

***** SAMPLE CERTIFICATE OF INDEMNITY *****

**CERTIFICATE OF INDEMNITY
FOR AN EXHIBITION KNOWN AS
"«ExhibitionTitle»"
«Exh_Number»**

Under authority of the Arts and Artifacts Indemnity Act (P.L. 94-158) as amended, and in accordance with the provisions thereof, the Federal Council on the Arts and the Humanities (hereinafter "Council"), on behalf of the United States of America agrees to indemnify the «Institution», the participating institution(s)«Partic_Institutions» and the owners named on the attached list, as appropriate, against loss or damage to items while on exhibition as set forth below, and described in the attached list. The total amount of indemnity shall not exceed \$«IndAmnt» (United States dollars), each item being insured at the agreed value stated on the attached list. Losses and damages payable in United States dollars only.

Time Period of Indemnification: «Time_Period», inclusive.

This Certificate is effective from 12:01 a.m. Greenwich Time (all references to time herein refer to Greenwich Time) on the earlier date specified until the termination date described in Section 1160.3(j) of Regulations under the Arts and Artifacts Indemnity Act (P.L. 94-158) published in the Federal Register October 2, 1991 as part of Title 45 of the Code of Federal Regulations, which are hereinafter referred to as "the Regulations." Section 1160.3(j) of the Regulations reads as follows:

"'Termination date' means the date thirty (30) calendar days after the date specified in the indemnity Certificate by which an indemnified item is to be returned to the place designated by the lender or the date on which the item is actually so returned, whichever date is earlier. (In museum terms this means wall-to-wall coverage.) After 11:59 p.m. on the termination date, the item is no longer covered by the indemnity agreement unless an extension has theretofore been requested by the indemnitee and granted in writing by the Council."

This Certificate indemnifies against all risks of physical loss or damage from any external cause except normal wear and tear, inherent vice, or damage sustained due to or resulting from any repairing, restoration or retouching process.

1. CLAIM PAYMENT:

If, while on exhibition, as defined in S 1160.3(e) and described in the application for indemnification, any indemnified item(s) is lost, destroyed, stolen or suffers damage from any external cause excepting normal wear and tear, the indemnitee, on behalf of the owner(s), shall file a claim (including agreement to Federal indemnity and to the US dollar values assigned to the item in the Certificate of Indemnity), with the Council under the terms of the Arts and Artifacts Indemnity Act for compensation (United States dollars) to be paid to the indemnitee on behalf of the owner or owners (hereinafter called the "owner"), who are identified on the attached list as follows:

- (a) In the case of total loss or destruction of the item(s), payment of the agreed valuation specified in the attached list of objects subject to the \$«Deduct_Amnt» deductible amount provided by law;
- (b) In the case of partial loss or damage to the item(s), payment of:
 - (i) such reasonable costs of repairs to the item(s) as agreed upon by the owner and the indemnitee, or in default of agreement, as determined by an appraiser mutually acceptable to the owner and the indemnitee, subject to the \$«Deduct_Amnt» deductible amount provided by law; and
 - (ii) an amount equal to any reduction in the fair market value of the item(s) after repair, as agreed upon by the owner and the indemnitee or, in default of agreement, as determined by an appraiser mutually acceptable to the owner and the indemnitee, subject to the \$«Deduct_Amnt» deductible amount provided by law.

The indemnitee, before receiving such compensation, will be required to obtain a document from the owner releasing the Council from liability, and to agree to pay such compensation over to the owner who is entitled thereto.

2. APPRAISAL PROCEDURES:

In the event of a disagreement between the Council and the indemnitee regarding claims relating to partial loss, damage or reductions in fair market value as a result thereof, the arbitration and appraisal procedures described in Section 1160.10 of the Regulations shall apply.

3. CLAIM CERTIFICATION:

In the event of total loss or claims in which the Council is in agreement, or which have been resolved through arbitration proceedings with respect to the amount of partial loss, damage or reduction in fair market value as a result thereof, the Council shall certify the validity of the claim and the amount of such loss, damage, or reduction in fair market value as a result thereof, to the Speaker of the House of Representatives and the President pro tempore of the Senate, in accordance with the provisions of the Arts and Artifacts Indemnity Act.

4. INDEMNITEE RESPONSIBILITIES:

The indemnitee agrees to follow the policies, procedures, techniques and methods with respect to packing, shipping, etc., as described in the Application for Indemnification, unless modified by the Council.

5. CONDITION REPORTS:

No item shall be considered indemnified under this agreement until a condition report has been prepared prior to the initial packing, during the period of indemnification for the exhibition. The indemnitee further agrees to make condition reports upon each occasion of packing and unpacking the items covered during the period of indemnification.

6. SUBROGATION AND LOSS BUY BACK PROVISION:

(Note: see next page, *6, for Subrogation for Sovereigns)

In the event of any payment under this Certificate of Indemnity, the Council shall be subrogated to all the indemnitee's and owner's right of recovery therefor against any person or organization other than an indemnitee, participating institution(s) (as listed above), their trustees, officers, employees and agents, all of whom shall be liable only for willful misconduct and gross negligence; and the indemnitee and owner shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. If the rights secured result in the recovery of property other than money, such property shall be sold at public auction. The owner shall have the right to repurchase from the Council property of the owner that is recovered for the amount paid to the owner for the loss, plus an amount which represents loss adjustment and recovery expenses. Any money recovered under this subrogation provision shall be apportioned as follows:

- (a) The Council shall be reimbursed to the extent of its actual payment hereunder;
- (b) Payment shall next be made out of amounts remaining from said sale to any interest having paid any portion of the \$«Deduct_Amnt» deductible amount provided by law in an amount not to exceed such interest's actual payment;
- (c) If any balance then remains unpaid, it shall be applied to reimburse the indemnitee.

The expenses of all such recovery and sale proceedings shall be apportioned in the ratio of respective recoveries, except that the United States of America shall not be reimbursed its expenses as sovereign in conducting its general police, judicial and diplomatic business. If there is no recovery in proceedings conducted solely by the Council, it shall bear the expenses thereof.

*6. SUBROGATION AND LOSS BUY BACK PROVISION FOR SOVEREIGNS:

If payment under this Certificate of Indemnity is made to the owner of an insured work which owner is a sovereign or the agent of a sovereign, said owner can elect to be covered either by clause 6 "Subrogation" of the Certificate of Indemnity, or by the following clause:

In the event of a payment under this Certificate of Indemnity, the Council shall be subrogated to all the indemnitee's and owner's right of recovery therefor against any person or organization other than the indemnitee, participating institutions (as listed above), their trustees, officers, employees and agents, all of whom shall be liable only for willful misconduct and gross negligence; and the indemnitee and owner shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. If the rights secured result in the recovery of property other than money, such property shall be returned to the owner and the owner shall pay to the Council:

- (a) the amount previously paid by the Council to the owner;
- (b) any amounts paid by the Council, the indemnitee or others as part of the \$«Deduct_Amnt» deductible amount provided by law under the Arts and Artifacts Indemnity Act.

The costs of recovering the property shall be paid by the indemnitee (or participating institution, as appropriate) as part of the \$«Deduct_Amnt» deductible amount provided by law under the Arts and Artifacts Indemnity Act.

The expenses of such recovery shall be apportioned in the ratio of respective recoveries, except that the United States of America shall not be reimbursed its expenses as sovereign in conducting its general police, judicial and diplomatic business. If there is no recovery in proceedings conducted solely by the Council, it shall bear the expenses thereof.

7. PAIR AND SET:

It is understood that, in the event of loss of, or damage to, any articles which are a part of a set, the measure of loss of or damage to such articles shall be a reasonable and fair proportion of the total value of the set, giving consideration to the importance of said article or articles, but in no event shall such loss or damage be construed to mean total loss of set.

8. MISREPRESENTATION AND FRAUD:

This agreement shall be void if the indemnitee or owner has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof or in case of any fraud, attempted fraud or false swearing by the indemnitee or owner touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

9. EXAMINATION UNDER OATH:

The indemnitee and the owner shall submit, and so far as is within his or their power shall cause all other persons connected in any way with the indemnified exhibition and members of the household and employees to submit to examinations under oath by any persons named by the Council, relative to any and all matter in connection with a claim and subscribe the same; and produce for examination all books of account, bills, invoices, and other vouchers or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the Council or its representatives, and shall permit extracts and copies thereof to be made.

10. NO BENEFIT TO BAILEE:

This agreement shall in no way inure directly or indirectly to the benefit of any carrier or other bailee.

11. SUE AND LABOR:

In case of loss or damage, it shall be lawful and necessary for the indemnitee or owner, his or their factors, servants and assigns, to sue, labor, and travel for, in and about the defense, safeguard and recovery of the property insured hereunder, or any part thereof without prejudice to this indemnification agreement; nor shall the acts of the indemnitee or owner or the Council, in recovering, saving and preserving the property insured in case of loss or damage, be considered a waiver or an acceptance of abandonment to the charge whereof the Council will contribute according to the rate and quantity of the sum herein insured.

12. COLLECTION FROM OTHERS:

No loss shall be paid hereunder if the indemnitee or owner has collected the same from others.

13. THE FOLLOWING CONDITIONS SHALL APPLY TO THE INSURED PROPERTY WHILE IN WATERBORNE OR AIRBORNE TRANSIT OVERSEAS:

- (a) including transit by craft and lighter to and from the vessel. Each craft and lighter to be deemed a separate insurance. The indemnitee and owner are not to be prejudiced by any agreement exempting lightermen from liability;
- (b) This insurance shall not be vitiated by an unintentional error in description of vessel, voyage or interest, or by deviation, over-carriage, change of voyage, transshipment, or any other interruption of the ordinary course of transit, from causes beyond the control of the indemnitee and owner. It is agreed, however, that any such error, deviation or other occurrence mentioned above shall be reported to the Council as soon as known to the indemnitee and owner;
- (c) General average and salvage charges payable according to United States laws and usage and as per foreign statement and as per York Antwerp rules (as prescribed in whole or in part) if in accordance with the contract of affreightment;
- (d) Warranted free of claim for loss of market or for loss, damage or deterioration arising from delay, whether caused by peril insured against or otherwise, unless expressly assumed in writing hereon;
- (e) Where goods are shipped under a Bill of Lading containing the so-called "both to blame collision" clause, the Council agrees as to all losses covered by this agreement's proportion of any amount (not exceeding the amount insured) which the indemnitee and owner may be legally bound to pay to the ship owners under

such clause. In the event that such liability is asserted the indemnitee and owner agree to notify the Council who shall have the right at its own cost and expense to defend the indemnitee and owner against such claim;

- (f) Marine extension clause: Notwithstanding anything to the contrary contained in or endorsed on this agreement it is understood and agreed that the following terms and conditions shall apply to all shipments which become a risk hereunder:
 - (i) This insurance specially to cover the goods during:
 - (aa) Deviation, delay, forced discharged, reshipment and transshipment; and
 - (bb) Any other variation of the adventure arising from the exercise of a liberty granted to the ship owner or charterer under the contract of affreightment.
 - (ii) In the event of the exercise of any liberty granted to the ship owner or charterer under the contract of affreightment whereby such contract is terminated at a port or place other than the original insured destination, the insurance continues until the goods are delivered at such port or place; or, if the goods are forwarded to the original insured destination or to any other destination this insurance continues until the goods have arrived at the place designated by the owner.
 - (iii) Held covered in case of change of voyage or of any omission or error in the description of the interest, vessel or voyage.
 - (iv) This agreement shall in no case be deemed to extend to cover loss, damage, or expense proximately caused by decay or inherent vice or nature of the subject matter insured.
 - (v) It is a condition of this agreement that there shall be no interruption or suspension of transit unless due to circumstances beyond the control of owner and indemnitee.

14. SECURITY PROVISIONS:

The security provisions shall be as stated in the approved indemnity application. Within thirty days preceding the opening of an indemnified exhibition to the public, the Chief of Security, or corresponding official, of the exhibiting museum must submit to the Federal Council on the Arts and the Humanities, c/o Indemnity Administrator, National Endowment for the Arts, 400 7th Street, SW, Washington, D.C. 20506, a letter certifying that the security arrangements are still as stated in the application on which this Certificate was issued, and the Director or corresponding official of the exhibiting museum shall endorse said letter by signing it.

Failure to comply with the arrangements for security as stated will be deemed "willful misconduct" or "gross negligence" as those terms are used in Clause 6 "Subrogation and Loss Buy Back Provision."

All other terms and conditions of the agreement not in conflict with the foregoing remain unchanged.

This Certificate of Indemnity is issued under and is subject to the provisions of the Arts and Artifacts Indemnity Act and the Regulations.

This agreement, under authority of Section 4(c) of the Arts and Artifacts Indemnity Act, pledges the full faith and credit of the United States to pay any amount (United States dollars) for which it becomes liable in accordance with the above provisions.

In witness whereof, the Federal Council on the Arts and the Humanities has caused this Certificate to be signed on the date written below.

Jane Chu
Chairman
National Endowment for the Arts
and
Member
Federal Council on the Arts and the Humanities

Date

Attachment: List of Indemnified Items