

# Borrower's Agreement



CONDITIONS GOVERNING OUTGOING LOANS

The following loans are currently on site at the War Memorial and Performing Arts Center campus.

**Loan number(s):** LOEXT.2003.002-003

**Date:** April 13, 2023

**Borrowing Institution:** San Francisco War Memorial & Performing Arts Center

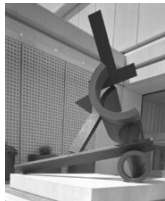

**Contact:** Rob Levin  
Acting Managing Director  
San Francisco War Memorial & Performing Arts Center  
401 Van Ness, Room 110  
San Francisco, CA 94102  
415-554-6308  
rob.levin@sfgov.org

**Exhibition:** Ongoing loan of Fletcher Benton *Balanced - Unbalanced T*, from the series *Balanced – Unbalanced* and Peter Voulkos, *Hiro II*

**Venue(s)/Date:** Fletcher Benton *Balanced - Unbalanced T*, from the series *Balanced – Unbalanced*, on display at the San Francisco Symphony  
201 Van Ness Ave, San Francisco, CA 94102, north terrace

Peter Voulkos, *Hiro II* on display at the War Memorial Building, 401 Van Ness Ave, San Francisco, CA 94102, front lawn

April 13, 2023 – January 31, 2024 (the “Initial Term”) and the Loan shall automatically renew for subsequent one-term terms after the Initial Term unless terminated in accordance with this Agreement.

LOANED WORK	INSURANCE VALUE
 <p>81.147.A-C Fletcher Benton <i>Balanced - Unbalanced T</i>, from the series <i>Balanced - Unbalanced</i> enamel on mild steel 161 1/4 in. x 130 in. x 134 in. (409.58 cm x 330.2 cm x 340.36 cm) <b>Credit line:</b> San Francisco Museum of Modern Art Gift of William S. Picher and Wally Goodman</p>	<p>\$90,000.00</p>
 <p>71.66 Peter Voulkos <i>Hiro II</i></p>	<p>\$800,000.00</p>

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bronze 96 in. x 328 in. x 84 in. (243.84 cm x 833.12 cm x 213.36 cm); 87 3/8 in. (222.0 cm); 290 in. (736.6 cm); 178 1/8 in. (452.4 cm) <b>Credit line:</b> San Francisco Museum of Modern Art T. B. Walker Foundation Fund purchase and anonymous gift	
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## General Conditions

The Borrower agrees to the condition described in this loan agreement (“Borrower’s Agreement”) and any additional conditions or requirements provided to Borrower by SFMOMA in writing, and agreed to in writing by Borrower. If Borrower’s own loan agreement differs in language, the SFMOMA Borrower’s Agreement will supersede.

The Borrower must request any change in the schedule, venue(s) or other conditions of the Borrowers Agreement in advance and in writing from the lending curatorial department. If granted, approval by SFMOMA will be confirmed in writing. Loaned Work must be placed on display; no work can be stored, even temporarily, without SFMOMA’s approval.

## Care of Loaned Works

At all times, Borrower will take care to prevent loss or damage to the Loaned Work. Except as provided herein, the Loaned Work shall not be conserved, cleaned, repaired, retouched, framed, unframed or glazing changed or removed from mats, mounts or bases, rewired, duplicated, migrated to a new medium or altered in any way whatever except with SFMOMA’s prior written permission. Hanging hardware, brackets, cables and plugs may not be replaced or removed, and the Loaned Work may not be subjected to technical examination of any type, unless Borrower has obtained SFMOMA’s prior written permission.

**Environment and Security** Notwithstanding any other provision of this Agreement, SFMOMA agrees and understands that the Loaned Work is located in a public space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment.

1. Loaned works will be in a location protected by 24-hour security.
2. A security camera will be directed toward the work and monitored by security.
3. SFMOMA reserves the right to install a stanchion (barrier) around the work.
4. Maintenance staff will be properly trained in the methods maintenance around the work. No machinery will be used in close proximity of the work.

## Damages/Repairs

Borrower will assume all responsibility for damages and costs associated with repairs.

If changes to the mounts are necessary, Borrower will advise SFMOMA and will cover the costs of those changes.

## Annual Maintenance

Borrower’s staff must report any damage, loss, or other change in condition of the Loaned Work to SFMOMA staff within 24 hours (weekday) or 48 hours (weekends). **Please contact:** Kelly Parady, Associate Registrar, Collections & Loans Out, 415-357-4079 and/or Michelle Barger, Head of Conservation, 415-357-4052.

# Borrower's Agreement

## CONDITIONS GOVERNING OUTGOING LOANS

Borrower shall contract a private conservator directly to perform annual maintenance (frequency as needed, to be determined by consulting conservator). Recommended conservators are pre-approved by SFMOMA Conservation and are listed below:

- Rowan Geiger (415) 407-0728; rowan@sfartconservation.com
- Tracy Power (415) 824-8762; tracybpower@gmail.com
- **Borrower will contact Kelly Parady, Associate Registrar, Loans Out, 415-357-4079 once appointment is confirmed.** \_\_\_\_\_ initial
- Borrower will provide equipment for maintenance as needed.

### Shipping and Transportation

a.) The Borrower must consult with and obtain advance approval from the SFMOMA Registrar before moving the Loaned Work from the locations listed above. .

b.) Selection of transport company/agent must be approved 60 days in advance of release of Loaned Work by SFMOMA registrar. SFMOMA reserves the right to request a transport company/agent other than the one selected by the Borrower. Only Fine Arts trucks with climate control, air-ride suspension, dual drivers and lift-gate may be used. Transportation must be arranged as last-on and first-off for the assembly and dispersal, or via an exclusive Fine Arts truck.

### Packing, Unpacking and Installation

a.) Only qualified members of the Borrower's staff (no interns or volunteers) may pack, and handle Loaned Work. Commercial firms, if used, must be approved in advance by the SFMOMA Registrar and must always be supervised by the Borrower's staff.

b.) SFMOMA has inspected and approved the Loaned Work as currently installed. Borrower may not alter the current installation in any way whatever except with SFMOMA's prior written permission. Authorized variations to installation should be recorded and documentation (diagrams, photo documentation, etc.) must be provided by Borrower to SFMOMA.

### Commercial Insurance, Indemnity and Immunity

It is understood that The City of San Francisco is self-insured and will provide a letter stating that the Loaned Work noted on this borrower's agreement is insured.

a.) The Borrower is responsible for this loan on a wall-to-wall (nail-to-nail) basis, for the amount indicated on the Borrowers Agreement, against all risks of physical loss or damage from any external cause while in transit and on location during the period of the loan.

b.) Notwithstanding the foregoing or any other provision of this Agreement, in the event of loss of or damage to any Loaned Work(s) the amount payable, if any, from the insurance secured by Borrower under this Agreement shall be the sole recovery available to the lender for such Loaned Work(s) from Borrower and the City and County of San Francisco.

### Damage, Loss, Theft

In the event that the Loaned Work or the associated equipment fails, is damaged, lost or stolen, whether in transit or while on exhibition, the Borrower must immediately (within 24 hours) notify SFMOMA's Registrar by phone and e-mail, followed by a written report of the circumstances, including photographs.

- **Contact:** Kelly Parady, Associate Registrar, Collections & Loans Out, 415-357-4079; [kparady@sfmoma.org](mailto:kparady@sfmoma.org)

# Borrower's Agreement



## CONDITIONS GOVERNING OUTGOING LOANS

In the event of an emergency, the Borrower must take all steps to prevent any additional damage to the Loaned Work. No repairs or conservation work shall be made of the Loaned Work without SFMOMA's prior written consent.

### Loan Costs

a.) The Borrower shall be responsible for all expenses of the loan, whether incurred by SFMOMA or by the Borrower. SFMOMA's service provider(s) will bill Borrower directly for certain loan expenses, such as, but not limited to, crating, packing, shipping and customs formalities, and equipment servicing/maintenance. SFMOMA will bill Borrower for any necessary framing, mounting, matting, glazing, handling fees, intra-storage trucking fees, duplication and migration of media, reimbursement of insurance premium, insurance premiums, conservation (where relevant) and other related expenses. If Borrower cancels the loan, any expenses already incurred will be billed to the Borrower. We reserve the right to withhold shipment pending the payment in full of any outstanding sums due SFMOMA.

### Photography, Catalogues and Credit Line

a.) While on exhibit, SFMOMA understands that the Loaned Work is in a public space and may be photographed and/or videotaped by the general public or others. Borrower is not responsible for third party uses of the work..

b.) Photographic material for merchandise development, publication, publicity, research, and educational use can be provided upon request. Please contact:

David Rozelle  
Rights and Digital Assets Assistant  
San Francisco Museum of Modern Art  
151 Third Street  
San Francisco, CA 94103  
P: 415-538-2694  
[drozelle@sfmoma.org](mailto:drozelle@sfmoma.org)

c.) Borrower is responsible for obtaining any necessary licenses, permissions or consents from third party rights holders in connection with using images provided by SFMOMA.

d.) The Borrower may not use images of the Loaned Work to create merchandise (including but not limited to posters, postcards, magnets, or other commercial goods) or for marketing purposes without first obtaining SFMOMA's written permission. To request SFMOMA's permission for these uses see above for contact information.

e.) Borrower may photograph or film the Loaned Work as part of an installation view, as an internal record of the specific installation and exhibition. SFMOMA will be provided with one copy of any such material upon request.

f.) Information about the Loaned Work for use on wall labels, in catalogues, for publicity and any other purpose must conform to the catalogue data, including the full credit line (see page 1) as furnished by SFMOMA. Complimentary copies of any catalogue, brochure or checklist should be sent to each of SFMOMA's lending curatorial department(s), with an additional copy sent to the SFMOMA Library.

### Recall or Cancel

SFMOMA reserves the right to recall or cancel the loan if the conditions are not met or if SFMOMA deems such recall or cancellation is in its best interest.

### Notice

Notices required under this Borrower's Agreement or applicable law shall be sent to the contacts below, which may be updated by written notice to the other party.

# Borrower's Agreement

CONDITIONS GOVERNING OUTGOING LOANS

**For SFMOMA:**

Attn: Kelly Parady, Associate Registrar, Collections & Loans Out  
151 Third Street  
San Francisco, CA 94103  
Phone: 415-357-4079  
Email: [kparady@sfmoma.org](mailto:kparady@sfmoma.org)

**For Borrower:** The contact listed on Page One of this Borrower's Agreement.

**General**

The English language text of the Borrower's Agreement controls, should any question of legal interpretation of the Borrower's Agreement arise. In the event of any dispute under the Borrower's Agreement, the laws of the State of California shall apply, and the dispute shall be subject to the exclusive jurisdiction of the Courts of the State of California. Borrower hereby consents to such jurisdiction.

*[signature page to follow]*

# Borrower's Agreement

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**Agreed to and accepted:**

**The Borrower:** San Francisco War Memorial & Performing Arts Center

**Signature:**

**Name:**

**Title:**

**Date:**

**San Francisco Museum of Modern Art**

**Signature:**

Approved as to Form:

David Chiu  
City Attorney

By: \_\_\_\_\_  
**Lauren Curry**  
Deputy City Attorney

Kelly Parady  
Associate Registrar, Collections & Loans Out  
**Date:**

**Please return one copy to SFMOMA Loans Out Registration contact:**

Kelly Parady, Associate Registrar, Collections & Loans Out  
Telephone 415-357-4079, kparady@sfmoma.org

**Retain one copy for your records.**