

Northwest Missouri State University
Board of Regents
Date of Meeting: December 18, 2009

Cabinet Member:
Agreement

Douglas Dunham

Agenda Item: Art Exhibition

Background:

Northwest is the custodian of a collection that belongs to Dr. Antony Racela of Kansas City. Dr. Racela asked Northwest to house the collection in the Art Department after Phil Laber, Professor of Art, helped curate the collection and after it was first exhibited here in our gallery. Dr. Racela hopes the collection will be used for educational purpose throughout the US. This purpose of the agreement is to delineate terms between Northwest and other organizations that will accept the works on loan from us for a limited time and exhibit the collection on their premises. Therefore, the agreement not only will be used in this particular case, but will serve as a template as we travel the works to various locations in the future.

This MOA has been reviewed by Board Counsel.

Issue:

I recommend approval

President's Recommendation:

I recommend approval.

Art Exhibition Agreement

This Agreement ("Agreement or Contract") is between Northwest Missouri State University, a public institution of higher education located at 800 University Drive, Maryville, MO 64468 (hereafter "Northwest") and **Latino Arts, Inc**, located at **1028 S. Ninth St., Milwaukee, WI 53204** (hereafter the "Exhibitor").

RECITALS

WHEREAS, Northwest is the custodian of a certain art exhibition (hereafter the "Exhibition") as described in paragraph 1 below that is owned by the Racela Educational & Charitable Foundation ("Foundation"). The Exhibitor desires to display the Exhibition on the terms and conditions set forth herein, and in consideration of the mutual promises of the parties to this Agreement, and

WHEREAS, The Foundation encourages Northwest to seek opportunities for the Collection (including in whole or in part the Inventory defined below) to be exhibited at other university galleries, museums and art institutions (such as Exhibitor) and agrees that Northwest may further loan the Collection to any such entity for that purpose. The Foundation also agrees that Northwest may charge a reasonable fee to any entity to which it further loans the Collection and may retain and use those fees to cover its administrative costs and for such purposes as Northwest deems appropriate. And

WHEREAS, the Foundation has approved the Exhibition as defined herein.

IT IS THEREFORE AGREED THAT:

1. The Exhibition

The Exhibition (hereafter collectively "Exhibition"), of which Northwest is the custodian, is briefly described as follows:

An exhibition of contemporary Cuban printmaking consisting of seventy-eight (78) works by diverse artists (see Exhibit 1—"Inventory"). The exhibition is accompanied by an essay providing a historical overview of artistic conditions in Cuba and information about Cuban printmaking contained in a publication entitled "Contemporary Cuban Printmaking" from the Taller Experimental de Grafica, Habana, Cuba, dated 21 febrero 2005. Fifteen (15) copies of this publication shall be included in the rental fee.

2. Northwest Agreement with Dr. Anthony Racela

Attached hereto as Exhibit 2 is a true and accurate copy of the Agreement between Northwest and Foundation entitled Art Loan Agreement pursuant to which terms Northwest is the custodian of Inventory. Exhibit 2 is incorporated herein by reference and if this Agreement is inconsistent in any way with Exhibit 2, the terms of Exhibit 2 shall control.

3. Fees Payable to Northwest

The Exhibitor shall pay to Northwest a total fee of five hundred dollars (\$500.00) for Northwest's making the Exhibition available to the Exhibitor, of which fee two hundred dollars

(\$200.00) shall be payable upon the signing of this Agreement and the remaining three hundred dollars (\$300.00) shall be payable at least seven (7) days before the Exhibition is shipped by Northwest to the Exhibitor.

4. Transportation.

In addition to amounts payable pursuant to paragraph 2 above, the Exhibitor shall pay the costs of shipping the Exhibition to its designated location and returning it to Northwest or to a subsequent venue if one is scheduled by Northwest. If the latter, Northwest will advise the Exhibitor of the location of the next venue and the date by which the Exhibition must arrive at that venue. Shipping shall be done via a company experienced in shipping fine art and the selection of the company must be agreed to in advance with Northwest.

5. Display of Exhibition.

The Exhibitor shall show the Exhibition from **December 2, 2010 to February 18, 2011** at the following facility and address:

**The Latino Arts Gallery
1028 S. Ninth Street
Milwaukee, WI 53204**

The Exhibition shall be shown in a dignified and suitable manner and place, so as to preserve the works of art. Exhibitor shall use the highest degree of care in carrying out its duties and responsibilities as set forth in this Agreement. The Exhibitor will not attempt to clean, repair or conserve any work of art or frame without the consent of Northwest. The Exhibitor agrees that no work of art may be removed from the Exhibition without written permission of Northwest. Works removed from Exhibition must be properly stored. The Exhibitor shall comply with all special instructions of Northwest relating to the care of any objects in the Exhibition.

6. Damages: Breach of this Agreement.

(a) The parties understand that it will be difficult to calculate or estimate the serious and substantial damage to Northwest which would be caused by breach of this Agreement by the Exhibitor, and, therefore, the parties agree that in the event the Exhibitor cancels the Exhibition or is otherwise unable to show the Exhibition as agreed upon for any reason whatsoever (other than the inability of Northwest to perform hereunder), the Exhibitor shall pay to Northwest as liquidated damages and not as a penalty, (i) fifty percent (50%) of the total fees set forth in paragraph 2 if canceled two (2) months or more in advance of the scheduled opening date of the Exhibition, or (ii) seventy-five percent (75%) if canceled within one (1) month of such scheduled opening date, December 2, which payments shall be due and payable immediately upon such cancellation.

(b) The parties further understand that, while Northwest shall endeavor to make all reasonable efforts to assure that the Exhibition is available for shipment to Exhibitor complete and as described above prior to the scheduled opening as stated above:

(i) In the event that Northwest is unable to perform hereunder, Northwest shall promptly refund to the Exhibitor the fee already paid by the Exhibitor in full and complete satisfaction of its obligation to the Exhibitor; and

(ii) In the event Northwest must withdraw any works of art from the Exhibition while it is in circulation, the Exhibitor shall promptly comply with all packing and shipping instructions given by Northwest in the course of such withdrawal and Exhibitor shall be entitled to no damages against Northwest.

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7. Liability

The Exhibitor will be responsible for items of Inventory lost, stolen or damaged from the time when the Exhibition leaves Northwest until the Exhibition is returned to Northwest. The Exhibitor will provide insurance coverage during transit and display in an amount equal to the estimated value of the collections, which is \$ **45,000.00** with Northwest being a named insured on such policy. The Exhibitor agrees to provide: all fire precautions according to local fire department regulations and standard museum practice; handling, unpacking and repacking of the Exhibition in original containers, all under professional supervision; and strict protection against theft.

The Exhibitor warrants and represents to Northwest that it is fully experienced and properly qualified, equipped, organized and financed to exhibit the Inventory referenced herein. The Exhibitor shall finance its own operations and shall operate as an independent Exhibitor and not as an agent of Northwest, and shall indemnify and hold Northwest free and harmless from all liabilities, costs and charges by reason of any act, omission or representation of the Exhibitor or of its agents, and employees, including costs and attorney's fees.

8. Packing and Unpacking.

All packing and unpacking instructions sent by Northwest shall be followed explicitly by competent packers provided by the Exhibitor. Each object shall be handled with the greatest possible care at all times to ensure against damage or deterioration. The Exhibitor agrees to furnish a verbal report of the condition of all objects in the Exhibition within 24 hours of unpacking and to provide a written condition report if requested by Northwest. Damage, whether in transit or on the Exhibitor's premises, regardless of who may be responsible, must be reported in detail by telephone and in writing to Northwest immediately. Should damage occur during transit, notify the carrier at once as well and save all packing material until the carrier or the carrier's agent has inspected it.

9. Receipt of the Exhibition.

Northwest will not be liable in the event of a delay by the carrier in the receipt of the Exhibition by the Exhibitor. The Exhibitor agrees to telephone Northwest if the Exhibition has not arrived by that time. Rental fee will not be waived or reduced if such notice is not given. An Exhibitor unable to receive the Exhibition must absorb the cost of an acceptable outside storage facility, approved by Northwest, and any related expenses.

10. Forwarding the Exhibition.

If the Exhibition is scheduled to display at another location subsequent to Exhibitor's display of the Exhibit, the Exhibitor agrees to forward the Exhibition to that next location in accordance with shipping instructions from Northwest. The Exhibitor agrees to dispatch the Exhibition on the date specified. If this is not done, the Exhibitor will be charged the cost of delay to the subsequent Exhibitor.

11. Publicity.

The Exhibitor agrees that all publicity releases, invitations, announcements, catalogues, and other printed matter concerning the Exhibition shall carry a notice or the information that the Exhibition has been made available by Northwest. The Exhibitor shall send to Northwest copies of any printed matter relating to the Exhibition, together with a publicity report, no later than seven (7) days after the last date of the showing by the Exhibitor. Nothing herein shall be construed to grant a license or any rights to Exhibitor to reproduce in any manner any of the Inventory.

12. Reproductions and Photographs on Television.

Except where written notice by Northwest is given to the contrary, and subject to the terms of Exhibit 2, reproduction and photographs of objects included in the Exhibition may be used without restriction for general publicity and in television programs reviewing or discussing the Exhibition. All publicity shall state that the Exhibition was organized by Northwest. Photography of the Exhibition is not allowed by the public, unless consent from Northwest is obtained.

13. Governing Law

The laws of the State of Missouri shall govern this contract. Subject to the arbitration provisions herein, any action in regard to this Agreement shall be instituted and litigated in the courts of the State of Missouri, County of Nodaway and in no other. In accordance, the parties submit to the jurisdiction of the courts of the State of Missouri and to venue in Nodaway County.

14. Use of Names.

Exhibitor shall not use the name of Northwest or any of its employees without prior written consent obtained from Northwest, except to promote the Exhibition. In any such case, all references to the name of Northwest or any of its employees shall be dignified and in good taste.

15. Additional Provisions.

Subject to the written approval of Northwest, should the Exhibitor need to make any changes in the dates for this venue, they shall be made in consultation with Northwest so as not to interfere with the preceding or subsequent venues.

16. Arbitration

16.1 In case of a Difference in the interpretation or execution of this Agreement or any amendments to it, the Parties agree to seek to resolve that dispute in an amicable manner. If a resolution of differences can not be achieved by the parties, they agree to arbitrate as provided herein any and all Differences which may arise with, between them with regard to this agreement.

16.2 Prior to initiating arbitration the parties to the Difference the Parties shall first meet face to face in good faith at the offices of Northwest or such other appropriate place as may be mutually agreeable to effect a resolution of the Differences. The Parties shall seek to have the Differences, which the Parties are unable to resolve after meeting or attempting to meet in good faith to effect a resolution, mediated by an individual chosen in accordance with the Commercial Mediation Rules of the American Arbitration Association. The cost of the Mediation shall be shared equally.

16.3 Any Differences which the Parties are unable to resolve under paragraph 2 shall be finally settled in the offices of Northwest (or other location mutually agreed upon by the Parties) by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") as modified herein and by one neutral mutually selected arbitrator. Any award entered in any such arbitration shall be final and binding and may be entered and enforced in any court of competent jurisdiction.

16.4 The arbitration shall be initiated by any Party filing with the AAA notice of intent to arbitrate ("Arbitration Notice") and serving a copy of the Arbitration Notice on the other Party or Parties to the Differences. The arbitrator shall set such times and make such orders as will compel all depositions, exchange of relevant information, document production, and other discovery as permitted by the AAA Commercial Arbitration Rules and/or the Uniform Arbitration Act as adopted by the State of Missouri.

16.5 The arbitrator shall make such orders and conduct and schedule all proceedings in connection with the arbitration so that the final arbitration hearing commences no less than 90 days and concludes no later than one hundred eighty (180) days after the Arbitration Notice is filed, and so that the final arbitration award is made and delivered to the parties within two hundred (200) days after the Arbitration Notice is filed.

16.6 The arbitrator's award shall be in writing and shall be accompanied by a written opinion explaining the decision. (The written opinion is for information purposes only and may not be used by any person as a basis for questioning or challenging in any way the arbitrator's award in any court.) The arbitrator has discretion to award reasonable attorney fees to the Party or Parties deemed by the arbitrator to be the prevailing Party or Parties in the arbitration. Subject to the requirement of Missouri's Sunshine Law (§610.010 et seq. R.S.Mo.) the undersigned agree to treat as confidentially as practicable all Differences, all matters relating to resolution proceedings under this Agreement, any arbitration opinion or award, and any proceedings related to or to enforce an arbitration award.

16.7 The rights, remedies, duties and obligations of the undersigned shall survive the termination of any agreements subject to this Arbitration Agreement. Termination of any agreement subject to this Arbitration Agreement shall be without prejudice to any rights which have accrued to any party under this Arbitration Agreement.

16.8 Any notice or other communication required or permitted hereunder shall be deemed to have been given when sent by certified or registered mail, postage prepaid, to the designated agent set forth herein or their designated successor.

16.9 If any part or provision of this Agreement relating to Arbitration is invalid or unenforceable or prohibited by the law of any jurisdiction where it is to be performed or enforced, this Agreement shall be considered divisible as to such provision and such provision shall be inoperative and the remainder of this Agreement shall be valid and binding and of like effect as though such provision were not included herein. Any court is requested in the absence of the excluded provision to endeavor to give the fullest possible effect to the intent of the Parties as expressed herein.

16.10 The agreement shall be governed by and construed in accordance with the laws of the State of Missouri without regard to the conflict of laws principles thereof.

17. Assignment.

The Exhibitor shall not assign this Contract without the prior written consent of the Northwest.

18. Not A Joint Venture

Nothing contained in this Contract shall be deemed to constitute the Northwest and the Exhibitor as partners in a partnership or joint venture for any purpose whatsoever.

19. Entire Contract.

This Contract and the Exhibits attached hereto constitutes the entire agreement between the parties. Terms not specifically set out herein and no verbal agreement or conversation with any officer, official, agent or employee of the Northwest, either before or after the execution of the Contract, shall effect, modify or add to the terms or obligations contained in the Contract. Any such purported term, verbal agreement or conversation shall in no way be binding upon the Northwest or the Exhibitor.

20. Severability.

All of the provisions of this Contract shall be severable. In the event that any provision of this Contract is found by a court of competent jurisdiction or arbiter to be unconstitutional or

unlawful, the remaining provisions of this Contract shall be valid unless the court or arbiter finds the valid provisions of this Contract are so essentially and inseparably connected with and so dependent upon the invalid provisions that it cannot be presumed that the parties to this Contract could have included the valid provisions without invalid provisions; or unless the court or arbiter finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

21. Ownership

Nothing here in shall grant or convey any ownership interest in the Inventory or any other rights other than to complete the Exhibition described herein.

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

In witness whereof, Northwest and the Exhibitor have caused this Agreement to be executed as of the last date entered below

Northwest Missouri State University

Latino Arts, Inc.

By: _____ By: _____

Title: _____ Title: _____

Date: _____ Date: _____