

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss:

HOUSING COURT DEPARTMENT
WORCESTER DIVISION
Civil Action No.

ATTORNEY GENERAL for the
COMMONWEALTH OF MASSACHUSETTS and
the TOWN OF ATHOL,

Petitioners,

v.

[REDACTED] as co-owner of the property
located at [REDACTED], Athol, Massachusetts;

[REDACTED] as co-owner of the property
located at [REDACTED], Athol, Massachusetts;

[REDACTED] as mortgagee and
party with an interest in the property located at [REDACTED]
[REDACTED], Athol, Massachusetts; and

[REDACTED] as
mortgagee and party with an interest in the property
located at [REDACTED], Athol, Massachusetts,

Respondents.

**PETITION TO ENFORCE THE STATE SANITARY CODE
AND FOR APPOINTMENT OF A RECEIVER**

This is a petition by Martha Coakley, Attorney General for the Commonwealth of Massachusetts, and the Town of Athol, seeking enforcement of the State Sanitary Code (the "Code"). The Attorney General and Town of Athol assert that the property owned by respondents [REDACTED] and [REDACTED] has numerous long-standing Code violations which pose a serious risk to the health, safety and well-being of abutters, trespassers, emergency

responders and residents of the community, thereby justifying the Court's exercise of its statutory authority and general equity power to appoint a receiver for the purpose of making those repairs necessary to protect the public health and safety and that are in the best interests of the property.

JURISDICTION AND PARTIES

1. The jurisdiction of this court is founded upon the State Sanitary Code, G.L. c. 111, § 127I and the court's equity jurisdiction under G.L. c. 185C, § 3.

2. The petitioner, the Attorney General for the Commonwealth of Massachusetts (the "Commonwealth"), is a public official and the Commonwealth's chief law enforcement officer under the constitution and laws of the Commonwealth of Massachusetts.

3. The petitioner, the Town of Athol (the "Town" and, with the Commonwealth, "Petitioners"), is a municipal corporation under the constitution and laws of the Commonwealth of Massachusetts.

4. The respondent [REDACTED] ("[REDACTED]") is a natural person with a last known mailing address of [REDACTED], Dorchester Center, MA 02124. Walsh is the co-owner of record of the property located at [REDACTED], Athol, Massachusetts. *See* Exhibit I, Affidavit of Nancy Ward ("Ward Aff.") at ¶¶ 3, 8, 12.

5. The respondent [REDACTED] ("[REDACTED]") is a natural person with a last known mailing address of [REDACTED], Dorchester, MA 02121. Jaynes is the co-owner of record of the property located at [REDACTED], Athol, Massachusetts. *See id.*

6. The respondent [REDACTED]
[REDACTED]
[REDACTED] ("[REDACTED]") is a foreign corporation which holds a mortgage covered by the property owned by

█████ and █████. According to the records of the Secretary of State, █████ has appointed CT Corporation System, 155 Federal St., Suite 700, Boston, MA 02110 as its Resident Agent for service of process within the Commonwealth. *See* Ward Aff. at ¶¶ 6, 9. Pursuant to G.L. c. 223A, § 3(e), this Court may exercise personal jurisdiction over █████, because █████ has an interest in real property within the Commonwealth.

7. The respondent █████ (“█████”) is a foreign corporation which holds a mortgage covered by the property owned by █████ and █████. *See* Ward Aff. at ¶¶ 4, 7. Upon information and belief, █████ withdrew from doing business within the Commonwealth in 2009 and no longer maintains a Resident Agent for service of process within the Commonwealth; therefore, █████ is deemed to have appointed the Secretary of State as its agent for service of process pursuant to G.L. c. 156D, § 15.10(b). *See* Exhibit II, Affidavit of Kiernan E. Reed (“Reed Aff.”) at ¶ 10. Pursuant to G.L. c. 223A, § 3(e), this Court may still exercise personal jurisdiction over █████, because █████ has an interest in real property within the Commonwealth.

FACTUAL ALLEGATIONS

8. The property that is the subject of this Petition is located at █████, Athol, Massachusetts (the “Property”). Respondents █████ and █████ are the record owners of the Property, which in its present condition is unfit for human habitation and endangers or materially impairs the health, safety, and well-being of occupants, neighbors, and/or the public. *See* 105 CMR 410.750.

9. The Property is not secured against unlawful entry in violation of 105 CMR 410.480(A and E), allowing easy access for trespassers and/or vermin. *See* Exhibit III, Affidavit of Deborah Karan (“Karan Aff.”) at ¶¶ 6(a), 7-11.

10. The Property is not weather-tight due to the open doors and open/broken windows in violation of 105 CMR 410.501(A)(1), creating the potential for water damage and mold growth. *See* Karan Aff. at ¶¶ 6(b), 7-11.

11. The Property's interior and exterior contain a significant accumulation of trash, rubbish, and debris in violation of 105 CMR 410.602(A and B), creating conditions favorable for vermin. *See* Karan Aff. at ¶¶ 6(c), 7-11.

12. The Property is believed to have damaged interior walls and floors in violation of 105 CMR 410.500. *See* Karan Aff. at ¶ 4.

13. The Property's present condition creates a significant risk of harm to the public's health and safety, including without limitation the Property's neighbors, trespassers and any unauthorized occupants who may use this property for shelter or to engage in any illegal activities, and to emergency personnel who may be called to respond to any call to service at this Property. As such, it constitutes a public nuisance which, left unabated, justifies civil enforcement at common law, in addition to remedies otherwise provided by statute.

14. On September 24, 2012, the Office of the Attorney General issued a certified letter to the Respondents, describing the conditions present at the Property and the Commonwealth's intent to file a receivership case should the Respondents fail to bring the Property back into compliance with the Code. Respondents [REDACTED] and [REDACTED] do not appear to have received this letter, and the Office of the Attorney General has been unable to locate alternate contact information for Ms. [REDACTED]. *See* Reed Aff. at ¶ 6; *see* Ward Aff. at ¶ 12.

15. Respondent [REDACTED] never responded in any way to the Attorney General's letter, except to indicate through CT Corporation System that it no longer did business in

Massachusetts and that CT Corporation System could no longer accept service on [REDACTED]'s behalf. *See* Reed Aff. at ¶¶ 9-10.

16. Respondent [REDACTED] did respond to the Attorney General's letter, through its attorneys, and indicated that it would ensure that the Code violations at the Property were remedied during the pending foreclosure proceeding. However, subsequent site visits revealed that despite the work allegedly performed by [REDACTED], the Property still exhibited multiple Code violations posing a severe threat to the public health and safety. *See* Reed Aff. at ¶¶ 13-15; *see* Karan Aff. at ¶¶ 8-11.

17. The Respondents' failure to restore the Property to full compliance with the Code poses an immediate danger to the health, safety and well-being of the abutters and general public. The possibility of vandalism, trespass and other illegal activities pose a significant risk that the Property will be destroyed beyond repair without this Court's intervention and the appointment of a receiver. Unless action is taken immediately, the conditions will continue unabated, and the public will continue to face risks to its safety as this property continues to deteriorate.

18. In order to determine the scope and cost of the work required to restore the Property to compliance with all applicable codes, any potential receiver must be permitted to access the Property's interior and exterior for the purpose of conducting a full inspection. *See* Exhibit IV, Affidavit of Michael O'Rourke ("O'Rourke Aff.") at ¶¶ 6-7.

RELIEF REQUESTED

WHEREFORE, the Attorney General respectfully requests this court to:

1. Schedule a hearing for the appointment of a receiver for the Property;

2. Appoint a receiver for the Property pursuant to the Court's general equitable powers and G.L. c. 111, § 127I for the limited purpose of accessing the exterior and interior of the Property and conducting an inspection to assess the feasibility of repairs that will be necessary to bring the Property into conformity with the State Sanitary Code and other applicable codes and ordinances;

3. Grant such additional relief as the Court deems just and proper.

Respectfully submitted,

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ATTORNEY GENERAL
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Dated: May __, 2013.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss:

HOUSING COURT DEPARTMENT
WORCESTER DIVISION

Civil Action No. [REDACTED]

ATTORNEY GENERAL for the
COMMONWEALTH OF MASSACHUSETTS
and the TOWN OF ATHOL,

Petitioners,

v.

[REDACTED] as co-owner of the property
located at [REDACTED], Athol,
Massachusetts; [REDACTED] as co-owner
of the property located at [REDACTED],
Athol, Massachusetts; [REDACTED]

[REDACTED] as mortgagee and party
with an interest in the property located at [REDACTED]
[REDACTED], Athol, Massachusetts; and
[REDACTED].

[REDACTED] as mortgagee and party with an interest in the
property located at [REDACTED], Athol,
Massachusetts,

Respondents.

**PROPOSED ORDER ON THE PETITION TO ENFORCE THE STATE SANITARY
CODE AND FOR APPOINTMENT OF A RECEIVER**

- 1. Introduction:** Pursuant to G.L. c. 111 § 127I and the general equity powers of this Court, following a hearing on June 18, 2013, with respect to the violations of the State Sanitary Code, 105 CMR 410 *et seq.* ("Code"), at the Property located at [REDACTED], Athol, Massachusetts (the "Property"), the Court finds that unless a receiver is appointed these violations will not be promptly remedied, and that such appointment is in the best interest of the Property and of the public.

2. **Parties:** The Petitioner in this action, the Attorney General for the Commonwealth of Massachusetts is a public official under the constitution and laws of the Commonwealth of Massachusetts. The Petitioner, the Town of Athol (the “Town”), is a municipal corporation under the laws of the Commonwealth of Massachusetts (collectively, “Petitioners”). The respondents are [REDACTED] (“[REDACTED]”) and [REDACTED] (“[REDACTED]”), title holders of record; [REDACTED] (“[REDACTED]”), as mortgagee of record; and [REDACTED] (“[REDACTED]”), as mortgagee of record (collectively, “Respondents”).

3. **Procedural Posture:** The Property is an abandoned and vacant single-family dwelling which fails to meet the minimum standards of decency for human habitation. By certified letter dated September 24, 2012, the above-referenced violations were brought to the attention of the Respondents. The Respondents were notified of the Petitioners’ intention to seek enforcement of the Code and that Petitioners may petition the Court for appointment of a receiver. To date, the Respondents have failed to undertake or are not capable of undertaking the repairs required to bring the Property into compliance with the Code.

On May 29, 2013, the Petitioners filed this action, seeking the enforcement of the Code and the appointment of Worcester County Management Corp., 53 Blue Bell Rd., Worcester, MA 01606 as receiver of the property.

On May 31, 2013, the Petitioners provided Respondents [REDACTED], [REDACTED], and [REDACTED] with notice of the hearing on the Petition by delivering a copy of the summons and order of notice, together with the Petition and all supporting documents, to [REDACTED] at his last and usual place of abode; in hand to CT Corporation System, Boston, Massachusetts, as registered agent for [REDACTED] and in hand to the Massachusetts Secretary of State on behalf of [REDACTED] which does not currently maintain a registered agent for service of process within the Commonwealth.

On June 11, 2013 and June 13, 2013, the Petitioners provided Respondent [REDACTED] with notice of the hearing on the Petition by posting a legal notice on the front door of the Property and by publishing a legal notice in the Athol Daily News, as allowed by this Court on May 29, 2013.

4. **Description and Condition of the Premises:** The Property is an unoccupied single-family dwelling which has been left vacant and abandoned by the respondents for over a year. It has numerous long standing Code violations which pose a serious risk to the health, safety and well being of abutters and residents of the community, and render the Property unfit for human habitation. For example, the Property contains a significant accumulation of trash, rubbish, and debris in violation of 105 CMR 410.602 and 410.750(I), creating conditions favorable for attracting and harboring vermin. Additionally, the Property is not secured against unlawful entry and is not

“weather tight” in violation of 105 CMR 410.480(A) and (E) and 410.501(A)(1). The Code violations present at the Property have the ability to impact the health and safety of the occupants of neighboring homes and the public in general.

The present abandoned state of the Property creates a high risk of vandalism, trespass, fire damage and personal injury to abutters and residents of the community. As the Property continues to deteriorate and create greater risks to the general public, there is also a significant risk that it will be destroyed beyond repair without the intervention of this court.

THEREFORE, following a hearing held on June 18, 2013, the Court hereby orders as follows:

5. **Receiver:** Worcester County Management Corp., 53 Blue Bell Rd., Worcester, MA 01606 is hereby appointed Receiver of the Property (“Receiver”). This appointment is effective upon the signing of this Order, and will last two hundred and forty (240) days, subject to extensions granted by the Court upon a showing of good cause by the Receiver or other party with an interest in these proceedings.
6. **Authority and Duties of Receiver:** The authority and duties of the Receiver shall be as follows:
 - a) Promptly repair the Property and maintain it in a safe and healthful condition.
 - b) Employ companies, persons or agents to perform its duties hereunder.
 - c) Deposit all amounts received on account of the Property into a separate account under the control of the Receiver.
 - d) Disburse funds received by the Receiver on account of the Property as follows, in the following order of priority:
 - i. First, to reimburse the Receiver for its actual out-of-pocket expenses incurred in its capacity as Receiver, including without limitation its reasonable legal fees, its allocable overhead and labor costs, its cost of incorporation, its costs of negotiation of the terms of this receivership and costs of liability insurance (“Receiver Out-Of-Pocket Expenses”);
 - ii. Then, to make repairs to conditions which violate the State Sanitary, fire safety, electrical and building codes or ordinances;
 - iii. Next, to make payments, to the extent possible, towards any unpaid taxes, assessments, penalties or interest;
 - iv. Finally, to make payments, to the extent possible, to any payments due any mortgagee or lien holder of record
 - e) The Receiver shall file with the Court and serve upon all parties within fourteen (14) days of the effective date of this Receivership, a detailed line-item budget for the necessary repairs, which shall be based upon the Receiver’s full inspection of the Property.
 - f) The Receiver shall file with the Court and serve upon all parties within sixty (60) days of the effective date of this Receivership, a report setting forth all expenses

and disbursements of the Receivership, with attached receipts, and an accounting of all funds received by the Receiver during the period covered by such report.

- g) After the filing of the initial report described in subsection (f), the Receiver shall file with the Court and serve upon all parties every two (2) months thereafter, an updated report setting forth all expenses and disbursements of the Receivership, with attached receipts, and an accounting of all such receipts. If the Property becomes occupied in the future, the report shall also include a list of all tenants residing at the Property, together with a list of current rental amounts and the status rental payments to date. The Receiver shall serve upon the Respondents, in a timely manner and to an address provided by the Respondents appearing in Court, copies of all reports, notices and other documents which are required of the Receiver under the terms of this Order. If the Respondents fail to appear or otherwise fail to provide an address for service, then the Receiver shall be obliged only to file that report with the Court.
 - h) The Receiver may rent the vacant Property when it is in current compliance with the State Sanitary Code. Policies regarding the first month's rent, last month's rent and security deposit for new tenancies shall be left to the discretion of the Receiver.
 - i) Should the Property become occupied, the Receiver may collect and receive all rental revenues due from tenants or occupants of the Property as an agent of the Court on or after the first rental period following the effective date of this Order. It shall be the responsibility of the Receiver under this paragraph to account for all receipts according to the standards set forth in subparagraph 6(f).
7. **Bond:** The Receiver shall not be required to furnish bond or surety, but shall provide proof of suitable liability insurance to be approved by the Court.
8. **Claims against Receiver:** Except as provided in Paragraph 9 of this Order, any residents or occupants of the Property, whether past or future, may not seek money damages from any funds administered by the Receiver. All residents or occupants of the Property retain any and all rights under statutes or common law to proceed against the Respondents, or any other appropriate party, other than the Receiver, and/or their agents or employees for money or other damages for claims arising out of the occupancy of the Property, including any damages that may be incurred or claims that may arise while the Property is under the receivership, to the extent provided by law.
9. **Liability and Agency:** As set forth in G.L. c. 111 § 127I, liability of the Receiver shall be limited to the assets and income of the receivership, including proceeds of insurance purchased by the Receiver in capacity as receiver. The Receiver shall in no instance be personally liable for actions or inactions within the scope of the Receiver's capacity as receiver. No suit shall be brought against the Receiver except as approved by the Court.
10. **Priority Liens and Mortgages:** As set forth in G.L. c. 111 § 127I, the Receiver shall have a lien, effective when recorded in the registry for which the Property is located,

with priority over all other liens or mortgages except municipal liens, to secure payment of any costs incurred and repayment of any loans for repairs, operation, maintenance or management of the Property. The Receiver's lien may be assigned to lenders for the purpose of securing loans for repair, operation, maintenance or management of the Property.

11. **Notice to Creditors:** The Petitioners shall send a copy of this Order to all mortgages and lien holders of record, if any, a list of which is to be provided to the Petitioners by the Respondents.
12. **Sale of the Property:** The Property shall not be sold, encumbered or placed under contract for sale without the prior leave of the Court.
13. **Duties of the Respondents:** Within 48 hours of the signing of this Order, the Respondents shall transfer to the Receiver the right to obtain all keys to the apartments and common areas of the premises and its rent roll for all apartments at the Property. The Respondents shall provide the Receiver with reasonable advance notice prior to entering any part of the Property. Within seven (7) days of the signing of this Order, the Respondents shall provide to the Receiver copies of all documents necessary to manage and maintain the property and shall provide the following information:
 - a) Mortgages and Liens: the name and address of all mortgages and lien holders of record; the amount of the liens or mortgages.
 - b) Insurance: the name, address, and telephone number of all insurance companies and their agents providing insurance coverage for the Property; the amount and type of coverage; the amount and due dates of premiums.
 - c) Utilities: the amount of the most recent water, sewer, gas and electric bills; the amount of any outstanding balance; and the dates and amounts of the last payment.
 - d) Real Estate Tax: the amount of the most recent real estate tax bill; the amount of any outstanding balance; the date and amount of the last payment.
 - e) Contracts: copies of all warranties for prior work done, service contracts for ongoing maintenance (e.g., for extermination) and all contracts or bids for repairs.
 - f) Other: all information relevant to any outstanding expenses relating to the Property.
14. **Further Court Order:** The Petitioners, the Respondents, the Receiver and other interested parties shall have the right to request from the Court, by motion and with advance notice, further orders consistent with G.L. c. 111 § 127I, common law, or the terms of this Order. In the event of emergencies, service of motions to parties on this action by facsimile transmission shall be acceptable.
15. **Review by Court:** The foregoing Order shall remain in effect for two hundred and forty (240) days. The Receiver and all other affected parties shall report on the Receiver's progress to the Court on July 2, 2013 at 2 o'clock p.m.
16. **Effective Date:** This Receivership shall take effect on _____.

So entered on this ____ day of _____, 2013.

Hon. Timothy F. Sullivan
Justice, Worcester Housing Court