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VICTORIA VAZQUEZ, JORDON KLOTZ,  
SARAH MORROW, TIMOTHY MORROW,  
JOHN ARLIEVSKY, CASEY WICHMAN,  
KAYLA FREEDMAN, HANNAH STEELE,  
REBECCA KIRK, SAMUEL SCHEIBE, MORGEN  
ZWICHAROWSKI, CHARLES IBSEN,  
SARAH ENGEL, KELLY ZUZIC, WILLIAM LANDIS,  
JASON STEINER, ORRY WALTER,  
ANDREW CHOJNACKI, MADELYNN SHORES,  
GABE WOODS, ANTHONY PINKERTON,  
ANNA MATONE, KAITLYN NEWMAN,  
ABIGAIL FLANAGAN, MADISON MURPHY,  
CHLOE CROSBY, MICHAELA CAREY,  
LAURA MILLON, BRIAN McCLARY,  
ELIZABETH BOYLE, MARY-KATE HOMETCHKO,  
CASSANDRA SUTTER, ANTHONY DUTKIEWICZ,  
KARINA BRUNO, EVAN DAVIS,  
GRACE RYKACZEWSKI, LILLIE JUDGE,  
JORDAN ALLEN, SARAH SWAHLON,  
WILLIAM BUTRON, DAVID HELMER,  
GRACE AMODEO, KIRA PAUL, ROSEMARY GURAK,  
ELLIE SMOLYANINOVA, DEVON BARNES,  
MALLORY HAGEN, JOHN VANDEVERT,  
FRANCESCA FIORAVANTI, JOSHUA LISNER,  
MARISSA DEMARZO, JULIANNA MASSIELO,  
CHRISTINA HAN, DESTINY VELEZ, NATALIE ATKINSON,  
SAVANNAH BEALE-McCONNELL, SUMMER RAE KUHNS,  
CHELSEA HOLBROOK, FRANCESCA BLISS, JORDAN MONGELL,  
JOHN ARLIEVSKY, ALEXANDER MILLER,  
MARCUS TIMPANE, JULIA COSTELLO,  
RICHARD SABER, HANNAH BROOMHALL,  
COLLEN GILGAN, JOCELYUN ALAM, AMIA LANGER,  
EMILY CHANT and EMILY McDONALD, On Behalf of  
Themselves and Others Similarly Situated,

Plaintiffs,

v.

RIDER UNIVERSITY,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
COUNTY OF MERCER  
CHANCERY DIVISION

DOCKET NO C- \_\_\_\_\_ - \_\_\_\_\_

**COMPLAINT**

## **PRELIMINARY STATEMENT**

### **PARTIES AND VENUE**

1. RIDER UNIVERSITY (“Rider”), is a not-for-profit charitable educational institution with 501(c)(3) exempt status organized under the laws of the State of New Jersey. Rider is an institution of higher education that provides degrees to undergraduate and graduate students in liberal arts, fine arts, music, business and other fields.

2. Plaintiffs are all freshman, sophomore, junior and senior undergraduates, or graduate students, currently enrolled at Westminster Choir College; plaintiffs will be materially harmed and affected by Rider University’s stated intent to move Westminster Choir College in or by September 2020 from its Princeton campus to Rider’s Lawrence campus; plaintiffs also assert the interest of future Westminster students not yet enrolled who will also be deprived of the academic, educational and religious mission of Westminster and its facilities as a result of such move.

3. Plaintiffs are enrolled undergraduates or graduate students at Westminster Choir College, as follows: VICTORIA VAZQUEZ is a Junior; JORDAN KLOTZ is a Freshman; TIMOTHY MORROW is a Junior; SARAH MORROW is a Senior; JOHN ARLIEVSKY is a Freshman; CASEY WICHMAN is a Senior; HANNAH STEELE is a Senior; REBECCA KIRK is a Sophomore; SAMUEL SCHEIBE is a Junior; MORGEN ZWICHAROWSKI is a Sophomore; CHARLES IBSEN is a Sophomore; SARAH ENGEL is a Junior; JASON STEINER is a Junior; ORRY WALTER is a Freshman; MADELYNN SHORES is a Freshman; ANNA MATONE is a Junior; ANTHONY PINKERTON is a Junior; MADISON MURPHY is a Junior; GABE WOODS is a Junior; ABIGAIL FLANAGAN is a Sophomore;

KELLY ZUZIC is a Junior; WILLIAM LANDIS is a Junior; LAURA MILLON is a Westminster graduate student; KAITLYN NEWMAN is a Westminster graduate student; CHLOE CROSBY is a Junior; BRIAN McCLARY is a Senior; MICHAELA CAREY is a Sophomore; ANDREW CHOJNACKI is a Freshman; KAYLA FREEDMAN is a Junior, ELIZABETH BOYLE is a Junior, MARY-KATE HOMETCHKO is a Sophomore, CASSANDRA SUTTER is a Freshman, ANTHONY DUTKIEWICZ is a Freshman, KARINA BRUNO is a sophomore, EVAN DAVIS is a Freshman, GRACE RYKACZEWSKI is a freshman, LILLIE JUDGE is a sophomore, JORDAN ALLEN is a Sophomore, SARAH SWAHLON is a Sophomore, WILLIAM BUTRON is a Sophomore, DAVID HELMER is a Sophomore, GRACE AMODEO is a senior, KIRA PAUL is a Sophomore, ROSEMARY GURAK is a Sophomore, ELLIE SMOLYANINOVA is a Sophomore, DEVON BARNES is a Junior, MALLORY HAGEN is a Junior, JOHN VANDEVERT is a Senior, FRANCESCA FIORAVANTI is a Junior, JOSHUA LISNER is a Junior, MARISSA DeMARZO is a Senior, JULIANNA MASSIELO is a Junior, CHRISTINA HAN is a Senior, DESTINY VELEZ is a Sophomore, NATALIE ATKINSON is a Junior, SAVANNAH BEALE-McCONNELL is a Freshman, SUMMER RAE KUHNS is a Freshman, CHELSEA HOLBROOK is a Sophomore, FRANCESCA BLISS is a Freshman, JORDAN MONGELL is a Freshman, JOHN ARLIEVSKY is a Freshman, ALEXANDER MILLER is a Senior, MARCUS TIMPANE is a Senior, JULIA COSTELLO is a Freshman, RICHARD SABER is a Freshman, HANNAH BROOMHALL is a Freshman, COLLEN GILGAN is a Junior, JOCELYN ALAM is a Sophomore, AMIA LANGER is a Junior, EMILY CHANT is a Junior and EMILY McDONALD is a Junior.

4. Jurisdiction is appropriately in the Chancery Division in that this action concerns the improper wastage and disposition of a charitable property in the form of Westminster Choir College; at her request, the Attorney General will be given separate notice of this action but is not named as a defendant.

5. Venue is properly in the County of Mercer in that Westminster and Rider University are situated in Princeton and Lawrence, respectively, both in Mercer County.

6. This Complaint seeks declaratory, injunctive and other relief arising under 1) New Jersey common law governing charities and the obligations of stewardship, 2) the 1935 bequest and grant of Sophia Strong Taylor, and 3) the agreements between Westminster Choir College and Rider University that govern Rider's obligations following its 1992 affiliation with Westminster.

7. As charitable steward of Westminster, Rider has common law obligations, and separate obligations under Rider's 1991 agreement, to continue the operation of Westminster Choir College in substantially the same format and location as has traditionally existed unless Rider can demonstrate under *cy pres* principles 1) that such move or change is necessary to preserve the charitable purposes and mission of Westminster and 2) that the move to the Lawrence campus will preserve such program and mission in the closest means possible to the existing mission, campus and operation of Westminster.

8. Rider has also assumed such obligations under the 1935 Strong-Taylor trust.

9. Plaintiffs respectfully submit that Rider has not demonstrated and cannot demonstrate that it can satisfy *cy pres* and other common law doctrine to support the move of Westminster, the re-branding of this institution and the material and adverse changes to its

conservatory training program that will arise from this move and the loss and wastage of Westminster's unique and specialized facilities.

10. Plaintiffs are all students currently enrolled at Westminster Choir College and are the intended beneficiaries of the donors to Westminster Choir College and, separately, under the 1935 Strong-Taylor trust, and are the intended beneficiaries under both common law and the 1991 agreement executed by Westminster and Rider University under which Rider became the charitable steward of Westminster.

### **GENERAL BACKGROUND AND ASSERTIONS**

11. In 1991, Rider agreed to become the charitable steward of Westminster Choir College and undertook the duty to preserve and conserve this school of higher education, to protect it and its programs and to continue those programs in the same manner as then existing or in as close a manner as possible under *cy pres* doctrine.

12. As charitable steward Rider University is obligated (and has agreed in the 1991 agreement) to maintain the "separate identity" of Westminster and to continue to operate the Choir College at the Westminster Princeton campus in accord with its traditional mission and purpose unless relieved of such burden by a court of competent jurisdiction that authorizes a change to the charitable mission under *cy pres* doctrine upon proper and adequate cause being demonstrated.

13. Rider has not sought such judicial authorization, such cause does not exist and Rider is without authority to materially change the function, purpose, location and nature of Westminster's educational mission and programming.

14. At all times between 2014 and 2016 Westminster had been in surplus, had no loss of students or student tuition and had no financial exigency.

15. In 2016 Westminster ran an approximate \$2.5 million surplus and had run surpluses for the prior two years, as well.

16. No financial exigency for Westminster existed that would cause Westminster's campus to no longer be able to be operated as a separate campus to preserve the separate programming and mission of Westminster.

17. And all times since 1991 Westminster's educational and charitable mission, as it existed at the time Rider became the charitable steward, has remained fully capable of performance and has remained in substantially unchanged demand by the educational, religious and performance communities that Westminster was intended to serve.

18. Rider University has also benefitted materially from the accession to charitable stewardship over Westminster.

19. Rider acquired all or most of its present academic capacity in music, liturgical music training, conducting, instrumental training and performance training, music management and allied areas of study, and in music theatre, from such affiliation that commenced in 1992 and it was on the strength of these additional offerings, including graduate offerings, that the State of New Jersey awarded Rider the status of "university".

20. Rider's association with Westminster also enabled Rider to make use of the "Westminster" trademark in creating a new school known as the Westminster College of the Arts that accepts as majors each year approximately 300 students who are not a part of Westminster Choir College but whose majors in music theatre and art are offered at Rider

itself under the “Westminster” trademark; Rider receives on average \$27,000 in actual payments for each such student, meaning that each year Rider University receives tuition in the average amount of \$8.1 million through its use of the Westminster trademark on Rider’s Lawrence campus.

21. This litigation is based on Rider’s announcement on or about July 1, 2019, and its repeated statements since, that it will move Westminster Choir College and its students, faculty, performance training and all programs to Rider’s Lawrenceville campus beginning September 2020 where facilities to accommodate Westminster’s specialized conservatory training do not exist, cannot be reasonably accommodated and for which Rider has announced no plan to build or replicate replacement facilities.

22. Rider has since made further announcements on August 7, 2019 and on October 3, 2019, and thereafter, confirming that it intends to move Westminster and its faculty to the Lawrence campus in September 2020.

23. Rider officials have made multiple informal, verbal statements to plaintiffs and other students at student meetings of Rider’s intent to move Westminster as of September 2020 and to complete such move by such date.

24. Rider has announced no plan at all to replicate Westminster’s facilities and the move will cause the abandonment of such facilities and the loss of the conservatory educational environment that is the purpose and mission of Westminster and for which the students have enrolled.

25. Rider’s decision to move Westminster to Rider’s Lawrenceville campus follows the announced failure of its two-year plan to sell Westminster to a commercial, Chinese-

government-owned entity known as Beijing Kaiwen Education Technology Co., Ltd. (hereafter “Kaiwen”), a plan that was not accepted in the community of professional conservatory students and that resulted in the loss of two-thirds of Westminster’s students, the departure of certain key faculty and nearly all of Westminster’s donations since 2016.

26. Prior to the announcement of the plan to sell Westminster in 2017 and the June 2018 announcement to sell the Choir College to the China-based entity, Westminster had an approximate \$2.5 million surplus as of December 2016 and had a full incoming student complement of 95 undergraduate and 50 graduate students.

27. The destruction wrought by Rider’s attempts to sell Westminster resulted in a dramatically shrunken incoming class in Fall 2018 of 25 students and in the Fall 2019 class of only 35 undergraduate and 18 graduate students.

28. This decline in student census damaged the goodwill of Westminster and the academic programs of Westminster that depend upon a minimum number of students to fill places in the three performance choirs that are the core of Westminster’s academic training, including the Westminster Symphonic Choir, among others.

29. Such choral groups are fundamental to the plaintiffs’ reasons for attending Westminster in that they will benefit educationally and professionally from Westminster’s relationship and performing contracts with the New York Philharmonic, the Julliard School, Carnegie Hall, the Philadelphia Orchestra and the Spoleto Festival.

30. These are critical to the conservatory training offered by Westminster and are unique to this institution: no other academic music conservatory in the United States has performance contracts at such high professional levels.

31. Plaintiffs intentionally sought to enroll and attend Westminster in substantial part because of these performing opportunities that are unique to Westminster.

32. Rider's prior actions in attempting to sell Westminster to the Kaiwen group have resulted in the loss of at least two-thirds of the incoming student body in both the 2019-20 and 2018-19 academic years, the shrinking of its choral groups, the termination of the sophomore chorus due to the lack of incoming voices, the impending loss of its contracts with the Philharmonic and the other performance venues noted above, departure of certain key faculty and the loss of virtually all donations to Westminster since 2016.

33. Such acts have harmed the current and future academic program and opportunities for the plaintiffs and have caused a wastage and destruction of Westminster as an educational foundation and charitable property.

34. Rider has failed in and/or abandoned its duty to preserve and conserve the educational mission and charitable trust known as Westminster Choir College.

35. Plaintiffs are currently enrolled Freshmen, Sophomores, Juniors and graduate students at Westminster Choir College whose time of enrollment is expected to continue after the September 2020 move date of Westminster to Rider's Lawrence campus and will be materially harmed and injured in the loss of the conservatory education for which they enrolled, as described below in greater detail; such plaintiffs also have the knowledge and interest to represent the interests of students not directly appearing in this action.

36. For those plaintiffs who are seniors and will likely graduate prior to the completion of the move, the loss or material harm to the conservatory educational program and the change in mission and purpose of Westminster will cause the degradation of the value

of their degree in the professional music marketplace (in addition to the damage already caused by Rider's prior actions as to the Kaiwen transaction); moreover, the seniors have the knowledge and interest to stand as representative plaintiffs for other students not directly appearing in this action.

37. The plaintiffs will be injured in their academic and professional training and will lose the opportunity of the conservatory training they sought when they enrolled at Westminster by the move of the Choir College to a location — Rider's Lawrence campus — that does not have facilities for the type of conservatory education offered by Westminster and for which it has become known and for which reason the plaintiffs accepted enrollment at Westminster Choir College.

38. The move will cause the continuing loss of student admissions and student places in the choral performing groups that are material and vital to Westminster's mission and purpose.

39. The move will harm materially the student plaintiffs by the injury to their capacity to learn and train by the loss of Westminster's specialized facilities and by the harm to the faculty's ability to teach, research, compose and perform due to the lack of such facilities at the Lawrence campus.

40. Student plaintiffs enrolled in Westminster because of its unique facilities and the exclusivity of its conservatory environment and setting that allows close, intimate and continuing physical and intellectual contact between conservatory students on a constant basis.

41. Student plaintiffs enrolled in Westminster specifically to be with elite conservatory students on a constant basis sharing the intense and continuing music training

found in a conservatory that cannot and does not exist at Rider's undergraduate campus that is a general college setting, not a conservatory.

42. The planned move of Westminster will cause the student plaintiffs to be deprived of the opportunities intended in the creation of the Westminster educational foundation and charitable property because Rider's Lawrence campus is not a conservatory, lacks conservatory facilities, is not a conservatory setting and environment and has none of the specialized facilities created at Westminster by its donors who intended such to be used by conservatory-trained students.

#### **THE EXCLUSIVE CONSERVATORY SETTING OF WESTMINSTER**

43. The proposed move of Westminster Choir College will cause the loss of the exclusive and specialized environment established at Westminster's Princeton campus in the form of its conservatory education in which music students are educated and trained in an intensive around the clock program that, by design, concentrates such students in a tight knit and exclusive educational and cultural setting.

44. Conservatory music education, including Westminster's educational program, is designed intentionally to focus and concentrate conservatory students in an exclusive educational and training program in which students and faculty in other disciplines are not normally present except for occasional general education courses or occasional attendance in conservatory courses.

45. Westminster's conservatory education is designed and intended to place conservatory students in continuous and exclusive proximity to one another so that their

educational and cultural commitment to professional music, choral and operatic training is experienced jointly, and separately from a general collegiate population.

46. Conservatory education is designed to place such students' living quarters in direct and immediate proximity to their education and training facilities so there may be seamless movement between their life functions and their academic and music training on a constant, 24-hour daily basis.

47. Unlike conventional college students, conservatory students (including plaintiffs) engage in continuous classroom work throughout the day, generally from 8 AM through 6 PM, with practice and rehearsal dominating their schedule until generally 9-10 PM each evening.

48. In such program, conservatory students are in classrooms, with faculty and/or in studio session continuously from 8 AM through 6 PM without ever meeting students or faculty from other disciplines except for occasional instances in a non-conservatory general education course that is incidental to and not a material part of the conservatory program.

49. This exclusiveness is a form of educational segregation that is the essence of conservatory training as has been offered at Westminster for nearly 100 years; it is designed to differ materially from education in a general college departmental music program and is intended to keep conservatory students separated from a general college population so as to allow concentrated training and exchanges between students and faculty.

50. The proposed move will also harm the students by the loss of access by Westminster faculty to the specialized facilities at Westminster that are essential to their teaching, research, conducting, composition, voice and instrumental training and performance activities that are, in turn, material and vital to the students' conservatory training.

51. Student plaintiffs will also be materially harmed and injured in their professional training and education by the loss of the historical atmosphere and physical locations at Westminster's Princeton campus where internationally known masters and maestros have taught and performed; this ingrained cultural heritage is a material element of the reason for students to come to Westminster and cannot be transported or duplicated - the intangible benefit of such historical associations are vital to education but cannot be quantified or measured or reproduced at Rider's Lawrence campus.

52. Similarly, Westminster Choir College was designed and intended to be situated in Princeton to be part of a local academic/religious community that allowed direct and immediate interrelationships between Westminster, Princeton University, the Princeton Theological Seminary, the multiple churches within walking distance of Westminster at which Westminster students work and train, along with other religious cultural and academic institutions situated directly within Princeton within walking distance; such relationships will be lost and/or materially damaged by the move of Westminster to Lawrence, a community that lacks such academic, religious and cultural institutions and is accessible to Princeton only by bus or car, as opposed to being part of an integrated academic walking community as Westminster is presently situated.

**WASTAGE CAUSED BY RIDER'S ATTEMPTED SALE OF  
WESTMINSTER CHOIR COLLEGE**

53. Since December 2016 Rider University has caused the wastage and destruction of the charitable property and/or trust known as Westminster Choir College through an illegal

and ill-conceived plan to sell Westminster to a Chinese government-controlled commercial entity that could not qualify to operate a non-profit American college.

54. As a result of Rider's attempt to sell Westminster, the Choir College now has only two full size classes (the junior and senior class years) and has two classes that are three-quarters diminished and 60% diminished (the current sophomore and freshman classes, respectively).

55. Westminster's graduate program is reduced by approximately two-thirds as well.

56. The now-defunct plan to sell this college caused material wastage to Westminster's goodwill, its mission and the ability to carry out its purposes, reputation and function, the loss of virtually all donations to Westminster and two-thirds of its traditional enrollment in the past two classes.

57. Rider's plan to sell Westminster to the Kaiwen group, announced on June 21, 2018, resulted in the reduction of the 2018-19 entering class from 95 undergraduate students to less than 25 students and the complete loss of virtually all donations from Westminster's wide and committed giving community.

58. In the current 2019-20 school year, only 35 undergraduate students have accepted admission to Westminster and only 18 graduate students.

59. Prior to the announcement of the plan to move or sell this college, Westminster Choir College had had a full complement of entering students.

60. The loss of student enrollment is solely and exclusively the result of Rider's announced intent since 2016 to close or move Westminster and from its now-abandoned plan to sell Westminster to Kaiwen, an entity with no experience in higher education, that had been

a steel and bridge maker until shortly before the announcement of the sale, that is controlled by the authoritarian government of China, that stated it would place Westminster's endowment and property on its commercial and corporate books and that required as a contractual provision that it could terminate Westminster's existence at any time after its acquisition.

61. It was following the announcement of the Kaiwen sale in June 2018 that Westminster's entering enrollment was reduced by more than two-thirds and its fundraising dried up almost entirely (with the exception of the annual fundraising dinner operated by Howard McMorris, lead plaintiff in the parallel action under docket number C-69-18).

62. The loss of student enrollment has materially damaged Westminster's financial stability, its goodwill, its reputation in the music community, its performance contracts and its ability to carry forward its teaching, training and performance missions.

**MATERIAL DAMAGE TO WESTMINSTER'S PERFORMING GROUPS  
AND CONTRACTS WITH THE NEW YORK PHILHARMONIC,  
THE PHILADELPHIA ORCHESTRA AND OTHER GROUPS**

63. Of even greater significance, the loss of undergraduate and graduate students, from the normal entering class of 95 undergrads and 50 graduate students to between 25 and 35 undergraduates and 18 graduate students, has already worked material harm, and will cause further harm, to Westminster's performance groups, among which are the following:

Westminster Chapel Choir

Westminster Choir

Westminster Concert Bell Choir

Westminster Jubilee Singers

Westminster Kantorei

Westminster Recordings

Westminster Schola Cantorum

Westminster Symphonic Choir

Westminster Williamson Voices.

64. Westminster has had to close its sophomore chorus due to the absence of sufficient numbers of student voices to fill the choral positions.

65. Declining enrollment already in place, and that will be furthered by the move of Westminster to the Lawrence campus — a place without conservatory facilities or a conservatory atmosphere necessary to attract elite voice, choral and opera students — will imminently cause the failure of other choral groups at Westminster.

66. The choral performance groups, particularly the Westminster Symphonic Choir, are the core of Westminster's academic and professional training program and their loss or diminishment will be a material deviation and injury to the institution's mission and to the student plaintiffs' education and training.

67. Already, certain of the aforementioned groups have been kept up in their numbers only by the use of recent alumni singers to make up missing student voices.

68. The Westminster Choir typically performs professionally with the Philadelphia Orchestra and the New York Philharmonic with complex works such as Mahler's 8th Symphony, Beethoven's 9th Symphony and Bernstein's Opera *West Side Story*. These works require a full scale chorus that would be overwhelmed by the orchestra if the choral scale dropped consistent with the continuing drop in enrollment of sixty percent in the incoming undergraduate class.

69. In such case, Westminster's professional contracts with the Philadelphia Orchestra and the Philharmonic will be lost and the principal professional training program for Westminster students will be extinguished.

70. The availability of professional training outlets such as the Philharmonic, Carnegie Hall and the Philadelphia Orchestra is unique to Westminster, and is not available at other U.S. music conservatories.

71. The loss of such professional training outlets will materially harm, if not eliminate, the traditional education and professional training mission of Westminster Choir College and will deprive the student plaintiffs of the training for which they sought out and enrolled at Westminster.

**RIDER'S NEW PLAN TO MOVE WESTMINSTER IN PLACE OF THE  
FAILED ATTEMPT TO SELL THE CHOIR COLLEGE**

72. On July 1, 2019 Rider announced a new plan to move the entire Westminster Choir College to Rider's Lawrence, New Jersey campus.

73. Rider has announced that it intends to complete such move by September 2020, and has repeated such statements on multiple occasions since the July 1, 2019 announcement.

74. Such planned move will materially damage and destroy the Westminster conservatory because: 1) Rider does not have facilities to provide for such program at its Lawrence campus; 2) Rider does not have the acoustically designed performance halls, practice rooms, studios, piano rooms, organ structures, music library that exist at Westminster and that are designed expressly for Westminster's mission of non-amplified voice, choral and operatic training; 3) Rider has no announced plans to build or finance such facilities; 4)

Rider’s current dean, Marshall Onofrio, told students and parents publicly that practice rooms will not be available at the Lawrence campus and that students will have to seek out “churches” and “fellowship halls” on their own to obtain practice space, contrary to the purposes of a conservatory that is supposed to provide such facilities as Westminster does presently;<sup>1</sup> 5) Rider has announced a general intention to re-design a building to temporarily house Westminster faculty offices and a proposal to expand a small chapel but no other construction or design activities to replicate Westminster’s existing facilities; 6) Rider has not identified how or where it will reproduce or replicate Westminster’s facilities; 7) Rider has announced no plan to maintain Talbott Library, Westminster’s music library and one of the largest in the United States as a separate library but has stated it will spread Talbott’s collections within Rider’s existing Moore Library; 8) Rider cannot duplicate in any reasonable degree the existing conservatory atmosphere and setting of Westminster; 9) Rider cannot duplicate or provide facilities with the historical associations existing at Westminster that are a material part of the education and training program; and 10) Rider’s Lawrence campus is not situated in the unique environment of Princeton with its direct and immediate immersion in an established academic setting with numerous university, religious and cultural facilities as to which Westminster has entwined and focused its academic and training program over the past 85 years.

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<sup>1</sup> Since such statement by Dean Onofrio, Rider has announced a plan to build 16 practice rooms, far below the approximate 150 rooms available for such purposes at Westminster’s various structures on the Princeton campus.

## **THE ABSENCE OF CONSERVATORY FACILITIES AT RIDER'S LAWRENCE CAMPUS**

75. The planned move of Westminster is without any performing halls designed for voice, choral and operatic training.

76. At present on its Princeton campus, Westminster Choir College has at least five major performing venues that are specially designed, both structurally and acoustically, for the highly specialized non-amplified choral, operatic and instrumental training that Westminster provides.

77. These performance venues include: 1) the Cullen center, a choral training facility that provides room for a 300-person standing choir; 2) the Bob Annis Playhouse, a facility now linked architecturally to the Cullen Center; 3) Bristol Chapel, a traditional large religious setting specially designed for Westminster by Princeton University's renowned architecture chair, Professor Sherley W. Morgan, for choral performance at Westminster; 4) Williamson Hall; 5) Hillman lounge.

78. Rider lacks such facilities and has a single conventional auditorium largely used by its existing musical theatre program; this is an amplified microphone facility without the hardened surfaces or other acoustic designs that have been specially implanted in Westminster's existing facilities for its *non*-amplified piano, organ, voice, choral and operatic training.

79. Such facility cannot be used in Westminster's choral and operatic training that is intentionally conducted without amplification since choral and opera singers perform in facilities, i.e., the Metropolitan Opera, Carnegie Hall, the Philadelphia Orchestra, without

microphones and train to use their voice and body in ways materially different from Broadway performers or popular folk or rock singers who normally use amplification. These training modalities are generally mutually exclusive — facilities designed for amplified voice, such as Rider's Lawrence auditorium, cannot be used to train Westminster's students in professional choral or operatic performance.

80. Rider's only other facility is a small theatre in the student center that is a very modest general purpose forum not designed for Westminster's specialized functions.

81. Rider has announced no plan to construct comparable facilities to those at Westminster and has failed to identify where it can provide such facilities following the move of Westminster.

82. Even these minimal facilities will not be dedicated exclusively to Westminster's programs and training but will be shared with Rider's existing student body, its multiple academic activities and its departmental music theatre program as compared to Westminster's current campus where its choral and operatic training programs have had exclusive use of such facilities for the past 85 years.

83. Rider's Lawrence campus is without studios for Westminster faculty that must accommodate at least one grand piano and often a second piano for use by both professor and student and must have hardened surfaces for vocal and instrumental feedback for non-amplified training; Westminster has approximately 45 such studios on the Princeton campus but none exist on the Lawrence campus.

84. Rider has stated that it plans temporary office space for faculty in a dormitory called Omega House but has not announced or disclosed plans to build acoustically-designed permanent faculty studios suited to Westminster's conservatory program.

85. Following such move, Westminster students will not have studio facilities in which to practice and train with faculty, a fundamental part of conservatory training.

86. The planned move is without regard to practice rooms for voice, organ and/or piano training that must accommodate pianos and must be designed with certain acoustic considerations, none of which exist at Rider's Lawrence campus.

87. At present Westminster has up to 150 practice spaces that are in continuous use during the day and all evening.

88. Rider plans to construct a total of 16 practice rooms at its Rider campus.

89. Without practice rooms conservatory students cannot train and gain vocal feedback from their vocalization and instrumentation; "practice" rooms are a fundamental structural element of a conservatory education and serve the same substantive role as laboratories in schools that offer training in physical sciences or athletic facilities on campus for schools that offer athletic training. In a conservatory context, practice facilities are "hardened", meaning they are constructed intentionally of hard surfaces to allow vocal and instrumental feedback for musicians training in the non-amplified orchestral, choral and operatic performance fields.

90. Rider has admitted that it lacks such facilities and has stated that students who presently have such facilities available all day and night at Westminster will, following the move, be required to find their own practice spaces off campus.

91. In publicly discussing the absence of practice rooms at Rider's Lawrence campus, Westminster Dean Marshal Onofrio told alumni and incoming parents and students at a forum in July 2019 that after the move students will have to search out churches and fellowship halls in which to practice.

92. By such statement, Dean Onofrio acknowledged that upon the move of the campus Rider will be unable to provide this fundamental and critical aspect of conservatory training.

93. Rider has since attempted to make up for this deficit by announcing a plan to construct a maximum of 16 practice rooms, woefully inadequate for a full-time music conservatory.

94. The absence of studio and practice facilities for conservatory students will diminish materially the training opportunities for Westminster students, injure the professional training opportunities for which students come to a conservatory such as Westminster and will lead to materially diminished applications from incoming students.

95. Moreover, it will be impossible for students to locate off campus practice facilities because sufficient facilities do not exist in the Lawrence community and valuable training time will be lost in 1) the search for such facilities and 2) the commuting time to travel to such locations, if they can be found, and the expense of arranging for such travel.

96. Conservatories typically spend a great deal of money to assure that students have adequate practice space to concentrate properly and to sustain concentration but Rider has announced no plan to build or design adequate practice facilities for Westminster students at the Lawrence campus.

97. Westminster presently has approximately 150 pianos used by faculty and students at all levels in its conservatory training and performance; each piano requires a separate room location except in certain instances where a grand piano is situated in a faculty studio room with a smaller upright for training purposes. No facilities exist at Rider — and none have been announced — to house these instruments or provide performance, training or practice opportunities for students in piano or allied fields. Such facilities are essential and material to a conservatory program but will be absent at Rider’s Lawrence campus.

98. Westminster is the owner and operator of rare and expensive organs that are used in its religious educational mission and programs, along with use by faculty who perform and compose for organ; such organs require specially constructed buildings for their operation and maintenance, such as Bristol Chapel, that do not exist at Rider and for which Rider has announced no plans to replicate.

99. Rider has announced no plans to construct or replicate any of Westminster’s existing facilities at its Lawrence campus except that it said it will expand Gil Chapel but has produced no development or engineering plans even for this singular expansion.

100. In its August 7, 2019 announcement, Rider stated that it is only first forming committees of faculty and others to explore the move that it claimed will be completed in 12 months in September 2020; in the announcement Rider made no statement that it was planning to construct *any* facilities for the use by Westminster; Rider has failed to identify or propose any facilities that will replicate Westminster’s specialized facilities or that can accommodate the additional students and faculty to be added to the Lawrence campus.

101. Rider has announced that it will make certain very minimal changes consisting of expanding Gil Chapel, building 16 practice rooms and providing temporary office space to Westminster faculty, but no architectural plans, engineering drawings, site plan applications or any other indicia of the development of facilities to house Westminster's programs and specialized needs have been disclosed or identified by Rider in connection with the proposed move of Westminster *and none that would even remotely replicate Westminster's facilities that have been used for 85 years for Westminster's exclusive and specialized functions.*

102. Rider has produced a concept plan to include a small addition to its Fine Arts building, a facility to be used by Rider's existing music, theatre, art programs, but not dedicated to Westminster Choir College or its programming.

103. In fact, none of Rider's announced plans in connection with the proposed move of Westminster contain any proposal to construct any new buildings or facilities dedicated to use by Westminster except for the temporary office space at Omega House but, even as to these offices, no permanent plans for faculty studios have been announced by Rider.

104. In sum, Rider intends to force Westminster to relocate a nearly 100-year old specialized campus with unique training and educational facilities into Rider's existing facilities without construction or development of new, additional or comparable facilities to accommodate Westminster's conservatory mission and training.

105. Following the move, Westminster will lose all of its independent structures and independent facilities that are essential to the intensive and continuous training of conservatory students and will be forced to change from an independent conservatory to a shared facility with a conventional collegiate music and art department that does not provide

conservatory training and that will not provide the isolated and segregated environment for conservatory music students that is essential to all music conservatories.

**WESTMINSTER’S CAMPUS IS UNIQUELY DESIGNED FOR ITS SPECIAL  
AND PARTICULAR EDUCATIONAL MISSION**

106. Westminster’s concert and performance venues are unique structures that have been created over a period of 85 years since the first construction of the campus in 1935.

107. Construction and development of the performance venues continued through 2014 when the Cullen Center, the most modern facility built at Westminster and the most modern choral training facility in the United States was completed and opened.

108. In its announcement of the opening of the Cullen Center on October 22, 2014, Rider announced that it was intended to create “a new quadrangle”, along with the Playhouse and “courtyard” to be the “primary outdoor venue for Westminster student and alumni events.” See <https://www.rider.edu/ridermagazine/spring-2015/news/campus/marion-buckelew-cullen-center-opens>.

109. The new “quadrangle” was designed to be a permanent part of Westminster’s conservatory serving as a focal point, performance space and architectural link between the earlier structures built at Westminster and the new performing arts center:

“Its design was inspired by the Georgian style of the four original buildings surrounding the Morgan Quadrangle.” *Id.*

110. Donors contributed funds specifically intended for the future use of this facility by Westminster students studying and training on the campus in direct proximity to the Cullen Center and the related facilities.

111. The Cullen Center contains a 3,000 square foot performance hall, with permanent built-in stands for 200-plus choral students, what its designers, the KSS architectural group, called a critical component of the Master Plan for Westminster Choir College:

“[T]he completion of the Marion Buckelew Cullen Center marks a significant advancement of the master plan created by KSS to guide the growth and development of campus facilities at Westminster.

See <https://kssarchitects.com/intersections/blog/2014/10/westminster-choir-college-steps-future>.

112. That “master plan” is now to be abandoned by Rider’s planned move of Westminster, the abandonment of a conservatory educational venue designed specifically for the unique needs of Westminster and that was the attraction, in material part, for students to enroll at Westminster.

113. The Cullen Center was designed as a “gateway” for the campus, was intentionally integrated with the existing Georgian structures and designed to have a close relationship with Westminster’s existing structures, as KSS itself stated:

“In keeping with the original Georgian architecture of Williamson, Taylor and Erdman Halls, the Cullen Center compliments the classic vision of the campus, and forms the eastern edge of a new quadrangle. In this significant location, the Center now acts as a gateway to the heart of campus.

*Id.*

114. As KSS, its architects made clear, the Cullen Center was designed to “support” Westminster’s “wide range of teaching methods”:

The Cullen Center, which houses two flexible performance spaces, supports the college’s wide range of teaching methods, from private lessons and group classes, to performances before audiences and individual practice sessions. These state-of-the-art spaces, strategically laid out in two wings forming an L-shape, make it

possible to easily conduct many sessions simultaneously. The two wings converge into the grand, light-filled lobby, perfect for receptions and displaying banners.

*Id.*

115. Assistant Professor of Conducting Amanda Quist stated in a 2014 interview with the Rider News that prior to the Cullen Center’s opening Westminster had a shortage of rehearsal spaces as the Choir College had grown beyond its campus capacity and that the Cullen Center was designed to address this deficit with one of the most modern choral rehearsal facilities in the United States:

“The Cullen Center is a wonderful new addition to our thriving campus...with such an active campus, we were desperately in need of more spaces in which to rehearse. This new hall has been designed with the very best acousticians in the business, and it allows for a variety of choices for rehearsal configurations. Few college campuses in the country have a space as fantastic as this.”

The Rider News, Oct. 21, 2014; <http://www.theridernews.com/open-house-to-showcase-wccs-new-world-class-hall/>

116. Westminster’s acoustic engineers, Acentech, specially modeled the Cullen facility to maximize vocal exchanges in a choral context — it was designed intentionally to accommodate the “variable acoustics elements [that] affect what listeners will hear” and was also designed to feature distance learning, to live stream concerts and contains built-in infrastructure to enable commercial digital recording that is fundamental to Westminster mission and work, among other design features.

117. Rider University’s current website describes the Cullen Center as its “signature space”. <http://catalog.rider.edu/westminster-choir-college/>, viewed on August 8, 2019.

118. Rider intentionally represented these facilities as being part of its educational attraction to students and induced students, including plaintiffs, to enroll at Westminster Choir College in substantial part on the basis of such representations.

119. The Cullen facility is integral to the educational training and mission of Westminster and was designed, as KSS acknowledged, to integrate all elements of Westminster's education and training mission.

120. Rider has announced no plan and it has no capacity to replicate and recreate the Cullen Center and fill the deficits that the Center was designed to address; following the planned move of Westminster, the deficits that previously existed will be enhanced and exacerbated far beyond any shortage of educational and performance spaces that had previously existed at Westminster.

121. The Westminster campus also features the "Playhouse", a decades old performance venue that is acoustically designed for Westminster's unique needs and is today linked via an architectural passageway to the Cullen Center; the Cullen Center and the Playhouse were designed to work together as a single educational and performance entity, as well as creating an exterior quadrangle as a "a primary outdoor venue" for Westminster student and alumni performances and events. <https://www.rider.edu/wcc/about/construction>.

122. The Playhouse is also a historical structure that has featured rehearsals, teaching and performance by virtually all leading U.S. and European conductors.

123. In or about 2014 Rider University intentionally sought donations to make up a \$1.69 million fund "to upgrade this building [the Playhouse] that has played such an important role in Westminster's history." <https://www.rider.edu/wcc/about/construction>.

124. This fundraising campaign resulted in extensive modernization of The Playhouse including, as Rider's website current announces, "a larger stage area, dressing rooms, and an extended thrust stage." <http://catalog.rider.edu/westminster-choir-college/>

125. The donors for the Cullen Center and the Playhouse and the related facilities intended their donations to be used for the construction of these facilities for the education and training of then-current and future Westminster students (and for the faculty in their own performance and composing work that is essential to their teaching and training of the students).

126. By moving the campus, these facilities will no longer be available for use by the students and faculty in a conservatory setting; similarly, these facilities cannot be used as intended for conservatory training by busing students from Rider's Lawrence campus to Princeton as such will interfere with the immediate constant and ready access to such facilities that is a necessary part of professional conservatory training

127. In any event, Rider has announced no plan to continue the regular use of these facilities as part of the conservatory training program after the move in September 2020 and they will be abandoned.

128. By moving the campus without committing the proceeds of sale of the campus to rebuild and replicate these facilities, Rider is not only abandoning these facilities but is wasting the asset for use on its general academic campus and not for the specific or particular use of the Westminster students and faculty.

129. Other facilities at the Princeton campus are uniquely designed for use in Westminster's professional conservatory training program.

130. Erdman Hall was extensively renovated and rededicated in 1997, from donations, and is named for Charles Erdman, former chaplain of the college, and houses The Presser Music Center and provides offices and studios for the Voice and Piano Departments and the Voice Resource Center and an electronic keyboard lab. As with the Playhouse and the Cullen Center, no such facilities exist on Rider's Lawrence campus and none are planned, none are in the design stages or been announced by Rider.

131. Dayton Hall houses Scheide Recital Hall, named for benefactor William H. Scheide. Dayton Hall is the location of the Casavant and Ott organs and of Organ Department offices, teaching studios, and practice facilities. Similarly, Ithaca Hall includes both organ and piano practice facilities.

132. The Talbot Library of Westminster Choir College is a music, choral and opera facility that has been built over the past 80 years into a cohesive and integrated music library along with extensive historical archives and is one of the largest conservatory libraries in the United States.

133. Talbot's collections comprise more than 67,000 music-related books, music scores and periodicals, approximately 5,400 choral music titles in performance quantities, a choral music reference collection of more than 80,000 titles, 200 current periodical titles in print, as well as access to more than 12,000 titles electronically, 25,000 sound and video recordings and many other specialized facilities and archives.

134. Talbot's special collections also include the Erik Routley Collection of hymns and hymnological literature; the D. deWitt Wasson Research Collection of Organ Music; and the Archives of the Organ Historical Society, a comprehensive collection of organ research

materials, along with an extensive score and sound recording collection covering all musical styles, genres and periods with a concentration on choral, vocal, keyboard and sacred music.

135. Talbot houses the collected works of many individual composers, masterworks of music, an extensive piano pedagogy collection, instructional material for music education in primary and intermediate schools and holdings both broad and deep in choral music, keyboard music and hymnals.

136. In addition, Talbott library collects multiple print editions of many music titles for comparison of editing practices and multiple recordings of many titles for comparison of performance practices. See Rider Catalog, <http://catalog.rider.edu/westminster-choir-college/>.

137. Talbott Library is fundamental to the education at Westminster, to its mission and to its accreditation.

138. Rider has announced no plan to replicate Talbott Library following the move of Westminster.

139. Talbott Library is equal to, or larger in some respects, than libraries at larger conservatories including Julliard and the Cincinnati Conservatory of Music.

140. For example, Julliard has 25,000 books (Westminster has 67,000), Julliard has an equal number of sound recordings (25,000), Julliard and Westminster both hold approximately 85,000 musical recordings. See e.g. <https://www.juilliard.edu/school/library-and-archives>.

141. By way of further example, the library at the Cincinnati Conservatory of Music has 43,500 print volumes (Westminster has 65,000), 80,000 scores (Westminster has 85,000 choral reference works), 60,000 sound recordings (Westminster has 25,000 sound recordings).

142. Although Westminster has a smaller undergraduate and graduate student capacity (500 students), compared with 949 students at Julliard and 1500 at CCM, Westminster's Talbot Library is equal in most respects, and exceeds the capacity in other respects, of the libraries at these much larger conservatories.

143. Westminster's library thus compares on an equal basis to the finest conservatory libraries in the United States.

144. Rider has proposed to move this unique library to the *basement* of its existing Moore Library on the Rider Lawrence campus, as it informed Rider Board members on prior tours of the Lawrence campus in spring 2017 when a move of Westminster was first discussed.

145. As with other elements of this move, no plans, drawings, architectural renderings or any other evidence of a design have been produced by Rider to demonstrate that it can accommodate Talbot Library on the Lawrence campus and, in particular, *in the basement of Moore Library*.

146. Even the basement of the Moore Library is not presently available for transfer of the Talbot Library as it is occupied by Rider's administrative staff, including its president, general counsel and nearly all of its executives and administrators; no plan has been announced and no building has been designed to accommodate the administrative staff in another location to accommodate Talbot Library.

147. As an alternative to such proposal, Rider has informed the Library transition committee that it will distribute Talbot Library among the existing collection of Moore Library at Rider's Lawrence campus.

148. Moore Library, however, is not a conservatory or music library and, following this move, Westminster students and faculty will no longer have a dedicated library in the conservatory setting that has prevailed at Talbot Library for many decades and that is a core part of Westminster's conservatory program and essential to its accreditation.

149. Rider has also announced no actual plan to integrate Talbot Library into Moore Library.

150. Rider thus proposes to move this vast facility to its Lawrence campus without any plan, design or structure to adequately house one of the largest conservatory libraries in the United States, built up over nearly 100 years since Westminster was first founded in the 1920's, let alone to house Talbot as an independent facility vital to the educational and research mission of Westminster Choir College.

151. Other material deficits in the purpose and program of Westminster Choir College will arise from the move of Westminster that will materially harm, diminish if not destroy Westminster as a music conservatory.

152. The Westminster campus has extensive historical and cultural associations that are material to the mission of Westminster Choir College and that cannot ever be replicated or replaced at Rider's Lawrence campus or at any other location.

153. The Playhouse and, in particular, Bristol Chapel, an original Westminster structure, have intense historical connections in the orchestral, voice and choral settings.

154. Bristol Hall itself is a unique church structure designed both for religious purposes and liturgical music purposes and that is wholly integrated into Westminster's existing and traditional academic and training program.

155. No similar structure exists at Rider's Lawrence campus and none is planned by Rider nor can Rider recreate the historical associations that attach to Bristol Chapel.

156. Most U.S. and European conductors of note have rehearsed and performed in the Playhouse and Bristol Chapel including, for example, Leonard Bernstein, Leopold Stokoski, Kurt Masur, Zubin Mehta, James Levine and Arturo Tuscanni, among many others.

157. It is in substantial part because of these historical associations that students and faculty value the education at Westminster and the association with past figures at this locale is vital to the motivational element of conservatory and cultural education.

### **THE BACKGROUND OF WESTMINSTER CHOIR COLLEGE**

158. Westminster is a residential school of higher education and conservatory training, with, inter alia, a significant emphasis on sacred music; it is a 501(c)(3) entity and certified as a degree-granting institution by the State of New Jersey.

159. Westminster's campus is located in Princeton, New Jersey.

160. Westminster was founded in 1920 by John Finley Williamson as the Westminster Choir of the Westminster Presbyterian Church in Dayton, Ohio.

161. In 1929 the school moved to Ithaca, New York where it became associated with Ithaca College and began offering a four-year degree program culminating in a Bachelor of Music degree.

162. After four years as an affiliate of Ithaca College, Westminster moved to Princeton, New Jersey to be near to the performing arts centers of New York and Philadelphia.

163. Westminster's Princeton campus was made possible by the grant of Sophia Strong Taylor ("Strong Taylor" or "Grantor"), who endowed Westminster with the land and certain buildings that from 1935 have constituted its Princeton campus.

164. The Strong Taylor grant was subject to certain conditions, namely that Westminster must continue to train Ministers of Music in the evangelical Christian tradition, as Westminster has continued to do through the present day, in addition to other allied academic music education.

165. Other donors later contributed tens of millions of dollars to Westminster's buildings and endowment.

166. In 1935, Sophia Strong Taylor (the "Grantor") gave the twenty-three (23) acres of land in Princeton that now comprise Westminster's buildings and campus that also house its Conservatory and Continuing Education divisions, both being components of the college; Strong Taylor also provided funding for the creation and construction of the structures (hereafter the "Strong Taylor Grant or Trust").

167. Strong Taylor gave her gift to Westminster to advance the "training of Ministers of Music of Evangelical Churches" with the condition that the school continue to carry out such purposes and activities; she imposed a covenant running with the land given to Westminster to enforce such intent. If Westminster ceased to pursue that purpose, the land by the unequivocal terms of Strong Taylor's gift would become the Seminary's property.

168. Strong Taylor was a resident of Ohio where Westminster was founded in Dayton, she was active in the school's life and activities and sought to maintain the school for the future as a place of learning of liturgical music and training of ministers of music.

169. Strong Taylor imposed the conditions and covenant because of her intent that her gift be used by Westminster for a school of music and liturgical music training with emphasis on the Christian tradition.

170. Pursuant to the terms of the Strong Taylor grant, if Westminster Choir College should ever violate the covenant to use the lands and buildings for the teaching of liturgical music and the training of ministers of music then the lands and buildings must pass to and vest in the Princeton Seminary, today known as Princeton Theological Seminary (the “Seminary”).

171. Strong Taylor conveyed to the Seminary a residual interest in the Westminster campus in Princeton due to the common faith of the two Presbyterian organizations and that they share communitarian Presbyterian interests and missions.

172. As is well-known, the Seminary (plaintiff in the parallel Chancery Division proceeding, Docket No. MER-C-18-18), is an educational institution offering advanced degrees and education focused upon the training of Christian ministers and theologians in the Presbyterian tradition; its mission is set forth on its website. *See* <http://www.ptsem.edu/discover/mission-vision>.

173. The relationship between Westminster and the Seminary dates to the 1930’s when, during construction on its permanent campus in Princeton, Westminster conducted classes and its academic program at the First Presbyterian Church in Princeton (now Nassau Presbyterian Church) and at the Seminary.

### **THE 1991 “MERGER” AGREEMENT**

174. In 1991, Westminster entered into negotiations with Rider to acquire the Choir College under conditions of trust under which Rider would preserve Westminster in its

present format, on its present campus and preserves its existing academic mission, support such mission financially when necessary and pledge to use Westminster's resources for Westminster's purposes.

175. In 1991, Rider was a school of approximately 5,000 students with a focus on business, accounting and a general liberal arts curriculum and sought the academic and educational benefits of acquiring Westminster with its superior music, religion and arts programs.

176. To gain such benefits, Rider was willing to continue to maintain Westminster in its present format along with a religious establishment at Westminster including the church, clergy and religious services, liturgical music training, religious music education, and to make such study available to Westminster students; Rider also agreed to maintain Westminster's separate identity, the substance of its existing music education and training and its Princeton campus.

177. The Rider Merger Agreement was conditioned on Rider's continued operation, maintenance and funding of Westminster Choir College on its campus in Princeton.

178. Westminster and Rider expressly stated and agreed in the Rider Merger Agreement that the merger was for the specific "intention of continuing the purposes of Westminster..." and that the parties would act to "ensure that the Westminster programs may be continued by Rider following the Merger of Westminster." Rider Merger Agreement, §1.3

179. The Rider Merger Agreement required that "...after the Merger of the institutions Rider will:

- (a) Preserve, promote and enhance the existing missions, purposes, programs and traditions of Westminster, including, without limiting the generality of the foregoing, the continuation of the mission of Westminster through its emphasis on instruction in sacred music; training of minister of music; choral, vocal, and instrumental performance; and preparation of music teachers.
- (b) Ensure that the separate identity of Westminster, its programs and activities and its faculty will be recognized, and the current and future Westminster alumni will continue to be so identified;

Rider Merger Agreement, §2.1 (a) and (b).

180. These provisions require Rider to continue to operate Westminster for the stated purposes, and to maintain its “separate identity” as an institution of higher education.

181. Consistent with these purposes, the Rider Merger Agreement expressly stated that the resources of Westminster must be used for the Westminster programs, specifically that “Rider will... [u]tilize Westminster’s resources in support of Westminster’s programs and provide such additional funds as may be necessary from time to time beyond the resources of Westminster to accomplish the obligations of Rider as set forth in this Agreement...” Rider Merger Agreement, §2.1 (c).

182. Such provisions are also consistent with Rider’s duties as the charitable steward of Westminster.

183. In the agreement, Rider also assumed the duty to continue to budget for and provide administrative services to Westminster for the express purpose of continuing “the operation of Westminster”: “Rider will ensure that the necessary personnel and services are available to accomplish the foregoing, including without limitation, the necessary services relating to accounting, recordkeeping and other similar activities that are necessary for the operation of Westminster.” *Id.*

184. Rider assumed, as a condition of receiving the Westminster school and property, that it would continue at its own cost and expense where necessary beyond the revenues of Westminster, to operate a college with the separate Westminster identity for the purposes of maintaining the Westminster programs, mission and academic purposes.

185. The Rider Merger Agreement was further predicated upon the specific obligation of Rider to continue to operate and maintain the Campus except where Rider determines “in good faith” that it cannot continue to do so under certain specified conditions.

186. In this respect, Rider’s 1991 Merger Agreement provided that Rider would not be obligated “to continue to operate or maintain the existing Campus, if it determines, in good faith, that such continued action would be substantially impracticable or would substantially adversely affect the affiliated or merged institutions.” Rider Merger Agreement, §2.3.

187. Nothing in the Rider Merger Agreement or any other agreement or understanding authorizes or otherwise permits Rider, or Westminster for that matter, unilaterally to sell, lease, license, encumber for an unauthorized purpose, or in any other manner convey the Campus except under such conditions and circumstances.

188. All of the foregoing representations were a fundamental understanding and predicate of the merger.

189. Separately, under common law Rider is obligated to continue to operate the Princeton Campus except where it can demonstrate under cy pres principles the necessity to move the Choir college.

**THE 1991 AGREEMENTS ALSO BIND RIDER TO THE  
PURPOSES AND INTENT OF THE STRONG-TAYLOR TRUST**

190. On May 16, 1991 Westminster and the Seminary agreed, so as to facilitate a merger with Rider, to set aside the Strong Taylor’s residuary conveyance based on the belief that

“the Covenant, today, unduly restricts the ability of Westminster to make the best use of the Taylor Property to continue the general purpose of the Covenant and the intention of the Grantor, Sophia Strong Taylor;”

See Westminster-Seminary Agreement, May 16, 1991, Third Whereas Clause.

191. Explicit in this agreement was the understanding that the purpose of the Seminary’s setting aside of its rights under the residuary conveyance was to enable the parties to “*continue the general purpose...of the Grantor...*”, *Id.*, and “*simultaneously advance and foster the primary general intent of the grantor of the Taylor Property...*” See Westminster-Seminary Agreement, May 16, 1991, Fourth Whereas Clause.

192. The Westminster-Seminary Agreement recited that the “primary and general intent of the grantor of the Taylor Property” was that she:

“required Westminster to use the Taylor Property, in part, for the training of Ministers of Music for Evangelical Churches and requiring that Bible instruction in accordance with the principles of the Westminster Confession of Faith be offered to the whole school at least one hour per week;”

See Westminster-Seminary Agreement, May 16, 1991, First Whereas Clause.<sup>2</sup>

193. As these provisions show, the purpose of the Westminster-Seminary Agreement was to enable a merger of Westminster with Rider *with the understanding that Westminster would continue to adhere to and perform under the Strong Taylor grant.*

194. On June 26, 1992 Rider agreed to assume and adhere to the purposes and intent of the Strong Taylor trust by accepting and signing the Assumption Agreement dated June 26, 1992 in which Rider made the express statement that

“in consideration of the mutual agreements and covenants between the Seminary, Westminster and Rider College, Rider College hereby expressly assumes the obligations of Westminster set forth in the Note, the Mortgage and the Agreement...”).

See Assumption Agreement, June 26, 1992 [emphasis added].

195. Therefore, aside from its common law duty to adhere to the purposes of all Westminster’s donors and to use the Westminster property for its intended charitable purposes, Rider assumed a contractual duty to adhere to the Strong Taylor grant conditions when it acceded to the Assumption Agreement.

196. Separately and regardless of the 1991 agreements, Rider is bound to the purposes and intent of the Strong Taylor grant, and to the purposes and intent of Westminster’s other donors, by virtue of Rider’s position as successor to Westminster Choir

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<sup>2</sup> Such purpose is identical to that provided in Strong Taylor’s deed of conveyance, namely that the property

“*shall be used* . . . for the purpose of training Ministers of Music of Evangelical Churches;. . . This covenant shall run with the land and be binding upon [Westminster], its successors and assigns.

See Deeds of Sophia Strong Taylor, Grantor, dated July 22, 1935 recorded August 8, 1935 (Liber 737, pages 352-356 and Liber 739, pages 241-245)[emphasis added].

College under common law and public policy principles as the charitable steward of Westminster Choir College.

**COUNT I**

**DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

(Rider's Proposed Move of Westminster to the Lawrence Campus Will Materially Harm the Students as it will Eliminate Westminster as a Music Conservatory, or Materially Damage Such Facility and Program, or Materially Alter Such Program, Violating Cy Pres Principles and Related Legal Doctrine and Public Policy Governing Charitable Foundations)

197. Plaintiffs incorporate by reference each of the foregoing paragraphs as if more fully set forth at length herein.

198. At all times, Westminster Choir College's traditional conservatory mission and purpose have been fully capable of completion and the demand for its conservatory training and its liturgical music training has remained at its traditional levels.

199. As of December 2016 when Rider first announced its intention to sell or close Westminster, the Choir College was at or near its ordinary and traditional complement of 95 entering undergraduate students and 100 graduate students.

200. At such time, Westminster's recruiting was at its ordinary and usual levels and had been for many years.

201. Also in December 2016, Westminster had an approximate \$2.5 million surplus, its third successive year of increasing surpluses.

202. At all times prior to Rider's December 2016 announcement of its intent to sell or close the Choir College, Westminster's mission of music education has been in heavy demand, as are its performing choirs, choruses and ensembles that have continued through

the present date in their contracts with major orchestras including the New York Philharmonic, Carnegie Hall, Julliard, the Philadelphia Orchestra and the Spoleto Festival.

203. Westminster's faculty at all times have continued their ordinary work of teaching, performing, researching, conducting and composing, along with church work as ministers of music through the region and the nation.

204. No material change is necessitated in the performance of Westminster's mission and *cy pres* principles bar the move of Westminster and the loss of its conservatory facilities.

205. In addition to its common law duties of stewardship, in the 1991 Agreement of Merger Rider agreed to continuation of Westminster's traditional function and purposes, namely that Rider would act with the specific "intention of continuing the purposes of WCC, ...", see 1991 Agreement at §1.3; that it would "*ensure* that the WCC programs may be continued by Rider following the Merger of WCC", *id.*, and 3) that "...[A]fter the Merger of the institutions Rider *will*:"

(a) Preserve, promote and enhance the existing missions, purposes, programs and traditions of WCC, *including, without limiting the generality of the foregoing, the continuation of the mission of WCC through its emphasis on instruction in sacred music; training of ministers of music; choral, vocal, and instrumental performance; and preparation of music teachers.*"

Agreement of Merger, §2.1 [emphasis added].

206. Such provision was intended to ensure the continued existence of Westminster's independent and separate academic and music training program *and* the maintenance of its independent and separate identity.

207. Rider's intention to move Westminster to its Lawrence campus, to sell the Princeton campus and keep the proceeds for Rider's general purposes (not for Westminster's

specific programs) and use the proceeds to fund Rider's own operations (not Westminster and its religious or musical mission), violates Rider's common law duties, its duties under the 1991 agreement, its duties under the Strong Taylor grant and trust and under public policy governing the maintenance and use of charitable gifts and funds from all donors, not just Strong Taylor.

208. Rider is also obligated to the purposes, intent and expectations of its many donors, including but not limited to Strong-Taylor, who contributed their funds to Westminster prior to and after 1991 with the understanding that the funds would be used to enhance, grow and continue Westminster at its Princeton campus and as an independent music conservatory for the benefit of its students, current and future.

209. To induce such donations from the individual plaintiffs, Rider made express representations that the donations would be to build the physical campus to continue such purposes for the benefit of Westminster and its students at its Princeton campus, including, for example, donations to the Cullen Center and its construction.

210. Rider's proposed move of Westminster to the Lawrence campus will not be to an analogous or comparable institution with the physical plant and capacity to continue Westminster's mission as a music conservatory; to the contrary, the move will substantially and materially diminish or destroy Westminster's charitable purposes and mission and is not necessitated, justified or required under cy pres or other legal doctrine and is not permitted and is prohibited under Rider's separate obligations under the 1991 agreement.

WHEREFORE, the Plaintiffs respectfully request declaratory relief that 1) the move of Westminster to Rider's Lawrence campus is not an analogous or comparable manner of continuing Westminster's academic, charitable or religious mission, 2) that it prevents the students from obtaining the intended benefits of Westminster and its many donors of a music conservatory to provide the unique and specialized instruction and training of such institutions; 3) that it violates *cy pres* principles in that Rider will not and cannot create an analogous institution at its Lawrence campus nor was Westminster's mission incapable of performance in its present format and at the Princeton campus, 4) that it violates Rider's obligations to maintain a separate campus and separate identity for Westminster under common law and/or under the 1991 Agreement, 5) that the students are the intended beneficiaries of Rider's stewardship under common law, under the 1991 agreement, under the Strong-Taylor trust and grant and under the donative intent of Westminster's other donors; 6) that the proposed move violates the understanding Rider assumed under the Strong-Taylor Trust to continue the operation of the Princeton campus as a school of religious music training, 7) that the proposed move violates the intent and purpose of other donors; 8) that the proposed move will materially and permanently damage and/or eliminate Westminster's mission and purpose in providing conservatory education and training; and 9) permanently enjoining the move of Westminster to the Lawrence campus; together with attorneys' fees, costs of suit and such further relief as this Court deems equitable and just.

**COUNT II**

**DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

(Rider's Abrogation and Abandonment of Its Duties of Stewardship and Trust as the Charitable Successor to the Endowment and Property of Westminster)

211. Plaintiffs incorporate by reference each of the foregoing paragraphs as if more fully set forth at length herein.

212. The students are intended beneficiaries of the donations and trusts that have funded and built Westminster Choir College.

213. By its course of action since December 2016 rider has abrogated, repudiated and/or abandoned its duties as the charitable steward of Westminster Choir College.

214. Beginning in or about December 2016 when it announced its intent to sell Westminster, and by the acts described above, Rider has repudiated, abandoned and abrogated its trust responsibilities Rider assumed as the charitable steward of Westminster under New Jersey charitable laws, the purposes and intent of the 1991 Agreement, the Strong Taylor trust and/or the Assumption Agreement.

215. In or about March 2017 Rider commenced a series of acts demonstrating that it intended to and would abandon its duties of trust and supervision to Westminster and its beneficiaries by selling the Westminster campus and the school for its market value and retaining such proceeds for Rider's own activities and purposes, not for Westminster's purposes.

216. Beginning at such time, Rider repeatedly made statements that it would close Westminster if it could not sell Westminster Choir College.

217. Such acts demonstrate an intent to prospectively abandon and abrogate Rider's duties of responsibility as the charitable steward and trustee of Westminster Choir College.

218. In pursuit of such objective, Rider offered the Westminster campus for sale through a circular promoting the sale of Westminster, to monetize it for Rider's own purposes, not as an offer to permit other academic institutions to affiliate with Westminster without cost as Rider itself did in 1991.

219. Since December 2016, Rider has acted in the belief that it can sell Westminster and the campus in Princeton for its own account without dedicating the proceeds of such sale to Westminster.

220. In 2017 Rider stated publicly that it would cease to maintain Westminster following the sale of the property, that it will retain the proceeds of such sale for its own account, that the prospective buyer will be required to maintain and operate Westminster as a college for not more than five years and it informed Seminary that it will not honor the provisions, purposes and/or intent of the 1935 Strong Taylor grant.

221. Rider also stated that if the Westminster campus cannot be sold, it maintains the right to close Westminster.

222. Rider has stated on some occasions since December 2016 that it will, in fact, close Westminster if it cannot be sold.

223. Rider has thus disclaimed and denied the existence of any permanent or continuing obligation to Westminster and its students under New Jersey's charitable law, under cy pres doctrine, under the 1935 Strong Taylor grant and trust or under the 1991 Agreement.

224. Among other acts, since its repudiation Rider has encumbered the Westminster campus by accepting a \$15 million line of credit from a financial institution in or about November 2017 and, upon information and belief, drawing \$8 million on the line of credit with a mortgage against the Westminster campus; used a portion or all of that \$8 million for Rider and not Westminster's purposes; conduct that separately constitutes an abandonment of Rider's aforesaid duties of trust.

225. Such conduct is expressly barred under the 1991 Agreement that requires that any collateralization of the campus property to be specifically for the purpose of benefitting Westminster. See 1991 Agreement at Section 2.1(c).<sup>3</sup>

226. Other acts of Rider comprise an abandonment and abrogation of its duties in trust.

227. As to the now-aborted transaction with Kaiwen, Rider agreed that Kaiwen could close Westminster immediately upon sale of the Choir College as per Section 7.15 of the now-aborted Agreement of Sale.

228. In actuality, §7.15 of the agreement of sale allowed Kaiwen to close Westminster immediately upon the completion of the sale, a fact Rider did not publicly disclose and tried to conceal by its refusal to disclose the agreement of sale.

229. Rider continued to pursue the agreement with Kaiwen even though Kaiwen announced in a filing with its stock exchange, the Shenzhen Exchange, that the nearly \$20 million Westminster endowment and its profit and loss will be placed on the books and

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<sup>3</sup> Separately and apart from the Strong Taylor grant, Rider's drawing of such funds and the granting of a lien against the Westminster property violates the intent and understanding of other donors whose funds were solicited to build the Princeton campus for Westminster's purposes and contributes to the relief sought for such donors.

records of the commercial entity. See “Announcement on Reply to Shenzhen Stock Exchange Inquiry Letter”, Small and Medium-Sized Enterprise Board Management Department of Shenzhen Stock Exchange (SME Board Inquiry Letter [2018] No. 516), Reply No. 2018-052.

230. Kaiwen also announced in the Reply to the stock exchange committee that it will apply the Westminster endowment to “minority equity”. *Id.*

231. Rider thus agreed to convey and alienate Westminster’s endowment and Westminster itself to a commercial entity contrary to New Jersey law, federal regulations governing 501(c)(3) entities and contrary to the purposes and intent of the donors who contributed to the endowment, with the understanding it was to be used for charitable, non-profit, academic purposes to benefit Westminster students and faculty.

232. Rider’s agreement of sale with Kaiwen stated that Rider was to directly convey to Kaiwen’s commercial subsidiaries the Westminster Conservatory and the Continued Education divisions, along with their endowments, a further abrogation of Rider’s duties of trust and stewardship over Westminster.

233. Plaintiffs preserve and incorporate herein the additional factual assertions set forth in Count V of the First Amended Complaint under docket no. C-69-18 as to the unfitness of Kaiwen as an entity to assume control of Westminster Choir College, facts that further demonstrate the effective abandonment, abrogation or repudiation by Rider of its duties as the charitable steward of Westminster.

234. Subsequent to the failure of the Kaiwen sale, Rider announced on July 1, 2019 a new plan to move the entirety of Westminster to Rider’s Lawrence campus within 13 months

and to re-brand Westminster as a part of Rider's College of the Arts, an act that is contrary to Rider's duty to maintain and fund Westminster as a separate institution of conservatory and religious music education.

235. Rider has not stated what it will do with the Princeton property and has made no representation that it will sell the property to be used exclusively for Westminster's purposes and programs.

236. Rider is also continuing to maintain relations with the Kaiwen entity and has created a transition committee focusing on its relationship with Kaiwen and has not ruled out selling the Princeton campus to the Kaiwen entity for future use by that corporation for a school or other purpose.

237. By the move and the expected sale of the Princeton campus, Rider is continuing its original plan from 2018 to sell the school with the purpose of monetizing the value of Westminster's campus for Rider's own purposes, an anticipatory diversion by Rider of the trust property Rider undertook to preserve and protect.

238. Rider has also told Seminary that Rider believes it is entitled to be paid back for the amounts it has invested in Westminster and that it may keep such sum, i.e., a minimum of \$21 million dollars, from any sale of the Princeton campus for its own general use, not for Westminster's programs.

239. Rider has made express statements that its purpose is to eliminate the effective existence of Westminster Choir College as a separate and independent school of higher education, further abrogation, repudiation and/or abandonment of its duties as charitable steward.

240. On August 7, 2019, Rider’s President Gregory Dell’Omo announced on August 7, 2019 that the purpose of moving Westminster was to “blend” Westminster Choir College into Rider’s existing programs at the Lawrence campus, to “rebrand” the independent Choir College as a part of Rider’s general arts programs known as Westminster College of the Arts, an art and music theatre program established in 2007 at Lawrenceville for Rider majors on the Rider campus.

241. In the August 7, 2019 announcement, Rider stated that its purpose in moving Westminster was to allow “a renewed focus on the branding and promotion of Westminster College of the Arts as a whole,...”, meaning that Rider intended to eliminate the separate and independent existence of Westminster Choir College, contrary to the requirements of the 1991 agreement and New Jersey law under which Rider assumed duties of trust over Westminster.

242. Rider expressly stated that the proposed move of Westminster is to “blend” it with Rider University and create “a new brand”:

This fall we will be launching a new branding strategy for Rider, and much work is already underway to plan for the promotion and marketing of the Westminster College of the Arts as part of that new strategy. This is more than just an advertising campaign, but rather an entire new approach to the way in which we position and brand ourselves both internally and externally. I’m looking forward to sharing more information with you in the coming months. *Id.*

243. Rider President Dell’Omo went on to specifically admit that the purpose of moving Westminster was to eliminate its existence as an independent and separate school of higher education and to blend Westminster into Rider, eliminating two institutions:

Blending two important components of our University will take patience, cooperation and a shared commitment to ultimate success. Together we can make Rider University stronger and positioned for long term success not just in the arts, but university-wide. *Id.*

244. As this statement makes clear, Rider's intent is to eliminate the existence of two institutions and replace them with a "rebranded" Rider University.

245. Such anticipatory acts are contrary to Rider's obligations to maintain the "separate identity" of Westminster Choir College and its "programs, activities and faculty", see Agreement of Merger at ¶§2.1 (a) and (b).

246. The proposed "rebranding" of Westminster is in violation of and contrary to the purpose of Westminster being a discrete and distinct conservatory of professional music training as required under the 1991 agreement and under Rider's duties of stewardship under common law.

247. As further evidence of the intent to eliminate the separate identity of Westminster, Rider has announced no plan to construct any buildings to independently house Westminster, released no design for any such structure and has made no application for approval of any such structure nor has it announced how or where it will house the Westminster programs, faculty, students, specialized facilities, how it will replicate the existing performance venues, or that it will preserve the existing conservatory setting and training.

248. Rider's sole statement of intent to construct any facilities for use by Westminster is the expansion of Gill Chapel, the modification of Omega House to provide temporary offices for Westminster faculty and the expansion of Rider's existing arts building that will

house Rider's existing department of music, its music arts program and the entirety of Westminster Choir College; such such structure will not replace or replicate Westminster's existing independent structures or their specialized nature but will blend Westminster within Rider's general art and music departments resulting in the permanent loss of Westminster's "separate identity" as a music conservatory. *Id.*

249. In furtherance of the intent of "blending" Westminster into Rider University, Rider has placed a non-music Rider administrator, DonnaJean Freeden, Provost, to supervise the move of Westminster.

250. Rider's statement that it seeks to "blend" Westminster into Rider is a means of taking Westminster's assets in the form of the Princeton campus, selling such property for market value and, on the theory that Westminster and Rider are now "blended" into one institution Rider will retain the proceeds of the sale of Westminster's property for its general purposes; such intent is a further abandonment of Rider's obligations to maintain the separate identity of Westminster Choir College and an abandonment of its duty to preserve and conserve the charitable assets for their specific intended use, i.e., for Westminster and its programs.

251. Consequently, Rider has announced a plan to merge Westminster into Rider's Lawrence operation, blend it into Rider itself, rebrand Westminster Choir College into a part of Rider University, without any planning or designs for adequate housing of Westminster and its programs and purposes and without any consideration to maintaining the separateness of Westminster as a conservatory for professional music training.

252. Rider's determination to move Westminster and rebrand the Choir College, its loss of 60% of the Westminster student body and the complete loss of all Westminster fundraising from its now aborted sale to Kaiwen, its apparent intent to sell Westminster's property without intending to isolate and dedicate such proceeds to Westminster and its programs, the "re-branding" and "blending" of Westminster into Rider's other programs, all comprise an actual, anticipated or effective abrogation, repudiation and/or abandonment of Rider's duties as the charitable steward of Westminster and its abandonment of the purposes and intent of the 1991 agreement, the Strong Taylor trust and its duties to protect the purposes and intent of all of Westminster's donors, as well as a breach of its duties as charitable steward under common law to the students who are the intended beneficiaries.

WHEREFORE, Plaintiffs respectfully request that this Court declare that Rider has abrogated, repudiated and/or abandoned its duties as charitable steward of Westminster, or intends to prospectively do so, and direct that:

- 1) the proposed move of Westminster to Rider's Lawrence campus be permanently restrained and enjoined and Rider be directed to resume its proper stewardship of Westminster;
- 2) a special master be appointed to identify and propose an alternate fiduciary to continue to operate Westminster as Rider has abandoned its duties of trust and stewardship under common law and/or the Strong-Taylor trust and/or the 1991 agreement;
- 3) in the alternative, that Westminster be dis-established and separated from Rider University and returned to independent operation under a board of governors to be reconstituted following an appropriate transition as the Court should direct;
- 4) such further relief that the Court deems equitable and just, along with attorneys fees and cost of suit.

**COUNT III**  
**DECLARATORY AND INJUNCTIVE RELIEF**

(The Proposed Move Endangers the Donations and Donative Purposes and Intent of those who have contributed to Westminster and Violates Westminster and Rider's Representations that Induced Such Donations to Build the Future College at the Princeton Campus for Westminster's Program and Purposes and for the Benefit of Its Students)

253. Plaintiffs incorporate by reference each of the foregoing paragraphs as if more fully set forth at length herein.

254. Individuals have for many decades been regular and constant donors to Westminster prior to and after the 1991 merger or affiliation with Rider.

255. Such donations have been placed into the Westminster endowment, among other uses.

256. Such donations have been made with the intent and understanding, based in substantial part on representations by Rider and Westminster, that the gifts would be used solely for Westminster's purposes and to be held and maintained by Westminster and/or Rider for the exclusive use in Westminster's educational, research, religious and performance functions.

257. At all times such donations were solicited by Westminster and/or Rider based on the specific and express representation that the donations were to and for the benefit and use of Westminster as a professional music training conservatory and for the related academic and religious purposes of Westminster's mission.

258. Such donations were also made with the express and specific understanding that they were to a not-for-profit 501(c)(3) institution organized under New Jersey and federal

charitable laws and regulations and that the institution would be continued to operate within its present campus as designed as a professional music conservatory.

259. Rider has failed to make any statement that upon the abandonment of the Westminster campus it will sell the campus and use the proceeds for the exclusive purpose of Westminster and its programs.

260. Without justification or cause under *cy pres* or the related doctrine Rider has announced it will cause the abandonment of the facilities paid for in substantial part by Westminster's donors.

261. Based upon the allegations and assertions set forth earlier in this Complaint, the donative intent of Westminster's donors, who acted for the benefit of the students and future students, is to be violated and abrogated upon the move of Westminster to Rider's Lawrence campus, as follows:

- 1) the proceeds of sale of the campus are to be conveyed to Rider and Rider's own purposes and uses, not for the exclusive purposes of Westminster's mission contrary to the intent of the donors in funding and establishing such property and contrary to the terms of the 1991 Agreement and New Jersey law and public policy governing charities;
- 2) the conveyance of the Westminster property to a third party buyer without any expressed intent by Rider University of dedicating or committing the proceeds of such sale to Westminster and its programs and purposes or replicating its facilities;
- 3) the move of Westminster, its property, buildings, goodwill, libraries, archives, recordings, religious materials and the like onto the Rider's Lawrence campus represents the abandonment and wastage of the Princeton campus.

WHEREFORE, Plaintiffs respectfully request that this Court enter preliminary and permanent injunctive relief 1) barring the move of Westminster to Rider's Lawrence campus; 2) barring the sale of the Westminster campus and granting the equitable relief set forth in

Count II, supra; together with interest, attorneys' fees, costs of suit and such further relief as this Court deems equitable and just.

#### **COUNT IV**

(Declaratory and Injunctive Relief that Rider May Not Retain Funds from the Sale of Westminster's Campus to Reimburse Itself for Funding Westminster's Operating Deficits or To Use in Rider's General Treasury)

262. Plaintiffs incorporate by reference each of the foregoing paragraphs as if more fully set forth at length herein.

263. Rider has stated that it is entitled to retain from the proceeds of any sale of the Westminster campus funds equal to the amount Rider alleged paid since 1992 to cover Westminster's operating deficits in the approximate amount of \$21 million.

264. Such payments were made by Rider pursuant to the obligation Rider undertook under the 1991 Agreement to fund Westminster's operating deficits and it cannot now be reimbursed for such funds.

265. Such sum is believed to have increased since the deficits at Westminster arose again beginning in 2017 due to the attrition in fundraising and enrollment due to the now-abandoned plan to sell the College to the Chinese entity, Kaiwen.

266. Rider has announced no plan to place the funds from any sale of the Westminster campus into a dedicated fund for the exclusive use of Westminster and, upon information and belief, Rider intends to place such funds into Rider's general treasury or the Rider endowment.

267. Rider is obligated as the charitable steward of Westminster to use any proceeds from the sale of the Westminster campus, if this Court permits it to move the school and sell the campus, for the exclusive purposes of Westminster and not for Rider's general purposes.

268. Rider may not reimburse itself for costs in operating Westminster since it assumed such duty and obligation as a condition of the 1991 merger agreement and it is bound, as a condition of receiving the Westminster school and property, to continue at Rider's own cost and expense to fund Westminster where necessary beyond the revenues of Westminster.

269. Specifically, the 1991 Agreement states that Rider is obligated to cover Westminster's deficits as they arise in the course of operating the Choir College: "Rider will... [u]tilize Westminster's resources in support of Westminster's programs *and provide such additional funds as may be necessary from time to time beyond the resources of Westminster to accomplish the obligations of Rider* as set forth in this Agreement..." Rider Merger Agreement, §2.1 (c)[emphasis added].

270. Rider thus assumed, as a condition of affiliating with Westminster and gaining the benefits of such affiliation, that it would continue at its own cost and expense where necessary beyond the revenues of Westminster, to operate a college with the separate Westminster identity for the purposes of maintaining the Westminster programs, mission and academic purposes.

271. Rider is not permitted or authorized under cy pres, public policy or other common law doctrine or the 1991 agreement to reimburse itself for such costs of covering Westminster's operating deficits or other expenses.

272. All such sums expended by Rider for any operating deficits or other such costs of Westminster were an obligation of Rider as it assumed under the 1991 agreement and cannot now be taken by Rider from the proceeds of Westminster's property; instead, these funds or proceeds must be reserved for the exclusive use and purposes of Westminster.

273. Rider has benefitted financially from its affiliation with Westminster and presently makes use of the Westminster trademark and trade name in the operation of Rider's Westminster College of the Arts on the Lawrence campus, an exclusively Rider program teaching music, musical theatre and art in a non-conservatory setting for which Rider attracts 300 majors per year paying an average of \$27,000 tuition; Rider has thus received annually the approximate sum of \$8,100,000 (eight million, one hundred thousand dollars) through its use of the Westminster trademark and trade name on the Lawrence campus, thereby benefitting financially from its affiliation with Westminster.

274. Hence, any claim for reimbursement if it is authorized by the Court, must *first* account for and take into account gains received by Rider.

WHEREFORE, plaintiffs seek declaratory and injunctive relief as follows: 1) declaring that Rider may not retain for its own purposes funds from the proceeds of any sale of the Westminster campus under the terms of the 1991 merger agreement and New Jersey common law regulating charities; 2) permanently restraining Rider from retaining \$21 million or like sum from the proceeds of any sale of Westminster's campus for any reimbursement to Rider; 3) permanently restraining Rider from expending all such sums *except* for the exclusive purposes and programs of Westminster; or, in the alternative 4) requiring Rider to account for all gains and funds received through its affiliation with

Westminster prior to any reimbursement or recoupment by Rider; together with attorneys' fees, costs of suit and such further relief as this Court deems appropriate, equitable and just.

**COUNT V**  
**(Accounting)**

275. Plaintiffs incorporate by reference each of the foregoing paragraphs as if more fully set forth at length herein.

276. Westminster's property was intended by its donors to be used for the benefit of its students and future students in its educational, academic and religious program.

277. Upon information and belief, Rider has borrowed \$8 million on the credit and property of Westminster, allowing placement of a lien upon Westminster to secure such indebtedness without any announcement of any program or project for the use of such funds for Westminster's purposes.

278. After securing such line of credit, Rider made no announcement of any intent to use such funds exclusively for Westminster's programs and purposes.

279. Such borrowing and lien is contrary to the intent, purposes and expectation of Westminster's donors who were induced by Rider to give such funds with the understanding that they were to enhance and build the Princeton campus for Westminster's use and for the benefit of its students.

280. Such borrowing and the lien is contrary to Rider's duty as a charitable steward or trustee of Westminster and it is contrary to the purposes of the Strong Taylor grant and trust and the donative intent of other donors, in that the Westminster property has been alienated to fund the loan that was, on information and belief, for the purposes of Rider and not Westminster.

WHEREFORE, plaintiffs respectfully request that this Court enter Order 1) requiring Rider to provide a full and complete accounting for its borrowing on the property of Westminster, 2) that Rider disclose what funds it drew on said credit line that used the Westminster campus as collateral, 3) that Rider disclose the current indebtedness on the credit line and 4) that the Court direct that the lien or any other form of mortgage instrument on the Westminster property is illegal and a violation of New Jersey law governing charities, the terms of the Strong-Taylor trust, the intent of Westminster's other donors, and is a violation of the 1991 Agreement; together with attorneys' fees, costs of suit and such further relief as this Court deems appropriate, equitable and just.

**COUNT VI**  
**INJUNCTIVE RELIEF**  
(As to sale of Westminster's Princeton Campus)

281. Plaintiffs incorporate by reference each of the foregoing paragraphs as if more fully set forth at length herein.

282. Rider has declared its intention to move Westminster from its Princeton campus to Rider's Lawrence campus in the manner described above.

283. Rider has not made any commitment to using the proceeds of any expected sale of the Westminster campus for Westminster's programs and for Westminster's purposes.

284. Any move of Westminster and/or the sale its Princeton campus by Rider for the use of Rider's general purposes and not Westminster programs and purposes violates New Jersey charities laws and public policy, the intent of Westminster's donors, the Strong Taylor grant and trust and the 1991 agreement.

285. Rider's sale of the Princeton Campus without commitment to using all of the proceeds for the sale for the programs and purposes of Westminster is contrary to the terms of the Strong Taylor grant and trust and, separately, is illegal under New Jersey's charities laws and public policy and violates the terms and conditions of the 1991 Agreement and the Westminster-Seminary Agreement under which Rider accepted stewardship of the Princeton campus.

286. Such conduct will further breach and violate the express and implied understandings of Westminster's donors who gave their donations to Westminster and/or Rider for Westminster's purposes, namely for the benefit of its current and future students, as set forth above.

287. If such a sale of Westminster is permitted, the school and its property will be forever lost for the purposes articulated by Westminster's donors, by Strong Taylor, and/or by the terms of the 1991 Agreement and New Jersey law and public policy governing charities and in particular, charitable non-profit educational institutions.

288. Such a sale would permanently alienate the campus to a third party buyer, preventing its use by the students as the intended beneficiaries of this charitable asset, causing irreparable harm that cannot be remedied, now or in the future, by money damages.

WHEREFORE, plaintiffs respectfully request that this Court enter Order permanently restraining Rider University from selling the Westminster campus in whole or in part; together with attorneys' fees, costs of suit and such further relief as this Court deems appropriate, equitable and just.

## COUNT VII

(Reinstatement of the Westminster Board of Governors or Trustees as a Result of the Abandonment and Wastage of Westminster by Rider University)

289. Plaintiffs incorporate by reference each of the foregoing paragraphs as if more fully set forth at length herein.

290. Defendant Rider University has materially and substantively mismanaged, harmed and/or injured the charitable fund and property known as Westminster Choir College, or has acted in a manner in which it will do so unless it is restrained, in violation of its duties under New Jersey law and public policy governing charities and/or in breach of its fiduciary duties and duties of stewardship.

291. Such acts, include but are not limited to the following, in addition to those set forth elsewhere in this complaint:

- 1) The illegal mortgaging of the Westminster campus to fund Rider's separate operational or other needs;
- 2) The harm to student admissions and fundraising caused by the now-failed effort to sell or close the school to the point where Westminster's fundraising has diminished almost entirely and enrollment has been reduced by sixty (60%) per cent to less than 40 students from Westminster's traditional annual enrollment of nearly 100 incoming students;
- 3) Its now aborted plan to sell Westminster to Kaiwen and use the entire proceeds for Rider's own purposes, not Westminster's, illegally diverting the charitable fund at a time when Westminster's purposes are still in demand and capable of performance;
- 4) The attempted sale of Westminster to a Chinese government owned entity that would have been entitled to close the academic program immediately upon sale and merge it into its commercial operations and attributed its endowment to the commercial entity;
- 5) The failure to protect tenured faculty employment for more than two years under the aborted sales proposal;

- 6) That Rider by the aborted sale disregarded the primary charitable purpose of the 1935 trust to operate a religious music college;
- 8) Disregard of the donative intent of Westminster's donors that their funds were to be used for a school of music or sacred music, not for Rider's general purposes;
- 9) Abandonment or prospective abandonment of Westminster by Rider University;
- 10) Wasting and/or harm to the academic reputation, business and goodwill of Westminster;
- 11) The attempted move of Westminster in a manner that would break up and destroy its conservatory program and without adequate facilities.
- 12) The loss or resignation of certain key faculty because of Rider's attempts to sell or close the Choir College.
- 13) The continuing attrition and loss of students due to Rider's attempts to close, sell or move the Choir College.
- 14) Rider's announced proposal to move Westminster to the Lawrence campus is contrary to the findings of its own prior studies that such move is not practicable, possible or is infeasible.

WHEREFORE, for the reasons set forth above, in the alternative, the corporation of Westminster Choir College should be reinstated and its Board reconstituted.

#### **COUNT VIII**

#### **DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

(Validity of the Strong Taylor Covenant as to the Residuary Interest of Seminary and Continuing duty of Westminster to Continue the Conditions of the Grant)

292. Sophia Strong Taylor conditioned her grant of the campus property and other gifts to Westminster subject to, inter alia, the residuary conveyance to the Seminary upon failure of Westminster to continue the purposes of the Strong Taylor grant and trust.

293. The Strong Taylor grant required Westminster to operate and maintain a college for training Ministers of Music for evangelical churches on the Westminster campus and by Westminster as a fundamental condition of the grant.

294. The Grantor's restrictions on the use of the Campus and her instructions as to the residuary conveyance may not be extinguished by private agreement between parties not involving the Grantor.

295. New Jersey law provides a judicial remedy, when appropriate, for parties seeking to extinguish and/or change a condition or restriction mandated by a grant, trust or bequest when the conditions of the grant can no longer be reasonably carried out.

296. Absent judicial approval, funds or real property subject to a restriction put in place by a grantor may not be put to a use that is contrary to the grantor's intentions or that materially changes the grantor's intent or abandons such intent.

297. The restrictions on the Westminster assets and campus put in place by the grantor Strong Taylor or her requirement of a residuary conveyance to Seminary have never been extinguished by any court nor has any person or entity sought such judicial remedy.

298. Due to the lack of judicial extinguishment of the Covenant, Rider does not possess fee simple title to the Westminster campus that remains encumbered by the Strong Taylor grant and trust conditions.

299. If Rider, or any successor to it, ceases to operate and maintain a college for training ministers of music for evangelical churches on the Westminster campus and/or for liturgical music training, ownership of the campus shifts to the Seminary in accordance with the Strong Taylor grant and trust; such covenant and restriction must continue to be deemed

to run with the land of Westminster in Princeton absent appropriate application to a court and a ruling modifying such conditions.

300. Such covenant was intended to protect the interest and benefit of Westminster's current and future students by creating a condition that would require Westminster to continue in the religious and liturgical music training mission at the risk of losing the campus and buildings to Seminary.

301. Accordingly, declaratory judgment should be granted that the residuary conveyance to Seminary runs with the Westminster campus, property and buildings, that it continues in force, that its has not been extinguished by judicial action, along with injunctive relief that any deed of conveyance to a qualified and lawful buyer of the Westminster property must include the conditions giving rise to the residuary conveyance to Seminary and provide for such conditions as a part of any documents necessary to such transaction.

WHEREFORE, the Plaintiffs respectfully request that this Court enter judgment against Rider declaring that

- 1) Rider does not possess fee simple title to the Campus and the Campus remains encumbered by the Strong Taylor grant and trust;
- 2) the Westminster-Seminary Agreement is void *ab initio* for failure to obtain required judicial approval, together with all agreements attendant thereto;
- 3) returning the parties to their respective positions prior to execution of the Westminster-Seminary Agreement, together with attorneys' fees, costs of suit and such further relief as this Court deems equitable and just.

**COUNT IX**

**DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

(The Provisions of the Westminster-Seminary Agreement Vacating the Residuary Conveyance to Seminary are Contrary to the Purposes and Intent of the Strong Taylor Grant and Trust)

302. Plaintiffs incorporate by reference each of the foregoing paragraphs as if more fully set forth at length herein.

303. The Strong Taylor grant and trust was predicated upon the underlying condition and restriction that Westminster would continue to provide training of Ministers of Music and training students in sacred and liturgical music and the offering of Christian theology at the Westminster campus in Princeton on the premises funded by Strong Taylor.

304. Strong Taylor's grant required that if Westminster failed to continue in such mission, Westminster's lands and buildings in Princeton were to pass to and vest in the Seminary as a communitarian Presbyterian institution.

305. The purpose of the grantor's restriction was to burden Westminster by a condition that would deprive it of ownership and control of the campus property and buildings in Princeton so as to force Westminster to maintain and pursue the above-described mission at the cost of loss of ownership of the property for the benefit of its current and future students.

306. The purpose of designating the Seminary as residual beneficiary was to assure 1) that the Westminster property would continue to be used for the purposes of Westminster's students and 2) that upon the cessation of the Westminster mission the property would continue to be used by a Presbyterian entity to best continue the religious purposes and intent of the Strong Taylor grant.

307. The religious music mission of Westminster as foreseen in the Strong Taylor grant is still capable of performance; has been performed continuously by Westminster since at least 1935, without interruption, through the present date; and can continue to be performed in Princeton in the context of an academic center or academic institution dedicated to the training, in part, of ministers of music and students of liturgical music and Christian theology in a degree-granting institution of higher education.

308. The purposes of the Seminary also continue substantively today as they had in 1935; Seminary is still competent and capable of acting as a communitarian institution to receive the Westminster property through the residuary conveyance.

WHEREFORE, plaintiffs respectfully request declaratory relief that the Westminster-Seminary Agreement be declared void and of no further force and effect, along with injunctive relief as necessary to carry out such relief, along with costs of suit, reasonable attorneys fees and such other relief as to the Court should seem just and proper.

**COUNT X**  
**DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**  
(Rider is Obligated to Operate Westminster in a Manner Consistent with the  
Strong Taylor Grant)

309. The Westminster-Seminary Agreement requires that Rider continue to operate Westminster in a manner consistent with the purposes and intent of the Strong Taylor trust.

310. Under common law and under public policy, as the charitable steward that succeeded to the Strong-Taylor trust Rider is obligated to adhere to the grantor's conditions, purposes and intent.

311. If Rider ceases to, or no longer wishes to, carry out such purposes and intent, under cy pres principles, public policy or related legal doctrine Westminster and its campus and properties must be conveyed to another institution capable of continuing to carry out the charitable purposes and intent of the Strong Taylor grant in as a close a manner as possible.

312. In 1991, the Seminary through the Westminster-Seminary agreement agreed to vacating of the residual conveyance in return for an express commitment by Westminster that it would continue to operate Westminster in a manner consistent with the purposes and intent of the Strong Taylor grant and trust.

313. Rider, as successor to the Westminster-Seminary Agreement, is bound to the purposes and intent of the Strong Taylor grant and trust.

314. Rider assumed the obligations of the Westminster-Seminary Agreement by its acceptance and agreement to the Assumption Agreement that became effective upon the merger and/or affiliation of Rider with Westminster in 1992.

315. Regardless of the Assumption Agreement, Rider is obligated as a successor to Westminster to adhere to the purposes and intent of the Strong Taylor grant and trust under New Jersey law and public policy governing charitable and conditional grants and trusts.

WHEREFORE, declaratory judgment is respectfully requested under this Count that Rider is obligated as successor to Westminster and/or under the Assumption Agreement to continue to operate the Westminster campus and property for the purposes set forth in the Strong Taylor grant and that such conditions run with the property, along

with injunctive relief necessary to implement such relief and cure any harm to Westminster caused by Rider's actions beginning in or about December 2016, along with cost of suit, reasonable attorneys fees and such other relief as to the Court may seem just and proper.

Respectfully submitted,

Bruce I. Afran,  
Counsel for Plaintiffs

**Designation of Trial Counsel**

Plaintiffs hereby designate Bruce I Afran, Esq., as trial counsel in this matter.

**Certification Pursuant to R. 4:5-1**

I hereby certify that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding nor is any other action or arbitration proceeding contemplated except that an action on related grounds was commenced in the U.S. District Court for the Southern District of New York by certain plaintiffs herein that has been the subject of plaintiffs' notice of voluntary dismissal without prejudice pursuant to Federal Rules of Civil Procedure, R. 41(a)(1)(A)(i) and an action in this court on related grounds under docket no. C-69-18 and by a separate plaintiff Princeton Theological Seminary under docket no. C-18-18. To the best of my knowledge at this time, I further certify that there are no other parties who should be joined for any reason to this action. I certify that all personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

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Bruce I. Afran,  
Counsel for Plaintiffs