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Trustee of the Debtor

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:	:	Chapter 7
	:	
KOLLEL MATEH EFRAIM, LLC, a/k/a	:	Case No. 04-16410 (SMB)
MATEH EPHRAIM LLC, a/k/a	:	
KOLEL MATEH EFRAIM,	:	
	:	
	:	
Debtor.	:	
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**STIPULATION AND ORDER REGARDING SCHEDULING AND
CONDUCT OF AUCTION, SCHEDULING THE SALE HEARING AND APPROVAL
OF BIDDING PROCEDURES, SALE NOTICE AND FORM OF SALE CONTACT**

Robert L. Geltzer (the “Trustee”), Chapter 7 trustee of Kollel Mateh Efraim, LLC, a/k/a Mateh Ephraim LLC, a/k/a Kolel Mateh Efraim (the “Debtor”), by his counsel, Bryan Cave LLP, and Helen-May Holdings, LLC (“Helen-May” and together with the Trustee, the “Parties”) respectfully submit this Stipulation and Order (the "Stipulation") resolving the Parties’ disputes regarding the scheduling and conduct of the Auction¹ of the Debtor’s interests in the Properties pursuant to the terms and conditions of the revised, proposed bidding procedures (the “Revised

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion for an Order Pursuant to Sections 105 and 363 of the Bankruptcy Court (1) Authorizing Robert L. Geltzer, Chapter 7 Trustee, to Sell Debtor’s Interests in Certain Real Property Located in Cohecton, New York, Free and Clear of Liens, Claims and Encumbrances, Such Liens and Encumbrances to Attach to the Net Proceeds of Such Sale, (2) Scheduling an Auction, (3) Approving Bidding Procedures, (4) Approving the Form of Sale Contract, (5) Scheduling a Sale Hearing and (6) Approving the Form and Manner of Notices (the “Motion”)

Bidding Procedures”) attached hereto as Exhibit A, scheduling the Sale Hearing and approving the forms of the Sale Notice, as amended herein, and the Sale Contract, and agree and state as follows:

WHEREAS, on October 4, 2004 (the “Petition Date”), the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code.

WHEREAS, by an Order of this Court entered on October 29, 2007, the Debtor’s Chapter 11 case was converted to a case under Chapter 7 of the Bankruptcy Code.

WHEREAS, the Trustee was appointed as interim Chapter 7 Trustee in this case on October 29, 2007, thereafter became permanent Trustee pursuant to Section 702(d) of the Bankruptcy Code and by operation of law, duly qualified, and has been and is continuing to serve as such trustee.

WHEREAS, on December 19, 2007, the Trustee filed a motion seeking to extend the Trustee’s time to assume or reject the Prepetition Purchase Agreement by 120 days after the original deadline of December 28, 2007. The motion was set for presentment to the Court on December 27, 2007. On December 27, 2007, the Court continued the hearing on such motion and extended the Trustee’s time to assume or reject the Prepetition Purchase Agreement to January 31, 2008. At the hearing held on January 31, 2008, the Court directed that the hearing on such motion be continued and the Trustee’s time to assume or reject executory contracts and unexpired leases of the Debtor be extended through March 4, 2008. This ruling was confirmed in a letter entered on the Court’s docket on February 5, 2008. At the hearing on March 4, 2008, the hearing on such motion and the Trustee’s time to assume or reject executory contracts and unexpired leases of the Debtor was further extended through April 3, 2008.

WHEREAS, on March 11, 2008, the Trustee filed the Motion seeking authority (i) to assume and assign Debtor's rights under the PrePetition Purchase Agreement and (ii) to sell the Owned Property, which is wholly owned by the Debtor and located adjacent to the Contract Property, to the successful bidder(s) at the Auction.

WHEREAS, the Motion also requested that this Court (i) schedule the Auction for April 1, 2008, (ii) approve the proposed Bidding Procedures, (iii) approve the form of Sale Contract, (iv) approve the proposed method of notice of the Sale and the form of Sale Notice, and (v) schedule the Sale Hearing.

WHEREAS, the Debtor acquired its interest in the Prepetition Purchase Agreement by assignment from Aron Fixler prior to the Petition Date. Pursuant to the Prepetition Purchase Agreement, the Debtor has the right to purchase the Contract Property for \$1,400,000 from Helen-May, less the \$140,000 deposit currently held by Helen-May. The Contract Property is comprised of approximately 60 acres of real property, located at 1141 County Road 114, Cohecton, New York, and was formerly known as the Meadows Hotel Resort. At various times prior to conversion of this case, the Debtor operated or permitted the operation of a summer camp for Jewish young men on the premises during the summer.

WHEREAS, the original closing date set forth in the Prepetition Purchase Agreement was June 1, 2004. Memorialized in letters between counsel for each of the parties dated June 3, and September 22, 2004, respectively, Helen-May and the Debtor twice extended the date of the closing, first to September 27, 2008 and then to November 29, 2004.

WHEREAS, Helen-May has alleged that the Debtor defaulted under the Prepetition Purchase Agreement by failing to close by the extended closing date of September 27, 2008, which default Helen-May alleges terminated the Debtor's interest under the Prepetition Purchase

Agreement and/or that the Prepetition Purchase Agreement was terminated by Helen-May's service of a Ten Day Notice to Tenant to Quit and Vacate, dated June 15, 2007.

WHEREAS, the Trustee takes the position that the Prepetition Purchase Agreement is an executory contract that may be assumed and assigned pursuant to Section 365 of the Bankruptcy Code, notwithstanding the alleged default, because the Prepetition Purchase Agreement was not terminated automatically by its own terms, by any explicit termination notice on the part of any party thereto or otherwise.

WHEREAS, pursuant to the terms of a letter dated June 3, 2004 from counsel for Helen-May to counsel for the Debtor, as amended by a letter between these same parties dated September 22, 2004, the Debtor and Helen-May agreed to terms of a proposed occupancy agreement under which the Debtor would be permitted to occupy the Contract Property prior to closing under the Prepetition Purchase Agreement. Although the letters state that a formal occupancy agreement would be drafted, this was not done; the letters purportedly memorialize the parties' agreement regarding the terms and conditions under which the Debtor would occupy the Contract Properties (the "Occupancy Agreement").

WHEREAS, the Trustee takes the position that the Occupancy Agreement is either a separate agreement or is severable from the Prepetition Purchase Agreement, and the Trustee does not seek to assume and assign the Occupancy Agreement. The Trustee also takes the position that the Occupancy Agreement terminated under its own terms when the Trustee surrendered occupancy of the Contract Property on or about November 29, 2007.

WHEREAS, Helen-May has taken the position that the Occupancy Agreement is a modification of the Prepetition Purchase Agreement and, accordingly, the defaults under the

Occupancy Agreement must be cured as a condition to assumption of the Prepetition Purchase Agreement.

WHEREAS, the Trustee takes the position that there are no monetary defaults under the Prepetition Purchase Agreement and that no cure amount is due to Helen-May as a condition to assumption and assignment of that contract.

WHEREAS, Helen-May takes the position that a payment of \$1,683,000.00 is necessary to cure defaults under the Occupancy Agreement, which it asserts is a modification of the Prepetition Purchase Agreement, and that this cure amount must be paid as condition to assumption of the Prepetition Purchase Agreement.

WHEREAS, the Contract Property is encumbered by mortgages held by MEW Equity LLC (“MEW Equity”) in the total principal amount of \$1,350,000.00. Helen-May is the obligor on each of these mortgages. As of the date of the Motion, MEW Equity alleges that the amount due under these mortgages, including principal, interest and other charges, is approximately \$1.8 million. The mortgages are in default and the mortgagee, MEW Equity has instituted an action to foreclose on the Contract Property. At the Trustee’s and Helen-May’s request, MEW Equity has agreed to periodically hold in abeyance the further prosecution of the foreclosure action while the parties negotiate a stipulation that would provide, *inter alia*, for a reasonable time for the Trustee to complete the Sale, including assumption and assignment of the Debtor’s interest in the Prepetition Purchase Agreement.

WHEREAS, the Contract Property is also encumbered by tax liens held by the Sullivan West Central School District and Sullivan County/ Town of Cochection in the amount of approximately \$25,068.81.

WHEREAS, the Trustee has succeeded to the Debtor's interest as plaintiff in two adversary proceedings pending before this Court, which are docketed as adversary proceeding numbers 04-4545 and 07-01937 and assert various claims against Helen-May regarding the Debtor's and Helen-May's respective interests in the Contract Property and the Prepetition Purchase Agreement. Adversary Proceeding number 07-01937 was commenced by the Debtor in the Supreme Court of the State of New York, County of Sullivan, index no. 1952-07, and was subsequently removed to this Court (the "Removed Adversary Proceeding").

WHEREAS, on June 26, 2007, prior to removal of the Removed Adversary Proceeding to this Court, the Debtor filed a Notice of Pendency of Action against the Contract Property. The Notice of Pendency of Action remains filed against the Contract Property.

WHEREAS, the Parties are in negotiations regarding a global resolution of the disputed issues between them and have agreed to resolve at present pursuant to the terms and conditions of this Stipulation those of the disputed issues that relate to (i) the scheduling and conduct of the Auction, (ii) the Bidding Procedures, (iii) approval of the forms of Sale Notice and Sale Contract and (iv) scheduling the Sale Hearing.

NOW, THEREFORE, in consideration of the foregoing, the Trustee and Helen-May stipulate and agree that Helen-May's objection to the relief requested in the Motion with respect to (i) the scheduling and conduct of the Auction, (ii) the Bidding Procedures, (iii) approval of the forms of the Sale Notice and Sale Contract and (iv) scheduling the Sale Hearing is withdrawn upon the following terms and conditions:

1. The Trustee has amended the Bidding Procedures to increase the amount of the minimum bid for the Debtor's interest in the Prepetition Purchase Agreement from \$150,000 to \$1,200,000, and to increase the amount of incremental bidding as set forth in the Revised

Bidding Procedures annexed hereto as Exhibit A. The Trustee will seek approval of and conduct the Auction according to the Revised Bidding Procedures.

2. The Trustee will revise the Notice of Sale to incorporate the Revised Bidding Procedures and seek approval of this amended Notice of Sale. If approved, the Trustee will serve the amended Notice of Sale in accordance with the proposed service procedures set forth in the Motion and the Bidding Procedures Order.

3. The Trustee will within one day of the execution of this Stipulation amend its advertisement of the Auction on G.E.M.'s website to reflect a \$1,200,000 minimum bid for the Debtor's interest in the Prepetition Purchase Agreement, and will likewise amend any future advertisement of the Auction.

4. The closing of the Trustee's assignment of the Debtor's interest in the Prepetition Purchase Agreement to the Successful Bidder thereof, and the closing of the sale of the Contract Property by Helen-May to that Successful Bidder, shall be held simultaneously (the "Contract Property Closing"). The aggregate of the amounts due under the liens of the mortgagee MEW Equity and of the taxing authorities upon the Contract Property (together with MEW Equity, the "Lien Holders") as of the Contract Property Closing shall be referred to hereinafter as the "Aggregate Lien Amount." At the Contract Property Closing, (i) the \$1,260,000.00 balance of the purchase price due to Helen-May from the Successful Bidder under the Prepetition Purchase Agreement (i.e., the \$1,400,000.00 purchase price under the Prepetition Purchase Agreement less the \$140,000.00 downpayment thereunder previously delivered by the Debtor to Helen-May's counsel in escrow), together with the \$140,000.00 escrowed downpayment, shall be paid over by Helen-May toward the Aggregate Lien Amount; and (ii) the Trustee shall pay directly to the Lien Holders, out of the amount he receives from the Successful Bidder of the

Debtor's interest in the Prepetition Purchase Agreement, an amount equal to the resultant balance of the Aggregate Lien Amount on account and in satisfaction, to the extent of the amount paid, of the cure claims asserted by Helen-May against the Debtor's estate related to the Prepetition Purchase Agreement. The resulting remainder of the amount received by the Trustee from that Successful Bidder shall be referred to hereinafter as the "Remaining Successful Bid Amount."

5. The Parties will continue to negotiate in good faith regarding the remaining disputed issues among them not resolved by this Stipulation, including, without limitation, Helen-May's assertion of additional cure claims with respect to the Prepetition Purchase Agreement and the respective distributions to be made to Helen-May and/or to the Debtor's estate from the Remaining Successful Bid Amount. Each of the remaining disputed issues related to the Sale will be determined by the Court at the Sale Hearing if not resolved by the Parties prior thereto.

6. In the event that the Parties do not reach a consensual resolution of the amount owed to Helen-May to cure alleged defaults under the Prepetition Purchase Agreement, and that issue is determined by the Court at the Sale Hearing, the cure amount ordered to be paid to Helen-May, if any, will be reduced by the amount paid by the Trustee as set forth in paragraph 4(ii) above.

7. At Contract Property Closing, the Contract Property Closing, the Trustee will dismiss, with prejudice, Adversary Proceeding numbers 04-4545 and 07-01937 and will execute a cancellation of the Notice of Pendency of Action.

8. Helen-May agrees and stipulates to the extension of the Trustee's time to assume or reject the Prepetition Purchase Agreement, pursuant to Section 365 of the Bankruptcy Code,

through and including a date that is ten calendar days after the date of entry of a final order approving or denying the Sale.

9. This Stipulation shall be governed by, and construed and enforced in accordance with, as appropriate, the Bankruptcy Code and the laws of the State of New York, without regard to conflicts of law principles.

10. The Parties hereto acknowledge that they are executing this Stipulation without reliance on any representations, warranties, or commitments other than those representations, warranties, and commitments expressly set forth in this Stipulation.

11. The Parties acknowledge that this Stipulation is a compromise of disputed issues, and shall not be deemed an admission regarding any aspect of the disputed issues resolved herein.

12. This Stipulation constitutes the entire understanding of the parties in connection with the subject matter hereof. This Stipulation may not be modified, altered, or amended except by an agreement in writing signed by the Parties.

13. This Stipulation shall be binding upon the Parties' heirs, successors and assigns, and shall inure to the benefit of the parties' heirs, successors and assigns.

14. This Stipulation is subject to and will be effective upon the Court's final approval.

15. This Stipulation is being entered into among competent persons who are experienced in business and represented by counsel, and has been reviewed by Helen-May and its counsel. Therefore, any ambiguous language in this Stipulation will not be construed against any particular party as the drafter of such language.

16. This Stipulation may be executed in any number of counterparts and by the Parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of

which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this agreement by facsimile or electronic mail shall be equally as effective as delivery of an original executed counterpart of this Stipulation.

17. The Parties acknowledge and agree that this Court shall retain exclusive jurisdiction over enforcement of this Stipulation.

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Chapter 7 Trustee of the Debtor

Counsel for Helen-May Holdings, LLC

Dated: New York, New York
March ____, 2008

Dated: New York, New York
March ____, 2008

**ROBERT L. GELTZER, CHAPTER
7 TRUSTEE OF THE DEBTOR**

HELEN-MAY HOLDINGS, LLC

By:
Robert L. Geltzer (RG 4656)
Chapter 7 Trustee of the Debtor
1556 Third Avenue, Suite 505
New York, New York 10128
(212) 410-0100

By:
Name:
Title:
Address:
Phone:

Dated: New York, New York
March ____, 2008

Dated: New York, New York
March ____, 2008

SO ORDERED MARCH _____, 2008

CHIEF JUDGE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

REVISED BIDDING PROCEDURES

- (a) Auction: The Trustee intends to offer the Debtor's interests in the Properties for sale in the following order: (i) first, each of the Debtor's interests in the Properties individually, (ii) second, the Owned Property together as a package, and (iii) finally, all of the Debtor's interests in the Properties together as a package, and will sell the Debtor's interests in the Properties in whichever combination(s) yields the highest and/or best bid or combination of bids, subject only to approval by this Court at the Sale Hearing. Notwithstanding the foregoing, the Trustee reserves the right to alter the order of the Auction and/ or to offer the Debtor's interests in the Properties for Sale in any other combination that yields the highest and best offer or offers, at his discretion, subject only to approval by this Court at the Sale Hearing.
- (b) Minimum Bids: The Minimum Bids for the Debtor's interests in the Properties shall be as follows:
- (i) Lot 45: The Minimum Bid for only Lot 45 will be \$225,000. Successive bids must be in increments of at least \$10,000 more than the previous bid.
 - (ii) Lot 47: The Minimum Bid for only Lot 47 will be \$75,000. Successive bids must be in increments of at least \$5,000 more than the previous bid.
 - (iii) Owned Property: The Minimum Bid for Lots 45 and 47 together will be an amount \$10,000 greater than the sum of (x) the amount of the highest and/or best bid for only Lot 45 and (y) the amount of the highest and/or best bid for only Lot 47. Successive bids must be in increments of at least \$15,000 more than the previous bid.
 - (iv) Prepetition Purchase Agreement: The Minimum Bid for only Debtor's interest in the Prepetition Purchase Agreement will be \$1,200,000. Successive bids must be in increments of at least \$50,000 more than the previous bid.
 - (v) Debtor's Interests in the Properties Collectively: The Minimum Bid for the Debtor's interests in all the Properties collectively as one package will be the greater of (1) \$1,550,000, (2) an amount \$50,000 greater than the amount of the highest and/or best bid for only Lot 45 plus the amount of the highest and/or best bid for only Lot 47 plus the amount of the highest and best bid for only the Debtor's interest in the Prepetition Purchase Agreement, or (3) an amount \$25,000 greater than the amount of the highest and/or best bid for the Owned Property plus the highest and/or best bid for

only the Debtor's interest in the Prepetition Purchase Agreement. Successive bids for this package of the Debtor's interest in all of the Properties must be in increments of at least \$50,000 more than the previous bid.

- (c) Deposit: Any initial bid to purchase the Debtor's interest in the Properties must be accompanied by certified check or bank check payable to "Robert L. Geltzer as Chapter 7 Trustee" from a bank acceptable to the Trustee located in New York State, in an amount equal to ten percent (10%) of any such bid (the "Deposit").
- (d) Financial Capacity of Bidder: At the time of its initial bid, each bidder must provide to the Trustee documents, in form and substance satisfactory to the Trustee in his discretion, demonstrating such bidder's financial capacity to consummate its proposed bid. For those bidders submitting a bid that includes assignment of the Prepetition Purchase Agreement, such information must also include information demonstrating the bidder's financial ability to close on the Contract Property pursuant to the Prepetition Purchase Agreement at the time of the closing on the Owned Property pursuant to the Sale Contract.
- (e) Bid: Each bid must (a) be irrevocable and (b) provide for a transaction that is not subject to any conditions, including, without limitation, the obtaining of financing or completion of any due diligence, subject to the Trustee's reservation of rights as set forth in paragraph (k) below;
- (f) No Collusion. By submitting its bid and participating in the Auction, each bidder is confirming that it has not engaged in any collusive behavior with respect to the submission of its bid and its participation in the Auction.
- (g) Designation of Successful Bidder(s): At the conclusion of the Auction, the Trustee, in his discretion, and subject to Bankruptcy Court approval, shall (i) identify the highest and/or best bid for the Properties (the "Successful Bid(s)") and the second highest and/or best bid for the Properties (the "Runner Up Bid(s)"); and (ii) notify all bidders participating in the Auction of the name(s) of the amounts and makers of the Successful Bid(s) (the "Successful Bidder(s)") and the Runner up Bid (the "Runner Up Bidder(s)").
- (h) Presentation of Successful Bid(s) to the Bankruptcy Court: At the Sale Hearing, the Trustee will present the Successful Bid(s) and the Runner Up Bid(s) to the Bankruptcy Court for approval. The Trustee's presentation to the Bankruptcy Court for approval of any Successful Bid(s) does not constitute the Trustee's acceptance of the Bid(s). The Trustee will be deemed to have accepted the Successful Bid(s) only when such bid has been approved by the Bankruptcy Court.

- (i) Obligation to Close: If the Successful Bidder(s) fails to close on the Sale in compliance with the final Sale Contact executed by the Successful Bidder(s) and the Trustee on behalf of the Debtor, the Trustee will have the right to close on the Runner Up Bid and retain the Deposit of the Successful Bidder(s), as liquidated damages for all loss, damage and expense suffered by the Trustee (and not as a penalty). If the Runner Up Bidder(s) fails to close on the Sale in compliance with the final Sale Contact executed by the Runner Up Bidder(s) and the Trustee on behalf of the Debtor, the Trustee will have the right not to close on the Runner Up Bid and retain the Deposit of the Runner Up Bidder(s), as liquidated damages for all loss, damage and expense suffered by the Trustee (and not as a penalty). In the event that both the Successful Bidder(s) and the Runner Up Bidder(s) fail to timely close on the Sale, the Trustee has the right not sell the particular one or more of such Properties, without prejudice to his right to later seek to sell such one or more of the Properties upon further notice and a hearing
- (j) Return of the Deposit: The Deposits of all bidders except those of the Successful Bidder(s) and the Runner up Bidder(s) shall be returned no later than ten (10) business days following the Auction. The Deposits of the Successful Bidder(s) and the Runner up Bidder(s) shall be retained by the Trustee, until the Sale is consummated. In the event that the Successful Bidder(s) consummates the sale, the Deposit of the Runner Up Bid shall be returned by the Trustee no later than ten (10) business days following the consummation of the Sale.
- (k) Reservation of Trustee's Rights: The Trustee reserves the right to withdraw one or more of the Debtor's interests in the Properties from Auction for any reason, including but not limited to insufficiency of the amount of the final bid(s) obtained at Auction and may withdraw one or more of the Debtor's interests in the Properties at any time prior to accepting the Successful Bid(s), as determined by the Trustee in his sole discretion.
- (l) Taxes – The Successful Bidder(s) will be exclusively responsible for the payment of any New York State and/or other taxes incurred in connection with the transfer of the Debtor's interests in the Properties by the Trustee, and for the filing of any tax form and other documentation required to be recorded in connection with the transfer.