

**COMMONWEALTH OF MASSACHUSETTS
PROBATE AND FAMILY COURT DEPARTMENT**

ESSEX, ss.

Docket No. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR.,)
PETER FOOTE, DONALD WHISTON,)
JAMES FOLEY, ELIZABETH KILCOYNE,)
PATRICK J. MCNALLY, AND INGRID)
MILES AS THEY ARE THE FEOFFEEES OF)
THE GRAMMAR SCHOOL IN THE TOWN)
OF IPSWICH)
)
Plaintiffs,)
)
v.)
)
ATTORNEY GENERAL OF THE)
COMMONWEALTH OF MASSACHUSETTS,)
IPSWICH SCHOOL COMMITTEE, and)
RICHARD KORB, as he is Superintendent of)
Schools in the Town of Ipswich,)
)
Defendants.)

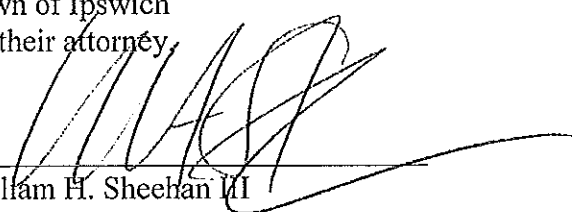
PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

NOW come the Plaintiffs, the Feoffees of the Grammar School in the Town of Ipswich ("Feoffees"), owners of certain real estate known as Little Neck, Ipswich, Massachusetts (hereafter referred to as "the Property" or "Little Neck") which they hold in trust for the benefit of the Ipswich Public Schools, and move this Honorable Court, pursuant to Mass.R.Civ.P. 54(b) and 56, for the entry of partial summary judgment authorizing the Feoffees to take the following actions: (1) to borrow not more than \$6,500,000 from Cambridge Savings Bank ("CSB"); (2) to secure the credit facility from CSB by, among other instruments, a first mortgage on the Property; (3) to create a condominium, pursuant to G.L. c. 183A, §§ 1 et seq., at Little Neck, consisting of the Property and certain improvements thereon; (4) to sell the Property for the gross sales price of \$29,150,000; and (5) to receive mortgages on some or all of the Property and

buildings thereon, including condominium units, in conjunction with the sale of Little Neck, all as conditioned, and more particularly set forth, in the proposed partial judgment attached hereto and marked "A".

In support of this motion, the Feoffees file herewith a memorandum containing the statement of material facts and statement of legal elements required by Probate Court Rule 27C and an appendix containing documents supporting the statement of material facts. The Feoffees' filing establishes that there is no genuine issue as to a material fact and that the Feoffees are entitled to partial judgment as a matter of law.

Respectfully submitted,
Alexander B.C. Mulholland, Jr., et al.,
Feoffees of the Grammar School in the
Town of Ipswich
By their attorney,



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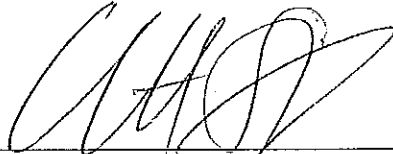
Dated: December 2, 2010

CERTIFICATE OF SERVICE

I, William H. Sheehan III, attorney for the Plaintiffs hereby certify that I served a copy of the above document upon all parties or counsel of record, by hand delivering the same, to the following attorneys:

Richard C. Allen, Esq.
Casner & Edwards, LLP
303 Congress Street
Boston, MA 02210

Johanna Soris, Esquire
Commonwealth of Massachusetts
Office of the Attorney General
Public Charities Division
One Ashburton Place
Boston, MA 02108



William H. Sheehan III

Dated: December 2, 2010

EXHIBIT A

**COMMONWEALTH OF MASSACHUSETTS
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RICHARD KORB, as he is Superintendent of)
Schools in the Town of Ipswich,)
)
Defendants.)

PARTIAL FINAL JUDGMENT

Following hearing on the Plaintiffs' Motion for Partial Summary Judgment, the Court enters the following final partial judgment:

1. The Feoffees of the Grammar School in the Town of Ipswich ("the Feoffees") are authorized to borrow not more than \$6,500,000 from Cambridge Savings Bank upon the terms set forth in the June 23, 2010 commitment letter of said bank.

2. The Feoffees are authorized to grant as security for the loan they are to receive from said bank the following interests:

(a) A first mortgage covering the entire property located at the land commonly known as Little Neck, at the end of Little Neck Road, Ipswich, Massachusetts ("the

Property”) consisting of approximately thirty-six (36) acres of land, and those buildings thereon belonging to the Feoffees, the legal description of which land is attached hereto and marked “A”;

(b) A first assignment of all the Feoffees’ rights and interests as Landlord/Owner under any and all leases, licenses, franchises and occupancy arrangements now of hereafter in effect relating to the Property, all of which shall be made subject or superior to the lien of said bank’s mortgage, as said bank shall direct;

(c) A first security interest in all fixtures, furnishings, equipment, materials, inventory and any other improvements and items of personal property forming a part of or used in connection with the Property or purchased from the proceeds of the loan;

(d) A first assignment of all contracts, agreements, permits, licenses and approvals entered into or obtained by the Feoffees or, anyone acting as Feoffees’ agent or on Feoffees’ behalf relating to the construction, development and use of the Property, including without limitation construction contracts and bonds, architectural, engineering and consulting contracts, building permits and curb cuts, letters of assurance from utilities, the right to obtain possession of and use all plans, drawings and specifications prepared in connection with the Property and all contracts for the procurement of materials, fixtures and equipment in connection therewith (each such assignment to be with the written consent of any party whom the bank deems necessary to render such assignment effective and the item assigned binding in favor of the bank).

3. The purposes of the loan include the payment in full of an existing loan presently secured by a conditional assignment of rents and leases, the funding of loan closing costs, and the provision of capital for expenses incurred in connection with the rental, lease, improvement and potential sale of land and buildings owned by the Feoffees.

4. The rate of interest to be paid by the Feoffees shall be as follows:

1. Initial funding of \$6,000,000.00:

The rate will be a three (3) year fixed rate equivalent to the 3-year FHLB (Federal Home Loan Bank) Classic Advance index plus two hundred seventy-five (275) basis points, set at closing with a floor rate of 5.50% (example: rate would be the floor rate of 5.50% based on the current index as of June 21, 2010 – actual rate is 4.57%);

Extension Option Period: the rate during each one (1) year option period shall be fixed for one year at a rate equal to the one (1) year FHLB Classic Advance index plus two hundred seventy-five (275) basis points with a floor rate of 5.50%.

2. \$500,000.00 Line of Credit:

Floating rate at CSB (Cambridge Savings Bank) Base Rate (Prime) plus 150 basis points with a floor of 5.75% (currently rate would be the floor rate of 5.75% actual rate is 4.75% as of June 21, 2010).

Extension Option Period: the rate during each one (1) year option period shall be floating rate at CSB Base Rate (Prime) plus 150 basis points with a floor of 5.75%.

5. The interest and the whole or any part of the money secured by the mortgage may be paid from time to time from the income from, and the proceeds from the sale of, the Property mortgaged.

6. This judgment is entered for the benefit of the trust estate held by the Feoffees, all in accordance with G.L. c. 201, §§23 and 24, and constitutes a license of this Court issued to the Feoffees to grant to Cambridge Savings Bank a mortgage containing a power of sale.

7. The Feoffees are authorized and permitted to sell the Property and improvements thereon for the gross sale price of \$29,150,000 in the manner provided in a certain Settlement

Agreement and Release entered into as of the 24th day of December, 2009 by and between the Feoffees and the Little Neck Legal Action Committee. Such a sale is a reasonable and prudent deviation from the express terms of the will of William Payne and will best accomplish the dominant intent of William Payne in his creation of the subject trust: the support of the Ipswich Public Schools. The sale of the Property as aforesaid is necessary and expedient, all in accordance with the provisions of G.L. c. 203, § 16, and the Feoffees are ordered to conduct such a sale. Such authority and permission is subject to the condition that, in the event the Feoffees make mortgage loans to buyers of units, the Feoffees comply with or be exempted from the licensing provisions of G.L. c. 255E.

8. The investment, reinvestment and application of the proceeds of such sale, after all necessary expenses of sale and the payoff of liens on the Property, shall be for the exclusive benefit of the beneficiary of the trust with not less than \$20,000,000 of sales proceeds, consisting of cash or promissory notes or both, constituting a permanent endowment fund.

9. The Feoffees are authorized and permitted to create a condominium, pursuant to the terms of G.L. c. 183A, §§ 1 et seq., consisting of the Property and certain improvements thereon.

10. The Feoffees are authorized and permitted to receive mortgages on some or all of the Property and buildings thereon, including condominium units created pursuant to G.L. c. 183A, §§ 1 et seq., and to receive such other security as the Feoffees deem sufficient, to secure purchase money loans made to buyers of condominium units; provided, however, that the servicing of said mortgages shall be conducted by the Cambridge Savings Bank or some other person or entity whose business includes the servicing of mortgage loans and such servicing of

mortgages shall not be conducted by the Feoffees themselves; and further provided, however, that the Feoffees comply with, or be exempted from, the licensing provisions of G.L. c. 255E.

11. The Feoffees are authorized to conditionally assign to their lender promissory notes and mortgages received by the Feoffees from the sale of condominium units in order to obtain partial releases of said units from the mortgage and other liens held by said lender.

12. The provisions of G.L. c. 30B, §§ 1 et seq., the Uniform Procurement Act, do not apply to the sale of the condominium units and Little Neck as approved by this Partial Final Judgment.

13. Pursuant to G.L. c. 204, § 13, the Feoffees are hereby authorized to settle and compromise all claims in the civil action sub nom. William M. Lonergan, et al. v. James W. Foley, et al., Essex Superior Court Civil Action No. 06-02328D by entering into a stipulation of dismissal with prejudice of all outstanding claims and counterclaims with each party thereto bearing its own costs and attorney's fees, all rights of appeal waived.

14. The Feoffees are authorized and permitted to take any and all actions necessary to implement and put into effect the borrowing and sale contemplated by this Partial Final Judgment other than actions expressly prohibited herein.

15. The Court hereby expressly determines that there is no just reason for delay and expressly directs the entry of this final partial judgment.

Dated: _____

Justice of the Probate and Family Court