

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.

**RECEIVER'S UNOPPOSED VERIFIED MOTION TO APPROVE
THE SALE OF REAL PROPERTY LOCATED AT
2433 WEST MAIN STREET, TUPELO, LEE COUNTY, MISSISSIPPI 38801**

Pursuant to 28 U.S.C. § 754, Fed. R. Civ. P. 66, 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 at 2433 West Main Street, Tupelo, Lee County, Mississippi 38801.

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.; 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 and the trust 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.) In accordance with that Order, the Receiver took possession of real property located at 2433 West Main Street, Tupelo, Lee County, Mississippi 38801 (the "Property").

THE PROPERTY

The Property was purchased by Receivership Entity Scoop Real Estate, L.P. on February 3, 2005 for \$941,000.00 with proceeds from Nadel's Ponzi scheme. The Property consists of approximately .65 acres and includes a building currently occupied and leased by a Starbucks coffee store, a business owned by Starbucks Corporation. The building contains approximately 1,650 square feet of floor area and there is also a parking lot on the Property. The Property is not subject to any liens or encumbrances.

The Lee County Mississippi Tax Collector's office assessed the Property at a value of \$360,070.00 in 2009. The Receiver also obtained informal opinions as to the fair market value of the Property from various potential brokers. These brokers estimated the fair market value of the Property to be between \$550,000.00 and \$700,000.00.

RECEIVER'S MARKETING EFFORTS

The Receiver initially marketed the Property to potential purchasers through his website, www.nadelreceivership.com, in a specific "Assets for Sale" section, but there was

little interest in the Property. Then, in September 2009, the Receiver engaged the services of John A. Skicewicz of Coldwell Banker Commercial NRT and the property was listed for \$925,000.00. After several months the price was reduced to \$800,000.00 in an effort to generate more interest. In July 2010 the Receiver was offered \$675,000.00 and eventually entered into a contract with the prospective purchaser for \$750,000.00. However, for various reasons the prospective purchaser was unable to finalize the transaction.

The list price was again reduced in November 2010 to \$725,000.00. The Receiver was presented with three offers between \$700,000.00 and \$720,000.00 in November 2010. A prospective buyer that offered \$720,000.00 withdrew the offer because he did not like the location of the Property. A prospective buyer that offered \$700,000.00 was unable to obtain financing. Then, on November 30, 2010, the Receiver was presented with an all-cash offer from David A. Topper (“Purchaser”)¹ for \$710,000.00. On January 12, 2011, Purchaser and the Receiver entered into an Agreement for Sale and Purchase of Real Property (the “Agreement”) for the purchase price of \$715,000.00, contingent on this Court’s approval. *See* Exhibit 2. The Receiver believes that the offer by Purchaser fairly represents the current value of the Property. Furthermore, Purchaser is in position to complete the sale and purchase of the Property contingent upon this Court’s approval. As part of the Agreement, Purchaser has deposited \$25,000.00 of earnest money into an escrow account, which amount is to be credited towards the purchase price at closing should the Court approve the sale. Purchaser has agreed to pay the balance of the purchase price in full at closing, which is

¹ Following the execution of the Agreement for Sale and Purchase of Real Property, the Receiver was informed that David A. Topper would be assigning his right to purchase under the contract of sale to Elvis Realty LLC. Accordingly, “Purchaser” as used herein includes Elvis Realty LLC.

scheduled to take place on or before February 28, 2011, contingent upon this Court's approval.

The Receivership Estate will net approximately \$650,000.00 in connection with the sale of the Property, after the payment of commissions and other expenses associated with the sale of the Property. The Receiver believes that the Agreement with Purchaser is in the best interests of the Receivership, and accordingly, the Receiver respectfully requests that this Court enter an order in substantially the form attached as Exhibit 1, approving the sale of the Property located at 2433 West Main Street, Tupelo, Lee County, Mississippi 38801.

MEMORANDUM OF LAW

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership 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). The Court's wide discretion 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). The relief sought by the Receiver falls squarely within those powers. Furthermore, the relief sought is in furtherance of the duties and authorities bestowed upon the Receiver by the Order Appointing Receiver.

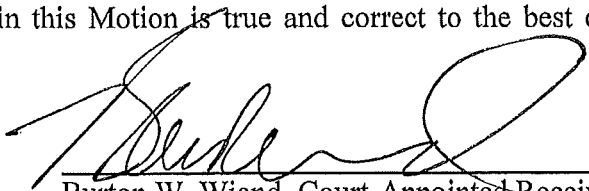
WHEREFORE, the Receiver moves the Court for entry of an order in substantially the form of the proposed Order attached as Exhibit 1 approving the sale of the Property to Purchaser in accordance with the terms set forth in the Agreement attached hereto as Exhibit 2 and authorizing the Receiver to transfer title to the Property to the Purchaser via Receiver's Deed free and clear of all liens and encumbrances.

CERTIFICATE UNDER LOCAL RULE 3.01(g)

Undersigned counsel has conferred with counsel for the SEC and is authorized to represent to the Court that this motion is unopposed.

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 February 18, 2011, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I further certify that 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
Gianluca Morello, FBN 034997
gmorello@wiandlaw.com
WIAND GUERRA KING P.L
3000 Bayport Drive
Suite 600
Tampa, FL 33607
Tel: 813-347-5100
Fax: 813-347-5199
Attorney for the Receiver, Burton W. Wiand

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VIKING IRA FUND, LLC,
VIKING FUND, LLC, AND
VIKING MANAGEMENT, LLC.

Relief Defendants. /

ORDER

Before the Court is the Receiver's Unopposed Verified Motion to Approve the Sale of Real Property Located at 2433 West Main Street, Tupelo, Lee County, Mississippi 38801 (the "Motion") (Dkt. ____). Upon due consideration of the Receiver's powers as set forth in the Order Appointing Receiver (Dkt. 8), the Orders Reappointing Receiver (Dkts. 140, 316 and 493), and applicable law, it is **ORDERED AND ADJUDGED** that the Receiver's

Unopposed Verified Motion to Approve the Sale of Real Property Located at 2433 West Main Street, Tupelo, Lee County, Mississippi 38801 (Dkt. ____) is **GRANTED**.

The Receiver is hereby authorized to transfer to Elvis Realty LLC by way of Receiver's Deed free and clear of all claims, liens, and encumbrances, pursuant to the Agreement for Sale and Purchase of Real Property title to real property located at 2433 West Main Street, Tupelo, Lee County, Mississippi 38801, which bears the following legal description:

Commencing at the Southwest Corner of the Southeast Quarter of Section 35, Township 9 South, Range 5 East, Lee County, Mississippi. Thence North 1575.56 feet; thence East 521.59 feet to an iron pin; thence North 00 degrees 43 minutes 16 seconds West 198.26 feet to the Point of Beginning. Thence North 00 degrees 17 minutes 10 seconds West 186.23 feet to the new right of way of West Main Street, said point being 40 feet from centerline; thence South 84 degrees 52 minutes 01 seconds West along said South line 136.34 feet to a chisel mark; thence South 00 degrees 13 minutes 26 seconds East 174.00 feet to an iron pin; thence East 136.34 feet to the Point of Beginning, and containing 0.563 acres. Lying and being in the Southeast Quarter of Section 35, Township 9 South, Range 5 East, City of Tupelo, Lee County, Mississippi.

TOGETHER WITH a non-exclusive perpetual easement for ingress and egress across the following described real property, lying and being in the City of Tupelo, Lee County, Mississippi, to wit:

Commencing at the Southwest Corner of the Southeast Quarter of Section 35, Township 9 South, Range 5 East, City of Tupelo, Lee County, Mississippi, and run thence North 1575.56 feet; thence East 521.59 feet to an iron pin; thence North 00 degrees 47 minutes 54 seconds West 168.34 feet to the POINT OF BEGINNING; thence South 75 degrees 00 minutes West 58.96 feet; thence around the arc of a curve to the left, with a radius of 38.60 feet, a tangent of 29.62 feet, for an arc length of 50.53 feet; thence South 48.04 feet; thence South 89 degrees 51 minutes 42 seconds West 363.55 feet to the East right of way of South Thomas Street; thence North 00 degrees 08 minutes 18

seconds West along said East line 30.00 feet; thence North 89 degrees 51 minutes 42 seconds East 338.62 feet; thence North 100.56 feet to the South line of the Starbucks lot; thence East along said South line 25.00 feet; thence South 31.92 feet; thence North 63 degrees 48 minutes 59 seconds East 24.67 feet; thence North 75 degrees 00 minutes East 65.52 feet; thence South 00 degrees 17 minutes 10 seconds East 25.85 feet to the POINT OF BEGINNING. Lying and being in the Southeast Quarter of Section 35, Township 9 South, Range 5 East, City of Tupelo, Lee County, Mississippi.

DONE and ORDERED in chambers in Tampa, Florida this ____ day of February, 2011.

RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record

AGREEMENT FOR SALE AND PURCHASE OF REAL PROPERTY

~~THIS AGREEMENT FOR SALE AND PURCHASE OF REAL PROPERTY,~~ (this "Agreement") is made effective as of this 12th day of January 2011, by and between Burton W. Wiand, as Receiver for Scoop Real Estate, LP, a Delaware Limited Partnership, ("Seller") and David A. Topper, or assigns ("Buyer").

WITNESSETH:

WHEREAS, Seller desires to sell and Buyer desires to purchase certain real property consisting of approximately .65 acres, more or less, located in Section 35, Township 9 South, Range 5 East in Tupelo, Lee County, Mississippi and as further described on Exhibit A attached hereto and incorporated by reference, which such real property includes and encompasses a building containing approximately 1,650 square feet of floor area (the "Building") currently occupied by and utilized as a Starbucks coffee store owned by Starbucks Corporation, a Washington corporation, ("Starbucks"), together with all buildings, parking lots, sidewalks, landscaping and other improvements located thereon, including, without limitation, all of Seller's interest in all mechanical systems, fixtures and equipment; electrical systems, fixtures and equipment; heating fixtures, systems and equipment; and plumbing fixtures, systems and equipment (the "Improvements"), and (2) all of Seller's right, title and interest in and to all rights, benefits, privileges, easements, tenements, hereditaments, rights-of-way and other appurtenances thereon or in any way appertaining thereto, and all information which is related to such real property, including any current leases, agreements with tenants, architectural or engineering plans, service and maintenance contracts, warranties or other documents or tangible information, any tangible or intangible personal property owned or hereinafter owned by Seller and situated on the property and all permits, certificates of occupancy, approvals or other governmental authorizations with regard to the operation of the real

property (hereinafter collectively referred to as the "Real Property"), subject only to the Permitted Exceptions (hereinafter defined).

NOW, THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the parties hereto agree as follows:

1. The Buyer agrees to buy and Seller agrees to sell the Real Property upon the terms, provisions and conditions herein contained.
2. The price for the purchase and sale of the Real Property is Seven Hundred Fifteen Thousand Dollars and No/100 (\$715,000.00) (the "Purchase Price").
3. Upon execution of this Agreement by both parties hereto, the Buyer will deposit with Michael D. Ferris, Esq., Mitchell, McNutt & Sams, P.A., the sum of Twenty Five Thousand and no/100 Dollars (\$25,000) in readily available funds as an earnest money deposit ("Earnest Money Deposit"). The Earnest Money Deposit shall be applied at Closing to the Purchase Price to be paid to Seller by Buyer at Closing for the Real Property. If merchantable title is delivered or made available to the Real Property at Closing and all of the Contingencies (as defined below) are satisfied and Buyer shall fail to pay Seller for the Real Property as specified herein, Seller shall have the right to elect to declare this Agreement cancelled, and upon such election, the Earnest Money Deposit shall be retained by Seller as liquidated damages.

Simultaneously with the execution of this Agreement by the parties, Seller shall make available to Buyer all surveys, environmental inspection reports, leases, reports related to current lease agreements concerning the Real Property, including, but not limited to operating expense reports related to any such lease which is related to the Real Property, soil tests, construction plans and specifications or other documents or tangible information in the possession of Seller that are

relevant to the Real Property. (Seller is a Court-appointed Receiver and has limited information)

4. The place of Closing of the transaction contemplated hereby is to be held at the offices of Michael D. Ferris, Esq., Mitchell, McNutt & Sams, P.A., 105 South Front Street, Tupelo, MS 38804 and shall be recorded in Lee County Mississippi (the "Closing") and shall be on a date (the "Closing Date") to be mutually agreed upon by Seller and Buyer and in no event later than fifteen (15) days after the end of the Due Diligence Period (provided, however, that Seller and Buyer shall have the right to adjourn the Closing from time to time for an additional ten (10) days upon prior written notice to the other party). The "Due Diligence Period" shall mean the period beginning upon the execution of this Agreement by both the Seller and the Buyer and ending on the close of business on the thirtieth day (30th) day thereafter. Closing shall be conducted via electronic transmission, facsimile and overnight delivery service.

5. Seller, shall obtain, within five (5) days after the execution of this Agreement, a commitment to issue ("Commitment") from Chicago Title Underwriting Company, an American Land Title Association ("ALTA") standard form owner's marketability policy (ALTA Form B - 1992), without exceptions other than "Permitted Exceptions" (as hereinafter defined). During the Due Diligence Period, Buyer can conduct such examination and analysis as it feels appropriate. At the conclusion of the Due Diligence Period Buyer should notify Seller in writing delivered during business hours by any reasonably verifiable means should Seller for any reason or for no reason, desire not to proceed with this purchase. Absent such notification, except as otherwise set forth herein no further contingencies to this contract shall exist absent the issuance of a court order and this contract shall proceed to closing and all deposits shall be the property of the Seller (absent a default by Seller hereunder, the non-fulfillment, for any reason, of any of the conditions set forth

below, the lack of marketable title, or casualty to the Real Property before closing).

(A) Buyer's obligation to purchase the Real Property is contingent and conditional on the Buyer's ability to enter into an Assignment of Commercial Lease with the Seller to completely assign all of the Seller's rights, title and interest in and to that certain Commercial Lease dated April 19, 2004 between Seller and Starbucks (the "Lease"),

(B) Buyer's obligation to purchase the Real Property is contingent and conditional on the Buyer's receipt, at or before Closing, of an Estoppel Certificate in the form attached hereto as Exhibit B (the "Estoppel").

(C) Buyer's obligation to purchase the Real Property is contingent and conditional on the Seller's Delivery of a Receiver's Deed in the form attached hereto as Exhibit C (the "Deed") and issued pursuant to Order of the United States District Court for the Middle District of Florida conveying the Real Property free and clear of any and all claims, liens and encumbrances other than the Permitted Exceptions (the "Order").

(D) Buyer's obligation to purchase the Real Property is contingent and conditional on the entry of satisfactory court orders from the United States District Court for the Middle District of Florida which are necessary for the Seller to convey title to the Real Property free and clear of all claims, liens and encumbrances other than the Permitted Exceptions.

The matters set forth in subsections (A) through (D) above shall be referred to herein as the "Contingencies."

6. Deliverables.

- a. Seller shall deliver at the Closing:
 - (i) the executed Deed and Order;

- (ii) the executed Assignment of Commercial Lease;
- (iii) an executed Bill of Sale, in form reasonably satisfactory to Buyer,

transferring any and all personal property included in the Real Property;

- (iv) the Estoppel, executed by Starbucks;
- (v) all documents required by the title company necessary for it to

issue its title insurance policy to Buyer;

b. Buyer shall deliver at the Closing

- (i) the balance of the Purchase Price;
- (ii) an executed counterpart of the Assignment of Commercial Lease;

and

- (iii) all other documents as may be reasonably required to be executed

and delivered to complete this transaction as contemplated hereunder.

7. All current real estate taxes, assessments, rental and operating expenses, including utilities, if any (not otherwise paid by Starbucks directly), shall be prorated as of the date of Closing, based upon an actual 365 day year, as is customary. Buyer shall receive a credit at the Closing for all prepaid rentals (prorated through the date of Closing for the month in which Closing occurs). Seller will pay any and all rollback taxes or special assessments applicable to the Real Property which are due and payable on the date of Closing.

8. All notices required or permitted hereunder, shall be in writing and shall be served on the parties at the following address:

If to Buyer:

David A. Topper
Fast Food Systems, Inc.
42-40 Bell Blvd., Suite 200
Bayside, NY 11361

With a copy to: Eiseman Levine Lehrhaupt & Kakoylannis, PC
805 Third Avenue, 10th Floor
New York, New York 10017
Attention: Edward Duffy
Fax: 212-355-4608

If to Seller: Burton W. Wland, as Receiver for Scoop Real Estate, LP
3000 Bayport Drive, Suite 600
Tampa, Florida 33607
Attention: Jeffrey C. Rizzo
Fax: 813.347.5173

Notices shall be either (i) personally delivered to the addresses set forth above, in which case they shall be deemed delivered on the date of delivery to said address, (ii) sent by registered or certified mail, return receipt requested, in which case they shall be deemed delivered three (3) business days after deposit in the U.S. mail, (iii) sent by overnight courier in which case delivery shall be deemed as shown on the courier's records; or (iv) sent via confirmed facsimile.

9. Time is of the essence of this Agreement. If both parties do not execute this Agreement within five (5) business days following the execution and delivery of this Agreement by one party to the other party, then this Agreement shall become null and void unless this provision is expressly waived in writing by both parties.

10. This Agreement shall be governed by and enforced in accordance with the laws of the State of Mississippi. Any provision of this Agreement which is unenforceable or invalid or the inclusion of which would affect the validity, legality, or enforcement of this Agreement shall be of no effect, but all the remaining provisions of this Agreement shall remain in full force and effect.

11. The parties acknowledge that Coldwell Banker Commercial, NRT ("Broker") is the sole broker in this transaction. Seller shall pay a real estate sales commission to Broker at Closing in an amount equal to six percent (6%) of the Purchase Price referenced in Section 2 hereof. Except for the commission payable to Broker, Seller and Buyer each represent and warrant to the other party that no other real estate broker or agent has been engaged or retained by such party in

connection with this transaction. Except for the commission payable to the Broker, Seller and Buyer will indemnify and hold the other harmless from any and all claims for commissions alleged to be due brokers asserting entitlement to commission by virtue of their representation of the indemnifying party. The provisions of this paragraph shall survive the Closing of this transaction. In no event shall the total real estate sales commission exceed 6% of the Purchase Price or Forty Two Thousand Nine Hundred and no/100 Dollars (\$42,900).

12. This Agreement contains the entire agreement of the parties regarding the subject matter hereof and no representations, warranties or agreements have been made by either of the parties except as set forth in this Agreement. No modification, waiver or amendment of the provisions of this Agreement shall be effective unless made in writing and signed by the parties hereto.

13. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. The Buyer shall have the right to assign its rights under this Agreement to a limited liability company, corporation, limited partnership or general partnership controlled by the Buyer or affiliated with the Buyer or under common control as to the members of the Buyer.

14. Notwithstanding any other provision of this Agreement to the contrary, Buyer may elect to terminate this Agreement for any reason whatsoever in its sole discretion prior to the last day of the Due Diligence Period. If Buyer delivers written notice to Seller on or prior to the last day of the Due Diligence Period that it is electing to terminate this Agreement, the Earnest Money Deposit will be returned to the Buyer and the parties will thereafter be released from further performance hereunder.

15. Seller shall make available to Buyer (either via e-mail or hard copy), to the extent such documents are within Seller's possession or control those documents listed on Exhibit D attached hereto within three (3) days of the full execution of this Agreement.

16. Seller hereby authorizes Buyer and its agents, at Buyer's expense, to enter upon the Real Property, at any reasonable time during the Due Diligence Period, or thereafter, as Buyer deems necessary, for the purpose of inspecting the Real Property (including non-invasive testing of the Real Property such as a Phase I environmental site assessment), taking reasonable care not to interfere with business being conducted on the Real Property. Buyer shall repair any damage to the Real Property or improvements caused by such inspections. Buyer agrees to defend and hold Seller harmless from all claims (including reasonable attorneys' fees) which may be asserted as a result of any such entry by Buyer or its agents. Buyer shall coordinate such activities with Seller, so that Seller may give notice to Starbucks of such activities.

17. At the Closing, Seller shall convey to Buyer via Receiver's Deed in the form attached hereto as Exhibit C (the "Deed") and issued pursuant to Order of the United States District Court for the Middle District of Florida conveying the Real Property free and clear of any and all claims, liens and encumbrances, fee simple, marketable title to the Real Property, insurable by a title company licensed to do business in the State of Mississippi pursuant to an ALTA 2006 Owner's Policy of Title Insurance (the "Title Policy") in the amount of the Purchase Price, at regular rates and without additional premium, subject only to (i) current taxes not yet delinquent and (ii) all easements, restrictions and conditions of record approved by Buyer in accordance with Section 18b below (collectively, the "Permitted Exceptions").

18. Seller states that (i) there are no parties in possession of the Real Property except

Seller and Starbucks, and Seller has not entered into any other outstanding agreements of sale, leases, options or other rights of third parties to acquire an interest in the Real Property; (ii) there are no disputes or disagreements between the Seller and Starbucks, and the lease is in full force and effect and there is not a breach or default of any term of the Lease; (iii) Seller is the duly appointed receiver of the Real Property. This Agreement has been duly authorized, executed and delivered by Seller and all documents executed by Seller which are to be delivered to Buyer at Closing will be (a) duly authorized, executed and delivered by the Seller, (b) the legal, valid and binding obligation of Seller, and (c) sufficient to convey fee simple, marketable title; (iv) the execution and delivery by Seller of this Agreement and the performance by Seller of its obligations hereunder will not (a) violate or constitute an event of default under the terms or provisions of any agreement, document or other instrument to which Seller is a party or by which it or the Real Property is bound, (b) violate any provision of any legal requirement to which Seller or the Real Property is subject and (c) violate any judgment, order, writ, injunction or decree of any court applicable to Seller or the Real Property; (v) no consent, authorization, license, permit, registration or approval of, or exemption or other action by, any governmental or public body, commission or authority, other than the Order, is required in connection with the execution, delivery and performance by Seller of this Agreement.

19. In the event of a default by Buyer hereunder, and such default is not cured within five (5) Business Days after written notice from Seller, Seller may, as its sole and exclusive remedy, retain the Earnest Money Deposit, including interest, as liquidated damages but not as a penalty. Buyer and Seller agree that it would be impracticable or difficult to establish damages if Buyer should default and that the amount of the Deposit is a reasonable, negotiated and liquidated estimation thereof.

20. In the event Seller shall be in continuing default hereunder after the expiration of the applicable cure period, Buyer 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.

21. Buyer 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 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.

22. From and after the execution of this Agreement to and including the Closing Date:

a. Seller shall not consent or approve any matter under the Lease as to which Seller has the right to consent or approve, without Buyer's prior written consent in each instance, which shall not be unreasonably withheld or conditioned.

b. Seller shall promptly provide to Buyer copies of all notices of default to and from Starbucks and from Seller's lender as well as copies of any summons, complaint, temporary restraining order, order to show cause or other documents evidencing the commencement or continuation of any legal action against Seller or affecting the Real Property.

c. Seller shall give Buyer prompt notice (within three (3) Business Days after its receipt of notice of same) of (i) any rezoning of the Real Property, (ii) actual or threatened taking or condemnation of all or any portion of the Real Property, (iii) any actual or threatened enforcement action by any governmental agency or authority relating to the use, condition or environmental quality of the Real Property, or (iv) the commencement of any action by any party seeking relief which would result in the imposition of a lien on the Real Property, including, without limitation, an action to foreclose any mortgage on the Real Property.

d. Seller shall not (i) further mortgage, convey, or encumber the Real Property; (ii) execute any easements, covenants, conditions, restrictions, or rights-of-way with respect to the Real Property, (iii) enter into any recorded or unrecorded contracts with respect to the Real Property which are not by their terms terminable prior to Closing and not otherwise inconsistent with this Agreement, (iv) seek any zoning changes or other governmental approvals with respect to the Real Property, or (v) do, or to permit or suffer to be done, anything which would adversely affect the condition of title to the Real Property from and after the date of this Agreement through the completion of Closing.

e. Seller shall not (i) enter into any leases, or (ii) allow occupancy or use of any portion of the Real Property under any license or other agreement, without the prior written consent of Buyer.

f. Seller shall not solicit, seek, negotiate, or respond to any offer to purchase, ground lease, lease or sell and leaseback, all or any portion of the Real Property for the period commencing on the execution of this Agreement by all parties and continuing through the Closing Date, unless the Closing is delayed or fails to occur as a result of any breach of this Agreement by Buyer.

23. Buyer shall be entitled to assign its rights in, to and under this Agreement to an Affiliate of Buyer without the prior written consent of Seller. "Affiliate" shall mean any entity in which Buyer is a member and manager or managing member (if a limited liability company), stockholder and executive officer (if a corporation), or holds a similar position in an entity serving as general partner (if a limited partnership). No assignment shall be effective or binding on Seller until notice thereof has been delivered to Seller and assignee executes an agreement in which assignee assumes all of Buyer's rights, duties and obligations under this Agreement. Upon such assignment, the assignor shall be relieved of any and all obligations under this Agreement, provided however that the obligations of Buyer with respect to the Earnest Money Deposit shall remain in force and upon a default by either Buyer or its assignee, the Earnest Money Deposit shall be payable to Seller as set forth herein.

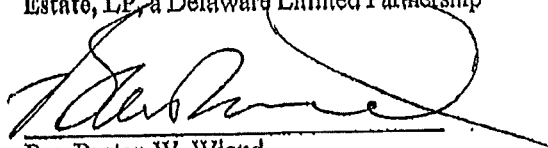
24. Any number of counterparts of this Agreement may be executed and each such executed counterpart shall be deemed to be an original.

{Signatures to appear on the following pages.}

IN WITNESS WHEREOF, the parties have executed this Agreement for the Sale and Purchase of Real Property on the date first above written.

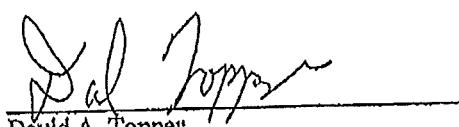
SELLER:

BURTON W. WIAND, as receiver for Scoop Real Estate, LP, a Delaware Limited Partnership



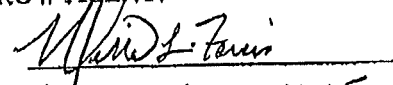
By: Burton W. Wiand

BUYER:



David A. Topper

ESCROW AGENT:

By: 

Mitchell McNeill & Sams, P.A.

Exhibit A

Description of the Real Property in Tupelo, Lee County, Mississippi

Commencing at the Southwest Corner of the Southeast Quarter of Section 35, Township 9 South, Range 5 East, Lee County, Mississippi. Thence North 1575.56 feet; thence East 521.59 feet to an iron pin; thence North 00 degrees 43 minutes 16 seconds West 198.26 feet to the Point of Beginning. Thence North 00 degrees 17 minutes 10 seconds West 186.23 feet to the new right of way of West Main Street, said point being 40 feet from centerline; thence South 84 degrees 52 minutes 01 seconds West along said South line 136.34 feet to a chisel mark; thence South 00 degrees 13 minutes 26 seconds East 174.00 feet to an iron pin; thence East 136.34 feet to the Point of Beginning, and containing 0.563 acres. Lying and being in the Southeast Quarter of Section 35, Township 9 South, Range 5 East, City of Tupelo, Lee County, Mississippi.

TOGETHER WITH a non-exclusive perpetual easement for ingress and egress across the following described real property, lying and being in the City of Tupelo, Lee County, Mississippi, to wit:

Commencing at the Southwest Corner of the Southeast Quarter of Section 35, Township 9 South, Range 5 East, City of Tupelo, Lee County, Mississippi, and run thence North 1575.56 feet; thence East 521.59 feet to an iron pin; thence North 00 degrees 47 minutes 54 seconds West 168.34 feet to the POINT OF BEGINNING; thence South 75 degrees 00 minutes West 58.96 feet; thence around the arc of a curve to the left, with a radius of 38.60 feet, a tangent of 29.62 feet, for an arc length of 50.53 feet; thence South 48.04 feet; thence South 89 degrees 51 minutes 42 seconds West 363.55 feet to the East right of way of South Thomas Street; thence North 00 degrees 08 minutes 18 seconds West along said East line 30.00 feet; thence North 89 degrees 51 minutes 42 seconds East 338.62 feet; thence North 100.56 feet to the South line of the Starbucks lot; thence East along said South line 25.00 feet; thence South 31.92 feet; thence North 63 degrees 48 minutes 59 seconds East 24.67 feet; thence North 75 degrees 00 minutes East 65.52 feet; thence South 00 degrees 17 minutes 10 seconds East 25.85 feet to the POINT OF BEGINNING. Lying and being in the Southeast Quarter of Section 35, Township 9 South, Range 5 East, City of Tupelo, Lee County, Mississippi.

