

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN RE:)	
)	
5 STAR INVESTMENT GROUP, LLC,)	CASE NO. 16-30078-hcd
5 STAR PORTLAND HOLDINGS, LLC,)	
5 STAR INVESTMENT GROUP V, LLC,)	SUBSTANTIVELY CONSOLIDATED
5 STAR COMMERCIAL, LLC,)	CHAPTER 11s
5 STAR INVESTMENT GROUP VII, LLC,)	
5 STAR HOLDINGS, LLC,)	
5 STAR INVESTMENT GROUP III, LLC,)	
5 STAR INDIANA HOLDINGS, LLC,)	
5 STAR INVESTMENT GROUP II, LLC,)	
5 STAR INVESTMENT GROUP IV, LLC,)	
and 5 STAR CAPITAL FUND, LLC)	
)	
Debtors.)	

**TRUSTEE'S MOTION TO SELL AT PRIVATE SALE REAL ESTATE FREE
AND CLEAR OF ALL LIENS, ENCUMBRANCES, CLAIMS AND INTERESTS**

Douglas R. Adelsperger, as Trustee (the "Trustee"), by counsel, for the above-entitled motion (this "Motion"), hereby moves for an entry of an Order, pursuant to 11 U.S.C. §§ 105 and 363(b), (f) and (m), Rule 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Local Rule B-6004-1, authorizing the sale of certain real estate, as described below, free and clear of all liens, encumbrances, claims and interests. In support of this Motion, the Trustee states as follows:

I. Background

1. On January 25, 2016 (the "Petition Date"), 5 Star Investment Group, LLC, 5 Star Portland Holdings, LLC, 5 Star Investment Group V, LLC, 5 Star Commercial, LLC, 5 Star Investment Group VII, LLC, 5 Star Holdings, LLC, 5 Star Investment Group III, LLC, 5 Star Indiana Holdings, LLC, 5 Star Investment Group II, LLC, 5 Star Investment Group IV, LLC and 5 Star Capital Fund, LLC (collectively, the "Debtors") filed voluntary petitions for relief under

Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Northern District of Indiana, South Bend Division initiating eleven (11) separate bankruptcy cases (the “Bankruptcy Cases”).

2. On February 9, 2016, the United States Trustee (the “UST”) filed her *Emergency Motion for an Order Directing the Appointment of a Trustee or, in the Alternative, Conversion to Chapter 7, and Request for an Expedited Hearing on the Motion* (the “UST Motion”).

3. Following a February 16, 2016 hearing on the UST Motion, the Court entered an *Agreed Order for the Appointment of a Chapter 11 Trustee*.

4. On February 29, 2016, the Trustee was appointed as the Chapter 11 Trustee in each of the Bankruptcy Cases.

5. On March 23, 2016, the Court entered its *Order Granting Motion for Joint Administration*, consolidating the Bankruptcy Cases for purposes of administration only.

6. On April 21, 2016, the UST filed her *Appointment and Notice Appointing Unsecured Creditors’ Committee*, appointing an Official Committee for Unsecured Creditors (the “Committee”) in these Bankruptcy Cases.

7. On June 24, 2016, the Court entered its *Agreed Order Granting Trustee’s Motion for Substantive Consolidation*, substantively consolidating the Bankruptcy Cases for all postpetition matters and purposes, effective as of the Petition Date, and deeming that all assets and liabilities of the Bankruptcy Cases to be consolidated into one (1) bankruptcy estate, to be administered in accordance with the Bankruptcy Code under the jurisdiction of the Court (the “Consolidated Bankruptcy Estate”).

8. Prior to the Petition Date, on November 5, 2015, the United States Securities Exchange Commission (the “SEC”) filed a complaint against the Debtors’ sole owner, Earl D.

Miller (“Miller”), 5 Star Capital Fund, LLC and 5 Star Commercial, LLC, in the United States District Court for the Northern District of Indiana, Hammond Division, under Case No. 3:15-cv-00519 (the “SEC Action”). In its complaint, the SEC alleged that Miller, 5 Star Capital Fund, LLC and 5 Star Commercial, LLC defrauded at least 70 investors from whom they raised funds of at least \$3.9 million.

9. Additionally, on November 5, 2015, the SEC obtained an *ex parte* Temporary Restraining Order, asset freeze and other emergency relief in the SEC Action.

II. Jurisdiction

10. The Court has jurisdiction over the Bankruptcy Cases under 28 U.S.C. §§ 157 and 1334. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(A), (N), and (O).

11. Venue for these Bankruptcy Cases is proper in this district under 28 U.S.C. §§ 1408 and 1409.

III. The Real Estate, Liens and Leases

12. Pursuant to § 541(a) of the Bankruptcy Code, the Consolidated Bankruptcy Estate includes all legal and equitable interests of the Debtors in property as of the commencement of the Bankruptcy Cases, including real estate.

13. On the Petition Date, the Debtor, 5 Star Investment Group V, LLC, was the sole owner of real estate located in St. Joseph County (Indiana), commonly known as 318 N. Wenger Street, Mishawaka, IN 46544 and more particularly described as follows:

Lot Numbered 109 in Wenger Realty Company’s Addition to the City of Mishawaka, in St. Joseph County, Indiana, as per plat thereof recorded September 13, 1904 in Plat Book 8, page 182 in the Office of the Recorder of Saint Joseph County, Indiana.

(the “Real Estate”).

14. The Debtor, 5 Star Investment Group V, LLC, listed the value of the Real Estate on its Schedule A at approximately \$54,900.00, which is based on the 2014/2015 tax assessed value of the Real Estate.

15. The Real Estate is subject to a tax lien for delinquent real estate taxes for the 2014 Fall installment that was due and payable in 2015, in the approximate sum of \$816.34 (the “2014 Fall Tax Lien”). The Real Estate is also subject to a tax lien for real estate taxes for 2015 that are due and payable in 2016, in the approximate sum of \$1,704.33 (the “2015 Tax Lien” and together with the 2014 Fall Tax Lien, the “Tax Liens”).

16. The Real Estate is also subject to the following mortgages:

- (a) A first priority mortgage in favor of James Shetler (“Shetler”) dated June 30, 2011 (the “Shetler Mortgage”). The Shetler Mortgage was recorded on August 11, 2011 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1120445; and
- (b) A second priority mortgage in favor of Victor Graber (“Graber”) dated December 31, 2013 (the “Graber Mortgage”). The Graber Mortgage was recorded on January 13, 2014 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1400960.

The Shetler Mortgage and the Graber Mortgage are collectively referred to herein as the “Investor Mortgages”.

17. Upon information and belief, the outstanding balances owed pursuant to the Investor Mortgages are as follows:

- (a) The Shetler Mortgage is approximately \$35,418.17;¹ and
- (b) The Graber Mortgage is approximately \$54,583.33.²

Accordingly, the total outstanding balance of the Investor Mortgages is approximately \$90,001.50.

¹ Amount listed is pursuant to Schedule D filed by 5 Star Investment Group V, LLC.

² Amount listed is pursuant to Proof of Claim #127 filed by Graber in Case No. 16-30078.

18. Prior to the Petition Date, the Real Estate was subject to a lease (the “Lease”), with an option to purchase, in favor of Kimberly Bonds (the “Tenant”). Pursuant to the option to purchase under the Lease, the Tenant deposited with the Debtor, 5 Star Investment Group V, LLC, a non-refundable lease purchase payment of \$3,450.00 (the “Deposit”). In the event the Tenant exercised her rights pursuant to the option to purchase under the Lease, the Deposit was to be applied to the full purchase price, as stated in the Lease. The Trustee and the Tenant have agreed that the Lease, including the option to purchase, has expired and that the Tenant did not exercise her rights pursuant to the option to purchase. Accordingly, the Tenant has no interest in the Real Estate, other than her rights as a month-to-month tenant pursuant to IND. CODE § 32-31-1-2.

IV. The Purchase Agreement

19. On August 31, 2016, pursuant to the sole efforts of the Trustee, the Trustee entered into a purchase agreement for the sale of the Real Estate to the Tenant for the total sale price of \$88,100.00 (the “Purchase Agreement”). A copy of the Purchase Agreement is attached hereto and incorporated herein as Exhibit “A”.

20. On July 21, 2016, this Court entered its *Order Granting Trustee’s Application to Employ Tiffany Group Real Estate Advisors, LLC as the Bankruptcy Estates’ Broker*, authorizing the employment of Tiffany Group Real Estate Advisors, LLC (“Tiffany Group”), to assist the Trustee with the marketing and sale of the real estate. Pursuant to the *Listing Agreement* approved by the Court, Tiffany Group is not entitled to any commissions for sales of real estate to tenants occupying properties that were obtained solely through the efforts of the Trustee, his counsel, the Committee and/or the Committee’s counsel. Accordingly, the Tiffany Group is not entitled to a commission on the sale of the Real Estate to the Tenant.

21. Pursuant to the Purchase Agreement, the Tenant is purchasing the Real Estate “AS IS AND WHERE IS AND WITH ALL FAULTS”.

22. Additionally, pursuant to the Purchase Agreement, the Tenant is entitled to a credit of \$3,450.00 against the total purchase price for the Deposit the Tenant previously paid pursuant to the Lease.

V. Sale of Real Estate Free and Clear of Liens

A. Free and Clear of Investor Mortgages

23. Pursuant to § 363(f)(1) of the Bankruptcy Code, a trustee is permitted to sell property free and clear of any interest, if applicable nonbankruptcy law permits such a sale. The case law regarding equitable distribution in securities fraud cases is sufficient “applicable nonbankruptcy law” to satisfy § 363(f)(1) of the Bankruptcy Code as it relates to the Investor Mortgages. Moreover, § 510 of the Bankruptcy Code, provides that under principles of equitable subordination, the Court may subordinate for purposes of distribution, all or part of an allowed claim to all or part of another and transfer the lien securing the subordinated claim to the estate.

24. In these Bankruptcy Cases, virtually all of the creditors, including Shetler and Graber, consist of one group—unsophisticated investors who entrusted money to the Debtors, believing they would receive high returns secured by first priority mortgages on real estate. Contrary to their expectations, the vast majority of investors are left with worthless mortgages.

25. Although the Trustee is in the early stages of administering the Consolidated Bankruptcy Estates, it appears that the assets will fall short of paying the plethora of claimants. Unfortunately, under these circumstances, no distribution method can possibly compensate all the investors/creditors fully for their losses. Courts addressing similar facts, particularly in cases

involving securities fraud, have treated all investors similarly in the distribution of recovered funds.

26. The Indiana Supreme Court has found generally “that all assets of insolvents are to be distributed according to the rules of equity; that equality is equity; [and] that the assets of an insolvent are to be distributed pro rata according to the amount due the several creditors.” *Todd v. Davidson*, 19 N.E.2d 236, 238 (Ind. 1939).

27. Moreover, there are numerous reported securities fraud cases that favor treating all investors equally in distributing collected funds.³ In particular, *S.E.C. v. Sunwest Management, Inc.*, 2009 WL 3245879 (D.C. Ore. 2009), involved a receivership case where the principals of the company solicited and sold tenant in common (“TIC”) real property investments to investors as part of an alleged fraudulent scheme. In *Sunwest Management*, the court approved an equitable, pro rata distribution plan to all investors despite the property interests of the TIC investors. In approving the pro rata distribution plan, the court noted that it had the power to fashion any distribution plan that was fair and equitable, without restriction from any set rules, and must determine the most equitable distribution result for all claimants. *Id.* at *8-9. Further, the court found that if investors were treated separately, many investors would receive no return while others who were fortunate enough to have invested in certain properties could receive all of their investments plus interest. *Id.* at *9. The court concluded as follows: “The Court finds and concludes that this result would be inequitable because it would allow greater

³ See, e.g., *SEC v. Capital Consultants, LLC*, 397 F.3d 733 (9th Cir. 2005) (pooling and pro rata distribution of receivership’s real estate assets, as opposed to the tracing of assets, were appropriate); *U.S. v. 13328 & 13324 State Hwy. 75 N.*, 89 F.3d 551 (9th Cir. 1996) (proceeds of sale of real estate distributed pro rata to all fraud victims; court rejected argument that funds used to purchase real estate were traceable to single claimant’s investment). Similarly, the majority of non-real estate securities cases appear to favor a pro rata distribution approach. See *Commodity Futures Trading Comm’n v. Equity Financial Group, LLC*, 2005 WL 2143975 (D.N.J. Sept. 2, 2005) (rejected tracing approach as inequitable and approved pro rata distribution of receivership assets); see also, *SEC v. Credit Bancorp, Ltd.*, 290 F.3d 80, 88-89 (2nd Cir. 2002) (pro rata distribution plan “especially appropriate for fraud victims”); *United States v. Durham*, 86 F.3d 70, 73 (5th Cir. 1996) (in “the interest of equity,” court distributed funds to defrauded consumers pro rata despite the fact that majority of funds could be traced to particular claimant).

recovery by certain Investors on the arbitrary basis of the actions of the Sunwest Enterprise control parties.” *Id.*

28. Similar to the *Sunwest Management* case, it would be inequitable to treat the investors/creditors in these Bankruptcy Cases based on their priority of their mortgages because it would allow greater recovery to those few lucky investors who happen to hold first priority mortgages based on the arbitrary decisions of the Debtors’ owners.

29. In order to ensure the fair and equitable treatment of all investors/creditors in these Bankruptcy Cases, the Trustee proposes to sell all real estate free and clear of investor mortgages, with the liens to attach to the proceeds until further Order of this Court.

30. The Trustee anticipates that the resolution of how the funds should be distributed will be raised in the future pursuant to either a chapter 11 plan and/or separate actions. At such time, all parties can be heard on how the proceeds from the sale of the Real Estate secured by the Investor Mortgages should be distributed.

31. Accordingly, based on the above-referenced “applicable nonbankruptcy law”, § 363(f)(1) of the Bankruptcy Code has been satisfied as it relates to the Investor Mortgages, and any liens held pursuant to the Investor Mortgages shall attach to the sale proceeds until further Order of this Court.

B. Free and Clear of Tax Liens

32. Pursuant to § 363(f)(3) of the Bankruptcy Code, a trustee is permitted to sell property free and clear of any interest in such property if such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property.

33. The total purchase price of \$88,100.00 is greater than the aggregate value of the Tax Liens (\$2,520.67), and therefore, pursuant to § 363(f)(3) of the Bankruptcy Code, the Trustee is permitted to sell the Real Estate free and clear of the Tax Liens.

34. Accordingly, § 363(f)(3) of the Bankruptcy Code has been satisfied as it relates to the Tax Liens. The Tax Liens will be paid in full from the gross sale proceeds at closing. Real estate taxes that have accrued for 2016 and are due and payable in 2017, shall be prorated as of the date immediately prior to the date of closing.

VI. Relief Requested

35. The Trustee respectfully requests that the Court enter an Order, pursuant to § 363(b), (f) and (m), Bankruptcy Rule 6004, Local Rule B-6004-1, and all other applicable law, as follows:

- (a) Authorizing the Trustee/Consolidated Bankruptcy Estate to sell the Real Estate to the Tenant for the total sale price of \$88,100.00;
- (b) Directing that the sale of the Real Estate be free and clear of all liens, encumbrances, claims and interests (including any interest held pursuant to the Investor Mortgages and the Tax Liens), with all such liens, encumbrances, claims and interests attaching to the sale proceeds in the same order, priority and validity that presently exists, subject to all claims of the Trustee/Consolidated Bankruptcy Estate; provided however, the Real Estate shall be sold subject to all easements, right of ways, leases (recorded or unrecorded), covenants, restrictions and all other valid exceptions reflected in title commitments prepared for the Real Estate;
- (c) Directing that the sale of the Real Estate be sold “AS IS WHERE IS AND WITH ALL FAULTS”;
- (d) Authorizing the Trustee to execute any documentation necessary to effectuate the sale of the Real Estate, including the execution of the Purchase Agreement and a Bankruptcy Trustee’s Deed;
- (e) Finding that § 363(f)(1) of the Bankruptcy Code has been satisfied as it relates to the Investor Mortgages and directing that any liens held pursuant to the Investor Mortgages to attach to the sale proceeds until further Order of this Court;

- (f) Finding that § 363(f)(3) of the Bankruptcy Code has been satisfied as it relates to the Tax Liens and directing that the Tax Liens be paid in full from the sale proceeds at closing;
- (g) Authorizing the Trustee, pursuant to Local Rule B-6004-1(d), to disburse from the proceeds from the sale of the Real Estate, first to pay the costs and expenses of the sale, and second to pay all real estate taxes and assessments outstanding and unpaid at the time of the sale, including the Tax Liens; and
- (h) Authorizing and directing the Trustee to retain the excess proceeds from the sale until further Order of this Court.

VII. Basis for Requested Relief

36. Section 363(b)(1) of the Bankruptcy Code 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)(2). For a court to approve the use, sale or lease of property outside of the ordinary course of business, the Seventh Circuit has held that there must be “some articulated business justification” for the sale, notice must be given to all creditors, and a hearing must be held on the sale. *See Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991) (citing *In re Continental Air Lines*, 780 F.2d 1223, 1226 (5th Cir. 1986); *In re Naron & Wagner, Chartered*, 88 B.R. 85, 88 (Bankr. D. Md. 1988)); *see also Stephens Inc. v. McClung*, 789 F.2d 386, 389 (6th Cir. 1986) (holding that “a bankruptcy court can authorize a sale [or other use] of . . . a Chapter 11 debtor’s asset under § 363(b)(1) when a sound business purpose dictates such action.” (citing *In re Lionel Corporation*, 722 F.2d 1063, 1070-71 (2d Cir. 1983))).

37. The Trustee has attempted to fully investigate the marketability and value of the Real Estate, and in his business judgment, believes that the proposed private sale of the Real Estate to the Tenant represents the best way to obtain the highest and best offer attainable for the sale of the Real Estate. The Trustee represents that the proposed sale is fair and equitable and in

the best interests of the Consolidated Bankruptcy Estate, and represents the best way to obtain a reasonable recovery for the Consolidated Bankruptcy Estate. Against this background, the Trustee asserts that sound business reasons justify the Trustee's decision to sell the Real Estate to the Tenant for the total sale price of \$88,100.00 and, therefore, requests that the Court approve the sale, pursuant to the Purchase Agreement, and that it enter an Order granting this Motion.

38. Rule 6004(h) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") provides that "[a]n order authorizing the sale, use or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." The Trustee requests that this Court order that such an order be effective immediately upon entry in order to allow the Trustee to timely consummate the proposed sale.

VI. Notice

39. The Trustee shall serve a copy of this Motion upon: (a) the UST; (b) counsel for the Committee; (c) the Chairman for the Committee; (d) all entities that can be discovered through a reasonably diligent inquiry holding liens upon or having interests in the Real Estate, including Shetler, Graber, the Tenant and the St. Joseph County (Indiana) Treasurer; and (e) all other parties who have requested notice pursuant to Bankruptcy Rule 2002.

40. Pursuant to Local Rule B-6004-1(b), notice for this Motion must be given to all creditors and parties in interest, unless the Court orders otherwise. On June 24, 2016, this Court entered its *Order Granting Trustee's Motion to Limit Notice in Chapter 11 Bankruptcy Cases*, limiting notice for certain motions, applications and other filings, including sale motions, to the UST, counsel for the Committee, the Chairman for the Committee and those parties who have requested notice pursuant to Bankruptcy Rule 2002. Accordingly, the Trustee shall serve the notice for this Motion only upon those parties listed above in paragraph 39.

WHEREFORE, the Trustee respectfully requests entry of an Order, pursuant to § 363(b), (f) and (m) of the Bankruptcy Code, Bankruptcy Rule 6004, Local Rule B-6004-1, and all other applicable law:

- (i) Authorizing the Trustee/Consolidated Bankruptcy Estate to sell the Real Estate to the Tenant for the total sale price of \$88,100.00;
- (ii) Directing that the sale of the Real Estate be free and clear of all liens, encumbrances, claims and interests (including any interest held pursuant to the Investor Mortgages and the Tax Liens), with all such liens, encumbrances, claims and interests attaching to the sale proceeds in the same order, priority and validity that presently exists, subject to all claims of the Trustee/Consolidated Bankruptcy Estate; provided however, the Real Estate shall be sold subject to all easements, right of ways, leases (recorded or unrecorded), covenants, restrictions and all other valid exceptions reflected in title commitments prepared for the Real Estate;
- (iii) Directing that the sale of the Real Estate be sold “AS IS WHERE IS AND WITH ALL FAULTS”;
- (iv) Authorizing the Trustee to execute any documentation necessary to effectuate the sale of the Real Estate, including the execution of the Purchase Agreement and a Bankruptcy Trustee’s Deed;
- (v) Finding that § 363(f)(1) of the Bankruptcy Code has been satisfied as it relates to the Investor Mortgages and directing that any liens held pursuant to the Investor Mortgages to attach to the sale proceeds until further Order of this Court;
- (vi) Finding that § 363(f)(3) of the Bankruptcy Code has been satisfied as it relates to the Tax Liens and directing that the Tax Liens be paid in full from the sale proceeds at closing;
- (vii) Authorizing the Trustee, pursuant to Local Rule B-6004-1(d), to disburse from the proceeds from the sale of the Real Estate, first to pay the costs and expenses of the sale, and second to pay all real estate taxes and assessments outstanding and unpaid at the time of the sale, including the Tax Liens;
- (viii) Authorizing and directing the Trustee to retain the excess proceeds from the sale of the Real Estate until further Order of this Court;
- (ix) Waiving the requirements of Bankruptcy Rule 6004(h); and
- (x) For all other just and proper relief.

Respectfully submitted,

RUBIN & LEVIN, P.C.

By: /s/ Meredith R. Theisen

Meredith R. Theisen

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Trustee

CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2016, a copy of the foregoing *Trustee's Motion to Sell at Private Sale Real Estate Free and Clear of All Liens, Encumbrances, Claims and Interests* was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on September 2, 2016, a copy of the foregoing *Trustee's Motion to Sell at Private Sale Real Estate Free and Clear of All Liens, Encumbrances, Claims and Interests* was mailed by first-class U.S. Mail, postage prepaid, and properly addressed to the following:

David W. Criswell Ball Janik LLP 101 SW Main Street, Suite 1100 Portland, OR 97204	Jaclyn J. Janssen U.S. Securities & Exchange Commission 175 W. Jackson Blvd, Suite 900 Chicago, IL 60604	Timothy Leiman U.S. Securities & Exchange Commission 175 W. Jackson Blvd, Suite 900 Chicago, IL 60604
Galen J Graber 8342 E Old US Hwy 50 Montgomery, IN 47558	Charles S Howard Kivel & Howard, LLP 111 SW 5th Ave Portland, OR 97204-3604	Joe Schwartz 2012 S.E. 33rd St. Okeechokee, FL 34974
Dwight Gosser 1857 Woodland Dr Elkhart, IN 46514	Brad T. Summers Ball Janik LLP 101 SW Main Street, Suite 1100 Portland, OR 97204	Christopher Coblentz 6345 Helena Rd Mayslick, KY 41055
Committee Chairman Grant Swartzentruber as Representative for Creditor Omar Wagler 412 E. Flora St., Apt. 1 Washington, IN 47501	Jonathan Hochstetler 12855 County Road 50 Syracuse, IN 46567	Kimberly Bonds 318 N. Wenger Street Mishawaka, IN 46544

James Shetler
0820 S. 200 E.
LaGrange, IN 46761

Victor Graber
14213 Hursttown Road
Grabill, IN 46741

St. Joseph County Treasurer
227 W. Jefferson Blvd. #209
South Bend, IN 46601

/s/ Meredith R. Theisen

Meredith R. Theisen

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PURCHASE AGREEMENT

This Purchase Agreement (this "Agreement") is executed as of the 31st day of August, 2016, by and between Douglas R. Adelsperger, in his sole capacity as the duly appointed, qualified and acting Chapter 11 Trustee for the substantively consolidated Bankruptcy Estates of 5 Star Investment Group, LLC, 5 Star Portland Holdings, LLC, 5 Star Investment Group V, LLC, 5 Star Commercial, LLC, 5 Star Investment Group VII, LLC, 5 Star Holdings, LLC, 5 Star Investment Group III, LLC, 5 Star Indiana Holdings, LLC, 5 Star Investment Group II, LLC, 5 Star Investment Group IV, LLC and 5 Star Capital Fund, LLC, and not in his individual capacity (the "Seller") and Kimberly Bonds (the "Buyer").

WITNESSETH:

WHEREAS, on January 25, 2016 (the "Petition Date"), 5 Star Investment Group, LLC, 5 Star Portland Holdings, LLC, 5 Star Investment Group V, LLC, 5 Star Commercial, LLC, 5 Star Investment Group VII, LLC, 5 Star Holdings, LLC, 5 Star Investment Group III, LLC, 5 Star Indiana Holdings, LLC, 5 Star Investment Group II, LLC, 5 Star Investment Group IV, LLC and 5 Star Capital Fund, LLC (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Northern District of Indiana, South Bend Division (the "Bankruptcy Court"), initiating eleven (11) separate bankruptcy cases (the "Bankruptcy Cases").

WHEREAS, on February 29, 2016, the Seller was appointed as the Chapter 11 Trustee in each of the Bankruptcy Cases.

WHEREAS, on March 23, 2016, the Bankruptcy Court entered its *Order Granting Motion for Joint Administration*, consolidating the Bankruptcy Cases for purposes of administration only.

WHEREAS, on June 24, 2016, the Court entered its *Agreed Order Granting Trustee's Motion for Substantive Consolidation*, substantively consolidating the Bankruptcy Cases for all postpetition matters and purposes, effective as of the Petition Date, and deeming that all assets and liabilities of the Bankruptcy Cases to be consolidated into one (1) bankruptcy estate, to be administered in accordance with the Bankruptcy Code under the jurisdiction of the Bankruptcy Court (the "Consolidated Bankruptcy Estate").

WHEREAS, pursuant to § 541(a) of the Bankruptcy Code, the Consolidated Bankruptcy Estate is administering real estate owned by the Debtor, 5 Star Investment Group V, LLC, located in St. Joseph County (Indiana), commonly known as 318 N. Wenger Street, Mishawaka, IN 46544 and more particularly described as follows:

Lot Numbered 109 in Wenger Realty Company's Addition to the City of Mishawaka, in St. Joseph County, Indiana, as per plat thereof recorded September 13, 1904 in Plat Book 8, page 182 in the Office of the Recorder of Saint Joseph County, Indiana.

(the "Real Estate"). The Real Estate shall include any existing permanent improvements and fixtures attached, including but not limited to, electrical and/or gas fixtures, home heating fuel, heating and central air-conditioning equipment and all attachments thereto, built-in kitchen equipment, sump pumps, water softener, water purifier, gas grills, fireplace inserts, gas logs and grates, central vacuum equipment, window shades/blinds, curtain rods, drapery poles and fixtures, ceiling fans and light fixtures, towel racks and bars, storm doors, windows, awnings, TV antennas, wall mounts, satellite dishes, storage barns, all landscaping, mailbox and garage door opener with controls.

WHEREAS, prior to the Petition Date, the Real Estate was subject to a lease, with an option to purchase, in favor of the Buyer (the "Lease"). Pursuant to the option to purchase under the Lease, the Buyer deposited with the Debtor, 5 Star Investment Group V, LLC, a non-refundable lease purchase payment of \$3,450.00 (the "Deposit"). In the event the Seller exercised her rights pursuant to the option to purchase under the Lease, the Deposit was to be applied to the full purchase price, as stated in the Lease. The Buyer and Seller have agreed that the Lease, including the option to purchase, has expired and that the Seller did not exercise her rights pursuant to the option to purchase. Accordingly, the Seller has no interest in the Real Estate, other than her rights as a month-to-month tenant pursuant to IND. CODE § 32-31-1-2.

WHEREAS, the Seller, on behalf of the Consolidated Bankruptcy Estate, is willing to sell the Real Estate to the Buyer, and the Buyer is willing to purchase the Real Estate from the Seller.

NOW THEREFORE, in consideration of the mutual covenants, agreements, and conditions stated herein, the sufficiency of which is hereby acknowledged by the parties hereto, the Seller, on behalf of the Consolidated Bankruptcy Estate, and the Buyer hereby agree as follows:

1. **Purchase of Real Estate.** Subject to the terms and conditions of this Agreement, the Seller, on behalf of the Consolidated Bankruptcy Estate, agrees to sell, assign, convey and transfer to the Buyer, and the Buyer agrees to purchase from the Consolidated Bankruptcy Estate, all rights, title and interests held by the Consolidated Bankruptcy Estate in the Real Estate.

2. **Sale Documents.** To evidence the sale of the Real Estate, the Seller, on behalf of the Consolidated Bankruptcy Estate, shall execute a Bankruptcy Trustee's Deed to be delivered to the Buyer at closing. Upon delivery of the Bankruptcy Trustee's Deed at closing, the Buyer shall be authorized to file and record such document with the appropriate courts and government offices.

3. **Effective Date:** The effective date of this Agreement shall be the date set forth above; provided however, this Agreement shall be subject to the entry of a final, non-appealable Order by the Bankruptcy Court approving the sale of the Real Estate to the Buyer, free and clear of all liens, encumbrances, claims and interests, provided however, the Real Estate shall be sold subject to all recorded easements, right of ways, leases, covenants, restrictions of record and all other valid exceptions reflected in title commitments prepared for the Real Estate. Moreover, the

Real Estate shall be sold subject to any leases, written or verbal, in favor of any person or entity occupying the Real Estate pursuant to any written or verbal lease.

4. **Purchase Price.** The purchase price for the sale of the Real Estate shall be a total of \$88,100.00. The Buyer shall receive a credit against the total purchase price of \$3,450.00 for the Deposit the Buyer previously paid pursuant to the Lease. The remaining balance of the purchase price in the sum of \$84,650.00 shall be paid in full by the Buyer at closing. In the event the sale of the Real Estate, as contemplated by this Agreement, does not occur for any reason, the Buyer shall not be entitled to a refund of the Deposit in the sum of \$3,450.00.

5. **Disclaimer and Absence of Warranties.** The Buyer acknowledges that the Real Estate is being sold in an "AS IS AND WHERE IS AND WITH ALL FAULTS" condition. The Buyer understands that the Seller and his agents make no representations as to the condition, quality or serviceability of the Real Estate, for any particular purpose. The Seller does not assume any responsibility or warranty for any specific use, location of utilities, and assurance of building, driveway, water or septic permits. The Buyer understands that by entering into this Agreement the Buyer is agreeing to accept the Real Estate in an "AS IS AND WHERE IS AND WITH ALL FAULTS" condition.

6. **Seller's Title.** Prior to closing, the Seller, at the Consolidated Bankruptcy Estate's expense, shall cause to be delivered to the Buyer a commitment for an owner's policy of title insurance (the "Title Commitment") issued by Meridian Title Corporation (the "Title Company"). Such Title Commitment shall commit the Title Company to issue a title policy at closing which (a) is in the full amount of the Purchase Price; and (b) insures good and merchantable fee simple title to the Real Estate in the name of the Buyer, free and clear of all liens, encumbrances, claims and interests; provided however, the Real Estate shall be sold subject to all recorded easements, right of ways, leases (including unrecorded leases), covenants, restrictions of record and all other valid exceptions reflected in the Title Commitment prepared for the Real Estate. The Title Commitment shall be updated to the date of closing. The Consolidated Bankruptcy Estate shall pay all closing costs up to the total sum of \$3,900.00, which shall include all costs and expenses related to the Title Commitment, including all search fees and the premium for the policy. Any closing costs in excess of \$3,900.00 shall be paid by the Buyer.

7. **Survey.** The Buyer agrees to accept title to the Real Estate without a current survey.

8. **Flood Area/Other.** If the Real Estate is located in a flood plain, the Buyer may be required to carry insurance at the Buyer's expense. Revised flood maps and changes to Federal law may substantially increase future flood insurance premiums or require insurance for formerly exempt properties. The Buyer should consult with one or more flood insurance agents regarding the need for flood insurance and possible premium increases. In the event the Real Estate requires flood insurance, the Buyer may not terminate this Agreement. Further, the Buyer may not terminate this Agreement if the Real Estate is subject to building or use limitations by reason of the location which materially interfere with the Buyer's intended use of the Real Estate.

9. **Insurance and Risk of Loss.** The Seller shall cause the insurance on the Real Estate to be canceled as of the date of the closing. In the event that, prior to the closing, all or any portions of the Real Estate, any interests therein, or any rights appurtenant thereto are taken or appropriated (either permanently or for temporary periods) under the power of eminent domain or condemnation by any authority having such power, or by virtue of any actions or proceedings in lieu thereof, or if any notice or threat of such taking or appropriation has been given or is pending at the date of closing, then the Buyer, at his or her option, may either (a) terminate this Agreement by written notice to the Seller and neither party shall have any further obligation hereunder, or (b) elect to proceed with closing, in which event the purchase price shall be reduced by an amount equal to any sums actually received by the Seller from the condemning authority by reason of such taking, appropriation or action or proceeding in lieu thereof. In the event the Real Estate is damaged prior to closing, and there is no insurance to cover the loss, either the Buyer or the Seller can terminate this Agreement, by written notice to the other party and neither party shall have any further obligation hereunder.

10. **Taxes and Assessments.** At closing, the Consolidated Bankruptcy Estate shall pay all delinquent real estate taxes and assessments and all real estate taxes and assessments that have accrued for 2015 and are due and payable in 2016 that remain unpaid as of the date of closing. Real estate taxes and assessments that have accrued for 2016 and are due and payable in 2017 shall be prorated as of the date immediately prior to the date of closing. The Buyer shall pay any and all transfer taxes imposed by the county, state or municipality in which the Real Estate is located.

11. **Closing.** The closing shall occur within ten (10) days following the entry of a final, non-appealable Order from the Bankruptcy Court approving the sale of the Real Estate, pursuant to this Agreement, unless the Seller and the Buyer agree upon a different date for the closing. At closing, the Seller shall execute and deliver to the Buyer (a) an Order from the Bankruptcy Court approving the sale of the Real Estate to the Buyer, free and clear of all liens, encumbrances, claims and interests; provided however, the Real Estate shall be sold subject to all recorded easements, right of ways, leases (including unrecorded leases), covenants, restrictions of record and all other valid exceptions reflected in the Title Commitment; (b) a Bankruptcy Trustee's Deed, conveying fee simple title to the Real Estate to the Buyer; (c) a closing statement for the sale of the Real Estate; and (d) such other instruments, certificates or affidavits as may be provided herein or as the Buyer or Title Company may reasonably request to effect the intention of the parties hereunder. The Buyer shall pay all recording fees. The Consolidated Bankruptcy Estate shall pay all closing costs up to the total sum of \$3,900.00, which shall include all costs and expenses related to the Title Commitment, including all search fees and the premium for the policy. Any closing costs in excess of \$3,900.00 shall be paid by the Buyer.

12. **Rights and Obligations.** The rights and obligations of the Seller and the Buyer herein contained shall insure to the benefit of and be binding upon the parties hereto and their respective personal representatives, heirs, successors and assigns.

13. **Notices.** All notices required or permitted to be given hereunder shall be in writing and delivered either via telefax, electronic mail, in person or by certified or registered first-class, prepaid mail, return receipt requested, to the following:

Seller: Douglas R. Adelsperger, as the Chapter 11 Trustee for the
Consolidated Bankruptcy Estate
Adelsperger & Kleven, LLP
111 West Wayne Street
Fort Wayne, IN 46802
Tel: (260) 407-7077
Fax: (260) 407-7137
Email: dra@adelspergerkleven.com

Buyer: Kimberly Bonds
318 N. Wenger Street
Mishawaka, IN 46544
Tel: 574-855-9746
Fax: (____) _____ - _____
Email: Luv JTK2U@aol.com

14. **Bankruptcy Court Approval.** This Agreement is subject to and contingent upon the entry of a final, non-appealable Order approving the sale of the Real Estate to the Buyer pursuant to the terms of this Agreement. The Seller shall file a motion with the Bankruptcy Court seeking approval of the sale of the Real Estate pursuant to the terms of this Agreement.

15. **Complete Agreement.** This Agreement represents the entire agreement between the Seller and the Buyer covering everything agreed upon or understood in this transaction. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties. No change or addition shall be made to this Agreement except by a written agreement executed by the Seller and the Buyer.

16. **Voluntary Actions of the Parties.** The parties represent that they have read this Agreement, that they have sought the advice of counsel or waived the right to advice of counsel prior to executing this Agreement; that counsel has fully explained each and every provision of this Agreement; that they fully understand each and every provision of this Agreement; that they have not relied upon any representation or statement made by any other party or any other party's agents, representatives, or attorneys with regard to the subject matter, basis or effect of this Agreement; and that they have voluntarily executed this Agreement.

17. **Authorized Signatories.** The persons executing this Agreement for and on behalf of the Buyer and the Seller each represent that they have the requisite authority to bind the entities on whose behalf they are signing.

18. **Partial Invalidity.** If any term, covenant or condition of this Agreement is held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any

other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

19. **Use of Brokers.** Each party represents and warrants to the other that it has not dealt with an agent, broker, finder or other person with respect to this Agreement or the transactions contemplated hereby.

20. **Default and Attorneys' Fees.** All actions for default under the terms of this Agreement shall be brought in the Bankruptcy Court. The Bankruptcy Court shall have sole and exclusive jurisdiction to determine all issues of default and any appropriate remedy including the order of attorney's fees.

22. **Controlling Law and Jurisdiction.** This Agreement shall be deemed to have been entered into and shall be construed and enforced in accordance with the laws of the State of Indiana as applied to contracts made and to be performed entirely within Indiana, notwithstanding any state's choice of law rules to the contrary. The Bankruptcy Court shall retain exclusive jurisdiction to enforce this Agreement, including after the Bankruptcy Case is dismissed, closed or converted to another chapter of the Bankruptcy Code.

23. **Headings.** The headings in this Agreement have been inserted solely for ease of reference and should not be considered in the interpretation or construction of this Agreement.

24. **Counterparts.** This Agreement may be executed by the parties in separate counterparts by means of original and/or facsimile and/or electronically transmitted signatures, each of which counterparts shall be deemed an original but all of which shall constitute a single and entire document when taken together.

25. **Successors and Assigns.** The provisions of this Agreement are intended to be for the sole benefit of the parties hereto and shall bind and insure to the benefit of the parties and their respective legal representatives, successors and assigns, and none of the provisions of this Agreement are intended to be, nor shall they be construed to be, for the benefit of any third party.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date first above written.

“SELLER”

A handwritten signature in black ink, appearing to read "Douglas R. Adelsperger".

Douglas R. Adelsperger, in his sole capacity as the duly appointed, qualified and acting Chapter 11 Trustee for the substantively consolidated Bankruptcy Estates of 5 Star Investment Group, LLC, 5 Star Portland Holdings, LLC, 5 Star Investment Group V, LLC, 5 Star Commercial, LLC, 5 Star Investment Group VII, LLC, 5 Star Holdings, LLC, 5 Star Investment Group III, LLC, 5 Star Indiana Holdings, LLC, 5 Star Investment Group II, LLC, 5 Star Investment Group IV, LLC and 5 Star Capital Fund, LLC, and not in his individual capacity

“BUYER”

A handwritten signature in black ink, appearing to read "Kimberly Bonds".

Kimberly Bonds