

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

WRIT OF SUMMONS

(248)

Case No: 355237-V

TO:

JOHNS HOPKINS UNIVERSITY
3400 N CHARLES ST
BALTIMORE MD 21218

(Service Address)
STEPHEN S. DUNHAM, ESQ.
OFFICE OF THE VICE PRESIDENT AND
GENERAL
COUNSEL
THE JOHNS HOPKINS UNIVERSITY
3400 N. CHARLES STREET
GARLAND 113
BALTIMORE, MARYLAND 21218

You are hereby summoned to file a written response by pleading or motion in this court to the attached complaint filed by:

JOHN TIMOTHY NEWELL

within 30 days after service of this summons upon you.

Witness, the Honorable Chief Judge of the Sixth Judicial Circuit of Maryland.

TO THE PERSON SUMMONED:

1. Failure to respond within the time allowed may result in a default judgment or the granting of the relief sought against you.
2. If you have been served with a Scheduling Order, your appearance is required pursuant to the Scheduling Order, regardless of the date your response is due.

Date Issued: 11/10/2011



Loretta E. Knight

Loretta E. Knight, CLERK
of the Circuit Court for
Montgomery County, Maryland
50 Maryland Avenue
Rockville, MD 20850-2393

NOTE:

1. This summons is effective for service only if served within 60 days after the date it is issued.
2. Proof of service shall set out the name of the person served, the date, and the particular place and manner of service. If service is not made, please state the reason(s).
3. Return of served or unserved process shall be made promptly and in accordance with Rule 2-126.
4. If this summons is served by private process, process server shall file a separate affidavit as required by Rule 2-126(a).

RETURN

[] Served on _____ at _____
(Date) (City/State/Country)

[] Unserved _____
(Date) (Reason)

(Signature) [] Sheriff




Loretta E. Knight
Clerk of the Circuit Court for Montgomery County, Maryland
50 Maryland Avenue
Rockville, Maryland 20850-2397
November 10, 2011

RE: Notice of New Case Number for
JOHN TIMOTHY NEWELL, ET AL vs JOHNS HOPKINS UNIVERSITY
Reference Case#: N/A
Case Type: DECLARATORY JUDGMENT
(836)

Dear Sir/Madam:

Please be advised that the above referenced case was received on November 10, 2011, in the office of the Clerk for Montgomery County. This matter has been assigned case number 355237-V. Please include this case number on all future papers to be filed in this case.

Sincerely,


Clerk of the Circuit Court
for Montgomery County,
Maryland

JOHNS HOPKINS UNIVERSITY
3400 N CHARLES ST
BALTIMORE MD 21218

**IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND**

JOHN TIMOTHY NEWELL

P.O. Box 78
Oldwick, New Jersey 08858,

FRANCES LUCINDA NEWELL

247 Sweetwater Drive
Sandpoint, Idaho 83864,

KAREN NEWELL BRINDLEY

111 Beaumont Drive
Newtown, Pennsylvania 18940,

SHARON NEWELL FAWCETT

472 Harvard Road
Lancaster, Massachusetts 01523,

ESTATE OF BEULAH BANKS NEWELL

P.O. Box 78
Oldwick, New Jersey 08858, and

ELIZABETH BANKS RAY

2055 Yosemite Avenue
Los Angeles, California 90041

Plaintiffs,

v.

THE JOHNS HOPKINS UNIVERSITY

3400 N Charles St
Baltimore, Maryland 21218

SERVE:

Stephen S. Dunham, Esq.
Office of the Vice President and General
Counsel
The Johns Hopkins University
3400 N. Charles Street
Garland 113
Baltimore, Maryland 21218,

Defendant.

COMPLAINT

**(Seeking Declaratory and
Injunctive Relief)**

Civil Action No. 355237-v

RECEIVED

NOV 10 2011

Clerk of the Circuit Court
Montgomery County, Md.

OFFICE OF THE CLERK OF THE CIRCUIT COURT
MONTGOMERY COUNTY, MARYLAND

RECEIVED
MAY 10 2011

CLERK OF THE CIRCUIT COURT
MONTGOMERY COUNTY, MARYLAND

STATE OF MARYLAND
COURT AND CLERK OF THE CIRCUIT COURT
MONTGOMERY COUNTY, MARYLAND

IN SENATE
MAY 10 2011

STATE OF MARYLAND
COURT AND CLERK OF THE CIRCUIT COURT
MONTGOMERY COUNTY, MARYLAND

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MAY 10 2011

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MONTGOMERY COUNTY, MARYLAND

IN SENATE
MAY 10 2011

STATE OF MARYLAND
COURT AND CLERK OF THE CIRCUIT COURT
MONTGOMERY COUNTY, MARYLAND

RECEIVED
MAY 10 2011
Clerk of the Circuit Court
Montgomery County, Md.

Plaintiffs, John Timothy Newell, *et al.*, through undersigned counsel, sue The Johns Hopkins University, and state as follows:

NATURE OF THE ACTION

1. This is an action to confirm, declare and protect the respective rights of the parties with respect to (a) a December 10, 1988 contract for the sale of a property known as the Belward Farm in Montgomery County, Maryland, to The Johns Hopkins University (“Contract”); and (b) a corresponding deed of conveyance of the Belward Farm to defendant, record date of January 10, 1989 (“Deed”). Declaratory and injunctive relief is necessary because, over the objection of plaintiffs, defendant intends to implement a use of the property conveyed by the Deed in a manner that is inconsistent with the restrictions placed on its use in both the Contract and the Deed to effectuate the donative intent of the transferors of Belward Farm.

PARTIES, JURISDICTION AND VENUE

2. Plaintiffs are successors in interest to the contract and deed rights of the parties that transferred Belward Farm to The Johns Hopkins University, the defendant (“JHU”), at a sales price that constituted a substantial donation. More specifically, (a) plaintiffs John Timothy Newell, Karen Newell Brindley, Frances Lucinda Newell, and Sharon Newell Fawcett are the successors in interest to now-deceased Elizabeth B. Banks, the majority owner of the Belward Farm at the time of sale/donation to JHU in 1989 (a 69.4% undivided interest); (b) plaintiff the Estate of Beulah Banks Newell is the successor in interest to Beulah Banks Newell, now deceased, one of two minority owners of the Belward Farm at the time of sale/donation to JHU in 1989 (a 15.3% undivided interest); and (c) plaintiffs John Timothy Newell and Elizabeth Banks Ray are the current

successors in interest to now-deceased Roland F. Banks, Jr., the other minority owner of the Belward Farm at the time of sale/donation to JHU in 1989 (a 15.3% undivided interest). Elizabeth B. Banks, Beulah Banks Newell and Roland F. Banks, Jr. are collectively referred to below as the “Owners.” Plaintiffs are referred to below as the “Owner Successors.”

3. Defendant, The Johns Hopkins University (“JHU”), is a not-for-profit institution of higher education organized under the laws of the State of Maryland with offices and an address at Charles and 34th Streets, Baltimore, Maryland 21218. JHU is the purchaser/donee of the Belward Farm from the Owners.

4. The Court has jurisdiction over this action pursuant to Md. Courts and Jud. Proc. Code Ann. §1-501, and under the Maryland Uniform Declaratory Judgments Act, *id.*, §§3-401 to 3-415. It has jurisdiction over defendant pursuant to §6-102(a) and §6-103(b)(1), (2) & (5) of that Article. Venue is proper in this Court under §6-201(a) of that Article.

BELWARD FARM – 1873-1988

5. In the late 1980’s, an area of prime farmland in Montgomery County almost entirely circled by development of homes and businesses had been under the control of one family for over a century, and operated as a farm throughout that time. The original purchaser of the land, in three acquisitions over the period 1873-1883, was Ignatius Beall Ward. Mr. Ward and his surviving widow, Elizabeth P. Ward, owned the property until her death in 1928.

6. At that point the property came under the ownership and control of the seven Ward children. Through inheritances and transfers among siblings since 1928, as of

1988 the property was owned by Elizabeth B. Banks, daughter of deceased Ward sibling Frances L. Ward Banks, and Ms. Banks' two siblings, Roland F. Banks, Jr., and Beulah F. Banks Newell. All three Banks children were raised on the farm, commencing in about 1928.

7. The property was a dairy farm during most of the period from 1928-59, and was known as "Belward Haven," where "Belward" is a contraction of Ignatius Beall Ward's last two names. Subsequently, it became known as simply "Belward Farm."

8. By 1988, of the three Owners, only Elizabeth Banks continued to live at Belward Farm. By then she had for many years been operating the farm alone. Ms. Banks was also employed full-time as a teacher in the Rockville, Maryland or Montgomery County public schools, from which she retired in 1967.

9. In the years prior to 1988, Ms. Banks was staunchly opposed to the frequent entreaties by developers to sell Belward Farm for development, even as whole neighborhoods and a life sciences center arose around her on neighboring properties.

10. Belward Farm was then in the R-200 residential zone, which permitted both agricultural uses and single-family residences on 20,000 or more square foot lots. In the R-200 zone at that time, virtually all commercial uses other than the sale of Christmas trees in December were not permitted uses, and private educational institutions were allowed if granted a special exception.

11. In 1988, the Belward Farm had development potential under existing zoning for at least 200 single-family homes. Ms. Banks had rejected numerous offers to sell Belward Farm for development, and was reported in the local newspapers as having driven off at least one trespassing developer with a shotgun. Ms. Banks' antipathy

toward developers, in relation to Belward Farm, was reported in a 1989 Montgomery Journal account of an interview of her at that time. Journal reporter Matt Hamblen quoted her as follows:

I never wanted it [Belward Farm] to be developed. I never wanted a developer to put a foot on this property. They destroy all the trees, the birds, everything. This whole community around here has been destroyed by the developers.

Sometimes when I'm out shopping total strangers ask me if I'm the one with the beautiful farm, and I tell them, 'I'm trying to keep it that way.'

SALE OF BELWARD FARM TO JHU

12. In or about 1988, discussions commenced between Elizabeth Banks and JHU regarding donating Belward Farm to JHU. Her co-Owners, who understood and supported Ms. Banks' wish to live the rest of her life on Belward Farm and to ensure that it not become the object of residential or commercial development, supported Ms. Banks desire to fulfill these wishes while at the same time making a substantial gift to JHU.

13. JHU was the object of Ms. Banks' donative intent based on a long history of its favorable impressions on her, starting with the dating of JHU students when she was a young woman, and continuing through her mother's treatment at JHU medical facilities when diagnosed with lung cancer in 1962. As Ms. Banks explained to Journal reporter Hamblen at the time of the sale in 1989,

I've had a big spot in my heart for Johns Hopkins for many years. They're a great institution and Montgomery County should be proud.

In addition, Ms. Banks felt that a JHU college campus on Belward Farm would be a good way to protect the property from being commercially developed.

14. The discussions with JHU resulted in a letter to the Owners setting forth a ten-point “Proposed Terms of Transfer” from John Dearden, Director, JHU Office of Sponsored Projects. A copy of the Dearden letter is attached as Exhibit A to this Complaint. By this letter, JHU informed the Owners that senior JHU officers were prepared to recommend the ten points to the President and Trustees of JHU as the basis for acquisition of Belward Farm by JHU. Point 2 of the Proposed Terms provided that Belward Farm “will be sold in part and deeded in part as a gift . . .” Point 5 provided that the 100-acre upper or western section of Belward Farm “will be developed and used only for academic purposes.” Point 6 provided that the 30-acre lower or eastern section of Belward Farm “may be commercially developed in order to create revenue to support the academic activities of [JHU].” Point 7 provided that wooded land between these two sections “will be maintained as a ‘buffer zone’ between academic and commercial activities.”

15. The Owners, in general agreement with the ten points, proceeded with JHU to drafting and execution of a Contract of Sale between the Owners and JHU for the sale/donation of Belward Farm. The Contract of Sale, initially executed on August 22, 1988, was re-executed as the “Amended and Restated Contract of Sale” on December 10, 1988. A copy of the Amended and Restated Contract of Sale (“Contract”) is attached as Exhibit B to this Complaint. In the recitals to the Contract, the parties to it expressly acknowledged that (a) the purchase price of \$5 million for the Belward Farm did not represent the fair market value of the property, even taking into account the restrictions on future use set forth in ¶ 13 of the Contract; and (b) the difference between such fair market value and \$5 million constitutes a donation to JHU.

16. The Contract identified two adjacent parcels comprising the Belward Farm: (a) a triangular-shaped parcel of approximately 30 acres outlined in green on Exhibit B thereto, a plat of the property; and (b) a generally square parcel of approximately 98 acres outlined in red on said Exhibit B. The smaller parcel was subsequently identified in the Deed as Parcel "A" and as having an area of 29.3833 acres; the larger parcel was subsequently identified in the Deed as Parcel "B" and as having an area of 108.7645 acres. These designations will be used when referring to the use restrictions in the Contract, which, in keeping with the March 2, 1988 Proposed Terms of Transfer, differ as between the two parcels.

17. As to Parcel A, the parties agreed in ¶ 13 that JHU would preserve a wooded area to serve as a buffer between the two Parcels. The Owners further agreed that there would otherwise be no limitation on JHU's use or disposition of Parcel A, based upon JHU's representation, in Point 6 of the Proposed Terms of Transfer and otherwise, that allowing commercial development of Parcel A would greatly facilitate JHU's ability to build a college campus on Parcel B.

18. As to Parcel B, the parties agreed in ¶ 13 that JHU would be bound by the following restrictions: (a) not to dispose of its fee interest in Parcel B for fifty (50) years; (b) to limit use of Parcel B to "agricultural, academic, research and development, delivery of health and medical care and services, or related purposes only," with specific mention made of "development of a research campus in affiliation with one or more divisions of [JHU];" (c) to maintain the land in a well kept and attractive fashion; and (d) to ensure that the land is known as the "Belward Campus of Johns Hopkins University." The parties further agreed in ¶ 13 that these restrictions "shall be enforced by a covenant

to be contained in the deed conveying the Property to [JHU] for the benefit of [the Owners] and their descendants.”

19. Also as to Parcel B, but not included in the use restrictions to be recorded by deed, the parties agreed that Elizabeth Banks would have the right to enter into a lease for all or a portion of the property for residential use and continued pursuit of the current agricultural use. Such a lease was agreed to on January 9, 1989, under which Ms. Banks paid JHU annual rent of \$6000 per year, renewable for subsequent years during her lifetime, with specified rent escalation terms.

20. Also as to both Parcels A and B, the parties agreed in ¶ 15 of the Contract that the proceeds of any such sale or disposition would be used by JHU “to create or add to a fund established in the name of Elizabeth B. Banks for the benefit of [JHU].”

21. The parties to the Contract recognized that in order for JHU to create a college campus on the property, it would need to be rezoned from the existing R-200 zoning. Accordingly, ¶ 14 of the Contract provided that the Owners would “cooperate with and assist” JHU in applying for the necessary zoning change by the Montgomery County Council (“Council”).

22. The closing on the sale of Belward Farm took place on or about January 9, 1989, and the Deed reflecting the transfer of fee simple title was recorded in the land records of Montgomery County on January 10, 1989, at Liber 8649, folios 824-833. A copy of the Deed is attached as Exhibit C to the Complaint.

23. The Deed repeats the use restrictions on Parcel B in ¶ 13 of the Contract and specifies that they “shall constitute a covenant running with the land for the benefit of [the Owners] and their descendants....” This provision further states that “a violation

of this covenant shall not result in a forfeiture or reversion of the fee simple title to the land.”

24. On June 30, 1989, the Owners received an appraisal of Belward Farm commissioned by JHU. The appraisal concluded that the fair market value of Belward Farm for unrestricted commercial/residential development was \$392,000 per acre. Accordingly, had the Owners elected to sell the 138-acre Belward Farm unconditionally on the open market instead of proceeding with the JHU transaction, they had the potential to realize somewhere in the range of \$54 million, rather than the \$5 million they actually received from JHU.

25. In July 1990, the Shady Grove Study Area Master Plan was approved. It designated (at p. 64) Belward Farm “as a component of the R&D Village to be developed as a research campus containing R & D uses....” With this change, JHU applied for and obtained a rezoning of Belward Farm to the R&D zone. The Owners cooperated in this effort in the expectation it would facilitate the college campus development of Parcel B that the parties had agreed to. This zoning change significantly increased the fair market value of Belward Farm.

THE 1996 PRELIMINARY PLAN AND DEVELOPMENT OF PARCEL A

26. In March 1997, the Montgomery County Planning Board (“Board”) approved a JHU application for approval of a Preliminary Plan of Subdivision, the first step in the development of the Belward Farm, inclusive of Parcels A and B. JHU denominated the plan “The Johns Hopkins Belward Research Campus.” The approved Preliminary Plan of Subdivision (“1997 Plan”) depicts the layout of proposed buildings, their square footage and number of stories, all consistent with the then-existing R & D

zoning of the property. On Parcel A, six buildings of 2-4 stories, with floor areas ranging from 45,000 to 88,000 square feet were proposed, with a total square footage of 433,000 approved. On Parcel B, seventeen buildings of 2-4 stories, with floor areas ranging from 54,000 to 130,000 square feet were proposed, with a total square footage of 1,367,000 approved, along with three parking structures of three stories each. A preliminary plat of subdivision was filed with the Planning Board by JHU in accordance with the plan approval. A true and correct copy of the 1997 Plan is attached as Exhibit D to the Complaint. It reflects approval of a maximum amount of developed gross floor area for Parcels A and B combined of 1,800,000 square feet, a number that is about 99.7% of the maximum development allowed under the then-existing R&D zoning for the property.

27. JHU made the Owners aware of the proposed 1997 Plan before it was approved by the Planning Board. The Owners did not object to the application, believing that the 1997 Plan, if implemented as a JHU-owned and operated college campus, was of a magnitude and scale consistent with the Deed restrictions and the agreed-upon rezoning, and would ensure the preservation of the farm buildings and home on Belward Farm in an appropriate historic context.

28. JHU did not thereafter seek to obtain final (i.e., site plan) development approvals for any of the buildings or other features depicted on the 1997 Plan. Instead, JHU donated Parcel A to Montgomery County in exchange for the County's support for the development of Parcel B in a manner consistent with the 1997 Plan. This understanding was incorporated into a Declaration of Covenants, Easements and Restrictions applicable to Parcel A, recorded contemporaneously with the deed to Parcel A, in the land records of Montgomery County on September 26, 1997.

29. Prior to the sale of Belward Farm in 1989, Elizabeth Banks had made JHU representatives aware of her opposition to efforts by Montgomery County to take control over development of Belward Farm. JHU did not disclose to Ms. Banks any of its 1997 dealings with Montgomery County relating to Parcel A. Nor did JHU inform Ms. Banks that, as a result of receiving no cash compensation from the County for Parcel A, there would be no funds with which to establish the Elizabeth B. Banks fund called for in ¶ 15 of the Contract.

30. Thereafter, following subdivision of Parcel A into several lots, Montgomery County sold these lots during the period December 1997 to December 2001, receiving thereby over \$3.8 million in compensation for Parcel A. Since those sales, the lots comprising Parcel A have been developed. Except for a dispute in 1997 over what Ms. Banks regarded as the unauthorized destruction of trees in the area of Parcel A to be protected as a wooded buffer under the Contract and the Deed, the Owners and the Owner Successors have not objected to the development of Parcel A, which has been generally consistent with what JHU proposed for that portion of the 1997 Plan, except that it is no longer under the ownership or control of JHU.

31. Parcel A is now fully developed with approximately 390,000 gross square feet of buildings housing research and development firms. Parcel B remains an undeveloped 108 acres today except for the historic farmstead buildings, most having been initially established by Ignatius Beall Ward. Under these circumstances, Parcel B alone is what is now generally referred to by the community, the parties, and government officials as the historic "Belward Farm." Accordingly, in succeeding paragraphs of this

Complaint, Parcel B in the Deed will be referred to as “Belward Farm” unless the contrary is indicated.

**JHU OBTAINS A SECOND REZONING
TRIPLING THE PERMITTED
DEVELOPMENT DENSITY OF BELWARD FARM**

32. Despite assurances to the Owners by JHU in the course of completing the sale/donation of Belward Farm, JHU did not involve the Owners in the concept and design of any JHU plans for development of Belward Farm different from those in the 1997 Plan. In approximately 2008, the Owners or Owner Successors became aware of a JHU program of outreach to the community living near Belward Farm to discuss new plans for development of Belward Farm. This process overlapped with a governmental process of public hearings on an amendment to the Master Plan that included the Belward Farm property, known as the Great Seneca Science Corridor Master Plan (“Master Plan”), and a rezoning of properties recommended for rezoning in the Master Plan.

33. During the Master Plan review and approval process, JHU urged that the Master Plan recommend development of Belward Farm at a floor area ratio (FAR) of 1.5. Given that the square footage of Belward Farm is reported in the Deed to be 4,737,783 square feet, this was, in effect, a request that the County officially recognize that development of Belward Farm with 7,106,675 square feet of gross floor area would be appropriate. By contrast, the development authorized for Belward Farm under the 1997 Plan, after deducting development on Parcel A, was 1,410,000 square feet of gross floor area, or about one-fifth as much. In its final form the Master Plan recommended development of Belward Farm at an FAR of 1.0, or a gross floor area of 4,737,777 square feet, which is approximately 336% of the development possible for Belward Farm under

the 1997 Plan. The Master Plan also recommended that this development occur in stages triggered by determinations that roads and other public facilities would be adequate to support the development.

34. After the 1990 rezoning of Belward Farm into the R&D zone, the following were among the permitted uses on the property: “research, development and related activities,” and “universities and colleges providing teaching and research facilities.” In all cases, development in the R&D zone was limited to a gross floor area of 30% of the lot area, i.e., an FAR of 0.3. As detailed in paragraph 26, this is a development limit that the 1997 Plan, for 1,800,000 square feet of gross floor area, came close (99.7%) to achieving. Hence, JHU could not accomplish its goal of a greatly expanded Belward Farm development without a further zoning change, and any such zoning change required that there be an explicit recommendation for it as to Belward Farm in the newly emerging Master Plan. Hence, JHU was actively involved in ensuring that the new Master Plan also recommended yet another rezoning of Belward Farm.

35. JHU was successful in ensuring that the new Master Plan recommend a zoning change for Belward Farm. As finally adopted in May 2010, the Master Plan recommended that Belward Farm be placed in the LSC zone. The Council accordingly approved this rezoning on July 20, 2010, in Council Resolution No. 16-1447. This change facilitated JHU’s plans because, on May 17, 2010, amendments to the LSC zone had been adopted, increasing the allowable FAR in that zone from 0.3 to 2.0. With these changes in place, JHU had cleared the major regulatory roadblocks to development of Belward Farm at a much higher level of density than was possible when JHU, with the cooperation of the Owners, had gotten Belward Farm rezoned to the R&D zone in 1990.

36. The Owners or Owner Successors, acting through Successor Owner John Timothy Newell, actively participated in or monitored the JHU outreach, Master Plan, and LSC Zone amendment proceedings. In those proceedings, the Owners or Owner Successors made clear to JHU, to the Board and to the Council that they expected JHU to adhere to the Deed restrictions regardless of what might be authorized for Belward Farm as a result of (a) the new Master Plan, (b) changes in the LSC Zone, (c) the further rezoning of Belward Farm, or (d) any governmental approval of any JHU development proposal or modification of the 1997 Plan on account of the changes since 1990 in the rules applicable to development of Belward Farm.

JHU'S 2011 PLAN AMENDMENT

37. On February 28, 2011, JHU filed with the Planning Board a request to amend its 1997 Plan ("the Plan Amendment."). Under the Master Plan, development of the area in which Belward Farm is located is to occur in four specified stages, denominated Stages 1-4. Each has prerequisites to be met before development above the gross floor area previously authorized may occur. These prerequisites are to ensure that key public facilities are in place before the next phase of growth takes place. In light of the staging constraints, where Stage 1 allows only an additional 400,000 square feet of gross floor area over previously approved development, JHU sought immediate approval via the Plan Amendment only to build up to the 1,410,000 square feet of gross floor area of development authorized under the 1997 Plan not previously developed on Parcel A.

38. JHU nevertheless also clearly indicated its intention to utilize, in future unspecified years, the remaining approximately 3.3 million square feet of Belward Farm development recommended by the Master Plan and effectively authorized by the

rezoning of Belward Farm into the LSC Zone, when allowed to do so in future Stages. The amended Preliminary Plan submitted to the Board shows a conceptual layout of all buildings and roads on the Belward Farm when fully developed at the Master Plan recommended 1.0 FAR level. A copy of the amended Preliminary Plan, as revised on June 3, 2011, is attached as Exhibit E to the Complaint.

39. As reflected in Exhibit E, JHU's plans for the future ultimate development of Belward Farm include 23 buildings ranging in height from 50 to 150 feet, with a total gross floor area of 4,737,777 square feet, plus three parking structures, such that parking will be provided for approximately 12,320 vehicles. The Belward Farm farmstead is to be preserved on approximately 10 acres, surrounded on three sides by buildings. The JHU projections of parking that will be provided, which differs in required amounts according to how the future buildings are actually used, reveal that JHU envisions that approximately 50% of the gross floor area will be devoted to R&D/Office use; an additional 40% to life sciences use; and 10% to auxiliary retail use.

40. In conjunction with the Plan Amendment, JHU submitted to the Planning Board a "Concept Plan" illustrating the anticipated development of Belward Farm in greater detail. This submission was an express requirement of the Master Plan, which (at p. 45) provides that it is to accompany JHU's first amendment to its 1997 Preliminary Plan, in order to address the detailed guidelines in the Master Plan for the ultimate development of Belward Farm at the 1.0 FAR level. Footnotes to the diagrams in the Concept Plan state that they are only illustrative and that "[a]ctual parcel and building configurations, locations, sizes, heights, paving and roads will be determined at site plan." The Concept Plan is nevertheless illustrative of what JHU believes can be done

consistent with the Master Plan and the LSC Zone upon approval of the Plan Amendment, and can only be understood as JHU's statement of present intention regarding future development of Belward Farm.

41. A copy of page 9 of the Concept Plan is attached as Exhibit F to the Complaint. This illustration of JHU's development plans for Belward Farm shows 150' high buildings of up to fifteen (15) stories facing the farmstead on the north and east sides, and a 110 feet tall building facing the farmstead on the west side. This drawing is also incorporated into the approved amended Preliminary Plan (Exhibit E).

42. As detailed in Exhibits E and F, JHU intends to construct a road across Belward Farm with a 150' right of way, connecting at each end to the existing street grid. The Plan Amendment makes clear that this roadway, denominated Belward Campus Drive, is also intended to function as part of the planned future routing of the Corridor Cities Transitway ("CCT"), a Master Planned project intended to provide a greater level of mass transit service to all of upper Montgomery County. A CCT transit stop is planned to be located midway along Belward Campus Drive, as depicted on Exhibit E. Additional roadways will be constructed to link Belward Campus Drive to the existing road network. Under the Plan Amendment, most if not all of the new roads will be private roads that will function as if they were dedicated public roads, and create a grid-like network of public streets, as depicted on Exhibit E.

43. The Plan Amendment was reviewed by Planning Board staff, who issued a Staff Report on the Plan Amendment on July 11, 2011 with a recommendation of approval with conditions. The Planning Board conducted a public hearing on the Plan Amendment on July 21, 2011 and unanimously voted to approve the Plan Amendment.

The Board's formal resolution approving the Plan Amendment, Resolution No. 11-72, adopted on October 27, 2011, is dated November 2, 2011 ("Resolution 11-72"). A copy of Resolution 11-72 is attached as Exhibit G to the Complaint.

44. Resolution 11-72 approved the Plan Amendment substantially as sought by JHU, inclusive of all the details enumerated above. Resolution 11-72 provides, *inter alia*, (a) dedication of the 150-foot Belward Campus Drive right-of-way, inclusive of the 50-foot wide CCT and CCT station; (b) public use easements for two 70-foot right-of-way business district streets within Belward Farm; (c) no substantial modification of the lot configuration and layout of the Preliminary Plan without a formal amendment; (d) approval of the Concept Plan submitted by JHU; and (e) a favorable discussion of the eventual plan to place the greatest height (up to 150 feet) and density of buildings in proximity to the proposed CCT station location, which is in the middle of Belward Campus Drive where it is adjacent to the Belward Farm farmstead.

45. Under the Plan Amendment, as reflected in the parking needs projections, it was anticipated that retail, service, and restaurant uses will be needed within these buildings to accommodate the needs of employees and visitors. Resolution 11-72 expressly notes, and thus approves, JHU's allowing its future lessees at Belward Farm to own and operate retail, service and restaurant uses within the future Belward Farm buildings "to accommodate the needs of employees and visitors." Exhibit G at 8.

46. Under the Plan Amendment, JHU has expressed its intention to retain ownership of the land comprising Belward Farm. Given this statement, and numerous other public statements made by JHU concerning its development intentions for Belward Farm, and given the no-sale provision in the Deed, Owner Successors allege, on

information and belief, that JHU has a present intention to lease Belward Farm land to third parties for purposes of construction and occupancy of buildings, or to build and lease such buildings, or some combination of the two.

47. What is envisioned and planned by JHU is the substantial commercial, entrepreneurial real estate development of Belward Farm, exclusive of 10 acres for preservation of the farmstead. What is **not** envisioned and planned is what the Owners and the Owner Successors understood was envisioned and planned -- a college campus consisting solely of buildings built for, and occupied by, JHU researchers, teachers, students and supporting personnel. The overall effect of the Plan Amendment, once all phases are fully implemented, is creation not of a small, low-rise college campus, but rather a dense, high-rise commercial development, one described by the Planning Board Staff in its Report on the Plan Amendment (at p. 15) as “an urban scale network of blocks.”

48. On October 6, 2011, the Board found that all the Master Plan staging requisites were met to ensure that necessary infrastructure was in place for the first stage of development in the Life Sciences Center, of which the development proposed by JHU in the Plan Amendment is a part. As a result, the Board declared Stage 1 of the Master Plan open to applications for new development in the Life Sciences Center. This action meant that once Resolution 11-72 was formally adopted, JHU could proceed with its development plans for Belward Farm as approved by the Board in Resolution 11-72.

STANDING OF THE OWNER SUCCESSORS

49. As the lawful successors to the Owners, the Owner Successors have the standing of the Owners to specifically enforce the use restrictions in ¶ 13 of the Contract

with respect to Belward Farm, pursuant to ¶ 22 (c) of the Contract. In turn, the Owners' standing is derived from their right to enforce the use restrictions in the Contract of Sale, in that ¶ 22 (d) of the Contract of Sale expressly provides that the use restrictions "shall survive settlement and the execution and delivery of the deed to the Property." Exhibit B at 13.

50. As the lawful successors to the Owners, the Owner Successors have the standing of the Owners to specifically enforce the use restrictions in the Deed with respect to Belward Farm, pursuant to the Deed language that specifies that "[t]he restrictions herein contained relate to Parcel B only, and shall constitute a covenant running with the land for the benefit of Grantors and their descendants...." Exhibit C at 2.

VIOLATION OF THE USE RESTRICTIONS IN THE CONTRACT OF SALE AND THE DEED

51. The Owner Successors repeat and reallege here, as if stated in full, the allegations contained in ¶¶ 1-50 of the Complaint.

52. The Contract is a valid and binding contract between JHU and the Owners, who mutually agreed to it. The Contract states with reasonable certainty what the parties thereto have undertaken, and there was mutual consideration for the promises made.

53. The Owner Successors, as successors to the Owners under the Contract, have the lawful right to seek to remedy any violation or threatened violation by JHU of the use restrictions in ¶ 13 of the Contract.

54. The Deed contains valid and binding restrictions on JHU's development and use of Belward Farm.

55. The Owner Successors have the lawful right to seek to remedy any violation or threatened violation by JHU of the use restrictions in the Deed.

56. The Owners and the Owner Successors are not now, and have not at any relevant time been, in material breach of the Contract or of the use restrictions in the Deed.

57. JHU has breached its obligation, as set forth in both the Contract and in the Deed, to comply with the use restrictions set forth in ¶ 13 of the Contract and reiterated in the Deed.

58. Alternatively, through its acts and omissions, JHU has unequivocally expressed its present intention to proceed with development of Belward Farm in violation of the aforesaid use and development restrictions, in anticipatory breach or repudiation of the Contract and the Deed.

59. Development by JHU of Belward Farm in a manner consistent with, or substantially consistent with, the 1997 Plan was, at the time of its approval, neither illegal, impossible or impracticable of being accomplished. The same has been true of the 1997 Plan ever since that time, up to and including the present.

60. An actual controversy exists between the Owner Successors and JHU regarding the Owner Successors' claimed rights, as described above, to limit the development and use of Belward Farm. The Owner Successors have made known their belief that JHU's current plans for future development and use of Belward Farm are in violation of the Owner's donative intent and the use restrictions in the Contract and the Deed. JHU is nevertheless proceeding forthwith to implement its plans. The permanent

abrogation of the Owner Successors' rights by JHU, as described above, will inevitably occur absent relief from this Court.

61. A declaratory judgment is necessary to terminate the controversy giving rise to this proceeding.


62. Declaratory relief consistent with the findings and conclusions of the Court in this action is appropriate and necessary to resolve the controversy and to bring definiteness and certainty to the respective property rights of the parties.

63. In light of JHU's flagrant disregard of the use restrictions in the Contract and the Deed, injunctive relief is necessary to prevent continued impairment of the rights of the Owner Successors under the Contract and the Deed, and to prevent a recurrence of such violation of rights.

WHEREFORE, plaintiff respectfully requests that this Court:

1. Declare that JHU is precluded by the terms of the Contract and the Deed from implementing the Plan Amendment;
2. Permanently enjoin JHU from any action that would impair the Owner Successors' rights under the Contract and the Deed;
3. Award the Owner Successors their costs and attorneys' fees; and
4. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,


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