

Sample
DEED RESTRICTION
Document Title

Document Number

Name and Return Address
City of Milwaukee
Attn: Real Estate Section
809 North Broadway
Milwaukee, WI 53202-3617

Tax Key No.:

Recording Area

This DEED RESTRICTION (this “**Restriction**”), made as of the ____ day of _____, 2011 (the “**Effective Date**”) by the City of Milwaukee, a Wisconsin municipal corporation, acting upon the request of the Board of School Directors of the Milwaukee Public Schools under Wis. Stat. § 119.60(2) (the “**Declarant**”) and _____ Buyer Name _____, a Wisconsin corporation (“**Buyer**”).

Witnesses:

A. Declarant is the owner in fee simple absolute of certain real property located in the City of Milwaukee, Milwaukee County, Wisconsin, which real property is more particularly described on the **Attachment A** attached to and made a part of this Restriction (with all improvements thereon, whether as of or at any time after the Effective Date, the “**Property**”).

B. Declarant and Buyer on _____, 2011 entered into a purchase and sale agreement (“**Sale Agreement**”), pursuant to which Declarant shall, of even date herewith, convey title to the Property to Buyer for the sum of _____ and No/100ths (\$____.00) (“**Purchase Price**”).

C. By action adopted on _____, 2011, the Board of School Directors of the Milwaukee Public Schools, a public school district organized and existing under the Constitution and laws of the State of Wisconsin (“**MPS**”), found and determined (i) that the Competing Uses (as defined in this Restriction) detract from MPS’s ability to establish, provide, and improve MPS’s programs, functions, and activities for the benefit of its pupils, and thus (ii) that prohibiting such Competing Uses would promote the cause of education in MPS;

D. Pursuant to the expressed terms and conditions of the Sale Agreement, Declarant and Buyer—the latter for itself and for all of its successors and assigns in title to all or any portion of the Property—wish to ensure that the Property shall be used for purposes, and in a fashion, that are consistent with the mandate and authority of the Milwaukee Public Schools (“**MPS**”) under (i) Chapters 115 to 121 of the Wisconsin Statutes and (ii) policies, procedures, and findings of the Milwaukee Board of School Directors in effect as of the Effective Date.

NOW, THEREFORE, the Declarant, for itself and for all Governed Persons, does hereby declare that the Declarant’s Property shall be held, sold, conveyed, transferred, used, and improved only subject, in every instance, to the conditions, covenants, restrictions, and reservations set forth below in this

Deed Restriction;

all of which covenants, conditions, restrictions, and reservations shall (i) govern all Governed Persons, and (ii) run with and bind all and any portion of the Property.

1. Definitions. For purposes of this Restriction, the following terms shall have the stated meanings:

- a. **“Competing Use”** shall mean the following: (i) use by any school operating under Wis. Stat. § 119.23; (ii) use by any school operating under Wis. Stat. § 118.40(2r); and (iii) use by any other school if enrollment in such school would, in any School Year, have the incident or effect of diminishing Pupil Enrollment as compared to Pupil Enrollment in the immediately preceding School Year.
- b. **“Deed of Conveyance”** shall mean the Special Warranty Deed, of even date herewith, by which the Declarant shall convey title to the Property to the Buyer.
- c. **“Governed Person”** shall mean every Person who may at any time after the Effective Date purchase or otherwise accede or succeed to any right, title, or interest in or to, or otherwise enjoy any right to use or occupy, any portion (or all) of the Property.
- d. **“Person”** shall mean an individual, corporation, partnership, association, or other legal entity.
- e. **“Proposed Improvements”** shall mean such building improvements as shall be required to improve the Property for use as _____.
- f. **“Pupil Enrollment”** shall mean, with respect to any School Year, the annual average number of “pupils enrolled” (as defined in Wis. Stat. § 121.004(7)) in MPS, as determined for such School Year under Wis. Stat. § 121.05(1)(a).
- g. **“School Year”** shall mean each period of July 1 to June 30 commencing on or after June 1, 2010.

2. Defeasance upon Introduction of a Competing Use (Fee Simple Subject to a Condition Subsequent).

- a. Competing Uses Prohibited. The Property shall not be used at any time for any Competing Use. If MPS shall determine that the Property is being used for any Competing Use, Either MPS or Declarant may deliver to Buyer written notice of Buyer’s breach of this prohibition (the **“Notice of Default”**), and Buyer shall have thirty (30) days after delivery to cure such default by fully and finally terminating the Competing Use.
- b. Arbitration. If, in MPS’s view, the Competing Use shall not be fully and finally terminated by the thirtieth (30th) day after MPS or Declarant shall deliver the Notice of Default (such thirty (30) days being known as the **“Cure Period”**), then each of Declarant and Buyer may, not more than three (3) days after the expiration of the Cure Period, appoint one (1) arbitrator apiece, after which the arbitrator(s) so selected shall immediately appoint another arbitrator (the **“Deciding Arbitrator”**). The appointment of arbitrators in accordance with the foregoing shall be binding on Declarant and Buyer.

Immediately upon identification of the Deciding Arbitrator, MPS and Buyer shall agree on a location for arbitration and a date for the same, which date shall not be more than thirty (30) days after the Notice of Default’s delivery. The sole issue to be determined at the arbitration hearing shall be whether, after the expiration of the Cure Period, the Property shall then be used in any part for any Competing Use. Declarant and Buyer may submit relevant information to the arbitrators in connection with such dispute by such means and pursuant to such procedures as the Deciding Arbitrator shall determine. The Deciding Arbitrator alone shall make a final decision on the claim, which determination shall be conclusive, final and binding on both Declarant and Buyer, and may be enforced as a judgment at law or in equity in any court of competent jurisdiction.

If the Deciding Arbitrator shall determine that the Property is not, at any time after the expiration of the Cure Period, then used in any part for any Competing Use, then MPS and Declarant shall jointly be responsible for all costs and expenses incurred in connection with the arbitration under this Section 2(b), including all reasonable and out-of-pockets costs, fees, and expenses of MPS, Declarant, and Buyer. Otherwise, the Buyer shall be responsible for all such costs and expenses incurred in connection the arbitration under this Section.

- c. Right of Entry and Power of Termination. If the Deciding Arbitrator shall determine that the Property is being or has been, at any time after the expiration of the Cure Period, used for any Competing Use, then Declarant may, at its sole discretion, immediately terminate all intervening interests in the Property and cause title to be recovered by Declarant. Such right of entry shall be deemed exercised immediately upon (i) Declarant's securing approval from the City of Milwaukee's Common Council for such revesting, and (ii) Declarant's recording against the Property, in the Office of the Milwaukee County Register of Deeds ("**Register of Deeds**"), a "Declaration of Termination" evidencing both such Common Council approval and Declarant's election to exercise its right of entry in the Property, and in so doing to reacquire all right, title, and interest in and to the same. If Declarant records such a "Declaration of Termination," then title to the Property in fee simple absolute shall immediately become forfeit to, shall revert to, and shall be revested in Declarant, all without need for Declarant to take any other act, and without any right of Buyer (or of any successor in interest to all or any portion of the Property) to reclaim the Property (or any interest in it) or to receive compensation for monies paid for, or improvements made to, the Property. Thereafter, title to the Property shall be vested in Declarant in fee simple absolute as absolutely, fully, and perfectly as if no deed of conveyance from Declarant had ever been made.

3. Restriction against tax exemption.

- a. Property to Remain Taxable. The Property shall at all times be and remain fully taxable for purposes of all *ad valorem* real property taxes payable under Wisconsin law, and thus no Governed Person shall apply for, seek, or accept, any property tax exemption (whether under Wis. Stat. § 70.11 or otherwise) for the Property, or any portion of the Property.
- b. Release. Notwithstanding the foregoing, the restriction arising under this Section 3 may be released by a resolution passed by the Common Council of the City of Milwaukee for the purpose of granting such release.

4. Covenants to Commence and Complete Proposed Improvements.

- a. Approval, Commencement, Prosecution, and Completion. Within eighteen (18) months after the Effective Date, Buyer shall obtain (at its sole cost and expense) all reviews, approvals, and permits required by Declarant as a condition to Buyer's immediately commencing construction of the Proposed Improvements. Furthermore, within twenty-four (24) months after the Effective Date, there shall be commenced (and thereafter diligently and without interruption prosecuted) upon the Property the construction of the Proposed Improvements. Finally, not later than thirty-six (36) months after the Effective Date, the Proposed Improvements shall be complete and ready for occupancy.
- b. Declarant's Option to Repurchase. If all necessary reviews, approvals, and permits required by Declarant shall not be timely obtained by Buyer as required under Section 4(a), or if the Proposed Improvements shall not be timely commenced as required under Section 4(a), or if the Proposed Improvements shall not (once commenced) be prosecuted diligently and without interruption as required under Section 4(a), or shall not (once commenced) be timely completed and ready for occupancy as required under Section 4(a), then—in any such instance—the Declarant shall have the sole and exclusive option, exercisable upon at least ten (10) days' written notice given to all Governed Person, to repurchase the Property for ninety-five percent (95%) of the Purchase Price, upon which all Governed Persons shall then join in reconveying the Property to Declarant by special warranty deed, free and clear of all liens, encumbrances, taxes, assessments and rights of others, except only those excepted from the limited warranty of title provided in the Deed of Conveyance.

5. Severability. If any term or provision of this Restriction is held to be invalid or unenforceable by a court of competent jurisdiction, then such holding shall not affect any other terms or provisions of this Restriction, and the same shall continue to be effective to the fullest extent permitted by law.

6. Governing Law. This Restriction concerns property located in the State of Wisconsin and shall be construed in accordance with the internal laws of the State of Wisconsin.

7. Binding Effect. The conditions, covenants, restrictions, and reservations contained herein shall be deemed at all time to touch and concern the land, and thus to run with title to the Property. This Restriction shall thus be binding on all Governed Persons. In addition, given the nature of Declarant's interest in the Property, this Restriction (i) shall be deemed to benefit both the City of Milwaukee a Wisconsin municipal corporation (for purposes of this Section, the "City"), as well as MPS, and hence (ii) shall be enforceable (whether at law or in equity) by the City and by MPS, whether acting alone or acting in concert.

8. Entire Restriction. This Restriction includes the entire understanding of the Declarant and the Buyer with respect to the subject matter hereof.

9. Amendment. This Restriction may not be amended, modified, terminated, or in any manner altered except by means of a written instrument, in recordable form, executed by the Declarant and by all Governed Persons.

IN WITNESS WHEREOF, the Declarant has executed this Restriction, by its duly authorized representatives, on the Effective Date.

Declarant

CITY OF MILWAUKEE,

acting upon request of the Board of School Directors of Milwaukee Public Schools under Wis. Stat. § 119.60(2)

Comptroller Countersignature

(Milwaukee City Charter § 3-18-2)

By: _____
Tom Barrett, Mayor

By: _____
Print Name: _____
City Comptroller

Attest: _____
Print Name: _____
City Clerk

City Attorney's Office

(Milwaukee Code of Ordinances § 304-21)

By: _____
Michael Bonds, President,
Board of School Directors

Approved by: _____
Print Name: _____
Assistant City Attorney

By: _____
Gregory E. Thornton, Superintendent

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2011, Tom Barrett, Mayor of the City of Milwaukee, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My commission Expires: _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2011, Michael Bonds, President of the Board of School Directors, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My commission Expires:_____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2011, Gregory E. Thornton, Superintendent of Milwaukee Public Schools, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My commission Expires:_____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2011, _____, the _____ City Clerk of the City of Milwaukee, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My commission Expires:_____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2011, _____, the _____ City Comptroller, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My commission Expires:_____

This instrument drafted by:
The City of Milwaukee, Department of City Development (Miller)