

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION :
DRAFT :

Plaintiff, :

vs. :

Case No. 1:10-CV-457
(GLS/CFH)

McGINN, SMITH & CO., INC., :
McGINN, SMITH ADVISORS, LLC :
McGINN, SMITH CAPITAL HOLDINGS CORP., :
FIRST ADVISORY INCOME NOTES, LLC, :
FIRST EXCELSIOR INCOME NOTES, LLC, :
FIRST INDEPENDENT INCOME NOTES, LLC, :
THIRD ALBANY INCOME NOTES, LLC, :
TIMOTHY M. McGINN, AND :
DAVID L. SMITH, GEOFFREY R. SMITH, :
Individually and as Trustee of the David L. and :
Lynn A. Smith Irrevocable Trust U/A 8/04/04, :
LAUREN T. SMITH, and NANCY McGINN, :

Defendants, :

LYNN A. SMITH and :
NANCY McGINN, :

Relief Defendants. and :

GEOFFREY R. SMITH, Trustee of the :
David L. and Lynn A. Smith Irrevocable :
Trust U/A 8/04/04, :

Intervenor. :

-----X

**MOTION OF WILLIAM J. BROWN, AS RECEIVER, FOR AN ORDER
APPROVING SETTLEMENT WITH SETON HEALTH SYSTEM, INC.
WITH RESPECT TO A CERTAIN GROUND LEASE
(SETON HALL ASSOCIATES)**

William J. Brown, as Receiver (the “Receiver”) for certain of the Defendants and other entities in this action, by his counsel, Phillips Lytle LLP, moves (“Motion”) for an order (i) approving a Lease Termination, Surrender, and Release Agreement (“Agreement”) with Seton Health System, Inc. (“Seton Health”) with Respect to Seton Hall Associates (“SHA”), one of the MS Entities (as defined below), and in support thereof, represents as follows:

SUMMARY OF MOTION

The Motion seeks approval of a settlement with Seton Health, in its capacity as ground lessor, for a building commonly known as Seton Hall on terms favorable to the estates. The SEC does not object to the Motion.

BACKGROUND

A. General Background

1. On April 20, 2010, the Securities and Exchange Commission (“SEC”) filed a Complaint initiating the above-captioned action (the “Complaint”) (Docket No. 1). Also, on April 20, 2010, this Court granted a Temporary Restraining Order (Docket No. 5), which, among other things, froze certain assets of the above-captioned Defendants and Relief Defendants, and appointed the Receiver as temporary receiver with respect to numerous entities controlled or owned by Defendants Timothy M. McGinn and David L. Smith (collectively, the “MS Entities”).

2. On July 26, 2010, the Court entered an order granting SEC’s Motion for a Preliminary Injunction and appointing the Receiver as permanent receiver with the consent of defendants Timothy M. McGinn and David L. Smith (“Preliminary Injunction Order”) (Docket No. 96).

(i) On August 3, 2010, the SEC filed an Amended Complaint (Docket No. 100). On June 8, 2011, the SEC filed a Second Amended Complaint (Docket No. 334).

3. The Preliminary Injunction Order authorizes the Receiver to, among other things, “use, lease, sell, and convert into money all assets of the MS Entities, either in public or private sales or other transactions on terms the Receiver reasonably believes based on his own experience and input from his advisors to be most beneficial to the MS Entities and those entitled to the proceeds...” Preliminary Injunction Order, ¶ VII(m).

B. Background Relating to SHA

4. St. Mary's Hospital of Troy (now known as Seton Health System, Inc.), as Ground Lessor, entered into a Ground Lease dated January 27, 1982 (the "Ground Lease") with KGM Associates, a New York Partnership, as Ground Lessee, which Ground Lease was assigned by KGM Associates to SHA on January 27, 1982, by means of an Assignment of Land-Lease dated January 27, 1982 and recorded in the office of the Rensselaer County Clerk at Book 1342 of Deeds, Page 147. SHA is an MS Entity (as defined in the Preliminary Injunction Order, page 2). The August 12, 1993 Prospectus issued by SHA in conjunction with the issuance of certain investor Notes denominated as "9.875% First Mortgage Notes Due 1999" described KGM Associates as a partnership consisting of Timothy M. McGinn and David L. Smith.

5. Seton Health conveyed a certain building and improvements known as "Seton Hall" located on the premises (the "Premises") described in the Ground Lease by deed dated January 27, 1982, and recorded in the office of the Rensselaer County Clerk at Book 1342 of Deeds, Page 098.

6. Seton Health did not convey title to the land located under or around Seton Hall.

7. KGM Associates conveyed Seton Hall to SHA by deed dated January 27, 1982, and recorded in the office of the Rensselaer County Clerk at Book 1342 of Deeds, Page 155.

8. Pursuant to the terms of the Ground Lease, SHA is responsible for the payment of ground rent and other additional rent items (collectively, the "Rents") and for the payment of real property taxes ("Real Property Taxes").

9. Seton Health asserts that SHA is also responsible for the upkeep, maintenance and repair of Seton Hall, which together with the Rents and Real Property Taxes are collectively hereafter referred to as the "Obligations".

10. The Real Property Taxes are accruing and had been unpaid since at least 2009.

11. Pursuant to the Preliminary Injunction Order, all actions by creditors of SHA were stayed (“Stay”).

12. Seton Health and SHA are the sole holders of any interest in and/or title to Seton Hall pursuant to the Ground Lease.¹

TERMINATION, SURRENDER AND RELEASE AGREEMENT

13. The Seton Hall building is an older medical office building located on the St. Mary’s Hospital campus in Troy, New York. All tenant leases are on a month-to-month basis with significant space being available for rent. At the commencement of the Receivership, the Receiver explored various alternatives to the use or disposition of the building. Given its age and condition (requiring significant investment to upgrade the space and the building’s systems) coupled with its location on the St. Mary’s campus and the reorganization process being undertaken within the Seton Health System involving St. Mary’s, Samaritan and St. Peter’s Hospitals, all alternatives pointed to a solution being likely only with Seton Health. The Receiver was not in a position to upgrade the building on a speculative basis, especially given the relatively short term remaining on the ground lease.

14. Consequently, the Receiver proposed a settlement to Seton Health which has resulted in the Agreement, a copy of which is attached as **Exhibit A**, subject to court approval (“Settlement”). A summary of the Agreement is as follows:²

¹ In connection with the SHA investments, certain mortgages were acquired by and restructured to form a first lien on the Seton Hall property to secure repayment of the investor notes. A subordinated mortgage granted to KGM Associates, an entity controlled by Messrs. Smith and McGinn, also remains of record. As part of this Settlement, the Receiver will cause each of those mortgages, including subordination agreements, to be discharged and allow those liens, if any, to attach to the proceeds received on the Surrender of the Ground Lease in order of legal priority.

² Reference should be made to the Agreement for the complete terms of the Settlement.

a. Effective as of the closing date, the Ground Lease will be terminated and (i) SHA shall be deemed to have surrendered the Premises, (ii) Seton Health shall be deemed to have accepted the surrender of the Premises, and (iii) the Ground Lease shall be deemed terminated and any obligation of SHA or the Receiver will be terminated and released for all purposes.

b. Seton Health or its nominee shall (a) pay the sum of Seventy Thousand and 00/100 Dollars (\$70,000.00) to the Receiver upon the full execution of the Agreement and receipt of an entered Court Order approving the Agreement in this action, and (b) shall pay or cause to be paid the Real Property Taxes owed as of the closing date. In addition, the improvements and buildings on the Premises, including the building located thereon known as Seton Hall including all equipment and building maintenance equipment owned by SHA, will be transferred as is, where is, without recourse, representation or warranty, on the closing date to Seton Health or its nominee without cost to the Receiver.

c. The Receiver agrees not to accept rent or additional rent from any Tenant for payments that might accrue as of and after the closing date. The Receiver shall provide prior to the closing date to Seton Health a rent roll. In addition, the Receiver will waive and release any claims for any security deposits or reimbursement of funds that might be due to the Receiver under the Ground Lease. The Receiver shall be solely responsible for any security deposits or other monies held on behalf of a Tenant, which obligations shall survive the closing date.

d. The Receiver shall obtain a satisfaction and discharge of any and all mortgages or other liens encumbering the leasehold estate consisting of the Ground Lease or encumbering Seton Hall as referenced in footnote 1 above (other than the lien of the Real Property Taxes, water and sewer charges) on or before the closing date.

e. As of the closing date, Seton Health will be released from the Ground Lease, and the Receiver will release Seton Health, its successors and assigns and all of

its employees, officers, directors, trustees and members from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, which against Seton Health, the Receiver, now has or hereafter can, shall or may have, for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world through the closing date relating to the Ground Lease and the Premises or for the performance of any other obligation under the Ground Lease; provided, however, the release shall not affect the right of the Receiver or SHA or their insurance carriers (if any) to contribution or indemnity from Seton Health with respect to any claims by a third party relating to the Ground Lease, the Tenants, and/or the Premises or any obligations under this Agreement that are to survive the Closing Date.

f. Seton Health consents to the Receiver vacating the Premises and Seton Health will not hold SHA or the Receiver liable for the payment of any sums under or in connection with the Ground Lease and Seton Health will release SHA and the Receiver and their respective heirs, executors, administrators, successors and assigns from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands, in law, admiralty or equity, which against SHA or the Receiver, Seton Health and its successors and assigns ever had, now or hereafter can shall or may have, for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world through the closing date relating to either the Ground Lease or the Premises, or for the performance of any other obligation under the Ground Lease, provided, however, the release shall not affect the right of Seton Health or its insurance carriers (if any) to contribution or indemnity from SHA with respect to any claims by a third party relating to the Ground Lease, the Tenants and/or the Premises or any obligations under the Agreement that are to survive the closing date.

g. Between the date of the Agreement and the closing date, neither SHA nor the Receiver shall cause or permit any mortgage, lien or encumbrance (other than real property taxes and water and sewer charges) to attach to the Ground Lease, the Premises or Seton Hall.

h. The parties shall execute and record without cost to the Receiver such documents that are reasonably necessary to further effectuate the terms of the Agreement, including, but not limited to, a memorandum of the Agreement or the Agreement itself for recording purposes in the Rensselaer County Clerk's Office, a deed to Seton Hall, an equalization and assessment form and a TP-584.

15. The Receiver's analysis indicates that the Receivership estates are benefitted by entering into the Settlement for at least the following reasons

a. The obligation to maintain Seton Hall and pay obligation would be transferred and released.³

b. The estates would be relieved of Real Property Taxes exceeding approximately \$372,000.

c. The SHA estate will receive \$70,000 which will be deposited into a Receivership account.

PROPOSED PROCEDURE

16. Time is of the essence in completing the Settlement because the Receiver is no longer be able to provide maintenance to Seton Hall due to the departure of the person providing maintenance services.

³ Seton Health is currently providing or causing to be provided assistance to the Receiver in maintaining Seton Hall.

17. As such, the Receiver has requested the Court to schedule a hearing on approximately 14 days notice, although the Preliminary Injunction Order requires only four business days notice. (Preliminary Injunction Order, Paragraph VIII(m), Docket No. 96).

18. Seton Health wishes to avoid the cost and expense of litigating its rights under the Ground Lease including, but not limited to, lifting the Stay and pursuing an eviction proceeding and other legal rights it may have including seeking payment of the Obligations.

19. The Receiver desires to terminate the Ground Lease and surrender possession of the Premises (as defined in the Ground Lease) and otherwise avoid litigating with Seton Health.

20. SHA entered into certain leases with the tenants in Seton Hall whose leases have expired by their terms (collectively, the “Tenants” and individually, a “Tenant”).

BASIS FOR RELIEF

21. The relief requested herein is authorized by the Preliminary Injunction Order and applicable law, and additionally is appropriate because it preserves and enhances the value of MS Firstline.

22. This court clearly has the authority to freeze assets and to permit sales of such assets. That authority authorizes a court in cases such as this to exercise “broad equitable discretion.” S.E.C. v. Fischbach Corp., 133 F.3d 170, 175 (2d Cir. 1997); see also SEC v. Manor Nursing Centers, Inc., 458 F.2d 1082, 1103 (2d Cir. 1972) (explaining the equitable powers granted to the district court and holding that when there is “a showing of a securities law violation, the court possesses the necessary power to fashion an appropriate remedy.”).

23. The Preliminary Injunction Order mandates that the assets be maintained without dissipation of their value. (Preliminary Injunction Order at page 5). Therefore, if the value of an asset is at risk of dissipation so that funds available to investors could be diminished in the event

the SEC ultimately obtains a judgment, the Court may act to prevent such dissipation. S.E.C. v. Am. Bd. of Trade, Inc., 830 F.2d 431, 436 (2d Cir. 1987). In addition, the Court also has the power to enter the proposed Order under § 21(d)(5) of the Securities Exchange Act of 1934, which provides that in SEC actions, "the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors." See also S.E.C. v. Wencke, 622 F.2d 1363, 1369 (9th Cir. 1980) ("federal courts have inherent equitable authority to issue a variety of 'ancillary relief' measures in actions brought by the SEC to enforce the federal securities laws") (citations omitted).

24. In this case, the Settlement will maximize the value of SHA, and, additionally will mitigate the legal and financial risk that the value of SHA further diminish to the detriment of the MS Entities and those entitled to the proceeds.

MEMORANDUM OF LAW

25. Since the basis for the relief requested herein under the Permanent Injunction Order and applicable law is set forth herein, the Receiver requests that any requirement for a separate memorandum of law be waived.

NOTICE OF HEARING

26. The Receiver will give notice of this Motion by posting the Motion on the Receiver's website (www.mcginnsmithreceiver.com) as well as posting at the top of the Receiver's website an explanation of the Motion with the hearing date established by the Court. Notice will also be given by ECF to counsel of record and all parties who have filed notices of appearance, and by e-mail to Messrs. McGinn and Smith.

HEARING DATE

27. By separate letter to the Court, the Receiver is requesting that a hearing to consider approval of the Motion be held on or about November 16, 2012.

CONCLUSION

28. As such, for the reasons set forth herein, the Receiver requests the Court to (i) set a hearing date for approval of the Agreement, (ii) approve the Agreement, and (iii) provide such other relief as is necessary and proper.

Dated: November 2, 2012

PHILLIPS LYTTLE LLP

By /s/ William J. Brown
William J. Brown (Bar Roll #601330)
Todd A. Ritschdorff (Bar Roll #512601)
Attorneys for the Receiver
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Albany, New York 12207
Telephone No. (518) 472-1224

and

3400 HSBC Center
Buffalo, New York 14203
Telephone No.: (716) 847-8400

Doc #01-2612214.4

Exhibit A

LEASE TERMINATION, SURRENDER, AND RELEASE AGREEMENT

LEASE TERMINATION, SURRENDER, AND RELEASE AGREEMENT (the "Agreement") dated October 30, 2012, by and between William J. Brown, as Receiver ("Receiver") of Seton Hall Associates, a New York Limited Partnership (as hereinafter defined) and Seton Health System, Inc., a New York State not-for-profit corporation.

WITTENESTH:

WHEREAS, St. Mary's Hospital of Troy (now known as Seton Health System, Inc. and hereafter referred to as the "Hospital"), as Ground Lessor, entered into a Ground Lease dated January 27, 1982 (the "Ground Lease") with KGM Associates, a New York Partnership, as Ground Lessee, which Ground Lease was assigned by KGM Associates to Seton Hall Associates, a New York Limited Partnership ("SHA") on January 27, 1982, by means of an Assignment of Land-Lease dated January 27, 1982 and recorded in the office of the Rensselaer County Clerk at Book 1342 of Deeds, Page 147, said Ground Lease being attached hereto as Exhibit "A"; and

WHEREAS, the Hospital conveyed a certain building and improvements known as "Seton Hall" located on the premises (the "Premises") described in the Ground Lease by deed dated January 27, 1982, and recorded in the office of the Rensselaer County Clerk at Book 1342 of Deeds, Page 098; and

WHEREAS, the Hospital did not convey title to the land located under or around Seton Hall; and

WHEREAS, KGM Associates conveyed Seton Hall to SHA by deed dated January 27, 1982, and recorded in the office of the Rensselaer County Clerk at Book 1342 of Deeds, Page 155; and

WHEREAS, pursuant to the terms of the Ground Lease, SHA is responsible for the payment of ground rent and other additional rent items (collectively, the "Rents") and for the payment of real property taxes ("Real Property Taxes"); and

WHEREAS, the Hospital asserts that SHA is also responsible for the upkeep, maintenance and repair of Seton Hall, which together with the Rents and Real Property Taxes are collectively hereafter referred to as the "Obligations"; and

WHEREAS, the Real Property Taxes are accruing and have been unpaid for an extended period of time; and

WHEREAS, pursuant to a Preliminary Injunction Order (Docket No. 96) ("Order") entered by the U.S. District Court for the Northern District of New York on July 26, 2010, in the action entitled Securities and Exchange Commission vs. McGinn, Smith & Co., Inc., et al., (10 CV-457) ("Action"), the Receiver was appointed as Receiver for, among other things, SHA and its assets; and

WHEREAS, pursuant to the Order all actions by creditors of SHA were stayed ("Stay"); and

WHEREAS, the Hospital and SHA are the sole holders of any interest in and/or title to Seton Hall pursuant to the Ground Lease and the Ground Lease itself; and

WHEREAS, the Hospital wishes to avoid the cost and expense of litigating its rights under the Ground Lease including, but not limited to, lifting the Stay and pursuing an eviction proceeding and other legal rights it may have including seeking payment of the Obligations; and

WHEREAS, the Receiver desires to terminate the Ground Lease and surrender possession of the Premises (as defined in the Ground Lease) and otherwise avoid litigating with the Hospital; and

WHEREAS, SHA entered into certain leases with the tenants in Seton Hall whose leases have expired by their terms (collectively, the "Tenants" and individually, a "Tenant"); and

WHEREAS, certain Tenants have not paid certain rent to either SHA or the Receiver;

NOW THEREFORE, the Hospital and the Receiver agree as follows:

1. The "WHEREAS" clauses set forth above are incorporated by reference herein as if fully set forth herein.
2. Effective as of Closing Date (as hereinafter defined), the Ground Lease is terminated and SHA shall be deemed to have surrendered (to the extent necessary, the Ground Lease hereby being amended to have as its termination date be the Closing Date) the Premises, the Hospital shall be deemed to have accepted the surrender of the Premises, and the Ground Lease shall be deemed terminated and any obligation of SHA or the Receiver is terminated and released for all purposes.
3. The Hospital shall (a) pay the sum of Seventy Thousand and 00/100 Dollars (\$70,000.00) to the Receiver upon the full execution of this Agreement and receipt of an entered

Court Order approving this Agreement in the Action (the "Closing Date") and (b) shall pay the Real Property Taxes owed as of the Closing Date. In addition, the improvements and buildings on the Premises, including the building located thereon known as Seton Hall including all equipment and building maintenance equipment owned by SHA, is transferred on the Closing Date to the Hospital without cost to the Receiver.

4. The Receiver agrees (a) not to accept rent or additional rent from any Tenant for payments that might accrue as of and after the Closing Date. The Receiver shall provide prior to the Closing Date to the Hospital a rent roll. In addition, the Receiver waives and releases any claims for any security deposits or reimbursement of funds that might be due to the Receiver under the Ground Lease. The Receiver shall be solely responsible for any security deposits or other monies held on behalf of a Tenant, which obligations shall survive the Closing Date.

5. The Receiver shall obtain a satisfaction and discharge of any and all mortgages or other liens encumbering the leasehold estate consisting of the Ground Lease or encumbering Seton Hall (other than the lien of the Real Property Taxes, water and sewer charges) on or before the Closing Date.

6. As of the Closing Date, the Hospital is released from the Ground Lease, and the Receiver does hereby release the Hospital, its successors and assigns and all of its employees, officers, directors, trustees and members from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, which against the Hospital, the Receiver, now has or hereafter can, shall or may have, for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world through the Closing Date relating to the Ground Lease and the Premises or for the performance of any other obligation under the Ground Lease; provided, however, the foregoing release shall not affect the right of the Receiver or SHA or their insurance carriers (if any) to contribution or indemnity from the Hospital with respect to any claims by a third party relating to the Ground Lease, the Tenants, and/or the Premises or any obligations under this Agreement that are to survive the Closing Date.

7. The Hospital consents to the Receiver vacating the Premises and the Hospital will not hold SHA or the Receiver liable for the payment of any sums under or in connection with the Ground Lease and the Hospital hereby releases SHA and the Receiver and their respective heirs, executors, administrators, successors and assigns from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands, in law, admiralty or equity, which against SHA or the Receiver, the Hospital, the Hospital's successors and assigns ever had, now or hereafter can shall

or may have, for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world through the Closing Date relating to either the Ground Lease or the Premises, or for the performance of any other obligation under the Ground Lease, provided, however, the foregoing release shall not affect the right of the Hospital or its insurance carriers (if any) to contribution or indemnity from SHA with respect to any claims by a third party relating to the Ground Lease, the Tenants and/or the Premises or any obligations under this Agreement that are to survive the Closing Date.

8. Between the date hereof and the Closing Date, neither SHA nor the Receiver shall cause or permit any mortgage, lien or encumbrance to attach to the Ground Lease, the Premises or Seton Hall.

9. The parties hereto agree to execute and record without cost to the Receiver such documents that are reasonably necessary to further effectuate the terms of this Agreement, including, but not limited to, a memorandum of this Agreement or the Agreement itself for recording purposes in the Rensselaer County Clerk's Office, a deed to Seton Hall, an equalization and assessment form and a TP-584. This Paragraph 9 shall survive the Closing Date as shall the representations made by the Receiver and SHA contained in the WHEREAS clauses.

10. This Agreement may be signed in counterparts, each of which shall be an original, but all of which shall constitute but one and the same agreement.

11. In compliance with Sec. 13 of the Lien Law, the Receiver will receive the consideration for this Agreement and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

IN WITNESS WHEREOF, the undersigned have executed this Lease Surrender and Release Agreement as of the date and year first above written.

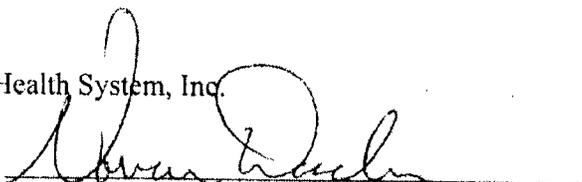
[SIGNATURE PAGE FOLLOWS]



William J. Brown, as Receiver of Seton Hall Associates

Seton Health System, Inc.

By:



Name: Norman Dascher

Title: CEO

State of New York)

: ss.:

County of Erie)

On the 2nd day of ~~October~~ ^{November} in the year 2012 before me, the undersigned, a Notary Public in and for said State, personally appeared William J. Brown, as Receiver, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individuals(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

KAREN M. LUDLOW
No. 01HA6000701
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 12/22/20 13

State of New York)

: ss.:

County of Rensselaer)

On the 30th day of October in the year 2012 before me, the undersigned, a Notary Public in and for said State, personally appeared Norman Dascher, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individuals(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

LINDA B. MANONI
Notary Public, State of New York
No. 01MA6014617
Qualified in Saratoga County
Commission Expires October 19, 20 14

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
SECURITIES AND EXCHANGE COMMISSION :

Plaintiff, :

vs. :

Case No. 1:10-CV-457
(GLS/CFH)

McGINN, SMITH & CO., INC., :
McGINN, SMITH ADVISORS, LLC :
McGINN, SMITH CAPITAL HOLDINGS CORP., :
FIRST ADVISORY INCOME NOTES, LLC, :
FIRST EXCELSIOR INCOME NOTES, LLC, :
FIRST INDEPENDENT INCOME NOTES, LLC, :
THIRD ALBANY INCOME NOTES, LLC, :
TIMOTHY M. MCGINN, AND :
DAVID L. SMITH, GEOFFREY R. SMITH, :
Individually and as Trustee of the David L. and :
Lynn A. Smith Irrevocable Trust U/A 8/04/04, :
LAUREN T. SMITH, and NANCY MCGINN, :

Defendants, :

LYNN A. SMITH and :
NANCY MCGINN, :

Relief Defendants. and :

GEOFFREY R. SMITH, Trustee of the :
David L. and Lynn A. Smith Irrevocable :
Trust U/A 8/04/04, :

Intervenor. :

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CERTIFICATE OF SERVICE

I, Karen M. Ludlow, being at all times over 18 years of age, hereby certify that on November 2, 2012, a true and correct copy of the Motion of William J. Brown, as Receiver, for an Order Approving Settlement with Seton Health Systems, Inc. With Respect to a Certain Ground Lease (Seton Hall Associates) was caused to be served by e-mail upon all parties who receive electronic notice in this case pursuant to the Court's ECF filing system, and by First Class Mail to the parties indicated below:

- **Alison B. Cohen** acohen@gkblaw.com
- **Elizabeth C. Coombe** elizabeth.c.coombe@usdoj.gov, paul.condon@usdoj.gov, kelly.ciccarelli@usdoj.gov
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