

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.:

**VERIFIED PETITION**

Petitioner respectfully alleges:

**I. INTRODUCTION**

1. The Japanese Educational Institute of New York ("JEI" or "Petitioner"), a New York not-for-profit education corporation, submits this 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"), a New York not-for-profit education corporation. Simultaneously with the sale, JEI will lease back from WFHA, at a substantially below market rent and with the right to remain for a minimum of eight years, approximately two-thirds of the useable floor space on the campus, which is the portion of the Greenwich property in and on which JEI currently operates the Greenwich Japanese School ("GJS").

2. Pursuant to its charter from the Board of Regents, JEI provides educational services for Japanese-speaking students at four programs in the New York metropolitan area, including two weekend and two full-day schools. Due to demographic factors described below, one of the full-day schools, GJS, has suffered an enrollment decline of 45% over the past eight years. As a result, GJS is currently educating fewer than half of the students JEI had anticipated when it first purchased the Greenwich property. Faced with GJS's declining revenue and the high cost of maintaining the aging 16.5 acre Greenwich property, and after spending several years exploring ways to increase revenue and decrease spending, JEI's Trustees ultimately

concluded that the sale and leaseback of the Greenwich property was the best way for JEI successfully to continue its charitable purpose of educating Japanese-speaking students at all four of its schools. Pursuant to the proposed lease agreement, JEI has the right to continue to operate GJS for eight years in the same space and in the same manner as it currently operates, at a substantially below market rent, while JEI evaluates the situation in light of GJS's substantially diminished enrollment and ultimately identifies an appropriate facility.

3. The names of Petitioners' Trustees, including the titles of its principal officers and their places of residence are set forth on Exhibit A.

## **II. RELIEF SOUGHT**

4. Pursuant to Not for Profit Corporation Law ("N-PCL") §511, Petitioner seeks an order of this Court approving the sale of the Greenwich property more fully described herein. A Proposed Order is submitted herewith.

## **III. THE SALE AND LEASEBACK OF JEI'S GREENWICH PROPERTY PROMOTES ITS EDUCATIONAL PURPOSE AND THE CONSIDERATION JEI WILL RECEIVE FROM THE SALE AND LEASEBACK IS FAIR AND REASONABLE**

5. As more fully set forth below, 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. The \$20 million sale price for the Greenwich property equals the appraised value at the time the price was initially negotiated. It was arrived at after evaluation of several offers and lengthy negotiation with WFHA. Together with the value of the eight-year leaseback, including the substantially below market rent and freedom from obligation for capital improvements that JEI has negotiated with WFHA, the transaction will fairly compensate JEI for its Greenwich property. By selling and leasing back part of the Greenwich property, JEI will improve its financial situation by

approximately \$1.1 million annually. This improvement comes from a combination of interest income from the proceeds of the sale, the elimination of depreciation, and a substantial reduction of building repair and maintenance expenses, after taking into account the cost of leasing the facility and associated costs.

6. The leaseback also has an important non-monetary value in that it allows GJS to continue to occupy the buildings it currently uses for educational purposes and to use the ample outdoor space on its current campus, for eight years. JEI operates education programs serving nearly 1,300 children *in addition to* the 220 enrolled at GJS. This eight-year period will allow the Trustees time to formulate the best possible plan for continuing to meet the needs of *all* JEI's students, including those at GJS, 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. 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, this Court should grant JEI leave to sell its Greenwich property.

#### **IV. BACKGROUND OF JEI**

##### **A. Mission and Charter**

7. JEI was formed and exists primarily to educate Japanese-speaking students in the New York metropolitan area. The majority of JEI's students are the children of private sector employees and government representatives on temporary assignment from Japan to the New York area, whom it educates in a manner that conforms to the curriculum set forth by the Japanese Ministry of Education, Culture, Sports, Science and Technology for students attending school in Japan. JEI operates a New York weekend school with locations in Queens and Westchester; a New Jersey weekend school in Paramus; and full-day schools for grades one

through nine in Oakland, New Jersey (the "New Jersey Japanese School") and Greenwich, Connecticut (GJS). JEI's four schools are supported by its administrative section.

8. JEI is chartered under Section 216 of the New York Education Law and is a Type B Charitable Corporation under Section 201 of the N-PCL. Attached hereto as Exhibit B is a copy of JEI's Absolute and Provisional charter and subsequent amendments, and attached hereto as Exhibit C is a certified copy of JEI's complete by-laws. Pursuant to N-PCL § 701(a) and its charter, the management of JEI is vested in its Board of Trustees. JEI's officers consist of a president, vice presidents, a secretary and a treasurer. JEI does not have members. JEI works closely with the Japanese government. The Ambassador, Consul General of Japan, Hiroyasu Ando is JEI's honorary president. Most of the faculty in JEI's programs are Japanese public school educators who are employees of the government of Japan dispatched to the four JEI schools at the expense of the government of Japan.

9. The sale and leaseback at issue concern JEI's Greenwich property. JEI operates the Greenwich Japanese School on this property, which is approximately sixteen and one-half acres and consists of fifteen buildings including classrooms, administration buildings, a gymnasium, a chapel and residential structures, all of which are more fully described in Exhibit A to the Agreement of Sale with the WFHA ("Agreement of Sale"), which is attached hereto as Exhibit D, and Annex 3 to the proposed Lease and Sharing Agreement, which is Exhibit B-1 to the Agreement of Sale. The property was formerly the Rosemary Hall School for Girls from 1900 to 1971, when it was sold to the Daycroft School. JEI purchased it from the Daycroft School in 1991. JEI proposes to sell the property and lease back for up to eight years on extremely favorable terms approximately two-thirds of the useable floor space on the campus, which is the portion of the Greenwich property in and on which it currently operates GJS. The Lease and Sharing Agreement is Exhibit B-1 to the Agreement of Sale.

10. The sale and leaseback of JEI's Greenwich property are inextricably tied to the entire organization's ability to continue its educational purpose as described in its charter. As described more fully below, JEI as a whole is experiencing severe financial problems, which are disproportionately based on its loss of revenue due to the declining number of students at GJS. As a result of the decline in enrollment, the Greenwich property, with its aging, costly-to-maintain buildings, is far too large for the school's needs. If JEI does not sell its Greenwich property, JEI as a whole will encounter a severe cash crisis that would compel it to significantly scale back its operations.

**B. History of JEI's Programs**

11. Since its provisional charter was granted in 1974, JEI has educated Japanese-speaking children in the New York metropolitan area. Except for GJS, all of JEI's schools are operated in leased facilities. By 1989, JEI's weekend school classes in Japanese language and culture were educating over 4,500 students, from pre-school through high school, at twelve locations. In recent years, the number of weekend school students and locations has decreased, and today JEI has about 1,200 weekend school students at three locations.

12. The full-day New Jersey Japanese School opened in 1992 for grades one through four. By 2000, its enrollment reached 85 students in grades one through nine. Today, it educates 57 students in a leased facility in Oakland, New Jersey.

13. The Greenwich Japanese School, also a full-day program, is also known as the New York Japanese School ("NYJS") because of its origins in New York. It opened on September 2, 1975 in Jamaica Estates, Queens with a total of eight classes from third through sixth grade. In December 1980, having expanded up to grade nine, NYJS moved to leased space in P.S. 260 in Fresh Meadows, Queens. JEI temporarily relocated NYJS from Fresh Meadows, Queens, to Yonkers, Westchester County for the 1991-1992 school year, while JEI renovated the

Greenwich campus buildings and resolved legal issues regarding the use of the property. By this time, NYJS's enrollment had reached 394 students. On September 1, 1992 NYJS relocated to Greenwich, and became known as GJS. The Greenwich property is permitted by its zoning restrictions to accommodate up to 450 students and JEI fully expected that its enrollment would reach this number by the late 1990s. JEI's enrollment reached its apex in 1997, however, with 409 students.

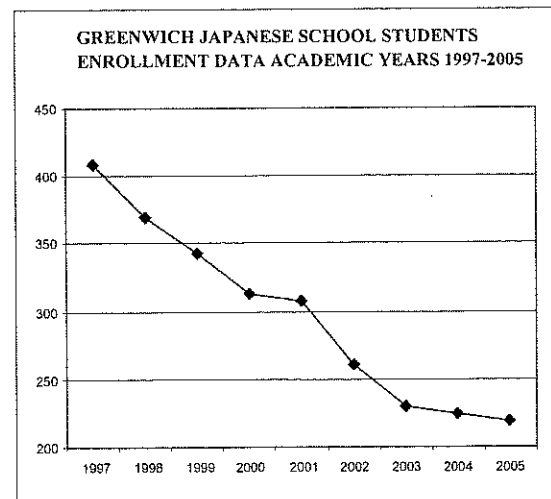
**V. JEI MUST ADDRESS DECLINING ENROLLMENT AND FINANCIAL DOWNTURN AT GJS**

**A. GJS's Declining Enrollment**

14. Much to JEI's dismay, in 1998 the enrollment at GJS began what has proven to be a sharp and steady decline. From 1997 to 1998, GJS's enrollment dropped 10% from 409 to 370 and, as the chart and graph below illustrate, from 1997 to 2005 the number of students at GJS declined by more than 45%, from 409 students to 219 students.

**GREENWICH JAPANESE SCHOOL STUDENTS ENROLLMENT DATA ACADEMIC YEARS 1997-2005**

	APRIL	SEPTEMBER	JANUARY	AVERAGE
1997	392	428	408	409
1998	358	380	371	370
1999	348	341	337	342
2000	309	313	317	313
2001	303	314	306	308
2002	274	251	258	261
2003	234	239	217	230
2004	207	232	232	224
2005	209	223	226	219



15. There appear to be several reasons for this decline. First, the number of Japanese expatriate private sector employees working in the metropolitan area has decreased and it is expected that this trend will continue. JEI's Board of Trustees, which is comprised largely of

chief executive officers and presidents of U.S. subsidiaries or branch offices of major Japanese companies, is uniquely qualified to assess this trend, and the trend is evident in statistics compiled by the Japanese Chamber of Commerce and Industry ("JCCI").<sup>1</sup> Second, people of Japanese origin in both Japan and the United States are postponing marriage and having fewer children. Therefore, there are not only fewer potential students for JEI to educate, but also many parents are posted overseas before their children have reached school age. Third, over the past decade, schools in Japan have made reentry easier for students returning from American schools. Japanese families living in the U.S. have recognized the importance of English language skills and in greater numbers are choosing to send their children to American schools, including public schools where there is no tuition. As a result of these factors, the target audience for JEI's services has decreased and enrollment has sharply declined.

16. JEI's Trustees are committed to continuing to provide education services to the population that remains. In order to remain able to do so, however, they must take prudent steps that reflect the reality of JEI's declining student population.

**B. JEI and GJS Have Encountered Serious Financial Difficulties In Recent Years**

17. JEI's audited financial statement reflects the income, expenditures and financial condition of JEI overall and of each of the four schools operated under JEI's supervision and its administrative office. This breakdown is calculated so that items of income and expense can be clearly allocated to a particular school. These income and expenditure breakdowns are reflected in "internal adjustment accounts" and the sum of the segments equals the total income and expenditure for JEI overall. JEI's most recent audited financial statement (for FY 2003 and 2004) is attached hereto as Exhibit E.

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<sup>1</sup> The number of Japanese expatriates employed by Japanese corporations registered with the New York JCCI in 1996 was 4,177, in 1999 was 3,423 and in 2003 was 2,365.

18. JEI had a FY 2004 deficit of approximately \$360,000, of which GJS's deficit was \$310,000. Exhibit E, Schedule 2. By comparison, Schedule 2 to JEI's audited financial statements also reflects that in FY 2004, all of the other schools operated by JEI had significantly better financial performance. The two weekend schools posted small gains and the full-day New Jersey school had a \$16,000 deficit. JEI's audited financial statements further show that it had an aggregate cash flow deficit in its 2003 and 2004 fiscal years of \$1,334,506. Exhibit E, at p.4.

19. As a consequence of the decrease in enrollment described above, funds available to JEI and GJS have dwindled over the years. For example, cash on hand for JEI decreased by \$1.06 million (22%) in 2004.

20. GJS's steep enrollment decline and large deficits are detrimental to JEI's overall financial condition and endanger all of its programs. It therefore became incumbent upon the Board of Trustees of JEI to address the situation by reducing GJS's operating costs, which are the largest component of JEI's deficit.

## **VI. JEI CONSIDERED REMEDIAL MEASURES PRIOR TO THE SALE AND LEASEBACK**

21. During the past four years, JEI's Trustees have explored numerous ways to remedy its financial problems including, among other things, a consolidation of its two full-day schools, a reduction in administrative expenses and selling or leasing part of its Greenwich property. After considerable research and deliberation, the Trustees determined, in the exercise of their fiduciary obligations, that none of these measures would enable JEI to continue its operations as presently conducted. Therefore, the Trustees decided that the sale and leaseback were the best solution to enable JEI to continue its charitable mission of educating Japanese-speaking students, long-term.

**A. Consolidation of the Greenwich and the New Jersey Full-time Schools**

22. In March 2002, because both the New Jersey Japanese School and GJS were operating at deficits, and foreseeing a continuing decline in enrollment, the Trustees planned to consolidate the two schools by 2005. The plan initially called for students at the New Jersey full-day school to move temporarily to the Greenwich school, while a new joint location was found midway between the schools. JEI began to work with a real estate broker to study the market in connection with a relocation. The Trustees eventually realized, however, that it was unrealistic to expect many families at the New Jersey school to commute to Greenwich. In addition, enrollment at GJS declined at a rate faster than had been expected, pushing JEI into deeper deficits. Unlike the rental facilities JEI uses for its other schools, the cost of maintaining the aging Greenwich property could not be reduced and in fact was growing. When it became clear that a consolidation at the Greenwich campus would not solve the deficit problem and more time would be needed to locate an appropriate new facility, the Trustees revised their plan. In March 2004, they voted to postpone the consolidation and pursue a transaction whereby they would sell the Greenwich property on the condition that JEI retain the ability to continue to use it as a school for several years, during which time they could assess JEI's needs and locate an appropriate facility.

**B. Measures to Increase Revenue and Decrease Expenses**

23. In addition to considering the consolidation of its Greenwich and New Jersey day schools, JEI pursued several measures to attempt to increase revenue. The Trustees attempted to increase enrollment by establishing a committee to visit families of potential students and to speak with Japanese business leaders to promote JEI's educational services. However, due apparently to the demographic reasons identified above in Paragraph 15 these efforts ultimately were unsuccessful.

24. Realizing that it would be unable to attract students to GJS in sufficient numbers to reduce its deficit, JEI's Trustees considered increasing tuition for current GJS students. However, because GJS recorded a large deficit in 2004, for GJS to financially break even, JEI would have to substantially increase tuition. In light of the declining interest among potential JEI student families in Japanese education and the already relatively high cost of tuition, the Trustees were concerned that such a significant tuition increase would actually decrease enrollment, creating an ongoing downward spiral. They therefore decided against a tuition increase.

25. Significant zoning restrictions limited JEI's ability to generate revenue from the property. As a result of tremendous community opposition when it initially relocated to the Greenwich property in 1991, primarily because of residents' concerns about increased traffic, JEI eventually received approval from the Zoning Board of Appeals, but with significant restrictions.<sup>2</sup> Examples of these restrictions include: (1) a 450-student maximum enrollment; (2) a limitation of grade levels to first through ninth; (3) restricted operating hours and no classes on Saturday or Sunday or during the summer recess; (4) transportation by bus 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; (5) a maximum of 30 cars transporting faculty; and (6) equalizing traffic by specifying which of the property's entrances bus drivers, parents and teachers should use.

26. JEI was able to raise limited revenue in the amount of three to four thousand dollars annually by leasing GJS's chapel to various religious groups. JEI also rented out its Greenwich property during summer recesses to a day camp program and earned approximately \$25,000 per year. JEI also considered leasing unoccupied GJS campus housing to its expatriate

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<sup>2</sup> JEI also settled a lawsuit with its neighbors, which settlement included further restrictions on JEI's use of the Greenwich campus.

faculty. However, because the housing was old and would require considerable renovations, JEI concluded that, in light of such costs, the net rental income would be negligible.

27. Having determined that JEI was limited in the amount of additional income it could generate, the Trustees considered numerous measures to reduce expenses. For example, JEI offered administrative and support staff part-time employment or resignation. JEI saved approximately \$20,000 because one staff accountant changed from full-time to part-time status, but JEI subsequently determined that it was not in its students' best interests to further reduce its staff. JEI also considered decreasing school activities, but similarly concluded that this would limit its students' educational experiences.

28. JEI was successful in reducing cleaning and maintenance expenses by decreasing the frequency of cleanings and by encouraging its students and staff to work on a campus beautification project. It also reduced outside printing expenses by encouraging use of the school's copy machines. However, the revenue saved from these efforts was minimal.

29. In sum, while JEI and its GJS faculty and staff made concerted efforts to increase revenue and curb spending, these efforts were simply insufficient to combat GJS's large and rapidly growing deficit.

**C. Subdividing and Selling or Leasing a Portion of the Greenwich Property**

30. In connection with the decision to sell the property, JEI's Trustees also considered subdividing its Greenwich property and selling or leasing a portion of the subdivided property. JEI learned that in order to subdivide the property, application would have to be made to the Town of Greenwich Planning and Zoning Commission (the "Commission"). JEI concluded that in light of the restrictions dating back to its purchase of the Greenwich property in 1991 as well as other existing restrictions and Greenwich ordinances, it was extremely unlikely that the Commission would permit JEI to subdivide its property. JEI understood that the school's

neighbors, many of whom remain hostile to the arrangement and were concerned about increasing traffic in the area, would likely fight against subdividing and might prevail upon the Commission to impose even greater restrictions, which would reduce the value of the property. At the very least, such a dispute would take several years to resolve at great expense and with the possibility of a negative outcome for JEI. JEI also learned that sale of a portion of the property for residential use would essentially be impossible because the property's Floor Area Ratio ("FAR"), which already exceeds the maximum permissible FAR in its zone but is allowable as long as it remains unchanged as it is grandfathered for JEI, would not (i) permit additional improvements to be constructed on the property and (ii) permit the sale of any portion of the property because such a sale would exacerbate JEI's excessive FAR.

31. In October 2005, JEI received an offer from a neighbor to purchase approximately one acre of its property for between \$1 million and \$1.5 million. JEI rejected this offer because of the above-detailed problems with subdividing its Greenwich property, because it determined that such a one-time infusion of cash would not address JEI's underlying financial problems and would only postpone an inevitable crisis, and because it was already far along in its negotiations with WFHA for a transaction the Trustees believe is in JEI's best long-term interest.

32. The Trustees also considered leasing a portion of the Greenwich property to a third party, but decided against it for two principal reasons. First, any lease JEI entered into would frustrate its ability freely to sell its property if it located preferable space. Second, due to subsidies provided to JEI by the Japanese government, lease revenues would have to be returned to the Japanese government.

33. In September 2005, JEI's President received a proposal from another school to pay \$500,000 a year to lease 20,000 square feet of space on JEI's campus for five years. JEI decided not to pursue the proposal for the reasons set forth in paragraph 32 above, and because

JEI investigated the financial status of the entity and concluded that it posed a higher than average credit risk and had no track record in the New York area.

34. Instead of leasing its property to a third party, JEI's Trustees also considered whether JEI could effectively lease its Greenwich property to its New York weekend school. Because zoning restrictions imposed in connection with JEI's purchase of the Greenwich property prohibit weekend use, however, JEI would need approval from the Commission, and would face the same obstacles referred to above. Then, even if JEI was successful at the Commission, because the weekend school enrolls more than the 450 students permitted under the zoning restrictions, the Greenwich property could not accommodate all of the weekend school students and JEI would still need to rent another facility, the cost of which would limit potential savings.

## **VII. JEI OBTAINED AND EVALUATED SEVERAL OFFERS TO PURCHASE THE GREENWICH PROPERTY**

35. As noted, due to JEI's worsening financial condition and the substantially reduced enrollment of GJS, and recognizing that none of the above-mentioned measures could adequately remedy JEI's growing deficit, the Trustees concluded that unless JEI sold the Greenwich property, JEI as a whole would be unable to continue its charitable mission of educating Japanese-speaking students. The Trustees therefore decided on March 24, 2004 to postpone the consolidation of the New Jersey and Greenwich full-time schools and to seek a buyer for the Greenwich property that would agree to allow GJS to continue to operate on the property for an extended period of time.

36. By this time, JEI already was aware of potential buyers for its Greenwich property, having earlier retained a real estate broker to study the market in connection with its plan to relocate its facility following the planned consolidation of its two full-day schools. JEI

instructed the broker to locate potential buyers for its Greenwich property who would permit GJS to remain for an extended period of time on the portions of the Greenwich property that it currently used for educational purposes.

37. The broker contacted the organizations that had previously expressed an interest in the Greenwich property and explained to them that JEI was seeking a buyer that would agree to a sale and leaseback of the Greenwich property on terms favorable to JEI. JEI's requirement of remaining on the property for an extended time, combined with the property's zoning restrictions and covenants, limited the market for potential buyers.

38. The broker contacted another independent day school in the area ("School A"), which had offered JEI \$12 million in September 2002 for its Greenwich property and subsequently offered JEI \$18 million in February 2004, a month before JEI decided to seek a buyer to which it could sell and lease back its property. School A was not interested in sharing its space with JEI because of School A's large student body. WFHA, however, which had also submitted an \$18.5 million offer in February 2004, was receptive to an arrangement that would suit JEI's needs. Negotiations commenced between JEI and WFHA and by December 2004, WFHA had agreed to raise its initial offer from \$18.5 million to \$20 million and to permit JEI to continue its educational program on the Greenwich campus pursuant to an arrangement whereby the two schools would share JEI's Greenwich property for at least five years, until March 30, 2011 and, at JEI's option, would continue to share the space for three additional years through March 30, 2014, for a total of eight years.

39. Later, in March 2005, School A expressed interest in acquiring the Greenwich property for \$23 million and allowing GJS to remain on the campus for four years. While this expression of interest was attractive on its face, JEI did not pursue it primarily because it provided substantially less time -- than the eight-year WFHA leaseback offer -- for JEI to assess

its needs, locate an appropriate new facility and give parents time to make necessary arrangements in connection with the relocation of the school. In addition, while School A did not state rental terms, even if it had matched the extremely favorable terms offered by WFHA, doing so for four years was considerably less attractive than the eight-year WFHA offer. Through its broker, JEI informed School A that JEI was seeking the right to remain on the campus for longer than four years, but School A did not indicate that it was prepared to extend that time period.

**VIII. JEI'S EDUCATIONAL CHARITABLE PURPOSE WILL BE PROMOTED BY THE TRANSACTION**

**A. The Sale and Leaseback of GJS will effectively address JEI's financial problems and enable JEI to continue to pursue its educational charitable mission**

40. JEI has executed the Agreement of Sale with WFHA, Exhibit D hereto, whereby WFHA will pay \$20 million to purchase the Greenwich property and will agree to lease back to JEI for up to eight years at a substantially below market rent approximately two-thirds of the usable floor space on the campus, which is the portion of the Greenwich property GJS currently uses for educational purposes. The Lease and Sharing Agreement ("Leaseback Agreement"), is Exhibit B-1 to the Agreement of Sale. Pursuant to the Agreement of Sale, subject to the approval of this Petition, the parties will execute and deliver the Leaseback Agreement at the closing of the sale. The Leaseback Agreement, described more fully below, details the way in which the two schools will share the current GJS facilities for up to eight years at JEI's option. The Leaseback Agreement contemplates an additional two-year extension, should JEI and WFHA agree to it.

**1. The sale and leaseback will enable JEI to avoid a financial crisis and improve its financial status by \$1.1 million annually**

41. By selling and leasing back the Greenwich property JEI will improve its financial situation by approximately \$1.1 million annually. This improvement comes from a combination of (i) interest income from the proceeds of the sale, (ii) the elimination of expenditures such as depreciation, (iii) the significant reduction of expenditures such as building repair and maintenance expenses associated with the ownership and operation of the Greenwich property, and (iv) accounting for the cost of leasing back a portion of the facility. The net result of the sale and leaseback is an annual benefit to JEI of approximately \$1.1 million.

42. After repaying JEI's only debt, \$1.2 million due on a loan from the Bank of Tokyo Mitsubishi currently bearing interest at a rate of 7.4% per annum, as reflected on JEI's most recent audited financial statement, Exhibit E, and after paying the costs and expenses associated with the sale, the balance of the sale proceeds will be deposited at the Bank of Tokyo Mitsubishi or another internationally recognized financial institution and placed in prudent, short-term investments bearing market rates of return. The short-term nature of such investments will allow JEI to utilize the sales proceeds to either purchase or lease a new facility where it will continue to educate Japanese-speaking students.

**2. The leaseback will allow JEI sufficient time to locate a new facility and will not unduly burden GJS families**

43. The sale and leaseback agreement guarantees that JEI can continue to educate GJS students at the school's current location for up to eight years. The transaction will in no way affect GJS families in the near future. There is considerable turnover in JEI's student body from year-to-year due to families completing their assignments in the United States and returning to Japan. The average student spends only three to four years enrolled at GJS before leaving. In the past three years, not a single student has completed the ninth grade having started at GJS in

first grade. Moreover, the eight-year leaseback will allow all students currently enrolled at GJS to graduate from the school at the current location.

44. The leaseback also gives JEI sufficient time to formulate the best possible plan for continuing to meet the needs of all of its students. Early in the leaseback period, JEI will consider whether consolidating the New Jersey and Greenwich schools remains its best alternative. The eight-year period enables JEI to consider a wider range of locations and facilities because it will have sufficient time, if necessary, to convert a property for use as a school. The extended period also will allow GJS families time to make transportation or other necessary arrangements in advance of the school's relocation. The Trustees anticipate establishing a forum for all interested parties to deliberate jointly and work together to find an excellent facility so that JEI may continue its mission of educating Japanese-speaking students for years to come.

**3. Under the Leaseback Agreement, GJS will maintain its own space and its students will benefit from sharing the campus with WFHA**

45. JEI and WFHA have committed to working together to ensure the success of the joint-use plan. A detailed description of the sharing plan is contained in Schedule B of the Lease and Sharing Agreement, Exhibit B-1 of Exhibit D. Under the Leaseback Agreement, each school will, for the most part, operate in its own, separate facilities. GJS will primarily occupy the west side of the campus, which it currently occupies, and WFHA will primarily occupy the east side, which is currently virtually vacant. The schools will share Building 10, the Arts and Sciences Building, and WFHA will divide the two science labs in that building so each school will not be disturbed by the other's usage. GJS will use one science lab, both music rooms and the art room closest to the music rooms. WFHA will use the room currently used as a machine shop, the remaining science lab, the east music room and the remaining art room. The schools

will share the auditorium, the main gymnasium building, the main field, and the tennis courts, with GJS enjoying primary use of these facilities. These sharing arrangements will enable both schools to continue their current sports curricula. Each school will have recess in a designated area and, if problems develop with the neighbors due to WFHA's use of an open area, the two parties will modify the open space arrangement. JEI and WFHA have committed to reviewing the terms of the joint-use agreement prior to the commencement in February of each school year to coordinate their schools' respective schedules, and, if necessary, again in August of each year. The schools will discuss any changes that may be required from each school's educational and curricular perspective as well as any additional provisions that the parties have not addressed. JEI and WFHA have established an expedited dispute resolution procedure to resolve promptly any issues that may arise.

46. By sharing the campus with WFHA, GJS students will have further opportunities to experience American culture and a more international atmosphere will be created on the Greenwich campus. WFHA and JEI are looking forward to exchanges between the two groups and both organizations believe their students will benefit from the opportunities for multi-cultural exposure and interaction.

**IX. THE CONSIDERATION AND THE TERMS OF THE SALE ARE FAIR AND REASONABLE**

47. The combination of the \$20 million cash price and favorable leaseback terms agreed to with WFHA, including the substantial benefit of remaining in the location GJS is currently using for up to eight years and monetary benefits conservatively estimated at \$5 million, far exceeds the property's appraised value of \$21.7 million. Because WFHA's offer fairly compensates JEI for its property and at the same time allows it sufficient time and

resources to plan and pay for its future, JEI's Trustees ultimately concluded that it is in JEI's best interest to consummate the sale and leaseback transaction with the WFHA.

**A. An independent appraiser valued JEI's property at \$21.7 million**

48. To ensure that JEI would be fairly compensated for the sale of the Greenwich property, the Trustees hired an appraiser to value the land and improvements. As of May 20, 2004, the appraised market value of the fee simple interest held by JEI in its approximately 16.521 acres of land and sixteen buildings was \$20 million. Attached hereto as Exhibit F is a copy of the initial appraisal dated May 20, 2004. On August 4, 2005, the appraiser revised his estimate and concluded, due to increases in building costs and in the value of land, that the property's current market value was \$21.7 million. Attached hereto as Exhibit G is a letter from the appraiser to JEI dated August 4, 2005 updating the appraisal.

**B. The value JEI will receive from the Sale and Leaseback far exceeds the Greenwich property's appraised value**

49. Although the sale price of \$20 million is \$1.7 million less than the revised appraised value, under the sale and leaseback agreement JEI will not only receive \$20 million for its property, it also will receive additional value in the leaseback that fairly compensates JEI. Indeed, it is estimated that the leaseback arrangement will save JEI approximately \$5 million over the next eight years because JEI has negotiated favorable rent terms, and an additional amount in the millions of dollars because JEI's obligation for capital costs during this period will be extremely limited.

50. The estimate is arrived at as follows. If JEI sold the Greenwich property without a leaseback, it would need to rent or purchase space. Under the Leaseback Agreement, JEI will enjoy for the next eight years an extremely low rent payment to WFHA. JEI will pay WFHA a fixed amount equal to JEI's percentage share of costs for maintenance, routine capital

expenditures, cleaning and other services actually incurred by JEI for its 2004/2005 fiscal year, with a 3% per annum increase during the leased term and a 25% surcharge for the last three years. JEI also will pay WFHA for its percentage share of actual insurance premiums and utility costs, 50% of the costs for safety personnel and traffic police and 50% of the amortized cost of an electronic security system. JEI's percentage share will be adjusted as JEI and WFHA agree to changes in the use of the campus by JEI and WFHA.

51. JEI conservatively calculates the value of the favorable rental terms at \$5 million over the eight-year Leaseback Agreement. For purposes of computing the \$5 million savings, the fixed annual rent under the leaseback is subtracted from the fixed annual rent under a third-party lease. It is assumed that JEI's share of the actual insurance premiums, utility costs, costs for safety personnel and technology and traffic police payable under the Lease and Sharing Agreement would approximate the real estate tax and operating expense escalations that would otherwise be payable under a third-party lease. Even if this was not the case, JEI will realize a 38% savings because it is no longer solely responsible for these costs.

52. JEI also expects to save capital costs in the millions of dollars over the next eight years. Under the agreement with WFHA, JEI has very limited obligations to maintain any part of the buildings, facilities, fixtures and equipment other than the property it will use. The improvements JEI would need to make if it were to remain the owner of the Greenwich property would include an updated heating, ventilating and air conditioning system, some window replacement, upgraded lighting, new interior finishes, some exterior upgrade and roof repairs. It is expected that these costs would increase throughout the eight-year period in light of the aging nature of the buildings.

**X. THE TRUSTEES HAVE BEEN RESPONSIVE TO THE CONCERNS OF GJS PARENTS, BUT ALSO MUST PROTECT THE NEEDS OF JEI AS A WHOLE**

53. Opposition to the proposed transaction is anticipated from the PTA of GJS. Parents have complained that neither they nor faculty nor administrators have had sufficient input into the decision whether to enter into the sale and leaseback agreement or sufficient information regarding the process leading to the agreement. As described below, however, the PTA has had ample opportunity to understand and be heard on the matter. Moreover, and respectfully, this is a Trustee decision that transcends the concerns of the GJS parents. JEI educates nearly 1,300 children *in addition to* the GJS students. The Trustees' decision to enter the sale and leaseback transaction is a decision for the good of all of JEI's students.

54. The Trustees have provided the PTA with numerous meaningful opportunities to be heard and have opened the organization's books to review by the parents. The parents were initially formally notified of the Trustees' revised plan regarding consolidation, including the plan to pursue an agreement to sell and lease back the Greenwich property, in March 2004. Through the fall of 2004, confidential negotiations proceeded, with input from GJS's principal. In March 2005, JEI created a Task Force on Joint Use to inform its negotiations with WFHA. The Task Force included GJS's principal, who was asked to solicit and include the opinion of the parents, so that their input could be reflected in the negotiating decisions.

55. Large, formal meetings between Trustees and parents regarding the proposed sale and leaseback took place in March, May, September and November of 2005. A Trustee committee spent hours meeting with, and produced and explained voluminous financial documents to, a parent committee. The Trustees listened at length to and carefully considered the parents' objections and alternative proposals. The Trustees regularly have solicited and

considered the input of GJS's principal, and the Trustees incorporated the principal's input in the agreement with WFHA regarding sharing the campus.

56. The GJS parents also have indicated that they disagree with the Trustees' assessment of JEI's financial condition. The Trustees listened at length to and carefully considering the PTA's analysis, as well as its alternative proposals to generate revenues. JEI's Trustees are business leaders who possess both commitment to educational excellence and sophisticated business judgment. As noted, 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. They are motivated to provide the best possible educational programs to JEI's students, many of whom are children of employees of companies for which the Trustees work. Based on the parents' input as well as the Trustees' own careful examination of JEI's finances, numerous efforts to stem the flow of red ink and study of still others, the Trustees have finally concluded that the sale and leaseback is the appropriate action to take. Their judgment is entitled to deference.

57. GJS is operating with 220 students on a 16-plus acre campus zoned to accommodate 450 students. Some parents understandably would prefer to continue that luxury. But the Trustees must make a judgment to conserve JEI's resources for the use of all of its programs and to enable it to continue to fulfill its educational mission.

58. The Trustees concluded that the sale and leaseback is in the best interest of both GJS and JEI as a whole. With respect to GJS, the transaction represents the best opportunity to allow current students to continue to be educated on the Greenwich campus through ninth grade with the same level of education services the school historically has provided. It is also clear to the Trustees that the sale and leaseback is in the best interest of JEI as a whole. To ensure that JEI is able to fulfill its charitable educational purpose, not just as concerns the 220 students at

GJS, but for 1,300 students in JEI's three other schools, the Trustees determined that the transaction is necessary.

**XI. THE TRUSTEES OVERWHELMINGLY APPROVED THE TRANSACTION**

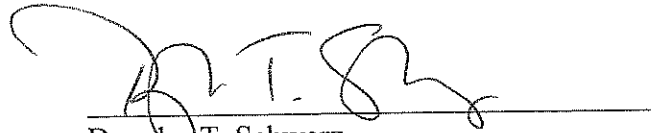
59. On November 29, 2005, at a meeting duly called and held, JEI's Trustees voted to approve the sale and leaseback. Attached hereto as Exhibit H is a copy of the resolution approving the sale and leaseback. A quorum, i.e., more than a majority, of JEI's Trustees participated in this vote as 27 of JEI's 38 Trustees attended this meeting. Twenty-six Trustees voted in favor, zero Trustees voted against the sale and leaseback and one Trustee abstained.

60. JEI does not have members.

61. The dissolution of JEI is not contemplated.

WHEREFORE, petitioner requests leave of this Court to carry out the sale and leaseback described above and for that purpose to execute any and all deeds necessary and all other relief that is just and proper.

Dated: New York, New York  
December 29, 2005



Douglas T. Schwarz  
Gary A. Adler  
Jessica S. Boar  
Susanna Chu  
BINGHAM MCCUTCHEN LLP  
*Attorneys For Petitioner*  
399 Park Avenue  
New York, New York 10002-4689

Of Counsel:  
Daniel L. Kurtz  
HOLLAND & KNIGHT  
195 Broadway  
New York, New York 10007

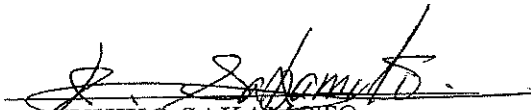
[VERIFICATION ON FOLLOWING PAGE]

VERIFICATION

STATE OF NEW YORK    )  
                                  : SS. :  
COUNTY OF NEW YORK )

KAZUHIKO SAKAMOTO, being duly sworn, deposes and says:

That he is the President of the Board of Trustees of the Japanese Educational Institute of New York; that he has read and knows the contents of the foregoing petition; that the same is true to the best of his knowledge, information and belief.

  
KAZUHIKO SAKAMOTO

Sworn to before me this  
28<sup>th</sup> day of December, 2005

  
Notary Public

HOWARD C. TIEGEL  
Notary Public, State of New York  
No. 4940366  
Qualified in Cassau County  
Commission Expires Aug. 15, 192006