

SUBSTITUTE AGREEMENT

SOLON H. BORGLUM ART COLLECTION

THIS SUBSTITUTE AGREEMENT ("Agreement") is entered into this 28th day of July, 2011, by and between the TOWN OF PRESCOTT VALLEY, a municipal corporation of Arizona (hereinafter the "Town"), and the PRESCOTT AREA ART TRUST, INC., a nonprofit corporation of Arizona (hereinafter the "Trust").

Recitals

The Trust acquired the collection of Solon H. Borglum sculptures and certain other art pieces (hereinafter the "Borglum Collection") from the Borglum Foundation in 1987.

On September 10, 1998, the Town and the Trust entered into an agreement for the Town to store, insure, and publicly display designated pieces of the Borglum Collection in the Town's soon-to-be-constructed Town Hall, one of several buildings planned for a parcel bounded by Civic Circle and Lake Shore Drive in Prescott Valley ("Civic Center"). The Town subsequently stored and displayed the Borglum Collection in the Town Hall.

On February 27, 2003, the Town and the Trust entered into a substitute agreement to continue the Town's possession and stewardship of the Borglum Collection (listed in Exhibit A attached hereto and made a part hereof) for an additional ten (10) year term.

On June 2, 2010, the Trust entered into a separate agreement with the Phippen Museum ("Museum") that provided, among other things, that the Trust would transfer the Borglum Collection to the Museum at the end of the term of the Trust's substitute agreement with the Town. However, circumstances have resulted in a request by the Museum for the Trust to approach the Town about returning the Borglum Collection prior to the end of the term of the substitute agreement so the Museum may display the Collection as part of the grand opening of a newly-constructed portion of the Museum.

The Town and the Trust have now reached a second substitute agreement whereby the Town will return the Borglum Collection (as listed in Exhibit A) to the Trust on or before July 28, 2011, so the Trust may deliver it to the Museum. In return, the Trust will encourage the Museum to provide the Town with other art pieces for display by the Town in the Civic Center.

The Town is specifically authorized by ARS §9-241(A) to enter into this Agreement in the name of the municipal corporation;

NOW, THEREFORE, for and in consideration of the mutual covenants and promises herein, the parties hereto agree as follows:

Agreement

SECTION 1 Substitution for Prior Agreement. This Agreement is hereby substituted for that certain agreement dated February 27, 2003, by and between the Town and the Trust.

SECTION 2 Purpose. The purpose of this Agreement is to provide for the:

(a) Return of the Borglum Collection (described in Exhibit A) to the Trust on or before July 28, 2011.

(b) Encouraging the Museum to enter into a new agreement with the Town to obtain and display for reasonable periods such art pieces from the Museum as the Town and the Museum mutually agree are appropriate for display in one or more of the buildings at the Civic Center.

SECTION 3 Trust Performances. The Trust agrees under this Agreement as follows:

(a) The Trust shall take possession of the Borglum Collection (as listed in Exhibit A) on or before July 28, 2011. In so doing, the Trust shall arrange at its sole expense for loading and transporting the Collection from the Town Hall, and shall thereafter be solely responsible for the Collection and its disposition.

(b) The Trust shall encourage the Museum to enter into a separate agreement with the Town to provide certain art pieces that the Museum and the Town mutually agree are suitable for display by the Town in its Civic Center.

SECTION 4 Town Performances. The Town agrees under this Agreement as follows:

(a) The Town shall reasonably account for and assist the Trust in loading the Borglum Collection (as listed in Exhibit A) for transport from the Town Hall, on or before July 28, 2011. No third-party costs for loading and transporting the Collection from the Town Hall shall be borne by the Town.

SECTION 5 Term. The term of this Agreement shall be from the date first-above written through December 31, 2011.

SECTION 6 Insurance. Without limiting any liabilities or other obligations of the parties hereto, the Town shall secure and continuously carry with insurers authorized to do business in Arizona and possessing a current A.M. Best, Inc. Rating of B++6 or better, the following insurance coverage with regard to storage, transportation and display of each art piece from the Museum once delivered to the Town for display under this Agreement:

Commercial General Liability insurance with a limit of not less than \$1,000,000.00 for each occurrence, with a \$2,000,000.00 Products/Completed Operations Aggregate and a \$2,000,000.00. General Aggregate Limit. The policy shall include coverage for:

- Bodily Injury
- Broad Form Property Damage
- Personal Injury
- Products and Completed Operations (including fine art), and
- Blanket Contractual (including, but not limited to, the liability assumed under the indemnification provisions of this Revised Agreement).

The insurance coverage required herein shall be maintained in full force and effect until all performances contemplated hereunder are satisfactorily completed. Failure to do so may, at the sole discretion of the Trust, constitute a material breach of this Agreement. The insurance coverage may contain deductibles or self-insured retentions.

The Trust reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein-required insurance policies and/or endorsements. The Town shall furnish the Trust with Certificates of Insurance, or formal endorsements as required by the Agreement, issued by the Town's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect. Insurance evidenced by the Certificates of Insurance shall not expire, be canceled, or be materially changed without thirty (30) days prior written notice to the Trust. If a policy does expire during the term of this Agreement, a renewal certificate must be sent to the Trust fifteen (15) days prior to the expiration date.

SECTION 7 Limitation of Town Liability for Damage or Loss. Notwithstanding any other provision of this Agreement, it is expressly understood by the parties that the Town is not obligated under this Agreement to pay the Trust, the Museum or any other third party any costs related to damage to or loss of any art piece that is the subject of this Agreement beyond the amounts recoverable by any party under the insurance coverage actually provided by the Town under this Agreement.

SECTION 8 Notices and Demands. Unless otherwise specifically provided herein, all notices, demands or other communications relating to this Agreement shall be in writing, and shall be deemed to have been duly delivered upon personal delivery or as of the second business day after mailing by United States mail, postage prepaid, addressed as follows:

TOWN: Town of Prescott Valley
c/o Town Manager
7501 East Civic Circle
Prescott Valley, AZ 86314

TRUST: Kevin Pitts
201 N. Montezuma Street
Suite 300
Prescott, AZ 86301

AND

John F. Phillips
130 Apollo Drive
Prescott, AZ 86303

Copy to: Robert Pecharich
Boyle, Pecharich, Cline & Whittington
125 North Granite Street
Prescott, AZ 86302-1191

Calvin Fuchs
Gallagher and Kennedy
201 Montezuma
Prescott, AZ 86301

These addresses may be changed by either party by giving notice in writing. Such changes shall be deemed to have been effectively noticed five (5) days after being mailed by the party changing the address.

SECTION 9 Amendments of Agreement. Except as otherwise provided herein, this Agreement may be amended only by a written agreement fully executed by the parties hereto.

SECTION 10 Successors-in-Interest and Assignments. This Agreement shall inure to the benefit of and shall be binding upon the successors-in-interest of each of the parties hereto. The Trust shall have the absolute right to assign all or any part of its

rights hereunder to any one or more persons or entities, on such terms and conditions as it may deem appropriate; provided, however, that the Trust may not convey its rights hereunder unless either (a) the corresponding obligations of the Trust are assumed by the assignee of the Trust's rights, or (b) the Trust remains obligated to perform its obligations hereunder after such assignment.

SECTION 11 Default. Failure or unreasonable delay by either party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days (the "cure period") after written notice thereof from the other party, shall constitute a default under this Agreement; provided, however, that if the failure or delay is such that more than 30 days would reasonably be required to perform such action or comply with any term or provision hereof, then such party shall have such additional time as may be necessary to perform or comply so long as such party commences performance or compliance within said 30-day period and diligently proceeds to complete such performance or fulfill such obligation. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event such default is not cured within the cure period, the non-defaulting party shall have all rights and remedies which may be available under law or equity including, without limitation, the right to specifically enforce any term or provision hereof and/or the right to institute an action for damages.

SECTION 12 Waiver of Breach. No waiver by either party of a breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein-contained.

SECTION 13 Cooperation and Alternative Dispute Resolution. To further the commitment of the parties to cooperate in the implementation of this Agreement, the Town and the Trust shall each designate a representative to act as liaison with the other party in the administration of this Agreement and the resolution of disputes hereunder. The Town's initial representative shall be the Town Manager or his designee. The Trust's initial representative shall be its President. The designated representative may be changed by either party in a writing mailed to the other party as provided in Section 8 hereinabove.

Any controversy or claim arising out of, or related to, this Agreement, or the making, performance, or interpretation thereof, may be settled by arbitration in Yavapai County, Arizona, in accordance with the then-existing rules of the American Arbitration Association or, in the event the American Arbitration Association shall not then be in existence, the rules of any other comparable organization, upon written request of either party hereto delivered no later than 30 days after said party became or should have become aware of the issue. Judgment on any ensuing arbitration award may be entered in any court having jurisdiction over the subject matter of the controversy.

SECTION 14 Ongoing Obligation. Each of the parties hereto shall execute and deliver all such documents and perform all such acts as are reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

SECTION 15 Consents and Approvals. The parties to this Agreement shall at all times act reasonably with respect to any and all matters which require either party to review, consent to, or approve any act or matter hereunder.

SECTION 16 Awarding of Costs. In the event any action shall be instituted between the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs, including reasonable attorneys' fees.

SECTION 17 Savings Clause. In the event that any phrase, clause, sentence, paragraph, section, or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law. However, if any commitment to perform any act hereunder by any party is merely excused, the provision requiring such action shall be deemed to permit the action at the party's discretion. If that party fails to take such discretionary action within the cure period provided for in Section 11 hereinabove, the other party shall be entitled to terminate this Agreement.

SECTION 18 Choice of Law and Venue. This Agreement shall be governed by and construed under the laws of the State of Arizona, and shall be deemed made and entered into in Yavapai County.

SECTION 19 Corporate Status and Authority of Trust . The Trust represents and warrants that (a) it is a nonprofit corporation fully organized, validly existing and in good standing under the laws of the State of Arizona, (b) the execution, delivery and performance of this Agreement has been duly authorized by the responsible officers thereof, and (c) it has exclusive ownership of each and all of the pieces of the Borglum Collection such that it has authority to perform its obligations under this Agreement.

SECTION 20 Corporate Status and Authority of Town. The Town represents and warrants that (a) it is a validly existing and incorporated municipal corporation of the State of Arizona, (b) it has authority under applicable Town Codes and Arizona law to

carry out its performances under this Agreement, and (c) its execution, delivery and performance of this Agreement has been duly authorized and entered into in compliance with its Town Code and applicable Arizona statutes.

SECTION 21 No Partnership or Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Trust and the Town. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

SECTION 22 Construction of Agreement. This Agreement has been arrived at by negotiation and shall not be construed against a party simply because it played the larger part in drafting the Agreement or because it prepared the last draft.

SECTION 23 Time of the Essence. Time is of the essence in this Agreement.

SECTION 24 Captions. The captions used herein are for convenience only and are not a part of this Agreement. They do not in any way limit or amplify the terms and provisions hereof.

SECTION 25 Merger Clause. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

SECTION 26 Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

SECTION 27 Statutory Conflict-of-Interest. In accordance with ARS §38-511, this Agreement provides that it may be canceled without penalty in the event of a conflict-of-interest as described in §38-511 by any person significantly involved in negotiating this Agreement on behalf of the Town. As far as the parties are aware at the time of this Agreement, no such conflict-of-interest exists.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their authorized representatives the day and year first-above written.

TOWN OF PRESCOTT VALLEY, a municipal corporation of Arizona, ("Town")

HARVEY C. SKOOG, Mayor

ATTEST:

Diane Russell, Town Clerk

APPROVED AS TO FORM:

Ivan Legler, Town Attorney

PRESCOTT AREA ART TRUST, INC., a nonprofit corporation of Arizona ("Trust")

JOHN F. PHILLIPS, President

ATTEST:

, Secretary

STATE OF ARIZONA)
) ss:
County of Yavapai)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011, by HARVEY C. SKOOG, Mayor, TOWN OF PRESCOTT VALLEY, a municipal corporation of Arizona, on behalf of said Municipal Corporation.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss:
County of Yavapai)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011, by JOHN F. PHILLIPS, President, PRESCOTT AREA TRUST, INC., a nonprofit corporation of Arizona, on behalf of said corporation.

Notary Public

My Commission Expires:

EXHIBIT A

Solon H. Borglum Art Collection

TITLE	CONDITION	APPRAISED VALUE
1. <i>The Indian Love Chase</i> , [bronze]	<u>no damage</u>	\$ 30,000.00
2. <i>Small horse, title unknown</i> , [bronze]	<u>small "ding" near tip of tail</u>	\$ 20,000.00
3. <i>Burial on the Plains</i> , [bronze]	<u>no damage</u>	\$ 20,000.00
4. <i>The Indian - A Study</i> , [bronze]	<u>no damage</u>	\$ 25,000.00
5. <i>Bear with Raised Head</i> , [bronze]	<u>no damage</u>	\$ 15,000.00
6. <i>Bear with Lowered Head</i> , [bronze]	<u>no damage</u>	\$ 15,000.00
7. <i>Sioux Indian Buffalo Dancer</i> , [bronze]	<u>branch in left hand broken off above hand</u>	\$ 35,000.00
8. <i>The Blizzard</i> , [bronze]	<u>no damage</u>	\$ 15,000.00
9. <i>The Sioux Chief</i> , [bronze]	<u>no damage</u>	\$ 20,000.00
10. <i>The Pioneer in a Storm</i> , [bronze]	<u>no damage</u>	\$ 15,000.00
11. <i>On the Trail</i> , [bronze]	<u>no damage</u>	\$ 20,000.00
12. <i>Our Slave</i> , [bronze]	<u>chips on walnut base</u>	\$ 15,000.00
13. [two bas reliefs from the Captain William Owen O'Neill Memorial]		\$ 2,400.00
14. <i>The Waters</i> , [bronze]	<u>no damage</u>	\$ 20,000.00
15. <i>Evening</i> [bronze with highlights]		\$ 25,000.00
16. <i>The Two Faces of Life</i> , [bronze]	<u>no damage</u>	\$ 30,000.00

17. <i>Benjamin Franklin, the Elder Statesman</i> , [bronze]	<u>no damage</u>	\$ 20,000.00
18. <i>Monica</i> , [plaster]	<u>no damage</u>	\$ 15,000.00
19. <i>The Heavens</i> , [plaster]	<u>old breaks to nose, base, "rock" under figure, right elbow, right buttock, and right arm (reattached?), new breaks to right hand and base</u>	\$ 25,000.00
20. <i>General John Gregg</i> , [plaster]	<u>Unrepaired break across head at level of lower lip, old repairs to left lapel, left shoulder, and left ear, chips in base</u>	\$ 15,000.00
21. <i>The Rough Rider</i> , [plaster]	<u>broken base</u>	\$ 25,000.00
22. <i>The Earth</i> , [plaster]	<u>some repaired damage</u>	\$ 15,000.00
23. <i>The Man</i> , [plaster]	<u>some repaired damage</u>	\$ 15,000.00
24. <i>Untitled oil painting, 1897</i> , [painting]	<u>no damage, wooden strips nailed to stretcher bars</u>	\$ 25,000.00
25. [chair]	<u>both back legs broken at joint with seat</u>	\$ 1,000.00
26. [buffet, two pieces]	<u>no new damage</u>	\$ 30,000.00
27. [sculptor's stand]	<u>no new damage</u>	\$ 15,000.00
28. [strouding cloth child's dress, probably plains Indian, Dentallia decorated]	<u>severe moth damage has been repaired</u>	\$ 5,000.00
29. [one 5 x 7 photo of Solon H. Borglum in Paris, 1898]		\$ 1,000.00
30. [seventeen photos and captions mounted on foam core from the exhibit "Solon H. Borglum, The Prairie Years, 1885-1907"]		\$ 1,000.00
31. [four large, framed photos]		\$ 5,000.00
32. [two, framed ink drawings by William A. Burnes]		\$ 2,000.00

33. [three plaster molds of the Borglum Bells]		
34. [plaster horse]	repaired; donated by Mavina McSeron	