



HARMER-SCHAU AUCTION GALLERIES, INC.

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Contract # _____ Date _____ H/S Rep _____ Consignor # _____

Mr/Ms/Mrs (Last Name) _____ First Name: _____

Business Name/Title (if applicable) _____

Mailing Address: _____ City: _____

State: _____ Zip: _____ Country: _____ Email: _____

Business Phone: _____ Ext.: _____ Home Phone: _____ Fax: _____

Special Instructions: _____

CONSIGNMENT AGREEMENT

THIS IS A BINDING LEGAL CONTRACT: PLEASE READ IT CAREFULLY.

This Consignment Agreement (hereinafter "Agreement") sets forth all terms respecting the personal property ("property") listed on any "Inventory List" either attached to this Agreement or executed separately and identified as being subject to this Agreement. We agree to offer the property for sale at public auction as your agent, subject to the terms set forth below. The Conditions of Sale printed on the reverse of this Consignment Agreement constitute our agreement with the buyer at auction and are provided for your information only. You are not an intended beneficiary of any term of the Conditions of Sale and you agree that none of the buyer's or our rights or obligations under the Conditions of Sale shall inure to your benefit. This auction house has a surety bond on file with the California Secretary of State.

1. **COMMISSION:** As payment for our services, we shall be entitled to a commission equal to twenty-five percent (25%) on the final bid at auction, unless specified otherwise in the Special Instructions above. The minimum sellers commission will be \$15 per lot. Our commission includes all normal expenses of sale, except expediting fees, transport, packing and if applicable, the buy-in charge specified in Paragraph 8c. We shall retain our commission from the sales proceeds.

2. **INSURANCE & LIMITATION ON LIABILITY:** The maximum amount of our liability for an insured loss or theft of, or damage to, any item while at our premises or in our charge shall be limited to the lesser of the amount of insurance proceeds received with respect to such loss, theft or damage, or whichever of the following is applicable, in either case less the amount of our commission measured against such amount and other costs which have been incurred for your account and which have not otherwise been paid: (1) if the property has been sold, the successful bid price as defined in the Conditions of Sale; or (2) if the property has not been sold, the reserve (start) price established under Paragraph 8(c) below. In no event, however, will we be liable for any loss, theft, or damage resulting from a risk not covered by our insurance.

3. **PHOTOGRAPHY:** We retain the right to photograph for our catalogues or for advertising purposes any article we deem suitable. You grant us the right to reproduce illustrations of your property, both before and after the sale, and agree that we retain all copyright rights in any such photographs and complete ownership of any blocks, prints, negatives, transparencies, plates or electronic memory devices for storing images.

4. **PACKING & TRANSPORT:** All charges and costs for packing and transportation will be at your sole expense and risk, unless specified otherwise in the Special Instructions above. We shall be happy to recommend a carrier or packer on request, but make no representations, warranties or guarantees in relation thereto.

5. **EXPENSES:** You agree to reimburse us for all sums advanced to third parties for your account. All such amounts are due and payable ten (10) days after the date of billing or we reserve the right to deduct such sums from the proceeds of sale.

6. **LEGAL STATUS:** If you are acting as an agent for someone who is not signing this Agreement, initial "AGENT" which will constitute your agreement that you and your principal jointly and severally assume all obligations and liabilities hereunder. If you are signing on behalf of a corporation or other entity, initial "corporation or other entity" below, which will constitute your agreement to furnish to us any additional documents we may require to verify such relationship.

7. **SECURITY AGREEMENT:** You hereby grant us a security interest in the property being consigned to secure the payment of all sums for which you may become obligated under this Agreement. You also agree to execute any documents we may reasonably request to perfect this security interest. We shall have all the rights of a secured party under law.

8. METHOD OF SALE:

a. Time, Place and Lots. We shall have complete discretion as to the place(s) and date(s) of sale of the consigned property, the manner in which any sale is conducted and the manner in which items are grouped in selling lots. We reserve the right to group one or more items in each selling lot.

b. Name of Seller. With your permission so noted above, we may disclose your name as seller of the property, and have the right to use your real or professional name, photograph or likeness in publicizing any sale in which any or all of the property is offered for sale.

c. Reserves (start bids). Each lot will be sold at auction with reserve (start bid). As a minimum, the reserve (start bid) will be 50% of the low estimate established by us. A reserve (start bid) is "established" when noted on the Inventory List or on another writing signed by us, including, without limitation, any written confirmation from us that an established reserve (start bid) has been altered by oral agreement between us before sale. Should a lot fail to sell at its reserve (start bid), we reserve the right to recommend to you in writing lowering the reserve (start bid) to a specified sum and re-offering the lot at a specified future auction.

If a lot fails to sell at its reserve (start bid), we may elect either to sell the lot under the following paragraph or to return the lot to you and charge you (in lieu of commission, but in addition to other sums payable hereunder) a buy-in charge. Such buy-in charge shall be fifteen dollars (\$15) or 10% of the agreed upon reserve (start bid), whichever is greater, unless specified otherwise in the Special Instructions above.

If any lot fails to sell at its reserve (start bid) at auction, you authorize us at our discretion, as your agent, for a period of thirty (30) days following the auction, to sell the lot privately for any price, provided, however, that in either such event we pay you on the settlement date (or 40 days following the date of the private sale) an amount not less than the net amount (after our commission, expenses and any other amount you owe us) to which you would have been entitled had the lot been sold at a price equal to the reserve (start bid). In the event of any such private sales your obligations to us hereunder with respect to such lots shall be the same as if it had been sold at auction.

d. NEITHER YOU, YOUR PRINCIPAL, IF ANY, NOR ANY OTHER REPRESENTATIVE OR AGENT OF YOU OR YOUR PRINCIPAL SHALL BID FOR THE PROPERTY. If, however, you violate your foregoing commitments and you (or your agent or representative) become the successful bidder on your property, we may either return the property to you in exchange for the commission set forth in Paragraph 1 (including buyer's premiums of 15%) on the bid price or sell the property without reserve in order to recover the commission due from such sale as well as the commission due on the sale concluded in violation of this paragraph (including, in each case, buyer's premium of 15%) and all expenses to which we are entitled.

e. Completion of Sale. No sale shall be considered complete until the buyer has made final and full payment to us in cash or by cashier's check, or, in the event that payment is made by approved personal check, after such check has cleared our bank.

9. SELLER'S WARRANTIES & INDEMNITY: You represent and warrant that: (1) you are the legal owner of the consigned property, or as authorized agent have the legal right, power and authority to consign the property for sale, to enter into this Agreement and to perform all of your obligations hereunder; (2) the property is and until sold shall remain free and clear of all liens, encumbrances or claims of third parties, except as may be noted under "special instructions" at the top of this Agreement; (3) you have fully disclosed to us all information known to you concerning the description of the property, and all of your oral or written representations concerning the property (including, without limitation, the written description of the property included in the "Inventory List" and any attribution or identification, source of origin, physical condition, quality, rarity, importance, provenance, or other specific information included in the description) are true and correct; and (4) you hold good title to the property, and good title will pass to the buyer upon sale. You acknowledge and agree that we may rely upon the accuracy and completeness of the foregoing warranties without conducting any independent verification.

You agree to indemnify us against and hold us harmless from any and all

claimed actions, damages, loss, liabilities and expenses (including reasonable attorneys' fees) arising out of or resulting from any adverse claim of ownership or right to possession of the property, and breach by you of any obligation, representation or warranty hereunder or from our offering for sale or selling any of the property consigned hereunder whether or not it has been returned to us. Your warranties and this indemnity shall be continuing and shall survive the completion of the transactions contemplated by this Agreement.

10. WITHDRAWAL BY SELLER: You hereby waive the right to withdraw the property from sale after the date of this Agreement without our consent, which shall not be unreasonably withheld. In the case of any withdrawal (If property, you shall pay us, in addition to other sums due hereunder, liquidated damages (it being agreed that our actual damages are impracticable or extremely difficult to ascertain and that such amount is a reasonable estimate thereof)) in an amount equal to (1) our commission, as established under Paragraph 1 above, calculated by applying the appropriate percentage to the established low estimate entered on the "Inventory List" (if the property has not been catalogued), or (2) the commission set forth in Paragraph 1 above, plus the buyer's premium of 15%, measured against the low estimate entered on our books (if the property has been catalogued). We shall release the consigned property to you upon receipt of all funds due us.

11. RIGHT TO WITHDRAW PROPERTY FROM SALE: We reserve the right to withdraw any property at any time before sale if in our judgment (1) there is doubt as to its attribution or authenticity, or (2) your representations to us concerning the property are inaccurate in any respect, or (3) you have breached or we reasonably believe you are about to breach any provision of the Agreement or (4) for other good reason. In the case of any such withdrawal you shall pay us, in addition to other sums due hereunder, liquidated damages (it being agreed that our actual damages are impracticable or extremely difficult to ascertain and that such amount is a reasonable estimate thereof) in an amount equal to (1) our commission, as established under Paragraph 1 above, calculated by applying the appropriate percentage to the established low estimate on the "Inventory List" (if the property has not been catalogued), or (2) the commission set forth in Paragraph 1, including buyer's premium of 15%, measured against the low estimate on our books (if the property has been catalogued). We shall release the consigned property to you upon receipt of all funds due us.

12. ESTIMATES AND DESCRIPTIONS: Any appraisal, estimate or other statement by our representative with respect to the selling price or description of any property is a statement of opinion only. We make no warranty to you with respect to the selling price or description of tile property and shall not be responsible to you for any good faith or inadvertent errors or omissions in describing the property. We shall have complete discretion as to the description of the property in our catalogue or other literature. We may, with your approval, engage the services of an outside expert to authenticate the property and charge you the fees of such expert pursuant to Paragraph 5. No description or information provided by any such expert, whether or not included in our catalogue or other literature, constitutes a representation or warranty by us to you with respect to the property consigned or its value. Notwithstanding any information, valuation or description obtained from an expert or included in our catalogue or other literature, we and the buyer are entitled to rely upon any representation or warranty made by you under Paragraph 9 above.

13. SETTLEMENT OF ACCOUNT: No later than forty (40) calendar days after the completion of sale of any property, we will pay you the net proceeds received and collected from the sale of the property after deducting: our commission, amounts for property placed on extension for authentication, and any other expenses, fees and charges due hereunder or required by law; provided that no claim has been made against any of the property or proceeds of sale, and further provided that the buyer has not given to you or us any notice of intent to rescind the sale.

14. BUYER'S DEFAULT: In the event of non-payment by a buyer, you authorize us in our discretion as your agent, to either: cancel the sale and return the property to you or resell any such property at auction or privately and, as your agent, to employ such means, including legal process, compromise or settlement in our own and/or your name to recover any sums to which you

or we may be lawfully entitled. After deducting from any sums recovered our commission (including the buyer's premium of 15%) and all other sums owing to us hereunder, including, without limitation, costs and expenses (including attorneys' fees) incurred by us in connection with the consigned property or our actions pursuant to the foregoing sentence, we shall allocate any remaining sums recovered as appropriate.

15. RESCISSION; You authorize us to rescind a sale, and accept the return of any property at any time if in our judgment we determine that offering such property for sale may subject us and/or you to liability, including any liability arising from an alleged breach of warranty or other claim relating to any attribution or identification, source of origin, physical condition, quality, rarity, importance, provenance or other information included in any description of the property. In such event, you further authorize us at any time to refund or credit the buyer for the purchase price of the returned property, and if we have already remitted to you any proceeds of the rescinded sale you shall pay us on request an amount equal to the remitted proceeds. We will return the property to you provided your indebtedness to us, if any, is paid in full. The foregoing right of rescission is in no way limited by any limitation on the buyer's right to seek rescission contained in the Conditions of Sale.

In the event a buyer seeks rescission based on an alleged breach of any warranty that corresponds to a warranty made by you under Paragraph 9, you shall be liable for our full commission set forth in Paragraph 1 plus all of our expenses incurred in selling the lot. You also authorize us to assign to the buyer any and all rights we may have against you. You acknowledge and agree that upon our assignment of rights pursuant to the preceding sentence, a buyer seeking rescission will have direct rights against you based on this agreement and you hereby authorize us to release to any buyer seeking rescission your name and such other information as the buyer may request in order to pursue its claim against you. Any liability that we may have as your agent hereunder with respect to consigned property the sale of which is sought to be rescinded by the buyer shall automatically terminate upon our assignment of rights to a rescinding buyer under this paragraph. You hereby expressly waive and release us (and all of our agents and employees) from any joint and/or several liability we may have to any buyer of the consigned property relating to or arising from an alleged defect in the title, condition, quality, description, attribution or identification of the consigned property or an alleged breach of any warranty that corresponds to a warranty made by you under Paragraph 9.

16. UNSOLD PROPERTY: All lots brought in for sale which are not sold hereunder must be picked up by you within thirty (30) days after we notify you in writing to do so. At our option we may ship such lots to you at the address stated in this Agreement at your expense (including the cost of insurance). In the event you request us in writing to attempt to auction such items one more time, we will do so under the terms set forth above.

17. MISCELLANEOUS: This Agreement and any and all schedules or attachments hereto, including a Security Agreement and any written representations by you concerning the consigned property constitutes the entire agreement between you and us with respect to the property and supersedes all prior negotiations or agreements, oral or written, regarding the consigned property. Except as otherwise specified herein, no modifications or amendments

of this Agreement shall be binding unless contained in a writing signed by the party to be bound thereby. Any notice given hereunder must be in writing and shall be deemed effective upon deposit in the U.S. mail, postage prepaid, if addressed to either of the parties at their respective addresses indicated above. If any part of this Agreement is deemed invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions of this Agreement which shall remain in full force and effect.

18. APPLICABLE LAW. SUCCESSORS: This agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California and shall be binding upon the parties, and their heirs, executors, beneficiaries, successors, and assigns.

19. DISPUTE; AGREEMENT TO ARBITRATE: Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, brought by or against us (but not including claims brought against you by the purchaser of lots consigned hereunder) shall be submitted to arbitration for resolution, Upon a party's refusal to arbitrate the other party may compel arbitration pursuant to the following procedures:

(1) Either party shall send the other written notice identifying the matter in dispute and invoking the procedures of this Paragraph. Within thirty (30) days after such written notice is given, one or more principals of each party shall meet at a mutual agreeable location in Petaluma, California for the purpose of determining whether they can resolve the dispute themselves by written agreement and if not, whether they can agree upon a third-party impartial arbitrator (the "Arbitrator") to whom to submit the matter in dispute for final and binding arbitration pursuant to Title 9 of the California Code of Civil Procedure (section 1280, et seq.) (the California Arbitration Act);

(2) If the parties fail to resolve the dispute by written agreement or to agree on the Arbitrator within said thirty (30) day period, either party shall make written application to the American Intermediation Service ("AIS"). 114 Sansome Street, Suite 1130, San Francisco, California 94104, for the appointment of an Arbitrator to resolve the dispute by arbitration pursuant to the California Arbitration Act. At the request of AIS, the parties shall meet with AIS at its offices within ten (10) days of such request to discuss the dispute and the qualifications and experience which each party respectively believes the Arbitrator should have; provided, however, the selection of the Arbitrator shall be the exclusive decision of AIS and shall be made within thirty (30) days of the written application to AIS;

(3) Within thirty (30) days of the selection of the Arbitrator, the parties shall meet in Petaluma, California, with such Arbitrator at a place and time designed by the Arbitrator after consultation with the parties and present their respective positions in the dispute. Each party shall have no longer than eight (8) hours to present its position, the entire proceedings before the Arbitrator shall be limited to three (3) consecutive days, and the award shall be made in writing no more than thirty (30) days following the end of the proceeding. Such award shall be a final and binding determination of the dispute and shall be fully enforceable as a Judgment in accordance with the California Arbitration Act. Each party shall bear its own attorney's fees and expenses in connection with such proceedings and shall bear one-half of the Arbitrator's fees and expenses.

I have read, agree to, and acknowledge receipt of this agreement.

Consignor (Signature) _____

Dated: _____

Consignor (print) _____

Title (if Corporation) _____

I am acting as an agent _____ or am authorized to sign on behalf of a corporation or other entity _____

(initial)

(initial)

HARMER-SCHAU AUCTION GALLERIES, INC. By: _____



Print Name: _____