COPY

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
Docket No. _____

WILLIAM M. LONERGAN and
DIANE WHITNEY-WALLACE,
ON BEHALF OF THEMSELVES AND
ALL OTHERS SIMILARLY SITUATED,

Plaintiffs,

vs.

JAMES W. FOLEY, PETER A. FOOTE,
ALEXANDER B. C. MULHOLLAND, JR.,
DONALD F. WHISTON,
ELIZABETH A. KILCOYNE, PATRICK J. MCNALLY,
AND EDWARD B. RAUSCHER,
FEOFFEES OF THE GRAMMAR SCHOOL
IN THE TOWN OF IPSWICH,

Defendants.

FILED
IN THE SUPERIOR COURT
FOR THE COUNTY OF ESSEX
DEC 08 2006
CLERK

CLASS ACTION COMPLAINT AND JURY DEMAND

Plaintiffs bring this action in their individual capacities and on behalf of the class of persons defined below, and for their complaint allege, pursuant to their investigation and upon personal knowledge, information and belief, as follows:

INTRODUCTION AND OVERVIEW

1. Plaintiffs bring this action seeking, among other forms of relief, injunctive relief enjoining Defendants from further interfering with Plaintiffs' property and other rights, following Defendant's refusal to extend the arrangement whereby

EXHIBIT
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Plaintiffs and their predecessors in interest have used and occupied individual lots at Little Neck in Ipswich ("Little Neck") for over 100 years and on which Plaintiffs and their predecessors in interest have constructed their homes, which they own, exclusively, and have used and enjoyed for over 100 years. Significantly, Plaintiffs and their predecessors in interest have freely sold their homes, to purchasers of their choice, for consideration determined solely by them, no part of which has ever been paid to Defendants. As alleged below, in the absence of such relief, Plaintiffs will be deprived of valuable property and other rights as a result of Defendants' unlawful and inequitable misconduct.

2. Little Neck is an approximately 35-39 acre parcel upon which is located approximately 211 separately designated lots, and other vacant land. Of the 211 lots, homes have been constructed on 167 of them by Plaintiffs and/or their predecessors in interest, with the express knowledge and consent of Defendants and their predecessors in interest. The lots upon which homes have been constructed are, for the most part, small being comprised of anywhere from 1780 square feet, up to 7820 square feet with the vast majority of the lots being comprised of approximately 3000 square feet. The acreage comprising the 167 lots approximates 12 acres. The balance of the acreage is made up of vacant land comprising approximately 3 acres, undeveloped and unimproved lots controlled by Defendants comprising approximately 13 acres and an 11 acre improved lot which is the site of a Community Center. The lots are individually taxed by the Town of Ipswich Assessors Office to Defendants, as the owners, although

none of the lots has been approved under subdivision control laws. Little Neck is owned, in trust, and is managed and controlled by Defendants.

3. Defendants are currently unlawfully interfering with Plaintiffs' rights in and to their homes and other valuable rights with the unlawful and unfair goal of attempting to extract money from Plaintiffs to which Defendants are not entitled. Unfortunately, Defendants' interference with Plaintiffs' rights is only the latest chapter in a long history of unlawful and inequitable activity by Defendants. Defendants have rejected any and all efforts by Plaintiffs to negotiate an extension of and extend the term for their continued use of Little Neck. In doing so, Defendants have taken the unlawful and inequitable position that none of the Plaintiffs have any rights to continue to occupy their lots at Little Neck beyond December 31, 2006 and that with the expiration of such rights, Plaintiffs must remove their homes, an option that Defendants know or should know is not physically and/or economically viable. If Plaintiffs fail to remove their homes, Defendants have asserted that they will be considered abandoned and Defendants will exercise ownership and control over them.

4. Many Plaintiffs, prior to purchasing their homes, inquired of Defendants as to their rights and status as prospective homeowners. Defendants consistently advised such Plaintiffs that they had nothing to be concerned with and that the relationship between the homeowners and Defendants had been stable and consistent for 300 years and would not change in the future. In making the decision to purchase their homes, said Plaintiffs reasonably relied on Defendants' promises and representations.

5. Many Plaintiffs, with the express knowledge and consent of Defendants, financed the acquisition of their homes. Many other Plaintiffs, with the express knowledge and consent of Defendants, have refinanced or taken equity loans on their primary residences in order to purchase their homes on Little Neck.

6. Many Plaintiffs, with the express knowledge and consent of Defendants, have made substantial and costly improvements to their homes. Certain Plaintiffs, with the express knowledge and consent of Defendants, have had the homes they purchased razed and have constructed new homes in their stead.

7. Many Plaintiffs' financing arrangements for the acquisition or reconstruction of their homes were facilitated by Defendants where, among other things, Defendants referred such Plaintiffs to lending institutions with which some of the Defendants have personal and professional relationships and to attorneys who have had long-standing professional relationships (even attorney-client relationships) with some of the Defendants. Indeed, one such attorney has for several years represented some of the Defendants in their capacity as Feoffees (the meaning of which is described below in ¶ 26).

8. In the past, Plaintiffs have, at Defendants' urging, spent considerable sums of their own money to improve certain common amenities actually owned by Defendants, including but not limited to, a playground and the Community Center. Plaintiffs did so in reliance upon Defendants' promises and representations that Plaintiffs' status as homeowners on Little Neck was secure and would not change in the future.

9. Defendants' actions and published intensions will deprive Plaintiffs of their homes and expose them to significant losses, including significant amounts owed to Plaintiffs' mortgagees.

10. Accordingly, Plaintiffs seek a preliminary injunction restraining Defendants from interfering with Plaintiffs' rights to continue to use and occupy their homes without the threats, intimidation and coercion which Defendants have exerted and, it is feared, will continue to exert. Plaintiffs further seek a declaratory judgment as to (i) the respective rights and obligations among the parties with respect to Plaintiffs' rights to continue to use, occupy and/or lease their lots on Little Neck; and (ii) the proper amounts to be paid by Plaintiffs to Defendants for their continued use and occupancy. Plaintiffs also seek money damages resulting from Defendants' unlawful and inequitable conduct including, but not limited to, the unauthorized assessment and collection of rents, real estate taxes, wastewater construction assessments, wastewater disposal charges; breach of Defendants' obligation to maintain the land in a manner fit for the intended use and occupancy; breach of the duty of good faith and fair dealing; unjust enrichment; violation of G.L. Ch. 12, § 11H; violation of G.L. Ch. 93A, §§ 2 and 11; and in the extremely unlikely event of the determination that Plaintiffs have no rights to continue to use and occupy their lots, and as a consequence their homes, the recovery by Plaintiffs from Defendants of the fair market value of their homes.

PARTIES

11. Plaintiff William M. Lonergan resides at 39 Greenhalge Street, Medford, Massachusetts and for over 20 years has owned a home on Little Neck located at 36 Middle Road, Ipswich, Massachusetts.

12. Plaintiff Diane Whitney-Wallace resides on Little Neck at 11 Middle Road, Ipswich, Massachusetts. Ms. Whitney-Wallace acquired her home on Little Neck in 1989 from her father, who had owned it since the early 1950's. Plaintiff Diane Whitney-Wallace's family (grandparents, great grandparents and great great grandparents), have owned homes on Little Neck since the late 1800's.

13. Defendant, James W. Foley (" Foley"), resides at 25 Meadowview Lane in Ipswich, Massachusetts and since 1988 has been purporting to act as a duly constituted member of the Feoffees (described in ¶ 26, below).

14. Defendant, Peter A. Foote ("Foote"), resides at 401-50 Colonial Road in Ipswich, Massachusetts and has been purporting to act as a duly constituted member of the Feoffees.

15. Defendant, Alexander B. C. Mulholland, Jr. ("Mulholland"), resides at 44 Plover Hill Road in Ipswich, Massachusetts and has been purporting to act as a duly constituted member of the Feoffees.

16. Defendant, Donald F. Whiston ("Whiston"), resides at 2 Jeffrey's Neck Road in Ipswich, Massachusetts and since 1973 has been purporting to act as a duly constituted member of the Feoffees.

17. Defendant, Elizabeth Kilcoyne ("Kilcoyne"), resides at 48 East Street in Ipswich, Massachusetts, is a duly elected member of the Town of Ipswich Board of Selectmen and, since August of 2006, has properly assumed her role as a lawful member of the Feoffees.

18. Defendant, Patrick J. McNally ("McNally"), resides at 74 Little Neck Road in Ipswich, Massachusetts, is a duly elected member and Chairman of the Town of Ipswich Board of Selectmen and, since August of 2006, has properly assumed his role as a lawful member of the Feoffees.

19. Defendant, Edward Rauscher ("Rauscher"), resides at 107R Argilla Road in Ipswich, Massachusetts, is a duly elected member of the Town of Ipswich Board of Selectmen and, since August of 2006, has properly assumed his role as a lawful member of the Feoffees.

20. Defendants, Kilcoyne, McNally and Rauscher are named as *necessary* party defendants and with the exception of Plaintiffs' claim for declaratory judgment as to the future rights and obligations among the parties, Plaintiffs assert no claims against and seek no damages from these Defendants.

FACTS

21. For over 100 years, and perhaps as early as the late 1600's or early 1700's, Plaintiffs and their predecessors in interest have occupied lots on Little Neck, paying "rent" to the Feoffees for their occupancy. Plaintiffs and their predecessors in interest have constructed homes on these lots, which structures are solely owned by

them and which Plaintiffs and their predecessors in interest have used and enjoyed for decades.

22. They have done so as a result of a unique arrangement dating back to the 1600's.

23. Upon information and belief, in 1650, the Town of Ipswich, by vote at town meeting, established a four member committee to hold land, in trust, as had been granted to them by the Town of Ipswich for the support of a grammar school and to receive, also in trust, all other parcels of land, rents or annuities as shall be given in the future to support the school. This committee later became known, by legislative act (described in ¶ 26 below), as the "Feoffees of the Grammar School in the town of Ipswich" ("Feoffees"). Little Neck was left by William Paine, upon his death in 1660, to the "free scoole of Ipswitch" to be used and remain to the benefit of "said scoole" forever and not to be sold or wasted. Pursuant to this bequest, the Feoffees undertook ownership and management of Little Neck.

24. Upon information and belief, at the time of the grant of Little Neck to the Feoffees, in trust, the grammar school in Ipswich was not publicly funded or supported (i.e. public assessments, in the form of taxes, were not made and used for the grammar school).

25. Pursuant to Chapter 26 of the Province Laws of 1755-56, an Act was enacted for regulating the grammar school in Ipswich and for incorporating certain persons to manage and direct the same. Specifically, the then surviving Feoffees, with three successors, together with part of the Selectmen of the Town of Ipswich, for the

time being, were empowered as an incorporate body, to manage and direct the affairs of the school for ten years then next coming in the manner as expressed in the Act.

26. Pursuant to Chapter 5 of the Province Laws of 1765-66, an Act was enacted incorporating certain persons, being identified as the present surviving Feoffees, together with three of the present Selectmen of the Town of Ipswich, as a "joint committee or feoffees in trust" with full power and authority, among other things, to lease the lands held by them in trust and to demand and receive rents and annuities with respect to the same, for the benefit of the schools. The Act further provided for the appointment of successors by and for the four surviving Feoffees and the successors of the three of the present Selectmen of the Town of Ipswich to be the "three eldest, in that office, of the selectmen of that town, other than such of them as be also one of the Feoffees." The Act provided that it was to "continue and be in force for the term of twenty-one years from the first day of March next, and no longer."

27. Pursuant to Chapter 54 of the Acts of 1786, Chapter 5 of the Province Laws of 1765-66 (described in ¶ 26 above) was made perpetual.

28. Notwithstanding the clear and unequivocal mandate of the referenced Acts, as to who shall and must constitute the Feoffees, no members of the Town of Ipswich Board of Selectmen have acted as Feoffees, according to the Town (of Ipswich Committee on the Feoffees, for over 80 years.

29. Upon information and belief, Defendants Foley, Foote, Mulholland and Whiston have failed to maintain accurate and complete records of their activities and finances, as Feoffees.

30. Upon information and belief, prior to 2001, Defendants Foley, Foote, Mulholland and Whiston failed and refused to file either a State or Federal tax return, as Feoffees, or to file a "Form PC" with the Commonwealth of Massachusetts Attorne General's Division of Public Charities.

31. Upon information and belief, in 2001, the Massachusetts Attorney General's Division of Public Charities compelled Defendants Foley, Foote, Mulholland and Whiston to properly file tax returns and to file Form PC's, for prior years and in each year going forward.

32. On September 25, 2006, at Plaintiffs' urging, Defendants Kilcoyne, McNally and Rauscher, as the three longest serving Selectmen, asserted and declared at a Board of Selectmen's meeting that they were lawful members of the Feoffees and going forward they would so act.

33. Notwithstanding the efforts of Defendants Kilcoyne, McNally and Rauscher to act as Feoffees, Defendants Foley, Foote, Mulholland and Whiston have refused to meet, in a lawfully constituted session, with Defendants Kilcoyne, McNally and Rauscher and have refused to conduct the business of the Feoffees, inclusive of the participation of Defendants Kilcoyne, McNally and Rauscher.

34. For many years prior to and including 1997, Defendants Foley, Foote, Mulholland and Whiston assessed and collected what was commonly referred to as "rents" from Plaintiffs for Plaintiffs' occupancy of the lots for the period from July 1 through June 30, in amounts ranging from a few to several hundred dollars.

35. Over the years, increases in rents were periodic and gradual. For example, in 1986, the rent was $300 for seasonal occupancy and $500 for year-round occupancy. By 1996, the rent for seasonal occupancy was $600 and $800 for year-round occupancy.

36. Up until 1965, real estate taxes, based upon assessments established by the Town of Ipswich Board of Assessors for the lot occupied by each Plaintiff and each Plaintiff's home, were factored into and deducted from the rent. Starting in 1966, Defendants Foley, Foote, Mulholland and Whiston (or their predecessors, purporting to act as Feoffees) collected said real estate taxes (i.e. being those assessed upon the lot occupied by each Plaintiff and each Plaintiff's home), directly from Plaintiffs, *in addition* to the rent.

37. Then, commencing in 1998, Defendants Foley, Foote, Mulholland and Whiston made demands for increased rent from Plaintiffs, which has continued, unabated, to the present time. In this regard, the rents demanded and collected by Defendants Foley, Foote, Mulholland and Whiston, from 1998 through the present, have increased by over 700%. And while some of the increases have been gradual, others have not. As an example, the rent in 2005 was increased by Defendants Foley, Foote, Mulholland and Whiston by more than 52% from the preceding year. Significantly, at no time did Defendants Foley, Foote, Mulholland and Whiston properly notify Plaintiffs of any of the increases in the rent, solicit the agreement of Plaintiffs to pay the new rent or otherwise purport to terminate Plaintiffs' rights to their continued use and occupancy of the lots in the event that any one of them did not agree.

And, importantly, at no time did any of the Plaintiffs do so. Rather, Plaintiffs capitulated, and paid the demanded rent because they believed they had to, and because they feared retaliation and/or eviction by Defendants Foley, Foote, Mulholland and Whiston.

38. At the same time, Defendants Foley, Foote, Mulholland and Whiston demanded that Plaintiffs pay real estate taxes on the lots (as well as Plaintiffs' homes), *in addition to* the rent. Plaintiffs, on several occasions, objected to the amounts demanded of them for reasons, among others, that the assessed values were believed to be excessive. In addition, Plaintiffs, on several occasions, requested that Defendants Foley, Foote, Mulholland and Whiston apply for and in good faith pursue abatements given the excessive assessments, and they failed and/or refused to do so.

39. In recent years, all efforts by Plaintiffs to engage in a discussion with Defendants Foley, Foote, Mulholland and Whiston about the significantly increasing rents have been rebuffed. At the same time, however, Defendants Foley, Foote, and Mulholland each began to take and then substantially increase their own salaries out of the moneys collected from Plaintiffs and intended to support the Ipswich schools.

40. Then, in 2000, Defendants Foley, Foote, Mulholland and Whiston announced that those Plaintiffs who owned homes occupied seasonally and had not previously installed Title 5 compliant systems, would be required to install and pay for individual tight tanks, at a price of approximately $12,000, each. They also declared that the owners of homes occupied year-round would be required to install a new "drip"

system, at a price of approximately $22,000, each. Plaintiffs were given no meaningful role or input into this decision-making process.

41. Sometime later, Defendants Foley, Foote, Mulholland and Whiston retained Pio Lombardo of Lombardo Associates, Inc., to investigate alternatives to the individual tight tanks.

42. Then, in 2003, Defendants Foley, Foote, Mulholland and Whiston declared that they had decided to construct a centralized wastewater collection system to which all Plaintiffs, with the exception of those who had recently installed Title 5 compliant systems, would be required to connect. At that time, Defendants Foley, Foote, Mulholland and Whiston stated that the total cost of the project would be approximately $3,600,000 or $22,100 per home.

43. In 2004, defendants Foley, Foote, Mulholland and Whiston notified Plaintiffs that they had *already* spent nearly $200,000 in engineering and legal fees, soil analyses and other research, and that they anticipated spending *another* $100,000 to complete the project's preliminary planning phase. Consequently, they declared and "imposed" a special assessment on Plaintiffs of $1000 each and declared that another $1000 assessment, each, was likely. This would have equaled some $334,000 in special assessments, in addition to the rent then being charged by Defendants Foley, Foote, Mulholland and Whiston totaling in excess of $460,000.

44. Later, Defendants Foley, Foote, Mulholland and Whiston sent out a series of communications to Plaintiffs repeatedly revising their earlier figures, in ever increasing amounts, without any explanation. For example, one such communication

stated that it "appears [that it] will be at least $35,000 per cottage" for the wastewater system, being a 58% increase over the original estimate. In the same communication, Defendants Foley, Foote, Mulholland and Whiston purported to notify Plaintiffs that their "existing tenancy at will status" would be terminated as of December 31, 2005 *but* Plaintiffs would be offered the opportunity to enter into a written, 15 year lease for Plaintiffs' lots.

45. In June of 2005, Defendants Foote and Mulholland (but not Foley and Whiston) executed certain documents related to the borrowing by the "Feoffees of the Grammar School in the Town of Ipswich" of the amount of $6,483,000 from Ipswich Co-Operative Bank, including an assignment of rents and betterment fees to be paid by Plaintiffs.

46. By October of 2005, the estimated cost of the wastewater system increased, once again, from $35,000 to $38,704, a nearly 75% increase from the original estimate. Then in January of 2006, the estimated cost of the wastewater system increased, again, from $38,704 to $41,050, an overall increase of nearly 86%. Then in a written communication to Plaintiffs dated May 8, 2006, the cost of the wastewater system was declared to be $7,298,000 or $43,700 per home, a nearly 98% increase, with a prediction of *more to come*.

47. During this time, Plaintiffs were requesting, on numerous occasions, that Defendants Foley, Foote, Mulholland and Whiston provide them with a draft lease (as had been promised), as well as information, documentation and importantly, an explanation concerning the ever escalating costs of the wastewater system, and the then

newly announced wastewater disposal charges. Regarding the latter, sometime prior to May of 2006, Defendants Foley, Foote, Mulholland and Whiston entered into a contractual agreement with a company to dispose of the wastewater from the wastewater system, for which they declared that Plaintiffs would be responsible. Upon information and belief, there was no genuine competitive bidding process to obtain the best possible terms and the lowest possible cost for the disposal services. In May of 2006, defendants Foley, Foote, Mulholland and Whiston caused invoices for wastewater disposal charges to be distributed to Plaintiffs covering the period from March 31, 2006 to May 1, 2006. Noted on the reverse side of the invoice was a previously undisclosed $40 fee per home, per month, for alleged "utilities, operation and maintenance of the wastewater collection, pump stations, storage and pump out facilities, billing and collection fees and administrative costs". If collected, this fee would have generated more than $80,000 per year for Defendants Foley, Foote, Mulholland and Whiston. In May of 2006, Plaintiff Diane Whitney-Wallace received an invoice for wastewater disposal in the amount of $467.36. Based on this invoice, extrapolated over a 12 month period, the annual cost of the disposal of the wastewater would be approximately $5600, on top of the rent, on top of the real estate taxes and on top of the *entire* cost of the wastewater system.

48. Plaintiffs requested, on numerous occasions, the opportunity to engage in good faith negotiations concerning the lease. Notwithstanding the promise by Defendants Foley, Foote, Mulholland and Whiston *and their counsel* that Plaintiffs would have "a place at the table", that, indeed, they intended to negotiate "in good

faith", in late March, 2006 Defendants Foley, Foote, Mulholland and Whiston delivered to Plaintiffs what *purported* to be a 20 year lease. However, the draft lease provided for rent, in a sum certain, for only the first three years. Thereafter, the rent for years four through twenty would be determined by Defendants Foley, Foote, Mulholland and Whiston pursuant to what was characterized as a "classification system" otherwise undefined and undescribed but which was predicted to result in rents for the highest of classifications of $20,000. Unbelievably, the draft lease also required Plaintiffs to pay their proportionate (i.e. 1/167th) share of *all* of the costs, direct and indirect, of the wastewater system which, incredibly, remained undetermined but which, as stated above, had already increased by nearly 98% from the original estimate. Notwithstanding Plaintiffs' repeated attempts to engage in a dialogue with Defendants Foley, Foote, Mulholland and Whiston, they persistently and consistently refused to discuss these two critical issues (i.e. the rent and the cost of the wastewater system), as well nearly all other issues.

49. Then on June 27, 2006, Defendants Foley, Foote, Mulholland and Whiston delivered to Plaintiffs a "take it or leave it" lease for a term of 20 years, *commencing July 1, 2006, for which Defendants demanded that Plaintiffs pay a nearly 100% increase in rent, effective July 1, 2006.* Plaintiffs were provided merely 34 days to sign this onerous (as detailed below) lease on or before August 1, 2006 or face eviction, the loss of their homes and significant monetary and other damages. As proposed, the lease required the payment of rent in years one through three of $10,800 for year-round occupancy (a 96% increase from the previous rent of $5,500) and

$9,700 for seasonal occupancy (a 94% increase from the previous rent of $5,000). The lease provided that thereafter, rent would be adjusted for years four through six, and every three years thereafter, in amounts to be determined by the Defendants, Foley, Foote, Mulholland and Whiston, at their sole discretion (or, more appropriately, whim).

50. At the same time this "take it or leave it" lease was delivered to Plaintiffs, Defendants Foley, Foote, Mulholland and Whiston, through their counsel, sent Plaintiffs a purported Notice to Terminate Tenancy at Will dated June 28, 2006 ("Notice to Quit"), in which Plaintiffs were notified to quit and deliver up at the end of the term of Plaintiffs' tenancy (*claimed to be January 31, 2007*) the lots occupied by Plaintiffs and to *remove*, by the same date, their homes. The Notice to Quit acknowledged that Plaintiffs' rent for the *remaining term* (stated as being July 1, 2006 to December 31, 2006) was the same as the rent for the last (i.e. preceding) six month period (i.e. $5,500 for year-round occupancy and $5,000 for seasonal occupancy). Notwithstanding Defendants' admission that Plaintiffs' then current term continued through December 31, 2006, for which Defendants admitted Plaintiffs were to pay rent of $5,000 or $5,500 (depending upon their occupancy), yet, under the threat of eviction and the loss of their homes, Defendants demanded that Plaintiffs execute the new lease for the term commencing July 1, 2006 and pay rent, also commencing July 1, 2006, of $9,700 or $10,800 (depending upon their occupancy). This would have resulted in a windfall to Defendants of approximately $800,000 (being the difference between the

rent payable by Plaintiffs for the remainder of the term and the new rent to commence on July 1, 2006).

51. Once again, Plaintiffs made numerous efforts to have a discussion with Defendants Foley, Foote, Mulholland and Whiston which, consistent with their conduct in the past, were ignored and rebuffed.

52. In response to the described actions of Defendants Foley, Foote, Mulholland and Whiston, Plaintiffs, by their attorneys, made a written demand for relief pursuant to G.L. Ch. 93A, §§ 2 and 9, in a letter dated July 28, 2006 ("93A Letter"). In it, Plaintiffs detailed the long course of unfair and deceptive practices engaged in by Defendants Foley, Foote, Mulholland and Whiston and demanded that they (i) rescind the August 1, 2006 deadline by which Plaintiffs were required to execute the lease or face eviction; (ii) rescind the Notices to Quit; and (iii) immediately undertake good faith negotiations regarding the lease.

53. On August 28, 2006, Defendants Foley, Foote, Mulholland and Whiston, through their counsel, responded to Plaintiffs' 93A Letter, in which they essentially denied all of Plaintiffs' factual and legal assertions, and alleged that certain unnamed Plaintiffs had engaged in tortious conduct and an unlawful civil conspiracy. They offered to resolve all differences by extending the time for Plaintiffs' acceptance of the proffered lease to September 30, 2006; by discussing, through counsel, terms by which those of the Plaintiffs who were not going to sign the proffered lease would be permitted to sell their homes; and that Defendants Foley, Foote, Mulholland and Whiston would release Plaintiffs of liability *to them* for their alleged breach of contract,

civil conspiracy, civil rights violations and interference with contractual and advantageous relations. In the absence of doing so, Defendants Foley, Foote, Mulholland and Whiston threatened that they would proceed "forthwith" with the evictions and seek to recover damages for the Plaintiffs' tortious and conspiratorial conduct.

54. Notwithstanding the response of Defendants Foley, Foote, Mulholland and Whiston, as described, Plaintiffs, once again, attempted to engage in a good-faith dialogue by offering to engage in mediation, in response to which Defendants Foley, Foote, Mulholland and Whiston said that they would *only* participate in mediation *if* Plaintiffs agreed, in advance, that there would be no discussion of the nearly 100% increase in rent for the first three years and no discussion concerning Plaintiffs' responsibility for 100% of the asserted *total* costs of the wastewater system, which had ballooned to nearly $7.3 million (with a prediction of more to come). In other words, notwithstanding that the wastewater system would benefit Defendants' land and their buildings, Plaintiffs were to be responsible for the entire cost of the wastewater system project, both direct and indirect (which included, but was not limited to, legal fees associated with a challenge to a decision of the Town of Ipswich Conservation Commission related to the wastewater system project). Plaintiffs, understandably, declined.

55. Presently, Plaintiffs believe that Defendants Foley, Foote, Mulholland and Whiston will undertake to deprive them, through the process of eviction or otherwise, of their ownership rights in their homes, and their long standing rights to use

and enjoy their homes. To demonstrate the minimum order of magnitude of such losses, Plaintiffs' homes were *assessed*, in fiscal year 2005, for nearly $20 million, collectively.

56. Plaintiffs have always been and remain willing to pay a fair rent for their use and occupancy of the lots on Little Neck, upon which their homes have been built.

57. Plaintiffs have also been and remain willing to pay a fair and equitable share of the reasonable and legitimate costs of the wastewater system. However, upon information and belief, the wastewater system project has been seriously mismanaged by Defendants Foley, Foote, Mulholland and Whiston and, as delivered, is plagued by deficiencies. Simply, the project, as a whole, has turned into a "Little 'Big Dig'" with significant and, importantly, unexplained cost overruns.

CLASS ACTION ALLEGATIONS

58. This case is brought as a class action pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure ("Mass. R. Civ. P."). Plaintiffs seek relief through the establishment of a class pursuant to Rule 23 including injunctive and declaratory relief, compensatory damages, restitution and punitive damages incidental to or flowing from such relief. Plaintiffs seek certification of this action as a class action on behalf of all persons or entities who had/have an ownership interest in a home on Little Neck from the earliest date under the lengthiest applicable statute of limitations to the present. Excluded from the class are Defendants, members of Defendants' immediate families and their legal representatives, heirs, successors, or

assigns and any entity in which Defendants have or had a controlling interest ("Class"). This case is properly brought as a class action under Rule 23 for the reasons set forth in the following paragraphs.

59. Membership in the Class is so numerous that separate joinder of each member is impracticable. The number of Class Members is presently unknown but can readily be determined from a review of Defendants' records. Plaintiffs reasonably estimate that there are, at a minimum, hundreds of Class Members.

60. The named Plaintiffs will fairly and adequately protect and represent the interests of the Class and have retained counsel experienced and competent in complex litigation.

61. There are numerous and substantial questions of law and fact common to all Class Members which control this litigation and predominate over any individual issues.

62. Defendants have acted, and refused to act, on grounds generally applicable to the members of the Class who currently own homes on Little Neck, making it appropriate for declaratory or injunctive relief for all such Class Members.

63. Based on the intentional and egregious conduct of Defendants, Plaintiffs and Class Members are entitled to an award of punitive damages. The entitlement to those damages and the appropriate amount of such damages is incidental to the request for equitable relief and compensatory damages and flows from the same conduct that entitles Plaintiffs and Class Members to equitable relief and compensatory damages. Therefore, an award of punitive damages is appropriate under Rule 23.

64. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to the individual members of the Class, and a risk that any adjudications with respect to individual members of the Class would, as a practical matter, either be dispositive of the interests of the other members of the Class not a party to the adjudication, or substantially impair or impede their ability to protect their interests.

65. Individual Class Members have little ability to prosecute an individual action due to the complexity of the issues involved in this litigation, the size and scope of Defendants' uniform policies, practices and common course of conduct, and the significant costs attendant to such litigation.

66. This action will result in the orderly and expeditious administration of Class claims. Economies of time, effort and expense will be fostered and uniformity of decisions will be ensured.

67. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impractical. Furthermore, the expense and burden of individual litigation make it virtually impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

COUNT ONE
Injunctive Relief

68. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 57 of this Complaint and incorporate them herein by reference.

69. Plaintiffs are entitled to, and therefore request, preliminary injunctive relief restraining defendants from further interfering with plaintiffs' ownership rights in their homes and rights to continue to use and enjoy their homes, to include but not be limited to restraining defendants from attempting to evict Plaintiffs pending a trial on the merits in this matter.

70. Plaintiffs have a substantial likelihood of success on the merits.

71. In the absence of the requested relief, Plaintiffs will suffer irreparable harm including, without limitation, the loss of their homes.

72. The balance of harm to Plaintiffs in the absence of the requested injunctive relief far outweigh any potential harm to Defendants in the event that the Court issues the requested relief, especially where, as here, Plaintiffs continue to pay rent and real estate taxes.

73. The requested relief is in the interests of both justice and the public.

COUNT TWO
Declaratory Judgment

74. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 57 of this Complaint and incorporate them herein by reference.

75. As described above, an actual dispute and case or controversy currently exists between Plaintiffs and Defendants with respect to the rights, obligations and duties of Defendants under the controlling legal grants, including the legislative Acts and Resolves ("Governing Grants/Laws") and the rights of Plaintiffs with respect to their continued use and occupancy of the lots (which Plaintiffs assert are not mere tenancies, but instead, are in the nature of an irrevocable license, a servitude running

with the land, an implied easement and/or an equitable interest in Little Neck) and the amount of a fair and proper rent to be paid by Plaintiffs, including the determination of whether such fair and proper rent should be offset by real estate taxes assessed on the lots and Plaintiffs' homes, as amounts being paid for the schools, as specifically contemplated by the Governing Grants/Laws and, importantly, including whether any or all of the actions of Defendants Foley, Foote, Mulholland and Whiston, purporting to act as Feoffees, including but not limited to those actions in assessing and collecting increased rents, real estate taxes and any and all other special assessments, during such time as the Feoffees were *not* duly constituted in accordance with the Governing Grants/Laws, are null and void.

76. Plaintiffs are entitled to a judgment declaring the rights, obligations and duties of Defendants, and the rights of Plaintiffs, including Plaintiffs' rights to continue to use and occupy the lots and use and enjoy their homes.

COUNT THREE
Breach of the Covenant of Good Faith and Fair Dealing

77. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 57 of this Complaint and incorporate them herein by reference.

78. The long-standing, contractual arrangement/agreement between Plaintiffs and Defendants contains an implied obligation of good faith and fair dealing.

79. Defendants' actions as alleged above constitute a breach of the obligation of good faith and fair dealing.

80. Plaintiffs have suffered and will continue to suffer damage as a result of Defendants' breach of their obligation of good faith and fair dealing.

COUNT FOUR
Violation of G.L. Ch. 93A, §§ 2 and 9

81. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 57 of this Complaint and incorporate them herein by reference.

82. Defendant's actions, as alleged above, constitute unfair or deceptive acts or practices in the conduct of trade or commerce, in violation of G.L. Ch. 93A §§ 2 and 9.

83. Defendants' unfair and deceptive acts and practices in violation of G.L. Ch. 93A occurred primarily and substantially in Massachusetts.

84. Defendants unfair and deceptive acts and practices in violation of G.L. 93A were knowing and willful.

85. Defendants' unfair and deceptive acts and practices in violation of G.L. 93A have caused or threatened to cause Plaintiffs to suffer injury including the loss of property.

86. On July 28, 2006, Plaintiffs made a written demand for relief pursuant to G.L. 93A §§ 2 and 9, a true and accurate copy of which is attached as **Exhibit "A"**.

87. On August 28, 2006, Defendants Foley, Foote, Mulholland and Whiston purported to respond to Plaintiffs' 93A letter, which response, however, was wholly unreasonable.

88. For Defendant's actions, Plaintiffs seek the recovery of damages, including emotional distress, to be multipled, and reasonable attorney's fees.

COUNT FIVE
Violation of G.L. Ch. 12 § 11I

89. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 57 of this Complaint and incorporate them herein by reference.

90. Defendants' actions, as alleged above, constitute the interference or attempted interference by threats, intimidation or coercion with Plaintiffs' exercise or enjoyment of their rights secured by the Constitution, the laws of the United States, and/or the laws of the Commonwealth, including their use and enjoyment of, and their ownership interests in, their homes.

91. For Defendants' actions, Plaintiffs seek the recovery of damages, including emotional distress damages, and reasonable attorney's fees.

COUNT SIX
Breach of the Covenant of Quiet Enjoyment

92. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 57 of this Complaint and incorporate them herein by reference.

93. Defendants owe Plaintiffs a covenant of quiet enjoyment.

94. Defendants' actions, as alleged above, constitute the breach of the covenant of quiet enjoyment owed by Defendants to Plaintiffs for which Plaintiffs seek damages.

COUNT SEVEN
Breach of Obligation to Maintain Lots in a Condition Suitable for Their Intended Use

95. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 57 of this Complaint and incorporate them herein by reference.

96. Defendants' actions, as alleged above, constitute a breach of Defendants' obligation to maintain the lots in a condition suitable for their intended use by Plaintiffs, i.e. for the use and maintenance of Plaintiffs' homes, including appropriate wastewater disposal, for which Plaintiffs seek damages.

COUNT EIGHT
Recovery of Real Estate Taxes under G.L. Ch. 59, §12C and Common Law

97. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 57 of this Complaint and incorporate them herein by reference.

98. As a matter of common law and under G.L. Ch. 59, §12 C, the burden of paying real estate taxes on the lots occupied by Plaintiffs is upon Defendants.

99. At no time did Plaintiffs agree to pay the real estate taxes assessed to Defendants, on the lots, except as was included in (i.e. credited against) the rent.

100. In excess of and contrary to their authority under the Governing Grants/Laws and otherwise, Defendants Foley, Foote, Mulholland and Whiston unlawfully demanded and collected real estate taxes that were not credited against or included in the rent, the amounts of which Plaintiffs seek to recover from Defendants.

COUNT NINE
Recovery of Increases in Rent and Wastewater Assessments

101. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 57 of this Complaint and incorporate them herein by reference.

102. At no time did Plaintiffs agree to pay increases in rent or the wastewater assessments, which were unlawfully and in excess of and contrary to the Governing

Grants/Laws, demanded and collected by Defendants Foley, Foote, Mulholland and Whiston.

103. At no time did Defendants purport to terminate Plaintiffs' tenancies when Defendants sent notices to Plaintiffs purporting to raise the rent and impose the wastewater assessments.

104. As a result, the increases in rent and the imposition of the wastewater assessments were legally ineffectual and no new tenancies, subject to the increased rent and wastewater assessments, were created given the absence of Plaintiffs' consent and agreement and given the lack of authority of Defendants Foley, Foote, Mulholland and Whiston to have imposed the same.

105. Plaintiffs seek the recovery of all unlawfully demanded and collected rent increases and wastewater assessments.

COUNT TEN
Unjust Enrichment

106. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 57 of this Complaint and incorporate them herein by reference.

107. In the unlikely event it is determined that Plaintiffs have no rights to the continued use and occupancy of the lots, and, as a consequence, their homes, Defendants will be unjustly enriched by the resultant retention by Defendants of Plaintiffs' homes, which cannot be removed by Plaintiffs.

108. Defendants, therefore, should be required to pay to Plaintiffs an amount equal to the fair market value of Plaintiffs' homes.

WHEREFORE, Plaintiffs respectfully seek, for themselves and the members of the Class, the following:

1. An order certifying this action as a class action pursuant to Rule 23;

2. Entry of a preliminary injunction and, after trial, a permanent injunction as requested in Count One.

3. Entry of a declaratory judgment as requested in Count Two.

4. An award of damages to Plaintiffs under each Count for which damages are available, doubling or trebling those damages and awarding reasonable attorney's fees and costs, under those Counts for which multiple damages and an award of attorney's fees are available.

5. An award of punitive damages to Plaintiffs under each Count for which such damages are available.

6. Any and all such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

PLAINTIFFS, ON BEHALF OF THEMSELVES AND ALL OTHER SIMILARLY SITUATED, DEMAND A JURY TRIAL ON ALL CLAIMS SO TRIABLE.

Respectfully submitted,

WILLIAM M. LONERGAN AND
DIANE WHITNEY-WALLACE
On behalf of themselves and
all others similarly situated,

Neal C. Tully

Neal C. Tully, Esquire (BBO #504280)

Mary E. O'Neal, Esquire (BBO #379325)
Masterman Culbert & Tully LLP
One Lewis Wharf
Boston, MA 02110
(617) 227-8010

Dated: December 8, 2006

Exhibit "A"

TELEPHONE (617) 227-8010
TELECOPIER (617) 227-2630

Masterman, Culbert & Tully LLP

One Lewis Wharf
Boston 02110

July 28, 2006

By Regular and Certified Mail

Mr. Peter A. Foote
401-50 Colonial Road
Ipswich, Massachusetts 01938

Mr. James W. Foley
25 Meadowview Lane
Ipswich, Massachusetts 01938

Mr. Alexander B. C. Mulholland, Jr.
44 Plover Hill Road
Ipswich, Massachusetts 01938

Mr. Donald F. Whiston
2 Jeffrey's Neck Road
Ipswich, Massachusetts 01938

Re: **Demand for Relief Pursuant to the Massachusetts Consumer Protection Act, G.L. c. 93A**

Dear Sirs:

This office has been retained by the owners of 141 of the homes at Little Neck in connection with their claims against the Feoffees. On their behalf, we make the following demand for relief pursuant to the Massachusetts Consumer Protection Act, G.L. c. 93A §§ 2, 9.

The course of your unfair and deceptive business practices recently culminated in an extortionate demand that our clients execute, by August 1, 2006, a written lease for their lots and pay rent commencing as of July 1, 2006 in an amount two times greater than what is presently owed or face eviction and the distinct possibility of the loss of their homes. This, at the same time you acknowledged, in writing, that our clients' current tenancy, and their obligation to pay less than half of the rent demanded under the new lease, does not expire until January 31, 2007. (The homeowners dispute that their tenancy is limited to a tenancy at will and dispute that, even if viewed as a tenancy at will, it expires any sooner than June 30, 2007.) The demand appears to

be a response, at least in part, to the homeowners' valid objections to the Feoffees' attempt to assess the homeowners 100% of the exorbitant cost of the mismanaged construction of the common wastewater system and their valid objections to the exorbitant operating charges of the system and the manner of allocating those charges. Such conduct constitutes an unfair act or practice in violation of c. 93A. See, e.g., **Anthony's Pier Four, Inc. v. HBC Associates, et al., 411 Mass. 451, 474 (1992)** ("Conduct in disregard 'of known contractual arrangements' and intended to secure benefits for the breaching party constitutes an unfair act or practice for c. 93A purposes."); **Diamond Crystal Brands, Inc. v. Backleaf, LLC, 60 Mass. App. Ct. 502, 507-08 (2004)** (when "coercive and extortionate" threats to evict a commercial tenant, including service of a notice to quit, were made by landlord following tenant having validly objected to overcharges by the landlord for the cost of utilities, a *per se* c. 93A violation was found); **Plastics Color and Compounding, Inc. v. Coz, 2006 Mass. Super. LEXIS 29,*14-15** (court found that the defendant landlord had engaged in "willful and knowing" unfair and deceptive acts where landlord threatened plaintiff tenant with immediate termination of lease and exercise of landlord's right of entry following upon tenant's having learned of and objected to landlord's overcharges for utilities characterizing landlord's conduct as "just the kind of insidious overbearing and course of conduct from which it is the object of c. 93A to protect honest commercial actors.").

Moreover, the proffered lease contains provisions that constitute per se violations of c. 93A. Under regulations of the Attorney General, 940 CMR §3.17(6)(a), it is an unfair or deceptive act or practice for an owner to impose any interest or penalty for late payment of rent unless such payment is 30 days overdue. Your lease purports to impose a penalty if the rent is 15 days overdue.

Prior to these recent events, you engaged in other conduct giving rise to various other legal claims, several of which also implicate c. 93A.

Every homeowner who has bought (or sold) a home has solicited and received your express permission to do so. Frequently, purchase money mortgage financing has been facilitated and arranged by a member of the Feoffees, with a local bank and with the legal assistance of a local lawyer who represents the Feoffees and whose services were also recommended by a member of the Feoffees. Incident to such arrangements, the Feoffees have approved the content of UCC-1 financing statements confirming the "tenancy agreement" of unlimited duration. Consistently, over many years, on many occasions, members of the Feoffees have made statements to the effect that homeowners, many of whose family members had lived at and enjoyed Little Neck for generations, would be able to continue to do so because nothing had changed over the past 300 years and nothing would change in the next 300. Against this backdrop, many homeowners built, purchased and renovated homes, constructed additions to

their homes, borrowed monies secured by their homes and otherwise added significant value to their investment, with your express approval and based upon your representations, both express and implied, that they were secure in their tenancies.

Historically, the rent reflected what the homeowners were paying for: vacant land, without consideration of the improvements erected by and belonging to the homeowners. Over the past several years, however, the Feoffees have imposed significant increases in rent which appear to be based on an enhanced value attributable to the homeowners' improvements and which have not been the product of an agreement but rather, fiat. Both the imposition, or attempted imposition, of an inflated rent and the manner in which it was done, constitute unfair acts or practices. Similarly, real estate taxes assessed against the real estate to the Feoffees, as owners, were declared to be due and payable by the homeowners, contrary to the provisions of G.L. c. 59, §12C. At no time did the homeowners, prior to the inception of their tenancies, enter into a valid agreement with the Feoffees to pay increases in rent or real estate taxes on the Feoffees' real estate, the latter of which also violates the Attorney General's consumer protection regulations at 940 CMR 3.17(2)(c), which make it an unfair or deceptive practice for an owner to demand payment for increased real estate taxes during the term of a tenancy unless, prior to the inception of the tenancy, a valid agreement is made pursuant to which the tenant is obligated to pay such increase.

A landlord may not arbitrarily increase rent or demand the payment of taxes and betterments by a tenant. In the absence of the consent of *both* parties, the terms of an existing tenancy cannot be changed and a new tenancy cannot be created. Where a landlord sends notice to a tenant at will purporting to raise the rent, it is ineffectual if it does not purport to terminate the tenancy. It is, simply, an attempt to unilaterally raise the rent which, in the absence of an agreement by the tenant, is legally ineffective to alter the rent term of the tenancy agreement. Even where a tenant promises to pay and pays an increase of rent, where the original tenancy has not been waived or rescinded or terminated, such a promise lacks consideration and is unenforceable. See, e.g., **Iorio v. Donnelly, 343 Mass. 772, 772 (1961)** (landlord asserted that tenant's continued occupancy of premises after being notified that the rent would be increased created an implied contract to pay the increased sum; court held that the trial judge was not obligated to make a finding that there was an implied contract stating that "a new tenancy at will cannot be created without the consent of both parties"); **Williams v. Seder, 306 Mass. 134, 136-137 (1940)** (court held that tenant's continued occupancy did not constitute agreement to occupy at increased rent demanded by landlord where landlord's notice to tenant purporting to raise the monthly rent was ineffectual where it did not purport to terminate the tenancy at will); **Torrey v. Adams, 254 Mass. 22, 26-28 (1925)** (court held that there was no legal consideration for tenant's agreement to pay increased rent, notwithstanding tenant's execution of a writing agreeing to do so

and tenant's subsequent payment of the increased rent for over a year, where tenant was in possession under the lease until a date certain and from year to year thereafter, and the lease had not been terminated by the required notice, as a result of which court concluded that the landlord had given the tenant nothing except what the tenant already had for the tenant's agreement to pay more rent).

In addition, your actions and conduct violate the covenant of quiet enjoyment benefiting the homeowners. A landlord's failure to furnish services to a tenant which deprives the tenant of a vital part of what the landlord knows the tenant must have in order to use and enjoy the property for its intended purpose, breaches the covenant. See, e.g., **Burt v. Seven Grand Corp., 340 Mass. 124, 127 (1959)**. The assessment of taxes upon property other than property for which the tenant had agreed to pay taxes has also been held to breach the covenant of quiet enjoyment. See, e.g., **Boston Molasses Co. v. Commonwealth, 193 Mass. 387, 390-91 (1907)**. Simply, the covenant of quiet enjoyment is breached by the landlord under circumstances where the landlord attempts to impose more onerous conditions upon the tenant with respect to the agreed-upon terms of the tenancy. Here, your unilateral actions in consenting to the construction of the centralized wastewater system, in entering into engineering and construction contracts which have resulted in initial cost estimates nearly doubling, in failing to properly manage the project, in refusing to permit the homeowners to inspect the documentation relative to the scope and expense of the project, but yet insisting that they blindly pay all expenses (direct and indirect) associated with the system, including legal expenses incurred in defense of an appeal from the Conservation Commission decision related to the location of the pumpout station, constitute significantly more onerous terms of the tenancy agreement. You, as the owner of the property and the landlord, are obligated to provide sanitary services for any residential occupancy, and as between the parties, you assumed full responsibility for the system by proceeding with selection, design and construction of the system without the consent or participation of the homeowners. While you are obligated to provide the services, you are not free to do so carelessly or negligently and you are not free to arbitrarily impose the cost on the homeowners. The relationship between the homeowners and the Feoffees is not a blank check.

Contrary to the representations made by you and on your behalf that the homeowners would have a "place at the table" with respect to "good-faith" negotiations to be undertaken regarding a long-term, written lease, you refused to respond to the homeowners' concerns and arbitrarily terminated discussions concerning the terms of a lease. The most important concerns related to the "out of control" costs associated with the wastewater system and significantly increased rents with the preview of even more to come in three years' time. In response to your proposed lease terms imposing the entire cost of the wastewater system and the entire cost of its operation and maintenance, the homeowners raised legitimate questions, among others, about:

unexplained escalating engineering costs, unexplained escalating construction costs, shoddy construction (there appears to be extensive ground and storm water infiltration into the system), improper metering or cost allocation (basing bills on water in rather than waste water out), unexplained overhead and maintenance charges for a Feoffee-operated entity, allocation of costs and charges to common facilities, and numerous errors in the calculation of disposal bills. Rather than address the questions and concerns, you terminated discussions, sent (defective) notices to quit and tendered a "take it or leave it" lease. You also declared that in the absence of its execution by August 1, 2006 and the payment commencing on July 1, 2006 of *double* the rent due under the existing tenancy through its expiration, the homeowners would be required to vacate their lots and take their homes with them, this being, as you well know, a practical impossibility.

These actions violate the covenant of good faith and fair dealing implicit in the relationship between you and the homeowners, *and* c. 93A. See, e.g., **Massachusetts Employers Insurance Exchange v. Propac-Mass., Inc., 420 Mass. 39, 42-43 (1995)** (court reaffirmed that a breach of the implied covenant of good faith and fair dealing, alone, may constitute an unfair or deceptive act or practice for the purposes of c. 93A and held that conduct undertaken as leverage to destroy the rights of another party to an agreement while the agreement was still in effect breached the implied covenant of good faith and fair dealing *and* warranted a finding of unfair acts or practices).

This same "take it or leave it" lease was your response to the homeowners' concerns regarding the rent. Although you said that the rent had been established based upon an appraisal report, you refused to share the report with the homeowners. You also refused to respond to the homeowners' concerns that any such appraisal may have determined rent based upon the value of the lots, as improved, which is tantamount to seeking rent based on the value of the homeowners' improvements. Similarly, you refused to consider that the rent should take into consideration the extraordinary expense you expected the homeowners to pay with respect to the wastewater system. In other words, the homeowners were paying twice--once with respect to the construction of the system and again with respect to the rental value of the lots enhanced by the betterment. Finally, you refused to consider an equitable offset against the rent based upon the homeowners' contribution to the increased value of your *remaining* land based upon the their payment of the entire cost of the waste the to water system betterment.

These questions and concerns were *never* addressed, contrary to the promised good-faith negotiations and your responsibility to act consistently with your obligations of good faith and fair dealing. Further, given that the concerns raised by the homeowners implicate what appears to be attempts on your part to collect monies from them to which you are not entitled and to mask them

as something other than what they were, my clients assert that these tactics, too, constitute unfair and deceptive business practices.

Your course of conduct, culminating in the threat to deprive the homeowners of their homes unless they accede to your extortionate demands, also constitutes interference with or an attempt to interfere with the use and enjoyment of their property, a right protected by the Constitution and laws of the Commonwealth, by threats, intimidation or coercion and therefore violates G.L. c. 12, §11H, the Massachusetts Civil Rights Act. See, **Haufler v. Zotos, 446 Mass. 489, 504-505 (2006)** (court held that plaintiff "easily establishe[d]" first prong of c. 12 claim where based upon right to use and enjoy his real estate and also noted that scope of coercion under the Act, which is entitled to *liberal* construction, is not limited to actual or attempted physical force and includes economic coercion, "standing alone").

Your actions have placed the homeowners in a position where they must and will avail themselves of all available legal remedies in an effort to save their homes and a way of life that you have assured them was theirs for the keeping. The homeowners recognize their obligation to pay a reasonable rent. You have not permitted that determination to be made by mutual agreement and instead have engaged in threatening and retaliatory actions. In the absence of the immediate undertaking of good faith negotiations with respect to the lease, the homeowners will seek a court declaration as to the rights and obligations between the parties and they will assert whatever claims for damages are available to them, including claims for rent overcharges[1], past real estate taxes, the fair market value of their homes, violation of G.L. c. 12, §11H and violation of G.L. c. 93A.

The homeowners demand that you rescind the August 1, 2006 deadline with respect to their execution of the lease; that you rescind the notices to quit; and that you immediately undertake good-faith negotiations regarding the lease. Under c. 93A you have 30 days from your receipt of this letter to respond with a reasonable offer of settlement. Failure to do so subjects you to the potential for the assessment of multiple damages and reasonable attorneys' fees incurred by the homeowners in their prosecution of claims based upon your unfair and deceptive practices.

[1] Over the last ten years, rents have increased by approximately 1000%. Multiplied by the number of homeowners we represent, 141, the sought-after recovery is potentially staggering.

Very truly yours,

Neal C. Tully

Neal C. Tully

NCT/afl