

L-4112 CP 178

THIS AGREEMENT made this 22nd day of August 1941, between

THE TRUSTEES OF THE CONGREGATION SHEARITH ISRAEL IN THE CITY OF NEW YORK, a religious corporation of 2 West 70th Street, Borough of Manhattan, City, County and State of New York, party of the first part,

and

BLANCHE S. AMES, residing at 575 Park Avenue, Borough of Manhattan, City, County and State of New York, STEPHEN K. AMES and PAUL S. AMES, both residing at 6431 Allison Road, Miami Beach, Florida, as Trustees under the Last Will and Testament of Mayer S. Ames, deceased, parties of the second part,

WITNESSETH:

WHEREAS, the parties of the second part are the owners of the following described property:

\* ALL that certain lot, piece or parcel of land with the building thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point in the southerly side of 70th Street, distant One hundred twenty-nine feet westerly from the corner formed by the intersection of the southerly side of 70th Street and the westerly side of Central Park West; thence southerly parallel with Central Park West and part of the way through a party wall One hundred feet five inches to the middle line of the block; thence westerly along the said line twenty-one feet; thence northerly parallel with Central Park West One hundred feet five inches to the southerly side of 70th Street; thence easterly along the southerly side of 70th Street twenty-one feet to the point or place of beginning.

Said premises being known as and by the street number 8 West 70th Street.\*

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and

WHEREAS, the aforesaid property is affected by and is subject to certain restrictive covenants recorded in the office of the Registrar of the County of New York in Liber 53, section 4 of conveyances at page 313, between The Trustees of the Congregation Shearith Israel, a religious corporation, party thereto of the first part, and Peter Wagner and Robert Wallace, parties thereto of the second part; and

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WHEREAS, said restrictive covenants read as follows:

" The parties of the second part covenant for themselves, their heirs or assigns, to and with the party of the first part, its successors, or assigns, that so long as the building or buildings now or hereafter to be erected on premises immediately adjoining the above described premises on the east, being now the property of the party of the first part, are used for religious purposes, no building or structure shall be constructed or permitted on premises above described and hereby intended to be conveyed, except first class private dwellings to be used and occupied as such, each for one family only, and for no other purpose whatsoever.

The parties of the second part further covenant for themselves, their heirs or assigns, to and with the party of the first part, its successors or assigns, that so long as the building or buildings now or hereafter erected on the premises immediately adjoining the above described premises on the east are used for religious purposes, the space of 5 feet in width by 30 feet in depth colored red on diagram below and just opposite the open space now at the southwest corner of the premises next immediately east of the premises herein described and intended to be conveyed, shall forever be kept open and unbuilt upon, free of any building, structure or erection whatsoever except a fence of a height not exceeding five feet and a retaining wall not exceeding three feet in height.

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It is further agreed by and between the parties hereto that the restrictions above mentioned as to the character of the buildings to be erected on the premises hereby intended to be conveyed and the use of same and as to the open air space at rear and the covenants with regard to the same are to run with the land and be binding on all future owners of the same.

And it is further understood and agreed that the party of the first part hereto ~~its successors or assigns~~, shall have the right to restrain any person corporation or association, by suit or proceeding at law or in equity from violating said restrictions and also to recover damages for any violations of the same."

and

WHEREAS, said restrictive covenants affect and restrict not only the above described property owned by the parties of the second part but also affect and restrict the property immediately adjoining said property on the east known as and by the street number 6 West 70th Street, Borough of Manhattan, City, County and State of New York; and

WHEREAS, the party of the first part has continuously since the year 1897 owned and occupied and now owns and occupies the property immediately adjoining the property known as and by the street number 6 West 70th Street, Borough of Manhattan, City, County and State of New York on the east, and has continuously since the year 1897 used and is now using its said property and the building thereon for religious purposes; and

WHEREAS, the property now owned by the parties of the second part and the property known as and by street number 6 West 70th Street, Borough of Manhattan, City, County and State of New York, were both originally owned by

the party of the first part and were conveyed by it to a common owner subject to the restrictive covenants aforesaid, and

WHEREAS, it is desired to modify the aforesaid restrictive covenants ONLY in so far as the same relate to and affect the property owned by the parties of the second part, to wit, 8 West 70th Street, Borough of Manhattan, City, County and State of New York, without in any way affecting or limiting said restrictive covenants in so far as the same relate to the property known as and by the street number 6 West 70th Street, Borough of Manhattan, City, County and State of New York; And

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WHEREAS, the parties of the second part desire a modification of said restrictive covenants only so as to permit the one family dwelling now erected upon the above described property owned by them, to be altered, or a new building upon said property to be erected, for use and occupancy as a dwelling for more than one family; and

WHEREAS, the party of the first part is willing to consent to such limited modification of the aforesaid restrictive covenants in so far as the same relate to the property known as and by the street number 8 West 70th Street, Borough of Manhattan, City, County and State of New York, on condition that the parties of the second part agree herein not to alter or change the present building on said property except as hereinafter provided, or to erect a new building on said property except as hereinafter provided,

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter contained,

and in further consideration of the sum of One thousand dollars (\$1,000) paid by the parties of the second part to the party of the first part simultaneously with the execution and delivery of this agreement, the receipt of which payment is hereby acknowledged by the party of the first part,

IT IS HEREBY AGREED, that the above mentioned restrictive covenants, only in so far as the same relate to and affect the above-described property owned by the parties of the second part and known as and by the street number 8 West 70th Street, Borough of Manhattan, City, County and State of New York, are changed and modified in the following respects:

1. The parties of the second part covenant and agree for themselves, their successors, grantees and assigns, to and with the party of the first part, its successors, grantees and assigns, that so long as the building or buildings now erected, or hereafter to be erected, on the property immediately adjoining premises known as and by the street number 6 West 70th Street, Borough of Manhattan, City, County and State of New York, on the east, being now the property of the party of the first part, are used for religious purposes, no building or structure shall be constructed or permitted on the property owned by the parties of the second part, known as and by the street number 8 West 70th Street, Borough of Manhattan, City, County and State of New York, except the present building, which may, however, be altered for use and occupancy as a dwelling for more than one family, and any new building constructed for use and occupancy as a dwelling for one family or for more than one family, which said present building and new building however, shall comply with the provisions of paragraph numbered "2" hereof.

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2. The party of the first part agrees for itself, its successors, grantees and assigns, that the parties of the second part, their successors, grantees and assigns, may alter the building now on the property owned by the parties of the second part hereinabove described and known as and by the street number 8 West 70th Street, Borough of Manhattan, City, County and State of New York, and may erect any new building on said property, which present building may be altered, and which new building may be erected, for use and occupancy as a dwelling for one or more families, and that such altered building and any such new building may be used and occupied for such purpose, but not for any other purpose, provided, however, that such altered building and any such new building shall comply with the following requirements:

(a) Neither such altered building nor any such new building shall have a height, measured to the roof, greater than the greatest present height, measured to the roof, of the present building on said property, nor shall such altered building nor any such new building have any cornice, parapet wall, chimney, vent pipe, or skylight having a height greater than the greatest present height of any cornice, parapet wall, chimney, vent pipe, or skylight of the present building on said property, except that there may be erected upon the roof of such present building or of any such new building a bulkhead or any other superstructure as may be required by law, ordinance, rule or regulation, Federal, State or Municipal, for a building of a character permitted by this agreement, but such bulkhead or other superstructure shall not exceed the minimum height permitted by such law, ordinance, rule or regulation. It is hereby agreed that the

greatest height, measured to the roof, of the present building is 61 feet 6 1/2 inches, and that the greatest height of any cornice, parapet wall, chimney, vent pipe or skylight of the present building is 62 feet 10 1/2 inches in the case of a cornice, 63 feet 6 inches in the case of a parapet wall, 67 feet 11 inches in the case of a chimney, 65 feet 10 inches in the case of a vent pipe, and 64 feet 7 inches in the case of a skylight; all of such measurements being above a horizontal plane passing through the top of the now existent curb opposite the westerly line of the lot.

(b) Neither such altered building nor any such new building shall have a depth, measured from the front line of the property, greater than the greatest present depth of the present building on said property, to wit, seventy-six feet and one-half inch; but this requirement shall not be construed to prevent such altered building or any such new building from being built for the full width of the property to a depth not greater than the greatest depth of the present building, to wit, seventy-six feet and one-half inch.

3. The parties hereto further covenant and agree for themselves, their successors, grantees and assigns, that the restrictions above mentioned as to character, alteration, height, depth and use of the present building and of any new building on the property owned by the parties of the second part and known as and by the street number 8 West 70th Street, Borough of Manhattan, City, County and State of New York, are to run with the land and be binding on all future owners of the same, and the party of the first part, its

successors, grantees and assigns, shall have the right to restrain any person, partnership, corporation or association, by suit or proceeding at law or in equity, from violating said restrictions.

4. The parties hereto further covenant and agree for themselves, their successors, grantees and assigns, that the party of the first part, its successors, grantees and assigns shall have the right to recover damages for any violation of said restrictions from any person, partnership, corporation or association, including the parties of the second part, who or which may be the owner of the property at the time said violations are committed, but neither the parties of the second part nor any of their successors, grantees or assigns shall be liable for damages for any violation committed at a time while such parties of the second part or such successor, grantee or assign is not the owner of the property. For the purpose of this covenant, the parties of the second part shall be deemed to be the owners of the property if the property is owned by a person, partnership, corporation or association directly or indirectly controlled by the parties of the second part, and each successor, grantee or assign of the parties of the second part shall be deemed to be the owner of the property if the property is owned by a person, partnership, corporation or association directly or indirectly controlled by such successor, grantee or assign.

5. Nothing herein contained shall be deemed in any way to impair, modify, cancel or annul the restrictive covenants contained in the instrument recorded in the office of the Register of the County of New York in Liber



section 4 of Conveyances at page 313, except as herein provided, and all rights and remedies of the party of the first part under said instrument except as herein modified are hereby expressly reserved.

6. This agreement shall not in any way inure to the benefit of the property known as and by the street number 6 West 70th Street, Borough of Manhattan, City, County and State of New York, or to any present or future owner of said property, or in any way impair any of the rights of the party of the first part, its successors, grantees, or assigns under the restrictive covenants hereinabove mentioned and recorded in the office of the Register of the County of New York, in Liber 53, section 4 of Conveyances at page 313, all of which rights are expressly reserved, against the property known as and by the street number 6 West 70th Street, Borough of Manhattan, City, County and State of New York, and against any and all present and future owners thereof.

IN WITNESS WHEREOF, the parties hereto have signed and sealed this agreement the day and year first above written.

THE TRUSTEES OF THE CONGREGATION  
SHEARITH ISRAEL IN THE CITY OF NEW  
YORK



By *Stephen Ames* *Pro*

Stephen Ames (LS)

Blanche S. Ames (LS)

Paul S. Ames (LS)

as Trustees under the Last Will and Testament of Mayer S. Ames, deceased.

STATE OF CALIFORNIA

(N.Y.)

County Clerk and Clerk of the Superior Court of the State of California, in and for said County of record of the aforesaid County, having by law a seal, do hereby certify that

... whose name is subscribed to the attached certificate ... was at the time of taking and acknowledgment, proof or affidavit, a Notary Public ... duly commissioned and sworn and residing in said County, and was, as such, an officer ... to take and certify the same, as well as to take and certify the proof and ... in writing to be recorded in said State, and that full faith and credit are and ... of the State seal is not required by law to be filed in the office of the ... his handwriting and truly believe that the signature to the attached ... instrument is subscribed and acknowledged according to the laws

I, the undersigned, have hereunto set my hand and affixed the seal of said Superior Court

L. K. HAMPTON,  
County Clerk and Clerk of the Superior Court of the State  
of California, in and for the County of Los Angeles  
Deputy

STATE OF New York  
COUNTY OF New York  
CITY OF New York

On this 16 day of May 1941,  
before me personally came PAUL S. AMES, to me known and known  
to me to be one of the individuals described in and who  
executed the foregoing instrument, and he duly acknowledged  
to me that he executed the same.

*David M. Perkins*

CERTIFICATE FILED  
REGISTERED OFFICE  
NEW YORK COUNTY

DAVID M. PERKINS, Notary Public  
Roughs Chk. No. 14, Reg. No. 2086  
N. Y. Chk. No. 54, Reg. No. 2840  
Commission expires March 30, 1946

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SERIAL NO. C 3909  
Indurned to be indexed against Block 1122 on Land Map of the  
County of New York, Lot 38. Requested of SKUTCH, MEYER & BURTON, 70 Pine St. N.Y.C.  
on June 23, 1941 at 12:02 P.M. MARTHA BYRNE, Register.  
FEES PAID \$ 11.05  
Recorded preceding at