



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item #
11/18/10

November 17, 2010

SUPPLEMENTAL MEMORANDUM

TO: Montgomery County Planning Board

VIA: Glenn Kreger, Acting Chief *GK*
Vision/Community-Based Planning Division

Khalid Afzal, Team Leader, East Transit Corridor Team *KA*
Vision/Community-Based Planning Division

FROM: Kristin O'Connor, Senior Planner (301.495.2172)
East Transit Corridor Team
Vision/Community-Based Planning Division

SUBJECT: Discussion Item: Sale of Former Peary High School to the Melvin J. Berman Hebrew Academy (former Mandatory Referral No. 05506-DPWT-1), 13300 Arctic Avenue, Rockville Maryland, R-90 Zone, 1994 Aspen Hill Master Plan

REVISED RECOMMENDATION: Transmit comments to the County Council recommending approval of proposed property disposition.

Based on the new information provided by the Berman Academy (Attachment 1) and the Associate General Counsel's recommendations (Attachment 2), the Vision/Community-Based Planning staff has revised its recommendation and recommends approval of the proposed sale.

On November 10, 2010, six days after the publication of my initial staff report, the terms of the sale were renegotiated between the County Executive and the Berman Academy. After discussions with representatives of the Berman Academy, legal staff has determined that the added provision of a repurchase option provided the County more certainty in the right to reacquire Peary, if the County needs the site in the future due to enrollment increases (see memo from Office of General Counsel).

Staff recommends the Planning Board transmit comments to the County Council recommending approval of the proposed disposition of the Peary site.

Attachments:

1. November 10, 2010 memorandum from the County Executive to Council President Floreen
2. November 15, 2010 memorandum from Carol S. Rubin, Associate General Counsel to the Planning Board

Vision Division, 301-495-4555, Fax: 301-495-1304
8787 Georgia Avenue, Silver Spring, Maryland 20910
www.MontgomeryPlanning.org

KO:ha: G:\OCONNOR\Peary High memo 11172010.doc



MELVIN J. BERMAN HEBREW ACADEMY

Harry A. Epstein Campus

13300 Arctic Avenue, Rockville, MD 20853-3012

301.962.9400 • Fax 301.962.3991 • www.mjbha.org

ישיבת בית יהודה

To: Montgomery County Planning Board

Date: November 16, 2010

Re: Sale of 13300 Arctic Avenue, Rockville, MD, to Melvin J. Berman Hebrew Academy (Former Mandatory Referral No. 05506-DPWT-1)

We write to request that the Montgomery County Planning Board recommend approval of the sale of the site of the former Robert E. Peary High School at 13300 Arctic Avenue, Rockville, Maryland, to the Melvin J. Berman Hebrew Academy ("MJBHA" or the "Academy").

The Academy is a private, co-educational Jewish day school which has been located in the Greater Washington area since 1944. We educate over 700 children from pre-K through grade 12, the overwhelming majority of whom are Montgomery County residents. Approximately 35 percent of our children receive financial aid, and for many others, the burden of tuition is significant. Nonetheless, our parents feel strongly about the importance of a strong Jewish education and sacrifice to make that a reality for their children.

The Academy also partners with the Sulam School, located in our facility, which works closely with the Academy to enable children with significant developmental disabilities to learn in a Jewish environment, mainstreamed into Academy classrooms wherever educationally appropriate.

We understand that the central focus of the Planning Board's analysis is whether the proposed sale is substantially in conformance with the 1994 Master Plan. Indeed, in 1994, the Montgomery County Council by resolution 12-1874 stated that the "preferred reuse [of the property] is to lease the property to a private school with appropriate sharing with the community of the outdoor recreation facilities, gymnasium, and auditorium. . . . Any sale of the property is subject to prior consent by the County Council which will consider the appropriate elements of the Aspen Hill Master Plan at that time."

Although the Planning Board recommended against the sale when asked for its views in 2005, important differences between the terms of that purchase and the currently proposed agreement warrant new consideration.

We first address the Master Plan and those elements of the proposed agreement that are consistent with its requirements and then provide some additional background and discussion.

Headmaster
Joshua Levisohn

President
Daphna Raskas

1st Vice President
Behnam Dayanim

2nd Vice President
Paul Glashofer

Secretary
Jodi Mazel

Treasurer
Debra Panitch

Development Chair
Diana Ely Epstein

Trustees
Manette Mayberg
Benjamin Neumann
Orlee Turitz

Education Committee Chair
Michele Klein

PTO/Vaad Horim President
Carrie Gluck
Ex Officio Representative
Mindy Horowitz

Board of Directors
Benny Berkowitz
Erica Brown
Samuel Charnoff
Daniel Chefitz
Julie Coplin
Carrie Gluck
Ari Goldberg
David Goldschlag
Devorah Grayson
Eliezer Halbfinger
Amy Hall
David Janus
Sandy Karlin
Sharon Kushnir
Michael Levine
David Makovsky
Laura Margulies
Sharon Mazel
Michael Schiess
Arnie Sherman
Ed Snyder
Joel Tabin
Aton Teitelbaum
Deborah Wilbur
Sy Zuckerman

Jewish Federation Representatives
President
Susie Gelman
Interim CEO
Eileen Frazier

Further Agency of
The Jewish Federation



Past Presidents

Rabbi Moshe H. Levinson • Jeremiah Weitz • Joseph Viener • Bernard Danzansky • Joseph Andelman • Solomon H. Feldman
Joseph Wineburgh • Leo Kramer • Sylvan Danzansky • Bernard White • Gerald Charnoff • Melvin Rische • Mei Burdett • Jacques J. Gorlin
Michael J. Bandler • David J. Butler • Jacob Schorr • Jonathan Blank • Susan J. Gorlin • Diana Ely Epstein • Michael Pelcovits • Lawrence Stern

2

I. The Proposed Purchase is Consistent With the Master Plan

The 1994 Master Plan states in pertinent part:

“.... if the site is surplus by the Board of Education, it should be kept in public ownership. **If a determination is made that it is not needed as a public school, any use of the site that would not preclude its eventual reuse as a public school would be desirable.** Such uses include, but are not limited to, a private school.... To the extent that the building is not renovated and not used, it should be considered for demolition... Regardless of who controls the site, the existing outdoor recreation facilities should be repaired and made available for public use.” (Emphasis added.)

Subsequent to the issuance of the Master Plan, the Montgomery County Board of Education, in fact, surplused the property back to the County, stating that it “is not needed for use as a public school.” Resolution No. 246-94 (excerpts attached as **Exhibit A**).

The proposed purchase meets all the requirements of the Master Plan.

- First, the Master Plan clearly states that while use as a public school is the preferred use, a secondary use as a private school is permitted. That is the intended use in this case. Moreover, unlike the sale as proposed in 2005, the Academy has accepted a covenant to its deed that restricts use of the site to that of a private school only. That covenant also would apply to any subsequent purchaser.
- Second, we have agreed to maintain the outdoor recreation facilities, which we repaired and renovated at our cost, and continue to make them available for public use, an obligation that will be recorded and bind us and all future purchasers.
- Finally, the Master Plan states that a use of the site “that would not preclude its eventual reuse as a public school would be desirable.” In our case, there has not been a need for a public school at the site for 26 years, and there is no evidence or claim by anyone that there is a current use for such a school. The only question is whether there might be a future need for a public school. Nevertheless, the Academy has agreed to a provision **allowing repurchase by the County** should the property be needed for a public school.

For all of these reasons, and as explained further below, we respectfully submit that a recommendation of approval of the purchase is warranted.

II. Background to the Lease

The Board of Education (“BOE”) decided to close the former Peary High School in 1984, and the property remained vacant for 14 years. During that time, the building and surrounding areas were terribly vandalized, it became a hangout for gangs and drug use, and the Aspen Hill community justifiably demanded that the County do something about this situation. **Exhibit B** includes pictures from that time that show the state of disrepair in comparison to the school

presently. **Exhibit C** contains newspaper articles describing the property's condition. *See also Exhibit D* (Declaration of Dennis Berman).

In April 1994, the BOE decided that it had no further use for the site as a public school and so deeded it back to the County. In November 1994, the County Council by resolution 12-1874 stated that the "preferred reuse [of the property] is to lease the property to a private school with appropriate sharing with the community of the outdoor recreation facilities, gymnasium, and auditorium. . . . Any sale of the property is subject to prior consent by the County Council which will consider the appropriate elements of the Aspen Hill Master Plan at that time." A copy of that Resolution is attached as **Exhibit E**.

Then-County Executive Doug Duncan issued a request for proposals. Of those who responded, only MJBHA was willing to undertake renovation of the property at its own expense and only on condition that it be able to purchase the property. *See Exhibit D*.

At the time, the Academy was leasing a building from the County, at Montgomery Hills. The lease was not due imminently to expire, and the Academy did not need to relocate. For that reason, the school was only willing to pursue the Arctic Avenue site in the context of a purchase.

In 1996, the County entered into a Lease with MJBHA containing an option to purchase the property. The County insisted that MJBHA apply the funds it raised for the site first to renovation, to enable the school to occupy the property and to ameliorate as quickly as possible the problems the building's neglect and deterioration had caused to the community. For that reason, it made the purchase option exercisable at any time during the lease, at MJBHA's election. Exercise of that option – consistent with the Council Resolution – requires County Council approval, but the Lease stipulates that approval cannot "be unreasonably withheld."

The building was then valued by the County at zero because of its condition, and because the parties agreed that MJBHA would have to spend an enormous sum of money – ultimately nearly \$9 million – to rehabilitate the property. The purchase price for the land was contractually established at that time and is based on the average of three professional appraisals – one by an appraiser selected by the County, one by an appraiser selected by the Academy and one by an appraiser selected by the other two appraisers.

The appraisals were based on the **highest and best use** permitted for the property – residential development – even though MJBHA only intended to use the property as a school, and the average of the three (none of which differed significantly) was to be adjusted upward annually for increases in the CPI.

MJBHA needed to raise all of the money for the renovations from private donors, almost none of whom would have donated the necessary funds without the knowledge that MJBHA would ultimately own the building. The County did not contribute any money toward the renovations.

The Academy's preference was to purchase the site first and then to undertake the fundraising for the renovations. However, in deference to the desire of the community and the County Executive that the property be rehabilitated as quickly as possible, we agreed to apply the funds

directly to the renovation and accepted a purchase option that was exercisable at any time during the Lease term.

III. Exercise of the Purchase Option

MJBHA first notified the County Executive of its intention to exercise its option in 2001. After four years of delay, the County Executive submitted the terms of purchase to the County Council. The Planning Board on September 15, 2005, voted to recommend against approval of the purchase. On October 17, 2005, the County Council's Management and Fiscal Policy Committee held a work session on the proposed sale and raised several questions and requests for information. Contrary to what is stated in the Planning Board Staff Report, **the Committee reached no conclusions with regard to the sale.** See Exhibit F (copy of Committee minutes). The transaction never moved forward to the County Council for a vote, and the situation remained unresolved until now.

In the summer of 2010, MJBHA and the County Executive negotiated new terms for the purchase, which have been submitted to the County Council. Those proposed terms were further amended as of Nov. 10, 2010 – after the Planning Board staff submitted its report – to add a repurchase provision for the County.

We are grateful for the demonstrated support of the purchase by the **Aspen Hill Civic Association, Montgomery Square Civic Association and Kemp Mill Civic Association**, as well as other nearby civic groups, and for the support of **our entire District 19 delegation** to the Maryland General Assembly – Senator-elect **Roger Manno**, Delegate **Ben Kramer** and Delegates-elect **Bonnie Cullison** and **Sam Arora**. See Exhibit G (copies of letters of support; to be supplemented).

The 2010 proposed purchase differs from the 2005 proposed agreement in several significant ways:

- First, the purchase price has **increased** by several hundred thousand dollars, as a result of increases in the CPI, per the methodology set out in the Lease.
- Second, the parties have agreed that MJBHA and all future purchasers **can use the site only as a school**. This restriction will be recorded in a covenant to the deed. (Of course, this was always the Academy's intention, but now it will be a binding obligation.)
- Third, MJBHA and all future purchasers will remain obligated to make the outdoor recreation facilities (as well as the gymnasium and auditorium) available **for use by the community** at no cost to the County.
- Finally, and most significantly, with the November 10 amendment, the agreement now allows the County **to reclaim the property** should it be needed for use as a public school.

The repurchase provision stipulates that, in any eminent domain proceeding brought to reclaim the property for use as a public school, the Academy would stipulate that fair compensation would be what it put into the property – the purchase price for the land (adjusted for CPI) and the lesser of the money put into the improvements (to renovate the building) or the appraised value of those improvements at the time of repurchase. The effect of this provision would be to remove any risk that a condemnation would be exceedingly expensive due to appreciation in property values and to avoid a protracted battle over appropriate compensation. The provision allows for a five-year transition in which the Academy would be given time to find an alternative location – an accommodation also provided in the current Lease.

With these elements, the Academy submits that the purchase satisfies the policy preferences embodied in the Master Plan. The property is limited to one of the “desirable” uses (a private school), the “existing outdoor recreation facilities” will continue to be “made available for public use,” and – through the repurchase option – the site’s “eventual use as a public school” is not precluded.

IV. Question of Need for a Public School

As already explained, the Academy believes it has addressed any potential need of the site for a public school through the repurchase provision now included as part of the proposed agreement. Nonetheless, we think a few brief comments regarding the reality of any such need are warranted.

In the first instance, context is important. Peary High School was closed by the BOE in 1984 and surplused to the County 10 years later, with the BOE saying it would have no need for it in the future. The site is no longer public school property. Moreover, it has now been 26 years since Peary High School was closed, and there has been no need for an additional high school in that area. In 2005, Montgomery County Public Schools (“MCPS”) stated that the site would not be required for future needs in that area, and that additional high school facilities, if required, would be needed in the northern part of the County. Planning Board staff has included that e-mail in its submission.

Since 2005, when the Planning Board last considered the proposed purchase, enrollment in the Rockville cluster – the cluster in which the Arctic Avenue site is located – has **declined**. Only two of seven schools in the cluster had more students enrolled in 2009-10 than in 2004-05, and, in aggregate, the numbers have decreased. (In fact, of the schools identified in the Planning Board’s staff report, only one is in the Rockville cluster.)

School ¹	Enrollment 2004-05	Enrollment 2009-10 (most recent available online)
Rockville H.S.	1222	1220
Earle Wood M.S.	985	847
Rock Creek Valley E.S.	354	378

¹ Data obtained from <http://www.montgomeryschoolsmd.org/departments/regulatoryaccountability/glance/>.

Meadow Hall E.S.	385	366
Flower Valley E.S.	461	444
Maryvale E.S.	622	584
Lucy V. Barnsley E.S.	520	628
TOTAL:	4,549	4,467

Moreover, there is no plan for an additional school in the cluster.

The BOE in its letter opposing the sale cannot and does not dispute any of these numbers. Instead, it states simply that the County **may** have need of the site in the future – **not** that it does or that it will. It bears remembering that, without MJBHA, there would be **no** facility on the site at all – it would be a public park and not part of any serious consideration as a potential public school.

In any event, rather than debate the BOE over the possibility of a need for the property at some undefined point in the future, the Academy has agreed to permit a repurchase if needed for a public school. As noted earlier, the repurchase price in that event is at most what we paid for it, and we respectfully submit that this provision satisfies the criteria of the Master Plan.

V. Conclusion


During the 12 years MJBHA has occupied the property, we are proud to say that we have been a key part of the revitalization and growth of the Aspen Hill community. We have converted a blight and an eyesore into a thriving school community. We have attracted many families to the neighborhood. We have maintained excellent relations with the County and our neighbors, and many members of the Aspen Hill community make regular use of our facility. We thank you for the opportunity to present MJBHA's position to you, and we respectfully ask for the Planning Board to recommend approval.



MEMORANDUM

Approved for Public Dissemination

TO: Montgomery County Planning Board

FROM: Carol S. Rubin, Associate General Counsel 
301-495-4646

DATE: November 15, 2010

RE: Proposed Disposition of Former Peary High School Site to the Melvin J. Berman Hebrew Academy

The question before the Planning Board for its recommendation to the County Council, whether to approve the sale of the former Peary High School ("Peary" or "site" or "property") to Melvin J. Berman Hebrew Academy ("Berman") has an added level of complexity as a result of recent negotiations between the County and Berman. The new proposal has been outlined in a November 10, 2010 memorandum from the County Executive to Council President Floreen [Attachment One] after publication of the Staff Report. As set forth more specifically below, the new proposal allows for the County to exercise its option to repurchase Peary earlier than was established under the original Lease [Attachment Two]. And it provides more certainty in both the right to reacquire Peary (if the County were to exercise that right prior to the time set forth in the Lease), and the cost to do so.

However, the terms of the new proposal are only triggered by the sale. If the sale is not approved, the County and Berman continue under the terms of the existing Lease. Therefore, because the terms of the new proposal put the County in a better legal posture, and it provides more certainty with regard to i) when the site can be returned to the County, and ii) price (not necessarily a lower cost, but as to risk in determining the ultimate cost), the Board's recommendation for the County Council to make its decision must be weighed in light of those factors.

The pertinent terms of the existing Lease provide the following:

- ξ The Lease term began April 15, 1996 and runs for an initial 27 year period (25 years after 2-year renovation period) through April 14, 2023.
- ξ Berman has the option to extend for 3 additional 5-year periods, subject to the County's right to terminate by providing 5-years advance notice of its intent to

terminate, "at any time after conclusion of the twenty-five year lease term." The County does not have the right to terminate prior to April 14, 2023.

ξ Berman was granted a right to purchase the site subject to approval by the County Council and the Board of Public Works.

ξ There is no price established in the Lease if the County files condemnation to terminate the Lease before the expiration of the Lease term. However, possession would be returned to the County at the Lease expiration for no cost with proper notice of termination, if necessary.

The Master Plan provides "if the site is surplus by the Board of Education [which it has been], it should be kept in public ownership." If the 1994 Aspen Hill Master Plan recommendation to retain Peary in public ownership was to be strictly adhered to, the County would not have granted Berman an option to purchase less than 2 years later when the County entered into a Lease granting Berman the conditional right to purchase the site. However, the Master Plan goes further in stating that "...any use of the site that would not preclude its eventual reuse as a public school would be desirable."

It is counterintuitive that sale of the property to Berman rather than continuing under the Lease makes it easier to get it back for public school use. However, the reason this is so is that with the sale come renegotiated terms in the form of the deed. *The sale to Berman triggers the terms of the new proposal. Without the sale, the County must operate under the existing terms of the Lease.*

The pertinent terms of the new proposal compared to the existing Lease are as follows:

1. Use restricted to private educational purposes. The new proposal restricts Berman from using the site for anything other than private educational use and other incidental and related uses, subject to the County being offered the right to repurchase. The Lease does not hold Berman to such a restriction. In fact, under the Lease, the purchase price formula in Berman's option includes a specific provision in the event Berman were to use the site for other than private educational purposes. The cost to the County will be significantly less to convert an operational private school to a public school than to redevelop from some other use.
2. Right to repurchase and established cost through modified condemnation. The new proposal allows for reacquisition by the County through a modified condemnation process. In other words, if there is a public purpose, i.e. MCPS declares the need for the site as a public school, Berman has effectively admitted that the County has the right to condemn, and it has established the repurchase price. Under the Lease, if the County were to attempt to repossess the property prior to the Lease expiration by condemning Berman's leasehold interest, it leaves the determination whether the action is appropriate to the courts, and the cost the County must bear to a jury. And any time the courts get involved, there is a risk of unfavorable outcome. As

- indicated earlier, if possession of the property is returned to the County as a result of the Lease expiration or termination after April 14, 2023, it is likely, although not guaranteed that the County would have the property returned for little or no cost.
3. Deed allows earlier repossession through modified condemnation. The new proposal does not restrict the timeframe under which the County can file the condemnation action to reacquire possession; only that it must give the same 5-year notice for Berman to relocate. Effectively, if MCPS declares its need for the site in 2011, the County will have possession in 2016 at a price established by formula in the deed. The Lease may not allow the County to terminate Berman's possession until at least April 14, 2028 (5-year notice no earlier than end of initial Lease term). It could be argued that under the Lease the County can give Berman notice before the end of the initial Lease term so long as the termination does not occur until after the initial term in 2023. However, one can expect that Berman will oppose that interpretation, and that would leave it to the courts to decide the intent of the parties. Even if the County prevails in that interpretation, the earliest date for return to the County under the Lease would be April 14, 2023.

In summary, this recommendation is about the path of least resistance if and when the property is needed for public school use. The terms of the proposed deed provide more certainty to the County, both as to the right to reacquire the property and the cost to do so. Therefore, sale of the property to Berman accomplishes the goals of MCPS and the 1994 Aspen Hill Master Plan not to preclude its eventual reuse as a public school.

Attachment One - County Executive Memo
Attachment Two - Lease

cc: Adrian R. Gardner, General Counsel
Rollin Stanley, Planning Director
Glenn Kreger, Chief, Vision Division




OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

November 10, 2010

TO: Nancy Floreen, Council President

FROM: Isiah Leggett, County Executive 

RE: Melvin J. Berman Hebrew Academy Exercise of Contractual Purchase Option

This memorandum is a follow-up to my October 18, 2010 transmittal of the Berman Academy's exercise of its contractual purchase option for the closed Peary High School which was closed by the Board of Education in 1984 and transferred to Montgomery County in 1994. Following the conveyance of the property to the County, the County entered into an agreement with the Berman Academy for the long term lease and the purchase option that the Berman Academy is now exercising.

As I pointed out in my previous transmittal, the property can only be used for a school. If it is abandoned, or if it is offered for sale, the County can repurchase the property for the same base land value as the County is receiving plus payment for the building at a price that is the lesser of i) the then current appraised value of the secular improvements made by the Berman Academy, or ii) the actual costs of the improvements.

On October 25, 2010, the Board of Education wrote to the Council expressing opposition to the Berman Academy's exercise of its purchase option for the school. The Board of Education indicated that "While it is not possible to project our exact facility needs for the future, we know future sites will be needed given the burgeoning enrollments we have seen at all school levels."

In response to this concern the Berman Academy has agreed to an amendment to the exercise of its purchase option which addresses this specific concern and which is arguably even more favorable than what currently exists under the lease. A copy of the Amendment is attached. Specifically, the Berman Academy has agreed that the conveyance does not limit the County's power of eminent domain to reclaim the property for a school. If the County seeks to reacquire it for a school, the Berman Academy stipulates that the reacquisition price is the same base land price and the lesser of the Berman Academy's cost of the improvements or the then fair market value of the improvements. Like the lease, the provision requires a five-year period

(11)

Nancy Floreen, Council President
November 10, 2010
Page 2 of 2

before repossession is effective to enable the school to relocate. *Unlike the lease*, this eminent domain right can be exercised at any time. Under the lease the right to repossession cannot be exercised during the initial 25 year lease term.

I believe that this amendment more than addresses the concern raised by the Board of Education for this school that it closed in 1984. The County should honor the purchase option that it granted to the Berman Academy and that was a basis for the significant investment made by the Academy.

This is a win/win for the County, MCPS, the community and the Academy. The County and its residents get continuing and perpetual use of the ball fields, auditorium and gymnasium without having to pay for their maintenance. The County receives nearly \$2 Million during trying economic times and retains the right to buy back the property if it needs the property for a school at the same price it is selling it for, plus the value of the improvements which can never be more than what the Berman Academy paid for them. MCPS is able to reacquire the school if it needs it sooner than it could otherwise. The community receives the continuing benefit of the Berman Academy's stewardship which has contributed positively to the neighborhood. And, the Berman Academy gets the benefit of the bargain the County struck with it in 1996. For these reasons I am urging the Council to act positively on this matter as soon as possible.

If you have any questions, please feel free to contact me or Diane Schwartz Jones in my office.

Attachment: Amendment

PARCEL ID NO. 13-502-954274

DEED AND RESERVATION OF RIGHT TO REPURCHASE

THIS DEED AND RESERVATION OF RIGHT TO REPURCHASE (the "Deed"), is made this ___ day of _____ 2010, by and between MONTGOMERY COUNTY, MARYLAND, a body corporate and politic and a political subdivision of the State of Maryland (the "GRANTOR") and the MELVIN J. BERMAN HEBREW ACADEMY, a District of Columbia nonstock corporation organized under the laws of the District of Columbia and qualified to do business in the State of Maryland and having a determination letter from the Internal Revenue Service as to its status as a qualified organization under §501 (c) (3) of the Internal Revenue Code of 1986, as amended and the successors, heirs and assigns of the MELVIN J. BERMAN HEBREW ACADEMY (the "GRANTEE"), (the GRANTOR and GRANTEE together the "Parties").

IN CONSIDERATION of the payment of One Million Nine Hundred Fourteen Thousand Eight Hundred Sixty Dollars (\$1,914,860.00) by GRANTEE TO GRANTOR, and of GRANTEE's past expenditures to rehabilitate the Property, and in reliance upon GRANTEE's acceptance of the covenants and conditions contained in the declaration of covenants attached hereto as Exhibit A (the "Declaration of Covenants"), and GRANTOR's right to repurchase recited below, the GRANTOR does hereby grant to GRANTEE as sole owner in fee simple absolute, subject to the limitations set forth in the Declaration of Covenants and GRANTOR's rights to reacquire the Property as covenanted below, certain property located in Montgomery County, Maryland, known as the former Peary Senior High School, consisting of all that piece or parcel of land described in the deed between the Board of Education of Montgomery County, Maryland and Montgomery County, Maryland dated October 17, 1994, and recorded among the Land Records of Montgomery County, Maryland in Liber 13060, folio 122, *et seq.*, more particularly described as

All that parcel of land conveyed to the Board of Education of Montgomery County, Maryland by Edith E. Matthews, by deed dated April 28, 1958, and recorded among the Land Records of Montgomery County, Maryland, at Liber 2457, Folio 339 consisting of a total of 19.52 acres, more or less, being known as the former Peary Senior High School.

together with all improvements, rights, privileges and appurtenances to the same belonging, subject to the conditions and covenants stated below (the "Property")

TO HAVE AND TO HOLD the Property, and all improvements thereon, to the use and benefit of the GRANTEE as sole owner;

SUBJECT, HOWEVER, to all easements, covenants and restrictions of record, including, without limitation, the Declaration of Covenants and to the following right of GRANTOR to reacquire the Property:

RIGHT TO REPURCHASE

GRANTOR hereby grants the Property to GRANTEE and GRANTEE accepts the Property subject to the limitation that the Property may be used only for private educational use, and as incidental uses related and accessory to use for private educational purposes, use for daycare and worship services, private educational day camp and private religious education center. GRANTEE must not change the use of the Property, or sell, or transfer (with or without consideration) the Property to any person or entity for any use other than such operation of a private educational facility and such related and accessory uses unless and until GRANTEE has first offered to sell the Property (including any secular (non-religious) improvements hereafter constructed thereon) to GRANTOR for the Repurchase Price as that term is defined in Amendment No. 1 (the "Amendment") to that certain lease of the Property by and between GRANTOR and GRANTEE dated March 29, 1996 (the "Lease"); and in accord with the terms and conditions of the Lease Amendment regarding exercise of the County's Repurchase Right (as defined in the Amendment).

REAQUISITION BY MODIFIED CONDEMNATION

In addition to the Grantor's Repurchase Right provided for above, the Grantor shall have the right to reacquire the Property by condemnation and nothing contained herein shall be deemed to waive the Grantor's right to reacquire the Property by condemnation, provided however, that in any such condemnation action the Grantor and Grantee agree that (i) the fair market value of the Property otherwise required to be paid by the Grantor to the Grantee in any such condemnation action is waived by Grantee and the Grantor and Grantee instead agree that the fair market value of the Property payable by the County in any such condemnation action shall be an amount equal to the Repurchase Price as provided in Section 7 of Amendment No. 1 to the Lease, (ii) in the event the Grantor prevails in the condemnation action, notwithstanding any rights that the Grantor may have to transfer of title and possession of the Property provided by law, the Grantor waives any such rights and the Grantor and Grantee agree that the time in which the Grantor shall be entitled to the transfer of title to the Grantor and repossession of the Property by the Grantor after the condemnation action becomes final and non-appealable, shall be not less than five (5) years from the date that such condemnation becomes final and non-appealable, (iii) Grantee, except with respect to the fair market value compensation for the Property which shall be instead controlled by subsection (i) of this provision, Grantee shall be entitled to any and all other compensation to which Grantee might otherwise be entitled in any condemnation action, including without limitation any relocation expenses; and (iv) notwithstanding the provisions of subsection (ii) if the Grantee tenders title to the Property to the Grantor at any time before or after the condemnation action becomes final and non-appealable, then upon the occurrence of such event, Grantor shall pay to Grantee the Repurchase Price at that time and Grantee during the five (5) year period provide for in subsection (ii) shall be entitled to continue to occupy the Property under the same terms and conditions as provided in the Lease and upon the conclusion of such five (5) year period Grantee shall thereupon vacate the Property leaving it in the condition as provided in the Lease and the Grantee shall have no further right to possession or occupancy of the Property.

IN WITNESS WHEREOF, the Parties have executed this Deed under seal on the date first written above, it being the specific intention of the Parties to create a specialty.

WITNESS OR ATTEST:

MONTGOMERY COUNTY, MARYLAND

By: _____ (SEAL)

Isaiah Leggett
County Executive

Date: _____

MELVIN J. BERMAN HEBREW ACADEMY

By: _____ (SEAL)

Daphna Raskas
President

Date: _____

RECOMMENDED:
DEPARTMENT OF GENERAL SERVICES

By: _____

David E. Dise, Director
Department of General Services

Date: _____

APPROVED AS TO FORM AND LEGALITY
OFFICE OF THE COUNTY ATTORNEY

By: _____

John J. Fisher
Associate County Attorney

Date: _____

STATE OF MARYLAND, COUNTY OF MONTGOMERY, to wit:

ON THIS _____ day of _____ 2010, before me, the undersigned officer, personally appeared Isaiah Leggett, County Executive for Montgomery County, Maryland, known to me to be the person whose name is subscribed to the foregoing, who did fully acknowledge that he executed the same as his voluntary act and deed for the purposes therein contained.

WITNESS my hand and official seal the same day and year first above written.

Notary Public

My Commission Expires: _____

STATE OF MARYLAND, COUNTY OF MONTGOMERY, to wit:

ON THIS _____ day of _____ 2010, before me, the undersigned officer, personally appeared Daphna Raskas, President of the Melvin J. Berman Hebrew Academy, known to me to be the person whose name is subscribed to the foregoing, who did fully acknowledge that he executed the same as his voluntary act and deed for the purposes therein contained.

WITNESS my hand and official seal the same day and year first above written.

Notary Public

My Commission Expires: _____

CERTIFICATION: This Deed has been prepared by the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

John J. Fisher
Associate County Attorney

16