Revised 12/1/16

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF RHODE ISLAND

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In re: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ :

: Case No. \_\_\_\_\_\_\_\_\_\_\_\_

Debtor (s) : Chapter \_\_\_\_

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**MOTION TO AVOID JUDICIAL LIEN OF [LIENHOLDER]**

Debtor(s) [Debtor’s/Debtors’ name(s)] respectfully move(s) to avoid the judicial lien of [lienholder’s name] pursuant to 11 U.S.C. § 522(f)(1)(A), Fed. R. Bankr. P. 4003(d), and R.I. LBR 4003-2. On [petition date], the Debtor(s) filed a voluntary petition for relief under Chapter [X] of the Bankruptcy Code (the “Petition Date”). [Information regarding administration, closure, and reopening of the case if the Debtor(s) seek(s) to avoid a judicial lien in a reopened case.] The Court has jurisdiction over this matter pursuant to 28 USC § 1334, and this is a core proceeding under 28 USC § 157(b)(2)(K).

In support of this motion, and in accordance with R.I. LBR 4003-2(a), the Debtor(s) state(s):

1. The holder of the judicial lien sought to be avoided is [lienholder’s name].
2. The judicial lien of [lienholder’s name] was recorded at Book [number] Page [number] of the [Town/City of \_\_\_, Rhode Island] Land Evidence Records on or about [Month Day, Year] in the amount of $[dollar amount] [If applicable, add: which as a result of interest has increased to approximately $[dollar amount] as of the Petition Date].
3. The judicial lien is against the [Debtor’s/Debtors’] real property located at [insert address] (the “Property”). According to the filed bankruptcy schedules, the Debtor(s) hold(s) an interest in the Property as a [describe nature of the ownership (e.g. sole owner, tenants by the entirety, tenants in common, joint tenant with right of survivorship)] [If the Debtor(s) is/are not the sole owner of the Property, state the percentage ownership interest of the Debtor(s).] The value of the [Debtor’s/Debtors’] interest in the Property is $[dollar amount].
4. The Property is subject to the following liens and encumbrances of record as of the Petition Date [List in order of their priority, including the judicial lien sought to be avoided]:
   1. A first mortgage to [mortgageholder’s name] recorded on or about [Month Day, Year] in the Land Evidence Records of [city/municipality] with an approximate balance of $[dollar amount].
   2. [If applicable, list separately all other mortgages against the Property in the order of the priority of each mortgage and non-judicial lien, the date and place of recording of each, and the approximate balance owed each such mortgage holder or non-judicial lienholder].
   3. A judicial lien held by [lienholder’s name] recorded on or about [Month Day, Year] in the Land Evidence Records of [city/municipality] in the amount of $[dollar amount].
   4. [If applicable, list separately all other non-judicial and judicial liens against the Property, the date and place of recording of the execution pertaining to each such lien, and the approximate balance owed each such lienholder.]

The total amount of all liens against the Property is $[dollar amount]. [Include all mortgages, non-judicial liens, and judicial liens, including the judicial lien sought to be avoided.]

1. [State whether the Debtor(s) has/have previously sought or is/are simultaneously seeking to avoid other liens against the Property].
2. The Debtor(s) elected exemptions under [11 U.S.C. § 522(b)(2) (federal exemptions) / 11 U.S.C. § 522(b)(3) (state exemptions)].
3. The Debtor(s) claimed an exemption in the Property on Schedule C in the amount of $[dollar amount] pursuant to [11 U.S.C. § 522(d)(1) / R.I. Gen. Laws § 9-26-4.1(a) / other exemption if applicable]. The maximum exemption available to the Debtor(s) pursuant to this statutory provision is $[dollar amount].
4. 11 U.S.C. §522(f)(1)(A) permits a debtor to avoid the fixing of a judicial lien on an interest of the debtor in property to the extent that such judicial lien impairs an exemption to which the debtor would have been entitled under 11 U.S.C. §522(b), so long as such lien is a judicial lien and is not a lien to a spouse, former spouse, or child of the debtor for alimony to, maintenance for, or support of such spouse or child. The lien of [lienholder’s name] is a judicial lien as that term is defined by 11 U.S.C. §101(36). Applying the formula set forth in 11 U.S.C. § 522(f)(2)(A):
   1. Amount of lien to be avoided:

[lienholder’s name] $XXXX **Plus**

* 1. Total of all other liens against the Property:

1st Mortgage – [mortgageholder’s name] $XXXX

2nd Mortgage – [mortgageholder’s name] $XXXX  
[List any other holders of mortgages / liens]

$XXXX **Plus**

* 1. Total amount of exemption Debtor(s) could claim:

[11 U.S.C. §522(d)(1) / R.I. Gen. Laws § 9-26-4.1(a) /

other exemption] $XXXX

Resulting Sum $XXXX **Less**

* 1. Value of [Debtor’s/Debtors’] Interest in the Property in

the absence of any mortgages or liens: $XXXX

Exemption Impairment $XXXX

1. Amount of lien of [lienholder’s name] to be avoided $XXXX\*

\*Lien of [lienholder’s name] avoidable [in full / in part]

[Please Note: If the Debtor(s) seeks to avoid multiple judicial liens, either in one motion or in separate motions, the calculation of the impairment for each lien must also comply with 11 U.S.C. § 522(f)(2)(B). See In re Derocha, 503 B.R. 553 (Bankr. D.R.I. 2014).]

1. The sum of the liens and the exemption, minus the value of the [Debtor’s/Debtors’] interest in the Property, is greater than the judicial lien of [lienholder’s name] in the amount of $[dollar amount] and the lien of [lienholder’s name] may be avoided in its entirety [or in part up to $XXX, if applicable].

WHEREFORE, the Debtor(s) respectfully request(s) that the judicial lien of [lienholder’s name] in the total amount of $[dollar amount] be avoided in its entirety [or partially avoided up to the amount of $XXXX] and declared null and void [or partially null and void in the amount of $XXXX] pursuant to 11 U.S.C. § 522(f)(1)(A).

Respectfully submitted,

Debtor(s) [Debtor’s/Debtors’ name(s)],

By [his/her/their] attorney,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_ [Electronic Signature]

Dated: [Month Day, Year]

**NOTICE**

Within fourteen (14) days after service, if served electronically, as evidenced by the certification, and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if served by mail or other excepted means specified, any party against whom such paper has been served, or any other party who objects to the relief sought, shall serve and file an objection or other appropriate response to said paper with the Bankruptcy Court Clerk’s Office, 380 Westminster Street, 6th Floor, Providence, RI 02903, (401) 626-3100. If no objection or other response is timely filed, the paper will be deemed unopposed and will be granted unless: (1) the requested relief is forbidden by law; (2) the requested relief is against public policy; or (3) in the opinion of the Court, the interest of justice requires otherwise.

**SERVICE**

The Debtor shall serve the motion in accordance with R.I. LBR 4003-2(b) and 9013-3(b)(2),

(d)-(e).