

THE ARSHILE GORKY FOUNDATION
1133 Broadway, Suite 1027
New York, New York 10010

LETTER AGREEMENT

[Date]
[Name and Address of
Owner]

Re: See attached, "Description of Artwork".

Dear []:

1. You have asked The Arshile Gorky Foundation (the "Foundation") to consider for inclusion in the ongoing *Arshile Gorky Catalogue Raisonné* (the "Catalogue") the artwork described in the attached Description of Artwork ("the "Work"). This Letter Agreement (the "Agreement") sets forth the terms under which the Foundation will examine and consider the Work for inclusion in the Catalogue. The Foundation's signing and/or delivery of this Agreement to you does not mean that the Work will be included in the Catalogue.

2. Attached as Exhibit "A" hereto and fully incorporated herein are the "Catalogue Raisonné Examination Procedures." Owner hereby agrees to such Catalogue Raisonné Examination Procedures.

3. You hereby represent and warrant that you are the sole owner(s) of the Work ("Owner") and that all of the information set forth on the attached "Description of Artwork" is true, accurate and complete, and you acknowledge that the information will be used and substantially relied on by the Foundation in its evaluation of the Work. You agree to provide the Foundation with copies of all documents in your possession or, to the extent practicable, about which you are aware, with respect to the Work's ownership history (provenance), exhibition history, and bibliographic references (that is, all publications depicting and or describing the Work). Owner hereby agrees that such documentation will identify the name of the previous owner of the Work or the agent of the previous owner of the Work from whom the Work was acquired and that, as part of its examination procedure, the Foundation is authorized to retain such information and contact such persons as the Foundation deems necessary in its sole discretion for the purpose of evaluating the Work for possible inclusion in the Catalogue.

4. Owner will arrange for and pay all costs, including insurance, shipping, packing and storage, associated with transporting the Work to and from the location the Foundation determines is appropriate for its examination (the "Examination Location"). Owner will insure the Work in accordance with the terms stated in paragraphs 3-4 of the attached Exhibit "A," Catalogue Raisonné Examination Procedures, at Owner's sole cost while it is being transported to and from the Examination Location and while it is in the Foundation's possession against any loss or damage for its full value as determined by Owner. The Foundation will have no liability

whatsoever to the Owner for, and the Owner hereby indemnifies the Foundation and each Indemnitee (as defined in paragraph 10 below) against any claim or liability arising out of any loss or damage to the Work. The Owner must provide the Foundation with a certificate of insurance demonstrating that the Work is insured under a wall-to-wall all risk fine arts insurance policy, which shall include a provision in which the insurer expressly waives subrogation of any claim against the Foundation (as set forth further in Exhibit A, paragraph 3).

5. The Foundation will attempt to form an opinion on whether the Work was created by Arshile Gorky, but you agree that the Foundation has no obligation to form or issue such an opinion. Owner further agrees that if the Foundation has any reservations or uncertainty as to the ownership, provenance or authenticity of the Work, it may in its sole and absolute discretion, decline to issue an opinion or include the Work in the Catalogue. Owner agrees that the Foundation has no obligation to, and may not, identify any reservations or uncertainty it may have or any reason for any opinion it issues.

6. The Owner acknowledges and agrees that: (a) the Foundation's forming an opinion as to whether the Work was created by Arshile Gorky, and its decision regarding whether to include the Work in the Catalogue may depend, in part, upon subjective criteria; and (b) the conclusions reached by the Foundation are opinions only, rendered in the Foundation's sole and absolute discretion; and (c) a decision by the Foundation to include the Work in the Catalogue is not a warranty of any kind. The Owner further agrees not to misrepresent or misstate the position of the Foundation expressed in any opinion issued pursuant to this Agreement. The Owner further agrees to provide a copy of such documentation issued to Owner expressing the Foundation's opinion, if any, to any person or entity to whom Owner may wish to sell and/or transfer such Work.

7. The Foundation reserves the right to withdraw or modify its opinions or findings at any time, and accordingly any work accepted for inclusion in the Catalogue may be withdrawn at any time from the Catalogue in the Foundation's sole and absolute discretion. Owner acknowledges that, after the Foundation provides a written opinion (if any) to Owner on whether the Work was created by Arshile Gorky, the Foundation might receive information that causes the Foundation to doubt or to change any opinion, initially expressed to Owner. In such event, the Foundation may, but it shall be under no duty to, notify Owner of such occurrence and deliver to Owner a revised opinion. Owner agrees that in such case (a) Owner will promptly return to the Foundation any original documentation issued to Owner expressing the Foundation's initial opinion, if it is in Owner's power to do so; and (b) Owner will use all reasonable efforts to advise a buyer or any subsequent owner known to Owner of any such change in the Foundation's opinion.

8. In the event that Owner makes a legal claim of any kind against one or more Indemnitees (as such term is defined below), Owner will be fully responsible for the payment of any and all reasonable legal fees, costs and expenses of any such Indemnitees.

9. Owner agrees that the Foundation may: (a) make and retain photographic images of the Work (including all photographic images submitted by Owner); (b) in the event the Work is

included in the Catalogue, reproduce those photographic images in the Catalogue or any other publication of the Foundation or permit reproduction in other publications pertaining to Arshile Gorky's works; (c) retain copies of all documents, information and images submitted by Owner to the Foundation related to this Agreement; and (d) in the event the Work is included in the Catalogue, include any such information or images submitted by Owner to the Foundation in the Catalogue. The Foundation also may retain in its files a copy of any documentation issued to Owner expressing the Foundation's opinion, if any, and make copies of any such documentation available at the request of persons who the Foundation in its sole and exclusive discretion determines to have an appropriate interest.

10. Owner hereby indemnifies the Foundation and all members, officers, directors, agents, representatives, employees, and independent contractors of, and all others at any time acting for, the Foundation (collectively, the "Indemnitees" and individually an "Indemnitee") against, and agrees to defend and hold each of the Indemnitees harmless from, any claim or liability asserted (a) by Owner or any person or entity acquiring the Work from Owner ("Buyer") or by any person or entity from whom Owner or any predecessor in interest acquired the Work, which claim or liability is based directly or indirectly on any opinion from the Foundation relating to the authenticity of the Work or any other action by the Foundation or any other Indemnitee in connection with the Work, including without limitation any claim that an opinion expressed is not correct, or (b) by any other person to whom Owner or Buyer has made any statement or representation with respect to the authenticity or non-authenticity of the Work, or any action of the Foundation or any other Indemnitee in connection therewith. Owner also hereby agrees to pay or reimburse each Indemnitee for all costs and expenses incurred by any and all Indemnitees in connection with any such asserted claim or liability including without limitation the reasonable fees, costs and expenses of legal counsel.

11. Owner and the Foundation hereby waive any right to trial by jury, and consent to the exclusive jurisdiction and venue of the state courts of, or federal courts sitting in, the State of New York, County of New York, in any proceeding arising under or related to this Agreement.

12. This Agreement will be governed by and construed in accordance with the laws of the State of New York without regard to conflict of law principles. The language of this Agreement shall be construed as a whole, according to its fair meaning, and may not to be construed as favoring any party over any other party.

13. This Agreement is the entire agreement of the parties hereto and it supersedes any and all prior or contemporaneous agreements or understandings with respect to the subject matter of this Agreement. No waiver, amendment, modification or supplementation of any provision of this Agreement will be valid unless it is in a writing that expressly refers to this Agreement and is signed by both the Owner and the Foundation. This Agreement is binding on the Foundation's and Owner's heirs, successors and assigns.

14. If any provision of this Agreement is for any reason held invalid, illegal or unenforceable, any such holding will not affect the validity of this Agreement or any of its other provisions. Instead, this Agreement shall be interpreted and construed as if such provision, to the

extent held invalid, illegal or unenforceable, had not been included in the Agreement.

15. This Agreement may be executed in counterparts and delivered by mail, facsimile or PDF each of which shall be deemed an original and all of which shall constitute one and the same document.

[Intentionally Left Blank]

THE ARSHILE GORKY FOUNDATION

By: _____
(Signature)

Print Name: _____

Title: _____

ACCEPTED AND AGREED TO:

Signature of Owner

Print Name of Owner

Signature of 2nd Owner (if any)

Print Name of 2nd Owner