

Location Agreement

This location agreement (the "Agreement"), dated as of _____[DATE] sets forth the terms, between Whitney Museum of American Art, 99 Gansevoort Street, New York, NY 10014 (the "Museum" or "Whitney") and _____ ("Producer") regarding Producer's _____ DESCRIBE PROJECT _____, as more fully described below (the "Project"):

Title of Production: [NAME].

Production Company: [NAME].

Studio, Distributor, or Network Affiliation: [NAME].

Date(s): [DATE].

Load-In: [DATE], after [TIME] a.m./p.m.

Filming Time: [TIME] a.m./p.m to [TIME] a.m./p.m. on each date of filming listed herein.

Load-Out: [DATE], by [TIME] a.m/p.m

Location within Premises: [LOCATION].

Approximate Number of Guests, Talent and Crew on Premises: [NUMBER].

Restricted Areas: [LOCATIONS].

Fees: \$[1500, minimum, with higher rates for some productions], with additional fees and costs as described below in Section 7.

For good and valuable consideration, receipt of which is acknowledged, Producer and the Museum hereby agree as follows:

1. Grant of Access: The Museum shall grant Producer nonexclusive access to the Museum's premises located at 99 Gansevoort Street (and such other applicable Museum premises, if any) (the "Filming Location") on as described above for the purposes of filming the Project (the "Shoot"), and authorizes Producer and its agents to make audio and video recordings of the Filming Location on film, tape, or in any other media (the "Recordings"). While at the Filming Location, Producer and its agents shall at all times promptly and fully comply with all instructions given by the Museum's staff, shall depart from the Filming Location promptly at the times set in this Agreement. Producer agrees to leave the Filming Location in as good order and condition as when received, normal wear and tear excepted. Following the Shoot, Producer shall vacate the Premises and shall remove all equipment, sets and other materials that Producer placed thereon. Producer's film crew must at all times be accompanied by a member of the Museum's staff and shall not enter any areas of the Filming Location except when so accompanied.
2. Rights in the Recordings: Producer shall own all right, title, and interest, including copyrights, in and to the Recordings, and any related materials created by Producer hereunder, for use in any manner or media now or hereafter known or invented throughout the world in perpetuity, subject to the Museum's sole ownership of all existing intellectual property of the Museum, and each applicable rights holder's ownership of any third-party intellectual property (including, without limitation, the works of art on display at the Museum) that may be depicted in the Recordings. The Recordings may only be used for the Project, and for promotion of the Project and not in any other context. Any additional uses or permissions must be agreed in writing prior to the

commencement of the Recordings. Producer will not use the Recordings in any way that would tend to embarrass or disparage Whitney, its employees, or museum collections.

3. Releases, Third Party Rights: Producer shall obtain all third-party consents necessary for the use of the Recordings in the Project, including, without limitation, all consents from any persons, or the copyright holders of any works of art, depicted in the Recordings ("Releases"). Nothing in this Agreement may be construed as a representation from Museum to Producer that any artwork or other material on the Museum premises is free of third party restrictions, including copyright interests or lender conditions. Any rights granted by Museum to Producer hereby are in the nature of a quit claim. Accordingly, as a precondition to the exercise of all rights granted herein, it is the express obligation of Producer to determine whether any material filmed/photographed in connection herewith is subject to copyright or other protection, including without limitation rights of publicity, privacy or other rights of persons appearing in the Recordings, and to clear all rights to reproduce any such protected material with the appropriate rights holders as required by law.
4. Insurance: Producer shall provide commercial general liability insurance on an occurrence (not claims made) basis (including premises liability, products liability, personal injury, bodily injury, property damage and contractual liability) in the minimum amount of \$1,000,000 per each occurrence/\$5,000,000 in the aggregate to cover any loss or damage arising out of or in connection with its activities under this Agreement. Producer shall also carry employer's liability insurance in the minimum amount of \$500,000 and worker's compensation insurance, as required by applicable law. All such insurance (except for worker's compensation insurance) shall include Museum as additional insured and such insurance shall be primary of Museum's own insurance policies, regardless of negligence. Producer shall obtain a full waiver of subrogation against the Museum. A certificate of insurance evidencing the foregoing requirements shall be delivered to Museum upon execution of this Agreement, and in any event prior to Producers entering the Filming Location. No equipment or materials may be loaded on to the Premises until the certificate of insurance has been delivered to and approved by Museum.
5. Indemnification: Producer, on behalf of itself and its employees and agents, agrees to defend, indemnify and hold harmless Museum, its trustees, officers, employees, agents and representatives from and against all claims, damages, losses, liabilities, actions, suits, demands, fines, penalties, costs and expenses (including reasonable attorney's fees) (collectively, "Losses") arising from or relating to (w) any injury (including death) to persons or damage to property resulting from, or in connection with Producer's use of the Filming Location; (x) any aspect of the Production, including the content, broadcast, exhibition and any other exploitation of the Production, including any third-party copyright infringement claims, right to privacy/publicity or defamation claims; (y) a breach by Producer of its representations, warranties or covenants under this Agreement; and (z) the actions by any of the Production's participants, hosts, advertisers or sponsors.
6. Risk. Access to the Filming Location is granted entirely at Producer's own risk. Producer assumes sole responsibility for all risks associated with entering onto the Filming Location, and hereby releases each of the Museum Parties from any and all claims relating to any injury, damage or loss that Producer, or its film crew, or its agents,

contractors or employees, may suffer or cause while at the Filming Location. Producer also assumes all risks in the event of weather conditions, fire, other acts of God, labor controversy, and any other “force majeure” type of event out of the control of the Museum which may affect the Filming Location.

7. Fees and Costs: In consideration for the rights and permissions granted in this Agreement, Producer shall pay the non-refundable fees described above, due and payable in full no later than three (3) days prior to the start of the shoot. **Producer shall not be entitled to proceed with the shoot in the event that payment of the fee is not timely made.** If the duration of the shoot extends beyond the date and time listed above, Museum shall charge Producer \$350 for each additional hour, with any fraction thereof rounded up to the next hour, and Producer agrees to pay any such additional charges within fifteen (15) days of the date of the invoice. Producer is independently responsible for all aspects of the shoot, and Museum shall not provide any services for the benefit of Producer in connection with the shoot. In addition, Producer shall be responsible for any substantiated out-of-pocket costs incurred by Museum in connection with the shoot, including, without limitation, security and any necessary deinstallation and reinstallation of artworks to safeguard them during the Shoot. Museum shall provide to Producer estimates of these costs in advance of the shoot, and shall invoice Producer for the total costs promptly after the completion of the shoot. Producer agrees to pay such amounts fifteen (15) days of the date of the invoice.
8. Authority: The Museum represents and warrants that it has the authority to grant the rights granted herein, and that the grant of such rights will not conflict with any commitment or obligation the Museum may have to any third party.
9. Facilities Use. With respect to Producer’s access to the Museum premises, Producer agrees that:
 - (a) All equipment used during the Shoot is subject to the final approval of Museum, and a list of equipment/props (including size/weight specifications) shall be provided to Museum with the production schedule no fewer than ten (10) business days prior to Producer’s first day on the premises.
 - (b) Producer shall, and shall cause its contractors, subcontractors, vendors, employees, representatives, partners, actors, performers, guests, volunteers and/or agents (the “Producer Parties”) to, comply with Museum’s requests regarding security and regulations. Producer agrees to assume full responsibility for the actions of all Producer Parties while on the Museum premises.
 - (c) Producer shall ensure that the Project does not interfere with the Museum’s normal business activities or the business activities of any of the Museum’s employees, visitors or other occupants of the Filming Location..
 - (d) If artworks are to be filmed, Producer agrees to comply with the guidelines attached.
 - (e) Producer shall, and shall cause the Producer Parties to, exercise particular care to prevent damage to any property of Museum, including any property on loan to Museum.
 - (f) No food, beverages or smoking is permitted in the Museum at any time, except under terms and conditions specified by Museum.
 - (g) Producer will provide its own power source (or generator) for its lighting and other activities. No equipment will be plugged into any house outlet without prior arrangements and prior written approval of Museum.
 - (h) In the conduct of activities on Whitney property, Producer will act in accordance with all applicable federal, state, and municipal laws, ordinances, and regulations.

(i) Museum has the right to require the immediate removal of Producer or any Producer Parties from the premises if Producer or a Producer Party fails to comply with the Museum's requests or if the Museum determines at its sole discretion they are otherwise acting improperly. If Producer does not vacate the Filming Location promptly after such request for removal, Producer shall pay to the Museum fees of \$500 for each additional hour Producer occupies the Filming Location.

10. Whitney License. Producer shall provide a digital master and three (3) complimentary copies of the Recordings to the Whitney. Producer grants the Whitney a royalty-free, perpetual license to use the Recordings for its archival, educational, website, and other purposes consistent with its educational mission.

11. Miscellaneous: This Agreement: (i) is personal to the parties and not capable of assignment by either party without the other's prior written consent; (ii) cannot be amended or waived except in a written document signed by the party against whom enforcement is sought, with no waiver of any instance of breach to be construed as a waiver of any other instance; (iii) shall not be interpreted against either party on the ground that it was drafted by that party; (iv) is binding upon and shall inure to the benefit of the parties' respective affiliates, successors, and authorized assigns; (v) shall not be deemed to create a partnership, joint-venture, agency, employee/ employer, or similar relationship; (vi) is governed by the laws of the State of New York (excluding conflict-of-laws rules); (vii) may be executed by facsimile or electronic signature (e.g., a signature digitally transmitted by email or otherwise, in a PDF or similar format); (viii) may be executed in one or more counterparts; and (ix) sets forth the parties' entire agreement regarding the subject matter hereof, superseding all previous agreements, understandings and arrangements in this regard.

Sincerely,

PRODUCER

By: _____

Name:

Title:

WHITNEY MUSEUM OF AMERICAN ART

By: _____

Name:

Title:

Guidelines for photography and filming works of art

- **General**

- The Producer Parties must take particular care when moving equipment through the Filming Location(s), exhibiting awareness and attention to their surroundings. Loading in and out cannot be done in haste and supervisors must insist on deliberate activity.
- All works on view at the Museum must be photographed as installed. They cannot be unframed or moved to facilitate photography except by authorized Museum personnel with prior permission.
- Works of art and their bases may not be touched, sat upon, or have anything draped or placed upon them as a part of the photographic or filming situation. Cameras, microphones, lights, reflectors, and other equipment may not be lifted or used directly above works of art. Works of art may not be handled in any way except by authorized Museum personnel.
- The Producer Parties must also be mindful of their electrical cords and the extension of equipment behind them. Equipment and baggage not in active use should be kept completely out of walking paths on the perimeters of galleries but not directly underneath works of art.
- The Producer Parties will be interrupted if dangerously close to an artwork.
- If a Producer Party is found to infringe these rules and guidelines, permission to continue or photograph on future occasions may be withheld.

- **Standing Equipment**

- No artwork or display may be within the full radius of any standing equipment. Lamps, reflectors, tripods and any other equipment must be at a greater distance from any work of art than the height of the stand fully extended. Specific distances from artworks may be required.
- Any lamp or stand which is free-standing should have a person assigned to hold it, or must be weighted with sand bags to prevent accidental toppling of the lamp towards any work of art. No lamps or reflectors on stands are permitted for use in galleries without an attendant or appropriate weights. The same applies for tripods without electronics or any item that would approach an artwork if it topples over.

- **Lighting**

- No more than two lamps may be used.
- Lamps must be switched off except when a the Producer Party is in the process of filming or engaging in an allied activity such as taking an exposure reading. Crews are encouraged to take such readings off of the actual subject to be photographed.
- No work may be illuminated with photographic lights for more than two minutes consecutively or more than fifteen minutes in any one hour. Still photographers need to shutter their lights to minimize the amount of light striking surrounding works.
- All lamps and flash lamps must have protective screens.

- **Light levels**

- Using HMI or Tungsten
- If HMI lights are used (preferred because they produce less radiant heat in relation to their light output than other lamps) they must be fitted with ultraviolet absorbing filters, and the light level may not exceed 100 foot candles.
- If tungsten lamps are to be used, the light level must not exceed 100 foot candles and both ultraviolet and infrared filters are required.
- Using Other Artificial Light Sources
- Lighting for paintings and sculptures cannot exceed 15-20 foot-candles in total and can only be on the works of art for no more than 15 minutes.
- For works on paper, only available light may be used. No exceptions.
- Please note that some media will melt, split, or spontaneously combust if exposed to light and heat of high intensity. Because art works made of these materials are very sensitive to light and heat, additional conditions may be imposed in such cases.