

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
PALM BEACH DIVISION
www.flsb.uscourts.gov

In re:

PALM BEACH FINANCE PARTNERS, L.P.
AND PALM BEACH FINANCE II, L.P.,

CASE NO. 09-36379-BKC-PGH
CHAPTER 11

Debtors.

BARRY E. MUKAMAL, IN HIS
CAPACITY AS LIQUIDATING TRUSTEE
OF THE PALM BEACH FINANCE
PARTNERS LIQUIDATING TRUST AND
PALM BEACH FINANCE II
LIQUIDATING TRUST,

ADV. CASE NO.

Plaintiff,

v.

METRO GEM, INC. AND FRANK ELROY
VENNES, JR.,

Defendants.

COMPLAINT TO RECOVER TRANSFERS AND FOR TORT DAMAGES

Barry E. Mukamal, in his capacity as liquidating trustee (“*Liquidating Trustee*”) of the Palm Beach Finance Liquidating Trust and the Palm Beach Finance II Liquidating Trust (collectively, the “*Palm Beach Liquidating Trusts*”), sues Metro Gem, Inc. (“*MGI*”) and Frank Elroy Vennes, Jr. (“*Vennes*”; and together with MGI, the “*Defendants*”), and alleges as follows:

I. PARTIES, JURISDICTION AND VENUE

1. Palm Beach Finance Partners, L.P. (“*PBF I*”) and Palm Beach Finance II, L.P. (“*PBF II*”) (PBF I and PBF II are referred to each as a “*Palm Beach Fund*” or collectively, the

“*Palm Beach Funds*”) were Delaware limited partnerships whose principal place of business was located in Palm Beach County, Florida. PBF I was formed in 2002 while PBF II was formed in 2004.

2. The Palm Beach Funds were formed to make the investments described in *Section II.1.A* below.

3. The general partner for the Palm Beach Funds was Palm Beach Finance Capital Management, L.P. (“*PBLP*”). *PBLP*’s general partner was Palm Beach Capital Corp. The investment manager for the Palm Beach Funds was Palm Beach Capital Management, LLC (“*PBLLC*”). These entities are collectively referred to as the “*Palm Beach Managing Entities*.”

4. Historically, the principals who directed the activities of the Palm Beach Funds and the Palm Beach Managing Entities were David Harrold and Bruce Prevost (respectively, “*Harrold*” and “*Prevost*”). However, beginning in October 2008, approximately thirteen months before these bankruptcy cases were filed, following the discovery of the Petters Ponzi Scheme (as described in *Section II.5* below), the Palm Beach Funds replaced this management structure with new, independent management. In particular:

a) On or about October 29, 2008, agreements were entered into among the Palm Beach Funds, Harrold, Prevost, the Palm Beach Management Entities and certain limited partners of the Palm Beach Funds that delegated day-to-day control to appointees of the limited partners. Pursuant to these agreements, “steering committees” for each of the Palm Beach Funds were created and authorized to act on behalf of the Palm Beach Funds.

b) The steering committees established subcommittees for varying functions and responsibilities.

c) On or about October 16, 2008, the law firm of Fulbright & Jaworski, LLP was retained as legal counsel on behalf of the Palm Beach Funds.

d) In December 2008, each steering committee retained the law firm of Thomas, Alexander & Forrester, LLP ("**TAF**") to investigate and pursue claims against third parties arising from losses resulting from the Petters Ponzi Scheme.

e) In March 2009, each steering committee retained the law firm of Berger Singerman, to serve as special bankruptcy counsel and co-counsel with TAF for the steering committees.

f) In June 2009, the steering committees authorized the retention of Lewis B. Freeman to serve as the Chief Restructuring Officer ("**CRO**") for each of the Palm Beach Funds. The CRO was authorized to (1) manage the Palm Beach Funds's day-to-day affairs; (2) make payments and disbursements as appropriate; (3) retain counsel and professionals to pursue and resolve any claims belonging to the Palm Beach Funds; (4) file voluntary bankruptcy petitions on behalf of the Palm Beach Funds and (5) report the material developments regarding the Palm Beach Funds to the steering committees.

g) In October and November 2009, Kenneth Welt ("**Welt**") and Trustee Asset Recovery, Inc. replaced Mr. Freeman as CRO, with substantially similar reporting requirements and powers.

5. On November 30, 2009 ("**Petition Date**"), Welt authorized the filing of voluntary petitions under Chapter 11 of the United States Bankruptcy Code for the Palm Beach Funds. Orders for relief were entered and Mr. Mukamal was subsequently appointed Chapter 11 trustee for the Palm Beach Funds.

6. Thereafter, pursuant to a confirmed joint plan of liquidation, Mr. Mukamal was appointed Liquidating Trustee for the Palm Beach Liquidating Trusts.

7. Pursuant to the confirmed joint plan of liquidation, all claims and causes of action held by the Palm Beach Funds are reserved, preserved and retained by the Palm Beach Liquidating Trusts.

8. Vennes is, upon information and belief, a resident of the state of Florida.

9. MGI is, upon information and belief, a Nevada corporation. MGI is, upon information and belief, owned in whole or in part by Vennes. Vennes was, upon information and belief, MGI's chief executive officer.

10. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (H) and (O).

11. Venue is proper in this District pursuant to 28 U.S.C. § 1409.

II. ALLEGATIONS

1. The Petters Investment

A. General Description of the Investment

12. Beginning in approximately 1995, Petters began raising money by offering and selling promissory notes to members of the public.

13. Petters offered and sold the notes to various feeder fund investors, which in turn, typically raised their capital from private investors.

14. In offering and selling the notes, Petters represented to investors that the proceeds from the sale of the notes would be used to finance so-called "purchase order financing" transactions.

15. Petters claimed he would arrange for the sale and delivery of overstock consumer electronics from manufacturers or suppliers to certain "big box" retailers such as Costco, Sam's

Club and B.J.'s Wholesale Club. The financing provided by the investors would allow Petters to pay his suppliers while he waited for payment from his retailer customers.

16. The main Petters entity which arranged these purchase and financing transactions was Petters Company, Inc. ("**PCF**"). Single purpose entities ("**SPE**") affiliated with PCI were formed by Petters or his associates to handle loans for particular feeder fund investors that financed the transactions.

17. In documenting these transactions, Petters or persons working on his behalf, typically provided a series of documents to the investors including executed note documents, purported purchase orders from a retailer, purported bills of sale from the vendors, collateral and credit insurance and documents assigning a security interest in the underlying merchandise to the financing investor (collectively, the "**Loan Documents**").

18. The main suppliers that were allegedly selling the merchandise that formed the basis of the purchase order financing transactions were Nationwide International Resources, Inc. ("**Nationwide**") and Enchanted Family Buying Company ("**Enchanted**") (Enchanted and Nationwide are sometimes referred to each as a "**Petters Supplier**," or collectively, the "**Petters Suppliers**").

B. Creation of the Palm Beach Funds

19. Since at least 1995, Vennes was a business associate of Petters and raised monies from third parties to invest in PCI purchase financing transactions.

20. In or about 1998, Vennes began seeking larger sources of financing for Petters. As part of these efforts, Vennes worked with other individuals to form hedge funds to solicit institutional investment in PCI purchase financing transactions.

21. In 1999, Vennes began collaborating with James Fry ("**Fry**") to form a family of hedge funds to invest in PCI transactions.

22. As part of this collaboration, Vennes (or persons acting on his behalf) helped assemble the documents necessary to establish the hedge funds, including private placement materials and underlying contracts with third parties.

23. Ultimately, Fry and Vennes established three funds devoted to invest in PCI purchase financing transactions (each an "**Arrowhead Fund**" and collectively, the "**Arrowhead Funds**").

24. In early 2002, Prevost was introduced to Vennes through Prevost's religious endeavors.

25. Later that year, the Defendants began to pitch Prevost about the possibility of putting together a hedge fund to invest in Petters purchase financing transactions.

26. In or about September 2002, Prevost and Harrold travelled to Minnesota to meet with the Defendants to discuss the possibility. The meeting took place at Vennes's impressive, multi-million dollar lakefront home.

27. At this meeting, and during subsequent in person and telephonic meetings in the weeks thereafter, the Defendants and their lawyer, Craig Howse ("**Howse**"), described in specific detail the manner in which the Petters investment worked.

28. During these meetings, the Defendants told Harrold and Prevost that they conducted extensive due diligence on PCI in the past. They represented that before any investment in a particular Petters purchase financing transaction was made, the Defendants contacted both the alleged supplier and purchaser of the goods purportedly being bought and sold by Petters.

29. The Defendants prepared investment materials for MGI and provided them to Prevost and Harrold. These materials made similar representations regarding due diligence. In a so called "Investment Summary" for MGI ("*MGI Investment Summary*"; attached as Exhibit 1), the Defendants, consistent with their representations to Prevost and Harrold, told their investors:

After all documents stated above are assembled, then Metro Gem, Inc. verifies the transaction as follows:

1. *Contacts the supplier.*
2. *Contacts the purchaser's purchasing agent(s), and employees.*

(emphasis added).

30. The Defendants informed Prevost and Harrold that in order to protect PCI's valuable vendor relations, other than any due diligence conducted by the Defendants, Prevost and Harrold were prohibited from directly contacting the suppliers or purchasers for any of the transactions. Similarly, the MGI Investment Summary provided to Prevost and Harrold stated that:

"No contacts can be made with suppliers or purchasers to verify the transaction, other than that method now allowed by the due diligence being done by [MGI], and the major client ..."

31. The Defendants further represented to Prevost and Harrold that they would not be given access to PCI's financial information. The Defendants's explained that: (i) Petters would not supply such information due to the extremely competitive nature of the industry and the resulting attendant adverse consequences to PCI in the event such confidential information was publicly leaked; and (ii) the Defendants did not want to risk being cut out of the significant commissions that would inure to them in connection with these deals.

32. Although Prevost and Harrold would not be afforded access to Petters's financial information, the Defendants represented that they had "intimate knowledge" of PCI's finances and particularized access to PCI's confidential internal financial data and financial statements. The Defendants further claimed this access was unique to them and unavailable to PCI's other lenders.

33. The MGI Investment Summary provided to Prevost and Harrold made similar representations about the scope of the Defendants's diligence: "*The major client is required to provide quarterly financial statements, monthly bank statements, corporate and personal tax information, and furnish periodical auditing.*" The Investment Summary shared with Prevost and Harrold supported the Defendants's claims that they had access to PCI's financial data by virtue of the document's statements concerning PCI's financial performance: "*[PCI's] approximate gross sales were: 1995 - \$28 million, 1996 - \$70 million, 1997 - \$120 million, 1998 - \$330 million, 1999 - \$1 billion, 2000 and 2001 - over \$1 billion.*"

34. To further alleviate any concerns of Prevost and Harrold about the lack of financial disclosure that would be given to them, the Defendants boasted and proclaimed that they would not invest tens of millions of dollars of their own monies in PCI without having full and complete knowledge of what was going on with the business.

35. Finally, to promote the legitimacy of the investment, the Defendants informed Prevost and Harrold that General Electric Capital Corporation ("**GECC**") was at one time the primary funding source for PCI and the purchase financing transactions. The Defendants explained that GECC desired to be the exclusive lender to PCI. However, they further explained that PCI elected to terminate the GECC relationship because GECC's internal decision making processes were too slow and PCI was unwilling to commit to an exclusive lending relationship

with GECC. In truth and in fact, GECC terminated its lending relationship because it discovered that PCI was engaged in fraudulent conduct.

C. The Defendants's Role With Respect to Establishing the Palm Beach Funds and the Implementation of Confidentiality

36. The materials provided by, and the representations made by, the Defendants were all done in anticipation of the creation of each of the Palm Beach Funds. These materials and representations were made by the Defendants for the benefit of the Palm Beach Funds and the funds were entities to which the Defendants knew the initial recipients of the information – Prevost and Harrold – would supply such information. The Defendants had a financial incentive to cause the Palm Beach Funds to raise monies to lend to PCI because PCI would pay the Defendants substantial commissions for doing so.

37. PBF I was formed in or about October 2002. PBF I invested exclusively in Petters purchase financing transactions and raised monies by selling limited partnership stakes to third parties.

38. PBF II was formed in or about June 2004 to make the same investments that PBF I was making in Petters purchase financing transactions. The sole difference between the funds was that PBF II, aside from selling limited partnership interests to third parties, borrowed hundreds of millions of dollars from two offshore lenders.

39. The first monies to fund PBF I emanated from MGI, through the sale of a limited partnership interest. Thereafter, and as set forth on Schedule 1.a (MGI) and Schedule 1.b (Vennes), the Defendants received various transfers from both funds (“*Investment Transfers*”).

40. Additionally, over the life of the Palm Beach Funds's investment in Petters purchase financing transactions, MGI sold to the Palm Beach Funds outstanding notes owed to

MGI by PCI. Schedule 1.a.1 details the purchases of notes from MGI by PBF I (“*Note Sale Transfers*”).

41. Finally, over the life of the Palm Beach Funds’s investment in Petters purchase financing transactions, MGI received from PBLLC transfers to perform various UCC functions with respect to the Petters purchase financing transactions. Schedule 1.c details the transfers made by PBLLC to MGI with respect to these services (“*UCC Transfers*”).

42. Vennes and Howse worked together to facilitate the creation and operation of both of the Palm Beach Funds. They forwarded the Arrowhead Funds’s investment documents to enable them to be used as a template to be replicated by counsel to Harrold and Prevost for the creation of PBF I. Similar efforts were employed by the Defendants with respect to the formation of PBF II in 2004.

43. In a letter to Petters dated November 13, 2002 (“*November 2002 Letter*”; attached as Exhibit 2), the Defendants described their activities *vis a vis* the establishment of PBF I as follows:

Dear Tom:

This letter supplements our letter agreement dated August 16, 2002, with respect to the work [MGI] has undertaken with [Holdings] and [PBF I]. [PBF I] is a hedge fund established by Bruce Prevost and David Harrold. . . . [MGI] has been working with [Holdings] and [PBF I] as your service agent in an effort to fulfill your directive to arrange financing for your companies Specifically, Petters has instructed [MGI] to find replacement financing for some of your current lenders, and I am very optimistic that [PBF I], will be a solid source of financing at reduced rates.

Since [PBF I] is a hedge fund and must meet certain requirements, ***[MGI] is assisting [PBF I] in establishing a financing structure to meet the requirements.*** Bob White provided a copy of financing documents from your counsel, and I forwarded them to [PBF I]. ***During [MGI’s] review of the documents, modifications were made to enhance your position. I have discouraged changes by [PBF I] and its counsel, and we are close to concluding drafts.***

(emphasis added).

44. The November 2002 Letter further reaffirmed the Defendants's earlier representations that they had intimate knowledge of the business and finances of Petters and PCI and served in a senior advisory capacity as to PCI's operations:

[MGI] will provide strategic advisory services to Petters and serve as a communications liaison between Petters and Bruce Prevost, David Harrold . . . and [PBF I] . . . or any entity affiliated to or associated with any one of the foregoing including their referrals, collectively hereinafter the Lender. [MGI] will provide the following specific services:

- i. *Advice to Petters regarding matters of corporate strategy and opportunity analysis, business concept and model development, organization and control, operations, business planning, financing and capital budgeting.*
- ii. Advice to Petters regarding prospective debt financing strategy and structure.
- iii. Negotiating, structuring and financial engineering for debt financing.
- iv. Assistance in closing of debt financing transactions as requested by Petters.
- v. *Serving as the liaison between Petters and Lender to allow Petters to focus on its core business objectives.*

(emphasis added).

45. Aside from helping form the funds and preparing related investment documents, the Defendants insisted upon acting as the gatekeeper for all access to Petters.

46. In particular, as set forth in the Defendants's October 7, 2002 letter ("**October 2002 Letter**") (attached as Exhibit 3) to Prevost and Harrold:

Specifically, [MGI] *provides strategic advisory services to Petters* and serves as a communications liaison between Petters and its lenders. Petters has committed to conducting all communications and business with you through [MGI].

As the service agent and communications liaison, I will arrange all meetings for you with Tom Petters and Petters. *You are to direct all communications to me for Tom Petters or Petters and I will pass the communications along for you. If you have need of any information concerning Petters, this should also be presented to me. If there is*

any need for due diligence by you or any party related to you, the due diligence request should be presented to me.

An important part of the role which I play for Petters is the protection of its confidential information. Thus, any information I provide to you concerning Petters must be maintained in the strictest confidence. It is of utmost importance that the information not be disseminated to anyone without my prior written approval. Petters desires for me to obtain non circumvention and confidentiality agreements with each party with whom I share information concerning Petters. . . .

It is my desire to see you be extremely successful as you work with Petters. *I know the Petters business intimately so please utilize [MGI] to its fullest extent for your greatest success.* . . .

(emphasis added).

47. As the October 2002 Letter makes clear, the Defendants would serve as the liaison between the Palm Beach Funds and PCI. This was because of the Defendants's asserted unique and intimate knowledge of all material facets of the business and finances of PCI.

48. Moreover, based on the October 2002 Letter, the Defendants exercised control over the Palm Beach Funds's investments in Petters purchase financing transactions.

49. *First*, all purchase financing transactions for the Palm Beach Funds emanated from the Defendants – any potential deal was sent to the funds from Petters through the Defendants and the attendant Loan Documents would be provided by the Defendants.

50. *Second*, the Palm Beach Funds were forbidden from contacting Petters or his employees directly. The Defendants went to great efforts to control the Palm Beach Funds's access to Petters. For example, in 2007, the Defendants suggested to Prevost and Harrold that they attend that year's Consumer Electronics Show in Las Vegas to bolster their understanding of Petters's successes. However, while Prevost and Harrold would attend the show, the Defendants insisted that they not actually approach Petters or discuss their business relationship with him or with any of the retailers in attendance.

51. Because of the Defendants's insistence that all communications and information *vis a vis* the Palm Beach Funds and Petters flow through them, the Palm Beach Funds relied upon the Defendants to provide accurate, timely and truthful information.

52. The Defendants's motivation to enforce strict confidentiality was driven by their desire to avoid the Palm Beach Funds from dealing directly with Petters, with the result that the Defendants would no longer receive substantial commissions from PCI.

53. Given that the Palm Beach Funds were far larger in dollar terms than prior investors secured by the Defendants, and because the funds engaged in significantly more Petters purchase financing transactions, the magnitude of the commissions flowing to the Defendants from PCI was massive. For instance, from 2001 through 2008, the Defendants received \$48 million in commissions in connection with the Arrowhead Funds. From 2003 through 2008, the Defendants received approximately \$60 million in commissions in connection with the Palm Beach Funds.

54. As the magnitude of the Palm Beach Funds's lending relationship with PCI increased, the Defendants, during their weekly communications with the Palm Beach Funds, routinely reaffirmed that they held exclusive "intimate knowledge" of PCI's operations and finances, thereby representing that their due diligence of PCI was ongoing. Specifically, the Defendants's couched their statements in terms of "do you think I would invest my money without full knowledge of what's going on?" or "don't you realize the responsibility I have? I have responsibility for my money, family money, your clients's money."

55. Finally, the Defendants again touted their close alliance with Petters during their weekly calls with the Palm Beach Funds, representing to the Palm Beach Funds that they were

given opportunities to invest in additional PCI deals ahead of other PCI lenders because of the Defendants's relationship with Petters.

D. The Petters Ponzi Scheme

56. The Petters purchase financing transactions were in actuality, a *ponzi* scheme ("*Petters Ponzi Scheme*").

57. Notwithstanding the Defendants's claims regarding due diligence conducted by them with respect to the Petters purchase financing transactions, there was never any (i) merchandise or (ii) contracts to purchase or sell such merchandise with a particular big box retailer. Instead, Petters, conspiring with others, operated a multi-billion dollar *ponzi* scheme.

58. Neither Nationwide nor Enchanted ever engaged in any sale of merchandise in connection with the purchase financing transactions. In virtually every instance, if not every instance, that monies were sent to Nationwide or Enchanted by the Palm Beach Funds and other lenders to finance the purchase of merchandise, Nationwide and Enchanted deducted a small commission for their benefit and then remitted the remaining funds to PCI. Thereafter, these funds were used to repay lenders on earlier PCI purchase financing transactions or fund the lavish lifestyle of Mr. Petters and that of his criminal co-conspirators.

E. The Collapse of the Petters Ponzi Scheme

59. In September 2008, agents for the Federal Bureau of Investigation raided PCI's offices. Petters was subsequently arrested by federal agents on October 3, 2008 and then indicted on charges of mail and wire fraud, conspiracy to commit mail and wire fraud, conspiracy to commit money laundering and money laundering, all in connection with the PCI purchase financing transactions.

60. On October 14, 2008, United States District Judge Ann D. Montgomery entered an Order for Entry of Preliminary Injunction, Appointment of Receiver, and Other Equitable Relief, thereby placing Petters, the Defendants and others in an 18 U.S.C. §1345 receivership proceeding with respect to their roles in the Petters Ponzi Scheme.

61. On December 2, 2009, a jury in the United States District Court of the District of Minnesota found Petters guilty of all counts charged. Money laundering Counts 16, 17, 18 and 19 convicted Petters of laundering millions of dollars through the M&I Account on various specific occasions from July 2004 through December 2007.

62. On April 8, 2010, United States District Court Judge Richard H. Kyle sentenced Petters to 50 years of imprisonment for his crimes.

63. On September 29, 2010, PCI and its affiliate, Petters Group Worldwide, pled guilty to wire fraud, conspiracy to commit wire fraud, and conspiracy to commit money laundering.

Count 1 – Fraudulent Transfer Pursuant to 11 U.S.C. §§ 548(a)(1)(B) and 550
(Investment Transfers – Vennes)

64. The Liquidating Trustee reasserts the allegations set forth in paragraphs 1 through 63 as if fully set forth herein.

65. As set forth on Schedule 1.b (Vennes), some of the Investment Transfers made to or for the benefit of Vennes were made within two years of the Petition Date (“*Two Year Investment Transfers*”).

66. The Palm Beach Funds made the Two Year Investment Transfers to or for the benefit of Vennes without receiving reasonably equivalent value in exchange for such transfers.

67. At the time the Palm Beach Funds made each of the Two Year Investment Transfers, they were insolvent.

68. At the time the Palm Beach Funds made each of the Two Year Investment Transfers, they were engaged in a business or a transaction, or were about to engage in a business or transaction, for which any property remaining with them was an unreasonably small amount of capital.

69. Vennes was never a creditor of the Palm Beach Funds throughout the duration of his investment in the funds.

Count 2 –11 U.S.C. § 544, Fla. Stat. §§ 726.105(1)(b) and 726.108 or other applicable law¹
(Investment Transfers and Note Sale Transfers – Vennes and MGI)

70. Plaintiff reasserts the allegations set forth in paragraphs 1 through 63 as if fully

¹ To the extent the Court determines that another state’s law applies to this cause of action and such state’s law provides for a greater look back period than is provided for under Florida law, the Liquidating Trustee gives notice that he will amend this Complaint to avoid and recover all Fraudulent Transfers made during this greater look back period. *See, e.g.*, Minn Stat. § 541.05. The Plaintiff expressly reserves the right to seek such a determination.

set forth herein.

71. As set forth on Schedule 1.a (MGI) and Schedule 1.b (Vennes), some of the Investment Transfers made to or for the benefit of the Defendants were made within four years of the Petition Date (“*Four Year Investment Transfers*”).

72. As set forth on Schedule 1.a.1, some of the Note Sale Transfers made to or for the benefit of MGI were made within four years of the Petition Date (“*Four Year Note Sale Transfers*”).

73. The Palm Beach Funds made the Four Year Investment Transfers to or for the benefit of the Defendants without receiving reasonably equivalent value in exchange for such transfers.

74. PBF I made the Four Year Note Sale Transfers to or for the benefit of MGI without receiving reasonably equivalent value in exchange for such transfers.

75. At the time the Palm Beach Funds made each of the Four Year Investment Transfers, they were insolvent.

76. At the time PBF I made each of the Four Year Note Sale Transfers, it was insolvent.

77. The net assets of the Palm Beach Funds were unreasonably small in relation to the Four Year Investment Transfers by virtue of their worthless investments in Petters’s *ponzi* scheme.

78. The net assets of PBF I were unreasonably small in relation to the Four Year Note Sale Transfers by virtue of its worthless investments in Petters’ *ponzi* scheme.

79. At the time each of the Four Year Investment Transfers were made, the Palm Beach Funds were insolvent and would not be able to satisfy their liabilities as they came due.

80. At the time each of the Four Year Note Sale Transfers were made, PBF I was insolvent and would not be able to satisfy its liabilities as they came due.

81. At the time each of the Four Year Investment Transfers were made, the Palm Beach Funds were engaged in, or were about to engage in, a business or a transaction for which the remaining assets were unreasonably small in relation to their business or transaction.

82. At the time each of the Four Year Note Sale Transfers were made, PBF I was engaged in, or was about to engage in, a business or a transaction for which the remaining assets were unreasonably small in relation to its business or transaction.

83. The Defendants were never creditors of the Palm Beach Funds throughout the duration of their investment in the funds.

Count 3 – 11 U.S.C. § 544 and Fla. Stat. §§ 726.106(1) and 726.108 or other applicable law²
(Investment Transfers and Note Sale Transfers – Vennes and MGI)

84. Plaintiff reasserts the allegations set forth in paragraphs 1 through 63 as if fully set forth herein.

85. The Palm Beach Funds made the Four Year Investment Transfers to or for the benefit of the Defendants.

86. PBF I made the Four Year Note Sale Transfers to or for the benefit of the MGI.

87. The Palm Beach Funds did not receive reasonably equivalent value in exchange for the Four Year Investment Transfers.

88. PBF I did not receive reasonably equivalent value in exchange for the Four Year Note Sale Transfers.

² See footnote 1, *supra*.

89. At the time the Palm Beach Funds made each of the Four Year Investment Transfers, they were insolvent.

90. At the time PBF I made each of the Four Year Note Sale Transfers, it was insolvent.

91. The Defendants were never creditors of the Palm Beach Funds throughout the duration of their investment in the funds.

Count 4 – Fla. Stat. §§ 726.105(1)(b) and 726.108 or other applicable law
(UCC Transfers – MGI)

92. Plaintiff reasserts the allegations set forth in paragraphs 1 through 63 as if fully set forth herein.

93. During the course of the Palm Beach Funds's investment activities in Petters purchase financing transactions, millions of dollars were transferred from the Palm Beach Funds to the Palm Beach Managing Entities.

94. On March 21, 2011, Plaintiff, on behalf of the Palm Beach Funds filed an action in the Bankruptcy Court for the Southern District of Florida against the Palm Beach Managing Entities, Adversary Case No. 11-1820 (“*Palm Beach Management Action*”).

95. The Palm Beach Management Action sought to avoid all transfers made by the Palm Beach Funds to the Palm Beach Managing Entities within four years of the Petition Date.

96. On June 28, 2011, judgments were entered in favor of Plaintiff, on behalf of the Palm Beach Funds, and against the Palm Beach Managing Entities.

97. As of the filing of this Complaint, the Judgments remain outstanding.

98. Pursuant to *Fla Stat.* § 726.102 or other applicable law, the Palm Beach Funds are creditors of PBLLC.

99. As set forth on Schedule 1.c, the UCC Transfers made to or for the benefit of MGI were made within four years of the Petition Date.

100. PBLLC did not receive reasonably equivalent value in exchange for the UCC Transfers made to or for the benefit of MGI.

101. PBLLC was insolvent at the time of the UCC Transfers.

102. The net assets of PBLLC were unreasonably small in relation to the UCC Transfers.

103. At the time the UCC Transfers were made to or for the benefit of MGI, PBLLC was insolvent and would not be able to satisfy its liabilities as they came due.

104. At the time the UCC Transfers were made to or for the benefit of MGI, PBLLC was engaged in, or was about to engage in, a business or a transaction for which the remaining assets were unreasonably small in relation to the business or transaction.

105. At the time of the UCC Transfers, PBLLC intended to incur or believed that it would incur, debts that were beyond its ability to pay as such debts matured.

Count 5 – 11 U.S.C. § 544 and Fla. Stat. §§ 726.106(1) and 726.108 or other applicable law
(UCC Transfers – MGI)

106. Plaintiff reasserts the allegations set forth in paragraphs 1 through 63 as if fully set forth herein.

107. Pursuant to *Fla Stat. § 726.102* or other applicable law, the Palm Beach Funds are creditors of PBLLC.

108. PBLLC made the UCC Transfers to or for the benefit of MGI within four years of the Petition Date.

109. PBLLC did not receive reasonably equivalent value in exchange for the UCC Transfers to or for the benefit of MGI.

110. PBLLC was insolvent at the time of the UCC Transfers.

Count 6 – Fraudulent Misrepresentation
(MGI and Vennes)

111. Plaintiff reasserts the allegations set forth in paragraphs 1 through 63 as if fully set forth herein.

112. Defendants knowingly and falsely represented to each of the Palm Beach Funds that they were in possession of detailed and accurate information pertaining to the finances and operations of PCI and that such information ratified and evidenced the legitimacy and profitability of PCI's operations. They further misrepresented that they had confirmed the legitimacy of PCI's transactions directly with PCI's suppliers and retailer customers, when in fact they never did because such suppliers and customers did not exist, as PCI engaged in few if any real transactions.

113. The misrepresentations made by the Defendants were material and were made to induce and thereafter, to have the Palm Beach Funds continue purchase financing transactions with PCI.

114. The Palm Beach Funds relied upon such misrepresentations and as a result, were damaged.

115. Defendants's conduct was purposeful and willful.

Count 7 – Negligent Misrepresentation
(MGI and Vennes)

116. Plaintiff reasserts the allegations set forth in paragraphs 1 through 63 as if fully set forth herein.

117. Defendants misrepresented to each of the Palm Beach Funds that they were in possession of detailed and accurate information pertaining to the finances and operations of PCI and that such information ratified and evidenced the legitimacy and profitability of PCI's operations. They further misrepresented that they had confirmed the legitimacy of PCI's transactions directly with PCI's suppliers and retailer customers, when in fact they never did because such suppliers and customers did not exist, as PCI engaged in few if any real transactions.

118. The representations to the Palm Beach Funds were material and were intended to induce the Palm Beach Funds to enter into and thereafter, to continue purchase financing transactions with PCI.

119. Defendants were negligent in making such material representations.

120. The Palm Beach Funds justifiably relied upon the misrepresentations and as a result, suffered damages.

Count 8 – Breach of Fiduciary Duty
(MGI and Vennes)

121. Plaintiff reasserts the allegations set forth in paragraphs 1 through 63 as if fully set forth herein.

122. Defendants owed a fiduciary duty to the Palm Beach Funds by virtue of their relationship of trust and repose.

123. The Palm Beach Funds placed a high level of trust and confidence in the Defendants based on the Defendants's express and repeated representations of their intimate knowledge of the finances and operations of PCI and role as a senior advisor to Petters as well as the Defendants's role as the intermediary between PCI and the Palm Beach Funds.

124. Had the Defendants actually possessed the knowledge of the detailed inner workings of PCI's operations as they proclaimed, then they would have understood that PCI was perpetrating a massive financial fraud. Alternatively, if the Defendants did not have the knowledge of the finances and operations that they proclaimed, then they purposely deceived the Palm Beach Funds. In either event, the Defendants breached their duties and obligations to the Palm Beach Funds.

125. As a result of the Defendants's breach, the Palm Beach Funds were injured and suffered damages.

Count 9 –Negligence
(MGI and Vennes)

126. Plaintiff reasserts the allegations set forth in paragraphs 1 through 63 as if fully set forth herein.

127. The Defendants owed a duty of care to the Palm Beach Funds to disclose to them the true state of knowledge they held as to PCI's business, finances, operations, vendor relations and customer relations.

128. Had the Defendants actually possessed the knowledge of the detailed inner workings of PCI's operations as they proclaimed, then they would have understood that PCI was perpetrating a massive financial fraud. Alternatively, if the Defendants did not have the knowledge of the finances and operations that they proclaimed, then they purposely deceived the Palm Beach Funds. In either event, the Defendants breached their duties and obligations to the Palm Beach Funds.

129. As a result of the Defendants's breach, the Palm Beach Funds were injured and suffered damages.

III. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- (a) With respect to Count 1, enter judgment in favor of Plaintiff, on behalf of the Liquidating Trusts, and against Vennes in the total amount of the Two Year Investment Transfers received by him, along with all other transfers made to him which are avoidable under Count 1 and that are later discovered, and all other relief provided for under 11 U.S.C. § 550;
- (b) With respect to Count 2 and 3, (i) enter judgment in favor of Plaintiff, on behalf of the Liquidating Trusts, and against the Defendants in the total amount of the Four Year Investment Transfers received by them, along with all other transfers made to them which are avoidable under Count 2 and 3 that are later discovered, and all other relief provided for under § 726.108 (or other applicable law) and (ii) enter judgment in favor of Plaintiff, on behalf of the Liquidating Trusts, and against MGI in the total amount of the Four Year Note Sale Transfers received by MGI, along with all other transfers made to it which are avoidable under Count 2 and 3 that are later discovered, and all other relief provided for under § 726.108 (or other applicable law);
- (c) With respect to Counts 4 and 5, enter judgment in favor of Plaintiff, on behalf of the Liquidating Trusts, and against MGI in the total amount of the UCC Transfers received by it, along with all other transfers made to it which are avoidable under Counts 4 and 5 that are later discovered, and all other relief provided for under § 726.108 (or other applicable law);

- (d) With respect to Counts 6, (i) enter judgment in favor of Plaintiff, on behalf of the Liquidating Trusts, and against Defendants and (ii) award Plaintiff compensatory damages in an amount to be determined at trial and, to the extent applicable, punitive damages in an amount to be determined at trial appropriate to the severity of the Defendants's conduct and their financial capacity to pay;
- (e) With respect to Counts 7 through 9, (i) enter judgment in favor of Plaintiff, on behalf of the Liquidating Trusts, and against Defendants; and (ii) award Plaintiff compensatory damages in an amount to be determined at trial
- (f) Award prejudgment interest to the extent allowed under applicable law or statute;
- (g) Award Plaintiff's reasonable attorney's fees and costs to the extent allowed under applicable law or statute; and
- (h) Grant such further relief this Court deems just and proper.

s/ Michael S. Budwick
Michael S. Budwick, Esquire
Florida Bar No. 938777
mbudwick@melandrussin.com
MELAND RUSSIN & BUDWICK, P.A.
3000 Southeast Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 358-6363
Telecopy: (305) 358-1221

Attorneys for Plaintiff

FROM : METRO GEM INC

PHONE NO. : 952 475 6712

Feb. 28 2002 03:54PM P1

METRO GEM, INC.
(INVESTMENT SUMMARY)
[for informational purposes only]

BACKGROUND INFORMATION

This is a short summary of an investment financing opportunity with Metro Gem, Inc., a bridge financier for several small businesses which also assist a large major client. Funds invested will be used in the financing of that major client, that is a corporation with a rapidly expanding wholesale discount consumer merchandise business. The Metro Gem, Inc., CEO, has over a 7 year history with the major client, a personal relationship with its CEO, has lent it in excess of \$800 million with never a default, no returns nor allowances for any defective merchandise, and currently has over \$100 million in receivables with the major client.

The major client is in the business of purchasing excess consumer merchandise inventories produced by brand name manufacturers whenever they happen to occur for whatever reason. These opportunities occur in order to protect the manufacturers normal retail outlets from price reduction losses, and its stockholders from decreases in value. The corporation has a bankable line of credit, but because of rapid and often unexpected purchase opportunities it is always necessary to have major amounts of private funds available. In fact it has been necessary in the past to decline as much as 60% of these purchase opportunities, because funds have not always been available. The corporation's approximate gross sales were: 1995 - \$28 million, 1996 - \$70 million, 1997 - \$120 million, 1998 - \$330 million, 1999 - \$1 billion, 2000 and 2001 - over \$1 billion. It is in a very highly competitive business that dictates the need for immediate action, while having the liquid resources, to negotiate product acquisition. It requires extreme confidentiality so that competitors are unable to identify the corporation's contacts, nor to learn of individual transactions under negotiation, and to project a corporate image that liquid assets are available to consummate all purchases negotiated. It is obvious that the business is strictly proprietary, and it is necessary to obtain funding from non-traditional sources without inflexible procedures so as to provide freedom and strict confidentiality necessary for the successful operation of this business. Consequently, a higher than normal rate of return is available for such financing.

THE TRANSACTION

A working capital loan to Metro Gem, Inc. is made through the use of a 9 month promissory note. Interest of up to ___% annually can be paid every month. Return of principal can be made at anytime upon 30 days notice (after the 1st 60 days). The principal is recycled every 60 days and additional funds can be added to increase the loan at that time. Business collateral secures each loan made by Metro Gem, Inc.. In order to explore this situation a loan of \$500,000.00 or more should be made, with larger amounts to be added incrementally if desired, as your association progresses and earnings are demonstrated.

SECURITY

Metro Gem, Inc. is a transactional lender and each loan is for the purchase of a specific lot of merchandise, which is already pre-sold to a Dunn & Bradstreet, AAA credit rated company, such as Walmart, etc. on a purchase order contract. The major client is required to obtain all PO's and sales invoices through the CEO or senior V/P of each company. Before delivery of the merchandise to the purchaser, there is an account receivable collaterally secured by the purchase order contract. After delivery of the merchandise to the purchaser, there is an account receivable collaterally secured by the merchandise. Each lot of merchandise is paid for by such companies in 30 days. The loan to value ratio on any lot of merchandise is 80%. Each loan is secured by a UCC filing and security agreement on the specific lot of merchandise, and is evidenced by a promissory note, with Metro Gem, Inc. taking 1st position on all inventories, and with corporate and personal guarantees of the major client and CEO. All merchandise is insured for casualty loss, and there is credit insurance on each loan, as well as life insurance on the CEO of the borrowing corporation. Collateral security can be assigned from Metro Gem, Inc. to larger investors upon request. Before renewing a loan at the end of its term, Metro Gem, Inc. calls the major client and receives a verification by the company's bank that the funds are available and on deposit in the bank to pay the principal. It is only then that principal (and profit sharing if desired) is rolled over or reinvested. The major client is required to provide quarterly financial statements, monthly bank statements, corporate and personal tax information, and furnish periodical auditing. Security documents include but are not limited to the following: Purchase Order (Retail Purchaser), Sales Invoice (Major Client), Bill of Lading (Supplier), UCC Financing Statement, Security Agreement, Promissory Note.

OPERATIONAL PROCEDURE

A. Major Client

No contacts can be made with suppliers or purchasers to verify the transaction, other than that method now allowed by the due diligence being done by Metro Gem, Inc., and the major client does the following:

1. Major client's contacts learn of quality merchandise that is excess inventory to a supplier.
2. The major client then negotiates for the product, through its employees and/or agents, and after doing so, issues a purchase order, contracting to acquire the product, setting a delivery site for the inspection of the product, to verify its authenticity, and have the cash to immediately pay for the product.
3. The product acquired has already been sold to a purchaser, who in turn issues a purchase order, for an agreed price, that is in excess of the major client's negotiated purchase price.

FROM : METRO GEM INC

PHONE NO. : 952 475 6712

Feb. 28 2002 03:55PM P3

4. The major client then creates an invoice to the purchaser, with the specifics, including where "proceeds" are to be wire transferred, or sent, after the product is delivered by the carrier.

5. Then all the above documents are immediately given to Metro Gem, Inc. which verifies the transaction, as presented, contacting the supplier and the purchaser, all prior to any cash investment in the transaction. After this "due diligence" verification, funds are immediately wire transferred to the supplier's account, which allows the release of the product for shipment by the major client.

6. The major client's employee/agents are on site immediately to inspect, assemble and have the purchased product delivered. Vehicles of the major client and that of other carriers then immediately deliver the products to the purchaser. Upon delivery, the purchaser receives and inspects to verify the transaction and the deal is concluded, requiring that the "proceeds" be remitted, as negotiated by the terms of the invoice.

B. Metro Gem, Inc.

After all documents stated above are assembled, then Metro Gem, Inc. verifies the transaction as follows:

1. Contacts the supplier.
2. Contacts the purchaser's purchasing agent(s), and employees.
3. Verifies that the shipping process has been arranged, that the product is ready for delivery, that a copy of the Bill of Landing has been received, that the whole inventory is insured and that the terms of the purchase order(s) is/are exact.
4. Only then does Metro Gem, Inc. remit funds to be invested in the transaction. These can go direct to the supplier, so long as they are not identified as coming from a source other than that of Metro Gem, Inc. and the major client, and so long as the proceeds are so paid.

FROM : METRO GEM INC

PHONE NO. : 952 475 6712

Apr. 23 2004 02:05PM P1

METRO GEM, INC.

BP

P.O. Box 245
Wayzata, MN 55391

Phone (952) 475-6681
Fax (952) 475-6712
Mobile (612) 619-4346

November 13, 2002

Thomas J. Petters
The Petters Companies
7585 Equitable Drive
Eden Prairie, MN 55344

Re: Letter Agreement with Respect to
PBFP Holdings, LLC, and Palm
Beach Finance Partners, LP

Dear Tom:

This letter supplements our letter agreement dated August 16, 2002, with respect to the work Metro Gem, Inc. has undertaken with PBFP Holdings, L.L.C. (PBFP) and Palm Beach Finance Partners, L.P. (Palm Beach). Palm Beach is a hedge fund established by Bruce Prevost and David Harrold. PBFP is the master servicer for Palm Beach. Metro Gem, Inc. has been working with PBFP and Palm Beach as your service agent in an effort to fulfill your directive to arrange financing for your companies, the Petters Company, Redtag Biz, Inc., and your related or affiliated companies hereinafter "Petters." Specifically, Petters has instructed Metro Gem, Inc. to find replacement financing for some of your current lenders, and I am very optimistic that Palm Beach, will be a solid source of financing at reduced rates.

Since Palm Beach is a hedge fund and must meet certain requirements, Metro Gem, Inc. is assisting Palm Beach in establishing a financing structure to meet the requirements. Bob White provided a copy of financing documents from your counsel, and I forwarded them to Palm Beach. During Metro Gem's review of the documents, modifications were made to enhance your position. I have discouraged changes by Palm Beach and its counsel, and we are close to concluding the drafts. All documents are being provided to Tom Hay and Bob White.

I anticipate that a lending relationship can be established with Palm Beach at a rate of approximately 18% per annum. Except as noted below, the service agent fee for Metro Gem will be 4.80% per annum or .4% per month of the monthly average daily financing balance provided to Petters by Bruce Prevost or David Harrold through Palm Beach, PBFP or any entity related to or associated with any one of the forgoing including their referrals, collectively hereinafter the Lender. The annual cost of this financing will be 22.8%.

FROM : METRO GEM INC

PHONE NO. : 952 475 6712

Apr. 23 2004 02:06PM P2

In order to launch this fund, Metro Gem will invest \$10 million in the fund. Metro Gem is requesting, and Petters agrees, that it will be paid a monthly service agent fee of .8% on the first \$10 million of Palm Beach Funds provided by Metro Gem, Inc. The service agent fee on all other Palm Beach funds will be at the monthly rate of .4% as stated above.

Metro Gem, Inc. will continue to provide services to Petters as Petter's servicing agent for all loan arrangements between Petters and the Lender, or any affiliated or related companies. Petters agrees that it will use Metro Gem, Inc. as its exclusive servicing agent with respect to the Lender or any affiliated or related companies to perform the duties described on Schedule A, and that Petters will conduct all communications with the Lender through Metro Gem, Inc., provided that Petters shall have the right, with a Metro Gem, Inc. representative present, to conduct negotiations with the Lender regarding the loan facility or the terms thereof. Petters agrees not to establish any type of lending facility, financing, capitalization or other financial relationship with the Lender except through Metro Gem, Inc. as servicing agent.

This letter agreement supplements our agreement of August 16, 2002, and except as modified herein, the August 16, 2002, letter agreement remains in full force. We agree to the above as evidence by our signatures.

METRO GEM, INC.

Dated: 11-13-02

By: [Signature]
Its: Chief Executive Officer

THE PEFTERS COMPANY, INC.

Dated: 11-13-02

By: [Signature]
Its: Chief Executive Officer

FROM : METRO GEM INC

PHONE NO. : 952 475 6712

Apr. 23 2004 02:06PM P3

SCHEDULE A

Service Agent Responsibilities

Metro Gem, Inc. will provide strategic advisory services to Petters and serve as a communications liaison between Petters and Bruce Prevost, David Harrold, PBFP Holdings, L.L.C. (PBFP) and Palm Beach Finance Partners, L.P. (Palm Beach) or any entity related to or associated with any one of the foregoing including their referrals, collectively hereinafter the Lender. Metro Gem, Inc. will provide the following specific services:

- i. Advice to Petters regarding matters of corporate strategy and opportunity analysis, business concept and model development, organization and control, operations, business planning, financing, and capital budgeting.
- ii. Advice to Petters regarding prospective debt financing strategy and structure.
- iii. Negotiating, structuring and financial engineering for debt financing.
- iv. Assistance in closing of debt financing transactions as requested by Petters.
- v. Serving as the liaison between Petters and Lender to allow Petters to focus on its core business objectives.

Petters designates Metro Gem, Inc. as its point of contact and as liaison with Lender and Petters will direct Lender to direct all communications for Petters to Metro Gem, Inc.

METRO GEM, INC.

P.O. Box 245
Wayzata, MN 55391

Phone (952) 475-6681
Fax (952) 475-6712
Mobile (612) 619-4346

October 7, 2002

Bruce Prevost & David Harrold
Palm Beach ~~Cross~~ Partners, L.P.
3601 PGA Blvd. # 301
Palm Beach Gardens, FL 33401

Re: The Petters Company

Dear Bruce and David:

I am pleased that we are moving forward in structuring a financing arrangement with the Petters Company, Inc. Tom Petters and I have worked together for many years. Our companies, the Petters Company, Inc. and Metro Gem, Inc., have enjoyed great success due to the strengths which both of us bring to our relationship. We are confident that you will also enjoy great success as we join in business together because of the strengths and relationships you possess.

The purpose of this letter is to outline the role that my company, Metro Gem, Inc., plays on behalf of the Petters Company, Inc. For the past eight years, I have negotiated and arranged financing for the Petters Company, Inc., as well as servicing as a financier of the Petters Company, Inc. Tom Petters has requested that I serve specifically on behalf of him as a servicing agent in the negotiation and structuring of financing arrangements for the Petters Company, Inc., RedtagBiz, Inc., and any affiliated or related company of either of these companies, which I will refer to herein as "Petters".

Specifically, Metro Gem, Inc. provides strategic advisory services to Petters and serves as a communications liaison between Petters and its lenders. Petters has committed to conducting all communications and business with you through Metro Gem, Inc.

As the service agent and communications liaison, I will arrange all meetings for you with Tom Petters and Petters. You are to direct all communications to me for Tom Petters or Petters, and I will pass the communications along for you. If you have need of any information concerning Petters, this should also be presented to me. If there is any need for due diligence by you or any party related to you, the due diligence request should be presented to me.

October 6, 2002

An important part of the role which I play for Petters is the protection of its confidential information. Thus, any information I provide to you concerning Petters must be maintained in the strictest confidence. It is of utmost importance that the information not be disseminated to anyone without my prior written approval. Petters desires for me to obtain non-circumvention and confidentiality agreements with each party with whom I share information concerning Petters. To that end, I have attached our standard Non-circumvention and Confidentiality Agreement. Please read it and sign where indicated, and return it to me.

It is my desire to see you be extremely successful as you work with Petters. I know the Petters business intimately so please utilize Metro Gem, Inc. to its fullest extent for your greatest success. I, on behalf of my company and on behalf of Petters, look forward to working with you in a long and prosperous relationship.

Sincerely,

METRO GEM, INC.

By: Frank E. Kemo J
Its Chief Executive Officer

The undersigned has read the foregoing and understands the role of Metro Gem, Inc. and the services it provides to Petters. The undersigned will conduct its affairs consistent with the foregoing and abide by the expectations set forth within this letter and the attached Non-circumvention and Confidentiality Agreement.

Metro Gem, Inc.

Palm Beach ^{Finance}~~Global~~ Partners, L.P.

By: Frank E. Kemo J

By: B.P.A

Its: Chief Executive Officer

Its: Managing Partner

CONFIDENTIALITY AND NON-CIRCUMVENTION AGREEMENT

THIS CONFIDENTIALITY AND NON-CIRCUMVENTION AGREEMENT (“Agreement”) is made and entered into as of the 10th day of December, 2002, by and between Petters Company, Inc., a Minnesota corporation, and its affiliates and related companies, or their assigns, 4400 Baker Road, Suite 200, Minnetonka, MN 55343 (“Petters”), and Palm Beach Finance Partners (“Lender”). (“Petters” and “Lender” are sometimes referred to herein individual as a “Party” and together as the “Parties.”)

1. **Evaluation Material; Representatives.** Lender desires to loan funds to Petters or engage in other financial transactions with Petters, both of which shall be referred to as the “Transaction” herein. In order to assist the Parties in evaluating the possibility of a Transaction, each Party is prepared (without creating or applying any obligation to do so) to make available to the other Party certain confidential, non-public or proprietary information of the **Disclosing Party** (the “**Evaluation Material**”). As a condition to the **Evaluation Material** being furnished to each Party and its directors, officers, partners, employees, agents, advisors, attorneys, accountants, and consultants (collectively, “**Representatives**”), the Parties agree to treat the **Evaluation Material** in accordance with the provisions of this **Agreement** and to take or abstain from taking certain other actions hereinafter set forth. For purposes of this **Agreement**, each Party shall be considered a “**Receiving Party**” to the extent it receives information from the other Party and a “**Disclosing Party**” to the extent it provides information to the other Party.

2. **Excluded Information.** The **Evaluation Material** shall not include information that (i) is or becomes publicly available other than as a result of acts by the **Receiving Party** in breach of this **Agreement**, (ii) is in the **Receiving Party**’s possession prior to disclosure by the **Disclosing Party** or is independently derived by the **Receiving Party** without the aid, application or use of the **Evaluation Material**, (iii) is disclosed to the **Receiving Party** by a third party other than Metro Gem, Inc. or other agent of Petters on a non-confidential basis (provided that the third

party did not receive such information in violation of or is bound by a confidentiality agreement), or (iv) the **Receiving Party** is advised by counsel is required to be disclosed by law.

3. **Non-Disclosure of Evaluation Material.** The **Receiving Party** and its **Representatives** shall use the **Evaluation Material** solely for the purpose of evaluating a possible Transaction between the Parties. The **Receiving Party** and its **Representatives** shall keep the **Evaluation Material** confidential and shall not disclose any of the **Evaluation Material** in any manner whatsoever, provided, however, that (i) the **Receiving Party** may make any disclosure of information contained in the **Evaluation Material** to which the **Disclosing Party** gives its prior written consent, and (ii) any information contained in the **Evaluation Material** may be disclosed to the **Receiving Party's Representatives** who reasonably need to know such information for the purpose of evaluating a possible Transaction with the **Disclosing Party**. The **Receiving Party** shall be responsible for any breach of this Agreement by any of its **Representatives**.

4. **Non-Disclosure and Non-Use.** The **Receiving Party** covenants, warrants and represents that he/she/it will not, directly or indirectly, in whole or in part, orally or in writing, at any time without prior written consent of the **Disclosing Party**, during the term of this Agreement and for any time thereafter (i) disclose all or any of **Evaluation Material** to any third party, except as permitted in paragraph 3 above; (ii) will not provide copies of the **Evaluation Material** to any third party; and (iii) will not use any of the **Evaluation Material** for its own benefit, or for the benefit of any third party.

5. **Non-Circumvention.** The **Receiving Party** warrants, covenants and represents to the **Disclosing Party** that during the term of this Agreement and for all times after termination, it shall not use the **Evaluation Material**, directly or indirectly, to the **Receiving Party's** own benefit or for the benefit of any affiliate, subsidiary, or related party of the **Receiving Party**, or any third party. The **Lender** specifically warrants and represents to **Petters** and assigns, the **Lender** will not circumvent **Petters** or assigns by seeking to make arrangements with the clients,

customers, vendors, financing sources, trading partners or business contacts of **Petters**, which have been disclosed to the **Lender**.

6. **Definitive Agreement.** Unless and until a definitive written agreement between the Parties with respect to the Transaction has been executed and delivered, neither Party will be under any legal obligation of any kind whatsoever with respect to such Transaction by virtue of this or any other written or oral expression by either of them, or their **Representatives** except, in the case of this **Agreement**, for the matters specifically agreed to herein, or which by context is intended to bind the Parties after termination of this **Agreement**.

7. **Term; Termination.** In the event one Party elects not to proceed with the Transaction, such Party will promptly notify the other Party of such decision. If no such notice is provided, the parties' efforts to enter into a transaction shall be deemed to cease ninety (90) days after the date hereof. Each of the Parties shall, within two (2) business days, thereafter, or earlier upon request promptly redeliver to the other Party all documents or other matters furnished by each of the Parties to the other, or their respective **Representatives**, constituting the **Evaluation Material**, together with all copies thereof in such Party's, and their respective **Representatives**, possession. All other documents or other matters constituting **Evaluation Material**, in each of the Parties and their respective Representative's possession will be destroyed, with any such destruction confirmed by one Party to the other in writing. Notwithstanding the return or destruction of the **Evaluation Material**, each of the Parties and their respective **Representatives** shall continue to be bound by each of the Party's respective obligations hereunder.

8. **Remedies.** The Parties acknowledge that in the event of any breach of this **Agreement** by a Party, the other Party may not be made whole by monetary damages. Accordingly, each Party, in addition to any other remedy to which it may be entitled at law or in equity, shall be entitled to an injunction to prevent any additional breach(s) of this **Agreement**, and to an order compelling specific performance of this **Agreement**. The breaching Party shall reimburse the other Party for all costs and expenses, including reasonable attorney's fees, incurred

by the other Party in the event it successfully enforces the obligations of the breaching Party and its **Representatives** hereunder.

This **Agreement** shall be construed under the laws of the State of Minnesota, irrespective of its choice of law principals. In the event any claim arises, such claim shall be litigated in the Federal District Court--District of Minnesota or the Fourth Judicial District of Hennepin County, Minnesota. This **Agreement** may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Each of the Parties hereto agree to execute any other documents necessary to fulfill the intent, terms and conditions of this **Agreement**. To be enforceable, any change, modifications or amendments to this **Agreement** must be in writing and signed by each Party hereto. Any ambiguities shall be considered neutral and such ambiguities shall not be construed against the drafter of this **Agreement**. A waiver of any term herein shall not be construed as a waiver of any other term or a subsequent waiver. Should a court of competent jurisdiction invalidate any term herein, such act shall not affect the validity of the remaining terms. The Parties agree that properly executed and distributed facsimile copies of any documents shall be considered an original, legally binding, and an enforceable document. This **Agreement** reflects the entire understanding of the Parties hereto and supersedes any prior understandings or agreements, whether oral or written, with respect to the subject matter of this **Agreement**. Headings are not part of this **Agreement** and are provided only for the sake of convenience. This **Agreement** shall bind the Parties hereto and their respective affiliates, related parties, directors, officers, employees, agents, representatives, successors and assigns. This **Agreement** shall not be assigned by **Lender** without the prior written consent of **Petters**.

Petters:

PETTERS COMPANY, INC.

By: _____

Its: _____

LENDER:

By: B. P. Pender

Its: Managing Partner

Schedule 1.a

Payor	Date	Contributions	Withdrawals
PBF	11/27/02	\$ 3,500,000.00	\$ -
PBF	12/04/02	2,100,000.00	-
PBF	12/06/02	3,400,000.00	-
PBF	12/12/02	1,000,000.00	-
PBF	04/21/04	-	(1,830,757.84)
PBF	08/01/04	-	(4,675,000.00)
PBF	12/01/04	-	(1,005,837.40)
PBF	04/04/05	-	(344,811.00)
PBF	10/11/05	-	(953,645.62)
PBF	02/14/06	-	(130,000.00)
PBF	03/31/06	2,000,000.00	-
PBF	08/01/06	-	(406,396.00)
PBF	04/02/07	-	(7,160,343.78)
		\$ 12,000,000.00	\$ (16,506,791.64)
PBFII	08/11/04	\$ 4,675,000.00	\$ -
PBFII	04/04/05	-	(227,004.00)
PBFII	12/28/05	-	(425,000.00)
PBFII	04/20/06	-	(2,000,000.00)
PBFII	04/21/06	-	(340,000.00)
PBFII	08/01/06	-	(136,284.00)
PBFII	10/17/06	-	(320,000.00)
PBFII	02/22/07	-	(300,000.00)
PBFII	02/28/07	-	(240,000.00)
PBFII	04/02/07	-	(3,042,156.67)
PBFII	04/02/07	-	(66,000.00)
		\$ 4,675,000.00	\$ (7,096,444.67)

Schedule 1.a.1

Payor	Date	Amount
PBF	1/12/2004	\$ 3,728,323.70
PBF	1/12/2004	3,215,147.13
PBF	1/12/2004	3,239,443.38
PBF	1/12/2004	4,660,404.62
PBF	1/12/2004	5,496,864.45
PBF	1/20/2004	5,048,923.68
PBF	2/4/2004	3,767,402.78
PBF	4/6/2004	3,090,133.98
PBF	4/6/2004	3,856,376.93
PBF	4/6/2004	2,825,963.49
PBF	4/6/2004	3,652,912.62
PBF	4/6/2004	3,433,360.42
PBF	4/19/2004	4,985,507.25
PBF	4/21/2004	1,830,757.84
PBF	5/5/2004	4,293,086.82
PBF	5/5/2004	4,464,386.32
PBF	5/5/2004	3,835,275.21
PBF	7/30/2004	2,816,821.67
PBF	9/15/2004	1,902,424.24
PBF	10/12/2004	5,727,494.91
PBF	1/3/2005	3,132,782.92
PBF	1/7/2005	5,012,237.33
PBF	1/7/2005	2,445,547.80
PBF	1/7/2005	6,027,049.18
PBF	1/7/2005	6,101,636.66
PBF	1/7/2005	4,663,281.88
PBF	1/7/2005	5,380,748.66
PBF	1/7/2005	4,324,672.13
PBF	4/20/2005	3,221,103.50
PBF	7/29/2005	5,355,896.61
PBF	1/3/2006	4,736,512.48
		\$ 126,272,480.59

Schedule 1.b

Payor	Date	Contributions	Withdrawals
PBF	04/01/07	\$ 7,081,343.78	\$ -
PBF	04/02/08	-	(1,100,000.00)
PBF	08/01/08	179,067.64	(179,067.65)
		<u>\$ 7,260,411.42</u>	<u>\$ (1,279,067.65)</u>
PBFII	04/02/07	\$ 3,042,156.67	\$ -
PBFII	08/01/08	-	(294,932.04)
PBFII	12/01/08	294,932.04	-
PBFII	08/29/07	5,100,000.00	-
PBFII	04/01/08	-	(1,400,000.00)
		<u>\$ 8,437,088.71</u>	<u>\$ (1,694,932.04)</u>

Schedule 1.c

Payor	Date	Check No	Amount
PBCM LLC	1/20/2006	1142	\$ 4,000.00
PBCM LLC	2/9/2006	1185	4,000.00
PBCM LLC	3/2/2006	1220	4,000.00
PBCM LLC	4/4/2006	1279	4,000.00
PBCM LLC	5/2/2006	1332	4,000.00
PBCM LLC	6/2/2006	1380	4,000.00
PBCM LLC	7/5/2006	1437	4,000.00
PBCM LLC	8/8/2006	2102	4,000.00
PBCM LLC	9/12/2006	2159	4,000.00
PBCM LLC	10/13/2006	1546	4,000.00
PBCM LLC	11/3/2006	1575	4,000.00
PBCM LLC	12/8/2006	1627	4,000.00
PBCM LLC	12/18/2006	1708	4,000.00
PBCM LLC	12/20/2006	1651	4,000.00
PBCM LLC	3/12/2007	1779	4,000.00
PBCM LLC	4/4/2007	1818	4,000.00
PBCM LLC	5/3/2007	1902	4,000.00
PBCM LLC	6/1/2007	1958	4,000.00
PBCM LLC	7/5/2007	2008	4,000.00
PBCM LLC	8/7/2007	2176	4,000.00
PBCM LLC	9/11/2007	2243	4,000.00
PBCM LLC	10/3/2007	2282	4,000.00
PBCM LLC	11/9/2007	2365	4,000.00
PBCM LLC	12/5/2007	2428	4,000.00
PBCM LLC	12/31/2007	2473	4,000.00
PBCM LLC	2/7/2008	2548	4,000.00
PBCM LLC	3/4/2008	2589	4,000.00
PBCM LLC	4/1/2008	2649	4,000.00
PBCM LLC	5/5/2008	2726	4,000.00
PBCM LLC	6/2/2008	2765	4,000.00
PBCM LLC	7/8/2008	2813	4,000.00
PBCM LLC	8/1/2008	2882	4,000.00
PBCM LLC	9/3/2008	2934	4,000.00
			\$ 132,000.00