

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 15 parcels of real estate, free and clear of all liens, encumbrances, claims and interests to GPH, LLC or its assign (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

A. The Real Estate.

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. On the Petition Date, the Debtor, 5 Star Investment Group, LLC, was the sole owner of real estate located in St. Joseph County (Indiana), commonly known as the following:

- (a) 1711 S. Carlisle Street, South Bend, IN 46613; and
- (b) 1232 S. 31st Street, South Bend, IN 46615

(collectively, the "5 Star Group Real Estate"). Legal descriptions for the 5 Star Group Real Estate are contained on Exhibit 1 attached and incorporated herein.

14. 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 the following:

- (a) 2641 Prescott Drive, Mishawaka, IN 46544;
- (b) 1127 Parkway, South Bend, IN 46619;
- (c) 1811 E. McKinley Avenue, South Bend, IN 46617;
- (d) 721 E. 5th Street, Mishawaka, IN 46544;
- (e) 811 Carlton Street, Mishawaka, IN 46544;
- (f) 709 S. Sheridan, South Bend, IN 46619;
- (g) 732 S. Illinois Street, South Bend, IN 46619; and
- (h) 2807 Millburn Boulevard, Mishawaka, IN 46544

(collectively, the "5 Star V Real Estate"). Legal descriptions for the 5 Star V Real Estate are contained on Exhibit 2 attached and incorporated herein.

15. On the Petition Date, the Debtor, 5 Star Investment Group III, LLC, was the sole owner of real estate located in either Elkhart County (Indiana) or St. Joseph County (Indiana), commonly known as the following:

- (a) 906 W. Indiana, Elkhart, IN 46516;
- (b) 227 E. LaSalle Avenue, Mishawaka, IN 46545; and
- (c) 607 Rush Street, South Bend, IN 46601

(collectively, the “5 Star III Real Estate”). Legal descriptions of the 5 Star III Real Estate are contained on Exhibit 3 attached and incorporated herein.

16. On 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 the following:

- (a) 3022 Pleasant Street, South Bend, IN 46615; and
- (b) 1629 Nash Street, South Bend, IN 46635; and

(collectively, the “5 Star II Real Estate” and together with the 5 Star Group Real Estate, 5 Star V Real Estate and the 5 Star III Real Estate, the “Real Estate”). Legal descriptions for the 5 Star II Real Estate are contained on Exhibit 4 attached and incorporated herein.

B. The Liens.

17. The Real Estate is subject to various tax liens for delinquent real estate taxes that have accrued for 2014 through 2016, and real estate taxes that will accrue for 2017 (the “Tax Liens”).

18. The Real Estate may also be subject to various sewage liens for delinquent sewage fees that have accrued for 2014 through 2016, and sewage fees that will accrue for 2017 (the “Sewage Liens”).

19. The Real Estate is also subject to various investor mortgages (the “Investor Mortgages”). The Investor Mortgages for each parcel of Real Estate are described in more detail on Exhibit 5 attached and incorporated herein.

IV. THE PURCHASE AGREEMENT

20. On May 15, 2017, pursuant to the sole efforts of the Tiffany Group, the Trustee entered into the Purchase Agreement for the sale of all the Real Estate to the Purchaser. A copy of the Purchase Agreement is attached hereto and incorporated herein as Exhibit 6.

21. Pursuant to the Purchase Agreement, the applicable sale price for each parcel of Real Estate is as follows:

<u>Parcel Address</u>	<u>Sale Price</u>
1711 S. Carlisle Street, South Bend, IN 46613	12,100.00
1232 S. 31 st Street, South Bend, IN 46615	21,600.00
2641 Prescott Drive, Mishawaka, IN 46544	51,600.00
1127 Parkway, South Bend, IN 46619	29,600.00
1811 E. McKinley Avenue, South Bend, IN 46617	57,600.00
721 E. 5 th Street, Mishawaka, IN 46544	23,600.00
811 Carlton Street, Mishawaka, IN 46544	29,100.00
709 S. Sheridan, South Bend, IN 46619	12,100.00
732 S. Illinois Street, South Bend, IN 46619	12,100.00
2807 Millburn Boulevard, Mishawaka, IN 46544	21,600.00
906 W. Indiana, Elkhart, IN 46516	27,600.00
227 E. LaSalle Avenue, Mishawaka, IN 46545	31,600.00
607 Rush Street, South Bend, IN 46601	12,100.00
3022 Pleasant Street, South Bend, IN 46615	32,600.00
1629 Nash Street, South Bend, IN 46635	12,100.00
Total Sale Price for All Real Estate	<u>\$387,000.00</u>

22. Pursuant to the Purchase Agreement, the Purchaser has represented and warranted to the Trustee that: (a) the Purchaser or any of its assigns are not insiders 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 or any of its assigns 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 represent real estate taxes for 2017 will be prorated as of the date immediately prior to the date of closing. Further, the Purchase Agreement provides that any portion of the Sewage Liens that represent delinquent assessments will be paid in full at closing, and any portion that represents assessments 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.

25. Finally, the Purchase Agreement provides for separate closings for each parcel of Real Estate, with each parcel of Real Estate being purchased by separate land trust. Closings for the Real Estate shall occur on a rolling basis, with all closing to occur within sixty (60) days of the entry of an order approving this motion.

V. RELIEF REQUESTED

26. 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, the Sewage Liens, and the Investor Mortgages), 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 Bankruptcy Trustee's Deeds and the Purchase Agreement;
- (d) Finding that the Purchaser and its assigns are a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code because (i) the Purchaser and its assigns are 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 and Sewage Liens, and directing that such liens be paid in full from the sale proceeds at closing for the respective parcel of Real Estate;
- (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 liens held pursuant to the Investor Mortgages to attach to the sale proceeds for the respective parcel of Real Estate until further order of the Court;
- (g) Authorizing the Trustee to disburse from the sale proceeds for each parcel of Real Estate, first to pay the costs and expenses of that particular sale, including the commission owed to Tiffany Group, second to pay all real estate taxes and assessments outstanding and unpaid at the time of the sale, including the Tax Liens and Sewage Liens for that particular parcel of Real Estate, and third 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 of each parcel of Real Estate until further order of the Court.

VI. GROUNDS FOR GRANTING RELIEF

27. 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.

28. 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)).

29. 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).

30. 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 . . .”).

31. 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

32. 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 all parcels Real Estate.

33. The Trustee believes, based on the advice of the Tiffany Group, that the various purchase prices for each parcel of Real Estate reflect the fair market value of such parcels, and therefore maximizes recovery.

A. Free and Clear of Tax Liens and Sewage Liens.

34. The proposed sale satisfies section 363(f)(3) of the Bankruptcy Code as it relates to the Tax Liens and Sewage Liens. The purchase price for each parcel of Real Estate is greater

than the aggregate value of the Tax Liens and/or Sewage Liens for each parcel of Real Estate. Any portion of the Tax Liens that represents delinquent real estate taxes, including real estate taxes and sewage fees 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 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 or its assign is assuming the remaining balance of the Tax Liens for 2017. Further, any portion of the Sewage Liens that represent delinquent assessments will be paid in full at closing. Any portion of the Sewage Liens that represent assessments 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 or its assign is assuming the remaining balance of the Sewage Lien for 2017. 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 and Sewage Liens.

B. Free and Clear of Investor Mortgages.

35. 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.

36. 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.

37. 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.

38. 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).

39. 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 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

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).

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.*

40. 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.

41. 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.

42. 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.

43. 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 liens held pursuant to the Investor Mortgages shall attach to the sale proceeds from the respective parcel of Real Estate until further Order of the Court.

C. Additional Request.

44. 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

45. The Trustee will serve a copy of this motion, along with the attached Exhibits 1 - 6 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, the Elkhart County (Indiana) Treasurer, and all holders of Investor Mortgages; and (e) all other parties who have requested notice pursuant to Bankruptcy Rule 2002.

46. 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 45.

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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CERTIFICATE OF SERVICE

I hereby certify that on June 1, 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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Thomas G. Wallrich twallrich@cozen.com, akulbeik@cozen.com; jaudette@cozen.com; jnesset@cozen.com

I further certify that on June 1, 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:

David W. Criswell Ball Janik LLP 101 SW Main Street, Suite 1100 Portland, OR 97204	Jaclyn Janssen/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
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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

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

Elkhart County Treasurer
117 N. 2nd Street, #201
Goshen, IN 46526

Mattie Yoder
123 N. CR 200 E.
Arcola, IL 61910

Mattie Yoder
c/o Kimberly A. Mouratides
200 Monticello Drive
Dyer, IN 46311

Mark Stutzman
7806 W. 750N
Etna Green, IN 46524

Gerald & Ella M. Shildt
6336 Lincoln Way West
Saint Thomas, PA 17252

Gerald & Ella M. Shildt
c/o Julie G. Dorsett
Dorsett Law Firm
39 North Second Street
Chambersburg, PA 17201

Noah & Mary Ann Schmucker
16707 Grabill Road
Grabill, IN 46741

Greg Taylor
402 North Williams Street
Nappanee, IN 46550

Glen Riegsecker
62279 CR 41
Goshen, IN 46528

Glen Riegsecker
Ethan Charles Ramer Irrevocable
Trust
Mikayla Jeanne Ramer
Irrevocable Trust
Joshua Glen David Ramer
Irrevocable Trust
The Jack W. Herrli Revocable
Trust Agreement
c/o Jeffrey L. Lund
130 N. Main Street
P.O. Box 575
Goshen, IN 46527

Billy Wiser or Tracey Craft or
Christine Bertini
c/o Billy Wiser
6156 Tidwell Street
North Port, FL 34291

The David and Catherine
Lengacher Family Trust
15314 Antwerp Road
Grabill, IN 46741

Laffoon Family Trust
14295 Country Road 4
Bristol, IN 46507

Ethan Charles Ramer Irrevocable
Trust
Mikayla Jeanne Ramer
Irrevocable Trust
Joshua Glen David Ramer
Irrevocable Trust
509 Horizon Drive
Middlebury, IN 46540

Jacob Schwartz, Jr.
18629 Bull Rapids Road
Spencerville, IN 46788

Leonard L. Yoder
1209 Larch Avenue
Kalona, IA 52247

Marlin Schmucker
10736 Notestine Road
Fort Wayne, IN 46835

Noah & Naomi Lengacher
15524 Roth Road
Grabill, IN 46741

Sue Miller Generational TR FBO
Jeff Miller
c/o Jeff Miller
4580 Trails Drive
Sarasota, FL 34232

Ian Preble
P.O. Box 2236
Fort Campbell, KY 42223

The Emma Bontrager Revocable
Living Trust
3066 N. 500 E.
Kokomo, IN 46901

The Paul & Mary Ann Witmer
Revocable Trust
10621 Notestine Road
Fort Wayne, IN 46835

Equity Trust Company FBO
Omer Hochstetler, IRA
c/o Omer Hochstetler
7180 W. 350 N.
Shipshewana, IN 46565

Norman Yoder
16271 Iris Blvd.
Drakesville, IA 52552

James Miller
3012 Logsdon Valley Road
Munfordville, KY 42765

Allen B. Schwartz
14108 Ehle Road
New Haven, IN 46774

Albert Yoder
2755 County Road 160
Millersburgh, OH 44654

Jonas Schmucker
14429 Springfield Center Road
Grabill, IN 46741

Kathleen Seat
7931 E. Sessions Road
Carson City, MI 48811

Levi & Katie A. Byler
522 S. Stonebase Road
New Wilmington, PA 16142

John Raber
591 Ironwood Road
Bremen, IN 46506

David & Esther Miller
12119 Street Road 37
Grabill, IN 46741

Joni Lehman
7275 W. U.S. 20
LaGrange, IN 46761

Edwin Graber, Jr.
14133 Antwerp Road
Grabill, IN 46741

The Jack W. Herrli Revocable
Trust Agreement
3108 Mallard Lane
Goshen, IN 46526

Lester Lengacher
15314 Antwerp Road
Grabill, IN 46741

John Raber
5755 W. Kinsel Hwy.
Charlotte, MI 48813

Equity Trust Company FBO
Omer Hochstetler, IRA
13893 CR 22
Middlebury, IN 46540

John Raber
c/o Mark Engel
1406 W. Plymouth Street
Bremen, IN 46506

James & Kanoshia Graber
15606 Antwerp Road
Grabill, IN 46741

Samuel Schwartz
8112 Rietier Road
Grabill, IN 46741

/s/ Meredith R. Theisen

Meredith R. Theisen

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Legal Descriptions for 5 Star Group Real Estate

1711 South Carlisle Street, South Bend, IN 46613

Lots Numbered 51 and 52 in South Bend Industrial Addition to the City of South Bend, as per plat thereof recorded August 13, 1920 in Plat Book 10, page 118 in the Office of the Recorder of Saint Joseph County, Indiana.

Tax ID Number(s):

18-8095-3646 71-08-15-408-016.000-026

1232 S. 31st Street, South Bend, IN 46615

Lot Numbered Three Hundred Twenty-three (323) as shown on the recorded Plat of the Subdivision of Lot Lettered "A" in Fordham, now within and a part of the City of South Bend, in St. Joseph County, Indiana, as per plat thereof recorded April 6, 1903 in Plat Book 8, page 109 in the Office of the Recorder of Saint Joseph County, Indiana.

Tax ID Number(s):

18-6049-1603 71-09-17-253-011.000-026

Legal Descriptions for 5 Star V Real Estate

2641 Prescott Drive, Mishawaka, IN 46544

Lot Numbered 100 in Portage Realty's Reverewood Addition, Section C, in the City of Mishawaka, as per plat thereof recorded September 15, 1961 in Plat Book 21, page R in the Office of the Recorder of Saint Joseph County, Indiana.

Tax ID Number(s):

16-1236-9453 71-09-24-102-003.000-023

1127 Parkway, South Bend, IN 46619

Lot Numbered 45 in Block D in Belleville Gardens, an Addition to the City of South Bend, St. Joseph County, Indiana, as per plat thereof recorded December 21, 1940 in Plat Book 14, page B in the Office of the Recorder of Saint Joseph County, Indiana.

Tax ID Number(s):

18-8135-4965 71-08-17-226-032.000-026

1811 E. McKinley Avenue, South Bend, IN 46617

Lot Numbered Thirty-seven (37) in Coquillard Woods Addition, Section "A", an Addition to the City of South Bend, as per plat thereof, recorded April 21, 1926 in Plat Book 12, page 80, in the Office of the Recorder of Saint Joseph County, Indiana.

Tax ID Number(s):

18-5069-2420 71-09-06-480-012.000-026

721 E. 5th Street, Mishawaka, IN 46544

A lot or parcel of land 33 1/3 feet in width taken off of and from the entire length of the West side of Lot Numbered 21 in Strong's First Addition to the City of Mishawaka, in St. Joseph County, Indiana, as per plat thereof recorded January 10, 1902 in Plat Book 8, page 63 in the Office of the Recorder of Saint Joseph County, Indiana.

Tax ID Number(s):

16-1118-4676 71-09-15-328-003.000-023

811 Carlton Street, Mishawaka, IN 46544

Lot Numbered 52 in St. Joseph Park, an Addition to the City of Mishawaka, as per plat thereof recorded November 13, 1903 in Plat Book 8, page 140 in the Office of the Recorder of Saint Joseph County, Indiana.

Tax ID Number(s):

16-1190-7657 71-09-17-451-023.000-023

709 S. Sheridan, South Bend, IN 46619

Lot Numbered 401 in Belleville Third Unit as per plat thereof recorded March 29, 1926 in Plat Book 12, page 66 in the Office of the Recorder of Saint Joseph County, Indiana.

Tax ID Number(s):

18-4089-3265 71-08-09-378-030.000-026

732 South Illinois Street, South Bend, IN 46619

Lot Numbered Eighty (80) in Belle Village Section "C" as per plat thereof recorded March 8, 1948 in Plat Book 17, Page B in the Office of the Recorder of Saint Joseph County, Indiana.

Tax ID Number(s):

18-4105-3805 71-08-09-452-008.000-026

2807 Milburn Boulevard, Mishawaka, IN 46544

Lot Numbered Ninety-nine (99) as shown on the recorded Plat of Lafayette Place Addition to the City of Mishawaka, recorded March 14, 1921 in Plat Book 10, page 140, in the Office of the Recorder of St. Joseph County, Indiana.

Tax ID Number(s):

16-1206-8252 71-09-17-351-017.000-023

Legal Descriptions for 5 Star III Real Estate

906 W. Indiana Avenue, Elkhart, IN 46516

Lot Numbered 10 in Newland Trail, PUD, as per plat thereof recorded in Plat Book 28, page 64 in the Office of the Recorder of Elkhart County, Indiana.

Tax ID Number(s):

State ID Number Only 20-06-08-165-032.000-012

227 E. LaSalle Avenue, Mishawaka, IN 46545

Lot Numbered 101 in Martin's Second Addition to the City of Mishawaka, as per plat thereof recorded May 11, 1966 in Plat Book 12, page 82 in the Office of the Recorder of Saint Joseph County, Indiana.

Tax ID Number(s):

16-2066-2243 71-09-09-232-004.000-023

607 Rush Street, South Bend, IN 46601

A part of Lot Numbered 33 in the Replat and Resurvey of Rugh's Second and Third Addition to the City of South Bend, described as follows:

Beginning on the East line of said Lot 78, 95 feet South of the Northeast corner of said Lot; thence running West 55.16 feet to the West line of said Lot; thence South 35 feet; thence East 55.6 feet; thence North 35 feet to the point of beginning, being all of Lot, except 78.95 feet off North end and except 35 feet off South end.

Tax ID Number(s):

18-3031-1151 71-08-12-407-011.000-026

Legal Descriptions for 5 Star II Real Estate

3022 Pleasant Street, South Bend, IN 46615

Lot Numbered 355 in the Subdivision of Lot A in Fordham Addition, now within and a part of the City of South Bend, as per plat thereof recorded April 6, 1903 in Plat Book 8, page 109 in the Office of the Recorder of Saint Joseph County, Indiana.

Tax ID Number(s):

18-6051-1696 71-09-17-252-005.000-026

1629 Nash Street, South Bend, IN 46635

Lot Numbered Ninety-two (92) as shown on the recorded Plat of Walnut Second Addition to the City of South Bend, recorded August 8, 1923 in Plat Book 11, page 78 in the Office of the Recorder of St. Joseph County, Indiana.

Tax ID Number(s):

18-8076-2898 71-08-15-433-018.000-026

Investor Mortgages for 5 Star Group Real Estate

1711 South Carlisle Street, South Bend, IN 46613

- 1) A first priority mortgage in favor of Mark Stutzman dated May 17, 2011. Such mortgage was recorded on May 31, 2011 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1114029.
- 2) A second priority mortgage in favor of Gerald & Ella M. Shildt dated May 17, 2011. Such mortgage was recorded on May 31, 2011 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1114030.
- 3) A third priority mortgage in favor of Noah and Mary Ann Schmucker dated August 12, 2013. Such mortgage was recorded on September 4, 2013 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1327193.

1232 S. 31st Street, South Bend, IN 46615

- 1) A first priority mortgage in favor of Greg Taylor dated October 23, 2009. Such mortgage was recorded on November 5, 2009 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 0936763.
- 2) A second priority mortgage in favor of Glen Riegsecker dated December 19, 2014. Such mortgage was recorded on February 3, 2015 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1502374.

Investor Mortgages for 5 Star V Real Estate

2641 Prescott Drive, Mishawaka, IN 46544

- 1) A first priority mortgage in favor of Billy Wiser or Tracey Craft or Christine Bertini dated March 29, 2013. Such mortgage was recorded on April 30, 2013 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1312795.
- 2) A second priority mortgage in favor of David and Catherine Lengacher Family Trust dated March 29, 2013. Such mortgage was recorded on April 30, 2013 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1312796.
- 3) A third priority mortgage in favor of the Laffoon Family Trust dated April 19, 2013. Such mortgage was recorded on April 30, 2013 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1312798.

1127 Parkway, South Bend, IN 46619

- 1) A first priority mortgage in favor of the Ethan Charles Ramer Irrevocable Trust dated February 15, 2011. Such mortgage was recorded on February 23, 2011 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1105431, and rerecorded on October 3, 2013 as Instrument No. 1330323.
- 2) A second priority mortgage in favor of the Mikayla Jeanne Ramer Irrevocable Trust dated February 15, 2011. Such mortgage was recorded on February 23, 2011 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1105432, and rerecorded on October 3, 2013 as Instrument No. 1330322.
- 3) A third priority mortgage in favor of the Joshua Glen David Ramer Irrevocable Trust dated February 15, 2011. Such mortgage was recorded on February 23, 2011 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1105433, and rerecorded on October 3, 2013 as Instrument No. 1330321.

1811 E. McKinley Avenue, South Bend, IN 46617

- 1) A first priority mortgage in favor of Jacob Schwartz, Jr. dated March 27, 2012. Such mortgage was recorded on May 10, 2012 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1213852.
- 2) A second priority mortgage in favor of Leonard L. Yoder dated July 31, 2014. Such mortgage was recorded on August 11, 2014 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1419512.
- 3) A third priority mortgage in favor of Marlin Schmucker dated September 3, 2014. Such mortgage was recorded on September 29, 2014 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1424149.

721 E. 5th Street, Mishawaka, IN 46544

- 1) A first priority mortgage in favor of Noah & Naomi Lengacher dated March 22, 2012. Such mortgage was recorded on March 27, 2012 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1208538.
- 2) A second priority mortgage in favor of Allen B. Schwartz dated May 15, 2013. Such mortgage was recorded on May 24, 2013 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1315456.
- 3) A third priority mortgage in favor of Edwin Graber, Jr. dated January 14, 2015. Such mortgage was recorded on February 3, 2015 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1502375.

811 Carlton Street, Mishawaka, IN 46544

- 1) A first priority mortgage in favor of the Sue Miller Generational TR FBO Jeff Miller dated May 23, 2013. Such mortgage was recorded on June 5, 2013 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1316626.
- 2) A second priority mortgage in favor of Albert Yoder dated May 9, 2014. Such mortgage was recorded on May 23, 2014 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1411668.
- 3) A third priority mortgage in favor of The Jack W. Herrli Revocable Trust Agreement dated May 10, 2010. Such mortgage was recorded on June 16, 2014 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1413845.

709 S. Sheridan, South Bend, IN 46619

- 1) A first priority mortgage in favor of Ian Preble dated January 27, 2011. Such mortgage was recorded on March 23, 2011 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1108081.
- 2) A second priority mortgage in favor of Jonas Schmucker dated August 17, 2013. Such mortgage was recorded on September 23, 2013 in the Office of the Recorder for St. Joseph County (Indiana), as Instrument No. 1329317.

732 South Illinois Street, South Bend, IN 46619

- 1) A first priority mortgage in favor of Lester Lengacher dated March 24, 2011. Such mortgage was recorded on April 4, 2011 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1109103.
- 2) A second priority mortgage in favor of The David & Catherine Lengacher Family Trust dated March 24, 2011. Such mortgage was recorded on April 4, 2011 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1109104, and rerecorded on December 6, 2012 as Instrument No. 1238942.
- 3) A third priority mortgage in favor of The Emma Bontrager Revocable Living Trust dated December 24, 2013. Such mortgage was recorded on January 13, 2014 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1400962.
- 4) A fourth priority mortgage in favor of Kathleen Seat dated December 24, 2013. Such mortgage was recorded on January 13, 2014 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1400963.

2807 Milburn Boulevard, Mishawaka, IN 46544

- 1) A first priority mortgage in favor of John Raber dated May 26, 2011. Such mortgage was recorded on June 14, 2011 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1115221.
- 2) A second priority mortgage in favor of The Paul & Mary Ann Witmer Revocable Trust dated May 26, 2011. Such mortgage was recorded on June 14, 2011 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1115222, and rerecorded on October 9, 2012 as Instrument No. 1232350.
- 3) A third priority mortgage in favor of Levi & Katie A. Byler dated February 17, 2012. Such mortgage was recorded on February 23, 2012 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1205042.

Investor Mortgages for 5 Star III Real Estate

906 W. Indiana Avenue, Elkhart, IN 46516

- 1) A first priority mortgage in favor of Glen Riegsecker dated October 12, 2010. Such mortgage was recorded on October 22, 2010 in the Office of the Recorder of Elkhart County (Indiana), as Instrument No. 2010-21252.

227 E. LaSalle Avenue, Mishawaka, IN 46545

- 1) A first priority mortgage in favor of the Equity Trust Company Custodian FBO Omer Hochstetler, IRA, dated September 16, 2010. Such mortgage was recorded on September 30, 2010 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1026838.
- 2) A second priority mortgage in favor of John Rader dated March 23, 2013. Such mortgage was recorded on April 9, 2013 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1310360.

607 Rush Street, South Bend, IN 46601

- 1) A first priority mortgage in favor of Greg Taylor dated September 8, 2009. Such mortgage was recorded on October 21, 2009 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 0935114.
- 2) A second priority mortgage in favor of Norman Yoder dated July 31, 2013. Such mortgage was recorded on August 15, 2013 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1325032.

- 3) A third priority mortgage in favor of David & Esther Miller dated November 20, 2013. Such mortgage was recorded on December 12, 2013 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1337244.

Investor Mortgages for 5 Star II Real Estate

3022 Pleasant Street, South Bend, IN 46615

- 1) A first priority mortgage in favor of James Miller dated May 27, 2010. Such mortgage was recorded on June 2, 2010 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1014421 and rerecorded on March 12, 2013 as Instrument No. 1307221.

1629 Nash Street, South Bend, IN 46635

- 1) A first priority mortgage in favor of Joni Lehman dated January 7, 2010. Such mortgage was recorded on January 8, 2010 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1000692.
- 2) A second priority mortgage in favor of Samuel Schwartz dated November 8, 2012. Such mortgage was recorded on November 15, 2012 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1236767.
- 3) A third priority mortgage in favor of Mattie Yoder dated November 20, 2013. Such mortgage was recorded on December 12, 2013 in the Office of the Recorder of St. Joseph County (Indiana), as Instrument No. 1337242.

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "**Agreement**") is executed as of the 15th 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 GPH, LLC, an Indiana limited liability company (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, the Debtors' real estate assets are part of the consolidated bankruptcy estate (the "**Bankruptcy Estate**"), including fifteen (15) parcels (the "**Parcel(s)**") of residential real estate owned by one or more of the Debtors located in the cities of Elkhart, Mishawaka, and South Bend, Indiana, which have common addresses as 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, believes that the Parcels should be sold to the Purchaser through an orderly sale process pursuant to the terms of this Agreement.

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. **Parcel Prices and Closing Procedures.**

A. Subject to the Bankruptcy Court's approval of this Agreement and the terms and conditions of any addendum to this Agreement that the Purchaser and the Seller may execute regarding a Parcel, the Seller, on behalf of the Bankruptcy Estate, is to sell and the Purchaser is to purchase each Parcel for the applicable sale price (the "**Parcel Price**") set forth in **Exhibit A**.

B. The Parcel Prices (exclusive of closing adjustments and costs provided for herein and by Addendum) shall be paid in the following manner:

(i) Upon the Purchaser's execution and delivery of this Agreement to the Seller, the Purchaser shall deposit with Meridian Title Corporation (the "**Title Company**") a deposit in the amount of \$19,350.00 (the "**Deposit**", which Deposit represents five percent (5.0%) of the total purchase price for each Parcel (the "**Parcel Deposit**")), which the Title Company shall hold in a segregated, non-interest bearing account (the "**Account**").

(ii) The balance (the "**Balance**") of the Parcel Price for each Parcel, after the application of the Parcel Deposit and exclusive of closing adjustments and costs, shall be due and payable to the Seller in immediately available funds at the closing of the sale of each Parcel (a "**Closing**") as set forth herein.

C. At each Closing, the Seller shall deliver to the Purchaser a Bankruptcy Trustee's Deed and the Purchaser's acceptance of each Bankruptcy Trustee's Deed 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 for each Parcel and no representation, warranty or agreement, express or implied, of the Seller in regard to the transferred Parcels shall survive the Closings except those which are herein specifically stated to survive the Closings.

3. **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 sale proceeds of a Parcel in the same order, priority and validity that presently exists regarding that Parcel; 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 Closings to occur as soon as possible after entry of the Sale Order.

4. **Purchaser's Elections regarding Objections to Sale Motion.** If a timely objection is filed to the Sale Motion (an "**Objection**") regarding the sale of one or more of the Parcels, the Purchaser shall have the right to (a) elect to terminate this Agreement regarding all the Parcels (the "**Termination Election**") or (b) elect to exclude from the terms of this Agreement the sale of any Parcel to which the Objection(s) apply (the "**Exclusion Election**", together with the Termination Election, the "**Objection Election(s)**"), which rights shall be set forth in the Sale Motion. The Seller shall notify the Purchaser, in writing, within five (5) business days of a filing of a timely objection to the Sale Motion. The Purchaser shall have five (5) business days following written notification from the Seller to exercise an Objection Election in writing to the Seller. If the Purchaser elects the Termination Election, the Seller shall instruct the Title Company to immediately refund the Deposit to the Purchaser and, by that action, this Agreement shall be terminated and of no further force or effect. If the Purchaser elects the Exclusion Election, the Seller shall instruct the Title Company to immediately refund the Deposit for each excluded Parcel to the Purchaser and said Parcels will be removed from the effect of the Sale Order.

Once the Election Period has expired without the Purchaser exercising the Termination Election (which date shall be hereafter referred to as the “**Effective Date**”), the Purchaser shall be bound to purchase the Parcels that have not been excluded (the accepted Parcels being those hereafter continuing to be referred to as the “**Parcels**”). Nothing in this Agreement shall preclude the Seller from electing, prior to entry of the Sale Order, to exclude a Parcel from this Agreement in the event of a timely objection, even in the event the Purchaser does not elect the Objection Elections.

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. **All Sales are “As-Is”, Without Representation or Warranty; Purchaser’s Duty to Review.** PURCHASER ACKNOWLEDGES AND AGREES THAT UPON CLOSING THE SELLER, ON BEHALF OF THE BANKRUPTCY ESTATE, SHALL SELL AND TRANSFER TO THE PURCHASER AND THE PURCHASER SHALL ACCEPT EACH PARCEL “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 ANY 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 OR THE BANKRUPTCY ESTATE 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, PARCEL 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 OR THE BANKRUPTCY ESTATE, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT. THE PURCHASER REPRESENTS TO THE SELLER THAT THE PURCHASER IS WAIVING SUCH INVESTIGATIONS OF THE PARCELS, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AND THE PURCHASER IS SATISFIED 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 EACH PARCEL.

7. Seller and Purchaser Deliverables.

A. The Purchaser has advised the Seller that the Purchaser will create a separate land trust to hold title to each Parcel as it is purchased pursuant to this Agreement. Promptly after the Effective Date, the Purchaser will provide the Seller the names of the land trusts (the “**Trust Designations**”) that will take title to each Parcel. Within three (3) business days of entry of the Sale Order, the Seller will order from the Title Company a separate Owner’s Policies of Title Insurance (the “**Owners Policies**”) for each Parcel in the name of the designated land trust. The Owners Policies shall be provided to the Purchaser at the Bankruptcy Estate’s expense.

B. The Purchaser shall purchase all of the Parcels, approved by the Sale Order, within sixty (60) days of the entry of the Sale Order. The Closings of the sale of each Parcel shall occur no earlier than three (3) business days after the Purchaser provides written notice to the Title Company and the Seller that the Purchaser is ready to close the purchase of the Parcel(s) identified in the notice.

C. At each Closing, the Seller, on behalf of the Bankruptcy Estate, 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 Parcel(s) to the designated land trust(s), (c) a settlement sheet, and (d) such other documents required to effect a transfer of the Parcel(s) under applicable state law. The Seller, on behalf of the Bankruptcy Estate, shall convey title to each Parcel, and the Purchaser shall accept title to each Parcel, subject to all easements, right of ways, leases (recorded or unrecorded), covenants, restrictions, declarations or agreements of record, plus those matters that would be disclosed upon a visual inspection of the Parcel(s) (the “**Permitted Exceptions**,” with the condition of the title subject only to the Permitted Exceptions being referred to herein as the “**Acceptable Title**”), but expressly excluding any mortgages, deeds of trust, tax liens, judgments, mechanics’ liens or other monetary encumbrances against the Parcel(s).

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 to the Purchaser or the Title Company.

D. At each 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 2 hereof. Time is of the essence with respect to each Closing.

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

A. The Purchaser is not an insider of the Debtors;

B. The proposed sales represent arms-length transactions 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. 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 a Parcel is 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 for the Parcel to the Purchaser and neither party shall have any further obligation hereunder regarding the Parcel. In the event a Parcel is damaged prior to Closing, and there is insurance to cover the loss, then the Purchaser shall proceed with Closing in which event the Parcel Price shall be reduced by all insurance proceeds payable in respect of such damage collected by the Seller before the Closing Date 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 a Parcel, 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, as to only that Parcel, by written notice to the Seller, and upon receipt of such written notice, the Seller shall instruct the Title Company to immediately refund the Deposit for the Parcel to the Purchaser and neither party shall have any further obligation hereunder regarding the Parcel, or (b) elect to proceed with Closing, in which event the Parcel 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.

10. 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.

11. Closing Adjustments and Costs.

A. The Purchaser shall pay the cost of all (i) documentary stamps, recordation taxes, transfer taxes and any other similar tax related to the conveyance of title to the Parcels and (ii) the closing costs of the Title Company, with the exception of the cost associated with the Owners Policies.

B. If, at the time of a Closing, a Parcel is 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 the 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 a 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; (e) rents that have been paid for the month in which a Closing occurs; and (f) any other charges customarily prorated in similar transactions.

12. 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.

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

14. **Events of Default.**

A. The Purchaser shall be in default under this Agreement if the Purchaser (1) fails to pay the balance of the Parcel Price on or before the applicable 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 29 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 as the Seller's sole remedy, all payments made hereunder shall be forfeited to and retained by the Seller, on behalf of the Bankruptcy Estate, and the Seller shall be entitled to the retention of the Deposit as liquidated damages and not a penalty.

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.

15. **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 all Closings.

16. **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: GPH LLC
111 E. 3rd Street, #152
Mishawaka, IN 46546

17. 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.

18. 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.

19. 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.

20. Entire Agreement. All prior understandings and agreements between the Seller and the 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.

21. **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.

22. **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.

23. **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.

24. **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.

25. **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 Parcel are located, the date for such performance shall be the next succeeding business day.

26. **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.

27. **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.

28. **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 23 hereof.

29. **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.

30. 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:

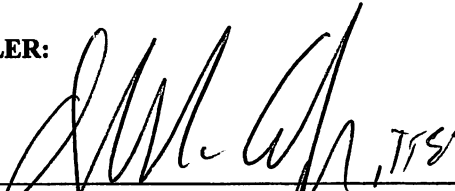
GPH, LLC, an Indiana limited liability company

By: 

Printed: Matt Selis

Title: member

SELLER:



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 attached Exhibit A- List of Parcels- is hereby incorporated herein by reference.

EXHIBIT A**List of Parcels**

<u>Parcel Address</u>	<u>Parcel Purchase Price</u>
906 W. Indiana, Elkhart, IN 46516	\$27,600.00
2641 Prescott Drive, Mishawaka, IN 46544	\$51,600.00
3022 Pleasant Street, South Bend, IN 46615	\$32,600.00
1127 Parkway, South Bend, IN 46619	\$29,600.00
1811 E. McKinley Ave., South Bend, IN 46617	\$57,600.00
721 E. 5 th Street, Mishawaka, IN 46544	\$23,600.00
811 Carlton Street, Mishawaka, IN 46544	\$29,100.00
227 E. LaSalle Ave., Mishawaka, IN 46545	\$31,600.00
1711 South Carlisle Street, South Bend, IN 46613	\$12,100.00
1232 S. 31 st Street, South Bend, IN 46615	\$21,600.00
1629 Nash Street, South Bend, IN 46635	\$12,100.00
709 S. Sheridan, South Bend, IN 46619	\$12,100.00
732 S. Illinois Street, South Bend, IN 46619	\$12,100.00
607 Rush Street, South Bend, IN 46601	\$12,100.00
2807 Milburn Boulevard, Mishawaka, IN 46544	\$21,600.00
Total:	\$387,000.00