**USE RESTRICTION AGREEMENT**

Recording Area

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name and return address:

Attorney \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

State of Wisconsin

Department of Administration

101 East Wilson Street

Madison, WI 53707-7970

PIN: [insert pin]

**Between the**

**State of Wisconsin**

**Department of Administration**

**And**

**XXXXXXXXXX**

THIS USE RESTRICTION EASEMENT (“**Agreement**”) is made and effective as of the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Grantor**”) and THE STATE OF WISCONSIN, DEPARTMENT OF ADMINISTRATION (“**Grantee**”).

W I T N E S S E T H :

WHEREAS, Grantor is a nonstate organization; and

WHEREAS, Grantor is the sole owner in fee simple of certain real property (the “**Property**”) located in \_\_\_\_\_\_\_\_\_\_ County, Wisconsin, and more particularly described on Exhibit A hereto;

WHEREAS, the Wisconsin State Building Commission has provided financial support for the development of [describe project] in \_\_\_\_\_\_\_ County (the **“Project”)**;

WHEREAS, on October 8, 2024, the State of Wisconsin Building Commission authorized $\_\_\_\_\_\_\_\_\_\_ to aid Grantor in the construction of the Project, with state funding support to be in the form of a grant, and determined that Grantor has secured sufficient additional funding from non-state donations for the Project;

WHEREAS, if the facility that is constructed with funds from the grant, and/or the equipment that is purchased, is not used for the purpose of the Project, the Legislature requires Grantee to retain an ownership interest in the facility equal to the amount of the state’s grant;

NOW, THEREFORE, in consideration of the Grant, the premises, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

# Grant; Purpose. Grantor hereby voluntarily grants and conveys to Grantee, and Grantee hereby accepts, a use restriction easement over the Property for a period of Twenty (20) years from the effective date hereof (the “**Term**”), which use restriction easement shall be of the nature and character and to the extent and on the terms and conditions set forth herein. It is the purpose of this Agreement to assist Grantor in the construction of the Project.

# Restrictions. In furtherance of the foregoing, Grantor covenants, on behalf of itself and its successors and assigns, which covenants shall run with and bind the Property during the Term, that the Property and the Project will be primarily used to for the purpose described herein and that any activity on or use of the Property inconsistent with such primary use and the purpose of this Agreement is prohibited.

# Reserved Rights. Grantor hereby reserves to itself and its successors and assigns, all rights accruing from ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited by or inconsistent with the purpose of this Agreement.

# Rights of Grantee. To accomplish the purpose of this Agreement, the following rights are hereby granted to the Grantee:

1. Grantee shall have the right to enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Agreement, as provided in Paragraph 5 hereof, provided that (except in cases where Grantee reasonably determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Agreement that would significantly impair the public purposes to be served by this Agreement) such entry shall be upon prior reasonable notice in writing to Grantor.
2. Grantee shall have the right to prevent any activity on or use of the Property that is inconsistent with the purpose and terms of this Agreement, as provided in Paragraph 5 hereof.

# Grantee’s Remedies.

1. Acquisition of Ownership Interest. If Grantee determines that a violation of Paragraph 2 of this Agreement has occurred or is threatened, then it shall give written notice to Grantor of the same, and Grantor shall have a thirty (30) day period after the receipt of such notice in which to cure such violation or, if such violation cannot be cured within such thirty (30) day period, then Grantor shall commence diligent efforts to pursue cure of such violation. If Grantor fails to either cure such a violation or commence and continue such diligent efforts to pursue a cure of such violation within thirty (30) days after receipt of notice to do so from Grantee, or if Grantor thereafter fails to diligently pursue such cure and to cure such violation within one hundred eighty (180) days, then Grantee shall deliver written notice to Grantor, and Grantor, within ten (10) days after delivery of such written notice, shall deliver to Grantee a deed in substantially the form attached hereto as Exhibit B, transferring an ownership interest in the facility constructed on the Property equal to the amount of the state’s grant to Grantor.
2. Injunctive Relief. Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Agreement, to enjoin the violation, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to such violation.
3. Scope of Relief. Grantee’s rights under this Paragraph 5 apply equally in the event of either actual or threatened violations of the terms of this Agreement. Grantor agrees that Grantee shall be entitled to the injunctive relief described in Paragraph 5(b) hereof, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Agreement. The remedies described in this Paragraph 5 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
4. Costs of Enforcement. All reasonable costs incurred by Grantee in successfully enforcing the terms of this Agreement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorneys’ fees, shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in such a judicial action, then Grantee shall pay Grantor’s costs and expenses relating thereto.
5. Forbearance. Forbearance by Grantee in exercising its rights under this Agreement in the event of any breach of any term of this Agreement by Grantor shall not be deemed or construed to be a waiver by Grantee of such breach or of any subsequent breach of the same or any other term of this Agreement or of any of Grantee’s rights under this Agreement. No delay or omission in the exercise by Grantee of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
6. Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, or prescription.
7. Acts Beyond Grantor’s Control. Notwithstanding anything to the contrary contained in this Agreement, Grantee shall not be entitled to bring any action against Grantor for any change in use of the Property resulting from causes beyond Grantor’s reasonable control, including, without limitation, fire, flood, storm, and earth movement; or from any action or inaction by Grantor in order to comply with local, state, or federal laws or regulations.

# No Public Access. No right of access by the general public to any portion of the Property is granted by this Agreement.

# Costs, Liabilities, Taxes, and Environmental Compliance.

1. Costs, Legal Requirements, and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of liability insurance coverage in the minimum amount of $1,000,000 (adjusted from time to time by the percentage change from the date hereof in the Consumer Price Index – All Urban Consumers, All Items, 1982-84 = 100, or if such index is no longer published, then a similar generally accepted index of price inflation). Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Agreement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements.
2. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively “taxes”), including any taxes imposed upon, or incurred as a result of this Agreement, and shall furnish Grantee with satisfactory evidence of payment upon request.
3. Representations and Warranties. Grantor represents and warrants that, to the best knowledge of Grantor, there is no pending or threatened litigation in any way affecting, involving, or relating to the Property and no civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor believes would form the basis for any such proceedings, investigations, notices, claims, demands, or orders.
4. Control. Nothing in this Agreement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor’s activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“**CERCLA**”), or similar laws imposing legal liability on the owner or operator of real property.

# Extinguishment; Condemnation.

1. Extinguishment. If circumstances arise in the future that render the purpose of this Agreement impossible to accomplish, then this Agreement can be terminated or extinguished, whether in whole or in part, only by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the original amount of the Grant.
2. Condemnation. If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in-lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Agreement, in whole or in part, then Grantor and Grantee shall act jointly to recover the full value of Grantor’s interest in the Property subject to the taking or in-lieu purchase and all direct or incidental damages resulting therefrom (the “**Award**”), from which Award Grantee shall be entitled to collect an amount equal to the original amount of the Grant, plus reasonable interest calculated from the date hereof, and any expenses reasonably incurred by Grantee in connection with the taking or in-lieu purchase; provided, however, that if the Award is less than such original Grant amount plus such reasonable interest, then Grantee shall be entitled to recover its pro rata share of the Award.

# Subsequent Transfers. Grantor agrees to incorporate the terms of this Agreement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any such interest at least thirty (30) days prior to the date of such transfer. The failure of Grantor to perform any act required by this Paragraph 9 shall not impair the validity of this Agreement or limit its enforceability in any way.

# Estoppel Certificates. Grantee shall within thirty (30) days after its receipt of a written request by Grantor therefor, execute and deliver to Grantor, or to any party designated by Grantor, an estoppel certificate, which certifies Grantor's compliance with any obligations of Grantor contained in this Agreement. Such certification shall be limited to the use being made of the Property as of Grantee’s most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within twenty (20) days after its receipt of Grantor's written request therefor and shall execute and deliver the requested certificate within ten (10) days after such inspection.

# Termination. This Agreement shall terminate twenty (20) years from the effective date written above (the “Termination Date”). If at any time after the Termination Date Grantee receives a request from Grantor to record a notice of termination in the office of the Register of Deeds for \_\_\_\_\_\_\_\_ County, Wisconsin, Grantee shall comply with the request within ten (10) business days of receipt of the request, and shall deliver a copy of such notice of termination to Grantor. In the event that the person charged with the administration of this Agreement on behalf of Grantee (e.g., the Secretary of the Department of Administration) determines that the purposes to be served by the Grant have been satisfied, Grantee may terminate this Agreement and its rights hereunder at any time by recording a notice of termination in the office of the Register of Deeds for \_\_\_\_\_\_\_\_ County, Wisconsin. Grantee shall deliver a copy of such notice of termination to Grantor.

# Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either delivered personally or sent by first class mail, postage prepaid, addressed as follows:

If to Grantor:

Attention:

If to Grantee: State of Wisconsin

Wisconsin Department of Administration

101 East Wilson Street, 10th Floor

Madison, WI 53702

Attention: Chief Legal Counsel

or to such other address or by such other means of common communication as either party from time to time may designate by written notice to the other.

# Recording. Grantee shall record this Agreement in the office of the Register of Deeds for \_\_\_\_\_\_\_ County, Wisconsin, and may re-record it at any time as may be required to preserve its rights under this Agreement.

# General Provisions.

1. Controlling Law. The interpretation and performance of this Agreement shall be governed by the internal laws of the State of Wisconsin.
2. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Agreement shall be liberally construed to effect the primary purpose of this Agreement and the public purposes to be served by the making of the Grant. If any provision in this Agreement is found to be ambiguous, then an interpretation consistent with the primary purpose of this Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid.
3. Severability. If any provision of this Agreement, or the application thereof to any person or circumstance, is found to be invalid, then the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
4. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Agreement and supersedes all prior discussions, negotiations, understandings, or agreements relating to such matters, all of which are merged herein.
5. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of title in any respect.
6. Successors. The covenants, terms, conditions, and restrictions of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running with the Property during the Term.
7. Termination of Rights and Obligations. A party’s rights and obligations under this Agreement terminate upon transfer of that party's interest in this Agreement (as to Grantee) or the Property (as to Grantor), except that liability for acts or omissions occurring prior to transfer shall survive transfer.
8. Captions. The captions in this Agreement have been inserted solely for convenience of reference and shall have no effect upon its construction or interpretation.
9. Amendment. If circumstances arise under which an amendment to or modification of this Agreement would be appropriate, Grantor and Grantee may jointly amend this Agreement by a written instrument recorded in the office of the Register of Deeds for \_\_\_\_\_\_\_\_\_ County, provided that any such amendment shall not diminish the purpose of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and delivered the same as of the day and year first above written.

*[Signatures on next page]*

GRANTOR: GRANTEE:

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ THE STATE OF WISCONSIN**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Naomi De Mers

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Secretary, Wisconsin State Building Commission

**ACKNOWLEDGEMENT**

State of Wisconsin

County of Dane

This instrument was acknowledged before me on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, by Naomi De Mers as the Secretary of the Wisconsin State Building Commission.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public, Wisconsin

My Commission (expires) (is) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ACKNOWLEDGEMENT**

State of Wisconsin

County of \_\_\_\_\_\_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public, Wisconsin

My Commission (expires) (is) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A**

Legal Description of the Property

EXHIBIT B

Form of Deed

See Attached

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Document Number | State Bar of Wisconsin Form 1-2003  **WARRANTY DEED**  Document Name | | | |  |
| **THIS DEED**, made between  (“Grantor,” whether one or more),  and State of Wisconsin  (“Grantee,” whether one or more).  Grantor, for a valuable consideration, conveys to Grantee the following described real property, together with rents, profits, fixtures and other appurtenant interests, in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County, State of Wisconsin (“Property”) (if more space is needed, please attach addendum):  See attached addendum | | | | | Recording Area |
| Name and Return Address  Chief Legal Counsel  WI Department of Administration  P.O. Box 7864  Madison, WI 57707 |
| Parcel Identification Number (PIN)  This is not homestead property.  (is) (is not) |
| Grantor warrants that the title to the Property is good, indefeasible in fee simple and free  and clear of encumbrances except: municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants, and general taxes in the year of recording. | | | | |
| Dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_. | | | | | |
| XXXXXXXXXXXXXXXXXXX  By: (SEAL)  Name:  Its: | | | | | |
|  | | | | | |
| **AUTHENTICATION**  Signature(s)    authenticated on .    \*  TITLE: MEMBER STATE BAR OF WISCONSIN  (If not,  authorized by § 706.06, Wis. Stats.)  THIS INSTRUMENT DRAFTED BY: | | | **ACKNOWLEDGMENT**  STATE OF WISCONSIN )  ) ss.  COUNTY )  Personally came before me on ,  the above-named    to me known to be the person(s) who executed the foregoing  instrument and acknowledged the same.    \*  Notary Public, State of Wisconsin  My Commission (is permanent) (expires: ) | | |
| **(Signatures may be authenticated or acknowledged. Both are not necessary.)** | | | | | |
| **NOTE: THIS IS A STANDARD FORM. ANY MODIFICATIONS TO THIS FORM SHOULD BE CLEARLY IDENTIFIED.** | | | | | |
| **WARRANTY DEED** | | **STATE BAR OF WISCONSIN FORM NO. 1-2003** | |  | |

\* Type name below signatures.