

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN RE:)
)
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)
)
Debtors.)

CASE NO. 16-30078-hcd
SUBSTANTIVELY CONSOLIDATED
CHAPTER 11s

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

Douglas R. Adelsperger, the chapter 11 trustee in this case (the “Trustee”), by counsel, pursuant to 11 U.S.C. §§ 105 and 363, Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rule B-6004-1, requests entry of an order authorizing the sale of certain real estate, free and clear of all liens, encumbrances, claims and interests to William Watterud (the “Purchaser”) pursuant to a purchase and sale agreement (the “Purchase Agreement”), on the following grounds:

I. JURISDICTION

1. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2).
2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for relief are sections 105 and 363 of Title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

II. BACKGROUND

4. 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 the Bankruptcy Code.

5. 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”). Following a February 16, 2016 hearing on the UST Motion, the Court entered an *Agreed Order for the Appointment of a Chapter 11 Trustee*. On February 29, 2016, the Trustee was appointed as the chapter 11 trustee in each of the Debtors’ bankruptcy cases.

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

7. 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 the Debtors’ bankruptcy cases.

8. On June 24, 2016, the Court entered its *Agreed Order Granting Trustee’s Motion for Substantive Consolidation*, substantively consolidating the Debtors’ 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”).

9. On July 21, 2016, the Court entered *Order Granting 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”) as real estate brokers with respect to the sale of real estate in these bankruptcy cases. Pursuant to the agreement between the Trustee and Tiffany Group approved by the Court, Tiffany Group is entitled to receive a commission of five percent (5.0%) of the total purchase price for all sales that were obtained solely through the efforts of the Tiffany Group.

10. 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.

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

III. THE REAL ESTATE AND LIENS

12. Pursuant to section 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 Debtors' bankruptcy cases, including real estate.

13. Prior to 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 18890 Cleveland Road, South Bend, IN 46637 and more particularly described as follows:

Lot Numbered Five (5) as shown on the recorded plat of Ranch Acres recorded July 29, 1959 in Plat Book 20, page "R" in the Office of the Recorder of St. Joseph County, Indiana.

("Cleveland Road").

14. Cleveland Road is subject to a tax lien for delinquent real estate taxes that have accrued for 2014 through 2016 and real estate taxes that will accrue for 2017 (the "Cleveland Road Tax Lien").

15. Cleveland Road is also subject to assessment fees for the Juday Creek Drain/Ditch, which is a lien against Cleveland Road (the "Drain/Ditch Lien").

16. Cleveland Road is not subject to any investor mortgages.

17. Prior to the Petition Date, the Debtor, 5 Star Investment Group II, LLC, was the sole owner of real estate located in St. Joseph County (Indiana), commonly known as 1124 East Dayton Street, South Bend, IN 46613, and more particularly described as follows:

Lot Numbered 24 in Miami Addition to the City of South Bend, as per plat thereof recorded May 10, 1920 in Plat Book 10, page 112 in the Office of the Recorder of Saint Joseph County, Indiana.

("Dayton Street" and together with Cleveland Road, the "Real Estate").

18. Dayton Street is subject to a tax lien for delinquent real estate taxes that have accrued for 2014 through 2016 and real estate taxes that will accrue for 2017 (the “Dayton Street Tax Lien” and together with the Cleveland Road Tax Lien, the “Tax Liens”).

19. Dayton Street is also subject to the following investor mortgages:

- (a) A first priority mortgage in favor of Larry Kruse (“Mr. Kruse”) and Mary Ann Osuch (“Ms. Osuch”) dated February 24, 2010 (the “Kruse/Osuch Mortgage”). The Kruse/Osuch Mortgage was recorded on March 8, 2010 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1005823.
- (b) A second priority mortgage in favor of Marion Bontrager (“Ms. Bontrager”) dated February 24, 2010 (the “Bontrager Mortgage”). The Bontrager Mortgage was recorded on March 8, 2010 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1005824.

The Kruse/Osuch Mortgage and the Bontrager Mortgage are collectively referred to herein as the “Investor Mortgages.”

20. Finally, Dayton Street is subject to a mechanic’s lien (the “Mechanic’s Lien”) in favor of Advanced Roofing & Home Improvement, LLC (“Advanced Roofing”) in the approximate sum of \$460.00. The Mechanic’s Lien was recorded on February 5, 2016 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1602813.

IV. THE PURCHASE AGREEMENT

21. On May ____, 2017, pursuant to the sole efforts of the Tiffany Group, the Trustee entered into the Purchase Agreement for the sale of the Real Estate to the Purchaser for the total purchase price of \$101,000.00 (\$75,000.00 for Cleveland Road and \$26,000.00 for Dayton Street). A copy of the Purchase Agreement is attached hereto and incorporated as Exhibit 1.

22. Pursuant to the Purchase Agreement, the Purchaser has represented and warranted to the Trustee that: (a) the Purchaser is not an insider of one or more of the Debtors; (b) the proposed sale represents an arms-length transaction between the parties, made without fraud or

collusion with any other person (including any other prospective purchaser for the Real Estate); and (c) there has been no attempt to take any unfair advantage of the Trustee. Accordingly, the Purchaser shall be deemed to be purchasing the Real Estate in good faith pursuant to section 363(m) of the Bankruptcy Code.

23. In addition, the Purchase Agreement provides for the sale of the Real Estate, free and clear of all liens, encumbrances, claims and interests; provided however, the Real Estate is to be sold subject to all easements, right of ways, leases (recorded or unrecorded), covenants, restrictions, declarations or agreements of record and all other valid exceptions of record, in addition to those matters that would be disclosed upon a visual inspection of the Real Estate (the “Permitted Exceptions”).

24. The Purchase Agreement also provides that any portion of the Tax Liens that represent delinquent real estate taxes, including real estate taxes that have accrued for 2014 through 2016, will be paid in full at closing. In addition, the Purchase Agreement provides that any portion of the Tax Liens that represents real estate taxes for 2017 will be prorated as of the date immediately prior to the date of closing. Moreover, the Purchase Agreement provides that any other special assessment liens, utilities, water and sewer charges and any other charges customarily prorated in similar transactions will be prorated as of the date immediately prior to the date of closing.

V. RELIEF REQUESTED

25. The Trustee requests the Court enter an order, pursuant to sections 105 and 363 of the Bankruptcy Code, Bankruptcy Rule 6004 and Local Rule B-6004-1, as follows:

- (a) Authorizing the Trustee, on behalf of the Consolidated Bankruptcy Estates, to sell the Real Estate to the Purchaser pursuant to the terms and conditions of the Purchase Agreement;

- (b) Directing the sale of the Real Estate to the Purchaser free and clear of all liens, encumbrances, claims and interests (including the Tax Liens and the Drain/Ditch Lien as it relates to Cleveland Road and the Investor Mortgages and Mechanic's Lien as they relate to Dayton Street), with all such valid 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; provided however, the Real Estate shall be sold subject to the Permitted Exceptions;
- (c) Authorizing the Trustee to execute any documentation necessary to effectuate the sale of the Real Estate, including the execution of a Bankruptcy Trustee's Deed and the Purchase Agreement;
- (d) Finding that the Purchaser is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code because (i) the Purchaser is not an insider of one or more of the Debtors, (ii) the proposed sale represents an arms-length transaction between the parties, made without fraud or collusion with any other person (including any other prospective purchaser for the Real Estate), and (iii) there has been no attempt to take any unfair advantage of the Trustee;
- (e) Finding that section 363(f)(3) of the Bankruptcy Code has been satisfied as it relates to the Tax Liens, the Drain/Ditch Lien and the Mechanic's Lien and directing that such liens be paid in full from the sale proceeds at closing;
- (f) Finding that section 363(f)(1) of the Bankruptcy Code has been satisfied as it relates to the Investor Mortgages and directing that any lien held pursuant to the Investor Mortgages to attach to the sale proceeds until further order of the Court;
- (g) Authorizing the Trustee to disburse from the sale proceeds, first to pay the costs and expenses of the sale, including the commission owed to Tiffany Group (approximately \$5,050.00), second to pay all real estate taxes and assessments outstanding and unpaid at the time of the sale, including the Tax Liens and the Drain/Ditch Lien, third to Advanced Roofing for the Mechanic's Lien in the approximate sum of \$460.00, and fourth to pay the prorated portions for any other special assessment liens, utilities, water and sewer charges and any other charges customarily prorated in similar transactions;
- (h) Waiving the requirements of Bankruptcy Rule 6004(h); and
- (i) Authorizing and directing the Trustee to retain the excess proceeds from the sale until further order of the Court.

VI. GROUNDS FOR GRANTING RELIEF

26. Pursuant to section 363(f) of the Bankruptcy Code, a trustee may sell property pursuant to section 363(b) or (c) of the Bankruptcy Code, “free and clear of any interest in such property of an entity other than the estate” if any of the following conditions are satisfied: (a) applicable nonbankruptcy law permits sale of such property free and clear of such interest; (b) such entity consents; (c) 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; (d) such interest is in bona fide dispute; or (e) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

27. 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). Although section 363 of the Bankruptcy Code does not provide an express standard for determining whether a court should approve any particular proposed use, sale, or lease of estate property, case law consistently applies an “articulated business judgment” standard. *See 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 Colfin Bulls Funding A, LLC v. Paloian (In re Dvorkin Holdings, LLC)*, 2016 WL 1029387, at *12 (Bankr. N.D. Ill. Mar. 14, 2016) (“The Seventh Circuit has clarified that a trustee’s justification warrants judicial approval if it ‘makes good business sense’ (i.e., if ‘the creditors as a whole . . . benefit’).”) (citing *United Retired Pilots Ben. Prot. Ass’n v. United Airlines, Inc. (In re Ual Corp.)*, 443 F.3d 565, 571-72 (7th Cir. 2006)).

28. In addition, under section 363 of the Bankruptcy Code, a court should not substitute its business judgment for that of the trustee. *See e.g., Stephens Indus., Inc. v. McClung (In re McClung)*, 789 F.2d 386, 389-90 (6th Cir. 1986); *In re Highway Equip. Co.*, 61 B.R. 58, 60 (Bankr. S.D. Ohio 1986). Rather, the court is required to ascertain whether the trustee has articulated a valid business justification for the proposed transaction. *See, e.g., Lewis v. Anderson*, 615 F.2d 778, 781 (9th Cir. 1979); *In re Schipper*, 109 B.R. 832, 836 (Bankr. N.D. Ill. 1989); *In re Airlift Int'l, Inc.*, 18 B.R. 787, 789 (Bankr. S.D. Fla. 1982) (recognizing congressional intent to limit Court involvement in business decisions by a trustee).

29. The Court's power to authorize a sale under section 363(b) of the Bankruptcy Code is to be exercised at its discretion, utilizing a flexible, case-by-case approach. *See In re Baldwin United Corp.*, 43 B.R. 888, 905 (Bankr. S.D. Ohio 1984). The key consideration is the Court's finding that a good business reason exists for the sale. *See McClung*, 789 B.R. at 389. However, the paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See e.g., In re Good Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate at hand"); *In re The Ohio Corrugating Co.*, 59 B.R. 11, 13 (Bankr. N.D. Ohio 1985); *In re Atlanta Packaging Prod., Inc.*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988) ("It is a well-established principle of bankruptcy law that the objective of bankruptcy sales and the [debtor's] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate."); *Teed v. Thomas & Betts Power Sols., L.L.C.*, 711 F.3d 763, 769 (7th Cir. 2013) ("Once a firm is in Chapter 7 bankruptcy . . . it is 'owned' by the trustee . . . whose sole concern is with maximizing the net value of the debtor's estate to creditors . . .").

30. Pursuant to Bankruptcy 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. *See In re Nicole Energy Servs.*, 385 B.R. 201, 230 (Bankr. S.D. Ohio 2008); *see also In re Embrace Sys. Corp.*, 178 B.R. 112, 123 (Bankr. W.D. Mich. 1995) (citing *In re Blue Coal Corp.*, 168 B.R. 553, 564 (Bankr. M.D. Pa. 1994)). Furthermore, evidence that a transaction involving estate property under section 363 of the Bankruptcy Code will be at fair market value permits the conclusion that the transaction is in the best interest of the estate. *See In re Planned Sys., Inc.*, 82 B.R. 919, 923 (Bankr. S.D. Ohio 1988) (finding sufficient evidence of fair market value and adequate exposure where property was listed with a broker since the prior year).

The Proposed Sale Satisfies the Bankruptcy Code Requirements

31. The Trustee submits that the proposed sale pursuant to the Purchase Agreement, will accomplish a “sound business purpose” and will result in the maximized value for the Real Estate.

32. The Trustee believes, based on the advice of the Tiffany Group, that the combined purchase price of \$101,000.00 (\$75,000.00 for Cleveland Road and \$26,000.00 for Dayton Street) reflects the combined fair market value of the Real Estate, and it therefore maximizes recovery.

A. Free and Clear of Tax Liens, Drain/Ditch Lien & Mechanic’s Lien.

33. The proposed sale satisfies section 363(f)(3) of the Bankruptcy Code as it relates to the Tax Liens. The total purchase price for the Real Estate is greater than the aggregate value of the Tax Liens. Any portion of the Tax Liens that represent delinquent real estate taxes,

including real estate taxes that have accrued for 2014 through 2016, will be paid in full at closing. Any portion of the Tax Liens that represents real estate taxes that are for 2017, but are not yet due and payable, will be prorated as of the date immediately prior to the date of closing, and the Purchaser is assuming the remaining balance for 2017 real estate taxes. Accordingly, pursuant to section 363(f)(3) of the Bankruptcy Code, the Trustee is permitted to sell the Real Estate free and clear of the Tax Liens.

34. The proposed sale satisfies section 363(f)(3) of the Bankruptcy Code as it relates to the Drain/Ditch Lien. The total purchase price for Cleveland Road is greater than the aggregate value of the Drain/Ditch Lien. The Drain/Ditch Lien will be paid in full at closing. Accordingly, pursuant to section 363(f)(3) of the Bankruptcy Code, the Trustee is permitted to sell Cleveland Road free and clear of the Drain/Ditch Lien.

35. The proposed sale satisfies section 363(f)(3) of the Bankruptcy Code as it relates to the Mechanic's Lien. The total purchase price for Dayton Street is greater than the aggregate value of the Mechanic's Lien. The Mechanic's Lien will be paid in full at closing. Accordingly, pursuant to section 363(f)(3) of the Bankruptcy Code, the Trustee is permitted to sell Dayton Street free and clear of the Mechanic's Lien.

B. Free and Clear of Investor Mortgages.

36. Pursuant to section 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 section 363(f)(1) of the Bankruptcy Code as it relates to the Investor Mortgages. Moreover, section 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.

37. In these bankruptcy cases, virtually all of the creditors 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.

38. Although the Trustee is still in the process of liquidating the assets of the Consolidated Bankruptcy Estate, 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.

39. 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).

40. Moreover, there are numerous reported securities fraud cases that favor treating all investors equally in distributing collected funds.¹ In particular, *S.E.C. v. Sunwest Management, Inc.*, 2009 WL 3245879 (D.C. Ore. 2009), involved a receivership case where the

¹ 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).

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

41. 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.

42. 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 the Court.

43. 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.

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

C. Additional Request.

45. Bankruptcy Rule 6004(h) 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 order otherwise.” Fed. R. Bankr. P. 6004(h). The Trustee requests the Court order that such an order be effective immediately upon entry in order to allow the Trustee to timely and expeditiously consummate the proposed sale.

VI. NOTICE

46. The Trustee will serve a copy of this motion, along with the attached Exhibit 1 on the following: (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 the St. Joseph County (Indiana) Treasurer, Mr. Kruse, Ms. Osuch, Ms. Bontrager and Advanced Roofing; and (e) all other parties who have requested notice pursuant to Bankruptcy Rule 2002.

47. 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, the 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 46.

WHEREFORE, the Trustee respectfully requests entry of an order granting the relief requested herein and granting the Trustee 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 May 16, 2017, 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 May 16, 2017, 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:

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William Watterud
611 S. Main Street
Mishawaka, IN 46544

/s/ Meredith R. Theisen

Meredith R. Theisen

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PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "**Agreement**") is executed as of the 16th day of May, 2017, 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 (collectively, the "**Debtors**"), and not in his individual capacity (the "**Seller**") and William Watterud (the "**Purchaser**").

WITNESSETH:

WHEREAS, on January 25, 2016 (the "**Petition Date**"), 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 that have been substantively consolidated under Case No. 16-30078-hcd (the "**Bankruptcy Case**").

WHEREAS, on February 29, 2016, the Seller was appointed as the Chapter 11 Trustee in the Bankruptcy Case, pursuant to section 1104(a)(1) of the Bankruptcy Code.

WHEREAS, pursuant to section 541(a) of the Bankruptcy Code, Debtors' real estate assets are part of the consolidated bankruptcy estate (the "**Bankruptcy Estate**"), including two (2) parcels (the "**Parcel(s)**") of residential real estate owned by one or more of the Debtors located in St. Joseph County (Indiana), which have common addresses as follows: (a) 18890 Cleveland Road, South Bend, IN 46637; and (b) 1124 E. Dayton Street, South Bend, IN 46613. The Parcels are more particularly described on **Exhibit A** attached and incorporated herein. The Parcels as defined herein shall not include any cash, bank accounts, and accounts receivable related to the operations of any of the Parcels.

WHEREAS, the Seller, on behalf of the Bankruptcy Estate, is willing to sell the Parcels to the Purchaser, and the Purchaser is willing to purchase the Parcels 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 Bankruptcy Estate, and the Purchaser hereby agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are true and correct and incorporated herein as substantive provisions and not as mere recitals.

2. **Sale of Parcels.** On the terms and conditions set forth in this Agreement, the Seller, on behalf of the Bankruptcy Estate, agrees to sell, assign, convey and transfer to the Purchaser, and the Purchaser agrees to purchase from the Bankruptcy Estate, all rights, title and interests held by the Bankruptcy Estate in the Parcels.

3. **Purchase Price.**

A. The Seller is to sell and the Purchaser is to purchase the Parcels for a total of \$101,000.00 (the "**Purchase Price**"), which shall comprise of the following:

- (i) \$75,000.00 purchase price for 18890 Cleveland Road, South Bend, IN 46637; and
- (ii) \$26,000.00 purchase price for 1124 E. Dayton Street, South Bend, IN 46613.

B. The Purchase Price for the Parcels (exclusive of closing adjustments and costs provided for herein) shall be paid in the following manner:

(i) An initial deposit in the amount of \$5,050.00 (the "Deposit") is due when the Purchaser signs and submits this Agreement and is payable in immediately available funds and shall be delivered to Meridian Title Corporation (the "Title Company"), who shall hold such Deposit in a segregated, non-interest bearing account (the "Account").

(ii) The balance of the Purchase Price, exclusive of closing adjustments and costs (the "Balance"), is due at the closing contemplated hereunder (the "Closing") and is payable in immediately available funds and shall be delivered to the Seller.

C. The acceptance by the Purchaser of the delivery of the Bankruptcy Trustee's Deed at the Closing shall be deemed to be full performance and discharge of every agreement and obligation (either express or implied) on the part of the Seller to be performed pursuant to this Agreement regarding the Parcels and no representation, warranty or agreement, express or implied, of the Seller shall survive the Closing except those which are herein specifically stated to survive the Closing.

4. **Bankruptcy Court Approval and Sale Order.** Upon the Purchaser's execution of this Agreement and the Seller's acceptance of this Agreement by his execution of the same, the Seller shall file with the Bankruptcy Court a motion to sell the Parcels pursuant to section 363(f) of the Bankruptcy Code (the "Sale Motion"). The parties' obligations set forth in this Agreement are expressly subject to approval of the Sale Motion by the Bankruptcy Court (the "Bankruptcy Court Approval") pursuant to an order (the "Sale Order") approving the terms of the sales to the Purchaser as set forth in this Agreement. The Sale Order shall include factual findings and ordering provisions that provide (i) title to the Parcels shall be transferred to the Purchaser free and clear of all liens, claims, encumbrances and interests pursuant to section 363(f) of the Bankruptcy Code, with all such valid liens, claims, encumbrances and interests to attach to the proceeds of the sale of the Parcels in the same order, priority and validity that presently exists regarding the Parcels; provided however, (i) the Parcels shall be transferred subject to all easements, right of ways, leases (recorded or unrecorded), covenants, restrictions and all other valid exceptions of record; (ii) the Purchaser is purchasing the Parcels in "good faith" within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the protections offered thereby; (iii) this Agreement was negotiated, proposed, and entered into by the parties without collusion, in good faith and arms' length bargaining position; and (iv) that the stay provided under the Rule 6004(h) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") shall be waived to the extent necessary to permit the Closing to occur as soon as possible after entry of the Sale Order.

5. **All-Cash Transaction.** The parties expressly agree and acknowledge that this is an all-cash sale and purchase transaction. The sale of the Parcels is **NOT** contingent upon the Purchaser obtaining financing. The Purchaser shall provide to the Seller proof of funds within five (5) days of execution of this Agreement.

6. **Inspection.** The Purchaser acknowledges that the Purchaser has examined and inspected the Parcels and that the Purchaser is satisfied that he is familiar with condition thereof, and accepts the Parcels in "As-Is" physical condition.

7. **Sales is "As-Is", Without Representation or Warranty; Purchaser's Duty to Review.** THE PURCHASER ACKNOWLEDGES AND AGREES THAT UPON CLOSING THE SELLER SHALL SELL AND TRANSFER TO THE PURCHASER AND THE PURCHASER SHALL ACCEPT THE PARCELS "AS IS, WHERE IS, WITH ALL FAULTS". IT IS UNDERSTOOD AND AGREED THAT THE SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PARCELS INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, ZONING, TAX CONSEQUENCES, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITION, UTILITIES, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, THE COMPLIANCE OF THE PARCELS WITH GOVERNMENTAL LAWS (INCLUDING, WITHOUT LIMITATION, ACCESSIBILITY FOR HANDICAPPED PERSONS), THE TRUTH, ACCURACY OR COMPLETENESS OF PARCELS DOCUMENTS OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF THE SELLER TO THE PURCHASER, OR ANY OTHER MATTER OR THING REGARDING THE PARCELS. THE PURCHASER HAS NOT RELIED AND WILL NOT RELY ON, AND THE SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PARCELS OR RELATING THERETO (INCLUDING SPECIFICALLY, WITHOUT LIMITATION, PARCELS INFORMATION PACKAGES DISTRIBUTED WITH RESPECT TO THE PARCELS) MADE OR FURNISHED BY THE SELLER OR ANY REAL ESTATE BROKER OR AGENT REPRESENTING OR PURPORTING TO REPRESENT THE SELLER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT. THE PURCHASER REPRESENTS TO SELLER THAT THE PURCHASER HAS CONDUCTED, OR WILL CONDUCT PRIOR TO CLOSING, SUCH INVESTIGATIONS OF THE PARCELS, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS THE PURCHASER DEEMS NECESSARY TO SATISFY HIMSELF AS TO THE CONDITION OF THE PARCELS AND THE EXISTENCE OR NONEXISTENCE ANY HAZARDOUS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PARCELS, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF THE SELLER OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO, OTHER THAN SUCH REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE SELLER AS ARE EXPRESSLY SET FORTH IN THIS AGREEMENT. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE CLOSING ON THE SALE OF THE PARCELS.

8. **Representations of the Purchaser.** The Purchaser covenants, represents, and warrants to the Seller that, both now and as of the Closing Date:

- A. The Purchaser is not an insider of one or more of the Debtors;
- B. The proposed sale represents an arms-length transaction between the parties, made without fraud or collusion with any other person (including any other prospective purchaser for the Parcels); and
- C. There has been no attempt to take any unfair advantage of the Seller.

9. **Seller and Purchaser Deliverables at Closing.**

- A. At the Closing, the Seller shall deliver to the Purchaser each of the following, executed and acknowledged, as appropriate: (a) the Sale Order in recordable form, (b) a Bankruptcy Trustee's

Deed (in proper statutory form for recording) so as to transfer all of its right, title and interest in and to the Parcels, (c) a settlement sheet, and (d) such other documents required to effect a transfer of the Parcels under applicable state law. The Seller at its expense shall provide the Purchaser with an Owner's Policy of Title Insurance on the Parcels. Notwithstanding anything to the contrary contained herein, the Seller shall not be required to execute or deliver any Vendor's Affidavit or Owner's Title Affidavit.

B. At the Closing, the Purchaser shall deliver to the Seller each of the following, executed and acknowledged, as appropriate: (a) a settlement sheet, and (b) such other documents reasonably requested by the Title Company and which are consistent with this Agreement and customarily executed in the State of Indiana to effectuate the conveyance of real property. The Purchaser shall also deliver the Balance of the Purchase Price in accordance with Section 3 hereof.

10. **Closing Date and Office.** The Closing shall take place not later than thirty (30) business days following the entry of the Sale Order (the "Closing Date"), at the offices of the Title Company or at such other location as may be mutually agreed by the parties, at a time mutually convenient for all parties. Time is of the essence with respect to Closing.

11. **Personal Property.** To the extent the sale of the Parcels include equipment, appliances and fixtures located in or on each Parcel at the time of the Closing, the Purchaser accepts such personal property in its "as-is" condition, without representation as to quantity, quality or any other matter.

12. **Subject to Provisions.** At Closing, the Seller shall convey title to the Parcels, subject to all easements, covenants, restrictions, declarations or agreements of record, leases (recorded or unrecorded) plus those matters that would be disclosed upon a visual inspection of the Parcels, but expressly excluding any mortgages, deeds of trust, tax liens, judgments, mechanics' liens or other monetary encumbrances against the Parcels ("Permitted Exceptions," and the condition of the title subject only to the Permitted Exceptions is referred to herein as "Acceptable Title").

13. **Rents and Security Deposits.** The Seller, on behalf of the Bankruptcy Estate, shall retain the exclusive right and ownership of all monthly rent payments due and owing from any tenant(s) occupying the Parcels through the date of Closing, including any delinquent rents. The Purchaser hereby waives any and all rights to any monthly rent payments that may be due and owing through the date of Closing, including any delinquent rents. Following the Closing, the Purchaser shall have the exclusive right and ownership of any monthly rent that may become due after the Closing. Following the Closing, the Purchaser shall assume responsibility for any security deposit, if any, concerning the Parcels and shall solely be responsible and liable for the reimbursement of any security deposit, if any, and all applicable laws with respect to such security deposit. The Seller is not aware of any security deposits for the Parcels. The Purchaser expressly acknowledges that the Bankruptcy Estate is not holding any security deposit for the Parcels and will not turn over any funds to the Purchaser in connection with any potential security deposit for the Parcels.

14. **Title Company Approval.** The Purchaser shall accept title subject to the Permitted Exceptions. Seller shall not be obligated to cause the Title Company to omit any Permitted Exception. The Purchaser shall not have the right to terminate this Agreement if the Seller is able to provide Acceptable Title.

15. **Insurance and Risk of Loss.** The Seller shall cause any insurance on the Parcels to be canceled as of the Closing Date. In the event one or more of the Parcels are damaged prior to closing, and there is no insurance to cover the loss, either the Purchaser or the Seller can terminate this Agreement, by written notice to the other party. In such an event, the Seller shall

instruct the Title Company to immediately refund the Deposit to the Purchaser and neither party shall have any further obligation hereunder regarding the Parcels. In the event one or more of the Parcels are damaged prior to Closing, and there is insurance to cover the loss, then the Purchaser shall proceed with Closing in which event the Purchase Price shall be reduced by all insurance proceeds payable in respect of such damage collected by the Seller before the Closing Date, which shall be retained by the Seller, and the Seller shall assign to the Purchaser all of the Seller's rights, title and interest in and to all such insurance proceeds not collected by the Seller before Closing Date. In the event that, prior to a Closing, all or any portions of the Parcels, 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 a Closing Date, then the Purchaser, at its option, may either (a) terminate this Agreement by written notice to the Seller regarding the Parcels, and upon receipt of such written notice, the Seller shall instruct the Title Company to immediately refund the Deposit to the Purchaser 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.

16. Acceptance of State and Municipal Department Violations and Orders. The Purchaser accepts the Parcels subject to all notes or notices of violations, known or unknown, of law or municipal ordinances, orders or requirements noted in or issued by any governmental department having authority as to lands, housing, buildings, fire and health and labor conditions affecting the Parcels. This provision shall survive Closing.

17. Closing Adjustments and Costs.

A. The Purchaser shall pay the cost of all documentary stamps, recordation taxes, transfer taxes and any other similar tax related to the conveyance of title to the Parcels and closing costs of the Title Company.

B. If at the time of Closing the Parcels are affected by an assessment which is or may become payable in annual installments, and the first installment is then a lien, or has been paid, then for the purposes of this Agreement all the unpaid installments shall be payable by Purchaser when each installment as to such assessment is due and payable after the Closing.

C. Each of the following items are to be apportioned as of midnight the day before Closing: (a) real estate taxes on the basis of the calendar year for which they are assessed; (b) special assessment liens in accordance with the preceding paragraph; (c) utilities; (d) water and sewer charges; and (e) any other charges customarily prorated in similar transactions. If Closing shall occur before a new tax rate is fixed, the apportionment of taxes shall be upon the basis of the old tax rate for the preceding period applied to the latest assessed valuation.

18. Use of Purchase Price to Pay Encumbrances. If there is any monetary encumbrance which is capable of being reduced to a sum certain affecting the sale which the Seller, on behalf of the Bankruptcy Estate, is obligated to pay and discharge at Closing pursuant to this Agreement, the Seller may, to the extent permitted by the Sale Order, use any portion of the balance of the Purchase Price to discharge it. As an alternative, the Seller may, to the extent permitted by the Sale Order, deposit money

with the Title Company in such amount as reasonably required by the Title Company to assure its discharge.

19. Events of Default.

A. The Purchaser shall be in default under this Agreement if Purchaser (1) fails to pay the balance of the Purchase Price on or before the Closing Date, (2) fails to pay, perform or observe any of the Purchaser's obligations hereunder, or (3) assigns this Agreement, or records any written instrument regarding this Agreement, without the consents set forth in Section 34 of this Agreement.

B. If any payment or any other material covenant of this Agreement hereof is not made, tendered or performed by either the Seller or the Purchaser, as herein provided, then this Agreement, at the option of the party who is not in default, may be terminated by such party.

(i) In the event of such default by the Seller, if the Purchaser elects to treat this Agreement as terminated, then, as the Purchaser's sole remedy, the Deposit shall be returned to the Purchaser and the Seller and the Bankruptcy Estate shall be released from any and all liability hereunder. The Purchaser expressly waives its right to seek damages in the event of the Seller's default hereunder.

(ii) In the event of such default by the Purchaser, if the Seller elects to treat this Agreement as terminated, then all payments made hereunder shall be forfeited to and retained by the Seller and the Seller shall be entitled to the retention of the Deposit as liquidated damages and not a penalty, and the Seller shall retain all rights to bring such other causes of action against the Seller as are allowed by law as a result of the Purchaser's default.

C. Notwithstanding the occurrence of an event of default hereunder by the Purchaser, the Seller may, in its sole discretion, keep this Agreement in effect and proceed to Closing.

D. If the Purchaser breaches this Agreement and the Seller institutes a judicial action to enforce its rights or obtain remedies hereunder, the Purchaser shall pay to the Seller the reasonable attorneys' fees, court costs and expenses incurred by the Seller.

20. Broker's Commission. Any commission or fee of any type due and payable to a broker on behalf of the Purchaser as a result of this Agreement or related to the sale of the Parcels shall be paid solely by the Purchaser. The Seller shall have no obligation to fund or cause the funding of any commission or fee due to any broker acting on behalf of the Purchaser. The Purchaser indemnifies the Seller and the Bankruptcy Estate in this regard including, without limitation, for any such fee and for all expenses incurred in respect of any litigation or claims brought seeking the payment of such fee. This paragraph shall survive Closing.

21. Notices. Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery, or (b) reputable overnight delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, or (d) legible facsimile transmission sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile transmission, as of the date of the facsimile transmission provided that an original of such facsimile is also sent to the intended addressee by means described in

clauses (a), (b) or (c) above. Unless changed in accordance with the preceding sentence, the addressees for notices given pursuant to this Agreement shall be as follows:

If to Seller: Douglas R. Adelsperger, Trustee
Adelsperger & Kleven, LLP
111 West Wayne Street
Fort Wayne, IN 46802
dra@adelspergerkleven.com

With a copy to:

Meredith R. Theisen, Esq.
Rubin & Levin, P.C.
135 N. Pennsylvania St., Suite 1400
Indianapolis, IN 46204
mtheisen@rubin-levin.net

If to Purchaser: William Watterud
611 S. Main Street
Mishawaka, IN 46544

22. Additional Provisions.

A. This Agreement shall be governed and construed in accordance with the laws of the State of Indiana without regard to conflicts of laws principles. 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.

B. The parties agree that neither this Agreement nor any memorandum thereof shall be recorded or filed in any government office charged with the obligation to accept documents for recording or filing, and such office is instructed to refuse to accept same for recordation or filing.

23. Strict Compliance. Any failure by either party to insist upon strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, irrespective of the number of violations or breaches that may occur, and each party, notwithstanding any such failure, shall have the right thereafter to insist upon strict performance by the other of any and all of the provisions of this Agreement.

24. Waiver of Jury Trial. EXCEPT AS PROHIBITED BY LAW, THE PARTIES SHALL, AND THEY HEREBY DO, EXPRESSLY WAIVE TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, CONNECTED WITH, OR RELATING TO THIS AGREEMENT, OR THE RELATIONSHIP CREATED HEREBY. With respect to any matter for which a jury trial cannot be waived, the parties agree not to assert any such claim as a counterclaim in, nor move to consolidate such claim with, any action or proceeding in which a jury trial is waived. The parties submit to the exclusive jurisdiction and venue of the Bankruptcy Court with respect to any dispute, claim or issue arising out of this Agreement.

25. Entire Agreement. All prior understandings and agreements between Seller and Purchaser are merged in this Agreement. It completely expresses their full agreement; neither party is relying upon any statements made by anyone else that are not set forth in this Agreement.

26. **Singular Also Means Plural.** Any singular word or term herein shall also be read as in the plural whenever the sense of this Agreement may require it.

27. **Gender.** A reference in this Agreement to any one gender, masculine, feminine or neuter, includes the other two, and the singular includes the plural, and vice versa, unless the context requires otherwise.

28. **Certain References.** The term "herein," "hereof" or "hereunder" or similar terms used in this Agreement shall refer to this entire Agreement and not to the particular provision in which the term is used. Unless otherwise stated, all references herein to paragraphs, subparagraphs or other provisions are references to paragraph, subparagraphs or other provisions of this Agreement.

29. **No Oral Changes.** This Agreement cannot be changed or any provision waived orally. ANY CHANGES OR ADDITIONAL PROVISIONS OR WAIVERS MUST BE SET FORTH IN A WRITTEN ADDENDUM TO THIS AGREEMENT EXECUTED BY THE SELLER AND THE PURCHASER.

30. **Date of Performance.** If any date for performance hereunder falls on a Saturday, Sunday or other day which is a federal holiday or holiday under the laws of the state where the Parcels are located, the date for such performance shall be the next succeeding business day.

31. **Severability.** Except as set forth herein, if any clause or provision of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction as against any person or under any circumstances, the remainder of this Agreement and the applicability of any such clause or provision to other persons or circumstances shall not be affected thereby; provided, however, the parties agree that the conditions for Bankruptcy Court approval and issuance of a Sale Order is a non-negotiable condition precedent to the validity and enforcement of this Agreement against the Seller. Any other clauses or provisions of this Agreement, not found invalid and unenforceable, shall be and remain valid and enforceable.

32. **Counterparts.** This Agreement may be executed in multiple counterparts all of which when taken together shall constitute an Agreement for the sale of real estate under the laws of the State of Indiana. It is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both the Seller and the Purchaser.

33. **Facsimile Execution.** For the purposes of executing this Agreement, a document signed and transmitted by facsimile machine or electronic (PDF) mail shall be treated as an original document. The signature of any party thereon shall be considered as an original signature, and the document transmitted shall be considered to have the same binding legal effect as an original signature on an original document. At the request of either party, any facsimile or electronic (PDF) mail document shall be re-executed by both parties in original form. No party hereto may raise the use of a facsimile machine or electronic (PDF) mail or the fact that any signature was transmitted through the use of a facsimile machine or electronic (PDF) mail as a defense to the enforcement of this Agreement or any amendment executed in compliance with this paragraph. This paragraph does not supersede the requirements of Section 20 hereof.

34. **Assignment.** The Purchaser shall not assign this Agreement without the prior written consent of the Seller, such consent to be given in the Seller's sole discretion. Any purported assignment by the Purchaser in violation of this Agreement shall be voidable at the option of the Seller. The refusal of any such person to consent to an assignment shall not entitle the Purchaser to cancel this Agreement nor

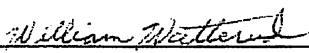
give rise to any claim for damages against the Seller. Any assignment by the Purchaser, even if consented to by the Seller, shall not act to limit, reduce or impact in any way any of the Purchaser's obligations to perform all of its obligations under this Agreement including, without limitation, its obligation to pay the Purchase Price.

35. **Construction of Agreement.** This Agreement is a negotiated agreement, as the Seller and the Purchaser have each been represented, and had the benefit of, legal counsel, and shall not be construed in the event of any ambiguity therein against either party, solely by virtue of the Agreement being drafted by counsel for that party.

[signatures appear on following page]

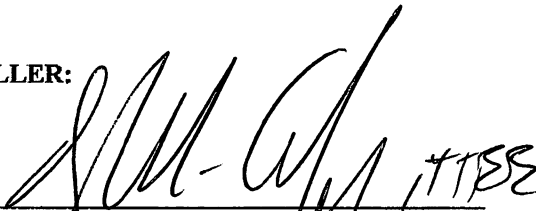
IN WITNESS HEREOF, the Purchaser and the Seller agree that the date of this Agreement shall be the date the Seller executes this Agreement.

PURCHASER:



William Watterud

SELLER:



Douglas B. 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 attached Exhibits are hereby incorporated herein by reference:

Exhibit A - Parcels Legal Description

EXHIBIT A

Parcels Legal Description

18890 Cleveland Road, South Bend, IN 46637

Lot Numbered Five (5) as shown on the recorded plat of Ranch Acres recorded July 29, 1959 in Plat Book 20, page "R" in the Office of the Recorder of St. Joseph County, Indiana.

Tax ID Number(s):

02-1020-042713

71-04-30-101-004.000-003

1124 E. Dayton Street, South Bend, IN 46613

Lot Numbered 24 in Miami Addition to the City of South Bend, as per plat thereof recorded May 10, 1920 in Plat Book 10, page 112 in the Office of the Recorder of Saint Joseph County, Indiana.

Tax ID Number(s):

18-7065-2388

71-09-18-303-007.000-026