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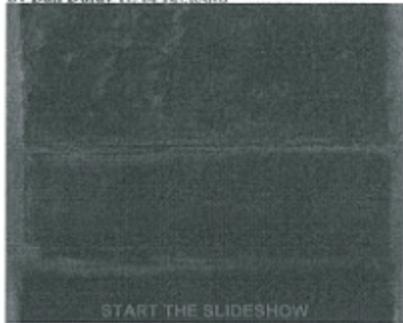
## Sotheby's Contemporary Sale Nets \$375.1 M., House Record, With \$75.1 M. Rothko in Front

LAST

Presenting the Next 15 CPW: Zeckendorfs Unveil 50 UN Plaza, Norman Foster's First U.S. Apartment Building

NEXT

By Dan Duray 11/14 12:38am



Sotheby's saw its highest-ever auction total last night during a spirited, two-hour-long postwar and contemporary sale in which auctioneer Tobias Meyer hammered \$375.1 million worth of art, including buyer's premium, a sum that peaked just over the house's high estimate of \$374.7 million for the 69 lots on offer. Fifty-eight of those works sold, for a respectable 84.1 percent sell-through rate by lot, with new artist records for a number of Abstract-Expressionists—Jackson Pollock, Franz Kline, Robert Motherwell, Arshile Gorky and Hans Hofmann—and for the 40-year-old painter Wade Guyton.

That \$375.1 million figure edged out the total combined value of last week's uneven Impressionist and Modern art evening sales at Sotheby's and Christie's, which together brought in about \$368 million.

The sale was bolstered by an impressive 1954 Mark Rothko and one of Francis Bacon's iconic Pope paintings, also from that year. The record-setting Pollock went for \$40 million in just three minutes, shooting up from an opening bid of \$20 million, a testament to just how rarely the artist comes up at auction and the eagerness of those looking to buy him.

The Rothko, owned by Sotheby's longtime chief auctioneer and chairman John Marion, saw spirited bidding from the room and from the phones. David Nahmad had a shot at this cover lot at \$38 million, but as other bidders fell away, Sotheby's Chairman Lisa Dennison and Charlie Moffett, vice chairman at the Impressionist and Modern department, bid it past its high estimate, on telephones at opposite sides of the room.

Mr. Moffett's bidder made a few aggressive offers, jumping from \$41 million to \$43 million, and later from \$56 million to \$60 million, but each time Ms. Dennison's bidder parried with another \$1 million increment. However, in the end, he outlasted her, and after eight minutes Mr. Meyer hammered down lot 19, for Mr. Moffett, at \$67 million—\$75.1 million with premium.

The Rothko, No. 1 (Royal Red and Blue), is now second in the artist's record book only to the 1961 Orange, Red, Yellow, which earned \$86.9 million at Christie's New York in May. That sale made \$388.5 million, the most ever for any contemporary auction, an accolade this evening's sale missed by only about \$13 million.

"This painting is from one of the most important periods for Rothko," said Bonnie Clearwater, director and chief curator of the Museum of Contemporary Art, North Miami, and former curator of the Mark Rothko Foundation, after the sale. A formative trip to Europe by Rothko just

## REVERSE EXCHANGE AGREEMENT

This Reverse Exchange Agreement (the "Agreement") is entered into this \_\_\_\_ day of June, 2012 by and between Black Family 1997 Trust ("Black"), with an address at 9 West 57<sup>th</sup> Street Avenue, New York, New York 10019, and Gagosian Gallery, Inc. (the "Company"), having an office at 980 Madison Avenue, New York, New York 10075, and is made with reference to the following facts:

A. Black wishes to acquire the following work of art (the "Replacement Work"):

Artist: Pablo Picasso  
Title: *Mateu Fernández de Soto*  
Medium: Oil on canvas  
Size: 18 1/8 x 15 in. (46 x 38 cm)  
Date: 1901

B. Black wishes to exchange a certain work of art owned by it (the "Relinquished Work") for the Replacement Work pursuant to the provisions of Section 1031 of the Internal Revenue Code of 1986, as amended (the "Code"), upon the terms and conditions set forth in this Agreement.

C. The Company is willing to purchase the Replacement Work from its current owner and exchange the Replacement Work for the Relinquished Work upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and conditions contained in this Agreement, the parties agree as follows:

### 1. 1031 Exchange.

A. Purchase of the Replacement Work. The Company agrees to purchase the Replacement Work for a total purchase price of Forty Eight Million Dollars (\$48,000,000.00) (the "Replacement Work Exchange Value") and agrees to hold the Replacement Work for the benefit of Black in order to facilitate an exchange under Section 1031 of the Code and Revenue Procedure 2000-37, 2000-40 I.R.B. 308 (10/2/2000) ("Rev. Proc. 2000-37"). The Company shall take legal title to and possession of the Replacement Work on July 10, 2012 (the "Effective Date") and shall hold legal title to and possession of the Replacement Work until the Replacement Work is transferred to Black as provided in Paragraph 1.C by means of a bill of sale in the form of attached Exhibit A (the "Replacement Work Bill of Sale").

B. Relinquished Work. Black shall identify in writing as specified in Paragraph 1.B.i and on Exhibit B attached hereto the work of art owned by Black that Black believes will satisfy the requirements of "like kind property" for purposes of Section 1031 of the Code (the "Relinquished Work"). Prior to the Exchange Date (as defined below), Black shall transfer to the Company, and the Company shall accept and acquire from Black, legal title in and to and possession of the Relinquished Work. Black shall deliver to the Company a bill of sale in the form of attached Exhibit C (the "Relinquished Work Bill of Sale") transferring title to the Relinquished Work to the Company.

(i) Identification of Relinquished Work. Black shall specifically identify the Relinquished Work in a writing delivered to the Company within forty-five (45) days after the Effective Date (the "Identification Period"). The Relinquished Work identified by Black shall be described on a written identification statement in the form of attached Exhibit B (the "Identification Statement") and shall be delivered to the Company within the Identification Period. The date of the identification of the Relinquished Work and the fair market value for the Relinquished Work (the "Relinquished Work Exchange Value") for all purposes of this Agreement shall be stated by Black on the Identification Statement.

(ii) Failure to Identify a Relinquished Work. If Black does not identify a Relinquished Work within the Identification Period, then an amount equal to the Replacement Work Exchange Value shall be paid by Black to the Company on the Exchange Date, as payment in full of the purchase price for the Replacement Work, and the Company shall transfer title to and possession of the Replacement Work to Black upon such payment in full.

(iii) Excess Cash Requirements. To the extent that the Replacement Work Exchange Value exceeds the Relinquished Work Exchange Value, Black shall pay to the Company the full amount of such excess and the Company shall use such cash to acquire the Replacement Work.

(iv) Relinquished Work Sale Proceeds. When the Relinquished Work is sold by the Company, the proceeds of such sale shall be held by the Company in a separate interest bearing account, in escrow, designated for and to be used exclusively by the Company to acquire title to the Replacement Work.

(v) Satisfaction of Obligations. If the Relinquished Work Exchange Value actually received by the Company upon sale of the Relinquished Work exceeds the Replacement Work Exchange Value, then the Company shall pay to Black an amount equal to the difference between the Relinquished Work Exchange Value and the Replacement Work Exchange Value. Subject to the immediately preceding sentence, such difference shall be paid on the Exchange Date. Black shall have no right to receive, pledge, borrow or otherwise obtain the benefits of any such amount or related property prior to such time. The Company may offset any damages from Black it may have against the unexpended Relinquished Work Exchange Value.

C. Exchange of the Replacement Work. The Company agrees to convey title to and possession of the Replacement Work to Black in exchange for and as consideration for the transfer of the Relinquished Work to the Company, and to deliver to Black the Replacement Work Bill of Sale. The Company shall transfer title to the Replacement Work to Black on or before the earlier of (i) one hundred eighty (180) days after the Effective Date, or (ii) the due date (including extensions) for Black's federal income tax return for Black's taxable year during which the Effective Date occurs of which Company has been notified by Black, (the "Exchange Date"); provided, however, that in no event shall the Exchange Date occur prior to the end of the Identification Period.

D. Form 8824. Black represents that it will prepare and file IRS Form 8824, Like-Kind Exchanges, or an equivalent statement, and, upon request, will furnish the Company with a copy of the Form or an equivalent statement.

2. **Representations and Warranties of, and Indemnities by, Black.** Black does hereby represent and warrant to the Company that:

A. The Relinquished Work is an authentic work of art created by the artist indicated on the Identification Statement;

B. Black has full legal authority to enter into this Agreement, to make the representations and warranties contained herein, to deliver the Relinquished Work Bill of Sale and to complete the transaction contemplated herein;

C. Black is the sole and absolute owner of the Relinquished Work, has the full right to sell and transfer title to the Relinquished Work, and the Relinquished Work, at the time of transfer of title, will be free and clear of any and all rights, claims, liens, mortgages, security interests or other encumbrances held by any person;

D. Other than as specifically represented and warranted by Black in this Agreement, Black makes no representations or warranties, express or implied, with respect to the Relinquished Work, including, without limitation, representations or warranties as to value or condition;

E. Black does hereby agree to indemnify, defend and hold the Company free and harmless from any and all demands, claims, suits, judgments, obligations, damages, losses or other liability, including all attorney or other professional fees and other costs, fees and expenses, suffered or incurred by, or asserted or alleged against the Company arising by reason of, or in connection with, (i) the alleged or actual breach by Black of this Agreement or the alleged or actual falsity, or the alleged or actual inaccuracy of any representation or warranty contained in this Agreement; or (ii) the failure of this transaction, for any reason, to qualify as a 1031 Exchange transaction under the Code. Black's representations, warranties, covenants and indemnities shall survive completion of the transactions contemplated by this Agreement, including without limitation transfer of the Relinquished Work to the Company.

3. **Representations and Warranties of, and Indemnities by, the Company.** Assuming that the current owner of the Replacement Work complies with his/her/its obligations to timely transfer the Replacement Work to the Company, and that the representations and warranties by such current owner are true and accurate, the Company does hereby represent and warrant to Black that:

A. Based solely upon representations made to it by the current owner of the Replacement Works and without further inquiry, the Replacement Work is an authentic work of art created by the artist indicated on page one of this Agreement and it is the same work of art that is described on the attached Exhibit A.

B. As of the Effective Date, the Company will be the sole and absolute owner of the Replacement Work and will have the full right to sell and transfer title to the Replacement Work to Black.

C. The Company without any further action, consent or authority of any other party, and without violation of any party's rights or claims, has full right, legal authority and capacity to enter into this Agreement, to make the covenants, representations and warranties contained in this Agreement, to execute and deliver the Replacement Work Bill of Sale and to perform its obligations under and complete the transaction contemplated by this Agreement.

D. The Company will transfer to Black good, valid and marketable title and exclusive and unrestricted right to possession of the Replacement Work free and clear of any and all rights or interests of others, claims, liens, security interests or other encumbrances of any kind held or claimed by any person, other than Black (collectively, "Claims"). The Company has no actual knowledge of any Claims threatened or pending, but has made no inquiry with respect thereto.

E. The Company will provide Black with all information in the possession of the Company or of which the Company is actually aware of without further inquiry on or before the Exchange Date, concerning the attribution, authenticity, description, condition and provenance of the Replacement Work.

F. The Company does hereby agree to indemnify, defend and hold Black free and harmless from any and all demands, claims, suits, judgments, obligations, damages, losses or other liability, including all reasonable attorney or other professional fees and other costs, fees and expenses, suffered or incurred by, or asserted or alleged against Black arising by reason of, or in connection with, the alleged or actual breach of this Agreement or the alleged or actual falsity of, or the actual or alleged inaccuracy of any representation or warranty contained in this Agreement. The Company's representations, warranties, covenants and indemnities shall survive completion of the transaction contemplated by this Agreement, including without limitation transfer of the Replacement Work to Black.

#### **4. Sales Tax.**

A. The Company represents that it is an art dealer and is acquiring the Relinquished Work for resale and agrees to furnish Black with a New York resale certificate.

B. Black agrees to pay any and all applicable sales or use tax due on the acquisition of the Replacement Work by Black and agrees to indemnify and hold the Company, its officers, members, agents, servants and employees (in any capacity) harmless from any and all demands, claims, suits, judgments or other liability (including reasonable attorney fees and other expenses incurred by the Company in connection therewith awarded to any person or entity) arising by reason of Black's breach or alleged breach of this Agreement to pay such taxes. Such indemnification shall survive the termination of this Agreement.

**5. Additional Obligations and Indemnities.** The Replacement Work is being acquired by the Company pursuant to the written directions of Black. Black agrees to reimburse

the Company for any costs or expenses (exclusive of the purchase price of the Replacement Work) incurred by the Company in acquiring the Replacement Work at the direction of Black, and for maintaining, storing, insuring and transporting the Replacement Work which is not otherwise properly paid for out of the Relinquished Work sale proceeds. Except as otherwise provided in any subsequent executed writing, the Company shall have no liability to Black in connection with the physical condition, value, acquisition costs or terms, sales or use taxes payable with respect to the Replacement Work, or investment potential of the Replacement Work. Further, the Company is making no representation or warranty of any kind or nature that the transaction contemplated by this Agreement qualifies as a tax free exchange under Section 1031 of the Code, or that this Agreement carries out the intentions stated in Paragraph 6 hereof. In addition to the indemnities specified in Paragraph 2.E., above, Black agrees to indemnify the Company and hold the Company harmless from any and all demands, claims, suits, judgments or other liability (including attorney fees and other expenses incurred by the Company in connection therewith) (collectively, "Liability") which the Company incurs by reason of good-faith compliance with Black's directions, including, without limitation, any Liability with respect to sales or use taxes payable in connection with the Replacement Work and the failure or alleged failure of the transactions herein contemplated to satisfy the intent stated in Paragraph 6 hereof or to constitute a tax-free exchange under Section 1031 of the Code. Black hereby releases the Company from any responsibility for the failure of the current owner of the Replacement Work to comply with such current owner's obligations, representations or warranties. These indemnifications and releases shall survive the termination of this Agreement.

6. **Section 1031 of the Code and Rev. Proc. 2000-37.** It is the intention of the parties hereto that the transaction contemplated by this Agreement qualify as a tax-free exchange under Section 1031 of the Code and Rev. Proc. 2000-37 as to Black. The parties hereto intend that: (i) the exchange contemplated by this Agreement constitutes a "qualified exchange accommodation arrangement," (ii) the Company qualifies as an "exchange accommodation titleholder" and as a "qualified intermediary," (iii) this Agreement constitutes a "qualified exchange accommodation agreement," (iv) the Replacement Work constitutes "replacement property" in an exchange that is intended to qualify for nonrecognition of gain under Section 1031 of the Code, and (v) the Relinquished Work constitutes "relinquished property," all within the meaning of Section 1031 of the Code and Rev. Proc. 2000-37. The Company will be treated as the beneficial owner of the Replacement Work and the Relinquished Work for all federal income tax purposes once legal title to each is transferred to the Company as provided in this Agreement and in the separate agreement between the Company and the current owner of the Replacement Work. Notwithstanding anything else in this Agreement to the contrary, the combined time period that the Relinquished Work and the Replacement Work are held by the Company in the qualified exchange accommodation arrangement shall not exceed one hundred eighty (180) days.

7. **Fee.** Black shall pay the Company a fee for acting as exchange accommodation titleholder and qualified intermediary in the amount of One Thousand Dollars (\$1,000.00).

## 8. General Provisions.

A. Successors and Assigns. The rights and obligations under this Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, successors, representatives and permissible assigns.

B. Counterparts. This Agreement may be executed in two or more counterparts, including by facsimile or PDF, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

C. Interpretation. No provision of this Agreement is to be interpreted for or against either party because that party or that party's legal representative drafted such provision.

D. Disputes. Any dispute arising hereunder shall be resolved in the courts of the State of New York or in the United States District Court for the Southern District of the State of New York and the parties hereby consent to the personal jurisdiction of those courts, provided, however, that the parties hereto agree that they will make concerted efforts to settle any dispute between them in an amicable manner without the necessity of litigation.

E. Survival of Representation, Warranties and Indemnification. The benefits of the representations, warranties, covenants and indemnities contained in this Agreement shall survive completion of the transactions contemplated by this Agreement.

F. Confidentiality. Neither party will disclose to any person or entity, except to either party's attorneys and advisors, and as may be required by law, regulation or in response to process, or in order to carry out the terms of this Agreement, (i) the identity of the parties and (ii) the terms of this Agreement or the negotiations with respect thereto.

G. Notice. Every notice, or other communication, which any party is required or desires to make or communicate upon or to the other, shall be in writing and shall be deemed to have been delivered or communicated upon actual receipt, after being deposited, registered mail, in a United States mail depository, postage and fees prepaid and properly addressed to the address of the party as contained in this Agreement.

H. Additional Documents and Acts. In addition to the documents and instruments to be delivered as provided in this Agreement, each of the parties shall, from time to time at the request of the other party, execute and deliver to the other party such other instruments and documents and shall take such other action as may be reasonably required to more effectively carry out the terms of this Agreement.

I. Incorporation of Exhibits. All exhibits attached to this Agreement are by such reference incorporated in this Agreement and made a part of this Agreement.

J. Validity – Waiver. No breach of any provision shall be waived unless such waiver is in a writing executed by the party to be charged therewith. Waiver of any one breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach of the same or any other provision of this Agreement. This Agreement may be amended only by a written agreement executed by the parties in interest at the time of the modification. In the event

that any covenant, condition or other provision in this Agreement is held to be invalid, void or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect, impair or invalidate any other covenant, condition or other provision in this Agreement. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such covenant, condition or other provision shall be deemed valid to the extent of the scope or breadth permitted by law.

K. Headings – Gender – New York Law. Paragraph titles or captions contained in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or any provision of this Agreement. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine, feminine and neuter genders shall each include the others, and the word “person” shall include corporation, firm, partnership, joint venture, trust or estate. This Agreement and all matters relating to it shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the date first above set forth.

BLACK FAMILY 1997 TRUST

  
By: Barry Cohen  
Its: Trustee

GAGOSIAN GALLERY, INC.

\_\_\_\_\_  
By: Larry Gagosian  
Its: President

**EXHIBIT A**

**BILL OF SALE**

Dated: \_\_\_\_\_, 2012

Sold by: Gagosian Gallery, Inc. ("Seller")  
980 Madison Avenue  
New York, New York 10075

Sold to: Black Family 1997 Trust ("Buyer")  
9 West 57<sup>th</sup> Street  
New York, New York 10019

Work Sold: Artist: Pablo Picasso (the "Work")  
Title: *Mateu Fernández de Soto*  
Medium: Oil on canvas  
Size: 18 1/8 x 15 in. (46 x 38 cm)  
Date: 1901  
Provenance: Schedule A

Purchase Price: \$48,000,000.00 (Forty Eight Million Dollars) – Trade-in Credit

FOR VALUE RECEIVED, Seller sells, transfers and assigns to Buyer and to all Buyer's successors and assigns all right, title and interest of Seller in and to the Work.

Seller represents and warrants to Buyer that upon Seller's receipt of the Purchase Price for the Work, delivery of the Work by Seller to Buyer, and full compliance by Seller's immediate predecessors in ownership (a) with the sale agreements between such predecessors and Seller and (b) the bills of sale from such predecessors to Seller, good, valid and marketable title and exclusive and unrestricted right to possession of the Work, free of all Claims (as defined below), will pass from Seller to Buyer.

Seller represents and warrants that: (i) based solely upon representations and warranties made to Seller by the Work's immediately preceding owner, the Work is an authentic work of art created by the artist indicated above and is the same work of art that is described above and on the attached Schedule A; (ii) based solely upon representations and warranties made to Seller by the Work's immediately preceding owner, Seller is the sole and absolute owner of the Work; (iii) the Work is sold free and clear of any and all claims, liens, security interests or other encumbrances of any kind held or claimed by any person (collectively, "Claims"); (iv) without inquiry Seller has no actual knowledge of any Claims threatened or pending, but has made no inquiry with respect thereto; and (v) Seller will provide Buyer with all information actually in its possession or of which Seller is aware without inquiry, concerning the attribution, authenticity, description, condition and provenance of the Work. The representations and warranties contained in this Bill of Sale and all other terms hereof shall survive the delivery of this Bill of Sale and the transfer of the Work to Buyer.

Subject to the provisions of other agreements between Seller and Buyer relating to this transaction, Seller does hereby agree to indemnify, defend and hold Buyer free and harmless from any and all demands, claims, suits, judgments, obligations, damages, losses or other liability, including all reasonable attorney or other professional fees and other costs, fees and expenses, suffered or incurred by, or asserted or alleged against Buyer arising by reason of, or in connection with, the breach or alleged material breach of, or material falsity or material inaccuracy of any representation or warranty contained in this Bill of Sale.

Seller makes no representation or warranty as to the condition or value of the Work and the Work is being transferred "as is" and, other than as specifically stated herein, makes no representations or warranties of any kind whatsoever, express or implied. Buyer or Buyer's agent has inspected the Work and the document attached hereto as Schedule A and is satisfied with and approves of and accepts the condition, provenance and appearance of the Work.

Seller agrees to deliver the Work by common carrier, which shall be experienced art handlers, to Buyer at 9 West 57<sup>th</sup> Street, New York, New York 10019 or such other location in New York as Buyer may direct. Buyer agrees to timely reimburse Seller for reasonable third party costs and expenses approved in advance by Buyer and paid by Seller relating to the packing, crating, transporting, shipping and insuring of the Work for delivery by common carrier to Buyer pursuant to this Bill of Sale. Any examination or inspection of the Work or any condition reports ordered by Buyer or Seller in connection with this transaction shall be for the account of Buyer.

The terms and provisions of this Bill of Sale shall be binding upon Seller and Seller's successors, assigns and legal representatives and shall inure to the benefit of Buyer and Buyer's successors, assigns and legal representatives.

This Bill of Sale shall be governed by and shall be construed and enforced in accordance with the laws of the State of New York without regard to any conflict of laws principles. This Bill of Sale may be executed by facsimile or PDF, each of which shall be deemed an original.

GAGOSIAN GALLERY, INC.

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By: Larry Gagosian  
Its: President

Schedule A of EXHIBIT A

THE WORK

Artist: PABLO PICASSO (1881-1973)  
Title: *Mateu Fernández de Soto*  
Medium: Oil on canvas  
Size: 18 1/8 x 15 in. (46 x 38 cm)  
Date: 1901

PROVENANCE

Collection of the artist  
Private collection (by descent to the present owner)

EXHIBITION

France, La Courneuve: Fête de l'Humanité, *Picasso*, September 5-9, 1973, no. 164

New York, The Museum of Modern Art, *Picasso: A Retrospective*, May 22 – September 16, 1980, p. 29; p. 43, illustrated

Ingelheim am Rhein, *Pablo Picasso: Maler, Grafiker, Bildhauer, Keramiker, Dichter*, May 2 – June 8, 1981, no. 1, p. 87

Gisors, France, Mairie de Gisors, *Picasso*, April 22 – May 3, 1983

Spain, Museu Picasso Barcelona, *Picasso and els 4 CATS: The Early Years in Turn-of-the-Century Barcelona*, November 15, 1995 – February 11, 1996, p. 190; no. 159, p. 207, illustrated in color

Vienna, Kunstforum Wien; Kunsthalle Tübingen, *Picasso: Figur und Porträt, Hauptwerke aus der Sammlung Bernard Picasso*, September 7, 2000 – June 16, 2002, no. 4, pp. 56-57, illustrated in color

Milan, Palazzo Reale, *Picasso: 200 Masterworks from 1898 to 1972*, September 15, 2001 – January 27, 2002, no. 2, p. 144, illustrated in color; p. 335

Malaga, Spain, Museo Picasso Malaga, *Picasso Twentieth Century 1901-1972*, October 27, 2003 – October 27, 2004, p. 14; no. 2, p. 26; p. 27, illustrated in color

Malaga, Museo Picasso Malaga, *30 Obras de Picasso*, October 27, 2004 – October 27, 2005, no. 2, p. 29, illustrated in color

## LITERATURE

Pierre Daix and Georges Boudaille, *The Blue and Rose Periods: A Catalogue Raisonné of the Paintings* (Neuchatel: Editions Ides et Calendes, 1966), cat. VI, no. 33, p. 191, illustrated in color; p. 204, illustrated

Christian Zervos, *Pablo Picasso, Oeuvres de 1895 - 1906* (Paris: Editions Cahier d'Art, 1969), vol. 1, no. 86, p. 43, illustrated

Paolo Lecaldano, *The Complete Paintings of Picasso: Blue and Rose Periods* (London: Weidenfeld and Nicolson, 1971), no. 23, p. 89, illustrated

Josep Palau i Fabre, *Picasso: The Early Years, 1881-1907* (New York: Rizzoli, 1981), no. 708, p. 281, illustrated

John Richardson, *A Life of Picasso; Volume I: The Early Years, 1881-1906* (New York: Random House, 1996), p. 227, illustrated

The Picasso Project, eds. *Picasso's Paintings, Watercolors, Drawings and Sculpture: A Comprehensive Illustrated Catalogue 1885 - 1973, Turn of the Century - 1900-1901* (San Francisco: Alan Wofsy Fine Art, 1997), no. 1901-516, p. 264, illustrated

Brigitte Léal, Christine Piot and Marie-Laure Bernadac, *The Ultimate Picasso* (New York: Harry N. Abrams, 2000), no. 85, p. 50, illustrated in color; p. 56

**EXHIBIT B**  
**IDENTIFICATION STATEMENT**

Pursuant to Paragraph 1.B.i of the Reverse Exchange Agreement between Black Family 1997 Trust and Gagosian Gallery, Inc. dated June \_\_\_\_, 2012, Black Family 1997 Trust hereby identifies the following Relinquished Work. This Identification Statement may be executed by facsimile or PDF, each of which shall be deemed an original.

BLACK FAMILY 1997 TRUST

\_\_\_\_\_  
By: Barry Cohen  
Its: Trustee

Date: \_\_\_\_\_, 2012

Fair Market Value

1. Artist:  
Title:  
Medium:  
Size:  
Date:

\$ \_\_\_\_\_

IDENTIFICATION OF RELINQUISHED WORK  
RECEIVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2012, BY:

GAGOSIAN GALLERY, INC.

\_\_\_\_\_  
By: Larry Gagosian  
Its: President

**EXHIBIT C**

**BILL OF SALE**

Dated: \_\_\_\_\_, 2012

Sold by: Black Family 1997 Trust ("Seller")  
9 West 57<sup>th</sup> Street  
New York, New York 10019

Sold to: Gagosian Gallery, Inc. ("Buyer")  
980 Madison Avenue  
New York, New York 10075

Work Sold: Artist: (the "Work")  
Title:  
Medium:  
Size:  
Date:

Purchase Price: \$ \_\_\_\_\_ ( \_\_\_\_\_ Dollars)

FOR VALUE RECEIVED, Seller hereby irrevocably and without condition or reservation of any kind sells, transfers and conveys to Buyer the Work, and all right to possession, and all legal and equitable ownership of the Work, to have and to hold the Work unto Buyer, its successors and assigns, forever.

Seller represents and warrants to Buyer that upon delivery by Seller to Buyer of the Work, good, valid and marketable title and exclusive and unrestricted right to possession of the Work, free of all Claims (as defined below), will pass from Seller to Buyer.

Seller represents and warrants that (i) the Work is an authentic work of art created by the artist indicated above; (ii) Seller has full legal right and authority to sell the Work to Buyer; (iii) Seller is the sole and absolute owner of the Work and has good and marketable title to the Work; and (iv) the Work is subject to no claims, liens, security interests or encumbrances ("Claims"). Seller indemnifies and holds Buyer harmless from any and all demands, claims, suits, judgments, losses and other liabilities (including but not limited to reasonable attorneys' fees and other reasonable expenses incurred by Buyer in connection with the matters so indemnified) asserted by or awarded to any person or entity against Buyer arising by reason of the alleged or actual breach, alleged or actual falsity or alleged or actual incorrectness of any of Seller's representations or warranties contained in this Bill of Sale. These representations and warranties shall survive the delivery of this Bill of Sale to Buyer. In all other respects, the Work is being transferred to Buyer in "as is" condition, and other than as specifically represented in this Bill of Sale, neither Seller nor anyone on behalf of Seller is making any representations or warranties of any kind

whatsoever, express or implied, with regard to the Work, including without limitation, representations or warranties as to condition or value.

The terms and provisions of this Bill of Sale shall be binding upon Seller and Seller's successors, assigns and legal representatives and shall inure to the benefit of Buyer and Buyer's successors, assigns and legal representatives.

This Bill of Sale shall be governed by and shall be construed and enforced in accordance with the laws of the State of New York without regard to any conflict of laws principles. This Bill of Sale may be executed by facsimile or PDF, each of which shall be deemed an original.

BLACK FAMILY 1997 TRUST

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By: Barry Cohen  
Its: Trustee

BILL OF SALE

Dated: \_\_\_\_\_, 2012

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9 West 57<sup>th</sup> Street  
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Sold to: Gagosian Gallery, Inc. ("Buyer")  
980 Madison Avenue  
New York, New York 10075

Work Sold: Artist: Mark Rothko (the "Work")  
Title: *Untitled*  
Medium: Oil on canvas  
Size: 93 1/8 x 80 1/8 inches  
Date: Signed and dated 1961 on reverse

Purchase Price: \$ \_\_\_\_\_ (\_\_\_\_\_ Dollars)

FOR VALUE RECEIVED, Seller hereby irrevocably and without condition or reservation of any kind sells, transfers and conveys to Buyer the Work, and all right to possession, and all legal and equitable ownership of the Work, to have and to hold the Work unto Buyer, its successors and assigns, forever.

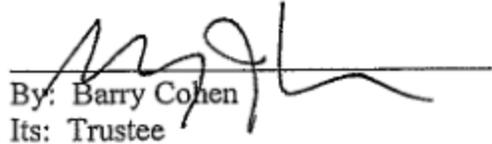
Seller represents and warrants to Buyer that upon delivery by Seller to Buyer of the Work, good, valid and marketable title and exclusive and unrestricted right to possession of the Work, free of all Claims (as defined below), will pass from Seller to Buyer.

Seller represents and warrants that (i) the Work is an authentic work of art created by the artist indicated above; (ii) Seller has full legal right and authority to sell the Work to Buyer; (iii) Seller is the sole and absolute owner of the Work and has good and marketable title to the Work; and (iv) the Work is subject to no claims, liens, security interests or encumbrances ("Claims"). Seller indemnifies and holds Buyer harmless from any and all demands, claims, suits, judgments, losses and other liabilities (including but not limited to reasonable attorneys' fees and other reasonable expenses incurred by Buyer in connection with the matters so indemnified) asserted by or awarded to any person or entity against Buyer arising by reason of the alleged or actual breach, alleged or actual falsity or alleged or actual incorrectness of any of Seller's representations or warranties contained in this Bill of Sale. These representations and warranties shall survive the delivery of this Bill of Sale to Buyer. In all other respects, the Work is being transferred to Buyer in "as is" condition, and other than as specifically represented in this Bill of Sale, neither Seller nor anyone on behalf of Seller is making any representations or warranties of any kind whatsoever, express or implied, with regard to the Works, including without limitation, representations or warranties as to condition or value.

The terms and provisions of this Bill of Sale shall be binding upon Seller and Seller's successors, assigns and legal representatives and shall inure to the benefit of Buyer and Buyer's successors, assigns and legal representatives.

This Bill of Sale shall be governed by and shall be construed and enforced in accordance with the laws of the State of New York without regard to any conflict of laws principles. This Bill of Sale may be executed by facsimile or PDF, each of which shall be deemed an original.

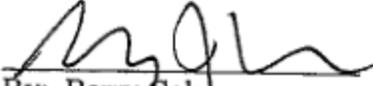
BLACK FAMILY 1997 TRUST

  
By: Barry Cohen  
Its: Trustee

**IDENTIFICATION STATEMENT**

Pursuant to Paragraph 1.B.i of the Reverse Exchange Agreement between Black Family 1997 Trust and Gagosian Gallery, Inc. dated the \_\_\_\_ day of June, 2012, Black Family 1997 Trust hereby identifies the following Relinquished Work. This Identification Statement may be executed by facsimile or PDF, each of which shall be deemed an original.

BLACK FAMILY 1997 TRUST

  
By: Barry Cohen  
Its: Trustee

Dated as of: July 10, 2012

Artist:	Mark Rothko	Fair Market Value
Title:	<i>Untitled</i>	
Medium:	Oil on canvas	\$ _____
Size:	93 1/8 x 80 1/8 inches	
Date:	Signed and dated 1961 on reverse	

IDENTIFICATION OF RELINQUISHED WORK  
RECEIVED AS OF THE 10<sup>th</sup> DAY OF JULY, 2012, BY:

GAGOSIAN GALLERY, INC.

\_\_\_\_\_  
By: Larry Gagosian  
Its: President

## LOAN AGREEMENT

THIS AGREEMENT made and entered into this 10th day of July, 2012, by and between Black Family 1997 Trust, with an address at 9 West 57<sup>th</sup> Street, New York, New York 10019 ("Lender"), and Gagosian Gallery, Inc., having an office at 980 Madison Avenue, New York, New York 10075 ("Borrower").

### WITNESSETH:

WHEREAS, Borrower wishes to borrow funds from Lender for the purpose of acquiring the work of art more fully described on Exhibit A attached hereto (the "Work"); and

WHEREAS, Lender wishes to lend funds to Borrower for the purpose of acquiring the Work.

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement, the parties agree as follows:

**1. The Loan.**

Lender agrees to loan Forty Eight Million Dollars (\$48,000,000.00) (the "Loan") to Borrower to be used only for the purpose of Borrower paying the purchase price of the Work pursuant to a certain reverse exchange agreement bearing even date herewith (the "Reverse Exchange Agreement"), a copy of which is attached hereto as Exhibit B. The Loan, or any part thereof, shall be advanced from Lender to Borrower based on a written request from Borrower setting forth in detail the timely need for the Loan. The Loan will be repayable by Borrower to Lender on the earliest of (i) the Exchange Date (as defined in the Reverse Exchange Agreement), (ii) the occurrence of an Event of Default (as defined in Paragraph 3 herein), or (iii) such date as agreed to, in a writing executed and delivered by both of the parties hereto.

**2. Promissory Note.**

Borrower agrees to sign a promissory note as evidence of the Loan made under this Agreement in the form attached hereto as Exhibit C. No interest shall be payable on the Loan.

**3. Events of Default.**

Upon the occurrence of any of the following events (collectively "Events of Default"; individually "Event of Default"), the outstanding principal amount of the Loan and all other outstanding indebtedness and obligations of Borrower to Lender shall become immediately due and payable, and Borrower shall immediately reimburse Lender (in addition to any other damages or monies to which Lender may be entitled) for all of Lender's expenses incurred in connection with this Agreement. The Events of Default are the following:

(a) after not less than five (5) days notice, Borrower shall default in the payment of any principal of the Loan as and when the same shall become due and payable;

(b) Borrower shall breach, or fail to perform when due, any agreement, covenant or obligation to be performed by Borrower pursuant hereto, and such breach or failure to perform shall continue for more than ten (10) days following notice thereof to Borrower;

(c) Borrower shall file a petition seeking relief, or a case or proceeding shall have been commenced against Borrower in court having competent jurisdiction seeking a decree or order in respect of Borrower, under Title 11 of the United States Code, as now constituted or hereinafter amended, or any other applicable federal, state or foreign bankruptcy or other similar law, or Borrower shall consent to the institution of proceedings thereunder or to the filing of any such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee or sequestrator (or similar official) of Borrower or of any substantial part of Borrower's assets;

(d) the Work shall cease to be subject to Lender's continuing security interest of first priority in and first lien upon all of Borrower's right, title and interest in and to the Work and the proceeds thereof, insurance proceeds and products thereof, additions and accessions thereto and any accounts receivable arising therefrom, by reason of any willfully, wrongful, reckless or negligent act or omission of Borrower; or

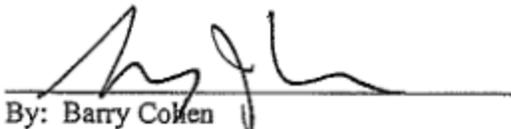
(e) there shall be any levy, seizure, attachment or execution upon the Work by reason of any willful, wrongful, reckless or negligent act or omission of Borrower.

4. Miscellaneous.

Except for the provisions of the other agreements and instruments relating to the Work and to this transaction bearing even date herewith, this Agreement represents the entire understanding of the parties hereto with respect to the Loan, supersedes any and all other and prior agreements between the parties with respect thereto and declares all such prior agreements between the parties null and void. If any of the provisions of this Agreement shall be held to be invalid or unenforceable, the determination of invalidity or unenforceability of any such provision or provisions shall not affect the validity or enforceability of any other provision or provisions of this Agreement. The terms of this Agreement may not be modified or amended, except in a writing signed by the parties hereto and so designated. This Agreement and all matters relating to it shall be governed by the laws of the State of New York without regard to any conflict of laws principles. This Agreement shall inure to the benefit of, and shall be binding upon, the successors, assignors, heirs, executors and administrators of the parties hereto. Any dispute arising hereunder shall be resolved in the New York Supreme Court, New York County or in the United States District Court for the Southern District of New York, and the parties hereto consent to the personal jurisdiction of those Courts. This Agreement may be executed in two or more counterparts, including by facsimile or PDF, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Loan Agreement the day and year first above written.

LENDER  
Black Family 1997 Trust

  
By: Barry Coken  
Its: Trustee

BORROWER

Gagosian Gallery, Inc.

\_\_\_\_\_  
By: Larry Gagosian  
Its: President

EXHIBIT A

THE WORK

Artist: Pablo Picasso  
Title: *Mateu Fernández de Soto*  
Medium: Oil on canvas  
Size: 18 1/8 x 15 in. (46 x 38 cm)  
Date: 1901

EXHIBIT B

REVERSE EXCHANGE AGREEMENT

EXHIBIT C

PROMISSORY NOTE

Black Family 1997 Trust  
9 West 57<sup>th</sup> Street  
New York, New York 10019

As of July 10, 2012

Gagosian Gallery, Inc.  
980 Madison Avenue  
New York, New York 10075

Re: Advisor Fee Letter: Sale of Mark Rothko, *Untitled*, 1961 ("Rothko")

Dear Larry:

This is to confirm that on the completion of the trust's purchase of Picasso, *Mateu Fernández de Soto*, 1901 and the sale of the Rothko, the trust will pay you a fee as described below in full payment for your services as the qualified exchange agent intermediary and for your art investment advice pertaining to my sale of the Rothko.

I hereby authorize you to offer the Rothko to the three to four potential buyers, to be mutually agreed upon at a minimum price to be determined. If you do not have a firm offer from any of those potential buyers by August 15, 2012, you shall consign the Rothko to Sotheby's, Inc or Christie's, Inc. My attorney shall negotiate the consignment agreement on your behalf.

If Gagosian Gallery, Inc. sells the Rothko directly to a buyer for more than \$48,000,000.00, you shall receive one hundred percent (100%) of the overage up to \$50,000,000.00. Additionally, you shall receive twenty-five percent (25%) of any amount over \$50,000,000.00.

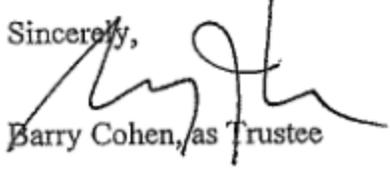
If the Rothko is sold through Sotheby's or Christie's, and Sotheby's or Christie's sells the Rothko to a buyer for a hammer price of more than \$48,000,000.00, you shall receive one hundred percent (100%) of the overage up to \$50,000,000.00 and any balance shall be paid to me.

Please invoice me along these lines and your invoice will be paid within five (5) days after my exchange transaction is complete.

You hereby agree that the terms of my purchase and sale of the works of art, the trust's name, Leon D. Black's name, and the name of the seller and buyer, the purchase price and all other matters pertaining to my purchase or sale shall be kept strictly confidential.

Please indicate your agreement with the foregoing by signing the enclosed copy of this letter and returning it to me.

Sincerely,

  
Barry Cohen, as Trustee

AGREED TO:  
Gagosian Gallery, Inc.

By: Larry Gagosian  
Title: President