

DRAFT

[Gallery Letterhead]

ART CONSIGNMENT AGREEMENT

[Artist as Consignor]

This Art Consignment Agreement ("Agreement") is made this ____ day of _____, 199_, by and between [Name of Artist/Consignor], ("Consignor, as more particularly described in paragraph 1.2), and THE PETERS CORPORATION, (The Consignee," as more particularly described in paragraph 1.2).

ARTICLE 1: GENERAL PURPOSES AND DEFINITIONS

1.1 **Purpose.** Consignor is an artist and as such is the owner of and has control over certain art works created by Consignor. Consignor desires that certain works of fine and applied art, all as described on Exhibit "A" as the Exhibit is accepted by Consignee, shall be consigned to Consignee for sale and for display under the terms and conditions as set forth in this Agreement. It is the purpose of this Agreement to set forth between Consignor and Consignee the terms and conditions under which such works of fine and applied art will be consigned for sale.

1.2 **Definitions.**

A. "Consigned Works" means those works of fine and applied art, including without limitation, all art, sculpture, prints, and paintings (in whatever medium), all created, produced and owned by [Name of Artist], Consignor herein, which are consigned for sale and display as contemplated under this Agreement and which works are described in Exhibit "A" which is attached hereto and by this reference incorporated herein. The description of the works on Exhibit "A" shall, at a minimum, include for each work the title, size, medium, year created, and, if available, the artist's serial number or number representing the order in which the works were created. Additions to or deletions from Exhibit "A" shall be by addendum thereto and signed by the parties.

C. "Consignor" means, [name of artist] [a single person] [a married person acting with respect to her (or his) sole and separate property], a resident of _____, and the artist and creator of each of the Consignor Works.

D. "Consignee" means The Peters Corporation, a corporation organized under the laws of the State of New Mexico, acting through its authorized representatives, including the Gerald Peters Gallery in Santa Fe, New Mexico. It is contemplated that Consignee may receive delivery, make sales or take other acts in furtherance of this Agreement through the Santa Fe location and the Gerald Peters Gallery, Dallas, Texas.

E. "Net Sales Price" means fifty percent (50%) of the suggested retail price as determined by the parties and as shown on Exhibit "A" with respect to each of the Consigned Works, less discounts, deductions and adjustments as provided in this Agreement. The "Net Sales Price" shall also include fifty percent (50%) of the excess, if

any, over the suggested retail price as may be received by Consignee from the sale of a Consigned Work.

F. "Insured Value" means seventy-five percent (75%) of the suggested retail price as reflected on Exhibit "A" for each of the Consigned Works, which value shall be the minimum value for the purpose of determining the proper amount of insurance to be maintained by Consignee on the Consigned Works and shall not be construed to restrict the parties concerning the retail sales price of the Consigned Works.

ARTICLE 2: CONSIGNMENT AND LICENSE

2.1 Consignment. Consignor agrees to consign the Consigned Works to Consignee for sale under the terms, and for the Term, as set forth in this Agreement. Consignee agrees to accept the consignment of the Consigned Works under the terms and conditions set forth in this Agreement.

2.2 License to Display and Sell. Consignor grants to Consignee, for the purposes and under the terms of this Agreement, the license to sell and to display the Consigned Works. This license is exclusive and worldwide. ?

2.3 Title. This Agreement represents a consignment of the Consigned Works to Consignee and, except as may be expressly set forth herein, is not and shall in no way be construed as a transfer of title nor as a sale to Consignee. Title to the Consigned Works shall remain in Consignor and shall pass from Consignor, to the purchaser or purchasers of the Consigned Works upon Consignor's receipt of payment pursuant to the terms of this Agreement. Consignee may deliver an invoice to each purchaser evidencing the sale. The Consignee shall further perform all acts required by law to preserve and protect the rights of Consignor to the Consigned Works.

3 yrs
3+1 yrs

2.4 Term. The term of the consignment under this Agreement shall be for a period of three (3) years commencing _____, 199_, and ending on _____, 199_. The term of the consignment shall automatically extend for one year beyond the date of the opening of any one-person exhibition of the Consigned Works for which Consignor has given its prior written consent and which exhibition is arranged by Consignee. Subject to such one year extension beyond the opening of a one-person exhibition, commencing _____, 199_, the term of the consignment shall automatically be extended for additional one (1) year periods, unless a party shall have delivered written notice of intent to terminate pursuant to paragraph 6.1 of this Agreement.

2.5 Exclusive Consignment. During the Term of this Agreement and any renewals thereof, Consignor grants to Consignee the sole and exclusive right to sales of works of art created by Consignor worldwide, whether or not such works are now or shall later be in existence. Consignee shall have the right to contract with third parties, on such terms as Consignee, in its sole discretion, shall deem appropriate, including galleries, art dealers or museums, to act as agents of Consignee pursuant to and in furtherance of the

Artist?
Territory?
Partners?
Agent House?

terms of this Agreement. Any payments made or commissions paid to such third parties shall be made in accordance with subparagraph 2.6.2 of this Agreement.

2.6 **Sales Proceeds.** Upon the sale of the Consigned Works, or any of them, Consignee shall collect, from the purchaser or purchasers, all sale proceeds, including all applicable sales, gross receipts, or other applicable taxes or duties incident to the sale or sales of the Consigned Works, or any of them. Discounts, deductions and payments shall be as follows:

2.6.1. **Discounts.** Consignee may grant discounts up to fifteen percent (15%) of the suggested retail price shown on Exhibit "A". The reduction in the suggested retail price for each discount granted shall be shared pro rata by the parties. Consignee shall bear the full cost of any discount to the extent that it exceeds fifteen percent (15%) of the suggested retail price shown on Exhibit "A", unless the parties shall agree in writing as to the portion of such excess discount to be borne by Consignor. Discounts for purchases by Consignee shall not be taken without the prior written consent of Consignor, which consent shall include a statement of the portion of such discount to be borne by Consignor;

2.6.2 **Commissions to Third Parties.** In the event that Consignee shall choose, in Consignee's sole discretion, to contract with third parties, including other galleries or art dealers, to act as agents for the sale of the Consigned Works or any of them, Consignee shall determine the amount or percent of the suggested retail price to be retained by such third party as such third party's commission and the first twenty percent (20%) of such commission paid shall not be included in the computation of the Net Sales Price and shall be deducted from the retail price before computing the Net Sales Price; the resulting net shall be shared equally by Consignor and Consignee, less any discounts or deductions as provided in this Agreement; in the event of third party commission payments which exceed twenty percent (20%) of the suggested retail price, the Consignee shall deduct such excess sum from Consignee's share of the proceeds;

2.6.3 **Deductions.** In addition to deduction for discounts or third party commissions as set forth in subparagraphs 2.6.1 and 2.6.2 above, deduction from payments shall be made for the cost of framing, cleaning, or restoration as may be required at the time of delivery and for other expenses incurred by Consignee and to be reimbursed by Consignor pursuant to paragraphs 2.8, 3.2, 4.2 and 4.4 of this Agreement and such other deductions upon which the parties may from time to time agree in writing; and

2.6.4 **Payments to Consignor.** Consignor shall be entitled to receive the Net Sales Price for each Consigned Work, as adjusted by any commissions paid to third parties and less Consignor's share of any discount or of any deductions then owed, with such payments to be made on the fifteenth day of the month following Consignee's receipt of funds from a purchaser or purchasers. On any installment sales, the Net Sales Price shall be deemed to be the first fifty percent (50%) of the proceeds received therefrom; no

installment sales shall be made for periods which exceed twelve (12) months without the prior written consent of the Consignor.

2.7 **Approvals or Transfers.** Any transfer of possession of a Consigned Work to a purchaser or potential purchaser, whether incident to an outright sale or an installment sale or on approval, shall be at Consignee's sole risk. Any transfer of possession of a Consigned Work to a dealer or any third party shall also be at Consignee's sole risk. However, if a transfer of possession is made at the express written direction of Consignor, then such transfer shall be at Consignor's sole risk.

2.8 **Delivery.** Consignor shall be responsible for delivery of the Consigned Works and each of them to Consignee at its designated location in _____. Each Consigned Work shall be reflected on Exhibit "A" or an addendum thereto, and shall be accompanied by a condition report. Delivery shall be deemed to have occurred upon written notice of acceptance by Consignee to Consignor. If any of the Consigned Works are not received by Consignee in the same condition as shown on the condition report, Consignee shall immediately notify Consignor and repairs shall be made under the supervision of Consignee and at Consignor's expense. The cost of such repairs shall be deducted from the sales proceeds pursuant to subparagraph 2.6.3 of this Agreement. Consignee shall be responsible for transfer of the Consigned Works, or any of them to other locations for delivery of the Consigned Works to purchasers of the Consigned Works and for the delivery of any unsold Consigned Works to Consignor upon termination of this Agreement.

ARTICLE 3: OTHER UNDERTAKINGS OF CONSIGNEE

3.1 **Promotional Activities, Advertising and Marketing.** Consignee shall endeavor to enhance and promote the artistic reputation of Consignor and the market for Consignor's works. Consignee shall advertise and publicize each exhibition of Consigned Works in such national, regional and local print media and cause to be prepared such catalogues or brochures as Consignee shall deem to be necessary and appropriate to the purposes of this Agreement. As set forth more fully in paragraphs 5.2 and 5.3 of this Agreement, Consignor grants to Consignee the permission and right to reproduce, by transparencies or otherwise, in print or other media, the Consigned Works, or any of them, for any advertising or promotional purpose necessary or appropriate in accordance with Consignee's advertising program.

3.2 **Exhibitions.** Consignee shall endeavor to arrange one-artist exhibits for the Consigned Works and to arrange for inclusion of the Consigned Works in group exhibits. All expenses for display and exhibit of the Consigned Works, or any of them, at the Gerald Peters Gallery, Santa Fe, New Mexico, or at the Gerald Peters Galleries in New York, New York, or Dallas, Texas, shall be borne by Consignee. All expenses for display and exhibit of the Consigned Works or any of them at other locations in the United States or in other countries shall be borne equally by Consignor and Consignee, except that Consignee shall be free to contract with third parties (e.g. other galleries) to bear or

share the costs of display and exhibition, and Consignor and Consignee shall share, pro rata, the benefit of any such contribution by third parties. Any costs borne by Consignor pursuant to this paragraph shall be deductions from the sales proceeds pursuant to subparagraph 2.6.3 of this Agreement.

3.3 Insurance. Consignee shall, at its sole expense, provide insurance coverage for the Consigned Works, from the time of acceptance of the Consigned Works in _____ until the Consigned Works shall have been sold and delivered to a purchaser or purchasers or returned to Consignor. Such insurance shall be under Consignee's standard "all risk" fine arts policy of insurance, subject to standard exclusions in such policies, under which the Consignor shall be a designated additional beneficiary. Insurance shall be in an amount equal to the aggregate of the Insured Value for all of the Consigned Works as shown on Exhibit "A".

3.4 Loss of or Damage to Consigned Works. Consignee shall bear the risk of loss of, and be responsible for, all loss and expense resulting from the damage to, the loss of or the destruction or theft of, the Consigned Works, or any of them, or of any levy or attachment or any court process or lien on such Consigned Works or any of them, from the time of delivery by Consignor to Consignee in _____ until such time as title to each such Consigned Work shall have passed from Consignor to a purchaser by reason of sale or until each such Consigned Work which has not been sold shall have been returned to Consignor.

3.5 Return Consigned Works in Same Condition. Consignee agrees that it shall assure that each of the Consigned Works will be maintained in the condition such Consigned Works were in at the time of acceptance by Consignee, or as enhanced by subsequent restoration, cleaning or framing. Consignee agrees that if there is any damage to a Consigned Work at the time such Consigned Work is sold to a purchaser or is returned to Consignor, such damage shall be repaired at Consignee's expense. However, it is understood by the parties that all tangible objects are subject to gradual inherent deterioration for which neither party is responsible

3.6 Inventory and Statements of Account. Consignee shall deliver to Consignor a statement of account within thirty (30) days after the end of each calendar year. Consignee shall warrant that the statement of account is accurate, true and complete in all respects. Upon reasonable notice and by appointment with the registrar during normal business hours, Consignor shall have the right to inspect, at Consignee's administrative offices in Santa Fe, New Mexico, the financial records of Consignee which pertain to any transaction involving any of the Consigned Works. The annual statement of account shall include the following information:

- a. An itemization of the Consigned Works held by Consignee, including the date each of the Consigned Works was delivered to Consignee;
- b. The date, price and terms of the sales for each Consigned Work sold during the year;

The names and address of buyer

c. The payments made to Consignor, and any amounts owed to Consignor on installment purchases; and

d. The particularly described location of each unsold Consigned Work, including whether such work is currently displayed.

ARTICLE 4: OTHER UNDERTAKINGS BY CONSIGNOR

4.1 Availability of Consigned Works. Consignor shall make available and deliver works of art created by Consignor to Consignee for consignment under the terms of this Agreement.

*Description
size
medium
date
condition*

4.2 Delivery and Framing of Consigned Works. Consignor shall deliver the Consigned Works at Consignor's expense to Consignee in _____.

A condition report shall be delivered to Consignee with the Consigned Works. In the event that particular Consigned Works require cleaning, restoration or framing at the time of delivery, Consignee shall so notify Consignor. Consignee shall supervise the necessary cleaning, restoration, or framing, with the cost thereof to be borne by Consignor as a deduction from the sales proceeds pursuant to subparagraph 2.6.3 of this Agreement.

4.3 Taxes. Consignor shall be responsible for payment of any income or other taxes imposed upon the Consignor's share of the sales proceeds received by Consignor under this Agreement and Consignee shall not be responsible for any withholding with respect to such taxes.

4.4 Cooperation and Client List. Consignor shall cooperate with Consignee in furtherance of Consignee's promotional and advertising activities. Consignor will provide biographical information and information concerning the Consigned Works as will further the purposes of this Agreement. Consignor shall provide Consignee with that portion of Consignor's client list which relates to or may facilitate sales of the Consigned Works for use in Consignee's promotional and advertising activities pursuant to and in furtherance of this Agreement.

Prints/Books?

4.5 Statement of Account and Payment to Consignee. Consignor shall provide the Consignee with a statement of account within thirty (30) days after the end of each calendar year, which statement of account shall describe any work of art created by or derivative of any work of art created by Consignor which had been sold by Consignor or Consignor's agents during the preceding calendar year, the location and identity of the purchaser and the amount received on such sale. Consignee shall have the right, upon reasonable notice, to inspect the financial records of Consignor as they pertain to the sale of works created by Consignor. In the event that any such works are sold by Consignor or Consignor's agents, Consignee shall be entitled to a commission equal to one-half the retail price paid to Consignor, with payment therefore to be made as a deduction from the sales proceeds pursuant to subparagraph 2.6.3 of this Agreement.

*After
Photo
Portrait?*

ARTICLE 5: TITLE AND REPRODUCTION RIGHTS

5.1 Creation and Title. Consignor warrants that each of the Consigned Works is genuine and was created by Consignor and that the Consignor has the authority to transfer marketable and unencumbered title to the Consigned Works and each of them. Title to the Consigned Works shall remain in the Consignor, until title passes to a purchaser or purchasers after payment to Consignor in accordance with the terms of this Agreement.

5.2 Copyright and Reproduction Rights. With respect to the copyright to and reproduction of the Consigned Works, the parties agree that the rights to display or copy the Consigned Works are subject to the following:

a. Consignor reserves and retains the copyright to the Consigned Works, together with the right to copy, photograph or reproduce the Consigned Works and Consignor's copyright and reproduction rights are reserved and asserted to the full extent allowed and protected by the copyright laws of the United States;

b. Consignor grants to Consignee permission to reproduce the Consigned Works for catalogues, brochures, invitations, note cards, posters or promotional materials pursuant to paragraphs 3.1 and 5.3 of this Agreement.

c. Consignee shall display in a prominent place during all exhibits or shows of the Consigned Works a sign advising that the Consigned Works may not be copied, photographed or reproduced; Consignee will use its best efforts to prevent violations thereof;

d. All approved reproductions by Consignee, in its catalogues, brochures, advertisements, and other promotional literature, shall carry the following notice: "© by Artist 199_ (year of publication)."

e. Consignor grants to Consignee the permission and right to photograph, for Consignee's files and archives and to make sales presentations, each of the Consigned Works. Consignee shall be the owner of its file and archival photographs or transparencies but, except as set forth in paragraphs 5.2 and 5.3 of this Agreement, shall not display or further reproduce said photographs or transparencies without the prior consent of Consignor. Upon Consignor's request, Consignee shall provide copies of any such photographs or transparencies to Consignor at Consignor's expense.

f. During the term of this Agreement, Consignor agrees that no license to display or reproduce the Consigned Works or any of them shall be given to any person without the prior written consent of Consignee.

5.3 Catalogues. Consignee may, at Consignee's expense, include reproductions of the Consigned Works in brochures, catalogues, invitations or promotional materials in connection with displays or exhibitions of the Consigned Works. In addition, Consignee may, at Consignee's expense, reproduce the Consigned Works or any of them for publication as note cards, posters or the like. Any published reproduction of a Consigned Work shall include in a prominent place language substantially as follows: "Photographs or reproductions of works included in this publication are made with the express permission of [the artist] for the limited purpose of reproduction herein. Any

other use of the photographs or reproductions in this publication is expressly prohibited." All design decisions with respect to any catalogue or other publication shall be made by the Consignee.

ARTICLE 6: TERMINATION AND DEFAULT

6.1 Termination. This Agreement shall remain in full force and effect until the Consigned Works shall have been sold, or unsold Consigned Works shall have been returned to and accepted by Consignor and Consignor has received payment of all monies due hereunder. Following the expiration of the initial term of this Agreement which shall end _____, 199_, either party may terminate this Agreement by giving ninety (90) days written notice to the other party, except that the Agreement may not be terminated for one year (1) following the opening of a one-person exhibition to which Consignor has consented and which is arranged by Consignee. Upon termination, Consignee shall return all unsold Consigned Works at Consignee's sole expense to Consignor at Consignor's address as shown in paragraph 8.3 of this Agreement or at such other place as Consignor may designate in writing. Termination of this Agreement shall not terminate the promises, covenants, rights and duties herein imposed and the same shall survive and be in effect.

6.2 Default. Should either party to this Agreement default or otherwise fail to comply with the terms of this Agreement, in addition to, and limited by, such party's rights as set forth in this Agreement, and particularly as may be circumscribed by the arbitration provisions set forth in paragraph 7.3, the nondefaulting party shall, at its option, be entitled to seek specific performance, to seek recovery of damages, to rescind this Agreement, or to seek any other remedy provided for by law or in equity.

ARTICLE 7: GOVERNING LAW AND JURISDICTION

7.1 Application of New Mexico Law. This Agreement shall be subject to and construed in accordance with the laws of the State of New Mexico. The parties agree that this Agreement is deemed to have been made in the State of New Mexico.

7.2 Applicability of the Artists' Consignment Act. The parties agree that the Consigned Works are "art," that the Consignor is an "artist," and that the Consignee is an "art dealer," all within the meaning of the Artists' Consignment Act, Sections 56-11-1 *et seq.* (NMSA 1978), and that the Consigned Works will be and are delivered to Consignee for the purposes of sale within the meaning of that Act.

7.3 Arbitration. Any controversy or claim arising out of or relating to this Agreement or its breach, including this paragraph 7.3, shall be resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be held in Santa Fe, New Mexico, or at such other location as the parties may agree. The arbitrator's award, including injunctive relief, if any, shall be final, and judgment may be entered upon it in any court having jurisdiction

thereof. The prevailing party in such proceeding shall be entitled to recover such party's reasonable costs and attorneys' fees incurred in connection therewith.

ARTICLE 8: GENERAL

8.1 Binding Effect. This Agreement shall be binding upon Consignor and Consignee and their respective principals, agents, employees and all others on whose behalf either of them may be acting and who may be acting on behalf of either of them.

8.2 Assignability. Neither this Agreement, nor the obligations or benefits hereunder, may be assigned by either Consignor or Consignee without the express written consent of the other party, except that it is expressly understood and agreed that Consignee may, consistent with and pursuant to the terms of this Agreement, contract with third parties for exhibition, display or sale of the Consigned Works, or any of them and may require such third parties to pay costs associated therewith.

8.3 Notices. All notices or other correspondence contemplated, incident to or required by this Agreement shall be given to the parties at their addresses as follows:

Consignor:

Consignee:

Gerald Peters Gallery
The Peters Corporation
439 Camino del Monte Sol
Post Office Box 908
Santa Fe, New Mexico 87504
Telephone: (505) 988-8961
Telecopier: (505) 983-2481

Such notices or other correspondence shall be deemed given or made when mailed, postage prepaid, by registered or certified mail, return receipt requested.

8.4 Payments. Payments shall be deemed made when the funds have actually been received by the party entitled thereto. Payments shall be made to the parties at their respective addresses as shown in paragraph 8.3.

8.5 Non-Waiver. The terms of this Agreement may not be waived, modified or changed except by written agreement between the parties.

8.6 Captions and Severability. The captions in this Agreement are for convenience or reference only and shall not define, limit or qualify the provisions hereof. If any part of this Agreement is held to be illegal, void or unenforceable for any reason, such holding shall not affect the validity and enforceability of any other part,

8.7 Confidentiality. This Agreement, and the terms hereof, including, without limitation, client lists, the names and addresses of purchasers and the prices paid or to be paid for the Consigned Works, or any of them, shall remain confidential and shall be made only to those persons or entities as shall be necessary to accomplish the terms and purposes of this Agreement.

8.8 Entire Agreement. This Agreement constitutes the complete and exclusive statement of the entire agreement between the parties with respect to the consignment and the Consigned Works, and there are and have been no verbal or other representations, undertakings, agreements, or promises related to this Agreement not incorporated herein.

8.9 Relationship of Parties. This Agreement is not intended to create, nor shall anything contained herein be construed to create, any partnership between or among the Consignor and the Consignee. Other than as expressly set forth in this Agreement, nothing in this Agreement shall authorize or empower either party to assume or create any obligation or responsibility whatsoever, express or implied, on behalf of or in the name of the other party or to bind the other party in any manner, or make any representation, warranty or commitment on behalf of the other party; this Agreement being limited to its express terms and the consignment of the Consigned Works.

8.10 Execution in Counterparts. This Agreement is executed in two or more counterparts, each of which shall be an original, and each of which together shall comprise one instrument.

IN WITNESS WHEREOF, Consignor and Consignee have signed, executed and become bound by the terms of this Agreement.

CONSIGNOR:

By _____

CONSIGNEE

THE PETERS CORPORATION

By _____

ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 199_, by _____, who certified to me that he/she is the creator and owner of the Consigned Works and is fully authorized to execute the foregoing Agreement in furtherance of the consignment and sales contemplated thereunder.

Notary Public

My Commission Expires:

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 199_, by _____, _____ of The Peters Corporation, a New Mexico corporation, who certified to me that he/she is the duly authorized representative of the corporation and is authorized to execute the foregoing Agreement in behalf of the corporation.

Notary Public

My Commission Expires:

ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 199_, by _____, who certified to me that he/she is the creator and owner of the Consigned Works and is fully authorized to execute the foregoing Agreement in furtherance of the consignment and sales contemplated thereunder.

Notary Public

My Commission Expires: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 199_, by _____, _____ of The Peters Corporation, a New Mexico corporation, who certified to me that he/she is the duly authorized representative of the corporation and is authorized to execute the foregoing Agreement in behalf of the corporation.

Notary Public

My Commission Expires: