

ARTIST AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 20____, by and between The Florida International University Board of Trustees on behalf of **The Patricia and Phillip Frost Art Museum** (“Museum” or “Borrower”) and _____ (“Artist”), whose address is _____.

WHEREAS, the University desires to present an exhibition of Artist’s work entitled _____ (“Exhibition”) which will be curated by _____; and

WHEREAS, Artist desires for the Exhibition to be presented at the Museum pursuant to the terms and conditions set forth herein;

NOW, THEREFORE, the parties agree as follows

1. Services and Exhibition Schedule:

a. The Artist agrees to conceive, research, produce, provide and participate in the installation of an exhibition of his/her work. The Exhibition will consist of:

b. Public opening date: _____
Public closing date: _____
Loan dates (delivery to ship out): _____

c. No change of Exhibition dates may be made without the Museum’s advance written consent. If a change is desired, Artist should contact Museum’s director. Museum may cancel the Exhibition in its discretion upon at least 30 days advance notice of shipment of the works. Museum **[shall / shall not]** charge for admission specifically to the Exhibition.

d. Independent Contractor:

The Artist provides his/her services to the Museum as an independent contractor on a fee basis. Artist shall not be considered as having an employee status or as being entitled to participate in any plan, arrangements, or distributions by FIU pertaining to or in connection with any qualified pension plan or providing any other health or welfare plan with similar benefits for regular FIU employees. Artist shall be responsible for the payment of any taxes on any monies received by Artist. The Artist agrees to sign the attached IRS Form W-9 and return it to the Museum with this signed agreement, and attached Vendor Application Form BEFORE the Museum can pay any amounts due to ARTIST.

2. Exhibition Contents and Display:

a. The checklist for the artworks in the Exhibition are attached hereto as Exhibit A. Museum reserves the right to make substitutions or withdrawals in the Exhibition if necessary. Artist may make deletions from the Exhibition with prior approval of Museum’s curator for the Exhibition. Additions to the Exhibition are not permitted without prior notice.

- b. No foodstuffs or wet or live media that may endanger people or other artworks will be permitted in the galleries. Organic materials must be inspected by staff or placed in quarantine before exhibition.
- c. If applicable, Museum agrees to pay for fabrication/installation of site-specific pieces, up to \$_____. Artist to pay for other fabrications for the Exhibition.
- d. The Exhibition will be installed in the Museum's _____ gallery space(s) at the Patricia & Phillip Frost Art Museum, Florida International University, 10975 S.W. 17th Street, Miami, Florida 33199.
- e. MUSEUM will hold a members' Preview/Opening Reception on _____. Artist agrees to meet deadlines for presentation to the public and will attend the reception.

3. Project Budget:

a. **Museum:**

Artist/Production Fee	\$_____	.00
Curator Fee, if applicable	\$_____	.00
Transportation of Artworks, if applicable	\$_____	.00
Publications/invitations/ press, if applicable	\$_____	.00
Catalog, if applicable (contingent on availability of funding)	\$_____	.00
Fabrication of site-specific works, if applicable	\$ _____	.00

- b. As set forth above, Museum shall pay to artist an Artist/Production Fee in the total amount of \$_____. The Artist/Production Fee is inclusive of all expenses associated with the Exhibition and Artist's obligations under this Agreement, including but not limited to materials, labor, transportation, delivery and removal of the works, Artist travel, and all promotional and/or collateral materials as may be prepared by Artist.
- c. Catalog publication is contingent on funding. Museum shall have no obligation to produce a catalog in the event that external funding is not secured.
- d. Schedule of Payment. The Museum will pay the ARTIST'S Fee in several installments as follows:
 - i. Upon signing of agreement and submission of all forms, including Vendor Application Form. \$_____.
 - ii. Upon completion and 30 (thirty) days following public opening of PROJECT and after ARTIST has fulfilled all his/her obligations under this Agreement. \$_____.

4. Individuals Responsible for Arrangements:

Identified below are the staff members of MUSEUM and Artist who are responsible for designated obligations with respect to the Exhibition:

- a. For coordination, transportation and object handling:

Debby Kirschtel-Taylor, Registrar and Collection Manager
Chip Steeler, Exhibition Preparator and Designer
The Patricia & Phillip Frost Art Museum
Florida International University
10975 S.W. 17th St
Miami, Florida 33199
Telephone: (305) 348-2891
Facsimile: (305) 348-2762
Email: taylor@fiu.edu; steelerc@fiu.edu;

b. For curatorial information:

Carol Damian, Director and Chief Curator.
The Patricia & Phillip Frost Art Museum
Florida International University
10975 S.W. 17th St
Miami, Florida 33199
Telephone: (305) 348-2278
Facsimile: (305) 348-2762
Email: damianc@fiu.edu

c. For publicity and publications:

Marketing and Communications Coordinator
The Patricia & Phillip Frost Art Museum
Florida International University
10975 S.W. 17th St
Miami, Florida 33199
Telephone: (305) 348-3892
Facsimile: (305) 348-2762

5. **Shipping Information**

a. Borrower's shipping address:

The Patricia & Phillip Frost Art Museum,
Florida International University
10975 S.W. 17th Street
Miami, Florida 33199

6. **Delivery and Transportation of the Exhibition Works:**

- a. Artist agrees to pay cost of packing, pick up, delivery by Fine Arts Inclusive-use transportation, and cost of return to Artist's designated location. Artist will ship the works in specially prepared crates, where required, and will arrange for all transportation to and from the Museum's premises, including selection of carriers. Crates will be delivered directly to Museum's loading dock via tractor-trailer, unless Museum is otherwise notified by Artist one month prior to ship date. Artist will absorb any additional costs associated with special delivery arrangements. Museum will consult with Artist on scheduling a date for the delivery of the Exhibition. This date will be determined no later than two months prior to the opening of the Exhibition.

- b. The arrival of the Exhibition will be reported to Artist by telephone, fax or e-mail as soon as it is received at Museum's premises. Any delays in transportation will be promptly brought to the attention of Artist. In the event the Museum is unable to receive the Exhibition in compliance with the transportation schedule due to circumstances beyond the Museum's control (including but not limited to force majeure events), Artist agrees to absorb the cost of an interim storage facility acceptable to Artist and all expenses related thereto until such time as Museum is able to accept delivery of the Exhibition.
- c. All crates must be stored indoors in a clean, climate and pest-controlled area, and all packing materials must be stored inside their proper crates together with the hardware. No adjustments or alterations should be made to packing or crates without consultation with and written authorization from Artist. Museum will be responsible for the cost of crate replacement as a result of damage between the time of delivery and the time of release.
- d. Upon the closing of the Exhibition, the Museum agrees to cause for the Exhibition to be packed and prepared for shipment on a date scheduled by Artist in consultation with the Museum, such date to be determined no later than one month prior to the closing date of the Exhibition and earlier if possible.
- e. Museum will provide professional installation technicians to assist with installation. If additional assistance is needed, Museum must receive prior notice to Director at least 3 months in advance of installation. All artwork will be installed under the supervision of Museum exhibition manager and staff. Installation must occur during regular business hours of Museum.

7. Exhibition Insurance

- a. Museum will provide all-risk, wall-to-wall, fine arts insurance coverage, with standard exclusions, for the Exhibition while on Museum's premises.
- b. Museum will not be held responsible for loss or damage to objects in the Exhibition unless the loss or damage results from the Museum's gross negligence in failing to follow Artist's instructions for the inspection, handling, installation, and protection of the objects.

8. Inspection, Protection, and Installation of the Exhibition

- a. Promptly upon arrival at Museum's premises, periodically while on exhibition, and immediately prior to repacking, a member of Museum's staff will make an individual examination of each item in the Exhibition. Findings from such examinations will be handled as described below.
- b. A condition report book will be provided with the Exhibition, and Museum agrees to make an appropriate entry in the book for each object immediately after unpacking and just prior to repacking the object.
- c. Repair or retouching of artworks may not be undertaken without advance authorization from Mr. Scholl.
- d. Museum will be responsible for protecting the Exhibition against fire, theft, vandalism, and other damage and loss. Objects will be maintained in a fire-resistant building under 24-hour security; protected from unusual temperatures and humidity; and guarded against smoke, dirt, water,

insects, excessive light and other conditions which may cause damage. Objects will be unpacked, repacked, moved, handled and installed under professional supervision by personnel who have been employed for such purposes. Artist may send a member of its staff to supervise during the installation and de-installation of the artworks.

- e. Specifications for display: Relative humidity of 50% and temperature of 68-72° F should be maintained in the Exhibition galleries. The galleries will be dark during non-exhibition hours, with no night lighting on the works. There will be limited direct daylight in the galleries, if possible. If a display and handling document accompanies certain works in the show, then it must be followed. There will be no food or drink in the galleries where the artwork is displayed.
- f. The Museum agrees to create wall text and labels for the artworks in the Exhibition from information provided by Artist, provided, however, that Museum will write all object and wall text labels, in consideration of Museum's mission, audience, and gallery requirements.

9. Publicity, Credits, Photography

- a. Artist will provide Museum with a disk with images of all the artworks in the exhibition.
- b. Museum, at its option, may provide and pay for a series of installation photographs.
- c. Museum shall prepare and distribute a press release prior to the opening of the Exhibition and therein recognize Artist's contribution to the Exhibition and related activities. A copy of the press release will be sent to Artist prior to distribution.
- d. Museum is responsible for producing all promotion material (publicity, press, marketing and website) of the Exhibition at its venue. Museum will recognize Artist's contribution to the Exhibition and related activities to the extent appropriate for the relevant application at issue.
- e. Museum agrees to use the Exhibition Credit Line provided below on all printed matter and in any and all media (e.g. print or electronic form), including but not limited to those stated below:

In the event outside support is secured by Museum for its showing of the Exhibition, Museum may recognize such support in the credit.

- f. If Artist secures a sponsor for the Exhibition or its tour, Artist will so advise the Museum, which agrees to expand the above-cited credit as prescribed by Artist, including use of sponsor's logo unless inconsistent with the University's or Museum's standard practice for conferring logo/sponsorship recognition.
- g. Museum agrees to send to Artist's publicity liaison within 30 days after Exhibition closes any press clippings or other evidence of public response in connection with the Exhibition, Exhibition attendance figures, as well as a sample of invitations, announcements, and other publicity matter for the Exhibition.
- h. Museum may photograph the Exhibition and the works included therein for its publicity, educational and archival purposes. Artist hereby grants to Museum an irrevocable non-exclusive license, on a royalty-free basis, to publish and/or reproduce images of the Exhibition and the

works for its educational, informational or promotional purposes, including but not limited to reproductions used in brochures, media publicity, exhibition catalogues or other similar publications in any and all media throughout the universe, including but not limited to print, CD-ROMs, DVDs or other digital formats, internet and/or any other electronic or other medium presently in existence or invented in the future. Photography for commercial sales or profit purposes is prohibited unless upon the advance written approval of Artist.

- i. Museum will hold a special reception for the Exhibition on _____, and agrees to extend at no charge up to _____ invitations to Artist, staff, members, and sponsors for any opening or special reception Museum may hold in conjunction with the Exhibition. In the event that additional invitations are desired, Artist may acquire them, if space permits, by reimbursing Museum for its actual per-person cost.
- j. MUSEUM may, in collaboration with Artist and with Artist's approval, host a membership cultivation event.

10. **Publication.** _____ will pay for cost of design and printing of illustrated catalog, not to exceed \$_____.00. Museum's obligations, if any, are subject to and contingent on availability of funding. The Exhibition arrangements (contingent on availability of funding) include _____ copies of a full color catalogue on the Exhibition, which will be shipped directly to Museum. Museum may purchase additional copies at the price of \$_____, or a 50% discount off the retail price of \$_____. The order for additional copies should be placed by _____ to be included in the initial print run of the publication.

11. **Indemnification.** Each party shall be responsible for its obligations under this Agreement. Artist shall indemnify and save harmless, Museum, the FIU Board of Trustees, Florida International University, and its respective trustees, directors, officers, agents or employees from and against all claims, suits, actions, damages, or causes of action directly arising during the Exhibition for any personal injury, loss of life or other damage sustained by reason or as a result of Artist's breach under this Agreement and from and against any orders, judgments, or decrees which may be entered thereto, and from and against all costs, attorney's fees, expenses, and liabilities incurred in or by reason of the defense for any such claim, suit or action and the investigation thereof, unless any such claim, suit, action, damage or cause of action arises from the sole negligence of Museum, the FIU Board of Trustees, Florida International University, and/or its respective trustees, directors, officers, agents and/or employees.

Nothing in this agreement shall be deemed to affect the rights, privileges, and immunities of Florida International University, The Florida International University Board of Trustees and the State of Florida as are provided for by law. This provision shall survive the termination of this agreement.

12. **Default.** If either party fails to comply with any material term or condition of this Agreement, or fails to perform any of its obligations hereunder, then that party shall be in default. Upon the occurrence of a default hereunder which is not cured within fifteen (15) days after receiving written notification from the other party, the non-defaulting party, in addition to all remedies available to it by law, may immediately terminate this agreement, upon written notice to the defaulting party. Any amounts due to the non-defaulting party shall be paid within ten (10) business days after written demand for such payment is received.

13. **Force Majeure.** Neither party shall be responsible or liable for damages caused by a delay or failure in its performance under this Agreement or any provision hereof, or by delay or failure which causes cancellation of this Agreement, if such delay or failure is due to a cause beyond its reasonable control, such as, but not limited to the following: fires; strikes; scarcity of fuel; war or acts of war; acts of mobs or rioters; acts of public authorities; delay or defaults caused by public carriers; or earthquakes, storms, floods, or other acts of God; provided, however, that the party shall give notice to the other party of any actual or anticipated delay, take reasonable steps to minimize the delay and overcome its effects, and promptly resume performance when the cause of delay is removed.
14. **Severability.** In the event that any one or more of the provisions contained herein, or the application thereof, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality, and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired or affected, it being intended that all of the rights and privileges contained herein shall be enforceable to the fullest extent permitted by the law.
15. **Relationship of the Parties.** The parties have contracted with each other only for the purposes set forth in this Agreement, and their relationship to each other shall, during the term of this Agreement, be that of independent contractor.
16. **Notices.** Except as otherwise required specifically herein, all notices and other communications provided for or permitted hereunder shall be made by hand-delivery, recognized courier such as FedEx, UPS or DHL, or via e-mail followed up by a hard copy sent via courier.
17. **Governing Law.** This Agreement shall be construed, interpreted, enforced and governed by and under the laws of State of Florida. Exclusive jurisdiction and venue of any actions arising out of, or relating to or in any way connected with this Agreement shall be in Miami-Dade County, Florida.
18. **Entire Agreement and Amendments.** This Agreement is the final expression of the agreement of the parties and is a complete and exclusive statement of the agreement and understanding. This Agreement supersedes all prior agreements and understandings between the parties with respect to the subject matter contained herein. This Agreement may only be changed, waived, discharged, or terminated with the prior written agreement of the parties signed by the respective authorized representatives.
19. **Miscellaneous.**
 - a. Neither party shall assign or transfer this Agreement or any portion of its rights or obligations without the prior written approval of the other party. Subject to the foregoing, the terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Agreement shall be construed to give any third party (other than the parties named herein) any legal or equitable right, remedy or claim in respect to this Agreement.
 - b. No waiver by either party or breach of this Agreement shall be implied from any failure by the other party to take action on account of such breach if such breach persists or is repeated.

Waiver by either party of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

- c. The public shall be admitted to the Exhibition without discrimination or segregation and regardless of race, creed, sex, sexual orientation, age or national origin.

IN WITNESS WHEREOF, the parties have signed this Exhibition Agreement as of the date fully executed below.

COMPANY NAME: _____

By: _____

Name: _____

Title: _____

Date: _____

**THE FLORIDA INTERNATIONAL UNIVERSITY
BOARD OF TRUSTEES:**

By: _____

Name: Tonja Moore

Title: Associate Vice President – Academic Affairs

Date: _____