

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HOWARD McMORRIS; MONA DAVIDS;
ELIZABETH COOKSEY; C. DANIEL BERGFELD;
CHRISTIAN KOLLER; MATTHEW KOLLER;
MARK D. HAFFNER; CAROL L. JENKINS;
MYMOENA DAVIDS; and CHARLES GOLDBERG,

Docket No:

Plaintiffs,

vs.

RIDER UNIVERSITY,

COMPLAINT

Defendant.

Plaintiffs, by their attorney Bruce I. Afran, assert as follows:

PARTIES, JURISDICTION AND VENUE

1. RIDER UNIVERSITY is a not for profit charitable educational foundation organized under the laws of the State of New Jersey and operates an institution of higher education that provides degrees to undergraduate and graduate students in liberal arts, fine arts, music, business and other fields.

2. WESTMINSTER CHOIR COLLEGE is a college in New Jersey that awards degrees in study of the fine arts and music arts including voice, conducting, composition, chorus and liturgical studies and related fields and operates a conservatory for the teaching of music to non-matriculated students and youth, along with other cultural and music-oriented studies, research and activities.

3. Plaintiffs are stakeholders in and members of the Westminster Choir College community including former Westminster board members, students past and present, donors and parents of current students who have incurred financial obligations to send their children to Westminster.

4. Plaintiffs HOWARD McMORRIS and C. DANIEL BERGFELD, in particular, were members of the last Board of Trustees of Westminster prior to its merger with Rider in 1991 and were members of the Board that authorized such merger under the terms and conditions of the 1991 merger agreement between Westminster and then-Rider College (the “1991 Merger Agreement”).

5. Jurisdiction arises as a matter of the diverse citizenship of the plaintiffs and defendants pursuant to 28 U.S.C. §1332.

6. Venue and personal jurisdiction is properly in the Southern District of New York by virtue of the residence of plaintiffs Howard MCMorris and Mona Davids in this district and because defendant conducts business in this District.

SUMMARY OF THE COMPLAINT

7. Plaintiffs bring this complaint to seek a declaration and injunctive relief declaring illegal Rider University’s expressed intent to sell Westminster Choir College and its campus to a commercial developer or to a non-profit developer that will cease to operate Westminster at its Princeton Campus.

8. Westminster has resided at its Princeton campus for 83 years continuously and has emerged as one of the world’s leading institutions of academic music, choral, voice, conducting and sacred music instruction, as well as one of the nation’s leading training grounds for music

teachers. Westminster and its performance groups are among the worlds' elite cultural enterprises and are irreplaceable in their current form.

9. Rider University's expressed intent to close Westminster and sell its Princeton campus is in direct violation of the 1991 merger agreement under which Rider agreed it would continue to operate, maintain and fund Westminster Choir College and its Princeton campus, except under limited financial circumstances that have not arisen.

10. Westminster's Trustees, including plaintiffs Howard McMorris and C. Daniel Bergfeld, surviving members of the Westminster board that agreed in 1991 to merger with Rider, agreed to give the Westminster campus and programs, along with its goodwill and faculty, to Rider University in exchange for a continuing commitment to operate and maintain this vaunted school of music education.

11. Rider's administration's intent to sell the Westminster campus, close Westminster Choir College and use the proceeds to fund Rider's deficit, violates the 1991 agreement and public policy and will result in the dismemberment and destruction of this school of music and sacred music instruction and the loss of one of the world's truly great academic and cultural institutions.

FACTUAL BACKGROUND

History of Westminster Choir College and Its Academic and Cultural Significance

12. Westminster Choir College is a residential school of higher education and conservatory training situated in Princeton, New Jersey.

13. Westminster was founded in 1920 by John Finley Williamson as the Westminster Choir of the Westminster Presbyterian Church then-situated in Dayton, Ohio.

14. By 1926 Finley had founded a school known as the Westminster Choir School focusing on liturgical musical education producing graduates who came to be known as Ministers of Music for their work in church-based choral programs.

15. In addition to its academic courses, Westminster Choir College provides performance-based academic training through its Westminster Choir and its Westminster Symphonic Choir, along with other performance groups and has done so for nearly 100 years, with such performance groups be widely regarded internationally as the world's leading choral and religious choral programs.

16. Almost immediately, the Westminster Choir began featuring prominently in the nation's cultural life.

17. For example, in 1928 the Westminster Choir and the Cincinnati Symphony made the nation's first coast-to-coast radio broadcast, a major media achievement.

18. After this historic broadcast, the Westminster Choir because of its growing reputation, continued to feature in America's early radio history, making a total of 60 half-hour broadcasts from NBC's New York facilities, just 8 years after its initial founding.

19. Its first European tour took place in 1929 and was sponsored by Dayton philanthropist Katharine Hauk Talbott and endorsed by Walter Damrosch, conductor of the New York Symphony Orchestra; the tour included 26 concerts in major cities of Europe.

20. In 1934 the Westminster Choir served as the vehicle for early Soviet and American diplomacy when the Choir was invited as the first official American guests of the Soviet Union and made the first broadcast from Russia to the United States.

21. In 1938 the Westminster Choir was invited to perform at the dedication of the New York World's Fair.

22. Also, in 1938 the Choir under Dr. Williamson as conductor performed the first U.S. presentation of Hadyn's Passion, the performance including Albert Einstein in the violin section along with other Princeton musicians.

23. 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; the school had moved from Dayton in order to gain ready rail access to major cultural destinations including New York City, Chicago and Philadelphia where its choir had performed during each musical season.

24. Later that same year the choir sang with the NBC Symphony Orchestra conducted by Arturo Toscanini.

25. After four years as an affiliate of Ithaca College, Westminster began its nearly century-long tenure and residence in Princeton, its permanent home.

26. While construction was ongoing on its permanent campus, Westminster conducted classes and its academic program at the First Presbyterian Church in Princeton and at what was then known as the Princeton Seminary, today known as Princeton Theological Seminary.

27. In 1934 Westminster occupied its permanent campus on Hamilton Street in Princeton, where it has remained continuously without interruption for the past 83 years.

28. The creation of the campus was made possible by the grant of Sophia Strong Taylor who endowed Westminster with the land and buildings on its campus with the condition that the site must continue to be used as a place of liturgical music education; the grant contained an

additional condition that if Westminster ceased such function the property would revert to the Princeton Theological Seminary.

29. Westminster has remained one of the Nation's leading cultural institutions with its students performing regularly in most of the world's primary choral and orchestral venues including the New York Philharmonic, Philadelphia Orchestra, National Symphony Orchestra, NBC Symphony Orchestra, Pittsburgh Symphony Orchestra, Boston Symphony Orchestra, Cleveland Orchestra, Atlanta Symphony Orchestra, San Francisco Symphony Orchestra, and Los Angeles Philharmonic.

30. The Westminster Symphonic Choir has regularly performed with nearly all of the world's leading classical conductors including Claudio Abbado, Daniel Barenboim, Leonard Bernstein, Herbert von Karajan, Eugene Ormandy, William Steinberg, Leopold Stokowski, Arturo Toscanini, and Bruno Walter, and such contemporary figures as Pierre Boulez, Mariss Jansons, Erich Leinsdorf, James Levine, Zdeněk Mácal, Kurt Masur, Lorin Maazel, Michael Tilson Thomas, Riccardo Muti, Claudio Abbado, Seiji Ozawa, Wolfgang Sawallisch, Robert Shaw, Zubin Mehta, Albert Wolff, and Rafael Frúbeck de Burgos.

32. Recognizing its international position, the Westminster Choir and the Westminster Symphonic Choir are regularly invited to perform with leading touring orchestras including the Berlin Philharmonic, the Berlin State Opera Orchestra, the Dresden Philharmonic Orchestra, the Bavarian Radio Symphony Orchestra, the Korean Broadcasting Symphony Orchestra, the Royal Concertgebouw Orchestra, and the Vienna Philharmonic, when these well known orchestras travel to New York and Philadelphia.

33. Working with Walt Disney, the Westminster Choir appeared in the groundbreaking film "Fantasia" (1940) where it performed Ave Maria Op. 52 No. 6 (1825) by Franz Schubert, a film nominated for preservation in 1990 in the United States National Film Registry by the Library of Congress as being "culturally, historically, or aesthetically significant"; the film is ranked at number 96 in the American Film Institute's Top 300 films and at number 5 in their Top 10 Animation films. See e.g. <http://www.hollywoodsgoldenage.com/movies/fantasia.html>.

34. Westminster ensembles, choirs and faculty have won or been nominated for multiple Grammy awards including:

James Whitbourn: Annelies, 2014
Westminster Williamson Voices,
James Jordan, Ariana Zukerman, and The Lincoln Trio
Naxos Records

Dvořák: Requiem; Symphony No.9 "From the New World", 2000
The Westminster Symphonic Choir
Zdeněk Mácal and the New Jersey Symphony Orchestra
Delos Records

Berlioz: Romeo & Juliet, 1986
The Westminster Symphonic Choir
Riccardo Muti and the Philadelphia Orchestra
Angel/EMI

Barber: Anthony & Cleopatra, 1983
The Westminster Symphonic Choir
C. Badea and the Spoleto Festival Orchestra
New World Records

Haydn: Lord Nelson Mass, 1977
The Westminster Symphonic Choir
Leonard Bernstein and the New York Philharmonic
Columbia

35. Since 1939 the Westminster Choir began regular performances with the New York Philharmonic, at that time conducted by Sir John Barbirolli.

36. In the years since the Westminster Choir has had more than three hundred performances with the Philharmonic the largest number of engagements of any single performing group with this esteemed orchestra.

37. Unique among undergraduate choirs, the Westminster Choir has held at least three world tours:

- in 1934 when it toured the Soviet Union and other nations as the first invited American guests of the communist state
- in 1957 when it undertook a five month world tour in 22 nations under the U.S. State Department Cultural Exchange Program, in 1957;
- in 1996 when, conducted by Joseph Flummerfelt, it traveled on a concert tour of Korea and Taiwan and the Colmar Music Festival in Colmar, France

38. Before departing on their 1957 State Department tour, President Dwight Eisenhower acknowledged the Westminster Choir as American emissaries to the world:

“To the young men and women of the Westminster Choir celebrating the beginning of their world concert tour, I send greetings. You have been chosen to represent America. As cultural ambassadors, you are showing the countries of the world how Americans can sing and, also, how Americans can listen and learn. You will return home with a new understanding of other nations even as you take them a new appreciation of our musical heritage. In this exchange, you will make a real contribution to the peace of the world. Best wishes as you begin this great adventure.

See e.g. <https://slippedisc.com/2017/03/americas-top-choir-college-is-about-to-be-homeless/#sthash.OEhMHRyR.dpuf>.

39. In 1964 the Westminster Choir performed on the Telstar World-Wide Telecast for the dedication of the 1964 New York World’s Fair, the largest television audience up to that date.

40. In 1965 the Choir, for the first time, appeared with three major orchestras in one year: the Berlin Philharmonic, the American Symphony Orchestra and the Philadelphia Orchestra.

41. By this time, the Westminster Choir had become recognized as one of the world's leading musical institutions regularly appeared at major cultural inaugurations.

42. For example, in 1970 the Westminster Choir began an annual concert series featuring the National Symphony and the Westminster Choir performing in Washington and New York.

43. That same year the Choir performed the world premiere of Panufnik's *Universal Prayer* at the Cathedral of St. John the Divine.

44. In 1972, the Westminster Choir was among the invited groups to perform at the inaugural week of concerts at the Kennedy Center in Washington performing *The Dawn of Glory* by Christian Latrobe with the Piedmont Chamber Orchestra directed by Nicholas Harsanyi.

45. Following this inauguration at the Kennedy Center, in 1972 the Westminster Choir performed and recorded the American premiere of Messiaen's *The Transfiguration of Our Lord Jesus Christ* with the National Symphony at the Kennedy Center, marking the Choir's debut with Maestro Antal Dorati.

46. Also, in 1972 at the invitation of Gian Carlo Menotti, the Westminster Choir began its first summer as the chorus-in-residence for the Festival dei Due Mondi (Festival of Two Worlds) in Spoleto Italy, a collaboration that for two decades until 1991.

47. In 1977 Maestro Gian Carlo Menotti inaugurated Westminster Choir as the first chorus-in-residence at the Spoleto Festival USA in Charleston a collaboration that continues annually.

48. Following its tradition of world premieres, in 1975 Westminster Choir premiered William Schuman's *Casey at the Bat* with the National Symphony Orchestra.

49. Among its many honors, in 1980 the Westminster Choir was the first choir to be featured on the "Live from Lincoln Center" telecast series over National Public Television where it performed Verdi's Requiem with the New York Philharmonic and Zubin Mehta.

50. The Choir has appeared many times since on "Live from Lincoln Center".

51. Recognizing its unique place in the classical music world, Westminster Choir was invited to participate in the 10,000th performance of the New York Philharmonic.

52. In 1991 the Westminster Choir was invited to perform at Carnegie Hall's 100th anniversary celebration.

53. At the 45th anniversary of Leonard Bernstein's conducting debut at the New York Philharmonic in 1988, the Westminster Choir sang Bernstein's *Chichester Psalms* under his direction at Carnegie Hall.

54. Two years later, in a unique recognition of its place in the music world, the Westminster Choir performed in the Leonard Bernstein memorial concert at the invitation of the Bernstein family.

55. In 1990 Westminster Choir performed the world premiere of Menotti's *Salve Regina* at Spoleto.

56. In 1993 the Westminster Symphonic Choir was invited to perform in a tribute to Masstro Riccardo Muti in "A Tribute to Riccardo Muti" with the Philadelphia Orchestra broadcast nationally on Arts and Entertainment Network (A&E).

57. In 1993 the Westminster Choir performed the world premier of Carlisle Floyd's *A time to Dance* with the San Antonio Symphony Orchestra at the American Choral Directors Association's national convention.

58. Also, that same year, the Westminster Symphonic Choir was led by Maestro Wolfgang Sawallisch at the Philadelphia Orchestra's first performance of Benjamin Britten's *War Requiem*.

59. Continuing its series of world premieres, in 1999 the Westminster Symphonic Choir performed the world premiere of Kaija Saariaho's *Oltra Mar, 7 Preludes for the New Millennium* with the New York Philharmonic conducted by Kurt Masur.

60. In 2001, the New York Philharmonic honored the Westminster Choir by playing for its world premiere of Stephen Paulus' *Voices of Light* commissioned to honor the 75th founding of Westminster Choir College.

61. The Choir has been recognized as one of the staples of our national life, being chosen to commemorate in 2002 the events of September 11, 2001 in the PRI national radio broadcast of *In the Shadow of the Towers* where the choir was joined by President George W. Bush and former Mayor Rudolph Giuliani.

62. That same year Westminster Symphonic Choir's performance of Verdi's *Requiem* with the New Jersey Symphony was broadcast nationally by PBS.

63. In 2004 Westminster's artistic director, Dr. Joseph Flummerfelt, was named Musical America's 2004 Conductor of the Year, the first choral conductor to be so honored.

64. At the Westminster Choir's farewell performance at DePauw University on its 2004 tour that preceded Dr. Flummerfelt's retirement, the Choir and Dr. Flummerfelt were described by one commentator as the world's leading choral performance group:

"There are few American choruses more celebrated than the Westminster Choir and probably no current American chorusmaster as renowned as Joseph Flummerfelt..."

Andrew Adler, *Louisville Courier-Journal*, March 28, 2004; see e.g. <http://www.depauw.edu/news-media/latest-news/details/13327/>.

65. Westminster Symphonic Choir performed Ravel's *Daphnis et Chloë (complete)* for the first time in 2006 with the New York Philharmonic, again under Maestro Lorin Maazel.

66. Continuing with its long series of noted openings, in 2007 the Westminster Symphonic Choir opened the Carnegie Hall season performing Beethoven's Symphony No. 9 with the Lucerne Festival Orchestra, conducted by David Robertson.

67. And in 2009 Westminster Symphonic Choir performed Mahler's *Symphony No. 2 "Resurrection"* with the New York Philharmonic, conducted by Gilbert Kaplan, a commemoration of the 100th anniversary of the work's American premiere.

68. Westminster Symphonic Choir was invited to participate in 2005 in the New York Philharmonic's first performance of Mozart's *Mass in C, K. 317 "Coronation"*, conducted by Lorin Maazel, a premiere presentation of this work by the nation's leading orchestra.

69. Following these noted premiers, world openings, anniversary performances and commemorations with America's leading orchestral performance organizations, in 2009 American Record Guide describes the Choir as "the gold standard for American academic choirs."

70. No academic performance group has ever received the recognition and performance opportunities regularly accorded to the Westminster Choir and Westminster Symphonic Choir.

71. In recent years, the Westminster Symphonic Choir has had premiere performances with emerging modern conductors, in 2011 with the Philadelphia Orchestra under the direction of Yannick Nezet-Seguin and in 2012 with Gustavo Dudamel and the Simon Bolivar Symphony Orchestra.

72. In 2014, Westminster Voices' and James Jordan's joint recording of James Whitbourn's *Annelies*, the first major choral setting of The Diary of Anne Frank, was nominated for a Grammy Award for Best Choral Performance.

73. Beginning 2002 Westminster Choir joined with Julie Andrews, Christopher Plummer and Charlotte Church and London's Royal Philharmonic Concert Orchestra for the international tour of "A Royal Christmas".

74. In 2015 the Westminster Symphonic Choir performed Bernstein's *Mass: A Theater Piece for Singers, Players and Dancers* for the first time with the Philadelphia Orchestra conducted by Yannick Nezet-Seguin.

75. In yet another milestone, the Westminster Williamson Voices ensemble appeared at the Metropolitan Museum of Art's Temple of Dendur for a performance of Arvo Part's *Kanon Pokajanen*.

76. Westminster Choir is known internationally for the breadth and scope of its classical repertoire and the complexity of its performance works and in recent seasons has performed the complete choral works of Aaron Copland at Avery Fisher Hall in a concert presented by the New York Philharmonic Orchestra, L.v. Beethoven's *Symphony No. 9* with Kurt Masur conducting the

New York Philharmonic Orchestra; Gustav Mahler's *Symphony No. 3* and Debussy's *Nocturnes* with Claudio Abbado conducting the Berlin Philharmonic; L.v. Beethoven's *Symphony No. 9* with Mark Laycock conducting the Princeton Chamber Symphony; Felix Mendelssohn's *Elijah* with Wolfgang Sawallisch conducting The Philadelphia Orchestra; and J.S. Bach's *Missa Brevis No. 1 in F* and *O Jesu Christ, meins Lebens Licht* with Joseph Flummerfelt conducting the New Jersey Symphony Chamber Orchestra.

77. Recent performances have also included Mussorgsky/Schebalin's *Dream of the Peasant Grischko* from *The Fair of Sorotchinsky* with Zdenek Macal conducting the New Jersey Symphony Orchestra, Benjamin Britten's *War Requiem*, with Kurt Masur and the New York Philharmonic Orchestra and Debussy's *Le martyre de Saint Sebastien* with Kurt Masur conducting the New York Philharmonic Orchestra.

78. Recently, the Westminster Chapel Choir and Westminster Schola Cantorum performed masterworks by W.A. Mozart Masterworks with the Juilliard Orchestra conducted by Juilliard faculty member Gary Thor Wedow at the Princeton University Chapel, representing a performance collaboration between two of the world's leading schools of music education.

79. In 1978 the Westminster Choir and Westminster Symphonic Choir created a recording label, and released its first recording, *Six Motets of Johann Sebastian Bach*, with conductor Wilhem Ehmann.

80. As part of the larger Westminster Symphonic Choir, the Westminster Choir has made over 50 recordings on the Columbia, RCA, EMI, Deutsche Grammophon and Philips Classics labels.

81. Other Westminster performance groups are widely acknowledged as the world leaders, including the Westminster Concert Bell Choir described as being “Hailed for their virtuosity...”, <http://www.malmark.com/html/westminster.php>, by Malmark Company, the world’s leading manufacturer of church hand bells.

82. The Westminster Concert Bell Choir has appeared on Public Television’s “Mister Rogers’ Neighborhood” and several holiday broadcasts of the “Today” show, including one in which the ensemble was joined by NBC television personalities Katie Couric and Willard Scott.

83. Its holiday performances have been heard annually on National Public Radio’s “Performance Today,” and it is included on NPR’s Christmas Around The Country II recording.

84. The Westminster Concert Bell Choir has performed at Carnegie Hall twice during the Christmas season and was featured on New Jersey Network’s State Of The Arts program.

85. In December 2002 the ensemble joined leading musical theater stars Julie Andrews, Christopher Plummer, Charlotte Church and the Royal Philharmonic Orchestra for the critically acclaimed 15-city tour entitled “A Royal Christmas.”

86. Most recently, the Choir joined singer Josh Groban, appearing at NBC’s nationally televised Lighting of the Rockefeller Center Christmas tree.

87. The Westminster Concern Bell Choir has made nine recordings: The Pealing Bells, Westminster Concert Bell Choir, Christmas Bells, Westminster Rings!, Praise and Adoration, Christmas at Westminster: The Westminster Concert Bell Choir, By Request, Westminster Concert Bell Choir: 30th Anniversary Collection and A Time To Dance.

88. As the US/1 newspaper commented at the time of the A Royal Christmas tour, the Westminster Choir College is the world leader in handbell education and performance:

When it comes to handbell choirs, Westminster Choir College (WCC) of Rider University is a world-recognized expert. The first institution anywhere to develop a handbell program, WCC has been both pioneer and leader in the field for more than a generation.

Elaine Strauss, US/1, December 3, 2014 reprinted in <http://princetoninfo.com/index.php/component/us1more/?key=12-3-14bells>, downloaded June 17, 2017.

89. Among national music education schools, Westminster Choir College is ranked among the leaders, as for example, by musicschoolcentral.com that ranked Westminster number 5 out of 10 ahead of such well-known institutions as Columbia University, University of Michigan Ann Arbor, Eastman School of Music, SUNY-Fredonia and University of Wisconsin Madison. As musicschoolcentral.com stated, Westminster is one of the nation's leading schools of music education and has a 100% job placement rate for graduates:

Widely considered to be among the very finest programs in the entire country for vocal music education, the Westminster Choir College is an intriguing choice for the aspiring music ed. major. As the name suggests, the school's most famous specialties lie within choral music education, choral music conducting, and vocal performance, invaluable strengths that will prepare a musician to be a great teacher to any K-12 student body.

For the past 11 years, the Westminster Choir College's music education students have enjoyed a 100% job placement rate upon successful graduation. The students at the school themselves are not separated from the performance majors, but rather, are seamlessly integrated into the ensemble and studio classes of the college.

The voice faculty at Westminster is the largest voice faculty of any college in the world, which is a large reason why an emphasis on choral music education at this school exists.

If you are looking to pursue music education either as a stand-alone major or in conjunction with arts management, conducting, composition, or another performance major, with the intent of landing a job in New Jersey upon successful graduation, look no further than this prestigious college.

See <http://musicschoolcentral.com/top-10-colleges-music-education-majors-us/2/>, downloaded June 17, 2017.

90. Westminster Choir College is a superior academic organization with high admission standards and an average GPA and SAT score in excess of the remainder of Rider University’s student body. In particular, Westminster’s scores for reading, math and writing, respectively, are substantially higher than Rider University’s student body:

Westminster Choir College	593	570	589
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Rider University	511	520	506
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91. Westminster’s average GPA is 3.51 while Rider’s average GPA is substantially lower at 3.32. See e.g. <http://www.rider.edu/wcc/admissions/undergraduate/how-to-apply/first-year-class-profile>; <http://www.rider.edu/admissions/undergraduate/how-to-apply/first-year-students/first-year-class-profile>.

92. Yet, this outstanding academic and world-renowned institution is proposed to be sold, dismembered and turned into a commercial development by Rider University that assumed, in 1991, a trust to continue to operate, maintain and fund Westminster Choir College, as set forth below.

The 1991 Merger of Westminster Choir College with Rider University

93. After 70 years of academic and international achievement, success and national and world appreciation, Westminster Choir College found it necessary to seek an academic partner due to financial difficulties common to many small institutions of higher education.

94. In 1991 Rider University, a small business and liberal arts college situated in Lawrenceville, New Jersey, approximately ten miles from Westminster's campus in Princeton, agreed to merge with Westminster.

95. Rider was a college of approximately 5,000 students (compared to Westminster's small, but highly selective body of 400 undergraduates and 100 graduate students) with a focus on business, accounting and general liberal arts curriculum but without a significant or world-class fine arts or performing arts program.

96. Rider sought the merger in order to increase its curriculum offerings in the fine arts and performance arts by gaining access to Westminster's world-renowned faculty.

97. Since the merger, Rider has taken advantage of the unique Westminster faculty to open a Westminster College of the Arts in which approximately 300 Rider students study in the fine arts under Westminster faculty at Westminster's Princeton campus.

98. Following the 1991 merger, Rider College applied for and gained New Jersey state recognition as a university on the strength of the expanded schools and graduate degrees now available to Rider students through Westminster.

99. In the 1991 merger instrument Rider accepted the responsibility of continuing to maintain and operate Westminster Choir College in exchange for the gift of the Westminster property, goodwill, faculty and course offerings and represented that it would continue to operate and fund the Westminster campus in Princeton under the separate Westminster identity.

100. Such representations by Rider were the consideration for the Westminster's Trustees' agreement to the merger, including plaintiff trustees.

101. The merger agreement was conditioned on Rider's continued operation, maintenance and funding of Westminster Choir College on its Princeton campus.

102. In agreeing to the merger, the parties expressly agreed that the merger was for the specific "intention of continuing the purposes of WCC,..." Agreement of Merger at §1.3.

103. The 1991 agreement provided that the parties would act to "ensure that the WCC programs may be continued by Rider following the Merger of WCC." *Id.*

104. The agreement required 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 minister of music; choral, vocal, and instrumental performance; and preparation of music teachers.

(b) Ensure that the separate identify of WCC, its programs and activities and its faculty will be recognized, and the current and future WCC alumni will continue to be so identified;

Agreement of Merger at §2.1 (a) and (b).

105. These provisions require, absent exigent circumstances, that Rider continue to operate Westminster Choir College for the stated purposes and maintain its "separate identity" as an institution of higher education.

106. Consistent with these purposes, the merger agreement placed limitations on Rider's ability to collateralize the Westminster property and expressly stated that the resources of Westminster must be used for the Westminster programs and mission and that "Rider will... [u]tilize WCC's resources in support of WCC's programs and provide such additional funds as may be necessary from time to time beyond the resources of WCC to accomplish the obligations of Rider as set forth in this Agreement,..." Agreement of Merger at §Section 2.1 (c).

107. By this provision Rider recognized that it cannot close Westminster or its operation simply because Westminster requires additional annual financial support in the form of subsidies or deficit support as Rider expressly undertook the duty and obligation "to provide such additional funds as may be necessary from time to time beyond the resources of WCC...", *id.*, and Rider represented that it would be able to do so.

108. Such representations were a fundamental understanding and predicate of the merger.

109. As part of the obligation to "Utilize WCC's resources in support of WCC's programs", Agreement of Merger at §2.1(c), the merger agreement provided that Rider shall be entitled to collateralize the Westminster property for the purpose of borrowing to support the Westminster programming, a further demonstration of the intended limits to be placed on Rider's use of this property.

110. In exchange for receiving the Westminster property, goodwill, programs, faculty and the like, the agreement obligated Rider to continue to provide for the financial and administrative support of Westminster Choir College including its "real...property." Specifically the agreement provided that "after the Merger...Rider will...

(d) Assume the responsibilities for the obligations, financial liabilities, and daily management of affairs of WCC including the supervision and management of all of WCC's real and personal property.”

Agreement of Merger at §2.1(d).

111. Along with this obligation, Rider assumed the duty to continue to budget for and provide administrative services to Westminster for the express purpose of continuing “the operation of WCC”:

“Rider will ensure that the necessary personnel and services are available to accomplish the foregoing, including without limitation, the necessary services relating to account, recordkeeping and other similar activities that are necessary for the operation of WCC.”

Id.

112. By these provisions, 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.

113. The merger does provide, as in the case of any college or university, that after the merger Rider is not “obligated to continue any *specific* programs of WCC”, see Agreement of Merger at §2.3 [emphasis added], a condition that is an ordinary and usual element of the operation of any academic institution that may, from time to time, change course offerings or programming based on student needs, financing or faculty availability and the like, but such provision was subject to the broader obligation of Rider to continue to maintain the “separate” Westminster academic program in sacred and other music education; such provision was a

recognition of the need for management flexibility as to “specific” programs but was not a license to Rider to terminate Westminster’s “separate” academic mission and purpose as an free-standing, integral school of higher music and fine arts education.

114. The merger agreement was further predicated upon the specific obligation of Rider to continue to operate and maintain the Westminster Princeton campus except where Rider determines “in good faith” that it cannot continue to do so under certain specified conditions.

115. Specifically, the merger agreement provided that Rider would not be obligated “to continue to operate or maintain the existing WCC 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.” Agreement of Merger at §2.3.

116. In November 2016, Rider announced it was considering a proposal to sell the Westminster campus and transfer its programs, in part, to either Rider’s Lawrence, New Jersey campus or to another institution, such as Montclair State University; Rider has announced that as a part of such plan it will be considering proposals to sell the land and buildings of the campus to commercial real estate developers and use the funds to fund Rider’s \$10 million deficit and construct other buildings on the Rider campus for Rider’s purposes, not Westminster’s programming.

117. Rider University did not seek merger partners for Westminster Choir College but issued a circular offering to sell Westminster to other academic institutions or to commercial developers for the market value of the Westminster campus that Rider believes is worth between \$40 and \$60 million.

118. Rider’s administration has stated that it will not continue the operation of Westminster Choir College beyond the 2017-2018 academic year.

119. Rider has taken affirmative steps to carry out such sale of the Westminster property by retaining PriceWaterhouse Coopers to provide acquisition advice, consulting services and to solicit purchase inquiries from third party buyers and other activities.

120. Rider has, in fact, attempted to solicit purchase inquiries from nearly three hundred entities.

121. Although Rider has made statements that it would prefer that Westminster be sold to an academic partner that would continue the operation of Westminster at its Princeton campus, Rider has failed to make good faith efforts to solicit such interest but, instead, offered to sell the Westminster campus to other academic institutions at market value, a solicitation that is not a good faith effort to continue the purposes of the 1991 merger agreement: academic institutions do not typically purchase colleges or universities at market value but merge with existing entities in the same manner as Rider merged with Westminster, without payment but with a commitment to continue to operate and maintain the school and its programs.

122. Because Rider did not seek out merger partners from other universities but only offered to sell Westminster's property at market value, the only entities responding to Rider's solicitation circular are real estate developers or for-profit commercial businesses that do not operate non-profit fine arts or liberal arts institutions of higher education.

123. Rider has, therefore, taken affirmative steps to sell the Westminster Campus to commercial entities that will cease to operate an institution of higher education at the Westminster campus.

124. Pursuant to such purposes, Rider is considering options from the following developers who have expressed interest in purchasing the Westminster property: EPR Properties United States; Guanhua Education Group; Bloom; Garden Homes of Princeton; Weichert

Development Company; CITIC Private Equity Funds; Lunar Capital Management Ltd.; Toll Brothers; The Vistria Group.

125. Each of the above entities is a real estate developer that invests in commercial or residential real estate projects or, in the case of the Guanghua Education Group, is a commercial developer of private, for-profit business and language schools.

126. Rider has announced to its Board that it will be considering moving ahead with such interested purchasers, none of whom are institutions of higher education and will not be operating Westminster Choir College.

127. Montclair State University has expressed interest in incorporating Westminster's choral education faculty and certain courses into Montclair's existing choral education program but will not maintain a separate Westminster Choir College as required under Rider's 1991 merger agreement.

CLAIMS FOR RELIEF

COUNT I

(Rider University's anticipatory and/or actual breach of the 1991 merger agreement)

128. Each of the above assertions are repeated as if more fully set forth below.

129. Rider has declared that it will cease to operate Westminster Choir College on its Princeton campus as of the close of the 2017-2018 academic year.

130. Such declared intention will be or is in breach of the 1991 merger agreement that requires Rider to continue to operate, maintain, fund and subsidize Westminster Choir College and its campus and maintain its "separate identity", except under limited circumstances in which such continued operation is "substantially impracticable" or "would substantially adversely affected the affiliated institutions." Agreement of Merger at §2.3.

131. Such conditions as set forth at §2.3 for the cessation of operation or maintenance of Westminster Choir College and/or its Princeton campus have not arisen.

132. Continued operation of Westminster Choir College is neither “substantially impracticable” nor “would substantially adversely affect the affiliated institutions”, the conditions necessary to any cessation of operation of Westminster under the 1991 merger agreement.

133. Based on the foregoing, plaintiffs seek judgment declaring that Rider University has anticipatorily or actually breached the 1991 merger agreement, along with such other relief as to which the Court deems just and proper.

COUNT II

(Declaratory judgment that Rider University must relinquish control of Westminster Choir College by virtue of its declared intent to abandon the conditions under which Rider received Westminster and its property)

134. Each of the above assertions are repeated as if more fully set forth below.

135. Under the 1991 merger agreement Rider received the Westminster property, goodwill, trade name and academic programs and faculty in exchange for Rider’s promise and representation that it would use the property for the purpose of continuing, operating and maintaining Westminster Choir College as an institution of higher education.

136. In November 2016, Rider University publicly declared that it is no longer willing to continue to operate, maintain and fund Westminster Choir College.

137. The conditions under §2.3 of the 1991 merger agreement under which Rider may cease such operation and funding have not arisen.

138. Rider has determined to abandon its continued operation, maintenance and funding of Westminster Choir College, the conditions under which it received the Westminster property, goodwill, trade name and academic programs and faculty (the “Westminster property”).

139. Because Rider has determined to cease such continued operation, maintenance and funding of Westminster as required under the 1991 agreement, it has breached the terms under which it received the Westminster property and such property must be returned to the grantor, in this case the Trustees of Westminster Choir College.

140. Accordingly, judgment should be entered directing that Westminster Choir College be judicially reinstated under a Board of Trustees to be formed that will resume operation of Westminster Choir College as a non-profit institution of higher education.

COUNT III

(Alternately, that Rider University be judicially directed under the Court's equitable powers to seek out and identify an academic institution to merge with Westminster Choir College on terms substantially analogous to the terms and conditions under which Rider received the Westminster property under the 1991 merger agreement)

141. Each of the above assertions are repeated as if more fully set forth below.

142. As more particularly set forth in Count II, supra, Rider University has declared that it is no longer willing to continue to operate, maintain and fund Westminster Choir College and the conditions under §2.3 of the 1991 merger agreement under which Rider may cease such operation and funding have not arisen.

143. Rider University received the Westminster property under the terms and conditions that it would continue to operate, maintain and fund Westminster as a non-profit institution of higher education specializing in the education and training of undergraduate and graduate students in the fine arts, particularly in the field of sacred and choral music instruction, voice, conducting, music teaching and related fields.

144. Because Rider University has declared its intention to abandon the grant of the Westminster property and the purposes underlying such grant, Rider should be judicially directed to seek out and identify an academic institution or other entity that will continue to operate,

maintain and fund Westminster Choir College in the manner most analogous to the stated purposes of the 1991 merger agreement, namely the operation and maintenance of the academic programs and performances of Westminster Choir College at its Princeton campus consistent with the operation and purposes of a non-profit institution of higher education in the field of sacred and choral music instruction, voice, conducting, music teaching and related fields.

145. Accordingly, plaintiffs seek judgment under this Court's equitable powers that Rider University be directed to seek out, identify and effect such transaction by contract or other instrument of merger on terms to be approved by the Court under *cy pres* or other equitable doctrine.

COUNT IV

(As a second alternate remedy, that a special master be appointed under the Court's equitable powers to seek out and identify an academic institution to merge with Westminster Choir College on terms substantially analogous to the terms and conditions of the 1991 merger agreement)

146. Each of the above assertions are repeated as if more fully set forth below.

147. In the event that the Court finds that Rider University is unable or unwilling to seek out and identify an academic institution to assume the purposes and conditions of the 1991 merger agreement, plaintiffs request judgment that a special master be appointed to find an academic partner to merge with or acquire Westminster Choir College on terms substantially analogous to the purposes of the 1991 merger agreement and that said special master be empowered to effect such transaction by contract or other instrument of merger on terms to be approved by the Court under *cy pres* or other equitable doctrine.

COUNT V

(Permanent injunctive relief barring the sale of the Westminster property to any commercial developer or other commercial entity, corporation, partnership or association or any entity that will not continue to operate Westminster Choir College at its Princeton campus on terms substantially analogous to the 1991 agreement)

148. Each of the above assertions are repeated as if more fully set forth below.

149. Rider University has declared its intention to sell the Westminster property to a commercial developer for commercial purposes, or for non-profit purposes, that do not include the operation of a non-profit institution of higher education in the field of choral music instruction, voice, conducting, music teaching and related fields.

150. Commercial sale and development of the Westminster campus will destroy the integrated and unique academic structures and physical plant designed for the specific purposes of the music and fine arts education to be continued under the 1991 merger agreement, along with the performance places, piano and organ structures, the church and its religious performance venue, the playhouse and the Cullen center, a performance venue designed for Westminster's specific academic mission and purposes, and will cause a completion destruction of the history associated with the Westminster Princeton campus.

151. In addition, sale of the campus and removal of its programming to other venues will cause the irreplaceable loss of the nearby ancillary structures and venues in the Princeton community and at Princeton University and Princeton Theological seminary, including religious settings and performance venues used for many decades by Westminster's faculty and students as a fundamental part of its academic mission.

152. Rider has declared that it intends to make use of the proceeds of commercial sale to cover Rider's \$10 million deficit and has created plans to use the balance of such proceeds for the construction of non-Westminster buildings for Rider's other academic programs excluding the Westminster programming.

153. Rider University has taken affirmative and overt material steps to achieve such sale including: 1) the solicitation of expressions of interest from commercial developers; 2) the

retention of PriceWaterhouseCoopers that has been directed to seek out such commercial developers for the Westminster campus; 3) the review of expressions of interest received from such developers; 4) the acceptance of Non-Disclosure Agreements from such commercial developers for the purpose of facilitating commercial due diligence in connection with the anticipated sale of the Westminster campus.

154. The sale of the Westminster campus for commercial purposes and development, or for non-profit use not conforming to the purposes of the 1991 agreement, and Rider's stated intention to retain the proceeds for non-Westminster programs and academic activities is contrary to and in violation of the 1991 agreement and the terms under which Rider received the Westminster property.

155. Accordingly, plaintiffs request issuance by the Court of permanent injunctive relief barring sale of the Westminster campus to commercial developers or to any purchaser that will not continue to operate the Westminster campus under the terms of the 1991 merger agreement or terms substantially analogous to the terms of the 1991 merger agreement, along with permanent injunctive relief barring Rider University from continuing to solicit and seek out and use university resources to facilitate such commercial or non-conforming non-profit development.

COUNT VI

(Declaratory relief that Rider University's efforts and intent to sell the Westminster Campus and/or to close Westminster Choir College are in violation of the 1991 agreement and violate public policy)

156. Each of the above assertions are repeated as if more fully set forth below.

157. As set forth above, Rider University's efforts and intent to sell the Westminster Choir College or its campus, or sell same, are in violation of the terms and conditions of the 1991

agreement and the terms and conditions under which Rider University received the Westminster property.

158. Accordingly, declaratory relief is sought that all such efforts to sell the campus, the Westminster property or to close Westminster Choir College are illegal, in violation of the 1991 agreement and violate public policy.

WHEREFORE, judgment is sought as follows, along with attorneys fees and cost of suit:

On Count I, declaratory judgment that Rider University has anticipatorily breached the terms and conditions of the 1991 merger agreement;

On Count II, judgment should be entered directing that Westminster Choir College be judicially reinstated under a Board of Trustees to be formed that will resume operation of Westminster Choir College as a non-profit institution of higher education in a manner substantially analogous to the purposes set forth in the 1991 merger agreement;

On Count III, that Rider University be judicially directed under the Court's equitable powers to seek out and identify an academic institution to merge with Westminster Choir College on terms substantially analogous to the terms and conditions under which Rider received the grant of the Westminster property under the 1991 merger agreement;

On Count IV, that a special master be appointed under the Court's equitable powers to seek out and identify an academic institution to merge with Westminster Choir College on terms substantially analogous to the terms and conditions of the 1991 merger agreement;

On Count V, permanent injunctive relief barring the sale of the Westminster campus to any commercial developer or any purchaser who will not continue to operate and maintain Westminster Choir College at its Princeton campus on terms substantially analogous to those set forth in the 1991 merger agreement;

On Count VI, declaratory judgment that Rider University's efforts and intent to sell the campus, the Westminster property or to close Westminster Choir College are illegal, in violation of the 1991 agreement and/or violate public policy.

Respectfully submitted,

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