

*THE DEBTOR IN THIS CASE IS A “SMALL BUSINESS”. AS A RESULT, THE DEBTOR IS PERMITTED TO DISTRIBUTE AND HAS DISTRIBUTED THIS DISCLOSURE STATEMENT BEFORE ITS FINAL APPROVAL BY THE COURT. IF AN OBJECTION TO THIS DISCLOSURE STATEMENT IS FILED BY A PARTY IN INTEREST, FINAL APPROVAL OF THIS DISCLOSURE STATEMENT WILL BE CONSIDERED AT OR BEFORE THE HEARING ON CONFIRMATION OF THE PLAN.*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

Chapter 11

NEGRIL VILLAGE, INC.

Case No. 17-10319(SHL)

Debtor.

-----X

**FIRST AMENDED JOINT DISCLOSURE STATEMENT  
PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE**

**I. INTRODUCTION**

Negril Village, Inc. (the “Debtor”) and Imagek, LLC (“Imagek”)(the Debtor and Imagek are collectively, the “Proponents”), submit this First Amended Joint Disclosure Statement dated December 11, 2017 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”), to all known holders of Claims<sup>1</sup> against or Interests in the Debtor in order to adequately disclose information deemed to be material, important and necessary to make a

---

<sup>1</sup> Unless otherwise stated, defined terms used herein shall have the same meaning ascribed to them in the Plan.

reasonably informed judgment about the Proponents' First Amended Joint Chapter 11 Plan of Reorganization, dated December 11, 2017 (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". A copy of the Debtors' post-Effective Date projections are annexed hereto as Exhibit "B."

**A. Purpose of This Document**

This Disclosure Statement summarizes what is in the Plan, and tells you certain information relating to the Plan and the process the Court follows in determining whether or not to confirm the Plan.

This Disclosure Statement cannot tell you everything about your rights. You should consider consulting your own lawyer to obtain more specific advice on how this Plan will affect you and what is the best course of action for you. Be sure to read the Plan as well as the Disclosure Statement. If there are any inconsistencies between the Plan and the Disclosure Statement, the Plan provisions will govern.

Bankruptcy Code section 1125 requires a Disclosure Statement to contain "adequate information" concerning the Plan. The term "adequate information" is defined in Bankruptcy Code section 1125(a) as "information of a kind, and in sufficient detail," about a debtor and its operations "that would enable a hypothetical reasonable investor typical of holders of claims or interests" of the debtor to make an informed judgment about accepting or rejecting the Plan. The Bankruptcy Court ("Court") has determined that the information contained in this Disclosure Statement is adequate, and it has approved this document in accordance with Bankruptcy Code section 1124.

This Disclosure Statement is provided to each creditor whose claim has been scheduled by the Debtor or who has filed a proof of claim against the Debtor and to each interest holder of record as of the date of approval of this Disclosure Statement. Under the Bankruptcy Code, your acceptance of the Plan may not be solicited unless you receive a copy of this Disclosure Statement prior to or concurrently with such solicitation.

**B. Confirmation Procedures and Key Deadlines**

Persons Potentially Eligible to Vote on the Plan

In determining acceptance of the Plan, votes will only be counted if submitted by a creditor whose claim is duly scheduled by the Debtor as undisputed, non-contingent and unliquidated, or who, prior to the hearing on confirmation of the Plan, has filed with the Court a proof of claim which has not been disallowed prior to computation of the votes on the Plan. All Interest holders of record as of the date of approval of this Disclosure Statement may vote on the Plan.

The Ballot that you received does not constitute a proof of claim. If you are uncertain whether your claim has been correctly scheduled, you should check the Debtor's Schedules, which are on file at the office of the Clerk of the Bankruptcy Court located at: United States Bankruptcy Court, U.S. Court House, One Bowling Green, New York, New York 10004. The Clerk of the Bankruptcy Court will not provide this information by telephone.

THE COURT HAS NOT YET CONFIRMED THE PLAN DESCRIBED IN THIS DISCLOSURE STATEMENT. IN OTHER WORDS, THE TERMS OF THE PLAN ARE NOT YET BINDING ON ANYONE. HOWEVER, IF THE COURT LATER CONFIRMS THE PLAN, THEN THE PLAN WILL BE BINDING ON THE DEBTOR AND ON ALL CREDITORS AND INTEREST HOLDERS IN THIS CASE.

**1. Time and Place of the Confirmation Hearing**

The hearing at which the Court will determine whether to confirm the Plan will take place on December \_\_\_\_, 2017 at \_\_\_ o'clock am. in the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, Courtroom 701, New York, New York 10004.

**2. Deadline For Voting For or Against the Plan**

If you are entitled to vote, it is in your best interest to timely vote on the enclosed ballot and return the ballot in the enclosed envelope to Counsel for the Debtor at the address below:

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

Your ballot must be received by December \_\_\_\_, 2017 or it will not be counted.

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

Any objections to the confirmation of the Plan must be filed with the Court and served upon the following so as to be received by December \_\_\_\_, 2017:

James E. Hurley Jr., Esq.  
LAW OFFICES OF JAMES E. HURLEY JR.  
14 Wall Street, 20<sup>th</sup> Floor  
New York, NY 10005  
Attorney for the Debtor

Erica R. Aisner, Esq  
DELBELLO DONNELLAN WEINGARTEN WISE & WIEDERKEHR, LLP  
One N. Lexington Avenue  
White Plains, NY 10601  
Attorneys for Imagek

**4. Identity of Person to Contact for More Information Regarding the Plan**

Any interested party desiring further information about the Plan should contact Erica R. Aisner at the address above, at telephone number 914-681-0200 or by e-mail: eaisner@ddw-law.com.

**C. Disclaimer**

The financial data relied upon in formulating the Plan is based on information provided by the Debtor, an understanding of the Debtor's assets, the market and the industry in which the Debtor operates. The information contained in this Disclosure Statement is provided by the Proponents. The Proponents represents that everything stated in the Disclosure Statement is true to the best of their knowledge.

**PLEASE NOTE THAT THE APPROVAL OF THIS DISCLOSURE STATEMENT BY THE BANKRUPTCY COURT DOES NOT CONSTITUTE A RULING ON THE MERITS, FEASIBILITY OR DESIRABILITY OF THE PLAN.**

**II. BACKGROUND**

The Debtor operates a restaurant at 70 W. 3<sup>rd</sup> Street, New York, NY 10012 under the name "Negril Village." The restaurant serves Caribbean cuisine including traditional dishes from locales such as Trinidad, Puerto Rico and Jamaica. The restaurant operates on two levels at the Premises which includes area for live music in a lounge like setting. The Debtor's sole shareholder and principal officer is Marva Lane.

The Chapter 11 Case was filed on February 13, 2017, in the face of mounting tax liabilities which in certain cases, had been reduced to liens on the Debtor's assets, as well as disputes with

the landlord, Imagek with which the Debtor's relationship had converted to a month-to-month tenancy after the expiration of the lease.

The Debtor's primarily asset is the goodwill which has been built over the course of the Debtor's time in operations. The name, the menu and general atmosphere of the Debtor and the Premises are all of value but given that the Debtor has no lease for its premises, in order to monetize this asset it would have to relocate absent a cure arrangement with Imagek (as provided for in the Plan).

### **Outstanding Debts of the Debtor**

As set forth in more detail in Article III of this Disclosure Statement, the outstanding debt of the Debtor is summarized as follows:

- Secured claims filed by federal and state taxing authorities which total approximately **\$360,000.00** which amounts are based upon proofs of claim filed by the New York State Department of Taxation and Finance ("NYS DTF") and the Internal Revenue Service ("IRS");
- Priority claims in the approximate amount of **\$125,000.00** which amounts are based upon the proofs of claim filed by NYS DTF, IRS and the New York City Department of Finance ("NYCDOF");
- General unsecured claims in the approximate amount of **\$200,000.00** which amount is based primarily on the Debtor's Schedule F (although all of the debts on Schedule F are disputed by the Debtor). It should be noted that the aforementioned amount includes \$56,000 allegedly due to Imagek however, the Allowed Imagek Claim is in excess of that

amount and shall be paid in accordance with the assumption of the lease with Imagek and the execution of the Amended Lease.

It should also be noted that the deadline to file claims (“Bar Date”) has been set for December 7, 2017 and once that occurs, the universe of claims will be more certain, subject to any claim objections that may need to be filed.

**A. Significant Events During the Bankruptcy**

The following is a chronological list of the events which have occurred (and not occurred) during this Chapter 11 bankruptcy proceeding:

- February 13, 2017, bankruptcy petition filed by the Debtor.
- The Debtor filed its Schedules of Assets and Liabilities on February 28, 2017 however, upon information and belief, they fail to disclose numerous assets of the Debtor. No Statement of Financial Affairs has been filed to date.
- The Court approved the Debtor's retention of its attorneys on May 24, 2017, *nunc pro tunc* to the petition date.
- A partial monthly operating report was filed for February – March, 2017 and another report filed for April, 2017.
- No substantive matters have occurred in the Chapter 11 case.
- The exclusive period during which only the Debtor can file a Chapter 11 case expired on June 13, 2017 and the Debtor has failed to file a Chapter 11 plan or seek an extension of such exclusive period.

**III. SUMMARY OF THE CHAPTER 11 PLAN**

**A. What Creditors and Interest Holders Will Receive Under the Proposed Plan**

The Plan classifies claims and interests in various classes. The Plan states whether each class of claims or interests is impaired or unimpaired. The Plan provides the treatment each class will receive.

**B. Unclassified Claims**

Certain types of claims are not placed into voting classes. They are not considered impaired and they do not vote on the Plan because they are automatically entitled to specific treatment provided for them in the Bankruptcy Code. As such, the Debtor has not placed the following claims in a class:

**1. Administrative Expenses and Fees**

Administrative expenses are claims for fees, costs or expenses of administering the Debtor's Chapter 11 case which are allowed under Bankruptcy Code section 507(a)(1), including all professional compensation requests pursuant to Sections 330 and 331 of the Bankruptcy Code. The Bankruptcy Code requires that all allowed administrative expenses including fees payable to the Bankruptcy Court and the Office of the United States Trustee which were incurred during the pendency of the case must be paid on the Effective Date of the Plan, unless a particular claimant agrees to a different treatment. It is estimated that the approximately \$30,000 in Administrative Expenses will be due on the Effective Date (subject to the approval of the Bankruptcy Court).

**3. Secured and Priority Tax Claims**

Priority tax claims are certain unsecured corporate, sales and payroll related taxes described by Bankruptcy Code section 507(a)(8). The Bankruptcy Code requires that each holder of such a section 507(a)(8) priority tax claim receive the present value of such claim in deferred cash payments, over a period not exceeding five years from the date of Petition Date, unless the holder of such Claim agrees to different treatment. Proponent estimates that the total aggregate Allowed Secured Priority Tax Claims to be approximately \$360,000 and Allowed Unsecured Priority Tax



Claims to be approximately \$125,000. Proponent proposes to pay such Allowed Claims in full, in Cash, over a period not to exceed five (5) years from the Petition Date.

**C. Classified Claims and Interests**

**1. Class 1 Priority Non-Tax Claims**

Certain priority non-tax Claims that are referred to in Code sections 507(a)(3), (4), (5), (6), and (7) are required to be placed in Classes. The Debtor's schedules show there are no priority non-tax Claims in this case. Nor has any party filed a priority claim prior the expiration of the Bar Date. To the extent any such claims exist, payment in full in Cash shall be made to such Claim holders on their Allowed Claims on the Effective Date of the Plan by the Proponent. Class 1 Claims are not Impaired under the Plan.

**2. Class 2 General Unsecured Claims**

General Unsecured Claims are Claims not secured by any property of the Debtor's estate and not entitled to priority under Code section 507(a). The Debtor scheduled approximately \$200,000 on its Schedule F as unsecured claims. Distribution will be made to Allowed Claims of Class 2 creditors who will receive up to 25% of their Allowed Claim payable in yearly installments of 5% per year with the first installment being made six (6) months after the Effective Date and continuing on the yearly anniversary of such payment date for four (4) years thereafter. Allowed Class 2 Claims are Impaired under this Plan and shall be entitled to vote to accept or reject the Plan.

**3. Class 3 of Equity Interest Holders**

Interest holders are the parties who hold ownership interest (i.e., equity interest) in the Debtor. Upon information and belief, Marva Layne is the sole shareholder the Debtor. Ms. Lane shall receive no distribution under the Plan, her Interest shall be deemed impaired and she shall be deemed to reject the Plan.

**D. Means of Effectuating the Plan**

The Plan will be funded by all of the Debtor's Cash on hand on the Effective Date and Cash generated from post-Effective Date operations. However, in the event of an uncured default under the Plan, the Assets will be conveyed to the Purchaser and the payments due under the Plan assumed and remitted by Purchaser from the same sources. A detailed discussion of the procedures in the event of a default under the Plan are set forth in the Plan in Section II(H).

**E. Assumption of Executory Contracts and Unexpired Leases**

**1. Assumption and Cure.** Except as otherwise provided herein, as of the Effective Date, any executory contract or unexpired lease (collectively, a "Contract" or "Contracts") which has not otherwise been assumed or rejected by Order of the Court or which has otherwise expired by its own terms, shall be deemed assumed. Any monetary defaults under any Contract to be assumed under the Plan shall be paid either, (i) by payment of the default amount in Cash, in full on the Effective Date; or (ii) by payment of the default amount on such other terms as may be agreed to by the Debtor and the non-Debtor parties to such Contract. *Cure claims must be filed by parties to a Contract no later than fourteen (14) days prior to the first scheduled date for hearing to consider Confirmation of this Plan or shall be deemed waived.* In the event of a dispute regarding cure payments, adequate assurance of future

performance or any other matter pertaining to assumption of the Contract to be assumed, must be set forth in a written objection filed with the Bankruptcy Court and served on or before the same deadline and in the same manner established for the filing and service of objections to Confirmation of the Plan. Failure to timely assert an objection shall constitute consent to the proposed assumption and vesting in the reorganized Debtor.

**2. Reinstatement, Amendment and Assumption of Premises Lease.** On or prior to Confirmation, the Debtor and Imagek shall execute an Reinstatement and Amendment of the Lease Agreement (“Amended Lease”) between the parties providing for, *inter alia*, a ten (10) year renewal term. This is critical for the Debtor’s reorganization efforts as it has no legal right to occupy its current business location for longer than 30 days. The issuance of the Amended Lease will ensure that so long as the Debtor complies with the monetary and non-monetary terms thereof, it will be able to continue its operations uninterrupted while it emerges from bankruptcy and carries out the terms of the Plan.

**3. Payment of Imagek Allowed Claim/ Cure Payment.** Imagek shall be paid as follows: (a) \$100,000 upon the Effective Date and the balance shall be paid in equal consecutive monthly payments of \$15,000 per month with interest at 12% per annum, until such time as it is paid in full. Upon the payment in full of the Imagek Allowed Claim, the Amended Lease shall be effective and the Escrow Documents shall be released from escrow in accordance with Section 3(b) of the Plan. As security for the repayment by the Debtor of the cure over time, Imagek shall receive, (i) a lien on the Debtor’s principal’s residence (for which the execution of a note and collateral mortgage by the Debtor’s principal and her spouse shall be required), the recording costs for which shall be borne by the Debtor, and (ii) a lien on all of the assets of the Debtor

which shall be perfected with the filing of a UCC-1 financing statement. As further security, the Debtor shall also execute: (iii) a bill of sale providing for the conveyance of the Assets to the Purchaser, (iv) assignment of all right, title and interest in and to the Amended Lease (notwithstanding the fact that it is not yet effective), (v) Warrant of Eviction of the Debtor from the Premises, (vi) Non-Compete by the Debtor's principal and (vii) any other documents which Imagek deems necessary for the conveyance of the Assets and operations upon default (collectively, the "Sale Documents")(the Sale Documents and the Amended Lease are collectively referred to as the "Escrow Documents").

**Procedures for Resolving Contested Claims.**

A deadline of December 7, 2017 for filing proofs of claims in this Case has been established pursuant to an Order of the Court. Any objection to claim shall be filed up to the Effective Date. With respect to disputed Claims or Interests, the Disbursing Agent will hold the entire required distribution amount until such time as the dispute regarding the Claim is determined by the Court at which time the funds will be released in accordance with such resolution.

**F. Tax Consequences of Confirmation.**

**1. Generally.** Confirmation may have federal income tax consequences for the Debtor and holders of Claims and Interests. The Plan Proponent has not obtained and does not intend to request a ruling from the Internal Revenue Service (the "IRS"), nor has the Plan Proponent 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 and holders of Interests are urged to consult

their own counsel and tax advisors as to the tax consequences, 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 or Interest 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 under the Plan.

**2. 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 cases do not recognize income from discharge of indebtedness. However, subject to certain exceptions, 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.

**3. 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.

**4. Modification of Plan.** The Debtor may modify the Plan at any time before confirmation. However, the Court may require a new disclosure statement and/or re-voting on the Plan if Debtor modifies the plan before confirmation. The Plan Proponent may also seek to modify the Plan at any time after confirmation so long as (1) the Plan has not been substantially consummated and (2) the Court authorizes the proposed modification after notice and a hearing. Plan Proponent further reserves the right to modify the treatment of any Allowed Claims at any time after the Effective Date of the Plan upon the consent of the Creditor whose Allowed Claim treatment is being modified, so long as no other Creditors are materially adversely affected.

**5. Post-Confirmation Conversion/Dismissal.** In the Event of Default under the Plan, which default remains uncured, upon compliance with the Notice requirements in Section II(H)(2) in the Plan, the Escrow Documents shall be released to the Purchaser and shall be deemed immediately effective. The result of this release shall render the Purchaser the titled owner of the Assets and it shall assume the remaining payments due under the Plan. Once these assumed payments are paid in full, the Assets shall be deemed free and clear of all liens, claims and encumbrances. The issuance of the discharge shall be effective as to the Assets and inure to the benefit of the Purchaser.

In the event of any subsequent default the only remedies available to the estate and/ or its creditors shall be (1) the acceleration and demand for payment due to such holder under the Plan from the Purchaser, (2) to commence an action against the Purchaser in the Bankruptcy Court to

compel payment or to otherwise enforce the default or (3) to seek conversion or dismissal of the Chapter 11 Case, as applicable.

#### **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 Plan Proponent 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.

##### **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 is December 7, 2017.*

## **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 2 and 3 Claims are impaired under the Plan and Class 2 shall be entitled to vote (Class 3 is deemed to reject the Plan). As such, each holder of a Claim in Class 2 shall be 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 \_\_\_\_\_, **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.  
Erica R. Aisner, Esq.



Each Holder of an Allowed Claim in each voting Class 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.

### **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.*

### **3. 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”).

Typically, 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. Here, given that the Plan Proponent is not the Debtor, feasibility will be determined on whether the Plan itself will result in

sufficient funds to meet the financial 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 Plan Proponent will have sufficient funds on hand to fund the Plan.

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.

The Proponents believe 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.

Proponents submit that the value of the Assets of the Debtor on liquidation are significantly less than the amount due the Secured and Priority Creditors and were the Debtor to be liquidated in a Chapter 7, it is extremely likely that the Creditors would receive little to no distribution given that the trustee would have no lease to sell so the only asset capable of sale would be goodwill and other intangibles. Moreover, a chapter 7 trustee would be entitled to earn a commission and would

hire his/ her own professionals which would result in additional expenses payable from the estate. Finally, all of the Debtor's operations would cease which would have a detrimental impact on the value of the remaining assets, de minimus as they may be.

**4. The estimated amounts required to be paid on the Effective Date are:**

Secured Claims	\$6,000.00
Priority Tax Claims	\$2,100.00
Initial Payment -Cure to Imagek	\$100,000.00
Professional Fees & Expenses	\$30,000.00
<b>Estimated Total Required on Effective Date.....</b>	<b>\$138,100.00</b>

**THE PROPONENTS THEREFORE STRONGLY RECOMMEND ACCEPTANCE OF THE PLAN. CREDITORS ARE URGED TO CONSULT WITH THEIR ATTORNEYS IN DETERMINING WHETHER TO ACCEPT OR REJECT THE PLAN.**

**V. EFFECT OF CONFIRMATION OF PLAN**

A. **Discharge.** Upon the Effective Date, the Debtor shall receive a discharge, as provided for under section 1141 of the Bankruptcy Code.

**B. Releases, Exculpations and Injunctions.**

**1. Exculpation.** *Subject to the limitations set forth in section 1125(e) of the Bankruptcy Code, neither of the Proponents nor any of their Interest holders, 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 or the disclosure statement therefor except with respect to its obligations under the Plan, with the exception of any such act or omission taken in 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 contained in this section 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, NYS 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 this section enjoin the United States or any state or local authority from bringing any claim, suit, action or other proceedings against any Released Party referred to herein for any liability whatever, including, without limitation, any claim, suit or action arising under the Internal Revenue Code, NYS 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, NYS 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 pursuant to Rule 1.8(h)(1) of the New York Rules of Professional Conduct.*

**2. Confirmation Injunction.** *Except for the treatment specified in, and as otherwise expressly provided in the Plan, any and all entities who have held, hold or may hold*

*Claims or Interests, including Administrative Claims, against or in the Debtor shall, as of the Effective Date, be enjoined from:*

*(a) commencing, conducting, or continuing, in any manner, any suit, action, or other proceeding of any kind (including, without limitation, in any judicial, arbitral, administrative or other forum) against the Debtor or reorganized Debtor or their property with regard to such entity's Claim against the Debtor or its Assets;*

*(b) enforcing, levying, attaching (including, without limitation, any pre-judgment attachment), collection or otherwise recovering by any manner or means, whether directly or indirectly, or any judgment, award, decree, or order against the Debtor or reorganized Debtor or the Assets with regard to such entity's Claim against the Debtor;*

*(c) creating, perfecting or otherwise enforcing, in any manner, directly or indirectly, any encumbrance of any kind against the Debtor or reorganized Debtor or the Assets with regard to such entity's Claim against the Debtor;*

*(d) asserting any set off, right of subrogation or recoupment of any kind, directly or indirectly, against any obligation due the Debtor, the reorganized Debtor or the Assets with regard to such entity's Claim against the Debtor; and*

*(e) acting in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.*

**VI. RECOMMENDATION**

The Proponents believe that Confirmation of the Plan is in the best interests of all creditors of the estate. No other alternative available to the Debtor or the creditors will result in any greater recovery than that which is proposed and recommended in the Plan. All other alternative would cause significant delay and uncertainty, as well as substantial additional administrative costs.

Dated: December 11, 2017  
New York, New York

NEGRIL VILLAGE INC.  
*Debtor*

By: /s/ Marva Layne  
Marva Layne, Pres.

IMAGEK, LLC  
*Co-Plan Proponent*

By: /s/ Anthony C. Marano  
Anthony C. Marano, Managing Member