

The current proposal is:

Preservation Department – Item 2, LPC-22-04263

95 Horatio Street - Gansevoort Market Historic District Borough of Manhattan

To Testify Please Join Zoom

Webinar ID: 893 8993 7710

Passcode: 836195

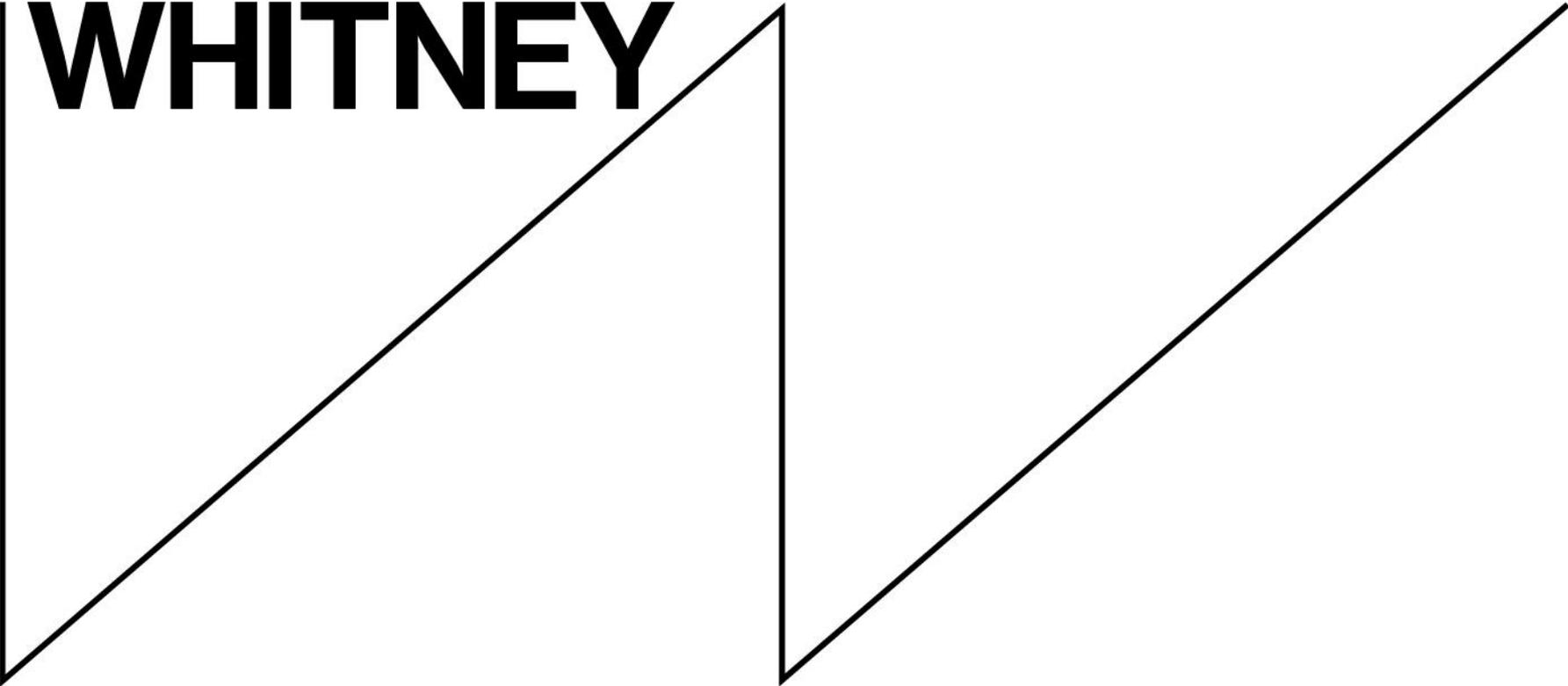
By Phone:

1 646-558-8656

US (New York) 877-853-5257 (Toll free)

US 888 475 4499 (Toll free)

Note: If you want to testify on an item, join the Zoom webinar at the agenda's "Be Here by" time (about an hour in advance). When the Chair indicates it's time to testify, "raise your hand" via the Zoom app if you want to speak (*9 on the phone). Those who signed up in advance will be called first.

The logo consists of a large, stylized outline of the letter 'W'. The top-left and top-right strokes of the 'W' are connected by a horizontal line. The word 'WHITNEY' is written in a bold, black, sans-serif font across the top horizontal bar of the 'W'.

WHITNEY

95 Horatio

Certificate of Appropriateness Application

Whitney Museum of American Art

December 2021

Public Art Series Site History



Public Art Series Site Today



Photograph by Nic Lehoux

2014

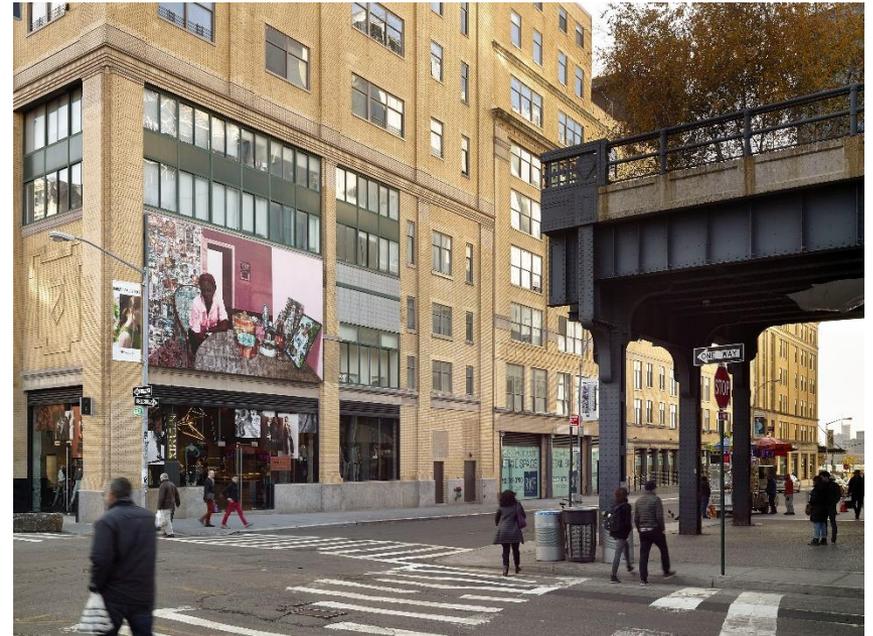


Alex Katz, *Katerine and Elizabeth*
September 5, 2014-April 5, 2015

2015

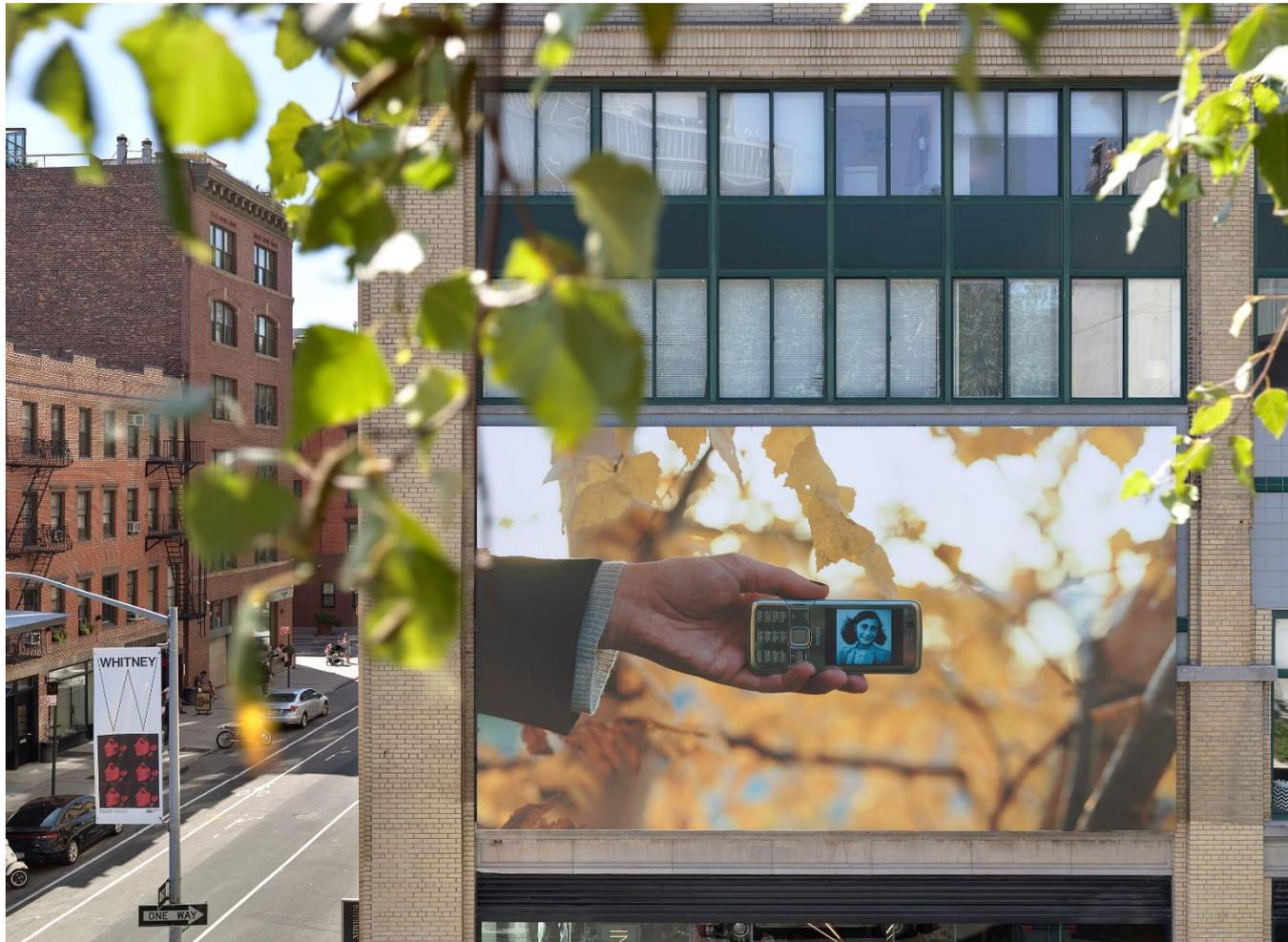


Michele Abeles, *Baby Carriage on Bike or Riot Shield as Carriage*
April 6-November 22, 2015



Njideka Akunyili Crosby, *Before Now After (Mama, Mummy and Mamma)*
November 23, 2015-June 6, 2016

2016



Torbjørn Rødland, *Blue Portrait (Nokia N82)*
June 7, 2016-March 5, 2017

2017



Puppies Puppies, *Untitled (Sauron)*
March 6-June 25, 2017



Do Ho Suh, *95 Horatio Street*
June 26, 2017-January 28, 2018

2018



Christine Sun Kim, *Too Much Future*
January 29-September 24, 2018



Derek Fordjour, *Half Mast*
September 25, 2018-May 5, 2019

2019



Lucas Blalock, *Donkeys Crossing the Desert*
May 6, 2019-March 1, 2020

2020



Jill Mulleady, *We Wither Time into a Coil of Fright*
March 2, 2020-January 24, 2021

2021



Andrea Carlson, *Red Exit*

January 25-September 19, 2021

GENERAL NOTES

- Contractor shall perform the work in accordance with all applicable provisions of the 2008 New York City Building Code.
- Contractor shall secure all necessary permits from the appropriate agencies.
- Bidders shall visit the site and fully inform themselves as to the existing conditions and limitations prior to submitting a proposal. Failure to do so will in no way relieve the successful bidder from any part of its contractual agreement.
- The Contractor shall check and coordinate drawings of all trades. In any case of conflict between the drawings, notes, details and specifications, the most stringent requirements shall govern.
- The Contractor shall make no deviation from the design drawings without the written approval of the Engineer.
- Work not specifically indicated on a part of the drawing but reasonably implied to be similar to that shown on another part of the drawing shall be repeated.
- All dimensions and details shown, which relate to existing construction, shall be verified in the field by the contractor prior to the preparation of detailed drawings or shop drawings. Any discrepancies with the information shown on the drawings shall be brought to the attention of the Engineer immediately.
- Contractor shall be responsible to check and coordinate dimensions, clearances, configurations, etc with the work of all trades.
- Alternate details may be used if such details are submitted to the Engineer for review and acceptance is granted.
- Contractor alone shall be responsible for the safety of the existing structures and equipment during the entire construction of the addition and alterations of the existing structure and shall take adequate precaution to prevent damage to the existing structure and equipment in any way.
- Any damage to the existing structure or equipment shall be rectified at no extra cost to the owner.
- Contractor shall coordinate the work with existing utilities, services, equipment and structures that are to remain. These components may not be shown on the drawings.
- Work areas shall be kept clean, and all debris shall be removed from the worksite in a timely manner.
- Prior to starting work Contractor shall submit all proposed products along with product information and manufacturer's instructions to the Engineer for review and approval. Proposed substitutions must meet or exceed the requirements of the contract documents and must be fully compatible with the proposed application.
- Contractor shall perform work in accordance with Manufacturer's instructions and recommendations.
- Contractor shall use qualified, full-time experienced personal to direct all operations.
- Contractor is responsible for the stability of the art structure or parts of the art structure during erection.
- DO NOT SCALE DRAWINGS.

ALUMINUM NOTES

- All aluminum shapes are Alloy Type 6061-T6
- Bolted connections and screws are ASTM F593 300 Series Stainless Steel or ASTM 468 7075-T73 Aluminum Alloy.
- Provide galvanic separation where aluminum is in contact with concrete or steel.
- Welded connection to conform to AWS.

SPECIAL INSPECTIONS

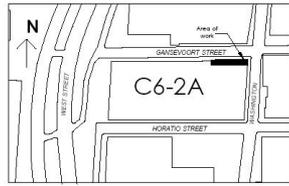
- Special inspectors shall be retained by the Owner. Contractor shall coordinate with the inspecting engineers.
- Steel Construction as per NYCBC section 1704.3
 - Welding (1704.3.1)
 - High Strength Bolting (1704.3.3)
- Structural Stability
- Final Inspection

STRUCTURAL STEEL NOTES

- Submit erection drawings and shop drawings for review. Provide connections using AISC 360-05 Specifications.
- All steel details and connections shall be in accordance with the requirements of the AISC specifications, March 9, 2005, using allowable stress design provisions.
- All clip angles, plates, and bars shall conform to ASTM A36, unless otherwise noted.
- Shop and field welds not specifically detailed on the drawings shall be bolted or welded.
- All welding shall be performed by qualified welders in accordance with A.W.S specifications, latest edition, and New York City requirements.
- All welding electrodes shall conform to A.W.S A5.1 grade #70 bare electrodes and granular flux shall conform to A.W.S A5.1.7 F70 A.W.S flux classification.
- Bolted connections shall use 3/4" diameter bolted bearing type connections with A-325 bolts, unless otherwise noted.
- All field splices and connections shall be welded or high strength bolted. Splices shall be designed to develop the full capacity of member at the point of splice. Do not splice members at points of maximum stress.
- Cuts, holes, coping, etc. required for work of other trades shall be shown on the shop drawings and made in the shop. Cuts or burning of holes in structural steel members in the field will not be permitted.
- High strength bolting shall conform to the provisions of the Research Council of Riveted and Bolted Structural Joints Specifications for Structural joints using ASTM A325 or A490 Bolts, latest edition.
- Painting of steel: all existing and new steel shall be cleaned to SSPC-SP3 standard and shall receive a primer coat of paint that is compatible with spray on fireproofing material.
- Fireproofing: All exposed steel, whether new or existing, shall receive spray-on fireproofing. See Architectural drawings for requirements.
- Mill reports: Furnish to Engineer three certified copies of all mill reports covering the chemical and physical properties of all steel used in this contract.
- Materials shall not be ordered, fabricated, or delivered, to the site before the shop and erection drawings have been approved by the engineer and returned to the Contractor.

TENANT SAFETY NOTES (According to the 2008 NYC Building Code Section 28-104.8.4)

- Egress: At all times in the course of construction provision shall be made for adequate egress as required by this code and the tenant protection plan shall identify the egress that will be provided.
- Required egress shall not be obstructed at any time except where approved by the commissioner.
- Fire Safety: All necessary laws and controls, including those with respect to occupied dwellings, as well as additional safety measures necessitated by the construction shall be strictly observed.
- Health requirements: Specifications of methods to be used for control of dust, disposal, of construction debris, pest control and maintenance of sanitary facilities, and limitation of noise to acceptable levels shall be included.
- There shall be included a statement of compliance with applicable provisions of law relating to lead and asbestos.
- Compliance with housing standards: The requirements of the New York City Housing Maintenance Code, and, where applicable, the New York State Multiple Dwelling Law shall be strictly observed.
- Structural Safety: No structural work shall be done that may endanger the occupants.
- Noise restrictions: Where hours of the day or the days of the week in which construction work may be undertaken are limited pursuant to the New York City Noise Control code. Such limitations shall be stated.



PROJECT DATA

Address: 95 Horatio Street, New York, NY
 Block: 643
 Lot: 1
 Lot Area: 4,360 sf
 Lot Dimensions: 170' x 370'
 Zoning Map: 86
 Zoning District: C6-2A
 Building Height: 125 feet

JOB DESCRIPTION

Installation of Whitney Artwork System for 2-D Artwork. No signage proposed.

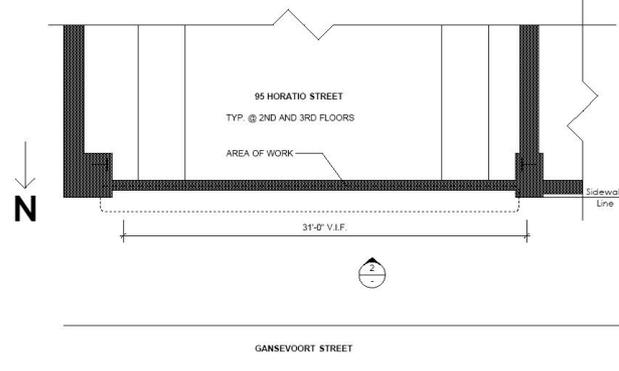
3 ZONING MAP
N.T.S.

PROPOSED ARTWORK



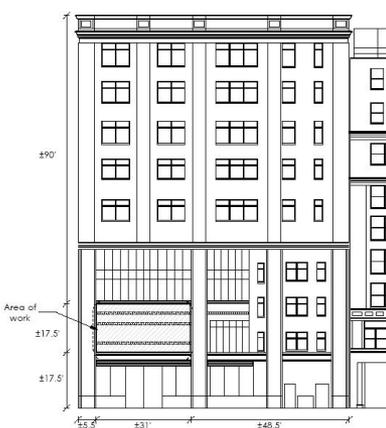
4 Proposed Artwork
No Scale

NOTE: SEE STRUCTURAL DRAWINGS FOR DETAILS



1 PARTIAL PLAN
Scale: 1/4" = 1'-0"

NOTE: SEE STRUCTURAL DRAWINGS FOR DETAILS



2 ELEVATION
Scale: 1/16" = 1'-0"

RISE PROJECTS
 31 Union Square West, Suite 20
 New York, NY 10003, USA
 Voice: +1212.242.2981
 Fax: +1212.242.2987
 Internet: www.riseprojects.com

Structural Engineer:
ROBERT SILMAN ASSOCIATES
 89 University Place
 New York, NY 10003, USA
 Voice: +1212.633.1970
 Fax: +1212.633.8167
 Internet: www.rsilman.com

Key Plan:

Legend:

Notification

Contractor shall be responsible for the safety of the existing structures and equipment during the entire construction of the addition and alterations of the existing structure and shall take adequate precaution to prevent damage to the existing structure and equipment in any way. Any damage to the existing structure or equipment shall be rectified at no extra cost to the owner.

| No. | Issue Description | Date |
|-----|-------------------|----------|
| 01 | Filing | 03.28.14 |
| 02 | Re-Filing | 05.06.14 |

| No. | Revision | Date |
|-----|----------|------|
| | | |

Project Title:
WHITNEY ARMATURE SYSTEM FOR 2-D ARTWORK
 95 HORATIO STREET
 NEW YORK, NY 10014

Floor Number:

COVER SHEET, ELEVATION
GENERAL NOTES
 2ND AND 3RD FLOORS

Date: 28 March 2014
 Project Number: 0250
 Drawing: GIP
 Checked: KRF
 Drawing Number:
T-001.00

Plaque Sample: Alex Katz

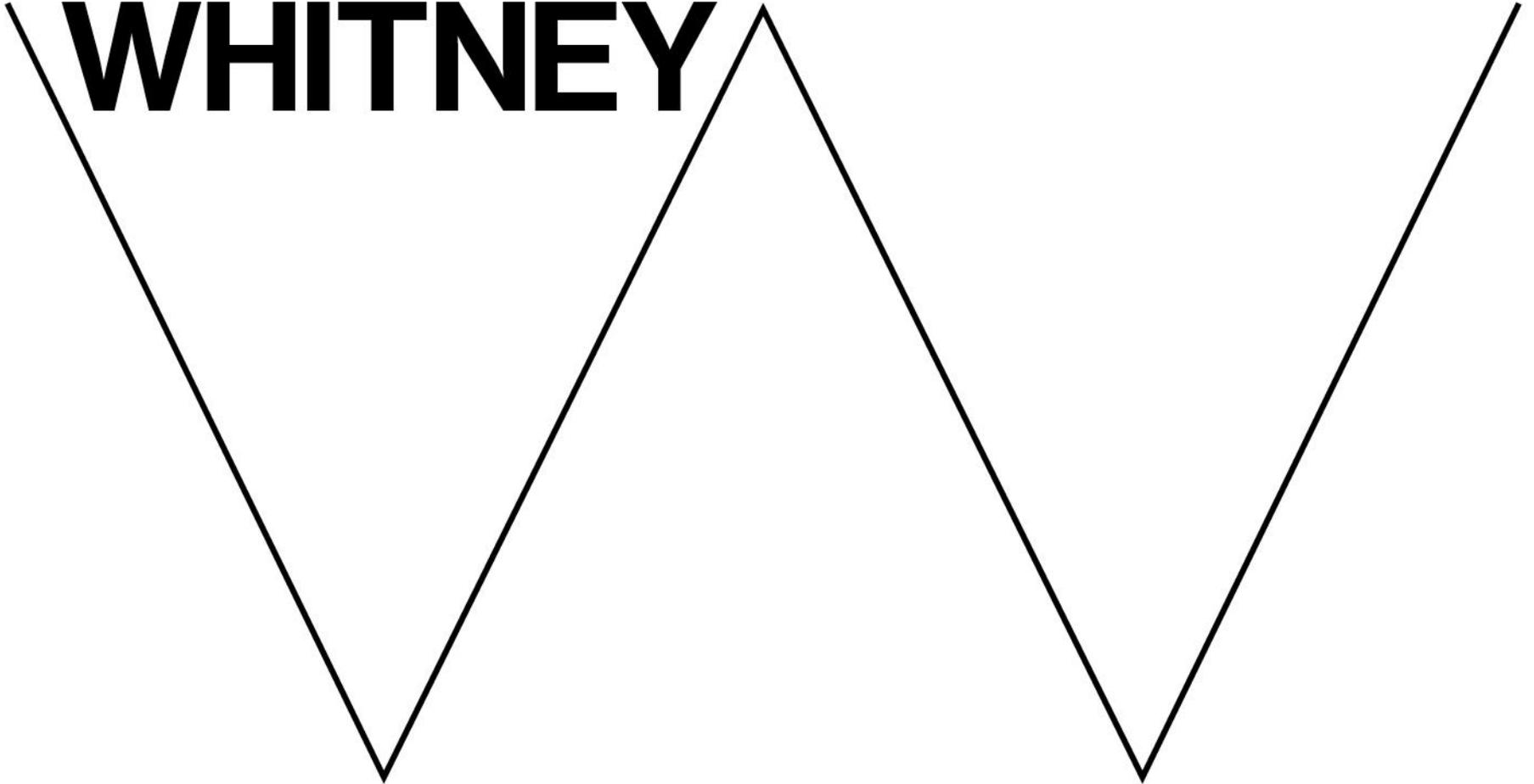


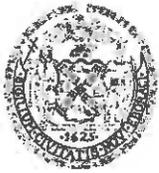
Appendix: Table of Contents

- Permit History
- Agreement with TF Cornerstone
- Sample Artist Agreement
- Letters of Support

WHITNEY

Permit History





THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION
 1 CENTRE STREET 9TH FLOOR NORTH NEW YORK NY 10007
 TEL: 212 669-7700 FAX: 212 669-7780



PERMIT

CERTIFICATE OF APPROPRIATENESS

| | | | |
|---|--------------------------------------|------------------------------|--------------------------------|
| ISSUE DATE: 12/10/15 | EXPIRATION DATE: 12/8/2021 | DOCKET #: 173131 | COFA #: COFA 17-9916 |
| ADDRESS: 95 HORATIO STREET <u>HISTORIC DISTRICT</u> GANSEVOORT MARKET | | BOROUGH: MANHATTAN | BLOCK/LOT: 643 / 1 |

Display This Permit While Work Is In Progress

ISSUED TO:

Bruce M. Weill
TF Cornerstone
387 Park Avenue
New York, NY 10016

Pursuant to Section 25-307 of the Administrative Code of the City of New York, the Landmarks Preservation Commission, at the Public Meeting of December 8, 2015 following the Public Hearing of the same date, voted to grant a Certificate of Appropriateness for the proposed work at the subject premises, as put forward in your application completed on November 12, 2015.

The proposal, as approved, establishes a master plan governing the future installation of artwork on a rotating basis on a 17' by 29' frame, installed at modern infill at a section of the second and third floors on the north (Gansevoort Street) façade, along with a 10 ¾" by 5" aluminum plaque at the base of the façade, identifying the artwork. The work was shown in a 21 page digital slide presentation, titled "95 Horatio, Certificate of Appropriateness, Whitney Museum of American Art," consisting of drawings and photographs, prepared by the Whitney Museum, and presented at the Public Hearing and Public Meeting.

In reviewing this proposal, the Commission noted that the Gansevoort Market Historic District Designation Report describes 95 Horatio Street as a neo-Classical style warehouse designed by John B. Snook and Sons and built in 1931-35; and that the building's style, scale, materials, and details are among the features that contribute to the special architectural and historic character of the historic district. The Commission also noted that the district is reflective of the area's long history of continuous varied and evolving use as a place of dwelling, industry, and commerce, and art. The Commission further noted that Certificate of No Effect 15-8460 was issued on June 3, 2014 for the temporary installation of artwork; Miscellaneous/Amendment 16-9064 was issued on March 18, 2015, renewing Certificate of No Effect 15-8460;

Miscellaneous/Amendment 16-9064 was issued on March 18, 2015 and Miscellaneous/Amendment 17-8684 was issued on November 6, 2015, both to replace artwork; and Certificate of Appropriateness 14-6463 was issued on July 22, 2013 for the permanent installation of artwork, which was never installed.

With regard to this proposal, the Commission found that the size and placement of the installation, on a panel covering and conforming to the former opening in the façade where the railway penetrated the building, will maintain an harmonious proportional relationship with the façade that will recognize the former opening in a creative manner; that the installation will not result in damage to significant architectural features; that the installation is in keeping with the characteristic evolving nature of the district, and its history of adaptive reuse; that the parameters of the permissible artwork, limiting its size, and precluding illumination and advertisements, will help prevent the installation from detracting from the building or streetscape; that the lower plaque, providing information about the artwork, will be small in size, simple in design, and typical in terms of installations of this type, and will be mounted at plain masonry; and that the proposed work will enhance the special architectural and historic character of the Gansevoort Market Historic District. Based on these findings, the Commission determined the proposed work to be appropriate to Gansevoort Market Historic District, and voted to approve the application with the stipulation that the master plan be limited to a period of six years; and that the applicant be required to document all of the installations during that time so that is a good record for the Commission to review if or when the applicants seek to renew the permit. On this basis, Certificate of Appropriateness 17-9916 is being issued.

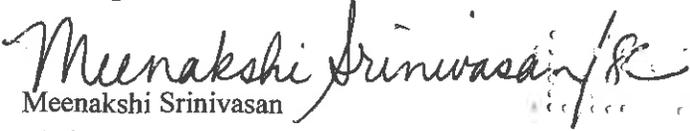
This master plan sets a standard for the future installation of artwork on a rotating basis until December 8, 2021. If the owner wishes to move forward with a portion of the work covered by the master plan, a completed application form must be filed with the Commission, including a representation of the artwork proposed to be installed, the text for the plaque, an artist waiver, and a statement that the work will conform to the approved master plan documents on file with the Landmarks Preservation Commission. The staff of the Preservation Department will review the application to ascertain that all proposed work is covered by the master plan, and will then send the owner an "Authorization to Proceed" letter. The Authorization to Proceed will be sent prior to the commencement of the work and will be contingent on adherence to the approved master plan.

This permit is issued contingent upon the Commission's review and approval of specifications for the removal of the frame and plaque and repair of holes or damage caused by the installation prior to the expiration of this permit if an application for an extension of the approval is not submitted and approved by the Commission prior to the expiration date. The applicants should submit these to the Commission staff once they are available.

This permit is issued on the basis of the building and site conditions described in the application and disclosed during the review process. By accepting this permit, the applicant agrees to notify the Commission if the actual building or site conditions vary or if original or historic building fabric is discovered. The Commission reserves the right to amend or revoke this permit, upon written notice to the applicant, in the event that the actual building or site conditions are materially different from those described in the application or disclosed during the review process.

All approved drawings are marked approved by the Commission with a perforated seal indicating the date of the approval. The work is limited to what is contained in the perforated document. Other work or amendments to this filing must be reviewed and approved separately. The applicant is hereby put on notice that performing or maintaining any work not explicitly authorized by this permit may make the applicant liable for criminal and/or civil penalties, including imprisonment and fine. This letter constitutes the permit;

a copy must be prominently displayed at the site while work is in progress. Please direct inquiries to Anne Jennings.


Meenakshi Srinivasan
Chair

PLEASE NOTE: PERFORATED DRAWINGS AND A COPY OF THIS PERMIT HAVE BEEN SENT TO:
John Stanley, Whitney Museum of American Art

cc: B. Artus, Deputy Director of Preservation, LPC

WHITNEY

Agreement with TF Cornerstone

95-97 HORATIO L.L.C.
c/o TF Cornerstone Inc.
387 Park Avenue South, 7th Floor
New York, NY 10016

March 5, 2019

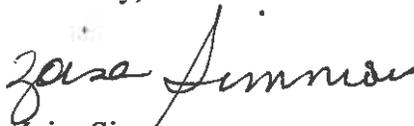
Via Hand Delivery
Rory Keeley
Assistant to the Chief Financial Officer and General Counsel
Whitney Museum of American Art
99 Gansevoort Street
New York, NY 10014

Re: 95-97 Horatio L.L.C.
First Amendment to License Agreement

Dear Mr. Keeley:

In regards to the above captioned matter, one fully executed original is enclosed.

Sincerely,



Zoisa Simmons
Legal Administrator

cc: Nick Holmes, General Counsel (without enclosure)

Encl.

FIRST AMENDMENT TO LICENSE AGREEMENT

DATE OF THIS FIRST AMENDMENT TO LICENSE AGREEMENT: as of February 28, 2019.

PARTIES TO THIS FIRST AMENDMENT TO LICENSE AGREEMENT:

LICENSOR: 95-97 HORATIO L.L.C., a New York limited liability company, having an office c/o TF Cornerstone Inc. ("TFC"), 387 Park Avenue South, New York, New York 10016.

LICENSEE: WHITNEY MUSEUM OF AMERICAN ART, a New York not-for-profit corporation, having an address at 99 Gansevoort Street, New York, New York 10014.

ORIGINAL LICENSE: License Agreement dated as of May 21, 2014 (the "Original License"), for a license area on the surface of the north façade of the building located at 76-108 Gansevoort Street, New York, New York 10014, as shown on Exhibit 1 to the Original License, between Licensor and Licensee.

The parties hereto, in consideration of the premises and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, each to the other in hand paid, the mutual receipt and sufficiency of which is hereby acknowledge, for themselves, their successors and assigns, covenant and agree as follows:

1. Additional Defined Terms.

1.1 The Original License as further amended by this Agreement, is herein referred to as the "License".

1.2 This First Amendment to License Agreement is herein referred to as this "Agreement".

1.3 All capitalized terms that are not otherwise defined in this Agreement shall have the same meaning and effect as they have in the Original License.

2. License Term. The definition of "Expiration Date" in the Key Terms Section of the Original License is amended to be May 31, 2024, subject to earlier termination pursuant to the terms of the License.

3. No Defaults; Prohibited Persons.

3.1 Licensee represents and warrants that Licensee is in sole possession of the License Area and no other person has any rights or interest in or to the License Area (or any part thereof), the Original License is in full force and effect and Licensor is not in default under the

Original License. Licensor represents and warrants that the Original License is in full force and effect and Licensee is not in default under the Original License.

3.2 Licensee represents and warrants to Licensor that it is not an "SDN" and Licensor represents and warrants to Licensee that it is not an "SDN". For purposes of this Agreement, an "SDN" is someone (1) who is on the list of "Specially Designated Nationals and Blocked Persons" promulgated by the Office of Foreign Assets Control of the U.S. Department of Treasury pursuant to 31 C.F.R. Part 500 or (2) with whom there is a prohibition or restriction from doing business with pursuant to the United States Patriot Act or any other law, rule, regulation, order or governmental action (an "Anti-Terrorism Law"). Licensee shall, upon request of Licensor, provide such information (including, without limitation certification) as may be required to enable Licensor to comply with any Anti-Terrorism Law. Notwithstanding any provision of this Agreement to the contrary, in no event is Licensee permitted to assign the License, sublet the License Area (in whole or part) or engage in any other transaction relating to the License or the License Area.

4. **No Broker.** Licensee and Licensor represent and warrant to each other that it has not dealt with any broker, finder, agent or salesperson (collectively, a "Broker") in connection with this Agreement, and that no other Broker negotiated this Agreement or is entitled to any commission in connection herewith. Licensee shall indemnify, defend and hold Licensor and TFC harmless and Licensor shall indemnify, defend and hold Licensee harmless of and from any and all loss, costs, damage or expense (including reasonable attorneys' fees and disbursements) incurred by reason of any claim of or liability to any Broker relating to this Agreement. The execution and delivery of this Agreement by Licensor and Licensee shall be conclusive evidence that each has relied upon the foregoing representation, warranty and indemnity.

5. **General Provisions.**

5.1 The parties hereby confirm that the terms, covenants and conditions of the Original License, as modified by this Agreement, are hereby ratified and confirmed and shall continue to be and remain in full force and effect. All understandings and agreements heretofore made by the parties with respect to the subject matter hereof are merged in this Agreement which, together with the Original License as modified hereby, fully and completely express the agreement of the parties. If there are any inconsistencies between the Original License and this Agreement, the terms of this Agreement shall control. This Agreement shall be interpreted under the laws of the State of New York and without regard to the identity of the drafts-person and may not be changed or modified, and no provision waived, except in a writing signed by the party sought to be charged. Licensee and Licensor agree that all legal actions relating to the License shall be adjudicated in the federal and state courts located in the City of New York. Licensee and Licensor each irrevocably consents to the personal and subject matter jurisdiction of those courts in any legal action relating to the License, and neither Licensee nor Licensor may assert, by way of motion, as a defense or otherwise, any objection to any such court being the venue of such legal action or claim that such venue is an inconvenient forum for Licensee. This Agreement shall not be binding upon Licensor unless and until Licensor signs it and delivers a signed copy to Licensee. Captions are inserted as a matter of convenience and for reference only

and in no way define, expand, limit or describe the scope of this Agreement nor the intent of any provision hereof.

5.2 This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. The preceding sentence shall not be deemed to have granted Licensee any rights to assign the License.

5.3 Licensee shall not record the License or any memorandum of it.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date indicated above.

LICENSEE:
**WHITNEY MUSEUM OF
AMERICAN ART**

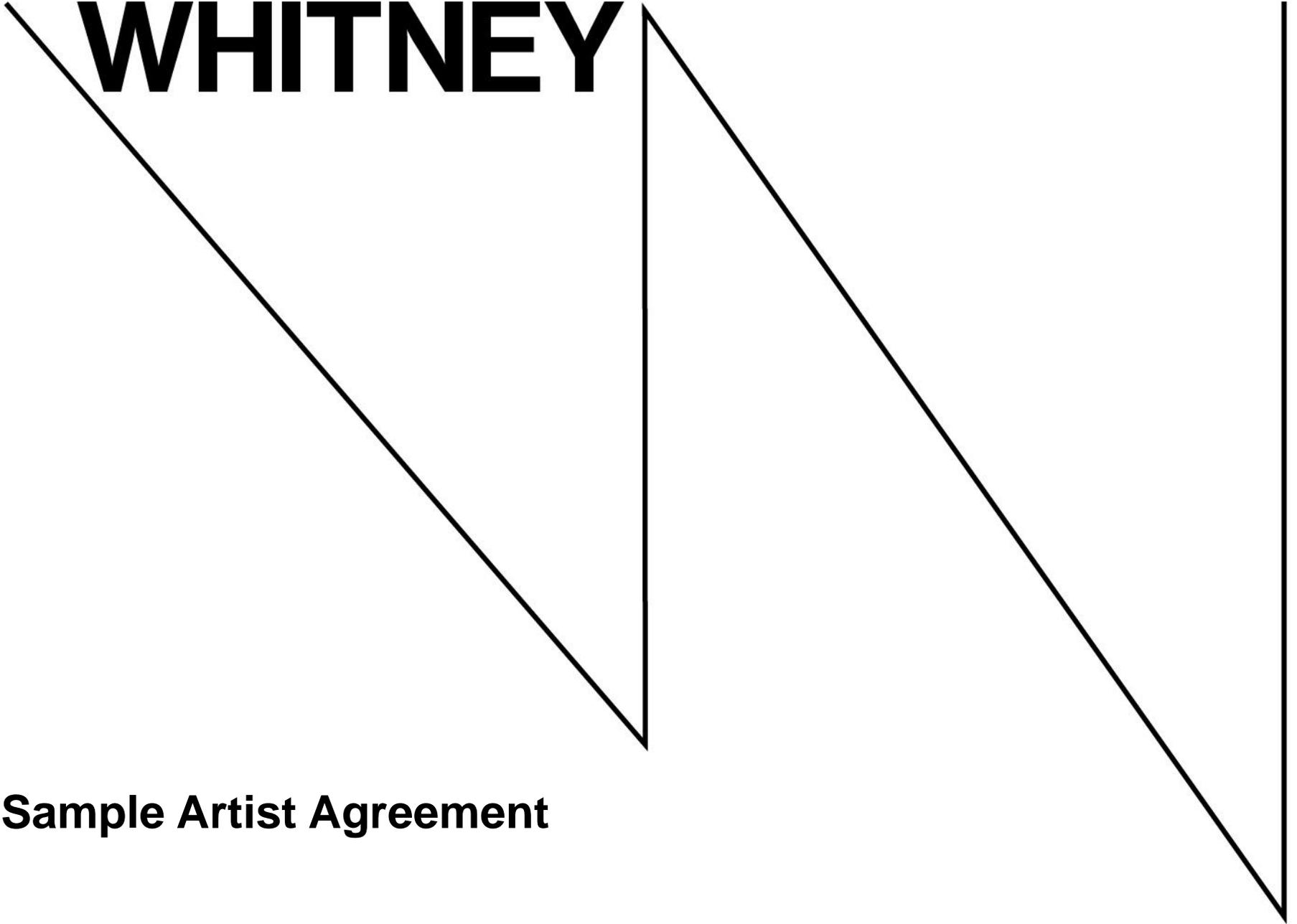
LICENSOR:
95-97 HORATIO L.L.C.

By: 
Name: _____
Title: **ADAM D. WEINBERG
ALICE PRATT BROWN DIRECTOR**

By: 
Name: *Jacob N. Elghanyan*
Title: *Senior Vice President*

WHITNEY

Sample Artist Agreement



FORM Production Agreement—Billboard

AGREEMENT FOR PRODUCTION OF SITE-SPECIFIC ARTWORK

AGREEMENT, dated as of [date], by and between the Whitney Museum of American Art, 99 Gansevoort Street, New York, NY 10014 (the "Museum") and [NAME OF ARTIST] [address] (the "Artist").

WHEREAS, Museum has sought permission from 95-97 Horatio L.L.C. and its agent, TF Cornerstone Inc., (the "Landlord") to install a work of art on an area approximately 17 feet high x 29 feet wide on the surface of the north façade of building located at 95 Horatio Street, New York, New York 10014 (the "Site") for a period of time not to exceed one year;

NOW, THEREFORE, for good and valuable consideration received, the parties hereby agree as follows:

1. Artwork Design

The Museum hereby requests that the Artist produce and deliver a design for an installation at the Site, and the Artist accepts the Museum's request.

2. Nature of Artwork

The "Artwork" shall be a site-specific installation constituting a work of fine art by Artist located at the Site. The design of the Artwork shall be substantially as set forth in the attached Exhibit "A."

3. Schedule & Budget

Artist shall provide all required services in conformance with the agreed-upon production budget and agreed-upon production schedule (the "Schedule"), subject to timely provision by Museum of all reasonably required content, input, information, materials, work, and cooperation. The Schedule is set forth in the attached Exhibit "B." In the spirit of the collaboration the Artist and Museum mutually agree that, once the Artwork is selected and accepted by the Museum, the Artwork will remain on view unaltered throughout the planned schedule of the exhibition.

4. Artist's Rights & Responsibilities

Artist shall provide the following services, in conformance with the Schedule and the Budget:

(i) Prepare and present to Museum Artist's original creative design for the Artwork;

FORM Production Agreement—Billboard

(ii) Consult with Museum's contractors and vendors to provide them with all information they may require in order to create and finalize the working scale renderings (the "Specifications"), necessary to fabricate and install the Artwork at the Site in accordance with Artist's creative design as approved by Museum (the "Design");

(iii) Make reasonable efforts to participate in events and initiatives, if any, relating to the public opening of the Artwork;

5. Museum's Rights & Responsibilities

Museum shall be responsible for:

(i) Funding the project in conformance with the Budget and the Schedule;

(ii) Fabricating and installing the Artwork at the Site in material conformance with the Specifications and the Design;

(iii) Engaging all contractors and personnel required for the fabrication and installation of the Artwork;

(iv) Covering all costs associated with the project (other than any costs expressly required hereunder to be borne by Artist), including, without limitation, the cost of all materials, equipment, services, contractors, staff, regulatory compliance, permits, insurance, operation, security, and maintenance;

(v) Promptly reviewing each item submitted by Artist for Museum's review, approval and/or acceptance, and promptly providing Artist with written notice as to whether such item is accepted or rejected, including without limitation advising Artist as to any Modification (as defined below) that may be required to comply with any applicable law, ordinance, and/or regulation, or otherwise to ensure the physical integrity and safety of the Artwork as installed at the Site; and

(vi) Providing prompt written notice to Artist when the fabricated and installed Artwork is deemed completed and finally accepted by Museum ("Final Acceptance").

6. Landlord's Rights & Responsibilities

Artist acknowledges that the work will be installed on a commercial building and that Landlord has granted its permission on the condition that Artist agrees to the terms described in the acknowledgment letter attached here as Exhibit "C." In addition, Artist acknowledges that Landlord requires Artist to sign the VARA Waiver attached as Exhibit "D."

7. Fee

In consideration of the Artwork, Artist's services, and the rights granted herein, Museum shall pay to Artist the sum of [amount] (USD \$xxx,xxx) (the "Fee"), to be paid as follows:

FORM Production Agreement—Billboard

- USD \$[xxx] upon execution of this Agreement;
- USD \$[xxx] upon commencement of installation of the Artwork;

Payment shall be made by made against invoices to be submitted by Artist.

The Whitney will make payment to the name of the individual, entity, or agent stated on the Form W-9, or W-8BEN if you are a non-resident alien, submitted by you to the Whitney. Except as otherwise set forth above and below, you will be paid without deductions for income tax or Social Security, and you are fully responsible for paying all applicable taxes, including income, self-employment, Medicare, Social Security, and other required tax payments, and for filing all tax returns and forms required in connection with this Agreement. Even though income tax or Social Security deductions are not made by the Whitney, you should be aware that the Whitney is required to report total annual amounts paid to you to the Internal Revenue Service (“IRS”) for informational purposes. If you are a non-resident alien, the Whitney may be required to withhold 30% of compensation payable to you. Certain residents of countries with whom the U.S. maintains tax treaties may be exempt depending on the provisions of such treaties. If you are eligible for reduced withholding or exemption, please submit IRS Form with your signed agreement; a copy can be from the IRS at <https://www.irs.gov/pub/irs-pdf/fw8ben.pdf>.

8. Expenses

Except as expressly set forth herein, or otherwise agreed in writing, each party shall be responsible for its own expenses hereunder.

9. Ownership & Reproduction Rights

(a) *Installation Components.* Museum shall be the sole owner at all times of the components to be installed at the Site.

(b) *Copyrights.* Artist shall remain the sole owner of the copyrights and all related intellectual property rights in the Artwork. When reasonably practicable, the following copyright notice shall be included when the Artwork is reproduced: © [date][name of artist].

(c) *Reproduction Rights.* Artist grants to Museum a worldwide, fully paid up nonexclusive license to create and use reproductions of the Artwork for customary non-commercial archival, documentary, educational and publicity purposes directly and solely relating to Museum, its exhibitions and/or its programs. In addition, Artist grants to Landlord the reproduction rights listed in the Acknowledgement letter attached as Exhibit “C”.

(d) *Working Materials.* Any drawings, maquettes, models, mock-ups, or similar presentation or preliminary materials created by Artist and/or Artist in order to present or model the Artwork, and the copyrights and intellectual property rights therein, shall remain the sole property of Artist.

11. Credit Lines

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(a) *Artist Credit Line.* Artist shall be credited at the Site as the sole artistic creator of the Artwork in accordance with standard museum practice. Artist shall also be so credited in any materials in which the Artwork is reproduced, and in all other customary and appropriate circumstances.

(b) *Museum Credit Line.* When the Artwork is publicly reproduced by or under the authority of Artist or his successor, the following credit shall appear whenever reasonably practicable: “An original artwork [commissioned] by the [name of institution].”

12. De-installation

Notwithstanding any moral rights (*droit moral*) or similar rights afforded to Artist under the Visual Artists Rights Law (VARA) and any similar laws in any applicable jurisdiction, Museum or Landlord shall have the right to de-install, store, re-install, discard, and/or destroy the Artwork. Artist agrees to the terms in the Waiver attached as Exhibit D, and agrees to sign the Waiver and provide the signed Waiver to the Museum.

14. Approvals & Permits

Museum shall obtain, any and all rights, permits, leases, permissions (the “Approvals”), and access necessary for the Artwork to be installed at the Site, including but not limited to, a Certificate of Appropriateness from the Landmarks Preservation Commission. Artist shall cooperate with Museum in this regard, and shall sign or provide any documentation that may be necessary or desirable to secure the Approvals.

15. Third-Party Contractors

Artist shall have no responsibility for any services or materials provided by third-party contractor/vendor or by Museum’s staff, or any modifications or additions to the project or the Artwork carried out or provided by any of them, or any delays or errors any of them may cause.

16. Unavailability of Artist

If Artist dies or becomes incapacitated such that it is not possible for Artist to complete and finalize the Artwork hereunder, Artist’s legal representative or successor shall provide Museum with all available information and materials that document Artist’s creative design and intentions for the Artwork, and Museum shall have the right to complete and install the Artwork hereunder in accordance therewith.

17. Term & Termination

(a) *Term of Agreement.* The term of this Agreement shall commence as of the date set forth above and shall continue for so long as either party has any obligation to the other hereunder.

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(b) *Cancellation.* Notwithstanding the foregoing, Museum shall have the right to cancel the project and terminate this Agreement at any time and for any reason, upon written notice to Artist. Unless such termination is attributable to Artist's uncured material breach of this Agreement: (i) Museum shall pay Artist any and all installments of the Fee that have already accrued (ii) Museum shall have no right to install or make any use whatsoever of the Artwork; and (iii) all rights granted herein by Artist with respect to the Artwork shall revert to Artist, free and clear.

Neither party will be held responsible for failure to fulfill its obligations hereunder if such failure is due to a Force Majeure Event. A "**Force Majeure Event**" shall mean an: act or declaration of war; terrorist act or threat; riot or civil commotion; an act or regulation of public authority (including any public health or safety warning, advisory, or recommendations); pandemic, public health emergency; declaration of a state of emergency; quarantine or embargo; fire; earthquake; natural disaster; lockout or strike or other labor dispute; an act of God; or other occurrence outside the reasonable control of a party. A Force Majeure Event shall also be deemed to include any circumstance that we believe could give rise to a concern for the safety of Museum visitors, staff, and/or the Artwork.

18. Representations & Warranties

Artist represents, warrants and covenants that:

(i) Except as otherwise expressly disclosed to Museum in writing, the Design is unique and original and solely the result of the artistic effort of Artist, and does not infringe upon any copyright or other rights of any person;

(ii) No work of art by Artist materially implementing the Design has been previously fabricated or accepted for sale or donation elsewhere;

(iii) The Design is free and clear of any liens from any source whatsoever, and Artist has not assigned, transferred, sold, licensed, granted, encumbered or utilized the Design or any material element thereof, or any copyright related thereto, in any manner that may impair the rights granted to Museum hereunder; and

(iv) Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained herein.

The foregoing representations, warranties and covenants shall survive the termination or other extinction of this Agreement.

19. Indemnification & Liability

(a) *By Artist.* Artist shall indemnify and hold harmless Museum and its affiliates, parents, subsidiaries, officers, directors, agents, representatives, members, shareholders, principals, employees, successors and authorized assigns against all claims, damages, losses,

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expenses and costs of any kind (including without limitation reasonable attorneys' fees) (collectively, "Claims") arising out of (i) any uncured material breach by Artist of this Agreement or any of Artist's representations, warranties and covenants herein ; and (ii) any claim that the Design violates the copyright or any other intellectual-property right of any third party.

(b) *By Museum.* Museum shall indemnify and hold harmless Artist and Artist's affiliates, agents, representatives, employees, heirs, executors, and administrators against any Claim arising out of (i) any uncured material breach of this Agreement by Museum; (ii) any action taken or not taken by Museum or its employees, contractors, representatives or agents in connection with the project and/or in connection with the development, fabrication, installation of the Artwork, or its presentation and/or maintenance at the Site, that causes harm to any person or property, or violates any right of any third party (other than any intellectual-property infringement claim covered by Artist's indemnification above), or violates any applicable law, rule, regulation, requirement, order or direction of any governmental authority; and (iii) any harm or injury caused to any person or property by the Artwork, or its fabrication, installation, presentation, maintenance, or operation, unless expressly covered by Artist's indemnification above or caused by the negligence or deliberate malfeasance or Artist or any of Artist's employees or agents.

(c) *Consequential Damages.* Neither party shall be liable to the other for indirect, incidental, consequential, special or exemplary damages (even if the other party has been advised of the possibility of such damages), such as, without limitation, any lost revenue or anticipated profits or business.

(d) *Survival.* The foregoing representations, warranties and covenants shall survive the termination or other extinction of this Agreement.

20. Miscellaneous

(a) *Confidentiality.* Each party shall maintain the secrecy of any confidential information belonging to the other party. Information shall be deemed confidential in every case where either a reasonable person would understand it to be so or the disclosing party has expressly identified it as such, unless the information in question was already known to the receiving party prior to its first disclosure hereunder, has become generally known to the public through no fault of the receiving party, or is required by law to be disclosed.

(b) *Force Majeure.* Neither party shall be liable for delay or failure in the performance of its obligations hereunder if such delay or failure arises from the occurrence of events beyond the reasonable control of such party.

(d) *Assignment.* This Agreement is personal to the parties and shall not be capable of being assigned by either party without the other party's express written consent in advance.

(e) *Miscellaneous.* This agreement is personal to Artist, and cannot be assigned by Artist. Artist agrees and acknowledges that in performing pursuant to this agreement, Artist

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shall be acting as an independent contractor with respect to Museum, and that Artist and Museum are entirely independent of one another, and nothing in this agreement will be deemed to create any partnership, joint-venture, agency or employment relationship. Artist will have no right or power to obligate or bind Museum in any way, and Artist will not represent themself to any third party as having any such right or power. This agreement can only be modified in a writing signed by the party having the obligation. No provision hereof will be construed against either party because it was drafted by that party. If any provision is deemed legally prohibited or invalid, it will be deemed modified to the minimum extent necessary to bring it into legal compliance consistent with the parties' intent. No waiver of any default hereunder will operate as a waiver of any other default. This agreement will bind the parties' respective affiliates, representatives, staff, heirs, successors, and assigns, as applicable. This agreement is made in, and governed by the internal substantive laws of, the State of New York, and any disputes arising hereunder will be adjudicated in that State. This agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, superseding all prior agreements or discussions between them.

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

WHITNEY MUSEUM OF AMERICAN ART

THE ARTIST:

By: _____
Name:
Title:

[name of artist]

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EXHIBIT "A"

DESCRIPTION OF ARTWORK

EXHIBIT "B"

SCHEDULE

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EXHIBIT “C”
LETTER ACKNOWLEDGING LANDLORD TERMS AND CONDITIONS

[Date]

Whitney Museum of American Art
99 Gansevoort Street
New York, NY 10014

To Whom It May Concern:

As you know, the Whitney Museum of American Art (the “Museum”) has sought permission from 95-97 Horatio L.L.C., and its agent, TF Cornerstone Inc., (the “Landlord”) to install a work of art created by me (the “Work”) on an area approximately 17 feet high x 29 feet wide on the surface of the north façade of building located at 95 Horatio Street, New York, New York 10014 (the “Site”) for a period of time not to exceed one year.

I acknowledge and agree that the Landlord reserves the right to review and approve the Work and may reject the Work for any or no reason.

I understand the Landlord had required that the artist of the Work sign a waiver of rights under the Visual Artists Rights Act of 1990, in the form attached hereto. I agree to sign the waiver.

I understand and acknowledge that Landlord reserves the right itself to use, or to license to others the north façade of the Building other than the Site for any purposes whatsoever without consultation with Museum. Museum shall have no right to approve Landlord’s or another licensee’s use of the façade of the Building other than the Site. Landlord also reserves the right to require that the Work be relocated to another part of the building.

I acknowledge and agree that without the further consent of, or the payment of any sum or other consideration to me, Landlord or any Landlord affiliate (each a “Landlord Party”) may photograph, film, depict and otherwise record and/or reproduce a likeness of the Work solely in connection with an incidental depiction, meaning a depiction of the north façade or the entire building that shows the Work in the context of its location on the Site (and “Image”) and use, broadcast, exhibit and distribute such Image in any way that such Landlord Party so chooses to promote its business, which use may include the use of such Image in promotional materials for the building or any other Landlord Party’s business or property in any manner and media whatsoever, whether now known or hereafter devised and without any geographic limit, provided, however, that no Landlord Party shall use any such Image separate and apart from the promotion of its business. The Landlord or any Landlord Party may use any Image in connection with any products that are promotional items and are not sold by Landlord or any Landlord Party.

Sincerely,

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[NAME OF ARTIST//Signed by ARTIST]

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EXHIBIT “D”
WAIVER FOR WORKS OF VISUAL ART INSTALLED AT BUILDING

[Date]

Building Owner: 95-97 Horatio L.L.C.
Building Owner’s Address: c/o TF Cornerstone Inc.,
387 Park Avenue South, New York, NY 10016

Re: Building: 95-97 Horatio Street, New York, NY
Work: _____(name of Work)

Ladies and Gentlemen:

Thank you for giving the opportunity to participate in the design, creation and/or installation of the captioned work (the “Work”) to be located at the captioned building (the “Building”). In consideration of the foregoing and for \$10.00 and other good and valuable consideration, we, for ourselves, our successors and assigns covenant and agree as follows:

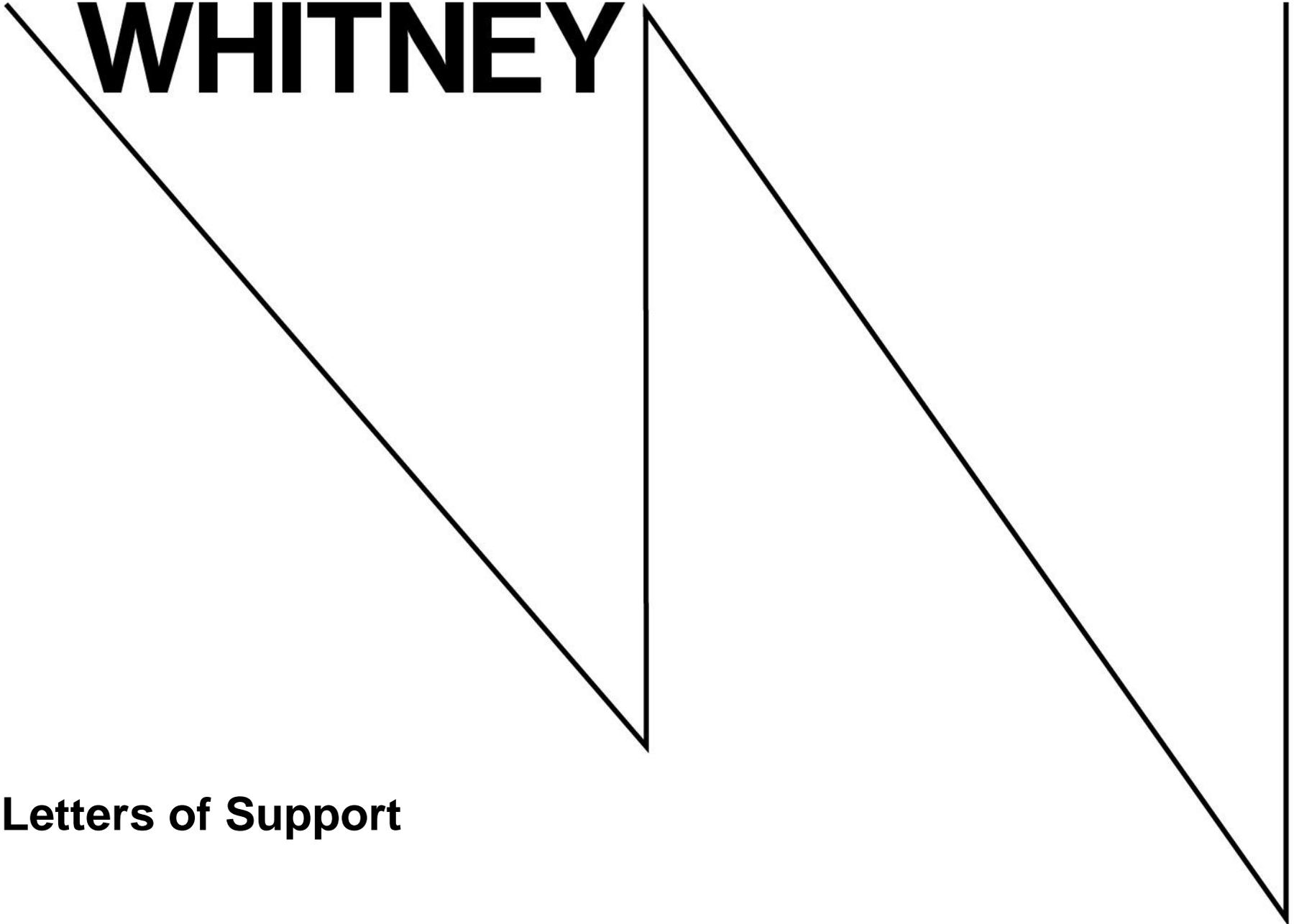
1. We hereby consent to the installation of the Work on the north façade of the Building even though such installation of the Work may subject it to destruction, distortion, mutilation or other modification by reason of its removal. We understand that you shall not provide any security for the Work and that the Work will not be protected from the public or from the elements, and so may suffer damage.
2. We hereby waive any and all rights under the Visual Artists Rights Act of 1990, as amended, codified at 17 U.S.C. §1-1 et seq. (“VARA”) with respect to the Work or any part thereof and confirm that the rights conferred by VARA do not apply to the Work or any part thereof or to any and all uses thereof including, without limitation, the removal, relocation, transportation, storage, installation (at the Building or elsewhere) destruction, modification or mutilation of the Work.
3. Nothing contained in this document is intended to confer any rights under VARA or otherwise with respect to the Work (or any part thereof) that would not exist otherwise.
4. We shall, upon request of you or any subsequent owner of the Building, execute such instruments as you or any subsequent owner may require confirming the foregoing provision of this document.

Very truly yours,

[NAME OF ARTIST//Signed by ARTIST]

WHITNEY

Letters of Support



The current proposal is:

Preservation Department – Item 2, LPC-22-04263

95 Horatio Street - Gansevoort Market Historic District Borough of Manhattan

To Testify Please Join Zoom

Webinar ID: 893 8993 7710

Passcode: 836195

By Phone:

1 646-558-8656

US (New York) 877-853-5257 (Toll free)

US 888 475 4499 (Toll free)

Note: If you want to testify on an item, join the Zoom webinar at the agenda's "Be Here by" time (about an hour in advance). When the Chair indicates it's time to testify, "raise your hand" via the Zoom app if you want to speak (*9 on the phone). Those who signed up in advance will be called first.