



3. Admitted.
4. Admitted.
5. This paragraph contains a description of the action to which no response is required.
6. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
7. Admitted as to the first sentence of this paragraph. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.
8. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
9. The Interveners neither admit nor deny Plaintiffs' characterization of Chapter 26 of the Province Laws of 1755-56, which speaks for itself. The remainder of this paragraph states a legal conclusion to which no response is required.
10. This paragraph states legal conclusions to which no response is required.
11. This paragraph states legal conclusions to which no response is required.
12. The Interveners neither admit nor deny Plaintiffs' characterization of Chapter 26 of the Province Laws of 1755-56, which speaks for itself.
13. The Interveners neither admit nor deny Plaintiffs' characterization of Chapter 5 of the Province Laws of 1765-66, which speaks for itself.
14. The Interveners neither admit nor deny Plaintiffs' characterization of Chapter 54 of the Acts of 1786, which speaks for itself.

15. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

16. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

17. This paragraph states legal conclusions to which no response is required.

18. Admitted.

19. Admitted.

20. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

21. Admitted.

22. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

23. Admitted as to the rent-increase proposed by Plaintiffs, and admitted as to the lease offered to the tenants. No response is required to the legal conclusion that Plaintiffs acted consistent with their fiduciary obligations. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

24. The Interveners neither admit nor deny Plaintiffs' characterization of Exhibits E and F, which speaks for themselves. The remainder of this paragraph states legal conclusions to which no response is required.

25. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

26. Admitted that some Little Neck residents have not signed the lease and that the Superior Court Action was initiated and is pending. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

27. The Interveners neither admit nor deny Plaintiffs' characterization of the stipulation filed in the Superior Court Action, which speaks for itself. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

28. Admitted that no distributions have been received by the Ipswich Public Schools. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

29. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

30. This paragraph states legal conclusions to which no response is required. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

31. Denied as of the date of the Amended Complaint.

32. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

33. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

34. This paragraph states legal conclusions to which no response is required.

35. This paragraph states legal conclusions to which no response is required.

36. This paragraph states legal conclusions to which no response is required.

37. This paragraph states legal conclusions to which no response is required.

38. This paragraph states legal conclusions to which no response is required.

39. This paragraph states legal conclusions to which no response is required.

40. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

41. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

42. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

43. This paragraph states legal conclusions to which no response is required.

44. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

45. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

WHEREFORE, the Interveners, individually and on behalf of their minor children, respectfully request that this Honorable Court:

- A. Dismiss the Amended Complaint and Plaintiffs' request for deviation pursuant to G.L. c. 214, § 10B;
- B. Grant the Interveners their reasonable costs and legal fees; and
- C. Grant such other and further relief as is just and appropriate.

### AFFIRMATIVE DEFENSES

1. The Amended Complaint does not set forth a specific sale proposal.
  2. The Amended Complaint fails to state a claim on which relief can be granted.
  3. Any frustration of the Trust's purpose results from Plaintiffs' acts or omissions.
  4. This Court lacks jurisdiction or authority to alter the terms of the Trust, the administration of which is governed by statute.
5. The terms of William Payne's will cannot be reformed under Massachusetts law.
- The Interveners reserve their right to add to their affirmative defenses.

### COUNTERCLAIM

1. Applicant for Intervention Douglas J. DeAngelis is an individual residing at 28 Turkey Shore Road, Ipswich, Massachusetts. He has a minor child who is eligible to attend the Ipswich Public Schools in 2012-13. He is a member of the Ipswich Open Space Committee and past member of the Ipswich Community Development Plan Implementation Task Force.
2. Applicant for Intervention Catherine T.J. Rowe is an individual residing at 21 Turkey Shore Road, Ipswich, Massachusetts. She has two minor children who attend the Ipswich Public Schools. She has run the Winthrop School Destination Imagination (DI) Program, served as a classroom volunteer, and helped to coach sports teams at Ipswich High School and Ipswich Middle School.
3. Applicants for Intervention Jacqueline and Jonathan Phypers are individuals residing at 444 Main Street, Rowley, Massachusetts. They have two minor children who attend the Ipswich Public Schools pursuant to the School Choice program.

4. Applicant for Intervention Peter Buletza is an individual residing at 15 Blaisdell Terrace, Ipswich, Massachusetts. He has three minor children who attend the Ipswich Public Schools.

5. Applicant for Intervention Kenneth Swenson is an individual residing at 449 Linebrook Road, Ipswich, Massachusetts. He has three minor children who attend the Ipswich Public Schools. He is a member of the Subcommittee on Athletics of the Ipswich School Committee, chairman of the Athletic Fields Subcommittee of the Ipswich Board of Selectmen, and project coordinator for the proposed irrigation well at Mile Lane.

6. Applicant for Intervention Robert Weatherall, Jr. is an individual residing at 33 Labor-in-Vain Road, Ipswich, Massachusetts. He has two minor children who attend the Ipswich Public Schools, and he himself attended the Ipswich Public Schools. He is the senior member of the Ipswich Planning Board, and a past chair of the Ipswich Growth Management Steering Committee.

7. Applicant for Intervention Joanne Delaney is an individual residing at 12 Kinsman Court, Ipswich, Massachusetts. She has one minor child who attends the Ipswich Public Schools. She is a member of "FRIES" (Friends of Ipswich Elementary Schools), a past member of the Ipswich Recycling Committee, and has volunteered as an "ACE" (The American Council on Exercise) program instructor.

8. Applicant for Intervention Cara Doran is an individual residing at 12 Argilla Road, Ipswich, Massachusetts. She has two minor children who attend the Ipswich Public Schools.

9. Applicants for Intervention Andrew and Susan Brengle are individuals residing at 7 Cogswell Street, Ipswich, Massachusetts. They have two minor children who attend the Ipswich Public Schools.

10. Applicants for Intervention Michele and Jason Wertz are individuals residing at 19 Turkey Shore Road, Ipswich, Massachusetts. They have three minor children who attend the Ipswich Public Schools, and another minor child who is eligible to attend in two years. Michele Wertz is the Co-Chair of the Winthrop School Council, which acts as a sounding board for the school principal with a primary focus on budget decisions and school improvement plans, a member of FRIES, and a past member of the Demographic Subcommittee of the Ipswich School Committee.

11. Applicant for Intervention Clark Ziegler is an individual residing at 10 Woods Lane, Ipswich, Massachusetts. He has one minor child who attends the Ipswich Public Schools, and two other children who attended the Ipswich Public Schools. He is a past member and chair of the Ipswich Finance Committee, where he was involved in reviewing and approving school budgets, structuring the bond financing for new school buildings, and determining how much revenue was available to support the school system. Last year the School Committee asked him to join an ad hoc committee to review the economic feasibility of the condominium structure and financing that were proposed in Plaintiffs' settlement with the tenants.

12. Applicant for Intervention Carl Nysten is an individual residing at 34 Brownville Avenue, Ipswich, Massachusetts. He has two minor children who attend the Ipswich Public Schools. He has served as Treasurer and a member of the Leadership Team of "Turn the Tide," a successful Proposition 2½ override initiative, a member of the FRIES Facilities and Playground



Committee, a member of the Ipswich Athletic Fields Study Committee of the Ipswich Board of Selectmen, and an ACE program instructor.

13. The interest of the Applicants for Intervention and their minor children (the “Interveners”) is separate and distinct from that of the general public because, inter alia, of their active involvement in the Town of Ipswich and town governance generally and the Ipswich Public Schools specifically.

14. The Interveners repeat and fully incorporate herein the Counterclaim dated December 30, 2009, as filed by Defendants Ipswich School Committee and Ipswich Superintendent of Schools (the “School Defendants”), seeking an order removing Plaintiffs and modernizing the governance and administrative structure for carrying out the Trust that was created by William Payne to benefit the Ipswich Public Schools.

15. The requested removal and modernization of the governance and administrative structure for carrying out the Trust is necessary before any decision is made regarding the sale of Little Neck, to the extent such a sale were even permissible under the doctrine of reasonable deviation.

16. Prior to December 20, 2011, the Interveners believed – had been led to believe – that the School Defendants were (a) opposed to Plaintiffs’ request for reasonable deviation of the Trust and the proposed sale of Little Neck, and (b) advocating for the removal of Plaintiffs and the modernization of the governance and administrative structure for carrying out the Trust.

17. On December 20, 2011, the School Defendants announced an agreement with Plaintiffs under which Plaintiffs would be permitted to sell Little Neck and thereafter, or in connection therewith, the governance and administrative structure for carrying out the Trust would be altered.

18. As of December 20, 2011, the interest of the Interveners in this matter is not adequately represented by the School Defendants.

WHEREFORE, the Interveners, individually and on behalf of their minor children, respectfully request that this Honorable Court:

A. Enjoin the sale of Little Neck unless and until Plaintiffs establish that reasonable deviation from the terms of the Trust, specifically including the mandate that Little Neck shall not be sold, is necessary;

B. Deny Plaintiffs' request for reasonable deviation, because (1) Plaintiffs cannot meet their burden of proving that the doctrine of reasonable deviation is applicable under the circumstances, (2) any frustration of the Trust's purpose results from Plaintiffs' acts or omissions, (3) this Court lack jurisdiction or authority to alter the terms of the Trust, the administration of which is governed by statute, and (4) the terms of William Payne's will cannot be reformed under Massachusetts law;

C. Order the removal of Plaintiffs with Feoffees appointed by Ipswich governmental bodies, as summarized in Exhibit A to the School Defendants' Counterclaim and set forth in the proposed Trust Administrative Order attached as Exhibit B to the School Defendants' Counterclaim;

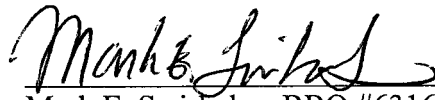
D. Order full distribution to the Ipswich Public Schools from the funds of the Trust of all shortfalls resulting from Plaintiffs' failure to provide distributions to the Ipswich Public Schools commensurate with fair-market rents;

E. Grant the Interveners their reasonable costs and legal fees; and

F. Grant such other and further relief as is just and appropriate.

DOUGLAS J. DeANGELIS, CATHERINE  
T.J. HOWE, JACQUELINE PHYPERS,  
JONATHAN PHYPERS, PETER BULETZA,  
KENNETH SWENSON, ROBERT  
WEATHERALL, JR., JOANNE DELANEY,  
CARA DORAN, ANDREW BRENGLE,  
SUSAN BRENGLE, MICHELE WERTZ,  
JASON WERTZ, CLARK ZIEGLER, and  
CARL NYLEN; individually and on behalf of  
their minor children,

By their attorneys,



Mark E. Swirbalus, BBO #631650

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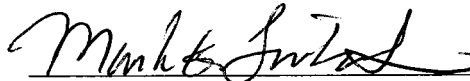
Fax: (617) 345-4745

meswirbalus@daypitney.com

Dated: December 30, 2011

**CERTIFICATE OF SERVICE**

I, Mark E. Swirbalus, hereby certify that on this 30th day of December, 2011, I served a copy of the foregoing by electronic and first-class mail upon counsel of record.



Mark E. Swirbalus