EXHIBIT 2

FORM OF DECLARATION OF RESTRICTIVE COVENANT

DECLARATION OF RESTRICTIVE COVENANT

Dated as of _____

by

[_____]

Location of Premises

Street Address:
City or Town:
County:
Block:
Lot:

_____

After Recording, Return to:

[Name and Address of Applicable City Agency]

DECLARATION OF RESTRICTIVE COVENANT

THIS DECLARATION OF RESTRICTIVE COVENANT ("**Declaration**") is made as of the ___ day of _____ 20__ by _____, a _____ organized under the [Not-for-Profit Corporation Law of the State of New York – *please modify accordingly*] (the "**Declarant**") having an office at _____, New York _____, in favor of The City of New York, a municipal corporation of the State of New York (the "**City**") having an office at City Hall, New York, New York 10007.

W I T N E S S E T H

WHEREAS, Declarant is the fee owner of certain real property located in the Borough of _____, City of New York and State of New York, which property is designated as Block ____, Lot ____ on the Tax Map for such Borough and is also known by the street address of _____, New York, all as more particularly described in **Exhibit A** attached hereto (such real property together with all improvements now or hereafter erected thereon, being hereinafter referred to as the "**Premises**"); and

WHEREAS, Declarant operates _____ at the Premises; and

WHEREAS, Declarant desires to undertake a project at the Premises ("**Project**") consisting of the construction of certain improvements more fully described in that certain funding agreement dated as of _____, 20__ between [Name of City Agency] and Declarant ("**Funding Agreement**"); and

WHEREAS, Declarant has requested that the City provide funding for the Project; and

WHEREAS, the City has appropriated the sum of _____ Dollars ($_____) to provide City Funds (as defined in Section 1 below) for the Project; and

WHEREAS, City Funds will be made available to Declarant by [Name of City Agency] for the purposes of the Project pursuant to the Funding Agreement.

NOW, THEREFORE, in consideration of the award of City Funds and other good and valuable consideration the receipt of which is hereby acknowledged by Declarant, Declarant for itself and on behalf of its successors, heirs, assigns, legal representatives, lessees and transferees, including, without limitation, any owners and/or users of the Premises does hereby declare and agree that the Premises shall be hereinafter held, sold, transferred, conveyed and occupied subject to the restrictions, covenants, obligations and agreements set forth in this Declaration.

1. **DEFINITIONS.** For the purposes hereof the following terms shall have the following meanings. (Capitalized terms utilized and not otherwise defined herein shall have the meaning assigned to such terms in the Funding Agreement):

"**City**" has the meaning provided in the Preamble hereof.

"**City Funds**" means funds provided by the City to or for the benefit of Declarant and used in connection with the Premises.

"**City Purpose Covenant**" has the meaning provided in Section 3 hereof.

"**Compliance Certificate**" has the meaning provided in Section 4(d) hereof.

"**Declarant**" has the meaning provided in the Preamble hereof.

"**Declaration**" has the meaning provided in the Preamble hereof.

"**Force Majeure**" means any of the following acts and events that occur without the negligence or fault, and beyond the reasonable control, of Declarant or that of any of its successors, heirs, assigns, legal representatives, lessees and/or transferees including, without limitation, any owners and/or users of the Premises and of which Declarant (or the owner or lessee of the Premises at the time of the occurrence of such act or event) has given the City written notice within thirty (30) days after such party knows of same: (a) governmental actions, (b) orders of any court of competent jurisdiction, (c) war or act of war (whether an actual declaration of war is made or not), (d) insurrection, (e) riot, (f) act of public enemy, (g) terrorist acts, (h) accidents, (i) mechanical failure and (j) acts of God (including, fire, flood or other inordinately severe weather conditions).

"**Funding Agreement**" has the meaning provided in the Recitals hereof.

"**Indemnitees**" has the meaning provided in Section 9 hereof.

"**Lien**" means any lien (statutory or otherwise), encumbrance, lease, easement, option, restriction, estate or other interest including, but not limited to, mechanic's, laborer's, materialman's and public improvement liens, restrictive covenant, security interest, mortgage, deed of trust, priority, pledge, charge, conditional sale, title retention agreement, financing lease or other similar right of others, or any other agreement to give any of the foregoing.

"**Performance Term**" has the meaning provided in Section 3 hereof.

"**Performance Term Commencement Date**" has the meaning provided in Section 3 hereof.

"**Person**" means an individual, corporation, partnership, joint venture, estate, trust, unincorporated association; any federal, state, county or municipal government or any bureau, department or agency thereof; and any fiduciary acting in such capacity on behalf of any of the foregoing.

"**Premises**" has the meaning provided in the Recitals hereof.

"**Project**" has the meaning provided in the Recitals hereof.

"**Register's Office**" means the Office of the City Register of the City of New York for the County where the Premises are located.

"**Useful Life**" has the meaning provided in Section 4(a) hereof.

2. **EFFECTIVE DATE AND TERMINATION.** This Declaration shall become effective immediately upon execution by Declarant and shall terminate upon expiration of the Performance Term except for rights and obligations that accrued prior to termination.

3. **CITY PURPOSE COVENANT. [THE FOLLOWING IS AN EXAMPLE OF A CITY PURPOSE COVENANT. EACH COVENANT MUST DESCRIBE THE PARTICULAR CITY PURPOSE BEING SERVED.]** Declarant agrees that commencing on the date hereof and continuing until completion of the improvements contemplated by the Project the Premises shall be used solely for the development and construction of the Project, and commencing on the Performance Term Commencement Date and concluding _____ (___) years[1] thereafter (the "**Performance Term**") the Premises shall be used for the benefit of the people of the City as follows ("**City Purpose Covenant**"):

(a) [as a not-for-profit center that is dedicated to the presentation of music, performing arts and cultural programs that foster personal growth for children through music and artistic appreciation][2];

(b) for purposes ancillary and incidental to the foregoing uses provided that such ancillary and incidental purposes relate to, promote, and do not derogate from, use of the Premises for the purposes authorized by Section 3(a) hereof;[3] and

(c) for such other cultural, educational, artistic, community, social service or recreational use for the benefit of the people of the City as the City shall approve through the Mayor of the City of New York or the Mayor's designee.[4]

For the purposes hereof, "**Performance Term Commencement Date**" means the date on which the construction work contemplated by the Project has been substantially completed as evidenced by the issuance of a Certificate of Occupancy (Temporary or Final) for the entire Premises, or a

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[1] **THE PERFORMANCE TERM IS DETERMINED IN EACH CASE BY OMB.**

[2] **EXAMPLE OF USE**

[3] **THIS SECTION CANNOT BE MODIFIED WITHOUT PRIOR APPROVAL FROM OMB COUNSEL**

[4] **THIS SECTION CANNOT BE MODIFIED WITHOUT PRIOR APPROVAL FROM OMB COUNSEL.**

Letter of Completion by the New York City Buildings Department, in either case, as required by applicable law, and the Premises can be utilized as required by the City Purpose Covenant.

4. **ADDITIONAL AGREEMENTS.** Declarant further covenants and agrees as follows:

(a) No Destruction, Removal or Alteration. Any property whether real or personal (including the Premises and any items of machinery and equipment) and any improvements to the Premises paid for in whole or in part with City Funds shall not be destroyed, removed or altered in any way by, through or as the result of the action or inaction of Declarant or that of any of its successors, heirs, assigns, legal representatives, lessees and/or transferees including, without limitation, any owners and/or users of the Premises before the expiration of the useful life ("**Useful Life**") for such property as determined by the City's Office of Management and Budget in its sole and absolute discretion based on the criteria set forth in New York State Local Finance Law Section 11.a., unless the City's prior written consent shall have been obtained. It is understood and agreed that none of the following shall constitute a breach of this covenant: (i) destruction, removal or alteration of any such property or improvement before the expiration of its Useful Life as a result of the intervention of Force Majeure, (ii) the undertaking of any repair or restoration of the Premises and/or any improvements thereto as may be reasonably necessary to protect and preserve their character and functionality, and (iii) the removal and disposal of any item of machinery and/or equipment as may become worn or obsolete, provided that promptly, after such removal, any such item of machinery and/or equipment shall be replaced with other machinery and/or equipment functionally comparable (or better) in all material respects to the removed machinery and/or equipment.

(b) No Sale, Mortgage, Transfer or Assignment of the Premises. Declarant shall not sell, transfer or assign any interest to the Premises or any portion thereof to any Person, unless: (i) such sale, transfer or assignment shall be approved by the City, (ii) such Person (*i.e.* the purchaser, transferee or assignee) executes an instrument in recordable form and otherwise reasonably satisfactory to the City in form and substance whereby such Person acknowledges that the Declaration can be enforced against the Premises and its owner, and agrees to be personally bound by each and every term, covenant and condition on the part of Declarant to be performed and/or observed under this Declaration as if such Person was the original Declarant hereunder, (iii) Declarant shall, or shall cause, said instrument to be recorded against the property records of the Premises in the Register's Office, and (iv) Declarant shall provide the City with evidence of the execution and recordation of said instrument in accordance with the requirements of this Declaration. In addition, Declarant shall not mortgage the Premises or any portion thereof to any Person unless such Person executes a Subordination acceptable to the City, a current form of which is attached hereto as **Exhibit C**; and Declarant shall, or shall cause, such Subordination to be recorded against the property records of the Premises in the Register's Office and provide the City with evidence of the execution and recordation of such Subordination. Any purported sale, mortgage, transfer or assignment of any interest to the Premises or portion thereof that fails to comply with the requirements of this Section shall be null and void and of no force or effect whatsoever as if such sale, mortgage, transfer or assignment shall not have been consummated.

(c) Restoration. If the Premises shall be damaged or destroyed by fire or other casualty, ordinary or extraordinary, foreseen or unforeseen, Declarant shall promptly restore the Premises to the extent and the value of, and to the extent reasonably practicable, the character of the Premises as they existed prior to said casualty such that the Premises can continue to be used in accordance with the City Purpose Covenant. Declarant shall so restore the Premises whether or not (i) such damage or destruction has been insured or was insurable, (ii) Declarant is entitled to receive any insurance proceeds, or (iii) the insurance proceeds are sufficient to pay in full the cost of the restoration of the Premises. However, if after a fire or other casualty the Premises cannot be repaired or restored so that the Premises can continue to be used in accordance with the requirements of the City Purpose Covenant, unless the City agrees otherwise, the insurance proceeds shall be allocated between Declarant and the City as follows: (1) to the City, an amount equal to the amount of City Funds actually disbursed to Declarant; and (2) the balance, if any, to Declarant.

(d) Certificate. On the first anniversary of the date of this Declaration and on each anniversary thereafter, Declarant (or the owner of the Premises at such time) shall provide the City with a certificate, substantially in the form annexed hereto as **Exhibit B**, certifying that the Premises are held, occupied and used in compliance with the requirements of this Declaration (the "**Compliance Certificate**"). The Compliance Certificate shall be signed by the Chief Executive Officer of Declarant or that of the owner of the Premises at such time.

(e) Inspections. At any time and from time to time upon reasonable prior notice, the City and its officers, employees, servants, consultants and agents shall be permitted to enter the Premises to confirm that the Premises are being used in compliance with the requirements of this Declaration.

(f) No Discrimination; Sectarian and Other Uses. The Premises shall not be used to unlawfully discriminate against any Person on the basis of race, religion, creed, color, national origin, sex, age, disability, marital status, sexual orientation, or political affiliation. Any portion of the Premises the acquisition, construction or improvement of which shall have been paid for with City Funds shall not be used to advance religion or support sectarian activity, including religious worship, instruction or proselytization. Notwithstanding the preceding, subject to the requirements of the City Purpose Covenant, such portion of the Premises may be made available to any Person, including Declarant itself, on a neutral, non-discriminatory basis for any religious or nonreligious purposes or activities, provided that such portion of the Premises is generally made available to the general public for such purposes or activities on substantially similar terms and conditions, the availability of such portion of the Premises for such purposes or activities on such terms and conditions is made known to the general public, and the use of such portion of the Premises for any such purposes or activities is occasional and temporary.

(g) Green Building Standards Law. If the amount of City Funds and the nature of the improvements contemplated by the Project trigger the requirements of the Green Building Standards Law (New York City Charter Section 224.1 and Chapter 10 of Title 43 of the Rules of the City of New York), Declarant shall comply with the requirements of said Green Building Standards Law in the construction of the improvements contemplated by the Project.

5. **REPRESENTATIONS AND WARRANTIES.** Declarant represents and warrants that:

(a) There are no restrictions of record on the use of the Premises, nor any present or presently existing future estate or interest in and to the Premises, nor any Lien of any kind, on or with respect to the Premises, which prevent, preclude or delay, or may prevent, preclude or delay, the imposition, performance and/or observance of the restrictions, covenants, obligations and agreements of this Declaration which have not been extinguished or subordinated to this Declaration.

(b) The execution, delivery, performance and recordation of this Declaration by Declarant has been authorized by all necessary corporate action of Declarant and does not and will not: (i) require any consent or approval by any Person, which has not been obtained and is in full force and effect on the date hereof, (ii) contravene the charter or by-laws of Declarant, (iii) violate any provision of, or require any filing, registration, consent or approval under, any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Declarant or its affiliates, (iv) result in a breach of, or constitute a default or require any consent, which has not been obtained and is in full force and effect on the date hereof, under any indenture or agreement, lease or instrument to which Declarant is a party or its properties may be bound or affected, or (v) cause Declarant to be in violation of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award, or in default under any such indenture, agreement, lease or instrument.

6. **REAL COVENANTS.** Declarant understands and agrees that the restrictions, covenants, obligations and agreements contained in this Declaration shall be real covenants running with the land and shall inure to the benefit of the City and its respective successors and assigns, and bind Declarant and its successors, heirs, assigns, legal representatives, lessees and transferees, including, without limitation, any owners and/or users of the Premises.

7. **RECORDING.** Declarant shall file and record, or shall cause to be filed and recorded, immediately upon execution hereof, this Declaration in the Register's Office and shall cause the Register's Office to index this Declaration against the Premises. Promptly upon recordation hereof Declarant shall deliver to the City true and complete copies of this Declaration bearing the recording information and certified by the Register. If Declarant fails to record this Declaration and/or deliver copies thereof to the City as required hereby, the City] may record this Declaration, at the sole cost and expense of Declarant and all recording fees and other fees, costs and expenses including, without limitation, any and all expenses for the purchase of a reasonable number of certified copies of the recorded Declaration shall be immediately paid by Declarant to the City.

8. **SUBORDINATION; CONFLICTING LIENS.** Any present or future estate in and to the Premises and any Lien of any kind at any time arising, claimed or asserted in and to or with respect to the Premises shall be subject and subordinate to this Declaration. Accordingly, Declarant for itself and on behalf of its successors, heirs, assigns, legal representatives, lessees and transferees including, without limitation, any owners and/or users of the Premises shall cause any Person that at any time asserts any right or claim in and to or with

respect to the Premises to subordinate any such right or claim to the Premises to this Declaration. In addition, Declarant for itself and on behalf of its successors, heirs, assigns, legal representatives, lessees and transferees including, without limitation, any owners and/or users of the Premises agrees that it shall not permit the imposition of any restriction on the use of the Premises that conflicts with the City Purpose Covenant in any manner without first obtaining the written consent of the City, and that any such restriction imposed on the Premises in violation of the foregoing requirement shall be unenforceable for the duration of the Performance Term.

9. **INDEMNIFICATION.** Declarant agrees that it shall defend, indemnify and save the City and their respective directors, officers, employees, agents and servants (collectively, the "**Indemnitees**") harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, court costs and reasonable attorneys' fees and disbursements, that are imposed upon, or incurred by, or asserted against, any of the Indemnitees resulting from the execution and delivery of this Declaration, the recordation thereof or the failure of Declarant or any of its successors, heirs, assigns, legal representatives, lessees and transferees including, without limitation, any owners and/or users of the Premises to perform or observe any restriction, covenant, obligation or agreement of this Declaration on its or their part to be performed or observed.

10. **REMEDIES AND ENFORCEMENT.** Declarant understands, acknowledges and agrees as follows:

(a) The City is an interested party to this Declaration and Declarant consents to enforcement by the City, administratively or at law or equity, of the restrictions, covenants, obligations and agreements contained herein.

(b) Monetary damages would not be adequate or sufficient to compensate the City for a breach of any of the restrictions, covenants obligations and/or agreements of this Declaration. Accordingly, in addition to any other remedies available to the City administratively, at law or equity, under this Declaration or otherwise, the City may obtain a mandatory and/or prohibitory injunction compelling Declarant to specifically perform and observe the restrictions, covenants, obligations and agreements contained in this Declaration or to remedy any failure on the part of Declarant or any of its successors, heirs, assigns, legal representatives, lessees and transferees including, without limitation, any owners and/or users of the Premises to perform or observe any such restriction, covenant, obligation or agreement.

(c) No right or remedy conferred upon the City in this Declaration is intended to be exclusive of any other right or remedy contained in this Declaration or at law or equity. Every such right or remedy shall be cumulative and shall be in addition to each other right and remedy contained in this Declaration or now or hereafter available to the City at law, in equity, by statute or otherwise.

11. **NOTICES.** All notices, approvals, consents and other communications to the parties hereunder shall be in writing and shall be delivered by hand or sent by registered or certified mail, return receipt requested, or by nationally recognized overnight delivery service that provides a receipt to the sender. Receipt of a notice by the party to whom the notice is

transmitted will be deemed to have occurred: (i) upon receipt, if hand delivered; (ii) five days from the date of mailing, if mailed; or (iii) the next business day after overnight delivery service.

(a) All notices and correspondence to the City must be delivered to the following addresses and addressees or to such other address(es) or addressee(s) of which the City may notify Declarant its successors, heirs, assigns, legal representatives, lessees or transferees including, without limitation, any owners and/or users of the Premises from time to time:

Title: Counsel
Address: New York City Office of Management and Budget
255 Greenwich Street
New York, New York 10007

with copies to:

Title: Chief, Economic Development Division
Address: New York City Law Department
100 Church Street
New York, New York 10007

(b) All notices and correspondence to [NAME OF CITY AGENCY] will be delivered to the following addresses and addressees or to such other address(es) or addressee(s) of which [NAME OF CITY AGENCY] may notify Declarant its successors, heirs, assigns, legal representatives, lessees or transferees including, without limitation, any owners and/or users of the Premises from time to time:

Title:
Address: [Name and Address of the Managing Agency]

with copies to:

Title: General Counsel
Address: [Name and Address of the Managing Agency]

and

Title: Chief, Economic Development Division
Address: New York City Law Department
100 Church Street
New York, New York 10007

and

Title: Counsel
Address: New York City Office of Management and Budget
255 Greenwich Street
New York, New York 10007

(c) All notices and correspondence to Declarant its successors, heirs, assigns, legal representatives, lessees and transferees including, without limitation, any owners and/or users of the Premises will be delivered to the following address(es) and addressee(s) or to such other address(es) or addressee(s) of which Declarant its successors, heirs, assigns, legal representatives, lessees or transferees including, without limitation, any owners and/or users of the Premises may notify the City from time to time:

Name: _____
Title: _____
Address: _____
_____
_____

12. **MISCELLANEOUS.**

(a) Headings and Captions. The descriptive headings and captions used in this Declaration are for the purposes of convenience only and do not constitute a part of this Declaration.

(b) Governing Law. This Declaration and its performance shall be governed by and construed in accordance with the laws of the State of New York, excluding New York's rules regarding conflict of laws and any rule requiring construction against the party drafting this Declaration.

(c) Amendments. This Declaration may not be amended except by an instrument in writing signed by the City and Declarant.

(d) Waiver. No failure by the City to exercise, and no delay in exercising, any right, power or privilege under this Declaration, and no course of dealing between the City, Declarant and/or any other Person shall constitute a waiver of any such right, power or privilege nor preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

(e) Severability; Invalidity of Certain Provisions. The provisions of this Declaration are intended to be severable. If any term or provision of this Declaration or the application thereof to any Person or circumstances shall, to any extent, be invalid and unenforceable, the remainder of this Declaration, and the application of such term or provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

(f) "Including." "**Including**" as used in this Declaration, shall be deemed to mean "including, without limitation."

(g) Required Provisions of Law Controlling. It is understood and agreed that each and every provision of law required to be inserted in this Declaration should be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is deemed to be inserted and if, through mistake or otherwise, any such provision is not inserted herein or is not

inserted in correct form, then this Declaration shall forthwith, upon the application of the City be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of the City.

(h) Construction of Terms and Words. All terms and words used in this Declaration regardless of the number and gender in which they are used shall be deemed and construed to include any other gender, masculine, feminine or neuter, as the context or sense may require, with the same effect as if such numbers and words had been fully and properly written in the required number and gender.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written and by a duly authorized signatory agrees for itself and on behalf of its successors, heirs, assigns, legal representatives, lessees and transferees including, without limitation, any owners and/or users of the Premises to be bound by this Declaration.

[NAME OF DECLARANT]

By: _____
Name:
Title:

STATE OF NEW YORK)
: SS.:
COUNTY OF _____)

On the _____ of _____ the year 20__ before me, the undersigned, a Notary Public in and for said State, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

<u>EXHIBIT A</u>

PREMISES

(SEPARATE ATTACHMENT)

EXHIBIT B

COMPLIANCE CERTIFICATE

(SEPARATE ATTACHMENT)