

ESTTA Tracking number: **ESTTA546990**

Filing date: **07/05/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91209647
Party	Plaintiff Jorge J. Carnicero
Correspondence Address	THERESA W MIDDLEBROOK HOLLAND & KNIGHT LLP 400 SOUTH HOPE STREET, SUITE 800 LOS ANGELES, CA 90071 UNITED STATES theresa.middlebrook@hklaw.com, thomas.brooke@hklaw.com
Submission	Opposition/Response to Motion
Filer's Name	Theresa W. Middlebrook, Esq.
Filer's e-mail	theresa.middlebrook@hklaw.com
Signature	/twm/
Date	07/05/2013
Attachments	TTAB Response.pdf(39509 bytes) TTAB Decl Middlebrook In Support Of Response to Emergency Motion for Protective Order For Filing.pdf(26527 bytes) TTAB Exhibits to Decl Middlebrook for filing.pdf(2613511 bytes) TTAB Exhibits to Response.pdf(2630427 bytes)

2. The Pending Motion For Stay Is Ill Founded On Its Face.

The Applicant cites two main reasons to support its Emergency Motion. The first is the assertion that there are “ongoing settlement negotiations”. The Opposer clearly and unequivocally refutes this assertion. The Applicant offers no evidence that could even possibly contradict this clear position of the Opposer, or even the common-sense conclusion that, if there were such active settlement negotiations, the Opposer would not be setting depositions.

However, it is the second main argument that is the most troubling. The Applicant asserts that “Applicant’s Motion to Stay makes a prima facie showing that the issues in the Opposition and the earlier filed civil action may be dispositive of the Opposition.” The “earlier filed civil action” is a suit pending before the DC Superior Court (the “DC Case”). However, the Applicant’s Motion to Stay, and the filings by Applicant’s counsel in the DC Case, actually make a prima facie showing that this Emergency Motion is *improper*, and more than improper.

First, as Exhibit B to the Emergency Motion states, the Applicant, Middleburg Real Estate, LLC, is not even a party in the DC Case. Applicant states in its Motion for Stay that “The same parties appear in the DC Superior Court Case”, but the copy of the Complaint in the DC Case, attached to that Motion, directly refutes that assertion.¹

Second, one of Applicant's owners, Peter Pejacsevich (along with his wife, Natalia) have actually filed a Motion to Dismiss the DC Case as to them, as they assert that the DC Superior Court has no subject matter jurisdiction over them, as Virginia residents. See Exhibit A attached to this Response. In addition, incredibly, the Applicant seeks to induce the Interlocutory Attorney to grant a stay in this proceeding, pending resolution in the DC Case, when Applicant’s counsel has likewise moved for a stay of the DC Case, on behalf of Peter and Natalia Pejacsevich, pending resolution of this Opposition (See Exhibit A to this Response, Page 12, Footnote 14):

“The Plaintiff is currently challenging Peter’s alleged use of the Atoka Farm name before the United States Patent and Trademark Office’s Trademark Trial and Appeal Board, Docket No.

¹ Opposer notes, also, that, while Applicant asserts that there can be no good faith basis to even depose Natalia Pejacsevich (Emergency Motion, Page 3), she is, in fact, a party to the DC Suit.

117964-00001.² Therefore, even if this Court denies the Pejacseviches' Motion, this Court should stay any decision on the trademark issue raised by Plaintiff pending a resolution of the issue by the Trademark Office."

Simply stated, the Applicant is playing the two tribunals off of each other, and seeking to obtain a stay in both proceedings pending resolution of the other – in other words, indefinitely deferring adjudication in any forum, and relying on the assumed fact that the tribunals will not “communicate” with each other. This is nothing short of attempted fraud on two tribunals.

Third, Applicant's co-owner, Peter Pejacsevich, has argued in its Motion to Dismiss the Cross-Claim filed against him by Chevy Chase Trust (Trustee for the Trust and entities which own the real “Atoka Farm”) in the DC Case that the DC Superior Court does not have subject matter jurisdiction to decide the issues before the Trademark Trial and Appeals Board (See Exhibit B to this Response, Page 7):

“While Chevy Chase is free to continue to pursue its opposition of the alleged trademark applications [*sic*] with the USPTO, this Court lacks jurisdiction to hear the matter, and the cross-claim should be dismissed pursuant to Rule 12(b)(1).”

The Applicant has not established good cause for a stay. Indeed, on the face of its own motions, and the pleadings filed by Applicant's owner in the DC Case (using the same law firm) there is little likelihood of the Motion for Stay being granted. Nevertheless, and consistent with the directive of *Pioneer* that matters such as Applicant's Emergency Motion are particularly well suited to a telephone conference, Opposer is available for such a conference today, as the Interlocutory Attorney may schedule.

Even setting aside the lack of any evidentiary showing of good cause, Applicant makes the following arguments and statements that are simply not true, as will be shown hereafter and through appropriate declarations and evidence attached thereto. As the Interlocutory Attorney is well aware, we went through exactly this sort of difficulty just last week, where communications to counsel for Applicant purporting to describe a decision and ruling already made by the Interlocutory Attorney in this proceeding were not quite accurate. As will be shown below, the pattern is continuing.

² This does not make a lot of sense. Applicant's papers in the DC Case are inexcusably sloppy - it misidentified that mark in issue in this proceeding, and refers to this proceeding not by a serial number of opposition number, but by a number that happens to be an H&K internal word-processing and document tracking number.

3. There Are No Ongoing Settlement Negotiations.

Three times in the Emergency Motion, Applicant's counsel claims quite clearly and unequivocally that there are active ongoing negotiations between the parties, and asks that this fact be taken into consideration as to whether the emergency relief sought should be granted.³ To emphasize how very active these alleged negotiations are, Applicant's Emergency Motion states specifically that "...opposing counsel has promised to send a revised draft of the settlement agreement to counsel for Applicant today." (emphasis added) However, Opposer's counsel – Holland & Knight, LLP – is not preparing any such draft, and did not offer to send any such draft. Applicant offers no evidence of such a statement. While counsel for Chevy Chase Trust, which has filed its own opposition to Applicant's filing, may have made such a communication on its own behalf, but even if so, Applicant is misstating fact to deliberately mislead the Interlocutory Attorney. The claim that there are ongoing settlement negotiations (active or otherwise) between the parties to this Opposition is simply false. Surely a party must do more than simply assert that there are active settlement negotiations, in the face of a categorical denial by the opposing party, in order to be granted a stay of all discovery.

4. This Is No Aggressive "Scorched Earth" Or Excessive Improper Discovery.

The Emergency Motion is also replete with implications and some express statements that Opposer is seeking wholly inappropriate discovery, with little or no notice and certainly without any attempt to coordinate with counsel for Applicant; that this is clear harassment such that a protective order is appropriate. "It is generally inappropriate for a party to respond to a request for discovery by filing a motion attacking it, such as ... a motion for a protective order." TMEP Sec. 410. There is an exception to this rule, where a party is faced with clear harassment, such as "a clearly unreasonable number of requests"

³ FIRST CLAIM: "The aggressive rush for discovery is even more pointless as the parties are actively discussion settlement." Emergency Motion, p. 1; SECOND CLAIM "Given the posture of the case... and the parties are actively negotiating a settlement." Motion, p. 2. THIRD CLAIM "...given the ongoing settlement negotiations between Applicant, Opposer and the Chevy Chase Trust." Motion, p. 3.

or the receiving party is not even the real party in interest. Neither situation, nor anything comparable, exists here. There is no reason here that the ongoing discovery should be interrupted.⁴

If the Interlocutory Attorney or Panel determine that the arguments relating to discovery included in the Emergency Motion should be considered, then the following is pertinent and should also be considered. After analyzing the various claims and assertions made by Applicant throughout its Emergency Motion, it appears that

- (a) Applicant asserts that it first learned of the Opposer's intent to depose seven deponents on June 26, 2013, on a schedule to which it did not agree (E. Motion, page 3, lines 4 - 5; page 3, lines 21 - 22; and E. Motion, page 4, lines 1-2); then,
- (b) On June 27, 2013, Applicant filed its "well founded" Motion to Stay (E. Motion, page 1, lines 3-8 of text); and then,
- (c) On June 28, 2013, Opposer served 19 requests for production, the form and substance of which Applicant feels are, it seems, irrelevant. (No clear evidentiary objection is made.) (E. Motion page 2, line 17 - 23; page 4, lines 10-15)

However, this characterization of events is materially inaccurate. Applicant has omitted the fact that Opposer identified these exact seven witnesses to Applicant on June 14, 2013, in its Rule 26(a)(1) Initial Disclosures, including the subjects upon when they would be examined. Each of the witnesses are believed to have direct knowledge of facts and matters directly pertinent to the Section 2(a) and 2(e) issues.⁵ A true, correct and completed copy of Opposer's Initial Disclosures are attached as Exhibit C.

On June 17, 2013, after receiving Applicant's Initial Disclosures, Opposer noted its inadequacy, by electronic mail. Applicant's counsel did not respond. (See Para. 5, Exhibit C).

On June 25, 2013, a follow-up email was sent by counsel for Opposer to counsel for Applicant, on the same three topics, and including a proposed deposition schedule in the District of Columbia area for the

⁴ Furthermore, this court does not even have the power to quash a District Court subpoena.

⁵ Mrs. Pejacsevich's knowledge of the history and fame of Atoka Farm, her grandfather's historic estate, and her knowledge of the village of Atoka, clearly relevant to the Section 2(a) and (e) issues, are not even remotely related to whether she is involved with applicant's business.

seven witnesses, Decl. Middlebrook, Para 6, Exhibit D. Again, there was no response. Decl. Middlebrook, at Para. 6.

On June 27, 2013, and instead of writing, emailing, calling, or otherwise responding, even to point out difficulties, Applicant filed its Motion to Stay. Once that arrived, there were a few more exchanges, the last from counsel for Opposer asking about discovery scheduling cooperation, to which, yet again, counsel for Opposer received no response. Decl. Middlebrook, Para.7, Exhibit E.

Thereafter, of course, in view of Applicant's refusal to respond, Opposer went ahead and issued the deposition notices, had subpoenas issued and sent out for service, and served a request for production. The cover email to the requests for production specifically invited Applicant's counsel to call if there were any difficulties with the requests. Decl. Middlebrook, Para. 8, Exhibit G. There has been no response, other than the arguments that first appeared in this Emergency Motion. Decl. Middlebrook, Para.8.

Discovery is open and Opposer is moving forward. There is absolutely nothing unusual about either the amount, or timing or any other factor relating to the discovery. Applicant was invited, repeatedly, to weigh in on the deposition schedule, which it failed to do, and now it complains that Opposer went ahead and set up the schedule without Applicant's participation.

Finally, Applicant's arguments that imply that the discovery is improper because it is not specifically directed to the mark ATOKA PROPERTIES, and reference ATOKA alone and Atoka Farm, are completely lacking in merit. This is a Section 2(a) "famous institution" and 2(e) "geographic designation" case. Of course ATOKA alone and Atoka Farm are pertinent to the issues here.

5. Conclusion and Request Under 37 C.F.R. 2.210(f) For Order of Cooperation.

From a substantive standpoint, the Opposer is entitled to consideration of its Opposition, and to conduct discovery in support of that Opposition. The misrepresentations by Applicant and its counsel as to the true nature and status of the DC Case are an attempt to evade adjudication of this Opposition, and the status of negotiations intend only to delay and drive up costs. The Motion for Stay, like the Emergency Motion, sets out no proper, much less compelling, reason to stay this proceeding, which will be further

addressed in Opposer's response thereto. Applicant's actual objection is that mere notion of conducting discovery is annoying, embarrassing, oppressive and an undue burden. However, the law requires more than this in order to justify a stay. Indeed, as the foregoing shows, Applicant simply wishes to delay, for no good reason. The lack of candor is making what should be a routine Opposition proceeding very difficult.

For all the reasons set forth above, and such further reasons that may be brought forth in the oral argument, if any, in connection with disposition of this Emergency Motion, Opposer asks that the Emergency Motion be denied, and if denied, oppose further requests that the Board order that Applicant provide and permit discovery under 37 C.F.R. 2.120(f).

Respectfully submitted,

Jorge J. Carnicero

Dated: July 5, 2013

By: _____ s/s _____
Theresa W. Middlebrook
HOLLAND & KNIGHT LLP
400 South Hope Street, Suite 800
Los Angeles, California 90071
213 896 2586
theresa.middlebrook@hklaw.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **RESPONSE BY OPPOSER TO APPLICANT'S EMERGENCY MOTION FOR PROTECTIVE ORDER AND STAY OF DISCOVERY; CONDITIONAL REQUEST PER 37 C.F.R. 2.120(f)** was served this 5th day of July, 2013 electronic mail and U.S. Mail to:

Michael T. Murphy, Esq.
K&L Gates, LLP
P.O. Box 1135
Chicago, Illinois 60690
michael.murphy@klgates.com



Catherine R. Viquelia

5. On June 17, 2013, after receiving Applicant's Initial Disclosures, I noted some inadequacies, and sent several questions to counsel for Applicant. A true and correct copy of that email is attached hereto as Exhibit C. I received no response to this email.

6. On June 25, 2013, I sent a follow-up email to counsel for Applicant, addressing the same questions as on June 17, 2013, and proposing a deposition schedule in the Washington DC area for all seven witnesses designated in the initial disclosures. A true and correct copy of that email is attached hereto as Exhibit D. I received no response to this email.

7. On June 27, 2013, I received applicant's Motion to Stay. I emailed counsel for applicant and asked if the Motion to Stay was intended to be a response to the June 25, 2013 email. Counsel for Applicant did respond, basically saying he did not think it made sense to engage in discovery, he hoped there would be a settlement, and he had "worked towards that end" (although I have no idea with whom he thought he was working - it was not me.) A true and correct copy of that email is attached hereto as Exhibit E. Once that response arrived, there were a few more exchanges, where I asked whether I could expect cooperation in depositions. I never received a response to this question. A true and correct copy of that email is attached hereto as Exhibit F.

8. On June 28, 2013, I emailed a courtesy copy of Opposer's first request for production to counsel for Applicant, and asked that he contact me to discuss any difficulties he had with that discovery document. I never received a response to this email. A true and correct copy of that email is attached hereto as Exhibit G.

9. On July 3, 2013, after receiving the Emergency Motion, I noted the multiple references therein to claimed active settlement negotiations, and right away send an email to counsel for Applicant asking that this specific claim be explained, and since it was wrong, be corrected in Applicant's papers. I have received no response at all. A true and correct copy of that email is attached hereto as Exhibit H.

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was executed on the 5th of July, 2013, at Santa Rosa Valley, California.

_____/s/_____

Theresa W. Middlebrook

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DECLARATION OF THERESA W. MIDDLEBROOK IN SUPPORT OF RESPONSE BY OPPOSER TO APPLICANT'S EMERGENCY MOTION FOR PROTECTIVE ORDER AND STAY OF DISCOVERY; CONDITIONAL REQUEST PER 37 C.F.R. 2.120(f)** was furnished by electronic mail and U.S. Mail on July 5, 2013 addressed as follows:

Michael T. Murphy, Esq.
K&L Gates, LLP
P.O. Box 1135
Chicago, Illinois 60690
michael.murphy@klgates.com



Catherine R. Viquella

EXHIBIT A
to Declaration of Middlebrook

Middlebrook, Theresa A (LAX - X52586)

From: Murphy, Michael T [michael.murphy@klgates.com]
Sent: Tuesday, July 02, 2013 8:49 AM
To: Middlebrook, Theresa A (LAX - X52586)
Cc: Hwang, Daniel In; Rosati, Michelle A (NVA - X78079); Ross, Bruce S (LAX - X52527 - SFR - X56994)
Subject: Motion for Protective Order

Terry

Thank you for your reply.

The TTAB is available for a telephonic hearing today at 2:30 pm EST on Applicant's Motion for a Protective Order, made necessary by your intention to rush ahead with discovery. Please confirm your availability (or propose another time later today) and I will send you the call in number.

Mike

From: theresa.middlebrook@hklaw.com [mailto:theresa.middlebrook@hklaw.com]
Sent: Tuesday, July 02, 2013 10:30 AM
To: Murphy, Michael T
Cc: Hwang, Daniel In; Michelle.Rosati@hklaw.com; bruce.ross@hklaw.com
Subject: RE: Request for Production - First Set

Mike, your email of July 1, 2013 is really rather over the top, and certainly does not call for a simple yes or no. It's filled with discordant statements on a wide variety of issues.

In sum, the motion to stay is particularly ill-founded and will be opposed in a timely manner. You have indicated that your client will not be complying with its discovery obligations under noticed discovery, even though the ill-founded motion to stay will not be even be heard for many weeks. I note particularly your statement that you will not produce third party witnesses, which seems to indicate that you feel you control their appearance? Should you chose to move for a protective order, it will be opposed.

Yes, you owe me answers. You still have not provided an appropriate response to my questions regarding the strange Rule 26 statements regarding documents. If you have them, produce them. If you don't have them, say so. You have ignored my past requests to cooperate in setting depositions or coordinating production. You have not responded substantively at all to my inquiry on your client's position with respect to consolidation, made in April. We are in the discovery period. **There is no settlement on the horizon.** Let's just get on with it. I expect to see you next week with your witnesses.

Best, Terry

Terry Middlebrook | Holland & Knight

400 South Hope Street, 8th Floor | Los Angeles CA 90071
Office 213.896.2586 | Mobile 805.750.1312 | Fax 213.896.2450
theresa.middlebrook@hklaw.com
terry.middlebrook@hklaw.com
www.hklaw.com

[Add to address book](#) | [View professional biography](#)

From: Murphy, Michael T [<mailto:michael.murphy@klgates.com>]
Sent: Monday, July 01, 2013 7:32 PM
To: Middlebrook, Theresa A (LAX - X52586)
Cc: Hwang, Daniel In; Rosati, Michelle A (NVA - X78079); Ross, Bruce S (LAX - X52527 - SFR - X56994)
Subject: RE: Request for Production - First Set

Terry

I'm not sure what formulating you need to do to answer my question. It is a yes or no. Absent your response i must assume the answer is no.

I believe I have answered all of your questions but feel free to ask further.

Mike

theresa.middlebrook@hklaw.com wrote:

Mike - sorry - have not had time to formulate an appropriate response to your email today. Meanwhile, could you do me the courtesy of answering my outstanding questions? I would appreciate that. Terry

Terry Middlebrook | Holland & Knight

400 South Hope Street, 8th Floor | Los Angeles CA 90071
Office 213.896.2586 | Mobile 805.750.1312 | Fax 213.896.2450
theresa.middlebrook@hklaw.com
terry.middlebrook@hklaw.com
www.hklaw.com

[Add to address book](#) | [View professional biography](#)

From: Murphy, Michael T [<mailto:michael.murphy@klgates.com>]
Sent: Monday, July 01, 2013 5:54 AM
To: Middlebrook, Theresa A (LAX - X52586); Hwang, Daniel In
Cc: Rosati, Michelle A (NVA - X78079); Ross, Bruce S (LAX - X52527 - SFR - X56994); Hwang, Daniel In
Subject: RE: Request for Production - First Set

Terry

In view of the pending Motion to Stay, I think the parties' efforts are best spent dealing with whether this case should open, rather than "bulling ahead" with discovery. It is clear the same issues are pending in the DC Action, and that the Board's policy is to suspend.

Therefore, we will not answer the attached requests for production, nor provide witnesses for the seven depositions you requested.

I note also you served a subpoena for deposition upon Natalia Pejacsevich on Saturday. As you know, Ms. Pejacsevich is not employed by, or involved with, the Applicant Middleburg Real Estate LLC, so there is no good faith reason to notice her deposition. We ask that you withdraw the subpoena to Ms. Pejacsevich or any other subpoenas you may have issued in this case.

Absent your agreement to refrain from discovery until the Motion to Stay is decided, we will seek a protective order.

Please let me have your response today.

Regards

Michael T. Murphy

1601 K St., N.W.
Washington, DC 20006-1600
tel. 202-778-9176
cell 202-907-8911
fax. 202-778-9100
michael.murphy@klgates.com
www.klgates.com
Mike

From: theresa.middlebrook@hklaw.com [<mailto:theresa.middlebrook@hklaw.com>]
Sent: Friday, June 28, 2013 6:31 PM
To: Murphy, Michael T; Hwang, Daniel In
Cc: Michelle.Rosati@hklaw.com; bruce.ross@hklaw.com
Subject: Request for Production - First Set

Attached you will find a courtesy copy of opposer's first request for production, which has been served by mail today. If you have any difficulties with definitions, terms, breadth, or whatever, please give me a call so that we can see if we can work any difficulties out.

Best, Terry Middlebrook

Terry Middlebrook | Holland & Knight

400 South Hope Street, 8th Floor | Los Angeles CA 90071
Office 213.896.2586 | Mobile 805.750.1312 | Fax 213.896.2450
theresa.middlebrook@hklaw.com
terry.middlebrook@hklaw.com
www.hklaw.com

[Add to address book](#) | [View professional biography](#)

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EXHIBIT B
to Declaration of Middlebrook

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

Jorge J. Carnicero,	:
	:
Opposer,	:
	: Opposition No. 91209647
v.	:
	: ATOKA PROPERTIES
Middleburg Real Estate, LLC,	: Application Serial No. 85/629,450
	:
Applicant.	:
	:

Attorney Docket No. 117964-00001

OPPOSER'S RULE 26(a)(1) INITIAL DISCLOSURES

Opposer, through undersigned counsel, submits the following initial disclosures pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice.

No. 26(a)(1)(A)(i). Individuals likely to have discoverable information

Name: Peter Pejacsevich
Position: Partner and principal in Applicant
Address: believed to be 10 E. Washington St, Middleburg, Virginia 20118
Phone: c/o counsel for Applicant
Relevant knowledge: Nature and extent of the use of ATOKA by Applicant; the history of Atoka Farm; Basis of any rights claimed by Applicant to use ATOKA in any formative for real estate services or other goods and services

Name: Scott Buzzelli
Position: Partner and principal in Applicant
Address: same as above
Phone: same as above
Relevant knowledge: Nature and extent of the use of ATOKA by Applicant; the history of Atoka Farm; Basis of any rights claimed by Applicant to use ATOKA in any formative for real

estate services or other goods and services; all representations known by witness made by or on behalf of Peter Pejacevich as to his relationship to that certain estate known as Atoka Farm

Name: Dan Kaseman
Position: Partner and principal in Applicant
Address: same as above
Phone: same as above

Relevant knowledge: Nature and extent of the use of ATOKA by Applicant; the history of Atoka Farm; Basis of any rights claimed by Applicant to use ATOKA in any formative for real estate services or other goods and services; all representations known by witness made by or on behalf of Peter Pejacevich as to his relationship to that certain estate known as Atoka Farm

Name: Ray Rees
Position: Principal Broker of Applicant
Address: same as above
Phone: same as above

Relevant knowledge: Nature and extent of the use of ATOKA by Applicant; the history of Atoka Farm; Basis of any rights claimed by Applicant to use ATOKA in any formative for real estate services or other goods and services; all representations known by witness made by or on behalf of Peter Pejacevich as to his relationship to that certain estate known as Atoka Farm

Name: Jacqueline C. Duchange
Position:
Address: 4735 Rodman Street, NW, Washington DC 20016
Phone: c/o her counsel

Relevant knowledge: Nature and extent of the use of ATOKA by Applicant; the history of Atoka Farm; Basis of any rights claimed by Applicant to use ATOKA in any formative for real estate services or other goods and services; all representations known by witness made by or on behalf of Peter Pejacevich as to his relationship to that certain estate known as Atoka Farm

Name: Leslie K. Smith
Position: Senior Managing Director, Chevy Chase Trust
Address: 7501 Wisconsin Avenue, Suite 1500W, Bethesda, Maryland 20814
Phone:

Relevant knowledge: Nature and extent of the use of ATOKA by Applicant; the history of Atoka Farm; Basis of any rights claimed by Applicant to use ATOKA in any formative for real estate services or other goods and services; all representations known by witness made by or on behalf of Peter Pejacevich as to his relationship to that certain estate known as Atoka Farm

Name: Natalia Duchange Pejacevich
Position:
Address: c/o her counsel
Phone: c/o her counsel

Relevant knowledge: Nature and extent of the use of ATOKA by Applicant; the history of Atoka Farm; Basis of any rights claimed by Applicant to use ATOKA in any formative for real estate

services or other goods and services; all representations known by witness made by or on behalf of Peter Pejacsevich as to his relationship to that certain estate known as Atoka Farm

This list does not include impeachment or expert witnesses, nor is it intended to include additional witnesses who will be identified on applicant's witness list or disclosures. Opposer had identified the knowledge expected from the above witnesses, and reserves the right to designate and seek additional relevant and material knowledge from each witness.

No. 26(a)(1)(A)(ii). Copies and/or Descriptions of Evidence.

Documents that Petitioner may use to support its claims include the following:

1. Documents relating to the history of the use of ATOKA in connection with the historic estate known as Atoka Farm.

2. Documents reflecting the same of the historic estate known as Atoka

The documents collected to date are provided herewith, numbered JC0001 through JC0101. Opposer's production of the foregoing documents and any produced hereafter pursuant to Rule 26(a)(1)(B) or discovery is not a waiver of any objections based on attorney-client privilege, work product, confidentiality, relevance or other appropriate grounds.

No. 26(a)(1)(A)(iii). Computation of Damages.

[Not Applicable]

No. 26(a)(1)(A)(iv). Disclosure of Insurance Agreements.

[Not Applicable.]

Reservation of rights. Opposer reserves the right to supplement and correct these initial disclosures to include information hereafter acquired or the significance of which is later discovered.

Respectfully submitted,

Jorge J. Carnicero, Opposer

June 14, 2013

By: 
Theresa W. Middlebrook
HOLLAND & KNIGHT LLP
400 South Hope Street, Suite 800
Los Angeles CA 90071
(213) 896-2586

CERTIFICATE OF SERVICE

I hereby certify that a copy of Opposer's Initial Disclosures under Rule 26 of the Federal Rules of Civil Procedure was served by electronic mail on June 14, 2013 and by first class mail on June 14, 2013 to:

Kevin Oliviera, Esq.
Odin Feldman & Pittleman PC
1775 Wiehle Avenue
Reston, Virginia 20190-5159
kto@ofplaw.com

Michael T. Murphy, Esq.
K&L Gates, LLP
P.O. Box 1135
Chicago, Illinois 60690
michael.murphy@klgates.com



Theresa W. Middlebrook

#12586732_v1

EXHIBIT C
to Declaration of Middlebrook

Middlebrook, Theresa A (LAX - X52586)

From: Middlebrook, Theresa A (LAX - X52586)
Sent: Monday, June 17, 2013 1:48 PM
To: 'Hwang, Daniel In'
Cc: Murphy, Michael T; Rosati, Michelle A (NVA - X78079)
Subject: RE: Opposition No. 91209647 - ATOKA PROPERTIES - Applicant's Initial Disclosures

Importance: High

Tracking:	Recipient	Read
	'Hwang, Daniel In'	
	Murphy, Michael T	
	Rosati, Michelle A (NVA - X78079)	Read: 6/17/2013 1:50 PM
	Middlebrook, Theresa A (LAX - X52586)	Read: 6/25/2013 2:48 PM

Thank you, Michael. I have a few questions:

First, there are absolutely no documents attached to the Rule 26 disclosure. It states that there are documents within the possession custody or control of the Applicant on certain subjects, but also states that making the disclosure is no representation that any such documents exist. This seems rather contradictory to me. Please advise by return whether there are any documents, or not, or perhaps you don't know yet. (If you don't know yet, that is certainly understandable, since the negotiations between CCT and our client have been rather dynamic, and I know that you had requested and no doubt hoped for an extension of this deadline.) Nevertheless, please forward the documents you have, or let me know when I can expect the documents, or whether there really aren't any, or something in between.

Second, I never did receive any draft protective order from your side. Status on that, please?

Third, I see that you (Michael) have substituted in for former counsel on the two other pending Atoka formative applications, 85687947 and 85687953. Is Kevin Oliveira still co-counsel on the Opposition, or is he out of that as well?

Thanks, Terry Middlebrook

Terry Middlebrook | Holland & Knight

400 South Hope Street, 8th Floor | Los Angeles CA 90071
Office 213.896.2586 | Mobile 805.750.1312 | Fax 213.896.2450
theresa.middlebrook@hklaw.com
terry.middlebrook@hklaw.com
www.hklaw.com

[Add to address book](#) | [View professional biography](#)

From: Hwang, Daniel In [<mailto:Daniel.Hwang@klgates.com>]
Sent: Monday, June 17, 2013 12:55 PM
To: Middlebrook, Theresa A (LAX - X52586)
Cc: Murphy, Michael T
Subject: Opposition No. 91209647 - ATOKA PROPERTIES - Applicant's Initial Disclosures

Dear Theresa,

Please find attached PDF copies of Applicant's Rule 26(a)(1) Initial Disclosures.

Regards,
Daniel



Daniel I. Hwang
K&L Gates LLP
70 West Madison Street
Suite 3100
Chicago, IL 60602
Phone: +1-312-807-4381
Fax: +1-312-345-1842
daniel.hwang@klgates.com
www.klgates.com

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EXHIBIT D
to Declaration of Middlebrook

Middlebrook, Theresa A (LAX - X52586)

From: Middlebrook, Theresa A (LAX - X52586)
Sent: Tuesday, June 25, 2013 3:06 PM
To: Middlebrook, Theresa A (LAX - X52586); Hwang, Daniel In
Cc: Murphy, Michael T; Rosati, Michelle A (NVA - X78079); Ross, Bruce S (LAX - X52527 - SFR - X56994)
Subject: Opposition No. 91209647 - ATOKA PROPERTIES - Five Discovery Matters
Importance: High

Michael, a few matters, the first three are already discussed:

First, I am going to assume that you are not working on any protective order, so I will.

Second, who do we serve - KL Gates alone? I don't want to not include Oliviera if he is still counsel. I don't think the record is clear.

Third, I am waiting for a response to my question re Initial Disclosures. I'm fine if you don't have any, but I need to know. Starting tomorrow morning I am preparing a motion to compel compliance by the applicant with the Rule 26 disclosure requirements. I assume this delay is not your fault, but we need to see what your client will be using.

These matters new:

Fourth - I am finishing off request for production, and if approved through the system, the requests will be served on you (and Oliviera unless you confirm otherwise) tomorrow, if at all possible. They call for production at our offices in Tysons Corner, by July 31, 2013.

Fifth - I am also finishing up deposition notices, and am happy to take those before applicant's document production arrives. I have the depositions tentatively set up as follows: If you want to fly to Tyson's Corner to take any you want to take, maybe we can work that out so we both travel just once.

Tentative Deposition Schedule:

Sunday, July 8 - I'd fly out to DC from LA

Monday, July 9 - Prep day

Tues, July 10

Morning - Peter Pejacsevich - 3 hours

Afternoon - Scott Buzzelli - 3 hours

Wednes, July 11 - If miracles happen, knock out 5 in one day

Morning - Dan Kaseman - 1-2 hours

Ray Rees 1-2 hours

Afternoon - Jacqueline Duchange - 1-2 hours

Leslie Smith 1-2 hours

Natalia - 1-2 hours

Thursday - July 12

Finish up any uncompleted depositions, if I guess wrong of how much each person knows about this.

I'd take a late flight back to LA that day, or change if you want to take depositions at the same time.

Anyway, please let me have your response on these five matters, asap.

Best, Terry

Terry Middlebrook | Holland & Knight

400 South Hope Street, 8th Floor | Los Angeles CA 90071

Office 213.896.2586 | Mobile 805.750.1312 | Fax 213.896.2450

theresa.middlebrook@hklaw.com

terry.middlebrook@hklaw.com

www.hklaw.com

[Add to address book](#) | [View professional biography](#)

From: Middlebrook, Theresa A (LAX - X52586)

Sent: Monday, June 17, 2013 1:48 PM

To: Hwang, Daniel In

Cc: Murphy, Michael T; Rosati, Michelle A (NVA - X78079)

Subject: RE: Opposition No. 91209647 - ATOKA PROPERTIES - Applicant's Initial Disclosures

Importance: High

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Thanks, Terry Middlebrook

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From: Hwang, Daniel In [<mailto:Daniel.Hwang@klgates.com>]
Sent: Monday, June 17, 2013 12:55 PM
To: Middlebrook, Theresa A (LAX - X52586)
Cc: Murphy, Michael T
Subject: Opposition No. 91209647 - ATOKA PROPERTIES - Applicant's Initial Disclosures

Dear Theresa,

Please find attached PDF copies of Applicant's Rule 26(a)(1) Initial Disclosures.

Regards,
Daniel



Daniel I. Hwang
K&L Gates LLP
70 West Madison Street
Suite 3100
Chicago, IL 60602
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daniel.hwang@klgates.com
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EXHIBIT E
to Declaration of Middlebrook

Middlebrook, Theresa A (LAX - X52586)

From: Murphy, Michael T [michael.murphy@klgates.com]
Sent: Thursday, June 27, 2013 4:49 PM
To: Middlebrook, Theresa A (LAX - X52586); Hwang, Daniel In
Cc: Rosati, Michelle A (NVA - X78079); Ross, Bruce S (LAX - X52527 - SFR - X56994)
Subject: RE: Opposition No. 91209647

Terry

Given the related issues in the Opposition and the DC Action, we do not believe it makes any sense to engage in discovery in the Opposition.

We are hopeful that a resolution of the trademark issues in the Opposition and the DC Action can be reached, and have worked toward that end.

Nevertheless, your proposal to take seven depositions - including persons not connected with the Applicant - forces us to seek the stay.

Kevin Oliveria is no longer representing the Applicant, so you should serve any papers on me. .

Regards

Mike

From: theresa.middlebrook@hklaw.com [mailto:theresa.middlebrook@hklaw.com]
Sent: Thursday, June 27, 2013 7:30 PM
To: Hwang, Daniel In
Cc: Murphy, Michael T; Michelle.Rosati@hklaw.com; bruce.ross@hklaw.com
Subject: RE: Opposition No. 91209647

Michael, when may I expect a response to my email of Tuesday, June 25? If this Motion is intended as your client's de facto response (whether partial or whole) to that e-mail, let me know.

Best, Terry

Terry Middlebrook | Holland & Knight

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theresa.middlebrook@hklaw.com
terry.middlebrook@hklaw.com
www.hklaw.com

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From: Hwang, Daniel In [mailto:Daniel.Hwang@klgates.com]
Sent: Thursday, June 27, 2013 3:17 PM
To: Middlebrook, Theresa A (LAX - X52586)
Cc: Murphy, Michael T
Subject: Re: Opposition No. 91209647

Dear Theresa,

Attached are the motion to stay and corresponding exhibits we filed and served via first class mail today.

Regards,
Daniel

Daniel I. Hwang
K&L Gates LLP
70 West Madison Street
Suite 3100
Chicago, IL 60602
Phone: +1-312-807-4381
Fax: +1-312-345-1842
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EXHIBIT F
to Declaration of Middlebrook

Middlebrook, Theresa A (LAX - X52586)

From: Middlebrook, Theresa A (LAX - X52586)
Sent: Thursday, June 27, 2013 5:38 PM
To: Murphy, Michael T; Hwang, Daniel In
Cc: Rosati, Michelle A (NVA - X78079); Ross, Bruce S (LAX - X52527 - SFR - X56994)
Subject: RE: Opposition No. 91209647

Michael - thank you for being clear that Oliviera is no longer counsel.

But I still need an answer to my questions. I just checked Rule 2.117, and I am not seeing that your filing of the Motion for Stay has any effect prior to a ruling on the motion by the Board. Is there some Rule or precedent I am missing? Assuming the filing did not cause any automatic suspension, is your client declining to provide the rest of the Rule 26 related information I have requested? Are you not going to participate in setting up production locations and dates or deposition times and dates convenient for all?

Best, Terry

Terry Middlebrook | Holland & Knight

400 South Hope Street, 8th Floor | Los Angeles CA 90071
Office 213.896.2586 | Mobile 805.750.1312 | Fax 213.896.2450
theresa.middlebrook@hklaw.com
terry.middlebrook@hklaw.com
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From: Murphy, Michael T [<mailto:michael.murphy@klgates.com>]
Sent: Thursday, June 27, 2013 4:49 PM
To: Middlebrook, Theresa A (LAX - X52586); Hwang, Daniel In
Cc: Rosati, Michelle A (NVA - X78079); Ross, Bruce S (LAX - X52527 - SFR - X56994)
Subject: RE: Opposition No. 91209647

Terry

Given the related issues in the Opposition and the DC Action, we do not believe it makes any sense to engage in discovery in the Opposition. We are hopeful that a resolution of the trademark issues in the Opposition and the DC Action can be reached, and have worked toward that end. Nevertheless, your proposal to take seven depositions - including persons not connected with the Applicant - forces us to seek the stay.

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Mike

From: theresa.middlebrook@hklaw.com [<mailto:theresa.middlebrook@hklaw.com>]
Sent: Thursday, June 27, 2013 7:30 PM
To: Hwang, Daniel In

Cc: Murphy, Michael T; Michelle.Rosati@hklaw.com; bruce.ross@hklaw.com

Subject: RE: Opposition No. 91209647

Michael, when may I expect a response to my email of Tuesday, June 25? If this Motion is intended as your client's de facto response (whether partial or whole) to that e-mail, let me know.

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From: Hwang, Daniel In [<mailto:Daniel.Hwang@klgates.com>]

Sent: Thursday, June 27, 2013 3:17 PM

To: Middlebrook, Theresa A (LAX - X52586)

Cc: Murphy, Michael T

Subject: Re: Opposition No. 91209647

Dear Theresa,

Attached are the motion to stay and corresponding exhibits we filed and served via first class mail today.

Regards,
Daniel

Daniel I. Hwang

K&L Gates LLP

70 West Madison Street

Suite 3100

Chicago, IL 60602

Phone: +1-312-807-4381

Fax: +1-312-345-1842

daniel.hwang@klgates.com

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EXHIBIT G
to Declaration of Middlebrook

Middlebrook, Theresa A (LAX - X52586)

From: Middlebrook, Theresa A (LAX - X52586)
Sent: Friday, June 28, 2013 3:31 PM
To: 'Murphy, Michael T'; 'Hwang, Daniel In'
Cc: Rosati, Michelle A (NVA - X78079); Ross, Bruce S (LAX - X52527 - SFR - X56994)
Subject: Request for Production - First Set
Attachments: Opposer's Request for Production No. 1

Attached you will find a courtesy copy of opposer's first request for production, which has been served by mail today. If you have any difficulties with definitions, terms, breadth, or whatever, please give me a call so that we can see if we can work any difficulties out.

Best, Terry Middlebrook

Terry Middlebrook | [Holland & Knight](#)

400 South Hope Street, 8th Floor | Los Angeles CA 90071

Office 213.896.2586 | Mobile 805.750.1312 | Fax 213.896.2450

theresa.middlebrook@hklaw.com

terry.middlebrook@hklaw.com

www.hklaw.com

[Add to address book](#) | [View professional biography](#)

EXHIBIT H
to Declaration of Middlebrook

Middlebrook, Theresa A (LAX - X52586)

From: Middlebrook, Theresa A (LAX - X52586)
Sent: Wednesday, July 03, 2013 5:46 PM
To: Hwang, Daniel In
Cc: Murphy, Michael T; Rosati, Michelle A (NVA - X78079)
Subject: Re: Opposition No. 91209647

Mike, what opposing counsel is allegedly drafting a settlement? You are implying that this is counsel for opposer. Is that who you mean to reference, and if so, please advise exactly who that might be. If it is not counsel for opposer, I suggest you clarify that in your papers.

Also I am not seeing a supporting declaration. Was there any supporting declaration included?

Sent from my iPhone

On Jul 3, 2013, at 4:35 PM, "Hwang, Daniel In" <Daniel.Hwang@klgates.com> wrote:

Dear Theresa,

Attached are PDF copies of Applicant's Emergency Motion for Protective Order and To Stay Discovery and the corresponding exhibits filed today and served via first class mail.

Regards,
Daniel Hwang



Daniel I. Hwang
K&L Gates LLP
70 West Madison Street
Suite 3100
Chicago, IL 60602
Phone: +1-312-807-4381
Fax: +1-312-345-1842
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<Exhibit_A-Emergency_Motion_Opp_No_91209647.pdf>
<Exhibit_B-Emergency_Motion_Opp_No_91209647.pdf>
<Exhibit_C-Emergency_Motion_Opp_No_91209647.pdf>
<Emergency_Motion-Opp_No_91209647.pdf>

EXHIBIT A
to Response

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

JORGE J. CARNICERO)	
)	
Plaintiff,)	
	)	Case No. 2013 CA 0001400 B
v.	)	Judge Brian F. Holeman
	)	Next Court Date: May 24, 2013
JACQUELINE C. DUCHANGE, <i>et al.</i>	)	Event: Initial Conference
)	
Defendants.)	

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE MOTION
TO DISMISS OF DEFENDANTS PETER PEJACSEVICH AND
NATALIA PEJACSEVICH**

Pursuant to Rules 12(b)(2) and 12(b)(6) of the Rules of the Superior Court of the District of Columbia, Defendants Peter Pejacsevich (“Peter”) and Natalia Pejacsevich (“Natalia”) (together, the “Pejacseviches”), through undersigned counsel, respectfully submit this Memorandum of Points and Authorities in Support of their Motion to Dismiss.

I. INTRODUCTION

In his own words, Plaintiff Jorge J. Carnicero’s allegations relate to an alleged “*breach of a Settlement Agreement*” that, in his view, “should have, once and for all, resolved a series of contentious intra-family lawsuits and disputes.”¹ Despite the fact that neither Peter nor Natalia is a party to that Settlement Agreement (and, thus, could not have breached its terms), the Plaintiff attempts to hold the Pejacseviches liable for alleged breaches of a separate consent document, in which the Pejacseviches consented to very specific, limited portions of the Settlement

¹ Compl. at 2 (emphasis added).

Agreement but did not consent to be generally bound by its terms. For the reasons that follow, the action against the Pejacseviches should be dismissed.²

As an initial matter, this Court lacks personal jurisdiction over the Pejacseviches, who are non-residents of the District of Columbia.³ The specific causes of action against the Pejacseviches (alleged “breaches” of the consent document), as pled, do not arise out of any activity of the Pejacseviches in the District of Columbia. Further, the Pejacseviches, who reside in Virginia, do not have (nor has Plaintiff alleged that they have) systematic and continuous contacts with the District of Columbia such that they are generally subject to the jurisdiction of the courts of the District of Columbia. Accordingly, the Complaint should be dismissed as against the Pejacseviches pursuant to Rule 12(b)(2).

Even if this Court finds that it may exercise personal jurisdiction over the Pejacseviches, the Plaintiff has failed to state a claim upon which relief can be granted for at least the following reasons: (i) the consent document is not an enforceable contract between the Pejacseviches and the Plaintiff such that the Pejacseviches may be held liable for any alleged “breach;” and (ii) even if the consent document were an enforceable contract, the Plaintiff’s allegations, taken as true, do not establish a breach of its terms. Thus, even if the Pejacseviches are within the Court’s jurisdictional reach, the causes of action against them should be dismissed pursuant to Rule 12(b)(6).

² This memorandum addresses Counts II and III of the Complaint. The remaining causes of action (Counts I, IV, V, and VI) do not arise out of any alleged actions or inactions of the Pejacseviches and, instead, appear to be directed at other defendants. To the extent Counts I, IV, V, or VI are deemed applicable to the Pejacseviches, they hereby move to dismiss them under Rule 12(b)(6) for failure to state a claim upon which relief may be granted.

³ The Pejacseviches have not and do not consent to the personal jurisdiction of this Court and are making a special appearance for the limited purpose of challenging this Court’s jurisdiction.

II. BACKGROUND⁴

In December 2008, the Plaintiff filed a seven-count lawsuit in this Court against his sister, named defendant Jacqueline C. Duchange (“Ms. Duchange”), and his father, Jorge E. Carnicero (“Mr. Carnicero”), alleging that Ms. Duchange had exercised “undue influence” over Mr. Carnicero and caused him to make a series of modifications to certain estate planning instruments, including a marital trust (the “2008 Trust”), for the benefit of Ms. Duchange and her daughter, Natalia (the “First Action”). (Compl. ¶¶ 19-22). Through the First Action, the Plaintiff sought, among other things, to set aside the 2008 Trust. (*Id.* ¶ 22).

After Mr. Carnicero’s death, the Plaintiff, along with his mother, Jacqueline J. Carnicero (“Mrs. Carnicero”), filed a separate action in this Court in December 2009 against Ms. Duchange, this time seeking to have Ms. Duchange removed as trustee and personal representative of Mr. Carnicero’s estate (the “Second Action”). (*Id.* ¶ 24). This Court consolidated the First Action and the Second Action. (*Id.* ¶ 25). In October 2010, the Plaintiff filed a third lawsuit against Ms. Duchange, among other defendants, in the Delaware Court of Chancery, asserting various derivative claims against Ms. Duchange related to her position as an officer of certain companies owned by Mr. Carnicero’s estate. (*Id.* ¶ 26).

In an effort to resolve the litigation commenced by the Plaintiff, on June 16, 2011, the Plaintiff and Ms. Duchange, as well as certain other parties, some of which are defendants in the present lawsuit,⁵ executed a settlement agreement (the “Settlement Agreement”).⁶ (*Id.* ¶ 27).

⁴ The factual allegations herein are drawn primarily from the Complaint (“Compl.”), and the exhibits attached thereto. While this Court must take well-pled facts in the Complaint as true in considering a motion under Rule 12(b)(6), any reference herein to the allegations in the Complaint not an acknowledgement by the Pejacseviches of the truth of such allegations.

⁵ Inter-Properties, Inc and Trans-American Aeronautical Corporation, which are both named defendants in the present lawsuit, were parties to the Settlement Agreement. Susan Carnicero

As part of the Settlement Agreement, the distribution of property under the 2008 Trust was modified in several respects (the “2008 Modified Trust”). (*Id.* ¶ 28).

As neither Natalia nor her husband, Peter, had been a party to the aforementioned litigation, neither of them was made a party to the Settlement Agreement. (*See Exhibit A* at 1). Instead, the Pejacseviches signed a so-titled “Consent to Settlement Agreement,” whereby they consented to certain very specific, limited portions of the Settlement Agreement (the “Consent”).⁷ The Consent contained two provisions relevant to the Plaintiff’s claims: (1) in Paragraph 2, the Pejacseviches “acknowledge[d] the rights and limitations of their future occupancy” of a piece of property held by the 2008 Modified Trust and known as “Atoka Farm,” the terms of which were set forth in Article II, Paragraph 11 of the Settlement Agreement;⁸ and

and Blue Cove, Inc. were also parties to the Settlement Agreement but are not named defendants in the present lawsuit.

⁶ The Settlement Agreement is attached hereto as Exhibit A.

⁷ The Consent is attached hereto as Exhibit B.

⁸ Article II, Paragraph 11 of the Settlement Agreement states in full:

Atoka Occupancy and Tax Status. To give the trustee of the 2008 Trust the opportunity to make other arrangements for the security of the assets of the 2008 Trust and the continued supervision of the Atoka Farm operation, Peter and Natalia Pejacsevich and their children shall be permitted to reside in the main house at Atoka Farm, rent-free and with all utilities paid by the 2008 Trust, until the earlier of (a) December 31, 2012, or (b) the sale of Atoka Farm by the trustee for the 2008 Trust. This occupancy shall not constitute a lease, or create any interest in real property. All decisions regarding other or subsequent occupancy and management at Atoka Farm, including any decision to opt out of the applicable Agricultural Overlay districts, or to seek to classify the Atoka Farm property as “land use” for real property tax purposes, shall be as determined by Inter-Properties, or after its liquidation, by the trustee of the 2008 Trust, provided that no such decision shall be made until Chevy Chase has been appointed as successor trustee of the 2008 Trust, and personal representative of

(2) in Paragraph 4, the Pejaceviches stated that they would, “as requested by any of the parties to this Settlement Agreement,” “execute such further documents as may be reasonably required or appropriate to effectuate the provisions of the Settlement Agreement.” (See Exhibit B).

In the present litigation, the Plaintiff alleges that Ms. Duchange “and her family” have breached the Settlement Agreement (Compl. at 2). Unable to technically allege that the Pejaceviches breached the Settlement Agreement (since they are not parties to the Settlement Agreement), the Plaintiff alleges that they have breached the Consent. (Compl. ¶¶ 118-127). As set forth below, the Plaintiff’s allegations, even if true, fail to establish a breach of the Consent.

III. ARGUMENT

A. Standard for Motion to Dismiss under Rules 12(b)(2) and 12(b)(6)

The Fourteenth Amendment’s Due Process Clause restricts a court’s jurisdiction “to enter judgments affecting rights or interests of non-resident defendants.” *Eric T. v. Nat’l Med. Enters.*, 700 A.2d 749, 758-59 (D.C. 1997) (quoting *Kulko v. California Super. Ct.*, 436 U.S. 84, 91, 56 L. Ed. 2d 132, 98 S. Ct. 1690 (1978)). “It has long been the rule that a valid judgment imposing a personal obligation or duty in favor of the plaintiff may be entered only by a court having jurisdiction over the person of the defendant.” *Id.* (quoting *Kulko*, 436 U.S. at 91). When personal jurisdiction is challenged under Rule 12(b)(2), the plaintiff “bear[s] the burden of establishing personal jurisdiction over each defendant.” *Daley v. Alpha Kappa Alpha Sorority, Inc.*, 26 A.3d 723, 727 (D.C. 2011). If a court’s assertion of personal jurisdiction over a nonresident defendant is inconsistent with due process, the complaint must be dismissed. *Mouzavires v. Baxter*, 434 A.2d 988, 990 (D.C. 1981).

the Estate, and has appointed a new board of directors for Inter-Properties.

In considering a motion to dismiss pursuant to Rule 12(b)(6), this court must generally treat all well-pleaded allegations in the complaint as true, and draw all reasonable inferences from the allegations in favor of the plaintiff. *See Murray v. Wells Fargo Home Mortg.*, 953 A.2d 308, 316 (D.C. 2008). Even so, dismissal of the complaint is required if the plaintiff would not be entitled to recovery even if all of the allegations in the complaint were proven true. *See Harnett v. Wash. Harbour Condo. Unit Owners' Ass'n*, 54 A.3d 1165, 1171 (D.C. 2012). Documents referenced in and attached to the complaint, such as the Settlement Agreement and the Consent, may be reviewed by the Court in deciding a motion to dismiss, *see Washkoviak v. Student Loan Mktg. Ass'n*, 900 A.2d 168, 178 (D.C. 2006), and the Court need not accept as true the Complaint's factual allegations if they contradict exhibits to the Complaint. *See Braude & Margulies, P.C. v. Fireman's Fund Ins. Co.*, 468 F. Supp. 2d 190, 195 (D.D.C. 2007).

B. This Court Lacks Personal Jurisdiction over the Pejacseviches.

This Court has the authority to exercise personal jurisdiction over a non-resident only as permitted by statute and as consistent with the due process clause of the Fourteenth Amendment. *Holder v. Haarmann & Reimer Corp.*, 779 A.2d 264, 269 (D.C. 2001). The District of Columbia's long-arm statute⁹ has been interpreted to be co-extensive with the due process clause and, as a result, the "statutory and constitutional jurisdictional questions, which are usually distinct, merge into a single inquiry."¹⁰ *Gasplus, L.L.C. v. United States*, 466 F. Supp. 2d 43, 46

⁹ D.C. Code § 13-423.

¹⁰ In addition to the traditional long-arm statute, the Plaintiff asserts this Court has personal jurisdiction over the defendants under D.C. Code §§ 13-422 and 19-1302.2. *See* Compl. ¶ 8. Neither statute is applicable to the Pejacseviches. While Section 13-422 permits the exercise of jurisdiction over a person "domiciled in, organized under the laws of, or maintaining his or its principal place of business in, the District of Columbia," the Pejacseviches are domiciled in Virginia and do not maintain a principal place of business in the District of Columbia (and the Plaintiff has not alleged facts to the contrary). Section 19-1302.2 deems "beneficiaries of a trust," "[w]ith respect to their interests in the trust," to be subject to the jurisdiction of District of

(D.D.C. 2006) (quoting *United States v. Ferrara*, 54 F.3d 825, 828 (D.C. Cir. 1995)). Thus, District of Columbia courts are permitted to “exercise [] personal jurisdiction to the fullest extent of the Due Process Clause.” *Trerotola v. Cotter*, 601 A.2d 60, 67 (D.C. 1991).

Assertions of personal jurisdiction must be evaluated according to the standard set forth by the United States Supreme Court in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). *International Shoe* and its progeny hold that courts may not exercise personal jurisdiction over a non-resident defendant unless that defendant has certain “minimum contacts” with the jurisdiction “as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there.” 326 U.S. at 317. To meet the “minimum contacts” test, the contacts between the non-resident and the forum must be grounded in “some act by which the defendant purposefully avails [himself] of the privilege of conducting activities with the forum [jurisdiction], thus invoking the benefits and protections of its laws.” *Gasplus, L.L.C.*, 466 F. Supp. at 46 (quoting *International Shoe Co.*, 326 U.S. at 316. “In short, ‘the defendant’s conduct and connection with the forum [jurisdiction] [must be] such that he should reasonably anticipate being haled into court there.’” *Id.* (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)).

In applying the constitutional standard, courts distinguish between those situations where the claim in the litigation does not arise out of the defendant’s contacts with the forum (*i.e.*, “general jurisdiction”) and those situations where the claim does arise out of the defendant's contacts with the forum (*i.e.*, “specific jurisdiction”). *See, e.g., Jenkins v. Kerry*, No. 12-00896,

Columbia courts as to “any matter involving [a] trust” with “a principal place of administration in the District of Columbia.” Neither Natalia or Peter is a present beneficiary of any trust referenced in the Complaint. Further, the relief sought by Plaintiff (*i.e.*, alleged breach of the Consent) does not specifically relate to any interest in any trust. Nor does this action involve a

2013 U.S. Dist. LEXIS 31351, at *21-22 (D.D.C. Mar. 7, 2013); *Gonzalez v. Internacional de Elevadores*, 891 A.2d 227, 232 (D.C. 2006). To establish general jurisdiction over a defendant, a plaintiff must show that the defendant's contacts with the forum state are "continuous and systematic" such that the defendant may be forced to defend a suit arising out of any subject matter and unrelated to the defendant's activities within the forum. *Lex Tex Ltd., Inc. v. Skillman*, 579 A.2d 244, 246 (D.C. 1990) (quoting *Helicopteros Nacionales de Columbia v. Hall*, 466 U.S. 408, 414-16 (1984)). On the other hand, specific jurisdiction will lie only where the cause of action arises from the defendant's activities which "touch and concern" the forum. *Kopff v. Battaglia*, 425 F. Supp. 2d 76, 81 (D.D.C. 2006).

In the present matter, the Plaintiff cannot carry his burden to show that this Court has *in personam* jurisdiction over the non-resident Pejacseviches. The Plaintiff's cause of action against Peter and Natalia is the same: breach of the Consent. *See* Compl. ¶¶ 118-127. Since the Plaintiff does not contend that any of the actions related to the alleged breach of the Consent occurred in the District of Columbia, specific personal jurisdiction is lacking. Further, nowhere in the Complaint does the Plaintiff allege (nor *could* he accurately allege) that the Pejacseviches have "continuous and systematic" contacts with the District of Columbia such that they are subject to the general jurisdiction of this Court. Accordingly, the action against the Pejacseviches should be dismissed under Rule 12(b)(2) for lack of personal jurisdiction.¹¹

trust "with a principal place of administration in the District of Columbia," as the Plaintiff alleges that the trustee of the 2008 Modified Trust is located in Maryland. *See* Compl. ¶ 3.

¹¹ The Pejacseviches anticipate the Plaintiff may argue that, by signing the Consent, the Pejacseviches bound themselves to the choice-of-forum provision in the Settlement Agreement. However, as explained further below and as evident on the face of the Settlement Agreement, the Pejacseviches are not parties to the Settlement Agreement, and, therefore, are not bound by its terms.

C. Even if this Court Has Jurisdiction over the Pejacseviches, Plaintiff Has Failed to State a Claim upon which Relief May Be Granted.

Even if this Court finds that it has jurisdiction over the Pejacseviches, the Plaintiff has failed to state a claim upon which relief may be granted for at least two reasons: (i) the Consent is not an enforceable contract between the Plaintiff and the Pejacseviches; and (ii) even if the Consent were an enforceable Contract, the Plaintiff's allegations, taken as true, do not establish a breach of any of the Consent's terms. The action against the Pejacseviches should be dismissed under Rule 12(b)(6).

1. Counts II and III of the Complaint Should Be Dismissed Because the Consent Is Not An Enforceable Contract between the Plaintiff and the Pejacseviches.

In Counts II and III of the Complaint, the Plaintiff attempts to plead a cause of action for breach of contract against Natalia and Peter, respectively. *See* Compl. ¶¶ 118-127. The Plaintiff cannot recover for breach of contract because the "contract" that was allegedly breached – the Consent – is not a legally enforceable agreement.

To state a claim for breach of contract, a plaintiff must allege "(1) a legally enforceable obligation of [the] defendant to [the] plaintiff; (2) the defendant's violation or breach of that obligation; and (3) injury or damage to the plaintiff caused by the breach of that obligation." *Sunrise Continuing Care, LLC v. Wright*, 671 S.E.2d 132, 135 (Va. 2009).¹² To have a legally enforceable contract, there must be a meeting of the minds between at least two parties as to the terms of the agreement, and those terms must create a mutual obligation. *See Town of Vinton v.*

¹² To the extent the Consent is deemed to be an enforceable contract, the Pejacseviches believe that any breach of contract action would be governed by Virginia law since the Commonwealth of Virginia has the most significant relationship to the parties. *See* Restatement (Second) of Conflict of Laws § 188; *In re Parkwood Inc.*, 461 F.2d 158, 172 (D.C. Cir. 1971) (applying § 188). The basic elements of a breach of contract action appear to be the same under both District

City of Roanoke, 80 S.E.2d 608, 617 (Va. 1954) (“Both parties must be bound or neither is bound” (quoting *Am. Agricultural Co. v. Kennedy*, 48 S.E. 868, 870 (Va. 1904))).

Here, the Plaintiff’s allegations fail to establish that the Consent is the manifestation of an agreement between the Pejacseviches and the Plaintiff. The Plaintiff did not sign the Consent. Nor did any other party to the Settlement Agreement. See Exhibit B. While the Pejacseviches’ execution of the Consent might be viewed as a *unilateral* waiver of their right to challenge certain portions of the Settlement Agreement in future, the Plaintiff simply fails to plead facts sufficient to show that there was a “meeting of the minds” between the Plaintiff and the Pejacseviches as to the terms of the Consent.

Moreover, the Consent is not legally enforceable contract because it does not contain mutual obligations on the part of the Pejacseviches and the Plaintiff. Nowhere *in the Consent* does the Plaintiff make any promise or undertake any obligation to the Pejacseviches. Further, even if the specific terms of the Atoka Farm arrangement in Article II, Paragraph 11 of the Settlement Agreement are somehow deemed incorporated into the Consent, those terms would not constitute a promise to the Pejacseviches because the Plaintiff—but not the Pejacseviches—is given the authority, as a party to the Settlement Agreement, to modify the terms of Paragraph 11.¹³ Since the Plaintiff could have changed the terms of the Atoka Farm arrangement at any time and without the consent of the Pejacseviches, *the Plaintiff did not bind himself in any respect*. Therefore, the Consent—even if the result of a “meeting of the minds”—lacks the requisite mutuality of obligation to deem it enforceable. See *Town of Vinton*, 80 S.E.2d at 617.

of Columbia and Virginia law. See *Tsintolas Realty Co. v. Mendez*, 984 A.2d 181, 187 (D.C. 2009).

¹³ See Exhibit A ¶ 7 (stating that the Settlement Agreement may be modified if “in writing and signed by all Parties and, to the extent required, approved by the Court.”)

2. Even if the Consent is a Legally Enforceable Contract, Count II Should Be Dismissed Because Plaintiff's Allegations, Taken as True Fail to Establish that Natalia Breached the Consent.

In Count II of the Complaint, the Plaintiff contends that Natalia has breached the terms of the Consent. As shown below, even if the Consent is a legally enforceable contract, the Plaintiff's allegations, taken as true, fail to establish that Natalia breached any provision of the Consent.

a. Plaintiff's allegations, taken as true, do not establish that Natalia breached Paragraph 4 of the Consent.

Paragraph 4 of the Consent indicates that Natalia will, "as requested by any of the parties to this Settlement Agreement," "execute such further documents as may be reasonably required or appropriate to effectuate the provisions of the Settlement Agreement." Exhibit B. The Plaintiff claims that Natalia breached this provision of Paragraph 4 by: (1) failing and refusing to reimburse the 2008 Modified Trust for her personal expenses, *see* Compl. ¶¶ 121, 122(e); and (2) executing a document that diverted assets from the 2008 Trust to Ms. Duchange, *see id.* ¶ 122(c). For the following reasons, the Plaintiff's allegations fail to establish a breach of Paragraph 4.

First, even if true, neither of the alleged actions on the part of Natalia involved a failure to "execute . . . documents." As such, the alleged actions could not possibly have breached Paragraph 4 of the Consent.

Second, even if the alleged actions did involve a failure to execute documents, the Plaintiff does not allege that any party to the Settlement Agreement requested that Natalia sign any such documents, which is a precondition to the existence of any obligations under Paragraph 4 of the Consent. Since no party to the Settlement Agreement requested that Natalia execute any documents, it is impossible for her to have breached the terms of Paragraph 4.

Third, Natalia stated in Paragraph 4 that she would sign those documents that would “effectuate the provisions of the Settlement Agreement.” Even if Plaintiff had alleged that Natalia failed to execute documents at the request of a party to the Settlement Agreement, the Plaintiff fails to aver which provision of the Settlement Agreement, if any, would have been effectuated by Natalia’s execution of such documentation. Since the Plaintiff does not indicate what provision of the Settlement Agreement would have been effectuated, his claim cannot stand.

b. Plaintiff’s allegations, taken as true, do not establish that Natalia breached Paragraph 2 of the Consent.

In Paragraph 2 of the Consent, Natalia “acknowledge[d] the rights and limitations of [her] future occupancy of Atoka Farm under Article II, Paragraph 11 of the Settlement Agreement.”

Exhibit B. The Plaintiff alleges that Natalia breached this provision of Paragraph 2 by: (1) excluding the Plaintiff and other 2008 Modified Trust beneficiaries from the main house at Atoka Farm, *see* Compl. ¶ 122(g); and (2) consenting to and assisting Peter in his alleged “improper expropriation” of the Atoka Farm name,¹⁴ *see id.* ¶ 122(k). For the following reasons, the Plaintiff’s allegations, taken as true, fail to establish a breach of Paragraph 2.

First, language relied upon by Plaintiff in Paragraph 2 of the Consent does not create any obligation on the part of Natalia. Rather, Natalia simply “acknowledge[d]”—*i.e.*, “generally recognized, accepted, or admitted”¹⁵— her “rights and limitations” of her future occupancy of Atoka Farm under Article II, Paragraph 11 of the Settlement. Such “acknowledgment” was

¹⁴ The Plaintiff is currently challenging Peter’s alleged use of the Atoka Farm name before the United States Patent and Trademark Office’s Trademark Trial and Appeal Board, Docket No. 117964-00001. Therefore, even if this Court denies the Pejaceviches’ Motion, this Court should stay any decision on the trademark issue raised by Plaintiff pending a resolution of the issue by the Trademark Office.

¹⁵ Merriam-Webster’s Collegiate Dictionary 10 (Frederick C. Mish et al. eds., 10th ed. 1997).

completed on the day the Consent was signed by her. Natalia did not promise in Paragraph 2 to make any future acknowledgment as to those rights and obligations. Thus, it is illogical to assert that Natalia failed to “acknowledge” her rights and liabilities as to Atoka Farm by allegedly excluding the Plaintiff from Atoka Farm or by allegedly assisting Peter in the alleged improper expropriation of the Atoka Farm name.

Second, even if the signing of the Consent operated to bind Natalia to the terms of Article II, Paragraph 11 of the Settlement Agreement, the actions alleged by Plaintiff do not violate the terms of Paragraph 11. As set forth in full in the Background Section above, while Paragraph 11 permitted Natalia (and Peter and their children) to live rent-free at Atoka Farm for a certain period of time and designated certain persons to make decisions regarding the use of the property subsequent to the Pejacseviches’ occupancy, the terms of Paragraph 11 do not encompass the actions which Plaintiff alleges constitute a breach. *See Exhibit A.* Paragraph 11 says nothing about the alleged exclusion of trust beneficiaries from Atoka Farm or about the alleged “expropriation” of the Atoka Farm name. Thus, it is impossible for the alleged facts to constitute a breach of the Consent or, through incorporation, the Settlement Agreement.

c. Plaintiff’s remaining allegations, taken as true, fail to establish that Natalia breached any provision of the Consent.

In addition to the Complaint’s specific reference to Paragraphs 2 and 4 of the Consent, the Plaintiff generally claims that certain other actions on the part of Natalia constitute a breach of the Consent without indicating which particular provision of the Consent was allegedly breached. As explained after each bullet point below, the Plaintiff’s allegations, even if true, do not establish a breach of any portion of the Consent.

- **Plaintiff’s Allegation:** Natalia breached the Consent by “[c]ombining with [Ms. Duchange] and CCT to change the ‘Atoka Parcel’ to one which was different from, and more valuable than, the ‘Atoka Parcel’ defined in the Settlement Agreement and the 2008 Modified Trust, has [sic] improperly diverted an asset of

the Marital Trust or of the 2008 Modified Trust to the A-B Trust, for the sole benefit of [Ms. Duchange].” Compl. ¶ 122(a).

Natalia’s Response: The Consent does not contain any provisions related to the value of the Atoka Parcel, including any provision prohibiting Natalia from allegedly combining with Ms. Duchange to change the Atoka Parcel. *See Exhibit B.* Nor does the Consent contain any provision governing alleged diversion of trust assets. *See id.* As the Consent does not contain a provision that may have possibly been breached by the aforementioned alleged actions of Natalia, the Plaintiff has failed to establish a breach of the Consent.

- **Plaintiff’s Allegation:** Natalia breached the Consent by “[f]ailing and refusing to consent to join the First BLA, in a way which would have resulted in payment, by [Ms. Duchange], of full market value for the Atoka Parcel, as it has now been enhanced by the additional development right, in violation of her fiduciary duties as an officer and director of Inter-Properties, the owner of Atoka at the time, until she was certain that the benefit of doing so would fall solely on her mother, [Ms. Duchange], as opposed to being distributed to the other beneficiaries according to the 2008 Modified Trust Agreement.” *Id.* ¶ 122(b).

Natalia’s Response: The Consent does not contain any provisions related to the First BLA, the development rights of Atoka Farm, or the fiduciary duties of officers or directors of Inter-Properties. *See Exhibit B.* As the Consent does not contain a provision that may have possibly been breached by the aforementioned alleged actions of Natalia, the Plaintiff has failed to establish a breach of the Consent.

- **Plaintiff’s Allegation:** That Natalia breached the Consent by “[e]nabling the expenditure of 2008 Modified Trust resources for the purpose of diverting the benefit of the Second BLA to [Ms. Duchange], at the expense of the other 2008 Modified Trust beneficiaries.” *Id.* ¶ 122(d).

Natalia’s Response: The Consent does not contain any provisions related to 2008 Modified Trust resources, including any provision prohibiting Natalia from allegedly diverting the benefit of the Second BLA to Ms. Duchange. *See Exhibit B.* As the Consent does not contain a provision that may have possibly been breached by the aforementioned alleged actions of Natalia, the Plaintiff has failed to establish a breach of the Consent.

- **Plaintiff’s Allegation:** That Natalia breached the Consent by “[c]onverting the services of Bertha Correa, and the use of Cottage #4, subsequent to the execution of the Settlement Agreement, to her own personal benefit, in violation of the terms of the Settlement Agreement.” *Id.* ¶ 122(f).

Natalia’s Response: Natalia is not a party to the Settlement Agreement. By signing the Consent, Natalia merely consented to specific, limited portions of the Settlement Agreement but did not consent to be bound by all of the terms of the Settlement. *See Exhibit B.* Therefore, Natalia could not have “violat[ed]” the Settlement Agreement as alleged by Plaintiff. Moreover, even if Natalia were a party to the Settlement Agreement,

the Plaintiff has not stated what provisions of the Settlement Agreement were violated by the aforementioned actions.

- **Plaintiff's Allegation:** That Natalia breached the Consent by “[i]mproperly utilizing the tangible personal property of Mrs. Carnicero, which is property of Mrs. Carnicero’s Irrevocable Trust, and seeking to prohibit other family members from using or even performing an inventory of said tangible property.” *Id.* ¶ 122(h).

Natalia's Response: The Consent does not contain any provisions related to the tangible personal property of Mrs. Carnicero or of the 2008 Modified Trust, including any provision precluding Natalia from allegedly utilizing Mrs. Carnicero’s tangible personal property or from prohibiting family members from performing an inventory. *See Exhibit B.* As the Consent does not contain a provision that may have possibly been breached by the aforementioned alleged actions of Natalia, the Plaintiff has failed to establish a breach of the Consent.

- **Plaintiff's Allegation:** That Natalia breached the Consent by “[c]onverting numerous items of the tangible personal property of Mrs. Carnicero, removing them from the main house at Atoka, and refusing to return them.” *Id.* ¶ 122(i).

Natalia's Response: The Consent does not contain any provisions related to the tangible personal property of Mrs. Carnicero, including any provision precluding Natalia from allegedly converting the property from Mrs. Carnicero, removing the items from Atoka Farm, or refusing to return them.. *See Exhibit B.* As the Consent does not contain a provision that may have possibly been breached by the aforementioned alleged actions of Natalia, the Plaintiff has failed to establish a breach of the Consent.

- **Plaintiff's Allegation:** That Natalia breached the Consent by “[i]mproperly utilizing personalty – including various tools and other construction equipment – of Inter-Properties, and, thus, of the 2008 Modified Trust, in constructing a home for herself and her immediate family on the GST Parcel.” *Id.* ¶ 122(j).

Natalia's Response: The Consent does not contain any provisions related to personalty of the 2008 Modified Trust, including any provision precluding Natalia from allegedly using personalty to construct a home for her family. *See Exhibit B.* As the Consent does not contain a provision that may have possibly been breached by the aforementioned alleged actions of Natalia, the Plaintiff has failed to establish a breach of the Consent.

- **Plaintiff's Allegation:** That Natalia breached the Consent by “[u]tilizing employees of Inter-Properties and other Trust entities for performing work related to their own new home, and their own property, without reimbursing the Trust or the Trust entities for such work.” *Id.* ¶ 123.

Natalia's Response: The Consent does not contain any provisions related to the use of employees of trust entities, including any provision precluding Natalia from allegedly using trust employees for work related to her home. *See Exhibit B.* As the Consent does

not contain a provision that may have possibly been breached by the aforementioned alleged actions of Natalia, the Plaintiff has failed to establish a breach of the Consent.

3. Even if the Consent is a Legally Enforceable Contract, Count III Should Be Dismissed Because Plaintiff's Allegations, Taken as True, Fail to Establish that Peter Breached the Consent.

In Count III, the Plaintiff contends that Peter has breached the terms of the Consent. As shown below, even if the Consent is a legally enforceable contract, the Plaintiff's allegations, taken as true, fail to establish that Peter breached any provision of the Consent.

a. Plaintiff's allegations, taken as true, do not establish that Peter breached Paragraph 4 of the Consent.

As stated above, Paragraph 4 of the Consent indicates that Peter will, "as requested by any of the parties to this Settlement Agreement," "execute such further documents as may be reasonably required or appropriate to effectuate the provisions of the Settlement Agreement." Exhibit B. The Plaintiff claims that Peter breached this provision of Paragraph 4 by: (1) failing and refusing to reimburse the 2008 Modified Trust for his personal expenses, *see* Compl. ¶¶ 126; and (2) improperly and unlawfully seeking to register certain Atoka Farm names in a Trademark Application, *see id.* ¶ 127(e). For the following reasons, the Plaintiff's allegations fail to establish a breach of Paragraph 4.

First, even if true, neither of the alleged actions on the part of Peter involved a failure to "execute . . . documents." As such, the alleged actions could not possibly have breached Paragraph 4 of the Consent.

Second, even if the alleged actions did involve a failure to execute documents, the Plaintiff does not allege that any party to the Settlement Agreement requested that Peter sign any such documents, which is a precondition to the existence of any obligations under Paragraph 4 of the Consent. Since no party to the Settlement Agreement requested that Peter execute any documents, it is impossible for him to have breached the terms of Paragraph 4.

Third, Peter stated in Paragraph 4 that he would sign those documents that would “effectuate the provisions of the Settlement Agreement.” Even if Plaintiff had alleged that Peter failed to execute documents at the request of a party to the Settlement Agreement, the Plaintiff fails to aver which provision the Settlement Agreement, if any, would have been effectuated by Peter’s execution of such documentation. Since the Plaintiff does not indicate what provision of the Settlement Agreement would have been effectuated, his claim cannot stand.

b. Plaintiff’s allegations, taken as true, do not establish that Peter breached Paragraph 2 of the Consent.

In Paragraph 2 of the Consent, Peter “acknowledge[d] the rights and limitations of [his] future occupancy of Atoka Farm under Article II, Paragraph 11 of the Settlement Agreement.” Exhibit B. The Plaintiff claims that Peter breached this provision of Paragraph 2 by excluding Plaintiff and other 2008 Trust beneficiaries from the main house at Atoka Farm. *See id.* ¶ 122(g). For the following reasons, the Plaintiff’s allegations, taken as true, fail to establish a breach of Paragraph 2.

First, language relied upon by Plaintiff in Paragraph 2 of the Consent does not create any obligation on the part of Peter. Rather, as with Natalia, Peter simply “acknowledge[d]”—*i.e.*, “generally recognized, accepted, or admitted”¹⁶— the “rights and limitations” of his future occupancy of Atoka Farm under Article II, Paragraph 11 of the Settlement. Such “acknowledgment” was completed on the day the Consent was signed by him. Peter did not promise in Paragraph 2 to make any future acknowledgment as to those rights and obligations. Thus, it is illogical to assert that Peter failed to “acknowledge” his rights and liabilities as to Atoka Farm by allegedly excluding the Plaintiff from Atoka Farm.

¹⁶ Merriam-Webster’s Collegiate Dictionary 10 (Frederick C. Mish et al. eds., 10th ed. 1997).

Second, even if the signing of the Consent operated to bind Peter to the terms of Article II, Paragraph 11 of the Settlement Agreement, the actions alleged by Plaintiff do not violate the terms of Paragraph 11. As set forth in full above, the terms of Paragraph 11 permitted Peter (and Natalia and their children) to live rent-free at Atoka Farm for a certain period of time and designated certain persons to make decisions regarding the use of the property subsequent to the Pejaceviches' occupancy. The terms of Paragraph 11 say nothing about Peter's right to exclude individuals from the property. As the provision says nothing about the topic, it is impossible for the alleged facts to constitute a breach of the Consent or the Settlement Agreement.

c. Plaintiff's remaining allegations, taken as true, fail to establish that Peter breached any provision of the Consent.

In addition to the Complaint's specific reference to Paragraphs 2 and 4 of the Consent, the Plaintiff generally claims that certain other actions on the part of Peter constitute a breach of the Consent without indicating which particular provision of the Consent was allegedly breached. As explained after each bullet point below, the Plaintiff's allegations, even if true, do not establish a breach of any portion of the Consent.

- **Plaintiff's Allegation:** That Peter breached the Consent by "[u]sing the services of Bertha Correa, and of Cottage #4, subsequent to the execution of the Settlement Agreement, in violation of the Settlement Agreement's prohibition on the use of such services without reimbursement of the 2008 Trust." Compl. ¶ 127(a).

Peter's Response: Peter is not a party to the Settlement Agreement. By signing the Consent, Peter merely consented to specific, limited portions of the Settlement Agreement but did not consent to be bound by all of the terms of the Settlement. *See Exhibit B.* Therefore, Peter could not have "violat[ed]" the Settlement Agreement as alleged by Plaintiff.

- **Plaintiff's Allegation:** That Peter breached the Consent by "[i]mproperly utilizing the tangible personal property of Mrs. Carnicero, which is property of Mrs. Carnicero's Irrevocable Trust, and seeking to prohibit other family members from using or even performing an inventory of said tangible property." *Id.* ¶ 127(c).

Peter's Response: The Consent does not contain any provisions related to the tangible personal property of Mrs. Carnicero or of the 2008 Modified Trust, including any provision precluding Peter from allegedly utilizing Mrs. Carnicero's tangible personal property or from prohibiting family members from performing an inventory. See Exhibit B. As the Consent does not contain a provision that may have possibly been breached by the aforementioned alleged actions of Peter, the Plaintiff has failed to establish a breach of the Consent.

- **Plaintiff's Allegation:** That Peter breached the Consent by "[i]mproperly utilizing personalty – including various tools and other construction equipment – of Inter-Properties, and, thus, of the 2008 Modified Trust, in constructing a home for himself and his immediate family on the GST Parcel." *Id.* ¶ 127(d).

Peter's Response: The Consent does not contain any provisions related to personalty of the 2008 Modified Trust, including any provision precluding Peter from allegedly using personalty to construct a home for his family. See Exhibit B. As the Consent does not contain a provision that may have possibly been breached by the aforementioned alleged actions of Peter, the Plaintiff has failed to establish a breach of the Consent.

IV. CONCLUSION

For the foregoing reasons, Peter Pejacevich and Natalia Pejacevich respectfully request this Court grant their Motion to Dismiss and enter an order, in the form of the proposed order attached hereto, dismissing the Complaint with prejudice.

Dated: March 14, 2013

Respectfully submitted,

K&L GATES LLP

/s/ Andrew N. Cook
Andrew N. Cook (D.C. Bar No. 416199)
John P. Estep (D.C. Bar No. 101049)
K&L Gates LLP
1601 K Street, N.W.
Washington, DC 20006
T: 202-778-9106
F: 202-778-9100
E: andrew.cook@klgates.com
E: john.estep@klgates.com

CERTIFICATE OF SERVICE

I certify that on the 14th day of March 2013 a copy of the foregoing was served on the following individual via First Class U.S. Mail:

Thomas M. Brownell
Holland & Knight LLP
1600 Tysons Blvd., Suite 700
McLean, VA 22102
Counsel for Plaintiff

Deborah B. Baum
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037
Counsel for Chevy Chase Trust Company

Eva Petko Esber
Williams & Connolly LLP
735 Twelfth Street, NW
Washington, DC 20005
Counsel for Jacqueline C. Duchange

UCC Retrievals, Inc.
7288 Hanover Green Dr.
Mechanicsville, VA 23111
*Registered Agent for Inter-
Properties, Inc. and Trans-American
Aeronautical Corporation*

/s/ Andrew N. Cook
Andrew N. Cook

EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement Agreement") is entered into by and between: (a) Jacqueline C. Duchange ("Jacqueline"), individually, as Trustee of the 2008 Jorge E. Carnicero Revocable Trust ("2008 Trust"), as personal representative of the estate of Jorge E. Carnicero (the "Estate"), as an officer and director of the Trans-American, Inter-Properties, and Blue Cove, and as a shareholder in Sobrado, S.A.; (b) Jorge J. Carnicero ("Jorge"); (c) Jacqueline J. Carnicero ("Mrs. Carnicero"); (d) Susan Carnicero, on behalf of L.C., a minor, and N.C., a minor ("Susan"); (e) Inter-Properties, Inc. ("Inter-Properties"); (f) Blue Cove, Inc. ("Blue Cove"); and (g) Trans-American Aeronautical Corporation ("Trans-American"). These people and entities are referred to herein individually as a Party and collectively as the Parties.

DEFINITIONS

1. The "Execution Date" shall be the last date on which this Settlement Agreement has been executed by all of the Parties.
2. The "Effective Date" of this Settlement Agreement shall be the latest of the following events in accordance with Article II, Paragraph I, *infra*: (i) the date of an order of the court in the D.C. Lawsuit (as defined herein) approving this Settlement Agreement; (ii) the date of Mrs. Carnicero's execution of the Irrevocable Trust Agreement and Mrs. Carnicero's Pourover Will provided for in Article II, Paragraphs 5a and 5e, *infra*; the date of an order of dismissal with prejudice of the D.C. Lawsuit; and (iii) the date of an order of the dismissal with prejudice of the Delaware Complaint (as defined herein).

ARTICLE I – PARTIES AND CURRENT LITIGATIONS

- A. Jorge and Jacqueline are the son and daughter, respectively, of Jorge E. Carnicero ("Mr. Carnicero") and Mrs. Carnicero. Jacqueline has one daughter, Natalia Pejaesevich ("Natalia"), and three minor grandchildren, who are all beneficiaries of the 2008 Trust. Jorge has two minor children, L.C. and N.C., who are both beneficiaries of the 2008 Trust.
- B. Susan Carnicero is Jorge's ex-wife and the mother of L.C. and N.C.
- C. Mr. Carnicero owned, directly or indirectly, 100% of the outstanding shares of Inter-Properties and Trans-American. Trans-American owns 15,826 shares of stock in Sobrado, S.A. and owns 100% of the shares of stock in Blue Cove (Trans-American, Inter-Properties, Sobrado, and Blue Cove are referred to herein as the "Carnicero Companies"). Jacqueline owns one share of stock in Sobrado, S.A. Together, Trans-American and Jacqueline own all authorized and outstanding shares of stock in Sobrado, S.A.
- D. In late August 2008, Mr. Carnicero transferred all of his shares of stock in Trans-American and Inter-Properties to the trustee of the 2008 Trust, who consequently became, and remains, directly or indirectly, the 100% owner of all the Carnicero Companies, except for the one share of stock Jacqueline owns in Sobrado, S.A.

E. On December 3, 2008, Jorge filed a seven-count complaint in the Superior Court of the District of Columbia, Civil Division, captioned 2008 CA 8461 B, against Mr. Carnicero and Jacqueline seeking to set aside the 2008 Trust and raising breach of contract counts against Mr. Carnicero and tortious interference counts against Jacqueline (the "Initial Action"). Mr. Carnicero and Jacqueline filed counterclaims and defenses in the Initial Action.

F. Mr. Carnicero was the initial trustee of the 2008 Trust. Jacqueline became the trustee of the 2008 Trust on June 24, 2009 upon a determination of Mr. Carnicero's incapacity by two physicians, in accordance with the terms of the trust instrument governing the 2008 Trust (the "2008 Trust Instrument").

G. On October 28, 2009, Mr. Carnicero passed away.

H. On November 6, 2009, Jacqueline filed a petition for probate in the Superior Court of the District of Columbia seeking appointment as personal representative of the Estate and unsupervised and abbreviated probate of Mr. Carnicero's 2008 Will, which requests were granted by the Probate Court. On December 23, 2009, Jorge and Mrs. Carnicero instituted an action in the Superior Court of the District of Columbia, captioned 2009 LIT 51, (the "Will Contest") challenging the validity of the 2008 Will and the 2008 Trust and seeking to have Jacqueline removed as trustee and personal representative. Jacqueline, individually, as trustee of the 2008 Trust, and as personal representative of the Estate, filed counterclaims and defenses in connection with the Will Contest.

I. On March 26, 2010, the Court entered an order consolidating the Initial Action with the Will Contest (collectively, as so consolidated "D.C. Lawsuit").

J. On August 10, 2010, the Court granted leave for Susan Carnicero, as representative of L.C. and N.C., to intervene in the D.C. Lawsuit.

K. On October 29, 2010, Mrs. Carnicero and Jorge filed a Verified Derivative Complaint in the Court of Chancery for the State of Delaware ("Delaware Complaint") against Jacqueline, Trans-American, and Inter-Properties, asserting derivative claims against Jacqueline as a director of Trans-American and Inter-Properties for breach of fiduciary duty and for waste of corporate assets.

L. On May 25, 2011, the Court entered an Order in the D.C. lawsuit appointing Rima D. Carnicero as representative and guardian *ad litem* for any and all unborn and unascertained children or descendants of Jorge J. Carnicero.

M. There are bona fide disputes between the parties, most of which are set forth in the pleadings and related documents in the D.C. Lawsuit and the Delaware Complaint.

The Parties wish to amicably resolve any differences they may have and have determined that it is in their mutual best interests to enter into an out-of-court settlement and dismissal with prejudice of the D.C. Lawsuit and provide for dismissal with prejudice of the Delaware Complaint, without any admission of wrongdoing.

NOW, THEREFORE, in consideration of the foregoing, the respective covenants and agreements herein contained, and in consideration of other good and valuable consideration, each to one another, the sufficiency of which is hereby acknowledged, the Parties to this Settlement Agreement hereby agree as follows:

ARTICLE II – TERMS

1. Definitions, Recitals and Escrows; Effective Date. The Definitions and Recitals set forth above are incorporated herein and made a part of this Settlement Agreement. To the extent any action herein is to be taken on the Effective Date, as defined above, or on a date based on calculation from the Effective Date, and such action cannot be completed on the date contemplated by this Settlement Agreement, then (a) any Party's attorney may provide written notice to the other Parties' attorneys of the issues delaying such actions, (b) the Parties' attorneys will convene as soon as is reasonably possible to resolve the issues, and (c) the Parties will use commercially reasonable efforts to achieve resolution of the issues delaying the action.

2. No Admissions. The Parties understand, acknowledge, and agree that any claims any Party may have against any other Party are disputed and that all Parties are entering into this Settlement Agreement for the purpose of settling such disputes by compromise in order to avoid litigation and to achieve peace. If the Court approves this Settlement Agreement in its entirety and the D.C. Lawsuit and Delaware Complaint are dismissed with prejudice, all parties waive any right to appeal. Neither the execution nor delivery of this Settlement Agreement by any Party, nor the motion or joinder in the motion for approval of this Settlement Agreement, nor the order granting the motion, nor the payment of any consideration or performance of any obligation hereunder is an admission as to the merits of any of the claims the Parties may have against one another, or that the Parties have against any other persons or entities.

3. Loans to Jorge J. Carnicero. This paragraph shall govern extension of certain loans by the trustee of the 2008 Trust to Jorge and satisfaction of certain existing promissory notes obligating Jorge to Mrs. Carnicero.

a. Contemporaneously with the execution of this Settlement Agreement, Jorge shall execute, but leave undated, two promissory notes made payable to the trustee of the 2008 Trust, as follows:

(i) a promissory note in the face amount of \$125,000 in the form attached hereto as Exhibit A; and

(ii) a promissory note in the face amount of \$750,000 in the form attached hereto as Exhibit A.

Jorge shall deliver the executed promissory notes to Holland & Knight LLP ("H&K"), and H&K shall hold those promissory notes in escrow. Within thirty (30) days after the Effective Date, the trustee of the 2008 Trust shall pay (a) by wire transfer to H&K, the amount of \$675,000 and (b) by transfer to Mrs. Carnicero's Irrevocable Trust (as defined and provided for in Article II, Paragraph 5 of this Settlement Agreement), the amount of

\$200,000. Within two business days of the completion of these payments, H&K shall release those promissory notes to the trustee of the 2008 Trust, dated as of the Effective Date. Upon the 2008 Trust's receipt of said promissory notes the trustee of Mrs. Carnicero's Irrevocable Trust shall cancel the two promissory notes executed by Jorge in favor of Mrs. Carnicero, for \$100,000 each, dated March 3, 2011 and May 16, 2011. Jorge agrees to pay directly to Mrs. Carnicero's Irrevocable Trust the interest owed on the aforesaid promissory notes of March 3, 2011 and May 16, 2011, through the date of the aforesaid cancellation, within twenty (20) days after such cancellation.

b. The trustee of the 2008 Trust will advance an additional \$100,000 to Jorge if, on or after the time when the above payments are made under Paragraph 3a above, and within sixty (60) days of the Effective Date, Jorge delivers to the trustee of the 2008 Trust a promissory note executed by him in the face amount of \$100,000 the payment of which is secured to the satisfaction of the trustee of the 2008 trust by a deed of trust constituting a first lien on real property in Virginia (which may include real property of a third party such as Mrs. Carnicero's interest in real property referred to below as "Bolinvar"). The promissory note shall provide for quarterly payments of interest at the applicable federal rate for its term in effect for the month when the loan is made, shall have a maturity date no later than ninety (90) days after Mrs. Carnicero's death, shall be dated as of the date of its delivery to the trustee of the 2008 Trust and shall include such other provisions that are typically in such note obligations as determined by the trustee. The deed of trust shall be executed and acknowledged on the date of the promissory note and shall be recorded in land records for the jurisdiction where the real property is located. The trustee of the 2008 Trust shall advance the \$100,000 to Jorge as soon as the promissory note is delivered and the deed of trust securing its obligations is recorded.

4. Modification of 2008 Trust. As set forth in Paragraph 13, *infra*, the Parties will file in the D.C. Lawsuit, a joint motion and proposed order to approve this Settlement Agreement, and to modify the 2008 Trust Instrument to be effective as of the Effective Date under this Settlement Agreement. The terms of the proposed modified 2008 Trust Instrument ("Modified 2008 Trust Instrument"), attached hereto as Exhibit B are material parts of this Settlement Agreement. Any further modification or amendment thereto may not be made without the written consent of the Parties. In the event the Court does not approve any provision of the Modified 2008 Trust Instrument as part of this Settlement Agreement, this agreement shall be void absent the written consent of all Parties.

5. Management and Disposition of Mrs. Carnicero's Property. It is Mrs. Carnicero's intention and a material provision of this Settlement Agreement that she take the actions and execute instruments and/or documents with respect to management and disposition of her property as provided below in this paragraph.

a. Contemporaneously with the execution of this Settlement Agreement, Mrs. Carnicero shall execute the Irrevocable Trust Agreement ("Mrs. Carnicero's Irrevocable Trust Agreement") in the form of the document attached hereto as Exhibit C to establish an irrevocable trust ("Mrs. Carnicero's Irrevocable Trust"). The terms of Mrs. Carnicero's Irrevocable Trust Agreement are a material part of this Settlement

Agreement, and any modification or amendment thereto may not be made without the written consent of the Parties.

b. Except as provided below in this paragraph, Mrs. Carnicero's Irrevocable Trust shall hold all of Mrs. Carnicero's property including but not limited to her (i) financial assets, such as bank accounts, savings accounts, any other financial or investment accounts, certificates of deposit, shares of stock, interests in mutual funds, bonds, and other securities and promissory notes; (ii) dividends and other receivables and amounts collected before or after formation of the Irrevocable Trust, and those attorneys fees and costs that will be reimbursed to her, either directly or through Jorge out of the attorneys fees and costs shown on Exhibit D; (iii) real property, including her Spring Valley residence; (iv) limited liability company and partnership interests; and (v) tangible personal property, such as jewelry, silver, artworks, antiques, and the personal property at her residence in the District of Columbia or in safety deposit boxes or other locations, including her personal property located at the Atoka Farm.

c. Mrs. Carnicero's tangible personal property includes but is not limited to property identified in Exhibit E hereto, subject to the provisions of Paragraph 17 of this Article. The trustee of Mrs. Carnicero's trust shall obtain a further appraisal and inventory of the tangible personal property located at the Spring Valley residence not reflected on Exhibit E, including but not limited to the contents of the locked sideboard in the dining room and the locked wine closet in the basement. Each Party to this Agreement other than Mrs. Carnicero represents and warrants that (i) he or she has not removed any tangible personal property from the Spring Valley residence since June 24, 2009; (ii) they are not aware of any person other than Mrs. Carnicero who has removed any tangible personal property from the Spring Valley residence since June 24, 2009; and (iii) they have not themselves, nor are they aware of any other person who has removed valuable silver items, such as British or Georgian antique silver, from the Spring Valley residence at any time.

d. Contemporaneously with execution of the Settlement Agreement, Mrs. Carnicero shall execute an assignment of her tangible personal property described above to the trustee of Mrs. Carnicero's Irrevocable Trust. Mrs. Carnicero shall complete the transfer of ownership of all of her other property to the trustee of Mrs. Carnicero's Irrevocable Trust as soon as possible and in any event within sixty (60) days after the Effective Date of this Settlement Agreement. Any property subsequently received by her or discovered to be owned by her shall also promptly be transferred to the trustee of Mrs. Carnicero's Irrevocable Trust to be held among its trust assets. The trustee shall use best efforts to locate, account for and/or obtain replacement checks for all insurance proceeds from Mr. Carnicero's life insurance policies, all proceeds from redemption of bonds since June 24, 2009, and all dividend checks and replacement dividend checks issued to Mrs. Carnicero since June 24, 2009, and to locate and account for items of tangible personal property that may be missing and file insurance claims, as appropriate, for missing items.

e. Contemporaneously with the execution of this Settlement Agreement, Mrs. Carnicero shall execute a Last Will and Testament ("Mrs. Carnicero's Pourover

Will") in the form of the document attached hereto as Exhibit E. Mrs. Carnicero's Pourover Will shall be maintained by her during her life so that upon her death (i) any property that could pass according to her last will and testament shall be distributed by her personal representative to the trustee of Mrs. Carnicero's Irrevocable Trust, (ii) the trustee of Mrs. Carnicero's Irrevocable Trust is appointed as personal representative of her estate, and (iii) the estate taxes arising at her death shall be paid, and her GST exemption shall be allocated, as provided in Exhibit E.

f. Contemporaneously with the execution of this Settlement Agreement, Mrs. Carnicero shall execute beneficiary designations for any life insurance policies that are owned or controlled by her and that will pay benefits on her death. Each designation shall name the trustee of Mrs. Carnicero's Irrevocable Trust as the beneficiary of the death benefit. To the extent any life insurance policy that will pay a death benefit on her death is acquired by Mrs. Carnicero after execution of the Settlement Agreement, she will designate the trustee of Mrs. Carnicero's Irrevocable Trust as the beneficiary of the death benefit under the policy.

g. Contemporaneously with the execution of this Settlement Agreement, Mrs. Carnicero shall execute beneficiary designations for benefits under any annuity contract, IRA, qualified plan or similar arrangement that are payable on her death to a beneficiary designated by her. Those designations and any future designation for each such benefit or other similar benefit shall be made to (i) the trustee of Mrs. Carnicero's Irrevocable Trust; or (ii) one half (1/2) to any one or more members of a class comprising of Jorge and his descendants and one-half (1/2) to any one or more members of a class comprising Jacqueline and her descendants.

h. Mrs. Carnicero shall maintain a personal checking account that can receive distributions from Mrs. Carnicero's Irrevocable Trust, payment of the benefits described in subparagraph g, and payments from Social Security. If she designates recipients to receive that account on her death, such designations and any future designation shall be made to (i) the trustee of Mrs. Carnicero's Irrevocable Trust; or (ii) one half (1/2) to any one or more members of a class comprised of Jorge and his descendants and one-half (1/2) to any one or more members of a class comprised of Jacqueline and her descendants.

i. Nothing in this Settlement Agreement shall be construed to limit Mrs. Carnicero's ability to participate as an accommodation party or otherwise to provide security for the \$100,000 promissory note by Jorge described in Paragraph 3b *supra*.

6. Sale of Atoka Parcel to 2008 Trust. Inter-Properties owns real property located in Fauquier County, Virginia known as the Atoka Farm, Virginia PIN Numbers 6073-68-5135, 6073-48-4243, 6073-45-7956, and 6073-88-4395 ("Atoka"). Inter-Properties shall complete a boundary line adjustment to establish an approximately 100-acre parcel of Atoka Farm as shown on the attached Exhibit G (the "Atoka Parcel"). Inter-Properties then shall sell and the trustee of the 2008 Trust then shall acquire the Atoka Parcel for an amount equal to the current fair market value of the Atoka Parcel as determined by a qualified independent real estate appraiser (the

"Atoka Parcel Purchase Price") selected by the trustee of the 2008 Trust in its sole and absolute discretion, with notice to Jorge and Jacqueline. The Atoka Parcel Purchase Price will be paid prior to or contemporaneously with the delivery of the deed for the Atoka Parcel by the execution and transmittal of a promissory note by the trustee of the 2008 Trust in the amount of the Atoka Parcel Purchase Price. Within 90 days of the Effective Date, Inter-Properties shall execute and shall cause the recording of a General Warranty deed conveying the Atoka Parcel to the trustee of the 2008 Trust.

7. Allocations and Disposition of Bolivar and the Atoka Parcel. The trustee of the 2008 Trust and Mrs. Carnicero own as equal tenants in common an approximately 145-acre property referred to herein as Bolivar, in Loudoun County, Virginia PIN Number 536-46-9524 ("Bolivar"). The Trustee of the 2008 Trust shall allocate its interest in Bolivar and the Atoka Parcel (after its purchase from Inter-Properties) to the Atoka-Bolivar Marital Trust in accordance with the terms of the Modified 2008 Trust Instrument.

8. Modification of Power of Attorney. Contemporaneously with the execution of this Settlement Agreement, Mrs. Carnicero shall revoke the existing Power of Attorney dated November 20, 2009 and execute new Powers of Attorney in the form of the documents attached hereto as Exhibit II and Exhibit I. Jorge shall return all copies of the November 20, 2009 Power of Attorney to Ronald Aucutt, who is authorized to destroy the same. Jorge shall also deliver any credit or debit cards on Mrs. Carnicero's accounts to Ronald Aucutt to be held for disposition in accordance with the instructions of the trustee of Mrs. Carnicero's Irrevocable Trust. Jacqueline and Jorge shall not accept appointment under any subsequent power of attorney of Mrs. Carnicero unless both of them agree to such appointment.

9. Past Acts. In connection with the preparation of this Settlement Agreement, the Parties have exchanged information regarding the nature and extent of the 2008 Trust's and Mrs. Carnicero's assets and liabilities, and significant changes in those assets and liabilities, since June 24, 2009. Each of the Parties warrants and represents that, in connection with such mutual requests for disclosure, full disclosure has been made of all material gifts, loans, compensation, exchanges, use of property, or otherwise, whether direct or indirect, including without limitation transfers for inadequate consideration in money or money's worth since June 24, 2009. In addition, Mrs. Carnicero represents and warrants that she has made no undisclosed loans or transfers of property since June 24, 2009. Jacqueline in her capacity as Trustee of the 2008 Trust, and the Carnicero Companies, represent and warrant that they have made no undisclosed loans or transfers of property, other than in the ordinary course of business, since June 24, 2009. All Parties waive any further accounting for past benefits of any kind, whether or not in the form of gifts, other than as specifically provided for elsewhere in this Settlement Agreement, including the exhibits hereto.

10. Jacqueline's Service as Personal Representative and Trustee of the 2008 Trust Successor Personal Representative. Jacqueline will continue as personal representative of the Estate and trustee of the 2008 Trust until the Effective Date at which time she shall be deemed to have resigned from those fiduciary positions as approved by the court and after which she shall have no further responsibility for those fiduciary estates. Chevy Chase Trust, as the successor trustee of the 2008 Trust (Chevy Chase) will be appointed as the personal representative of the Estate on the Effective Date. In no event shall Chevy Chase or any other successor personal

representative of the Estate prosecute, pursue, or assign, or assert set off or recoupment with respect to, any claim against Jacqueline for acts or omissions by her as personal representative of the Estate or in any other capacity to the extent such claim was released pursuant to this Settlement Agreement; and all parties waive rights to accounting and to take exception to any accounting with respect to such released claims. Within thirty (30) days after the Effective Date, Jacqueline will be paid a trustee's commission fee of \$150,000 by the 2008 Trust by wire transfer to Williams & Connolly LLP from the 2008 Trust.

11. Atoka Occupancy and Tax Status. To give the trustee of the 2008 Trust the opportunity to make other arrangements for the security of the assets of the 2008 Trust and the continued supervision of the Atoka Farm operation, Peter and Natalia Pejacsevich and their children shall be permitted to reside in the main house at Atoka Farm, rent-free and with all utilities paid by the 2008 Trust, until the earlier of (a) December 31, 2012, or (b) the sale of Atoka Farm by the trustee for the 2008 Trust. This occupancy shall not constitute a lease, or create any interest in real property. All decisions regarding other or subsequent occupancy and management at Atoka Farm, including any decision to opt out of the applicable Agricultural Overlay districts, or to seek to classify the Atoka Farm property as "land use" for real property tax purposes, shall be as determined by Inter-Properties, or after its liquidation, by the trustee of the 2008 Trust, provided that no such decision shall be made until Chevy Chase has been appointed as successor trustee of the 2008 Trust, and personal representative of the Estate, and has appointed a new board of directors for Inter-Properties.

12. Liquidation of Corporations. The corporate trustee of the 2008 Trust will determine the timing and method of liquidating Inter-Properties and Trans-American. Jacqueline shall receive her current salary of \$11,666.66 per month from Inter-Properties or Trans-American until the earlier of (a) the liquidation of Inter-Properties and Trans-American, and (b) 60 days after the Effective Date. Jacqueline acknowledges and agrees that her employment with Inter-Properties or Trans-American is at will. Any subsequent decisions regarding the employment and compensation of any individual by the Carnicero Companies, including any Party hereto, shall be as determined by the trustee of the 2008 Trust. Except as otherwise provided for in this Settlement Agreement, after the Effective Date the Carnicero companies will not pay any salary to, or any personal bills or expenses of, any family member or Party to this Settlement Agreement. Each Party to this Settlement Agreement represents that he or she has no knowledge of any undisclosed, material changes to the assets of the Carnicero Companies since June 24, 2009, and going forward they each will take no action that will materially affect the assets or liabilities of the Carnicero Companies other than those contemplated by this Agreement. If after the date of this Settlement Agreement there are any assets discovered in which Jorge E. Carnicero had an interest, such assets will be promptly transferred to the trustee of the 2008 Trust. All assets of the Carnicero Companies discovered after the Effective Date shall be liquidated by the trustee of the 2008 Trust in accord with the provisions of this paragraph.

13. Court Approval and Dismissal of Actions. The Parties hereby agree that (i) court approval of this Settlement Agreement in the Superior Court of the District of Columbia, (ii) dismissal of the D.C. Lawsuit with prejudice, (iii) dismissal of the Delaware Complaint with prejudice, and (iv) execution of Exhibit J by Natalia Pejacsevich and Peter Pejacsevich are

conditions precedent to effectiveness of the Settlement Agreement. Within ten (10) business days of the Execution Date, the Parties will jointly file in the D.C. Lawsuit a motion for approval of this Settlement Agreement, the Modified 2008 Trust Instrument, and dismissal with prejudice of all claims in the D.C. Lawsuit. Likewise, within ten (10) business days of the Execution Date, Jorge will file the stipulation attached hereto as Exhibit K to dismiss the Delaware Complaint with prejudice. If the D.C. court denies the approval of the Settlement Agreement and dismissal with prejudice of the D.C. Lawsuit in whole or in part, or the Delaware court will not approve dismissal with prejudice of the Delaware Complaint or the Consent form attached as Exhibit J is not executed, this Settlement Agreement (including the General Releases provided pursuant to Paragraph 16, *infra*) is null and void, and any action taken in respect of this Settlement Agreement shall be ineffective. In that event, the Parties hereby agree that they shall negotiate in good faith to reach a settlement to be resubmitted to the court for approval and for dismissal with prejudice of the D.C. Lawsuit and dismissal of the Delaware Complaint. In the event that the Parties are unable to reach a settlement to be resubmitted to the courts for approval, the Parties shall submit a stipulated motion for, and participate in, court-ordered mediation.

14. Cooperation with Trustees of the 2008 Trust and Mrs. Carnicero's Irrevocable Trust and the Personal Representative. Each of the Parties covenants that, after the Effective Date, he or she will cooperate with the trustee of the 2008 Trust, the personal representative of the Estate, and the trustee of Mrs. Carnicero's Irrevocable Trust. Upon reasonable request of the personal representative or a trustee, each Party will promptly provide all requested financial and other materials, information, or documents that are within the Party's custody or control and pertain to the trusts, the Estate, or the distribution thereof. The Parties hereby grant each other written consent as contemplated in provisions (3) and (5)(1) of the Protective Order entered by the Court in the D.C. Lawsuit on April 22, 2009, to provide to the trustees of the 2008 Trust and Mrs. Carnicero's Irrevocable Trust and/or to the personal representative, documents designated "Confidential" by any of the Parties. The Parties acknowledge that Chevy Chase as the successor personal representative may file amended or supplemental estate tax returns for the Estate. Except in the case of its gross negligence, dishonesty, or bad faith, Chevy Chase will be held harmless with respect to any estate tax filings for the Estate, whether filed before or after the appointment of Chevy Chase as successor personal representative; all taxes, interest, penalties, assessments or deficiency claims related thereto shall be paid from the 2008 Trust.

15. Attorneys' Fees and Expenses. The 2008 Trust shall bear the costs and attorneys' fees relating to the litigation or proceedings between the Parties or Mr. Carnicero, and the negotiation and consummation of this Settlement Agreement as an expense of administration in accordance with the Schedule attached hereto as Exhibit D. Each of the Parties acknowledges that the attorneys' fees and costs so agreed upon are reasonable, were necessarily incurred to permit and facilitate the proper administration and distribution of the 2008 Trust and its assets, that the litigation benefited the 2008 Trust and its resolution and all of its beneficiaries, and these fees and costs are properly payable from the 2008 Trust. The Parties will cooperate in obtaining Court review and approval of the fees and costs so incurred in connection with the motion for approval of the Settlement provided for by paragraph 13, above. Upon such Court approval, within thirty (30) days of the Effective Date, the trustee of the 2008 Trust shall reimburse the costs and attorneys' fees to the payees listed in Exhibit D, with the exception of Mrs. Carnicero's Irrevocable Trust, which shall be reimbursed within sixty (60) days of the Effective Date. Upon

reimbursement of Mrs. Carnicero's Irrevocable Trust, the trustee of that Trust shall cancel the promissory note(s) that Jorge executed in favor of Mrs. Carnicero for the payment of attorneys' fees and costs. In addition, fees for services required by the Parties' counsel and expenses incurred after those reflected on Exhibit D, and fees and expenses of any beneficiary giving consent to this Settlement Agreement, shall be paid from the 2008 Trust in connection with those services that the trustee of the 2008 Trust determines are or have been reasonably necessary or advisable to complete the actions called for in this Agreement or to assist it in fulfillment of its duties as personal representative and trustee of the 2008 Trust.

16. Releases. Contemporaneously with the execution of this Settlement Agreement, the Parties will execute the "General Releases" attached hereto as Exhibits L, M, N, O, and P. Jacqueline shall deliver the executed General Releases for herself, Trans-American, Inter-Properties, and Blue Cove to Williams & Connolly LLP ("W&C"), Jorge Carnicero shall deliver the executed General Release for himself and the executed Release by Rima as Guardian *ad litem* (Exhibit Q) and representative pursuant to the order of the Court, to H&K. Susan Carnicero, on behalf of L.C. and N.C. shall deliver the executed General Releases for L.C. and N.C. to Cozen O'Connor ("Cozen"). Mrs. Carnicero shall deliver the executed General Release for herself to H&K. W&C, H&K, and Cozen shall certify that they have received all of the executed General Releases. If any of the General Releases attached hereto are not properly executed, this Settlement Agreement will be null and void. If the D.C. Court denies the Motion for Approval in whole or in part and/or does not dismiss the D.C. Lawsuit with prejudice, or the Delaware Court will not allow withdrawal of the Delaware Complaint or approve its dismissal with prejudice, the General Releases attached hereto are null and void. Within two business days of the Effective Date, the Parties, W&C, H&K, and Cozen shall release and exchange the General Releases.

17. Mrs. Carnicero's Tangible Personal Property. Disposition of Mrs. Carnicero's tangible personal property, including the personal property at her home located at 3949 52nd Street, NW, Washington, D.C. ("Spring Valley"), in her safety deposit box at Middleburg Bank, and at Atoka Farm will be made at such time as is in accordance with Mrs. Carnicero's wishes, pursuant to procedures for such distribution established in Mrs. Carnicero's Irrevocable Trust and the equalization terms of Mrs. Carnicero's Irrevocable Trust Agreement. The Parties agree that to the extent any of the Parties dispute Mrs. Carnicero's ownership of any personal property or the appraised value of any personal property (the "Disputed Tangible Personal Property"), (a) the Parties shall preserve the Disputed Tangible Personal Property, and (b) such disputes will be addressed with the trustee of Mrs. Carnicero's Irrevocable Trust after the Effective Date. Each Party to this Settlement Agreement represents and warrants that he or she has no knowledge of any undisclosed, material changes to the assets of Mrs. Carnicero since June 24, 2009, and they each will going forward take no action, including acceptance of any gifts or loans through the Effective Date, which will materially affect the assets or liabilities of Mrs. Carnicero, other than those contemplated by this Agreement.

ARTICLE III - REPRESENTATIONS AND WARRANTIES

1. No Reliance. Each of the Parties represents and warrants that, in executing and entering into this Settlement Agreement, they are not relying and have not relied upon any representation, promise or statement made by anyone which is not recited, contained or embodied in this Settlement Agreement. Each of the Parties understands and expressly assumes the risk that any fact not recited, contained or embodied herein may turn out hereafter to be other than, different from, or contrary to the facts now known to them or believed by them to be true. Nevertheless, subject to the granting of the Motion for Approval and the dismissal or withdrawal of the D.C. Lawsuit and the Delaware Complaint, each of the Parties intends by this Settlement Agreement, and with the advice of their own, independently selected counsel, to release finally, fully and forever all matters released in the General Releases (the "Released Matters") and agrees that this Settlement Agreement shall be effective in all respects notwithstanding any such difference in facts, and shall not be subject to termination, modification or rescission by reason of any such difference in facts.

2. No Assignment. The Parties represent and warrant that they have not heretofore assigned or transferred or purported to assign or transfer to any person or entity all or any part of or any interest in any claim, contention, demand, cause of action or otherwise relating to any Released Matter.

3. No Encumbrances. The Parties make the following representations and warranties:

- a. No encumbrances.
 - (i) Inter-Properties, and Jacqueline in her capacity as an officer and director of Inter-Properties, represent and warrant that between June 24, 2009 and the date of this Agreement, they neither created nor caused to be created any liens, transfers of development rights or encumbrances, including but not limited to conservation easements, on Atoka except those shown on the title report attached as Exhibit R other than three tenancies at Atoka (Michael Robinson, Michael Jenkins and Leslie Hedison, and John Hudson).
 - (ii) Jacqueline in her capacity as Trustee, Jorge J. Carnicero, and Mrs. Carnicero each represent and warrant that, between June 24, 2009 and the date of this Agreement each of them has neither created nor caused to be created any liens, transfers of development rights or encumbrances, including, without limitation, conservation easements, on Bolivar except those shown on the title report attached as Exhibit S.
 - (iii) Jorge J. Carnicero and Jacqueline J. Carnicero represent and warrant that that they have taken all actions reasonably necessary and proper to protect the value and interests of the Spring Valley

property in connection with any issues presented or raised by the U.S. Army Corps of Engineers.

- (iv) In addition, each of the Parties (including those listed in (i), (ii), and (iii) above), represents and warrants that he, she, or it, as the case may be, has no actual knowledge of, any liens, transfers of development rights or encumbrances, including, without limitation, conservation easements or transfers of development rights, on Atoka, Bolinvar, or Spring Valley except those shown on the title reports attached as Exhibits R, S, and T and other than three tenancies at Atoka (Michael Robinson, Michael Jenkins and Leslie Hedison, and John Hudson).

b. No Authority to encumber.

- (i) Inter-Properties represents and warrants that, except as shown on the title report attached as Exhibit R, and other than three tenancies at Atoka (Michael Robinson, Michael Jenkins and Leslie Hedison, and John Hudson) and the boundary line adjustment contemplated in this Agreement, between June 24, 2009 and the date of this Agreement, it did not execute, nor cause to be executed, any conveyance or transfer, or contract to convey or transfer, any interest in real property owned by Inter-Properties, nor in any way granted any authority to Natalia Pejacsevich or Peter Pejacsevich to convey or transfer, or contract to convey or transfer, any interest in real property owned by Inter-Properties, or to encumber such real property, whether by power of attorney or any other source of authority, written or otherwise.
- (ii) Jacqueline, in her capacity as an officer and director of Inter-Properties, represents and warrants that, except as shown on the title report attached as Exhibit R, and other than three tenancies at Atoka (Michael Robinson, Michael Jenkins and Leslie Hedison, and John Hudson) and the boundary line adjustment contemplated in this Agreement, between June 24, 2009 and the date of this agreement, she did not execute any conveyance or transfer, or contract to convey or transfer, any interest in real property owned by Inter-Properties, nor in any way grant any authority to Natalia Pejacsevich or Peter Pejacsevich to convey or transfer, or to contract to convey or transfer, any interest in real property owned by Inter-Properties, or to encumber such real property, whether by power of attorney or any source of authority, written or otherwise; and, to the best of her knowledge, Jorge E. Camicero did not make any such transfer, contract to transfer, or make any such grant of authority.

(iii) Jorge J. Carnicero and Jacqueline J. Carnicero represent and warrant that, between June 24, 2009 and the date of this Agreement, they did not execute, nor cause to be executed any conveyance or transfer, or contract to convey or transfer, any interest in real property, nor did they in any way give to any third party any authority to convey or transfer or contract to convey or transfer any interest in real property owned by Jacqueline Carnicero, or to encumber such real property, whether by power of attorney or any other source of authority, written or otherwise.

c. As used herein "liens" and "encumbrances" shall not be interpreted to include the requirements of applicable zoning regulations and/or enrollment or participation in zoning or tax overlay districts, including Agricultural Districts, except to the extent to which violations thereof, or failure to pay taxes as required, may give rise to actual assessments, fines or other charges that may constitute valid liens. The Parties affirmatively represent and warrant that they have no actual knowledge of any action that has been taken to request that Fauquier County remove any portion of Atokn from its Agricultural District in 2011.

4. Blue Cove. Jacqueline, individually and as an officer and director of Blue Cove, represents and warrants, to the best of her knowledge and belief, that Blue Cove has only one non-cash asset: a condominium apartment unit and rentals thereon described as Apartment 48 B at 641 5th Avenue, New York, New York, and that, in her actual knowledge, there has been no material change in Blue Cove assets (excluding rental income and expenditures relating to that unit since June 24, 2009).

5. Sobrado, S.A. Jacqueline, individually and as an officer and director of Trans-American, represents and warrants, to the best of her knowledge and belief that: (a) Sobrado, S.A. is an Argentine Corporation; (b) its only two shareholders are Trans-American owning 15,826 shares of stock and Jacqueline owning one share of stock; (c) no undisclosed material change in Sobrado's assets has occurred since June 24, 2009; (d) Sobrado owns Cottage 4 on John Pringle Drive in Round Hill, Montego Bay, Jamaica; (e) Sobrado owns 504,499 shares of stock in Round Hill Development Corp and 82 shares in Marriott Plaza; and (f) Sobrado has no other assets except cash and receivables and as disclosed herein. Trans-American agrees to vote the shares of stock Trans-American owns in Sobrado so as to cause corporate compliance with the Settlement Agreement, and Jacqueline agrees to vote her own share of Sobrado for that purpose and not to dispose of or encumber her share of stock except in connection with the sale of stock in Sobrado by the trustee of the 2008 Trust or with the trustee's consent.

ARTICLE IV - GENERAL PROVISIONS

1. Signatures and Counterparts. This Settlement Agreement shall be executed in counterparts, each of which so executed shall be deemed an original, irrespective of the date of its execution and delivery, and said counterparts together shall constitute one and the same instrument.

2. Authority to Execute. The execution of this Settlement Agreement by each Party constitutes a representation and warranty that the person signing on behalf of that Party has full authority to bind that Party, including any heirs who may have an interest affected by this Settlement Agreement, and that there exists no impediment to full enforcement of this Settlement Agreement other than Court Approval and consent of non-party beneficiaries of the 2008 Trust, as contemplated by this Settlement Agreement.

3. Advice of Counsel. Each Party has entered into this Settlement Agreement with the advice of counsel and by their respective signatures below certifies that each Party has read this Settlement Agreement in its entirety and had the benefit of the advice of counsel with respect to all of the terms and conditions contained herein.

4. Joint Drafting and Construction. The Parties hereby acknowledge that each of them has been represented by independent counsel of their own selection throughout all negotiations preceding the execution of this Settlement Agreement, and that they have executed the same upon the advice of such counsel. The Parties and their respective counsel cooperated in the drafting and preparation of this Settlement Agreement such that it shall be deemed to be their joint work product and may not be construed against any of the Parties by reason of its preparation.

5. Entire Agreement. This Settlement Agreement together with the Exhibits attached hereto constitutes and is intended to constitute the entire agreement of the Parties and is in full and complete settlement of all claims between the Parties, including those which were or could have been asserted in, or in connection with, or arising out of the D.C. Lawsuit, the Delaware Complaint, the transfers to and administration of the 2008 Trust, administration of the Estate, the beneficiary change to the "2008 Retirement Account," and Mrs. Carnicero's Irrevocable Trust and estate. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as specifically set forth herein. The Parties hereby expressly waive any right to rely on any prior statements, representations, promises or agreements not set forth herein. All prior or contemporaneous discussions or negotiations with respect to the subject matter hereof are superseded by this Settlement Agreement. This Settlement Agreement is entered solely for the benefit of Parties to it and confers no benefit upon a non-party, except as is limited to the occupancy provisions for Atoka in Article II, Paragraph 11.

6. Further Assurances. Each Party hereto shall use reasonable and diligent efforts to proceed promptly with the transactions contemplated herein, to fulfill the conditions precedent, and to execute such other and further documents and perform such other and further acts as may reasonably be required or appropriate to effectuate the provisions of this Settlement Agreement.

7. Modification and Amendment. This Settlement Agreement may not be modified or amended orally and no modification, termination or waiver shall be valid unless in writing and signed by all of the Parties and, to the extent required, approved by the Court. Oral modifications shall be of no force or effect.

8. Binding Effect. This Settlement Agreement shall be binding upon and inure to the benefit of all Parties hereto and their respective heirs, representatives, successors and assigns. This Settlement Agreement shall be binding, enforceable, discoverable and admissible to establish the rights, obligations and duties of the Parties hereunder in any action brought to enforce this Settlement Agreement.

9. Tax Responsibility. The Parties agree that they will bear their respective tax liabilities that may arise from this Settlement Agreement other than as specifically provided for elsewhere in this Settlement Agreement, including the exhibits hereto.

10. Judicial Enforcement. This Settlement Agreement shall be construed in accordance with the laws of District of Columbia. Each Party consents to the jurisdiction of the Superior Court of the District of Columbia with respect to any issue concerning enforcement, interpretation or breach of this Settlement Agreement. The Superior Court of the District of Columbia shall retain continuing jurisdiction over the subject matter of the parties for those purposes. Nothing herein confers personal or subject matter jurisdiction in the District of Columbia with respect to any issue relating to real property located outside of the District of Columbia that extends beyond enforcement, interpretation or breach of the terms of this Settlement Agreement.

11. Inadmissibility of Settlement Agreement. This Settlement Agreement, any statements, discussions, or negotiations made in connection with this Settlement Agreement, and any actions taken by any Party pursuant to this Settlement Agreement, may not be offered or be admissible in evidence or in any other fashion against any Party in any action or proceeding for any purpose, except in any action or proceeding brought to enforce the terms of this Settlement Agreement by or against any Party.

12. No Waiver. The waiver of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition contained herein.

13. Severability. Except as otherwise provided herein, if any provision of this Settlement Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, the remaining provisions, and any partially invalid or unenforceable provisions, to the extent valid and enforceable, shall nevertheless be binding and valid and enforceable.

14. Notices. All notices under this Settlement Agreement shall be in writing and shall be deemed effective on the date of delivery if delivered personally (and a receipt obtained therefore), on the fifth calendar day after mailing if mailed by first class mail, registered or certified, postage prepaid, or on the third calendar day if by overnight mail.

[SIGNATURES APPEAR ON NEXT PAGES]

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals the day and year first above written.

JACQUELINE C. DUCHANGE
INTER-PROPERTIES, INC.
BLUE COVE, INC.
TRANS-AMERICAN AERONAUTICAL CORPORATION

Jacqueline C. Duchange
Jacqueline C. Duchange, individually, as Trustee of the 2008 Jorge E. Carnicero Revocable Trust, as personal representative of the Estate of Jorge E. Carnicero, as an officer and director and on behalf of Trans-American, Inter-Properties and Blue Cove, and as a shareholder in Sobrado

Dated: ____ day of _____, 2011

JORGE J. CARNICERO

Jorge J. Carnicero, individually

Dated: ____ day of _____, 2011

JACQUELINE J. CARNICERO

Jacqueline J. Carnicero, individually

Dated: ____ day of _____, 2011

SUSAN CARNICERO

Susan Carnicero, on behalf of L. C., a minor, and N. C., a minor

Dated: ____ day of _____, 2011

CARNICERO/DUCHANGE SETTLEMENT AGREEMENT – EXHIBIT LIST

<u>Exhibit A</u>	Jorge J. Carnicero promissory note for \$125,000 and \$750,000 loans
<u>Exhibit B</u>	2008 Trust Instrument (modified)
<u>Exhibit C</u>	Mrs. Carnicero's Irrevocable Trust Agreement
<u>Exhibit D</u>	Schedule of Attorneys Fees and Expenses
<u>Exhibit E</u>	Non-exhaustive list of personal property for Mrs. Carnicero
<u>Exhibit F</u>	Mrs. Carnicero's Last Will and Testament/Pourover Will
<u>Exhibit G</u>	Plat for Atoka Parcel Boundary Line Adjustment
<u>Exhibit H</u>	Atoka-Bolinvar Limited Power-of-Attorney (Mrs. Carnicero)
<u>Exhibit I</u>	Modified General Power-of-Attorney (Mrs. Carnicero)
<u>Exhibit J</u>	Consent Form for Natalia and Peter Pejasevich
<u>Exhibit K</u>	Stipulation and contents to dismiss the Delaware Complaint with prejudice
<u>Exhibit L</u>	GENERAL RELEASE (Jacqueline C. Duchange)
<u>Exhibit M</u>	GENERAL RELEASE (Jorge Carnicero)
<u>Exhibit N</u>	GENERAL RELEASE (Jacqueline J. Carnicero)
<u>Exhibit O</u>	GENERAL RELEASE (Susan Carnicero)
<u>Exhibit P</u>	GENERAL RELEASE (Carnicero Companies)
<u>Exhibit Q</u>	GENERAL RELEASE (Rima Carnicero as guardian <i>ad litem</i>)
<u>Exhibit R</u>	Atoka Title Commitment
<u>Exhibit S</u>	Bolinvar Title Commitment
<u>Exhibit T</u>	Spring Valley Title Commitment

EXHIBIT B

CONSENT TO SETTLEMENT AGREEMENT

This Consent to Settlement Agreement is executed on June __, 2011 by Natalia Pejacsevich, individually as representative for her minor children, their descendants, her unborn and unascertained descendants, and descendants of Jacqueline C. Duchange ("Natalia") and Peter Pejacsevich ("Peter").

WHEREAS, Peter and Natalia are husband and wife;

WHEREAS, each of them has received a final, binding, and executed copy of a Settlement Agreement entered into by and among: (a) Plaintiff, Jorge J. Carnicero; (b) Plaintiff, Jacqueline J. Carnicero; (c) Trans-American Aeronautical, Inter-Properties, Inc., and Blue Cove, Inc. ("Carnicero Companies"); (d) Defendant, Jacqueline C. Duchange in her individual capacity and in her stated capacity set forth in the Settlement Agreement; and (e) Susan Carnicero on behalf of L.C., a minor, and N.C., a minor;

WHEREAS, Peter and Natalia have had an opportunity to consult with legal counsel concerning the Settlement Agreement; and

WHEREAS, in Article II, Paragraph 11, of the Settlement Agreement, there is a provision permitting Natalia and Peter to remain in occupancy of the Atoka Farm which Peter and Natalia acknowledge constitutes value and legal consideration for their executing this Consent form.

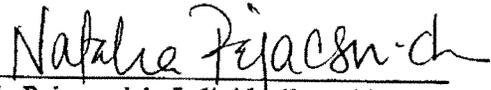
NOW, THEREFORE, the undersigned consent and agree as follows:

1. Consent to Settlement Agreement. The recitations contained within this agreement are true and correct and the provisions concerning the occupancy of Atoka Farm, as stated in the Settlement Agreement, constitute value and legal consideration, for Natalia and Peter to execute this consent.
2. Occupancy of Atoka Farm. The parties to this Consent to Settlement Agreement, jointly and severally, acknowledge the rights and limitations of their future occupancy of Atoka Farm under Article II, Paragraph 11 of the Settlement Agreement; each of them agrees that they shall receive no greater rights to occupancy of Atoka Farm than are set forth in Article II, Paragraph 11 of the Settlement Agreement; and each agrees that their occupancy is limited as set forth in the Settlement Agreement.
3. Consent to Modification of 2008 Trust. Natalia has had an opportunity to review the 2008 Trust referenced in the Settlement Agreement; she has had an opportunity to consult with legal counsel concerning its terms; she acknowledges that she is or may be a qualified beneficiary under the terms of the 2008 Trust Agreement; she does hereby consent to its modification in substantially the form of Exhibit B which is attached to the Settlement Agreement; and she agrees to execute all consent forms needed for the Superior Court in the

District of Columbia to enter a judgment or order modifying the 2008 Trust in substantially the form set forth in Exhibit B to the Settlement Agreement.

4. Further Consents and Assistance. The undersigned have reviewed the Settlement Agreement and agree that each of them will in the future, as requested by any of the parties to this Settlement Agreement, execute such consent forms which are referenced in the Settlement Agreement, which require their execution; they further agree that they will execute these consent forms at no cost and without further consideration; and they further agree that they will execute such further documents as may be reasonably required or appropriate to effectuate the provisions of the Settlement Agreement.

IN WITNESS WHEREOF, Natalia and Peter have executed this Consent to Settlement Agreement on the date above written.



Natalia Pejacsevich, Individually and in all of her stated capacities set forth in this consent



Peter Pejacsevich, Individually and in all of his stated capacities set forth in this consent

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

JORGE J. CARNICERO)	
)	
Plaintiff,)	
	)	Case No. 2013 CA 0001400 B
v.	)	Judge Brian F. Holeman
	)	Next Court Date: May 24, 2013
JACQUELINE C. DUCHANGE, <i>et al.</i>	)	Event: Initial Conference
)	
Defendants.)	

ORDER

Upon consideration of the Motion to Dismiss of Defendants Natalia Pejacsevich and Peter Pejacsevich, the memorandum in support thereof, and any opposition thereto, it is this _____ day of _____, 2013 hereby

ORDERED, that the Motion to Dismiss is granted and Defendants Natalia Pejacsevich and Peter Pejacsevich are dismissed from this litigation with prejudice.

Judge, Superior Court of the District
of Columbia

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

JORGE J. CARNICERO)	
)	
Plaintiff,)	
	)	Case No. 2013 CA 0001400 B
v.	)	Judge Brian F. Holeman
	)	Next Court Date: May 24, 2013
JACQUELINE C. DUCHANGE, <i>et al.</i>	)	Event: Initial Conference
)	
Defendants.)	

**RULE 12-I CERTIFICATION OF DEFENDANTS PETER PEJACSEVICH AND
NATALIA PEJACSEVICH**

Counsel for Defendants Peter Pejacsevich and Natalia Pejacsevich, pursuant to Superior Court Rule 12-I, hereby certifies that counsel for Plaintiff, Thomas M. Brownell, was contacted on March 14, 2013 regarding the filing of the Motion to Dismiss by Peter Pejacsevich and Natalia Pejacsevich for dismissal of the action with prejudice, and counsel stated that Plaintiff does not consent to the requested relief.

Dated: March 14, 2013

Respectfully submitted,

K&L GATES LLP

/s/ Andrew N. Cook
Andrew N. Cook (D.C. Bar No. 416199)
John P. Estep (D.C. Bar No. 101049)
K&L Gates LLP
1601 K Street, N.W.
Washington, DC 20006
T: 202-778-9106
F: 202-778-9100
E: andrew.cook@klgates.com
E: john.estep@klgates.com

CERTIFICATE OF SERVICE

I certify that on the 14th day of March 2013 a copy of the foregoing was served on the following individual via First Class U.S. Mail:

Thomas M. Brownell
Holland & Knight LLP
1600 Tysons Blvd., Suite 700
McLean, VA 22102
Counsel for Plaintiff

Eva Petko Esber
Williams & Connolly LLP
725 Twelfth Street, NW
Washington, DC 20005
Counsel for Jacqueline C. Duchange

Deborah B. Baum
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037
Counsel for Chevy Chase Trust Company

UCC Retrievals, Inc.
7288 Hanover Green Dr.
Mechanicsville, VA 23111
*Registered Agent for Inter-Properties, Inc. and
Trans-American Aeronautical Corporation*

/s/ Andrew N. Cook
Andrew N. Cook

EXHIBIT B
to Response

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

JORGE J. CARNICERO)	
)	
Plaintiff,)	
	)	Case No. 13-0001400
v.	)	Judge Brian F. Holeman
	)	Next Court Date: May 24, 2013
JACQUELINE C. DUCHANGE, <i>et al.</i>	)	Event: Initial Conference
)	
Defendants.)	

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETER
PEJACSEVICH’S AND NATALIA PEJACSEVICH’S MOTION TO DISMISS THE
CROSS-CLAIM OF CHEVY CHASE TRUST COMPANY**

Pursuant to Rules 12(b)(1), 12(b)(2) and 12(b)(6) of the Rules of the Superior Court of the District of Columbia, Defendants Peter Pejacsevich (“Peter”) and Natalia Pejacsevich (“Natalia”) (together, the “Pejacseviches”), through undersigned counsel, respectfully submit this Memorandum of Points and Authorities in Support of their Motion to Dismiss the Cross-Claim of Chevy Chase Trust Company (“Chevy Chase”).

I. INTRODUCTION

Chevy Chase has filed a cross-claim against the Pejacseviches, primarily seeking to prohibit the Pejacseviches from allegedly pursuing a federal trademark of the name “Atoka Farm.” Chevy Chase’s claim against the Pejacseviches should be dismissed.

First, this Court lacks subject matter jurisdiction to consider Chevy Chase’s cross-claim, as Chevy Chase’s challenge to the Pejacseviches’ alleged application to register a federal trademark is within the exclusive jurisdiction of the United States Patent and Trademark Office (“USPTO”) and the federal courts.

Second, this Court lacks personal jurisdiction over the Pejacseviches. The Pejacseviches, who reside in Virginia and have not consented to this Court’s jurisdiction, do not have systematic

and continuous contacts with the District of Columbia such that they are subject to the general jurisdiction of this Court. Further, all of the alleged actions giving rise to the cross-claim took place in Virginia—not the District of Columbia. Finally, to the extent Chevy Chase contends that this Court has jurisdiction under the District of Columbia’s Uniform Trust Code, Chevy Chase is wrong.

Third, even if this Court finds that it has jurisdiction, the cross-claim against the Pejacseviches should be dismissed because Chevy Chase has failed to state a claim upon which relief may be granted for the following reasons: (i) Chevy Chase’s claim is not ripe for judicial resolution because the trademark dispute is pending with the USPTO; (ii) Chevy Chase does not allege that there is an actual controversy between Chevy Chase and the Pejacseviches related to certain accountings of the 2008 Modified Trust; and (iii) Chevy Chase’s separate “damages” count is not an independent cause of action.

II. BACKGROUND¹

A. Previous Litigation and the Settlement Agreement

Beginning in December 2008, the Plaintiff commenced a series of lawsuits against his sister, named defendant Jacqueline C. Duchange (“Ms. Duchange”) and others, in which the Plaintiff alleged that Ms. Duchange had exercised undue influence over their father, Jorge E. Carnicero (“Mr. Carnicero”) and caused him to make a series of modifications to certain estate planning instruments, including a marital trust (the “2008 Trust”). (*see* Chevy Answer ¶ 22). In an effort to resolve that litigation, the Plaintiff and Ms. Duchange, as well as certain other

¹ The factual allegations herein are drawn primarily from Chevy Chase’s answer (“Chevy Answer”), counterclaim and cross-claims (together, “Chevy Claim”). While this Court must take well-pled facts in the cross-claim as true in considering a motion under Rule 12(b)(6), any reference herein to the allegations in the counterclaim and cross-claims is not an acknowledgement by the Pejacseviches of the truth of such allegations.

parties, executed a settlement agreement in June 2011 (the “Settlement Agreement”).² (*Id.* ¶ 27). Neither the Pejacseviches nor Chevy Chase was a party to the Settlement Agreement. (Chevy Claim ¶ 10). The Pejacseviches signed a separate consent document that related to certain specific, limited portions of the Settlement Agreement (the “Consent”).³

As part of the Settlement Agreement, the distribution of property under the 2008 Trust was modified in several respects (the “Modified 2008 Trust”). (Chevy Answer ¶ 28). Chevy Chase was appointed trustee of the Modified 2008 Trust pursuant to the Settlement Agreement. (Chevy Claim ¶ 10).

B. The Present Lawsuit

1. The Plaintiff’s Action

On February 19, 2013, the Plaintiff filed a complaint, alleging that Ms. Duchange “and her family” breached the Settlement Agreement (Compl. at 2). Unable to technically allege that the Pejacseviches breached the Settlement Agreement (since they are not parties to the Settlement Agreement), the Plaintiff alleges that they breached the separate Consent document. (*Id.* ¶¶ 118-127). The Plaintiff also alleges that Chevy Chase has breached its duties as trustee of the Modified 2008 Trust and seeks removal of Chevy Chase as trustee. (Chevy Claim ¶ 15).

2. The Pejacseviches’ Motion to Dismiss the Plaintiff’s Action

On March 14, 2013, the Pejacseviches filed a motion to dismiss the Plaintiff’s action on the grounds that (i) this Court lacks personal jurisdiction over the Pejacseviches; and (ii) even if this Court has jurisdiction, the Plaintiff’s allegations, taken as true, fail to state a claim upon which relief may be granted. On April 1, 2013, the Plaintiff filed a brief in opposition to the

² The Settlement Agreement is attached hereto as Exhibit A.

³ The Consent is attached hereto as Exhibit B.

Pejacseviches' motion to dismiss. On April 8, 2013, the Pejacseviches filed a motion for leave to file a reply brief in further support of their motion to dismiss. The Pejacseviches' motion to dismiss and motion for leave to file a reply remain pending.

3. Chevy Chase's Counterclaim and Cross Claims

On March 27, 2013, Chevy Chase filed a counterclaim against the Plaintiff and cross-claims against Ms. Duchange and the Pejacseviches.

In its counterclaim, Chevy Chase seeks a declaration that certain accountings of the Modified 2008 Trust and certain other trusts are "approved and passed by the Court." (Chevy Claim ¶ 30). Chevy Chase contends that it is entitled to relief because "[a]n actual controversy exists between Chevy Chase on the one hand, and [the Plaintiff] on the other, regarding Chevy Chase's administration" of the Modified 2008 Trust and certain other trusts. (*Id.* ¶ 28).

In its cross-claim, Chevy Chase appears to state three distinct counts against the Pejacseviches and Ms. Duchange as follows:

First, Chevy Chase appears to include the Pejacseviches and Ms. Duchange in the aforementioned count seeking to have this Court "approve and pass" the accountings of the Modified 2008 Trust and other trusts. (*See id.* ¶¶ 27-30 (labeling the count "First Counterclaim and Cross-Claim")). Notably, Chevy Chase does not allege that there exists an actual controversy between Chevy Chase on the one hand, and the Pejacseviches and Ms. Duchange, on the other hand, regarding Chevy Chase's administration of the Modified 2008 Trust. (*Id.*).

Second, Chevy Chase seeks a declaration that the Pejacseviches are prohibited from attempting to trademark the name "Atoka Farm." (*Id.* ¶ 31-35). As a basis for this count, Chevy Chase alleges that, on or about July 26, 2012, Peter filed an application to register the name

“Atoka Farm” with the USPTO on behalf of himself and Natalia.⁴ (*Id.* ¶ 23). The Plaintiff and Chevy Chase have filed oppositions with the USPTO regarding Peter’s alleged application to trademark name the name “Atoka Properties.”⁵ (Chevy Answer ¶¶ 102, 105). Chevy Chase contends that the Pejacseviches’ alleged application to register the trademark “Atoka Farm” interferes with and compromises Chevy Chase’s ability to sell the so-called Atoka Farm, which is a piece of property situated in Fauquier County, Virginia and owned by Inter-Properties, Inc, which was a party to the Settlement Agreement. (Chevy Claim ¶ 26). Chevy Chase further states that “[a]n actual controversy exists between Chevy Chase on the one hand, and Peter and Natalia on the other, regarding their Trademark Application and usage of the name ‘Atoka Farm.’” (*Id.* ¶ 32).

Third, Chevy Chase pleads a separate count for “Damages,” in which it contends that the Pejacseviches’ alleged wrongful dealings and interference with the aforementioned intellectual property will damage the Modified 2008 Trust. (*Id.* ¶ 37). Although the count is entitled “Damages,” Chevy Chase does not claim in this count or elsewhere that it is entitled to compensatory damages.

⁴ In actuality, Peter applied for the aforementioned trademark, but Natalia was not involved. That said, Chevy Chase’s allegations will be taken as true for purposes of this motion. As Peter and Natalia were not both involved in the trademark application process, the subject activity will be referred to herein as the Pejacseviches’ “alleged” trademark application.

⁵ The Pejacseviches expect that Chevy Chase will also file an opposition to Peter’s alleged attempt to trademark the name “Atoka Farm” once the period for challenging that trademark with the USPTO begins.

III. ARGUMENT

A. This Court Lacks Subject Matter Jurisdiction over Chevy Chase's Challenge to the Pejacseviches' Alleged Federal Trademark Application.

This Court is not the proper forum for Chevy Chase's challenge to the Pejacseviches' alleged application to trademark the name "Atoka Farm." If a person or entity desires to challenge a federal trademark application, federal law prescribes the remedy. In particular, the Federal Trademark Statute states in pertinent part:

Any person who believes that he would be damaged by the registration of a mark upon the principal register . . . may, upon payment of the prescribed fee, file an opposition in the Patent and Trademark Office, stating the grounds therefor, within thirty days after the publication . . . of the mark sought to be registered.

15 U.S.C. § 1063. If the person filing an opposition to a trademark application is dissatisfied with the decision of the USPTO, that person may then either appeal the decision to the United States Court of Appeals for the Federal Circuit or file a separate civil action in federal court. 15 U.S.C. § 1071.

Here, both Chevy Chase and the Plaintiff have invoked the aforementioned federal remedy by filing oppositions to an alleged trademark application now pending with the USPTO. (Chevy Answer ¶¶ 102, 105). Nevertheless, Chevy Chase also asks this Court to step in and halt the federal application process, which was commenced pursuant to federal law. *See* 15 U.S.C. § 1051 (stating that a person may "request registration of its trademark on the principal register" by filing an application with the USPTO).

This Court lacks jurisdiction to interfere with the application process, as Sections 1063 and 1071 of the Federal Trademark Statute make clear that Congress intended the process outlined in those sections to be the exclusive remedy for challenging the registration of a *federal*

trademark. Any state interference with that process is thus improper.⁶ *See Donovan v. City of Dallas*, 377 U.S. 408, 411-14 (1964) (holding that a state court could not enjoin a person from pursuing a federal right granted by Congress in a federal forum); *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000) (holding that state action must yield where it “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress”). While Chevy Chase is free to continue to pursue its opposition of the alleged trademark applications with the USPTO, this Court lacks jurisdiction to hear the matter, and the cross-claim should be dismissed pursuant to Rule 12(b)(1).

B. This Court Lacks Personal Jurisdiction over the Pejacseviches.

Chevy Chase alleges that this Court has personal jurisdiction over the counterclaim and cross-claim defendants pursuant to “D.C. Code §§ 13-422, 13-423, 19-1302.2, Section 10 of the Settlement Agreement, and the Consent to Settlement Agreement.” (Chevy Claim ¶ 8). As set forth below, none of those grounds is sufficient to establish this Court’s jurisdiction over the Pejacseviches.

1. Neither D.C. Code § 13-422 Nor § 13-423 Permits the Exercise of Jurisdiction over the Pejacseviches.

This Court has the authority to exercise personal jurisdiction over a non-resident only as permitted by statute *and* as consistent with the due process clause of the Fourteenth Amendment. *Holder v. Haarmann & Reimer Corp.*, 779 A.2d 264, 269 (D.C. 2001). In light of those limitations, this Court cannot exercise jurisdiction over the Pejacseviches under D.C. Code §§ 13-422 or 13-423.

⁶ The Pejacseviches do not contend that Congress intended preemption of the entire field of trademark law such that no state trademark laws may co-exist. Rather, since Chevy Chase’s claim is based on the Pejacseviches’ alleged attempt to register a trademark under *federal* law with the *Federal* Trademark Office, this Court lacks jurisdiction to hear Chevy Chase’s claims.

As an initial matter, the terms of D.C. Code § 13-422 do not authorize jurisdiction over the Pejacseviches. While Section 13-422 permits the exercise of jurisdiction over a person “domiciled in, organized under the laws of, or maintaining his or its principal place of business in, the District of Columbia,” the Pejacseviches are domiciled in Virginia and do not maintain a principal place of business in the District of Columbia (and Chevy Chase has not alleged facts to the contrary).

As for the District of Columbia’s traditional long-arm statute, D.C. Code § 13-423, it has been interpreted to be co-extensive with the due process clause and, as a result, the “statutory and constitutional jurisdictional questions, which are usually distinct, merge into a single inquiry.” *Gasplus, L.L.C. v. United States*, 466 F. Supp. 2d 43, 46 (D.D.C. 2006) (quoting *United States v. Ferrara*, 54 F.3d 825, 828 (D.C. Cir. 1995)). Thus, District of Columbia courts are permitted to “exercise [] personal jurisdiction to the fullest extent of the Due Process Clause.” *Trerotola v. Cotter*, 601 A.2d 60, 67 (D.C. 1991).

Assertions of personal jurisdiction must be evaluated according to the standard set forth by the United States Supreme Court in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). *International Shoe* and its progeny hold that courts may not exercise personal jurisdiction over a non-resident defendant unless that defendant has certain “minimum contacts” with the jurisdiction “as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there.” 326 U.S. at 317. To meet the “minimum contacts” test, the contacts between the non-resident and the forum must be grounded in “some act by which the defendant purposefully avails [himself] of the privilege of conducting activities with the forum [jurisdiction], thus invoking the benefits and protections of its laws.” *Gasplus, L.L.C.*, 466 F. Supp. at 46 (quoting *International Shoe Co.*, 326 U.S. at

316. “In short, ‘the defendant’s conduct and connection with the forum [jurisdiction] [must be] such that he should reasonably anticipate being haled into court there.’” *Id.* (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)).

In applying the constitutional standard, courts distinguish between those situations where the claim in the litigation does not arise out of the defendant’s contacts with the forum (*i.e.*, “general jurisdiction”) and those situations where the claim does arise out of the defendant’s contacts with the forum (*i.e.*, “specific jurisdiction”). *See, e.g., Jenkins v. Kerry*, No. 12-00896, 2013 U.S. Dist. LEXIS 31351, at *21-22 (D.D.C. Mar. 7, 2013); *Gonzalez v. Internacional de Elevadores*, 891 A.2d 227, 232 (D.C. 2006). To establish general jurisdiction over a defendant, a plaintiff must show that the defendant’s contacts with the forum state are “continuous and systematic” such that the defendant may be forced to defend a suit arising out of any subject matter and unrelated to the defendant’s activities within the forum. *Lex Tex Ltd., Inc. v. Skillman*, 579 A.2d 244, 246 (D.C. 1990) (quoting *Helicopteros Nacionales de Columbia v. Hall*, 466 U.S. 408, 414-16 (1984)). On the other hand, specific jurisdiction will lie only where the cause of action arises from the defendant’s activities which “touch and concern” the forum. *Kopff v. Battaglia*, 425 F. Supp. 2d 76, 81 (D.D.C. 2006).

In the present matter, Chevy Chase cannot carry its burden to show that this Court has *in personam* jurisdiction over the non-resident Pejacseviches. All of the alleged actions of the Pejacseviches giving rise to Chevy Chase’s cross-claim took place in Virginia: the Pejacseviches live in Virginia; the alleged Atoka Farm is situated in Virginia; and the USPTO is headquartered in Virginia. Chevy Chase can point to no alleged contacts of the Pejacseviches with the District of Columbia giving rise to the cross-claim. Further, Chevy Chase does not allege in the cross-claim (nor *could* it allege) that the Pejacseviches have “continuous and

systematic” contacts with the District of Columbia such that they are subject to the general jurisdiction of this Court. Accordingly, the exercise of personal jurisdiction over the Pejacseviches, whether general or specific, would violate due process.

2. D.C. Code § 19-1302.2 Does Not Authorize this Court to Exercise Jurisdiction over the Pejacseviches.

Chevy Chase next alleges that this Court has jurisdiction over the counterclaim and cross-claim defendants pursuant to the District of Columbia’s Uniform Trust Code. The act contains a jurisdictional provision that states in pertinent part:

With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in the District of Columbia are subject to the jurisdiction of the courts of the District of Columbia regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of the District of Columbia regarding any matter involving a trust.

D.C. Code § 19-1302.(b). This provision does not authorize jurisdiction over the Pejacseviches.

First, the provision only applies to “beneficiaries” who have “accept[ed] a distribution” from a trust. Chevy Chase does not allege that Peter is a beneficiary. (Chevy Claim ¶ 7). Nor does Chevy Chase allege that Natalia accepted a distribution under the trust. (*See generally* Chevy Claim).

Second, the “principal place of administration” of the trust for which Chevy Chase serves as trustee, the Modified 2008 Trust, is not the District of Columbia.⁷ A trust’s “principal place of administration” is ordinarily the place where the trustee is located,⁸ and Chevy Chase is located in Maryland. (Chevy Claim ¶ 3). Accordingly, the Modified 2008 Trust’s principal place of

⁷ While Chevy Case contends that the “situs” of the Modified 2008 Trust is the District of Columbia, it provides no basis for such a statement (Chevy Claim ¶ 3). And in any event, the “situs” of a trust is irrelevant to determining jurisdiction, as that term is not used in the statute.

⁸ *See* Note to Uniform Trust Code, attached hereto as Exhibit C.

administration is Maryland, and the Uniform Trust Code’s jurisdictional provision is not applicable.⁹

3. Neither the Settlement Agreement Nor the Consent Permit this Court to Exercise Jurisdiction over the Pejacseviches.

Lastly, Chevy Chase contends that this Court has personal jurisdiction over the counterclaim and cross-claim defendants pursuant to “Section 10 of the Settlement Agreement and the Consent to Settlement Agreement.” Neither document can serve as the basis of jurisdiction over the Pejacseviches.

i. Settlement Agreement

In Article IV, Paragraph 10 of the Settlement, each “Party” to the Settlement Agreement consents to the jurisdiction of this Court with respect to matters arising out of the Settlement Agreement.¹⁰ But as Chevy Chase recognizes, the Pejacseviches were not parties to the Settlement Agreement. (Chevy Claim ¶ 10). Accordingly, the Pejacseviches cannot be bound by the Settlement Agreement’s forum-selection clause.

ii. Consent

Although it is not evident from the cross-claim itself, Chevy Chase may attempt to argue that, by signing the Consent document, the Pejacseviches bound themselves to the Settlement Agreement’s forum-selection clause, which should operate as a consent to the personal jurisdiction of this Court. Such an argument would ignore the plain terms of the Consent. The language of the Consent does not expressly reference *all* of the terms of the Settlement Agreement but instead carves out specific, limited portions of the Settlement Agreement

⁹ Even if the statute’s terms authorized the exercise of jurisdiction over the Pejacseviches, a finding of jurisdiction would nevertheless be improper as a violation of due process, as explained in Section II.B.1 above.

¹⁰ See Exhibit A.

pertaining to Peter and/or Natalia.¹¹ The Consent document does not expressly incorporate the Settlement Agreement's forum-selection clause or contain any other jurisdictional provision. Consequently, the Pejacseviches' signing of the Consent cannot be construed as assent to this Court's jurisdiction.¹² *See Knowledgeplex, Inc. v. Metonymy, Inc.*, 574 F. Supp. 2d 164, 172 (D.D.C. 2008) (holding that a party to a subcontract was not bound to the forum-selection clause in a related prime contract).

C. Even if this Court has Jurisdiction, Chevy Chase Has Failed to State a Claim upon which Relief May be Granted.

Even if this Court finds that it has jurisdiction, Chevy Chase has failed to state a claim upon which relief may be granted for the following reasons: (i) Chevy Chase's claim is not ripe for judicial resolution because the trademark dispute is pending with the USPTO; (ii) Chevy Chase does not allege that there is an actual controversy between Chevy Chase and the Pejacseviches related to certain accountings the 2008 Modified Trust; and (iii) Chevy Chase's separate "damages" count is not an independent cause of action. The action against the Pejacseviches should be dismissed under Rule 12(b)(6).

In considering a motion to dismiss pursuant to Rule 12(b)(6), this court must treat all well-pleaded allegations in the complaint as true, and draw all reasonable inferences from the allegations in favor of the plaintiff. *See Murray v. Wells Fargo Home Mortg.*, 953 A.2d 308, 316 (D.C. 2008). Even so, dismissal of the complaint is required if the plaintiff would not be entitled to recover even if all of the allegations in the complaint were proven true. *See Harnett v. Wash.*

¹¹ *See Exhibit B.*

¹² If the Consent *had* expressly incorporated all of the provisions of the Settlement Agreement, such incorporation would not change the Pejacseviches' status as non-parties to the Settlement Agreement. Therefore, even in the event of full incorporation of Settlement Agreement's terms (which did not occur), the Settlement Agreement's forum-selection clause would not apply to the Pejacseviches because they are not "Part[ies]" to the Settlement Agreement.

Harbour Condo. Unit Owners' Ass'n, 54 A.3d 1165, 1171 (D.C. 2012) (“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face”).

1. Chevy Chase’s Cross-Claim Is Not Ripe for Judicial Resolution.

As explained above, the Plaintiff and Chevy Chase have filed oppositions to Peter’s application to register the trademark “Atoka Properties” with the USPTO. (Chevy Answer ¶¶ 102-104). As the USPTO has not yet decided the pending trademark dispute, Chevy Chase does not present a claim that is ripe for judicial resolution, and, therefore, the action against the Pejacseviches should be dismissed. *See, e.g., Env’t Defense Fund, Inc. v. Hardin*, 138 U.S. App. D.C. 391, at *12, 428 F.2d 1093, 1098 (D.C. Cir. 1970) (“The doctrine of ripeness and finality are designed to prevent premature judicial intervention in the administrative process, before the administrative action has been fully considered, and before the legal dispute has been brought into focus”).

2. The Cross-Claim’s First Count Does Not Involve the Pejacseviches.

In the first count of the cross-claim, Chevy Chase seeks a declaration by this Court that the accountings of the Modified 2008 Trust and certain other trusts are “approved and passed by the Court.” (Chevy Claim ¶ 30). In support of that count, Chevy Chase states that “[a]n actual controversy exists *between Chevy Chase on the one hand, and Jorge on the other*, regarding Chevy Chase’s administration of the Modified 2008 Trust . . .” (*Id.* ¶ 28 (emphasis added)). As Chevy Chase does not allege that an actual controversy exists between the Pejacseviches and Chevy Chase related to the administration of the Modified 2008 Trust,¹³ the first count of the cross-claim does not relate to the Pejacseviches and should be dismissed as to them.

¹³ Notwithstanding that Chevy Chase does not allege that the Pejacseviches are presently challenging Chevy Chase’s administration of the Modified 2008 Trust or any other trusts or

3. Chevy Chase's Separate Damages Count Is Improper.

Chevy Chase sets out a third count in the cross-claim entitled "Damages," without specifying a legally-cognizable right to recover any damages.¹⁴ (*Id.* ¶ 37). As a claim for damages it not an independent cause of action, the cross-claim's third count is without merit and should be dismissed. *See Mitchell v. E. Sav. Bank*, 890 F. Supp. 2d 104 (D.D.C. 2012).

IV. CONCLUSION

For the foregoing reasons, Peter Pejacsevich and Natalia Pejacsevich respectfully request this Court grant their Motion to Dismiss the Cross-Claim of Chevy Chase Trust Company and enter an order, in the form of the proposed order attached hereto, dismissing the cross-claim with prejudice, and enter such other and further relief as this Court deems just and proper.

Dated: April 16, 2013

Respectfully submitted,

K&L GATES LLP

/s/ Andrew N. Cook
Andrew N. Cook (D.C. Bar No. 416199)
John P. Estep (D.C. Bar No. 1010495)
K&L Gates LLP
1601 K Street, N.W.
Washington, DC 20006
T: 202-778-9106
F: 202-778-9100
E: andrew.cook@klgates.com
E: john.estep@klgates.com

property, the Pejacseviches hereby reserve all rights to do so in the future (in this litigation or elsewhere) based on facts existing both before and after the date of this motion.

¹⁴ Although the count is entitled "Damages," nowhere in that count or elsewhere in the cross-claim does Chevy Chase seek compensatory damages from the Pejacseviches.

CERTIFICATE OF SERVICE

I certify that on the 16th day of April 2013 a copy of the foregoing was served on the following individuals via First Class U.S. Mail:

Thomas M. Brownell
Holland & Knight LLP
1600 Tysons Blvd., Suite 700
McLean, VA 22102
Counsel for Plaintiff

Eva Petko Esber
Williams & Connolly LLP
735 Twelfth Street, NW
Washington, DC 20005
Counsel for Jacqueline C. Duchange

Deborah B. Baum
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037
*Counsel for Chevy Chase Trust Company,
Trans-American Aeronautical Corporation,
and Inter-Properties, Inc.*

/s/ Andrew N. Cook
Andrew N. Cook

EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement Agreement") is entered into by and between: (a) Jacqueline C. Duchange ("Jacqueline"), individually, as Trustee of the 2008 Jorge E. Carnicero Revocable Trust ("2008 Trust"), as personal representative of the estate of Jorge E. Carnicero (the "Estate"), as an officer and director of the Trans-American, Inter-Properties, and Blue Cove, and as a shareholder in Sobrado, S.A.; (b) Jorge J. Carnicero ("Jorge"); (c) Jacqueline J. Carnicero ("Mrs. Carnicero"); (d) Susan Carnicero, on behalf of L.C., a minor, and N.C., a minor ("Susan"); (e) Inter-Properties, Inc. ("Inter-Properties"); (f) Blue Cove, Inc. ("Blue Cove"); and (g) Trans-American Aeronautical Corporation ("Trans-American"). These people and entities are referred to herein individually as a Party and collectively as the Parties.

DEFINITIONS

1. The "Execution Date" shall be the last date on which this Settlement Agreement has been executed by all of the Parties.
2. The "Effective Date" of this Settlement Agreement shall be the latest of the following events in accordance with Article II, Paragraph I, *infra*: (i) the date of an order of the court in the D.C. Lawsuit (as defined herein) approving this Settlement Agreement; (ii) the date of Mrs. Carnicero's execution of the Irrevocable Trust Agreement and Mrs. Carnicero's Pourover Will provided for in Article II, Paragraphs 5a and 5e, *infra*; the date of an order of dismissal with prejudice of the D.C. Lawsuit; and (iii) the date of an order of the dismissal with prejudice of the Delaware Complaint (as defined herein).

ARTICLE I – PARTIES AND CURRENT LITIGATIONS

- A. Jorge and Jacqueline are the son and daughter, respectively, of Jorge E. Carnicero ("Mr. Carnicero") and Mrs. Carnicero. Jacqueline has one daughter, Natalia Pejaesevich ("Natalia"), and three minor grandchildren, who are all beneficiaries of the 2008 Trust. Jorge has two minor children, L.C. and N.C., who are both beneficiaries of the 2008 Trust.
- B. Susan Carnicero is Jorge's ex-wife and the mother of L.C. and N.C.
- C. Mr. Carnicero owned, directly or indirectly, 100% of the outstanding shares of Inter-Properties and Trans-American. Trans-American owns 15,826 shares of stock in Sobrado, S.A. and owns 100% of the shares of stock in Blue Cove (Trans-American, Inter-Properties, Sobrado, and Blue Cove are referred to herein as the "Carnicero Companies"). Jacqueline owns one share of stock in Sobrado, S.A. Together, Trans-American and Jacqueline own all authorized and outstanding shares of stock in Sobrado, S.A.
- D. In late August 2008, Mr. Carnicero transferred all of his shares of stock in Trans-American and Inter-Properties to the trustee of the 2008 Trust, who consequently became, and remains, directly or indirectly, the 100% owner of all the Carnicero Companies, except for the one share of stock Jacqueline owns in Sobrado, S.A.

E. On December 3, 2008, Jorge filed a seven-count complaint in the Superior Court of the District of Columbia, Civil Division, captioned 2008 CA 8461 B, against Mr. Carnicero and Jacqueline seeking to set aside the 2008 Trust and raising breach of contract counts against Mr. Carnicero and tortious interference counts against Jacqueline (the "Initial Action"). Mr. Carnicero and Jacqueline filed counterclaims and defenses in the Initial Action.

F. Mr. Carnicero was the initial trustee of the 2008 Trust. Jacqueline became the trustee of the 2008 Trust on June 24, 2009 upon a determination of Mr. Carnicero's incapacity by two physicians, in accordance with the terms of the trust instrument governing the 2008 Trust (the "2008 Trust Instrument").

G. On October 28, 2009, Mr. Carnicero passed away.

H. On November 6, 2009, Jacqueline filed a petition for probate in the Superior Court of the District of Columbia seeking appointment as personal representative of the Estate and unsupervised and abbreviated probate of Mr. Carnicero's 2008 Will, which requests were granted by the Probate Court. On December 23, 2009, Jorge and Mrs. Carnicero instituted an action in the Superior Court of the District of Columbia, captioned 2009 LIT 51, (the "Will Contest") challenging the validity of the 2008 Will and the 2008 Trust and seeking to have Jacqueline removed as trustee and personal representative. Jacqueline, individually, as trustee of the 2008 Trust, and as personal representative of the Estate, filed counterclaims and defenses in connection with the Will Contest.

I. On March 26, 2010, the Court entered an order consolidating the Initial Action with the Will Contest (collectively, as so consolidated "D.C. Lawsuit").

J. On August 10, 2010, the Court granted leave for Susan Carnicero, as representative of L.C. and N.C., to intervene in the D.C. Lawsuit.

K. On October 29, 2010, Mrs. Carnicero and Jorge filed a Verified Derivative Complaint in the Court of Chancery for the State of Delaware ("Delaware Complaint") against Jacqueline, Trans-American, and Inter-Properties, asserting derivative claims against Jacqueline as a director of Trans-American and Inter-Properties for breach of fiduciary duty and for waste of corporate assets.

L. On May 25, 2011, the Court entered an Order in the D.C. lawsuit appointing Rima D. Carnicero as representative and guardian *ad litem* for any and all unborn and unascertained children or descendants of Jorge J. Carnicero.

M. There are bona fide disputes between the parties, most of which are set forth in the pleadings and related documents in the D.C. Lawsuit and the Delaware Complaint.

The Parties wish to amicably resolve any differences they may have and have determined that it is in their mutual best interests to enter into an out-of-court settlement and dismissal with prejudice of the D.C. Lawsuit and provide for dismissal with prejudice of the Delaware Complaint, without any admission of wrongdoing.

NOW, THEREFORE, in consideration of the foregoing, the respective covenants and agreements herein contained, and in consideration of other good and valuable consideration, each to one another, the sufficiency of which is hereby acknowledged, the Parties to this Settlement Agreement hereby agree as follows:

ARTICLE II – TERMS

1. Definitions, Recitals and Escrows; Effective Date. The Definitions and Recitals set forth above are incorporated herein and made a part of this Settlement Agreement. To the extent any action herein is to be taken on the Effective Date, as defined above, or on a date based on calculation from the Effective Date, and such action cannot be completed on the date contemplated by this Settlement Agreement, then (a) any Party's attorney may provide written notice to the other Parties' attorneys of the issues delaying such actions, (b) the Parties' attorneys will convene as soon as is reasonably possible to resolve the issues, and (c) the Parties will use commercially reasonable efforts to achieve resolution of the issues delaying the action.

2. No Admissions. The Parties understand, acknowledge, and agree that any claims any Party may have against any other Party are disputed and that all Parties are entering into this Settlement Agreement for the purpose of settling such disputes by compromise in order to avoid litigation and to achieve peace. If the Court approves this Settlement Agreement in its entirety and the D.C. Lawsuit and Delaware Complaint are dismissed with prejudice, all parties waive any right to appeal. Neither the execution nor delivery of this Settlement Agreement by any Party, nor the motion or joinder in the motion for approval of this Settlement Agreement, nor the order granting the motion, nor the payment of any consideration or performance of any obligation hereunder is an admission as to the merits of any of the claims the Parties may have against one another, or that the Parties have against any other persons or entities.

3. Loans to Jorge J. Carnicero. This paragraph shall govern extension of certain loans by the trustee of the 2008 Trust to Jorge and satisfaction of certain existing promissory notes obligating Jorge to Mrs. Carnicero.

a. Contemporaneously with the execution of this Settlement Agreement, Jorge shall execute, but leave undated, two promissory notes made payable to the trustee of the 2008 Trust, as follows:

(i) a promissory note in the face amount of \$125,000 in the form attached hereto as Exhibit A; and

(ii) a promissory note in the face amount of \$750,000 in the form attached hereto as Exhibit A.

Jorge shall deliver the executed promissory notes to Holland & Knight LLP ("H&K"), and H&K shall hold those promissory notes in escrow. Within thirty (30) days after the Effective Date, the trustee of the 2008 Trust shall pay (a) by wire transfer to H&K, the amount of \$675,000 and (b) by transfer to Mrs. Carnicero's Irrevocable Trust (as defined and provided for in Article II, Paragraph 5 of this Settlement Agreement), the amount of

\$200,000. Within two business days of the completion of these payments, H&K shall release those promissory notes to the trustee of the 2008 Trust, dated as of the Effective Date. Upon the 2008 Trust's receipt of said promissory notes the trustee of Mrs. Carnicero's Irrevocable Trust shall cancel the two promissory notes executed by Jorge in favor of Mrs. Carnicero, for \$100,000 each, dated March 3, 2011 and May 16, 2011. Jorge agrees to pay directly to Mrs. Carnicero's Irrevocable Trust the interest owed on the aforesaid promissory notes of March 3, 2011 and May 16, 2011, through the date of the aforesaid cancellation, within twenty (20) days after such cancellation.

b. The trustee of the 2008 Trust will advance an additional \$100,000 to Jorge if, on or after the time when the above payments are made under Paragraph 3a above, and within sixty (60) days of the Effective Date, Jorge delivers to the trustee of the 2008 Trust a promissory note executed by him in the face amount of \$100,000 the payment of which is secured to the satisfaction of the trustee of the 2008 trust by a deed of trust constituting a first lien on real property in Virginia (which may include real property of a third party such as Mrs. Carnicero's interest in real property referred to below as "Bolinvar"). The promissory note shall provide for quarterly payments of interest at the applicable federal rate for its term in effect for the month when the loan is made, shall have a maturity date no later than ninety (90) days after Mrs. Carnicero's death, shall be dated as of the date of its delivery to the trustee of the 2008 Trust and shall include such other provisions that are typically in such note obligations as determined by the trustee. The deed of trust shall be executed and acknowledged on the date of the promissory note and shall be recorded in land records for the jurisdiction where the real property is located. The trustee of the 2008 Trust shall advance the \$100,000 to Jorge as soon as the promissory note is delivered and the deed of trust securing its obligations is recorded.

4. Modification of 2008 Trust. As set forth in Paragraph 13, *infra*, the Parties will file in the D.C. Lawsuit, a joint motion and proposed order to approve this Settlement Agreement, and to modify the 2008 Trust Instrument to be effective as of the Effective Date under this Settlement Agreement. The terms of the proposed modified 2008 Trust Instrument ("Modified 2008 Trust Instrument"), attached hereto as Exhibit B are material parts of this Settlement Agreement. Any further modification or amendment thereto may not be made without the written consent of the Parties. In the event the Court does not approve any provision of the Modified 2008 Trust Instrument as part of this Settlement Agreement, this agreement shall be void absent the written consent of all Parties.

5. Management and Disposition of Mrs. Carnicero's Property. It is Mrs. Carnicero's intention and a material provision of this Settlement Agreement that she take the actions and execute instruments and/or documents with respect to management and disposition of her property as provided below in this paragraph.

a. Contemporaneously with the execution of this Settlement Agreement, Mrs. Carnicero shall execute the Irrevocable Trust Agreement ("Mrs. Carnicero's Irrevocable Trust Agreement") in the form of the document attached hereto as Exhibit C to establish an irrevocable trust ("Mrs. Carnicero's Irrevocable Trust"). The terms of Mrs. Carnicero's Irrevocable Trust Agreement are a material part of this Settlement

Agreement, and any modification or amendment thereto may not be made without the written consent of the Parties.

b. Except as provided below in this paragraph, Mrs. Carnicero's Irrevocable Trust shall hold all of Mrs. Carnicero's property including but not limited to her (i) financial assets, such as bank accounts, savings accounts, any other financial or investment accounts, certificates of deposit, shares of stock, interests in mutual funds, bonds, and other securities and promissory notes; (ii) dividends and other receivables and amounts collected before or after formation of the Irrevocable Trust, and those attorneys fees and costs that will be reimbursed to her, either directly or through Jorge out of the attorneys fees and costs shown on Exhibit D; (iii) real property, including her Spring Valley residence; (iv) limited liability company and partnership interests; and (v) tangible personal property, such as jewelry, silver, artworks, antiques, and the personal property at her residence in the District of Columbia or in safety deposit boxes or other locations, including her personal property located at the Atoka Farm.

c. Mrs. Carnicero's tangible personal property includes but is not limited to property identified in Exhibit E hereto, subject to the provisions of Paragraph 17 of this Article. The trustee of Mrs. Carnicero's trust shall obtain a further appraisal and inventory of the tangible personal property located at the Spring Valley residence not reflected on Exhibit E, including but not limited to the contents of the locked sideboard in the dining room and the locked wine closet in the basement. Each Party to this Agreement other than Mrs. Carnicero represents and warrants that (i) he or she has not removed any tangible personal property from the Spring Valley residence since June 24, 2009; (ii) they are not aware of any person other than Mrs. Carnicero who has removed any tangible personal property from the Spring Valley residence since June 24, 2009; and (iii) they have not themselves, nor are they aware of any other person who has removed valuable silver items, such as British or Georgian antique silver, from the Spring Valley residence at any time.

d. Contemporaneously with execution of the Settlement Agreement, Mrs. Carnicero shall execute an assignment of her tangible personal property described above to the trustee of Mrs. Carnicero's Irrevocable Trust. Mrs. Carnicero shall complete the transfer of ownership of all of her other property to the trustee of Mrs. Carnicero's Irrevocable Trust as soon as possible and in any event within sixty (60) days after the Effective Date of this Settlement Agreement. Any property subsequently received by her or discovered to be owned by her shall also promptly be transferred to the trustee of Mrs. Carnicero's Irrevocable Trust to be held among its trust assets. The trustee shall use best efforts to locate, account for and/or obtain replacement checks for all insurance proceeds from Mr. Carnicero's life insurance policies, all proceeds from redemption of bonds since June 24, 2009, and all dividend checks and replacement dividend checks issued to Mrs. Carnicero since June 24, 2009, and to locate and account for items of tangible personal property that may be missing and file insurance claims, as appropriate, for missing items.

e. Contemporaneously with the execution of this Settlement Agreement, Mrs. Carnicero shall execute a Last Will and Testament ("Mrs. Carnicero's Pourover

Will") in the form of the document attached hereto as Exhibit E. Mrs. Carnicero's Pourover Will shall be maintained by her during her life so that upon her death (i) any property that could pass according to her last will and testament shall be distributed by her personal representative to the trustee of Mrs. Carnicero's Irrevocable Trust, (ii) the trustee of Mrs. Carnicero's Irrevocable Trust is appointed as personal representative of her estate, and (iii) the estate taxes arising at her death shall be paid, and her GST exemption shall be allocated, as provided in Exhibit E.

f. Contemporaneously with the execution of this Settlement Agreement, Mrs. Carnicero shall execute beneficiary designations for any life insurance policies that are owned or controlled by her and that will pay benefits on her death. Each designation shall name the trustee of Mrs. Carnicero's Irrevocable Trust as the beneficiary of the death benefit. To the extent any life insurance policy that will pay a death benefit on her death is acquired by Mrs. Carnicero after execution of the Settlement Agreement, she will designate the trustee of Mrs. Carnicero's Irrevocable Trust as the beneficiary of the death benefit under the policy.

g. Contemporaneously with the execution of this Settlement Agreement, Mrs. Carnicero shall execute beneficiary designations for benefits under any annuity contract, IRA, qualified plan or similar arrangement that are payable on her death to a beneficiary designated by her. Those designations and any future designation for each such benefit or other similar benefit shall be made to (i) the trustee of Mrs. Carnicero's Irrevocable Trust; or (ii) one half (1/2) to any one or more members of a class comprising of Jorge and his descendants and one-half (1/2) to any one or more members of a class comprising Jacqueline and her descendants.

h. Mrs. Carnicero shall maintain a personal checking account that can receive distributions from Mrs. Carnicero's Irrevocable Trust, payment of the benefits described in subparagraph g, and payments from Social Security. If she designates recipients to receive that account on her death, such designations and any future designation shall be made to (i) the trustee of Mrs. Carnicero's Irrevocable Trust; or (ii) one half (1/2) to any one or more members of a class comprised of Jorge and his descendants and one-half (1/2) to any one or more members of a class comprised of Jacqueline and her descendants.

i. Nothing in this Settlement Agreement shall be construed to limit Mrs. Carnicero's ability to participate as an accommodation party or otherwise to provide security for the \$100,000 promissory note by Jorge described in Paragraph 3b *supra*.

6. Sale of Atoka Parcel to 2008 Trust. Inter-Properties owns real property located in Fauquier County, Virginia known as the Atoka Farm, Virginia PIN Numbers 6073-68-5135, 6073-48-4243, 6073-45-7956, and 6073-88-4395 ("Atoka"). Inter-Properties shall complete a boundary line adjustment to establish an approximately 100-acre parcel of Atoka Farm as shown on the attached Exhibit G (the "Atoka Parcel"). Inter-Properties then shall sell and the trustee of the 2008 Trust then shall acquire the Atoka Parcel for an amount equal to the current fair market value of the Atoka Parcel as determined by a qualified independent real estate appraiser (the

"Atoka Parcel Purchase Price") selected by the trustee of the 2008 Trust in its sole and absolute discretion, with notice to Jorge and Jacqueline. The Atoka Parcel Purchase Price will be paid prior to or contemporaneously with the delivery of the deed for the Atoka Parcel by the execution and transmittal of a promissory note by the trustee of the 2008 Trust in the amount of the Atoka Parcel Purchase Price. Within 90 days of the Effective Date, Inter-Properties shall execute and shall cause the recording of a General Warranty deed conveying the Atoka Parcel to the trustee of the 2008 Trust.

7. Allocations and Disposition of Bolivar and the Atoka Parcel. The trustee of the 2008 Trust and Mrs. Carnicero own as equal tenants in common an approximately 145-acre property referred to herein as Bolivar, in Loudoun County, Virginia PIN Number 536-46-9524 ("Bolivar"). The Trustee of the 2008 Trust shall allocate its interest in Bolivar and the Atoka Parcel (after its purchase from Inter-Properties) to the Atoka-Bolivar Marital Trust in accordance with the terms of the Modified 2008 Trust Instrument.

8. Modification of Power of Attorney. Contemporaneously with the execution of this Settlement Agreement, Mrs. Carnicero shall revoke the existing Power of Attorney dated November 20, 2009 and execute new Powers of Attorney in the form of the documents attached hereto as Exhibit II and Exhibit I. Jorge shall return all copies of the November 20, 2009 Power of Attorney to Ronald Aucutt, who is authorized to destroy the same. Jorge shall also deliver any credit or debit cards on Mrs. Carnicero's accounts to Ronald Aucutt to be held for disposition in accordance with the instructions of the trustee of Mrs. Carnicero's Irrevocable Trust. Jacqueline and Jorge shall not accept appointment under any subsequent power of attorney of Mrs. Carnicero unless both of them agree to such appointment.

9. Past Acts. In connection with the preparation of this Settlement Agreement, the Parties have exchanged information regarding the nature and extent of the 2008 Trust's and Mrs. Carnicero's assets and liabilities, and significant changes in those assets and liabilities, since June 24, 2009. Each of the Parties warrants and represents that, in connection with such mutual requests for disclosure, full disclosure has been made of all material gifts, loans, compensation, exchanges, use of property, or otherwise, whether direct or indirect, including without limitation transfers for inadequate consideration in money or money's worth since June 24, 2009. In addition, Mrs. Carnicero represents and warrants that she has made no undisclosed loans or transfers of property since June 24, 2009. Jacqueline in her capacity as Trustee of the 2008 Trust, and the Carnicero Companies, represent and warrant that they have made no undisclosed loans or transfers of property, other than in the ordinary course of business, since June 24, 2009. All Parties waive any further accounting for past benefits of any kind, whether or not in the form of gifts, other than as specifically provided for elsewhere in this Settlement Agreement, including the exhibits hereto.

10. Jacqueline's Service as Personal Representative and Trustee of the 2008 Trust Successor Personal Representative. Jacqueline will continue as personal representative of the Estate and trustee of the 2008 Trust until the Effective Date at which time she shall be deemed to have resigned from those fiduciary positions as approved by the court and after which she shall have no further responsibility for those fiduciary estates. Chevy Chase Trust, as the successor trustee of the 2008 Trust (Chevy Chase) will be appointed as the personal representative of the Estate on the Effective Date. In no event shall Chevy Chase or any other successor personal

representative of the Estate prosecute, pursue, or assign, or assert set off or recoupment with respect to, any claim against Jacqueline for acts or omissions by her as personal representative of the Estate or in any other capacity to the extent such claim was released pursuant to this Settlement Agreement; and all parties waive rights to accounting and to take exception to any accounting with respect to such released claims. Within thirty (30) days after the Effective Date, Jacqueline will be paid a trustee's commission fee of \$150,000 by the 2008 Trust by wire transfer to Williams & Connolly LLP from the 2008 Trust.

11. Atoka Occupancy and Tax Status. To give the trustee of the 2008 Trust the opportunity to make other arrangements for the security of the assets of the 2008 Trust and the continued supervision of the Atoka Farm operation, Peter and Natalia Pejacsevich and their children shall be permitted to reside in the main house at Atoka Farm, rent-free and with all utilities paid by the 2008 Trust, until the earlier of (a) December 31, 2012, or (b) the sale of Atoka Farm by the trustee for the 2008 Trust. This occupancy shall not constitute a lease, or create any interest in real property. All decisions regarding other or subsequent occupancy and management at Atoka Farm, including any decision to opt out of the applicable Agricultural Overlay districts, or to seek to classify the Atoka Farm property as "land use" for real property tax purposes, shall be as determined by Inter-Properties, or after its liquidation, by the trustee of the 2008 Trust, provided that no such decision shall be made until Chevy Chase has been appointed as successor trustee of the 2008 Trust, and personal representative of the Estate, and has appointed a new board of directors for Inter-Properties.

12. Liquidation of Corporations. The corporate trustee of the 2008 Trust will determine the timing and method of liquidating Inter-Properties and Trans-American. Jacqueline shall receive her current salary of \$11,666.66 per month from Inter-Properties or Trans-American until the earlier of (a) the liquidation of Inter-Properties and Trans-American, and (b) 60 days after the Effective Date. Jacqueline acknowledges and agrees that her employment with Inter-Properties or Trans-American is at will. Any subsequent decisions regarding the employment and compensation of any individual by the Carnicero Companies, including any Party hereto, shall be as determined by the trustee of the 2008 Trust. Except as otherwise provided for in this Settlement Agreement, after the Effective Date the Carnicero companies will not pay any salary to, or any personal bills or expenses of, any family member or Party to this Settlement Agreement. Each Party to this Settlement Agreement represents that he or she has no knowledge of any undisclosed, material changes to the assets of the Carnicero Companies since June 24, 2009, and going forward they each will take no action that will materially affect the assets or liabilities of the Carnicero Companies other than those contemplated by this Agreement. If after the date of this Settlement Agreement there are any assets discovered in which Jorge E. Carnicero had an interest, such assets will be promptly transferred to the trustee of the 2008 Trust. All assets of the Carnicero Companies discovered after the Effective Date shall be liquidated by the trustee of the 2008 Trust in accord with the provisions of this paragraph.

13. Court Approval and Dismissal of Actions. The Parties hereby agree that (i) court approval of this Settlement Agreement in the Superior Court of the District of Columbia, (ii) dismissal of the D.C. Lawsuit with prejudice, (iii) dismissal of the Delaware Complaint with prejudice, and (iv) execution of Exhibit J by Natalia Pejacsevich and Peter Pejacsevich are

conditions precedent to effectiveness of the Settlement Agreement. Within ten (10) business days of the Execution Date, the Parties will jointly file in the D.C. Lawsuit a motion for approval of this Settlement Agreement, the Modified 2008 Trust Instrument, and dismissal with prejudice of all claims in the D.C. Lawsuit. Likewise, within ten (10) business days of the Execution Date, Jorge will file the stipulation attached hereto as Exhibit K to dismiss the Delaware Complaint with prejudice. If the D.C. court denies the approval of the Settlement Agreement and dismissal with prejudice of the D.C. Lawsuit in whole or in part, or the Delaware court will not approve dismissal with prejudice of the Delaware Complaint or the Consent form attached as Exhibit J is not executed, this Settlement Agreement (including the General Releases provided pursuant to Paragraph 16, *infra*) is null and void, and any action taken in respect of this Settlement Agreement shall be ineffective. In that event, the Parties hereby agree that they shall negotiate in good faith to reach a settlement to be resubmitted to the court for approval and for dismissal with prejudice of the D.C. Lawsuit and dismissal of the Delaware Complaint. In the event that the Parties are unable to reach a settlement to be resubmitted to the courts for approval, the Parties shall submit a stipulated motion for, and participate in, court-ordered mediation.

14. Cooperation with Trustees of the 2008 Trust and Mrs. Carnicero's Irrevocable Trust and the Personal Representative. Each of the Parties covenants that, after the Effective Date, he or she will cooperate with the trustee of the 2008 Trust, the personal representative of the Estate, and the trustee of Mrs. Carnicero's Irrevocable Trust. Upon reasonable request of the personal representative or a trustee, each Party will promptly provide all requested financial and other materials, information, or documents that are within the Party's custody or control and pertain to the trusts, the Estate, or the distribution thereof. The Parties hereby grant each other written consent as contemplated in provisions (3) and (5)(1) of the Protective Order entered by the Court in the D.C. Lawsuit on April 22, 2009, to provide to the trustees of the 2008 Trust and Mrs. Carnicero's Irrevocable Trust and/or to the personal representative, documents designated "Confidential" by any of the Parties. The Parties acknowledge that Chevy Chase as the successor personal representative may file amended or supplemental estate tax returns for the Estate. Except in the case of its gross negligence, dishonesty, or bad faith, Chevy Chase will be held harmless with respect to any estate tax filings for the Estate, whether filed before or after the appointment of Chevy Chase as successor personal representative; all taxes, interest, penalties, assessments or deficiency claims related thereto shall be paid from the 2008 Trust.

15. Attorneys' Fees and Expenses. The 2008 Trust shall bear the costs and attorneys' fees relating to the litigation or proceedings between the Parties or Mr. Carnicero, and the negotiation and consummation of this Settlement Agreement as an expense of administration in accordance with the Schedule attached hereto as Exhibit D. Each of the Parties acknowledges that the attorneys' fees and costs so agreed upon are reasonable, were necessarily incurred to permit and facilitate the proper administration and distribution of the 2008 Trust and its assets, that the litigation benefited the 2008 Trust and its resolution and all of its beneficiaries, and these fees and costs are properly payable from the 2008 Trust. The Parties will cooperate in obtaining Court review and approval of the fees and costs so incurred in connection with the motion for approval of the Settlement provided for by paragraph 13, above. Upon such Court approval, within thirty (30) days of the Effective Date, the trustee of the 2008 Trust shall reimburse the costs and attorneys' fees to the payees listed in Exhibit D, with the exception of Mrs. Carnicero's Irrevocable Trust, which shall be reimbursed within sixty (60) days of the Effective Date. Upon

reimbursement of Mrs. Carnicero's Irrevocable Trust, the trustee of that Trust shall cancel the promissory note(s) that Jorge executed in favor of Mrs. Carnicero for the payment of attorneys' fees and costs. In addition, fees for services required by the Parties' counsel and expenses incurred after those reflected on Exhibit D, and fees and expenses of any beneficiary giving consent to this Settlement Agreement, shall be paid from the 2008 Trust in connection with those services that the trustee of the 2008 Trust determines are or have been reasonably necessary or advisable to complete the actions called for in this Agreement or to assist it in fulfillment of its duties as personal representative and trustee of the 2008 Trust.

16. Releases. Contemporaneously with the execution of this Settlement Agreement, the Parties will execute the "General Releases" attached hereto as Exhibits L, M, N, O, and P. Jacqueline shall deliver the executed General Releases for herself, Trans-American, Inter-Properties, and Blue Cove to Williams & Connolly LLP ("W&C"), Jorge Carnicero shall deliver the executed General Release for himself and the executed Release by Rima as Guardian *ad litem* (Exhibit Q) and representative pursuant to the order of the Court, to H&K. Susan Carnicero, on behalf of L.C. and N.C. shall deliver the executed General Releases for L.C. and N.C. to Cozen O'Connor ("Cozen"). Mrs. Carnicero shall deliver the executed General Release for herself to H&K. W&C, H&K, and Cozen shall certify that they have received all of the executed General Releases. If any of the General Releases attached hereto are not properly executed, this Settlement Agreement will be null and void. If the D.C. Court denies the Motion for Approval in whole or in part and/or does not dismiss the D.C. Lawsuit with prejudice, or the Delaware Court will not allow withdrawal of the Delaware Complaint or approve its dismissal with prejudice, the General Releases attached hereto are null and void. Within two business days of the Effective Date, the Parties, W&C, H&K, and Cozen shall release and exchange the General Releases.

17. Mrs. Carnicero's Tangible Personal Property. Disposition of Mrs. Carnicero's tangible personal property, including the personal property at her home located at 3949 52nd Street, NW, Washington, D.C. ("Spring Valley"), in her safety deposit box at Middleburg Bank, and at Atoka Farm will be made at such time as is in accordance with Mrs. Carnicero's wishes, pursuant to procedures for such distribution established in Mrs. Carnicero's Irrevocable Trust and the equalization terms of Mrs. Carnicero's Irrevocable Trust Agreement. The Parties agree that to the extent any of the Parties dispute Mrs. Carnicero's ownership of any personal property or the appraised value of any personal property (the "Disputed Tangible Personal Property"), (a) the Parties shall preserve the Disputed Tangible Personal Property, and (b) such disputes will be addressed with the trustee of Mrs. Carnicero's Irrevocable Trust after the Effective Date. Each Party to this Settlement Agreement represents and warrants that he or she has no knowledge of any undisclosed, material changes to the assets of Mrs. Carnicero since June 24, 2009, and they each will going forward take no action, including acceptance of any gifts or loans through the Effective Date, which will materially affect the assets or liabilities of Mrs. Carnicero, other than those contemplated by this Agreement.

ARTICLE III - REPRESENTATIONS AND WARRANTIES

1. No Reliance. Each of the Parties represents and warrants that, in executing and entering into this Settlement Agreement, they are not relying and have not relied upon any representation, promise or statement made by anyone which is not recited, contained or embodied in this Settlement Agreement. Each of the Parties understands and expressly assumes the risk that any fact not recited, contained or embodied herein may turn out hereafter to be other than, different from, or contrary to the facts now known to them or believed by them to be true. Nevertheless, subject to the granting of the Motion for Approval and the dismissal or withdrawal of the D.C. Lawsuit and the Delaware Complaint, each of the Parties intends by this Settlement Agreement, and with the advice of their own, independently selected counsel, to release finally, fully and forever all matters released in the General Releases (the "Released Matters") and agrees that this Settlement Agreement shall be effective in all respects notwithstanding any such difference in facts, and shall not be subject to termination, modification or rescission by reason of any such difference in facts.

2. No Assignment. The Parties represent and warrant that they have not heretofore assigned or transferred or purported to assign or transfer to any person or entity all or any part of or any interest in any claim, contention, demand, cause of action or otherwise relating to any Released Matter.

3. No Encumbrances. The Parties make the following representations and warranties:

- a. No encumbrances.
 - (i) Inter-Properties, and Jacqueline in her capacity as an officer and director of Inter-Properties, represent and warrant that between June 24, 2009 and the date of this Agreement, they neither created nor caused to be created any liens, transfers of development rights or encumbrances, including but not limited to conservation easements, on Atoka except those shown on the title report attached as Exhibit R other than three tenancies at Atoka (Michael Robinson, Michael Jenkins and Leslie Hedison, and John Hudson).
 - (ii) Jacqueline in her capacity as Trustee, Jorge J. Carnicero, and Mrs. Carnicero each represent and warrant that, between June 24, 2009 and the date of this Agreement each of them has neither created nor caused to be created any liens, transfers of development rights or encumbrances, including, without limitation, conservation easements, on Bolivar except those shown on the title report attached as Exhibit S.
 - (iii) Jorge J. Carnicero and Jacqueline J. Carnicero represent and warrant that that they have taken all actions reasonably necessary and proper to protect the value and interests of the Spring Valley

property in connection with any issues presented or raised by the U.S. Army Corps of Engineers.

- (iv) In addition, each of the Parties (including those listed in (i), (ii), and (iii) above), represents and warrants that he, she, or it, as the case may be, has no actual knowledge of, any liens, transfers of development rights or encumbrances, including, without limitation, conservation easements or transfers of development rights, on Atoka, Bolinvar, or Spring Valley except those shown on the title reports attached as Exhibits R, S, and T and other than three tenancies at Atoka (Michael Robinson, Michael Jenkins and Leslie Hedison, and John Hudson).

b. No Authority to encumber.

- (i) Inter-Properties represents and warrants that, except as shown on the title report attached as Exhibit R, and other than three tenancies at Atoka (Michael Robinson, Michael Jenkins and Leslie Hedison, and John Hudson) and the boundary line adjustment contemplated in this Agreement, between June 24, 2009 and the date of this Agreement, it did not execute, nor cause to be executed, any conveyance or transfer, or contract to convey or transfer, any interest in real property owned by Inter-Properties, nor in any way granted any authority to Natalia Pejacsevich or Peter Pejacsevich to convey or transfer, or contract to convey or transfer, any interest in real property owned by Inter-Properties, or to encumber such real property, whether by power of attorney or any other source of authority, written or otherwise.
- (ii) Jacqueline, in her capacity as an officer and director of Inter-Properties, represents and warrants that, except as shown on the title report attached as Exhibit R, and other than three tenancies at Atoka (Michael Robinson, Michael Jenkins and Leslie Hedison, and John Hudson) and the boundary line adjustment contemplated in this Agreement, between June 24, 2009 and the date of this agreement, she did not execute any conveyance or transfer, or contract to convey or transfer, any interest in real property owned by Inter-Properties, nor in any way grant any authority to Natalia Pejacsevich or Peter Pejacsevich to convey or transfer, or to contract to convey or transfer, any interest in real property owned by Inter-Properties, or to encumber such real property, whether by power of attorney or any source of authority, written or otherwise; and, to the best of her knowledge, Jorge E. Camicero did not make any such transfer, contract to transfer, or make any such grant of authority.

(iii) Jorge J. Carnicero and Jacqueline J. Carnicero represent and warrant that, between June 24, 2009 and the date of this Agreement, they did not execute, nor cause to be executed any conveyance or transfer, or contract to convey or transfer, any interest in real property, nor did they in any way give to any third party any authority to convey or transfer or contract to convey or transfer any interest in real property owned by Jacqueline Carnicero, or to encumber such real property, whether by power of attorney or any other source of authority, written or otherwise.

c. As used herein "liens" and "encumbrances" shall not be interpreted to include the requirements of applicable zoning regulations and/or enrollment or participation in zoning or tax overlay districts, including Agricultural Districts, except to the extent to which violations thereof, or failure to pay taxes as required, may give rise to actual assessments, fines or other charges that may constitute valid liens. The Parties affirmatively represent and warrant that they have no actual knowledge of any action that has been taken to request that Fauquier County remove any portion of AtoKn from its Agricultural District in 2011.

4. Blue Cove. Jacqueline, individually and as an officer and director of Blue Cove, represents and warrants, to the best of her knowledge and belief, that Blue Cove has only one non-cash asset: a condominium apartment unit and rentals thereon described as Apartment 48 B at 641 5th Avenue, New York, New York, and that, in her actual knowledge, there has been no material change in Blue Cove assets (excluding rental income and expenditures relating to that unit since June 24, 2009).

5. Sobrado, S.A. Jacqueline, individually and as an officer and director of Trans-American, represents and warrants, to the best of her knowledge and belief that: (a) Sobrado, S.A. is an Argentine Corporation; (b) its only two shareholders are Trans-American owning 15,826 shares of stock and Jacqueline owning one share of stock; (c) no undisclosed material change in Sobrado's assets has occurred since June 24, 2009; (d) Sobrado owns Cottage 4 on John Pringle Drive in Round Hill, Montego Bay, Jamaica; (e) Sobrado owns 504,499 shares of stock in Round Hill Development Corp and 82 shares in Marriott Plaza; and (f) Sobrado has no other assets except cash and receivables and as disclosed herein. Trans-American agrees to vote the shares of stock Trans-American owns in Sobrado so as to cause corporate compliance with the Settlement Agreement, and Jacqueline agrees to vote her own share of Sobrado for that purpose and not to dispose of or encumber her share of stock except in connection with the sale of stock in Sobrado by the trustee of the 2008 Trust or with the trustee's consent.

ARTICLE IV - GENERAL PROVISIONS

1. Signatures and Counterparts. This Settlement Agreement shall be executed in counterparts, each of which so executed shall be deemed an original, irrespective of the date of its execution and delivery, and said counterparts together shall constitute one and the same instrument.

2. Authority to Execute. The execution of this Settlement Agreement by each Party constitutes a representation and warranty that the person signing on behalf of that Party has full authority to bind that Party, including any heirs who may have an interest affected by this Settlement Agreement, and that there exists no impediment to full enforcement of this Settlement Agreement other than Court Approval and consent of non-party beneficiaries of the 2008 Trust, as contemplated by this Settlement Agreement.

3. Advice of Counsel. Each Party has entered into this Settlement Agreement with the advice of counsel and by their respective signatures below certifies that each Party has read this Settlement Agreement in its entirety and had the benefit of the advice of counsel with respect to all of the terms and conditions contained herein.

4. Joint Drafting and Construction. The Parties hereby acknowledge that each of them has been represented by independent counsel of their own selection throughout all negotiations preceding the execution of this Settlement Agreement, and that they have executed the same upon the advice of such counsel. The Parties and their respective counsel cooperated in the drafting and preparation of this Settlement Agreement such that it shall be deemed to be their joint work product and may not be construed against any of the Parties by reason of its preparation.

5. Entire Agreement. This Settlement Agreement together with the Exhibits attached hereto constitutes and is intended to constitute the entire agreement of the Parties and is in full and complete settlement of all claims between the Parties, including those which were or could have been asserted in, or in connection with, or arising out of the D.C. Lawsuit, the Delaware Complaint, the transfers to and administration of the 2008 Trust, administration of the Estate, the beneficiary change to the "2008 Retirement Account," and Mrs. Carnicero's Irrevocable Trust and estate. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as specifically set forth herein. The Parties hereby expressly waive any right to rely on any prior statements, representations, promises or agreements not set forth herein. All prior or contemporaneous discussions or negotiations with respect to the subject matter hereof are superseded by this Settlement Agreement. This Settlement Agreement is entered solely for the benefit of Parties to it and confers no benefit upon a non-party, except as is limited to the occupancy provisions for Atoka in Article II, Paragraph 11.

6. Further Assurances. Each Party hereto shall use reasonable and diligent efforts to proceed promptly with the transactions contemplated herein, to fulfill the conditions precedent, and to execute such other and further documents and perform such other and further acts as may reasonably be required or appropriate to effectuate the provisions of this Settlement Agreement.

7. Modification and Amendment. This Settlement Agreement may not be modified or amended orally and no modification, termination or waiver shall be valid unless in writing and signed by all of the Parties and, to the extent required, approved by the Court. Oral modifications shall be of no force or effect.

8. Binding Effect. This Settlement Agreement shall be binding upon and inure to the benefit of all Parties hereto and their respective heirs, representatives, successors and assigns. This Settlement Agreement shall be binding, enforceable, discoverable and admissible to establish the rights, obligations and duties of the Parties hereunder in any action brought to enforce this Settlement Agreement.

9. Tax Responsibility. The Parties agree that they will bear their respective tax liabilities that may arise from this Settlement Agreement other than as specifically provided for elsewhere in this Settlement Agreement, including the exhibits hereto.

10. Judicial Enforcement. This Settlement Agreement shall be construed in accordance with the laws of District of Columbia. Each Party consents to the jurisdiction of the Superior Court of the District of Columbia with respect to any issue concerning enforcement, interpretation or breach of this Settlement Agreement. The Superior Court of the District of Columbia shall retain continuing jurisdiction over the subject matter of the parties for those purposes. Nothing herein confers personal or subject matter jurisdiction in the District of Columbia with respect to any issue relating to real property located outside of the District of Columbia that extends beyond enforcement, interpretation or breach of the terms of this Settlement Agreement.

11. Inadmissibility of Settlement Agreement. This Settlement Agreement, any statements, discussions, or negotiations made in connection with this Settlement Agreement, and any actions taken by any Party pursuant to this Settlement Agreement, may not be offered or be admissible in evidence or in any other fashion against any Party in any action or proceeding for any purpose, except in any action or proceeding brought to enforce the terms of this Settlement Agreement by or against any Party.

12. No Waiver. The waiver of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition contained herein.

13. Severability. Except as otherwise provided herein, if any provision of this Settlement Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, the remaining provisions, and any partially invalid or unenforceable provisions, to the extent valid and enforceable, shall nevertheless be binding and valid and enforceable.

14. Notices. All notices under this Settlement Agreement shall be in writing and shall be deemed effective on the date of delivery if delivered personally (and a receipt obtained therefore), on the fifth calendar day after mailing if mailed by first class mail, registered or certified, postage prepaid, or on the third calendar day if by overnight mail.

[SIGNATURES APPEAR ON NEXT PAGES]

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals the day and year first above written.

JACQUELINE C. DUCHANGE
INTER-PROPERTIES, INC.
BLUE COVE, INC.
TRANS-AMERICAN AERONAUTICAL CORPORATION

Jacqueline C. Duchange
Jacqueline C. Duchange, individually, as Trustee of the 2008 Jorge E. Carnicero Revocable Trust, as personal representative of the Estate of Jorge E. Carnicero, as an officer and director and on behalf of Trans-American, Inter-Properties and Blue Cove, and as a shareholder in Sobrado

Dated: ____ day of _____, 2011

JORGE J. CARNICERO

Jorge J. Carnicero, individually

Dated: ____ day of _____, 2011

JACQUELINE J. CARNICERO

Jacqueline J. Carnicero, individually

Dated: ____ day of _____, 2011

SUSAN CARNICERO

Susan Carnicero, on behalf of L. C., a minor, and N. C., a minor

Dated: ____ day of _____, 2011

CARNICERO/DUCHANGE SETTLEMENT AGREEMENT – EXHIBIT LIST

<u>Exhibit A</u>	Jorge J. Carnicero promissory note for \$125,000 and \$750,000 loans
<u>Exhibit B</u>	2008 Trust Instrument (modified)
<u>Exhibit C</u>	Mrs. Carnicero's Irrevocable Trust Agreement
<u>Exhibit D</u>	Schedule of Attorneys Fees and Expenses
<u>Exhibit E</u>	Non-exhaustive list of personal property for Mrs. Carnicero
<u>Exhibit F</u>	Mrs. Carnicero's Last Will and Testament/Pourover Will
<u>Exhibit G</u>	Plat for Atoka Parcel Boundary Line Adjustment
<u>Exhibit H</u>	Atoka-Bolinvar Limited Power-of-Attorney (Mrs. Carnicero)
<u>Exhibit I</u>	Modified General Power-of-Attorney (Mrs. Carnicero)
<u>Exhibit J</u>	Consent Form for Natalia and Peter Pejasevich
<u>Exhibit K</u>	Stipulation and contents to dismiss the Delaware Complaint with prejudice
<u>Exhibit L</u>	GENERAL RELEASE (Jacqueline C. Duchange)
<u>Exhibit M</u>	GENERAL RELEASE (Jorge Carnicero)
<u>Exhibit N</u>	GENERAL RELEASE (Jacqueline J. Carnicero)
<u>Exhibit O</u>	GENERAL RELEASE (Susan Carnicero)
<u>Exhibit P</u>	GENERAL RELEASE (Carnicero Companies)
<u>Exhibit Q</u>	GENERAL RELEASE (Rima Carnicero as guardian <i>ad litem</i>)
<u>Exhibit R</u>	Atoka Title Commitment
<u>Exhibit S</u>	Bolinvar Title Commitment
<u>Exhibit T</u>	Spring Valley Title Commitment

EXHIBIT B

CONSENT TO SETTLEMENT AGREEMENT

This Consent to Settlement Agreement is executed on June __, 2011 by Natalia Pejacsevich, individually as representative for her minor children, their descendants, her unborn and unascertained descendants, and descendants of Jacqueline C. Duchange ("Natalia") and Peter Pejacsevich ("Peter").

WHEREAS, Peter and Natalia are husband and wife;

WHEREAS, each of them has received a final, binding, and executed copy of a Settlement Agreement entered into by and among: (a) Plaintiff, Jorge J. Carnicero; (b) Plaintiff, Jacqueline J. Carnicero; (c) Trans-American Aeronautical, Inter-Properties, Inc., and Blue Cove, Inc. ("Carnicero Companies"); (d) Defendant, Jacqueline C. Duchange in her individual capacity and in her stated capacity set forth in the Settlement Agreement; and (e) Susan Carnicero on behalf of L.C., a minor, and N.C., a minor;

WHEREAS, Peter and Natalia have had an opportunity to consult with legal counsel concerning the Settlement Agreement; and

WHEREAS, in Article II, Paragraph 11, of the Settlement Agreement, there is a provision permitting Natalia and Peter to remain in occupancy of the Atoka Farm which Peter and Natalia acknowledge constitutes value and legal consideration for their executing this Consent form.

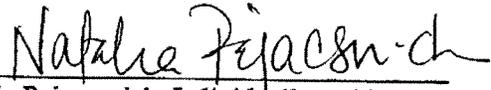
NOW, THEREFORE, the undersigned consent and agree as follows:

1. Consent to Settlement Agreement. The recitations contained within this agreement are true and correct and the provisions concerning the occupancy of Atoka Farm, as stated in the Settlement Agreement, constitute value and legal consideration, for Natalia and Peter to execute this consent.
2. Occupancy of Atoka Farm. The parties to this Consent to Settlement Agreement, jointly and severally, acknowledge the rights and limitations of their future occupancy of Atoka Farm under Article II, Paragraph 11 of the Settlement Agreement; each of them agrees that they shall receive no greater rights to occupancy of Atoka Farm than are set forth in Article II, Paragraph 11 of the Settlement Agreement; and each agrees that their occupancy is limited as set forth in the Settlement Agreement.
3. Consent to Modification of 2008 Trust. Natalia has had an opportunity to review the 2008 Trust referenced in the Settlement Agreement; she has had an opportunity to consult with legal counsel concerning its terms; she acknowledges that she is or may be a qualified beneficiary under the terms of the 2008 Trust Agreement; she does hereby consent to its modification in substantially the form of Exhibit B which is attached to the Settlement Agreement; and she agrees to execute all consent forms needed for the Superior Court in the

District of Columbia to enter a judgment or order modifying the 2008 Trust in substantially the form set forth in Exhibit B to the Settlement Agreement.

4. Further Consents and Assistance. The undersigned have reviewed the Settlement Agreement and agree that each of them will in the future, as requested by any of the parties to this Settlement Agreement, execute such consent forms which are referenced in the Settlement Agreement, which require their execution; they further agree that they will execute these consent forms at no cost and without further consideration; and they further agree that they will execute such further documents as may be reasonably required or appropriate to effectuate the provisions of the Settlement Agreement.

IN WITNESS WHEREOF, Natalia and Peter have executed this Consent to Settlement Agreement on the date above written.



Natalia Pejacsevich, Individually and in all of her stated capacities set forth in this consent



Peter Pejacsevich, Individually and in all of his stated capacities set forth in this consent

EXHIBIT C

UNIFORM TRUST CODE
(Last Revised or Amended in 2010)

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-NINTH YEAR
ST. AUGUSTINE, FLORIDA
JULY 28 – AUGUST 4, 2000

WITH PREFATORY NOTE AND COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

January 15, 2013

personal and proprietary effects of marriage, succession rights, transfer of title and security interests in property, protection of creditors in matters of insolvency, and, more generally, protection of third parties acting in good faith. Hague Convention art. 15.

For the authority of a settlor to designate a trust's principal place of administration, see Section 108(a).

SECTION 108. PRINCIPAL PLACE OF ADMINISTRATION.

(a) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

(1) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or

(2) all or part of the administration occurs in the designated jurisdiction.

(b) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.

(c) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (b), may transfer the trust's principal place of administration to another State or to a jurisdiction outside of the United States.

(d) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than 60 days before initiating the transfer. The notice of proposed transfer must include:

(1) the name of the jurisdiction to which the principal place of administration is to be transferred;

(2) the address and telephone number at the new location at which the trustee can

be contacted;

(3) an explanation of the reasons for the proposed transfer;

(4) the date on which the proposed transfer is anticipated to occur; and

(5) the date, not less than 60 days after the giving of the notice, by which the

qualified beneficiary must notify the trustee of an objection to the proposed transfer.

(e) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(f) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to Section 704.

Comment

This section prescribes rules relating to a trust's principal place of administration. Locating a trust's principal place of administration will ordinarily determine which court has primary if not exclusive jurisdiction over the trust. It may also be important for other matters, such as payment of state income tax or determining the jurisdiction whose laws will govern the trust. *See* Section 107 comment.

Because of the difficult and variable situations sometimes involved, the Uniform Trust Code does not attempt to further define principal place of administration. A trust's principal place of administration ordinarily will be the place where the trustee is located. Determining the principal place of administration becomes more difficult, however, when cotrustees are located in different states or when a single institutional trustee has trust operations in more than one state. In such cases, other factors may become relevant, including the place where the trust records are kept or trust assets held, or in the case of an institutional trustee, the place where the trust officer responsible for supervising the account is located.

A concept akin to principal place of administration is used by the Office of the Comptroller of the Currency. Reserves that national banks are required to deposit with state authorities is based on the location of the office where trust assets are primarily administered. *See* 12 C.F.R. Section 9.14(b).

Under the Uniform Trust Code, the fixing of a trust's principal place of administration will determine where the trustee and beneficiaries have consented to suit (Section 202), and the rules for locating venue within a particular state (Section 204). It may also be considered by a court in another jurisdiction in determining whether it has jurisdiction, and if so, whether it is a convenient forum.

A settlor expecting to name a trustee or cotrustees with significant contacts in more than one state may eliminate possible uncertainty about the location of the trust's principal place of administration by specifying the jurisdiction in the terms of the trust. Under subsection (a), a designation in the terms of the trust is controlling if (1) a trustee is a resident of or has its principal place of business in the designated jurisdiction, or (2) all or part of the administration occurs in the designated jurisdiction. Designating the principal place of administration should be distinguished from designating the law to determine the meaning and effect of the trust's terms, as authorized by Section 107. A settlor is free to designate one jurisdiction as the principal place of administration and another to govern the meaning and effect of the trust's provisions.

Subsection (b) provides that a trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries. "Interests of the beneficiaries," defined in Section 103(8), means the beneficial interests provided in the terms of the trust. Ordinarily, absent a substantial change or circumstances, the trustee may assume that the original place of administration is also the appropriate place of administration. The duty to administer the trust at an appropriate place may also dictate that the trustee not move the trust.

Subsections (c)-(f) provide a procedure for changing the principal place of administration to another state or country. Such changes are often beneficial. A change may be desirable to secure a lower state income tax rate, or because of relocation of the trustee or beneficiaries, the appointment of a new trustee, or a change in the location of the trust investments. The procedure for transfer specified in this section applies only in the absence of a contrary provision in the terms of the trust. *See* Section 105. To facilitate transfer in the typical case, where all concur that a transfer is either desirable or is at least not harmful, a transfer can be accomplished without court approval unless a qualified beneficiary objects. To allow the qualified beneficiaries sufficient time to review a proposed transfer, the trustee must give the qualified beneficiaries at least 60 days prior notice of the transfer. Notice must be given not only to qualified beneficiaries as defined in Section 103(13) but also to those granted the rights of qualified beneficiaries under Section 110. To assure that those receiving notice have sufficient information upon which to make a decision, minimum contents of the notice are specified. If a qualified beneficiary objects, a trustee wishing to proceed with the transfer must seek court approval.

In connection with a transfer of the principal place of administration, the trustee may transfer some or all of the trust property to a new trustee located outside of the state. The appointment of a new trustee may also be essential if the current trustee is ineligible to administer the trust in the new place. Subsection (f) clarifies that the appointment of the new

trustee must comply with the provisions on appointment of successor trustees as provided in the terms of the trust or under Section 704. Absent an order of succession in the terms of the trust, Section 704(c) provides the procedure for appointment of a successor trustee of a noncharitable trust, and Section 704(d) the procedure for appointment of a successor trustee of a charitable trust.

While transfer of the principal place of administration will normally change the governing law with respect to administrative matters, a transfer does not normally alter the controlling law with respect to the validity of the trust and the construction of its dispositive provisions. *See 5A Austin W. Scott & William F. Fratcher, The Law of Trusts Section 615 (4th ed. 1989).*

SECTION 109. METHODS AND WAIVER OF NOTICE.

(a) Notice to a person under this [Code] or the sending of a document to a person under this [Code] must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message.

(b) Notice otherwise required under this [Code] or a document otherwise required to be sent under this [Code] need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(c) Notice under this [Code] or the sending of a document under this [Code] may be waived by the person to be notified or sent the document.

(d) Notice of a judicial proceeding must be given as provided in the applicable rules of civil procedure.

Comment

Subsection (a) clarifies that notices under the Uniform Trust Code may be given by any method likely to result in its receipt by the person to be notified. The specific methods listed in the subsection are illustrative, not exhaustive. Subsection (b) relieves a trustee of responsibility for what would otherwise be an impossible task, the giving of notice to a person whose identity

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

JORGE J. CARNICERO)	
)	
Plaintiff,)	
	)	Case No. 13-0001400
v.	)	Judge Brian F. Holeman
	)	Next Court Date: May 24, 2013
JACQUELINE C. DUCHANGE, <i>et al.</i>	)	Event: Initial Conference
)	
Defendants.)	

ORDER

Upon consideration of Defendant Natalia Pejacsevich’s and Defendant Peter Pejacsevich’s Motion to Dismiss the Cross-Claim of Chevy Chase Trust Company, the memorandum in support thereof, and any opposition thereto, it is this _____ day of _____, 2013, hereby

ORDERED, that the Motion to Dismiss the Cross-Claim of Chevy Chase Trust Company is GRANTED and the cross-claim against Defendants Natalia Pejacsevich and Peter Pejacsevich is dismissed with prejudice.

Judge, Superior Court of the District
of Columbia

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
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JORGE J. CARNICERO)	
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Plaintiff,)	
)	Case No. 13-0001400
v.)	Judge Brian F. Holeman
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JACQUELINE C. DUCHANGE, <i>et al.</i>)	Event: Initial Conference
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Defendants.)	

**RULE 12-I CERTIFICATION OF DEFENDANTS PETER PEJACSEVICH AND
NATALIA PEJACSEVICH**

Counsel for Defendants Peter Pejacsevich and Natalia Pejacsevich (together, the “Pejacseviches”), pursuant to Superior Court Rule 12-I, hereby certifies that counsel for Chevy Chase Trust Company was contacted but did not consent to the requested relief in the Pejacseviches’ Motion to Dismiss the Cross-Claim of Chevy Chase Trust Company.

Dated: April 16, 2013

Respectfully submitted,

K&L GATES LLP

/s/ Andrew N. Cook
Andrew N. Cook (D.C. Bar No. 416199)
John P. Estep (D.C. Bar No. 1010495)
K&L Gates LLP
1601 K Street, N.W.
Washington, DC 20006
T: 202-778-9106
F: 202-778-9100
E: andrew.cook@klgates.com
E: john.estep@klgates.com

CERTIFICATE OF SERVICE

I certify that on the 16th day of April 2013 a copy of the foregoing was served on the following individuals via First Class U.S. Mail:

Thomas M. Brownell
Holland & Knight LLP
1600 Tysons Blvd., Suite 700
McLean, VA 22102
Counsel for Plaintiff

Eva Petko Esber
Williams & Connolly LLP
735 Twelfth Street, NW
Washington, DC 20005
Counsel for Jacqueline C. Duchange

Deborah B. Baum
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037
*Counsel for Chevy Chase Trust Company,
Trans-American Aeronautical Corporation,
and Inter-Properties, Inc.*

/s/ Andrew N. Cook
Andrew N. Cook