

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

In re:	)	
	)	Case No. 10-50494
FAIR FINANCE COMPANY,	)	
	)	Chapter 7
Debtor.	)	
	)	Judge Jessica E. Price-Smith

**MOTION TO APPROVE SALE OF PROPERTY  
FREE AND CLEAR OF ALL LIENS, CLAIMS, AND ENCUMBRANCES**

Brian A. Bash (“**Trustee**”), hereby moves the Court for entry of an order pursuant to section 363(b) of title 11 of the United States Code (the “**Bankruptcy Code**”) authorizing the Trustee to sell certain real and personal estate property. In support of this Motion, the Trustee respectfully states as follows:

**JURISDICTION**

1. The Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this proceeding and this Application is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are section 363 of the Bankruptcy Code and Rules 6004 and 9013 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

**BACKGROUND**

2. On February 8, 2010 (the “**Petition Date**”), creditor-investors filed a petition for involuntary bankruptcy against the debtor in this case, Fair Finance Company (the “**Debtor**”).

3. On the Petition Date, the creditor-investors also filed an “Emergency Motion to Appoint Interim Trustee” (Docket No. 2) alleging that a trustee was needed to oversee the operations of the Debtor because (i) the Debtor had failed to make timely payments on its debts,



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including failing to redeem matured certificates and failing to pay interest on unmatured certificates; (ii) the Debtor and several affiliated companies had been raided by the Federal Bureau of Investigation in November of 2009; (iii) the Debtor has not been open to the public since the raid; and (iv) public records revealed that the Debtor had made “unusually large” loans to insiders.

4. On February 19, 2010, this Court entered an order directing the United States Trustee to appoint an interim trustee. On February 24, 2010, the Debtor filed notice that it consents to the entry of an order for relief in this proceeding (Docket No. 35). On March 2, 2010, the Court entered an Order granting the relief sought by the Petitioning Creditors *nunc pro tunc* as of February 24, 2010 (Docket No. 40).

5. On March 2, 2010, the United States Trustee filed the Notice of Appointment of Interim Chapter 7 Trustee *nunc pro tunc* effective February 24, 2010 (Docket No. 41). The Trustee is the duly appointed, qualified and acting Trustee in the within proceedings.

#### **DESCRIPTION OF PROPERTY AND PURCHASE OFFER**

6. The Debtor owns improved real property located at 815 E. Market Street, Akron, Ohio, consisting of two parcels aggregating approximately .7285 acres of real estate, and certain personal property located at the real property, both being more particularly described in the Purchase Agreement (defined below) attached as Exhibit A (the “**Property**”). The Property formerly served as the Debtor’s main business office, and a parking lot. The building has been vacant since this case commenced, and has been used by the Trustee and his accountant to review records stored at the Property.

7. The Trustee also seeks authority to sell certain personal property located at the real property, which personal property is described further below and in the Purchase Agreement attached as Exhibit A.

8. During a visit to the Property, the Trustee was approached by a potential purchaser and wished to proceed without delay with discussions regarding a potential sale and disposition of the Real Property.

9. David Sarver of Berkshire Hathaway Home Services agreed to provide his valuation services immediately in order to facilitate the Trustee's efforts in negotiating a sale of the Property without delay, and the Trustee agreed to seek approval of Mr. Sarver's retention effective *nunc pro tunc*. On March 12, 2019 the Trustee filed an Application for an Order Authorizing the Employment and Retention *Nunc Pro Tunc* of David Sarver of Berkshire Hathaway Home Services for Real Property Valuation Services (Dkt. No. 2546), which is currently still pending.

10. The purchaser, AGPC, Inc., and the Trustee have entered into an Agreement of Purchase and Sale, which was subsequently amended by a First Amendment to Agreement of Purchase and Sale, both attached hereto as Exhibit A (such agreement, as amended, the "**Purchase Agreement**"), the terms of which are incorporated by reference as if fully set forth herein.

11. AGPC, Inc. has agreed to pay the Trustee \$115,000.000 for the Property, in the form of immediately available funds. The terms of the sale are more fully set forth in Purchase Agreement.

12. In addition, AGPC, Inc. has agreed to pay the sum of \$7,500.00 in immediately available funds for certain personal property located at the real property (such personal property, as defined in the Purchase Agreement, the "**Personal Property**").

13. Pursuant to the terms of the Purchase Agreement, the Personal Property does not include the main computer equipment and business records located in the secured storage area or any data stored therein or thereon (the "**Excluded Property**," as such property is defined in the Purchase Agreement). The Trustee is entitled to keep the Excluded Property in the secured storage area located

at the Property for up to six months after the sale is closed, and to have access to such Excluded Property upon reasonable notice to AGPC, Inc.

14. The sale of the Property to AGPC, Inc. is expressly conditioned on the Trustee obtaining a final order from this Court approving the sale of the Property free and clear of all liens and encumbrances other than those easements, covenants, conditions, reservations and restrictions of record, with all such liens and encumbrances to attach to the proceeds of the sale.

15. The Trustee proposes that all of its interest in and to the Property shall be sold, conveyed, assigned and transferred to AGPC, Inc., free and clear of any and all liens, mortgages, pledges, security interests, restrictions, prior assignments, liabilities, obligations, encumbrances charges, or claims of any and every kind, nature and description whatsoever, whether contingent or noncontingent, whether disputed or undisputed (collectively the “**Liens**”). Liens shall also include, without limitation, claims arising out of pending litigation, those which arise or have arisen from the assessment of any taxes, including personal property taxes, the interest of any and all lien holders and claims of present and future tort and product liability claimants of any kind and nature whatsoever.

16. Any Liens on the Property shall attach to net sales proceeds, after payment of any cost of sale including, but not limited to, fees directly associated with the sale, as directed by the Purchase Agreement.

17. The Trustee seeks authority to sell the Property pursuant to the above and pursuant to the terms set forth in the Purchase Agreement.

#### **BASIS FOR RELIEF REQUESTED**

18. Bankruptcy Code § 363(b)(1) provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease other than in the ordinary course of business, property of the estate.” 11 U.S.C. §363(b)(1). In general, a debtor may use property of the estate outside of the ordinary

course of its business where the use of such property represents an exercise of debtor's sound business judgment. See, e.g., Stephens Indus., Inc. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986) (citing Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983)); see also In re Martin, 91 F.3d 389, 395 (3d Cir. 1996) (citing Fulton State Bank v. Schipper (In re Schipper), 933 F.2d 513, 515 (7th Cir. 1991)); In re Abbotts Dairies of Pa., Inc., 788 F.2d 143, 145-47 (3d Cir. 1986) (implicitly adopting the articulated business judgment test of Lionel Corp.)

19. Under Rule 6004, “[a]ll sales not in the ordinary course of business may be by private sale or by public auction.” Fed. R. Bankr. P. 6004(f)(1). A large measure of discretion is accorded a bankruptcy court in deciding whether a private sale of a debtor's assets should be approved. Matter of Embrace Systems Corp., 178 B.R. 112, 123 (Bankr. W.D. Mich. 1995). A private sale of a debtor's assets is appropriate if the statutory requirements are met, the bid is fair, and the sale is in the best interests of the estate and its creditors. Id. In determining whether to authorize a private sale of property outside the ordinary course of business, a court should evaluate whether the sale is fair and equitable and in the best interest of all creditors, as demonstrated mainly by evidence that the property is sold for fair market value. See, e.g., Matter of Correa Rodriguez, 123 B.R. 153, 155 (Bankr. D. Puerto Rico 1991).

20. The Trustee believes that the proposed sale will accomplish a “sound business purpose” and will maximize the assets of the Debtor's estate. The Trustee has engaged in good faith arm's length negotiation with AGPC, Inc. regarding the sale of the Property. The Trustee has no affiliation with AGPC, Inc. The sale reflects a fair and reasonable price – consisting of \$115,000.00 for the real property and \$7,500.00 for the personal property, both in immediately available funds – based on the independent evaluation of the Property by Mr. Sarver, which report

is attached as Exhibit B. The building on the Property has sat vacant for 10 years, with no serious offers or expressions of interest (beyond casual inquiry) other than that of AGPC, Inc. The estate has incurred and will continue to incur costs associated with maintaining the Property (e.g., costs for a security system, repairs, etc.). The estimated value of the Property makes it very unlikely that costs associated with an auction process or bidding procedures would be outweighed by the receipt of proceeds in excess of the current offer. The proceeds from the current offer will be received in immediately available funds. Furthermore, AGPC, Inc. is willing to allow continued storage of the personal property for up to six months after the sale has closed. The estate will thus save the costs associated with ownership while benefitting from savings that result from not having to move or pay for storage of personal property immediately. For these reasons, the Trustee has determined that the sale proposed herein will achieve the intended purpose of maximizing returns for creditors and Trustee submits that the proposed sale is being undertaken in good faith and for fair value within the meaning of 11 U.S.C. § 363(m).

21. The sale satisfies the requirements of § 363(f) of the Bankruptcy Code. Pursuant to 363(f), the Trustee may sell property under subsection (b) or (c) of § 363 free and clear of any and all liens, claims, encumbrances or interests in such property if: (i) such sale is permitted under applicable nonbankruptcy law; (ii) the party asserting such a lien, claim or interest consents to such sale; (iii) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property; (iv) the interest is the subject of a bona fide dispute; or (v) the party asserting the lien, claim or interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. See 11 U.S.C. § 363(f); In re Elliot, 94 B.R. 343, 345 (E.D. Pa. 1988). Section 363(f) is written in the disjunctive - the court may approve a sale “free and clear” provided at least one of the subsections is met.

22. All Liens on the Property will attach to the proceeds of the sale and secured creditors, if any, will be paid from the proceeds of the sale at closing. The Trustee does not believe there are any secured creditors that will have an interest in the proceeds.

**NOTICE**

23. Pursuant to F.R.B.P. 2002, 6004, and 9014, the Debtor will give notice of the proposed sale by serving this Motion on: (i) the Office of the United States Trustee; (ii) all creditors; (iii) all parties who have filed requests for notice in this case; (iv) all entities known to have asserted any lien, claim, encumbrance, or other property interest in the Property; and (v) the taxing authorities.

**WHEREFORE**, the Trustee respectfully requests that the Court enter an Order, substantially in the form attached hereto as Exhibit C, (i) authorizing the Trustee to sell the Property pursuant to the terms identified herein and as set forth in the Purchase Agreement; and (ii) granting the Trustee such other and further relief as is just and proper.

Date: March 18, 2019

Respectfully submitted,

/s/ Kelly S. Burgan

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Alexis C. Beachdell (0083642)  
Baker & Hostetler LLP  
Key Tower  
127 Public Square, Suite 2000  
Cleveland, Ohio 44114  
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kburgan@bakerlaw.com  
abeachdell@bakerlaw.com

*Counsel for the Trustee*

**EXHIBIT A**

**PURCHASE AGREEMENT AND AMENDMENT**



## AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT ("Agreement") executed as of the 22<sup>nd</sup> day of February, 2019, constitutes the Agreement of Purchase and Sale by and between **Brian Bash, Chapter 7 Trustee of Fair Finance Company** (the "Seller"), and **AGPC, Inc.** (the "Buyer"),

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

WHEREAS, Fair Finance Company (the "Debtor") is the Chapter 7 debtor in a bankruptcy proceeding captioned *In re Fair Finance Company*, pending in the United States Bankruptcy Court for the Northern District of Ohio (the "Bankruptcy Court") as Case Number 10-50494 (the "Bankruptcy Case");

WHEREAS, the Seller is the duly-appointed, qualified, and acting Chapter 7 Trustee for the Debtor in the Bankruptcy Case;

WHEREAS, Seller and Buyer have negotiated the terms of this Agreement at arms' length, and Seller believes it is in the best interest of the Debtor to consummate this transaction upon the issuance of an order approving the sale of the Property (as defined below) by the Bankruptcy Court;

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties contained herein and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending legally to be bound, hereby covenant and agree as follows:

1. Agreement to Buy and Sell. Seller agrees to sell and convey to Buyer, and Buyer agrees to buy and take title to, on an "as is" "where is" basis, but subject to the terms and conditions set forth below the improved real property owned by Seller at 815 E. Market Street, Akron, Ohio, consisting of two parcels aggregating approximately .7285 acres of real estate, and being more particularly described in Exhibit A attached hereto and made a part hereof.

2. Appurtenances. (a) The parties agree that the property shall include the land, all landscaping and all appurtenant rights, easements and privileges and the structures, fixtures and improvements in their present condition, including, without limitation, the existing industrial building (the "Building"), together with all of the following to the extent that same are in or on the property: all electrical, heating, air conditioning, plumbing and fixtures and equipment (all of the foregoing and the real property are hereinafter collectively called the "Property").

(b) The Property, however, shall not include the furniture, computers, records and other personal property that is not affixed to the Property and would not qualify as a fixture under Ohio law (the "Personal Property"), which Buyer shall acquire for the sum of \$7,500 as provided below; provided, however, that neither the Property nor the Personal Property shall include the main computer equipment and business records located in the secured storage area or any data stored therein or thereon (all such being hereinafter the "Excluded Property").

3. Purchase Price. (a) Buyer agrees to pay to Seller for the Property the sum of ONE HUNDRED FIFTEEN THOUSAND DOLLARS (\$115,000.00) (the "Purchase Price") payable as follows:

- (i) Fifteen Thousand DOLLARS (\$15,000.00) in the form of immediately available funds from Buyer; and
- (ii) By delivery of a Cognovit Promissory Note and Mortgage substantially in the forms attached as Exhibit B (collectively, the "Note and Mortgage" and separately the "Note" and the "Mortgage") from Buyer in favor of Seller.

(b) For the Personal Property, Buyer agrees to pay the sum of \$7,500 in immediately available funds on the Closing Date (hereinafter defined), and Seller shall execute and deliver a quit claim bill of sale for the Personal Property to Buyer at Closing (the "Bill of Sale").

4. Fiduciary Deed. Seller will deposit in escrow a Fiduciary Deed (the "Deed"), conveying to Buyer the title to the Property from Seller in the form the Seller holds title (but with the benefits of the order from the Bankruptcy Court as contemplated by Section 19), and in all events subject to the following:

- (a) zoning ordinances and regulations;
- (b) real estate taxes and assessments, both general and special, which are a lien but not yet due and payable at the Closing Date (hereinafter defined);
- (c) easements, covenants, conditions, reservations and restrictions of record; and
- (d) such other items that appear on the Commitment (as defined below) other than the Excluded Items (as defined below).

5. Title Commitment. Buyer acknowledges it has received a copy of a title commitment from First American Title Insurance Company (File No: NCS940337-CLE (the "Commitment") relating to the Property and is willing to take the Property subject to all items on the Commitment, other than items 14-20 on Schedule B, Part II, (the "Excluded Items"). The Seller intends that all Excluded Items will be removed through an order issued by the Bankruptcy Court contemplated in Section 19 and that any liens that may be associated therewith will attach to the proceeds from the sale of the Property. In the event that any of the Excluded Items are not removed by such order, Buyer shall have the option to terminate this Agreement by written notice to Seller delivered within five days after the issuance of such order.

6. Escrow Agent. The Escrow Agent shall be First American Title Insurance Company ("Escrow Agent").

7. Closing Date and Possession. Unless the parties otherwise agree in writing, this transaction shall be closed within five (5) business days after the satisfaction of the conditions set forth in Section 19 hereof (the "Closing Date"). All funds and documents (including the Note and Mortgage) shall be deposited in escrow no later than the Closing Date. On the Closing Date, the Escrow Agent shall file for record the Deed and immediately thereafter file for record any Mortgage, provided that all necessary funds and documents have been deposited in escrow. Buyer shall be entitled to possession of the Property on the Closing Date, subject to the remainder of this paragraph. Seller shall be entitled to keep all Excluded Property in the secured storage area on the Property after the Closing Date at no additional cost or rent to Seller until 30 days after the Note and Mortgage has been fully satisfied, but in no event less than six months after the Closing Date. In addition with reasonable notice to Buyer by Seller, Buyer will provide Seller access to the Property after the Closing Date so that Seller and its agents can appraise, auction, sell and remove the Excluded Property from the Property. Buyer agrees to act as bailee of the Excluded Property for the benefit of Seller as part of the consideration for this Agreement. Seller's and Buyer's obligations set forth in this Section 7 shall survive the Closing Date.

8. Prorations and Charges. The Escrow Agent shall prorate and apportion as of the close of business on the Closing Date real estate taxes and assessments, both general and special, using the rates and valuation shown on the latest available tax duplicate and such proration shall be final absent mathematical error; provided, however, that if Buyer is successful in any attempt to secure a reduction in real estate tax valuation, any portion of such refund or credit that applies to a time period prior to the Closing Date shall be remitted by Buyer to Seller. Seller warrants that Seller has received no notice of pending special assessments.

From the funds deposited in escrow by Buyer, Seller shall be charged, if applicable, the following:

- (i) prorated real estate taxes and assessments;
- (ii) the cost of the title examination, including the Commitment; and
- (iii) the cost of discharging any mortgage on the Property.

Buyer shall be charged, if applicable, the following:



- (i) the cost of a lender's title policy and the cost of any endorsements requested by Buyer for the owner's or lender's title insurance policies;
- (ii) the cost of Ohio real estate transfer tax and conveyance fees;
- (iii) any mortgage loan expenses incurred by Buyer, including the cost of a survey;
- (iv) the cost of recording the Deed and the Mortgage; and
- (v) the escrow fee.

9. Utilities. Seller shall be responsible for any utility charges incurred on the Property up to the close of business on the Closing Date, and will pay for all such charges that were invoiced prior to the Closing Date. Buyer agrees to be responsible for any such charges incurred thereafter, and will pay all utility charges that were invoiced after the Closing Date, even if such invoice covers a period of time for service prior to the Closing Date ("Pre-Closing Period"). Seller will forward all such invoices after the Closing Date to Buyer for payments. To the extent an invoice paid by Buyer covers any services during the Pre-Closing Period, Buyer may credit that allocated portion of those charges against the next interest payment that is due by Buyer to Seller under the Note. Buyer will provide a summary of how the credit was calculated. Buyer will cause all utilities to be transferred in the name of Buyer within ten (10) business days (or as soon as the utility provider will permit, if a longer period of time is required) after the Closing Date.

10. Delivery and Payment. Upon consummation of this transaction, the Escrow Agent shall make delivery and payment as follows:

- (a) To the Seller at:  
Baker & Hostetler LLP  
127 Public Square, Suite 2000  
Cleveland, OH 44114
  - (i) copy of the escrow settlement statement;
  - (ii) cash deposited by Buyer less prorations and amounts hereinbefore mentioned to be charged to Seller by check payable to Seller;
  - (iii) the original executed Note; and
  - (iv) the original recorded Mortgage.
- (b) To the Buyer at: 1874 Englewood Avenue  
Akron, OH 44312
  - (i) a copy of the escrow settlement statement;
  - (ii) the executed Bill of Sale;
  - (iii) the recorded Deed; and
  - (v) the balance, if any, in the escrow account to the credit of Buyer by check payable to Buyer.

11. Fire or Other Casualty. Seller agrees keep present insurance policy or policies on the Property in full force and effect through the Closing Date, and to promptly advise Buyer of any damage to the Property. If the Property shall, prior to the Closing Date, be materially damaged or destroyed by fire or any other cause, and such damage shall not have been repaired or reconstructed prior to the Closing Date in a good and workmanlike manner

to the reasonable satisfaction of Buyer, Buyer may terminate this Agreement. Upon termination of this Agreement by Buyer pursuant to this Paragraph, neither party shall thereafter be under any further liability to the other.

12. Condition of Property. Seller accepts the Property and Personal Property in its current "AS IS", "WHERE IS" condition.

13. No Outside Representations. This Agreement and the Exhibit hereto shall be deemed to contain all of the terms and conditions agreed upon, it being understood that there are no outside representations or oral agreements.

14. Escrow Conditions. This Agreement shall serve as escrow instructions, and the Escrow Agent may attach hereto one of its printed forms of conditions of acceptance of escrow; provided, however, that in the event of any inconsistency between said conditions of acceptance and this Agreement, this Agreement shall govern.

15. Notices. Unless otherwise expressly required by the terms of this Agreement, notice required or permitted to be given hereunder by the parties shall be in writing and delivered personally, or by a nationally recognized overnight delivery service to the parties at the addresses set forth below, unless different addresses are given by one party to the other:

As to Seller:

Brian Bash, Chapter 7 Trustee of Fair Finance Company  
Baker & Hostetler LLP  
127 Public Square, Suite 2000  
Cleveland, OH 44114

As to Buyer:

Agathonicos Paboukis, President  
AGPC, Inc.  
1874 Englewood Avenue  
Akron, OH 44312

16. Mechanic's Liens. Seller represents that no construction work has been performed on the Property or materials supplied for the Property in connection with the improvements thereof within ninety (90) days of the date hereof for which a mechanic's lien could be filed. Seller shall hold Buyer harmless against any costs, damages and expenses incurred by Buyer, including reasonable attorneys' fees, as a result of the filing against the Property of mechanic's liens by persons, firms or corporations claiming to have performed work on the Property or supplied materials for the Property prior to the Closing Date pursuant to authorization from Seller or Seller's agents. Buyer agrees to give Seller notice of any such liens promptly after obtaining knowledge thereof. If any such liens are not discharged of record within sixty (60) days after the receipt by Seller of such notice, Buyer shall have the right to pay the full amount of any such liens to the lien claimants, and Seller shall reimburse Buyer for any such payments within fifteen (15) days after receiving from Buyer copies of receipts for such payments. Seller's obligations under this Section 16 shall survive the Closing Date.

17. Real Estate Brokers' Commissions. Buyer and Seller acknowledge that no real estate agent or broker has been involved with this transaction. Each party hereby indemnifies and holds the other harmless from any loss, liability or expense whatsoever in connection with any commission found to be owing to any agent or broker claiming to have dealt with the indemnifying party.

18. [Intentionally deleted]

19. Bankruptcy Court Order. Seller and Buyer's obligations under this Agreement are expressly conditioned on Seller obtaining a final order from the Bankruptcy Court approving the sale of the Property, that upon such sale of the Property it will be sold free and clear of all liens and encumbrances other than those

easements, covenants, conditions, reservations and restrictions of record, with all such liens and encumbrances to attach to the proceeds of sale.

20. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators and assigns; provided, however, that neither party shall assign this Agreement without the prior written consent of the other, which consent will not be unreasonably withheld.



21. Counterparts/Electronic Signature. This Agreement may be executed by both parties in counterparts, each of which shall be deemed an original, but all of such counterparts taken together shall constitute one and the same Agreement. Electronic transmissions of executed signature pages are agreed and deemed by all parties to constitute originals fully enforceable and binding upon the parties.

IN WITNESS WHEREOF, the parties hereto have signed three counterparts of this Agreement, each of which shall be deemed to be an original document, as of the date set forth above.

"BUYER"

"SELLER"

AGPC, Inc.

By:   
Agathonicos Pamboukis, President  


\_\_\_\_\_  
Brian Bash, Chapter 7 Trustee  
of Fair Finance Company

EIN: \_\_\_\_\_

EIN: 

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20. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators and assigns; provided, however, that neither party shall assign this Agreement without the prior written consent of the other, which consent will not be unreasonably withheld.

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IN WITNESS WHEREOF, the parties hereto have signed three counterparts of this Agreement, each of which shall be deemed to be an original document, as of the date set forth above.

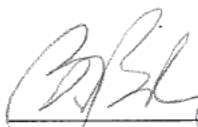
"BUYER"

AGPC, Inc.

By: \_\_\_\_\_  
Agathonicos Pamboukis, President

EIN: \_\_\_\_\_

"SELLER"


  
\_\_\_\_\_  
Brian Bash, Chapter 7 Trustee  
of Fair Finance Company

EIN: \_\_\_\_\_

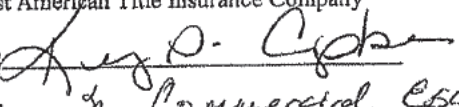
ACCEPTANCE OF ESCROW

Receipt of an executed copy of the foregoing instrument is hereby acknowledged, and the undersigned hereby agrees to act as escrow agent in accordance with the foregoing agreement.

Dated 2/22/2019

Escrow No. 

First American Title Insurance Company

By: 

Title: Jr. Commercial Escrow  
Officer



EXHIBIT A

LEGAL DESCRIPTION

Parcel I:

Situated in the City of Akron, County of Summit and State of Ohio, being part of Original Lot 3, Tract 8, formerly Portage Township, more fully described as follows:

Beginning at a point in the Northeasterly line of E. Market St. (60 feet wide), which point is S. 44° E. a distance of 302.00 feet from the most Southerly corner of Lot 34 of the Sumner Allotment, as recorded in Plat Book 2, Page 46 of Summit County Records;

Thence N. 46° 03' E. 10.00 feet to the present Northeasterly line of E. Market St., as widened to 80 feet, and the true place of beginning;

Thence along the Southeasterly line of Weather-Seal, Inc. property N. 46° 03' E. 221.75 feet to the most Easterly corner of said property;

Thence along the Northeasterly line of said Weather-Seal, Inc. property N. 44° W. 70.00 feet to the most Northerly corner of said property;

Thence N. 88° 46' E. 65.53 feet;

Thence S. 0° 51' W. 133.25 feet;

Thence S. 46° 02' W. 175.90 feet to the present Northeasterly line of E. Market St.;

Thence along said street line N. 44° W. 69.10 feet to the place of beginning, containing .3785 acres as surveyed by E. A. Hand, Dec. 1955.

Excepting from the premises above described, the following 5 foot strip of land which has been conveyed to Weather-Seal, Inc.

Situated in the City of Akron, County of Summit, State of Ohio, and being part of Original Lot 3, Tract 8, formerly Portage Township, more fully described as follows: Beginning at a point in the Northeasterly line of E. Market St. (60 feet wide), which point is S. 44° E. 302.00 feet from the most Southerly corner of Lot 34 of the Sumner Allotment, as recorded in Plat Book 2, Page 46 of Summit County Records; Thence N. 46° 03' E. 10.00 feet to the present Northeasterly line of E. Market St., as widened to 80 feet, and the true place of beginning;

Thence along the Southeasterly line of Weather-Seal, Inc. property N. 46° 03' E.

200.00 feet; Thence S. 44° E. 5.00 feet;

Thence S. 46° 03' W. 200.00 feet to the present Northeasterly line of E. Market St.;

Thence along the Northeasterly line of said street N. 44° W. 5.00 feet to the place of beginning. Containing 0.23 acres, assurveyed by E. A. Hand in Dec. 1955.

Parcel II:

Situated in the City of Akron, County of Summit, State of Ohio, and being part of Original Lot 3, Tract 8, formerly Portage Township, more fully described as follows:



Beginning at a point in the Northeasterly line of E. Market St. (60 feet wide), which point is S. 44° E. 232.00 feet from the most Southerly corner of Lot 34 of the Sumner Allotment, as recorded in Plat Book 2, Page 46 of Summit County Records;

Thence along the Northwesterly line of Weather-Seal, Inc. property N. 46° 03' E. 210.00 feet to the true place of beginning;

Thence N. 46° 03' E. 21.75 feet to the most Northerly corner of Weather-Seal, Inc. property;

Thence along the Northeasterly line of Weather-Seal, Inc. property S. 44° E. 70.00 feet to the most Easterly corner of said Weather-Seal, Inc. property;

Thence along the Southeasterly line of said property S. 46° 03' W. 21.75 feet;

Thence N. 44° W. 70.00 feet to the place of beginning. Containing 0.350 acre as surveyed by E. A. Hand in Dec, 1955.

PPN: 6714271 and 6714272

## FIRST AMENDMENT TO AGREEMENT OF PURCHASE AND SALE

This **First Amendment to Agreement of Purchase and Sale** (this "**Amendment**") is made as of **February 27, 2019** (the "**Effective Date**"), by and between **Brian Bash, Chapter 7 Trustee of Fair Finance Company** (the "**Seller**") and **AGPC, Inc.** (the "**Buyer**").

### RECITALS:

- A. Seller and Buyer are parties to a certain Agreement of Purchase and Sale made as of February 22, 2019, for the purchase and sale of improved real property owned by the Seller at 815 E. Market Street, Akron, Ohio, consisting of two parcels aggregating approximately .7285 acres of real estate (the "**Purchase Agreement**"). Capitalized terms not defined herein shall have the meaning given to such terms in the Purchase Agreement.
- B. Seller and Buyer desire to amend certain terms and provisions of the Purchase Agreement as set forth in this Amendment.

**NOW THEREFORE**, in consideration of good and valuable consideration, the receipt and adequacy of which is acknowledged, the parties intending to be legally bound do hereby agree that the foregoing recitals are incorporated herein and as follows:

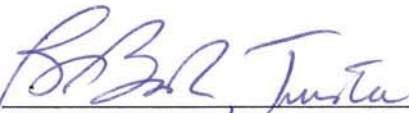
1. **Purchase Price.** Section 3 of the Purchase Agreement is hereby deleted in its entirety and restated as follows:
  - 3. **Purchase Price.** (a) Buyer agrees to pay to Seller for the Property the sum of ONE HUNDRED FIFTEEN THOUSAND DOLLARS (\$115,000) (the "**Purchase Price**") in immediately available funds on the Closing Date (hereinafter defined).
  - (b) For the Personal Property, Buyer agrees to pay the sum of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500) in immediately available funds on the Closing Date, and Seller shall execute and deliver a quit claim bill of sale for the Personal Property to Buyer at Closing (the "**Bill of Sale**").
2. **References to Note and Mortgage.** All references to the terms "Note", "Mortgage", "Note and Mortgage" and all other terms relating to such terms shall be deleted in their entirety and any provision of the Purchase Agreement relating to such terms shall be of no force and effect.
3. **Reaffirmation of Agreement.** Seller and Buyer each confirm and reaffirm their respective obligations under the Purchase Agreement, intending them to remain in full force and effect in accordance with the Purchase Agreement as modified by this Amendment. To the extent any of the terms, covenants and conditions of this Amendment are inconsistent with the terms, covenants and conditions of the Purchase Agreement, the terms, covenants and conditions of this Amendment shall prevail and control.
4. **Execution.** This Amendment may be executed in any number of counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument. Facsimile or electronic transmissions of executed signature pages are agreed and deemed by all parties to constitute originals fully enforceable and binding upon the parties.


Seller and Buyer have caused this Amendment to be signed and delivered by their duly authorized representatives as of the Effective Date set forth above.

**SELLER:**

**BUYER:**

**AGPC, INC.**

By:   
\_\_\_\_\_  
Brian Bash, Chapter 7 Trustee of  
Fair Finance Company

By:   
\_\_\_\_\_  
Agathonikos Pamboukis, President

**EXHIBIT B**

VALUATION REPORT

## REAL ESTATE APPRAISAL REPORT

Address of Property: 815 East Market St., Akron Ohio 44305

Property Owner: Fair Finance Company

District: 67 Akron

Address of Property Owner: unknown

Parcel: 6714271

Occupant's Name: Vacant

Whole: ☒ Partial: ☐ Acquisition

County: Summit

### Purpose of the Appraisal

The purpose of this appraisal is to estimate the market value of the fee simple title to the real property in accordance with the laws of Ohio.

### Market Value

Market value is defined as follows: "Market Value is the price which the property would bring when it is offered for sale by one who desires, but is not obliged to sell, and is bought by one who is under no necessity of buying it, taking into consideration all of the uses to which it is reasonably adaptable and for which it either is or in all reasonable probability will become available within the reasonable future."

### Certificate of Appraiser

**I hereby certify that , it is my opinion the total compensation for the acquisition of the herein described property is \$143,000 as of 2/7/2019 based on a 180 market time and \$125,000 for a Quick Sale Cash value,**

based upon my independent appraisal and the exercise of my professional judgment; on 2/7/2019, I personally inspected in the field the property herein appraised; I afforded Brian Bash, the property owner or the representative of the property owner, the opportunity to accompany me at the time of the inspection; the comparables relied upon in making said appraisal were as represented by the photographs contained in the appraisal report and were inspected on 1/18/2019; I have not revealed and will not reveal the findings and results of such appraisal to anyone other than Brian Bash, or until I am required to do so by due process of law or until I am released from this obligation by having publicly testified to such findings; and , my compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result or the occurrence of a subsequent event.

I certify to the best of my knowledge and belief that the statements of fact contained in this report are true and correct; the reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions and conclusions; I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved; and, my analyses, opinions and conclusions were developed, and this report has been prepared in conformity with the appropriate State of Ohio laws, regulations, and policies and procedures applicable to the appraisal of right of way for such purposes, and that to the best of my knowledge no portion of the value assigned to such property consists of items which are noncompensable under the established law of said State, and any decrease or increase in the fair market value of subject real property prior to the date of valuation caused by the public improvement other than that due to the physical deterioration within the reasonable control of the owner has been disregarded in estimating the compensation for the property.

  
Real Estate Broker Associate Signature

0700300553

File Number

2/7/2019

Date

## PHOTOGRAPHS OF SUBJECT PROPERTY

Include Each Major Improvement

Parcel No.: 6714271

Date Taken: 1/18/2019

1. Point from which taken: front

Local Address: 815 East Market St., Akron Ohio 44305

Taken By: David Sarver

Looking: NE



2. Point from which taken: side

Looking: NE



3. Point from which taken: rear

Looking:





4. Point from which taken: interior

Looking: out window



5. Point from which taken: side

Looking: SW



26. Point from which taken: interior office

Looking: up



2. Point from which taken: utility room

Looking:



**DESCRIPTION OF PROPERTY:** See attached



**EXHIBIT C**

**PROPOSED ORDER**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

In re:	)	
	)	Case No. 10-50494
FAIR FINANCE COMPANY,	)	
	)	Chapter 7
Debtor.	)	
	)	Judge Jessica E. Price-Smith

**ORDER GRANTING THE TRUSTEE’S MOTION TO APPROVE SALE OF  
PROPERTY FREE AND CLEAR OF ALL  
LIENS, CLAIMS, AND ENCUMBRANCES**

This matter came before the Court on the *Trustee’s Motion for to Approve Sale of Property Free and Clear of all Liens, Claims, and Encumbrances* (the “**Motion**”) [D.I. \_\_\_\_].<sup>1</sup> The Court has considered the Motion and determined that the proposed sale pursuant to the guidelines discussed in the Motion constitutes a sound exercise of the Trustee’s business judgment, and the relief requested is in the best interests of the Debtor, the estate, its creditors, and other parties-in-interest. Upon the record herein, after due deliberation thereon, good and sufficient cause appearing

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

therefore; and good and sufficient notice of the Motion having been given under the particular circumstances and no other or further notice need be given; it is hereby:

**FOUND THAT:**

1. The value to be received by the Trustee through the proposed sale to AGPC, Inc. is the highest and best available and represents a fair value for the Property.

2. The Trustee has articulated sound business justification for the sale of the Property to AGPC, Inc. free and clear of all liens, claims, encumbrances, liabilities and interests, and it is a reasonable exercise of the Trustee's business judgment to consummate the sale of the Property to AGPC, Inc. pursuant to the Motion.

3. The consummation of the Property sale by the Trustee is in the best interests of the Debtor, the estate, its creditors and all parties-in-interest.

4. The sale of the Property and the transfer thereof to AGPC, Inc. pursuant to this Order comply with all applicable provisions of Section 363 of the Bankruptcy Code.

5. The Trustee, AGPC, Inc., and their respective representatives, attorneys and advisors have acted in good faith in all respects relating to the sale of the Property. The terms of the Property sale were negotiated and entered into in good faith and from arm's length bargaining positions. AGPC, Inc. is entitled to the protections afforded under Section 363(m) of the Bankruptcy Code as transferee of the Property.

6. Notice of the Motion and of the relief requested therein was good and sufficient given the circumstances.

**ORDERED, ADJUDGED, AND DECREED** as follows:

1. The Motion is **GRANTED** in its entirety.

2. The Trustee is authorized to sell the Property free and clear of all liens, claims and encumbrances to AGPC, Inc. in accordance with the terms of the Purchase Agreement.

3. The Trustee is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

4. All of the Trustee's interest in and to the Property shall be sold, conveyed, assigned and transferred to AGPC, Inc. free and clear of any and all liens, mortgages, pledges, security interests, restrictions, prior assignments, liabilities, obligations, encumbrances, charges, or claims of any and every kind, nature and description whatsoever, whether contingent or noncontingent, whether disputed or undisputed (collectively the "**Property Liens**"). For purposes of this Order, Property Liens shall also include, without limitation, claims arising out of pending litigation, those which arise or have arisen from the assessment of any taxes, including personal property taxes, the interest of any and all lien holders and claims of present and future tort and product liability claimants of any kind and nature whatsoever.

5. Any Property Liens on the Property shall attach to net sales proceeds, after payment of any cost of sale including, but not limited to, fees directly associated with the sale, pursuant to the Purchase Agreement.

6. All persons or entities holding any adverse claim shall be and hereby are enjoined, stayed and barred from pursuing or attempting to pursue or commencing any suits or proceedings, in law, in equity or otherwise to collect, recover or pursue any adverse claims against AGPC, Inc. or the Property.

7. The sale, conveyance, transfer and assignment of the Property to AGPC, Inc. pursuant to this Order shall be binding upon the Trustee, AGPC, Inc., the Debtor, all of the

Debtor's creditors, all persons having or asserting a claim against or interest in the Debtor or the Property, and all parties to any actions or proceedings.

8. This Order shall be binding upon and inure to the benefit of any successors or assigns of the Trustee, the Debtor, and AGPC, Inc.

9. Notice of the Motion was adequate and sufficient under the circumstances.

10. This Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

**IT IS SO ORDERED.**

# # #

Submitted by:

/s/ Kelly S. Burgan

Kelly S. Burgan (0073649)

Baker & Hostetler LLP

Key Tower

127 Public Square, Suite 2000

Cleveland, Ohio 44114

Telephone: 216.621.0200

Facsimile: 216.696.0740

abeachdell@bakerlaw.com

*Counsel for the Trustee*

## **CERTIFICATE OF SERVICE**

A copy of the foregoing has been served via ECF or regular, U.S. Mail, on March 18, 2019, on the attached service list.

/s/ Kelly S. Burgan

Kelly S. Burgan

*Counsel for the Trustee*

## SERVICE LIST

### Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive e-mail notice/service for this case.

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## Manual Notice List

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\*KCC will serve this motion and notice of motion on all creditors. A supplemental certificate of service will be filed.