

BAKER & HOSTETLER LLP

Robertson D. Beckerlegge (RB 1829)
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201

Counsel for Plaintiff
Scott C. Mueller

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
SCOTT C. MUELLER,	:	
	:	
Plaintiff,	:	CIVIL ACTION NO.
	:	
-against-	:	1:15-CV-04827 (NRB)
	:	
MICHAEL JANSSEN GALLERY PTE.	:	
LTD., MICHAEL JANSSEN,	:	
WILHELM SCHURMANN,	:	<u>JURY TRIAL DEMANDED</u>
MARISA NEWMAN PROJECTS, LLC,	:	
	:	
Defendants.	:	
	:	
-----X	:	

FIRST AMENDED COMPLAINT

Scott C. Mueller (“Mueller” or “Plaintiff”) for his complaint against defendants Michael Janssen Gallery Pte. Ltd., Michael Janssen, Wilhelm Schurmann and Marisa Newman Projects, LLC states as follows:

NATURE OF THE ACTION

This case arises from the unlawful retention of \$800,000 paid for an artwork that was never delivered. Mueller brings this action to recover the \$800,000 owed by Michael Janssen Gallery Pte. Ltd. under the contractual buy-back option and

against Wilhelm Schurmann and Marisa Newman Projects, LLC to disgorge funds belonging to Mueller. Mueller also brings this action against Michael Janssen individually for the conversion of funds.

THE PARTIES

1. Plaintiff Mueller is an individual residing in Chagrin Falls, Ohio.
2. Defendant Michael Janssen is a German citizen and the owner operator of defendant Michael Janssen Gallery Pte, Ltd. (“Janssen Gallery”) which is incorporated in Singapore. Janssen operates art galleries in Singapore and Berlin, Germany. Janssen Gallery, by and through Michael Janssen, sells artwork to buyers throughout the world, including in this judicial district.
3. Defendant Wilhelm Schurmann (“Schurmann”) is the owner of the artwork titled “Log Cabin” which Mueller paid Janssen Gallery to purchase. Based on available information, Schurmann is a citizen of the Republic of Germany.
4. Defendant Marisa Newman Projects, LLC (“Newman”) is a corporation resident in this judicial district. Pursuant to the Agreement (defined *infra* at ¶9), Newman acted as “an independent art advisor to facilitate the sale of the work.” Defendant Newman received and unlawfully retains proceeds from the sale.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332 (diversity jurisdiction). Plaintiff and defendants are citizens of different states and the amount in controversy is more than \$75,000.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391b(2) and (3) because a substantial part of the events or omissions occurred in this district and there is no other district where this action may be brought and the defendants are subject to personal jurisdiction in this district.

FACTUAL ALLEGATIONS AND BACKGROUND

7. “Log Cabin” is an artwork created by renowned American artist Cady Noland (“Noland”). It is a sculpture with a wooden façade bearing an American flag. At all times relevant hereto, the artwork was owned by Schurmann.

8. Newman contacted Brett Shaheen (“Shaheen”), an art dealer located in Cleveland, Ohio, to inform him that “Log Cabin” was available for purchase and to see if Shaheen’s client, Mueller, might be interested. By the efforts of Newman and Shaheen, Mueller reached an agreement to purchase “Log Cabin” through the Janssen Gallery.

9. The terms of this agreement were memorialized in a written Agreement of Purchase and Sale (the “Agreement”) dated July 2, 2014 and attached hereto as Exhibit A. This Agreement was drafted by attorneys from the law firm Pelosi, Wolf, Effron & Spates LLP who were retained by Newman and located at 233 Broadway Avenue, New York, New York.

10. The Agreement provided for the payment of USD \$1,400,000 wire transfer to Janssen Gallery in Singapore. The Agreement further specified that Newman would facilitate the transaction and that the artwork would be shipped to Mueller in Ohio.

11. To provide assurance as to the authenticity of the artwork and given the history of the artist, the Agreement expressly provided a buy-back option if the artist “affirmatively refuses to acknowledge or approve the legitimacy of the work; seeks to disassociate her name from the work; or claims that her moral rights...have been violated.” In such event, the Agreement provided for the buy-back of the artwork by Janssen Gallery and return of the full purchase price. Newman, with the assistance of legal counsel, recommended the buy-back provision to address concerns that the artist might disavow the work rendering it materially less valuable. Newman also provided guidance that this was an unlikely concern.

12. The Agreement further contained a written representation, warranty, and covenant that the vendor (Janssen Gallery) and the Owner (Schurmann) “have sufficient capital in light of their contemplated activities and are able to pay their obligations as they become due in the ordinary course.”

13. Pursuant to the Agreement, Mueller wire transferred the full purchase price of USD \$1,400,000 to the Janssen Gallery.

14. Prior to the shipment, Mueller’s art buyer, Shaheen, sent a letter to Noland to inform her of the sale and the replacement of the logs that had rotted in the ten years it sat outside at a museum in Germany. Shaheen consulted Janssen,

the owner of Janssen Gallery and Chris D'Amelio (an advisor specified in the Agreement), prior to sending the letter. The letter included a telephone number and email address to contact Shaheen and a fax number for Mueller.

15. Noland called Shaheen. Noland angrily denounced the restoration of the artwork without her knowledge and approval. She further stated that any effort to display or sell the sculpture must include notice that the piece was remade without the artist's consent, that it now consists of unoriginal materials, and that she does not approve of the work.

16. Noland also sent by facsimile a handwritten note to Mueller on or about July 18, 2014, stating, "This is not an artwork" and objecting to the fact that the sculpture was "repaired by a conservator (sic) BUT THE ARTIST WASN'T CONSULTED." (Emphasis in the original.)

17. Shaheen then informed Janssen and Newman of the substance of the telephone call. Shaheen concluded, stating "Please get back to me at your earliest possible convenience so that we can proceed under the terms of the purchase agreement to unwind this transaction and initiate the buy-back of the piece by the previous owner." Shaheen also later provided copies of the letter to Cady and her facsimile to Mueller.

18. Janssen responded representing that he had spoken with the owner Schurmann and that there were "not much options to calm 'crazy' Cady down." Janssen then suggested that perhaps Mueller could instead buy one of the other Cady Noland artworks that Schurmann owned with the funds already paid.

19. Shaheen, on behalf of Mueller, responded confirming that Mueller was only interested in “exercising the buy-back clause, and Michael Janssen Gallery/Mr. Schurmann buying the work back from him for the full cash purchase price of \$1.4 million, per the terms of and within the timeframe set forth in the purchase agreement.” This email was copied to Newman and to the attorneys engaged by Newman to advise as to the transaction. These attorneys were located at 233 Broadway Avenue, New York, New York.

20. Acknowledging the obligation to return the purchase price, Janssen requested wiring instructions for Mueller. In or about August of 2014, the Janssen Gallery returned \$350,000 of the \$1,400,000 by a wire transfer.

21. In September, Shaheen sent an email to Janssen questioning when he would send the remainder of the money owed. Despite repeated requests, Janssen would not confirm when the remaining funds would be received or where the artwork was located.

22. In November, Janssen requested additional time to return the funds. The deadline to return the money owed was then extended to December 20, 2014. Janssen return an additional \$250,000 of the purchase but has not returned the additional \$800,000 which he acknowledges is owed. After repeated requests, Janssen eventually represented that the sculpture was still held in storage by Schurmann.

23. Repeated efforts to secure the return of the remaining funds have failed. In an email dated May 27, 2015, Janssen wrote: “It is a most unfortunate

situation for me as you can imagine and I am working continuously to find a solution. I can only ask again for an extension of your good will and patience, but certainly understand if there is no room for maneuver anymore.”

FIRST CAUSE OF ACTION

Breach of Contract
(Against The Jansen Gallery)

24. Each and every allegation set forth above is incorporated as if fully rewritten herein.

25. Mueller and the Janssen Gallery entered into a signed contract which is attached as Exhibit A.

26. Mueller performed his obligation under the Agreement wire transferring the full purchase price of \$1,400,000.

27. After transferring the funds, Mueller validly exercised his rights under the buy-back option.

28. The Janssen Gallery acknowledged the valid exercise of this right, but has returned only USD \$600,000 of the purchase price, breaching its contractual obligation to return the full purchase price by the agreed date.

29. Wherefore, the remaining balance of USD \$800,000 is overdue and should be ordered to be paid forthwith to Mueller.

SECOND CAUSE OF ACTION

Unjust Enrichment
(Against Marisa Newman Projects LLC)

30. Plaintiff Mueller realleges each and every allegation set forth above as if fully rewritten herein.

31. Newman “acted as an independent art advisor to facilitate the sale of the Work.”

32. This facilitation and advice included proposing a solution to “the primary concern” that the artist Noland might disavow or reject the artwork after sale because of certain repairs that had been made. Newman’s recommendation was for a buy-back provision that would provide for the return of the full purchase price if the artist in fact later rejected the artwork.

33. Relying upon Newman’s advice, Mueller paid the full purchase price for the artwork.

34. Newman, as “independent art advisor” received a percentage or portion of the \$1,400,000.00 purchase price.

35. Mueller validly exercised the buy-back option as explained above. However, Mueller has not been able to receive the return of the full purchase price.

36. Newman has refused to return the funds received from Mueller. Under these circumstances, as a matter of equity and good conscience, it is unjust for Newman to retain the funds paid by Mueller when the artwork was never delivered to Mueller and Mueller validly exercised the buy-back option recommended by Newman.

37. Wherefore, in equity and good conscience, this Court should order that Newman disgorge all funds received from Mueller for this transaction.

THIRD CAUSE OF ACTION

Breach of Fiduciary Duty
(Against Marisa Newman Projects LLC)

38. Plaintiff Mueller realleges each and every allegation set forth above as if fully rewritten herein.

39. Defendant Newman “acted as an independent art advisor to facilitate the transaction.” This is the description of Newman’s role written by the attorneys engaged by Newman to facilitate the transaction.

40. Mueller and his art buyer, Shaheen, placed confidence and trust in Newman to advise Mueller in good faith during this transaction. In this capacity, Newman provided advice as to the artwork, the artist, and legal issues surrounding the transaction.

41. For example, in June of 2014, the sale of the artwork appeared to falter out of concerns that the artist, Noland, might disavow the artwork. In particular, Mueller, through Shaheen, raised with Newman’s principal, Marisa Newman, questions as to whether the “Visual Artists Rights Act of 1990” (“VARA”) gave Noland rights to “disown/disassociate their name with a given work of art...” Newman responded by providing Mueller with a memo from Newman’s New York counsel, Jaime Wolfe. This memo provides legal guidance and responds to the questions posed on behalf of Mueller. Specifically, the analysis provided by Newman includes a response to the question “(C)an she challenge the piece under

VARA – why or why not?” The response to this question concludes “(O)nce again, considering the fact that the re-fabrication was based on the her [sic] original blue print, it is hard to imagine how they could prejudice her honor or reputation (a type of prejudice represented to invoke an artist’s rights under VARA).

42. In addition to relying upon Newman for legal counsel, Mueller relied upon Newman for specific factual information relevant to the transaction and the concerns for the integrity of the artwork. On June 11, 2014, Marisa Newman sent Shaheen a photograph of the artwork. She annotated the picture with a comment reassuring as to the repairs to the artwork: “exactly the same nothing to argue about.” Newman further passed on to Mueller a representation that the artist, Cady, had been approving at auction “all her works without the slightest doubt except the Jancou work.” Mueller relied upon these and other representations from Newman in going forward with the transaction.

43. Underscoring the special relationship of confidence and trust, Mueller’s buyer concluded an email presenting a series of questions and concerns by saying “am I missing/not considering anything important here?” This is not a question that would be posed to a counterparty in an arms-length business transaction. Mueller and Newman recognized that Newman acted pursuant to a higher level of trust as an “advisor.”

44. As alleged above, Newman engaged the New York attorneys to provide legal guidance on the transaction. Documenting the unique role played by Newman and its counsel, Shaheen sent an email to Marisa Newman stating that “It would

probably make sense for the preliminary agreement to include a brief intro from Jaime indicating his and Mathew's role in the process, which as I understand it, is to work on everyone's behalf to ensure that each party's concerns and interests are protected in the final contractual agreement/transaction." Jaime and Mathew refer to Jaime Wolfe and Mathew Tynan, the New York counsel at Pelosi, Wolf, Effron & Spates LLP who drafted the agreement.

45. Newman breached its fiduciary duty by refusing to return its share of the purchase price after the artist disavowed the work and after Mueller invoked the buy-back provision. This conduct is particularly inequitable because Newman provided guidance as to the "primary concern" that the artist would disavow the work and recommended the buy-back solution which failed.

46. For this breach of fiduciary duty, Newman should be ordered to pay back the amount received and such further damages as this Court determines to be just and proper.

FOURTH CAUSE OF ACTION

Conversion (Against Michael Janssen)

47. Plaintiff incorporates each and every allegation set forth above as if fully rewritten herein.

48. Plaintiff pleads in the alternative that if Janssen simply converted the funds sent for the full purchase of the artwork, then he is personally liable for the tort of conversion.

49. As stated above, the \$1,400,000 was wired to the Janssen Gallery for the purchase of the artwork owned by Schurmann. Janssen has wrongfully misappropriated funds provided by Mueller which have not been returned in full.

50. Wherefore, Mueller seeks damages in the full amount converted by Janssen along with punitive damages for the wrongful conduct.

FIFTH CAUSE OF ACTION

Unjust Enrichment (Against Wilhelm Schurmann)

51. Plaintiff Mueller incorporates each and every allegation set forth above as if fully rewritten herein.

52. Plaintiff Mueller paid \$1,400,000 for an artwork owned by Schurmann with the express understanding that he would receive a full return of the purchase price if the artist refused to approve the legitimacy of the artwork.

53. After the artist rejected her artwork because it was reconditioned without her approval, Mueller invoked the buy-back provision.

54. As a matter of equity and good conscience, it is unjust for Schurmann to retain the funds paid by Mueller for an artwork never delivered to Mueller and after a valid exercise of the buy-back provision. Despite the publicity this case received in the art world, Schurmann has never represented that he returned all of the funds.

55. Wherefore, this Court should order the disgorgement from Schurmann of any funds received from the sale of the artwork.

PRAYER FOR RELIEF

WHEREFORE, Mueller seeks an order and judgment of this Court, granting the following relief:

- (a) Granting specific performance against Janssen Gallery for the remaining \$800,000 purchase price required to be paid under the “buy-back option” of the Agreement;
- (b) Awarding an order of disgorgement against defendants Newman and Schurmann for the full amount received from the purchase price;
- (c) Awarding damages against Newman for the breach of its duty;
- (d) Granting judgment against Janssen personally for the conversion of funds wire transferred by Mueller for the purchase of the artwork;
- (e) Awarding punitive damages against Janssen personally for the acts of conversion;
- (f) Awarding Plaintiff his costs of suit, including reasonable attorneys’ fees to the extent provided by law; and
- (g) Allowing Plaintiff such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff requests a trial by jury on all issues so triable.

Dated: New York, New York
January 7, 2016

BAKER & HOSTETLER LLP

By: /s/ Robertson D. Beckerlegge

Robertson D. Beckerlegge (RB 1829)
rbeckerlegge@bakerlaw.com
45 Rockefeller Plaza
New York, New York 10111
(212) 589-4200
(212) 589-4201 - Fax

Of Counsel:
Edmund W. Searby (OH0067455)
esearby@bakerlaw.com
PNC Center
1900 East 9th Street, Suite 3200
Cleveland, OH 44114-3482
Telephone: (216) 621-0200
Facsimile: (216) 696-0740

Attorneys for Plaintiff
SCOTT C. MUELLER

608146201.1

EXHIBIT A

**AGREEMENT OF PURCHASE AND SALE
(Cady Noland, "Log Cabin")**

THIS AGREEMENT is made the 2nd day of July, 2014

B E T W E E N:

Michael Janssen Gallery Pte. Ltd.

(the "Vendor")

and

Scott C. Mueller

(the "Purchaser").

WHEREAS the Vendor has secured the rights from the current owner (the "Owner") to sell that certain artwork titled "Log Cabin" (the "Work") by Cady Noland (the "Artist"), the description and provenance of which is more particularly described and attested to by Vendor in the attached Schedule A;

WHEREAS Marisa Newman Projects, LLC ("Newman") acted as an independent art advisor to facilitate the sale of the Work;

AND WHEREAS the Vendor has agreed to sell and the Purchaser has agreed to purchase the Work from the Vendor, upon and subject to the terms and conditions set out in this Agreement;

NOW THEREFORE, THIS AGREEMENT WITNESSETH THAT in consideration of the covenants, agreements, representations, warranties and payments herein set out and provided for and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto hereby covenant and agree as follows:

1. Purchase and Sale

- (a) Subject to the terms and conditions hereof, the Vendor hereby sells, conveys, assigns and transfers to the Purchaser, and the Purchaser accepts the conveyance, assignment and transfer from the Vendor, of all right, title and interest in the Work.

- (b) Notwithstanding the foregoing, the parties acknowledge that copyright in and to the Work is not conveyed or transferred hereunder and shall remain with the Artist.
- (c) The Purchaser covenants and agrees to be liable for and pay all applicable sales and use or any other taxes upon and in connection with the sale and transfer of the Work by the Vendor to the Purchaser, where and if applicable. The Vendor shall deliver to the Purchaser such transfer documents as are required by the Purchaser to transfer title to and in the Work to the Purchaser fully on closing of the transaction contemplated herein.
- (d) The Purchaser covenants and agrees that for twelve (12) months following the execution of this Agreement, neither it, nor an agent acting on its behalf, shall re-sell, donate or otherwise transfer ownership in the Work, mortgage or pledge a security interest in, or otherwise encumber the Work without the prior written consent of the Vendor and/or the Owner.

2. **Purchase Price**

The total purchase price (the “**Purchase Price**”) payable by the Purchaser to the Vendor for the Work is USD \$1,400,000.00.

3. **Payment of Purchase Price**

Upon delivery of a fully-signed copy of this Agreement to Purchaser, the Purchaser shall pay the full amount of the Purchase Price to the Vendor by wire transfer (the “**Purchase Payment**”) to MICHAEL JANSSEN GALLERY PTE. LTD. at:

Michael Janssen Gallery Pte. Ltd.
Bank: DBS BANK LTD
Bank Address: Great World City Branch
1 Kim Seng Promenade
#02-32 Great World City
Singapore 237994

Account Number: 008-902641-0
SWIFT Code: DBSSSGSG

Reference: *Cady Noland “Log Cabin”*

4. Delivery and Insurance Arrangements

- (a) The Purchaser has designated *ART to move* of Cologne, Germany (the “**Designated Delivery Service**”) to transport the Work. The transfer of title to the Work shall occur in Berlin, Germany when the Work is released to the Designated Delivery Service. The Work shall be released to the Designated Delivery Service in a deconstructed form to facilitate shipping with the expectation that the Work shall, upon delivery to the Purchaser in the State of Ohio, be reconstructed in accordance with the Artist’s original design.
- (b) The expenses of delivery, including, without limitation, customs clearance expenses and duties, shall be paid and arranged by the Purchaser and/or the Designated Delivery Service.
- (c) The Designated Delivery Service shall provide a receipt indicating that the Work has been released to the Designated Delivery Service (the “**Release to the Designated Delivery Service**”). A copy of the Release to the Designated Delivery Service shall be provided to the Vendor at Galerie Michael Janssen in Berlin, Germany who shall cause a copy of such document to be emailed to the Purchaser at smueller@dealertire.com and to Newman at marisa@marisanewman.com.
- (d) Purchaser shall provide so-called “wall to wall” insurance to Purchaser’s benefit in an amount not less than the Purchase Price, against risk of loss or damages to the Work. Such insurance shall cover all risk and loss upon receipt of the Work in Berlin, Germany by Designated Delivery Service for the delivery to Purchaser in the State of Ohio.

5. Vendor’s Representations, Warranties and Covenants

As a material inducement to the Purchaser entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Purchaser is entering into this Agreement in reliance upon the representations, warranties and covenants of the Vendor in this Section 5, the Vendor represents, warrants and covenants to the Purchaser that each of the following statements are true, correct, complete and not misleading on the date hereof.

- (a) Vendor, Michael Janssen Gallery Pte. Ltd., has all requisite power and authority to execute and deliver this Agreement on behalf of the Owner and to engage in the transactions contemplated herein and otherwise perform its obligations hereunder.

- (b) The Vendor, as the authorized agent of the Owner, has all necessary power, authority and capacity to enter into this Agreement and all other agreements and instruments to be executed as contemplated by this Agreement and to carry out its obligations under this Agreement and such other agreements and instruments. The execution and delivery by the Vendor of this Agreement, the performance by the Vendor of its obligations hereunder, and the consummation of the transactions contemplated hereby, have been duly and validly authorized by all necessary action on the part of the Vendor, the Owner and all other persons whose approval is required under the Vendor's organizational documents and under applicable law.
- (c) This Agreement constitutes a valid and binding obligation of the Vendor's enforceable against the Vendor in accordance with its terms subject, however, to limitations on enforcement imposed by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of the rights of creditors or others and to the extent that equitable remedies such as specific performance and injunctions are only available in the discretion of the court from which they are sought.
- (d) Neither the Vendor nor the Owner has (i) filed, or proposes to file, either (A) a voluntary petition seeking liquidation, reorganization, arrangement or readjustment, in any form, of its debts under any bankruptcy or insolvency law (collectively, "**Bankruptcy Law**"), or (B) an answer consenting to or acquiescing in any such petition; (ii) made any assignment for the benefit of its creditors with respect to substantially all of its assets; (iii) been subject to an order of relief or to an involuntary petition under any Bankruptcy Law, an application for the appointment of a receiver for substantially all of its assets, or any involuntary petition seeking liquidation, reorganization, arrangement or readjustment of its debts under any other applicable law. No action has been taken or threatened with respect to the Vendor or Owner under any Bankruptcy Law and no act or proceeding has been taken by or against the Vendor or Owner in connection with the dissolution, liquidation or reorganization of the Vendor or Owner.
- (e) The Vendor and the Owner have sufficient capital in light of their contemplated activities and are able to pay their obligations as they become due in the ordinary course.
- (f) The Owner acquired the Work or has owned the Work since such date with good, free and marketable title thereto free and clear of all mortgages, liens, leases, charges, security interests, adverse claims, pledges, encumbrances or demands whatsoever and is exclusively entitled to possess and dispose of the same and the Vendor, on behalf of the Owner, shall provide to the Purchaser all chain-of-title and provenance information relating to the Work in the Vendor's

or Owner's possession or control. The Purchaser shall accordingly obtain good, free and marketable title hereto, free and clear of all mortgages, liens, leases, charges, security interests, adverse claims, pledges, encumbrances or demands whatsoever and will be exclusively entitled to possess and dispose of the same, the whole subject to the Purchaser's own acts.

- (g) Other than this Agreement, there is no agreement, option or other right or privilege outstanding in favor of any person for the purchase from the Vendor of the Work.
- (h) There is no action, suit, proceeding, claim, application, complaint or investigation in any court or before any arbitrator or before or by any regulatory body or governmental or non-governmental body pending or threatened by or against the Vendor or Owner:
 - (i) related to the Work or the transactions contemplated by this Agreement;
 - (ii) for the purpose of enjoining, preventing or restraining the completion of the transactions contemplated hereby or otherwise claiming that such completion is improper; or
 - (iii) which could adversely affect the right of the Purchaser to acquire or retain the Work.
- (i) The Vendor, on behalf of the Owner, has the right to enter into this Agreement and to sell the Work, and no other person is capable of preventing the Vendor from selling the Work and upon Vendor's receipt of the Purchase Payment, the Purchaser shall obtain good and marketable title to the Work free and clear of all liens, charges and encumbrances.
- (j) None of the foregoing representations and warranties contain any untrue statement of a material fact or omit to state any material fact that would mislead a prospective purchaser of the Work seeking full information as to the Vendor and the Work. Except for those matters disclosed in this Agreement and the attached Schedule A, there are no known facts related to the Work not disclosed in this Agreement which, if learned by the Purchaser, might reasonably be expected to materially diminish the Purchaser's evaluation of the worth of the Work or which, if learned by a purchaser acting in a commercially reasonable manner, might reasonably be expected to deter such purchaser from completing the transactions contemplated by this Agreement on the terms of this Agreement.

6. Buy-back Option

- (a) *If*, as a direct result of the Work's prior treatment under Owner's control and supervision, including the fact, as stipulated on Schedule A hereto, that the original logs of the Work's facade were re-fabricated and/or that any original material of the Work may have been discarded or destroyed without the Artist's knowledge and/or approval, Artist does any of the following (the "Artist Objection(s)") within twelve (12) months of Vendor's receipt of the Purchase Payment (the "Buy-back Period"):
- (i) affirmatively refuses to acknowledge or approve the legitimacy of the Work;
 - (ii) seeks to disassociate her name from the Work; or
 - (iii) claims that her moral rights, rights under the Visual Artists Rights Act or other similar legislation have been violated;
- (b) *Then*, the party who first learns of such Artist Objection shall promptly inform the other. In such event, Purchaser's sole remedy, in its sole discretion, shall be to elect within six (6) months of the date of learning of or being informed of the Artist Objection to cause the Vendor to buy back the Work from the Purchaser for a sum equal to the Purchase Price, on the same material terms provided herein, payable as follows:
- (i) the sum of USD \$350,000.00, representing 25% of the Purchase Price, to be paid on or before thirty (30) days of Vendor's receipt of such written notice from Purchaser; and
 - (ii) the remaining balance due of USD \$1,050,000.00 to be paid no later than one hundred twenty (120) days of Vendor's receipt of such written notice from Purchaser.
- (c) Notwithstanding the foregoing, in the event that the Artist affirmatively acknowledges or approves the legitimacy of the Work at any point within the Buy-back Period, the Purchaser's right to exercise the buy-back option, as provided in this Section 6, shall automatically terminate.
- (d) Purchaser agrees that its initial efforts to reach the Artist concerning the transaction contemplated hereunder shall be made under the supervision of Chris D'Amelio.

7. **Future Sale of the Work**

If at any point beyond the Buy-back Period, and continuing for so long as the Purchaser retains ownership of the Work, the Purchaser decides to sell the Work, the Purchaser agrees to offer Michael Janssen Gallery Pte. Ltd. the first opportunity to either buy the Work or sell the Work on Purchaser's behalf.

8. **Indemnification**

The Vendor hereby agrees to indemnify and hold harmless the Purchaser (along with Purchaser's heirs, executors, agents, and assigns) and Newman (along with Newman's heirs, executors, agents, and assigns) from and against losses incurred by the Purchaser or Newman as a result of any and all claims and liabilities (including interest and penalties, legal fees on a substantial indemnity basis, expenses and expenses of investigation and defence in connection therewith arising out of any claims and proceedings resulting therefrom) arising out of or in connection with or related to any misrepresentation or breach of warranty or covenant made by the Vendor pursuant to this Agreement or any instrument or certificate delivered by the Vendor hereunder. The indemnification obligations hereunder shall survive the completion of the transactions contemplated hereunder and shall subsist notwithstanding any investigation which may be made by or at the request of the Purchaser.

9. **Conditions of Purchase**

This Agreement and the parties' obligation to complete the purchase and sale of the Work upon signing of this Agreement by both parties, shall be subject to:

- (a) no material damage to the whole or any substantial part of the Work shall have occurred prior to delivery of the Work to the Designated Delivery Service other than the deconstruction of the work to facilitate shipping as agreed upon hereunder;
- (b) chain of title and provenance documentation with respect to the Work, provided upon request, and in form and content satisfactory to the Purchaser; and
- (c) a Bill of Sale in favor of the Purchaser.

10. **Miscellaneous**

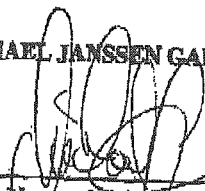
- (a) Except as otherwise specified herein, each party hereto shall assume and be solely responsible for the fees and expenses including commissions of any brokers or agents, lawyer's fees or other charges, retained by each or it in connection with the transactions contemplated herein and each party agrees to fully indemnify the other party for any breach of this provision;

- (b) This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors, heirs, executors, administrators, and assigns;
- (c) Each party hereto shall, with reasonable diligence, do all such things and execute and deliver all such documents or instruments required by each other party as may reasonably be necessary or desirable to effect the purpose and intent of this Agreement and to carry out its provisions, whether before or after the completion of the transactions contemplated hereunder;
- (d) This Agreement, including Schedule A and all documents referred to in Section 9 above, constitutes the entire understanding, contract and Agreement between the parties hereto with respect to the subject matter of this Agreement and supersedes all prior oral or written understandings, agreements or contracts, formal or informal, between the parties hereto or their representatives with respect thereto and may only be amended by written agreement of the parties;
- (e) This Agreement shall be governed by and construed and interpreted exclusively in accordance with the laws of the State of New York and the laws of the United States applicable therein to transactions negotiated and fully performed within the State of New York;
- (f) All stipulations as to time are strictly of the essence;
- (g) This Agreement may be executed and delivered by facsimile, pdf or e-mail transmission and in counterparts; and
- (h) The terms and provisions of this Agreement shall be and remain strictly confidential and shall not, without the consent of the other party, be disclosed to any person by either party, or their advisors.

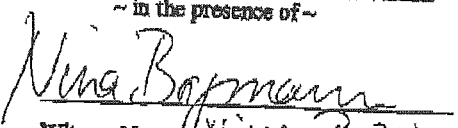
[SIGNATURE PAGE FOLLOWS]


IN WITNESS WHEREOF the parties hereto have executed this Agreement on the date set forth above.

MICHAEL JANSSEN GALLERY PTE. LTD.

By: 
Name: Michael Janssen
Title: Owner

SIGNED, SEALED AND DELIVERED
~ in the presence of ~


Witness Name: NINA BORGSMANN

By: 
Scott C. Mueller

SIGNED, SEALED AND DELIVERED
~ in the presence of ~


Witness Name: DEBORAH LYNELLE

SCHEDULE A

ARTWORK DESCRIPTION AND PROVENANCE

1. **Title:** Log Cabin
2. **Date of Creation:** 1990
3. **Component Materials:** Wood, American flag, metal rings, and construction plans
4. **Size:** 141¾" x 218" x 31½"
5. **Description:** A sculpture consisting of a log cabin façade fabricated to the Artist's specifications, an American flag, metal rings, and paper construction plans.
 - a. All components, other than the wood and hardware that comprise the log cabin façade, are original to the artwork and have not been subject to any conservation, repair or replacement.
 - b. There are no additional components that are missing or not included with the artwork.
6. **Exhibition / Ownership History:**
 - a. First exhibited at *Galerie Max Hetzler*, Cologne in 1990.
 - b. Sold directly by *Galerie Max Hetzler* to the current Owner.
 - I. A redacted copy of the bill of sale / invoice is available, and shall be supplied by the Vendor to the Purchaser at the Purchaser's request.
 - II. The artwork was paid for in full at the time of purchase and the Owner has clear title to it. The Vendor shall, upon request of the Purchaser, provide proof of title.
 - c. After being purchased from *Galerie Max Hetzler* by the current Owner, "Log Cabin" was included in exhibitions at the following museums:
 - I. *Ludwig Forum*, Aachen (1992)
 - II. *Deichtorhallen*, Hamburg (1994)
 - III. *Kunsthalle der Hypo-Kulturstiftung*, Munich (1995)
 - d. In 1995, the current Owner placed the work on long-term loan with the *Suermondt-Ludwig-Museum*, Aachen, where it was exhibited outdoors in a courtyard setting for approximately ten years.
 - e. Following the re-fabrication (described below) of the log cabin façade, the artwork was exhibited at *KOW*, Berlin in 2011 as part of the exhibition "Cady Noland / Santiago Sierra."
 - I. An image of the artwork was initially posted on *KOW*, Berlin's website and was subsequently taken down, as Cady Noland did not approve of the context of the exhibition; and did not want to be shown along side with Santiago Sierra.
 - II. To the best of the current Owner's knowledge, Cady Noland raised no specific objection to the artwork based on its appearance in the image originally posted on the *KOW*, Berlin website.

7. Artist Approval of Prior Use, Display and Conservation

- a. The Artist initially intended and expressly approved that the artwork could be displayed both indoors and outdoors and gave general / non-specific instructions that it should be treated with a stain or other appropriate material that would provide resistance to / protection from damage and deterioration due to weather and other natural elements.

8. Modifications due to Passage of Time and Exposure to the Elements

- a. During the approximately ten years, the artwork was exhibited outside by the *Suermondt-Ludwig-Museum*, the artwork suffered significant damage and deterioration due to its material composition, the inherent nature of its wood and other physical components, and the effects of weather, seasonal changes in climate, time, and other natural elements.

9. Conservation Efforts / Re-fabrication

- a. As a result of the damage and deterioration that the artwork sustained during its time outdoors, a condition report was prepared in December 2010, which documented the poor condition of the log cabin façade, and recommended that the only way to ensure the long-term viability / existence of the artwork would be to replace the rotting logs with new ones.
- b. Based on the conservation report / conservator's recommendations, the original logs were replaced and a new log cabin façade was constructed.
- c. The log cabin façade was re-constructed by the original fabricator -- *MasterLog Homes, Inc.* (Darby, Montana) -- to Cady Noland's original and exact specifications, using the same blueprint / building plan used for the original façade, and the same variety of wood / material.