

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF NEW YORK

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In re

Case no.14-14130 Ess

Porto Resources LLC

Chapter 11

Debtor

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PORTO RESOURCES, LLC AMENDED DISCLOSURE STATEMENT.

I. INTRODUCTION

This is the disclosure statement (the "Disclosure Statement") in the chapter 11 case of Porto Resources ,(the "Debtor"). This Disclosure Statement contains information about the Debtor and describes the Amended Plan filed by the Debtor . A full copy of the Plan is attached to this Disclosure Statement as Exhibit A.

***Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.***

The proposed distributions under the Plan are discussed at pages 8-11 of this Disclosure Statement. Secured creditors and equity interest holders are described as class 1 ,General unsecured creditors are classified in Class2, and priority unsecured are described as class 3, and will receive a distribution of of their allowed claims, to be distributed as the charts in pages 8-10.

## A. Purpose of This Document

This Disclosure Statement describes:

- The Debtor and significant events during the bankruptcy case,
- How the Plan proposes to treat claims or equity interests of the type you hold (*i.e.*, what you will receive on your claim or equity interest if the plan is confirmed),
- Who can vote on or object to the Plan,
- What factors the Bankruptcy Court (the "Court") will consider when deciding whether to confirm the Plan,
- Why the Proponent believes the Plan is feasible, and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation, and
- The effect of confirmation of the Plan.

Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

## B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing

The Court has not yet confirmed the Plan described in this Disclosure Statement. This section describes the procedures pursuant to which the Plan will or will not be confirmed.

### 1. *Time and Place of the Hearing to Finally Approve This Disclosure Statement and Confirm the Plan*

The hearing at which the Court will determine whether to finally approve this Disclosure Statement and confirm the Plan will take place on February 23<sup>rd</sup> 2016 or as soon thereafter as the Court shall deem appropriate, at 10:00 am Before the Hon. Judge Elizabeth Stong, in Courtroom number, at the United States Bankruptcy Court, Eastern District of New York 271c 17 Cadman Plaza East, Brooklyn, New York, 11201.

### 2. *Deadline For Voting to Accept or Reject the Plan*

If you are entitled to vote to accept or reject the plan, vote on the enclosed ballot and return the ballot in the enclosed envelope to [insert address]. See section IV.A. below for a discussion of voting eligibility requirements.

Your ballot must be received by within thirty days after these disclosure or by order of the court it will not be counted.

### 3. *Deadline For Objecting to the [Adequacy of Disclosure and] Confirmation of the Plan*

Objections to this Disclosure Statement must be filed with the Court and served upon the debtor upon their return date of the motion approve or by March 30<sup>th</sup> whichever.

#### 4. Identity of Person to Contact for More Information

If you want additional information about the Plan, you should contact Michael L. Previto 6 Lyndon Lane , South Setauket New York 11720 at 631-379-0837 representative of plan proponent.

#### C. Disclaimer

*The Court has not yet approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the fact that the Court may approve this Disclosure Statement does not constitute an endorsement of the Plan by the Court, or a recommendation that it be accepted. The Courts approval of this Disclosure Statement is subject to final approval at the hearing on confirmation of the Plan. Objections to the adequacy of this Disclosure Statement may be filed until February 13<sup>th</sup> 2016}*

## II. BACKGROUND

### A. Description and History of the Debtor's Business

**The Debtor is a LLC Corporation with one sole Member, since 2007, the Debtor has been in the business of Real Estate Development and Management the debtor business is to develop properties in fringe cities that need to be encouraged for further development, specifically Washington Heights, in order to provide affordable housing and while stimulating the neighborhood, thus providing increased value in rents.**

### B. Insiders of the Debtor

**Joseph F Porto sole Member**

### C. Management of the Debtor Before and During the Bankruptcy

**Jointly between Fidelity Trust Realty and Joseph F Porto**

**During the two years prior to the date on which the bankruptcy petition was filed, the officers, directors, managers or other persons in control of the Debtor was Joseph Porto.**

The Managers of the Debtor during the Debtor's chapter 11 case have been: Joseph Porto and Managers of the Debtor during the Debtor's chapter 11 case.]

**Jointly between Fidelity Trust Realty and Joseph F Porto**

After the effective date of the order confirming the Plan, the directors, officers, and voting trustees of the Debtor, any affiliate of the Debtor participating in a joint Plan with the Debtor, or successor of the Debtor under the Plan (collectively the "Post Confirmation Managers"), will be: [List Post Confirmation Managers of the Debtor.] The responsibilities and compensation of these Post Confirmation Managers are described page 11 of this Disclosure Statement.

D. Events Leading to Chapter 11 Filing

While the Debtor was fulfilling the Monthly payment obligations, since August 2008, the Debtor had a mortgage balance of \$592,395.00, reduced by the Debtor, from its original amount of \$975,000.00. The mortgage was prematurely, cancelled, by Banco Popular Dominican Republic, here in, BPD Bank. Furthermore, BPD Bank, failed to appropriate the renovation money, breaching its original contractual agreement, an agreement paid for in advance for by the Debtor, with a cost of \$5900.00 by the debtor, in spite of this, and after BPD kept the earnest money points, Bpd failed to provide the \$235,000, renovation money. Then the Secured Creditor, BPD Bank, commenced a foreclosure proceeding index 850123/2012, During the foreclosure, at the behest of the Creditor, Sunkyung, an assignee of BPD Bank, the presiding Justice Rakower, installed a receiver Robert Brill Esq., to collect the rents, manage the company and to commiserate with the creditor, BPD Bank, for "the benefit of the parties". The receiver failed to collect rents, for six months, except one only one single tenant out of four. Specifically, less than \$12,000 in total, furthermore, the Receiver failed to make one single payment to any ongoing concerns, nor taxes, nor any bills, whatsoever, of the Debtors Corporation

E. Significant Events During the Bankruptcy Case

[Describe significant events during the Debtor's bankruptcy case:

- Debtor was granted the right to collect the rents, from the income producing asset , 560 W 173<sup>rd</sup> Street , a four family townhouse and operate the company. The Debtor successfully made 100% collections and was required by stipulation, to turn over all of the proceeds to the receiver, as per Judge Stong's orders.<sup>1</sup> Upon request if Mr. Porto, The fire department duly inspected and approved the sprinkler.
- As a step to improve the Debtors Assets, 517 W 158<sup>th</sup> Street , a prior to Debtor's ownership, fire damaged townhouse shell, The Debtor successfully sealed, secured and strengthened, the vacant building , to alleviate all concerns, regarding the structure and integrity of the building,.
- At the request of the Secured Creditor Sunk Yung, The stay was lifted with respect to the foreclosure proceeding presently pending before Justice Rackower, in New York County Supreme Court. Thereafter the secured creditor brought a second motion for summary Judgment which was denied. The denial of yet a second summary judgment motion cast serious doubt on the validity of the Money owed to the secured creditor Sunk Yung. As such the lien of Sunk Yung may not be valid as to the amount owed or the interest it alleges thereon.
- That thereafter the Secured Debtor , Appealed the first denied motion for summary Judgment. An attempt to dismiss this appeal was denied. Briefs opposing this Appeal were submitted. Counsel for the debtor believes this appeal is without merit for a variety of reasons,, one of which is that the appeal is moot since the issues continued therein were superseded by the second order denying the Appeal. However should the Appeal be granted it would have adverse consequences for the Bankruptcy Estate.

<sup>1</sup> . With the exception of , Malai Phengthanlagsky, that was successfully evicted, only after fourteen months. This long drawn out procedure, may actually be one of quicker eviction based in New York Landlord Tenant ( L&T Court).

- In either scenario, Judge Stong .has retained the final say, in the consequences of such a ruling To the extent if the foreclosure granted and the stay has only been lifted to make such a determination, by the State court.
- There are no sales or transfers , there are no cash collateral orders.
- The professionals Approved by the court include Michael Previto Attorney for the debtor for the Chapter 11 of record, James Mantia as attorney.
- State appointed Temporary Receiver, Robert Brill , functions have been limited to stakeholder only.
- Sunkyoung has made a claim of 1.1 million , in a recent objection of the disclosures but does not disclose how it is that he came to this amount., therefore it is deemed late, baseless and disallowed.

#### F. Pursuable Actions

The Debtor intends to pursue an action to against the secured creditor have the Court determine of the extent and validity of loan if an objection to this plan is asserted by said secured creditor

The Debtor is presently pursuing a judgment, obtained from the landlord in the amount in excess of \$ 30,000,00 against the tenant Malai Phengthanlagsky.

B25B (Official Form 25B) (12/08) - Cont.

G. Claims Objections

Except to the extent that a claim is already allowed pursuant to a final non-appealable order, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. The procedures for resolving disputed claims are set forth in Article V of the Plan.

H. Current and Historical Financial Conditions

The identity and fair market value of the estate's assets are listed in Exhibit B. and basis of valuation of two properties 4.3 million. This figure is arrived at by the Joseph Porto Principal of the debtor based upon his knowledge of both buildings and the land.

Operating Reports are available have been duly filed .with this court.

III. SUMMARY OF THE PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS

A. What is the Purpose of the Plan of Reorganization?

As required by the Code, the Plan places claims and equity interests in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims or equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

B. Unclassified Claims

Certain types of claims are automatically entitled to specific treatment under the Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. As such, the Plan Proponent has *not* placed the following claims in any class:

1. *Administrative Expenses*

Administrative expenses are costs or expenses of administering the Debtor's chapter 11 case which are allowed under § 507(a)(2) of the Code. Administrative expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition. The Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment.

The following chart lists the Debtor's estimated administrative expenses, and their proposed treatment under the Plan:

Description	Estimated Amount Owed	Proposed Treatment
Expenses Arising in the Ordinary Course of Business After the Petition Date	None	Paid in full on the effective date of the Plan, or according to terms of obligation if later
The Value of Goods Received in the Ordinary Course of Business Within 20 Days Before the Petition Date	none	Paid in full on the effective date of the Plan, or according to terms of obligation if later
Professional Fees, as approved by the Court.	TBD	Paid in full on the effective date of the Plan, or according to separate written agreement, or according to court order if such fees have not been approved by the Court on the effective date of the Plan
Clerk's Office Fees	1700.00	Paid in full on the effective date of the Plan
Other administrative expenses	TBD	Paid in full on the effective date of the Plan or according to separate written agreement
Office of the U.S. Trustee Fees	650	Paid quarterly

## 2. *Priority Tax Claims*

Priority tax claims are unsecured income, employment, and other taxes described by § 507(a)(8) of the Code. Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim, in regular installments paid over a period not exceeding 5 years from the order of relief.

Approximately 15000



The following lists the Debtor's estimated § 507(a)(8) priority tax claims and their proposed treatment under the Plan:

Real estate taxes and water and sewer /quarterly –approximately 15,000.00

C. Classes of Claims and Equity Interests

The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the Plan:

1. *Classes of Secured Claims*

Allowed Secured Claims are claims secured by property of the Debtor's bankruptcy estate (or that are subject to setoff) to the extent allowed as secured claims under § 506 of the Code. If the value of the collateral or setoffs securing the creditor's claim is less than the amount of the creditor's allowed claim, the deficiency will [be classified as a general unsecured claim].





Class #	Description	Impairment	Treatment
1	Department of Finance \$21,580.62	impaired	
	Total amt of claims = \$32671.00	impaired	

The following chart lists all classes containing claims under §§ 507(a)(1), (4), (5), (6), and (a)(7) of the Code and their proposed treatment under the Plan:

2 *Class of General Unsecured Claims*

General unsecured claims are not secured by property of the estate and are not entitled to priority under § 507(a) of the Code. [Insert description of § 1122(b) convenience class if applicable.]

The following chart identifies the Plan's proposed treatment of Classes through, which contain general unsecured claims against the Debtor:

Class #	Description	Impairment	Treatment
2 2	General unsecured  Robert Gummineck Mitchell Cantor	[State whether impaired or unimpaired] impaired impaired	Paid in full of the allowed claim Claim on the effective date \$1500 \$1500
<b>Class 3 Priority Unsecured</b>			
3 3 3	DEP Water \$4208.00  \$7880.00 560 w 173 NYC \$ 3211 517 W 158 NYC	unimpaired  unimpaired unimpaired	Paid in full on the effective date Department of Finance RE Taxes Paid in full on the effective date Department of Finance RE Taxes

Equity interest holders are parties who hold an ownership interest (*i.e.*, equity interest) in the Debtor. In a corporation, entities holding preferred or common stock are equity interest holders. In a partnership, equity interest holders include both general and limited partners. In a limited liability company ("LLC"), the equity interest holders are the members. Finally, with respect to an individual who is a debtor, the Debtor is the equity interest holder.

The following chart sets forth the Plan's proposed treatment of the class of equity interest holders:

Class #	Description	Impairment	Treatment
1	Equity interest holders Joseph F Porto	impaired	Paid upon sale or refi

D. Means of implementing the Plan

1. *Source of Payments*

Payments and distributions under the Plan will be funded by the following:

Receivers account current at approximately \$125,000.00 estimated to be \$150,000 by May 2016, should be noted that upon plan confirmation, any excess funds should be transferred to back the Debtors operating account.

2. *Post-confirmation Management*

The Post-Confirmation Managers of the Debtor, and their compensation, shall be as follows:

Name	Affiliations	Insider	Position	Compensation
Joseph F Porto	Member	Yes	Manager	waived

E. Risk Factors

The proposed Plan has the following risks: landlord tenant factors. Risk of Successful Foreclosure, Other risks normally involved in the management of Real Estate.

F. Executory Contracts and Unexpired Leases, there are no Executory Contracts, however the debtor maintains the rights to establish such Executory contracts provided they do not interfere with the current leases in effect. Unexpired lease for Four Tenants generating current revenue at 6300 per month realistic amount is 75% \$4500 per month.

The Plan lists all unexpired leases if any that the Debtor will assume under the Plan. Assumption means that the Debtor has elected to continue to perform the obligations under such contracts and unexpired leases, and to cure defaults of the type that must be cured under the Code, if any.

If you object to the assumption of your unexpired lease or executory contract, the proposed cure of any defaults, or the adequacy of assurance of performance, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan, unless the Court has set an earlier time.

If you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan.

*The Deadline for Filing a Proof of Claim Based on a Claim Arising from the Rejection of a Lease or Contract Is, the approval of this disclosure or as court deems fit.* . Any claim based on the rejection of a contract or lease will be barred if the proof of claim is not timely filed, unless the Court orders otherwise.]

#### G. Tax Consequences of Plan

*Creditors and Equity Interest Holders Concerned with How the Plan May Affect Their Tax Liability Should Consult with Their Own Accountants, Attorneys, And /Or Advisors.*

**The Debtor tax consequences are subject to the actions taken by the court and the consequence of the receiver being relieved such taxes should be no more that approximately \$10,000.**

**The Creditors shall have minimum tax consequences from this plan and is limited to whatever interest they receive minus their legal and administration fees, if any.**

#### IV. CONFIRMATION REQUIREMENTS AND PROCEDURES

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Code. These include the requirements that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the plan, without counting votes of insiders; the Plan must distribute to each creditor and equity interest holder at least as much as the creditor or equity interest holder would receive in a chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in § 1129, and they are not the only requirements for confirmation.

### A. Who May Vote or Object

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.

A creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, the Plan Proponent believes that all classes are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Plan. With the exception of the City of New York' agencies The Plan

Proponent believes that the classes, of the city of New York' agencies are unimpaired and that holders of claims in each of these classes, therefore, do not have the right to vote to accept or reject the Plan. And are deemed to accept the plan.

#### 1. *What Is an Allowed Claim or an Allowed Equity Interest?*

Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest. When a claim or equity interest is not allowed, the creditor or equity interest holder holding the claim or equity interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

*The deadline for filing a proof of claim in this case was designated as March 31<sup>st</sup> 2016.*

#### 2. *What Is an Impaired Claim or Impaired Equity Interest?*

As noted above, the holder of an allowed claim or equity interest has the right to vote only if it is in a class that is *impaired* under the Plan. As provided in § 1124 of the Code, a class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

#### 3. *Who is Not Entitled to Vote*

The holders of the following five types of claims and equity interests are *not* entitled to vote:

- holders of claims and equity interests that have been disallowed by an order of the Court;
- holders of other claims or equity interests that are not "allowed claims" or "allowed equity interests" (as discussed above), unless they have been "allowed" for voting purposes.
- holders of claims or equity interests in unimpaired classes;

- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Code; and
- holders of claims or equity interests in classes that do not receive or retain any value under the Plan;
- Persons claiming administrative expenses.

*Even / You Are Not Entitled to Vote on the Plan, You Have a Right to Object to the Confirmation of the Plan (and to the Adequacy of the Disclosure Statement).*

#### *Who Can Vote in More Than One Class*

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise hold claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

#### *Votes Necessary to Confirm the Plan*

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by "cram down" on non-accepting classes, as discussed later in Section [B.2.].

#### *Votes Necessary for a Class to Accept the Plan*

A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one-half (1/2) of the allowed claims in the class, who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds (2/3) in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

A class of equity interests accepts the Plan if the holders of at least two-thirds (2/3) in amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

#### *B.2. Treatment of Nonaccepting Classes*

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribed by § 1129(b) of the Code. A plan that binds nonaccepting classes is commonly referred to as a "cram down" plan. The Code allows the Plan to bind nonaccepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Code, does not "discriminate unfairly," and is "fair and equitable" toward each impaired class that has not voted to accept the Plan.

*You should consult your own attorney if a 'cramdown' confirmation will affect your claim or equity interest, as the variations on this general rule are numerous and complex.*



C. Liquidation Analysis

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a chapter 7 liquidation. A liquidation analysis is built in the chart above., classes of secured claims page 8.

D. Feasibility

The Court must find that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor, unless such liquidation or reorganization is proposed in the Plan.

1. *Ability to Initially Fund Plan*

The Plan Proponent believes that the Debtor will have enough cash on hand on the effective date of the Plan to pay all the claims and expenses that are entitled to be paid on that date. Tables showing the amount of cash on hand on the effective date of the Plan, and the sources of that cash are shown in the chart above. Classes of secured claims page 8.

*Ability to Make Future Plan Payments And Operate Without Further Reorganization*

The Plan Proponent must also show that it will have enough cash over the life of the Plan to make the required Plan payments.

The Plan Proponent projects financial projections, gross or 54,000 to 75,000 per annum and interest payments of 20,000 per annum and expenses of 10,000 to 30,000 per annum.

The Plan Proponent's financial projections show that the Debtor will have an aggregate annual average cash flow, after paying operating expenses and post-confirmation taxes, of \$5,000 to 20,000 per year.

Plan payment is expected to begin on confirmation and paid in full within two to five years of the plan approval.

*You Should Consult with Your Accountant or other Financial Advisor If You Have Any Questions Pertaining to These Projections.*

V. EFFECT OF CONFIRMATION OF PLAN

A. DISCHARGE OF DEBTOR



The Debtor is a corporation and § 1141(d)(3) is not applicable

Discharge. On the effective date of the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the effective date, to the extent specified in § 1141 (d)(1)(A) of the Code, except that the Debtor shall not be discharged of any debt (i) imposed by the Plan, (ii) of a kind specified in § 1141 (d)(6)(A) if a timely complaint was filed in accordance with Rule 4007(c) of the Federal Rules of Bankruptcy Procedure, or (iii) of a kind specified in § 1141 (d)(6)(B). After the effective date of the Plan your claims against the Debtor will be limited to the debts described in clauses (i) through (iii) of the preceding sentence.

B. Modification of Plan

The Plan Proponent may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or revoting on the Plan.

C. Final Decree

Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Plan Proponent, or such other party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case. Alternatively, the Court may enter such a final decree on its own motion.

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Joseph Porto , Plan Proponent



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