

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

ARTHUR NADEL,  
SCOOP CAPITAL, LLC,  
SCOOP MANAGEMENT, INC.,

Defendants.

CASE NO.: 8:09-cv-0087-T-26TBM

SCOOP REAL ESTATE, L.P.,  
VALHALLA INVESTMENT PARTNERS, L.P.,  
VALHALLA MANAGEMENT, INC.,  
VICTORY IRA FUND, LTD,  
VICTORY FUND, LTD,  
VIKING IRA FUND, LLC,  
VIKING FUND, LLC, AND  
VIKING MANAGEMENT, LLC.

Relief Defendants.

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**RECEIVER'S VERIFIED MOTION TO APPROVE THE  
SALE OF REAL PROPERTY LOCATED IN GRAHAM,  
ALAMANCE COUNTY, NORTH CAROLINA**

Pursuant to 28 U.S.C. § 754, Rule 66 of the Federal Rules of Civil Procedure, and Rule 3.01 of the Local Rules of the Middle District of Florida, Burton W. Wiand, as Receiver (the "**Receiver**"), respectfully moves the Court for entry of an order in substantially the form attached as **Exhibit 1** approving the sale of Receivership property located in Graham, Alamance County, North Carolina (the "**Property**") in accordance with the terms of

the Agreement of Sale and Purchase (the “**Agreement**”) between the Receiver and Trinet West, LLC, which is attached as **Exhibit 2**. Although the Property secures a loan made by Wachovia Bank, N.A., n/k/a Wells Fargo Bank, N.A. (“**Wachovia**”), and Wachovia filed a related claim in the claims process (which should be denied for several reasons), as discussed below the Court has the power to approve the sale and to order transfer of the Property free and clear of all claims, liens, and encumbrances. Legal, equitable, and factual circumstances establish this is warranted and in the best interest of the Receivership estate in light of the already substantially reduced value of the Property and the prospect of further significant reductions in its value.

#### **BACKGROUND**

On January 21, 2009, the Securities and Exchange Commission (“**Commission**”) initiated this action to prevent the defendants from further defrauding investors of hedge funds operated by them. That same day, the Court entered an order appointing Burton W. Wiand as Receiver for Defendants Scoop Capital, LLC (“**Scoop Capital**”) and Scoop Management, Inc. (“**Scoop Management**”) and Relief Defendants Scoop Real Estate, L.P. (“**Scoop RE**”); Valhalla Investment Partners, L.P.; Valhalla Management, Inc.; Victory Fund, Ltd.; Victory IRA Fund, Ltd.; Viking IRA Fund, LLC; Viking Fund, LLC; and Viking Management, LLC (the “**Order Appointing Receiver**”). (*See generally* Order Appointing Receiver (Doc. 8).) The Court subsequently granted several motions to expand the scope of the Receivership to include other entities owned or controlled by Arthur Nadel (“**Nadel**”). (*See generally* Docs. 17, 44, 68, 81, 153, 172, 454.) All of the entities in receivership are hereinafter collectively referred to as the “**Receivership Entities.**”

Pursuant to the Order Appointing Receiver, the Receiver has the duty and authority to “administer and manage the business affairs, funds, assets, choses in action and any other property of the Defendants and Relief Defendants; marshal and safeguard all of the assets of the Defendants and Relief Defendants; and take whatever actions are necessary for the protection of the investors.” (Order Appointing Receiver at 1-2.) In particular, the Receiver was directed to:

[t]ake immediate possession of all property, assets and estates of every kind of the [Receivership Entities], whatsoever and wheresoever located belonging to or in the possession of the [Receivership Entities], including but not limited to all offices maintained by the [Receivership Entities], rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of the [Receivership Entities] wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court . . . .

(*Id.* at 2.) The Receiver took possession of the Property pursuant to the Order Appointing Receiver. The Receiver now seeks to convey the Property by Receiver’s Deed, in accordance with the terms of the Agreement.

### **The Property**

The Property is a commercial building located at 841 South Main Street in the City of Graham, Alamance County, North Carolina. The Property consists of approximately 1.18 acres of land and a 13,824 square-foot building. The Property was purchased by Receivership Entity Scoop RE in May 2005 for approximately \$5,310,000.00. The Property has received no significant improvements since being purchased by Scoop RE. The Alamance County Tax Collector appraised the taxable value of the Property as \$2,041,514.00

in 2009, 2010, and 2011. The Property is currently being leased by Rite-Aid Corporation (“**Rite-Aid**”) pursuant to a triple net lease which expires in 2024, and it houses a Rite Aid drugstore. A significant portion of the Property’s value is directly attributable to the future income which will be generated by the lengthy Rite-Aid lease. Consequently, absent the income generated by the lease, the value of the Property would decrease substantially.

The Property was purchased, in part, with an interest-only loan in the amount of \$2,655,000.00 which Scoop RE obtained from Wachovia. This loan represented half of the total purchase price of the Property. The remaining balance and all closing costs were paid by Scoop RE using funds raised from Nadel’s Ponzi scheme. In connection with the loan, Nadel signed a Promissory Note in favor of Wachovia. Nadel signed the Promissory Note in his capacity as Managing Member of Scoop Capital, Scoop RE’s general partner. A Deed of Trust and Security Agreement (“**Deed of Trust**”) was also recorded with the Promissory Note, and Wachovia was given a security interest in the Property. The Promissory Note was subsequently modified twice by Nadel and Wachovia, with the second modification requiring that all principal and accrued interest be paid in full by May 23, 2009.

The Receiver was appointed in January 2009, including as Receiver for Scoop RE, and took possession of the Property. Although he did not renew the Promissory Note, he continued to make interest payments on the loan until October 27, 2009. No payments on the loan have been made since that time. In total, to date Wachovia has received \$681,050.22 in payments on the loan, which represents 25.65% of the principal amount loaned. All of the money paid to Wachovia was proceeds of Nadel’s scheme – in other words, it was money stolen from investors.

**The Receiver's Marketing Efforts And Previous Offers On The Property**

The Receiver first marketed the Property to potential purchasers through his website, [www.nadelreceivership.com](http://www.nadelreceivership.com), in a specific "Assets for Sale" section. The Receiver's initial marketing efforts revealed that, due to economic conditions and a depressed real estate market, the value of the Property was significantly lower than what Nadel had originally paid. The Receiver advised representatives of Wachovia of his plans to market the Property and sought recommendations from them for brokers who could assist. The Receiver also sought suggestions from Wachovia representatives to improve his proposed marketing plan. After communicating with Wachovia and reviewing proposals from several brokers, the Receiver decided to list the Property with one of the nation's largest and most successful commercial real estate brokerage firms, Holliday Fenoglio Fowler, LLC ("HFF"). HFF was referred to the Receiver by Wachovia.

The Receiver and HFF entered into an Exclusive Listing Agreement for the Property early in this Receivership, and HFF immediately began marketing the Property for sale. HFF's marketing efforts from August 2009 to the present have resulted in approximately fifteen offers to purchase the Property. The highest offer of \$4,177,000 was made in August 2010. Since then, offers have steadily decreased, and the lowest offer (of \$1,400,000.00) was made in September 2011. The factors contributing to the Property's decreasing value are explained in detail below.

The Receiver carefully evaluated all offers and attempted to negotiate to final contract those which he determined were acceptable and in the best interest of the Receivership estate. The Receiver vigorously pursued those offers, but none of them resulted in a final

transaction: those potential buyers either failed to respond to the Receiver's efforts, retracted their offers, or terminated the contracts for various reasons. As such, despite the Receiver's vigorous efforts, he was unable to sell the property under any of the earlier offers. Now, however, the Receiver has a viable offer which is at the high end of the range of the Property's current value, and selling the Property under this offer is in the best interests of the Receivership given: current economic and market conditions; the real possibility that Rite-Aid could file for bankruptcy and terminate its lease of the Property; and the fact that, as discussed at pages 55 to 59 of the Receiver's claims determination motion (the "**Claims Determination Motion**") (Doc. 675), Wachovia's claim arising from its loan on the Property should be denied for several reasons, including that at a minimum, it was on inquiry notice of fraud and it assisted Nadel's perpetration of the scheme. The Receiver seeks approval to sell the Property in accordance with the Agreement.

#### **The Current Offer And The Value Of The Property**

On September 15, 2011, the Receiver received an offer of \$2,400,000.00 for the Property from Trinet West, LLC, or its assigns (the "**Purchaser**"). This offer fairly represents the current value of the Property – indeed, it is at the high end of the range of the Property's value – and selling it to the Purchaser is in the best interest of the Receivership estate. In evaluating this offer, the Receiver considered, among other things, the poor current economic conditions and the depressed real estate market. HFF's analysis of the Property's local commercial real estate market indicates that, overall, commercial rents in the area, and thus the value of commercial properties, have decreased and will continue to do so. Factors

which have generally depressed commercial rents in that geographic area include increased unemployment, low population density and traffic, and excess supply.

The Receiver also considered features of the Property itself. HFF indicated that specific aspects of the Property and its current tenant also contributed to its decreased value, and that value will continue to decline in the future. Those aspects include: (1) a lack of local traffic, population density, and other commercial space in the immediate area which could complement the Property and attract additional customers to the current tenant's drugstore; (2) adjacent commercial spaces which are vacant or renting at lower prices than the Property; (3) the very poor financial condition of Rite-Aid and the real possibility that it may have to file Chapter 11 bankruptcy; (4) the real potential for termination of Rite-Aid's lease on the Property if it files for bankruptcy, especially in light of the poor performance experienced by the Rite-Aid store located in the Property; and (5) the expectation of reduced rents if Rite-Aid terminates its lease and a replacement tenant is found.

Significantly, HFF has reported that potential purchasers of the Property are seeking to recover their equity in the next three to five years given Rite-Aid's current financial predicament and the real possibility of bankruptcy and termination of the lease on the Property. Because of these and other relevant Property and broader market conditions, HFF estimated that potential purchasers value the Property at between \$1.4 million and \$2.4 million. This valuation will decrease at a substantial rate the longer the Property remains unsold because, among other reasons, the opportunity for purchasers to recover their equity will shrink.

Considering all of these factors, the Receiver accepted the offer from the Purchaser, which offer is at the high end of the Property's value as estimated by HFF – a value which is expected to decrease and may do so at a steep rate. The Receiver believes acceptance of this offer was in the best interest of the Receivership estate, including because it fairly represents the current value of the Property and because the opportunity to secure the same or a higher value at a later date is highly unlikely. Accordingly, the Receiver entered into the Agreement with the Purchaser to sell the Property free and clear of all claims, liens, and encumbrances contingent upon this Court's approval. *See* Exhibit 2. The sale of the Property is expected to generate approximately \$2,250,000.00 after payment of commissions and other associated expenses.

**The Encumbrance On The Property And The Receiver's Efforts To Resolve It**

The only known encumbrance on the Property relates to the loan Nadel obtained in Scoop RE's name from Wachovia to pay one-half of the Property's purchase price. The Property is encumbered by the Promissory Note and Deed of Trust which was given to Wachovia to secure its loan. As of the date of filing this motion, Wachovia has been paid \$681,050.22 in interest or principal payments on that loan, all of which were made with proceeds of Nadel's scheme.

In connection with the claims process in this matter, Wachovia submitted a Proof of Claim Form relating to its loan on the Property seeking \$2,655,000.00 plus accrued but unpaid interest since October 27, 2009, late fees, attorney's fees, and costs. Since early in the Receivership in 2009, the Receiver has attempted to reach a resolution with Wachovia



regarding its interest in the Property on a number of occasions, including when the Receiver received what he believed were viable purchase offers, but he has not been successful.

On May 23, 2011, Wachovia's counsel informed the Receiver's counsel that its claim aggregates to at least \$2,930,256.29. Importantly, however, the Receiver's Claims Determination Motion (Doc. 675) explains why that claim should be denied. As explained in some detail at pages 55 through 59 of that motion, Wachovia's claim should be denied for several reasons, including that Wachovia was alerted of numerous "red flags" and improprieties relating to Nadel and his use of the hedge funds underlying this case, and that by executing numerous transactions for Nadel, Wachovia was not only aware of unlawful activities but it was actually assisting Nadel's perpetration of the scheme. Wachovia's liability arose from numerous events, including Nadel's use of secretive "shadow" bank accounts at Wachovia to perpetrate his scheme, including two that Nadel opened in a "doing business as" capacity to mimic the names of three of the hedge funds underlying the scheme; his repetitive periodic transfers of money between the shadow accounts; his numerous wires of money from trading accounts at Goldman Sachs into the shadow accounts, which Wachovia accepted even though the destination shadow accounts bore names that were different from those on the wires; Wachovia's knowledge of Nadel and the receivership hedge funds from its longstanding relationship with Nadel and its investment in two of the hedge funds; Wachovia's knowledge of the unrealistic positive performance of the hedge funds while (and before and after) Wachovia was invested in them; and the problematic information that even rudimentary due diligence would have revealed about Nadel and the hedge funds.

In light of the high probability that the Property will continue to decrease in value the longer it remains unsold and the time necessary to reach a final resolution of Wachovia's claim,<sup>1</sup> the proposed sale of the Property is in the best interest of the Receivership estate. Further, although the Property would be transferred to the Purchaser free and clear of all claims, liens, and encumbrances, including Wachovia's encumbrance, as discussed below Wachovia's interests would be protected because its encumbrance would shift to the proceeds of the sale, which would be held by the Receiver pending further order from the Court. As discussed below, that Wachovia's claim amount exceeds the amount of the proceeds from the Property's proposed sale does not change the fact that the sale sought in this motion is authorized by applicable legal and equitable principles and is in the Receivership estate's best interest.

#### ARGUMENT

The Court's power to supervise an equity receivership and to determine the appropriate actions in its administration is extremely broad. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). This broad discretion and power derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *SEC v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). This is important here because in matters involving administration of this equity Receivership, such as those underlying this motion and, more broadly, the claims process, the

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<sup>1</sup> Although the Receiver's Claim Determinations Motion proposes an efficient objection procedure that will result in final adjudication of claim objections in a time period that could be as short as a month or two, depending on the needs of the specific dispute, Wachovia wants more than 9 months before submitting the matter to the Court for a final adjudication: it wants 3 months to respond to the Receiver's claim determination, then 6 months for discovery, and then a full-blown trial (*see* Doc. 689 at 18). Under Wachovia's drawn-out proposal, the value of the Property will undoubtedly be severely impaired by the time its claim is finally resolved.

Court is equipped with broad equitable powers and authority, and the goal is to protect the best interests of defrauded investors. *See SEC. v. Mutual Benefits Corp.*, Case No. 0:04-cv-60573, Order Granting Receiver's Motion For Final Determination Of Allowed Claims at 3 (S.D. Fla. Oct. 23, 2008) (“(1) this is an SEC enforcement action designed to protect the investors, not the creditors, (2) [the receivership entity's] fraudulent conduct was directed toward its investors, not its creditors (which were paid substantial amounts already), [and] (3) the investors as a whole are less able to bear the financial costs of [the receivership entity's] conduct than are the creditors. . . .”), a copy of which is attached as **Exhibit 3**. This is a critical distinction between equity receiverships like this one and bankruptcy proceedings, which involve significantly less judicial flexibility because of the comprehensive statutory scheme which governs them. *See Marion v. TDI, Inc.*, 2006 WL 3742747, \*2 (E.D. Pa. 2006) (“[A] bankruptcy proceeding differs significantly from an equity receivership imposed at the request of a government agency such as the SEC. The whole purpose of the SEC proceeding is to remedy violations of the securities laws for the benefit of investors.”); *see also Off'l Comm. of Unsecured Creditors of PSA, Inc. v. Edwards*, 437 F.3d 1145, 1150-57 (11th Cir. 2006) (distinguishing between bankruptcy and receivership law, and noting that bankruptcy trustee's appeal was “governed by the Bankruptcy Code, not the law of receiverships”). The relief sought in this motion falls squarely within the Court's powers and is in the best interests of defrauded investors and the Receivership estate.

That relief is also consistent with precedent, which establishes that a court of equity – like this one in these proceedings – may authorize the sale of property free and clear of all claims, liens, and encumbrances. *See, e.g., Miners' Bank of Wilkes-Barre v. Acker*, 66 F.2d

850, 853 (3d Cir. 1933); *People's-Pittsburgh Trust Co. v. Hirsch*, 65 F.2d 972, 973 (3d Cir. 1933). In part, a court has this authority because when a court of competent jurisdiction takes possession of property through its officers – such as this Court has done with the Property through the Receiver – it has jurisdiction and authority to determine all questions about title, possession, and control of the property. *Isaacs v. Hobbs Tie & Timber Co.*, 282 U.S. 734, 737-38 (1931).

Generally, courts authorize sales of encumbered property when there is a reasonable prospect that a surplus will be left for distribution among creditors. *See Bogosian v. Foederer Tract Comm., Inc.*, 399 A.2d 408, 414 (Pa. Super. Ct. 1979). Here, the Receiver has sought approval of his denial of Wachovia's claim, and the pertinent legal, equitable, and factual circumstances show there is a "reasonable prospect" that determination will stand and consequently the sale will result in a surplus. Alternatively, that claim could be resolved in several other ways which would still stop short of recognizing the full claim amount and consequently also result in a claim amount that is less than the amount of the proceeds of the Property's proposed sale. But even if Wachovia's claim is ultimately recognized for the full amount, the Court has the power to approve the Property's sale despite that the claim amount will exceed the sale price. *See In re Hout*, 9 F. Supp. 419, 419 (W.D. Pa. 1934) (citing *Isaacs*, 282 U.S. at 738) ("[T]his court [has] exclusive jurisdiction to sell the property of the bankrupt, in spite of the claim that there was no equity in the property for the bankrupt estate . . ." (emphasis added)); *In re Sloterbeek Chevrolet Co.*, 8 F. Supp. 1023, 1023 (W.D. Pa. 1934). Resolution of this motion turns on the equities and facts of the circumstances (*see*

*Spreckels v. Spreckels Sugar Corp.*, 79 F.2d 332, 334-35 (2d Cir. 1935)), and here the equities and facts strongly favor sale of the Property.

The Court's power to order the Property's sale, and the important role of applicable equities is evident in legal precedent. *Spreckels* noted that "although there is perhaps no rigid rule about it . . . ordinarily a court will not sell property free of liens unless it can see that there is a substantial equity to be preserved." *Id.* at 334. The court explained that courts of equity were allowed to "abate the severity of a ruthless exercise of lienor's powers," and that exercise of the court's power was appropriate "so long as the substance of the [lienor's] rights was preserved." *Id.* at 335. *Spreckels* focused on the lienor's right to assert a claim rather than any right to a specific amount. Similarly, *People's-Pittsburgh Trust Co. v. Hirsch* found that a sale of property free and clear of encumbrances for an amount less than the indebtedness secured by the property was appropriate because the sale by the receiver had notable advantages over a foreclosure sale. *People's-Pittsburgh Trust Co.*, 65 F.2d at 974-75. *People's-Pittsburgh Trust* ultimately determined the sale was in the best interests of the receivership but still protected the mortgagee's interests. *In re Franklin Brewing Co.* also acknowledged a court's power to sell property free and clear of liens. 249 F. 333, 335 (2d Cir. 1918). Although it noted that it is "good practice" not to order such a sale unless there is "a fair prospect that the proceeds will at least discharge the lien," this is not a rule of law and "where (for instance) the very existence of any lien is in litigation, and property is wasting while waiting decision, it must be a matter of discretion whether or not to sell promptly . . . ." *Id.* *In re Franklin* concluded there was nothing improper about such a sale and that it was not an abuse of discretion. *Id.* Other courts also have long recognized the inherent authority

of equity courts to sell property in their custody free and clear of liens. *See Matter of Valley Road Sewerage Co.*, 685 A.2d 11, 18 (N.J. Super. Ct. App. Div. 1996); *see also Passaic Plumbing Supply Co. v. Eastside Holding Corp.*, 105 N.J. Eq. 485, 486, 490 (N.J. Ch. 1930) (concluding that it would “be in the best interest of all creditors if the property be sold free of all liens . . . [with] the liens of such to attach to the proceeds of sale” after finding legality of the liens was in question and property would deteriorate in value).

Importantly for Wachovia, although the Court can order the Property’s sale free and clear of all claims, liens, and encumbrances, those claims, liens, and encumbrances do not evaporate. Rather, upon sale of the Property, they would transfer to the sale’s proceeds. *Bogosian*, 399 A.2d at 414 (citing *Buss Mach. Works v. Watsontown Door and Sash Co.*, 2 F. Supp. 757 (M.D. Pa. 1933)) (“Under the broad equity powers of the court, it can, under proper circumstances, order a sale of property free and divested of liens by transferring the liens to the fund derived from the sale.”); *In re Franklin Brewing Co.*, 249 F. at 335 (noting transfer of liens to proceeds of sale of collateral); *see also Acker*, 66 F.2d at 852; *Novor v. Fourth Street Bargain Store Co.*, 145 A. 119, 120 (Del. Ch. 1929) (“[L]ien claimants ought to be permitted to look to the proceeds as a substitute for the property.”). As such, a sale of the Property free and clear of all claims, liens, and encumbrances will not destroy Wachovia’s interests, but it will simply shift them from the Property to the sale proceeds, which the Receiver will then hold pending further order from the Court. This will then allow for a full resolution of Wachovia’s claim without further impairing the Property’s value for the Receivership estate.

**CONCLUSION**

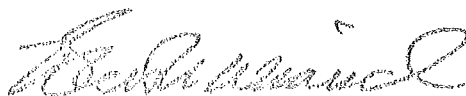
In light of the present economic conditions; the real prospect that the value of the Property will continue to decrease for some time, including a strong possibility for a drastic decrease resulting from Rite-Aid's poor financial condition; and the time that will be needed to resolve Wachovia's claim relating to the Property, the sale of the Property free and clear of all claims, liens, and encumbrances as sought in this motion is in the best interests of the Receivership estate. Further, Wachovia's interests will be adequately protected as its encumbrance on the Property will shift to the proceeds of the sale, which will be held by the Receiver pending further order from the Court. Accordingly, the Receiver respectfully requests the Court enter an order in substantially the form attached as Exhibit 1 approving the sale of the Property to Trinet West, LLC, or assigns in accordance with the terms of the Agreement attached as Exhibit 2; eliminating any and all claims, liens, and encumbrances from the Property; and directing the Receiver to transfer title to the Property to Trinet West, LLC, or assigns, via Receiver's Deed free and clear of all claims, liens, and encumbrances.

**LOCAL RULE 3.01(g) CERTIFICATION**

Counsel for the Receiver has conferred with counsel for the Securities and Exchange Commission and is authorized to represent to the Court that this motion is unopposed. Wachovia's counsel has indicated it objects to the sale of the Property.

**VERIFICATION OF RECEIVER**

I, Burton W. Wiand, Court-Appointed Receiver in the above-styled matter hereby certify that the information contained in this Motion is true and correct to the best of my knowledge and belief.



Burton W. Wiand, Court-Appointed Receiver

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on January 6, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send an electronic copy of this motion to Joseph Shaheen, Esquire and Steven R. Wirth, Esquire of Akerman Senterfitt, counsel for Wells Fargo Bank, N.A., successor to Wachovia Bank, N.A.

**I FURTHER CERTIFY** that on January 6, 2012, I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants:

Arthur Nadel, Register No. 50690-018  
FCI BUTNER LOW  
Federal Correctional Institution  
P.O. Box 999  
Butner, NC 27509

**s/Gianluca Morello**  
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*Attorneys for the Receiver, Burton W. Wiand*



# **EXHIBIT 1**

## Proposed Order

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

ARTHUR NADEL,  
SCOOP CAPITAL, LLC,  
SCOOP MANAGEMENT, INC.,

Defendants,

CASE NO.: 8:09-cv-0087-T-26TBM

SCOOP REAL ESTATE, L.P.,  
VALHALLA INVESTMENT PARTNERS, L.P.,  
VALHALLA MANAGEMENT, INC.,  
VICTORY FUND, LTD,  
VIKING IRA FUND, LLC,  
VIKING FUND, LLC, AND  
VIKING MANAGEMENT, LLC.

\_\_\_\_\_  
Relief Defendants. /

**ORDER**

Before the Court is the Receiver's Verified Motion to Approve the Sale of Real Property Located in Graham, Alamance County, North Carolina (the "Motion") (Dkt. \_\_\_\_). Upon due consideration of the Receiver's powers as set forth in the Order Appointing Receiver (Dkt. 8) and the Orders Reappointing Receiver (Dkts. 140, 316 and 493), it is **ORDERED AND ADJUDGED** that the Motion is **GRANTED**.

The sale of the real property located in Alamance County, North Carolina pursuant to the Purchase and Sale Agreement attached as Exhibit 2 to the Motion is hereby approved. Any and all existing claims, liens, and encumbrances relating to the property located in Alamance County, North Carolina (the "Property"), including any held by Wells Fargo Bank, N.A. as successor to Wachovia Bank, N.A., arising from a loan provided to Scoop Real Estate, L.P., shall be transferred to the proceeds of the sale ordered herein, and the Property shall become free and

clear of any and all such existing claims, liens, and encumbrances. The Receiver is hereby directed to transfer free and clear of all claims, liens, and encumbrances to Trinet West, LLC, or assigns, by way of Receiver's Deed, pursuant to the Purchase and Sale Agreement attached as Exhibit 2 to the Motion, title to the Property, which bears the following legal description:

LYING AND BEING in Graham Township, Alamance County, North Carolina, and more particularly described as follows:

BEGINNING at an existing iron pin (site bench mark with NC Grid coordinates of N: 839,090,546 feet, E: 1,881,775.383 feet, NAVD 88, elev: 593.21 feet, value published by National Geodetic Survey "OPUS" Solution on 09/11/03) on the western margin of the public right-of-way of NC Highway 87 (South Main Street) and in the northeastern corner of the land conveyed to Crescent Center Associates by instrument recorded in Deed Book 503, Page 66, Alamance County Public Registry, and running thence with the northern boundary of the Crescent Center Associates land (nor or formerly) S. 84-34-58 W. 242.92 feet to an existing iron pin in the southeastern corner of the land conveyed to ECMM Associates by instrument recorded in Deed Book 789, Page 658, Alamance County Public Registry; thence with the southern boundary of the ECMM Associates land (nor or formerly) N. 61-06-52 W. 18.19 feet to an iron rebar set; thence two new lines within the ECMM Associates land (nor or formerly) as follows: (1) N. 05-35-11 W. 189.62 feet to an iron rebar set; and (2) N. 84-34-01 E. 15.00 feet to an existing iron pin in the southern margin of the public right-of-way of Crescent Square Drive; thence with the southern margin of the public right-of-way of Crescent Square Drive N. 84-34-01 E. 231.52 feet to an iron rebar set in the western margin of the right-of-way of NC Highway 87 (South Main Street); and thence with the western margin of the right-of-way of NC Highway 87 (South Main Street) three (3) courses and distances as follows: (1) S. 04-50-25 E. 15.86 feet to a nail; (2) S. 49-50-25 E. 19.80 feet to a nail; and (3) S. 04-50-25 E. 169.95 feet to the point and place of BEGINNING, containing 1.18 acres, more or less, all as shown on survey prepared by Clinton B. Osborne, North Carolina Professional Land Surveyor L-3834, of Allied Associates, P.A., Job No. PA030608, Map No. GSDelta.dwg., and dated October 31, 2003, reference to said survey being made in aid of description.

Together with:

Easement rights in favor of the property, as set forth in Cross Access Easement Agreement recorded in Book 2108, Page 530, of the Alamance County Registry.

**DONE and ORDERED** in chambers in Tampa, Florida this \_\_\_\_ day of \_\_\_\_\_,  
2012.

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**RICHARD A. LAZZARA**  
**UNITED STATES DISTRICT JUDGE**

**COPIES FURNISHED TO:**  
Counsel of Record

# **EXHIBIT 2**

## Agreement of Sale and Purchase

FIRST DRAFT VERSION

**AGREEMENT OF SALE AND PURCHASE**

BY AND BETWEEN

**BURTON W. WIAND, Receiver for  
Scoop Real Estate, L.P.,**  
a Delaware limited partnership  
("Seller")

AND

**TRINET WEST, LLC,**  
a California limited liability corporation, or assigns  
("Purchaser")

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**AGREEMENT OF SALE AND PURCHASE**

**THIS AGREEMENT FOR SALE AND PURCHASE** (the "Agreement") is made effective as of October \_\_\_\_, 2011 by **BURTON W. WIAND** (the "Seller"), as Court-appointed Receiver for Scoop Real Estate, L.P., a Delaware limited partnership (the "Company") and **TRINET WEST, LLC**, a California Limited Liability Corporation, or assigns (the "Purchaser") (Purchaser and Seller are sometimes collectively referred to herein as the "Parties").

**WHEREAS**, the United States District Court for the Middle District of Florida, Tampa Division (the "Court"), appointed Burton W. Wiand on January 21, 2009, and reappointed Mr. Wiand on September 23, 2009, as Receiver of Scoop Real Estate, L.P., a Delaware limited partnership, among other receivership entities, in the action styled *Securities and Exchange Commission v. Arthur Nadel, et al.*, Case No: 8:09-cv-87-T-26TBM;

**WHEREAS**, the Company owns a real property located in Graham, Alamance County, North Carolina, as more particularly described in **Exhibit A** attached hereto, consisting of one (1) building containing approximately 13,824 square feet (the "Building") on an approximately one (1) acre of land (the "Land"), together with all rights whatsoever, including easements, right-of-way, interests and appurtenances benefitting the Land which is part of such Property, and all other Improvements thereon and Fixtures therein (collectively, the "Property");

**WHEREAS**, the Company has leased the Property pursuant to a written lease dated as of January 28, 2004, as amended (the "Lease"), with the obligation of the Lease assumed by Rite Aid Corporation ("Rite-Aid" or "Tenant") and secured under a guaranty signed and delivered by Rite Aid as the Tenant; and

**WHEREAS**, Seller desires to sell and Purchaser desires to purchase the Property, and Seller desires to transfer and Purchaser desires to assume the Lease, pursuant to the terms and conditions set forth herein;

**NOW, THEREFORE**, for and in consideration of the mutual covenants and obligations contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller agree as follows:

**OPERATIVE TERMS**

**Article I.  
DEFINITIONS**

As used herein (including any Exhibits attached hereto), the following terms shall have the meanings indicated:

"Business Day(s)" shall mean calendar days other than Saturdays, Sundays and legal holidays.

"Closing" shall mean the consummation of the sale and purchase of the Property as provided for herein, to be conducted at such location as the Parties may mutually agree in writing.

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"Closing Date" shall mean the actual day on which the transaction contemplated hereby is closed with the transfer of title to the Property to Purchaser. The Parties agree that the Closing Date shall take place on or before the fifteenth (15<sup>th</sup>) day after the satisfaction of the Inspection Period; Parties may agree in writing that the Closing Date shall be extended for a reasonable period of time not to exceed fifteen (15) days, subject to further time extensions provided in Section 2.03, if applicable.

"Court" shall mean the United States District Court in the Middle District of Florida, Tampa Division, in Hillsborough County in the State of Florida.

"Deed" shall mean a Receiver's Deed in content, form and substance reasonably acceptable to the Parties and complying with local law executed by Seller, as grantor, in favor of Purchaser or its permitted assignee, as grantee, conveying the Property to Purchaser.

"Earnest Money Deposit" shall mean the earnest money deposits to be delivered to shall mean the deposit to be delivered to the "Escrow Agent" as contemplated by Section 3.01.

"Escrow Agent" shall mean the "Title Company".

"Fixtures" shall mean all permanently affixed equipment, machinery, fixtures, and other items of real and/or personal property, including all components thereof, now and hereafter located in, on or used in connection with, and permanently affixed to or incorporated into the Improvements, and owned, in each instance, by Seller, including, without limitation, all furnaces, boilers, heaters, electrical equipment, heating, plumbing, lighting, ventilating, refrigerating, incineration, air and water pollution control, waste disposal, air-cooling and air-conditioning systems and apparatus, sprinkler systems and fire and theft protection equipment, all of which, to the greatest extent permitted by law, are hereby deemed by the Parties hereto to constitute real estate, together with all replacements, modifications, alterations and additions thereto, but *specifically excluding* all items of personal property or trade fixtures leased by Seller and property owned by tenant(s) under any tenant lease(s) encumbering the Property.

"Improvements" shall mean all buildings, improvements, structures and Fixtures, now or on the Closing Date to the extent owned by Seller and located on the Land, including, without limitation, landscaping, parking lots and structures, roads, drainage and all above ground and underground utility structures, equipment systems and other so-called "infrastructure" improvements to the extent any of same may be owned by Seller.

"Property" shall mean, collectively, The Land, the Building, the Fixtures together with: (i) all rights, easements and appurtenances pertaining thereto, if any; (ii) any other improvements constructed on the Land (the Building and all such improvements being hereinafter collectively the "Improvements"), if any; (iii) all contracts and agreements relating to the operation or maintenance of the Land, the Building or the Improvements, the terms of which extend beyond midnight of the day preceding the Closing (as hereinafter defined), if any and (iv) all of Seller's rights, if any, in the name of the shopping center constructed on the Land, if any, and all trademarks, servicemarks, and logos used in connection with such Land and Improvements (it being understood that Seller makes no representations or warranty with respect to Purchaser's right to use such names, marks and logos); together with any transferable rights in any surveys,



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environmental reports, traffic studies, plans and specifications (including, without limitation, "as built" drawings), geotechnical reports, and other studies and reports in Seller's possession or control relating to the construction, use or operation of the Land and/or Improvements, all assignable guaranties and warranties, if any, and transferable permits, licenses, goodwill and all other intangible property, if any, related to the Land or connected therewith and appurtenances related to the Land; together with all of Seller's right, title and interest in the Lease.

"Purchase Price" shall mean the amount of Two Million Four Hundred Thousand Dollars and No/100 (\$2,400,000.00).

"Title Company" shall mean Fidelity National Title Insurance Company, 200 Galleria Parkway, SE, Suite 2060, Atlanta, GA who is to handle this transaction, including acting as Escrow Agent to hold the deposit(s).

## Article II. AGREEMENT TO SELL AND PURCHASE

Section 2.01 Agreement to Sell and Purchase. On the Closing Date, Seller shall sell, convey, assign, transfer and deliver to Purchaser and Purchaser shall purchase, acquire, have conveyed unto it and accept from Seller, the Property, for the Purchase Price and subject to the terms and conditions of this Agreement.

Section 2.02 (a) Condition of Property. Purchaser acknowledges and agrees to purchase the Property on an "AS IS" "WHERE IS" BASIS, WITH ALL FAULTS AND WITHOUT REPRESENTATIONS, EXPRESS OR IMPLIED, OF ANY TYPE, KIND, CHARACTER OR NATURE, INCLUDING BUT NOT LIMITED TO THE SUITABILITY OF THE PROPERTY FOR ANY USE, AND WITHOUT WARRANTIES, EXPRESS OR IMPLIED, OF ANY TYPE, KIND, CHARACTER OR NATURE, INCLUDING BUT NOT LIMITED TO, SUITABILITY OF THE PROPERTY FOR ANY USE, AND WITHOUT RECOURSE, EXPRESS OR IMPLIED, OF ANY TYPE, KIND, CHARACTER OR NATURE, SAVE AND EXCEPT THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS SECTION 2.02 (b) AND THE DISCLOSURE STATEMENT SET FORTH IN SECTION 4.01 HEREOF.

(b) Written Disclosure. Notwithstanding the terms of Section 2.02 above, Seller shall within seven (7) days of the execution of this agreement deliver to Purchaser a written disclosure statement setting forth in detail any condition of the Property known to Seller which adversely affect the condition or marketability of the Property.

Section 2.03 Purchaser's Right of Inspection.

(a) With prior notice to and approval from Seller, Seller does hereby grant to Purchaser and its authorized agents the right, at Purchaser's sole risk, cost and expense, and subject to the rights of the Tenant under the Lease, for a period of thirty (30) days from the Effective Date (the "Inspection Period"), during normal business hours and without undue disruption to the ordinary course of business being conducted on the

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Property, to examine the title to the Property and to enter upon the Property to inspect, examine and survey the Property and otherwise do that which, in the opinion of Purchaser, is reasonably necessary to determine the boundaries and acreage of the Property, the suitability of the Property for the uses intended by Purchaser, and to determine the physical condition of the Property. Purchaser agrees to indemnify and hold Seller harmless from and against any and all liabilities, claims, losses or damages arising directly or indirectly arising from negligence in conducting Purchaser's inspection and examination of the Property (but not from any effect upon value or marketability of the property), and this indemnity and hold harmless provision shall survive Closing or the termination of this Agreement. Purchaser shall promptly deliver to Seller, copies of the results of all of Purchaser's inspections and/or examinations.

(b) Seller shall provide to Purchaser the due diligence materials listed in Exhibit B within three (3) days of the full execution and delivery of this Agreement.

(c) Purchaser shall have the right to extend the Inspection Period for up to thirty additional days upon written notice to Seller at least five days prior to the end of the Inspection Period along with delivery to Seller of additional Earnest Money Deposit funds in the amount of Fifty Thousand Dollars and No/100 (\$50,000.00). Such additional Earnest Money Deposit shall be treated in the same manner as the original Earnest Money Deposit funds, but for the extended Inspection Period. Should an extension of the Inspection Period be granted for any reason other than completion of any third-party reports (i.e. environmental, survey, etc.), the Seller has the right to remarket the Property during the additional Inspection Period.

(d) At least fifteen (15) days prior to the last day of the Inspection Period, Seller shall deliver to Purchaser an estoppel statement executed by Rite Aid Corporation and/or Eckerd Corporation and compliant with Section 31.4 of the lease and showing that Tenant is fully and unconditionally obligated under the terms of the lease and the lease is in full force and effect.

### Article III.

#### PURCHASE PRICE AND EARNEST MONEY DEPOSITS

Section 3.01 Payment of Purchase Price. Purchase Price shall be paid by Purchaser in cash or other immediately available funds at Closing in the manner set forth below, subject to the terms and conditions provided for herein:

(a) *Earnest Money Deposit.* Within three (3) days of executing of this Agreement, Purchaser shall deliver to Escrow Agent the first of two Earnest Money Deposits in the amount of Twenty Five Thousand Dollars and No/100 (\$25,000.00). A second Earnest Money Deposit of Twenty Five Thousand Dollars and No/100 (\$25,000.00) shall be delivered to the Escrow Agent immediately at the close of the Inspection Period. The Earnest Money Deposit shall, if Purchaser closes on the purchase of the Property as contemplated hereby, be credited toward the Purchase Price at the Closing, but shall be deemed immediately fully earned by Seller and otherwise become

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non-refundable to Purchaser at the expiration of the Inspection Period, except as otherwise specifically set forth in this Agreement. Interest earned on the Earnest Money Deposit(s), if any, shall be the property of Purchaser.

(b) Contingencies. Notwithstanding any other term, provision, or condition contained herein to the contrary, Purchaser will be able to terminate this Agreement and receive a full refund of the Earnest Money Deposit: (a) in the event that Seller is unable to obtain approval of the Court for the sale of the Property in accordance with this Agreement (the "Seller Contingency") or comply with other agreements or satisfy any other condition imposed herein on Seller; or (b) if Purchaser gives notice as set for in Section 2.03 (b) above.; or (c) if Seller fails to deliver timely the estoppel statement described in Section 2.03 (c) above.

#### Article IV.

#### REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS

Section 4.01 Representations and Warranties of Seller. Seller, subject to the other terms and conditions of this Agreement, represents and warrants to Purchaser the following:

(a) Seller shall have, as of Closing, full right, power and authority to consummate the transactions provided for herein, and to Seller's knowledge, the joinder of no person or entity is or will be necessary to sell the Property to Purchaser at Closing.

(b) Seller will, on or before the Closing Date, obtain approval from the Court to sell the Property free and clear of all liens, claims and encumbrances and Seller will convey title to the Property to the Purchaser pursuant to the Court order via Receiver's Deed in a form substantially similar to Exhibit C attached hereto.

(c) Seller has granted no option or Contract to any other person or entity to purchase the Property.

Purchaser expressly acknowledges that Seller has made no warranties with respect to the Property. Purchaser is purchasing the Property on an "AS IS" "WHERE IS" BASIS, WITH ALL FAULTS AND WITHOUT REPRESENTATIONS, EXPRESS OR IMPLIED, OF ANY TYPE, KIND, CHARACTER OR NATURE, INCLUDING BUT NOT LIMITED TO THE SUITABILITY OF THE PROPERTY FOR ANY USE, AND WITHOUT WARRANTIES, EXPRESS OR IMPLIED, OF ANY TYPE, KIND, CHARACTER OR NATURE, INCLUDING BUT NOT LIMITED TO, SUITABILITY OF THE PROPERTY FOR ANY USE, AND WITHOUT RECOURSE, EXPRESS OR IMPLIED, OF ANY TYPE, KIND, CHARACTER OR NATURE, SAVE AND EXCEPT THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS SECTION 4.01 AND THE DISCLOSURE STATEMENT SET FORTH IN SECTION 2.02 (b) All other representations and warranties shall not survive Closing, however, Seller shall reaffirm such representations and warranties at Closing.

Section 4.02 Representations and Warranties of Purchaser. Purchaser represents and warrants to Seller that:

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(a) Purchaser has duly and validly authorized and executed this Agreement, and has full right, power and authority to enter into this Agreement and to consummate the transactions provided for herein, and the joinder of no person or entity other than Lender will be necessary to purchase the Property from Seller at Closing.

(b) The execution by Purchaser of this Agreement and the consummation by Purchaser or its permitted assigns of the transactions contemplated herein do not, and at the Closing will not, result in any breach of any of the terms or provisions of or constitute a default or a condition which upon notice or lapse of time or both would ripen into a default under any indenture, agreement, instrument or obligation to which Purchaser is a party; and does not and at the Closing will not constitute a violation of any order, rule or regulation applicable to Purchaser or of any federal or state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Purchaser.

(c) On or before the Closing Date, Purchaser will have conducted and completed any and all due diligence it deems or deemed necessary prior to completing the purchase contemplated herein.

Purchaser expressly acknowledges that Seller has made no warranties with respect to the Property. Purchaser is purchasing the Property on an "AS IS" "WHERE IS" BASIS, WITH ALL FAULTS AND WITHOUT REPRESENTATIONS, EXPRESS OR IMPLIED, OF ANY TYPE, KIND, CHARACTER OR NATURE, INCLUDING BUT NOT LIMITED TO THE SUITABILITY OF THE PROPERTY FOR ANY USE, AND WITHOUT WARRANTIES, EXPRESS OR IMPLIED, OF ANY TYPE, KIND, CHARACTER OR NATURE, INCLUDING BUT NOT LIMITED TO, SUITABILITY OF THE PROPERTY FOR ANY USE, AND WITHOUT RECOURSE, EXPRESS OR IMPLIED, OF ANY TYPE, KIND, CHARACTER OR NATURE, SAVE AND EXCEPT THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 4.01 AND THE DISCLOSURE STATEMENT SET FORTH IN SECTION 2.02 (b) ABOVE.

#### Article V.

#### CONDITIONS TO THE SELLER'S AND PURCHASER'S OBLIGATIONS

Section 5.01 Conditions to the Purchaser's Obligations. The obligations of Purchaser to purchase the Property from Seller and to consummate the transactions contemplated by this Agreement are subject to the satisfaction, at all times prior to and as of the Closing, of each of the following conditions:

(a) The representations and warranties of Seller set forth in this Agreement shall be true in all material respects at all times prior to, at and as of the Closing.

(b) Seller shall have delivered, performed, observed and complied with, in all material respects, all of the items, instruments, documents, covenants, agreements and conditions required by this Agreement to be delivered, performed, observed and complied with by it prior to, or as of, the Closing.

Section 5.02 Failure of Conditions to Purchaser's Obligations. In the event any one or more of the conditions to Purchaser's obligations are not satisfied in whole or in part at any time

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prior to or as of the Closing Date, and provided such event is not caused by Purchaser's actions or default(s) hereunder, Purchaser, at Purchaser's option, shall be entitled to: (a) terminate this Agreement by giving written notice to Seller and Purchaser shall have no further obligations or liabilities hereunder, except those expressly surviving termination of this Agreement; or (b) waive any and all default(s) not cured and proceed to Closing.

Section 5.03 Condition to the Seller's Obligations. The obligations of Seller to sell the Property to Purchaser and to consummate the transaction contemplated by this Agreement are subject to the satisfaction at all times prior to and, as applicable, at closing of each of the following:

(a) All of the representations and warranties of Purchaser set forth in this Agreement shall be true at all times prior to, at, and as of the Closing.

(b) Purchaser shall have delivered, performed, observed and complied with, in all material respects, all of the items, instruments, documents, covenants, agreements and conditions required by this Agreement to be delivered, performed, observed, and complied with by it prior to, and as of the Closing.

(c) Purchaser shall have delivered the Earnest Money Deposit and has otherwise, on or before the Effective Date, delivered to the Title Company the balance of the Purchase Price due and owing Seller at Closing and same have been delivered to Seller.

(d) If at any time (including the time Purchaser has removed all contingencies and the Inspection Period has lapsed) Seller is unable to obtain the necessary court approval to sell the Property and transfer title to the Purchaser, then Purchaser may terminate this contract and in doing so shall receive a full refund any Earnest Money Deposit(s) and any interest earned thereupon.

Section 5.04 Risk of Loss. Risk of loss up to and including the Closing Date shall be borne by Seller.

**Article VI.**  
**PROVISIONS WITH RESPECT TO THE CLOSING**

Section 6.01 Seller's Closing Obligations. At the Closing, Seller shall furnish or as applicable execute and deliver to the Title Company for delivery to Purchaser, the following with respect to the Property:

(a) A Receiver's Deed substantially in the form substantially similar to Exhibit C attached hereto to be duly executed and acknowledged by Seller;

(b) Any security deposit or prepaid rent received by Seller from the Tenant, to be credited in favor of Purchaser against the Purchase Price;

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(c) Agreement for the assignment and assumption of Lease substantially in the form attached hereto as Exhibit D attached and duly executed by Seller;

(d) A letter to the Tenant directing payment of all future rents to Purchaser and directing that Purchaser be added to all policies of insurance required by the lease.

(e) A bill of sale and instrument of transfer and assignment substantially in the form attached hereto as Exhibit E assigning all of Seller's right, title and interest in and to all of the tangible and intangible personal property constituting a portion of the Property and listed therein;

(f) Such other instruments or documents as are reasonably necessary or reasonably required by Purchaser or the Title Company to consummate the transaction contemplated hereby, including to evidence the status and capacity of Seller to consummate this transaction and the authority of the person or persons who are executing the various documents on behalf of Seller in connection with the purchase and sale transaction contemplated hereby, including Seller's authority to execute and deliver the closing documents; and

(g) All files, including all permits and licenses for operation of the Property, to the extent in Seller's possession.

(h) Evidence that all tax bills, and utility bills have been presented to and paid by Tenant, and that Tenant has maintained as current all policies of insurance required by the lease.

Section 6.02 Purchaser's Closing Obligations. At the Closing, Purchaser shall execute and/or deliver to the Title Company for delivery to Seller:

(a) Wired funds, and/or direct Escrow Agent to disburse Earnest Money Deposit, payable to the order of the Seller for the balance of the Purchase Price due in accordance with Section 3.01 and other applicable provisions herein;

(b) Agreement for the assignment and assumption of Lease substantially in the form attached hereto as Exhibit D attached and duly executed by Purchaser;

(c) Such instruments as are necessary or reasonably required by Seller or the Title Company to consummate the transaction contemplated hereby, including evidence of authority of Purchaser to consummate the purchase and sale transaction contemplated hereby and to execute and deliver the closing documents on the Purchaser's part to be delivered;

(d) A closing statement itemizing the Purchase Price and all adjustments thereto as provided herein.

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**Article VII.**  
**EXPENSES OF CLOSING**

Section 7.01 Closing Prorations. The following items shall be prorated and adjusted between the Seller and the Purchaser as of midnight on the day preceding the Closing Date:

(a) Rents. All rents and other receipts actually received in and applicable to the month in which the Closing occurs shall be prorated as of the Closing, other than rents from Purchaser, based on twelve thirty (30) day months.

(b) Other Items. All other items, including without limitation licenses and permits being assumed by Purchaser (if any, provided that in no event shall Purchaser assume any indemnification obligations of Seller) and other income from, and expenses associated with, the Property shall be prorated between Purchaser and Seller as of the Closing.

Section 7.02 Closing Costs.

(a) Seller shall pay: (i) one-half of all transfer taxes payable in connection with the delivery for recording of any title transfer instrument or document by Seller provided in or contemplated by this Agreement; and, (ii) Seller's legal, accounting and other professional fees and expenses and the cost of all certificates, instruments, documents and papers required to be delivered, or to cause to be delivered, by Seller hereunder, including without limitation, the cost of performance by Seller of its obligations hereunder.

(b) Purchaser shall pay: (i) all title examination fees; (ii) survey costs or any costs to update surveys; (iii) to update recording costs on documents necessary for Seller to clear title (to the extent such action is required); (iv) any premiums for a Title policy; (v) one-half of all transfer taxes payable in connection with the delivery for recording of any title transfer instrument or document by Seller provided in or contemplated by this Agreement; (vi) all charges by the Escrow Agent for escrow services; (vii) all survey costs; (viii) mortgage taxes (if any); (ix) the cost of any environmental reports; and, (x) Purchaser's legal, accounting and other professional fees and expenses and the cost of all certificates, instruments, documents and papers required to be delivered, or to cause to be delivered, by Purchaser hereunder, including without limitation, the cost of performance by Purchaser of its obligations hereunder.

(c) Except as otherwise prorated pursuant to Section 7.01 or expressly provided for in Section 7.02(b) and Section 7.03, Purchaser shall be responsible for any and all other costs and expenses, regardless of custom or practice in the county where the Property is located, in connection with the consummation of this Agreement.

Section 7.03 Improvement Liens. Certified, confirmed or ratified liens for governmental improvements fully due and payable for governmental improvements as of the Closing, if any, shall be paid in full by Seller, and Seller shall receive credit toward the Purchase Price for the amounts paid, and pending liens or installment liens accruing after the Closing Date

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for governmental improvements completed as of the Closing shall be assumed by and be the sole responsibility of Purchaser.

**Article VIII.  
DEFAULT AND REMEDIES**

Section 8.01 Seller's Default; Purchaser's Remedy.

(a) *Seller's Default.* Seller shall be deemed to be in default hereunder upon the occurrence of the following events: (i) any of Seller's warranties or representations set forth herein shall be materially untrue when made or at Closing; or (ii) Seller shall fail to meet, comply with, or perform any material covenant, agreement or obligation on its part required within the time limits and in the manner required in this Agreement and shall fail to cure same within thirty (30) days after receipt of written notice from Purchaser.

(b) *Purchaser's Remedy.* In the event Seller shall be deemed to be in continuing default hereunder after the expiration of the applicable cure period, Purchaser expressly acknowledges and agrees that its sole and exclusive remedy is to terminate this Agreement and the Earnest Money Deposit and any interest earned shall be returned to the Purchaser. This Agreement, when duly executed by the Parties, constitutes the express waiver in writing of any other remedy, whether legal or equitable, that may be available to the Parties.

Section 8.02 Purchaser's Default; Seller's Remedies.

(a) *Purchaser's Default.* Purchaser shall be deemed to be in default hereunder upon the occurrence of the following events: (i) any of Purchaser's warranties or representations set forth herein shall be untrue when made or at Closing; (ii) failure to remit to the Escrow Agent the full amount of the Earnest Money Deposit due in accordance with Section 3.01(b) above; or (iii) Purchaser shall fail to meet, comply with, or perform any material covenant, agreement or obligation on its part required within the time limits and in the manner required in this Agreement and shall fail to cure same within thirty (30) days after written notice from Seller;

(b) *Seller's Remedy.* In the event Purchaser shall be in continuing default hereunder after the expiration of the applicable cure period, Seller shall be entitled to terminate this Agreement and, within three (3) business days, receive from the Escrow Agent upon written notice to it all monies held as Earnest Money Deposit, including any additional deposits pursuant to Section 3.01(b) above hereunder as liquidated damages so long as Purchaser's default is not caused by Seller's default or actions. Parties acknowledge and agree that a reasonable estimate of the total net detriment Seller would suffer in the event of default not cured by Purchaser equals to the Earnest Money Deposit being held by the Escrow Agent, and the delivery of the Earnest Money Deposit to Seller as liquidated damages shall constitute Seller's sole and exclusive remedy under this Agreement (subject to those provisions of this Agreement which, by their express terms,



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survive a termination of this Agreement), Such liquidated damages are not intended as a forfeiture or penalty within the meaning of applicable law.

**Article IX.  
MISCELLANEOUS**

Section 9.01 Survival of Representations and Warranties. All of the respective representations and warranties of the Parties to this Agreement shall survive the consummation of the transactions contemplated hereby. All other representations, warranties, covenants, agreements and indemnities of Seller and Purchaser contained in this Agreement shall be deemed to merge upon the acceptance of the Receiver's Deed by Purchaser.

Section 9.02 Broker's Commissions. Seller and Purchaser represent and warrant each to the other that they have not dealt with any real estate broker, sales person or finder in connection with this transaction, except for Jim Hamilton and Coler Yoakam of Holliday Fenoglio Fowler, L.P. (the "Listing Broker"). At Closing, Seller agrees to pay the Listing Broker the sum of One Hundred Fifty Thousand Dollars and No/100 (\$150,000.00) pursuant to a separate written agreement by and between Seller and Listing Broker. In the event of any claim for broker's or finder's fees or commissions by any party other than those provided in this Section, each party shall indemnify and hold the other party harmless from and against any such claim based upon any statement, representation or agreement of such party. This provision shall survive the consummation of the transactions contemplated hereby.

Section 9.03 Indemnification. Notwithstanding any provisions in this Agreement to the contrary, Purchaser expressly acknowledges and agrees that Seller provides **NO** indemnification from and against any loss, claim and/or damage arising under any circumstance related to the Property or this Agreement, and that Section 8.01(b) sets forth the Purchaser's sole and exclusive remedy under this Agreement.

Section 9.04 Right of Assignment. Purchaser shall have no right to assign this Agreement without the prior written consent of Seller, which consent shall not be unreasonably withheld or delayed.

Section 9.05 Notices. Any notice, request, information or other document to be given hereunder to any Parties by any other party shall be in writing and shall have been deemed to have been given (i) when personally delivered, sent by facsimile (with hard copy to follow) or sent by reputable overnight express courier (charges prepaid), or (ii) five (5) days following mailing by certified or registered mail, postage prepaid and return receipt requested. Unless another is specified in writing, notices, demands and communications to Seller and Purchaser shall be sent to the addresses indicated below:

- (a) If intended for Seller:
- Burton W. Wiand, Receiver  
Scoop Real Estate, L.P.  
3000 Bayport Drive, Suite 600  
Tampa, Florida 33607  
Attn: Jeffrey C. Rizzo, CP, FRP

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Phone: (813) 347-5100  
Fax: (813) 247-5173  
Email: jrizzo@wiandlaw.com

(b) If intended for Purchaser:

Trinet West, LLC  
1255 West Shaw Avenue, Suite 101  
Fresno, CA 93711  
Attn: Gerald C. Mohr, Managing Member  
Phone: 559-244-3100  
Fax: 559-244-3110  
Email: jm@mrcapital.com

With copies to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any party may change the address to which notices hereunder are to be sent by giving written notice of such change of address as provided above.

Section 9.06 Entire Agreement; Amendments. This Agreement and the instruments delivered pursuant hereto constitute the entire agreement between the Parties hereto and supersede all prior written agreements and understanding, oral or written, between the Parties relating to the subject matter hereof. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by the Party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument. This Agreement, although initially drawn by one of the Parties hereto, shall not be construed for or against either party as a result thereof in any dispute pertaining to this Agreement or the transaction contemplated hereby, but this Agreement shall be interpreted in accordance with language hereof in an effort to reach the result intended thereby.

Section 9.07 Applicable Law; Jurisdiction; Venue.

(a) This agreement and the transactions contemplated hereby shall be governed by and construed in accordance with the laws of the state of North Carolina.

(b) Purchaser and Seller hereby (i) agree that all disputes and matters whatsoever arising under, in connection with, or incident to this Agreement shall be exclusively litigated as a summary proceeding in **SECURITIES AND EXCHANGE COMMISSION V. ARTHUR NADEL, ET AL., CASE NO: 8:09-CV-87-T-26TBMIN AND BEFORE THE UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION**, in Hillsborough County in the State of Florida, to

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the exclusion of the courts of any other state or country, and (ii) irrevocably submits to the exclusive jurisdiction of the **UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION**, in Hillsborough County in the State of Florida, in any action or proceeding arising out of or relating to this Agreement, and hereby irrevocably waives any objection to the laying of venue of any such action or proceeding in any such court and any claim that any such action or proceeding has been brought in an inconvenient forum. A final judgment in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

Section 9.08 Captions. The captions in this Agreement are inserted for convenience of reference only and in no way define, describe, or limit the scope or intent of this Agreement or any of the provisions hereof.

Section 9.09 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns; provided, however the delivery of the Agreement by one party shall not be binding upon either until both Parties have fully executed same.

Section 9.10 Timely Performance. Should any action required under this Agreement not be performed, upon five (5) days written notice to the non-performing party, this Agreement may be cancelled if non-performance is not remedied within five (5) days.

Section 9.11 Waiver. No waiver by either party hereto of any condition or any breach of any term, covenant, representation or warranty contained in this Agreement shall be deemed or construed as a further or continuing waiver of such condition or breach or waiver of any other or subsequent condition or the breach of any other term, covenant, representation or warranty contained in this Agreement.

Section 9.12 Severability. If any provision of this Agreement is determined to be illegal or unenforceable, such provision will be deemed amended to the extent necessary to conform to applicable law or, if it cannot be so amended without materially altering the intention of the Parties, it will be deemed stricken and the remainder of the Agreement will remain in full force and effect.

Section 9.13 No Recording. Purchaser shall not record this Agreement or any short form, memorandum or notice thereof in any public or governmental office.

Section 9.14 Attorneys' Fees. In any action or dispute, at law or in equity, that may arise under or otherwise relate to this Agreement, the prevailing party will be entitled to, from the non-prevailing party, reimbursement of its attorneys' fees (including, but not limited to, attorneys' fees, paralegals' fees and legal assistants' fees), costs and expenses incurred in the preparation for and in connection with any trial, appeal or bankruptcy proceeding.

Section 9.15 Counterparts. Any number of counterparts of this Agreement may be executed and each such executed counterpart shall be deemed to be an original.

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date first above written.

**PURCHASER:**

**TRINET WEST, LLC**



Gerald C. Mohr, Managing Member

**SELLER:**

**BURTON W. WIAND, RECEIVER FOR  
SCOOP REAL ESTATE, L.P.**



Burton W. Wiand, as Receiver for Scoop Real Estate, L.P.

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EXHIBIT A

**Legal Description**

LYING AND BEING in Graham Township, Alamance County, North Carolina, and more particularly described as follows:

BEGINNING at an existing iron pin (site bench mark with NC Grid coordinates of N: 839,090,546 feet, E: 1,881,775.383 feet, NAVD 88, elev: 593.21 feet, value published by National Geodetic Survey "OPUS" Solution on 09/11/03) on the western margin of the public right-of-way of NC Highway 87 (South Main Street) and in the northeastern corner of the land conveyed to Crescent Center Associates by instrument recorded in Deed Book 503, Page 66, Alamance County Public Registry, and running thence with the northern boundary of the Crescent Center Associates land (nor or formerly) S. 84-34-58 W. 242.92 feet to an existing iron pin in the southeastern corner of the land conveyed to ECMM Associates by instrument recorded in Deed Book 789, Page 658, Alamance County Public Registry; thence with the southern boundary of the ECMM Associates land (nor or formerly) N. 61-06-52 W. 18.19 feet to an iron rebar set; thence two new lines within the ECMM Associates land (nor or formerly) as follows: (1) N. 05-35-11 W. 189.62 feet to an iron rebar set; and (2) N. 84-34-01 E. 15.00 feet to an existing iron pin in the southern margin of the public right-of-way of Crescent Square Drive; thence with the southern margin of the public right-of-way of Crescent Square Drive N. 84-34-01 E. 231.52 feet to an iron rebar set in the western margin of the right-of-way of NC Highway 87 (South Main Street); and thence with the western margin of the right-of-way of NC Highway 87 (South Main Street) three (3) courses and distances as follows: (1) S. 04-50-25 E. 15.86 feet to a nail; (2) S. 49-50-25 E. 19.80 feet to a nail; and (3) S. 04-50-25 E. 169.95 feet to the point and place of BEGINNING, containing 1.18 acres, more or less, all as shown on survey prepared by Clinton B. Osborne, North Carolina Professional Land Surveyor L-3834, of Allied Associates, P.A., Job No. PA030608, Map No. GSDelta.dwg., and dated October 31, 2003, reference to said survey being made in aid of description.

Together with:

Easement rights in favor of the property, as set forth in Cross Access Easement Agreement recorded in Book 2108, Page 530, of the Alamance County Registry.

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**EXHIBIT B**

**DUE DILLIGENCE MATERIALS TO BE DELIVERED TO PURCHASER**

1. Rite Aid - Graham, NC (Phase 1)
2. Rite Aid Memo
3. Rite Aid Fidelity National title Ins company of New York
4. Rite Aid Affidavit of No Liens
5. Rite Aid - Graham, NC (Survey 2)
6. Rite Aid - Graham, NC (Survey 1)
7. Rite Aid - Graham, NC (Eckerd Prior Lease Agreement)
8. Rite Aid - Graham, NC (Eckerd Assignment and Assumption)
9. Rite Aid (Commitment for Title Insurance 3.22.05)
10. Order Appointing Receiver (Dkt. 8 efiled 1-21-09)
11. Tax Bills
12. Estoppel Certificate
13. Copies of Operating Statements with respect to the Property since it has been in the control of the court-appointed Receiver.
14. Any and all written correspondence, if any, received by the Receiver from Rite-Aid and/or Eckerd Companies since the Property has been under court-ordered receivership.

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**EXHIBIT C**

**Receiver's Deed and Exhibits**

**STATE OF FLORIDA**

**COUNTY OF HILLSBOROUGH**

**RECEIVER'S DEED**

**THIS INDENTURE**, made as of the \_\_\_\_ day of \_\_\_\_\_, 2011, by and between **Burton W. Wiand, as Receiver for Scoop Real Estate, L.P.**, a Delaware limited partnership (hereinafter referred to as the "Grantor"), having a mailing address of 3000 Bayport Drive, Suite 600, Tampa, Florida 36607 and **Trinet West, LLC**, a California limited liability corporation, , or assigns, having an address of 1255 West Shaw Avenue, Suite 101, Fresno, California 93711 (hereinafter referred to as the "Grantee").

**W I T N E S S E T H:**

That Burton W. Wiand was appointed Receiver for the Property, as hereinafter described, pursuant to that certain Order Reappointing Receiver in Securities and Exchange Commission v. Arthur Nadel, et al, United States District Court Middle District of Florida, Tampa Division Case No.: 8:09-cv-87-T-26TBM. The sale having been duly approved by Order of the United States District Court Middle District of Florida Tampa Division entered \_\_\_\_\_, 2011 (hereinafter referred to as the "Order" and attached hereto as Exhibit A and incorporated herein by this reference).

That for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, Grantor has granted, bargained, sold, aliened, conveyed and confirmed and does hereby grant, bargain, sell, alien, convey and confirm unto Grantee all of Grantor's right, title and interest in and to all that certain tract or parcel of land lying and being in Alamance County, North Carolina, being more particularly described in Exhibit B attached hereto and by this reference made a part hereof (hereinafter referred to as the "Property").

TO HAVE AND TO HOLD said Property, together with all and singular the rights, members and appurtenances thereof, to the same being, belonging or in anywise appertaining, to the only proper use, benefit and behoof of Grantee forever, in as full and ample a manner as the same was held by Grantor.

IN WITNESS WHEREOF, Grantor has signed and sealed this Receiver's Deed, the day and year first above written.

FIRST DRAFT VERSION

GRANTOR:

\_\_\_\_\_  
Burton W. Wiand, as Receiver for Scoop Real Estate, L.P.

SEALED AND DELIVERED  
IN THE PRESENCE OF:

\_\_\_\_\_  
Witness  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Witness  
Print Name: \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

The foregoing Receiver's Deed was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by **BURTON W. WIAND, AS RECEIVER FOR SCOOP REAL ESTATE, L.P.**, who [ ] is personally known to me, or [ ] has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

[notary seal]

Print Name: \_\_\_\_\_



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**Exhibit A to Receiver's Deed**

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

SECURITIES AND EXCHANGE COMMISSION,  
Plaintiff,

v,  
ARTHUR NADEL,  
SCOOP CAPITAL, LLC,  
SCOOP MANAGEMENT, INC.,

Defendants,  
SCOOP REAL ESTATE, L.P.,  
VALHALLA INVESTMENT PARTNERS, L.P.,  
VALHALLA MANAGEMENT, INC.,  
VICTORY FUND, LTD,  
VIKING IRA FUND, LLC,  
VIKING FUND, LLC, AND  
VIKING MANAGEMENT, LLC.

CASE NO.: 8:09-cv-0087-T-26TBM

Relief Defendants. \_\_\_\_\_ /

**ORDER**

Unopposed Verified Motion to Approve the Sale of Real Property Located in Graham, Alamance County, North Carolina (the "Motion") (Dkt. \_\_\_\_). Upon due consideration of the Receiver's powers as set forth in the Order Appointing Receiver (Dkt. 8) and the Orders Reappointing Receiver (Dkts. 140, 316 and 493), it is **ORDERED AND ADJUDGED** that the Motion is **GRANTED**.

The sale of the real property located in Alamance County, North Carolina pursuant to Agreement of Sale and attached as Exhibit \_\_\_\_ to the Motion is hereby approved. All claims relating to the property located in Alamance County, North Carolina are hereby extinguished. The Receiver is hereby directed to transfer free and clear of all claims, liens, and encumbrances to Trinet West, LLC, or

FIRST DRAFT VERSION

assigns, by way of Receiver's Deed, pursuant to the Purchase and Sale Agreement, title to the real property located in Alamance County, North Carolina, which bears the following legal description:

LYING AND BEING in Graham Township, Alamance County, North Carolina, and more particularly described as follows:

BEGINNING at an existing iron pin (site bench mark with NC Grid coordinates of N: 839,090,546 feet, E: 1,881,775.383 feet, NAVD 88, elev: 593.21 feet, value published by National Geodetic Survey "OPUS" Solution on 09/11/03) on the western margin of the public right-of-way of NC Highway 87 (South Main Street) and in the northeastern corner of the land conveyed to Crescent Center Associates by instrument recorded in Deed Book 503, Page 66, Alamance County Public Registry, and running thence with the northern boundary of the Crescent Center Associates land (nor or formerly) S. 84-34-58 W. 242.92 feet to an existing iron pin in the southeastern corner of the land conveyed to ECMM Associates by instrument recorded in Deed Book 789, Page 658, Alamance County Public Registry; thence with the southern boundary of the ECMM Associates land (nor or formerly) N. 61-06-52 W. 18.19 feet to an iron rebar set; thence two new lines within the ECMM Associates land (nor or formerly) as follows: (1) N. 05-35-11 W. 189.62 feet to an iron rebar set; and (2) N. 84-34-01 E. 15.00 feet to an existing iron pin in the southern margin of the public right-of-way of Crescent Square Drive; thence with the southern margin of the public right-of-way of Crescent Square Drive N. 84-34-01 E. 231.52 feet to an iron rebar set in the western margin of the right-of-way of NC Highway 87 (South Main Street); and thence with the western margin of the right-of-way of NC Highway 87 (South Main Street) three (3) courses and distances as follows: (1) S. 04-50-25 E. 15.86 feet to a nail; (2) S. 49-50-25 E. 19.80 feet to a nail; and (3) S. 04-50-25 E. 169.95 feet to the point and place of BEGINNING, containing 1.18 acres, more or less, all as shown on survey prepared by Clinton B. Osborne, North Carolina Professional Land Surveyor L-3834, of Allied Associates, P.A., Job No. PA030608, Map No. GSDelta.dwg., and dated October 31, 2003, reference to said survey being made in aid of description.

Together with:

Easement rights in favor of the property, as set forth in Cross Access Easement Agreement recorded in Book 2108, Page 530, of the Alamance County Registry.

**DONE and ORDERED** in chambers in Tampa, Florida this \_\_\_\_ day of \_\_\_\_\_, 2011.

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**RICHARD A. LAZZARA**  
**UNITED STATES DISTRICT JUDGE**

**COPIES FURNISHED TO:**  
Counsel of Record

FIRST DRAFT VERSION

**Exhibit B to Receiver's Deed**

LYING AND BEING in Graham Township, Alamance County, North Carolina, and more particularly described as follows:

BEGINNING at an existing iron pin (site bench mark with NC Grid coordinates of N: 839,090,546 feet, E: 1,881,775.383 feet, NAVD 88, elev: 593.21 feet, value published by National Geodetic Survey "OPUS" Solution on 09/11/03) on the western margin of the public right-of-way of NC Highway 87 (South Main Street) and in the northeastern corner of the land conveyed to Crescent Center Associates by instrument recorded in Deed Book 503, Page 66, Alamance County Public Registry, and running thence with the northern boundary of the Crescent Center Associates land (nor or formerly) S. 84-34-58 W. 242.92 feet to an existing iron pin in the southeastern corner of the land conveyed to ECMM Associates by instrument recorded in Deed Book 789, Page 658, Alamance County Public Registry; thence with the southern boundary of the ECMM Associates land (nor or formerly) N. 61-06-52 W. 18.19 feet to an iron rebar set; thence two new lines within the ECMM Associates land (nor or formerly) as follows: (1) N. 05-35-11 W. 189.62 feet to an iron rebar set; and (2) N. 84-34-01 E. 15.00 feet to an existing iron pin in the southern margin of the public right-of-way of Crescent Square Drive; thence with the southern margin of the public right-of-way of Crescent Square Drive N. 84-34-01 E. 231.52 feet to an iron rebar set in the western margin of the right-of-way of NC Highway 87 (South Main Street); and thence with the western margin of the right-of-way of NC Highway 87 (South Main Street) three (3) courses and distances as follows: (1) S. 04-50-25 E. 15.86 feet to a nail; (2) S. 49-50-25 E. 19.80 feet to a nail; and (3) S. 04-50-25 E. 169.95 feet to the point and place of BEGINNING, containing 1.18 acres, more or less, all as shown on survey prepared by Clinton B. Osborne, North Carolina Professional Land Surveyor L-3834, of Allied Associates, P.A., Job No. PA030608, Map No. GSDelta.dwg., and dated October 31, 2003, reference to said survey being made in aid of description.

Together with:

Easement rights in favor of the property, as set forth in Cross Access Easement Agreement recorded in Book 2108, Page 530, of the Alamance County Registry.

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**EXHIBIT D**

**Assignment and Assumption of Lease**

**ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT**

**THIS ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT** (the "Assignment") made effective as of \_\_\_\_\_, 2011, by and between **BURTON W. WIAND** as Court-appointed Receiver for Scoop Real Estate, L.P, a Florida limited partnership ("Assignor") and **TRINET WEST, LLC**, a California limited liability corporation, or assigns ("Assignee").

**BACKGROUND**

Assignor has been the Landlord under that certain Lease ("Lease") entered into by and between Graham EC, LLC, a North Carolina limited liability company, and Eckerd Corporation, a Delaware corporation, dated as of January 28, 2004, as amended (the "Lease"). Assignor became the assignee of the Lease pursuant to an Assignment and Assumption of Lease dated May 24, 2005, with the obligation of the Lease assumed by Rite Aid Corporation. Assignor desires to assign the Lease to Assignee, and Assignee is willing to assume all of the obligations of Assignor which arise under the Lease.

**AGREEMENT**

For and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee agree as follows:

**Assignment.** Assignor hereby grants, conveys, sells, assigns, transfers, bargains, sets over and delivers unto assignee, its successors and assigns, all of assignor's right, title and interest in and to the lease to have and to hold the same unto assignee for the residue of the unexpired term stated in the lease.

**Assumption.** By execution hereof, assignee hereby assumes and agrees to perform and carry-out all of assignor's obligations and responsibilities as landlord/lessor in and to the lease after the date hereof.

**Representations and Warranties.** In connection with the lease, assignor represents and warrants to assignee the following:

(a) Assignor has full power and lawful right to grant, convey, sell, assign, transfer, bargain, set over and deliver to Assignee all of its rights, title and interest in and to the Lease; and

(b) Assignor has not heretofore transferred, sold, conveyed, assigned, bargained, set over or otherwise disposed of its interest in and to the Lease to any other party.

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Ratification. Except as provided for herein, all terms, covenants, conditions and restrictions under the lease are hereby ratified and confirmed and shall be and remain in full force and effect in accordance with their terms.

Attorneys' Fees. In the event of any litigation between assignor and assignee arising out of this assignment, the prevailing party, whether assignor or assignee, shall be entitled to recover its reasonable attorneys' fees from the other party.

Entire Agreement. This assignment contains all of the terms and agreements between the parties relating to the subject matter of this assignment of the lease.

Notices. Notices permitted or required under this assignment shall be in writing, signed by the party giving the notice, or his attorney, and shall be: (a) delivered personally, or (b) sent by registered U.S. mail, or certified U.S. mail return receipt requested, or (c) sent by federal express or similar overnight air delivery service. notices shall be sent to the following addresses:

To Assignor:

Scoop Real Estate, L.P.  
3000 Bayport Drive, Suite 600  
Tampa, Florida 33607  
Attn: Burton W. Wiand, Court-appointed Receiver

To Assignee:

Trinet West, LLC  
1255 West Shaw Avenue, Suite 101  
Fresno, CA 93711  
Attn: Gerald C. Mohr, Managing Member

For purposes of this Assignment, the date of the notice shall be the date of deposit in the U.S. Mail system, with postage prepaid, or the date of delivery to the overnight air delivery service; in the case of notices given by personal delivery, the date of the notice shall be the date it is left at the above address.

Parties and Terms. This assignment shall be binding on and run to the benefit of the heirs, successors and assigns of the parties. The use of any gender shall be deemed to refer to the appropriate gender, whether masculine, feminine or neuter, and the singular shall be deemed to refer to the plural where appropriate, and vice versa.

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Captions. Headings and paragraph captions in this assignment are only for convenience of reference, and shall not be considered in interpreting, nor construed to limit, the context or meaning of the text.

Amendments. The provisions of this assignment may not be changed, waived, or terminated except in writing signed by the party against whom enforcement of the change, waiver or termination is sought.

Governing Law. This agreement shall be governed by the laws of Florida.

Authorized Signatory. All parties executing this assignment are authorized to execute same on behalf of assignor or assignee.

**THIS ASSIGNMENT IS EXECUTED** between the parties as of the date specified at the beginning of this Assignment.

As to

**“ASSIGNOR”**  
BURTON W. WIAND, AS COURT-  
APPOINTED RECEIVER FOR SCOOP  
REAL ESTATE, L.P.

By: \_\_\_\_\_  
BURTON W. WIAND, AS COURT-  
APPOINTED RECEIVER FOR SCOOP  
REAL ESTATE, L.P.

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Witness

Print Name: \_\_\_\_\_

\_\_\_\_\_  
Witness

Print Name: \_\_\_\_\_

FIRST DRAFT VERSION

As to

**“ASSIGNEE”  
TRINET WEST, LLC**

By: \_\_\_\_\_  
Gerald C. Mohr, Managing Member

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Witness  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Witness  
Print Name: \_\_\_\_\_

FIRST DRAFT VERSION

**EXHIBIT E**

**Bill of Sale**

**BILL OF SALE**

1. Sale and Transfer of Assets. For good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, Burton W. Wiand, as Court-appointed Receiver for Scoop Real Estate, L.P., a Delaware limited partnership ("Assignor"), hereby sells, transfers, assigns, conveys, grants and delivers to Trinet West, LLC, a California limited liability corporation, or assigns ("Assignee"), effective as the date hereof, all of Seller's right, title and interest in and to all of the tangible and intangible personal property constituting a portion of the Property (as defined in the Agreement of Sale and Purchase dated October \_\_, 2011) (the "Assets").

2. Representations and Warranties. Assignor hereby covenants with Assignee that: (a) Assignor is the lawful owner of the Assets with the free and unrestricted right to sell the same; (b) the Assets are free and clear of all liens, claims and encumbrances of any nature whatsoever; (c) Assignor warrants and will defend title to the Assets hereby transferred against all claims and demands of all persons whomsoever; and (d) Assignor will execute and deliver such other documents and take such actions as Assignee may reasonably request from time to time to further evidence the transfer of the Purchased Assets as contemplated hereby.

3. Further Actions. Assignor agrees to take all steps reasonably necessary to establish the record of Assignee's title to the Assets and, at the request of Assignee, to execute and deliver further instruments of transfer and assignment and take such other action as Assignee may reasonably request to more effectively transfer and assign to and vest in Assignee each of the Assets.

Assignor has executed this Bill of Sale as of \_\_\_\_\_, 2011.

Burton W. Wiand, Receiver for  
SCOOP REAL ESTATE, L.P.

\_\_\_\_\_  
Burton W. Wiand, as Receiver



# **EXHIBIT 3**

*SEC v. Mutual Benefits Corp.*

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division

Case Number: 04-60573-CIV-MORENO

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

MUTUAL BENEFITS CORP., *et al.*,

Defendants,

VIATICAL BENEFACTORS, LLC, *et al.*,

Relief Defendants,

---

**ORDER GRANTING RECEIVER'S MOTION FOR  
FINAL DETERMINATION OF ALLOWED CLAIMS**

THIS CAUSE came before the Court upon Receiver's Final Omnibus Report on Claims and Motion for Final Determination of Allowed Claims (D.E. No. 2172), filed on **October 14, 2008**.

THE COURT has considered the motion, the oral argument of the parties, and the pertinent portions of the record, and being otherwise fully advised in the premises, it is

**ADJUDGED** that the motion is **GRANTED** as follows.

**I. Applicable Basis for Investors' Claims**

---

The Court adopts the Receiver's position regarding the applicable basis for the investors' claims. The Receiver shall use the initial dollar amount invested with MBC as the basis for the allowed amount of each investor's claim (the "dollars invested" approach) as it is the most equitable and practical basis for determining investors' claims in this Receivership. It is also the most common and most generally recognized approach to treatment of investor claims in an equitable receivership or bankruptcy proceeding involving a fraudulent investment scheme.

## II. Disputed Claims and Miscellaneous Issues

The Court adopts the Receiver's position regarding the disputed claims and miscellaneous issues as the Receiver's recommendations are in the best interest of the investors and will result in the equitable distribution of the receivership estate. Specifically, the Court finds as follows.

(1) Claims for Investment Return

These are claims where the investors have sought the amount they expected to earn on their investment with MBC (in addition to the amount invested). These claims are disallowed as the promised returns were the product of fraud and claims for "profits" in Ponzi-scheme receiverships are generally rejected by the courts.

(2) Claims for Delay/Interest/Lost Time Value of Money

These are claims where the investors have sought damages for the delay in their policies maturing "on time" in the form of interest or some other form of opportunity cost. These claims are disallowed as it would be inequitable and contrary to the case law to recognize claims based upon the fraudulent representations made in a Ponzi-scheme. Moreover, even if the business of MBC had been conducted lawfully, the investors had no guarantee that an investment in a policy would mature at the time projected in the life expectancy estimate.

(3) Claims for Premiums Paid and/or Administrative Fees Paid

These are claims where the "Keeping Investors" have sought to recover the administrative fees and/or premiums paid to keep their policies in force since the disposition process for all of the policies was concluded. These claims are disallowed as the "Keeping Investors" specifically agreed to take on the administrative expense and shared premium burden for their policies when they opted to attempt to mitigate their losses by voting to keep their policies.

(4) Claims are Unstated or Unexplained or Non-Responsive

These are claims where the investors indicated that they did not agree with the recommended claim amount, but did not explain why or indicate the additional amount sought. These claims are disallowed as there is no practical way to give these investors an additional amount without a description of what additional amount is claimed.

(5) Claims for Consequential Damages

These are claims where the investors have sought some form of consequential damages as a result of their investment with MBC (e.g. payments to an attorney or other professional, pain and suffering). These claims are disallowed as recognizing them would be impractical (as the existence and amount of the claims are difficult to verify) and inequitable (as investors made different personal choices).

(6) Claims from Trade Creditors

Six of the trade creditors responded to the Receiver's notice by indicating that they wished to preserve their claims despite the Receiver's objections. The creditors' claims shall be subordinated to the individual investors' claims because, among other things, (1) this is an SEC enforcement action designed to protect the *investors*, not the creditors, (2) MBC's fraudulent conduct was directed towards its *investors*, not its creditors (which were paid substantial amounts already), (3) the investors as a whole are less able to bear the financial costs of MBC's conduct than are the creditors, and (4) four of these creditors provided lobbying or legal services to MBC, helping to keep it in business, thereby prolonging the fraud. The Court also disallows (1) Holland & Knight's Claim No. 3049061 to the extent it relates to work that was performed post-Receivership, (2) Aaron Reed & Associates, LLC's Claim No. 3048058 to the extent it includes a retainer fee for the month of April 2004, and (3) Franklin Trade Graphics's Claim No. 3048110 to the extent it includes post-Receivership finance charges.

(7) On-Going Maturities

Additional policies will inevitably mature between this ruling and actual receivership estate distribution. In order to prevent an investor from receiving the death benefits on their investment *and* their *pro rata* share of the receivership estate distribution, any claims on policies that mature before the distribution date shall be disallowed (as the investor will already receive the death benefits on the policy).

(8) Estate of Sally G. Richardson

This investor signed an irrevocable offer to sell her policy interest to another investor on her policy. By error, the death benefit proceeds were sent to Mrs. Richardson, instead of to the investor who bought her interest in the policy. The Receiver notified Mrs. Richardson of the error, but she has not responded. Instead, she has submitted claims on five other policies through the Claims Process. These claims are denied and any amount she would have received shall be transferred to the investor who should have received the death benefit proceeds on the sold policy. (Any amount that may be transferred to the investor shall not exceed the amount that the investor should have received from the sold policy.)

DONE AND ORDERED in Chambers at Miami, Florida, this 22nd day of October, 2008.

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FEDERICO A. MORENO  
UNITED STATES DISTRICT JUDGE

Copies provided to:  
Counsel of Record