

A G R E E M E N T

THIS AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City") and **SOTHEBY'S, INC.**, a New York corporation, with its principal place of business located at 1334 York Avenue, New York, NY 10021 (the "Auction House"), collectively "the parties".

WHEREAS, the City entered into a Donation Agreement with the Patricia Still Estate ("Estate") dated February 24, 2009, which granted the City ownership of the majority of works and archives of Clyfford Still from the Estate upon completion of a museum for exhibition of the works;

WHEREAS, the City had previously entered into an agreement entitled "Agreement Regarding the Clyfford Still Museum", a separate 501(c)(3) corporation, ("Museum") to build and operate a museum facility for exhibition of the works of Clyfford Still on November 20, 2007;

WHEREAS, although the Museum raised sufficient capital to build the museum facility, it was unable to raise sufficient funding for its endowment fund for ongoing operations. The Museum petitioned the Circuit Court for Carroll County Maryland by Petition filed November 3, 2010 to allow sale of the four specified works from the Estate listed on Schedule 1 to Exhibit A hereto (the "Property") for funding its endowment fund;

WHEREAS, the City did not object to the sale of the Property for the purpose of funding the endowment and the Circuit Court of Carroll County Maryland entered an order on or about March 25, 2011 (the "Court Order") authorizing the City to sell the Property for the benefit of the Museum's endowment fund;

WHEREAS, in the course of preparing the Property for sale, experts have advised the City that the total value of the Property is likely sufficient to fund the entire endowment need and the City has determined it requires professional assistance to sell the Property; and

WHEREAS, the Auction House is qualified, ready, willing, and able to conduct the sale of the Property for the City to benefit the Museum's endowment fund as set forth herein.

NOW THEREFORE, the parties agree as follows:

1. **COORDINATION AND LIAISON**: With the expressed consent of the Manager of General Services, as defined in the Denver Revised Municipal Code at Charter Article 2, Part 9, the Auction House shall fully coordinate all services under the Agreement with the Director of

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the Division of Arts and Venues Denver (the "Director"). The Auction House shall be entitled to assume in all cases that the Director has obtained the consent, where required, of the Manager of General Services for any action not in conflict with this Agreement which the Auction House is requested to take by the Director.

2. SERVICES TO BE PERFORMED:

a. The City grants to Auction House the exclusive right to offer the Property, for sale under the terms and conditions as described in Exhibits A "City Scope of Work" and A-1 "Conditions of Sale", collectively "the Scope of Work". The parties understand and agree that the primary obligation of the City is to honor the terms of the will of the Patricia Still Estate, to the extent possible, and to obey the Court Order in disposition of the Property. The Auction house has been advised by the City that, while the City has a goal of funding the endowment of the Museum, the City also has a secondary public purpose goal to provide continued public access to the Property, which requires a good faith effort to be made by the Auction House to offer the Property for sale to a select group of viable institutional candidates that may be interested in purchasing the Property, under the terms set forth in this Agreement, including its Exhibits. As the Director directs, the Auction House shall diligently undertake, perform, and complete all of the services and produce all the deliverables set forth in the Scope of Work, to the City's reasonable satisfaction.

b. The Auction House is ready, willing, and able to provide the services required by this Agreement.

c. The Auction House shall faithfully perform the services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent auction houses performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.

d. Notwithstanding anything to the contrary herein, the City hereby acknowledges and confirms that the Auction House shall have no liability hereunder for any claims that may arise as a result of or in connection with (i) the City's breach or alleged breach of any of its representations set forth in Section 6 hereunder; (ii) the selection by the City of the Auction House to offer the Property for sale, provided that the Auction House will defend, indemnify and hold the City harmless from any claims or actions under the Colorado Open Records Act or to the extent the Auction House has violated bidding regulations as contained in the Request for

Proposals; or (iii) the decision by the City to offer all of the Property for sale as contemplated hereunder.

3. **TERM:** The Agreement will commence on the date of the City's signature (the "Effective Date") of this Agreement and will expire on July 14, 2012 (the "Term").

4. **COMPENSATION AND PAYMENT:**

a. **Fee:** The Auction House shall be paid a commission for all services rendered to the City out of the proceeds of the sale of the Property as described in this Article 4. The City has not appropriated any other funds to pay for the services provided or costs incurred by Auction House under this Agreement. The Commission shall be paid as follows:

(i) **Private Treaty Sale.** In the event of a private sale of the Property (the "Private Sale"), Auction House shall accept as the selling commission (the "Maximum Private Selling Commission") a percentage of the aggregate private sale purchase price for the Property of up to five percent (5%), up to a maximum of Seven Million Five Hundred Thousand Dollars (\$7,500,000.00). Upon approval by City Council in ordinance approving this Agreement, the Director will be granted the authority to negotiate and designate the actual percentage and dollar amount of the Maximum Private Selling Commission in a written "Fee Letter" so long as it does not exceed the parameters set forth in this subsection. The Fee Letter will also state the Private Sale minimum net price for the Property, which must be in conformity with the parameters set forth in the Agreement. Auction House in a Private Sale shall not charge, nor accept, payment from any buyer, any buyer's premium, or other commission, or payment except the Maximum Private Selling Commission.

(ii) **Public Auction with Guarantee.** In the event a Private Sale is unsuccessful by September 19, 2011, the Property will be offered for sale at public auction in the Auction House's Contemporary Art Auction to be held in November 2011 as described in **Exhibits A and A-1**, subject to postponement (the "Auction") for reasons outside the Auction House's control. Upon approval by City Council in ordinance approving this Agreement, the Director will be granted the authority to negotiate and agree to a guarantee price that is higher than Twenty Five Million Dollars (\$25,000,000.00) (the "Guarantee Price"). The Guarantee Price shall be net of any costs, fees or expenses of any kind, type or nature. The initial Guarantee Price shall be effective through the final payment settlement dates for the November 2011 Auction anticipated in Exhibit A for the Auction. The Guarantee Price shall be set forth in a written "Fee Letter" to be

signed by Auction House and the Director and shall act as a guaranteed minimum price, but the actual price may exceed the Guarantee. The written Guarantee Price shall not contain any other terms and conditions than are set forth in this Agreement, including its Exhibits. In the event the Property is offered for sale at Auction, the Auction House shall accept as the selling commission (the "Maximum Guarantee Selling Commission") including any Buyer's Premium, fifteen percent (15%) of the aggregate auction purchase price for the Property, up to a maximum of Fifteen Million Dollars (\$15,000,000.00). Upon approval by City Council in ordinance approving this Agreement, the Director will be granted the authority to negotiate and designate in the written Fee Letter the percentage and dollar amount of Maximum Guarantee Selling Commission so long as they do not exceed the parameters set forth in this subsection. Upon expiration of a Guarantee Price, a new Fee Letter may be negotiated during the Term of this Agreement, provided pricing and commission terms for any replacement Fee Letter are within the parameters of this section. In the event no agreement as to the Maximum Guarantee Selling Commission and the Guarantee Price is reached with the Director for the corresponding Auction, no Auction will occur and this Agreement will terminate and the Parties will have no further obligations under this Agreement.

(iii) **Sales Commission Maximum.** In no case shall the total compensation to be earned by Auction House hereunder (the applicable maximum selling commission including any applicable Buyer's Premium) for the sale of all lots of the Property exceed fifteen percent (15%) of the Total Purchase Price (comprised of either a final sale price or the Guarantee Price whichever is applicable) up to a maximum of Fifteen Million Dollars (\$15,000,000.00).

(iv) **Failure to Meet Reserve.** In the event that the Property is offered for sale at Auction, each lot of the Property will be offered subject to a reserve set forth in the Fee Letter. In the event a lot of Property is bought in for failing to meet reserve, the Auction House will announce that it has been "passed, withdrawn, returned to owner, or bought in." There will be no Selling Commission paid by City to Auction House for any lot of the Property that is bought in and, upon the fall of the hammer and the payment by the Auction House of the Guarantee to the Museum Endowment Fund (as detailed below) for such bought-in Property, the title to such Property shall pass to the Auction House.

b. **Reimbursable Expenses:** There are no reimbursable expenses allowed under the Agreement.

c. **Invoicing**: Auction House shall provide to the City at the time of remittance a final invoice in a format and with a level of detail acceptable to the City including all supporting documentation required by the City showing the total amounts of the sale price(s) of the Property, and all fees paid by the City and buyers. The Auction House shall also provide confirmation of remittance with the final invoice. Neither the invoice nor other documentation provided by Auction House will contain any identifying information of the successful bidder.

d. **Remittance to City**: The City has been ordered by the Circuit Court for Carroll County Maryland to remit proceeds of the sale into the endowment fund of the Museum. Auction House shall directly remit the net proceeds of the sale to the Endowment Fund of the Clyfford Still Museum (the "Endowment Fund") to meet this obligation on behalf of the City as follows:

(i) **Private Sale Settlement**. Within five (5) business days after receipt by the Auction House of the entire Private Sale purchase price in good funds, Auction House will wire to the Endowment Fund the Private Sale purchase price after deducting the applicable selling commission, as detailed in the Fee Letter. In the event the Private Sale purchaser fails to pay any portion of the Purchase Price, City agrees that Auction House will have no obligation to enforce payment by the Private Sale purchaser. Auction House will not release the Property without payment in full from the purchaser.

(ii) **Auction Sale Settlement**.

A. In the event that the Property is offered for sale at Auction, Auction House will not release the Property without payment in full from the purchaser. Thirty-five days after the last session of the Auction (the "Settlement Date"), Auction House will apply any sale proceeds it has collected and received for any item of sold Property (absent notice of intent to rescind under paragraph 7) as follows:

1) first, to the Endowment Fund an amount up to the actual Guarantee Price set forth in the Fee Letter;

2) second, the Auction House will split any Overage between the Endowment Fund and the Auction House so that the Auction House retains an amount equal to its actual commission (as defined in the Fee Letter) up to the Maximum Guarantee Selling Commission, and the remaining Overage will be disbursed to the designated Endowment Fund. For purposes of this Agreement and the Fee Letter, the amount by which the total hammer prices

(excluding buyer's premium) of all sold lots of the Property exceed the Guarantee is referred to herein as the "Overage"; and

3) third, to the Auction House, its standard buyer's premium in effect as of the date of the Auction.

B. If any sale proceeds collected and received from purchasers as of the date that is ninety (90) days after the last session of the Auction (the "Guarantee Settlement Date") are less than the Guarantee Price (such difference, the "Shortfall"), Auction House will pay to the Endowment Fund on the Guarantee Settlement Date the amount of the Shortfall in addition to the net sale proceeds (the sales proceeds for the Property excluding the buyer's premium).

C. Auction House will retain any additional net sale proceeds it collects and receives from the Auction purchasers, if any, after the Guarantee Settlement Date, until such time as Auction House has recovered the Shortfall, if any. Thereafter, any further net sale proceeds collected and received by the Auction House from any purchaser of the Property at Auction will constitute Overage, and will be split between City to be paid to the Endowment Fund and Auction House so that Auction House retains an amount equal to the commission it is entitled to as set forth in the Fee Letter up to the Maximum Guarantee Selling Commission, and the remaining Overage will be disbursed to the Endowment Fund

(iii) **Partial Payment.** In the event the Auction House permits any purchaser to make partial payments, whether at Private Sale or Auction, such payments shall be deposited into an interest bearing account until payment in full is received, with all earned interest to be remitted with the net proceeds and a monthly statement of account reflecting the earned interest to be provided to the Director until such remittance. In the event any buyer fails to pay any portion of the purchase price in connection with a Private Sale of the Property or an Auction sale, Auction House has no obligation to enforce payment by the buyer; however, the lot or lots of the Property shall not be released by the Auction House to such buyer without remittance to the City, into the Endowment Fund, of the full amount of the net proceeds due to the City in respect of such lot or lots and any terms on **Exhibit A-1**, Conditions of Sale to the contrary are inapplicable to the sale of the Property. Auction House may, in its sole discretion, impose on any purchaser and retain a late charge if payment is not made in accordance with the terms on **Exhibit A-1**, Conditions of Sale.

e. **Maximum Contract Amount:**

(i) Notwithstanding any other provision of the Agreement, the City's payment obligation shall be paid only through the applicable Private Sale or Auction sale selling commission (each, a "Selling Commission") on the sale as specified on the Fee Letter and the City is not otherwise obligated for payment to Auction House. The applicable Selling Commission to be paid shall not under any circumstances exceed Fifteen Million Dollars (\$15,000,000) (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Auction House beyond that specifically described in **Exhibits A and A-1**. Any services performed beyond those in **Exhibits A and A-1** are performed at Auction House's risk and without authorization under the Agreement.

(ii) Except for the applicable Selling Commission to be retained from sales proceeds, the City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

5. **STATUS OF AUCTION HOUSE:** The Auction House is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Auction House nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

6. **CITY REPRESENTATIONS** The City represents to the Auction House and to any purchaser of the Property that, prior to execution by the City, this Agreement has been authorized by City Council and the City has the requisite power and authority to enter into this Agreement. Upon execution of the Agreement by the City, the Agreement is a valid and legally binding obligation of the City, enforceable against the City in accordance with its terms, except to the extent such enforcement is limited by applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally and general equitable remedies such as specific performance or other injunctive relief. The City is the beneficiary of the Estate by virtue of a Donation Agreement between the Estate and the City. The City believes the Estate has been in continuous possession of the Property since the death of

Clyfford Still's widow, Patricia Still. The Donation Agreement, as approved by City Council and duly executed by the City, provides that the City shall take possession of the Estate's collection, which would have included the Property, upon completion of specified museum facilities. The City entered into an agreement with the Museum, a separate 501(c)(3) corporation, to create and operate the specified museum facilities. The Museum successfully petitioned the Carroll County Maryland Circuit Court to allow release of the Property from the Estate to the City in order for the City to sell, lease, or otherwise dispose of the Property in order to fund the Museum endowment fund and a copy of the Court Order authorizing such action is attached hereto as **Exhibit B**. The City has received its ownership interest in the Property as directed by the Court. The City is unaware of any liens on the Property and the City shall not allow any liens, claims and encumbrances of others including, but not limited to, claims of governments or governmental agencies through and until the time of sale of the Property as contemplated hereunder. Good title and right to possession of the Property will pass to any purchaser of the Property free of all such liens, claims and encumbrances, exclusive of any post-sale tax or other liens which may arise as a result of the sale itself to an individual who or entity which has incurred a tax liability to the City. The City has not been informed of any fact or law that would prevent good title and right to possession to pass to the buyer(s) free of all liens, claims and encumbrance. The City has never been in the physical possession of the Property and is relying on Auction House's expertise in authentication; however, the City has no reason to doubt the authenticity of the Property. The City shall not bid on the Property in the event of an Auction.

7. TERMINATION, WITHDRAWAL OR RECISSION:

a. Notwithstanding any provision of this Agreement to the contrary, if this Agreement has not been duly approved by City Council and executed by the Mayor, by September 12, 2011, Sotheby's may terminate this Agreement by delivery to the City of a written termination notice, and upon delivery of such written notice, this Agreement will automatically be deemed to be null and void and neither of the Parties shall have any continuing obligation to the other hereunder

b. The City has the right to terminate the Agreement with cause for material breach of this Agreement at any time upon written notice to Auction House, if such breach is not remedied by the Auction House within five (5) business days of written notice from the City of the material breach. However, nothing gives the Auction House the right to perform services

under the Agreement beyond the time when the Director has determined that the Auction House has failed to cure any such material breach.

c. Notwithstanding the preceding paragraph, the City may terminate the Agreement if the Auction House or any of its officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Auction House's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice of termination.

d. Upon termination of the Agreement, with or without cause, the Auction House shall have no claim against the City by reason of, or arising out of, incidental or relating to termination.

e. If the Agreement is terminated, the City is entitled to and will take possession of the unsold Property and all materials, equipment, and documentation that the City owns that are in the Auction House's possession, custody, or control by whatever method the City deems expedient. The Auction House shall deliver to the City all documents in any form and all other items, materials and documents that were prepared under the Agreement and that have been paid for by the City. The Auction House shall mark all copies of City owned work product that are incomplete at the time of termination "DRAFT-INCOMPLETE". The Auction House may retain all other items, materials, and documents that have not been paid for by the City.

f. Regardless of whether Auction House has previously issued a receipt, published a catalogue including the Property or advertised its sale, Auction House may withdraw any lot of the Property at any time before sale if in its reasonable judgment (i) there is reasonable doubt as to its authenticity or attribution, (ii) there is reasonable doubt as to the accuracy of City representations, (iii) the City breached any material provision of this Agreement, or (iv) the Property incurs loss or damage so that it is not in the state in which it was when the Parties agreed to offer it for sale. Either Party may withdraw any lot of the Property if there is a proceeding against the City in any court or before any public board that, if adversely determined, would prohibit sale of the Property. If any Property is withdrawn, Auction House shall return it to the City promptly, and the amount of the Guarantee, if any, for the lots that have not been withdrawn will be reduced by the amount of the Guarantee of the lot(s) withdrawn. In the event any Property is withdrawn by the City or by the

Auction House for any reason other than under (i) or (iv) above, the entire Guarantee will be null and void and this Agreement shall terminate in its entirety. The City agrees that absent withdrawal of the Property from sale by the City as a result of the termination of this Agreement by the City as provided for in Section 7(b), 7(c) or withdrawal due to proceedings of a court or public body under this section 7(f), the City will not withdraw any lot of the Property from sale.

g. The Parties agree that the Property will be offered for Private Sale “AS IS” and neither the City nor Auction House shall make any representations or warranties with respect to merchantability, fitness for a particular purpose, the physical condition, size, quality, rarity, importance, provenance, restoration, exhibitions, literature or historical relevance of the Property and no statement anywhere, whether oral or written, shall be deemed such a representation or warranty.

Notwithstanding the foregoing, City and the Auction House will assure the Private Sale purchaser that the Property is by Clyfford Still for a period of four (4) years from the date the Property is sold. This assurance is not assignable and is only applicable to the original Private Sale purchaser and not to any subsequent owner or owners who acquire an interest in the Property. In the event Auction House determines that the Property is not as stated above, City authorizes Auction House for such four (4) year period to rescind the sale and return the purchase price paid by the Private Sale purchaser (including commission) for such item to the buyer. In such event, upon ten (10) days notice to City, the City shall cooperate with the Auction House in obtaining a refund of the purchase price paid by the purchaser from the Museum, and within ten (10) days after the return of such funds in full, Auction House will return such item of the Property to City

h. Following the sale of any Property at Auction in accordance with **Exhibit A-1**, Auction House may rescind any such sale if Auction House learns that any lot of the Property is a counterfeit (a modern forgery intended to deceive) or if Auction House determines in its judgment that the offering for sale of the Property has subjected or may subject the Auction House and/or the City to any liability, including liability under the representations of title or authenticity included in this Agreement. If Auction House receives from a purchaser notice of intention to rescind and Auction House determines that a lot of the Property is subject to rescission as set forth above, (a) Auction House will credit the purchaser with the purchase price, (b) Auction House will seek from the Museum return of the pro-rated portion of the amount actually paid to the Museum by Auction House pursuant to Section 4 of this Agreement for such lot and (c) Auction House shall return such

Property to the City promptly upon receipt by Auction House of the refund from the Museum. The City shall cooperate with the Auction House in obtaining from the Museum a refund of the net sale proceeds paid by the Auction House to the Endowment Fund for such rescinded lot of the Property. In the event Auction House has not yet paid any amounts from the proceeds of sale of any lot at the time Auction House determines that a lot of Property is subject to rescission under the Terms of Guarantee or as set forth above, Auction House will (i) return to the purchaser any portion of the purchase price paid, (ii) promptly return the lot to the City, (iii) reduce the amount of the total remittance by the amount of the Guarantee of the lot subject to rescission and (iv) thereafter have no further obligation under this Agreement with respect to such rescinded lot.

8. EXAMINATION OF RECORDS: Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of the Auction House, involving transactions related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations.

9. WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Auction House. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

10. INSURANCE:

a. General Conditions: Auction House agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Auction House shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall send written notice to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202.

Such written notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior.” Additionally, Auction House shall provide written notice of cancellation, non-renewal and any reduction in coverage to the address above by certified mail, return receipt requested. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Auction House. Auction House shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Auction House. The Auction House shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

b. Proof of Insurance: Auction House shall provide a copy of this Agreement to its insurance agent or broker. Auction House may not commence services or work relating to the Agreement prior to placement of coverage. Auction House certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City’s contract number be referenced on the Certificate. The City’s acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Auction House’s breach of this Agreement or of any of the City’s rights or remedies under this Agreement. The City’s Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

c. Additional Insureds: For Commercial General Liability, Auto Liability and Excess Liability/Umbrella, Auction House and subcontractor’s insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

d. Waiver of Subrogation: For all coverages, Auction House’s insurer shall waive subrogation rights against the City.

e. Subcontractors and Sub-consultants: All subcontractors and sub-consultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Auction House. Auction House shall include

all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and sub-consultants maintain the required coverages. Auction House agrees to provide proof of insurance for all such subcontractors and sub-consultants upon request by the City.

f. Workers' Compensation/Employer's Liability Insurance: Auction House shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Auction House expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Auction House's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Auction House executes this Agreement.

g. Commercial General Liability: Auction House shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

h. Business Automobile Liability: Auction House shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

i. Professional Liability/Media Liability: Auction House shall maintain professional liability limits of \$1,000,000.00 per claim and \$1,000,000.00 aggregate policy limit.

j. Property Insurance: Auction House shall maintain fine arts insurance written on an all risk, replacement cost basis including coverage for consignments or property of others held in Auction House's care, custody or control and transit coverage, including worldwide transit. Auction House shall maintain cargo or transit liability coverage in an amount equal to latest presale high estimates value of Property to be carried in a single vehicle with terminal coverage in an amount equal to the highest value of all such Property stored in one terminal. Auction House shall have warehouseman's liability, bailee's customers' goods, property insurance or

equivalent coverage in an amount equal to the value, as provided by the Director, of materials to be in Auction House's custody.

k. Additional Provisions:

(i) For Commercial General Liability and Excess Liability, the policies must provide the following:

(A) That this Agreement is an Insured Contract under the policy;

(B) A severability of interests, separation of insureds or cross liability provision; and

(C) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(ii) For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

(iii) Auction House shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Auction House will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

11. DEFENSE AND INDEMNIFICATION

a. Auction House hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed by Auction House or its subcontractors under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Auction House or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

b. Auction House's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the

Claim. Auction House's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

c. Auction House will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

d. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Auction House under the terms of this indemnification obligation. The Auction House shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

e. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

12. LOSS OR DAMAGE TO PROPERTY. Auction House assumes liability for any loss or damage to the Property from the time it receives the Property and while the Property is in its custody and control. Auction House shall pay to the City the Value of the Property (as defined below) or the Depreciation Amount (as defined below), as the case may be, in the event of loss or damage as set forth below. The maximum amount of Auction House liability to the City resulting from loss or damage to the Property shall not exceed the Value of the Property. For purposes of this loss or damage, the Value of the Property is: (a) for Property which has been sold, the hammer price (excluding buyer's premium and the applicable portion of the Selling Commission, if any), (b) for Property which has failed to sell at Auction, the the latest presale low estimate, or (c) for Property not yet offered for sale, the latest presale high estimates. The latest presale estimates for purposes of determining the Value of the Property under (b) and (c) will be included in the Fee Letter. Auction House shall pay the City the Value of the Property for any total loss (Property which has been lost or is stolen, or Property which has been damaged and has depreciated in value, in the opinion of an Independent Expert by 50% or more), and simultaneously with such payment, all title and interest to the Property shall pass to Auction House. The "Independent Expert" shall be a third party independent expert recognized in the

field and acceptable to both Parties who shall make the determination as to total loss, partial loss and/or the Depreciation Amount, as set forth hereunder. Auction House shall pay all costs associated with the Independent Expert. In the event of a partial loss (Property which has been partially damaged and has depreciated in value, in the opinion of an Independent Expert, by less than 50%), Auction House shall pay the City the amount of depreciation, as determined by an Independent Expert (the "Depreciation Amount"), and such Property will be returned to the City. Neither Auction House nor its insurer will be responsible for Property not in Auction House custody and control. Neither the Auction House nor its insurer will be liable for damage to frames or glass covering the Property, for damage occurring in the course of any process undertaken by independent contractors employed by the City (including restoration, framing or cleaning), inherent conditions or defects, war, acts of terrorism, nuclear fission or radioactive contamination, or chemical, bio-chemical or electromagnetic weapons.

13. TAXES, CHARGES AND PENALTIES: The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* The Auction House shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

14. ASSIGNMENT; SUBCONTRACTING: The Auction House shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Director's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and shall be cause for termination of this Agreement by the City. The Director has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Auction House shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.

15. INUREMENT: The rights and obligations of the parties to the Agreement inure to the benefit of and shall be binding upon the parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

16. NO THIRD PARTY BENEFICIARY: Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity, except for the Museum. Any person or entity other than the City, the Museum, or the Auction House receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

17. NO AUTHORITY TO BIND CITY TO CONTRACTS: The Auction House lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

18. SEVERABILITY: Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.

19. CONFLICT OF INTEREST:

a. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement; and the Auction House shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

b. The Auction House shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Auction House represents that it has disclosed any and all current or potential conflicts of interest, including transactions, activities or conduct that would affect the judgment, actions or work of the Auction House by placing the Auction House's own interests, or the interests of any party with whom the Auction House has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the Auction House written notice describing the conflict.

20. NOTICES: All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Auction House at:

Gilbert Klemann, Esq.
Worldwide General Counsel
Sotheby's, Inc.
1334 York Avenue
New York, NY 10021

With a copy to:

Nina del Rio, Director of Museum Services
Sotheby's, Inc.
1334 York Avenue
New York, NY 10021

and if to the City at:

Director of Arts and Venues Denver
1245 Champa Street, First Floor
Denver, Colorado 80204

With a copy to:

Denver City Attorney's Office
Attn: Municipal Operations Section
201 West Colfax Ave., Dept 1207
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

21. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK IN THE STATE OF COLORADO UNDER THE AGREEMENT:

a. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

b. The Auction House certifies that:

(i) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work in the State of Colorado under this Agreement.

(ii) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work in the State of Colorado under this Agreement.

c. The Auction House also agrees and represents that:

(i) It shall not knowingly employ or contract with an illegal alien to perform work in the State of Colorado under the Agreement.

(ii) It shall not enter into a contract with a sub-consultant or subcontractor in the State of Colorado that fails to certify to the Auction House that it shall not knowingly employ or contract with an illegal alien to perform work in the State of Colorado under the Agreement.

(iii) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work in the State of Colorado under this Agreement, through participation in the E-Verify Program.

(iv) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Auction House to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(v) If it obtains actual knowledge that a sub-consultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such sub-consultant or subcontractor and the City within three (3) days. The Auction House will also then terminate such sub-consultant or subcontractor if within three (3) days after such notice the sub-consultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the sub-consultant or subcontractor provides information to establish that the sub-consultant or subcontractor has not knowingly employed or contracted with an illegal alien.

(vi) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

d. The Auction House is liable for any violations as provided in the Certification Ordinance. If Auction House violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Auction House shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Auction House from submitting bids or proposals for future contracts with the City.

22. GOVERNING LAW; VENUE: The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. The City acknowledges that the New York City Department of Consumer Affairs auction regulations will apply to the Auction. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District, or, if jurisdictional requirements are met, in the United States District Court for the District of Colorado. The Auction House acknowledges that Paragraph 13 of **Exhibit A-1** "Conditions of Sale" is specifically stricken as to the City and as to disputes arising between the City and the Auction House hereunder.

23. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under the Agreement, the Auction House may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability. The Auction House shall insert the foregoing provision in all subcontracts.

24. COMPLIANCE WITH ALL LAWS: Auction House shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

25. LEGAL AUTHORITY: Auction House represents and warrants that it possesses the legal authority, to enter into the Agreement. Each person signing and executing the Agreement

on behalf of Auction House represents and warrants that he or she has been fully authorized by Auction House to execute the Agreement on behalf of Auction House and to validly and legally bind Auction House to all the terms, performances and provisions of 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 either Auction House or the person signing the Agreement on behalf of Auction House to enter into the Agreement.

26. 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 any provisions of the Agreement were prepared by a particular party.

27. ORDER OF PRECEDENCE: In the event of any conflicts between the language of the Agreement and the Exhibits, and the Conditions of Sale and Terms of Guarantee printed in the catalogue for the Auction sale of the Property, the language of the Agreement controls.

28. INTELLECTUAL PROPERTY RIGHTS: The City and Auction House intend that all intellectual property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the Auction House and paid for by the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, "Materials"), shall belong to the City. The Auction House shall disclose all such items to the City. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, *et seq.*, the Materials are a "work made for hire" and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a "work made for hire," the Auction House (by this Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity. The City does not claim any interest in the catalogue, web pages, or magazine created by Auction House except for the images and entries related to the Property or to other City owned images used with permission of the City. To the extent images other than the Property are used, such images shall contain a credit stating: This image is property of the City and County of Denver, used with permission, all rights reserved.

29. COMPLIANCE WITH PATENT, TRADEMARK AND COPYRIGHT LAWS.

The Auction House agrees that all work performed by it under this Agreement, shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States. The Auction House further agrees that it will not utilize any protected patent, trademark or copyright in performance of its work unless the Auction House has obtained proper permission and all releases and other necessary documents. If the Auction House specifies any material, equipment, process or procedure, which is protected, the Auction House shall disclose such patents, trademarks and copyrights. Auction House agrees to release, indemnify and save harmless the City, its officers, agents and employees, pursuant to Article 11, DEFENSE AND INDEMNIFICATION, from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind or nature whatsoever, of or by anyone whomsoever, in any way resulting from, or arising out of, directly or indirectly, the performance or work under this Agreement by the Auction House which infringes upon any patent, trademark or copyright protected by law.

30. CONFIDENTIAL INFORMATION; OPEN RECORDS:

A. City Information: Auction House acknowledges and accepts that, in performance of all work under the terms of this Agreement, Auction House may have access to proprietary or confidential information that may be owned or controlled by the City or the Museum ("City Confidential Information"), and that the disclosure of such City Confidential Information may be damaging to the City or third parties. Auction House agrees that all City Confidential Information provided or otherwise disclosed by the City to Auction House and identified by the City to the Auction House as City Confidential Information or which a reasonable person would otherwise deem to be confidential shall be held in confidence by Auction House and used only in the performance of its obligations under this Agreement. Auction House shall exercise the same standard of care to protect such information as a reasonably prudent auction house would to protect its own proprietary or confidential data. "City Confidential Information" shall mean any materials or information which may be designated or marked "Proprietary" or "Confidential", or which would not be subject to disclosure pursuant to the Colorado Open Records Act or City ordinance, and provided or made available to Auction House by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

B. Use of Proprietary Data or Confidential Information: Except as expressly provided by the terms of this Agreement, Auction House agrees that it shall not disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available the City Confidential Information or any part thereof to any other person, party or entity in any form of media for any purpose other than performing its obligations under this Agreement. Auction House further acknowledges that by providing this City Confidential Information, the City is not granting to Auction House any right or license to use such information except as provided in this Agreement. Auction House shall, upon the expiration or earlier termination of the Agreement, destroy (and, in writing, certify destruction) or return all such data or work products incorporating such City Confidential Information to the City.

C. Employees and Sub-contractors: Auction House shall inform its employees of the obligations under this Agreement, and all requirements and obligations of Auction House under this Agreement shall survive the expiration or earlier termination of this Agreement. Auction House shall not disclose City confidential information to subcontractors unless such subcontractors are bound by non-disclosure and confidentiality provisions at least as strict as those contained in this Agreement.

D. Disclaimer: Notwithstanding any other provision of this Agreement, the City is furnishing City Confidential Information on an “as is” basis, without any support whatsoever, and without representation, warranty or guarantee, including but not in any manner limited to, fitness, merchantability or the accuracy and completeness of the information. The City assumes no liability for any errors or omissions herein.

E. Auction House’s Information: City acknowledges and accepts that, as a result of this Agreement, City may have access to proprietary data trade secrets, non-public information about the Auction House’s purchasers or other confidential information that may be owned or controlled by the Auction House (“Auction House Confidential Information”), and that the disclosure of such Auction House Confidential Information may be damaging to the Auction House or third parties. Auction House Confidential Information shall include information which is unidentified, but which a reasonable person would consider confidential. Auction House shall identify its Auction House Confidential Information to the City. City agrees that all identified Auction House Confidential Information provided or otherwise disclosed by the Auction House

to the City shall be held in confidence and used only in the performance of its obligations under this Agreement. City shall exercise the same standard of care to protect such Auction House Confidential Information as it would to protect its own proprietary or confidential data. The City shall endeavor, to the extent provided by law, to comply with the confidentiality provisions requested by the Auction House. The City agrees during the term of this Agreement and thereafter, to hold the Auction House Confidential Information including any copies thereof and any documentation related thereto, in strict confidence and to not permit any person or entity to obtain access to it except as required for the City's exercise of the rights granted hereunder, and except as required by law. The parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act, § 24-72-201, et seq., C.R.S. In the event of a request to the City for disclosure of such information, the City shall advise Auction House of such request in order to give Auction House the opportunity to object to the disclosure of any of its documents which it marked as proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and Auction House agrees to intervene in such lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. Auction House further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of Auction House's intervention to protect and assert its claim of privilege against disclosure under this Article including but not limited to, prompt reimbursement to the City of all reasonable attorneys' fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

F. Administrative remedy. Each party agrees that any actual or threatened use or disclosure of Confidential Information by the other in a manner inconsistent with this Agreement may cause the owner irreparable damage for which remedies other than injunctive relief might be inadequate, and the disclosing party agrees that the owner may seek injunctive or other equitable relief restraining such prohibited use or disclosure.

31. SURVIVAL OF CERTAIN PROVISIONS: The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable provided that the parties representations will survive

termination for the applicable statute of limitations, Paragraphs 6 and 7(h) shall survive termination of this Agreement for five (5) years, Paragraph 7(g) shall survive termination of this Agreement for four (4) years and Paragraph 11 shall survive termination of this Agreement for eleven (11) years. Without limiting the generality of this provision, the Auction House's obligations to provide insurance will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

32. ADVERTISING AND PUBLIC DISCLOSURE: The Auction House shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Auction House's advertising or public relations materials unrelated to the Auction without first obtaining the written approval of the Director; however, notwithstanding the foregoing, the written approval of the Director is not required if such inclusions or references refer solely to the results of the Auction or the sale of the Property. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Auction House shall notify the Director in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

33. CITY EXECUTION OF AGREEMENT: The Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

34. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS: The Agreement and the pricing and commissions in any Fee Letter are the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.

35. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Auction House consents to the use of electronic signatures by the City. The 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 Agreement 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 Agreement 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.

36. COUNTERPARTS OF THE AGREEMENT: The Agreement may be executed in counterparts, each of which is an original and constitute the same instrument.

Remainder of page left intentionally blank.

Contract Control Number: 201101655

Vendor Name: SOTHEBY'S INC

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:

DOUGLAS J. FRIEDNASH, Attorney
for the City and County of Denver

By _____

By _____

By _____



Contract Control Number: 201101655

Vendor Name: SOTHEBY'S INC

By: 

Name: TOBIAS MEYER
(please print)

Title: EXECUTIVE VICE PRESIDENT
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



EXHIBIT A
SCOPE OF WORK

1. Any sale of the Property at Auction shall be conducted in accordance with the Conditions of Sale and Terms of Guarantee to be printed in the catalogue for the Auction and by which the City agrees to be bound. The current Conditions of Sale and Terms of Guarantee are attached as Exhibit A-1 hereto and are subject to revision by the Auction House in its sole discretion. In the event of any conflict between the Conditions of Sale and Terms of Guarantee and the terms of the Agreement, the Agreement shall govern.
2. Auction House shall at its own expense create a unique sale catalogue profiling the Property for prospective private purchasers of the Property, and if the Property goes to Auction, create a catalogue entry in the Auction catalogue.
3. Auction House may prepare presale estimates as a guide for prospective Auction bidders; however, Auction House makes no representation or warranty of the anticipated selling Auction price of the Property, except in the instance of a Guarantee as described in the Agreement and this Scope of Work. Estimates in receipts, catalogues, or elsewhere are preliminary only and are subject to revision by Auction House, upon notice to the City.
4. Auction House shall at its own expense, undertake all reasonable and necessary promotional efforts for the Auction sale, including, but not limited to, an online landing page, an email announcement, presentation of all lots of the Property in appropriate e-catalogues and other promotions on Sothebys.com, display of the Property during special events in the Auction House New York headquarters, promotion of the Property throughout Auction House regional offices and on plasma screens in the Auction House New York headquarters, exhibition in Auction House's museum-quality galleries immediately prior to the Auction and, subject to applicable publication deadlines, coverage of the Clyfford Still Museum in its "Sotheby's at Auction" magazine.
5. Auction House shall not take any action nor forbear from any action which would allow any lien, claim or encumbrance caused by the Auction House to attach to the Property.
6. Auction House shall display the Property in its gallery exhibition space for such term as it deems reasonable in advance of offering the Property for sale.
7. Auction House may at its own expense and upon notice to the City, as part of its promotional efforts exhibit the Property for no more than thirty five (35) days total in Hong Kong and London provided that all insurance coverage in Paragraph 10 of the Agreement is in full force and effect.
8. In connection with the sale of the Property, Auction House will have absolute discretion as to (a) consulting any expert either before or after the sale (b) researching the provenance of the Property either before or after the sale; and (c) providing catalogue and other descriptions of the Property. The City will not be responsible for any costs incurred by Auction House in consultation or research nor will such expenses be added to the Maximum Contract Amount.

9. Auction House will work with the City and mutually agree upon (a) the date of the Auction (b) the marketing and promotion of the Auction and (c) the manner of conducting the Auction.
10. Auction House will make arrangements, to be approved by the City in advance, with the Estate of Patricia Still, for customized packing and shipping of the Property to Auction House premises. Auction House will have custody and control of the Property from the time it is collected by the Auction House or its agents from its current location until it is picked up by the buyer or returned to the City in the event of a withdrawal or rescinded sale. Auction House. Auction House will at all times ensure the Property is kept in appropriate climate-controlled conditions, whether in transport, storage or on display. Auction House will not undertake any restoration, framing or cleaning of any lot of the Property without receiving the City's express written approval in advance of the same. The Auction House shall pay all costs associated with said transportation.
11. Auction House shall initially offer the Property on Schedule I hereto, for Private Treaty Sale from the date of effectiveness of the Agreement until September 19, 2011 (the "Exclusivity Period"). Auction House will offer the Property for sale to no fewer than three City approved museums, each of which the Auction House has determined in good faith, without independent investigation, would have a potential interest in purchasing the Property and the financial ability to do so. The museums participating in the Private Treaty Sale must agree to purchase all four (4) lots of the Property and must agree to pay the entire Private Sale purchase price for the Property no later than thirty (30) days after execution of the Private Sale purchase agreement, unless City and the Auction House agree to extended payment terms. The aggregate purchase price that a buyer will pay for the Property (the "Purchase Price") shall be an amount which will result in a total payment to the City, and directed into the Clyfford Still Museum endowment fund, of not less than \$25 million (the "Minimum Net Price"). If none of the museums has entered into an unconditional Private Sale purchase agreement with the Auction House by the end of the Exclusivity Period, the Auction House will be authorized to offer the Property for sale at Auction as contemplated hereunder and under the Agreement.
12. In the event that Auction House is unable to sell the Property at Private Treaty Sale as contemplated herein, upon the expiration of the Exclusivity Period, the City will authorize Auction House to offer the Property by individual lots in a public auction for sale to be held no later than November 30, 2011 (the "Auction"), subject to postponement by mutual agreement or to postponement by the Auction House for reasons beyond its control. If the Private Sale of the Property is rescinded by the Auction House because the Private Sale purchaser has failed to pay the Private Sale purchase price within ninety (90) days of the Private Sale, then the parties will mutually determine an appropriate public auction date.
13. The City acknowledges and agrees that the Auction House may solicit an irrevocable bid from one or more third parties for each lot of the Property to be offered for sale at Auction. Such irrevocable bids will guarantee that each lot of the Property will be sold at Auction for no less than the Director's minimum

price as described on Schedule I hereto. Auction House will indicate if a third party has provided an irrevocable bid on each lot of the Property with a symbol in the Auction catalogue. Whether or not the Auction House obtains an irrevocable bid, the Auction House shall remain solely responsible to the City for payment of the Guarantee Price.

14. In the event that the Property goes to Auction, Auction House may, in its sole discretion, charge the buyer and retain for the Auction House account a commission on each lot sold (the "buyer's premium"). The buyer's premium will be based on the hammer price of each lot sold and will be the percentage stated in the Conditions of Sale in the catalogue for the Auction.
15. In the event a successful bidder at Auction fails to pay the Auction House within ninety (90) days of the Auction, the Auction House has no obligation to enforce payment by any purchaser; however, Auction House shall pay the Guarantee Price to the Endowment Fund. Upon payment in full of the Guarantee Price for such lot or lots of the Property as set forth in subparagraph 4(d) of the Agreement, title to such Property shall vest in the Auction House.
16. The Auction House shall not under any circumstances release any lot of the Property from its possession unless and until payment in full for the lot has been made to the City as set forth in the Agreement.
17. Auction House shall be solely responsible for transfer of title to bidders and no further signature, title, bill of sale, provenance, or other documentation of transfer will be required by the City. Auction House may maintain the confidentiality of the identity and all identifying information of successful bidders and is not required to provide such information to the City.
18. The Auction House shall provide to Clyfford Still Museum, as the City's agency for care and exhibition of the Clyfford Still Collection, the following additional services:
 - a. Identification of and introductions to potential donors;
 - b. A three year participation in Auction House's Preferred Museum Partner program;
 - c. Subject to applicable publication deadlines, an article on the Clyfford Still Museum opening in the November 2011 issue of "Sotheby's at Auction";
 - d. Online support of the Museum including a video podcast about the Property and the Museum, if appropriate, to be posted at www.Sotheby's.com during the exhibition and sale period for the Property to be paid for by the Auction House at its sole cost and expense and a link to on www.Sotheby's.com to the Clyfford Still Museum through the exhibition and sale period for the Property;
 - e. Hosting of at least two cultivation events during the Term of the Agreement the exact number of events and the scheduling of such events will be mutually agreed to between the Auction House and the Museum;
 - f. Assistance in public relations strategy development and publicity management during the Term of the Agreement; and
 - g. Upon request of the Clyfford Still Museum, advice in preparation and printing of the Clyfford Still Museum inaugural publication and its catalog

raisonné, with the Museum to be responsible for all associated costs and expenses.

19. Auction House may send to the City or the Museum information about its sales and events, or about products and services of other organizations with which it has a relationship.

SCHEDULE I

Description

Lot 1

Clyfford Still

Oil on Canvas

1949- A No. 1 (PH-89), 1949

93 x 79 inches

Clyfford Still

Oil on Canvas

(PH-351), 1940

41 x 37 1/2 inches

Clyfford Still

Oil on Canvas

1947-Y No. 2 (PH-584) , 1947

69 1/2 x 59 inches

Clyfford Still

Oil on Canvas

(PH-1033), 1976

93 1/2 x 83 inches

Minimum aggregate price*

\$25,000,000.00

*The Director of Arts and Venues Denver may agree to a higher aggregate guarantee or aggregate reserve than the minimum aggregate price, but may not agree to a lower aggregate guarantee or aggregate reserve.

Exhibit A-1

CONDITIONS OF SALE

The following Conditions of Sale and Terms of Guarantee are Sotheby's, Inc. and the Consignor's entire agreement with the purchaser and any bidders relative to the property listed in this catalogue.

The Conditions of Sale, Terms of Guarantee, the glossary, if any, and all other contents of this catalogue are subject to amendment by us by the posting of notices or by our announcements made during the sale. The property will be offered by us as agent for the Consignor, unless the catalogue indicates otherwise.

By participating in any sale, you acknowledge that you are bound by these terms and conditions.

1. **As Is.** Goods auctioned are often of some age. The authenticity of the Authorship (as defined below) of property listed in the catalogue is guaranteed as stated in the Terms of Guarantee and except for the limited Warranty contained therein, all property is sold "AS IS" without any representations or warranties by us or the Consignor as to merchantability, fitness for a particular purpose, the correctness of the catalogue or other description of the physical condition, size, quality, rarity, importance, medium, provenance, exhibitor's literature or historical relevance of any property and no statement anywhere, whether oral or written, whether made in the catalogue, an advertisement, a bill of sale, a salesroom posting or announcement, or elsewhere, shall be deemed such a warranty, representation or assumption of liability. We and the Consignor make no representations and warranties, express or implied, as to whether the purchaser acquires any copyrights, including but not limited to, any reproduction rights in any property. We and the Consignor are not responsible for errors and omissions in the catalogue, glossary or any supplemental material.

2. **Inspection.** Prospective bidders should inspect the property before bidding to determine its condition, size, and whether or not it has been repaired or restored.

3. **Buyer's Premium.** A buyer's premium will be added to the hammer price and is payable by the purchaser as part of the total purchase price. The Buyer's premium is 25% of the hammer price up to and including \$50,000, 20% of any amount in excess of \$50,000 up to and including \$1,000,000, and 15% of the amount in excess of \$1,000,000.

4. **Withdrawal.** We reserve the right to withdraw any property before the sale and shall have no liability whatsoever for a withdrawal.

5. **Per Lot.** Unless otherwise announced by the auctioneer, all bids are per lot as numbered in the catalogue.

6. **Bidding.** We reserve the right to reject any bid. The highest bidder acknowledged by the auctioneer will be the purchaser. The auctioneer has absolute and sole discretion in the case of error or dispute with respect to bidding, and whether to repeat the sale, to postpone the sale, to make any other terms and conditions of sale, to resolve any dispute arising from the sale, and sale terms is conclusive. Bidders agree that Nootman Master Paintings, or independently managed subsidiary of Sotheby's ("Nootman") may bid for and/or purchase any lot. We accept no responsibility to other bidders in connection with permitting Nootman to bid and/or purchase any lot. In our

discretion we will execute order or absentee bids and accept telephone bids and online bids via BIDnow as a convenience to clients who are not present at auctions. Sotheby's is not responsible for any errors or omissions in connection therewith. Prospective bidders should also consult sothebys.com for the most up to date cataloging of the property in this catalogue.

By participating in the sale, you represent and warrant that any bids placed by you, or on your behalf, are not the product of any collusive or other anti-competitive agreement and are otherwise consistent with federal and state antitrust law.

7. **Online Bids via BIDnow.** Sotheby's may offer clients the opportunity to bid online via BIDnow for selected sales. By participating in a sale via BIDnow, you acknowledge that you are bound by these Conditions of Sale as well as the Additional Terms and Conditions for Live Online Bidding via BIDnow ("Online Terms"). The Online Terms can be viewed at www.sothebys.com and bidders utilizing BIDnow will be required to accept the Online Terms, as well as the relevant Conditions of Sale, prior to participating in the sale.

8. **Bids Below Reserve.** If the auctioneer determines that any opening bid is below the reserve of the article offered, he may reject the same and withdraw the article from sale, and if, having acknowledged an opening bid, he determines that any advance thereafter is insufficient, he may reject the advance.

9. **Purchaser's Responsibility.** Subject to fulfillment of all of the conditions set forth herein, on the fall of the auctioneer's hammer, the contract between the consignor and the purchaser is concluded, and the winning bidder thereupon will immediately pay the full purchase price or such part as we may require. Title in a purchased lot will not pass until Sotheby's has received the full purchase price in cleared funds. Sotheby's is not obligated to release a lot to the purchaser until title to the lot has passed and any earlier release does not affect the passing of title or the Purchaser's unconditional obligation to pay the full purchase price. In addition to other remedies available to us by law, we reserve the right to impose from the date of sale a late charge of the annual percentage rate of Prime + 6% of the total purchase price if payment is not made in accordance with the conditions set forth herein.

Unless otherwise agreed by Sotheby's, all property must be removed from our premises by the purchaser at his expense not later than 30 calendar days following its sale. Buyers are reminded that Sotheby's liability for loss or damage to sold property shall cease no later than 30 calendar days after the date of the auction. If any applicable conditions herein are not complied with by the purchaser, the purchaser will be in default and in addition to any and all other remedies available to us and the Consignor by law, including, without limitation, the right to hold the purchaser liable for the total purchase price, including all fees, charges and expenses more fully set forth herein, we at our option may (x) cancel the sale of that, or any other lot or lots sold to the defaulting purchaser at the same or any other auction, remaining as liquidated damages all payments made by the purchaser, or (y) resell the purchased property, whether at public auction or by private sale, or (z) effect any combination thereof. In any case, the purchaser will be liable for any deficiency any and all costs, handling charges, late charges, expenses of both sales, our commissions on both sales at our regular rates,

legal fees and expenses, collection fees and incidental damages. We may in our sole discretion, apply any proceeds of sale then due or thereafter becoming due to the purchaser from us or any affiliated company or any payment made by the purchaser to us or any affiliated company, whether or not intended to reduce the purchaser's obligations with respect to the unpaid lot or lots, to the deficiency and any other amounts due to us or any affiliated companies. In addition, a defaulting purchaser will be deemed to have granted and assigned to us and our affiliated companies, a continuing security interest of first priority in any property or money of or owing to such purchaser in our possession or in the possession of any of our affiliated companies, and we may retain and apply such property or money as collateral security for the obligations due to us or to any affiliated company of ours. We shall have all of the rights accorded a secured party under the New York Uniform Commercial Code. You hereby agree that Sotheby's may file financing statements under the New York Uniform Commercial Code without your signature. Payment will not be deemed to have been made in full until we have collected good funds. Any claims relating to any purchase, including any claims under the Conditions of Sale or Terms of Guarantee, must be presented directly to Sotheby's. In the event the purchaser fails to pay any or all of the total purchase price for any lot and Sotheby's nonetheless elects to pay the Consignor any portion of the sale proceeds, the purchaser acknowledges that Sotheby's shall have all of the rights of the Consignor to pursue the purchaser for any amounts paid to the Consignor, whether at law, in equity, or under these Conditions of Sale.

10. **Reserve.** All lots in this catalogue are offered subject to a reserve, which is the confidential minimum hammer price at which a lot will be sold. No reserve will exceed the low pre-sale estimate stated in the catalogue, or as amended by oral or posted notices. We may implement such reserve by opening the bidding on behalf of the Consignor and may bid up to the amount of the reserve by placing successive or consecutive bids for a lot, or bids in response to other bidders. In instances where we have an interest in the lot other than our commission, we may bid up to the reserve to protect such interest. In certain instances, the Consignor may pay us less than the standard commission rate where a lot is "bought in" to protect its reserve.

11. **Tax.** Unless exempted by law, the purchaser will be required to pay the combined New York State and local sales tax, any applicable compensating use tax of another state, and if applicable, any federal luxury or other tax on the total purchase price. The rate of such combined tax is 8.875% in New York City and ranges from 7% to 9.5% elsewhere in New York.

12. **Export and Permits.** It is the purchaser's sole responsibility to identify and obtain any necessary export, import, firearm, endangered species or other permit for the lot. Any symbols or notices in the sale catalogue reflect Sotheby's reasonable opinion at the time of cataloging and are for informational purposes only. Sotheby's and the Consignor make no representations or warranties as to whether any lot is or is not subject to export or import restrictions or any embargoes.

13. **Governing Law and Jurisdiction.** These Conditions of Sale and Terms of Guarantee, as well as bidders' purchase and our respective rights and obligations hereunder, shall be

governed by and construed and enforced in accordance with the laws of the State of New York. By bidding at an auction, whether present in person or by agent, order bid, telephone, online or other means, all bidders including the purchaser, shall be deemed to have consented to the exclusive jurisdiction of the state courts of, and the federal courts sitting in, the State of New York. All parties agree, however, that Sotheby's shall retain the right to bring proceedings in a court other than the state and federal courts sitting in the State of New York.

14. **Packing and Shipping.** We are not responsible for the acts or omissions in our packing or shipping of purchased lots or of other carriers or packers of purchased lots, whether or not recommended by us. Packing and handling of purchased lots is at the entire risk of the purchaser.

15. **Limitation of Liability.** In no event will our liability to a purchaser exceed the purchase price actually paid.

16. **Data Protection.** Sotheby's will use information provided by its clients or which Sotheby's otherwise obtains relating to its clients for the provision of auction and other art-related services, real estate and insurance services, client administration, marketing and otherwise to manage and operate its business, or as required by law.

Some gathering of information about Sotheby's clients will take place using technical means to identify their preferences and provide a higher quality of service to them, and Sotheby's may gather information about its clients through video images or through the use of monitoring devices used to record telephone conversations.

Sotheby's will generally seek clients' express consent before gathering any sensitive data, unless otherwise permitted by law. Clients agree that Sotheby's may use any sensitive information that they supply to Sotheby's.

By agreeing to these Conditions of Sale, clients agree to the processing of their personal information and a sale to the disclosure and transfer of such information to any Sotheby's affiliate and to third parties anywhere in the world for the above purposes, including to countries where we may not offer equivalent protection of personal information to that offered in the US. Clients can prevent the use of their personal information for marketing purposes at any time by notifying Sotheby's.

TERMS OF GUARANTEE

As set forth below and in the Conditions of Sale, for all lots Sotheby's guarantees that the authorship, period, culture or origin (collectively, "Authorship") of each lot in this catalogue is as set out in the BOLD or CAPITALIZED type heading in the catalogue description of the lot, as amended by oral or written salesroom notes or announcements. Purchasers should refer to the Glossary of Terms, if any, for an explanation of the terminology used in the Bold or Capitalized type heading and the extent of the Guarantee. Sotheby's makes no warranties, whatsoever, whether express or implied, with respect to any material in the catalogue other than that appearing in the Bold or Capitalized heading and subject to the exclusions below.

In the event Sotheby's in its reasonable opinion deems that the conditions of the Guarantee have been satisfied, it shall refund to the original purchaser of record the hammer price and applicable Buyer's Premium paid for the lot by the original purchaser of record.

This Guarantee does not apply if (i) the catalogue description was in accordance with the opinion(s) of generally accepted scholar(s) and expert(s) at the date of the sale, or the catalogue description indicated that there was a conflict of such opinions; or (ii) the only method of establishing that the Authenticity was not as described in the Bold or Capitalized heading at the date of the sale would have been by means of processes not then generally available or accepted, unreasonably expensive or impractical to use, or likely (in Sotheby's reasonable opinion) to have caused damage to the lot or likely to have caused loss of value to the lot or fail there has been no material loss in value of the lot from its value had it been in accordance with its description in the Bold or Capitalized type heading.

This Guarantee is provided for a period of five (5) years from the date of the relevant auction, is solely for the benefit of the original purchaser of record at the auction and may not be transferred to any third party. To be able to claim under this Guarantee of Authenticity, the original purchaser of record must: (i) notify Sotheby's in writing within three (3) months of receiving any information that causes the original purchaser of record to question the accuracy of the Bold or Capitalized type heading specifying the lot number, date of the sale, or at which it was purchased and the reasons for such question; and (ii) return the Lot to Sotheby's at the original selling location at the time of sale or, in the date of sale to the original purchaser, who will be able to transfer good title to the Lot free from any third party claims arising after the date of sale.

Sotheby's has discretion to waive any of the above requirements. Sotheby's may require the original purchaser of record to obtain at the original purchaser of record's cost the reports of two independent and recognized experts in the field, mutually acceptable to Sotheby's and the original purchaser of record. Sotheby's shall not be bound by any reports produced by the original purchaser of record, and reserves the right to seek additional expert advice at its own expense. It is specifically understood and agreed that the rescission of a sale and the refund of the original purchase price (if the successful hammer price, plus the Buyer's Premium, is exclusive of any fee of any other remedy which might otherwise be available at common law or in equity). Sotheby's and the Consignor shall not be liable for any incidental or consequential damages incurred or claimed, including without limitation, loss of profits or interest.

BUYING AT AUCTION

The following will help in understanding the auction buying process as well as some of the terms and symbols commonly used in an auction catalogue. All bidders should read the Conditions of Sale and Terms and Guarantee in this catalogue, as well as the Glossary or any other notices, the bidding information bidders are bound by the Conditions of Sale and Terms of Guarantee, as amended by a formal announcement or posted notices, which together with the sale contract and any other notices, constitute the offer of the lot and any bidders, including the successful bidder/purchaser.

1. SYMBOLKEY

□ Reserves

Unless indicated by a box (□), all lots in this catalogue are offered subject to a reserve. A reserve is the confidential minimum hammer price at which a lot will be sold. The reserve is generally

set at a percentage of the low estimate and will not exceed the low estimate of the lot. If any lots in the catalogue are offered without reserve, such lots will be designated by a box (□). If every lot in a catalogue is offered without a reserve, the Conditions of Sale will so state and this symbol will not be used for each lot.

○ Guaranteed Property

The seller of lots with this symbol has been guaranteed a minimum price from one or a series of auctions. This guarantee may be provided by Sotheby's, by a third party or jointly by Sotheby's and a third party. Third parties providing all or part of a guarantee benefit financially if a guaranteed lot is sold successfully and may incur a loss if the sale is not successful.

△ Property in which Sotheby's has an Ownership Interest

Lots with this symbol indicate that Sotheby's owns the lot in whole or in part or has an economic interest in the lot equivalent to an ownership interest.

⇒ Irrevocable Bids

Lots with this symbol indicate that a party has provided Sotheby's with an irrevocable bid on the lot that will be executed during the sale at a value that ensures that the lot will sell. The irrevocable bidder, who may bid in excess of the irrevocable bid, will be compensated based on the final hammer price in this event he or she is not the successful bidder. If the irrevocable bidder is the successful bidder, he or she will be required to pay the full Buyer's Premium and will not be otherwise compensated. If the irrevocable bid is not secured until after the printing of the auction catalogue, a pre-lot announcement will be made indicating that there is an irrevocable bid on the lot.

∨ Interested Parties

Lots with this symbol indicate that parties with a direct or indirect interest in the lot may be bidding on the lot, including (i) the beneficiary of an estate selling the lot, or (ii) the joint owner of a lot. If the interested party is the successful bidder, they will be required to pay the full Buyer's Premium. In certain instances, interested parties may have knowledge of the reserve. In the event the interested party's possible participation in the sale is not known until after the printing of the auction catalogue, a pre-lot announcement will be made indicating that interested parties may be bidding on the lot.

◎ Restricted Materials

Lots with this symbol have been identified at the time of cataloguing as containing organic material which may be subject to restrictions regarding import or export. The information is made available for the convenience of bidders and the absence of the symbol is not a warranty that there are no restrictions regarding import or export of the Lot; bidders should refer to Condition 12 of the Conditions of Sale. Please also refer to the section on Endangered Species in the information on Buying at Auction.

Π Monumenta

Lots with this symbol may, in our opinion, require special handling or shipping services due to size or other physical considerations. Bidders are advised to inspect the lot and to contact Sotheby's prior to the sale to discuss any specific shipping requirements.

2. BEFORE THE AUCTION

The Catalogue A catalogue prepared by Sotheby's is published for every scheduled live auction and is available prior to the sale date. The cat-

alogue will help familiarize you with property being offered at the designated auction. Catalogues may be purchased at Sotheby's or by subscription in any categories. For information, please call +1 212 606 7000 or visit sothebys.com. Prospective bidders should also consult sothebys.com for the most up to date cataloguing of the property in this catalogue.

Estimates Each lot in the catalogue is given a low and high estimate, indicating to a prospective buyer a range in which the lot might sell at auction. When possible, the estimate is based on previous auction records of comparable pieces. The estimates are determined several months before a sale and are therefore subject to change upon further research of the property, or to reflect market conditions or currency fluctuations. Estimates should not be relied upon as a representation or prediction of actual selling prices.

Provenance In certain circumstances, Sotheby's may print in the catalogue the history of ownership of a work of art if such information contributes to scholarship or is otherwise well known and assists in distinguishing the work of art. However, the identity of the seller or previous owners may not be disclosed for a variety of reasons. For example, such information may be excluded to accommodate a seller's request for confidentiality or because the identity of prior owners is unknown given the age of the work of art.

Specialist Advice Prospective bidders may be interested in specific information not included in the catalogue description of a lot. For additional information, please contact either a Sotheby's specialist in charge of the sale (all of whom are listed in the front of the catalogue), or Sotheby's Client Services Department. You may also request a condition report from the specialist in charge.

The Exhibition An exhibition of the auction property will be held the week prior to the auction on the days listed in the front of the catalogue. There you will have the opportunity to view, inspect and evaluate the property yourself, or with the help of a Sotheby's specialist.

Salesroom Notices Salesroom notices amend the catalogue description of a lot after our catalogue has gone to press. They are posted in the viewing galleries and salesroom or are announced by the auctioneer. Please take note of them.

3. DURING THE AUCTION

The Auction Auctions are open to the public without any admission fee or obligation to bid. The auctioneer introduces the objects for sale — known as "lots" — in numerical order as listed in the catalogue. Unless otherwise noted in the catalogue or by an announcement at the auction, Sotheby's acts as agent on behalf of the seller and does not permit the seller to bid on his or her own property. It is important for all bidders to know that the auctioneer may open the bidding on any lot by placing a bid on behalf of the seller. The auctioneer may further bid on behalf of the seller, up to the amount of the reserve, by placing responsive or consecutive bids for a lot. The auctioneer will not place consecutive bids on behalf of the seller above the reserve.

Bidding in Person If you would like to bid, you must register for a paddle upon entering the salesroom. The paddle is numbered so as to identify you to the auctioneer. To register, you will need a form of identification such as a driver's license, a passport or some other type of government issued identification. If you are a first-time bidder, you will also be asked for your

address, phone number and signature in order to create your account. If you are bidding for someone else, you will need to provide a letter from that person authorizing you to bid on that person's behalf. Issuance of a bid paddle is in Sotheby's sole discretion.

Once the first bid has been placed, the auctioneer asks for higher bids, in increments determined by the auctioneer. To place your bid, simply raise your paddle until the auctioneer acknowledges you. You will know when your bid has been acknowledged; the auctioneer will not mistake a random gesture for a bid.

Bidding by Noortman Master Paintings

Bidders agree that Noortman Master Paintings, an independently managed subsidiary of Sotheby's ("Noortman"), may bid for and/or purchase any lot. Sotheby's accepts no responsibility to other bidders in connection with permitting Noortman to bid and/or purchase any lot. Noortman has had no access through Sotheby's or any of its affiliates or subsidiaries to any confidential information relating to the sale of any property.

Absentee Bidding If it is not possible for you to attend the auction in person, you may place your bid ahead of time. In the back of every catalogue there is an absentee bid form, which you can use to indicate the item you wish to bid on and the maximum bid you are willing to make. Return the completed absentee bid form to Sotheby's either by mail or fax. When the lot that you are interested in comes up for sale, a Sotheby's representative will execute the bid on your behalf, making every effort to purchase the item for as little as possible and never exceeding your limit. This service is free and confidential. For detailed instructions and information, please see the Absentee Bid Form and Guide for Absentee Bidders instructions at the back of this catalogue.

Telephone Bidding In some circumstances, we offer the ability to place bids by telephone live to a Sotheby's representative on the auction floor. Please contact the Bid Department prior to the sale to make arrangements or to answer any questions you may have. Telephone bids are accepted only at Sotheby's discretion and at the caller's risk. Calls may also be recorded at Sotheby's discretion. By bidding on the telephone, prospective buyers consent thereto.

Online Bidding via BIDnow If you cannot attend the auction, it may be possible to bid online via BIDnow for selected sales. This service is free and confidential. For information about registering to bid via BIDnow, please see www.sothebys.com. Bidders utilizing the BIDnow service are subject to the Additional Terms and Conditions for Live Online Bidding via BIDnow, which can be viewed at www.sothebys.com, as well as the relevant Conditions of Sale.

Employee Bidding Sotheby's employees may bid in a Sotheby's auction only if the employee does not know the reserve and if the employee fully complies with Sotheby's internal rules governing employee bidding.

US Economic Sanctions The United States maintains economic and trade sanctions against targeted foreign countries, groups and organizations. There may be restrictions on the export into the United States of certain items originating in sanctioned countries, including Burma, Cuba, Iran, North Korea and Sudan. The purchaser's inability to import any item into the US or any other country as a result of these or other restrictions shall not constitute cancellation or rescission of the sale or any delay in payment. Please check with the specialist department if you

are uncertain as to whether a lot is subject to these import restrictions, or any other restrictions on importation or exportation.

Hammer Price and the Buyer's Premium For lots which are sold, the last price for a lot as announced by the auctioneer is the hammer price. A buyer's premium will be added to the hammer price and is payable by the purchaser as part of the total purchase price. The buyer's premium will be the amount stated in the Conditions of Sale.

Currency Board As a courtesy to bidders, a currency board is operated in many salesrooms. It displays the lot number and current bid in both US dollars and foreign currencies. Exchange rates are approximations based on recent exchange rate information and should not be relied upon as a precise invoice amount. Sotheby's assumes no responsibility for any error or omission in foreign or United States currency amounts shown.

Results Successful absentee bidders will be notified after the sale. Absentee bidders will receive a list of sale results if they enclose a stamped, self-addressed envelope with their address and four printed lots of auction prices are available at our galleries approximately three weeks following each auction and are sent on request to catalogue purchasers and subscribers. Results may also be obtained by contacting the 24-hour Recorded Information Results Line, or online at sothebys.com.

International Auctions If you need assistance making bids, obtaining condition reports or receiving auction results for a Sotheby's sale outside the United States, please contact our International Client Services Department.

4. AFTER THE AUCTION

Payment If your bid is successful, you can go directly to Post Sale Services to make payment arrangements. Otherwise, your invoice will be mailed to you. The final price is determined by adding the buyer's premium to the hammer price and a 2% bid-levy sales tax where applicable, will be charged on the entire amount. Payment is due in full immediately after the sale. However, under certain circumstances, Sotheby's may, in its sole discretion, offer bidders an extended payment plan. Such a payment plan may provide an economic benefit to the bidder. Credit terms should be requested at least one business day before the sale. However, there is no assurance that an extended payment plan will be offered. Please contact Post Sale Services or the specialist in charge of the sale for information on credit arrangements for a particular lot. Please note that Sotheby's will not accept payments for purchased lots from any party other than the purchaser, unless otherwise agreed between the purchaser and Sotheby's prior to the sale.

Payment by Cash It is against Sotheby's general policy to accept single or multiple related payments in the form of cash or cash equivalents in excess of the local currency equivalent of US \$10,000. It is Sotheby's policy to request any new clients or purchasers preferring to make a cash payment to provide verification of identity (by providing some form of government issued identification containing a photograph, such as a passport, identity card or driver's license), confirmation of permanent address and identification of the source of the funds.

Payment by Credit Cards Sotheby's does not accept payment by credit card for auction purchases.

Payment by Check To pay for a purchase by check please see our cashier and fill out a Check Acceptance Account form. Until approved, you will not be permitted to remove purchases before the check has cleared. Check acceptance privileges are reviewed from time to time by Sotheby's and may be granted or withdrawn at our sole discretion. Checks should be made payable to Sotheby's. Certified checks, banker's drafts and cashier's checks are accepted at Sotheby's discretion and provided they are issued by a reputable financial institution governed by anti-money laundering laws. Instruments not meeting these requirements will be treated as "cash equivalents" and subject to the constraints noted in the prior paragraph titled "Payment By Cash".

Payment by Wire Transfer

Payment by wire transfer should be directed to:
JP Morgan Chase Bank NA
4 New York Plaza, New York, NY 10004
Sotheby's Inc. Account #865356836
ABA routing: 021000021
SWIFT Code: CHASUS33
Please include your account number and sale and lot numbers.

Sales and Use Tax New York sales tax is charged on the hammer price, buyer's premium and any other applicable charges on any property picked up or delivered in New York State, regardless of the state or country in which the purchaser resides or does business. Please refer to "Information on Sales and Use Tax Related to Purchases at Auction" in the back of the catalogue.

Collection and Delivery

Post Sale Services
+1 212 606 7444
FAX: +1 212 606 7043
uspostalservices@sothebys.com

Once your payment has been received and cleared, property may be released. Unless otherwise agreed by Sotheby's, all purchases must be removed by the 50th calendar day following a sale.

Shipping Services Sotheby's offers a comprehensive shipping service to meet all of your requirements. If you received a shipping quotation or have any questions about the services we offer please contact us.

Collecting your Property As a courtesy to purchasers who come to Sotheby's to collect property, Sotheby's will assist in the packing of lots, although Sotheby's may, in the case of fragile articles, choose not to pack or otherwise handle a purchase.

If you are using your own shipper to collect property from Sotheby's please provide a letter of authorization and kindly instruct your shipper that they must provide a Bill of Lading prior to collection. Both documents must be sent to Post Sale Services prior to collection.

The Bill of Lading must include the purchaser's full name, the full delivery address including the street name and number, city and state or city and country, the sale and lot number.

Sotheby's will contact your shipper within 24 hours of receipt of the Bill of Lading to confirm the date and time that your property can be collected. Property will not be released without this confirmation and your shipper must bring the same Bill of Lading that was faxed to Sotheby's when collecting. All property releases are subject to the receipt of cleared funds.

Please see the Conditions of Sale for further details.

Endangered Species Certain property sold at auction, for example, items made of or incorporating plant or animal materials such as coral, crocodile, ivory, whalebone, tortoiseshell, etc., irrespective of age or value, may require a license or certificate prior to exportation and additional licenses or certificates upon importation to another country. Sotheby's suggests that buyers check on their government wildlife import requirements prior to placing a bid. Please note that the ability to obtain an export license or certificate does not ensure the ability to obtain an import license or certificate in another country, and vice versa. It is the purchaser's responsibility to obtain any export or import licenses and/or certificates as well as any other required documentation in the case of denial of any export or import license or of delay in the obtaining of such licenses, the purchaser is still responsible for making on-time payment of the total purchase price for the lot.

Although licenses can be obtained to export some types of endangered species, other types may not be exported at all, and other types may not be resold in the United States. Upon request, Sotheby's is willing to assist the purchaser in attempting to obtain the appropriate licenses and/or certificates. However, there is no assurance that an export license or certificate can be obtained. Please check with the specialist department or the Shipping Department if you are uncertain as to whether a lot is subject to these export/import license and certificate requirements, or any other restrictions on exportation.

The Art Loss Register As part of Sotheby's efforts to support only the legitimate art market and to combat the illegitimate market in stolen property, Sotheby's has retained the Art Loss Register to check all uniquely identifiable items offered for sale in this catalogue that are estimated at more than the equivalent of US\$1,500 against the Art Loss Register's computerized database of objects reported as stolen or lost. The Art Loss Register is pleased to provide purchasers with a certificate confirming that a search has been made. All inquiries regarding search certificates should be directed to The Art Loss Register, First Floor, 65-66 Hatter Garden, London EC1N 3LE, or by email at artloss@artloss.com. The Art Loss Register does not guarantee the provenance or title of any catalogue item against which they search, and will not be liable for any direct or consequential losses of any nature whatsoever arising. This statement and the ALR's service do not affect your rights and obligations under the Conditions of Sale applicable to the sale.

SELLING AT AUCTION

If you have property you wish to sell, Sotheby's team of specialists and client services representatives will assist you through the entire process. Simply contact the appropriate specialist (specialist departments are listed in the back of this catalogue), General Inquiries Department or a Sotheby's regional office representative for suggestions on how best to arrange for evaluation of your property.

Property Evaluation There are three general ways evaluation of property can be conducted.

(1) In our galleries

You may bring your property directly to our galleries where our specialists will give you auction estimates and advice. There is no charge for this service, but we request that you telephone ahead for an appointment. Inspection hours are 9:30 am to 5 pm, Monday through Friday.

(2) By photograph

If your property is not portable, or if you are not able to visit our galleries, you may bring in or send a clear photograph of each item. If you have a large collection, a representative selection of photographs will do. Please be sure to include the dimensions, artist's signature or maker's mark, medium, physical condition and any other relevant information. Our specialists will provide a free preliminary auction estimate subject to a final estimate upon first-hand inspection.

(3) In your home

Evaluations of property can also be made in your home. The fees for such visits are based on the scope and diversity of property, with travel expenses additional. These fees may be rebated if you consign your property for sale at Sotheby's. If there is considerable property in question, we can arrange for an informal "walkthrough".

Once your property has been evaluated, Sotheby's representatives can then help you determine how to proceed should you wish to continue with the auction process. They will provide information regarding sellers' commission rates and other charges, auction venue, snipping and any further services you may require.

SOTHEBY'S SERVICES

Sotheby's also offers a range of other services to our clients beyond buying and selling at auction. These services are summarized below. Further information on any of the services described below can be found at sothebys.com.

Valuations and Appraisals Sotheby's Valuations and Appraisals Services offers advice regarding personal property assets to trusts, estates, and private clients in order to help fiduciaries, executors, advisors, and collectors meet their goals. We provide efficient and confidential advice and assistance for all appraisal and auction services. Sotheby's can prepare appraisals to suit a variety of needs, including estate tax and planning, insurance, charitable contribution and collateral loan. Our appraisals are widely accepted by the Internal Revenue Service, tax and estate planning professionals, and insurance firms. In the event that a sale is considered, we are pleased to provide auction estimates, sales proposals and marketing plans. When sales are underway, the group works closely with the appropriate specialist departments to ensure that clients' needs are met promptly and efficiently.

Financial Services Sotheby's offers a wide range of financial services including advances on consignments, as well as loans secured by art collections not intended for sale.

Museum Services Tailored to meet the unique needs of museums and nonprofits in the marketplace, Museum Services offers personal, professional assistance and advice in areas including appraisals, deaccessions, acquisitions and special events.

Corporate Art Services Devoted to servicing corporations, Sotheby's Corporate Art Services Department can prepare appraisal reports, advise on acquisitions and deaccessions, manage all aspects of consignment, assist in developing art-management strategies and create events catering to a corporation's needs.

INFORMATION ON SALES AND USE TAX RELATED TO PURCHASES AT AUCTION

To better assist our clients, we have prepared the following information on Sales and Use Tax related to property purchased at auction.

Why Sotheby's Collects Sales Tax Virtually all State Sales Tax Laws require a corporation to register with the State Tax Authorities and collect and remit sales tax if the corporation maintains a presence within the state, such as offices. In the states that impose sales tax, Tax Laws require an auction house, with a presence in the state, to register as a sales tax collector and remit sales tax collected to the state. New York sales tax is charged on the hammer price, buyer's premium and any other applicable charges on any property sold or delivered in New York, regardless of the state or country in which the purchaser resides or does business.

Where Sotheby's Collects Sales Tax Sotheby's is currently registered to collect sales tax in the following states: California, Connecticut, Florida, Illinois, Maryland, Massachusetts, Minnesota, New Jersey, New York, Pennsylvania, and Texas. For any property collected or received by the purchaser in New York City, such property is subject to sales tax at the existing New York State and City rate of 8.875%.

If the property is delivered into any of the states in which Sotheby's is registered, Sotheby's is required by law to collect and remit the appropriate sales tax in effect in the state where the property is delivered. Property collected from Sotheby's New York premises by common carriers on behalf of the purchaser for delivery to the purchaser at his address outside of New York is not subject to New York sales tax. If it is delivered to the common carrier to any of the states where Sotheby's is required to collect sales tax, applicable tax will be added to the purchase price.

Where Sotheby's is Not Required to Collect Sales Tax Sotheby's is not required to collect sales tax on property delivered to states other than those listed above. If the property is delivered to a state where Sotheby's is not required to collect sales tax, it is the responsibility of the purchaser to self-assess any sales or use tax and remit it to taxing authorities in that state.

Sotheby's is not required to collect sales tax for property delivered to the purchaser outside of the United States.

Restoration and Other Services Regardless of where the property is subsequently transported, if any building or restoration services are performed on the property in New York, it is considered to be a delivery of the property to the purchaser in New York, and Sotheby's will be required to collect the 8.875% New York sales tax.

Certain Exemptions Most states that impose sales taxes allow for specified exemptions to the tax. For example, a registered re-seller such as a registered art dealer may purchase without incurring a tax liability, and Sotheby's is not required to collect sales tax from such re-seller. The art dealer, when reselling the property, may be required to charge sales tax to its client, or the client may be required to self-assess sales or use tax upon purchase of the property.

Local Tax Advisors As sales tax laws vary from state to state, Sotheby's recommends that clients with questions regarding the application of sales or use taxes to property purchased at auction seek tax advice from their local tax advisors.

Photography:
Patrick de Warren
Scott Konzelmann
Peter Kutschler
Steven Maglietta
Pauletta Tavormina

Exhibit B

IN THE MATTER OF
THE ESTATE OF
PATRICIA ALICE STILL
Deceased

* IN THE
* CIRCUIT COURT
* FOR
* CARROLL COUNTY
* MARYLAND
* Case No.: C-10-57827

* * * * *

ORDER

Upon consideration of the Petition for Construction and Reformation of a Bequest and the accompanying Memorandum of Law filed in the above-captioned action, a hearing having been held and good cause having been shown, it is this 24th day of March, 2011, by the Circuit Court for Carroll County,

ORDERED, that, pursuant to the Uniform Charitable Trusts Administration Act set forth in the Annotated Code of Maryland; Estates & Trusts Article, §14-302, the Court finds the restriction on sale, gifting, exchanging, etc. contained in the Last Will and Testament of Patricia Alice Still to be impracticable and that the terms of said Last Will and Testament are hereby reformed to allow the City and County of Denver to sell, lease or otherwise dispose of the following four (4) works of art by Clyfford Still:

- A. PH-351, 1940, 41 x 37 1/2 in.
- B. PH-584, (1947-Y No. 2), 1947, 69 1/2 x 59 in.
- C. PH-89 (1949-A No. 1), 1949, 93 x 79 in.
- D. PH-1033, 1976, 93 1/2 x 83 in.; and

IT IS FURTHER ORDERED, that in order to facilitate such sale(s), lease(s) and/or other disposition(s), Frederick H. Stalfort and Steven G. Wisecarver, co-Personal Representatives of the Estate of Patricia Alice Still are hereby authorized and directed to release and transfer the aforementioned four (4) works of art from the Collection of the Estate of Patricia Alice Still, free, clear and specifically exempted hereby from the above-mentioned restrictions contained in the Last Will and Testament of Patricia Alice Still, to the City and County of Denver, for sale(s), lease(s) and/or other disposition(s) of the same in strict conformity herewith; and

IT IS FURTHER ORDERED, that the proceeds of any such sale(s), lease(s) and/or other disposition(s) shall be applied to the endowment of the Clyfford Still Museum as well as other expenses required by the Donation Agreement between the Estate of Patricia Alice Still and the City and County of Denver; and

IT IS FURTHER ORDERED, that the Petitioner be granted such other and further relief as the nature of its cause may require.



JUDGE



ADDITIONAL REMARKS SCHEDULE

AGENCY Willis of New York, Inc.		NAMED INSURED Sotheby's 1334 York Avenue Attn: Mary Gomez AVP R.M. New York, NY 10021-4806	
POLICY NUMBER See First Page		EFFECTIVE DATE: See First Page	
CARRIER See First Page	NAIC CODE		
ADDITIONAL REMARKS			

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
 FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

Waiver of Subrogation applies in favor of Additional Insured with respects to General Liability.

EVIDENCE OF PROPERTY INSURANCE

Issue Date

FIACERT43 2011

June 7, 2011

MANAGERS

MARSH MANAGEMENT SERVICES
(BERMUDA) LTD.
VICTORIA HALL, 11 VICTORIA STREET
PO BOX HM 1262
HAMILTON HM, FX
BERMUDA

INSURED

Sotheby's
1334 York Avenue
New York, New York 10021
(as their respective interest may appear)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE:

COMPANY

LETTER **A** **FINE ART INSURANCE LTD**

COMPANY

LETTER **B**

COMPANY

LETTER **C**

COMPANY

LETTER **D**

COMPANY

LETTER **E**

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM, OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	EFFECTIVE DATE	EXPIRY DATE
A	OTHER "ALL RISKS"	1-12101-00	OCTOBER 1, 2010	SEPTEMBER 30, 2011

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

The Insured is covered for its liability against all risk of physical damage or loss to scheduled property as per terms of written, private sale agreement to be executed between consignor, the City and County of Denver, and Sotheby's. Said coverage is on a "wall-to-wall" worldwide basis always when in the care, custody, and control of Sotheby's or its authorized agent or shipper.

Property description: various paintings

Insured Value: aggregate of pre-sale high estimates

CERTIFICATE HOLDER:

City and County of Denver
Denver, CO

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL PROVIDE 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS, OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE:

