


Office of the Superintendent of Schools
MONTGOMERY COUNTY PUBLIC SCHOOLS
Rockville, Maryland

October 25, 2010

MEMORANDUM

To: Members of the Board of Education

From: Jerry D. Weast, Superintendent of Schools 

Subject: Sale of the Former Robert E. Peary High School Site

The purpose of this memorandum is to inform you that the Melvin J. Berman Hebrew Academy (Berman Academy) has decided to exercise its contractual purchase option for the former Robert E. Peary High School site. Staff in County Executive Isiah Leggett's office has concluded negotiations with representatives of the Berman Academy for the sale of the property and conveyed the documentation for the sale to the County Council. Under the lease agreement that was signed in 1996, the Berman Academy has the right to purchase the property at any time during the lease, subject to the approval of the County Executive, County Council, and the Board of Public Works. I have attached a copy of Mr. Leggett's memorandum to the County Council that includes Amendment No. 1 to the lease, which is the exercise of the purchase option, the Declaration of Covenants, and the Deed and Reservation of Right to Repurchase. Copies of the original lease are available in the Board office.

Mrs. Patricia B. O'Neill, president, Montgomery County Board of Education, requested that staff prepare a letter from her to the president of the County Council conveying opposition to the sale of the property. A copy of the draft letter is attached for your review.

In 2005, when the issue of the sale of the property was being addressed by the County Council, the Board of Education took a position opposing the sale of the property because of concerns that the property might be needed sometime in the future for a Montgomery County Public Schools' site. The Board was concerned that there are a limited number of potential school sites in the developed areas of the county, and that although there was no specific foreseeable need for the property as a school site in 2005, there could be a need in the future based on growth in the student population in this area of the county.

The lease agreement that was approved in March 1996 was for 25 years after a two-year renovation period, until 2023, with three five-year extensions. The county could get the site back if it was needed for educational purposes with a five-year notice after the conclusion of the 25 year lease, or not before 2028. As indicated, the Berman Academy has the right to purchase the property at any time during the lease agreement.

Staff will be available to respond to questions during this evening's Board of Education meeting.

JDW:LAB:lsh

Attachments

Copy to:

Executive Staff

Mr. Song



MONTGOMERY COUNTY BOARD OF EDUCATION

850 Hungerford Drive ♦ Rockville, Maryland 20850

October 25, 2010

The Honorable Nancy Floreen, President
Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue, 6th Floor
Rockville, Maryland 20850

Dear Ms. Floreen:

This letter is regarding the proposed sale of the former Robert E. Peary High School, which is on the agenda for the County Council meeting on Tuesday, October 26, 2010. The former Robert E. Peary High School is located at 13300 Arctic Avenue, Rockville, Maryland. This site is within the Rock Creek Valley Elementary School service area and the Rockville Cluster of schools.

In October 2005, in response to a request from the County Council's Management and Fiscal Policy Committee to provide the Board's position on the proposed sale of the former Robert E. Peary High School, the Board of Education passed a resolution opposing the sale on the basis that the facility may be needed for educational purposes in the future. Since that time, enrollment in Montgomery County Public Schools (MCPS) has continued to increase substantially. Preliminary enrollment this year is 144,458 students, which is 5,071 more students than in 2005. Another 10,000 students are projected to be enrolled by the 2016–2017 school year.

It is important to note that enrollment is increasing throughout the county, including the Rockville Cluster. In order to address enrollment increases in the past, MCPS has found it necessary to rebuild and reopen a number of schools that were closed. Since 1985, three elementary schools, six middle schools, and one high school have been reopened or built at the sites of formerly closed schools. It is important in this era of enrollment increases to maintain all possible facilities and school sites to address enrollment growth.

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. For these reasons, we continue to oppose the sale of the former Robert E. Peary High School.

Thank you for your consideration of these remarks.

Sincerely,

Patricia B. O'Neill
President

PBO:jlc
Copy to:
Members of the Board of Education
Dr. Weast




OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

October 18, 2010

TO: Nancy Floreen, Council President
Duchy Trachtenberg, Councilmember

FROM: Isiah Leggett, County Executive 

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

I am writing in response to a request from Councilmember Trachtenberg for an update on where Executive Staff is on processing a request from the Melvin J. Berman Hebrew Academy (the "Berman Academy" formerly known as the Hebrew Academy of Greater Washington) to exercise its contractual purchase option for the former Peary High School site. I am pleased to respond that negotiations on the request have been concluded and I am now transmitting to the County Council for its approval documentation reflecting the Berman Academy's exercise of its purchase option for the Peary High School site.

Under the lease the Berman Academy has the right to purchase the property at any time during the term. The purchase is subject to the approval of the County Executive, the County Council and the Maryland Board of Public Works and to any restrictions, conditions, or requirements that may be imposed upon the purchase. However, the lease requires that the County approvals relating to, among other things, conveyance of the property, not be unreasonably withheld.

The methodology of determining the purchase price is set out in the lease. Consistent with that methodology, a purchase price for the land has been established at \$1,914,860. Per the lease, the purchase price for the property acknowledges the poor condition of the building at lease execution and places value only in the land. The current good condition of the building is attributable to the significant investment of more than \$8 million by the Berman Academy.

The conveyance is subject to three conditions. Specifically, the property is to be used as a school pursuant to a restriction that will be recorded with the deed; the County has a repurchase right if the property is abandoned or used for anything other than a school; and the

Nancy Floreen, Council President
Duchy Trachtenberg, Councilmember
October 18, 2010
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gymnasium, auditorium, and outdoor athletic fields that are part of the premises must continue to be available for use by the public when not being used by the school.

The County's repurchase price is for the same base land value as it is being sold for 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 depreciated actual costs of the improvements.

The terms of this exercise differ in several significant ways from terms that had been discussed several years ago. First, the price is different and largely reflects the County's rejection of one of the appraisals that had been used previously. Second, the repurchase right is tied to the price that is being paid today and the lesser of the fair market value of the improvements or the depreciated actual costs of the improvements. Third, the use of the site is limited to school uses.

With this exercise, the public will, through the Community Use of Public Facilities, continue to have use of the fields, the gym and the auditorium during non-school use times and the County will receive nearly \$2 million dollars in purchase money proceeds. With the three conditions that are imposed on the conveyance, I support the Berman Academy's exercise of its option and I am asking the County Council to also approve the conveyance in accordance with the above described terms.

If you have any questions, please feel free to contact me or Diane Schwartz Jones in my office. I ask that you schedule consideration of this matter at your earliest possible convenience.

Attachments:

Amendment No. 1 to Lease
Declaration of Covenants
Deed and Reservation of Right to Repurchase
Lease dated March 29, 1996
Proposed Resolution

AMENDMENT NO.1

This Amendment No. 1 (this "Amendment") is entered into the day and date below written by and between MONTGOMERY COUNTY, MARYLAND, a political subdivision of the State of Maryland, hereinafter called "County" or "Lessor", and MELVIN J. BERMAN HEBREW ACADEMY, formerly known as THE HEBREW ACADEMY OF GREATER WASHINGTON, INC., a non-profit educational organization incorporated in the District of Columbia, with its principal offices located at 13300 Arctic Avenue, Rockville, Maryland, hereinafter called "Lessee." Collectively hereinafter referred to as the "Parties."

WITNESSETH

WHEREAS, the County and Lessee entered into a lease dated March 29th, 1996 (the "Lease") for the lease of certain property located in Montgomery County, Maryland, known as the former Peary Senior High School, which consists of 19.52 acres of land, more or less, then improved with a building comprising approximately 220,000 square feet, together with any and all then existing site improvements, appurtenant rights and benefits of the parcel, located at 13300 Arctic Avenue, Rockville, Montgomery County, Maryland, known as Parcel P209, on Tax map HR 21, as recorded in Liber 13060 at Folio 122 among the land records of Montgomery County, Maryland, as shown on Exhibit A attached to the Lease, which land and improvements were therein and are herein collectively referred to as the "Property" except that as herein used the term Property also includes all improvements constructed on the land since the date of the Lease or hereafter constructed on the land by the Lessee (the "Property");

WHEREAS, the Lease in Article III granted to the Lessee the right to purchase the Property at any time during the 25 year term or during any of the three five year extensions, subject to the approval of the Montgomery County Executive ("County Executive") and the Montgomery County Council ("County Council"), and subject to any restrictions, conditions or requirements which the County Executive and the County Council might elect to attach to the purchase

WHEREAS, the Lessee's right to purchase the Property under the Lease was further subject to the approval of the State of Maryland Board of Public Works ("Board of Public Works") which also had the right to elect to place restrictions, conditions or requirements on the purchase

WHEREAS, the Lease further provided that the Lessee's right to purchase and the County's acceptance thereof was to be exercised in accordance with all applicable State and local statutes and regulations governing the disposition of public property;

WHEREAS, Article III further provided that the "baseline" price of the Property was to be established by a certain method involving appraisals of the Property all as more specifically set forth in Article III of the Lease and further provided that the baseline price was to be adjusted annually pursuant to a CPI index also all as more specifically set forth in Article III of the Lease;

WHEREAS, the Lease further provided in Article XXXVI that certain community uses of the Property as set forth in Article XXXVI were to be preserved and reserved for use by the public pursuant to a recorded declaration of covenants preserving and reserving to the public the community uses as set forth in Article XXXVI of the Lease in the event Lessee purchased the Property;

WHEREAS, the County Council Resolution (Resolution No.: 12-1874) adopted November 29, 1994, authorizing the disposition of Peary High School and authorizing an eventual sale of the Property stated that the Property's preferred reuse was to lease the Property to a private school with a lease that should not preclude the future reestablishment of a public education facility on the Property; and

WHEREAS, Lessee has notified the County that it is now exercising its option to purchase the Property and the County is agreeable to selling the Property upon the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the above recitals (which are incorporated herein) and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the Parties and subject to the terms, conditions and covenants hereinafter provided for the County does hereby agree to sell and the Lessee does hereby agree to purchase the Property in accordance with the following terms and conditions.

1. Purchase Price. The Parties agree that the unadjusted "baseline" price under the Lease is One Million Four Hundred Twenty-nine Thousand Dollars (\$1,429,000.00), and that through, December 17, 2010, the adjusted purchase price for the Property shall be One Million Nine Hundred Fourteen Thousand Eight Hundred Sixty Dollars (\$1,914,860.00) payable by wire transfer from the Lessee to the County on the Settlement Date (the "Purchase Price"). If the Settlement Date is after December 17, 2010, the Purchase Price shall be equal to the product of One Million Four Hundred Twenty-nine Thousand Dollars (\$1,429,000.00) multiplied by a fraction, the numerator of which shall be the most recently preceding published December CPI All Urban index and the denominator of which shall be the published December 1997 CPI All Urban 1982-1984 index, (the "Adjusted Price").

2. Settlement Date. Settlement on the Property shall occur within thirty (30) days of the date that all Approvals (as defined in Section 3, below) for the sale of the Property have been obtained and have become final and non-appealable without the rejection by the Lessee of any conditions to such Approvals as set forth in Section 3 below (the "Settlement Date"). On the Settlement Date, the County shall execute and deliver to Lessee a special warranty deed in recordable form conveying fee simple title to the Property, free and clear of any liens and encumbrances as of the date of the Lease (March 29, 1996).

3. Approvals. The sale of the Property is subject to (i) the approval of the County Council and any restrictions, conditions, or requirements imposed on the sale by the County Council which approval shall be evidenced by the adoption of a resolution by the County Council authorizing the sale of the Property; and (ii) the approval of (if any may be required) the Board of Public Works and any restrictions, conditions, or requirements imposed on the sale by the Board of Public Works which approval shall be evidenced by appropriate action of the Board of Public Works authorizing the sale (if any may be required); and (iii) compliance with all applicable State and local statutes and regulations governing the disposition of the Property (the "Approvals"). Lessee cannot reject any conditions that are expressly required by the Lease. Lessee may reject any other conditions of the Approvals within thirty (30) days of issuance of the respective Approval in which case the Lease shall remain in effect and Lessee shall have the right to continue its tenancy pursuant to the Lease as amended hereby. Lessee's rejection of a condition must be exercised in

writing to be valid and if not so exercised within the thirty (30) day period, Lessee shall be deemed to be exercising the purchase subject to the conditions, if any, of the Approval(s).

4. Covenants. A declaration of covenants shall be recorded on or before the Settlement Date preserving and reserving to the County for the benefit of the public, use of the Property in accord with the community uses set forth in Article XXXVI of the Lease, all as more specifically set forth in the Declaration of Covenants attached hereto as Exhibit A.

5. Additional Covenants. The declaration of covenants referenced in Section 4 above shall also include covenants containing restrictions and requirements with respect to insurance, maintenance and use of the Property; and containing a further covenant prohibiting the abandonment or lack of use of the Property as a school (an "Abandonment") for any consecutive one hundred and eighty (180) weekday period of time unless such lack of use is attributable to renovations or restoration of the Property that would preclude use of the Property during such period of time and which renovations or restoration are at all times being duly and diligently pursued, all as more specifically set forth in the Declaration of Covenants attached hereto as Exhibit A.

6. Repurchase Right. The County shall have the right to repurchase the Property in the event of an Abandonment or if at any time Lessee agrees to sell the Property to any purchaser for any use other than for use as a validly licensed private school or educational institution (a "Proposed Sale"). In the event of any Proposed Sale to a purchaser as provided in this Section, the sales agreement shall be made contingent upon the right of the County to repurchase the Property and Lessee shall provide the County with not less than ninety (90) days notice of the Lessee's execution of the sales agreement and the County shall have the right by written notice to the Lessee at any time during such ninety (90) day period to give notice to the Lessee of its intent to repurchase the Property (the "Repurchase Right"). Any exercise of the Repurchase Right by the County shall be subject to the appropriation of funds by the County Council for such purpose which appropriation must be obtained by the County within one hundred and eighty (180) days of the date the County gives written notice to the Lessee of the County's intent to exercise its Repurchase Right; provided however, that if the one hundred and eighty (180) day period includes any time period between July 1st and September 30th the time in which to obtain the appropriation shall be extended day for day by the number of days equal to the number of days of the one hundred and eighty (180) days falling during any period between July 1st and September 30th ("The Appropriation Period"). If the County fails to obtain the appropriation within the Appropriation Period, the County's right to purchase the Property shall lapse and shall be of no further force and effect; provided, however, that if for any reason the Proposed Sale is cancelled, the County's Repurchase Right shall not be deemed to have been exercised and the County shall not be obligated to repurchase the property nor shall the County's Repurchase Right fail or lapse but instead the County shall have a continuing Repurchase Right with respect to any subsequently occurring Proposed Sale or Abandonment.

7. Repurchase Price. The repurchase price by the County pursuant to Section 6 shall be at an amount equal to the sum of (a) the Purchase Price (as set forth in Section 1, above) increased annually starting on the first anniversary date of this Amendment and on each anniversary thereafter until the Repurchase Settlement Date (as defined in Section 8, below) by a fraction the numerator of which shall be the most currently published value of the index now known as the "U.S. Department of labor, Bureau of Labor Statistics, Consumer Price Index for all

Urban Consumers, All Items, (1984 = 100)", and the denominator of which shall be the value for said index published for the month and year of the Settlement Date (as defined in Section 2, above), plus (b) the lesser of (i) the sum of the construction cost of improvements made to the Property since the date of the Lease which amount is Eight Million Two Hundred Forty-Five Thousand Two Hundred Ninety-Nine Dollars (\$8,245,299) (which amount Lessee represents and warrants accurately reflects the actual cost thereof and which representation and warranty Lessee acknowledges the County is relying upon in agreeing to such amount) plus the cost of any Qualified Elective Capital (non religious) Improvements (as that term is defined in the Lease) made after the date of this Amendment the cost of which shall be submitted by Lessee to the County and subject to the County's verification thereof (such sum shall be referred to hereafter as the "Aggregate Lessee Improvements"), or (ii) the Appraised Improvements Value (as defined in Section 9, below). (The "Repurchase Price").

8. Repurchase Settlement Date. If the County exercises its Repurchase Right, settlement shall occur not sooner than ninety (90) days and not later than one hundred and eighty (180) days from the date that the County Council appropriates the funds necessary to pay the Repurchase Price.

9. Appraised Improvements Value. The Appraised Improvement Value shall be the replacement cost of all Aggregate Lessee Improvements existing on the Property at the time the County gives notice of its intent to exercise its Repurchase Right less appropriate depreciation normally used by an appraiser taking into account the conditions of the Aggregate Lessee Improvements at the time of the appraisal which appraisal valuation date shall be as of the date the County gives notice to Lessee of its intent to exercise its Repurchase Right.

10. Determination of Appraised Improvements Value. The Appraised Improvements Value shall be determined using one of the following methods as agreed to by the Parties: (i) a single appraiser agreed to by the Parties whose appraisal shall be final and non-appealable; or (ii) each party shall select an appraiser and, if the appraisals are within ten percent (10%) of each other, the average of the two (2) appraisals shall constitute the agreed final and non-appealable Appraised Improvements Value; or (iii) if the Parties choose method (ii) and the two (2) appraisals differ by more than ten percent (10%), then the two appraisers shall select a third appraiser, provided that, if the two appraisers are unable to agree upon a third appraiser, then either party may request that the Washington D.C. Metro Area Chapter of the Appraisal Institute select a third appraiser (the "Third Party Appraiser") and such Third Party Appraiser shall, based on a review of the two appraisals and based on the Third Party Appraiser's own independent appraisal of the Appraised Improvements Value determine the Appraised Improvements Value which shall constitute the agreed and non-appealable Appraised Improvements Value. The term appraiser as used in this section shall mean a licensed real estate appraiser having experience in the valuation of improved real estate in the Washington, D.C. metropolitan area, and who is a member of the Appraisal Institute (Each certified as an "MAI appraiser").

11. Release of Covenants. In the event the Lessee sells the Property to any purchaser, pursuant to any Proposed Sale, and the County fails to exercise its Repurchase Right, as provided in Section 6 above, then in such event the County agrees (at no cost to the County) that it will execute such instrument(s) as may reasonably be requested of it by the Lessee or purchaser releasing the declaration of covenants excepting the covenant regarding community use set forth in

the Declaration of Covenants attached hereto as Exhibit A which covenant shall remain in full force and effect and continue to run with the Property.

12. Authority to Bind. The undersigned, by their signatures, individually represent and warrant that this Amendment and its execution has been duly authorized by all necessary actions whatsoever on the part of each party to this Amendment, and that they are duly authorized and empowered to execute this Amendment and that this Amendment is binding on the respective party on whose behalf they are signing this Amendment.

13. Authorship and Interpretation. Each party acknowledges that this Amendment is entirely the product of the collective joint drafting efforts of the Parties and their respective legal counsel, and should there be any claim of ambiguity, it shall not be construed more strictly against (or more favorably for) either party solely as a result of that party's particular contribution to this effort.

14. Successors and Assigns. The terms of this Amendment shall be binding upon and fully enforceable against the successors, successors-in-title, and assigns of the Parties to this Amendment.

15. Severability. If any provision of this Amendment proves to be illegal, invalid or unenforceable, the remainder of this Amendment shall not be affected by such finding, and in lieu of each provision of this Amendment that is illegal, invalid or unenforceable, a provision will be added as a part of this Amendment as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

16. Entire Agreement. This Amendment sets forth the entirety of the undertakings and obligations of the Parties hereto with respect to the matters addressed herein and supersedes all prior understandings and agreements, and the Parties acknowledge that they have not relied upon any representations by the other party as to the matters set forth herein apart from those set forth in this Amendment.

17. Modifications. Any modifications of this Amendment must be in writing and signed by both of the Parties to this Amendment.

18. Governing Law. This Amendment shall be governed by and interpreted in accordance with the laws of the State of Maryland.

19. Venue. The Parties agree that the venue for any suit or dispute arising out of or relating in any way to this Amendment shall be the Circuit Court for Montgomery County Maryland and the Parties hereby waive any right to bring any suit in any other court or to raise any claim that venue in the Circuit Court for Montgomery County Maryland is for any reason inconvenient or improper.

20. Counterparts. This Amendment may be signed in counterparts, each constituting an original. Photocopies or facsimile transmissions of signatures shall be deemed original signatures and shall be fully binding upon the Parties to the same extent as original signatures.

21. No Assignment of Rights and no Delegation of Duties. The Parties acknowledge

that the rights and obligations of each under this Amendment are personal and may not be assigned or delegated by either party without the prior written consent of the other party, which consent may be granted, withheld or conditioned as the party in its sole discretion shall determine, provided however, that either party may act through a properly authorized agent having authority to act on behalf of the party. Either party shall provide to the other party upon request written evidence of the authority of any such agent to act on behalf of the party.

22. Recording. Lessee and County shall each have the right to record this Amendment, or to execute a Memorandum of this Amendment and have it properly acknowledged for the purpose of recording. Such Memorandum shall have included therein such of the provisions hereof as may be requested by either of the Parties. The cost of recording such a Memorandum or the Amendment (including all stamps, conveyance, recordation and other taxes incident thereto) shall be borne by the party so requesting.

23. Full Force and Effect. Except as expressly provided in this Amendment the Lease shall remain otherwise in full force and effect until the Settlement Date upon which date the Lease shall expire and be of no further force or effect.

24. Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THE RIGHT TO TRIAL BY JURY ON ANY DISPUTE OR MATTER ARISING FROM THE LEASE OR THIS AMENDMENT.

25. Effective Date. The Effective Date of this Amendment is the date upon which all the signature pages hereto are fully executed and delivered to each of the Parties (either as originals or as facsimile copies, or both).

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties have affixed their signatures to this Amendment on the day and date below written.

WITNESS OR ATTEST:

MONTGOMERY COUNTY, MARYLAND

By: _____ (SEAL)
Diane Schwartz Jones
Assistant Chief Administrative Officer

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 Raskaš, 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: _____

DECLARATION OF COVENANTS

This **DECLARATION OF COVENANTS** (this "Declaration") is made the day of and date below written, by MONTGOMERY COUNTY, MARYLAND, a body corporate and politic, it's successors and assigns (hereinafter referred to as "County"), and MELVIN J. BERMAN HEBREW ACADEMY, a non-profit educational organization incorporated in the District of Columbia, with its principal offices located at 13300 Arctic Avenue, Rockville, Maryland, it's successors and assigns (hereinafter referred to as the "Academy").

WHEREAS, the County is the owner of 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 (the "Property"); and

WHEREAS, the County intends to convey the Property to the Academy; and,

WHEREAS, as part of the consideration for the transfer of the Property to the Academy, the Academy agrees to subject the Property to certain covenants for the benefit of Montgomery County, Maryland, in its capacity as a government; and,

WITNESSETH:

The Academy, with full authority to execute deeds, mortgages, other covenants, and other rights, titles, and interest in real property owned by the Academy, does hereby covenant to the benefit of Montgomery County, Maryland, as follows:

COVENANTS:

1. COMMUNITY USE:

A. The Academy shall make certain facilities on and within the Property available for continuing use by the community on an "as available" basis. These facilities are the (currently existing or any single replacement, but not future additional) Gymnasium and Auditorium within the building, as well as the outdoor athletic fields that are part of the Property. These facilities will be made available for use by the public on the terms set forth in this Declaration and as will be further set out in a memorandum of understanding to be negotiated and mutually agreed between the Academy and the Montgomery County Office of Community Use of Public Facilities ("CUPF"). The parties contemplate that such memorandum will conform in general concept with the guidelines and regulations for community use of public schools, published by the Montgomery County Community Use of Schools Program, as established by the Montgomery County Code 1994, as amended, Chapter 44, Article I, School Facilities Utilization Act and may be updated annually or otherwise as the parties mutually may agree. The parties also understand that such arrangement shall include (but not be limited to) the following provisions:

(i) The Gymnasium and the Auditorium will be made available only on a scheduled basis, and at times when such community use will not interfere with the Academy's use.

(ii) The Academy shall be identified in any facility use license or similar agreement as an indemnitee, and the CUPF either shall require all users not covered under the County's self-insurance fund ("SIF") to maintain insurance to cover such use that identifies the Academy and the County as additional named insureds, or shall stipulate that as to those covered under SIF that the County's self-insurance (including its coverage, notice, and other limitations and requirements including, without limitation, the Maryland Tort Claims Act) will cover those uses by the County or County agencies. Provided further that nothing contained herein shall be

construed as a waiver of the County's sovereign immunity nor create any rights in any third parties.

(iii) Users of the facility will be responsible for the Academy's costs not already being incurred by the Academy for building operation and personnel incurred in connection with such use and for compliance with parking regulations. Although the CUPF use program may contemplate the potential rental of additional equipment associated with use of the Gymnasium and the Auditorium and establish a rental schedule for such equipment, the parties understand that such rentals are not required under this Declaration and are to be at the Academy's sole discretion and at such rates as may be established by the Academy, provided, however, that equipment normally maintained and used with respect to, and located on the premises of, the outdoor recreational areas by the Academy shall be provided and maintained by the Academy for CUPF users at no cost.

(iv) In addition, the County recognizes the safety and security concerns associated with public access to the interior of the building, and accordingly, the Academy may require such security measures (or reimbursement for reasonable security expenditures required specifically and solely due to the permitted use) as it reasonably deems necessary for such purpose.

(v) The parties understand the religious character of the Academy and thus agree that no community use pursuant to this Declaration shall be permitted for the Gymnasium or Auditorium during the Jewish Sabbath and Jewish holidays.

- B. The Academy shall have the exclusive use of the outdoor recreational areas and athletic fields until 6:00 p.m. Monday through Thursday and until 3:30 p.m. on Friday. After those hours during the week and all day Saturday and Sunday, these outdoor areas will remain available, on a continuing basis, for use by the community subject to paragraph 1.A hereof. In the event the Academy requires the use of these areas during the times normally reserved for community use, the Academy will schedule such use with the CUPF.

C. The Academy may not materially alter the dimensions or character of the athletic fields, as generally depicted on Exhibit A attached hereto and incorporated as if fully set forth in this Declaration of Covenants, without notifying and obtaining the written approval of the County. Notice of any change must be communicated in writing and accompanied by accurate drawings and plans of the proposed change. The County may grant, deny, or condition any requested change in the County's discretion; however, consent shall not be unreasonably withheld. Provided further however that the Academy may relocate the athletic fields to other locations on the property without the consent of the County provided that the relocated athletic fields retain substantially the same dimensions and characteristics of the athletic fields as generally depicted on Exhibit A; and can be used at least for the same purposes and in the same manner as existed at the time of the execution of these Covenants.

2. MAINTENANCE OF PROPERTY: The Academy shall, at its sole cost and expense, keep the Property in good repair at all times and shall maintain the property in a condition at least equal to similar private schools operated throughout the County. The Academy, except in the case of required repairs (the duration of which the Academy shall seek to minimize to the extent commercially practicable) shall maintain those facilities available for community use in such a condition as shall make them at all times available for, and not interfere with, the use of them by the public as provided for in the preceding Section 1.

3. INSURANCE: The Academy must obtain at its own cost and expense and keep in full force and effect at all times the following insurance coverages with an insurance company(ies) licensed to do business in the State of Maryland. The Academy must provide evidence of coverage by submitting a certificate of insurance and/or certified copies of the insurance policies to the County as reasonably requested by the County. The Academy's insurance shall be primary.

A. General Liability: Minimum One Million Dollars (\$1,000,000.00) combined single limit for bodily injury and property damage coverage per occurrence, including the following coverages: Contractual Liability; Premises and Operations; Independent Contractors; and Personal Injury Coverage.

- B. **Property Insurance:** The Academy shall also provide all risk property damage insurance for 100% of the value of the secular (non-religious) buildings and contents on the Property against all risks of direct physical loss or damage, including expenses of removal of debris of such property damage by an insured peril. The Property policy shall contain a 100% replacement cost endorsement, and shall cover demolition and clearing costs. The Academy shall make a claim for all covered damage to the Property or make such repairs with its own funds within the time prescribed in the Property insurance policy for the making of claims. All insurance proceeds received by the Academy as a result of any covered casualty must be used by the Academy solely for the purposes of repair and/or replacement of the property damaged by the covered casualty, unless otherwise agreed to in writing by the County. In the event that the Academy does not intend to use the Property policy proceeds to replace the claimed loss, then no claim on the Property policy shall be settled without the written approval of the County.
- C. **Additional Insured:** Montgomery County Government must be named as an additional named insured on all liability policies.
- D. **Policy Cancellation:** Forty-five (45) days written notice to the County of cancellation or material change of any of the policies is required.
- E. **Certificate Holder:** Montgomery County Government, Department of General Services, 101 Monroe Street, 9th Floor, Rockville, Maryland 20850.
4. **USE OF PROPERTY:** 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. The Academy 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 the Academy has first offered to sell the Property to the County 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 the County and the Academy dated March 29, 1996 (the "Lease"); and in accord with the terms and conditions of the Amendment regarding exercise of the County's Repurchase Right (as defined in the Amendment). The Academy agrees that it will be solely responsible for any and all governmental use or occupancy permits or any other permits or approvals necessary to establish and continue this use of the Property.

5. ABANDONMENT: If the Academy shall fail to use the Property as a school (an "Abandonment") for any consecutive one hundred and eighty (180) weekday period of time, unless such lack of use is attributable to renovations or restoration of the Property that would preclude use of the Property during such period of time and which renovations or restoration are at all times being duly and diligently pursued, the same shall be deemed an abandonment of the Property and shall entitle the County to proceed with any and all of its enforcement rights as provided in Section 9 of this Declaration and shall entitle the County, at the County's election (but the County shall not be required to do so), to reacquire the Property by exercising its Repurchase Right for the Repurchase Price (as those terms are defined in the Amendment).

ENFORCEMENT:

6. The covenants herein contained shall run with the Property and shall bind the Academy, its heirs, executors, administrators, successors, and assigns.
7. The Academy or its successors and/or assigns shall be permitted to modify, amend or restate this Declaration, provided the Academy has first obtained the prior written consent of the County to such modification, amendment or restatement, which consent may be granted, denied, or conditioned, in the County's sole discretion.
8. The rights and interests granted by this Declaration shall be of no force and effect unless and until the Academy first acquires fee simple ownership of the Property. This Declaration shall terminate and be of no further force and effect if the Academy does not acquire the Property from the County.

9. A violation of any of the provisions herein contained shall give to the County the right to bring proceedings in court against the party or parties violating or attempting to violate any of said covenants, conditions, restrictions, and reservations, to enjoin them from so doing, to cause any such violation to be remedied, and/or to recover damages resulting from such violation. Further, every act, omission to act, or condition which violates the provisions of this Declaration shall constitute a nuisance and every remedy available in law or in equity for the abatement of public or private nuisances shall be available for the abatement thereof, excepting any self-help remedies. Such remedies shall be cumulative and not exclusive of any and all other rights and remedies that the County may have at law or in equity for any violation of this Declaration, excepting only any self-help remedies.

10. The Academy, shall record, or shall cause this Declaration to be recorded, among the land records of Montgomery County simultaneously with the recordation of any deed conveying the Property to the Academy. All costs of recordation shall be paid by the Academy; and the Academy shall provide the County with a copy of the recorded Declaration as soon as the same is available from the Clerk of the Court.

SIGNATURE PAGE FOLLOWS

IN TESTIMONY WHEREOF the parties have hereunto set their hands and seals the day and date below written.

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: _____

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).

[SIGNATURE PAGE FOLLOWS]

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