



## CONSIGNMENT AGREEMENT

Contract Number: \_\_\_\_\_

Consignor: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Contract Date: \_\_\_\_\_ Department: \_\_\_\_\_

Sale Number: \_\_\_\_\_ Sale Date: \_\_\_\_\_

This Consignment Agreement (the "Agreement") is hereby entered into on \_\_\_\_\_ ("Effective Date") by and between Turner Auctions + Appraisals, LLC, located at 461 Littlefield Avenue, South San Francisco, CA 94080 ("Turner," "TAA" or "we") and \_\_\_\_\_ (the "Consignor"), hereinafter collectively referred to as the "Parties."

### TURNER AND THE CONSIGNOR HEREBY AGREE AS FOLLOWS:

#### I. GOODS

- 1.01 The Consignor agrees to deliver the goods listed in Exhibit A attached hereto (the "Goods") to TAA's premises for the purpose of selling the Goods via an auction(s) on TAA's website or other means available to TAA, pursuant to the terms and conditions contained herein.
  - 1.02 Upon delivery, TAA shall accept delivery of the Goods. The Goods shall remain the sole property of Consignor until sold or as otherwise stated in this Agreement. TAA hereby acknowledges that it takes possession of the Goods only on a consignment basis and it does not acquire any property right, title, or security interest in the Goods, unless otherwise stated herein. The Consignor's consignment is not a consignment intended as a security.
  - 1.03 The Consignor is responsible for providing any and all information pertaining to the Goods, which may include, but is not limited to, written descriptions, provenance, history, authorship, period, culture, source of origin, quality, rarity, existence of copyright or other proprietary or intellectual property rights pertaining thereto, condition/damage reports, estimates of value and reserves, and such other information as TAA may from time to time require of the Consignor and that may be used by TAA to advertise or attempt to sell the Goods. The Consignor acknowledges that all information about the Goods provided to TAA is true and correct to the best of his/her knowledge.
- II. TAA reserves the right to reject any Goods that the Consignor may bring in or have shipped to TAA to sell on the Consignor's behalf.

### III. SERVICES

- 3.01 Consignor agrees to grant to TAA the exclusive right to market and sell the Goods for a period of time equal to ninety days from the date this agreement is executed by both parties ("Final Sale Date"). During the term of this Agreement, the Goods cannot be withdrawn from TAA for any reason without the consent of TAA. If all of the Goods are not sold by the Final Sale Date, the Parties may (i) extend the time period by written agreement or (ii) the Consignor shall arrange for the removal of the unsold Goods from TAA's premises within 20 days of the Final Sale Date at the Consignor's expense or title to the unsold Goods shall transfer to TAA.
- 3.02 TAA is responsible for providing all services related to the online auction and sale of the Goods, which may include, but is not limited to, researching and preparing the Goods for sale, describing the Goods, photographing the Goods, listing the Goods on its online auction website ("Website"), the cost for representation on the Website, communicating with prospective buyers about the Goods, administering the sale of the Goods on the Website (an "Auction"), closing the sale, and accepting payments for the Goods (collectively, the "Services").
- 3.03 The Consignor's name, or designated business name as noted in the Agreement, will not be disclosed by TAA to any potential or successful buyers or used to publicize an Auction or an Auction's results, unless agreed by the Parties in writing in advance.

### IV. COMMISSION AND FEES

- 4.01 For the Services, TAA will retain fees and commissions on the final bid price of the Goods, which will be calculated as follows:
- (a) Twenty-five percent (25%) of the final accepted bid on Goods selling in the auction for up to \$500;
  - (b) Twenty percent (20%) of the final accepted bid on Goods selling in the auction from \$501 to \$10,000;
  - (c) Fifteen percent (15%) of the final accepted bid on Goods selling in the auction for more than \$10,000;
  - (d) \$25 for any lot that does not sell.
- 4.02 The above fees and commission shall be based on the final accepted bid price of any individual Auction, and are not altered in any way if the Goods are sold individually or in a group as a lot.
- 4.03 No later than 45 business days after TAA receives full payment for the Goods sold in an Auction from the buyer, TAA shall pay the Consignor the net proceeds received and collected from the sale of the Goods sold after deducting any fees or commissions due, electronic transfer fees if applicable, and any other expenses, fees, and charges due hereunder or required by law ("Net Sale Proceeds").

## V. AUCTION DETAILS

5.01 TAA in its sole discretion and as it deems appropriate reserves the right to:

- (a) Select, change, or reschedule the venue, date, and time for an Auction;
- (b) Determine or change the rules and procedures related to all bidding and Auctions;
- (c) Group the Goods into a lot or lots, unless already grouped into a lot in Exhibit A;
- (d) Market and promote the sale of the Goods and an Auction;
- (e) Provide and edit any photographs, illustrations, and descriptions of the Goods for an Auction and other marketing materials, including any such materials provided by the Consignor;
- (f) Use any marketing materials before, during, and after an Auction without payment to the Consignor for such marketing or any materials used therein;
- (g) Set and revise estimates for the Goods at any time, up to and including the time of an Auction;
- (h) Accept or decline any bid on the Goods;
- (i) Consult any expert, conduct research, or employ other procedures to verify authenticity, attribution, or other qualities of the Goods whether before or after an Auction;
- (j) Include in any marketing materials and/or listings on the Website any information provided to or discovered by TAA in connection with the Goods;
- (k) Reject any of the Goods as unsuitable for sale and/or decide not to list the Goods on the Website or in any Auction; and
- (l) Ban the Consignor from submitting Goods or using the Website or the Services due to inaccurate or deceiving descriptions or representations of the Goods, or for any other reason as deemed appropriate by TAA.

5.02 TAA may use any third-party auction website or any website owned by TAA to market and sell the Goods. TAA may also sell the Goods privately to buyers it contacts directly if it thinks the best price is achieved in this manner, either before or after listing the Goods on any online auction website and at its sole discretion.

5.03 All bids to protect the Reserve price will be made on the Consignor's behalf by TAA. Neither the Consignor, nor anyone whom we determine in our sole discretion may be acting on the Consignor's behalf, may bid on the Goods. If the Consignor or the Consignor's agent is a successful bidder for any or all of the Goods, the Consignor:

- (a) Shall immediately pay TAA the Buyer's Premium Fee for the Goods;
- (b) May not avail itself of any warranty or rights afforded to a buyer on the Services or by law; and
- (c) Agrees that TAA may sell any such Goods at a subsequent auction without a reserve, with all reasonable expenses of the sale to be borne by Consignor, or sell such Goods in a private sale to any other person or entity who agrees to pay TAA an amount equal to or greater than 90% of the Reserve.

5.04 The Consignor understands and agrees that TAA and its subsidiaries, employees, and agents may bid on the Goods.

- 5.05 No sale shall be considered complete until the buyer has submitted final and full payment to TAA. In the event that TAA is unable to collect payment from a buyer, no payment shall be made to Consignor for the Goods. However, any fees associated with the Goods that TAA is unable to recover shall be paid to TAA by the Consignor within 15 days of receipt of an invoice from TAA for such fees. Once TAA deems the sale price unable to be collected, the Goods may be re-listed at the discretion of TAA or offered to the other bidders in the Auction. TAA shall not be responsible for collecting or attempting to collect any payments owed to it or the Consignor beyond charging or attempting to charge the payment method for the buyer and sending a final payment inquiry. The Consignor shall hold TAA harmless in the event of a non-paying buyer for any amount that would have been collected or any loss resulting from the resale of the property.

## **VI. RESERVES AND ESTIMATES**

- 6.01 TAA will impose a reasonable, confidential Reserve for certain Goods, at its sole discretion. The Reserve assigned to a lot is the lowest bid that must be achieved in order for a lot to be awarded to a bidder. Reserves are limited in use and are approved if TAA believes there is a reasonable chance the Reserve will be met and result in a sale. The Consignor agrees that it shall not have any claim against TAA for TAA's imposition of or failure to impose a Reserve on an Auction and any resulting bids on, sale of, or failure to sell the Goods.
- 6.02 TAA only guarantees that a certain Reserve will be set if there is a written agreement signed by the Parties before the relevant Auction opens.
- 6.03 TAA makes no representations or warranties about the actual price at which any of the Goods will sell, and the Consignor agrees not to rely on estimates as a prediction or guarantee of the value of the Goods or the price at which they will be sold.

## **VII. UNSOLD PROPERTY**

- 7.01 In the event any Goods are not sold at an Auction or fail to reach the Reserve or opening bid, TAA agrees to re-offer such Goods in another Auction or private sales pursuant to this Agreement, with no Reserve and at a reduced estimate as determined by TAA. If the Goods fail to sell a second time, the Goods will be shipped back to the Consignor at the Consignor's expense. The Consignor agrees to pay TAA \$25.00 for each of the Goods or lots that do not sell after a second attempt.

## **VIII. TERM; TERMINATION; WITHDRAWAL**

- 8.01 This Agreement shall commence as of the Effective Date and, unless earlier terminated as set forth in this Agreement, shall remain in effect until the Final Sale Date or the date that the last of the Goods is sold, whichever is earlier.
- 8.02 TAA may withdraw any of the Goods at any time before sale and/or terminate this Agreement immediately if, in its sole judgment:

- (a) There is doubt as to the authenticity, authorship, or attribution of any of the Goods;
- (b) There is doubt as to the Consignor's title or authority to place any of the Goods for sale;
- (c) Representations or warranties that the Consignor made to TAA are materially inaccurate;  
or
- (d) The Consignor has breached, or indicated that it intends to breach, any provision of this Agreement.

- 8.03 Withdrawal of Goods pursuant to Section 7.01 shall be the basis for immediate termination of this Agreement, and a cancellation fee of \$25.00 for each of the Goods or lot will apply.
- 8.04 The Consignor shall not sell or dispose of the Goods by any other means during the period of this Agreement, and the Consignor shall not withdraw the Goods from TAA for any reason without the signed consent of TAA. A breach of this paragraph shall be grounds for TAA to immediately terminate this Agreement.
- 8.05 If the Consignor withdraws any of the Goods from sale for any reason or if TAA withdraws any Goods for any reason described in Section 7.02, the Consignor shall pay TAA a withdrawal fee of twenty percent (20%) of the pre-sale estimate or Reserve, with a minimum fee of \$25.00 per individual Good or lot, as specified in Exhibit A, plus any other fees and charges the Consignor is obliged to pay under this Agreement.

#### **IX. LOSS AND DAMAGE TO GOODS; FEES**

- 9.01 The Consignor shall be solely responsible for maintaining insurance on the Goods until the Auction is concluded and the Goods are shipped to the buyer. TAA shall not be liable in any way for damages, whether general, special, incidental, or consequential, however caused, whether by loss, theft, or damage, including negligence, arising out of consignment and/or sale of the Goods, and including the packing and shipping of the Goods. Any insurance claims arising from the damage of the Goods during shipment or transportation shall be the sole responsibility of the buyer.
- 9.02 The Consignor agrees to pay a loss and damage liability fee on the Goods equal to (a) 1.5% of the final bid if the Goods are sold, or (b) any pre-sale estimates recorded by TAA if the Goods are not sold.

#### **X. WARRANTIES AND INDEMNIFICATION**

- 10.01 The Consignor represents and warrants that:
- (a) It has the right, power, and authority to consign the Goods for sale and to enter into this Agreement and to perform all obligations hereunder;
  - (b) The Goods at all times herein shall remain free and clear of all liens, encumbrances, or claims of third parties of any kind whatsoever;
  - (c) Good title will pass to the buyer upon sale;
  - (d) The information the Consignor has provided to TAA is true and correct;
  - (e) There is no restriction on TAA's right to photograph, illustrate, describe, or exhibit the Goods or to use photographs or other materials provided to TAA by the Consignor;

- (f) No import, export or any other laws, rules, or regulations of any governmental authorities have been violated in connection with the Consignor's dealings with the Goods; and
  - (g) Unless otherwise noted, the Consignor will pay any and all taxes and/or duties that may be due in connection with the sale of the Goods.
- 10.02 The Consignor shall defend, indemnify, and hold harmless TAA, its employees, subsidiaries, and agents against any and all claims, actions, damages, losses, liabilities, and expenses (including reasonable attorney's fees) arising out of or resulting from any and all claims relating to: (a) breach or alleged breach (whether alleged by TAA or by a third party) of the Consignor's obligations, representations, and warranties as set forth in this Agreement; (b) any act or omission by the Consignor relating to the Good, whether alleged by TAA or by a third party; and (c) any claim by a third party against the Goods or proceeds it generates.
- 10.03 TAA shall retain full copy, reproduction, and photographic rights to any pictures taken during any and all processes and transactions, even if the transaction is withdrawn, cancelled, substituted, or changed in any way. The Consignor's warranties and indemnification shall survive the completion of the transactions contemplated by this Agreement, and shall apply to all Goods sold or consigned for sale pursuant to this Agreement.
- 10.04 TAA agrees to use professional skill, knowledge, and experience to the best advantage of both Parties in preparing for and conducting the sale of the Goods. However, TAA cannot guarantee any sale price for any of the Goods, and shall not be responsible if any of the Goods are sold for an amount less than what the Consignor was expecting and/or do not sell.

#### **XI. LIMITATIONS ON LIABILITY**

- 11.01 TAA SHALL NOT BE LIABLE TO THE CONSIGNOR FOR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOST DATA, PERSONAL INJURY, OR PROPERTY DAMAGE, EVEN IF TAA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TAA SHALL NOT BE LIABLE FOR ANY DAMAGES, LIABILITY, OR LOSSES INCURRED BY YOU ARISING OUT OF: (i) YOUR USE OF OR RELIANCE ON THE SERVICES; (ii) ANY ERRORS OR OMISSIONS ON THE WEBSITE OR ANY OTHER MATERIALS USED IN CONNECTION WITH THE SALE OF THE GOODS; (iii) ERRORS IN EVALUATION OF THE GENUINENESS, ATTRIBUTION, AUTHORSHIP, PROVENANCE, ORIGIN, CONDITION, VALUE, OR ANY OTHER QUALITY OF THE GOODS; (iv) DELAY IN THE SALE OF THE GOODS, INCLUDING DELAYS BY THIRD-PARTY ONLINE PLATFORMS; (v) FAILURE OF AN AUCTION TO TAKE PLACE; (vi) FAILURE TO SELL THE GOODS AT ALL, AT THE RESERVE (IF ANY), OR WITHIN THE ESTIMATES; (vii) ANY TRANSACTION OR RELATIONSHIP BETWEEN YOU AND ANY THIRD PARTY, OR (viii) ANY OTHER LOSS, DAMAGE, OR EXPENSE RELATING TO THE GOODS OR THE SERVICES, EVEN IF TAA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 11.02 TAA'S MAXIMUM LIABILITY WITH RESPECT TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT, OR OTHERWISE) IS LIMITED TO AN AMOUNT EQUAL TO THE AMOUNTS PAID OR PAYABLE BY THE CONSIGNOR UNDER THIS AGREEMENT. THIS INCLUDES ALLEGED ACTS OF NEGLIGENCE, OR BREACH OF CONTRACT, AND REGARDLESS OF THE FORM IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT. THE FOREGOING SHALL CONSTITUTE THE CONSIGNOR'S EXCLUSIVE REMEDY.

## **XII. MISCELLANEOUS PROVISIONS**

- 12.01 In addition to any other fees and charges that may be due, TAA may, without further obligation or notification to the Consignor, collect a Buyer's Premium Fee as described online in the Website's Terms and Conditions and, in our sole discretion, pay a portion thereof or of the Seller's Commission to any party who assisted TAA with the sale of the Goods or who brought the Consignor or the Goods to our attention.
- 12.02 The Consignor authorizes TAA as its agent to accept the return and rescind the sale of any of the Goods at any time if, in our sole judgment, TAA determines that colorable legal grounds exist for rescission or if TAA, in its sole judgment, determines that it or the Consignor may be subject to liability (including, for example, liability under a warranty of authenticity or title that TAA gives to a buyer). Within 10 days following receipt of notice of rescission from TAA, the Consignor shall reimburse TAA for the Net Sale Proceeds received by it for such Goods, plus the out-of-pocket expenses incurred by TAA in connection the rescission, after which TAA will return the Goods to the Consignor unless otherwise directed by a controlling governmental authority (such as a court).
- 12.03 Nothing contained in this Agreement shall be construed as any agency, partnership, or other joint enterprise between the Parties. Both Parties shall be solely and individually responsible for payment of their taxes and payment of their employees and independent contractors, including payment of applicable Social Security, Workers' Compensation, Unemployment Insurance, and other legal requirements, as applicable.
- 12.04 Either party shall be excused from the performance of this Agreement and shall not be liable for any delay in whole or in part, to the extent caused by the occurrence of any fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, or any other similar cause beyond the reasonable control of the excused party.
- 12.05 This Agreement shall be binding upon the Parties and their legal representatives and permitted successors and assigns. The Consignor may not assign this Agreement, either voluntarily or by operation of law, without TAA's prior written consent. If the Consignor is acting as an agent (or fiduciary) for a disclosed or undisclosed principal (or beneficiary), (i) the representations and warranties in the Agreement, and (ii) all agreements to defend, indemnify, and hold TAA harmless, shall be binding on both the Consignor and its principal (or beneficiary), jointly and severally.
- 12.06 All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows: when delivered personally to the recipient's address; three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated on this Agreement; or upon sending an email.
- 12.07 This Agreement will be governed by and construed in accordance with the laws of the State of California without regard to the conflicts of laws provisions thereof.

- 12.08 Any disputes, claims, or controversies concerning this Agreement (collectively, "Disputes"), other than with respect to intellectual property rights, shall be resolved by binding arbitration in San Francisco, California, conducted by a single arbitrator and be governed by JAMS pursuant to its Comprehensive Arbitration Rules & Procedures. All Disputes concerning intellectual property rights shall be resolved by the state or federal courts located in San Francisco, California. The Parties hereby consent to personal jurisdiction for such purpose and waive, to the fullest extent allowed by law, any trial by jury. In any action or proceeding to enforce rights under this Agreement, the prevailing party shall be entitled to recover reasonable legal costs and attorneys' fees.
- 12.09 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.
- 12.10 This Agreement constitutes the entire agreement, and supersedes all prior negotiations, understandings or agreements (oral or written), between the Parties concerning its subject matter. The failure of either party to enforce its rights under the Agreement at any time for any period will not be construed as a waiver of such rights. No change, modification or waiver to the Agreement will be effective unless in writing and signed by both Parties. In the event that any provision of the Agreement is determined by any court of competent jurisdiction to be unenforceable, such provision will be deemed to be modified to permit its enforcement to the maximum extent permitted by law.

**TURNER AUCTIONS + APPRAISALS, LLC**

By: \_\_\_\_\_

BY SIGNING BELOW, YOU CERTIFY THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

By: \_\_\_\_\_  
Consignor



