

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:)	
)	
CONDADO RESTAURANT GROUP, INC.,)	Case No. 16-01329 (BKT)
)	
Debtor,)	Chapter 11 (Small Business Case)
)	
<i>Consolidated with</i>)	<i>Consolidated with</i>
)	
RESTAURANT ASSOCIATES OF PR, INC.,)	Case No. 16-01330 (BKT)
)	
Debtor.)	Chapter 11 (Small Business Case)
_____)	

**DEBTORS' [PROPOSED]
DISCLOSURE STATEMENT**

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I. INTRODUCTION.

This is the [proposed] disclosure statement (the “**Disclosure Statement**”) in the ordinary business, consolidated Chapter 11 cases of CONDADO RESTAURANT GROUP, INC. (“**CRG**”), and RESTAURANT ASSOCIATES OF PUERTO RICO, INC. (“**RAPR**”) (together, the “**Debtors**”). This Disclosure Statement contains information about the Debtors and describes the Plan of Reorganization (the “**Plan**”) filed by them contemporaneous herewith. A full copy of the Plan is attached to this Disclosure Statement as **Exhibit 1**. *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 starting at page 33 below. General unsecured creditors are classified in Class 4 and, except for the Puerto Rico Economic Development Bank and the unsecured nonpriority portion of the government tax agencies, will receive a distribution of 10% of their allowed claims.

A. Purpose of This Document.

This Disclosure Statement describes:

- The Debtors and significant events both prior to and during their separate and consolidated bankruptcy cases (the “**Bankruptcy Cases**”);
- 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

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to confirm the Plan;

- Why the Debtors believe 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 a date to be determined, at a time to be determined, in the United States Bankruptcy Court for the District of Puerto Rico. You will receive notice of the hearing.

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 the following address: Weinstein-Bacal, Miller & Vega, P.S.C., Gonzalez Padin Building, Penthouse, 154 Rafael Cordero Street, San Juan, Puerto Rico 00901. See section IV.A. below for a discussion of voting eligibility requirements.

You will be notified of the date that the ballot must be received or it will not be counted.

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3. Objections to this Disclosure Statement.

Objections to this Disclosure Statement or to the confirmation of the Plan must be filed with the Court and served upon the Debtors by the date given by the Court of which you will be notified.

4. Identity of Person to Contact for More Information.

If you want additional information about the Plan, you should contact either Javier Vega Villalba, Esquire, or Stuart A. Weinstein-Bacal, Esquire, of Debtors' counsel, WEINSTEIN-BACAL, MILLER & VEGA, P.S.C., González-Padín Building, Penthouse, 154 Rafael Cordero Street, Plaza de Armas, Old San Juan, Puerto Rico 00901. Telephone: (787) 977-2550 / Telecopier: (787) 977-2559 / Email: swb@wbmlaw.com or jvv@wbmvlaw.com.

C. Disclaimer.

Creditors are advised that the financial information contained in this Disclosure Statement has not been the object of an audit and is not certified by independent public accountants, except where expressly stated otherwise. The Debtors do not warrant or represent that the information contained herein is without inaccuracy notwithstanding its efforts to disclose all matters with careful attention to accuracy and completeness.

Any representation concerning the Debtors and/or any other statement relative to them, different from, or not included in this Disclosure Statement, is not authorized by the Debtors. Any representation or inducement not contained in this Disclosure Statement, which might be made to secure acceptance of the Plan, should not be relied upon by a creditor in deciding how to vote on the Plan.

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II. BACKGROUND.

A. Description and History of the Debtors' Businesses.

The Debtors are both corporations organized and existing under the laws of Puerto Rico.

RAPR was incorporated in 1995, and CRG in 2007. The Debtors' businesses consist of providing food services for dine-in customers, also known as restaurants. The restaurants of both of the Debtors – “Perla” at La Concha Renaissance San Juan Resort in Condado, Puerto Rico (“**La Concha**”), which is owned by CRG, and “Stingray Café and Ballyhoo Bar & Grill” at the Waldorf Astoria El Conquistador Resort and Country Club in Las Croabas, Puerto Rico (“**El Conquistador**”), owned by RAPR – are recognized as leading “fine dining” restaurants in Puerto Rico and both have received many accolades, including reviews and kudos from a wide variety of area, national, and international publications. **Exhibit 2** hereto contains a variety of those accolades.

Last year, in the midst of the economic collapse affecting nearly all businesses in Puerto Rico, the Debtors' businesses continued to prosper, although with slightly reduced revenues than in earlier years. CRG's Perla is also available for social events, and has achieved a kind of “cult” following as a wedding venue, which has redounded to the significant benefit of both the Debtors and their creditors. Stingray and Ballyhoo have been benefitting in this year from the aggressive marketing campaign being conducted by Hilton Hotels and its owner, LXR Luxury Resorts & Hotels (which also owns the Boca Raton Resort & Club, A Waldorf Astoria Resort, in Boca Raton, Florida; the Hyatt Regency Pier 66 Hotel & Marina in Fort Lauderdale, Florida; the South Seas Island Resort in Captiva Island, Florida; and the Hilton Key Largo Resort in Key Largo, Florida, among others). Accordingly, despite the dramatic decrease this year in tourist visits to Puerto Rico, Stingray and Ballyhoo are holding their own.

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B. Insiders of the Debtors.

The Equity Security Holders of the Debtors are Chef Dayn R. Smith (“**Chef Dayn Smith**”) and his wife, Nancy A. Moon Smith (“**Nancy Moon**”).¹

C. Management of the Debtors Before and During the Bankruptcy Cases.

During the two years prior to the date on which the Debtors’ respective bankruptcy petitions were filed, the officers, directors, managers and other persons in control of the Debtors (collectively the “**Management**”) were Chef Dayn Smith, his son, Chef Lindell J. Smith (Perla Restaurant) (“**Chef Lindell Smith**”), and Mr. Angel Maldonado (Stingray Café and Ballyhoo Bar & Grill) (“**Angel Maldonado**”). The Management during the Chapter 11 cases has continued to repose in Dayn Smith as president of both of the Debtors, and Chef Lindell Smith and Angel Maldonado as the respective Management of Perla Restaurant and Stingray and Ballyhoo. Management are in **Exhibit 3** hereto.

After the effective date of the order confirming the Plan, the directors, officers, and voting trustees of the Debtors, any affiliate of the Debtors participating in a joint Plan with the Debtors, or successor of the Debtors under the Plan (collectively the “**Post Confirmation Management**”), will remain the same. The Debtors are in the process of creating a new Board of Directors/Board of Managers. The responsibilities and compensation of these Post Confirmation Management are described in this Disclosure Statement.

¹ Mr. Leslie Valentin, hired as the general manager of Stingray Café and Ballyhoo Bar & Grill in 1998, was originally the holder of 10% of the equity of Debtor CRG, based on his investment of \$100,000. Because he failed to professionally discharge his duties as the General Manager of both CRG and RAPR, and because he failed to answer future capital calls from them as they were made by the Smiths, his employment by the Debtors was terminated, and his equity interest diluted to nothing. He is thus no longer an equity holder of the Debtors.

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D. Events Leading to the Chapter 11 Filing.

1. Chef Dayn Smith.

Chef Dayn Smith is a renowned chef of international fame. He is a 1978 graduate, with High Honors, of the esteemed Culinary Institute of America in Hyde Park, New York, arguably the world's premier culinary college [www.ciachef.edu], which has trained many of the world's foremost chefs, and from which he graduated with high honors.

Chef Dayn Smith has had a distinguished career. He started in 1978 as a sous chef at the Detroit Plaza Hotel in Michigan. That was followed by a time as an executive sous chef at the United Nations Plaza Hotel in New York, and then a *chef de partie* at the famed Le Beau Rivage Palace in Lausanne, Switzerland. He then rose to Executive Chef. From 1982 through 1995 Chef Smith has been Executive Chef at such renowned institutions as the United Nations Plaza Hotel and the St. Moritz Hotel in New York (1982-1990).

Chef Dayn Smith was recruited by Williams Hospitality Group, Puerto Rico's leading hotel owner ("**Williams Hospitality**"), to come to Puerto Rico in 1990. He served first as Executive Chef at the Condado Plaza Hotel and Casino in San Juan (the "**Condado Plaza**"), and later at El Conquistador Resort and Country Club in Las Croabas (1990-1995) ("**El Conquistador**"). In 1995, Chef Dayn Smith was invited by the principal owner of El Conquistador, Mr. Hugh Andrews, to open a restaurant there. Thus was born RAPR and its restaurants, Stingray Café and Ballyhoo Bar & Grill, discussed in greater detail below.

2. Nancy A. Moon Smith.

Nancy Moon, Chef Dayn Smith's wife and the mother of two of his children (now ages 11 and 13), has worked closely with Chef Dayn since 1995. She was part of the incorporation of both of the

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Debtors and in the development of their restaurants. Since 1995, she has been Vice President of RAPR, and since 2008, Vice President of CRG. Initially, Mrs. Smith was intimately involved in the management and operation of the Debtors' restaurants, and has stayed involved during their 21-year life span to date.

Before joining Chef Dayn in the restaurant business, Mrs. Smith was a professional nurse. She graduated with a B.S. in Nursing. She was also an assistant broker at Advest, Inc., in New York; and the President of Aston Private Nursing Services, 729 Park Avenue, New York, New York, from 1988 - 1995. She is a highly competent professional.

3. The births of Stingray Café, Ballyhoo Bar & Grill, and Perla.

a. El Conquistador: Stingray and Ballyhoo.

As stated above, the Debtors are corporate entities which operate fine-dining restaurants at La Concha and El Conquistador, respectively. Stingray Café and Ballyhoo Bar and Grill (hereafter, together, "**Stingray/Ballyhoo**") opened for business at the El Conquistador in 1996 and 1997, when El Conquistador was owned by Williams Hospitality, which also owned the Condado Plaza. The principal owner of Williams Hospitality was Mr. Hugh Andrews, Puerto Rico's preeminent hotelier ("**Hugh Andrews**"), and the genius behind most of Puerto Rico's leading hotels. His enterprises either own or have owned many of the finest hotels in Puerto Rico including but not limited to the El Conquistador, La Concha, the Condado Plaza, the El San Juan Hotel & Casino in Isla Verde ("**El San Juan**"), El Convento Hotel in Old San Juan ("**El Convento**"), and the Verdanza Hotel in Isla Verde (the "**Verdanza**"), among others.

b. La Concha: Perla.

In 2006, La Concha – located on the oceanfront across Millenium Park from La Concha – was

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also owned by Williams Hospitality. In addition, an enterprise in which Hugh Andrews was a principal undertook the massive renovation of the historic Vanderbilt Hotel, originally constructed in 1919 on Ashford Avenue in the Condado by the Vanderbilt family (“**The Vanderbilt**”). The Vanderbilt included the (new) construction of two eleven-story condominium towers on east and west sides of The Vanderbilt (the “**Vanderbilt**”). The Vanderbilt projects began with great fanfare and great expectations in 2006, as the renovation of La Concha was being completed.

Because of his great esteem for Chef Dayn Smith, Hugh Andrews encouraged him to open a restaurant in the “concha” shell at La Concha. The idea was that Chef Dayn’s new restaurant at La Concha would benefit from the symbiotic marketing of both The Vanderbilt and La Concha hotels, and draw its customers from both.

4. The Smiths role in their restaurants was all consuming.

As the “Owners” of the Debtors and their restaurants, both Chef Dayn Smith and Nancy Smith, have worked tirelessly to ensure that the service and beverage operations at the restaurants run smoothly and maintain the highest standards. Together, the Smiths developed the concepts for each of their restaurants, provided and obtained financing, negotiated leases and other contracts, selected the design and decor of the dining rooms and bars, hired and trained staff and management, and brought the concepts to fruition, first Stingray Café, followed shortly by Ballyhoo Bar & Grill. There were two other restaurant ventures, one unsuccessful for reasons beyond the Smiths control and the other successful but short-lived. Finally, in Perla, the Smiths own and operate what is arguably Puerto Rico’s most elegant and best restaurant.

Together, the Smiths developed the beverage programs for their restaurants, including specialty drinks and wine lists; created, maintained, and updated the beverage menus and wine lists; set

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inventory parameters; and assessed quality control, encouraged the service staff to improve and deliver professional friendly service, and hired and trained front-of-the-house staff.

5. The Stingray Lease: Stingray Café and Ballyhoo Bar & Grill opened in 1996.

Having been the Executive Chef at the Condado Plaza, Chef Dayn Smith had a long and successful business relationship with Williams Hospitality and its president, Hugh Andrews, Puerto Rico's most famous hotelier and the genius behind the venerable hotel properties identified above. Williams Hospitality renovated and expanded into a spectacular 450-acre resort El Conquistador, which opened in 1995 in Las Croabas near Fajardo. Hugh Andrews promptly invited Chef Dayn to open the oceanfront restaurant at the bottom of the funicular running from El Conquistador's main hotel to the sea level marina area below. Thus was born RAPR and Stingray/Ballyhoo.

Stingray/Ballyhoo was financed by a loan from Banco Popular for build-out and FF&E. That loan was paid in full. In around 2011, a second loan was taken from Banco Popular to renovate Stingray and Ballyhoo. That loan was also paid in full. Years ago, Banco Popular issued a line of credit to RAPR for around \$250,000. That has now been paid down to approximately \$100,000.

RAPR was incorporated under the laws of Puerto Rico on September 28, 1995. **Exhibit 4** hereto is a genuine copy of RAPR's Certificate of Incorporation. The lease for Stingray and Ballyhoo, titled the "CONCESSION AGREEMENT FOR LA MARINA RESTAURANT AND BAR PLAZA" (the "**Stingray/Ballyhoo Lease**") was executed on October 2, 1995, between the owner, El Conquistador Partnership, L.P. ("**Stingray/Ballyhoo's Landlord**"), and RAPR. RAPR's restaurant project was initially dubbed "La Marina Restaurant & Bar." **Exhibit 5** hereto is a genuine copy of the Stingray Lease.

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According to its Article 2.1, the “Initial Term” of the Stingray Lease was “for a period of ten (10) years and 11 days commencing on December 20, 1995 ... and expiring on December 31, 2005.” RAPR took possession of the leased premises pursuant to that same Article “commencing on October 15, 1995 for purposes of carrying out the improvements and work required herein.” Article 2.2 of the Stingray Lease permitted extension of the Lease for three (3) “Renewal Period(s)” of five (5) years each, or until December 31, 2021. Stingray/Ballyhoo is presently operating in the third renewal period of the Stingray Lease.

The rent required of RAPR, termed a “Concession Fee,” was quite modest in the initial years of the Stingray Lease. The fee increased in the sixth (6th) year of the lease to \$60,000.00 per annum (payable in equal monthly installments), “... plus a Percentage Concession Fee of an amount by which 6% of Concessionaire’s Annual Gross Sales exceeds the Minimum Concession Fee ...[.]” According to Article 4.1(viii) of the Stingray Lease, “[d]uring the First Renewal Period Concessionaire shall pay the Hotel a Minimum Concession Fee of \$96,000.00 per annum ... plus a Percentage Concession Fee of an amount by which 10% of Concessionaire’s Annual Gross Sales exceeds the Minimum Concession Fee[.]” Article 4.1(ix) increased the Minimum Concession Fee “[d]uring the Second Renewal Period ... [to] ... \$120,000.00 per annum” with the same 10% “plus” based on Annual Gross Sales. Article 4.1(x) raised the Minimum Concession Fee to \$144,000 per annum “plus” the same 10% during the Third Renewal Period.

The Stingray Lease in Article 7.1 allowed for seating at Stingray “for approximately 150 guests.” Ballyhoo opened for business on December 25, 1996. Both operations have been continuous from the date of their respective openings.

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Registered guests of El Conquistador (the “**Hotel**”) were, and remain, permitted by Article 11 of the Stingray Lease “... to charge their purchases at Concessionaire’s business to their account with the Hotel[,]” for which the Hotel charged Concessionaire a fee of four percent (4%) during the first year, four point five percent (4.5%) during the second year, and five percent (5%) thereafter. The Hotel made, and continues to make, payments due from registered guests’ charges to RAPR’s restaurants fourteen (14) days after the Hotel’s receipt of payment therefor.

RAPR initially hired a bookkeeper with an accounting degree to maintain the books and records for Stingray/Ballyhoo. After three months, he was let go, having done nothing more than the payrolls, and even that poorly. At the time of his discharge, the Hotel was indebted to RAPR for guest charges at Stingray/Ballyhoo in an amount approaching \$800,000, and the restaurants owed suppliers and taxes of nearly \$500,000. In an effort to help, Nancy Smith’s brother wrote a payroll program for Stingray/Ballyhoo that they have used successfully ever since.

After discharging the bookkeeper, RAPR retained a CPA to oversee its accounting and tax compliance requirements. After accruing late payment penalties, RAPR looked for an alternative, and ultimately retained Rene Mirabal, JD/CPA (“**CPA Mirabal**”) of Value Added Accounting Services, Inc. (“**Value Added**”). Value Added was used by both RAPR and CRG until the filing of their Voluntary Petitions for Relief in these Bankruptcy Cases, and is being used post-petition for bookkeeping services only. Value Added uncovered many irregularities in the accounting practices of its predecessor, and corrected them.

6. 2001: Rodizio Restaurante: An “aside” and distraction.

In January 2001, RAPR opened another restaurant, Rodizio Restaurante in the Plaza del Sol

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Mall in Bayamón (“**Rodizio**”), with a loan from the EDB. Business at Rodizio was strong until the 9/11 terrorist attack on the World Trade Centers in New York. As a result of the terrorist threat to shopping malls, Rodizio suffered an immediate and fatal drop in its business, from which it never recovered. Dayn and Nancy Smith never even contemplated declaring bankruptcy for Rodizio; they simply sold the restaurant for pennies on the dollar and absorbed its EDB loan into RAPR and paid it in a timely manner until it was paid in full.

7. 2002: The restaurant at Palmas del Mar Country Club opens and closes.

In 2002, RAPR took over the restaurant in the Palmas Del Mar Country Club. The Hotel at Palmas del Mar was closed in 2004, and the restaurant there was relinquished by RAPR.

8. 2006: The Smiths move to Virginia.

In 2006, Dayn and Nancy Smith moved to their farm in Virginia to raise their two small children. The move was shortly after their having been held up at gunpoint in their home in Fajardo while they were with Dayn’s two older children from a previous marriage, then ages 10 and 11. It was also after their home had been burglarized three other times and their closest neighbor’s home broken into numerous times and their neighbors severely beaten during a home invasion. Enough was enough.

9. 2007-2008: Perla Restaurant.

a. The Vanderbilt Hotel is set to return to the Condado.

As The Vanderbilt project got underway, there was great optimism in the Puerto Rico business and tourism communities for a rejuvenation of the Condado. Central to that rejuvenation was the completion of the renovation of La Concha and the start of work on The Vanderbilt. In that

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environment, Dayn and Nancy Smith went to work on opening Perla at La Concha.

b. March 2007: Perla signs its Lease.

By a Concession Agreement dated March 7, 2007, between International Hospitality Services, Inc., as “Grantor” (the “**Perla Landlord**”), and Smith Culinary Concepts, Inc., as “Concessionaire,” the lease for Perla was executed (the “**Perla Lease**”). A genuine copy of the Perla Lease is **Exhibit 6** hereto.

c. October 2007: Perla gets an EDB Loan.

By a document entitled “TERM LOAN AGREEMENT between SAN JUAN RESTAURANTS GROUP CORP. and ECONOMIC DEVELOPMENT BANK OF PUERTO RICO” and dated October 1, 2007, San Juan Restaurants Group Corp. (predecessor-in-interest to Debtor CRG), the Economic Development Bank of Puerto Rico (the “**EDB**”) granted a loan in the amount of \$1,500,000.00 (the “**EDB Loan Agreement**” and the “**EDB Loan**”). A genuine copy of the EDB Loan Agreement is **Exhibit 7** hereto. CRG was not incorporated until August 2010, when it assumed the EDB Loan and the 1st Amendment to EDB Loan Agreement. **Exhibit 8** hereto is a genuine copy of CRG’s Certificate of Incorporation.

Pursuant to Section 2.02 of the EDB Loan Agreement, the interest rate on the EDB Loan was the “Prime Rate” but the interest rate “shall never be less than five point sixty percent (5.60%).” The EDB Loan was guaranteed by Dayn Smith, Nancy Smith, and Leslie Valentín Ramos.

By the time the EDB Loan Agreement was executed, Perla was under construction. By late 2007, however, the economy in the United States had begun to decline (*see, e.g.*, the 2015 movie, “The Big Short”), and the Puerto Rico economy was continuing its long decline in the recession which

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began in 2001 and has yet to end. Perla opened in May 2008. Then, in September 2008, things in the United States economy went from bad to worse, and the Great Recession began with a dramatic plummet of the U.S. Stock Markets, the failure of brokerage firms and banks, and the rapid decline into recession (*see, e.g.*, the 2011 movie, "Margin Call"). That recession has not yet ended.

d. Perla opened in 2008.

Based on the affluent guests expected to patronize The Vanderbilt, La Concha had branded itself to be marketed as an upscale Condado beachfront hotel property with an anticipated occupancy rate of eighty-five percent (85%) and a nightly room rate of \$400.00 by 2010. Perla Restaurant was to be the flagship fine dining facility appropriate for such a high-end resort hotel property. Perla's business plan envisioned significantly augmenting its affluent customer base from La Concha with even more affluent guests from The Vanderbilt and the Vanderbilt Towers. The business model for Perla was inextricably intertwined with both The Vanderbilt and the customer occupancy and room rate expectations of La Concha, and cross-promotion of The Vanderbilt, La Concha, and Perla.

After completion of the extensive renovations of the shell ("*la concha*") behind the La Concha hotel, and new construction needed in order to close it off from the elements and transform it into one of the most beautiful restaurant properties in the world² – accomplished with the assistance of the EDB Loan – CRG's Perla Restaurant opened at La Concha in May 2008. The investment of nearly \$2 Million in the construction and renovation of the property and the installation of the extraordinarily luxurious furniture, fixtures, and equipment ("**FF&E**") of Perla can be seen in the photographs

² See the photographs in Exhibit 2 above.

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included in Exhibit 2 above. Unfortunately, that FF&E – currently carried at a value of \$42,366.90 – is of little value other than *in* Perla as an operating business. It is, however, all that secures the EDB Loan other than the personal guarantees of Chef Dayn and Nancy Smith, who are not residents of Puerto Rico, and whose assets are not in Puerto Rico, as discussed above and below.

Perla's initial offerings included, in addition to the gourmet fare provided by Chef Dayn Smith, an expansive collection of some of the world's finest wines, with prices up to and in excess of \$10,000.00 per bottle. It was and is, indeed, the "Pearl" of the Puerto Rico restaurant scene, unparalleled in its elegance and grandeur.

e. January 2009: The 1st Amendment to the EDB Loan.

On January 23, 2009, San Juan Restaurants Group Corp. and the EDB executed a FIRST AMENDMENT TO TERM LOAN AGREEMENT (the "1st Amendment to the EDB Loan"). A genuine copy of the 1st Amendment to the EDB Loan is included herewith as **Exhibit 9**. By the 1st Amendment to the EDB Loan, the credit facility provided by the EDB was increased by \$99,117.00. By Section 2.2 of the 1st Amendment to the EDB Loan, the minimum interest rate on the EDB Loan was increased to six percent (6%). Pursuant to Article 2.05 of the 1st Amendment to the EDB Loan, the monthly payment STAYED THE SAME, to the sum of \$13,513.51. The same Guarantors guaranteed the 1st Amendment to the EDB Loan, and RAPR was added as a Guarantor thereof.

Around the time that Perla opened, Angel Maldonado was promoted to General Manager of Stingray/Ballyhoo, and Mr. Ernie Hernández was hired as the General Manager of Perla. At the same time, Leslie Valentín was promoted to Director of Operations for both Debtors, overseeing the operations of Perla, Stingray, and Ballyhoo.

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f. 2008 and on: Economic Troubles, in the United States and Puerto Rico.

As discussed above and eloquently portrayed in the film “The Big Short,” the overall national economic decline marked by the sub-prime mortgage industry meltdown was beginning in earnest towards the end of 2007. Over the course of the next 18 to 24 months, Perla experienced a decline in sales, similar to the overall restaurant industry in both the United States in general and in Puerto Rico in particular. Daily revenues at Perla even dropped on abysmal days to less than \$1,000, as the Great Recession deepened and The Vanderbilt sat, unfinished and shuttered.

Unfortunately, the distressed economies in both the United States and Puerto Rico had compelled La Concha to slash its rates because of the paucity of “high-end resort customers”; between 2008 and 2015, La Concha’s rates were reduced from the initial average expected \$400/night to an average of \$175/night. The lower prices attracted a different kind of guest. Instead of availing themselves of the fine dining opportunity at Perla, many La Concha guests have opted for less expensive fare at the abundance of restaurants within walking distance of the hotel. Nevertheless, business at Perla is expected to rebound after 2016 given the beneficial publicity that La Concha is receiving. **Exhibit 10** hereto is a chart depicting the annual revenues of Perla. *See also, Exhibit 22* below.

g. 2014: The Vanderbilt finally opens.

Extensive delays in the renovation of The Vanderbilt and the construction and sale of the units in The Vanderbilt’s “Towers” was profoundly delayed by the complications caused by the Great Recession of 2008, from which the United States has only recently begun to recover, and in which the

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Puerto Rico economy remains mired.³ The Vanderbilt was supposed to open in 2010.

In March 2014, a majority interest in The Vanderbilt was acquired by Wall Street mogul John Paulson – a hedge fund billionaire who has been purchasing hotel and resort properties in Puerto Rico at distressed prices since at least 2013. The Vanderbilt was finally completed and, with the opening of its guest rooms in December 2014, Perla's revenues began to increase, reaching \$12,000 daily.

Perhaps most importantly, The Vanderbilt and La Concha are both located in the heart of the Condado district in San Juan and comprise a total of 802 hotel rooms. Perla is thus poised for a resurgence as the economy of Puerto Rico moves towards an inevitable resurgence. The Vanderbilt and La Concha are both located in the heart of the Condado district in San Juan and comprise a total of 802 hotel rooms. The immediate surroundings are characterized by high-end retail stores, numerous restaurants, and luxury condominium developments. The two resorts are separated by approximately 200 feet via the La Ventana al Mar public park. Both The Vanderbilt and La Concha have their main entrances along Ashford Avenue, providing unparalleled access to historic Old San Juan, extensive shopping and tourist activities, cruise ship piers, the new Puerto Rico Convention Center, and the Hato Rey financial district. In addition, San Juan's Muñoz Marín International Airport is only six miles away.

According to PR Newswire's March 10, 2014 (also included in Exhibit 11 above), article, John Paulson, the founder and president of Paulson & Co., opined that: "These two properties are at the epicenter of luxury in San Juan. When completed, the oceanfront, 5-star Vanderbilt will be the most

³ See, e.g., the graph in the article in the August 16, 2016, EL VOCERO newspaper (translation ours): "Economic depression at unexpected levels" the first page of which is **Exhibit 11** hereto. *But see* the articles about Paulson & Co.'s investments in Puerto Rico, also included in Exhibit 11.

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luxurious hotel in San Juan and a global destination spot. We believe the Puerto Rican economy is at the cusp of recovery and both these hotels will benefit from future growth in Puerto Rico.” Mr.

Paulson’s optimism is Perla’s optimism, as the third article in Exhibit 11 above – “John Paulson: Why I put billions in Puerto Rico” – encourages.

While awaiting the recovery of the Puerto Rico economy, however, the combined effects of the Debtors’ declining financial situation and the overall continued economic malaise within the restaurant industry in Puerto Rico made it impossible for the Debtors to continue operations during the normal course. **Exhibit 12** hereto is a table depicting eating and drinking places sales in Puerto Rico from fiscal year 2007 through 2016, as prepared by the Puerto Rico Fiscal Agency and Financial Advisory Authority.

And then, along came Zika and the attendant media hysteria, which has inflicted great damage on Puerto Rico tourism and, as a by-product, the businesses of the Debtors. Now that Zika is spreading on the mainland, Puerto Rico may have a chance to recover by the coming high season on the Puerto Rico hotel and restaurant industry. It is expected that transmission levels of Zika in Puerto Rico will drop in the coming months. A new vaccine for Zika appears to be working in trials, and it is expected that tourism in Puerto Rico in the 2016-2017 season will be greatly improved over 2015-2016 levels. Needless to say, Zika was devastating to both Perla and Stingray/Ballyhoo as conventions and groups canceled their plans to come to Puerto Rico during the 2015-2016 tourist season.

Examples of the kind of articles and publicity which created Zika-based hysteria among people who would have otherwise vacationed and come for business reasons to Puerto Rico in the last year (from the New York Times and npr now), and articles about the optimistic view of the new vaccine, are

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collected in **Exhibit 13** hereto.

Like John Paulson, CRG and RAPR remain confident that Puerto Rico is on the cusp of an economic resurgence. As Mr. Paulson – who has invested what is approaching TWO BILLION DOLLARS (\$2,000,000,000.00) in Puerto Rico resort (the St. Regis), hotel (The Vanderbilt and La Concha), and office building properties, and built a vacation home here – stated in a February 12, 2016, article in CNN Money International, a copy of which is **Exhibit 14** hereto, that Puerto Rico today is like Miami in the 1980s. And Miami today is enjoying a remarkable resurgence!

10. 2011: Chef Dayn and Nancy Smith open Glen Gordon Manor.

In 2006, Chef Dayn and Nancy Smith purchased a farm in Rappahannock County, Virginia, in the small hamlet of Huntly (population 837), about an hour west of Washington, D.C. (“**GGM**”). The Smiths and their young children have lived at GGM since then.

In 2011, GGM opened as an elegant “Bed and Breakfast” for tourists to the area, the beautiful, historic, hilly area known as the Virginia Piedmont, in the foothills of the Blue Ridge Mountains.⁴ The Smiths’ idea behind turning GGM into a bed and breakfast was to decrease their dependence on their salaries from CRG and RAPR derived from their restaurants, and to free cash flow for other operational purposes. The development of GGM was evolutionary.

In the first year of GGM’s operations, the Smiths renovated a small, 3-bedroom house on the GGM property, converting it into two luxurious guest suites. They also turned the dining room of the manor house on GGM into a by-invitation restaurant, serving gourmet dinners with wine pairings, at a cost of \$200 per patron. In tony, rural Rappahannock County, GGM quickly caught on with the local

⁴ **Exhibit 15** hereto contains representative photographs of GGM and its spectacular property.

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gentry. Revenues the first year were approximately \$40,000.

Each year thereafter, revenues at GGM grew. In the second year of operation, 2012, revenues were reached nearly \$180,000. In 2013, revenues grew to almost \$229,000. In 2014, the Smiths decided that they could increase the revenues at GGM substantially by moving their family into another small house on the GGM property, remodeling the three bedrooms in the manor house into additional guest rooms, and converting the dining room and entry hall areas to accommodate a larger restaurant operation. GGM's revenue increased to more than \$336,000 in 2014, and to more than \$450,000 in 2015. YTD 2016 revenue has already surpassed \$500,000, demonstrating 20% annual growth. When its next high season begins in the spring of 2017, around the time of the Effective Date of the Plan, GGM will be entering its peak season and able to contribute to the Debtors to accommodate any shortfalls in their revenues.

Over the years, as the Smiths have downsized their personal living quarters at GGM to accommodate the need for additional guest rooms, first moving from the manor house into a smaller house on the property, and, more recently, from there into an apartment on the second floor of the manor house. If necessary, the Smiths are even willing to put GGM – their only significant asset other than their ownership of the Debtors – into the “pot” of their companies for the purpose of securing certain obligations undertaken in the Debtors' Plan. By doing this, the feasibility of the Debtors' Plan would be significantly enhanced. The Smiths' only condition for the foregoing would be the confirmation of the Plan, which would include staying the efforts of both the IRS and *Hacienda* to collect “trust fund” taxes owed by the Debtors from them, as provided in Section II.F below.

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According to one of the preeminent real estate companies in the Virginia Piedmont area, GGM is a very valuable and marketable property. As an alternative, the Smiths have listed GGM for sale with Hunt Country / Southeby's International Realty ("**Southeby's**"). Southeby's estimate of the fair market value of the GGM property (the "**FMV**"), taking into consideration "... the acreage, the three homes, barn and the considerable restoration" is Three Million Eight Hundred Thousand Dollars (\$3,800,000). The GGM property is presently encumbered by a mortgage in the current amount of \$1.8 Million, leaving equity in GGM of approximately \$2.0 Million. **Exhibit 16** hereto is a genuine copy of Southeby's letter to the Smiths, its Marketing Plan for GGM, and its \$3.8 Million estimate of GGM's FMV.

Glen Gordon Manor LLC ("**GGM LLC**"), a Virginia limited liability company owned by the Smiths, has a lease with the Smiths dated August 1, 2011, and terminating on August 1, 2031 (the "**GGM Lease**"). A genuine copy of the GGM Lease is included herewith as **Exhibit 17**. A genuine copy of the GGM Business Plan is included herewith as **Exhibit 18**. The GGM property appears to be increasing in value since the Bankruptcy Cases were filed. **Exhibit 19** hereto is a genuine copy of the VIRGINIA Home Sales Report for the Second Quarter 2016.

The Debtors loaned GGM LLC approximately \$84,000 while it was under development, as reflected in the Statement of Financial Affairs for CRG [Docket No. 24]. The repayment of those loans will generate additional income to help fund the Debtors' Plan and add to the feasibility of the Plan.

11. The Debtors' tax problems came to light in early 2013.

Through 2012, both of the Debtors paid their taxes more or less in a timely manner. Because

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their restaurants are all subject to the vagaries of the "Tourist Season," revenues vary widely not only on a daily, weekly, and monthly basis, but also "seasonally." That requires substantial tax payments to be deferred, from time to time. Debtor CRG's and GGM's fiscal years are calendar, while RAPR's is from October 1 through September 30, which more closely follows the Tourist Season than the calendar.

The method for making tax payments was complicated. A copy of an illustration depicting the procedures for making tax payments due from the Debtors' restaurants is included as **Exhibit 20** hereto. Essentially, both Perla and Stingray reported their gross receipts and weekly payroll to Value Added with a copy of the gross revenue figures to Chef Dayn Smith. Value Added then calculated the tax payments due for IVU and payroll taxes, and then attempted to wire the appropriate payments. If funds were not available to cover the needed payments, Value Added would advise Perla and/or Stingray, who would monitor cash flow and notify Value Added when funds were available, at which time Value Added would make the appropriate payments. Lack of communication between the Debtors and Value Added often led to the failure to make tax payments in a timely manner. Chef Dayn Smith was not kept abreast of the status of the tax payments either when due or when made, another breakdown in communication. Several years passed with the foregoing situation in effect.

In early 2013, Leslie Valentín, who had been the Director of Operations overseeing Perla, Stingray, and Ballyhoo since 2008, advised Chef Dayn Smith that: "We are not paying our taxes." Chef Dayn responded that: "We can't *not* pay our taxes. If we don't have enough money, let's talk to the EDB." Mr. Valentín – who had failed to keep Chef Dayn and Nancy Moon Smith apprised of any delinquencies in the tax payments made or due by their companies – resigned in April 2013. Prior to

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his departure, Mr. Valentín trained the respective general managers of Perla and Stingray/Ballyhoo so that they could take over the financial responsibilities for each of the restaurants that he had failed to discharge responsibly. The position of Director of Operations was then eliminated.

In November 2013, Chef Dayn Smith met with representatives of the EDB, who agreed to temporarily reduce the monthly payments due under the terms and conditions of the EDB Loan from \$24,000 per month to \$8,000 per month, for Perla, for one year, after which it increased to \$21,000 per month, with a balloon payment at the end of \$576,000. By an email sent by EDB to Chef Lindell Smith on March 11, 2015, the monthly payment was adjusted effective retroactive to February 2015, for 21 months (until November 2016) to \$12,000 monthly, with the balloon payment increased to \$698,000.

After arranging for the reduction of the monthly payment for the EDB Loan, payment plans were established with *Hacienda* for the taxes that were owed through 2013 (collectively, the “*Hacienda Payment Plans*”)⁵. At the same time, RAPR was paying down its line of credit with Banco Popular de Puerto Rico. Although the Debtors made most of the payments due under their respective *Hacienda* Payment Plans, due to the declining economic situation in Puerto Rico, some of the payments were, unfortunately, missed.

12. 2016: Hacienda double-crosses the Debtors.

As discussed above, from 2013, the Debtors were operating under their respective *Hacienda* Payment Plans. They faithfully filed their tax returns, but, due to the vagaries of the Puerto Rico

⁵ Both of the Debtors have fiscal year which end on September 30. The reason for that is to make the tax year coterminous with the tourist “year” in Puerto Rico. Essentially, October 1 through September 30 more closely follows the tourist year than does the actual calendar year.

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Tourist Season, among other things; lamentably, they did not always have enough money available to fulfill their tax obligations. As the Chart included above as Exhibit 20 demonstrates, the lines of communication for obtaining final authorization to make tax payments due was complicated.

In 2014 and 2015, the Debtors fell behind on their payments to *Hacienda* for IVU and withholding taxes by amounts that are currently in dispute and which will be settled by this Honorable Court after the Debtors file an objection to the proof of claims filed by *Hacienda*, unless the parties reach a settlement.

13. Chef Lindell Smith and Angel Maldonado take over Perla and Stingray.

a. Chef Lindell J. Smith.

Lindell J. Smith – Chef Dayn Smith’s son from an earlier marriage (“**Chef Lindell**”) – earned an Associates degree in the Culinary Arts from the prestigious Culinary Institute of America after studying in the Hotel and Hospitality Management Program at New York University. Chef Lindell started his career at Stingray and Perla, then moved briefly to the Apple Pie Bakery and Café at the Culinary Institute of America, before spending time training at the famous Washington, D.C. restaurant, Zaytinya, a creation of world-renowned chef José Andres. In 2010, Chef Lindell returned to Perla, where he rose to Chef in 2012, and Chef and General Manager in 2013.

b. Angel Maldonado.

Angel Maldonado – the General Manager of Stingray/Ballyhoo – has learned the restaurant trade “on the job” and has learned it well. His history with Stingray/Ballyhoo started with their respective openings and he has moved steadily up the ladder to General Manager in the years since, as shown on his resume included in Exhibit 3 above.

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At least 75 direct jobs, and even more indirect jobs, will be lost if the Debtors shut down operations.

E. Significant Events During the Bankruptcy Cases.

- At the time of the filing of the Voluntary Petitions in the Debtors' Bankruptcy Cases, the balance on the EDB Loan, as modified by the 1st Amendment to the EDB Loan, had been reduced to approximately \$800,000, and the payments on the EDB Loan were current. It is the Debtors' intention to object to the EDB's Proof of Claim Nos. 6 and 7, and to cure any default in the payments due under the EDB Loan as restructured under the Debtors' Plan by the Confirmation Date.
- All of the Debtors' pre-Petition bank accounts have been closed, and DIP accounts opened.
- The Stingray Lease was assumed by the Debtors [Docket No. 57] and the assumption approved by the Bankruptcy Court [Docket No. 69].
- The Perla Lease was assumed by the Debtors [Docket No. 57] and the assumption approved by the Bankruptcy Court [Docket No. 69].
- The Debtors' lease on the Jeep Cherokee used by Lindell Smith was assumed [Docket No. 44] and the assumption approved by the Bankruptcy Court [Docket No. 59].
- Numerous, inconsistent Proofs of Claim ["POC"] were filed by the Puerto Rico Department of the Treasury (*Hacienda*) on June 28, 2016, the latter of which claimed \$2,039,878.11 [POC Nos. 12 and 13]. It is the Debtors' intention to file strong objections to *Hacienda's* POCs.

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- The IRS filed a series of POCs, in ascending amounts, the most recent of which was filed on July 8, 2016, and claimed \$292,313.47 [POC No. 2].
- The Economic Development Bank for Puerto Rico (the “**EDB**”) filed two (2) POCs, one in the amount of \$1,066,448.21 [POC No. 6] and another in the amount of \$25,315.51 [POC No. 7]. It is the Debtors’ intention to file an objection to the EDB’s POCs.
- Banco Popular de Puerto Rico (“**Banco Popular**”) filed a POC on June 9, 2016, in the amount of \$97,858.29 [POC No. 10].
- Several smaller claims were filed by trade creditors of the Debtors.
- The Debtors have paid all post-Petition taxes due.
- The Debtors have paid all post-Petition fees assessed by the UST.
- The Debtors have maintained all required insurance policies.
- The Debtors applied to retain Weinstein-Bacal, Miller & Vega, P.S.C. (“**WBMV**”) as their attorneys to assist with their reorganization(s) in the Bankruptcy Cases [CRG Docket No. 18] and their application was approved by the Bankruptcy Court on April 26, 2016 [CRG Docket No. 36; RAPR Docket No. 29].
- Meetings of the Debtors’ creditors pursuant to section 341 of the Bankruptcy Code, 11 U.S.C. § 341, were held on May 9, 2016 [Docket No. 40].
- The Debtors filed their Consolidated Request for Extension of Exclusivity Period in Which to Submit a Disclosure Statement and Plan of Reorganization and Extension of Period in Which to Accept the Plan [Docket No. 60], which Request was granted by the

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Bankruptcy Court on June 23, 2016 [Docket No. 61], extending the exclusivity period for filing of the Debtors' Disclosure Statement and Plan until August 23, 2016; it was extended until September 26, 2016, and again by motion [Docket No. 86] granted on September 9, 2016 [Docket No. 94]; it was extended again until October 31, 2016, and again by motion [Docket No. 99] granted on October 13, 2016 [Docket No. 101].

- The Debtors applied to retain CPA Juan Acosta-Reboyras and his firm, CRS-CPA, as its financial advisor and accountants [Docket Nos. 41, 49 and 67] and their application was approved by the Bankruptcy Court [Docket No. 70].
- The Debtors submitted their Consolidated Schedules on July 12, 2016 [Docket No. 71].
- A Status Conference was held before the Bankruptcy Court on July 13, 2016 [Docket Nos. 75 and 76].
- Debtor CRG presently operates its Perla Restaurant pursuant to the La Concha Lease.
- Debtor RAPR presently operates its Stingray Café and Ballyhoo Bar & Grill restaurants pursuant to the Stingray Lease.
- As a result of the continuing economic debacle which is Puerto Rico, Debtors RAPR's revenues have declined slightly year-over-year since 2012, while CRG held relatively stable until 2015, even showing a gain in 2014. **Exhibit 21** hereto contains a graph and a chart depicting the foregoing revenues, as well as those of GGM, from 1999 through 2016.
- Both Debtors, but particularly CRG and its Perla Restaurant, have initiated new methods to expand their customer base. Those methods include but are not limited to:

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- Use of social media for marketing
 - Add lower price choices to the menu
 - Thursday night live entertainment: music, comedy, and dance
 - Fine wine dinners
 - Meeting with key players re opportunities for business development
 - Opening for lunch on an trial basis
 - Discounted dinner offers, or “early bird” specials
 - Partnering in promotional efforts with credit card companies such as American Express, Visa, Mastercard, etc.
 - Working with La Concha to increase special events business
- Since the petition was filed on February 24, 2016, all Schedules and Statement of Financial Affairs have been filed.
 - There has been no change in the Debtors’ equity security holders.
 - The 2016 Resort Finder Edition of Caribbean Travel+Life Magazine gave its seal of approval for three (3) resorts in Puerto Rico. The magazine designated Hotel El Convento as its choice under the “Historic” label, the W Retreat & Spa under the “Hidden Away” label and *La Concha Hotel* under its “Happening” label. The magazine described *la Concha Hotel* as “the neighborhood’s command central” and described *Perla Restaurant* as “the perfect perch to sip, see and be seen.” See **Exhibit 22** hereto.

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F. The rampaging *Hacienda* and its pursuit of Chef Dayn Smith and Family.

Throughout the Chapter 11 proceedings, the IRS and *Hacienda* relentlessly harrassed Chef Dayn Smith, Nancy Smith, Chef Lindell Smith, and Angel Maldonado, alleging that they are *all* personally liable for all “Trust Fund” taxes owed by the Debtors. At the Section 341 Meetings, the Debtors explained why Chef Smith should not be considered the “responsible person” for the payment of the Trust Fund taxes. Nevertheless, the IRS and *Hacienda* persisted in their efforts to compel Chef Smith, as the “responsible person,” to pay the Trust Fund taxes. The incessant harassment of Chef Smith by both the IRS and *Hacienda* has been causing him to lose concentration on the business operations of the Debtors, jeopardizing their operations.

Inasmuch the Debtors’ Plan provides for payment in full of the priority portion of the Trust Fund taxes, and inasmuch as Chef Smith – to the extent that he may even properly be determined to be the “responsible person” by either the IRS or *Hacienda*, notwithstanding the evidence to the contrary set forth in Exhibit 20 above – is critical, if not indispensable, to the success of the Debtors’ Plan (*see* Exhibit 1 - PLAN - above), the Plan being promulgated by the Debtors proposes to have the Bankruptcy Court stay any actions by either the IRS or *Hacienda* to collect the Trust Fund taxes from Chef Dayn Smith, Chef Lindell Smith, and Angel Maldonado, as the Bankruptcy Court is empowered to do pursuant to Section 105(a) of the Bankruptcy Code, 11 U.S.C. § 105(a), as applied by the United States Supreme Court in *United States v. Energy Resources Co., Inc.*, 495 U.S. 545 (1990), and as followed by the IRS in section 5.9.8.10 (Trust Fund Considerations in Chapter 11) of its Internal Revenue Manual - 5.9.8 Processing Chapter 11 Bankruptcy Cases. Chef Dayn Smith (who will continue as president and Executive Chef of both Debtors’ restaurants, Perla and Stingray/Ballyhoo);

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Chef Lindell Smith (who will continue as the chef at Perla); and Angel Maldonado (who will continue as the General Manager of Stingray/Ballyhoo and has been appointed General Manager of Perla), and each of whom is critical to the success of the Debtors' operations, will have additional incentives to work towards the success of the Debtors' Plan if the first tax payments are applied toward their potential personal obligations, if any, for the Trust Fund Taxes. The Bankruptcy Court may determine that the interdiction of efforts by the IRS and/or *Hacienda* to collect trust fund taxes (much less any penalties thereon) from Chef Dayn Smith, as well as from Nancy Smith, Chef Lindell Smith and Angel Maldonado, if it determines that they are necessary to the success of the Plan, and that the tax payments made under the Plan may first be applied to Trust Fund Taxes, since doing so will not in any way jeopardize the ability of either the IRS or *Hacienda* to collect the Trust Fund Taxes.

G. Projected Recovery of Avoidable Transfers.

The Debtors do not intend to seek to set aside any prepetition transactions.

H. Claims Objections.

Except to the extent that a claim is already allowed pursuant to a final non-appealable order, the Debtors reserve 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 Articles V, VII, and VIII of the Plan.

I. Current and Historical Financial Conditions.

The identity and fair market value of the Debtors' assets are listed in **Exhibit 1 to the Plan**. The most recent post-petition operating report filed since the commencement of the Debtors' Bankruptcy Cases is set forth in **Docket No. 104**.

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J. Alternatives to the Debtors' Plan of Reorganization.

There is no practical alternative to the Debtors' Plan. Dismissal of the Bankruptcy Cases would lead to the rapid demise of the Debtors, quickly resulting in the direct loss of employment for more than 140 persons presently employed by the Debtors. Appointment of a Chapter 11 trustee or a conversion to Chapter 7 would be futile, since, without Chef Dayn Smith behind the Debtors' restaurant operations, there would be little, if any, hope for their survival.

To vote against the Debtors' Plan is to bet against Puerto Rico, against John Paulson, Goldman Sachs, and against those recently relocated to Puerto Rico who have come with their pockets bulging, looking for tax abatement and investment opportunities. Perla and Stingray/Ballyhoo are perhaps the two best-located restaurants in Puerto Rico, if not in the entire Caribbean area. El Conquistador is the largest resort and most renowned luxury resort in the Caribbean, and La Concha is neighbor and sister to the dazzling, rejuvenated, and reborn Vanderbilt Hotel. What better bet could be made than on these Debtors and their impeccable restaurants, Perla in La Concha itself and Stingray, along with the oceanfront Ballyhoo, at El Conquistador?

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

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

As required by the Bankruptcy 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

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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 Debtors' Chapter 11 cases which are allowed under § 507(a)(2) of the Bankruptcy Code. Administrative expenses also include the value of any goods sold to the Debtors in the ordinary course of business and received within 20 days before the date of the bankruptcy petitions. The Bankruptcy Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment. Debts under this class are estimated to be over \$125,000 but under \$200,000

2. Priority Tax Claims.

Each holder of a priority tax claim will be paid within a period of five (5) years from the Effective Date of the Plan, in equal monthly installments, including interest at 0.75% per annum, unless otherwise agreed or unless a timely objection to this Plan is filed. *See* section III.B.2 of the Disclosure Statement for the treatment of Priority Tax Claims under the Plan.

Before and throughout the Chapter 11 proceedings, the IRS and *Hacienda* have relentlessly harassed Chef Dayn Smith, Nancy Smith, Chef Lindell Smith, and Angel Maldonado, alleging that they are *all* personally liable for all "Trust Fund" taxes owed by the Debtors (an apparent "shoot first and ask

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questions later” approach?). At the Section 341 Meetings, the Debtors explained why Chef Smith should not be considered the “responsible person” for the payment of the Trust Fund taxes, and made it plain that there was no specific individual who clearly shouldered such responsibility. Nevertheless, the IRS and *Hacienda* have persisted in their efforts to compel Chef Smith, as the “responsible person,” to pay the Trust Fund taxes, and have also alleged personal responsibility on the part of Chef Lindell Smith and Angel Maldonado. The incessant harassment of Chef Dayn Smith by both the IRS and *Hacienda* has been causing him to lose concentration on the business operations of the Debtors, jeopardizing their operations. Likewise with their pursuit of Chef Lindell Smith and Angel Maldonado, who are highly vexed by the possibility of personal liability for the tax obligations of the Debtors.

Inasmuch the Debtors’ Plan provides for payment in full of the Trust Fund taxes, and inasmuch as Chef Smith – to the extent that he may even properly be determined to be the “responsible person” by either the IRS or *Hacienda*, notwithstanding the evidence to the contrary set forth in the “Flow Chart” included as Exhibit 20 to the Disclosure Statement – is critical, if not indispensable, to the success of the Debtors’ Plan, the Plan being promulgated by the Debtors proposes to have the Bankruptcy Court stay any actions by either the IRS or *Hacienda* to collect the Trust Fund taxes from Chef Smith, as the Bankruptcy Court is empowered to do pursuant to Section 105(a) of the Bankruptcy Code, 11 U.S.C. § 105(a), as applied by the United States Supreme Court in *United States v. Energy Resources Co., Inc.*, 495 U.S. 545 (1990), and as followed by the IRS in section 5.9.8.10 (Trust Fund Considerations in Chapter 11) of its Internal Revenue Manual - 5.9.8 Processing Chapter 11 Bankruptcy Cases. Chef Dayn Smith – who will continue as president and Executive Chef of both Debtors’ restaurants, Perla and Stingray/Ballyhoo, and is critical to the success of their operations – will have additional incentive to

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work towards the success of the Debtors' Plan if the first tax payments are applied toward his personal obligations, if any, namely, the Trust Fund Taxes. The Bankruptcy Court may determine that the interdiction of efforts by the IRS and/or *Hacienda* to collect trust fund taxes (much less any penalties thereon) from Chef Dayn Smith, as well as from Nancy Smith, Chef Lindell Smith, and Angel Maldonado (which both *Hacienda* and the IRS are attempting to do), is necessary to the success of the Plan, and that the tax payments made under the Plan may first be applied to Trust Fund Taxes, since doing so will not in any way jeopardize the ability of either the IRS or *Hacienda* to collect the Trust Fund Taxes.

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 Debtors' consolidated bankruptcy estates (or that are subject to setoff) to the extent allowed as secured claims under § 506 of the Bankruptcy Code, 11 U.S.C. § 506. 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.

The following list identifies the Debtors' secured prepetition claims and their proposed treatment under the Plan:

a. Class 1. Secured Creditor - EDB.

EDB's loan is secured by the furniture, fixtures, and equipment ("FF&E") in the "Perla

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Restaurant” at La Concha Renaissance San Juan Resort in Condado, Puerto Rico (“**La Concha**”). The secured portion of the claim of the EDB, which has been valued by CRG at \$42,366.90, will be paid in full on the Effective Date of the Plan, to the extent allowed as a secured claim under § 506 of the Code. The Consolidated Debtors intend to file an Objection to Proof of Claim No. 6 (“**POC No. 6**”) filed by the EDB, due to EDB’s gross overvaluation of the secured portion of its claim. This class is not impaired.

2. Classes 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.

The following list identifies the Plan’s proposed treatment of Classes 2 through 4, which contain general unsecured claims against the Debtors:

a. Class 2. The Unsecured Nonpriority Portion of the Governmental Tax Claims.

This class shall consist of the unsecured nonpriority portion of the municipal, state, and federal government agencies. This class will be paid 10% of their allowed claim over the course of 72 months, with interest at 0.75% per annum. Payments will commence on the first anniversary of the Effective Date of the Plan, with funds generated from operations as per payment scheduled. This class is impaired.

b. Class 3. The Unsecured Portion of the EDB Claim.

This class consists of the unsecured portion of the EDB Claim, allowed under § 502 of the Code. This class will be paid 10% of its allowed claim over the course of 72 months, with interest at 0.75% per annum. Payments will commence on the first anniversary of the Effective Date of the Plan, with funds generated from operations as per payment scheduled. This class is impaired.

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c. Class 4. General Unsecured Creditors Other Than EDB.

This class consists of general unsecured creditors, excluding those Classes 2 and 3, allowed under § 502 of the Code. These parties are primarily suppliers and other trade creditors. This class will be paid 75% of their allowed claims over the course of 72 months, without interest, commencing on the Effective Date of the Plan with funds generated from operations as per payment schedule. This class is impaired.

3. Class of Equity Interest Holders.

Equity interest holders are parties who hold an ownership interest (*i.e.*, equity interest) in the Debtors. 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 list sets forth the Plan's proposed treatment of the class of equity interest holders:

a. Class 5. Equity Security and Other Interest Holders.

This class includes all equity security and interest holders who are owners of the stock of the Debtors. This class will not receive dividends distribution under the plan until all senior classes are paid in full.

D. Means of Implementing the Plan.

1. Source of Payments.

On the Effective Date of the Plan, the distribution, administration, and management of the Debtors' affairs, collection of monies, and distribution to creditors, unless otherwise provided herein, will be under the control and supervision of the current officers, who will assume the same roles they

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have assumed throughout the reorganization process.

It is the Debtors' intention to make payments to all of their creditors through the Plan. The Plan shall be funded by the following means:

1. Future earnings of the reorganized Debtors from the operation of their businesses over the next seven (7) years for the priority and general unsecured claims.

2. Any future equity or debt capital acquired by the Debtors, which may be used for payments and distributions.

3. Reduced salaries for the corporations' officers Dayn Smith (already reduced from \$125,000/year to \$62,500/year), Nancy Smith (already reduced from \$125,000/year to \$62,500/year). General Manager Angel Maldonado's salary has already been reduced from \$55,000/year to \$47,000/year. Chef Lindell Smith's salary will remain at \$40,000/year.

The Debtors believe that the Plan payments proposed herein will suffice for a confirmable plan.

2. Post-confirmation Management.

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

<i>Name</i>	<i>Affiliations</i>	<i>Insider (yes or no)?</i>	<i>Position</i>	<i>Compensation</i>
<i>Mr. Lindell J. Smith</i>	<i>Perla Restaurant</i>	<i>No</i>	<i>General Manager</i>	<i>[\$40,000] per year, plus benefits</i>
<i>Angel Maldonado</i>	<i>Stingray/Ballyhoo</i>	<i>No</i>	<i>General Manager</i>	<i>[\$47,000] per year, plus benefits</i>
<i>Dayn Smith</i>	<i>Both Companies</i>	<i>Yes</i>	<i>President</i>	<i>[\$62,500] per year, plus benefits</i>
<i>Nancy Smith</i>	<i>Both Companies</i>	<i>Yes</i>	<i>Vice President</i>	<i>[\$62,500] per year, plus benefits</i>

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E. Risk Factors.

The proposed Plan has the following risks:

The general market conditions in Puerto Rico and the United States pose significant operational risks to the Debtors on a going forward basis. Even the Zika virus is a risk factor. **Nevertheless, given the massive investments in Puerto Rico made by John Paulson and others – and the recent imminent arrival of the fiscal control board mandated by PROMESA, Public Law No. 114-187– there is every indication that Puerto Rico’s economy has bottomed out and is on the way up. If the Bankruptcy Court and the Debtors’ creditors are unwilling to place their faith in the feasibility of the Debtors’ Plan for two of Puerto Rico’s best and best located restaurants, associated with three of Puerto Rico’s finest hotels – The Vanderbilt, La Concha, and El Conquistador – then, surely, there is no hope for Puerto Rico’s eventual recovery from its economic doldrums. The only real alternative to having such faith is liquidation . . . of the Debtors, and of Puerto Rico itself.**

F. Executory Contracts and Unexpired Leases.

The Plan lists all executory contracts and unexpired leases that the Debtors will assume under the Plan. Assumption means that the Debtors have 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 Bankruptcy Code, if any. The Plan also lists how the Debtors will cure and compensate the other party to such contract or lease for any such defaults.

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

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the Plan within the deadline for objecting to the confirmation of the Plan, unless the Court has set an earlier time.

All executory contracts and unexpired leases that are not listed in the Plan will be rejected under the Plan. Consult your adviser or attorney for more specific information about particular contracts or leases.

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.

A proof of a claim arising from the rejection of an executory contract or unexpired lease under this section must be filed no later than thirty (30) days after the date of the order confirming this Plan. 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 the 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.

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

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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.

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 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 Classes 2 through 4 are impaired and that the holders of claims in this class are therefore entitled to vote to accept or reject the Plan. The Plan Proponent believes that the rest of the classes 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.

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

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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 June 30, 2016, and for government creditors until August 24, 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;
- Administrative expenses.

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4. 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.

B. 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.

1. 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.

a. 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 § 1129(b) 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 classes of claims or equity interests if it meets all the requirements for consensual

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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 attached to this Disclosure Statement as **Exhibit 23**. No priority, unsecured or other creditor or equity security holder besides EDB would get anything in a liquidation, as the furniture, fixtures and equipment of the Debtors are secured by the EDB Loan. Thus, the liquidation value to other creditors is nothing.

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 Debtors or any successor to the Debtors, unless such liquidation or reorganization is proposed in the Plan.

1. Ability to Initially Fund Plan.

The Plan Proponents believe that the Debtors 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, with the exception of Class 4, which the Debtors have proposed to start payments commencing one year from the Effective Date of the Plan. Both El Conquistador and La Concha anticipate stronger revenues in the coming 2017 tourist season.

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2. Ability to Make Future Plan Payments And Operate Without Further Reorganization.

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

The Debtors have provided projected financial information. Those projections are listed in Exhibit 1 to the Plan.

The Plan Proponents' financial projections show that the Debtors will have an aggregate annual average cash flow, after paying operating expenses and post-confirmation taxes, of approximately \$365,000. The final Plan payment is expected to be paid no later than December 31, 2023.

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 the Debtors.

1. Discharge.

On the effective date of the Plan, the Debtors 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 Debtors will be limited to the debts described in clauses (i) through (iii) of the preceding sentence.

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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 re-voting on the Plan. The Plan Proponent may also seek to modify the Plan at any time 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 Debtors' 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.

VI. OTHER PLAN PROVISIONS.

The Bankruptcy Court shall retain jurisdiction over this case as is conferred upon it by law, rule or statute, or by the Plan, to enable the Debtors to substantially consummate any and all proceedings which it may bring before or after the entry of the Order of Confirmation, in order to carry out the provisions of the Plan.

Respectfully submitted, in San Juan, Puerto Rico, on December 2, 2016.

I hereby certify on this date, I electronically filed the foregoing with the Clerk of the Court, using the CM/ECF system which will send notification of such filing to the parties subscribed to said system, including the United States Trustee, and by First Class Mail to all those parties who have requested a copy and are not subscribed to this case on the CM/ECF system.

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Signed

s/ Dayn R. Smith

Dayn R. Smith

President, Condado Restaurant Group, Inc.

President, Restaurant Associates of Puerto Rico, Inc.

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