

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

PROBATE & FAMILY COURT
NO. ES09E0094QC

_____)
 ALEXANDER B.C. MULHOLLAND, JR,)
 ET ALS., as they are THE FEOFFEES)
 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 and to this Court’s judgment dated December 23, 2011, 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 with respect to the land known as Little Neck effective upon the filing of the Master Deed submitting the land at Little Neck to the provisions of G.L. c. 183A (the “Effective Date”):

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 making distributions to the Ipswich Public Schools. The educational uses of the distributed funds shall be determined by the Ipswich School Committee, with preference 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. After the Interim Period (as defined below) no person may be a Feoffee while serving as a member of the School Committee, Board of Selectmen, the Town Finance Committee, the Life Feoffees (as defined below) 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 beyond the end of the Interim Period 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 felony or a crime involving dishonesty, false statement, theft, fraud, or moral turpitude.

b. Number and appointment of Feoffees

- i. For an interim period (the “Interim Period”), starting on the Effective Date and ending on the first to occur of a) the sale of the last condominium unit or b) 90 days after the Effective Date, 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) one Feoffee appointed by the Ipswich Town Finance Committee; and (iv) two of the current so-called Life Feoffees or their duly appointed successors. During the Interim Period, the three Selectman Feoffees and the remaining Life Feoffees other than those two who are continuing to serve during the Interim Period, shall no longer be Feoffees. After the Interim Period 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 Life Feoffees in accordance with the following subsection. (The School Committee, the Board of Selectmen, the Finance Committee, and the Life Feoffees are each referred to below as an “Appointing Authority.”)
- ii. Commencing at the end of the Interim Period, the four individuals who were serving at the time of this Order as life Feoffees (or the successors they duly appointed between the date of this Order and the end of the Interim Period if applicable) shall be a self-perpetuating body known as the Life Feoffees whose sole role shall be to appoint one of the Feoffees of the Trust in accordance with the preceding subsection. From that time on, none of the Life Feoffees shall themselves be trustees of the Trust and they shall have no right to manage or deal with the Trust assets. All Life Feoffees must reside in Ipswich. In the event of any vacancy in the office of the Life

Feoffees, a successor shall be chosen by those Life Feoffees remaining in office.

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, Finance Committee or Life Feoffees 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. For purposes of suspension or removal, “cause” is defined as: (i) breach or neglect of fiduciary duty; or (ii) failure or inability to carry out his or her duties diligently and with reasonable judgment, skill, care or prudence.
 - c. In the case of a Feoffee vacancy, the applicable Appointing Authority may appoint a Feoffee to fill the remainder of the term.
 - d. The Probate Court may also remove any Feoffee in accordance with applicable law.
- 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 good governance standards for governmental bodies and public charities and is at least as restrictive as the conflict of interest statutes and regulations of the Commonwealth of Massachusetts applicable to municipal officials and employees.
 - 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 responsibilities and powers conferred upon trustees by the statutory and common law of the Commonwealth of Massachusetts, the Feoffees shall carry out and comply with the provisions of this Court's judgment entered on December 23, 2011 ("Judgment"), including the Settlement Agreement referenced therein. The Feoffees are authorized to take all actions as they deem necessary or appropriate in connection with the documentation, enforcement, refinancing, or collection of secured and unsecured loans provided to Little Neck residents pursuant to the Judgment. Except as may be expressly limited by this Trust or the Judgment, the Feoffees shall have all of the powers over the trust assets that an unmarried competent owner has over individually owned property and all other powers appropriate to achieve the proper investment, management and distribution of the trust property, including all powers granted to trustees by applicable law. The Trustees shall also have, without limitation, the following responsibilities and powers with respect to the assets and funds of the Trust:
- a. During the Interim Period, and until all condominium units at Little Neck have been sold, collect rents in accordance with the Judgment and make monthly distributions of available net income from such rentals to the School Committee;
 - b. Hold title to and manage the assets and funds of the Trust, which, upon the sale of Little Neck condominium units, shall consist of (i) the sum of \$2.4 million in cash which shall be segregated by no later than the end of the Interim Period from the other trust assets and allocated as use and occupancy payments distributable to the School Committee as

provided for below (the “Use and Occupancy Funds”), and (ii) all other assets and funds of the Trust, including the remaining net proceeds received or due from the sale of Little Neck lots, or from loans made to Little Neck residents, which, after payment of all debts and expenses shall establish a permanent endowment.

- c. Invest the \$2.4 million in Use and Occupancy Funds in appropriate fixed income investments and make distributions to the School Committee as follows: 1) within thirty days of the Effective Date, the Feoffees shall distribute an amount equal to one-third of the sum of the Use and Occupancy Funds and any interest or income earned thereon for expenditure by the School Committee during the fiscal year ending June 30, 2013; 2) on or before the first anniversary of the Effective Date, the Feoffees shall distribute an amount equal to one half of the remaining balance of the Use and Occupancy Funds (including in such balance any interest or income thereon) for expenditure by the School Committee during the fiscal year ending June 30, 2014; and 3) on or before the second anniversary of the Effective Date, the Feoffees shall distribute the balance of the Use and Occupancy funds, including any remaining interest or income thereon, for expenditure by the School Committee during the fiscal year ending June 30, 2015.
- d. Hold title to and manage the remaining Trust assets and funds after payment of all properly incurred debts and expenses owed or accrued by the Feoffees at the time of sale of the lots. Such remaining Trust assets and funds, after payment of all such debts and expenses and exclusive of the Use and Occupancy Funds, shall constitute the initial “Principal” of said endowment.
- e. Pursuant to the Trust purpose, make annual distributions to the School Committee prior to the start of the fiscal year ending June 30, 2016, and prior to the start of each subsequent fiscal year thereafter, pursuant to the Spending and Distribution Policy (as defined in (g) below) then in effect. As provided in Part 3 above, the educational uses of the distributed funds shall be determined by the Ipswich School Committee, with preference for supplemental enrichment programs and uses that provide education enhancement for Ipswich public school students.
- f. Hire or employ qualified investment managers, accountants, and, if appropriate, mortgage service providers, advisors and other investment professionals, attorneys, or other agents, and pay reasonable compensation for the services of such persons. The selection of investment managers shall be in accordance with guidelines established by the Feoffees.

- g. With the assistance of qualified investment managers, portfolio or endowment advisors, or other professionals, and the approval of the School Committee, establish and periodically review a written spending and distribution policy (“Spending and Distribution Policy”) for the Trust pursuant to which the annual distribution in (e) above is to be calculated and made. Absent extraordinary circumstances, the Spending and Distribution Policy should result in a mathematically defined and calculable level of distribution and spending each year. Such calculation of the distribution shall be made as of March 31 of each calendar year (the “Measurement Date”), starting on March 31, 2015. The Measurement Date may be adjusted with the approval of the School Committee. The Spending and Distribution Policy and any amendments shall be communicated to the School Committee, the Board of Selectmen, and the Finance Committee. The Feoffees are to be guided in their development of the Trust’s Spending and Distribution Policy by the provisions of the Uniform Prudent Management of Institutional Funds Act, M.G.L. c. 180A, Section 3, and any successor thereto.

- h. Establish and periodically review and update the Trust’s Investment Policy, with the goal of maintaining or growing in perpetuity the Principal of the Trust after inflation, taking into account the distributions and expenses contemplated by the Spending and Distribution Policy. The Investment Policy and any amendments shall be promptly communicated to the School Committee, the Board of Selectmen, and the Finance Committee.

- i. Hold, through third party fund custodians independent of Feoffees and of investment advisors (unless the investment advisor is a national bank or a bank or trust company chartered by the Commonwealth of Massachusetts), and invest Trust assets as the Feoffees deem appropriate in accordance with and furtherance of the Trust’s Investment Policy, subject to the standards 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 Prudent Management of Institutional Funds Act, and any successor statute.

- j. 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.

- k. Arrange for investment performance reports at least quarterly to ascertain current and long-term levels of achievement relative to the Investment Policy and applicable benchmarks, with a copy to be

provided to the School Committee, Board of Selectmen, and Finance Committee.

- l. Monitor the Trust's overall compliance with the Investment Policy, as well as the performance and diversification of its invested assets.
- m. Develop, in conjunction with advisors, appropriate market performance benchmarks against which the Trust's return will be measured.
- n. Monitor the performance of investments, managers and advisors to assure that the Trust's investment objectives are being met.
- o. 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, its Spending and Distribution Policy and information and advice provided by investment advisers and consultants.
- p. Accept charitable gifts for the benefit of the Trust, which may be restricted or unrestricted, to be added to principal unless the donor specifies otherwise.
- q. Pay all proper charges and expenses, and maintain an operational reserve for this purpose.
- r. Ensure the Trust's compliance with legal and regulatory requirements and donor restrictions, if any, related to the investment of the Trust's funds.
- s. 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).
- t. Use the same fiscal year as the Town.
- u. Cause an audit of the Trust in accordance with Generally Accepted Auditing Standards to be conducted as of the end of the Interim Period. Unless the Trust and any affiliated entities are included in the annual Town audit, in which event the Trust may be charged with its proportionate share of the cost, the Feoffees shall thereafter cause the finances of the Trust and affiliated entities to be audited annually in accordance with Generally Accepted Auditing Standards, 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. The Feoffees shall also adopt adequate controls and safeguards over the receipt and disbursement of the Trust's funds.

- v. 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.
- w. Report to the Appointing Authorities by October 1 each year (or such other date agreed by the School Committee) the amount that the Feoffees then reasonably anticipate that they will distribute to the public schools in the forthcoming distribution, and promptly report any adjustment in this amount that may have resulted from changes in the Trust's net asset value, the completion of the annual audited financial statement or audit of Town accounts.
- x. At least annually, and no later than the day before the start of the fiscal year that ends on June 30, 2016 and the day before the start of each subsequent fiscal year, distribute to the School Committee the amount due to the School Committee under the Spending and Distribution Policy determined as of the Measurement Date (as defined in subsection g). The annual distribution shall be reported at a public meeting conducted within thirty days after the Measurement date and 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.
- y. 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.
- z. 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.
- aa. 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.

- bb. Such other powers, consistent with the requirements of the Trust, necessary to carry out the purposes of the Trust.
- cc. Minor, technical adjustments of Paragraphs (a) through (z), above, may be made upon approval of a majority of the Feoffees with the consent of a two-thirds majority of the School Committee members in office (e.g., 5 members of a 7-member School Committee). The Trust may also be amended by a petition to the Probate Court filed in accordance with applicable law.

6. Other applicable requirements

Except as is otherwise stated in this Trust or the Judgment (which in the event of any inconsistency with this Trust shall control):

- a. The Trust shall be a public body and an agency of the Town of Ipswich or its subdivisions.
- 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.
- f. The Trust may utilize Town of Ipswich buildings and facilities for its meetings and the conduct of its business and may utilize the services of a School Department or other Town employee to assist with the posting of meetings, the recording and distribution of minutes and similar administrative functions.
- g. The validity, interpretation, construction and administration of this Trust shall be governed by the laws of the Commonwealth of Massachusetts.

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

_____, 2012