

DRAFT RESTRICTIVE COVENANT

THIS RESTRICTIVE COVENANT (this “**Agreement**”) is made as of _____, 201__ by 15 WEST 68TH STREET, LLC (“**Owner**”), a New York limited liability company with an address at 1270 Avenue of the Americas, Suite 2116, New York , New York 10020.

RECITALS:

WHEREAS, Owner is the owner of certain real property and the improvements thereon located at 15 West 68th Street, New York, New York, as more particularly described on **Exhibit A** annexed hereto and made a part hereof (the “**Property**”);

WHEREAS, Owner is the applicant to the New York City Department of City Planning for a Special Permit pursuant to Section 74-711 of the Zoning Resolution of the City of New York, which Special Permit will permit the Property to be used as a “Use Group 5 Transient Use”;

WHEREAS, certain members of Manhattan Community Board 7 (“**CB7**”) and the community surrounding the Property as a whole (collectively, the “**Community Members**”) have expressed concern with Owner’s proposed plan to operate the Property as a hotel;

WHEREAS, Owner and the Community Members have entered into that certain Memorandum of Understanding, dated as of September 1, 2010 (the “**MOU**”), which MOU outlined certain agreements addressing the concerns of the Community Members; and

WHEREAS, Owner is entering into this Agreement to restate its obligations set forth in the MOU and memorialize its intentions with respect to the Property.

NOW THEREFORE, Owner does hereby covenant and agree that the Property shall be held and operated subject to the obligations hereinafter set forth:

1. **Hotel Staffing and Management.** Owner covenants and agrees that the Property shall be operated and managed by an experienced hotel staff. A resident manager (the “**Resident Manager**”) will reside at the Property and will supervise the staff,.

2. **Neighborhood Character.** Owner covenants and agrees to the following: (a) it shall not amplify music outside of the Property; (b) it shall not apply for a cabaret license; (c) it shall not operate a “bar” at the Property; (d) it shall not apply for a liquor license with respect to the Property; (e) it shall not operate a dining room at the Property that will be available to the general public; (we need to be clear what is permitted as well (guests can have alcohol, etc.))(f) it shall use reasonable efforts to have its linens delivered once each week between the hours of 8:00am and 4:00pm; (g) it shall use reasonable efforts to have groceries delivered once each week, provided, however, that groceries shall be delivered to the Property as needed; (h) it shall use external cleaning service providers minimally; (i) the suites at the Property shall not be equipped with individual kitchens and the Property shall contain one (1) central kitchen for use by the guest(s) or their chef(s); (j) waste generated from the Property shall be safely stored inside

the Property and shall be placed in the appropriate location outside of the Property approximately thirty (30) minutes prior to the scheduled garbage removal; (k) organic waste generated from the Property shall be placed in the appropriate location outside of the Property approximately thirty (30) minutes prior to the scheduled pick-up and stored in sealed containers, which such containers shall be removed from the sidewalk no more than thirty (30) minutes following garbage removal; (l) it shall use reasonable efforts to arrange for garbage removal after 7:00am, no more than once per day and shall consult with CB7 prior to entering into any agreement with any such garbage removal company; (m) it shall not apply for any hotel-related restricted parking signage in front of the Property, including, without limitation, a taxi stand; (n) it shall use reasonable efforts to enter into a contract with a parking garage operator located within a reasonable walking distance to the Property to reserve at least one (1) parking spot for the use of hotel guests; (o) it shall use reasonable efforts to ensure that no vehicle of Owner or any of its contractors or vendors shall double-park on West 68th Street, and that all trucks servicing the Property with refrigeration shall turn off their motors while standing on West 68th Street; (p) it shall not encourage the operators of vans, limousines, sport utility vehicles, buses or private cars departing the Property to park their vehicles on West 68th Street, and shall inform arriving guests of nearby parking lots and garages; (q) it shall post a visible plaque in the entry foyer of the Property advising guests, "Please respect the peace and quiet of our neighbors"; (r) it, and its employees and contractors, shall be expressly prohibited from congregating on the West 68th Street sidewalk; and (s) it shall make the Property available to the general public for tours at least once a year.

3. Private Events. All private events held in the hotel by hotel occupants and their guests (not to exceed fifty (50) persons in the aggregate) during normal hotel operating hours, ending no later than 10:00pm from Sunday through Thursday and 2:00am on Friday and Saturday (each, a "**Private Event**") shall be subject to the following restrictions: (a) Owner shall not apply for a public assembly permit; (b) Private Events shall be subject to the terms and conditions of the hotel's rental agreement which will stipulate the rules and regulations regarding the use of the hotel's public venues and conduct of the hotel occupant(s) and guests, (c) Owner shall post dedicated Private Event personnel, as necessary, on West 68th Street for the duration of the Private Event to use reasonable efforts to ensure that (i) guests do not congregate on West 68th Street, (ii) the vehicles associated with the Private Event do not block the street, and (iii) drivers are made aware of the special parking arrangements at nearby parking lots or garages; (d) Owner shall not cause any equipment rented in connection with a Private Event to be removed after midnight or before 7:00am; (e) in the event that a hotel guest uses its own sound amplification device during a Private Event, Owner shall use reasonable efforts to ensure that the maximum permitted volume established for such device pursuant to the New York City Noise Code regulations shall be adhered to; (f) Owner shall not enter into any contracts with third party booking agents to advertise or promote a Private Event to the public (i.e. "promoters"), and agrees that all Private Events shall be reserved through the Resident Manager; (g) Owner shall ensure that the hotel's public venues shall only be available to persons who are associated with guests who are registered at the hotel; (h) the Resident Manager shall maintain a strict accounting of all attendees of any Private Event, as more particularly set forth in the rental agreement; and (i) Owner shall make its form of rental agreement to be used for Private Events available to CB7 for review and comment prior to its implementation.

4. Neighborhood Security. Owner shall (a) provide plans to CB7 showing the location of exterior-mounted video cameras that will continuously record sidewalk activity in front of the Property, (b) maintain a permanent hard drive or DVD archive of video images, and (c) cooperate with law enforcement and CB7 in sharing the archived materials with regard to specific complaints or investigations of criminal behavior, subject to legal requirements of Owner to protect the privacy of hotel guests and staff.

5. Community Liaison. Owner shall assign at least one (1) person (the “**Community Liaison**”) who will be available to speak with the Community Members between 9:00am and 5:00pm, Monday through Friday concerning any matter related to compliance with the terms of this Agreement. In the event of an emergency, during the hours that a Community Liaison is not available, the Resident Manager shall be available to handle issues arising under this Agreement. The Community Liaison shall hold meetings with Community Members prior to the opening of the hotel at the Property, and as needed thereafter until Community Members deem them no longer necessary. Community Members shall have a dedicated phone number and email address to contact the Resident Manager.

6. New York City Noise Code. Owner shall operate the Property in compliance with all regulations set forth in the New York City Noise Code.

7. Prevention of Odors and Noise From Mechanical Systems. Owner shall design its mechanical systems to provide industry standard venting and equipment to minimize odors and HVAC noise.

8. Hotel Room Occupancy and Length of Stay. Owner shall adopt the following room policies: (a) the maximum occupancy on floors one (1) and two (2) shall be fifty (50) persons; (b) the maximum number of guests occupying each room at the Property shall be two (2) persons (c) the maximum number of guests occupying rooms at the Property shall be twenty-two (22) persons; (d) the minimum length of time a guest can stay at the Property shall be one week; and (e) the Property shall not be part of any hotel travel network or exchange program, and guests shall have no ownership rights of the Property. We should include one more line about renters having no rights to sublet or transfer their reservation Items (a) - (d) in this paragraph 8 shall be set forth in a rental agreement and monitored by the Resident Manager.

9. Miscellaneous. The provisions of this Agreement shall be binding upon the respective successors and assigns of Owner, for so long as the (make reference to special permit?) Property shall be used for the Use Group 5 transient hotel purposes. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Section headings used herein are for convenience purposes only and are not part of the text of the Agreement.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

IN WITNESS WHEREOF, Owner has executed this Agreement as of the date first above written.

15 WEST 68TH STREET, LLC,
a New York limited liability company

By: _____
Name:
Title:

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the ____ day of _____, 2010 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/they 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

EXHIBIT A

The Property

Memorandum of Understanding among 15 West 68 Street, LLC and “Community Owners” as defined herein) Regarding 15 West 68th Street, NY, NY (the “Site”)

This AGREEMENT is made as of September 1st, 2010 (the “Agreement”) by and between 15 West 68th Street, LLC (“15W68”), a New York Limited Liability Company (“LLC”) whose address is 1270 Avenue of the Americas, Suite 2116, New York, NY 10020; and the owners and the associations of owners of the properties, whose names, legal addresses and legal structures are included in the list of owners attached to this Agreement as Exhibit A and incorporated hereto, said owners and associations of owners being collectively referred to hereafter as the “Community Owners,” collectively, 15W68 and Community Owners, being the “Parties”).

WHEREAS, 15 West 68 Street, LLC represents and affirms that (i) it is a wholly owned subsidiary of Fine Times Inc., which is the fee owner of the tax lot identified on the Tax Map of the City of New York as Block 1121 Lot 25 in the Borough of Manhattan (the “Property”); (ii) it is the applicant to the NYC City Department of City Planning for a Special Permit pursuant to Section 74-711 of the NYC Zoning Resolution. Such Special Permit will permit a change of use to a "Use Group 5 Transient Use" for the Site. Use Group 5 would allow a short-term (30 days or less) occupancy in order to operate a hotel where guests would stay at the property for a minimum 1-week. (the “Building”); and

WHEREAS, Fine Times Inc. represents and affirms (i) that, as of the date of this Agreement, Fine Times Inc. is sole owner of the Property and the Building; (ii) Fine Times Inc. has full legal right, title and authority to enter into this Agreement, make all of the promises it has made to Community Owners in this Agreement, and undertake to all of the legal obligations it has agreed to accept in this Agreement; and,

WHEREAS, the Community Owners have expressed their concerns to Fine Times Inc. with regard to certain aspects of the proposed plan of hotel operation in the Building, including but not limited to (i) diminution of the quality of life (ii) the capacities and hours of operation of the public venues shown in the Plans, (iii) the means by which hotel guests, and non-hotel guests invited to private functions will enter and leave the Building and (iv) the manner by which Fine Times Inc. would conduct hotel operations in and around the Building; and

WHEREAS, Fine Times Inc. expressed a willingness to address the concerns raised by the community, and to enter into a written agreement with the Community Owners to memorialize its intentions in exchange for expressions of support from those present that Manhattan Community Board 7 (“CB 7”) should recommend approval of the Special Permit Application; and,

WHEREAS, the Parties now wish to memorialize their mutual agreements in writing through this Agreement.

NOW THEREFORE, based on the mutual promises and covenants contained herein, it is

AGREED by each of the Parties that:

1. Commitments to regarding hotel staffing and management: Fine Times Inc. agrees that an experienced hotel staff should be hired to facilitate the operations as described within this agreement and the stipulations as described with in a rental agreement. The staff will include:
 - a. Fine Times Inc. will employ a Resident Manager who will live on the premises.
 - b. There will be no chef on premises unless requested by the guest or traveling with the guest.
 - c. Will employ a staff of including the Resident Manager that will be responsible for the daily activities at the Hotel.

2. Commitments to Protect Neighborhood Character of West 68th Street. Fine Times Inc. agrees that reasonable steps should be taken to minimize the impact of a hotel, its guests, and their non-guest invitees. Fine Times Inc. therefore agrees to the following:
 - a. There will be no amplified music outside the building.
 - b. Fine Times Inc. will not apply for a cabaret license.
 - c. There will be no bar on the premises.
 - d. Fine Times Inc. will not apply for a approval for liquor license.
 - e. There will not be a publicly available dining room.
 - f. Linens will be delivered once a week between the hours of 8:00 AM and 4:00 PM.
 - g. Grocery deliveries will be made as needed. Reasonable best efforts will be made to limit the number of grocery deliveries to once a week.
 - h. In-house staff will be responsible for cleaning services. Outside cleaning services will be used minimally.
 - i. There will be only 1 central kitchen for the use of the guests. The individual suites will not be equipped with kitchens.
 - j. All waste bins will be maintained inside the building and all waste will remain inside the building until no more than 30 minutes prior to the scheduled time

of pick-up. All organic waste will be brought outside in sealed bins rather than brought curbside and left in bags. Empty bins will not remain on the sidewalk longer than 30 minutes following pick-up.

- k. Fine Times Inc. commits to consult the community board before entering into a contract with a carting company and will make reasonable best efforts to contract for waste carting for morning pick-up after 7:00 AM. Fine Times Inc. agrees it will make best efforts to limit garbage pick up to one pick-up per day.
 - l. Fine Times Inc. will not apply for any hotel-related restricted parking signage, including taxi stand signage in front of its property line.
 - m. Fine Times Inc. will contract with the operator of a nearby parking garage for at least one parking spot to be used in association with the hotel guest.
 - n. Fine Times Inc. commits to take all reasonable measures to assure that no vehicles under the direct or indirect control of Fine Times Inc. or any contractor or vendor of Fine Times Inc. will double-park on West 68th Street and to assure that all trucks servicing the hotel with refrigeration will shut off their motors while standing on West 68th Street.
 - o. Fine Times Inc. will not permit any third party vendor, contractor or licensee to establish, any presence on West 68th Street other than customary hotel arrival, porter and security services. No rope lines, hospitality tables, checkpoints, check-in tents will be established at any time outside the Building.
 - p. No vans, limousines, SUV's buses (including airport buses and tour buses) or private cars awaiting departing hotel will be encouraged to park or remain on west 68th Street. Arrivals will be informed of the availability of parking agreements with nearby parking lots and garages.
 - q. A plaque will be posted so as to be visible from the entry foyer and advising "Please respect the peace and quiet of our neighbors." (or similar language).
 - r. Employees and contractors of Fine Times Inc. will be expressly prohibited from congregating on the West 68th Street sidewalk.
 - s. That the facility, in association with its landmark status, will be made available to the public at least once a year for tours.
3. Commitments regarding "private event". A "private event" is defined as a group consisting of 50 or less people, including hotel occupants, who will be using any of the public venues during normal hours of operation; Private event will be subject to

the following restrictions:

- a. Fine Times Inc. will limit the number of guests attending private events in the Building to no more than 50 persons per event,
 - b. Fine Times Inc. will not apply for a public assembly permit
 - c. Fine Times Inc. will require that any private event for 50 or less guests will require the responsible party to abide by the rental agreement which will stipulate the rules of use and conduct.
 - d. That the private event will end by 10:00 PM Sunday – Thursday, and 2:00 AM Friday – Saturday.
 - e. That dedicated private event personnel will be required to be posted on west 68th Street for the entire period of the event to ensure that guests do not congregate on West 68th Street; that vehicles associated with the private events do not block the street, and that drivers are made aware of the special parking arrangements at nearby lots or garages,
 - f. That there will be no post-event removal of rented equipment after midnight and before 7:00 AM.
 - g. That in the event an hotel guest will use its own sound amplification devices, the maximum permitted volume established for such sound system pursuant to New York City Noise Code regulations, will apply to those devices.
 - h. Agrees that it will not enter into private event contracts with “promoters,” i.e., third party booking agents advertising events to the public (not including conference and concierge advance booking services working with small, organized groups). Any and all events will be booked through the Resident Manager.
 - i. The public space will never be available to users other than those who are associated with the registered guests.
 - j. A strict accounting of private event visitors will be managed by the Resident Manager as described in the rental agreement.
 - k. The format of the rental agreement to be used in accordance with this Agreement will be made available to the community board for review and comments to assure compliance with the terms of this Agreement.
4. Commitments to the Security of the Neighborhood. The Parties have discussed their mutual interest in providing a safe environment for both pedestrians and the guests of

the hotel and have agreed as follows:

- a. Fine Times Inc. will provide plans to show the location of exterior-mounted video cameras that will at a minimum continuously record sidewalk activity for the length of the Building on West 68th Street.
 - b. Fine Times Inc. agrees to maintain a permanent hard drive or DVD archive of the video images. Fine Times Inc. agrees that it will fully cooperate with law enforcement and CB 7 in sharing the archived materials with regard to specific complaints or investigations subject only to its legal obligations to protect the privacy of the guests of the hotel.
5. Commitments to Appoint Community Liaison. Fine Times Inc. will assign at least one person (“Community Liaison”) who will be available to speak with the Parties during normal weekday business hours concerning any matter related to compliance with the terms of this Agreement. In addition, during non-business hours, the Resident Manager will serve in this capacity with full authority to enforce the terms of this Agreement in the event emergency contact is required.
- a. Fine Times Inc. agrees that the Liaison will hold meetings with community representatives to commence shortly before the hotel opens for business and as needed until the community deems them no longer necessary.
 - b. Members of the community will have a dedicated phone number and email address to contact the Resident Manager.
6. Commitments to Contain Sounds to within the Building. Agrees to adopt the following policy:
- a. Fine Times Inc. agrees to operate the Building so as to comply with all NYC Noise Code regulations.
7. Commitments to Prevent Odors and Restrict Locations of Mechanical Systems.
- a. Fine Times Inc. agrees to design its mechanical systems to provide industry standard venting and equipment to minimize odors and HVAC noise.
8. Commitments regarding Hotel Room Occupancy and length of stay. Fine Times Inc. is aware of the community’s concerns of the total guest occupancy. Fine Times Inc. agrees to adopt the following room policies:
- a. Maximum occupancy on floors 1-2 will be limited to 50 persons.
 - b. Maximum occupancy per room will be limited to 2 persons.

- c. Maximum number of total occupants 22 persons.
- d. Rental of the property will only be available for a minimum of 1 week and maximum 30 days.
- e. The property will not be part of any hotel travel network or exchange program. Guests will have no ownership rights.

The required compliance with (a) through (d) will be stated in a rental agreement and monitored by the Resident Manager.

9. Commitments regarding Public Support and Cooperation.

- a. The Parties agree that this Agreement was entered into during the course of a democratic public review and that individual parties either associated or unassociated with the Community Owners may elect to testify as private citizens or may elect to file complaints or otherwise challenge Fine Times Inc.'s standing in the future. Such individuals shall be deemed to be acting in their personal capacity shall not be deemed a party to this Agreement and Fine Times Inc. agrees that any such activity by a person acting in its personal capacity shall not be considered a breach of this Agreement. Community Owners agree to use their best faith efforts to mediate any such activities by private parties.
- b. Nothing in this Agreement shall be construed as prohibiting any party from testifying at any hearing or proceeding.

10. Enforceability.

- a. If Fine Times Inc. shall default in the performance of its obligations set forth in the Agreement, Community Owners shall have all of their rights and remedies at law and in equity, including, but limited to, specific performance and injunctive relief.

11. Miscellaneous


- a. Term of Agreement. Fine Times Inc. agrees to be bound in all respects by the terms of this Agreement for the period during which it owns and operates the facility.
- b. Successor(s). In the event that any Party subsequently conveys its interests in its property to a third party, the party that receives said interest shall have the same rights and liabilities under this Agreement which were held by its predecessor(s) prior to the conveyance.
- c. Paragraph Headings. The paragraph headings in this Agreement were inserted

solely to facilitate ease of reading and are not part of the text of the Agreement.

- d. No Waiver/Reasonableness. Any Party's failure to insist on strict adherence to a term of this Agreement shall not be considered a waiver and shall not prevent it from insisting on strict adherence to that term or any other term. If any provision of this Agreement is deemed unenforceable, the remainder of the Agreement shall be interpreted in such a manner and to such an extent as to be enforceable.
- e. Choice of Law/Choice of Forum. The Parties agree that the validity, interpretation and construction of this Agreement is governed by New York State law, excluding its conflict-of-law principles. Any dispute arising out of the Agreement shall be brought in court in New York County, and in any such proceeding each Party will bear its own costs, including attorney fees.
- f. Amendment/Counterparts. This Agreement may be amended only in writing, signed by all of the Parties. This Agreement may be signed in counterparts.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first above written.

Fine Times Inc.

By: 

Name: Joseph Lopez

Title: Managing Director

Community Owners:

By: _____

Name: _____

Title: _____

Property: _____

By: _____

Name: _____

Title: _____

Property: _____

By: _____

Name: _____

Title: _____

Property: _____

ADD COMMUNITY OWNERS AS NECESSARY