

**OPERATING AGREEMENT  
OF  
FRIENDS VENTURES LLC**

**A New York Limited Liability Company**

OPERATING AGREEMENT of FRIENDS VENTURES LLC dated as of September \_\_, 2014 (this "Agreement") by, among and between FRIENDS VENTURES LLC, a New York limited liability company (the "Company"), LEON D. BLACK, an individual with an address at 760 Park Avenue, New York, New York 10021 ("Black") and RONALD S. LAUDER, an individual with an address at \_\_\_\_\_ ("Lauder") (each of Black and Lauder is a "Member" and collectively the "Members").

W I T N E S S E T H:

WHEREAS, the Members have formed the Company as a New York limited liability company pursuant to the Limited Liability Company Law of the State of New York, as amended (the "Act");

WHEREAS, the expressed primary purpose of the Company is to purchase and hold the property listed on Exhibit A (the "Property") as investment property; and

WHEREAS, the Members and the Company desire to enter into this Agreement in order to state the terms and conditions of the ongoing operation and management of the Company;

NOW, THEREFORE, in consideration of the premises and the agreements herein contained and intending to be legally bound hereby, the Members and the Company hereby agree as follows:

I. FORMATION

1.1 Formation; Name; Office. The Members have formed the Company under and pursuant to the Act to be conducted under the name "FRIENDS VENTURES LLC." The business office of the Company shall be c/o Elysium Management LLC, 445 Park Avenue, Suite 1401, New York, New York 10022.

1.2 Purposes. The purposes for which the Company has been formed are:

- (a) To purchase and acquire the Property as investment property;
- (b) To own, maintain, finance, sell, dispose of and otherwise deal with the Property; and

(c) To take any and all actions and to engage in any and all activities which are incidental or reasonably related to, or necessary or desirable in connection with, any purposes of the Company as described herein.

1.3 Duration. The term of existence of the Company commenced on the date that the Articles of Organization of the Company (the "Articles") were duly filed with the Secretary of State of the State of New York and shall be perpetual, unless the Company is earlier dissolved in accordance with either the terms and provisions of this Agreement or the Act.

1.4 Registered Agent. The registered agent of the Company upon whom process against the Company may be served shall be Corporation Services Company, 80 State Street, Albany, New York. If the Company's registered agent shall ever resign, then the Members shall promptly appoint a successor.

## II. CAPITAL CONTRIBUTIONS

### 2.1 Initial Capital Contributions by the Members.

(a) As soon as practicable following the date on which this Agreement is executed and delivered by all of the parties hereto, each Member shall make a cash capital contribution to the Company (collectively, the "Initial Capital Contributions") by wire transfer of immediately available funds in an amount equal to fifty percent (50%) of the acquisition cost (the "Acquisition Cost") of the Property (including, without limitation, hammer price, buyer's premium and applicable use tax), as such amount is set forth opposite the name of such Member on Exhibit B.

(b) In consideration for each Member's Initial Capital Contribution, effective as of the date of such contribution, each Member shall have a membership interest in the Company (a "Membership Interest") equal to the percentage of the aggregate Membership Interests in the Company ("Percentage of Membership Interest") set forth on Exhibit B. Exhibit B shall reflect the name, address, Membership Interest and the Percentage of Membership Interest of each Member and shall be revised, amended or modified to reflect the issuance, redemption or Transfer (as defined in Section 8.1(a) of this Agreement) of any Membership Interests.

### 2.2 Additional Capital Contributions.

(a) Subject to Section 2.2(b), no Member shall be obligated to make additional capital contributions (an "Additional Capital Contribution" and, together with the Initial Capital Contributions, the "Capital Contributions") to the capital of the Company in excess of such Member's Initial Capital Contribution. Except as otherwise provided in Section 2.2(b), each request by the Company for Additional Capital Contributions shall be made only upon the prior unanimous consent of the Members and shall be made by the Members on a voluntary basis, but the making thereof shall not affect the Percentages of Membership Interests of the Members unless otherwise agreed by the Members.

(b) Each Member shall be obligated to make an Additional Capital Contribution to the capital of the Company for purposes of funding the Company Expenses (as hereinafter defined) and for such other Company purposes as determined by the Members. Each request by the Company for an Additional Capital Contribution pursuant to this Section 2.2(b) shall be made only upon the prior consent of each Member, which consent shall not be unreasonably withheld. The Additional Capital Contribution of each Member to fund the aggregate capital requested by the Company shall be made on the basis of the Percentage of Membership Interest of such Member. The Members intend that “Company Expenses” shall include, without limitation,: (i) insurance covering the Property as provided in Section 3.4 (should the Company elect to insure the Property), (ii) all fees and expenses of appraisers for any appraisals that are contemplated by this Agreement, (iii) all maintenance, conservation and restoration costs and expenses for the Property, including without limitation, cleaning, re-framing and the costs of periodic condition reports and condition reports requested by a Member pursuant to Section 3.2, (iv) any costs or expenses (including legal fees) incurred with respect to any claim made relating to the authenticity or ownership of the Property and (v) the costs and expenses for packing and shipping the Property from Christie’s (London) to the Permitted Location of the first Member entitled to the possession of the Property under this Agreement. To the extent that a Member incurs a Company Expense, such Member shall have a right of reimbursement against the other Member for such other Member’s *pro rata* portion of the expense attributable to such other Member’s Percentage of Membership Interest. The other Member shall make such reimbursement within thirty (30) days after a reasonably substantiated demand in writing. The net expense of each Member for such Company Expense shall be treated as an additional Capital Contribution of such Member.

2.3 Members’ Liability. Except as otherwise expressly provided in the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Member shall be obligated personally for any such debt, obligation or liability solely by reason of being a Member. Except as otherwise expressly provided in the Act, the liability of each Member shall be limited to the amount of Capital Contributions required to be made by such Member in accordance with the terms and provisions of this Agreement, but only when and to the extent the same shall become due and payable pursuant to the terms and provisions of this Agreement.

2.4 Withdrawal of Capital. No Member shall have the right to withdraw any part of its Capital Contributions prior to the liquidation and termination of the Company pursuant to Article X of this Agreement, unless such withdrawal is provided for in this Agreement.

2.5 Uses of Capital Contributions; Interest on Capital Contributions. All Capital Contributions received by the Company shall be utilized by the Company for Company purposes as determined by the Members. Except as otherwise provided in this Agreement, no interest shall accrue on any of the Capital Contributions.

### III. THE PROPERTY OF THE COMPANY

3.1 Title to the Property of the Company. Title to the Property and to any and all other property, real, personal, intangible or mixed, owned by, or leased to, the Company shall be held in the name of the Company. Neither Member shall have any right, at common law or otherwise, to partition the Property or any other property of the Company.

3.2 Possession of the Property. Each Member will have the right to possess and use the Property for revolving periods comprised of two and one half years (each, a "Possession Period"). Each Possession Period will commence on the date that a Member takes initial possession of the Property pursuant to this Section 3.2 and will not include any days in which the Property is in transit from a Permitted Location (as defined herein). Lauder will be the first Member entitled to possess the Property following its acquisition by the Company. Lauder shall, with the approval of Black, make arrangements to pack, crate and ship the Property from Christie's (London) to a Permitted Location designated by Lauder via a common carrier acceptable to both Members. Prior to the end of each Possession Period, the Member in possession of the Property (the "Possessing Member") shall, with the approval of the other Member (the "Other Member"), make arrangements to pack, crate and ship the Property to a Permitted Location designated by the Other Member via a common carrier acceptable to both Members. Each Possessing Member shall, upon the request of the Other Member, obtain and deliver to the Other Member, a condition report setting forth the condition of the Property as of a date within fifteen (15) days but not more than thirty (30) days prior to the expected transfer of possession of the Property to the Other Member. In the event such a request is made, the Members shall jointly select and agree upon a conservator to prepare such condition report. In the interest of continuity, the Members shall endeavor to use the same conservator to prepare each condition report. The Property may only be held by either Member during such Member's respective Possession Period in one of the locations set forth on Exhibit C attached hereto (a "Permitted Location"). Any locations not included on Exhibit C (including any museums or other cultural institutions, should the Property be loaned) must be approved in writing by both Members. Neither Member may enter into any loan agreements with museums, foundations or other cultural institutions without the prior written consent of the Other Member.

3.3 Care of the Property. Each Member shall exercise the same care with respect to the Property as such Member does in the safekeeping of comparable property of his own. Each Member shall notify the other Member immediately upon discovering that the Property has been lost, damaged or stolen. Unless sufficient time does not allow, due to an emergency (e.g., fire) or other exigent circumstances that would result in increased damage to the Property if there was any delay, the Possessing Member shall not restore, conserve, un-frame or otherwise alter the Property without the prior written consent of the Other Member which consent will not be unreasonably withheld, delayed or conditioned. Upon reasonable notice to the Possessing Member, the Other Member may inspect the Property at a reasonable time.

3.4 Insurance; Liability for Loss or Damage.

(a) If the Company elects to insure the Property, it shall insure the Property under a fine arts insurance policy providing for wall-to-wall coverage against “all risks” of physical loss or damage at all times. Such insurance must be in form and content satisfactory to both Members and must insure the Property with “agreed amount” basis coverage for at least the current fair market value of the Property as determined by the most recent Annual Appraisal or Qualified Appraisal (each as hereinafter defined) (the “Current Value”) for loss, damage or destruction (such term and its variants to include without limitation the loss of the Property due to theft, flood, earthquake and terrorism). Such insurance shall be provided as follows: a stand-alone policy covering only the Property, issued by a carrier or carriers (collectively, the “insurer”) licensed to do business in the State of New York and having an A.M. Best rating of “A” or better, naming the Company as insured. The policy shall be primary and shall not contain any term or provision that requires it to sit in excess of any other insurance policy. The policy shall name the Company as loss payee in the event of loss, damage, or destruction of the Property. The Company shall not modify, alter, cancel, change or terminate any insurance coverage or policy described in this Section 3.4(a), or any term, provision, condition, requirement or other part thereof or with regard thereto except with the prior written consent of each Member. The policy shall be endorsed to provide for at least sixty (60) days’ written notice to the Company of any modification, alteration, cancellation, change or termination of any coverage, whether such modification, alteration, cancellation, change or termination is initiated by the insurer or by a Member or the Company.

(b) (i) If the Company elects not to insure the Property for any period of time, each Member agrees, at its own expense, to insure the Property under an all risk fine arts insurance policy, wall-to-wall against “all risks” of physical loss or damage during each such Member’s Possession Period and while the Property is in transit from the Possessing Member’s Permitted Location to the Other Member’s Permitted Location, for any portion of such time that the Company is not providing insurance coverage for the Property. Such insurance must be in form and content satisfactory to both Members and must insure the Property with “agreed amount” basis coverage for at least the Current Value for loss, damage or destruction (such term and its variants to include without limitation the loss of the Property due to theft, flood, earthquake and terrorism). Such insurance shall be provided as follows: issued by an insurer licensed to do business in the State of New York and having an A.M. Best rating of “A” or better, naming the Company and the Other Member as insureds or additional insureds and as loss payees. The coverage and policy shall provide for severability of interest such that the acts or omission of one Member, including without limitation failure to comply with the terms and conditions of any insurance policy, shall not allow the insurer to reduce or avoid coverage with respect to the Other Member. The policy shall name the Company, the Possessing Member and the Other Member as insureds and loss payees, to the extent their interests appear, in the event of loss, damage, or destruction of the Property, and regardless of any defenses the insurer may have against the Possessing Member. The Members agree to not modify, alter, cancel, change or terminate any insurance coverage or policy described in this Section 3.4(b), or any term, provision, condition, requirement or other part thereof or with regard thereto except with the prior written consent of the Company or the Other Member. The policy shall be endorsed to provide for at least sixty (60) days’ written notice to the Company and each Member of any

modification, alteration, cancellation, change or termination of any coverage, whether such modification, alteration, cancellation, change or termination is initiated by the insurer or by a Member or the Company.

(ii) Each Member obtaining insurance will obtain a certificate of insurance and additional insured and loss payee endorsements naming the Company as the insured or additional insured and as loss payee, in a manner and using a form satisfactory to the other Member, with respect to the Property and agreed amount coverage for loss or destruction and evidencing compliance with the insurance requirements of this Agreement. The Member entitled to possession shall as soon as possible after receiving the foregoing certificate and endorsements, but not later than fifteen days (15) prior to the commencement of his Possession Period, deliver said documents to the Other Member. Each Member agrees to pay any and all deductibles relating to his insurance coverage for the Property.

(c) Notwithstanding any other provisions of this Agreement, each Member (the "Indemnifying Party") agrees to assume absolutely and unconditionally all liability, and to fully reimburse and indemnify the Company (the "Indemnified Party"), for any and all loss, damage or destruction to the Property or any part thereof occurring during the Indemnifying Party's possession of the Property, which shall include the time during which it is in transit to the Other Member hereunder, regardless of the cause of such loss, damage or destruction and regardless of whether or not the Indemnifying Party is at fault with respect to such loss, damage or destruction. It is expressly understood by the Members that by the agreement set forth in this Section 3.4(c), the Indemnifying Party agrees to be fully liable for any and all such loss, damage or destruction, regardless of whether or not the Indemnifying Party has received any insurance proceeds or obtained insurance for the Property, regardless of any defenses, exclusions, exceptions or limitations in any insurance, regardless of the insolvency of any insurer, and regardless of the degree of care exercised by the Indemnifying Party. In the event of any loss or destruction of the Property, the Indemnifying Party shall be liable to the Indemnified Party for the Current Value. In the event the Property is damaged but not destroyed, the Indemnifying Party shall be liable to the Indemnified Party for the Damage Value (as hereinafter defined). If the Indemnified Party actually receives payment from the insurer equal to the Current Value or the Damage Value, as the case may be, the Indemnifying Party shall have no further liability to the Indemnified Party; provided, however, if the loss, damage or destruction is directly or indirectly the result of or caused by any act, omission or error constituting gross negligence or willful misconduct by the Indemnifying Party or anyone on his behalf or any of his or their employees, agents, officers, directors, representatives or contractors, the Indemnifying Party's liability shall not be so limited. "Damage Value" shall mean the cost of repairing and restoring the Property after it has been damaged and the diminution in its value, if any, measured by its Current Value immediately prior to such damage minus its fair market value as determined by appraisal in accordance with Section 3.5(d) after such restoration and repair (the "Restoration Date").

### 3.5 Appraisal of the Property; Fair Market Value.

(a) Annual Appraisal. For purposes of determining that the Property is adequately insured, the Company or the Member providing insurance in accordance with Sections 3.4(a) or 3.4(b) hereof, as the case may be, shall obtain an annual appraisal of the fair market value of the Property by an appraiser acceptable to both Members (the "Annual Appraisal"). The Annual Appraisal need not be a Qualified Appraisal. A "Qualified Appraisal" shall mean an appraisal meeting the requirements of Treasury Regulation §170(A)-13(c)(3) or any successor provision thereto.

(b) Deceased Member's Membership Interest. Whenever, upon the death of a Member (a "Deceased Member"), a Qualified Appraisal is required to initially determine the Purchase Price of a Membership Interest such appraisal shall be prepared by a qualified independent appraiser selected by the personal representatives of the estate of the Deceased Member (the "Executors") and the surviving Member (the "Surviving Member"). If they are unable to agree upon such appraiser, each of the Executors and the Surviving Member shall select a qualified independent appraiser to prepare a draft appraisal report. The two appraisers shall select a third appraiser who shall review the draft reports and select the report that, in such third appraiser's opinion, better reflects the fair market value of the Membership Interest as of the Deceased Member's date of death. The qualified independent appraiser who produced the selected report shall prepare the Qualified Appraisal that initially determines the Purchase Price.

(c) Damage Value. Whenever an appraisal is required to determine the Damage Value pursuant to Section 3.4(c), such appraisal shall be prepared by an appraiser selected the Members. If they are unable to agree upon such appraiser, each of the Members, or each of the Executors and the Surviving Member, as the case may be, shall select an appraiser and the two appraisers so selected shall select a third appraiser to appraise the fair market value of Property as of the Restoration Date, as shall be applicable. Each appraiser shall render an appraisal and the results of the three appraisals prepared shall then be averaged to determine the fair market value of the Property as of the Restoration Date, as the case may be.

3.6 Reproduction of the Property. Subject to the copyright rights of the Company or any third party, each Member may photograph, telecast, or reproduce the Property for its own educational, catalog, publicity, promotional and merchandising purposes. Other uses of the Property's image by a Member, commercial or otherwise, may be allowed only with written permission from the Company. Notwithstanding the foregoing, no provision of this Agreement shall limit the right of either Member to reproduce the Property in connection with archival, insurance-related or other internal matters. To the extent either Member owns or acquires any copyright in the Property, such copyright shall be conveyed by such Member to the Company. Any gross proceeds of licensing photographs, telecasts or reproductions of the Property (less all direct costs and expenses) ("Net Proceeds") shall be remitted to the Company.

3.7 Credit Lines. All credit lines, signage, display labels, narratives, video, and all other media shall include the following credit line: "Anonymous," unless both Members agree that another credit line may be used. Each Member shall submit to the Company for its

advance review and approval the proposed text of all credit lines, signage, and display labels, such approval not to be unreasonably delayed or withheld.

3.8 Individual Expenses Relating to the Property. Each Member shall be responsible for the costs and expenses incurred by such Member in connection with the performance of his obligations under this Agreement and the exercise of his privileges under this Agreement (collectively, "Individual Expenses"), including without limitation, the following costs and expenses: (a) all reasonably necessary out-of-pocket costs incurred in connection with the use of the Property while in a Possessing Member's possession, including without limitation, expenses related to the display of the Property (such as installation costs, costs of lighting, *etc.*) and insurance covering the Property as provided in Section 3.4 (should the Company elect not to insure the Property), (b) the costs and expenses required to deliver the Property to the possession of the Other Member, and (c) if a Member loans the Property to a museum, foundation or other cultural institution as provided in Section 3.2, the costs and expenses for packing and shipping the Property to and from the borrowing institution and insurance covering the Property during the loan period and while in transit, unless the Members otherwise agree.

#### IV. MANAGEMENT OF THE COMPANY

4.1 Management of the Company. The Company shall be managed by the Members, acting unanimously. The Members shall be the sole persons with the power to bind the Company, except and to the extent that such power is expressly delegated to any other person or entity by the Members.

4.2 Officers of the Company. The Members may appoint officers of the Company who shall be authorized to perform such actions for and on behalf of the Company as the Members shall determine. The President, Vice President, Secretary and Treasurer of the Company shall be the individuals as may be appointed by the Members from time to time, which individuals shall serve until the earlier of their retirement, removal, death or disability. The Members and/or, to the extent determined by the Members, any officers or other authorized persons appointed by the Members shall each have the power and authority to do any and all acts necessary or convenient to or for the furtherance of the purposes of the Company set forth in this Agreement.

4.3 General Powers of Members. Any and all decisions concerning the business and affairs of the Company shall be made by the Members, acting unanimously. Without limiting the generality of the immediately preceding sentence, the Members shall, acting unanimously, have the power and authority to do all things necessary or convenient to carry out the business and affairs of the Company.

V. DUTIES OF MEMBERS.

5.1 No Compensation. Each Member acknowledges and agrees that such Member shall not be entitled to any fee, salary, bonus or other compensation payments in respect of any services performed by such Member on behalf of the Company.

5.2 Confidentiality. Each Member, on behalf of such Member and such Member's affiliates, covenants and agrees that such Member and such Member's affiliates shall retain in strict confidence, and shall not use for any purpose whatsoever, or divulge, disseminate or disclose to any third party (other than in furtherance of the business purposes of the Company or as may be required by law) all proprietary or confidential information relating to the Company's activities, including, without limitation, the ownership, maintenance, sale or other disposition of the Property. The provisions of this Section 5.2 shall survive and continue to bind the Company's Members notwithstanding the termination of this Agreement or any Member's ceasing to be a Member of the Company.

VI. MEETINGS AND VOTING OF MEMBERS

6.1 Unanimous Approval of the Members. Notwithstanding any provision contained in this Agreement to the contrary, no act shall be taken, sum expended, decision made, obligation incurred or power exercised by any Member on behalf of the Company except with the unanimous consent of the Members.

VII. ACCOUNTING PROVISIONS

7.1 Fiscal and Taxable Year. The fiscal and taxable year of the Company shall be the calendar year, unless the Members designate a different fiscal or taxable year.

7.2 Books and Accounts.

(a) Complete and accurate books and accounts shall be kept and maintained for the Company at the Company's principal place of business or at such other place as the Members shall select. Such books and accounts shall be kept for fiscal and tax purposes on the cash or accrual basis, as the Members shall determine, and shall include separate accounts for each Member. A list of the names and addresses of the Members shall be maintained as part of the books and records of the Company. Each Member or such Member's duly authorized representative, at such Member's own expense and upon delivering advance written notice to the Company, shall at all reasonable times have access to, and may inspect and make copies of, such books and accounts and any other records of the Company.

(b) All funds received by the Company shall be deposited in the name of the Company in such bank account or accounts as the Members may designate from time to time, and withdrawals therefrom shall be made upon the signature of the Members or upon such other signature or signatures on behalf of the Company as the Members may designate from time to time. All deposits and other funds not needed in the operation of the Company's business may

be deposited in interest-bearing bank accounts, in money market funds, or invested in treasury bills, certificates of deposit, U.S. government security-backed repurchase agreements or similar money market instruments, or funds investing in any of the foregoing or similar types of investments.

7.3 Financial Reports.

(a) At the request of a Member, the Company shall provide each Member, on or about April 1 of the following year, with financial statements including a balance sheet and the related statements of income and changes in Company capital and changes in financial position for the prior year.

(b) The Company shall endeavor to cause to be prepared and filed, on or before their respective due dates (as the same may be extended), all tax returns of the Company and shall take all action as may be necessary to permit the Company's regular accountants to prepare and timely file such returns. Schedule K-1 shall be sent to each Member as soon as practicable after the end of each taxable year.

7.4 Tax Elections. Any elections required or permitted to be made by the Company under the Internal Revenue Code of 1986, as amended (the "Code"), shall be made by the Members in such manner as the Members shall determine. In the event of an audit of the Company by the Internal Revenue Service (the "IRS"), a Member, appointed by both Members, shall act as the "tax matters partner" pursuant to Section 6231(a)(7) of the Code, and such tax matters partner shall comply with all of its obligations as such under the Code and the regulations promulgated thereunder, provided that any action such tax matters partner undertakes shall be subject to prior consultation with and consent by the other Member.

7.5 Expenses. To the extent practicable, all expenses of the Company shall be billed directly to, and be paid by, the Company. Notwithstanding the immediately preceding sentence, all expenses and disbursements relating to the preparation of this Agreement, including, without limitation, fees and expenses of outside counsel, shall be borne equally between the Members.

VIII. TRANSFERS OF MEMBERSHIP INTERESTS; RIGHTS ON DEATH OF A MEMBER

8.1 General Prohibition on Transfer.

(a) Subject to Section 8.5, without the prior consent of each Member, no Member shall sell, convey, transfer, assign, mortgage, pledge, hypothecate, or otherwise encumber in any way, or otherwise dispose of (collectively, a "Transfer") all or any portion of their Membership Interest, except to another Member or as otherwise permitted by this Article VIII.

(b) Each Member shall hold all or any part of its Membership Interest and the economic interest therein, on the date hereof or hereafter acquired, subject to the provisions of this Article VIII.

8.2 Further Limitations on Transfers of Members' Membership Interests.

(a) In no event may a Transfer be made if the Transfer would result in the dissolution of the Company pursuant to the Act. In making the determination whether a Transfer will result in such a dissolution either Member may require the assignee to furnish at such assignee's expense an opinion of counsel passing on this issue.

(b) In no event may a Transfer be made to (and no substitute Member shall be admitted to the Company who is) a person who has been adjudged to be insane or incompetent.

8.3 Effect of Non-Permitted Transfers. Any attempted Transfer of the Membership Interests of a Member not permitted by this Article VIII (a "Non-Permitted Transfer") shall be null and void and have no effect whatsoever on the Company or its Members.

8.4 Restrictions on Becoming a Substituted Member. Notwithstanding any other provision of this Agreement to the contrary, an assignee or transferee of a Membership Interest shall not, without the prior unanimous consent of the Members be admitted as a Member or have any rights in the Company other than the right to receive the distributions and allocations relating to the Membership Interest transferred unless such assignee or transferee holds such Membership Interest pursuant to a Transfer permitted by this Article VIII.

8.5 Call Rights on Death of a Member.

(a) Survivor's Call Right. In the event of the death of a Member, the Surviving Member shall have the right (the "Survivor's Call Right") to purchase from the estate of the Deceased Member (the "Estate") the Membership Interest of the Deceased Member (the "Deceased Member's Interest"), which right may be exercised by the Surviving Member's delivery of a written notice (the "Call Notice") of the exercise of such right to the Executors within five (5) months following such death (the "Call Period").

(b) Survivor's Call Right Purchase Price. The "Purchase Price" for the Deceased Member's Interest to be paid pursuant to Section 8.5(a) shall be the fair market value of the Deceased Member's Interest as of the Deceased Member's date of death and shall be initially determined by a Qualified Appraisal (the "Appraised Value") in accordance with Section 3.5(b). The Purchase Price for the Deceased Member's Interest shall be paid (in cash) by the later of the expiration of the Call Period or ninety (90) days following the determination of the Appraised Value; provided, however, that if the fair market value of the Deceased Member's Interest as finally determined for federal estate tax purposes, taking into consideration any election that may be made under Section 2032(a) of the Code if applicable (the "Estate Value"), is greater or less than the Appraised Value, then the Purchase Price shall be the Estate Value.

Within ninety (90) days following the determination of the Estate Value, the Members agree as follows:

(i) If the Estate Value is greater than the Appraised Value, the Surviving Member shall deliver to the Executors cash equal to the difference between the Appraised Value and the Estate Value (the "Difference").

(ii) If the Estate Value is less than the Appraised Value, the Executors shall deliver to the Surviving Member cash equal to the Difference.

(c) Estate's Call Right. In the event that the Survivor's Call Right is not exercised within the Call Period, the Estate shall have the right (the "Estate's Call Right") to purchase from the Surviving Member his Membership Interest (the "Surviving Member's Interest"), which right may be exercised by the Executors' delivery of a written notice of the exercise of such right (the "Estate's Call Notice") to the Surviving Member within three (3) months following the expiration of the Call Period (the "Estate's Call Period").

(d) Estate's Call Right Purchase Price. The "Purchase Price" for the Surviving Member's Interest to be paid pursuant to Section 8.5(c) shall be the Appraised Value as determined in accordance with Section 3.5(b). The Purchase Price for the Surviving Member's Interest shall be paid (in cash) by the later of the expiration of the Estate's Call Period or ninety (90) days following the determination of the Appraised Value; provided, however, if the Estate Value of the Deceased Member's Interest would have resulted in a higher or lower Purchase Price for the Surviving Member's Interest, then the Purchase Price payable pursuant to this Section (d) shall be appropriately adjusted to reflect such Estate Value. Within ninety (90) days following the determination of the Estate Value, the Members agree as follows:

(i) If the Estate Value would have resulted in a higher Purchase Price, the Executors shall deliver to Surviving Member cash equal to the Difference

(ii) If the Estate Value would have resulted in a lower Purchase Price, the Surviving Member shall deliver to the Executors cash equal to the Difference.

(e) Forced Sale of the Property. If the Survivor does not exercise the Survivor's Call Right and the Executors do not exercise the Estate's Call Right, then the Company shall, as soon as practicable after the expiration of the Estate's Call Right, sell the Property to a third party and distribute to the Estate and the Surviving Member their respective *pro rata* portions of the net sale proceeds in proportion to their respective Percentages of Membership Interest (the "Forced Sale"). Such sale shall be conducted by a major fine art auction house acceptable to both the Executors and the Surviving Member and on terms acceptable to both of them.

## IX. DISTRIBUTIONS AND ALLOCATIONS

9.1 Definitions. As used in this Agreement, the following terms shall have the following meanings:

(a) "Available Net Cash Flow" means all cash receipts of the Company and the fair market value of any property received in connection therewith, from whatever source derived including, without limitation, indebtedness incurred less (x) payment of all of the Company's expenses including, without limitation, debt service, payment of unincorporated business taxes, attorneys', accountants' and other professional fees, brokers' fees, all expenses of the sale of assets, closing costs, appraisal costs, transfer taxes, recording fees, charges and taxes, and all expenses, the payment of which is deferred to be paid out of sale or other disposition of a capital asset (a "Capital Transaction") and (y) an amount of a reasonable reserve determined by the Members in accordance with generally accepted accounting principles, consistently applied for the payment of such amounts.

(b) "Treasury Regulations" means the Income Tax Regulations and Procedures and Administration Regulations promulgated under the Code, as amended from time to time.

### 9.2 Distributions of Available Net Cash Flow.

(a) The distributions of Available Net Cash Flow of the Company shall be made to the Members upon the receipt of cash proceeds for the disposition of the Property and otherwise as and when determined by the Members, ratably, in accordance with the Percentage of Membership Interest of each Member.

(b) Whenever a distribution of Available Net Cash Flow is made by the Company in accordance with this Section 9.2, the Company shall provide a notice to each Member including in reasonable detail the computation of the aggregate Available Net Cash Flow so distributed.

9.3 Withholding. The Company is authorized to withhold from distributions, or with respect to allocations, to the Members and to pay over to any foreign, federal, state or local government any amounts required to be withheld pursuant to the Code or any provisions of any other foreign, federal, state or local law and shall allocate such amounts to the Members with respect to whom such amounts were withheld. All amounts withheld pursuant to the Code or any provisions of foreign, state or local tax law with respect to any payment or distribution to the Company or to the Members shall be treated as amounts distributed to the Members pursuant to this Agreement for all purposes under this Agreement.

### 9.4 Capital Account; Allocations, Etc.

(a) A capital account ("Capital Account") shall be created and maintained for each Member with respect to the Member's Membership Interest in a manner

consistent with Section 704 of the Code and Treasury Regulations thereunder, in particular Treasury Regulation Sections 1.704-1 and 1.704-2.

(b) The Company's items of income, gain, loss, and deduction for each taxable year shall be allocated among the Members in a manner that will, as nearly as possible (proportionately), cause the Capital Account balance of each Member at the end of such taxable year to equal the hypothetical distribution (if any) that such Member would receive if, on the last day of the taxable year, (i) all Company assets, including cash, were sold for cash equal to their book value (as determined and adjusted under Code Section 704(b)), taking into account any adjustments thereto for such taxable year, and (ii) the net proceeds thereto (after satisfaction of liabilities, limited with respect to each nonrecourse liability to the book value of the asset securing such liability) were distributed in full pursuant to Section 9.2.

(c) The Company shall have the "qualified income offset" provision described in Treasury Regulation 1.704-1(b)(2)(ii)(d)(3). The Company shall also make special allocations of its items of income, gain, loss and deduction consistent with Treasury Regulations under Section 704 of the Code.

(d) The Members, by mutual consent, may make such adjustments to the determination and allocation among the Members of its items of income, gain, loss, deduction and credit, as are necessary or appropriate to comply with requirements of the Code and the Treasury Regulations.

9.5 No Return of Distributions. No Member shall have any obligation to refund to the Company any amount that shall have been properly distributed to such Member pursuant to this Agreement, subject, however, to the rights of any third party creditor under law.

9.6 Allocations between Assignor and Assignee Members. In the case of a Transfer, the assignor and assignee shall each be entitled to receive distributions of Available Net Cash Flow and allocations of the Company's income, gain, loss, deduction and credit as follows:

(a) Unless the assignor and assignee agree to the contrary and shall so provide in the instrument effecting the Transfer, distributions shall be made to the person owning the Member's Membership Interest on the date of the distribution; and

(b) The allocation of the Company's income, gain, loss, deduction and credit shall be made based on the "closing of the books" method unless the parties to the Transfer request another method which is approved by the non-Transferring Member.

9.7 Deficit Capital Accounts. Except as otherwise provided herein or under the Act, no Member shall be required at any time to make up any deficit in his Capital Account.

9.8 Distributions to and Allocations among the Members, as a Class. Wherever a provision of this Agreement requires a distribution to or an allocation among the

Members or a select group of Members "as a class", such distributions and allocations shall be made to each Member in the proportion that the amount distributable or allocable to such Member pursuant to such provision bears to the amount to be distributed to or allocated among all of the Members pursuant to such provision.

X. DISSOLUTION, LIQUIDATION AND TERMINATION OF THE COMPANY

10.1 Grounds. The Company shall be dissolved and its affairs wound up upon the occurrence of any of the following events:

- (a) the sale or other disposition of the Property;
- (b) the unanimous approval of the Members; or
- (c) the occurrence of any other event which requires dissolution under the Act.

10.2 No Right to Retire, etc. or Cause Dissolution. No Member shall have the right to retire, resign or withdraw (as such terms are used in the Act) as a Member or otherwise cause, voluntarily or involuntarily, a dissolution of the Company other than as expressly permitted under the Act, or under Article VIII hereof, and any such action or any such dissolution caused by a Member, other than as so permitted, shall be null and void and shall constitute a breach by such Member of his obligations under this Agreement. Notwithstanding any provision in the Act to the contrary, no Member shall be entitled to any payment or distribution upon any such action or upon ceasing to be a Member of the Company for any reason, except as may be expressly provided to the contrary in this Agreement. This Section 10.2 expressly overrides any rights to distributions or other payments to which a Member of any assignee thereof might otherwise be entitled under any provision of the Act.

10.3 Liquidation. Upon dissolution of the Company, the liquidation of the Company shall be conducted in accordance with this Article X and the Act. The liquidation shall be conducted and supervised by a person who shall be designated for such purpose by the Members (the person for such purpose so designated being herein referred to as the "Liquidating Agent"). The Liquidating Agent shall have all of the rights and powers with respect to the assets and liabilities of the Company in connection with the liquidation and termination of the Company that the Members have with respect to the assets and liabilities of the Company during the Term. Without limiting the foregoing, the Liquidating Agent is hereby expressly authorized and empowered to execute and deliver any and all documents necessary or desirable to effectuate the liquidation and termination of the Company and the transfer of any asset or liability of the Company. The Liquidating Agent shall have the right from time to time, by revocable powers of attorney, to delegate to one or more persons any or all of such rights and powers and such authority and power to execute and deliver documents, and, in connection therewith, to fix the reasonable compensation of each such person, which compensation shall be charged as an expense of liquidation.

10.4 Statements on Termination. Each Member shall be furnished with a statement prepared by the Company's regular accountants setting forth the assets and liabilities of the Company as of the date of complete liquidation, and each Member's share thereof. Upon compliance with the distribution plan set forth in Section 10.5 of this Agreement, the Members shall cease to be such, and the Liquidating Agent shall execute, acknowledge and cause to be filed where appropriate under law Articles of Dissolution of the Company.

10.5 Priority on Liquidation. The Liquidating Agent shall, to the extent feasible, liquidate the assets of the Company as promptly as shall be practicable. To the extent the proceeds are sufficient therefor, as the Liquidating Agent shall deem appropriate, the proceeds of such liquidation shall be applied and distributed in the following order of priority (the "Liquidation Distribution"):

- (a) To pay the costs and expenses of the liquidation and termination;
- (b) To pay the matured or fixed debts and liabilities of the Company;
- (c) To establish any reserve that the Liquidating Agent may deem necessary for any contingent, unmatured or unforeseen liability of the Company; and
- (d) The balance, if any, shall be distributed to the Members in the same manner as Available Net Cash Flow is distributable to the Members under Section 9.2 of this Agreement.

10.6 Distribution of Non-Liquid Assets. If the Liquidating Agent shall determine that it is not practicable to liquidate all of the assets of the Company, then the Liquidating Agent shall cause the fair market value (including the fair market value of the Property, to the extent applicable) of the assets not so liquidated to be determined by appraisal by an independent appraiser or appraisers. Such assets, as so appraised, shall be retained or distributed by the Liquidating Agent as follows:

(a) The Liquidating Agent shall retain any assets having a fair market value equal to the amount, if any, by which the net proceeds of liquidated assets are insufficient to satisfy the debts and liabilities of the Company (other than any debt or liability for which neither the Company nor the Members are personally liable), to pay the costs and expenses of the dissolution and liquidation, and to establish reserves, all subject to the provisions of Section 10.5 of this Agreement. The foregoing shall not be construed, however, to prohibit the Liquidating Agent from distributing, pursuant to Section 10.6(b) of this Agreement, property subject to liens at the value of the Company's equity therein.

(b) The remaining assets (including, without limitation, receivables, if any) shall be distributed to the Members as tenants-in-common of undivided interests therein in such proportions as shall be equal to the respective amounts to which each Member is entitled pursuant to Section 10.5(d) of this Agreement.

(c) Nothing contained in this Article X or elsewhere in this Agreement is intended to cause any in-kind distributions to be treated as sales for value.

10.7 Orderly Liquidation. A reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the discharge of liabilities to creditors so as to minimize the losses normally attendant upon a liquidation.

## XI. MISCELLANEOUS PROVISIONS

11.1 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws and decisions of the State of New York, without regard to conflict of law rules applied in such State.

11.2 Consent to Jurisdiction. All actions and proceedings arising out of, or relating to, this Agreement shall be heard and determined in any state or federal court sitting in New York County, New York, New York. The undersigned, by execution and delivery of this Agreement, expressly and irrevocably consent and submit to the personal jurisdiction of any of such courts in any such action or proceeding; (ii) consent to the service of any complaint, summons, notice or other process relating to any such action or proceeding by delivery thereof to such party by hand or by certified mail, delivered or addressed as set forth in Section 11.4 of this Agreement; and (iii) waive any claim or defense in any such action or proceeding based on any alleged lack of personal jurisdiction, improper venue or forum non conveniens or any similar basis.

11.3 Oral Modification. This Agreement constitutes the entire understanding among the parties hereto. No waiver or modification of the provisions of this Agreement shall be valid unless it is in writing and signed by the party to be charged and then only to the extent therein set forth.

11.4 Notices. Wherever provision is made in this Agreement for the giving of any notice, such notice shall be in writing and shall be deemed to have been duly given if mailed by first class United States mail, postage prepaid, addressed to the party entitled to receive the same or delivered personally to such party at the address specified below, or if delivered personally, telegraphed, telexed, sent by facsimile transmission or sent by overnight courier, if to the Members, to the addresses therefor set forth on Exhibit B, and if to the Company, to it at:

Friends Ventures LLC  
C/o Elysium Management LLC  
445 Park Avenue, Suite 1401  
New York, New York 10022.  
Telephone No.: 646-589-0302  
Attn: Eileen Alexanderson, CIO  
With a copy to:

Herrick, Feinstein LLP

2 Park Avenue  
New York, NY 10016  
Telephone No.: (212) 592-1400  
Attn: Frank Lord, Esq.

or to such other address, in any such case, as any party hereto shall have last designated by notice to the Company. All such notices, requests and other communications will (i) if delivered personally to the address as provided in this Section, be deemed given upon delivery, (ii) if delivered by facsimile transmission to the facsimile number as provided in this Section, be deemed given upon the completion of the facsimile transmission, if the receipt is confirmed, and (iii) if delivered by mail in the manner described above to the address as provided in this Section, be deemed given upon receipt (in each case regardless of whether such notice, request or other communication is received by any other person to whom a copy of such notice, request or other communication is to be delivered pursuant to this Sec. 11.4).

11.5 Captions. The captions used in this Agreement are intended for convenience of reference only, shall not constitute any part of this Agreement and shall not modify or affect in any manner the meaning or interpretation of any of the provisions of this Agreement.

11.6 Pronouns. All pronouns and any variation thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

11.7 Execution. This Agreement may be executed in counterparts, and as so executed shall constitute one agreement binding on the Company and the Members.

11.8 Amendments. This Agreement may be amended only by written consent of all of the parties hereto.

11.9 Binding Effect. Except as otherwise provided herein, this Agreement shall be binding upon and shall inure to the benefit of the respective heirs, executors, administrators, legal representatives, and permitted successors and assigns of the parties hereto.

11.10 Severability. In case any one or more of the provisions contained in this Agreement or any application thereof shall be deemed invalid, illegal or unenforceable in any respect, such affected provisions shall be construed and deemed rewritten so as to be enforceable to the maximum extent permitted by law, thereby implementing to the maximum extent possible, the intent of the parties hereto, and the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired thereby.

11.11 Further Assurances. The Members will execute and deliver such further instruments and documents and do such further acts and things as may be required to carry out the intent and purposes of this Agreement.

11.12 Specific Performance. The parties recognize and acknowledge that their Membership Interests are closely held and that, accordingly, in the event of a breach or default by one or more of the parties hereto of the terms and conditions of this Agreement, the damages to the remaining parties to this Agreement, or any one or more of them, may be impossible to ascertain and such parties will not have an adequate remedy at law. In the event of any such breach or default in the performance of the terms and provisions of this Agreement, any party or parties thereof aggrieved thereby shall be entitled to institute and prosecute proceedings in any court of competent jurisdiction, either at law or in equity, to enforce the specific performance of the terms and conditions of this Agreement, to enjoin further violations of the provisions of this Agreement and/or to obtain damages. Such remedies shall however be cumulative and not exclusive and shall be in addition to any other remedies which any party may have under this Agreement or at law.

11.13 No Third Party Beneficiaries. Except as is otherwise specifically provided for in this Agreement or as may otherwise be specifically agreed in writing by all of the Members, the provisions of this Agreement are not intended to be for the benefit of any creditor or other person to whom any debts, liabilities, or obligations are owed by (or who otherwise has any claim against) the Company or any of the Members; and no such creditor or other person shall obtain any benefit from such provisions or shall, by reason of any such foregoing provision, make any claim in respect of any debt, liability, or obligation against the Company or any of the Members.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first written above.

COMPANY:

FRIENDS ART VENTURES LLC

By: \_\_\_\_\_

LEON D. BLACK, its Member

By: \_\_\_\_\_

RONALD S. LAUDER, its Member

MEMBERS:

\_\_\_\_\_

LEON D. BLACK

\_\_\_\_\_

RONALD S. LAUDER

## TABLE OF CONTENTS

	<u>Page</u>
I.	FORMATION.....1
1.1	Formation; Name; Office.....1
1.2	Purposes.....1
1.3	Duration.....2
1.4	Registered Agent.....2
II.	CAPITAL CONTRIBUTIONS.....2
2.1	Initial Capital Contributions By The Members.....2
2.2	Additional Capital Contributions.....2
2.3	Members' Liability.....3
2.4	Withdrawal of Capital.....3
2.5	Uses of Capital Contributions; Interest on Capital Contributions.....3
III.	THE PROPERTY OF THE COMPANY.....4
3.1	Title to the Property of the Company.....4
3.2	Possession of the Property.....4
3.3	Care of the Property.....4
3.4	Insurance; Liability for Loss or Damage.....4
3.5	Appraisal of the Property; Fair Market Value.....6
3.6	Reproduction of the Property.....7
3.7	Credit Lines.....8
3.8	Individual Expenses Relating to the Property.....8
IV.	MANAGEMENT OF THE COMPANY.....8
4.1	Management of the Company.....8
4.2	Officers of the Company.....8
4.3	General Powers of Members.....8
V.	DUTIES OF MEMBERS.....9
5.1	No Compensation.....9
5.2	Confidentiality.....9
VI.	MEETINGS AND VOTING OF MEMBERS.....9
6.1	Unanimous Approval of the Members.....9
VII.	ACCOUNTING PROVISIONS.....9
7.1	Fiscal and Taxable Year.....9
7.2	Books and Accounts.....9
7.3	Financial Reports.....10
7.4	Tax Elections.....10

7.5	Expenses .....	10
VIII.	TRANSFERS OF MEMBERSHIP INTERESTS; RIGHTS ON DEATH OF A MEMBER .....	10
8.1	General Prohibition on Transfer .....	10
8.2	Further Limitations on Transfers of Members' Membership Interests .....	11
8.3	Effect of Non-Permitted Transfers.....	11
8.4	Restrictions on Becoming a Substituted Member.....	11
8.5	Put/Call Rights on Death of a Member.....	11
IX.	DISTRIBUTIONS AND ALLOCATIONS.....	13
9.1	Definitions.....	13
9.2	Distributions of Available Net Cash Flow .....	13
9.3	Withholding .....	13
9.4	Capital Account; Allocations, Etc.....	13
9.5	No Return of Distributions.....	14
9.6	Allocations between Assignor and Assignee Members.....	14
9.7	Deficit Capital Accounts.....	14
9.8	Distributions to and Allocations among the Members, as a Class.....	15
X.	DISSOLUTION, LIQUIDATION AND TERMINATION OF THE COMPANY.....	15
10.1	Grounds.....	15
10.2	No Right to Retire, etc. or Cause Dissolution.....	15
10.3	Liquidation.....	15
10.4	Statements on Termination .....	16
10.5	Priority on Liquidation.....	16
10.6	Distribution of Non-Liquid Assets.....	16
10.7	Orderly Liquidation .....	17
XI.	MISCELLANEOUS PROVISIONS.....	17
11.1	Governing Law .....	17
11.2	Consent to Jurisdiction.....	17
11.3	Oral Modification.....	17
11.4	Notices .....	17
11.5	Captions .....	18
11.6	Pronouns .....	18
11.7	Execution .....	18
11.8	Amendments .....	18
11.9	Binding Effect.....	18
11.10	Severability .....	18
11.11	Further Assurances.....	19
11.12	Specific Performance .....	19
11.13	No Third Party Beneficiaries .....	19

HF DRAFT  
9/08/14

**OPERATING AGREEMENT  
OF  
FRIENDS VENTURES LLC**

**Dated as of September \_\_, 2014**

## EXHIBIT A

A certain framed oil painting, known as "*Ja - Was? - Bild*", signed and dated 'Kurt Schwitters 1920' (lower left); signed and inscribed "Kurt Schwitters 1920 Ja, Was? = Bild" (on the reverse), oil, paper, corrugated card, cardboard, fabric, wood and nails on board, approximately 43 x 31 1/2 in. (109.2 x 80 cm.), including the artist's original frame.

**EXHIBIT B**

**NAME AND ADDRESS OF EACH MEMBER;  
INITIAL CASH CAPITAL CONTRIBUTION OF EACH MEMBER; AND  
MEMBERSHIP INTEREST AND PERCENTAGE OF MEMBERSHIP INTEREST OF EACH MEMBER**

<u>Name and Address of Member</u>	<u>Initial Cash Capital Contribution</u>	<u>Membership Interest and Percentage of Membership Interest</u>
LEON D. BLACK C/o Elysium Management LLC 445 Park Avenue, Suite 1401 New York, NY 10022 Attn: Eileen Alexanderson	\$ _____	50%
RONALD S. LAUDER	\$ _____	50%
Total	\$ _____	<u>100%</u>

**EXHIBIT C**  
**PERMITTED LOCATIONS**

**Permitted Locations shall include the following locations:**

<b><u>With respect to Leon Black:</u></b>	<b><u>With respect to Ronald Lauder:</u></b>
<b><u>760 Park Avenue</u></b> <b><u>New York, NY 10021</u></b>	
<b><u>190-200 Narrows Road</u></b> <b><u>Bedford, NY 10507</u></b>	
<b><u>730 Meadow Lane</u></b> <b><u>Southampton, NY 11968</u></b>	