

DECLARATION OF RESTRICTIVE COVENANT

Dated as of _____, 20__

By

[ADD NAME OF ORGANIZATION]

Location of Premises

Street Address:

City or Town:

County:

Block:

Lot:

After Recording, Return to:

THE CITY OF NEW YORK
DEPARTMENT OF DESIGN AND CONSTRUCTION
General Counsel
30-30 Thomson Avenue, 4th Floor
Long Island City, New York 11101

DECLARATION OF RESTRICTIVE COVENANT

THIS DECLARATION OF RESTRICTIVE COVENANT (“Declaration”) is made as of the ___ day of _____ 20__ by _____, a _____ organized under the laws of the State of New York having an office at _____ New York, New York _____ (the “**Declarant**”), in favor of The City of New York, a municipal corporation of the State of New York, acting by and through its Department of Design and Construction with offices located at 30-30 Thomson Avenue, Long Island City, New York 11101 (the “**City**”).

WITNESSETH

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 _____ at the Premises (“**Project**”); and

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

WHEREAS, the City has allocated the amount of _____ Dollars (\$_____) to provide funding (“**Funding**”) for the Project; and

WHEREAS, the Funding will be made available by the City for the purposes of the Project pursuant to the terms and conditions of a [ADD TYPE: construction contract; pass through contract; funding agreement] [IF KNOWN: dated as of _____, 20__] (the “**Agreement**”); and

WHEREAS, as a condition precedent to the disbursement of the Funding for the purposes of the Project pursuant to the Agreement, Declarant has agreed to execute, deliver and perform its obligations under this Declaration.

NOW, THEREFORE, 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 which shall run with the Premises and shall be binding upon Declarant and its successors, heirs, assigns, legal representatives, lessees and transferees, including, without limitation, any owners and/or users of the Premises.

1. CITY PURPOSE COVENANT. [THE FOLLOWING IS AN EXAMPLE OF A CITY PURPOSE COVENANT. EACH COVENANT MUST DESCRIBE THE PARTICULAR CITY PURPOSE BEING SERVED.] For a period commencing [**FOR CONSTRUCTION PROJECTS ADD:** upon Substantial Completion (as defined below) of the improvements contemplated by the Project] [**FOR PROPERTY ACQUISITIONS ADD:** upon acquisition of the Premises]¹ and concluding thirty (30) years² thereafter (the “**Performance Term**”) 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 as follows (“**City Purpose Covenant**”):

The Premises shall be used for the benefit of the people of the City:

(a) [as a 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]³ and which is operated for the benefit of not-for-profit entities⁴;

(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 1(a) hereof;⁵ 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.⁶

[DELETE THE FOLLOWING IF INAPPLICABLE: For the purposes hereof, “Substantial Completion” means that the construction work contemplated by the Project has been substantially completed and a certificate of occupancy has been issued for the Premises such that the Premises can be utilized for the purposes of the City Purpose Covenant.]

¹ **IF THE PROJECT INVOLVES BOTH PROPERTY ACQUISITION AND CONSTRUCTION WORK THEN THE PERFORMANCE TERM SHOULD COMMENCE UPON SUBSTANTIAL COMPLETION OF THE CONSTRUCTION WORK.**

² **THE PERFORMANCE TERM IS DETERMINED IN EACH CASE BY OMB.**

³ **EXAMPLE OF USE**

⁴ **THIS PART IS REQUIRED**

⁵ **THIS SECTION CANNOT BE MODIFIED WITHOUT PRIOR APPROVAL FROM OMB COUNSEL**

⁶ **THIS SECTION CANNOT BE MODIFIED WITHOUT PRIOR APPROVAL FROM OMB COUNSEL.**

2. ADDITIONAL AGREEMENTS. 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 further covenants and agrees as follows:

(a) 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 (as defined below) 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 (whether direct or indirect) 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: **(1)** destruction, removal or alteration of any improvement before the expiration of its Useful Life as a result of the intervention of Force Majeure (as defined below), **(2)** 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 **(3)** the removal and disposal of any item of machinery and/or equipment as may become worn or obsolete, provided that simultaneously with or prior to 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.

For the purposes of this Declaration “**City Funds**” means funds provided by the City to or for the benefit of Declarant and used in connection with the Premises; and “**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 of Force Majeure) has given the City express written notice within thirty (30) days after such party knows of same: governmental actions, orders of any court of competent jurisdiction, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, terrorist acts, accidents, mechanical failure and acts of God (including, fire, flood or other inordinately severe weather conditions).

(b) On the second anniversary of the date of this Declaration and on each second anniversary thereafter Declarant (or the owner of the Premises at such time) shall issue a certification to the City of New York certifying that the Premises are held, occupied and used in compliance with the requirements of this Declaration. The certification required by this Section shall be signed by the Chief Executive Officer of Declarant or that of the owner of the Premises at such time.

(c) At any time and from time to time upon reasonable prior notice, the City and its 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.

(d) The Premises shall not be used to 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.

(e) If the amount of the Funding 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.

(f) If the Premises shall be damaged or destroyed by fire or other casualty, ordinary or extraordinary, foreseen or unforeseen, Declarant shall 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. 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.

3. 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 (as defined below), obligation, covenant, easement, limitation, lease or other encumbrance of any kind, on or with respect to the Premises, which prevent, preclude or delay, or may prevent, preclude or delay, the imposition of the restrictions, covenants, obligations and agreements of this Declaration which have not been extinguished or subordinated to this Declaration; and

(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 (as defined below), (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 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.

For the purposes of this Declaration, the term “**Lien**” means any lien (statutory or otherwise), including, but not limited to, mechanic’s, laborer’s, materialman’s and public improvement liens, security interest, mortgage, deed of trust, priority, pledge, charge, conditional sale, title retention agreement, financing lease or other encumbrance or similar right of others, or any other agreement to give any of the foregoing; and “**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.

4. REAL COVENANTS. 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 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 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.

5. RECORDING. Declarant shall file and record, or shall cause to be filed and recorded, immediately upon execution hereof, this Declaration in the Office of the City Register of the City of the New York, County of _____ (“**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 a true and complete copy 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.

6. REMEDIES AND ENFORCEMENT. 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 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.

7. INDEMNIFICATION. 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 defend, indemnify and save the City and its 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 may be 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.

8. SUBORDINATION. Any present or future estate in and to the Premises, any Lien, obligation, covenant, lease, limitation or other encumbrance 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.

9. NOTICES. All notices and communications to the parties hereunder will be delivered by hand or sent by registered or certified mail, return receipt requested, or by Airborne Express, Federal Express, Express Mail or other overnight mail 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 transmittal by Airborne Express, Express Mail or other overnight delivery service that provides a receipt to the sender.

(a) All notices and correspondence to the City must be delivered to the following addresses and addressees or to such other addresses or addressees 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: General Counsel
Address: New York City Department of Design and Construction
30-30 Thomson Avenue, 4th Floor
Long Island City, New York 11101

with copies to:

Title: Counsel
Address: New York City Office of Management and Budget
75 Park Place
New York, New York 10007

(b) 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: [Name of Organization]

10. 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.

11. MISCELLANEOUS.

(a) Headings, Captions and Table of Contents. 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; Waiver. This Declaration may not be amended except by an instrument in writing signed by the City and the Declarant. The failure by the City to exercise in any respect any right provided for herein will not be deemed a waiver of any rights hereunder.

(d) 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.

(e) “Including”. **“Including”** as used in this Declaration, shall be deemed to mean “including, without limitation.”

(f) Required Provisions of Law Controlling. It is the intention and understanding of the parties hereto 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 either party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party.

(g) 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:

EXHIBIT A

PREMISES

(SEPARATE ATTACHMENT)