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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION**

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**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiffs,**

**v.**

**ART INTELLECT, INC., a Utah  
corporation, d/b/a MASON HILL and  
VIRTUAL MG, PATRICK MERRILL  
BRODY, LAURA A. ROSER, and  
GREGORY D. WOOD,**

**Defendants.**

**RECEIVER'S MOTION FOR ORDER  
APPROVING SETTLEMENT  
AGREEMENT AND TRANSFER AND  
ABANDONMENT OF PROPERTIES**

**Case No. 2:11-cv-00357 TC**

**Honorable Tena Campbell**

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R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") of Art Intellect, Inc. d/b/a Mason Hill and VirtualMG requests the Court's approval of a settlement agreement reached between the Receiver and the Kenneth J. Hills and Marci Hills Retirement Profit Sharing Plan ("Hills"). A copy of the proposed settlement agreement is attached Exhibit A. The proposed settlement agreement involves the Receiver granting deeds in lieu of foreclosure for three properties owned by the Receivership Estate and abandoning claims to a fourth property, in

exchange for the payment of \$25,000.00 to the Receiver by Hills. The proposed settlement agreement is described in more detail in the accompanying memorandum.

This motion is brought pursuant to Paragraph 40 of the Order Granting Plaintiff's *Ex Parte* Motion for Temporary Restraining Order, *Ex Parte* Order Freezing Assets, *Ex Parte* Order Appointing Receiver and Other Emergency Relief dated April 18, 2011 (the "Order") [Docket No. 5], which authorizes the Receiver "to sell, and transfer clear title to, all real property in the Receivership Estates" using such procedures as may be required by this Court.

A proposed Order is submitted herewith.

DATED this 20<sup>th</sup> day of July 2011.

**CLYDE SNOW & SESSIONS**

/s/ Jennifer A. James

Jennifer A. James

Walter A. Romney, Jr.

*Attorneys for Court-Appointed*

*Receiver R. Wayne Klein*

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the above **RECEIVER'S MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT AND TRANSFER AND ABANDONMENT OF PROPERTIES** was served via the CM/ECF system on this 20<sup>th</sup> day of July 2011 on the following:

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*Court-Appointed Receiver*

/s/Jennifer A. James

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# **Exhibit “A”**

## **SETTLEMENT AGREEMENT AND RELEASE**

### **KENNETH J. HILLS AND MARCIA HILLS RETIREMENT PROFIT SHARING PLAN**

This Settlement Agreement and Release (“Agreement”) is entered into this 16<sup>th</sup> day of July, 2011 (“Effective Date”), by and between Kenneth J. Hills and Marcia Hills, on behalf of the Kenneth J. Hills and Marcia Hills Retirement Profit Sharing Plan (collectively “Hills”), and Wayne Klein, as the duly appointed Receiver (“Receiver”) for Art Intellect, Inc. d/b/a Mason Hill and VirtualMG (“Art Intellect”) and the assets of Patrick M. Brody (“Brody”) and Laura Roser (“Roser”). The Hills and the Receiver are collectively referred to as the “Parties.”

### **RECITALS**

WHEREAS, on April 18, 2011, the U.S. Securities and Exchange Commission (“SEC”) filed a civil enforcement lawsuit against Art Intellect, Brody, and Roser accusing them of engaging in securities fraud in the process of operating an investment Ponzi scheme. (*SEC v. Art Intellect, Mason Hill and Virtual MG*, Case No. 2:11CV0035&, Utah District Court). In connection with the SEC lawsuits, the U.S. District Court of Utah appointed Receiver to take control of Art Intellect and the assets of Brody and Roser. The same day, the Court also imposed an asset freeze on all assets of Art Intellect and its affiliated entities, including properties owned by Art Intellect and bank accounts controlled by it; and

WHEREAS, the Hills had loaned \$234,000.00 (\$60,000 on Pullman, \$55,000 on SW 1<sup>st</sup> Terrace, \$51,000 on 20<sup>th</sup> St, and \$68,000 on 29<sup>th</sup> Street). These loans by the Hills are secured by recorded mortgages on five properties in Lee County, Florida which are owned by Mason Hill/Art Intellect or Roser and which are under the control of the Receiver: i) 112/114 Pullman Street, ii) 1138 SW 1<sup>st</sup> Terrace, iii) 3963/3965 20<sup>th</sup> Street West, iv) 5217/5219 29<sup>th</sup> Street SW, and v) 340/342 Rogen Street; and

WHEREAS, the Parties dispute how much the Receiver is obligated to pay the Hills in satisfaction of their loans and dispute the strength and extent of the security interest of the Hills in the properties; and

WHEREAS, resolution of the disputed claims of the Parties through litigation would be complex, lengthy, and expensive for the Parties; and

WHEREAS, the Parties seek to compromise and settle all disputes between them related to loans made by the Hills to Mason Hill/Art Intellect and mortgages and promissory notes given to the Hills by Mason Hill/Art Intellect, believing such settlement to be in their respective best interests and in the best interests of the other property buyers who provided money to Mason Hill/Art Intellect, in light of the expense and uncertainty of litigation, and without admission of any liability, fact, claim, or defense, on the terms and conditions set forth herein.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for good consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Transfer of Properties to the Hills. Upon approval by the Court, as described below, the Receiver will transfer to the Hills his interest in the four properties listed here (“Properties”) in the following manner:
  - a. 112/114 Pullman Street: The Receiver along with Laura Roser will sign documents granting the Hills a deed in lieu of foreclosure to this property;
  - b. 1138 SW 1<sup>st</sup> Terrace. The Receiver along with Laura Roser will sign documents granting the Hills a deed in lieu of foreclosure to this property;
  - c. 5217/5219 29<sup>th</sup> Street SW. The Receiver along with Laura Roser will sign documents granting the Hills a deed in lieu of foreclosure to this property;
  - d. 3963/3965 20<sup>th</sup> Street W. The Receiver will provide a letter to the Hills and a copy of an order from the Court permitting the Receiver to abandon any claim to this property and releasing it from the effects of the asset freeze.
  
2. Terms Relating to the Transfers of the Property. In connection with the transfers of interest in the Properties from the Receiver to the Hills:
  - a. Security Deposits: Security deposits for three current tenants of the Properties, totaling \$1,875.00 will be sent to the property manager who is managing these Properties for inclusion in the amounts being held in escrow for these three tenants.
  - b. Rents, Expenses: The rents, tenant deposits, and expenses for these 1<sup>st</sup> Terrace, Pullman, and 29<sup>th</sup> Street Properties will be allocated to the Hills as of August 1, 2011, even if the Receiver signs the deed in lieu of foreclosure after that date. The rents and expenses on the 20<sup>th</sup> Street property will be prorated as of the date that the Hills file papers to foreclose on that property.
  - c. Taxes: If there are any unpaid taxes, they will be prorated by the Title Company up to the recording date of the Deeds in Lieu of Foreclosure. Taxes on the 20<sup>th</sup> Street property will be prorated to the foreclosure auction date or the sale of the property whichever shall first occur.
  - d. Insurance: Receiver shall keep all properties insured at market value with the Hills as the beneficiary for the amount of the mortgage until the date of the recording of the Deed in Lieu of Foreclosure. At that time the Insurance will become the responsibility of the Hills.

3. Payment to the Receiver: The Hills will pay to the Receiver \$25,000.00 within 60 days of the date of the Court order approving this Agreement or on the date the first Property is sold by the Hills, whichever occurs first.
4. Release of Mortgage on Rogen Street Property: Upon Court approval of this Agreement and the transfer of the Properties from the Receiver to the Hills, the Hills will execute a release of its mortgage on 340/342 Rogen Street and any claim to that property or promissory note relating to that property.
5. Motion and Approval by the Court. The Hills acknowledge that this Agreement is subject to approval by the Court. The Receiver will file a motion with the Court seeking: a) approval of the terms of this Agreement, b) permission for the Receiver to transfer or abandon his interests in the four Properties, and c) releasing the asset freeze relating to the four Properties. The Receiver's motion will describe the substantive terms of this Agreement.
6. Warranties by the Hills. The Hills warrant that they do not have any other claims or liens on any other properties owned by Art Intellect, Brody, or Roser. The Hills further warrant that the financial transaction information they have provided to the Receiver in connection with settlement discussions leading up to this Agreement is accurate and complete.
7. Dismissal of Lawsuit and Release. If the Court issues an order approving this Agreement, that Order and this Agreement will constitute a complete settlement, release, and waiver of all claims, causes of action, and counterclaims the Parties have against each other, or that they might have against one another, whether alleged or not, and whether discovered or not, as of the date of this Agreement, subject to the accuracy of the warranties in paragraph 6.
8. Successors and Assigns. The terms of this Agreement shall be binding upon the Parties and their agents, employees, successors, assigns, affiliated entities, and insurers.
9. Fees and Costs. The Parties shall bear their own fees and costs (including, but not limited to, attorneys' fees) incurred in connection with this Agreement and the claims of these Parties.
10. Consultation with Counsel. Each of the Parties to the Agreement represents and warrants that this Agreement has been voluntarily and knowingly executed by the Parties after having had the opportunity to consult with legal counsel. The Parties declare that they know and understand the contents of this Agreement, and that they have executed it voluntarily.
11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument, and will be effective upon execution by all Parties. Facsimile signatures shall be deemed original signatures for all purposes.

**AGREED TO BY AND BETWEEN** the undersigned Parties as of the Effective Date:

**R. Wayne Klein**, on behalf of and as the duly appointed Receiver for, Art Intellect, Inc. and the assets of Patrick M. Brody and Laura Roser:

Wayne Klein, Receiver.

**Kenneth J. Hills (individually and on behalf of the Kenneth J. Hills and Marcia Hills Retirement Profit Sharing Plan):**

Kenneth J. Hills, Managing Member

**Marcia Hills (individually and on behalf of the Kenneth J. Hills and Marcia Hills Retirement Profit Sharing Plan)**

Marcia Hills  
Managing Member



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**Defendants.**

**ORDER GRANTING RECEIVER'S  
MOTION FOR ORDER APPROVING  
SETTLEMENT AGREEMENT AND  
TRANSFER AND ABANDONMENT OF  
PROPERTIES**

**Case No. 2:11-cv-00357 TC**

**Honorable Tena Campbell**

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Based upon the Receiver's Motion for an Order approving Settlement Agreement and Transfer and Abandonment of Properties (the "Motion"), the supporting Memorandum, and good cause appearing therefore, it is hereby

ORDERED that:

1. The proposed Settlement Agreement between Kenneth J. Hills and Marcia Hills, on behalf of the Kenneth J. Hills and Marcia Hills Retirement Profit Sharing Plan and the

Receiver (the "Settlement Agreement") attached as Exhibit A to the Motion is hereby approved and the Receiver is permitted to move forward to implement its terms;

2. The Receiver is authorized to sign deeds in lieu of foreclosure for the Pullman, 1<sup>st</sup> Terrace, and 29<sup>th</sup> Street properties as referenced in the Settlement Agreement;

3. The Receiver is authorized to abandon any claim to, or interest in, the 20<sup>th</sup> Street property and to declare that the 20<sup>th</sup> Street property is no longer deemed property of the Receivership Estate as referenced by the Settlement Agreement; and

4. The four properties referenced in the Settlement Agreement are hereby released from the coverage of the asset freeze imposed by the Court on April 18, 2011.

DATED this \_\_\_\_\_ day of July 2011.

BY THE COURT

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Tena Campbell  
United States District Court Judge