IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND

JOHN TIMOTHY NEWELL, *et al.*	:	
	:	
Plaintiffs,	:	
	:	
v.	:	**Civil Action No. 355237-V**
	:	
THE JOHNS HOPKINS UNIVERSITY	:	
	:	
Defendant.	:	

REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs, John Timothy Newell, Frances Lucinda Newell, Karen Newell Brindley, Sharon Newell Fawcett, the Estate of Beulah Banks Newell and Elizabeth Banks Ray, through undersigned counsel, submit this Reply Memorandum in Support of Plaintiffs' Motion for Summary Judgment. Summary judgment is warranted in favor of plaintiffs because defendant has not demonstrated any dispute of material fact that would obviate plaintiffs' entitlement to judgment as a matter of law.

STATEMENT OF FACTS

In its effort to resist summary judgment for plaintiffs, defendant vainly attempts a remarkable and stunning reformation of the Contract. In the past, the Contract effectuated a major gift to JHU grounded in the extraordinary, self-sacrificing generosity of the Owners, as JHU had consistently recognized. Now the **gift** is portrayed as a **sale** that was larded with benefits for the "Sellers".[1] Defendant's sudden transformation of the essence of the Contract and Deed is indefensible from every perspective:

[1] "Sellers" is the term JHU coined to refer to the owners of Belward Farm at the time of the drafting of the Contract, and "Buyer" is the term JHU coined for itself. There is no dispute that the Contract's principal drafter was Patricia A. Friend, a lawyer in JHU's Office of General Counsel. Plaintiffs' Statement 16. This does not deter JHU from overreaching to claim that

- As previously disclosed, defendant did not build a "half-million dollar house for Miss Banks;" it built a house with a net cost to JHU of $78,000. Plaintiffs' Mem. in Opp. to Def. Summary Judgment Motion at 2-3 n.1.
- While JHU agreed that Ms. Banks could "remain on and farm the property as long as she wanted," Def. Mem. 1, she did so under a year-to-year lease at $6,000 per year, plus any increase in real estate taxes and insurance premiums, plus utilities, plus certain specified maintenance and repair costs. Defendant's Exhibit 9c.
- While the Contract did oblige JHU to "assume[] responsibility for a $1.5 million [front foot] benefit assessment," Def. Mem. 1, the road improvements that flowed from the assessment benefitted the land, not the Owners, and increased its value to JHU.[2]
- Before JHU agreed to pay $5 million for Belward Farm, it secured the Owners' consent to develop Parcel A without restriction and had the Director of Property Development for its real estate subsidiary, Dome Corporation, estimate the fair market value of Parcel A, then characterized as the "30-acre development parcel." The Director estimated a range of valuation for that parcel alone from a current (February 1988) value of $307,000/acre (i.e., $9,201,000) to a value after rezoning of $466,000/acre (i.e., $13,980,000). Plaintiffs' Exhibit 32. Unsurprisingly, he concluded that a purchase price for the entire tract of $4.9 million "would appear quite conservative." Id.
- As previously recounted, Plaintiffs' Opp. Mem. to Def. Summary Judgment Motion ("Plaintiffs' Opp. Mem.") 8, the Contract recitals anticipate the fair market value of Belward Farm, taking into account restrictions on future use, would exceed the $5 million

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JHU's lawyer's choice of words is evidence that **both** parties viewed the transaction as merely a real property sale. Def. Mem. 8.

[2] Ultimately, when defendant transferred Parcel A to Montgomery County, it wound up not having to pay this assessment. See Plaintiffs' Exhibit 22.

payment to the Owners, and would constitute a **charitable gift** of that amount, which was recorded on JHU's contribution records as a gift valued at over $10 million. Id. Years later JHU described this gift as "the largest gift to the Campaign for Johns Hopkins." Id. at 13, citing Plaintiffs' Exhibit 10.

- The Owners and JHU also agreed that Belward Farm should be appraised as of its transfer to JHU. The appraisal had an effective valuation date of January 16, 1989. Plaintiffs' Exhibit 33. (Plaintiffs' Document Nos. 00254-323). The value of Parcel A was found to be $11,760,000, (p. 00300) and Parcel B to be $7,920,000 after an adjustment on account of the use restrictions and the ongoing lease of Parcel B to Ms. Banks (p. 00299-0300), for a final appraised value for all of Belward Farm of $19,688,000 (p. 00301).[3]

This contemporaneous appraisal makes clear that it would be reasonable to conclude that Parcel A alone had a fair market value at the time of transfer of well in excess of **all benefits** received by the Owners and that, so viewed, the transfer in one deed of both Parcels A and B to JHU was a bargain **sale** of Parcel A and an outright **gift** of Parcel B, with restrictions on Parcel B that are more in keeping with a gift than a sale. Two contracts and two deeds could have just as easily been used to formally separate the sale of Parcel A from the gift of Parcel B without changing the purpose or effect of anything done in the actual combined transaction encompassing both Parcels. The combined transaction tends to obscure this, obliging plaintiffs to emphasize that the gift aspects of the single transfer predominate over its sale aspects, both

[3] The appraisal concluded that but for the lease, Parcel B had a fair market value of $185,130 per acre and Parcel A a value of $392,000 per acre, or more than twice as much as Parcel B per acre. Id. (p.00299-00300). This reflects the appraiser's correct understanding that the use restrictions have a significant impact on the prospects for gainful development of Parcel B.

qualitatively and quantitatively. Plaintiffs Opp. Mem.8. But as will be detailed below, the touchstone question remains: what did the parties intend for development of Parcel B?

In the same vein, it should not go unremarked that plaintiffs see in the tone of Defendant's Opposition Memorandum JHU's barely concealed irritation, bordering on arrogance, for having to respond to plaintiffs' legitimate effort to make JHU live up to its commitments to the Owners, given that it is now the owner of Belward Farm. Perhaps this is explained by the fact that donor attempts to have donee universities comply with donor intentions in making large gifts of property often fail for lack of donor standing. The operative rule is that "[t]he donor himself has no standing to enforce the terms of his gift when he has not retained a specific right to control the property, such as a right of reverter, after relinquishing physical possession of it." Russell v. Yale University, 54 Conn. App. 573, 578, 737 A.2d 941, 945 (1999). Plaintiffs in this case, however, do not have that problem. Because the Owners trusted JHU to carry out their intentions for use of Belward Farm, the Deed does not contain a reverter clause, but the Owners did insist on a covenant in the Deed running with the land, securing a right of enforcement "for the benefit of the Grantors and their descendants...." Defendant's Exhibit 2 at 2. Further, ¶22(d) of the Contract provides that its terms survive execution of the Deed. Defendant's Exhibit 1 at 13.

ARGUMENT

I. DEFENDANT PRESENTS NO REASON TO REJECT JUDGE SAVAGE'S FINDING OF CONTRACT AMBIGUITY

Plaintiffs have already explained in detail why the Court should reject defendant's invitation to re-examine Judge Savage's finding of contract ambiguity without resort to extrinsic evidence. Plaintiffs' Opp. Mem. 7-16. Those arguments are incorporated by reference here, and require only brief supplementation.

A. A Reasonable Person Looking Only At the Contract Language Could Interpret It As Plaintiffs Claim It Should Be Interpreted

Defendant's narrow focus simply on the meaning of selected words in certain parts of the Contract, Def. Mem. 3-4, is in error. The task of the Court is to determine if the language employed in susceptible of more than one meaning by "examination of the character of the contract, its purpose, and the facts and circumstances of the parties at the time of execution," as Judge Savage correctly observed. Mem. Op. 16 (*quoting from* Calomiris v. Woods, 353 Md. 425, 436, 727 A.2d 358, 363 (1999)). But even on defendant's narrower focus on the words alone, the claim that the Contract is unambiguous does not withstand scrutiny.

First, the ambiguity is not about the restriction on disposition by JHU of its "fee interest" in Parcel B; it arises in reconciling defendant's claim of entitlement to long-term lease (for 50 years or more) the **entirety** of Parcel B to others when the prohibition on disposition of its "fee interest" is for 50 years, as Judge Savage recognized. See Plaintiffs' Opp. Mem. 15.

Defendant's argument that 18 of the words in the restrictive covenant are unambiguous, Def. Mem. 4, also fails defendant's "words only" test. A reasonable person could conclude that the allowed uses are **JHU** uses, not **third-party** uses, and that the omission of the modifier "JHU" in front of each use was of no significance. This interpretation is strongly reinforced by examining the Contract recitals, which make clear that the Contract is intended to effectuate a charitable gift of Belward Farm to JHU. Moreover, the 18 words in Contract ¶13 and the Deed are not the complete expression of the restrictive covenant, and its full expression is reasonably understood to limit use of Parcel B by third parties, at least for research and development activities, to those who will be acting in an ancillary capacity "in affiliation with one or more divisions of [JHU]." Plaintiffs' Summary Judgment Mem. 50-51. As plaintiffs have explained,

a reasonable person could conclude that mere commercial "leasing" by JHU is not acting "in affiliation with one or more divisions of the buyer." Id.

Lastly, defendant claims lack of ambiguity from **silence** in the Contract on express restrictions on scale and density and leasing. Def. Mem. 4. This turns the notion of ambiguity on its head. How can one discern solely from the unambiguous meaning of the words employed what is meant when **no** words are employed? The mere failure of a contract to address a particular matter does not compel **any** conclusion regarding what the parties might have intended as to that matter. In such a case, the touchstone for resolution of the parties' intent, as Judge Savage recognized, is the Calomiris test: "examination of the character of the contract, its purpose, and the facts and circumstances of the parties at the time of execution." Mem. Op. 16.

B. There is Ambiguity in Contract ¶ 14 and It Should Be Resolved By Concluding That the Parties Agreed To One Rezoning of Parcel B

Defendant claims there is no ambiguity in Contract ¶14 regarding rezoning of Belward Farm because there is no ambiguity that the Owners agreed to cooperate and assist JHU in getting Belward Farm rezoned. Def. Mem. 5-6. This misses the point. This paragraph also expresses, albeit in vague terms, the mutual agreement of the parties "that the use of the Property contemplated by the Buyer will require a change in the current zoning classification of the Property." Def. Exhibit 1 at 10. What is the use "contemplated by the Buyer" that the parties mutually agreed to? What exactly is the "change in the current zoning classification" that the parties agreed is required? The Contract does not unambiguously answer the obvious questions arising from the words employed.

Defendant further argues that ¶14 "does not contain any language restricting JHU whatsoever." Def. Mem. 5. But defendant has no answer to the obvious question plaintiffs previously posed: What is the purpose of the mutual agreement on a needed "zoning change" if

defendant, as the new fee simple owner, has the unrestricted right to pursue successive rezonings without regard to the mutually understood "use of the Property contemplated by the Buyer"? See Plaintiffs' Opp. Mem. 14-15; Plaintiffs' Summary Judgment Mem. 43-44.

Nor are plaintiffs attempting to use extrinsic evidence to contradict the unambiguous language in the Contract. Def. Mem. 6. Plainly "the use of the Property contemplated by the Buyer" is not specified in Contract ¶14, and that use is implicated – and no more clearly specified – in Contract ¶13. What plaintiffs have done, virtually without contradiction by defendant, is recount in detail the implementation history of Contract ¶¶13 and 14 during 1989-97, i.e., prior to the time any controversy arose, in order to resolve any doubt about the correct interpretation of the Contract. That history is "persuasive evidence" of the parties' intentions. Tackney v. USNA Alumni Ass'n, Inc., 408 Md. 700, 717, 971 A.2d 309, 319 (2009).

Defendant further argues that "the zoning change" reference in Contract ¶14 "is a vestige of earlier drafts and does not create an ambiguity." Def. Mem. 6. Self-evidently, there is no ambiguity that "the zoning change" means **one** zoning change, and a reasonable person cannot conclude it means more than one. But defendant's "vestige" argument, coupled with its claim that Contract ¶14 was "**converted** to impose a duty on the Sellers to cooperate with and assist JHU with that rezoning," id. (emphasis added), is baseless. As detailed in Plaintiffs' Statement 18-19, without contradiction by defendant, the duty-to-cooperate language in Contract ¶14 is exactly the same language as appeared in this paragraph in the first draft of the Contract.

The absurd upshot of defendant's argument that the parties were in agreement that JHU could pursue multiple zoning changes in this: since the Owners were obliged to cooperate in seeking such changes, under both Contract ¶4 and ¶14, and since the Owners' Contract performance is binding on their heirs and successors, Contract ¶22(c), there is a continuing

obligation on plaintiffs – none of whom reside anywhere near Montgomery County-- to return to Montgomery County in the future to add their support for whatever further rezonings JHU deems "necessary for the full and economic use of the Property contemplated by this Agreement." Def. Mem. 7, *quoting from* Contract ¶4. Tellingly, defendant has failed to produce any evidence that it called upon any of the surviving Owners or plaintiffs to fulfill this claimed duty during the second rezoning process it pursued for Parcel B during 2008-11.

When the one-time zoning change contingency payment was converted into a delayed payment that was not contingent on the rezoning, Plaintiffs' Statement 17-20, neither the language of ¶14 or the parties' intentions expanded from one rezoning to multiple rezonings. And the Owners' agreement to the rezoning carried through every draft of the Contract, even though any such agreement by a **former** owner of land is not a legally relevant factor in ruling on any rezoning application by a **new** owner. See Plaintiffs Opp. Mem. 14-15. What has obviously been agreed to is that the Owners would support JHU in its efforts to gain the rezoning necessary to develop Belward Farm (and now just Parcel B) in accordance with one or more of the uses agreed to in Contract ¶13. And given ¶14's purpose, and "the facts and circumstances of the parties at the time of execution," Calomiris, supra, "rezoning" must be interpreted in light of, and limited by, the available (or reasonably foreseeable) options for rezoning at the time. See Plaintiffs Summary Judgment Mem. 42-46.[4]

II. INTERPRETATION OF THE CONTRACT SHOULD REFLECT THAT THE TRANSFER IT EFFECTUATES IS A CHARITABLE GIFT, NOT AN ARMS'-LENGTH SALE

[4] Defendant emphasizes that the subject heading to Contract ¶14 is plural: "Zoning Changes." Def. Mem. 6. But defendant simply ignores the obvious explanation previously presented for this. At the time, defendant was contemplating pursuing a different zoning change for Parcel A than for Parcel B, so differing "zoning changes" for each were at the forefront. Id. at 44 n.17.

Defendant asserts that plaintiffs are asking the Court to restrict its examination of the Contract to only the Owners' intentions in entering into it. Def. Mem. 7. No such claim has been made by plaintiffs. Nor is defendant correct in claiming that plaintiffs "afford no weight to the intentions of JHU in acquiring the property...." Id. As plaintiffs have made very clear in seeking summary judgment, the relief being sought is **precisely tailored** to the intentions arguably expressed by JHU to Elizabeth Banks – the very same expression JHU relies upon to demonstrate what its intentions were. See Plaintiffs' Opp. Mem. 17-20.

When these obfuscations by defendant are cleared away, what remains is plaintiffs' claim that the essence of the Contract is its effectuation of a charitable **gift**, not an arms'-length **sale**, id. at 8, and that rules of contract interpretation that disfavor restrictions on land imposed in an arms'-length conveyance or by the recordation of restrictive covenants should not control the outcome of an inquiry into what the parties intended. Id. at 12. Rather, the donor's intention should be "given effect to the maximum extent allowed by law," id. at 12 n.4, which means **also** taking into account JHU's intentions to the extent they were actually shared with the Owners without objection. See Plaintiffs' Summary Judgment Mem. 53.[5]

Defendant simply ignores that plaintiffs have sought relief that coincides with its expressed intentions, claiming that plaintiffs are improperly asking the Court to "examine the sufficiency of consideration in contract negotiations." Def. Mem. 7. This is diversionary nonsense. The cited case, Harford County v. Town of Bel Air, 348 Md. 363, 383, 704 A.2d 421, 431 (1998), stands for the proposition that absent fraud, inadequacy of consideration does not

[5] Defendant relies on Park Station LP v. Bosse, 378 Md. 122, 835 A.2d 646 (2003) to claim that the Belward Farm transfer must be viewed as a sale because the Owners received valuable consideration. Def. Mem. 8. But that case did not define any such line of demarcation that could be applied here. Rather, the Court held that a donation of real property where there was **no** consideration (only tax benefit) was a gift, and did not constitute a "sale" triggering the appellant's right of first refusal to buy the donated land. 378 Md. at 129-31, 835 A.2d at 650-53.

render an agreement unenforceable. By contrast, here there is no claim of inadequate consideration, and the opposite of Harford County's efforts to avoid contract obligations is sought: **enforcement** of the Contract.[6] In doing so, this Court is not **precluded** from examining, but rather **should** examine, "the purpose of the contract [and] its character...." Calomiris v. Woods, supra. That inquiry reveals that the true character and purpose of the Contract is a charitable gift, as detailed in the Statement of Facts, supra. The Court's review and interpretation of the Contract should take account of that reality.

III. THE RELIEF PLAINTIFFS REQUEST ON SUMMARY JUDGMENT WOULD NOT RESTRICT JHU TO ONLY NON-COMMERCIAL DEVELOPMENT OF PARCEL B

Defendant argues that under the Contract, Parcel B is not restricted to only non-commercial use. Def. Mem. 10-11. Defendant also expresses uncertainty about the dividing line between commercial and non-commercial uses. Id. at 10 n.2. As explained below, however, on plaintiffs' summary judgment motion, these questions are of little, if any, consequence.

As plaintiffs have detailed, the Contract and the negotiations that led to it unmistakably reveal that JHU "sold" the Owners on a plan for the non-commercial development of Parcel B and commercial development of Parcel A, creating and sharply distinguishing between the two Parcels in this respect. Plaintiffs' Statement 9-10. There ought to be no confusion about what was intended: Parcel A was to be revenue producing (from sale or leasing, whether the vendee/lessee is a private or public entity); Parcel B was not to be revenue producing – it was to be a JHU-owned and operated campus.

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[6] Defendant's citation to the Restatement (Second) of Contracts §79 cmt.c (1981), Def. Mem. 8 is equally unavailing. The cited section is about the requirement of an exchange of consideration in the formation (not enforcement) of a contract.

While this is what emerges from examination of all the pre-agreement facts and circumstances, plaintiffs have liberally taken into account the post-agreement evidence that defendant claims must bind the Owners to intentions it expressed (albeit indirectly) to Elizabeth Banks at a County Council hearing on February 27, 1990. Def. Sum. Judg. Mem. 21; Plaintiffs Judg. Mem. 51-53. As a result, the relief plaintiffs seek on summary judgment would not preclude defendant from leasing ground or buildings on Parcel B to third parties for commercial gain. However, based on JHU intentions expressed to Ms. Banks and the terms of the Contract, such leasing must be subordinate to a JHU research center on the Parcel B, and conducted by entities acting in affiliation with JHU. That is the relief plaintiffs seek, and its grant would obviate the need to address plaintiffs' claim that the Owners and JHU agreed that use of Parcel B would be exclusively by JHU for non-commercial purposes.[7]

IV. THE RESTRICTIONS SET FORTH ON DEVELOPMENT OF PARCEL B IN PLAINTIFFS' PROPOSED SUMMARY JUDGMENT ORDER FAITHFULLY TRACK THE PARTIES' MUTUAL INTENTIONS

Ignoring virtually every item of uncontested evidence painstakingly presented by plaintiffs regarding the negotiation and pre-controversy implementation of the Contract, defendant woodenly insists that plaintiffs "seek a gross rewriting of the parties' agreement." Def. Mem. 11. Defendant's conclusory and dismissive argumentation should be rejected. It is non-responsive to plaintiffs' detailed presentation of the facts and the law to show that rather than a "gross rewriting," plaintiffs are asking the Court to require defendant to abide by its own legal claim about the Contract: "[t]the mutual intention is the only legally relevant intention." Id. at 7. Defendant concludes its diatribe against plaintiffs with the narrow-minded assertion that

[7] It is no small concession for plaintiffs to forego their claim that Parcel B is to be used exclusively by JHU. As Ms. Banks herself said at the February 27, 1990 hearing, "Hopkins has prepared a plan for future use of the farm as a **university** research campus." Def. Exhibit 22, Tr. 147 (emphasis added).

nothing matters but a selected part of the assertedly unambiguous use restrictions in Contract ¶13; so long as use is within defendant's notion of what those restrictions entail, "JHU, as the fee simple owner, can do as it wishes." Id. at 14. But many other considerations matter besides defendant's conception today of what it claims was agreed to in 1988, as plaintiffs have detailed and as defendant has repeatedly ignored, dismissed or misrepresented.

Defendant complains that the limitations in plaintiffs' proposed order "were never discussed by the parties and are found nowhere in the Amended Contract and Deed." Id. at 11. This is demonstrably wrong. The extrinsic evidence is clear that the Contract was predicated on a mutual understanding that the allowed uses for Parcel B were to be **JHU** uses, Plaintiffs' Opp. Mem. 10-11, and that the possibility of use by others was communicated to the Owners only post-agreement, i.e., at the February 29, 1990 Council Hearing. Plaintiffs' Summary Judgment Mem. 52-53. Hence, Plaintiffs' proposed order ¶2 and ¶3 work together to limit JHU to the uses specified in ¶13 of the Contract, according to the terms of ¶13, and according to the expressed intentions for **both** JHU and non-JHU use of Parcel B on that occasion.

In fact, the only substantive critique of plaintiffs' proposed order not tied to defendant's broadside dismissal of plaintiffs' efforts to match the order to the mutual intention of the parties is the claim that "campus" or "campus-like setting" are themselves ambiguous standards. Def. Mem. 12 n.3. If the Court agrees, it can readily strike these modifiers yet still effectuate virtually all the relief plaintiffs seek.

Defendant also claims that because the parties did not expressly agree on a particular density, scale or height for buildings on Parcel B, its actions in these respects are unconstrained by the Contract. Id. at 12-14. But defendant does not dispute – and in fact applies to plaintiffs – the principle that what the parties communicated to each other or did to implement the Contract

post-agreement is the most reliable evidence of what the parties intentions are. James F. Powers Foundry, Inc. v. Miller, 166 Md. 590, 599, 171 A. 842, 847 (1934).[8] Moreover, as Mr. Davis has made clear, the rezoning options available to JHU at the time were in a state of flux, along with the development standards that would be applicable if the rezoning "required for use of the Property by the Buyer," Contract ¶ 14, were achieved. Plaintiffs' Statement 21-22. This provided JHU a unique opportunity to try to tailor the changing zoning code to its needs for Belward Farm, which it rather thoroughly succeeded in doing. Id. at 21-23. And once the rezoning process was complete for Belward Farm, defendant filed and got approval for Belward Farm development with specific density, scale and height limitations for the buildings on a plan seen by the Owners at to which they did not materially object. Id. at 23-33.[9] The Owners' lack of objection, in turn, can be traced directly back to their pre-agreement expectation, communicated to them by defendant, that what was to come on Parcel B would be low-rise buildings befitting Belward Farm's suburban location, arranged to preserve as much of the Farm's open space as possible. Id. at 12-13.

Plaintiffs look to this history well aware of and sensitive to the fact that what was approved in 1997 may not be entirely right for development in 2012 or later. Plaintiffs have not sought to interject themselves into the development approval process for Parcel B in the ways claimed by defendant. Plaintiffs do not claim "that JHU is contractually obligated not to seek amendment to the 1997 Plan," Def. Mem. 13, and plaintiffs claim no right "to control the

[8] It is this principle that underlies defendant's claim that the Owners, having failed to object at the time, must be held to have agreed to JHU's post-agreement expression of its Parcel B development intentions at the Council Hearing on February 27, 1990. Defendant's Summary Judgment Mem. 21.

[9] Remarkably, JHU today baldly asserts that it "never would have agreed to the use, height and density restrictions that plaintiffs seek to impose." Def. Mem. 15. But the use, height and density restrictions "plaintiffs seek to impose" are none other than exactly those for which JHU sought and obtained approval in 1996-97. Plaintiffs' Statement 30-32.

development as if they remain the fee simple owners...." Id. Nor do plaintiffs seek to place defendant in the position of having to "speculate about which of its proposals will or will not be challenged by plaintiffs." Id. Indeed, by operation of law, a judgment in this case in plaintiffs' favor would be deemed complete and final relief on the issues litigated.[10] Thus, if plaintiffs' proposed order were to become the final judgment in this case, any plan that JHU submits for zoning authority approval that is not inconsistent with the Contract, as interpreted unambiguously in the Court's judgment, would be effectively immunized from any dissent or dissatisfaction from plaintiffs.

In sum, because the restrictions on development of Parcel B set forth in plaintiffs' proposed order faithfully track the parties' mutual intentions in entering into and implementing the Contract, it should be the basis for awarding summary judgment to plaintiffs.

V. LEASING OF THE ENTIRETY OF PARCEL B TO THIRD PARTIES CONTRAVENES THE CONTRACTING PARTIES' MUTUAL INTENT

Plaintiffs have explained in detail why JHU's leasing of the **entirety** of Parcel B to third parties would be contrary to the mutual intent of the contracting parties, fulfilling an agreement to make a major charitable gift to JHU, subject to certain restrictions and expectations found in the Contract. Plaintiffs' Opp. Mem. 23-25. Rather than deal straightforwardly with this point, defendant simply claims that its leasing rights are not restricted in any way. But as extensively detailed by plaintiffs and all but ignored by defendant, for JHU to act solely as an absentee landlord on Parcel B (which plainly is the upshot of its claim) is contrary to (a) the name agreed to in the Contract and the Deed – "the Belward Campus of the The Johns Hopkins University";

[10] E.g., Janes v. State, 350 Md. 284, 295, 711 A.2d 1319, 1324 (1998) ("When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.")

(b) the pre-agreement representations defendant made to the Owners; and (c) representations JHU made to Montgomery County in order to secure the desired rezoning. JHU-as-landlord is also completely at odds with why the Owners were ever willing to consider donating their beloved Belward Farm, worth millions of dollars, to JHU in the first place.

Plaintiffs reluctantly recognize that to secure summary judgment, they must abandon the Owners' vision that all of Parcel B would be developed as a JHU-owned an operated activity, whether as a traditional college campus, a research campus or a medical campus. This concession to JHU – which JHU describes as plaintiffs' "ever-changing position," Def. Mem. 15 -- is made necessary because the Owners were told by JHU of plans that, if they came to fruition, would involve some third-partly leasing on Parcel B. But that communication also included an explicit promise that such lessees would find their new Parcel B premises adjacent to or surrounded by "a major Hopkins research center [that] will be the **keystone** of [Parcel B]." Davis Exhibit 22, Tr. 140 (emphasis added). Plaintiffs have thoroughly documented, factually and legally, that they have every right to insist that JHU keep its word, expressed not only to the Owners, but also to Montgomery County and to a trusting public in the County that has long held The Johns Hopkins University in high regard.

CONCLUSION

For the foregoing and previously stated reasons, plaintiffs' motion for summary judgment should be granted.

Respectfully submitted,

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October 19, 2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this 19th day of October 2012, a true and correct copy of Plaintiffs' Reply Memorandum In Support of Plaintiffs' Motion for Summary Judgment was emailed and mailed, first class, postage prepaid, to:

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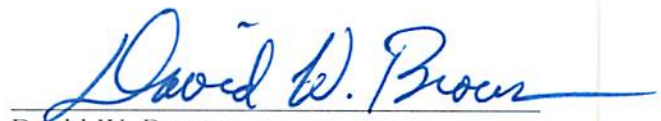

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