

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

QUARTERLY STATUS REPORT OF  
RECEIVER, MICHAEL A. GRASSMUECK  
(October 2016 through December 2016)

1 **TO ALL PARTIES, THEIR COUNSEL OF RECORD, AND THIS HONORABLE**  
 2 **COURT:**

3 In accordance with LCR 66(a) and this Court's October 22, 2015 Order Appointing  
 4 Receiver, as modified ("Appointment Order") [Docket 88], Michael A. Grassmueck (the  
 5 "Receiver"), the Court-appointed receiver for Path America, LLC; Path America SnoCo, LLC  
 6 ("SnoCo"); Path America Farmer's Market, LP; Path America KingCo, LLC ("KingCo"); Path  
 7 America Tower, LP; Path Tower Seattle, LP; Potala Tower Seattle, LLC; Potala Shoreline, LLC;  
 8 Potala Village Kirkland, LLC, Dargey Development, LLC, Dargey Enterprises, LLC, Dargey  
 9 Holdings, LLC and Path Farmer's Market, LLC (collectively, the "Receivership Entities" or  
 10 "Entities"), hereby submits the following Quarterly Status Report of Receiver, Michael A.  
 11 Grassmueck ("Report").

12 **I. EXECUTIVE SUMMARY.**

13 As previously reported, the primary assets of the Receivership Entities ("Receivership  
 14 Assets") previously consisted of: the Potala Tower project in Seattle, Washington ("Tower  
 15 Project"); the Potala Market Place Project in Everett, Washington ("Market Place Project"); the  
 16 Potala Shoreline Project in Seattle, Washington ("Shoreline Project"); and the Potala Village  
 17 Kirkland Project in Kirkland, Washington ("Kirkland Project").<sup>1</sup> The transaction by which the  
 18 Receiver disposed of the Tower Project closed during the third quarter of 2016.

19 During the fourth quarter of 2016, the Receiver focused his efforts primarily on the  
 20 development of the commercial space at the Market Place Project, the potential disposition of the  
 21 Receiver's interests in the Market Place Project, addressing the termination of the Path America  
 22 SnoCo, LLC ("SnoCo") regional center by the United State Citizenship and Immigration Services  
 23 ("USCIS"), and the potential disposition of the Shoreline and Kirkland Projects. With respect to  
 24 the Market Place Project, the Receiver finalized a contract with The Carlin Company for  
 25 development of the commercial space and filed a motion for Court approval of that contract and  
 26 related plans. [Docket 454] The motion was noted for December 16, 2016 and was the subject of

27 \_\_\_\_\_  
 28 <sup>1</sup> The Tower Project, the Market Place Project, the Shoreline Project, and the Kirkland Project  
 are sometimes collectively referred to as the "Projects."

1 a cross-motion [Docket 458] filed by defendant Lobsang Dargey ("Dargey"), both of which are  
2 now pending before the Court. With respect to the Shoreline and Kirkland Projects, the Receiver  
3 addressed environmental issues and continued to pursue sales of the properties.

4 Immediately following the fourth quarter, Dargey entered into a Plea Agreement with  
5 United States in the related criminal matter. Dargey has also proposed a settlement to the  
6 Securities and Exchange Commission ("SEC") in this matter, which is under consideration at the  
7 SEC and may be presented to the Court for approval at the end of February. (See Joint Status  
8 Report, Docket 483). The Receiver expects that any settlement, if approved by the SEC and this  
9 Court, will reduce impediments to the performance of his work on this matter.

## 10 **II. RECEIVER'S OPERATIONS**

### 11 **A. Investigation and Asset Recovery.**

12 The Receiver and counsel have continued their work to locate and obtain documents and  
13 information from various sources. The Receiver and his staff have continued to investigate the  
14 pre-appointment transfer of assets and analyze potential opportunities to seek disgorgement of  
15 funds. The Receiver has communicated with the United States Attorney's office concerning real  
16 property that is believed to have been purchased using investor funds, and which is currently the  
17 subject of a forfeiture action. The Receiver also investigated issues raised by the assets of the  
18 entities more recently added to the receivership, including various discussions concerning the  
19 Everett Public Market project described below.

### 20 **B. Addressing Immediate-Term Asset Preservation Issues.**

21 In addition to the Projects mentioned above, Receivership Entities own certain assets,  
22 including a fifty percent (50%) ownership interest in the project known as Everett Public Market  
23 Building ("Everett Building"). The following reflects the status and the Receiver's work  
24 associated with each of the Projects and the Everett Building.

#### 25 *(1) The Tower Project.*

26 During the fourth quarter, the Receiver and his team worked with counsel for the acquiring  
27 parties to address various transition issues, including issues relating to the transfer of remaining  
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1 funds, liens on the property, and taxes arising out of the transaction. The Receiver understands the  
2 project is moving forward and that immigration counsel for the new KingCo management team  
3 has filed papers to re-open the USCIS termination decision.

4 (2) *The Market Place Project.*

5 The residential portion of the Market Place Project completed its initial lease-up and is  
6 currently generating material positive cash flow. During the fourth quarter, the Receiver finalized  
7 his plan for completion and future management of the commercial portion of the project,  
8 negotiated a contract with The Carlin Company, prepared corporate documents necessary to  
9 implement the plan, and filed a motion seeking the Court's approval of the modified plan, the  
10 contemplated loan from Path America LLC, and the Carlin contract [Docket 454]. Dargey filed a  
11 cross-motion seeking approval of a proposal involving the transfer of ownership of SnoCo. The  
12 motion and cross-motion have been fully briefed and are under submission with the Court. The  
13 Receiver has engaged in negotiations with multiple parties concerning a transaction by which a  
14 qualified USCIS- approved entity will acquire ownership of SnoCo, take over all regional center  
15 duties and obligations, and manage the project. Within the next few weeks, the Receiver expects  
16 to complete negotiations, enter into a letter of intent for the most favorable transaction, and file a  
17 motion for preliminary approval of the transaction.

18 (3) *The Shoreline Project.*

19 The Shoreline Project is a pending mixed-use, commercial and residential development, in  
20 the north end of Seattle. The Receiver previously prepared the Shoreline Project for sale, engaged  
21 a broker who listed the property for sale, engaged in discussions with numerous interested parties,  
22 and entered into a purchase and sale agreement with a potential buyer. During the fourth quarter,  
23 the potential buyer performed due diligence on the project, and the parties continued discussions.  
24 Once the parties satisfy certain conditions, the Receiver expects to file a motion seeking approval  
25 of the sale of the project. The Receiver also addressed certain environmental issues during the  
26 fourth quarter, including resolution of an issue concerning escrowed environmental funds.

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1                                   (4)     *The Kirkland Project.*

2           The Kirkland Project is a proposed mixed-use, commercial and residential development.  
3 Previously, the Receiver engaged a broker, and engaged in discussions and negotiations with  
4 numerous interested parties. However, environmental and land use issues regarding the project  
5 affected the timing of the potential disposition of the Project. During the fourth quarter, the  
6 Receiver engaged a consultant to interact with the appropriate regulators and conduct limited  
7 environmental testing on the property. Initial test results have been favorable. The Receiver's  
8 team continues to engage with regulators concerning methods and timing to resolve any  
9 environmental issues and obtain a "No Further Action" letter, which would facilitate a sale.  
10 During the fourth quarter, the Receiver's team also continued efforts to obtain entitlements.

11                                   (5)     *The Everett Building*

12           The Everett Building, in which Dargey Enterprises, LLC has a fifty percent (50%)  
13 ownership interest, is one of the few assets of the New Entities unrelated to the Projects. It is a  
14 commercial building with a number of tenants with varying track records of compliance with lease  
15 terms. The Receiver has had discussions with the co-owners of the Everett Building, is assessing  
16 the asset, and developing options concerning the appropriate next steps regarding the Everett  
17 Building. During the fourth quarter, the Receiver terminated the tenancy of a non-paying tenant,  
18 replaced applicable insurance, resolved a potentially expensive heating system issues, and retained  
19 a professional property manager to oversee the property.

20                                   (6)     *Miscellaneous Asset Recovery Efforts*

21           During the fourth quarter, the Receiver engaged in efforts to recover various funds  
22 transferred from Receivership Entities. The Receiver made a written demand to the managing  
23 member of Potala Village Everett, LLC, for payment of certain loan amounts due and owing from  
24 that entity to Receivership Entity Dargey Enterprises in excess of \$1 million. The Receiver has  
25 also been engaged in discussions with a third party concerning the transfer of \$1.4 million for the  
26 purchase of certain California real estate. The Receiver contends such transfer was fraudulent, and  
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1 has demanded return of the funds. If the parties cannot resolve the issue in the near term, the  
2 Receiver intends to commence litigation.

3 **C. Communications With Investors, Investor Relations and EB-5 Status.**

4 The Receiver has continued to communicate with creditors, investors and their counsel on  
5 a regular basis. The Receiver established, and has regularly updated, a website containing  
6 background information related to the case (i.e. Frequently Asked Questions), pleadings and other  
7 information. The website is available in both English and Chinese languages. During the fourth  
8 quarter, the Receiver engaged in extensive discussions with a number of investors' counsel with  
9 respect to the plans for the Market Place Project, the Carlin contract, and the motion to approve  
10 the Carlin contract.

11 As the Court is aware, SnoCo functioned as USCIS-designated Regional Center for the  
12 Market Place Project. During the fourth quarter, USCIS issued a Notice of Termination of SnoCo,  
13 terminating it as a regional center under the program. The Receiver submitted a timely appeal of  
14 that termination decision. The Receiver also requested, and obtained, an extension of time to June  
15 1, 2017, to submit a brief and documentation in support of that appeal. The basis for the extension  
16 request was the Receiver's intent to enter into a transaction by which SnoCo's ownership would be  
17 transferred out of the receivership. As discussed above, the Receiver has made substantial  
18 progress in negotiating with interested parties, and anticipates filing a motion for preliminary  
19 approval of a transaction in the near future.

20 **D. Assets Identification, Recovery & Protection**

21 1. Bank & Investment Accounts

22 Pursuant to the Appointment Order, the Receiver secured all known bank accounts held by  
23 the Receivership Entities. The Receiver has obtained custody of such funds as appropriate and  
24 deposited them in interest bearing accounts.

25 There are also bank accounts associated with the management and leasing of the  
26 apartments at the Potala Place (Path America Farmer's Market, LP). These accounts are managed  
27 by Allied Residential, an independent property management company, and as such the Receiver  
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1 has not sought control of these accounts. The Potala Place apartments continues to operate at a  
2 profit and, as such, excess cash is transferred to the Path America Farmer's Market bank account  
3 as appropriate.

4 The balance of the bank accounts related to the Tower Project<sup>2</sup> were transferred to the  
5 control of the Binjiang/Molasky Group (i.e. were transferred to Potala Tower Seattle, LLC's new  
6 account) upon the closing of the Tower Project transaction, significantly reducing the amount of  
7 the cash under the Receiver's control.

## 8 2. Escrow Accounts

9 Approximately \$999,500 of EB-5 investor funds are held in escrow accounts as of  
10 December 31, 2016. These accounts are held at Central Escrow pursuant to the respective  
11 investors' escrow agreements. The Receiver does not have direct control over these accounts,  
12 however, they are covered by the asset freeze. All escrow funds related to the Tower Project were  
13 transferred from escrow to Potala Tower Seattle, LLC upon closing of the of the Tower Project  
14 transaction. Pursuant to the Master Agreement terms, the Binjiang/Molasky Group, through the  
15 appropriate entities, is responsible for paying the opt-out investors.

## 16 3. Properties

17 The status of the Tower Project, Market Place Project, Shoreline Project and Kirkland  
18 Project is discussed earlier in this report.

## 19 4. Investments

20 Path America Farmer's Market, LP is a 20% interest holder in Everett Hospitality  
21 Company, LLC ("EHC"), which owns and operates the Hampton Inn Everett. The Receiver and  
22 his accountants have received and reviewed pertinent accounting and financial data from EHC.  
23 Path America Farmer's Market received distributions from EHC totaling \$600,000 during the  
24 fourth quarter of 2016.

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28 <sup>2</sup> This included the bank accounts for Potala Tower Seattle, LLC; Path America Tower, LP; and  
Path Tower Seattle, LP.

1           **E.       Current Financial Position of the Estate**

2           Attached hereto as Exhibit "A" is the Receiver's Consolidated Balance Sheet reflecting the  
 3 overall financial condition of the Receivership Entities. Attached as Exhibit "B" hereto is the  
 4 Summary of Cash Receipts and Disbursements reflecting the receivership cash flow. These  
 5 schedules attempt to capture all financial activity of the receivership between October 1, 2016 and  
 6 December 31, 2016. The statements do not reflect administrative liabilities owed to receivership  
 7 professionals or pre-receivership unsecured and contingent claims. Additionally, Exhibit A  
 8 contains select accrual adjustments and Exhibit B was prepared on a pure cash flow basis so there  
 9 is no articulation between the schedules as would normally be present in traditional financial  
 10 statements.

11           As of December 31, 2016, the Receiver held a total of \$4,432,864 in cash<sup>3</sup>, for the benefit  
 12 of the Receivership Entities. On March 28<sup>th</sup>, 2016, the Court issued an Order granting the  
 13 Receiver's Motion for Authorization to Reallocate and Expend Receivership Assets for  
 14 Administrative Operations. The Court directed the Receiver to track all reallocations and track  
 15 expenditures in accordance with the Receiver's proposed budget. During the fourth quarter,  
 16 expenditures under the categories included in the budget were de minimis.

17           **F.       Claims Accounting and Administrative Costs**

18           To date, the Receiver has identified approximately \$42,500,000 of EB-5 investor claims  
 19 remaining; with \$40,000,000 invested in the Market Place Project and \$2,500,000 for the investors  
 20 that opted-out of the Tower transaction. A significant share of EB-5 claims were released by the  
 21 investors that opted-in to the Tower transaction. Additionally, most of Binjiang's claims were  
 22 released pursuant to the terms of the Master Agreement and related documents. Binjiang still  
 23 retains a partial claim on its investment in the Shoreline Project. Potala Tower Seattle, LLC, now  
 24 owned by the Binjiang/Molasky Group, retains a claim of approximately \$6.4 million against the  
 25 Kirkland Project.

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 28           <sup>3</sup> This figure does not include investor funds currently held in escrow.



1 In addition to these investor claims, the Receiver has been aware of a number of  
2 non-investor creditors' claims. On June 16, 2016, the Receiver filed a motion for Court approval  
3 of a proposed claims process [Docket 352]. After discussions with counsel, the Receiver  
4 withdrew his motion and filed a new motion on July 28, 2016 [Docket 385]. The motion was  
5 granted by order of the Court dated August 30, 2016 ("Claims Order")[Docket 415]. Pursuant to  
6 the Claims Order, the Receiver set and published a claims bar date of November 30, 2016 and  
7 published/distributed claim forms and instructions. The Receiver's office received approximately  
8 forty (40) claims as of the claims bar date, asserting various amounts owed by, and interests held  
9 in, Receivership Entities. The monetary claims have a face value of approximately \$40 million.  
10 The Receiver is reviewing each claim and its supporting documentation, and is making  
11 preliminary determinations as to validity and value. Once he has completed this process,  
12 including attempts to resolve disputed claims voluntarily, the Receiver will file a motion with the  
13 Court seeking approval of proposed allowed claim amounts.

14 Administrative fees for the period July 1, 2016 through September 30, 2016 were approved  
15 by the Court on December 13, 2016 and paid during the fourth quarter, and included the following  
16 (paid at 80%): Receiver \$81,961.70; Allen Matkins \$350,752.38; Baker Donelson \$6,169.56;  
17 Karr Tuttle \$39,572.88; Financial Forensics \$19,981.83; Caron Architecture \$35,299.91; and  
18 Peterson Sullivan \$9,792.72.

### 19 **III. RECOMMENDATIONS.**

20 The Receiver has closed the Tower transaction and made significant progress toward the  
21 disposition of the Farmers Market and Shoreline Projects. The Receiver believes proceeding with  
22 the Recovery Plan filed with the Court is in the best interest of the receivership estate. The  
23 Receiver also believes he should continue his efforts to recover the transferred funds referenced  
24 above, and to file appropriate actions should settlement negotiations fail. The Receiver  
25 recommends that this Court authorize him to continue to administer the Receivership Entities and  
26 their estates in accordance with the Appointment Order, and continue to make such expenditures  
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1 from funds recovered as he deems necessary, in his reasonable business judgment, to protect and  
2 preserve the value of Receivership Assets.

3 **IV. CONCLUSION AND PETITION FOR INSTRUCTIONS.**

4 Accordingly, the Receiver respectfully requests that the Court enter an order:

- 5 1. Accepting the Receiver's Report and the information presented therein;  
6 2. Authorizing and instructing the Receiver to continue to administer the Receivership  
7 Entities in accordance with the terms of the appointment order;  
8 3. Authorizing and instructing the Receiver to undertake the recommendations  
9 presented herein; and  
10 4. Providing such other and further relief as the Court deems necessary and  
11 appropriate.

12  
13 Dated: January 30, 2017

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

14  
15 By: s/ Michael R. Farrell

16 David R. Zaro, Esq. #124334 (CA)  
17 (Pro Hac Vice Granted Oct. 26, 2015)  
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**CERTIFICATE OF SERVICE**

I hereby certify that on January 30, 2017, 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: January 30, 2017

s/ Michael R. Farrell  
Michael R. Farrell  
(Pro Hac Vice Granted November 6, 2015)