

COLLABORATION AGREEMENT

between

HARTILL ART ASSOCIATES, INC. and [Text Deleted],

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

and

THE ANDREW W. MELLON FOUNDATION

WHEREAS, Hartill Art Associates, Inc. and [Text] in his individual capacity (collectively "Hartill"), the California Digital Library (the "CDL") on behalf of The Regents of the University of California ("UC"), and The Andrew W. Mellon Foundation (the "Foundation") understand that Hartill has created and is the owner of a collection of high quality photographs of architectural works, sculpture, mosaics, and stained glass associated with such architectural works, currently captured in high resolution on slides ("Hartill Slides");

WHEREAS, Hartill, UC, and the Foundation (collectively the "Parties") recognize that the collection of Hartill Slides is a valuable and important resource for teaching and/or research;

WHEREAS, the Parties further recognize that the Hartill Slides should be preserved for archival purposes, and UC is interested in purchasing a complete set of the Hartill Slides and housing that set of Hartill Slides at the UC for archival purposes;

WHEREAS, the Parties seek to have digital images created from the Hartill Slides and to incorporate those digital images into: (a) visual resources and databases that will contain other images of architecture and art works and associated texts and cataloging and that will be managed and made available for noncommercial uses by the University of California to facilitate teaching, learning, and research throughout the communities it serves (collectively "Educational Resources"); and (b) an electronic database that is being built by the Foundation and that will contain other images of architecture and art works, associated texts and cataloging, an electronic search engine, and software and user tools ("ArtSTOR Database"), and that will be managed and made available for noncommercial uses by a nonprofit designee of the Foundation ("ArtSTOR") to facilitate teaching, learning, and research;

NOW, THEREFORE, having received consideration in the form of the mutual promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to the following Collaboration Agreement (the "Agreement"):

A. The Purchase of A Set of Master Hartill Slides for Archival Purposes and for the Creation of Digital Images from those Slides

1. Purchase of Master Hartill Slides. In connection with this agreement, UC will purchase from Hartill one complete set of all master Hartill Slides of the highest quality and resolution available to Hartill, numbering approximately 25,000-30,000 slides in total, and any and all associated cataloging information for those slides in unedited form (all of the slides and cataloging information are collectively referred to as "Hartill Archival Slides"), to be used for those noncommercial uses described in this Agreement. The Parties understand that Hartill, in compiling the Hartill Archival Slides, will review all of his slides and remove lower-quality duplicate slides, and that after the removal of such duplicates, the total number of Hartill Archival Slides purchased by UC under this Agreement will be approximately 25,000-30,000. Hartill may keep other sets of Hartill Slides for any use or purpose. In exchange for the Hartill Archival Slides, UC will pay Hartill a total sum of US[Text Deleted]
[Text Deleted]

in paragraph A(2) below) of Hartill Archival Slides to the Foundation. Upon execution of this Agreement, Hartill agrees to invoice UC for the first [Text Deleted] payment, in a format to be specified by UC. Upon shipment of the last batch of Hartill Archival Slides to the Foundation (as set forth in paragraph A(2) below), Hartill will invoice UC for the last [Text Deleted] payment, and that invoice will be in approximately the same format as the first invoice.

2. Shipment of Hartill Archival Slides. Following Hartill's receipt of the first [Text Deleted] payment, Hartill will: (a) as soon as possible, provide the Foundation with the most recent cataloging information in electronic form, so that the Foundation can create a written inventory of the Hartill Archival Slides. The Foundation will provide Hartill with a copy of that inventory; (b) begin shipping the slides in batches by subject matter to the Foundation for digitization, along with information that Hartill will fill in on the inventory corresponding to those slides. No later than 90 days from Hartill's receipt of the first [Text Deleted] payment and the inventory described in this paragraph, Hartill will have reviewed all slides and removed lower-quality duplicates, will have shipped a complete set of all Hartill Archival Slides to the Foundation for digitizing, and will have provided the Foundation with all cataloging in its most current form. The Foundation will pay for the shipping and insurance costs associated with delivering the Hartill Archival Slides to the Foundation.
3. Digitization of Hartill Archival Slides. The Foundation agrees that it will pay for [Text Deleted] associated with having representatives of the Foundation and/or ArtSTOR digitize select slides, the selection of which slides will be made by the Foundation and/or ArtSTOR, in consultation with the CDL and Hartill, and for the creation in electronic form of Hartill cataloging information (to the extent that such cataloging information is not already in electronic form). Such digitization shall be in accordance with standards to be agreed upon by CDL and the

Foundation and/or ArtSTOR. To ensure that the digital images are of high quality and that they accurately capture the objects of the Hartill Archival Slides, Hartill agrees to review sample images at the Foundation's request. For purposes of this Agreement, all of the digital images created from the 25,000-30,000 Hartill Archival Slides and associated electronic cataloging shall collectively be referred to as "Hartill Digital Images";

4. Copies of the Hartill Digital Images to CDL and Hartill. Within 30 days following the creation of the Hartill Digital Images, the Foundation and/or ArtSTOR will provide the CDL with one set of the Hartill Digital Images on hard disk drives (including the cataloging information in electronic form) for the uses specified in this Agreement. The Foundation and/or ArtSTOR will also promptly return to the CDL all Hartill Archival Slides after the creation of the Hartill Digital Images. The Foundation and/or ArtSTOR will further provide Hartill with one set of the Hartill Digital Images, including the electronic cataloging information, for his own uses, commercial or otherwise, on either hard disk drives or CDs, as indicated by Hartill. The Foundation agrees to pay [Text Deleted] [Text Deleted] associated with delivering the Hartill Archival Slides and a set of the Hartill Digital Images to the CDL ([Text Deleted] [Text Deleted] and [Text Deleted] associated with delivering the Hartill Digital Images to Hartill [Text Deleted] [Text Deleted]

B. Intellectual Property Rights

1. Hartill Retains Copyrights in the Hartill Slides, Hartill Archival Slides, and Hartill Digital Images. Hartill will hold the copyrights in the Hartill Slides, Hartill Archival Slides, and the Hartill Digital Images (including all cataloging information). Hartill will have the right to use the Hartill Slides (other than the set of Hartill Archival Slides that he has provided to the CDL) and Hartill Digital Images in any manner of Hartill's choosing, including for commercial and non-commercial purposes, subject to the rights granted to the Foundation, and/or ArtSTOR, and subject to the rights granted to UC, in this Agreement, and subject to paragraph B(5) herein.
2. License to UC. Hartill grants UC a perpetual, irrevocable, non-exclusive license, free of charge or royalty (other than the purchase price set forth in paragraph A(1) herein): (a) to transfer physical possession of the Hartill Archival Slides and Hartill Digital Images to a University of California library or academic department for archival purposes; (b) upon execution of this Agreement, to incorporate the Hartill Digital Images in any format or resolution in Educational Resources that make available the Hartill Digital Images in any resolution or format only to students, faculty, staff, and educational and cultural institutions that are affiliated with the University of California, *provided that* access to the Hartill Digital Images through such Educational Resources is limited to persons at those institutions, and users of such Educational Resources are prohibited, either through user agreements or other electronic notices, from making commercial uses of the Hartill Digital Images and from reproducing the Hartill Digital Images

in Publications (as defined in paragraph B(4) below) without express permission from Hartill; (c) following a period of 18 months from the execution of this Agreement, to incorporate the Hartill Digital Images in any format or resolution in Educational Resources that make available the Hartill Digital Images worldwide (to institutions inside or outside the State of California) in any resolution or format to students, faculty, staff, and other affiliates of educational and cultural institutions *provided that* access to the Hartill Digital Images in such Educational Resources is limited to persons at those institutions, and users of such Educational Resources are prohibited, either through user agreements or other electronic notices, from making commercial uses of the Hartill Digital Images and from reproducing the Hartill Digital Images in Publications (as defined in paragraph B(4) below) without express permission from Hartill; (d) to incorporate the Hartill Digital Images in any format or resolution in noncommercial Educational Resources that are made available on unrestricted websites worldwide, in the event that Hartill and/c[Text Deleted]

[Text Deleted] stop licensing the Hartill Digital Images and the Hartill Archival Slides for his own purposes; (e) to digitally and electronically associate, link, compile, and aggregate in any format or resolution the Hartill Digital Images with other images and materials in the Educational Resources; (f) to digitally and electronically transmit, display, and distribute the Hartill Digital Images in any format or resolution to users of the Educational Resources; (g) to permit users of the Educational Resources to use, display, and reproduce the Hartill Digital Images or Hartill Archival Slides for educational and scholarly uses in any media, format, and resolution, provided that users are prohibited from reproducing the Hartill Digital Images or Hartill Archival Slides in Publications (as defined below) or from making commercial uses of them. These intellectual property rights apply to any future technologies or media that develop to supplement or replace the Internet.

3. License to the Foundation and ArtSTOR. Hartill grants the Foundation, and ArtSTOR a perpetual, irrevocable, worldwide, non-exclusive license free of charge or royalty (other than the payment [Text Deleted] [Text Deleted] as set forth in paragraph A(2) herein): (a) to incorporate the Hartill Digital Images in any format or resolution in the ArtSTOR Database; (b) to digitally and electronically associate, link, compile, and aggregate the Hartill Digital Images in any format or resolution with other images of art works from other sources, and with the content of other digital projects and resources made available for educational, cultural, and charitable purposes; (c) to digitally and electronically transmit, display, and distribute in any format or resolution the Hartill Digital Images to users for educational, cultural, and charitable purposes, subject to user agreements and/or electronic terms and conditions of use between the Foundation and/or ArtSTOR, on the one hand, and users, on the other, concerning the educational, cultural, and charitable uses of ArtSTOR and the restrictions on their reproduction in Publications (as defined in paragraph B(4) below) or commercial uses; and (d) to reproduce the Hartill Digital Images in any size, resolution, media, or format for the foregoing purposes. These intellectual property rights apply to any future technologies or media that develop to supplement or replace the Internet.

4. Restrictions on Reproductions in Publications and Commercial Uses. UC agrees to provide notice to users of the Educational Resources that they may not reproduce the Hartill Archival Slides and/or Hartill Digital Images in print or electronic publications that are published by a publisher (commercial or noncommercial) and that are intended for broad distribution to multiple institutions or individuals ("Publications"), nor make commercial uses of the Hartill Archival Slides and/or Hartill Digital Images, without seeking advance permission, and paying any standard fees, to Hartill. Similarly, the Foundation, and/or ArtSTOR is obligated to inform users of the ArtSTOR Database, through user agreements and/or electronic terms and conditions of use that appear in the ArtSTOR Database, that users of the ArtSTOR Database must seek permission from Hartill before reproducing the Hartill Digital Images in Publications or before making commercial uses of the Hartill Digital Images. Hartill agrees that such permissions will not be unreasonably withheld, provided that the person or entity pays a standard fee for such uses.
5. Slides of the Guggenheim Museum in Bilbao. Hartill has taken approximately 22 photographs of the building that currently houses the Guggenheim Museum in Bilbao, Spain ("Guggenheim Bilbao Slides"), and Hartill has already created digital images from those slides ("Guggenheim Bilbao Images"). Hartill will only provide UC with copies of the Guggenheim Bilbao Slides and/or Guggenheim Bilbao Images upon UC providing written documentation showing that the Guggenheim has given permission to the UC to make use of the images for noncommercial educational purposes consistent with this Agreement. Similarly, Hartill will only provide the Foundation with copies of the Guggenheim Bilbao Slides and/or Guggenheim Bilbao Images upon the Foundation and/or ARTstor providing written documentation showing that the Guggenheim has given permission to ARTstor to make use of the images for noncommercial educational purposes consistent with this Agreement. UC and the Foundation agree that they will abide, and that ARTstor will abide, by all educational use restrictions placed on the use of the Guggenheim Bilbao Slides and Guggenheim Bilbao Images by the Guggenheim.
6. The Foundation and/or ArtSTOR Hold the Exclusive Intellectual Property Rights in the ArtSTOR Database. The Foundation, and/or ArtSTOR, holds and will hold the exclusive intellectual property ownership rights in the ArtSTOR Database, including but not limited to the copyright of the ArtSTOR Database as a compilation, and/or collective or derivative work. The Foundation and/or ArtSTOR, and/or third parties with whom the Foundation and/or ArtSTOR has signed license agreements, hold and will hold the intellectual property ownership rights, including but not limited to any copyrights, patents, or trademarks, in any software and/or technologies developed in connection with the ArtSTOR Database.
7. License to Use and Reproduce Hartill Digital Images in the Classroom without Seeking Permission or Paying Publication Fee. Hartill grants the Foundation, ArtSTOR, and the UC each a perpetual, worldwide, nonexclusive, irrevocable

license to permit educational, cultural, and charitable users of the ArtSTOR Database and the Educational Resources, respectively, to reproduce or display in print or electronic form the Hartill Digital Images, for teaching purposes, on a projection screen, in classroom materials, or in other teaching devices, without incurring a publication fee or royalty. These intellectual property rights apply to any future technologies or media that develop to supplement or replace the Internet.

8. License to Use Images to Publicize ArtSTOR and the Educational Resources. Notwithstanding the limited licenses herein, Hartill grants the Foundation, ArtSTOR, and the UC each a perpetual, worldwide, non-exclusive, irrevocable license to use a small selection of the Hartill Digital Images on the unrestricted ArtSTOR website or an unrestricted UC website, respectively, and/or in print form, for the limited purpose of publicizing the availability of the ArtSTOR Database and the Educational Resources and promoting their scholarly and educational use, without incurring a royalty or publication fee. These intellectual property rights apply to any future technologies or media that develop to supplement or replace the Internet.
9. License to Use Thumbnail Images. The Parties understand that the inclusion of thumbnail-sized Hartill Digital Images, along with other thumbnail-sized images of works included in the ArtSTOR Database or Educational Resources, or on the unrestricted ArtSTOR or UC Websites, will serve as an important resource to users or potential users of the ArtSTOR Database and the Educational Resources in that it will allow them to quickly browse the content in those resources. The Parties further understand that the inclusion of such thumbnail-sized Hartill Digital Images on the ArtSTOR and UC websites may also provide benefits to Hartill, such as publicity and recognition. Accordingly, Hartill grants UC, the Foundation, and ArtSTOR each a perpetual, worldwide, non-exclusive, irrevocable license free of charge or royalty to use thumbnail-sized images of all of the Hartill Digital Images on UC's and ArtSTOR's unrestricted websites provided such thumbnail-sized images are not of sufficient resolution that they would typically be used in Publications. These intellectual property rights apply to any future technologies or media that develop to supplement or replace the Internet.
10. Annual User Fees. The Foundation and/or ArtSTOR will charge annual user fees to educational, cultural, or charitable institutions for access to the ArtSTOR Database, in order to defray part of the costs of maintaining and distributing the ArtSTOR Database.
11. Work for Hire. The Parties agree that the copyrights to any work product created or developed in connection with the digitization of the Hartill Digital Images will be assigned to Hartill and will be performed by either: (1) an employee of one of the Parties to this Agreement, acting within the scope of his or her employment; or (2) a contractor pursuant to a written contract that provides that any work product is the property of Hartill and/or Hartill's designated party, and is not the property of that contractor.

C. Other

1. Entire Agreement. This Agreement constitutes the entire agreement and supersedes all prior communications, understandings, and agreements, whether written or oral, relating to the subject matter herein. No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by the authorized representatives of the Parties.
2. Authority to Execute and Grant Rights Herein. Each Party to this Agreement represents that this Agreement has been signed and executed by a person with the requisite corporate authority to act on its behalf, to grant these rights, and to enter into this Agreement. Hartill further represents and warrants that Hartill owns the exclusive intellectual property rights to the Hartill Slides and Hartill Archival Slides and that the use of the Hartill Slides, Hartill Archival Slides, and Hartill Digital Images by the Foundation, ArtSTOR, and CDL will not violate the rights of any third person.
3. Indemnification. Hartill shall indemnify and hold UC, the Foundation, ArtSTOR, their collective officers and employees, and the users of the Educational Resources and ArtSTOR Database (collectively "Licensees") harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any claim by any third party of an alleged infringement of copyright or any other property right arising out of the use of the Hartill Digital Images or Hartill Archival Slides by Licensees or any Authorized User of the Educational Resources and ArtSTOR Database. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.

The Parties shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any alleged breach of such indemnifying party's representations and warranties made under this Agreement, provided that the indemnifying party is promptly notified of any such claims. The indemnifying party shall have the right to defend such claims at its own expense. The other party shall provide assistance in investigating and defending such claims as the indemnifying party may reasonably request and have the right to participate in the defense at its own expense.

4. Construction of Contract. This Agreement shall in no way be construed to limit the applicability or validity of the US copyright laws, including the fair use and educational exceptions under those laws.
5. Severability. If any provision or provisions of this Agreement are deemed invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

6. Waivers. The waiver of any provision or provisions of this Agreement shall not be deemed to be a waiver of any other provision herein, nor shall a waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.
7. Cancellation of ArtSTOR Funding. The Foundation reserves the right to discontinue and/or cancel the funding of the ArtSTOR Database at any time and for any reason, and if it should do so, the licenses granted to the Foundation and/or ArtSTOR herein shall terminate, unless the Foundation designates a nonprofit educational institution to house and manage the ArtSTOR Database on terms that are materially the same as contained herein.
8. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of

_____, 2003.

HARTILL ART ASSOCIATES, INC.
AND [Text Deleted] IN HIS INDIVIDUAL
CAPACITY
[Text Deleted]

THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA

[Text Deleted]

By:

By: _____

Name

Name

Title: Owner/Photographer

Title: Deputy University Librarian

Date: 2003 Feb 14

Date: February 21, 2003

THE ANDREW W. MELLON FOUNDATION
[Text Deleted]

By:

Name

Title: Vice President for Operations + Planning

Date: 2/12/03