



CONDITIONS GOVERNING EXHIBITION LOANS TO THE CITY AND COUNTY OF DENVER

DEN ARTS PROGRAM

1. Definitions:

- A. "Conditions" are these Conditions Governing Exhibition Loans to the City and County of Denver.
- B. "Purchase Order" is the Purchase Order issued by the City to which these Conditions are attached and incorporated therein, pursuant to which the Borrower borrows the Borrowed Objects from the Lender, including but not limited to the General Conditions of Purchase incorporated therein by reference.
- C. "Lender" or "Artist" is the Party with the right to loan and who has loaned the Borrowed Objects to the Borrower in accordance with these Conditions and the Purchase Order. "Lender" shall include all natural persons involved with the Exhibition Program on behalf of Lender, whether such persons are employees, contractors, or agents of Lender.
- D. "Borrower" or "City" is the City and County of Denver, Department of Aviation, operating Denver International Airport ("DEN").
- E. "Borrowed Objects" are single or plural articles, which may be paintings, photographs, sculpture or other items borrowed by the Borrower from the Lender for display at DEN, pursuant to the Purchase Order and these Conditions, as identified in more detail in the Inventory.
- F. "Exhibition Program" is the City's program to curate and display Borrowed Objects at DEN for the benefit of the traveling public.
- G. "Exhibition Curator" is the City's employee or agent responsible for managing the Exhibition Program and Lender's regular point of contact for matters related to the Borrowed Objects.
- H. "Inventory" is the document prepared by the Lender and approved by the Exhibition Curator documenting, among other terms, a description of the Borrowed Objects, the duration of the Borrower's display of the Borrowed Objects, the location of the display of the Borrowed Objects, and the Lender's valuation of each of the Borrowed Objects. The Inventory may be attached to the Purchase Order, but whether or not attached, shall be incorporated in the Purchase Order. The Inventory may be updated at any time during the Term. Lender and Borrower agree that the Lender-signed version of the Inventory maintained by the Exhibition Curator in Borrower's files is the true and accurate version of the Inventory.
- I. "Condition Assessment" is the document completed by the Exhibition Curator or their designee documenting the physical condition of the Borrowed Objects at the time the Borrowed Objects are delivered to Borrower's possession, when the Borrowed Objects are put on display at DEN, when the Borrowed Objects are divested from Borrower's possession, and any time as determined by the Exhibition Curator.
- J. "Term" means the duration of the Borrower's display of the Borrowed Objects as stated in the Inventory together with any additional period of time during which the Borrower has agreed in writing signed by the Exhibition Curator to retain possession of the Borrowed Objects.

2. Management of Exhibition Program; Requirements for Borrowed Objects. The Exhibition Program entertains and informs people in transit at DEN by providing diversion from what can be a stressful event. The exhibits are engaging, aesthetically pleasing and enlightening to visitors, thereby enhancing their experience at DEN. The content of the exhibits are wide and varied, and adhere to the highest artistic standards. Only the highest quality authentic objects are selected for display. Borrowed Objects shall remain in the possession of the Borrower during the time specified in the Purchase Order. The Borrower reserves the right to withdraw or relocate Borrowed Objects at any time and will notify Lender in advance of such withdrawal or relocation. The content or subject matter of the exhibitions must be appropriate for viewing

in an airport venue. The Borrower does not accept for display Borrowed Objects that include political statements, nudity, lewd or pornographic depictions, violent or menacing images, weapons, ethnic slurs, or any controversial materials that could make passengers apprehensive about flying or traveling through DEN. The Borrower reserves the right to refuse to accept delivery of or display for exhibit any Borrowed Objects or work it deems unacceptable due to poor craftsmanship or significant departure from image representation. The Lender shall not install any audio or video displays of any type in, on, or around the Borrowed Object without the prior written approval of the Borrower documented by the Exhibition Curator.

3. Delivery and Installation of Borrowed Objects; Removal from Display; Return of Borrowed Objects.

- A. Lender shall deliver Borrowed Objects to DEN in accordance with the Exhibition Curator's instructions.
- B. All costs of delivery of the Borrowed Objects to the Borrower's possession and divestiture of the Borrowed Objects from the Borrower's possession, including but not limited to packaging, shipping, and courier fees, shall be borne solely by the Lender.
- C. Lender shall comply with all written and verbal instructions from the Exhibition Curator while at DEN, including but not limited to all requirements for the transportation of the Borrowed Objects from the parking garage to the installation location for the exhibition. Lender shall install the Borrowed Objects in the exhibition pursuant to the Exhibition Curator's directions (including directions of any staff or contractors assisting the Exhibition Curator).
- D. If directed by the Exhibition Curator, Lender shall remove the Borrowed Objects from the exhibition display pursuant to the Exhibition Curator's directions (including directions of any staff or contractors assisting the Exhibition Curator); otherwise, the Exhibition Curator will direct the removal of the Borrowed Objects from the exhibition display and will divest the Borrowed Objects from the Borrower's possession and return the Borrowed Objects to the Lender, the Lender's duly authorized agent, or a legal representative, according to the written instructions of the Lender. In the event of a change of legal ownership of any Borrowed Objects, the new owner shall notify the Borrower in writing as soon as possible and shall establish legal right to possession of the object(s) by proof satisfactory to the Borrower.
- E. If Lender or its successor in interest does not provide written instructions (or communicate its efforts to provide such instructions) to Borrower for the return of any Borrowed Objects within thirty (30) days from the date of the removal of the Borrowed Objects from the exhibition display, the Borrower shall store the Borrowed Objects at Borrower's facilities at Lender's sole risk for a period of forty-five (45) days, after which the unclaimed Borrowed Objects shall be disposed of in accordance with the City's policies governing unclaimed or abandoned property. From the time that any Borrowed Objects are stored by Borrower in accordance with this paragraph, such Borrowed Objects shall no longer be covered by Borrower's insurance policies and Borrower shall not be held liable to Lender or any party claiming any rights or interest in the Borrowed Objects.
- F. While present in the Secured or Sterile areas at DEN, Lender shall remain in the physical presence of the Exhibition Curator or any City staff identified by the Exhibition Curator to be escorting Lender and Lender shall comply with all instructions of Exhibition Curator.

4. Condition of Borrowed Objects; Care of Borrowed Objects while in Borrower's Possession. By accepting the Purchase Order, Lender certifies that the condition of the Borrowed Objects as stated in the Inventory is accurate, that the value assigned by Lender to each of the Borrowed Objects as stated in the Inventory is accurate, and that the Borrowed Objects will withstand the ordinary strains of packing, handling and transportation into secured and restricted areas at DEN. While the Borrowed Objects are in Borrower's possession during the Term, Borrower will extend the same level of

care to the Borrowed Objects as given to similar property owned by the Borrower; provided that Borrower shall not be required to exercise any standard of care outside the Term, including but not limited to any time when the Borrowed Objects are stored by Borrower at the Lender's risk or divested from Borrower's possession as provided in these Conditions. The Lender and Borrower understand that all objects, including the Borrowed Objects, are subject to gradual inherent deterioration for which neither party is responsible. The Lender warrants to the City that the fabrication of the Borrowed Objects is free of defects in workmanship or materials, including inherent vice. The Lender assumes responsibility for any defects due to faulty workmanship or materials, or to inherent vice, which may appear during the Term.

5. Condition Assessment. The Exhibition Coordinator will inspect the Borrowed Objects and prepare a Condition Assessment to document the physical condition of the Borrowed Objects at certain times, including but not limited to (a) delivery of the Borrowed Objects to Borrower's possession, (b) installation of Borrowed Objects in the exhibition, (c) removal of Borrowed Objects from the exhibition, and (d) divestiture of Borrowed Objects from Borrower's possession. Evidence of damage to the Borrowed Objects at the time of delivery or while in Borrower's possession during the Term will be documented in a Condition Assessment and reported immediately to the Lender. Borrower may, at its sole discretion, refuse delivery of any damaged Borrowed Objects or immediately return them to the Lender. Borrower will not undertake any alteration or repair of Borrowed Objects.

6. Insurance Coverage for Borrowed Objects.

- A. The Borrowed Objects will be insured under the City's fine art insurance policy during the Term. The Borrower will maintain its insurance policy covering the Borrowed Objects in the amount of the value specified by the Lender on the Inventory, which amount must reflect fair market value of the Borrowed Objects. In the case of damage or loss, the City's insurance company may ask for the Lender to substantiate the insurance valuation of any Borrowed Objects. If Borrowed Objects can be repaired to the Lender's specifications, Borrower's liability (including that of Borrower's insurance carrier) shall be limited to the cost of such repair. Subject to the limitations imposed herein and the terms of the City's fine art insurance policy, in the event that any Borrowed Objects listed on the Inventory suffer damage while in the possession of the Borrower, the Borrower may, at its sole discretion, either repair said item or compensate the Lender for the declared insurance value of the item.
- B. The Lender, by accepting the Purchase Order, agrees that in the event of loss or damage to any Borrowed Objects, Lender's recovery, if any, shall be limited to the sum of: (1) the amount paid by the insurer with respect to the claim for the Borrowed Objects, and (2) the amount of the insurance policy deductible applicable to such claim which is paid by the Borrower; provided, however, that Lender shall be entitled to recover any amount greater than the declared value of the Borrowed Objects as documented on the Inventory, subject to adjustment of such value by Borrower's insurance carrier. Lender hereby releases the City, its officers, officials and employees from liability from any and all claims arising out of such loss or damage.
- C. The Lender agrees that it shall, within 180 days of discovering any cause for claim against the City related to the Borrowed Object(s), notify the City in writing of such damage, such notice being sent to:

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| Risk Manager | and | DEN Arts Program Director |
| Denver International Airport | | Denver International Airport |
| Airport Office Building | | Airport Office Building |
| 8500 Peña Blvd. | | 8500 Peña Blvd. |
| Denver, CO 80249 | | Denver, CO 80249 |

Failure to comply with this provision shall result in a waiver of the claim by the Lender.

7. Reproduction, Credit and Copyright. Unless otherwise notified in writing by the Lender, and subject to copyright restrictions, it is understood that the Borrower may photograph and reproduce Borrowed Objects in its publications and for publicity purposes, including video and film, and that reproductions thereof may be made and distributed by the Borrower for educational purposes. It is understood that Borrowed Objects may be photographed by the general public according to guidelines established by the Borrower. Unless otherwise stated in writing by the Exhibition Curator, the Borrower will give credit to the Lender in any publications as specified on the Inventory. The Lender is responsible for taking all actions necessary to comply with copyright or other intellectual property protection for any Borrowed Objects. Pursuant to Section 11 of these Conditions, Lender shall indemnify and defend the City from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings resulting from, or arising out of, directly or indirectly, the Borrowed Objects or any action performed pursuant to the Purchase Order which infringes upon any patent, trademark, service mark, property rights by a third party or copyright protected by law.

8. Sales. No Borrowed Objects may be withdrawn by the Lender during the Term, unless the Borrower agrees to such withdrawal in the City's sole discretion. If the Lender negotiates the sale of any Borrowed Objects during the Term, the Lender shall immediately notify the Exhibition Curator in writing of any such sale. The Borrower is not responsible to the Lender or any purchaser of any Borrowed Objects with respect to such transaction and shall have no obligations with respect thereto. The Borrower does not take a commission from the sale of any Borrowed Objects.

9. Advertising. The Lender shall not install any sign, either lighted or unlighted, poster, symbols, wording, or other display of advertising media, including material supplied by the manufacturers of merchandise offered for sale, as well as other types of display specified in the DEN Design Standards or DEN Tenant Development Guidelines without the prior written approval of the Borrower. The Lender shall coordinate with the Borrower to ensure any advertising generated by Lender will not infringe upon any of advertising agreements that the City enjoys in its operation of DEN. The Lender must seek approval from the Borrower for advertiser and/or sponsorship recognition associated with the Borrowed Objects.

10. Lender's Insurance Requirements. If Lender, including any employee, contractor, or agent of Lender, shall be physically present at DEN in accordance with Lender's requirements hereunder, including but not limited to installation and removal of Borrowed Objects from the exhibition display, Lender shall obtain and maintain for the duration of physical presence at DEN all of the applicable minimum insurance coverage forms and amounts set forth in DEN Rules and Regulations Part 230 and all other applicable laws and regulations. The Lender and the Borrower understand and agree that the City, its elected and appointed officials, employees, agents and volunteers are relying on, and do not waive or intend to waive by any provisions of the Purchase Order, the monetary limitations and any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 to 120, or otherwise available to the City, its elected and appointed officials, employees, agents and volunteers.

11. Defense and Indemnification.

- A. Lender hereby agrees to defend, indemnify, reimburse and hold harmless the 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 Borrowed Objects or any action performed pursuant to the Purchase Order ("**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 the City for any acts or omissions of Lender or its subcontractors either passive or active, irrespective of fault, including the City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.
- B. Lender's duty to defend and indemnify the City shall arise at the time written notice of the Claim is first provided to the City regardless of whether claimant has filed suit on the Claim. Lender's duty to defend and

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

- C. Lender will defend any and all Claims which may be brought or threatened against the City and will pay on behalf of the 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, including but not limited to time expended by the City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars and no cents (\$200.00) per hour of City Attorney time. Such payments on behalf of the City shall be in addition to any other legal remedies available to the City and shall not be considered the City's exclusive remedy.
- D. Insurance coverage requirements specified in these Conditions shall in no way lessen or limit the liability of Lender under the terms of this indemnification obligation. Lender 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 the Term or the Purchase Order.

12. Incorporation of Purchase Order; Order of Precedence. These Conditions, the Inventory, and any Condition Assessment are explicitly incorporated in the Purchase Order, which by definition includes and incorporates the City's General Conditions of Purchase by reference. Except as explicitly provided herein, in the event of an irreconcilable conflict between a provision of the Purchase Order, the Inventory, any Condition Assessment, or these Conditions, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

Conditions;
Inventory;
Condition Assessment; and
Purchase Order.

12. Lender's Authority. By acceptance of the Purchase Order, the Lender warrants that the Lender is fully authorized to lend the Borrowed Objects to the Borrower and expressly agrees to comply with all provisions of these Conditions, the Purchase Order, and any other document or writing referenced or incorporated herein.