

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

In re:

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

Debtors.

Case No. 09-36379-PGH  
Case No. 09-36396-PGH  
(Jointly Administered)  
CHAPTER 11

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**LIQUIDATING TRUSTEE’S MOTION TO APPROVE (1) SETTLEMENT WITH TRINITY CHRISTIAN SCHOOL AND (2) 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 Trinity Christian School (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. (“*MGF*”; 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 (the “*Minnesota Bankruptcy Court*”) 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. 11-3022-PGH (the “*Adversary Proceeding*”). The Adversary Proceeding seeks to avoid transfers made, *inter alia*, to or for the benefit of the Transferee by the Vennes Parties, either directly or via the Fidelis Foundation, from approximately December of 2007 through and including approximately September of 2008 (the “*Transfers*”).<sup>1</sup>

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 \$348,259.76 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 entered into an agreement whereby they have agreed to mediate jointly with the Transferee and other transferees of the Vennes Parties and allocate

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<sup>1</sup> Originally, the Adversary Proceeding sought to avoid transfers made to the Transferee dating back to February of 2004. In connection with the resolution of the Transferee’s motion to dismiss [Adv. Case No. 11-03022; ECF No. 14], the Plaintiff agreed to limit its claims to those transfers that occurred within two (2) years of the Petition Date. *See* Adv. Case No. 11-03022, ECF No. 144].

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.]

18. As a result of various discussions and negotiations between the parties since the commencement of the Adversary Proceeding, the parties have reached a global resolution of the Litigation as set forth below.

## II. Settlement Terms

19. The key aspects of the stipulation of settlement between the parties (“*Stipulation*”) are the following:<sup>2</sup>

- a) In full and final settlement of the Trustees’ Claims, the Transferee shall execute and deliver to the PCI Trustee a promissory note (the “*Note*”) in the amount of \$67,500.00 (the “*Settlement Amount*”), which note (i) is due and payable in full within two (2) years of the date of execution of the Stipulation; and (ii) shall accrue interest at a rate of 5% per annum, payable once a year in arrears on the anniversary of the date of execution of the Stipulation. The PCI Trustee shall, upon receipt, remit to the Liquidating Trustee forty percent (40%) of any payment received by the PCI Trustee in accordance with the Note (including any interest payment). In addition, the PCI Trustee may not sell or otherwise dispose of the Note without the express written consent of the Liquidating Trustee; and
- b) The Transferee shall deliver to the PCI Trustee a signed Warrant of Attorney to Confess Judgment, in the form attached to the Stipulation as Exhibit B (the “*Judgment*”) for the amount of the Note, together with any interest that has accrued but remained unpaid thereon as of the date of the entry of such final judgment. The PCI Trustee shall, upon receipt, remit

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<sup>2</sup> 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 Stipulation, the Stipulation controls.

to the Liquidating Trustee forty percent (40%) of any payment received by the PCI Trustee in accordance with the Judgment; and

- c) During the term of the Note, the Transferee shall have a right of first refusal on any proposed sale or other disposition of the Note to a third party.

20. 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 Stipulation 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

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

22. 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.”

23. 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).

24. 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 Stipulation Ought to be Approved***

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

*Probability of success in litigation*

26. 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.

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

28. 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*

29. Collectability is an issue that militates settling the Liquidating Trustee's claims in a greatly reduced amount compared to other similarly situated defendants. In short, the

Transferee is a non-profit school that is currently, and has been for many years, operating at a deficit. The Transferee depends almost entirely on donations by third parties to fund this deficit in its operations. In addition, while the Transferee does own the property upon which the school is located, they have been unable to obtain financing with respect to such property after expending reasonable efforts to do so. As such, the collectability of the full amount of the Transfers from the Transferee is an issue that the Liquidating Trustee has taken into account in agreeing to the Stipulation.

*Complexity of litigation and attendant expense, inconvenience and delay*

30. This is a significant consideration that militates in favor of approval of the Stipulation.

31. 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.

32. Additionally, the Transferee is located in North Dakota. While the Liquidating Trustee disputes that North Dakota law applies to the Litigation, he did consider the potential risks and expenses associated with litigating this issue as well.

33. The Stipulation addresses the foregoing 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 Stipulation provides a meaningful payment of the claims asserted against the Transferee in the Adversary Proceeding. The 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 Stipulation 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 \$2,700.00 – 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 25, 2013, via (i) the Court's Notice of Electronic Filing upon Registered Users set forth on the attached list on Exhibit 3; and (ii) U.S. Mail on those parties set forth on the attached list on Exhibit 4.

s/ Jessica L. Wasserstrom  
Jessica L. Wasserstrom, Esquire  
Florida Bar No. 985820  
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*Attorneys for Barry E. Mukamal,  
Liquidating Trustee*

**STIPULATION OF SETTLEMENT**

This Stipulation of Settlement (“*Stipulation*”) is entered into on \_\_\_\_\_, 2013 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) Trinity Christian School (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 April 1, 2012, 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 certain real and personal property the Transferee received from Frank Vennes or Metro Gem, including certain transfers made via the Fidelis Foundation (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.** In full and final settlement of the Trustees' Claims, the Transferee shall execute and deliver to the PCI Trustee, upon approval of this Stipulation by the Florida Bankruptcy Court and the Minnesota Bankruptcy Court, the promissory note attached hereto as Exhibit A (the "*Note*") in the amount of \$67,500.00 (the "*Settlement Amount*"), which note (i) is due and payable in full two (2) years of the date of execution of this Stipulation; and (ii) shall accrue interest at a rate of 5% per annum, payable once a year in arrears on the anniversary of the date of execution of this Stipulation. The PCI Trustee agrees that, upon receipt, it shall remit to the Liquidating Trustee forty percent (40%) of any payment received by the PCI Trustee in accordance with the Note (including any interest payment). Moreover, the PCI Trustee agrees that, during the term of the Note, the PCI Trustee may not sell or otherwise dispose of the Note without the express written consent of the Liquidating Trustee.

4. **Confession of Judgment.** The Transferee shall also deliver to the PCI Trustee in the form attached hereto as Exhibit B a signed Confession of Judgment for the amount of the Note, together with any interest that has accrued but remained unpaid thereon as of the date of the entry of such final judgment (the "*Judgment*"). The PCI Trustee agrees that, upon receipt, it shall remit to the Liquidating Trustee forty percent (40%) of any payment received by the PCI Trustee in accordance with the Judgment.

5. **Payment Instructions.** All payments made to the Liquidating Trustee pursuant to this Stipulation 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 Jessica L. Wasserstrom, Esq., Meland Russin & Budwick, P.A., 200 South Biscayne Blvd., Suite 3200, Miami, Florida 33131. All payments made to the PCI Trustee pursuant to this Stipulation 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.

6. **Right of First Refusal.** During the term of the Note, the Trustees agree that, before they may sell the Note to a third party, the Trustees shall first offer the Note to the Transferee on the same terms and conditions as are offered by the third party. The Transferee shall have ten (10) days within which to accept the offer. If the Transferee does not accept the offer within such ten (10) day period, the Trustees shall be free to accept the third-party offer and sell their interest in the Note.

7. **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.

8. **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 Transferee from 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.

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. The Liquidating Trustee and the PCI Trustee each further represent that they are the sole owners of the Trustees' Claims being settled herein and are 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.

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 upon execution by all of the Parties hereto, 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 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



## PROMISSORY NOTE

US \$67,500.00

Williston,ND  
September \_\_, 2013

**FOR VALUE RECEIVED**, the undersigned Trinity Christian School. (“Borrower”), promises to pay to the order of DOUGLAS A. KELLEY, PCI TRUSTEE (the “Holder”), or their successors and assigns, at 431 South Seventh Street, Suite 2530, Minneapolis, Minnesota, or such other address as Holder may designate or permit in writing, in lawful money of the United States of America and in immediately available funds, the principal sum of Sixty-seven thousand five hundred and NO/100 Dollars (\$67,500.00) plus interest at a rate of 5% per annum; said principal and interest to be paid by the Borrower on September \_\_, 2015 (the “Maturity Date”).

1. Payments. All cash payments with respect to this Note will be made by check or by wire transfer, in immediately available funds, to such account as the Holder may specify in writing, without any presentation of this Note. Each such payment will be applied (i) first, to any fees, expenses or other amounts (other than principal and interest) due under this Note, (ii) second, to accrued interest, and (iii) third, to outstanding principal. Whenever any payment to be made under this Note is due on a Saturday, Sunday or holiday for banks under the laws of the State of North Dakota, such payment may be made on the next succeeding bank business day, and such extension of time will in such case be included in the computation of the amount of interest due.

2. Prepayment. The Borrower may at any time prior to the Maturity Date of this Note, prepay the principal sum in whole or in part together with any accrued interest to the date of such payment. No penalty will be due or payable in the event of prepayment.

3. Interest. All interest will be computed on the basis of a 360-day year and the actual number of days elapsed.

4. Waiver of Presentment. The Borrower waives presentment for payment, demand, and notice of non-payment of this Note.

5. Representations and Warranties. The Borrower represents and warrants to the Holder that this Note constitutes the Borrower’s legal, valid and binding obligations, enforceable in accordance with its terms.

6. Covenants. The Borrower covenants and agrees that the Borrower shall (i) duly and punctually pay principal and interest and all other sums due or to become due under and in accordance with this Note; and (ii) duly and punctually perform and observe all of the covenants and agreements contained in this Note.

7. Events of Default. The failure to make payment when due under this Note or the breach of Borrower’s representations, warranties and covenants shall constitute an Event of Default under this Note (“Event of Default”).

8. Remedies upon Event of Default. Upon the occurrence of an Event of Default, or at any time thereafter, the Holder may immediately (i) declare the entire unpaid principal balance due under the Note, together with all other amounts owing hereunder, to be immediately due and payable; and (ii) exercise any and all rights under applicable law. Each and every power or remedy specified in this Note shall be cumulative and in addition to every other power or remedy, existing or implied, given now or hereafter existing at law or in equity, and each and every power and remedy herein specifically given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Holder, and the exercise or the beginning of the exercise of one power or remedy shall not be deemed a waiver of the right to exercise at the same time or thereafter any other power or remedy.

9. Costs of Collection. If legal proceedings are commenced with respect to enforcement of this Note, the prevailing party in any such action shall be entitled to recover from the other party its fees and expenses incurred in connection therewith, including, without limitation, court costs, reasonable attorneys' fees and related expenses.

10. No Waiver. No delay or omission on the part of the Holder in exercising any right or remedy hereunder shall operate as a waiver of such right or of any other right or remedy under this Note or any other document or agreement referred to herein.

11. Successors and Assigns. This Note shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, successors and assigns.

12. Invalidity. In the event that any provision in this Note shall be declared unlawful or unenforceable, the remainder of this Note shall be construed without such provision and be construed to implement as far as possible the intentions of the parties hereto.

13. Governing Law. This Note is made with reference to and is construed in accordance with the internal laws of the State of Minnesota without regard to its conflicts of laws principles.

14. Jury Trial. The Borrower waives the right to a trial by jury in any action based on or pertaining to this Note.

*[Signature on following page]*

IN WITNESS WHEREOF, the undersigned have caused this Secured Promissory Note to be signed as of the day and year first above written.

TRINITY CHRISTIAN SCHOOL

By: \_\_\_\_\_

Its: \_\_\_\_\_

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

**Jointly Administered under  
Case No. 08-45257**

Petters Company, Inc., et al.,

Court File No. 08-45257

Debtors.

Court Files No.'s:

(includes:

Petters Group Worldwide, LLC;

08-45258 (GFK)

PC Funding, LLC;

08-45326 (GFK)

Thousand Lakes, LLC;

08-45327 (GFK)

SPF Funding, LLC;

08-45328 (GFK)

PL Ltd., Inc.;

08-45329 (GFK)

Edge One LLC;

08-45330 (GFK)

MGC Finance, Inc.;

08-45331 (GFK)

PAC Funding, LLC;

08-45371 (GFK)

Palm Beach Finance Holdings, Inc.)

08-45392 (GFK)

Chapter 11 Cases  
Judge Gregory F. Kishel

**WARRANT OF ATTORNEY TO CONFESS JUDGMENT**

STATE OF NORTH DAKOTA)

)ss.

COUNTY OF \_\_\_\_\_ )

This Warrant of Attorney to Confess Judgment is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2013 by TRINITY CHRISTIAN SCHOOL, in conformance with Minn. Stat. § 548.23 for the purpose of confessing judgment upon a certain Promissory Note dated \_\_\_\_\_, 2013, executed by TRINITY CHRISTIAN SCHOOL, in favor of Douglas A. Kelley, Trustee of the Chapter 11 bankruptcy estate of Petters Company, Inc. and Petters Group Worldwide, LLC, et al. (the "Trustee" and with Barry E. Mukumal, Liquidating Trustee for the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance II Liquidating Trust, the "Trustees"), in the principal amount of SIXTY-SEVEN THOUSAND



FIVE HUNDRED and no/100 dollars (\$67,500.00), together with costs, attorneys' fees and disbursements thereon from the date hereof (hereinafter "Promissory Note").

The debt evidenced by the Promissory Note arose from the Trustees' claims in the District of Minnesota bankruptcy case number 08-45257 captioned, In Re: Petters Company, Inc. et.al. as well as claims from adversary case number 11-03022 commenced in the United States Bankruptcy Court, Southern District of Florida. In order to avoid further litigation, the Trustees, on the one hand, and TRINITY CHRISTIAN SCHOOL, on the other hand, negotiated and reached an agreement and settlement of all claims. This Warrant of Attorney to Confess Judgment is a part of the settlement.

TRINITY CHRISTIAN SCHOOL confesses that by reason of said facts, the debt evidenced by the Promissory Note is justly due and payable according to its terms without a right of offset, defense, or claim of any kind and that the Promissory Note constitutes the legal, valid, and binding obligation of TRINITY CHRISTIAN SCHOOL.

NOW, THEREFORE, TRINITY CHRISTIAN SCHOOL hereby irrevocably authorizes the Trustee or his attorneys, any time upon an Event of Default under the Promissory Note, to appear in any state or federal court in the State of Minnesota and, without process, and to confess judgment against TRINITY CHRISTIAN SCHOOL in favor of the Trustee for the sum of SIXTY-SEVEN THOUSAND FIVE HUNDRED and no/100 dollars (\$67,500.00), less any payments made pursuant to the Promissory Note, which sum is justly due, together with interest at the rate of five percent (5%) per annum from the date of said Event of Default, together with all legal costs and disbursements necessary and incident to obtaining the judgment and collecting on the judgment under this Warrant, including reasonable attorneys' fees, and taxes allowed by such court, and to waive all errors which may intervene in such proceedings and to consent to and authorize execution to issue on such judgment.



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re:

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

Debtors.

Case No. 09-36379-PGH  
Case No. 09-36396-PGH  
(Jointly Administered)  
CHAPTER 11

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**ORDER GRANTING LIQUIDATING TRUSTEE'S MOTION TO APPROVE (1)  
SETTLEMENT WITH TRINITY CHRISTIAN SCHOOL  
AND (2) PAYMENT OF CONTINGENCY FEE**

**THIS CAUSE** came before the Court upon the Liquidating Trustee's Motion to Approve (1) Settlement with Trinity Christian School and (2) Payment of Contingency Fee (the "**Motion**").<sup>1</sup> 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 the proposed

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

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. Upon approval of the Stipulation by the Minnesota Bankruptcy Court, Transferee shall execute and deliver to the PCI Trustee the following:
  - a) the promissory note attached to the Stipulation as Exhibit A (the "**Note**") in the amount of \$67,500.00 (the "**Settlement Amount**"), which note (i) is due and payable in full within two (2) years of the date of execution of the Stipulation; and (ii) shall accrue interest at a rate of 5% per annum, payable once a year in arrears on the anniversary of the date of execution of the Stipulation; and
  - b) the Warrant of Attorney to Confess Judgment, in the form attached to the Stipulation as Exhibit B (the "**Judgment**") for the amount of the Note, together with any interest that has accrued but remained unpaid thereon as of the date of the entry of such final judgment (the "**Judgment**").
4. Upon receipt, the PCI Trustee shall remit to the Liquidating Trustee forty percent (40%) of any payment received by the PCI Trustee in accordance with the Note (including any interest payment).
5. The PCI Trustee shall not sell or otherwise dispose of the Note without the express written consent of the Liquidating Trustee.
6. Of the total Settlement Payment, \$27,000.00 will be paid to the Liquidating Trustee and \$40,500.00 will be paid to the PCI Trustee. The Liquidating Trustee's portion of the

Settlement Payment (\$27,000.00) 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.

7. The Liquidating Trustee’s portion of the Settlement Payment (\$27,000.00) will be allocated and apportioned among the Liquidating Trusts as follows: 18% to the Palm Beach Finance Partners Liquidating Trust and 82% to the Palm Beach Finance II Liquidating Trust (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.

8. MRB’s Contingency Fee in the amount of \$2,700.00 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.

9. 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]

10. The Court retains jurisdiction to enforce the terms of the Stipulation.

###

**Submitted By:**

Jessica L. Wasserstrom, Esquire

Florida Bar No. 985820

[jwasserstrom@melandrussin.com](mailto:jwasserstrom@melandrussin.com)

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Telephone: (305) 358-6363

Telecopy: (305) 358-1221

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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