

EXHIBIT F

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

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

Defendants,

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.

DECLARATION PURSUANT TO 28 USC § 1746

I, W. Samuel Woodard, make this declaration on personal knowledge and declare as follows:

1. I am over the age of 18 years old.
2. I am member of the North Carolina State Bar, licensed to practice in North Carolina since 1969. My Martindale-Hubbell rating has been AV since the late 1970's. I have been named in Woodward and White's The Best Lawyers in America as a best lawyer in the practice area of real estate law since their 1993-1994 edition.
3. My practice focuses on all aspects of real property law in North Carolina.

4. I am knowledgeable of the law regarding real property in North Carolina and of the law regarding real estate lending and finance in North Carolina.

5. I have reviewed the Deed of Trust and Assignment of Rents made on May 2, 2008 by Laurel Preserve, LLC, as Grantor, to TRSTE, Inc., a Virginia corporation, as Trustee for Wachovia Bank, National Association, as Beneficiary (the "Deed of Trust). The Deed of Trust was given to secure payment of a Promissory Note evidencing a \$1,900,000.00 loan made by Wachovia Bank, National Association, now known as, Wells Fargo Bank, N.A. to Laurel Preserve, LLC. TRSTE, Inc. is authorized to transact business in North Carolina by the North Carolina Secretary of State and is in good standing.

6. North Carolina is a title theory state where under a deed of trust the legal title to real property in a trust is controlled by a trustee until an underlying debt and/or obligation is fully paid or performed.

7. A North Carolina Deed of Trust is a three party arrangement in which the Grantor (the owner of the real property who usually is the borrower or obligor as well) conveys its legal title to real property to a Trustee to hold for the benefit of the Beneficiary (the lender) until the underlying loan and/or obligation is repaid or satisfied. Legal title is only restored to the Grantor when the indebtedness and/or obligation is fully repaid or satisfied. Until that occurs, the Grantor only has an equitable interest in the real property conveyed to the Trustee.

8. Here, Laurel Preserve, LLC, conveyed all its legal title to the real property described in the legal description exhibit attached to the Deed of Trust on May 2, 2008, to TRSTE, Inc. TRSTE, INC., the Trustee, holds fee simple title to the real property until the Grantor, Laurel Preserve, LLC, fully repays the \$1,900,000.00 loan plus interest and other charges to the Beneficiary. When Laurel Preserve, LLC, conveyed its legal title to TRSTE, Inc., as Trustee, all Laurel Preserve, LLC, retained was mere equitable title to the real property.

9. Under North Carolina law, the holder of an equitable interest in real property cannot convey fee simple, legal and insurable title to such real property. Thus, neither Laurel Preserve, LLC, nor anyone deriving title from Laurel Preserve, LLC, can convey fee simple, legal and insurable title to the real property under North Carolina law unless and until the Deed of Trust is marked cancelled of record in the office of the Register of Deeds in each county in which it is recorded, or a Satisfaction of Deed of Trust is recorded in the office of the Register of Deeds in each county in which the Deed of Trust is recorded.

10. It is the custom and practice of attorneys in North Carolina who represent persons making a claim affecting the title to real property situated in North Carolina, which real property is the collateral under a recorded deed of trust, to give written notice to the holder of the legal title to the real property which is the trustee under the deed of trust, and in addition, to give written notice to the beneficiary under such recorded deed of trust.

11. The Deed of Trust provides the address of the Trustee, TRSTE, Inc., on Page 1 as 301 South Tryon Street, Charlotte, North Carolina 28202.

12. In Paragraph Two on Page 2 of the Deed of Trust, the Deed of Trust provides that the Grantor (Laurel Preserve, LLC) conveys the real property (the "Property") to the Trustee

"TO HAVE AND TO HOLD the Property and all the estate, right, title and interest, in law and in equity, of Grantor in and to the Property unto Trustee, its successors and assigns, in fee simple, forever." [Emphasis added]

13. Paragraph Three on Page 2 of the Deed of Trust provides, in part, as follows:

". . . and if Default (as hereinafter defined) occurs, Trustee is authorized to foreclose and sell the Property under power of sale or by judicial proceeding in accordance to applicable law and as provided herein." [Emphasis added]

14. On Pages 3 through 7 of the Deed of Trust, the Grantor makes numerous representations regarding the Property to the Trustee.

15. On Page 7 of the Deed of Trust, the Grantor indemnifies, holds harmless and defends the Trustee from all damages, penalties, liabilities and expense relating to Grantor's representations regarding the environmental condition of the Property.

16. On Pages 11 and 12 of the Deed of Trust regarding remedies upon a Default by the Grantor, the Deed of Trust provides that upon the application of the Beneficiary:

“ . . . Trustee shall sell the Property and pay the proceeds of sale according to the following terms and conditions: (a) Trustee shall foreclose upon this Deed of Trust and sell the Property, or any part of the Property, at public sale conducted according to applicable law (referred to as “Trustee’s Sale”); (b) Trustee shall provide such notice and shall advertise a Trustee’s Sale in the manner required by applicable law; (c) Trustee shall conduct additional Trustee’s Sales as may be required until all of the Property is sold or the Obligations are satisfied; (d) Trustee may received bids at Trustee’s Sale from the Bank and may accept from Bank as successful bidder, credit against the Obligations as payment of any portion of the purchase price; (e) Trustee may receive a reasonable fee for Trustee’s services hereunder, not to exceed the maximum fee allowed by applicable law; and (f) Trustee shall apply the proceeds of Trustee’s Sale, first to any permitted Trustee’s fee, second to expenses of foreclosure and sale, third to the Obligations, and any remaining proceeds as required by law.”

17. It is my legal opinion that in view of the fact that the Trustee under the Deed of Trust held legal title in fee simple to the Property at the time of the institution of this federal receivership proceeding, written notice of the receivership proceeding should have been given to

the Trustee (whose address is clearly set forth on Page 1 of the Deed of Trust) in order for this receivership proceeding to have unquestionable jurisdiction and control over the Property covered by and described in the Deed of Trust.

18. The fact situation in the instant case relating to the failure to give notice of the federal receivership proceeding to the Trustee under the Deed of Trust is analogous to a mechanic's lien claimant seeking to foreclose its Claim of Lien against real property pursuant to Chapter 44A of the North Carolina General Statutes on Mechanic's Liens. In order for the sale of real property pursuant to a foreclosure of a mechanic's lien in North Carolina to pass all right, title and interest of the owner of the real property, N.C.G.S. 44A-13(c) expressly requires that the lien claimant must first have filed a Notice of Lis Pendens in each county in which the real property is located (except the county in which the foreclosure action is commenced). I am informed and believed that a Notice of Lis Pendens relating to the Property situated in Buncombe and McDowell counties in North Carolina was not filed by the Receiver or any other party. In addition, it is the custom and practice of attorneys in North Carolina for a mechanic's lien claimant who is foreclosing its Claim of Lien on real property to give written notice of the lien foreclosure proceeding and/or to name as parties to the lien foreclosure proceeding every person or entity who has any interest in the real property as shown on the public records of the Register of Deeds and the Clerk of Superior Court of each county in which the real property is located. This custom and practice includes giving written notice to and/or joining as parties to the lien foreclosure action both the trustee and the beneficiary under any deed of trust filed of record relating to the real property which real property is also the subject to the Claim of Lien.

In accordance with 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing
is true and correct.

Date: December 21, 2011

W. Samuel Woodard
W. Samuel Woodard

Respectfully submitted,

STEARNS WEAVER MILLER
WEISSLER ALHADEFF &
SITTERSON, P.A.

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