

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

PROBATE & FAMILY COURT
NO. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR,
et al.,

Plaintiffs,

v.

ATTORNEY GENERAL of the
Commonwealth of Massachusetts, et al.;

Defendants

**OPPOSITION OF IPSWICH SCHOOL COMMITTEE AND
RICHARD KORB TO FEOFFEEES' MOTION TO STAY
DISCOVERY AND FOR SEPARATE TRIALS**

This Court is familiar with the background of this case from earlier proceedings. The Plaintiff Feoffees hold title to property known as Little Neck, which they are required to lease or rent in perpetuity for the benefit of the Ipswich School Committee. The Feoffees are comprised of four Feoffees who were appointed privately by their predecessors (the "Privately-appointed Feoffees"), and three Feoffees who serve by virtue of being members of the Ipswich Board of Selectmen (the "Selectmen Feoffees").

Under the existing governance structure for the Trust, the four Privately-appointed Feoffees serve unlimited terms and select and appoint their successors privately. There are no bylaws and no other comprehensive governance documents or rules. (Counterclaim paragraph 4). The Privately-appointed Feoffees have largely conducted Trust business in private, without participation from the Selectmen Feoffees, and without transparency or public accountability. (Counterclaim paragraph 9).

Despite the Feoffees' fiduciary duty to charge fair market rents, is undisputed that for many years they failed to do so – a failure that the School Committee contends to be a direct consequence of the lack of proper governance and accountability to the public. The Feoffees' failure to collect fair market rent resulted in distributions to the Ipswich Public Schools that were far lower than warranted.

Several years ago, when the Feoffees' finally attempted to raise the rents to fair market levels, some Little Neck tenants sued the Privately-appointed Feoffees for damages in a purported class action lawsuit. As part of a proposed settlement of these claims, the Feoffees agreed to sell Little Neck to the tenants for an amount that the School Committee contends is less than its fair value and on terms that the School Committee contends to be unfair. Ironically, the Feoffees now proffer as the primary justification for the sale the meager distributions to the School Committee caused by the Feoffees' failure to charge and collect market rents.

The Feoffees' Complaint asks that this Court deviate from the no-sale provisions of the Trust and order a sale of Little Neck on the terms that the Feoffees negotiated with the tenants. In addition to opposing this relief, the Ipswich School Committee and superintendant Richard Korb (collectively, the "School Committee") are prosecuting counterclaims to reform the governance of the Trust. The Counterclaim seeks relief that would, among other things, alter the manner in which the seven Feoffees are appointed; provide for three year terms with no term limits; clearly define their responsibilities with respect to assets held by the trust; and regulate conflicts of interests on the part of the Feoffees. The proposed governance reforms, a copy of which are attached as Exhibit 1 hereto, are necessary regardless of whether Little Neck continues to be rented or is sold.

Recently the School Committee served deposition notices on one of the Feoffees and on one of the tenant representatives. These witnesses have knowledge relevant both to the Feoffees'

Complaint for equitable deviation and the School Committee's Counterclaim seeking governance reforms. In response to these efforts to conduct basic discovery, the Feoffees have moved to preclude any discovery on or trial of the School Committee's Counterclaim until after the Court has entered a judgment on the equitable deviation and sale issues. The School Committee hereby opposes the Feoffees' motion. The proposed stay of discovery and bifurcation of the trial would be costly and inefficient, lead to constant discovery disputes, unfairly prejudice the School Committee, and delay the implementation of governance reforms that are necessary to serve the public's interest.

I. The Issues Raised in the Complaint and the Counterclaim are Intertwined.

The Feoffees' motion to postpone both discovery and trial of the Counterclaim until after a judgment enters on the Feoffees' complaint is founded on their incorrect premise that there will be "no, or very little, overlap of fact issues" as between the Complaint and the Counterclaim. To the contrary, the issues in the Complaint and Counterclaim are completely intertwined.

There will be substantial overlap in the witnesses pertinent to the Complaint and the Counterclaim both during the discovery phase and at trial. The Privately-appointed Feoffees will be key witnesses concerning both parts of the case, and they will likely be testifying to substantially the same subject matters with respect to both parts of the case. Similarly, the tenants, or their lead representatives, are likely to be witnesses and have substantial knowledge that is relevant to both the Complaint and the Counterclaim.

Even some of the expert witnesses have overlapping information that will be relevant both to the Complaint and to the governance issues raised in the Counterclaim. For example, LandVest, the firm that advised the Feoffees in establishing the terms of sale, also served as their adviser in setting Little Neck rentals over the past fifteen years. The LandVest expert thus has knowledge concerning issues relevant to both the Complaint and the Counterclaim. This

overlapping knowledge includes direct information concerning market rents and the historical discrepancy between market rents and the amounts that the Feoffees were actually collecting.

The Feoffees in large measure base their Complaint for equitable deviation on the inadequate amounts that the School Committee has historically received through rentals. The School Committee contends in response that the purposes of the Trust can be fully achieved by the ongoing rental of Little Neck under proper management and at fair rental value. The School Committee further contends that the historically inadequate distributions are a product of the Feoffees' failure to collect market rents and mismanagement of the property, problems that can and will be corrected going forward. In short, many of the same facts that will demonstrate that the ongoing rental of the property is appropriate and feasible will also demonstrate the need for the governance reforms set forth in the Counterclaim.

Bifurcation would be unlikely to lessen substantially the scope of discovery or trial because the issues of mismanagement that will be probed in the Counterclaim are equally important to the School Committee's defense of the sale case. The School Committee anticipates that the Counterclaim will require only limited discovery beyond that which would be necessary to defend against the Feoffees' Complaint for equitable deviation and approval of sale.

The Feoffees raise the specter that the Counterclaim would somehow involve days of added trial testimony concerning the construction of the wastewater system. As shown by the parties submissions in connection with Feoffees' unsuccessful motion for partial summary judgment, issues concerning the wastewater system will be as relevant to the Feoffees' Complaint for approval of sale as they will be to the Counterclaim.

The Feoffees are alleging that the expenditures and debt they incurred installing the wastewater system is a reason supporting the proposed sale. But the Feoffees alleged in their Superior Court counterclaim against the tenants that they installed the wastewater system at the

Trust's expense based on the tenants' agreement to pay for it. As part of the Complaint for approval of sale, the Feoffees propose to release this multi-million dollar counterclaim.

Accordingly, in connection with the Feoffees' Complaint for equitable deviation and approval of sale, there will need to be discovery, and potentially trial testimony, concerning the Feoffees' dealings with the tenants concerning the wastewater treatment plant, and the appropriateness of releasing this counterclaim against the tenants. This evidence will also be relevant to the School Committee's Counterclaim.

It is highly inefficient to have two separate trials, let alone two distinct discovery periods, one now and one much later, in a case where the issues are so entangled. The substantial overlap of issues present in this case strongly militates against severing discovery or the trials. *See, e.g., Global Investors Agent Corp. v. National Fire Ins. Co. of Hartford*, 76 Mass. App. Ct. 812, 821 (2010) (bifurcation of claims has "little to commend it" where there is substantial overlap of facts and witnesses).

II. The Feoffees Cite No Proper Authority To Support their Request to Stay Discovery on the Counterclaim, Which Would be Inefficient and Prejudicial.

Rule 42(b) commits to the "sound discretion of the judge" whether to order separate trials. *E.g., Adams v. Adams*, 459 Mass. 361 (2011) (upholding probate court's denial of bifurcation in divorce proceeding). But even if there were to be separate trials, nothing in Rule 42(b) says that discovery on a bifurcated claim should commence only after judgment has entered on the first claim. There is normally a single discovery period even if there are going to be separate trials. The Feoffees cite no authority in support of their request that all discovery on the Counterclaim be stayed. Their motion, if granted, would be extremely inefficient for the prompt administration of justice and would lead to constant discovery disputes, the loss of evidence and undue delay and expense.

As noted in the preceding section of this Memorandum, the evidence relevant to the Complaint and Counterclaim is substantially overlapping and will be derived from largely the exact same witnesses. There is no sound reason to limit deposition questioning at the present time to only those questions that are viewed as relating to the Complaint, rather than the Counterclaim. It will be far more efficient for the School Committee to continue to conduct full discovery on the Counterclaim simultaneously with discovery relevant to the Complaint.

Furthermore, there is no clear dividing line whatsoever between issues germane to the Complaint and those germane to the Counterclaim. An order limiting discovery to the issues raised in the Complaint, as distinguished from the Counterclaim, will inevitably lead to costly and needless discovery disputes. In this regard it is significant that the Feoffees filed their motion to bifurcate after the School Committee noticed the deposition of one of the Feoffees and of one of the tenant representatives. These deponents clearly have intertwined knowledge and information relevant to both the Complaint and the Counterclaim. If the Court were to grant the Feoffees' motion to limit discovery to issues raised by the Complaint, the Feoffees' counsel would be in a position to direct these witnesses not to answer questions that in his disputed judgment were relevant solely to the Counterclaim. There could be no surer prescription for future discovery disputes, which are themselves costly and inefficient.

The Feoffees' motion seeks to have the School Committee's right under Rule 26 to conduct discovery suspended until after the issues in the Complaint have been tried, after this Court has issued its decision, and perhaps after post-judgment and appellate proceedings (depending on whether the initial judgment were certified as final under Rule 54(b)). It could well be years before the second stage of discovery occurred and the Counterclaim was tried. Memories would fade and information would be harder to obtain. And in the meantime the

Feoffees would remain in place, operating the trust on a business-as-usual basis, to the public's detriment. Such an approach would be highly unfair to the School Committee.

III. The Feoffees' Motion Will Not Conserve the Parties' Resources.

The Feoffees claim that the bifurcation order would be for the School Committee's own benefit, to maximize funds available for the Ipswich Schools. The School Committee does not share this view. In the School Committee's submission, the proposed stay of discovery and proposed separate trials would, in the final analysis, be costly and inefficient, while substantially delaying the adjudication of issues raised in the Counterclaim.

The proposed stay and bifurcation would require that the relevant witnesses submit to depositions twice: once now, and once after judgment. There would have to be two costly trials instead of one. Expert witnesses would have to be paid for in two proceedings. And there would be countless discovery disputes about whether information requested by the School Committee was germane to the Counterclaim, as distinguished from the Complaint. All of this would result in the expenditure of more, not less, funds.

The Feoffees argue that an adjudication in their favor on the sale issue may render the governance issue moot. But this is not really true, even if, contrary to the School Committee's expectations, the Feoffees were to prevail on the sale issue. Even if Little Neck were to be sold, there would be the need for the governance reforms that the School Committee is requesting in order to manage the resulting funds. The governance reforms go far beyond simply having someone other than the present Feoffees manage the funds, as they now say they would be prepared to do. The Counterclaim seeks to provide for ongoing oversight and accountability by, among other things, altering the way in which the Feoffees are selected, removing their present life tenure, enforcing conflict of interest rules, and subjecting their conduct to appropriate written rules and procedures. All of these reforms would be just as necessary in the case of a sale as

they would be if the property continues to be rented in accordance with the express terms of the Trust.

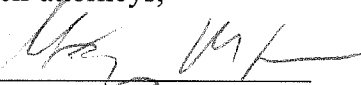
Furthermore, the appellate courts have emphasized that in cases such as this where claims are intertwined, the courts must act sparingly in entering separate judgment pursuant to Rule 54(b) on just a portion of a case. It is a paramount goal of the appellate courts to avoid piecemeal appeals. “When the dismissed and the surviving claims are factually and legally overlapping or closely related, such a fragmentation of the case is to be avoided except in ‘unusual and compelling circumstances.’” *Long v. Wickett*, 50 Mass. App. Ct. 380, 389 (2000). What this means is that even if the Feoffees were to prevail and the Court were to order a sale after a trial, under the standards of Rule 54(b) the Counterclaim might have to be adjudicated before an appeal could be taken by an aggrieved party. A schedule that potentially entails, win or lose, limited discovery now on the Complaint, followed by a trial, followed by post-trial briefing, decision writing, and entry of partial judgment, which would then be followed by a second round of discovery, a second trial, and a second phase of post-trials briefs and judgment, is indefensible.

IV. Conclusion.

For all of the foregoing reasons, the School Committee respectfully requests that the Feoffees' motion to bifurcate be denied.

Dated: June 14, 2011

Defendants and Counterclaim Plaintiffs,
IPSWICH SCHOOL COMMITTEE AND RICHARD
KORB, SUPERINTENDENT
By their attorneys,


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CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2011, I caused a copy of the foregoing document to be served upon all counsel of record by email delivery and by first class mail.

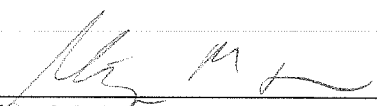

Stephen M. Perry

EXHIBIT 1

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

PROBATE & FAMILY COURT
NO. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR,
ET ALS., 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

TRUST ADMINISTRATION ORDER

Pursuant to the Court's equitable powers with respect to estates, charitable trusts, and trustees, the Court hereby approves and orders the following revision and amplification of the governance structure and administrative requirements applicable to the Trust created by William Paine respect to the land known as Little Neck:

1. The formal name for the Trust shall be Feoffees of the Grammar School in the Town of Ipswich Trust.
2. The beneficiary of the Trust shall be the Ipswich public schools.
3. In furtherance of the bequest in 1660 by William Paine who established this Trust "to be and remain to the benefit of the said school of Ipswich forever," the Trust purpose is to support the Ipswich public schools by, at least annually, making distributions of the Trust's net income, after reasonable expenses and operational reserves, to the Ipswich Public Schools. The

educational uses of the distributed funds shall be determined by the Ipswich School Committee, with preference when feasible for supplemental enrichment programs and uses that provide education enhancement for Ipswich public school students.

4. Trust governance

a. Eligibility to serve as a Feoffee

- i. To be eligible to be appointed as a Feoffee or to continue to serve as a Feoffee, a person's primary residence shall be in Ipswich.
- ii. No person may be a Feoffee while serving as a member of the School Committee, Board of Selectmen or the Town Finance Committee or as Town Manager or Superintendent of Schools.
- iii. No person may be appointed as a Feoffee or continue to serve as a Feoffee who is a resident or home owner on Little Neck if his or her lot is rented from the Trust, nor may a person (referred to here as the "individual") be appointed as a Feoffee or continue to serve as a Feoffee if one of the following is a resident or home owner on Little Neck and his or her lot is rented from the Trust:
 - a. the individual's spouse;
 - b. a parent of the individual or of the individual's spouse;
 - c. a child of the individual and/or of the individual's spouse;
 - d. a sibling of the individual or of the individual's spouse.
- iv. In the appointment of Feoffees, the appointing Authorities (defined below) shall appoint persons who possess the qualities of integrity and sound judgment and who acknowledge at the time of appointment the Feoffees' fiduciary duties and obligations of trusteeship and the purpose of the Trust to benefit the Ipswich public schools. Persons shall be appointed who also possess expertise and skills that will enable the Feoffees collectively to carry out their responsibilities.
- v. No person may be appointed as a Feoffee or continue to serve as a Feoffee who has been convicted of a crime involving dishonesty, false statement, theft, fraud, or moral turpitude.

b. Number and appointment of Feoffees

- i. The Trust shall be administered by a body of Feoffees as follows: (i) two Feoffees appointed by the Ipswich School Committee; (ii) two Feoffees appointed by the Ipswich Board of Selectmen; (iii) two Feoffees appointed by the Ipswich Town Finance Committee; and (iv) one Feoffee appointed by the Ipswich Town Meeting (The School Committee, the Board of Selectmen, the Finance Committee, and the Town Meeting are each referred to below as an "Appointing Authority.")
- ii. Nothing herein shall prevent a person presently serving as a Private Feoffee (a Feoffee not appointed by a public body) from being appointed as a Feoffee by a public Appointing Authority so long as all eligibility requirements herein are met.

c. Term of service

- i. The term of office for each Feoffee shall be three years, except that to implement staggered terms, the initial term pursuant to this Order shall be two years for one Feoffee appointed by the School Committee, one Feoffee appointed by the Board of Selectmen, and one Feoffee appointed by the Finance Committee. A Feoffee shall hold office until his or her successor is duly appointed, or until he or she sooner resigns, is removed, becomes disqualified, or dies.
- ii. Feoffees may be reappointed, with no limit as to number of terms served.
- iii. Suspension or removal
 - a. A Feoffee appointed by School Committee, Board of Selectmen or Finance Committee may be suspended or removed by his or her Appointing Authority for cause, provided that such Feoffee is given at least seven days written notice of the proposed suspension or removal and the reasons therefor, and an opportunity to be heard at the meeting, and that notice of the proposed suspension or removal is given in the notice of meeting.
 - b. A Feoffee appointed by a Town Meeting may be suspended or removed for cause by a Town Meeting or by a two-thirds vote of both the School Committee and the Board of Selectmen (i.e., a two-thirds vote by each

body), subject to the same notice and hearing procedure as above.

- c. For purposes of suspension or removal, "cause" is defined as: (i) breach of fiduciary duty; or (ii) failure to carry out his or her duties with reasonable judgment, skill, care or prudence.
 - d. In the case of a Feoffee vacancy, the applicable Appointing Authority may appoint a Feoffee to fill the remainder of the term.
 - d. Feoffees shall serve without compensation, but reasonable and necessary trust-related expenses may be paid, such trust-paid expenses to be reported in writing at least quarterly and in detail to the School Committee, the Board of Selectmen and the Finance Committee.
 - e. The Feoffees shall be subject to a conflict of interest policy, approved by the School Committee, that is compliant with the State Public Ethics Statute and good governance standards for governmental bodies and public charities.
 - f. The Feoffees shall meet at least quarterly.
 - g. The Feoffees meeting quorum shall be a majority of the Feoffees in office (vacancies to be included in the denominator), and, unless otherwise provided herein or required by law, a majority vote of those present is required for action.
 - h. The Feoffees may elect officers from among their number, establish such officers' responsibilities, and establish committees of Feoffees.
5. In addition to those responsibilities and powers conferred upon trustees by law, the Feoffees shall have the following responsibilities and powers with respect to the Little Neck property:
- a. Lease, rent, improve and manage the Trust real estate (sale, if any, shall be subject to School Committee approval and a Court order separate from this Trust Administration Order).
 - b. Establish and collect rents and fees.
 - c. Establish and enforce regulations, including through eviction, with respect to residency on and use of Trust property.
 - d. Pay all proper charges and expenses.

- e. Upon approval by the School Committee, borrow funds and mortgage the real estate and the rent income stream therefrom to the extent necessary for the prudent operation and maintenance of the Trust property.
 - f. Hire or employ property managers and other agents, and pay reasonable compensation for the services of such persons (maximum term of three years, with termination of the arrangement available to the Feoffees for cause; Feoffees may provide that terms are renewable at the Feoffees' discretion).
6. In addition to responsibilities and powers conferred upon trustees by law, the Feoffees shall have the following responsibilities and powers with respect to the funds of the Trust:
- a. Hold title to and manage the funds of the Trust, with the net proceeds of the sale of Little Neck lots if any to establish a permanent endowment. The amount of said net sale proceeds, after payment, in an amount approved by the School Committee, of debts owed by the Feoffees at the time of this Order or owed at the time of the sale of a lot or lots, and a reasonable expenses and operational reserve agreed to by the School Committee, shall constitute the initial principal or "historic dollar value" of said endowment. The following shall not be distributed: (i) the initial principal; and (ii) the accumulation that is added to principal pursuant to Paragraph (b), below.
 - b. Pursuant to the Trust purpose, make distributions of net investment income and appreciation and net rental income to the School Committee to benefit the public schools, after reasonable expenses and operational reserves and the accumulation described in the following sentence. Prior to distribution, the following amount of income and appreciation shall be accumulated and added to principal, not to be distributed: the smaller of (i) the amount needed to maintain the inflation-adjusted value of the endowment over time; or (ii) 20% of net investment and rental income and investment appreciation. As provided in Part 3 above, the educational uses of the distributed funds shall be determined by the Ipswich School Committee, with preference when feasible for supplemental enrichment programs and uses that provide education enhancement for Ipswich public school students.
 - c. Hire or employ qualified investment managers and, if appropriate, advisors and other investment professionals, attorneys, or other agents, subject to the approval of the School Committee, and pay reasonable compensation for the services of such persons.

- d. Establish and periodically review and update the Trust's Investment Policy, with the goal of maintaining an appropriate balance of security and growth of principal and consistent and beneficial annual distributions to benefit the public schools. The Investment Policy and any amendments shall be communicated to the School Committee, the Board of Selectmen, and the Finance Committee.
- e. Hold, through third party fund custodians independent of Feoffees and of investment advisors, and invest Trust assets in accordance with and furtherance of the Trust's Investment Policy and in accordance with and subject to the standards set forth in the prudent investor rule set forth in M.G.L. c. 203C, the Massachusetts Prudent Investor Act, and any successor statute and M.G.L. c. 180A, the Massachusetts Uniform Management of Institutional Funds Act, and any successor statute (except that the historic dollar value of the Trust endowment shall not be distributed).
- f. If funds are placed in banking institutions, follow good stewardship practices as to coverage by depositor insurance and the rate of interest income generated. Funds placed in banking institutions may be placed in banks located outside Ipswich.
- g. Arrange for investment performance reports at least quarterly to ascertain current and long-term levels of achievement relative to stated goals, with a copy to be provided to the School Committee, Board of Selectmen, and Finance Committee.
- h. Monitor the Trust's overall compliance with the Investment Policy, as well as the performance and diversification of its invested assets.
- i. Develop, in conjunction with advisors, appropriate market performance benchmarks against which the Trust's return will be measured.
- j. Monitor the performance of investments, managers and advisors to assure that the Trust's investment objectives are being met.
- k. Periodically review and, if appropriate, rebalance the strategic asset allocation of the Trust and make tactical allocation decisions based on the Trust's Investment Policy and information and advice provided by investment advisers and consultants.
- l. Accept charitable gifts for the benefit of the Trust, to be added to principal unless the donor specifies otherwise

- m. Pay all proper charges and expenses, and maintain an operational reserve for this purpose
- n. Ensure the Trust's compliance with legal and regulatory requirements and donor restrictions related to the investment of the Trust's funds.
- o. Pursue, defend and settle all claims and demands relating to the Trust or Trust property, subject to the advice and consent of the School Committee and the Board of Selectmen (if the School Committee or Board of Selectmen are sued with respect to a matter relating to the Trust or the Trust property, the sued body will notify the other body).
- p. Use the same fiscal year as the Town.
- q. Unless the Trust and any affiliated entities are included in the annual Town audit, with payment by the Trust of its proportionate share of the cost, the Feoffees shall cause the finances of the Trust and affiliated entities to be audited, said audit to be completed within four months of the close of the fiscal year. The Feoffees shall file the annual financial statement of the Trust and affiliated entities with the Town for inclusion in the Town annual report.
- r. Maintain regular and open communication with the School Committee, provide periodic reports, and reply within one month to all requests by the School Committee for information concerning the Trust and affiliated entities.
- s. Periodically, based on the expected annual portfolio returns, past distribution levels, and other appropriate factors, and subject to the approval of the School Committee, set the following: (i) the accumulation amount or percentage to be added to principal; (ii) the overall draw on the endowment of funds for expenditure and distribution; and (iii) the measurement date on which to base the calculation of distributions to be made pursuant to Paragraph (u), below (the "Measurement Date").
- t. Report to the School Committee by October 1 each year (or such other date agreed by the School Committee) the amount that the Feoffees reasonably anticipate that they will distribute to the public schools in the forthcoming distribution, and shall, immediately report any adjustment in this amount that may have resulted from the completion of the annual audited financial statement. The Feoffees will also report any additional adjustments that may result from the audit of Town accounts made at a later date as part of the regular Town audit.

- u. At least annually, and no later than the first day of the public schools' fiscal year, distribute to the School Committee all available income and appreciation determined as of the Measurement Date pursuant to Paragraph (s), above, after accumulation, expenses and reserves. The annual distribution shall be reported at a public meeting called for that purpose and for the purpose of providing the public and the School Committee with additional information pertaining to the Trust and its management in the previous year and to answer inquiries.
 - v. At least annually, report on the activities and financial status of the Trust and affiliated entities in a meeting of the School Committee, with any participation in such meeting by the Board of Selectmen and Finance Committee subject to separate arrangement among the bodies.
 - w. Trust property shall be held in the name of the Trust, and agreements, obligations, instruments, papers and actions on behalf of the Trust may be made, incurred, executed, signed, or taken in the name of the Trust.
 - x. No Feoffee appointed pursuant to the terms of this Order shall be personally liable: (i) for any obligation or liability incurred by the Trust; (ii) for the acts or omissions of another Feoffee; or (iii) otherwise by reason of serving or having served as a Feoffee. Exceptions: (a) breach of duty of loyalty to the Trust; (b) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; and (c) a transaction from which the Feoffee derived an improper personal benefit. Each Feoffee appointed pursuant to the terms of this Order shall be entitled to indemnification and reimbursement out of the Trust assets to the extent permitted by law. Each Feoffee appointed pursuant to the terms of this Order, both individually and as a Feoffee, shall be defended, indemnified and held harmless in the pending litigation with the residents of Little Neck.
 - y. Such other powers, consistent with the requirements of the Trust, necessary to carry out the purposes of the Trust.
 - z. Minor, technical adjustments of Paragraphs (c) through (x), above, may be made upon approval of a two-thirds majority of the School Committee members in office (e.g., 5 members of a 7-member School Committee).
7. In addition to responsibilities and powers conferred upon trustees by law, the Feoffees shall have the following responsibilities and powers with respect to rental of residential lots on Little Neck:
- a. Pursuant to the Feoffees' fiduciary duties as trustees of this Trust to benefit the Ipswich public schools, the Feoffees shall charge and

collect rents, for residence on or other use of the Trust property, at a level that is designed to maximize the financial benefit to the public schools. To the extent possible, the amount of income provided to the Ipswich public schools each year shall at a minimum represent a reasonable return on the market value of the Trust's assets; if the income provided to the public schools is lower than the amount that would be such a reasonable return, the Feoffees shall report the reasons for this differential to the School Committee.

- b. In calculating the rent levels necessary to satisfy the standard set forth in (a), above, all costs of operation of the Trust shall be taken into account, including the following costs, to the extent that they provide benefit to the residents and are appropriately includable in determining the rent: (i) the cost of extra services provided by or for the Feoffees at or in connection with Little Neck (such as police details, etc.); (ii) the cost of providing and maintaining common or unoccupied land or structures; (iii) the cost of providing and maintaining other amenities; (iv) taxes on all the land, including the common or unoccupied land and all improvements; and (v) taxes on residential structures whether or not paid separately by the homeowners or residents. The Feoffees shall take reasonable steps on an ongoing basis to monitor property tax assessments and property taxes levied with respect to Little Neck occupied property, unoccupied property, and common land, to evaluate whether adjustments should be sought, to respond to resident request with respect to property tax matters, and to seek property tax adjustments where determined to be appropriate.
- c. Consideration shall be given to establishing rents that vary lot by lot, depending on size, location, view, and other factors affecting rental value, including year-round versus seasonal rental. However, no more than twenty-four lots, the number presently eligible for year-round rental, shall be rented on a year-round basis.
- d. Feoffees are authorized to enter into written rental agreements for periods of years, the substantive content of which has been approved by the School Committee.
- e. Feoffees are authorized to engage expert assistance in establishing rent levels, length of rentals, and other rental terms and practices.
- f. Additional Feoffee powers are enumerated in Parts 5 and 6, above.

8. Other applicable requirements

- a. The Trust shall be a municipal trust.

- b. The Trust shall be subject to the standards and requirements set forth in the open meeting law and subsequent amendments.
- c. The Trust shall be subject to the standards and requirements set forth in the public records law and subsequent amendments.
- d. The Trust shall be subject to the standards and requirements set forth in the public bidding law and subsequent amendments.
- e. The Trust shall be subject to the standards and requirements set forth in the public ethics (i.e., conflict of interest) law and subsequent amendments.

Justice of the Probate and Family Court
Department of the Trial Court

_____, 2010
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