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HAMILTON COUNTY PROBATE COURT
JAMES CISSELL, JUDGE

TRUST U/W ETHAN STONE FBO VARIOUS CHARITIES
CASE NO. 19000000176

APPLICATION TO APPROVE SETTLEMENT AND GENERAL RELEASE OF CLAIMS AND CONVEYANCE OF CERTAIN REAL ESTATE

Pursuant to Ohio Revised Code 2101.24(N), the Fifth Third Bank, Successor Trustee of the Trust under the Will of Ethan Stone ("the Trust"), moves this Court to approve its execution and implementation of the Settlement Agreement and General Release of Claims attached hereto as Exhibit A. The grounds for this motion are stated in the memorandum which follows.

Of Counsel:

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Respectfully submitted,

Stephen L. Black

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MEMORANDUM

I. The Foreclosure Suit

On October 22, 2012, Huntington National Bank filed a mortgage foreclosure action in the Hamilton County Court of Common Pleas against Collins Riverside Development LLC and its principals (Case No. A1208332). Collins sought judgment on a certain promissory note executed by the defendants in the face amount of $1,550,000 and foreclosure on 52 parcels of real estate that had been mortgaged to it to secure the indebtedness. Later Huntington's complaint was amended to seek foreclosure on a total of 58 properties.

Huntington National Bank joined to the foreclosure proceeding all parties of record who had or may have had an interest in the real estate in question. In doing so, it named as a defendant the Fifth Third Bank, on account of the various ground leases entered into by Ethan Stone. A number of the properties in the foreclosure proceeding were subject to these ground leases.

The Fifth Third Bank, as successor trustee, filed an answer in the foreclosure proceeding to assert its interest in the parcels for which it held the fee interest by reason of a certain 1974 deed from the State of Ohio. It further cross-claimed against Collins Riverside Development LLC for the unpaid rents due under the ground leases in effect on the properties in question.

In response to the cross-claim filed by Fifth Third, Collins filed an answer denying liability and its own cross-claim against the Bank as trustee. In that cross-claim, Collins claimed that it had acquired marketable record title to the parcels in question. It sought a declaratory judgment as to the fee simple ownership of the properties and an order quieting title in it. The cross-claim laid out theories of recovery based on the Ohio Marketable Title Act and on the doctrine of adverse possession.

In due course, the Fifth Third Bank filed a motion for partial summary judgment to dismiss Collins' cross-claims, and Collins filed a cross-motion for partial summary judgment on its claims against the bank. Those motions are currently pending before Judge Myers in the Court of Common Pleas.

II. <u>The Proposed Settlement</u>.

After preliminary negotiations conducted by counsel, the Fifth Third Bank and Collins Riverside Development LLC have arrived at a written settlement agreement which is intended to put to rest the present claims in the foreclosure suit. The method used to settle the claims is for the Bank as trustee to convey to Collins the Ethan Stone Trust's interest in 12 parcels for $550 per parcel and for the Bank as trustee to relinquish any claims for past due ground rents. The scope of the settlement includes the properties for which the Bank asserted claims for past due rent, and certain additional properties owned by Collins not included in the Bank's cross-claim. The terms of the settlement are fully stated in the agreement attached as Exhibit A. The parties believe that the settlement will dispose of all claims that have been or might have been asserted.

III. <u>The Proposed Settlement is in the Best Interest of the Trust Estate</u>.

The Fifth Third Bank as Successor Trustee believes that this settlement is in the best interests of the Trust. Considerable uncertainly confronts the Bank if it proceeds with the litigation of its claims in the foreclosure action. The Ethan Stone Trust is currently without funds to pay the expenses of litigation, to say nothing of the title work and factual research that would have to be completed in order to advance its claims for past due rents. The monies tendered by Collins for quitclaim deeds to the 12 properties in question are consistent in amount with the Bank's past practice in conveying fee simple title to purchasers of leasehold interests in properties held in the Trust. In short, the settlement makes good business sense for both the Trust and for Collins given the uncertainty and high cost of litigating further.

IV. Conclusion.

Ohio Revised Code §2101.24(N) gives this Count jurisdiction to authorize the sale of any estate created by will if the estate is held in trust. In the present case, the will of Ethan Stone created a trust estate that held holds the fee simple interest in numerous properties subject to ground leases. It is in the best interest of the Trust to convey this interest. This Court should approve the proposed settlement for this reason.

Respectfully submitted,

Stephen L. Black

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Successor Trustee
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(513) 310-0777

Of Counsel:

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Certificate of Service

I hereby certify that a copy of the foregoing application has been transmitted by U.S. Mail to Michael DeWine, Ohio Attorney General, Charitable Law Section, 30 East Broad Street, 17th Floor, Columbus, Ohio 45215; to the Convalescent Hospital for Children and Orphan Asylum, c/o Elizabeth A. Stautberg, Statutory Agent, 333 Burnet Avenue, Cincinnati, Ohio 45229; to Maple Knoll Communities, Inc., c/o GH&R Business Services, Inc., Statutory Agent, 1900 Fifth Third Center, 511 Walnut Street, Cincinnati, Ohio 45202; and to G. Robert Hines, Esq., Attorney for Collins Riverside Development LLC, 810 Sycamore Street, First Floor, Cincinnati, Ohio 45202 this 11th day of February, 2014.

Stephen L. Black

Stephen L. Black

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Exhibit A

SETTLEMENT AGREEMENT AND GENERAL RELEASE OF CLAIMS

This Settlement Agreement and General Release of Claims ("this Agreement") is made and executed by **FIFTH THIRD BANK, Successor Trustee of the Ethan Stone Trust ("FIFTH THIRD BANK")**, and **COLLINS RIVERSIDE DEVELOPMENT LLC, an Ohio limited liability company ("COLLINS RIVERSIDE")** (jointly hereinafter referred to as **"Releasees"**).

WHEREAS, there is pending litigation between the parties being prosecuted against the other in Hamilton County Court of Common Pleas Case No. A1208332, captioned The Huntington National Bank vs. Collins Riverside Development LLC, et al., wherein FIFTH THIRD BANK filed its cross-claim as Successor Trustee of the Ethan Stone Trust against COLLINS RIVERSIDE demanding, among other relief, a money judgment against COLLINS RIVERSIDE for a purported liability for unpaid ground rents due it as a result of it holding the fee simple title to Section 29 of Storrs Township under a Governor's Deed filed April 30, 1974 in Deed Book 3964, Page 920, Hamilton County, Ohio Records, and otherwise, as asserted therein;

WHEREAS, COLLINS RIVERSIDE has denied any liability for the claims asserted by FIFTH THIRD BANK and filed its cross-claim for a declaratory judgment and to quiet title to any interest of FIFTH THIRD BANK in the real estate which is the subject of the litigation; and

WHEREAS, COLLINS RIVERSIDE and FIFTH THIRD BANK desire to compromise, settle, fully release and discharge any and all claims which they may have had or now have against each other relating to the real estate which is the subject of the litigation, and to give each other assurances that neither party will hereafter assert, directly or indirectly, any claim or allegation released in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements set forth below, the adequacy and sufficiency of which are hereby acknowledged, FIFTH THIRD BANK and COLLINS RIVERSIDE hereby covenant and agree as follows:

1. CONSIDERATION. In consideration of the promises, covenants and agreements set forth herein, and other valuable consideration, the parties agree that:

a. FIFTH THIRD BANK will execute and deliver for prompt recordation four (4) separate Quit Claim Deeds conveying all of its right, title and interest in and to the following described parcels to COLLINS RIVERSIDE:

(i) 2500 River Road, Cincinnati, Ohio 45204 - Parcel No. 151-02-073;
(ii) 2519 Galvin Avenue, Cincinnati, Ohio 45204 - Parcel No. 151-02-090;
(iii) 2632 River Road, Cincinnati, Ohio 45204 - Parcel No. 151-03-61;
(iv) 2628 River Road, Cincinnati, Ohio 45204 - Parcel No. 151-03-063;
(v) 2772 River Road, Cincinnati, Ohio 45204 - Part Parcel No. 152-40-087
(vi) 2760 River Road, Cincinnati, Ohio 45204 - Parcel No. 152-40-029
(vii) 2756 River Road, Cincinnati, Ohio 45204- Parcel No. 152-40-119
(viii) 2752 River Road, Cincinnati, Ohio 45204 - Parcel No. 152-40-080
(ix) 2748 River Road, Cincinnati, Ohio 45204 - Parcel No. 152-40-061
(x) 2746 River Road, Cincinnati, Ohio 45204 - Parcel No. 152-40-121
(xi) 2488 River Road, Cincinnati, Ohio 45204 - Parcel No. 151-2-014
(xii) 2790 River Road, Cincinnati, Ohio 45204 - Parcel Nos. 152-40-024

b. COLLINS RIVERSIDE will pay to FIFTH THIRD BANK the total sum of $6,600.00 as full and final consideration to compromise, settle and fully release and discharge all of its claims which have been asserted or which could be asserted against COLLINS RIVERSIDE in the pending litigation.

c. FIFTH THIRD BANK and COLLINS RIVERSIDE will execute and file in the pending litigation an agreed Stipulation of Dismissal with Prejudice after the payment of the $6,600.00 is made by COLLINS RIVERSIDE to FIFTH THIRD BANK.

2. **RELEASE OF COLLINS RIVERSIDE BY FIFTH THIRD BANK.** By the execution of this Agreement, FIFTH THIRD BANK, in its capacity as Successor Trustee of the Ethan Stone Trust, its successors and assigns, fully, completely, irrevocably and unconditionally release and forever discharges COLLINS RIVERSIDE from any and all civil claims, counterclaims, actions, causes of actions, damages, or liabilities at law or equity, known or unknown, existing up to the date of this Agreement, which have been or which could have been asserted in the pending litigation between the parties related to real estate owned by COLLINS RIVERSIDE in Section 29 of Storrs Township, Hamilton County, Ohio.

3. **RELEASE OF FIFTH THIRD BANK BY COLLINS RIVERSIDE.** By execution of this Agreement, COLLINS RIVERSIDE, for itself and its successors and assigns, completely, irrevocably and unconditionally releases and forever discharges FIFTH THIRD BANK, in its capacity as Successor Trustee of the Ethan Stone Trust, its successors and assigns, from any and all legal, equitable or other claims, counterclaims, actions, causes of actions, damages, or liabilities at law or equity, known or unknown, existing up to the date of this Agreement.

4. **NO OTHER CLAIMS.** FIFTH THIRD BANK states and represents that it has no pending or outstanding civil claims in its capacity as Successor Trustee of the Ethan Stone Trust against COLLINS RIVERSIDE. COLLINS RIVERSIDE states and represents that it has no pending or outstanding claims or charges against FIFTH THIRD BANK, in its capacity as Successor Trustee of the Ethan Stone Trust. FIFTH THIRD BANK, in its capacity as Successor Trustee of the Ethan Stone Trust, further states and represents that, except to the extent such a promise is prohibited by applicable law, it will not file any claims or charges of any sort in the future based on any act or omission of COLLINS RIVERSIDE up to and including the date it executes this Agreement. COLLINS RIVERSIDE further states and represents that except to the extent such a promise is prohibited by applicable law, it will not file any civil claims of any sort in the future based on any act or omission of FIFTH THIRD BANK, in its capacity as Successor Trustee of the Ethan Stone Trust, up to and including the date they execute this Agreement.

5. **NON-DISPARAGEMENT**. As a material inducement for the parties to enter into this Agreement, the parties agree not to make any disparaging or negative statements, oral or written, to anyone concerning or in any way relating to the other hereinafter from the date of this Agreement.

6. **ADMISSION**. FIFTH THIRD BANK and COLLINS RIVERSIDE agree that this Agreement is made in the interest of anticipating and fully and forever compromising, settling and resolving all unsettled issues, matters, disputes and potential litigation. Nothing contained in this Agreement shall constitute any acknowledgment or admission of liability.

7. **VENUE**. This Agreement shall be governed by the laws of the State of Ohio and shall bind the parties thereto and their respective heirs, estates, successors, assigns, and all other persons or entities in privy with them. Hamilton County, Ohio is the sole and exclusive venue for all proceedings arising out of this Agreement.

8. **SEVERABILITY**. The provisions of this Agreement are severable and if any part thereof is found to be invalid or unenforceable, the parties shall use their best efforts to substitute a valid, legal and enforceable provision, which insofar as practical, implements the purpose of this Agreement. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof, or of any other provision. The other provisions shall remain valid and enforceable notwithstanding.

9. **ACKNOWLEDGEMENT**. Prior to executing this Agreement, FIFTH THIRD BANK and COLLINS RIVERSIDE acknowledge that: (i) they have completely read this Agreement and fully understand the contents thereof; (ii) they have had the opportunity to consult with an attorney(s); (iii) they are fully competent and authorized to execute this Agreement and fulfill all of its terms and conditions; and (iv) this Agreement is being executed voluntarily, without coercion, duress, or undue influence.

10. **ENTIRE AGREEMENT**. This Agreement constitutes the full agreement and entire understanding between the parties. It supersedes any and all prior agreements or understandings between the parties. This Agreement has been executed in separate counterparts by each of the respective signatories, and an electronic copy or facsimile copy shall be accepted as an original. This Agreement may be modified only by a written agreement signed by FIFTH THIRD BANK and COLLINS RIVERSIDE.

IN WITNESS WHEREOF, FIFTH THIRD BANK, as Successor Trustee of the Ethan Stone Trust, fully authorized by an Order entered in Hamilton County Probate Court Case No. 1900-000176 for the Estate of Ethan Stone, Deceased, and COLLINS RIVERSIDE DEVELOPMENT LLC, an Ohio limited liability company, duly authorized by Resolution, has hereunto set their hands on the day and year written below.

FIFTH THIRD BANK, Successor Trustee
of the Ethan Stone Trust

By:____________________________
Name:__________________________
Its Senior Trust Officer
Dated: January _____, 2014

COLLINS RIVERSIDE DEVELOPMENT, LLC

By:____________________________
F. Thomas Conway, Member
Dated: January _____, 2014

By:____________________________
Arlon R. Brown, Member
Dated: January _____, 2014

This instrument prepared by:

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