

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

In re:

CHAPTER 11

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

Case No. 09-36379-PGH
Case No. 09-36396-PGH
(Jointly Administered)

Debtors.

**LIQUIDATING TRUSTEE'S MOTION (1) TO
APPROVE SETTLEMENT WITH SOUTHWEST KEY PROGRAMS, INC.
AND (2) TO APPROVE PAYMENT OF CONTINGENCY FEE**

Any interested party who fails to file and serve a written response to this motion within 21 days after the date of service stated in this motion shall, pursuant to Local Rule 9013-1(D), be deemed to have consented to the entry of an order in the form attached to this motion. Any scheduled hearing may then be cancelled.

Barry E. Mukamal, in his capacity as liquidating trustee ("*Liquidating Trustee*") for the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance Partners II Liquidating Trust (collectively, the "*Palm Beach Liquidating Trusts*"), by and through undersigned counsel, and pursuant to *Fed. R. Bankr. P.* 9019, seeks an Order from this Court approving a settlement of claims that could be asserted against Southwest Key Programs, Inc. (individually or collectively, the "*Transferee*") and payment of counsel's contingency fee. In support of this relief, the Liquidating Trustee states the following:

I. Factual Background

A. Procedural Background

1. Prepetition, Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. (collectively, the “*Debtors*”) operated as hedge funds. Together, David Harrold and Bruce Prevost managed the Debtors’ fund raising and investment activities.

2. The principal investment strategy of the Debtors was to invest in purchase financing transactions supposedly sourced by Thomas Petters and his company, Petters Company, Inc. and its affiliated entities (collectively, “*PCI*”).

3. The reality, however, was that Mr. Petters and PCI were engaging in a massive *Ponzi* scheme.

4. On October 2, 2008, the United States of America filed under seal in the United States District Court for the District of Minnesota its Complaint for Permanent Injunctive Relief and Other Equitable Relief (the “*DOJ Complaint*”) pursuant to 18 U.S.C. § 1345. The parties to the DOJ Complaint included a number of parties implicated in the massive *Ponzi* scheme perpetrated by Mr. Petters, including Deanna Coleman; Frank E. Vennes, Jr.; Metro Gem, Inc. (“*MGT*”; and together with Mr. Vennes, the “*Vennes Parties*”); Robert White; Nationwide International Resources, Inc.; Larry Reynolds a/k/a Larry Reservitz; Michael Catain and Enchanted Family Buying Company (collectively, the “*Receivership Defendants*”).

5. On October 3, 2008, the United States District Court for the District of Minnesota (the “*Minnesota Court*”) entered a temporary restraining order, finding, among other things, that “[t]here is probable cause to believe that Defendants have conspired to commit and/or committed federal mail, wire, and/or banking fraud offenses.”

6. On October 6, 2008, the Minnesota Court entered an Order for Entry of Preliminary Injunction, Order Appointing Receiver, and Other Equitable Relief (including amendments thereto, the “*Petters Receivership Order*”).

7. The Petters Receivership Order appointed Douglas A. Kelley as the receiver for the Receivership Defendants (the “*Petters Receiver*”). Thereafter, the Petters Receiver filed voluntary Chapter 11 petitions in the United States Bankruptcy Court for the District of Minnesota for PCI and was appointed Chapter 11 trustee for all such entities (in such capacity, the “*PCI Trustee*”; and at times together with the Liquidating Trustee, the “*Trustees*”).

8. On November 30, 2009, the Debtors filed voluntary Chapter 11 petitions in the United States Bankruptcy Court for the Southern District of Florida. By subsequent Order of this Court, the cases are jointly administered.

9. On January 29, 2010, the United States Trustee appointed the Liquidating Trustee as Chapter 11 trustee in both of the Debtors’ estates. [ECF No. 107].

10. On October 21, 2010, this Court entered its Order Confirming Second Amended Plan of Liquidation [ECF No. 444], creating the Palm Beach Liquidating Trusts, appointing the Liquidating Trustee as Liquidating Trustee and appointing Geoffrey Varga as Trust Monitor.

B. The Vennes Litigation

11. The Debtors’ entry into the Petters’ fraud was made through the Vennes Parties. Namely, based on representations made by them, the Debtors invested hundreds of millions of dollars in fictitious PCI transactions.

12. On November 29, 2011, the Liquidating Trustee filed suit against the Vennes Parties, Adversary Case No. 11-03041-PGH-A (the “*Vennes Action*”). The Vennes Action seeks to avoid and recover transfers made to the Palm Beach Funds by the Vennes Parties and to

hold the Vennes Parties liable in tort for material misrepresentations made by them to the Palm Beach Funds.

13. Concurrently with commencing his action against the Vennes Parties, the Liquidating Trustee also commenced suit against the Transferee, Adv. Case No. 11-02944-PGH (the “*Adversary Proceeding*”). The Adversary Proceeding seeks to avoid transfers made to or for the benefit of the Transferee by the Vennes Parties in approximately September of 2005 (the “*Transfers*”).

14. After the commencement of the Adversary Proceeding, on March 2, 2012, the PCI Trustee sent a letter to the Transferee indicating that he intends to pursue the Transferee for the recovery of the Transfers under 11 U.S.C. § 550 (the “*Letter Demand*”; and together with the Adversary Proceeding, the “*Litigation*”).

15. Altogether, as set forth in the complaint filed in the Adversary Proceeding and the Letter Demand, the Trustees assert that the Transferee received in the aggregate, approximately \$300,000.00 in Transfers from the Vennes Parties that are subject to avoidance and recovery for the benefit of the victims of the Petters’ fraud.

16. The Transferee denies that it has any liability in connection with the claims asserted in the Litigation.

17. The Trustees have recently entered into an agreement whereby they have agreed to mediate jointly with the Transferee and other transferees of the Vennes Parties and allocate between themselves according to the terms of that agreement any settlement proceeds relating to the transfers (the “*Allocation Agreement*”). Under the terms of the Allocation Agreement, the parties agreed to share equally the first one million dollars of total aggregate recoveries relating to claims against the Vennes Parties and their transferees, and for recoveries in excess of one

million dollars, the PCI Trustee receives sixty percent and the Liquidating Trustee receives forty percent. [See ECF No. 1282.]

II. Settlement Terms

18. The key aspects of the stipulation of settlement between the parties (“*Stipulation*”) are the following:¹

- a) Subject to approval of the Stipulation by this Court and the Minnesota Bankruptcy Court, the Transferee will pay (or cause to be paid) \$140,000.00 (the “*Settlement Payment*”) as follows:
 1. Immediately upon execution of this Stipulation by all Parties, \$35,000.00 will be paid to the Trustee as follows: \$14,000.00 to the Liquidating Trustee and \$21,000.00 to the PCI Trustee (collectively, the “*First Payment*”);
 2. Within ninety (90) days from the date the Transferee makes the First Payment, \$35,000.00 will be paid to the Trustees as follows: \$14,000.00 to the Liquidating Trustee and \$21,000.00 to the PCI Trustee (collectively, the “*Second Payment*”);
 3. Within ninety (90) days from the date the Transferee makes the Second Payment, \$35,000.00 will be paid to the Trustees as follows: \$14,000.00 to the Liquidating Trustee and \$21,000.00 to the PCI Trustee (collectively, the “*Third Payment*”); and
 4. Within ninety (90) days from the date the Transferee makes the Third Payment, \$35,000.00 will be paid to the Trustees as follows: \$14,000.00 to the Liquidating Trustee and \$21,000.00 to the PCI Trustee.
- b) Of the total Settlement Payment, \$56,000.00 will be paid to the Liquidating Trustee and \$84,000.00 will be paid to the PCI Trustee. The Trustees will hold their respective portions of the Settlement Payment pending approval of the Stipulation by the Florida Bankruptcy Court and

¹ A copy of the Stipulation is attached as Exhibit 1. To the extent the terms set forth in this Motion differ from those set forth in the settlement agreement, the settlement agreement controls.

the Minnesota Bankruptcy Court. The Settlement Payment represents roughly 46% of the Transfers.

- c) The parties shall exchange mutual, general releases;
- d) The Liquidating Trustee shall seek dismissal of the Adversary Proceeding; and
- e) The Transferee shall not be entitled to any distribution from the Debtors' or PCI bankruptcy estates.

19. Pursuant to the Second Amended Joint Plan of Liquidation (the "***Plan***"), approved by this Court's Order dated October 21, 2010 [ECF No. 444], all monetary consideration received by the Palm Beach Liquidating Trusts in conjunction with the Settlement will be allocated as follows: 18% to Palm Beach Finance Partners Liquidating Trust and 82% to Palm Beach Finance II Liquidating Trust (the "***Pro Rata Allocation Formula***").

III. Relief Requested

20. The Liquidating Trustee seeks an Order from this Court (a) approving the Stipulation and (b) directing payment of the Contingency Fee (as defined below).

21. Federal Rule of Bankruptcy Procedure 9019 provides in relevant part that "[o]n motion ... and after a hearing on notice to creditors; the debtor ... and to such other entities as the Court may designate, the Court may approve a compromise or settlement."

22. Approval of a settlement in a bankruptcy proceeding is within the sole discretion of the Court and will not be disturbed or modified on appeal unless approval or disapproval is an abuse of discretion. *See In re Arrow Air*, 85 BR 891 (Bankr. S.D. Fla. 1988).

23. The standards for approval are well settled and require the Court to inquire into the reasonableness of the proposed settlement. *See, e.g., Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re W.T. Grant*

Co., 699 F.2d 599, 608 (2d Cir. 1983); *Florida Trailer and Equip. Co. v. Deal*, 284 F.2d 567, 571 (5th Cir. 1960). The inquiry need only determine whether the settlement falls below the lowest point of the range of reasonableness. See *W.T. Grant Co.*, 699 F.2d at 608; see also *In re Martin*, 91 F.3d 389 (3rd Cir. 1996); *In re Louise's Inc.*, 211 B.R. 798 (D. Del. 1997) (setting forth considerations by the Court for approval of a settlement, including: (i) the probability of success in litigation, (ii) the likely difficulties in collection; (iii) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (iv) the paramount interest of the creditors.

A. *The Settlement Ought to be Approved*

24. Based upon the above legal principles, the Liquidating Trustee asserts that the Settlement falls well above the lowest point of the range of reasonableness and, thus, should be approved.

Probability of success in litigation

25. The Liquidating Trustee, on behalf of the Liquidating Trusts, could assert that the transfers made to the Transferee by the Vennes Parties were fraudulent transfers under federal or state law, or alternatively, that the Transferee was unjustly enriched by such transfers.

26. The Liquidating Trustee believes that he will likely succeed in prosecuting either of these causes of action.

27. Nonetheless, the Liquidating Trustee acknowledges that there are risks inherent in all litigation and there is the possibility that the Transferee, or other similarly situated parties, could raise certain issues or defenses that potentially could impact the Liquidating Trustee's claims.

Collectability

28. Collectability is not a significant consideration with respect to the Litigation.

Complexity of litigation and attendant expense, inconvenience and delay

29. This is a significant consideration that militates in favor of approval of the Settlement.

30. In sum, although many of the claims outlined above are typical claims litigated before this Court, they still will require retention of experts and extensive fact discovery before a trial could take place. The result of these efforts will be substantial attorney's fees on both sides which would diminish the net result of any recovery.

31. Moreover, a significant focus of the litigation will be the Vennes Parties themselves. To that end, the pending criminal case against Mr. Vennes is currently scheduled for trial in the spring of 2013. The possibility exists that discovery from the Vennes Parties may be delayed until the conclusion of that proceeding.

32. In addition, during the pendency of the Adversary Proceeding, the Minnesota legislature enacted an amendment to the State's version of the Uniform Fraudulent Transfer Act, which purports to apply retroactively and impose certain limitations on the Liquidating Trustee's rights and remedies. While the Liquidating Trustee disputes the applicability of the amended statute, the Liquidating Trustee did consider the potential risks and expenses associated with litigating this issue. Notably, the statute, if applicable, could be asserted to potentially eliminate the Liquidating Trustee's ability to recover the Transfers.

33. The Settlement addresses these concerns. The parties avoid litigating fact-specific claims with the attendant expense and delay of such litigation being nullified.

Paramount interest of creditors

34. The settlement provides a meaningful payment of the claims asserted against the Transferee in the Adversary Proceeding. The Palm Beach Settlement Payment is a meaningful resolution in light of the complexity of the Litigation, as well as the potential delay and professional costs associated therewith. As such, the Settlement is in the paramount interest of the Debtors' stakeholders.

B. The Contingency Fee Ought to be Approved

35. Pursuant to the Plan and this Court's Order Approving the Trustee's Motion to Approve Hybrid Form of Compensation [ECF No. 223], Meland Russin & Budwick, P.A. ("**MRB**") is entitled to a fee of 10% of any affirmative recovery received by the Debtors' estates from a litigation matter pursued by the firm without further order of the Court ("**Contingency Fee**").

36. The Liquidating Trustee requests that the 10% Contingency Fee – in the amount of \$5,600.00 – be approved and that he be authorized and directed to pay this amount when the Liquidating Trustee receives his allocation of the Settlement Payment.

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WHEREFORE, the Liquidating Trustee respectfully requests that this Court enter an Order (similar in form to the Order attached as Exhibit 2) (i) approving the Stipulation; (ii) approving payment of the Contingency Fee; and (iii) granting such other relief this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on September 12, 2012 via: (i) the Court's Notice of Electronic Filing upon Registered Users set forth on the attached list on Exhibit 3; (ii) U.S. Mail to those parties on the service list attached as Exhibit 4; and (iii) Noel Boeke, Esq., 100 North Tampa Street, Suite 4100, Tampa FL 33602.

s/ Jessica L. Wasserstrom
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*Attorneys for Barry E. Mukamal,
Liquidating Trustee*

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“**Stipulation**”) is entered into on _____, 2012 by and between (a) Barry E. Mukamal, in his capacity as liquidating trustee (the “**Liquidating Trustee**”) of the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance II Liquidating Trust (collectively, the “**Liquidating Trusts**”), (b) Douglas A. Kelley, in his capacity as Chapter 11 trustee of the administratively-consolidated debtors under *In re Petters Company Inc., et al.* (the “**PCI Trustee**”), and (c) Southwest Key Programs, Inc. (individually or collectively, the “**Transferee**”) (the Liquidating Trustee, PCI Trustee, and the Transferee are at times individually referred to herein as a “**Party**” or collectively, the “**Parties**”). The terms of this Stipulation are as follows:

RECITALS

A. On November 30, 2009 (“**Petition Date**”), Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. (the “**Palm Beach Funds**”) commenced Chapter 11 bankruptcy cases by filing voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Florida (the “**Florida Bankruptcy Court**”), Bky. Nos. 09-36379 and 09-36396 respectively (the “**Florida Bankruptcy Cases**”);

B. On October 21, 2010, the Florida Bankruptcy Court entered its Order Confirming Second Amended Plan of Liquidation [Bky. No. 09-36379, ECF No. 444], creating the Liquidating Trusts and appointing the Liquidating Trustee as liquidating trustee;

C. In an action commenced by the United States of America, by an Order entered on October 6, 2008 and as subsequently amended, the Honorable Ann D. Montgomery, United States District Judge for the District of Minnesota, appointed Douglas A. Kelley as Receiver (the “**Receiver**”) for, among others, Thomas J. Petters (“**Petters**”), Petters Company, Inc. (“**PCI**”), Petters Group Worldwide, LLC (“**PGW**”) and any affiliates, subsidiaries, divisions, successors,

or assigns owned 100% or controlled by the foregoing. *United States v. Petters, et al.*, Case No. 0:08-cv-05348, ECF Nos. 12 and 127 (the “**Receivership Case**”);

D. Pursuant to the authority granted to him under the Receivership Order, the Receiver filed petitions in the United States Bankruptcy Court for the District of Minnesota (“**Minnesota Bankruptcy Court**”) commencing the Chapter 11 cases of PCI and PGW on October 11, 2008. Petitions commencing the voluntary Chapter 11 bankruptcy cases of PC Funding, LLC, Thousand Lakes, LLC, SPF Funding, LLC, PL Ltd., Inc., Edge One, LLC and MGC Finance, Inc. were filed on October 15, 2008. The petition commencing the Chapter 11 bankruptcy case of PAC Funding, LLC was filed on October 17, 2008. The petition commencing the Chapter 11 bankruptcy case of Palm Beach Finance Holdings, Inc. was filed on October 19, 2008. The above-referenced bankruptcy cases are being jointly administered under *In re Petters Company, Inc., et al.*, Bky. Case No. 08-45257 (the “**Minnesota Bankruptcy Cases**” or “**PCI/PGW Bankruptcy Estates**”);

E. On February 26, 2009, the Minnesota Bankruptcy Court approved the Office of the United States Trustee for the District of Minnesota’s appointment of Douglas A. Kelley, as the PCI Trustee;

F. On November 29, 2011, the Liquidating Trustee commenced litigation against Frank E. Vennes, Jr. (“**Vennes**”) and Metro Gem, Inc. (“**Metro Gem**”) on behalf of the Liquidating Trusts. *Mukamal v. Metro Gem, Inc. et al.*, Adv. No. 11-03041 (Bankr. S.D. Fla.). The Liquidating Trustee asserts claims arising in tort based on certain representations Vennes made to the Palm Beach Funds regarding their advances to Palm Beach Finance Holdings, Inc. and also for fraudulent transfers to recover certain investment transfers Vennes and Metro Gem received from the Palm Beach Funds as investors in the Palm Beach Funds;

G. On or about November 23, 2011, the Liquidating Trustee, on behalf of the Liquidating Trusts, commenced an Adversary Proceeding asserting several claims against the Transferee, including claims for the avoidance and recovery of fraudulent transfers and unjust enrichment (the “*Adversary*”), relating to funds the Transferee received from Frank Vennes and/or Metro Gem (the “*Transfers*”);

H. On March 2, 2012, the PCI Trustee sent a letter to the Transferee indicating that he intends to pursue the Transferee for the recovery of the Transfers under 11 U.S.C. § 550 (the “*Letter Demand*”). The Adversary and the Letter Demand are collectively referred to herein as the “*Trustees’ Claims*”;

I. The Transferee expressly denies any liability arising from the Trustees’ Claims;

J. Prior to and following commencement of the Adversary and the communication of the Letter Demand, the Parties have engaged in discussions in an attempt to resolve any and all issues, including the Trustees’ Claims;

K. To avoid the continued expense of litigating the Trustees’ Claims and the related risk of an adverse outcome arising from the Adversary, as well as incurring costs and expenses associated therewith, among other reasons, the Parties have agreed to resolve the Trustees’ Claims pursuant to the terms and conditions of this Stipulation.

NOW, THEREFORE, it is stipulated, consented to, and agreed, by and among the Parties as follows:

1. **No admission of liability.** The Parties acknowledge that this Stipulation is a compromise and settlement of a controversy. No Party admits, and each expressly denies, any liability on its part.

2. **Entire agreement.** This Stipulation constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, and there are no other stipulations, agreements, representations, or warranties other than those specifically set forth herein. All prior agreements and understandings between the Parties concerning the subject matter hereof are superseded by the terms of this Stipulation.

3. **Settlement Payment.** In full and final settlement of the Trustees' Claims, the Transferee will pay (or cause to be paid) \$140,000.00 (the "***Settlement Payment***") as follows:

A. Immediately upon execution of this Stipulation by all Parties, \$35,000.00 will be paid to the Trustees as follows: \$14,000.00 to the Liquidating Trustee and \$21,000.00 to the PCI Trustee (collectively, the "***First Payment***").

B. Within ninety (90) days from the date the Transferee makes the First Payment, \$35,000.00 will be paid to the Trustees as follows: \$14,000.00 to the Liquidating Trustee and \$21,000.00 to the PCI Trustee (collectively, the "***Second Payment***").

C. Within ninety (90) days from the date the Transferee makes the Second Payment, \$35,000.00 will be paid to the Trustees as follows: \$14,000.00 to the Liquidating Trustee and \$21,000.00 to the PCI Trustee (collectively, the "***Third Payment***").

D. Within ninety (90) days from the date the Transferee makes the Third Payment, \$35,000.00 will be paid to the Trustees as follows: \$14,000.00 to the Liquidating Trustee and \$21,000.00 to the PCI Trustee.

The Liquidating Trustee's total portion of the Settlement Payment (\$56,000.00) will be paid to the Liquidating Trustee via (i) wire transfer pursuant to written instructions to be provided by the Liquidating Trustee or his counsel or (ii) check made payable to "Barry E. Mukamal, Liquidating Trustee" and delivered to Jonathan S. Feldman, Esq., Meland Russin & Budwick, P.A., 200

South Biscayne Blvd., Suite 3000, Miami, Florida 33131. The PCI Trustee's total portion of the Settlement Payment (\$84,000.00) will be paid to the PCI Trustee on behalf of the PCI bankruptcy estate via (i) wire transfer pursuant to written instructions to be provided by the PCI Trustee or his counsel or (ii) check made payable to "Douglas A. Kelley, Trustee" and delivered to Josiah Lamb, Esq., Kelley, Wolter & Scott, P.A., 431 South Seventh Street, Suite 2530, Minneapolis, MN 55415. The Liquidating Trustee and the PCI Trustee will hold their respective portions of the Settlement Payment pending approval of this Stipulation by the Florida Bankruptcy Court and the Minnesota Bankruptcy Court.

4. **No entitlement to distribution.** The Transferee agrees that he, she, or it will not be entitled to any monetary distribution whatsoever, directly or indirectly, from the Liquidating Trusts, the Palm Beach Funds, or the PCI/PGW Bankruptcy Estates. To the extent that the Transferee was scheduled (i) by the Palm Beach Funds in the Florida Bankruptcy Cases, or (ii) by PCI, PGW or any of the related administratively-consolidated debtors in the Minnesota Bankruptcy Cases, as having a claim or has filed any proof of claim or proof of interest in the Palm Beach Funds bankruptcy cases or the Minnesota Bankruptcy Cases, the Transferee agrees such claims or interests are deemed withdrawn in their entirety and will be stricken or otherwise disallowed.

5. **General releases between the Parties.**

A. For purposes of this Stipulation, the term "**Claims**" means any obligations, claims (including those arising under section 502(h) of the Bankruptcy Code), causes of action, or demands of any type that a party may presently have, may have or have had in the past, upon or by reason of any matter, cause or thing whatsoever, including without limitation any and all obligations, claims, causes of actions, and demands of any kind

whatsoever, at law or in equity, indirect, derivative, or direct, known or unknown, discovered or undiscovered, including, but not limited to, the Trustees' Claims.

B. Upon approval of this Stipulation by orders of the Florida Bankruptcy Court and Minnesota Bankruptcy Court and payment of the Settlement Payment, the Liquidating Trustee, on behalf of the Liquidating Trusts and the Palm Beach Funds, and the PCI Trustee, on behalf of the PCI/PGW Bankruptcy Estates, each waives and releases, now and forever, the Transferee from any and all Claims that the Liquidating Trustee, the Liquidating Trusts, the Palm Beach Funds, the PCI Trustee, or the PCI/PGW Bankruptcy Estates may have against the Transferee; provided that nothing herein will be deemed to release, waive, or otherwise limit any rights or obligations arising out of this Stipulation.

C. Upon approval of this Stipulation by final order of the Florida Bankruptcy Court and Minnesota Bankruptcy Court and payment of the Settlement Payment, the Transferee waives and releases, now and forever, the Liquidating Trustee, the Liquidating Trusts, the Palm Beach Funds, the PCI Trustee, and the PCI/PGW Bankruptcy Estates from any and all Claims that the Transferee may have against the Liquidating Trustee, the Liquidating Trusts, the Palm Beach Funds, the PCI Trustee, and the PCI/PGW Bankruptcy Estates; provided that this provision does not release, waive, or otherwise limit any rights or obligations arising out of this Stipulation.

6. **Dismissal of Adversary.** Upon entry of final, non-appealable orders by the Florida Bankruptcy Court and the Minnesota Bankruptcy Court approving this Stipulation, the Liquidating Trustee, on behalf of the Liquidating Trusts, agrees to seek dismissal of the Adversary.

7. **Representations of the Transferee.** The individuals executing this Stipulation on behalf of the Transferee represent and warrant that he or she has the authority to execute this Stipulation on behalf of the applicable Party and bind them to its terms. Such individuals further represent and warrant on behalf of the Transferee that the Transferee received an aggregate amount of \$300,000.00 from Vennes and/or one of his related entities, including Metro Gem.

8. **Representations of the Liquidating Trustee and the PCI Trustee.** The Liquidating Trustee and the PCI Trustee signing below each represents and warrants that he has the authority to execute this Stipulation on behalf of the Liquidating Trusts and the PCI/PGW Bankruptcy Estates, respectively, and bind them to its terms. In addition, Liquidating Trustee and the PCI Trustee signing below each represent and warrant that he is not aware of any claim or potential claim that any person or entity, other than the Parties to the Adversary and this Stipulation, may have against Transferee with regard to the Transfers.

9. **Review/No Duress.** Each of the Parties acknowledges that he, she, or it has read all of the terms of this Stipulation, has had an opportunity to consult with counsel of his, her, or its own choosing or knowingly and voluntarily waived such opportunity, and enters into those terms voluntarily and without duress.

10. **Amendments, Waiver.** This Stipulation may not be terminated, amended, or modified in any way except in a writing signed by all the Parties. No waiver of any provision of this Stipulation shall be deemed to constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.

11. **Assignability.** No Party hereto may assign its rights under this Stipulation without the prior written consent of each of the other Parties hereto. The Liquidating Trustee and the PCI Trustee signing below each represents and warrants that he has not assigned any

claim against Transferee or authorized any other person or entity to assert a claim against Transferee.

12. **Successors Bound.** This Stipulation shall be binding upon and inure to the benefit of each of the Parties and their successors and permitted assigns, including any subsequently-appointed Chapter 7 trustee in the Minnesota Bankruptcy Cases or trustee of the Liquidating Trusts.

13. **No Third-Party Beneficiary.** The Parties do not intend to confer any benefit by or under this Stipulation upon any person or entity other than the Parties hereto and their respective successors and permitted assigns.

14. **Attorneys' fees and costs.** Each Party shall bear its own attorneys' fees and costs in connection with the negotiation of this Stipulation and motions and orders as may be necessary to obtain the approval of this Stipulation by the Florida Bankruptcy Court or Minnesota Bankruptcy Court, and each Party shall bear any mediation fees incurred in accordance with the Mediation Procedures Order entered in the Adversary; provided that in the event of any litigation between the Parties under this Stipulation or arising as a result of a default under this Stipulation, the prevailing Party shall be entitled to recover reasonable attorneys' fees and costs related thereto, including, but not limited to, those incurred at all trial and appellate levels.

15. **Effective date.** This Stipulation shall be effective August 29, 2012, subject only to approval of this Stipulation by final, non-appealable orders of the Minnesota Bankruptcy Court and the Florida Bankruptcy Court and payment of the Settlement Payment. Upon it becoming effective, this Stipulation shall be binding on all of the Parties' successors or assigns.

16. **No effect.** If either of the Florida Bankruptcy Court or the Minnesota Bankruptcy Court do not approve this Stipulation, then the Stipulation shall be of no further force or effect, the Parties shall be restored to their rights as they existed prior to the execution of this Stipulation, and, within ten business days, the Settlement Payment shall be returned to the Transferee by the Liquidating Trustee and the PCI Trustee in the amounts stated in Paragraph 3, respectively. Notwithstanding the foregoing, if either of the Florida Bankruptcy Court or the Minnesota Bankruptcy Court do not approve this Stipulation because any of the Parties has failed to provide the Florida Bankruptcy Court or Minnesota Bankruptcy Court with adequate information to rule on the merits of the Stipulation, the Parties will use their best efforts to seek reconsideration of any order declining to approve the Stipulation, or to file an amended motion to approve the Stipulation.

17. **Controlling law.** This Stipulation shall in all respects be construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed wholly within the State of Florida and by federal law to the extent the same has preempted the laws of the State of Florida.

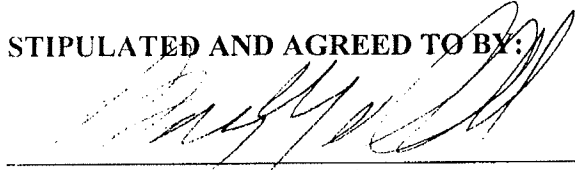
18. **Counterparts.** This Stipulation may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Stipulation. Delivery of an executed counterpart of a signature page to this Stipulation by facsimile shall be effective as delivery of a manually executed counterpart of this Stipulation.

19. **Construction, Severability.** This Stipulation shall be deemed to have been jointly drafted by the Parties, and in construing and interpreting this Stipulation, no provision shall be construed and interpreted for or against any of the Parties because such provision or any

other provision of the Stipulation as a whole is purportedly prepared or requested by such Party. If any provision of this Stipulation is held by final judgment to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of this Stipulation, and the remainder of this Stipulation shall be enforced. In addition, the invalid, illegal or unenforceable provision shall be deemed to be automatically modified, and, as so modified, to be included in this Stipulation, such modification being made to the minimum extent necessary to render the provision valid, legal and enforceable. Notwithstanding the foregoing, however, if the severed or modified provision concerns all or a portion of the essential consideration to be delivered under this Stipulation by one party to the other, the remaining provisions of this Stipulation shall also be modified to the extent necessary to equitably adjust the parties' respective rights and obligations hereunder.

20. **Jurisdiction.** Jurisdiction to enforce the terms of this Stipulation shall rest exclusively with the Florida Bankruptcy Court or the Minnesota Bankruptcy Court and the Parties agree to bring any controversy arising under this Stipulation only in either the Minnesota Bankruptcy Court or the Florida Bankruptcy Court.

STIPULATED AND AGREED TO BY:


Barry E. Mukamal, Liquidating Trustee

Date: 8/30/12

Douglas A. Kelley, PCI/PGW Trustee

Date: _____

Southwest Key Programs, Inc.

Date: _____

By its: _____

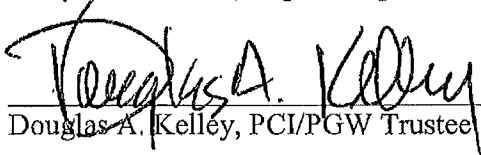
other provision of the Stipulation as a whole is purportedly prepared or requested by such Party. If any provision of this Stipulation is held by final judgment to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of this Stipulation, and the remainder of this Stipulation shall be enforced. In addition, the invalid, illegal or unenforceable provision shall be deemed to be automatically modified, and, as so modified, to be included in this Stipulation, such modification being made to the minimum extent necessary to render the provision valid, legal and enforceable. Notwithstanding the foregoing, however, if the severed or modified provision concerns all or a portion of the essential consideration to be delivered under this Stipulation by one party to the other, the remaining provisions of this Stipulation shall also be modified to the extent necessary to equitably adjust the parties' respective rights and obligations hereunder.

20. **Jurisdiction.** Jurisdiction to enforce the terms of this Stipulation shall rest exclusively with the Florida Bankruptcy Court or the Minnesota Bankruptcy Court and the Parties agree to bring any controversy arising under this Stipulation only in either the Minnesota Bankruptcy Court or the Florida Bankruptcy Court.

STIPULATED AND AGREED TO BY:

Barry E. Mukamal, Liquidating Trustee

Date: _____



Douglas A. Kelley, PCI/PGW Trustee

Date: 8/30/2012

Southwest Key Programs, Inc.

Date: _____

By its: _____

other provision of the Stipulation as a whole is purportedly prepared or requested by such Party. If any provision of this Stipulation is held by final judgment to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of this Stipulation, and the remainder of this Stipulation shall be enforced. In addition, the invalid, illegal or unenforceable provision shall be deemed to be automatically modified, and, as so modified, to be included in this Stipulation, such modification being made to the minimum extent necessary to render the provision valid, legal and enforceable. Notwithstanding the foregoing, however, if the severed or modified provision concerns all or a portion of the essential consideration to be delivered under this Stipulation by one party to the other, the remaining provisions of this Stipulation shall also be modified to the extent necessary to equitably adjust the parties' respective rights and obligations hereunder.

20. **Jurisdiction.** Jurisdiction to enforce the terms of this Stipulation shall rest exclusively with the Florida Bankruptcy Court or the Minnesota Bankruptcy Court and the Parties agree to bring any controversy arising under this Stipulation only in either the Minnesota Bankruptcy Court or the Florida Bankruptcy Court.

STIPULATED AND AGREED TO BY:

Barry E. Mukamal, Liquidating Trustee

Date: _____

Douglas A. Kelley, PCI/PGW Trustee

Date: _____



Southwest Key Programs, Inc.

Date: 9/29/2012

By its: GENERAL COUNSEL

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

In re:

CHAPTER 11

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

Case No. 09-36379-PGH
Case No. 09-36396-PGH
(Jointly Administered)

Debtors.

**ORDER GRANTING LIQUIDATING TRUSTEE'S MOTION
FOR APPROVAL OF SETTLEMENT WITH SOUTHWEST KEY PROGRAMS, INC.
AND PAYMENT OF CONTINGENCY FEE [ECF NO.]**

THIS CAUSE came before the Court upon the Liquidating Trustee's Motion for Approval of Settlement with Southwest Key Programs, Inc. and Payment of Contingency Fee [ECF No.] (the "**Motion**").¹ The Court, having reviewed the Motion and noting that a Certificate of No Response and Request for Entry of Order has been filed, finds that the notice of

¹ All capitalized terms not defined in this Order shall have the meaning ascribed to such term as set forth in the Motion.

the proposed compromise and settlement is sufficient to comply with Bankruptcy Rules 9019 and 2002(a)(3), Local Rule 9013-1(D) and any other applicable notice requirement, and accordingly, it is:

ORDERED as follows:

1. The Motion is **GRANTED**.
2. The Stipulation is **APPROVED**.
3. Transferee shall pay (or cause to be paid) \$140,000.00 (the “*Settlement*

Payment”) as follows:

- a) Immediately upon execution of this Stipulation by all Parties, \$35,000.00 will be paid to the Trustee as follows: \$14,000.00 to the Liquidating Trustee and \$21,000.00 to the PCI Trustee (collectively, the “*First Payment*”);
- b) Within ninety (90) days from the date the Transferee makes the First Payment, \$35,000.00 will be paid to the Trustees as follows: \$14,000.00 to the Liquidating Trustee and \$21,000.00 to the PCI Trustee (collectively, the “*Second Payment*”);
- c) Within ninety (90) days from the date the Transferee makes the Second Payment, \$35,000.00 will be paid to the Trustees as follows: \$14,000.00 to the Liquidating Trustee and \$21,000.00 to the PCI Trustee (collectively, the “*Third Payment*”); and
- d) Within ninety (90) days from the date the Transferee makes the Third Payment, \$35,000.00 will be paid to the Trustees as follows: \$14,000.00 to the Liquidating Trustee and \$21,000.00 to the PCI Trustee.

4. Of the total Settlement Payment, \$56,000.00 will be paid to the Liquidating Trustee and \$84,000.00 will be paid to the PCI Trustee. The Trustees will hold their respective portions of the Settlement Payment pending approval of the Stipulation by the Minnesota Bankruptcy Court.

5. The Debtors' portion of the Settlement Payment (\$56,000.00) may be made via (i) wire transfer pursuant to written instructions to be provided by the Liquidating Trustee or his counsel or (ii) check made payable to "Barry E. Mukamal, Liquidating Trustee" and delivered to Jessica L. Wasserstrom, Esq., Meland Russin & Budwick, P.A., 200 South Biscayne Blvd., Suite 3200, Miami, Florida 33131.

6. The Debtors' portion of the Settlement Payment will be allocated and apportioned among the Debtors as follows: 18% to Palm Beach Finance Partners, L.P. and 82% to Palm Beach Finance II, L.P. (the "*Pro Rata Allocation Formula*"), and the wire transfers and/or checks referenced in paragraph 3 above as the mechanism for the Settlement Payment shall be made in the amounts in accordance with this allocation.

7. MRB's Contingency Fee in the amount of \$5,600.00 is approved. The Liquidating Trustee is authorized and directed to make payment of the Contingency Fee without the need of further Court Order, in accordance with the Pro Rata Allocation Formula, promptly upon receipt of the Settlement Payment.

8. To the extent that the Transferee has any scheduled claim or proof of interest or has filed a proof of claim or proof of interest in the Debtors' chapter 11 cases, such claim or interest is deemed disallowed in its entirety.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

9. The Court retains jurisdiction to enforce the terms of the Settlement.

###

Submitted By:

s/ Jessica L. Wasserstrom

Jessica L. Wasserstrom, Esquire

Florida Bar No. 985820

jwasserstrom@melandrussin.com

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Attorneys for the Liquidating Trustee

Copies Furnished To:

Jessica L. Wasserstrom, Esquire, is directed to serve copies of this Order on all parties in interest and to file a Certificate of Service.

Mailing Information for Case 09-36379-PGH

Electronic Mail Notice List

The following is the list of parties who are currently on the list to receive email notice/service for this case.

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