

**REID COLLINS & TSAI LLP**

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**Presentment Date: February 28, 2012**

**Time: 10:00 a.m.**

**Objections Due: February 21, 2012**

**Time: 5:00 p.m.**

Barbara Whiten Balliette (*pro hac vice*)  
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*Special Litigation Counsel for Chapter 7 Trustee*

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK  
AT CENTRAL ISLIP

-----X  
In re:

AGAPE WORLD INC., *et al.*,

Debtors.

-----X  
KENNETH P. SILVERMAN, ESQ., as  
Chapter 7 Trustee of Agape World, Inc., *et al.*,

Plaintiff,

-against-

CUNNINGHAM COMMODITIES, LLC,

Defendant.  
-----X

Chapter 7  
Case No. 8-09-70660 (DTE)  
Substantively Consolidated

Adv. Pro. No. 8-11-09167 (JBR)

**NOTICE OF PRESENTMENT OF PROPOSED ORDER  
UNDER BANKRUPTCY RULE 9019(a) APPROVING A STIPULATION  
SETTLING THE TRUSTEE'S CLAIMS AGAINST  
CUNNINGHAM COMMODITIES, LLC**

**PLEASE TAKE NOTICE**, that upon the application (the "Application") of Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") for the substantively consolidated estate of Agape World, Inc., *et al.*, by his counsel, Reid Collins & Tsai LLP and Ruskin Moscou Faltischek, P.C. ("Special Counsel"), the Trustee will present a proposed order before the Honorable Joel B. Rosenthal, United States Bankruptcy Court for the Eastern District of New York, located at 271 Cadman Plaza East, Brooklyn, New York 11201 on February 28, 2012 at 10:00 a.m., seeking approval of the Stipulation Settling Trustee's Claims against Cunningham Commodities. A copy of the proposed Order is annexed hereto.

**PLEASE TAKE FURTHER NOTICE**, that objections, if any, to the relief requested in the Application or the proposed Order must be (i) made in writing; (ii) electronically filed with the Bankruptcy Court; (iii) delivered to Chambers of the Honorable Joel B. Rosenthal, United States Bankruptcy Judge, United States Bankruptcy Court, Eastern District of New York, 271 Cadman Plaza East, Brooklyn, New York 11201; (iv) mailed to SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753, Attn: David J. Mahoney, Esq.; (v) mailed to Reid Collins & Tsai, LLP, Two Wall Street, Suite 5200, New York, New York, 10005, Attn: Rachel S. Fleishman; (vi) mailed to Ruskin Moscou Faltischek, P.C., 1425 RXR Plaza, Uniondale, New York, 11556, Attn: Mark S. Mulholland; and (vii) mailed to the Office of the United States Trustee, 560 Federal Plaza, Central Islip, New York, 11722, no later than **February 21, 2012**.

**PLEASE TAKE FURTHER NOTICE**, that if objections to the Application are filed and served in compliance with the above-paragraph, the Court will schedule a hearing on the Application.

Dated: New York, New York  
February 3, 2012

Respectfully submitted,  
REID COLLINS & TSAI LLP

/s/ William T. Reid, IV  
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*Special Litigation Counsel for Kenneth P. Silverman,  
as Chapter 7 Trustee of Agape World, Inc., et al.*

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK  
AT CENTRAL ISLIP

-----X  
In re:

AGAPE WORLD, INC., *et al.*

Chapter 7  
Case No. 09-70660 (DTE)  
Substantively Consolidated

Debtors.  
-----X

KENNETH P. SILVERMAN, ESQ., as  
Chapter 7 Trustee of Agape World, Inc., *et al.*

Plaintiff,

Adv. Pro. No. 8-11-09167 (JBR)

-against-

CUNNINGHAM COMMODITIES, LLC,

Defendant.  
-----X

**ORDER UNDER BANKRUPTCY RULE 9019(a) APPROVING A STIPULATION  
SETTLING ALL CLAIMS BY AND BETWEEN KENNETH P. SILVERMAN, ESQ.,  
CHAPTER 7 TRUSTEE OF AGAPE WORLD, INC., *et al.*, AND  
CUNNINGHAM COMMODITIES, LLC, AND (II) GRANTING RELATED RELIEF**

Upon the (1) Trustee's Application Under Bankruptcy Rule 9019(a) ("Application") and (2) Notice of Presentment of Proposed Order (the "Notice), dated February 3, 2012, of Kenneth P. Silverman, Esq., in his capacity as the Chapter 7 Trustee (the "Trustee") of the substantively consolidated estate of for Agape World Inc., et al., by his special counsel, Reid Collins & Tsai LLP, seeking the entry of an Order (i) approving of the Stipulation (the "Stipulation") Settling All Claims By and Between Kenneth P. Silverman, Esq., Chapter 7 Trustee of Agape World, Inc., *et al.*, and Cunningham Commodities, LLC ("**Cunningham**") and (ii) granting related relief; and upon the Affidavit of Service filed with the Court; and no objections to the Application having been filed; and the Court having found that the settlement of the Trustee's claims against Cunningham, to be fair, reasonable and in the best interest of the

Debtors' estate; and the Court having found that service of the Notice of Presentment, Application with Exhibit and Proposed Order is sufficient *and* cause having been shown therefore; and no additional notice being necessary or required;

NOW, THEREFORE, upon the Notice of Presentment and Application of the Trustee and pursuant to Federal Rule of Bankruptcy Procedure 9019(a) and other applicable law, it is hereby

**ORDERED**, that the Application is **granted**, and it is further

**ORDERED**, that the settlement of all claims by and between the Trustee and Cunningham, as memorialized in the Stipulation is **approved**; and it is further

**ORDERED**, that the Trustee be, and hereby is authorized and directed to take such steps, execute such documents and expend such funds as may be reasonably necessary to effectuate and implement the terms and conditions of this Order.

**SO ORDERED.**

Dated: \_\_\_\_\_, New York  
\_\_\_\_\_, 2012

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Honorable Joel B. Rosenthal  
United States Bankruptcy Judge

**REID COLLINS & TSAI LLP**

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*Special Counsel to Kenneth P. Silverman, Esq.  
Chapter 7 Trustee of Agape World Inc., et al.*

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK  
AT CENTRAL ISLIP

-----x  
In re:

AGAPE WORLD, INC., *et al.*

Chapter 7  
Case No. 09-70660 (DTE)  
Substantively Consolidated

Debtors.

-----x  
KENNETH P. SILVERMAN, ESQ., as  
Chapter 7 Trustee of Agape World, Inc., *et al.*  
Plaintiff,

Adv. Pro. No. 8-11-09167 (JBR)

-against-

CUNNINGHAM COMMODITIES, LLC  
Defendant.  
-----x

**TRUSTEE'S APPLICATION UNDER BANKRUPTCY RULE 9019(a) SEEKING THE ENTRY OF AN ORDER (I) APPROVING A STIPULATION SETTling ALL CLAIMS BY AND BETWEEN KENNETH P. SILVERMAN, ESQ., CHAPTER 7 TRUSTEE OF AGAPE WORLD, INC., *et al.*, AND CUNNINGHAM COMMODITIES, LLC AND (II) GRANTING RELATED RELIEF**

Kenneth P. Silverman, Esq., (the "Trustee") the chapter 7 trustee of the substantively consolidated estate of Agape World, Inc., *et al.*, by his special counsel, Reid Collins & Tsai LLP and Ruskin Moscou Faltischek P.C. (collectively "Special Counsel"), (i) seeking entry of an Order approving of the Stipulation Settling All Claims By and Between Kenneth P. Silverman, Esq., Chapter 7 Trustee of Agape World, Inc., *et al.*, and Cunningham Commodities, LLC settling claims in this adversary proceeding for the amount of \$475,000.00 and (ii) granting related relief, respectfully sets forth and represents as follows:

**Background**

1. On February 5, 2009 (the "Petition Date"), an involuntary chapter 7 petition was filed by four petitioning creditors (the "Petitioning Creditors") pursuant to 11 U.S.C. §303(b), against the Agape World, Inc. ("AWI") in the United States Bankruptcy Court for the Eastern District of New York.

2. On February 9, 2009, the Petitioning Creditors filed a motion to appoint an interim chapter 7 trustee under 11 U.S.C. §303(g).

3. On February 12, 2009, this Court granted the Petitioning Creditors' motion and entered an order directing the United States Trustee's Office to immediately appoint an interim chapter 7 trustee in the AWI case.

4. On February 12, 2009, Kenneth P. Silverman, Esq., was appointed the interim trustee in the AWI case, and has since duly qualified and is now the permanent Trustee in the AWI substantively consolidated case.

5. On March 4, 2009, the Court issued an Order for relief in the AWI chapter 7 case.

6. On April 14, 2009, the Court issued an Order substantively consolidating AWI, Agape Merchant Advance LLC, Agape Community LLC, Agape Construction Management, LLC, Agape World Bridges LLC, and 114 Parkway Drive South LLC (collectively with AWI, the “Debtors”).

7. The Trustee and his counsel have investigated the financial affairs of the Debtors, including a detailed analysis of the extent and validity of certain transfers made by the Debtors as a part of their futures trading scheme to Cunningham Commodities, LLC (“Cunningham” or “Defendant”) within the two (2) years immediately preceding the Petition Date in the aggregate amount of Four Million Sixty Hundred Fifty Thousand and 00/100 (\$4,650,000.00) Dollars (the “Transfers”).

8. By order dated January 20, 2010, Special Counsel was retained to conduct an initial investigation to determine the viability of certain third-party claims as directed by the Trustee. These claims included potential causes of action against several Futures Commission Merchants (“FCMs”), including Cunningham. Over the course of the ensuing months, Special Counsel conducted extensive and on-going legal research and analysis regarding potential claims against Cunningham and other FCMs.

9. The Trustee and Special Counsel conducted an investigation of the Debtors’ pre-petition financial affairs, including obtaining and analyzing a substantial array of documents from FCMs and other industry participants relating to the Debtors’ business dealings. The Trustee served a first round of document requests pursuant to Fed. R. Bankr. P. 2004 and Orders of the Court in July 2009. The Trustee then engaged Special Counsel to analyze the documents. Upon this review, in July 2010, Special Counsel served a second round of requests for documents and witness examinations pursuant to Fed. R. Bankr. P. 2004 and Orders of the Court. Special Counsel then reviewed the additional documents produced by the FCMs and examined



their designated witnesses. Thereafter, Special Counsel served a third round of requests for documents and witness examinations pursuant to Fed. R. Bankr. P. 2004 and Orders of the Court on other futures and commodities industry participants.

10. In the course of this initial, pre-suit analysis, the Trustee and Special Counsel obtained documentary discovery from Cunningham directly, which related to the Transfers and the Debtors' business dealings with Cunningham.

11. The Trustee and Special Counsel concluded that the Trustee could assert viable legal claims on behalf of the Debtors' estate to avoid and recover the Transfers from Cunningham pursuant to 11 U.S.C. §§548 and 550 and New York common law (the "Trustee's Claims").

12. Special Counsel prepared a draft complaint setting forth the Trustee's Claims against Cunningham (the "Draft Complaint") prior to commencing formal litigation and provided it to Cunningham as a confidential settlement communication pursuant to Fed. R. Evid. 408.

13. Through Special Counsel, the Trustee engaged in pre-suit settlement discussions with Cunningham, however, the parties were unable to reach a settlement. Therefore, on or about January 28, 2011, the Trustee filed this adversary proceeding against Cunningham in the Eastern District of New York Bankruptcy Court (the "Lawsuit").

14. In the Lawsuit, Trustee asserted that Transfers, totaling \$4,650,000 and made by the Debtors to Cunningham, are avoidable pursuant to 11 U.S.C. §§548 and 550 (the "Claims").

15. Cunningham answered the Complaint on August 4, 2011. Cunningham generally denied any liability related to the Claims and asserted multiple defenses to the Claims, including, *inter alia*, that Cunningham lacked dominion and control over the Transfers, that it had acted in good faith in receiving the Transfers and, therefore, the Transfers were not avoidable, and that it

should not be liable for the receipt of the Transfers because it only received \$20,000 in fees for the futures trading conducted through Cunningham.

16. Thereafter, the parties began conducting discovery. The parties exchanged initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) and responded to document requests, with each party producing documents. The parties also exchanged and responded to initial interrogatories. After review of the written discovery the Trustee noticed multiple depositions, including depositions of employees of Cunningham. However, prior to conducting the depositions, the Trustee and Cunningham, through their respective counsel, agreed to settle the case for the sum of \$475,000 (four hundred seventy-five thousand dollars) (the "Settlement Sum").

17. Based upon the Trustee's and Special Counsel's investigation, legal and factual research, analysis of the relevant law, industry, and the Debtors' pre-petition financial affairs, review of the documentation produced by Cunningham, and the advice of Special Counsel, the Trustee, in the exercise of his business judgment, agreed to accept Cunningham's offer to remit the Settlement Sum in full and final settlement of any and all claims that the Trustee may have against Cunningham.

18. Further, because of Cunningham's small size and limited financial resources, the Trustee has agreed to allow Cunningham to pay the Settlement Sum in three installments as follows: (1) the first installment, in the amount of Two Hundred Thousand and no/100 (\$200,000.00) Dollars **shall be remitted to the Trustee at the execution of the settlement stipulation**; (2) the second installment, in the amount of One Hundred Twenty Five Thousand and no/100 (\$125,000.00) Dollars shall be remitted so as to be received by the Trustee **no later than June 29, 2012**; and (3) the third and final installment, in the amount of One Hundred Fifty

Thousand and no/100 (\$150,000.00) Dollars shall be remitted so as to be received by the Trustee **no later than January 30, 2013**

### **SETTLEMENT**

19. The Trustee has determined that settling the Trustee's Claims for the Settlement Sum is in the best interests of the Debtors' estate and is the most economical and efficient way to realize a meaningful and beneficial recovery for the benefit of creditors without the need to incur the expenses and risks inherent with the prosecution of the Trustee's Claims in continued litigation.

20. The Trustee and Special Counsel concluded that the dominion and control issue, if litigated, was likely to be determined in favor of the Trustee. Certainly, the arguments advanced by Cunningham were the same arguments the Trustee and Special Counsel would expect any FCM sued by the Trustee to assert. Dominion and control, in the context of the Trustee's Claims, is a mixed question of law and fact, and while the Trustee and Special Counsel believe the case law favors the Trustee, the issue does not lend itself to disposition at the pleading stage and will require months or years of expensive litigation before resolution. Indeed, the leading cases in this area on the issue of dominion and control are either summary judgment opinions or decisions rendered after trial.

21. The Trustee and Special Counsel also recognized that Cunningham would attempt to argue that, even if it had dominion and control as to some portion of the Transfers, it did not have dominion and control of all of the Transfers. Thus, the Trustee and Special Counsel considered the range of results that might be obtained after a lengthy litigation.

22. If the Trustee prevailed on all issues, the Transfers at issue equal \$4,650,000, which constitutes the entire sum of money transferred from the Debtor to Cunningham. However, in the event that Cunningham prevailed on its dominion and control argument with

respect to some portion of the Transfers, it was at least theoretically possible that the Trustee could win a judgment in the amount of the trading losses suffered by Debtor in the Cunningham account (approximately \$2.7 million), or win a judgment that was limited to the fees and commissions deducted by Cunningham from the Debtor's account (approximately \$20,000).

23. Similarly, the good faith defense that Cunningham articulated during discussions with Special Counsel is a fact-intensive issue that can only be resolved after full discovery, including the testimony and opinions of industry experts. Very likely, the issue of whether Cunningham received the Transfers in good faith is a question for trial, not summary judgment. Special Counsel considered, among other things, its prior experience litigating this same issue in other cases, which has invariably involved a factual finding made only after discovery and, often, an expensive "battle of the experts" at a trial of the case. Thus, although it would be Cunningham's burden to prove the defense, the good faith issue was another matter that the Trustee and Special Counsel carefully considered.

24. Further, as Cunningham repeatedly informed the Trustee and Special Counsel, Cunningham is one of the smallest licensed FCMs and has limited financial resources. Cunningham provided evidence of its financial status to the Trustee to evaluate in the context of settlement discussion.

25. The Trustee and Special Counsel weighed the expenses and uncertainty of trying the issue to a successful conclusion before a fact finder, against the advantages to the estate of an early and certain recovery through settlement.

26. Taking all of the foregoing circumstances into consideration, the Trustee has exercised his considerable business judgment and determined that the benefit of receiving the certain Settlement Sum is greater than the potential benefit coupled with the uncertainty of taking the matter to a fact finder.

27. In light of the foregoing and mindful of the costs and risks of litigating the Trustee's Claims, the Trustee has agreed to accept the Settlement Sum.

28. For a more comprehensive explanation of the terms and conditions of the proposed settlement, all interested parties are encouraged to review the Stipulation of Settlement "Stipulation" annexed hereto as **Exhibit A**.

### **BASIS FOR THE RELIEF REQUESTED**

29. The clear purpose of Rule 9019 is to prevent the making of concealed agreements which are unknown to the creditors and unevaluated by the court. Federal Rule of Bankruptcy Procedure 9019(a), the Rule governing the approval of compromises and settlements, provides:

(a) Compromise. On motion by the trustee and after notice and hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.<sup>1</sup>

30. The Trustee has made an "informed and independent" judgment regarding his settlement of the Trustee's Claims against Cunningham. In approving a compromise and settlement, the Bankruptcy Court is required to make an "informed and independent judgment" as to whether the compromise and settlement is fair and equitable based on an:

[e]ducated estimate of the complexity, expense and likely duration of [any] litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to this process, in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of litigation.<sup>2</sup>

31. The settlement set forth in the Stipulation satisfies each of the criteria outlined by the courts in *TMT Trailer Ferry*, *Arrow Air*, *Jackson Brewing* and *Holywell*. The Trustee has

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<sup>1</sup> *In re Masters, Inc.*, 141 B.R. 13 (Bankr. E.D.N.Y. 1992).

<sup>2</sup> *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425, *reh'g denied*, 391 U.S. 909 (1968). See *American Can Co. v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 605, 607 (5th Cir. 1980); *Chopin Assoc. v. Smith (In re Holywell Corp.)*, 93 B.R. 291, 294 (Bankr. S.D. Fla. 1988); *In re Arrow Air, Inc.*, 85 B.R. 886, 891 (Bankr. S.D. Fla. 1988); *In re Bell & Beckwith*, 77 B.R. 606, 611 (Bankr. N.D. Ohio 1987), *aff'd*, 87 B.R. 472 (N.D. Ohio 1987); *Cf. Magill v. Springfield Marine Bank (In re Heissinger Resources Ltd.)*, 67 B.R. 378, 383 (C.D. Ill. 1986) ("the law favors compromise").

determined that, following an analysis of Debtors' transactions, an extensive exchange of information and arguments with Cunningham, and lengthy negotiations with counsel, it is too speculative to presume that prosecution of the Trustee's Claims and enforcement of resulting judgments would result in a net benefit to the estate in excess of the Settlement Sum.

32. Accordingly, after considering the foregoing factors, the Trustee believes that the settlement is fair and equitable and in the best interests of the estate and represents a reasonable exercise of the Trustee's business judgment.

33. It is respectfully submitted that settling the Trustee's Claims in accordance with the Stipulation is fair and reasonable, in the best interests of this estate, represents a reasonable exercise of the Trustee's business judgment and should be approved by the Court. Therefore, and based on the foregoing, the Trustee respectfully requests that the Court approve the Stipulation.

#### **NOTICE OF PRESENTMENT OF PROPOSED ORDER**

34. The Trustee has served this Application with Exhibit, the Notice of Presentment of Proposed Order, and the Proposed Order upon: (i) the Office of the United States Trustee; (ii) Nicholas Cosmo, former principal of the Debtors, (iii) criminal counsel to Nicholas Cosmo, (iv) counsel to Cunningham, (v) the appropriate taxing authorities, and (vi) all parties having filed a Notice of Appearance in this case, and copies have been posted on the Trustee's website located at [www.agapeworldbankruptcy.com](http://www.agapeworldbankruptcy.com). The Trustee respectfully represents that service complies with the Bankruptcy Court's Order Establishing Noticing Procedures entered on July 8, 2009.

35. No previous application for the relief requested herein has been made to this or any other Court.

**WHEREFORE**, the Trustee respectfully requests that this Court enter an Order approving of the Stipulation Settling All Claims By and Between Kenneth P. Silverman, Esq., Chapter 7 Trustee of Agape World, Inc., *et al.*, and Cunningham Commodities, LLC and (ii) granting related relief as this Court deems just and proper.

# # # # #

Dated: New York, New York  
February 3, 2012

REID COLLINS & TSAI LLP

/s/ William T. Reid, IV

William T. Reid, IV (WR-5205)  
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*Special Litigation Counsel for Kenneth P. Silverman,  
as Chapter 7 Trustee of Agape World, Inc., et al.*



UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK  
AT CENTRAL ISLIP

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In re:

AGAPE WORLD INC., *et al.*,

Debtors.

Chapter 7  
Case No. 8-09-70660 (DTE)  
Substantively Consolidated

-----X  
KENNETH P. SILVERMAN, ESQ., as  
Chapter 7 Trustee of Agape World, Inc., *et al.*

Adv. Pro. No. 8-11-09167 (JBR)

Plaintiff,

-against-

CUNNINGHAM COMMODITIES, LLC,

Defendant.  
-----X

**STIPULATION SETTling ALL CLAIMS BY AND BETWEEN KENNETH P.  
SILVERMAN, ESQ., CHAPTER 7 TRUSTEE OF AGAPE WORLD, INC., *et al.*,  
AND CUNNINGHAM COMMODITIES, LLC**

Kenneth P. Silverman, Esq., Chapter 7 Trustee of Agape World, Inc., *et al.*, and  
Cunningham Commodities, LLC file this Stipulation Settling All Claims and show the Court as  
follows:

**I. BACKGROUND**

1. On February 5, 2009 (the "**Petition Date**"), an involuntary chapter 7 petition was  
filed by four petitioning creditors (the "**Petitioning Creditors**") pursuant to 11 U.S.C. §303(b),  
against Agape World, Inc. ("**AWI**"), in the United States Bankruptcy Court for the Eastern  
District of New York.

2. On February 9, 2009, the Petitioning Creditors filed a motion to appoint an  
interim chapter 7 trustee under 11 U.S.C. §303(g).

3. On February 12, 2009, the Court granted the Petitioning Creditors' motion and entered an order directing the United States Trustee's Office to immediately appoint an interim chapter 7 trustee in the AWI case.

4. On February 12, 2009, Kenneth P. Silverman, Esq., was appointed the interim trustee in the AWI case, and has since duly qualified and is now the permanent trustee (the "**Trustee**") in the Debtors' substantively consolidated case.

5. On March 4, 2009, the Court issued an Order for relief in the AWI chapter 7 case.

6. On April 14, 2009, the Court issued an Order substantively consolidating AWI, Agape Merchant Advance LLC, Agape Community LLC, Agape Construction Management, LLC, Agape World Bridges LLC, and 114 Parkway Drive South LLC (collectively, the "**Debtors**").

7. The Trustee and his counsel have investigated the financial affairs of the Debtors, including a detailed analysis of the extent and validity of certain transfers made by the Debtors to Cunningham Commodities, LLC ("**Defendant**") within the two (2) years immediately preceding the Petition Date.

8. The Trustee obtained an Order of the Bankruptcy Court authorizing the examination of the Defendant pursuant to Federal Rule of Bankruptcy Procedure ("**Bankruptcy Rule**") 2004. In response to the Bankruptcy Rule 2004 subpoena served by the Trustee, Defendant produced documentation related to transfers made to and from the Debtor.

9. On or about June 20, 2011, the Trustee filed an adversary proceeding against the Defendant in the Eastern District of New York Bankruptcy Court (the "**Complaint**").

10. In the Complaint, Trustee asserted that transfers totaling \$4,650,000 (the “**Transfers**”) made by the Debtors to the Defendant are avoidable pursuant to 11 U.S.C. §§548 and 550 (the “**Claims**”).

11. The Defendant answered the Complaint on August 4, 2011, generally denying any liability related to the Claims and asserted certain affirmative defenses to the Claims, including, *inter alia*, that Defendant did not have dominion and control over the Transfers and that Defendant acted in good faith in receiving the Transfers and, therefore, the Transfers were not avoidable.

12. Defendant and the Trustee exchanged written discovery materials in this litigation. After initial written discovery, the Trustee and Defendant agreed to discuss the possibility of settling the Claims and conducted settlement negotiations between counsel.

13. On January 3, 2012, the Defendant, in the spirit of compromise and without any admission of liability, offered to remit the sum of **Four Hundred Seventy Five Thousand (\$475,000.00) Dollars (the “Settlement Sum”)** to the Trustee in full and final settlement of the Claim in exchange for a full release of Defendant. Defendant has agreed to be liable for payment of the Settlement Sum.

14. Based upon his review of all documentation related to the Transfers and his investigation of all attendant factors, the Trustee has, in his business judgment, agreed to accept the Settlement Sum in full and final settlement of the Claims upon the following terms and conditions, which the Trustee believes are fair and reasonable, especially in light of the costs and uncertainty associated with litigation.

## **II. STIPULATIONS AND AGREEMENTS**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the parties hereto, that the Trustee's Claims be resolved upon the terms and conditions set forth herein as follows:

### **A. BANKRUPTCY COURT APPROVAL OF THE SETTLEMENT**

1. This Stipulation (the "**Stipulation**") is subject to the approval of the United States Bankruptcy Court for the Eastern District of New York (the "**Approval Order**").

2. If the Bankruptcy Court does not enter the Approval Order or if the Approval Order is appealed and reversed, this Stipulation (including the releases contained herein) will be null and void and of no force and effect and without prejudice to the rights, claims or defenses of the parties and none of the terms herein shall be usable as evidence by either party.

### **B. DEFENDANT'S OBLIGATION TO PAY THE SETTLEMENT SUM**

3. The Settlement Sum in the amount of Four Hundred Seventy Five Thousand and 00/100 (\$475,000.00) Dollars **shall be remitted to the Trustee** in three (3) installments. The first installment, in the amount of Two Hundred Thousand and no/100 (\$200,000.00) Dollars **shall be remitted to the Trustee at the execution of this settlement stipulation.** The second installment, in the amount of One Hundred Twenty Five Thousand and no/100 (\$125,000.00) Dollars shall be remitted so as to be received by the Trustee **no later than June 29, 2012.** The third and final installment, in the amount of One Hundred Fifty Thousand and no/100 (\$150,000.00) Dollars shall be remitted so as to be received by the Trustee **no later than January 30, 2013.**

4. Any of the installment payments made by Defendant prior to the entry of the Approval Order shall be held in a non-interest bearing escrow account of the Trustee's counsel

until the Approval Order becomes final and non-appealable under 28 U.S.C. §158(c)(2) and Bankruptcy Rule 8002.

5. Upon the Approval Order becoming final and non-appealable, Trustee's counsel will transfer that portion of the Settlement Sum being held in escrow to the Trustee to be deposited into the Debtors' estate account. If, and only if, the Bankruptcy Court denies the entry of the Approval Order as contemplated in paragraph 2, above, will Trustee's counsel return the Settlement Sum to Defendant's counsel.

6. If Defendant fails to make timely payment of any installment of the Settlement Sum in accordance with paragraph 3, above, or if Defendant's payment of any installment of the Settlement Sum is dishonored for any reason whatsoever and Defendant does not cure such default within ten (10) business days after written notice sent by Federal Express or other reputable overnight courier to Defendant and its counsel at the addresses set forth herein, then the Trustee shall be entitled to move before the Bankruptcy Court, without further notice and upon the affidavit by the Trustee attesting to the default (a) for the entry of a judgment against Defendant in the amount of all unpaid installments, plus interest at the rate of 18% per annum (calculated from the date of execution of this Stipulation), plus all attorneys' fees incurred by the Trustee in attempting to collect on the unpaid amount, and (b) for any further relief necessary to enforce his rights under this Stipulation. Written notice of default shall be sent by Federal Express or other reputable overnight courier to (i) Defendant at Cunningham Commodities, LLC, 141 West Jackson Blvd., Suite 211A, Chicago, IL, Attn: William Cunningham; and (ii) Dewey & LeBoeuf LLP, Two Prudential Plaza, 180 North Stetson Avenue, Suite 3700, Chicago, IL 60601; Attn: Timothy Carey, Esq.

7. Defendant expressly agrees that in the event of a default that is not cured within ten (10) business days after written notice described above, Defendant is liable to the Trustee in the amount of all unpaid installments, plus interest at the rate of 18% per annum (calculated from the date of execution of this Stipulation), plus all attorneys' fees incurred by the Trustee in attempting to collect on the unpaid amount. Defendant expressly agrees that in the event of a default that is not cured within ten (10) business days after written notice described above, it waives any and all rights to contest its liability to the Trustee for this amount.

**C. MUTUAL RELEASES**

8. Upon the Approval Order becoming final and non-appealable, and the Trustee's receipt and clearance of the full Settlement Sum, the Trustee and the Debtors release and forever discharge Defendant, Cunningham Commodities, LLC, its affiliated entities, and each of their present or former officers, attorneys, directors, employees, agents, representatives, assigns, predecessors-in-interest and successors-in-interest (the "**Released Parties**") from any and all claims, claims for relief, demands, costs, expenses, damages, liabilities, losses and obligations of any nature.

9. Upon the entry of the Approval Order, the Released Parties release, discharge and waive any and all claims against the Debtors' Estate, the Trustee and the Trustee's agents, attorneys, assigns and successors-in-interest from any and all claims, claims for relief, demands, costs, expenses, damages, liabilities, and obligations of any nature.

**D. NO ADMISSION OF CRIMINAL OR CIVIL LIABILITY**

10. It is understood and agreed that this Stipulation is entered into to avoid costly and protracted litigation. Neither the execution of this Stipulation, nor the payment of the Settlement Sum shall be construed as an admission of any liability on Defendant's part. For clarification,

this paragraph is not intended and shall not be deemed to affect Defendant's obligation to make timely payment of the Settlement Sum or adversely affect the Trustee's rights and remedies in the event that Defendant fails to make timely payment of the Settlement Sum.

**E. MISCELLANEOUS**

11. This Stipulation may be executed in one or more counterparts, with each part being deemed a part of the original document, and facsimile or other electronic signatures shall be deemed an original signature.

12. Counsel executing this Stipulation on behalf of each respective party warrants and represents that she or he is authorized and empowered to execute and deliver this Stipulation on behalf of such party.

13. This Stipulation may not be altered, modified, or changed unless in writing, signed by the parties or their counsel.

14. The Trustee and Defendant are each responsible for their own costs and attorneys' fees incurred in connection with this proceeding.

15. Upon the Approval Order becoming final and non-appealable and after the payment of the final installment of the Settlement Sum, the Trustee shall promptly execute, deliver and file with the Court a stipulation or other appropriate documents necessary to dismiss this adversary proceeding with prejudice.

Dated: New York, New York  
January 23, 2012

**REID COLLINS & TSAI LLP**

*s/ William T. Reid, IV*

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William T. Reid, IV  
Two Wall Street  
Suite 5200  
New York, New York 10005  
(212) 344-5200

*Special Counsel for Kenneth P. Silverman, Esq.,  
the Chapter 7 Trustee*

**DEWEY & LEBOEUF LLP**

*s/ Timothy J. Carey*

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Chicago, IL 60601  
(312) 794-8000

*Counsel for Cunningham Commodities, LLC*



**AGREED AS TO SECTIONS II.A, II.B, II.C, II.D, AND II.E**

s/ Kenneth P. Silverman  
KENNETH P. SILVERMAN, ESQ.  
CHAPTER 7 TRUSTEE FOR AGAPE WORLD, INC., ET AL.

Date: January 23, 2012

s/WILLIAM D. CUNNINGHAM  
CUNNINGHAM COMMODITIES, LLC  
By: William D. Cunningham  
Title: Manager

Date: January 23, 2012