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**Artists in Legacy-Land:
Endowing Foundations to Balance
Market and Philanthropic Activity**

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Sotheby's Institute of Art: Master's in Art Business
December 2022
Word Count: 15,920

ABSTRACT

In this paper, artist-endowed foundations are examined to assess the direct and indirect impact of their philanthropic activity on the art market. Beginning with an overview of historical and contextual variables paving the way for private philanthropy in the 20th century, specific case studies are analyzed--established foundations, as well as varying formats for smaller foundations, that illustrate the symbiotic relationship between the art market and artist-endowed foundations. Emphasis is placed on the newfound popularity of artists establishing foundations, and securing legacy, within their lifetimes rather than upon death, as this has the potential to yield the best results. Best practices are then identified for artists looking to establish 21st century foundations. Artist-endowed foundations have become instruments for not only securing legacy, but also fueling arts and culture more broadly. Future artist-endowed foundations should look to build upon the success of their predecessors; their decisions will promote their artists' legacies and support other artists in unique ways, as well as drive the art market and its audience to new heights. A circular model, where artists strengthen and support each other and art institutions, will be a final stage of development for an advanced art market.

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I would like to formally acknowledge the following:

The faculty and staff at Sotheby's Institute of Art for providing me with a theoretical understanding of the art world and an incredible experience. In particular, I thank my advisor, Eric M. Wolf, PhD, MSLIS for his wise counsel on this project...

Christopher Gaillard, for inspiring my thinking from an art market perspective...

Dr. Liliana Leopardi, for sparking my sustained interest in ever-expanding world of Art History...

My peers at Sotheby's Institute of Art, for insightful discussions that enhanced this shared experience...

My family for their support in all my endeavors...

“Every artist was first an amateur.”

—Ralph Waldo Emerson

“When bankers get together for dinner, they discuss art. When artists get together for dinner, they discuss money.”

—Oscar Wilde

“The reward for good work is more work.”

—Tom Sachs

INTRODUCTION

Artists' legacies have long been determined by factors beyond their control—their careers often at the mercy of sporadic support from ultra-wealthy patrons' and true notoriety eluding them until after death. Society's current relationship with artists and artwork, however, has never been more proximal, due to the globalized and structured art market formed over a century of innovation. Beginning in the 1900s, industrial and technological advances allowed time and money to flow toward art and culture, and as a result, artists began to enjoy successful careers and achieve lifetime recognition and status. With this success came visions of legacy, an opportunity to solidify their own place in art history, influence the art market, and promote the careers of other artists.

This paper focuses primarily on the development of U.S.-based, artist-endowed foundations in the 20th century and the effects of these foundations on the art market. The relationship is symbiotic: private, tax-exempt, artist-endowed foundations pursue activity which not only benefits the artist's legacy—through programs benefiting the public—but also develops and secures an essential market for the artist, keeping the work relevant to the public and prominent in the art history context. A foundation's charitable activity can take a variety of forms, benefiting the public in various, and often innovative, ways. Like the art market directing attention toward areas of value, artists, through foundations,

direct funding toward philanthropic niches they value, addressing local or specific areas of need. Programs sponsored by artist-endowed foundations affect the careers of other artists and/or institutions with intention, creating new stories of success in the art world. In this way, their work directly impacts the market.

The lifetime success of artists cannot be underestimated in the ability of foundations to achieve their goals. Today, artists have an unprecedented amount of exposure and public attention. The market often finds artists directly from MFA programs and success can occur overnight. Granted, the space is more crowded in a highly developed art market that generates more practicing artists, more fairs, more galleries, and more public interest than ever, but artist success is arguably more common than it was in the 20th century.

The contemporary art market has brought attention to living artists, and while markets are fickle, unremittingly seeking value in new areas, success can be properly leveraged and managed, through philanthropy and legacy planning, to enhance the overall art world.

This paper explores, through specific case studies, the interrelatedness of philanthropy and the market and culminates in a discussion of best practices. Studying innovative, 20th century, artist-endowed foundations is essential to understanding the societal function of these institutions and provides a basis for identifying strategies and best practices for 21st century foundations. By capitalizing on their current lifetime success, contemporary

artists have an opportunity to usher in the next generation of artist-endowed foundations, thereby influencing the art world according to their own insights and values.

This paper will first examine the groundwork that supported creation of artist-endowed foundations, considering contextual variables and historical events that allowed artists to envision their legacies. A series of case studies will then be presented and analyzed, in a consistent approach, to compare strategies and practices. Several niche foundations of varying success also will also be briefly summarized in this section, to explore how broad and niche the field of artist-endowed foundations has become. Finally, a set of best practices will be identified. These will both summarize findings from the case studies and prove how charitable activity and the market can be motivated cooperatively for ideal results. This analysis makes clear that planning for a distinct legacy has become a process that artists can, and should, begin to undertake themselves. This is a means of ensuring their place in art history, the strength of their market, the perpetuity of their body of work, and, ultimately, their impact from beyond the grave. Through their foundations, artists can support future artists or institutions in their own name and promote the very cultural ecosystem which nurtured and benefitted them.

SETTING THE STAGE FOR ARTIST-ENDOWED FOUNDATIONS

GROWTH OF PHILANTHROPY

The 20th century was an unprecedented moment for both artists and social programming in the United States. Career artists became much more common as the art market globalized, and artists began to achieve widespread social recognition for their work during their lifetimes, rather than posthumously. Meanwhile, philanthropy grew from a relatively small endeavor, pursued mainly by religious organizations, to a significantly larger and more influential social tool wielded by private foundations and individuals.

A few pivotal societal changes drove the growth of private philanthropy in the 20th century. Macro-trends included ongoing industrialization, exponential economic growth, broader social awareness with appetite for change, and a more educated public, as well as a movement from public to private charitable activity. These trends were spurred by events like the Great Depression, World War II, the Vietnam War, and the Civil Rights movement. Private philanthropy became a tool for tackling issues too niche for direct government impact. This was the perfect environment for artist-endowed foundations to rise in the United States as they grew out of artists' own desires to support other artists.

An excellent starting point for examining the history of private philanthropy is in the academic realm. Academics not only propelled social and liberal movements throughout the 20th century, but also built strategies for managing endowments early on. With the overall number of private academic institutions growing at the end of the 19th century,

endowment management became a major area of focus.¹ This coincided with the growth of industry and overall GDP in the U.S., as “prior to 1865, the economy of the United States did not produce enough surplus wealth to support significant benefactions, and most gifts were made for current use.”² Academic institutions blazed a trail for efficient fund management to grow endowments strategically and supporting their tax-exempt activity. An exemplar of this type of growth is Harvard University, which has historically grown its academic endowment. In fact, Harvard’s endowment has grown to the point where they formed a subsidiary 501(c)(3) in 1974—Harvard Management Company—to monitor the endowment and ensure the growth necessary to meet the charitable ends at the University level.³ Harvard exemplifies the role of academic institutions in modeling the growth of private philanthropy in the 20th century.

An indirect effect of the growth of academic institutions and education was the support it provided to the arts and culture. Artists and collectors are inextricably tied to 20th century educational developments. Most museumgoers and Arts patrons were college-educated. “The National Research Center for the Arts found in 1975 that 78% of those going to art museums had a college degree.”⁴ At the same time, Masters Fine Arts (MFA) programs were on the rise, and career paths were established for artists who wanted to be

¹ Claudia Goldin and Katz F. Lawrence, “The Shaping of Higher Education: The Formative Years in The United States, 1890-1940,” *Journal of Economic Perspectives* 13(1), Winter, 1999 page 12; Bruce A. Kimball and Benjamin Ashby Johnson, “The Inception of the Meaning and Significance of Endowment in American Higher Education, 1890–1930.” *Teachers College Record Volume 114(10)*, 2012.

² Ibid.

³ Harvard Management Company, 2022, <https://www.hmc.harvard.edu/>.

⁴ Titia Hurst, “A History of the Western Art Market,” University of California Press, Berkeley, 2017, page 325.

educated under a strict arts curriculum in the U.S.⁵ The growth of an educated public and artistic professionalism led to further success of the arts in the 20th century.

DEVELOPMENT OF U.S. ART MARKET

The growth of the art market cannot be underestimated as an impetus for artist-endowed foundations because the strength of these markets allowed artists to make careers of their work, prompted support from patrons, and encouraged collectors. As the U.S. strengthened its economy and began to become a global power in the first half of the 20th century, the attention to art and culture was slightly delayed. The “local primary art market was slow to develop,” as “wealthy Americans were accustomed to purchasing art from the same source as their wines and gowns—Paris—and this inhibited the formation of the critical mass of artists and collectors needed for an American artistic culture to flourish.”⁶ World War II brought not only increased economic development, but also a cultural migration of artists from Europe to the U.S., in particular, to New York City.⁷ New York City saw changes in demographics and class ranges, over new and old immigrant populations, deepening the cultural relevance of the new world hub.⁸ In the midst of the 20th century, the U.S. art market found its stride, and parallels between the market, liberalism, and philanthropy contributed to its success.

⁵ Artists were also able to teach through which they were able support their careers. Artists like Joseph Albers and Faith Ringgold linked teaching and their professional practices.

⁶ Titia Hurst, “A History of the Western Art Market,” University of California Press, Berkeley, 2017, page 31.

⁷ Ibid.

⁸ Tom, McGlynn, “The Adolph and Esther Gottlieb Foundation,” *The Brooklyn Rail*, July-August 2019, <https://brooklynrail.org/2019/07/artonic/The-Adolph-and-Esther-Gottlieb-Foundation>

Fascinatingly, the beginnings of the established art market in the U.S., have their roots in government aid, and art supported the overall advancement of American values relating to freedom and diplomacy. The 1920s and 1930s saw the establishment of the Museum of Modern Art and introduction of government aid to the arts through the Works Progress Administration (WPA).⁹ Newly established museums, supported by the U.S. government, developed international exhibitions at ends with authoritarianism. The CIA funded MoMA's international exhibitions after WWII and into the Cold War, while also supporting "cultural forays across Europe."¹⁰ The government provided funding that supported artists like Jackson Pollock, Lee Krasner, Willem de Kooning, Mark Rothko, Adolf Gottlieb, and Jacob Lawrence. These artists would become some of the foremost abstract expressionists, not only establishing the abstract expressionist movement, but also becoming some of the first artists to think about living legacies and impactful foundations.

Major cultural and political shifts at the global level in the 20th century positioned the U.S. to continue its economic development and compete, culturally, with the rest of the world. These changes were brought on by government funding and had lasting effects on the American art world. The early success of Abstract Expressionism led the way for prominent artists in the latter half of the 20th century, who achieved success within their lifetimes, to plan their legacies. It also set the groundwork for other American movements—such as neo-expressionism, new abstraction, pop-art, minimalism, post-

⁹ Titia Hurst, "A History of the Western Art Market," University of California Press, Berkeley, 2017, page 316.

¹⁰ Lucie Levine, "Was Modern Art Really a CIA Psy-Op?" *JSTOR Daily*, April 1st, 2020, Retrieved from: <https://daily.jstor.org/was-modern-art-really-a-cia-psy-op/>.

minimalism, and land art—which relied heavily on subsidization for their success. Thus, the development of the American art market is linked with the empowering concept of philanthropy as well as liberal social policy and cultural shifts.

Critics, curators, and collectors were next to rise in this newly developed U.S. art world, helping assure the public of abstract expressionism's impact and bringing educated perspectives that imbued the new movement with meaning and context. The number of galleries in the U.S. rose exponentially from seventy in 1940 to two-hundred-seventy-five in 1960, in response to the growing U.S. art market.¹¹ This set-in motion the careers of artists and gallerists alike. Galleries like Leo Castelli's, established in 1957, promoted exceptional work to the public, supported artists, and brought them success, as interest grew from private collectors.

THE RISE OF FOUNDATIONS

Early in the 20th century, individual private foundations were predominantly established by wealthy business tycoons, who made fortunes in industry. The Russell Sage foundation, established in 1907, is the first private foundation whose stated mission was "the improvement of social and living conditions in the United States."¹² The foundation was founded by Margaret Olivia Slocum Sage, widow of railroad magnate Russell Sage.¹³ The industrial revolution and social programming are linked, as the industrial revolution not only improved overall welfare but also brought capital into the burgeoning

¹¹ Titia Hurst, "A History of the Western Art Market," University of California Press, Berkeley 2017, page 324.

¹² Russell Sage Foundation, "History of the Foundation," Russell Sage Foundation, 2022, Retrieved from: <https://www.russellsage.org/about/history>.

¹³ Ibid.

and newly globalized United States economy. Other wealthy capitalists followed in the footsteps of Russell Sage. Andrew Carnegie and John D. Rockefeller, as well as Henry and Edsel Ford developed their own charitable organizations over the next thirty years.¹⁴ Today, these individual foundations pursue a variety of charitable ends and have grown their endowments annually. Their endowments, however, have been “surpassed by newer trusts created by such later entrepreneurs as...Packard, Kellogg, Lilly, and Hewlett.”¹⁵ These trail-blazing foundations, which pre-date artist-endowed foundations, serve as models as they comprise a large portion of overall philanthropic activity in the 20th century.

While artist-endowed foundations did not form until the latter half of the 20th century, foundations in support of the arts, created by patrons, families, and individual collectors, appeared just after the turn of the 20th century. The American Federation for the Arts (AFA), founded in 1909, was the first foundation in support of the arts in the U.S.¹⁶ The foundation, now over 100 years old, continues to “[enrich] the public’s understanding, experience and understanding of the visual arts through organizing and touring art exhibitions for presentation in museums around the world.”¹⁷ These exhibitions include relevant educational programming around art and culture. The AFA boasts an enormous record of exhibitions and has funded and helped organize hundreds of solo and group shows. The 1950s, 60s, and 70s were truly outstanding years for the foundation, judging

¹⁴ Philanthropy New York, “History of U.S. Philanthropy,” Philanthropy New York, 2009, p. 1

¹⁵ Mark Dowie, *American Foundations: An Investigative History*, The MIT Press, Cambridge, 2002, p. xxi

¹⁶ American Federation of Arts (AFA), “About,” AFA, 2022.

¹⁷ *Ibid.*

by the sheer amount and quality of their charitable activity throughout the decades.¹⁸ The foundation has consistently supported contemporary and modern movements, from its work to remove tariffs from art entering the U.S. in 1913, to developing a traveling exhibition on post-minimalism in 1968, and continued, inclusive programming to expand art access.¹⁹ The AFA set the stage for supporting the art world in the United States, while increasing the public's art awareness and fluency. The foundation's activity seems to have slowed in the past twenty years, for two likely reasons: its stagnated endowment and the growth of artist-endowed foundations.

To round out the discussion of philanthropy in the early 20th century, an overview of the Barnes Foundation is necessary. Albert C. Barnes (1872–1951) was a wealthy collector, who had close relationships with prominent artists of the time, including William Glackens, Charles Demuth, and Henri Matisse. His collection was initially housed in Lower Merion, Pennsylvania, where he would allow his factory workers and other community members to visit the collection for educational opportunities.²⁰ Barnes had a strong distaste for the established art world and academic elite and was a supporter of progressive education and social justice, working closely with the black community.²¹ Despite his disdain for the established art world, his collection is predominantly French Impressionist and Post-Impressionist works, and the collecting behavior is relatively predictable and limited in scope for the time—considering artists like Duchamp and

¹⁸ American Federation of Arts (AFA), “History,” AFA, 2022.

¹⁹ American Federation of Arts (AFA), “AFA History: A Century in the Arts,” AFA, 2022.

²⁰ The Barnes Foundation, “About,” The Barnes Foundation, Philadelphia, 2022, Retrieved from: <https://www.barnesfoundation.org/about>.

²¹ Ibid.

Malevich were contemporaneously making enormous conceptual strides. Barnes chartered the foundation in 1922, and upon his death, left control of the trustees to Lincoln University, a nearby, historically black university.²² He was aware of the strength of his amassed collection, and was keen to define his legacy precisely prior to his death in 1951. His will stipulated that that pictures in the collections were never to be “sold, lent or moved on the walls of the foundation’s building in Lower Merion.”²³ Foundation management was not the best, and by 1990, the foundation had “depleted its endowment and was operating with annual deficits.”²⁴ At a crossroads, it needed to adapt to a changing foundation landscape while also respecting the legacy and wishes of Dr. Barnes. This predicament created divisions in the art world, the realm of philanthropy, and the public, as the foundation struggled to balance these interests. In the end, other foundations stepped in to assist the Barnes Foundation. The Pew Charitable Trust, Lenfest Foundation, and Annenberg Foundation offered advice, and funding, on loosening the restrictions placed on the Barnes Foundation, including expanding the board of directors, fueling the endowment, and relocating the Barnes Foundation from Lower Merion to downtown Philadelphia.²⁵ These actions brought an overwhelming amount of attention to the foundation, as well as a torrent of criticism for neglecting Albert Barnes' explicit wishes for the collection.

²² Ibid.

²³ Carol Vogel, “Judge Rules the Barnes Can Move to Philadelphia,” *The New York Times*, December 14th, 2004.

²⁴ William A. Schambra “‘Art of the Steal’ Raises Tough Questions About Donor Intent,” *Philanthropy Daily*, May 2nd, 2019.

²⁵ Ibid.

The Barnes Foundation odyssey illustrates not only how U.S. philanthropy transformed from the beginning to the end of the 20th century, but also the types of problems that can arise in managing a legacy. The foundation's change in approach was roundly condemned for going against the donor's intent, and the assisting foundations were accused of dragging the Barnes Foundation into "venture philanthropy," and overemphasizing the promotion of revenue.²⁶ In reality, these were necessary changes, offering more opportunity for the public to view the collection and opening the door to further programming opportunities. The Barnes Foundation is a very large and important collection with holdings that have increased significantly in terms of both cultural and monetary value. This increased value required adaptation, and change was necessary to protect the collection, its tax-exempt status, and Albert C. Barnes' vision. Despite the controversy surrounding the Barnes relocation, it has been quite successful. The endowment has grown, and the foundation is able to continue its relatively narrow mission of "promoting the advancement of education and appreciation of the fine arts" to the public.²⁷ It serves as an example of just how difficult it is to manage a permanent collection while concurrently promoting charitable activity, when the founder has strictly prohibited sale of any artworks in the collection.

The overall number of general private philanthropic foundations increased rapidly in the latter half of the 20th century ballooning to 50,000 by the year 2000.²⁸ Artist-endowed

²⁶ Ibid.

²⁷ Internal Revenue Service (2020), "Form 990: Return of Organization Exempt from Income Tax: Barnes Foundation," retrieved from *ProPublica*.

²⁸ Mark Dowie, *American Foundations: An Investigative History*, The MIT Press, Cambridge, 2002, back cover.

foundations were a part of this philanthropic movement, taking hold mainly in the last 50 years. Once the Rothko Foundation and the Adolph & Esther Gottlieb Foundation were established in the late 60s and 70s, other career artists were motivated to begin planning their legacies as well.

As career artists became increasingly common throughout the 20th century, preserving artists' legacies naturally followed. Like business tycoons leading the way for the initial wave of charitable foundations, artists who achieved lifetime success looked to foundations as a means of managing the perpetuity of their assets. They were, of course, eager to assure their own legacies, but also wanted to fuel their contemporaries and assist future artists. The Internal Revenue Code provided a means of advancing these interests while simultaneously reaping tax benefits. Laws and regulations granting foundations tax-exempt status were established in the Revenue Act of 1954, under section 501(c)(3), "pursuant to which foundations could be organized and operated exclusively for tax exempt purposes."²⁹ Necessary to this status is the pursuit of charitable activity:

The term charitable is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.³⁰

²⁹ Paul Arnsberger, et. al, "A History of the Tax-Exempt Sector: An SOI Perspective," *Statistics of Income Bulletin*, Winter, 2008, page 107, Retrieved from: <https://www.irs.gov/pub/irs-soi/tehistory.pdf>.

³⁰ *Ibid*, page, 125.

While the activities of artist-endowed foundations could be interpreted to meet a number of these charitable purposes, the most common is often “education,” including working to inform the public of the artists and their work. This educational end is obviously met only if the foundation grants the public access to the artist’s work or other tangible educational benefits. The IRS has reworked the rules for these tax-exempt private foundations over the years, adding requirements. Most notably, private charitable foundations established as 501(c)(3)s must distribute at least five percent of their total endowment--or investable assets--each year.³¹ Foundations are penalized for not meeting this requirement, and if funds disguised as meeting charitable ends are benefiting private interests, then the foundation risks losing its tax-exempt status.³² These penalties ensure that private charitable foundations benefit the public and fulfill the founder’s vision.

ARTIST ENDOWED FOUNDATIONS

The first artist-endowed foundations appeared in the 1970s, with Mark Rothko (1903-1970) and Adolph Gottlieb (1903-1974) interested in pursuing charitable activity as part of their legacy.³³ Rothko, Gottlieb, and other contemporaries like Barnett Newman

³¹ The Association of Baltimore Area Grantmakers (ABAG), “Council on Foundations: The Five Percent Minimum Payout Requirement,” ABAG, 2000, <https://www.ncfp.org/wp-content/uploads/2018/09/The-Five-Percent-Minimum-Payout-Requirement-COF-2000-the-five-percent-minimum-payout-requirement.pdf>.

³² National Council of Nonprofits. “Protect Your Nonprofit’s Tax-Exempt Status.” National Council of Nonprofits. 2022, Retrieved from: <https://www.councilofnonprofits.org/tools-resources/protect-your-nonprofit%E2%80%99s-tax-exempt-status>.

³³ While Mark Rothko committed suicide in 1970, he established the Mark Rothko Foundation in a year prior, in 1969, and left many artworks to the foundation. These artworks were mishandled due to a conflict of interest between the executors and Marlborough Gallery, and the foundation was ultimately phased out due to legal struggles between the family and foundation management (See: Michael Brenson, “Rothko Foundation Gives 1,000 Works to 19 Art Museums,” *The New York Times*, May 4, 1984).

(1905-1970) discussed the writings of Peter Kropotkin and his collection of essays titled “Mutual Aid: A Factor of Evolution,” published at the turn of the 20th century.³⁴

Kropotkin’s writings on “mutual aid,” opposed social Darwinism and proposed concepts of “mutualism” and “altruism” as vital to the success and support of communities.³⁵

Kropotkin’s writings were vital to the increased feelings of community, spirit, and generosity in the growing artist population in New York City, and reflect the overall sentiment and motive in the development of artist-endowed foundations to fuel and empower artists.

Artist foundations have become increasingly popular since the initial wave in the 1970s, with artists looking to ensure their legacy during their lifetimes. Accordingly, formats and strategies for foundation management have also developed. While each foundation is unique in terms of vision and approach, the general definition of an artist-endowed foundation revolves around use of the artist’s assets for charitable activity. The Aspen Institute defines an artist-endowed foundation as “a tax-exempt, private foundation created or endowed by a visual artist, the artist’s surviving spouse, or other heirs or beneficiaries to own the artist’s assets for use in furthering charitable and educational activities serving a public benefit.”³⁶ Quantity and value of assets, as well as desired charitable activities, differ from artist to artist, which creates a large, diverse field of

³⁴ Tom, McGlynn, “The Adolph and Esther Gottlieb Foundation,” *The Brooklyn Rail*, July-August 2019, Retrieved from: <https://brooklynrail.org/2019/07/artonic/The-Adolph-and-Esther-Gottlieb-Foundation>.

³⁵ Ibid.

³⁶ The Aspen Institute, “Philanthropy: What is an Artist Endowed Foundation?” The Aspen Institute, July 5th, 2013, Retrieved from: <https://www.aspeninstitute.org/blog-posts/artist-endowed-foundation/>.

foundations, but upon examination, a somewhat standard strategy and balancing priorities emerges.

CASE STUDY #1: ADOLPH & ESTHER GOTTLIEB FOUNDATION

ESTABLISHMENT & DISBURSEMENT OF THE ESTATE

The Adolf & Esther Gottlieb Foundation (AEGF) is a model foundation that has enjoyed continuous strategic leadership. During his lifetime, Adolf Gottlieb discussed the concept of creating a foundation that would directly benefit artists through grant writing. At the time, there was no model for a foundation founded by an individual artist that would write cash grants to individual artists.³⁷ This meant the foundation would establish itself as an operating foundation, granting money directly to artists. The concept of the foundation was laid out in Gottlieb's will, where he requested a foundation be established to benefit "mature, creative painters and sculptors."³⁸ Esther Gottlieb, Adolf's wife, helped conceive of the idea and was the visionary bringing the concept to life.

Adolf Gottlieb died in 1974, amid legal drama surrounding the disbursement and dealings of the Rothko estate. Trustees of the Rothko estate had breached their fiduciary duties by commingling their personal business with that of the estate.³⁹ The AEGF was able to learn from these mistakes as it navigated its founding. Esther took control of Adolf's assets upon his death, and this initial control and involvement with the estate was essential. Rather than assume sole responsibility for these assets, she selected people she trusted with her husband's vision and legacy to help establish the foundation: Sanford

³⁷ Sanford Hirsch, "The Start of the Gottlieb Foundation," *Brooklyn Rail*, New York, December 2018 - January 2019, Retrieved from: <https://brooklynrail.org/2018/12/criticspage/The-Start-of-the-Gottlieb-Foundation>.

³⁸ Adolf and Esther Gottlieb Foundation, "About Our Grant Programs," Adolf & Esther Gottlieb Foundation, Inc., New York, 2022 Retrieved From:

<https://www.gottliebfoundation.org/grants>.

³⁹ See footnote, 33.

Hirsch and her nephew Dick Netzer.⁴⁰ Sanford Hirsch is a foundation director exemplar; initially serving as an administrator/curator, Hirsch became executive director ten years later, and still oversees the foundation today.⁴¹ Dick Netzer, an economist, provided insights on how the grant program might come to fruition.⁴² The three worked together to create what was, at the time, an unprecedented program, providing direct aid to individual, mature, artists.

Sanford Hirsch recalls hurdles encountered during AEGF's initial founding.⁴³ including the will, which stated that half the estate be used for the purposes of the foundation.⁴⁴ While this was a noble intention, the Gottlieb's were not particularly wealthy upon the death of Adolf in 1974, so the foundation, having practically no ready cash, had to borrow \$10,000 to establish its artist-support program. Assets included mainly a piece of real estate, which the foundation would later occupy, and the physical body of Adolf Gottlieb's work, which Hirsch considered "quite marketable."⁴⁵ Because Gottlieb had not achieved the level of public recognition and lifetime success necessary to support his vision, Esther Gottlieb, Sanford Hirsch, and Dick Netzer developed a strategic plan to

⁴⁰ Adolf and Esther Gottlieb Foundation, "About Our Grant Programs," Adolf & Esther Gottlieb Foundation, Inc., New York, 2022, retrieved from:

<https://www.gottliebfoundation.org/grants>.

⁴¹ Ibid.

⁴² Ibid; Dick Netzer is also the author of *The Subsidized Muse*, a book which discusses public support for the arts in the United States (See: Dick Netzer, *The Subsidized Muse*, Cambridge University Press, 1978).

⁴³ Magda Salvesen and Diane Cousineau, *Artists' Estates: Reputations in Trust*, 2005, Rutgers University Press, New Brunswick, 2005.

⁴⁴ Ibid, page 192.

⁴⁵ Ibid, page 194.

market and exhibit the collection to increase Adolph Gottlieb’s overall market visibility and translate it to revenue.

ENDOWMENT AND LICENSING

AEGF has seen massive growth in endowment since its \$10,000 of start-up funding, thanks to a strong foundation model spearheaded by Netzer and Hirsch.⁴⁶ As one of the first artist-endowed foundations, AEGF had to blaze a trail, and blaze they did, exceeding goals in shorter time frames than expected and ushering in a new wave of foundations endowed by artists. The AEGF’s current endowment is approximately \$33,000,000, with recent annual revenues amounting to an average of \$1,200,00.⁴⁷ The Gottlieb foundation is hesitant in terms of its licensing efforts and instead chooses to focus on exhibition programming.

AEGF’s CHARITABLE ENDEAVORS

The AEGF is an operating foundation,⁴⁸ organizing their own program to distribute funds and giving directly to recipients. The foundation also pursues exhibition programming, using their collection of Gottlieb’s work, which is considered charitable activity within the parameters of an operating foundation. The AEGF has a two-pronged, grant-making mission for distinct categories of need. Advancing Adolph’s desire to support mature

⁴⁶ Sanford Hirsch, “The Start of the Gottlieb Foundation,” *Brooklyn Rail*, December 2018 - January 2019, retrieved from: <https://brooklynrail.org/2018/12/criticspage/The-Start-of-the-Gottlieb-Foundation>.

⁴⁷ Internal Revenue Service (IRS), Form 990: Return of Organization Exempt from Income Tax: Adolph Esther Gottlieb Foundation, Inc., 2019-2021, retrieved from: *ProPublica*.

⁴⁸ An “Operating Foundation” is a private foundation that devotes most of its resources to the active conduct of its exempt activities (IRS, “Private Operating Foundations,” IRS, 2022).

artists, the foundation's "Individual Support Grant" aims to support such artists directly. This grant program is open to painters, sculptors, and printmakers who "have been producing art for at least 20 years and who are in current financial need."⁴⁹ The foundation has reached a broad scope of artists through open applications and has distributed grants worldwide. The Individual Support Grant is supplemented by an "Emergency Grant." The Emergency Grant provides readily available funding, without an onerous application process, to artists in dire or extreme circumstances. The Emergency Grant is available to "painters, printmakers, and sculptors who have been making mature art for at least 10 years and have recently undergone an unforeseen catastrophic event such as a fire, flood, or medical emergency."⁵⁰ Grants average \$5,000 but can reach a maximum of \$15,000.⁵¹ While such grants are not necessarily unique to the foundation, emergency support is another option for struggling artists searching for relief in trying times.⁵² Sanford Hirsch recalls running into an sculptor at an event who shared that the foundation had financed his reconstructive hand surgery.⁵³ AEGF's is storied and has made enormous impact with expedited turnarounds for approval, some as fast as 24 hours.⁵⁴ Because of unpredictable demands, such a grant program needs to be

⁴⁹ Adolf and Esther Gottlieb Foundation. "About Our Grant Programs." Adolf & Esther Gottlieb Foundation, Inc., New York, 2022. Retrieved From: <https://www.gottliebfoundation.org/grants>.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² The New York Foundation for the Arts (NYFA) has developed a list of emergency grant programs, and some other artist-endowed foundations, like the Joan Mitchell Foundation, have offered emergency funding.

⁵³ Magda Salvesen, and Diane Cousineau, *Artists' Estates: Reputations in Trust*, 2005, Rutgers University Press, New Brunswick, 2005, page 202.

⁵⁴ Tom, McGlynn, "The Adolph and Esther Gottlieb Foundation," *The Brooklyn Rail*, July-August 2019, <https://brooklynrail.org/2019/07/artonic/The-Adolph-and-Esther-Gottlieb-Foundation>.

nimble, with sufficient cash reserves to distribute funds quickly. These programs are labor intensive for foundation board members who must review applications in a timely manner, prioritize applicants in need, provide relief according to cash reserves on hand, and project revenue necessary to maintain and strengthen the program in the future.

EXHIBITIONS

Essential to the AEGF's mission is the development of exhibitions, through collaboration with institutions, to perpetuate the legacy of Adolf Gottlieb. Maintaining ownership of Gottlieb's art was always the intent of the Gottlieb foundation, as it decided to manage the works like a stock portfolio. Hirsch explains that the trustees "established a program to use the works of art in [their] collection to organize exhibitions for, and to lend to, museums and other public venues."⁵⁵ The exhibition programming builds recognition for Adolf Gottlieb's work, keeping him relevant in the art world, which bolsters the value of the works within their collection. Adding lines to exhibition history increases the market value of a work if it is eventually sold or used to secure financing, and the foundation can write off exhibition costs as tax-deductible, charitable activity. However, it is often difficult to balance these conflicting priorities. The Gottlieb foundation is always juggling "having a good body of work for museums" and "dealings with the commercial gallery world."⁵⁶ Commercial success is both connected to, and restrained by, public exhibition programs. When a dealer comes to the foundation with a buyer, for a work that is currently on public exhibition, the foundation needs to decide whether the dealer has the

⁵⁵ Sanford Hirsch, "The Start of the Gottlieb Foundation," *Brooklyn Rail*, December 2018 - January 2019, retrieved from: <https://brooklynrail.org/2018/12/criticspage/The-Start-of-the-Gottlieb-Foundation>.

⁵⁶ Magda Salvesen and Diane Cousineau, *Artists' Estates: Reputations in Trust*, 2005, Rutgers University Press, New Brunswick, 2005, page 199.

foundation's best interests in mind and consider timing the sale. Hirsch explains the foundation's rule: "once a work is selected for a public exhibition (and that can be years before the exhibition opens), it will not be offered for sale until the exhibition is completed."⁵⁷ A policy of restraint assures decisions about the collection will be thoughtfully considered rather than rash, but it is a double edged sword: on one hand a work's popularity and value might increase as a result of an exhibition, but the foundation also runs the risk of changes in the art market that might decrease the work's value or cause fluctuating interest among future buyers. The AEGF supplements public shows with exhibitions at Pace Gallery, which has represented the foundation since 2001.⁵⁸ These shows consign works from the foundation, and the gallery is able to offer them for private sale.

Despite the risks, AEGF's exhibition program is incredibly successful, perpetuating Gottlieb's legacy with an average of two or three posthumous, solo exhibitions each year, larger traveling shows every few years, and numerous inclusions in group shows each year.⁵⁹ In 2002 alone, the AEGF contributed to and planned five solo exhibitions. This does not include lending works to seventeen group exhibitions that year. While this might sound impressive, Hirsch describes it as being "really too much."⁶⁰ A balance must be

⁵⁷ Ibid.

⁵⁸ World Art Foundations, "Pace Gallery: Adolph Gottlieb 'Classic Paintings,'" World Art Foundations, 2022, retrieved from: <https://www.worldartfoundations.com/pace-gallery-adolph-gottlieb-classic-paintings/>.

⁵⁹ Adolph and Esther Gottlieb Foundation, "Exhibition History," Adolph and Esther Gottlieb Foundation, New York, 2022. Retrieved from: <https://www.gottliebfoundation.org/exhibition-history>.

⁶⁰ Magda Salvesen and Diane Cousineau, *Artists' Estates: Reputations in Trust*, 2005, Rutgers University Press, New Brunswick, 2005, page 199.

struck to ensure that exhibitions reach a certain level of quality and consistency, as well as relevancy to a current market and trends. As it takes years to plan these larger exhibitions, the foundation plans carefully, rolling out relatively unknown or undiscovered works alongside more important works and masterpieces. The foundation also made strides in the 2000s to introduce abstract expressionism to an international audience.⁶¹ These exhibits undoubtedly fueled the rise of the 20th century and contemporary markets overall, with abstract expressionists getting a significant amount of attention in the U.S.

While the AEGF continues its consistent exhibition programming, it seems to have shifted internal focus more toward grant-making activity, staging no international exhibitions since 2017, and keeping solo exhibitions to one per year for the last ten years.⁶² Also noticeable is the increased concentration of shows at Pace Gallery.⁶³ This is worrying, as Pace appears to be exercising more control of the exhibition programming. While Pace represents various mature artists and estates, the partnership could be more beneficial if Pace incorporated more Gottlieb Exhibitions at their international locations. Alternatively, perhaps the AEGF can rest on its laurels; having worked hard to shore up its endowment, it may no longer require four or five exhibitions a year to maintain momentum in both the market and the art world generally.

⁶¹ Ibid, page 200.

⁶² Adolph and Esther Gottlieb Foundation, “Exhibition History,” Adolph and Esther Gottlieb Foundation, Inc., New York, 2022. Retrieved from: <https://www.gottliebfoundation.org/exhibition-history>.

⁶³ World Art Foundations, “Pace Gallery: Adolph Gottlieb ‘Classic Paintings,’” World Art Foundations, 2022, retrieved from: <https://www.worldartfoundations.com/pace-gallery-adolph-gottlieb-classic-paintings/>.

MARKET UPS AND DOWNS

Gauging AEGF's success requires not only examining its endowment, charitable activity, and exhibition programming, but also cross referencing and contextualizing the foundation's decisions relating to art market fluctuations. The foundation has surely cemented Gottlieb's legacy while managing his collection of physical works. the artists While it is difficult to assess the foundation's direct market impact with precision-- private sale data, e.g., from Pace, would provide a nuanced view of the success of the foundation's work in terms of sales--the secondary market auction results are useful datapoints and are used in valuation. Reviewing record auction results, geographic distribution, and number of lots sold annually at auction paints a good picture of the current market for artwork by Adolf Gottlieb.

When reviewing the annual record price points for Gottlieb, a clear peak can be defined. In 2008, Gottlieb's *Cool Blast*, 1960, sold at Christie's for a realized price of \$6,537,000 USD.⁶⁴ The work had direct provenance and was put up at auction from the foundation's collection. Interestingly, it had not been included in any posthumous exhibitions.⁶⁵ It is a strong example of Gottlieb's later work, and from a transitional period in 1960. Despite the overachieving outcome, it comes as a surprise that the foundation would move to sell this work at this time. Christie's estimated the value at \$2 to \$3 million, and the Gottlieb foundation should have had higher expectations for the work to perform at auction, prior to consigning for this estimate. Price records from the previous years had only recently

⁶⁴ Christie's New York. *Post War and Contemporary Evening Sale*. Christie's: New York, 2008. Auction Catalog, Live Sale No. 1997. Retrieved from:

<https://www.christies.com/en/lot/lot-5074059>.

⁶⁵ Ibid.

broken the \$1 million milestone. Contextualizing the sale with the reconciliation of the larger economic market adds further insight to the sale, as the valuation was likely lowered in the reeling economic conditions. However, the foundation was not necessarily in need of the capital raised from the sale at that moment in 2008, as the revenue and total assets were up year over year, in both 2006 and 2007. Gottlieb's market has been meager since this peak, with more lots sold each year, and lacking turnover.⁶⁶ The foundation will look to advance the market through its relationship with Pace in the coming years, to keep up with the demands of its charitable activity.

GOTTLIEB FOUNDATION'S CURRENT STATE

The AEGF is an extremely successful foundation that models skillful management of physical artworks to grow an endowment. Strong board members and directors led the foundation well past its projected end and continue to preserve the legacy of Adolf and Esther Gottlieb. However, the foundation will also need to prepare for the eventual departure of Sanford Hirsch. The Gottlieb foundation is proof that an artist's legacy can continue to grow after death. Legacy does not depend solely on market valuations, but higher valuations can positively affect a foundation's charitable initiatives. Poorly managed collections drain funds and negatively impact both legacy and opportunity for financial growth and stability. The AEGF's exhibition program remains relatively strong, despite fewer annual exhibitions. This should be the case for more mature foundations as they devote more energy and funds toward the quality, not quantity, of the exhibitions.

⁶⁶ *Artprice*, Adolph Gottlieb (1903-1974), "Advanced Analytics: Annual Results, Records," accessed, December 2022, retrieved from: <https://www-artprice-com.ezproxy.sothebysinstitute.com/artist/11716/adolph-gottlieb/index?st=indexes>.

Energy and money can move out of exhibition programming and into grant writing initiatives.

CASE STUDY #2: THE ANDY WARHOL FOUNDATION FOR THE VISUAL ARTS

ESTABLISHMENT & DISBURSEMENT OF THE ESTATE:

The Andy Warhol Foundation for the Visual Arts (AWFVA) has learned to balance philanthropic and market priorities, a balance that allows it to maximize current endowment and pursue charitable activities, while also promoting the legacy of Andy Warhol (1928-1987) through numerous projects. Established as part of Warhol's will, with language authorizing the creation of a "charitable foundation to support the advancement of the visual arts,"⁶⁷ the foundation's mission focuses mainly on supporting artists and scholars through an extensive grants program, while continuing to promote Warhol's legacy through licensing and ongoing catalogue raisonné projects.⁶⁸ The foundation has been enormously successful in its endeavors, giving \$260 million in grants to 1,000 arts organizations. Additionally, the foundation has donated a total of 52,786 works of art to institutions worldwide.⁶⁹

The AWFVA was established May 1987, shortly after Warhol's death, and its success is the direct result of Warhol's lifetime success as one of the most prominent 20th century artists. His legacy has continued to flourish, thanks to the foundation's ability use these funds. Upon his death, Warhol left relatively little to his family and friends— \$250,000 each for brothers John and Paul Warhol, and another \$250,000 to Fred Hughes, his

⁶⁷ The Andy Warhol Foundation for the Visual Arts (AWFVA), "General Information." AWFVA, Inc., New York, 2022, retrieved from: <https://warholfoundation.org/about/faq/>.

⁶⁸ Ibid.

⁶⁹ Ibid.

business manager and estate executor.⁷⁰ Hughes also received executor fees, because he was instrumental in persuading Andy to write up a will in 1975 and assumed leadership of the foundation during its inception following Warhol's death.⁷¹ Because he was at the helm, he bore the brunt of confronting the immediate storm surrounding the Warhol estate.

Because relatives and friends will often squabble over a deceased artist's possessions, it is vitally important for an artist intent on establishing a foundation to draft a clearly worded will that minimizes the risk that parceling assets poses to the entirety of the estate. Warhol's considerable financial success allowed room for negotiation of the will, and his brothers received an additional \$337,743, after seeking separate legal counsel. When the brothers asked Hughes for paintings, Hughes declined, informing them that "everything belonged to the foundation."⁷² This is a legal obligation of an executor or trustee when disbursing an estate. As a fiduciary, the executor is "bound by law to maximize estate assets on the foundation's behalf."⁷³ Pursuing the highest market value for artworks and limiting taxes through charitable activity are obligations of an executor, who acts in the best interest of the deceased and ensures estate assets are properly handled. Hughes had the fiduciary duty to establish a foundation that would not only care

⁷⁰ Jo Ann Lewis, "Warhol the \$100 Million Morass," *The Washington Post*, April 22, 1988, retrieved from:

<https://www.washingtonpost.com/archive/lifestyle/1988/04/22/warhol-the-100-million-morass/4578cf4e-e4d6-4a5e-ba2a-ee25d20acf09/>.

⁷¹ Bob Colacello, "The House that Fred Built," *Vanity Fair*, August 1993, retrieved from: <https://archive.vanityfair.com/article/1993/8/the-house-that-fred-built>

⁷² Jo Ann Lewis, "Warhol the \$100 Million Morass," *The Washington Post*, April 22, 1988.

⁷³ Legal Information Institute, "Fiduciary Duty," Cornell Law School, Ithaca, 2022, retrieved from: https://www.law.cornell.edu/wex/fiduciary_duty.

for Warhol's tangible paintings, but also protect his legacy and further his philanthropic desire to support other artists.

APPRAISAL OF THE WARHOL ESTATE

At the time of Warhol's death, assets total \$100 million in real estate, cash, stocks, and bonds as well as an additional \$25 million generated by sale of Warhol's physical belongings at Sotheby's in 1988.⁷⁴ An appraisal by Christie's set the value of Warhol's own artwork in the estate at \$120 million in 1991, a value considerably less than the \$600-\$700 million figure estimated by estate lawyer Ed Hayes. The 1991 Christie's appraisal considered how the injection of a significant number of works by Warhol into the market would affect the market. The calculation for determining the impact of flooding the market with works is known as a "blockage discount."⁷⁵ The appraisal of Warhol's artwork by Christie's in 1991 would equate to roughly \$478 million in 2022. Surprisingly, still shy of the initial expected appraisal—largely due to the blockage discount.

The waters get murky here as the blockage discount should be a standard appraisal practice. However, considering Christie's continued relationship with AWFVA, questions arise regarding whether the initial value was suppressed to stabilize the future market for Warhol, and leave room for future landmark sales. Christie's and AWFVA would have both benefited from undervaluing the initial estate, as many of AWFVA's

⁷⁴ Jo Ann Lewis, "Warhol the \$100 Million Morass," *The Washington Post*, April 22, 1988, <https://www.washingtonpost.com/archive/lifestyle/1988/04/22/warhol-the-100-million-morass/4578cf4e-e4d6-4a5e-ba2a-ee25d20acf09/>.

⁷⁵ Magda Salvesen and Diane Cousineau, *Artists' Estates: Reputations in Trust*, 2005, Rutgers University Press, New Brunswick, 2005, page 223.

legal obligations would be reduced through a lower valuation. The lack of capital gains tax on works sold at auction for the foundation would be largely beneficial as the works in the estate appreciated from their initial projected value. This tax benefit also applies to donations made by the foundation, which could be written off “for the full fair market value up to a certain percentage of [the] adjusted gross income.”⁷⁶ In fact, works are given in advance to Christie's and turned over for “storage and preservation,” which saves the foundation \$3 million a year in expenses.⁷⁷ Given Hughes’ legal duty to pursue the highest appraisal value and financially rewarding partnership, the estimate seems underwhelming. However, it is arguably more favorable, from a market perspective, to adopt a strategy undervaluing estate artwork in the short term, to secure the market in the future. Here it seems that Hughes balanced his fiduciary duty with the reality of the market.

Fostering the partnership with Christie’s has boosted the foundation’s endowment, allowing it to focus solely on charitable activities. In 2012, the foundation announced that it would “sell or give away all its remaining Warhol holdings so it could bolster its endowment and focus strictly on making grants to nonprofit art organizations and art writers”⁷⁸ This luxury is the sign of a mature foundation.

⁷⁶ Estate Planning, “Setting Up Your Own Charitable Foundation,” Wealth Counsel, LLC, December 1, 2020, retrieved from: <https://www.estateplanning.com/setting-up-a-charitable-foundation>.

⁷⁷ Mike Boehm, “Andy Warhol Foundation Finishes a Spree of Art Giveaways,” *Los Angeles Times*, January 5th, 2015, retrieved from: <https://www.latimes.com/entertainment/arts/culture/la-et-cm-andy-warhol-foundation-art-donations-exhibitions-museums-universities-grants-20150105-story.html>

⁷⁸ Ibid.

AWFVA's PHILANTHROPIC ENDEAVORS

As Warhol's estate progressed, in terms of logistics and legal matters, the trustees began to envision how the foundation's mission to enable the visual arts would take shape. Hughes set up the foundation as a "non-operating" foundation. Rather than developing their own programming, non-operating foundations distribute grant funding to support other nonprofits and institutions.⁷⁹ This set the tone for how the AWFVA would conduct its charitable activities, which enabled AWFVA's clear, confident decision to sell artwork in its possession and transition to a cash-dominant foundation. Hughes' commitment to a non-operating status assured that the foundation would have sufficient cash from the endowment to pursue its goals. Non-operating foundations deduct a lesser percentage of their charitable activity than operating foundations. The AWFVA can claim only 30% of its total donations as tax deductions, while an operating foundation able to deduct 50%.⁸⁰ Therefore, to pursue charitable activities as a non-operating foundation, a considerable endowment is needed to churn income, pay taxes, and make an impact in their field. The AWFVA has done just this. Its non-operating status allows it to partner with institutions across all levels of the art world, and its independence from Warhol's physical body of work conserves resources and supports further research and writing related to his legacy.

⁷⁹ Philanthropy Roundtable, "Should You Choose a Private Non-Operating Foundation for Your Philanthropy?" Philanthropy Roundtable, December 23rd, 2021, Retrieved From: <https://www.philanthropyroundtable.org/resource/should-you-choose-a-private-non-operating-foundation-for-your-philanthropy/>.

⁸⁰ Critchfield, Critchfield, and Johnston, "What is the Difference Between Operating and Non-Operating Private Foundations?" Critchfield, Critchfield, and Johnston, Ltd., August 23rd, 2021, Retrieved From: <https://www.ccj.com/what-is-the-difference-between-operating-and-non-operating-private-foundations/>.

The AWFVA grant program slowed during protracted wrangling over the value of artwork in the estate, which persisted several years after Warhol's death.⁸¹ All the foundation's grant initiatives are funded through an endowment that was created from Andy Warhol's assets, as well as through revenue from a "licensing and sales program."⁸² Again, the foundation's non-operating status does not confine its charitable activities, so it can spread funds throughout the art world quite efficiently and frequently. The foundation reviews applications and distributes grants twice a year, fall and spring. They outline the application process on their website and encourage institutions at all levels to apply. Funds reach artists, art organizations, and curators, mostly across the United States, through three distinct grant types: curatorial research fellowships, exhibition support, and multi-year grants.⁸³ AWFVA supports numerous important exhibits often featuring Warhol but also promoting other contemporary artists. In 2022, the foundation supported both Brooklyn Museum's "Andy Warhol: Revelations," and the New Museum's "Theaster Gates: Young Lords and Their Traces." AWFVA supports not only established artists, but also institutions and artistic careers in progress. On top of these grant types, they also have a regional re-granting program and three special initiatives: Creative Capital, Common Field, and the Art Writers Grant.⁸⁴

⁸¹ Carol Vogel, "Value Put on Warhol Estate Declines," *The New York Times*, July 21st, 1993, Retrieved from: <https://www.nytimes.com/1993/07/21/arts/value-put-on-estate-of-warhol-declines.html>.

⁸² Andy Warhol Foundation for the Visual Arts, "Mission," AWFVA, Inc., New York, 2022, retrieved from: <https://warholfoundation.org/about/>.

⁸³ Andy Warhol Foundation for the Visual Arts, "Grants," AWFVA, Inc., New York, 2022, retrieved from: <https://warholfoundation.org/about/>.

⁸⁴ Ibid.

The overall, annual, charitable disbursements for the AWFVA in recent years have been upwards of \$18 million, comprising eighty percent of the foundation's annual expenses.⁸⁵ The foundation can dedicate this large portion of expenses to charity because of its non-operating status and the fact that it does not own any physical Warhol works. The foundation has been consistently funding unique and contemporary projects through their primary, semi-annual grant writing program. At around \$8 million a year, their main grant writing program makes up 50% of the total charitable disbursements.⁸⁶ The remaining 50% is used to further AWFVA's special initiatives and compensate officers. Officer compensation is included in charitable disbursements and includes salaries to officers who oversee writing and research on Andy Warhol—charitable activity promoting his legacy.

AWFVA's grant making program is unparalleled in terms of annual donations, distributing an average of \$15 million each year since 1987.⁸⁷ Recent funding appears concentrated in the Midwest and the West Coast, likely related to Warhol's Pittsburgh roots and the foundation's goals of expanding the reach of its grants and supporting artists who have traditionally received less funding.

⁸⁵ Internal Revenue Service (IRS). Form 990: Return of Organization Exempt from Income Tax: Andy Warhol Foundation for the Visual Arts. 2011-2020. Retrieved from *ProPublica*.

⁸⁶ Andy Warhol Foundation for the Visual Arts (AWFVA), "News: The Andy Warhol Foundation Announces Spring 2019 Grants," AWFVA, Inc., New York, July 17th, 2019, retrieved from: <https://warholfoundation.org/2019/07/17/the-warhol-foundation-announces-spring-2019-grants/>.

⁸⁷ Andy Warhol Foundation for the Visual Arts (AWFVA), "About: History," AWFVA, Inc., New York, 2022, Retrieved From: <https://warholfoundation.org/about/history/>.

Finally, the AWFVA has not confined itself to a simple, single grant distribution strategy, but has instead developed various “special initiatives,” including the Arts Writer Grant, Creative Capital, and Common Field. These special initiatives allow the AWFVA to target specific audiences, guaranteeing them predictable, consistent funding. This is an excellent method of grant distribution for large, mature foundations, as they can provide specific support through projects they lead.

ENDOWMENT AND LICENSING

The consistency of the AWFVA grant program proves how stable the endowment has been. In terms of endowment strategy, AWFVA uses a moving average spending scheme, where a spending rate is determined by averaging the portfolio value over a set number of years.⁸⁸ This method evens out the effect of market impacts on the investment portfolio and also allows for consistent and projected spending, which is enormously beneficial to artists, who receive regular aid, even in a bearish market.⁸⁹ It also allows AWFVA to develop special initiatives that require reliability and foresight for success.

AWFVA is particularly well suited to pursue licensing efforts due to Warhol’s infatuation with the world of advertising and American pop culture. Warhol was immersed in pop culture, from frequently using ad imagery in his work and creating portraits of pop-culture icons, to designing commissioned album covers and collaborating directly with brands like Absolut, Amiga, and Mercedes.⁹⁰ Given this intersection of Warhol’s work

⁸⁸ Jim Sonneborn, “A Primer for Nonprofit Spending Policies,” *Regent Atlantic*, May 14th, 2014, retrieved from: <https://regentatlantic.com/blog/primer-nonprofit-spending-policies-for-nonprofit/>.

⁸⁹ *Ibid.*

⁹⁰ Jon Burgess, “Andy Warhol’s Rarely Seen Mercedes Painting Will Divide Opinion—Again,” Hagerty Media Media Group, LLC, July 21st, 2022, Retrieved From:

and pop-culture, especially in the realm of advertising, it makes sense that, upon his death, the foundation was quick to pursue brand collaborations. Only a few months after Warhol's death, Fred Hughes signed a marketing deal with Schlaifer Nance & Company.⁹¹ The foundation focused on working with brands to perpetuate the image of Andy Warhol and to curate Warhol's legacy in accordance with his values. Importantly, these initial decisions reflect both the foresight Warhol had for his legacy, and the strength of Hughes as a trustee. Since its inception, the AWFVA has partnered with various licensing agencies to produce products and collaborated directly with partners in a broad spectrum of industries. Recent collaborations include fashion brands like Dior, Calvin Klein, Uniqlo, and Supreme, while also working on projects with brands like Bulgari, Estée Lauder, and Burger King.⁹² These partnerships reflect adaptation of Warhol's work to a 21st-century audience. AWFVA even has the means to dedicate a director position to "licensing and sales." While many artists would not consider licensing and commercializing their image to be an ideal legacy, Warhol's desire to be a pop-culture icon is something the foundation can perpetuate through licensing. In turn, these licensing agreements allow further strides in the foundation's charitable activity and impact the art world as Warhol intended. Therefore, AWFVA's brand collaborations serve three main purposes: 1) they advance Warhol's vision for his posthumous legacy; 2) they bolster revenue for the foundation, which fuels its charitable distributions; and 3)

<https://www.hagerty.com/media/news/andy-warhols-rarely-seen-mercedes-paintings-will-divide-opinion-again/>.

⁹¹ Bob Colacello, "The House that Fred Built," *Vanity Fair*, August 1993, Retrieved From: <https://archive.vanityfair.com/article/1993/8/the-house-that-fred-built>.

⁹² Andy Warhol Foundation for the Visual Arts (AWFVA), "Warhol: Licensing," AWFVA, Inc., New York, 2022, retrieved from: <https://warholfoundation.org/warhol/licensing/>.

they have a positive effect on the market for Warhol works by maintaining Warhol's continued relevance in pop-culture and collecting.

WARHOL FOUNDATION'S CURRENT STATE

The foregoing discussion illustrates that AWFVA is a standout success with continued impact on the art world. It was thoughtfully conceived by the artist during his lifetime and has made significant progress since his death, advancing its mission to support artists, which in turn enlightens the public. The foundation perpetuates Warhol's legacy, making thoughtful decisions about his oeuvre, which keeps the artist relevant decades after his death. Discussion of Warhol's market is absent here, as it remains strong, and the foundation has separated itself from its collection. Cultural relevance adds value to Warhol's existing work and helps generate funds to fulfill his vision of helping fellow artists. The public benefits indirectly from artist support, because when artists are supported, their work becomes more readily available to the public through common cultural or commercial venues. AWFVA's success is based, in large part, on Warhol's lifetime monetary success, which facilitated an easy transition of assets into philanthropic endeavors. By shedding physical ownership of Warhol's works, the foundation generated extra cash to support their non-operating activity. The present board members are at the top of their respective fields. AWFVA's leadership in the art world is evidenced by the broad range of institutions and agendas they support.

CASE STUDY #3: JOAN MITCHELL FOUNDATION

ESTABLISHMENT OF THE FOUNDATION

Joan Mitchell (1925-1992), one of the most prominent abstract painters, produced an expansive body of work during her lifetime. Her will advised forming a foundation to preserve her own legacy as a pioneering female artist while providing aid to artists through charitable activity.⁹³ The Joan Mitchell Foundation (JMF) was founded the year after her death and selected its first grant recipients in 1994.⁹⁴ Mitchell's vision for a foundation came on the heels of her contemporaries' similar actions to orchestrate their legacies. The operating model closely resembles that of the Gottlieb foundation, but the JMF developed more significantly in a shorter period. Like AEGF, JMF uses "funds from strategic sales of artworks in the Foundation's collection to grow an investment portfolio and support mission-driven work."⁹⁵ Mitchell had a prosperous career, achieving a high level of financial success within her lifetime, which had the downside of creating a complex estate.

APPRAISAL OF THE ESTATE & DISBURSEMENT OF THE ESTATE

A hurdle for foundations is receiving initial funding—often from an artist's estate—to form the foundation according to the artist's will. Joan Mitchell's estate entered a protracted settlement period following her death in 1992, which took over ten years to settle.⁹⁶ Despite having limited funding during this period, the JMF strategically allocated

⁹³ Amanda Millet-Sorsa, "Joan Mitchell Foundation," *The Brooklyn Rail*, June 2022, retrieved from: <https://brooklynrail.org/2022/06/artonic/Joan-Mitchell-Foundation-June>.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

⁹⁶ Joan Mitchell Foundation, "Foundation History," Joan Mitchell Foundation, Inc., New York, 2022, retrieved from: <https://www.joanmitchellfoundation.org/about/history>.

funds to support artists, build solid programming, and roadmap the future of the foundation. Capable board members were immediately identified, and their planning and staging during the estate settlement period resulted in a strong organization ready to acquire Mitchell’s body of work and archives when the time came. Proof of this robust start lies in the foundation’s numerous charitable activities accomplished in this initial period.

Working alongside the estate, the foundation was formalized, and a board appointed in 1993, which made excellent use of initial cash assets.⁹⁷ JMF distributed its first round of grants in 1994, just two years after Mitchell’s death. Eighteen grantees were given “unrestricted awards of \$10,000 to further their artistic practices and careers.”⁹⁸ The foundation therefore made an almost immediate impact with these initial awards, which set the tone for their vigorous grant program characterized by consistency and expansion over time. In 1994, the Estate of Joan Mitchell gifted four paintings to the Museum of Modern Art: *Grandes Carrières* (ca. 1962), *No Rain* (1976), *Wood, Wind, No Tuba* (1979), and *Untitled* (1963).⁹⁹ This was an important decision by the estate, as it wrote off the donation as a tax deduction, and could direct additional funds to the foundation. It also strengthened critical respect for Mitchell. These paintings would have been assessed by an outside appraiser prior to their donation, and overall values of the work would be deductible from income taxes imposed on appreciated estate assets.¹⁰⁰ This method

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Internal Revenue Service (IRS), “File an Estate Tax Income Tax Return,” IRS, 2022, retrieved from: <https://www.irs.gov/individuals/file-an-estate-tax-income-tax-return>.

avoids the taxes and fees that would be incurred if the artwork were sold directly at auction. The foundation continued to explore its charitable opportunities in 1996, when it developed an MFA grant program to fund artists in their final years of MFA programs.¹⁰¹ This program broadened the impact of the foundation, making grants accessible to young artists. The estate also financed Klaus Kertess’s monograph on Joan Mitchell in 1997.¹⁰² Mitchell had requested that her “lifetime friend, Klaus Kertess write the accompanying text” in the monograph.¹⁰³ The monograph is still one of the most important pieces of literature for the artist, and her catalogue raisonné is currently under production through the foundation. Finally, at the turn of the 21st century, the foundation further advanced its charitable activity, beginning an Art Education Program and providing financial support to artists impacted by the September 11 attacks in 2001.¹⁰⁴ This groundwork set the tone for the foundation, and settlement of the estate in 2004 catalyzed the foundation as it confidently managed its new assets and continued to scale its charitable endeavors.

CHARITABLE ENDEAVORS

JMF’s mission is to support artists while also stewarding Joan Mitchell’s legacy.¹⁰⁵ Since its first round of grants in 1994, it has always had an accessible, effective, and diverse program for charitable activity. The grants in 1994 were given under the “Painters & Sculptors Grant” program, and the foundation has since grown—and curtailed—its

¹⁰¹ Joan Mitchell Foundation, “Foundation History,” Joan Mitchell Foundation, Inc., New York, 2022, retrieved from: <https://www.joanmitchellfoundation.org/about/history>.

¹⁰² Ibid.

¹⁰³ Joan Mitchell Foundation, “Books & Media: Joan Mitchell, Klaus Kertess,” Joan Mitchell Foundation, Inc., New York, 2022, retrieved from: <https://www.joanmitchellfoundation.org/joan-mitchell/citations/joan-mitchell>.

¹⁰⁴ Joan Mitchell Foundation, “Foundation History,” Joan Mitchell Foundation, New York, Inc., 2022, retrieved from: <https://www.joanmitchellfoundation.org/about/history>.

¹⁰⁵ Ibid.

programming to be most effective. Eliminating programming can better position a foundation, aligning it with a more specific or targeted audience, while keeping program opportunities unique. This approach is appropriate in a burgeoning field of artist-endowed foundations offering various grants. JMF is an operating foundation whose current programs include the Joan Mitchell Fellowship, Residences in New Orleans, Professional Development, and their Creating a Living Legacy (CALL) Initiative.¹⁰⁶ This programming fulfills the charitable ends of the foundation while maintaining the legacy of Joan Mitchell through exhibitions, archival undertakings, and literature production.

JMF's chief grantmaking program is currently the Joan Mitchell Fellowship, developed in 2021, which aims to "re-envision and enhance the impact of the Foundation's earlier Painters & Sculptors Grants through a multi-year commitment."¹⁰⁷ This is important because artists involved in extensive projects can quickly exhaust funds. While one-time grants are helpful, a program like the Joan Mitchell Fellowship is much closer to how a gallery might support or contract with an artist. It provides 15 unrestricted grants of \$60,000 USD over the course of five years, which affords artists both stability and freedom. Additionally, the fellowship blends the funding package with other initiatives from the foundation:

"The financial support is interwoven with dedicated and flexible professional development that also unfolds across the five-year timeline, including virtual studio visits and one-on-one professional practice consultations; convenings that facilitate network-building; and programs that focus on personal finance, legacy planning, and thought leadership,

¹⁰⁶ Joan Mitchell Foundation, "Artist Programs," Joan Mitchell Foundation, Inc., New York, 2022, retrieved from: <https://www.joanmitchellfoundation.org/artist-programs>.

¹⁰⁷ Joan Mitchell Foundation, "Joan Mitchell Fellowship," Joan Mitchell Foundation, Inc., New York, 2022, retrieved from: <https://www.joanmitchellfoundation.org/joan-mitchell-fellowship>.

among other opportunities. As grant recipients, Fellows will also be eligible to apply for a residency at the Joan Mitchell Center in New Orleans.”¹⁰⁸

The foundation has thus created a small ecosystem in which selected artists can thrive.

However, the reach of the program is limited; artists must be nominated to receive the fellowship and must be living in New Orleans, or a past fellowship recipient.¹⁰⁹

Nonetheless, the foundation has a tight and strong lens for impact, as they hear nominations for the fellowship annually and reach a diverse range of artists, at different career points.

While the selective fellowship may elude most artists, the foundation also offers free resources through its Creating a Living Legacy (CALL) program, which makes professional development and legacy planning information widely available to artists.

The CALL initiative is a valuable resource for artists thinking about legacy, the market, and charitable activity. Initially developed in 2007, the initiative “provides a comprehensive suite of resources to help artists create usable documentation of their artworks and careers, manage their inventory of artworks, and start the estate planning process.”¹¹⁰ This is obviously an outstanding resource for mature or late career artists, but is also a wonderful tool to aid trustees in estate matters.

¹⁰⁸ Ibid.

¹⁰⁹ Joan Mitchell Foundation, “Residences in New Orleans,” Joan Mitchell Foundation, Inc., New York, 2022, retrieved from: <https://www.joanmitchellfoundation.org/residencies>.

¹¹⁰ Joan Mitchell Foundation, “Creating a Living Legacy (CALL),” Joan Mitchell Foundation, Inc., New York, 2022, retrieved from: <https://www.joanmitchellfoundation.org/creating-a-living-legacy>.

JMF has had significant impact on artists, supporting more than 1,000 since 1993.¹¹¹ In recent years it has focused primarily on its fellowship program, dissolving programs like its Painters and Sculptors Grants and Emergency Grants in pursuit of this. Supporting artists more thoroughly, through a multi-year grant program, and distributing larger amounts of funding over the five-year focuses the impact of the foundation. While the program is still young, it will undoubtedly yield impactful projects pursued by the nominated artists. The program achieves prestige through the nomination-based application process and recognizing fewer artists each year, moving from supporting 25 artists a year with the Painters & Sculptors Grant to 15 each year with the Fellowship program.

The adaption of the program shows thoughtful consideration of the foundation's impact in relation to its assets. A 501(c)(3) foundation must distribute at least 5% of its endowment value, calculated through a payout rule considering the "12-month average of the fair market value of the endowment for the tax year in question."¹¹² Joan Mitchell's market has become red-hot, boosting the value of the endowment over the past five to ten years and, accordingly, requiring a larger percentage of funding go to charitable activity. The program has expanded in terms of annual funding distribution, yet at the same time gained a greater focus through selectivity. This approach is good for an operating foundation with a larger endowment as it avoids inconsistently scattering funds in

¹¹¹ Joan Mitchell Foundation, "Supported Artists," Joan Mitchell Foundation, Inc., New York, 2022, retrieved from: <https://www.joanmitchellfoundation.org/supported-artists>.

¹¹² The Association of Baltimore Area Grantmakers, "Council on Foundations: The Five Percent Minimum Payout Requirement," ABAG, Baltimore, 2000, <https://www.ncfp.org/wp-content/uploads/2018/09/The-Five-Percent-Minimum-Payout-Requirement-COF-2000-the-five-percent-minimum-payout-requirement.pdf>.

multiple places. Selectivity and steady growth of charitable activity is the goal of a mature foundation and shows strong judgment from JMF's directors and board members. Finally, JMF takes on significant charitable activity in the name of Mitchell herself, managing a large archive of her works, letters, poetry, and materials. The foundation is also currently undertaking a very large catalogue raisonné project to formalize her body of work. Both activities have art historical and art market impacts.

ENDOWMENT AND LICENSING

JMF's endowment has performed remarkably over the last twenty years, and will undoubtedly continue, as the foundation not only balances its endowment with outside investments, but also still holds hundreds of the artist's works, which have become considerable assets. The endowment has seen considerable growth over the past twelve years. In 2001, total assets were just \$1.7 million USD.¹¹³ In the broader economic market, the following ten years were considered a "lost" decade in which the S&P 500 valuation ended lower in 2009 than when it started in 2000.¹¹⁴ Despite this, the foundation still grew valuation of its assets considerably, and in 2010, a middling year for the art market, reported assets at just under \$70 million USD.¹¹⁵ In the most recent data from 2020 the foundation's assets were reported at \$115 million USD.¹¹⁶ This

¹¹³ Internal Revenue Service (IRS), Form 990: Return of Organization Exempt from Income Tax: Joan Mitchell Foundation, Inc., 2001, retrieved from *ProPublica*.

¹¹⁴ The Evidence-Based Investor, "The Best and Worst of Times," *TEBI*, September 5th, 2019, retrieved from: <https://www.evidenceinvestor.com/the-best-and-worst-of-times/>.

¹¹⁵ Internal Revenue Service (IRS), Form 990: Return of Organization Exempt from Income Tax: Joan Mitchell Foundation, Inc., 2010, Retrieved from *ProPublica*.

¹¹⁶ Internal Revenue Service (IRS), Form 990: Return of Organization Exempt from Income Tax: Joan Mitchell Foundation, Inc., 2020, Retrieved from *ProPublica*.

exceptional and steady growth of roughly 60 percent over ten years equates to an annualized return of six percent each year. This is the value of the assets owned by the foundation and does not account for the exceedingly robust stock market year 2021, when private foundations posted an average of 16.3 percent growth.¹¹⁷ It makes sense that JMF chose to refine its grant program in 2021.

JMF has kept its licensing endeavors in check and has no notable partnerships or collaborations with brands, closely protecting Mitchell's image. Granted, the poetically abstract subject matter is not as marketable as something like Warhol's colorfully relevant prints. The foundation has explicit guidelines and processes for using its copyrighted material. These are outlined on the foundation's website, along with a submission form for approval. In this way, the foundation maintains tight control of Mitchell's posthumous image and can be selective in the literature produced by outside parties.

MITCHELL'S MARKET UPS & DOWNS

While Mitchell did reach lifetime success, the market for her work began to pick up steam only in the early 2000s. Since then, her market has experienced steady growth with values trending upward. This is immediately visible by comparing total auction turnover across several years. In 2000, turnover for Joan Mitchell's market was just \$1,840,000.¹¹⁸

¹¹⁷ Philanthropy News Digest, "Strong investment returns continued in 2021, report finds," *Candid*, August 26th, 2022, retrieved from: <https://philanthropynewsdigest.org/news/strong-investment-returns-continued-in-2021-report-finds>.

¹¹⁸ *ArtPrice*, Joan Mitchell (1925-1992), "Advanced Analytics: Annual Results, Turnover."

Turnover continued to increase following the record prices set in 2004 and 2005, peaking in 2008, at \$30 million; 2013, at \$43 million; and most recently, in 2018 at \$71 million. Turnover has remained elevated, above the \$50 million mark each year since 2018. This turnover emphasizes the exponential growth in Mitchell's market and should be confirmed by considering the number of lots sold to determine if there is a true rise in value, or simply more lots coming to auction. The number has remained relatively steady over time, with an average of 38 lots each year, confirming a true rise in value.

JMF has actively developed the market for her work. Mitchell's prices did not reach \$1 million plus record points until 2004, just as the estate was settled.¹¹⁹ The record-breaking work *Déjel*, 1961-1962, had a direct provenance line to Xavier Fourcade, providing further evidence that Mitchell's market had matured, as the gallerist had represented Mitchell during his lifetime, and respect was given to this history and provenance.¹²⁰ By 2004, the market had become aware of Mitchell, her career, and her best periods. In that year—the year the estate was settled—the foundation did not sell any of these record lots at auction, nor have they ever sold directly at auction. Instead, they used strategic exhibition programming and partnerships with galleries to drive sales. The foundation formalized relationship with Cheim & Read, having the gallery represent Mitchell in the market. This prompted solo shows in the early 2000s. In addition to this

¹¹⁹ *ArtPrice*, Joan Mitchell (1925-1992), “Advanced Analytics: Annual Results, Records.”

¹²⁰ John Russell, “Xavier Fourcade Dead at 60; Dealer in Contemporary Art,” *The New York Times*, April 29th, 1987, Retrieved from: <https://www.nytimes.com/1987/04/29/obituaries/xavier-fourcade-dead-at-60-dealer-in-contemporary-art.html>.

new partnership, the foundation also worked with The Whitney in a massive retrospective titled *The Paintings of Joan Mitchell*, which traveled among various museums from 2002 to 2004.¹²¹ This spurred record sales in 2004. Balancing market and philanthropic activity, the JMF aided the market for Mitchell, and furthered her legacy, while still furthering charitable ends.

As of 2018, David Zwirner has represented the JMF in the market. This came with a solo exhibition of some of her large format works on canvas at David Zwirner's Chelsea location. The exhibition, titled *I Carry My Landscapes with Me*, was the first that David Zwirner organized for Joan Mitchell in 2019. Seven out of the ten total works in the exhibition came from JMF.¹²² Despite the new representation, revenues remained consistent from years past, suggesting that there has not been an immediate difference due to the David Zwirner partnership.¹²³ The foundation director, Christa Blatchford stated that the foundation chose David Zwirner because it “admired the level of scholarship, the quality of the artists and the international scope.”¹²⁴ This makes sense, as David Zwirner has become an international brand with increasing resources at its

¹²¹ Joan Mitchell Foundation, “Joan Mitchell’s Curriculum Vitae,” Joan Mitchell Foundation, Inc., New York, 2022, retrieved from: <https://www.joanmitchellfoundation.org/uploads/pdf/Joan-Mitchell-CV.pdf>.

¹²² Joan Mitchell, “*Joan Mitchell: I carry my landscapes with me*,” David Zwirner, New York, May-July 2019, Retrieved from: <https://www.davidzwirner.com/exhibitions/2019/i-carry-my-landscapes-around-me#/checklist>.

¹²³ Internal Revenue Service (IRS), Form 990: Return of Organization Exempt from Income Tax: Joan Mitchell Foundation, Inc., 2017-2020, Retrieved from *ProPublica*.

¹²⁴ Robin Pogrebin, “David Zwirner to Represent Abstract Painter Joan Mitchell,” *The New York Times*, May 1st, 2018, Retrieved from: <https://www.nytimes.com/2018/05/01/arts/design/david-zwirner-to-represent-joan-mitchell.html>.

disposal. Like that of other abstract-expressionists, Joan Mitchell's market is almost non-existent outside of the U.S. Despite the new representation, David Zwirner's latest exhibition in 2022, titled *Joan Mitchell: Paintings 1979-1985* was staged in the gallery's New York City space, the same location as the 2019 exhibition.¹²⁵ Clearly JMF is operating on the right level, as it attempts to switch representation to a more sizable gallery and even direct attention internationally, attempting to expand the market for Mitchell. Most important, though not acknowledged by Blatchford directly, are the sales and marketing abilities of a gallery like David Zwirner. With a department dedicated to managing "Institutional Partnerships," Zwirner has resources to support developed foundations like the JMF. Partnering with a gallery that has in-house support can significantly reduce a foundation's logistical problems, freeing up time for charitable activity.

Mitchell's market is poised for continued success, as her larger canvases continue to fetch over \$14 million at auction. Auction results from Christie's support this, as the auction house, in 2018, sold *Blueberry*, 1969 and *12 Hawks at 3 O'clock*, 1962 for \$16.6 million and \$14.5 million respectively. While the latter fell short of its low estimate, it reappeared at Art Basel, Hong Kong, in 2021, where Lévy Gorvy sold the painting for \$20 million USD.¹²⁶ This is encouraging not only because it reflects the rising Mitchell

¹²⁵ Joan Mitchell, "*Joan Mitchell: Paintings 1979-1985*," David Zwirner, New York, November-December 2019, Retrieved from: <https://www.davidzwirner.com/exhibitions/2022/joan-mitchell-paintings-1979-1985/press-release>.

¹²⁶ Angelica Villa, "\$20 M. Joan Mitchell Painting Sells During Art Basel Hong Kong's Early Hours," *ArtNews*, May 20th, 2021, Retrieved from: <https://www.artnews.com/art-news/market/joan-mitchell-painting-art-basel-hong-kong-sale-1234593499/>.

market, but also because it shows international appeal for abstract expressionists' work. It also evidences David Zwirner's divided interest in representing the foundation, as they chose to bring a roster of young artists to the same fair. Most recently, in 2022, Mitchell's *Untitled*, 1989, went for upwards of \$14 million USD in a Christie's evening auction. Joan Mitchell's market sentiment remains high, allowing the foundation to continue to grow its endowment and charitable activity.

CURRENT STATE OF THE JOAN MITCHELL FOUNDATION

Like AEGF and AWFVA, JMF stands out in the field. It has grown its endowment and charitable activity year after year, and taken on massive legacy projects, like Mitchell's catalogue raisonné. This charitable activity aids aspiring artists and formalizes Mitchell's legacy and market.

Elimination of the Emergency Grant program is disappointing because a foundation with such a large endowment can undoubtedly devote resources to such a program. While the applications for the program are likely numerous and labor intensive for staff members, the program serves a valuable social purpose. The foundation also needs to be careful in terms of exhibition programming. Underwhelming solo shows, like the one currently at David Zwirner, can hinder Mitchell's market. Instead, the foundation should focus on advancing Mitchell's legacy on an international scale. Finally, the foundation needs to promote its CALL initiative. While there is incredible information available through its free resources, the foundation could be even more active in supporting career artists in such activity.

While the decision to restructure their grant programming was bold, it seems to be the right decision. As more foundations enter the field, unique and specific programming stands out. The parameters of the fellowship program offer more diverse opportunities and larger, more consistent—and extended—rounds of funding to artists. This is a foundation that seems ready to slowly part ways with its physical body of work, grow its endowment, and focus solely on charitable activity.

COMPARATIVE ANALYSIS OF THE FIELD

The foundations reviewed this far, have been incredibly successful in promoting the legacy of their endowed artists. This is largely because of the artists' lifetime success of the endowing artist and the foundations' skillful management. However, there other foundation formats worth exploring, as well as lessons to be learned from poorly managed foundations. This section briefly presents several niche, small-scale, or poorly-managed foundations, providing further insight into strategies for managing foundations and their larger art market implications. Attention is given to foundations established by a living artist, those handling unique physical collections, and those that have left their legacies in the wrong hands.

THE LIVING ARTIST FOUNDATION

The David Hockney Foundation is an excellent example of a foundation endowed by a living artist who has reached lifetime success and secured legacy through a tax-exempt, 501(c)(3). The David Hockney Foundation's stated mission is "advancing appreciation and understanding of visual art and culture."¹²⁷ Hockney (b. 1937) is still living, and his foundation currently exists to own and maintain a large body of around 8,000 Hockney works; perform archival activity relating to Hockney, his work, and his process; and lend works to institutions for exhibitions. Undoubtedly, the foundation will eventually transition into more impactful charitable endeavors, but for now, their priority is primarily record-keeping. Hockney, listed as a director, works alongside other directors to build the foundation, as he sees fit, to a point of transition.

¹²⁷ The David Hockney Foundation, "Mission," The David Hockney Foundation, 2022, Retrieved from: <https://www.thedavidhockneyfoundation.org/foundation>.

MANAGING UNIQUE ART AND STUDIO SPACE

Some artist-endowed foundations aim to protect their artists' particular brand of art. Two foundations focusing on large-scale art are the Calder Foundation and The Holt-Smithson Foundation. The Calder foundation is “dedicated to collecting, exhibiting, preserving, and interpreting the art and archives of Alexander Calder.”¹²⁸ While some of these objectives are typical of an artist-endowed foundation, some are unique to this particular foundation, which preserves Calder’s “works, archives, homes, and studios,” and “[examines] works attributed to Calder.”¹²⁹ These activities make sense given the scale, and outdoor context, of Calder’s work, as well as the number of forgeries in circulation, particularly in his printed works. Both activities have market-related implications.

The foundation also has a unique residency program, where artists can live and work in Calder’s studio in Saché, France. The program gives artists funding, technical support, and the opportunity to “realize artistic projects that might otherwise prove daunting.”¹³⁰

The residency program links back to Calder directly—the scale at which Calder often worked required a large studio space. This space's legacy lives on, as the foundation selects artists from an international pool to create works of similar scale and ambition.

The space has hosted projects from the likes of conceptual and performance artist Marina Abramovic,(2001); installation artist Tomás Saraceno (2010); and architect Marc Fornes

¹²⁸ Calder Foundation, “History & Mission,” Calder Foundation, New York, 2022, retrieved from: <https://calder.org/about/>.

¹²⁹ Ibid.

¹³⁰ Ibid.

(2012).¹³¹ The program not only uses the space to achieve charitable ends, but also breathes Calder’s legacy into a new generation of artists.

The Holt-Smithson Foundation, representing the legacies of both Nancy Holt and Robert Smithson, also deals with a difficult collection of artworks that are large in scale, semi-permanent, contextual, and expensive to maintain.¹³² The foundation currently focuses on maintaining the two artists’ archives, partnering with other institutions to accomplish this.¹³³ Working together, the estate and foundation gifted Nancy Holt’s *Sun Tunnels*, 1973-1976, and Robert Smithson’s *Spiral Jetty*, 1970, to the Dia Foundation.¹³⁴ Dia works as a steward for these important works, relieving the Holt-Smithson Foundation of maintenance responsibility for these land-art pieces,. This partnership suits both organizations as their viewpoints and missions are consistent. The partnership also exists to develop “publications, exhibitions, and special programs,” around the work of Smithson and Holt.¹³⁵

SUNSETTING: FOUNDATIONS WITH AN END IN SIGHT

Some foundations are established with “sunset provisions” indicating when they will cease to exist. For instance, the Holt-Smithson Foundation “is designed to last twenty

¹³¹ Calder Foundation, “Atelier Calder,” Calder Foundation, New York, 2022, Retrieved from: <https://calder.org/about/>.

¹³² The foundation works with two different galleries to represent the couple's work, with Robert Smithson being represented by Marian Goodman and Nancy Holt represented by Parafin. This decision illustrates how different artists, and their bodies of work, require different levels of attention and resources, while also proving the importance of international representation.

¹³³ Holt/Smithson Foundation, “Programs,” Holt/Smithson Foundation, 2022, retrieved from: <https://holtsmithsonfoundation.org/programs>.

¹³⁴ Holt/Smithson Foundation, “FAQ,” Holt/Smithson Foundation, 2022, retrieved from: <https://holtsmithsonfoundation.org/programs>.

¹³⁵ Holt/Smithson Foundation, “Programs,” Holt/Smithson Foundation, 2022, retrieved from: <https://holtsmithsonfoundation.org/programs>.

years, until 2038—a century from when both Smithson and Holt were born,” it seems the work of Holt and Smithson may enjoy increased relevance and market demand in this timeframe as focus turns to the planet in the face of global climate change.¹³⁶ The foundation has fast-tracked charitable programming, to maintain its tax-exempt status and perhaps capitalize on current public sentiment for environmentalism, ramping up *The Island Project: Point of Departure*, which will feature commissioned artists, Tacita Dean, Renée Green, Sky Hopinka, and Joan Jonas to “develop proposals responding to an island in Maine.”¹³⁷ The foundation will look to grow its endowment, distance itself from physical ownership of works, and find ways to relay the legacies of Holt and Smithson through charitable activity over the next twenty years.

The Georgia O’Keeffe Foundation is another prime example of a sunset foundation. Founded in 1989, shortly after Georgia O’Keeffe’s death (1887-1986), the foundation set an expiration date and planned its existence around its ultimate termination. The foundation terminated its activity in 2006, twenty years after it received the assets from O’Keeffe’s estate.¹³⁸ During its existence, the foundation recorded and distributed over “over a thousand paintings, drawings, and photographs,” donating many works to museums and promoting large exhibitions featuring the work.¹³⁹ This work by the foundation was fundamental to ensuring O’Keeffe’s place in both art history and the

¹³⁶ Claire Voon, “Nancy Holt and Robert Smithson Foundation Launches Ambitious Ten-Year Initiative to Wrestle with Artists’ Legacies,” *The Art Newspaper*, September 22nd, 2022, retrieved from: <https://www.theartnewspaper.com/2022/09/22/nancy-holt-robert-smithson-foundation-lecture-series>.

¹³⁷ Holt/Smithson Foundation, “Programs,” Holt/Smithson Foundation, 2022, Retrieved from: <https://holtsmithsonfoundation.org/programs>.

¹³⁸ Georgia O’Keeffe Foundation, “Guide to the Georgia O’Keeffe Foundation Records,” The Georgia O’Keeffe Foundation, circa. 1986-2006, Retrieved from: <https://snaccooperative.org/ark:/99166/w6xh4fvg>.

¹³⁹ Ibid.

market. The foundation took on the task of recontextualizing O’Keeffe, laying the groundwork for her current-day market through exhibitions and catalogue raisonné development. The sunset model worked well in this instance, as the foundation was able to ensure the legacy of their artist during its limited existence. Because of its constrained timeframe, the foundation did not need to envision direct grant-making activity or grow its endowment. Priorities were art-historically driven--donations to museums could be written-off and the ensuing market resulted from this limited, methodical distribution. O’Keeffe’s strong market is the result of her skill and the beauty of her work, but also the care taken to limit the number of works in private hands.

THE MISMANGAGED FOUNDATION

The quality of a foundation’s trustees/board members is vitally important to its success as mismanagement can be a death knell. The Judith Rothschild Foundation illustrates critical errors made by a foundation trustee. Judith Rothschild (1921-1993) was an early success in the 1940s.¹⁴⁰ She died with significant assets in physical artworks, cash, and real estate. In her will, she established the foundation and directed Harvey Shipley Miller, her friend, to use “her collection of artworks by masters like Matisse and Mondrian to promote underappreciated artists,” including herself.¹⁴¹ While Miller, the sole trustee, made strides in the name of Judith Rothschild, his ethically questionable behavior damaged both the foundation and Rothchild’s legacy. For example, he used foundation

¹⁴⁰ Richard Gray Gallery, “Estate of Judith Rothschild,” Richard Gray Gallery, New York, 2022, retrieved from: <https://www.richardgraygallery.com/artists/estate-of-judith-rothschild>.

¹⁴¹ Kevin Flynn and Robin Pogrebin, “Foundation Promotes Art as Well as Trustee,” *The New York Times*, March 17th, 2010, retrieved from: <https://www.nytimes.com/2010/03/18/arts/design/18foundation.html>.

assets to establish a fellowship in his *own* name at U.C.L.A. and donated a questionable collection to the Museum of Modern Art in 2003, when he was serving on the museum board.¹⁴² That year, the foundation also failed to make promised grants.¹⁴³ Ironically, the foundation has worked to support artists in the estate planning process, assisting in the creation of *A Visual Artist's Guide to Estate Planning*.¹⁴⁴ The foundation has since ceased its grantmaking activity, citing reasons relating to eligibility laid out in Rothschild's will. The endowment has been whittled down, the market for Judith Rothschild's paintings has been crippled, and the foundation cannot provide further support. These foundation missteps illustrate the necessity of appointing competent managers, not necessarily friends and family.

BEST PRACTICES

The following best practices emerge from analyzing the foregoing case studies. They relate to foundation creation and optimal alignment of market and charitable activity. The decisions made by foundations significantly impact not only the legacy of the endowed

¹⁴² Ibid: Miller also served on the board of MoMA at the time and created an associated curator position in his name.

¹⁴³ Robin Pogrebin, "Artists Miffed Over Rothschild Foundation's Missing Grant Money," *The New York Times*, January 12th, 2010, retrieved from: <https://www.nytimes.com/2010/01/13/arts/design/13grants.html>.

¹⁴⁴ Judith Rothschild Foundation, "Grant Program Information," Judith Rothschild Foundation, New York, 2022, retrieved from: <https://judithrothschildfoundation.org/grant-program/>.

artist and the market for their work, but also the quality and quantity of eventual charitable activity. Proper decisions are crucial to maximize the value achieved from the body of work and other assets left behind after an artist's death. These assets fuel the endowment, which in turn fuels charitable activity. A blended approach, combining traditional private foundation management with art business strategies, ensures endowment growth sufficient to support annual charitable activity.

RECORD KEEPING AND VISION

As an artist achieves some form of lifetime success and begins thinking about legacy in the form of a foundation, record keeping, and vision are critical first steps. Well-kept records relieve pressure on foundations. Titles, dates, media, and signatures are traditionally essential pieces of information for every work. If the artwork was included in lifetime exhibitions, notes should be made for each instance. If works are sold through galleries, private sale, or given as gifts, these should also be tracked. These are vital pieces of information from an art-historical and market perspective. Artists who are alive and still working should take advantage of technology to track works, organize inventory, and take high resolution photographs of artworks. These are essential assets a foundation can use in publications, like a catalogue raisonné, online databases, or licensing.

In the past, artists have typically created foundations within their wills, to be formed after their death. Successful artists of today, however, should consider establishing them during their lives to have utmost power over design and direction, including ability to lay out a strong vision and ensure the right directors are appointed to oversee operations upon their death. Along with appointed staff, the artist should also decide whether the

foundation intends to exist in perpetuity or set an end-date to terminate activity and sunset.¹⁴⁵ While a short term of years may relieve a foundation of long-term planning responsibilities, it might also extinguish a foundation before it has sufficiently influenced, and capitalized on, market conditions, which could mean fewer resources to achieve goals. Artists should define their desired foundation impact so charitable activity can be planned accordingly. Whether artists have achieved monetary success, critical success, or both, efforts by an estate or foundation should focus on promoting educational and critical understanding of the body of work to reinforce the market, as this directly affects foundation activity.

SELECTION OF TRUSTEES

Undoubtedly, one of the most important aspects a successful artist-endowed foundation begins in the early stages of planning, when considering stewardship. Selecting competent and trustworthy executors and/or trustees is important as they will oversee the initial distribution of the artist's estate according to a will or trust, including directing funds necessary to establish a foundation. A stable relationship between executors/trustees and the foundation is therefore essential to starting the foundation off on the right foot. Because a trust might continue to manage foundation funds even after the estate has been settled, good relations between trustees and the foundation are essential to smooth operation and longevity of the foundation. Selecting competent, trustworthy, level-headed trustees is vital in the early stages of foundation formation, as

¹⁴⁵ This is exemplified in the field of artist endowed foundations by models like the Andy Warhol Foundation for the Visual Arts, which exists in perpetuity. The Georgia O'Keeffe Foundation is an example of a foundation that established a timeline of twenty years for activity and terminated at the end of this. While available funding plays an important role in this decision, it should really be up to the artist.

they can hit the ground running, planning, and staging, like the JMF board, or, on the other hand, they can be a liability, like the sole trustee in the Judith Rothschild foundation whose improper decision making trickled down to the foundation's bottom line. As case studies indicate, the right people to fill trustee/board positions may not be friends or family members, but those with expertise in art, law, business and/or another related field, and appointing only one trustee is risky as checks and balances are not possible.

PROGRAMMING & CHARITABLE ACTIVITY

Developing charitable programming is necessary for a foundation to maintain tax exempt status. Based on the varied programs in the case studies, this is an area open to the artist's desires, as well as foundation innovation. Classic models include giving directly to artists or other institutions, but charitable activity can take a multitude of forms. Most important, however, is education regarding the endowed artist. Despite the eagerness of trustees or board members who may want to advance charitable activity outside the foundation, this is not always an option for smaller foundations. Developing and growing a foundation requires a steady increase in endowment, and this is best achieved by first developing educational programming to increase awareness of, and produce a market for, the artist. Funds can be directed toward exhibition programming, archival activity, and literature. There is usually a considerable amount of work to be done with a deceased artist's work and story. This type of format is most useful while the artist is still alive, or if funds are limited. If the underlying endowed-artist's career is still in need of attention, it is best to delay distributing funding. The David Hockney Foundation is an excellent example of this type of format, as the foundation currently has limited funds, does not yet pay its board members, and relies on Hockney, who is still alive, to contribute actively at

this critical stage of foundation development. While Hockney is most definitely an established artist, his market, presence in the art world, and legacy, can be enhanced by foundation activity. As Linda Würtenberger explains, “the original motive for an estate's work may change over time.”¹⁴⁶ Ensuring adequate funding for charitable activity is a goal that should be met prior to distributing program funds. The relationship between foundations and the art market, and their interdependence, becomes clear in this context.

The scope of mature charitable activity and grant-making should be defined, including whether the foundation will be organized as a non-operating (e.g., AWFVA) or operating (e.g., AEGF and JMF) foundation. This decision begins to shape the foundation's areas of impact and define the audience that will benefit. The AWFVA proved that non-operating foundations can make a significant impact in the art world. On the other hand, the AEGF is an excellent example of an operating foundation, as it gives money directly to a specific audience, i.e., “mature artists.” As foundations structure their grant-making activity, they should think about grantees—easily accessible applications and timely review of them are signs of an efficient grant-making program. Keeping grantees at the forefront in decision-making is key. As Mark Dowie explains “too often forgotten are the grantees who really made it all happen, men and women of science or the arts who could as easily have accomplished what they did with a grant from Ford as one from Rockefeller.”¹⁴⁷ With the number of artist-endowed foundations rising, this succinctly conveys an optimal foundation mindset. Finding unique solutions and niches increases

¹⁴⁶ Linda Würtenberger, *The Artist's Estate: A Handbook for Artists, Executors, and Heirs*, Hatje Cantz, Ostfildern, 2006, page 134.

¹⁴⁷ Mark Dowie, *American Foundations: An Investigative History*, The MIT Press, Cambridge, 2002, p. xxxvi.

opportunity and deepens outcomes. The JMF did just this by grooming its grant-making activity, focusing on a single fellowship program. A balance must be struck—ideally, the foundation would adapt its mission as its endowment grows. Impactful charitable activity is a response to endowment growth.

GALLERY REPRESENTATION

Gallery representation is a foundation's tool for market success. Galleries can provide income and interest for an artist's body of work. When considering working with galleries posthumously, foundations should be careful that the gallery fits the level of the artist. A gallery should not continue representation simply because it worked with an artist during the artist's lifetime. Galleries tend to be transitory, and concerned with larger market forces; therefore, they will not always be able to promote the artist in a meaningful way. AEGF is an excellent example of this. The foundation had many shows early in its development, which helped build the market for Gottlieb, and now works with Pace to put on exhibitions. While Pace has access to a broad, international market, they have concentrated shows in the U.S. for some time. Gottlieb's market, therefore, lacks exposure to an international audience. While foundations should, of course, work with galleries to find solutions to these problems, they can also work internally to develop markets in new regions through traveling exhibitions, educational activity, and more general marketing strategies. As markets become stronger for artists, foundations can leverage the market to grow the endowment.

AUTHENTICATION AND CATALOGUE RAISONNÉS

Another way foundations can have a direct impact on the market is through authentication programs and catalogue raisonné inclusions. While authentication of

artworks was a common foundation activity in the early 2000s, it has fallen under scrutiny from the art market after numerous lawsuits. In the same vein, artists should also be clear as to how they want their work handled after their death, and whether post-humous editions, or attributions should take place.

Foundations like AWFVA and Calder Foundation have taken on the authentication of artworks in the past. AWFVA examined and authenticated artworks, through its authentication board, until 2011, when it dissolved the board due to legal disputes.¹⁴⁸ The Calder Foundation was involved in several lawsuits revolving around inauthentic works that the foundation confirmed as authentic.¹⁴⁹ Legal proceedings can put a strain on a foundation, and AWFVA's dissolution of its authentication board makes sense; considering Warhol's enormous body of work, the number of forgeries in circulation, and the high value of Warhol works, it is arguably too risky an activity for too little reward. The Calder Foundation, on the other hand, continues to provide authentication advice. Authentication of artwork has obvious market ramifications, as often the work is slated for sale or was recently sold. While the overall trend is for foundations to accept less of this responsibility, such programs do have the upside of bringing lost or unrecorded works to the foundation's attention, which allows for inclusion in official records or a catalogue raisonné, if one is being compiled. The risk/reward ratio should be evaluated

¹⁴⁸ Dan Duray, "Warhol Foundation Dissolves Authentication Board," *Observer*, October 19th, 2011, Retrieved from: <https://observer.com/2011/10/warhol-foundation-dissolves-authentication-board/>.

¹⁴⁹ Daniel Grant, "Calder Lawsuit May Raise Bar for Authentication Committees," *ArtNews*, May 12th, 2009, retrieved from: <https://www.artnews.com/art-news/news/calder-lawsuit-may-raise-bar-for-authentication-committees-1191/>; Eileen Kinsell, "A Matter of Opinion," *ArtNews*, February 28th, 2012, Retrieved from: <https://www.artnews.com/art-news/news/a-matter-of-opinion-512/>.

by the foundation on a case-by-case basis. Larger foundations, with well managed records and strong markets for their respective artists, should be less willing to authenticate artworks, as they have more to lose. Smaller foundations, with fewer resources, may find opportunity or a sense of duty in attributing a work to its artist.

Foundations often undertake compiling a catalogue raisonné for an endowed artist. The catalogue is reliant on strong record keeping by the artist and/or foundation and takes a significant amount of preparation and resources to produce. It is also important for artists to define parameters for archival activity.¹⁵⁰ Living artists can think about, and sometimes oversee, development of the catalogue raisonné. This is ideal, as an artist can confirm the works being added, and ensure desired completeness. Artists like Richard Serra, Gerhard Richter, and Jeff Koons have produced catalogue raisonnés while still living, ahead of any formalized foundation. Another option for foundations is a digital catalogue raisonné. This is a good starting place for foundations with limited resources and can make the work easily accessible to a broad audience. Auction houses generally decline to take a work if it is not featured in the correlated catalogue raisonné.¹⁵¹ This can impact an artist's market, and lead to unexpected complications surrounding the work. Regardless, the development of a catalogue raisonné is critical to an artist's long-term success and relevancy.

¹⁵⁰ Artists should also lay out how they want archival work handled, whether their archive is donated to a library or the Smithsonian's Archives of American art, or whether the archive is managed directly by the foundation.

¹⁵¹ Pierre Valentin, "Top London Art Lawyer on Common Issues with Fakes and Authentication," *The Art Newspaper*, June 30th, 2004, Retrieved from: <https://www.theartnewspaper.com/2004/07/01/top-london-art-lawyer-on-common-issues-with-fakes-and-authentication>.

CONCLUSION

In preparing the next generation of artists to think about legacy, developments in the art world should be considered. The globalized art market, development of the field of philanthropy, and the lifetime success of artists are contextual elements that should be engaged to understand the rise of the artist-endowed foundation. Artists achieving lifetime success will have varying priorities, but all will have the same general end goal: maximizing charitable impact and ensuring longevity for their body of work. Both can be accomplished by balancing philanthropic and market priorities. While each artist's case is unique, these intricacies can be leveraged to fill niches in the market for their work as well as philanthropy. Just as certain works, or artists, fill market niches, artist-endowed foundations can align an artist's vision with charitable activity. Next-generation foundations should, from inception, begin to think about how these priorities align as they develop a roadmap for success. Promoting an artist's body of work through tax-exempt charitable activities—like education, literature, and exhibition programming—can lead to appreciation of the body of work itself. In turn, these assets can be leveraged to pursue the foundation's ultimate goals of supporting artists. Ideally, the model becomes circular, with artists supporting one another and funding the arts generally through consistent private foundation activity. While funding relies on strong performance from both financial and art markets, which can be fickle, well-managed foundation endowments can survive market ups and downs, providing steady support in bear markets and fueling further innovation in bull markets. This symbiosis was envisioned by Mark Rothko and Adolph Gottlieb as they promoted of the concept of “mutual aid” as a basis for the artist-endowed foundation. Artist-endowed foundations are poised for continued

success in the twenty-first century. They have become proven bastions of legacy with the ability to influence the art world, art market, and artists of the future.

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