

The Honorable James L. Robart

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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; and PATH OTHELLO,
LLC,

Relief Defendants.

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

DECLARATION OF MICHAEL A.
GRASSMUECK IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF DISPOSITION
OF POTALA TOWER RELATED ASSETS

NOTE ON MOTION CALENDAR: July 8, 2016

DECLARATION OF MICHAEL A. GRASSMUECK

I, Michael A. Grassmueck, declare:

1. I am 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; and Potala Village Kirkland, LLC (collectively, the "Receivership Entities" or "Entities"), and was appointed receiver pursuant to this Court's Order Appointing Receiver on October 22, 2015.

2. This Declaration is made in support of my Motion for Final Approval of Disposition of Potala Tower Related Assets ("Motion"), which seeks final approval of the terms of a restructuring transaction ("Restructuring Transaction") for the commercial development project located at 2116 Fourth Avenue, Seattle, Washington ("Tower Project") submitted by Binjiang Tower Corp. ("Binjiang"), PH Seattle Tower I, LLC ("Molasky"), and Lobsang Dargey and certain affiliated companies. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify to such facts under oath.

3. Based on my review of the records of the Receiverships Entities, I understand the Tower Project is a planned commercial development in downtown Seattle originally intended to be a mixed-use facility comprised of residential apartment units, a hotel, and other retail facilities. The land upon which the Tower Project is being developed was acquired in 2013 by Potala Tower Seattle, LLC ("Tower LLC"), whose members are Dargey Holdings, LLC and Binjiang.

4. In connection with the Restructuring Transaction and pursuant to the terms of this Court's Order entered on May 20, 2016 approving my recommendation to select the restructuring proposal submitted by Binjiang and Molasky ("Preliminary Approval Order"), I have prepared a form notice to EB-5 investors with the assistance of my counsel detailing the terms of the contemplated Restructuring Transaction and setting forth the terms of the investor consent process ("Notice to Investors"). A true and correct copy of the Notice to Investors is attached hereto as

Exhibit A.

1 5. As reflected therein, the Notice to Investors explains in detail the process by which
2 investors may elect to either opt-in or opt-out of the restructuring. The Notice to Investors also
3 sets forth the final terms of the Restructuring Transaction impacting EB-5 investors, where
4 investors who opt-in to the restructuring will consent to the restructuring as an accord and
5 satisfaction of all prior claims, and will further release any and all claims as a result of the
6 transaction and any claims relating to any potential denials of their EB-5 petitions. The Notice to
7 Investors also indicates that investors who opt-out of the restructuring will receive an opt-out
8 payment of \$250,000, due within five days after closing, and an allowed claim against the
9 receivership estate for the remaining amount of their investment. In exchange for payment,
10 opting-out investors will provide releases of claims as specified in an exhibit to the Notice to
11 Investors. Finally, the Notice to Investors expressly states that any investors who do not
12 affirmatively respond to the Notice to Investors will be deemed to have opted-in to the
13 Restructuring Transaction.

14 6. As required by this Court, I have evaluated various methods of sending the Notice
15 to Investors to the EB-5 investors of the Tower Project, and believe that a number of methods
16 should be used to maximize the likelihood of reaching all investors. Specifically, I propose that
17 the Notice to Investors be sent to investors by mail and electronic mail based on investor addresses
18 contained in available investor records of the Receivership Entities. I also propose to send copies
19 of the Notice to Investors to all counsel who have identified themselves to me as representing one
20 or more investors in the Tower Project, and further propose posting an electronic copy of the
21 Notice to Investors on the Path America receivership website at
22 <http://grassmueckgroup.com/pathamerica.php>. I will also publish a notice regarding the Notice to
23 Investors and the response process in a newspaper regularly issued and of general circulation in
24 Seattle, Washington at least two times between July 20, 2016 and August 20, 2016. In addition, in
25 order to further assist investors to respond to the Notice to Investors, I will also establish and
26 operate a help line in English and Mandarin for any EB-5 investors who may require assistance.
27 In turn, EB-5 investors will be allowed to submit their responses by electronic mail, facsimile or
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1 regular mail to me directly, or submit their responses online at the Path America receivership
2 website through a web-based form that I will create with the assistance of my professionals.

3 7. In my reasonable business judgment, I believe the form of the Notice to Investors
4 submitted herewith contains sufficient information to appropriately inform EB-5 investors of the
5 contemplated Restructuring Transaction and the ramifications of their opt-in/opt-out decision, and
6 that the procedures outlined above for delivery of the Notice to Investors provides the best
7 opportunity to reach the investors and maximize the number of responses to the Notice to
8 Investors.

9 8. In accordance with the terms of the Preliminary Approval Order, I negotiated the
10 final terms of the Restructuring Transaction and entered into a Master Agreement memorializing
11 the final terms of the transaction, subject to Court approval, for the consummation of the
12 contemplated restructuring. The Master Agreement specifies the basic terms of the Restructuring
13 Transaction and, in turn, includes as exhibits forms of all related additional agreements necessary
14 for completion of the transaction (these additional agreements, along with the Master Agreement,
15 are referred to herein as the "Final Agreements"). A true and correct copy of the fully executed
16 Master Agreement, including exhibits thereto, is attached hereto as **Exhibit B**.

17 9. The form additional agreements appended as exhibits to the Master Agreement
18 include Exhibit A which is the form of an amendment and restatement of Tower LLC's operating
19 agreement ("A&R LLC Agreement"), and Exhibit C which is the form of a new development
20 agreement for the Tower Project by and between Tower LLC and Molasky ("New Development
21 Agreement"). Copies of the A&R LLC Agreement and the New Development Agreement are
22 specifically not included in the copy of the Master Agreement attached hereto as Exhibit B
23 because these agreements contain confidential and proprietary operational information for the
24 applicable companies, and are not currently part of the public judicial record in this matter.
25 Accordingly, these agreements should be filed under seal and, with the assistance of my counsel, I
26 am meeting and conferring with the parties and anticipate filing these agreements under seal
27 pursuant to a stipulated motion in the next few days, well before the noted date for this Motion.

1 10. In my reasonable business judgment, I believe the final terms of the Restructuring
2 Transaction, as detailed in the Final Agreements, provide the best opportunity to complete the
3 Tower Project development and achieve the immigration goals of the EB-5 investors, and are
4 consistent with the Preliminary Approval Order. Accordingly, I respectfully request that the
5 Restructuring Transaction be approved and that I be authorized to complete the closing of the
6 Restructuring Transaction in accordance with the terms of the Final Agreements, and that the
7 Court execute and enter an approval order in the form filed concurrently herewith.

8 11. Finally, given that complete interest in the Receivership Entities Tower LLC, Path
9 America KingCo LLP, Path America Tower, LP and Path Tower Seattle, LP, will be transferred in
10 connection with the consummation of the Restructuring Transaction, I believe these entities should
11 be removed from the receivership following the closing of the transaction. I thus anticipate filing
12 a supplemental motion to inform this Court of the closing of the Restructuring Transaction, and
13 respectfully requests that an order be entered at that time to specifically designate these entities as
14 non-receivership entities by way of entry of an order amending the Appointment Order,
15 substantially in the form of a [Proposed] Order Amending Order Appointing Receiver, a copy of
16 which is attached hereto as **Exhibit C**.

17
18 I declare under penalty of perjury under the laws of the State of Washington that the
19 foregoing is true and correct.

20 Executed this 23rd day of June, 2016, at Seattle, Washington.

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22 MICHAEL A. GRASSMUECK