

AGREEMENT OF ORIGINAL TRANSFER OF WORK OF ART

Fill in date, names
and addresses of
parties

This agreement made this _____ day of _____ 19 _____ by and between
_____(hereinafter the "Artist"),
residing at _____
and _____ (hereinafter the "Collector"),
residing at _____

WITNESSETH:

WHEREAS the Artist has created that certain work of art:

Fill in data
identifying the
Work

Title: _____ Identification: _____

Date: _____ Material: _____

Dimensions: _____ Description: _____

(hereinafter "the Work"); and

WHEREAS Artist is willing to sell the Work to Collector and Collector is willing to purchase the Work from Artist, subject to mutual obligations, covenants, and conditions herein; and

WHEREAS Collector and Artist recognize that the value of the Work, unlike that of an ordinary chattel, is and will be affected by each and every other work of art the Artist has created and will hereafter create; and WHEREAS the parties expect the value of the Work to increase hereafter; and

WHEREAS Collector and Artist recognize that it is fitting and proper that Artist participate in any appreciated value which may thus be created in the Work, and

WHEREAS the parties wish the integrity and clarity of the Artist's ideas and statements in the Work to be maintained and subject in part to the will or advice of the creator of the Work,

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter set forth and other valuable considerations the parties hereto agree as follows:

Fill in price or
value; strike out
one not applicable

PURCHASE AND SALE. ARTICLE ONE: The Artist hereby sells to Collector and Collector hereby purchases the Work from Artist, subject to all the covenants herein set forth (for the price of _____ receipt of which is hereby acknowledged) (at the agreed valuation for the purposes of this agreement of _____)

FUTURE TRANSFERS: ARTICLE TWO: Collector covenants that in the event Collector shall hereafter sell, give, grant, barter, exchange, assign, transfer, convey or alienate the Work in any manner whatsoever or if the Work shall pass by inheritance or bequest or by operation of law, or if the Work shall be destroyed and insurance proceeds paid therefore, Collector or Collector's personal representative shall:

Fill in name
address of
information if any;
strike out one not
applicable

(a) file a current TRANSFER AGREEMENT AND RECORD in the form and containing the artist's agent, set forth And called for in the specimen hereunto annexed and made a part hereof, completed and dated, and subscribed by Collector or Collector's personal representative and collector's transferee, with (Artist at the address set forth above) (Artist's agent for the purpose: _____ within thirty days of such transfer, distribution, or payment of insurance proceeds, and shall

Fill in name,
address of artist's
agent if any; strike
out one not

(b) pay a sum equal to fifteen percent (15%) of the Appreciated Value (as hereinafter defined), if any, occasioned by such transfer or distribution or payment of insurance proceeds to (Artist at the address set forth above) . (Artist's agent for the-purpose: _____

applicable

at: _____ within
thirty days of such transfer, distribution, or payment of insurance proceeds.

PRICE/VALUE. ARTICLE THREE: The "Price or value" to be entered on a TRANSFER AGREEMENT AND RECORD shall be:

- (a) the actual selling price if the Work is sold for money; or
- (b) the money value of the consideration if the Work is bartered or exchanged for a valuable consideration; or
- (c) the fair market value of the Work if it is transferred in any other manner.

APPRECIATED VALUE. ARTICLE FOUR: "Appreciated Value" of the Work for the purposes of this Agreement, shall be the increase, if any, in the value or price of the Work set forth in a current duly executed and filed TRANSFER AGREEMENT AND RECORD over the price or value set forth in the last prior duly executed and filed TRANSFER AGREEMENT AND RECORD, or, if there be no prior duly executed and filed TRANSFER AGREEMENT AND RECORD, over the price or value set forth in ARTICLE ONE herein

(a) In the event a current duly executed TRANSFER AGREEMENT AND RECORD is not timely filed as required by ARTICLE TWO herein, Appreciated Value shall nonetheless be computed as if such current TRANSFER AGREEMENT AND RECORD had been duly executed and filed, with a price or value set forth therein equal to the actual market value of the Work at the time of the current transfer or at the time of the discovery of such transfer.

TRANSFEREES TO RATIFY AGREEMENT. ARTICLE FIVE: Collector hereby covenants that he will not hereafter sell, give, grant, barter, exchange, assign, transfer, convey or alienate the Work in any manner whatsoever or permit the Work to pass by inheritance or bequest or by operation of law to any person without procuring such transferee's ratification and affirmation of all the terms of this Agreement and transferee's agreement to be bound hereby and to perform and fulfil all of the Collector's covenants set forth herein, said ratification, affirmation and agreement to be evidenced by such transferee's subscription of a current duly completed and filed TRANSFER AGREEMENT AND RECORD.

Strike out one not
applicable

PROVENANCE. ARTICLE SIX: Artist hereby covenants that (Artist) (Artist's agent for the purpose as set forth in ARTICLE TWO) will maintain a file and record of each and every transfer of the Work for which a TRANSFER AGREEMENT AND RECORD has been duly filed pursuant to ARTICLE TWO herein and will at the request of the Collector or Collector's successors in interest, as -that interest shall appear, furnish in writing a provenance and history of the Work based upon said records and upon Collectors' notices of proposed public exhibitions and will certify in writing said provenance and history and the authenticity of the Work to Collector and his successors in interest, and, at Collector's reasonable request, to critics and scholars. Said records shall be the sole property of the Artist.

EXHIBITION. ARTICLE SEVEN: Artist and Collector mutually covenant that

a) Collector shall give Artist written notice of Collector's intention to cause or permit the Work to be exhibited to the public, advising Artist of all details of such proposed exhibition which shall have been made known to Collector by the exhibitor. Said notice shall be given for each such exhibition prior to any communication to the exhibitor or the public of Collector's intention to cause or permit the Work to be exhibited to the public. Artist shall forthwith communicate to Collector and the exhibitor any and all advice or requests that he may have regarding the proposed exhibition of the Work. Collector shall not cause or permit the Work to be exhibited to the public except upon compliance with the terms of this article.

Strike out (b) if not
required

(b) Collector shall not cause or permit any public exhibition of the Work except with the consent of the Artist to each such exhibition.

(c) Artist's failure timely to respond to Collector's timely notice shall be deemed a waiver of Artist's rights under this article, in respect to such exhibition and shall operate as a consent to such. Exhibition and to all details thereof of which Artist shall have been given timely notice.

ARTIST'S POSSESSION. ARTICLE EIGHT: Artist and Collector mutually covenant that Artist shall have the right, upon written notice and demand to Collector made not later than 120 days prior to the proposed shipping date therefor, to possession of the Work for a period not to exceed sixty (60) days solely for the purpose of exhibition of the Work to the public at and by a public or non-profit institution, at no expense whatsoever to Collector. Collector shall have the right to satisfactory proof of sufficient insurance and pre-paid transportation or satisfactory proof of financial responsibility therefor. Artist shall have the right to such possession of the Work for one period not to exceed sixty (60) days every five (5) years

NON-DESTRUCTION. ARTICLE NINE: Collector covenants that Collector will not intentionally destroy, damage, alter, modify or change the Work in any way whatsoever.

REPAIRS. ARTICLE TEN: Collector covenants that in the event of any damage to the Work, Collector shall consult with Artist prior to the commencement of any repairs or restoration and if practicable Artist shall be given the opportunity to make any required repairs or restoration

Strike out one not applicable

RENTS. ARTICLE ELEVEN: In the event that Collector shall become entitled to any monies as rent or other compensation for the use of the Work at public exhibition, the Collector shall pay a sum equal to one-half of said monies to (Artist) (Artist's agent as set forth in ARTICLE TWO herein) within thirty (30) days of the date when Collector shall become entitled to such monies.

REPRODUCTION. ARTICLE TWELVE: Artist hereby reserves all rights whatsoever to copy or reproduce the Work. Artist shall not unreasonably refuse permission to reproduce the Work' in catalogues and the like incidental to public exhibition of the Work.

NON-ASSIGNABILITY. ARTICLE THIRTEEN: No rights created in the Artist and for the Artist's benefit by the terms of this Agreement shall be assignable by Artist during the Artist's lifetime, except that nothing herein contained shall be construed as a limitation on Artist's rights under any copyright laws to which the Work may be subject.

NOTICE. ARTICLE FOURTEEN: Artist and Collector mutually covenant that there shall be permanently affixed to the Work a NOTICE of the existence of this Agreement and that ownership, transfer, exhibition and reproduction of the Work are subject to the covenants herein, said NOTICE to be in the form of the specimen hereunto annexed and made a part of this Agreement.

Strike out (a) if not applicable

(a) Because the Work is of such nature that its existence or essence is represented by documentation or because documentation is deemed by Artist to be part of the Work, the permanent affixing of said NOTICE to the documentation shall satisfy the requirements of this article.

TRANSFEREES BOUND. ARTICLE FIFTEEN: In the event the Work shall hereafter be transferred or otherwise alienated from Collector or Collector's estate in any manner whatsoever, any transferee taking the Work with notice of this Agreement shall in every respect be bound and liable to perform and fulfil each and every covenant herein as if such transferee had duly made and subscribed a properly executed TRANSFER AGREEMENT AND RECORD in accordance with ARTICLE TWO and ARTICLE FIVE herein at the time the Work was transferred to him or her

EXPIRATION. ARTICLE SIXTEEN This Agreement and the covenants herein shall be binding upon the parties, their heirs, legatees, executors, administrators, assigns, transferees and all other successors in interest and the Collector's covenants do attach and run with the Work and shall be binding to and until twenty-one (21) years after the deaths of Artist and Artist's surviving spouse, if any, except that the Covenants set forth in ARTICLE SEVEN, ARTICLE EIGHT and ARTICLE TEN herein shall be binding only during the life of the

Artist.

WAIVERS NOT CONTINUING. ARTICLE SEVENTEEN: Any waiver by either party of any provision of this Agreement or of any right hereunder, shall not be deemed a continuing waiver and shall not prevent or stop such party from thereafter enforcing such provision or right, and the failure of either party to insist in any one or more instances upon the strict performance of any of the terms or provisions of this Agreement by the other party shall not be construed as a waiver or relinquishment for the future of any such terms or provisions, but the same shall continue in full force and effect.

AMENDMENT IN WRITING. ARTICLE EIGHTEEN This Agreement shall not be subject to amendment, or termination, except in writing signed by both parties.

ATTORNEYS' FEES. ARTICLE NINETEEN: In the event that either party shall hereafter bring any action upon any default in performance or observance of any covenant herein, the party aggrieved may recover reasonable attorneys' fees in addition to whatever remedies may be available to him or her.

IN WITNESS WHEREOF, the parties have set their hands and seals to this Agreement as of the day and year first above written.

SPECIMEN – SPECIMEN – SPECIMEN

Fill in NOTICE in full (Do not remove from original)

NOTICE

Ownership, Transfer, Exhibition and Reproduction of this Work of Art are subject to covenants set forth in a certain Agreement made the _____ day of _____, 19 ____ by _____ and between _____ the original of which is on file with _____ at _____

(Artist)

(Collector)

SPECIMEN – SPECIMEN – SPECIMEN

Fill in ONLY:

TRANSFER AGREEMENT AND RECORD

TO:

Know ye that _____

residing at: _____

has this day transferred all his right, title and interest in that certain Work of art known as:

Title:

Identification #:

Date:

Material:

Dimensions:

Description:

to _____ residing at _____

transferee, at the agreed price or value of _____ Transferee, hereby expressly ratifies and affirms all the terms of that certain Agreement made by and between _____ and _____

on the _____ day of _____, 19 ____ and agrees to be bound thereby and to perform and fulfil all of Collector's covenants set forth in said agreement.

Done this _____ day of _____, 19 ____, at _____

data identifying the Work

names of parties ("between _____ and _____")

date

Source CAS Broadsheet, June 1972

© Helen Grace (ed.) *Before Utopia – A non official Prehistory of the Present*
(University of Western Sydney 2000)