

## **CONDITIONS OF USE FOR THIS PDF**

The images contained within this PDF may be used for private study, scholarship, and research only. They may not be published in print, posted on the internet, or exhibited. They may not be donated, sold, or otherwise transferred to another individual or repository without the written permission of The Museum of Modern Art Archives.

When publication is intended, publication-quality images must be obtained from SCALA Group, the Museum's agent for licensing and distribution of images to outside publishers and researchers.

If you wish to quote any of this material in a publication, an application for permission to publish must be submitted to the MoMA Archives. This stipulation also applies to dissertations and theses. All references to materials should cite the archival collection and folder, and acknowledge "The Museum of Modern Art Archives, New York."

Whether publishing an image or quoting text, you are responsible for obtaining any consents or permissions which may be necessary in connection with any use of the archival materials, including, without limitation, any necessary authorizations from the copyright holder thereof or from any individual depicted therein.

In requesting and accepting this reproduction, you are agreeing to indemnify and hold harmless The Museum of Modern Art, its agents and employees against all claims, demands, costs and expenses incurred by copyright infringement or any other legal or regulatory cause of action arising from the use of this material.

### **NOTICE: WARNING CONCERNING COPYRIGHT RESTRICTIONS**

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

THE MUSEUM OF MODERN ART

Date: 21 August 1958

Re: "pledge letter"

July 9, 1958

Mr. Ralph F. Golin  
575 Madison Avenue  
New York, New York

Dear Ralph:

I should tell you first of all that I have had a long letter from Alfred Barr, making it absolutely clear that he intends to use Jim Husted's pledge agreement for pictures coming into the Museum Collections only in the case of these few people who have specifically asked for such an agreement. He has no intention of distributing the document in any way publicly, nor of letting it get into the wrong hands. I wrote Alfred yesterday saying that you and I had talked about this delicate matter on Sunday, and that Jim Husted, you, René, Alfred and myself might meet late in July to restudy the wording of the agreement, though I must say Jim Husted's phrasing seems very skillful to me.

On Sunday you and Georgia seemed to like some portrait photographs in our house which Miss Alex Darrow of Woodbury, Connecticut had taken. I am therefore sending under separate cover, two other photographs which she took of Gabo, whom you saw on Sunday. I think you will agree these are remarkable likenesses. Miss Darrow is only beginning to be a professional photographer. Her prices are extremely modest and she seems equally good at photographing men, women, and children. She is fantastically shy but also, I think, highly competent. I suggest you get in touch with her if there are any portraits you would like her to try.

My very best to you and Georgia. It was fine seeing you on Sunday, and Melissa and I were delighted too that Dick Rodgers seems so well.

Sincerely,

JTS:sb

cc: Mr. Alfred Barr  
Mr. René d'Harnoncourt  
Mr. James Husted

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

# THE MUSEUM OF MODERN ART

Date 21 August 1958

To: Mr. Soby

Re: "Pledge letter"

From: Alfred Barr, dictated from Greensboro  
(Lenox 3-2341)

Dear Jim:

Having had no word from John Boland (acting for Jim Husted) since I left New York on the 15th, I am phoning him today to ask what progress he has been making with Marvin Lyons, Bill Burden's counsel and to suggest that even if he has reached an agreement with Lyons with a suitable compromise, that he should also draw up an agreement in which there is no loophole for those such as yourself who prefer to commit themselves.

Let me know what you think of this. I certainly do not want you or others to go beyond what they prefer, especially as our president does not care to do so.

Sincerely,

*Alfred*  
(mu)

Alfred A. Barr, Jr.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

C  
O  
P  
Y

August 22, 1958

Mr. Ralph F. Colin  
Rosenman Goldmark Colin & Kays  
575 Madison Avenue  
New York 22, N.Y.

August 22, 1958

Dear Ralph:

I am writing you as Vice-Chairman of our Committee on the Museum Collections following our conversation of this morning.

You will have, as soon as possible, the four successive versions of the proposed agreement together with Mr. Boland's covering letter. Would you look these over and phone me at your convenience?

For my own clarification I have written the following questions:

Granting that all our "future donors", in complete good faith, wish to promise that they will give or bequeath certain specified works of art to the Museum and that both the donors and the Museum would prefer a written agreement to this effect, we are faced with two problems:

1. How can an agreement be drawn up that will accommodate a donor who wishes to reserve the possibility of giving a work of art at any time prior to his death, at his convenience, and with a tax deduction at the total valuation?

2. If such an agreement can only be worded so as to permit obvious legal loopholes both in the gift and bequest clauses, would the Museum be justified in announcing that the gift has indeed been "promised"?

In other words, would the moral, oral and publicized obligation so generously agreed to by the donors be neutralized by a written legal agreement which obviously contradicted the ineradicable nature of the oral promise? Would it be better in such a case simply to leave the agreement to give or bequeath unwritten except for a definite commitment to enter the gift immediately in his will? In that case the Museum would still be free to announce and expect works of art as "promised gifts".

I am sending a copy of this letter to Messrs. Soby and d'Harnoncourt. My Greensboro, Vermont, telephone is Lenox 3-2341.

I cannot thank you enough for your advice as to whether we should forward to the staffs of Messrs. Whitney, Rockefeller, etc. the material Mr. Boland has prepared.

Sincerely,

Alfred H. Barr, Jr.

cc: Mr. Soby  
Mr. d'Harnoncourt

(Dictated by Mr. Barr from Greensboro)

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

9 August 1958

CONFIDENTIAL

Dear Nelson:

Although there is still much to do by way of selection and possibly solving legal problems, I don't want to delay a moment more telling you how delighted I was when Louise phoned me the list of no less than seventeen pictures from your collection which, in principle, you would be willing to let us include in the October exhibition as promised future gifts. I was astonished, as well as delighted, for I realized how difficult it might be for you to make any sort of decision in the middle of the summer when you were so overwhelmingly preoccupied with other activities.

I admire so much the pictures on your list that it's going to be very difficult to make a selection.

I think you will be very glad to know that Bill Burden has come through very handsomely with eight of his best pictures and sculptures so that your response as Chairman of the Board and his as President, together with what Adels Levy, Jock Whitney, Jim Soby and David have done, would give us a really wonderful show, even if we did not approach two or three other Trustees who have indicated in the past that they would very probably like to join in the exhibition. I now feel that although there is some slight risk of some of the others feeling "put on the spot", I am pretty sure that they would feel much worse if they were not offered a chance to participate. I hope to make the proposal as discreetly as possible.

As for non-trustees, we have already the formidable gifts of Nate Spingold and David Thompson. I intend to approach one or two others, notably Louise Smith, all of whose really distinguished collection she has repeatedly said would come to the Museum. I think it would be unwise to make any general approach to non-trustee collectors, particularly as I think the October show may well set a precedent which might lead to future exhibitions of the same character in which other promised gifts might be included.

Jim Husted has been working very seriously on a form for the pledged gifts, but has not yet reached a final conclusion.

I shall keep you informed. Meanwhile, let me say again how very grateful I am to you for your magnificent support of this highly important undertaking.

Sincerely,

Mr. Nelson A. Rockefeller  
30 Rockefeller Plaza  
New York 20, New York

Alfred H. Barr, Jr.

AHB:na

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

9 August 1958

CONFIDENTIAL

Dear Bill:

Although I am afraid Mr. Lyons is not yet satisfied with the form drawn up by Jim Husted, I don't want to delay a moment more telling you how very much I appreciate your generous attitude as expressed in your letter of August 6th. The eight works in your collection which you offer as a group from which we may choose for our October exhibition of pledged works of art are so fine that I am going to have a really difficult problem of selection. On the same day that I returned from the west to find your letter, I received from Nelson a list of seventeen of his best paintings from which we could choose for the same show. His list is longer than yours, but his collection is, as you know, very large, and in any case, your list is at least as fine in quality.

Your response as President and Nelson's as Chairman of the Board, together with what Adele Levy, Jock Whitney, Jim Soby and David Rockefeller have done, would give us a really wonderful show even if we did not approach two or three other Trustees who have indicated in the past that they would very probably like to join in the exhibition. I now feel that although there is some slight risk of some of the others feeling "put on the spot", I am pretty sure that they would feel much worse if they were not offered a chance to participate. I hope to make the proposal as discreetly as possible.

As for non-trustees, we have already the formidable gifts of Nate Spingold and Dave Thompson. I intend to approach Alex Lewyt, who two years ago offered us his late Renoir nude on condition that he could divide the gift over two years for tax purposes. In the end, his lawyer did not feel confident that this division could be made, in spite of a very clear private ruling to the contrary. A year later, however, the Treasury made a public ruling permitting such a division, so I think he may be persuaded to fulfill his original intention. I also intend to approach Louise Smith, all of whose really distinguished collection she has repeatedly said would come to the Museum. I do not at present propose to approach any other non-trustee collectors, believing that the October show may well set a precedent which might lead to future shows of the same character in which other promised gifts might be included.

There is still much to be done. I write now simply to tell you how very pleased and grateful I am for your very handsome action.

Sincerely,

Mr. William A. M. Burden  
Northeast Harbor,  
Maine

Alfred H. Barr, Jr.

AHB:ma  
cc: 630 Fifth Avenue

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

9 August 1958

CONFIDENTIAL

Dear Bill:

This is a postscript to my longer letter of August 9th. I had not intended to discuss the list in detail but when I had the pleasure of reading it to Jim Soby over the phone he pointed out that I had omitted the Arp Ptolemy. This was a stupid oversight, but since the sculpture is to be included in the Arp exhibition, it could not very well be shown in the ground floor show, though I suppose it could be listed. Jim also felt very strongly that the Gorky Diary of a Seducer should be included, even if it meant omitting one of the other pictures which you have already agreed to lend.

I would prefer at this stage not to make a final selection from your collection, in view of our limited space and quite a number of possible inclusions from other collectors, both trustee and non-trustee.

Therefore, may we leave the final selection undecided for the time being?

Sincerely,

Alfred H. Barr, Jr.

Mr. William A. M. Burden  
Northeast Harbor,  
Maine

AHB:ma  
cc: 630 Fifth Avenue

FOR STUDY PURPOSES ONLY. NOT FOR REPRODUCTION.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

cc: Mr. Soby ✓

12 August 1958

SPECIAL DELIVERY

Dear Mr. Boland:

Here is one of the copies of the letter from Marvin Lyons to William A. M. Burden concerning the conversation Mr. Lyons had with Jim Husted about the question we spoke of on the phone this afternoon. I suppose that this letter should be kept confidential.

In his third paragraph Mr. Lyons suggests that some formula may be found which would be almost as binding as the draft of a letter which Jim Husted had drawn up July 28th, but which would free the future donor from the hazard that when he made his gift in the future he would not be able to take a tax deduction should the Government maintain that his gift was deductible at the time of the promise rather than at the time of the actual change of title.

Since Jim Husted is away, we would be enormously grateful to you if you would work on this problem, since our time is seriously short.

Sincerely,

Alfred H. Barr, Jr.

Mr. John Boland  
Winthrop, Stimson, Putnam & Roberts  
40 Wall Street  
New York 5, New York

AHB:ma

P. S. The Tentative title of the show is: Works of Art: Acquired and Promised

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

Copies for Mr. Soloy

Jim, here's a  
summary draft  
of the "promise"  
about which we  
spoke on the phone.  
Other copies go to  
Ralph, and  
Messrs Boland  
and Husted

Yours  
h.

NO. IV - REVISED AND AMENDED

, 1958

to confirm my promise to turn over to you,  
; my lifetime or by bequest in my Will, all of  
ed and described below.

the above promise I shall enter the works of  
y Will as bequests to the Museum of Modern Art  
y done so) and will send the Museum a copy of

the relevant passages from my Will for its files within the next  
weeks. The list follows.

Trustees who have not already indicated their willingness to accept, for instance, not think of approaching me directly. On the other hand, as you know, I do feel that the Trustees should take the opportunity afforded by this significant gift of her four best pictures, not to wait until they give from David Velasco and Kate Spingold and particularly from David Rockefeller, to approach the three Trustees - myself, Boland and Leach, and perhaps Bill Paley, who have already indicated their willingness at least to consider making such a contribution.

of the reopening of the Museum, when we shall receive the above-mentioned preliminary gifts. These gifts, I believe, will be appreciated not merely as splendid additions to the Museum's future collection, but also as expressions of faith in the Museum's future following the recent crisis.

Very truly yours,

Donor

I entirely understand your preference not to take any action at this time because of your tax situation so that I was all the more delighted by your willingness to take the lead in making a public commitment to give or bequeath some of the best things in your collection. Specifically speaking such a commitment is viewed as great an advantage to the Museum as the preliminary gift arrangement. In neither case does the Museum have any immediate control over the pictures but the public and other collectors know that the Museum can count on having the works eventually.

*revising after meeting with Mr. Soloy*



The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

July 8, 1958

Mr. William A.M. Burden, President  
Museum of Modern Art

11 West 53rd St.  
New York

Dear Bill,

I received a wire from Jock giving me an appointment at twelve, noon, on the 17th (I shall get to London late on the 16th so that I shall have time to pick up my mail at the Chase Bank the following morning before seeing Jock).

I am writing you now to ask you whether you have seen Jock and, if so, whether you gave him a general review of the Museum's situation and future plans and whether you raised the question of his following your lead by being willing to commit himself publicly to bequeath several of his best pictures to the Museum or, if he prefers, to give them at some time in the future. Should you have not seen or talked with him, I wonder whether I may count on his knowing the general situation of the Museum by letter or otherwise by the time I see him on the 17th.

I agree with Jim Soby that the question of asking a Trustee-Collector whether he would pledge a gift or bequest of works of art is an extremely delicate matter and should not be raised at all with Trustees who have not already indicated their willingness. I would, for instance, not think of approaching Mr. Goodyear or Mr. Clark. On the other hand, as you know, I do feel that the Museum should take the opportunity afforded by Adele Levy's magnificent gift of her four best pictures, not to mention the residuary gifts from David Thimpson and Nate Spingold and previously from David Rockefeller, to approach the three Trustees - yourself, Nelson and Jock, and perhaps Bill Paley, who have already indicated their willingness at least to consider making some commitments, particularly on the occasion of the reopening of the Museum, when we shall announce and show the above-mentioned residuary gifts. These gifts, I think, will be appreciated not merely as splendid additions to the Museum's future collection, but also as expressions of faith in the Museum's future following the recent crisis.

I entirely understand your preference not to make any actual gift of pictures at this time because of your tax situation so that I was all the more delighted by your willingness to take the lead in making a public commitment to give or bequeath some of the best things in your collection. Practically speaking such a commitment is almost as great an advantage to the Museum as the residuary gift arrangement. In neither case does the Museum have any immediate control over the picture but the public and other collectors know that the Museum can count on having the works eventually.

\* especially after my last talk with Adele

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

cc: Mr. Seby

2.

July 7, 1950

As I recollect, you told me that I might mention your willingness to commit yourself in certain pictures now and to lend the pictures for a brief showing in October when your generosity would be made public. However, I would prefer to have some confirmation of your intentions before I report them to Jock.

Would you therefore write me c/o Chase-Manhattan Bank, Berkeley Square, London, so that I may have your answer before I see him on the 17th?

Sincerely

P.S. I am sending copies of this letter to Jim and René. I may receive from René an answer to some of the above questions since I am sure he will have discussed them with you upon your return.

I am terribly sorry not to have answered your first letter but I know that Jim has written you and it happened at a time when we were again wildly busy with emergencies on the reconstruction plant. It's a long and lurid story but fortunately everything is back to the original plan and we did not lose time as I was greatly afraid we might.

With warmest regards,

Faithfully yours,

Benjamin Franklin

Mr. Alfred H. Barr, Jr.  
c/o American Express Company  
Brompton Road  
London, W.1, England

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

THE MUSEUM OF MODERN ART

NEW YORK 19

TELEPHONE: CIRCULAR 3-8700  
CALLEE: MUSEUMS, NEW YORK

cc: Mr. Soby ✓

July 7, 1958

Dear Jim and René,

Dear Alfred:

Many thanks for your communications. As Jim wrote you, we had a meeting and looked at the document provided by the lawyers. From your last letter, I see that we are all agreed that such a document can only be used if the prospective donor is asking for a formula.

As far as Jock Whitney is concerned, I am personally convinced that you are by far the best person to approach him. I have tried to get word from Nelson but, as you know, he has declared his candidacy and has immediately started on a barnstorming tour of up-state counties. However, Louise tells me that she thinks from what he has told her that he would be willing to make an outright gift of two paintings now. Her statements are, of course, not binding on him but I think she usually interprets his intentions correctly and I think that a vague reference to Nelson's intentions might help with Jock without doing any harm here. I am writing Jock within the next two days one of my occasional letters of general information and will introduce the subject of the exhibition in a casual way but with great emphasis on Adele's action. This should help prepare the ground for your visit.

I am terribly sorry not to have answered your first letter but I knew that Jim has written you and it happened at a time when we were again wildly beset with emergencies on the reconstruction plans. It's a long and lurid story but fortunately everything is back to the original plans and we did not lose time as I was greatly afraid we might.

With warmest regards,

Faithfully yours,

Rene d'Harnoncourt

Mr. Alfred H. Barr, Jr.  
c/o American Express Company  
Briennerstrasse  
Munich, Germany

*Handwritten notes in left margin:*  
Lorraine - get word from Jim and René...  
I feel that the situation is...  
The other big question about Jock is...



FOR STUDY PURPOSES ONLY. NOT FOR REPRODUCTION.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

LAW OFFICES OF  
WINTHROP, STIMSON, PUTNAM & ROBERTS  
40 WALL STREET, NEW YORK 5, N.Y.  
WHITEHALL 3-0700 CABLE "WINSTIM"

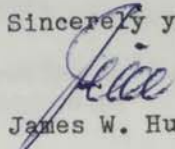
July 2, 1958.

Mr. James T. Soby  
The Museum of Modern Art  
11 West 53rd Street  
New York 19, N. Y.

Dear Jim:

After you called me this morning about the letter that Alfred wanted, I reread it, and, as usual, noticed some improvements that could be made. I am enclosing two copies of a revise which I think reads a little more smoothly.

Sincerely yours,

  
James W. Husted

Enclosures

Dear Jim - This came today. I have sent a copy to Alfred and will give one to d'lt. on Monday when he returns. Betty

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

on Schedule 1 annexed hereto which I am loaning to the  
Museum for this exhibition.]

July , 1958.

My agreement above is in consideration of and

The Museum of Modern Art  
11 West 53rd Street  
New York 19, N. Y.

Gentlemen:

We have discussed the loan exhibition which the  
Museum is putting on this fall of paintings and sculpture  
which the lenders have said they intended to give or be-  
queath to the Museum. We are agreed that if it could be  
announced that the owners have made definite commitments  
to do this, it would greatly increase the impact of the  
exhibition and would be of great help in getting future  
gifts and bequests from others.

(Use whichever of the following two paragraphs  
is appropriate)

[With these purposes in mind, I am happy to agree  
to make a gift at some future date to the Museum of the  
paintings or sculpture listed on Schedule 1 annexed hereto  
which I am loaning to the Museum for this exhibition and,  
to ensure that this purpose will be achieved, I agree to  
bequeath these objects of art to the Museum if at the time  
of my death the gift has not been completed.]

[With these purposes in mind, I am happy to agree  
to bequeath to the Museum the paintings or sculpture listed

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

2.-

on Schedule 1 annexed hereto which I am loaning to the Museum for this exhibition.]

My agreement above is in consideration of and conditional upon your receiving similar agreements from the lenders of at least two-thirds of the art objects which are included in the exhibition when it opens. Please let me know if you are successful in obtaining the requisite number of agreements.

Very truly yours,

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

cc: Mr. Soby ✓  
Mr. d'Harnoncourt  
Mr. Colin

27 August 1958

CONFIDENTIAL

Dear Louise:

Because time is growing short, I am sending you now four drafts of agreements concerning the "promised pictures" together with a letter of analysis from Mr. John Boland who, as I explained to you, is acting for Mr. Husted during the latter's vacation.

It may be that Nelson, his financial advisor, and his counsel may not find these drafts usable, but they represent several weeks of study in conjunction with Mr. Burden's counsel.

I shall be back September 2nd and shall phone you hoping to work out some satisfactory paper as soon as possible.

Sincerely,

Alfred H. Barr, Jr.

Mrs. Louise Boyer  
Room 5600  
30 Rockefeller Plaza  
New York 20, New York

AHB:ma

(dictated by Mr. Barr from Greensboro, Vermont)

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

cc: Mr. Soby ✓  
Mr. d'Harnoncourt  
Mr. Colin

27 August 1958

Dear Mr. Streeter:

May I follow up my letter of August 21st covering the copy of my letter of August 19th to Mr. Whitney.

Mr. Husted, the Museum's counsel, and (acting for him during his vacation) his partner, Mr. John Boland, have been working on the problem of preparing an agreement such as Mr. Whitney asked me to send to Mr. Park. The background is reviewed in the letter to Mr. Whitney.

Because time runs short, I am sending you, for Mr. Park's study, a draft of four agreements together with a letter of analysis of August 25th from Mr. Boland. It may be that Mr. Park as Mr. Whitney's counsel will have some helpful suggestions.

I should be back in New York September 2nd and shall phone, hoping to discuss the subject with Mr. Park or yourself.

Sincerely,

Alfred H. Barr, Jr.

Mr. Frank Streeter  
Office of Mr. Whitney  
630 Fifth Avenue  
Room 3450  
New York 20, New York

AHB:ma  
(dictated by Mr. Barr from Greensboro, Vermont)

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

LAW OFFICES OF  
WINTHROP, STIMSON, PUTNAM & ROBERTS

40 WALL STREET, NEW YORK 6, N.Y.

UNIVERSAL 2-0700 - CABLE "WINTRO"

August 25, 1958

Mr. Alfred N. Barr, Jr.  
Director of Museum Collections  
The Museum of Modern Art  
11 West 53rd Street  
New York 19, New York

Dear Mr. Barr:

At your request, I am transmitting herewith four alternative drafts which may be considered in connection with your program to obtain some written assurance from prospective donors that you will eventually receive the paintings and other objects of art which they have promised to you.

Draft No. 1 is substantially in the form sent to you by my partner Jim Masted some time ago (before the tax question was raised), and constitutes an unconditional commitment on the part of the donor to transfer the listed paintings to the Museum either during his life or by Will. This draft contains more than a mere moral commitment on the part of the donor, and would give the Museum the greatest degree of assurance that it will eventually acquire all of the listed paintings. Mr. Burden's attorneys, however, have raised the question whether this form of agreement would give the Museum such a vested interest in the paintings as to constitute a present gift of a remainder interest therein for federal income tax purposes, and thus cause a problem to any donor who might be close to the 20% or 30% limitations by reason of other charitable contributions during the year.

The Museum of Modern Art Archives, NY	Collection:	Series, Folder:
	JTS	IV.A.10

Mr. Alfred H. Barr, Jr.

Page -2- August 25, 1958

The draft marked No. II is an attempt on my part to revise Draft No. I with a view toward eliminating the tax problem, but at the same time preserving for the Museum a legal basis for at least asserting ownership at the donor's death. While it is agreed that this draft eliminates the tax problem raised by Mr. Burden's attorneys, it appears to have two other objections:

(i) The Museum's legal right to claim ownership upon the donor's death (in the absence of a bequest to the Museum in the donor's Will) are not as clear as in Draft No. I; and the donor's executor might well insist upon court approval before turning the paintings over to the Museum; and

(ii) The donor's commitment to the Museum is weakened by the clause which clearly implies his power to dispose of the paintings as he sees fit during his lifetime.

Draft No. III was prepared by me at the suggestion of Mr. Burden's attorneys as a possible solution to the problem; and, while I have not had time to clear this draft with Mr. Burden's attorneys, I believe it substantially conforms to what they had in mind. On researching the law applicable to this proposal, however, it appears to contain such indicia of a testamentary disposition as would cause an executor at least as much difficulty as would arise out of Draft No. II. Further-

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

Mr. Alfred H. Barr, Jr.

Page -3- August 25, 1958

more, the express reservation of a power to revoke (even though accompanied by the proposed letter of intent not to revoke) would seem to weaken the donor's commitment to the Museum at least to the same extent as the implied power of disposition during life in draft No. II.

In view of the difficulties inherent in drafts Nos. II and III, I am enclosing a fourth draft which merely contains an unsupported but unqualified promise to make gifts of the paintings either during life or by Will. This form of agreement would certainly enable the Museum to advertise that the indicated paintings were "promised"; and, in no event, could be deemed a present gift for tax purposes. On the other hand, it would give the Museum no basis for claiming ownership of the pictures in the event the donor should make another disposition thereof either by way of gift or in his Will.

I am afraid that the problem presented here is something that the English language cannot solve to everyone's satisfaction. As indicated above, in the absence of a specific bequest to the Museum by the donor or a binding obligation on the part of the donor to turn the paintings over to the Museum either during his life or at death, the donor's executor will be faced with a problem, and may insist upon court approval before turning the paintings over to the Museum. If involvement in such judicial proceedings would not concern the Museum, then

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

Mr. Alfred H. Barr, Jr.

Page -4- August 25, 1958

either draft No. II or No. III may be adopted, as neither presents any tax problem. On the other hand, if you would prefer to avoid all such controversy, it seems to me that drafts No. I and No. IV are your only alternatives.

If you determine that, because of the "executor" problem involved in drafts No. II and No. III, they are not acceptable, and you would prefer draft No. I to draft No. IV, I would suggest that a ruling be obtained (if possible) from the Internal Revenue Service on the question of whether or not it would constitute a present gift for income tax purposes. Such a ruling (even if unfavorable) would at least enable the donor to anticipate with some degree of certainty the income tax consequences of using such a form; and it is barely possible that the authorities may rule that it does not constitute a present gift.

Adverting once again to Draft No. II, you will note that I did not eliminate the clause implying unlimited power of disposition during life, as you had suggested. On further reflection, I concluded that your suggested change would result in such a commitment as would revive the tax problem almost to the same extent as draft No. I, and could still present a problem to the donor's executor.

I trust that what I have done here is in line with the procedure suggested by you last Thursday; and that you will

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

Mr. Alfred H. Barr, Jr.

Page -5- August 25, 1958

let me know if there is anything further you wish me to do in the matter.

Very truly yours,

JOHN J. BOLAND

Enclosure

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

DRAFT NO. 1

, 1938

The Museum of Modern Art  
11 West 53rd Street  
New York 19, New York

Dear Sirs:

I have told you that I would either (a) donate to you at some future date my pictures which are listed on the annexed schedule or (b) if at the time of my death this gift has not been completed, bequeath these pictures to you in my Will.

You have informed me that there are a number of other friends of the Museum who have also told you that they would do the same with respect to paintings or other objects of art which they own.

As I believe that definite commitments to make such gifts or bequests would be of great help to the Museum, I hereby agree to make the gift or bequest referred to above if you will agree in return to do your best promptly to get similar commitments from the others who have given you like assurances.

Very truly yours,

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

2.-

We hereby agree to do our best promptly to get such other commitments and confirm that this letter correctly states the agreement between us.

THE MUSEUM OF MODERN ART

By \_\_\_\_\_

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

DRAFT NO. II

, 1958

The Museum of Modern Art  
11 West 53rd Street  
New York 19, New York

Dear Sirs:

I understand that there are a number of friends of the Museum who have told you that they intend to donate certain pictures and other objects of art to the Museum either during their lifetime or by Will; and that, with appropriate solicitation, they may be willing to give the Museum written commitments to that effect.

It is my belief that such commitments would be of great help to the Museum; and, to that end, I hereby confirm (a) my intention to donate to you at some time in the future my pictures which are listed on the annexed schedule; and (b), to the extent that I have not disposed of such pictures prior to my death, my agreement to bequeath them to you in my Will, provided that you are still in existence with corporate power to collect and exhibit paintings and other works of art.

This commitment on my part, however, is given with the understanding that you will agree in return to

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

do your best promptly to get similar commitments from the others who have given you like assurances.

Very truly yours,

We hereby agree to do our best promptly to get such other commitments, and confirm that this letter correctly states the understanding between us.

THE MUSEUM OF MODERN ART

By \_\_\_\_\_

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

DRAFT NO. III

A S S I G N M E N T

WHEREAS, the undersigned (hereinafter called the "Donor") is the owner of each of the paintings listed and described in Exhibit A hereto; and

WHEREAS, the Donor wishes and intends to make gifts of said paintings, either during his life or at his death, to THE MUSEUM OF MODERN ART, a New York corporation with its principal place of business at 11 W. 53rd Street, in the City, County and State of New York, (hereinafter called the "Donee"); and

WHEREAS, the Donor wishes to retain for his life the possession and use of said paintings; but, at the same time, wishes to give the Donee some assurance of eventually receiving said paintings;

NOW, THEREFORE, These Presents Witness, that:

1. The Donor hereby gives, grants, assigns, transfers and conveys to the Donee all his right, title and interest in and to the paintings listed and described in Exhibit A hereto, subject only to the right of the Donor

(a) to retain possession and use of said paintings until the Donor's death, and

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

(b) to revoke, cancel and rescind this assignment at any time prior to his death by sending written notice to the Donee of such revocation, cancellation or rescission.

2. The Donee accepts said right, title and interest in and to the paintings hereby given, granted, assigned, transferred and conveyed by the Donor subject to the conditions provided in paragraph 1. above.

IN WITNESS WHEREOF the parties have caused these presents to be duly executed this        day of        , 1958.

\_\_\_\_\_  
Donee (L.S.)

THE MUSEUM OF MODERN ART

By \_\_\_\_\_  
Donor

(Individual acknowledgment)  
(Corporate acknowledgment)

[This assignment to be accompanied by letter from Donor to the effect that he has no present intention of exercising his power of revocation.]

FOR STUDY PURPOSES ONLY. NOT FOR REPRODUCTION.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

DRAFT NO. IV

, 1958

The Museum of Modern Art  
11 West 53rd Street  
New York 19, New York

Dear Sirs:

This is merely to confirm my promise to turn over to you, either by gifts during my lifetime or by bequest in my Will, all of the paintings listed and described below:

Very truly yours,

\_\_\_\_\_  
Donna

FOR STUDY PURPOSES ONLY. NOT FOR REPRODUCTION.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

DEBEVOISE, PLIMPTON & McLEAN

20 EXCHANGE PLACE  
NEW YORK 5, N. Y.

August 1, 1958

carry as much weight as a statement that there has been a legal commitment.

You have asked what would be the comparative effect on your estate if you bequeathed a \$100,000 painting to the Museum, which would otherwise have been bequeathed to one of your sons. Assuming your estate was in the 70% bracket, the gift to the Museum would, of course, relieve the estate of \$70,000 of tax which would benefit all the children pro rata, as they would receive the painting pro rata. If, instead of leaving the painting to the Museum, you left it to one of your sons, the effect of this would depend on (a) whether or not you would want the share going to him in trust to be reduced because of the legacy of the painting, and (b) whether you would want this to be a pro rata share with a pro rata share of the tax to be paid by the children or whether that tax share be the trust for the children.

August 1, 1958

Mr. William A. M. Burden  
Northeast Harbor, Maine

Dear Bill:

I have talked with Jim Husted about the Museum of Modern Art matter and have told him that I am concerned about a binding legal commitment being made now to contribute paintings to the Museum, either during lifetime or by will, as this might result in a successful claim by the Internal Revenue Service that a charitable gift, subject to reservation of use during lifetime, had been effectively made at the time of the making of the commitment. This might put the individual concerned in a position where he could not take an income tax deduction in any year other than the year of the commitment.

Jim asked whether this problem could be avoided by making it a condition of the commitment that the Museum is still in existence with corporate power to collect and exhibit paintings and other works of art at the time of the gift or bequest. I told him that I did not consider this condition to be of sufficient substance to avoid the problem.

It would be my recommendation that the individuals be asked to state their present intention with respect to future gifts to the Museum of the paintings to be exhibited, and that they be told that for their own income tax protection no more than a moral commitment to make the gift is requested at this time. The statement to the public should not, of course, contain the income tax explanation and could perhaps be drawn by the publicity people in a way that would

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

Mr. William A. M. Burden

-2-

August 1, 1958

carry as much weight as a statement that there has been a legal commitment.

You have asked what would be the comparative effect on your estate if you bequeathed a \$100,000 painting to the Museum, which would otherwise have been bequeathed to one of your sons. Assuming your estate was in the 70% bracket, the gift to the Museum would, of course, relieve the estate of \$70,000 of tax which would benefit all the children pro rata, as they would bear the tax pro rata. If, instead of leaving the painting to the Museum, you left it to one of your sons, the effect of this would depend on (a) whether or not you would want the share going to him in trust to be reduced because of the legacy of the painting, and (b) whether you would want him to be charged by the will with a pro rata part of the tax applicable to the painting or whether that tax was to be absorbed ratably by all the trusts for the children.

As this involves a number of permutations and constructions, I would prefer to discuss the point with you further before preparing a number of sets of hypothetical figures.

I will also be glad to discuss the confidential material you sent me regarding the Harvard drive.

As I am leaving on vacation for two weeks, I have had to dictate this letter and leave it for signature by my secretary. I will be reachable, if necessary, by telephone beginning Tuesday, the 5th, through my secretary.

Sincerely yours,

MARVIN LYONS  
per E.G.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

Mr. William A. M. Burden

-2-

July 31, 1958.

LAW OFFICES OF

WINTHROP, STIMSON, PUTNAM & ROBERTS

40 WALL STREET, NEW YORK 5, N.Y.

WHITEHALL 3-0700 CABLE "WINSTIM"

condition on the ground that it was put in only for a tax reason and so should be disregarded.

July 31, 1958.

I have no bright ideas at the moment.

Mr. William A. M. Burden  
630 Fifth Avenue  
New York 20, N. Y.

Dear Bill:

Marvin Lyons, as he has told you, is afraid that any agreement committing an owner of valuable paintings or other art objects either to give them to the Museum during his lifetime or, if the gift has not been made, to bequeath them to the Museum in his Will, might be regarded by the Treasury as a gift of a remainder interest in the year that the agreement was signed. This is because the Museum would be certain to get the art objects by the date of death and the Museum would be able to get specific performance of the agreement, as the art objects are unique and money damages would not compensate it for the loss. In order to meet his point of view, I revised the agreement to put in the condition that the Museum be in existence at the date of death with charter powers authorizing it to collect and exhibit paintings and other art objects. I thought that with this change it could no longer be said that the Museum was certain to get the art objects. Lyons, however, on seeing this revised draft is still afraid of it. He thinks that there is a possibility that the Treasury would look through the

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

Mr. William A. M. Burden

-2-

July 31, 1958.

condition on the ground that it was put in only for a tax reason and so should be disregarded.

I have no bright ideas at the moment. I don't think that we can go ahead with Lyons feeling as he does. I am leaving today for a month's vacation and if you or Alfred Barr or Jim Soby want to consider the matter further, will you get in touch with my tax partner, John Boland, who returns from his vacation a week from Monday.

I am sending copies of this letter to Messrs. Lyons, Barr and Soby for their information.

Sincerely yours,



James W. Husted

JWH:AA

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

Mr. Alfred H. Barr, Jr. LAW OFFICES OF

July 28, 1958.

WINTHROP, STIMSON, PUTNAM & ROBERTS

40 WALL STREET, NEW YORK 5, N.Y.

WHITEHALL 3-0700

that time that the Museum would ever get the bequest. I  
July 28, 1958.

was called up by Marvin Lyons at the Debevoise office  
Mr. Alfred H. Barr, Jr.  
Director of Museum Collections as to the tax angle and  
The Museum of Modern Art  
11 West 53rd Street  
New York 19, N. Y.

that I have solved this possible diffi-  
culty and I believe, approves the enclosed form of  
Dear Alfred:

agreement. I sent Jim Soby and you the other day drafts of  
I am sending copies of the enclosure to Messrs.  
an agreement to give or bequeath paintings or other art  
Lyons and Soby.  
objects to the Museum. One of the points that I wanted  
to check was whether or not a Revenue Agent could take the  
position that in effect the donor was giving a remainder  
interest in the art objects in the year in which he signed  
the agreement. The agent might assert that the Museum was  
certain to get the picture at the death of the donor and,  
as the picture is unique, the courts would enforce specific  
performance and thus the agreement gave the pictures to the  
Museum when it was executed subject to at most a life inter-  
est in the giver.

I am enclosing a revision of this agreement which  
makes the agreement to bequeath the painting contingent on  
the Museum being in existence at the date of the death with  
corporate power to collect and exhibit the pictures. With  
that change, it seems to me it would be impossible for the  
Government to claim that there was a present gift subject to  
a life interest, because it would not be at all certain at

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

Mr. Alfred H. Barr, Jr.

-2-

July 28, 1958.

that time that the Museum would ever get the bequest. I was called up by Marvin Lyons at the Debevoise office this afternoon for reassurance as to the tax angle and he agrees with me that I have solved this possible difficulty and, I believe, approves the enclosed form of agreement.

I am sending copies of the enclosure to Messrs. Lyons and Soby.

Sincerely yours,

James W. Husted

Enclosure

FOR STUDY PURPOSES ONLY. NOT FOR REPRODUCTION.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

LAW OFFICES OF  
WINTHROP, STIMSON, PUTNAM & ROBERTS  
40 WALL STREET, NEW YORK 5, N.Y.  
WHITEHALL 3-0700 CABLE "WINSTIM"

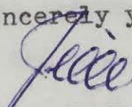
July 28, 1958.

Mr. James T. Soby  
The Museum of Modern Art  
11 West 53rd Street  
New York 19, N. Y.

Dear Jim:

I am enclosing a copy of a letter to  
Alfred Barr and a copy of the enclosure. I think  
the letter will be self-explanatory.

Sincerely yours,

  
James W. Husted

Enclosures

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

Draft  
7/28/58  
J.W.H.

We hereby agree to do our best promptly to get such other commitments and confirm that this letter correctly states the agreement between us. , 1958.

The Museum of Modern Art  
11 West 53rd Street  
New York 19, N. Y.

THE MUSEUM OF MODERN ART

Gentlemen:

I have told you that I would either (a) donate to you at some future date my pictures which are listed on the annexed schedule or (b) if at the time of my death this gift has not been completed and you are still in existence with corporate power to collect and exhibit paintings and other works of art, bequeath these pictures to you in my Will. You have informed me that there are a number of other friends of the Museum who have also told you that they would do the same with respect to paintings or other objects of art which they own.

As I believe that definite commitments to make such gifts or bequests would be of great help to the Museum, I hereby agree to make the gift or bequest referred to above if you will agree in return to do your best promptly to get similar commitments from the others who have given you like assurances.

Very truly yours,

FOR STUDY PURPOSES ONLY. NOT FOR REPRODUCTION.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

2.-

We hereby agree to do our best promptly to get such other commitments and confirm that this letter correctly states the agreement between us.

THE MUSEUM OF MODERN ART

By \_\_\_\_\_

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

Draft  
7/25/58  
J.W.H.

like assurances.

, 1958.

Very truly yours,  
The Museum of Modern Art  
11 West 53rd Street  
New York 19, N. Y.

Gentlemen:

I have told you that at some future date I would donate to you my pictures which are listed on the annexed schedule and that, if at the time of my death this gift has not been completed, I would bequeath these pictures to you in my Will. You have informed me that there are a number of other friends of the Museum who have also told you that they would do the same with respect to paintings or other objects of art which they own.

As I believe that definite commitments to make such gifts or bequests would be of great help to the Museum, I hereby agree to make the gifts or bequests referred to above if you will agree in return to do your best promptly to get similar commitments from the others who have given you

FOR STUDY PURPOSES ONLY. NOT FOR REPRODUCTION.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

Draft  
7/25/58  
J.W.H.

like assurances.

, 1958.

Very truly yours,  
The Museum of Modern Art  
11 West 53rd Street  
New York 19, N. Y.

Gentlemen:

I have told you that at some future date I would donate to you my pictures which are listed on the annexed schedule and that, if at the time of my death this gift has not been completed, I would bequeath these pictures to you in my Will. You have informed me that there are a number of other friends of the Museum who have also told you that they would do the same with respect to paintings or other objects of art which they own.

As I believe that definite commitments to make such gifts or bequests would be of great help to the Museum, I hereby agree to make the gifts or bequests referred to above if you will agree in return to do your best promptly to get similar commitments from the others who have given you

FOR STUDY PURPOSES ONLY. NOT FOR REPRODUCTION.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

2.-

like assurances.

Very truly yours,

We hereby agree to do our best promptly to get such other commitments and confirm that this letter correctly states the agreement between us.

THE MUSEUM OF MODERN ART

By \_\_\_\_\_

FOR STUDY PURPOSES ONLY. NOT FOR REPRODUCTION.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

LAW OFFICES OF  
WINTHROP, STIMSON, PUTNAM & ROBERTS  
40 WALL STREET, NEW YORK 5, N.Y.  
WHITEHALL 3-0700 CABLE "WINSTIM"

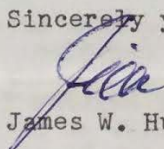
July 25, 1958.

Mr. James T. Soby  
The Museum of Modern Art  
11 West 53rd Street  
New York 19, N. Y.

Dear Jim:

Enclosed is a revise of my letter committing prospective donors to make a gift or bequest. It has been worked out with Alfred Barr, who didn't want the letter to be limited in its application merely to those who were going to lend pictures for the coming exhibition. I think that the enclosed letter will stand up legally and it has the virtue of being quite simple.

Sincerely yours,

  
James W. Husted

Enclosure

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

of at least two-thirds of the art objects which are in-  
cluded in the exhibition when it opens. Please let me  
know if you are successful in obtaining the requisite  
July , 1958.

The Museum of Modern Art  
11 West 53rd Street  
New York 19, N. Y.

Very truly yours,

Gentlemen:

We have discussed the loan exhibition which the  
Museum is putting on this fall of paintings and sculpture  
which the owners (of whom I am one) have said they intended  
to give or bequeath in their Wills to the Museum. We are  
agreed that if it could be announced that the owners have  
made definite commitments to do this, it would greatly in-  
crease the impact of the exhibition and would be of great  
help in getting future gifts and bequests from others.

With these purposes in mind, I am happy to agree

(Use whichever language appearing in  
brackets below is appropriate)

[at some future date to make a gift to the Museum  
of the paintings or sculpture which I am loaning  
for the purpose of this exhibition and which are  
listed on Schedule 1 annexed hereto and to ensure  
that this purpose will be effectuated, I agree to  
bequeath these objects of art to the Museum if at  
the time of my death the gift has not been com-  
pleted]

[to bequeath to the Museum the paintings or sculpture  
which I am loaning for the purpose of this exhibition  
and which are listed on Schedule 1 annexed hereto]

My agreement above is in consideration of and conditional  
upon your receiving similar agreements from the lenders

FOR STUDY PURPOSES ONLY. NOT FOR REPRODUCTION.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

2.-

of at least two-thirds of the art objects which are included in the exhibition when it opens. Please let me know if you are successful in obtaining the requisite number of agreements.

Very truly yours,

FOR STUDY PURPOSES ONLY. NOT FOR REPRODUCTION.

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

LAW OFFICES OF  
WINTHROP, STIMSON, PUTNAM & ROBERTS  
40 WALL STREET, NEW YORK 5, N.Y.  
WHITEHALL 3-0700 CABLE "WINSTIM"

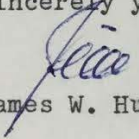
June 27, 1958.

Mr. James T. Soby  
The Museum of Modern Art  
11 West 53rd Street  
New York 19, N. Y.

Dear Jim:

Here is something that I have dreamed up.  
I think that in New York such an agreement would be  
binding. I am sending a copy to Ralph F. Colin for  
his information.

Sincerely yours,

  
James W. Husted

Enclosures (2)

The Museum of Modern Art Archives, NY	Collection:	Series.Folder:
	JTS	IV.A.10

Promised gift from correspondence  
including carbon of part of  
JTS' legend

HUSTED