

Schuyler G. Carroll (SC-1234)
ARENT FOX LLP
1675 Broadway
New York, New York 10019
(212) 484-3900

Hearing Date: March 15, 2007
Hearing Time: 10:00 a.m

Attorney for Roy Babitt, Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In re

Chapter 7

ANITA S. WIGGINTON,

Case No. 04-16523 (RDD)

Debtor.

-----x

**MOTION FOR AN ORDER AUTHORIZING THE SALE OF
PROPERTY OF THE ESTATE AND FIXING POST-CLOSING RENTAL
RATES PURSUANT TO 11 U.S.C. § 363(b)(1), (f), (h), AND 105 AND
FEDERAL RULES OF BANKRUPTCY PROCEDURE 2002(a)(2) AND 6004**

TO THE HONORABLE ROBERT D. DRAIN:
UNITED STATES BANKRUPTCY JUDGE

Roy Babitt, Chapter 7 Trustee (the “Trustee”) of the estate of Anita S. Wigginton (the “Debtor”) by and through his attorney, Arent Fox LLP, hereby submits this motion (the “Motion”) seeking an order authorizing the sale of property of the estate and fixing post-closing rental rates pursuant to sections 363(b)(1), (f), (h) and 105 of Title 11 of the United States Code (the “Bankruptcy Code”) and Federal Rules of Bankruptcy Procedure 2002(a)(2) and 6004 (the “Bankruptcy Rules”), hereby sets forth and alleges:

PRELIMINARY STATEMENT

1. The Debtor and Carolyn Billington (“Billington”) are co-owners of the multifamily property located at 3989 Paulding Avenue, Bronx, NY 10466 (the “Property”). The Trustee seeks an order of this Court authorizing the sale of the Property

pursuant to section 363(b), (h) and (f) of the Bankruptcy Code. It is expected that the estate's share of the sale proceeds will permit a dividend to creditors. Absent such a sale, however, it is likely that creditors will not receive any distributions.

2. The Property consists of six units, three of which are occupied by third party tenants, and one is currently vacant. The Trustee retained G.E.M. Auction Corp. ("GEM") to market the Property for sale and has received an offer for the Property from MSD Group LLC ("MSD" or the "Purchaser") for \$425,000.00. The Trustee seeks an order of this Court approving the sale of the Property to the Purchaser, subject to higher bids, pursuant to section 363 of the Bankruptcy Code. The sale is in accordance with the prior agreement among the Trustee, the Debtor, and Billington, memorialized in the Stipulation and Order entered by this Court on June 28, 2006. A copy of the Stipulation and Order is annexed hereto as **Exhibit A**.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334 and the Standing Order of Referral of Cases to Bankruptcy Judges for the Southern District of New York, dated July 10, 1984 (Ward, acting C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b). The venue of this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 363 and 105 of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 2002(a)(2) and 6004 (the "Bankruptcy Rules").

BACKGROUND

4. On October 8, 2004, the Debtor filed a Chapter 13 bankruptcy petition under Title 11 of the United States Code (the "Bankruptcy Code"). On March 11, 2005 Countrywide Home Loans objected to confirmation of the Debtor's Chapter 13 plan. On

May 10, 2005, the Debtor voluntarily converted from Chapter 13 to Chapter 7 and Roy Babitt was appointed the Chapter 7 Trustee.

The Property

5. The Debtor and Billington own the Property as joint tenants. The Property is a six unit multifamily dwelling. The Debtor and her sister, Carolyn Billington, each occupy one unit of the Property. Three of the other four units are occupied by tenants, with rents now being collected by GEM, and one unit is currently vacant.

6. On March 16, 2006, the Trustee filed a complaint (the “Complaint”) against the Debtor and Billington as co-owners of the Property. The Complaint sought an order permitting the sale of the Property pursuant to section 363(h) of the Bankruptcy Code and compelling the Debtor and Billington to turnover all post-petition rents pursuant to section 541(a)(6) of the Bankruptcy Code. Prior to the filing of the Complaint, the Trustee had only received partial payment of the rents.

7. On April 4, 2006, the Court entered an Order authorizing the retention of GEM as the real estate broker and managing agent for the Property.

8. On April 24, 2006, Carolyn Billington filed a Chapter 13 Bankruptcy petition under the Bankruptcy Code. Billington asserts that her filing was an error, and is in the process of having said case dismissed.

Sale Of The Property Was Authorized By This Court And The Non-Debtor Co-Owner:

9. After the filing of the Complaint, the Trustee, the Debtor and Billington reached an agreement to permit a sale of the Property. On June 28, 2006, this Court entered a Stipulation and Order between the Trustee, the Debtor and Billington memorializing that agreement. The Stipulation and Order provides among other things:

- The Trustee is authorized to market and sell the Property, pursuant to section 363(h) of the Bankruptcy Code.
- The Trustee has the sole authority to sell both the Debtor's and Billington's interest in the Property.
- Upon receipt of an offer by GEM, the Trustee will make a motion before the Court, seeking approval of the sale of the Property pursuant to section 363 of the Bankruptcy Code.
- After payment of all expenses associated with the Property and the sale thereof the Trustee and Billington each are entitled to one-half of the remaining proceeds from the sale of the Property.
- The Debtor is not required to pay rent until the Property is sold.
- Billington is not to be required to pay rent until the Property is sold, provided however, Billington is required to fully cooperate with the Trustee and any of his agents (including GEM) and to vacate the Property within 120 days of the of the closing date of the sale.

10. The Debtor's Schedule D lists a mortgage on the Property with Countrywide Home Loans in the amount of \$165,024.31. The Debtor's Schedule E indicates \$0.00 in unsecured priority claims and Schedule F indicates \$25,063.95 in unsecured non-priority claims. A total of \$210,008.00 in claims have been filed against the Debtor's estate, including the claim filed by Countrywide Home Loans in the amount of \$164,868.79.

The Trustee's Extensive Marketing Efforts:

11. At the Trustee's request, GEM worked diligently to attempt to find a suitable purchaser for the Property. After more than six months of intensive marketing efforts by GEM, the Trustee identified several different parties interested in purchasing

the Property. MSD has entered into a contract (the “Contract”) for the purchase of the Property for the sum of \$425,000.00, subject to this Court’s approval and higher and better offers. The Trustee and GEM are hopeful that additional, higher offers will be received prior to the auction (the “Auction”), since several other parties continue to express interest. In light of GEM’s extensive efforts to recruit potential purchasers and the results thereof, however, the Trustee believes that the offer from MSD represents a fair value for the Property. The Contract permits the Trustee to conduct an auction and continue marketing the Property until the Auction, so that GEM may solicit higher and better offers and the estate may obtain maximum value for the Property. A copy of the Contract is annexed hereto as **Exhibit B**.

The Contract Requires The Trustee To Seek An Order Setting Post-Closing Rental Rates

12. As described above, the Debtor and Billington are not paying rent at the present. In addition, they are not obligated to do so until after the closing. As a result, MSD expressed concern that disputes might arise with the Debtor and Billington as to the amount of rent that should be charged and related issues. In order to ease MSD’s concerns, MSD required the Trustee to seek entry of an order fixing the amount of the post-closing rent to be paid by the Debtor and Billington in this regard. Paragraph 15(b) of the Contract provides as follows:

Trustee agrees to seek approval of the following terms as part of the Trustee’s motion for an Approval Order: (i) that for six (6) months after the Closing Date (the “Rental Period”), the rent for the Apartment shall be \$1,200.00 per month; (ii) that if Billington remains in the Apartment after the expiration of the Rental Period, the rent shall be \$2,400.00 per month (the “Holdover Rent”); (iii) that at closing, Trustee shall establish an escrow in the amount of \$14,400.00 from the proceeds of the Purchase Price (the “Rent Escrow”); (iv) that if Billington remains in the Apartment after the expiration of the Rental Period and does not pay the Holdover Rent, Trustee shall pay to Purchaser from the Rent Escrow the amount of Holdover Rent due and payable to Purchaser, provided (A) that

Purchaser shall only be entitled to payments from the Rent Escrow for amounts of Holdover Rent due for that period of time which Billington actually remains in possession of the Apartment, without the consent of Purchaser and does not pay rent, during the six (6) months immediately after the expiration of the Rental Period, (B) Purchaser provides evidence reasonable to Trustee of the amounts paid by Billington and amounts payable to Purchaser, (C) Purchaser provides to Trustee an affidavit executed by Purchaser setting forth the amounts paid and amounts payable to Purchaser; (v) that any amounts remaining in the Rent Escrow shall be paid in accordance with the Approval Order; and (vi) nothing contained herein shall create any rights in favor of Billington.

13. Thus, the Contract requires the Trustee to seek entry of an order (a) fixing the post-closing rental rates, (b) requiring the Debtor and Billington to pay post-closing rent, (c) requiring the Debtor and Billington to pay double rent if they do not vacate the Property within six months, and (d) providing for \$14,400.00 to be held in escrow by the Trustee for six months.

Breakup Fees

14. In order to induce MSD to act as the stalking horse, MSD required the Trustee to grant MSD a break up fee providing for the payment to MSD in the amount of 3% of the purchase price or \$12,750.00, in the event MSD is not the successful bidder at the Auction. Thus, paragraph 3(d) of the Contract provides as follows:

Trustee's obligations under this Agreement are conditioned upon Trustee's not receiving, after notice and hearing (including, the Sale Hearing), a Competing Offer that is a "higher or better" offer approved or authorized by the Court. If such a higher and better offer is accepted, approved, authorized by the Court and the Trustee consummates a transaction with the person or entity that submitted such Competing Offer, (i) this Agreement will be null and void (except to the extent provided in the final sentence of this subparagraph); (ii) after title to the Property closes to the Competing Offeror, Trustee will return the Down Payment to Purchaser and Trustee shall pay to Purchaser a fee equal to three percent (3%) of the Purchase Price (the "Break-Up Fee") so long as Purchaser is not in default of its obligations hereunder; and (iii) after Trustee returns the Down Payment to Purchaser and pays the Break-Up Fee to Purchaser, neither party will have any further rights or obligations hereunder, except obligations under this Agreement that by their express terms, survive the termination of this Agreement. If Purchaser has bid an amount at the Sale Hearing, or at the time scheduled for such bids by the Court that is less than the Competing Offeror, this Agreement will

remain in effect until the Competing Offeror closes title to the Property or defaults in its obligation; in the latter event, Purchaser will be obligated to close title under this Agreement at a Purchase Price equal to its highest bid at the Sale Hearing within ten (10) business days notice from Trustee that the Competing Offeror has defaulted in its obligation and that Trustee will convey the Property to Purchaser.

15. Accordingly, the Contract requires the Trustee to seek such entry of an order authorizing the Trustee to pay MSD \$12,750.00 in the event MSD is not the successful bidder at the Auction.

RELIEF REQUESTED HEREIN

16. The Trustee seeks an order (i) authorizing the Trustee to sell the Property to the highest and best bidder at the Auction or pursuant to the Contract with MSD (the “Successful Bidder”), subject to any higher or better offers as may be made at the hearing to consider the same; (ii) authorizing the sale of the Property free and clear of all liens, claims, interests and encumbrances, with all such liens, claims, interests and encumbrances attaching to the net proceeds of the sale, in their order of priority and to the extent of their validity, net of all Trustee commissions, attorneys’ fees and expenses, and all other expenses of the sale, pursuant to sections 363(b), (f), (h), 105 and 506(c) of the Bankruptcy Code; (iii) fixing post-closing rental rates; (iv) allowing the Trustee to assume and assign any executory contracts and unexpired leases to the Successful Bidder and in determining that the Successful Bidder is a good faith purchaser and is thereby entitled to the protections afforded by section 363(m) of the Bankruptcy Code.

17. The Trustee is authorized to sell property of the estate pursuant to section 363 of the Bankruptcy Code, which provides in relevant part that “the Trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). In addition, the Trustee has the authority

to sell property free and clear of all liens and encumbrances. 11 U.S.C. § 363(f). The Trustee's authority to sell the Property is amplified in Bankruptcy Rules 6004(f)(1), which in relevant part states that "[a]ll sales not in the ordinary course of business may be by private sale or by public auction." Chapter 7 Trustees often exercise the authority to sell debtors' assets. *In re Stein*, 281 B.R. 845, 848 (Bankr. S.D.N.Y. 2002) (discussing the Trustee's right to sell the assets of the Debtor under the Bankruptcy Code); *In re Bakalis*, 220 B.R. 525, 531–32 (Bankr. E.D.N.Y. 1998) (explaining the Trustee's authority to conduct the sale of the debtor's assets).

18. Furthermore, the Trustee is authorized to sell property of the estate that is owned with another non-debtor party where:

“(h) [n]otwithstanding subsection (f) of this section, the trustee may sell both the estate's interest, under subsection (b) or (c) of this section, and the interest of any co-owner in property in which the debtor had, at the time of the commencement of the case, an undivided interest as a tenant in common, joint tenant, or tenant by the entirety, only if-- (1) partition in kind of such property among the estate and such co-owners is impracticable; (2) sale of the estate's undivided interest in such property would realize significantly less for the estate than sale of such property free of the interests of such co-owners; (3) the benefit to the estate of a sale of such property free of the interests of co-owners outweighs the detriment, if any, to such co-owners; and (4) such property is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power.” 11 U.S.C.A. § 363(h).

Authorization To Sell The Property

19. The Trustee seeks authorization to sell the Property to MSD, according to the terms of the Contract, a copy of which is annexed hereto as **Exhibit B**, pursuant to which the Trustee has agreed to sell the Property, subject to higher or better offers.

Sale Free And Clear

20. As noted above, the Trustee seeks authorization to sell the Property free and clear of security interests, liens, claims and encumbrances at the Auction, if any, with such security interests, liens, claims and encumbrances, if any, to attach to the proceeds of sale. The Trustee is advised that there is value in the Property to benefit the estate. If any holder of any security interest, lien, claim or encumbrance does not object to the proposed sale, the Trustee will request the Court enter an order approving the sale of the Property, free and clear of any security interests, liens, claims and encumbrances as provided by section 363(f) of the Bankruptcy Code, with such security interests, liens, claims and encumbrances to attach to the proceeds of sale.

Fixing Post-Closing Rental Rates

21. Pursuant to the terms of the Contract, MSD requires the Trustee to seek Court approval fixing post-closing rental rates. Accordingly, pursuant to the terms of the Contract, and subject to Court approval of the same, the Trustee shall pay to MSD, any funds received by the Trustee, after the date of closing, attributed to unpaid or uncollected rents and any amounts received, that stem from lease agreements associated with the four rental units of the Property.

The Standard For Break-Up Fees:

22. As noted above, the Trustee seeks authorization to grant MSD a break up fee providing for the payment to MSD in the amount of 3% of the purchase price or \$12,750.00, in the event MSD is not the successful bidder at the Auction. The Second Circuit has consistently recognized the usefulness and necessity of break-up fees in the bidding process. "Agreements to provide breakup fees . . . are meant to compensate the potential acquirer who serves as a catalyst or 'stalking horse' which attracts more

favorable offers.” *In re Marrose Corp.*, 1992 WL 33848, 5 (Bankr. S.D.N.Y. 1992).

Breakup fees are “legitimately necessary to convince a ‘white knight’ to enter the bidding by providing some form of compensation for the risks it is undertaking.” *Samjens Partners I. v. Burlington Indus., Inc.*, 663 F. Supp. 614, 624 (S.D.N.Y. 1987). That risk includes embarking “on a one-sided commitment . . . the debtor must offer a prospective purchaser an incentive to be a stalking hours – to commit to buy at a set price. The breakup fee is one strong incentive to commit to the transaction.” Jonathan M. Landers and Kathryn A. Coleman, *Selling an Operating Business in Bankruptcy*, 33 UCC L.J. 387, 411 (2001, No. 4).

Executory Contract Standard of Review

23. The Trustee has the power to assign and reject executory contracts pursuant to section 365. *The In re Chi-Feng Huang*, 23 B.R. 798, 800 (Bankr. 9th Cir. 1982). "Generally, absent a showing of bad faith, or an abuse of business discretion, the debtor's business judgment will not be altered." *In re G Survivor Corp.*, 171 B.R. 755, 757-58 (Bankr. S.D.N.Y. 1994).

NOTICE OF SALE

24. Bankruptcy Rule 2002(a)(2) requires that all creditors of the Debtor shall receive at least twenty (20) days notice of the proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the Court for cause shown shortens the time or directs another method of giving notice.

25. The Trustee respectfully requests that the Court authorize notice of the Hearing, the Motion and the Auction, pursuant to Federal Rules of Bankruptcy Procedure 2002(a)(2) and 6004(a) by service of a copy of the Notice of Hearing by first class mail

to (i) the United States Trustee; (ii) all creditors; (iii) all those who filed a notice of appearance; and (iv) all parties known to have any interest in purchasing the Property.

AUCTION PROCESS

26. In order to ensure the highest and best price is obtained for the Property, the Trustee proposes to hold an auction at the hearing subject to the terms and conditions outlined in the Notice of Hearing annexed hereto as **Exhibit C** and the Terms and Conditions annexed hereto as **Exhibit D**. In summary, the terms and conditions provide that:

- (a) All bids must be in the form of cash or other immediately available funds, must be without contingencies or conditions of any kind, and must be irrevocable.
- (b) At the conclusion of bidding, the Trustee shall determine if any of the bids made in open Court are an acceptable highest and best bid.
- (c) Counsel for the Trustee shall ask the Bankruptcy Court to enter a written order in open court approving the sale to the successful bidder.
- (d) The minimum initial overbid for the Property is \$445,000.00 and will continue in \$5,000.00 increments, unless the Trustee or his representatives determines otherwise.
- (e) Any person wishing to bid on the Property shall deposit with the Trustee prior to the commencement of the Auction a deposit in the amount of 10% of the Minimum Bid Price in the form of a cashier's check or certified check drawn on a bank acceptable to the Trustee, such cashier's check or certified bank check made payable to "Roy Babitt, Trustee" (the "Bid Deposit"). Only those parties who submit a Bid Deposit to the Trustee prior to the commencement of the Auction shall be entitled to bid on the Property at the Auction. The deposit made by the successful bidder shall be non-refundable except in the event that a closing does not take place as a consequence of the disapproval of the sale by the Trustee or the Bankruptcy Court. The Bid Deposit shall be applied to the purchase price.
- (f) The purchase and sale of the Property will close within three business days of the entry of an order of the Court approving the terms of the sale of the

Property. If the successful bidder fails to pay in full and close within three business days, the Bid Deposit immediately shall be forfeited and become property of the estate; the successful bidder shall forfeit all rights to purchase the Property and the Trustee shall be permitted to close with the bidder that placed the next highest bid without further order.

- (g) The sale shall be free and clear of all claims, liens, encumbrances and security interests with any such claims, liens, encumbrances or security interests to attach to the net proceeds of the sale.
- (h) The purchaser takes the Property “as is” “where is”. The Trustee makes no representations or warranties whatsoever. The purchaser avers that he/she has not relied on any statements, representations of information furnished by the Trustee or any agent, employee or other person.
- (i) All sales shall be subject to such additional or different terms and conditions as the Trustee or the Court shall require and be announced at the Auction. In no event shall the estate or the Trustee have any liability beyond return of the deposit. Each bidder and purchaser acknowledges that the Trustee is offering the Property for sale in his capacity as the Trustee for the estate of Anita S. Wigginton and not in his individual capacity and, as such, shall have no personal liability.

27. In addition to the foregoing, the Trustee may impose such other terms and conditions as he deems to be in the best interest of the estate, creditors and other parties-in-interests as may be announced at the Auction.

28. Pursuant to section 363(f) of the Bankruptcy Code, the Trustee proposes that the Property be sold free and clear of all liens, security interests, claims, encumbrances and interests if any, which will attach to the net proceeds received by the Trustee with the same force and effect that they now have. The trustee will also seek a ruling that the purchaser is a “good faith” purchaser under section 363(m) of the Bankruptcy Code.

WAIVER OF MEMORANDUM OF LAW

29. This Motion presents no new or novel issues of law and the authorities relied upon are fully set forth herein. Accordingly, the Trustee respectfully requests that the Court waive the requirement set forth in Local Bankruptcy Rule 9013-1(b) that a separate memorandum of law be filed in support of this Motion.

30. No previous application for the relief sought herein has been made to this or any other court, except with respect to the action commenced by the Trustee to compel the sale, which culminated in the entry of the Stipulation Order, as described herein.

CONCLUSION

WHEREFORE, the Trustee respectfully requests that this Court grant the Motion, enter an order granting the relief requested herein and grant such other, further and different relief as this Court deems just and proper.

Dated: New York, New York
January 26, 2007

ARENT FOX LLP
Attorney for Roy Babitt, Chapter 7 Trustee

By: /s/ Schuyler G. Carroll
Schuyler G. Carroll (SC-1234)
1675 Broadway
New York, New York 10019
(212) 484-3900

EXHIBIT A

Schuyler G. Carroll (SC-1234)
ARENT FOX PLLC
1675 Broadway
New York, New York 10019
(212) 484-3900

Attorney for Roy Babitt, Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re

ANITA S. WIGGINTON,

Debtor.

Chapter 7

Case No. 04-16523 (RDD)

-----X
In re

CAROLYN BILLINGTON,

Debtor.

Chapter 13

Case No. 06-10861 (JMP)

-----X
Roy Babitt, Chapter 7 Trustee of the Estate of
Anita S. Wigginton,

Plaintiff,

v.

ANITA S. WIGGINTON and CAROLYN
BILLINGTON,

Defendants.

Adv. Pro. No. 06-01354 (RDD)

-----X

STIPULATION AND ORDER

Roy Babitt, Chapter 7 Trustee (the "Trustee") of the estate of Anita S. Wigginton, Anita S. Wigginton (the "Debtor") and Carolyn Billington (collectively, the "Parties") hereby stipulate and agree as follows:

RECITALS

WHEREAS, on October 8, 2004, the Debtor, Anita Wigginton, filed a Chapter 13 petition under Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code").

WHEREAS, on March 11, 2005, Countrywide Home Loans objected to confirmation of Ms. Wigginton's Chapter 13 plan.

WHEREAS, on May 10, 2005, Ms. Wigginton voluntarily converted from Chapter 13 to Chapter 7 and Roy Babitt was appointed the Chapter 7 Trustee.

WHEREAS, Anita S. Wigginton and Carolyn Billington are co-owners of the multifamily property located at 3989 Paulding Avenue, Bronx, NY 10466 (the "Property").

WHEREAS, the Property is a six unit multifamily dwelling. The Debtor and Ms. Billington each occupy one unit of the Property. The other four units are occupied by four tenants (the "Tenants") with rents collected on a monthly basis.

WHEREAS, Ms. Wigginton's Schedule A lists the Debtor as joint owner of the Property valued at \$600,000.

WHEREAS, Ms. Wigginton's Schedule D lists a mortgage on the Property in favor of Countrywide Home Loans in the amount of \$165,024.31.

WHEREAS, according to that certain deed, dated May 12, 1997, the Debtor and Ms. Billington inherited the Property as joint tenants.

WHEREAS, at the Trustee's request, G.E.M. Auction Corp. ("GEM") conducted a comparative market analysis of the Property. This report valued the Property at an excess of \$600,000.

WHEREAS, the Defendants continue to live on the premises.

WHEREAS, the Trustee objects to the Defendant's collection and receipt of post-petition rents, if any.

WHEREAS, after filing for bankruptcy, the Debtor and/or Ms. Billington have reportedly received several bids. The Debtor and Ms. Billington have provided all information regarding the bids for the Property to the Trustee.

WHEREAS, the Debtor turned over to the Trustee the July 2005 rents and an additional partial payment for October, 2005, however, since that time, Ms. Wigginton has failed to respond to the Trustee's letters and phone calls regarding the turnover of rents collected for the months of August 2005 through March 2006.

WHEREAS, on March 16, 2006, the Trustee filed an adversary complaint to sell the Property pursuant to section 363(h) of the Bankruptcy Code and to compel the Debtor to turnover all post-petition rents pursuant to section 541(a)(6) of the Bankruptcy Code.

WHEREAS, on April 4, 2006, the Trustee retained GEM as the real estate broker and managing agent for the Property.

WHEREAS, on April 24, 2006, Mr. Billington filed a Chapter 13 Bankruptcy petition under the Bankruptcy Code. Ms. Billington concedes that this was an error, and is in the process of having said case dismissed.

WHEREAS, on May 1, 2006, GEM collected rent from the Tenants.

NOW, THEREFOR, IT IS HEREBY STIPULATED, AGREED, ORDERED AND ADJUDGED

1. The Trustee is hereby authorized to market and sell the Property, pursuant to section 363(h) of the Bankruptcy Code.
2. The Parties agree that the Trustee shall have the sole authority to sell both the Debtor's and Ms. Billington's interest in the Property.

3. The parties agree that upon receipt of an offer by GEM, the Trustee will make a motion before the Court, seeking approval of the sale of the Property pursuant to section 363 of the Bankruptcy Court for higher or better offer.

4. The Parties agree that GEM is the only agent authorized to market and sell the Property.

5. The Parties agree that all bids or any other indication of interest in purchasing the Property by the Debtor and Ms. Billington shall be forwarded to GEM within twenty-four hours.

6. The Parties agree that after payment of all expenses associated with the Property, that the Trustee is entitled to one-half of the remaining proceeds from the sale of the Property. No distribution shall be made by the Trustee to any party, including Ms. Wigginton, until all claims against the estate are satisfied.

7. The Parties agree that after payment of all expenses Ms. Billington is entitled to one-half of the remaining proceeds from the sale of the Property. Such proceeds shall be paid at closing.

8. All parties consent to payment of all usual costs at the closing out of the proceeds of sale, prior to the payments to the Trustee and Ms. Billington in paragraph 5 and 6 above including the satisfaction of all liens associated with the joint ownership of the property, including hot water expenses. Should any lien be associated with one party, like a judgment, the satisfaction of that lien shall come out of the share of that party, and not "off the top" as a joint expense. Closing expenses shall be the payment of outstanding taxes, the outstanding mortgage, the brokerage commission (which is set at 6% of the purchase price), and title charges. The parties agree that the purchaser shall receive a Trustee's deed, so that no transfer tax shall be due.

9. By no later than June 29, 2006 Ms. Wigginton and/or Ms. Billington shall provide the Trustee with a full written accounting of all rents received from August 2005 through April 2006, if any. To the extent any rents were retained by Ms. Wigginton or Ms. Billington, said rents will be turned over to the Trustee immediately.

10. The Parties agree that GEM is the only agent authorized to receive all future rents. Ms. Wigginton and Ms. Billington further stipulate that they have and will continue to instruct in writing all tenants at the Property to send rents directly to GEM. GEM shall provide a form of notice to be sent to tenants.

11. Ms. Billington or Ms. Wigginton shall have 15 days from the closing file any proof of claim against Ms. Wigginton's estate. Any claim not filed by such date shall be barred forever.

12. Ms. Billington shall not be required to pay rent until the property is sold and the Trustee releases her from any claim for rent for the period until closing, provided however, Ms. Billington does not fully cooperate with the Trustee, any of his agents (including GEM) or does not vacate the Property within 120 days of closing of the sale.

13. Ms. Wigginton shall not be required to pay rent until the property is sold.

14. The Court shall retain jurisdiction over the terms and conditions of this Stipulation and Order.

15. This Stipulation and Order cannot be amended, modified or superseded except upon written consent of the parties hereto.

16. This Stipulation and Order may be signed in counterparts, with each part being deemed a part of the original document.

17. This Stipulation and Order may be signed by facsimile transmission which signatures shall be treated as original signatures.

18. This Stipulation shall become effective on the date it is signed by the Parties.

Dated: New York, New York
May 5, 2006

Attorney for Debtor for Anita Wigginton

ARENT FOX PLLC
Attorney for Roy Babitt, Chapter 7 Trustee

By: /s/ Edward L. Koester
Edward L. Koester, Esq.
1457 Knapp Street
Bronx, NY 10469
(718) 671-8700

By: /s/ Schuyler G. Carroll
Schuyler G. Carroll (SC-1234)
1675 Broadway
New York, NY 10019
(212) 484-3900

Siegel & Siegel P.C.
Attorney for Debtor for Carolyn Billington

By: /s/ Michael Siegel
Michael Siegel
One Penn Plaza
Suite 4632
New York, NY 10119

SO ORDERED:

/s/Robert D. Drain
THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

June 27, 2006

SO ORDERED:

THE HONORABLE JAMES M. PECK
UNITED STATES BANKRUPTCY JUDGE

June _____, 2006

EXHIBIT B

**3989 Paulding Ave, Bronx, NY
AGREEMENT OF SALE**

THIS AGREEMENT made as of this 3rd day of January, 2007 between Roy Babitt, solely in his capacity as Chapter 7 Trustee ("Trustee") of the bankruptcy estate of Anita Wigginton (the "Debtor") having an address c/o Arent Fox, 1675 Broadway, New York, NY 10019 and MSD Group LLC ("Purchaser") having an address at 1813 51st Street, Brooklyn, NY 11204 .

WHEREAS, Trustee has the right to sell, convey and assign (i) the building and all appurtenant improvements, equipment and fixtures located in the County of Bronx, City and State of New York, known as 3989 Paulding Avenue, Bronx, New York and Section 17, Block 4861, Lot 3 on the New York City Tax Map (the "Building"), (ii) the parcel of land more fully described in the annexed Exhibit A (the "Land", together with the Building, the "Premises"); (iii) any land lying the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and (iv) all leases relating to the Premises (the "Leases") (collectively, the "Property"); and

WHEREAS, Purchaser desires to purchase the Property from the Trustee who desires to sell the Property to Purchaser, in accordance with the terms, covenants and conditions set forth in this Agreement, subject to and contingent upon the approval of the United States Bankruptcy Court for the Southern District of New York (the "Court") in Case No. 04-16523 (RDD), to be reflected in an appropriate Order of the Court (the "Approval Order");

NOW, THEREFORE, in consideration of the terms, covenants and conditions as set forth hereinafter, the parties agree as follows:

1. Agreement to Sell and Purchase.

(a) Trustee agrees to sell, convey and assign Trustee's right, title and interest in and to the Property to the Purchaser and Purchaser agrees to purchase, accept and assume title to the Property no later than the tenth (10th) day following the entry of the Approval Order (such date, as the same may be extended by written agreement of the parties, solely pursuant to the terms of this Agreement, the "Closing Date"). The closing will occur at 10:00 a.m. on the Closing Date at the offices of Trustee's attorney.

(b) TIME IS OF THE ESSENCE for Purchaser to perform all of its obligations under this Agreement and to close the transactions contemplated herein by the Closing Date. Purchaser has no right to postpone the Closing Date. Trustee, in its sole discretion, may postpone the Closing Date. If the Closing Date is so postponed by the Trustee, Purchaser may request an adjournment of the closing to a date which is no later than five (5) business days after the date fixed by Trustee. The term "business day" means a day when commercial banks in New York are generally open for the transaction of business.

2. Amount and Manner of Payment of Purchase Price.

(a) Purchaser agrees to pay Trustee, FOUR HUNDRED AND TWENTY FIVE THOUSAND DOLLARS (\$425,000.00) for the Property (the "Purchase Price") subject only to such prorations and/or closing adjustments provided for under this Agreement. Purchaser will pay the Purchase Price to Trustee as follows: (i) forty-two thousand five hundred dollars (\$42,500.00) (the "Down Payment") on signing of this Agreement, by immediately available federal funds wire transfer or by unendorsed certified or official check subject to collection, to be held by Trustee in escrow and (ii) the difference between the Purchase Price and the Down Payment, in full on the Closing Date, subject to such prorations and/or closing adjustments provided for under this Agreement (the "Balance"). At closing, Purchaser will pay the Balance to Trustee's direct order or as Trustee otherwise directs, in any case, by immediately available federal funds wire transfer or by unendorsed certified or official bank checks payable to the direct order of Trustee or its designees, drawn on a bank or trust company that is a member of the Federal Reserve System. Any checks accepted by Trustee will be deemed accepted subject to collection.

(b) If the Down Payment is paid by a check that fails due collection, Trustee, at its option, may declare this Agreement null, void and of no force and effect, and may pursue any remedies against Purchaser upon said check under this Agreement or as permitted by law. Trustee's remedies under those circumstances are cumulative.

(c) All personal property, if any, owned by the Trustee and located on the Property and used in connection therewith shall be included in this transaction. Any personal property that is owned by the manager of the Premises or by any tenant or person in possession of the Premises, or any portion thereof, is excluded from this Agreement. No portion of the Purchase Price shall be deemed paid for such personal property.

3. Bankruptcy Court Approval.

(a) Trustee's obligations under this Agreement are entirely subject to higher and better offers and contingent upon, approval of the transaction embodied in this Agreement by the Court, as may be reflected in the Approval Order. Purchaser acknowledges that the application for the Approval Order will be made on notice to creditors and interested parties as may be proscribed by the Court in accordance with all applicable provisions of Title 11, United States Code (the "Bankruptcy Code") and such other parties as Trustee deems appropriate.

(b) Trustee agrees to submit an initial application for the Approval Order within twenty (20) days of Trustee's delivery of a signed copy of this Agreement to Purchaser (but a hearing or return date with respect to such application need not occur within that time frame). Trustee agrees to seek a return date for a hearing with respect to issuance of the Approval Order (the "Sale Hearing") subject to the constraints of the Court's calendar.

(c) The terms and conditions of sale that govern the proceeding at the Sale Hearing will provide that in order to be considered by the Court, any competing offer (a "Competing Offer") must satisfy the following terms and conditions: (i) the Competing Offer must be substantially similar to the terms and conditions of this Agreement; (ii) a bidder

submitting a Competing Offer (the "Competing Offeror") must sign an agreement agreeing to be bound by the terms and conditions of this Agreement (subject only to identifying the Competing Offeror as the purchaser and incorporating economic terms advanced at the Sale Hearing); (iii) the Competing Offeror must demonstrate, to the satisfaction of Trustee and the Court in their discretion, evidence of its ability to conclude the transaction upon the terms and conditions of this Agreement, without material delay, (iv) the Competing Offer may not be conditioned upon (A) financial or mortgage contingencies or (B) the outcome of unperformed due diligence by the Competing Offeror with respect to the Property; (v) the Competing Offeror must provide, before the commencement of the Sale Hearing, a certified check made payable to Trustee equal to ten percent (10%) of the Competing Offer; and (vi) the Competing Offer must provide for a purchase price that is at least \$15,000.00 higher than the Purchase Price.

(d) Trustee's obligations under this Agreement are conditioned upon Trustee's not receiving, after notice and hearing (including, the Sale Hearing), a Competing Offer that is a "higher or better" offer approved or authorized by the Court. If such a higher and better offer is accepted, approved, authorized by the Court and the Trustee consummates a transaction with the person or entity that submitted such Competing Offer, (i) this Agreement will be null and void (except to the extent provided in the final sentence of this subparagraph); (ii) after title to the Property closes to the Competing Offeror, Trustee will return the Down Payment to Purchaser and Trustee shall pay to Purchaser a fee equal to three percent (3%) of the Purchase Price (the "Break-Up Fee") so long as Purchaser is not in default of its obligations hereunder; and (iii) after Trustee returns the Down Payment to Purchaser and pays the Break-Up Fee to Purchaser, neither party will have any further rights or obligations hereunder, except obligations under this Agreement that by their express terms, survive the termination of this Agreement. If Purchaser has bid an amount at the Sale Hearing, or at the time scheduled for such bids by the Court that is less than the Competing Offeror, this Agreement will remain in effect until the Competing Offeror closes title to the Property or defaults in its obligation; in the latter event, Purchaser will be obligated to close title under this Agreement at a Purchase Price equal to its highest bid at the Sale Hearing within ten (10) business days notice from Trustee that the Competing Offeror has defaulted in its obligation and that Trustee will convey the Property to Purchaser.

(e) If the application for the Approval Order is denied or rejected by the Court, then this Agreement will be deemed canceled, in which event, (i) this Agreement will be null and void; (ii) Trustee will return the Down Payment to Purchaser if Purchaser is not in default of its obligations under this Agreement; and (iii) after Trustee returns the Down Payment to Purchaser, neither party will have any further rights or obligations hereunder, except obligations under this Agreement that, by their express terms, survive the termination of this Agreement.

4. Inspection and Condition of the Property.

(a) Purchaser or its agents have examined the Property, both inside and outside, and the contents thereof and all other matters of significance affecting, or otherwise deemed relevant by Purchaser with respect to the Property. Purchaser is a sophisticated investor and its valuation of, and its decision to purchase the Property is based upon its own independent expert evaluations of such facts and materials deemed relevant by Purchaser and its agents. Purchaser covenants and agrees to accept title to the Property, AS IS, WHERE IS, WITH ALL

FAULTS, as of the date hereof, subject to use, wear and tear and deterioration through closing, and Trustee is not obligated to make any repairs, alterations, improvements or additions to the Property. Purchaser acknowledges that it has not relied on and will not rely on, and Trustee has not made and is not liable for, or bound by, any express or implied warranties, guarantees, statements, representations or information pertaining to the Property or relating thereto made or furnished by Trustee, its affiliates, or any real estate broker, agent or third party representing or purporting to represent Trustee, to whomever made or given, directly or indirectly, orally or in writing. Upon closing, Purchaser shall assume the risk that adverse matters, including but not limited to, adverse physical or construction defects or adverse environmental, health or safety conditions, may not have been revealed by Purchaser's investigation and inspections.

(b) If Purchaser, with knowledge of (i) a default of any of the covenants, agreements or obligations to be performed by Trustee under this Agreement and/or (ii) any breach or inaccuracy in any representation or warranty of Trustee (if any) under this Agreement, nonetheless elects to proceed to closing, then, upon the consummation of the closing, Purchaser shall be deemed to have waived any such default and/or breach or inaccuracy and shall have no claim against Trustee with respect thereto. This Section 4 shall survive the closing.

5. Disposition of Down Payment. The Down Payment will be held and disbursed as follows: (a) if the closing takes place, the Down Payment will be retained by Trustee; (b) if this Agreement is terminated in accordance with its terms, the Down Payment will be paid to, or upon the instructions of, the party entitled thereto in accordance with the provisions of this Agreement; or (c) if the closing does not take place by reason of the failure of a party to comply with such party's obligations hereunder, the Down Payment will be paid to the party entitled thereto in accordance with the provisions of this Agreement.

6. Closing Requirements.

(a) At closing, Trustee shall deliver to Purchaser the following:

(i) a deed, in the form of a Trustee's Deed conveying the Property to Purchaser and in proper form for recording, duly executed by Trustee (the "Deed");

(ii) an assignment and assumption agreement with respect to the Leases (without recourse and without representation or warranty) with Trustee, as assignor, and Purchaser, as assignee, which shall provide for the assignment to Purchaser of Trustee's interest in the Leases and the assumption by Purchaser of all of landlord's obligations under the Leases, duly executed by Trustee;

(iii) a notice letter to all of the tenants under the Leases, advising them of the conveyance of the Property and directing them to pay rent to Purchaser (or Purchaser's designee, or to Trustee, if such rent is attributable to the time period prior to the Closing Date), duly executed by Trustee;

(iv) all files and documents relating to the Leases, that are in Trustee's possession;

(v) any security deposits paid by tenants and in possession of Trustee as of the Closing Date (any such amounts to be paid to Purchaser as a setoff against the Balance);

(vi) a certification as to Trustee's non-foreign status which complies with the provisions of Section 1445(b)(2) of the Internal Revenue Code of 1986, as amended, duly executed by Trustee;

(vii) TP-584, RPT, RP-5217(NYC), IT-2663 (if applicable) and 1099 forms completed with respect to the sale of the Property, duly executed by Trustee and acknowledged (if necessary);

(viii) a closing statement between Trustee and Purchaser, setting forth the prorations and closing adjustments to the Purchase Price with respect to the Property, duly executed by Trustee;

(ix) all keys to the Property that are in Trustee's possession; and

(x) any other documents as may be required in connection with the transactions contemplated by this Agreement or by applicable law.

(b) Purchaser's Closing Requirements

(i) the Balance;

(ii) New York City Department of Housing Preservation and Development Property Registration Form, duly executed by Purchaser and the managing agent of the Property;

(iii) an assignment and assumption agreement with respect to the Leases (without recourse and without representation or warranty) with Trustee, as assignor, and Purchaser, as assignee, which shall provide for the assignment to Purchaser of Trustee's interest in the Leases and the assumption by Purchaser of all of landlord's obligations under the Leases, duly executed by Purchaser;

(iv) a notice letter to all of the tenants under the Leases, advising them of the conveyance of the Property and directing them to pay rent to Purchaser (or Purchaser's designee, or Trustee, if such rent is attributable to the time period prior to the Closing Date), duly executed by Purchaser;

(v) TP-584, RPT, and RP-5217(NYC) forms completed with respect to the sale of the Property, duly executed by Purchaser and acknowledged (if necessary);

(vi) a resolution of Purchaser evidencing the authority of Purchaser to enter into this Agreement and to execute and deliver documents required to be executed and delivered by Purchaser to consummate the transaction contemplated herein;

(vii) a closing statement between Trustee and Purchaser, setting forth the prorations and closing adjustments to the Purchase Price with respect to the Property, duly executed by Purchaser; and

(viii) any other documents as may be required in connection with the transactions contemplated by this Agreement or by applicable law.

7. Closing Costs.

(a) Purchaser will pay or cause to be paid (i) all premiums and charges in connection with any Title Report (as hereinafter defined); (ii) the costs of Purchaser's due diligence, including fees due to its consultants, and (iii) all lenders' fees related to any financing that may be obtained by Purchaser.

(b) Trustee will pay or cause to be paid one half (1/2) of the New York City Real Property Transfer Tax and New York State Real Estate Transfer Tax that are due in connection with this transaction. Purchaser will pay the remainder of transfer taxes due and all recording and filing charges in connection with the recording of the Deed or otherwise payable in connection with the closing.

(c) In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs from the losing party.

(d) Each of Trustee and Purchaser shall pay the cost of its own legal counsel employed by it in connection with the sale and purchase of the Property.

(e) All of the provisions of this Section 7 shall survive the closing or sooner termination of this Agreement.

8. Adjustments and Prorations. The following are to be apportioned between Trustee and Purchaser as of 11:59 P.M. on the day immediately preceding the closing:

(i) Fuel, at the price then charged by the supplier of such fuel, as of the Closing Date and any New York sales tax due in connection herewith. The certificate of any representative of the fuel company from whom the fuel was purchased will be conclusive as to the cost of the fuel;

(ii) All real estate taxes, water charges and sewer rents, and charges for gas, electricity and all other public utilities; if there is a water meter on the Property, apportionment at the closing shall be based on the last available reading, subject to adjustment after the closing when the next reading is available;

(iii) Vault charges, if any;

(iv) Rents and other charges paid by tenants under the Leases and collected by Trustee prior to the Closing Date;

(v) Any other items which are customarily apportioned in connection with the purchase and sale of real property similar to the Property in the jurisdiction in which the Property is located.

(b) If the Closing Date occurs before the tax rate is fixed for the tax year in which the Closing Date occurs, the apportionment of taxes shall be upon the basis of the tax rate for the preceding year applied to the latest assessed valuation and Trustee and Purchaser shall readjust real estate taxes promptly upon the fixing of the tax rate for the tax year in which the Closing Date occurs.

(c) If there are any unpaid or uncollected rents or other charges in connection with the Leases as of the Closing Date, any amounts received after the Closing Date (by either Trustee or Purchaser) shall be applied as follows: (i) first, to the month in which the closing occurred, (ii) second, to the month immediately preceding the month in which the closing occurred, (iii) third, to the months preceding the month which immediately precedes the month in which the closing occurred, and (iv) fourth, to any month or months following the month in which the closing occurred. After closing, Purchaser shall use commercially reasonable efforts to collect delinquent rent from tenants but shall have no obligation to institute legal proceedings to collect same. Any rents collected by Purchaser after closing and payable to Trustee shall be net of Purchaser's reasonable costs of collection.

(d) At closing, the net adjustment, if in favor of Trustee, shall be paid to Trustee in the same manner as the Balance or, if in favor of Purchaser, shall be paid to Purchaser by setoff against the Balance.

(e) If any of the items described in this section cannot be apportioned at closing because of the unavailability of the amounts which are to be apportioned or for any other reason, or are incorrectly apportioned at closing, such items shall be apportioned or reapportioned, as the case may be, as soon as practicable after the Closing Date or after the date such error is discovered. This Section 8 shall survive the Closing Date for six (6) months.

9. Title Report: Title Obligations.

(a) Subject to the provisions set forth in this Agreement and particularly subsection 9(b) below, Trustee shall deliver such title as a reputable title company doing business in the State of New York shall be willing to insure in accordance with the then standard form of title policy and Purchaser shall accept such insurable title to the Property, as of the Closing Date. If Purchaser's title company or abstract company is unwilling to insure title to the Property, Trustee will have the right to try to produce such a policy from a nationally reputable title company.

(b) The sale is being made in accordance with the provisions of Section 363 of the Bankruptcy Code with the Property to be sold free and clear of all liens, claims, taxes and encumbrances of whatever kind or nature (the "Liens"), with Liens to attach to the net proceeds of the Purchase Price (that, is, net of attorney fees, broker fees and expenses of the sale reflected in this Agreement). Purchaser agrees that for the purposes of this Agreement, the Approval Order will suffice for the purpose of rendering title insurable, notwithstanding any contrary

position that may be taken by a title company or abstract company that may be retained by the Purchaser.

(c) Purchaser will order an examination of title of the Property (the "Title Report") from a reputable title insurance company or abstract company within five (5) business days from receipt of an executed copy of this Agreement and will send a copy of the Title Report and any continuations thereof, upon receipt, to Trustee's attorney's designated below.

(d) Purchaser shall take title to the Property, subject to the permitted exceptions set forth below. Trustee shall have no obligation to take any action to remove any exceptions to title set forth on the Title Report or any continuation thereof.

(e) Purchaser shall have five (5) days after the furnishing of the Title Report or any continuation thereof to object to any exceptions not included in the list of permitted exceptions listed below (the "Non-Permitted Exceptions") and set forth on such Title Report or any continuation thereof and shall notify Trustee of such objection in writing. If Purchaser does not exercise its right to object within such five (5) day period, Purchaser will be deemed to have waived any and all objections to the Non-Permitted Exceptions. If there are any Non-Permitted Exceptions that Trustee is unable to remove at or prior to the Closing Date, Trustee shall be entitled to postpone the Closing Date for a period of sixty (60) days for the purposes of discharging or attempting to discharge the Non-Permitted Exceptions to which Purchaser objects. Trustee has no obligation to discharge any Non-Permitted Exception and any action taken by Trustee to remove any such Non-Permitted Exception will not be deemed an admission by Trustee that such Non-Permitted Exception is one that would give Purchaser the right to cancel this Agreement.

(f) The following are the permitted exceptions, subject to which Purchaser must purchase the Property:

1. Covenants, restrictions, agreements, easements, rights of way and other agreements of record.
2. State of facts that a now accurate survey may show.
3. Rights, if any, of any utility company to construct, operate and/or maintain lines, pipes, wires, cables, poles, conduits and distribution boxes and equipment in, over, under, and/or upon the Property or any portion thereof.
4. Any and all laws, statutes, ordinances, codes, regulations or requirements, including, without limitation, building, zoning and other land use restrictions, ordinances, and regulations, affecting the Property adopted by the city in which the Property lies or by any other governmental authority having jurisdiction thereof and all amendments or additions thereto now, or which, at the time of closing are in force and effect.

5. Real estate taxes, assessments, water rates, water frontage charges, sewer taxes, and charges and surcharges based thereon, vault charges and all other taxes and impositions, including, without limitation, those that are to become due and payable after the closing.
6. Possible encroachments of retaining walls, yard walls, bay windows, hedges, stoops, gratings, steps, balconies, eaves, trim, cornices, lights, piers, lintels, window sills, fire escapes, ledges, copings, cellar doors and other cellar areas, sidewalks, flues, vent pipes, elevators, railings, coping, or fences, if any, upon any street, highway, sidewalk or adjoining premises; variations between record lines and fences, hedges and retaining walls.
7. Possible encroachments of improvements on adjoining properties onto the Property and encroachments of improvements on the Property onto adjoining properties and streets.
8. Minor variations between the legal description set forth on Exhibit A and the tax map description.
9. All notes or notices of violations of laws, regulations or municipal ordinances, orders or requirements, if any, affecting the Property issued by any governmental or municipal department, agency or bureau and any conditions constituting such violations although not so noted or issued.
10. The provisions of the Emergency Tenant Protection Act and the regulations and guidelines promulgated thereunder and any other rent laws and regulation now or hereinafter in effect, if applicable.
11. Environmental Control Board liens.
12. Consents by the Trustee or any former owner of the Property for the erection of any structure or structures on under or above any street or streets on which the Property may abut, so long as such consents were granted prior to the date hereof.
13. Possible lack of right of any, in the Trustee, to maintain vaults, vault lights, curb cuts, coal chutes or excavations beyond the building line, whether above or below the sidewalk.
14. Party wall agreements, if any, or variations, if any, between the record lot lines of the Property and those shown on the tax map.
15. Unpaid Franchise taxes and New York City corporation or business taxes of any corporation (other than Trustee) in the chain of title.

16. Leases from time to time in effect.

10. Purchaser's Default and Trustee's Damages. If Purchaser fails to pay the Purchase Price or Purchaser defaults in its obligations under this Agreement, Trustee, as its sole remedy, may terminate this Agreement and retain the Down Payment, as liquidated damages and neither party will have any further rights or obligations hereunder except for those that expressly survive termination of this Agreement. The parties agree that the Down Payment represents a reasonable measure of the amount of damages that would be sustained by Trustee in the event of Purchaser's default.

11. Termination Rights.

(a) If Trustee cannot deliver title to the Property in the manner required by this Agreement, and this Agreement has not previously been terminated in accordance with its terms, then Purchaser will have the right to reject title by written notice to Trustee, in which case Purchaser's exclusive remedy and Trustee's sole liability will be to refund the Down Payment to Purchaser and upon such refund, this Agreement will wholly cease and terminate and neither party will have any further claim or liability against the other under this Agreement except under those provisions that, by their express terms, survive termination. If Purchaser elects to reject Trustee's performance, as set out in the preceding sentence, Purchaser will be deemed to have waived any and all rights to seek specific performance, sue for money damages, or pursue such other remedies it may have against Trustee under the Agreement, as may be available under law or at equity. Alternatively, Purchaser may accept such title as Trustee is able to deliver without abatement of the Purchase Price.

(b) If the Court has not issued the Approval Order before the ninetieth (90th) day following the execution and delivery of this Agreement or Trustee is otherwise unable to perform its obligations under this Agreement (other than by willful default of Trustee of its obligations), Trustee has the right to cancel this Agreement and if Purchaser is not in default hereunder, Trustee will refund the Down Payment to Purchaser. Upon such refund, this Agreement will wholly cease and terminate and neither party will have any further claim against the other under this Agreement except as to those provisions that, by their express terms, survive termination. Purchaser's exclusive remedy for Trustee's inability to obtain the Approval Order or to perform its obligation (other than by willful default of Trustee of its obligations) is to terminate the Agreement and to have the Down Payment returned.

12. Casualty, Damages, Takings.

(a) If before the closing, substantially the entire Property is taken by condemnation or eminent domain, this Agreement will be automatically canceled and the Down Payment will be returned to Purchaser, in which event neither party will have any further liability or obligation to the other under this Agreement. If before the closing, less than substantially the entire Property is taken by condemnation or eminent domain, this Agreement will remain in effect and the Purchase Price shall be reduced by the amount of any award or payments received by Trustee in connection with such taking (minus those amounts used by Trustee in the restoration of the Property). The right to any payments or awards in connection with such taking which has not been received by Trustee prior to the Closing Date shall be assigned to Purchaser at closing.

(b) If before the closing, all or any portion of the Property is damaged or destroyed as a result of fire or other casualty, this Agreement will remain in effect without any abatement of the Purchase Price, and all of the insurance proceeds which have not been received by Trustee as of the Closing Date will be assigned to Purchaser at the closing and any amounts received by Trustee in connection with such fire or other casualty prior to closing (minus those amounts used by Trustee in the restoration of the Property) will be paid over to Purchaser in the form of a setoff against the Balance.

13. Trustee's Capacity. Purchaser acknowledges that Trustee has entered into this Agreement solely in his capacity as Chapter 7 Trustee of Debtor and not in his individual capacity. This Agreement is "non-recourse" as to the Trustee. Purchaser agrees to look solely to the estate and property of Trustee in the Property and in the Down Payment for the satisfaction of Purchaser's remedies for the collection of a judgment (or judicial process) requiring the payment of money by Trustee in the event of any default or breach by Trustee with respect to any of the terms, covenants and conditions of this Agreement to be observed and/or performed by Trustee. Purchaser will have no recourse to any other property or assets of Trustee, which will be exempt from levy, execution or other enforcement procedure for the satisfaction of Purchaser's remedies. The provisions of this section will survive the closing or other termination of this Agreement.

14. Financing. Purchaser acknowledges that Purchaser's obligations under this Agreement are not conditioned or contingent upon Purchaser obtaining financing or a mortgage from any source.

15. Matters Concerning Tenancy of the Property.

(a) Purchaser acknowledges that apartment No. 4 (the "Apartment") is occupied by Carolyn Billington ("Billington") and is subject to the rights set forth in that certain Stipulation and Order dated May 5, 2006, attached hereto as Exhibit B (the "Stipulation").

(b) Trustee agrees to seek approval of the following terms as part of the Trustee's motion for an Approval Order: (i) that for six (6) months after the Closing Date (the "Rental Period"), the rent for the Apartment shall be \$1,200.00 per month; (ii) that if Billington remains in the Apartment after the expiration of the Rental Period, the rent shall be \$2,400.00 per month (the "Holdover Rent"); (iii) that at closing, Trustee shall establish an escrow in the amount of \$14,400.00 from the proceeds of the Purchase Price (the "Rent Escrow"); (iv) that if Billington remains in the Apartment after the expiration of the Rental Period and does not pay the Holdover Rent, Trustee shall pay to Purchaser from the Rent Escrow the amount of Holdover Rent due and payable to Purchaser, provided (A) that Purchaser shall only be entitled to payments from the Rent Escrow for amounts of Holdover Rent due for that period of time which Billington actually remains in possession of the Apartment, without the consent of Purchaser and does not pay rent, during the six (6) months immediately after the expiration of the Rental Period, (B) Purchaser provides evidence reasonable to Trustee of the amounts paid by Billington and amounts payable to Purchaser, (C) Purchaser provides to Trustee an affidavit executed by Purchaser setting forth the amounts paid and amounts payable to Purchaser; (v) that any amounts remaining in the Rent Escrow shall be paid in accordance with the Approval Order; and (vi) nothing contained herein shall create any rights in favor of Billington.

(c) Notwithstanding the provisions of paragraph 15(b), Purchaser may pursue any claims or remedies against Billington as permitted by law.

(d) If any or all of the terms set forth in paragraph 15(b) are not included in the Approval Order, this Agreement shall continue in full force and effect and Purchaser shall be obligated to proceed to closing pursuant to the terms of this Agreement, without adjustment to price or otherwise.

16. Purchaser's Representations and Warranties.

(a) Purchaser represents to Trustee that:

(A) Purchaser is a limited liability company, duly formed, validly existing and in good standing under the laws of the State of New York.

(B) Purchaser has the legal power, right and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The individual executing this Agreement on behalf of Purchaser has the legal power, right, and actual authority to bind Purchaser to the terms and conditions of this Agreement.

(C) Neither the execution and delivery of this Agreement by Purchaser nor the consummation of the transactions contemplated hereby will constitute or result in a violation of any judgment, order, writ, injunction or decree issued or imposed against Purchaser, any law, regulation or other legal requirement applicable to Purchaser, or any contract, agreement or other obligation of Purchaser.

(D) As of the date hereof, all necessary action has been taken by Purchaser in connection with the entering into this Agreement and the consummation of the transactions contemplated hereby.

(E) Purchaser has not filed any petition seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law relating to bankruptcy or insolvency, nor has any such petition been filed against Purchaser. No general assignment of Purchaser's property has been made for the benefit of creditors, and no receiver, liquidation or trustee has been appointed for Purchaser or any of its property. Purchaser is not insolvent and the consummation of the transactions contemplated by this Agreement shall not render Purchaser insolvent.

(F) This Agreement and all documents required hereby to be executed by Purchaser are and will be valid, legally binding obligations of and enforceable against Purchaser in accordance with their terms.

(G) Purchaser has no interest, equitable or legal, direct or indirect, in the Debtor, or any of its affiliates, parents or subsidiaries and is not related in any respect to any principal of the Debtor or any of its affiliates, parents or subsidiaries.

(b) All of the representations and warranties of Purchaser contained in this Section 16 shall be deemed to be continuing representations and warranties and shall continue in force through the closing.

17. No Representations by Trustee. Except to the extent that any representation is otherwise specifically set forth in this Agreement, Trustee has not made and does not make any representations as to the physical condition, rents, leases, expenses, operations, value of the land or buildings thereon, or any other matter or thing affecting or related to the Property or this transaction, which might be pertinent to the purchase of the Property or the execution of this Agreement, including, without limitation, (i) the current or future real estate tax liability, assessment or valuation of the Property; (ii) the potential qualification of the Property for any and all benefits conferred by federal, state or municipal laws, whether for subsidies, special real estate tax treatment, insurance, mortgages, or any other benefits, whether similar or dissimilar to those enumerated; (iii) the compliance of the Property, in its current or any future state, with applicable zoning ordinances and the ability to obtain a change in the zoning or a variance in respect to the Property, or noncompliance, if any, with said zoning ordinances; (iv) the availability of any financing for the purchase, alteration, rehabilitation or operation of the Property from any source, including, but not limited to, any state, city or federal government or institutional lender; (v) the current or future use of the Property; (vi) the present and future condition and operating state of any and all machinery and equipment on the Property and the present or future structural and physical condition of any building thereon or its suitability for rehabilitation or renovation; (vii) the ownership or state of title of any personal property on the Property; (viii) the presence or absence of any laws, ordinances, rules or regulations issued by any governmental authority, agency or board and any violations thereof; (ix) the rent regulatory status of the Property, to wit, whether the Property or any portion thereof is subject to New York City Rent Control, Rent Stabilization or the Emergency Tenant Protection Act or any related rule or regulation; (x) the status of any Leases or occupancy thereunder; or (xi) the compliance with any environmental laws and the presence or absence of any above ground or underground fuel storage tank, any hazardous materials or asbestos anywhere on the Property. Purchaser hereby expressly acknowledges that no such representations have been made.

18. Notices.

All notices, demands and all other communications required or desired to be sent under this Agreement must be in writing and must be delivered by hand, nationally recognized overnight delivery service, (such as Federal Express) marked for delivery the next business day or, if mailed, sent by United States certified mail, postage prepaid, return receipt requested at such address set forth in the preamble or any other address as any party shall designate by notice to the other party pursuant to this Section 18. Notices, demands and all other communications shall be deemed given when received by the party to whom it is addressed, if delivered by hand or by overnight courier service and three (3) days after deposit in the United States mail, if mailed. The attorneys for either party may give any notices sent pursuant to this Agreement. Copies of all notices will be sent as follows:

If to Trustee, a copy will be sent to:

Arent Fox LLP
Attn: Schuyler Carroll, Esq.
Esther Hoffman, Esq.

1675 Broadway
New York, NY 10019
Telephone: 212-484-3900
Facsimile: 212-484-3990

If to Purchaser, a copy will be sent to:

MSD Group LLC
1813 51st Street
Brooklyn, NY 11204
Telephone: 718-853-1082
Facsimile: 718-853-9531

19. Broker. Trustee and Purchaser each represent to the other that such party has not dealt with any broker or other agent in connection with this Agreement or the transactions contemplated thereby other than G.E.M. Auction Corp (the "Broker") whose fees will be paid by Trustee, subject to approval by the Court. Purchaser agrees to indemnify Trustee from and against any and all liabilities, damages, claims, losses, costs and expenses (including reasonable attorney's fees) for fees or commissions arising out of this transaction attributable to a breach by Purchaser of its representations under this section. The provisions of this section will survive the closing or other termination of this Agreement

20. Entire Understanding. This Agreement is the entire agreement between the parties. All prior verbal and written understandings and agreements between the parties are merged in this Agreement, which alone fully and completely expresses the agreement of the parties. This Agreement has been executed by the parties after full investigation, neither party relying upon any statement or representation not embodied in this Agreement made by the other. This Agreement cannot be altered, amended, changed, waived, terminated or modified in any respect unless it is done in writing, and signed and delivered by or on behalf of Purchaser and Trustee or their agents.

21. Successors and Assigns. This Agreement will be binding upon, and will inure to the benefit of the respective parties and their successors and permitted assigns. Purchaser's rights under this Agreement may not be assigned without the prior written consent of Trustee. Any assignment or attempted or purported assignment made without the prior written consent of Trustee will be null and void and of no force or effect.

22. No Lien or Recording of Agreement. No lien or encumbrance will arise against the Property in favor of Purchaser from this Agreement or any monies deposited hereunder. Neither this Agreement, nor any memorandum hereof, will be recorded by Purchaser, and any such recordation will be a default by Purchaser hereunder entitling Trustee to terminate this Agreement and to retain the Down Payment as liquidated damages for such default.

23. Severability. If any provision of this Agreement is found to be void or unenforceable by a court of competent jurisdiction, the remaining provisions will nevertheless be binding upon the parties with the same force and effect as though the void or unenforceable part had been severed and deleted.

24. Interpretation.

(a) A reference in this Agreement to any gender includes any other gender and the singular includes the plural, and vice versa, unless the context requires otherwise. The captions in this Agreement are inserted for convenience only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

(b) No rules of construction against the drafter of this Agreement shall apply in any interpretation or enforcement of this Agreement, any documents or certificates executed pursuant hereto, or any provisions of any of the foregoing.

25. Waiver. Any failure by Trustee to insist upon strict performance by Purchaser of any of the provisions of this Agreement or to exercise any right or remedy upon a breach hereof will not be deemed a waiver of any of the provisions of this Agreement, despite the number of violations or breaches that may occur, and Trustee, notwithstanding any such failure, will have the right thereafter to insist upon strict performance by Purchaser of any and all of the provisions of this Agreement to be performed by Purchaser.

26. No Third Party Beneficiary. This Agreement and each of the provisions hereof are solely for the benefit of Purchaser and Trustee and their permitted assigns. No provisions of this Agreement, or of any of the documents and instruments executed in connection herewith, shall be construed as creating in any person or entity other than Purchaser and Trustee and their permitted assigns any rights of any nature whatsoever.

27. Binding Effect. Trustee's delivery of this Agreement for inspection by Purchaser is not an offer and does not create any rights in favor of Purchaser or others or create any obligation upon Trustee. This Agreement will have no force or effect unless and until it has been fully executed, delivered and exchanged.

28. Applicable Law. The provisions of this Agreement will be governed by, and construed and enforced according to, the laws of the State of New York and applicable federal law. Any action or proceeding arising out of this Agreement will be brought in the United States Bankruptcy Court for the Southern District of New York.

29. Waiver of Jury Trial. EXCEPT AS PROHIBITED BY LAW, THE PARTIES WAIVE TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, OR 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 MATTER AS A COUNTERCLAIM IN, NOR MOVE TO CONSOLIDATE SUCH CLAIM WITH ANY ACTION OR PROCEEDING IN WHICH A JURY TRIAL IS WAIVED.

30. Survival. No provision of this Agreement will survive the closing, except those obligations expressly stated therein to survive or to be performed subsequent to the Closing Date.

31. Counterpart Execution. This Agreement will not be binding unless a fully executed counterpart has been delivered to each of the parties. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement binding on the parties hereto.

32. Authority of Trustee. The parties acknowledge that the Property is being sold pursuant to the Stipulation and Trustee has the authority to sell the interests of the Debtor and Carolyn Billington (collectively, the "Owners") in the Property pursuant to the Stipulation.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the parties have signed this Agreement on the date first above written.

Trustee:

ROY BABITT solely in his
Capacity of Trustee

Purchaser:

MSD Group LLC

By: _____

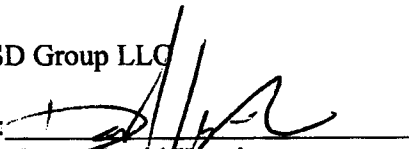

Name: David Kornitzer
Title: Manager

EXHIBIT A

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Bronx, City and State of New York, being Lot No. 98 and part of Lot No. 99 on map of 329 lots part of Schieffelin Estate, made by Charles M. Mapes, May 1906 filed in New York County as Map No. 1114-A, bounded and described as follows:

Beginning at a point on the westerly side of Paulding Avenue, distance 34.05 feet southerly from the corner formed by the inter-section of the southerly side of East 226th Street and the westerly side of Paulding Avenue; running thence westerly parallel with the southerly side of 226th Street 109.50 feet to Lot No. 96 on the said map; thence southerly along the easterly line of Lot No. 96, 37.50 feet to the line running through the middle of Lot No. 99; thence easterly parallel with the southerly side of East 226th Street, 107.56 feet to the westerly side of Paulding Avenue; thence northerly along the westerly side of Paulding Avenue, 37.54 feet to the point or place of beginning.

Said premises being known as 3989 Paulding Avenue, Bronx, New York.

EXHIBIT B

Schuyler G. Carroll (SC-1234)
ARENT FOX PLLC
1675 Broadway
New York, New York 10019
(212) 484-3900

Attorney for Roy Babitt, Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In re

Chapter 7

ANITA S. WIGGINTON,

Case No. 04-16523 (RDD)

Debtor.

-----x

In re

Chapter 13

CAROLYN BILLINGTON,

Case No. 06-10861 (JMP)

Debtor.

-----x

Roy Babitt, Chapter 7 Trustee of the Estate of
Anita S. Wigginton,

Plaintiff,

v.

Adv. Pro. No. 06-01354 (RDD)

ANITA S. WIGGINTON and CAROLYN
BILLINGTON,

Defendants.

-----x

STIPULATION AND ORDER

Roy Babitt, Chapter 7 Trustee (the "Trustee") of the estate of Anita S. Wigginton, Anita S. Wigginton (the "Debtor") and Carolyn Billington (collectively, the "Parties") hereby stipulate and agree as follows:

RECITALS

WHEREAS, on October 8, 2004, the Debtor, Anita Wigginton, filed a Chapter 13 petition under Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code").

WHEREAS, on March 11, 2005, Countrywide Home Loans objected to confirmation of Ms. Wigginton's Chapter 13 plan.

WHEREAS, on May 10, 2005, Ms. Wigginton voluntarily converted from Chapter 13 to Chapter 7 and Roy Babitt was appointed the Chapter 7 Trustee.

WHEREAS, Anita S. Wigginton and Carolyn Billington are co-owners of the multifamily property located at 3989 Paulding Avenue, Bronx, NY 10466 (the "Property").

WHEREAS, the Property is a six unit multifamily dwelling. The Debtor and Ms. Billington each occupy one unit of the Property. The other four units are occupied by four tenants (the "Tenants") with rents collected on a monthly basis.

WHEREAS, Ms. Wigginton's Schedule A lists the Debtor as joint owner of the Property valued at \$600,000.

WHEREAS, Ms. Wigginton's Schedule D lists a mortgage on the Property in favor of Countrywide Home Loans in the amount of \$165,024.31.

WHEREAS, according to that certain deed, dated May 12, 1997, the Debtor and Ms. Billington inherited the Property as joint tenants.

WHEREAS, at the Trustee's request, G.E.M. Auction Corp. ("GEM") conducted a comparative market analysis of the Property. This report valued the Property at an excess of \$600,000.

WHEREAS, the Defendants continue to live on the premises.

WHEREAS, the Trustee objects to the Defendant's collection and receipt of post-petition rents, if any.

WHEREAS, after filing for bankruptcy, the Debtor and/or Ms. Billington have reportedly received several bids. The Debtor and Ms. Billington have provided all information regarding the bids for the Property to the Trustee.

WHEREAS, the Debtor turned over to the Trustee the July 2005 rents and an additional partial payment for October, 2005, however, since that time, Ms. Wigginton has failed to respond to the Trustee's letters and phone calls regarding the turnover of rents collected for the months of August 2005 through March 2006.

WHEREAS, on March 16, 2006, the Trustee filed an adversary complaint to sell the Property pursuant to section 363(h) of the Bankruptcy Code and to compel the Debtor to turnover all post-petition rents pursuant to section 541(a)(6) of the Bankruptcy Code.

WHEREAS, on April 4, 2006, the Trustee retained GEM as the real estate broker and managing agent for the Property.

WHEREAS, on April 24, 2006, Mr. Billington filed a Chapter 13 Bankruptcy petition under the Bankruptcy Code. Ms. Billington concedes that this was an error, and is in the process of having said case dismissed.

WHEREAS, on May 1, 2006, GEM collected rent from the Tenants.

**NOW, THEREFOR, IT IS HEREBY STIPULATED, AGREED, ORDERED AND
ADJUDGED**

1. The Trustee is hereby authorized to market and sell the Property, pursuant to section 363(h) of the Bankruptcy Code.
2. The Parties agree that the Trustee shall have the sole authority to sell both the Debtor's and Ms. Billington's interest in the Property.

3. The parties agree that upon receipt of an offer by GEM, the Trustee will make a motion before the Court, seeking approval of the sale of the Property pursuant to section 363 of the Bankruptcy Court for higher or better offer.

4. The Parties agree that GEM is the only agent authorized to market and sell the Property.

5. The Parties agree that all bids or any other indication of interest in purchasing the Property by the Debtor and Ms. Billington shall be forwarded to GEM within twenty-four hours.

6. The Parties agree that after payment of all expenses associated with the Property, that the Trustee is entitled to one-half of the remaining proceeds from the sale of the Property. No distribution shall be made by the Trustee to any party, including Ms. Wigginton, until all claims against the estate are satisfied.

7. The Parties agree that after payment of all expenses Ms. Billington is entitled to one-half of the remaining proceeds from the sale of the Property. Such proceeds shall be paid at closing.

8. All parties consent to payment of all usual costs at the closing out of the proceeds of sale, prior to the payments to the Trustee and Ms. Billington in paragraph 5 and 6 above including the satisfaction of all liens associated with the joint ownership of the property, including hot water expenses. Should any lien be associated with one party, like a judgment, the satisfaction of that lien shall come out of the share of that party, and not "off the top" as a joint expense. Closing expenses shall be the payment of outstanding taxes, the outstanding mortgage, the brokerage commission (which is set at 6% of the purchase price), and title charges. The parties agree that the purchaser shall receive a Trustee's deed, so that no transfer tax shall be due.

9. By no later than June 29, 2006 Ms. Wigginton and/or Ms. Billington shall provide the Trustee with a full written accounting of all rents received from August 2005 through April 2006, if any. To the extent any rents were retained by Ms. Wigginton or Ms. Billington, said rents will be turned over to the Trustee immediately.

10. The Parties agree that GEM is the only agent authorized to receive all future rents. Ms. Wigginton and Ms. Billington further stipulate that they have and will continue to instruct in writing all tenants at the Property to send rents directly to GEM. GEM shall provide a form of notice to be sent to tenants.

11. Ms. Billington or Ms. Wigginton shall have 15 days from the closing file any proof of claim against Ms. Wigginton's estate. Any claim not filed by such date shall be barred forever.

12. Ms. Billington shall not be required to pay rent until the property is sold and the Trustee releases her from any claim for rent for the period until closing, provided however, Ms. Billington does not fully cooperate with the Trustee, any of his agents (including GEM) or does not vacate the Property within 120 days of closing of the sale.

13. Ms. Wigginton shall not be required to pay rent until the property is sold.

14. The Court shall retain jurisdiction over the terms and conditions of this Stipulation and Order.

15. This Stipulation and Order cannot be amended, modified or superseded except upon written consent of the parties hereto.

16. This Stipulation and Order may be signed in counterparts, with each part being deemed a part of the original document.

17. This Stipulation and Order may be signed by facsimile transmission which signatures shall be treated as original signatures.

18. This Stipulation shall become effective on the date it is signed by the Parties.

Dated: New York, New York
May 5, 2006

Attorney for Debtor for Anita Wigginton

ARENT FOX PLLC
Attorney for Roy Babitt, Chapter 7 Trustee

By: /s/ Edward L. Koester
Edward L. Koester, Esq.
1457 Knapp Street
Bronx, NY 10469
(718) 671-8700

By: /s/ Schuyler G. Carroll
Schuyler G. Carroll (SC-1234)
1675 Broadway
New York, NY 10019
(212) 484-3900

Siegel & Siegel P.C.
Attorney for Debtor for Carolyn Billington

By: /s/ Michael Siegel
Michael Siegel
One Penn Plaza
Suite 4632
New York, NY 10119

SO ORDERED:

/s/Robert D. Drain
THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

June 27, 2006

SO ORDERED:

THE HONORABLE JAMES M. PECK
UNITED STATES BANKRUPTCY JUDGE

June ____, 2006

18. This Stipulation shall become effective on the date it is signed by the Parties.

Dated: New York, New York
May 5, 2006

Attorney for Debtor for Anita Wigginton

ARENT FOX PLLC
Attorney for Roy Babitt, Chapter 7 Trustee

By: /s/ Edward L. Koester
Edward L. Koester, Esq.
1457 Knapp Street
Bronx, NY 10469
(718) 671-8700

By: /s/ Schuyler G. Carroll
Schuyler G. Carroll (SC-1234)
1675 Broadway
New York, NY 10019
(212) 484-3900

Siegel & Siegel P.C.
Attorney for Debtor for Carolyn Billington

By: /s/ Michael Siegel
Michael Siegel
One Penn Plaza
Suite 4632
New York, NY 10119

SO ORDERED:

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

June ____, 2006

SO ORDERED:

s/ James M. Peck

THE HONORABLE JAMES M. PECK
UNITED STATES BANKRUPTCY JUDGE

Dated: July 14, 2006

EXHIBIT C

Schuyler G. Carroll (SC-1234)
ARENTE FOX LLP
1675 Broadway
New York, New York 10019
(212) 484-3900

Hearing Date: March 15, 2007
Hearing Time: 10:00 a.m

Attorney for Roy Babitt, Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In re

ANITA S. WIGGINTON,

Debtor.

Chapter 7

Case No. 04-16523 (RDD)

-----x

**NOTICE OF HEARING TO CONSIDER THE MOTION FOR AN ORDER AUTHORIZING
THE SALE OF PROPERTY OF THE ESTATE AND FIXING POST-CLOSING
RENTAL RATES PURSUANT TO 11 U.S.C. § 363(b)(1), (f), (h), AND 105
AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 2002(a)(2) AND 6004**

PLEASE TAKE NOTICE that a hearing will be held on **March 15, 2007 at 10:00 a.m.** (the "Hearing Date"), or as soon thereafter as counsel may be heard, before the Honorable Robert D. Drain, United States Bankruptcy Judge, in the United States Bankruptcy Court, One Bowling Green, New York, New York 10004-1408, to consider the motion of Roy Babitt, the Chapter 7 Trustee (the "Trustee") of the estate of Anita S. Wigginton, for an order authorizing the sale of property of the estate and fixing post-closing rental rates pursuant to 11 U.S.C. § 363(b)(1), (f), (h), and 105 and Federal Rules of Bankruptcy Procedure 2002(a)(2) and 6004 (the "Motion").

PLEASE TAKE FURTHER NOTICE that objections to the Motion, if any, must be in writing, must state with particularity the grounds therefor, and must be filed with the Clerk of the Bankruptcy Court, with a copy delivered to the chambers of Judge Drain, and served upon the undersigned counsel

for the Trustee, Arent Fox LLP, 1675 Broadway New York, New York 10019 (Attn: Schuyler G. Carroll, Esq.), so as to be filed and actually received no later than three (3) business days prior to the Hearing Date.

Dated: New York, New York
January 26, 2007

ARENT FOX LLP
Attorney for Roy Babitt, Chapter 7 Trustee

By: /s/ Schuyler G. Carroll
Schuyler G. Carroll (SC-1234)
1675 Broadway
New York, New York 10019
(212) 484-3900

EXHIBIT D

TERMS AND CONDITIONS OF SALE

1. Sale Procedure

A. Conduct of the Auction. The Auction shall be conducted on March 15, 2007 at 10:00 a.m., before the Honorable Robert D. Drain, United States Bankruptcy Judge for the Southern District of New York, United States Bankruptcy Court, One Bowling Green, New York, New York, 10004. Any individual or entities who wish to submit a bid shall enter their appearance on the Bankruptcy Court's record and submit to the jurisdiction of the Bankruptcy Court. Any entity wishing to bid for the Property must designate one individual who is authorized to submit verbal bids on behalf of the entity. The Bankruptcy Judge will conduct the Auction in accordance with these procedures and any other terms announced by the Bankruptcy Judge at the Auction.

B. Bids. All bids must be in the form of cash or other immediately available funds, must be without contingencies or conditions of any kind, and must be irrevocable.

C. Bid Acceptance. At the conclusion of bidding, the Trustee shall determine if any of the bids made in open Court are an acceptable highest and best bid. The Bid Deposit (as defined in Paragraph 4 below) of the successful bidder shall be deposited by the Trustee in a segregated account and will be applied toward the purchase price. The Bid Deposit of all other unsuccessful bidders will be returned at the conclusion of the Auction.

D. Order Approving Sale. Counsel for the Trustee shall ask the Bankruptcy Court to enter a written order in open court approving the sale to the successful bidder.

2. Minimum Initial Bid and Overbid

The minimum initial bid (the "Minimum Bid price") for the Property is \$445,000.00 and will continue in \$5,000.00 increments, unless the Trustee or his representatives determines a lesser overbid is appropriate.

3. Property Being Sold

The Trustee is selling his right, title and interest and the right, title and interest of Carolyn Billington in real property located at 3989 Paulding Avenue, Bronx, NY 10466.

4. Deposit

Any person wishing to bid on the Property shall deposit with the Trustee prior to the commencement of the Auction a deposit in the amount of 10% of the Minimum Bid Price in the form of a cashier's check or certified check drawn on a bank acceptable to the Trustee, such cashier's check or certified bank check made payable to "Roy Babitt, Trustee" (the "Bid Deposit"). Only those parties who submit a Bid Deposit to the Trustee prior to the commencement of the Auction shall be entitled to bid on the Property at the Auction. The deposit made by the successful bidder shall be non-refundable except in the event that a closing does not take place as a consequence of the disapproval of the sale by the Trustee or the Bankruptcy Court. The Bid Deposit shall be applied to the purchase price.

5. Closing

The purchase and sale of the Property will close within three business days of the entry of an order of the Court approving the terms of the sale of the Property. If the successful bidder fails to pay in full and close within three business days, the Bid Deposit immediately shall be forfeited and become property of the estate; the successful bidder shall forfeit all rights to purchase the Property and the Trustee shall be permitted to close with the bidder that placed the next highest bid without further order.

6. Free and Clear

The sale shall be free and clear of all claims, liens, encumbrances and security interests with any such claims, liens, encumbrances or security interests to attach to the net proceeds of the sale.

7. “As Is”, No Representation or Warranties

The purchaser takes the Property “as is” “where is”. The Trustee makes no representations or warranties whatsoever. The purchaser avers that he/she has not relied on any statements, representations of information furnished by the Trustee or any agent, employee or other person.

8. Trustee Not Liable

All sales shall be subject to such additional or different terms and conditions as the Trustee or the Court shall require and be announced at the Auction. In no event shall the estate or the Trustee have any liability beyond return of the deposit. Each bidder and purchaser acknowledges that the Trustee is offering the Property for sale in his capacity as the Trustee for the estate of Anita S. Wigginton and not in his individual capacity and, as such, shall have no personal liability.

9. Purchaser Representation

Each prospective bidder, prior to being granted permission to participate in the Auction, must sign an attestation in the form annexed hereto.

Bankruptcy Sale is “as is, where is” and is subject
to errors, omissions, prior sale and
withdrawal without notice

**Bankruptcy Auction
March 15, 2007**

Conducted by Roy Babitt,
Bankruptcy Trustee
Anita S. Wigginton

ATTESTATION

- (1) I am not a stockholder, agent, employee or insider of an appraiser, auctioneer, the Trustee, attorney or accountant or any other retained professional in this matter or a relative of any of the foregoing.
- (2) I have reviewed the attached Terms and Conditions of the Sale, and Agree to be bound by and Accept all terms and conditions set forth therein.

Sign Name

Dated:

Print Name

Company

Address

City, State, Zip

Telephone Number(s)