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The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
SEATTLE DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

PATH AMERICA, LLC; PATH AMERICA  
SNOCO LLC; PATH AMERICA FARMER'S  
MARKET, LP; PATH AMERICA KINGCO  
LLC; PATH AMERICA TOWER, LP; PATH  
TOWER SEATTLE, LP; POTALA TOWER  
SEATTLE, LLC; and LOBSANG DARGEY,

Defendants, and,

POTALA SHORELINE, LLC; POTALA  
VILLAGE KIRKLAND, LLC; DARGEY  
DEVELOPMENT, LLC; DARGEY  
ENTERPRISES, LLC; PATH OTHELLO,  
LLC; PATH FARMER'S MARKET, LLC; and  
DARGEY HOLDINGS, LLC,

Relief Defendants.

Case No. 2:15-cv-01350-JLR

STIPULATED MOTION AND ~~PROPOSED~~  
ORDER MODIFYING PREVIOUS ORDERS  
APPROVING FINAL DISPOSITION OF  
POTALA TOWER RELATED ASSETS AND  
EXTENDING DEADLINE FOR CLOSING OF  
RESTRUCTURING TRANSACTION

*MR*

NOTE ON MOTION CALENDAR: Date of  
Filing per [Local Civil Rules 10(g), 7(d)1]

**STIPULATED MOTION**

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2       **PLEASE TAKE NOTICE** that Michael A. Grassmueck (the "Receiver"), the Court-  
3 appointed receiver for Path America, LLC; Path America SnoCo, LLC; Path America Farmer's  
4 Market, LP; Path America KingCo, LLC; Path America Tower, LP; Path Tower Seattle, LP;  
5 Potala Tower Seattle, LLC; Potala Shoreline, LLC; Potala Village Kirkland, LLC; Dargey  
6 Development, LLC; Dargey Enterprises, LLC; Path Farmer's Market, LLC; and Dargey Holdings,  
7 LLC, Plaintiff Securities and Exchange Commission ("SEC"), and Defendant Lobsang Dargey and  
8 Relief Defendant Path Othello, LLC (together "Dargey")<sup>1</sup>, hereby file this stipulated motion  
9 ("Stipulated Motion") for an order modifying this Court's prior orders approving the final  
10 disposition of Potala Tower Seattle, LLC related assets in connection with the restructuring  
11 transaction ("Restructuring Transaction") for the commercial development project located at 2116  
12 Fourth Avenue, Seattle, Washington ("Tower Project"), to extend the existing deadline to close the  
13 Restructuring Transaction.

14       **WHEREAS**, on May 20, 2016, the Court entered an Order approving the Receiver's  
15 recommendation ("Preliminary Approval Order") to select the proposal submitted by Binjiang  
16 Tower Corp. ("Binjiang"), an affiliate of PH Seattle Tower I, LLC ("Molasky"), and Lobsang  
17 Dargey and certain affiliated companies for the Restructuring Transaction;

18       **WHEREAS**, the Preliminary Approval Order required, among other things, the Receiver  
19 and the parties to the Restructuring Transaction to finalize and submit for approval final  
20 agreements memorializing the final terms of the transaction;

21       **WHEREAS**, in accordance with the terms of the Preliminary Approval Order, on June 23,  
22 2016, the Receiver filed a Motion for Final Approval of Disposition of Potala Tower Related  
23 Assets ("Final Approval Motion"), which seeks the final approval of this Court for the  
24 Restructuring Transaction;

25       **WHEREAS**, on July 15, 2016, the Court entered its Order Granting Final Approval of  
26 Disposition of Potala Tower Related Assets ("Final Approval Order"), granting final approval of  
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28 <sup>1</sup> The Receiver, SEC, and Dargey are collectively referred to herein as the "Parties."

1 the terms of the Restructuring Transaction as memorialized in the final agreements ("Final  
2 Agreements") previously submitted as Exhibit B to the Receiver's Declaration filed in support of  
3 his Final Approval Motion and as sealed exhibits to the Stipulated Motion filed on June 29, 2016  
4 in support of the Final Approval Motion;

5 **WHEREAS**, the terms of the Final Agreements, the Preliminary Approval Order and the  
6 Final Approval Order, contemplate and require the Restructuring Transaction to be closed on or  
7 before August 31, 2016;

8 **WHEREAS**, as a condition to closing the Restructuring Transaction, the Final  
9 Agreements, and specifically Section 12.1(c) of the fully-executed Master Agreement dated June  
10 23, 2016 ("Master Agreement"), require a \$100 million construction loan ("Construction Loan") to  
11 be secured in order to provide construction financing for the Tower Project, and further  
12 contemplate that the Construction Loan would be obtained from Voya Investment Management  
13 ("Voya") and closed by no later than August 31, 2016;

14 **WHEREAS**, Section 4.1 of the Master Agreement further requires various assets to be  
15 transferred at the closing of the Restructuring Transaction;

16 **WHEREAS**, Binjiang and Molasky have diligently attempted to negotiate the final terms  
17 of the Construction Loan with Voya, but require additional time to secure agreement on final  
18 terms and secure a final commitments to close the Construction Loan as Voya has indicated it will  
19 jointly make the loan with participation from another lender, Guardian Life Insurance  
20 ("Guardian");

21 **WHEREAS**, on August 22, 2016, Voya's Loan Committee notified Binjiang that it had  
22 approved Voya's participation in a \$50 million portion of the Construction Loan, with the  
23 Commitment Letter expected this Friday, August 26, after only minor remaining revisions;

24 **WHEREAS**, Binjiang and Molasky have informed the Receiver that, through their  
25 negotiations with Voya and Guardian, they anticipate that Guardian will issue its final  
26 commitment letter for its \$50 million portion of the Construction Loan by no later than September  
27 22, 2016, after the next soonest Loan Committee formal meeting in the week of September 15,

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1 2016 and that the Construction Loan, funded by Voya and Guardian, can then be closed on or  
2 before October 24, 2016;

3       **WHEREAS**, the Receiver believes that a short extension of the closing deadline for the  
4 overall Restructuring Transaction will be the best means for ensuring that construction lenders  
5 (expected to be Voya and Guardian), will simultaneously close the necessary Construction Loan  
6 for the Project, and the Restructuring Transaction may proceed to closing and the Tower Project  
7 may be completed as contemplated;

8       **WHEREAS**, the Receiver further believes that, although success on appeal is not  
9 guaranteed, the timely closing of the Restructuring Transaction and completion of the Tower  
10 Project still present the best option to maximize the potential for success of the pending appeal  
11 with the U.S. Citizenship and Immigration Services and for the Tower Project's EB-5 investors to  
12 achieve the immigration benefit they originally sought; and

13       **WHEREAS**, the Parties have conferred regarding extending the deadline to close the  
14 Restructuring Transaction, and have agreed that the current deadline for closing by August 31,  
15 2016, should be extended for a period of approximately 54 days to October 24, 2016, in order to  
16 provide additional time for Binjiang and Molasky to close their Construction Loan, and that the  
17 required transfer of assets pursuant to the terms of the Master Agreement as described herein be  
18 facilitated through a mutually agreed-upon escrow company at or before the extended deadline for  
19 closing.

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21       **THEREFORE**, the Parties hereby **STIPULATE** and **AGREE** as follows:

- 22       1.       The deadline for closing the Restructuring Transaction, as set forth in the  
23 Preliminary Approval Order and the Final Approval Order, is to be extended to October 24, 2016;
- 24       2.       The Final Agreements shall be amended by the parties thereto to reflect the  
25 extension of the deadline for closing;

1           3.       The required transfer of assets pursuant to the terms of the Master Agreement shall  
2 be facilitated through a mutually agreed-upon escrow company at or before the extended deadline  
3 for closing;

4           4.       Binjiang and Molasky shall diligently continue to pursue the issuance of the final  
5 Construction Loan commitments by no later than September 22, 2016, and the Construction loan  
6 shall close by no later than October 24, 2016; and

7           5.       If Binjiang and Molasky are: (1) unable to secure the issuance of a final loan  
8 commitment from Guardian and Voya, respectively, or other construction lender satisfactory to the  
9 Receiver on or before September 22, 2016, or (2) unable to close the Construction Loan by no  
10 later than October 24, 2016 for a combined \$100 million; or (3) close the Restructuring  
11 Transaction by October 24, 2016, the Restructuring Transaction may be deemed void upon  
12 application by any party thereto and further order of the Court.

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14           **IT IS SO STIPULATED.**

15 Dated: August 26, 2016

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

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By:           s/ David R. Zaro

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David R. Zaro, Esq. #124334 (CA)

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(Pro Hac Vice Granted Oct. 26, 2015)

20

Michael R. Farrell, Esq. #173831 (CA)

21

(Pro Hac Vice Granted Nov. 6, 2015)

22

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Attorneys for Receiver

MICHAEL A. GRASSMUECK

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1 Dated: August 26, 2016

DORSEY & WHITNEY LLP

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By: s/ Todd S. Fairchild

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Development, LLC; Dargey Enterprises,  
LLC; and Path Othello, LLC*

Dated: August 26, 2016

SECURITIES AND EXCHANGE  
COMMISSION

By: s/ Susan F. LaMarca

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~~PROPOSED~~ ORDER

The Court, having read the Stipulated Motion and Proposed Order Modifying Previous Orders Approving Final Disposition of Potala Tower Related Assets and Extending Deadline for Closing of Restructuring Transaction ("Stipulated Motion"), filed by Michael A. Grassmueck, the Court-appointed receiver for Path America, LLC; Path America SnoCo, LLC; Path America Farmer's Market, LP; Path America KingCo, LLC; Path America Tower, LP; Path Tower Seattle, LP; Potala Tower Seattle, LLC; Potala Shoreline, LLC; Potala Village Kirkland, LLC; Dargey Development, LLC; Dargey Enterprises, LLC; Path Farmer's Market, LLC; and Dargey Holdings, LLC, Plaintiff Securities and Exchange Commission, and Defendant Lobsang Dargey and Relief Defendant Path Othello, LLC—which seeks an order modifying this Court's prior orders approving the final disposition of Potala Tower Seattle, LLC related assets in connection with the restructuring transaction ("Restructuring Transaction") for the commercial development project located at 2116 Fourth Avenue, Seattle, Washington ("Tower Project"), to extend the existing deadline to close the Restructuring Transaction—and good cause appearing therefor, hereby **ORDERS** as follows:

1. The Stipulated Motion is hereby Approved;
2. The August 31, 2016 deadline for closing the Restructuring Transaction, as set forth in the May 20, 2016 Order approving the Receiver's recommendation for disposition of the Tower Project related assets and the July 15, 2016 Order Granting Final Approval of Disposition of Potala Tower Related Assets, is hereby extended to October 24, 2016;
3. The final agreements memorializing the terms of the Restructuring Transaction, previously submitted as Exhibit B to the Receiver's Declaration filed in support of his Motion for Final Approval of Disposition of Potala Tower Related Assets ("Final Approval Motion") and as sealed exhibits to the Stipulated Motion filed on June 29, 2016 in support of the Final Approval Motion, shall be amended by the parties thereto to reflect the extension of the deadline for closing;

1           4.       The required transfer of assets pursuant to the terms of the Master Agreement dated  
2 June 23, 2016 ("Master Agreement") shall be facilitated by the parties thereto through a mutually  
3 agreed-upon escrow company at or before the extended deadline for closing

4           5.       Binjiang and Molasky shall diligently continue to pursue the issuance of a final  
5 loan commitment from Guardian Life Insurance ("Guardian") for its \$50 million portion of the  
6 \$100 million construction loan ("Construction Loan"), as contemplated in Section 12.1(c) of the  
7 Master Agreement, by no later than September 22, 2016, and close the Construction Loan by no  
8 later than October 24, 2016; and

9           6.       If Binjiang and Molasky are: (1) unable to secure the issuance of a final loan  
10 commitment from Guardian for its \$50 million portion of the Construction Loan by September 22,  
11 2016 for a combined \$100 million loan commitment, or (2) close the Construction Loan by no  
12 later than October 24, 2016 through the issuance of a combined \$100 million loan from Voya and  
13 Guardian or other construction lenders, or (3) close the Restructuring Transaction by October 24,  
14 2016, the Restructuring Transaction may be deemed void upon application by any party thereto  
15 and further order of the Court.

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17           **IT IS SO ORDERED.**

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19 Dated: 29 August, 2016



Hon. James L. Robart  
Judge, United States District Court



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**CERTIFICATION OF MEET AND CONFER**

In accordance with Local Civil Rule 5(g)(3)(A), I hereby certify that I met and conferred with all other parties to this Stipulated Motion and Proposed Order Modifying Previous Orders Approving Final Disposition of Potala Tower Related Assets and Extending Deadline for Closing of Restructuring Transaction on August 24 and 25, 2016, by way of e-mail communications with counsel for the Parties, and the Parties agree that August 31, 2016 deadline to close the restructuring transaction for the commercial development project located at 2116 Fourth Avenue, Seattle, Washington previously established by the Court should be extended to October 24, 2016.

Dated: August 26, 2016

s/ David R. Zaro  
David R. Zaro, Esq. #124334 (CA)  
(Pro Hac Vice Granted Oct. 26, 2015)

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 26, 2016, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of the filing to all counsel of record.

Dated: August 26, 2016

s/ David R. Zaro  
David R. Zaro, Esq. #124334 (CA)  
(Pro Hac Vice Granted Oct. 26, 2015)