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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 TO CONFIRM APPROVAL FOR
FINAL DISPOSITION OF POTALA TOWER
RELATED ASSETS

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

STIPULATED MOTION

1
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")¹, hereby file this stipulated motion
9 ("Stipulated Motion") for an order confirming approval for the final disposition of Potala Tower
10 Seattle, LLC related assets in connection with the restructuring transaction ("Restructuring
11 Transaction") for the commercial development project located at 2116 Fourth Avenue, Seattle,
12 Washington ("Tower Project") in light of a potential new construction lender.

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

17 **WHEREAS**, in accordance with the terms of the Preliminary Approval Order, on June 23,
18 2016, the Receiver filed a Motion for Final Approval of Disposition of Potala Tower Related
19 Assets ("Final Approval Motion"), which seeks the final approval of this Court for the
20 Restructuring Transaction;

21 **WHEREAS**, on July 15, 2016, the Court entered its Order Granting Final Approval of
22 Disposition of Potala Tower Related Assets ("Final Approval Order"), granting final approval of
23 the terms of the Restructuring Transaction as memorialized in the final agreements ("Final
24 Agreements") previously submitted as Exhibit B to the Receiver's Declaration filed in support of
25 his Final Approval Motion and as sealed exhibits to the Stipulated Motion filed on June 29, 2016
26 in support of the Final Approval Motion;

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28 ¹ The Receiver, SEC, and Dargey are collectively referred to herein as the "Parties."

1 **WHEREAS**, the terms of the Final Agreements, the Preliminary Approval Order and the
2 Final Approval Order, contemplated and require the Restructuring Transaction to be closed on or
3 before August 31, 2016;

4 **WHEREAS**, as a condition to closing the Restructuring Transaction, the Final
5 Agreements, and specifically Section 12.1(c) of the fully-executed Master Agreement dated June
6 23, 2016 ("Master Agreement"), require a \$100 million construction loan ("Construction Loan") to
7 be secured in order to provide construction financing for the Tower Project, and further
8 contemplate that the Construction Loan would be obtained from Voya Investment Management
9 ("Voya"), or other construction lender, and closed by no later than August 31, 2016;

10 **WHEREAS**, on August 26, 2016, the Parties filed a stipulated motion ("Stipulated
11 Motion") confirming Binjiang and Molasky's efforts to secure the closing of the Construction
12 Loan from Voya and Guardian Life Insurance ("Guardian"), and seeking an order to extend the
13 deadline for closing the Restructuring Transaction to October 24, 2016;

14 **WHEREAS**, on August 26, 2016, the Court entered an order granting the Stipulated
15 Motion and setting a closing deadline of October 24, 2016 for the Construction Loan to be closed
16 "through the issuance of a combined \$100 million loan from Voya and Guardian or other
17 construction lenders" (the "Extension Order");

18 **WHEREAS**, since entry of the Extension Order, Binjiang and Molasky have diligently
19 attempted to finalize the Construction Loan with Voya and Guardian, but have encountered
20 various delays in the approval process;

21 **WHEREAS**, given the delays in securing approval from Voya and Guardian for the
22 Construction Loan, and in order to avoid any further delays to closing the Restructuring
23 Transaction, Binjiang and Molasky have proposed that the entire \$100 million Construction Loan
24 be obtained from Binjiang Limited Partnership, a Delaware limited partnership ("Binjiang
25 Limited") and an affiliate of Binjiang, who will issue the Construction Loan on terms substantially
26 identical to the material loan terms negotiated with Voya and Guardian;

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1 **WHEREAS**, the Receiver and Binjiang Limited have tentatively agreed to an escrow
2 agreement whereby Binjiang Limited will deposit the entire \$100 million in Construction Loan
3 funds into a domestic account at the Los Angeles branch of the Bank of China, a federally
4 chartered branch of Bank of China Limited ("Bank of China"). The entire \$100 million will be
5 maintained in the Bank of China account until \$25 million has been drawn on the Construction
6 Loan to finance the costs of construction pursuant to the terms of the Final Agreements. At that
7 time, Binjiang Limited may withdraw \$50 million from the Bank of China account but will be
8 obligated to replenish the account in \$25 million installments whenever the account balance falls
9 below \$1 million;

10 **WHEREAS**, the Receiver believes that while a non-arms length affiliate relationship
11 exists between Binjiang and Binjiang Limited, the contemplated escrow terms provide substantial
12 assurance that the construction funds will be available for construction post-restructuring;

13 **WHEREAS**, although the terms of the Final Agreements, the Preliminary Approval Order
14 and the Final Approval Order already authorize securing the Construction Loan from "*other*
15 *construction lenders*," the Parties wish to expressly confirm authorization by this Court to close
16 the contemplated Construction Loan with Binjiang Limited as part of the closing of the
17 Restructuring Transaction;

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

19 1. The Restructuring Transaction may proceed with the Construction Loan provided
20 by Binjiang Limited and close pursuant to the Final Approval Order and the Extension Order.

21 **IT IS SO STIPULATED.**

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1 Dated: September 19, 2016

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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By: /s/ Michael R. Farrell

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

5

Michael R. Farrell, Esq. #173831 (CA)
(Pro Hac Vice Granted Nov. 6, 2015)

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Attorneys for Receiver

MICHAEL A. GRASSMUECK

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14 Dated: September 19, 2016

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By: /s/ Todd S. Fairchild

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Attorneys for Lobsang Dargey; Dargey

Development, LLC; Dargey Enterprises,

LLC; and Path Othello, LLC

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1 Dated: September 19, 2016

SECURITIES AND EXCHANGE
COMMISSION

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By: /s/ Susan F. LaMarca

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~~PROPOSED~~ ORDER

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The Court, having read the Stipulated Motion and Proposed Order To Confirm Approval For Final Disposition Of Potala Tower Related Assets ("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 confirming this Court's prior approval of 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"), in light of the potential \$100 million construction loan for completion of the Tower Project ("Construction Loan") from Binjiang Limited Partnership, a Delaware limited partnership ("Binjiang Limited") who is also an affiliate of Binjiang Tower Corp. ("Binjiang")—and good cause appearing therefor, hereby **ORDERS** as follows:

1. The Court confirms its approval of the Restructuring Transaction as set forth in the Final Approval Order and the Extension Order, with Binjiang Limited as a potential lender on the Construction Loan.

IT IS SO ORDERED.

Dated: 20 Sept. 2016, 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 To Confirm Approval For Final Disposition Of Potala Tower Related Assets on various days between September 15, 2016 and September 19, 2016, by way of e-mail and telephonic communications with counsel for the Parties, and the Parties agree that the restructuring transaction for the commercial development project located at 2116 Fourth Avenue, Seattle, Washington may proceed as set forth in the Final Approval Order and Extension Order, with Binjiang Limited Partnership as a potential lender for the contemplated construction loan..

Dated: September 19, 2016

/s/ Michael R. Farrell
Michael R. Farrell, Esq. #173831 (CA)
(Pro Hac Vice Granted Nov. 6, 2015)

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CERTIFICATE OF SERVICE

I hereby certify that on September 19, 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: September 19, 2016

/s/ Michael R. Farrell
Michael R. Farrell, Esq. #173831 (CA)
(Pro Hac Vice Granted Nov. 6, 2015)