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June 8, 2007

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2007 FEB 15 AM 9:56  
REGIONAL HEARING  
CLERK

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

Re: In the Matter of: Wyndham El Conquistador Resort  
& Country Club; Avenida El Conquistador #1000  
Fajardo, Puerto Rico 00738  
Palomino Island Reverse Osmosis Plant  
NPDES Permit No. PR0026051

Dear Sir/Madam:

In connection with the above-noted matter, attached are an original and one copy of the "Answer to the Complaint and Request for Hearing." By copy of this letter, I am also forwarding a copy of the same by hand to Héctor Vélez, Esq. at his office, U.S. Environmental Protection Agency, Region 2, 1492 Ponce de León Avenue, Suite 417, San Juan, Puerto Rico. I am informed that the attorney named in the Complaint, Silvia Carreño, Esq., is leaving the agency and that Mr. Vélez has been placed in charge of this matter.

Should you have any questions concerning this matter, please contact me at your convenience.

Cordially,

O'NEILL & BORGES  
Attorneys for Respondent

By: Irwin H. Flashman  
Irwin H. Flashman

Encls.

C: Héctor Vélez, Esq.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

IN THE MATTER OF:

Docket No. CWA-02-2007-3409

Wyndham El Conquistador Resort  
& Country Club; Avenida El  
Conquistador #1000  
Fajardo, Puerto Rico 00738

Proceeding Pursuant Section  
309(g) of the Clean Water Act,  
33 U.S.C. §1319(g) to Assess  
Class II Civil Penalty

Palomino Island Reverse Osmosis  
Plant  
NPDES Permit No. PR0026051

Respondent

**Answer to the Complaint and Request for Hearing**

Comes now Respondent, El Conquistador Partnership, L.P.,  
S.E., and through its undersigned counsel, answers the Complaint  
in the above noted matter as follows:

**ANSWER TO THE COMPLAINT:**

**I. STATUTORY AUTHORITY**

1. This paragraph is a conclusion of law and not a statement of  
fact, and as such no answer is required. To the extent that an  
answer is required, it is denied.

2. This paragraph is a conclusion of law and not a statement  
of fact, and as such no answer is required. To the extent that  
an answer is required, it is denied. Respondent's proper name  
is "El Conquistador Partnership L.P., S.E." The use of the  
terms "Respondent" and "El Conquistador" in this Answer to the  
Complaint refer to this entity and no other. Since December  
2005, the proper D/B/A for the referenced hotel operation is "El  
Conquistador Golf Resort & Casino".

**II. FINDINGS OF VIOLATION**

1. This paragraph is a conclusion of law and not a statement  
of fact, and as such no answer is required. To the extent that  
an answer is required, it is denied.

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2. It is admitted that: the Palomino RO Plant is located at Palomino Island, Fajardo, Puerto Rico; the El Conquistador is best described by the Standard Industrial Classification Code 7011. With respect to the period of time relevant to the allegations of the Complaint (January 14, 2004 through April 6, 2006) the remainder of the paragraph is denied.

3. It is admitted that the Palomino RO Plant is based upon an engineering technology that physically separates sea water into water containing higher concentrations of sea water components than sea water and water containing lower concentrations of sea water components than sea water. Water containing the higher concentrations of sea water components is discharged back into the body of water from which the sea water is withdrawn. The remainder of the content of this paragraph is denied.

4. This paragraph is a conclusion of law and not a statement of fact, and as such, no answer is required. To the extent that an answer is required, it is denied. The content of the last sentence of the paragraph is also denied for lack of information upon which to base an informed opinion as to its veracity.

5. It is admitted that up to the date of the issuance of the Complaint, Respondent has not received an NPDES Permit for the Palomino RO Plant; the remainder of the content of paragraph 5 is denied.

6. This paragraph is a conclusion of law and not a statement of fact, and as such no answer is required. To the extent that an answer is required, it is denied.

7. The content of paragraph 7 is denied for lack of sufficient information upon which a founded belief as to its veracity can be formed; and it is denied, because it constitutes a conclusion of law and not a statement of fact.

8. The content of paragraph 8 is denied for lack of sufficient information upon which a founded belief as to its veracity can be formed; and it is denied, because it constitutes a conclusion of law and not a statement of fact.

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9. This paragraph is a conclusion of law and not a statement of fact, and as such no answer is required. To the extent that an answer is required, it is denied.

10. Respondent does not have sufficient information upon which to base a founded belief as to the veracity of the content of the paragraph and, therefore, the content of the paragraph is denied.

### **III. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY**

The content of this section constitutes a conclusion of law and not a statement of fact, and as such no answer is required. To the extent that an answer is required, it is denied. Further, Respondent does not have sufficient information upon which to base a founded belief as to their veracity, for which their content is also denied.

### **IV. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION**

This paragraph is a conclusion of law and not a statement of fact, and as such no answer is required. To the extent that an answer is required, it is denied.

JHF

#### **A. Answering The Complaint**

The content of this section is a conclusion of law and not a statement of fact, and as such no answer is required. To the extent that an answer is required, it is denied.

#### **B. Opportunity to Request a Hearing**

The content of this section is a conclusion of law and not a statement of fact, and as such no answer is required. To the extent that an answer is required, it is denied.

#### **C. Failure to Answer**

The content of this section is a conclusion of law and not a statement of fact, and as such no answer is required. To the extent that an answer is required, it is denied.

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**V. INFORMAL SETTLEMENT CONFERENCE**

The content of this section is a conclusion of law and not a statement of fact, and as such no answer is required. To the extent that an answer is required, it is denied.

**VI. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE**

The content of this section is a conclusion of law and not a statement of fact, and as such no answer is required. To the extent that an answer is required, it is denied.

**VII. FILING OF DOCUMENTS**

The content of this section is a conclusion of law and not a statement of fact, and as such no answer is required. To the extent that an answer is required, it is denied.

**VIII. GENERAL PROVISIONS**

The content of this section is a conclusion of law and not a statement of fact, and as such no answer is required. To the extent that an answer is required, it is denied.

**AFFIRMATIVE DEFENSES**

- JHW
1. The Complaint fails to set out in whole or in part a claim upon which the granting of relief is justified.
  2. The penalty sought in Section III of the Complaint in the amount of \$85,000 is not justified by the facts as alleged in the Complaint and the application of the law and should be eliminated or significantly reduced.
  3. The Complainant lacks a basis in law and in fact to assess the penalty proposed of \$85,000 Section III of the Complaint; the penalty should be eliminated or at minimum substantially reduced.

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4. The penalty sought in Section III of the Complaint ought to be reduced, because the Respondent has no prior history of violations under the NPDES Program.
5. The penalty sought under Section III of the Complaint ought to be reduced, because the alleged Palomino RO Plant discharge did not exist on the date of the alleged EPA Reconnaissance Inspection of the Palomino RO Plant April 26, 2006.
6. The alleged number of days of operation of the Palomino RO Plant appears to be based in part upon the date upon which it is alleged that Respondent allegedly filed an application for an NPDES Permit. Even if the same were true, which is denied for lack of information, the same does not evidence illegal discharges upon which a claim for penalty may be based.
7. For the relevant period of the Complaint (see Paragraph 9 of Section II) the Respondent did not own or operate the Palomino RO Plant.
8. The Respondent does not discharge and has not discharged pollutants through a point source into the Atlantic Ocean, a water of the United States, all within the respective definitions established in Section 502 of the Act, 33 U.S.C. §1362. Specifically, the terms "discharge of a pollutant" and "discharge of pollutants" are defined by subsection (12) of the referenced section to mean "any addition of any pollutant to navigable waters from any point source" or "any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft". The discharge of water from an RO plant to the same body of sea water from which the sea water run through the RO plant was taken does not constitute "any addition of any pollutant" to such body of water. The discharge of a pollutant is an essential element necessary to be present in order for an NPDES Permit to be required. Therefore, absent the addition of any pollutant through a discharge to a body of water, no NPDES Permit is required. Based on the foregoing, no NPDES Permit is required for the

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discharge of water run through an RO Plant and returned to the body of sea water from which the sea water was originally taken, because there is no addition of any pollutant to the receiving body of water caused by such operation.

9. All of the answers to the Complaint should be taken as affirmative defenses and all of the affirmative defenses should be taken as if they were answers to the complaint.
10. In the measure that any answer to the Complaint leaves any portion of the allegation unanswered, such portion of the allegation is hereby denied.
11. The right to supplement this answer to the Complaint and the affirmative defenses set out herein is hereby reserved in the measure that new information or information heretofore unknown to Respondent becomes available and requires the amendment of the answer or permits the presentation of additional affirmative defenses.

#### REQUEST FOR HEARING

Pursuant to 40 CFR §22.15(c), a hearing upon the issues raised by the complaint and the answer may be held if requested by Respondent in its answer. Respondent hereby requests a hearing on such issues and facts in dispute and upon the proposed penalty assessment.

#### PRAYER FOR RELIEF

Wherefore, in view of the foregoing, it is respectfully requested that, after hearing, the Honorable Presiding Officer make the findings of fact and conclusions of law consistent with the facts and the application of the law and determine that the claim be dismissed and for such claim as may be determined to be allowed to remain, if any, determine the appropriate amount of penalties to be imposed, if any, which penalties should be lower than the amounts proposed by Complainant.

Respectfully submitted,



Office of Regional Counsel  
Centro Europa Building  
1492 Ponce de León Avenue  
Suite 207  
San Juan, Puerto Rico 00907-4127

**FAX TRANSMISSION**

To: Karen Maples

Fax: (212) 637-3202

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Date: 02/15/2008

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From: **Silvia Carreño** Phone: (787)977-5818  
Associate Regional Counsel Fax : (787)729-7748  
for Caribbean Programs

**Comments:**

As agreed on the phone, here are the answers to the complaints.

Thanks,

Silvia