

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

\_\_\_\_\_  
James HATT, Kristin HATT, and Elizabeth  
WEINBERG, individually and derivatively on  
behalf of the Trustees of the Berkshire Museum

Plaintiffs,

v.

CIVIL ACTION NO.

TRUSTEES OF THE BERKSHIRE MUSEUM,  
a/k/a the Berkshire Museum of Art, History, and  
Science, a corporation, and  
Elizabeth MCGRAW; Stacey Gillis WEBER;  
Ethan KLEPETAR; Stephen BAYNE;  
Lydia S. ROSNER; Mike ADDY; Jay BIKOFSKY;  
Douglas CRANE; Howard J. EBERWEIN III;  
Ursula EHRET-DICHTER; David GLODT;  
Wendy GORDON; William M. HINES, JR.;  
Joan HUNTER; Eric KORENMAN;  
Barbara KRAUTHAMER; Donna KRENICKI;  
Suzanne NASH; David NEUBERT;  
Jeffrey NOBLE; Caitlin PEMBLE;  
and Melissa SCARAFONI, individuals in their  
capacity as Trustees of the Berkshire Museum  
of Art, History, and Science,

Defendants.

**VERIFIED COMPLAINT**

This is an action by Plaintiffs James Hatt, Kristin Hatt (together the “Hatts”), and Elizabeth Weinberg (“Weinberg,” with the Hatts, the “Plaintiffs”), individually and derivatively and on behalf of the class of members that they represent to enjoin the Trustees of the Berkshire Museum, a/k/a the Berkshire Museum of Art, History, and Science (the “Museum”) and its management and trustees from their unlawful intended dissolution of one of the great collections

of American paintings, a collection that is uniquely important to the history and culture of Pittsfield and of Berkshire County.

### **PRELIMINARY STATEMENT**

1. In June, 2017, the Museum announced its intention to sell forty of its most important paintings, sculpture, and decorative arts (the “Artwork”) in an effort to raise more than \$50 million (the “Liquidation Sale”). The Artwork includes masterpieces by Norman Rockwell and Frederic Edwin Church, and by several members of the Hudson River School whose work is inextricably connected to the Hudson River watershed in which Pittsfield is located. One of the Rockwell paintings, *Shuffleton’s Barbershop*, is widely considered his greatest work.

2. The Liquidation Sale is an explicit violation of universally-accepted tenets of museum management with regard to the disposition of cultural objects, a process known as deaccession. Industry practice dictates that museums may sell works of art or other cultural objects only if the resulting sales proceeds are held solely to acquire additional art work. The reason for these principles is straightforward: museums’ very existence is supported by a public subsidy in exchange for the understanding that they hold their collections for the benefit of the public — a public trust. Donors of artwork, money, and time do so in reliance on the expectation that a museum will adhere to its function — making available unique objects of creative expression for engagement and learning by the public.

3. The Liquidation Sale breaks faith with these principles at every level. The Artwork will disappear into private collections around the world, never to be seen again and certainly not in the place where their donors and the museums’ supporters intended: at the Museum, in Pittsfield. Once done, it can never be undone.

4. The guidelines of the Association of Art Museum Directors (the “AAMD”) and the American Alliance of Museums (the “AAM”) — the leading museum associations of the United States — encompass the importance of these principles on deaccessioning, and both the AAMD and the AAM have condemned the Liquidation Sale in the strongest possible terms.

5. The Liquidation Sale was announced without warning, and the members of the Museum were not advised nor offered the opportunity to provide their input. The Museum offered a purported change in its intended scope of activity as justification, an assertion that withers under any scrutiny.

6. Put simply, the Liquidation Sale is a solution in search of a problem.

7. Absent intervention by the Court, the Museum will do irreparable harm to its purpose and to its duties and obligations to its donors and members.

#### **PARTIES**

8. The Hatts are full-time residents of Lenox, Berkshire County, Massachusetts. The Hatts are members of the Museum.

9. Weinberg is a full-time resident of Lenox, Berkshire County, Massachusetts. Weinberg was a member of the Museum from 2010 until she cancelled her membership in response to the Liquidation Sale.

10. The Museum is a corporation organized pursuant to an act of the Legislature, and G.L. c. 180, *et seq.* The Museum is located at 39 South Street, Pittsfield, Berkshire County, Massachusetts.

11. Elizabeth McGraw is President of the Board of Trustees.
12. Stacey Gillis Weber is Vice President of the Board of Trustees.
13. Ethan Klepetar is Vice President of the Board of Trustees.
14. Stephen Bayne is Treasurer of the Board of Trustees.
15. Lydia S. Rosner is Secretary of the Board of Trustees.
16. Mike Addy is a member of the Board of Trustees.
17. Jay Bikofsky is a member of the Board of Trustees.
18. Douglas Crane is a member of the Board of Trustees.
19. Howard J. Eberwein III is a member of the Board of Trustees.
20. Ursula Ehret-Dichter is a member of the Board of Trustees.
21. David Glodt is a member of the Board of Trustees.
22. Wendy Gordon is a member of the Board of Trustees.
23. William M. Hines, Jr. is a member of the Board of Trustees.
24. Joan Hunter is a member of the Board of Trustees.
25. Eric Korenman is a member of the Board of Trustees.
26. Barbara Krauthamer is a member of the Board of Trustees.
27. Donna Krenicki is a member of the Board of Trustees.

28. Suzanne Nash is a member of the Board of Trustees.
29. David Neubert is a member of the Board of Trustees.
30. Jeffrey Noble is a member of the Board of Trustees.
31. Caitlin Pemble is a member of the Board of Trustees.
32. Melissa Scarafoni is a member of the Board of Trustees (together with the foregoing identified trustees, the “Trustee Defendants”).

## FACTS

### **The History of the Museum**

33. The Museum is a jewel in the culture of Berkshire County and the Commonwealth. One of the oldest continuing museums in Massachusetts, it presents a classical encyclopedic collection of art and natural history. As noted below, its history also parallels the development and industry of Pittsfield. The Museum’s founding was a milestone in the history of Pittsfield and its presence at the very heart of downtown anchors the community uniquely.

34. The origins of the Museum begin in 1871 with the incorporation of the Trustees of the Berkshire Athenaeum and Museum (the “Athenaeum”) in Pittsfield. Established by an act of the Legislature on March 24, 1871, the Athenaeum’s stated mission was “promoting education, culture and refinement, and diffusing knowledge by means of a library, reading-rooms, lectures, **museums, and cabinets of art** and historical and natural curiosities. . . .” *See* Exhibit A hereto (emphasis added). The Athenaeum’s property is explicitly restricted as follows:

no part of such real and personal property, or such gifts, devises or bequests, shall ever be removed from the town of Pittsfield.

35. A second act of the legislature on March 6, 1903 changed the name of the Athenaeum to the “Trustees of the Berkshire Athenaeum and Museum.” *See* Exhibit B hereto. It limited the number of Trustees of the Athenaeum to twenty (20), nine (9) new seats in addition to the eleven (11) created in the 1871 charter. It made no change to the Athenaeum’s geographic restriction.

36. The modern formulation of the Museum was the vision of Zenas Crane (“Crane”), a successful paper manufacturer in Dalton. On or about April 2, 1903, Crane deeded the land where the Museum now stands by gift “for the purpose of establishing a Museum of Natural History **and Art** in connection with the Berkshire Athenaeum.” *See* Exhibit C hereto (emphasis added).

37. Crane also specified a bequest of \$100,000 to the Athenaeum in his will. By later codicil, he added another \$100,000 to the Athenaeum. A true and accurate copy of Crane’s will and first codicil are attached as Exhibit D.

38. In 1932, the Legislature once again amended the governing documents of the Museum. On March 31, 1932, the legislature passed a resolution creating a new entity named the Trustees of the Berkshire Museum, and authorized the existing Athenaeum to transfer its property to the newly-chartered entity. *See* Exhibit E hereto. The Museum (the present Defendant) was chartered:

for the purpose of establishing and maintaining **in the city of Pittsfield** an institution to aid in promoting for the people of Berkshire county and the general public the study of art, natural science, and culture history of mankind and kindred subjects by means of museums and collections. . . .

*Id.* (emphasis added). The 1932 act limited the number of trustees of the Museum to fifteen (15).

39. Once again, no alteration was made to the geographical restriction on the works in the original Athenaeum collection, nor, on information and belief, has the Legislature ever changed that restriction, which remains in force today.

40. The Crane family continued to support the Berkshire Museum. In 1932, Zenas Marshall Crane bequeathed to the now-Berkshire Museum “my paintings and objects of art” that the Museum wished to have, except certain prints specified in the will. A true and accurate copy of this will is attached hereto as Exhibit F. This will also made a \$200,000 cash bequest to the Museum, “to the end that their possibilities as educational factors in the life of the community, and to the general public who may be drawn to them, may be realized to their fullest extent.”

### **The Artwork**

41. The following paintings and objects are the subject of this action, and they are listed for sale at Sotheby’s on the dates indicated, though Sotheby’s recently indicated that the bracketed works may not be offered on November 13, 2017, but the schedule is entirely in their hands for the moment.

#### American Art: November 13, 2017

Albert Bierstadt  
*Connecticut River Valley, Claremont, New Hampshire* (1868)  
oil on canvas  
27 by 44 inches (68.6 by 111.8 cm)

[Albert Bierstadt  
*Giant Redwood Trees of California (King’s River, Big Tree Grove, California)* (ca. 1874)  
oil on canvas  
52 ½ by 42 ¼ inches (133.4 by 107.3 cm)]

[Ralph Albert Blakelock  
*Rocky Mountains* (undated)  
oil on canvas  
35 by 55 ¾ inches (88.9 by 141.6 cm)]

[Frederic Edwin Church  
*Valley of Santa Isabel, New Granada* (1875)  
oil on canvas  
39 ¼ by 60 inches (99.7 by 152.4 cm)]

Thomas Wilmer Dewing  
*The White Dress* (1921)  
oil on canvas  
16 ⅞ by 25 inches (41 by 63.5 cm)

George Henry Durrie  
*Hunter in Winter Wood* (1860)  
oil on canvas  
36 by 54 inches (91.4 by 137.2 cm)

[George Inness  
*Mountain Landscape - The Painter at Work (Leeds in the Catskills, with the Artist Sketching)*  
(ca. 1867-89)  
oil on canvas  
47 ½ by 71 ½ inches (120.7 by 181.6 cm)]

John La Farge  
*Magnolia* (1859)  
oil on panel  
16 by 11 ½ inches (40.6 by 29.2 cm)

[Thomas Moran  
*The Last Arrow* (1867)  
oil on canvas  
52 by 79 inches (132.1 by 200.7 cm)]

[Charles Willson Peale  
*Portrait of General David Forman* (1784)  
oil on canvas  
51 ½ by 39 ½ inches (130.8 by 99.6 cm)]

[Rembrandt Peale  
*George Washington* (undated)  
oil on canvas  
36 ⅞ by 29 ¼ inches (91.8 by 74.3 cm)]



Norman Rockwell  
*Shuffleton's Barbershop* (1950)  
oil on canvas  
46 by 43 inches (116.8 by 109.2 cm)

*Shaftsbury Blacksmith Shop* (1940)  
oil on canvas  
35 1/8 by 70 1/4 inches (89.2 by 178.4 cm)

Augustus Saint Gaudens  
*Diana of the Tower* (1899)  
Bronze  
height: 26 3/4 inches (67.9 cm) on a 2 1/4 inch (5.7 cm) marble base

Impressionist & Modern Art Evening Sale: November 14, 2017

Henry Moore  
*Three Seated Women* (1942)  
pencil, crayon, charcoal, ink wash and pen and ink on paper  
17 1/2 by 21 3/4 inches (44.6 by 55.2 cm)

Francis Picabia  
*Force Comique* (1914)  
watercolor on paper  
25 1/2 by 21 1/8 inches (64.7 by 53.7 cm)

Impressionist & Modern Art Day Sale: November 15, 2017

Raoul Dufy  
*La Fête* (1935)  
watercolor and gouache on paper  
19 3/4 by 26 inches (50.1 by 66 cm)

Édouard Vuillard  
*Deux femmes dans un interieur* (undated)  
watercolor and pencil on paper  
8 7/8 by 6 3/4 inches (22.5 by 17.1 cm)

European Art: November 21, 2017

William Bouguereau  
*The Newborn Lamb* (1873)  
Oil on canvas  
65 by 34 5/8 inches (165.1 by 87.9 cm)

William Bouguereau  
*Les deux soeurs (La Bourrique)* (1884)  
oil on canvas  
53  $\frac{3}{4}$  by 39  $\frac{7}{8}$  inches (136.5 by 101.3 cm)

Charles François Daubigny  
*Paysans allant aux champs (Le Matin)* (undated)  
oil on canvas  
57 by 94  $\frac{1}{2}$  inches (144.8 by 240 cm)

Daniel Ridgway Knight  
*Reverie (Leisure Moments)*  
oil on canvas  
33  $\frac{1}{4}$  by 45  $\frac{1}{2}$  inches (84.5 by 115.6 cm)

Alberto Pasini  
*Faubourg de Constantinople* (1877)  
oil on canvas  
25 by 39  $\frac{7}{8}$  inches (63.5 by 101.3 cm)

Edwin Lord Weeks  
*Indian Prince, Palace of Agra* (undated)  
oil on canvas  
24  $\frac{3}{8}$  by 19  $\frac{7}{8}$  inches (61.9 by 50.5 cm)

Master Paintings: February 2018

Pieter De Hooch  
*An interior scene with a musical party and a young boy dancing* (undated)  
oil on canvas  
26  $\frac{5}{8}$  by 30  $\frac{5}{8}$  inches (67.6 by 77.8 cm)

Adriaen Isenbrant  
*Adam and Eve* (undated)  
oil on panel  
18  $\frac{1}{4}$  by 10  $\frac{3}{4}$  inches (46.4 by 27.3 cm)

Adriaen Isenbrant  
*The Flight into Egypt* (undated)  
oil on panel  
27  $\frac{1}{4}$  by 33  $\frac{5}{8}$  inches (69.2 by 85.4 cm)  
oil on canvas

Attributed To Sir Joshua Reynolds, P.R.A.  
*Portrait of a gentleman, said to be Mr. Cave* (undated)  
oil on canvas  
30 ½ by 25 ¼ inches (77.5 by 64.2 cm)

Girolamo Troppa  
*Apollo flaying Marsyas* (undated)  
oil on canvas  
40 ½ by 52 ⅞ inches (103 by 134 cm)

Jan Victors  
*Benjamin taking leave of Jacob before his departure to Egypt* (undated)  
oil on canvas  
63 by 90 inches (160 by 228.6 cm)

Benjamin West, P.R.A.  
*Daniel interpreting to Belshazzar the handwriting on the wall* (1775)  
oil on canvas  
50 ¾ by 73 ½ inches (129 by 186.5 cm)

Asia Week: March 2018

An Archaic Bronze Ritual Food Vessel (Gui) Early Western Zhou Dynasty

A Large Blue And White 'Dragon' Vase Qing Dynasty, 18th / Early 19th Century

A Large Gilt Bronze Figure Of Guanyin Qing Dynasty, Late 19th Century

A Panel Coromandel 'Birthday' Screen Qing Dynasty, Kangxi Period, Dated Jisi Year,  
Corresponding To 1689

A Six-Panel Folding Screen Japan, Late 17th Century

Date to be determined:

Alexander Calder  
*Dancing Torpedo Shape* (1932)  
wood, wire, sheet metal and paint  
29 by 24 ½ by 11 ½ inches (73.7 by 62.2 by 29.2 cm)

Alexander Calder  
*Double Arc and Sphere* (ca. 1932)  
wood, wire, rod and paint  
32 ½ by 11 ½ by 11 ¾ inches (82.6 by 29.2 by 29.9 cm)

Franklin Simmons  
*Penelope* (1884)  
71 inches (180.3 cm)

Giulio Tadolini  
*Judith* (1881)  
Marble  
height (with base): 90 inches (228.6 cm)

### **The Museum Installs New Management Intent on Improperly “Monetizing” the Collection**

42. On information and belief, the Liquidation Sale is not the result of any impending financial need. It is a lazy solution to the financial challenges of running a non-profit museum.

43. The Museum’s Director Van Shields (“Shields”) spoke of “monetizing” the Museum’s collection almost as soon as he arrived in 2011. This was clearly a warning signal, and, it turns out, part of a pattern of museum mismanagement.

44. At his prior post as Executive Director and CEO of the publicly owned Culture & Heritage Museums in Rock Hill, South Carolina, Shields attempted the makeover of a collection of primarily African taxidermy. According to the *Berkshire Eagle*:

Shields and his museum allies failed to win the community acceptance and donations the ambitious effort needed, an investigation by *The Eagle* found.

They missed project deadlines, churned through staff even as the museum expanded its upper ranks, fumbled politics in a conservative county, and resisted public and private calls to be more open about the project’s challenges.

45. Worse yet, Shields’s project resulted in an inquiry from the South Carolina Secretary of State’s office. In a letter from the deputy general counsel for the Secretary of State, numerous failings were identified:

It does not appear that much effort was made to actually begin the museum project for which the land was donated — a lot of money was spent but it appears that there is nothing to show for it. . . . Also, it appears that hundreds of thousands of dollars were spent annually on professional fundraisers and public relations firms with little return on investment.

There may be conflict of interest concerns involving members of the Foundation's Board of Directors and other individuals associated with the partnership with [Cherokee Investment Partners]. . . . The same individuals seem to be involved with multiple corporations that are receiving large amounts of money.

46. Shields left his South Carolina position in 2011 and was hired by the Museum.

47. The Museum's prior administration oversaw a successful capital campaign that raised millions of dollars. The Museum has portrayed that capital campaign as a failure because it did not secure the financial stability of the Museum indefinitely, but few if any such campaigns accomplish that. Non-profit fundraising is a never-ending pursuit, and the Museum and the Trustee Defendants have apparently concluded that they can no longer be bothered with the hard work of charitable stewardship.

48. The Museum sold a number of Russian artworks in 2008, not as part of the separate capital campaign, but to enhance the collection (which is focused on American art).

49. The then-director Stuart Chase summarized succinctly why those works were being sold:

Our museum has held a unique position in the culturally rich Berkshire region throughout its history. Its appeal is broad — serious art connoisseurs, mineral hobbyists, aquarium enthusiasts, history aficionados — providing something for every member of the family, whatever their age. It is a very exciting time for the museum. We have just completed the \$10 million Phase 11 of an extensive renovation, including the construction of a new 3,000 square foot Feigenbaum Hall of Innovation and the installation of a museum-wide climate control system that has transformed our ability to preserve and display our collection and other loan exhibitions. The proceeds from the auction will allow us to focus our energy on acquisitions, an equally important part of the institution's growth, which will help enrich the Berkshire Museum's special niche as the premier family institution in the area.

50. While some of those proceeds were used to acquire other art, on information and belief other of those funds have been commingled and dissipated for overhead and expenses, not dedicated to the acquisition of additional art.

51. The full extent of that inappropriate expenditure is unknown because the Museum has refused to provide information concerning it.

52. On information and belief, the 2008 consignment contract did not contain what is known as a reserve clause, a provision requiring the item to be withdrawn from sale if bids do not reach a certain level. On information and belief, the Liquidation Sale will also include no reserve clause, requiring the artwork to be sold to the highest bidder. Thus, the speculative amounts bandied about by the Museum may not even be reached. Given the Museum's breach of ethics, no other museum will bid on the artwork, making a depressed price more likely.

53. The number of Trustee Defendants (including Life Trustees) currently and substantially exceeds the statutory allowance of fifteen. It is unknown by what margin, majority, or plurality the Trustee Defendants approved the Liquidation Sale, even though the Hatts requested information about resolutions concerning acquisition policy.

54. As recently as October 1, 2015 — well into what Shields has now described as a period of financial need — he touted the fiscal health of the Museum. In an interview with the *Berkshire Eagle*, Shields argued: “[w]e’re in a good financial position. . . .” He discussed the Museum’s budget and made no mention of a deficit or any other problem. That same interview touted the Museum’s various regional and community partnerships, all of which are now threatened by the Liquidation Sale because a flagrant breach of ethics will almost certainly turn the Museum into a pariah in the art world.

55. In July, 2017 the Museum announced the Liquidation Sale without warning. A true and accurate copy of the public statement is attached as Exhibit G hereto. Poorly disguised with a catchy “New Vision” slogan, the *Berkshire Eagle* reported that it was approved by certain of the Trustee Defendants “just hours” before it was announced to the world, and without any word to members or the community.

56. The statement touted how many retreats the Board had taken and made reference to paid consultants and “focus group” testing, but all of this was news to members and the Pittsfield community until 2017.

57. Since then, the Museum has tried to have it both ways, arguing that the larger endowment is necessary, but claiming that it is not in financial straights. These positions are irreconcilable, and since the Museum is pressing ahead with the Liquidation Sale, a rationale of fiscal exigency is at the very least implicit in the Museum’s position.

58. In a letter to members after the announcement of the Liquidation Sale, Shields admitted that the focus groups had not been told about how the New Vision would be funded, i.e., by the Liquidation Sale.

59. On information and belief, in the Museum’s 2017 filing to the Massachusetts Cultural Council, submitted after the release of the “New Vision,” the Museum answered a question about whether any material changes had taken place in the year prior or were planned in the year ahead in the negative.

60. The Liquidation Sale has a regrettable precedent in Massachusetts history: in 2009, Brandeis University (“Brandeis”) announced plans to liquidate the collection of the Rose

Art Museum (the “Rose”), Brandeis’s signature museum of modern and contemporary art. The sale was similarly condemned in all quarters, the university was sued by the Rose’s founding donors, and the Attorney General performed an investigation. In response to the outcry, the university director resigned in disgrace, the museum lost its esteemed director to another position, and the institution reputation was harmed irreparably. Brandeis did not sell the paintings.

61. The Rose is a cautionary tale of disastrous museum management. Everything associated with it is rightly regarded as a fiasco.

62. In a telling development about the Museum’s decision making, the Massachusetts Cultural Council (the “MCC”) reported that “key individual behind the Rose’s decision is directly involved with the Berkshire Museum’s action.” If true, it would establish beyond doubt that the Museum has no understanding of its obligations or ethics.

63. After the announcement of the Liquidation Sale, the AAM and the AAMD stated in no uncertain terms what a catastrophe it would be if implemented. The two organizations felt so strongly that they issued a joint statement, a true and accurate copy of which is attached as Exhibit H. The statement made clear just how damaging the Liquidation Event is as a general proposition and for Pittsfield in particular:

One of the most fundamental and long-standing principles of the museum field is that a collection is held in the public trust and must *not* be treated as a disposable financial asset.

\* \* \*

Two of the works the Museum is currently planning to sell are important paintings by Norman Rockwell, given by the artist to the people of Pittsfield. These works were entrusted by Rockwell to the Museum for safe-keeping and to share with the public. The other works proposed for sale are by many noted artists



from America and around the world. If these works are indeed sold, it would be an irredeemable loss for the present and for generations to come.

Selling from the collection for purposes such as capital projects or operating funds not only diminishes the core of works available to the public, it erodes the future fundraising ability of museums nationwide. Such a sale sends a message to existing and prospective donors that museums can raise funds by selling parts of their collection, thereby discouraging not only financial supporters, who may feel that their support isn't needed, but also donors of artworks and artifacts, who may fear that their cherished objects could be sold at any time to the highest bidder to make up for a museum's budget shortfalls. That cuts to the heart not only of the Berkshire Museum, but every museum in the United States.

64. If the past is any guide, the Museum will be sanctioned by the AAMD and the AAM if the Liquidation Sale proceeds. Other American museums will be forbidden to lend the Museum works for temporary exhibition, or participate in any way with the Museum's programming. Prior targets of AAMD and/or AAM sanctions for deaccessioning violations included the National Academy Museum in New York and the Delaware Art Museum. Despite the initial receipt of significant sale proceeds, those museums' management crises continued unabated. In every instance, the sanctions are crippling to any institution that wishes to function within the museum community. The Museum will suffer the same fate.

65. These consequences are neither theoretical nor speculative. As a result of the Liquidation Sale's defiance of AAM and AAMD rules, the Museum has already been forced to end its relationship with the Smithsonian Institution (the "Smithsonian"). The Smithsonian, America's premier public cultural steward, affiliates with museums around the country to cultivate educational opportunities. Access to that affiliation cannot be valued, and certainly cannot be replaced.

66. The Museum's asserted fiscal "emergency" is, on information and belief, widely exaggerated or even fabricated.

67. The MCC invests in museums as public institutions by virtue of their designation as 501(c)(3) nonprofit organizations. The MCC condemned the Liquidation Sale forcefully. The MCC undertook to examine the Museum's finances in detail, and concluded that:

the Museum could put itself in a healthy operating position without deaccessioning art. We fear, moreover, that its broader plans rely on uncertain market and cost projections, and that widespread public opposition to the deaccession will erode the very base of support upon which the Museum must depend to realize its ambitions.

68. Independent financial experts have also examined the supposed fiscal emergency and found it illusory. Stephen C. Sheppard ("Professor Sheppard"), a professor of economics at Williams College and director of the Center for Creative Community Development, which studies nonprofits, said the Museum could sustain itself on an endowment a fraction of the one that it claims it needs the Liquidation Sale to realize.

69. Professor Sheppard analyzed eight years of Berkshire Museum financial documents. Sheppard studied the Museum's audited annual financial statements, which would allow it to operate for eight additional years at its present operating deficit.

70. Professor Sheppard observed critical flaws in the "New Vision." First, the Museum has an endowment, but in its articulation of a supposed operating deficit, the Museum failed to account for income that the existing endowment will generate.

71. In addition, the fictional endowment that the Liquidation Sale is supposed to create is not part of any actual plan. The Museum has admitted it has no business plan.

72. On information and belief, the Liquidation Sale is nothing more than a substitute for the hard work of fundraising and non-profit management. Raising money is an arduous,

often thankless task. The Museum and its board have been sold on a shortcut solution in which a pot of money magically appears and solves all problems. The money will neither simply materialize nor solve anything.

73. In sum, the Liquidation Sale is a complete dereliction of the Museum's obligations and the Trustee Defendants' duties.

74. On information and belief, Sharon Gregory ("Gregory"), a retired corporate finance and strategic planning expert formerly of PaineWebber, Lehman Brothers and Citibank, also reviewed the Museum's financial condition on behalf of the *Berkshire Eagle*.

75. Gregory concluded as follows (emphasis added):

Management has not demonstrated the ability to deliver programs or contributions [or] grants given the enormous treasure trove of art in the museum.

[T]he financials leave room for developing other solutions, including more effective management in art-centric programming, integrating art with natural sciences and history, of which ours is especially rich.

**There does not appear to be any quantitative data that would show more visitors would come or more contributions would be received with these changes.**

### **The Museum Refuses to Explain its Unlawful Actions**

76. To understand how the Museum could possibly claim to have made the decision to move forward with the Liquidation Sale in good faith, the Hatts reached out through counsel to request documents that would support the Museum's right and authority to do so.

77. The Museum simply ignored the Hatts.

78. In a final effort to convey the urgency of the situation and forestall the need for legal action, the Hatts made a final demand that the Museum change course.

79. The Museum, through counsel, responded dismissively on Friday afternoon, October 20, 2017 asserting that Plaintiffs have no rights to object to the Liquidation Sale or the Museum's mismanagement. Confirming its contempt for the public trust, the Museum made no effort to supply the information previously requested by the Hatts.

80. The Hatts are not alone. The Museum has faced substantial public outcry over its decision by local community members and the national press alike. The Museum has not softened its stance toward large-scale deaccessioning; it has not even indicated the slightest willingness to engage in dialogue. Compounding the need for full disclosure of the Trustee Defendants' decision making process, the *Berkshire Eagle* reported that Hill-Engineers, Architects, Planners Inc. had been "tapped to develop" the Museum's renovation plans pursuant to the "New Vision." Trustee Defendant Jeffrey Noble is the President and a Director of Hill-Engineers, according to its website and the Massachusetts Secretary of the Commonwealth, raising the question of whether the "New Vision" itself is an interested party transaction that would compel further scrutiny of the Liquidation Sale.

81. Paintings scheduled for auction under a standard consignment contract can be and often are sold prior to the public auction date. The first group of the Artwork is currently scheduled for auction beginning November 13, 2017, but the Museum could dispose of any or all of the Artwork at any time absent the Court's intervention.

## CAUSES OF ACTION

### **Count I — Breach of Contract (against the Museum)**

82. The Plaintiffs restate and reincorporate Paragraphs 1 to 81 as though set forth herein.

83. Under Massachusetts law, a corporation and its members have a contractual relationship.

84. A corporation's members, like the Plaintiffs, have standing to enforce the terms of the contract.

85. The terms of the Museum's contract with its members are encapsulated in the Museum's name, *inter alia*, it is a museum for art subject to the restrictions of its charters of 1871, 1903, and 1932.

86. The Liquidation Sale breaches that agreement by decimating the core of the Museum's unique painting collection.

87. Moreover, the consequences of the Liquidation Sale will ensure that it will be impossible for the Museum ever again to be an art museum as contemplated by Crane and the donors of the Artwork because the Museum will be shunned and retract into an empty shell of an institution.

88. The Museum's breaches of its governing charter and its obligations to its members include, but are not limited, to the following:

89. The Museum has violated the geographic restrictions on the works of art that were conveyed from the Athenaeum in 1932. The works are already in New York for auction, conclusively establishing that breach.

90. The Museum's pre-textual 2016 "Articles of Incorporation" is a legal nullity that attempts something only the legislature could do, *i.e.*, alter the prior applicable act of the Legislature.

91. Regardless of the intent behind the 2016 filing, the Liquidation Sale and the supposed "New Vision" are inherently destructive to the purpose of the Museum and its ability to be a museum of fine art.

92. The Museum has violated the statutory allowance on the number of its Trustees. It is therefore highly probable that the Museum has also violated bylaws regarding votes of the Trustees in the course of pursuing the Liquidation Sale. Perhaps to avoid this very argument, the Museum has refused to provide the Hatts with a copy of its bylaws, which the Hatts requested on September 27, 2017.

93. Plaintiffs and other members have been damaged by the Museum's breach of its agreement because the institution they paid to join and that they have financially supported, is being destroyed. If the Defendants are successful, the Plaintiffs will no longer be able to visit the jewels of the Museum's art collection, and they will not benefit from the Museum's prior ability to collaborate with other cultural institutions.

94. Talking in 2017 about the process, Shields revealed that deaccessioning was already on the docket in 2015. Rather than follow the AAM or AAMD guidelines, Shields proposed his own line of inquiry: "Is it mission critical? Is it necessary to continue to meet our interpretive goals? And what is the financial value?"

95. Shields thus framed the question backwards: right up front he was looking for excuses to monetize the art, rather than considering the balance between additions to the collection and the loss of a particular object.

96. None of this was revealed in 2015 as it was being pursued, of course, or any time before the announcement of the Liquidation Sale.

### **Count II — Breach of Fiduciary Duty (against the Trustee Defendants)**

97. The Plaintiffs restate and reincorporate Paragraphs 1 to 96 as though set forth herein.

98. The Trustee Defendants owe the Museum and its members the highest duty of care. This duty includes stewarding the Museum's art collection, and it includes abiding by the ethical standards that apply to art museums.

99. In spite of that duty, the Trustee Defendants have elected a short cut to avoid the work they are obliged to perform in respect of, *inter alia*, management and fundraising.

100. Rather than impose these activities on themselves, the Trustee Defendants have opted to pursue illusory piles of money as a substitute for effective management and good judgment.

101. The Trustee Defendants have caused priceless works of art to be removed from the Museum and sent out of state for auction to generate a cash fund for, *inter alia*, basic operating expenses. This inflicts existential harm on the Museum itself. The Plaintiffs are also harmed because they can no longer visit the Artwork at the Museum. Furthermore, because the

Trustee Defendants have flagrantly violated museum ethics, neither the Museum nor the individual Plaintiffs will benefit from previous relationships with other institutions.

**Count III — Declaratory Judgment (against all Defendants)**

102. The Plaintiffs restate and reincorporate Paragraphs 1 to 101 as though set forth herein.

103. An actual controversy exists between the Member Plaintiffs and the Museum's Trustees on the one hand and the Museum on the other hand as to the lawfulness of the Liquidation Sale and the Museum's authority to proceed with its plan.

104. Plaintiffs are entitled to a declaration that the Museum's actions are *ultra vires*, and unlawful.

**PRAYER FOR RELIEF**

**WHEREFORE**, the Plaintiffs pray that the Court:

- A) Enter a temporary restraining order enjoining the Museum and the Trustee Defendants against the Liquidation Sale or any similar actions;
- B) Enjoin preliminarily the Museum and the Trustee Defendants against the Liquidation Sale or any similar actions;
- C) Declare the Museum's intended course of action to be unlawful;
- D) Enter final judgment enjoining the Museum and the Trustee Defendants against the Liquidation Sale or any similar actions; and
- C) Award such other and further relief as the Court deems appropriate under the circumstances.

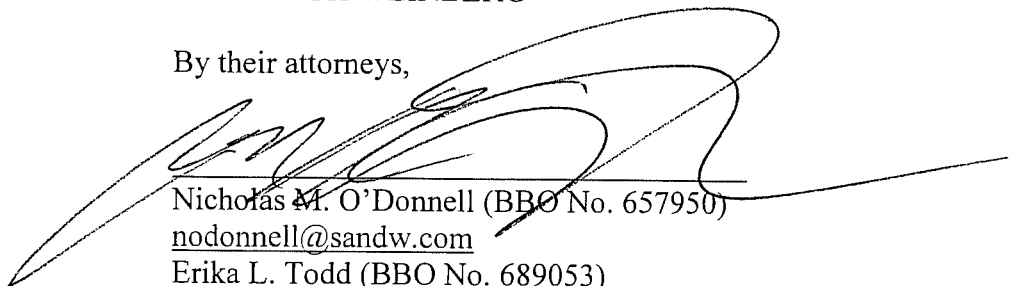


October 25, 2017

Respectfully submitted,

JAMES HATT, KRISTIN HATT, AND  
ELIZABETH WEINBERG

By their attorneys,

A large, stylized handwritten signature in black ink, appearing to be 'N. O'Donnell', is written over the text of the attorneys' names and contact information.

Nicholas M. O'Donnell (BBO No. 657950)

[nodonnell@sandw.com](mailto:nodonnell@sandw.com)

Erika L. Todd (BBO No. 689053)

[etodd@sandw.com](mailto:etodd@sandw.com)

SULLIVAN & WORCESTER LLP

One Post Office Square

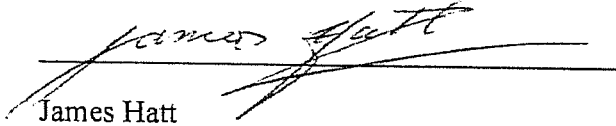
Boston, MA 02109

(617) 338-2800 (phone)

(617) 338-2880 (fax)

**Verification**

On this ~~14~~<sup>15</sup> day of October 2017, I hereby do verify and swear under the penalties of perjury that the foregoing facts are true according to my own personal knowledge except where stated as true according to my information and belief, in which case I hereby verify and swear under the penalties of perjury that such facts are true according to my information and belief.

  
James Hatt

# EXHIBIT A

SECTION 2. Said town may choose at its annual meeting, or at a legal meeting called for the purpose, two or more commissioners to superintend the digging of the said channel, and to expend the money raised therefor.

Commissioners to be chosen to superintend work, &c.

SECTION 3. This act shall take effect upon its passage.

Approved March 24, 1871.

AN ACT TO INCORPORATE THE TRUSTEES OF THE BERKSHIRE ATHENÆUM. *Chap. 129*

Be it enacted, &c., as follows:

SECTION 1. Thomas Allen, John Todd, Ensign H. Kellogg, Henry L. Dawes, Thomas Colt, Edwin Clapp, George Y. Learned, William R. Plunkett, Edward S. Francis, William F. Bartlett, James M. Barker, their associates and successors, are hereby made a body corporate by the name of the Trustees of the Berkshire Athenæum, for the purpose of establishing and maintaining in the town of Pittsfield an institution to aid in promoting education, culture and refinement, and diffusing knowledge by means of a library, reading-rooms, lectures, museums, and cabinets of art and historical and natural curiosities; with all the powers and privileges, and subject to all the duties, restrictions and liabilities set forth in all general laws which now are or may hereafter be in force applicable to such corporations.

Corporators.

Name and purpose.

Powers and duties.

SECTION 2. Said corporation may hold real and personal property for the purposes aforesaid to the amount of two hundred and fifty thousand dollars; and all gifts, devises and bequests thereto shall be devoted to such purposes exclusively, and used in conformity with the conditions made by any donor and expressed in writing: *provided*, such conditions are not inconsistent with the provisions of this act; and *provided, further*, that no part of such real and personal property, or such gifts, devises or bequests, shall ever be removed from the town of Pittsfield.

Real and personal property.

SECTION 3. The town of Pittsfield, so long as said corporation maintains a public library for the use of the inhabitants thereof, is hereby authorized to appropriate and pay money to aid in supporting such institution, the same as may be done by law for the support of public libraries, and said corporation may receive such appropriations as may be made.

Pittsfield may appropriate money for support of library.

SECTION 4. The trustees of such corporation shall have authority to fill all vacancies, in any manner occurring, but the number of said trustees shall never exceed eleven.

Trustees may fill vacancies in board.

SECTION 5. This act shall take effect upon its passage.

Approved March 24, 1871.

# **EXHIBIT B**

temporary notes from time to time in anticipation of the issue of bonds, notes or scrip hereby authorized, or in anticipation of the payments to be made.

SECTION 2. This act shall take effect upon its passage.

*Approved March 5, 1903.*

AN ACT RELATIVE TO THE TRUSTEES OF THE BERKSHIRE ATHENÆUM. *Chap.131*

*Be it enacted, etc., as follows:*

SECTION 1. The name of the Trustees of the Berkshire Athenæum is hereby changed to the Trustees of the Berkshire Athenæum and Museum. Name of Trustees of the Berkshire Athenæum changed.

SECTION 2. The corporation may elect nine trustees in addition to the number now authorized. Trustees.

SECTION 3. The corporation may by its by-laws limit the term of office of all trustees hereafter elected, and may from time to time reduce the number of trustees to a number not less than ten in addition to the trustees holding office ex officio, and may classify such trustees so that the terms of office of a certain number of trustees shall expire each year. Term of office, etc.

SECTION 4. This act shall take effect upon its passage.

*Approved March 6, 1903.*

AN ACT TO AUTHORIZE THE ASHBURNHAM NEW CEMETERY ASSOCIATION TO TRANSFER ITS PROPERTY AND FUNDS TO THE TOWN OF ASHBURNHAM. *Chap.132*

*Be it enacted, etc., as follows:*

SECTION 1. The Ashburnham New Cemetery Association is hereby authorized to release and convey to the town of Ashburnham, by a deed executed by the president and clerk of said association in its behalf, all the real estate owned by it, and to transfer to said town of Ashburnham all the personal property of said association and all trust funds held by it by bequest or otherwise for the care and benefit of its cemetery or of any lot or lots therein: *provided*, that the town of Ashburnham shall vote to accept the same at a meeting duly called for that purpose. The Ashburnham New Cemetery Association may transfer its property and funds to the town of Ashburnham.

SECTION 2. All real estate and personal property conveyed and transferred to the town of Ashburnham, pursuant to the authority contained in the preceding section, Proviso.

Management, etc., of real estate and personal property.

# EXHIBIT C

Commonwealth of Massachusetts.  
Berkshire, ss. March 25<sup>th</sup> 1903. I then personally appeared the above named  
George E. Halford and acknowledged the foregoing instrument to be his free  
act and deed. Before me. Charles H. Wright, Justice of the Peace  
Commonwealth of Massachusetts.

Berkshire, ss. March 31<sup>st</sup> 1903. I then personally appeared the within  
named Harry D. Sisson and acknowledged the foregoing instrument to be  
the free act and deed of the City of Pittsfield.  
Before me. John L. Crosby, Justice of the Peace.

J. Susan L. Davy of New York, the mortgagee named in a certain  
mortgage given to me by George E. Halford, which mortgage is dated February  
20<sup>th</sup> 1897, and recorded at the Registry of Deeds, at Pittsfield, Massachusetts,  
in Book 299 at Page 119, and which mortgage covers the property described  
in the within agreement, hereby consent to and ratify the within agreement  
to the same extent I would so ratify the same had I been a party thereto  
In Witness Whereof I have hereunto set my hand and seal on the day and  
year within written  
In the presence of

Susan L. Davy + seal.  
New York City. Mar. 28<sup>th</sup> 1903.

State of New York }  
County of New York } ss. I then personally appeared the above named  
Susan L. Davy and acknowledged the fore-  
going instrument to be her free act and deed.  
Before me. Saml R. Goodale, - Commissioner of Deeds for Massachusetts,  
Residents in New York.

Berkshire, ss. April 1<sup>st</sup> 1903 at 4. U. M. Read and Recorded from the original  
at Pittsfield  
at Pittsfield

Jonas Corane  
to  
Trustees of the Berkshire Athenaeum  
and Museum }  
Know all men by these presents that  
I, Jonas Corane, of Dalton, in the  
County of Berkshire and Commonwealth  
of Massachusetts, for good considerations  
as a voluntary gift for the purpose of  
establishing a Museum of Natural History and Art in connection with the  
Athenaeum, do hereby give, grant, bargain, sell and convey unto the Trustees  
of the Berkshire Athenaeum and Museum, of Pittsfield, Massachusetts, a  
certain lot or parcel of land situated in said Pittsfield and described as  
follows, viz: Beginning at a stone bound in the easterly line of South  
Street at a point ninety nine and six tenths (99.6) feet southerly from  
the point of intersection of said easterly line of South Street with the southerly  
line of Bank Row, and running thence southerly in said easterly line of South  
Street one hundred eighty four and fifty two one hundredths (184.52) feet  
to a stone bound in the northwesterly corner of land of the Berkshire County  
Home for Aged Women; thence easterly in the northerly line of said land  
of the Berkshire County Home for Aged Women one hundred and fifty four  
(154) feet to a stone bound; thence northerly ninety four and five tenths  
(94.5) feet to a stone bound or hundred and fifty three (153) feet easterly  
from the easterly line of South Street, measuring from a point in said  
easterly line of South Street ninety and two one hundredths (90.02) feet  
southerly from the place of beginning; thence westerly, in a line which if  
continued would intersect the said easterly line of South Street at a point  
ninety and two one hundredths (90.02) feet southerly from the place of  
beginning, twenty one and three tenths (21.3) feet to a stone bound; thence  
northerly, in a line at right angles with the last described line, about  
ninety (90) feet to a stone bound in the southerly line of a passage-way; thence  
westerly in the southerly line of said passage-way about one hundred thirty  
one and seven tenths (131.7) feet to the place of beginning. And I also  
grant the right, to be enjoyed as appurtenant to the parcel above described  
and every part thereof, to pass and repass, in common with others, on foot  
and with horses and vehicles, loaded or unloaded, in upon and over the  
whole of a strip of land twelve feet wide from north to south running from  
the easterly line of South Street easterly, along and adjoining the northerly  
line of the parcel above described, about one hundred thirty one and seven tenths



(131.7). set to the stone bound last above described. To have and to hold the granted premises, with all the privileges and appurtenances thereto belonging, to the said trustees and their successors and assigns, to their own use and behoof forever. And I do hereby, for myself and my heirs, executors, and administrators, covenant with the said grantee and their successors and assigns that I am lawfully seized in fee simple of the granted premises; that they are free from all incumbrances; that I have good right to sell and convey the same as aforesaid; and that I will and my heirs, executors, and administrators shall warrant and defend the same to the said grantee and their successors and assigns forever against the lawful claims and demands of all persons. And for the considerations aforesaid I, Ellen J. Brane, wife of said James Brane do hereby release unto the grantee and their successors and assigns all rights of or to both dower and homestead in the granted premises. In Witness Whereof I the said James Brane, and I, Ellen J. Brane, wife of said James Brane, have set our hands and seals, this 31<sup>st</sup> day of March in the year one thousand nine hundred and three.

Signed and sealed in presence of  
 G. H. Bridgman J.P. G.  
 Adeline Fox  
 (Commonwealth of Massachusetts,  
 Berkshire ss. April First 1<sup>st</sup> 1903. Then personally appeared the above named James Brane and acknowledged the foregoing instrument to be his free act and deed. Before me, G. H. Bridgman, Justice of the Peace.  
 Berkshire ss. April 2<sup>nd</sup> 1903 at 10.30 A.M. Read and recorded from the original  
 Attest Henry H. Pitt Regr

H. Parrey Cady }  
 Thomas Portner }  
 Know all men by these presents, That I, H. Parrey Cady, County of South Hadley, Berkshire County, Massachusetts, the mortgage named in a certain mortgage given by Thomas Portner and Edward H. Dowd to me dated October 15<sup>th</sup> and 1902, and recorded with Berkshire Sheriff District Deeds here 316 folio 631, in consideration of five thousand dollars paid by said Thomas Portner and Edward H. Dowd to me as witness whereof is hereby acknowledged, do hereby release and forever quit claim unto the said Thomas Portner and Edward H. Dowd all the right, title, and interest which I acquired under the aforesaid mortgage in or to that portion of the premises therein conveyed which is described as follows, to-wit: Beginning at the South Easterly corner of land of Mrs Sarah Curtis 7<sup>th</sup> in the Southern line of Walker Street, thence Easterly along said Southern line twenty five feet, thence at a right angle with said line and parallel to the Easterly line of said land of Mrs Curtis ninety feet, thence at a right angle and parallel to said line of said Walker Street twenty five feet to the South Easterly corner of said land of Mrs Curtis thence Northwesterly along her line ninety feet to the place of beginning.  
 To have and to hold the same to the said Thomas Portner and Edward H. Dowd and their heirs and assigns to their own use and behoof forever. But this release shall not in any way affect or impair my right to hold under the said mortgage and as security for the sum remaining due thereon or to sell under the power of sale in said mortgage contained all the remainder of the premises therein conveyed and not hereby released. In witness whereof I hereunto set my hand and seal this twenty seventh day of March A.D. 1903  
 Signed and sealed in presence of  
 E. D. Cady  
 H. Parrey Cady  
 See

Commonwealth of Massachusetts  
 Berkshire ss. March 27, 1903 Then personally appeared the above named H. Parrey Cady and acknowledged the foregoing instrument to be his free act and deed before me, E. D. Phelps Justice of the Peace  
 Berkshire ss. Apr. 6, 1903 at 3.5. P.M. Read & recorded from the original  
 Attest Henry H. Pitt Regr

# **EXHIBIT D**

1871  
1872  
1873  
1874  
1875  
1876  
1877  
1878  
1879  
1880  
1881  
1882  
1883  
1884  
1885  
1886  
1887  
1888  
1889  
1890  
1891  
1892  
1893  
1894  
1895  
1896  
1897  
1898  
1899  
1900

30585

Crane, Zenas  
Dalton

Dec. 20, 1917

Will

30536

James Cooney

**WILL**

Presented and Filed June 2 A. D. 1918

Allowed June 2 A. D. 1918

Recorded in Book 230 Page 27

*Arthur M. Robinson*  
Register.

I, \_\_\_\_\_ of Milton, in the  
County of Berkshire and Commonwealth of Massachusetts,  
do make and declare this my last will and testament,  
hereby revoking all former wills made by me.

I give and bequeath unto my beloved

wife, \_\_\_\_\_ in view of her right of dower,  
the use and enjoyment of the homestead estate in  
said Milton where she now lives, together with all  
the buildings thereon, and the contents thereof, in-  
cluding household furniture, glass, silverware, paint-  
ings, pictures, automobiles, and other vehicles and  
equipment, to have and to hold for and during her  
natural life.

I give and bequeath unto

my wife \_\_\_\_\_ the sum of \_\_\_\_\_ Dollars, to be paid, at  
her election, in cash or in such securities belonging  
to my estate, at their appraised value, as she may  
select.

I give and bequeath unto my daughter, \_\_\_\_\_

wife of \_\_\_\_\_ of Milton, the sum of \_\_\_\_\_ Dollars, to be paid, at her election, in cash or in such securities belonging to my estate, at their appraised value, as

*Handwritten signature*

she is eight.

Third item.

I give and request to be paid to the  
difference of Charles ... the sum of one  
thousand dollars.

4. To my ... falls ... and  
for ... the sum of ... dollars ...  
five ...

1. To my sister, ... of ...  
in said ... the sum of twenty-five  
thousand dollars.

2. To my sister, ... of ...  
in the ... the sum of twenty-five  
thousand dollars.

3. To my sister, ... of said ...  
the sum of ten thousand dollars.

4. To my sister, ... of said ...  
the sum of ten thousand dollars.

5. To my sister, ... of said ...  
the sum of ten thousand dollars.

6. To my brother-in-law, ... of  
said ... the sum of five thousand dollars.

*Handwritten note:*  
Please ...

1. To my nephew, \_\_\_\_\_ of said  
Estate, the sum of five thousand dollars.

2. To my cousin, \_\_\_\_\_ of  
Estate, in the event of my death, or, in the  
case of her predecease, to her son, \_\_\_\_\_ the sum  
of five thousand dollars.

3. To my son, \_\_\_\_\_ of said  
Estate, or in case of his predecease, to her children,  
the sum of five thousand dollars.

4. To \_\_\_\_\_ of said Estate, in the  
event of my death, the sum of five thousand dollars.

5. To \_\_\_\_\_ of said Estate, in the  
event of my death, the sum of five thousand dollars.

I give unto my said nephew \_\_\_\_\_ hereinafter  
mentioned the sum of five thousand dollars, in trust,  
nevertheless, to invest and reinvest the same from time  
to time in such securities as shall be deemed wise and  
prudent, and to pay over the net income therefrom  
to my said nephew \_\_\_\_\_ of said Estate, in  
the event of my death, and in the event of his death, and  
in the event of his death, to his surviving wife, if any,  
during her natural life. And upon the decease of  
the survivor of my said nephew \_\_\_\_\_ and his wife, my executors  
shall pay over the principal of this legacy, together

*Handwritten note:*  
To my nephew \_\_\_\_\_





1. The sum of twenty-five thousand dollars, used for the purchase of land in the State of New York, the sum of twenty-five thousand dollars, the sum of twenty-five thousand dollars, the sum of twenty-five thousand dollars.

2. The sum of twenty-five thousand dollars, used for the purchase of land in the State of New York, the sum of twenty-five thousand dollars, the sum of twenty-five thousand dollars, the sum of twenty-five thousand dollars.

3. The sum of twenty-five thousand dollars, used for the purchase of land in the State of New York, the sum of twenty-five thousand dollars, the sum of twenty-five thousand dollars, the sum of twenty-five thousand dollars.

4. The sum of twenty-five thousand dollars, used for the purchase of land in the State of New York, the sum of twenty-five thousand dollars, the sum of twenty-five thousand dollars, the sum of twenty-five thousand dollars.

5. The sum of twenty-five thousand dollars, used for the purchase of land in the State of New York, the sum of twenty-five thousand dollars, the sum of twenty-five thousand dollars, the sum of twenty-five thousand dollars.

6. The sum of twenty-five thousand dollars, used for the purchase of land in the State of New York, the sum of twenty-five thousand dollars, the sum of twenty-five thousand dollars, the sum of twenty-five thousand dollars.

7. The sum of twenty-five thousand dollars, used for the purchase of land in the State of New York, the sum of twenty-five thousand dollars, the sum of twenty-five thousand dollars, the sum of twenty-five thousand dollars.

8. The sum of twenty-five thousand dollars, used for the purchase of land in the State of New York, the sum of twenty-five thousand dollars, the sum of twenty-five thousand dollars, the sum of twenty-five thousand dollars.

*Handwritten note:* The sum of twenty-five thousand dollars, used for the purchase of land in the State of New York, the sum of twenty-five thousand dollars, the sum of twenty-five thousand dollars, the sum of twenty-five thousand dollars.

1. To the ... of ... the ... of ... the sum of ... dollars.

2. To the ... of ... the ... of ... the sum of ... dollars.

3. To the ... of ... the ... of ... the sum of ... dollars, to be invested by ... the ... of ... the ... thereof to ... the ... of said ...

4. To the ... of ... the ... of ... the sum of ... dollars, to be invested and the ... thereof ... the ... of the ... of said ... including the cost of ... and other incidental ...

5. To the ... of ... the ... of ... the sum of ... dollars.

6. To the ... of ... the ... of ... the sum of ... dollars.

7. To the ... of ... the ... of ... the sum of five thousand dollars.

8. To the ... of ... the ... of ... the sum of five thousand dollars.

9. To the ... of ... the ... of ... the sum of five thousand ...

*Handwritten note:* ...

100-100000-100000

12.

100000

To the ... of Springfield, Massachusetts, the sum of five thousand dollars.

To the ... of Springfield, the sum of five thousand dollars.

To the ... of Springfield, the sum of five thousand dollars.

... letters, ... of ...

I, the undersigned, do hereby certify that all the real, ... and personal, and wherever the same may ... and possessed, ... interest in the ... of ... and ... and ... forever.

*[Handwritten signature]*

1954

I request that the Board, upon receipt hereafter  
of the enclosed form, which is a preliminary estimate, the  
amount of the tax liability for the year 1954, and the  
amount of the tax liability for the year 1955, to the  
extent of the amount of the tax liability for the year 1954,  
but is an expression of my personal belief that my  
tax liability for the year 1954 will be within the  
amount shown.

Sincerely,  
D. W. Brown

In testimony whereof, I have hereunto set my hand and  
affixed the seal of the Department of the Interior, at  
Washington, D. C., this 15th day of July, 1954.

I hereby certify that the above is a true and correct  
copy of the original as shown to me by the person  
named above. Witness my hand and the seal of the  
Department of the Interior, at Washington, D. C., this 15th  
day of July, 1954.

1954

J. W. Brown

... [illegible] ... of the ...  
... [illegible] ...  
... [illegible] ...  
... [illegible] ...  
... [illegible] ...  
... [illegible] ...  
... [illegible] ...  
... [illegible] ...  
... [illegible] ...  
... [illegible] ...

W. A. ... [illegible] ...

Edw. ... [illegible] ...  
W. ... [illegible] ...

*John ...*

ZEPAS CRANE

C O D I C I L

HAWKINS, RYAN & KELLOGG  
COUNSELLORS AT LAW  
PITTSFIELD MASSACHUSETTS

I, ZENAS CRANE, of Dalton, in the County of Berkshire and Commonwealth of Massachusetts, do make this codicil to my last will and testament, dated November the twenty-sixth in the year nineteen hundred and fifteen, which will I do hereby ratify and confirm in all respects save as the same may be changed by the provisions of this codicil.

ARTICLE I.

I direct the executors of my said will to set apart the sum of two hundred and fifty thousand dollars, investing and reinvesting the same from time to time in such securities as shall commend themselves to their judgment, and to pay over the net income accruing therefrom from time to time to my wife, ELLEN J. CRANE, during the term of her natural life. Upon the decease of my said wife the principal of the trust fund hereby created shall fall into the residue of my estate and shall be disposed of as directed by the residuary article of my said will. This provision for the benefit of my said wife is in addition to, and not in lieu of or in substitution for the devise and legacy made to her in the first and second articles of my said will. My executors shall be exempt from giving a surety or sureties on any bonds that may be required of them in connection with the administration of the trust hereby created.



ARTICLE II.

Whereas, in and by Article III of my said last will, I gave and bequeathed to my daughter, FRANCES CRANE COLT, the sum of two hundred and fifty thousand dollars, I hereby give and bequeath to my said daughter the further sum of four hundred thousand dollars, making a total legacy to her of six hundred and fifty thousand dollars.

ARTICLE III.

I give and bequeath to SAMUEL G. COLT, husband of my said daughter, the sum of fifty thousand dollars.

ARTICLE IV.

I give and bequeath to each of the children of my said daughter who shall be living at the time of my decease the sum of twenty-five thousand dollars.

ARTICLE V.

Whereas, in and by Article VII of my said last will, I gave and bequeathed to the TRUSTEES OF THE BERKSHIRE ATHENAEUM AND MUSEUM, a corporation of Pittsfield in said County, as an endowment fund for the maintenance of the Museum of Natural History and Art belonging to said corporation, the sum of one hundred thousand dollars, I hereby give and bequeath to said corporation the further sum of one hundred thousand dollars, making a legacy to said corporation of two hundred thousand dollars in all. Said legacy

shall be invested and reinvested from time to time by the finance or investment committee of said Trustees; and it is my wish that, so far as practicable some member of my family, preferably a male member, shall at all times be a member of such finance or investment committee.

ARTICLE VI.

Whereas, in and by Article VIII of my said will, I gave and bequeathed to the BOYS' CLUB, a corporation of said Pittsfield, the sum of seventy-five thousand dollars, I hereby give and bequeath to said Boys' Club the further sum of twenty-five thousand dollars, making a legacy to said Boys' club of one hundred thousand dollars in all.

ARTICLE VII.

Whereas, in and by paragraph 10 of Article IX of my said will I gave to the DALTON PUBLIC LIBRARY, of said Dalton, the sum of five thousand dollars, I hereby give and bequeath to it the further sum of five thousand dollars, making a legacy to said Dalton Public Library of ten thousand dollars in all.

ARTICLE VIII.

Whereas, in and by paragraph 11 of Article IX of my said will, I gave to the CONGREGATIONAL PARISH OF DALTON the sum of five thousand dollars, I hereby give and bequeath to said Parish the further sum of five thousand dollars, making a legacy to said Parish

of ten thousand dollars in all.

ARTICLE IX.

I give and devise unto the INHABITANTS OF THE TOWN OF DALTON my undivided one-half of the lands situated in said Dalton comprising the Pine Grove Park recreation grounds.

IN TESTIMONY WHEREOF I hereunto set my hand, and in the presence of three witnesses declare this to be a codicil to my last will, this seventeenth day of July, in the year nineteen hundred and seventeen.

Zenas Crane

On this seventeenth day of July, A.D. 1917, Zenas Crane, of Dalton, Massachusetts, signed the foregoing instrument in our presence, declaring it to be a codicil to his last will; and as witnesses thereof we three do now, at his request, in his presence, and in the presence of each other, hereto subscribe our names.

(1) James H. [unclear] William [unclear]

(2) Edo. [unclear] Orlando [unclear]

(3) Wm. [unclear] Edw. [unclear]

20585  
Judas Thamus  
Records of Helen J. Mann  
by Executors  
Filed Dec. 1, 1934

BERKSHIRE, ss., REGISTRY OF PROBATE,

Pittsfield, Dec. 4, 1934

RECEIVED AND RECORDED IN

BOOK 230 PAGE 384

AND EXAMINED BY

*James S. [Signature]*  
CLERK.

COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss:

Probate Court

Estate of Zenas Crane

Re: Trust under Article I of Codicil

ACKNOWLEDGMENT OF SATISFACTION AND WAIVER OF ACCOUNTING

Z. Marshall Crane, Charles J. Pittroge and Samuel G. Colt, as they are executors of the will of Ellen J. Crane, late of Dalton in said Berkshire, hereby acknowledge that the payments made to the said Ellen J. Crane in her lifetime and to them as such executors after her death, by the said Z. Marshall Crane as trustee under the will (codicil, Article I.) of Zenas Crane, late of said Dalton, constitute payments in full of all income to which the said Ellen J. Crane and/or her estate have at any time been or are entitled to receive from the said trustee under the terms of the said trust; and we accordingly, for ourselves and for our successors, do hereby remise, release and forever discharge the said Z. Marshall Crane, his executors, administrators and assigns, of and from all claims and demands in relation to the said trust and in respect of the rights of the said Ellen J. Crane as beneficiary of the said trust, and we hereby waive any further accounting by the said Z. Marshall Crane in respect of the said trust.

WITNESS OUR HANDS AND SEALS this 30<sup>th</sup> day of November, 1934.

Z. Marshall Crane

Samuel G. Colt

Charles J. Pittroge

30585  
Juno Crane  
Trust of William Crane  
Filed Dec. 1, 1934

BERKSHIRE, ss., REGISTRY OF PROBATE,  
FITCHBURG, Dec. 1, 1934  
RECEIVED AND RECORDED IN  
BOOK 280 PAGE 283  
And Examined by  
*Raymond L. ...*  
REGISTRAR

COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss:

Probate Court

Estate of Zenas Crane

Re: Trust under Article I of Codicil. Declaration concerning closing of trust.

WHEREAS the above-named Zenas Crane, late of Dalton in said County of Berkshire, by Article I of the codicil to his last will and testament, established a trust fund in the sum of \$250,000 for the benefit of his wife, Ellen J. Crane, for her life and appointed as trustees thereof his executors, W. Murray Crane, Z. Marshall Crane and Charles K. Crane, and

WHEREAS the said W. Murray Crane and Charles K. Crane have deceased and no successors to them have been appointed, and

WHEREAS the remainder interest in said trust fund vested by the terms of the will of the said Zenas Crane in his sons, Z. Marshall Crane now of said Dalton, and Charles K. Crane, late of Pasadena in the State of California, in equal shares, (said Charles K. Crane having survived the said Zenas Crane) and

WHEREAS the undivided one-half remainder interest of the said Charles K. Crane in said trust fund was by the executors of the will of the said Charles K. Crane duly assigned and conveyed to the said Z. Marshall Crane by an instrument dated the 7th day of August, 1933 and duly recorded in the Probate Court for the County of Berkshire, and

WHEREAS said Ellen J. Crane has now deceased and the said Z. Marshall Crane, as surviving trustee has paid all sums due as income from the said trust to the said Ellen J. Crane or the executors of the will of the said Ellen J. Crane, and the said executors of the will of the said Ellen J. Crane have acknowledged receipt in full by their testatrix and by themselves of all in-

come due to the said Ellen J. Crane in her life time or to her estate, by instrument duly filed and recorded in the said Probate Court.

NOW THEREFORE, I the said E. Marshall Crane, hereby declare that I have transferred from myself as such surviving trustee to myself in my capacity of owner of the entire beneficial interest in remainder all of the principal of said trust in final termination thereof.

WITNESS my hand this 30<sup>th</sup> day of November, 1934.

E. Marshall Crane



# **EXHIBIT E**

AN ACT REPEALING THE LAW PROVIDING FOR THE ESTABLISHMENT AND MAINTENANCE UNDER THE SCHOOL DEPARTMENT OF A DENTAL CLINIC FOR SCHOOL CHILDREN IN THE CITY OF TAUNTON.

Chap.133

*Be it enacted, etc., as follows:*

Chapter eighty-seven of the acts of nineteen hundred and fourteen is hereby repealed.

1914, 87.  
repealed.

*Approved March 31, 1932.*

AN ACT CHANGING THE NAME OF THE TRUSTEES OF THE BERKSHIRE ATHENAEUM AND MUSEUM TO TRUSTEES OF THE BERKSHIRE ATHENAEUM, AND INCORPORATING THE TRUSTEES OF THE BERKSHIRE MUSEUM AND AUTHORIZING THE TRANSFER TO IT OF MUSEUM PROPERTY.

Chap.134

*Be it enacted, etc., as follows:*

SECTION 1. The name of the Trustees of the Berkshire Athenaeum and Museum, a Massachusetts corporation, is hereby changed to the Trustees of the Berkshire Athenaeum, hereinafter called the athenaeum corporation.

Name of Trustees of the Berkshire Athenaeum and Museum, changed.

SECTION 2. The athenaeum corporation is hereby authorized to transfer and convey to the Trustees of the Berkshire Museum, incorporated by section three of this act and hereinafter called the museum corporation, the museum building and the land used in connection therewith, substantially all of which was given to the athenaeum corporation by the late Zenas Crane. The athenaeum corporation is hereby further authorized to convey to the museum corporation, and to reserve to itself, such rights of way and other easements in the property conveyed as aforesaid, or in other property of the athenaeum corporation, as the athenaeum corporation may deem expedient, and to transfer to the museum corporation the Zenas Crane endowment fund and all objects donated by the said late Zenas Crane and such other objects of or illustrating natural science, culture history or art as the athenaeum corporation deems proper.

Transfer of certain museum property to Trustees of the Berkshire Museum, etc.

SECTION 3. Zenas Marshall Crane, John Barker, Frances C. Colt, Henry A. Francis, Charles J. Kittredge, Josephine C. Robbins and George H. Tucker, their associates and successors, are hereby made a body corporate by the name of the Trustees of the Berkshire Museum, hereinbefore and hereinafter called the museum corporation, for the purpose of establishing and maintaining in the city of Pittsfield an institution to aid in promoting for the people of Berkshire county and the general public the study of art, natural science, the culture history of mankind and kindred subjects by means of museums and collections, with all the powers and privileges, and subject to all the duties, restrictions and liabilities, set forth in all general

Trustees of the Berkshire Museum incorporated.

Purpose.

laws now or hereafter in force relating to such corporations. The number of trustees of the museum corporation shall never exceed fifteen.

May hold real and personal property, etc.

SECTION 4. The museum corporation may hold real and personal property for the purposes aforesaid; and all gifts, devises and bequests thereto shall be devoted to such purposes exclusively and used in conformity with the conditions made by any donor and expressed in writing; provided, that such conditions are not inconsistent with the provisions of this act.

May receive gifts, devises or bequests, etc.

SECTION 5. The museum corporation shall be entitled to receive any gifts, devises or bequests made to the Trustees of the Berkshire Athenaeum and Museum, which by their express terms are intended for the museum.

Effective upon passage.

Authority or right granted or conferred by act, limited, etc.

SECTION 6. This act shall take effect upon its passage; and whatever authority or right is granted or conferred by this act is hereby declared to be limited to such authority or right as the general court may constitutionally grant or confer, without prejudice to any proceeding that may be instituted in any court of competent jurisdiction to effect the purposes of this act.

*Approved March 31, 1932.*

*Chap.135* AN ACT RELATIVE TO THE ELECTION OF PRESIDENTIAL ELECTORS.

*Be it enacted, etc., as follows:*

G. L. 54, § 43, etc., amended.

Surnames of candidates of each party for president and vice president to be printed on ballot in lieu of names of candidates for presidential electors, etc.

SECTION 1. Chapter fifty-four of the General Laws, as amended in section forty-three by chapter thirty-six of the acts of nineteen hundred and twenty-five, is hereby further amended by striking out said section and inserting in place thereof the following:— *Section 43.* The names of the candidates for presidential electors shall not be printed on the ballot, but in lieu thereof the surnames of the candidates of each party for president and vice president shall be printed thereon in one line under the designation "Electors of president and vice president" and arranged in the alphabetical order of the surnames of the candidates for president, with the political designation of the party placed at the right of and in the same line with the surnames. A sufficient square in which each voter may designate by a cross (X) his choice for electors shall be left at the right of each political designation.

G. L. 54, § 78, amended.

Voting for presidential electors.

SECTION 2. Said chapter fifty-four is hereby further amended by striking out section seventy-eight and inserting in place thereof the following:— *Section 78.* In order to vote for presidential electors, the voter shall make a cross (X) in the square at the right of the party or political designation appearing on the ballot at the right of the surnames of the candidates for president and vice president, to vote for whom such candidates for electors are nominated;

# **EXHIBIT F**

614

Small Grace

to be given as  
James Marshall Grace

WILL  
and 3 Coheils

Presented and Filed: May 8 A. D. 1936

Allowed: May 19 A. D. 1936

Filed in Book 288, Page 246

*James Marshall*  
Register.

I, Z MARSHALL CRANE, of Dalton in the County of Berkshire and Commonwealth of Massachusetts, do make and declare this my last will and testament, hereby revoking any and all wills and codicils thereto heretofore made by me.

ARTICLE I I give and bequeath to the following named persons the sums severally set against their respective names:

1. To my sister, FRANCES CRANE COLT, the sum of One Hundred Twenty-five Thousand (125,000) Dollars.
2. To my nephew, ZENAS CRANE COLT, the sum of Two Hundred Thousand (200,000) Dollars.
3. To my nephews, JAMES D COLT, 2d, and SAMUEL G COLT, JR., and to my nieces, PRISCILLA COLT and JUDITH COLT, children of my sister, Frances Crane Colt, the sum of Twenty-five Thousand (25,000) Dollars each.
4. To my aunt, CLARA K CRANE of Pittsfield, Massachusetts, the sum of Five Thousand (5,000) Dollars.
5. To my cousin, CHARLES J KITTRIDGE, the sum of One Hundred Thousand (100,000) Dollars.
6. To my cousin, BRENTON C POMEROY, the sum of Fifty Thousand (50,000) Dollars.
7. To my cousin, J BREWER CRANE, the sum of Ten Thousand (10,000) Dollars.
8. To my cousin, H OGDEN BATES, JR., the sum of Ten Thousand (10,000) Dollars.
9. To ROLAND B BURBANK, of said Dalton, the sum of Twenty Thousand (20,000) Dollars.
10. To JAMES E KEEGAN of the Boys' Club of said Pittsfield the sum of Two Thousand Five Hundred (2,500) Dollars.

*Z. Marshall Crane*

11. To CHARLES E PARKER, of said Dalton, the sum of Two Thousand Five Hundred (2,500) Dollars.

12. To G FRANKLIN PIERCE of said Dalton, the sum of Twenty Thousand (20,000) Dollars, and I also devise to him the house, No. 121 Central Avenue, Dalton, where he now resides, and the lot upon which the same stands.

13. To MISS GRETA WANGBERG, housekeeper of my estate, Long Acre in said Dalton, the sum of Twenty Thousand (20,000) Dollars.

14. To E A YARROW, of Haddam, Connecticut, the sum of One Thousand (1,000) Dollars.

15. To S R MORRISON, the superintendent of my farm in Windsor, Massachusetts, known as Brookvale Farm, the sum of Two Thousand (2,000) Dollars.

16. To M W SAMS, the superintendent of my plantation at Jacksonboro, South Carolina, known as Hope Plantation, the sum of Five Hundred (500) Dollars.

17. To EDWARD C SHAW, head farmer of Valley Farm in Berkshire, Massachusetts, the sum of Five Hundred (500) Dollars.

18. To THOMAS KIRBY, caretaker of my estate, Long Acre in said Dalton, the sum of One Thousand (1,000) Dollars.

19. To LEROY BARTLETT, my chauffeur, the sum of One Thousand (1,000) Dollars.

20. To MRS. MAY LORD, now employed in my household, the sum of Five Hundred (500) dollars if she is so employed at the time of my death.

21. To MRS. FRIEDA MCKENNA, now employed in my household, the sum of Five Hundred (500) Dollars if she is so employed at the time of my death.

Witness my hand and seal this 1st day of June 1911.

-3-

22. To GEORGE H TUCKER, of said Pittsfield, the sum of Fifteen Thousand (15,000) Dollars.

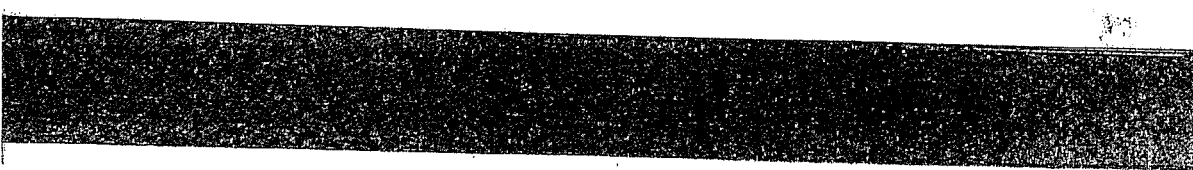
23. To each person who shall be in my personal employ at the time of my death and who shall have been in such employ for one (1) year or more at such time, excepting legatees already mentioned in this will and excepting also laborers at Hope Plantation, the sum of Fifty (50) Dollars each, and to such laborers at Hope Plantation who shall be in my employ at the time of my death and who shall have been in my employ for one (1) year or more at such time, the sum of Twenty-five (25) Dollars each. The determination of my executors as to whom legacies are given by this section 23 shall be conclusive upon all persons and shall not be open to question in any place or in any manner.

*Shank*

ARTICLE II I give, devise and bequeath all my tangible personal property, all my real estate, and all my interest therein, except that hereinbefore specifically devised in section 12 of Article I, my interest, whether represented by stock or indebtedness, in Z & W M Crane, Inc., and my interest in the Crane Realty Company, a partnership, as follows:

(a) To my Mother, such articles of tangible personal property as she may desire to have.

(b) Subject to subsection (a) of this Article, to the TRUSTEES OF THE BERKSHIRE MUSEUM of Pittsfield for the uses of said Museum my paintings and objects of art except those prints distributed in accordance with subsection (c) of this Article and except such as the Trustees of said Museum shall not within three months after the appointment of my executors choose to take and remove.





(c) My executors hereinafter named are empowered to give any of my various prints to such of my friends as may desire them and particularly to those friends who have been guests of mine at Hope Plantation and at my property at Windsor, Massachusetts.

(d) My executors are empowered to give any of my hunting dogs to such of my friends as may desire them, and are directed to make immediate provision for their care.

(e) Subject to the foregoing sections and to section (f) of this Article and to section 2 of Article III, to my sister, FRANCES CRANE COLT, the contents of all houses I may own except such articles as she shall not within three months after the appointment of my executors choose to take and remove for her own use or use of members of her family.

(f) To ZENAS CRANE COLT, one of the residuary legatees of this my will, my estate known as Long Acre in said Dalton, its contents and all equipment used in connection therewith, except as aforesaid and subject to section 2 of Article III, on condition, however, that my expectation as to his living in Dalton expressed in the residuary article of this my will is fulfilled within my lifetime or within one year after my death. My executors are given power to determine conclusively whether said condition has or has not been complied with and a certificate signed and acknowledged by my executors and recorded in the Registry of Deeds for Berkshire County or lodged in the Probate Court for said County shall be evidence conclusive on all persons that this condition has been or has not been complied with.

(g) Except as aforesaid, and subject to section 2 of Article III, all such tangible personal property, all my real estate, my said interest in said Z & W M Crane, Inc. and my said interest in Crane Realty Company shall be sold and converted

*Zenas Crane*

into cash by my executors and the proceeds thereof distributed among the institutions, charities and public bodies listed in Article III of this my will and for the purposes therein provided, the distribution to any one thereof to be that proportion of the total proceeds that the specific sum in cash mentioned in said Article III with respect to such one bears to the total of all cash sums in such of the legacies therein mentioned as shall take effect. It is my will that my executors shall offer said property to my sister and her children and then to relatives of mine living in said Dalton at appraised values or at the best prices obtainable from others before the same is sold to others. Pending such sales my executors are empowered and directed to pay out of my estate the reasonable expenses of maintaining, repairing and caring for my property and all taxes and carrying charges thereon.

ARTICLE III. I give and bequeath to the following institutions, charities and public bodies the sums severally set against their respective names, deducting first, however, all amounts paid to each under Article II of this my will and making no bequest under this article if the amounts paid under Article II equal such sums:

1. To the ZENAS CRANE FUND FOR STUDENT AID, INC., of Dalton, a Massachusetts corporation, the sum of Twenty-five Thousand (25,000) Dollars to be invested and the income to be used for the general purposes of said corporation.

2. If the INHABITANTS OF THE TOWN OF DALTON, or the proper officers thereof, shall within one (1) year after my death decide to make the alterations and improvements in that part of the Municipal Building of said town appropriated to the purposes of the Dalton Free Public Library, substantially as described in

*2. Hancock*

the following paragraph, I bequeath to such INHABITANTS the sum of Fifty Thousand (50,000) Dollars, such part of it as may be necessary to be used to make such alterations and improvements and to provide furnishings therefor, and the balance to be invested and the net income therefrom used for the general purposes of the Library, it being my expectation, based on an estimated expenditure of not more than \$30,000. for such alterations, improvements and furnishings, that such income will be ample to meet any additional annual expense of maintaining the building caused by the making of such additions and alterations.

The alterations and improvements referred to are as follows: Enlarging the Junior Room, so-called, by removing the south wall and extending the room to align with the south wall of the present boiler room; erecting in the rear of the present Stack Room an addition large enough to afford adequate space for relocating therein the book stacks, providing suitable work room facilities for the Library staff, and perhaps also for a small Committee Room available at the discretion of the Trustees for meetings of various organizations. The room now occupied by the book stacks would thus become available for other purposes, tending to broaden the field of usefulness of the Library; its walls would lend themselves to the display, temporary and permanent, of objects of art, science and natural history, and such room, in connection with the Reading Room adjoining, could be utilized at the discretion of the Trustees as an Assembly Room for purposes pertaining to community interests.

In such event, I also give to the legatee in this Section mentioned specimens to be selected by my executors from my collection of big game heads representative of the different species, together with my collection of birds, now contained in

*Handwritten signature*

cases at my home, to be exhibited in appropriate locations in the Reading Room and Assembly Room above mentioned.

It is my desire that in making plans for such alterations and improvements, consideration be given to certain suggestions, sketches and memoranda regarding the details which will be found among my papers.

If, however, said Inhabitants or the proper officers of the Town of Dalton shall not decide to make said alterations and improvements as aforesaid, I bequeath to said INHABITANTS OF THE TOWN OF DALTON in lieu of the foregoing provisions of this Section 2, the sum of Fifteen Thousand (15,000) Dollars, to be invested and the net income thereof used for the general purposes of said Library.

3. To the PITTSFIELD THIRD NATIONAL BANK & TRUST COMPANY, located in Pittsfield in said County of Berkshire, the sum of Twenty-five Thousand (25,000) Dollars IN TRUST to invest and reinvest the same and to pay over the net income therefrom to the voluntary association known as the COMMUNITY RECREATION ASSOCIATION of Dalton to be used by said Association for the promotion of public recreation in the public playgrounds and parks in the Town of Dalton. If said Community Recreation Association of Dalton shall cease to exist, I direct that the principal of the fund hereby established and any accumulated income shall be paid over to those persons who would have been my heirs at law under the statutes of descent of the Commonwealth of Massachusetts now in force if I had died immediately before such event.

4. I give and bequeath to the INHABITANTS OF THE TOWN OF WINDSOR, in said County, Twenty-five Thousand (25,000) Dollars

*Marshall Bone*

to be invested in first mortgage bonds and the net income therefrom to be expended on the order of the School Committee towards meeting the general expenses of the public schools in said town. However, in view of my special interest in the Crane Community School, it is my hope that its needs, both in the way of proper maintenance and possible future development, be given first consideration.

5. To the TRUSTEES OF THE BERKSHIRE MUSEUM of Pittsfield in said County, the sum of Two Hundred Thousand (200,000) Dollars to be invested and the net income applied to the furtherance, in as effective a manner as may be, of the general objects for which the Museum Building of said corporation, donated by my father, Zenas Crane, and the collections, exhibits and works of art therein, were given, to the end that their possibilities as educational factors in the life of the community, and to the general public who may be drawn to them, may be realized to their fullest extent.

6. To the BOYS' CLUB OF PITTSFIELD, in said County of Berkshire, the sum of One Hundred Fifty Thousand (150,000) Dollars. Should it seem advisable at any time or times to the Board of Directors of said institution, which was founded by my father, and to the extension of the facilities of which I have added, that portions of this bequest be expended on the further extension or replacement of such facilities, either by structural additions to the buildings of the club or otherwise, such sums as the Directors may determine may be expended for such purposes. It is my desire, however, that such determination should be made only after mature consideration of the needs of the institution and the effect upon the probable future income and expenses. The

*Z. Washburn*

principal of the fund, except as it may from time to time be diminished for the purposes aforesaid, shall be invested and the net income used for the general purposes of the institution.

7. To YALE DIVINITY SCHOOL in New Haven, Connecticut, One Hundred Thousand (100,000) Dollars for promotional activities, with a view to obtaining new students of the most desirable type, or for instruction.

8. To the HOUSE OF MERCY, of said Pittsfield, the sum of Fifteen Thousand (15,000) Dollars to be known as the Louise Crane Pomeroy Fund, the principal to be invested and the net income devoted to the general purposes of the institution.

9. To the FIRST CONGREGATIONAL CHURCH, of Dalton, the sum of Twenty-five Thousand (25,000) Dollars.

10. To the BERKSHIRE COUNTY HOME FOR AGED WOMEN the sum of Ten Thousand (10,000) Dollars.

11. To the YOUNG MEN'S CHRISTIAN ASSOCIATION, of Dalton, the sum of Five Thousand (5,000) Dollars.

12. To the BERRY SCHOOL of Mt. Berry, Georgia, the sum of Five Thousand (5,000) Dollars.

13. To the CHARLES ES DORN HOSPITAL of Walterboro, South Carolina, the sum of Ten Thousand (10,000) Dollars.

14. To YALE UNIVERSITY of New Haven, Connecticut, to be added to the principal of the Alumni University Fund, the sum of Ten Thousand (10,000) Dollars.

15. To the AMERICAN BOARD OF COMMISSIONERS FOR FOREIGN MISSIONS the sum of Twenty Thousand (20,000) Dollars.

ARTICLE IV. I direct that all legacy, succession and inheritance taxes which by virtue of Federal law or of the laws of any state, territory or foreign country may become payable

*S. Marshall*

in respect of any of the foregoing legacies shall be paid from the residue of my estate, to the end that each of said legacies shall be paid in full to the several legatees thereof without diminution or abatement by reason of any such tax.

ARTICLE V. If my estate, exclusive of my stock in Crane & Co., Inc., is sufficient after payment of all debts, expenses and taxes to pay the foregoing legacies and bequests in full, I give my stock in Crane & Co., Inc. two-thirds ( $2/3$ ) to my said nephew, ZENAS CRANE COLT, if he is living at the time of my death, and one-third ( $1/3$ ) to my said cousin, CHARLES J KITTREDGE, if he is living at the time of my death, but if either of them is not living at the time of my death or should for any reason prefer not to receive his share of the stock specifically I direct that his share be sold by my executors, who are directed to offer said stock first to those of my relatives residing in Dalton bearing the Crane name and at the time of my death connected with said Crane & Co., Inc. before making a sale of the same or any of the same to others, and the proceeds of any such sale shall be added to the residue of my estate. If, however, my estate is insufficient exclusive of said stock to make the above described payments in full, I direct my executors to sell said stock, offering it first as aforesaid, the proceeds to be used in making the aforesaid payments, any balance thereof to fall into the residue of my estate.

ARTICLE VI. I give, devise and bequeath all the rest, residue and remainder of my estate, both real and personal and wherever situated, and including property over which I may have power of appointment or to which I may be in any wise entitled, two-thirds ( $2/3$ ) to my said nephew, ZENAS CRANE COLT,

*S. Marshall Crane*

and one-third (1/3) to my said cousin, CHARLES J KITTREDGE. In making my said nephew one of my residuary legatees I have been influenced by the expectation that he will in the normal pursuance of his business career with the Crane paper interests settle and live in Dalton; however, this expectation is not to be construed as a condition which must be complied with in order to make this residuary bequest effective.

If said Zenas Crane Colt is not living at the time of my death and said Charles J Kittredge is then living, I give, devise and bequeath said rest, residue and remainder as follows: One-half (1/2) to my said cousin, CHARLES J KITTREDGE, and one-half (1/2) to my said sister, FRANCES CRANE COLT. If said Charles J Kittredge is not living at the time of my death and said Zenas Crane Colt is living at the time of my death, I give, devise and bequeath all of said rest, residue and remainder to my said nephew, ZENAS CRANE COLT. If neither said Zenas Crane Colt nor said Charles J Kittredge is living at the time of my death, I give, devise and bequeath all said rest, residue and remainder to my said sister, FRANCES CRANE COLT.

*Z. Marshall*

ARTICLE VII. Notwithstanding the foregoing articles of my will, I provide that if my estate is insufficient to pay in full the legacies enumerated in Articles I and III of this my will, excluding those which may have lapsed, or otherwise failed to take effect, all of my property, both real and personal (with the exception only of such tangible personal property and real estate as may pass under section 12 of Article I, subsections (a), (b), (c), (d), (e) and (f) of Article II, and section 2 of Article III) shall be sold and converted into cash by my executors and applied to the payment of the legacies in said Articles I



and III contained, all of said legacies abating proportionately. In making sales under this Article my executors shall follow the same directions as to preferences as are found in the foregoing Articles.

ARTICLE VIII. If any legatee hereunder shall be indebted to my estate, either directly or indirectly, then, anything to the contrary herein notwithstanding, the legacy to such legatee shall not be payable until after any such indebtedness shall have been established, and thereafter only such part of the legacy shall be paid as shall exceed such indebtedness so established.

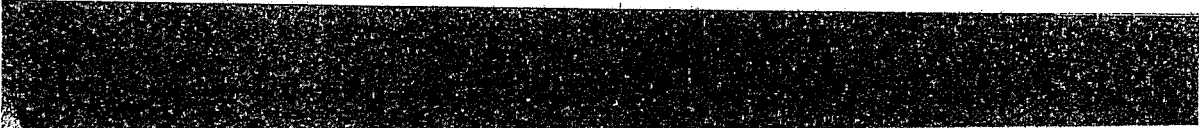
No legatee or devisee hereunder shall be entitled to interest on account of the deferred payment or enjoyment of any legacy or devise hereunder.

ARTICLE IX. I nominate and appoint my brother-in-law, SAMUEL GILBERT COLE, my cousin, CHARLES J KITTREDGE, and the PITTSFIELD THIRD NATIONAL BANK & TRUST COMPANY to be the executors of this my will and I request that no one of them be required to furnish sureties on bonds filed in the Probate Court as such executor.

My executors are directed to continue to employ all those in my employment at the time of my death for at least one (1) month after my death and may continue any of them for such period as they may consider desirable.

Any failure to describe properly any of the legatees in this my will shall not affect the legacy to such legatee provided that such legatee can be identified by my said executors to their satisfaction, and in any case the determination of my executors of the legatees intended shall be conclusive

*Handwritten signature*



upon all parties in interest, and shall not be open to question in any place or in any manner.

The determination of my executors as to whether any condition in this my will has or has not been complied with shall be conclusive upon all persons and shall not be open to question in any place or in any manner.

For the purpose of carrying out this my will, I authorize and empower any persons who shall be executors hereof, or who shall be executor in case there shall be only one such person, in their or his sole discretion, without first obtaining leave of court, to sell, either at public auction or at private sale, any and all estate, real or personal, of every description, of which I may die seized or possessed, and to execute such instruments as may be necessary or proper to transfer title thereto, and no person paying or transferring money or any other thing to said executors or executor, as purchaser, seller, or in any other capacity, shall be bound to see to the application of, or be in any way liable for the misapplication thereof, and any execution of this power on the part of said executors or executor shall convey title good against any person claiming hereunder, anything to the contrary herein notwithstanding.

No purchaser from my executors shall be bound to ascertain whether my executors have first offered the property sold as provided in this my will or be bound by any knowledge or notice that my executors have failed so to offer the same, but may deal with my executors as if they had an absolutely unrestricted power of sale.

Any execution of any power of sale hereunder by my

*Washburn*

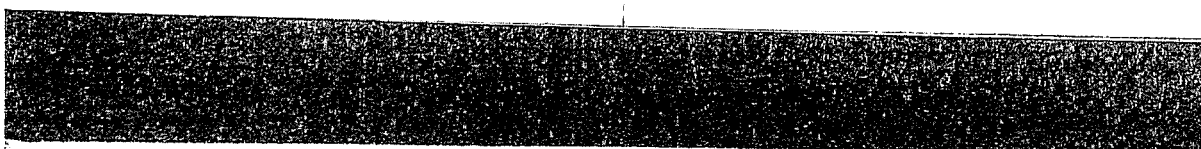
executors in actual good faith shall be conclusive on all parties in interest and shall not be open to question by anyone with respect to price, procedure, or otherwise.

No executor or administrator with the will annexed acting under this will shall be charged with or be held liable to account for the indebtedness to my estate of any other executor or administrator with the will annexed acting hereunder, whether such indebtedness shall be in existence at the time of my death or shall thereafter accrue.

My executors may in their discretion participate in such manner as they may deem proper in any reorganization, merger or consolidation of any corporation or association whose shares, stock, bonds, or other evidence of indebtedness may constitute a part of my estate in their hands. My executors may compromise, adjust or settle any claim by or against my estate upon any basis which to them in their sole discretion may seem advisable and may give or take in settlement or exchange therefor consideration in any form.

If one or more of my executors herein named shall for any reason fail to qualify, or because of refusal, resignation, removal, death or from any other cause, shall cease to be executor hereunder, I direct that my surviving or remaining executors or executor shall have and exercise all the estate, powers, discretions and duties herein given to my said executors. Any and all estate, powers, discretions, determinations and judgments by any provision of this will given to my said executors shall be vested in and exercisable respectively by any administrators or administrator with this will annexed. My executors herein named may exercise or concur in exercising all powers and

*S. Marshall*



discretions herein given to them or him, notwithstanding that they or any of them may have a direct or other personal interest in the manner or result of exercising any such power or discretion.

IN WITNESS WHEREOF I, the said J. MARSHALL GRAVE, do make and publish this my true will and testament.

*J. Marshall Grave*

Signed, read, published and declared by the said J. MARSHALL GRAVE, his testator, in the presence of my self and testator in the presence of

(10/10)

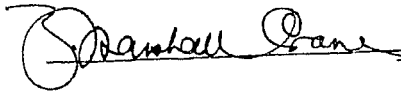

I, Z MARSHALL CRANE of Dalton, County of Berkshire and Commonwealth of Massachusetts, do hereby make and declare this codicil to my last will and testament dated July 5, 1933.

I direct that said will be amended by adding the following new article to which all other articles of my will shall be subject:-


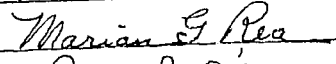
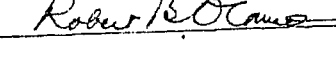
In the event of my death before I have made all the gifts promised by me to the Trustees of The Berkshire Museum by a certain letter dated July 8, 1935 written by me and my sister, Frances Crane Colt, to said Trustees, I give and bequeath to said Trustees the sums so promised to the extent that the same have not been paid in my lifetime, such sums to be expended by the Trustees for the purposes set forth in said letter.

Said will and any codicils thereto heretofore executed by me are in all other respects hereby ratified and confirmed.

IN TESTIMONY WHEREOF I, the said Z MARSHALL CRANE, do make and publish this codicil to my said last will and testament and do hereby set my hand and affix my seal this 24 day of July in the year nineteen hundred and thirty-five.

Signed, sealed, published and declared by the said Z MARSHALL CRANE, the testator above named, as and for a codicil to his said last will and testament in the presence of us, who, in his presence and in the presence of each other, have subscribed our names as witnesses hereto.

I, Z MARSHALL CRANE of Dalton, in the County of Berkshire and Commonwealth of Massachusetts, do make and declare this codicil to my last will and testament dated July 5, 1933.

I hereby direct that ARTICLE IX of said will shall be amended by striking out the first sentence thereof and substituting therefor the following: "I nominate and appoint my nephew, Zenas Crane Colt, my cousin, Charles J. Kittredge, and The Pittsfield Third National Bank & Trust Company to be the executors of this my will, and I request that no one of them be required to furnish sureties on bonds filed in the Probate Court as such executor".

Said will and any codicils thereto heretofore executed by me are in all other respects hereby ratified and confirmed.

IN TESTIMONY WHEREOF I, the said Z MARSHALL CRANE, do make and publish this codicil to my said last will and testament on this 29th day of July in the year nineteen hundred and thirty-five.

*Z Marshall Crane*

Signed, sealed, published and declared by the said Z MARSHALL CRANE, the testator above named, as and for a codicil to his said last will and testament, in the presence of us, who, in his presence and in the presence of each other have subscribed our names as witnesses to the said

*Robert B. Crane*


I, Z MARSHALL CRANE of Dalton, County of Berkshire and Commonwealth of Massachusetts, do make and declare this codicil to my last will and testament dated July 5, 1935.

I direct that said will be amended by adding the following new article to which all other articles of my will shall be subject, such new article to be in substitution for the new article provided by a previous codicil to said will:

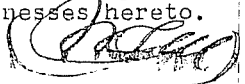
In the event of my death before I have made all the gifts promised by me to the Trustees of The Berkshire Museum by two certain letters, one dated July 8, 1935 and one dated ~~November 1st~~ <sup>12th</sup>, 1935, both written by me and my sister, Frances Crane Colt, to said Trustees, I give and bequeath to said Trustees the sums so promised to the extent that the same have not been paid in my lifetime, such sums to be expended by the Trustees for the purposes set forth in said letters.

Said will and any codicils thereto heretofore executed by me are in all other respects hereby ratified and confirmed.

IN TESTIMONY WHEREOF I, the said Z MARSHALL CRANE, do make and publish this codicil to my said last will and testament and do hereby set my hand and affix my seal this 12<sup>th</sup> day of ~~November~~ in the year nineteen hundred and thirty-five.

Z Marshall Crane 

Signed, sealed, published and declared by the said Z MARSHALL CRANE, the testator above named, as and for a codicil to his said last will and testament in the presence of us, who, in his presence and in the presence of each other, have subscribed our names as witnesses hereto.



John M. King  
Merton B. Dickson  
Ray E. Barnard



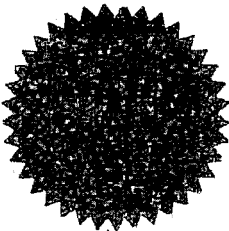


all claims and demands it has or may have against them as executors as afore-  
said and against said estate.

IN WITNESS WHEREOF the undersigned has caused this  
instrument to be signed in its behalf and its corporate seal to be hereto  
affixed by a duly authorized officer this 26<sup>th</sup> day of May, 1937.

TRUSTEES OF THE BERKSHIRE MUSEUM

By Charles J. Stedee  
Treasurer.  
Henry A. Francis  
Pres.



Attest: -  
William Banks  
Secretary

doc

# **EXHIBIT G**



## STATEMENT ON THE BERKSHIRE MUSEUM PROPOSAL TO DEACCESSION WORKS OF ART FOR ITS ENDOWMENT, OPERATIONS, AND TO FUND CAPITAL INVESTMENTS

The American Alliance of Museums (AAM), an organization representing the entire scope of the museum community, and the Association of Art Museum Directors (AAMD), an organization representing 243 directors of North America's leading art museums, are deeply opposed to the Berkshire Museum's plans to sell works from its collection to provide funds for its endowment, to make capital investments, and to pay for daily operations.

One of the most fundamental and long-standing principles of the museum field is that a collection is held in the public trust and must *not* be treated as a disposable financial asset. This prohibition is upheld by both AAMD and by AAM, which sets accreditation standards for art museums, science centers, natural history museums, and historical museums.

AAM and AAMD are communities of museum professionals founded to support museums, large and small, and the diverse communities they serve. Actions such as those being proposed by the Berkshire Museum undermine the public's trust in the mission of nonprofit museums—and museums' ability to collect, teach, study, and preserve works for their communities now and into the future.

Two of the works the Museum is currently planning to sell are important paintings by Norman Rockwell, given by the artist to the people of Pittsfield. These works were entrusted by Rockwell to the Museum for safe-keeping and to share with the public. The other works proposed for sale are by many noted artists from America and around the world. If these works are indeed sold, it would be an irredeemable loss for the present and for generations to come.

Selling from the collection for purposes such as capital projects or operating funds not only diminishes the core of works available to the public, it erodes the future fundraising ability of museums nationwide. Such a sale sends a message to existing and prospective donors that museums can raise funds by selling parts of their collection, thereby discouraging not only financial supporters, who may feel that their support isn't needed, but also donors of artworks and artifacts, who may fear that their cherished objects could be sold at any time to the highest bidder to make up for a museum's budget shortfalls. That cuts to the heart not only of the Berkshire Museum, but every museum in the United States.

The Berkshire Museum contends that in order to be a good steward of their institution they must be a poor steward of their collection. We believe those two responsibilities are not mutually exclusive. We are sympathetic to the financial challenges museums of all sizes may face. And we are heartened by the many creative solutions that museums across the country have developed to meet those challenges and uphold the professional standards of the field.

We have been in communication with the Berkshire Museum leadership and we continue to hope that they will reconsider their decision. We stand ready to assist, in any way we are able, to find other solutions to the institution's needs without resorting to the selling of works that can never be recovered.

###

## **Additional Resources:**

- [AAMD Policy on Deaccessioning](#)
- [AAM Code of Ethics](#)

### About AAMD:

The Association of Art Museum Directors advances the profession by cultivating leadership capabilities of directors, advocating for the field, and fostering excellence in art museums. An agile, issues-driven organization, AAMD has three desired outcomes: engagement, leadership, and shared learning. Further information about AAMD's professional practice guidelines and position papers is available at [www.aamd.org](http://www.aamd.org).

### About AAM:

The American Alliance of Museums has been bringing museums together since 1906, helping to develop standards and best practices, gathering and sharing knowledge, and providing advocacy on issues of concern to the entire museum community. Representing more than 35,000 individual museum professionals and volunteers, institutions, and corporate partners serving the museum field, the Alliance stands for the broad scope of the museum community. For more information, visit [www.aam-us.org](http://www.aam-us.org).

## **Press contacts:**

### ***For Association of Art Museum Directors:***

Christine Anagnos / Alison Wade  
Association of Art Museum Directors  
212-754-8084  
[canagnos@aamd.org](mailto:canagnos@aamd.org)  
[awade@aamd.org](mailto:awade@aamd.org)

Elizabeth Chapman / May Wijaya  
Resnicow and Associates  
212-671-5159 / 212-671-5167  
[echapman@resnicow.com](mailto:echapman@resnicow.com)  
[mwijaya@resnicow.com](mailto:mwijaya@resnicow.com)

### ***For American Alliance of Museums:***

Joseph Klem  
Director of Public Relations  
202-218-7670  
[jklem@aam-us.org](mailto:jklem@aam-us.org)

# EXHIBIT H

**Berkshire Museum Press Release**

For Immediate Release: July 12, 2017

Berkshire Museum media contact: Carol Bosco Baumann, Press Liaison

413.717.5232; cbaumann@berkshireremuseum.org

## **Berkshire Museum Unveils \$60 Million Reinvention Plan**

*New interdisciplinary approach strengthens Museum's unique niche as region's premier science and history museum*

[Pittsfield, Mass.] — On Wednesday, July 12, 2017, the Berkshire Museum Board of Trustees and Executive Director Van Shields announced the results of nearly two years of research and planning – the creation of an exciting new interdisciplinary Museum, where connections among science, history, and the arts are explored to inspire curiosity and wonder in audiences of all ages. The announcement was made at 3:30 p.m. during an hour-long gathering at the Museum that featured an introduction by Berkshire Museum Board of Trustees president Elizabeth “Buzz” McGraw, a detailed presentation of the Master Plan process and the concepts and designs for the new Museum by Shields, and closing remarks by John L. Bissell, president and CEO of Greylock Federal Credit Union.

Earlier in the day, the Board of Trustees met and voted unanimously to approve the plans for the new Museum as well as the plans for funding the transformation, marking the end of the planning process and the beginning of implementation.

“We are so proud of this thrilling new vision for the Museum,” says McGraw. “As a board, we have been united in the development of this plan, and we are united in our enthusiasm for moving forward. We have worked tirelessly over the last two years to ensure the future survival and relevance of our beloved Berkshire Museum. It was important to us, as Trustees, to take bold steps to address our financial challenges and to affirm that the Berkshire Museum of the future will reflect the growing needs of our community.”

The Berkshire Museum has been experiencing a burgeoning demand for its programs and services to the community. The July 12 announcement unveiled a new vision for its future, that of an interdisciplinary museum with a heightened emphasis on science and history. Realization of this ambitious plan is expected to cost \$20 million; in addition the Museum will create a new endowment of at least \$40 million in order to provide financial stability for the future. These initiatives will be largely funded through the sale of artworks in the Museum's collection, which have been deemed no longer essential to the Museum's new interdisciplinary programs, and include two Norman Rockwell paintings.

### **A transformed Museum**

For more than a century, the Berkshire Museum has been the region's premier museum of science, history, and the arts. Building on this legacy, the Berkshire Museum will create a radically new interdisciplinary approach to the experiences and educational opportunities it provides. Treasured objects from the collection will be integrated with new interpretive techniques, cutting-edge technology, and a fresh perspective that aims to extract contemporary relevance from historical artifacts. Static museum galleries will be transformed into active teaching laboratories, and the Museum will extend its leadership position as the region's authority on science and history for the general public. By inspiring curiosity and wonder in its audiences, the Museum will continue to nurture the social, cultural, and economic development of Pittsfield and the Berkshires.

"The Berkshire Museum's plan for a major investment in our city will greatly accelerate Pittsfield's ongoing transformation," says Mayor Linda Tyer. "I'm thrilled that the Museum is doubling down on its well-known dedication to meet community needs."

"Pittsfield's economy is on the rise, and we know that arts and culture is a driving force behind that," says State Senator Adam G. Hinds (D- Pittsfield). "Cultural attractions help to revitalize downtowns in Pittsfield, North Adams, and elsewhere. The Berkshire Museum is a cornerstone of that effort. We know that when the Berkshire Museum does well, Pittsfield is doing well. And the city's prosperity echoes throughout the Berkshires and

the larger western Mass region.” Hinds serves as the Senate chair of the Joint Committee on Tourism, Arts and Cultural Development.

### **Engaging the community**

The mission statement of the Museum, as adopted in April of 2011, is and remains: “To bring people together for experiences that spark creativity and innovative thinking by making inspiring, educational connections among art, history, and natural science.”

In developing the plan for a transformed Museum, one which will better support the mission, better serve the community, and lead to long-term stability, the Board of Trustees and staff executed an extensive planning process, beginning with identifying community needs. The process began in December of 2015 and is ongoing. It included seven special day-long Board retreats totaling more than 60 hours of focused work, outside of regular Board responsibilities.

Three groups of community leaders were convened and met several times. The Stakeholder Advisory Board, comprised of 18 individuals from Berkshire County’s business, nonprofit, and philanthropic sectors, offered insight on the needs of the wider community. The Program Working Group, consisting of representatives from 13 organizations in Berkshire County, explored programmatic collaborations, particularly around education and interdisciplinary experiences. The Cultural Partner Working Group, including leaders from 12 peer environmental, historic, performing and visual arts organizations in Berkshire County, acted as a sounding board.

In addition, a series of 22 focus groups met, engaging approximately 235 individuals from ages 8 to 55 and over. The participants included local children in both public and private school systems; Museum donors, members, and volunteers; young professionals; business leaders; innkeepers; and second home owners. Several dozen meetings with individuals and small groups to gather and assess feedback have taken place as well. Between standing stakeholder groups, focus groups, and individual and small group meetings, approximately 400 people have participated in the community consultation process, in addition to the Museum’s trustees and staff.



The Museum has developed strategies to meet several community challenges identified during the planning process. These challenges included Berkshire County's under-resourced schools; declining year-round population; a fractured community identity; and the lack of access to cultural resources, among others. The Museum's response to these challenges will include creating programmatic resources for educated, curious, well-rounded individuals with a diverse range of talents; providing a contemporary view of the Berkshires that feels relevant and will inspire people to find connections and become better local and global citizens; and becoming the most welcoming cultural institution in the Berkshires.

"The process undertaken by the Museum to reach this point has been thoughtful and thorough, marked by intense community engagement and involvement," says Van Shields, the Museum's executive director. "The vision for how the Museum can best serve Pittsfield and the Berkshires is a reflection of the wishes of the community that surrounds us. By aligning our vision to community needs today, we will ensure the Museum continues its century-long track record of success as a vital cultural and educational resource for Pittsfield and Berkshire County."

### **The visitor experience**

Community participation in the planning process revealed a strong interest in strengthening the Museum's programs related to science and history. With that in mind, the Museum's Master Plan will establish a truly interdisciplinary institution based on collections related to science, history, and the arts, unique in the Berkshire County region. New programs and exhibitions will create opportunities for people to discover more about the Berkshires and its impact on the world around them. The new model will provide visitors with technology that allows them to interact in a variety of modalities, and create regular opportunities for the community to come together.

The historic building will be updated inside, with a spacious, sunlit entryway, and an innovative display of objects from the Museum's collection enlivening the central space. Visitors will see many of the familiar, iconic objects interpreted in new ways

throughout the galleries. Wally the stegosaurus will be relocated indoors, protected from the elements. Tom Patti's magnificent glass installations will be in new locations within the Museum. Multi-media programming will be presented in a modern, more intimate space, with greatly improved sound and projection capabilities. The Alexander Calder mobiles now in the Theater will be re-installed as well.

Five thematic zones will define the visitor experience: Our Human Fabric, Make & Create, Shaping History, Perceive & Process, and Our Living World. Our Living World will feature a significantly expanded and improved aquarium, highlighting the streams and ponds of New England as well as exotic environments from around the globe. The iconic Egyptian mummy Pahat will be an important part of the Human Fabric thematic zone, prominently displayed with richer and more detailed interpretation than has been possible to date. The full-size wigwam will be moved to a new location, and visitors will still be able to enter and explore the structure.

### **Financial strategy**

The vision for the new Berkshire Museum will be supported by a bold financial strategy designed to properly capitalize the Museum. In addition to upgrading its facility and core educational experiences, the Museum will establish an endowment sufficient to sustain operations through investment earnings to complement annual earned and contributed income. The Museum will also strengthen its balance sheet to reduce financial risk, pay down existing debt, and establish reserve funds for long-term capital maintenance and to mitigate unforeseen events.

To support the capitalization strategy, the Board of Trustees has opted to deaccession 40 works of art from the Museum's extensive collection numbering approximately 40,000 objects. The Museum is working with Sotheby's to offer these works for sale. The Museum anticipates the proceeds to be in the region of \$50 million. Included are two paintings by Norman Rockwell, *Shuffleton's Barbershop* and *Shaftsbury Blacksmith Shop*, as well as other works in the fine art categories of Impressionist and Modern Art, Contemporary Art, 19<sup>th</sup>-Century European Paintings, American Art, Old Master Paintings, and Chinese Works of Art. The works that have been selected for deaccession have been deemed

to be not essential to the Museum's refreshed mission and do not directly contribute to its new interdisciplinary interpretive plan with its heightened emphasis on science and history. The complete list of works to be deaccessioned will be released by Sotheby's in due course.

The Museum will also continue to engage with its members, visitors, and supporters through fundraising campaigns, annual appeals, corporate sponsorships, and support from its membership base, including a \$10 million campaign to support the new strategic plan.

Together with its existing holdings, the proceeds from sales and additional fundraising will ensure the Museum can fund its capitalization goals.

### **Partnerships**

A team from Boston-based firm TDC, led by Anne Engel, vice president, acted as the lead consultants to work with the Museum's Trustees and staff to facilitate the development of the Master Plan, with a focus on business analysis and management. Experience Design, led by principals Larissa Hansen Hallgren and John Carney, has been part of the master planning process from the beginning and will continue to be the Museum's partner in the design and creation of the new exhibitions and experiences. Architects Tessa Kelly and Chris Parkinson, partners in the firm ARCADE based in Pittsfield, are designing the improvements to the building, working with a team from Hill-Engineers, Architects, Planners, Inc. of Dalton.

### **About the Berkshire Museum**

Located in downtown Pittsfield, Massachusetts, at 39 South St., the Berkshire Museum, a Smithsonian Affiliate, is open from 10 a.m. to 5 p.m., Monday through Saturday, and noon to 5 p.m. on Sunday.

In association with the Smithsonian since 2013, Berkshire Museum is part of a select group of museums, cultural, educational, and arts organizations that share the Smithsonian's resources with the nation.

The Berkshire Museum integrates science, history, and the arts in dynamic, educational, and engaging programs and exhibitions for visitors of all ages. ***Curiosity Incubator*** is on view. ***GUITAR The Instrument That Rocked the World*** is on view now through September 4, 2017. Little Cinema is open year-round. Lab102, Feigenbaum Hall of Innovation, Worlds in Miniature, Aquarium, and other exhibits are ongoing.

# # #

# EXHIBIT I

September 27, 2017

By FedEx

Mark S. Gold, Esq.  
Smith Green & Gold, LLP  
75 North Street, Suite 400  
Pittsfield, MA 01201

Re: Berkshire Museum of Art, History, and Natural Science

Dear Mr. Gold:

I represent James and Kristin Hatt (the "Hatts"). It is my understanding that you represent the Berkshire Museum of Art, History, and Natural Science (the "Berkshire Museum"), but if I am mistaken kindly advise to whom I should direct my communications.

The Hatts are members and long time supporters of the Berkshire Museum. It is with considerable alarm that the Hatts have observed the Berkshire Museum's announcements in the past several months concerning its plans to deaccession dozens of its most prestigious works of art. The Berkshire Museum's description of this fire sale as a purposeful new mission or direction is unpersuasive. In addition to being in direct contravention of all applicable museum standards, the Hatts see no evidence that this decision was reached in accordance with basic principles of good corporate governance.

The Hatts are eager to learn whether the Berkshire Museum has indeed followed proper procedure in making these institutional decisions. Accordingly, the Hatts kindly request that you (or the museum) provide the following:

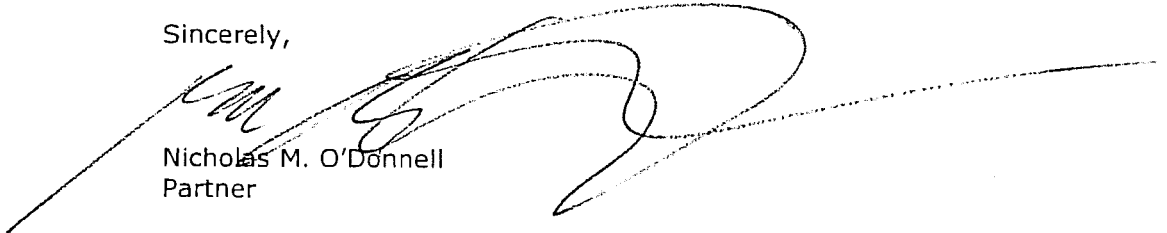
- All Bylaws of the Berkshire Museum currently in effect, and any prior Bylaws in effect during the last ten years.
- All resolutions adopting, deleting, or modifying any of the foregoing Bylaws.
- All resolutions concerning the composition of the Berkshire Museum's Board of Directors since 2010.
- The Berkshire Museum's current Acquisitions Policy and any resolutions of the Board of Directors concerning acquisition or deacquisition policy since 2010.
- Any other documents since 2010 purporting to state or amend the Berkshire Museum's mission and/or purpose.
- Any document concerning advance notice of intent to consider such amendments to the Berkshire Museum's mission and/or purpose.

Mark S. Gold, Esq.  
Page 2  
September 27, 2017

Given the Berkshire Museum's scheduled auctions of these irreplaceable works, time is of the essence in this matter. Please provide the above documentation at your earliest convenience but in any event within seven (7) days.

The Hatts reserve all their rights in this regard. I look forward to hearing from you.

Sincerely,



Nicholas M. O'Donnell  
Partner

T: 617 338 2814  
[nodonnell@sandw.com](mailto:nodonnell@sandw.com)

# **EXHIBIT J**



October 17, 2017

By FedEx

Mark S. Gold, Esq.  
Smith Green & Gold, LLP  
75 North Street, Suite 400  
Pittsfield, MA 01201

Re: Berkshire Museum of Art, History, and Natural Science—CEASE AND DESIST

Dear Mr. Gold:

As you know from my letter dated September 27, 2017 requesting certain information about the corporate governance of your client the Berkshire Museum of Art, History, and Natural Science (the "Berkshire Museum"), I represent Berkshire Museum members James and Kristin Hatt of Lenox, Massachusetts (the "Hatts"). Despite the reasonable and urgent inquiries set forth in my letter, I have received no timely response, or indeed any response. This letter is the Hatts' demand that the Berkshire Museum cease its course of action with respect to deaccessioning immediately.

The Berkshire Museum's stated intention to liquidate substantially all of the world-class paintings in its collection is contrary to, *inter alia*, its governing charter, the Berkshire Museum trustees' fiduciary duties, the Berkshire Museum's explicit and implied contracts with its members, G.L. c. 180 § 1 *et seq.* ("Chapter 180"), and G.L. c. 93A, §§ 2 and 9 ("Chapter 93A"). It also renders its prior Internal Revenue Service Forms 990 inaccurate as on those forms the collection was (properly) not listed as a capital asset. All publicly available information compels the conclusion that the Berkshire Museum's claim of a fiscal emergency as justification for these illegitimate decisions is categorically false. It is readily apparent that the Berkshire Museum is well aware that its actions are unlawful because it has also purported to change its "mission" such that the disposal of these critical works of art—the very first purpose to which the institution is dedicated in its name—would somehow be consistent with the supposed new "mission." Based on available information, however, the Berkshire Museum's recent reconstitution of its Board of Directors—and all actions flowing from that—lack legal authority, rendering all of the decisions in question about the collection void.

We provided the Berkshire Museum with the opportunity to justify its actions. The museum's failure to take that opportunity and forge ahead speaks for itself, plainly there is no such justification. The plans to sell some forty irreplaceable paintings breaks faith with the members and the Pittsfield community in a way that will never be repaired. It is difficult to understand how the trustees could possibly have concluded in good faith that this decision is in the best interests of the institution dedicated in part to fine art, because it is not. And that assumes that the museum will even realize an appreciably monetary yield from this sale, which is far from certain. No American museum will participate in an exhibition with the Berkshire Museum, ever again. No business or individual members of the community will support future activities of the Berkshire Museum because its promises

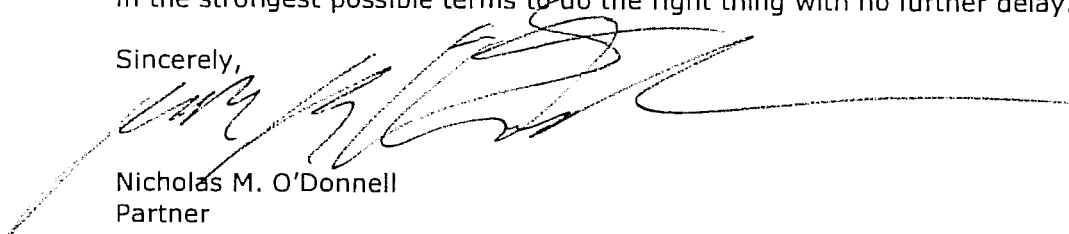
Mark S. Gold, Esq.  
Page 2  
October 17, 2017

will have been shown to be meaningless. And no endowment of any size will compensate for this dim and certain future. The Berkshire Museum will, quite simply, wither away. The sale of any one of the paintings that the Berkshire Museum proposes to dispose of would cause irreparable harm to the community and its members.

Accordingly, on behalf of the Hatts and other similarly-situated members, we hereby demand that the Berkshire Museum confirm in writing no later than **Friday, October 20, 2017** that the Berkshire Museum will not sell any of the paintings currently listed for auction beginning on or about November 13, 2017. Failing timely confirmation by the Berkshire Museum, the Hatts will seek immediate judicial relief to enjoin this poorly-considered and disastrous course of action, as well as all available relief pursuant to Chapter 93A and Chapter 180.

The Hatts reserve all their rights concerning the foregoing. We urge the Berkshire Museum in the strongest possible terms to do the right thing with no further delay.

Sincerely,



Nicholas M. O'Donnell  
Partner

T: 617 338 2814  
[nodonnell@sandw.com](mailto:nodonnell@sandw.com)

cc: James and Kristin Hatt  
Courtney M. Aladro, Esq.  
Michael B. Keating, Esq.