

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLORADO

|                        |   |                       |
|------------------------|---|-----------------------|
| In re:                 | ) |                       |
|                        | ) |                       |
| BALL FOUR, INC.        | ) | Case No. 10-33952 EEB |
| a Colorado Corporation | ) | Chapter 11            |
| EIN 84-0992964         | ) |                       |
|                        | ) |                       |
| Debtor.                | ) |                       |

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**AMENDED PLAN OF REORGANIZATION**

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Ball Four, Inc., Debtor-in-Possession (“Debtor”), proposes this Amended Plan of Reorganization (“Plan”), pursuant to §1121 of the Bankruptcy Code (11 U.S.C. §1121). This Plan is dated June 6, 2011.

**ARTICLE I.**

**DEFINITIONS**

The following terms, when used in the Plan, shall have the following meanings:

1.1 Administrative Expenses shall mean those expenses entitled to priority under the provisions of §§507 and 503(b) of the Bankruptcy Code, including actual and necessary costs and expenses of preserving the estate.

1.2 Allen & Vellone, P.C., 1600 Stout St., #1100, Denver, CO 80202, shall mean the attorneys hired with Bankruptcy Court approval to represent the Debtor as special counsel. To the extent allowed by the Court, Allen & Vellone, P.C.’s fees and expenses are entitled to payment as Chapter 11 administrative expenses. Allen & Vellone, P.C. is a Professional Person as defined herein.

1.3 Allowed Claim shall mean a claim (a) in respect of which a Proof of Claim has been timely filed with the Court within the applicable period of limitation fixed by Bankruptcy Rule 3003 or (b) scheduled in the list of creditors prepared and filed with the Court by the Debtor pursuant to Bankruptcy Rules 1007 and 3003, and not listed as disputed, contingent or unliquidated as to amount, in either case as to which no objection to the allowance thereof has been interposed within any applicable period of limitation pursuant to Bankruptcy Rule 3007 or an Order of the Court, or as to which any such objection has been terminated by an Order or Judgment which is no longer subject to appeal, or certiorari proceeding and as to which no appeal or certiorari proceeding is pending.

1.4 Assets shall mean all real and personal property rights and interest owned by the Debtor or the Estate as of the Effective Date established herein.

1.5 Bankruptcy Code shall mean the Bankruptcy Code, 11 U.S.C. §1101 et seq., and any amendments thereto ("Code").

1.6 Cash shall mean money that is on deposit in the bank account(s) of the Debtor on the date that the Court enters the Confirmation Order. Cash shall be used by the Reorganized Debtor to pay allowed Unsecured Claims and Chapter 11 Administrative Expenses on the Effective Date.

1.7 Chapter 11 shall mean Chapter 11 of the Code.

1.8 Claim shall mean a claim against the Debtor as defined in 11 U.S.C. §101(5).

1.9 Class shall mean any class of creditors or interests described in Article II of the Plan.

1.10 Confirmation Date shall mean the date on which the Plan is confirmed by the Bankruptcy Court.

1.11 Confirmation Order shall mean a Final Order of the Bankruptcy Court confirming the Plan in accordance with the provisions of Chapter 11 of the Code.

1.12 Court or Bankruptcy Court shall mean the United States Bankruptcy Court for the District of Colorado, unless otherwise identified.

1.13 Debtor shall mean Debtor-in-Possession, Ball Four, Inc. The terms “Debtor” and “Debtor-in-Possession” may be used interchangeably in the within Plan but shall have the same meaning. The Debtor, Ball Four, Inc., is the proponent of this Plan of Reorganization.

1.14 Disallowed Claim shall mean any claim or portion thereof that has been disallowed by a Final Order of the Bankruptcy Court.

1.15 Disputed Claim shall mean any claim which has been scheduled by the Debtor as disputed, contingent or unliquidated, or any claim as to which an objection has been filed and allowance or disallowance of such claim has not been determined by a Final Order.

1.16 Effective Date shall mean that date which is the first day of the first month following thirty (30) days after the Confirmation Date.

1.17 Elite Tax Service, 220 West 6<sup>th</sup> Ave., Denver, CO 80204, shall mean the accountant hired with Bankruptcy Court approval to provide accounting services to the Debtor in the within Chapter 11 bankruptcy proceeding. To the extent allowed by the Court, Elite Tax Service’s fees and expenses are entitled to payment as Chapter 11 administrative expenses. Elite Tax Service is a Professional Person as defined herein.

1.18 Estate shall mean the estate created and existing in this case pursuant to §541 of the Bankruptcy Code.

1.19 Final Order shall mean an Order or a Judgment as to which the time to seek certiorari, appeal, review or a hearing has expired and as to which no writ of certiorari, appeal or petition for review or a hearing or rehearing is pending.

1.21 Income shall mean the Debtor's Total Monthly Income less total monthly expenses, including, without limitation, operating expenses and labor.

1.22 Jehn Water Consultants, Inc., 1565 Gilpin Street, Denver, CO 80218, shall mean the consultants hired with Bankruptcy Court approval to provide consulting services to the Debtor in the within Chapter 11 bankruptcy proceeding. To the extent allowed by the Court, Jehn Water Consultants, Inc.'s fees and expenses are entitled to payment as Chapter 11 administrative expenses. Jehn Water Consultants, Inc. is a Professional Person as defined herein.

1.23 Kuhlman & Kuhlman, P.C., 7851 S. Elati St., #202, Littleton, CO 80120, shall mean the attorneys hired with Bankruptcy Court approval to represent the Debtor as special counsel. To the extent allowed by the Court, Kuhlman & Kuhlman, P.C.'s fees and expenses are entitled to payment as Chapter 11 administrative expenses. Kuhlman & Kuhlman, P.C. is a Professional Person as defined herein.

1.24 Petition Date shall mean September 21, 2010, the date on which the Debtor filed its voluntary Chapter 11 petition with the Court.

1.25 Plan shall mean this Plan of Reorganization and such amendments, if any, as may be proposed by the Debtor.

1.26 Professional Person shall mean an attorney, accountant, appraiser or real estate agent hired with Bankruptcy Court approval to represent or provide services to the Debtor during the pendency of the Debtor's Chapter 11 bankruptcy proceeding.

1.27 Reorganized Debtor shall mean the Debtor following that date which the Confirmation Order confirming the Plan becomes a Final Order.

1.28 Total Monthly Income shall mean the Debtor's monthly gross income generated by the Debtor's business operations.

1.29 Trout Raley Montano Witwer & Freeman, P.C., 1120 Lincoln St., #1600, Denver, CO 80203-2141, shall mean the attorneys hired with Bankruptcy Court approval to represent the Debtor as special counsel. To the extent allowed by the Court, Trout Raley Montano Witwer & Freeman, P.C.'s fees and expenses are entitled to payment as Chapter 11 administrative expenses. Trout Raley Montano Witwer & Freeman, P.C. is a Professional Person as defined herein.

1.30 Unsecured Claims shall mean the Allowed Claims against the Debtor which are unsecured and which are other than Allowed Priority Claims and Administrative Expenses, and shall include any Deficiency Claim(s) arising to the holder of an Allowed Secured Claim, pursuant to the provisions of 11 U.S.C. §506, after a hearing pursuant to Rule 3012 of the Bankruptcy Rules or resulting from any agreement reached between the Claimant and the Debtor in which it is determined that the value of the collateral securing the claim is less than the Allowed Claim.

1.31 Unsecured Creditors shall mean the holders of allowed Unsecured Claims in the estate.

1.32 Weinman & Associates, P.C., 730 17<sup>th</sup> Street, #240, Denver, CO 80202-3506, shall mean the attorneys hired with Bankruptcy Court approval to represent the Debtor in the within Chapter 11 bankruptcy proceeding. To the extent allowed by the Court, Weinman & Associates, P.C.'s fees and expenses are entitled to payment as Chapter 11

Administrative Expenses for services provided to the Debtor. Weinman & Associates, P.C. is a Professional Person as defined herein.

## ARTICLE II.

### **CLASSIFICATION OF CREDITORS' CLAIMS AND EQUITABLE INTERESTS AND IMPAIRMENT OF CREDITORS' CLAIMS AND EQUITABLE INTERESTS**

A. CREDITOR CLAIMS AND EQUITABLE INTERESTS IN THE DEBTOR ARE CLASSIFIED AND IMPAIRED IN THE PLAN AS FOLLOWS:

(1) Class 1 consists of the allowed secured claim of the Adams County, Colorado Treasurer's Office. Class 1 is impaired under the Plan.

(2) Class 2 consists of the allowed secured claim of the Colorado Department of Revenue. Class 2 is impaired under the Plan.

(3) Class 3 consists of the disputed secured claim of FirstTier Bank. Class 3 is impaired under the Plan.

(4) Class 4 consists of the holders of allowed unsecured creditor claims. Class 4 is impaired under the Plan.

(5) Class 5 consists of the holders of shareholder interests in the Debtor. Class 5 is not impaired under the Plan.

## ARTICLE III.

### **TREATMENT OF EQUITABLE INTERESTS WHICH ARE NOT IMPAIRED UNDER THE PLAN**

Provision for treatment of the equitable interests in the Debtor not impaired under the Plan is set forth below.

3.1 Class 5. Shareholder Interests in the Debtor. Class 5 consists of the Shareholder Interests in the Debtor. Class 5 is not impaired under the Plan. The shareholders of the Debtor shall retain their pre-petition shareholder interests in the Debtor to the same extent as their pre-petition shareholder interests in the Debtor following entry of the Confirmation Order, subject to the provisions of the Plan.

#### ARTICLE IV.

#### **TREATMENT OF CLASSES OF CREDITORS' CLAIMS IMPAIRED UNDER THE PLAN**

Provision for payment of or treatment of creditor classes impaired under the Plan is set forth below.

4.1 Class 1. Adams County, Colorado Treasurer's Office. Class 1 is impaired under the Plan. The allowed secured claim of the Adams County, Colorado Treasurer's Office shall be repaid by the Class 1 creditor retaining its lien(s) securing its claim to the same extent and in the same priority as its pre-petition lien(s) and receiving monthly payments of principal and interest with interest at 8% per annum amortized over 60 months from the Petition Date with the first payment of principal and interest due on the Effective Date and continuing monthly thereafter until paid in full.

Upon payment in full, the liens of the Class 1 creditor shall be deemed released and the Debtor will own its Assets free and clear of the lien(s) of the Class 1 creditor.

4.2 Class 2. Colorado Department of Revenue. Class 2 is impaired under the Plan. The allowed secured claim of the Colorado Department of Revenue shall be repaid by the Class 2 creditor retaining its lien(s) securing its claim to the same extent and in the same priority as its pre-petition lien(s) and receiving monthly payments of principal and

interest with interest at 8% per annum amortized over 60 months from the Petition Date with the first payment of principal and interest due on the Effective Date and continuing monthly thereafter until paid in full.

Upon payment in full, the liens of the Class 2 creditor shall be deemed released and the Debtor will own its Assets free and clear of the lien(s) of the Class 2 creditor.

4.3 Class 3. FirsTier Bank. Class 3 is impaired under the Plan. The Debtor disputes the allowability of this claim. To the extent that the claim of the Class 3 creditor becomes an allowed secured claim, such claim shall be repaid by the Class 3 creditor retaining its lien(s) securing its claim to the extent of its allowed secured claim and in the same priority as its pre-petition lien(s) and receiving monthly payments of principal which shall be equal to the allowed amount of the Class 3 creditor's claim plus interest at 6% per annum amortized over 25 years with a five-year balloon payment, with the first payment due on the later of the Effective Date or 30 days after the Court enters a Final Order allowing the secured claim of the Class 3 creditor, and continuing monthly thereafter until the balloon payment shall become due.

Upon payment in full of the allowed secured claim of the Class 3 creditor, the lien(s) of the Class 3 creditor shall be released and the Debtor shall own its Assets free and clear of the Class 3 creditor's lien(s).

4.4 Class 4. Allowed Unsecured Claims. Class 4 is impaired under the Plan. The holders of allowed unsecured claims will be paid the allowed amount of their claims in full plus interest at the current Federal Judgment Interest Rate calculated from the Effective Date until the date that the allowed unsecured claims are paid in full.



To pay allowed unsecured claims, the Debtor will make sufficient semi-annual payments of \$50,000 each which shall be distributed to the holders of allowed unsecured claims on a Pro Rata basis with the first semi-annual payment of \$50,000 due on the Effective Date and continuing thereafter with additional semi-annual payments of \$50,000 each until Class 4 claims are paid in full.

## ARTICLE V.

### **PAYMENT OF UNCLASSIFIED ALLOWED CHAPTER 11 ADMINISTRATIVE EXPENSES AND ALLOWED UNSECURED PRIORITY CLAIM**

5.1 Payment of allowed Chapter 11 Administrative Expenses not classified under the Plan is set forth in Paragraph 5.2 below. Payment of Allowed Unsecured Priority Claim is set forth in Paragraph 5.3 below.

5.2 Administrative Expenses. Chapter 11 Administrative Expenses are identified as follows:

- (a) Counsel (Weinman & Associates, P.C.) employed to represent the Debtor in the within bankruptcy proceeding;
- (b) Special Counsel (Allen & Vellone, P.C.) employed to represent the Debtor as special counsel;
- (c) Special Counsel (Kuhlman & Kuhlman, P.C.) employed to represent the Debtor as special counsel;
- (d) Special Counsel (Trout Raley Montano Witwer & Freeman, P.C.) employed to represent the Debtor as special counsel;
- (e) Accountant (Elite Tax Service); hired with Bankruptcy Court approval to provide accounting services to the Debtor;

- (f) Consultant (Jehn Water Consultants) hired with Bankruptcy Court approval to provide consulting services to the Debtor;
- (g) Fees required to be paid to the U.S. Trustee pursuant to 28 U.S.C. §1930; and
- (h) Post-petition fees and expenses, including taxes, incurred by the Debtor's bankruptcy estate in the ordinary operation and management of the Debtor's business and/or financial affairs.

The holders of allowed expenses in Paragraphs 5.2(a) through 5.2(f) shall submit their requests for payment to the Court and the Debtor shall pay such Allowed Chapter 11 Administrative Expenses only upon approval by and in the amount allowed by the Court.

The holders of allowed expenses in Paragraphs 5.2(a) through 5.2(f) shall be paid the allowed amount of their Chapter 11 Administrative Expenses on the Effective Date of the Plan provided the Court has entered final, non-appealable orders allowing such Administrative Expenses or as may be otherwise agreed to by these Administrative Claimants and the Debtor.

U.S. Trustee fees required to be paid pursuant to 28 U.S.C. §1930 identified in Paragraph 5.2(g) shall be timely paid until such time as the within Chapter 11 case is dismissed, converted or closed by order of the Bankruptcy Court.

Fees and other expenses identified in Paragraph 5.2(h) shall be paid pursuant to the terms of any agreement and/or in the ordinary course of the Debtor's business and/or financial affairs according to ordinary business terms. Any unpaid and due post-petition taxes owing by the Debtor's bankruptcy estate will be paid in full on or before the Effective Date of the Plan.

5.3 Allowed Unsecured Priority Claim. The unsecured priority claim of the IRS shall be paid in full with interest at 5% per annum amortized over 48 months with the first payment of principal and interest due on the Effective Date and continuing monthly thereafter until the claim is paid in full.

## ARTICLE VI.

### MEANS FOR IMPLEMENTATION OF THE PLAN

6.1 Upon confirmation of the Plan, the Reorganized Debtor will implement its Plan as follows:

- (a) Upon entry of the Confirmation Order, title in the Debtor's Assets, except as otherwise provided for herein, will be transferred to the Reorganized Debtor.
- (b) The Debtor will utilize Cash to pay Allowed Administrative Expenses and unsecured creditors with Allowed Claims as provided for under the Plan.
- (c) The Debtor will pay the holders of allowed Chapter 11 Administrative Expenses on the Effective Date of the Plan unless otherwise agreed to between these parties and the Debtor, or as otherwise provided for in the Debtor's Plan.

6.2 The Reorganized Debtor will pay quarterly fees to the U.S. Trustee as required by the Bankruptcy Code until its case is closed, converted to a Chapter 7 case or dismissed by the Bankruptcy Court.

6.3 Objections to Claims.

- (a) The Debtor shall object, when appropriate to any administrative expense, secured or unsecured claim; and

- (b) The Debtor shall bring any preference or fraudulent conveyance claims as appropriate.

6.4 Payment of Allowed Claims and Administrative Expenses Under the Plan.

The Reorganized Debtor shall make payments to creditors and administrative expense claimants as provided for under the terms of the within Plan. Payments to creditors and administrative expense claimants under the Plan shall be made by check and shall be mailed to each creditor and/or administrative expense claimant with an allowed claim at the address set forth in the Debtor's Statements and Schedules filed with the Court or as set forth in any Proof of Claim, other pleading or change of address notification, etc. filed with the Court.

6.5 Unclaimed Distributions. For a period of one year following the date a payment is due under the within Plan, the Reorganized Debtor shall retain in a reserve account for issuance any unclaimed distributions for the benefit of the holders of allowed claims and/or administrative expenses which have failed to claim such distributions. Following the one year period after such distributions are due, the holders of allowed claims or allowed administrative expenses theretofore entitled to such distributions held in such reserve account shall cease to be entitled thereto and such unclaimed distributions shall become property of the Reorganized Debtor.

**ARTICLE VII.**

**UNEXPIRED EXECUTORY CONTRACTS AND LEASES**

7.1 Unexpired Executory Contracts and Leases.

(a) The following unexpired executory contracts and/or leases shall be rejected by the Debtor upon confirmation of the Debtor's Plan unless previously assumed: None.

(b) All unexpired executory contracts and/or leases of the Debtor neither assumed pursuant to the Plan nor pursuant to an order of the Court prior to confirmation of the Plan shall be deemed to have been rejected upon confirmation of the Plan. These unexpired executory contracts and/or leases are identified as follows: None.

(c) If not assumed prior to confirmation of the Plan the following unexpired executory contracts and/or leases will be assumed upon confirmation of the Plan:

- (1) Water Lease Agreement with the City and County of Golden, Colorado;
- (2) Transmission Tower Lease with Verizon Wireless;
- (3) Copier Lease with Wells Fargo;
- (4) Facilities Lease for indoor soccer with DCG Sports.

## **ARTICLE VIII.**

### **MISCELLANEOUS PROVISIONS**

#### **8.1 Procedures for Resolving Contested Matters.**

(a) The Reorganized Debtor's objections to claims shall be filed with the Court and shall be served on the holder of each of the claims to which objections are filed by no later than 180 days after the Effective Date.

The Reorganized Debtor shall litigate to judgment, settle or withdraw objections to all such Disputed Claims; and

- (b) No payments or distributions shall be made under the Confirmed Plan with respect to all or any portion of a Disputed Claim or Administrative Expense unless and until all objections to such Disputed Claim or Administrative Expense have been determined by Final Order of the Court. Payments and distributions to holders of Disputed Claims or Administrative Expenses under the Confirmed Plan, to the extent such become Allowed Claims or Administrative Expenses, shall be made in accordance with the provisions of this Plan. The Debtor shall segregate sufficient Cash to pay the amount of any Disputed Claim that is ultimately determined to be an Allowed Claim.

8.2 Compromise and Settlement of Claims and/or Disputes. The Reorganized Debtor shall be authorized to compromise and settle any claim and/or dispute which it may have against any entity or which may have been brought by any entity against the Debtor. Any such compromise or settlement shall be subject to approval by the Bankruptcy Court after notice and opportunity for hearing as provided for pursuant to Rule 9013 of the Local Rules of Bankruptcy Procedure for the United States Bankruptcy Court for the District of Colorado.

8.3 Provisions for Execution and Supervision of the Plan: Retention of Jurisdiction.

(a) The Court shall retain and have exclusive jurisdiction over the Chapter 11 case for the following purposes to the extent authorized by the Code:

(1) To determine any and all objections to the allowance of claims;

(2) To determine any and all applications for allowances of compensation and reimbursement of expenses and any other fees and expenses authorized to be paid or reimbursed under the Code or the Plan;

(3) To determine any applications pending on the Effective Date for the rejection or assumption of executory contracts or unexpired leases for the assumption and assignment, as the case may be, of those executory contracts or unexpired leases to which the Debtor is a part or with respect to which the Debtor may be liable, and to hear and determine, and if need be, to liquidate any and all claims arising therefrom;

(4) To determine any and all applications, adversary proceedings and contested or litigated matters that may be pending on the Effective Date;

(5) To consider any modifications of the Plan, remedy any defect or omission or reconcile any inconsistency in any Order of the Bankruptcy Court, including the Confirmation Order;

(6) To determine all controversies, suits and disputes that may arise in connection with or interpretation, enforcement or consummation of the Plan;

(7) To consider and act on the compromise and settlement of any claim or cause of action by or against the Debtor's Estate;

(8) To resolve any pending disputes regarding the Debtor's interest in property;

(9) To issue orders in aid of execution of the Plan to the extent authorized by 11 U.S.C. §1142 of the Code; and

(10) To determine such other matters as may be set forth in the Confirmation Order or as may arise in connection with the Plan or the Confirmation Order.

(b) The Plan may be amended by the Debtor and/or the Reorganized Debtor before or after the Confirmation Date as provided in 11 U.S.C. §1127 of the Code.

8.4 Payment of Fees Pursuant to 11 U.S.C. §1129(12). All fees required to be paid by 28 U.S.C. §1930 will be paid as required therein until such time as the within Chapter 11 case is dismissed, converted or closed by order of the Bankruptcy Court. Reorganized Debtor shall file quarterly post-confirmation reports until the case is closed.

8.5 Modification of Payment Terms. The treatment of any Allowed Claim may be modified or reduced at any time after the Confirmation Date upon the consent of the creditor whose Allowed Claim treatment is being modified.



8.6 Retention of Liens. Except as may be otherwise provided for in this Plan, creditors whose claims are secured by lien(s) against the Debtor's Assets or otherwise claim an interest in such Assets shall retain such liens to the extent of their allowed secured claims and in the same priority as their pre-petition liens or, shall retain their interest in such Assets to the same extent and in the same priority as their pre-petition interests in such Assets.

8.7 Discharge of Debtor. The rights afforded in the Plan shall be in exchange for and in complete satisfaction, discharge and release of all claims or interests, of any nature whatsoever, including any interest accrued thereon from and after the petition date against the Debtor, and the Estate or any of its Assets except as otherwise provided for in the Plan. Upon the entry of a discharge of the Debtor, all creditors and holders of interests shall be precluded from asserting against the Debtor and its Estate or its Assets, any other or future claim or interest based on any act or omission, transaction or other activity of any kind that occurred prior to the Effective Date. Allowed secured claims agreed to be paid pursuant to the Plan shall not be discharged.

8.8 Debtor's Assets. Except as provided for in the Plan or in the Confirmation Order, upon Confirmation of the Plan, the Reorganized Debtor shall be vested with full ownership of and dominion over its Assets free and clear of all claims, liens, charges and other interests of creditors arising prior to the filing of the bankruptcy petition and except as otherwise provided in the Plan. Upon confirmation of the within Plan, the Reorganized Debtor may manage its financial affairs free of any restrictions of the Bankruptcy Code, the Bankruptcy Court or the United States Trustee except as otherwise provided in the Plan.

8.9 Final Report. The Debtor will file its Final Report and seek to obtain a Final Decree closing its Chapter 11 proceeding as soon as practicable following confirmation of its Plan. The Reorganized Debtor will make quarterly post-confirmation reports to the Court and the U.S. Trustee until such time as the Final Decree is entered by the Court.

8.10 Default. In the event of a default by the Reorganized Debtor with respect to payments to creditors under this Plan, such creditors shall be entitled to take action to collect the full amount of their debt with whatever collection remedies it normally would have available when payments to such creditors are not made as scheduled were this case not in bankruptcy. The creditors shall give the Reorganized Debtor written notice of any default and the Reorganized Debtor shall have ten (10) calendar days to cure such default. Any failure to act on any default or acceptance of late payments will not act as a waiver by the creditor to act on further defaults.

BALL FOUR, INC.

By: \s\ Larry R. Gentry  
Larry R. Gentry, President

Respectfully submitted,

WEINMAN & ASSOCIATES, P.C.

By: \s\ Jeffrey A. Weinman

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