purposes, including but not limited to scholarship shall specifically permit the sale of reproductions in their original color of the works of art in the

Collection in the form of prints, film, digitization, slides, posters, post cards, and books. The parties agree that the proceeds earned by the City of such sales shall be utilized for the maintenance and exhibition of the Collection. The City will use reasonable efforts to cooperate with third parties seeking permission to make reproductions to promote the legacy of Clyfford Still.

s. The parties agree that the City shall not use the rights granted in paragraph 4 of the Donation Agreement, as amended, to make, or license to third parties the right to make, reproductions of works of art in the Collection specifically on tote bags, jigsaw puzzles, apparel, nor generally on utilitarian, decorative, or memorial objects of any kind or nature.

t. In arranging for the manufacture and commercial sale of reproductions and digital or other electronic reproductions of the Collection for commercial purposes, the City shall not violate the artists rights, including, but not limited to, attribution and the integrity of any individual artwork in the Collection or discredit the intrinsic value of the original artwork or the Collection. The City shall contractually require that any licensee agree in the contract that it will not violate sub-paragraph 4(b) or Paragraph 8 of this Donation Agreement as amended. The City shall contractually require that any licensee shall place on all reproductions a permanent identification of the numbered title of the work(s) and credit Clyfford Still as the artist. The City shall ensure or require licensees to ensure reasonable accuracy and high quality to an industry standard of reproduction in the manufacture of commercial reproductions on all reproductions. The City may assign the determination of reasonable accuracy and high quality to an industry standard of reproduction in the manufacture of all reproductions to the Curator of the Clyfford Still Museum and the Board of Trustees of the Collection.”

4. A new Paragraph 25 of the Donation Agreement, entitled “LICENSE TO GRANTOR AND TO CLYFFORD STILL’S FAMILY MEMBERS,” is added to read as follows:

“25. REQUEST TO LICENSE TO GRANTOR AND TO CLYFFORD STILL’S FAMILY MEMBERS: The City recognizes that the Grantor and the family members of Clyfford Still have a special interest in the legacy of Clyfford Still. The City shall take under consideration on a case by case basis the granting of licenses to Grantor and Clyfford Still’s family members to use the images within the Collection in connection with educational, academic, historical preservation, research, publicity, and other activities to promote the legacy of Clyfford Still, including but not limited to the rights to use such images in publications, documentaries, catalogs, archive materials, brochures, and exhibits, provided that such usage does not disparage the City, the Museum, the Collection, or Clyfford Still in any way. The City shall retain all rights to directly license use of the images within the Collection.

5. A new Paragraph 26 of the Donation Agreement, entitled “ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS,” is added to read as follows:

“26. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Grantor consents to the use of electronic signatures by the City. The Donation Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Donation Agreement as amended solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Donation Agreement as amended in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.”

6. Exhibit A-1 attached to this agreement deletes the artwork known as PH-240-2, created in 1951 with the dimension of 91” x 68”, due to that work being sold by the Grantor under court order for expenses of the Grantor prior to the completion of the Clyfford Still museum quarters and turnover of the Collection to the City. Exhibit A-1 replaces Exhibit A and all references to “Exhibit A” are hereby amended to read “Exhibit A-1.”

7. That all references to “Denver Office of Cultural Affairs” be amended to read “Arts and Venues Denver” and that all references to “DOCA” be amended to read “AVD” and that the address for Arts and Venues Denver be amended to “1245 Champa Street, First Floor, Denver, Colorado 80202.”

8. Clyfford Still’s family is represented, under the Bylaws of the Clyfford Still Museum, as Honorary Directors on the Board of Directors by family members, including Sandra L. Still Campbell. When she retires from Board, Sandra L. Still Campbell desires that Sara Rocha Canepa, Sandra L. Still Campbell’s niece and a granddaughter of Clyfford Still, replace Sandra L. Still Campbell’s Honorary Director position on the board. The City does not have an objection to the replacement by Sara Rocha Canepa of Sandra L. Still Campbell.

9. Except as herein amended, the Donation Agreement is affirmed and ratified in each and every particular.

(Signature pages follow.)

Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: THTRS-XC4A053-01

Contractor Name: THE ESTATE OF CLYFFORD E. STILL

John G. Bilayer
WITNESS

By: *Diane S. Knox*

Dec. 17, 2012
DATE

Name: DIANE S. KNOX
(please print)

Title: Co Personal Representative
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



Contract Control Number: THTRS-XC4A053-01

Contractor Name: THE ESTATE OF CLYFFORD E. STILL

By: Sandra Still Campbell

Name: SANDRA STILL CAMPBELL
(please print)

Title: (CO-PERSONAL REPRESENTATIVE
OF THE CLYFFORD STILL ESTATE
(please print)

ATTEST: [if required]

By: Carol Olencki

Name: CAROL OLENSKI
(please print)

Title: _____
(please print)

