

William H. Sheehan III

From: Mary E. O'Neal [meo@mctlaw.com]
nt: Thursday, February 21, 2008 2:48 PM
TO: William H. Sheehan III
Cc: Neal C. Tully
Subject: Lease

Attachments: Redline of v3 to v1 - Seasonal Lease - LNH-01 (2_22_08).DOC; Ex. A Annual Rent (02_18_08).DOC; DOC.PDF



Redline of v3 to v1 Ex. A Annual Rent DOC.PDF (48 KB)
- Seasonal... (02_18_08)....

<<DOC.PDF>>

Dear Bill:

Please see the attached.

Beth

Mary E. O'Neal

Masterman Culbert & Tully LLP

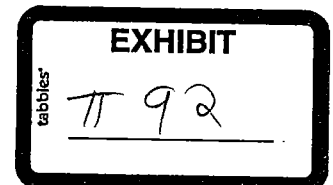
One Lewis Wharf

Boston, MA 02110

(617) 227-8010

In compliance with IRS requirements, we inform you that any U.S. tax advice contained in the communication is not intended or written to be used, and cannot be used, for the purpose of avoiding tax penalties or in connection with marketing or promotional materials.

The information contained in this e-mail message is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivery to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (617) 227-8010, and destroy the original message. Thank you.



Masterman, Culbert & Tully LLP

*One Lewis Wharf
Boston 02110*

February 21, 2008

By E-mail

William H. Sheehan, III, Esquire
MacLEAN HOLLOWAY DOHERTY ARDIFF & MORSE, P.C.
8 Essex Center Drive
Peabody, Massachusetts 01960

Re: Lease

Dear Bill:

We sincerely believe that we may be on the verge of either the very real prospect of a successful conclusion to our negotiations, leading to the execution by many tenants of a lease or a complete breakdown among the parties. For that reason, we ask that after you review this letter, and the enclosed form of lease, you speak with us before doing anything else.

The form of lease that you forwarded does not comport with what we understood was agreed as of the September mediation session. Therefore, it does not comport with what we agreed to recommend to our clients. We did not reach the conclusion to recommend a rent structure in isolation; it was in the context of the other terms of the lease that gave the tenants non-monetary benefits that could offset what would otherwise be perceived as excessive rent. We are still prepared to recommend the rent structure, but only in the context of what we understood to be the other settled terms. Enclosed is a form of lease that encompasses our understanding of what was agreed as of the September session, with two additions.

First, as of September a provision for 55 and older was not an agreed term (as it had been in August), but was open, subject to addressing the Feoffees' legal concerns that had been raised. We subsequently submitted language, carefully crafted, to address those concerns, and at the end of the December session, we were advised by Judge Adams that the 55 and over provision would be acceptable if the attorneys could work out the language. We have therefore carried over the term, and remain willing to discuss the language.

Second, we were advised by Judge Adams (and I believe this occurred in the presence of the Feoffees) that the Feoffees were agreeable to resetting the rent every three years starting in FY

February 21, 2008

Page 2

2013 rather than annually.

We have also modified four of the terms that were changed or added in your draft:

(a) In Paragraph 9 we changed the language to reflect that the Lease renews (for one more 20 year term) upon the same terms and conditions. We are certain that the renewal was to be on the same terms. Were it otherwise, it provides little to the tenants as the Feoffees presumably would permit the tenants to enter into a lease on whatever lease terms were then being offered to others. After the first renewal term, we added language regarding the negotiation of future terms.

(b) In paragraph 14, dealing with the period to sell or remove a home after termination, we adopted your shorter period, but restored the former language on securing payment. An immediate forfeiture is too harsh. The Feoffees are secure in obtaining either full payment on sale or removal or, in the alternative, title to the improvements, which will likely far exceed in value any arrearages.

(c) The self-help remedy in paragraph 12 was deleted. It is illegal under G.L. c. 184, §18 and could subject the Feoffees to punitive damages. We substituted a reference to G.L. c. 186, §11 for monetary breaches, and immediate termination on notice after the cure period for non-monetary breaches. In either event, the Landlord's remedy for possession is then an action for summary process.

(d) In paragraph 23(g), we deleted the reference to an indemnity. We do not have a problem releasing the Landlord in the event it is determined that the Lease is invalid, but we do not see any basis for an indemnity or what the tenants would be indemnifying the landlord against.

Finally, we have provided an alternative rent schedule. It provides a 10% cap to the rent calculation after fiscal 2013 (i.e. the recalculation commencing with fiscal year 2016). This protects both parties from a precipitous change in the assessments (and given both the decrease in assessments this year and the current state of the market, both sides need protection) and contributes to predictability and long term stability which should benefit both parties. It also offers a 2% equity sharing formula triggered by the sale of a tenant's dwelling, in addition to the payment of the rent for fiscal year 2018 and beyond, calculated at 4% (instead of 5%) of assessed value. In our opinion, the alternative rent schedule significantly enhances the prospect of acceptance of the lease, on a wide scale, with a strong recommendation from us.

We look forward to your call after you have had an opportunity to review the enclosures.

Sincerely yours,



Neal C. Tully

Masterman, Culbert & Tully LLP

February 21, 2008

Page 3

NCT/kas

Enclosure

FEOFFEEES OF THE GRAMMAR SCHOOL IN THE TOWN OF IPSWICH

LITTLE NECK LEASE - SEASONAL

This Agreement made this _____ day of _____, 2008, by and between the FEOFFEEES OF THE GRAMMAR SCHOOL IN THE TOWN OF IPSWICH (the "Landlord"), whose mailing address is P.O. Box 166, Ipswich, Massachusetts 01938, and _____, whose address is _____, _____, (the "Tenant").

In consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt whereof is hereby acknowledged, the parties hereto agree as follows:

1. LEASED PREMISES. Subject to the terms and conditions contained herein the Landlord leases to the Tenant Lot #_____, being a certain parcel of land located in Ipswich, Massachusetts, at Little Neck, also being identified as Parcel _____ on Ipswich Assessor Map 24C (the "Lot"). The street address for the Lot is _____.

2. USE.

(a) 2. USE.—The Lot shall be used only between April 1st to December 31st of each year for the existing single-family seasonal private dwelling and any existing ancillary structures. The Lot may also be used by the Tenant for one additional week per year during the month of February or March, upon ten (10) days advance notice to the Landlord.

(b) If the Tenant is fifty-five years of age or older or upon the Tenant attaining the age of fifty-five years during the term or any extended term of this Lease, the Tenant may elect to occupy the Lot for the existing single family private dwelling and ancillary structures (subject to and with the benefit of the provisions of paragraph 22(f) below) on a year round basis by giving the Landlord written notice of such election at least sixty days prior to July 1 in any year during the term or any extended term of the lease. As of July 1 following notice of such election, this Lease shall be deemed to be and shall be subject to the same terms and conditions as the Little Neck Lease – Year Round ("Year Round Lease"), including the rent terms of the Year Round Lease. In the event of an assignment of the Lease under paragraph 15, the Lease shall revert to a Seasonal Lease unless the assignee(s) (a) is fifty-five years of age or older and (b) the assignee(s) notifies the Landlord in writing of an election to continue the year round use, which election shall be given to the Landlord together with the notice of the assignment.

The Tenant hereby waives and releases any claim the Tenant has or may have against the Landlord with respect to year round occupancy by the Tenant who is or in the future reaches fifty-five years of age or older under the terms of this Lease or the terms of the lease of any other lot. The Tenant further agrees that in the event any person shall challenge the legality of paragraph 2 (b) above, the Tenant shall, if s/he has provided the Landlord with a written notice of election as provided in paragraph 2 (b) above, defend and indemnify Landlord from and against said challenge. In the event that the Tenant shall fail to defend and indemnify the Landlord, as provided, the Lease shall revert to a seasonal lease. Further, the Tenant agrees that in the event any term or provision of this Lease (or the lease of any other lot) with respect to year round occupancy by the Tenant or other tenants of any other lot fifty-five years of age or older is found by a court to violate any state or federal statute, law or regulation and such finding is upheld on appeal, if any, such term or provision shall be deemed null and void and stricken from this Lease, without affecting the validity and enforceability of the remaining terms and provisions of the Lease, and the use of the Lot shall thereafter be limited to seasonal use for which the Tenant shall pay seasonal rent.

3. TERM. This lease shall be for a term of twenty (20) years commencing at 12:01 a.m. EDT on the first day of July 1st, 2007 (the "Commencement Date") and ending at 11:59 p.m. EDT on the thirtieth day of June, 2027 (the "Term").
4. ANNUAL RENT. The Tenant shall pay the Landlord annual rent in the amounts set forth in Exhibit A attached hereto and incorporated herein by reference. The annual rent shall be payable in advance and due in equal quarterly installments on July 1st, October 1st, January 1st, and April 1st of each fiscal year, subject to the provisions of Exhibit A. Rent shall be paid to the Landlord at P.O. Box 166, Ipswich, Massachusetts 01938.
5. LATE FEES. Any rent not paid on the date the rent is due shall be assessed a late fee of twelve (12) percent per annum for each month or portion thereof that the rent is late.
6. TAXES. The Tenant shall pay all municipal real estate taxes assessed on the Lot and the buildings erected thereon. The Landlord shall use all reasonable efforts, working in conjunction with Little Neck tenants, to secure a direct, individual real estate tax bill for the Tenant from the Town of Ipswich. At such time, the Tenant shall pay the tax bill timely. Until such time, the Tenant shall pay additional rent to the Landlord in the amount of the real estate taxes attributable to the Lot and the buildings thereon, payable within fifteen (15) days from date of invoice from the

Landlord. Landlord agrees to invoice the Tenant as many times per year as the Town of Ipswich invoices the Landlord for real estate taxes, which invoice shall be in the amount billed by the Town to the Landlord. The Landlord shall be under no obligation to seek an abatement of real estate taxes. The Tenant shall have the right to prosecute an application for abatement of taxes in the name of the Landlord or Tenant, provided, however, that the expenses of prosecuting such application shall be borne by the Tenant. At the Tenant's request, Landlord shall furnish the Tenant with all data and information in the Landlord's possession reasonably necessary for Tenant's application. If the Landlord shall receive any abatement or refund of said taxes for any tax year for which the Tenant shall have paid to the Landlord all taxes due, the Tenant shall be entitled to receive from the Landlord the amount of such abatement or refund.

7. UTILITIES.

- (a) Water and Electric. The Tenant shall be responsible for payments of water and electric service charges to the Town of Ipswich.
- (b) Waste Water Disposal. The Tenant's dwelling shall be connected to the common waste water system operated by the Landlord or its designee. The Tenant shall pay all disposal fees charged for the disposal of waste water from the Tenant's use of the sewer system ~~dwelling~~, based upon metered water use, to the Landlord or its designee, within fifteen (15) days from date of invoice.
- (c) Other Utilities. The Tenant shall provide such other utilities to their lot at their own expense.

8. PERMITS AND LICENSES. It is understood and agreed that the Tenant shall obtain all necessary certificates, permits and other approvals required by any federal, state and local authorities necessary to undertake any repair, renovations or improvements to or to occupy said Lot or building or structure erected thereon.

9. ~~RENEWAL OF LEASE.~~ ~~This Lease does not grant to the Tenant any right to extend the term of the Lease or any right to renew the Lease. The Landlord agrees to provide a right of first refusal to the Tenant to enter into a new Lease for the Lot~~Provided that the Tenant is not in breach of any material provision of the Lease (which shall include, but not be limited to, payments of rent, taxes and waste water disposal fees), the Tenant may renew this Lease on the same terms and conditions as set forth herein for an additional twenty (20) year term by written notice to the Landlord given not more than eighteen (18) months nor less than three (3) months prior to the expiration of the initial 20 year Term. At least one hundred twentyeighty (120180) days prior to the expiration of the Term, the renewal term, the Landlord and the Tenant agree to negotiate, in good faith, a new lease on terms no less advantageous than those included in leases

entered into between the Landlord and other tenants. The Landlord shall provide the Tenant with the form of the Lease which the Landlord has then adopted. The new lease, which shall include the anticipated rent and other charges as then calculated by the Landlord and imposed on similar leaseholds. The Tenant shall have sixty (60) days to notify the Landlord whether it wishes to enter into the new lease upon the proposed terms. If the Tenant exercises its right of first refusal, the new lease shall be executed by the parties at least thirty (30) days prior to the expiration of the Term and the new lease shall be effective immediately upon the expiration of the Term. As used elsewhere herein, "Term" shall include the initial 20 year Term and the 20 year renewal term.

10. INDEMNIFICATION. During the Term, the Tenant, subject to the provisions contained herein, agrees to indemnify, defend and save the Landlord harmless against and from any and all claims, damages, costs, expenses (including the Landlord's reasonable attorney's fees) fines, penalties and other liabilities of any and every kind and nature, to any person or property, arising out of Tenant's use and occupancy of the Lot, including, but not limited to, costs and expenses incurred in connection with any clean-up, remediation, removal or restoration work required by any federal, state or local governmental authority because of the presence of any Hazardous Substance on or about the Lot to the extent the Tenant caused any such environmental occurrence, but there shall be no indemnity for any claim caused by the Landlord's negligence or intentional misconduct, or those of its agents, servants or employees. If any claim or proceeding arising under the preceding sentence is brought, naming the Landlord as a party by reason of any such claim or proceeding, and the claim, proceeding, damage, loss or liability is not caused by the negligent acts or intentional misconduct of the Landlord, its agents, servants or employees, Tenant, at its own cost and expense, upon written notice from the Landlord, agrees to undertake forthwith to defend such action or proceeding and hold the Landlord harmless and indemnify the Landlord against any liability thereon which may be asserted or imposed.

For the purposes of this Section, "Hazardous Substance" shall mean waste, substance or other material which may be dangerous to health or the environment, including, without limitation, all "hazardous wastes", "hazardous materials", "hazardous substances", "toxic substances", and "oil", as defined in and/or regulated under the Resources Conservation and Recovery Act of 1976, as amended, and/or any other federal, state or local law, regulation or by-law.

11. QUIET ENJOYMENT. The Landlord covenants that the Tenant, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Lot, subject, however, to rights of others to pass

on foot or by vehicle over those paths and driveways which have historically been so used generally by tenants at Little Neck.

12. BREACH OF CONDITION. This Lease is made on condition that if Tenant should neglect or fail to pay the rent, the waste water ~~used~~disposal charges payable to Landlord or its designee, or the real estate taxes assessed on said property in accordance with G.L. c. 59, §2B, all as required in this Lease, and said neglect or failure continues for fifteen (15) days from the due date of such payment, ~~or if the Landlord may terminate this Lease in accordance with and subject to the provisions of G.L. c. 186, §11.~~ If the Tenant shall neglect or fail to perform or observe any of the terms of any federal, state or local law, by-law or regulation or the Rules and Regulations promulgated by the Landlord, and after receipt by the Tenant of ~~such~~written notice ~~by the Landlord,~~ the Tenant fails to commence to cure within said sixty (60) days of receipt of such notice, or thereafter fails to diligently prosecute said cure to completion, or if the leasehold hereby created shall be taken on execution, or by other process of law, and such execution or other process is not satisfied or discharged within thirty (30) days thereafter or prior to a sale under said execution or other process which ever first occurs, or if any assignment shall be made of the Tenant's property for the benefit of creditors, or if a receiver, trustee in bankruptcy or similar officer shall be appointed (and if such person is not discharged within ninety (90) days thereafter) to take charge of all or any part of the Tenant's property by a Court of competent jurisdiction, or if a petition is filed by the Tenant under any bankruptcy law for relief or composition of its debts, or if the Tenant is declared bankrupt or if a mortgagee forecloses and/or takes possession of the chattel then, and in any of said cases, the Landlord ~~lawfully may immediately or at anytime thereafter and without demand or notice enter upon the Lot or any part thereof in the name of the whole and repossess the same, including all fixtures therein and/or annexed thereto, as of the Landlord's former estate and expel the Tenant and those claiming through or under the Tenant and remove its effects without being deemed guilty of any manner of trespass and without prejudice to any remedies which might otherwise be used for arrears of rent or proceeding for breach of covenants, and upon such entry, may terminate this Lease; and the Tenant covenants in case of such termination to pay and be liable for, on the days originally fixed for the payment thereof, amounts equal to the several installments of rent and other charges reserved as would under the terms of this Lease become due if this Lease had not been terminated or if the Landlord had not entered or reentered as aforesaid, and the Tenant covenants to pay and be liable for all losses and damages suffered by reason of such termination, including, but not limited to, the reasonable costs of legal counsel retained by the Landlord and all expenses of the Landlord for enforcement hereunder~~ may terminate this Lease upon written notice to the Tenant. Upon termination of this Lease for any reason under this

paragraph, the disposition of the Tenant's improvements shall be governed by paragraph 14 below.

13. TENANT'S TERMINATION OF LEASE. The Tenant may terminate this Lease upon one hundred twenty (120) days' written notice to the Landlord. Upon such termination, the disposition of the Tenant's improvements shall be governed by paragraph 14 below.

14. 13. SALE OR REMOVAL OF TENANT'S DWELLING AND STRUCTURES. Upon the expiration of the Term or the earlier termination of the Lease, the Tenant shall be permitted the opportunity, for up to twelve (12) months subsequent to the expiration of the Term or the earlier termination of the Lease ("Sale/Removal Period"), to use diligent efforts to sell the Tenant's dwelling, structures and other improvements located on the Lot or remove same at the Tenant's expense. Failure of the Tenant to sell or to remove the Tenant's dwelling, structures and other improvements shall result in the dwelling, structures and other improvements becoming the property of the Landlord at the end of the twelve-month period. The Tenant shall pay the Landlord the rent and other amounts due to the Landlord under this Lease during the period through the date of sale, removal or forfeiture of the dwelling, structures and other improvements on the Lot. If the Tenant fails to pay such rent and other amounts due within thirty (30) days from the due date of said payment, the Sale/Removal Period shall terminate and/or if the Tenant fails to pay any amounts due to Landlord for the period prior to the expiration of the Term or the earlier termination of the Lease, all such amounts shall be paid to the Landlord from the proceeds of sale and such payment shall be a condition of an assignment of the Lease to the purchaser of the dwelling, structures and other improvements on the Lot shall become the property of the Landlord. In the event the Tenant removes or forfeits the dwelling, structures and other improvements, the Tenant shall remain liable for all such amounts due up through the date of removal or forfeiture, and shall, in addition, be liable for the Landlord's reasonable costs of collection, including reasonable attorney's fees.

15. 14. ASSIGNMENT OF LEASE AGREEMENT OR SUBLEASE. This Agreement Lease may be assigned or transferred or bequeathed by the Tenant ~~without the~~ with written consent ~~of~~ notice to the Landlord (i) to a spouse, child, grandchild, sibling, niece or nephew of the Tenant (a "Relative") or to a trust, limited liability company, corporation or other legal entity owned or controlled by the Tenant or a Relative, and may otherwise be assigned ~~only with the written consent of the Landlord which consent shall not be unreasonably withheld.~~ The Tenant may sub-lease the Lot Relative(s), or (ii) to an individual/entity purchasing the Tenant's dwelling and any ancillary structures located on the Lot ("Tenant's Improvements"). during the Term or the Sale/Removal Period. In the

event of the sale of the Tenant's Improvements, the purchaser shall have the election of assuming this Lease or entering into a new twenty-year lease with the Landlord in the form and on the terms and conditions then prevailing. The Landlord agrees to provide the Tenant and the Tenant's prospective purchaser the form of lease within seven (7) days of the Tenant's request in order to facilitate the sale of the Tenant's Improvements. The Tenant may sublease the Lot and Tenant's Improvements to an unrelated party for a term not to exceed one hundred twenty (120) days per year upon notice to, but without the requirement of the assent of, the Landlord. The Tenant shall not enter into any other sub-leasesublease agreement. The Tenant shall promptly notify the Landlord promptly of any sub-leasesublease or of an assignment which does not require written consent of the Landlord. A purchaser of the Tenant's dwelling shall be offered a new lease for the Lot with the Landlord for a term of twenty (20) years in the form of lease then adopted by the Landlord for similar leaseholdsassignment.

16. ~~15.~~ COMMON AMENITIES. In addition to the exclusive use and occupancy of the Lot as described in Paragraph 11 above, the Tenant shall have the exclusive right, in common with other Little Neck tenants, to use the beaches, playgrounds, baseball field, dock, community center and other common amenities as currently provided by the Landlord for the enjoyment of the residents of Little Neck, subject to unavailability from time to time due to the making of repairs and improvements as necessary in the discretion of the Landlord. The Landlord shall provide reasonable security at the entrance to Little Neck during peak weekends and holidays to limit access to the Tenant and other Little Neck tenants, and a reasonable number of Tenant's invited guests.

17. ~~16.~~ RIGHT OF FIRST REFUSAL. The Tenant acknowledges that the Landlord does not possess the legal authority or power to sell the Lot during the term of this Lease. However, if at any time during the Term, the Landlord shall receive from any person a Bona Fide Offer (as defined below) to purchase the Lot, and shall have the desire and authority to sell the Lot pursuant to such Bona Fide Offer, the Landlord shall give written notice of the same to the Tenant, together with a copy of the Bona Fide Offer. A "Bona Fide Offer" shall mean an offer in writing setting forth all relevant terms and conditions of the proposed purchase from an offeror who is ready, willing and able to consummate the purchase. Upon the Tenant's receipt of such notice, the Tenant shall then have the right and option to purchase the Lot at the purchase price and upon the other terms set forth in the Bona Fide Offer, and as soon as practicable thereafter to consummate the transaction, provided only that the Tenant exercises such right and option by written notice to the Landlord within 60 days after the Tenant's receipt of the notice of the Bona Fide Offer. If the Tenant does not, for any reason, exercise the Tenant's option to purchase the Lot as

provided above, then the Landlord shall have the right to sell the Lot at the purchase price and upon the terms set forth in the Bona Fide Offer. If the Tenant shall not exercise the Tenant's option to purchase the Lot with respect to any Bona Fide Offer, and if the transaction contemplated at the purchase price and upon the terms set forth in the Bona Fide Offer does not close, the Tenant's right of first refusal shall once again take effect with respect to such Bona Fide Offer and with respect to any subsequent Bona Fide Offer.

18. ~~47.~~NOTICES. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, addressed as follows (or any other address that the party to be notified may have designated by like notice) and shall be deemed received as of the earlier date five days after the date of the postmark or actual receipt hereof.

the Landlord: Feoffees of the Grammar School
P.O. Box 166
Ipswich, MA 01938

Tenant:

19. ~~48.~~NOTICE OF LEASE. Upon the written request of the Tenant, the Landlord agrees to execute a Notice of Lease pursuant to Massachusetts General Laws Chapter 183, Section 4, to be recorded at the Essex South District Registry of Deeds at the Tenant's expense and a copy of said Notice of Lease as recorded shall be returned to the Landlord by the Tenant.

20. ~~49.~~BINDING EFFECT. This Lease shall extend to and bind the heirs, personal representatives, successors and assigns of the parties thereof.

21. ~~20.~~RIGHT OF ENTRY: Tenant agrees that the Landlord, the Landlord's agents and other representatives, shall have the right, without abatement of rent, to enter into and upon the Lot, or any part thereof, upon reasonable notice (except in the event of an emergency) for the purposes of examining the same to ensure compliance with the terms of the Lease, to make such repairs to the Lot as may be necessary for the safety and preservation thereof, or to make repairs off the Lot as to which the Lot provides access; provided, however, that such repairs (unless of an emergency nature) shall be made so as to cause a minimum of interference with the Tenant's use of the Lot.

22. 24. TENANT'S COVENANTS. The Tenant covenants for the Term of this Lease as follows:

- (a) To pay when due, all rent, taxes and waste water ~~used~~disposal fees at the time and in the manner required as provided in this Lease.
- (b) At the expiration or earlier termination of this Lease to yield up peaceably to the Landlord the Lot in good order, repair and condition and unencumbered, subject to the provisions of Paragraph 13 of this Lease.
- (c) To indemnify and defend and hold the Landlord harmless from and against any mechanics' or other liens arising out of the making of any alterations, repairs, additions or improvements by the Tenant. All such work by the Tenant shall be done in accordance with all requirements of law, including all governmental regulations, in a good workmanlike manner, and with materials of good quality.
- (d) To comply with all local, state and federal permits, licenses or certificates.
- (e) That the Tenant will not make or suffer any waste or any unlawful, improper or offensive use of the said premises.
- (f) That the Tenant shall not erect, alter, change, reconstruct or modify any building on the Lot, or use any building for any purpose other than as a single family dwelling or an accessory structure. Prior to any construction, reconstruction, alteration, changes or modifications, as aforesaid, the Tenant must submit to the Landlord three complete sets of plans, to scale, that clearly delineate all such proposed work. All work must be performed in accordance with said plans. No work can be started until the Landlord approves the plans. No exterior construction work on any building shall be conducted or carried on between June 1st through September 30th, inclusive, in each year in order to preserve the peaceful enjoyment of the area for Little Neck tenants. The Tenant acknowledges that no reconstruction, addition to or modification of an existing structure on the Lot shall alter or unreasonably interfere with the water views from the dwelling of any other tenant at Little Neck existing as of the Commencement Date. In no event shall this provision apply to renovations which take place solely in the interior of a dwelling or structure and which do not increase the footprint or height of the dwelling or structure.
- (g) That the Tenant shall (i) keep the grass cut upon the Lot and will not allow grass and other vegetation to grow in such a manner as to become a fire hazard to any building upon the Lot or any adjacent lots and (ii) trim trees and bushes upon the Lot so as not to unreasonably interfere with the water views from the dwelling of any other tenant at Little Neck existing as of the Commencement Date. No tree trimming or removal shall be undertaken without permission from the Landlord.

- (h) The Tenant hereby further covenants and agrees to comply with the Rules and Regulations duly promulgated by the Landlord, as they may be amended from time to time. Notwithstanding the foregoing, said Rules and Regulations shall not be contrary to the terms and provisions of this Lease.
- (i) The Tenant shall not drill, dig or construct any wells on the Lot.
- (j) The Tenant shall pay all costs of enforcement, including reasonable attorney's fees incurred by Landlord, in the event of Tenant's breach of one or more of the covenants contained in this paragraph.

23. ~~22.~~ LANDLORD'S COVENANTS. The Landlord covenants for the Term of this Lease, as follows:

- (a) The Landlord shall enforce the obligation of all tenants of Little Neck to keep trees and bushes trimmed so as not to unreasonably interfere with the Tenant's water views from the Tenant's dwelling existing as of the Commencement Date.
- (b) The Landlord shall enforce the obligations of all tenants of Little Neck set forth in Paragraph ~~24~~22(f) of this Lease.
- (c) Notwithstanding anything to the contrary contained in this Lease, in the event of the damage by casualty or destruction, subsequent to the Commencement Date, of the whole or any part of the Tenant's dwelling, the Landlord shall permit the Tenant to rebuild the Tenant's dwelling to the same size, configuration and location as exists of the Commencement Date, with and subject to all necessary government approvals.
- (d) The Landlord shall not impose new Rules and Regulations without at least sixty (60) days' written notice to the Tenant and without conducting a meeting with interested Tenants to discuss the proposed new Rule or Regulation.
- (e) The Landlord shall consent to a mortgage or other security interest in the Tenant's improvements (dwelling, accessory structures, etc.) as may be sought by the Tenant; provided, however, that no such consent need be given to an interest which would adversely affect the rights of the Landlord under the Lease in the event of a breach or default by the Tenant.
- (f) Except in the case of an emergency, the Landlord shall not enter into (1) a contract or agreement for the disposal of waste water or (2) a contract or agreement for a capital improvement for an amount in excess of Twenty Five Thousand (\$25,000) Dollars without at least sixty (60) days written notice to the Tenant and without conducting a meeting with interested tenants to discuss the proposed contract or agreement.
- (g) The Landlord represents and warrants that it is the owner of Little Neck. The Tenant acknowledges that the District Attorney for the

Eastern District has opined that the Landlord is a governmental body for purposes of the Open Meeting Law, G.L. c. 39, §§23A – 23C, with which opinion the Landlord disagrees and which opinion the Landlord has challenged in court. In the same court action, the Landlord has sought a declaration that it is not a governmental body for purposes of the Uniform Procurement Act, G.L. c. 30B. The Tenant acknowledges that, in the event it is determined that G.L. c. 30B applies to the Landlord, this Lease could be declared null and void. In that event, the Tenant hereby releases the Landlord from any and all claims, and agrees to indemnify and hold harmless the Landlord from and against any and all claims arising out of the nullification of the Lease.

(h) Notwithstanding the Landlord's position that it is not a governmental body for purposes of the Open Meeting Law, G.L. c. 39, §§ 23A-23C, the Landlord agrees to conduct its meetings and operations in accordance with the Open Meeting Law. Nothing in this subparagraph or in this Lease may be construed as an agreement or admission by the Landlord that it is a governmental body for purposes of the Uniform Procurement Act or any other federal, state or local statute, ordinance, rule or regulation.

24. ~~23.~~ SUBORDINATION. Subject to the Tenant's receipt of a reasonable subordination and nondisturbance agreement, this Lease, and all rights of the Tenant hereunder, are and shall be subject and subordinate in all respects to all mortgages given by the Landlord which may now or hereafter affect Little Neck ("Superior Mortgages"), to each and every advance made or hereafter to be made under the Superior Mortgages, and to all renewals, modifications, replacements and extensions of the Superior Mortgages. In confirmation of such subordination, the Tenant shall timely execute and deliver any instrument, in recordable form, if required, to the holder of any Superior Mortgages or any of their respective successors in interest as may be requested to evidence such subordination.

25. ~~24.~~ COMPLETE AGREEMENT. This Lease contains all the agreements, promises and understandings between the Landlord and the Tenant and no oral agreements, promises or understandings shall be binding upon either the Landlord or the Tenant in any dispute, controversy or proceeding at law, and any addition, variation or modification to the Lease shall be void and ineffective unless made in writing and signed by the parties hereto.

26. ~~25.~~ LAW GOVERNING. This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the Commonwealth of Massachusetts.

In witness whereof, the parties hereto have set their hands and seals the day and year first above written.

Feoffees of the Grammar School
In the Town of Ipswich, Landlord
By:

Its: _____

Tenant(s)

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this _____ day of _____, 2008, before me, the undersigned notary public, personally appeared _____, Tenant(s), proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name(s) is/are signed on the preceding document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose.

NOTARY PUBLIC

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this _____ day of _____, 2008, before me, the undersigned notary public, personally appeared _____ proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of the Feoffees of the Grammar School in the Town of Ipswich.

NOTARY PUBLIC

EXHIBIT A
ANNUAL RENT

July 1, 2007 – June 30, 2008	\$9,700 <u>\$7,900</u>
------------------------------	-----------------------------------

In the event this Lease is executed after July 1, 2007, all rent in excess of payments received for the period beginning July 1, 2007 shall be paid within thirty (30) days of the date this Lease is executed by the Tenant.

July 1, 2008 – June 30, 2009	\$8,600
July 1, 2009 – June 30, 2010	\$9,400
July 1, 2010 – June 30, 2011	\$9,900
July 1, 2011 – June 30, 2012	\$10,900

For each twelve-month period after June 30, 2012, which twelve month period shall hereafter be referred to as a fiscal year (the period of July 1, 2012 to June 30, 2013 being fiscal year 2013), the annual rent for each fiscal year shall equal the total assessed value of the 167 lots offered by the Landlord for rent at Little Neck, multiplied by .05 and divided by 167, all so as to charge annual rent to the Tenant in an amount equal to five percent of the average assessed value of the 167 lots offered for rent by the Landlord.

The assessed value for a fiscal year shall be that value set by the Assessors of the Town of Ipswich as of January 1 immediately prior to the beginning of the fiscal year. In the event that value has not been set by the Assessors before the beginning of the fiscal year, the Tenant shall make quarterly payments based on the previous fiscal year's annual rent until that value has been set, following which quarterly payments will be adjusted as necessary to reflect the actual annual rent for the fiscal year. For example, if the annual rent for fiscal year 2013 was \$12,000 and no assessed value for fiscal year 2014 was set by the Assessors prior to July 1, 2013, quarterly installments of rent for fiscal year 2014 will be \$3,000 until the assessed value for fiscal year 2014 is set. If, on December 15, 2013, the Assessors set the assessed value for fiscal year 2014 such that the annual rent is \$13,000, the Tenant will pay quarterly installments on January 1, 2014 and April 1, 2014, of \$3,500 each.

In the event the total assessed value of the 167 lots for a fiscal year is increased or decreased by reason of the statutory abatement procedure and results therefrom, and the increase or decrease in the total assessed value alters the calculation of annual rent by more than \$100, the difference shall be added to or subtracted from, as the case may be, the annual rent for the fiscal year immediately following the conclusion of all

abatement proceedings for the fiscal year for which an abatement or abatements are sought.

The Annual Rent set forth herein does not include the Tenant's payments described in Paragraphs 6 and 7 of the Lease.

The Tenant shall also make a one time payment of \$1,800, less any amounts previously paid by the Tenant to the Landlord in response to the Landlord's [insert month and year of request] request for a payment related to the waste water disposal system, which payment shall be paid within thirty (30) days of the date this Lease is executed by the Tenant.

Document comparison done by Workshare DeltaView on Thursday, February 21, 2008
2:32:09 PM

Input:	
Document 1	interwovenSite://MCTSQL/MCTiDocs/215192/1
Document 2	interwovenSite://MCTSQL/MCTiDocs/215192/3
Rendering set	standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	49
Deletions	51
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	104

ALTERNATIVE EXHIBIT A

ANNUAL RENT

July 1, 2007 – June 30, 2008	\$7,900
------------------------------	---------

In the event this Lease is executed after July 1, 2007, all rent in excess of payments received for the period beginning July 1, 2007 shall be paid within thirty (30) days of the date this Lease is executed by the Tenant.

July 1, 2008 – June 30, 2009	\$8,600
------------------------------	---------

July 1, 2009 – June 30, 20 10	\$9,400
-------------------------------	---------

July 1, 2010 – June 30, 2011	\$9,900
------------------------------	---------

July 1, 2011 – June 30, 2012	\$10,900
------------------------------	----------

1. (a) For the three-year period commencing on July 1, 2012, the annual rent (that is, the rent for the period for July 1, 2012 through June 30, 2013, and for the two subsequent fiscal years) shall equal the total assessed value as of January 1, 2012 of the 167 lots offered by the Landlord for rent at Little Neck, multiplied by .05 and divided by 167, all so as to charge annual rent to the Tenant in an amount equal to five percent of the average assessed value of the 167 lots offered for rent by the Landlord.

(b) The rent shall thereafter be recalculated every third year based on the assessed value of the 167 lots as of January 1 in the year in which the recalculation is being performed.

2. For the three-year period commencing on July 1, 2017, the annual rent (that is, the rent for the period for July 1, 2017 through June 30, 2018, and for the two subsequent fiscal years) shall equal the total assessed value as of January 1, 2017 of the 167 lots offered by the Landlord for rent at Little Neck, multiplied by .04 and divided by 167, all so as to charge annual rent to the Tenant in an amount equal to four percent of the average assessed value of the 167 lots offered for rent by the Landlord. The rent shall thereafter be recalculated every third year based on the assessed value of the 167 lots as of January 1 in the year in which the recalculation is being performed.

3. Commencing on July 1, 2017, the Tenant shall pay additional rent upon sale of the Tenant's improvements in an amount equal to the difference between (i) the gross sales price of the Tenant's improvements and (ii) the purchase price of the Tenant's improvements (paid by the Tenant or, if the Tenant did not purchase the Tenant's improvements, paid by the Tenant's predecessor in interest), multiplied by .02.

Notwithstanding the calculation of the rent as provided in paragraphs 1(b) and 2 above, the recalculated rent shall not increase or decrease by more than 10% of the then current rent.

In the event that the assessed value has not been set by the Assessors before the beginning of any fiscal year in which a rent recalculation is being performed, the Tenant shall make quarterly payments based on the previous fiscal year's annual rent until that value has been set, following which quarterly payments will be adjusted as necessary to reflect the actual annual rent for the fiscal year. For example, if no assessed value for fiscal year 2013 was set by the Assessors prior to July 1, 2012, quarterly installments of rent for fiscal year 2013 will be \$2,725 based on the rent for fiscal year 2012 as set forth above until the assessed value for fiscal year 2013 is set. If, on December 15, 2012, the Assessors set the assessed value for fiscal year 2013 such that the annual rent is \$12,000, the Tenant will pay quarterly installments on January 1, 2014 and April 1, 2014, of \$3,275 each.

In the event the total assessed value of the 167 lots for a fiscal year is increased or decreased by reason of the statutory abatement procedure and results therefrom, and the increase or decrease in the total assessed value alters the calculation of annual rent by more than \$100, the difference shall be added to or subtracted from, as the case may be, the annual rent for the fiscal year immediately following the conclusion of all abatement proceedings for the fiscal year for which an abatement or abatements are sought and the adjusted calculation of the annual rent shall apply to the remaining years, if any, until the next triennial recalculation of the rent.

The Annual Rent set forth herein does not include the Tenant's payments described in Paragraphs 6 and 7 of the Lease.

The Tenant shall also make a one time payment of \$1,800, less any amounts previously paid by the Tenant to the Landlord in response to the Landlord's [insert month and year of request] request for a payment related to the waste water disposal system, which payment shall be paid within thirty (30) days of the date this Lease is executed by the Tenant.