

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

DEL RESTAURANT CORP.,
Dba Lenny's Pizza

Chapter 11
Case No. 16-72807-AST

Debtor.

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DEBTOR'S FIRST AMENDED DISCLOSURE STATEMENT

This First Amended Disclosure Statement is filed pursuant to Section 1125 of Title 11, United States Code, on behalf of DEL RESTAURANT CORP. DBA LENNY'S PIZZA (the "Debtor").

Dated: April 17, 2017

Spence Law Office, P.C.
Robert J. Spence, Esq. (RS3506)
Attorneys for the Debtor and
Debtor-in-Possession
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DISCLOSURE STATEMENT

I. Introduction

This is the First Amended Disclosure Statement (the "Disclosure Statement") in the small business chapter 11 case of Del Restaurant Corp. d/b/a Lenny's Pizza, debtor and debtor-in-possession (the "Debtor"). The Disclosure Statement contains information about the Debtor and describes the Debtor's First Amended Plan of Reorganization, dated April 17⁴, 2017 (the "Plan"). A full copy of the Plan is attached to the Disclosure Statement as **Exhibit A**. Capitalized terms used in the Disclosure Statement shall have the respective meanings set forth in the Plan.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. If you do not have an attorney, you may wish to consult one.

The proposed distributions under the Plan are discussed at pages 10 to 15 of this Disclosure Statement. Holders of Allowed Unsecured Claims are classified in Class 4 and will receive a pro rata distribution of approximately 10% of their Claims, payable over 2 years, without interest.

A. Purpose of Disclosure Statement

The Disclosure Statement describes:

- The Debtor and significant events during the chapter 11 bankruptcy case;
- How the Plan proposes to treat Claims or Interests of the type you hold (i.e., what you will receive on your Claim or Interest if the Plan is confirmed)
- Who can vote on or object to the Plan;
- What factors the Court will consider when deciding to confirm the Plan;

- Why the Debtor believes the Plan is feasible, and how the treatment of your Claim or Interest under the Plan compares to what you would receive in liquidation; and
- The effect of Confirmation of the Plan.

Be sure to read the Plan, together with the Disclosure Statement. The 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 the 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 Confirm the Plan

The hearing at which the Court will determine whether to confirm the Plan will take place on **May 24 at 10:30 a.m.** in Courtroom 960, at the United States Bankruptcy Court for the Eastern District of New York, Long Island Federal Courthouse, Federal Plaza, Central Islip, New York 11722.

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 (also attached as **Exhibit E** hereto) and return the ballot by **overnight delivery, mail, fax or email** to Spence Law Office, P.C., **55 Lumber Road, Suite 5, Roslyn, New York 11576**. Attn: Robert J. Spence, Esq. (FAX NO. 516-605-2084; EMAIL: RSPENCE@SPENCELAWPC.COM) by **May 19, 2017 at 12:00 p.m. EST**. See Section III(I) below for a discussion of voting eligibility requirements. Your ballot must be received by **May 19, 2017 at 12:00 p.m. EST** or it will not be counted.

3. Deadline for Objecting to the Adequacy of the Disclosure Statement and

Confirmation of the Plan

Objections to the Disclosure Statement or to confirmation of the Plan must be filed with the Court and served upon (a) the attorney for the Debtor, Spence Law Office, P.C., Attn: Robert J. Spence, Esq., 55 Lumber Road, Ste. 5, Roslyn, New York 11576 and (b) the United States Trustee, 560 Federal Plaza, Central Islip, New York 11722. The Deadline to object to the adequacy of the Disclosure Statement is **May 19, 2017 by 12:00 p.m. EST**. Objections to the Plan or final approval of the Disclosure Statement must be made on or before **May 19, 2017 by 12:00 p.m. EST**.

4. Identity of Person to Contact for More Information

If you want additional information about the Plan, you should contact the attorney for the Debtor, Spence Law Office, P.C., Attn: Robert J. Spence, Esq., 55 Lumber Road, Ste. 5, Roslyn, New York 11576; Phone: 516-336-2060.

C. Disclaimer

The Court has conditionally approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The hearing on final approval of the Disclosure Statement is scheduled for May 24, 2017 at 10:30 a.m.

D. Debtor's Recommendation

The debtor believes that confirmation of the Plan is in the best interests of all creditors and strongly recommends that all holders of Claims in Classes entitled to vote for the Plan vote to accept the Plan.

II. Background

A. Description, History and Management of the Debtor's Business

The Debtor is a New York corporation, formed on March 11, 1999. The Debtor operates an Italian restaurant at 1451 Main Street, Jamesport, New York where it has been for approximately 18 years. “Lenny’s Pizza” is a traditional Italian pizzeria that includes a wood-fired pizza oven, dining room and full service bar. Lenny Lubrano, a humble self-described (others say famous) “Long Island Pizzaiolo,” was born and raised in Brooklyn, New York. Lenny brought his traditional Italian roots and service experience to Long Island about 30 years ago. Since then, Lenny has been serving New Yorkers and visitors alike with classic New York pizza and Italian cuisine on the North Fork - from Rocky Point, to Mattituck, to Lenny’s Pizza. The focus on premium ingredients, family recipes and one-of-a-kind pizza has made Lenny’s a favorite dining destination in Suffolk County. Over the years, Lenny’s customer base has grown from loyal local customers to also include visitors and tourists of the East End of Long Island. Lenny Lubrano manages the restaurant and is also the head chef. The Plan contemplates that Mr. Lubrano will continue to manage the Debtor after Confirmation of the Plan as its sole director and officer (and head chef).

B. Insiders of the Debtor

Leonard Lubrano is the sole owner of the Debtor. During the one year prior to the Filing Date, Mr. Lubrano received compensation from the Debtor of approximately \$30,000.00. Since the Filing Date and for the life of the Plan, Mr. Lubrano will receive compensation of approximately \$4,700.00/month. In addition to salary and draw, this compensation amount includes a car expense of \$400/month and health insurance of \$1,100.00/month.

C. Events Leading to the Chapter 11 Filing

Prior to the filing of the Chapter 11 case, the Debtor was faced with an insurmountable New York State Sales Tax claim. The claim filed in this case is for over \$311,000 but notwithstanding regular weekly payments during the four (4) years prior to the Filing Date, the Debtor was unable to reduce the claim in any material way. Because of the Sales Tax arrears and payments thereto, the Debtor also fell behind with its rent payments. Because of the Sales Tax claim and the collection efforts by the New York State Department of Taxation and Finance (“NYS Tax”), the Debtor was unable to sustain its business and pay its debts. Accordingly, the debtor sought the protection of the Bankruptcy Court to halt the collection efforts while the Debtor attempted to reorganize its financial affairs.

D. Significant Events During the Chapter 11 Case

Retention of Attorney for Debtor – By Order dated August 8, 2016, Spence Law Office, P.C. (“Spence PC”) was authorized to represent the Debtor in this chapter 11 case. The compensation of Spence PC is subject to the approval of the Court in accordance with the Code and Bankruptcy Rules.

Creditors’ Committee – No Committee of Unsecured Creditors was appointed in the Debtor’s chapter 11 case.

Deadline for Filing Claims – By Order of the Court dated August 3, 2016, the Court established October 10, 2016 as the deadline for any party to file a proof of pre-petition Claim against the Debtor and December 21, 2016 as the deadline for governmental agencies. Any party that did not file a proof of Claim before the October

10, 2016 deadline, and was not listed by the Debtor in its Schedules as holding a Claim that was not contingent, unliquidated or disputed, is not entitled to vote such Claim or receive any distribution in respect of the Claim under the Plan.

Monthly Operations – Since the Filing Date, the Debtor has continued to operate profitably. Based on the Debtor’s most recent monthly operating report for the month of February, 2017, a copy of which is attached hereto as **Exhibit B**, the Debtor’s operations show a net profit since the Filing Date. The Debtor is now entering its busiest part of the year. The Debtor expects that it will continue to operate post confirmation and that its operations will be sufficient to pay the Debtor’s ongoing expenses and Plan payments. The payments to creditors under the Plan will be made from ongoing operations and cash expected to be on hand on the Effective Date.

E. Projected Recovery of Avoidable Transfers

The Debtor has examined potential avoidance actions against creditors and parties in interest and has determined that there are no avoidance actions. The Debtor does not have any avoidance actions against insiders.

F. Claims Objections

The Debtor has been working informally to resolve the NYS Sales Tax claim. While the Debtor expects that this claim will be resolved by agreement on terms substantially similar to the proposed Plan terms, the Debtor reserves its right to object to this claim. The Debtor has agreed to a resolution of the ~~NYS-DOL~~United States Department of Labor Claim (“DOL”) wage claim subject to the terms of the Plan and Disclosure being consistent with the understanding between the Debtor and ~~NYS-DOL~~, and also conditional approval of the Disclosure Statement and confirmation of the Plan.

The Debtor may also object to the Santander secured claim unless that claim can be resolved through the terms of a Plan and the confirmation process. The Debtor does not intend at this time to file any additional objections to Claims except to the extent of (1) any late filed Claim, and (2) any Claim listed in the Schedules, which was listed as contingent, unliquidated or disputed, and was asserted in a timely proof of Claim, and the holder of such Claim does not withdraw the Claim voluntarily following a request from the Debtor.

G. Current and Historical Financial Information

The Debtor's most recent monthly operating report for the month of February, 2017, which includes a summary of the Debtor's operations since the Filing Date, is attached hereto as **Exhibit B**. Assets in the Debtor's possession are listed in the Debtor's schedules filed in this case and on **Exhibit C** hereto (the "Liquidation Analysis"). These assets currently amount to a fair market value of just \$29,000.00. The Debtor expects that the distribution to unsecured creditors in a Chapter 7 liquidation would be \$0.00 based on the Liquidation Analysis. Therefore, it is the Debtor's position that the Plan provides for a greater recovery for the unsecured creditors than a Chapter 7 liquidation.

III. Summary of the Plan

A. What is the purpose of the Plan?

As required by the Code, the Plan places Claims and the Interest in various Classes and describes the treatment each Class will receive. The Plan also states whether each Class of Claims or Interest is impaired or unimpaired.

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 Debtor has not placed the following claims in any Class:

1. **Administrative Expenses** – Administrative expenses are costs of administering the Debtor’s chapter 11 case, which are allowed under section 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 Filing Date. 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:

<u>Type</u>	<u>Estimated Amount Owed</u>	<u>Proposed Treatment</u>
Expenses arising in the ordinary course of business after the Filing Date	\$0	Paid in full on the Effective Date, or according to the terms of the obligation, if later
The value of goods received in the ordinary course of business within 20 days before the Filing Date	\$0	Paid in full on the Effective Date

Professional fees, as approved by the Court	\$25,000.00 (exclusive of the pre-petition retainer of \$15,000.00 and expenses)	Paid \$10,000 on the Effective Date and as agreed \$1,000 per month thereafter.
Clerk's office fees	\$0	Paid in full on the Effective Date
Other administrative expenses	\$0	Paid in full on the Effective Date or as otherwise agreed
Office of the U.S. Trustee fees	\$0	Paid in full on the Effective Date

2. Priority Tax Claims – Priority Tax Claims are unsecured taxes described by section 507(a)(8) of the Code. Unless the holder of a Priority Tax Claim agrees otherwise, it must receive the present value of such Claim, in regular installments paid over a period not exceeding five years from the Filing Date. The Debtor anticipates that NYS Tax will agree to accept payment as set forth herein and in the Plan.

The Debtor owes NYS Tax for unpaid priority sales tax and related interest in the aggregate amount of \$311,584.00 (which includes the priority portion of the reclassified NYS secured claim – see Class 1 herein). The Plan proposes to pay \$173,500.00, in full satisfaction of the NYS Sales Tax Claim by making 96 monthly payments together with interest on the principal portion (\$87,500) accruing thereon commencing on the Effective

Date, at an annual rate equal to five percent (5%). Monthly payments in respect of the Allowed NYS Sales Tax Claim shall commence on the Effective Date in the amount of \$5,000 toward the principal amount and continue thereafter for the next 96 successive months in the amount of \$1,940.00 per month. There shall be no penalty for early payment of part or all of the principal due and owing. Upon completion of the payments to NYS Sales Tax Claim hereunder, the NYS Sales Tax Claim liability shall be satisfied as against the Debtor and any responsible parties including Leonard Lubrano.

The IRS has filed a priority claim for unpaid corporate tax and related interest in the aggregate estimated amount of \$2,539.41. The Plan proposes to pay IRS's Allowed Priority Tax Claim in full by making 12 equal monthly payments in an amount sufficient to self-amortize the amount of the Allowed IRS Priority Claim, together with interest accrued thereon from the Effective Date at an annual rate equal to 5%. Monthly payments in respect of the Allowed IRS Priority Claim shall commence on the Effective Date. The Debtor estimates that the amount of each monthly payment will be of \$235.00. There shall be no penalty for early payment of part or all of the principal due and owing. Upon completion of the payments to the IRS hereunder, the priority claim liability shall be satisfied as against the Debtor and any responsible parties including Leonard Lubrano.

C. Classes of Claims and the Equity Interest

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) as determined by Section 506 of the Code. If the value of the collateral or the setoff

securing the creditor’s claim is less than the amount of the creditor’s Allowed Claim, the deficiency will be classified as a Class 4 general Unsecured Claim.

The following chart lists all of the Classes containing Secured Claims and their proposed treatment under the Plan:

Class Description	Estimated Amount	Impaired	Treatment
Class 1 – NYS Tax Secured Claim	\$0	Yes	The NYS Secured Claim will be reclassified as a priority claim (\$173,500) upon confirmation and paid in accordance with the terms of B(2) herein (NYS Priority Claims). The remainder of the NYS Claim shall be deemed satisfied upon completion of Plan payments to NYS)

Class 2 – Secured Claim of Santander Bank NA	\$0	Yes	<p>Santander Bank is the holder of a disputed secured claim allegedly secured by “all assets” of the Debtor. The secured claim relates to a pre-petition business loan that totals approximately \$32,000.00. Santander Bank attempted to perfect its lien by recording a financing statement under the Uniform Commercial Code with the Secretary of State of New York. The financing statement identifies the collateral subject to the lien of the financing statement as “all assets.” This description of collateral is considered super-generic and not sufficient to effectively perfect a lien on any collateral. In addition, the description of the collateral is limited to the collateral that existing [sic] at the time the lien was filed, and does not extend to any collateral acquired after the lien was filed. Therefore, Santander Bank's lien is not properly perfected. Santander Bank has not filed a proof of claim in this Bankruptcy case. <i>This secured claim of Santander Bank is being re-classified as an unsecured claim to be paid as a Class 4 unsecured creditor under this Plan. Santander Bank shall terminate the UCC-1 Financing Statement and release all other existing liens against the Debtor's asset[s] upon the Effective Date of this Plan. The Santander lien(s) shall not survive after confirmation of the Plan.</i></p>
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2. Class 3 – Non-Tax Priority Claims. Certain Priority Claims that are

referred to in Sections 507(a)(1), (4), (5), (6) and (7) of the Code are required to be placed in Classes. ~~The NYS Department of Labor (“DOL”)~~DOL has or will filed a priority claim for unpaid wages (507(a)(4)) in the amended amount of \$26,000.00 and an unsecured general claim in the amount of approximately \$40,000. The Plan proposes to pay DOL’s Allowed Priority Claim in the amount of \$26,000 in full by making 36 equal monthly payments without interest. Monthly payments in respect of the Allowed DOL Priority Claim shall commence on the Effective Date. The Debtor estimates that the amount of each monthly payment will be \$722.22. Upon completion of the payments to the DOL (the priority and general unsecured claim treatment of the DOL claim under the Plan) the DOL claim liability shall be satisfied as against the Debtor and any responsible parties including Leonard Lubrano. In connection with the resolution of the DOL claim, neither the Debtor nor Mr. Lubrano make any admission or acknowledgement of wrongdoing. The resolution was a business decision by the Debtor and Mr. Lubrano.

Class 3 claim is impaired and therefore entitled to vote on the Plan.

3. Class of General Unsecured Claims –Class 4– General Unsecured Claims are not secured by any Assets of the Debtor and are not entitled to priority under Section 507(a) of the Code. Unless the holder of an Allowed Class 4 Claim agrees to less favorable treatment, the Debtor shall pay holders of Allowed Class 4 Claims approximately 10% of the amount of their Allowed Class 4 Claims within 2 years after the Effective Date, without interest in 4 bi-annual payments.

The Debtor estimates that the total amount of Allowed Class 4 Claims will be approximately \$120,000.00.

The holders of Class 4 Unsecured Claims are impaired under the Plan.

4. Class of Equity Interest / Class 5 – Equity interest holders are parties who hold an ownership interest in the Debtor. The only holder of an equity interest in the Debtor is Leonard Lubrano, its sole stockholder, and his Interest is classified as Class 5. The Plan provides for Mr. Lubrano to retain his Interest in the Debtor. The Class 5 Interest is unimpaired under the Plan.

D. Means of Implementing the Plan

Payments to creditors under the Plan will be made from (a) the Debtor’s ongoing business operations and cash on hand on the Effective Date. Based on the five-year projections annexed hereto as **Exhibit D**, the Debtor will have sufficient cash flow to fund the Plan.

Mr. Lubrano shall continue to manage the Reorganized Debtor and shall continue to receive compensation of not more than \$5,000.00 per month from the Debtor’s current operations.

The Debtor is the disbursing agent under the Plan and will make all scheduled Plan payments.

E. Risk Factors

The proposed Plan has the following risks:

- Ongoing Operations/Projections – The Plan is dependent upon the Debtor’s business operations and the projections, although based upon historic and anticipated future revenue and expenses are subject to many market variables including increases in expenses in the Debtor’s operation and the uncertainty of the restaurant business. The Debtor believes that certain risk factors are mitigated by the fact that the Debtor has been in business for 20 years and that the management of the Reorganized

Debtor will remain the same.

- Inability to Resolve the Claims of NYS Tax/IRS – The Plan is dependent upon NYS , IRS and DOL accepting the treatment proposed under the Plan.

F. Executory Contracts and Unexpired Leases – The Debtor is unaware of any executory contracts or unexpired leases.

The Plan provides that, unless the Debtor has rejected an executory contract or unexpired lease, or filed an application to reject such contract or lease, the Debtor shall assume all executory contracts or leases as of the Confirmation Date pursuant to section 365 of the Code. Assumption means that the Debtor has elected to continue to perform its obligations under contracts and leases, and to cure defaults of the type that must be cured under the Code.

If you object to the assumption of your unexpired lease, 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.

G. Tax Consequences of the Plan

The Debtor does not believe that it will suffer any material adverse tax consequences from Confirmation of the Plan. **Creditors and the holder of the equity Interest concerned with how the Plan may affect their tax liability should consult with their own accountants, attorneys and/or advisors.**

H. Confirmation Requirements

To be confirmable, the Plan must meet the requirements listed in Sections 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 the votes of insiders; the Plan must distribute to the creditor or 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 section 1129, and they are not the only requirements for Confirmation.

I. Who May Vote or Object

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

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor or equity interest holder has a right to vote for or against the Plan only if that holder has a claim or equity interest that is both (1) Allowed or allowed for voting purposes and (2) impaired.

In this case, the Debtor believes that Classes 1, 2, 3 and 4 are impaired and that holders of Claims in each of these Classes are therefore entitled to vote to accept or reject the Plan. The Debtor believes that Class 5 is unimpaired and that holders of Claims (or the Interest) in each of these Classes do not have the right to vote to accept or reject the Plan.

a. What is an Allowed Claim or Allowed Equity Interest? – Only a creditor or equity interest holder with an Allowed Claim or Interest has the right to vote on the Plan. Under the Plan, a Claim or equity interest is Allowed, if either (a) the Debtor has listed the Claim on the Schedules, unless the Claim has been listed as disputed,

contingent or unliquidated or (b) the creditor has filed a proof of Claim or equity interest, unless an objection has been filed to the proof of Claim or equity interest. When a Claim or equity interest is not Allowed, the creditor or equity interest holder cannot vote unless the Court, after notice and a hearing, either overrules the objection or allows the Claim or equity interest for voting purposes pursuant to Bankruptcy Rule 3018(a).

The deadline for filing a proof of claim in this case was October 10, 2016. The deadline for objecting to Claims is 60 days after the Confirmation Date.

b. 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 section 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.

c. Who is **Not** Entitled to Vote? – The holders of the following six 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 (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 sections

507(a)(2), (3) and (8) of the Code;

- holders of Claims or equity interests in Classes that do not receive or retain any value under the Plan; and

- holders of Claims for administrative expenses.

Even If 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.

d. Who Can Vote in More Than One Class – A creditor whose Claim is Allowed, in part, as a Secured Claim and, in part, as an Unsecured Claim, or who otherwise holds Claims in multiple Classes, is entitled to vote to accept or reject the Plan in each capacity, and should cast one ballot for each Claim.

J. Votes Necessary to Confirm the Plan

If impaired Classes exist, the Court cannot confirm the Plan unless (1) at least one impaired Class of Claims 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.

a. 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. In this case, because the holder of the Interest is not impaired under the Plan, Class 5 is deemed to have accepted the Plan and is therefore not entitled to vote.

b. Treatment of Non-Accepting Classes – Even if one or more impaired Classes reject the Plan, the Court may nonetheless confirm the Plan if the non-accepting Classes are treated in the manner prescribed by Section 1129 of the Code. A

Plan that binds non-accepting Classes is commonly referred to as a “cram down” plan. The Code allows the Plan to bind non-accepting creditors or equity interests if it meets all of the requirements for consensual Confirmation except the voting requirements of section 1129(a)(8) of the Code, does not “discriminate unfairly,” and is “fair and equitable” toward each Class that has not voted to accept the Plan. **You should consult your own attorney if a “cram down” confirmation will affect your Claim or equity interest because the variations on this general rule are numerous and complex.**

c. The absolute priority rule comes into play when a class of similarly situated creditors do not accept the plan. The Court will only confirm a plan over the objections of this dissenting group of creditors if the dissenting creditors will be paid in full (see 11 U.S.C. § 1129(b)(2)(B)(i)), or, no one with a claim or interest that is junior to the claims of the dissenting creditor(s) will get or retain anything under the plan (see 11 U.S.C. § 1129(b)(2)(B)(ii)). If the impaired classes hereunder vote in favor of the Plan, they will allow Leonard Lubrano, the Debtor’s principal, to retain his equity interest in the Debtor. The Debtor anticipates that the all classes of impaired claims will accept the treatment under the Plan. Therefore, it is anticipated that the absolute priority rule will not apply.

K. 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 as much under the Plan as such Claim and equity interest holders would receive in a chapter 7 liquidation. A liquidation analysis is attached hereto as **Exhibit C**. It is the Debtor’s contention that it is worth more as a

going concern than in a liquidation. The liquidation analysis shows that the unsecured creditors are unlikely to receive any distribution in a hypothetical Chapter 7 case.

L. Feasibility

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

a. Ability to Initially Fund Plan – The Debtor will have approximately \$10,000.00 on hand on the Effective Date to pay all Claims and expenses that are entitled to be paid on that date. The Debtor is also proposing to pay creditors from current operations of the Debtor’s business. Projections of cash flow are annexed hereto as **Exhibit D.**

b. Ability to Make Future Plan Payments and Operate Without Further Reorganization – The Debtor must also show that it will have enough cash over the lifetime of the Plan to make the required Plan payments without the need for further reorganization. The Debtor has provided its report of operations through February 2017 and submits that based on the projections of its continued operations, there is every indication it will be able to fund the Plan and no indication that it will need a further reorganization.

IV. Effect of Confirmation of the Plan

A. Discharge of Debtor

The Effects of confirmation of the Plan are more fully detailed in the Plan. On (and subject to the occurrence of) the Effective Date, the Debtor shall be discharged from any debt that arose before Confirmation of the Plan, to the extent specified in section

1141(d)(1)(A) of the Code, except that the Debtor shall not be discharged of any debt (1) imposed by the Plan, (2) of a kind specified in section 1141(d)(6)(A) if a timely complaint was filed in accordance with Rule 4007(c) of the Bankruptcy Rules or (3) of a kind specified in section 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 (1) through (3) of the preceding sentence.

B. Modification of the Plan

The Debtor 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. The Debtor may also seek to modify the Plan after Confirmation only if (1) the Plan has not been substantially consummated *and* (2) the Court authorizes the proposed modifications after notice and a hearing.

C. Final Decree

Once the Plan has been substantially consummated as set forth in 11 U.S.C. §1101 (a)(2), the Debtor 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.

V. Recommendation and Conclusion

The Debtor believes that the Plan provides the greatest and earliest possible recovery to holders of Allowed Claims and is in the best interests of creditors. The Debtor therefore recommends that each holder of a Claim that is entitled to vote on the Plan vote to accept the Plan.

Dated: April 17⁴, 2017

DEL RESTAURANT CORP.
Debtor and Debtor in Possession

SPENCE LAW OFFICE, P.C.
Attorneys for Debtor and Debtor in Possession

By: /s/Leonard Lubrano
Leonard Lubrano, President

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