

DONATION OF COPYRIGHT AGREEMENT

THIS DONATION OF COPYRIGHT AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, 1437 Bannock Street, Denver, Colorado 80202, hereinafter referred to as the "City", and **DIANE STILL-KNOX** (hereinafter referred to as the "Grantor") whose address is 922 Reddington Court, Walnut Creek, California 94596.

W I T N E S S E T H:

WHEREAS, Grantor, Diane Still-Knox, is the daughter and a legal heir of Clyfford Still; and

WHEREAS, the Estate of Clyfford Still was responsible for administering the property of Clyfford Still, including but not limited to a Collection of art created by Clyfford Still (the "Clyfford Still Collection" as defined in Exhibit A to the Clyfford Still Collection Donation Agreement, defined below) pursuant to the terms of the Last Will and Testament of Clyfford E. Still, dated May 2, 1978 ("Clyfford Still Will"); and

WHEREAS, the City entered into a Clyfford Still Collection Donation Agreement dated September 20, 2004 as amended by Amendatory Agreement dated February 5, 2013 (collectively, the "Clyfford Still Collection Donation Agreement") as relating to a grant and transfer of the Clyfford Still Collection from the Estate of Clyfford Still to the City for placement, maintenance, and comprehensive exhibition and transfer of all rights, including all copyrights as provided therein; and

WHEREAS, the Estate of Patricia Still was responsible for administering the property of Patricia Still, including but not limited to her Collection of art created by Clyfford Still (the "Patricia Still Collection" as defined in Exhibit A to the Patricia Still Collection Donation Agreement, defined below, and collectively, with the Clyfford Still Collection "the Collection") pursuant to the terms of the Last Will and Testament of Patricia Alice Still, dated April 14, 1999 ("Patricia Still Will" and collectively with the Clyfford Still Will, the "Wills"); and

WHEREAS, the City entered into a Patricia Still Collection Donation Agreement dated February 24, 2009 (the "Patricia Still Collection Donation Agreement" and collectively, with the Clyfford Still Collection Donation Agreement, the "Donation Agreements") as relating to a grant and transfer of the Patricia Still Collection from the Estate of Patricia Still to the City for placement, maintenance, and comprehensive exhibition and transfer of all rights, including all copyrights as

provided therein; and

WHEREAS, it was determined by the Estate of Clyfford Still that copyright held by Clyfford Still or a portion of those rights may have passed intestate, outside of the Estate, to the heirs of Clyfford Still by operation of law; and

WHEREAS, the parties desire to transfer all copyright in the works to the City as part of the property of Clyfford Still to be used in connection and support of the placement, maintenance, and comprehensive exhibition of the Collection in the museum facility as set forth herein; and

WHEREAS, the City has contracted with the Clyfford Still Museum, an independent non-profit entity to act as the City's agent for the construction and operation of the museum quarters to house, maintain, and exhibit the Collection;

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and subject to the terms and conditions hereinafter stated, the parties hereto agree as follows:

1. **GRANTOR REPRESENTATIONS:** The Grantor affirmatively warrants and represents to the City that Grantor has not sold any interest in the copyrights of the artworks in the Collection and there are no liens upon or claims of any kind to said copyrights held by the Grantor.

2. **GRANTOR DEDICATION AND WAIVER OF RIGHTS:**

A. Subject to the provisions of this Donation of Copyright 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 right, title and interest of the Grantor in and to the copyrights of the artworks in the Collection which Grantor now owns or may hereafter acquire for the purposes of this Donation of Copyright Agreement. Grantor hereby assigns, donates, and forever relinquishes to the City all of Grantor's right, title and interest in any and all copyrights, foreign or domestic, including but not limited to rights 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 Donation Agreements and the Wills, 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 herein and in the Donation Agreements. 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 parties all believed that transfer of the copyright to the City had occurred as of the dates of the respective Donation Agreements and any use of Grantor's interest in the copyright by the City or the Clyfford Still Museum, prior to the execution of this Donation of Copyright Agreement is retroactively approved. 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 2(b) as a condition of the license.

C. 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 of Grantor's 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 of Copyright 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 the right to commence injunction proceedings, as Grantor deems appropriate. Grantor shall not seek attorney's fees or legal costs from the City under any circumstances; however, this Donation of Copyright 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.

D. Reproductions and digital or other electronic reproductions of the Collection for

commercial and non-commercial purposes shall be published in the item's original color only, regardless of format of the publication; however, so long as it does not violate the terms of the Wills, 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 Wills.

E. The parties agree that books in color of the works of art in the Collection are to be encouraged, subject to review of such publications to authenticate facts by Sandra Still-Campbell and Diane Still-Knox, during the lifetime of each named individual.

F. 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.

G. The parties agree that the City shall not use the rights granted in Paragraph 2 of this Donation of Copyright 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.

H. 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 Paragraph 2 of this Donation of Copyright 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.

3. **COORDINATION AND LIAISON:** The Grantor agrees that during performance under this Donation of Copyright Agreement it shall fully coordinate all services hereunder with the City's Director of Denver Arts and Venues, or as otherwise directed by the City.

4. **TERM OF DONATION AND WAIVER AGREEMENT:** The term of the Donation of Copyright Agreement shall commence on the date of execution, and remain in effect perpetually.

5. **PAYMENT:** It is understood and agreed that the copyrights are a donation to the City and no payment is due to the Grantor.

6. **EXAMINATION OF RECORDS:** The Grantor agrees that any duly authorized representative of the City, including the City Auditor or his representative, shall, at any time after the commencement of this grant, have access to and the right to examine any directly pertinent books, documents, papers and records of the Grantor, involving transactions related to this Donation of Copyright Agreement.

7. **VENUE, GOVERNING LAW:** Each and every term, condition, or covenant herein is subject to and shall be construed in accordance with the provisions of Colorado law, the Charter of the City and County of Denver and the ordinances, regulations, and Executive Orders enacted and/or promulgated pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this grant as if fully set out herein by this reference. Venue for any action arising hereunder shall be in the Denver County or Denver District Court in the City and County of Denver, Colorado.

8. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Donation and Waiver Agreement, the Grantor agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person

otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Grantor further agrees to insert the foregoing provision in all subcontracts hereunder.

9. **CONFLICT OF INTEREST**: The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and Grantor further agrees not to hire or contract for services any official, officer, or employee of the City or any other person which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter Sections 1.2.8, 1.2.9, and 1.2.12.

10. **PARAGRAPH HEADINGS**: The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

11. **SEVERABILITY**: It is understood and agreed by the parties hereto that if any part, term, or provision of this Donation and Waiver Agreement is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the grant did not contain the particular part, term, or provision held to be invalid.

12. **DONATION AND WAIVER AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS**: This Donation and Waiver Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other Donation and Waiver Agreement properly executed by the parties. This Donation and Waiver Agreement and any amendments shall be binding upon the parties, their successors and assigns.

13. **NO CONSTRUCTION AGAINST DRAFTING PARTY**: The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because the Agreement or any provisions thereof were prepared by a particular party.

14. **LEGAL AUTHORITY**: Grantor represents and warrants that she possesses the legal authority to enter into the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of the Grantor signing the Agreement to enter into the Agreement.

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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-201310700-00

Contractor Name: DIANE STILL-KNOX

By: *Diane Still Knox*

Name: DIANE STILL KNOX
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

