

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

**The Trustees of the Corcoran Gallery of
Art,**

Petitioner,

v.

The District of Columbia,

Respondent

**Civil Action No. 2014 CA 003745 B
Initial Conference Date: Sept. 23, 2014
9:30 AM**

MOTION FOR ENTRY OF PROPOSED ORDER

COMES NOW the Petitioner, The Trustees of the Corcoran Gallery of Art, and move the Court for the entry of an order, approving under the doctrine of cy prè, the Trustees' entry into and implementation of certain agreements with the National Gallery of Art and The George Washington University, related to the Corcoran Gallery of Art and the Corcoran College of Art + Design.

The grounds for the Motion, as more fully set forth in the Memorandum of Law in Support and the Declaration of Lauren Stack filed concurrently herewith, are that under DC Code §9-1304.13, it is impracticable or impossible for the operations of the Corcoran to continue in their current form, and the agreements with the National Gallery of Art and The George Washington University present the best method of continuing to implement the charitable intent at the formation of the Corcoran.

The form of order is attached. The Trustees have discussed the proposed form of order with the Office of the Attorney General of the District of Columbia, and believe that Attorney General will support the form of order.

The Trustees understand that the Motion will be heard at 2:30 in the afternoon of July 18, 2014.

Respectfully submitted,

/s/ Charles A. Patrizia (D.C. Bar No. 228999)

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Counsel for Petitioners

June 25, 2014

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of June, 2014, a copy of Petitioner's Motion for Entry of Proposed Order with Memorandum in Support and Exhibits was sent by first class, postage prepaid U.S. Mail and electronic mail to:

Bennett Rushkoff
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/s/Charles A. Patrizia
Charles A. Patrizia

LEGAL_US_E # 110695107.1

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

**The Trustees of the Corcoran Gallery of
Art,**

Petitioner,

v.

The District of Columbia,

Respondent

Civil Action No. 2014 CA 003745 B

**Initial Conference Date: Sept. 26, 2014
9:30 AM**

PROPOSED FORM OF ORDER GRANTING CY PRÈS

The Petitioner, The Trustees of the Corcoran Gallery of Art, has brought on a petition seeking the Court's grant of cy prèS with regard to its entry into and performance of certain agreements with National Gallery of Art and The George Washington University. The Court, having considered the Petition, the record before it, and having received the views of the Attorney General of the District of Columbia,

FINDS AND DETERMINES:

1. The Petitioner is a non-profit institution, initially established under a Deed of Trust given and made in the District of Columbia. The petitioner is a federally chartered non-profit corporation, but is subject to District of Columbia law. The Petitioner currently operates the Corcoran Gallery of Art and the Corcoran College of Art + Design. Since its founding under the Deed of Trust of William Corcoran, the Petitioner has received other gifts and contributions, some of which have included conditions and restrictions. These gifts and contributions include works of art, other physical objects, and monies. The Petitioner owns and operates the Corcoran Building, a designated national historic landmark located in the District of Columbia, and which houses its Gallery and the College.

2. The current financial circumstances of the Petitioner do not permit the assured, continued, long term operation of the Corcoran Gallery of Art and the Corcoran College of Art + Design as they have been operated in the contemplation and intent of the Deed of Trust. The current financial circumstances of the Petitioner do not permit the renovation and rehabilitation of the Corcoran Building.

3. If required to continue to operate in the current mode, the Petitioner would exhaust its available financial resources, and would be required to sell portions of its collection to maintain its operations. Doing so would result in the loss of its accreditation as a museum and would result in significant harm to the institution, its reputation, its ability to attract and retain curatorial staff and faculty, and otherwise undermine its ability to continue in proper operation.

4. As a result of its financial circumstances, the purposes for which the petitioner was established have become impracticable or impossible to achieve as a matter of continuing operation, within the meaning of DC Code Section 19-1304.13.

5. Seeking to address the financial circumstances and to continue to implement the underlying intent of the Deed of Trust, the petitioner has negotiated and, subject to the order of this Court, executed agreements with the National Gallery of Art and The George Washington University. If implemented the agreements will:

- a. assure a long-term, sustainable future for the Gallery and the College;
- b. assure the rehabilitation and renovation of the Corcoran Building that houses the Gallery and the College;
- c. assure the preservation and display of the Corcoran's valuable collection of art and its retention, to the extent reasonably possible, within the District of Columbia;
- d. assure the continued use of space within the Corcoran Building for the display of art; and
- e. assure the continuing fulfillment of the charitable intent of the original grantor and subsequent contributors.

5. It is therefore appropriate that the Court modify the terms of the Deed of Trust and related instruments, to allow the distribution and use of the Petitioner's property and assets in a manner consistent with the grantor's intent.

THEREFORE, IT IS HEREBY ORDERED AND DECREED:

A. The entry of the Trustees of the Corcoran Gallery of Art into the following Agreements (the "Agreements"), is hereby approved and the Corcoran Deed of Trust and any other applicable instrument is deemed to be revised to the extent necessary to permit the entry of the Trustees of the Corcoran Gallery of Art into the following Agreements:

1. The Accession and Custodial Transfer Agreement between the Trustees and the National Gallery of Art, dated as of May 15, 2014.
2. A License Agreement between the Trustees and the National Gallery of Art, in a form substantially similar to that attached to the Accession and Custodial Transfer Agreement as Exhibit B.
3. The Asset Contribution Agreement between the Trustees and The George Washington University, dated as of May 15, 2014
4. A License Agreement between the Trustees and The George Washington University, in a form substantially similar to that attached to the Asset Contribution Agreement as Exhibit B.
5. A side letter dated as of June 17, 2014, between the Trustees and The George Washington University, relating to the continued use of space in the Corcoran Building as exhibition and gallery space.
6. The letter dated as of June 17, 2014, between the Trustees and the National Gallery of Art, relating to the policy for the distribution of Custodial Art that is not accessioned by the National Gallery of Art.

B. The actions necessary by the Trustees of the Corcoran Gallery of Art to perform and implement the Agreements listed in Paragraph A, above according to their terms, are hereby

approved and the Corcoran Deed of Trust and any other applicable instrument is deemed to be revised to the extent necessary to permit the Trustees to perform and implement the Agreements according to their terms. The Trustees, and their employees and agents, shall have no liability to any person as a result of their actions to enter into, and to perform and implement the Agreements.

C. Pending the closing of the Agreements, the Trustees of the Corcoran shall continue to operate the Corcoran Gallery of Art and the Corcoran College of Art + Design in a manner consistent with the restrictions applicable to the assets, as they have been understood and implemented by the Trustees previously.

D. The National Gallery of Art shall take and hold the Corcoran's collection of art, in the manner and for the purposes described in the Accession and Custodial Transfer Agreement, and shall adhere to the restrictions as otherwise applicable to the collection, as those restrictions have been understood and implemented by the Trustees previously.

E. The George Washington University shall take and hold the assets as described in the Asset Contribution Agreement, in the manner and for the purposes described therein and in the letter of June 17 described in subparagraph A.5 above, and shall adhere to the restrictions applicable to such assets as those restrictions have been understood and implemented by the Trustees previously.

F. As and to the extent that elements of the Corcoran's collection of art are not accessioned by the National Gallery of Art into its collection, in the manner and for the purposes set forth in the Accession and Custodial Transfer Agreement, the Trustees of the Corcoran Gallery of Art shall, in conjunction with the National Gallery of Art, implement the policy and plan for the distribution of the remaining collection, as described in the letter of June 17 identified in subparagraph A.6 above, in accordance with its terms and subject to its provisions.

G. The Trustees of the Corcoran Gallery of Art, following the closing of the Agreements, shall hold and retain the existing federal charter, and shall continue to operate as a non-profit entity, dedicated to "encouraging American genius," as set forth in the Corcoran Deed of Trust.

H. The implementation of the Agreements shall be subject to District of Columbia law.

SO ORDERED, this __day of ____, 2014:

Robert D. Okun, Judge
Superior Court of the District of Columbia

Distribution to:

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**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

**The Trustees of the Corcoran Gallery of
Art,**

Petitioners,

v.

The District of Columbia,

Respondent,

Civil Action No. 2014 CA 003745 B

**MEMORANDUM OF LAW IN SUPPORT OF THE TRUSTEES’
MOTION FOR ENTRY OF A PROPOSED FORM OF
ORDER GRANTING CY PRÈS DETERMINATION**

INTRODUCTION

Petitioner The Trustees of the Corcoran Gallery of Art (the “Trustees”) have filed a petition seek a determination under DC Code § 19-1304.13, approving under the doctrine of cy prè, the Trustees’ entry into and implementation of certain transactions regarding the Corcoran Gallery of Art (the “Gallery”) and the Corcoran College of Art + Design (the “College”). The Trustees have filed a Motion seeking the entry of an order granting the cy prè, in the form and on the conditions set forth in a Proposed Form of Order, filed concurrently with the Motion. For the reasons set forth in the Petition and this Memorandum in Support, and in the Declaration of Lauren Stack filed with the Motion, the Court should grant the motion, and enter the order in the form proposed.

It is financially impracticable, and indeed in the medium- and longer-term, financially impossible, to continue the operations of the Gallery and College in their current form. To resolve the financial distress, the Trustees have negotiated and seek approval to implement arrangements that will (a) assure a long term, sustainable future for the Gallery and College, (b) assure the rehabilitation and renovation of the Corcoran building that houses the Gallery and

College, (c) assure the preservation of the Corcoran's valuable collection of art, while at the same time assuring that the works will be available for exhibition to the public, primarily in the District of Columbia; and (d) assure the continuing fulfillment of the charitable intent of the Corcoran's original grantor.

FACTUAL BACKGROUND

The Trustees of the Corcoran Gallery of Art is a federally chartered non-profit institution, initially established under a Deed of Trust by William Corcoran in 1869, and chartered by Act of Congress of May 24, 1870. A copy of the Corcoran Deed of Trust (the "Deed of Trust") and a copy of the federal statute incorporating the Trustees of the Corcoran Gallery of Art are attached to the Affidavit of Lauren Stack. The Trustees have elected to be subject to the DC Non-profit Act.

Mr. Corcoran, a successful and wealthy businessman, by the Deed of Trust, established the first art museum in the District of Columbia, and indeed one of the first art museums in the United States. Upon the formation of the Trust, and thereafter the grant of the Charter,¹ the initial Trustees took possession of the Renwick building and the collection of art, and implemented the purposes of the Trust. Over the succeeding years, the Trustees added to and enhanced the collection. As of the current time, the Corcoran Gallery's collection of art and other pieces numbers more than 18,000 individual pieces and is recognized nationally for the significance of certain works and for certain aspects of the collection.²

By 1890, the Corcoran Gallery and College had outgrown the limited space available in the Renwick building. In order to meet the needs for space, the Trustees acquired then vacant land at the corner of 17th Street, NW and New York Avenue, across from the White House grounds. On that land, they built a new building, designed by William Flagg and known as the

¹ The need for a federal charter arose because the District of Columbia followed the rule in *Trustees of Philadelphia Baptist Association v. Hart's Executors*, 17 U.S. 1 regarding the failure of a charitable trust as a result of Virginia's repeal of the English Statute of Charitable Uses. *Hart* was reversed in *Vidal v. Girard* in the District (following Maryland and Virginia law), a charitable trust, in order to be outside the Rule against Perpetuities, was required to incorporate.

² The Gallery's collection includes not only traditional works of art (paintings, works on paper, and sculpture), but also a nationally important collection of photography, ceramics, lace, stained glass, and other objects.

Flagg building. The building is listed on the National Register of Historic Places and is generally considered a prime example of Beaux Arts architecture. Since its completion in 1897, it has housed the Gallery and major aspects of the College.

In the early decades of the 20th Century, Senator William Clark became associated with the Gallery, through the urgings of the then-Chairman of the Board of the Trustees. Upon Senator Clark's death, he bequeathed a significant portion of his collection to the Corcoran³ and his widow and heirs donated the funds to construct an addition to the Flagg Building, now known as the Clark Wing, to house and display the Clark Collection. Since the completion of the Clark Wing, the Corcoran building (the Flagg Building and the Clark Wing) has housed the Gallery and major operations of the College.

THE FINANCIAL CONDITION OF THE CORCORAN

From inception, the operations of the Gallery and College depended on a combination of support from donated funds, including the funds originally given by Mr. Corcoran and donations from others, and support from revenues received, e.g., as admissions fees, college tuition and fees, and similar revenues. Over time, given inflation and other sources of cost increases, the dependency on donated funds became greater. Because the Corcoran is an accredited museum, the Trustees have adhered to guidelines published by the American Association of Museums and the Association of Museum Directors, under which proceeds from the sale of art are directed by the Trustees to an account maintained within the overall financial assets of the Corcoran dedicated to acquisition of additional works. That is, proceeds from the sale of art have not been allocated by the Board to maintenance or operation of the Building, or the Gallery or the College, but have been separately maintained to be used for acquisition of additional pieces to the collection. Adherence to these guidelines assures the Corcoran remains accredited and therefore qualified to receive loans of art from other museums, attract qualified staff, participate in special

³ The Clark Will bequeathed the collection to the Metropolitan Museum of Art in New York City, where Senator Clark had moved following the end of his Senate term. The Metropolitan declined to receive the collection under the conditions Clark had included in his will, and under the terms of the will, the collection was then bequeathed to the Corcoran. The Corcoran trustees, after consideration of the conditions and discussion of the terms with the Clark family to assure a mutual understanding, accepted the bequest.

and traveling exhibitions, and to maintain relationships with other museums.⁴ A determination by the Corcoran not to adhere to the guidelines would dramatically undermine the Corcoran's reputation within the museum field, and would likely substantially undermine its ability to recruit and retain qualified curatorial and other key museum staff, undercut its ability to raise funds, and substantially hinder if not eliminate its ability to participate in significant traveling exhibitions.

As is true of virtually all such institutions, the Trustees have maintained a staff and conducted programs seeking financial contributions from individuals, foundations and corporate sponsors. These programs range from specific campaigns for capital purposes (e.g., the construction of the Flagg Building or the Clark Wing, or their maintenance), campaigns for general purposes, campaigns in support of the College specifically, and campaigns to support specific exhibitions or shows.

While the fundraising financial campaigns have produced support that has varied in amount from year-to-year and purpose-to-purpose, the overall financial situation of the Corcoran has for several decades deteriorated. This deterioration is due to several factors. In 1939, at the urging of Andrew Mellon, the Congress created the National Gallery of Art ("NGA"). The NGA as a national institution receives federal funding support (while also seeking donations), and is open free of charge all year. Its location on the National Mall, its prestige as a national institution and its greater funding resources have undercut the Corcoran's separate role as a museum within the District. This effect has been compounded by the establishment of other national galleries and museums related to the Smithsonian Institution or the National Gallery, and that are located on or close to the National Mall and in the area between the White House and the Capitol, thus establishing a major tourism nexus away from the Corcoran's location west of the White House. Because those museums and galleries are open free of charge, the Corcoran's model of depending in part on admission fees from patrons has been deeply undercut, as has been seen in many galleries across the country. While the Corcoran has benefitted from the close relationship between the Gallery and the College, the fundraising for each has been

⁴ For example, the Delaware Art Museum, faced with substantial debt issues, recently determined to de-accession works from its collection, in order to sell the works and use the proceeds to retire debt and similar purposes. The American Association of Museums in response voted to decertify the Delaware Art Museum as an accredited museum. See <http://www.aam-us.org/about-us/media-room/2014/delaware-accreditation-status> (last visited, June 23, 2014).

hampered by the lack of a unique identity for either.

In the face of the limited financial resources available from the endowment and the amounts available from contribution campaigns, the Corcoran Trustees over the last several decades had prioritized expenditures to maintain the collection, keep open the Gallery and support the operations of the College. They deferred some major expenses, including maintenance of the Flagg Building and Clark Wing, but still operated at a deficit on a current accounting basis. A chart showing the annual deficits in the Corcoran's finances for 20 years from 1990 to 2010 is attached to the Declaration of Lauren Stack.

In effect, the ongoing operations of the Corcoran resulted in an increase in the likelihood and amount of future capital needs (to overcome deferred maintenance) and a decrease in the endowment funds available to support the ongoing operations and capital needs, in order to meet current obligations. Recent reviews of the condition of the Corcoran Building have confirmed that the Building is in need of substantial rehabilitation and replacement of key systems. Some of that is urgent, to address deterioration in electrical, heating and ventilation, plumbing and other systems. The work is estimated to require more than \$ \$70 to \$100Million and to require several years of construction or similar activities. Those funds are simply not available in the existing financial circumstances of the Corcoran, and the amounts would exceed any reasonable expectations of a capital fund raising campaign.

THE DEVELOPMENT OF FUTURE OPTIONS

For several years, the Trustees and administration have focused on the fundamental issues that would define finding a sustainable future for the gallery and the college, recognizing that the continuing annual deficits were not a sustainable long term path, and the endowment could not foreseeably support operations at the expected levels for the long term. To meet their obligations as Trustees, in 2011 the Corcoran Board retained consultants with expertise in operations, museum and college management and engaged in a concerted review of operations and options that would allow them to identify and implement a sustainable future.

As a result of the review, the Board determined that the proper priorities remained:

- (a) Preservation and continued display of the Corcoran collection (sale of works to fund operations was not a preferred course of action, and would result in

significant harm to the Corcoran's reputation and role within the Museum community nationally and internationally);

(b) Rehabilitation and renovation of the iconic Corcoran building to allow its continued use as a gallery and college; and

(c) continued operation of the Corcoran College of Art + Design, which remained one of the very few national professional art schools directly associated with a museum and its collection, with a national reputation for training contemporary artists and in training designers of exhibitions and exhibition spaces.

The Board was specifically concerned that the Gallery and the College be placed on a sustainable, long-term path, that would avoid the uncertainty and risks that had become well known in the last few years.

In 2012, the Board considered a full range of options, including consideration of a sale of the iconic Corcoran Building, a move to other space or locations within the District of Columbia or in the immediate environs, reductions in the operations of the Gallery or College, separating the Gallery and the College, and other measures. They also reviewed whether there was a reasonable likelihood of success in a renewed fundraising campaign. By December 2012, the Board had sufficient potential alternatives that included keeping the gallery in the building that only those alternatives were still being considered. In an effort to meet these priorities, the Board initiated discussions with several parties, seeking an overall arrangement that would best fulfill the objectives. In 2013, the Trustees more fully explored collaboration proposals with other academic and museum institutions and by the end of the year began the discussions with The George Washington University (GW) and National Gallery of Art (NGA).

THE NGA/GW ARRANGEMENTS

In an effort to meet the priorities it had established, the Board initiated discussions with several parties, seeking an overall arrangement that would best fulfill the objectives. By January 2014, discussions among GW, NGA and representatives of the Trustees identified an option that called for a cooperative relationship among the three institutions that would meet all the priorities, and created opportunities to enhance the ongoing dedication of the Corcoran to contemporary arts and encouraging of American Genius.

On the basis of an analysis of the risks and benefits of the proposals the Trustees determined that the NGA/GW arrangement offered the path forward which was most closely aligned with the original intent of Mr. Corcoran, and provided the best option for the long term sustainability of the Corcoran College and Gallery. The three institutions entered into letters of intent, and conducted diligence and negotiations to achieve a definitive arrangement. On May 15, 2014, NGA, GW and the Trustees approved the definitive documents, and executed the agreements. The agreements are subject, inter alia, to a condition precedent that the Trustees seek and obtain cy prè approval from this court.

Copies of the following agreements and forms are attached to the Declaration of Lauren Stack:

1. The Transfer Agreement between NGA and the Trustees
2. The form of License Agreement under which NGA will be permitted limited use of the Corcoran name and marks
3. The Transfer Agreement between GW and the Trustees.
4. The License Agreement under which GW will be permitted specified use of the Corcoran name and marks
5. The License Agreement under which NGA will operate exhibition and gallery space in the Corcoran Building.
6. The side letter dated as of June 17, 2014, describing the plan and policy by which art that is not accessioned by NGA into its collection will be distributed by the Corcoran.
7. The side letter dated as of June 17, 2014 under which GW confirms the continued devotion of space in the Corcoran Building to exhibition of art, should the NGA/GW agreement terminate.

Under the NGA Transfer Agreement, the Corcoran will transfer responsibility for its collection of art to NGA, thus assuring the continued preservation, maintenance and safeguarding of the entire collection. The NGA will review the collection and identify works from the Corcoran collection that will be accessioned into the NGA's collection and which will thereafter be known and identified at the NGA as the "Corcoran Collection." Certain works that

are intrinsically identified with the iconic Corcoran facility and its legacy and the history of the Gallery will be displayed in the Legacy Gallery to be established in that facility.

NGA, under an agreement with GW, will manage additional galleries at the Corcoran Building (“Corcoran Contemporary, NGA.”) where NGA will exhibit modern and contemporary works. In addition, certain works deeply associated with and affixed to the Corcoran Building, e.g., the Salon Doré and the Canova lions, will remain with the Corcoran Building, continuing the connection between the Corcoran, its art and the Building.

NGA and the Trustees will cooperate with each other to identify other museums or institutions that would receive and display works that are not accessioned by the NGA, Pursuant to discussions among representatives of the Corcoran, the NGA and the Attorney General, the Corcoran has agreed to a plan and policy that will give preference to museums and institutions in the District of Columbia to receive the works that the NGA does not accession, and to assure that there is an opportunity for review prior to works being transferred out of the District of Columbia.

Under the GW Transfer Agreement, GW will receive the Corcoran Building, and will undertake its renovation and rehabilitation. GW and NGA will separately agree on the use of significant space within the Building as gallery space, for the display of contemporary art, including works from the Corcoran Collection, works from NGA’s collection and other works. Thus, the building will remain in use as an active gallery, displaying contemporary art, and open to the public for free. Pursuant to discussions among representatives of the Corcoran, GW and the Attorney General, GW has confirmed that in the event its agreement with NGA terminates, GW will continue to devote an equivalent amount of space in the Corcoran Building to exhibition of art.

GW will also receive the Corcoran College of Art + Design, and continue to operate the College having a separate identity under the GW umbrella, providing professional arts training and other degree programs. The College will remain in its home in the renovated Corcoran Building, as well as having classes and other space in other buildings in the area as determined by GW.

As part of the transfers of art to NGA and the College and Building to GW, each of NGA and GW have undertaken to comply with donor restrictions that are part of the transferred

elements. The Trustees of the Corcoran Gallery of Art, as a federally chartered corporation, will remain in existence, but no longer operating as a museum or College. The Trustees will devote their efforts to the “encouraging of American Genius,” helping to assure coordination of the NGA and GW work in the Corcoran name, and seeking opportunities to support contemporary American art and artists

ARGUMENT

The doctrine of cy prè is of ancient vintage and appears to predate the English chancery courts. See Edith Fisch, *The Cy Pres Doctrine in the United States* (1950) at 3. At least until 1943, there was a question whether the District of Columbia accepted the doctrine of cy prè. See *Noel v. Olds*, 138 F.2d 581 (D.C.Cir.1943), cert. denied, 321 US 773 (1944)(affirming the application of cy prè, and disregarding dicta in *Graff v. Wallace*, 32 F.2d 960 (DC Cir. 1929). Subsequently, The District of Columbia has adopted the Uniform Trust Code, and under those provisions, the court is granted specific power to modify restrictions imposed on trusts. DC Code § 19-1304.13. The code formally adopts the doctrine of cy prè, an equitable doctrine of venerable heritage, that allows a court of modify restrictions when a charitable purpose is or becomes impracticable, impossible to achieve or wasteful. The court’s determination is equitable, and seeks to define continued activities and operations that most closely adhere to the donor’s original charitable purpose.

The commentary on the Uniform Trust Code indicates that the equitable power under cy prè is broad – the power may applied to modify administrative or dispositive terms, in order to vindicate the presumed charitable intent of the trust donor. Uniform Trust Code at Section 413, commentary. Cy prè has been used specifically in the context of an art museum, in order to assure the viability of the overall intent. See *In re Barnes Foundation*, 2004 WL 2903655 (Pa. Ct. Com. Pl. Dec. 13 2004)(allowing the Barnes Foundation museum to move to a new location in Philadelphia).

Reported cases under the DC Code provisions relating to modifications of trusts are few and not generally on point. See, e.g., *In re Duroske Marital Trust*, 862 A.2d 914 (DC 2004); *In re D.M.B.*, 979 A.2d 15 (D.C. 2009). Rather, such matters have been taken up in unreported cases, with the involvement of the Office of the Attorney General.

Under the code, two specific conditions must be met: the continued operation of the trust as originally contemplated must be impracticable or impossible, and the revised conditions must seek “as nearly as possible” to adhere to the original donor’s intent. D.C. Code §19-1304.134. The Petition here meets both tests.

First, the current financial condition of the Corcoran makes it impracticable, indeed financially impossible, for the Trustees to continue to operate the Gallery and College in their current form and accomplish the necessary renovations and rehabilitation of the Building. As set forth above and in the Declaration of Lauren Stack, the Corcoran has operated at a chronic deficit, resulting in reductions in the endowment in order to fund continued operation of the Gallery and the College, even as the Trustees deferred renovation or longer maintenance of the building. The Corcoran’s finances are untenable for the longer term. Studies of the Corcoran Building have established that it requires a major renovation. Even as the Trustees were able to obtain funding for specific maintenance, e.g., a replacement of roof, rehabilitation of stonework and replacement and upgrade of the heating and ventilation system, major work is still required. Indeed the most recent studies have indicated that necessary renovations are estimated at least \$70 million and several years to complete. Once that work is initiated, it must be carried to completion.

As the financial statements attached to the Stack Declaration show, the Corcoran lacks the current financial resources to assure the Trustees’ ability to continue operation of the Gallery and the College. This funding gap is compounded by the standards imposed by the Corcoran’s status as a museum. It is a long-standing part of the ethical standards applicable to museums that belong to the national association that proceeds of the sale of the art cannot be used to meet operating or capital expenses, but must be devoted only to acquisition and care of the art. This standard is based on the understanding that the art acquired by or contributed to the museum is a public trust. Adherence to the standard is essential to retaining accreditation as a museum, and accreditation in turn is necessary for modern museum operations – without it, museums will not loan works to one another, qualified staff could not be hired and retained, and the reputation of the museum would decline. To adhere to that standard, the Corcoran Trustees have set aside the proceeds of sales of works in a separate fund. That fund is now the largest liquid asset of the

Corcoran, and, under the current circumstances, even given amounts that the Trustees reasonably expect to receive, the Trustees would need to make determinations to invade the acquisition fund to maintain operations for the coming academic year. Thus, the Corcoran cannot maintain its operations without sacrificing the very status as a museum that is an essential part of its mission.

In response to the financial impracticability and impossibility of maintaining the current operations for any more than the very near term, the Trustees have negotiated an arrangement with GW and NGA, which will:

- (a) Assure a long term, sustainable future for the Gallery and College,
- (b) Assure the rehabilitation and renovation of the Corcoran building that houses the Gallery and College,
- (c) Assure the preservation and display of the Corcoran's valuable collection of art, and
- (d) The continuing fulfillment of the charitable intent of the Corcoran's founder.

Thus, the arrangement as documented in the Transfer Agreements and Licenses is the best available mechanism to assure the continued fulfillment of the underlying intent of Mr. Corcoran. As described above and set forth in the agreements themselves, the arrangements provide that the Corcoran's collection of art will be preserved. Those elements which the NGA does not itself accession, will be transferred to appropriate institutions and museums that will agree to preserve them and exhibit them in accordance with relevant standards. Under the policy and plan agreed with the Attorney General, institutions in the District of Columbia will be given a preference, assuring that Mr. Corcoran's intent regarding the exhibition of art in the District will continue to be fulfilled.

Similarly, the Corcoran Building will be preserved and renovated, and continue to serve both the College and as a gallery. Iconic pieces will remain exhibited in the building, and the NGA will establish new exhibition space devoted to contemporary art. The College will continue under the larger umbrella of GW University, but maintaining a link to the Corcoran collection.

Last, the Corcoran itself, now able to concentrate its limited resources on activities other than continued operation of the Gallery and College, will renew its focus on the basic mission

defined by Mr. Corcoran's Deed – dedicated to art and encouraging American Genius.

For the reasons set forth in the petition and the Motion, the Court should grant the petition and permit execution and implementation of the negotiated arrangements set forth in the Transfer Agreements and License Agreements. In the interim pending closing of those arrangements, the Trustees will continue to operate the Corcoran consistent with current restrictions.

Dated: June 25, 2014

By: /s/ Charles A. Patrizia

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/s/ David S. Julyan
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DECLARATION OF LAUREN STACK

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

**The Trustees of the Corcoran Gallery of
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Petitioners,

v.

The District of Columbia,

Respondent.

Civil Action No. 2014 CA 003745 B

**DECLARATION OF LAUREN STACK
IN SUPPORT OF MOTION FOR ENTRY OF CY PRÈS**

ss: City of Washington :
 District of Columbia :

1. I, Lauren Stack, declare that I am the Chief Operating Officer of the Corcoran Gallery of Art, a position I have held since 2011. As Chief Operating Officer, I am personally familiar with the activities and operations of the Corcoran Gallery of Art and the Corcoran College of Art + Design, and have access to their books and records. In this position, I report to the Interim Director and President, and to the Board of Trustees. If called as a witness, I could testify to the matters set forth herein of my personal knowledge, or to the best of my information and belief based on the books and records of the Corcoran.

2. The Corcoran was formed under a deed of gift, given by William Corcoran in 1869. A copy of the Deed is attached to this Declaration as Exhibit 1. As contemplated by the Deed, the Trustees designated in the Deed, sought a corporate charter, and Congress granted the charter by statute in May 1870. A copy of the statute creating a “body corporate and politic” known as the Trustees of the Corcoran Gallery of Art is attached as Exhibit 2.

3. Under the Deed of Gift, the Trustees had received from Mr. Corcoran works of art, and a

building now known as the Renwick Gallery which housed the collection. Documents relating to the history of the Corcoran indicate that within a few years of the Gallery's opening, it became apparent to the Trustees that some visitors to the gallery were students who used the gallery space to copy the works exhibited; and therefore consistent with the Deed's overarching intent to "foster American genius in the arts", the Trustees determined to open a formal college of art. Classes under The Corcoran College of Art began in 1878, and the College has operated continuously since.

4. An archived Corcoran Annual Report from the 1920's describes that by 1890 the gallery had outgrown Renwick's red brick building. Stymied by neighbors who would not sell their property to allow the gallery to expand at the original site, the Trustees bought a lot a few blocks away at 17th Street and New York Avenue. There they had designed and constructed a new building, known as the Flagg Building, after its architect. The Building is listed on the National Register of Historic Places.

5. In the early 1920's, the Corcoran received a substantial bequest from Senator William A. Clark, a wealthy industrialist who had during his lifetime donated to the Corcoran, loaned it works of art from his personal collection, and had been elected a Trustee. Upon his death, the Corcoran received a significant number of works from Clark's personal collection, and his widow and heirs donated the funds to add a wing to the Flagg Building (the "Clark Wing") to house and exhibit the works.

6. As a non-profit entity, the Corcoran has depended financially on its limited endowment, fundraising campaigns, and revenues from visitors, College tuition and fees, and grants or other similar sources for capital and operating expenses. The Corcoran Building, while a designated 19th Century national architectural treasure, is aging along with its systems, and needs substantial maintenance and renovation.

7. It is my understanding that in the face of the limited financial resources available from the endowment and the amounts available from contribution campaigns, the Corcoran Trustees over the last several decades had deferred some major expenses, including some maintenance of the Flagg Building and Clark Wing. Recent reviews of the condition of the Corcoran Building

have confirmed that the Building is in need of substantial rehabilitation and replacement of key systems. Some of that is urgent, to address deterioration in electrical, heating and ventilation, plumbing and other systems. The work is estimated to require at least \$70Million and could be more, and may require several years of construction or similar activities. Those funds are simply not available in the existing financial circumstances of the Corcoran, and the amounts would exceed any reasonable expectations of a capital fund raising campaign. The Corcoran's financial situation does not allow it to undertake necessary and extensive capital expenses.

8. A chart showing the annual deficits in the Corcoran's finances for the years 2001 through 2013 is attached hereto as Exhibit 3. The chart shows operating deficits for each year except 2007, and that year was an exception only because of a large grant received from the District of Columbia to fund the repair and replacement of the roof of the Corcoran Building.

THE DEVELOPMENT OF FUTURE OPTIONS

9. In the last several years, the Trustees and administration of the Corcoran focused specifically on the Corcoran's financial condition, recognizing that the continuing annual deficits were not a sustainable long term path, and the endowment could not foreseeably support operations at the expected levels for the long term. To meet their obligations as Trustees, the Corcoran Board retained consultants with expertise in operations, museum and college management and engaged in a concerted review of operations and options that would allow them to identify and implement a sustainable future. The Board considered a full range of options, including separating the Gallery and the College, reducing the operations of the Gallery or College, consideration of a sale of the iconic Corcoran Building and moving the Corcoran to other space or locations within the District of Columbia or in the immediate environs, and other measures. They also reviewed whether there was a reasonable likelihood of success in a renewed fundraising campaign outside of its ongoing development efforts.

10. As a result of the review, the Board determined that the proper priorities remained:

- (a) preservation and continued display of the Corcoran collection (sale of works to fund operations was not a preferred course of action, and would result in

significant harm to the Corcoran's reputation and role within the Museum community nationally and internationally);

(b) rehabilitation and renovation of the iconic Corcoran building to allow its continued use as a gallery and college; and

(c) continued operation of the Corcoran College of Art + Design, which remained one of the very few national professional art schools directly associated with a museum and its collection, with a national reputation for training contemporary artists and in training designers of exhibitions and exhibition spaces.

The Board was specifically concerned that the Gallery and the College be placed on a sustainable, long-term path, that would avoid the uncertainty and risks that had become well known in the last few years.

THE NGA/GW ARRANGEMENTS

11. In an effort to meet these priorities, the Board initiated discussions with several parties, seeking an overall arrangement that would best fulfill the objectives. By January 2014, discussions among GW, NGA and representatives of the Trustees identified an option that called for a cooperative relationship among the three institutions that would meet all the priorities, and created opportunities to enhance the ongoing dedication of the Corcoran to contemporary arts and encouraging of American Genius.

12. On the basis of an analysis of the risks and benefits of the proposals the Trustees determined that the NGA/GW arrangement offered the path forward which was most closely aligned with the original intent of Mr. Corcoran, and provided the best option for the long term sustainability of the Corcoran College and Gallery. The three institutions entered into letters of intent, dated February 18, 2014, and conducted diligence and negotiations to achieve a definitive arrangement. On May 15, 2014, NGA, GW and the Trustees approved the definitive documents, and executed the agreements. The agreements are subject, inter alia, to a condition precedent that the Trustees seek and obtain *cy prè*s approval from this Court.

13. Copies of the following agreements and forms are attached hereto as Exhibit 4. These are the agreements which have been or will be executed and the implementation of which is essential

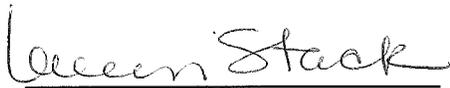
to accomplishing the proposed arrangements.

- a. the Transfer Agreement between NGA and the Trustees
- b. the form of License Agreement under which NGA will be permitted limited use of the Corcoran name and marks
- c. the Asset Contribution Agreement between GW and the Trustees.
- d. the License Agreement under which GW will be permitted specified use of the Corcoran name and marks
- e. the License Agreement under which NGA will operate exhibition and gallery space in the Corcoran Building.
- f. The side letter dated as of June 17, 2014, describing the plan and policy by which art that is not accessioned by NGA into its collection will be distributed by the Corcoran.
- g. The side letter dated as of June 17, 2014 under which GW confirms the continued devotion of space in the Corcoran Building to exhibition of art, should the NGA/GW agreement terminate.

14. Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

FURTHER DEPONENT SAYETH NOT.

Signed and subscribed, this 24th day of June 2014.



Lauren Stack

EXHIBIT 1

DEED

DEED

WILLIAM W. CORCORAN,
TO
JAMES M. CARLISLE, et al. }

DEED
Recorded
May 18, 1869.

This indenture made this tenth day of May, in the year of our Lord eighteen hundred and sixty-nine, by and between William W. Corcoran, of the city of Washington, District of Columbia of the first part, and James M. Carlisle, James C. Hall, George W. Riggs, Anthony Hyde, James G. Berret, James C. Kennedy, Henry D. Cooke, and James C. McGuire of the city of Washington and Georgetown, District of Columbia, and William T. Walters of the city of Baltimore, State of Maryland, of the second part.

Witnesseth, whereas, the said William W. Corcoran, in the execution of a long cherished desire to establish an institution in Washington City, to be "dedicated to Art," and used solely for the purpose of encouraging American genius, in the production and preservation of works pertaining to the "Fine Arts," and kindred objects, has determined to convey to a Board of Trustees the property hereinafter described, to which he may, hereafter, make other gifts and donations, to be held by said board and used for the purposes aforesaid: Now, therefore, the said William W. Corcoran, in consideration of the premises, and of the sum of one dollar current money of the United States to him in hand paid by the said

parties of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, aliened, enfeoffed and conveyed, and by these presents doth grant, bargain and sell, alien, enfeoff and convey unto the said James M. Carlisle, James C. Hall, George W. Riggs, Anthony Hyde, James G. Berret, James C. Kennedy, Henry D. Cooke, James C. McGuire and William T. Walters, and the survivors and the survivor of them, and the heirs and assigns of such survivor, lots numbered 5 (five) 6 (six) 7 (seven) and 8 (eight) in square numbered 167 (one hundred and sixty-seven) in the city of Washington and District of Columbia, as the same are laid down and distinguished upon the public plat of said city, fronting 106 feet 9 inches, more or less on President's square, and 160 $\frac{17}{100}$ feet, more or less on Seventeenth street west, together with all and singular the buildings, improvements, hereditaments, and appurtenances thereto appertaining, or in anywise belonging, and all the estate, right, title and interest of the said party of the first part in and to the same.

To have and to hold all and singular the lots and parcels of ground and premises aforesaid with the appurtenances unto, and to the use of them the said parties of the second part, and the survivors and survivor of them, and the heirs and assigns of such survivor. In trust, nevertheless, and to and for the intents and purposes hereinafter expressed and described, that is to say:

First. That the said parties of the second part shall, without unnecessary delay, after the acceptance of this trust, to be signified by their signing and sealing the memorandum to that effect, hereunder written, organize

themselves into a permanent Board of Trustees, with such officers, to be selected from their own number, as to them may seem necessary or convenient, for the orderly management of this trust, and the more efficient attainment of the end and objects designed by the said party of the first part, as indicated by his general intent to be gathered from this instrument, in all its parts and provisions, and with the same intent, and for the same ends and objects shall make and as often as may be necessary, from time to time, make, alter, amend, repeal and re-enact in whole or in part, all necessary by-laws, rules, and regulations, in the premises, in execution of and not inconsistent with the provisions and true intent of this instrument; in all which they shall act by the concurrence of a majority of the whole number of trustees.

Secondly. That when the number of the said original Board of Trustees, being the said parties of the second part, shall, by death, resignation, or inability, to be ascertained by a resolution of the said board, acting by a majority of the whole number, shall have been reduced below the number of nine members, the remaining members shall elect suitable persons, in their discretion, from time to time, as often as may be necessary, so that the board shall always be composed of nine members.

Thirdly. That all property, real, personal and mixed, rights, credits, choses in action, or other valuable thing whatsoever, hereby conveyed, or intended to be conveyed, or which may hereafter be conveyed, given or transferred and assigned, and delivered to the said Board of Trustees, whether composed of the said parties

of the second part or of their successors, chosen and elected as hereinbefore provided, whether in whole or in part, shall be held, managed, limited, used and devoted to executing the trusts, and giving effect, according to the best judgment of the said Board of Trustees from time to time; and all legal rights and titles in the premises shall be taken and held in such manner, and with such legal forms, as shall serve the trusts, intents, uses and purposes declared or plainly indicated or implied in and by the terms of this instrument.

Fourthly. The property so received and held, or which may be received and held by the said Board of Trustees, shall be held, used, managed and disposed of by them, and their successors and assigns, whether under this instrument alone or under any act of incorporation hereafter to be procured, for the perpetual establishment and maintenance of a Public Gallery and Museum for the promotion and encouragement of the arts of painting and sculpture, and the fine arts generally, upon such system, and with such regulations and limitations as the Board of Trustees may, from time to time, whether corporate or unincorporate, prescribe, limit and ordain: Provided, always, that the Gallery and Museum shall be open to visitors without any pecuniary charge whatever, at least two days in each week, for such convenient and customary hours as shall be, from time to time, prescribed and made public; and at such other times, not being such public days, as aforesaid, such moderate and reasonable fees for admission may be prescribed and received, to be applied to the current expenses of procuring and keeping in proper order the building and its contents.

Fifthly. While the officers necessary or appropriate to the organization of the Board of Trustees shall be elected from their own number, it is understood that the board shall and may, at its discretion at all times, employ other persons to be officers, agents and servants of the board for the orderly and efficient management and conduct of the institution.

Sixthly. The system and the appropriate measures for increasing the collection of paintings, statues and kindred works of art, of which the private gallery of the party of the first part will form the nucleus, and such other voluntary donations as the trustees may from time to time receive, are confided to the discretion and judgment of the Trustees, as is also the management generally of the institution.

Seventhly. The general intent of the said party of the first part being expressed in general terms in the premises and recitals of this instrument, and further indicated, with certain specifications in the foregoing articles, numbered from one to six, inclusive, it is hereby declared that all and singular the gifts, grants, conveyances, and assignments, herein expressed and set forth are to and for the trusts, intents, and purposes so as aforesaid expressed, implied, set forth, or indicated, and to none other whatsoever; and that while it is the intention of the grantor and donor herein that no merely technical or formal breach of or departure from the terms and conditions of this trust shall operate as any forfeiture or defeasance in favor of his heirs, or of any claiming in his right, nevertheless it is hereby declared, and these presents are upon the express and strict condition, that

these presents and every matter and thing hereinbefore contained, and every estate, right, title, interest, and power thereby given, granted, conveyed, and limited, shall cease and determine, and become utterly void and of none effect, whensoever it shall be decreed, adjudged, or declared by the highest judicial authority having jurisdiction, upon a proper proceeding in law or in equity, to be instituted by the heirs, devisees, or assignees of the said party of the first part, that the real estate hereinbefore conveyed shall have been diverted from the purposes of this trust, to be gathered from this instrument in all its parts and provisions, so as substantially to defeat or plainly to be inconsistent with and repugnant to this trust, construed and interpreted in a liberal and sensible spirit; and thereupon, as in a case of a breach of strict condition subsequent, the heirs, devisees, or assigns, or other proper legal representatives in the premises, of the said William W. Corcoran shall be entitled to re-enter upon the said real estate as of his, the said William W. Corcoran's, right and title prior to the execution of these presents, and as if the same had never been executed; and, in like manner, all and every other estate, property, chattel, or valuable thing, the title to which shall have proceeded in the premises from the said William W. Corcoran to the said trustees, or their successors and assigns, shall as far as may be consistent with the rules and principles of law and equity, revert and be re-vested in right of the said Corcoran or his proper legal representatives therein.

Eighthly. That the said Board of Trustees may at any time hereafter, in its discretion, apply for and accept an act of Congress incorporating them and their successors, so as to facilitate the execution of this trust by vesting the same in a perpetual body corporate with the like powers and for the same trusts, intents, and purposes herein declared, expressed, or indicated, but for no other trusts, intents, or purposes whatsoever; such act of incorporation to refer to this deed, and to be expressed to be in execution of the trusts thereof; and thereupon the said parties of the second part, and the survivors and survivor of them, or the heirs and assigns of such survivor, shall execute such conveyances as may be necessary to transfer the whole property of this trust to such corporation upon the trusts of this deed. And whereas the lots of ground and improvements herein before described and referred to have, by reason of the exigencies of the public service of the United States, been rented and occupied for the public use, without any special contract, but subject to the constitutional provision that "private property shall not be taken for the public use without just compensation," which just compensation for the whole period of such occupation by the United States now remains to be paid, and considering the same properly to belong to this trust, as being of the rents, issues, and profits of the ground and buildings which he had heretofore, and as early as the year eighteen hundred and fifty-nine, devoted and dedicated to the trusts and purposes hereinbefore formally declared, Now, therefore, in consideration of the premises, and of the sum of one dollar by the said parties of the second part

to him in hand paid, he, the said party of the first part, hath assigned, transferred, and set over, and by these presents doth assign, transfer, and set over, unto the said parties of the second part, and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, all and singular the rents, issues, and profits of the lots of ground and improvements hereinbefore described for and during the whole period of the occupation and possession of the same by the Government of the United States, and all the just compensation which may be due from the United States for the public use of the same, hereby authorizing and empowering the said parties of the second part, or a majority of them, either by themselves or by any substituted attorney or attorneys, to be named and appointed by them or a majority of them, to acquit and release and receipt for the same in any sufficient legal form of acquittance which may be according to law, as fully as he, the said party of the first part, could personally release and acquit the same; which rents, issues, and profits, and just compensation for the public use of the said property, shall be received and held, by the said parties of the second part, for the same uses, intents, and purposes hereinbefore declared, but shall, as far as may be necessary, be applied, before all other objects, to the completion of the interior of said building, and to putting it in a condition to be immediately applied to the primary intents and purposes of this trust, as expressed in the recital in the premises of this deed.

In testimony whereof, the said party of the first part

hath hereunto set his hand and affixed his seal, the day
and year first hereinbefore written.

W. W. CORCORAN. [SEAL.]

Signed, sealed, and delivered,
in the presence of—

JOHN HUNTER.

A. T. BRICE.

We, jointly and severally, accept the trusts of the
foregoing deed.

Witness our hands and seals, the said tenth day of
May, eighteen hundred and sixty-nine.

J. M. CARLISLE. [SEAL.]

J. C. HALL. [SEAL.]

GEO. W. RIGGS. [SEAL.]

ANTHONY HYDE. [SEAL.]

JAMES G. BERRET. [SEAL.]

JAMES C. KENNEDY. [SEAL.]

HENRY D. COOKE. [SEAL.]

JAMES C. McGUIRE. [SEAL.]

W. T. WALTERS. [SEAL.]

DISTRICT OF COLUMBIA, }
County of Washington, } *sc.*

I, Whitman C. Bestor, a notary public in and for
Washington county aforesaid, do hereby certify that
William W. Corcoran, the party of the first part to a
certain deed bearing date the tenth day of May, A. D.
eighteen hundred and sixty-nine, and hereto annexed,

personally appeared before me, in my county aforesaid, on the day of the date hereof, the said William W. Corcoran being personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this tenth day of May, eighteen hundred and sixty-nine.

WHITMAN C. BESTOR,
Notary Public.

[NOTARIAL SEAL.]

EXHIBIT 2

FEDERAL CHARTER



THE LIBRARY OF CONGRESS

WASHINGTON, D.C. 20540

PHOTODUPLICATION SERVICE

I hereby certify that I am an officer of the Photoduplication Service at the Library of Congress and that there is now in the collections of the Library of Congress a publication entitled

The Statutes at Large and Proclamations of the United States of America

From December 1869 to March 1871 Volume XVI - - - - -

I further certify that the attached photocopies are true copies of

spine, title page and page 139 - - - - -

from the said publication.

In testimony whereof I hereunto subscribe my name and cause the seal of the Library of Congress to be affixed this 23rd day of December 19 97 .

Eveline S. Overmiller
Supervisor, Information Unit (dae)

BY AUTHORITY OF CONGRESS.

THE
Statutes at Large
AND
PROCLAMATIONS
OF THE
UNITED STATES OF AMERICA,
FROM DECEMBER 1869 TO MARCH 1871,
AND
TREATIES AND POSTAL CONVENTIONS

Arranged in Chronological Order and carefully collated with
the Originals at Washington,

WITH
REFERENCES TO THE MATTER OF EACH ACT AND TO THE SUBSEQUENT
ACTS ON THE SAME SUBJECT.

EDITED BY
GEORGE P. SANGER,
COUNSELLOR AT LAW.

The rights and interest of the United States in the stereotype plates from which this work is printed are hereby recognized, acknowledged, and declared by the publishers, according to the provisions of the joint resolution of Congress, passed March 3, 1845.

VOL. XVI.

BOSTON:
LITTLE, BROWN, AND COMPANY.
1871.

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SEC. 12. *And be it further enacted,* That Congress shall, at all times, possess the power to alter, amend, or repeal this act. *Act may be altered, &c.*
APPROVED, May 24, 1870.

CHAP. CXL — *An Act to incorporate the Trustees of the Corcoran Gallery of Art, and for other Purposes.* May 24, 1870.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That James M. Carlisle, James C. Hall, George W. Riggs, Anthony Hyde, James G. Berret, James C. Kennedy, Henry D. Cooke, and James C. McGuire, of the city of Washington, and of Georgetown, District of Columbia, and William T. Walters, of the city of Baltimore, State of Maryland, and their successors, be, and they are hereby, created and constituted a body politic and corporate in law, by the name and style of the Trustees of the Corcoran Gallery of Art, and by that name may sue and be sued, implead and be impleaded, have perpetual succession, and shall and may take, hold, manage, and dispose of, at all times, real and personal estate, and shall and may do and perform all other acts and things necessary or appropriate for the execution of the trusts created and conferred on them in and by a certain deed from William W. Corcoran, to them, the said parties hereinbefore named, which is dated the tenth day of May, eighteen hundred and sixty-nine, and was recorded on the eighteenth of the same month in liber D, number eight, folio two hundred and ninety-four, et sequitur, one of the land records of Washington county, District of Columbia, to which reference is hereby made for greater certainty ; the intent of this charter of incorporation being that the same shall be in execution of the trusts in the said deed declared and set forth, and not to any other intent or purpose whatever.

Trustees of Corcoran Gallery of Art incorporated.

Powers of corporation.

Intent of charter.

Pay for the use of certain ground and buildings to be determined and the amount paid to the corporation.

Tax remitted.

Buildings, &c. exempt from taxes.

SEC. 2. *And be it further enacted,* That the Secretary of War, the Secretary of the Treasury, and the Secretary of State be, and they are hereby, authorized and directed to ascertain and settle, upon principles of justice, a fair and just compensation for the use of the ground and buildings described in the before-mentioned deed, while the same were occupied by the United States for the public service ; and that the sum so ascertained and settled by them, or a majority of them, shall, upon their certificate and award thereof, be paid to the corporation hereinbefore created, out of any money in the treasury not otherwise appropriated.

SEC. 3. *And be it further enacted,* That any tax which may be claimed or due to the United States, by reason of the transfer of the property above mentioned, or the execution and delivery of the said deed from the said William W. Corcoran to the above-named trustees, be, and the same is hereby, remitted and released.

SEC. 4. *And be it further enacted,* That the aforesaid buildings and grounds connected therewith, together with all the works of art that may be contained therein, shall be free from all taxes and assessments by the municipal authorities, or by the United States, so long as the same shall be held and used for the purpose hereinbefore set forth.

APPROVED, May 24, 1870.

CHAP. CXIII — *An Act creating an additional Land District in the Territory of Colorado.* May 27, 1870.
See Post, p. 288.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that portion of the Territory of Colorado embraced in the following described limits, to wit : commencing at the eastern boundary of the Territory at the intersection of the second correction line south and running thence west on that line to the line dividing ranges numbered seventy-five and seventy-six west of the sixth principal meridian ; thence south with the range line to the

Arkansas Valley land district established in Colorado. Boundaries.

EXHIBIT 3

CORCORAN'S FINANCES
FOR YEARS 2001 - 2013

Restricted and Unrestricted

	Actual per Audited Financial Statements												
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Revenues													
Total Revenues per audited financial statements	\$ 19,047,915	\$ 24,586,713	\$ 19,579,783	\$ 22,894,297	\$ 22,460,073	\$ 22,866,693	\$ 33,088,567	\$ 25,690,355	\$ 19,517,148	\$ 26,401,383	\$ 20,298,881	\$ 19,349,146	\$ 26,214,615
Total expenses per audited financial statements	\$ 19,445,952	\$ 21,598,434	\$ 20,268,858	\$ 22,847,213	\$ 24,338,276	\$ 22,599,738	\$ 25,085,364	\$ 25,370,759	\$ 23,444,429	\$ 25,063,766	\$ 27,435,461	\$ 28,668,075	\$ 28,285,744
Change in net assets from operations	(398,037)	2,988,279	(689,075)	47,084	(1,878,203)	266,955	8,003,203	319,596	(3,927,281)	1,337,617	(7,136,580)	(9,318,929)	(2,071,129)
Total Other Changes	21,011,559	438,757	(2,070,339)	113,019	(25,363,449)	822,501	1,765,625	(2,987,381)	(4,297,969)	(146,752)	(2,052,456)	17,985,337	38,445,902
Change in Net Assets Per Audited Financials	\$ 20,613,522	\$ 3,427,036	\$ (2,759,414)	\$ 160,103	\$ (27,241,652)	\$ 1,089,456	\$ 9,768,828	\$ (2,667,785)	\$ (8,225,250)	\$ 1,190,865	\$ (9,189,036)	\$ 8,666,408	\$ 36,374,773
Change in net assets from operations	(398,037)	2,988,279	(689,075)	47,084	(1,878,203)	266,955	8,003,203	319,596	(3,927,281)	1,337,617	(7,136,580)	(9,318,929)	(2,071,129)
Less: investment income	1,177,491	1,269,494	1,206,356	1,103,452	923,948	1,414,692	2,609,790	718,290	(1,213,714)	4,298,324	582,555	(85,160)	3,456,179
True change in net assets from operations	(1,575,528)	1,718,785	(1,895,431)	(1,056,368)	(2,802,151)	(1,147,737)	5,393,413	(398,694)	(2,713,567)	(2,960,707)	(7,719,135)	(9,233,769)	(5,527,308)

EXHIBIT 4

ART ACCESSION AND CUSTODIAL
TRANSFER AGREEMENT

ART ACCESSION AND CUSTODIAL TRANSFER AGREEMENT

This ART ACCESSION AND CUSTODIAL TRANSFER AGREEMENT (this “**Agreement**”) is hereby made and entered into as of May 15, 2014, by and between the **TRUSTEES OF THE CORCORAN GALLERY OF ART**, a Congressionally chartered nonprofit corporation located in the District of Columbia (“**Corcoran**”), and the **NATIONAL GALLERY OF ART**, an independent establishment of the United States created by Joint Resolution of Congress located in the District of Columbia (“**NGA**”).

WHEREAS:

A. Corcoran is a nonprofit institution dedicated to art and encouraging American genius and, in service to that mission, (i) owns and operates the Corcoran Gallery of Art, an art gallery and museum located in the District of Columbia (the “**Gallery**”), in which a collection of art works owned or controlled by Corcoran is located for exhibition or storage (including those art works owned by Corcoran currently on loan for exhibition in other venues and art work in off-site storage) (collectively, the “**Existing Collection**”), (ii) owns and operates the Corcoran College of Art + Design, an accredited school of art and design located in the District of Columbia (the “**College**”), and (iii) owns and controls the Corcoran legacy building located at 500 17th Street Northwest in the District of Columbia (the “**17th Street Building**”), together with other certain real estate;

B. Corcoran has determined that it is in the best interests of the institution and its mission to transfer to the custody, care and possession of NGA all of the Existing Collection, together with certain related assets. A portion of the Existing Collection will be designated by NGA for accession into its collection of art (as further described in, and in accordance with the terms and conditions of, Section 2.1, the “**Accessioned Art**”), and the remainder of the Existing Collection that is not so accessioned will remain in NGA’s care until distributed to other art museums and appropriate entities (as further described in Section 2.4, the “**Custodial Art**”);

C. NGA desires to establish a new contemporary art program, to be conducted as the “Corcoran Contemporary, National Gallery of Art” (or such other name as may be designated in accordance with Section 2.2(a)) (the “**Contemporary Art Gallery**”), to be housed at the 17th Street Building (acknowledging that the 17th Street Building will be under the ownership of the University, as hereinafter defined), for the purpose of exhibiting, *inter alia*, certain works of the Accessioned Art and other works as determined by NGA, and for the purposes of preserving, maintaining and perpetuating the mission and reputation of the Gallery, on the terms and conditions set forth herein;

D. NGA intends to designate a space (the “**Legacy Gallery**”) within the 17th Street Building to be used for the exhibition of certain works of Accessioned Art that are so intrinsically identified with the 17th Street Building and its legacy and the history of the Gallery that consideration should be given to their remaining on exhibit therein (the “**Legacy Art**”);

E. The parties desire to provide for the use of the “Corcoran” name and related marks in connection with matters contemplated herein and, accordingly, in connection with the closing of the transactions contemplated hereby, Corcoran and NGA will enter into the License

Agreement (as defined below) pursuant to which Corcoran will license to NGA as of the Closing the right to use the “Corcoran” name and related marks as set forth in the License Agreement;

F. Concurrently with the execution and delivery of this Agreement, Corcoran has entered into a related agreement (the “**University Asset Agreement**”) with The George Washington University, a Congressionally chartered nonprofit corporation located in the District of Columbia (the “**University**”), pursuant to which Corcoran will transfer the 17th Street Building and other related assets (including the College and certain Permanent Works (as hereinafter defined) intrinsic to the 17th Street Building) to the University (the “**University Transaction**”);

G. In connection with the University Transaction, and concurrently with the execution and delivery of this Agreement, the University and NGA have entered into a related agreement pursuant to which the University will dedicate portions of the 17th Street Building, as set forth on *Exhibit A* hereto, for continuous use as exhibition space for art of the Contemporary Art Gallery and the Legacy Gallery and other programming and administrative needs of NGA (the “**University-NGA Agreement**”);

H. Following the consummation of the transactions contemplated hereby, Corcoran will continue and maintain its separate existence as an organization dedicated to art and encouraging American genius, and, in connection therewith, the parties have provided herein for a joint advisory committee; and

I. The parties desire to set forth the terms and conditions upon which such transactions and related matters shall occur.

NOW, THEREFORE, in consideration of their respective representations, promises and obligations, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, and desiring to be bound hereby, the parties agree as follows:

ARTICLE 1 DEFINITIONS

1.1 **Certain Definitions.** The following terms, as used herein, have the meanings set forth below:

“**17th Street Building**” has the meaning set forth in the preamble.

“**2014 Commitments**” has the meaning set forth in Section 5.4.

“**Accessioned Art**” has the meaning set forth in the preamble.

“**Accession Waiver Notice**” has the meaning set forth in Section 2.4(b).

“**Agreement**” has the meaning set forth in the preamble.

“Art Related Materials” means (i) all Documentary Art Related Materials and (ii) all Equipment Art Related Materials.

“Assumed Liabilities” has the meaning set forth in Section 2.1(b)(i).

“Authorized Corcoran Representatives” shall mean those persons who shall be authorized by Corcoran as of the Closing or thereafter and from time to time with notice to NGA, to execute all documentation necessary on behalf of Corcoran to distribute and convey title to the Distributed Art or Accessioned Art, as applicable.

“Closing” has the meaning set forth in Section 6.1.

“Closing Date” has the meaning set forth in Section 6.1.

“Code” means the United States Internal Revenue Code of 1986, as amended.

“College” has the meaning set forth in the preamble.

“Contemporary Art Gallery” has the meaning set forth in the preamble.

“Contract” means any contract, lease, license, evidence of indebtedness, mortgage, indenture, security agreement, or other commitment, undertaking, or agreement (whether written or oral) that is legally binding.

“Corcoran” has the meaning set forth in the preamble.

“Custodial Art” has the meaning set forth in the preamble.

“Dispute” has the meaning set forth in Section 8.11(a).

“Distributed Art” has the meaning set forth in Section 2.4(b).

“Documentary Art Related Materials” means, with respect to a work of art, all documentation, files, records, images, archival material, Contracts, correspondence, and other written, electronic or digital materials, including all documentation with respect to the accession, donation, provenance, conservation, and restoration thereof, and with respect to the copyright and other intellectual property rights (including the right to create derivative works), reproduction rights, licenses, rights in images, publication rights, and similar matters therein relating to such work.

“Equipment Art Related Materials” means all frames, tools, packing materials, supplies and equipment related to art and art preparation, installation or handling (including ladders and lifts), the cold storage equipment, display cases and file cabinets and other storage materials currently used for any of the foregoing (exclusive, for the avoidance of doubt, of Gallery Shop Inventory), but in each case only to the extent NGA notifies Corcoran in writing prior to the Closing that it will take ownership of any such equipment effective as of the Closing.

“Equitable Provisions” has the meaning set forth in Section 8.11(b).

“**Existing Collection**” has the meaning set forth in the preamble, it being understood that the Existing Collection shall not include the Flemish Windows or the Permanent Works that are being transferred to the University at the Closing as set forth in Section 2.4(d).

“**Flemish Windows**” means the Jan de Caumont stained glass windows installed in the Platt portion of the 17th Street Building.

“**French Window**” means the French Soissons stained glass window installed in the Platt portion of the 17th Street Building.

“**Gallery**” has the meaning set forth in the preamble.

“**Gallery Shop Inventory**” means all merchandise and products in stock for sale by Corcoran to the general public.

“**Gifts and Endowments**” means all assets, held as cash and cash equivalents, investments or other assets, which are held by Corcoran subject to donor restrictions limiting the use of the gifts and endowments for the purpose of acquiring works of art, endowing curatorships, the care and restoration of art or similarly restricted for use related to art, *provided, however,* that such accounts shall not include Board-restricted funds allocated to such purposes (including for the avoidance of doubt the fund subject to the Renovation Transfer Amount (as defined in the University Asset Agreement)).

“**Governmental Entity**” means any (a) nation, state, commonwealth, county, city, town, village, district, or other jurisdiction of any nature, (b) federal, state, local, municipal, foreign, or other government, (c) federal, state, local or foreign governmental or quasi-governmental authority of any nature (including any agency, branch, department, board, commission, court or tribunal), (d) multi-national or supra-national organization or body, (e) body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power, including any court or arbitrator, (f) self-regulatory organization, (g) academic or professional agency, association or organization or (h) official of any of the foregoing.

“**Identification Process**” has the meaning set forth in Section 2.1(a).

“**Initial Accessioned Art**” shall consist of those works of art in the Existing Collection designated as such by NGA, and which shall be accessioned by NGA at the Closing pursuant to Section 2.1(b)(i).

“**Instrument of Accession**” has the meaning set forth in Section 2.1(b).

“**Instrument of Custodial Transfer**” has the meaning set forth in Section 6.2(d)(ii).

“**IRS**” has the meaning set forth in Section 3.1(b).

“**Joint Advisory Committee**” has the meaning set forth in Section 5.5(b).

“**Laws**” means all laws, statutes, common law, rules, codes, regulations, restrictions, ordinances, orders, decrees, approvals, directives, judgments, rulings, injunctions, writs and awards of, or issued or entered by, all Governmental Entities.

“**Legacy Art**” has the meaning set forth in the preamble.

“**Legacy Gallery**” has the meaning set forth in the preamble.

“**License Agreement**” has the meaning set forth in Section 6.2(d)(ii)(E).

“**List of Accessioned Art**” shall mean the list of Initial Accessioned Art to be delivered by NGA to Corcoran no later than three business days prior to the Closing, which shall be in the form attached to *Exhibit C* hereto, as such List of Accessioned Art may be supplemented and amended pursuant to Section 2.1(c).

“**NGA**” has the meaning set forth in the preamble.

“**Notice of Accession**” has the meaning set forth in Section 2.1(c).

“**Notice of Termination**” has the meaning set forth in Section 7.2(a).

“**Permanent Works**” has the meaning set forth in Section 2.4(d).

“**Person**” means any individual, corporation, partnership, joint venture, limited liability company, trust, Governmental Entity, or other organization.

“**Release**” has the meaning set forth in Section 6.2(d)(ii)(D).

“**Restricted Works**” has the meaning set forth in Section 2.3.

“**Restrictions**” has the meaning set forth in Section 3.5.

“**Solvent**” means, with respect to any Person on any date of determination, that on such date (i) the fair value of such Person’s assets is greater than the total amount of such Person’s liabilities, (ii) the present fair saleable value of such Person’s assets is not less than the amount that will be required to pay the probable liabilities of such Person as they become absolute and matured, (iii) such Person does not intend to, and does not believe that it will, incur liabilities beyond such person’s ability to pay such liabilities as they mature, and (iv) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person’s property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that, in light of all the fact and circumstances existing at the time, represents the amount that can reasonably be expected to become an actual matured liability.

“**Taxes**” means all taxes, charges, fees, duties (including customs duties), levies or other assessments, including income, gross receipts, net proceeds, ad valorem, turnover, real and personal property (tangible and intangible), sales, use, franchise, excise, value-added, stamp, leasing, lease, user, transfer, fuel, excess profits, unrelated business income, occupational,

interest equalization, windfall profits, severance, license, payroll, environmental, capital stock, disability, employee's income withholding, other withholding, unemployment and Social Security taxes, which are imposed by any federal, state, local or foreign Governmental Entity, and such term shall include any interest, penalties or additions to tax attributable thereto.

“**Transaction Documents**” has the meaning set forth in Section 8.11.

“**University**” has the meaning set forth in the preamble.

“**University Asset Agreement**” has the meaning set forth in the preamble.

“**University Transaction**” has the meaning set forth in the preamble.

“**University-NGA Agreement**” has the meaning set forth in the preamble.

1.2 **Interpretation.** The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof. Except where the context requires otherwise, whenever used in this Agreement, the singular includes the plural, the plural includes the singular, the use of any gender is applicable to all genders and the word “or” has the inclusive meaning represented by the phrase “and/or.” The words “include” and “including” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.” A reference in this Agreement to an Article, Section, Exhibit or Schedule is to the referenced Article, Section, Exhibit or Schedule of this Agreement. The wording of this Agreement shall be deemed to be the wording mutually chosen by the parties and no rule of strict construction shall be applied against either party. Unless expressly provided otherwise, all dollar figures in this Agreement are in the currency of the United States of America.

ARTICLE 2 TRANSFER AND TREATMENT OF THE EXISTING COLLECTION

Pursuant to the terms and subject to the conditions of this Agreement, Corcoran shall transfer into the custody, care and possession of NGA all works in the Existing Collection, with certain of such works to be designated by NGA as Accessioned Art and the remainder to be Custodial Art, in each case as set forth in this Article 2:

2.1 **Designation of Accessioned Art and Crediting as the “Corcoran Collection”.** Certain works of the Existing Collection shall be designated by NGA as Accessioned Art, as follows:

(a) From and after the date hereof, the parties shall work together to inventory the Existing Collection in its entirety (the “**Identification Process**”). As part of the Identification Process, Corcoran will cooperate with NGA to identify applicable Restrictions, if any, with respect to works in the Existing Collection that NGA is considering for accession into its collection.

(b) The Initial Accessioned Art shall be conveyed to NGA at the Closing pursuant to an instrument of accession in substantially in the form attached as *Exhibit C* hereto (the “**Instrument of Accession**”) and which shall have attached thereto the List of Accessioned Art.

(i) At the Closing, pursuant to the Instrument of Accession, without any further act by Corcoran, the works designated as the Initial Accessioned Art as set forth in the List of Accessioned Art shall be deemed to constitute Accessioned Art and shall be deemed de-accessioned, contributed, transferred and conveyed by Corcoran to NGA by virtue of such Instrument of Accession and the List of Accessioned Art attached thereto, and thereupon NGA shall assume and accept from Corcoran, all of its right, title and interest (including all copyright and other intellectual property rights, including the right to create derivative works (subject to crediting as contemplated by Section 2.1(d) below)) in and to the Initial Accessioned Art as listed on the List of Accessioned Art, to the fullest extent permissible under applicable Laws and any donor or other restrictions in respect of works of the Initial Accessioned Art (including, as applicable by transfer of title or permanent loan); and Corcoran shall thereby transfer to NGA, and NGA shall accept and assume and undertake to pay, discharge and perform, all liabilities, commitments and obligations, whether absolute, accrued, contingent or otherwise, that arise from and after the Closing as a result of the ownership by, or permanent loan to, NGA of the Initial Accessioned Art (collectively, the “**Assumed Liabilities**”).

(ii) During the period from the Closing through December 31, 2014, Corcoran shall keep in effect, at its expense, its existing insurance coverage with respect to the Custodial Art, and Corcoran shall list NGA as an additional named insured as custodian with respect to the Custodial Art from the Closing through December 31, 2014. To the extent insurance proceeds are paid to Corcoran, rather than NGA, with respect to any event occurring after the time of accession with respect to any work of Accessioned Art, Corcoran shall pay such proceeds over to NGA. After the Closing, NGA shall assume all costs of off-site storage for the Existing Collection and the Documentary Art Related Materials, to the extent such costs are not already prepaid. If requested by NGA, Corcoran shall notify its insurer following the accession of any work of Accessioned Art that NGA’s insurer is the primary insurer with respect to such work.

(c) From and after the Closing, the parties will continue the Identification Process and NGA shall continue, in its sole discretion, to designate by one or more notices of accession (a “**Notice of Accession**”) additional works of the Existing Collection that shall be accessioned by NGA; *provided, however*, that no work may be subject to a Notice of Accession or deemed Accessioned Art if such work shall have been designated as Distributed Art (as hereinafter defined) prior to delivery of such Notice of Accession. Each Notice of Accession shall reasonably identify such additional works. Upon delivery of a Notice of Accession, an Authorized Corcoran Representative shall promptly execute and deliver to NGA a ratification and acknowledgement of such Notice of Accession as an amendment to the List of Accessioned Art and thereupon, (i) the works set forth in such ratified Notice of Accession shall automatically supplement and be deemed to amend the List of Accessioned Art, (ii) any works of the Existing Collection designated therein shall be deemed to be Accessioned Art hereunder, and (iii) all of Corcoran’s right, title and interest (including all copyright and other intellectual property rights, including the right to create derivative works) in and to such designated works shall

automatically be de-accessioned, contributed, transferred and conveyed by Corcoran to NGA pursuant to the Instrument of Accession, without any further action by the parties, subject in each case to all liabilities, commitments and obligations, whether absolute, accrued, contingent or otherwise, that arise after the effective time of such accessioning as a result of the ownership by, or permanent loan to, NGA of such designated works (which shall constitute Assumed Liabilities hereunder).

(d) For so long as the License Agreement is in effect, works of the Accessioned Art that are displayed or exhibited in the 17th Street Building or at other venues other than NGA after the Closing Date shall be identified and credited as part of the "National Gallery of Art, Corcoran Collection" (including, as applicable, an appropriate sub-identifier, *e.g.*, "National Gallery of Art, Corcoran Collection (William A. Clark Collection)") and works displayed or exhibited at the NGA after the Closing Date shall be identified and credited as part of the "Corcoran Collection" (including, as applicable, an appropriate sub-identifier).

2.2 *Exhibition of the Accessioned Art in the 17th Street Building.*

(a) Effective as of the Closing, NGA shall assume responsibility for operating the Gallery as a museum, with the University to be responsible for the upkeep and maintenance of the entire 17th Street Building, as set forth in the University-NGA Agreement. In connection therewith, and subject to existing obligations of Corcoran with respect to special exhibitions, NGA may in its sole discretion determine what art is exhibited in what portion of the existing Gallery space, depending on, among other things, the space designated for use by NGA in the University-NGA Agreement, whatever renovation or construction NGA determines to undertake in such space, and the process concerning the distribution of the Custodial Art. It is the understanding of the parties that the Gallery will be closed on or around October 1, 2014 (or following the Closing if the Closing occurs after that date) for a period to complete the Identification Process, renovate the space to be provided to NGA under the University-NGA Agreement and establish the Legacy Gallery and the Contemporary Art Gallery in the 17th Street Building, with the Contemporary Art Gallery to be established by NGA for the purpose of exhibiting and programming modern and contemporary works from NGA's collection of art, including Accessioned Art, as well as works on loan individually or in special exhibitions. NGA may change the name of the Contemporary Art Gallery upon Corcoran's prior written approval in its sole discretion, *provided* that in any event the name of the Contemporary Art Gallery shall include the "Corcoran" name. For the avoidance of doubt, the obligations of NGA under this Section 2.2 shall be subject to the performance by the University of its applicable obligations under the University-NGA Agreement and a failure of the University to perform its obligations thereunder shall not constitute a breach by NGA hereunder to the extent such failure is a proximate cause of NGA's inability to perform hereunder; *provided, however*, that NGA covenants and agrees to use commercially reasonable efforts to enforce its rights under the University-NGA Agreement to ensure to the greatest extent practicable its ability to perform its obligations hereunder.

(b) NGA and Corcoran shall work together to identify works of the Accessioned Art that shall constitute the Legacy Art hereunder as works that are so intrinsically identified with the 17th Street Building or with the history of the Gallery that consideration

should be given to their remaining on exhibit within the 17th Street Building in the Legacy Gallery.

(c) With respect to works of Legacy Art, NGA covenants and agrees to use reasonable efforts to continue the exhibition thereof within the 17th Street Building in the Legacy Gallery, with the understanding that NGA shall maintain curatorial authority over the Legacy Gallery and may elect to rotate the Legacy Art and may display some of the works of the Legacy Art at the National Gallery of Art or offer such works for loan to qualified borrowers in accordance with NGA's customary lending practices.

(d) NGA's obligations pursuant to this Section 2.2 are conditioned on (i) the continued ownership by the University of the 17th Street Building, (ii) the performance in all material respects by the University of its obligations under the University-NGA Agreement and such agreement remaining in effect, (iii) the portion of the 17th Street Building that is not dedicated to use by NGA not being leased by the University to a third party and (iv) no event occurring or condition existing that would render the 17th Street Building unsuitable, in NGA's reasonable judgment, for the purposes of exhibiting art.

2.3 ***Restrictions on the Accessioned Art.*** Without limiting the generality of Section 2.1, NGA acknowledges and agrees that certain works of the Accessioned Art may be subject to donor or other restrictions (such as the Clark Collection) (collectively, the "**Restricted Works**"). With respect to any such Restricted Works, NGA covenants and agrees to assume, discharge and fully perform all obligations, as those restrictions have been understood and performed by Corcoran prior to the date hereof, under any donor or other restrictions applicable thereto.

2.4 ***Custodial Art and Designation for Distribution.*** Any works of the Existing Collection that are not accessioned into NGA's collection of art pursuant to Section 2.1 shall be deemed Custodial Art hereunder and treated as follows:

(a) On the Closing Date, pursuant to the terms and subject to the conditions of this Agreement, Corcoran shall execute and deliver to NGA the Instrument of Custodial Transfer, which shall be effective as of the Closing and, thereupon, without any further act by Corcoran, Corcoran shall transfer and deliver into the custody, care and possession of NGA, and NGA shall accept into its custody, care and possession, the Custodial Art (which at Closing shall be all of the Existing Collection other than the Initial Accessioned Art, but which over time shall be subject to designation as Accessioned Art pursuant to Section 2.1(c)), to be held by NGA for the benefit of Corcoran until its accession by NGA or distribution in accordance with Section 2.4(b). Following the Closing and based on the time schedule agreed with the University, NGA shall begin the process of physically removing the Custodial Art from the 17th Street Building, with the understanding of the parties that such physical removal shall take place over time in accordance with customary museum practice and as the care and preservation of such works otherwise requires. Subject to the terms of the Release, and without limiting the foregoing, NGA shall accept full responsibility for all liabilities, costs and expenses associated with the care, protection, storage, transfer and maintenance of the Custodial Art from and after the Closing.

(b) Subject to the ongoing process of designating works of Accessioned Art, from and after the Closing, the Corcoran and NGA shall agree on an appropriate policy and

program for the distribution of the Custodial Art to other art museums and appropriate entities (the “**Distributed Art**”), which shall include appropriate provision for any then-existing liabilities, commitments and obligations relating to, associated with or arising from such Distributed Art (such as agreements for future loan or exhibition, etc.). Pursuant to such policy and program, following receipt of written notice from NGA that it does not intend to accession any particular work of Custodial Art (an “**Accession Waiver Notice**”), Corcoran may designate such works of Custodial Art as Distributed Art and, pursuant to this Section 2.4, arrange with NGA for distribution of such work. It is contemplated that NGA will provide information and recommendations to Corcoran, which shall make any final determinations with respect to distributing such Distributed Art. Corcoran and NGA shall agree on a form of Deed of Gift that shall be used to distribute works of Custodial Art designated as Distributed Art, which form may be appropriately revised as necessary with respect to any work of art. It is contemplated that all recipients of the Distributed Art will pay to NGA the cost of packing, shipping and insuring during shipment the Distributed Art conveyed to them, together with an additional fee intended to defray the overhead costs involved in the distribution process. For the avoidance of doubt, following the Closing, Corcoran shall not designate any work of Custodial Art as Distributed Art or otherwise de-accession, loan, transfer title or gift any such work of Custodial Art unless and until NGA has delivered an Accession Waiver Notice with respect to such work of Custodial Art.

(c) Following the Closing, NGA shall safeguard, hold, conserve, handle and transfer the Custodial Art, in accordance with customary practices for comparable collections. Without limiting the foregoing, NGA covenants and agrees to take every reasonable and customary precaution to protect the Custodial Art from fire, theft, mishandling and the effects of light, temperature and humidity. Following December 31, 2014, NGA shall (i) maintain at its expense policies of insurance on the Custodial Art, in coverage amounts and against the types of risks that are consistent with customary practices for comparable collections, and (ii) list Corcoran as an additional named insured and loss payee under such policies of insurance with respect to the Custodial Art. For the avoidance of doubt, delivery by Corcoran of the Release at Closing as contemplated by Section 6.2(d)(ii)(D) shall not limit or impair in any way Corcoran’s right to obtain payment of insurance proceeds in respect of any covered loss under such policies of insurance to which Corcoran is entitled pursuant to the foregoing sentence.

(d) The parties acknowledge that certain works of art that are installed as a permanent part of the 17th Street Building and that cannot reasonably be removed (collectively, as set forth on *Schedule 2.4(d)*, the “**Permanent Works**”). With respect to such Permanent Works, the parties agree that such works shall be transferred to the University at the Closing with the University’s agreement in accordance with the University Asset Agreement that the installation of such Permanent Works within the 17th Street Building shall be maintained with a standard of care appropriate for works of art similar in kind and value (or as otherwise mutually agreed by Corcoran and the University) and in compliance with any applicable donor or other restrictions on the use, display, exhibition, maintenance or transfer of such Permanent Works, subject to customary preservation, conservation or renovation needs of such Permanent Works as reasonably determined by the University. For the avoidance of doubt, the French Window shall not be included in the Permanent Works and shall be deemed part of the Existing Collection, and, accordingly, subject to accessioning by NGA as works of the Existing Collection pursuant to Section 2.1, *provided* that NGA agrees to (i) bear all costs and expenses arising from the removal and installation of a replacement window and (ii) coordinate with the University in

undertaking such removal and replacement in connection with the Renovation (as defined in the University Asset Agreement) of the 17th Street Building.

2.5 **Art Related Materials.** At the Closing, Corcoran shall also transfer to NGA (i) custody of all Documentary Art Related Materials with respect to the Custodial Art and (ii) ownership of all Equipment Art Related Materials and all Documentary Art Related Materials with respect to the Initial Accessioned Art. Thereafter pursuant to Section 2.1(c), Corcoran shall also transfer all of its right, title, and interest in and to the Documentary Art Related Materials that relate to the Accessioned Art as such art is accessioned to NGA pursuant to Section 2.1(c) to the fullest extent permissible under applicable Laws and any donor or other restrictions. Following the Closing, Corcoran shall provide reasonable access to any written material retained by Corcoran and of which it has not provided copies to NGA, such as organizational documents, minute books and corporate records, relating to any of the Existing Collection which NGA has accessioned or of which it has custody. Corcoran agrees not to destroy any documentation which it retains which relates to the Existing Collection without giving prior notice to NGA, so that NGA can preserve or copy any materials to the extent it deems it advisable.

2.6 **Consideration.** In consideration of the accession, contribution, transfer and conveyance of the Accessioned Art, and Corcoran's other covenants and obligations hereunder, NGA agrees, pursuant to the terms and subject to the conditions hereof, to (a) assume the Assumed Liabilities, (b) undertake the care, exhibition, preservation and conservation, as applicable, of the Existing Collection as contemplated hereunder, (c) establish and operate the Contemporary Art Gallery and the Legacy Gallery as contemplated hereunder and (d) perform its other covenants and obligations set forth herein. The parties hereby acknowledge the sufficiency of the foregoing and the benefits that each shall obtain from the execution and delivery of this Agreement, the performance of the covenants and obligations hereunder, and the consummation of the transactions contemplated hereby.

2.7 **Excluded Materials.** For the avoidance of doubt, NGA shall not acquire from Corcoran, and the following assets, properties and rights of Corcoran shall be deemed excluded from the terms and conditions of this Agreement and shall be deemed excluded from the Existing Collection and shall be deemed to not constitute Accessioned Art, Custodial Art or Art Related Materials, as applicable (collectively, the "**Excluded Assets**");

- (a) Subject to Section 2.1(b)(ii), all insurance proceeds or other rights arising from ownership, damage or loss of any work constituting the Custodial Art, at the time of the event giving rise to the insurance proceeds;
- (b) The Permanent Works;
- (c) Subject to Section 5.6, the Flemish Windows;
- (d) Documentary Art Related Materials relating to the Permanent Works or the Flemish Windows; and
- (e) Gallery Shop Inventory.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF CORCORAN

As of the date of this Agreement and as of the Closing Date, Corcoran represents and warrants to NGA as follows, with each such representation and warranty subject to such exceptions as are set forth in the Corcoran disclosure schedules attached hereto:

3.1 *Organization, Standing and Power; Tax-Exempt Status.*

(a) Corcoran is a Congressionally chartered nonprofit corporation duly formed, validly existing and in good standing under the Laws of the District of Columbia and the United States of America. Corcoran has all requisite organizational power and authority to own, lease and operate its properties and to carry on its business as now being conducted. Corcoran is duly qualified to do business and in good standing in each jurisdiction in which such qualification is necessary because of the property owned, leased or operated by it or because of the nature of its business as now being conducted, except where any failure, individually or in the aggregate, to be so qualified or in good standing could not reasonably be expected to have a material adverse effect on the business or operations of the Corcoran.

(b) Corcoran is exempt from (i) U.S. income taxation under Section 501(c)(3) of the Code and (ii) from District of Columbia income Tax, sales and use Tax, franchise Tax and transfer Tax pursuant to the relevant provisions of the District of Columbia Code. Corcoran has received a determination letter from the Internal Revenue Service (“IRS”) that it is exempt from U.S. income taxation under Section 501(c)(3) of the Code, which determination letter is in full force and effect. No part of the net earnings of Corcoran has inured to the benefit of any private shareholder or individual within the meaning of Section 501(c)(3) of the Code. Corcoran has conducted its activities so as to continue to be eligible for Tax-exempt status under Section 501(c)(3) of the Code. There is no pending, or, to the knowledge of Corcoran, threatened challenge to the Tax-exempt status of Corcoran.

3.2 *Authority; Binding Agreement.* The execution and delivery by Corcoran of this Agreement and all of the other Transaction Documents to which Corcoran is a party, and the consummation of the transactions contemplated hereby and thereby, are duly and validly authorized by all necessary corporate action on the part of Corcoran. Corcoran has all requisite corporate power and authority to enter into this Agreement and the other Transaction Documents to which it is a party, and to consummate the transactions contemplated hereby and thereby, and this Agreement and the other Transaction Documents to which Corcoran is a party have been duly executed and delivered by Corcoran. This Agreement and the other Transaction Documents to which it is a party are the valid and binding obligations of Corcoran enforceable against it in accordance with its terms, except as enforceability may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar Laws affecting the enforcement of creditor’s rights generally and the application of general principles of equity (regardless of whether that enforceability is considered in a proceeding at law or in equity).

3.3 *Compliance with Laws; Restricted Works.* Corcoran has complied with and is in compliance with all Laws applicable to it or to any of its properties, assets, operations, and business, the failure of which to so comply would have a material adverse effect on the business

or operations of Corcoran. To the knowledge of Corcoran, there does not exist any basis for any claim of default under or violation of any Law except such defaults or violations, if any, that in the aggregate do not and will not have a material adverse effect on the business or operations of Corcoran. Corcoran has complied in all material respects with the donor or other restrictions applicable to the Restricted Works.

3.4 **Conflicts; Consents.** Except as set forth on *Schedule 3.4*, the execution, delivery and performance by Corcoran of this Agreement and the other Transaction Documents to which Corcoran is a party, and the consummation by Corcoran of any of the transactions contemplated hereby and thereby, do not and will not in any material respect conflict with, violate, result in a breach of the terms and conditions of, or, with or without notice or the passage of time, result in any material breach, event of default or the creation of any lien under, any material Contract, any organizational documents of Corcoran or any Law, judgment, order, or decree to which Corcoran is subject, or require the consent or approval of any third party, including the consent or approval, or a filing by Corcoran with, any Governmental Entity.

3.5 **Authority over the Existing Collection; Restrictions; Agreements; Litigation.** Corcoran has all necessary rights to effect the transactions contemplated hereby with respect to the Existing Collection, including (a) the transfer and delivery into the custody, care and possession of NGA of the Custodial Art and (b) the accession of the Accessioned Art into NGA's collection of art, as provided herein, and Corcoran will convey all of its right, title and interest (including all copyright and other intellectual property rights, including the right to create derivative works) in and to (i) the Initial Accessioned Art and the corresponding Documentary Art Related Materials and the Equipment Art Related Materials at the Closing (and with respect to works designated as Accessioned Art thereafter pursuant to Section 2.1(c)) and (ii) the Gifts and Endowments at the Closing, in each case to NGA, free and clear of any material encumbrances or restrictions other than those set forth on *Schedule 3.5.1* (collectively, the "**Restrictions**"). Except for the Restrictions, or any restrictions that may be imposed in connection with the *cy pres* proceeding, no third party has rights that would interfere in any material respect with NGA's ownership or use of the Existing Collection or the Gifts and Endowments as provided in this Agreement. Since 1940, no work in the Existing Collection has been imported or exported into or from any country contrary to its laws. *Schedule 3.5.1* sets forth (i) the Gifts and Endowments, (ii) all material Restrictions applicable to the Existing Collection, (iii) any restrictions applicable to the Gifts and Endowments and (iv) to the knowledge of Corcoran, the Assumed Liabilities. *Schedule 3.5.2* sets forth all agreements and understandings, whether in writing or not, as to the reproduction or use of the Existing Collection, and all publication agreements and licenses and similar Contracts granted with respect to the Existing Collection. Except as set forth in *Schedule 3.5.3*, there is no litigation pending, or threatened in writing, with respect to the Existing Collection or the Gallery.

3.6 **No Other Representations and Warranties.** EXCEPT AS EXPRESSLY PROVIDED IN THIS ARTICLE 3, CORCORAN MAKES NO OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, TO NGA, INCLUDING, WITH RESPECT TO THE ACCESSIONED ART, (i) ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (ii) ANY WARRANTY IN RESPECT OF CONDITION OR TITLE, (iii) ANY WARRANTY ARISING THROUGH COURSE OF DEALING OR USAGE OF TRADE, AND (iv) ANY LIABILITY FOR ANY DAMAGES, INCLUDING CONSEQUENTIAL, DIRECT, INDIRECT, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES, ARISING OUT OF, OR RELATING IN ANY

WAY TO, THE USE OR INABILITY TO USE THE ACCESSIONED ART BY ANY PERSON AND REGARDLESS OF THE BASIS OR CAUSE OF ACTION GIVING RISE THERETO.

3.7 **Solvency.** Corcoran is Solvent on the date hereof and as of and immediately following the Closing Date, after giving effect to the transactions contemplated hereby and by the University Transaction, Corcoran will be Solvent.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF NGA

As of the date hereof and as of the Closing Date, NGA represents and warrants to Corcoran as follows:

4.1 **Organization, Standing and Power; Non-Profit Status.**

(a) NGA is an independent establishment of the United States created by Joint Resolution of Congress (Act of March 24, 1937, 50 Stat. 51, 20 U.S.C. §§ 71-75). NGA has all requisite organizational power and authority to operate its properties and to carry on its activities as now being conducted.

(b) NGA is a non-profit organization that is exempt from U.S. income tax under §501 (c)(3) of the Internal Revenue Code (Ruling Letters dated February 20, 1973 and June 8, 1973).

4.2 **Authority; Binding Agreement.** The execution and delivery by NGA of this Agreement and all of the other Transaction Documents to which NGA is a party, and the consummation of the transactions contemplated hereby and thereby, are duly and validly authorized by all necessary action on the part of NGA. NGA has all requisite power and authority to enter into this Agreement and the other Transaction Documents to which it is a party, and to consummate the transactions contemplated hereby and thereby, and this Agreement and the other Transaction Documents to which NGA is a party have been duly executed and delivered by NGA. This Agreement and the other Transaction Documents to which it is a party are the valid and binding obligations of NGA enforceable against it in accordance with its terms, except as enforceability may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar Laws affecting the enforcement of creditor's rights generally and the application of general principles of equity (regardless of whether that enforceability is considered in a proceeding at law or in equity).

4.3 **No Other Representations and Warranties.** EXCEPT AS EXPRESSLY PROVIDED IN THIS ARTICLE 4, NGA MAKES NO OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, TO CORCORAN.

ARTICLE 5 COVENANTS AND AGREEMENTS

5.1 **Cooperation.** After the date hereof, the parties shall confer, reasonably cooperate and work together to ensure (a) an orderly transfer of the Existing Collection into the custody, care and possession of NGA and (b) the operation of the Gallery post-Closing and the

subsequent installation of the Contemporary Art Gallery and the Legacy Gallery, with the goal of installing the Contemporary Art Gallery and the Legacy Gallery after the Closing Date on a time schedule that takes into account the current obligations of Corcoran with respect to planned exhibitions and the status of renovation efforts. NGA will not assume any obligations, financial or otherwise, for the operation of the Gallery prior to the Closing.

5.2 ***Interim Operating Covenants.*** From the date hereof until the Closing, Corcoran shall, except as otherwise expressly contemplated or required hereby or as otherwise consented to in advance in writing by NGA (such consent not to be unreasonably withheld, conditioned or delayed), operate in the ordinary course of its business, consistent with past practice, and shall, except as otherwise expressly contemplated or required hereby or as otherwise consented to in advance in writing by NGA (such consent not to be unreasonably withheld, conditioned or delayed): (a) use its commercially reasonable efforts to preserve intact the goodwill and business organization of the Gallery; (b) not enter into any new agreements with respect to the rental after the date hereof of the Gallery; (c) not spend the Gifts and Endowments except in accordance with prior practice, and in any event, not buy any additional works of art and (d) not agree or commit, whether in writing or otherwise, to take any of the actions specified in the foregoing clauses (a) through (c). From the date hereof until the Closing Date, Corcoran shall not assign, sell, lease (as lessor), transfer or dispose of, or agree to the loan of any works of the Existing Collection, or agree to take such actions.

5.3 ***Approvals and Proceedings.***

(a) The parties acknowledge and agree that the ability of Corcoran to consummate the transactions contemplated hereby requires seeking the application of the *cy pres* doctrine to the Corcoran's organizational documents, in addition to other approvals by Governmental Entities.

(b) With respect to the foregoing and subject to the terms and conditions herein provided, Corcoran and NGA shall use reasonable best efforts to:

(i) obtain as promptly as practicable any necessary permits, consents, approvals, notices, waivers and authorizations of, or actions or nonactions by, and make as promptly as practicable all necessary filings and submissions with, any Governmental Entity or any third party necessary in connection with the consummation of the transactions contemplated by this Agreement and the other Transaction Documents;

(ii) cooperate with each other in (A) determining which filings are required to be made prior to the Closing with, and which material permits, consents, approvals, notices, waivers or authorizations are required to be obtained prior to the Closing from, Governmental Entities or third parties in connection with the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby and (B) timely making all such filings and timely seeking all such permits, consents, approvals, notices, waivers or authorizations;

(iii) cooperate with each other in defending, contesting and objecting to any claims, legal proceedings, petitions to deny, objections or other proceedings, whether

judicial or administrative, by or before any Governmental Entity challenging the transactions contemplated hereby or that would otherwise prevent or materially impede, interfere with, hinder or delay the consummation of the transactions contemplated hereby, including by seeking to have any stay or temporary restraining order entered by any Governmental Entity vacated or reversed;

(iv) cause the conditions to the Closing set forth in Article 6 to be satisfied as promptly as reasonably practicable; and

(v) take, or cause to be taken, all other actions and do, or cause to be done, and cooperate with each other in order to do, all other things necessary or appropriate to consummate the transactions contemplated hereby.

5.4 ***Acknowledgement with Respect to Certain Near-Term Exhibits and Special Events.*** NGA acknowledges that Corcoran is party to certain agreements and other understandings with third parties with respect to exhibits and special events scheduled to occur in the 17th Street Building between the date hereof and December 31, 2014, a list of which is attached hereto as *Schedule 5.4* (collectively, the “**2014 Commitments**”), copies of which agreements have been made available to NGA. NGA agrees to work with Corcoran and the University, as the post-Closing owner of the 17th Street Building, to use reasonable efforts to ensure that the 2014 Commitments are honored, in a manner consistent with past practice of Corcoran and otherwise as described in *Schedule 5.4*. Corcoran has provided for, in its budget, (i) all costs associated with the Paley and Tribe exhibitions and (ii) the cost of security guards for the Gallery through September 30, 2014 and such costs shall be the sole responsibility of Corcoran, whether incurred before or after the Closing.

5.5 ***Continuation of Corcoran Mission; Establishment of Joint Advisory Committee.*** In order to fulfill its legal duties as the holder of the federal charter and its responsibilities under the terms of this and related agreements, the Corcoran will continue as a legal entity committed to its original mission: “Dedicated to Art and Encouraging American Genius” and in that manner the Corcoran will continue its 145 year history of pursuing and supporting new art and new ideas. The continuing entity will seek to support NGA and the University stewardship of the Corcoran name and legacy, to promote the important role of contemporary art and artists in provoking new thinking and realizing new exciting cultural initiatives and, through the Joint Advisory Committee described below, to consult with and provide advice to NGA and the University on programs and interconnected activities of the University and NGA. Insofar as Corcoran will continue in existence following the Closing and will develop a program for the fulfillment of its mission as an organization dedicated to art and encouraging American genius, the parties desire to establish a framework for future potential collaboration and exploration of joint activities, as follows:

(a) The parties desire to (i) establish an ongoing relationship to perpetuate Corcoran’s mission by the establishment and operation of the Contemporary Art Gallery and (ii) pursue the goals contemplated in the preceding paragraph.

(b) In connection with the foregoing, promptly following the Closing, Corcoran and NGA shall form a joint advisory committee (the “**Joint Advisory Committee**”)

for the purposes of discussing the implementation of the goals embodied in this Agreement and endeavoring to jointly undertake such other actions or activities as the parties may agree from time to time in furtherance of the purposes of this Agreement and their ongoing respective missions.

(c) NGA and Corcoran shall each have the right to appoint an equal number of representatives to the Joint Advisory Committee, which shall not exceed three (3) representatives, respectively, unless the parties agree otherwise. NGA, on the one hand, and Corcoran, on the other, may replace its respective representatives to the Joint Advisory Committee from time to time by giving notice to the other party.

(d) The Joint Advisory Committee shall meet from time to time, but in any event no less frequently than once every two (2) years. The Joint Advisory Committee shall establish its own procedures with respect to the conduct of its meetings, *provided* that NGA, on the one hand, and Corcoran, on the other, shall propose any matters for the agenda of each meeting of the Joint Advisory Committee reasonably in advance by notice to the members of the Joint Advisory Committee. The parties shall in good faith coordinate with one another to establish the schedule of meetings for the Joint Advisory Committee as contemplated hereby.

5.6 ***Flemish Windows.*** It is the expectation of the parties that the Flemish Windows will be repatriated to Park Abbey in Louvain (Heverlee), Belgium, with all costs and expenses of such repatriation and the installation of replacement windows to be borne by the City of Louvain as the recipient thereof. In accordance with the University Asset Agreement, to the extent such repatriation occurs following the Closing, during the time period between Closing and such repatriation, Corcoran shall retain title to the Flemish Windows, and the University shall be deemed bailee thereof for the purpose of safeguarding and maintaining the Flemish Windows until such repatriation is complete.

ARTICLE 6 CONSUMMATION OF THE TRANSACTION

6.1 ***Closing.*** Pursuant to the terms and subject to the conditions of this Agreement, including as set forth in Sections 6.2 and 6.3 below, the consummation of the transactions contemplated by this Agreement (the “**Closing**”) shall take place at the offices of the University, 2100 Pennsylvania Avenue, N.W. at 10:00 a.m. local time, three (3) business days after the conditions set forth in this Article 6 are satisfied or, if permissible, waived, or on such other date as mutually agreed by the parties (such date of the Closing hereinafter referred to as the “**Closing Date**”), *provided* that in no event shall the Closing be prior to August 12, 2014.

6.2 ***Conditions to Obligations of NGA.*** The obligations of NGA to consummate the transactions contemplated by this Agreement at the Closing are subject to the satisfaction of the following conditions, or the waiver thereof by NGA:

(a) The representations and warranties of Corcoran contained herein that are qualified by materiality or subject to thresholds shall be true and correct in all respects, and the representations and warranties of Corcoran contained herein that are not so qualified shall be true

and correct in all material respects, in each case as of the date hereof and the Closing Date as if made on and as of the Closing Date.

(b) Corcoran shall have performed and complied in all material respects with all covenants and agreements required to be performed or complied with on or prior to the Closing Date.

(c) The parties shall have obtained final resolution of the application of the cy pres doctrine to Corcoran's organizational documents which resolution does not, in NGA's reasonable judgment, impose any restrictions which would materially and negatively affect the goals intended to be achieved by the parties in entering into this Agreement.

(d) NGA shall have received or Corcoran shall stand ready to deliver:

(i) a certificate, dated as of the Closing Date, duly executed by an authorized officer of Corcoran, certifying that:

A. the conditions set forth in Sections 6.2(a) and (b) have been fulfilled;

B. all documents to be executed by Corcoran and delivered at the Closing have been executed by a duly authorized officer of Corcoran; and

C. (1) Corcoran's charter and bylaws, attached to the certificate, are true and correct, (2) such organizational documents have been in full force and effect in the form attached since the date of the adoption of the resolutions referred to in clause (3) below and no amendment to such organizational documents has occurred since the date of the last amendment annexed thereto, if any, and (3) the resolutions adopted by Corcoran authorizing the execution, delivery and performance of this Agreement, attached to the certificate, were duly adopted at a duly convened meeting thereof, at which a quorum was present and acting throughout or by unanimous written consent, remain in full force and effect, and have not been amended, rescinded or modified, except to the extent attached thereto;

(ii) the following documents duly executed by Corcoran: (A) the Instrument of Accession, (B) with respect to the Gifts and Endowments, a wire transfer to an account designated by NGA of all amounts in cash and with respect to investments, such documentation as may be reasonably necessary to confer upon NGA ownership of such investments, (C) with respect to the Custodial Art, an instrument of custodial transfer and such other instruments of transfer, dated as of the Closing Date, as necessary to give effect to Section 2.4, in form and substance reasonably satisfactory to the parties hereto (the "**Instrument of Custodial Transfer**"), (D) a release of NGA from any and all liability arising out of its operation of the Gallery from the Closing and its custody of the Custodial Art substantially in the form attached as *Exhibit D* hereto (the "**Release**"), and (E) a trademark license agreement with respect to the "Corcoran" name and related marks as contemplated in the preamble to this Agreement based on the form attached hereto as *Exhibit B*, as further negotiated by the parties to implement their discussions prior to the execution of this Agreement (the "**License Agreement**"); and

(iii) such other documents, certificates or instruments as NGA may reasonably request, including an instrument transferring ownership of the Equipment Art Related Materials and an instrument assigning or otherwise transferring Documentary Art Related Materials.

6.3 **Conditions to Obligations of Corcoran.** The obligations of Corcoran to consummate the transactions contemplated by this Agreement at the Closing are subject to the satisfaction of the following conditions or waiver thereof by Corcoran:

(a) The representations and warranties of NGA contained herein that are qualified by materiality or subject to thresholds shall be true and correct in all respects, and the representations and warranties of NGA contained herein that are not so qualified shall be true and correct in all material respects, in each case as of the date hereof and the Closing Date as if made on and as of the Closing Date.

(b) NGA shall have performed and complied in all material respects with all covenants and agreements required to be performed or complied with on or prior to the Closing Date.

(c) The parties shall have obtained final resolution of the application of the cy pres doctrine to Corcoran's organizational documents which resolution does not, in Corcoran's reasonable judgment, impose any restrictions which would materially and negatively affect the goals intended to be achieved by the parties in entering into this Agreement.

(d) The University Transaction shall be consummated simultaneously with the Closing of the transactions contemplated hereby and the University-NGA Agreement shall not have been terminated.

(e) Corcoran shall have received or NGA shall stand ready to deliver:

(i) a certificate, dated as of the Closing Date, duly executed by an authorized officer of NGA, certifying that:

A. the conditions set forth in Sections 6.3(a) and (b) have been fulfilled; and

B. all documents to be executed by NGA and delivered at the Closing have been executed by a duly authorized officer of NGA; and

(ii) the following documents duly executed by NGA: (A) the License Agreement, (B) the Instrument of Accession, (C) the Instrument of Custodial Transfer, and (D) such other documents, certificates or instruments as Corcoran may reasonably request.

ARTICLE 7 TERMINATION

7.1 **Termination.** In addition to other remedies available at Law or equity, this Agreement may be terminated as set forth below by either Corcoran or NGA upon the occurrence of any of the following prior to the Closing:

- (a) the mutual written consent of both parties;
- (b) the termination of the definitive agreements entered into by Corcoran and NGA in respect of the University Transaction or the termination of the University-NGA Agreement;
- (c) if the parties' request for application of the *cy pres* doctrine to Corcoran's organizational documents shall have been denied by final judgment in accordance with applicable Laws, or if the conditions set forth in Section 6.2(c) or Section 6.3(c) shall not have been satisfied by such final judgment;
- (d) if the other party is in material breach of any of its representations, warranties, covenants, agreements or obligations hereunder and has failed to cure such breach within thirty (30) days of notice from the non-breaching party; *provided* that the party seeking to terminate the Agreement pursuant to this paragraph (d) is not then in material default or breach hereunder; or
- (e) if the Closing shall not have occurred as of the first anniversary of the date hereof.

7.2 **Procedure and Effect of Termination.**

(a) Any termination by either party pursuant to Section 7.1 shall be communicated by a written notice to the other party (the "**Notice of Termination**"). The Notice of Termination shall indicate the termination provision in this Agreement claimed to provide a basis for termination of this Agreement. Termination of this Agreement pursuant to the terms and subject to the conditions of Section 7.2 shall be effective upon and as of the date of delivery of a Notice of Termination.

(b) In the event of the termination of this Agreement pursuant to Section 7.1, this Agreement shall forthwith become null and void and have no effect, and the obligations of the parties under this Agreement shall terminate, except for this Section 7.2, Section 7.3 and Article 8, which shall survive indefinitely. Nothing in this Article 7 shall relieve either party of any liability for a breach of this Agreement prior to the termination hereof.

(c) For the avoidance of doubt, in the event this Agreement is terminated prior to the Closing, Corcoran shall not be obligated to enter into the License Agreement.

7.3 **Withdrawal of Certain Filings.** All filings, applications and other submissions relating to the transactions contemplated by this Agreement as to which termination has occurred

shall, to the extent practicable, be withdrawn from the Governmental Entity or other Person to which made.

ARTICLE 8 MISCELLANEOUS PROVISIONS

8.1 ***Survival of Representations, Warranties and Agreements.*** None of the representations, warranties, covenants and agreements in this Agreement or in any instrument delivered pursuant to this Agreement shall survive beyond the Closing, except for (a) those covenants and agreements set forth in this Agreement that by their terms contemplate performance in whole or in part after the Closing, including Section 2.1(b), Section 2.1(c), Section 2.1(d), Section 2.2, Section 2.3, Section 2.4, Section 2.5, Section 5.4, Section 5.5 and Section 5.6, which shall survive until fully performed and discharged, and (b) those contained in this Article 8.

8.2 ***Confidentiality.*** Information concerning either Corcoran or NGA's business methods, financial information, future plans, personnel data, trade secrets, information systems, financial and accounting policies or similar matters, or information designated as "confidential" by the disclosing party or released under circumstances where a reasonable Person would understand that such information is to be treated as confidential, shall be treated as confidential. The party receiving such confidential information shall take the same precautions as it takes to protect its own confidential information, but in all events reasonable precautions shall be taken, in order to preserve its confidentiality. Confidential information shall not be revealed to third parties without the written consent of the disclosing party, and neither Corcoran nor NGA may use the other party's confidential information for any purpose except for purposes of performing this Agreement. This confidentiality requirement shall not apply to: (a) information in the public domain, (b) information independently developed by either party without use of the other party's confidential information, (c) information received by either party from a third party under no duty of confidentiality, and (d) a disclosure of information that is required by Law or legislative or regulatory body. The obligations of the parties under this Section 8.2 shall survive the Closing or the termination of the Agreement for a period of five (5) years after such Closing or termination, as applicable.

8.3 ***Publicity, Marks and Use of Names.*** Except as permitted by the License Agreement, neither party shall use the name, logo, insignia, or trademarks of the other party or any of the other party's trustees, directors, officers, employees, or agents, in any press release, fund-raising, website, or product advertising, or for any other promotional purpose, without first obtaining the written consent of the other party.

8.4 ***Public Announcement.*** Prior to the Closing, NGA and Corcoran shall mutually agree on any public announcement concerning the matters covered by this Agreement. At the time of the Closing, Corcoran and NGA shall release a public announcement as shall be mutually agreed by the parties.

8.5 ***Cooperation Following the Closing.*** Following the Closing, each party shall deliver to the other party such further information and documents and shall execute and deliver to the other party such further instruments and agreements as any other party shall reasonably

request to consummate or confirm the transactions provided for herein, to accomplish the purpose hereof or to assure to any other party the benefits hereof.

8.6 *Notices.* All notices, requests, demands and other communications which are required or may be given pursuant to the terms of this Agreement (including Notices of Termination) shall be in the English language and in written or electronic form, and shall be deemed delivered (a) on the date of delivery when (i) delivered by hand or (ii) sent by reputable overnight courier maintaining records of receipt and (b) on the date of transmission when sent by facsimile or other electronic transmission during normal business hours with confirmation of transmission by the transmitting equipment; *provided* that any such communication delivered by facsimile or other electronic transmission shall only be effective if such communication is also delivered by hand or deposited with a reputable overnight courier maintaining records of receipt within two (2) business days after its delivery by facsimile or other electronic transmission. All such communications shall be addressed to the parties at the addresses set forth below, or at such other address as a party may designate upon ten (10) days' prior written notice to the other party.

If to Corcoran:

Corcoran Gallery of Art
500 17th Street N.W.
Washington, DC 20006
Attention: General Counsel
Phone: (202) 365-7327
Fax: (202) 639-1738

with a copy to:

Charles A. Patrizia
Paul Hastings LLP
875 15th Street N.W.
Washington, D.C. 20005
Phone: (202) 551-1710
Fax: (202) 551-1705

If to NGA:

Elizabeth A. Croog
Secretary and General Counsel
National Gallery of Art
2000B South Club Drive
Landover, MD 20785
Tel: (202) 842-6363
Fax: (202) 842-3782

with a copy to:

Janet T. Geldzahler
Sullivan & Cromwell LLP

1700 New York Avenue N.W.
Suite 700
Washington, D.C. 20006-5215
Tel: (202) 956-7515
Fax: (212) 558-3588

8.7 **Amendments.** Amendments to this Agreement shall be made by mutual consent of the parties, by the issuance of a mutually agreed upon written instrument, signed and dated by authorized officials of Corcoran and NGA, prior to any changes being performed.

8.8 **Waiver.** Any agreement on the part of a party to any extension or waiver of any provision hereof shall be valid only if set forth in an instrument in writing signed on behalf of such party. A waiver by a party of the performance of any covenant, agreement, obligation, condition, representation or warranty shall not be construed as a waiver of any other covenant, agreement, obligation, condition, representation or warranty. A waiver by any party of the performance of any act shall not constitute a waiver of the performance of any other act or an identical act required to be performed at a later time.

8.9 **Assignment.** Neither party may assign or transfer any rights or obligations in this Agreement except with the prior written consent of the other party. Any attempted assignment or delegation in violation of this Section 8.9 shall be void.

8.10 **Governing Law.** This Agreement shall be governed by the Laws of the District of Columbia, excluding any conflicts or choice of Law rules or principles that might otherwise refer construction or interpretation of this Agreement to the substantive Law of another jurisdiction.

8.11 **Dispute Resolution; Remedies.**

(a) In the event of any dispute, controversy or claim arising out of or in connection with this Agreement, the License Agreement or the other agreements, certificates and documents delivered in connection herewith (collectively, the "**Transaction Documents**"), and the rights and obligations of the parties under the Transaction Documents, including any question regarding their existence, validity or termination (a "**Dispute**") the parties agree to negotiate in good faith and to act reasonably, and within a reasonable time, to attempt to resolve any Disputes.

(b) Notwithstanding the foregoing, the parties recognize that irreparable injury will result from a breach by NGA of any of its covenants or obligations arising under the License Agreement or Section 2.1 or Sections 2.4(a) or (b) hereof (collectively, the "**Equitable Provisions**") and that money damages will be inadequate to fully remedy the injury. Accordingly, in the event of a breach or threatened breach of one or more of the Equitable Provisions, and following the inability of the parties to resolve the matter as set forth in subsection (a), any party that may be injured (in addition to any other remedies which may be available to that party), shall be entitled to one or more preliminary or permanent orders restraining and enjoining any act which would constitute a breach or compelling the performance of any obligation which, if not performed, would constitute a breach of any such Equitable Provision.

8.12 **Cumulative Rights.** Except as expressly provided herein, the various rights of this Agreement shall be construed as cumulative, and no one of them is exclusive of the other or exclusive of any rights allowed by Law.

8.13 **Severability.** If any covenant or provision hereof is determined by a court of competent jurisdiction to be void or unenforceable in whole or in part, it shall not, subject to the discretion of such court, be deemed to affect or impair the validity of any other covenant or provision, each of which is hereby declared to be separate and distinct. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable. If any provision of this Agreement is declared invalid or unenforceable for any reason other than overbreadth, the offending provision shall be modified so as to maintain the essential benefits of the bargain between the parties hereto to the maximum extent possible, consistent with Law and public policy.

8.14 **Expenses.** Except as otherwise expressly provided herein, each party shall pay its own fees, costs and expenses incurred in connection herewith and the transactions contemplated hereby, including the fees, costs and expenses of its financial advisors, accountants and counsel.

8.15 **Independent Contractors.** The parties to this Agreement are independent contractors. Neither party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture or partnership between the parties or to impose any liability attributable to such a relationship upon the parties.

8.16 **No Third-Party Beneficiaries.** This Agreement is solely for the benefit of NGA and Corcoran. There are no intended or implied third-party beneficiaries to this Agreement or any of the transactions contemplated herein.

8.17 **Entire Agreement.** This Agreement, together with any Schedules and Exhibits attached hereto and contemplated hereby, and the other Transaction Documents constitute the entire understanding between the parties with respect to the subject matter hereof and supersede all oral communications and prior writings with respect thereto, including for the avoidance of doubt, that certain Letter of Intent, dated as of February 18, 2014, by and between Corcoran and NGA.

8.18 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be an original and all of which will constitute together the same document.

[Signatures appear on following page; remainder intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Art Accession and Custodial Transfer Agreement as of the date first written above.

**TRUSTEES OF THE CORCORAN
GALLERY OF ART:**

By: _____

Name: Harry F. Hopper III
Title: Chairman

THE NATIONAL GALLERY OF ART

By: _____

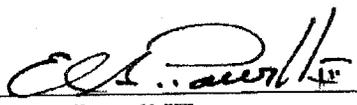
Name: Earl A. Powell III
Title: Director

IN WITNESS WHEREOF, the parties hereto have executed this Art Accession and Custodial Transfer Agreement as of the date first written above.

**TRUSTEES OF THE CORCORAN
GALLERY OF ART:**

By: _____
Name: Harry F. Hopper III
Title: Chairman

THE NATIONAL GALLERY OF ART

By:  _____
Name: Earl A. Powell III
Title: Director

LICENSE AGREEMENT BETWEEN THE
TRUSTEES OF THE CORCORAN GALLERY OF
ART AND NATIONAL GALLERY OF ART

EXHIBIT B

FORM OF LICENSE AGREEMENT

This LICENSE AGREEMENT (this “**Agreement**”) is hereby made and entered into as of [•], 2014, by and between the **TRUSTEES OF THE CORCORAN GALLERY OF ART**, a Congressionally chartered nonprofit corporation located in the District of Columbia (“**Corcoran**”), and the **NATIONAL GALLERY OF ART**, an independent establishment of the United States created by Joint Resolution of Congress located in the District of Columbia (“**NGA**”) (each a “**Party**” and, collectively, the “**Parties**”).

WHEREAS:

A. The Parties are entering this Agreement in conjunction with the closing under that certain Art Accession and Custodial Transfer Agreement, dated as of [•], 2014 (the “**Accession Agreement**”).

B. Pursuant to the Accession Agreement, the Parties desire that NGA will license from Corcoran, and Corcoran will license to NGA, certain rights to the “Corcoran” name and mark for use by NGA in connection with the Licensed Field (as set forth below) as contemplated by the Accession Agreement and on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of their respective representations, promises and obligations, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, and desiring to be bound hereby, the Parties agree as follows:

ARTICLE 1 DEFINITIONS AND TERMS

1.1 *Certain Definitions.* The following terms, as used herein, have the meanings set forth below:

“**Accession Agreement**” has the meaning set forth in the preamble.

“**Agreement**” has the meaning set forth in the preamble.

“**Authorized Uses**” has the meaning set forth in Section 2.3.

“**Claim**” has the meaning set forth in Section 5.3(b).

“**Combined Mark**” means any Trademark that combines the Licensed Mark with an NGA Mark.

“**Corcoran**” has the meaning set forth in the preamble.

“**Corcoran Intellectual Property**” means any Intellectual Property that is owned by, licensed to or used by Corcoran in the conduct of its business.

“**Effective Date**” has the meaning set forth in Section 2.4.

“**Infringement Claim**” has the meaning set forth in Section 5.3(b).

“**Initial Term**” has the meaning set forth in Section 2.4.

“**Intellectual Property**” means any or all of the following and all rights, arising out of or associated therewith: (a) all patents and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof; (b) all inventions (whether patentable or not), invention disclosures, improvements, proprietary information, know-how, technology, technical data and customer lists, and all documentation relating to any of the foregoing; (c) all copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto; (d) all industrial designs and any registrations and applications therefor; (e) all corporate, trade or business names, brands, designs, trademarks, service marks, trade dress, logos, domain names, and slogans (collectively, “**Trademarks**”), and all registrations and applications for registration of Trademarks; (f) all software, databases and data collections and all rights therein; (g) all moral and economic rights of authors and inventors, however denominated; and (h) any similar or equivalent rights to any of the foregoing.

“**Licensed Field**” has the meaning set forth in Section 2.1(a).

“**Licensed Mark**” means “Corcoran.”

“**NGA**” has the meaning set forth in the preamble.

“**NGA Mark**” means any Trademark owned by NGA (other than a Trademark including the Licensed Mark).

“**Renewal Term**” has the meaning set forth in Section 2.4.

“**Term**” has the meaning set forth in Section 2.4.

1.2 **Other Defined Terms.** Other capitalized terms contained herein that are not otherwise defined herein shall have the meanings ascribed thereto in the Accession Agreement.

1.3 **Interpretation.** The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof. Except where the context requires otherwise, whenever used in this Agreement, the singular includes the plural, the plural includes the singular, the use of any gender is applicable to all genders, and the word “or” has the inclusive meaning represented by the phrase “and/or.” The words “include” and “including” and variations thereof shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.” A reference in this Agreement to an Article, Section, Exhibit, or Schedule is to the referenced Article, Section, Exhibit, or Schedule of this Agreement. The wording of this Agreement shall be deemed to be the wording mutually chosen by the Parties, and no rule of strict construction shall be applied against either Party. Unless expressly provided otherwise, all dollar figures in this Agreement, if any, are in the currency of the United States of America.

ARTICLE 2
GRANT OF LICENSE AND RELATED RIGHTS

2.1 Grant of License.

(a) In consideration of NGA's covenants and obligations hereunder and under the Accession Agreement, and pursuant to the terms and conditions of this Agreement, Corcoran hereby grants to NGA, and NGA hereby accepts from Corcoran, the exclusive, worldwide, royalty-free, fully paid-up, irrevocable, non-transferable (except as expressly set forth in Section 2.1(b)) right and license to use the Licensed Mark during the Term in connection with (i) the establishment and operation of a new contemporary art program, to be conducted as the "Corcoran Contemporary, National Gallery of Art" (or such other name as may be designated in accordance with Section 2.2(a) of the Accession Agreement), which program is to be housed at the 17th Street Building; (ii) the display or exhibition in the 17th Street Building or other venues other than NGA of works of the Accessioned Art, which works shall be identified and credited as part of the "National Gallery of Art, Corcoran Collection" (including, as applicable, an appropriate sub-identifier), in accordance with Section 2.1(d) of the Accession Agreement; (iii) the display or exhibition at NGA of works of the Accessioned Art, which works shall be identified as part of the "Corcoran Collection" (including, as applicable, an appropriate sub-identifier), in accordance with Section 2.1(d) of the Accession Agreement; (iv) the performance of any and all activities consistent with or incident to such establishment, operation, display, or exhibition; and (v) any reproduction or derivative work of any work of the Accessioned Art (the "**Licensed Field**"), including on products created and distributed in connection with the Licensed Field, in connection with all services provided as part of the Licensed Field, in all advertising and promotion of such products, services, and activities, and in domain names or similar or successor electronic address mechanisms or systems as provided in Section 5.2 and Section 6.3.

(b) NGA's rights hereunder include the right to allow its officers, directors, trustees, employees, representatives, contractors, volunteers, and agents to use the Licensed Mark, pursuant to the terms and conditions of this Agreement, for the purpose of allowing NGA to exercise fully the rights granted under this Agreement or under the Accession Agreement. For the avoidance of doubt, NGA may allow other venues that exhibit the Accessioned Art pursuant to the terms and conditions of the Accession Agreement to use the Licensed Mark and Combined Marks in connection with such exhibitions in the same ways and under the same conditions that this Agreement permits NGA to use the Licensed Mark and Combined Marks, except that such venues shall not use the Licensed Mark to create any new Trademark.

2.2 Reserved Rights. Except for the rights expressly granted to NGA under this Agreement and under the Accession Agreement, all other rights, benefits and privileges relating to the Corcoran Intellectual Property are expressly reserved by and to Corcoran. For the avoidance of doubt, the license granted herein is exclusive even as to Corcoran, except that Corcoran may continue to use the Licensed Mark for its own corporate, non-commercial, and internal purposes, and except that Corcoran may grant a limited license to each recipient of any of the Distributed Art to use the Licensed Mark solely to identify and credit the Distributed Art that it acquires. No such recipient shall use the Licensed Mark to create any new Trademark .

2.3 *Authorized Uses.* Except with the prior written consent of Corcoran, NGA: (a) shall use the Licensed Mark only in the Licensed Field, and (b) shall use the Licensed Mark only with other words or letters, including any NGA Mark, and including as part of the Trademarks shown on Exhibit B hereto ((a) and (b), collectively, the “**Authorized Uses**”).

2.4 *Term.* The term of this Agreement shall commence on the Closing under the Accession Agreement (the “**Effective Date**”) and continue for an initial term of ninety-nine (99) years (the “**Initial Term**”). This Agreement shall automatically renew following the Initial Term for additional successive ten (10) year renewal terms (each, a “**Renewal Term**” and, together with the Initial Term, the “**Term**”).

ARTICLE 3 MAINTENANCE OF GOODWILL RELATING TO LICENSED MARK

3.1 *Compliance with Laws.* NGA shall comply with applicable Laws in its use of the Licensed Mark.

3.2 *Use of the Licensed Mark.*

(a) The products and services that NGA provides in connection with the Licensed Mark shall be of substantially the same quality as the products and services that NGA provides in connection with the NGA Marks as of the date of this Agreement.

(b) If any use by NGA of the Licensed Mark is not consistent with the terms and conditions of this Agreement and Corcoran so notifies NGA in writing, NGA shall use its reasonable best efforts to cure the cause of such failure, and, if NGA is unable to cure such failure, NGA shall discontinue such non-conforming use after a commercially reasonable phase-out period.

(c) NGA shall not use, display, or exhibit the Authorized Uses, or otherwise distribute any depiction of the Licensed Mark, in any way that would reasonably be expected to damage the goodwill associated with the Licensed Mark.

3.3 *Inspection.* Upon Corcoran’s reasonable request, but no more than once in any calendar year, NGA shall provide Corcoran with representative samples of the Authorized Uses to allow Corcoran to ensure that NGA’s use of the Licensed Mark complies with the terms and conditions of this Agreement.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF CORCORAN

Corcoran represents and warrants to NGA as follows:

4.1 *Rights to Licensed Mark.* Corcoran is the sole and exclusive owner of the Licensed Mark worldwide. Corcoran has the right to grant this license to the Licensed Mark on the terms and conditions provided herein.

4.2 **No Infringement.** The use of the Licensed Mark as authorized in this Agreement does not infringe the Intellectual Property rights of any third party.

4.3 **No Litigation.** There is no litigation pending or, to the knowledge of Corcoran, threatened, and Corcoran has not received or sent any written notice of a claim or suit (a) that could reasonably be expected to restrain, enjoin or otherwise prevent the performance by Corcoran of the covenants and obligations contemplated by this Agreement, or (b) relating to the validity or non-infringement of the Licensed Mark.

4.4 **Disclaimer of Warranties.** OTHER THAN AS EXPRESSLY SET FORTH IN THIS ARTICLE 4 OR IN ARTICLE 3 OF THE ACCESSION AGREEMENT, CORCORAN MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED MARK AND THE OTHER MATTERS CONTEMPLATED BY THIS AGREEMENT, INCLUDING (A) ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND (B) ANY WARRANTY ARISING THROUGH COURSE OF DEALING OR USAGE OF TRADE.¹

ARTICLE 5 OWNERSHIP AND PROTECTION OF LICENSED MARK

5.1 **Ownership of the Licensed Mark.** Subject to Article 7, NGA shall not acquire any ownership interest in the Licensed Mark throughout the Term of this Agreement. NGA acknowledges: (a) that Corcoran exclusively owns, and shall continue to own, all right, title, and interest in and to the Licensed Mark, except for the rights expressly granted to NGA hereunder; (b) the great value of the goodwill associated with the Licensed Mark; (c) that all goodwill associated with the Licensed Mark that arises from NGA's use thereof shall inure to the benefit of Corcoran, except that all goodwill attributable to use of any NGA Mark or any Combined Mark as part of the Authorized Uses shall inure solely to the benefit of NGA; and (d) that the Licensed Mark has secondary meaning in the minds of the public.

5.2 **Registrations; Protection of the Licensed Mark.**

(a) Subject to Section 6.3, at Corcoran's election or upon the request of NGA, Corcoran shall use commercially reasonable efforts to file applications for trademark or service mark registration or to register domain names (or similar or successor electronic address mechanisms or systems) for the Licensed Mark in the Licensed Field. The cost of preparing and filing any such application or registration contemplated hereby, including reasonable attorneys' fees in connection therewith, shall be borne by Corcoran or, if NGA makes such request for registration, by NGA. Subject to Section 6.3, NGA shall not, on its own behalf or on behalf of any other Person, in any jurisdiction in the world, register or attempt to register the Licensed Mark as a domain name or with the United States Patent and Trademark Office or any other Governmental Entity (including state trademark offices) as a trademark or service mark.

¹ We have deleted the representations and warranties of both parties that are covered in the Accession Agreement.

(b) Upon any such registration of the Licensed Mark, Corcoran shall take all reasonable steps to maintain such registration during the Term hereof, to the extent that NGA continues to use such registered Licensed Mark. The cost of preparing and making any filings in connection with maintenance of a registration for the Licensed Mark, including reasonable attorneys' fees in connection therewith, shall be borne by the Party who bore the cost of the obtaining the applicable registration.

5.3 *Infringement Claims.*

(a) Each of NGA and Corcoran shall notify the other in writing reasonably promptly (and in no event later than thirty (30) days) after becoming aware of any imitation, infringement, use without authorization, or dilution of the Licensed Mark by any Person.

(b) NGA shall have the initial right to institute and control, at its own expense, a claim, action, suit, demand, or proceeding, whether formally or otherwise asserted (collectively, a "**Claim**") alleging infringement of the Licensed Mark in the Licensed Field ("**Infringement Claim**"). NGA shall notify Corcoran within thirty (30) business days of NGA's receipt or issuance of the notice described in Section 5.3(a) whether NGA will initiate or pursue an Infringement Claim. NGA shall have no duty to initiate or pursue an Infringement Claim if NGA determines, in its reasonable business judgment, that initiating or pursuing such Claim is not warranted or in its best interests. Upon NGA's request, Corcoran shall reasonably cooperate with NGA in any Infringement Claim that NGA institutes or controls, including being joined as a party, and NGA shall reimburse Corcoran for the reasonable out-of-pocket, third-party expenses that it incurs in connection with such cooperation. At its own expense, Corcoran shall have the right to participate and be represented by Corcoran's own counsel in any Infringement Claim that NGA institutes or controls. In any Infringement Claim that NGA institutes or controls, NGA shall notify Corcoran of any proposed settlement or compromise, and NGA shall not, without Corcoran's express prior written consent, settle any Infringement Claim if such settlement (i) does not release Corcoran from all liability with respect thereto, or (ii) adversely impacts the exercise of any of the rights retained by Corcoran in the Corcoran Intellectual Property at such time.

(c) If NGA elects to not institute an Infringement Claim, Corcoran may, at its option and expense, take any action on its own behalf that it deems appropriate, including initiating or pursuing an Infringement Claim. Upon Corcoran's request, NGA shall reasonably cooperate with Corcoran in any Infringement Claim that Corcoran institutes or controls, and Corcoran shall reimburse NGA for the reasonable out-of-pocket, third-party expenses that it incurs in connection with such cooperation. At its own expense, NGA shall have the right to participate and be represented by NGA's own counsel in any Infringement Claim that Corcoran institutes or controls.

(d) In any Infringement Claim that Corcoran institutes or controls, Corcoran shall consult with NGA regarding any proposed settlement or compromise, and Corcoran shall not, without NGA's express prior written consent, settle an Infringement Claim in any manner other than for money damages alone.

(e) Any monetary reward, money damages or recovery resulting from any

Infringement Claim that either Party institutes shall be applied first to reimburse the Party incurring the expenses of such action. The Parties shall divide the balance, including any punitive or treble damages, in proportion to the damages or injury each has suffered as a result of such infringement in the Parties' respective fields, giving due regard, to the extent applicable, to any findings by an applicable court, jury, arbitrator or other finder of fact with respect to the nature or correlation of such damages, and with NGA being entitled to retain all damages attributable to infringing activities in the Licensed Field. If the Parties cannot agree on an appropriate division of the balance, they shall attempt to resolve the dispute according to the procedure set out in Section 7.9 of this Agreement.

5.4 **NGA Estoppel.** NGA shall not at any time do, or cause to be done, any acts or things that would be reasonably likely either to challenge or impair the rights of Corcoran in and to the Licensed Mark or to adversely affect the validity of the Licensed Mark.

ARTICLE 6 NGA MARKS, COMBINED MARKS, AUTHORIZED USES AND MATERIALS

6.1 **Ownership of NGA Intellectual Property.** Any Combined Marks created by NGA shall be owned solely and exclusively by NGA and shall constitute Intellectual Property of NGA. All rights, benefits, and privileges relating to any of NGA's Intellectual Property (including any Combined Marks and any NGA Marks) are owned by, and expressly reserved by and to, NGA. For the avoidance of doubt, Corcoran shall not acquire any ownership interest in any NGA Marks or any Combined Marks throughout the Term of this Agreement. Corcoran acknowledges: (a) that NGA exclusively owns, and shall continue to own, all right, title, and interest in and to all NGA Marks and Combined Marks; (b) the great value of the goodwill associated with NGA Marks and Combined Marks; and (c) that all goodwill associated with NGA Marks and Combined Marks shall inure to the benefit of NGA.

6.2 **Proprietary Materials of NGA.** Corcoran acknowledges that NGA shall own worldwide in perpetuity the following materials created by or on behalf of NGA: (a) all artwork that bears any Authorized Use; (b) all computer artwork incorporating graphic descriptions of any Authorized Use; (c) all photographs incorporating graphic descriptions of any Authorized Use; (d) all derivative works based on any of the Authorized Uses or works or materials described in (a)-(c) above; and (e) all copyrights and other Intellectual Property rights in, and all duplicates and copies of any works or materials described in clauses (a) through (d), except that NGA shall have no ownership rights in the Licensed Mark contained or embodied in any of the foregoing except to the extent such Licensed Mark is contained or embodied in a Combined Mark.

6.3 **Registrations; Protection of NGA Marks and Combined Marks.** NGA shall be responsible for filing all applications for trademark or service mark registration and for registering all domain names (or similar or successor electronic address mechanisms or systems) for Combined Marks and NGA Marks in the Licensed Field. Corcoran shall not, on its own behalf or on behalf of any other Person, in any jurisdiction in the world, register or attempt to register as domain names or with the United States Patent and Trademark Office or any other Governmental Entity (including state trademark offices) as trademarks or service marks (i) any Combined Mark, (ii) any NGA Mark, or (iii) any Trademark that consists of or includes a

Combined Mark or an NGA Mark or that would dilute the distinctiveness of, or is confusingly similar to, a Combined Mark or an NGA Mark.

6.4 ***Infringement Claims.*** NGA shall have the sole right to institute, control, and settle, at its own expense and in its sole discretion, all Claims alleging infringement of a Combined Mark or an NGA Mark. Corcoran shall not have any right to participate in any such Claim.

6.5 ***Corcoran Estoppel.*** Corcoran shall not at any time do, or cause to be done, any acts or things that would be reasonably likely either to challenge or impair the rights of NGA in and to any NGA Mark or any Combined Mark or to adversely affect the validity of any NGA Mark or any Combined Mark

6.6 ***Public Announcements.*** Except for the public announcement that the Parties will release pursuant to Section 8.4 of the Accession Agreement, after the Closing under the Accession Agreement, Corcoran shall not refer to NGA or any of NGA's trustees, directors, officers, employees, or agents, or use any NGA Mark or any Combined Mark, or refer to the current care, custody, possession, distribution, or exhibition of the Existing Collection (including the "Corcoran Contemporary, National Gallery of Art" or the "Legacy Gallery"), or NGA's other activities within the Licensed Field, for any purpose (including, but not limited to, in any press release or educational materials, in connection with any fund-raising, on any Web site or social media page or account, or in any advertising or for any other promotional purpose) without first obtaining NGA's written consent, except that Corcoran may provide a link on a Web site under the control of Corcoran to a page on a Web site that NGA identifies.

ARTICLE 7 MISCELLANEOUS PROVISIONS

7.1 ***Survival of Representations, Warranties and Agreements.*** None of the representations or warranties in this Agreement shall survive beyond the Closing under the Accession Agreement. Each of the covenants and agreements of the Parties in this Agreement shall survive until the earlier of (a) the expiration of the Term, or (b) the full performance or discharge of such covenant or agreement in accordance with this Agreement.

7.2 ***Confidentiality.*** Information concerning either Corcoran or NGA's business methods, financial information, future plans, personnel data, trade secrets, information systems, financial and accounting policies or similar matters, or information designated as "confidential" by the disclosing Party or released under circumstances where a reasonable Person would understand that such information is to be treated as confidential, shall be treated as confidential. The Party receiving such confidential information shall take the same precautions as it takes to protect its own confidential information, but in all events reasonable precautions shall be taken, in order to preserve its confidentiality. Confidential information shall not be revealed to third parties without the written consent of the disclosing Party, and neither Corcoran nor NGA may use the other Party's confidential information for any purpose except for purposes of performing this Agreement. This confidentiality requirement shall not apply to: (a) information in the public domain, (b) information independently developed by either Party without use of the other Party's confidential information, (c) information received by either Party from a third party under no

duty of confidentiality, and (d) a disclosure of information that is required by Law or legislative or regulatory body. The obligations of the Parties under this Section 7.2 shall survive the Closing or the termination of the Accession Agreement for a period of five (5) years after such Closing or termination, as applicable.

7.3 **Further Assurances.** From and after the date of this Agreement, upon the terms of this Agreement and subject to applicable Law, Corcoran and NGA shall act in good faith and shall cooperate with each other and use their commercially reasonable efforts to, as soon as reasonably practicable, (a) take, or cause to be taken, all actions, (b) execute, acknowledge, and deliver all documents, agreements, and instruments, and (c) perform such other acts and do, or cause to be done, all things necessary, proper, or advisable, in each case to confer on each Party the rights, benefits, and obligations provided by, and to consummate and make effective the transactions contemplated by, this Agreement as soon as practicable.

7.4 **Notices.** All notices, requests, demands and other communications which are required or may be given pursuant to the terms of this Agreement shall be in the English language and in written or electronic form, and shall be deemed delivered (a) on the date of delivery when (i) delivered by hand or (ii) sent by reputable overnight courier maintaining records of receipt, and (b) on the date of transmission when sent by facsimile or other electronic transmission during normal business hours with confirmation of transmission by the transmitting equipment; *provided* that any such communication delivered by facsimile or other electronic transmission shall only be effective if such communication is also delivered by hand or deposited with a reputable overnight courier maintaining records of receipt within two (2) business days after its delivery by facsimile or other electronic transmission. All such communications shall be addressed to the Parties at the addresses set forth below, or at such other address as a Party may designate upon ten (10) days' prior written notice to the other Party.

If to Corcoran:

Corcoran Gallery of Art
500 17th Street, N.W.
Washington, DC 20006
Attention: General Counsel
Phone: (202) 365-7327
Fax: [•]

with a copy to:

Charles A. Patrizia
Paul Hastings LLP
875 15th Street, N.W.
Washington, D.C. 20005
Phone: (202) 551-1710
Fax: (202) 551-1705

If to NGA:

Elizabeth A. Croog

Secretary and General Counsel
National Gallery of Art
2000B South Club Drive
Landover, MD 20785
Phone: (202) 842-6363
Fax: (202) 842-3782

with a copy to:

Janet T. Geldzahler
Sullivan & Cromwell LLP
1700 New York Avenue N.W.
Suite 700
Washington, D.C. 20006-5215
Tel: (202) 956-7515
Fax: (212) 558-3588

7.5 **Amendments.** Amendments to this Agreement shall be made by mutual consent of the Parties, by the issuance of a mutually agreed upon written instrument, signed and dated by authorized officials of Corcoran and NGA, prior to any changes being performed.

7.6 **Waiver.** Any agreement on the part of a Party to any extension or waiver of any provision hereof shall be valid only if set forth in an instrument in writing signed on behalf of such party. A waiver by a Party of the performance of any covenant, agreement, obligation, condition, representation, or warranty shall not be construed as a waiver of any other covenant, agreement, obligation, condition, representation, or warranty. A waiver by any Party of the performance of any act shall not constitute a waiver of the performance of any other act or an identical act required to be performed at a later time.

7.7 **Assignment.** Neither Party may assign or transfer any rights or obligations in this Agreement except with the prior written consent of the other Party. Any attempted assignment or delegation in violation of this Section 7.7 shall be void.

7.8 **Governing Law.** This Agreement shall be governed by the Laws of the District of Columbia, excluding any conflicts or choice of Law rules or principles that might otherwise refer construction or interpretation of this Agreement to the substantive Law of another jurisdiction.

7.9 **Dispute Resolution; Remedies.** Any dispute, controversy, or claim arising out of or in connection with this Agreement or in connection with the rights and obligations of the Parties under this Agreement, including any question regarding its existence, validity, or force and effect, shall be subject in all respects to the terms, conditions, and procedures set forth in Section 8.11 of the Accession Agreement, and the terms, conditions, and procedures of such Section 8.11 are incorporated herein by reference and made a part hereof.

7.10 **Cumulative Rights.** Except as expressly provided herein, the various rights of this Agreement shall be construed as cumulative, and no one of them is exclusive of the other or exclusive of any rights allowed by Law.

7.11 **Severability.** If any covenant or provision hereof is determined by a court of competent jurisdiction to be void or unenforceable in whole or in part, it shall not, subject to the discretion of such court, be deemed to affect or impair the validity of any other covenant or provision, each of which is hereby declared to be separate and distinct. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable. If any provision of this Agreement is declared invalid or unenforceable for any reason other than overbreadth, the offending provision shall be modified so as to maintain the essential benefits of the bargain between the Parties to the maximum extent possible, consistent with Law and public policy.

7.12 **Expenses.** Except as otherwise expressly provided herein, each Party shall pay its own fees, costs, and expenses incurred in connection herewith and the transactions contemplated hereby, including the fees, costs and expenses of its financial advisors, accountants, and counsel.

7.13 **Independent Contractors.** The Parties are independent contractors, and neither Party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture, or partnership between the Parties or to impose any liability attributable to such a relationship upon the Parties.

7.14 **No Third-Party Beneficiaries.** This Agreement is solely for the benefit of NGA and Corcoran. There are no intended or implied third-party beneficiaries to this Agreement or any of the transactions contemplated herein.

7.15 **Entire Agreement.** This Agreement, together with any Exhibits attached hereto and contemplated hereby, and the other Transaction Documents constitute the entire understanding between the Parties with respect to the subject matter hereof and supersede all oral communications and prior writings with respect thereto, including for the avoidance of doubt, that certain Letter of Intent, dated as of February 18, 2014, by and between Corcoran and NGA.

7.16 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be an original and all of which will constitute together the same document.

[Signatures appear on following page; remainder intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement as of the date first written above.

**TRUSTEES OF THE CORCORAN
GALLERY OF ART**

By: _____
Name: Harry F. Hopper III
Title: Chairman

THE NATIONAL GALLERY OF ART

By: _____
Name: Earl A. Powell III
Title: Director

Exhibit A

Certain Authorized Uses

“Corcoran Contemporary, National Gallery of Art”

“Corcoran Collection”

“Corcoran Collection-NGA”

“Corcoran Legacy Collection”

“National Gallery of Art, Corcoran Collection”

[and others to be discussed]

ASSET CONTRIBUTION AGREEMENT

ASSET CONTRIBUTION AGREEMENT

dated as of May 15, 2014

by and between

THE TRUSTEES OF THE CORCORAN GALLERY OF ART

and

THE GEORGE WASHINGTON UNIVERSITY

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EXHIBITS

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ASSET CONTRIBUTION AGREEMENT

This ASSET CONTRIBUTION AGREEMENT (this “**Agreement**”) is hereby made and entered into as of May 15, 2014 (the “**Effective Date**”), by and between the TRUSTEES OF THE CORCORAN GALLERY OF ART, a Congressionally chartered nonprofit corporation located in the District of Columbia (“**Corcoran**”), and THE GEORGE WASHINGTON UNIVERSITY, a Congressionally chartered nonprofit corporation located in the District of Columbia (the “**University**”).

WHEREAS:

A. Corcoran is a nonprofit institution dedicated to art and encouraging American genius and, in service to that mission, (i) owns and operates the Corcoran College of Art + Design, an accredited school of art and design located in the District of Columbia (the “**Legacy College**”), (ii) owns and controls the Corcoran legacy building located at 500 17th Street Northwest in the District of Columbia (as further described on *Schedule 1.1*, the “**17th Street Building**”) and the Fillmore Building (as defined below); and (iii) owns and operates the Corcoran Gallery of Art, an art gallery and museum located in the 17th Street Building (the “**Gallery**”), in which a collection of art works owned or controlled by Corcoran is located for exhibition or storage, including for the avoidance of doubt those art works owned by Corcoran that are (a) currently on loan for exhibition in other art centers or (b) held in storage by or on behalf of Corcoran in other locations (collectively, the “**Existing Collection**”);

B. Corcoran has determined that it is in the best interest of the institution and its mission to contribute substantially all of the assets of the Legacy College and the 17th Street Building and the Fillmore Building (but excluding for the avoidance of doubt the Randall Street Property (as defined below)), and to transfer the Legacy College, including its operation and mission, to the University;

C. The University desires to assume the contributed assets and continue the mission of the Legacy College by establishing within the University system a new school that will seek to preserve and maintain the mission, reputation and brand of the Legacy College, on the terms and conditions set forth herein;

D. In connection with the transfer of the Legacy College to the University, the parties desire that the Legacy College be operated with a name that integrates the name and mark “Corcoran” with the University’s name and, accordingly, in connection with the closing of the transactions contemplated hereby, Corcoran and the University will enter into the License Agreement (as defined below) pursuant to which Corcoran will license to the University certain rights to the “Corcoran” name and related marks for use by the University in connection with the establishment and operation of the Legacy College as part of the University following the closing;

E. The University has agreed pursuant to the terms and subject to the conditions set forth below to undertake renovation and rehabilitation of the 17th Street Building and the parties further desire to work together and confer with respect to such efforts, on the terms and conditions set forth herein;

F. Concurrently with the execution and delivery of this Agreement, Corcoran has entered into an Art Accession and Custodial Transfer Agreement (the “**NGA Accession Agreement**”) with the National Gallery of Art, a statutory federal establishment (“**NGA**”), pursuant to which Corcoran will transfer to the custody, care and possession of NGA all of the Existing Collection, together with certain related assets (the “**NGA Transaction**”). A portion of the Existing Collection will be designated by NGA for accession into its collection of art (the “**Accessioned Art**”), and the remainder of the Existing Collection that is not so accessioned will remain in NGA’s care until distributed to other art museums and appropriate entities;

G. The parties contemplate that, following the closing of the transactions contemplated hereby, NGA will (i) establish a new contemporary art program, to be conducted as the “Corcoran Contemporary, National Gallery of Art” (or such other name as may be designated by NGA and Corcoran) (the “**Contemporary Art Gallery**”), to be housed at the 17th Street Building under the ownership of the University, for the purpose of exhibiting, *inter alia*, certain works of the Accessioned Art and other works as determined by NGA, and for the purposes of preserving, maintaining and perpetuating the mission and reputation of the Gallery, on the terms and conditions set forth therein, and (ii) designate a space (the “**Legacy Gallery**”) within the 17th Street Building to be used for the exhibition of certain works of Accessioned Art that are so intrinsically identified with the 17th Street Building and its legacy and the history of the Gallery that consideration should be given to their remaining on exhibit therein;

H. In connection with the NGA Transaction, and concurrently with the transactions contemplated hereby and thereby, the University and NGA have entered into a related agreement pursuant to which the University will dedicate portions of the 17th Street Building for continuous use as exhibition space for art of the Contemporary Art Gallery and the Legacy Gallery and other programming and administrative needs of NGA (the “**University-NGA Transaction**”);

I. Following the consummation of the transactions contemplated hereby, the Board of Trustees of the Corcoran Gallery of Art will continue and maintain its separate existence as an institution dedicated to art and encouraging American genius, and, in connection therewith, the parties have provided herein mechanisms for the potential future collaboration and promotion of the interconnected mission, activities and programs between them; and

J. The parties desire to set forth the terms and conditions upon which such contribution of assets, transfer of mission and programming of the Legacy College, and related transactions shall occur.

NOW, THEREFORE, in consideration of the foregoing and the representations, promises, covenants, obligations, and other good and valuable consideration contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged and agreed, and desiring to be legally bound hereby, the parties agree as follows:

ARTICLE 1 — DEFINITIONS

1.1 **Certain Definitions.** The following terms, as used herein, have the meanings set forth below:

“**17th Street Building**” has the meaning set forth in the Preamble.

“**AAA**” means the American Arbitration Association.

“**Accessioned Art**” has the meaning set forth in the preamble.

“**Accounts Receivable**” means the outstanding accounts receivable of Corcoran, notes receivable and other receivables, including refunds or rebates owing to Corcoran, and any security, claim, remedy or other right related to any of the foregoing, but only to the extent related to the Legacy College or the Owned Real Property as of the Closing Date, including for the avoidance of doubt, all outstanding tuition and related fees due to or receivable by Corcoran in respect of (i) students enrolled at the Legacy College as of the Closing Date and (ii) students admitted for enrollment at the Legacy College for academic terms beginning after the Closing Date.

“**Action**” means any action, claim, complaint, petition, investigation, suit or other proceeding, whether civil or criminal, in Law or in equity, or before any arbitrator or Governmental Entity.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Agreement**” has the meaning set forth in the preamble.

“**Arbitration Rules**” has the meaning set forth in Section 11.11(c).

“**Art Related Materials**” means (i) all Documentary Art Related Materials and (ii) all Equipment Art Related Materials.

“**Assignment and Assumption Agreement**” has the meaning set forth in Section 9.2(k)(ii).

“**Assumed Accounts Payable**” means the outstanding trade accounts payable of Corcoran for goods and services that remain unpaid and are not delinquent as of the Closing Date, but only to the extent such trade accounts payable are related to the Legacy College or the Owned Real Property.

“**Assumed Contracts**” has the meaning set forth in Section 2.1(c).

“**Assumed Liabilities**” has the meaning set forth in Section 2.4(a).

“**Authorizations**” has the meaning set forth in Section 4.4.

“**Available Corcoran Retained Funds**” means, as of the date that the Clark Estate Proceeds are received by Corcoran, the aggregate amount of the Corcoran Retained Funds that

have not been disbursed by Corcoran to pay expenses or other items contemplated by, and in accordance with, the Transition Budget.

“Benefit Plan” means each plan, fund, program, agreement, arrangement or scheme, including each plan, fund, program, agreement, arrangement or scheme maintained or required to be maintained under applicable Laws, that is at any time sponsored or maintained or required to be sponsored or maintained by Corcoran or to which Corcoran makes or has made, or has had an obligation to make, contributions providing benefits to the current and former employees, directors, managers, officers, consultants, independent contractors, contingent workers or leased employees of Corcoran or the dependents of any of them (whether written or oral), or with respect to which Corcoran has any liability or obligation, including (a) each deferred compensation, bonus, incentive compensation, pension, retirement, and other equity compensation plan, “welfare” plan (within the meaning of Section 3(1) of ERISA, determined without regard to whether such plan is subject to ERISA), (b) each “pension” plan (within the meaning of Section 3(2) of ERISA, determined without regard to whether such plan is either subject to ERISA or is Tax qualified under the Code), (c) each severance plan or agreement, and each other plan providing health, vacation, supplemental unemployment benefit, hospitalization insurance, medical, dental, disability, life insurance, death or survivor benefits, fringe benefits or legal benefits and (d) each other employee benefit plan, fund, program, agreement or arrangement.

“Bill of Sale” has the meaning set forth in Section 9.2(k)(ii).

“Cash and Cash Equivalents” means all cash, cash equivalents and cash items of any kind whatsoever, certificates of deposit, money market instruments, institutional funds, bank balances and rights in and to bank accounts, Treasury bills and marketable securities and other securities of Corcoran as of Closing.

“Cause” shall mean, with respect to the employment or termination of employment by the University of a Transferred Employee who is not a faculty member of the Legacy College (referred to below as a “non-faculty Transferred Employee”), (a) a good faith determination by the University that the non-faculty Transferred Employee has committed an act of dishonesty or breach of trust or fiduciary duty in connection with his or her employment; (b) willful refusal by a non-faculty Transferred Employee to perform the duties reasonably assigned to him or her, which failure or breach continues for more than ten (10) days after written notice given to him or her by the University; (c) gross dereliction of duty by the non-faculty Transferred Employee that continues for more than ten (10) days following written notice given to him or her by the University; (d) commitment by the non-faculty Transferred Employee of any illegal act or act involving moral turpitude, whether or not directly affecting the University; or (e) any actions or omissions by the non-faculty Transferred Employee which amount to incompetence, including a pattern and practice of negligence, or willful neglect of his or her duties.

“Clark Estate Proceeds” has the meaning set forth in Section 2.6(b).

“Clark Estate Settlement Receivable” means the amount due to Corcoran from the Clark Estate Proceeds as of the Closing.

“**Closing**” has the meaning set forth in Section 9.1.

“**Closing Date**” has the meaning set forth in Section 9.1.

“**COBRA**” has the meaning set forth in Section 7.5(d).

“**Code**” means the United States Internal Revenue Code of 1986, as amended.

“**College Transfer Amount**” has the meaning set forth in Section 2.1(d).

“**Contemporary Art Gallery**” has the meaning set forth in the preamble.

“**Contracts**” has the meaning set forth in Section 2.1(c).

“**Contributed Assets**” has the meaning set forth in Section 2.1.

“**Corcoran**” has the meaning set forth in the preamble.

“**Corcoran Intellectual Property**” means any Intellectual Property that is owned by, licensed to or used by Corcoran in the conduct of its business.

“**Corcoran Retained Funds**” means the portion of the Cash and Cash Equivalents in an amount equal to the aggregate sum of the expenses set forth in the Transition Budget for the entire period covered thereby.

“**Dedicated Purposes**” means solely for purposes of scholarship and financial aid for students of the GW Corcoran School, subject to standards and terms for the award, timing and distribution of such scholarships and financial aid as may be agreed from time to time by Corcoran and the University.

“**Dispute**” has the meaning set forth in Section 11.11.

“**Documentary Art Related Materials**” means, with respect to a work of art, all documentation, files, records, images, archival material, Contracts, correspondence, and other written, electronic or digital materials, including all documentation with respect to the accession, donation, provenance, conservation, and restoration thereof, and with respect to the copyright and other intellectual property rights (including the right to create derivative works), reproduction rights, licenses, rights in images, publication rights, and similar matters therein relating to such work.

“**Effective Date**” has the meaning set forth in the preamble.

“**Equipment Art Related Materials**” means all frames, tools, packing materials, supplies and equipment related to art and art preparation, installation or handling (including ladders and lifts), the cold storage equipment, display cases and file cabinets and other storage materials currently used for any of the foregoing (exclusive, for the avoidance of doubt, of Gallery Shop Inventory).

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**Excluded Assets**” has the meaning set forth in Section 2.2.

“**Excluded Contracts**” has the meaning set forth in Section 2.2(e).

“**Excluded Liabilities**” has the meaning set forth in Section 2.4(b).

“**Existing Collection**” has the meaning set forth in the preamble.

“**Existing Insurance**” has the meaning set forth in Section 2.1(k).

“**Fillmore Building**” has the meaning set forth on *Schedule 1.1*.

“**Flemish Windows**” means the Jan de Caumont stained glass windows attached to the Platt portion of the 17th Street Building.

“**French Window**” means the French Soissons stained glass window installed in the 17th Street Building.

“**Gallery**” has the meaning set forth in the preamble.

“**Gallery Shop Inventory**” means all merchandise and products in stock for sale by Corcoran to the general public.

“**Gifts and Endowments**” means all assets, including Cash and Cash Equivalents, investments or other assets, which are held by Corcoran subject to donor restrictions limiting the use of the gifts and endowments for the purpose of acquiring works of art, endowing curatorships, the care and restoration of art or similarly restricted for use related to art, provided, however, that Gifts and Endowments shall not include any assets restricted to such purposes by Corcoran’s board or any amounts comprising the College Transfer Amount.

“**Governmental Entity**” means any (a) nation, state, commonwealth, county, city, town, village, district, or other jurisdiction of any nature, (b) federal, state, local, municipal, foreign, or other government, (c) federal, state, local or foreign governmental or quasi-governmental authority of any nature (including any agency, branch, department, board, commission, court or tribunal), (d) multi-national or supra national organization or body, (e) body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power, including any court or arbitrator, (f) self regulatory organization, (g) academic or professional agency, association or organization (including voluntary accrediting associations, such as the Middle States Association of Colleges and Schools) or (h) official of any of the foregoing.

“**GW Corcoran School**” has the meaning set forth in Section 7.1.

“**Intellectual Property**” means any or all of the following and all rights, arising out of or associated therewith: (a) all patents and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof, (b) all inventions (whether patentable or not), invention disclosures, improvements, proprietary information, know-how, technology, technical data and customer lists, and all documentation

relating to any of the foregoing, (c) all copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto, (d) all industrial designs and any registrations and applications therefor, (e) all internet uniform resource locators, domain names, trade names, logos, slogans, designs, common Law trademarks and service marks, trademark and service mark registrations and applications therefor, (f) all Software, databases and data collections and all rights therein, (g) all moral and economic rights of authors and inventors, however denominated, and (h) any similar or equivalent rights to any of the foregoing.

“**Interim Steering Committee**” has the meaning set forth in Section 5.2.

“**IRS**” has the meaning set forth in Section 3.1(b).

“**Joint Advisory Committee**” has the meaning set forth in Section 8(b).

“**Laws**” means all laws, statutes, common law, rules, codes, regulations, restrictions, ordinances, orders, decrees, approvals, directives, judgments, rulings, injunctions, writs and awards of, or issued or entered by, all Governmental Entities.

“**Legacy College**” has the meaning set forth in the preamble.

“**Liabilities**” means liabilities, commitments and obligations, whether absolute, accrued, contingent or otherwise.

“**License Agreement**” has the meaning set forth in Section 9.2(k)(ii).

“**Liens**” means all mortgages, liens, pledges, security interests, charges, claims, restrictions and encumbrances of any nature whatsoever.

“**Material Adverse Effect**” means any circumstance, change in or effect on Corcoran that occurs after the Effective Date and that (a) is, or would reasonably be expected to be, materially adverse to the results of operations or the financial condition of the Legacy College or (b) materially adversely impairs the ability of the University to use the 17th Street Building as contemplated by this Agreement (exclusive, for the avoidance of doubt, of any matter currently contemplated to be addressed by the Renovation); *provided* that none of the following, either alone or in combination, shall be considered in determining whether there has been a breach of a representation, warranty, covenant or agreement that is qualified by the term “**Material Adverse Effect**”: (i) events, circumstances, changes or effects that generally affect the museum or arts education industries in the United States (including legal and regulatory changes), (ii) general economic or political conditions or events, circumstances, changes or effects affecting such industries generally, (iii) changes arising from the consummation of the transactions contemplated by, or the announcement of the execution of (or intention to execute), this Agreement or any other Transaction Document, (iv) any change in applicable Laws or accounting requirements or principles, or the interpretation thereof, (v) events, circumstances, changes or effects caused by any outbreak or escalation of war, act of foreign enemies, hostilities, terrorist activities, or acts of nature, (vi) any acts or omissions of the University after the Effective Date (other than as specifically contemplated by this Agreement), including any publicly available statement made by the University, its Affiliates or representatives concerning Corcoran or the Legacy College, or otherwise relating to the transactions contemplated hereby,

(vii) any failure, in and of itself, by the Corcoran or the Legacy College to meet any budgets, projections, forecasts or predictions for any period ending on or after the Effective Date, or (viii) any circumstance, change or effect that results from any action taken or omitted to be taken pursuant to or in accordance with this Agreement or at the request or with the consent of the University. The parties agree that any circumstance, change in or effect that materially adversely impairs the ability of the University to use the Fillmore Building as contemplated by this Agreement shall not be a Material Adverse Effect, so long as such event is covered by Existing Insurance and such insurance proceeds shall be expressly excluded from the calculation of the Renovation Transfer Amount.

“**NGA**” has the meaning set forth in the preamble.

“**NGA Accession Agreement**” has the meaning set forth in the preamble.

“**NGA Transaction**” has the meaning set forth in the preamble.

“**Notice of Termination**” has the meaning set forth in Section 10.2(a).

“**Owned Real Property**” means the real property owned by Corcoran listed on *Schedule 1.1*. Notwithstanding anything to the contrary and for the avoidance of doubt, Owned Real Property shall be deemed to exclude the Randall Street Property.

“**Permanent Works**” has the meaning set forth in Section 2.1(n).

“**Permitted Liens**” means, collectively, (a) Liens for Taxes, assessments and governmental charges not yet due and payable; (b) zoning Laws and ordinances and similar Laws and any right reserved to any Governmental Entity to regulate the affected property (including restrictions stated in any permits) not materially interfering with the present use of, or detracting from the value of, the applicable Contributed Assets subject thereto; (c) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, material men and other Liens imposed by Law arising or incurred in the ordinary course of business for amounts that are not yet due and payable and that are not resulting from any breach, violation or default by Corcoran of any Assumed Contract or applicable Laws; (d) Liens created by or through the University or any of its affiliates; (e) easements, rights-of-way, restrictions and other Liens not materially interfering with the present use of, or materially detracting from the value of, the applicable Contributed Assets subject thereto; (f) Liens that will be released prior to or as of the Closing Date, including all mortgages and security interests securing indebtedness of Corcoran listed on *Schedule 1.2*; (g) any Liens relating to construction conducted pursuant to this Agreement, with the consent of the University or otherwise in connection with the Renovation; (h) without limiting the University’s rights under Section 9.2(c), any Liens imposed in connection with the application of the *cy pres* doctrine to the Corcoran’s organizational documents as further described in Section 5.4(a), and (i) Liens designated as Permitted Liens on *Schedule 1.2*.

“**Person**” means any individual, corporation, partnership, joint venture, limited liability company, trust, Governmental Entity, unincorporated organization, association or other organization or entity.

“**PNC**” means PNC Bank, National Association.

“**PNC Notes**” means the notes referenced in the Amendment to Deed of Trust, Assignment and Security Agreement, effective June 15, 2009, between Corcoran, Joanne T. Hampson (Trustee) and PNC Bank, encumbering the Fillmore Building and securing repayment and performance of obligations of Corcoran to PNC Bank as described therein.

“**Pre-Closing Period**” has the meaning set forth in Section 5.1.

“**Preliminary Renovation Plan**” has the meaning set forth in Section 6.3(a).

“**Proceeds Disbursement Request**” has the meaning set forth in Section 2.6(d).

“**Randall Street Property**” means the property owned by the Corcoran located at 820 Half Street, SW, Washington, D.C. (Sq. 643 S, Lot 801).

“**Renovation**” has the meaning set forth in Section 6.3(a).

“**Renovation Transfer Amount**” means the sum of the following: (A) as of the Closing Date, an amount equal to Thirty Five Million Dollars (\$35,000,000), subject to adjustment in accordance with Section 2.6, comprised of (i) Cash and Cash Equivalents, including the marketable securities and alternative investments in Corcoran’s J.P. Morgan account no. S30543003, and (ii) that portion of the Clark Estate Settlement Receivable necessary for the sum of clause (i) and this clause (ii) to equal Thirty Five Million Dollars (\$35,000,000), plus (B) following the Closing Date, the amount payable to the University pursuant to Section 2.6(b)(iii). (For the avoidance of doubt, the foregoing limitation of the Clark Estate Settlement Receivable does not limit the final amount of monies the University may receive from the Clark Estate Proceeds.)

“**Required Consents**” has the meaning set forth in Section 9.2(d).

“**RTA Insufficiency Notice**” has the meaning set forth in Section 5.7.

“**Software**” means any computer software program, together with any error corrections, updates, modifications, or enhancements thereto, in both machine-readable form and human-readable form, including all comments and any procedural code.

“**Summer Programming**” has the meaning set forth in Section 5.5(c).

“**Tangible Personal Property**” has the meaning set forth in Section 2.1(b).

“**Taxes**” means all taxes, charges, fees, duties (including customs duties), levies or other assessments, including income, gross receipts, net proceeds, *ad valorem*, turnover, real and personal property (tangible and intangible), sales, use, franchise, excise, value-added, stamp, leasing, lease, user, transfer, fuel, excess profits, unrelated business income, occupational, interest equalization, windfall profits, severance, license, payroll, environmental, capital stock, disability, employee’s income withholding, other withholding, unemployment and Social

Security taxes, which are imposed by any federal, state, local or foreign Governmental Entity, and such term shall include any interest, penalties or additions to tax attributable thereto.

“**Transaction Documents**” has the meaning set forth in Section 11.11.

“**Transferred Employees**” has the meaning set forth in Section 7.5(c).

“**Transition Budget**” has the meaning set forth in Section 5.6.

“**University**” has the meaning set forth in the preamble.

“**University-NGA Transaction**” has the meaning set forth in the preamble.

1.2 *Interpretation.* The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof. Except where the context requires otherwise, whenever used in this Agreement, the singular includes the plural, the plural includes the singular, the use of any gender is applicable to all genders and the word “or” has the inclusive meaning represented by the phrase “and/or.” The words “include” and “including” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.” A reference in this Agreement to an Article, Section, Exhibit or Schedule is to the referenced Article, Section, Exhibit or Schedule of this Agreement. All Schedules and Exhibits referenced in this Agreement are incorporated by this reference as if fully set forth in this Agreement, and all references to this Agreement shall be deemed to include all such Schedules and Exhibits. The wording of this Agreement shall be deemed to be the wording mutually chosen by the parties and no rule of strict construction shall be applied against either party. Unless expressly provided otherwise, all dollar figures in this Agreement are in the currency of the United States of America. The preamble is intended to be a substantive and legally binding element of this Agreement.

ARTICLE 2 — CONTRIBUTION OF LEGACY COLLEGE AND CERTAIN OTHER ASSETS

2.1 *Contribution and Acceptance of Assets.* Pursuant to the terms and subject to the conditions of this Agreement, upon and in connection with the Closing contemplated by ARTICLE 9 hereof, Corcoran agrees to contribute, assign, transfer and deliver to the University, and the University agrees to assume, acquire and accept from Corcoran, all right, title and interest of Corcoran in and to, except for the Excluded Assets, all of the assets, properties and rights of every kind, nature, character and description, whether real, personal or mixed, whether tangible or intangible, and wherever situated, primarily used in connection with the ownership, business and operations of the Legacy College, as the same shall exist on the Closing Date (such assets, properties and rights being referred to as the “**Contributed Assets**”), free and clear of all Liens other than Permitted Liens. Without limiting the foregoing, the Contributed Assets shall include the following assets, properties and rights of Corcoran, without duplication, but only to the extent relating to the ownership, business and operations of the Legacy College:

- (a) all curriculum and other academic materials;

(b) fixed assets, inventory, art supplies, equipment, machinery, furnishings, computer hardware and software, and fixtures (including furniture, cubicles and fixtures) and any other tangible personal property (collectively, the “**Tangible Personal Property**”); *provided, however,* that any artwork or fixtures constituting the Existing Collection shall be deemed Excluded Assets except as expressly set forth below with respect to Permanent Works;

(c) all of the contracts, grants and similar commitments for funding, licenses and agreements of any kind by which Corcoran is bound in respect of the Legacy College (the “**Contracts**”), including those Contracts set forth on *Schedule 2.1(c)* (but in all events, exclusive of all Excluded Contracts) (collectively, the “**Assumed Contracts**”);

(d) all funds allocated to the business and operations of the Legacy College, including the following: (i) all operating revenues received in relation to the Legacy College as of the Closing Date, including all tuition and fees received in respect of enrolled students as of the Closing Date and students admitted for enrollment for academic terms beginning after the Closing Date, (ii) the Accounts Receivable, the proceeds thereof and any security therefor, and (iii) all donor-restricted Corcoran institutional funds allocated for use in relation to the Legacy College as of the Closing Date, an estimate of which aggregate amount as of the Effective Date, which shall in any case be at least Eight Million Dollars (\$8,000,000), is set forth on *Schedule 2.1(d)* attached hereto (the “**College Transfer Amount**”);

(e) the Renovation Transfer Amount;

(f) all Cash and Cash Equivalents other than Gifts and Endowments and the Corcoran Retained Funds;

(g) the Owned Real Property;

(h) causes of action, lawsuits, judgments, claims and demands of any nature, whether arising by way of counterclaim or otherwise that are asserted or may be asserted by the Legacy College;

(i) all express or implied guarantees, warranties, representations, covenants, indemnities and similar rights covering the Tangible Personal Property to the extent transferable by Corcoran;

(j) the goodwill of the Legacy College;

(k) to the extent transferable, all (i) policies for insurance maintained by Corcoran in respect of the Contributed Assets (the “**Existing Insurance**”) and (ii) insurance proceeds and insurance awards receivable with respect to any of the Contributed Assets;

(l) to the extent transferable pursuant to, and otherwise subject to, applicable Laws, applicable student records, information, files, correspondence, records, data, plans, reports, and recorded knowledge, and all accounting or other books and records of the Legacy College, in whatever media retained or stored, including computer programs and disks;

(m) files and related correspondence (whether in electronic or hard-copy format) with funding agencies or other sources of funding for and with respect to the Legacy College;

(n) those certain works or art set forth on *Schedule 2.1(n)*, each of which is deemed integral to the 17th Street Building (collectively, the “**Permanent Works**”), and which Permanent Works, for the avoidance of doubt, are excluded from the Existing Collection for purposes of the NGA Transaction; and

(o) all Art Related Materials relating to the Permanent Works.

2.2 **Excluded Assets.** The University shall not acquire from Corcoran, and the Contributed Assets shall not include, the following assets, properties and rights of Corcoran (collectively, the “**Excluded Assets**”):

(a) Corcoran’s organizational documents, minute books, and corporate seals, and Corcoran’s corporate records and other books and records that pertain to internal corporate matters of Corcoran;

(b) the Corcoran Retained Funds;

(c) all assets, properties and rights of every kind, nature, character and description, whether real, personal or mixed, whether tangible or intangible, and wherever situated, used in connection with the Art Collection;

(d) subject to the License Agreement, all Corcoran Intellectual Property;

(e) all Corcoran employment Contracts and all other Contracts set forth on *Schedule 2.2(e)* (collectively, the “**Excluded Contracts**”);

(f) all Benefit Plans and assets attributable thereto;

(g) the Existing Collection and all works of art included therein (exclusive of, for the avoidance of doubt, Permanent Works) together with all Art Related Materials relating to such Existing Collection;

(h) Gifts and Endowments;

(i) the Randall Street Property;

(j) the Gallery Shop Inventory as of the Closing Date and the right to sell off such merchandise and all proceeds relating from any sale thereof;

(k) subject to Section 5.10, the Flemish Windows; and

(l) any of the rights of Corcoran under this Agreement and the other Transaction Documents.

2.3 **Consideration.** In consideration of the contribution, assignment and transfer of the Contributed Assets and Corcoran's other covenants and obligations hereunder, the University agrees, pursuant to the terms and subject to the conditions hereof, to (a) assume the Assumed Liabilities, (b) undertake the Renovation of the 17th Street Building and the operation and maintenance of the Owned Real Property as contemplated in ARTICLE 6, (c) establish, fund and operate the GW Corcoran School as contemplated in ARTICLE 7 and (d) perform its other covenants and obligations set forth herein. The parties hereby acknowledge the sufficiency of the foregoing and the benefits that each shall obtain from the execution and delivery of this Agreement, the performance of the covenants and obligations hereunder, and the consummation of the transactions contemplated hereby.

2.4 **Assumed Liabilities; Excluded Liabilities.**

(a) Pursuant to the terms and subject to the conditions of this Agreement, upon the Closing Date, the University shall assume and agree to pay, perform and discharge only the following Liabilities of Corcoran (collectively, the "**Assumed Liabilities**"), and no other Liabilities:

(i) all Liabilities in respect of the Assumed Contracts but only to the extent that such Liabilities thereunder are required to be performed after the Closing Date, were incurred in the ordinary course of business and do not relate to any failure to perform, improper performance, warranty or other breach, default or violation by Corcoran on or prior to the Closing;

(ii) all Liabilities in respect of the Assumed Accounts Payable;

(iii) all Liabilities in respect of the ownership, occupancy, operation, use or control of the Owned Real Property, including obligations of Corcoran in existence as of the date hereof with respect to the "naming" of galleries and other premises;

(iv) all Liabilities in respect of the Permanent Works; and

(v) all Liabilities in respect of the operation of the Legacy College.

(b) Notwithstanding the provisions of Section 2.4(a) or any other provision in this Agreement to the contrary, the University shall not assume and shall not be responsible to pay, perform or discharge any Liabilities of Corcoran or any of its Affiliates of any kind or nature whatsoever other than the Assumed Liabilities (the "**Excluded Liabilities**"). Without limiting the generality of the foregoing, the Excluded Liabilities shall include, but not be limited to, all Liabilities set forth in the Transition Budget and each of those certain Liabilities set forth on *Schedule 2.4(b)*.

(c) The University shall not be the successor to Corcoran with respect to the Excluded Liabilities, and the University expressly does not assume and shall not become liable to pay, perform or discharge, any obligation or liability whatsoever of Corcoran other than the Assumed Liabilities. Corcoran shall be responsible for the payment, discharge and performance of the Excluded Liabilities.

2.5 ***Assumed Contracts Not Freely Assignable.***

(a) Corcoran shall use all commercially reasonable efforts and the University shall cooperate in all commercially reasonable respects with Corcoran to obtain any consent necessary for the assignment of any Assumed Contract; *provided* that no such consents are conditions to Closing other than those certain Required Consents; and *provided further* that no party shall be required to expend any out-of-pocket expenses to obtain any such consent.

(b) Except as otherwise provided in Section 2.5(d), to the extent that any Assumed Contract may not be assigned without consent and such consent is not obtained prior to the Closing, or if an attempted assignment of such an Assumed Contract shall be ineffective, Corcoran shall use all commercially reasonable efforts to provide the University the benefits of any such Assumed Contract and, to the extent the University is provided with the benefits of such Assumed Contract, the University shall perform or discharge on behalf of Corcoran the Liabilities under such Assumed Contract in accordance with the provisions thereof. In addition to the University's obligation pursuant to the foregoing sentence, as to any Assumed Contract that is not effectively assigned to the University as of the Closing but is thereafter effectively assigned to the University, the University shall, from and after the effective date of such assignment, assume, and shall thereafter pay, perform and discharge as and when due, all Liabilities of Corcoran arising under such Assumed Contract.

(c) Upon Corcoran obtaining any such consent, (i) Corcoran shall promptly deliver to the University evidence of each such consent and (ii) upon delivery to the University of such consent, the corresponding Assumed Contract shall be deemed assigned and transferred pursuant to the terms and subject to the conditions of the Assignment and Assumption Agreement and the Bill of Sale, effective as of the effective time of such consent, and without any further action by the parties.

(d) Corcoran shall use all commercially reasonable efforts and the University shall cooperate in all commercially reasonable respects with Corcoran to obtain PNC's consent to the assignment of the PNC Notes to the University in connection with the conveyance of the Fillmore Building to the University as a Contributed Asset hereunder. In the event that such consent shall not have been obtained as of the Closing, the parties shall use commercially reasonable efforts to negotiate and enter into an agreement as of the Closing that provides the University and Corcoran with substantially the same benefits of conveyance of the Fillmore Building and assignment of the PNC Notes, and all obligations with respect thereto, as if title to the Fillmore Building had been conveyed, and the PNC Notes had been assigned, to the University at the Closing. Nothing in this Section 2.5(d) shall modify the conditions to Closing set forth in Sections 9.2(i) or 9.2(j).

2.6 ***Adjustments to Renovation Transfer Amount.*** The Renovation Transfer Amount shall be subject to adjustment as follows:

(a) ***Approved Pre-Closing Renovations Adjustment.*** Without limiting the provisions of Section 5.3, in the event that the parties agree to conduct any portion of the Renovation of the 17th Street Building prior to Closing, the Renovation Transfer Amount shall be reduced by the aggregate amount of the costs and expenses incurred by Corcoran in

connection with such Renovation consistent with the parties' agreed-upon plans for completing such portion of the Renovation (including the estimated cost thereof).

(b) *Allocation of Clark Estate Proceeds.* It is contemplated that certain proceeds arising under the Settlement Order in the Estate of Huguette Clark, including amounts from the sale of a Monet painting by the Estate (the "**Clark Estate Proceeds**"), will be paid to Corcoran following the Closing Date. The University and Corcoran acknowledge and agree that any Clark Estate Proceeds received following the Closing Date shall be distributed as follows: (i) *first*, to the University in the amount necessary for the Renovation Transfer Amount to equal Thirty Five Million Dollars (\$35,000,000); (ii) *second*, to Corcoran in an amount equal to Five Million Dollars (\$5,000,000) minus an amount equal to the Available Corcoran Retained Funds; and (iii) *third*, subject to Section 5.8 solely with respect to Corcoran, all remaining amounts and rights to Clark Estate Proceeds shall be payable in equal amounts to the University and Corcoran *pari passu*.

(c) *Illustrative Schedule of Adjustments.* For the convenience of the parties and by way of example only, *Schedule 2.6(c)* contains an illustrative calculation of potential adjustments to the Renovation Transfer Amount that may result from application of this Section 2.6.

(d) *Payment of Clark Estate Proceeds.* Within three (3) business days following receipt by Corcoran of the Clark Estate Proceeds, or any portion thereof, Corcoran shall prepare and deliver to the University a report showing the amount, as of such date, of the Available Corcoran Retained Funds and the expenses incurred and to be incurred by Corcoran pursuant to the Transition Budget and the proposed distribution of the Clark Estate Proceeds calculated in accordance with Section 2.6 (the "**Proceeds Disbursement Request**"). The University shall have five (5) business days from receipt thereof to review the Proceeds Disbursement Request and certify to Corcoran that the University is in agreement with such Proceeds Disbursement Request or to notify Corcoran if the University disputes any amounts in the Proceeds Disbursement Request. If the University disputes any amounts in the Proceeds Disbursement Request, the Parties will meet to discuss in good faith the resolution of such dispute. Payment by Corcoran to the University in accordance with this Section 2.6 and with respect to any undisputed amounts in such Proceeds Disbursement Request shall be made by wire transfer of immediately available funds (or by such other method of payment as may be agreed by the parties) on the second business day following confirmation by the University to Corcoran that it is in agreement with the Proceeds Disbursement Request (or any undisputed amounts therein).

2.7 *Uncollected Receivables.* For the avoidance of doubt, the parties acknowledge and agree that all Accounts Receivable shall be a Contributed Asset and the property of the University as of the Closing. In the event that Corcoran obtains any amounts with respect to Accounts Receivable properly owing to the University in accordance with the terms hereof, Corcoran shall promptly pay over such amounts to the University.

2.8 *Permanent Works.* The parties acknowledge and agree that the Permanent Works are intrinsic to the 17th Street Building and in connection with the contribution of such Permanent Works pursuant to this Agreement, the University agrees that the installation of such

Permanent Works within the 17th Street Building shall be maintained with a standard of care appropriate for works of art similar in kind and value (or as otherwise mutually agreed by Corcoran and the University) and in compliance with any applicable donor or other restrictions on the use, display, exhibition, maintenance or transfer of such Permanent Works (including those set forth on *Schedule 2.1(n)*), subject to customary preservation, conservation or renovation needs of such Permanent Works as reasonably determined by the University. Following the Closing, the University shall maintain policies of insurance on the Permanent Works in coverage amounts and against the types of risks that are consistent with customary practices for comparable collections. For the avoidance of doubt, (a) the French Window shall not be included in the Permanent Works and shall be subject to accessioning by NGA as works of the Existing Collection pursuant to the NGA Accession Agreement (including Section 2.4(d) thereof), and (b) the French Window shall be treated and subject to the same terms and conditions as other Accessioned Art to be displayed by NGA in the 17th Street Building.

**ARTICLE 3 —
REPRESENTATIONS AND WARRANTIES OF CORCORAN**

As of the Effective Date and as of the Closing Date, Corcoran represents and warrants to the University as follows, with each such representation and warranty subject to such exceptions as are set forth in the Corcoran disclosure schedules attached hereto:

3.1 *Organization, Standing and Power; Tax-Exempt Status.*

(a) Corcoran is a Congressionally chartered nonprofit corporation duly formed, validly existing and in good standing under the Laws of the District of Columbia and the United States of America. Corcoran has all requisite organizational power and authority to own, lease and operate its properties and to carry on its business as now being conducted. Corcoran is duly qualified to do business and in good standing in each jurisdiction in which such qualification is necessary because of the property owned, leased or operated by it or because of the nature of its business as now being conducted makes such licensing or qualification necessary.

(b) Corcoran is exempt from (i) U.S. income taxation under Section 501(c)(3) of the Code and (ii) from District of Columbia income Tax, sales and use Tax, franchise Tax and transfer Tax pursuant to the relevant provisions of the District of Columbia Code. Corcoran has received a determination letter from the Internal Revenue Service ("IRS") that it is exempt from U.S. income taxation under Section 501(c)(3) of the Code, which determination letter is in full force and effect. No part of the net earnings of Corcoran has inured to the benefit of any private shareholder or individual within the meaning of Section 501(c)(3) of the Code. Corcoran has conducted its activities so as to continue to be eligible for Tax-exempt status under Section 501(c)(3) of the Code. There is no pending, or, to the knowledge of Corcoran, threatened challenge to the Tax-exempt status of Corcoran.

3.2 *Authority; Binding Agreement.* The execution and delivery by Corcoran of this Agreement and all of the other Transaction Documents to which Corcoran is a party, and the consummation of the transactions contemplated hereby and thereby, are duly and validly authorized by all necessary corporate action on the part of Corcoran. Corcoran has all requisite

corporate power and authority to enter into this Agreement and the other Transaction Documents to which it is a party, and to consummate the transactions contemplated hereby and thereby, and this Agreement and the other Transaction Documents to which Corcoran is a party have been duly executed and delivered by Corcoran. This Agreement and the other Transaction Documents to which it is a party are the valid and binding obligations of Corcoran enforceable against it in accordance with its terms, except as enforceability may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar Laws affecting the enforcement of creditor's rights generally and the application of general principles of equity (regardless of whether that enforceability is considered in a proceeding at law or in equity).

3.3 ***Compliance with Laws and Donor Restrictions.***

(a) Corcoran has complied with and is in compliance with all Laws, including the Uniform Management of Institutional Funds Act, applicable to it or to any of its properties, assets, operations, and business, the failure of which to so comply would have a Material Adverse Effect. To the knowledge of Corcoran, there does not exist any basis for any claim of default under or violation of any Law except such defaults or violations, if any, that in the aggregate do not and will not have a Material Adverse Effect. For the last six (6) years no notice has been received by Corcoran, and no investigation or review is pending or, to the knowledge of Corcoran, threatened by any Governmental Entity with respect to (i) any alleged violation of any Law for which Corcoran may be liable or which may impact the business, or (ii) any alleged failure to have all permits, licenses and certificates of authority required in connection with the operation of the business.

(b) Corcoran is and has been in compliance with any applicable donor restrictions in all material respects. To the knowledge of Corcoran, there does not exist any basis for any Corcoran donor to claim that Corcoran has breached the terms of such donor's restricted donation. For the last six (6) years no donor of Corcoran has notified Corcoran in writing alleging that Corcoran has violated the terms of such donor's restricted donation.

3.4 ***Conflicts; Consents.*** Except as set forth on *Schedule 3.4*, the execution, delivery and performance by Corcoran of this Agreement and the other Transaction Documents to which Corcoran is a party, and the consummation by Corcoran of any of the transactions contemplated hereby and thereby, do not and will not in any material respect conflict with, violate, result in a breach of the terms and conditions of, or, with or without notice or the passage of time, result in any material breach, event of default or the creation of any Lien under, any Assumed Contract, any organizational documents of Corcoran or any Law, judgment, order, or decree to which Corcoran is subject, or require the consent or approval of, or a filing by Corcoran with, any Governmental Entity.

3.5 ***Assumed Contracts.*** *Schedule 2.1(c)* sets forth a true and correct list of the material Assumed Contracts, and Corcoran has provided copies of such material Assumed Contracts to the University. Except to the extent as would not have a Material Adverse Effect, (a) all of the Assumed Contracts are, and on the Closing Date all Assumed Contracts will be, in full force and effect, constituting valid and binding obligations of Corcoran and, to the knowledge of Corcoran, the other parties thereto and enforceable in accordance with their respective terms (subject to bankruptcy, insolvency, reorganization, fraudulent conveyance, or

other similar Laws relating to or affecting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at Law)), and (b) there exists no default, or any event which upon notice or the passage of time, or both, could reasonably be expected to give rise to any default, in any such case, in the performance by Corcoran under any Assumed Contract.

3.6 **Good Title; Ownership of Real Property.**

(a) *Schedule 3.6(a)* lists all material restrictions (donor, board or otherwise) currently encumbering the Contributed Assets.

(b) Corcoran holds valid title to, or valid contract rights to, as applicable, all of the Contributed Assets, free and clear of all Liens (other than Permitted Liens). At the Closing, the University will acquire from Corcoran valid title to, or valid contract rights to, as applicable, all of the Contributed Assets, free and clear of all Liens (other than Permitted Liens).

(c) Corcoran is the sole owner and has good and valid fee simple interest to each parcel of Owned Real Property listed on *Schedule 1.1*, free and clear of any Liens, other than Permitted Liens. Corcoran is not party to any real property leases, subleases, licenses, concessions, or other contracts granting to any party or parties the right of use or occupancy of any portion of any such parcel of Owned Real Property. Corcoran has delivered or otherwise made available to the University true, correct and complete copies of all deeds, title insurance reports and policies, exception documents, real property leases and related documents and information and surveys for the Owned Real Property in Corcoran's possession. Except as disclosed in *Schedule 3.6(c)*, there are no parties in possession of any portion of the Owned Real Property other than Corcoran, whether as lessees, tenants at will, trespassers or otherwise, and neither Corcoran, nor, to the knowledge of Corcoran, any other Person, has granted any oral or written right to any Person other than Corcoran to lease, sublease, license or otherwise use or occupy any of the Owned Real Property. To the knowledge of Corcoran, there are no options or rights in any third party to purchase or acquire any ownership interest in the Owned Real Property, including pursuant to any executory contracts of sale, rights of first refusal or options.

3.7 **Litigation.** There is no material decree, injunction, judgment, order, ruling, assessment or writ of any Governmental Entity outstanding or Action (i) pending, or to the best of Corcoran's knowledge threatened, against Corcoran or affecting its business, the Contributed Assets or the Assumed Liabilities or (ii) which seeks to prohibit, restrict or delay consummation of the transactions contemplated by this Agreement or any of the conditions to consummation of such transactions. In the past three years, Corcoran has not been subject to any material Action (whether or not settled) nor has Corcoran settled any material claim prior to being sued or prosecuted or a judgment being given in respect of it.

3.8 **Insurance.** Corcoran has, and at all times during the past three (3) years has had, insurance policies in full force and effect with reputable insurers, providing for coverages in all material respects that are sufficient for its business, the Contributed Assets and the Assumed Liabilities as to both amount and scope. Corcoran's insurance coverages for the current year and previous three (3) years, including annual premiums, are as described in *Schedule 3.8*. Corcoran

is not in default under any such policy or bond. Corcoran has timely filed claims with its insurers with respect to all material matters and occurrences of which it has knowledge.

3.9 **Sufficient Funds; PNC Notes.** Assuming payment of the Corcoran Retained Funds (as may be adjusted pursuant to Section 2.6), Corcoran will have as of the Closing Date, accrued sufficient funds to (a) pay the full consideration payable hereunder, including the Renovation Transfer Amount and the College Transfer Amount, (b) make all other necessary payments by it in connection with the transactions contemplated by this Agreement, including all fees and expenses related thereto, (c) otherwise perform its covenants and obligations of this Agreement and the other Transaction Documents and (d) to remain solvent after the consummation of the transactions contemplated by this Agreement and the NGA Transaction. The aggregate amount outstanding under the PNC Notes as of May 9, 2014 is \$2,900,581.63.

3.10 **No Other Representations and Warranties.** The University acknowledges and agrees that, except as otherwise expressly provided in this ARTICLE 3, (a) the Contributed Assets are bargained, sold, conveyed, transferred, assigned, delegated and released to the University on an "as is, where is" basis, in their present condition, and without any other representation or warranty, express or implied, (b) Corcoran makes no other warranty with respect to any of the Contributed Assets, including (i) any warranty of merchantability or fitness for a particular purpose, (ii) any warranty in respect of condition, title, the absence of encumbrances of Liens, and quiet enjoyment, (iii) any warranty arising through course of dealing or usage of trade, and (iv) any liability for any damages, including consequential, direct, indirect, incidental, exemplary or punitive damages, arising out of, or relating in any way to, the use or inability to use the Contributed Assets by any Person and regardless of the basis or cause of action giving rise thereto, and (c) for the avoidance of doubt, with respect to the institutional funds to be delivered to the University pursuant to Sections 9.2(h) and 9.2(i), (i) at Closing, Corcoran shall only be obligated to deliver to the University sufficient authority to control the investment and liquidation of such institutional funds, (ii) Corcoran makes no warranty as to the timing or process for which any investment allocations may be changed or such institutional funds may be liquidated, and (iii) risk of any changes in value of such institutional funds after Closing shall be borne entirely by the University.

ARTICLE 4 — REPRESENTATIONS AND WARRANTIES OF THE UNIVERSITY

As of the Effective Date and as of the Closing Date, the University represents and warrants to Corcoran as follows:

4.1 **Organization, Standing and Power; Tax-Exempt Status.**

(a) The University is a Congressionally chartered nonprofit corporation duly formed, validly existing and in good standing under the Laws of the District of Columbia and the United States of America. The University has all requisite organizational power and authority to own, lease and operate its properties and to carry on its business as now being conducted. The University is duly qualified to do business and in good standing in each jurisdiction in which such qualification is necessary because of the property owned, leased or operated by it or because of the nature of its business as now being conducted, except where any failure,

individually or in the aggregate, to be so qualified or in good standing could not reasonably be expected to have a material adverse effect on the business or operations of the University.

(b) The University is exempt from (i) U.S. income taxation under Section 501(c)(3) of the Code and (ii) from District of Columbia income Tax, sales and use Tax, franchise Tax and transfer Tax pursuant to the relevant provisions of the District of Columbia Code. The University has received a determination letter from the IRS that it is exempt from U.S. income taxation under Section 501(c)(3) of the Code, which determination letter is in full force and effect. No part of the net earnings of the University has inured to the benefit of any private shareholder or individual within the meaning of Section 501(c)(3) of the Code. The University has conducted its activities so as to continue to be eligible for Tax-exempt status under Section 501(c)(3) of the Code. There is no pending, or, to the knowledge of the University, threatened challenge to the Tax-exempt status of the University.

4.2 **Authority; Binding Agreement.** The execution and delivery by the University of this Agreement and all of the other Transaction Documents to which the University is a party, and the consummation of the transactions contemplated hereby and thereby, are duly and validly authorized by all necessary corporate action on the part of the University. The University has all requisite corporate power and authority to enter into this Agreement and the other Transaction Documents to which it is a party, and to consummate the transactions contemplated hereby and thereby, and this Agreement and the other Transaction Documents to which the University is a party have been duly executed and delivered by the University. This Agreement and the other Transaction Documents to which it is a party are the valid and binding obligations of the University enforceable against it in accordance with its terms, except as enforceability may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar Laws affecting the enforcement of creditor's rights generally and the application of general principles of equity (regardless of whether that enforceability is considered in a proceeding at law or in equity).

4.3 **Sufficient Funds.** The University has sufficient funds, when added to the Renovation Transfer Amount and the College Transfer Amount, to (a) fund the GW Corcoran School in an amount sufficient to support the transfer of the Legacy College and establishment of the GW Corcoran School on the terms and conditions set forth herein, (b) subject to Section 6.3, undertake the Renovation of the 17th Street Building and to operate and maintain the 17th Street Building and the Fillmore Building on the terms and conditions set forth herein, and (c) otherwise perform its covenants and obligations of this Agreement and the other Transaction Documents.

4.4 **Regulatory Matters.** The University holds all of the licenses, permits, accreditations and authorizations (collectively, the "**Authorizations**") required in the applicable jurisdictions under applicable Laws for the assumption of the Contributed Assets at Closing and the establishment and operation of the GW Corcoran School from and after the Closing as contemplated herein. Such Authorizations are in full force and effect and have not been revoked, suspended, canceled, rescinded or terminated and have not expired. There is not pending, or to the knowledge of the University, threatened, any action by or before any Governmental Entity to revoke, suspend, cancel, rescind or materially adversely modify any of the Authorizations.

4.5 **No Other Representations and Warranties.** Except as expressly provided in this ARTICLE 4, the University makes no other representation or warranty, express or implied, to Corcoran.

**ARTICLE 5 —
INTERIM MATTERS; OTHER COVENANTS**

5.1 **Cooperation on Interim Matters.** From the Effective Date until the Closing (the “**Pre-Closing Period**”), the parties shall confer and reasonably cooperate and work together to ensure an orderly transfer of the operations of the Legacy College to the University, with the goal of initiating the operations of the GW Corcoran School on the Closing Date, as set forth in ARTICLE 9.

5.2 **Interim Steering Committee.** As promptly as reasonably practicable following the Effective Date, Corcoran and the University shall establish a joint committee (the “**Interim Steering Committee**”) for the purpose of facilitating decision-making and discussing interim transfer matters (including, by way of example and not of limitation, (a) the University’s use of premises in the 17th Street Building and Fillmore Building, (b) plans for the Renovation, (c) receipt of revenues and payment of expenses of the Legacy College, (d) scheduling of special events and exhibitions, and (e) admissions and other academic matters) during the Pre-Closing Period. Corcoran and the University shall each have the right to appoint an equal number of representatives to the Interim Steering Committee, which shall not exceed three (3) representatives, respectively, unless the parties agree otherwise. The parties’ representatives to the Interim Steering Committee shall be representatives who (i) have responsibility for, and familiarity with, in the case of Corcoran, the ownership, business and operation of the Legacy College and, in the case of the University, the University’s business as it relates to matters contemplated by this Agreement and the other Transaction Documents and (ii) the requisite authority within their respective organizations to make decisions with respect to those business and non-legal matters customarily addressed by the Interim Steering Committee. Corcoran, on the one hand, and the University, on the other, may replace its respective representatives to the Interim Steering Committee from time to time by giving notice to the other party. The Interim Steering Committee shall be wound down by the parties as promptly as practicable following the Closing. The Interim Steering Committee shall endeavor to coordinate and integrate with the NGA and Corcoran personnel working on transition matters arising in connection with the NGA Accession Agreement, and both such committees shall function jointly as an omnibus committee as appropriate and to the extent reasonably practicable. The Interim Steering Committee shall not have the authority to make any decisions inconsistent with the terms of this Agreement or to amend this Agreement.

5.3 **Interim Operating Covenants.** During the Pre-Closing Period, Corcoran shall, except as otherwise expressly contemplated or required hereby or as otherwise consented to in advance in writing by the University (such consent not to be unreasonably withheld, conditioned or delayed), operate in the ordinary course of its business, consistent with past practice, and shall, except as otherwise expressly contemplated or required hereby or as otherwise consented to in advance in writing by the University (such consent not to be unreasonably withheld, conditioned or delayed):

(a) use its commercially reasonable efforts to preserve intact the goodwill and business organization of the Legacy College;

(b) maintain the policies for the Existing Insurance through the Closing Date and shall cause the University to be added as a named insured to each policy for Existing Insurance;

(c) not, other than in the ordinary course of its business, consistent with past practice, assign, sell, lease (as lessor), transfer or dispose of, or agree to assign, sell, lease (as lessor), transfer or dispose of, any material Contributed Assets without replacement thereof with functionally equivalent or superior assets;

(d) pay and satisfy in the ordinary course of business consistent with past practice all Excluded Liabilities which shall become due and payable and which Corcoran or an Affiliate of Corcoran shall be obligated to pay

(e) not incur, or suffer or permit to exist, any Lien (other than Permitted Liens) on the Contributed Assets;

(f) not make or authorize any new capital expenditures, other than (i) those set forth in the Legacy College budget provided to the University on or prior to the Effective Date and (ii) capital expenditures under \$25,000 in the aggregate;

(g) not renew, amend or modify any Assumed Contract, other than in the ordinary course of its business, consistent with past practice;

(h) not, except as required by applicable Laws, (i) hire any employee of the Legacy College, or (ii) enter into, renew, amend or modify any Contract with an independent contractor of the Legacy College other than those (x) with respect to security, (y) in the ordinary course of business consistent with past practice and terminable as of the Closing, or (z) set forth on *Schedule 5.3(h)*;

(i) not enter into any new Benefit Plan or amend any existing Benefit Plan or grant any increases in employee compensation except for increases in compensation in the ordinary course of its business, consistent with past practice;

(j) use commercially reasonable efforts to liquidate the Gallery Shop Inventory and not expend funds to replace such inventory; and

(k) not agree or commit, whether in writing or otherwise, to take any of the actions specified in the foregoing clauses.

5.4 *Approvals and Proceedings.*

(a) The parties acknowledge and agree that the ability of Corcoran to consummate the transactions contemplated hereby will require seeking the application of the *cy pres* doctrine to the Corcoran's organizational documents, in addition to other approvals by Governmental Entities. Corcoran shall provide the University with reasonable opportunity to

review and comment on each filing with a Governmental Entity prior to filing. Corcoran shall use its reasonable best efforts to file the *cy pres* application promptly following the Effective Date.

(b) With respect to the foregoing and subject to the terms and conditions herein provided, Corcoran and the University shall use reasonable best efforts to:

(i) obtain as promptly as practicable any necessary permits, consents, approvals, waivers and authorizations of, actions or nonactions by, and make as promptly as practicable all necessary filings and submissions with, any Governmental Entity or any third party necessary in connection with the consummation of the transactions contemplated by this Agreement and the other Transaction Documents;

(ii) cooperate with each other in (A) determining which filings are required to be made prior to the Closing with, and which material consents, approvals, permits, notices or authorizations are required to be obtained prior to the Closing from, Governmental Entities or third parties in connection with the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby and (B) timely making all such filings and timely seeking all such consents, approvals, permits, notices or authorizations;

(iii) cooperate with each other in vigorously defending, contesting and objecting to any claims, legal proceedings, petitions to deny, objections or other proceedings, whether judicial or administrative, by or before any Governmental Entity challenging the transactions contemplated hereby or that would otherwise prevent or materially impede, interfere with, hinder or delay the consummation of the transactions contemplated hereby, including by seeking to have any stay or temporary restraining order entered by any Governmental Entity vacated or reversed;

(iv) cause the conditions to the Closing set forth in ARTICLE 9 to be satisfied as promptly as reasonably practicable; and

(v) take, or cause to be taken, all other actions and do, or cause to be done, and cooperate with each other in order to do, all other things necessary or appropriate to consummate the transactions contemplated as soon as practicable.

5.5 Acknowledgements with Respect to Certain Near-Term Special Events and Commitments of Corcoran. Without limiting the generality of Section 2.1, given the time-sensitive nature of certain obligations of Corcoran in connection with the 17th Street Building, the parties wish to specifically acknowledge the intention of the University to assume and undertake to pay, discharge and perform such obligations of Corcoran as follows:

(a) Reference is hereby made to those certain Assumed Contracts for the rental of the 17th Street Building as a venue for special events between the Effective Date and December 31, 2014, a list of which is included in *Schedule 2.1(c)*. In respect thereof, the University covenants and agrees to assume and undertake to pay, discharge and perform the obligations of Corcoran under such Assumed Contracts in accordance with their terms and conditions.

(b) Reference is hereby made to the exhibitions scheduled to take place within the 17th Street Building between the Effective Date and October 1, 2014, a list of which is attached hereto as *Schedule 5.5(b)*. In respect thereof, the University affirms its commitment to provide space in the 17th Street Building and hold such exhibitions in a manner consistent with past practice of Corcoran and otherwise as described in *Schedule 5.5(b)*; *provided, however*, that the Corcoran shall bear certain security guard-related third-party expenses incurred with the operation of such exhibitions as contemplated in the Transition Budget.

(c) Reference is hereby made to certain summer programs scheduled to be conducted by Corcoran within the 17th Street Building beginning in approximately May 2014 and continuing through September 2014, a list of which is attached hereto as *Schedule 5.5(c)* (the “**Summer Programming**”). Insofar as such Summer Programming may be conducted following the Closing, the parties acknowledge and agree that (i) Corcoran shall conduct any such post-Closing Summer Programming and bear all costs for, and retain the revenues resulting from, such Summer Programming, except to the extent that the University agrees to provide limited post-Closing staffing services related to the Summer Programming for which Corcoran will reimburse the University for the reasonable, documented expenses incurred by the University in connection with providing such services, and (ii) the University shall (x) provide Corcoran and its licensees and guests in relation to such Summer Programming with reasonable access to the 17th Street Building to permit Corcoran to conduct such Summer Programming consistent with past practice and (y) confer and reasonably cooperate and work together with Corcoran to ensure the orderly operation of such Summer Programming by Corcoran.

(d) For the avoidance of doubt, this Section 5.5 shall survive the Closing until 11:59 p.m. on December 31, 2014.

5.6 *Transition Budget.*

(a) Reference is hereby made to that certain budget prepared by Corcoran with respect to certain expenses set forth therein to be incurred during the period from the Closing Date through the anticipated payment of the Clark Estate Proceeds to Corcoran (the “**Transition Budget**”), a copy of which has been delivered to the University as of the date hereof and designated as the “**Transition Budget**” for purposes of this Section 5.6, and which Transition Budget includes certain post-Closing operational expenses to be borne by Corcoran as expressly contemplated hereby. For the avoidance of doubt, the Transition Budget includes an estimate of the outstanding trade accounts payable of Corcoran for goods and services that will be accrued but unpaid and not delinquent as of the Closing Date, and which are not Assumed Accounts Payable.

(b) Corcoran covenants that, without the consent of the University (not to be unreasonably conditioned, withheld or delayed), Corcoran shall only make expenditures in material compliance with the Transition Budget.

(c) Upon request from the University from time-to-time and on a date not more than three (3) business days prior to the Closing Date, Corcoran shall provide information regarding its expenditures and allocations for costs and expenses pursuant to the Transition Budget and the amount of the Available Corcoran Retained Funds as of such Date.

5.7 **Renovation Transfer Amount Insufficiency.** In the event that Corcoran reasonably determines that it is, or is reasonably likely to be, unable to perform its obligation hereunder to deliver to the University a Renovation Transfer Amount equal to or greater than Thirty Five Million Dollars (\$35,000,000), Corcoran shall promptly deliver notice thereof to the University, which notice shall include a reasonable explanation of the basis for such determination (such notice, an “**RTA Insufficiency Notice**”).

5.8 **Corcoran Support for GW Corcoran School for Dedicated Purposes.** Corcoran covenants and agrees that the amount payable to Corcoran pursuant to Section 2.6(b)(iii) shall be deposited by Corcoran into a separate account in the University’s endowment to be used solely for the Dedicated Purposes.

5.9 **Audit Rights.**

(a) Corcoran shall keep complete and accurate books and records, including to the extent applicable electronic records, pertaining to (i) the expenditure of the Corcoran Retained Funds in accordance with the Transition Budget and (ii) the expenditure of the amount payable to Corcoran pursuant to Section 2.6(b)(iii) subject to the Dedicated Purposes, in each case in sufficient detail to calculate the payments payable hereunder, and such books and records shall be retained by Corcoran in a manner and for a period consistent with Corcoran’s customary records retention policy.

(b) At the request of the University, and at the University’s sole cost and expense, Corcoran shall permit a certified public accountant or a person possessing similar professional status or associated with a national independent accounting firm or another accounting firm reasonably acceptable to the both parties, during regular business hours and upon reasonable notice, to examine those books and records directly pertinent to (i) the expenditure of the Corcoran Retained Funds in accordance with the Transition Budget and (ii) the expenditure of the amount payable to Corcoran pursuant to Section 2.6(b)(iii) subject to the Dedicated Purposes, which books and records are maintained by Corcoran pursuant to Section 5.9(a); *provided, however*, that no audit may be conducted with respect to books and records beyond the scope of such Section 5.9(a). For the avoidance of doubt, any Dispute with respect to a matter contemplated by this Section 5.9 or arising as a result of the examination of the books and records under this Section 5.9 shall be subject to Section 11.11. This Section 5.9 shall survive the Closing for a period of eighteen (18) months following the Closing Date.

5.10 **Flemish Windows; Replacement.** It is the expectation of the parties that the Flemish Windows will be repatriated to Park Abbey in Louvain (Heverlee), Belgium, with all costs and expenses of such repatriation and the installation of replacement windows to be borne by the City of Louvain as the recipient thereof. The parties shall reasonably cooperate with respect to such repatriation, including the removal of the Flemish Windows and the payment to the University of the replacement costs relating thereto. To the extent such repatriation occurs following the Closing, during the time period between Closing and such repatriation, (a) Corcoran shall retain title to the Flemish Windows, and (b) the University shall (i) be deemed bailee thereof for the purpose of safeguarding and maintaining the Flemish Windows until such repatriation is complete and (ii) maintain the Flemish Windows with a standard of care

appropriate for works of art similar in kind and value (or as otherwise mutually agreed by Corcoran and the University).

ARTICLE 6 — REAL ESTATE MATTERS

6.1 ***Name of the 17th Street Building.*** Effective as of the Closing Date, and in perpetuity thereafter, the name of the 17th Street Building shall be as mutually agreed by the parties on or prior to the Closing Date, which name shall in any event include reference to the Corcoran and University names. The University shall not amend, modify or supplement such name in any manner without Corcoran's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. From and after the Closing Date, the University shall have the right to name portions of the 17th Street Building and interior spaces thereof in connection with a program of development and fundraising to support the GW Corcoran School, *provided* that the University may not rename any the galleries or other spaces in the 17th Street Building set forth on *Schedule 6.1* hereto.

6.2 ***Use of the 17th Street Building.*** Corcoran and the University contemplate that from and after the Closing Date, the 17th Street Building shall be primarily dedicated to arts education and to the operation of the GW Corcoran College and use as exhibition space for art in accordance with the terms and conditions of the definitive agreement executed and delivered in connection with the University-NGA Transaction, which definitive agreement shall not be amended by the University in a manner so as to materially reduce the space in the 17th Street Building dedicated to the exhibition of art. Without limiting the foregoing, except as otherwise provided herein, following the Closing the University will have the right to use the 17th Street Building in any manner not inconsistent with this agreement.

6.3 ***Renovation and Rehabilitation of the 17th Street Building.***

(a) Attached hereto as *Exhibit A* is an initial, preliminary renovation plan (the "**Preliminary Renovation Plan**") that outlines the proposed renovation and rehabilitation of the 17th Street Building (the "**Renovation**"), including the proposed uses and application of the Renovation Transfer Amount. The parties acknowledge that the Renovation is intended to be completed in phases as determined by the University in its sole discretion.

(b) From and after the Closing Date through substantial completion of the Renovations, and subject to applicable Laws (including the resolution, if any, of the application of the *cy pres* doctrine to Corcoran's organizational documents or similar proceedings in connection with the consummation of the transactions contemplated hereby) and this Section 6.3, the University may amend, modify or supplement the Preliminary Renovation Plan in its sole discretion after consultation in good faith with Corcoran, *provided* that the Renovation Transfer Amount may be used only for the Renovation (as such may be modified by the University in accordance with the foregoing). The University shall bear all costs of every kind and nature related to the Renovation, whether pursuant to the Preliminary Renovation Plan or otherwise, over and above the Renovation Transfer Amount.

(c) From and after the Closing Date through substantial completion of the Renovations, the University shall periodically update and consult with Corcoran on the status of the Renovations, including plans for future phases thereof.

(d) From and after the Closing Date, the University shall bear all costs of every kind and nature related to the operation of the 17th Street Building and (subject to subparagraph (f) of this Section 6.3 below) the Fillmore Building, in accordance with and subject to the definitive agreement between the University and NGA regarding gallery and exhibition space, at level that is at least equal to the level of other University buildings that require similar degrees of access, security and environmental controls, but in no event at a level less than that which (i) is appropriate for the use of the buildings as contemplated hereby or (ii) is reasonably necessary for the preservation and protection of the art, including the Permanent Works and otherwise in accordance with any agreements between NGA and the University.

(e) Other than as expressly set forth in this Agreement, in no event shall Corcoran be required to make payments towards the Renovation or the operation and maintenance of the 17th Street Building or the Fillmore Building.

(f) The parties acknowledge that the University plans to sell the Fillmore Building and use the proceeds therefrom in support of the operation of the GW Corcoran School or the Renovation. The University reserves the right to continue the use of the Fillmore Building for arts education uses until such time as those uses are transferred to another location or otherwise determined in accordance with the operation of the GW Corcoran School.

**ARTICLE 7 —
ESTABLISHMENT AND OPERATION
OF THE GW CORCORAN SCHOOL**

7.1 *Establishment of the GW Corcoran School.*

(a) In connection with the transfer of the Legacy College, the University covenants and agrees to establish a new school for art and design within the University under a name to be mutually agreed by the parties on or prior to the Closing Date, which name shall in any event include reference to the Corcoran name (the “**GW Corcoran School**”). On the Closing Date, the GW Corcoran School shall be established as a continuation of the Legacy College within the University. The University shall operate the GW Corcoran School as a separate and distinct entity integrated within the University system that honors the legacy of the Legacy College and preserves and continues the reputation, mission and brand of the Legacy College. In its operation of the GW Corcoran School, the University shall endeavor to maintain the academic quality and artistic mission of the Legacy College as of the Closing Date, including by seeking to preserve and foster the culture, character and diverse nature of the student body as of the Closing Date.

(b) At such time and over such period as determined in the sole discretion of the University, the University may integrate current arts programs at the University (e.g., Fine Arts, Interior Architecture and Design, and Museum Studies) with programs of the GW Corcoran School.

(c) From and after the Closing Date, the name of the GW Corcoran School shall remain in perpetuity as set forth in Section 7.1 in accordance with the terms of the License.

(d) *Exhibit C* hereto describes the intent of Corcoran and the University regarding the operation of the GW Corcoran School by the University after the Closing Date, subject to the following obligations:

(i) The GW Corcoran School shall continue to have a significant presence in the District of Columbia and at the 17th Street Building in perpetuity, in such manner as shall be determined by the University in its discretion;

(ii) The University shall permit cross-registration by students of the GW Corcoran School and students at all other programs and schools in the University system on reasonable terms and conditions as determined by the University in order to facilitate integration of the GW Corcoran School into the University system;

(iii) The University shall make all determinations regarding the awarding of degrees to the students of the GW Corcoran School and shall award such degrees under its own authority. Without limiting the foregoing, with respect to students enrolled or accepted for enrollment at the Legacy College as of the Closing Date, Corcoran and the University shall confer in good faith and jointly formulate a designation to appear on every degree granted by the GW Corcoran School after the Closing Date to such students;

(iv) The University will grant admission to students currently enrolled and in good standing at the Legacy College to the GW Corcoran School with status substantially similar to such students' status at the Legacy College (*e.g.*, a second year undergraduate student in good standing pursuing a degree as of the end of the spring 2014 term at the Legacy College would be admitted by the University for the fall 2014 term as a third year undergraduate student in good standing pursuing a degree at the GW Corcoran School);

(v) All students who have been admitted to the Legacy College will have their degree requirements grandfathered on substantially similar terms at the GW Corcoran School;

(vi) Students currently enrolled and in good standing at the Legacy College who continue their course of study at the GW Corcoran School will continue to be charged tuition and all other fees at the level existing at the Legacy College as of the Closing Date (subject to adjustment on an annual basis consistent with past practices in an amount to be determined by the University) for all courses that are offered within the GW Corcoran School or that are required for such students' degree until the later of such students' respective graduation dates or the end of the 2017-2018 academic year;

(vii) The University shall grant admission to the GW Corcoran School for a substantially similar program of study to all students accepted for admission, but not yet enrolled, at the Legacy College as of the Closing Date (*e.g.*, students accepted for enrollment for the Legacy College autumn 2014 term), provided that any previously admitted student may have their offer rescinded if such admitted student violates any existing terms of acceptance imposed by the Legacy College.

7.2 **University Control and Oversight.** Subject to the terms and conditions of this ARTICLE 7, the University shall have ultimate oversight and control of the GW Corcoran School and its successors from and after the Closing Date, including with respect to course requirements, curriculum development, academic standards, admissions, faculty appointment and oversight, administration and support staff and all other things related to the GW Corcoran School.

7.3 **University Funding Support.** From and after the Closing Date, the University shall provide funding for the GW Corcoran School so as to support the transfer of the Legacy College and the establishment of the GW Corcoran School on the terms and conditions set forth herein. The University shall bear all costs (including faculty salaries, employee benefits, classroom and studio space, operations, capital expenses, etc.) and receive all revenues (including tuition funds, fees, grants, etc.) associated with the operation of the GW Corcoran School from and after the Closing Date.

7.4 **College Transfer Amount.** The University shall use the College Transfer Amount solely in connection with the operation of the GW Corcoran School. The University acknowledges and agrees that certain portions of the College Transfer Amounts may be subject to temporary or permanent donor or other restrictions on the use of such funds (e.g., scholarship funds, prizes, etc.). Such restrictions have been described to the University and the University agrees to fully comply with such restrictions.

7.5 **Transferred Employees.**

(a) The University shall offer employment to the Legacy College full-time, ranked faculty members listed on *Schedule 7.5(a)* through a non-tenure accruing faculty appointment at a rank comparable to the rank the faculty members currently hold at the Legacy College, the term of which, if accepted, shall commence on the Closing Date and end on August 14, 2015. Such faculty appointment will be considered a one year term solely for purposes of Article V.B.1.a of the University's Faculty Code and will be at the same base salary as under their current appointment with Corcoran. Terms and conditions of employment, including eligibility for University benefits programs, and termination and non-renewal of employment (on the same or different terms), will be governed by University policies, including the University's Faculty Code. Corcoran acknowledges that, consistent with University policy, transferred faculty will not accrue annual or sick leave. The written offer of employment will be in the form substantially similar to *Exhibit D* hereto. Such faculty will be given ten (10) calendar days upon receipt of the University's written offer of employment to accept or reject the offer. Nothing herein shall limit or restrict the discretion of the University to terminate the employment of any such transferred faculty under the University's Faculty Code at any time. In the event a faculty member rejects the offer of employment from the University, the University shall have no further obligations with respect to that faculty member.

(b) The University shall offer employment to the Legacy College non-faculty employees listed on *Schedule 7.5(b)* at their current base salaries. The University reserves the right to revise such employees' current job titles and responsibilities in order to meet the University's business needs. Corcoran and the University acknowledge that *Schedule 7.5(b)*, as of the Effective Date, is not complete and shall be amended, from time to time by the parties

prior to the Closing Date. Terms and conditions of employment, including eligibility for University benefits programs, will be governed by University policies. At all times, any non-faculty employee shall be, like other University staff employees, an "at-will" employee. The University agrees that if it terminates the employment of any such transferred non-faculty employees during the first six months after hire except for Cause (as defined herein), it will pay the terminated employee a lump sum, as severance, an amount equivalent to the employee's base salary for the balance of the six (6) month period (less taxes). Payment of severance will be made within ten (10) business days after receipt by the University of a release signed by the terminated employee in the form prescribed by the University. Such employees will be given ten (10) days upon receipt of the written offer of employment to accept or reject the offer. In the event a non-faculty employee rejects the offer of employment from the University, the University shall have no further obligations with respect to that non-faculty employee.

(c) GW will apply to a Transferred Employee any applicable waiting periods for benefits programs under GW policies (e.g. GW tuition remission, and long and short term disability.)

(d) With respect to each Legacy College faculty and other employee identified in Sections 7.5(a) and 7.5(b) who accepts such offer (collectively, the "**Transferred Employees**"), at Closing employment with Corcoran shall terminate and employment with the University shall commence on the terms and conditions set forth in this Section 7.5. The University shall have no obligation to or liability for any Legacy College faculty or employee who is not a Transferred Employee. Corcoran shall offer and, if elected, provide group health continuation coverage under Part 6 of Title I of ERISA and Section 4980B of the Code ("**COBRA**") to each individual who is or becomes an "M&A qualified beneficiary" within the meaning of Treasury Regulation § 54.4980B-9, Q&A-4(a).

(e) Corcoran shall pay, discharge, and be responsible for (i) all salary or wages, bonuses, commissions, accrued but unused leave, and other compensation arising out of or relating to the employment of the Transferred Employees prior to the Closing Date and (ii) any employee benefits arising under the Benefit Plans with respect to the period prior to the Closing Date. From and after the Closing Date, the University shall pay, discharge and be responsible for (A) all salary, wages, and benefits arising out of or relating to the employment of the Transferred Employees by the University on and after the Closing Date and (B) all severance Liabilities for any of the Transferred Employees.

(f) The GW Retirement Plan for Faculty and Staff ("401(a) Plan") provides for University base and matching contributions. The base contribution is an amount equal to 4% of the Participant's Compensation for the Plan Year. Matching contributions equal 150% of the amount that the Participant contributed to the University Supplemental Retirement Plan ("403(b) Plan"), up to a maximum 6% of the Participant's Compensation for the Plan Year. Two years of service at the University are required for participation in the 401(a) Plan. Prior creditable service with another educational organization described in IRC Section 170(b)(1)(A)(ii) or 511(a)(2)(B), or with a college or university located outside the United States with accreditation, or a similar designation, from the country where the college or university is located, may count towards the 2 year service requirement. Service with Corcoran does not meet either of these requirements. Accordingly, GW will make retirement base and matching contributions to the 401(a) Plan for

Transferred Employees who meet the two-year service requirement described above as a result of prior service with a qualifying educational organization. For those Transferred Employees that do not meet the prior service requirement, GW will provide such employees with supplemental compensation (subject to income and employment taxes) equal to the base and matching contributions that would have been made to the 401(a) Plan on their behalf if they had met the service requirement. Such supplemental compensation shall be paid prior to the end of the one year term and shall not be considered as an employee's base salary for purposes of calculating any future merit pay increase or for any other purpose.

(g) Corcoran shall be responsible for all Liabilities under the Worker Adjustment and Retraining Notification Act and any similar applicable state or District of Columbia Law resulting from actions occurring prior to or contemplated on the Closing. The University shall be responsible for all Liabilities under the Worker Adjustment and Retraining Notification Act and any similar applicable state or District of Columbia Law resulting from the University's actions following the Closing.

(h) Without limiting the generality of Section 11.16, nothing contained herein, expressed or implied, is intended to confer upon any Transferred Employee any right to continued employment for any period of time by reason of this Agreement.

(i) Corcoran shall terminate effective no later than the Closing Date, and shall pay, discharge and be responsible for all salary or wages, bonuses, commissions, accrued but unused leave or vacation, employee benefits, and any other compensation arising out of or relating to the termination of employment of, any Legacy College faculty or employees who are not Transferred Employees.

7.6 ***GW Corcoran School Advisory Board.*** The parties acknowledge and agree that the University may in its sole and absolute discretion form an advisory board in the course of the establishment and operation of the GW Corcoran School. To the extent reasonably feasible, the University may choose, at its sole and absolute discretion, to invite at least one (1) representative from Corcoran to participate on any such advisory board, if and when formed, as a board observer.

ARTICLE 8 — CONTINUATION OF CORCORAN MISSION; ESTABLISHMENT OF JOINT ADVISORY COMMITTEE

It is acknowledged that in order to fulfill its legal duties as the holder of the federal charter and its responsibilities under the terms of this and related agreements, Corcoran will continue following the Closing as a legal entity committed to its original mission: "Dedicated to Art and Encouraging American Genius" and in that manner Corcoran will continue its 145 year history of pursuing and supporting new art and new ideas. As a continuing entity, Corcoran will seek to support stewardship of the Corcoran name and legacy, to consult with and provide advice to NGA and the University on programs and interconnected activities of such institutions, and to promote the important role of contemporary art and artists in provoking new thinking and realizing new exciting cultural initiatives. Insofar as Corcoran will continue in existence following the Closing and will develop a program for the fulfillment of its mission as an

institution dedicated to art and encouraging American genius, the parties desire to establish a framework for future potential collaboration and exploration of joint activities, as follows:

(a) The parties desire to (i) establish an ongoing relationship to integrate the mission of the Corcoran with the mission of the University in respect of the University's establishment and operation of the GW Corcoran School, (ii) support the University's stewardship of the Corcoran name and legacy, (iii) facilitate programs or other interconnected activities of the University and Corcoran, and (iv) promote the important role of contemporary art and artists in provoking new thinking and realizing new exciting cultural initiatives.

(b) In connection with the foregoing, as soon as reasonably practicable following the Closing, Corcoran and the University shall form a joint advisory committee (the "**Joint Advisory Committee**") for the purposes of conferring with one another with respect to the parties' performance of their respective covenants and agreements hereunder and under the other Transaction Documents and endeavoring to jointly undertake such other actions or activities as the parties may agree from time to time in furtherance of the purposes of this Agreement and their ongoing respective missions.

(c) The University and Corcoran shall each have the right to appoint an equal number of representatives to the Joint Advisory Committee, which shall not exceed two (2) representatives, respectively, unless the parties agree otherwise. The University, on the one hand, and Corcoran, on the other, may replace its respective representatives to the Joint Advisory Committee from time to time by giving notice to the other party.

(d) The Joint Advisory Committee shall meet from time to time, but in any event no less frequently than once every two (2) years. The Joint Advisory Committee shall establish its own procedures with respect to the conduct of its meetings, *provided* that the University, on the one hand, and Corcoran, on the other, shall propose any matters for the agenda of each meeting of the Joint Advisory Committee reasonably in advance by notice to the members of the Joint Advisory Committee. The parties shall in good faith coordinate with one another to establish the schedule of meetings for the Joint Advisory Committee as contemplated hereby. The parties may agree to dissolve the Joint Advisory Committee at any time upon mutual agreement.

ARTICLE 9 — CONSUMMATION OF THE TRANSACTION

9.1 **Closing.** Pursuant to the terms and subject to the conditions of this Agreement, including as set forth in Sections 9.2 and 9.3 below, the consummation of the transactions contemplated by this Agreement (the "**Closing**") shall take place at the offices of the University, 2100 Pennsylvania Avenue, N.W., Washington, D.C., at 10:00 a.m. local time, three (3) business days after the conditions set forth in this ARTICLE 9 are satisfied or, if permissible, waived, or on such other date as mutually agreed by the parties (such date of the Closing hereinafter referred to as the "**Closing Date**"), *provided* that in no event shall the Closing be prior to August 12, 2014.

9.2 **Conditions to Obligations of the University.** The obligations of the University to consummate the transactions contemplated by this Agreement at the Closing are subject to the satisfaction or waiver by the University of the following conditions:

(a) The representations and warranties of Corcoran contained herein that are qualified by materiality or subject to thresholds shall be true and correct in all respects, and the representations and warranties of Corcoran contained herein that are not so qualified shall be true and correct in all material respects, in each case as of the Effective Date and the Closing Date as if made on and as of the Closing Date.

(b) Corcoran shall have performed and complied in all material respects with all covenants and agreements required to be performed or complied with on or prior to the Closing Date.

(c) The parties shall have obtained final resolution of the application of the *cy pres* doctrine to Corcoran's organizational documents in a manner reasonably satisfactory to the University.

(d) The consents and approvals listed on *Schedule 9.2(d)* (the "**Required Consents**") shall have been obtained and delivered to the University.

(e) There shall have been no Material Adverse Effect following the Effective Date.

(f) The NGA Transaction shall be consummated substantially simultaneously with the Closing of the transactions contemplated hereby (for the avoidance of doubt, without respect to those certain obligations to be performed thereunder following the closing thereunder).

(g) The University and NGA shall have executed and delivered definitive agreements in respect of the University-NGA Transaction in a form reasonably satisfactory to the University.

(h) The University shall have received (i) with respect to any cash comprising the College Transfer Amount, such amount by wire transfer of immediately available funds, plus (ii) with respect to any institutional funds comprising the College Transfer Amount, such documentation as may be reasonably necessary to confer upon the University authority to control the investment or effect the liquidation of such amount.

(i) The University shall have received such documentation as may be reasonably necessary to confer upon the University authority to control the investment or effect the liquidation of an aggregate amount equal to the Renovation Transfer Amount or, with respect to any portion of the foregoing that shall be accrued but unpaid as of the Closing, such documentation as may be reasonably necessary to assign to, and confer upon, the University the right to the applicable accrued payment.

(j) The University shall have reasonably determined that Corcoran is, or is reasonably likely to be, able to perform its obligation hereunder to deliver to the University a

Renovation Transfer Amount equal to at least Thirty Five Million Dollars (\$35,000,000), taking into consideration the reasonably anticipated proceeds of the Clark Estate Settlement Receivable.

(k) The University shall have received or Corcoran shall stand ready to deliver:

(i) a certificate, dated as of the Closing Date, duly executed by an authorized officer of Corcoran, certifying that:

(A) the conditions set forth in Sections 9.2(a) and 9.2(b) have been fulfilled;

(B) all documents to be executed by Corcoran and delivered at the Closing have been executed by a duly authorized officer of Corcoran; and

(C) (1) Corcoran's charter and bylaws, attached to the certificate, are true and correct, (2) such organizational documents have been in full force and effect in the form attached since the date of the adoption of the resolutions referred to in clause (3) below and no amendment to such organizational documents has occurred since the date of the last amendment annexed thereto, if any, and (3) the resolutions adopted by the board of trustees of Corcoran authorizing the execution, delivery and performance of this Agreement, attached to the certificate, were duly adopted at a duly convened meeting thereof, at which a quorum was present and acting throughout or by unanimous written consent, remain in full force and effect, and have not been amended, rescinded or modified, except to the extent attached thereto;

(ii) the following documents duly executed by Corcoran: (A) a trademark license agreement with respect to the "Corcoran" mark as contemplated in the preamble to this Agreement based on the form attached hereto as *Exhibit B*, as further negotiated by the parties to implement their discussions prior to the execution of this Agreement (the "**License Agreement**"); (B) a bill of sale, instruments of accession with respect to the Permanent Works, and instruments of assignment, certificates of title documents, deeds and other conveyance documents, dated as of the Closing Date, to effect the transfer to the University of all of Corcoran's right, title and interest in and to the Contributed Assets, together with possession of the Contributed Assets, in form and substance reasonably satisfactory to the parties hereto (the "**Bill of Sale**"); and (C) an assignment and assumption agreement, executed by Corcoran, assigning the Assumed Contracts, and pursuant to which the University assumes the Assumed Contracts and the Assumed Liabilities, in form and substance reasonably satisfactory to the parties hereto (the "**Assignment and Assumption Agreement**"); and

(iii) such other documents, certificates or instruments as the University may reasonably request.

(l) The University shall have received either (i) PNC's written consent to the assignment of the PNC Notes or (ii) an executed definitive agreement in respect of the PNC Notes as contemplated in Section 2.5(d) in a form and substance reasonably satisfactory to the University.

9.3 **Conditions to Obligations of Corcoran.** The obligations of Corcoran to consummate the transactions contemplated by this Agreement at the Closing are subject to the satisfaction or waiver by Corcoran of the following conditions:

(a) The representations and warranties of the University contained herein that are qualified by materiality or subject to thresholds shall be true and correct in all respects, and the representations and warranties of the University contained herein that are not so qualified shall be true and correct in all material respects, in each case as of the Effective Date and the Closing Date as if made on and as of the Closing Date.

(b) The University shall have performed and complied in all material respects with all covenants and agreements required to be performed or complied with on or prior to the Closing Date.

(c) The parties shall have obtained final resolution of the application of the *cy pres* doctrine to Corcoran's organizational documents in a manner reasonably satisfactory to Corcoran.

(d) The NGA Transaction shall be consummated simultaneously with the Closing of the transactions contemplated hereby.

(e) The University and NGA shall have executed and delivered definitive agreements in respect of the University-NGA Transaction in a form reasonably satisfactory to Corcoran.

(f) Corcoran shall have received or the University shall stand ready to deliver:

(i) a certificate, dated as of the Closing Date, duly executed by an authorized officer of the University, certifying that:

(A) the conditions set forth in Sections 9.3(a) and 9.3(b) have been fulfilled; and

(B) all documents to be executed by the University and delivered at the Closing have been executed by a duly authorized officer of the University; and

(ii) the following documents duly executed by the University:
(A) License Agreement, (B) the Bill of Sale, (C) the Assignment and Assumption Agreement, and (D) such other documents, certificates or instruments as Corcoran may reasonably request.

ARTICLE 10 — TERMINATION

10.1 **Termination.** In addition to other remedies available at Law or equity, this Agreement may be terminated as set forth below by either Corcoran or the University upon the occurrence of any of the following prior to the Closing:

(a) the mutual written consent of both parties;

- (b) the termination of the NGA Accession Agreement;
- (c) if the parties' request for application of the *cy pres* doctrine to Corcoran's organizational documents shall have been denied by final judgment in accordance with applicable Laws;
- (d) if the other party is in material breach of any of its representations, warranties, covenants, agreements or obligations hereunder and has failed to cure such breach within thirty (30) days of notice from the non-breaching party; *provided* that the party seeking to terminate the Agreement pursuant to this paragraph (d) is not then in material default or breach hereunder;
- (e) if the Closing shall not have occurred as of the first anniversary of the Effective Date; or
- (f) at any time following delivery of an RTA Insufficiency Notice pursuant to Section 5.7.

10.2 *Procedure and Effect of Termination.*

(a) Any termination by either party pursuant to Section 10.1 shall be communicated by a written notice to the other party (the "**Notice of Termination**"). The Notice of Termination shall indicate the termination provision in this Agreement claimed to provide a basis for termination of this Agreement. Termination of this Agreement pursuant to the terms and subject to the conditions of Section 10.2 shall be effective upon and as of the date of delivery of a Notice of Termination.

(b) In the event of the termination of this Agreement pursuant to Section 10.1, this Agreement shall forthwith become null and void and have no effect, and the obligations of the parties under this Agreement shall terminate, except for this Section 10.2, Section 10.3 and ARTICLE 11, which shall survive indefinitely. Nothing in this ARTICLE 10 shall relieve either party of any liability for a breach of this Agreement prior to the termination hereof.

(c) For the avoidance of doubt, in the event this Agreement is terminated prior to the Closing, Corcoran shall not be obligated to enter into the License Agreement.

10.3 *Withdrawal of Certain Filings.* All filings, applications and other submissions relating to the transactions contemplated by this Agreement as to which termination has occurred shall, to the extent practicable, be withdrawn from the Governmental Entity or other Person to which made.

ARTICLE 11 — MISCELLANEOUS PROVISIONS

11.1 *Survival of Representations, Warranties and Agreements.* None of the representations, warranties, covenants and agreements in this Agreement or in any instrument delivered pursuant to this Agreement shall survive beyond the Closing, except for (a) those covenants and agreements set forth in this Agreement that by their terms contemplate performance in whole or in part after the Closing, including Sections 2.8, 5.5, 5.6, 5.8, 5.9 and

5.10, ARTICLE 6 and ARTICLE 7, which shall survive until fully performed and discharged or at such time as specified therein, and (b) those contained in this ARTICLE 11.

11.2 **Confidentiality.** Information concerning either Corcoran or the University's business methods, financial information, future plans, personnel data, trade secrets, information systems, financial and accounting policies or similar matters, or information designated as "confidential" by the disclosing party or released under circumstances where a reasonable Person would understand that such information is to be treated as confidential, shall be treated as confidential. The party receiving such confidential information shall take the same precautions as it takes to protect its own confidential information, but in all events reasonable precautions shall be taken, in order to preserve its confidentiality. Confidential information shall not be revealed to third parties without the written consent of the disclosing party, and neither Corcoran nor the University may use the other party's confidential information for any purpose except for purposes of performing this Agreement. This confidentiality requirement shall not apply to: (a) information in the public domain, (b) information independently developed by either party without use of the other party's confidential information, (c) information received by either party from a third party under no duty of confidentiality, and (d) a disclosure of information that is required by Law. The obligations of the parties under this Section 11.2 shall survive the Closing or the termination of the Agreement for a period of five (5) years after such Closing or termination, as applicable.

11.3 **Publicity, Marks and Use of Names.** Except as permitted by the License Agreement, neither party shall use the name, logo, insignia, or trademarks of the other party or any of the other party's trustees, directors, officers, employees, or agents, in any press release, fund-raising, website, or product advertising, or for any other promotional purpose, without first obtaining the written consent of the other party.

11.4 **Public Announcement.** At the time of the Closing, Corcoran and the University shall release a public announcement and hold an event announcing the GW Corcoran School at such time, place and in such manner as shall be mutually agreed by the parties.

11.5 **Cooperation Following the Closing.** Following the Closing, each party shall deliver to the other party such further information and documents and shall execute and deliver to the other party such further instruments and agreements as any other party shall reasonably request to consummate or confirm the transactions provided for herein, to accomplish the purpose hereof or to assure to any other party the benefits hereof.

11.6 **Notices.** All notices, requests, demands and other communications which are required or may be given pursuant to the terms of this Agreement (including Notices of Termination) shall be in the English language and in written or electronic form, and shall be deemed delivered (a) on the date of delivery when (i) delivered by hand or (ii) sent by reputable overnight courier maintaining records of receipt and (b) on the date of transmission when sent by facsimile or other electronic transmission during normal business hours with confirmation of transmission by the transmitting equipment; provided that any such communication delivered by facsimile or other electronic transmission shall only be effective if such communication is also delivered by hand or deposited with a reputable overnight courier maintaining records of receipt within two (2) business days after its delivery by facsimile or other electronic transmission. All

such communications shall be addressed to the parties at the addresses set forth below, or at such other address as a party may designate upon ten (10) days' prior written notice to the other party.

If to Corcoran:

Corcoran Gallery of Art
500 17th Street, N.W.
Washington, DC 20006
Attention: General Counsel
Phone: (202) 365-7327
Fax: (202) 639-1738

with a copy to:

Charles A. Patrizia
Paul Hastings LLP
875 15th Street, N.W.
Washington, D.C. 20005
Phone: (202) 551-1710
Fax: (202) 551-1705

If to the University:

The George Washington University
2121 Eye Street, N.W.
Suite 701
Washington, DC 20037
Attention: Steven Knapp, President
Phone: (202) 994-6500
Fax: (202) 994-0654

with a copy to:

Beth Nolan
The George Washington University
2100 Pennsylvania Avenue, N.W.
Suite 250
Washington, DC 20052
Phone: (202) 994-3434
Fax: (202) 944-4640

Kevin J. Lavin
Arnold & Porter LLP
555 Twelfth Street, N.W.
Washington, DC 20004-1206
Phone: (202) 942-5461
Fax: (202) 942-5999

11.7 *Amendments.* Amendments to this Agreement shall be made by mutual consent of the parties, by the issuance of a mutually agreed upon written instrument, signed and dated by authorized officials of Corcoran and the University, prior to any changes being performed.

11.8 **Waiver.** Any agreement on the part of a party to any extension or waiver of any provision hereof shall be valid only if set forth in an instrument in writing signed on behalf of such party. A waiver by a party of the performance of any covenant, agreement, obligation, condition, representation or warranty shall not be construed as a waiver of any other covenant, agreement, obligation, condition, representation or warranty. A waiver by any party of the performance of any act shall not constitute a waiver of the performance of any other act or an identical act required to be performed at a later time.

11.9 **Assignment.** Neither party may assign or transfer any rights or obligations in this Agreement except with the prior written consent of the other party, except that the University shall always have the right, without such consent, to perform any or all of its obligations and exercise any or all of its rights under this Agreement through any of its affiliates. Any attempted assignment or delegation in violation of this Section 11.9 shall be void.

11.10 **Governing Law.** This Agreement shall be governed by the Laws of the District of Columbia, excluding any conflicts or choice of Law rules or principles that might otherwise refer construction or interpretation of this Agreement to the substantive Law of another jurisdiction.

11.11 **Mediation; Dispute Resolution; Remedies.** Any dispute, controversy or claim arising out of or in connection with this Agreement, the License Agreement or the other agreements, certificates and documents delivered in connection herewith or otherwise in connection with the transactions contemplated hereby and thereby (collectively, the “**Transaction Documents**”), and the rights and obligations of the parties under the Transaction Documents, including any question regarding their existence, validity or termination (a “**Dispute**”) shall be subject to the following procedures:

(a) As an initial Dispute resolution procedure hereunder, the parties shall attempt in good faith to resolve any such Dispute promptly by negotiation between officers of the parties who have sufficient authority to settle such Dispute and who are at a higher level of organizational or management authority than the Persons from such party who then have direct responsibility for administration of the provisions of this Agreement then under dispute. The foregoing process may be initiated by either party upon written notice to the other of any Dispute that not resolved in the ordinary course of business. Within fifteen (15) days after delivery of such notice, the receiving party shall submit to the other a written response. The notice and response shall include (i) a statement of that party’s position with respect to the Dispute and a summary of arguments supporting that position, and (ii) the name and title of the officer who will be the principal liaison for such party with respect to this Section 11.11(a) and of any other Person who will accompany such officer. Within thirty (30) days after delivery of the initial notice, the designated liaisons of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the Dispute. All reasonable requests for information made by one party to the other shall be honored to the extent reasonably practicable. All negotiations pursuant to this clause shall be confidential in accordance with Section 11.2 and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

(b) In the event that a matter subject to the foregoing procedure has not been resolved by negotiation as provided herein within forty-five (45) days after delivery of the initial

notice contemplated by Section 11.11(a), or if the parties have failed to meet as contemplated thereby within twenty (20) days of such notice, the parties shall endeavor to settle such Dispute by mediation under the Mediation Procedure of the AAA, as then in effect, *provided* that if one party fails to participate in the negotiation as provided herein, the other party can initiate mediation prior to the expiration of the forty-five (45) days.

(c) Any Dispute that shall not have been resolved in accordance with the foregoing shall be referred to and finally resolved by arbitration in accordance with the Commercial Arbitration Rules (the “**Arbitration Rules**”) of the AAA, as then in effect, which Arbitration Rules are deemed to be incorporated by reference into this clause. The parties shall appoint one (1) arbitrator by mutual agreement. If the parties cannot agree on the appointment of an arbitrator within ten (10) days after a party’s receipt of a demand for arbitration, the arbitrator shall be appointed by the AAA in accordance with the Arbitration Rules, in which case the potential arbitrators identified on the list provided by the AAA to the parties in accordance with such Arbitration Rules shall be, to the extent available, attorneys experienced with commercial transactions in the broadcast television industry. The arbitrator shall have the exclusive right to determine the arbitrability of any disputes, controversies or claims. In the event of any conflict between the Arbitration Rules and any provisions of the Transaction Documents, the Transaction Documents shall govern. The place of arbitration shall be Washington, D.C. The arbitration shall be conducted in the English language. Judgment on the award entered in any arbitration shall be final and may be entered in any court having jurisdiction thereof. The prevailing party in the arbitration shall be entitled to recover its reasonable attorneys’ fees and costs, in addition to any other relief it may be awarded, and the arbitrator may (but shall not be required to) direct the parties to deposit funds against the payment of such costs. The parties agree that notifications of any proceedings, reports, communications, or any other document shall be sent as set forth in Section 11.5. Notwithstanding any provision of this Section 11.11 to the contrary, either party may, without waiving any remedy under this Agreement or any other Transaction Document, seek from any court having jurisdiction any interim or provisional relief, including equitable relief, that is necessary to protect the rights or property of such party or preserve the subject matter of the Dispute, pending its final resolution and (as applicable) enforcement, pursuant to the terms and subject to the conditions of this Section 11.11.

(d) The parties recognize that irreparable injury will result from a breach of any provision of the Transaction Documents and that money damages will be inadequate to fully remedy the injury. Accordingly, in the event of a breach or threatened breach of one or more of the provisions of the Transaction Documents, any party that may be injured (in addition to any other remedies which may be available to that party), shall be entitled to one or more preliminary or permanent orders restraining and enjoining any act which would constitute a breach or compelling the performance of any obligation which, if not performed, would constitute a breach.

11.12 **Cumulative Rights.** Except as expressly provided herein, the various rights of this Agreement shall be construed as cumulative, and no one of them is exclusive of the other or exclusive of any rights allowed by Law.

11.13 **Severability.** If any covenant or provision hereof is determined by a court of competent jurisdiction to be void or unenforceable in whole or in part, it shall not, subject to the

discretion of such court, be deemed to affect or impair the validity of any other covenant or provision, each of which is hereby declared to be separate and distinct. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable. If any provision of this Agreement is declared invalid or unenforceable for any reason other than overbreadth, the offending provision shall be modified so as to maintain the essential benefits of the bargain between the parties hereto to the maximum extent possible, consistent with Law and public policy.

11.14 **Expenses.** Except as otherwise expressly provided herein, each party shall pay its own fees, costs and expenses incurred in connection herewith and the transactions contemplated hereby, including the fees, costs and expenses of its financial advisors, accountants and counsel.

11.15 **Independent Contractors.** The parties to this Agreement are independent contractors. Neither party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture or partnership between the parties or to impose any liability attributable to such a relationship upon the parties.

11.16 **No Third-Party Beneficiaries.** This Agreement is solely for the benefit of the University and Corcoran. There are no intended or implied third-party beneficiaries to this Agreement or any of the transactions contemplated herein.

11.17 **Entire Agreement.** This Agreement, together with any Schedules and Exhibits attached hereto and contemplated hereby, and the other Transaction Documents constitute the entire understanding between the parties with respect to the subject matter hereof and supersede all oral communications and prior writings with respect thereto, including for the avoidance of doubt, that certain Letter of Intent, dated as of February 18, 2014, by and between Corcoran and the University.

11.18 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be an original and all of which will constitute together the same document.

[Signatures appear on following page; remainder intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Asset Contribution Agreement as of the date first written above.

**TRUSTEES OF THE CORCORAN
GALLERY OF ART**

By: _____

Name: Harry F. Hopper III

Title: Chairman

THE GEORGE WASHINGTON UNIVERSITY

By: _____

Name: Dr. Steven Knapp

Title: President

IN WITNESS WHEREOF, the parties hereto have executed this Asset Contribution Agreement as of the date first written above.

**TRUSTEES OF THE CORCORAN
GALLERY OF ART:**

By: _____
Name: Harry F. Hopper III
Title: Chairman

THE GEORGE WASHINGTON UNIVERSITY:

By: *Steve Knapp*
Name: Dr. Steven Knapp
Title: President

LICENSE AGREEMENT BETWEEN THE
TRUSTEES OF THE CORCORAN GALLERY OF
ART AND GEORGE WASHINGTON
UNIVERSITY

EXHIBIT B

FORM OF LICENSE AGREEMENT

This LICENSE AGREEMENT (this “**Agreement**”) is hereby made and entered into as of [•], 2014, by and between the **Trustees of the Corcoran Gallery of Art**, a Congressionally chartered nonprofit corporation located in the District of Columbia (“**Corcoran**”), and **The George Washington University**, a Congressionally chartered nonprofit corporation located in the District of Columbia (the “**University**”) (each a “**Party**” and, collectively, the “**Parties**”).

WHEREAS:

A. The Parties are entering this Agreement in conjunction with the closing under that certain Asset Contribution Agreement, dated as of May 15, 2014 (the “**Asset Contribution Agreement**”).

B. Pursuant to the Asset Contribution Agreement, the Parties desire that the University will license from Corcoran, and Corcoran will license to the University, certain rights to the “Corcoran” name and mark for use by the University in connection with the Licensed Field (as set forth below) as contemplated by the Asset Contribution Agreement and on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of their respective representations, promises and obligations, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, and desiring to be bound hereby, the Parties agree as follows:

ARTICLE 1 DEFINITIONS AND TERMS

1.1 **Certain Definitions.** The following terms, as used herein, have the meanings set forth below:

“**Agreement**” has the meaning set forth in the preamble.

“**Asset Contribution Agreement**” has the meaning set forth in the preamble.

“**Authorized Uses**” has the meaning set forth in Section 2.3.

“**Combined Mark**” means any Trademark that combines the Licensed Mark with a University Mark.

“**Corcoran**” has the meaning set forth in the preamble.

“**Corcoran Intellectual Property**” means any Intellectual Property that is owned by, licensed to or used by Corcoran in the conduct of its business.

“**Effective Date**” has the meaning set forth in Section 2.4.

“**Intellectual Property**” means any or all of the following and all rights, arising out of or associated therewith: (a) all patents and applications therefor and all reissues, divisions,

renewals, extensions, provisionals, continuations and continuations-in-part thereof; (b) all inventions (whether patentable or not), invention disclosures, improvements, proprietary information, know-how, technology, technical data and customer lists, and all documentation relating to any of the foregoing; (c) all copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto; (d) all industrial designs and any registrations and applications therefor; (e) all corporate, trade or business names, brands, designs, trademarks, service marks, trade dress, logos, domain names, and slogans (collectively, “**Trademarks**”), and all registrations and applications for registration of Trademarks; (f) all software, databases and data collections and all rights therein; (g) all moral and economic rights of authors and inventors, however denominated; and (h) any similar or equivalent rights to any of the foregoing.

“**Licensed Field**” has the meaning set forth in Section 2.1.

“**Licensed Mark**” means “Corcoran.”

“**Term**” has the meaning set forth in Section 2.4.

“**University**” has the meaning set forth in the preamble.

“**University Mark**” means any Trademark owned by the University (other than a Trademark including the Licensed Mark).

1.2 **Other Defined Terms.** Other capitalized terms contained herein that are not otherwise defined herein shall have the meanings ascribed thereto in the Asset Contribution Agreement.

1.3 **Interpretation.** The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof. Except where the context requires otherwise, whenever used in this Agreement, the singular includes the plural, the plural includes the singular, the use of any gender is applicable to all genders and the word “or” has the inclusive meaning represented by the phrase “and/or.” The words “include” and “including” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.” A reference in this Agreement to an Article, Section, Exhibit or Schedule is to the referenced Article, Section, Exhibit or Schedule of this Agreement. The wording of this Agreement shall be deemed to be the wording mutually chosen by the Parties and no rule of strict construction shall be applied against either Party. Unless expressly provided otherwise, all dollar figures in this Agreement, if any, are in the currency of the United States of America.

ARTICLE 2 GRANT OF LICENSE AND RELATED RIGHTS

2.1 *Grant of License.*

(a) In consideration of the University’s covenants and obligations hereunder and under the Asset Contribution Agreement, and pursuant to the terms and conditions of this Agreement, Corcoran hereby grants to the University, and the University hereby accepts from Corcoran, the exclusive, worldwide, royalty-free, fully paid-up, irrevocable, non-transferable

(except as expressly set forth in Section 2.1(b) and Section 8.7) right and license to use the Licensed Mark during the Term in connection with the establishment and operation of an educational institution and the performance of any and all activities consistent with or incident to the educational and related missions thereof (the “**Licensed Field**”), including (i) in the name of the educational institution and on physical buildings and spaces associated with the institution; (ii) in connection with any and all activities associated with the educational institution; (iii) on products created and distributed in connection with such educational institution or activities; (iv) in connection with all services and other offerings provided by such educational institution or as part of such activities; (v) in all advertising and promotion of such educational institution, and/or any such products, services or offerings; (vi) in domain names or similar or successor electronic address mechanisms or systems as provided in Section 6.2.

(b) The University’s rights hereunder include the right to allow its officers, directors, trustees, faculty, employees, students, representatives, contractors, volunteers, and agents to use the Licensed Mark pursuant to the terms and conditions of this Agreement, for the purpose of allowing the University to exercise fully the rights granted under this Agreement.

(c) Except with respect to the rights granted pursuant to the License Agreement entered into by Corcoran and the National Gallery of Art contemporaneously herewith, the rights granted herein to University are exclusive with respect to the Licensed Field (even as to Corcoran) and Corcoran shall not use, or grant any third party any right or license to use, the Licensed Marks in any manner that conflicts with the Licensed Field.

2.2 **Reserved Rights.** Except for the rights expressly granted to the University under this Agreement and under the Asset Contribution Agreement, all other rights, benefits and privileges relating to the Corcoran Intellectual Property are expressly reserved by and to Corcoran. For the avoidance of doubt, the license granted herein is exclusive even as to Corcoran, except that Corcoran may continue to use the Licensed Mark for its own corporate, non-commercial and internal purposes and in connection with events and programs conducted by Corcoran from time to time, such as symposia.

2.3 **Authorized Uses.** Except with the prior written consent of Corcoran, the University: (a) shall use the Licensed Mark only in the Licensed Field, and (b) shall use the Licensed Mark only with other words or letters, including any University Mark, and including as part of the Trademarks shown on Exhibit A hereto ((a), and (b), collectively, the “**Authorized Uses**”).

2.4 **Term.** The term of this Agreement shall commence on the Closing under the Asset Contribution Agreement (the “**Effective Date**”) and continue for an initial term of ninety-nine (99) years (the “**Initial Term**”). The Agreement shall automatically renew following the Initial Term for additional successive ten (10) year renewal terms (each, a “**Renewal Term**” and, together with the Initial Term, the “**Term**”).

ARTICLE 3
MAINTENANCE OF GOODWILL RELATING TO LICENSED MARK

3.1 ***Compliance with Laws.*** The University shall comply with applicable Laws in its use of the Licensed Mark.

3.2 ***Use of the Licensed Mark.***

(a) The products and services that the University provides in connection with the Licensed Mark shall be of substantially the same quality as the products and services that the University provides in connection with the University Marks as of the date of this Agreement.

(b) If any use by the University of the Licensed Mark is not consistent with the terms and conditions of this Agreement and Corcoran so notifies the University in writing, the University shall use its reasonable best efforts to cure the cause of such failure, and, if the University is unable to cure such failure, the University shall discontinue such non-conforming use following a commercially reasonable phase out period.

(c) The University shall not use, display, or exhibit the Authorized Uses, or otherwise distribute any depiction of the Licensed Mark, in any way that would reasonably be expected to damage the goodwill associated with the Licensed Mark.

3.3 ***Inspection.*** Upon Corcoran's reasonable request, but no more than once in any calendar year, the University shall provide Corcoran with representative samples of the Authorized Uses in order to allow Corcoran to ensure that the University's use of the Licensed Mark complies with the terms and conditions of this Agreement.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF CORCORAN

Corcoran represents and warrants to the University as follows:

4.1 ***Organization; Authority; Validity.*** Corcoran is a Congressionally chartered nonprofit corporation duly formed, validly existing and in good standing under the Laws of the District of Columbia and the United States of America. The execution and delivery by Corcoran of this Agreement and the consummation of the transactions contemplated hereby are duly and validly authorized by all necessary corporate action on the part of Corcoran. Corcoran has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and this Agreement has been duly executed and delivered by Corcoran. This Agreement is the valid and binding obligations of Corcoran enforceable against it in accordance with its terms, except as enforceability may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar Laws affecting the enforcement of creditor's rights generally and the application of general principles of equity (regardless of whether that enforceability is considered in a proceeding at law or in equity).

4.2 ***Conflicts; Consents.*** The execution, delivery and performance by Corcoran of this Agreement and the consummation by Corcoran of any of the transactions contemplated

hereby do not and will not conflict with, violate, result in a breach of the terms and conditions of, or, with or without notice or the passage of time, result in any breach, event of default or the creation of any lien under, any contractual obligation of Corcoran, any organizational documents of Corcoran or any Law, judgment, order, or decree to which Corcoran is subject.

4.3 **Rights to Licensed Mark.** Corcoran is the sole and exclusive owner of the Licensed Mark worldwide. Corcoran has the right to grant this license to the Licensed Mark on the terms and conditions provided herein.

4.4 **No Infringement.** The use of the Licensed Mark as authorized in this Agreement does not infringe the Intellectual Property rights of any third party.

4.5 **No Litigation.** There is no litigation pending or, to the knowledge of Corcoran, threatened, and Corcoran has not received or sent any written notice of a claim or suit (a) that could reasonably be expected to restrain, enjoin or otherwise prevent the performance by Corcoran of the covenants and obligations contemplated by this Agreement, or (b) relating to the validity or non-infringement of the Licensed Marks.

4.6 **Disclaimer of Warranties.** OTHER THAN AS EXPRESSLY SET FORTH IN THIS ARTICLE 4, CORCORAN MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED MARK AND THE OTHER MATTERS CONTEMPLATED BY THIS AGREEMENT, INCLUDING (A) ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND (B) ANY WARRANTY ARISING THROUGH COURSE OF DEALING OR USAGE OF TRADE.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE UNIVERSITY

The University represents and warrants to Corcoran as follows:

5.1 **Organization; Authority; Validity.** The University is a Congressionally chartered nonprofit corporation duly formed, validly existing and in good standing under the Laws of the District of Columbia and the United States of America. The execution and delivery by the University of this Agreement and the consummation of the transactions contemplated hereby are duly and validly authorized by all necessary corporate action on the part of the University. The University has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and this Agreement has been duly executed and delivered by the University. This Agreement is the valid and binding obligation of the University enforceable against it in accordance with the terms of this Agreement, except as enforceability may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar Laws affecting the enforcement of creditor's rights generally and the application of general principles of equity (regardless of whether that enforceability is considered in a proceeding at law or in equity).

5.2 **Conflicts; Consents.** The execution, delivery and performance by the University of this Agreement and the consummation by the University of any of the transactions contemplated hereby do not and will not conflict with, violate, result in a breach of the terms and conditions of, or, with or without notice or the passage of time, result in any breach, event of default or the creation of any lien under, any contractual obligation of the University, any

organizational documents of the University or any Law, judgment, order, or decree to which the University is subject.

ARTICLE 6 OWNERSHIP AND PROTECTION OF LICENSED MARK

6.1 ***Ownership of the Licensed Mark.*** Subject to Section 7, the University shall not acquire any ownership interest in the Licensed Mark throughout the Term of this Agreement. The University acknowledges: (a) that Corcoran exclusively owns, and shall continue to own, all right, title, and interest in and to the Licensed Mark, except for the rights expressly granted to the University hereunder; (b) the great value of the goodwill associated with the Licensed Mark; (c) that all goodwill associated with the Licensed Mark that arises from the University's use thereof shall inure to the benefit of Corcoran, except that all goodwill attributable to use of the University's Trademarks or any Combined Mark as part of the Authorized Uses shall inure solely to the benefit of the University; and (d) that the Licensed Mark has secondary meaning in the minds of the public.

6.2 ***Registrations; Protection of the Licensed Mark.***

(a) Subject to Section 6.3, at Corcoran's election or upon the request of the University, Corcoran shall use commercially reasonable efforts to file applications for federal trademark or service mark registration or to register domain names (or similar or successor electronic address mechanisms or systems) for the Licensed Mark to identify goods, services and/or offerings in the Licensed Field. The cost of preparing and filing any such application or registration contemplated hereby, including reasonable attorneys' fees in connection therewith, shall be borne by Corcoran or, if the University makes such request for registration, by the University. Subject to Section 6.3, the University shall not, on its own behalf or on behalf of any other Person, in any jurisdiction in the world, register or attempt to register the Licensed Mark with the United States Patent and Trademark Office or any other Governmental Entity (including state trademark offices) as trademarks, service marks or as a domain name.

(b) Upon any such registration of the Licensed Mark, Corcoran shall take all reasonable steps to maintain such registration during the Term hereof, to the extent that the University continues to use such registered Licensed Mark. The cost of preparing and making any filings in connection with maintenance of a registration for the Licensed Mark, including reasonable attorneys' fees in connection therewith, shall be borne by the Party who bore the cost of the obtaining the applicable registration.

6.3 ***Infringement Claims.***

(a) Each of the University and Corcoran shall notify the other in writing reasonably promptly (and in no event later than thirty (30) days) after becoming aware of any imitation, infringement, use without authorization, or dilution of the Licensed Mark by any Person.

(b) The University shall have the initial right to institute and control, at its own expense, a claim, action, suit, demand, or proceeding, whether formally or otherwise asserted (collectively, a "**Claim**") alleging infringement of the Licensed Mark in the Licensed

Field (“**Infringement Claim**”). The University shall notify Corcoran within thirty (30) business days of the University’s receipt or issuance of the notice described in Section 6.3(a) whether the University will initiate or pursue an Infringement Claim. The University shall have no duty to initiate or pursue an Infringement Claim if the University determines, in its reasonable business judgment, that initiating or pursuing such Claim is not warranted or in its best interests. Upon the University’s request, Corcoran shall reasonably cooperate with the University in any Infringement Claim that the University institutes or controls, including being joined as a party, and the University shall reimburse Corcoran for the reasonable out-of-pocket expenses that it incurs in connection with such cooperation. At its own expense, Corcoran shall have the right to participate and be represented by Corcoran’s own counsel in any Infringement Claim that the University institutes or controls. [In any Infringement Claim that the University institutes or controls, the University shall notify Corcoran of any proposed settlement or compromise, and the University shall not, without Corcoran’s express prior written consent, settle any Infringement Claim if such settlement (i) does not release Corcoran from all liability with respect thereto or (ii) adversely impacts the exercise of any of the rights retained by Corcoran in the Corcoran Intellectual Property at such time.] *[NTD: Under review by Corcoran]*

(c) If the University elects to not institute an Infringement Claim, Corcoran may, at its option and expense, take any action on its own behalf that it deems appropriate, including initiating or pursuing an Infringement Claim. Upon Corcoran’s request, the University shall reasonably cooperate with Corcoran in any Infringement Claim that Corcoran institutes or controls, and Corcoran shall reimburse the University for the reasonable out-of-pocket, third-party expenses that it incurs in connection with such cooperation. At its own expense, the University shall have the right to participate and be represented by the University’s own counsel in any Infringement Claim that Corcoran institutes or controls.

(d) In any Infringement Claim that Corcoran institutes or controls, Corcoran shall consult with the University regarding any proposed settlement or compromise, and Corcoran shall not, without the University’s express prior written consent, settle an Infringement Claim in any manner other than a settlement for money damages alone.

(e) Any monetary reward, money damages or recovery resulting from any Infringement Claim that either Party institutes shall be applied first to reimburse the Party incurring the expenses of such action. The Parties shall divide the balance, including any punitive or treble damages, in proportion to the damages or injury each has suffered as a result of such infringement in the Parties’ respective fields, giving due regard, to the extent applicable, to any findings by an applicable court, jury, arbitrator or other finder of fact with respect to the nature or correlation of such damages, and with the University being entitled to retain all damages attributable to infringing activities in the Licensed Field. If the Parties cannot agree on an appropriate division of the balance, they shall attempt to resolve the dispute according to the procedure set out in Section 8.9 of this Agreement.

6.4 **University Estoppel.** The University shall not at any time do, or cause to be done, any acts or things that would be reasonably likely either to challenge or impair the rights of Corcoran in and to the Licensed Mark or to adversely affect the validity of the Licensed Mark.

ARTICLE 7
UNIVERSITY MARKS, COMBINED MARKS, AUTHORIZED USES AND
MATERIALS

7.1 ***Ownership of University Intellectual Property.*** Any Combined Marks created by University shall be owned solely and exclusively by the University and shall constitute Intellectual Property of the University. All rights, benefits and privileges relating to any of the University's Intellectual Property (including any Combined Marks and any University Marks) are owned by, and expressly reserved by and to, the University. For the avoidance of doubt, Corcoran shall not acquire any ownership interest in any University Marks or any Combined Marks) throughout the Term of this Agreement. Corcoran acknowledges: (a) that the University exclusively owns, and shall continue to own, all right, title, and interest in and to all University Marks and Combined Marks; (b) the great value of the goodwill associated with the University Marks and any Combined Marks; and (c) that all goodwill associated with the University Marks and any Combined Marks shall inure to the benefit of the University.

7.2 ***Proprietary Materials of the University.*** Corcoran acknowledges that the University shall own worldwide in perpetuity the following materials created by or on behalf of the University: (a) all artwork that bears any Authorized Use; (b) all computer artwork incorporating graphic descriptions of any Authorized Use ; (c) all photographs incorporating graphic descriptions of any Authorized Use; (d) all derivative works based on any of the Authorized Uses or works or materials described in (a)-(c) above; and (e) all copyrights and other Intellectual Property rights in, and all duplicates and copies of any works or materials described in clauses (a) through (d), except that the University shall have no ownership rights in the Licensed Mark contained or embodied in any of the foregoing except to the extent such Licensed Mark is contained or embodied in a Combined Mark.

7.3 ***Registrations; Protection of the University Marks and Combined Marks.*** The University shall be responsible for filing all applications for federal trademark or service mark registration, and for registering all domain names (or similar or successor electronic address mechanisms or systems) for the Combined Marks and University Marks to identify goods, services and/or offerings in the Licensed Field. Corcoran shall not, on its own behalf or on behalf of any other Person, in any jurisdiction in the world, register or attempt to register with the United States Patent and Trademark Office or any other Governmental Entity (including state trademark offices) as trademarks, service marks or as a domain name (i) any Combined Mark, (ii) any University Mark, or (iii) any Trademark that consists of or includes a Combined Mark or a University Mark or would dilute the distinctiveness of, or is confusingly similar to, a Combined Mark or other University Mark.

7.4 ***Infringement Claims.*** The University shall have the sole right to institute, control and settle, at its own expense and in its sole discretion, all Claims alleging infringement of a Combined Mark or University Mark. Corcoran shall not have any right to participate in any such Claim.

7.5 ***Corcoran Estoppel.*** Corcoran shall not at any time do, or cause to be done, any acts or things that would be reasonably likely either to challenge or impair the rights of the

University in and to any University Mark or any Combined Mark or to adversely affect the validity of any University Mark or any Combined Mark

7.6 **Public Announcements.** Except for the public announcement that the Parties will release pursuant to Section 10.4 of the Asset Contribution Agreement, after the Closing under the Asset Contribution Agreement, Corcoran shall not refer to the University or any of the University's trustees, directors, officers, employees, students or agents, or use any University Mark or any Combined Mark, or refer to the educational institution operated by the University following Closing, or the University's other activities within the Licensed Field, for any purpose (including in any press release, in connection with any fund-raising, on any Web site or social media page or account, or in any advertising or for any other promotional purpose) without first obtaining the University's written consent, except that Corcoran may provide a link on a Web site under the control of Corcoran to a Web site that the University identifies.

ARTICLE 8 MISCELLANEOUS PROVISIONS

8.1 **Survival of Representations, Warranties and Agreements.** None of the representations or warranties in this Agreement shall survive beyond the Closing under the Asset Contribution Agreement. Each of the covenants and agreements of the Parties in this Agreement shall survive until the earlier of (a) the expiration of the Term, or (b) the full performance or discharge of such covenant or agreement in accordance with this Agreement.

8.2 **Confidentiality.** Information concerning either Corcoran or the University's business methods, financial information, future plans, personnel data, trade secrets, information systems, financial and accounting policies or similar matters, or information designated as "confidential" by the disclosing Party or released under circumstances where a reasonable Person would understand that such information is to be treated as confidential, shall be treated as confidential. The Party receiving such confidential information shall take the same precautions as it takes to protect its own confidential information, but in all events reasonable precautions shall be taken, in order to preserve its confidentiality. Confidential information shall not be revealed to third parties without the written consent of the disclosing Party, and neither Corcoran nor the University may use the other Party's confidential information for any purpose except for purposes of performing this Agreement. This confidentiality requirement shall not apply to: (a) information in the public domain, (b) information independently developed by either Party without use of the other Party's confidential information, (c) information received by either Party from a third party under no duty of confidentiality, and (d) a disclosure of information that is required by Law. The obligations of the Parties under this Section shall survive the Closing or the termination of the Asset Purchase Agreement for a period of five (5) years after such Closing or termination, as applicable.

8.3 **Further Assurances.** From and after the date of this Agreement, upon the terms of this Agreement and subject to applicable Law, Corcoran and the University shall act in good faith and shall cooperate with each other and use their commercially reasonable efforts to, as soon as reasonably practicable, (a) take, or cause to be taken, all actions, (b) execute, acknowledge and deliver all documents, agreements and instruments, and (c) perform such other acts and do, or cause to be done, all things necessary, proper or advisable, in each case to confer

on each Party the rights, benefits and obligations provided by, and to consummate and make effective the transactions contemplated by, this Agreement as soon as practicable.

8.4 **Notices.** All notices, requests, demands and other communications which are required or may be given pursuant to the terms of this Agreement shall be in the English language and in written or electronic form, and shall be deemed delivered (a) on the date of delivery when (i) delivered by hand or (ii) sent by reputable overnight courier maintaining records of receipt, and (b) on the date of transmission when sent by facsimile or other electronic transmission during normal business hours with confirmation of transmission by the transmitting equipment; *provided* that any such communication delivered by facsimile or other electronic transmission shall only be effective if such communication is also delivered by hand or deposited with a reputable overnight courier maintaining records of receipt within two (2) business days after its delivery by facsimile or other electronic transmission. All such communications shall be addressed to the Parties at the addresses set forth below, or at such other address as a Party may designate upon ten (10) days' prior written notice to the other Party.

If to Corcoran:

Corcoran Gallery of Art
500 17th Street, N.W.
Washington, DC 20006
Attention: General Counsel
Phone: (202) 365-7327
Fax: [•]

with a copy to:

Charles A. Patrizia
Paul Hastings LLP
875 15th Street, N.W.
Washington, D.C. 20005
Phone: (202) 551-1710
Fax: (202) 551-1705

If to the University:

Beth Nolan
The George Washington University
2100 Pennsylvania Avenue, N.W.
Suite 250
Washington, DC 20052
Phone: (202) 994-3434
Fax: (202) 944-4640

with a copy to:

Kevin J. Lavin
Arnold & Porter LLP
555 Twelfth Street, N.W.
Washington, DC 20004-1206
Phone: (202) 942-5461
Fax: (202) 942-5999

8.5 **Amendments.** Amendments to this Agreement shall be made by mutual consent of the Parties, by the issuance of a mutually agreed upon written instrument, signed and dated by authorized officials of Corcoran and the University, prior to any changes being performed.

8.6 **Waiver.** Any agreement on the part of a Party to any extension or waiver of any provision hereof shall be valid only if set forth in an instrument in writing signed on behalf of such party. A waiver by a Party of the performance of any covenant, agreement, obligation, condition, representation or warranty shall not be construed as a waiver of any other covenant, agreement, obligation, condition, representation or warranty. A waiver by any Party of the performance of any act shall not constitute a waiver of the performance of any other act or an identical act required to be performed at a later time.

8.7 **Assignment.** Neither Party may assign or transfer any rights or obligations in this Agreement except with the prior written consent of the other Party, except that the University may assign, transfer or sublicense (directly, by operation of law, or in connection with a merger, acquisition or sale of stock of assets of the University within the Licensed Field) its rights or obligations in this Agreement to Third Parties provided that notice of such assignment, transfer or sublicense is provided to Corcoran, and the assignee, transferee or sublicensee agrees in writing to be bound by the terms of this Agreement. Any attempted assignment or delegation in violation of this Section 8.7 shall be void.

8.8 **Governing Law.** This Agreement shall be governed by the Laws of the District of Columbia, excluding any conflicts or choice of Law rules or principles that might otherwise refer construction or interpretation of this Agreement to the substantive Law of another jurisdiction.

8.9 **Dispute Resolution; Remedies.**

8.9.1 Any dispute, controversy or claim arising out of or in connection with this Agreement or in connection with the rights and obligations of the Parties under this Agreement, including any question regarding its existence, validity or force and effect, shall be subject in all respects to the terms, conditions and procedures set forth in Section [] of the Asset Contribution Agreement, and the terms, conditions and procedures of such Section are incorporated herein by reference and made a part hereof.

8.9.2 Corcoran acknowledges and agrees that the license granted under this Agreement is intended to be perpetual and irrevocable and that significant damages that are difficult to quantify would be suffered by the University as the result of the termination, in whole or in part, of the license granted to the University hereunder. Accordingly, notwithstanding anything herein to the contrary, following the Effective Date Corcoran may under no

circumstances terminate the license granted herein, nor may Corcoran apply for injunctive or other equitable relief to terminate such license. Corcoran agrees that its sole remedy, if any, in the event of a breach will be (1) an action for damages, or (2) an action for injunctive or other equitable relief to restrain or enjoin any act which would constitute a breach, or compelling the performance of any obligation which, if not performed, would constitute a breach.

8.9.3 Cumulative Rights. Except as expressly provided herein, the various rights of this Agreement shall be construed as cumulative, and no one of them is exclusive of the other or exclusive of any rights allowed by Law.

8.10 Severability. If any covenant or provision hereof is determined by a court of competent jurisdiction to be void or unenforceable in whole or in part, it shall not, subject to the discretion of such court, be deemed to affect or impair the validity of any other covenant or provision, each of which is hereby declared to be separate and distinct. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable. If any provision of this Agreement is declared invalid or unenforceable for any reason other than overbreadth, the offending provision shall be modified so as to maintain the essential benefits of the bargain between the Parties to the maximum extent possible, consistent with Law and public policy.

8.11 Expenses. Except as otherwise expressly provided herein, each Party shall pay its own fees, costs and expenses incurred in connection herewith and the transactions contemplated hereby, including the fees, costs and expenses of its financial advisors, accountants and counsel.

8.12 Independent Contractors. The Parties are independent contractors, and neither Party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture or partnership between the Parties or to impose any liability attributable to such a relationship upon the Parties.

8.13 No Third-Party Beneficiaries. This Agreement is solely for the benefit of the University and Corcoran. There are no intended or implied third-party beneficiaries to this Agreement or any of the transactions contemplated herein.

8.14 Entire Agreement. This Agreement, together with any Exhibits attached hereto and contemplated hereby, and the other Transaction Documents constitute the entire understanding between the Parties with respect to the subject matter hereof and supersede all oral communications and prior writings with respect thereto, including for the avoidance of doubt, that certain Letter of Intent, dated as of February 18, 2014, by and between Corcoran and the University.

8.15 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be an original and all of which will constitute together the same document.

[Signatures appear on following page; remainder intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement as of the date first written above.

**TRUSTEES OF THE CORCORAN
GALLERY OF ART**

By: _____
Name: Harry F. Hopper III
Title: Chairman

THE GEORGE WASHINGTON UNIVERSITY:

By: _____
Name: Dr. Steven Knapp
Title: President

Exhibit A
Certain Authorized Uses

[Note: To be provided.]

LICENSE AGREEMENT BETWEEN THE
GEORGE WASHINGTON UNIVERSITY AND
NATIONAL GALLERY OF ART

LICENSE AGREEMENT BETWEEN THE
TRUSTEES OF THE CORCORAN GALLERY OF
ART AND NATIONAL GALLERY OF ART

EXECUTION COPY

LICENSE AGREEMENT

BETWEEN

THE GEORGE WASHINGTON UNIVERSITY

LICENSOR

and

NATIONAL GALLERY OF ART

LICENSEE

for

500 17th Street Northwest in the District of Columbia

LICENSE AGREEMENT

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LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“**License**”) is made as of this 15th day of May 2014 (the “**Execution Date**”), by **The George Washington University**, a Congressionally chartered nonprofit corporation located in the District of Columbia (the “**Licensor**”), and **National Gallery of Art**, an independent establishment of the United States created by Joint Resolution of Congress (the “**Licensee**”). Licensor and Licensee are sometimes referred to herein as the “**Parties**” and each individually as a “**Party**.”

WHEREAS, Licensor has entered into that certain Asset Contribution Agreement (the “**Asset Contribution Agreement**”) with the Trustees of the Corcoran Gallery of Art, a Congressionally chartered nonprofit corporation located in the District of Columbia (“**Corcoran**”), pursuant to which Corcoran has agreed to contribute substantially all of the assets of the Legacy College and certain related real property (including the building located at 500 17th Street Northwest in the District of Columbia (the “**17th Street Building**”));

WHEREAS, Licensee has entered into that certain Art Accession and Custodial Transfer Agreement with Corcoran (the “**Corcoran-NGA Agreement**”), pursuant to which Corcoran has agreed to transfer to Licensee the custody and care of the Existing Collection (as defined in the Corcoran-NGA Agreement) and Licensee will designate a portion of the Existing Collection for accession into Licensee’s collection of art;

WHEREAS, in connection with the transactions contemplated by the above agreements, Licensor and Licensee desire to enter into this related transaction pursuant to which Licensor will dedicate and license the use of portions of the 17th Street Building for continuous use as exhibition space for art and other programming and administrative needs of Licensee; and

WHEREAS, the parties desire to set forth the terms and conditions upon which such transactions and related matters shall occur.

NOW, THEREFORE, in consideration of the promises, the mutual obligations set forth in this License and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties, intending to be legally bound, mutually agree as follows:

WITNESSETH:

1. Premises

(a) Licensed Premises. In consideration of covenants hereinafter to be observed and performed, Licensor, commencing on the Commencement Date (as defined below), shall license to Licensee, and Licensee shall license from Licensor, the exclusive right to use, access and occupy those certain premises at the 17th Street Building identified on Exhibit A attached hereto and made a part hereof (collectively, the “**Licensed Premises**”). Subject to Licensor’s covenants to perform Licensor’s Work (as defined below) and to maintain the Licensed Premises in compliance with Licensee’s required Humidity and Temperature Controls (as defined below),

Licensee agrees that the Licensed Premises are being provided to Licensee on the Commencement Date in “as-is” condition, and that, except as expressly set forth herein, Licensor makes no representations or warranties with regard to the condition of the 17th Street Building, fixtures and other property in the Licensed Premises.

(b) Licensor Premises. All parts of the 17th Street Building which are not included in the Licensed Premises are reserved to Licensor and its designees (collectively, the “**Licensor Premises**”) for such uses as Licensor deems appropriate, subject to Licensee’s rights pursuant to Sections 4(b) and 17(c) hereof.

(c) Licensor’s Right to Use and Access. Without limiting any other provision in this License, Licensor and its employees, agents, contractors and other representatives (together with Licensor, collectively, “**Licensor Representatives**”) shall have the right at all times after the Commencement Date during the Term, but with prompt notice thereof to Licensee, to access the portions of the Licensed Premises to the extent necessary to respond to any emergency issues on the Licensed Premises, provided that if a Licensee security guard is in the 17th Street Building, such Licensor Representatives shall use their best efforts under the circumstances to first locate such security guard and if such security guard is located, the Licensor Representatives shall at all times be accompanied by such security guard while in the Licensed Premises.

(d) Licensee’s Right to Use and Access; Transition Space.

(i) Licensor will, after the Commencement Date during the Term, allow Licensee and its employees, agents, contractors and other representatives (together with Licensee, collectively, “**Licensee’s Representatives**”) to use Licensor’s loading dock and have direct access from the loading dock to the Licensed Premises at times coordinated with Licensor’s schedule. Such use shall be at no additional cost to Licensee (but Licensee shall be responsible for all security related costs associated with such use as described below).

(ii) Without limiting any other provision in this License, Licensee’s Representatives shall have the exclusive right to use, access and occupy at no cost and at all times from the Commencement Date through December 31, 2014 (with the option to extend for up to twelve months at no charge or cost to Licensee with the consent of Licensor, such consent not to be unreasonably withheld, delayed or conditioned) the area shown on Exhibit B attached hereto and made a part hereof (the “**Transition Space**”), provided however, that after September 30, 2014, Licensor may require Licensee, upon 45 days’ notice (which notice may only be delivered on or after September 30, 2014), to consolidate its use of the Transition Space to accommodate Licensor’s phased renovation of the 17th Street Building.

(iii) Licensee’s Representatives and Licensee’s visitors and invitees shall, at all times after the Commencement Date during the Term during times when the Licensed Premises are open to the public, have the non-exclusive right, in common with others, to enter and exit the 17th Street Building at the 17th Street entrance (and to traverse any of the Licensor Premises in order to gain access to portions of the 17th Street Building regarding which Licensee has a right of access, entry, use or occupancy hereunder, including, without limitation, for the purpose of visiting the Licensed Premises or transporting art or other property), provided however that in the event of an emergency Licensee’s Representatives and Licensee’s visitors and invitees shall

have the right to use any exit. Licensor agrees to allow Licensee to provide a guard to examine any packages brought onto the second floor of the 17th Street Building in the space adjoining the Licensed Premises.

(iv) Licensee's Representatives and Licensee's visitors and invitees shall at all times after the Commencement Date during the Term, have the non-exclusive right, in common with others, to use (i) Elevator 1 and Stair 1 from the first floor entryways to access the second floor within the Licensor Premises (including, without limitation, for the purpose of visiting the Licensed Premises or transporting art or other property), (ii) Elevator 2 and Stair 2 from the first floor entryways to access the first floor mezzanine, the second floor and the second floor mezzanine within the Licensor Premises (including, without limitation, for the purpose of transporting art or other property), and (iii) the men's toilet and women's toilet on the second floor.

(v) Licensee's Representatives and security staff shall at all times after the Commencement Date during the Term, have the non-exclusive right, in common with Licensor's security staff, to use the security staff locker rooms and security console room. Licensee shall have the right, during times when the Licensed Premises are open to the public, to have a docent of Licensee occupy a space at any information desk maintained by the Licensor on the first floor and to place outside the Licensed Premises up to two portable kiosks (of a size and design to be approved by Licensor) and display cases necessary for the sale of catalogues, programs, posters and other typical exhibition materials and the rental of audio-tour devices, as well as a portable cloakroom, which kiosks and cloakroom shall be stored in the Licensed Premises when the Licensed Premises are not open to the public.

(vi) Licensee, at all times after the Commencement Date during the Term, will, and will use reasonable efforts to cause Licensee's Representatives, visitors and invitees to, comply fully with all of the rules and regulations applicable to the 17th Street Building. The present rules and regulations for the 17th Street Building are identified as Exhibit C attached hereto and made a part hereof. Licensor reserves the right to amend or supplement from time to time the foregoing rules and regulations, and to adopt and promulgate from time to time additional reasonable rules and regulations applicable to the 17th Street Building, including the Licensed Premises, provided that no rules or regulations may be promulgated which would negatively affect the security or condition of the art exhibited or stored by Licensee in the Licensed Premises or the Transition Space or which would materially and negatively affect Licensee's ability to use the Licensed Premises or the Transition Space as contemplated hereunder. Reasonable notice of such rules and regulations and amendments and supplements thereto, if any, shall be given to Licensee. Licensee agrees to comply with, and to use reasonable efforts to cause Licensee's Representatives to comply with, all such rules and regulations and amendments and supplements thereof.

(vii) Subject to the renovation plans of Licensor with respect to such spaces, Licensor will allow Licensee to use the space designated as Public Activity on Exhibit A for events consistent with Licensee's use of the 17th Street Building that do not require rental to be paid to Licensee by a third party at reasonable times, upon advance notice and prior written approval of Licensor, such approval not to be unreasonably withheld. Such use shall be at no additional cost to Licensee (but Licensee shall be responsible for payment of costs associated

with such use, including, for example, set up, security and janitorial services). Licensee shall comply with the reasonable terms established by Licensor regarding the use of Licensor Premises. Any other use of the Licensor Premises by Licensee shall be at Licensor's sole discretion.

(viii) Following the reopening of the galleries as contemplated in Section 3(a) and in addition to the 2014 Event Commitments, Licensee will allow Licensor to occasionally use (not more than six times in a twelve month period) Licensed Premises for events consistent with Licensor's use of the 17th Street Building held by Licensor or Licensor's affiliates, that do not require rental to be paid to Licensor or such affiliates by a third party or charges for admission at reasonable times, upon advance notice and prior written approval of Licensee, such approval not to be unreasonably withheld. Such use shall be at no additional cost to Licensor (but Licensor shall be responsible for payment of costs associated with such use, including, for example, set up, security and janitorial services). Licensor shall comply with the reasonable terms established by Licensee regarding the use of Licensed Premises, which shall include no food or beverages being brought into the Licensed Premises. Any other use of the Licensed Premises by Licensor shall be at Licensee's sole discretion.

(e) Vacation by Licensee. If Licensee provides written notice to Licensor of its intent to permanently abandon or vacate any part or all of the Licensed Premises or Transition Space, Licensor, at its sole option, can recapture such vacated space and, upon written notice to Licensee, the Licensed Premises or Transition Space, as applicable, shall no longer include such vacated space.

2. Programs

Licensor and Licensee affirm that, given the shared use of the 17th Street Building contemplated herein, the Parties may collaborate on programs in furtherance of the activities of both institutions. Neither Party shall use the name, logo, insignia, or trademarks of the other Party or any of the other Party's trustees, directors, officers, employees, or agents, in any press release, fundraising, website, or product advertising, or for any other purpose, without first obtaining the written consent of the other Party.

3. Acknowledgement with Respect to Certain Near-Term Exhibits and Other Special Events and Exhibitions

(a) 2014 Event Commitments. Licensee acknowledges that Corcoran is party to certain agreements and other understandings with third parties with respect to exhibits and special events scheduled to occur in or affect the 17th Street Building between the Execution Date and December 31, 2014, a list of which is attached as Schedule 5.4 to the Corcoran-NGA Agreement (collectively, the "**2014 Event Commitments**"). Licensee agrees to cooperate with Corcoran and Licensor, as the owner of the 17th Street Building following the Commencement Date, with respect to the 2014 Event Commitments and to use reasonable efforts to accommodate Corcoran and Licensor in honoring the 2014 Event Commitments. Following the Commencement Date, all costs associated with and all obligations required to be performed with respect to the 2014 Event Commitments, other than the Tribe and Paley exhibits, shall be the sole responsibility of Licensor, whether incurred before or after the Execution Date, including, without limitation,

security, cleaning and maintenance for such events after normal business hours or in addition to normal requirements; and any revenue generated from such 2014 Event Commitments shall be solely for the benefit of Licensor. Any out-of-pocket costs reasonably incurred by Licensee with respect to the 2014 Event Commitments shall be promptly reimbursed by Licensor. Subject to existing obligations of Corcoran with respect to special exhibitions, Licensee may in its sole discretion determine what art is exhibited in what portion of the Licensed Premises, depending on, among other things, whatever renovation or construction Licensee determines to undertake in such space, and the process concerning the distribution of the art therein. It is the understanding of the parties that the gallery operated in the Licensed Premises will be closed on or around October 1, 2014 (or following the Commencement Date if the Commencement Date occurs after that date) for a period to complete the Identification Process (as defined in the Corcoran-NGA Agreement), renovate the Licensed Premises and establish the Legacy Gallery and the Contemporary Art Gallery in the 17th Street Building.

(b) Other Special Events and Exhibitions. Except as permitted by Section 2(d)(viii), Licensor agrees that after the Execution Date it shall not enter into any additional agreements or commitments with third parties with respect to exhibitions and special events or any other activity which would occur in or negatively impact the Licensed Premises.

4. Term

(a) The term of this License shall commence on the date of the closing under the Asset Contribution Agreement referred to in the preamble (the "**Commencement Date**") and shall, unless sooner terminated as herein provided, continue thereafter for twenty (20) years following the Commencement Date (the "**Primary Term**") and shall automatically renew on the same terms and conditions as for the Primary Term for successive, additional five (5) year terms (each, a "**Renewal Term**") following the expiration of the Primary Term and each Renewal Term, unless either Party shall provide written notice to the other Party of its determination not to renew this License at least one (1) year prior to the termination of the Primary Term or any Renewal Term. The "**Term**" of this License shall include the Primary Term and each Renewal Term.

(b) In the event Licensor enters into an agreement to sell, lease or license all or any material portion of the 17th Street Building, Licensor shall promptly provide written notice thereof to Licensee (a "**Transfer Notice**"). Licensee shall have the right, exercisable at any time within six (6) months of receipt of a Transfer Notice, to terminate this License by written notice to Licensor, it being understood and agreed that no such sale or lease shall itself terminate the License and that any buyer or lessee of the Licensor shall be bound by the terms hereof. Licensor agrees to cooperate with Licensee should Licensee determine to record, at Licensee's expense, a memorandum of the License in the land record. In addition, Licensee shall have the right to terminate the License, at any time upon written notice to Licensee, if any event or situation occurs or arises which, in Licensee's sole discretion, renders the Licensed Premises unsuitable for the purposes of exhibiting art.

5. Improvements and Alterations

(a) Alterations. “**Alterations**” means additions, installations, changes and improvements to the Licensed Premises (excluding personal property and trade fixtures which would not materially damage the Licensed Premises in a manner unreparable by Licensee upon removal). Any and all Alterations shall be at Licensee’s expense and shall belong to Licensor.

(b) Non-Structural Alterations. Licensor hereby consents to Licensee conducting each of the Alterations set forth in Exhibit D, to the extent Licensee determines to make such Alterations. Licensee may make any Alterations other than those set forth in Exhibit D without the prior written consent of Licensor (including, without limitation, painting, certain lighting, a hanging system for art, temporary walls, carpeting, flooring, etc.) provided that such Alterations do not affect the base building systems and do not require a permit from the applicable governmental authorities made by or on behalf of Licensee (collectively, the “**Non-Structural Alterations**”).

(c) Structural Alterations. Licensee may not make structural Alterations to the Licensed Premises (“**Structural Alterations**”) or any changes to the base 17th Street Building systems without the prior written consent of Licensor. Licensor’s consent may be granted or denied in the sole discretion of Licensor. Any Structural Alterations allowed by Licensor shall be completed in a good and workmanlike manner and shall be at the sole cost of Licensee. Structural Alterations shall be performed and completed (a) in accordance with submitted and Licensor-approved plans and specifications, (b) in a safe and workmanlike manner, (c) in compliance with Applicable Laws (as defined below), (d) using materials and installations at least equal in quality to the original building standard materials and installations to the extent feasible, using contractors and sub-contractors experienced in performing construction work on historic buildings who are approved by Licensor, such approval not to be unreasonably withheld, conditioned or delayed.

(d) Mechanic’s Liens. Each contract entered into by Licensee or its contractors for work in or about the Licensed Premises shall contain an express waiver of any rights such contractor may have to claim a mechanic’s or materialman’s lien against Licensor’s interest in the Licensed Premises and the 17th Street Building and an agreement to include similar provisions in the contracts between the contractor and all subcontractors. Licensee shall remove or discharge with a bond, within thirty (30) days of filing, any mechanics lien placed upon all or any part of the 17th Street Building as a result of Alterations performed by or on behalf of Licensee.

(e) Hazardous Substances. If during any work or Alterations at the Licensed Premises Licensee discovers any suspected Hazardous Substances, Licensee will promptly notify Licensor and Licensee and Licensor will consult on the proper response and further action with respect thereto.

(f) Capital Improvements. Licensee acknowledges and agrees that Licensor is committed to undertaking a phased renovation of the 17th Street Building and that such renovation may, subject to the limitation set forth herein, necessitate Licensee temporarily closing or restricting access to the Licensed Premises; provided that Licensor agrees to take into account any contracts that Licensee has entered into with respect to planned exhibitions in scheduling same. Subject to the limitations set forth herein, Licensor shall have the right, at its sole and absolute discretion and at its expense, to install certain capital improvements and other alterations in, on or about the 17th Street Building, including the Licensed Premises. Licensor currently intends, at its sole

expense, to perform the capital improvements and other alternations to the 17th Street Building set forth as Exhibit A to the Asset Contribution Agreement, which may be amended from time to time (collectively, the “**Licensor’s Work**”). Licensor understands that the Licensed Premises are being used for the exhibition and storage of valuable art and agrees (i) to take all reasonable and necessary precautions not to damage the same during any capital improvements and alterations and (ii) to discuss with Licensee any such plans generally at least six months in advance of commencing work, unless extenuating circumstances require shorter notice. Licensor agrees to use reasonable efforts to avoid interference with Licensee’s use of the Licensed Premises, but nothing herein shall require Licensor to perform any improvements or alterations after Licensee’s normal hours of operation. If Licensee chooses to temporarily cease displaying and/or storing art because of Licensor’s renovations, Licensor agrees to cooperate with Licensee regarding the scheduling of such work to minimize impacts on Licensee’s operations. Without limiting the generality of the foregoing, Licensor hereby agrees that without Licensee’s prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, Licensor shall not commence any capital improvements at the 17th Street Building, the effect of which would be to reduce the square feet of the Licensed Premises on a permanent basis or materially and adversely affect Licensee’s access to the Licensed Premises on a permanent basis.

(g) Historic Preservation Restrictions. Notwithstanding any other provision in this Section 5, Licensee will comply with all applicable laws, rules, regulations, notices or restrictions, including any restrictions on alterations or improvements to the Licensed Premises, imposed by the Historic Preservation Review Board in connection with such board’s designation of any portion of the 17th Street Building as “historic.” Licensor hereby represents and warrants to Licensee that (i) the exterior of the 17th Street Building is designated as “historic” but the Licensed Premises is not currently designated as “historic” or otherwise subject to restrictions imposed by the Historic Preservation Review Board and (ii) there is an application pending with the Historic Preservation Review Board to designate certain interior spaces of the 17th Street Building, which may include the Licensed Premises, as “historic”. Except for such currently pending application, Licensor agrees that it shall not petition to have any portion of the Licensed Premises designated as “historic” or otherwise made subject to any restrictions imposed by the Historic Preservation Review Board.

(h) French Windows. Licensee hereby notifies Licensor that Licensee intends to accession the French Soissons stained glass windows installed in the 17th Street Building into Licensee’s collection of art and to remove these windows from the 17th Street Building. Licensee will be responsible for the costs associated with removing and replacing the windows.

6. License Fee

There is no base license fee due to Licensor from Licensee hereunder.

7. Utilities and Services

(a) Operating Charges.

(i) Subject to Licensee’s obligations to reimburse Licensor for a portion of Operating Charges (hereinafter defined) pursuant to Section 7(b), Licensor shall be responsible

for all reasonable building operating charges during the term of this License associated with the management and operation of the Licensed Premises as an art gallery, including but not limited to water, sewer, electricity, gas, HVAC, elevator, window cleaning, life safety, pest control, snow removal and sidewalk maintenance and any other reasonably necessary services pertaining to the 17th Street Building and the Licensed Premises (except as limited below) (collectively, “**Operating Charges**”); provided however, except with respect to 2014 Event Commitments, Licensee shall be solely responsible for the costs and expenses of services contracted by Licensee related to or arising with respect to the Licensed Premises for cleaning and janitorial services, trash removal (except Licensee shall have the right to deposit its customary trash in the 17th Street Building’s trash dumpsters located near the loading dock), and security (except as expressly set forth in Section 7(c) below). Licensor shall be responsible for at all times operating and maintaining the Licensed Premises and Transition Space in a manner compliant with Exhibit E, which sets forth Licensee’s required “**Humidity and Temperature Controls**”, including the monitoring and documentation thereof. The Parties acknowledge and agree that the costs of compliance with Licensee’s required Humidity and Temperature Controls shall be considered a part of Operating Charges hereunder. In the event that Licensee requires special building utilities or services that are in excess of or different from those provided in the ordinary course pursuant to this Agreement (such as a unique special installation with major utilities needs), Licensee shall pay for the incremental costs of such building utilities or services to the extent they are in excess of the ordinary course Operating Charges for the 17th Street Building. Any costs required under this Section 7(a)(i) to be paid solely by Licensee shall be deemed not included within Operating Charges.

(ii) Notwithstanding anything to the contrary contained in this License, Licensee shall obtain at its sole expense its own telephone service, wired internet service and any other telecommunication service for the Licensed Premises, but upon request to Licensor, Licensee may connect to Licensor’s telephone and wired internet service at prevailing Licensor internal service rates, it being understood and agreed that Licensee’s Representatives and Licensee’s guests and invitees may utilize any wireless internet services provided by Licensor free of charge.

(iii) Other than Licensor’s obligation to maintain Humidity and Temperature controls, Licensor shall provide the services for which it is responsible to pay under this License as set forth in this Section 7 in a reasonable manner, taking into consideration the age and condition of the 17th Street Building, including without limitation the base 17th Street Building systems, with the understanding that this sentence shall not be construed to require that any 17th Street Building systems or equipment be upgraded.

(b) Licensee’s Obligation to Pay Pro Rata Portion of Operating Charges.

(i) For purposes of this License, the term “License Year” shall mean the period commencing on the Commencement Date and each consecutive twelve (12) month period thereafter. The first such period shall be referred to as the “first License Year,” and each of the following License Years shall similarly be numbered for identification purposes.

(ii) For the first License Year, Licensee shall pay to Licensor as reimbursement for Licensee’s pro rata share of Operating Charges an amount equal to \$10.00

(the "Base Operating Reimbursement") multiplied by 14,385, which is the number of square feet of rentable space comprising the Licensed Premises. Such amount shall be paid in twelve (12) equal monthly installments of \$11,987.50 no later than the fifth day of each month.

(iii) For License Years after the first License Year, the Base Operating Reimbursement shall automatically increase on the first day of each License Year (each, a "CPI Adjustment Date") by a percentage equal to the "increase in the CPI".

(iv) The "increase in the CPI" shall mean the percentage increase equal to a fraction, the numerator of which shall be (i) the CPI for the December immediately preceding the Adjustment Date minus (ii) the CPI published for the December of the second calendar year preceding the Adjustment Date, and the denominator of which shall be the CPI published for the December of the second calendar year preceding the Adjustment Date. Thus, if the Adjustment Date is July 1, 2016, the numerator is the CPI for December 2015 minus the CPI for December 2014 and the denominator is the CPI for December 2014). For purposes hereof, "CPI" means the revised Consumer Price Index for Urban Wage Earners and Clerical Workers (revised CPI-W), All Items, Washington – Baltimore DC-MD-VA-WV, CMSA, November 1996 = 100, issued by the Bureau of Labor Statistics of the United States Department of Labor.

(v) Except for the CPI Adjustment, Licensor shall not increase the Base Operating Reimbursement. Licensee shall not be required to pay the Base Operating Reimbursement during any period when Licensee is not able to use the Licensed Premises as a result of Licensor conducting renovations to the 17th Street Building as contemplated in Section 5(c) above.

(vi) The Parties may consult on a possible reduction of the Base Operating Reimbursement based on actual costs, provided that any change in the Base Operating Reimbursement, as adjusted by Section 7(b)(iii), shall require the mutual agreement of the Parties.

(c) Security.

(i) Licensor shall, at Licensor's expense, secure the 17th Street Building, other than the Licensed Premises, 24 hours a day, 7 days a week, in a manner equivalent to the standard of security Licensor currently applies to its existing academic buildings on its Foggy Bottom Campus. Licensor shall not be responsible for any thefts or other damages arising from security breaches that occur in the Licensed Premises, except as a result of the gross negligence or willful misconduct of Licensor.

(ii) Licensee shall, at Licensee's sole expense, secure the Licensed Premises and provide security to protect the artwork stored or displayed in the Licensed Premises.

(d) Interruptions. Licensee undertakes to provide Licensor with prompt notice if any utilities or services to the Licensed Premises (including without limitation the HVAC base 17th Street Building system and any systems required to maintain Licensee's required Humidity and Temperature Controls) to be provided by Licensor hereunder are interrupted or suspended. Following such notice, Licensor shall use its best efforts to promptly cause such utilities or

services to be reinstated. Subject to Licensee's rights set forth in Section 4(b), no interruption or malfunction of any such utilities or services shall constitute an actual or constructive eviction, disturbance of Licensee's use and possession of the Licensed Premises, constitute a breach by Licensor of any of its obligations hereunder, render Licensor liable for damages, entitle Licensee to be relieved from any of Licensee's obligations hereunder or grant Licensee any right of setoff or claim against Licensor; provided, however, that Licensor shall be responsible for any costs incurred to remedy such interruption of malfunction including, without limitation, the costs and expenses of any temporary arrangement required in order to maintain the Humidity and Temperature Controls.

8. Use of Licensed Premises

Licensee agrees that it shall use the Licensed Premises for the operation of an art gallery and museum with art exhibitions and programs and administrative and storage space supporting such uses. Licensee shall not permit any other use thereof, either by change of use or additional use, without the prior written consent of Licensor in its sole discretion. However, Licensee may use the Licensed Premises for related uses ancillary to the uses described in the first sentence above provided they are consistent with the NGA Activities. Licensee shall comply with all applicable Laws (including Environmental Laws, as hereinafter defined) including without limitation those pertaining to historic buildings such as compliance with limitations set by the District Historic Preservation Review Board, and all orders and decrees of any court of competent jurisdiction (collectively, "**Applicable Laws**"), and shall not directly or indirectly make any use of the Licensed Premises which may thereby be prohibited. For purposes hereof, "**Laws**" means all laws, statutes, common law, rules, codes, regulations, restrictions, ordinances, orders, decrees, approvals, directives, judgments, rulings, injunctions, writs and awards of, or issued or entered by, all Governmental Entities; "**Governmental Entity**" means any (a) nation, state, commonwealth, county, city, town, village, district, or other jurisdiction of any nature, (b) federal, state, local, municipal, foreign, or other government, (c) federal, state, local or foreign governmental or quasi-governmental authority of any nature (including any agency, branch, department, board, commission, court or tribunal), (d) multi-national or supra national organization or body, (e) body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power, including any court or arbitrator, (f) self regulatory organization, (g) academic or professional agency, association or organization or (h) official of any of the foregoing; and "**NGA Activities**" means events for the benefit of Licensee's Representatives, visitors and invitees and related to the activities conducted by Licensee, including, without limitation, those activities contemplated by the Corcoran-NGA Agreement, and expressly excluding the rental of the Licensed Premises by Licensee to third parties for purposes unrelated to NGA Activities.

9. Maintenance and Repair

(a) Licensee's Obligations. Except as provided in Section 9(b) below, Licensee shall, at Licensee's sole expense, maintain and keep the Licensed Premises in good condition, order and state of repair at all times during the term of this License, ordinary wear and tear excepted, in compliance with all Applicable Laws. In addition, Licensee shall keep the Licensed Premises in orderly and sanitary condition, free of trash or other debris. If Licensee refuses or neglects to commence and to complete any required repairs within ten (10) business days after written notice

from Licensor, Licensor may, but shall not be obligated to, make such repairs. Should Licensor elect to make such repairs, Licensee shall pay the reasonable costs of such repairs within thirty (30) days after submission to Licensee of a written invoice for same. In no event shall Licensor have any obligation to make any necessary repairs and shall incur no liability to make any necessary repairs in or upon the Licensed Premises. Licensee agrees not commit waste within the Premises. Licensee shall provide the maintenance required to be provided by Licensee under this Section 9(a) in a reasonable manner, taking into consideration the age and condition of the 17th Street Building and the Licensed Premises, including without limitation the base 17th Street Building systems, with the understanding that this sentence shall not be construed to require that any systems or equipment located in the Licensed Premises be upgraded.

(b) Licensor's Obligations. Licensor shall, at Licensor's sole expense, maintain and keep (i) the 17th Street Building (excluding the Licensed Premises except as set forth below in subsection (ii)) and (ii) the structural elements of the Licensed Premises and the base 17th Street Building systems (including base 17th Street Building HVAC, roof, façade, exterior windows, sidewalks, elevators, stairways, mechanical, electrical, plumbing and sanitary waste systems) serving the Licensed Premises whether or not within the Licensed Premises, including without limitation any capital improvements installed by Licensor in the Licensed Premises as permitted under Section 5(e) above, in good condition, order and state of repair at all times during the Term of this License, ordinary wear and tear excepted, and in compliance with all Applicable Laws; provided, however, Licensee shall be responsible for the cost of maintenance, repair and compliance with Applicable Laws caused by (i) the gross negligence or intentional misconduct of Licensee or (ii) the use of the Licensed Premises by Licensee for purposes other than those permitted under this License. In addition, Licensor shall keep the 17th Street Building (excluding the Licensed Premises) in orderly and sanitary condition, free of trash or other debris (including, without limitation, keep the sidewalks free from snow and other obstructions). Licensor shall provide the maintenance required to be provided by Licensor under this Section 9(b) in a reasonable manner, taking into consideration the age and condition of the 17th Street Building, including without limitation the base 17th Street Building systems, with the understanding that this sentence shall not be construed to require that any 17th Street Building systems or equipment be upgraded except in connection with Licensor's Work and to the extent necessary to comply with Licensee's required Humidity and Temperature Controls and all Applicable Laws.

10. Surrender of Licensed Premises

Upon the expiration or earlier termination of this License, Licensee covenants to deliver to Licensor the Licensed Premises in materially the same condition as at the beginning of the License term, ordinary wear and tear and damage due to casualty, and Non-Structural Alterations and Licensor-approved Structural Alterations excepted. The Licensee shall have the right to remove its personal property and trade fixtures, including any artwork exhibited or stored in the Licensed Premises, and shall repair any material damage caused by such removal. Any items not removed by Licensee within thirty (30) days of written notice by Licensor after the expiration or earlier termination of this License shall be deemed abandoned and may be disposed of by Licensor. Licensee shall surrender the Licensed Premises free and clear of all liens, charges, or encumbrances thereon to the extent caused by Licensee. If Licensee does not surrender all of the Licensed Premises upon the expiration or earlier termination of this License as required hereby, Licensee shall be obligated to pay to Licensor as holdover fee \$1,000.00 per day of such

holdover, plus any other reasonable charges due, attorneys' fees, costs, and reasonable expenses incurred by Licensor in regaining possession of the Licensed Premises and/or to recover the foregoing amounts, and shall be liable for any other damages, claims or reasonable expenses incurred by Licensor as a result of such holdover.

11. No Assignment or Subletting

Except as set forth herein, Licensee shall not transfer, mortgage, encumber or assign this License or sublicense or allow, to the extent within Licensee's control, any other person or entity to occupy all or any part of the Licensed Premises.

12. Delivery of Licensed Premises

Subject to Licensor's covenants to perform Licensor's Work and to maintain the Licensed Premises in compliance with Licensee's required Humidity and Temperature Controls, Licensee accepts the Licensed Premises in its "as is" condition as of the Commencement Date. As of the Commencement Date, Licensor shall be the fee owner of the 17th Street Building and, except as set forth herein, as of the Commencement Date no other persons shall have the right to use or occupy the Licensed Premises.

13. Right of Entry

Licensee agrees that Licensor's Representatives shall have the right upon reasonable notice to Licensee, to enter into and upon such Licensed Premises, or any part thereof, at all normal business hours for the purpose of examining or making repairs to same, and, as set forth in Section 1(c), at any time with no prior notice (but with notice promptly thereafter), during an emergency as determined by Licensor. Subject to the provisions of Section 14(f) below, Licensor shall promptly repair any damage to the Licensed Premises (but excluding the personal property of Licensee located therein which is subject to Section 14(e) below) caused by or arising from the exercise by Licensor of the rights set forth in this Section 13.

14. Indemnification

(a) Indemnification by Licensee. To the extent permitted by law, Licensee hereby indemnifies and agrees to defend and hold each of Licensor's Representatives harmless (i) from claims for personal injury, death, or property damage caused by the gross negligence or willful misconduct of Licensee's Representatives; (ii) from all claims, demands, fines, penalties, charges and orders, judgments and enforcement actions of any kind, and all reasonable costs and expenses incurred in connection therewith, including remediation costs, reasonable attorneys' fees and defense costs, arising directly or indirectly, in whole or in part, out of (a) the presence at the 17th Street Building during the Term of any Hazardous Substances (as hereinafter defined) that arises out of the actions of Licensee or any spilling, leaking, pumping, or other release into the environment (collectively, a "Discharge") of any Hazardous Substance on, under, or from the 17th Street Building that arises out of the actions of Licensee in violation of any Environmental Laws, or (b) any activity by any third persons occupying the Licensed Premises and under the control of Licensee regarding the handling of Hazardous Substances and in, on or about the Licensed Premises during the term of this License; and (iii) from all claims, demands,

finances, penalties, charges and orders, judgments and enforcement actions of any kind, and all costs and expenses incurred in connection therewith, including remediation costs, attorneys' fees and defense costs, arising directly or indirectly, in whole or in part, out of Licensee's actions or inactions in violation of the express terms of this License occurring during the Term.

(b) Indemnification by Licensor. Licensor hereby indemnifies and agrees to defend and hold each of Licensee's Representatives harmless (i) from claims for personal injury, death, or property damage caused by the gross negligence or willful misconduct of Licensor, its agents, employees, contractors, subcontractors, guests or invitees (including, without limitation, any students of Licensor); (ii) from all claims, demands, fines, penalties, charges and orders, judgments and enforcement actions of any kind, and all costs and expenses incurred in connection therewith, including remediation costs, reasonable attorneys' fees and defense costs, arising directly or indirectly, in whole or in part, out of (a) the presence at the 17th Street Building during the Term of any Hazardous Substances or any Discharge of any Hazardous Substance on, under, or from the 17th Street Building that arises out of the actions of Licensor in violation of any Environmental Laws, or (b) any activity by any third persons occupying or present in, on or about the 17th Street Building (other than the Licensed Premises) and under the control of Licensor regarding the handling of Hazardous Substances during the term of this License; and (iii) from all claims, demands, fines, penalties, charges and orders, judgments and enforcement actions of any kind, and all costs and expenses incurred in connection therewith, including remediation costs, attorneys' fees and defense costs, arising directly or indirectly, in whole or in part, out of Licensor's actions or inactions, including without limitation in violation of the express terms of this License occurring during the Term.

(c) Hazardous Substances Defined. As used in this License, the term "**Hazardous Substances**" means any substance, material, condition, mixture or waste which is now or hereafter (i) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "oil," "pollutant," or "contaminant" under any provision of District, federal, or other Applicable Law; (ii) classified as radioactive material; (iii) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Sec. 1321 or listed pursuant to Section 307 of the Clean Water Act, 33 U.S.C. sec. 1317 ("**Clean Water Act**"); (iv) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq. ("**RCRA**"); (v) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601 et seq. ("**CERCLA**"); (vi) determined to be a "hazardous chemical substance or mixture" pursuant to the Toxic Substances Control Act, 15 U.S.C. Sec. 2601 et seq. ("**TOSCA**"); (vii) identified for remediation, storage, containment, removal, disposal, or treatment in any District plan for the 17th Street Building; or (viii) determined by the District or federal authorities to pose or be capable of posing a risk of injury to human health, safety or property (such substances to include petroleum and petroleum by products, asbestos, polychlorinated biphenyls, polynuclear aromatic hydrocarbons, cyanide, lead, mercury, acetone, styrene and "hazardous air pollutants" listed pursuant to the Clean Air Act, 42 U.S.C. §7412 et seq. ("**Clean Air Act**")).

(d) Environmental Laws Defined. As used in this License, "**Environmental Laws**" means every law, ordinance, regulation, judicial or administrative order or decree, permit, license, approval, authorization and similar requirement of every federal and District governmental

agency or other governmental authority now or hereafter existing relating to any Hazardous Substances, including the Clean Water Act, the Clean Air Act, TOSCA, CERCLA, RCRA, the Hazardous Materials Transportation Act (49 U.S.C. §5101 et seq.), the Hazardous Substances Account Act, the Federal Hazardous Substances Act (15-U.S.C. §1261 et seq.), the Underground Storage Tank Act of 1984 (42 U.S.C. §991 et seq.), and the District of Columbia Underground Storage Tank Management Act of 1990 (D.C. Code §6-995.1 et seq.).

(e) Personal Property. Licensee shall bear the risk of all loss, destruction or damage to any personal property placed by Licensee on the Licensed Premises, including Licensee's collection of art in the Licensed Premises, and Licensor shall not be liable for any damage to said personal property of Licensee for any cause whatsoever, except to the extent caused by the gross negligence or willful misconduct of Licensor's Representatives. Licensee shall provide Licensor with evidence that Licensee or Corcoran has in place insurance covering risk of loss, destruction or damage to Licensee's personal property placed by Licensee on the Licensed Premises.

(f) Limitations on Licensor. Licensor shall not be liable to Licensee for any damage or injury to Licensee which results when Licensor exercises any rights it has under this License, except to the extent caused by the gross negligence or willful misconduct of Licensor's Representatives and subject in all events to Section 13 and Section 14(e) hereof.

15. Change of Licensee's Status and Failure to Use Licensed Premises

If Licensee ceases to be a non-profit organization or a federal establishment, or if Licensee uses the Licensed Premises for any purpose other than that permitted under this License or commits or suffers to exist an Event of Bankruptcy (defined below), then any of these events shall be an Event of Default as defined hereafter in Section 17 of this License. "**Event of Bankruptcy**" is any of the following: (i) if a receiver or custodian is appointed for any or all of the property or assets of Licensee or if there is instituted a foreclosure action on any of the property of Licensee, or (ii) if Licensee files a voluntary petition under 11 U.S.C. Article 101 et seq., as amended (the "**Bankruptcy Code**"), or under the insolvency laws of any jurisdiction (the "**Insolvency Laws**"); or (iii) if there is filed an involuntary petition against Licensee as the subject debtor under the Bankruptcy Code or Insolvency Laws, which is not dismissed within ninety (90) days of filing; or (iv) if Licensee makes or consents to an assignment of its assets, in whole or in part for the benefit of creditors, or a common law composition of creditors.

16. Insurance

(a) Comprehensive General Liability Coverage. At all times during the term of this License, Licensee shall maintain, at its own cost and expense, policies of contractual and comprehensive general liability insurance, including public liability and broad form property damage, with a minimum combined single limit of liability of \$1,000,000, for personal injuries or deaths of persons occurring in or about the Licensed Premises. The liability insurance covering bodily injury and property damage shall utilize an occurrence policy form in an amount no less than \$1,000,000 combined single limit for each occurrence. Such insurance shall include, but not be limited to, premises and operations liability, independent contractors liability and personal injury liability. The Licensor shall be named as an additional insured ("**Additional Insureds**") on all such policies as its interest may appear.

(b) Other Insurance. At all times during the term of this License, Licensee shall maintain, at its own cost and expense, Statutory Workers' Compensation Insurance as mandated by the state or District law. In addition, Licensee must obtain and maintain the following Employers Liability limits of Liability:

Bodily Injury by Accident	\$500,000	Each Accident
Bodily Injury by Disease	\$500,000	Policy Limit
Bodily Injury by Disease	\$500,000	Each Employee

(c) Certificate of Insurance; Endorsements. As of the Commencement Date, and on each anniversary of the Commencement Date during the term of this License, Licensee shall provide Licensor with a certificate of insurance for each policy required under this License showing that the coverages required hereunder are in force with premiums paid.

(d) Waiver of Claims. Licensor and Licensee each hereby waives all rights to recovery, claims or causes of action against the other and the other's agents, trustees, officers, directors and employees arising from any and all liability, loss or damage to property arising from a risk insured against under the insurance required to be carried under Section 16(b) of this License or to be covered by a specified plan of self-insurance as set forth in Section 16(b), regardless of the cause or origin (including negligence of the other Party). Each parties' insurance policies described in Section 16(b) shall include appropriate clauses waiving all rights of subrogation against the other, with respect to losses payable under such policies.

(e) Violation of Insurance Requirements. Licensee shall not do or suffer to be done or keep or suffer to be kept anything in or about the Licensed Premises which will contravene any of the insurance coverages required herein and shall immediately cease any such activity or omission that is in violation of such insurance coverage.

(f) Miscellaneous. The insurance required to be maintained herein by Licensee is primary coverage to Licensor with respect to any insurance or self-insurance programs maintained by Licensee and no insurance held or owned by Licensor shall be called upon to contribute to a loss, except for the sole negligence of Licensor.

17. Default

(a) Monetary Default. In the event Licensee shall fail to pay any monetary obligation when due in accordance with the terms of this License, and such default shall continue for a period of thirty (30) days after the giving of written notice thereof to Licensee, such failure shall constitute an "**Event of Default**" and Licensor, without prejudice to any other rights or remedies that it may have under this License or that are available at law or in equity, shall have the right to take possession of the Licensed Premises and terminate this License, whereupon Licensee shall promptly surrender the Licensed Premises to Licensor.

(b) Non-Monetary Default. In the event Licensee shall neglect to keep or perform in any material respect any covenant, agreement, or condition of this License, including but not limited to the provisions pertaining to the use of the Licensed Premises, compliance with all Applicable Laws, rules and regulations, the maintenance and repair of the Licensed Premises, the insurance

coverages as provided in this License, its non-profit corporate status, or shall fail to conform in any material respect to any of the building rules and regulations adopted by Licensor and such failure shall continue for the cure period set forth below in this Section 17(b), such failure to perform shall constitute a “**Licensee Event of Default**”. If a default under this Section 17(b) occurs, Licensor shall give written notice of such default to Licensee. In the event that such default is not rectified within thirty (30) days from the date of such notice or, provided Licensee has in good faith made an immediate and diligent effort to cure such failure during such thirty (30) day period and Licensee continues to diligently try to cure such failure thereafter, within such longer period of time that may be reasonably necessary for Licensee to promptly and diligently prosecuting the curing thereof (but not in excess of an additional ninety (90) days), then Licensor, without prejudice to any other rights or remedies that it may have under this License or that are available at law or in equity, shall have the right to take possession of the Licensed Premises and terminate this License, whereupon Licensee shall promptly surrender the Licensed Premises to Licensor.

(c) Default by Licensor. In the event Licensor shall neglect to keep or perform in any material respect any covenant, agreement, or condition of this License, including but not limited to the provisions pertaining to Licensor’s Work, compliance with all Applicable Laws, rules and regulations and the maintenance and repair of the 17th Street Building, and such failure shall continue for the cure period set forth below in this Section 17(c), such failure to perform shall constitute a “**Licensor Event of Default**”. If a default under this Section 17(c) occurs, Licensee shall give written notice of such default to Licensor. In the event that such default is not rectified within thirty (30) days from the date of such notice or, provided Licensor has in good faith made an immediate and diligent effort to cure such failure during such thirty (30) day period and Licensor continues to diligently try to cure such failure thereafter, within such longer period of time that may be reasonably necessary for Licensor to promptly and diligently prosecuting the curing thereof (but not in excess of an additional ninety (90) days), then Licensee, without prejudice to any other rights or remedies that it may have under this License or that are available at law or in equity, shall have the right to terminate this License.

(d) No Waiver. No default of this License by Licensee or Licensor, either prior to or subsequent to the filing of a bankruptcy or insolvency petition, shall be deemed to have been waived unless expressly done so in writing by Licensor or Licensee, respectively.

(e) Cure Right. If Licensee breaches any of its obligation under this License (after applicable notice and cure periods), then Licensor may, but shall not be required to, make such payment or do such act and charge the amount of the expense to Licensee, due within thirty (30) days of demand therefor. If Licensor breaches any of its obligation under this License (after applicable notice and cure periods), then Licensee may, but shall not be required to, make such payment or do such act and charge the amount of the expense to Licensor, due within thirty (30) days of demand therefor.

(f) Enforcement Costs. In addition to the foregoing, (i) if after a default by Licensee, an attorney is employed or directed to collect or enforce the monetary or other obligations evidenced by this License or to assist Licensor in connection with its exercise of any right, power, privilege, or remedy referred to herein, Licensee agrees to pay promptly all costs incurred by Licensor with respect to collection or enforcement including reasonable attorney’s fees and

court costs and (ii) if after a default by Licensor, an attorney is employed or directed to collect or enforce the monetary or other obligations evidenced by this License or to assist Licensee in connection with its exercise of any right, power, privilege, or remedy referred to herein, Licensor agrees to pay promptly all costs incurred by Licensee with respect to collection or enforcement including reasonable attorney's fees and court costs.

18. Signs

Except as provided in Exhibit C, Licensee shall place no signs, advertisements or signboards on the interior or exterior of the Licensed Premises or the 17th Street Building ("**Signs**") without the approval of Licensor, which approval shall be in its sole and absolute discretion. To the extent any such Signs are approved by Licensee, Licensee shall, at Licensee's sole cost, install, maintain in good, safe and professional condition, insure and remove at the end of the Term all such Signs. All such Signs shall be in conformity with all Applicable Laws.

19. Notices

(a) Address. All notices, requests, demands and other communications which are required or may be given pursuant to the terms of this License shall be in the English language and in written or electronic form, and shall be deemed delivered (a) on the date of delivery when (i) delivered by hand or (ii) sent by reputable overnight courier maintaining records of receipt and (b) on the date of transmission when sent by facsimile or other electronic transmission during normal business hours with confirmation of transmission by the transmitting equipment; provided that any such communication delivered by facsimile or other electronic transmission shall only be effective if such communication is also delivered by hand or deposited with a reputable overnight courier maintaining records of receipt within two (2) business days after its delivery by facsimile or other electronic transmission. All such communications shall be addressed to the parties at the addresses set forth below, or at such other address as a Party may designate upon ten (10) days' prior written notice to the other Party:

The George Washington University
2121 Eye Street, N.W.
Suite 701
Washington, DC 20037
Attention: Steven Knapp, President
Phone: (202) 994-6500
Fax: (202) 994-0654

with a copy to:

Beth Nolan
The George Washington University
2100 Pennsylvania Avenue, N.W.
Suite 250
Washington, DC 20052
Phone: (202) 994-3434
Fax: (202) 944-4640

Kevin J. Lavin
Arnold & Porter LLP
555 Twelfth Street, N.W.
Washington, DC 20004-1206
Phone: (202) 942-5461
Fax: (202) 942-5999

Any notice or communications to be given to Licensee shall be sent to the following address, unless Licensee provides a different notice address to Licensor in accordance with the terms hereof:

Elizabeth A. Croog
Secretary and General Counsel
National Gallery of Art
2000B South Club Drive
Landover, MD 20785
Tel: (202) 842-6363
Fax: (202) 842-3782

with a copy to:

Janet T. Geldzahler
Sullivan & Cromwell LLP
1700 New York Avenue, N.W.
Suite 700
Washington, DC 2006-5215
Phone: (202) 956-7515
Fax: (202) 956-7619

(b) Jury Trial Waiver. Licensee and Licensor, by its acceptance of this License, each hereby waives its right to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this License and the business relationship that is being established. This waiver is knowingly, intentionally and voluntarily made by Licensee and Licensor. Licensee and Licensor acknowledge that this waiver is a material inducement to enter into a business relationship, that Licensee and Licensor have already relied on this waiver in entering into this License and that each of them will continue to rely on this waiver in their related future dealings. Licensee and Licensor further acknowledge that they have been represented (or have had the opportunity to be represented) in the signing of this License and in the making of this waiver by independent legal counsel.

20. Authority of Parties

(a) Authority of Licensor. By executing this License, Licensor represents to Licensee that:
(i) Licensor is authorized to enter into, execute, and deliver this License and perform the obligations hereunder; (ii) this License is effective and enforceable against Licensor in accordance with its terms; (iii) the person signing on Licensor's behalf is duly authorized to

execute this License; and (iv) no other signatures or approvals are necessary in order to make all of the representations of Licensor contained in this paragraph true and correct.

(b) Authority of Licensee. By executing this License, Licensee represents to Licensor that: (i) it is authorized to enter into, execute and deliver this License and perform its obligations hereunder; (ii) this License is effective and enforceable against Licensee in accordance with its terms; (iii) the person signing on behalf of Licensee is duly authorized to execute this License; and (iv) no other signatures or approvals are necessary in order to make all of the representations of Licensee contained in this paragraph true and correct.

21. Brokers

Licensor and Licensee agree that this License was directly negotiated between them and that no broker was involved in bringing about this License. No claim of a broker's fee shall be made against either Licensor or Licensee.

22. Relationship of the Parties

Nothing herein contained shall be deemed or construed by the parties or by any third party as creating the relationship of principal and agent, partnership, joint venture, landlord and tenant, or any association between the parties hereto other than the relationship of licensor and licensee. This License is made for the benefit of the parties hereto and not for the benefit of any third party.

23. Provisions Severable

If any provision of this License or the application thereof to any person or circumstance is ruled invalid or unenforceable by a court of competent jurisdiction, the remainder of this License or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall continue in effect and be enforceable to the fullest extent permitted by law; provided that, in the event that Licensee's obligation elsewhere under this License (i) to indemnify Licensor, (ii) to keep the Licensed Premises in good order, repair and condition at its sole expense in accordance with and subject to the terms of this License, (iii) to provide insurance as required in this License, or (iv) to use the Licensed Premises solely as a permitted in this License is ever severed from this License, the term of this License shall automatically cease and terminate.

24. Remedies Cumulative; No Waiver

The rights and remedies granted herein or by law or equity are separate and no one of them, whether or not exercised, shall be deemed to exclude other rights or remedies. No failure of a Party to exercise, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of any right or remedy granted hereunder. Receipt by Licensor of any rent or other amount due hereunder with knowledge of the breach by Licensee of any provision hereof shall not constitute a waiver of such breach or an accord and satisfaction. To be valid, any waiver shall be in writing and signed by the Party waiving its rights, and no waiver of any breach shall be deemed to be a waiver of any subsequent breach.

25. Interpretation

The neuter, feminine, and masculine pronouns when used in the License shall each include each of the other genders. The parties hereto agree that all of the provisions of this License are to be construed as covenants and agreements as though the words imparting such covenants and agreements were used in each separate provision hereof. Although the provisions of the License were drafted by Licensor, the terms of the License were fully negotiated by the parties and shall not be construed for or against Licensor or Licensee, but the License shall be interpreted in accordance with the general meaning of the language herein contained in an effort to reach the intended result.

26. Counterparts

This License may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

27. Governing Law

This License shall be governed by the Laws of the District of Columbia, excluding any conflicts or choice of Law rules or principles that might otherwise refer construction or interpretation of this Agreement to the substantive Law of another jurisdiction

28. Time of the Essence

Time is of the essence with respect to the performance of all obligations by either Party under this License.

29. Survival of Remedies

Each Party's remedies shall survive the termination of this License whether such termination is caused by the default of the other Party or otherwise.

30. Force Majeure

Each of Licensor and Licensee shall be excused from performing an obligation or undertaking provided for in this License so long as the performance is prevented or delayed, retarded, or hindered by an act of God, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, failure or unavailability of transportation, strike, lockout, actions of labor unions, a taking by eminent domain, requisition, laws, orders of government or of civil, military, or naval authorities (but only such orders of a general nature pertaining to the Licensed Premises and comparable properties in the District), or any other cause, whether similar or dissimilar to the foregoing not within the reasonable control of Licensor or Licensee, as the case may be, specifically excluding, however, delays for adjustments of insurance and delays due to shortage or unavailability of funds.

31. Entire and Binding Agreement

This License, including all attachments and exhibits, contains the entire agreement of the parties hereto, and may not be modified other than by their express, written, mutual consent. The terms and conditions and provisions of this License shall inure to the benefit of Licensee and Licensor and shall likewise bind the Parties, their agents, successors and assigns.

32. Confidentiality.

Information concerning either Licensor's or Licensee's business methods, financial information, future plans, personnel data, trade secrets, information systems, financial and accounting policies or similar matters, or information designated as "confidential" by the disclosing Party or released under circumstances where a reasonable person would understand that such information is to be treated as confidential, shall be treated as confidential. The Party receiving such confidential information shall take the same precautions as it takes to protect its own confidential information, but in all events reasonable precautions shall be taken, in order to preserve its confidentiality. Confidential information shall not be revealed to third parties without the written consent of the disclosing Party, and neither Licensor nor Licensee may use the other Party's confidential information for any purpose except for purposes of performing this Agreement. This confidentiality requirement shall not apply to: (a) information in the public domain, (b) information independently developed by either Party without use of the other Party's confidential information, (c) information received by either Party from a third party under no duty of confidentiality, and (d) a disclosure of information that is required by Law or legislative or regulatory body. The obligations of the parties under this Section 32 shall survive the termination of this License for a period of five (5) years after such termination.

[Signatures follow on next page]

IN WITNESS WHEREOF, the Parties hereto intending to be legally bound hereby have executed this License as of the day and year first above written.

LICENSOR:

THE GEORGE WASHINGTON UNIVERSITY

By: _____
Name: Dr. Steven Knapp
Title: President

LICENSEE:

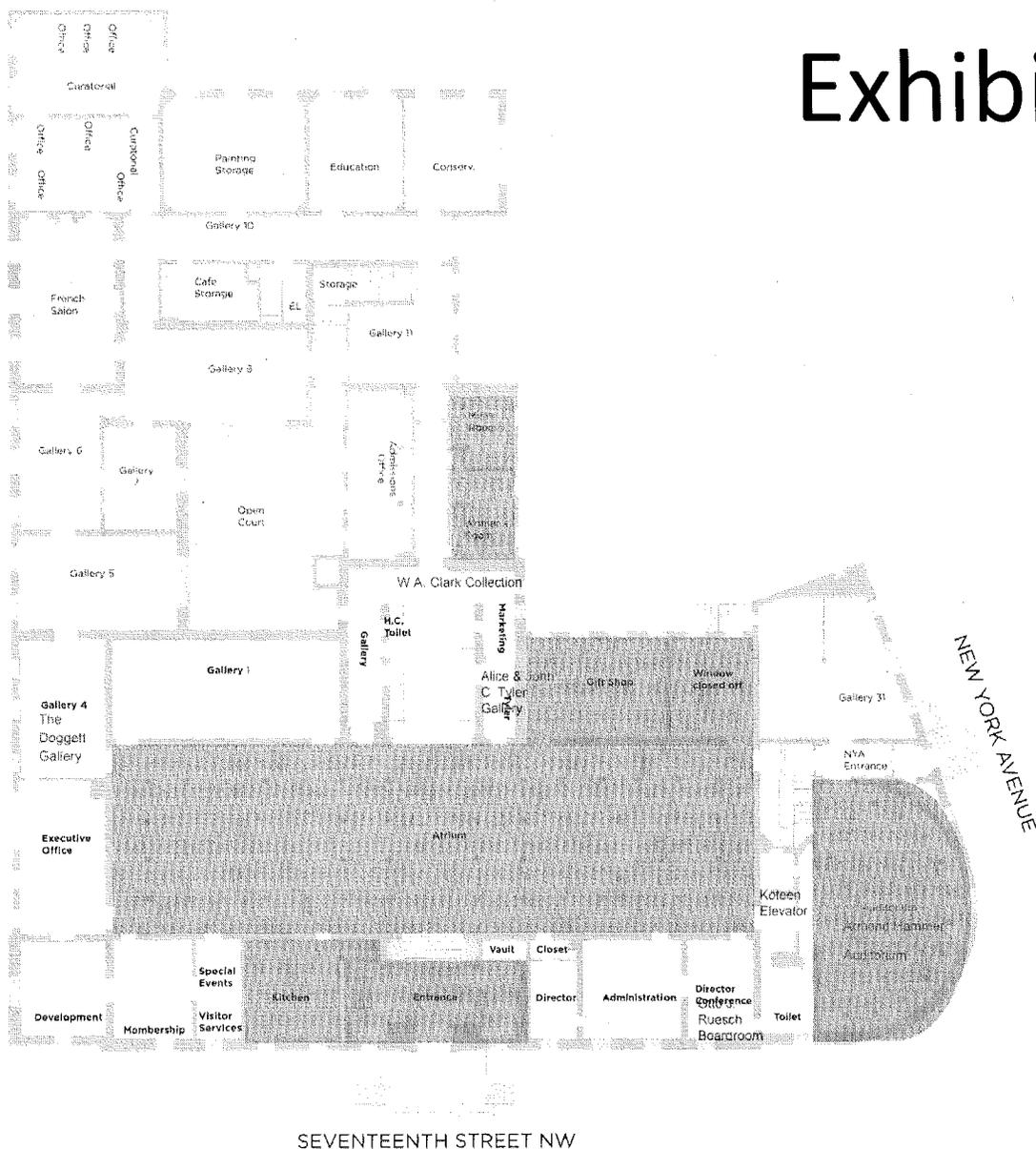
NATIONAL GALLERY OF ART

By:  _____
Name: Earl A. Powell III
Title: Director

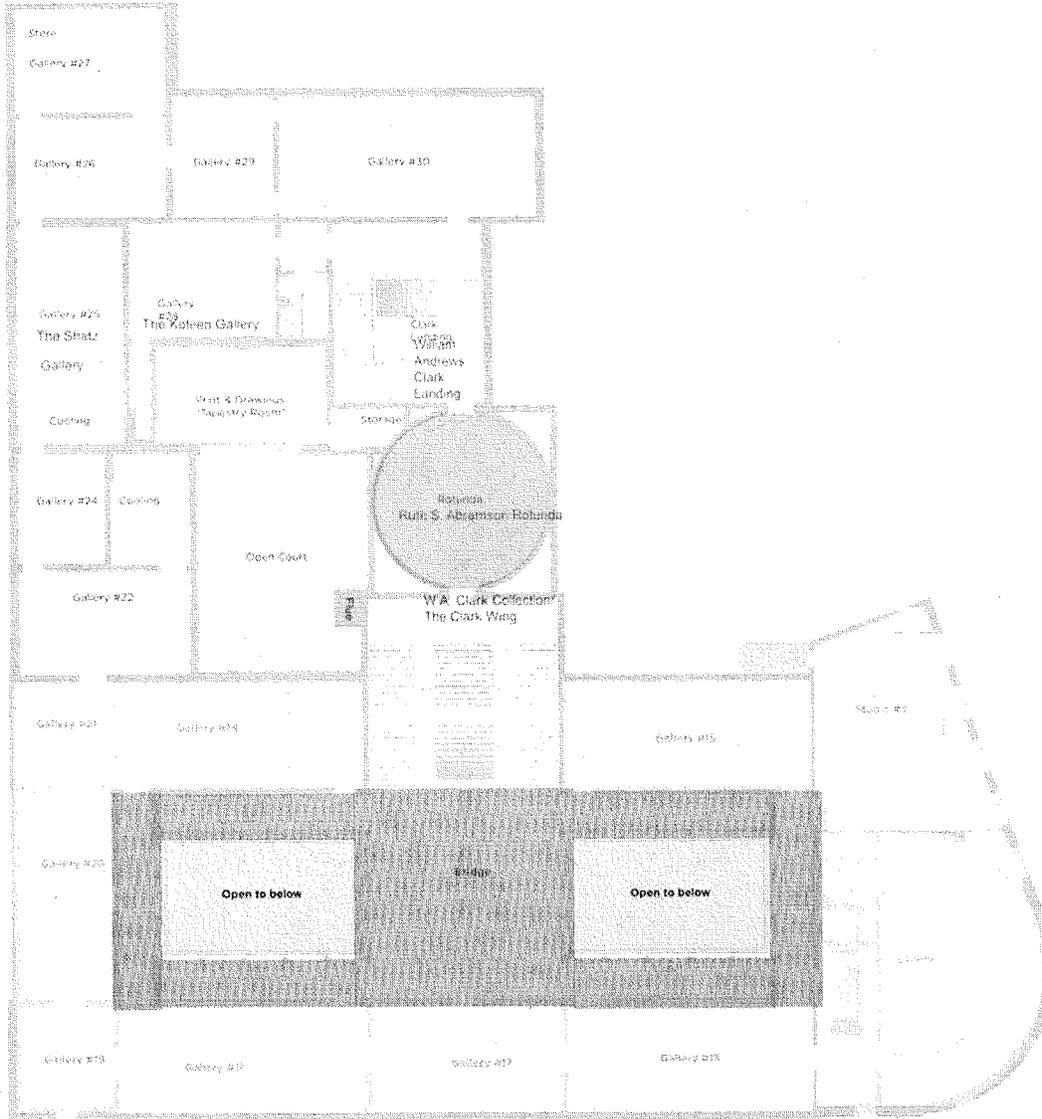
EXHIBIT A
LICENSED PREMISES

FIRST FLOOR

Exhibit A



SECOND FLOOR



Public Activity

Licensed Premises

EXHIBIT B
TRANSITION SPACE

B-1

EXHIBIT C

RULES AND REGULATIONS

(1) All loading and unloading of goods shall be done only in the areas designated for such purposes by Licensor and pursuant to Section 2 of the License Agreement.

(2) All garbage and refuse shall be kept in a container approved by Licensor, and shall be placed outside of the Licensed Premises prepared for collection in the manner and at the times and places specified by Licensor. If Licensor shall provide or designate a service for picking up refuse and garbage, Licensee shall use same at Licensee's cost, provided such cost is the rate normally charged in the vicinity of the 17th Street Building. Licensee shall have the right to independently contract for trash removal.

(3) No aerial shall be erected on the roof or exterior walls of the Licensed Premises, or on the grounds, without in each instance, the written consent of Licensor. Any aerial so installed without such written consent shall be subject to removal without notice at any time.

(4) Licensee shall conduct its business in a manner so as not to create a public nuisance.

(5) The outside areas immediately adjoining the Licensed Premises shall be kept clean and free from dirt and rubbish by Licensee to the reasonable satisfaction of Licensor and Licensee shall not place or permit any obstruction in such areas.

(6) The plumbing facilities shall not be used for any other purpose than that for which they are constructed. Licensor shall put signs in public bathrooms requesting that no foreign substances be thrown in toilets.

(7) Licensee shall not burn any trash or garbage of any kind in or about the Licensed Premises or the 17th Street Building.

(8) Licensee shall not cause or permit any obnoxious or foul odors that unreasonably disturb the public or other tenants. Should such odors be evident, Licensee shall be required to take immediate steps to remedy same.

(9) Licensee shall not display or sell merchandise or allow carts, portable signs, devices or other objects to be stored or to remain outside the Licensed Premises, without the prior written consent of Licensor. Notwithstanding the foregoing, Licensee may, without prior written consent of Licensor, in accordance with its practice, and/or the prior practice of Corcoran, exhibit signs with respect to exhibitions and programs and, during times when the Licensed Premises are open to the public, to have a docent of Licensee occupy a space at any information desk maintained by the Licensor on the first floor and to place outside the Licensed Premises up to two portable kiosks (of a size and design to be approved by Licensor) and display cases necessary for the sale of catalogues, programs, posters and other typical exhibition materials and the rental of audio-tour devices, as well as a portable cloakroom, which kiosks and cloakroom shall be stored in the Licensed Premises when the Licensed Premises are not open to the public.

(10) Licensee and Licensee's employees and agents shall not solicit business in the parking or other common areas, nor shall Licensee distribute any handbills or other advertising matter in automobiles parked in the parking area or in other common areas, without the prior written consent of Licensor.

EXHIBIT D
NGA NON-STRUCTURAL ALTERATION PLANS

EXHIBIT D

The Corcoran Gallery of Art

NGA Design Department Phasing Recommendations

April 30, 2014

DRAFT

General

This document is divided into two sections: Immediate Concerns and Future Concerns (Phase I and Phase II, respectively.)

Phase I - Immediate Concerns will include any project scope from the Corcoran Building closure in October 2014 through the opening/installation of the special exhibition planned for June 2015.

Phase II - Future Concerns will include any project scope as described in the following phasing plan. There are 4 estimated steps: "North", "East", "South", "West", and if necessary, "Ground".

PHASE I - Immediate Concerns (2014-2015)

The Corcoran Building will be closed on *October X, 2014*.

The initial and immediate phase of gallery refurbishment will be performed between October 2014 and April 2014.

Refurbishment includes:

Removal of Light track and lighting components

Removal of single pane lay light glazing in Galleries x, x, x, x, and x.

Remove temporary partitions including electrical, telecommunications and data in Gallery 16

Preparation of the lay light mullions for new paint

Painting of the lay light mullions

Cleaning of supply and return registers

Repair of any supply and return diffusers at the lay light level (Galleries 19, 20, 21, 14, 15)

Removal of extraneous devices on lay lights

Installation and re-wiring of devices needed at the lay light level

Purchasing and installation of new lighting track and fixtures (wiring)

Purchasing and installation of new plastic corrugated material to match adjacent gallery lay light infill

Cleaning of floors

Security?

Painting?

EXHIBIT D

The Corcoran Gallery of Art

NGA Design Department Phasing Recommendations

April 30, 2014

DRAFT

Phase II - Future Concerns (2015 – on)

These are broken up into steps based on location. Each step is comprised of a group of rooms that have similar requirements and can be programmed as a unit. It may be wise to begin with the “North” Step as these areas are separated from exhibition spaces and will serve future needs.

All work needs to have additional costs applied for any lead paint abatement, etc.

Step 1 - “North”: Hemicycle and adjacent spaces, Studio 3

Time Estimate –

Start date – End date

Step 2 - “East”: Galleries 16, 17, and 18

Time Estimate –

Start date – End date

Step 3 - “South”: Galleries 19, 20 and 21

Time Estimate –

Start date – End date

Step 4 - “West”: Galleries 14, and 15

Time Estimate –

Start date – End date

Step 5 - “Ground Floor”: Gallery 1 (if required)

Time Estimate –

Start date – End date

EXHIBIT D

The Corcoran Gallery of Art

NGA Design Department Phasing Recommendations

April 30, 2014

DRAFT

Step 1 - "North": Hemicycle and adjacent spaces, and Studio 3

Time Estimate –

Start date – End date

Studio #3 (Room 59) NGA Support

Ceiling / HVAC

- Remove and replace fluorescent pendent fixtures (8)
- Remove extraneous ceiling items
- Repair, prime and paint ceiling
- Prime and paint ducting and registers

Walls

- Remove extraneous temporary wall panels
- Remove all interior partitioning
- Repair, prime and paint walls
- Repair and paint baseboard

Floor

- Level floor and install linoleum (or similar)

Windows

- Install interior storms and shades
- Install security as required
- Repair, paint existing radiators

Restroom / Plumbing

- Remove existing plumbing fixtures (2 sinks, 1 toilet)
- Remove tile in restroom
- Install new fixtures (2 sinks, 1 toilet). Repair piping as required
- Repair, prime and paint walls in restroom. Install mirror.
- Remove and replace existing window in restroom, secure
- Remove piping in side office

Doors

- Strip, repair and paint doors (4)

Electrical/ Security / Fire Protection

- Remove unused surface mounted wiring & devices (telecommunication, data, electrical)
- Revise as needed surface mounted wiring and devices including cameras
- Rewire receptacles (10)
- Revise as needed surface mounted wiring/devices (smoke detectors, strobes and speakers)
- Install fire extinguisher cabinet

Equipment / Ramp

- *Remove existing ramp?*
- *Install ramp/lift?*

Furniture

- Install 2 work stations with telecommunication, data, electrical

EXHIBIT D

The Corcoran Gallery of Art

NGA Design Department Phasing Recommendations

April 30, 2014

DRAFT

Hemicycle (Room 60)

Ceiling/Lay lights/Cove

- Remove fluorescent pendent fixtures
- Remove extraneous ceiling items (pipe)
- Paint lay light mullions
- Install new lighting track and fixtures with integrated emergency lighting
- Repair and repaint cove

Walls (drywall)

- Remove baseboard (lead paint)
- Repair, skim, prime and paint wall
- Install and paint new baseboard

HVAC

- Repair and repaint supply and return registers

Floor

- Remove carpet
- Repair and refinish floor
- Install and paint shoe molding

Doors

- Strip, repair and paint doorway (North)
- Strip, repair and paint double door and door surround (South)

Electrical/ Security / Fire Protection

- Remove surface mounted wiring/devices (telecom, data, electrical, cameras, fire protection, etc.)
- *Install recessed fire extinguisher cabinet – do we want to move this to the vestibule?*
- Install new integrated smoke detectors, strobes, speakers, cameras in fixtures in lighting track

Hemicycle Vestibule (Room 61A)

Ceiling

- Remove fluorescent fixtures
- Repair and repaint ceiling
- Install new lighting with integrated emergency lighting

Walls (drywall)

- *Remove existing baseboard?(north, south, east walls)*
- Repair, skim, prime and paint wall
- Install and paint baseboard. Install painted baseboard to match original (east).

Floor

- Remove carpet
- Repair and refinish floor
- Install and paint shoe molding

Windows

- *Install interior storm? and shades?*
- Replace locks and security
- Repair, paint existing radiators

EXHIBIT D

The Corcoran Gallery of Art

NGA Design Department Phasing Recommendations

April 30, 2014

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Doors

- Strip, repair and paint doorway
- Strip, repair and paint original doors (2)
- Replace existing metal door with painted raised panel wood door

Electrical/ Security / Fire Protection

- Remove surface mounted wiring/devices as required
- Install recessed fire extinguisher cabinet
- Install new integrated smoke detectors, strobes, speakers, cameras

West Office (Room 61B)

Ceiling

- Remove fluorescent fixture
- Install new lighting with integrated emergency lighting
- Repair and repaint ceiling

Walls

- *Remove existing baseboard?(north, south, west walls)*
- Repair, skim, prime and paint wall
- Repair and paint baseboard
- Install painted baseboard and cornice to match original (west wall)

HVAC

- Remove HVAC units at window
- *Replace or repair existing HVAC unit? Maintain individual unit? Ducting?*

Floor

- Remove carpet
- Replace carpet
- Install and paint shoe molding

Doors

- Replace existing metal door with painted raised panel wood door (see Room 61A)

Electrical / Security / Fire Protection

- Remove surface mounted wiring/devices as required
- Install new integrated smoke detector

Closet (Room 61C)

Ceiling

- Remove fluorescent fixture
- Install new lighting
- Repair and repaint ceiling

Walls

- Repair, prime and paint wall
- Repair and paint baseboard

Floor

- Install carpet?

EXHIBIT D

The Corcoran Gallery of Art

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Doors

- Add lock? See Room 61A

Electrical / Security / Fire Protection

- Remove surface mounted wiring/devices as required
- Install new integrated smoke detector

EXHIBIT D

The Corcoran Gallery of Art

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Step 2 - "East": Galleries 16, 17, and 18

Time Estimate –

Start date – End date

Ceiling

- See Phase 1 re: new lay light panels, new track, new lighting, painting of lay light mullions

Walls

- Remove baseboard (lead paint)
- Repair and repaint cove and cornice
- Paint cove and decorative elements
- Repair and skim, prime and paint wall
- Install new baseboard and coordinate electrical
- Paint new baseboard

HVAC

- Remove temporary entablature panels with diffusers
- Repair entablature grilles using casts from original grille
- Install new entablature grilles

Floor

- Repair and refinish floor

Doors

- Strip, repair and refinish atrium pocket doors (5), door surround (gallery side?), and transom window. (add locks and hardware as required)
- Strip, repair and refinish pocket doors (3) and door surround between Galleries, add locks and hardware as required.
- Strip, repair and refinish North Door surround in Gallery 16. *Provide Door?*

Electrical

- Remove surface mounted wiring and devices
- Install new emergency lights in "dummy" tracks and wire into coordinated system
- Update electrical power system for lighting and power
- Consolidate electrical switches into integrated panel(s) at specified doorway
- Place new conduit and electrical receptacles to baseboard

Security

- Remove surface mounted wiring and devices including cameras
- Install integrated security cameras in fixtures in lighting track

Fire Protection

- Remove surface mounted wiring and devices
- Install recessed fire extinguisher cabinets
- Install new integrated smoke detectors, strobes and speakers in fixtures in lighting track

BAS

- Review, remove, and replace hydro-thermograph units and sensors with integrated recording devices and wire to central location

EXHIBIT D

The Corcoran Gallery of Art

NGA Design Department Phasing Recommendations

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Step 3 - "South": Galleries 19, 20, and 21

Time Estimate –

Start date – End date

Ceiling

- Most ceiling work was completed previously: new lay light panels, new track, new lighting
- Painting
- Repair and repaint cornice and decorative elements
- Paint new baseboard

Walls (drywall)

- Remove temporary walls on east and south elevations
- Repair and skim, prime and paint walls
- Remove baseboard (lead paint)
- Install new baseboard and coordinate electrical

HVAC

- Remove supply and return grilles in lay light panels
- Install new grilles in ceiling

Floor

- Repair and refinish floor

Window

- Repair existing window (coordinate security)
- Install Interior Storm
- Install Interior Shade system
- Strip, repair and paint window surround

Doors

- Strip, repair and refinish atrium pocket doors (1), door surround (gallery side?), and transom window (add locks and hardware as required)
- Strip, repair and refinish pocket doors (2) and door surround between Galleries, add locks and hardware as required.
- Clean Stone door surround in Gallery 21. *Provide Door? (Door to Gallery 14 in next phase)*

Electrical

- Install new emergency lights in "dummy" tracks and wire into coordinated system
- Remove surface mounted wiring and devices
- Update electrical power system for lighting and power
- Consolidate electrical switches into integrated panel(s) at specified doorways
- Place new conduit and electrical receptacles in baseboard

Security

- Remove surface mounted wiring and devices including cameras
- Install integrated security cameras in fixtures in lighting track

Fire Protection

- Remove surface mounted wiring and devices
- Install recessed fire extinguisher cabinets
- Install new integrated smoke detectors, strobes and speakers in fixtures in lighting track

EXHIBIT D

The Corcoran Gallery of Art

NGA Design Department Phasing Recommendations

April 30, 2014

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BAS

- Review, remove, and replace hydro-thermograph units and sensors with integrated recording devices and wire to central location

Step 4 - "West": Galleries 14 and 15

Time Estimate –

Start date – End date

Ceiling

- Most ceiling work was completed previously: new lay light panels, new track, new lighting

Walls (drywall)

- Remove baseboard (lead paint)
- Repair and skim, prime and paint wall
- Install and paint new baseboard and coordinate electrical
- Repair and repaint cornice
- Paint cornice and decorative elements

HVAC

- Remove supply and return grilles in lay light panels
- Install new grilles in ceiling

Floor

- Repair and refinish floor

Doors

- Strip, repair and refinish atrium pocket doors (4), door surround (gallery side?), and transom window (add locks and hardware as required)
- Strip, repair and refinish pocket doors (1) and door surround between Galleries, add locks and hardware as required.

BAS

- Review, remove, and replace hydro-thermograph units and sensors with integrated recording devices and wire to central location

Electrical

- Remove surface mounted wiring and devices
- Install new emergency lights in "dummy" tracks and wire into coordinated system
- Update electrical power system for lighting and power
- Consolidate electrical switches into integrated panel(s) at specified doorways
- Place new conduit and electrical receptacles in baseboard

Security

- Remove surface mounted wiring and devices including cameras
- Install integrated security cameras in fixtures in lighting track

Fire Protection

- Remove surface mounted wiring and devices
- Install recessed fire extinguisher cabinets
- Install new integrated smoke detectors, strobes and speakers in fixtures in lighting track

EXHIBIT D

The Corcoran Gallery of Art

NGA Design Department Phasing Recommendations

April 30, 2014

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Step 5 - "Ground Floor": Galleries 1

Time Estimate –

Start date – End date

General

- Build dividing wall to crate two separate galleries with moldings to match existing

Ceiling

- Most ceiling work was completed previously: new lay light panels, new track, new lighting

Walls (drywall)

- Remove baseboard (lead paint)
- Repair and skim, prime and paint wall
- Install new baseboard and coordinate electrical
- Paint new baseboard
- Repair and repaint cornice and cove
- Paint cove, cornice and decorative elements

HVAC

- Remove supply and return grilles in lay light panels
- Install new grilles in ceiling
- Relocate Grille on North wall, replace with linear diffuser

Floor

- Repair and refinish floor

Doors

- Strip, repair and refinish atrium pocket doors (2), door surround (gallery side?), and transom window (add locks and hardware as required)

BAS

- Review, remove, and replace hydro-thermograph units and sensors with integrated recording devices and wire to central location

Electrical

- Install new emergency lights in "dummy" tracks and wire into coordinated system
- Remove surface mounted wiring and devices
- Update electrical power system for lighting and power
- Consolidate electrical switches into integrated panel(s) at specified doorways
- Place new conduit and electrical receptacles in baseboard

Security

- Remove surface mounted wiring and devices including cameras
- Install integrated security cameras in fixtures in lighting track

Fire Protection

- Remove surface mounted wiring and devices
- Install recessed fire extinguisher cabinets
- Install new integrated smoke detectors, strobes and speakers in fixtures in lighting track

EXHIBIT E

HUMIDITY AND TEMPERATURE CONTROLS

1. There will be facilities for control of relative humidity and temperature in gallery, storage, and packing areas where NGA objects are located. Relative humidity will be maintained at $50\% \pm 5\%$ with no more than a 5% fluctuation within that range during a 24-hour period. Temperature will be maintained at $70^{\circ}\text{F} \pm 5^{\circ}\text{F}$ (65°F to 75°F).
2. There will be a system for monitoring and recording temperature and relative humidity; relative humidity will be monitored and documented using a psychrometer or a recording hygrothermograph, which will be calibrated monthly, or using an electronic system that accurately monitors and records the temperature and relative humidity. Hygrothermograph and electronic charts will be checked on a daily basis.

SIDE LETTER REGARDING
DISTRIBUTION OF CUSTODIAL ART

June 19, 2014

Earl A. Powell, III
Director
National Gallery of Art

Re: Policy Regarding Distribution of Custodial Art

Dear Mr. Powell:

Reference is made to that certain Art Accession and Custodial Transfer Agreement between the Trustees of the Corcoran Gallery of Art and the National Gallery of Art, dated as of May 15, 2014. By this letter, NGA and Corcoran agree, and Corcoran represents and confirms to the Office of the Attorney General for the District of Columbia (the "Office of the Attorney General") and for purposes of the *cy prè*s petition that Section 2.4(b) of the Art Accession and Custodial Transfer Agreement will be implemented as follows:

1. NGA will inventory the Existing Collection. As the inventory is conducted NGA will notify Corcoran from time to time of works it determines to accession as well as of works it has determined not to accession. NGA and Corcoran will maintain a coordinated list of works to be accessioned by NGA, and those identified by NGA as not to be accessioned.

2. With respect to those works that NGA has determined not to accession, NGA and Corcoran will discuss which museums or other institutions within the District of Columbia would appear to be the most suitable for any particular work or collection. Corcoran, with the assistance of NGA, will offer such works to such museums or institutions, it being understood that if Corcoran, in consultation with NGA, believes with respect to any particular work that there are circumstances that would indicate a non-DC institution would be the most suitable candidate for a particular work, such work need not first be offered to DC institutions.

3. If appropriate arrangements can be agreed upon, taking into account the factors elaborated in sections 5 and 7 below, Corcoran will deaccession the works to such museums or institutions as agreed.

4. Should an offered work be declined by the initial institution approached, additional likely D.C. institutions may be determined by Corcoran in consultation with NGA and such works offered to them. These institutions may include other museums and galleries, public buildings (such as government buildings, libraries and schools) or buildings with an appropriate connection to a work or artist and their willingness to accept the conditions.

5. After works have been offered as set forth above, NGA and Corcoran will create a list of the remaining works which have not been agreed to be accessioned. Corcoran, in consultation with NGA, will be responsible for compiling a list of all qualified DC institutions and for notifying all such institutions of the opportunity to acquire the works. NGA and Corcoran will engage in discussion with those institutions indicating interest to determine their qualification to accept work(s), and their willingness to accept conditions on accessioning the works and to pay any associated costs of transfer as set forth in Section 2.4(b). If multiple institutions request a work, Corcoran shall have the right to determine the receiving institution, taking into account the institution's ability to conserve and insure the work appropriately, the institution's ability to comply with any restrictions applicable to the

work, how available the work would be to the public at such institution, and such other factors as Corcoran may reasonably determine.

6. If a work has been on the list available to all qualified D.C. institutions for four months and no such institution has requested such a work, NGA and Corcoran shall work together to identify candidate institutions located outside of the District of Columbia to receive the works remaining with a priority to be given to institutions within a 50 mile radius of the District of Columbia. NGA and Corcoran shall compile a list of the works, the candidate institutions to receive the work(s) that are willing to accept the conditions associated with the work(s), and present the list and recommended recipient institutions to the Office of the Attorney General. If the Office of the Attorney General, after appropriate review, has no objection to the distribution as identified on the list, the Corcoran may proceed to deaccession the works. If the Office of the Attorney General has objections or concerns, the Office of the Attorney General and NGA and Corcoran shall consult on the appropriateness of an additional cy pres proceeding as to some or all of the works and institutions on the list.

7. All deaccessioning by Corcoran shall be on conditions that maximize, to the extent reasonably possible:

a. That the works will remain in the District of Columbia, and that they will not be sold or transferred without consent from the Corcoran.

b. That the works will be properly cared for and preserved.

c. That the works will be displayed to the public free of charge or on other reasonable terms, subject to appropriate considerations regarding conservation and standard museum practices on rotation of works on exhibition.

d. To the extent reasonably possible, the students of the Corcoran College at GW will have access to the works for educational and study purposes.

8. Prior to any work being deaccessioned or otherwise distributed by Corcoran, pursuant to any of the foregoing provisions, to an institution that is not i) a museum in the District of Columbia, ii) a governmental institution (e.g., government buildings, public universities, public schools, or libraries) in the District of Columbia, or iii) George Washington University, Georgetown University, American University, The Catholic University of America, Trinity Washington University, Howard University, or Gallaudet University, either the Office of the Attorney General shall state in writing that it does not object to the proposed deaccessioning or distribution, or the proposed deaccessioning or distribution shall be subject to a further cy pres proceeding in the District of Columbia Superior Court.

Please confirm your understanding by signing on the acknowledgement line below.

Sincerely yours,



Peggy Loar
Interim Director and President

Acknowledged and agreed, this 23rd day of June, 2014:

National Gallery of Art

By: 

Earl A. Powell III
Director

Cc: Hon. Irving Nathan, Esq.
Catherine Jackson, Esq.
David Julyan, Esq.
Charles Patrizia, Esq.
Elizabeth Croog, Esq.
Janet Geldzhaler, Esq.

**SIDE LETTER AGREEMENT CONFIRMING
DESIGNATION OF LICENSED PREMISES**

June 19, 2014

The George Washington University
2121 Eye Street, N.W.
Suite 701
Washington, DC 20037
Attention: Steven Knapp, President

Dear Dr. Knapp:

Reference is made to the Asset Contribution Agreement (the "Agreement") made and entered into as of May 15, 2014, by and between the Trustees of the Corcoran Gallery of Art, a Congressionally chartered nonprofit corporation located in the District of Columbia ("Corcoran"), and The George Washington University, a Congressionally chartered nonprofit corporation located in the District of Columbia (the "University"). Capitalized terms used herein and not otherwise defined have the meanings given to them in the Agreement.

In order to consummate the transactions contemplated by the Agreement, Corcoran is required to obtain court approval of the transaction documents through application of the *cy pres* doctrine to the Corcoran's organizational documents. The Office of the Attorney General for the District of Columbia ("Office of the Attorney General") is charged under the DC Code with certain oversight and other responsibilities regarding charitable institutions in the District and has legal standing to appear before the court in the *cy pres* proceeding. Accordingly, prior to making the *cy pres* filing, Corcoran, with the University's approval, provided drafts of the transaction documents and the proposed petition and order to the Office of the Attorney General for review.

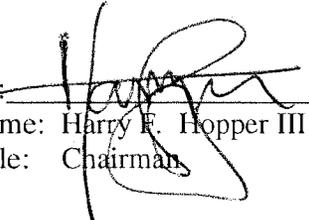
In connection with that review, and as a condition to supporting Corcoran's petition, the Office of the Attorney General has requested confirmation that the University will continue to designate space within the 17th Street Building for the exhibition of works of art in the event that the University-NGA Transaction is terminated. Accordingly, Corcoran seeks the University's confirmation as follows:

Upon expiration or termination of the University-NGA Transaction, for any reason, and NGA's ceasing to operate the Contemporary Art Gallery and the Legacy Gallery in the 17th Street Building, the University covenants to continue to dedicate the premises defined in the Agreement as the "Licensed Premises," or a substantially equivalent size space, within the 17th Street Building for the exhibition of works of art. The exhibition of works of art would continue to be open to the public.

Please indicate your agreement with the foregoing by executing this letter agreement below.

Sincerely,

**TRUSTEES OF THE CORCORAN
GALLERY OF ART**

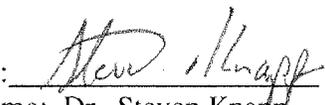
By: 

Name: Harry F. Hopper III

Title: Chairman

ACCEPTED AND AGREED BY

THE GEORGE WASHINGTON UNIVERSITY

By: 

Name: Dr. Steven Knapp

Title: President