

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT
CAUSE NO. 49D02-0907-MF-034543

BANK OF THE WEST)
)
) Plaintiff,)
)
) vs.)
)
MILO 801, LLC, MYLO, INC., and)
MYLES B. OGEA)
)
) Defendant.)

FILED
MAR 01 2010
CLERK OF THE MARION SUPERIOR COURT

**RECEIVER'S MOTION TO SELL CERTAIN REAL ESTATE
FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES AND
INTERESTS**

William J. Tucker, Inc. is the duly appointed Receiver ("Receiver") herein over certain real estate and related improvements (the real estate and related improvements are collectively referred to as the "Real Estate"). The Real Estate is located at 801-825 Broad Ripple Avenue, Indianapolis, Indiana 46220 and the legal description of the Real Estate is attached hereto and incorporated by reference as Attachment "A". As such, the Receiver, by counsel, with this above-entitled Motion (the "Sale Motion") seeks authority and an order of this Court authorizing the Receiver to sell the Real Estate free and clear of all liens, encumbrances and interests (collectively the "Interests"). In support of the Sale Motion, the Receiver states:

**HISTORY AND CURRENT STATUS OF THE CASE
AND RECEIVER'S ACTIVITIES**

1. On July 23, 2009, Bank of the West ("Bank") filed its Complaint on Note and Guaranty and for Foreclosure of Mortgage and for Immediate Appointment of Receiver (the "Complaint") in this case seeking recovery on a promissory note (the "Note"), guaranties of the Note (the "Guaranties") and foreclosure of its mortgage (the "Mortgage") on the Real Estate. The

Complaint, Note, Guaranties and Mortgage are attached to the Complaint and part of the Court's file herein.

2. In the Complaint, Bank requested, in part, a joint and several personal judgment against Milo 801, LLC ("Milo"), Myles B. Ogea ("Ogea") and Mylo, Inc. ("Mylo") pursuant to the Note and Guaranties and to foreclose on its Mortgage on the Real Estate.

3. In the Complaint, the Bank also requested the immediate appointment of a receiver over the Real Estate.

4. By order of this Court dated September 15, 2009, this Court entered its Amended Order Appointing Receiver (the "Receivership Order"), and a receivership was established over the Real Estate (the "Receivership Estate"). The Receivership Order is a part of the Court's file herein.

5. Pursuant to the Receivership Order, William J. Tucker, Inc. was appointed Receiver over the Real Estate, and among other things, was authorized to take possession, manage, control, protect, and sell (by further Court order) the Real Estate.

6. The Receiver did take possession and control of the Real Estate.

7. On December 31, 2009, Bank filed its Motion for Summary Judgment (the "Judgment Motion"). No objections were filed to the Judgment Motion as of the filing date of this Sale Motion, and the Judgment Motion is pending before this Court. The Judgment Motion is part of the Court's file herein.

8. Pursuant to the Affidavit of Sherry Pender (the "Affidavit") submitted in support of the Judgment Motion, the Real Estate is subject to the first priority lien and duly recorded Mortgage of the Bank, and such Mortgage is in excess of \$1,588,038.13.

9. The Receiver has negotiated a purchase agreement (the "Purchase Agreement") for sale of the Real Estate to William T. Stoops, III, (the "Buyer"), an individual, free and clear of all

Interests. A copy of the Purchase Agreement is attached hereto and incorporated by reference as Attachment "B".

10. Among other things, the Purchase Agreement provides that the Buyer shall pay the Receiver, as consideration for purchase of the Real Estate, as follows:

A. Buyer will pay the purchase price of \$825,000.00 for the Real Estate (the "Purchase Price"). (Purchase Agreement, paragraph 3.)

B. At closing, the following adjustments shall be made to the Purchase Price:

(a) Buyer shall submit \$50,000.00 upon acceptance of this Purchase Agreement, as earnest money (the "Earnest Money"), which shall be applied to the Purchase Price. (Purchase Agreement, paragraph 4.)

(b) There are several Leases (the "Leases") for the Real Estate between Milo and the tenants and/or person in possession of the Real Estate (the "Tenants"). The Buyer is purchasing the Real Estate subject to the Leases, all terms and conditions contained in the Leases, and all rights of the Tenants. At the closing, the Leases shall be assigned to the Buyer. All rents in the Seller's possession which were paid to Seller pursuant to the Leases, for the month in which the closing occurs, shall be prorated, and Buyer shall receive a credit towards the Purchase Price for said rents attributable to the closing date through the last day of the month in which the closing occurs. (Purchase Agreement, paragraph 10.)

C. At the closing of the sale of the Real Estate, the Receiver shall grant to the Buyer a Receiver's Deed. (Purchase Agreement, paragraph 23 D.)

11. The Receiver hereby alleges that the Real Estate is property of this Receivership Estate and the proper subject of an order from this Court authorizing the sale of such Real Estate in accordance with the terms requested in this Motion.

RECEIVER'S AUTHORITY FOR SALE OF THE REAL ESTATE

12. This Court, by its legal and equitable power, has authority to approve and authorize the sale of the Real Estate, by the Receiver, to the Buyer, free and clear of all Interests.

13. Pursuant to Paragraph 12 of the Receivership Order, "The Receiver may, under

control of the Court or Judge, . . . sell property; in Receiver's own name, and generally do other acts respecting the property, including the [Real Estate], as the Court may authorize, under Indiana Code §32-30-5-7.

14. Indiana Code §32-30-5-7 provides:

The receiver may, under control of the court or the judge: (1) bring and defend actions; (2) take and keep possession of the property; (3) receive rents; (4) collect debts; and (5) sell property; in the receiver's own name, and generally do other acts respecting the property as the court or judge may authorize.

15. The Receiver, alleges that it has exercised its business judgment with respect to its efforts described in this Motion, and that he believes that the sale of the Real Estate, pursuant to the terms of the Purchase Agreement, is fair and reasonable, will maximize the net value that the Receiver will recover for the Real Estate without further delay and cost to the Receivership Estate, and is in the best interests of the Receivership Estate. Good cause exists for granting the relief requested in this Sale Motion.

THE NEED FOR A QUICK SALE

16. The Buyer is a cash Buyer. He has indicated that he must obtain ownership and possession of the Real Estate at the earliest possible time to preserve the value of the Real Estate. In order to maintain the value of the Real Estate, it is imperative that the property be marketed to new tenants by the owner of the Real Estate. At the present time, the building is more than half vacant. The number of tenants and amount of rents paid by the tenants are critical to the value of the Real Estate. The more quickly the Buyer takes ownership of the Real Estate, the more likely the Real Estate is to maintain its present value. As a result, the Buyer has asked that the Receiver ask this Court to reasonably shorten notice of the time to respond to this Sale Motion to allow for an early

determination on the Motion, and enter a Sale Order and closing on the Real Estate as quickly as possible.

17. Because, as alleged in the Judgment Motion and Affidavit, the Bank has a perfected first priority lien against the Real Estate, and the gross sale proceeds to be received from the sale of the Real Estate, pursuant to the Purchase Agreement, are substantially less than any amount due the Bank, all interests of other parties in the proceeds of the sale of the Real Estate will not be satisfied, in any manner.

18. Bank has been advised of the negotiation of the Purchase Agreement and supports the sale of the Real Estate pursuant to the terms contained therein. The Receiver understands that Bank may file a concurrence with this Sale Motion within the time allowed by this Court to respond to it. The Receiver will serve a copy of this Sale Motion upon the Buyer and all parties and lien holders, including but not limited to, all defendants named in the Complaint, and any additional parties discovered in the most recent title search who are indicated as having a lien, encumbrance or interest on the Real Estate, if any.

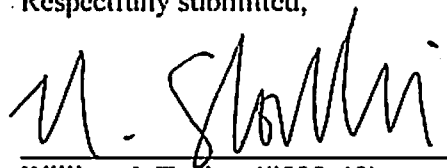
19. The Receiver tenders herewith and attaches hereto as Attachment "C" an Order and Notice on Receiver's Motion to Sell Certain Real Estate and Incidental Personal Property Free and Clear of All Liens, Encumbrances and Interests (the "Notice") provided for use by the Court to provide notice to interested parties of this Sale Motion, the relief requested herein, and the right to respond and be heard thereon.

20. The Receiver tenders herewith and attaches hereto as Attachment "D" a proposed Order Granting the Receiver's Motion to Sell Certain Real Estate and Incidental Personal Property Free and Clear of All Liens, Encumbrances and Interests (the "Sale Order" or "Order"), provided for use by the Court in granting the relief requested in this Sale Motion.

REQUEST FOR RELIEF

The Receiver respectfully requests that this Court enter the Notice, and after hearing thereon, if necessary, enter the Sale Order and thereby grant the Receiver all just and proper relief in the premises on this Sale Motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "W. J. Tucker", written over a horizontal line.

William J. Tucker (#599-49)
Niccole R. Sadowski (#21811-29)

William J. Tucker
Niccole R. Sadowski
TUCKER | HESTER, LLC
Pennsylvania Center, Suite 100
429 N. Pennsylvania St.
Indianapolis, IN 46204
(317) 833-3030 / (317) 833-3031 (f)
bill@tucker-hester.com
nikki@tucker-hester.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following by electronic filing service or United States Mail, first class postage prepaid, this 1st day of March, 2010:

Timothy L. Black
Feiwell & Hannoy, P.C.
P.O. Box 44141
251 North Illinois Street, Suite 1700
Indianapolis, IN 46204

Steven C. Earnhart
Thrasher Buschmann Griffith
& Voelkel, P.C.
151 N. Delaware St., Ste. 1900
Indianapolis, IN 46204-2505

William T. Stoops, III
Veritas Realty, LLC
930 East 66th Street
Indianapolis, IN 46220

Milo 801, LLC
c/o James P. Borgmann
201 E. Jackson Street, Suite 400
Muncie, IN 47305

Mylo, Inc.
c/o Myles Ogea
1610 W. University Ave.
Muncie, IN 47303

Myles Ogea
1610 W. University Ave.
Muncie, IN 47303



Nicole R. Sadowski

William J. Tucker
Niccole R. Sadowski
TUCKER | HESTER, LLC
Pennsylvania Center, Suite 100
429 N. Pennsylvania St.
Indianapolis, IN 46204
(317) 833-3030 / (317) 833-3031 (f)
bill@tucker-hester.com
nikki@tucker-hester.com

Legal Description:

Lot Numbered Seven (7), Eight (8) and Nine (9) in Brennehan's Home Place Addition to Broad Ripple, now in the City of Indianapolis, as per plat thereof recorded in Plat Book 18, page 180 in the Office of the Recorder of Marion County, Indiana, EXCEPT fifty-six (56) feet by parallel lines off the entire South end of such lots.

ATTACHMENT "A"

William J. Tucker
WILLIAM J. TUCKER, INC., RECEIVER

February 25, 2010

William T. Stoops, III
Veritas Realty, LLC
930 East 66th Street
Indianapolis, IN 46220

Via Email
Bstoops@veritasrealty.com

**RE: Second Counteroffer to Offer by
William T. Stoops, III ("Buyer")
to Purchase 801-825 Broad Ripple Avenue
Indianapolis, Indiana 46220**

Dear Mr. Stoops:

This letter serves as a second counteroffer (the "Second Counteroffer") to your offer to purchase the property located at 801 – 825 Broad Ripple Avenue, Indianapolis, Indiana 46220 (the "Property") dated February 5, 2010 (the "Offer"). A copy of the Offer is attached.

The Receiver of the Property, William J. Tucker, Inc. (the "Receiver"), will accept the Offer subject to the following additional terms and conditions:

The Receiver's acceptance of the Offer is conditioned upon and subject to the approval of the Offer by Bank of the West ("Bank"). If Receiver fails to obtain Bank's approval of the Offer, any agreement between Receiver and Buyer, related to the Property and including but not limited to the sale of the Property from Receiver to Buyer, shall be immediately terminated. Buyer hereby waives any claim it may have against Bank, Receiver, or the Property related to or arising from Bank's failure and/or refusal to approve the Offer.

The Receiver has been advised the Bank shall make a determination as to the approval of the Offer in the near future. Upon your acceptance of the Second Counteroffer, the Receiver shall proceed to obtain the Court's approval identified in paragraph 7 of the attached by finalizing and submitting its Motion to Sell to the Court.

This Second Counteroffer will be held open until 5:00 p.m. on February 26, 2010, and your acceptance of this Second Counteroffer must be in the Receiver's possession by said time or the Second Counteroffer shall be deemed rejected. Please contact me if you have any questions or wish to further discuss this matter.

ATTACHMENT "B"

Yours truly,

WILLIAM J. TUCKER, INC.



William J. Tucker

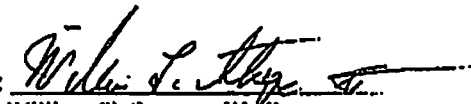
WJT/cfj

Enclosure

cc: Sherry Pender (email)
Timothy Black (email)
Niccole R. Sadowski (email)

Acceptance

The undersigned hereby acknowledges having read the above Second Counteroffer and understands its terms. The undersigned hereby accepts the foregoing Second Counteroffer and agrees to purchase the Property pursuant to the terms and conditions contained herein this 25th day of February, 2010.

By: 
William T. Stoops, III, Buyer

PURCHASE AGREEMENT

Date: 2/5/10

1. **BUYER:** William T Stoops III ("Buyer") agrees to buy the certain Property identified in Paragraph 2, herein, from William J. Tucker, Inc., Receiver of the Property ("Seller" or "Receiver") for the consideration and subject to the following terms, provisions and conditions contained within this Purchase Agreement (the "Agreement"):
2. **PROPERTY:** The property ("Property") is described in Attachment "A" attached hereto and incorporated herein, and is located in Marion County, Indiana 46220, together with all buildings, improvements and fixtures thereon.
3. **PRICE:** Buyer will pay the purchase price of \$ 825,000.00 for the Property (the "Purchase Price").
4. **EARNEST MONEY:** Buyer shall submit \$50,000.00 upon acceptance of this agreement, as earnest money (the "Earnest Money"), which shall be applied to the Purchase Price. The Receiver shall deposit the Earnest Money into a receivership account within two (2) banking days of receipt of the Earnest Money and hold it as provided in this Agreement. If Buyer fails, for any reason, to submit Earnest Money, as required herein, Seller may immediately terminate this Agreement. If this offer is accepted, and Buyer fails or refuses to close the transaction, without legal cause, the Earnest Money shall be retained for damages the Seller has or will incur, and Seller also retains all rights to seek other legal and equitable remedies. The Receiver, in holding any Earnest Money, is absolved from any responsibility to make payment to the Buyer, unless the parties enter into a Mutual Release or a Court issues an Order for payment. However, upon notification that Buyer or Seller intends not to perform, Receiver may release Earnest Money as provided in the Agreement. Receiver may send notice to Buyer of the disbursement of the Earnest Money by certified mail. Buyer agrees to hold the Receiver harmless from any liability, including attorney's fees and costs, for good faith disbursement of the Earnest Money in accordance with this Agreement.
5. **METHOD OF PAYMENT:** (Check appropriate paragraph letter)
 - A. CASH:** The entire Purchase Price shall be paid in cash and no financing is required.
 - B. NEW MORTGAGE:** Buyer has been approved for a:
 Conventional Insured Conventional Other: _____ first mortgage loan in the original principal amount of \$ _____. Buyer shall pay the remainder of the Purchase Price in cash. Buyer shall pay all costs of obtaining financing. Proof of said financing is attached hereto.
 - C. OTHER METHOD OF PAYMENT:** (Attach Financing Addendum)
6. **TIME FOR OBTAINING FINANCING:** Buyer agrees to make written application for and obtain any financing necessary to complete this transaction prior to the acceptance of the Agreement.
7. **RECEIVERSHIP APPROVAL:** Within sixty (60) days after acceptance of this Agreement by Seller, Seller shall have obtained the non-appealable final approval of the receivership Court approving the sale of the Property to Buyer (the "Contingency Period"). If Receiver fails to obtain such approval during the Contingency Period, this Agreement shall be terminated and the Earnest Money immediately refunded to Buyer.

8. **CLOSING:** The closing of the sale (the "Closing Date" or "Closing") shall be not earlier than 30 days or later than 40 days after entry of the Court's order approving this Agreement. Agreement shall terminate unless an extension of time is mutually agreed to in writing by the Buyer and Seller. The closing fee charged by the title insurance company shall be shared equally, and Seller shall determine the closing agent. The closing shall occur at a time and place mutually acceptable to Buyer and Seller.

9. **POSSESSION:**

- A. **Date of Possession:** The possession of the Property shall be delivered to the Buyer at closing.
- B. **Maintenance of Property:** Seller shall maintain the Property in its present condition until its possession is delivered to Buyer. Buyer may inspect the Property prior to the Closing Date to determine whether Seller has complied with this paragraph.
- C. **Casualty Loss:** Risk of loss by damage or destruction to the Property prior to the Closing Date shall be borne by Seller. In the event any damage or destruction is not fully repaired prior to Closing, Buyer, at Buyer's option, may either (a) terminate the Agreement or (b) elect to close the transaction, in which event Seller's right to all real property insurance proceeds resulting from such damage or destruction shall be assigned, in writing, by Seller to Buyer.
- D. **Utilities/Municipal Services:** Seller shall pay for all municipal services and public utility charges through the day of possession.

10. **LEASES:** There are several Leases (the "Leases") for the Property between Milo 801, LLC or its predecessor and the tenants and/or persons in possession of the Property (the "Tenants"). The Buyer is purchasing the Property subject to the Leases, all terms and conditions contained in the Leases, and all rights of the Tenants. At the closing, the Leases shall be assigned to the Buyer. There shall not be any credit for any security deposit paid by the Tenants because said security deposits were never turned over to Seller. All rents in the Seller's possession which were paid to Seller pursuant to the Leases, for the month in which the closing occurs, shall be prorated, and Buyer shall receive a credit towards the Purchase Price for said rents attributable to the Closing Date through the last day of the month in which the Closing occurs. Seller makes no representations or warranties regarding the status of the Leases.

11. **TENANTS:** Prior to the Closing, the Buyer may not contact the Tenants without the written consent of the Seller.

12. **SURVEY:** Buyer may purchase a land survey of the Property (the "Survey"), at Buyer's own expense, within five (5) days of the acceptance of this Agreement. Within ten (10) days of Buyer's receipt of the Survey, the buyer may make an objection to items appearing on the Survey, in writing, to the Seller. Failure of Buyer to make a written objection means Buyer accepts the Property, as is.

13. **FLOOD AREA:** Buyer may not terminate the Agreement if the Property requires flood insurance.

14. **ENVIRONMENTAL CONTAMINANTS ADVISORY/RELEASE:** Buyer acknowledges that Seller and its agents are NOT experts and have NO special training, knowledge or experience with regard to the evaluation or existence of possible lead-based paint, radon, mold and other biological contaminants ("Environmental Contaminants") which might exist and affect the Property. Environmental Contaminants at harmful levels may cause property damage and serious illness, including but not limited to allergic and/or respiratory problems - particularly in persons with compromised immune systems, young children and/or the elderly.

Buyer is **STRONGLY ADVISED** to obtain inspections (see below) to fully determine the condition of the Property and its environmental status. The **ONLY** way to determine if Environmental Contaminants are present on the Property at harmful levels is through inspections.

Buyer agrees to consult with appropriate experts and accept all risks for Environmental Contaminants and release and hold harmless Seller and its agents from any and all liability.

including attorney's fees and costs, arising out of, or related to, any inspection, inspection result, repair, disclosed defect or deficiency affecting the Property, including Environmental Contaminants. This release shall survive the Closing.

- 15. INSPECTIONS: BUYER RESERVES THE RIGHT TO HAVE THE PROPERTY INSPECTED** (including Lead-Based Paint), independent of and in addition to, any inspections required by Buyer's lender(s). All inspections are to be at Buyer's expense (unless noted otherwise or required by lender) by licensed independent inspectors or qualified independent contractors selected by Buyer within the agreed upon time periods.

INSPECTION/RESPONSE PERIOD: Buyer shall order all **INDEPENDENT INSPECTIONS** five (5) days after acceptance of the Agreement. Buyer shall have ten (10) days from the day the report(s) are received by Buyer to respond to the report(s), in writing, to Seller.

Inspections may include, but are not limited to, the condition of the following systems and components: heating, cooling, electrical, plumbing, roof, walls, ceilings, floors, foundation, basement, crawl space, well/septic, water, wood destroying insects and organisms, lead-based paint, radon, mold and other biological contaminants.

If the Buyer does not comply with any Inspection/Response Period(s) or make a written objection to Seller of any problem revealed in a report within the applicable Inspection/Response Period(s), the Property shall be deemed to be acceptable.

If the Buyer reasonably believes the Inspection Report reveals a **MAJOR DEFECT** with the Property, and the Seller is unable or unwilling to remedy the defect to the Buyer's reasonable satisfaction before closing (or at a time otherwise agreed to by the parties), then Buyer may terminate this Agreement or waive such defect and the Agreement shall proceed toward Closing. Under Indiana law, "Defect" means a condition that would have a significant adverse effect on the value of the Property that would significantly impair the health or safety of future occupants of the Property, or that if not repaired, removed, or replaced would significantly shorten or adversely affect the expected normal life of the premises. **BUYER AGREES THAT ANY PROPERTY DEFECT PREVIOUSLY DISCLOSED BY SELLER, OR ROUTINE MAINTENANCE AND MINOR REPAIR ITEMS MENTIONED IN ANY REPORT SHALL NOT BE A BASIS FOR TERMINATION OF THIS AGREEMENT. THE SELLER HAS NO OBLIGATION, PURSUANT TO THIS AGREEMENT, TO MAKE ANY REPAIR TO THE PROPERTY.**

- 16. TITLE APPROVAL:** Within five (5) days of the date of this Agreement, Buyer may purchase a policy of title insurance (the "Title Policy") from a company of their choosing, at Buyer's expense. Buyer shall have ten (10) days from the date the Title Policy is received to object to Seller of any issues contained within the Title Policy. Said objection must be in writing.

Any encumbrances or defects in title must be removed and Seller must convey title free and clear of any encumbrances and title defects, with the exception of any mortgage assumed by Buyer and any restrictions and easements of record which will not materially interfere with Buyer's intended use of Property. The Buyer acknowledges the Leases and/or the rights of the Tenants pursuant to the Leases are not defects in the title of the Property to be cured by the Seller.

- 17. TAXES:** All taxes assessed for any prior calendar year and remaining unpaid shall be paid by Seller, and all taxes assessed for the current calendar year shall be prorated between Seller and Buyer on a calendar-year basis as of the day immediately prior to the Closing Date.

If the taxes for the current year have not been determined at the closing of the transaction, the taxes shall be assumed to be the same as the prior year for the purpose of such proration and credit for due but unpaid taxes, and this shall be a final settlement. **WARNING: Buyer is responsible for confirming the status of all tax exemptions and/or credits.**

18. PRORATIONS AND SPECIAL ASSESSMENTS: Insurance, if assigned to Buyer, interest on any debt assumed or taken subject to, any rents, all other income and ordinary operating expenses of the Property, including but not limited to, public utility charges, shall be prorated as of the day immediately prior to the Closing Date. Seller shall pay any special assessments applicable to the Property for municipal improvements previously made to benefit the Property. Seller warrants that Seller has no knowledge of any planned improvements which may result in corrections of any existing conditions. Public or municipal improvements, which are not completed as of the date above but which will result in a lien or charge, shall be paid by Buyer. Buyer will assume and pay all special assessments for municipal improvements completed after the date of this Agreement.

19. FINDERS, CONSULTANTS AND BROKERS: Each party hereto represents and warrants to the other party that neither such party nor any person or entity acting on its behalf has agreed to pay a commission, finder's fee, or similar payment in connection with the Agreement or any matter related hereto to any person or entity, nor has it or any person or entity acting on its behalf taken any action on which a claim for any such payment could be based.

20. TIME: Time is of the essence. Time periods specified in this Agreement and any subsequent Addenda to the Purchase Agreement are calendar days and shall expire at 11:59 P.M. of the date stated unless the parties agree in writing to a different date and/or time.

Seller and Buyer have the right to withdraw any offer/counteroffer prior to written acceptance and delivery of such offer/counteroffer.

21. ATTORNEY'S FEES: Any party to this Agreement who is the prevailing party in any legal or equitable proceeding against any other party brought under or with relation to the Agreement or transaction shall be additionally entitled to recover court costs and reasonable attorney's fees from the non-prevailing party.

22. LIMITATION OF DAMAGES RECOVERABLE AGAINST SELLER: Buyer acknowledges and agrees that in the event Seller fails to comply with any provisions of this Agreement which results in the Buyer being entitled to obtain relief against the Seller, that notwithstanding any other terms of this Agreement, the recovery of such relief shall be limited to a recovery against the Seller acting in the Seller's official capacity only as Receiver. The Buyer further acknowledges and agrees that in such event, neither the Receiver nor any of its officers, principals, attorneys, agents or employees shall be individually liable to the Buyer for any such relief or damages.

23. MISCELLANEOUS:

A. Unless otherwise provided, any prorations for rent, taxes, insurance, damage deposits, association dues/assessments, or any other items shall be computed as of the day immediately prior to the Closing Date.

B. Underground mining has occurred in Indiana, and Buyers are advised of the availability of subsidence insurance.

C. The Indiana Sheriff's Sex Offender Registry (www.indianasheriffs.org) exists to inform the public about the identity, location and appearance of sex offenders residing within Indiana. Seller is not responsible for providing or verifying this information.

D. Conveyance of this Property shall be by Receiver's Deed, subject to taxes, easements, restrictive covenants and encumbrances of record, unless otherwise agreed.

E. Seller represents and warrants that Seller is not a "foreign person" (individual entity) and, therefore, is not subject to the Foreign Investment in Real Property Tax Act.

- F. Any notice required or permitted to be delivered, shall be deemed received when personally delivered, transmitted electronically or digitally or sent by express courier or United States mail, postage prepaid, certified and return receipt requested, addressed to Seller or Buyer or the designated agent of either party.
- G. This Agreement shall be construed under and in accordance with the laws of the State of Indiana and is binding upon the parties' respective heirs, executors, administrators, legal representatives, successors and assigns.
- H. In case any provision contained in this Agreement is held invalid, illegal, or unenforceable in any respect, the invalidity, illegality or unenforceability shall not affect any other provision of this Agreement.
- I. This Agreement constitutes the sole and only agreement of the parties and supersedes any prior understanding or written or oral agreements between the parties' respecting the transaction and cannot be changed except by their written consent.
- J. All rights, duties and obligations of the parties shall survive the passing of title to, or an interest in, the Property.

24. **CONSULT YOUR ADVISORS:** Buyer and Seller acknowledge they have been advised that, prior to signing this document, they may seek the advice of an attorney for the legal or tax consequences of the document and the transaction to which it relates. In any real estate transaction, it is recommended that you consult with a professional, such as a civil engineer, environmental engineer, or other person with experience in evaluating the condition of the Property.

25. **EXECUTION OF AGREEMENT:** This Agreement may be executed simultaneously or in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The parties agree that this Agreement may be transmitted between them electronically or digitally. The parties intend that electronically or digitally transmitted signatures constitute original signatures and are binding on the parties. The original document shall be promptly delivered, if requested.


 BUYER'S SIGNATURE

By: William T. Stoggs II

It's: _____

Date: 2/5/10

Addendum: I will close on the property
 24 hours after approval.



Acceptance

The undersigned seller of the Property hereby accepts the foregoing Purchase Agreement this day of _____, 2010.

WILLIAM J. TUCKER, INC.

By: _____
WILLIAM J. TUCKER, President
of William J. Tucker, Inc., Receiver

.....
..
..
.....

ATTACHMENT "A"

Legal Description:

Lot Numbered Seven (7), Eight (8) and Nine (9) in Breneman's Home Place Addition to Broad Ripple, now in the City of Indianapolis, as per plat thereof recorded in Plat Book 18, page 180 in the Office of the Recorder of Marion County, Indiana, EXCEPT fifty-six (56) feet by parallel lines off the entire South end of such lots.

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
) SS:
 COUNTY OF MARION) CAUSE NO. 49D02-0907-MF-034543

BANK OF THE WEST)
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 Plaintiff,)
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 vs.)
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 MILO 801, LLC, MYLO, INC., and)
 MYLES B. OGEA)
)
 Defendant.)

**ORDER AND NOTICE ON RECEIVER’S MOTION TO SELL CERTAIN REAL ESTATE
 FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES AND INTERESTS**

TO ALL INTERESTED PARTIES:

William J. Tucker, Inc. (“Receiver”), Receiver herein, has filed the Receiver’s Motion to Sell Certain Real Estate Free and Clear of All Liens, Encumbrances and Interests (the “Sale Motion”). The Sale Motion seeks an order of the Court granting among other things the following relief:

1. Approval of the sale of certain real estate as described in Attachment “A” to the Sale Motion which has a common address of 801 – 825 Broad Ripple Avenue, Indianapolis, Indiana 46220, to William T. Stoops, III (“Buyer”), an individual, free and clear of all liens, encumbrances, and interests.

2. A copy of the Sale Motion may be reviewed at the office of the Marion Superior Court #2 located at 200 E. Washington Street, Indianapolis, Indiana 46204.

3. A copy of the Sale Motion will be sent to you by counsel for the Receiver upon written request to counsel for the Receiver at the following address:

Tucker | Hester, LLC
 c/o Niccole R. Sadowski
 429 N. Pennsylvania St., Suite 100
 Indianapolis, Indiana 46204-1816
 Phone 317.833.3030 | Fax 317.833.3031
 nikki@tucker-hester.com

4. You may respond to the Sale Motion by filing a written response or objection thereto with the Clerk of this Court at the address indicated hereinabove, and forwarding a copy of said

objection to William J. Tucker at Tucker | Hester, LLC, 429 N. Pennsylvania Street, Suite 100, Indianapolis, Indiana 46204.

5. All responses or objections to the Sale Motion shall be filed with the Clerk of this Court no later than _____, 2010.

6. A hearing on the Sale Motion and any response or objection filed thereto shall be held before this Court on the _____ day of _____, 2010 at _____ o'clock __.M. in Room Number _____, 200 E. Washington Street, Indianapolis, Indiana 46204, only if an objection is filed.

7. All interested parties are entitled, but not required, to attend said hearing at which time they may provide testimony, evidence and argument on the issues.

8. IF NO RESPONSE OR OBJECTION TO THE SALE MOTION IS TIMELY FILED WITH THE CLERK OF THIS COURT WITHIN THE ALLOWED TIME, NO HEARING WILL TAKE PLACE AND THE SALE MOTION MAY BE GRANTED WITHOUT FURTHER NOTICE.

9. The Receiver is hereby directed to send a copy of this Order and Notice on Receiver's Motion to Sell Certain Real Estate and Incidental Personal Property Free and Clear of All Liens, Encumbrances and Interests ("Order and Notice") by first class mail to all parties of record, Buyer and all creditors appearing in all information obtained by the Receiver noting any party as a creditor of Milo 801, LLC, Mylo, Inc. or Myles B. Ogea within two (2) calendar days of entry of this Order.

10. The Receiver is directed to file with the Clerk of this Court a certification of service of this Order and Notice as required herein.

DATED: _____

Theodore M. Sosin
Judge, Marion Superior Court 2

Distribution attached:

Copies to:

Timothy L. Black
Feiwell & Hannoy, P.C.
P.O. Box 44141
251 North Illinois Street, Suite 1700
Indianapolis, IN 46204

Steven C. Earnhart
Thrasher Buschmann Griffith & Voelkel, P.C.
151 N. Delaware St., Ste. 1900
Indianapolis, IN 46204-2505

William T. Stoops, III
Veritas Realty, LLC
930 East 66th Street
Indianapolis, IN 46220

William J. Tucker (#599-49)
Niccole R. Sadowski (#21811-29)
TUCKER | HESTER, LLC
429 North Pennsylvania Street, Suite 100
Indianapolis, Indiana 46204-1816

All other interested parties as provided for in paragraph #9.

4. At the hearing, the Court heard testimony, received the submission of evidence, and heard the arguments of counsel of the parties present as set out in the Court's file.

5. The Real Estate is property of this Receivership Estate and the proper subject of this Court's Order authorizing the sale of such Real Estate in accordance with the terms requested in the Sale Motion.

6. This Court, by its legal and equitable power, has authority to approve and authorize the sale of the Real Estate by the Receiver to the Buyer, free and clear of all Interests.

7. Pursuant to Paragraph 12 of the Court's Receivership Order, "The Receiver may, under control of the Court or Judge, . . . sell property; in Receiver's own name, and generally do other acts respecting the property, including the [Real Estate], as the Court may authorize, under Indiana Code §32-30-5-7.

8. Indiana Code §32-30-5-7 provides:

The receiver may, under control of the court or the judge: (1) bring and defend actions; (2) take and keep possession of the property; (3) receive rents; (4) collect debts; and (5) sell property; in the receiver's own name, and generally do other acts respecting the property as the court or judge may authorize.

9. In accordance with a review of the Court's file, and if an objection to the Sale Motion was filed, after testimony, evidence, and arguments of counsel, the Court hereby finds that good cause has been shown for the entry of this Order authorizing the Receiver to sell the Real Estate to the Buyer in accordance with the terms of the Purchase Agreement free and clear of all Interests.

IT IS THEREFORE ORDERED:

10. The findings set out herein above are hereby entered as a part of this Order.

11. The Receiver is hereby authorized to sell the Real Estate to the Buyer in accordance with the terms and conditions of the Purchase Agreement, attached as Attachment "B" to the Sale Motion, free and clear of all Interests.

12. Upon payment and/or assumption of any outstanding real estate taxes, all Interests against the Real Estate existing at the time of the entry of this Order shall be released as to the Real Estate and any such Interest shall immediately attach to the proceeds of the sale of the Real Estate after deduction of all sale and closing costs.

13. The Receiver is hereby authorized to enter into all agreements and execute all documents as is necessary to effectuate the sale of the Real Estate in accordance with the terms of the Purchase Agreement including but not limited to a receiver's deed, a bill of sale and/or an assignment, if necessary.

14. The Receiver is hereby authorized to pay all reasonable and regular costs of sale and closing on the sale, first from proceeds of the sale of the Real Estate and thereafter to retain the net proceeds of such sale until further order of this Court.

Dated: _____

Theodore M. Sosin
Judge, Marion Superior Court 2

Distribution attached

Copies to:

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Indianapolis, IN 46220

William J. Tucker (#599-49)
Niccole R. Sadowski (#21811-29)
TUCKER | HESTER, LLC
429 North Pennsylvania Street, Suite 100
Indianapolis, Indiana 46204-1816

Milo 801, LLC
c/o James P. Borgmann
201 E. Jackson Street, Suite 400
Muncie, IN 47305

Mylo, Inc.
c/o Myles Ogea
1610 W. University Ave.
Muncie, IN 47303

Myles Ogea
1610 W. University Ave.
Muncie, IN 47303