

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT OF THE COMMONWEALTH  
HOUSING COURT DEPARTMENT

BRISTOL, SS.

SOUTHEASTERN DIVISION  
DOCKET NO. XXH83CV00XXXX

ATTORNEY GENERAL for the	)
COMMONWEALTH OF MASSACHUSETTS	)
Petitioner,	)
	)
v.	)
	)
THE ESTATE OF [NAME], and	)
THE ESTATE OF [NAME], and	)
[NAME], and [NAME],	)
as owners, and UMB BANK, NATIONAL	)
ASSOCIATION, AS TRUSTEE FOR MART	)
LEGAL TITLE TRUST 2015-NPL1, and	)
SOMERSET RIDGE, LP, and LIBERTY	)
UTILITIES, as parties with a potential interest in	)
the property at [ADDRESS],	)
Massachusetts	)
	)
<u>Respondents.</u>	)

RECEIVER'S MOTION FOR APPROVAL OF PROPOSED BUDGET

Now comes the Receiver, [NAME] LLC ("Receiver") and hereby moves this Honorable Court to approve the Receiver's Proposed Budget. The Receiver seeks approval of a budget in the amount of \$XXX,XXX.00 for the rehabilitation of the property located at [ADDRESS], Massachusetts ("Property").

In support hereof, the Receiver states that the Property is an abandoned, unoccupied, uninhabitable, single family dwelling owned by Respondent Barbara Augustine at the time of her passing on April X, XXXX. The Respondent lenders are mortgagees with interests and/or purported interests in the Property. The Respondents have failed to manage and maintain the Property in compliance with the relevant State Sanitary Code, State Building Code, State

laws and local regulations. The Property has numerous code violations which pose a serious risk to the health, safety, and well-being of abutters, illegal trespassers, emergency responders and residents of the neighborhood and community in which it is located. Due to the amount of rehabilitation work required to bring the Property into compliance with State laws and regulations and to make the Property habitable, the Receiver estimates the cost for the rehabilitation project to be \$XXX,XXX.00. A true and accurate copy of the Receiver's proposed renovation budget is attached hereto as Exhibit "1". A breakdown of the work to be conducted at the Property can be found in the attached Exhibit "2". A summary of the Town of Somerset's August XX, XXXX inspection of the Property is attached hereto as Exhibit "3".

As stated in the Attorney General's Petition and Attachment A11 thereto, and in the summary of the August XX, XXXX inspection, the conditions observed at the Property included, but were not limited to, defective exterior hand rails, steps, doors, windows (Code sections 500, 501, 503), defective interior floors, walls and ceilings (Code section 500), non-watertight basement (Code section 500), water—low pressure and non-potable (Code section 180), sanitary drainage/plumbing required (Code section 351), presence of pests (Code section 550), the exterior roof is leaking causing mold, chronic dampness throughout the entire dwelling (105 CMR 410.500 + 501 (A)+(B)), interior walls, ceilings and carpet contain extensive mold spores (105 CMR 410.500), basement contains black spore mold throughout all sheetrock partitions (105 CMR 410.500), no running water due to copper pipes being removed (105 CMR 410.180 + 410.351), evidence of rodents throughout dwelling (105 CMR 410.550), trash throughout all rooms in dwelling (105 CMR 410.602 (B)), collapsed ceilings, waterlogged insulation, and stripping of wiring and plumbing by vandals.

On August XX, XXXX, this Honorable Court granted the Attorney General's request to appoint the Receiver, and entered an Order On Petition To Enforce The State Sanitary Code And For Appointment Of A Receiver appointing a receiver for the Property. Since the date of the Order, the Receiver

has inspected the property in coordination with officials from the Town of Somerset to determine what repairs are necessary to bring the Property into compliance with the relevant State laws and regulations and make it habitable. The work to be completed by the Receiver includes: replacing the roof, removing/replacing all sheetrock, paneling, insulation, siding, windows, treat house for mold, stripping walls to studs, plumbing and electrical systems are to be upgraded to current building codes, replacing doors, removing/replacing exterior deck, replace heating system, replacing kitchen, replacing hardwood flooring, installing drywall/plaster on walls and ceilings, painting, and landscaping.

This Court has authority under M.G.L. c. 111, §127I, and under the general equitable powers of this Court, to fashion a remedy that is not only in the best interest of the Property, but in addressing the public health and safety hazards presented by the Property. *Judge Rotenberg Educational Center v. DMR*, 424 Mass. 430 (1997) (holding that the Court “has broad and flexible powers to fashion remedies” in equity). Massachusetts law requires that homeowners — including the Respondents comply— with the minimum standards of fitness for human habitation as defined by regulations promulgated under the State Sanitary Code. M.G.L. c. 111, §127A; 105 CMR §§400.00 and 410.00, et seq. (the “Code”); see, *City of Boston v. Rochalska*, 72 Mass. App. Ct. 236 (2008) (holding that the provisions in the State Sanitary Code, G.L. c. 111, §127A, et seq. demonstrate a “legislative intent to protect the health and safety of both the occupants of a building and members of the general public.”) see also, 105 CMR §400.001. The Commonwealth sought and obtained appointment of a receiver as that remedy was in the best interest of the Property and the public, given the deplorable conditions left unattended. The possibility that the Respondents may find the repairs to be costly is not a defense to the obligations imposed by Massachusetts law requiring compliance with health and safety standards. *City of Worcester v. Sigel*, 37 Mass. App. Ct. 764, 767 (1994). Any patchwork repair attempts that may be proposed by the Respondents will inevitably cause the Property to sit idle at or near its current state of disrepair, and remain a threat

to public health and safety. The Receiver offers the best opportunity for the Property to be made safe and habitable.

WHEREFORE, the Receiver requests that this Honorable Court grant its Motion For Approval of Receiver's Budget in the amount of \$XXX,XXX.00 for the rehabilitation construction on the Property located at [ADDRESS].

Respectfully submitted,  
[NAME] LLC,  
Receiver  
By its Attorney,

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[NAME]  
[ADDRESS]

Date: September XX, XXXX