Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Department of the Treasury

Number: **201727010**
Release Date: 7/7/2017

Employer Identification Number:

Contact Person - ID Number:

Contact Telephone Number:

Date: April 11, 2017

LEGEND

UIL:
4942.03-07

C = Company
D = Project
E = State
H = Date
J = Date
K = Date
n dollars = Amount
o dollars = Amount
p dollars = Amount
q dollars = Amount

Dear :

Why you are receiving this letter

This is our response to your February 26, 2016 letter requesting approval of a set-aside under Internal Revenue Code section 4942(g)(2). You've been recognized as tax-exempt under section 501(c)(3) of the Code and have been determined to be a private operating foundation under section 509(a).

Our determination

Based on the information furnished, your set-aside program is approved under Internal Revenue Code section 4942(g)(2) for tax periods ending on H, J and K. As required under section 4942(g)(2), the set aside amount must be paid within the 60-month period after the date of the first set-aside.

Description of set-aside request

You were formed as a result of a donation of q dollars by C, pursuant to the terms of the donation agreement. The donation agreement was made to allow C to construct Phase 1 of a multi-phase project, D, which will ultimately consist of residential units, retail space, a performing arts theater, and arts-related space.

The performing arts theater and arts-related space are not part of the Phase 1 construction and, therefore, construction of this facility will not begin immediately, but is expected to be completed and operational within five (5) years. At such time, you will use the donated funds from C for the operation, maintenance, and continued viability of the performing arts theater and arts-related space.

To ensure the advancement and vitality of the performing arts theater and arts-related space, you will adopt an annual budget and operational plan allowing for the sufficient fundraising and user fees necessary to pay all expenses needed to sustain the operation, management, and maintenance of your venue.

Your venue will be fully constructed and built-out by C and will be leased from C. The lease will be for an initial term of fifteen (15) years with two (2) consecutive options to renew for five (5) year period(s). The lease provisions will not require you to pay any base rent, but will require you to reimburse C for the venue's proportionate share of common charges, real estate taxes, and utilities, including the cost of water, sewage, gas, and electric services.

When the performing arts theater and arts-related spaces become operational, all of the funds, other than those necessary for administrative costs, will be used to further your charitable activities. You are bound by the agreement reached by the city and C as to the timing and construction of the performing arts theater and arts-related space. Your sole function is to maintain and operate the venue for the cultural and educational enrichment for the citizens of E and the surrounding region.

You estimate that this project will take five (5) years to fully realize. Therefore, you propose to set-aside, pursuant to section 4942(g)(2), the following amounts for use in the opening, and long-term operation and maintenance of the venue:

- Fiscal Year ending on H — n dollars
- Fiscal Year ending on J — o dollars
- Fiscal Year ending on K — p dollars

Basis for our determination

Internal Revenue Code section 4942(g)(2)(A) states that an amount set aside for a specific project, which includes one or more purposes described in section 170(c)(2)(B), may be treated as a qualifying distribution if it meets the requirements of section 4942(g)(2)(B).

Section 4942(g)(2)(B) of the Code states that an amount set aside for a specific project will meet the requirements of this subparagraph if, at the time of the set-aside, the foundation establishes that the amount will be paid within five years and either clause (i) or (ii) are satisfied.

Section 4942(g)(2)(B)(i) of the Code is satisfied if, at the time of the set-aside, the private foundation establishes that the project can better be accomplished using the set-aside than by making an immediate payment.

Section 53.4942(a)-3(b)(1) of the Foundations and Similar Excise Taxes Regulations provides that a private foundation may establish a project as better accomplished by a set-aside than by immediate payment if the set-aside satisfies the suitability test described in section 53.4942(a)-3(b)(2).

Section 53.4942(a)-3(b)(2) of the Foundations and Similar Excise Taxes Regulations provides that specific projects better accomplished using a set-aside include, but are not limited to, projects where relatively long-term expenditures must be made requiring more than one year's income to assure their continuity.

In Revenue Ruling 74-450, 1974-2 C.B. 388, an operating foundation converted a portion of newly acquired land into a public park under a four-year construction contract. The construction contract payments were to be made mainly during the final two years. This constituted a "specific project." The foundation's set-aside of all its excess earnings for four years was treated as a qualifying distribution under Internal Revenue Code section 4942(g)(2).

What you must do

Your approved set-aside(s) will be documented on your records as pledges or obligations to be paid by the date specified. The amounts set aside will be taken into account to determine your minimum investment return under Internal Revenue Code section 4942(e)(1)(A), and the income attributable to your set aside(s) will also be taken into account in computing your adjusted net income under section 4942(f) of the Code.

Additional information

This determination is directed only to the organization that requested it. Internal Revenue Code section 6110(k)(3) provides that it may not be used or cited as a precedent.

Please keep a copy of this letter in your records. We have sent a copy of this letter to your representative as indicated in your power of attorney.

If you have any questions, please contact the person listed in the heading of this letter.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosure