

COMMONWEALTH OF MASSACHUSETTS
PROBATE AND FAMILY COURT DEPARTMENT

ESSEX, ss.

Docket No. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR., et al.)
Plaintiffs,)
)
v.)
)
ATTORNEY GENERAL OF THE)
COMMONWEALTH OF MASSACHUSETTS,)
et al.)

Defendants.)

AGREEMENT FOR JUDGMENT

Now come the parties by and through their counsel and stipulate and agree that the following judgment be entered on the docket pursuant to Mass.R.Civ.P. 58:

“1. On the plaintiffs’ Complaint, judgment as follows:

A. The plaintiffs Feoffees of the Grammar School in the Town of Ipswich (“Feoffees”) have presented to this Court for approval a certain Settlement and Agreement and Release (“Settlement Agreement”) dated December 24, 2009, by and between the Feoffees and the Little Neck Legal Action Committee which was acting in a representative capacity in behalf of certain plaintiffs who filed a putative class action against the Feoffees in the Essex Superior court denominated William A. Lonergan et al. v. James W. Foley et al., Civil Action No. 06-02328D (the “Superior Court Action”).

The Court has authority to approve a proposed settlement of claims and demands proposed by a trustee pursuant to G.L. c. 204, § 13.

The proposed settlement as set forth in the Settlement Agreement provides, in essence, for the Feoffees, who hold title to the land at Little Neck, Ipswich, Massachusetts for the benefit of the Ipswich Public Schools, to create a condominium at

Little Neck consisting ultimately of 167 units and to sell those units to the 167 cottage owners who currently reside at Little Neck, or their successors. The combined sale price of the 167 units is \$29,150,000, less certain adjustments, as set forth in the Settlement Agreement. The Settlement Agreement also provides for the dismissal of all claims and counterclaims in the Superior Court Action without monetary consideration to any party. This Court is not satisfied with this aspect of the settlement, particularly with respect to the claim of the Feoffees against those who did not sign leases ("Non-Lessees") for use and occupancy. The Court hereby authorizes and permits the Feoffees to settle the Superior Court Action on the condition that the Non-Lessees pay in the aggregate a total of \$2,400,000 more to the Feoffees on account of their use and occupancy. This amount will be treated as additional trust income for distribution to the School Committee over a period of three years as will be more fully set forth under the terms of the Trust Administration order discussed below. Under the terms of the Settlement Agreement and, specifically, the individual condominium purchase and sale agreements executed between the Feoffees and unit buyers, the lessees are to receive an adjustment to their purchase prices so that the total rent paid by each lessee will equal the use and occupancy payments made by a Non-Lessee. As a result of the increased use and occupancy payments by the Non-Lessees set forth herein, the aggregate credit to be received by the lessees at the time of sale for the difference between rent paid by lessees and use and occupancy paid by the Non-Lessees will be reduced by approximately \$600,000, so that the Feoffees, after the sale of all of units, will have received close to \$3,000,000 more than the monies described in the Settlement Agreement. The total consideration set forth in the Settlement Agreement, as modified by this Judgment, results in a fair and

satisfactory settlement of the Superior Court Action and a fair and reasonable price for the sale of Little Neck.

Each Non-Lessee may pay its share of the aforesaid use and occupancy charges in one of two ways: (1) in cash at the time he or she purchases the condominium unit as more specifically set forth in the Settlement Agreement; or (2) in the event the Non-Lessee obtains purchase money financing from the Feoffees, the Non-Lessee may pay the use and occupancy payment at the time the Non-Lessee purchases the condominium unit by way of a five-year, fully amortized unsecured promissory note bearing interest at the rate of four percent per annum with five equal annual principal and interest payments due on the anniversary date of the note; provided, however, that the full balance of such promissory note shall be due and payable immediately upon prepayment by the Non-Lessee of more than 10 percent of the principal due to the Feoffees under the purchase money financing.

Each Non-Lessee may elect to treat its share of the use and occupancy payment as consideration for the condominium unit in addition to the price set forth in Exhibit G to the Settlement Agreement. Each Non-Lessee who elects to do so will execute an amendment to the purchase and sale agreement with the Feoffees that reflects the new purchase price for the relevant condominium unit. In accordance with the principle of equal treatment of the lessees and Non-Lessees, each lessee may elect to treat his or her particular share of the aforementioned approximate \$600,000 of rent previously paid to the Feoffees as consideration for the condominium unit in addition to the price set forth in Exhibit G to the Settlement Agreement and execute an amendment to the purchase and sale agreement as described above.

The date contained in the Settlement Agreement for delivery of so many of the Cottage Transfer Documents, as defined in the Settlement Agreement, as pertain to the release of an outstanding UCC Financing Statement or other security interest in a cottage which is to become a condominium unit, is extended to a date twenty days before the date of the recording of the Master Deed.

Each cottage owner shall maintain casualty and liability insurance on his or her cottage pending the sale to him or her of the condominium unit consisting of said cottage.

B. The proposed settlement by sale of Little Neck also presents the issue of whether deviation, pursuant to G.L. c. 214 § 10B, is warranted from the provision of the will of William Payne which directs that the land at Little Neck is “not to be sold nor wasted.” Due to the dispute that is the subject of the Superior Court litigation, there has not been a distribution from the Feoffees to the School Committee since 2006, and absent this settlement, litigation could be expected to continue for an additional prolonged period at substantial expense and with the accompanying risks and uncertainties to the Trust, all of which has been and will continue to be a substantial impairment to the accomplishment of the purposes of the Trust. Deviation from the no sale provision of said will is hereby granted, and the Feoffees are hereby authorized and permitted to sell the land at Little Neck on the terms set forth in the Settlement Agreement as modified by this Judgment. The Court’s authorization to the Feoffees of the sale as set forth in this Judgment is also pursuant to G.L. c. 203 § 16.

C. The Feoffees are hereby authorized and permitted to receive mortgages from buyers of condominium units on the terms set forth in the Settlement Agreement as modified by this Judgment.

D. The Feoffees shall grant to the Town of Ipswich a non-exclusive easement for use by the general public of that portion of Pavilion Beach owned by the Feoffees that lies outside the entrance columns of Little Neck. Said easement shall be given on the conditions, to be stated in the grant of easement, that the Town of Ipswich accepts the easement and agrees to insure, indemnify, defend and hold harmless the grantor, and its successors in title, including the trustees and unit owners of the condominium, from and against all claims arising out of the use by the public of said portion of Pavilion Beach.

E. The Feoffees in office for the period through the filing of the Master Deed shall be subject to the following constraints: (1) they shall operate the trust for the benefit of the beneficiary in the ordinary course and not engage in any unusual or out of ordinary course transaction without the written consent of the School Committee or Superintendent Korb except as may be specifically provided for in the Settlement Agreement and this Judgment; (2) they shall not enter into any contracts which will bind the Feoffees after June 30, 2012; and (3) they shall not compensate any of the life Feoffees or Selectmen Feoffees from and after December 19, 2011, except for Peter Foote who shall be compensated for his services as treasurer and manager at the rate of \$840 per week, payable as it has been previously, until the first to occur of a) the date upon which a majority of Feoffees determine his services are no longer needed; b) the date upon which substantially all of the units have been sold; or c) the date that is 90 days after the recording of the Master Deed. Notwithstanding the foregoing, the Feoffees are hereby authorized to engage providers of engineering, surveying, architectural and legal services as needed, in an amount not to exceed \$400,000 in the aggregate, to create the condominium documents and record the Master Deed and to represent the Feoffees in the

closing of 167 condominium unit sales. Insofar as no condominium sales will occur until such time as the trust has been reconstituted as a public body which is an agency of the Town of Ipswich or its subdivisions, as referred to below, the Court finds that the Feoffees will be exempt under the provisions of M.G.L. c. 64D, section 1, from the payment of taxes or fees under Chapter 64D in connection with the sale of the condominium units. Nothing herein shall prevent the Feoffees from performing any obligations they may have pursuant to paragraph 1 of the Settlement Agreement.

F. Absent extraordinary circumstances, the Feoffees shall record the Master Deed on or before May 1, 2012. The Feoffees and their successors, including any Feoffees appointed in place of the present Feoffees pursuant to the change in the Trust's governance, shall comply with all of the terms of the Settlement Agreement including, but not limited to, scheduling and conducting the unit closings in a diligent and expeditious manner. Unless caused by a breach by the School Committee of its obligations under this Judgment, or by a breach on the part of the reconstituted Feoffees in office after the filing of the Master Deed, any Non-Lessee who has not purchased his or her unit on or before July 1, 2012, whether due to a delay in the recording of the Master Deed or otherwise, but who has not breached his or her obligations under his or her purchase and sale agreement, shall begin paying monthly rent as of July 1, 2012 at the rate presently paid by lessees, with the rent for any partial months to be prorated. For avoidance of doubt, the rights and obligations with respect to any Homeowner who fails to close shall be as stated in paragraph 4 of the Settlement Agreement.

G. The Feoffees shall distribute to the School Committee within fourteen days of the entry of this Judgment (rather than ten days after the recording of the Master

Deed as originally provided in the Settlement Agreement), the interest from the Winchester Co-operative Bank, in the approximate amount of \$50,000, said interest to be returned to the Feoffees (for escrow purposes) in the event the Master Deed is not recorded. In addition, to the extent cash flow allows, the Feoffees shall make monthly distributions of net rental income to the School Committee until the completion of the sales process.

H. It is declared that Massachusetts General Laws Chapter 30B does not apply to conveyances of condominium units as set forth in the Settlement Agreement as modified by this Judgment.

I. In the event that the provisions of Massachusetts General Laws Chapter 255E apply to the Feoffees, all parties to this action shall cooperate with the Feoffees in their obtaining a license under said chapter.

2. On the Defendants' counterclaim, judgment as follows:

The Ipswich School Committee and the Superintendent of Schools have presented to this Court a proposed revision to the trust of which the Feoffees are trustees, including a change in the manner in which the seven Feoffees are selected to serve as trustees. Presently, the seven Feoffees consist of four Feoffees who serve for life, absent resignation, with such a life Feoffee's replacement made by the remaining three life Feoffees, and the three longest-serving Selectmen serving ex-officio.

The Court finds that such a revision is fair and reasonable and is especially warranted both by the benefits of the trust's becoming a public entity and agency of the Town or its subdivisions and by reason of the sale of Little Neck, which obviates any need for the experience and familiarity with Little Neck provided by the life Feoffees.

Effective upon the recording of the Master Deed which creates the condominium contemplated by the Settlement Agreement, two of the life Feoffees will resign from and split off from the Feoffees and form their own unincorporated association to be named and known as the Life Feoffees. Contemporaneously with that split-off, the Feoffees will be reconstituted as follows: the Selectmen Feoffees shall resign and their replacements will be selected, one each, by the Selectmen, the School Committee and the Finance Committee. The other four Feoffees will be the two life Feoffees who have not become Life Feoffees, one additional appointee of the Selectmen, and one additional appointee of the School Committee. Upon the first to occur of the sale of the last condominium unit or ninety days from the date of the recording of the Master Deed, the two life Feoffees then still serving as Feoffees will resign and join the Life Feoffees. The Life Feoffees shall then appoint one Feoffee and the Finance Committee shall appoint one Feoffee. In all other respects the selection and appointment of Feoffees thereafter shall be in accordance with a Trust Administration Order which the School Committee will submit to the Court for approval with input from the Office of the Attorney General and which will provide that the Trustees will consist of two appointees each by the Selectmen, the School Committee and the Finance Committee and one appointee of the Life Feoffees, all of whom will serve for fixed terms as will be set forth in the forthcoming Trust Administration Order. The Feoffees hereby consent to such Trust Administration order provided that it is not inconsistent with the provisions hereof.

Following the spin-off, the Life Feoffees shall be a private body, selecting their members and successors as they see fit in their sole discretion. The Life Feoffees may maintain custody of the original historical books and records of the Feoffees, copies of all of which shall also be made freely available to the reconstituted Feoffees. From the time the Feoffees are initially

reconstituted following the filing of the Master Deed, the Feoffees shall be deemed for all purposes a public body and shall be governed by the aforesaid Trust Administration Order.

The Feoffees, the School Committee and the Superintendent, and their members, predecessors, successors, representatives, assigns, agents, servants, attorneys, employees, executors, administrators, and heirs release and forever discharge the Feoffees, the Life Feoffees, their members, predecessors, successors, representatives, assignees, agents, attorneys, employees, executors, administrators, and heirs of and from any and all claims, debts, demands, defenses, liabilities, costs, attorneys' fees, actions suits at law or equity, compensation, obligations, contracts, losses, expenses, damages, whether general, specific or punitive, exemplary contractual or ex-contractual and causes of action of any kind or nature, known or unknown, derivative or direct, asserted or unasserted, from the beginning of the world to the date of this judgment; provided, however, this release shall not apply to any unknown claims of intentional misconduct.

Except for claims for intentional misconduct that are excluded from the release set forth above, the Feoffees shall, and are hereby authorized to, indemnify, defend and hold harmless the Selectmen Feoffees and Life Feoffees, both individually and in their capacity as Feoffees, their predecessors, heirs, predecessors, successors, representatives, assignees, agents, attorneys, employees, executors, administrators, and heirs of and from any and all claims, debts, demands, defenses, liabilities, costs, attorneys' fees, actions, suits at law or equity, compensation, demands, obligations, contracts, losses, expenses, damages, whether general, specific or punitive, exemplary, contractual or ex-contractual and causes of action of any kind or nature, known of unknown, derivative or direct, asserted or unasserted, from the beginning of the world to the date of this judgment, whether those claims are made against the Selectmen Feoffees or Life Feoffees

in their individual capacity or representative capacity or both, arising out of or related to their actions or omissions or status as Selectmen Feoffees or Life Feoffees, including, but not limited to, any and all claims, whether now in existence or later added, in the Superior Court litigation or relating to conducting the instant Probate Court action.

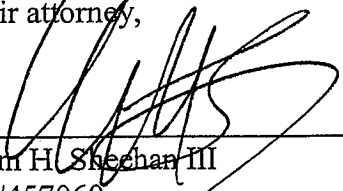
Nothing in the release or indemnity obligations set forth in this Judgment shall be deemed applicable to any claim, action or demand that may asserted in the future by the Office of the Attorney General.

3. Judgment is entered without costs. Due to the benefit to the Trust that has been created, the School Committee and Richard Korb are entitled to an award of attorneys' fees and expenses which they shall submit to the Court within sixty days from the date of this Judgment with notice to counsel for the Feoffees and the Office of Attorney General. Any such award will be paid out of the sale proceeds. All parties acknowledge that the fees and expenses of the Feoffees have already been paid from trust assets.

4. All rights of appeal are hereby waived."

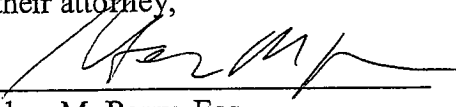
Respectfully submitted,

Feoffees of the Grammar School in
the Town of Ipswich
By their attorney,



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Approved and so Ordered as a Judgment of the Court:

By the court: (Sahagian, J.)