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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

MACELLERIA RESTAURANT, INC.,

Chapter 11  
Case No. 16-12110 (MKV)

Debtor.

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**MACELLERIA RESTAURANT INC.'S DISCLOSURE STATEMENT**

**I. INTRODUCTION**

Macelleria Restaurant Inc. (the “Debtor”) submits this Disclosure Statement pursuant to Section 1125(b) of Title 11, United States Code, 11 U.S.C. §§ et seq. (the “Bankruptcy Code”) and Rule 3017 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), in connection with its Chapter 11 Liquidating Plan dated November 4, 2016 (the “Plan”) to all known holders of Claims against or Interests in the Debtor in order to adequately disclose information deemed to be material, important and necessary to make a reasonably informed judgment about the Plan, including, who is entitled to vote to accept or reject the Plan. A full copy of the Plan is attached to this Disclosure Statement as Exhibit “A”. *Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.*

During the course of the Debtor’s Chapter 11 Case, the Debtor engaged in a sale process by which it sold its restaurant assets and Lease for \$1.1 million, which yielded sufficient monies

to satisfy all administrative, secured, and priority claims and provide a distribution on a *pro rata* basis to allowed general unsecured creditors.

Under Section 1126(b) of the Bankruptcy Code, only Classes<sup>1</sup> of Allowed Claims that are “impaired” under the Plan, as defined by Section 1124 of the Bankruptcy Code, are entitled to vote on the Plan. Generally, a Class is impaired if its legal, contractual or equitable rights are altered or reduced under the Plan. Under the Plan, only Class 3 is Impaired and therefore entitled to vote to accept or reject the Plan. To be accepted by a Class, the Plan must be accepted by more than one half in number and two-thirds in dollar amount of the Allowed Claims actually voting in such Class.

#### **A. Purpose of This Document**

##### **This Disclosure Statement describes:**

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

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<sup>1</sup> Capitalized terms not defined herein have the same meaning ascribed to them in the Plan.

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 Confirm the Plan*

The hearing at which the Court will determine whether to confirm the Plan will take place on January \_\_\_\_, 2017 before the Honorable Mary Kay Vyskocil, U.S. Bankruptcy Judge, in Courtroom 501, at the United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, New York 10004-1408.

*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 to DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, Counsel for the Debtor, One North Lexington Avenue, White Plains, New York 10601, Attn: Jonathan S. Pasternak, Esq. or Julie Cvek Curley, Esq. See Section IV.A. below for a discussion of voting eligibility requirements.

Your ballot must be received by **January \_\_, 2017 at 5:00 p.m. (Eastern Time)** or it will not be counted.

*3. Deadline For Objecting to the Confirmation of the Plan*

Objections to the confirmation of the Plan must be filed with the Court and served upon DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, Counsel for the Debtor, One North Lexington Avenue, White Plains, New York 10601, Attn: Jonathan S. Pasternak, Esq. or Julie Cvek Curley, Esq by **January \_\_, 2017 at 5:00 p.m. (Eastern Time)**.

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

If you want additional information about the Plan, you should contact DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, Counsel for the Debtor, One North Lexington Avenue, White Plains, New York 10601, Attn: Jonathan S. Pasternak, Esq. or Julie Cvek Curley, Esq. (914) 681-0200.

**C. Disclaimer [Upon approval by Bankruptcy Court]**

*The Court has approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the fact that the Court has approved this Disclosure Statement does not constitute an endorsement of the Plan by the Court, or a recommendation that it be accepted.*

**II. BACKGROUND**

**A. Description of the Debtor and Events Leading to Bankruptcy**

The Debtor formerly owned and operated an Italian steakhouse known as *Macelleria* in the heart of New York City's Meatpacking District (the "Restaurant"). When the Restaurant opened in 2000, it was located near Gansevoort Plaza at 48 Gansevoort Street, between Greenwich Street and Washington Street, New York, New York. At that location, the Restaurant was constructed from a former downtown meat locker, with two-story exposed brick walls, hinged doors, antique butcher blocks, vintage cases, and original 17<sup>th</sup> century Dutch stone in the wine cellar, embracing the history of the era and presenting a unique space for dining, private parties, and events.

The Debtor's lease with its landlord, Gansevoort Street Ventures, LLC, whose principal is the same principal as the Debtor's current landlord, West Village, LLC, ("Landlord"), expired in 2008 and was renewed for two (2) years, on two (2) occasions, with periods in excess of five (5) months, both before and after, where the Debtor was on a month-to-month lease, making it difficult to engage in long term business planning. In 2014, Landlord refused and ignored repeated requests to extend the Debtor's lease. As a result, in 2015, the Debtor began exploring alternative locations, and ultimately took an assignment of lease (the "Lease") for the restaurant space across the street, at 1-3 Little West 12<sup>th</sup> Street on Gansevoort Square, which was also owned by the Landlord. The Lease has nineteen (19) years remaining, and expires on November 15, 2035. The Debtor's new premises consists of a 4,500 square foot of restaurant space seating 170 people, with 2 bars, 40 foot of frontage, two party rooms, exhibit kitchen, sidewalk café on the first floor, and on the lower level, one of the bars, prep kitchen, and 5 bathrooms. The premises have only been partially built out and the Debtor has obtained and maintained current all permits.

Given the Debtor's past difficulties with the Landlord, the Debtor explored the option of simply selling and assigning the Lease. After consulting with an attorney, the Debtor was informed that it could indeed assign the Lease to a qualified assignee. To that end, the Debtor immediately began marketing the sale of the Restaurant. These efforts initially produced one serious party, Burger & Lobster, which invested hundreds of thousands of dollars into acquiring the Restaurant, including hiring engineers, designers, and architects. This buyer was backed by a large private equity group and was more than financially qualified. However, after nearly one (1) year of working on the assignment of the Lease, these efforts fell through when the Landlord

unreasonably withheld its consent to the assignment of the Lease in May, 2016, leaving the Debtor with mounting debt in excess of \$1,600,000.00. Burger & Lobster has since moved onto another project and has entered into two (2) other leases in New York City with other landlords this past year. Accordingly, the Debtor filed for Chapter 11 relief in order to use the protections afforded under the Bankruptcy Code to secure a new buyer and sell the Restaurant and assign the Lease, for the benefit of its estate and creditors.

The Debtor believes it holds significant Claims against the Landlord arising from its unreasonable withholding of consent to the assignment of the Lease to Burger & Lobster and the ensuing damages it has incurred.

## **B. Significant Events During the Bankruptcy Case**

On July 25, 2016 (the “Petition Date”), the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (Manhattan Division) and continued in possession of its property and management of its affairs as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. The case was initially assigned to the Hon. Mary Kay Vyskocil, United States Bankruptcy Judge, for administration under the Bankruptcy Code.

### *1. Retention of Professionals*

At the outset of this case the Debtor retained DelBello Donnellan Weingarten Wise & Wiederkehr, LLP as its Bankruptcy counsel to assist in the successful administration of the Debtor’s bankruptcy case. The retention of DelBello Donnellan Weingarten Wise & Wiederkehr, LLP was approved by an Order of the Bankruptcy Court dated August 18, 2016, *nunc pro tunc* as of the Petition Date. Additionally, the Debtor retained Banducci, Katz & Ferraris LLP as its

accountant, which was approved by an Order of the Bankruptcy Court dated August 22, 2016, *nunc pro tunc* as of the Petition Date. To assist with the sale of the Debtor's assets, the Debtor sought to retain Great American Brokerage, Inc. as broker in connection with the sale of Debtor's Restaurant assets and related lease, which was approved by an Order of the Bankruptcy Court dated August 22, 2016.

## *2. Schedules and Statement of Financial Affairs*

On the Petition Date, the Debtor filed its Schedules of Assets and Liabilities and Statements of Financial Affairs. Pursuant to an Order of the Bankruptcy Court dated August 15, 2016 (the "Bar Date Order"), the Court established September 30, 2016 as the last date by which creditors may file proofs of claim in the Chapter 11 Case, except as otherwise provided in the Bar Date Order. Pursuant to the Bar Date Order, notice of entry of the Bar Date Order was mailed, by first class mail, to all known creditors of the Debtor.

## *3. 341 Meeting*

On August 24, 2016 the Debtor appeared for its Initial Debtor Interview, and on August 26, 2016, the Debtor attended its Section 341(a) Meeting of Creditors. The Debtor also appeared at the initial case conference in this Bankruptcy proceeding before the Hon. Mary Kay Vyskocil at the United States Bankruptcy Courthouse on August 24, 2016 and has appeared at all continued case conferences as scheduled by the Bankruptcy Court.

## *4. Motion for Payment of Administrative Expenses*

On August 10, 2016, a mere fifteen (15) days following the Petition Date, Landlord filed a Motion for Payment of Administrative Expenses [Docket No. 15] (the "Motion for Payment"). In response, the Debtor filed opposition papers to the Motion for Payment on August 17, 2016

[Docket No. 23] stating that the Court should deny the Motion for Payment as the Debtor was about to enter into a contract to sell the Restaurant and assume and assign the Lease. At the hearing on the Motion for Payment, the Court denied the requested relief.

*5. Motion for Relief from the Automatic Stay*

On September 1, 2016, the Landlord filed a Motion for Relief from the Automatic Stay [Docket No. 31], which was returnable October 4, 2016, which was adjourned to October 18, 2016, the same return date as the Debtor's Sale Motion (defined herein below).

**C. The Sale of the Business and Property**

During its Chapter 11 case, the Debtor hired Great American Brokerage, Inc. to market the Restaurant for sale. In addition, the Debtor's principal, Violetta Bitici, reached out to her extensive contacts in the restaurant industry to procure any interested parties to acquire the Restaurant. These efforts initially resulted in the Debtor receiving an offer from The Resette Hospitality Group in the amount of \$1.2 million. However, disappointingly, The Resette Hospitality Group informed the Debtor that after completing its due diligence, and prior to executing a contract of sale, they decided not to proceed with the acquisition of the Debtor's assets. Subsequently, after further extensive marketing by Great American and the Debtor, the Debtor received an offer from The Meatpackers, Inc. (the "Purchaser") in the amount of \$1,100,000.

On or about September 26, 2016, the Debtor entered into an Asset Purchase Agreement with The Meatpackers, Inc. for purchase of the Restaurant in the amount of \$1,100,000 (the "APA").

On September 26, 2016, the Debtor filed its Motion For Order (I) Approving a Private Sale of the Debtor's Restaurant and Related Assets Free and Clear of all Liens, Claims, Interests, and Encumbrances, (II) Authorizing the Assumption and Assignment of the Debtor's Nonresidential Real Property Lease with West Village, LLC in Connection Therewith, and (III) Granting Related Relief [Docket No. 38].

Prior to the approval hearing, the Debtor, Landlord, and Purchaser reached an agreement for the assumption and assignment of the Lease and Landlord's consent thereto [Docket No. 43], which resulted in Landlord's consent to the sale, assumption, and assignment of the Lease to the Purchaser.

On October 21, 2016, the Court entered an order approving the APA, the sale of the Restaurant, and the assumption and assignment of the Lease [Docket No. 44].

The Debtor closed on the sale on November 4, 2016. The sale proceeds shall be the primary source of the Plan Distribution Fund in the estimated minimum amount of One Million One Hundred Thousand Dollars (\$1,100,000.00).

### **III. THE PLAN OF REORGANIZATION**

The following is a brief summary of the Plan. The Plan represents a proposed legally binding agreement and creditors are urged to consult with their counsel in order to fully understand the Plan and to make an intelligent judgment concerning it. The Plan governs over any discrepancy in this summary.

As required by the Bankruptcy Code, the Plan places claims in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims

is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

**A. Treatment of Unclassified Claims Under the Plan**

Certain types of claims are automatically entitled to specific treatment under the Bankruptcy 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 Bankruptcy Code. As such, the Debtor has *not* placed the following claims in any class:

*1. Allowed Administrative Claims other than Claims of Professionals*

Administrative expenses are costs or expenses of administration in connection with the Chapter 11 Case, including, without limitation, any actual, necessary costs and expenses of preserving the Debtor's estate, and all fees and charges assessed against the Debtor's estate pursuant to 28 U.S.C. section 1930. The term Administrative Claim does not include Fee Claims and quarterly fees owed to the Office of the U.S. Trustee, which are treated separately in this Plan. These Allowed Claims shall be paid in Cash on the later of the Effective Date or the Sale Closing Date, or as soon as is practicable thereafter. The Debtor estimates that the Allowed Administrative Claims other than Claims of Professionals outstanding on the Effective Date are \$0.00.

*2. Allowed Administrative Claims of Professionals*

These are Claims by any Professionals for compensation for legal and other services and reimbursement of expenses allowed or awarded under Bankruptcy Code sections 327, 328, 330(a), 331, 503(b) and/or 1103. The Debtor has three Professionals whose employment has

been approved by the Bankruptcy Court; (i) the Debtor's current bankruptcy counsel, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP ("DDWWW"), (ii) Banducci, Katz & Ferraris LLP, the Debtor's accountant, and (iii) Great American Brokerage, Inc. as the Restaurant broker (collectively, the "Professionals"). The Allowed Administrative Claims of the Professionals shall be paid in full, in Cash, upon the later of (i) allowance by the Court pursuant to 11 U.S.C. § 330, (ii) the Effective Date, or (iii) the Sale Closing Date. The Debtor estimates that the total net unpaid fee claims on the Effective Date total approximately \$200,000<sup>5</sup>, representing net unpaid professional fees incurred through the Effective Date.

### *3. United States Trustee's Fees*

These are claims for United States Trustee statutory fees arising under 28 U.S.C. § 1930 and 31 U.S.C. §3717. The Debtor shall pay outstanding United States Trustee statutory fees in full, in Cash, on the later of the Effective Date or the Sale Closing Date, or as soon as is practicable thereafter. Thereafter, such fees shall be paid in full, in Cash, in such amount as incurred in the ordinary course of business by the Debtor from the Post-Confirmation Reserve. The Debtor shall be responsible to effectuate payment of United States Trustee quarterly fees through the entry of a final decree closing the Chapter 11 Case. The Debtor estimates these fees to total approximately \$6,875.

### *4. Allowed Priority Tax Claims*

Priority tax claims are unsecured income, employment, sales, and other taxes described by §507(a)(8) of the Bankruptcy Code. The Debtor shall pay all Allowed Priority Tax claims in full, in Cash, on the later of the Effective Date or the Sale Closing Date, or as soon as is

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<sup>5</sup> This figure includes, inter alia, a reduced broker's commission of \$100,000 (from \$110,000) based on the purchase price of \$1.1 million.

practicable thereafter. The Debtor estimates these Claims to not exceed approximately \$100,000.

## **B. Classes of Claims**

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

### *1. Class 1: Allowed non-tax Priority Claims*

Class 1 Claims consist of Claims entitled to priority under Section 507(4)(2)-(7) of the Bankruptcy Code. Class I claims, if any, shall be paid in full, in Cash, from the Plan Distribution Fund on or shortly after the Effective Date. The Debtor does not believe there are any such claims. Class 1 Claims are unimpaired and deemed to accept the Plan.

### *2. Class 2: Allowed Secured Claims*

Secured claims are claims held by creditors secured by mortgages or liens on real and/or personal property owned by the Debtor or upon the leasehold interests and assets of the Debtor in accordance with section 506(a) of the Bankruptcy Code.

Class 2 consists of the holders of Allowed Class 2 Secured Claims. The Debtor shall pay to holder of Class 2 Secured Claims the amount of their Allowed Claim in full and in Cash on or shortly after the Effective Date from the Plan Distribution Fund, in full and final satisfaction of its Claims as against the Debtor. The Debtor estimates these Claims to total approximately \$180,000.00. Class 2 Claims are unimpaired under the Plan and are deemed to accept the Plan.

### *3. Class 3: Allowed General Unsecured Claims*

Class 3 consists of the holders of Allowed General Unsecured Claims. General Unsecured Claims are claims which are not either an Administrative Claim, Secured Claim, Priority Claim, or Interest that arose prior to the Petition Date and includes, without limitation,

Claims based upon pre-petition trade accounts payable or Claims based upon the rejection of an executory contract during the pendency of the Chapter 11 Case.

Class 3 Claim holders shall share in a distribution on a Pro Rata basis of the remaining monies in the Plan Distribution Fund, up to 100%, after payment of all unclassified and Class 1 and 2 Claims and the Post Confirmation Date Reserve, in full and final satisfaction of its Class 3 Claims as against the Debtor. The Debtor estimates Class 3 Claims to total approximately \$1,100,000, with an estimated, approximate minimum 8% Pro Rata distribution. Class 3 Claims are Impaired under the Plan and are allowed to vote on the Plan.

*4. Class 4: Interests*

Interests are holder of an equity security of or membership interest in the Debtor, within the meaning of Bankruptcy Code sections 101(16), (17), represented by any issued and outstanding shares of common or preferred stock or other instrument evidencing a present ownership or membership interest in the Debtor, whether or not transferable, or any option, warrant, or right, contractual or otherwise, to acquire any such interest, including a partnership, limited liability company or similar interest.

Class 4 consists of the Claims of holders of Interests in the Debtor. Class 4 Interests consist of Violetta Bitici (100%). Class 4 Interests shall receive the balance, if any, of the Plan Distribution Fund after payment of all unclassified and classified Claims and the Post-Confirmation Date Reserve, in full. Class 4 Interests are unimpaired and deemed to accept the Plan.

### **C. Resolution of Disputed Claims & Reserves**

#### *1. Objections.*

An objection to either the allowance of a Claim or an amendment to the Debtor's Schedules shall be in writing and may either be filed with the Bankruptcy Court or pursued and resolved by other means by the Debtor, at any time on or before the Effective Date, or for a period of 30 days thereafter, or within such other time period as may be fixed by the Bankruptcy Court. Except as otherwise set forth in this Plan, any Claim not filed with the Bankruptcy Court by September 30, 2016, unless specifically scheduled by the Debtor as nondisputed, noncontingent and liquidated is hereby deemed invalid for all purposes. The Debtor will object to and settle any Claims and shall settle, compromise or prosecute all Claims objections.

#### *2. Amendment of Claims.*

A Claim may be amended prior to the Effective Date only as agreed upon by the Debtor and the holder of such Claim and as approved by the Bankruptcy Court or as otherwise permitted by the Bankruptcy Code and Bankruptcy Rules. After the Effective Date, a Claim may be amended as agreed upon by the holder thereof and the Debtor to decrease, but not increase, the face amount thereof.

#### *3. Reserve for Disputed Claims.*

The Debtor shall reserve for account of each holder of a Disputed Claim that property which would otherwise be distributable to such holder on such date were such Disputed Claim an Allowed Claim on the Effective Date, or such other property as the holder of such Disputed Claim and the Debtor may agree upon. The property so reserved for the holder, to the extent such Disputed Claim is allowed, and only after such Disputed Claim becomes a subsequently

Allowed Claim, shall thereafter be distributed to such holder.

*4. Distributions to Holders of Subsequently Allowed Claims.*

Unless another date is agreed on by the Debtor and the holder of a particular subsequently Allowed Claim, the Debtor shall, on the first Business Day to occur after the fourteenth (14th) day after the Allowed amount of such theretofore Disputed Claim is determined, distribute to such holder with respect to such subsequently Allowed Claim the amount of distribution required under the Plan at that time, in Cash. The holder of a subsequently Allowed Claim shall not be entitled to any interest on the Allowed amount of its Claim, regardless of when distribution thereon is made to or received by such holder.

**D. Plan Funding and Means of Implementing the Plan**

*1. Plan Funding.*

The Plan shall be funded with the Sale Proceeds, which shall be the primary source, as well as Cash on hand, accounts receivable, and estate causes of action. Such assets shall constitute the Plan Distribution Fund, which shall be held pursuant to Section 345 of the Bankruptcy Code and ultimately distributed by DelBello Donnellan Weingarten Wise & Wiederkehr, LLP (the "Disbursing Agent") in accordance with the terms of the Plan. Except as otherwise provided in the Plan, including without limitation Article IX of the Plan, the Cash required to be distributed to holders of Allowed Claims under the Plan shall be distributed by the Disbursing Agent on the later of the following dates: (i) on, or shortly after, the later of the Effective Date or the Sale Closing Date to the extent the Claim has been Allowed or (ii) to the extent that a Claim becomes an Allowed Claim after the later of the Effective Date or the Sale Closing Date, within ten (10) days after the order allowing such Claim becomes a Final Order.

2. *Means for Implementation.*

Pursuant to an Order of the Bankruptcy Court, the Debtor sold its interests in the Restaurant and Lease in the amount of \$1.1 million. The proceeds from the sale have been deposited into an escrow account maintained by the Disbursing Agent to establish the Plan Distribution Fund. The Debtor estimates the following minimum distributions<sup>6</sup> under this Plan:

PURCHASE PRICE:	\$1,100,000.00
Professional Fees:	
Brokers	\$100,000.00 <sup>7</sup>
Attorneys	\$75,000.00
Accountants	\$25,000.00
Landlord (through 10/31/2016)	\$480,000.00, less the Debtor's objections and claims to be adjudicated
NYS Dept. Tax & Finance Secured Claim	\$107,000.00
Other Secured Claims	\$72,500.00
City of New York Priority Claim (Est.)	\$100,000.00
Estimated US Trustee Fees	\$6,825.00
Estimated Remaining for General Unsecured Creditors	\$88,675.00 (Approx. 8% Distribution)

**E. Executory Contracts and Leases**

The Plan, in Section 7.1, states that any written lease or contract that is executory, in whole or in part, to which any of the Debtor is a party and which has not been assumed on or prior to the Confirmation Date pursuant to Sections 365 and 1123 of the Bankruptcy Code during the pendency of the Chapter 11 Case, or assumed pursuant to this Plan, shall be deemed rejected. Any person or entity whose Claim arises from rejection of an executory contract shall, to the extent such Claim becomes an Allowed Claim, have the rights of a holder of an Unsecured Claim

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<sup>6</sup> The Plan Distribution Fund will be supplemented and increased by any proceeds or recoveries from (1) the sale of the Debtor's intellectual property; valued at approximately \$5,000, and (2) Estate Causes of Action including the Debtor's claims against the Landlord.

in Class 2 with respect thereto. **Any person or entity that has a Claim against the Debtor by virtue of rejection of an executory contract may file a Claim with the Clerk of the Court, and serve such claim upon counsel for the Debtor no later than twenty-five (25) days after notice of the occurrence of the Confirmation Date. If such Claim is not filed within such specified time, it shall forever be barred from assertion against the Debtor and its estate.**

The Debtor assumed its Lease for the Restaurant pursuant to Order of the Bankruptcy Court dated October 21, 2016 [Docket No. 44].

#### **F. Tax Consequence of the Plan**

*Creditors Concerned with How the Plan May Affect Their Tax Liability Should Consult with Their Own Accountants, Attorneys, and/or Advisors.*

Confirmation may have federal income tax consequences for the Debtor and Creditors. The Debtor has not obtained, and does not intend to request, a ruling from the Internal Revenue Service (the "IRS"), nor has the Debtor obtained an opinion of counsel with respect to any tax matters. Any federal income tax matters raised by confirmation of the Plan are governed by the Internal Revenue Code and the regulations promulgated thereunder. Creditors are urged to consult their own counsel and tax advisors as to the consequences to them, under federal and applicable state, local and foreign tax laws, of the Plan. The following is intended to be a summary only and not a substitute for careful tax planning with a tax professional. The federal, state and local tax consequences of the Plan may be complex in some circumstances and, in some cases, uncertain. Accordingly, each holder of a Claim is strongly urged to consult with his or her own tax advisor regarding the federal, state and local tax consequences of the Plan, including but not limited to the receipt of cash and/or stock under this Plan.

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<sup>7</sup> Includes any co-brokers to be paid at closing, subject to allowance by this Court.

*1. Tax Consequences to the Debtor*

The Debtor may not recognize income as a result of the discharge of debt pursuant to the Plan because Section 108 of the Internal Revenue Code provides that taxpayers in bankruptcy proceedings do not recognize income from discharge of indebtedness. However, a taxpayer is required to reduce its "tax attributes" by the amount of the debt discharged. Tax attributes are reduced in the following order: (i) net operating losses; (ii) general business credits; (iii) capital loss carryovers; (iv) basis in assets; (v) passive activity loss and credit carryovers; and (vi) foreign tax credit carryovers.

*2. Tax Consequences to Unsecured Creditors*

An unsecured creditor that receives cash in satisfaction of its Claim may recognize gain or loss, with respect to the principal amount of its Claim, equal to the difference between (i) the creditor's basis in the Claim (other than the portion of the Claim, if any, attributable to accrued interest), and (ii) the balance of the cash received after any allocation to accrued interest. The character of the gain or loss as capital gain or loss, or ordinary income or loss, will generally be determined by whether the Claim is a capital asset in the creditor's hands. A creditor may also recognize income or loss in respect of consideration received for accrued interest on the Claim. The income or loss will generally be ordinary, regardless of whether the creditor's Claim is a capital asset in its hands.

**G. Avoidance and Recovery Actions**

The Debtor's estate will pursue all causes of action under Sections 544, 547, 548, 550 and 553 of the Bankruptcy Code that should be pursued. The Debtor shall file such actions no later than 120 days after the Effective Date. The proceeds from any recoveries from Avoidance

Actions shall be used to first pay any outstanding professional fees and expenses incurred in connection with the prosecution of Avoidance Actions, with the balance to be paid to Class 3 Claim holders in accordance with this Plan.

#### **IV. CONFIRMATION REQUIREMENTS AND PROCEDURES**

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Bankruptcy 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 at least as much as the creditor would receive in a chapter 7 liquidation case, unless the creditor votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in § 1129, and they are not the only requirements for confirmation.

##### **A. Who May Vote or Object**

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

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

In this case, the Debtor believes that there are classes impaired under the Plan and that the holder of the claims in these classes are entitled to vote to accept or reject the Plan. The Debtor believes that 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?*

Only a creditor with an allowed claim has the right to vote on the Plan. Generally, a claim 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, unless an objection has been filed to such proof of claim. When a claim is not allowed, the creditor holding the claim cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim 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 September 30, 2016.***

*2. What Is an Impaired Claim?*

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

Class 3 Claims are impaired under the Plan and entitled to vote.

Each Holder of a Claim in Class 3 has been sent a ballot together with this Disclosure Statement. The ballot is to be used for voting to accept or reject the Plan.

The Bankruptcy Court has directed that, to be counted for voting purposes, ballots for the acceptance or rejection of the Plan must be mailed or delivered by hand or courier so that they are ACTUALLY RECEIVED no later than 5:00 p.m. (Eastern Standard Time) on January 7, 2017 at the following address:

DELBELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP  
One North Lexington Avenue  
White Plains, New York 10601  
Attn: Jonathan S. Pasternak, Esq.  
Julie Cvek Curley, Esq.

Each Holder of an Allowed Claims in Class 3 shall be entitled to vote to accept or reject the Plan as provided for in the order approving the Disclosure Statement. A vote may be disregarded if the Bankruptcy Court determines that such vote was not solicited or procured in good faith and in accordance with the Bankruptcy Code.

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

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

- holders of claims that have been disallowed by an order of the Court;
- holders of other claims that are not “allowed claims” (as discussed above), unless they have been “allowed” for voting purposes;
- holders of claims in unimpaired classes;
- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Bankruptcy Code; and
- administrative expenses.

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

*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.

*2. Treatment of Nonaccepting Classes*

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribed by § 1129(b) of the Bankruptcy Code. A plan that binds nonaccepting classes is commonly referred to as a “cram down” plan. The Bankruptcy Code allows the Plan to bind nonaccepting classes of claims if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Bankruptcy 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 as the variations on this general rule are numerous and complex.***

**C. Feasibility and Best Interests Test**

The Bankruptcy Code requires that in order to confirm the Plan, the Bankruptcy Court must find that confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization of the Debtor (the “Feasibility Test”).

For a plan to meet the Feasibility Test, the Bankruptcy Court must find that the Debtor will possess the resources to meet its obligations under the Plan. Since the Plan contemplates a liquidation of the Debtor's assets, Confirmation of the Plan is not likely to be followed by the need for further financial reorganization of the Debtor or any successor to the Debtor under the Plan. Moreover, on the Effective Date, the Debtor will have sufficient funds on hand to fund the Plan. The Plan Distribution Schedule outlining all payments to be made under the Plan from, *inter alia*, the sale proceeds is attached to this Disclosure Statement as **Exhibit "B."** ***You Should Consult with Your Accountant or other Financial Advisor If You Have Any Questions Pertaining to These Projections.***

In addition, the Bankruptcy Court must determine that the values of the distributions to be made under the Plan to each Class will equal or exceed the values which would be allocated to such Class in a liquidation under Chapter 7 of the Bankruptcy Code (the "Best Interest Test").

The Best Interest Test with respect to each impaired Class requires that each holder of a Claim or Interest in such Class either (i) accept the Plan or (ii) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive or retain if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code. Because the Debtor has proposed a liquidating Plan which distributes all proceeds thereof to holders of Allowed Claims in order of priority, no scenario exists, including but not limited to Chapter 7 liquidation, under which the creditors would be entitled to receive a distribution greater than that which the Debtor has proposed in its Plan. In fact, were the Debtor's assets liquidated in a Chapter 7 case, the creditors of the estate would stand to receive far less as the Administrative costs associated with such a case would be significantly higher.

The Debtor believes that the Plan satisfies all of the statutory requirements of Chapter 11 of the Bankruptcy Code, including the “best interest” and feasibility requirements. The Plan is “fair and equitable” and “does not discriminate unfairly”. The Plan complies with all other requirements of Chapter 11 of the Bankruptcy Code and the Plan has been proposed in good faith.

#### **D. Notices**

All notices and correspondence should be forwarded in writing to:

Macelleria Restaurant, Inc.  
DelBello Donnellan Weingarten Wise & Wiederkehr, LLP  
One North Lexington Avenue  
White Plains, New York 10601  
Attn: Jonathan S. Pasternak, Esq.  
Julie Cvek Curley, Esq.

### **V. EFFECT OF CONFIRMATION OF PLAN**

#### **A. Discharge of Debtor**

Since the Plan provides for a liquidation of the Debtor’s assets, the Confirmation Order shall not operate as a discharge pursuant to Section 1141(d)(1) of the Bankruptcy Code.

##### ***1. Exculpation.***

*Neither the Debtor nor any of its respective members, shareholders, officers, directors, employees, attorneys, advisors, agents, representatives and assigns (the “Released Parties”) shall have or incur any liability to any entity for any action taken or omitted to be taken in connection with or related to the formulation, preparation, dissemination, Confirmation or consummation of the Plan, the Disclosure Statement or any contract, instrument, release or other agreement or document created or entered into, or any other action taken or omitted to*

*be taken in connection with the chapter 11 case or the Plan and any related agreement except for bad faith, willful misconduct, gross negligence, breach of fiduciary duty, malpractice, fraud, criminal conduct, unauthorized use of confidential information that causes damages, and/or ultra vires acts. Notwithstanding any other provision hereof, nothing in Sections 11.2 or 11.3 of the Plan shall (a) effect a release of any claim by the United States Government or any of its agencies or any state and local authority whatsoever, including, without limitation, any claim arising under the Internal Revenue Code, New York State Tax Law, the environmental laws or any criminal laws of the United States or any state and local authority against the Released Parties, nor shall anything in Sections 11.2 or 11.3 of the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action or other proceedings against any of the Released Parties referred to herein for any liability whatever, including, without limitation, any claim, suit or action arising under the Internal Revenue Code, New York State Tax Law, the environmental laws or any criminal laws of the United States or any state and local authority, nor shall anything in this Plan exculpate any party from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including liabilities arising under the Internal Revenue Code, New York State Tax Law, the environmental laws or any criminal laws of the United States or any state and local authority against the Parties referred to herein, or (b) limit the liability of the Debtor's professionals to the Debtor pursuant to Rule 1.8(h)(1) of the New York Rules of Professional Conduct.*

2. *Plan Injunction*

*Upon the Confirmation Date, but subject to the occurrence of the Effective Date, all persons who have held, hold or may hold Claims or Interests are enjoined from taking any of the following actions against or affecting the Debtor or assets of the Debtor with respect to such Claims, Interests or Administrative Claims, except as otherwise set forth in the Plan, and other than actions brought to enforce any rights or obligations under the Plan or appeals, if any, from the Confirmation Order:*

*(i) Commencing, conducting or continuing in any manner, directly or indirectly, any suit, action, arbitration, or other proceeding of any kind against the Debtor or the assets of the Debtor regarding the Claims or Interests;*

*(ii) Enforcing, levying, attaching, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Debtor, the assets of the Debtor;*

*(iii) Creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the assets of the Debtor;*

*(iv) Asserting any setoff, right of subrogation, or recoupment of any kind, directly or indirectly, against the Debtor, the assets of the Debtor; and*

*(v) Proceeding in any manner and any place whatsoever that does not conform to or comply with the provisions of the Plan.*

3. *Full and Final Satisfaction*

To the fullest extent permitted by Section 1141(a)-(c) of the Bankruptcy Code, all payments and all distributions pursuant to the Plan, shall be in full and final satisfaction,

settlement and release of all Claims and Interests, except as otherwise provided in the Plan. Nevertheless, under Section 1141(d) of the Bankruptcy Code, the Debtor will not receive a discharge because the Plan is a liquidating plan.

**B. Amendment, Modification, Withdrawal or Revocation of the Plan.**

The Debtor reserves the right, in accordance with the Section 1127 of the Bankruptcy Code, to amend or modify the Plan by Order of the Bankruptcy Court, as may be required.

The Debtor may withdraw or revoke the Plan prior to the Confirmation Date. If such a withdrawal or revocation occurs, or if Confirmation does not occur, the Plan will be null and void. In such event, nothing contained in the Plan will constitute a waiver or release of any Claim by or against the Debtor or any other person or to prejudice in any manner the rights of the Debtor or any other person in any further proceedings involving the Debtor.

**C. Unclaimed Property**

Except as otherwise provided herein, if after thirty (30) days additional attempted notice to the claimholder such distribution remains unclaimed or unnegotiated, then and in that event such holder's Claim shall thereupon be deemed canceled and any such holder shall not be entitled to any payments under the Plan, and such unclaimed distributions shall be distributed Pro Rata to Allowed Class 2 Creditors unless and until such unclaimed distributions total less than \$5,000, at such time will be deemed available for post-Effective Date Professional Fees.

**D. Retention of Jurisdiction**

The Bankruptcy Court shall retain jurisdiction of the chapter 11 case:

(a) To determine all controversies relating to or concerning the allowance of and/ or distribution on account of such Claims or Interests upon objection thereto which may be filed by

any party in interest;

(b) To determine requests for payment of Claims entitled to priority under Section 507(a)(2) of the Bankruptcy Code, including any and all applications for compensation for professional and similar fees

(c) To determine any and all applications, adversary proceedings, and contested or litigated matters over which the Bankruptcy Court has subject matter jurisdiction pursuant to 28 U.S.C Sections 157 and 1334;

(d) To determine all disputed, contingent or unliquidated Claims and all disputed Interests;

(e) To determine requests to modify the Plan pursuant to Section 1127 of the Bankruptcy Code or to remedy any defect or omission or reconcile any inconsistencies in this Plan or Confirmation Order to the extent authorized by the Bankruptcy Code;

(f) To make such orders as are necessary or appropriate to carry out the provisions of the Plan;

(g) To resolve controversies and disputes regarding the interpretation or enforcement of the terms of the Plan; and

(h) To enter a final decree closing this chapter 11 case.

#### **E. Post-Confirmation Fees, Reserves and Final Decree**

The reasonable compensation and out-of-pocket expenses incurred post-Confirmation Date by the Debtor's professionals retained in the Chapter 11 case shall be paid by the Debtor within ten (10) days upon presentation of invoices for such professional services. All disputes

concerning post-confirmation fees and expenses shall be subject to Bankruptcy Court jurisdiction.

The Debtor shall reserve \$25,000 from the Plan Distribution Fund for the payment of post-Confirmation professional fees incurred by Debtor's counsel and the Disbursing Agent in the continued prosecution of estate causes of action, adjudication of Claims, and in connection with the carrying out of duties and responsibilities as the Disbursing Agent as well as payment of United States Trustee fees. The balance of such reserve, if any, shall be distributed in accordance with Article III of the Plan.

A final decree shall be entered as soon as practicable after initial distributions have commenced under the Plan.

#### **F. Continuation of Bankruptcy Stays**

All stays provided for in the chapter 11 case under Section 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

**VI. RECOMMENDATION**

The Debtor believes that Confirmation of the Plan is preferable to any of the alternatives described above. The Plan will provide greater recoveries than those available in liquidation to all holders of Claims. Any other alternative would cause significant delay and uncertainty, as well as substantial additional administrative costs.

Dated: New York, New York  
November 4 2016

MACELLERIA RESTAURANT, INC.

By: /s/ Violetta Bitici  
Violetta Bitici, President

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White Plains, New York 10528  
(914) 681-0200

By: /s/ Jonathan S. Pasternak  
Jonathan S. Pasternak