

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

Civil Action No. _____

TRUSTEES OF THE BERKSHIRE MUSEUM,

Plaintiff,

v.

MAURA HEALEY, ATTORNEY GENERAL OF
THE COMMONWEALTH OF MASSACHUSETTS,

Defendant.

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MAURA S. DOYLE CLERK
OF THE SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY

VERIFIED COMPLAINT IN EQUITY

INTRODUCTION

Plaintiff Trustees of the Berkshire Museum (the “Museum”) brings this action against Maura Healey, in her capacity as Attorney General of the Commonwealth of Massachusetts (“Attorney General”). This complaint is brought pursuant to this Court’s jurisdiction over matters of equity under G.L. c. 214, § 1.

Equitable relief is sought to authorize the Museum to sell up to 40 works out of the 5,000 artistic works in its 40,000-object collection, to avert its current course toward insolvency and allow the Museum to continue to serve its statutory purpose and mission of promoting for the people of Berkshire County and the general public the study of art, history, and science. After a two-year process of community input and financial analysis, the Museum has determined that it is impossible or impracticable to continue operating as a museum of art, history, and science

without selling up to 40 of these works in the manner described herein. Although the Museum has determined that none of these works is subject to a restriction, the Attorney General believes that certain restrictions apply that limit or prohibit the sale, or use of proceeds of sale, of the works. The Museum has determined that if such restrictions exist, complying with them would prevent the Museum from being able to adequately address its financial troubles and continue fulfilling its purpose and mission. As a result, the Museum asserts that, if such restrictions exist, complying with them is not practicable. The Museum understands that the Attorney General agrees with this conclusion and the relief set forth herein.

This proposed sale has been the subject of ongoing litigation between the Attorney General and the Museum in the Berkshire County Superior Court (Nos. 17-253, 17-260) and the Appeals Court (Nos. 2017-J-510, 2017-P-1548, 2018-P-33). In an effort to resolve their dispute, the Museum and the Attorney General have agreed that the Museum would file this Complaint, which seeks a judgment that the Museum may sell up to 40 works in its collection in the manner set forth herein. The Attorney General has informed the Museum that it assents to the relief sought by this Complaint.

PARTIES

1. Plaintiff Trustees of the Berkshire Museum, is—and seeks to continue to be—a museum of art, history, and science located at 39 South Street, Pittsfield, Berkshire County, Massachusetts.

2. Defendant Maura Healey is the Attorney General for the Commonwealth of Massachusetts and is named as a defendant pursuant to G.L. c. 12, § 8G.

3. As no gift has been found or alleged to be subject to a reversionary interest, no party other than those named has been or could be joined in this Complaint, pursuant to G.L. c. 214, § 10B. As a courtesy, the Museum has provided notice of this Complaint to certain private parties who brought litigation challenging the proposed sale, but alleged no reversionary interest in the 40 works. *See Rockwell v. Trustees of the Berkshire Museum*, No. 17-253 (Mass. Super. Ct., Berkshire County); *Hatt v. Trustees of the Berkshire Museum*, No. 17-260 (Mass. Super. Ct., Berkshire County).

STATEMENT OF FACTS

A. Museum History

4. The Berkshire Museum was founded by Zenas Crane in 1903. For its first three decades, it operated under the management of the Berkshire Athenaeum, but maintained separate ledgers and collections. In 1932, the Museum was formally incorporated with the following interdisciplinary purpose:

[E]stablishing 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 cultural history of mankind and kindred subjects by means of museums and collections.

Ex. A (Stat. 1932, c. 134) at § 3.

5. In the decades that followed, the Museum's collection grew to more than 40,000 items, including 5,000 works of art (including fine art and decorative art), 1,000 historical artifacts, and 30,000 scientific specimens. The Museum has a proud history of fulfilling the artistic, historical, and scientific components of its purpose and mission. The Museum has exhibited works by renowned artists including John Singleton Copley, Norman Rockwell, John

Singer Sargent, and Pierre Auguste Renoir, as well as works by prominent contemporary artists with strong connections to the Berkshires. It has also exhibited historical objects of great significance since its early years, including the suit of one of the first explorers to reach the North Pole, an Egyptian mummy, and a musket from the Revolutionary War. Its basement features an aquarium housing a variety of fish, amphibians, and reptiles, and for decades it has offered a wide range of science programming to the community, especially to children attending under-resourced schools.

6. In recent decades, Berkshire County's population has decreased, local businesses have relocated or merged, and the number of regional non-profit cultural institutions competing for attendees and donor support has increased.

7. For example, in 1903, the same year that the Museum was founded, General Electric ("GE") purchased an electric machinery plant in Pittsfield. Over the decades that followed, GE developed a substantial presence in Pittsfield, and was a generous contributor to the Museum. Beginning in the 1980s, GE's presence in Pittsfield shrank as the company closed divisions or sold them off. By 1992, only GE Plastics remained, and the company was later sold to SABIC Innovative Plastics, which closed its Pittsfield operation in 2015. The departure of GE from Pittsfield deprived the Museum of an important and longstanding donor.

8. The proliferation of non-profit organizations in the Berkshires compounds this problem. At the time of the Museum's founding in 1903, the only other major public charity open to the public in Pittsfield was the Colonial Theater. Today, the Museum is one of many museums and cultural institutions in the area. These include museums such as the Massachusetts Museum of Contemporary Art ("MASS MoCA"), the Norman Rockwell Museum, the Clark Art

Institute, and the Williams College Museum of Art; cultural attractions such as The Mount, Tanglewood, and Jacob's Pillow; and performing arts venues such as the Williamstown Theatre Festival, the Barrington Stage Company, and the Colonial Theater. This growth has resulted in increased competition for donor support.

9. These developments in the local economy and local cultural community have posed several related challenges to the Museum's efforts to fulfill its statutory purpose and mission.

10. Declining donor support has placed the Museum on an unsustainable financial trajectory. For decades, the Museum operated on a single-donor model that relied on the generosity of the descendants of the Museum's founder, Zenas Crane, to fund the Museum's annual operating deficits. While the Crane family continues to provide significant and generous support for the Museum, it stopped singlehandedly covering the Museum's deficits many years ago. The Museum has engaged in robust fundraising operations—offering multiple tiers of membership, annual galas, and capital campaigns—but as the community has aged and evolved, many of the community's most generous philanthropists have died, and as corporations have left Pittsfield and the Berkshires, corporate donations have dwindled. Over the past decade, the Museum has faced an average annual operating deficit of \$1.15 million.

11. Unlike many other museums and cultural nonprofits, the Museum lacks an endowment that generates earnings sufficient to cover its operating deficit and the Museum does not receive substantial government support, which has forced the Museum to make annual withdrawals from its board-designated endowment principal. At the end of 2017, its endowment

had shrunk to approximately \$6.2 million. On its current trajectory, absent an influx of capital, the Museum will approach insolvency and be forced to close within the next several years.

12. In response to this dire financial position, the Museum evaluated all possible options. It launched a capital campaign in 2006 that raised approximately \$9 million of pledged capital—less than the capital campaign goal—but the dollars took years to trickle in, and failed to appreciably change the Museum’s financial posture. As time passed, the Museum considered whether it needed to make a fundamental change to allow it to continue to operate as a sustainable resource for the people of Pittsfield and Berkshire County. To help answer that question, the museum engaged TDC, a non-profit management consulting and research firm that has extensive expertise in non-profit finances and management. With the help of TDC, in 2014, the Museum’s volunteer Board of Trustees (“Board”) began the process of exploring a potential merger with the nearby Hancock Shaker Village. During a process that spanned many months, the Museum studied the benefits and risks associated with the proposed transaction, including assessing the fundraising climate in Berkshire County; ultimately, both TDC and the Board concluded that the combination would not solve either institution’s structural financial problems, and the proposed merger was not further pursued.

13. The Museum’s problems are not merely financial. The Museum operates in a set of buildings that occupy almost an entire city block, the first of which was built well over 100 years ago. Upgrades over the years have been sporadic; the Museum has never had sufficient funding to address the myriad problems that plague its physical plant. The Museum lacks appropriate climate control systems for the display of visual art, and is forced to display art on the inside of exterior walls, which risks significant damage to the artwork. Ceilings are leaky,

and rain or snow often drip into galleries, with condensation running down the walls. In one room, an icicle grows from the floor during winter. There are problems with the Museum's connection to the city's septic line. And the Museum faces systemic problems with its collection storage areas, which—among other things—are prone to mold.

14. The Museum also faces growing competition from other art-focused institutions in the region that did not exist at its founding. Once one of a small number of museums displaying art in the region, the Museum's artistic exhibits now compete with a large number of institutions exclusively focused on the display of fine art, including the Norman Rockwell Museum, MASS MoCA, the Clark Art Institute, and the Williams College Museum of Art. While the Museum has continued to exhibit fine art, the Museum's best-attended special exhibitions in the last 20 years have focused on science and natural history.

15. In short, dwindling finances, changing regional dynamics, and aging infrastructure have left the Museum struggling to fulfill its statutory purpose and mission of promoting for the people of Berkshire County and the general public "the study of art, natural science, the cultural history of [hu]mankind and kindred subjects." Ex. A (Stat. 1932, c. 134) at § 3.

B. The Museum's Master Planning Process And New Vision

16. In light of the dire financial condition in which the Museum found itself, and after the Board concluded that a proposed merger with Hancock Shaker Village was not viable, in 2015 the Board embarked on a two-year "Master Planning Process" directed at two goals: charting a sustainable financial future for the Museum and best serving the people of Berkshire County in fulfilling the Museum's interdisciplinary statutory purpose and mission. As a part of

this Master Planning Process, the Board convened three formal advisory stakeholder groups (including representatives from the Museum's partner organizations; individuals from Berkshire County's business, non-profit, and philanthropic sectors; and local leaders of cultural institutions), held 22 focus groups involving more than 200 people (including local children, museum members and donors, young professionals, and business leaders), and conducted seven full-day Board meetings totaling 60 hours.

17. As part of the Master Planning Process, the Board consulted the community on how best to fulfill its purpose and mission, concluding that an approach that integrated art, history, and science exhibits, rather than keeping each separate, would best fulfill the Museum's entire interdisciplinary purpose and mission.

18. Also as part of the Master Planning Process, the Board conducted an exhaustive analysis of options that might allow it to achieve sustainable finances, including partnerships with other cultural institutions, increasing fundraising, changing programming, increasing ticket revenue, applying for additional grants, reducing Museum hours, scaling down programming, and selling works from the collection. As a stop-gap measure, the Board imposed a hiring and salary freeze.

19. The Board undertook a careful assessment of the Museum's financial needs. After a competitive bidding process, the Board again engaged the non-profit consultant TDC for guidance. The Board requested and obtained financial modeling of potential options from TDC throughout the two-year process. Early in this planning process, TDC provided the Board with financial estimates based on addressing only emergency renovation needs and immediate stabilization of finances. As the Master Planning Process continued, TDC performed additional

financial modeling based on further assessments of renovation needs and the Board's ongoing consideration, based on stakeholder and community input, of how the Museum could fulfill its mission and continue operations over the long term in a sustainable manner. At the conclusion of the Master Planning Process, TDC presented to the Board a range of estimates for the capital that would be required to address the financial needs identified and set the Museum on a course for financial stability in the future, which ranged from \$52 million to \$82 million.

20. The Board, with the assistance of TDC, also assessed the fundraising climate in Berkshire County. It had studied this issue when it evaluated a possible merger with Hancock Shaker Village, but reevaluated its ability to raise capital in connection with the Master Planning Process. Museum leadership met with key donors and analyzed the extent to which the community could support the Museum. As a result of that analysis, the Board determined that, while fundraising would always be an important part of the Museum's financial future, fundraising alone would not be sufficient to secure the Museum's survival.

21. After consultation with a number of experts, including formal advisory stakeholder groups, community members, and TDC, the Board determined that it needed approximately \$60 million to stabilize its finances and implement plans for new kinds of interdisciplinary exhibits and programming that will fulfill the Museum's mission and purpose which, combined, will enable the Museum to be financially viable in the future. With that capital infusion, the Board would be able to invest in a "New Vision" that would allow the Museum to continue to fulfill its purpose and mission by addressing critical renovation needs; fulfilling its entire interdisciplinary purpose and mission by integrating art, history, and science together in exhibits (while also maintaining dedicated art exhibits); and funding a sustainable

board-designated endowment that would be sufficient to close the gap between operating expenses and revenues (including revenues from ongoing fundraising).

22. After careful analysis of alternative options, the Board concluded that the only way to fund the revitalization was by deaccessioning (formally removing from the collection) and selling 40 works (including two paintings by Norman Rockwell) from the Museum's collection of 5,000 artistic works and 40,000 objects in total. The deaccessioned works are listed in Exhibit B.

23. The Board assessed the alignment of the 40 works with the Museum's purpose and mission, considered the legal standards, professional guidelines, and potential repercussions of deaccessioning, and concluded that the sale of the chosen works was the only way to provide the substantial infusion of capital necessary to secure the Museum's future. The Museum's professional staff engaged in an exhaustive eighteen-month review of the Museum's records regarding these and other works. That review, which included the Museum's gift instruments, accession slips, and other records relating to provenance, concluded that none of the 40 works was subject to any express written restriction.

24. Under the New Vision, the Museum plans to continue to fulfill all three components of its mission, including the artistic component. Fine art will continue to be displayed in dedicated artistic exhibits, will be integrated into interdisciplinary exhibits that also incorporate the historical and scientific objects that have in recent years been a greater visitor draw, and more of it will be displayed in the improved facility than ever before. The Museum will continue to hold and display a collection of approximately 5,000 artistic works, including Norman Rockwell's portrait of President Eisenhower and works by renowned artists including

Alexander Calder, John Singleton Copley, George Innes, Edward Moran, Auguste Rodin, Carl Rungius, John Singer Sargent, and John Trumbull, as well as its collection of works by contemporary artists with connections to the Berkshires.

25. Under the New Vision, the Museum's mission, like its purpose, will be unchanged: "to bring people together for experiences that spark creativity and innovative thinking by making inspiring, educational connections among art, history and natural science."

Ex. C.

26. The \$60 million to fund the New Vision is to be raised through a combination of fundraising and the planned sale of up to 40 works. Approximately \$40 million is needed to establish a sustainable board-designated endowment, the earnings from which would supplement the Museum's fundraising efforts and help sustain the Museum's continued operations.

Approximately \$20 million is needed to fund renovations to address the deficiencies in the Museum's physical plant described above, including improvements to its collections storage and display areas, the creation of a new atrium that will allow for the display of more art than is currently displayed, and the design of new exhibits that integrate art, history, and science and engage visitors in new ways.

27. On July 12, 2017, the Museum announced its New Vision and the planned sale of the 40 works through Sotheby's, Inc. ("Sotheby's"). On September 6, Sotheby's announced that the works would be sold at auctions beginning on November 13.

C. The Attorney General's Investigation And Litigation

28. On June 22, 2017, before the public announcement of the New Vision and planned sale, the Museum notified the Attorney General of its plans by letter. Beginning in July

and continuing through the end of September, the Attorney General, as part of an investigation into the proposed transaction, requested and received documents and information from the Museum regarding its decision making process and its records on the 40 works, visited the Museum, and interviewed Board members and employees as well as third parties.

29. On October 20, a group of private plaintiffs including three descendants of Norman Rockwell and four members of the Museum filed a complaint in the Berkshire County Superior Court and moved for a preliminary injunction to halt the sale of the 40 works at auctions scheduled to begin November 13. *Rockwell v. Trustees of the Berkshire Museum*, No. 17-253 (Mass. Super. Ct.). On October 25, another group of private plaintiffs including current and former members of the Museum filed a similar complaint and motion in the Suffolk County Superior Court, which was transferred to Berkshire County and consolidated with the *Rockwell* action. *Hatt v. Trustees of the Berkshire Museum*, No. 17-260 (Mass. Super. Ct.). On October 30, the Attorney General filed a response in support of the *Rockwell* plaintiffs' motion, stating that a preliminary injunction would allow the Attorney General more time to complete the ongoing investigation of the planned sale.

30. On November 7, the Superior Court dismissed the private plaintiffs seeking to enjoin the November 13 sale for lack of standing, and denied the Attorney General's preliminary injunction request seeking to enjoin the November 13 sale. *See Rockwell v. Trustees of the Berkshire Museum*, No. 17-253, 2017 WL 6940932 (Mass. Super. Ct. Nov. 7, 2017).

31. On November 10, the Attorney General noticed an appeal of the Superior Court's order and requested and obtained an injunction against the sale of the artwork pending appeal pursuant to Mass. R. App. P. 6(a) from a single justice of the Appeals Court. The single justice

also allowed the Attorney General to complete her investigation, and further stayed the Superior Court proceedings.

32. Following the imposition of the stay, the Museum continued to cooperate with the Attorney General's investigation into the proposed sale, including by producing over 1,500 additional documents and making its Trustees and employees available for interviews.

33. The injunction and stay imposed by the single justice of the Appeals Court expired by its own terms on February 5, 2018. Also on that date, the Attorney General and the Museum filed a joint status report with the single justice stating that the parties had agreed to resolve their differences and would file this Complaint.

34. The Attorney General's appeal of the Superior Court's November 7 order denying a preliminary injunction (App. Ct. No. 2017-P-1548), the private plaintiffs' appeals of the same Superior Court order (App. Ct. Nos. 2017-P-1556 and 2018-P-19), the Attorney General's petition before the single justice of the Appeals Court (App. Ct. No. 2017-J-510), and a separate appeal by the Museum regarding the orders entered by that single justice (App. Ct. No. 2018-P-33) are currently pending before the Appeals Court. The Museum understands that the Attorney General has agreed to dismiss its appeals (No. 2017-P-1548 and No. 2017-J-510) upon the filing of this Complaint, and, following dismissal of No. 2017-J-510, the Museum has agreed to dismiss its appeal (No. 2018-P-33).

35. The Museum's 40 works were withdrawn from the auctions scheduled to begin on November 13, 2017. The Museum has agreed not to sell any of the 40 works until this Court acts upon this petition (or, if the Superior Court proceedings are recommenced, until the Superior Court enters final judgment on the Attorney General's complaint in *Rockwell v. Trustees of the*

Berkshire Museum, No. 17-253). In light of the Museum’s rapidly deteriorating financial situation and the unpredictability of the art market (including the risk that the previously strong market will weaken before the upcoming spring auction season, which begins in late April), and the fact that the offer from the proposed buyer of *Shuffleton’s Barbershop* (discussed below) is time-limited, the Museum hopes to proceed with sales in the fashion described in this Complaint as soon as possible, and requests the Court act on this Complaint as expeditiously as possible.

STANDARD

36. The requested relief is appropriate under the court’s equitable powers, including (i) as an order of equitable deviation and/or (ii) as an application of the doctrine of *cy pres*.

37. Under the doctrine of equitable deviation, the Court may modify subordinate terms of a gift if they are interfering with the accomplishment of the charitable purpose. *See The Woodward Sch. For Girls, Inc. v. City of Quincy*, 469 Mass. 151, 166 n.26 (2014) (“‘courts of equity’ have general power ‘in the administration of charitable trusts to permit deviations short of *cy pres* applications’” (quoting *Trustees of Dartmouth College v. Quincy*, 357 Mass. 521, 531 (1970))); *see also* G.L. c. 203E, § 412 (“The court may modify the administrative or dispositive terms of a trust ... if, because of circumstances not anticipated by the settlor, modification ... will further the purposes of the trust.”).

38. Under the doctrine of *cy pres*, the Court may authorize an adjustment in the charitable purpose of a gift if there was general charitable intent and if it is impossible, impracticable, or illegal to carry out the particular purpose articulated by the donor. *See Boston Seaman’s Friend Soc’y, Inc. v. Att’y Gen.*, 379 Mass. 414, 418 (1980) (where trust “can no

longer practically be fulfilled[,] [t]he question then is how the general charitable intent can best be effectuated”).

THE MUSEUM AND THE ATTORNEY GENERAL’S AGREED FRAMEWORK

39. After the Museum’s two-year Master Planning Process and the Attorney General’s seven-month investigation, the Attorney General has informed the Museum that it agrees to the determinations outlined in this Complaint, including:

- a. The Museum faces severe financial challenges—including dwindling financial reserves, a weakening fundraising climate, and a substantial annual operating deficit—that will force it to close within the next several years absent a substantial infusion of capital.
- b. The Museum engaged in a two-year Master Planning Process that involved consideration of how the Museum could secure its financial future and continue serving its purpose. That process included extensive community input into the New Vision for the Museum, financial guidance from a respected non-profit consultant, and consideration of alternatives to deaccession.
- c. The Museum concluded that the New Vision will allow it to continue fulfilling its entire interdisciplinary purpose and mission of promoting the study of art, history, and science by focusing on interdisciplinary exhibits as well as dedicated art exhibits. The Museum’s Board determined that the New Vision is responsive to community needs, taking into account the role the Museum plays in the community and the large number of other regional museums dedicated exclusively to fine arts.
- d. The Museum determined that it requires an infusion of approximately \$60 million to fund a sustainable financial reserve and renovations necessary to continue fulfilling its purpose, of which only a small portion can be raised from fundraising. In the Museum’s July 2017 public announcement of the New Vision, the Museum indicated that it intended to achieve this \$60 million goal by raising at least \$50 million from the sales and \$10 million through a capital campaign. In light of the seven months of ongoing operations and expenses without a capital infusion since July, as well as a changed fundraising climate, the Museum has determined that it now needs to raise at least \$55 million from the sale of works.

- e. The Museum has engaged in fundraising efforts and has assessed the fundraising climate in Berkshire County, where a growing number of cultural institutions compete for a declining number of individual and corporate donors. While the Museum will continue to engage in fundraising, the Museum has concluded that fundraising will not be sufficient to generate the capital necessary to ensure the Museum's survival.
- f. Accordingly, it is impracticable for the Museum to continue to fulfill its statutory purpose of maintaining a Museum in the city of Pittsfield dedicated to promoting the study of art, history, and science without selling certain works in its collection.

40. The Museum has selected works for sale based on an assessment of how it could raise the necessary funds while aligning the works in its collection with the new interpretive plan designed to allow the Museum to continue to fulfill its entire purpose and mission, including the promotion of the study of art. The Museum's art collection includes approximately 5,000 artistic works, of which approximately half are classified as decorative art and approximately half are classified as fine art. The Museum obtained valuations of approximately 585 works in its collections from the auction houses Sotheby's and Christie's. The Board assessed the alignment of the potential works for deaccession and sale with the Museum's interpretive plan, seeking to sell as few works as possible while still raising the necessary funds.

41. The 40 works planned for sale are among the more financially valuable works in the Museum's artistic collection, but several of the Museum's most financially valuable works—including works with greater financial value than some of those planned for sale, such as John Singleton Copley's Portrait of John Newton, Keith Haring's Barking Dog, and Carl Rungius' Mountain Sheep—are not included in the list of 40 works.

42. Among other considerations, the Museum's selection of the works for sale was informed by the fact that many of the works proposed for sale have been displayed at the Museum only intermittently. Norman Rockwell's *Shuffleton's Barbershop*, for example, has been displayed at the Museum for fewer than five of the last 20 years.

43. The Museum recognizes, however, that there is a strong public attachment to *Shuffleton's Barbershop* and a desire by many that it remain on public view in the United States.

44. Accordingly, the Museum, with the Attorney General's support, has obtained an offer from a non-profit museum in the United States (the "buyer") to purchase *Shuffleton's Barbershop* subject to the following conditions, which will ensure that this painting will remain in public view for generations to come:

- a. Within 120 days of finalizing the acquisition of *Shuffleton's Barbershop*, the buyer will initiate a loan of *Shuffleton's Barbershop* to the Norman Rockwell Museum in Stockbridge, Massachusetts for a period of 18-24 months.
- b. Following the loan to the Norman Rockwell Museum, the buyer will explore the possibility of loaning *Shuffleton's Barbershop* to other museums in the Commonwealth of Massachusetts, such as the Museum of Fine Arts in Boston or the Worcester Art Museum.
- c. The buyer will ultimately display *Shuffleton's Barbershop* in a place of prominence within its museum. The buyer will consider periodically loaning the work to museums in Berkshire County and to museums in the United States and around the world.

45. The Museum and the Attorney General have also agreed that the Museum would seek this Court's approval to sell, via Sotheby's, the remaining 39 works free of any restriction, as necessary, in the event that the sale price net of any fees, commissions, or costs retained by Sotheby's ("net proceeds") received by the Museum from the sale of *Shuffleton's Barbershop*

does not exceed \$55 million.

- a. The Museum may sell 39 of the remaining items on Exhibit B in at least three tranches of works, with no more works in any tranche than the Museum deems necessary to be reasonably calculated by the Museum to further its interpretive goals and to arrive at the difference between \$55 million and the net proceeds received by the Museum from the sale of *Shuffleton's Barbershop* and from the sale of any previous tranche(s). For each tranche of works, once the Museum commences sales of the items in a tranche, the Museum may proceed to sell all items included in that tranche. If the net proceeds received by the Museum from the sale of the first tranche of works, plus the net proceeds received by the Museum of the sale of *Shuffleton's Barbershop*, meet or exceed \$55 million, the Museum will not proceed with the sale of the other works on Exhibit B in connection with subsequent tranches in the New Vision. Otherwise, the Museum may proceed with sale of the second tranche. If the net proceeds received by the Museum of the sale of *Shuffleton's Barbershop* and the first and second tranches meet or exceed \$55 million, the Museum will not proceed with the sale of the other works on Exhibit B in connection with the New Vision. Otherwise, the Museum may proceed with the sale of any subsequent tranche until reaching \$55 million of net proceeds received by the Museum.
- b. The number and identity of the works to be included in each tranche will be determined by the Museum in its sole discretion. The Museum shall utilize the following principles in identifying the works to be included in each tranche:
 - i. The Museum will consider whether to include works in any given tranche for sale based on both the interpretive and financial value of the works to the Museum.
 - ii. The tranches shall be structured and implemented sequentially to accommodate the Museum's desire to sell only those works on Exhibit B that will allow the Museum to best further its interpretive mission as well as the Museum's desire to achieve, as reasonably close as possible, net proceeds received by the Museum from the sales that will reach but not substantially exceed \$55 million.
 - iii. The number and identity of the works in the first tranche shall be at the Museum's sole discretion and shall be reasonably calculated to arrive at the difference between \$55 million and the net proceeds

received by the Museum from the sale of *Shuffleton's Barbershop* such that the Museum may not need to proceed with any further tranches. In selecting the number and identity of the works to be included in the first tranche, in addition to considering the interpretive mission of the Museum, the Museum shall use the median of contemporaneous auction estimates received by the Museum from Sotheby's to estimate the financial value of the works to be included in that tranche.

- iv. The number and identity of the works to be included in any subsequent tranches shall be at the Museum's sole discretion, but the number of works in any subsequent tranche shall not exceed 15 items, and shall be reasonably calculated to arrive at the difference between \$55 million and the net proceeds received by the Museum from the sale of *Shuffleton's Barbershop* and net proceeds received by the Museum from the sale of previous tranches. In selecting the number and identity of the works to be included in any subsequent tranche, in addition to considering the interpretive mission of the Museum, the Museum shall use the median of contemporaneous auction estimates received by the Museum from Sotheby's to estimate the financial value of the works to be included in that tranche, and to minimize the further sale of artwork.
- c. Although the Museum is under no obligation to do so, the Museum may consider sale terms for any of the 39 works with restrictions for public access to the work and/or to a Museum.

46. The Attorney General has informed the Museum that it agrees that it is not inconsistent with the Museum Trustees' discharge of their fiduciary duties to sell any of the works of art included in Exhibit B in the manner described herein, including with additional restrictions for public access to the work and/or to a museum, even if works are sold with such "public access" restrictions for a price lower than the price that could be achieved through an unrestricted sale at a public auction.

47. The Museum and the Attorney General have also agreed that the Museum would seek this Court's approval that the Museum be permitted to use the proceeds from the

transactions described above as follows:

- a. \$50 million of the net proceeds received by the Museum from the sale of these works may be used by the Museum without restriction in furtherance of its charitable purpose.
- b. Net proceeds to the Museum between \$50 and \$55 million will be held by the Museum in a separate fund for the benefit of the Museum's collection and to be used for acquisitions and to support the Museum's collection, including in connection with the New Vision.
- c. Any net proceeds received by the Museum that exceed \$55 million will be further restricted and held by the Museum in a separate fund for the benefit of the Museum's art collection and to be used for acquisitions and to support the Museum's art collection, including in connection with the New Vision.
- d. "Support" in this context (whether of the Museum's collection generally or its art collection) includes but is not limited to capital and operating expenditures for curation, exhibition, collections storage and facilities, related salaries, and conservation efforts.

48. The Museum has agreed to provide reports to the Attorney General on the progress of the sales and the Museum's implementation of the New Vision. Such reports will be provided no fewer than 14 days before the sale of works from any tranche identified in paragraph 45(a) and shall include the number and identity of the works to be included in each tranche and a description of how each tranche meets the elements identified in paragraph 45(b).

Notwithstanding the foregoing, the Attorney General will not have any input into the number and identity of the works to be included in each tranche, which will be determined by the Museum in its sole discretion. Six to twelve months after the Museum has attained \$55 million in net proceeds from the sales as described herein, the Museum shall provide the Attorney General with a final report on the progress of its implementation of the New Vision.

49. The Museum believes, and the Attorney General has informed the Museum that it

agrees, that this Court's approval of the sales and use of proceeds set forth herein would effectively ensure that the Museum will be able to viably carry out its mission for the future, while ensuring the public's continued ability to view *Shuffleton's Barbershop*, and ensuring that no more works are sold than necessary to meet the Museum's needs.

**IMPOSSIBILITY AND/OR IMPRACTICABILITY OF COMPLYING
WITH THE ATTORNEY GENERAL'S ASSERTED RESTRICTIONS**

50. As noted above, the Museum and the Attorney General differ about whether or not restrictions apply to the 40 works proposed for sale. However, both the Museum and the Attorney General have agreed that, whether or not any restrictions exist, and out of an abundance of caution, the Court should adjudge that the Museum cannot practicably comply with any such restrictions and therefore may proceed with the transactions as described above. Both the Museum and the Attorney General agree that it is impossible for the Museum to continue to fulfill its overall mission without the sale of works sufficient to raise \$55 million in net proceeds to the Museum, as set forth herein.

51. *First*, the Attorney General believes that the 40 works of art, which until recently were part of the Museum's permanent collection, constitute most of the monetary value of the Museum's fine art collection and are restricted for use to promote the study of art for the people of Berkshire County by means of museums and collections.

52. The Museum has considered whether it would be possible to continue to operate as a museum of art, history, and science without selling any of the 40 works, and determined that only the sale of up to 40 of these works in the manner described above would provide the Museum with the substantial infusion of capital needed to ensure its survival. Specifically, the

infusion of \$60 million (at least \$55 million of which would come from sale proceeds) would allow the Museum to build a board-designated endowment with annual income sufficient to cover its operating deficit, address critical renovation needs to its exhibition areas and collection storage space, and allow the Museum to viably fulfill its purpose and mission of promoting art, history, and science in a revitalized and interdisciplinary fashion. The Museum has considered whether it would be possible to direct all proceeds from the sale of these works exclusively toward activities relating to the artistic component of its purpose and mission. The Museum has concluded that it would not be possible or practicable to do so, for two reasons. First, if all the funding generated from the sale were dedicated exclusively to the artistic component of its purpose and mission, the Museum would lack funds to continue fulfilling the historical and scientific components. Second, while the planned renovations will further the artistic component of the Museum's purpose and mission, those renovations will also further the historical and scientific components. For example, planned improvements to the Museum's collections storage areas will ensure that the Museum's artistic collection is maintained in proper conditions, but will also provide for better maintenance of the historical and scientific objects maintained in those same storage areas. Similarly, the planned atrium and interdisciplinary exhibits are expected to result in increased public access to the Museum's artistic collection, but will also increase public access to the Museum's historical and scientific collections.

53. Accordingly, the Museum and the Attorney General have agreed that the Museum would request that the Court modify any restriction that the 40 pieces could only be used to promote art so that \$50 million of the net proceeds received by the Museum from the sales should be available for the Museum's use without restriction consistent with the Museum's

charitable purpose. The Museum and the Attorney General have further agreed, as described in paragraph 47, that the Museum would request that the Court adjudge that net proceeds received by the Museum in excess of that amount (*i.e.*, the difference between \$50 million and \$55 million) will be held by the Museum in a separate fund for the benefit of the Museum's collection and to be used for acquisitions and to support the Museum's collection, and that net proceeds received by the Museum in excess of \$55 million will be used solely for the benefit of the Museum's art collection and to be used for acquisitions and to support the Museum's art collection.

54. **Second**, the Attorney General believes that 19 of the 40 works at issue, which were transferred to the Museum before 1932 by the Trustees of the Berkshire Athenaeum ("Athenaeum") pursuant to Chapter 134 of the Acts of 1932 (Ex. A), are subject to a restriction in the Athenaeum's charter that forbids the removal of works from Pittsfield. *See* Ex. D (Stat. 1871, c. 129) at § 2.¹

55. The Museum has considered whether it could sell the 19 works acquired prior to 1932 subject to a restriction that the buyers keep the works in Pittsfield. The Museum concluded, and understands that the Attorney General agrees, that such a restriction would dramatically reduce the sale value of these works, forcing the Museum to sell a much larger number of works to raise the needed funds and adversely affecting the Museum's ability to continue fulfilling its purpose and mission. The Museum is seeking to sell only a fraction of the items that it acquired before 1932, and will retain in its collection thousands of objects acquired

¹ None of the objects that the Museum acquired after 1932 (including the two Norman Rockwell paintings at issue, *Shuffleton's Barbershop* and *Shaftsbury Blacksmith Shop*) is subject to this restriction.

prior to 1932, including more than 300 works of art. The works of art acquired prior to 1932 that will remain in the Museum's collection will include Leandro Bassano's *The Tower of Babel* (donated to the Museum in 1903 by Zenas Crane), John Singleton Copley's *Portrait of John Newton* (donated to the Museum in 1905 by the Berkshire Athenaeum), and Edward Moran's *Henrik Hudson Entering New York Harbor* (donated to the Museum in 1916 by Zenas Crane).

56. **Third**, the Attorney General believes that the paintings *Shuffleton's Barbershop* and *Shaftsbury Blacksmith Shop* were donated by the artist, Norman Rockwell, with the intent that they remain in or be used for the benefit of the Museum's permanent collection, and are therefore restricted for use for those purposes.

57. The Museum has considered whether it could continue operating as a museum of art, history, and science if it removed *Shuffleton's Barbershop* and *Shaftsbury Blacksmith Shop* from its planned sale, and concluded that it would not be practicable to do so. The Museum concluded, and understands that the Attorney General agrees, that removing either or both of these paintings, which have an estimated combined sale value between \$27 million and \$40 million, would force the Museum to sell a dramatically larger number of works to raise the needed funds. Even if the Museum sold a much larger number of works, it is unlikely that the Museum would be able to raise the needed funds through such sales. Further, selling a much larger number of works would adversely affect the Museum's ability to continue fulfilling the artistic component of its purpose and mission. The Museum has considered whether it could restrict proceeds from the sale of *Shuffleton's Barbershop* and *Shaftsbury Blacksmith Shop* solely to the artistic component of its purpose and mission. For the reasons discussed in paragraph 52 above, the Museum has concluded that it would not be practicable to do so, except as set forth

herein. In particular, the Museum has concluded that selling *Shuffleton's Barbershop* subject to the restrictions regarding its public display detailed above (paragraph 44) would be practicable, and has obtained an offer to purchase *Shuffleton's Barbershop* with those restrictions.

58. The Attorney General has informed the Museum that it believes that the relief requested as set forth herein is in the public interest and is warranted in fact and law.

PRAYERS FOR RELIEF

WHEREFORE, the Museum, with the assent of the Attorney General, respectfully prays that the Court enter an Order declaring that:

- a. To the extent notice is required under G.L. c. 214, § 10B, such requirements are met and no further notice is required.
- b. The 40 works listed in Exhibit B are a proper subject for the Court's application of its equitable powers, including deviation and/or *cy pres*.
- c. The Museum may sell, via Sotheby's, *Shuffleton's Barbershop*, on the following terms, which will be incorporated into the legal sale document:
 - a. The Museum will sell *Shuffleton's Barbershop* to a museum buyer registered as a 501(c)(3) institution.
 - b. Within 120 days of finalizing the acquisition of *Shuffleton's Barbershop*, the buyer will initiate a loan of *Shuffleton's Barbershop* to the Norman Rockwell Museum for a period of 18-24 months.
 - c. Following the loan to the Norman Rockwell Museum, the buyer will explore the possibility of loaning *Shuffleton's Barbershop* to other museums in the Commonwealth of Massachusetts, such as the Museum of Fine Arts in Boston or the Worcester Art Museum.
 - d. The buyer will ultimately display *Shuffleton's Barbershop* in a place of prominence within its museum. The buyer will consider periodically

loaning the work to museums in Berkshire County and to public-facing museums in the United States and around the world.

- d. The Museum may sell, via Sotheby's, the remaining 39 works free of any restriction, in the event that the sale price net of any fees, commissions, or costs retained by Sotheby's ("net proceeds") received by the Museum from the sale of *Shuffleton's Barbershop* does not exceed \$55 million.
- a. The Museum may sell 39 of the remaining items on Exhibit B in at least three tranches of works, with no more works in any tranche than the Museum deems necessary to be reasonably calculated by the Museum to further its interpretive goals and to arrive at the difference between \$55 million and the net proceeds received by the Museum from the sale of *Shuffleton's Barbershop* and from the sale of any previous tranche(s). For each tranche of works, once the Museum commences sales of the items in a tranche, the Museum may proceed to sell all items included in that tranche. If the net proceeds received by the Museum from the sale of the first tranche of works, plus the net proceeds received by the Museum of the sale of *Shuffleton's Barbershop*, meet or exceed \$55 million, the Museum will not proceed with the sale of the other works on Exhibit B in connection with subsequent tranches in the New Vision. Otherwise, the Museum may proceed with sale of the second tranche. If the net proceeds received by the Museum of the sale of *Shuffleton's Barbershop* and the first and second tranches meet or exceed \$55 million, the Museum will not proceed with the sale of the other works on Exhibit B in connection with the New Vision. Otherwise, the Museum may proceed with the sale of any subsequent tranche until reaching \$55 million of net proceeds received by the Museum.
- b. The number and identity of the works to be included in each tranche will be determined by the Museum in its sole discretion. The Museum shall utilize the following principles in identifying the works to be included in each tranche:
- i. The Museum will consider whether to include works in any given tranche for sale based on both the interpretive and financial value of the works to the Museum.
- ii. The tranches shall be structured and implemented sequentially to accommodate the Museum's desire to sell only those works on

Exhibit B that will allow the Museum to best further its interpretive mission as well as the Museum's desire to achieve, as reasonably close as possible, net proceeds received by the Museum from the sales that will reach but not substantially exceed \$55 million.

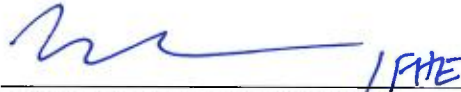
- iii. The number and identity of the works in the first tranche shall be at the Museum's sole discretion and shall be reasonably calculated to arrive at the difference between \$55 million and the net proceeds received by the Museum from the sale of *Shuffleton's Barbershop* such that the Museum may not need to proceed with any further tranches. In selecting the number and identity of the works to be included in the first tranche, in addition to considering the interpretive mission of the Museum, the Museum shall use the median of contemporaneous auction estimates received by the Museum from Sotheby's to estimate the financial value of the works to be included in that tranche.
 - iv. The number and identity of the works to be included in any subsequent tranches shall be at the Museum's sole discretion, but the number of works in any subsequent tranche shall not exceed 15 items, and shall be reasonably calculated to arrive at the difference between \$55 million and the net proceeds received by the Museum from the sale of *Shuffleton's Barbershop* and net proceeds received by the Museum from the sale of previous tranches. In selecting the number and identity of the works to be included in any subsequent tranche, in addition to considering the interpretive mission of the Museum, the Museum shall use the median of contemporaneous auction estimates received by the Museum from Sotheby's to estimate the financial value of the works to be included in that tranche, and to minimize the further sale of artwork.
- c. Although the Museum is under no obligation to do so, the Museum may consider sale terms for any of the 39 works with restrictions for public access to the work and/or to a Museum.
- e. The Museum may use the proceeds from the sales of these works subject to the following conditions:
 - a. \$50 million of the net proceeds received by the Museum from the sale of these works may be used by the Museum without restriction in furtherance of its charitable purpose.

- b. Net proceeds to the Museum between \$50 and \$55 million will be held by the Museum in a separate fund for the benefit of the Museum's collection and to be used for acquisitions and to support the Museum's collection, including in connection with the New Vision.
- c. Any net proceeds received by the Museum that exceed \$55 million will be further restricted and held by the Museum in a separate fund for the benefit of the Museum's art collection and to be used for acquisitions and to support the Museum's art collection, including in connection with the New Vision.
- d. "Support" in this context (whether of the Museum's collection generally or its art collection) includes but is not limited to capital and operating expenditures for curation, exhibition, collections storage and facilities, related salaries, and conservation efforts.

Respectfully submitted,

THE TRUSTEES OF THE BERKSHIRE MUSEUM

By its attorneys,



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VERIFICATION

I, Ethan S. Klepetar, hereby certify that I am Vice President of the Berkshire Museum's Board of Trustees, that I have read the foregoing Complaint, and that each factual allegation is true and accurate to the best of my knowledge, information, and belief. Signed this 9th day of February, 2018, under the pains and penalties of perjury.



Ethan S. Klepetar

VERIFICATION

I, Van W. Shields, hereby certify that I am Executive Director of the Berkshire Museum, that I have read the foregoing Complaint, and that each factual allegation contained is true and accurate to the best of my knowledge, information, and belief. Signed this 9th day of February, 2018, under the pains and penalties of perjury.



Van W. Shields

CERTIFICATE OF SERVICE

I, Felicia H. Ellsworth, hereby certify, under the pains and penalties of perjury, that on February 9, 2018, I and those working at my direction filed the foregoing document and supporting materials with the Clerk of the Supreme Judicial Court for The County of Suffolk via hand delivery, and served true and correct copies by email and hand delivery on counsel for the Attorney General listed below:

Courtney Aladro
Emily T. Gabrault
Andrew M. Batchelor
Assistant Attorneys General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
(617) 963-2545

A handwritten signature in blue ink, appearing to read 'Felicia H. Ellsworth', is written over a horizontal line. The signature is stylized and cursive.

Felicia H. Ellsworth (BBO # 665232)

EXHIBIT A

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.

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.

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

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.

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.

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.

G. L. 54, § 78, amended.

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;

Voting for presidential electors.

EXHIBIT B

Artist	Title/Object
Bierstadt, Albert	Connecticut River Valley, Claremont, New Hampshire
Bierstadt, Albert	Giant Redwood Trees of California
Blakelock, Ralph Albert	Rocky Mountains
Bouguereau, William-Adolphe	La Bourrique (The Horseback Ride)
Bouguereau, William-Adolphe	L'Agneau Nouveau-Ne (The Shepherdess)
Burrini, Giovanni Antonio / Troppa, Girolamo	Apollo and Marsyas/Apollo and Satyr
Calder, Alexander	Dancing Torpedo Shape
Calder, Alexander	The Arc and The Quadrant/Double Arc and Sphere
Church, Frederic Edwin	Valley of the Santa Ysabel
Daubigny, Charles Francois	Early Morning/Payans allant aux champs le matin
Dewing, Thomas Wilmer	Two Ladies in a Drawing Room/The White Dress
Dufy, Raoul	The Party/Card Game
Durrie, George Henry	Hunter in Winter Wood
Hooch, Pieter de	The Music Party
Inness, George	Leeds in the Catskills
Isenbrandt, Adriaen	Adam and Eve/The Temptation
Isenbrandt, Adriaen	Flight into Egypt
Knight, Daniel Ridgway	Reverie/Girl with a Dog
LaFarge, John	Magnolia
Moore, Henry	Three Seated Figures
Moran, Thomas	The Last Arrow
Pasini, Alberto	Market Day in Constantinople
Peale, Charles Wilson	Portrait of General David Forman
Peale, Rembrandt	George Washington
Picabia, Francis	Force Comique
Reynolds, Sir Joshua	Portrait of Mr. W. Cave
Rockwell, Norman	Shaftsbury Blacksmith Shop
Rockwell, Norman	Shuffleton's Barbershop
Saint-Gaudens, Augustus	Diana of the Tower
Simmons, Franklin W.	Penelope
Tadolini, Giulio	Judith
Unknown, China	Archaic Bronze Food Vessel, Gui
Unknown, China	Chinese porcelain vase. Blue on white. Decorated with dragons
Unknown, China	Daoist Screen
Unknown, China	Guanyin figure on lotus on lion – bronze
Unknown, Japan	Japanese screen with tale of Genji
Victors, Jan	Benjamin and His Brethren
Vuillard, Edouard	Deux femmes dans un interieur
Weeks, Edwin Lord	Indian Prince, Palace of Agra
West, Benjamin	Daniel Interpreting to Belshazzar the Handwriting on the Wall

EXHIBIT C



1. MISSION

The mission of the Berkshire Museum is to bring people together for experiences that spark creativity and innovative thinking by making inspiring, educational connections among art, history and natural science.

Adopted by the Berkshire Museum Board of Trustees April 2011

EXHIBIT D

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.