

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Application of the Japanese Educational Institute
of New York,

Petitioner.

For an order approving the sale of assets pursuant to
N-PCL §§ 510 and 511

Index No.: 06-103400

Hon. Sheila Abdus-Salaam

**REPLY AFFIRMATION OF
DOUGLAS T. SCHWARZ**

REPLY AFFIRMATION OF DOUGLAS T. SCHWARZ IN SUPPORT OF
VERIFIED PETITION OF JAPANESE EDUCATIONAL INSTITUTE OF NEW YORK

DOUGLAS T. SCHWARZ, an attorney admitted to practice law in the State of
New York, hereby affirms the truth of the following under penalty of perjury.

1. I am a member of the law firm of Bingham McCutchen LLP, attorneys for
Petitioner, the Japanese Educational Institute of New York (“JEI” or “Petitioner”) and as
such I am fully familiar with the facts described herein. I submit this affirmation in
response to the Surreply Affirmation Of Arthur R. Block In Opposition To The Petition
And In Support Of Objections Of The Japanese School Of New York PTA (“PTA
Surreply Aff.”), and in further support of JEI’s Verified Petition for an order authorizing
the sale of its property located at 270 Lake Avenue, Greenwich, Connecticut (the
“Greenwich property”) pursuant to New York Not-for-Profit Corporation Law §§ 510
and 511.

Introduction

2. JEI submits this affirmation to address two issues about which the Court
indicated interest in its telephone conference call with counsel on Monday April 24,

2006, and to address several incorrect representations in the PTA Surreply Aff.¹ The Court inquired about whether the value of the leaseback might be undermined by the possibility that JEI could leave the Greenwich property before realizing the economic benefit of the Lease and Sharing Agreement (the “Lease”) (the Lease is Exhibit B-1 to the Agreement of Sale, which is Exhibit D to the Verified Petition). In particular, the Court noted that on March 24, 2004, JEI resolved to postpone unification of the New Jersey Japanese School and the Greenwich Japanese School (“GJS”) for three to five years, leaving the possibility that it might decide to move from GJS before the end of the Lease. As set forth below and in the Resolution of Executive Committee of Board of Trustees of JEI (the “Resolution”), Exhibit A hereto, the March 24, 2004 resolution was decided before JEI had negotiated the extremely favorable sale and eight-year leaseback transaction. JEI has now clarified that it has no intention of leaving the Greenwich property before the end of the eight-year Lease unless it locates an alternative that both furthers the educational purpose of JEI and is economically more valuable than the remaining value of the Lease.

3. The Court also inquired as to whether any consideration had been given to providing in advance for the possibility that WFHA might want to buy out JEI’s right to remain on the Greenwich property at a below market rent for eight years. JEI and WFHA have now addressed that issue. WFHA has offered and JEI has agreed to accept WFHA’s offer to pay JEI an additional \$1 million per year, up to \$3 million, if for any reason JEI decides to leave during the last three years of the Lease. With respect to JEI’s responses

¹ JEI replies today only to those issues raised by the Court and in the PTA Surreply Aff. JEI has objected to the Court accepting any additional papers from the PTA. To the extent that the Court accepts additional papers from the PTA, JEI requests the opportunity to reply, consistent with its right as petitioner to open and close the record.

to the PTA Surreply Aff., as set forth below, JEI's analysis of the value of the leaseback is correct; the Fair Market Value of the Greenwich property is not \$26.8 million; and the record shows that, far from the sale and leaseback transaction being a "sweetheart deal" for WFHA, JEI, through its commercial real estate broker, negotiated an extraordinarily favorable deal for itself.

4. Before addressing these issues, however, JEI responds briefly to the PTA's wholly unsupportable claim that JEI withheld information from the Attorney General and this Court. JEI did not withhold anything. It is at best a sharp practice for the PTA's counsel to claim that it did. JEI fully and accurately stated to the Attorney General and the State Education Department the basis for and substance of all of its actions in connection with the sale and leaseback transaction. JEI responded to every request for further information the Attorney General and State Education Department made. A copy of my letter of February 21, 2006 to Gerald A. Rosenberg, Chief of the Attorney General's Charities Bureau, is attached hereto as Exhibit B (I contemporaneously sent a copy of the letter to Kathy A. Ahearn, Esq., Deputy Commissioner for Legal Affairs for the New York State Education Department.) The fact that JEI provided detailed summaries and descriptions of the basis for its actions and only provided additional documentation when challenged -- without basis -- by the PTA in this Court, is completely proper. JEI was never asked for, nor was it under any obligation to provide, additional documentation for its actions, all of which were fully justified. And it has fully supported in this Court every claim it summarized. As has been the case throughout this process, when the PTA has no substantive argument to make, it impugns the integrity and the motives of JEI. At the end of the day, however, as

will be shown again below, the PTA's innuendo and claims of conspiracy are empty of substance.²

JEI Intends To Remain On The Greenwich Property

5. In response to the Court's question regarding JEI's intention to remain on the Greenwich property, JEI's Executive Committee adopted the Resolution attached hereto as Exhibit A.³ The Resolution makes clear that the Board's March 24, 2004 resolution regarding postponing unification of the New Jersey and Greenwich schools for three to five years was made before JEI negotiated the extremely favorable eight-year leaseback. While subsequent Board action, including the November 29, 2005 vote to approve the terms of the sale and leaseback transaction with WFHA, indicated JEI's intention to utilize the eight-year leaseback period, the Resolution expressly states that GJS will remain on the Greenwich property through the end of the eight-year leaseback agreement with the WFHA unless the Board identifies an alternative that is educationally sound and more valuable than the remaining value of the lease with WFHA. JEI has not only the intention but the right to remain on the Greenwich property for eight years⁴ with

² As just one example of the PTA's lack of candor with this Court, the PTA has repeatedly asserted that JEI did not notify the parents for a year after March 2004 that it intended to seek a sale and leaseback transaction for the Greenwich property. *See, e.g.*, PTA Surreply Aff. ¶ 10. JEI attaches as Exhibit C hereto a copy of a letter dated March 29, 2004 from then JEI President Sakamoto to the GJS parents. Contrary to the PTA's assertion, the letter clearly states that the Trustees are pursuing a transaction for the Greenwich property "whereby the facility is sold to a third party first and then leased back for a certain period (3 - 5 years)." The letter contains a second reference to the "sales price and the terms of the lease for 3-5 years." It is simply false, therefore, for the PTA to state that it was kept secret from them for a year that the Greenwich property was being put on the market.

³ As the Resolution details, the Executive Board enacted the Resolution because there was inadequate time for the full Board of Trustees to meet prior to the Court's filing deadline of today.

⁴ The term of JEI's Lease is until March 31, 2011, Lease, § 1.02, and JEI has a unilateral right to extend the Lease to March 31, 2014, Lease, § 20.01.

up to 250 students⁵ – which is a higher enrollment than JEI has had in more than four years.

WFHA Will Pay JEI Up To \$3 Million If JEI Leaves
For Any Reason During The Last Three Years Of The Lease

6. In response to the Court's inquiry as to whether any consideration was given to a buyout of JEI's rights under the Lease if WFHA were to ask JEI to leave before the end of eight years, WFHA and JEI have addressed the issue. WFHA has offered additional consideration such that if JEI elects to leave the Greenwich property *for any reason* during the last three years of the leaseback period, WFHA will pay JEI \$1 million for each such year that JEI does not use the campus. *See* Affidavit of Marc Schulman, attached hereto as Exhibit D, ¶¶ 3,8. JEI has resolved to take all actions necessary to accept the offer. *See* Resolution, attached hereto as Exhibit A.

7. This addition to the leaseback agreement, which permits JEI to leave at any time during the last three years of the leaseback and receive \$1 million per year from WFHA if it does so, provides further evidence that the full value of the eight-year leaseback is indeed the approximately \$8 million set forth in the Affidavit of Bernard Katz.

JEI's Analysis Of The Value Of The Leaseback Is Correct

8. At paragraphs 34 through 41 of the PTA Surreply Aff., the PTA argues that JEI's analysis and conclusion that the value of the Lease is \$7,945,783 is "deeply

⁵ JEI has the right to have up to 250 students during the entire eight-year leaseback period. Lease, Schedule B(13). Because zoning restrictions, with which WFHA is bound to comply, Lease, § 4.01, limit the total number of students to 450, WFHA can have no more than 200 students unless JEI agrees otherwise.

flawed.” The PTA’s attack on the leaseback valuation is erroneous. (The PTA does not attempt to place a value on the leaseback.)

9. Mr. Kerin’s first comment, quoted by Mr. Block in paragraph 36 of the PTA Surreply Aff., indicates that Mr. Kerin does not understand JEI’s analysis of the value of the leaseback. Mr. Kerin says the valuation is flawed because school property cannot be leased as office space; he has it backwards. JEI is not suggesting that the school be leased as office space. JEI’s analysis assumes the sale of the Greenwich property for cash, which would require JEI to find other property on which to operate the school. The value of the Lease is and must be nothing short of the difference between what JEI would have to pay if it sold the Greenwich property without a leaseback and rented in the open market, and what JEI’s fixed rent is under the Lease. This is precisely the analysis performed by Mr. Katz.

10. Next, still in paragraph 36, Mr. Kerin contends that JEI should have looked at “comparable school space” instead of surveying office space. Again, Mr. Kerin is wrong, this time for two reasons. First, the best indicator of the market value of a property is what someone is actually willing to pay for it. JEI had an actual unsolicited first offer from the British Schools of America LLC to pay \$25 per square foot plus operating expenses for space on the Greenwich campus. Affidavit of Emil F. Jachmann, Exhibit M. This was only an unsolicited first offer and could have been negotiated by JEI upward from \$25 per square foot plus operating expenses. Thus the estimate of \$27.98 per square foot that Cushman & Wakefield arrived at for what JEI would have to pay for comparable property in or near Greenwich -- which leads directly to the

\$7,945,783 valuation of the leaseback -- is right on target, as proven by the PTA's own document.

11. Second, Mr. Kerin's suggestion to look at leases for "comparable school space" does not comport with the reality that there is no comparable school space on the market. Just as was the case in his appraisal, Mr. Kerin is not addressing the realities of the market. Cushman & Wakefield looked at available properties that would meet JEI's need for approximately 51,000 square feet of contiguous space within approximately 10 miles of Greenwich. The 37 properties Cushman & Wakefield considered are the only available properties that Cushman & Wakefield located as of the date of its report.⁶ Cushman & Wakefield considered all classes of office space (A, B, and C). It is not at all unusual for a school to take former office space, particularly Class B or C space, and convert it to school space. Thus Cushman & Wakefield's conclusion regarding an average rent of \$27.98 per square foot is an accurate basis for determining the value of the Lease to JEI.

12. In paragraph 37 of the PTA Surreply Aff., Mr. Kerin argues that Mr. Katz should have used a higher discount rate to calculate the present value to JEI of the leaseback. Mr. Kerin's argument again indicates that he misunderstands the analysis. The Katz analysis identifies the present value of the lease by first calculating for each year of the Lease the difference between what JEI would have to pay if it sold the Greenwich property without a leaseback and rented in the open market (\$27.98 per

⁶ To determine the average price per square foot, the Cushman and Wakefield Report did not rely upon the average price per square foot of the thirty-seven available properties, but rather the average price per square foot of the middle thirteen properties. The price per square foot of the thirty-seven properties is \$29.19 per square foot, in contrast to the more conservative \$27.98 per square foot of the middle thirteen properties, upon which JEI relied for its valuation of the leaseback. Moreover, if JEI limited its analysis to properties in Greenwich, the cost per square foot would be \$33.98 Katz Aff., ¶¶ 9, 12 & Exhibit B.

square foot), and JEI's fixed rent under the Lease. Reply Affidavit of Bernard Katz in Further Support of JEI's Verified Petition, ¶ 5.

13. The total eight-year cost saving created for JEI by the Leaseback, in real dollars, is \$9,672,942. Katz Reply Aff., ¶ 5. Because JEI will not have the benefit of those savings until the year the money is actually saved (up through the eighth year of the Lease), and money saved later is worth less than money saved today, Mr. Katz applied a discount rate to calculate the value of the Lease in today's dollars -- the Net Present Value ("NPV") -- in order to conservatively value the \$9,672,947 in savings from the Lease. Katz Reply Aff., ¶ 6. To make that calculation, Mr. Katz used a 4.50% annual rate of interest, which was the rate on the 10-year United States Treasury Note as of the date of the Agreement of Sale between JEI and WFHA. Katz Reply Aff., ¶ 7.

14. Mr. Katz used the 4.50% Treasury Note rate because the present value of the annual cost savings represents the amount that JEI would have to invest today to enable it to pay the additional market rent costs over and above the costs of the fixed rent under the Lease over the eight-year time horizon. Katz Supp. Aff., ¶ 8. In making such an investment, the Trustees would have to be conservative, prudent investors. *Id.*

15. The PTA's suggestion that a higher discount rate is appropriate, again, is out of touch with reality. JEI must invest conservatively and has not and would not in the future invest in high risk investment vehicles. Even if Mr. Katz increased the interest rate by .50% (an interest rate increase of over 10%), the effect on the NPV is negligible. With a 5.0% interest rate, the NPV decreases by only \$163,000, to \$7.78 million. Katz Reply Aff., ¶ 9.

16. To the extent the PTA is suggesting that JEI's rent obligation is riskier than U.S. government securities, that is also incorrect. Mr. Kerin's reference to our "rental stream" suggests that he misunderstands that the proper analysis considers the savings on rent being *paid by* JEI, not rent coming into JEI. This is not surprising because it is impossible for the PTA to argue with the fact that the rent JEI will pay for the next eight years is essentially guaranteed under the lease, and therefore the cost savings to JEI is no riskier than the Treasury Note. What is more, with WFHA's \$3 million cash buyout guarantee providing even more certainty to the value JEI will receive under the Lease, it would be reasonable to use an even lower interest rate, which would raise the net present value of the lease *higher* than \$7.945 million. Katz Reply. Aff., ¶ 10.

17. In paragraphs 38-40 of the PTA Surreply Aff., the PTA makes the entirely unsupported and tortured argument that the proper way to value the leaseback transaction is by looking not at its value to the seller, but at its value to the buyer. The PTA cites no law for this proposition and with good reason: the statute itself makes clear that the proper examination is of the value of the transaction to the not-for-profit corporation that is selling the property.

If it shall appear, to the satisfaction of the court, that the consideration and terms of the transaction are fair and reasonable *to the corporation . . .*, it may authorize the sale . . . for such consideration and upon such terms as the court may prescribe.

N-PCL § 511(d)(emphasis added). It is beyond doubt that the correct analysis under the statute is the fairness and reasonableness of the transaction *to JEI*.

18. Even assuming for the moment that the PTA's argument is made based on a concern about value to JEI (as opposed to being merely another effort to obstruct the transaction), the British Schools offer shows that the property is every bit as valuable to

WFHA as it is to JEI. This is true because the WFHA could take all that empty space the PTA refers to in paragraph 40⁷ and lease it to another school for more than the British School's unsolicited first offer of \$25 per square foot plus operating expenses. Thus, despite the fact that the PTA's analysis is wrong (because it is perfectly appropriate to value the transaction from the perspective of the seller), even looking at the transaction from the PTA's perspective the value is at or close to \$8 million.

19. One additional point is important regarding the PTA's attack on the value of the leaseback. Under the Lease, WFHA has the financial obligation for nearly all of the repairs, maintenance, and capital improvements to the aging Greenwich property. *See, e.g., Lease, §§. 2.01(h), 7.02.* This obligation of WFHA is of tremendous value to JEI, because there is substantial work that must be done on the property. Verified Petition, ¶ 52. Because of its limited resources, JEI negotiated for -- and won -- freedom from responsibility for the cost of repairs, maintenance, and capital improvements. These are expenditures that, absent the sale and leaseback transaction, JEI would have to incur sooner or later -- certainly within the next eight years -- and they thus reflect another substantial saving, the most recent estimate of which, as set forth in the Schulman Aff., ¶¶ 11-12, is more than \$2 million.

The Fair Market Value Of The Property Is Not \$26.8 Million

20. In the PTA Surreply Aff., the PTA incorrectly refers to the campus as a "\$26.8 million" property. PTA Surreply Aff., ¶ 39. The PTA's only basis for this

⁷ Paragraph 40 twice takes the position that is the exact opposite of the position the PTA has taken elsewhere in this proceeding. First, having previously argued that the WFHA is champing at the bit to grow and remove JEI from the space, the PTA here argues that the WFHA is small and unlikely to grow, hence having a tenant in place is of great value to it. Second, having previously argued that the campus is a palace, worth millions more than JEI's appraisal, the PTA here argues that the space does not even have air conditioning and cannot be worth much as a rental property.

statement is the appraisal it commissioned, but the PTA's appraisal is significantly flawed for a number of reasons. First, in valuing the property, the PTA's appraiser stated his opinion that the highest and best use of the property is as a private school⁸ and that no alternate use would yield a higher valuation. However, in valuing the buildings, as school buildings he did not take into account their actual condition. In fact, his appraisal states that virtually all of the school's buildings are in "good" condition. As noted above, there is serious deterioration to the physical plant (Verified Petition, ¶ 52), which WFHA will need to address at substantial expense.

21. In addition, in discounting his valuation of the campus with respect to the Greenwich zoning requirements, the neighbors' restrictive covenants, and the campus's registry on the National Historic Register, the PTA's appraiser dealt only with one restriction: the zoning limitation as to the number of students. He applied not one penny of discount as to other restrictions such as: the limitation of grade levels to first through ninth; the fact that 90% of the students must be transported to school by bus; a maximum of 30 cars can transport faculty; no classes are allowed on evenings or Saturday or Sunday or during summer recess; and no change of the footprint of the building is permitted. *See* Verified Petition, ¶¶ 25, 30. In summary, based on the PTA's appraiser's failure to discount his valuation for serious campus deterioration and for the numerous restrictions on the use of the property, his appraisal of \$26.8 million highly overstates the fair market value of the property.

⁸ The PTA's appraiser's conclusion that the best use of the property is as a private school flies in the face of the PTA's argument that the property should have been marketed for usages "other than a private elementary or secondary school." *Jachmann Aff.*, ¶ 77.

The Record Shows The Opposite Of A Sweetheart Deal For WFHA

22. In the PTA Surreply Aff., ¶¶ 12-33, the PTA tries unsuccessfully to support its claim that the correspondence of JEI's real estate broker somehow shows that JEI intentionally avoided a better deal it could have had with the Stanwich School. Far from a "smoking gun," however, the PTA's analysis is just smoke. And when the smoke clears, the Robertson correspondence shows JEI's diligent and ultimately successful efforts to increase the value of the transaction to JEI and to reach an agreement with WFHA that is extraordinarily favorable to JEI.

23. The PTA first suggests that the Stanwich offer of February 5, 2004 was somehow competitive with the WFHA offer of the same date. Examination of the letters shows, however, that the WFHA offer was not only \$500,000 greater than Stanwich's offer, but the WFHA offer included a five-year leaseback provision, allowing GJS students to remain on their current campus for years to come, while Stanwich's offer vaguely suggested a relocation of GJS to Stanwich's property. Robertson Aff., Exhibits E and F.

24. Despite the fact that Stanwich did not offer a leaseback and contrary to the PTA's assertion, JEI did not cut off negotiations with Stanwich. Rather, Mr. Robertson wrote to Stanwich's broker on June 4, 2004 and told him JEI was interested in a proposal that included a sale and leaseback. Robertson Aff., Exhibit G. After further negotiation with WFHA, Mr. Robertson again wrote to Stanwich's broker on November 19, 2004. Robertson Aff., Exhibit I. The PTA characterizes this letter as containing "very onerous provisions that were not required of WFHA" PTA Surreply Aff., ¶ 23. The fact is that by November 19, 2004, JEI already had a very good offer from WFHA, including

\$20 million cash, an eight-year leaseback, use of more than 50% of the campus, and an extremely low occupancy cost. Robertson Aff., ¶¶ 23-24. Mr. Robertson was plainly, and reasonably, asking Stanwich's broker for better terms than what JEI already had from WFHA. Such a request is completely consistent with the actions of a broker trying to obtain the highest sale price for his client. If Mr. Robertson was trying to brush Stanwich off, why would he include his detailed travel schedule and his international telephone number? Robertson Aff., Exhibit I.

25. The fact is JEI was not trying to brush Stanwich off; Stanwich was not interested in a leaseback. There is no other way to explain the fact that Mr. Robertson asked in two separate letters, which appear to reference other, interim communications, for a proposal including a leaseback, but Stanwich did not make one.

26. In describing the February and March 2005 letters from Stanwich, the PTA neglects to mention two key facts, which would explain the nature of the response JEI gave to Stanwich. First, JEI had concluded an agreement in principle with the WFHA, which was scheduled to close by March 31, 2005. Second, the letters followed very shortly the destruction by arson of a significant building on JEI's campus. Moreover, Mr. Robertson's assumption that Stanwich's offer included rent was entirely reasonable, because when he had written to Stanwich on November 19 and asked for a response to a proposal whereby JEI would not be obligated for any rent during the lease period, Stanwich never responded.

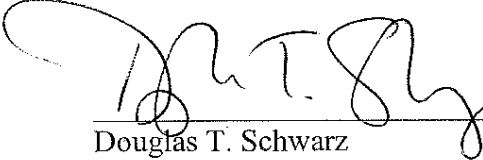
27. But again, Mr. Robertson made clear that the door was open to another proposal from Stanwich. Robertson Aff., Exhibit M. Mr. Robertson's letter was candid

about JEI being very far along in a process with WFHA, about the fact that JEI needed a leaseback that was longer than the four years Stanwich had proposed, and about the total value of JEI's existing proposal from WFHA being greater than Stanwich's proposal, id., which is consistent with his assumption that the proposal included a market rent.

Conclusion

For the foregoing reasons, as well as those set forth in the Verified Petition and in the affirmation and affidavits previously filed, Petitioner JEI respectfully requests leave of this Court to carry out the sale and leaseback described in the Verified Petition and for that purpose to execute any and all deeds necessary and all other relief that is just and proper.

Dated: May 1, 2006
New York, New York



Douglas T. Schwarz


EXHIBIT A

**Certificate of Executive Secretary
of Japanese Educational Institute of New York**

The undersigned, in his capacity as the duly appointed and acting President of Japanese Educational Institute of New York ("JEI"), does hereby certify in connection with a Petition of JEI to the New York Supreme Court pursuant to Section 511 of the Not-for-Profit Corporation Law as follows:

Attached hereto is a Resolution of the Executive Committee of the Board of Trustees of JEI dated May 1, 2006, and as of the date hereof such resolution has not been amended or modified and is in full force and effect.

IN WITNESS WHEREOF, the undersigned has signed this Certificate on May 1, 2006.



Kyota Omori
President

Resolution of Executive Committee of Board of Trustees of JEI

Upon motion duly made, seconded and carried, the Executive Committee of the Board of Trustees of the Japanese Educational Institute of New York ("JEI"), by a vote of 11 in favor, 0 opposed and 1 abstention, resolved to approve the following matters and the taking of actions contemplated thereby:

1. In reviewing JEI's petition for approval of the sale and leaseback transaction with the Westchester Fairfield Hebrew Academy ("WFHA"), the Court has raised a question regarding JEI's intention with respect to the timing of any move of the Greenwich Japanese School from the current campus in Greenwich. Although it is impossible to schedule a meeting of the full Board in time to comply with the Court's filing deadline of May 1, 2006, this resolution is intended to clarify for the Court what the Board's intention is and has been on the issue.
2. On March 24, 2004, in light of sharply declining enrollment and revenues, the Board resolved to postpone unification of the New Jersey and Greenwich Japanese Schools for three to five years and start negotiation for a sale and leaseback of the Greenwich Japanese School.
3. Subsequently, JEI was able to negotiate, subject to approval by the Court, a sale price of \$20 million and a guaranteed leaseback of eight years, using essentially all of the space the Greenwich Japanese School currently uses, at a rent that is drastically below market and is manageable in JEI's current financial condition, assuming enrollment does not further substantially decline. In addition, JEI will have removed the fiscal uncertainties associated with the very high potential costs of repairs to or replacement of the physical structures and equipment on the campus. JEI will have the cash proceeds of the sale to invest and use to secure a new facility of appropriate size.
4. On April 30, 2006, WFHA offered to revise the Lease and Sharing Agreement between WFHA and JEI to provide that WFHA shall pay JEI the sum of \$1 million per year if, for any reason, JEI leaves the campus before the sixth, seventh, and/or eighth years of the lease. JEI shall take any and all actions necessary to accept that offer.
5. For the foregoing reasons, it is hereby resolved that if the Court approves the transaction with WFHA, the Greenwich Japanese School will remain on the current Greenwich campus through the end of the eight-year leaseback agreement with WFHA, unless the Board identifies an alternative that is educationally sound and more valuable than the remaining value of the lease with WFHA, when combined with any remuneration to which JEI is or may become entitled for an early departure under the lease with WFHA.

EXHIBIT B

Douglas T. Schwarz
Direct Phone: (212) 705-7437
Direct Fax: (212) 508-1462
douglas.schwarz@bingham.com

February 21, 2006

VIA FEDERAL EXPRESS

Bingham McCutchen LLP
399 Park Avenue
New York, NY
10022-4689

212.705.7000
212.752.5378 fax

bingham.com

Gerald A. Rosenberg, Chief
Charities Bureau
New York State Department of Law
120 Broadway, 3rd Floor
New York, NY 10271
Attn: Ms. Barbara Zuckerman

**Re: Petition for Leave to Sell The Japanese Educational
Institute of New York's Greenwich Property**

Dear Mr. Rosenberg:

This letter constitutes the response of the Japanese Educational Institute of New York (JEI) to the objections described below to JEI's proposed sale and leaseback transaction with the Westchester Fairfield Hebrew Academy (WFHA) for JEI's property in Greenwich, Connecticut. The original Verified Petition was submitted to your office on December 30, 2005. The objections are contained in a letter to you dated January 17, 2006 from Arthur R. Block on behalf of the PTA of the Greenwich Japanese School (PTA) and the accompanying affidavit of Emil F. Jachmann.

As explained in the Verified Petition, JEI must enter into the sale and leaseback transaction because sharply declining enrollment at JEI's Greenwich Japanese School (GJS) has resulted in underutilization of its campus and a serious financial drain on the resources of GJS and JEI as a whole. In this letter, we address the objections raised by the PTA and show how the proposed transaction is fair and reasonable and will enable JEI to properly deploy its assets to avoid a financial crisis and promote its charitable purpose of educating Japanese-speaking students in both the short and long terms.

The problem faced by the JEI Board was how to preserve the future of JEI by stemming the losses caused by demographics -- the long-term and apparently irreversible decline in enrollment at all its schools -- and physics -- the cost of maintaining the large, and largely empty, physically aging Greenwich facility. After extensive research and deliberation, the Board decided to sell the Greenwich property, while leasing it back for an extended period (eight years) during which the students would have a stable learning environment as the Board made and implemented plans to create an educationally supportive and cost-efficient 21st century educational facility. Some parents of GJS students are upset that change is coming, but they do not offer -- indeed they cannot offer -- a viable alternative to the Board's carefully considered plan of action to protect not only the current students at GJS but future generations of all JEI students.

Boston
Hartford
London
Los Angeles
New York
Orange County
San Francisco
Silicon Valley
Tokyo
Walnut Creek
Washington

1. The Transaction as a Whole is Fair And Reasonable.

The proposed sale-and-leaseback transaction is the keystone of the JEI Board's plan to place GJS and the other JEI schools on firm financial footing for the years ahead. It does so by maximizing the value that JEI could obtain for a valuable asset -- its Greenwich campus, so as to protect its most valuable asset -- the learning community comprised of JEI students and teachers. Indeed, one of the JEI Board's two obligations is to ensure that the transaction, including the consideration and the additional terms of the transaction, is fair and reasonable to the corporation. N-PCL § 511(d). As the Verified Petition makes clear, the sale and leaseback transaction with the WFHA fully meets or exceeds this standard in that JEI will receive \$20 million in cash and extremely favorable eight-year lease provisions valued at well over \$5 million, which meet or exceed even the purported fair market value of the property claimed in the objections. The transaction provides the added value of an eight-year period for GJS to remain on the Greenwich campus while JEI identifies and prepares a new facility of appropriate size. A robust sales process, followed by a careful negotiation of terms highly favorable to JEI, all guided by the JEI Board, have insured an optimal outcome for the JEI and the GJS community. Mr. Jachmann's objections callously dismiss the extensive marketing and negotiation process and the extent of the value conferred by the transaction on the JEI, and instead rely on two deeply flawed and misleading measures of value to attack a very beneficial transaction.

A. The Property Was Properly And Thoroughly Marketed. Despite Mr. Jachmann's allegations to the contrary, the property was carefully and properly marketed and the terms of the sale and leaseback agreement were thoroughly negotiated by JEI. As a result of the unfortunate series of events described below, there was then an unusually long period between the date an agreement in principle was reached (December 2004) and the date that agreement was reduced to writing (December 2005). Notwithstanding this lengthy delay, the transaction continues to have great value for JEI.

As indicated in the Verified Petition at page 9, paragraph 22, JEI began to consider a sale of the Greenwich property in 2002. Through its experienced, independent real estate broker, JEI made it known to brokers and developers that JEI might be willing to sell the property and identified a number of potentially interested buyers. JEI's broker determined that the most likely buyer would be a school, because it could best take advantage of property given its significant zoning restrictions (described further in the Verified Petition and below). Although it received one proposal of \$12 million in this time period, JEI did not receive an acceptable offer for the property before determining, in March 2004, to seek a transaction whereby JEI would sell the property on the condition that it retain the ability to continue to use it as a school for an extended period during which it could assess JEI's needs and locate an appropriate facility.

Through its broker, JEI then let it be known that it was looking for a buyer willing to enter into a specialized transaction. JEI's broker received inquiries from many parties and pursued discussions with at least seven interested parties, with WFHA being the most serious prospective buyer. In early to mid-2004, JEI's broker had meetings with various schools, all of which rejected any transaction that involved a leaseback.

The Verified Petition at page 14, paragraph 38, describes the process by which, by December 2004, JEI had negotiated with WFHA a sale price of \$20 million, together with an eight-year leaseback. The parties planned to close the transaction by March 31, 2005 and JEI's broker engaged in no further marketing of the property. Then an unfortunate series of events began, which substantially delayed completion of the transaction. Anonymous complaints regarding alleged employee misconduct and opposition to the transaction were followed by a suspicious fire on the Greenwich property. Time spent investigating and responding to these matters slowed down the negotiation process with the WFHA.

Then, although the Board had informed the entire school community in March 2004 of the Board's decision that it was necessary to seek a sale and leaseback transaction, and the PTA had not objected to that decision, commencing in March 2005 and continuing through November 2005, the PTA expressed its strong opposition to the transaction. The Board met with the PTA on numerous occasions to exchange information and opinions. The Board prepared and provided many pages of written description, explanation and documentation regarding the reasons the transaction is necessary. The Board's substantial efforts to address the issues raised by the PTA delayed the documentation of the transaction considerably, such that the Agreement of Sale was not executed until December 2005.

It is in this context that questions arose regarding the motivations of some members of the PTA in opposing the sale and leaseback with WFHA, and led to allegations of anti-Semitism and the threat of a civil rights lawsuit by WFHA that the PTA describes in its papers. The Board has been clear from the beginning that neither it, nor the broader JEI community, harbors anti-Semitic views and that this transaction is in the best interests of all of JEI's stakeholders. Nonetheless, the rancor that developed over the question of anti-Semitism further delayed the process of negotiating the transaction.

B. No Competing Offer Matched The Total Value of The Sale-And-Leaseback Transaction. During this period, as more fully described in the Verified Petition at 13-15, ¶¶ 35-39, JEI received no competing offers that matched the value of the sale and leaseback transaction with WFHA. The value of the leaseback in terms of favorable rent is \$5 million, as JEI makes clear in its Verified Petition at 19-20, ¶¶ 49-51. Add to that an additional saving of several million dollars because JEI will not have to pay for repair and renovation costs, except in very limited instances, during the life of the lease, and the entire value of the sale and leaseback transaction to JEI is well over \$25 million.

Mr. Jachmann appears to contest the fact that the value of the leaseback portion of the sale transaction is far in excess of \$5 million over the first eight years of the lease. His principal contention is that it is unlikely JEI will continue to operate GJS on the Greenwich campus for the full eight years to which it is entitled under the lease. In addition to the fact that Mr. Jachmann's contention is pure speculation, the lease gives JEI the *right* to use the premises at a predetermined rent, which means the value of the lease can be established.

Mr. Jachmann also challenges the value of the lease based on his claim that, because the base rent is similar to what JEI places on its books as the internal rent charge for GJS, it must not be such a bargain. This contention is also flawed. In fact, under the sale and leaseback transaction, JEI will pay as rent only a portion of operating costs, without the usual profit margin added by a landlord. It is no accident that the base rent for JEI under the lease is similar to the internal rent charged to GJS in JEI's financial statements. Both are extraordinary bargains. The internal rent, like the rent under the leaseback, is actually quite low, because it includes no profit. (If JEI attributed a market rent charge to GJS on its books, the portion of its deficit attributable to GJS would be even greater.)

Mr. Jachmann says nothing about JEI's vast savings under the lease of the several million dollars in repair and renovation costs it would otherwise have to pay. WFHA estimates that it will have to spend millions of dollars to make the aging campus buildings useful for the foreseeable future by correcting such problems as long term water and moisture infiltration that has caused rot and decay of the structural elements of many buildings, as well as mold, mildew and insect infestations. Through the sale and leaseback transaction, JEI is saved those costs, which it would otherwise be forced to incur despite its declining student base.

Further, Mr. Jachmann does not and cannot contest that for JEI to obtain space comparable to what it has now, on the open market it would have to pay approximately \$25 per square foot (which also happens to be the rent that the WCLS British Schools Group offered). At that rent, the value of the rent reduction in the sale and leaseback is at least \$5 million. Adding the several-million-dollar value of the repair and renovation cost savings, the value of the transaction is far in excess of even the differences between the \$20 million sale price and the unsubstantiated higher appraisal and assessment numbers to which Mr. Jachmann refers.

Finally, one of the greatest sources of value in the lease transaction is that JEI does not have to bear any imputed finance charge for use of the campus. As owner of the campus, WFHA will tie up \$20 million in equity and debt resources to purchase the property, not counting the costs for renovation and repair of the aging buildings. The commonly accepted interest rate for debt used to finance such a property is eight per cent. Given that JEI will continue to occupy approximately 62 per cent of the campus during the lease period, its imputed savings from not having to pay for the financial costs of owning the campus is \$992,000 per year ($\$20,000,000 * 8\% * 62\%$), assuming the property was financed solely from debt.

C. There is Great Non-Economic Value in The Sale-And-Leaseback Transaction. Ironically, Mr. Jachmann completely fails to address the great, if difficult to quantify, value of the continuity provided by the eight-year leaseback. In structuring a sales transaction for the Greenwich property, the JEI Board was acutely aware of the importance to GJS families of providing for an orderly transition to a new facility. The Board therefore sought and obtained substantial value for the corporation in the ability to remain on the Greenwich campus for an extended period while identifying and preparing such a facility. In addition to its economic value as described above and in the Verified

Petition, therefore, the fact that the transaction enables an extended, orderly transition to a new facility adds tremendous value for JEI.

D. The Greenwich New Tax Assessment Provides No Meaningful Information. Mr. Jachmann's offhand dismissal of the benefits conferred by the transaction is matched by the slapdash manner in which he chooses to rely on completely inappropriate measures of the value of the Greenwich property. The Greenwich new tax assessment upon which Mr. Jachmann rests much of his argument does not represent the fair market value of JEI's property. Because JEI is exempt from paying property taxes, the reassessment has little significance to JEI. JEI is informed and believes, however, that there has been a storm of opposition in Greenwich to the reassessment notices, particularly by owners of large non-tax exempt properties, and some 1,700 property owners are challenging their reassessments as far greater than fair market value. JEI and WFHA are considering whether to challenge the assessment as well, although because the assessment will have no economic impact on either tax-exempt institution, they are unlikely to do so. Most significantly, the reassessment is of little or no value in determining the market value of the property. No information has been provided about the basis for the reassessment. On its face, the reassessment is indeed suspect. The document indicates that the zoning is "RA-2 Single Family 2 Acre" which does not reflect the actual restrictions on the property's use. It labels the land type as "Residential Land" which is also does not accurately reflect the restrictions on the property. The valuation shows a *decrease* in the value of the land from 2002 to 2005 of approximately 10% and an *increase* in the value of the (aging) improvements on the property of some 284% in three years, from just under \$10 million to \$23.6 million. These numbers are not explained and appear inexplicable.

E. The Jachmann Appraisal Incorrectly Inflates The Value of The Property. Meanwhile, the Kerin & Fazio Appraisal Report ("Jachmann Appraisal") submitted with Mr. Jachmann's affidavit contains numerous inaccuracies and arrives at a value greatly in excess of the market value of the property. As an initial example, in the Jachmann Appraisal the replacement cost estimates for many of the buildings use effective ages that are far lower than their actual ages, without sufficient basis for doing so. Thus, for example, the appraisal treats Twain Hall and the Arts and Science Building, both 85-year-old buildings, as equivalent to 15-year-old buildings. This error, applied in varying degrees to 15 different buildings, results in a substantial overvaluation of the property.

Second, in estimating the value of the land, the appraisal's estimate of development costs is far too low. The appraisal itself states:

Note that there is significant risk associated with [sic] approval process. The actual number of lots achievable on the subject property will not be known until engineering and testing is undertaken, and final subdivision approvals are obtained by the necessary Town agencies.

Jachmann Appraisal at 20. Acknowledging that no subdivision plan has been approved, the Jachmann Appraisal assumes a period for obtaining zoning approvals -- 9 months -- that is far too short. The actual time to obtain necessary zoning approvals (if they could

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be obtained at all) would be years, not months. And any decision by the relevant administrative agencies would certainly be appealed and likely spend years in the courts. Similarly the Jachmann Appraisal's estimate of legal costs associated with development at \$30,000 is unrealistically low, with actual legal costs likely to be in the hundreds of thousands of dollars and, again, with significant risk that approval would not be obtained at all. In addition, the development cost estimate assumes market escalation of 6% per year, which is far too high. In light of the uncertainty of obtaining approvals for development of the land, and in the current market, it would not be unreasonable to attribute a percentage of zero to the estimated selling price increase. In short, the Jachmann Appraisal, in substantially understating the development costs of the property, attributes far too high a value to the land.

Third, the sales comparison approach to estimating the land value is flawed because the recent sales it cites are not comparable to JEI's property. The Pecksland Lane property is not comparable because it already has subdivision approval for four lots, which increases its value substantially. The Conyers Farm Drive property is not comparable because it is in a more valuable area of Greenwich, a gated community with large-lot deed restrictions and including some lots with lake frontage.

Fourth, the appraisal indicates that the property's greatest sale value is as a school, yet fails to acknowledge that the extraordinary restrictions on its use as a school, further reduce the property's value. These restrictions include, but are not limited to, the following: the number of students is limited to 450; the school cannot be used as a high school, because it is limited to first through ninth grades; transportation by bus is mandatory for at least 90% of the students in a maximum of 18 buses, only one of which may leave the facility during the school day; and a maximum of 30 cars may transport faculty members to the campus each day. See Verified Petition at 10-12, ¶¶ 25, 30. The Jachmann Appraisal's unsupported conclusion that "the strong demand for real estate in the Greenwich market," means that these draconian limitations "do[] not adversely impact the market value" of the property, Jachmann Appraisal at 49, is simply not credible.

In short, the Jachmann Appraisal presents an incorrectly inflated value of the property. A much more accurate assessment of the property's true worth is the history of JEI's marketing efforts assisted by an experienced and independent broker.

F. The JEI Board Properly Exercised Its Business Judgment Not to Become a Landlord. Finally, Mr. Jachmann's suggestion that JEI is obligated to be in the business of leasing space on the campus as opposed to entering into the sale-and-leaseback transaction not only does not make economic sense for JEI, but is without legal basis. The business judgment rule, which applies to boards of not-for-profit corporations, *Consumers Union of U.S., Inc. v. State*, 5 N.Y.3d 327, 360, 806 N.Y.S.2d 99, 118 (2005), "bars judicial inquiry into actions of corporate directors taken in good faith and in the exercise of honest judgment in the lawful and legitimate furtherance of corporate purposes." *Id.*, quoting *Auerbach v. Bennett*, 47 N.Y.2d 619, 629, 419 N.Y.S.2d 920 (1979). JEI's Board's discretion extends to deciding that JEI should not be in the business of being a landlord for large portions of its property, particularly where the

transaction it has determined is in the best interests of JEI is one which fully meets the Board's duty of obedience in that it promotes the organization's charitable purpose, as described in the Verified Petition and below.

Mr. Jachmann also questions the fact that if JEI were to lease part of the Greenwich property, due to subsidies JEI receives from the Government of Japan, it would have to return such lease revenues to the Government of Japan. Again, the Trustees have made a considered judgment based on the best information available to them, and have concluded that there is a substantial risk that JEI will be required to repay some or all of the subsidies it receives from the Government of Japan. The Trustees' decision to sell and lease back the property rather than attempt to lease large portions of it to others is thus in the best interests of JEI.

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2. The Transaction Furthers The Charitable Purpose of JEI.

The Board's second obligation is to ensure that the purposes of the corporation will be promoted by the transaction. N-PCL § 511(d). Neither Mr. Block's letter nor Mr. Jachmann's affidavit provides any support for their conclusory statements that the transaction will not promote JEI's charitable educational purpose. Neither submission addresses the irrefutable evidence that GJS's enrollment has declined by 45% over the past eight years and that demographic trends carefully considered by the Board indicate that decline will not be reversed. Verified Petition at 6-7, ¶¶ 14-16. Mr. Jachmann refers to a "growing vibrant school community." Jachmann Affidavit, par. 41. The school community is vibrant, and the Board has ensured that it will remain so, but to state that the school community is "growing" is to completely disregard objective reality. The school community is not growing, it is shrinking drastically due to forces beyond the Board's control and the Board has an obligation to address the situation in a manner that protects and furthers the mission of JEI as a whole.

As one would expect, sharply declining enrollment has eroded JEI's finances. Despite the PTA's assertions to the contrary, the financial decline is real and immediate, and threatens the viability of all of JEI's educational institutions. Notably, the PTA presents no challenge to JEI's audited financial statements. Nor does it answer the incontrovertible fact that JEI can control its costs using rented facilities, while it is unable to control those costs, which are spiraling out of control, at GJS.

As fully explained in the Verified Petition, the sale and leaseback of the Greenwich property promotes JEI's charitable purpose because it will enable JEI to avoid a financial crisis that otherwise would require it to reduce significantly its educational programs. JEI operates education programs serving nearly 1,300 children *in addition to* the 220 enrolled at GJS. The transaction will allow the Board time to formulate the best possible plan for continuing to meet the needs of *all* JEI's students, including those at GJS. The \$20 million sale price, together with the value of the eight-year leaseback that JEI has negotiated with WFHA, including the substantially below market rent and freedom from obligation for capital costs, will effectively address JEI's financial problems and enable JEI to continue to pursue its educational charitable missions. Verified Petition at 15-18, ¶¶ 40-46.

The Board has meticulously negotiated the sale and leaseback terms to ensure that not a single GJS student will lose any aspect of his or her educational program and that the high quality of all of JEI's programs, including GJS, will be maintained. The leaseback allows GJS to continue to occupy most of the buildings it currently uses for educational purposes – over 60% of the useable floor space on the campus – as well as the campus's ample outdoor space, for eight years. This eight-year period will allow the Trustees time to locate a suitable facility and to provide its students' families with sufficient notice of a new location to enable them to make any necessary adjustments. It will also allow any student presently attending the school to complete his or her education on the present campus. There is absolutely no basis for Mr. Jachmann's speculation that JEI will close the GJS campus in 2007.

Neither Mr. Block's letter nor Mr. Jachmann's affidavit says anything to support their conclusory allegation that the transaction will detract from JEI's charitable purpose. In fact, although they say at the outset that they will show some way in which JEI's charitable purpose is not furthered by the transaction, in the end they say nothing about how the charitable educational purpose is harmed, because there is nothing to say -- this transaction only furthers JEI's educational purpose, it does not detract from it. Because the sale and leaseback will enable JEI as a whole to continue to educate Japanese-speaking students (including current students at GJS) for years to come, it promotes JEI's charitable purpose and should be approved.

3. The Board's Composition And The Board's Vote Are Entirely Valid.

Without citation to legal precedent, Mr. Block's letter and Mr. Jachmann's affidavit make the further specious allegation that the Board's vote to approve the sale and leaseback transaction, and the Board's very composition, is not valid. The allegation is without precedent or legal basis.

With respect to the Board's lack of knowledge of the new Greenwich tax assessment, first, the implication that anyone associated with the Board was aware of the Greenwich new tax assessment and failed to provide information about it is false. The reassessment notices appear to have been mailed in late November 2005. At the time the Board voted on the transaction (November 29) no JEI Trustee, employee or agent knew that a reassessment had been conducted by the Town of Greenwich. This is not surprising in light of the fact that the notice has no economic meaning for JEI, a tax-exempt organization. Second, had the Board received information about the new assessment, it would also have had information that the new assessment was unreasonably high and subject to appeal; that, indeed, similar inflated assessments are being challenged throughout Greenwich; and that the purpose of the tax assessment is to maximize tax revenues, not to accurately assess fair market value. Third, the Board had information, discussed in detail above and in the Verified Petition, that the total economic value of the sale and leaseback transaction exceeds even the inflated market value claimed in the new assessment. Fourth, the Board must act on the information it has before it based on its reasonable diligence. As a tax exempt entity, JEI simply was not aware of the new tax assessment. The implicit suggestion that JEI should have been aware of and on the lookout for the impending issuance of new assessments is ludicrous. In fact, Mr. Jachmann himself was apparently unaware of the impending reassessment, as

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indicated by the fact that he addressed the Board about the transaction for over an hour on November 22, 2005 and did not mention the reassessment. Finally, Mr. Block and Mr. Jachmann have complained to the Board about the transaction for months, and have raised numerous objections (all of them without merit). The fact that their concern about the Board's unawareness of the new tax assessment is the most significant complaint they can now muster shows that there really is no valid objection to the transaction. The Board's careful work to negotiate, evaluate and approve the sale-and-leaseback transaction cannot be scuttled based on the post-hoc discovery of such information.

The criticism of JEI's Board because it is comprised largely of members who have been extremely successful in professional endeavors other than education similarly has no basis in fact or in law. In fact, as described in the Verified Petition, the Board is comprised largely of chief executive officers and presidents of U.S. subsidiaries or branch offices of some of Japan's most important companies. Moreover, the Trustees have outstanding educational and civic qualifications. A representative sample of the Trustees includes individuals with degrees from some of the finest universities in the United States (Baruch College of the City University of New York, Fletcher School of Law and Diplomacy at Tufts University, Georgetown University), Japan (Hitosobashi University, Keio University and Tokyo University) and elsewhere (INSEAD), in such disciplines as economics, law, sociology, law and diplomacy, and business. The same sample includes individuals who are or have been active board members of numerous not-for-profit organizations, including Lincoln Center for the Performing Arts, the Metropolitan Museum of Art, the Museum of African Art, The Partnership for New York City, the Alumni Association of Tokyo University, the Board of Regents of Georgetown University, the Committee to Encourage Corporate Philanthropy, Japan Society, the Japanese Chamber of Commerce and Industry, the National and Public Universities Table Tennis Communication Council, and the Nippon Club. The breadth of experience of the Board members and the presence on the Board of so many high-level executives from the Japanese business community illustrates a tremendous level of commitment to and support of quality Japanese educational programs by the Japanese community in New York City. To accuse this group of being insufficiently qualified flies in the face of clear evidence to the contrary.

Moreover, as any parent of a JEI student should know, the educational quality of JEI's schools, including GJS, is carefully overseen by the Ministry of Education of the Government of Japan, which provides the schools' principals and the majority of their faculty members. The Ministry of Education ensures that all Japanese schools abroad, including those operated by JEI, provide education that is at least equivalent to that provided in schools for children of the same ages in Japan. While schools may add curriculum specific to their locality, and modify the standard Japanese curriculum to a degree, they must adhere for the most part to the written basic curriculum standards provided by the Ministry of Education. As a result, and as is the case with most schools in New York State, members of the Board of Trustees, like members of boards of other private and public schools and school districts, have an oversight role with respect to curriculum and education policy, leaving the teaching to professional educators.

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The role of the Board of Trustees, however, is one for which JEI's Board is eminently qualified: making sound decisions to ensure the financial well-being and competent administration of the schools. This is precisely the role the Board has fulfilled in negotiating the sale and leaseback transaction, to the great benefit of JEI's charitable purpose. And because the subject of the present approval process is a decision regarding a sale-and-leaseback transaction entered into to ensure JEI's financial future, any discussion of the qualifications of the Board of Trustees as educators is largely beside the point.

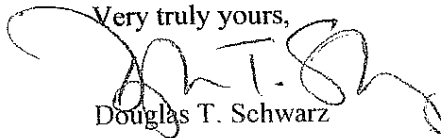
One additional aspect of the objections requires a brief response. Mr. Jachmann repeatedly uses the term "favored bidder" in referring to the WFHA, and has the audacity to request an investigation into why JEI entered into a transaction with that particular organization. Mr. Jachmann does not and cannot, however, point to a single fact that indicates the sale-and-leaseback is anything other than an arms-length transaction that is in the best interests of JEI. The Board would have nothing to gain by agreeing to sell the Greenwich property for less than its value and Mr. Jachmann does not and cannot point to a single fact to the contrary.

* * *

After a robust and deliberative sales process undertaken over a three-year period, the Board of Trustees of JEI is now poised to implement a sale that will bring long-term security to the education needs of Japanese children throughout the New York City region. It has won this security through diligence and determination, exercised on behalf of the students and in the face of a long-term decline in the numbers of Japanese-speaking school-age children in the New York City region. The Board has spent countless hours pursuing and meeting with potential buyers, and explaining the need for and details of the transaction to the PTA and other stakeholders. This hard-won transaction will restore JEI and the Greenwich school to health, and turn the Greenwich campus into a unique meeting place for children from different backgrounds. In light of such great potential, the surly response by a small but vocal minority who view their own interests and motivations as paramount and unassailable is particularly unfortunate. As their objections show, and as the Board's long and careful process concluded, the sale-and-leaseback transaction comfortably satisfies the two-pronged test of N-CPL §511(d), in that the transaction as a whole is fair and reasonable and furthers the charitable purpose of JEI.

JEI reiterates that it respectfully requests that the Attorney General provide written approval of the Verified Petition and waive statutory notice. Please contact me if you or your office require any further information regarding this matter.

Very truly yours,


Douglas T. Schwarz

DTS/drz

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cc: Mr. Kazuhiko Sakamoto
Kathy A. Ahearn, Esq.
Daniel L. Kurtz, Esq.
Arthur R. Block, Esq.

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EXHIBIT C

THE JAPANESE EDUCATIONAL
INSTITUTE OF NEW YORK

180 Lake Ave., Greenwich, CT 06830
Tel: (203) 618-0601 / 0616 Fax: (203) 618-0650
E-mail: jeiny@earthlink.net

March 29, 2004

Kazuhiko Sakamoto
Chairman, JEI

[Square seal:] Seal of Chairman of the Japanese Educational Institute of New York

To all concerned:

Postponement of the Merger of the New Jersey Japanese School into the Greenwich Japanese School

At the meeting of the Executive Committee of the Japanese Educational Institute of New York [("JEI")], which was held on March 24th, it was institutionally decided that the merger of the two schools, which was scheduled to take place in April 2005, be postponed for 3 to 5 years. Although I would like to hold a meeting to explain the details to you as soon as possible, I hereby give you a quick report on the summary of the background which led to this resolution, and the handling policy for the immediate future.

(1) Substantial divergence between the current status and the forecast of the situation at the time of the decision for merger

Needless to say, in March 2002, we had no choice but to decide to merge [the schools] due to the declining number of the students and in order to put a brake on the chronic structural deficit. However, during the past two years, the decline in the number of students has drastically surpassed the forecast, with this trend being particularly prominent at the Greenwich School (from 322 students in April 2002 to about 210 (estimate) in April 2004), thus the actual situation at present is that the deficit countermeasures originally intended for the New Jersey School have morphed into the deficit countermeasures for the Greenwich School. Indeed, according to the FY2004 budget, the New Jersey School's deficit is under \$70,000, whereas the Greenwich School's deficit is close to \$600,000. Furthermore, it is expected that the elimination of the deficits, which was the direct purpose of the merger, will be unattainable if the current situation continues. Under these changed circumstances that are far beyond the expectations at that time, since the latter half of last year, the Executive Committee has been deliberating from various perspectives as to whether to implement the merger as scheduled in April next year. Consequently, the Executive Committee has come to the current decision. In other words, unfortunately, under the circumstances where it is clear that the initial purpose cannot be achieved, we have reached the conclusion that we should postpone for now the implementation of the merger as scheduled, give a priority to the deliberation on the countermeasures against the deficit of the Greenwich School,

which is the biggest issue at present, and based on the above [deliberations], decide at another time on the timing of implementing the merger.

(2) Current handling policy

1. Proposal for/implementation of, the countermeasures against the Greenwich School's deficit

The break-even-point for the school in terms of the number of students is approximately 320, which has shown an improvement since the time when the decision to merge was made (approximately 350 students) due to [the reasons such as] the cost reduction efforts, yet in the current situation, the number of students is about 210 and even if the merger is implemented as scheduled in April next year, the reality is that we are likely able to obtain about 250 - 260 students only. Therefore, we must say that it is extremely difficult to realize the scenario in which we will work on the elimination of the current deficit while holding on to the existing facility and expecting the number of students to increase. Thus, we think that we would like to work on the measures to fundamentally improve the fiscal revenue and expenditure of this school by adopting the operation system whereby the facility is sold to a third party first and then leased back for a certain period (3 - 5 years). Of course, since this involves another party and the negotiations, it is unpredictable as to whether or not it turns out to be as we hope. However, we would like to do our best to find a measure that will provide the likelihood of resolution and will be within the realm of permissibility from the educational perspective.

2. Implementation of the countermeasures against the deficit of the New Jersey School

Even though the amount of deficit is almost on the same level as that at the time of the decision to merge, it is still in the red nonetheless, and in light of the present decision to postpone the merger, all of us concerned would like to put our heads together and move forward to eliminating the deficit by increasing the number of students.

(3) Medium-term policies

Although it has been officially decided to postpone the merger at this time, our policy for the merger in and of itself has not been changed. Therefore, we would like to endeavor to enable the permanent operation of the school by bringing quickly the likelihood of the fundamental countermeasures against the deficit of the Greenwich School, and in line with the results thereof (such as the sales price and the terms of the lease for 3-5 years) and pursuant to our policies heretofore, by either purchasing or leasing by no later than the end of 2008 a new facility, with the first candidate being a location that is halfway between the two schools.

In any event, while we have reluctantly caused inconvenience and trouble to many people as we

were forced to opt for the postponement of the merger at this time, we would appreciate your understanding that the Executive Committee had no choice but to take a down-to-the-wire, realistic measure in light of the change of circumstances that was not predictable at the time when the policy for the merger was decided. Furthermore, with respect to the current handling policy, it is needless to say that without your understanding and cooperation, the implementation thereof, particularly with respect to the proposal for, and the implementation of, the fundamental measure to eliminate the deficit of the Greenwich School, cannot be smoothly implemented. We hereby request your continuous support in maintaining the stable and high-quality educational standards and in building a solid financial foundation, which will render support [to such educational standards].

End

THE JAPANESE EDUCATIONAL
INSTITUTE OF NEW YORK

180 Lake Ave., Greenwich, CT 06830
Tel: (203) 618-0601/0616 Fax: (203) 618-0650
E-mail: jciny@earthlink.net

2004年3月29日

関係者の皆様へ

審議会 会長
坂本 和



ニュージャージー全日校のグリニッチ全日校への統合時期の延期について

先般3月24日に開催したニューヨーク日本人教育審議会理事会におきまして、2005年4月に予定しておりました両校統合の時期を3年～5年間延期する事を機関決定致しました。詳細につきましては今後出来るだけ早い機会にご説明する場を設けたいと思っておりますが、取り急ぎ今回の決定に至った背景と当面の対処方針について概略をご報告申し上げます。

(1) 統合決定時の状況予測と現状の大幅な乖離

申し上げるまでもなく、2002年3月に統合という苦渋の決断を余儀なくされたのは生徒数の減少と慢性的な赤字体質に歯止めをかける為でした。ところがこの2年間で生徒数の減少は当時の予測を大幅に上回るものとなり、特にグリニッチ校に於いてその傾向が極めて顕著(2002年4月の322名が2004年4月推定で約210名へ)であり、当時のニュージャージー校赤字対策が現在はグリニッチ校赤字対策へと変貌しているのが実状です。因みに2004年度の予算としてはニュージャージー校が7万ドル弱の赤字に対し、グリニッチ校の赤字は60万ドル近いものとなっています。また、統合の直接的な目的でありました統合による赤字解消も現状のままでは実現出来ない見通しとなっています。このような当時の予測を遥かに超える状況の変化の下で、来年4月の統合を予定通り実施することの是非につきまして、理事会として昨年後半来、種々の観点からの検討を続けて参りました。その結果として今般の理事会の決定に至った次第です。即ち、誠に遺憾ながら、所期の目的が達せられない事が明らかな状況下では、予定通り統合を実施することは一旦見合わせた上で、現時点での最大の課題であるグリニッチ校の赤字対策を優先的に検討し、それを踏まえて改めて統合実施時期を決定すべきとの結論とした次第です。

(2) 当面の対処方針

1. グリニッチ校赤字対策の立案・実施

当校の採算分岐点は生徒数換算で320名前後と統合決定時（約350名）よりは経費削減努力等により改善はしていますが、現状は約210名の生徒数であり、仮に来年4月に統合を予定通り実施したとしても250名～260名程度の生徒数しか確保出来そうにないのが実状です。従って、今後の生徒数の増加に期待をしながら現有施設を保有したままで現状の赤字解消を図るというシナリオの実現は極めて困難と言わざるをえません。そこで現有施設を自ら保有している現在の形態から、一旦施設を第三者に売却した上で一定期間（3～5年間）賃借する形態での運営方式を採用することにより当校の財政収支の抜本的な改善策を図りたいと考えます。勿論、相手のあることでもあり交渉ごとでもありますから、当方の希望通りに事が運ぶかどうかは予断を許しませんが、財政収支問題の抜本的解決に目処をつけ且つ教育的観点からも許容出来る範囲内の解決策を見出すべく最善を尽くしたいと思います。

2. ニュージャージー校赤字対策の実施

統合決定時の赤字額とほぼ同様な水準とはいえ、依然として赤字であることには変わりはなく、今回の統合延期をとらえ、生徒数の増加による赤字解消に向けて関係者一同叡智を結集して対処したいと思います。

(3) 中期的方針について

今回、統合時期の延期は正式決定致しましたが、統合方針そのものは変えておりません。従って、グリニッチ校の抜本的な赤字対策に早急に具体的な目処をつけ、その結果（売却額、3～5年間のリース条件等）に見合った形で、これまでの方針通り遅くとも2008年末までには両校の中間地点を第一候補として新たな施設を購入或いは借用することで永続的な学校運営を可能にすべく努力して参りたいと考えております。

いずれに致しましても、今回の統合延期の決定をせざるを得なかったことにより、多くの方に何かとご迷惑、ご心配をおかけすることにつきましては、誠に不本意ではございますが、統合方針決定当時には予測し得なかった事態の変化を踏まえた上でのギリギリの現実的な対処であり、理事会としての止むを得ない決定であることに何卒ご理解を賜りたいと存じます。加えて、当面の対処方針につきまして、特にグリニッチ校の赤字解消の為の抜本策の立案実行には、関係者の皆様の特段のご理解とご協力がなければスムーズな実行が出来ないことは申すまでもございません。安定的に質の高い教育水準を維持し、その裏付けとなる財政的基盤の構築に向け、引き続き皆様のご支援をこの場をお借りしてお願い申し上げます。

以上

Translation Certification

Document Translated: **The Japanese Educational Institute of New York letter (March 29, 2004)**

This is to certify that the above-stated document was translated from Japanese to English, and that it represents an accurate and faithful rendition of the original text to the best of my knowledge and belief.

By: Wheatleigh Dunham
Managing Director
Attorney Translation Services, LLC
8 Richmond Drive
Old Greenwich, CT 06870
Tel: 203-637-4628
Fax: 877-603-3220
www.attorneytranslation.com

Signature: Wheatleigh Dunham

Date: May 1, 2006

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 1st DAY OF May 2006

Chauhan Vargas
NOTARY PUBLIC

EXHIBIT D

SUPREME COURT, NEW YORK COUNTY
STATE OF NEW YORK

-----x
Application of the Japanese Educational Institute
of New York,

Petitioner,

06-103400 (Abdus Salam, J.)

AFFIDAVIT OF
MARC SCHULMAN

For an order approving the sale of assets pursuant to
N-PCL Section 510 and 511.

-----x

MARC SCHULMAN, being duly sworn, making this affidavit upon personal
knowledge, deposes and says under penalties of perjury as follows:

1. I am the President of the Board of Trustees of Westchester-Fairfield
Hebrew Academy ("WFHA"), a New York educational and not-for-profit corporation located at
300 East Putnam Avenue in Greenwich, Ct. I submit this affidavit in further support of the
application of the Japanese Educational Institute of New York, Inc., ("JEI"), a New York
educational and not-for-profit corporation located at 15 The Ridgeway in Greenwich, Ct., for the
Court's approval pursuant to New York Not-For-Profit Corporations Law Section 510 *et seq.* of
JEI's proposal to sell and transfer certain real property located at 270 Lake Avenue, Greenwich,
Ct. ("the Greenwich Campus") to WFHA. Currently, the sixteen acre Greenwich Campus is
utilized by JEI to operate the Greenwich Japanese School ("GJS"). I have been intimately
involved in all aspects of the negotiations for the purchase/sale/leaseback of the Greenwich
Campus since the property was first brought to my attention on or about Thanksgiving 2003

2. The purpose of this affidavit is to respond to certain questions raised by
the Court concerning the value of the sale/purchase/leaseback arrangement reached between JEI
and WFHA. Specifically, in this affidavit, I will discuss two limited matters: *first*, WFHA's

position on the question of whether WFHA will pay JEI in the event that JEI elects, for whatever reason, to vacate the Greenwich Campus prior to the end of the eight-year leaseback period; and *second*, as a consequence of the leaseback arrangement and the deteriorating state of the Greenwich Campus, the need for substantial capital and other expenditures necessary to make the campus safe and habitable for GJS and WFHA to both utilize the campus.

3. As to the first issue, after much consideration, WFHA has decided that it will pay JEI up to an additional \$3 million should JEI leave the campus *for any reason* during the last three years of the leaseback period. WFHA will pay these funds at the rate of \$1 million for every year of the sixth, seventh, and/or eighth year of the lease period that GJS is not using the Greenwich Campus.

4. And, as to second issue, it has been and is WFHA's intention to spend approximately \$4 million immediately to restore and reconfigure the Greenwich Campus, so that WFHA and GJS can share the campus safely and on the terms agreed to.

5. With that introduction, I will now turn to the specific issues.

A. WFHA's Position In The Event of An Early Departure By JEI

6. In opposing JEI's application for approval of the sale/purchase/leaseback transaction with WFHA, the GJS Parent-Teacher Association ("PTA") has argued that JEI will not realize the full value of the eight-year leaseback arrangement because JEI might decide to leave the Greenwich Campus before the eight years have elapsed. The PTA's core claim is that this fact, and the PTA's own "appraisal" of the property, suggest that WFHA is getting a "sweetheart deal" – i.e., that the campus is worth more JEI has accepted from WFHA in the form

of cash and the below-market-rent leaseback.

7. Speaking for WFHA, we believe strongly that the Greenwich Campus is worth significantly *less* than the PTA's appraised value, and that our original offer of \$20 million cash plus an eight-year leaseback to JEI at below-market rent is more than fair consideration. Despite our belief that JEI is receiving consideration in excess of the property's fair market value, and despite our belief that the market (which is the ultimate arbiter of the fair market value of the property) would not produce another school prepared to accept the many restrictions on use of the campus or the favorable terms afforded JEI by the leaseback arrangement, we wish to address directly the Court's concerns that, if JEI leaves early, they may not be realizing the full value of the leaseback.

8. In order to give the Court comfort, and to put to rest the assertion that the long-term leaseback is of little value to JEI, I have been authorized by the Board of WFHA to state that WFHA will pay JEI the sum of \$1 million per year if, *for any reason*, JEI leaves the campus for the sixth, seventh and/or eighth years of the lease – those years representing the extension period of the lease under the transaction documents now before the Court. Our willingness to pay up to an additional \$3 million to JEI – essentially at JEI's election – is designed to demonstrate our strong desire to satisfy the Court that the “out years” of the lease period are valuable to JEI.¹

¹ Indeed, even in the absence of this additional \$3 million, the extraordinary value of the leaseback provision to JEI is clear when one compares what JEI will pay under the proposed arrangement to what the WCLS group (the "British School") offered to pay for the (inferior) space that WFHA will occupy. Under the terms of the proposed leaseback to JEI, for the first five years, JEI will pay only its share of the operating expenses of the campus, which are currently approximately \$7 per square foot, with a 25% premium for years six through eight of the leaseback period (which comes to approximately \$9 per square foot) should JEI extend the

B. WFHA's Plan to Spend \$4 Million to Restore & Reconfigure the Campus

9. In our negotiations with JEI, JEI's representatives made it clear that one of JEI's primary motivating factors for the sale of the Greenwich Campus was JEI's desire not to manage a property of this size, age and deteriorating condition. This is not altogether surprising, given the physical state of the Greenwich Campus, which will require substantial investment and work to make it safe and habitable for two schools – especially in light of JEI's demands to have exclusive or near-exclusive use of some of the best buildings and playing fields on the campus.

10. Accordingly, WFHA's plan, from the time that it agreed to the leaseback and continuing forward to the present, has been and is to spend at least \$4 million to restore and reconfigure the campus so that it can be used by both WFHA and JEI in the manner contemplated by the proposed transaction. Such an expenditure will benefit both schools, as discussed below.

11. The \$4 million breaks down as follows: WFHA plans to spend two million dollars to perform long-deferred campus-wide maintenance – including areas that are to be used

lease. Compare this pricing to the offer made by the British School in September, 2005 (see Jachmann Affidavit, dated January 17, 2006, Exhibit D). The British School proposed to lease essentially the same portions of the campus that WFHA will occupy under its arrangement with JEI for the cost of (a) \$25 per square foot (a rate which WCLS notes in its offer letter is "commensurate with market rate for similar space"), plus (b) its proportionate share of the operating expenses (i.e. \$7 per square foot) of the campus, plus (c) sharing of costs to make improvements to the space it will lease. In other words, the British School was prepared to pay \$32 per square foot for its space--plus picking up a share of the costs for improvements to the space it occupies; under the proposed arrangement with WFHA, JEI will only pay \$7 per square foot (going to \$9 per square foot during the last three years if JEI extends the lease), with no significant obligations to pay for improvements.

exclusively or nearly exclusively by GJS – to ensure the safety and well-being of students, and an additional \$2 million to reconfigure the areas of the campus that WFHA will occupy during the leaseback period, since GJS will occupy the majority of the campus space essentially on its own. This *second* \$2 million would not have to be spent were GJS not occupying all of the prime buildings on the campus.

12. Our Executive Director has begun planning to prepare the campus for our use and to be ready to take charge of the overall maintenance of the campus. He has been working with architects and contractors to map out the scope of the work needed to deal with the many neglected maintenance issues on the property, and to ensure that it can be safely used by students of both WFHA and GJS. Based on these consultations, we currently estimate that a total of more than \$2 million of capital expenditures is necessary for this purpose. Another way to look at this is to say that, to be conservative, by selling the campus to us, JEI is avoiding over \$2 million of immediate costs and we are assuming the risks and costs associated with them.²

² Notably, in valuing the property's buildings, the PTA's appraiser did not take into account the serious deterioration of the campus. In fact, his appraisal is predicated on the school's buildings being in "good" or "average" condition. For example, the PTA's appraiser cites Building 16 as being in "average" condition. But our contractor has informed us that, due to the deterioration of Building 16's foundation as a result of extensive water damage, and because of the FAR restriction, Building 16 must be rebuilt from the foundation upward at a projected cost of \$450,000. Likewise, Building 9, which the PTA's appraiser declared in "good" condition, suffers from an extensive termite infestation and water damage, requiring that at least some, if not all, of the floors and joists be repaired or replaced at a cost of approximately \$150,000. In addition, our contractor has indicated that there is *campus-wide* deterioration that must be addressed, for example: the need for a complete overhaul of the water management system, since there is foundation erosion in many parts of the property; the total lack of maintenance of fire escapes and handicap railings; roofing problems in many buildings; and deteriorated stairs and flagstones throughout the property. As noted above, our contractor has estimated, on a preliminary basis, that a total of approximately \$2 million worth of campus-wide infrastructure repairs is necessary.

13. In the course of our lengthy negotiations with JEI, JEI demanded exclusive or near-exclusive access to portions of the Greenwich Campus during the leaseback period. We agreed to JEI's sharing requests in order to close the deal. These concessions included giving JEI *exclusive* use of the largest, nicest and most important buildings, which include the offices and conference rooms, the library, music rooms, large art room and the lunchroom. In addition, we agreed to give JEI *near-exclusive* use of the auditorium, main gymnasium, and large playing field. Together with the other areas that GJS will occupy, these areas constitute approximately 60% of the available above-ground space on the campus. We also gave JEI 67% of the limited parking spots for faculty on campus. As a result of these concessions, we will be forced to do approximately \$2 million of *additional* construction work solely for the purposes of creating space for our students during the leaseback period. As a simple example, WFHA will have to spend approximately \$500,000 to construct a kitchen and dining facility that would not have to be built were we not ceding the lunchroom to GJS.

14. Should the Court desire, WFHA is prepared to document, to the greatest degree possible, the approximately \$4 million in necessary expenditures it expects to make for campus restoration and reconfiguration, and how the money will be spent to improve the lives of students of both WFHA and GJS. We refrain from doing so here simply in the interest of efficiency and brevity.

15. Finally, two other issues are relevant to the Court's interest in the workability of the leaseback – for both JEI and WFHA: (1) WFHA's plan for growth; and (2) certain highly restrictive covenants which inhibit use of the campus by WFHA, JEI or anyone else.

16. I wish to be clear about WFHA's plans for growth. The PTA has asserted that WFHA is planning to grow to a student body of 450, and that those plans will result in GJS being pushed off the Greenwich Campus. Neither of these things is true. So long as GJS wishes to stay on the campus (up to eight years of course), GJS has an absolute right to 250 student slots, with a cap (by zoning restriction) of 450 students *in total* on the campus. WFHA simply has no plan to grow to 450 students in the next eight years.

17. Second, in the course of our due diligence on the campus, we discovered certain highly restrictive covenants contained in agreements that the JEI signed with two adjacent neighborhood associations in 1991. We have been informed by local counsel that changing those covenants is probably impossible, and would involve, at minimum, the delay and expense of years of court battles. Those neighborhood restrictive covenants include the agreement that no student maybe transported to the Greenwich Campus by private car. This restriction gave us pause, but ultimately we decided that, due to the nature of our school and the fact that 70% of our students (many of whom travel from as far south as New Rochelle, as far west Mt. Kisco in the North, and as far east Wilton, Connecticut) already come by bus, it was an arrangement that we could live with. It should be noted that, in the last few days, we have been contacted by a representative of one of these neighborhood associations to gain assurances that WFHA will abide by this restriction if the transaction is approved. To my knowledge, few if any other schools – including the Stanwich School, which is a local Greenwich private school where many of the students are driven to school by parents or household employees – could accept a restriction of this sort.

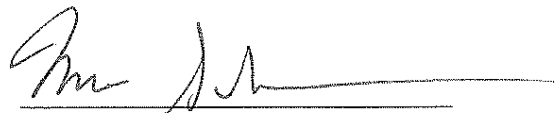
C. Conclusion

18. We believe that the foregoing clearly shows that the proposed purchase/sale/leaseback transaction provides JEI with more than full and fair consideration. The \$20 million purchase price; the long term below-market-rent leaseback; the up to \$3 million to be paid to JEI if it leaves the campus in the last three years of the lease; the approximately \$2 million worth of capital repairs that WFHA will pay for (in JEI's stead) to make campus-wide repairs and to make the entire campus safe and habitable; and the additional \$2 million that WFHA will spend to create the minimal space we need for our students on account of the leaseback provisions favorable to JEI; all, taken together, demonstrate that JEI will gain very substantial value – we believe, *more* than fair market value – for the property through this particular transaction. Based upon these financial factors, and more, we submit that this Court should approve the transaction that JEI has proposed.

19. Lastly, as WFHA's President, I wish to make a statement about the charges that the PTA has, unfortunately, made part of the record of these proceedings. Over the last year, opponents of this transaction have levied false accusations against our school and our board members – including before this Court, and including the implication that, in order to pressure JEI's Board to move forward with this transaction, we made a bogus allegation that certain members of the GJS community had engaged in anti-Semitic behavior. WFHA has consistently refrained from responding to these false and unfortunate claims, and has declined to make public the evidence that we have that anti-Semitism is, indeed, afoot here. Although it has

pained us greatly, we have chosen to remain silent – both out of respect for JEI’s board, whose members have behaved honorably, and because we wish to avoid adding to the tension between our two communities that others seem bent on fomenting.

Dated: May 1, 2006
New York, NY



A handwritten signature in black ink, appearing to be "Tom J.", written over a horizontal line.

Sworn to before me this
1st day of May 2006



A handwritten signature in black ink, appearing to be "Katherine Rosenfeld", written over a horizontal line.

NOTARY PUBLIC

Katherine Rosenfeld
Notary Public, State of New York
No. 02RO6086082
Qualified in New York County
Commission Expires January 13, 2007

EXHIBIT E

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Application of the Japanese Educational Institute
of New York,

Petitioner.

For an order approving the sale of assets pursuant to
N-PCL §§ 510 and 511

Index No.: 06-103400

Hon. Sheila Abdus-Salaam

**REPLY AFFIDAVIT OF BERNARD
KATZ IN FURTHER SUPPORT OF
JEI'S VERIFIED PETITION**

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

BERNARD KATZ, being duly sworn, deposes and says:

1. I am a Principal of Bernard Katz & Company P.C. and submit this reply affidavit in further support of the Japanese Educational Institute of New York's ("JEI") Verified Petition for leave to sell its property located at 270 Lake Avenue, Greenwich, Connecticut (the "Greenwich property") to the Westchester Fairfield Hebrew Academy ("WFHA"), and in reply to the opposition submitted by the PTA of the Greenwich Japanese School ("GJS"). I am fully familiar with the facts and circumstances set forth below.

2. JEI requested that my firm analyze the terms of the Lease and Sharing Agreement contained in the Agreement of Sale between JEI and WFHA, Exhibit D to the Verified Petition, to value the leaseback arrangement whereby JEI possesses under the Lease and Sharing Agreement the right to remain on the Greenwich property for the next eight-years.

3. Through my analysis, the step-by-step process of which is detailed in my initial affidavit in this matter, I concluded that JEI was extremely conservative in calculating the value of the favorable rent terms over the eight-year leaseback period at \$5 million. Indeed, I

conservatively opined that the eight-year leaseback has a value of nearly \$8 million and that the sale and leaseback have a combined present value of almost \$28 million.

4. In paragraph 37 of the Surreply Affidavit submitted by Mr. Block, the PTA argues that I overstated the present value to JEI of the leaseback. The PTA argues that I should have used a higher discount rate than was used to calculate the present value to JEI of the leaseback. However, the PTA's argument indicates that the PTA misunderstands my analysis.

5. Exhibit A to my initial affidavit lists the projected cost saving to JEI per year for each year of the eight year leaseback. For the Court's convenience, another copy of Exhibit A is attached hereto as Exhibit A. We made this projection by calculating for each year of the Lease the difference between what JEI would have to pay if it sold the Greenwich property without a leaseback and rented in the open market (\$27.98 per square foot), and JEI's fixed rent under the Lease. Taking the sum of the cost saving shown for each year under the line "Difference-projected annual cost savings under leaseback with WFHA" in Exhibit A, the total cost saving created for JEI by the leaseback, in real dollars, is \$9,672,942.00. This sum is the actual difference between the projected rent under the WFHA lease and market rent for the eight years of the leaseback.

6. Because JEI will not have the benefit of the cost saving for any one year until the year the money is actually saved (up through the eighth year of the Lease), and money saved later is worth less than money saved today, I applied a discount rate to calculate the value of the Lease in today's dollars -- the Net Present Value ("NPV") -- in order to conservatively value the \$9,672,942.00 in savings from the leaseback.

7. To make that calculation, I used a 4.50% annual rate of interest, which was the rate on the 10-year United States Treasury Note as of the date of the Agreement of Sale between JEI and WFHA.

8. I used the 4.50% rate because the present value of the annual cost savings represents the amount that JEI would have had to invest to enable it to pay the additional market rent costs over and above the costs of the fixed rent under the Lease over the eight-year time horizon of the Lease. In making such an investment, the Trustees would have to be conservative, prudent investors.

9. The PTA's suggestion that a higher discount rate is appropriate assumes that JEI would invest in risky investment vehicles to obtain a higher rate of return. That is not a conservative approach, and it is our understanding that JEI has not, and would not be expected in the future to invest its money in that way. In any event, an increase in the interest rate used for the calculation to reflect the most recent increase in rates by the Federal Reserve, would not materially change the analysis. If we increased the interest rate by .50% (an interest rate increase of over 10%), the effect on the NPV is negligible. With a 5.0% interest rate, the NPV decreases by only \$163,000, to \$7.78 million.

10. To the extent the PTA is suggesting that JEI's rent obligation is riskier than U.S. government securities, that is also incorrect. The rent JEI will pay for the next eight years is essentially guaranteed under the Lease and cannot be changed, and therefore the cost saving to JEI is no riskier than the Treasury Note. What is more, I understand that the WFHA has now promised a \$3 million cash buyout guarantee for the last three years of the leaseback, providing even more certainty to the value JEI will receive under the Lease. This would make it wholly

reasonable to use an even lower interest rate, which would raise the net present value of the lease higher than \$7.945 million.



BERNARD KATZ

Sworn to before me this
1st day of May, 2006



Notary Public

Kenneth A. Katz
Notary Public State of New York
No. 02KA6003496
Qualified in Westchester County
Commission Expires 3/9/2010

EXHIBIT F

EXHIBIT A

Joseph P. Dondiego, MAI
Managing Director



Cushman & Wakefield of Connecticut, Inc.
107 Elm Street
4 Stamford Plaza, 8th Floor
Stamford, CT 06902
203.326.5819 Tel
203.326.5835 Fax
joseph.dondiego@cushwake.com

April 12, 2006

Douglas T. Schwarz, Esq.
Partner
Bingham McCutchen LLP
399 Park Avenue
New York, NY 10022-4689

Re: Market Rent Analysis for 51,000± within
10 mile radius of
270 Lake Avenue
Greenwich, CT 06830

Dear Mr. Schwarz:

In accordance with our Terms of Engagement, Cushman & Wakefield of Connecticut, Inc. has conducted a market rent analysis within a ten mile radius of 270 Lake Avenue, Greenwich, CT. The purpose of the study was to evaluate the cost of occupancy for a 51,000± space requirement, for classroom study and supporting administrative offices. The study surveyed all classifications of office space (A, B and C) within the defined area.

Scope of the Study

This is a market rent study presented in a summary report, intended to comply with the reporting requirements set forth under *USPAP* for a Summary Report.

In preparation of this report, we investigated an array of market rent data. Additionally, we investigated the general regional economy as well as the specifics of the local study area.

The scope of this appraisal required collecting primary and secondary data relative to the study area. The depth of the analysis is intended to be appropriate in relation to the significance of the issues as presented herein. The data have been analyzed and confirmed with sources believed to be reliable, in the normal course of business, leading to the conclusions set forth in this report. In the context of completing this report, we have researched both public and Cushman & Wakefield of Connecticut, Inc. proprietary sources. The process involved utilizing market-derived methods and procedures considered appropriate to the assignment.

Definition of Market Rent

The following definitions of pertinent terms are taken from *The Dictionary of Real Estate Appraisal*, Fourth Edition (2002), published by the Appraisal Institute, as well as other sources.

Market Rent

The most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified lease agreement

Index No. 103400/06

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

Application of the Japanese Educational Institute of New
York,

Petitioner,

For an order approving the sale of assets pursuant to N-
PCL §§ 510 and 511

REPLY AFFIRMATION OF DOUGLAS T. SCHWARZ

Bingham McCutchen LLP

Office and Post Office Address

399 Park Avenue
New York, NY 10022-4689
Tel: 212-705-7000
Fax: 212-752-5378
www.bingham.com

*Rec'd By Hand
5 PM.*