

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
BALLY TOTAL FITNESS OF)	Case No. 08-14818 (BRL)
GREATER NEW YORK, INC., <i>et al.</i> ,)	
)	
Debtors.)	Jointly Administered

**ORDER CONFIRMING SECOND AMENDED JOINT PLAN OF
REORGANIZATION OF DEBTORS UNDER CHAPTER 11 OF THE
BANKRUPTCY CODE**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) having proposed the Amended Joint Plan of Reorganization of Debtors Under Chapter 11 of the Bankruptcy Code, dated July 7, 2009 (the “July 7 Plan”) as modified (the “Modifications”) in the Second Amended Joint Plan of Reorganization of the Debtors Under Chapter 11 of the Bankruptcy Code, dated August 14 filed with the Court on August 14 (the “Plan,” a copy of which (without exhibits) is attached hereto as Appendix 1);¹ the Court having conducted a hearing to consider confirmation of the Plan on August 19, 2009 (the “Hearing”); the Court having considered: (i) the testimony of the witnesses called at the Hearing, as well as the declarations admitted into evidence at the Hearing, (ii) the arguments of counsel presented at the Hearing, (iii) the objections filed with respect to confirmation of the Plan, (iv) the resolution and settlement of 14 of the 16 objections to confirmation of the Plan, and (v) the Debtors’ Memorandum of Law in Support of Confirmation of Second Amended Joint Plan of Reorganization of Debtors Under Chapter 11 of the Bankruptcy Code and Consolidated Reply to Certain Objections to Confirmation (the “Confirmation”

¹ All capitalized terms used but not defined herein have the meanings given to them in the Plan.



Memorandum”), including the Debtors’ summary of compliance with sections 1122, 1123, 1124, 1129(a) and 1129(b) of the Bankruptcy Code attached as Exhibit A thereto (the “Confirmation Compliance Summary”); the Court being familiar with the Plan and other relevant factors affecting these Chapter 11 Cases pending under the Bankruptcy Code; the Court having taken judicial notice of the entire docket of the Debtors’ Chapter 11 Cases maintained by the Clerk of the Court and/or its duly appointed agent, and all pleadings and other documents filed, all orders entered, and evidence and arguments made, proffered or adduced at, the hearings held before the Court during the pendency of the Chapter 11 Cases; the Court having found that due and proper notice has been given with respect to the Hearing and the deadlines and procedures for filing objections to the Plan; the appearance of all interested parties having been duly noted in the record of the Hearing; and upon the record of the Hearing, and after due deliberation thereon, and sufficient cause appearing therefor;

IT IS HEREBY FOUND AND CONCLUDED, that:²

JURISDICTION AND VENUE

A. The Court has jurisdiction over this matter and these Chapter 11 Cases pursuant to 28 U.S.C. § 1334.

B. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L), and this Court has jurisdiction to enter a final order with respect thereto.

C. The Debtors are proper debtors under section 109 of the Bankruptcy Code, and the Debtors are proper proponents of the Plan under section 1121(a) of the Bankruptcy Code.

² To the extent any findings of fact are herein construed to be conclusions of law, they are hereby adopted as such. To the extent any conclusions of law are construed to be findings of fact they are hereby adopted as such.

D. Each of the conditions precedent to the entry of this Confirmation Order has been satisfied in accordance with Article III.A. of the Plan or properly waived in accordance with Article III.B. of the Plan.

MODIFICATIONS OF THE PLAN

E. The Modifications to the July 7 Plan constitute technical changes or changes with respect to particular Claims by agreement with holders of such Claims and do not materially and adversely affect or change the treatment of any Claim against or Equity Interest in any Debtor. Pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019(a), the Modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or the resolicitation of acceptances or rejections of the Plan under section 1126 of the Bankruptcy Code, nor do they require that holders of Claims against the Debtors be afforded an opportunity to change previously cast acceptances or rejections of the July 7 Plan. The filing of the Plan and the disclosure of the Modifications therein, constitute due and sufficient notice thereof under the circumstances of the Chapter 11 Cases. Accordingly, the Plan is properly before the Court, and all votes cast with respect to the July 7 Plan prior to the Modifications shall be binding and shall apply with respect to the Plan.

**STANDARDS FOR CONFIRMATION
UNDER SECTION 1129 OF THE BANKRUPTCY CODE**

F. The evidentiary record of the Hearing and the Confirmation Compliance Summary support the findings of fact and conclusions of law set forth in the following paragraphs.

G. **Section 1129(a)(1)**. The Plan complies with each applicable provision of the Bankruptcy Code. In particular, the Plan complies with the requirements of sections 1122 and 1123 of the Bankruptcy Code as follows:³

1. In accordance with section 1122(a) of the Bankruptcy Code, Article III of the Plan classifies each Claim against and Equity Interest in the Debtors into a Class containing only substantially similar Claims or Equity Interests;
2. In accordance with section 1123(a)(1) of the Bankruptcy Code, Article III of the Plan properly classifies all Claims and Equity Interests that require classification. With respect to Claims classified in Class 10 and Equity Interests in Class 12, the Debtors have provided proof of a legitimate reason for the separate classification of such Claims and Equity Interests, and such classification is justified.
3. In accordance with section 1123(a)(2) of the Bankruptcy Code, Article III of the Plan properly identifies and describes each Class of Claims and Equity Interests that is not Impaired under the Plan;
4. In accordance with section 1123(a)(3) of the Bankruptcy Code, Article III of the Plan properly identifies and describes the treatment of each Class of Claims or Equity Interests that is Impaired under the Plan;
5. In accordance with section 1123(a)(4) of the Bankruptcy Code, the Plan provides the same treatment for each Claim or Equity Interest of a particular Class unless the holder of such a Claim or Equity Interest has agreed to less favorable treatment;
6. In accordance with section 1123(a)(5) of the Bankruptcy Code, the Plan provides adequate means for its implementation;
7. In accordance with section 1123(a)(6) of the Bankruptcy Code, the Reorganized Debtors' charters, bylaws or comparable constituent documents contain provisions prohibiting the issuance of non-voting equity securities and providing for the appropriate distribution of voting power among all classes of equity securities authorized for issuance;

³ See *In re Johns Manville Corp.*, 68 B.R. 618, 629-30 (Bankr. S.D.N.Y. 1986), *as modified*, 78 B.R. 407 (S.D.N.Y. 1987), *aff'd*, 843 F.2d 636 (2d Cir. 1988) (“Objections to confirmation raised under § 1129(a)(1) generally involve the failure of a plan to conform to the requirements of § 1122(a) or § 1123.”).

8. In accordance with section 1123(a)(7) of the Bankruptcy Code, the provisions of the Plan and the Reorganized Debtors' charters, bylaws or comparable constituent documents regarding the manner of selection of officers and directors of the Reorganized Debtors are consistent with the interests of creditors and equity security holders and with public policy;

9. In accordance with section 1123(b)(1) of the Bankruptcy Code, Article III of the Plan Impairs or leaves unimpaired, as the case may be, each Class of Claims and Equity Interests;

10. In accordance with section 1123(b)(2) of the Bankruptcy Code, Article X and other provisions of the Plan provide for the assumption, assumption and assignment, or rejection of the executory contracts or unexpired leases of the Debtors that have not been previously assumed, assumed and assigned, or rejected pursuant to section 365 of the Bankruptcy Code and orders of the Court;

11. In accordance with section 1123(b)(3) of the Bankruptcy Code, Article VII.I. of the Plan provides that the Reorganized Debtors will retain and may enforce any claims, demands, rights, defenses and causes of action that any Debtor or Estate may hold against any entity, including any Litigation Rights, to the extent not expressly released under the Plan or by any Final Order of the Court (including, without limitation, the Plan Releases);

12. In accordance with section 1123(b)(5) of the Bankruptcy Code, Article III of the Plan modifies or leaves unaffected, as the case may be, the rights of certain holders of Claims in Classes 1 and 2;

13. In accordance with section 1123(b)(6) of the Bankruptcy Code, the Plan includes additional appropriate provisions that are not inconsistent with applicable provisions of the Bankruptcy Code; and

14. In accordance with section 1123(d) of the Bankruptcy Code, Article X of the Plan provides for the satisfaction of Cure Claims associated with each executory contract or unexpired lease to be assumed pursuant to the Plan in accordance with section 365(b)(1) of the Bankruptcy Code. All Cure Claims will be determined in accordance with the underlying agreements and applicable law.

H. The Debtors have complied with all applicable provisions of the Bankruptcy Code with respect to the Plan and the solicitation of acceptances or rejections

thereof. In particular, the Plan complies with the requirements of sections 1125 and 1126 of the Bankruptcy Code as follows:

1. In compliance with the Order (I) Approving Disclosure Statement, (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Joint Plan of Reorganization of the Debtors Under Chapter 11 of the Bankruptcy Code, (III) Scheduling Hearing on Confirmation of the Plan, (IV) Approving Procedures for Notice of the Confirmation Hearing and for Filing Objections to Confirmation of the Plan, and (V) Granting Related Relief entered July 9, 2009 (Docket No.1232) (the “Disclosure Statement Order”), on or before July 15, 2009, the Debtors, through their claims and noticing agent, Kurtzman Carson Consultants LLC (“KCC”), caused copies of the following materials to be transmitted to all holders of Claims in Classes that were entitled to vote to accept or reject the Plan (i.e., Claims in Classes 3, 4, 5, 6, 7, 8, 9, and 10):

- notice of the Confirmation Hearing (the “Confirmation Hearing Notice”);
- the Disclosure Statement (together with the exhibits thereto, including the Plan);
- the Unsecured Creditors’ Committee’s letter recommending acceptance of the Plan; and
- an appropriate Ballot (collectively with the materials described in the preceding bullets, the “Solicitation Package”). *See* Affidavit of Service by KCC (Docket No.1280), dated July 21, 2009 (the “KCC Service Affidavit”).

2. In compliance with the Disclosure Statement Order, on or before July 15, 2009, the Debtors, through KCC, (i) caused copies of the Solicitation Package (not including Ballots) to be served on the parties listed on the Special Service List and General Service List (as such terms are defined in the Case Management Order), (ii) caused copies of the Confirmation Hearing Notice to be served on non-Debtor parties to executory contracts or unexpired leases, and (iii) caused copies of the Confirmation Hearing Notice and the notice of non-voting status to be served on holders of Administrative Claims and Priority Tax Claims.

3. In compliance with the Disclosure Statement Order, on or before July 15, 2009, the Debtors, through KCC, transmitted (a) the Confirmation Hearing Notice and (b) a notice of non-voting status to all holders of Claims and Equity Interests in the non-voting classes

(i.e., Classes 1, 2 and 12) that were not entitled to vote on the Plan. *See* KCC Service Affidavit at ¶ 5.

4. In compliance with the Disclosure Statement Order, on or before July 15, 2009, the Debtors, through KCC, transmitted the Confirmation Hearing Notice to: (a) all other creditors and equity security holders of the Debtors; and (b) all parties in interest that had filed requests for notice in accordance with Bankruptcy Rule 2002 in the Chapter 11 Cases on or before the record date established by the Court pursuant to Bankruptcy Rule 3017(d) in the Disclosure Statement Order. *See* KCC Service Affidavit at ¶ 16.

5. In compliance with the Disclosure Statement Order, on July 16 and 17, the Debtors caused a copy of the Confirmation Hearing Notice to be published in *USA Today* and the Chicago Tribune. *See* Notice of Publication in the Chicago Tribune, dated July 16, 2009 [Docket No. 1275]; Notice of Publication in USA Today, dated July 17, 2009 [Docket No. 1276].

6. On July 31, 2009, the Debtors filed (and made available on KCC's website at www.kccllc.net/Bally) Exhibits A, B, C, E, F, G and J to the Plan. *See* Notice of Filing Exhibits A, B, C, E, F, G and J to the Joint Plan of Reorganization of the Debtors Under Chapter 11 of the Bankruptcy Code [Docket No. 1304].

7. On August 11, 2009, the Debtors filed (and made available on KCC's website at www.kccllc.net/Bally) the following Exhibits: D, H, and I, and amended Exhibit G. *See* Notice of Filing Exhibit D, H, and I and Amended Exhibit G to the Amended Joint Plan of Reorganization Debtors Under Chapter 11 of the Bankruptcy Code [Docket No. 1359].

8. On August 12, 2009, the Debtors filed (and made available on KCC's website at www.kccllc.net/Bally) a supplement to Exhibit A. *See* Notice of Filing Supplement to Exhibit A to the Amended Joint Plan of Reorganization Debtors Under Chapter 11 of the Bankruptcy Code [Docket No. 1363].

9. On August 13, 2009, the Debtors filed (and made available on KCC's website at www.kccllc.net/Bally) an amended Exhibit J. *See* Notice of Filing Supplement to Exhibit J to the Amended Joint Plan of Reorganization Debtors Under Chapter 11 of the Bankruptcy Code [Docket No. 1363].

10. The Confirmation Hearing Notice provided due and proper notice of the Hearing and all relevant dates, deadlines, procedures and other information relating to the Plan and/or the solicitation of votes

thereon, including, without limitation, the voting deadline, the objection deadline, the time, date and place of the Hearing and the release provisions in the Plan.

11. All persons entitled to receive notice of the Disclosure Statement, the Plan and the Hearing have received proper, timely and adequate notice in accordance with the Disclosure Statement Order, applicable provisions of the Bankruptcy Code and the Bankruptcy Rules, and have had an opportunity to appear and be heard with respect thereto.

12. The Debtors solicited votes with respect to the Plan in good faith and in a manner consistent with the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Order, including, without limitation, the inclusion of a letter from the Unsecured Creditors' Committee recommending acceptance of the Plan in the Solicitation Packages. Accordingly, the Debtors are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the exculpation provisions set forth in Article VII.N of the Plan.

13. Claims and Equity Interests in Classes 1 and 2 under the Plan are unimpaired, and such Classes are deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

14. Intercompany Claims in Class 11 under the Plan are Impaired within the meaning of section 1124 of the Bankruptcy Code. To the extent that Class 11 Claims are not specifically reinstated by the Debtors on or before the Effective Date, they will be deemed eliminated in full on the date following the Effective Date through contribution or distribution of the Intercompany Claim, depending on the relationship of the parties, to the Debtor liable for the Intercompany Claim, or as otherwise provided by the Debtors. Notwithstanding this treatment, however, each holder of a Claim in Class 11 is deemed to have accepted the Plan.

15. The Plan was voted on by eight of the Classes of Impaired Claims that were entitled to vote pursuant to the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Order (i.e., Classes 3, 4, 5, 6, 7, 8, 9, and 10).

16. KCC has made a final determination of the validity of, and tabulation with respect to, all acceptances and rejections of the Plan by holders of Claims entitled to vote on the Plan, including the amount and number of accepting and rejecting Claims in Classes 3, 4, 5, 6, 7, 8, 9, and 10 under the Plan. *See* Certification of Alison M. Tearnen with Respect to the Tabulation of Votes on the Debtors' Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy

Code, dated August 13, 2009 [Docket No. 1373] (the “Voting Declaration”) at ¶ 13.

17. Each of Classes 3, 4, 5, 6, 7, 8, and 9 have accepted the Plan by at least two-thirds in amount and a majority in number of the Claims in such Classes actually voting. *See* Voting Declaration, Exhibit A.

18. Class 10 has voted to reject the Plan since two-thirds in amount of Claims actually voting did not vote in favor of the Plan.

I. **Section 1129(a)(3)**. The Plan has been proposed in good faith and not by any means forbidden by law. The Chapter 11 Cases were filed with an honest belief that the Debtors were in need of reorganization and the Plan was negotiated and proposed with the intention of accomplishing a successful reorganization, and for no ulterior purpose. The Plan fairly achieves a result consistent with the objectives and purposes of the Bankruptcy Code. In so finding, the Court has considered the totality of the circumstances in these Chapter 11 Cases. The Plan is the result of extensive good faith, arms’ length negotiations between the Debtors and certain of their principal constituencies (including the Unsecured Creditors’ Committee, the Prepetition Term Loan Holders, the Prepetition Revolver Facility Lenders and their respective representatives) and reflects substantial input from the principal constituencies having an interest in the Chapter 11 Cases and, as evidenced by the overwhelming acceptance of the Plan, achieves the goal of consensual reorganization embodied by the Bankruptcy Code.

J. **Section 1129(a)(4)**. No payment for services or costs and expenses in or in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been or will be made by any Debtor other than payments that have been authorized by order of the Court. Pursuant to Article II.B., all payments to be made to professionals or other entities asserting a Fee Claim for services rendered before the Effective Date will be subject to review and approval by this Court.

K. **Section 1129(a)(5)**. To the extent such information is available the Debtors have disclosed on Exhibit G to the Plan: (1) the identities of the officers and directors of the Reorganized Debtors and (2) the identity of any insiders that will be employed or retained by the Reorganized Debtors. The compensation of the Reorganized Debtors' directors will be consistent with each Reorganized Debtor's applicable constituent documents. The Debtors disclosed (1) the affiliations of their proposed respective directors and officers and (2) the compensation of any insiders to be employed or retained by the Reorganized Debtors (to the extent not previously disclosed) at or prior to the Confirmation Hearing. The proposed directors and officers for the Reorganized Debtors as set forth on Exhibit G to the Plan are qualified, and the appointments to, or continuance in, such offices by the proposed directors and officers is consistent with the interests of holders of Claims and Equity Interests and with public policy.

L. **Section 1129(a)(6)**. The Plan does not provide for any changes in rates that require regulatory approval of any governmental agency.

M. **Section 1129(a)(7)**. The Plan satisfies section 1129(a)(7) of the Bankruptcy Code. The liquidation analysis set forth in Exhibit D to the Disclosure Statement and other evidence proffered or adduced at the Hearing (a) are persuasive and credible, (b) have not been controverted by other evidence and (c) establish that each holder of a Claim or Equity Interest in an Impaired Class either (i) has accepted the Plan or (ii) will receive or retain under the Plan, on account of such Claim or Equity Interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount that it would receive if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code on such date.

N. **Section 1129(a)(8)**. The Plan has not been accepted by all Impaired

Classes of Claims and Equity Interests because the holders of Equity Interests in Class 12 are deemed to have rejected the Plan, and the holders of Subordinated Note Claims in Class 10 have voted to reject the Plan. Nevertheless, the Plan is confirmable because it satisfies section 1129(b)(1) of the Bankruptcy Code with respect to such non-accepting Classes of Claims and Equity Interests (as set forth in paragraph T below).

O. **Section 1129(a)(9)**. The Plan provides treatment for Administrative Claims, Priority Tax Claims and Other Priority Claims that is consistent with the requirements of section 1129(a)(9) of the Bankruptcy Code.

P. **Section 1129(a)(10)**. The Plan has been accepted by seven classes of Impaired Claims that are entitled to vote on the Plan (i.e., Classes 3, 4, 5, 6, 7, 8, and 9), determined without including any acceptance of the Plan by any “insider.” *See* Voting Declaration, Exhibit A.

Q. **Section 1129(a)(11)**. The Plan is feasible, within the meaning of section 1129(a)(11) of the Bankruptcy Code. The Debtors’ projections of the capitalization and financial information of the Reorganized Debtors as of the Effective Date are reasonable and made in good faith, each Reorganized Debtor is deemed to be solvent as of the Effective Date after giving effect to the Restructuring Transactions, and Confirmation of the Plan is not likely to be followed by the liquidation (other than the potential liquidation of inactive Debtor entities that no longer serve an ongoing business purpose, as described in Exhibit C to the Plan) or the need for the further financial reorganization of the Debtors. The Debtors have demonstrated a reasonable assurance of the Plan’s prospects for success.

R. **Section 1129(a)(12)**. The Plan provides that fees payable pursuant to section 1930 of title 28 of the United States Code will be paid by the Debtors on or before

the Effective Date. After the Effective Date, all fees payable pursuant to section 1930 of title 28 of the United States Code will be paid by the applicable Reorganized Debtor until the earlier of the conversion or dismissal of the applicable Chapter 11 Case under section 1112 of the Bankruptcy Code, or the closing of the applicable Chapter 11 Case pursuant to section 350(a) of the Bankruptcy Code.

S. **Section 1129(a)(13).** The Debtors do not have retiree benefits as defined in section 1114 of the Bankruptcy Code. To the extent such section is applicable to the Debtors, the Reorganized Debtors shall continue to pay all retiree benefits for the period during which the Debtors have obligated themselves to provide such benefits, thereby satisfying section 1129(a)(13) of the Bankruptcy Code to the extent such section is applicable to the Debtors.

T. **Section 1129(b).** The Plan satisfies section 1129(b) of the Bankruptcy Code with respect to the two rejecting Classes (i.e., Classes 10 and 12). The evidence proffered or adduced at the Hearing (i) is persuasive and credible, (ii) has not been controverted by other evidence, and (iii) establishes that the Plan does not discriminate unfairly, and is fair and equitable with respect to Classes 10 and 12, as required by section 1129(b) of the Bankruptcy Code because (a) each dissenting Class is treated substantially equally to similarly situated Classes, (b) no holder of a Claim or Equity Interest will receive more than it is legally entitled to receive on account of its Claim or Equity Interest, and (c) the Plan does not provide a recovery on account of any Claim or Equity Interest that is junior to the Impaired, non-accepting Classes of Claims and Equity Interests (i.e., Classes 10 and 12). Thus, the Plan may be confirmed notwithstanding the Debtors' failure to satisfy section 1129(a)(8) of the Bankruptcy Code. After entry of the Confirmation Order and upon

occurrence of the Effective Date, the Plan shall be binding on the members of Classes 10 and 12.

U. **Section 1129(c)**. The Plan is the only plan that has been filed in the Chapter 11 Cases that has been found to satisfy the requirements of subsections (a) and (b) of section 1129 of the Bankruptcy Code. Accordingly, the requirements of section 1129(c) of the Bankruptcy Code have been satisfied.

V. **Section 1129(d)**. No party in interest has requested that the Court deny Confirmation of the Plan on grounds that the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act, and the principal purpose of the Plan is not such avoidance. Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

RESTRUCTURING TRANSACTIONS

W. The Restructuring Transactions promote, among other things: (1) the creation of a rational corporate structure; and (2) appropriate financial reporting according to business lines. Bally's primary purpose in effecting the Restructuring Transactions is the rationalization of the Reorganized Debtors' corporate structure. Over time, a number of corporate acquisitions and divestitures by various Bally-related entities have resulted in a relatively complex corporate structure. The Restructuring Transactions work to streamline this corporate structure to (1) better reflect and serve the Reorganized Debtors' operational functions and (2) enhance the Reorganized Debtors' ability to analyze and address their operational performance along their various business lines. Under the Restructuring Transactions, the Debtors will take all necessary steps and make all necessary filings to consolidate the Bally Subsidiaries into eight operating subsidiaries (the "Operating

Subsidiaries”). As of the effective time of an applicable Restructuring Transaction, any executory contract or unexpired lease to be held by any Debtor or Reorganized Debtor and assumed in the Plan or the Chapter 11 Cases, will be deemed assigned to the surviving, resulting or acquiring corporation in the applicable Restructuring Transaction, pursuant to section 365 of the Bankruptcy Code. After such transfers, Reorganized Bally and the Operating Subsidiaries will be solvent and left with sufficient assets, liquidity and capital to satisfy their obligations as they come due for the foreseeable future.

EXECUTORY CONTRACTS

X. Pursuant to sections 365 and 1123(b)(2) of the Bankruptcy Code, upon the occurrence of the Effective Date, Article X of the Plan provides for the assumption, assumption and assignment, or rejection of certain executory contracts and unexpired leases. The Debtors’ determinations regarding the assumption, assumption and assignment or rejection of executory contracts and unexpired leases are based on and within the sound business judgment of the Debtors, are necessary to the implementation of the Plan and are in the best interests of the Debtors, their estates, holders of Claims and other parties in interest in the Chapter 11 Cases. The Debtors have Filed Exhibits A and B to the Plan (as they may have been amended or supplemented) and either have provided or will provide notice to counterparties of the Debtors’ determinations regarding the assumption, assumption and assignment or rejection of executory contracts or unexpired leases and any related Cure Claims.

RELEASES

Y. Each non-Debtor party that will benefit from the releases, exculpations and related injunctions set forth in Article VII of the Plan (collectively, the “Plan Releases”)

either shares an identity of interest with the Debtors, was instrumental to the successful prosecution of the Chapter 11 Cases and/or provided substantial consideration to the Debtors, which value will allow for distributions that would not otherwise be available but for the contributions made by such non-Debtor parties. The Plan Releases are, individually and collectively, integral to, and necessary for the successful implementation of, the Plan, essential to the Debtors' reorganization and supported by reasonable consideration. Releases of non-Debtor parties pursuant to Article VII.M. of the Plan (1) are binding upon creditors (a) that have accepted the Plan and/or (b) to the extent enforceable by applicable law and (2) were appropriately disclosed by the Debtors both in the Disclosure Statement and on each Ballot mailed to creditors. The Debtors and all creditors that voted to accept the Plan have expressly consented to the Plan Releases and no party has objected to the Plan Releases. Accordingly, in light of all of the circumstances, the Plan Releases satisfy the applicable standards contained in In re Metromedia Fiber Network, Inc., 416 F.3d 136 (2d Cir. 2005) and are fair to the releasing parties.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, AS FOLLOWS:

1. **Confirmation of the Plan.** The Plan and each of its provisions (whether or not specifically approved herein) are CONFIRMED in each and every respect, pursuant to section 1129 of the Bankruptcy Code; *provided, however*, that if there is any direct conflict between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order shall control. The Effective Date of the Plan shall occur on the date determined by the Debtors when the conditions set forth in Article XI.A. of the Plan have been satisfied or, if applicable, have been waived in accordance with Article

XI.B. of the Plan. Any objections or responses to confirmation of the Plan and the reservation of rights contained therein that (a) have not been withdrawn, waived or settled prior to the entry of this Confirmation Order or (b) are not cured by the relief granted herein are hereby OVERRULED in their entirety and on their merits, and all withdrawn objections or responses are hereby deemed withdrawn with prejudice.

2. **Confirmation Order Binding on All Parties.** Subject to the provisions of Article VII.A. of the Plan and Bankruptcy Rule 3020(e), in accordance with section 1141(a) of the Bankruptcy Code and notwithstanding any otherwise applicable law, upon the occurrence of the Effective Date, the terms of the Plan and this Confirmation Order shall be binding upon, and inure to the benefit of: (a) the Debtors; (b) the Reorganized Debtors; (c) any and all holders of Claims or Equity Interests (irrespective of whether such Claims or Equity Interests are Impaired under the Plan or whether the holders of such Claims or Equity Interests accepted, rejected or are deemed to have accepted or rejected the Plan); (d) any other person giving, acquiring or receiving property under the Plan; (e) any and all non-Debtor parties to executory contracts or unexpired leases with any of the Debtors; and (f) the respective heirs, executors, administrators, trustees, affiliates, officers, directors, agents, representatives, attorneys, beneficiaries, guardians, successors or assigns, if any, of any of the foregoing. On the Effective Date, all settlements, compromises, releases (including, without limitation, the Plan Releases), waivers, discharges, exculpations and injunctions set forth in the Plan shall be effective and binding on all Persons who may have had standing to assert any settled, released, discharged, exculpated or enjoined causes of action, and no other Person or entity shall possess such standing to assert such causes of action after the Effective Date.

3. **Consolidation of the Debtors.**

(a) As no objections to such consolidation have been filed or served by any party, pursuant to Article IV of the Plan the consolidation of the consolidated Debtors solely for the purpose of implementing the Plan, including for purposes of voting, confirmation and distributions to be made under the Plan is hereby approved. Solely for purposes of implementing the Plan, including without limitation the making of Distributions thereunder, and for no other purposes: (a) all assets and liabilities of the consolidated Debtors will be deemed to be merged, (ii) the obligations of each Debtor will be deemed to be the obligation of the consolidated Debtors, (iii) any Claims filed or to be filed in connection with any such obligations will be deemed Claims against the consolidated Debtors, (iv) all transfers, disbursements and distributions made by any Debtor hereunder will be deemed to be made by the consolidated Debtors, and (vi) all guarantees of the Debtors of the obligations of any other Debtors shall be deemed eliminated so that any Claim against any Debtor and any guarantee thereof executed by any other Debtor and any joint or several liability of any of the Debtors shall be deemed to be one obligation of the consolidated Debtors.

(b) Such consolidation (other than for the purpose of implementing the Plan) shall not affect (i) the legal and corporate structure of the Reorganized Debtors; (ii) guarantees that are required to be maintained post-Effective Date (a) in connection with executory contracts or unexpired leases that were entered into during the Chapter 11 Cases or that have been, or will hereunder be, assumed, (b) pursuant to the express terms of the Plan, or (c) in connection with the Exit Facilities; or (iii) each Debtor's obligation to file the necessary operating reports and pay any required fees pursuant to 28 U.S.C. § 1930(a)(6) (such obligations shall continue until an order is entered closing, dismissing or converting each such Debtor's

Chapter 11 Case). In addition, such consolidation shall not (a) constitute a waiver of the mutuality requirement for setoff under section 553 of the Bankruptcy Code or (b) otherwise provide the basis for the assertion of any setoff or rights of subrogation or recoupment of any kind, directly or indirectly, against any obligation due a Debtor, its estate or its assets, or any direct or indirect successor in interest to a Debtor, or any assets or property of such successor.

4. **Vesting and Transfer of Assets.** On the Effective Date, except as otherwise provided in the Plan (including with respect to the Restructuring Transactions and the Exit Facilities), all property of the estate of a Debtor shall vest in, and be transferred to, such Reorganized Debtor in accordance with the terms of the Plan (subject to, and taking into account, the Restructuring Transactions), free and clear of all liens, charges, Claims, other encumbrances, Equity Interests and other interests in accordance with section 1141 of the Bankruptcy Code, with any prohibitions upon such transfer being null and void.

5. **Continued Corporate Existence.** The Debtors, as Reorganized Debtors, shall continue to exist after the Effective Date (subject to the Restructuring Transactions) with all powers of a corporation or limited liability company, as the case may be, under the laws of the respective states governing their formation and without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) under such applicable state law, except as such rights may be limited and conditioned by the Plan and the documents and instruments executed and delivered in connection therewith. In addition, the Reorganized Debtors may operate their businesses free of any restrictions imposed by the Bankruptcy Code, the Bankruptcy Rules or the Court, subject only to the terms and conditions of the Plan as well as the documents and instruments executed and delivered in connection therewith, including

without limitation, the Plan Exhibits. The Reorganized Debtors shall be responsible for filing required post-confirmation reports and paying quarterly fees due to the Office of the United States Trustee.

6. **Approval of Discharge of Claims and Termination of Equity Interests.** The Plan discharge provision set forth in Article VII.G. of the Plan is approved in all respects, is incorporated herein in its entirety, is so ordered and shall be immediately effective on the Effective Date of the Plan without further order or action on the part of the Court or any other party. Except as specifically set forth in the Plan, as of the Effective Date, pursuant to sections 524 and 1141 of the Bankruptcy Code, the Reorganized Debtors shall be discharged of all Claims and other debts and liabilities, in accordance with Article VII.G. of the Plan, and no creditor shall have recourse against any Reorganized Debtor or any of their assets or property on account of such Claims and other debts and liabilities.

7. **Release of Liens.**

(a) The release and discharge of all mortgages, deeds of trust, liens or other security interests against the property of any estate as set forth in Article VII.G. of the Plan is approved in all respects, is incorporated herein, is so ordered and shall be immediately effective on the Effective Date of the Plan without further order or action of the Court. As of the Effective Date, the Reorganized Debtors shall be authorized to execute and file on behalf of creditors Form UCC-3 Termination Statements, mortgage satisfactions or such other forms as may be necessary or appropriate to implement this Confirmation Order and the Plan; *provided, however*, that any liens and security interests assigned to the Exit Lenders in connection with the Exit Facilities shall not be released or discharged but shall be retained to secure only the Exit Facilities.

(b) All entities holding Claims against or Equity Interests in the Debtors that are treated under the Plan are hereby directed to execute, deliver, file or record any document, and to take any action necessary to implement, consummate and otherwise effect the Plan in accordance with its terms, and all such entities shall be bound by the terms and provisions of all documents executed and delivered by them in connection with the Plan. Upon the entry of this Confirmation Order, all entities holding Claims against or Equity Interests in the Debtors that are treated under the Plan, and other parties in interest, along with their respective present or former employees, agents, officers, directors or principals, shall be enjoined from taking any actions to interfere with the implementation and consummation of the Plan.

8. **Injunction.** As of the Effective Date, except as provided in the Plan or this Confirmation Order, all entities and Persons that have been, are or may be holders of Claims against or Equity Interests in a Debtor are enjoined from taking any of the following actions or affecting a Debtor, its assets, its estate, any direct or indirect successor in interest to a Debtor (including without limitation, the Reorganized Debtors) or any assets or property of such successor with respect to such Claims or Equity Interest (other than actions brought to enforce any rights or obligations under the Plan): (i) commencing or continuing in any manner any action or other proceeding of any kind against or affecting a Debtor, its Estate or its Assets, with respect to any such Claim, (ii) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or order against the Debtors or the Reorganized Debtors on account of any such Claim, (iii) creating, perfecting, or enforcing any encumbrance of any kind against the Debtors or the Reorganized Debtors or against the property or interests in property of the Debtors on account of any such Claim, (iv) asserting any right of

setoff, or subrogation of any kind against any obligation due from the Debtors or the Reorganized Debtors or against the property or interests in property of the Debtors on account of any such Claim; and (v) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Equity Interests released or settled pursuant to the Plan. Such injunction shall extend to successors of the Debtor (including, without limitation, the Reorganized Debtors) and their respective properties and interests in property.

9. **Corporate Indemnities.**

(a) Prior to the Effective Date, Bally shall make arrangements to continue liability and fiduciary insurance for the benefit of its directors, officers and employees for the period from and after the Effective Date, and, shall fully pay the annual premium for such insurance. The Reorganized Debtors shall obtain tail coverage under their existing directors' and officers' liability insurance policy covering their officers and current and former directors, which coverage shall extend for a period of not less than 6 years after the Effective Date.

(b) The obligations of each Debtor or Reorganized Debtor to indemnify any person who was serving as one of its directors, officers or employees on or after October 1, 2007, by reason of such person's prior or future service in such a capacity or as a director, officer or employee of another corporation, partnership or other legal entity, to the extent provided in the applicable certificates of incorporation, bylaws or similar constituent documents, by statutory law or by written agreement, policies or procedures of or with such Debtor or Reorganized Debtor, will be deemed and treated as executory contracts that are assumed by the applicable Debtor or Reorganized Debtor pursuant to the Plan and section 365 of

the Bankruptcy Code as of the Effective Date. Accordingly, such indemnification obligations will survive and be unaffected by entry of this Confirmation Order, irrespective of whether such indemnification is owed for an act or event occurring before or after the Petition Date.

(c) Any obligations of each Debtor or Reorganized Debtor to indemnify any person who ceased serving as one of its directors, officers or employees prior to October 1, 2007, by reason of such person's prior service in such a capacity or as a director, officer or employee of another corporation, partnership or other legal entity, to the extent provided in the applicable certificates of incorporation, bylaws or similar constituent documents, by statutory law or by written agreement, policies or procedures of or with such Debtor - to the extent that such obligations are found to still exist - will terminate and be discharged pursuant to section 502(e) of the Bankruptcy Code or otherwise as of the Effective Date; *provided, however*, that to the extent that such indemnification obligations no longer give rise to contingent Claims that can be disallowed pursuant to section 502(e) of the Bankruptcy Code, such indemnification obligations will be deemed and treated as executory contracts that are rejected by the applicable Debtor or Reorganized Debtor pursuant to the Plan and section 365 of the Bankruptcy Code as of the Effective Date, and any Claims arising from such indemnification obligations (including any rejection damage claims) must be filed with the Court no later than thirty (30) days after the Effective Date. Any Claims not filed within such time will be forever barred from assertion against the Debtors, their respective estates, or the Reorganized Debtors.

10. **Releases and Exculpation.**

(a) The Plan Releases set forth in Article VII of the Plan, among others, are approved in all respects, are incorporated herein in their entirety, are so ordered and shall be immediately effective on the Effective Date of the Plan without further order or

action on the part of the Court, any of the parties to such releases or any other party.

(b) **Releases by the Debtors.** Without limiting any other applicable provisions of, or releases contained in, the Plan, as of the Effective Date, the Debtors and the Reorganized Debtors, on behalf of themselves and their estates, shall release unconditionally the Released Parties from any and all claims, obligations, suits, judgments, damages, rights, Causes of Action and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, based in whole or in part upon actions taken solely in their respective capacities described above or any omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, or the Plan, provided, however, that (a) no individual shall be released from any act or omission that is determined in a Final Order to constitute gross negligence or willful misconduct, (b) the Reorganized Debtors shall not relinquish or waive the right to assert any of the foregoing as a legal or equitable defense or right of set-off or recoupment against any Claims of any such persons asserted against the Debtors, (c) the foregoing release shall not apply to any obligations that remain outstanding in respect of loans or advances made to individuals by the Debtors or to any obligations under the Exit Facilities outstanding as of the Effective Date, and (d) the foregoing release applies to the Released Parties solely in their respective capacities as set forth in the Plan.

(c) **Releases by Holders of Claims and Equity Interests.** Without limiting any other applicable provisions of, or releases contained in, the Plan, as of the Effective Date, (i) Persons who directly or indirectly, have held, hold, or may hold Claims or Equity Interests who voted to accept the Plan, and (ii) to the fullest extent permissible under applicable law, as such law may be extended or interpreted subsequent to the Effective Date, all

Persons who directly or indirectly, have held, hold, or may hold Claims or Equity Interests, will be deemed, by virtue of their receipt of Distributions and/or other treatment contemplated under the Plan, to have forever released and covenanted with the Reorganized Debtors and the Released Parties not to (i) sue or otherwise seek recovery from any of the Reorganized Debtors or any Released Party on account of any Claim in any way related to the Debtors or their business and affairs or (ii) assert against any of the Reorganized Debtors or any Released Party any claim, obligation, right, cause of action or liability based on any act or omission, transaction, or occurrence in any way relating to the Debtors, the Chapter 11 Cases, or the Plan, provided, however, the foregoing release (i) will not apply to obligations arising under the Plan, and (ii) the foregoing release will not be construed to prohibit a party in interest from seeking to enforce the terms of the Plan.

(d) **Exculpation With Respect to Released Parties.** The Debtors, the Reorganized Debtors, and the other Released Parties (i) shall have no liability whatsoever to any holder or purported holder of an Administrative Claim, Claim, or Equity Interest for any act or omission in connection with, or arising out of, the Plan, the Disclosure Statement, the negotiation of the Plan, the negotiation of the documents included in the Plan Exhibits, the pursuit of approval of the Disclosure Statement or the solicitation of votes for confirmation of the Plan, the Chapter 11 Cases, the consummation of the Plan, the administration of the Plan or the property to be distributed under the Plan, or any transaction contemplated by the Plan or Disclosure Statement or in furtherance thereof *except* for any act or omission that constitutes willful misconduct or gross negligence as determined by a Final Order, and (ii) in all respects, shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

(e) **Injunction With Respect to Released Parties.** Pursuant to section 105 of the Bankruptcy Code, no holder or purported holder of an Administrative Claim, Claim or Equity Interest shall be permitted to commence or continue any action, employment of process, or any act to collect, offset, or recover any Claim against a Released Party that accrued on or prior to the Effective Date and that has been released or waived pursuant to this Plan.

11. **Exemption from Securities Laws.** Pursuant to, in accordance with, and solely to the extent provided under section 1145 of the Bankruptcy Code, the offering, issuance, and distribution of the New Bally Common Stock, the New Bally Warrants and the New Bally Common Stock underlying the New Bally Warrants, shall be exempt from, among other things, the registration requirements of section 5 of the Securities Act and any other applicable law requiring registration prior to the offering, issuance, distribution, or sale of the New Bally Common Stock, the New Bally Warrants and the New Bally Common Stock underlying the New Bally Warrants.

12. **Shareholder Agreement.** Reorganized Bally is authorized to enter into and execute the Shareholder Agreement, and any agreement or document entered into in connection therewith, which shall become effective and binding in accordance with the Plan and/or otherwise in accordance with their respective terms and conditions upon the parties thereto; in each case without further notice to or order of this Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person (other than as expressly required by the Shareholder Agreement). The holders of New Bally Common Stock specified in Article VIII of the Second Amended and Restated Certificate of Incorporation attached as Exhibit F of the Plan are deemed to be parties to the Shareholder

Agreement and their shares of New Bally Common Stock shall be subject to the Shareholder Agreement.

13. **Exemption From Taxation.**

(a) Pursuant to section 1146(a) of the Bankruptcy Code,⁴ the following transactions will not be subject to any sales or use tax, stamp tax, transfer tax, intangible tax, mortgage recording tax or similar tax, charge, expense or conveyance fee: (i) the issuance, transfer or exchange of any securities (including the New Bally Common Stock, New Bally Warrants and the Management Options), instruments or documents; (ii) the creation or recording of any mortgage, deed of trust, lien or other security interest; (iii) the making or assignment of any lease or sublease; (iv) the execution and delivery of the Exit Facilities; (v) any Restructuring Transaction, including, but not limited to, any transfers of owned or leased real property between the Debtors or from a Debtor to a Reorganized Debtor created as part of the Restructuring Transactions; or (vi) the making, delivery or recording of any instrument, lease, deed, pledge, mortgage, deed of trust, bill of sale or other instrument of transfer, financing statement or assignment (including any merger agreements and agreements of consolidation, restructuring, disposition, liquidation or dissolution) or the revesting, transfer or sale of any real or personal property of a Debtor under, in furtherance of or in connection with the Exit Facilities, the Plan or this Confirmation Order.

(b) All filing and recording officers are hereby directed to accept for filing or recording all instruments of transfer to be filed and recorded in accordance with the Plan without payment of any such taxes. Notice of entry of this Confirmation Order in the form approved by the Court shall (a) have the effect of an order of the Court, (b)

⁴ The reference in Article XII.G of the Plan to “section 1146(c)” of the Bankruptcy Code is hereby amended to “1146.”

constitute sufficient notice of the entry of this Confirmation Order to such filing and recording officers, and (c) be a recordable instrument notwithstanding any contrary provision of applicable nonbankruptcy law. This Court retains jurisdiction to enforce the foregoing direction by contempt proceedings or otherwise.

(c) Any transfers of owned or leased real property undertaken pursuant to the Plan or the Restructuring Transactions are specifically for the purpose of reorganizing and restructuring the Debtors under the Bankruptcy Code and shall not trigger (a) any increase in applicable real property taxes or (b) a reappraisal of any real property so transferred.

14. **Exit Facilities.** The terms and conditions of the Exit Facilities and any documents related thereto are approved and ratified as being entered into in good faith and being critical to the success and feasibility of the Plan. The Reorganized Debtors are hereby authorized to execute and deliver the loan agreements for the Exit Facilities, all mortgages, security documents and all other related documents (the “Exit Documents”) and perform their obligations thereunder. The Exit Documents shall constitute the legal, valid, binding and authorized obligations of the Reorganized Debtors, enforceable in accordance with their terms. On the Effective Date, all of the liens and security interests to be granted in accordance with the Exit Documents shall be deemed approved and shall be legal, valid, binding and enforceable liens on the collateral in accordance with the terms of the Exit Documents.

15. **Executory Contracts and Unexpired Leases.**

(a) The executory contract and unexpired lease provisions of Article X of the Plan are specifically approved in all respects, are incorporated herein in their entirety and are so ordered. The Debtors are authorized to assume, assign and/or reject

executory contracts or unexpired leases in accordance with Article X of the Plan. In the event of an inconsistency between the Plan and any executory contract or unexpired lease assumed under the Plan, the provisions of the Plan shall govern.

(b) Pursuant to Article X of the Plan, the Debtors shall be deemed to assume each executory contract and unexpired lease that (i) was not previously assumed, assumed and assigned or rejected by an order of the Court, (ii) was not rejected pursuant to Exhibit A of the Plan, (iii) did not terminate or expire pursuant to its own terms, or (iv) is not the subject of an agreement with the applicable landlord for an extension of the Debtors' time to assume or reject under section 364(d)(4) of the Bankruptcy Code.

(c) The assumptions, assumptions and assignments or rejections described in Article X of the Plan, are approved pursuant to section 365 of the Bankruptcy Code, as of the later of (as applicable): (i) the Effective Date; (ii) the resolution of any motion to reject an executory contract or unexpired lease filed on or prior to the Effective Date; or (iii) the resolution of any objection to the proposed assumption, assumption and assignment or rejection of an executory contract or unexpired lease or the amount of any proposed Cure Claim. If an objection to a proposed assumption, assumption and assignment or Cure Claim is not resolved in favor of the Debtors or the Reorganized Debtors, the applicable executory contract or unexpired lease may be designated by the Debtors or the Reorganized Debtors for rejection within thirty days of the entry of the order of the Court resolving the matter against the Debtors. Such rejection shall be deemed effective as of the Effective Date.

(d) Pursuant to Article X of the Plan, the applicable Reorganized Debtor, shall, on the Initial Distribution Date, cure any and all undisputed defaults under any

executory contract or unexpired lease that is assumed by such Reorganized Debtor pursuant to the Plan in accordance with section 365 of the Bankruptcy Code (except as otherwise agreed by the parties). The Cure Claim for each unexpired lease and executory contract to be assumed pursuant to the Plan is listed on Exhibit B to the Plan. The Cure Claim to be paid in connection with the assumption of any unexpired lease and executory contract that is not specifically identified on Exhibit B shall be \$0.00. Exhibit B may be amended by the Debtors at any time prior to the Effective Date.

(e) Contracts, leases and other agreements entered into after the Petition Date by a Debtor, including, without limitation, any executory contracts or unexpired leases assumed by a Debtor, shall be performed by such Debtor or Reorganized Debtor in the ordinary course of its business, as applicable. Such contracts and leases (including any assumed executory contracts or unexpired leases) shall survive and remain unaffected by entry of this Confirmation Order. Any executory contracts or unexpired leases assumed by a Debtor will be assigned to the surviving, resulting or acquiring Corporation in the applicable Restructuring Transaction as set forth in Exhibit C to the Plan under Section 365 of the Bankruptcy Code. The Debtors and Reorganized Debtors may, at any time until the date that is 30 days after the Effective Date, amend Exhibit C to the Plan to identify or change the identity of the Reorganized Debtor party that will be the assignee of an executory contract or unexpired lease.

(f) The Debtors may exercise their rights under state law and applicable nonbankruptcy law — including section 2-2 10 of the Uniform Commercial Code — to provide parties to nonexecutory agreements and postpetition agreements with notice of any assignments as practicable following the Effective Date.

(g) Notwithstanding any language to the contrary in any such executory contract or unexpired lease, and in accordance with section 365(f) of the Bankruptcy Code, any assignment of an executory contract or unexpired lease under which a Debtor is the lessee of real property may be effected without (i) the consent of the lessor party thereto and (ii) the payment of any fees or similar charges (including attorneys' fees) to the lessor.

(h) To the extent a lessor of nonresidential real property timely filed an objection with respect to the cure amount that the Debtors assert is required to be paid in connection with assumption of a nonresidential real property lease previously assumed in these Chapter 11 Cases, and such objection has not been resolved prior to the Effective Date of the Plan, notwithstanding any language in the Plan, this Confirmation Order or any related documents, the rights of each party with respect to the objection are reserved and nothing herein shall moot, adversely affect or otherwise be determinative of the rights and obligations of the parties with respect to any such objection or the underlying cure claim.”

(i) Nothing in this Order shall moot, adversely affect or otherwise be determinative of the issues between the Debtors and Sywest Development as set forth in (i) the pending state court action titled *Contra Costa Retail Center, LLC v. Bally Total Fitness Corporation*, Case No. CS07-0427 (the "Pending State Court Action") or the pending California State Court Appeal filed by Debtor, titled *Contra Costa Retail Center v. Bally Total Fitness*, First Appellate District Case. No. A125172, (ii) the order granting relief from stay with respect to the Pending State Court Action [Docket No. 442], (iii) the Third Omnibus Order Granting Motion of Debtors for an Order Pursuant to Section 365 of the Bankruptcy Code, Authorizing them to Assume Certain of their Unexpired Leases of Nonresidential Real Property entered on June 30,

2009 [Docket No. 1182]; or (iv) the adversary proceeding titled *Bally Total Fitness Corporation v. Contra Costa Retail Center, LLC*, Case No. 08-14818; Adv. Pro. No. 09-01350.

16. **Plan Distributions.** On and after the Effective Date, distributions on account of Allowed Claims and the resolution and treatment of Disputed Claims shall be effectuated pursuant to Article VIII of the Plan. The Record Date for making distributions under the Plan shall be the date of entry of this Confirmation Order.

17. **Recovery Actions.** In accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain all Litigation Rights and nothing contained in the Plan or this Confirmation Order shall be deemed a waiver or relinquishment of any claim, Litigation Right, right of setoff, or other legal or equitable defense of the Debtors that is not specifically waived or relinquished by the Plan. All of the Reorganized Debtors' legal and equitable rights respecting any claim that is not specifically waived or relinquished by this Plan may be asserted after the Effective Date to the same extent as if the Chapter 11 Cases had not been commenced. No Person may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Cause of Action against them as any indication that the Debtors or Reorganized Debtors, as applicable, will not pursue any and all available Causes of Action against such person. All decisions and determinations by the Reorganized Debtors in connection with the Litigation Rights, including without limitation decisions and determinations regarding whether to pursue or at any time to abandon any Litigation Rights and decisions and determinations regarding the terms for any settlement or other compromise of any Litigation Rights that is pursued, will be made in the sole and absolute discretion of the Reorganized Debtors and none of the Reorganized Debtors, affiliates of the Reorganized Debtors or representatives of the Reorganized Debtors or their affiliates will

have liability for any act or omission in connection with the Litigation Rights, including without limitation the pursuit, abandonment or resolution or other compromise thereof.

18. **Claims Bar Dates and Other Claims Matters.**

(a) **Professional Compensation.** All requests for compensation or reimbursement of Fee Claims shall be filed and served on the Reorganized Debtors, counsel to the Reorganized Debtors, the United States Trustee, counsel to the Unsecured Creditors' Committee, and counsel to the Exit Lenders and such other entities who are designated by the Bankruptcy Rules or the Fee Order, no later than 45 days after the Effective Date. Objections to any Fee Claims must be filed and served on the Reorganized Debtors, counsel for the Reorganized Debtors, and the requesting party no later than 75 days after the Effective Date (unless otherwise agreed by the party requesting compensation). Other than as set forth herein or in the Plan, the procedures set forth in the Fee Order regarding interim compensation of Professionals shall remain in effect through the Effective Date. Notwithstanding anything to the contrary in Plan or this Confirmation Order, (i) each Reorganized Debtor is authorized to pay the charges that it incurs on or after the Effective Date for retained estate Professionals' fees, disbursements, expenses or related support services (including fees relating to the preparation of Professional fee applications) without application to the Court, and (ii) any professional who may receive compensation or reimbursement of expenses pursuant to the Ordinary Course Professionals Order may continue to receive such compensation and reimbursement of expenses for services rendered before the Effective Date pursuant to the Ordinary Course Professionals Order without further Court review or approval (except as otherwise provided in the Ordinary Course Professionals Order).

(b) **Bar Date for Rejection Claims.** Except as otherwise provided in a Final Order of the Court approving the rejection of an executory contract or unexpired lease, Claims arising out of the rejection of an executory contract or unexpired lease pursuant to the Plan must be filed with the Court on or before the later of 30 days after (i) the Effective Date, (ii) if an objection to rejection is timely filed with the Court, the date that an order is entered approving the rejection of the applicable contract or lease or the date that the objection to rejection is withdrawn, or (iii) if an objection to a proposed Cure Claim is not resolved in favor of the Reorganized Debtors and the applicable executory contract or unexpired lease is designated by the Reorganized Debtors for rejection, within thirty days of notice of such designation to the executory contract or unexpired lease counterparty. Any Claims not filed within such applicable time periods are forever barred from receiving a distribution from the Debtors, the Reorganized Debtors or the Estates.

(c) **28 U.S.C. § 1930 Fees.** All fees payable on or before the Effective Date pursuant to section 1930 of title 28 of the United States Code shall be paid by the Debtors on or before the Effective Date and all such fees payable after the Effective Date shall be paid by the Reorganized Debtors.

19. **Plan Implementation.**

(a) In accordance with section 1142 of the Bankruptcy Code and any provisions of the business corporation law of any state (collectively, the “Reorganization Effectuation Statutes”), without further action by the Court or the stockholders, members, managers or directors of any Debtor or Reorganized Debtor, the Debtors, the Reorganized Debtors, as well as the Chairman of the Board, Chief Executive Officer, President, Vice President, Chief Financial Officer, Treasurer, Assistant Treasurer or

Secretary (collectively, the “Responsible Officers”) of the appropriate Debtor or Reorganized Debtor, are authorized to: (i) take any and all actions necessary or appropriate to implement, effectuate and consummate the Plan, this Confirmation Order or the transactions contemplated thereby or hereby, including, without limitation, the Restructuring Transactions and those other transactions identified in Article V and Article VI of the Plan and the payment of any employment taxes owing in respect of distributions under the Plan; and (ii) execute and deliver, adopt or amend, as the case may be, any contracts, instruments, releases, agreements and documents necessary to implement, effectuate and consummate the Plan, including without limitation, those contracts, instruments, releases, agreements and documents identified in the Restructuring Transactions and those other transactions identified in Article V and Article VI of the Plan.

(b) To the extent that, under applicable non-bankruptcy law, any of the foregoing actions would otherwise require the consent or approval of the stockholders or directors of any of the Debtors or Reorganized Debtors, this Confirmation Order shall, pursuant to section 1142 of the Bankruptcy Code and the Reorganization Effectuation Statutes, constitute such consent or approval, and such actions are deemed to have been taken by unanimous action of the directors and stockholders of the appropriate Debtor or Reorganized Debtor.

(c) Each federal, state, commonwealth, local, foreign or other governmental agency is hereby directed and authorized to accept any and all documents, mortgages and instruments necessary or appropriate to effectuate, implement or consummate the transactions contemplated by the Plan and this Confirmation Order.

(d) All transactions effected by the Debtors during the pendency of

the Chapter 11 Cases from the Petition Date through the Confirmation Date are approved and ratified.

20. **No Change in Control.** Pursuant to Article X.G. of the Plan, the consummation of the Plan, the implementation of the Restructuring Transactions or the assumption or assumption and assignment of any executory contract or unexpired lease to another Reorganized Debtor is not intended to, and shall not, constitute a change in ownership or change in control under any employee benefit plan or program, financial instrument, loan or financing agreement, executory contract or unexpired lease or contract, lease or agreement in existence on the Effective Date to which a Debtor is a party.

21. **Claims Monitor.**

(a) **Appointment of the Claims Monitor.** The appointment of a Claims Monitor as described at Article V.G. of the Plan is hereby approved and the Debtors are authorized to enter into an engagement letter (the “Engagement Letter”) with the Claims Monitor consistent with Article V.G of the Plan. The identity of the Claims Monitor will be filed with the Court prior to the Effective Date and upon filing will be deemed approved.

(b) **Rights of the Claims Monitor.** The powers, rights and responsibilities of the Claims Monitor shall be as specified in the Plan. In connection with its responsibilities, the Claims Monitor may employ, without further order of the Court, professionals to assist in carrying out its duties under the Plan.

(c) **Compensation for the Claims Monitor.** Except as otherwise ordered by the Court, the reasonable and necessary fees and expenses of the Claims Monitor (including the reasonable and necessary fees and expenses of any professionals assisting the Claims Monitor in carrying out its duties under the Plan) shall be paid by the Reorganized

Debtors in an amount not to exceed \$200,000 (which amount may be increased in the sole discretion of the Reorganized Debtors) in accordance with the Plan and the Engagement Letter without further order from the Bankruptcy Court.

22. **Cancellation of Securities.** On the Effective Date, (i) the Equity Interests in the Debtors shall be deemed cancelled and of no further force and effect, without any further action by the Debtors, the Reorganized Debtors or the Court and (ii) the Debtors' obligations under the Prepetition Term Loan, the Prepetition Swap, the Prepetition Revolver Facility, the Prepetition Swap Agreements, the Senior Secured Notes Indenture and the Subordinated Notes Indenture shall be discharged and all claims against the Debtors thereunder shall only be payable in accordance with the Plan. The holders of and parties to such canceled securities and Equity Interests shall have no rights arising from or relating to such securities and other documentation or the cancellation thereof, except the rights provided pursuant to the Plan. Notwithstanding the foregoing, the Senior Secured Notes Indenture and Subordinated Notes Indenture shall remain in effect until the Subordination Dispute has been resolved by entry of a Final Order and the Subordinated Notes Plan Distribution has been distributed in accordance with such Final Order, including without limitation: (i) all provisions relating directly or indirectly to the Subordination Dispute and the rights of holders of Senior Indebtedness (as defined in the Subordinated Notes Indenture); (ii) all rights and powers of the indenture trustees under each respective indenture; and (iii) all protections each indenture trustee has under the respective indentures, including lien rights with respect to any Plan distributions. The Reorganized Debtors shall have not have any obligations to the indenture trustees for any fees, costs or expenses except as expressly provided in the Plan.

23. **Approval of Management Incentive Plan.** Entry of this Confirmation Order constitutes the approval of the Management Incentive Plan summarized in Exhibit H to the Plan. The Debtors and Reorganized Debtors, as applicable, are authorized to (i) take any and all actions necessary or appropriate to implement, effectuate and consummate the Management Incentive Plan and (ii) execute and deliver, adopt or amend, as the case may be, any contracts, instruments, agreements and documents necessary to implement, effectuate and consummate the Management Incentive Plan.

24. **Approval of Corporate Personal Incentive Plan.** Entry of this Confirmation Order constitutes the approval of the Corporate Personal Incentive Plan summarized in Exhibit I to the Plan. The Debtors and Reorganized Debtors, as applicable, are authorized to (i) take any and all actions necessary or appropriate to implement, effectuate and consummate the Corporate Personal Incentive Plan and (ii) execute and deliver, adopt or amend, as the case may be, any contracts, instruments, agreements and documents necessary to implement, effectuate and consummate the Corporate Personal Incentive Plan.

25. **Binding Effect of Prior Orders.** Pursuant to section 1141 of the Bankruptcy Code, effective as of the Confirmation Date, but subject to the occurrence of the Effective Date and subject to the terms of the Plan and this Confirmation Order, all prior orders entered in the Chapter 11 Cases, all documents and agreements executed by the Debtors as authorized and directed thereunder and all motions or requests for relief by the Debtors pending before the Court as of the Effective Date shall be binding upon and shall inure to the benefit of the Debtors, the Reorganized Debtors and their respective successors and assigns.

26. **Final Order.** This Confirmation Order is a Final Order, and the period in which an appeal must be filed shall commence immediately upon the entry hereof.

27. **Reversal.** If any or all of the provisions of this Confirmation Order are hereafter reversed, modified or vacated by subsequent order of this Court or any other court, such reversal, modification or vacatur shall not affect the validity of the acts or obligations incurred or undertaken under or in connection with the Plan prior to the Debtors' receipt of written notice of such order. Notwithstanding any such reversal, modification or vacatur of this Confirmation Order, any such act or obligation incurred or undertaken pursuant to, and in reliance on, this Confirmation Order prior to the effective date of such reversal, modification or vacatur shall be governed in all respects by the provisions of this Confirmation Order and the Plan and all related documents or any amendments or modifications thereto.

28. **Notice of Confirmation of the Plan.** Pursuant to Bankruptcy Rules 2002(f)(7) and 3020(c)(2), the Debtors or the Reorganized Debtors are directed to serve a notice of the entry of this Confirmation Order and the establishment of bar dates for certain Claims hereunder, substantially in the form of Appendix 2 attached hereto and incorporated herein by reference (the "Confirmation Notice"), on all parties that received the Confirmation Hearing Notice and parties to executory contracts or unexpired leases, no later than 5 Business Days after the Confirmation Date; *provided, however*, that the Debtors or the Reorganized Debtors shall be obligated to serve the Confirmation Notice only on the record holders of Claims or Equity Interests as of the Confirmation Date. The Debtors are directed to publish the Confirmation Notice once in the *Chicago Tribune* and *USA Today* no later than 5 Business Days after the Confirmation Date. As soon as practicable after the

entry of this Confirmation Order, the Debtors shall make copies of this Confirmation Order and the Confirmation Notice available on KCC's website at www.kccllc.net/Bally.

29. **Modification of the Plan.** The Debtors are hereby authorized to amend or modify the Plan at any time prior to the substantial consummation of the Plan, but only in accordance with section 1127 of the Bankruptcy Code, without further order of the Court. In addition, without the need for a further order or authorization of this Court, but subject to the express provisions of this Confirmation Order, the Debtors shall be authorized and empowered to make non-material modifications to the documents filed with the Court, including the Plan Exhibits, in their reasonable business judgment as may be necessary; *provided, however*, the Debtors shall provide the Unsecured Creditors' Committee with 5 days' notice of such non-material modifications.

30. **Dissolution of the Unsecured Creditors' Committee.**

(a) On the Effective Date, the Unsecured Creditors' Committee shall be dissolved and its members shall be deemed released of all their duties, responsibilities and obligations in connection with the Chapter 11 Cases or this Plan and its implementation, and the retention or employment of the Unsecured Creditors' Committee's attorneys, financial advisors, and other agents shall terminate as of the Effective Date; *provided, however*, such attorneys and financial advisors shall be entitled to pursue their own Fee Claims and represent the Unsecured Creditors' Committee in connection with the review of and the right to be heard in connection with all Fee Claims.

(b) The Reorganized Debtors shall pay the reasonable expenses of the members of the Unsecured Creditors' Committee and the reasonable and documented fees and expenses of the Unsecured Creditors' Committee's Professionals incurred in

connection with objecting to and litigating Fee Claims and applications for fees and expenses under section 503(b) of the Bankruptcy Code.

(c) The Professionals retained by the Unsecured Creditors' Committee and the respective members thereof shall not be entitled to assert any Fee Claim for any services rendered or expenses incurred after the Effective Date, except for reasonable fees for services rendered, and actual and necessary expenses incurred, in connection with (a) any applications for allowance of compensation and reimbursement of expenses pending on the Effective Date or filed and served after the Effective Date pursuant to Article II.B. of the Plan; and (b) with respect to the Unsecured Creditors' Committee objecting to and litigating Fee Claims and applications for fees and expenses under section 503(b) of the Bankruptcy Code.

(d) Nothing contained herein shall, or shall be deemed to, limit, abridge or otherwise affect the exculpations and limitations on liability to which the foregoing parties may be entitled under Article VII.N. of the Plan.

31. **Miscellaneous Provisions**

(a) Nothing in the Confirmation Order or the Plan shall 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, federal securities laws, 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 the Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action or other proceedings against the Released Parties for any liability whatever, including without limitation any claim, suit or action arising under the Internal

Revenue Code, federal securities laws, the environmental laws or any criminal laws of the United States or any state or local authority, nor shall anything in the Confirmation Order or the 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 any liabilities arising under the Internal Revenue Code, federal securities laws, the environmental laws or any criminal laws of the United States or any state and local authority against the Released Parties; *provided* that the foregoing shall in no way affect or limit the discharge or injunction granted to the Debtors under sections 524 and 1141 of the Bankruptcy Code.

(b) Except as otherwise provided in the Plan, this Confirmation Order, and with respect to Fee Claims, notice of all subsequent pleadings in the Chapter 11 Cases shall be limited to counsel to the Debtors, counsel to the Exit Term Loan lenders, counsel for the Claims Monitor, the United States Trustee and any party known to be directly affected by the relief sought.

(c) Failure specifically to include or reference particular sections or provisions of the Plan or any related agreement in this Confirmation Order shall not diminish or impair the effectiveness of such sections or provisions, it being the intent of the Court that the Plan be confirmed and such related agreements be approved in their entirety.

(d) Nothing in the Confirmation Order or the Plan shall prohibit or impair the Reorganized Debtors right to seek a bar date for Administrative Claims after the Effective Date of the Plan.

(e) Any document related to the Plan that refers to a plan of reorganization of the Debtors other than the Plan confirmed by this Confirmation Order shall be, and it hereby is, deemed to be modified such that the reference to a plan of

reorganization of the Debtors in such document shall mean the Plan confirmed by this Confirmation Order, as appropriate.

(f) Nothing in either the Confirmation Order or the Plan shall (i) affect, impair, limit or in any way prejudice the rescission claims or any defenses that may be available to ACE American Insurance Company and Fireman's Fund Insurance Company (whether or not such defenses are currently pled) in the litigation captioned *Great American Insurance Company v. Bally Total Fitness Holding Corporation*, Case No. 06-cv-4554, in the United States District Court for the Northern District of Illinois (the "Coverage Litigation"), or (ii) affect, impair, limit or in any way prejudice the Debtors' claims and defenses in the Coverage Litigation (including any right of the Debtors to challenge the timeliness of a pleading or a defense).

(g) The Debtors have resolved the Limited Objection and Reservation of Rights filed by Westchester Fire Insurance Company and ACE USA (the "ACE Objection") [Docket No. 1339] as follows: Westchester Fire Insurance Company and ACE USA ("ACE") shall withdraw the ACE Objection and the reorganized Bally Total Fitness Holding Corporation shall enter into, effective as of the Effective Date, a new indemnity agreement in favor of ACE, substantially in the form of the indemnity agreement attached to the ACE Objection as Exhibit A, which agreement will indemnify ACE for future claims that may arise under surety bonds executed for the Debtors or Reorganized Debtors by ACE. The Debtors and the Reorganized Debtors acknowledge that ACE currently holds collateral which shall continue to secure all indemnification or other obligations arising either prepetition, postpetition or postconfirmation in connection with ACE's surety bonds.

(h) The Debtors and Lexington Insurance Company ("Lexington")

have agreed that the Order Pursuant to Section 105(a), Section 363(b) and Section 365(b) of the Bankruptcy Code Authorizing and Approving (I) The Debtors Assumption of Certain Insurance Agreements and (II) The Debtors' Entry into an Insurance Program With Certain Affiliate of American International Group, Inc. entered by the Bankruptcy Court on January 14, 2009 (the "AIG Insurance Order") [Docket No.423] is and shall remain in full force and effect, and nothing in the Plan or Confirmation Order shall adversely impact the effectiveness or validity of the AIG Insurance Order or shall alter or impair the insurer's rights or Debtors' obligations under any policies assumed by the Debtors pursuant to the AIG Insurance Order. Any liquidation, estimation, settlement or other resolution of Claims against the Debtors that may be covered by policies issued to the Debtors by Lexington shall be in compliance with the applicable assumed policies. To the extent that any liquidation, estimation, settlement, or other resolution of Claims affects coverage or payment by Lexington under the terms of any policy issued to the Debtors by Lexington, such liquidation, estimate, settlement, or other resolution shall not be binding upon Lexington unless Lexington participates in or consents to such liquidation, estimation, settlement, or other resolution.

(i) Pending Insurance Litigation Involving Certain Former Officers and Directors. Notwithstanding any other provision of the Plan or this Confirmation Order to the contrary, in order to facilitate the completion of certain settlement negotiations seeking to resolve litigation pending in the Northern District of Illinois, *Great Am. Ins. Co. v. Bally Total Fitness Holding Corp.*, Case No. 06-4554 (N.D. Ill.) (the "Coverage Action") as well as other related actions, the Debtors and the Reorganized Debtors have agreed and are hereby authorized to extend the time to assume or reject those agreements listed on Exhibit A to the Plan between the Debtors and former officers and directors Lee S. Hillman, John W. Dwyer, Paul Toback and

Theodore Noncek, respectively, until the earlier of (a) 90 days following the Effective Date of the Plan and (b) the date which is five business days after the date on which an order approving the settlement of the Coverage Action and all related actions entered by this Court becomes final. In the event that the settlement is not finalized and approved by this Court, the parties reserve all rights and defenses, including those available under both bankruptcy law and non-bankruptcy law.

(j) Without intending to modify any prior order of this Court (or any agreement, instrument or document addressed by any prior order), in the event of an inconsistency between the Plan, on the one hand, and any other agreement, instrument, or document intended to implement the provisions of the Plan, on the other, the provisions of the Plan shall govern (unless otherwise expressly provided for in such agreement, instrument, or document). In the event of any inconsistency between the Plan or any agreement, instrument, or document intended to implement the Plan, on the one hand, and this Confirmation Order, on the other, the provisions of this Confirmation Order shall govern.

(k) In accordance with Article XI.C. of the Plan, if the Effective Date does not occur, on or before one hundred and twenty (120) days after the Confirmation Date, upon notification submitted by the Debtors to the Court: (i) the Confirmation Order shall be vacated, (ii) no distributions under the Plan shall be made, (iii) the Debtors and all holders of Claims and Equity Interests shall be restored to the status quo ante as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred, and (iv) the Debtors' obligations with respect to the Claims and Equity Interests shall remain unchanged and nothing contained in the Plan shall constitute or be deemed a

waiver, release, or discharge of any Claims or Equity Interests by or against the Debtors or any other person or to prejudice in any manner the rights of the Debtors or any person in any further proceedings involving the Debtors unless extended by Court order.

(1) The business and assets of the Debtors shall remain subject to the jurisdiction of this Court until the Effective Date. Notwithstanding the entry of this Confirmation Order, from and after the Effective Date, the Court shall retain such jurisdiction over the Chapter 11 Cases as is legally permissible, including jurisdiction over those matters and issues described in Article IX of the Plan.

Dated: August 19, 2009
New York, New York

/s/ Burton R. Lifland
UNITED STATES BANKRUPTCY JUDGE

Appendix 1
Plan of Reorganization

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
BALLY TOTAL FITNESS OF)	
GREATER NEW YORK, INC., <u>et al.</u> ,)	Case No. 08-14818 (BRL)
)	
Debtors.)	
)	Jointly Administered
)	

**SECOND AMENDED JOINT PLAN OF REORGANIZATION OF THE DEBTORS
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

KRAMER LEVIN NAFTALIS & FRANKEL LLP
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Counsel for the Debtors and the Debtors in Possession

Dated: August 14, 2009
New York, New York

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INTRODUCTION

Bally Total Fitness Holding Corporation (“Bally”) and its direct and indirect subsidiaries in the above-referenced chapter 11 cases, as debtors and debtors in possession (collectively, the “Debtors”), propose the following joint plan of reorganization (the “Plan”) under section 1121(a) of the Bankruptcy Code. The Debtors’ Chapter 11 Cases are being jointly administered pursuant to an order of the Court. Claims against, and Interests in, the Debtors (other than Administrative Claims, Priority Tax Claims, and Fee Claims) are classified and treated in Article III hereof. Reference is made to the Disclosure Statement accompanying this Plan, including the exhibits thereto, for a discussion of the Debtors’ history, business, properties, results of operations, and projections for future operations and risk factors, together with a summary and analysis of this Plan. All Claim holders entitled to vote on this Plan are encouraged to consult the Disclosure Statement and to read this Plan carefully before voting to accept or reject this Plan.

NO SOLICITATION MATERIALS, OTHER THAN THE DISCLOSURE STATEMENT AND RELATED MATERIALS TRANSMITTED THEREWITH AND APPROVED BY THE COURT, HAVE BEEN AUTHORIZED BY THE COURT FOR USE IN SOLICITING ACCEPTANCES OR REJECTIONS OF THIS PLAN.

ARTICLE I. DEFINITIONS AND CONSTRUCTION OF TERMS

A. Definitions

Unless otherwise defined herein, or the context otherwise requires, the following terms shall have the respective meanings set forth below:

1. *Administrative Claim*: means any right to payment constituting a cost or expense of administration of the Chapter 11 Cases of a kind specified under section 503(b) of the Bankruptcy Code and entitled to priority under section 507(a)(2), 507(b) or 1114(e)(2) of the Bankruptcy Code, including, without limitation, (i) any actual and necessary costs and expenses of preserving the Debtors’ estates, (ii) any actual and necessary costs and expenses of operating the Debtors’ businesses, (iii) any indebtedness or obligations assumed by the Debtors in connection with the conduct of their businesses, (iv) all compensation and reimbursement of expenses to the extent awarded by the Court under sections 330, 331 or 503 of the Bankruptcy Code, (v) any fees or charges assessed against the Debtors’ estates under section 1930 of title 28 of the United States Code, and (vi) any Claim for goods delivered to the Debtors within twenty (20) days of the Petition Date and entitled to administrative priority pursuant to section 503(b)(9) of the Bankruptcy Code.

2. *Allowed*: means, with reference to any Claim, (i) any Claim against any of the Debtors that has been listed by the Debtors in the Schedules, as such Schedules may be amended by the Debtors from time to time in accordance with Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent, and with respect to which no contrary proof of claim has been filed, (ii) any Claim specifically allowed under the Plan, (iii) any Claim, which is not Disputed, which becomes allowed after the Claims Objection Deadline because no

objection was interposed against the Claim by the Claims Objection Deadline, or (iv) any Claim the amount or existence of which, if Disputed, (a) has been determined by a Final Order of a court of competent jurisdiction other than the Court, or (b) has been allowed by Final Order of the Court; provided, however, that any Claims allowed solely for the purpose of voting to accept or reject the Plan pursuant to an order of the Court shall not be considered “Allowed Claims” hereunder.

3. Ballots: means each of the ballot forms distributed with the Disclosure Statement to each holder of an Impaired Claim (other than to holders not entitled to vote on the Plan) upon which is to be indicated, among other things, acceptance or rejection of the Plan.

4. Bankruptcy Code: means title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., as in effect on the date hereof.

5. Bankruptcy Rules: means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, and local rules of the Court, as the context may require.

6. Bar Date Order: means the Order Establishing Bar Dates for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof, entered by the Bankruptcy Court on January 23, 2009 (Docket No. 514), as the same may be amended, modified or supplemented.

7. Business Day: means any day on which commercial banks are open for business, and not authorized to close, in the City of New York, New York, except any day designated as a legal holiday by Bankruptcy Rule 9006(a).

8. Cash: means legal tender of the United States of America.

9. Causes of Action: means any and all claims, causes of actions, crossclaims, counterclaims, third-party claims, indemnity claims, contribution claims, defenses, demands, rights, actions, debts, damages, judgments, remedies, Liens, indemnities, guaranties, suits, obligations, liabilities, accounts, offsets, recoupments, powers, privileges, licenses, and franchises of any kind or character whatsoever, known or unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, whether arising before, on or after the Petition Date, including through the Effective Date, in contract or in tort, in law or in equity, or pursuant to any other theory of law. “Causes of Action” shall include but are not limited to: (i) all rights of setoff, counterclaim, or recoupment and claims on contracts or for breaches of duties imposed by law or in equity; (ii) the right to object to Claims; (iii) all claims pursuant to sections 362, 510, 542, 543, 544 through 550, 552 or 553 of the Bankruptcy Code; (iv) such claims and defenses as fraud, mistake, duress, and usury and any other defenses set forth in section 558 of the Bankruptcy Code; and (v) any state law fraudulent transfer claims.

10. Chapter 11 Cases: means the chapter 11 cases commenced by the Debtors on December 3, 2008.

11. Claim: means any claim, as such term is defined in section 101(5) of the Bankruptcy Code.

12. Claims Agent: means Kurtzman Carson Consultants LLC or any successor thereto.

13. Claims Monitor: means the Person designated in accordance with Article V.G. of the Plan to monitor the Reorganized Debtors' post-Effective Date settlement of Disputed General Unsecured Claims.

14. Claims Objection Deadline: means the first business day that is one hundred eighty (180) days after the Effective Date, or such other later date the Court may establish upon a motion by the Reorganized Debtors, which motion may be approved without a hearing and without notice to any party.

15. Class: means a group of Claims or Equity Interests classified under the Plan.

16. Collateral: means any property or interest in property of the Debtors' estates subject to a Lien to secure the payment or performance of a Claim, which Lien has not been avoided or is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable state law.

17. Confirmation Date: means the date on which the Confirmation Order is entered by the Court.

18. Confirmation Hearing: means the hearing required by section 1128 of the Bankruptcy Code to consider confirmation of the Plan in accordance with section 1129 of the Bankruptcy Code, as it may be adjourned or continued from time to time.

19. Confirmation Order: means the order entered by the Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

20. Convenience Claims: means Claims against any of the Debtors that otherwise would be classified as General Unsecured Claims in Class 8, but, with respect to each such Claim, either (i) the aggregate amount of such Claim is equal to or less than \$300,000 or (ii) the aggregate amount of such Claim is reduced to \$300,000 pursuant to an election by the Claim holder made on the Ballot provided for voting on the Plan by the Voting Deadline; provided, however, that where any portion(s) of a single Claim has been transferred to a transferee, (a) the amount of all such portions will be aggregated to determine whether a Claim qualifies as a Convenience Claim and for purposes of the Convenience Claim election and (b) unless all transferees make the Convenience Claim election on the applicable Ballots, the Convenience Claim election will not be recognized for such Claim.

21. Corporate Personnel Incentive Plan: means the post-Effective Date Corporate Personnel Incentive Plan referenced in Article VI.F. of this Plan, the terms of which are set forth more fully in Exhibit I to the Plan.

22. Court: means, (i) the United States Bankruptcy Court for the Southern District of New York, having jurisdiction over the Chapter 11 Cases; (ii) to the extent there is no reference pursuant to section 157 of title 28 of the United States Code, the United States District

Court for the Southern District of New York; and (iii) any other court having jurisdiction over the Chapter 11 Cases or proceedings arising therein.

23. Credit Agreement: means that certain Credit Agreement, dated as of October 1, 2007, between Bally and Morgan Stanley Senior Funding, Inc., as Administrative Agent and Collateral Agent, Wells Fargo Foothill, LLC, as Revolving Credit Agent, and the CIT Group/Business Credit, Inc., as Revolving Syndication Agent and certain other lenders party thereto.

24. Cure Claim: means a Claim in an amount equal to all unpaid monetary obligations under an executory contract or unexpired lease assumed by a Debtor under section 365 of the Bankruptcy Code, to the extent such obligations are enforceable under the Bankruptcy Code and applicable non-bankruptcy law.

25. Cure Claim Bar Date: means the deadline for filing requests for payment of a Cure Claim in amount different from the amount listed on Exhibit B to the Plan or as set forth in Article X.B. of the Plan, which shall be 10 days after the Effective Date, unless otherwise ordered by the Bankruptcy Court or agreed to by the Debtors and the counterparty to the applicable executory contract or unexpired lease.

26. Debtor: means, individually, any of the Debtors.

27. Disbursing Agent: means an entity designated by a Debtor or Reorganized Debtor to act as a disbursing agent, which may be Reorganized Bally.

28. Disclosure Statement: means the written disclosure statement that relates to this Plan, as approved by the Court pursuant to section 1125 of the Bankruptcy Code and Bankruptcy Rule 3017, as such disclosure statement may be amended, modified or supplemented from time to time.

29. Disputed: means, with reference to any Claim, (i) a Claim that is listed on a Debtor's Schedules as either disputed, contingent or unliquidated; (ii) a Claim that is listed on a Debtor's Schedules as other than disputed, contingent or unliquidated, but the nature or amount of the Claim as asserted by the holder varies from the nature or amount of such Claim as it is listed on the Schedules; (iii) a Claim as to which the applicable Debtor or Reorganized Debtor, or, prior to the Confirmation Date, any other party in interest, has filed an objection and such objection has not been withdrawn or denied by a Final Order; (vi) Tort Claims, and (v) a Claim or request for payment of Administrative Claim that is required to be filed and no such Claim or request for payment of Administrative Claim is timely filed.

30. Distributions: means the distribution in accordance with this Plan of (i) Cash, (ii) New Bally Common Stock, (iii) New Bally Warrants, or (iv) other forms of consideration, as the case may be.

31. Effective Date: means the first Business Day on which all of the conditions specified in Article XI of the Plan have been satisfied or waived in accordance with Article XI of the Plan; provided, however, that if a stay of the Confirmation Order is in effect on such date, the Effective Date will be the first Business Day after such stay is no longer in effect.

32. Equity Interest: means any equity security within the meaning of section 101(16) of the Bankruptcy Code or any other instrument evidencing an ownership interest in any of the Debtors, whether or not transferable, and any option, warrant, or right, contractual or otherwise, to acquire, sell or subscribe for any such interest.

33. Estates: means the estates of the Debtors, individually or collectively, as is appropriate in the context, created in the Chapter 11 Cases pursuant to section 541 of the Bankruptcy Code.

34. Exit Facilities: means, collectively, the Exit Revolver Facility and the Exit Term Loan Facility, on substantially the terms set forth on Exhibit D.

35. Exit Lenders: means, collectively, the Exit Revolver Lenders and the Exit Term Loan Lenders.

36. Exit Revolver Facility: means that certain exit financing facility to be entered into by the Reorganized Debtors on or prior to the Effective Date, the obligations under which shall be secured by a first priority security interest in substantially all of the Reorganized Debtors' assets.

37. Exit Revolver Lenders: means the lenders, banks, financial institutions or non-Debtor entities that are or may become parties to the Exit Revolver Facility.

38. Exit Term Loan Facility: means that certain exit financing facility to be entered into by the Reorganized Debtors on or prior to the Effective Date, the obligations under which shall be secured by a first priority security interest in substantially all of the Reorganized Debtors' assets, which financing shall be utilized to make distributions under the Plan, to satisfy certain Plan-related expenses, and to fund the Reorganized Debtors' working capital needs.

39. Exit Term Loan Lenders: means the lenders, banks, financial institutions or non-Debtor entities that are or may become parties to the Exit Term Loan Facility.

40. Fee Claims: means (i) any Administrative Claim under section 330(a), 331 or 503 of the Bankruptcy Code for compensation of a Professional for services rendered or expenses incurred in the Chapter 11 Cases on or prior to the Effective Date (including reasonable expenses of the members of the Unsecured Creditors' Committee incurred as members of the Unsecured Creditors' Committee in discharge of their duties as such), and (ii) any Claim by persons asserting that they provided a "substantial contribution" to these Chapter 11 Cases pursuant to section 503(b)(3)(D) of the Bankruptcy Code for services rendered prior to the Effective Date.

41. Final Order: means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in the Chapter 11 Cases or the docket of any other court of competent jurisdiction, that has not been reversed, stayed, modified or amended, and as to which the time to appeal or petition for certiorari or move for a new trial, reargument or rehearing has expired, and as to which no appeal or petition for certiorari or other proceeding for a new trial, reargument or rehearing that has been timely taken is pending, or as to which any appeal that has been taken or any petition for certiorari that has been timely filed

has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument or rehearing shall have been denied or resulted in no modification of such order.

42. General Unsecured Claim: means a Claim against any of the Debtors that is not an Administrative Claim, Priority Tax Claim, Other Priority Claim, Fee Claim, Letter of Credit Claim, Prepetition Term Loan Secured Claim, Prepetition Revolver Facility Claim, Prepetition Swap Claim, Other Secured Claim, Senior Note Claim, Subordinated Note Claim, or Prepetition Term Loan Deficiency Claim and shall include, without limitation, (i) Claims of vendors or customers of the Debtors that are not Priority Claims, (ii) Claims of employees of the Debtors that are not Priority Claims, (iii) Claims arising as a result of the rejection by any of the Debtors of executory contracts, including, but not limited to, rejection of indemnification obligations under Article X.H. hereof, and rejection of unexpired leases pursuant to section 365 of the Bankruptcy Code, (iv) litigation Claims, (v) the Tort Claims, and (vi) the Previous Plan Claims.

43. Governmental Unit: has the meaning ascribed to such term in section 101(27) of the Bankruptcy Code.

44. Impaired: means, when used with reference to a Class of Claims or Equity Interests, Claims or Equity Interests that are impaired within the meaning of section 1124 of the Bankruptcy Code.

45. Indenture Trustee Fee Claim: means a Claim against the Debtors pursuant to the Senior Secured Notes Indenture or the Subordinated Notes Indenture relating to any compensation disbursements, fees and expenses accrued and unpaid through the Effective Date.

46. Initial Distribution Date: means the Effective Date or as soon thereafter as practicable, but no later than sixty (60) days after the Effective Date.

47. Insider: has the meaning set forth in section 101(31) of the Bankruptcy Code.

48. Insured Claim: means any Claim or portion of a Claim (other than a Workers Compensation Claim) that is insured under the Debtors' insurance policies.

49. Intercompany Claims: means any Claim held by one of the Debtors against any other Debtor, including, without limitation, (i) any account reflecting intercompany book entries by such Debtor with respect to any other Debtor, (ii) any Claim not reflected in book entries that is held by such Debtor, and (iii) any derivative Claim asserted or assertable by or on behalf of such Debtor against any other Debtor.

50. Letter of Credit Claims: means any Claim under the Credit Agreement on account of a letter of credit to the extent the letter of credit has not been drawn as of the Effective Date.

51. Lien: has the meaning set forth in section 101(37) of the Bankruptcy Code.

52. Litigation Rights: means the Causes of Action that the Debtors or their Estates may hold against any Person (except to the extent such Causes of Action are expressly released under the Plan).

53. Management Contracts: means the employment contracts to be entered into between Reorganized Bally's management and Reorganized Bally.

54. Management Incentive Plan: means the post-Effective Date Management Incentive Plan referenced in Article VI.E. of this Plan, the terms of which are set forth more fully in Exhibit H to the Plan.

55. New Board: means the board of directors of Reorganized Bally to be constituted as of the Effective Date pursuant to Article VI.B. of the Plan.

56. New Bally Common Stock: means the shares of common stock of Reorganized Bally, authorized pursuant to the Plan and the Amended and Restated Certificate of Incorporation of Reorganized Bally, of which 10,000,000 shares will be issued by Reorganized Bally pursuant to the Plan.

57. New Bally Warrants: means the warrants, issuable pursuant to the New Bally Warrant Agreement, to purchase New Bally Common Stock, exercisable for a period of five years from the Effective Date, representing 5% of the fully diluted equity of Reorganized Bally issuable in accordance with the Plan (after taking into account the exercise of the New Bally Warrants but not including New Bally Common Stock issuable upon exercise of options under the Management Incentive Plan), of which 526,316 warrants will be issued by Reorganized Bally pursuant to the Plan..

58. New Bally Warrant Agreement: means the New Bally Warrant Agreement attached as Exhibit F to the Plan.

59. New Subsidiary Equity Interests: means with respect to a particular Reorganized Debtor, the Equity Interests in such Reorganized Debtor authorized to be issued pursuant to the Plan and the amended certificate of incorporation of such Subsidiary Debtor.

60. Ordinary Course Administrative Claims: means Administrative Claims against the Debtors that represent liabilities (i) to sellers of goods or services on account of such sellers' provision of goods and/or services and (ii) that were incurred in the ordinary course of business by the Debtors.

61. Other Priority Claim: means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code (other than Administrative Claims and Priority Tax Claims), including, without limitation, certain allowed employee compensation and benefit claims of the Debtors' employees incurred within one hundred eighty (180) days prior to the Petition Date.

62. Other Secured Claims: means any Claim, other than the Prepetition Revolver Facility Claims, the Prepetition Term Loan Secured Claims, the Prepetition Swap Claims, and the Letter of Credit Claims, to the extent reflected in the Schedules or a proof of claim filed as a Secured Claim, which is secured by a Lien on Collateral to the extent of the value of such Collateral, as determined in accordance with section 506(a) of the Bankruptcy Code, or, in the event that such Claim is subject to setoff under section 553 of the Bankruptcy Code, to the extent of such setoff.

63. Person: means any individual, corporation, partnership, limited liability company, association, indenture trustee, organization, joint stock company, joint venture, estate, trust, governmental unit or any political subdivision thereof, or any other entity.

64. Petition Date: means December 3, 2008.

65. Plan: means this Plan, as it may be amended, modified, or supplemented from time to time, together with all addenda, exhibits, schedules or other attachments, if any, including the Plan Exhibits.

66. Plan Exhibits: means, collectively, the documents listed on the “Table of Exhibits” included herein, which documents will be filed no later than five business days before the Confirmation Hearing, to the extent not filed earlier; *provided, however*, that Exhibits A, B, C, F, G, and J will be filed no later than five Business Days prior to the Voting Deadline. The Plan Exhibits may be inspected in the office of the Clerk of the Court during normal court hours and shall be available online at <https://ecf.nysb.uscourts.gov> and <http://www.kccllc.net/bally>. Holders of Claims or Equity Interests may obtain a copy of the Plan Exhibits upon written request to counsel to the Debtors. The Debtors reserve the right, in accordance with the terms hereof, to modify, amend, supplement, restate or withdraw any of the Plan Exhibits after they are filed and shall promptly make such changes available online at <https://ecf.nysb.uscourts.gov> and <http://www.kccllc.net/bally>.

67. Petition Administrative Agent: means Morgan Stanley Senior Funding, Inc., in its capacity as Administrative Agent and Collateral Agent under the Credit Agreement.

68. Prepetition Revolver Facility Lenders: means Wells Fargo Foothill, LLC and CIT Group/Business Credit, Inc., as the revolver facility lenders under the Credit Agreement.

69. Prepetition Revolver Facility: means the five year senior secured revolving credit facility under the Credit Agreement in an aggregate principal amount of \$50,000,000.

70. Prepetition Revolver Facility Claims: means the Claims under or evidenced by the Prepetition Revolver Facility.

71. Prepetition Swap Agreements: means the interest expense hedging agreements, dated May 16 and 19, 2008, between Bally and Morgan Stanley Capital Services.

72. Prepetition Swap Claims: means the Claims under or evidenced by the Prepetition Swap Agreements allowed in the aggregate amount of \$7,415,000.

73. Prepetition Term Loan Holders: means the holders of the Prepetition Term Loan.

74. Prepetition Term Loan: means the six-year senior secured term loan facility under the Credit Agreement in an aggregate principal amount of \$242,000,000.

75. Prepetition Term Loan Claims: means the Claims under or evidenced by the Prepetition Term Loan.

76. Prepetition Term Loan Distribution: means 9,400,000 shares of New Bally Common Stock, representing 94% of the total amount of New Bally Common Stock, subject to dilution from the New Bally Warrants and the Management Options, to be issued in connection with the Plan, to be distributed to the holders of the Prepetition Term Loan Secured Claims pursuant to Article III of this Plan.

77. Prepetition Term Loan Deficiency Claims: means the Claims in the amount by which the Prepetition Term Loan exceeds the value of the Collateral securing the Prepetition Term Loan, which Claims are expressly Allowed in an amount equal to \$80,000,000 pursuant to the Plan; provided however, that so long as the Unsecured Creditors' Committee supports, and does not object, to the Plan, the Allowed Prepetition Term Loan Deficiency Claim shall be capped at \$40 million.

78. Prepetition Term Loan Secured Claims: means the Prepetition Term Loan Claims up to the value of the Collateral securing the Prepetition Term Loan, which Claims are expressly Allowed in an amount equal to \$162,000,000 pursuant to the Plan.

79. Previous Chapter 11 Cases: means the chapter 11 cases commenced by the Debtors on July 31, 2007.

80. Previous Plan: means the plan of reorganization confirmed by the Court on October 1, 2007 in the Previous Chapter 11 Cases.

81. Previous Plan Claims: means any Claim arising out of or relating to any remaining unperformed obligations under the Previous Plan, including without limitation any obligation to make any further distribution to holders of claims or interests under the Previous Plan. Without limiting the generality of the foregoing, Previous Plan Claims shall include (i) those Claims and/or interests classified in Class 7 of the Previous Plan, (ii) Claims of individuals who served as officers or directors of the Debtors prior to the petition date of the Previous Chapter 11 Cases, including, but not limited to, Claims classified in classes 6-B-1 and 6-B-2 of Previous Plan, and (iii) litigation Claims that were unimpaired by the Previous Plan.

82. Priority Tax Claim: means any unsecured Claim that is entitled to a priority in right of payment under sections 502(i) and 507(a)(8) of the Bankruptcy Code.

83. Professional: means (i) any professional employed in the Chapter 11 Cases pursuant to sections 327 or 328 of the Bankruptcy Code and (ii) any professional or other entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Cases pursuant to section 503(b)(4) of the Bankruptcy Code.

84. Proof of Claim: A proof of Claim filed against any of the Debtors in the Chapter 11 Cases.

85. Pro Rata: means, with respect to any Claim, at any time, the proportion that the amount of a Claim in a particular Class or group of Classes bears to the aggregate amount of all Claims (including Disputed Claims) in such Class or group of Classes, unless in each case the Plan provides otherwise.

86. Record Date: means, (i) for purposes of making distributions under the Plan on account of Allowed Claims, the Confirmation Date, and (ii) for purposes of casting Ballots, the date set forth in the order approving the Disclosure Statement that accompanies this Plan.

87. Released Parties: has the meaning assigned to such term in Article VII of the Plan.

88. Reorganized Bally: means Bally or any successor thereto by merger, consolidation or otherwise, on and after the Effective Date.

89. Reorganized Debtors: means the Debtors, or any successors thereto by merger, consolidation, or otherwise, on and after the Effective Date.

90. Reorganized Subsidiaries: means the Subsidiaries, or any successors thereto by merger, consolidation, or otherwise, on and after the Effective Date.

91. Restructuring Transactions: means, collectively, those mergers, consolidations, restructurings, dispositions, liquidations or dissolutions that the Debtors determine to be necessary or appropriate to effect a corporate restructuring of their respective businesses or otherwise to simplify the overall corporate structure of the Reorganized Debtors, as described in greater detail in Article V.H.

92. Scheduled: means, with respect to any Claim or Equity Interest, the status and amount, if any, of such Claim or Equity Interest as set forth in the Schedules.

93. Schedules: means the schedules of assets and liabilities, statements of financial affairs, and lists of holders of Claims and Equity Interests filed with the Court by each of the Debtors, including any amendments or supplements thereto.

94. Senior Note Claims: means the Claims under or evidenced by the Senior Notes, Allowed in the aggregate amount of \$259,663,152.08.

95. Senior Notes: means the 13% Notes due 2011 issued pursuant to the Senior Secured Notes Indenture in the principal amount of \$247,337,500.

96. Senior Secured Notes Indenture: means that certain Indenture, dated as of October 1, 2007, between Bally and the Senior Secured Notes Indenture Trustee pursuant to which the Senior Notes were issued.

97. Senior Secured Notes Indenture Trustee: means U.S. Bank National Association, as indenture trustee under the Senior Secured Notes Indenture.

98. Shareholder Agreement: means the Shareholder Agreement of Reorganized Bally, the terms of which are set forth more fully in Exhibit J to the Plan.

99. Subordinated Note Claims: means the Claims of the holders of the Subordinated Notes, Allowed in the aggregate amount of \$237,472,873.

100. Subordinated Notes: means the 15-5/8%/14% Notes due 2013 pursuant to the Subordinated Notes Indenture in the principal amount of \$231,250,000.

101. Subordinated Notes Indenture: means that certain Senior Subordinated Toggle Notes Indenture, dated as of October 1, 2007, between Bally and the Subordinated Notes Indenture Trustee pursuant to which the Subordinated Notes were issued.

102. Subordinated Notes Indenture Trustee: means HSBC Bank USA, National Association, as indenture trustee under the Subordinated Notes Indenture.

103. Subordinated Notes Plan Distribution: means the Pro Rata share of the Unsecured Claims Distribution based upon the Allowed Subordinated Note Claims, together with all dividends and distributions accruing after the Effective Date on such portion of the Unsecured Claims Distribution.

104. Subordination Dispute: means any pending motion, adversary proceeding, action or other request (together with all related proceedings and appeals) filed by the Subordinated Notes Indenture Trustee, the Senior Secured Notes Indenture Trustee, or the holders of at least 25% of the Senior Secured Notes or the Subordinated Notes, respectively, on or prior to the Subordination Dispute Deadline seeking a determination regarding entitlement to all or any portion of the Subordinated Notes Plan Distribution by reason of the subordination provisions of the Subordinated Notes Indenture or other applicable law.

105. Subordination Dispute Deadline: means five (5) days prior to the Voting Deadline.

106. Subsidiaries: means Bally Total Fitness Corporation, Bally ARA Corporation, Bally Fitness Franchising, Inc., Bally Franchise RSC, Inc., Bally Franchising Holdings, Inc., Bally-Holmes Place S.L. (Spain), Bally Matrix Fitness Centre, Ltd. (Canada), Bally Real Estate I LLC, Bally REFS West Hartford, LLC, Bally Sports Clubs, Inc., Bally Total Fitness Franchising, Inc., Bally Total Fitness International, Inc., Bally Total Fitness of California, Inc., Bally Total Fitness of Colorado, Inc., Bally Total Fitness of Connecticut Coast, Inc., Bally Total Fitness of Connecticut Valley, Inc., Bally Total Fitness of Greater New York, Inc., Bally Total Fitness of Minnesota, Inc., Bally Total Fitness of Missouri, Inc., Bally Total Fitness of Philadelphia, Inc., Bally Total Fitness of Rhode Island, Inc., Bally Total Fitness of the

Mid-Atlantic, Inc., Bally Total Fitness of the Midwest, Inc., Bally Total Fitness of the Southeast, Inc., Bally Total Fitness of Toledo, Inc., Bally Total Fitness of Upstate New York, Inc., BTF Canada Corporation (Canada), BTF Cincinnati Corporation, BTF Europe Corporation, BTF Indianapolis Corporation, BTF Minneapolis Corporation, BTF/CFI, Inc., BTFCC, Inc., BTF Corporation, CSI Bally Total Fitness Company, Ltd. (China), Greater Philly No. 1 Holding Company, Greater Philly No. 2 Holding Company, Health & Tennis Corporation of New York, Holiday Health Clubs of the East Coast, Inc., Holiday/Southeast Holding Corp., Jack LaLanne Holding Corp., Lincoln Indemnity Company (VT), New Fitness Holding Co., Inc., Nycon Holding Co., Inc., Rhode Island Holding Company, Tideland Holiday Health Clubs, Inc., and U.S. Health, Inc.

107. Swap Note: means a note with the same maturity date and interest rate as the Exit Revolver Facility, with annual principal payments to be made from excess cash flow, and secured on a *pari passu* basis with the Exit Revolver Facility, to be issued in accordance with Article III of the Plan on account of the Prepetition Swap Claims.

108. Tort Claims: means any Claim that has not been settled, compromised or otherwise resolved that: (i) arises out of allegations of personal injury, wrongful death, property damage, products liability or similar legal theories of recovery; or (ii) arises under any federal, state or local statute, rule, regulation or ordinance governing, regulating or relating to health, safety, hazardous substances or the environment.

109. Unsecured Claims: means, collectively, the General Unsecured Claims, the Senior Note Claims, the Subordinated Note Claims, the Convenience Claims, and the Prepetition Term Loan Deficiency Claims.

110. Unsecured Claims Distribution: means (i) the New Bally Warrants and (ii) 300,000 shares of New Bally Common Stock, representing 3% of the total amount of New Bally Common Stock, subject to dilution from the New Bally Warrants and the Management Options, to be issued in accordance with Article III of the Plan on account of Allowed General Unsecured Claims, the Senior Note Claims, the Subordinated Note Claims, and the Prepetition Term Loan Deficiency Claims.

111. Unsecured Claims Reserve: has the meaning ascribed to such term in Article VIII of the Plan.

112. Unsecured Creditors' Committee: means the Official Committee of Unsecured Creditors appointed by the United States Trustee in the Debtors' Chapter 11 Cases, as constituted from time to time.

113. Voting Deadline: means the deadline for submitting Ballots to either accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code that is specified in the Disclosure Statement, the Ballots or related solicitation documents approved by the Bankruptcy Court.

114. Workers Compensation Claim: means a Claim held by a current or former employee of the Debtors for workers' compensation insurance coverage under the workers'

compensation laws applicable in the particular state in which the employee is or was employed by the Debtors.

B. Interpretation, Application of Definitions and Rules of Construction

Capitalized terms in the Plan that are not defined herein shall have the same meanings assigned to such terms by the Bankruptcy Code or Bankruptcy Rules, as the case may be. The words “herein,” “hereof,” and “hereunder” and other words of similar import refer to the Plan as a whole and not to any particular section or subsection in the Plan unless expressly provided otherwise. The words “includes” and “including” are not limiting and mean that the things specifically identified are set forth for purposes of illustration, clarity or specificity and do not in any respect qualify, characterize or limit the generality of the class within which such things are included. Captions and headings to articles, sections and exhibits are inserted for convenience of reference only, are not a part of this Plan, and shall not be used to interpret this Plan. The rules of construction set forth in section 102 of the Bankruptcy Code shall apply to this Plan. In computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

**ARTICLE II.
ADMINISTRATIVE AND PRIORITY CLAIMS**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Priority Tax Claims, and Fee Claims, as described below, have not been classified and thus are excluded from the classes of Claims and Equity Interests set forth in Article III.

A. Administrative Claims.

Each holder of an Allowed Administrative Claim as of the Effective Date shall receive from the Debtors (i) Cash in an amount equal to the amount of such Allowed Administrative Claim as soon as practicable after the later of (a) the Effective Date and (b) thirty days after the date such Administrative Claim becomes an Allowed Administrative Claim, or (ii) such other treatment as the Debtors and such holder shall have agreed upon in writing; provided, however, that Allowed Ordinary Course Administrative Claims shall be paid in full in the ordinary course of business of the Reorganized Debtors in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to, such transactions.

B. Fee Claims.

All requests for compensation or reimbursement of Fee Claims shall be filed and served on the Reorganized Debtors, counsel to the Reorganized Debtors, the United States Trustee, counsel to the Unsecured Creditors’ Committee, and counsel to the Exit Lenders and such other entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Court, no later than 45 days after the Effective Date. Holders of Fee Claims that are required to file and serve applications for final allowance of their Fee Claims and that do not file and serve such applications by the required deadline shall be forever barred from asserting such Claims against the Debtors, Reorganized Debtors or their respective properties, and such Fee

Claims shall be deemed discharged as of the Effective Date. Objections to any Fee Claims must be filed and served on the Reorganized Debtors, counsel for the Reorganized Debtors, and the requesting party no later than 75 days after the Effective Date (unless otherwise agreed by the party requesting compensation).

C. Priority Tax Claims.

Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a different treatment, each holder of an Allowed Priority Tax Claim shall receive, at the sole option of the Reorganized Debtors, after consultation with the Exit Term Loan Lenders, in full satisfaction, settlement, release, and discharge, of and in exchange for such Priority Tax Claims: (i) payment in full in Cash as soon as practicable after the Effective Date; (ii) payment equal to the principal amount of such Priority Tax Claim plus statutory interest on any outstanding balance from the Effective Date, calculated at the prevailing rate under applicable nonbankruptcy law for each taxing authority, and in a manner not less favorable than the most favored nonpriority Unsecured Claim provided for by the Plan (other than cash payments made to a class of creditors pursuant to Code § 1122(b)), (a) in full within thirty (30) days after such Priority Tax Claim becomes an Allowed Priority Tax Claim; or (b) in equal Cash installments made on a quarterly basis in accordance with § 1129(a)(9)(C) of the Bankruptcy Code, over a period not to exceed sixty (60) months following the Petition Date. In the event that an Allowed Priority Tax Claim is not paid in accordance with the Plan, the holder of such Allowed Priority Tax Claim may provide the Reorganized Debtors with written notice of default by mail in accordance with Article XII.J. of the Plan. If default is not cured within thirty (30) days after service of the notice, the holder of such Allowed Priority Tax Claim may: (i) seek to exercise all of its rights and remedies under applicable nonbankruptcy law and/or (ii) seek such relief as may be appropriate in this Court.

ARTICLE III.

CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS

All Claims and Equity Interests, except Administrative Claims, Priority Tax Claims, and Fee Claims are placed in the Classes set forth below. A Claim or Equity Interest is placed in a particular Class only to the extent that the Claim or Equity Interest falls within the description of that Class, and is classified in other Classes to the extent that any portion of the Claim or Equity Interest falls within the description of such other Classes. A Claim is also placed in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released, or otherwise settled prior to the Effective Date.

A. Class Identification and Status

Below is a chart identifying each separate Class, a description of whether the Class is impaired and the Class's voting rights:

<u>Class</u>	<u>Claim or Equity Interest</u>	<u>Status</u>	<u>Voting Rights</u>
1	Other Priority Claims	Unimpaired	Deemed to Accept

2	Other Secured Claims	Unimpaired	Deemed to Accept
3	Prepetition Revolver Facility Claims	Impaired	Entitled to Vote
4	Prepetition Swap Claims	Impaired	Entitled to Vote
5	Prepetition Term Loan Secured Claims	Impaired	Entitled to Vote
6	Prepetition Term Loan Deficiency Claims	Impaired	Entitled to Vote
7	Senior Note Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Convenience Claims	Impaired	Entitled to Vote
10	Subordinated Note Claims	Impaired	Entitled to Vote
11	Intercompany Claims	Impaired	Deemed to Accept
12	Equity Interests	Impaired	Deemed to Reject

B. Treatment of Classified Claims and Equity Interests

1. Class 1 - Other Priority Claims. Except to the extent that a holder of an Allowed Other Priority Claim agrees in writing to different treatment, in full satisfaction of and in exchange for each Allowed Other Priority Claim, each holder of an Allowed Other Priority Claim shall receive payment in an amount equal to such Allowed Other Priority Claim in full in Cash as soon as practicable after the later of (a) the Effective Date and (b) thirty days after the date when such Other Priority Claim becomes an Allowed Other Priority Claim.

2. Class 2 - Other Secured Claims. Except to the extent that a holder of an Allowed Other Secured Claim agrees in writing to different treatment, at the sole option of the Debtors, after consultation with the Exit Term Loan Lenders, in full satisfaction of and in exchange for each Allowed Other Secured Claim, (i) each Allowed Other Secured Claim shall be reinstated and rendered unimpaired in accordance with section 1124(2) of the Bankruptcy Code, notwithstanding any contractual provision or applicable nonbankruptcy law that entitles the holder of an Allowed Other Secured Claim to demand or receive payment of such Allowed Other Secured Claim prior to the stated maturity of such Allowed Other Secured Claim from and after the occurrence of a default, (ii) each holder of an Allowed Other Secured Claim shall receive Cash in an amount equal to such Allowed Other Secured Claim, including any interest on such Allowed Other Secured Claim, if such interest is required to be paid pursuant to sections 506(b) and/or 1129(a)(9) of the Bankruptcy Code, as soon as practicable after the later of (a) the Effective Date, and (b) thirty days after the date such Other Secured Claim becomes an Allowed Other Secured Claim, or (iii) each holder of an Allowed Other Secured Claim shall receive the Collateral securing its Allowed Other Secured Claim in full and complete satisfaction of such Allowed Other Secured Claim as soon as practicable after the later of (a) the Effective Date and (b) thirty days after the date such Other Secured Claim becomes an Allowed Other Secured Claim.

Notwithstanding the foregoing, to the extent an Allowed Other Secured Claim arises on account of property taxes, any liens imposed on account of such Allowed Other Secured Claim shall remain unimpaired until such Allowed Other Secured Claim is paid in full, and such Allowed Other Secured Claim shall be treated as an Allowed Priority Tax Claim, *provided, however*, that such Allowed Other Secured Claim shall be satisfied in full if the holder of such Allowed Other Secured Claim receives on account of such Allowed Other Secured cash equal to the principal amount of such Allowed Other Secured, plus statutory interest on any outstanding balance accruing from the Petition Date rather than the Effective Date.

3. *Class 3 - Prepetition Revolver Facility Claims*. In full satisfaction of and in exchange for each Allowed Prepetition Revolver Facility Claim, each holder of an Allowed Prepetition Revolver Facility Claim shall receive a Pro Rata share of the Exit Revolver Facility. Any Letter of Credit Claim shall be satisfied with the issuance of one or more replacement letter of credit facilities as part of the Exit Revolver Facility unless cash collateralized at the sole election of the Debtors.

4. *Class 4 – Prepetition Swap Claims*. In full satisfaction of and in exchange for the Allowed Prepetition Swap Claims, the holder(s) of the Allowed Prepetition Swap Claims shall receive the Swap Note.

5. *Class 5 - Prepetition Term Loan Secured Claims*. In full satisfaction of and in exchange for each Allowed Prepetition Term Loan Secured Claim, each holder of a Prepetition Term Loan Secured Claim shall receive a Pro Rata share of the Prepetition Term Loan Distribution.

6. *Class 6 - Prepetition Term Loan Deficiency Claims*. In full satisfaction of and in exchange for each Allowed Prepetition Term Loan Deficiency Claim, each holder of a Prepetition Term Loan Deficiency Claim shall receive a Pro Rata share of the Unsecured Claims Distribution, provided, however, that in no event shall the holders of Prepetition Term Loan Deficiency Claims recover any value in excess of the Allowed amount of such Claims, provided further, that if Classes 7 and 8 vote in favor of the Plan, the Prepetition Term Loan Holders shall be deemed to waive the Prepetition Term Loan Deficiency Claim in full.

7. *Class 7 - Senior Note Claims*. In full satisfaction of and in exchange for each Allowed Senior Note Claim, each holder of an Allowed Senior Note Claim shall receive a Pro Rata distribution of the Unsecured Claims Distribution; provided, however, that in no event shall the holders of Senior Note Claims recover value in excess of the Allowed amount of such Claims; provided further, however, that if a Subordination Dispute is not timely commenced, the Subordinated Notes Plan Distribution shall be distributed to the Senior Secured Notes Indenture Trustee for the benefit of holders of Allowed Class 7 Claims, and there shall be no distributions to Class 10. If a Subordination Dispute is timely commenced, then the Debtors shall retain the Subordinated Notes Plan Distribution until the Subordination Dispute is resolved by Final Order, and shall distribute the Subordinated Notes Plan Distribution to holders of Class 7 Claims only to the extent provided for in a Final Order entered in the Subordination Dispute. The Subordinated Notes Indenture Trustee's rights under the Subordinated Notes Indenture shall not be reduced or impaired by reason of the Debtors' retention of the Subordinated Notes Plan Distribution.

8. Class 8 - General Unsecured Claims. In full satisfaction of and in exchange for each Allowed General Unsecured Claim, each holder of an Allowed General Unsecured Claim shall receive a Pro Rata distribution of the Unsecured Claims Distribution, provided, however, that in no event shall the holders of General Unsecured Claims recover value in excess of the Allowed amount of such Claims.

9. Class 9 - Convenience Claims. In full satisfaction of and in exchange for each Allowed Convenience Claim, each holder of an Allowed Convenience Claim shall receive a distribution in Cash equal to 1.17% of such holder's Allowed Convenience Claim (the "Convenience Claims Consideration") within the later of (i) 30 days after the Effective Date, or (ii) 30 days after the date on which such holder's claim becomes an Allowed Convenience Claim.

10. Class 10 - Subordinated Note Claims. In full satisfaction of and in exchange for each Allowed Subordinated Note Claim, each holder of an Allowed Subordinated Note Claim shall receive a Pro Rata distribution of the Unsecured Claims Distribution, provided, however, that in no event shall the holders of Subordinated Note Claims recover value in excess of the Allowed amount of such claims; provided further, however, that the treatment and distributions to be paid to holders of Allowed Subordinated Note Claims and Senior Note Claims shall give effect to the subordination provisions of the Subordinated Notes Indenture to the extent and in the manner set forth therein and section 510(a) of the Bankruptcy Code; provided further, however, if a Subordination Dispute is not timely commenced, the Subordinated Notes Plan Distribution shall be distributed to the Senior Secured Notes Indenture Trustee for the benefit of holders of Allowed Class 7 Claims, and there shall be no distributions to holders of Class 10 Claims. If a Subordination Dispute is timely commenced, then the Debtors shall retain the Subordinated Notes Plan Distribution until the Subordination Dispute is resolved by Final Order, and shall distribute the Subordinated Notes Plan Distribution to holders of Class 10 Claims only to the extent provided for in a Final Order entered in the Subordination Dispute. Nothing in the Plan shall affect, limit or impair the rights that the Senior Secured Indenture Trustee and the holders of Class 7 Claims may have as holders of Senior Indebtedness (as defined in the Subordinated Notes Indenture) with respect to the Subordinated Notes Plan Distribution. Nothing in this Plan shall affect, limit or impair the respective rights of the Senior Secured Notes Indenture Trustee and holders of Allowed Senior Notes Claims, or the Subordinated Notes Indenture Trustee and holders of Allowed Subordinated Notes Claims, in respect of the Subordinated Notes Indenture, including provisions pertaining to subordination.

11. Class 11 - Intercompany Claims. Intercompany Claims that are not specifically reinstated by the Debtors on or before the Effective Date will be deemed eliminated in full on the date following the Effective Date through contribution or distribution of the Intercompany Claim, depending on the relationship of the parties, to the Debtor liable for the Intercompany Claim, or as otherwise provided by the Debtors.

12. Class 12 - Equity Interests. The holders of Equity Interests in the Debtors shall neither receive distributions nor retain any property under the Plan on account of such Equity Interests.

ARTICLE IV.
CONSOLIDATION OF THE DEBTORS FOR DISTRIBUTION PURPOSES

Solely in connection with Distributions to be made to the holders of Allowed Claims, the Plan is predicated upon, and it is a condition precedent to confirmation of the Plan, that the Court provide in the Confirmation Order for the consolidation of the Debtors' Estates into a single Estate for purposes of this Plan and the Distributions hereunder. Holders of Allowed Claims in each Class shall be entitled to their share of assets available for distribution to such Class without regard to which Debtor was originally liable for such Claim. Intercompany Claims shall be treated as provided in Class 11 of this Plan.

Pursuant to the Confirmation Order (i) all assets and liabilities of the consolidated Debtors will be deemed to be merged solely for purposes of this Plan and Distributions to be made hereunder, (ii) the obligations of each Debtor will be deemed to be the obligation of the consolidated Debtors solely for purposes of this Plan and Distributions hereunder, (iii) any Claims filed or to be filed in connection with any such obligations will be deemed Claims against the consolidated Debtors, (iv) each Claim filed in the Chapter 11 Case of any Debtor will be deemed filed against the Debtors in the consolidated Chapter 11 Cases in accordance with the consolidation of the assets and liabilities of the Debtors, (v) all transfers, disbursements and distributions made by any Debtor hereunder will be deemed to be made by the consolidated Debtors, and (vi) all guarantees of the Debtors of the obligations of any other Debtors shall be deemed eliminated so that any Claim against any Debtor and any guarantee thereof executed by any other Debtor and any joint or several liability of any of the Debtors shall be deemed to be one obligation of the consolidated Debtors.

Notwithstanding the foregoing, such consolidation shall not affect (i) the legal and corporate structure of the Reorganized Debtors; (ii) guarantees that are required to be maintained post-Effective Date (a) in connection with executory contracts or unexpired leases that were entered into during the Chapter 11 Cases or that have been, or will hereunder be, assumed, (b) pursuant to the express terms of the Plan, or (c) in connection with the Exit Facilities; or (iii) each Debtor's obligation to file the necessary operating reports and pay any required fees pursuant to 28 U.S.C. § 1930(a)(6) (such obligations shall continue until an order is entered closing, dismissing or converting each such Debtor's Chapter 11 Case).

The Plan shall serve as, and shall be deemed to be, a motion for entry of an order consolidating the Estates as set forth in this Plan. If no objection to consolidation under this Plan is timely filed and served, then the holders of Claims will be deemed to have consented to consolidation for the purpose of this Plan only and the Court may approve consolidation of the Debtors' Estates in the Confirmation Order. If such objection to the consolidation provided for in this Plan is timely filed and served, a hearing with respect to the consolidation of the Estates and the objections thereto shall be scheduled by the Court, which hearing may coincide with the Confirmation Hearing.

**ARTICLE V.
MEANS FOR IMPLEMENTATION OF THE PLAN**

A. Exit Facilities

On or prior to the Confirmation Date, the Debtors shall have entered into the Exit Facilities.

1. The Exit Revolver Facility. The Exit Revolver Facility shall be utilized to roll the Prepetition Revolver Facility into a post-Effective Date revolver facility.

2. The Exit Term Loan Facility. The amounts borrowed under the Exit Term Loan Facility shall be used to make distributions under the Plan, to satisfy certain Plan-related expenses, and to fund the Reorganized Debtors' working capital needs.

B. Voting of Claims

Each holder of an Allowed Claim in an Impaired Class of Claims, not otherwise deemed to have accepted or rejected the Plan, shall be entitled to vote to accept or reject the Plan as provided in such order as may be entered by the Court establishing certain procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan, or any other order or orders of the Court.

C. Nonconsensual Confirmation

If less than all Impaired Classes accept the Plan, but at least one Class of Claims impaired under the Plan has accepted the Plan (and which Class's acceptance is determined without inclusion of Claims of Insiders), the Debtors may seek to have the Court confirm the Plan under section 1129(b) of the Bankruptcy Code. The Debtors request confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to any impaired Class that has not accepted or is deemed not to have accepted the Plan pursuant to section 1126 of the Bankruptcy Code.

D. Issuance of New Bally Common Stock, New Bally Warrants and New Subsidiary Equity Interests

1. Issuance and Shareholder Agreement. On the Effective Date, Reorganized Bally shall issue and distribute the New Bally Common Stock and New Bally Warrants pursuant to the terms of this Plan, and each Reorganized Subsidiary shall issue and distribute the New Subsidiary Equity Interests subject to the Restructuring Transactions. The number of shares, ownership and terms of the New Subsidiary Equity Interests shall be the same as the number of shares, ownership and terms of the Equity Interests in the Subsidiaries immediately prior to the Effective Date subject to the Restructuring Transactions. Each Person who receives a distribution of New Bally Common Stock under the Plan shall be deemed to have executed the Shareholder Agreement and shall be bound thereunder.

2. Section 1145 Exemption. Pursuant to, in accordance with, and solely to the extent provided under section 1145 of the Bankruptcy Code, the offering, issuance, and

distribution of the New Bally Common Stock, the New Bally Warrants and the New Bally Common Stock underlying the New Bally Warrants, shall be exempt from, among other things, the registration requirements of section 5 of the Securities Act and any other applicable law requiring registration prior to the offering, issuance, distribution, or sale of the New Bally Common Stock, the New Bally Warrants and the New Bally Common Stock underlying the New Bally Warrants.

E. The New Bally Common Stock

All New Bally Common Stock distributed under the Plan will be issued in book-entry form, and The Depository Trust Company (“DTC”) or its nominee will be the holder of record of such New Bally Common Stock, except for New Bally Common Stock issued to affiliates of the Debtors. One or more global stock certificates representing the New Bally Common Stock will be registered with a transfer agent for the New Bally Common Stock, in the name of, and will be deposited with, DTC or its nominee. For so long as New Bally Common Stock is held through DTC, the ownership interest of each holder of New Bally Common Stock, and transfers of ownership interests, will be recorded on the records of the direct and indirect participants in DTC. DTC participants include securities brokers and dealers, banks, trust companies, clearing corporations and other organizations. To receive distributions of New Bally Common Stock, holders of Claims who are not affiliates of the Debtors will be required to designate a direct or indirect participant in DTC with whom such holder has an account into which the New Bally Common Stock may be deposited. If DTC is unwilling or unable to continue as a depository for the New Bally Common Stock, or Reorganized Bally otherwise decides to do so, Reorganized Bally will either exchange the New Bally Common Stock represented in book-entry form by global stock certificates for registered stock certificates or record ownership of the New Bally Common Stock through a direct registration system.

New Bally Common Stock issued to affiliates of the Debtors will be in the form of registered stock certificates and may bear a legend indicating that transfer may be restricted under federal and state securities laws. To the extent New Bally Common Stock is issued in registered form, no stockholder may sell, exchange, assign, pledge, encumber or otherwise transfer such New Bally Common Stock if such transfer would result in the New Bally Common Stock being held of record by more than 275 Persons as determined pursuant to Section 12(g) of the Securities Exchange Act of 1934, as amended, unless such transfer is expressly approved by the board of directors of Reorganized Bally. Any transfer of New Bally Common Stock in violation of these provisions will be void.

F. The New Bally Warrants

The New Bally Warrants will be issued pursuant to the terms of the New Bally Warrant Agreement.

Each New Bally Warrant will initially be exercisable for one share of New Bally Common Stock at an exercise price set forth in the New Bally Warrant Agreement. The exercise price of the New Bally Warrants and the number of shares issuable upon exercise will be subject to customary adjustment for any stock dividends, stock distributions, stock subdivisions or stock combinations. The exercise price of the New Bally Warrants and the number of shares issuable

upon exercise will also be subject to customary adjustment for any extraordinary cash dividends or distributions of debt securities or other assets to all holders of New Bally Common Stock. In the event of any reclassification, capital reorganization or other change of the outstanding shares of New Bally Common Stock, or any consolidation or merger of Reorganized Bally with or into another corporation or entity (other than a consolidation or merger in which Reorganized Bally is the continuing entity) or any sale or conveyance of the property of Reorganized Bally substantially as an entirety, each New Bally Warrant will entitle the holder to purchase the kind and number of shares of stock or other securities or property receivable upon such reclassification, capital reorganization or other change, consolidation, merger, sale or conveyance by a holder of the number of shares of New Bally Common Stock that would have been purchased upon exercise of the New Bally Warrant immediately prior thereto.

In case Reorganized Bally declares a dividend or other distribution on the New Bally Common Stock that would require an adjustment in the exercise price of the New Bally Warrants; authorizes the granting to all of the holders of the New Bally Common Stock rights to subscribe for shares or warrants; effects any reclassification, reorganization, consolidation, merger or sale of substantially all of the assets of Reorganized Bally that would require adjustment to the New Bally Warrants; or effects any liquidation, dissolution or winding-up of the Debtors, Reorganized Bally will provide holders of the New Bally Warrants at least 15 business days advance notice of such action,

All New Bally Warrants distributed under the Plan will be issued in book-entry form, and DTC or its nominee will be the holder of record of such New Bally Warrants, except for New Bally Warrants issued to affiliates of the Debtors. One or more global warrant certificates representing the New Bally Warrants will be registered with a warrant agent for the New Bally Warrants, in the name of, and will be deposited with, DTC or its nominee. For so long as New Bally Warrants are held through DTC, the ownership interest of each holder of New Bally Warrants, and transfers of ownership interests, will be recorded on the records of the direct and indirect participants in DTC. To receive distributions of New Bally Warrants, holders of Claims who are not affiliates of the Debtors will be required to designate a direct or indirect participant in DTC with whom such holder has an account into which the New Bally Warrants may be deposited. If DTC is unwilling or unable to continue as a depository for the New Bally Warrants, or Reorganized Bally otherwise decides to do so, Reorganized Bally will exchange the New Bally Warrants represented in book entry form by global warrant certificates for registered warrant certificates or record ownership of the New Bally Warrants through a direct registration system.

So long as the New Bally Warrants are held of record by DTC or its nominee, beneficial owners of such New Bally Warrants will be required to follow such procedures as DTC or its direct or indirect participants may establish for exercising their rights in respect of the New Bally Warrants, including exercise and transfer thereof. Also, for so long as New Bally Common Stock is held through DTC, shares of New Bally Common Stock issuable upon exercise of the New Bally Warrants will be issued in book-entry form and held through DTC.

New Bally Warrants issued to affiliates of the Debtors will be in the form of registered warrant certificates and may bear a legend indicating that transfer may be restricted under federal and state securities laws. The New Bally Warrant Agreement will provide that, to

the extent New Bally Warrants are issued in registered form, no warrant holder may sell, exchange, assign, pledge, encumber or otherwise transfer of all or any portion of a New Bally Warrant if such transfer would result in the New Bally Warrants being held of record by more than 450 Persons as determined pursuant to Section 12(g) of the Securities Exchange Act of 1934, as amended, unless such transfer is expressly approved by the board of directors of Reorganized Bally. Any transfer of a New Bally Warrant in violation of these provisions will be void.

G. Claims Monitor

1. *Retention.* The Debtors, in consultation with the Unsecured Creditors' Committee, will negotiate and enter into an engagement letter with the Claims Monitor prior to the Effective Date.

2. *Powers, Rights and Responsibilities.* The powers, rights and responsibilities of the Claims Monitor shall be to: (i) consult with the Reorganized Debtors with respect to any proposed stipulation or settlement that would result in an Allowed General Unsecured Claim in excess of \$1,000,000; (ii) file an objection to any proposed stipulation or settlement which would result in an Allowed General Unsecured Claim in excess of \$1,000,000; and (iii) object to (and thereafter settle) any General Unsecured Claim in excess of \$1,000,000 where the Claims Monitor has expressly requested in writing that the Reorganized Debtors object to a General Unsecured Claim and the Reorganized Debtors have not filed the objection requested by the Claims Monitor within 30 days of the Reorganized Debtors' receipt of such request.

3. *Funding of Claims Monitor.* The reasonable, documented and necessary fees and expenses of the Claims Monitor (including the reasonable and necessary fees and expenses of any professionals assisting the Claims Monitor in carrying out its responsibilities as set forth above) will be funded by the Reorganized Debtors in an amount not to exceed \$200,000 (which amount may be increased in the sole discretion of the Reorganized Debtors) without further order from the Bankruptcy Court.

4. *Termination of Claims Monitor.* The Claims Monitor's engagement will terminate on the date that the last Disputed General Unsecured Claim in excess of \$1,000,000 is resolved.

H. Restructuring Transactions

1. *Restructuring Transactions Generally.* On or after the Confirmation Date, the applicable Debtors or Reorganized Debtors may enter into such Restructuring Transactions and may take such actions as the Debtors or Reorganized Debtors may determine to be necessary or appropriate to effect, in accordance with applicable non-bankruptcy law, a corporate restructuring of their respective businesses or simplify the overall corporate structure of the Reorganized Debtors, including but not limited to the restructuring transactions identified on Exhibit C, all to the extent not inconsistent with any other terms of the Plan. All such Restructuring Transactions will be deemed to occur on the date set under the terms of the applicable Restructuring Transaction. The Restructuring Transactions may include one or more

mergers, consolidations, restructurings, dispositions, liquidations or dissolutions, as may be determined by the Debtors or the Reorganized Debtors to be necessary or appropriate. The actions to effect these transactions may include: (i) the execution and delivery of appropriate agreements or other documents of merger, consolidation, restructuring, disposition, liquidation or dissolution containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable state law and such other terms to which the applicable entities may agree; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, duty or obligation on terms consistent with the terms of the Plan and having such other terms to which the applicable entities may agree; (iii) the filing of appropriate certificates or articles of merger, consolidation, dissolution or change in corporate form pursuant to applicable state law; and (iv) the taking of all other actions that the applicable entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable state law in connection with such transactions. Any such transactions may be effected on or subsequent to the Effective Date without any further action by the stockholders or directors of any of the Debtors or the Reorganized Debtors.

2. Continued Corporate Existence and Vesting of Assets. Except as otherwise provided herein (including with respect to the Restructuring Transactions described above): (i) each Debtor will, as a Reorganized Debtor, continue to exist after the Effective Date as a separate legal entity, with all of the powers of such a legal entity under applicable law and without prejudice to any right to alter or terminate such existence (whether by merger, dissolution or otherwise) under applicable state law; and (ii) on the Effective Date, all property of the Estate of a Debtor, and any property acquired by a Debtor or Reorganized Debtor under the Plan, will vest, subject to the Restructuring Transactions, in such Reorganized Debtor free and clear of all Claims, Liens, charges, other encumbrances, Interests and other interests. On and after the Effective Date, each Reorganized Debtor may operate its business and may use, acquire and dispose of property and compromise or settle any claims without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan or the Confirmation Order. Without limiting the foregoing, each Reorganized Debtor may pay the charges that it incurs on or after the Effective Date for Fee Claims, disbursements, expenses or related support services (including fees relating to the preparation of Professional fee applications) without application to, or the approval of, the Bankruptcy Court.

3. Successor Obligations. The Restructuring Transactions may result in substantially all of the respective assets, properties, rights, liabilities, duties and obligations of certain of the Reorganized Debtors vesting in one or more surviving, resulting or acquiring corporations. In each case in which the surviving, resulting or acquiring corporation in any such transaction is a successor to a Reorganized Debtor, such surviving, resulting or acquiring corporation will perform the obligations of the applicable Reorganized Debtor pursuant to the Plan to pay or otherwise satisfy the Allowed Claims against such Reorganized Debtor, except as provided in the Plan or in any contract, instrument or other agreement or document effecting a disposition to such surviving, resulting or acquiring corporation, which may provide that another Reorganized Debtor will perform such obligations.

ARTICLE VI.
PROVISIONS REGARDING CORPORATE GOVERNANCE
OF THE REORGANIZED DEBTORS

A. Amendments to Certificates of Incorporation

1. Bally Total Fitness Holding Corporation. On the Effective Date, the certificate of incorporation of Bally shall be amended and restated to (i) increase the authorized capital stock of New Bally, (ii) prohibit the issuance of nonvoting equity securities only so long as, and to the extent that, the issuance of nonvoting equity securities is prohibited, and (iii) provide for restrictions on trading New Bally Common Stock and New Bally Warrants to the extent provided in Article V.E. The Amended and Restated Certificate of Incorporation of Reorganized Bally is attached to the Plan as Exhibit E, and will be filed on or immediately prior to the Effective Date with the applicable Secretaries of State and/or the applicable authorities in their respective states of incorporation in accordance with the corporate laws of the respective states of incorporation.

2. The Debtor Subsidiaries. On the Effective Date, or as soon thereafter as is practicable, the certificate of incorporation of each Debtor Subsidiary shall be amended (to the extent such provision is not already included in the applicable certificate of incorporation) to prohibit the issuance of nonvoting equity securities only so long as, and to the extent that, the issuance of nonvoting equity securities is prohibited. Under the Restructuring Transactions, the Debtors shall take all necessary steps and make all necessary filings to consolidate the Subsidiaries into [7] operating subsidiaries. The amended certificates of incorporation of the Reorganized Subsidiaries will be filed with the applicable Secretaries of State and/or the applicable authorities in their respective states of incorporation in accordance with the corporate laws of the respective states of incorporation.

B. Appointment of Officers and Directors

As of the Effective Date, the term of the current members of the board of directors of Bally shall expire, and the initial boards of directors, including the New Board, and the officers of each of the Reorganized Debtors shall consist of the individuals identified on Exhibit G to the Plan. The initial board of directors of Reorganized Bally shall be an eight-member board comprised of Michael Sheehan, and seven directors designated by the Exit Term Loan Lenders (one of which will be Gene Davis). The initial boards of directors of the Reorganized Subsidiaries shall have substantially the same composition and membership as such Subsidiaries had immediately prior to the Effective Date. The identities, affiliations and the amount of compensation of the initial board members of Reorganized Bally will be disclosed in Exhibit G to the Plan. Any successors to the Reorganized Debtors' initial boards will be appointed in compliance with the applicable Reorganized Debtor's bylaws, certificates of incorporation or other applicable corporate formation and governance documents. Each such director and officer shall serve from and after the Effective Date pursuant to the terms of the new certificates of incorporation, new by-laws, and other constituent documents of the Reorganized Debtors.

C. Powers of Officers

The officers of the Debtors or the Reorganized Debtors, as the case may be, shall have the power to enter into or execute any documents or agreements that they deem reasonable and appropriate to effectuate the terms of the Plan.

D. Management of Reorganized Debtors

The officers of the Reorganized Debtors shall be substantially the same as the officers of the Debtors on the Effective Date. The Reorganized Debtors' officers shall be employed and serve the Reorganized Debtors in accordance with the Management Contracts.

E. Reorganized Debtors' Management Incentive Plan

The Management Incentive Plan shall become effective on the Effective Date. Pursuant to the Management Incentive Plan, (i) 3% of the shares of the New Bally Common Stock, subject to dilution from the New Bally Warrants and the Management Options (as defined below), shall be reserved for issuance and distribution to management with respect to the grant of restricted stock units, (ii) management will be granted options to purchase up to 8% of New Bally Common Stock, on a fully diluted basis, on the terms set forth in the Management Incentive Plan (the "Management Options"), and (iii) Reorganized Bally will distribute emergence bonuses in an aggregate amount of \$1 million to management on the Effective Date. A summary of the Management Incentive Plan shall be attached as Exhibit H to the Plan.

F. Reorganized Debtors' Corporate Personnel Incentive Plan

The Corporate Personnel Incentive Plan shall become effective on the Effective Date. Pursuant to the Corporate Personnel Incentive Plan the Reorganized Debtors will offer incentive based cash compensation to certain corporate personnel. A summary of the Corporate Personnel Incentive Plan shall be attached as Exhibit I to the Plan.

G. Indemnification of Directors, Officers and Employees

Upon the Effective Date, the charter and by-laws of each Reorganized Debtor shall contain provisions which (i) eliminate the personal liability of the Debtors' and the Reorganized Debtors' then-present and future directors and officers for post-emergence monetary damages resulting from breaches of their fiduciary duties to the fullest extent permitted by applicable law in the state in which the subject Reorganized Debtor is organized; and (ii) require such Reorganized Debtor, subject to appropriate procedures, to indemnify the Debtors' and the Reorganized Debtors' directors, officers, and other employees (as such employees are identified by the New Board) serving on or after the Effective Date for all claims and actions to the fullest extent permitted by applicable law in the state in which the subject Reorganized Debtor is organized, it being expressly understood that in no event shall the Reorganized Debtors be responsible for the indemnification claims of individuals who did not serve as officers or directors of the Debtors after October 1, 2007.

**ARTICLE VII.
CONFIRMATION OF THE PLAN**

A. Conditions to Confirmation

The following conditions are conditions to the entry of the Confirmation Order unless such conditions, or any of them, have been satisfied or duly waived:

1. The Confirmation Order is reasonably acceptable in form and substance to the Debtors, the Exit Lenders, and the Unsecured Creditors' Committee.

2. The Plan is reasonably satisfactory in form and substance to the Debtors, the Exit Lenders, and the Unsecured Creditors' Committee.

3. The Plan Exhibits are reasonably satisfactory in form and substance to the Debtors and the Exit Lenders after consultation with the Unsecured Creditors' Committee.

4. Any modification of, amendment, supplement or change to the Plan that alters in any way the distributions under the Plan or the parties to whom it shall be made available shall not have been made without the consent of the Exit Lenders and the Unsecured Creditors' Committee.

5. The Bankruptcy Court shall have approved the Disclosure Statement in form and substance reasonably satisfactory to the Debtors and the Exit Lenders, as containing adequate information with respect to the Plan within the meaning of section 1125 of the Bankruptcy Code.

6. All Plan Exhibits shall have been filed with the Bankruptcy Court.

7. The Debtors shall have executed all material documents relating to the Exit Facilities.

8. The Debtors shall have executed the Management Contracts.

B. Waiver of Conditions Precedent to Confirmation

The Debtors may waive conditions 1, 2 and 4 set forth in Article VII.A. above at any time with the consent of the Exit Lenders and the Unsecured Creditors' Committee, which consent shall not be unreasonably withheld, and without leave of or order of the Court and without any formal action. The Debtors may waive conditions 3, 5, 6, 7 and 8 set forth in Article VII.A. above at any time with the consent of the Exit Lenders, which consent shall not be unreasonably withheld, and without leave of or order of the Court and without any formal action.

C. Continued Corporate Existence

The Debtors, as Reorganized Debtors, shall continue to exist after the Effective Date with all powers of a corporation or limited liability company, as the case may be, under the laws of the respective states governing their formation and without prejudice to any right to alter

or terminate such existence (whether by merger or otherwise) under such applicable state law, except as such rights may be limited and conditioned by the Plan and the documents and instruments executed and delivered in connection therewith. In addition, the Reorganized Debtors may operate their businesses free of any restrictions imposed by the Bankruptcy Code, the Bankruptcy Rules or the Court, subject only to the terms and conditions of the Plan as well as the documents and instruments executed and delivered in connection therewith, including without limitation, the Plan Exhibits. The Reorganized Debtors shall be responsible for filing required post-confirmation reports and paying quarterly fees due to the Office of the United States Trustee.

D. Dissolution of Unsecured Creditors' Committee

The Unsecured Creditors' Committee shall continue in existence until the Effective Date to exercise those powers and perform those duties specified in section 1103 of the Bankruptcy Code. On the Effective Date, the Unsecured Creditors' Committee shall be dissolved and its members shall be deemed released of all their duties, responsibilities and obligations in connection with the Chapter 11 Cases or this Plan and its implementation, and the retention or employment of the Unsecured Creditors' Committee's attorneys, financial advisors, and other agents shall terminate as of the Effective Date; provided, however, such attorneys and financial advisors shall be entitled to pursue their own Fee Claims and represent the Unsecured Creditors' Committee in connection with the review of and the right to be heard in connection with all Fee Claims.

E. Benefit Plans

As of and subject to the Effective Date, except as provided in Article X and Exhibit A, all employment and severance agreements and policies, and all employee compensation and benefit plans, policies, and programs of the Debtors applicable generally to their employees, including agreements and programs subject to section 1114 of the Bankruptcy Code, as in effect on the Effective Date, including, without limitation, all savings plans, retirement plans, health care plans, disability plans, severance benefit plans, incentive plans, and life, accidental death, and dismemberment insurance plans, shall be deemed to be, and shall be treated as though they are, executory contracts that are assumed under the Plan, and the Debtors' obligations under such agreements and programs shall survive the Effective Date of the Plan, without prejudice to the Reorganized Debtors' rights under applicable non-bankruptcy law to modify, amend, or terminate the foregoing arrangements, except for (i) such executory contracts or plans specifically rejected pursuant to the Plan (to the extent such rejection does not violate section 1114 of the Bankruptcy Code), and (ii) such executory contracts or plans as have previously been terminated or rejected, pursuant to a Final Order, or specifically waived by the beneficiaries of such plans, contracts, or programs.

F. Vesting of Property

The property of the Debtors' estates, including, without limitation, all of the Litigation Rights, shall be revested in the Reorganized Debtors on the Effective Date.

G. Discharge of the Debtors

The rights afforded herein and the treatment of all Claims and Equity Interests herein shall be in exchange for and in complete satisfaction, discharge, and release of all Claims of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtors, the Reorganized Debtors or any of their respective assets or properties, arising prior to the Effective Date. Pursuant to section 1141(d) of the Bankruptcy Code and except as otherwise expressly specified in section 1141(d)(6) of the Bankruptcy Code or the Plan, upon the Effective Date the Confirmation Order shall act as a discharge of all debts of, Claims against, and Liens on the Debtors, their respective assets and properties, arising at any time before the Effective Date, regardless of whether a proof of Claim with respect thereto was filed, whether the Claim is Allowed, or whether the holder thereof votes to accept the Plan or is entitled to receive a distribution hereunder. Except as otherwise expressly specified in the Plan, after the Effective Date, any holder of such discharged Claim shall be precluded from asserting against the Debtors, the Reorganized Debtors, or any of their respective assets or properties, any other or further Claim based on any document, instrument, act, omission, transaction, or other activity of any kind or nature that occurred before the entry of the Confirmation Order.

H. Injunction

Except as otherwise expressly provided in the Plan, the Confirmation Order, or a separate order of the Court, all Persons or entities who have held, hold, or may hold Claims against the Debtors that arose before or were held as of the Effective Date, are permanently enjoined, on and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind against or affecting a Debtor, its Estate or its Assets, with respect to any such Claim, (ii) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or order against the Debtors or the Reorganized Debtors on account of any such Claim, (iii) creating, perfecting, or enforcing any encumbrance of any kind against the Debtors or the Reorganized Debtors or against the property or interests in property of the Debtors on account of any such Claim, (iv) asserting any right of setoff, or subrogation of any kind against any obligation due from the Debtors or the Reorganized Debtors or against the property or interests in property of the Debtors on account of any such Claim; and (v) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released or settled pursuant to the Plan. Such injunction shall extend to successors of the Debtor (including, without limitation, the Reorganized Debtors) and their respective properties and interests in property. Such injunction shall not apply in respect of Ordinary Course Administrative Claims.

I. Preservation of Causes of Action

In accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain all Litigation Rights, other than as expressly provided below. Nothing contained in this Plan or the Confirmation Order shall be deemed a waiver or relinquishment of any claim, Litigation Right, right of setoff, or other legal or equitable defense of the Debtors that is not specifically waived or relinquished by this Plan. The Reorganized Debtors shall have, retain, reserve and be entitled to assert all such claims, Litigation Rights, rights of setoff and

other legal or equitable defenses that the Debtors had immediately prior to the Petition Date as fully as if the Chapter 11 Cases had not been commenced, and all of the Reorganized Debtors' legal and equitable rights respecting any claim that is not specifically waived or relinquished by this Plan may be asserted after the Effective Date to the same extent as if the Chapter 11 Cases had not been commenced. No Person may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Cause of Action against them as any indication that the Debtors or Reorganized Debtors, as applicable, will not pursue any and all available Causes of Action against such person. The Debtors or Reorganized Debtors, as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Person, except as otherwise expressly provided in the Plan.

J. Votes Solicited in Good Faith

The Debtors have, and upon confirmation of the Plan shall be deemed to have, solicited acceptances of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code. The Debtors (and each of their respective affiliates, agents, directors, officers, members, employees, advisors, and attorneys) have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code in the offer and issuance of the securities offered and sold under the Plan and therefore have not been, and on account of such offer and issuance will not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or the offer or issuance of the securities offered and distributed under the Plan.

K. Administrative Claims Incurred After the Effective Date

Administrative Claims incurred by the Debtors after the Effective Date including (without limitation) Claims for Professionals' fees and expenses incurred after such date, may be paid by the Reorganized Debtors in the ordinary course of business and without application for or Court approval, subject to any agreements with any Claim holders.

L. Releases by the Debtors

On the Effective Date, and notwithstanding any other provisions of the Plan, the Debtors and the Reorganized Debtors, on behalf of themselves and their estates, shall be deemed to release unconditionally (i) all of their respective officers, directors, employees, partners, advisors, attorneys, financial advisors, accountants, and other professionals who served or were employed by the Debtors at any time between October 1, 2007, and the Effective Date, (ii) the Prepetition Administrative Agent, (iii) the officers, directors, principals, members, employees, partners, subsidiaries, affiliates, advisors, attorneys, financial advisors, accountants, and other professionals of the Prepetition Administrative Agent, (iv) the Prepetition Term Loan Holders and the Prepetition Revolver Facility Lenders, (v) the officers, directors, principals, members, employees, partners, subsidiaries, affiliates, advisors, attorneys, financial advisors, accountants, and other professionals of the Prepetition Term Loan Holders and the Prepetition Revolver Facility Lenders, (vi) the Exit Revolver Lenders and the Exit Term Loan Lenders, (vii) the officers, directors, principals, members, employees, partners, subsidiaries, affiliates, advisors, attorneys, financial advisors, accountants, and other professionals of the Exit

Revolver Lenders and the Exit Term Loan Lenders, (viii) the members of the Unsecured Creditors' Committee, (ix) the officers, directors, principals, members, employees, partners, subsidiaries, affiliates, advisors, attorneys, financial advisors, accountants, and other professionals of the Unsecured Creditors' Committee, (x) the Senior Secured Notes Indenture Trustee, (xi) the Subordinated Notes Indenture Trustee, (xii) Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund, LP. (collectively "Harbinger") as the former equity owners of Bally, and (xiii) the officers, directors, principals, members, employees, partners, subsidiaries, affiliates, advisors, attorneys, financial advisors, accountants, and other professionals of Harbinger (collectively the "Released Parties," and each a "Released Party") from any and all claims, obligations, suits, judgments, damages, rights, Causes of Action and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, based in whole or in part upon actions taken solely in their respective capacities described above or any omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, or the Plan, provided, however, that (a) no individual shall be released from any act or omission that constitutes gross negligence or willful misconduct, (b) the Reorganized Debtors shall not relinquish or waive the right to assert any of the foregoing as a legal or equitable defense or right of set-off or recoupment against any Claims of any such persons asserted against the Debtors, (c) the foregoing release shall not apply to any obligations that remain outstanding in respect of loans or advances made to individuals by the Debtors or to any obligations under the Exit Facilities outstanding as of the Effective Date, and (d) the foregoing release applies to the Released Parties solely in their respective capacities described above.

M. Releases by Holders of Claims and Equity Interests

On the Effective Date, and notwithstanding any other provisions of the Plan, (i) Persons who directly or indirectly, have held, hold, or may hold Claims or Interests who voted to accept the Plan, and (ii) to the fullest extent permissible under applicable law, as such law may be extended or interpreted subsequent to the Effective Date, all Persons who directly or indirectly, have held, hold, or may hold Claims or Interests, will be deemed, by virtue of their receipt of Distributions and/or other treatment contemplated under the Plan, to have forever released and covenanted with the Reorganized Debtors and the Released Parties not to (y) sue or otherwise seek recovery from any of the Reorganized Debtors or any Released Party on account of any Claim, including but not limited to any Claim based upon tort, breach of contract, violations of federal or state securities laws or otherwise, based upon any act, occurrence, or failure to act from the beginning of time through the Effective Date in any way related to the Debtors or their business and affairs or (z) assert against any of the Reorganized Debtors or any Released Party any claim, obligation, right, cause of action or liability that any holder of a Claim or Interest may be entitled to assert, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, or occurrence from the beginning of time through the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, or the Plan, provided, however, (i) the foregoing release will not apply to obligations arising under the Plan, (ii) the foregoing release will not be construed to prohibit a party in interest from seeking to enforce the terms of the Plan, and (iii) nothing

in the Confirmation Order or the Plan shall 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, federal securities laws, 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 the Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action or other proceedings against the Released Parties for any liability whatever, including without limitation any claim, suit or action arising under the Internal Revenue Code, federal securities laws, the environmental laws or any criminal laws of the United States or any state or local authority, nor shall anything in the Confirmation Order or the 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 any liabilities arising under the Internal Revenue Code, federal securities laws, the environmental laws or any criminal laws of the United States or any state and local authority against the Released Parties (provided that the foregoing shall in no way affect or limit the discharge or injunction granted to the Debtors under sections 524 and 1141 of the Bankruptcy Code.

N. Exculpation With Respect of Released Parties

The Debtors, the Reorganized Debtors, and the other Released Parties (i) shall have no liability whatsoever to any holder or purported holder of an Administrative Claim, Claim, or Equity Interest for any act or omission in connection with, or arising out of, the Plan, the Disclosure Statement, the negotiation of the Plan, the negotiation of the documents included in the Plan Exhibits, the pursuit of approval of the Disclosure Statement or the solicitation of votes for confirmation of the Plan, the Chapter 11 Cases, the consummation of the Plan, the administration of the Plan or the property to be distributed under the Plan, or any transaction contemplated by the Plan or Disclosure Statement or in furtherance thereof except for any act or omission that constitutes willful misconduct or gross negligence as determined by a Final Order, and (ii) in all respects, shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations and any other applicable law or rules protecting such Released Parties from liability.

O. Injunction With Respect of Released Parties

Pursuant to section 105 of the Bankruptcy Code, no holder or purported holder of an Administrative Claim, Claim or Equity Interest shall be permitted to commence or continue any action, employment of process, or any act to collect, offset, or recover any Claim against a Released Party that accrued on or prior to the Effective Date and that has been released or waived pursuant to this Plan.

P. Term of Bankruptcy Injunction or Stays

All injunctions or stays provided for in the Chapter 11 Cases under sections 105 or 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.

Q. Preservation of Insurance

The Debtors' discharge and release from all Claims as provided herein, except as necessary to be consistent with this Plan, shall not diminish or impair the enforceability of any insurance policy that may cover Claims against the Debtors, the Reorganized Debtors (including, without limitation, its officers and current and former directors) or any other person or entity. The Reorganized Debtors shall obtain tail coverage under their existing directors' and officers' liability insurance policy covering their officers and current and former directors, which coverage shall extend for a period of not less than 6 years after the Effective Date.

R. Indemnification Obligations Owed by the Debtors

Indemnification obligations owed by the Debtors to directors, officers, and employees of the Debtors (or the estates of any of the foregoing) who served or were employed by the Debtors at any time between October 1, 2007, and the Effective Date, excluding claims which have been determined by Final Order to have resulted from gross negligence, willful misconduct, breach of fiduciary duty, or intentional tort, shall be deemed to be, and shall be treated as though they are, executory contracts that are assumed pursuant to Sections 365 of the Bankruptcy Code under the Plan.

Indemnification obligations owed to any Professionals retained pursuant to sections 327 or 328 of the Bankruptcy Code and by order of the Court, to the extent that such indemnification obligations relate to the period after the Petition Date, shall be deemed to be, and shall be treated as though they are, executory contracts that are assumed pursuant to section 365 of the Bankruptcy Code under the Plan.

**ARTICLE VIII.
DISTRIBUTIONS UNDER THE PLAN**

A. Allowed Claims

1. *Delivery of Distributions.* Distributions under the Plan shall be made by the Reorganized Debtors to the holders of Allowed Claims in all Classes for which a Distribution is provided in this Plan at the addresses set forth on the Schedules, unless such addresses are superseded by proofs of claim or transfers of claim filed pursuant to Bankruptcy Rule 3001 by the Record Date (or at the last known addresses of such holders if the Debtors or the Reorganized Debtors have been notified in writing of a change of address).

2. *Distribution of Cash.* Any payment of Cash by the Reorganized Debtors pursuant to the Plan shall be made at the option and in the sole discretion of the Reorganized

Debtors by (i) a check drawn on, or (ii) wire transfer from, a domestic bank selected by the Reorganized Debtors.

3. Unclaimed Distributions of Cash. Any distribution of Cash under the Plan that is unclaimed after six months after it has been delivered (or attempted to be delivered) shall, pursuant to section 347(b) of the Bankruptcy Code, become the property of the Reorganized Debtor against which such Claim was Allowed notwithstanding any state or other escheat or similar laws to the contrary, and the entitlement by the holder of such unclaimed Allowed Claim to such distribution or any subsequent distribution on account of such Allowed Claim shall be extinguished and forever barred.

4. Distributions of New Bally Common Stock and New Bally Warrants. On the Effective Date, the Reorganized Debtors shall distribute the New Bally Common Stock from the Prepetition Term Loan Secured Claims Distribution to the holders of the Prepetition Term Loan Secured Claims. On the Initial Distribution Date, and from time to time thereafter, the Reorganized Debtors shall distribute the New Bally Common Stock and the New Bally Warrants from the Unsecured Claims Distribution to the holders of the Senior Note Claims, the Subordinated Note Claims, the General Unsecured Claims, and the Prepetition Term Loan Deficiency Claims. Distributions of New Bally Common Stock and New Bally Warrants made to holders of Allowed Class 7 Claims shall be delivered to the Senior Secured Notes Indenture Trustee for Pro Rata distribution to holders of Allowed Senior Note Claims in accordance with the Senior Secured Notes Indenture. Any Subordinated Notes Plan Distribution shall be distributed to the Subordinated Notes Indenture Trustee or the Senior Notes Indenture Trustee as provided in Article III.B.10 of the Plan.

5. Unclaimed Distributions of New Bally Common Stock and New Bally Warrants. Any distribution of New Bally Common Stock and New Bally Warrants under the Plan on account of an Allowed Unsecured Claim that is unclaimed after six months after it has been delivered (or attempted to be delivered) shall be held in the Unsecured Claims Reserve to be distributed to the other holders of such claims and, notwithstanding any state or other escheat or similar laws to the contrary, the entitlement by the holder of such Allowed Claim to such distribution or any subsequent distribution on account of such Allowed Claim shall be extinguished and forever barred.

6. Saturdays, Sundays, or Legal Holidays. If any payment, distribution or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, and shall be deemed to have been completed as of the required date.

7. Fractional New Bally Common Stock and New Bally Warrants and De Minimis Distributions. Notwithstanding any other provision in the Plan to the contrary, no fractional shares of New Bally Common Stock or New Bally Warrants shall be issued or distributed pursuant to the Plan. Whenever any payment of a fraction of a share of New Bally Common Stock or a New Bally Warrant would otherwise be required under the Plan, the actual distribution made shall reflect a rounding of such fraction to the nearest whole share (up or down), with half shares or less being rounded down and fractions in excess of a half of a share being rounded up. If two or more holders are entitled to equal fractional entitlements and the

number of holders so entitled exceeds the number of whole shares, as the case may be, that remain to be allocated, the Reorganized Debtors shall allocate the remaining whole shares to such holders by random lot or such other impartial method as the Reorganized Debtors deems fair, in their sole discretion. Upon the allocation of all of the whole New Bally Common Stock and New Bally Warrants authorized under the Plan, all remaining fractional portions of the entitlements shall be canceled and shall be of no further force and effect. The Reorganized Debtors shall not be required to, but may in their sole and absolute discretion, make any payment on account of any Claim in the event that the costs of making such payment exceeds the amount of such payment.

8. *Distributions for Claims Allowed as of the Initial Distribution Date.* On the Initial Distribution Date, the Reorganized Debtors shall distribute Cash, New Bally Common Stock, New Bally Warrants, or Collateral, as the case may be, to the holders of Allowed Claims as contemplated herein.

9. *Distributions for Claims Allowed after the Initial Distribution Date.* Each holder of a Claim that becomes an Allowed Claim subsequent to the Initial Distribution Date shall receive the Distribution to which such holder of an Allowed Claim is entitled at such time that the Reorganized Debtors determine, in their discretion, to make subsequent Distributions to holders of other Claims Allowed following the Initial Distribution Date, provided that the Reorganized Debtors shall make such Distributions at least annually after the Initial Distribution Date. Nothing set forth herein is intended to, nor shall it, prohibit the Reorganized Debtors, in their discretion, from making a Distribution on account of any Claim at any time after such Claim becomes an Allowed Claim.

10. *The Record Date.* As of the close of business on the Record Date, the claims register (for Claims) and transfer ledger (for Equity Interests) shall be closed, and there shall be no further changes in the record holders of any Claims or Equity Interests. The Reorganized Debtors shall have no obligation to, but may in their sole and absolute discretion, recognize any transfer of any Claims or Equity Interests occurring after the Record Date. The Reorganized Debtors shall instead be entitled to recognize and deal for purposes under the Plan with only those record holders stated on the claims register (for Claims) and transfer ledgers (for Equity Interests) as of the close of business on the Record Date.

11. *Interest on Claims.* Except as specifically provided for in the Plan, no Claims, Allowed or otherwise (including Administrative Claims, but excluding the claims of the Prepetition Revolver Lenders), shall be entitled, under any circumstances, to receive any interest on a Claim.

B. Disputed Claims

1. *Objections to and Resolution of Unsecured Claims.* The Reorganized Debtors shall have the right to file, settle, compromise, withdraw or litigate objections to Unsecured Claims. Unless otherwise ordered by the Court, objections to, or other proceedings concerning the allowance of, Unsecured Claims shall be filed and served upon the holders of the Unsecured Claims as to which the objection is made, or otherwise commenced, as the case may be, as soon as practicable, but in no event later than the Claims Objection Deadline. In the event

any Unsecured Claim is permitted to be filed after the Claims Objection Deadline, the Reorganized Debtors shall have ninety (90) days from the date of such order or agreement to object to such Claim, which deadline may be extended by the Court on motion of the Reorganized Debtors without a hearing or notice to Creditors. The Reorganized Debtors may settle any objections or proceedings without Court approval or may seek Court approval without notice to any Person.

2. Objections to and Resolution of Priority Tax Claims, Other Priority Claims, and Other Secured Claims. The Reorganized Debtors shall have the exclusive right to file, settle, compromise, withdraw or litigate objections to Priority Tax Claims, Other Priority Claims and Other Secured Claims. Unless otherwise ordered by the Court, objections to, or other proceedings concerning the allowance of Priority Tax Claims, Other Priority Claims and Other Secured Claims shall be filed and served upon the holders of such Claims, as soon as practicable, but in no event later than the Claims Objection Deadline. In the event any Priority Tax Claim, Other Priority Claim and Other Secured Claim is permitted to be filed after the Claims Objection Deadline, the Reorganized Debtors shall have ninety (90) days from the date of such order or agreement to object to such Claim, which deadline may be extended by the Court on motion of the Reorganized Debtors without a hearing or notice to Creditors. The Reorganized Debtors may settle any objections or proceedings without Court approval or may seek Court approval without notice to any Person.

3. Objections to and Resolution of Administrative Claims and Fee Claims. The Reorganized Debtors shall have the exclusive right to file, settle, compromise, withdraw or litigate objections to Administrative Claims (other than Fee Claims). Unless otherwise ordered by the Court, objections to, or other proceedings concerning the allowance of, filed Administrative Claims shall be filed and served upon the holders of the Administrative Claims as to which the objection is made, or otherwise commenced, as the case may be, as soon as practicable. The Reorganized Debtors may settle any such objections or proceedings without Court approval or may seek Court approval without notice to any Person. Objections to Fee Claims shall be filed and served within seventy-five (75) days of the Effective Date (or such longer period as may be allowed by order of the Court).

C. Insured Claims

Notwithstanding anything to the contrary in the Disclosure Statement or Plan, distributions under the Plan to each holder of an Allowed Insured Claim shall be in accordance with the treatment provided under the Plan for General Unsecured Claims; *provided, however,* that

1. an Allowed Insured Claim, all or a portion of which is within the applicable deductible or self-insured retention of the relevant insurance policy of the Debtors, shall be treated as an Allowed General Unsecured Claim for the amount which is within the applicable deductible or self-insured retention of such policy;

2. an Allowed Insured Claim, a portion of which exceeds the limits of coverage available under the relevant insurance policies of the Debtors, shall be treated as an

Allowed General Unsecured Claim in the amount by which such Allowed Insured Claim exceeds the limits of coverage available under such policies;

3. to the extent all or a portion of an Allowed Insured Claim is to be treated as an Allowed General Unsecured Claim under subsection 1 above, such Allowed Insured Claim or portion thereof shall be deemed to be paid in full, dollar for dollar, up to the amount of the Allowed General Unsecured Claim regardless of the value of Distributions on General Unsecured Claims under the Plan;

4. with respect to any Insured Claim, the Debtors' insurers shall have no duty or obligation to pay any amount within the deductible or self-insured retention of any applicable insurance policy of the Debtors unless otherwise required to do so by the terms of such policy;

5. in the event that any insurer pays any amount within the deductible or self-insured retention of any applicable insurance policy (whether or not obligated to do so under such policy), the Debtors shall have no obligation or liability to such insurer other than a General Unsecured Claim for the amount of such payment if such General Unsecured Claim has been timely filed;

6. each Workers' Compensation Claim shall be adjusted, settled and/or paid in the ordinary course in accordance with the terms of the applicable insurance policy of the Debtors;

7. nothing in this Article VIII.C. is intended to, shall, or shall be deemed to preclude any holder of an Allowed Insured Claim from seeking recovery from any insurer of the Debtors in addition to (but not in duplication of) any Distribution such holder may receive under the Plan or to preclude any insurer from contesting or asserting defenses to any such action by a holder. The Debtors do not waive, and expressly reserve, their rights to assert that any insurance coverage is property of the Estates;

8. nothing in the Disclosure Statement or Plan shall be construed as, or is, a determination as to coverage in connection with any Insured Claim under any applicable insurance policy; and

9. the Disclosure Statement and Plan shall not (i) modify the coverage provided under the Debtors' insurance policies, (ii) alter in any way the obligations of the Debtors' insurers under the insurance policies, or (iii) in any way permit any holder of a Workers Compensation Claim or Insured Claim to any duplicate recovery from the insurers and any other party including, but not limited to, the Debtors or the Reorganized Debtors.

Nothing in either the Confirmation Order or the Plan shall (i) affect, impair, limit or in any way prejudice the rescission claims or any defenses that may be available to ACE American Insurance Company and Fireman's Fund Insurance Company (whether or not such defenses are currently pled) in the litigation captioned *Great American Insurance Company v. Bally Total Fitness Holding Corporation*, Case No. 06-cv-4554, in the United States District Court for the Northern District of Illinois (the "Coverage Litigation"), or (ii) affect, impair, limit or in any way prejudice the Debtors' claims and defenses in the Coverage Litigation (including any right of the Debtors to challenge the timeliness of a pleading or a defense).

D. Tort Claims

1. Pending Tort Claims. Any unliquidated Tort Claim pending on the Effective Date that has not been resolved through a Final Order of the Bankruptcy Court will be determined and liquidated in the administrative or judicial tribunal(s) in which it is pending on the Effective Date. Upon the Effective Date, the discharge injunction will be deemed modified, without the necessity for further Bankruptcy Court approval, solely to the extent necessary to allow the parties to determine or liquidate the Tort Claims in the applicable administrative or judicial tribunal(s). For the avoidance of doubt, all Allowed Tort Claims, regardless of the forum in which they are liquidated and to the extent not covered by insurance, shall be treated as Class 8 General Unsecured Claims under the Plan and shall be limited to the recovery provided to Class 8 claimholders as their sole source of recovery against the Debtors or the Reorganized Debtors.

2. Non-Pending Tort Claims. Any unliquidated Tort Claim for which no action is pending on the Effective Date and that has not been resolved through a Final Order of the Bankruptcy Court will be determined and liquidated at the Debtors or Reorganized Debtors' option at any administrative or judicial tribunal of appropriate jurisdiction. The Debtors or the Reorganized Debtors may exercise the above option by service upon the holder of the applicable Tort Claim of a notice informing the holder of such Tort Claim that the Debtors or the Reorganized Debtors have exercised such option. Upon a Debtor's or Reorganized Debtor's service of such notice, the automatic stay provided under section 362 of the Bankruptcy Code, or after the Effective Date, the discharge injunction, will be deemed modified, without the necessity for further Bankruptcy Court approval, solely to the extent necessary to allow the parties to determine or liquidate the Tort Claim in the applicable administrative or judicial tribunal(s). For the avoidance of doubt, all Allowed Tort Claims, regardless of the forum in which they are liquidated and to the extent not covered by insurance, shall be treated as Class 8 General Unsecured Claims under the Plan and shall be limited to the recovery provided to Class 8 claimholders as their sole source of recovery against the Debtors or the Reorganized Debtors.

3. Bankruptcy Court Jurisdiction. At all times prior to or after the Effective Date, the Bankruptcy Court will retain jurisdiction relating to Tort Claims, including the Debtors' right to have such Claims determined and/or liquidated in the Bankruptcy Court (or the United States District Court having jurisdiction over the Chapter 11 Cases) pursuant to section 157(b)(2)(B) of title 28 of the United States Code, as may be applicable.

4. Automatic Dismissal of Tort Claim Upon Adverse Judgment. In the event a Tort Claim is liquidated pursuant to a judgment or order that is obtained in accordance with this Article and is no longer appealable or subject to review, and applicable non-bankruptcy law provides for no recovery against the applicable Debtor or Reorganized Debtor, such Tort Claim will be deemed expunged without the necessity for further Bankruptcy Court approval upon the applicable Debtor's or Reorganized Debtor's service of a copy of such judgment or order upon the holder of such Tort Claim.

5. Reservation of Rights. Nothing contained in this Article will constitute or be deemed a waiver of any claim, right or Cause of Action that a Debtor may have against any person or entity in connection with or arising out of any Tort Claim, including but not limited to

any rights under section 157(b)(5) of title 28 of the United States Code. All claims, demands, rights, defenses and Causes of Action that the Debtors or the Reorganized Debtors may have against any person or entity in connection with or arising out of any Tort Claim are expressly retained and preserved.

E. Reserve for Disputed General Unsecured Claims

1. Establishment of Unsecured Claims Reserve. In order to effect Distributions to holders of Allowed Unsecured Claims in a timely manner, within thirty (30) days after the Effective Date, the Reorganized Debtors shall file a motion for an order establishing a reserve of New Bally Common Stock and New Bally Warrants from the Unsecured Claims Distribution with respect to unliquidated and/or Disputed Unsecured Claims for Distribution purposes (the “Unsecured Claims Reserve”). The Unsecured Claims Reserve shall contain New Bally Common Stock and New Bally Warrants sufficient to provide the distributions to which holders of Disputed Unsecured Claims would be entitled under the Plan as of such date as if the Disputed Unsecured Claims were Allowed Unsecured Claims either in the amounts of the Claims as filed or in such amounts as estimated by the Court.

2. New Bally Common Stock and New Bally Warrants Held in Unsecured Claims Reserve. New Bally Common Stock and New Bally Warrants held in the Unsecured Claims Reserve shall be held in an account with a direct or indirect participant of DTC in the name of Reorganized Bally or its nominee, and distributed by the Disbursing Agent to the holders of Allowed Unsecured Claims in accordance with the Plan. New Bally Common Stock and New Bally Warrants held in the Unsecured Claims Reserve shall not constitute property of the Reorganized Debtors. New Bally Common Stock held in the Unsecured Claims Reserve will not be deemed outstanding, and shall not have any voting rights, unless and until they are distributed in accordance herewith. Any New Bally Common Stock or New Bally Warrants held in the Unsecured Claims Reserve after all Unsecured Claims have been Allowed or disallowed, including, but not limited to any unclaimed Distributions forfeited in accordance herein, shall be distributed by the Distributing Agent, in a supplemental distribution, Pro Rata, to holders of Allowed Unsecured Claims, provided, however, that to the extent such Pro Rata allocation results in a distribution of less than one share of New Bally Common Stock or one New Bally Warrant to over fifty percent (50%) of holders of Allowed Unsecured Claims otherwise entitled to such distribution, the Reorganized Debtors shall have no obligation to make such distribution and all then-undistributed New Bally Common Stock and New Bally Warrants shall be transferred to the Reorganized Debtors to be canceled.

3. Dividend and Interest Payments to the Unsecured Claims Reserve. The Reorganized Debtors shall hold in the Unsecured Claims Reserve any dividends, payments, or other distributions made on account of, as well as any obligations arising from, the New Bally Common Stock held in the Unsecured Claims Reserve, at the time such distributions are made or such obligations arise, and such dividends, payments, or other distributions shall be held for the benefit of holders of Disputed Unsecured Claims whose Claims, if Allowed, are entitled to distributions under the Plan. The Reorganized Debtors shall pay, or cause to be paid, out of any dividends paid on account of New Bally Common Stock or New Bally Warrants held in the Unsecured Claims Reserve, any tax imposed on the Unsecured Claims Reserve by any Governmental Unit with respect to income generated by New Bally Common Stock and New

Bally Warrants held in the Unsecured Claims Reserve and any costs associated with maintaining the Unsecured Claims Reserve.

4. *Tax Treatment of the Unsecured Claims Reserve.* The Reorganized Debtors may make an election pursuant to U.S. Treasury Regulations Section 1.468B-9(c) to treat the Unsecured Claims Reserve as a “disputed ownership fund” (the “DOF”). In the event that the Reorganized Debtors makes such an election, the DOF would be treated for United States federal income tax purposes as a taxable entity separate from the holders of Unsecured Claims. The DOF, and not the holders of Unsecured Claims, would be treated as the owner of the assets in the DOF, including the New Bally Common Stock or New Bally Warrants reserved for Allowed Unsecured Claims. The DOF would be responsible for the payment of any taxes (including by way of withholding) resulting from the transfer or holding of assets in the DOF.

F. Allocation of Consideration

The aggregate consideration to be distributed to the holders of Allowed Claims in each Class under the Plan shall be treated as first, satisfying an amount equal to the stated principal amount of the Allowed Claim for such holders, and any remaining consideration as satisfying accrued, but unpaid, interest and costs, if any, and attorneys’ fees, where applicable.

G. Cancellation and Surrender of Existing Securities and Agreements

Except for distributions to Class 7 and Class 10 described below, notwithstanding any other provision of the Plan, as a condition precedent to receiving any distribution under the Plan, each holder of a promissory note, or other instrument or security evidencing a Claim (other than the Exit Term Loan Lenders in their capacity as such) must tender such promissory note or other instrument or security to the Reorganized Debtors or must execute and deliver an affidavit of loss and furnish an indemnity or bond in substance and amount reasonably satisfactory to the Reorganized Debtors.

Any holder of a Claim that fails to surrender such instrument or to provide the affidavit and indemnity or bond before the later of six months following the (i) Effective Date or (ii) the date such holder’s Claim becomes an Allowed Claim shall be deemed to have forfeited all rights and/or Claims and may not receive or participate in any distribution under the Plan.

By reason of the Plan, the Debtors shall have no continuing duties under the Senior Secured Notes Indenture or the Subordinated Notes Indenture, the Debtors’ obligations under the Senior Secured Notes Indenture and the Subordinated Notes Indenture shall be discharged and all claims against the Debtors thereunder shall only be payable in accordance with the Plan. Notwithstanding the foregoing, if a Subordination Dispute occurs, the Senior Secured Notes Indenture and Subordinated Notes Indenture shall remain in effect until such Subordination Dispute has been resolved by entry of a Final Order and the Subordinated Notes Plan Distribution have been distributed in accordance with such Final Order, including without limitation: (1) all provisions relating directly or indirectly to the Subordination Dispute and the rights of holders of Senior Indebtedness (as defined in the Subordinated Notes Indenture; (2) all rights and powers of the indenture trustees under each respective indenture; and (3) all

protections each indenture trustee has under the respective indentures, including lien rights with respect to any Plan distributions.

Upon completion of the Distributions to Classes 7 and 10 in accordance with Article III (B)(7) and (10) of the Plan, the Senior Secured Notes Indenture Trustee and the Subordinated Notes Indenture Trustee shall coordinate with DTC to surrender the Senior Secured Notes and the Subordinated Notes and cancel the respective positions.

H. Estimation

The Reorganized Debtors may at any time, request that the Court estimate any Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtors or the Reorganized Debtors have previously objected to such Claim. The Court will retain jurisdiction to estimate any Claim at any time, including during proceedings concerning any objection to such Claim. In the event that the Court estimates any Disputed Claim, such estimated amount may constitute either (i) the Allowed amount of such Claim, (ii) the amount on which a reserve is to be calculated for purposes of any reserve requirement to the Plan, or (iii) a maximum limitation on such Claim, as determined by the Court. If the estimated amount constitutes a maximum limitation on such Claim, the Debtors or the Reorganized Debtors as the case may be, or the Unsecured Creditors' Committee (before the Effective Date) may elect to object to ultimate payment of such Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not necessarily exclusive of one another.

ARTICLE IX. RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to: (i) resolve any matters related to (a) the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Cure Claims pursuant to section 365 of the Bankruptcy Code; (b) the Reorganized Debtors amending, modifying, or supplementing, after the Effective Date, pursuant to Article X, any executory contracts or unexpired leases to the list of executory contracts and unexpired leases to be assumed or rejected or otherwise; and (c) any dispute regarding whether a contract or lease is or was executory or expired; (ii) to determine, adjudicate, or decide any other applications, adversary proceedings, contested matters, and any other matters pending on the Effective Date; (iii) to ensure that distributions to holders of Allowed Claims are accomplished as provided herein; (iv) to resolve disputes as to the ownership of any Claim or Equity Interest; (v) allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Equity Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims or Equity Interests; (vi) to enter and implement such orders as may be appropriate in the event the Confirmation Order is

for any reason stayed, revoked, reversed, modified or vacated; (vii) to issue such orders in aid of execution of the Plan, to the extent authorized by section 1142 of the Bankruptcy Code; (viii) to consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any order of the Court, including, without limitation, the Confirmation Order; (ix) to hear and determine all applications for compensation and reimbursement of expenses of Professionals under sections 330, 331 and 503(b) of the Bankruptcy Code; (x) to hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Plan; (xi) to hear and determine any issue for which the Plan requires a Final Order of the Court; (xii) to hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code; (xiii) to hear and determine disputes arising in connection with compensation and reimbursement of expenses of professionals for services rendered during the period commencing on the Petition Date through and including the Effective Date; (xiv) to hear and determine any Causes of Action preserved under the Plan; (xv) to hear and determine any matter regarding the existence, nature and scope of the Debtors' discharge; (xvi) to hear and determine any matter regarding the existence, nature, and scope of the releases and exculpation provided under the Plan; (xvii) to enter a final decree closing the Chapter 11 Cases; (xviii) issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation or enforcement of the Plan; (xix) adjudicate any and all disputes arising from or relating to distributions under the Plan; and (xx) hear any other matter not inconsistent with the Bankruptcy Code.

ARTICLE X. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption and Rejection of Executory Contracts and Unexpired Leases

To the extent not (i) assumed in the Chapter 11 Cases prior to the Confirmation Date, (ii) rejected in the Chapter 11 Cases prior to the Confirmation Date, or (iii) specifically rejected pursuant to this Plan, each executory contract and unexpired lease that exists between Debtor and any Person is specifically assumed by the Debtor that is a party to such executory contract or unexpired lease as of, and subject to the occurrence of, the Effective Date pursuant to the Plan.

The following executory contracts and unexpired leases are rejected:

1. executory contracts or unexpired leases that were rejected before the Confirmation Date;
2. employment agreements that were terminated or rejected prior to the Confirmation Date; and
3. contracts and unexpired leases identified on the attached Exhibit A to the Plan, which contracts and unexpired leases are deemed rejected by the applicable Debtor as of the corresponding rejection dates set forth on Exhibit A.

B. Cure

Except as otherwise agreed by the parties, the applicable Reorganized Debtor, will, on the Initial Distribution Date, cure any and all undisputed defaults under any executory contract or unexpired lease that is assumed by such Reorganized Debtor pursuant to the Plan in accordance with section 365 of the Bankruptcy Code. The Cure Claim for each unexpired lease and executory contract to be assumed pursuant to the plan shall be listed on Exhibit B to the Plan. The Cure Claim to be paid in connection with the assumption of any unexpired lease and executory contract that is not specifically identified on Exhibit B shall be \$0.00. The Debtors reserve the right to amend Exhibit B at any time prior to the Effective Date. Any provisions or terms of the Debtors' executory contracts or unexpired leases to be assumed pursuant to the Plan that are, or may be, alleged to be in default, shall be satisfied solely by payment (if any) of the Cure Claim, or by an agreed-upon waiver of the Cure Claim.

Except with respect to executory contracts and unexpired leases in which the Debtors and the applicable counterparties have stipulated in writing to the Cure Claim, all requests for payment of a Cure Claim that differ from the amounts proposed by the Debtors in Exhibit B or in this Article X.B. of the Plan, must be filed with the Court and served on the Debtors on or before the Cure Claim Bar Date. Any request for payment of Cure Claim that is not timely filed and served shall be disallowed automatically, forever barred and not be enforceable against any Reorganized Debtor, without the need for an objection by the Reorganized Debtors or order of the Bankruptcy Court.

The Reorganized Debtors may settle any dispute on the amount of a Cure Claim without further notice to or approval of the Bankruptcy Court. If the Reorganized Debtors object to any request for payment of a Cure Claim, the Bankruptcy Court shall determine the Allowed amount of such Cure Claim and any related issues. Unless the parties to the contract or lease agree otherwise, all disputed defaults that are required to be cured shall be cured by the later to occur of (i) ten days after entry of a Final Order determining the amount, if any, of the Reorganized Debtors' liability with respect thereto and (ii) the Initial Distribution Date. The Reorganized Debtors reserve the right, either to reject or nullify the assumption of any executory contract or unexpired lease no later than thirty days after a Final Order determining a Cure Claim greater than that proposed by the Debtors.

C. Assumption

Assumption of any executory contract or unexpired lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed executory contract or unexpired lease at any time prior to the effective date of assumption. Any Proofs of Claim filed with respect to an executory contract or unexpired lease that has been assumed shall be deemed disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court. All objections from counterparties to executory contracts or unexpired leases to be assumed relating solely to assumption must be filed with the Court and served on the Debtors on or before the Cure Claim Bar Date.

Obligations arising under insurance policies assumed by the Debtors prior to the Effective Date shall be adequately protected in accordance with any order authorizing such assumption.

D. Limited Extension of Time to Assume or Reject

In the event of a dispute as to whether a contract or lease is executory or unexpired, the right of the Debtors or Reorganized Debtors to move to assume or reject such contract or lease shall be extended until the date that is thirty (30) days after the entry of a Final Order by the Court determining that the contract or lease is executory or unexpired. The deemed assumptions and rejections provided for in this Article of the Plan shall not apply to such contract or lease.

In the event the Reorganized Debtors become aware after the Effective Date of the existence of an executory contract or unexpired lease that was not included in the Schedules, on Exhibit A, or on Exhibit B, the right of the Reorganized Debtors to move to assume or reject such contract or lease shall be extended until the date that is thirty (30) days after the date on which the Debtors or the Reorganized Debtors become aware of the existence of such executory contract or unexpired lease. The deemed assumptions and rejections provided for in this Article of the Plan shall not apply to any such contract or lease.

The Debtors reserve the right to amend Exhibit A at any time prior to the Effective Date.

E. Rejection Damage Claims

All Claims for damages arising from the rejection of executory contracts or unexpired leases must be filed with the Court in accordance with the terms of the Bar Date Order. Any Claims not filed within such time will be forever barred from assertion against the Debtors, their respective estates, or the Reorganized Debtors. All Allowed Claims arising from the rejection of executory contracts or unexpired leases shall be treated as General Unsecured Claims or Convenience Claims, as appropriate under the circumstances.

F. Assignment

As of the effective time of an applicable Restructuring Transaction, any executory contract or unexpired lease to be held by any Debtor or Reorganized Debtor and assumed hereunder or otherwise in the Chapter 11 Cases, if not expressly assigned to a third party previously in the Chapter 11 Cases, will be deemed assigned to the surviving, resulting or acquiring corporation in the applicable Restructuring Transaction, pursuant to section 365 of the Bankruptcy Code. If an objection to a proposed assumption, assumption and assignment or Cure Claim is not resolved in favor of the Debtors or the Reorganized Debtors, the applicable executory contract or unexpired lease may be designated by the Debtors or the Reorganized Debtors for rejection within five Business Days of the entry of the order of the Bankruptcy Court resolving the matter against the Debtors. Such rejection shall be deemed effective as of the Effective Date.

G. No Change in Control

The consummation of the Plan, the implementation of the Restructuring Transactions or the assumption or assignment of any executory contract or unexpired lease to another Reorganized Debtor is not intended to, and shall not, constitute a change in ownership or change in control under any employee benefit plan or program, financial instrument, loan or financing agreement, executory contract or unexpired lease or contract, lease or agreement in existence on the Effective Date to which a Debtor is a party.

H. Obligations to Indemnify Directors, Officers and Employees

The obligations of each Debtor or Reorganized Debtor to indemnify any person who was serving as one of its directors, officers or employees on or after October 1, 2007, by reason of such person's prior or future service in such a capacity or as a director, officer or employee of another corporation, partnership or other legal entity, to the extent provided in the applicable certificates of incorporation, bylaws or similar constituent documents, by statutory law or by written agreement, policies or procedures of or with such Debtor or Reorganized Debtor, will be deemed and treated as executory contracts that are assumed by the applicable Debtor or Reorganized Debtor pursuant to the Plan and section 365 of the Bankruptcy Code as of the Effective Date. Accordingly, such indemnification obligations will survive and be unaffected by entry of the Confirmation Order, irrespective of whether such indemnification is owed for an act or event occurring before or after the Petition Date.

Any obligations of each Debtor or Reorganized Debtor to indemnify any person who ceased serving as one of its directors, officers or employees prior to October 1, 2007, by reason of such person's prior service in such a capacity or as a director, officer or employee of another corporation, partnership or other legal entity, to the extent provided in the applicable certificates of incorporation, bylaws or similar constituent documents, by statutory law or by written agreement, policies or procedures of or with such Debtor – to the extent such obligations are found to still exist - will terminate and be discharged pursuant to section 502(e) of the Bankruptcy Code or otherwise as of the Effective Date; provided, however, that to the extent that such indemnification obligations no longer give rise to contingent Claims that can be disallowed pursuant to section 502(e) of the Bankruptcy Code, such indemnification obligations will be deemed and treated as executory contracts that are rejected by the applicable Debtor or Reorganized Debtor pursuant to the Plan and section 365 of the Bankruptcy Code as of the Effective Date, and any Claims arising from such indemnification obligations (including any rejection damage claims) must be filed with the Court no later than thirty (30) days after the Effective Date. Any Claims not filed within such time will be forever barred from assertion against the Debtors, their respective estates, or the Reorganized Debtors.

**ARTICLE XI.
EFFECTIVENESS OF THE PLAN**

A. Conditions Precedent to Effectiveness

The Plan shall not become effective unless and until it has been confirmed and the following conditions have been satisfied in full or waived:

1. the Confirmation Order entered by the Court is in form and substance reasonably satisfactory to the Debtors, the Exit Lenders and the Unsecured Creditors' Committee;
2. the Confirmation Order shall have become a Final Order;
3. the final version of the Plan Exhibits and all schedules, documents, and exhibits contained therein shall have been filed in form and substance reasonably acceptable to the Exit Lenders after consultation with the Unsecured Creditors' Committee;
4. all authorizations, consents and regulatory approvals required (if any) for the Plan's effectiveness shall have been obtained;
5. the certificate of incorporation for Bally shall have been amended as provided in Article VI.A.;
6. the New Bally Common Stock, New Bally Warrants and New Subsidiary Equity Interests to be issued pursuant to Article V.D. shall be consistent with the Plan;
7. the Debtors' management has been granted options to purchase New Bally Common Stock on the terms set forth in the Management Incentive Plan; and
8. the Reorganized Debtors shall have consummated the Exit Facilities.

B. Waiver of Conditions Precedent to Effectiveness

The Debtors may waive conditions 1, 3 and 6 set forth in Article XI.A. above at any time with the consent of the Exit Lenders and the Unsecured Creditors' Committee, which consent shall not be unreasonably withheld, and without leave of or order of the Court and without any formal action. The Debtors may waive conditions 2, 4, 5, 7 and 8 set forth in Article XI.A. above at any time with the consent of the Exit Lenders, which consent shall not be unreasonably withheld, and without leave of or order of the Court and without any formal action.

C. Effect of Failure of Conditions

In the event that the Effective Date does not occur on or before one hundred and twenty (120) days after the Confirmation Date, upon notification submitted by the Debtors to the Court: (i) the Confirmation Order shall be vacated, (ii) no distributions under the Plan shall be made, (iii) the Debtors and all holders of Claims and Equity Interests shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred, and (iv) the Debtors' obligations with respect to the Claims and Equity Interests shall remain unchanged and nothing contained in the Plan shall constitute or be deemed a waiver, release, or discharge of any Claims or Equity Interests by or against the Debtors or any other person or to prejudice in any manner the rights of the Debtors or any person in any further proceedings involving the Debtors unless extended by Court order.

D. Vacatur of Confirmation Order

If a Final Order denying confirmation of the Plan is entered, or if the Confirmation Order is vacated, then the Plan shall be null and void in all respects, and nothing contained in the Plan shall (a) constitute a waiver, release or discharge of any Claims against or Equity Interests in the Debtors; (b) prejudice in any manner the rights of the holder of any Claim against, or Equity Interest in, the Debtors; (c) prejudice in any manner any right, remedy or claim of the Debtors; or (d) be deemed an admission against interest by the Debtors.

E. Modification of the Plan

Subject to the limitations contained in the Plan, and subject to the approval of the Exit Lenders and the Unsecured Creditors' Committee, which approval shall not be unreasonably withheld: (i) the Debtors reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan prior to the entry of the Confirmation Order, including amendments or modifications to satisfy section 1129(b) of the Bankruptcy Code; and (ii) after entry of the Confirmation Order, the Debtors or the Reorganized Debtors, as the case may be, may, upon order of the Court, amend or modify the Plan, in accordance with Section 1127(b) of the Bankruptcy Code.

F. Revocation, Withdrawal, or Non-Consummation

1. Right to Revoke or Withdraw. The Debtors reserve the right to revoke or withdraw the Plan at any time prior to the Effective Date; provided, however, that if such revocation or withdrawal is made without the consent of the Exit Lenders, which is not to be unreasonably withheld, the Debtors shall pay the break up fee required in the Exit Facilities.

2. Effect of Withdrawal, Revocation, or Non-Consummation. If the Debtors revoke or withdraw the Plan prior to the Effective Date, or if the Confirmation Date or the Effective Date does not occur, the Plan, any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Interest or Class of Claims or Interests), the assumption or rejection of executory contracts, unexpired leases, or benefit plans effected by the Plan, any release, exculpation or indemnification provided for in the Plan, and any document or agreement executed pursuant to the Plan shall be null and void. In such event, nothing contained herein, and no acts taken in preparation for consummation of the Plan shall be deemed to constitute a waiver or release of any Claims by or against or Interests in the Debtors or any other Person, to prejudice in any manner the rights of the Debtors or any Person in any further proceedings involving the Debtors, or to constitute an admission of any sort by the Debtors or any other Person.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Payment of Statutory Fees

All fees payable on or before the Effective Date pursuant to section 1930 of title 28 of the United States Code shall be paid by the Debtors on or before the Effective Date and all such fees payable after the Effective Date shall be paid by the applicable Reorganized Debtor.

B. Payment of Indenture Trustee Fees

The Reorganized Debtors shall pay the reasonable and documented Indenture Trustee Fee Claims in an amount not to exceed \$125,000 in Cash for each of the Senior Secured Notes Indenture Trustee and the Subordinated Notes Indenture Trustee in respect of invoices submitted by the Senior Secured Notes Indenture Trustee and the Subordinated Notes Indenture Trustee, in each case without the need for the Senior Secured Notes Indenture Trustee and the Subordinated Notes Indenture Trustee to file an application for allowance with the Bankruptcy Court; provided, however, that to receive payment pursuant to this Article XII.B., the Senior Secured Notes Indenture Trustee and the Subordinated Notes Indenture Trustee shall provide reasonable and customary detail or invoices in support of their Indenture Trustee Fee Claims to counsel to the Reorganized Debtors after the Effective Date and parties in interest shall have the right to file objections to such Indenture Trustee Fee Claims based on a “reasonableness” standard within ten (10) days after receipt of supporting documentation. Any disputed amount of the Indenture Trustee Fee Claim shall be subject to the jurisdiction of, and resolution by, the Bankruptcy Court. Upon payment of a Indenture Trustee Fee Claim in full or by resolution of the Bankruptcy Court, the Senior Secured Notes Indenture Trustee or the Subordinated Notes Indenture Trustee (as applicable) will be deemed to have released its lien and priority rights for its fees and expenses under the respective Senior Secured Notes Indenture and the Subordinated Notes Indenture solely to the extent of such Indenture Trustee Fee Claim. Distributions under the Plan to holders of Allowed Senior Note Claims and Allowed Subordinated Note Claims will not be reduced by the amount of the Indenture Trustee Fee Claims paid by the Debtors pursuant to this Article, but may be reduced by charging liens and other rights that the respective indenture trustees may assert to the extent that Debtors do not pay the entire amount owed by the Debtors to the indenture trustees under their respective indentures for fees and expenses incurred by the indenture trustees after the Effective Date.

C. Governing Law

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or the Delaware General Corporation Law, the laws of the State of New York (without reference to the conflicts of laws provisions thereof) shall govern the construction and implementation of the Plan and any agreements, documents, and instruments executed in connection with the Plan, unless otherwise specified.

D. Filing or Execution of Additional Documents

On or before the Effective Date, the Debtors or the Reorganized Debtors, shall file with the Court or execute, as appropriate, such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

E. Information

For so long as Reorganized Bally is not required to publicly file financial information with the SEC, Reorganized Bally will furnish or make available to the holders of the New Bally Common Stock and the New Bally Warrants: (i) on a quarterly basis within 45 days of each quarter end, consolidated unaudited financial statements of Reorganized Bally, including the balance sheet, income statement, and statement of cash flow detailing the quarter-to-date and year-to-date results, together with the footnotes thereto; and (ii) on an annual basis within 120 days of each year end, audited consolidated financial statements of Reorganized Bally including the balance sheet, income statement, and cash flow detailing year-to-date results, together with the footnotes thereto, in each case in reasonable detail and prepared in accordance with GAAP, except as otherwise noted therein.

F. Withholding and Reporting Requirements

In connection with the Plan and all instruments issued in connection therewith and distributions thereon, the Reorganized Debtors shall comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority and all distributions hereunder shall be subject to any such withholding and reporting requirements.

G. Exemption From Transfer Taxes

Pursuant to section 1146(c) of the Bankruptcy Code, all transfers of property pursuant hereto, including (i) the issuance, transfer or exchange under the Plan of New Bally Common Stock, New Bally Warrants and the security interests in favor of the lenders under the Exit Facilities, (ii) the making or assignment of any lease or sublease, or (iii) the making or delivery of any other instrument whatsoever, in furtherance of or in connection with the Plan shall not be subject to any stamp, conveyance, mortgage, real estate transfer, recording or other similar tax, or governmental assessment.

H. Waiver of Federal Rule of Civil Procedure 62(a)

The Debtors may request that the Confirmation Order include (a) a finding that Fed. R. Civ. P. 62(a) shall not apply to the Confirmation Order, and (b) authorization for the Debtors to consummate the Plan immediately after entry of the Confirmation Order.

I. Plan Exhibits

All Plan Exhibits are incorporated into and constitute a part of the Plan as if set forth herein.

J. Notices

All notices, requests, and demands hereunder to be effective shall be in writing and unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

1. To the Debtors: Bally Total Fitness Corporation, 8700 W Bryn Mawr Ave., Third Floor, Chicago, IL 60631-3507, attention: General Counsel, Tel (773) 399-7626, Fax: (773) 399-0126, with a copy to Kramer Levin Naftalis & Frankel, 1177 Avenue of the Americas, New York, NY 10036, attention: Kenneth Eckstein, Esq., Tel: (212) 715-9100, Fax: (212) 715-8000.

2. To the Unsecured Creditors' Committee: Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036, attention: David Botter, Esq., Tel: (212) 872-1000, Fax: (212) 872-1000.

3. To the Prepetition Administrative Agent: Skadden, Arps, Slate, Meagher & Flom LLP, 300 South Grand Avenue, Suite 3400, Los Angeles, California 90071, attention: Gregory Robins, Esq., Tel: (213) 687-5270, Fax: (213) 621-5270.

4. To the Exit Revolver Lenders: Buchalter Nemer, A Professional Corporation, 1000 Wilshire Blvd., Ste. 1500, Los Angeles, California 90017, attention: Pamela Kohlman Webster, Esq., Tel: (213) 891-0700, Fax: (213) 896-0400; Hahn & Hessen LLP, 488 Madison Avenue, New York, NY 10022, Attention: Rosanne Thomas Matzat, Esq., Tel. (212) 478-7410, Fax (212) 478-7400

5. To the Exit Term Loan Lenders: Dewey & LeBoeuf LLP, 1301 Avenue of the Americas, New York, New York 10019, attention: Irena Goldstein, Esq., Tel: (212) 259-8000, Fax: 212-259-6333.

6. The Office of the United States Trustee: 33 Whitehall Street, 21st Floor, New York, New York 10004, attention: Paul K. Schwartzberg, Esq., Tel.: (212) 510-0500, Fax: (212) 668-2255.

K. Conflicts

The terms of this Plan shall govern in the event of any inconsistency with the summaries of the Plan set forth in the Disclosure Statement.

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Dated: August 14, 2009

**BALLY TOTAL FITNESS HOLDING
CORPORATION**

(on its own behalf and on behalf of each affiliate
Debtor)

By: /s/ Michael W. Sheehan

Name: Michael W. Sheehan

Title: Chief Executive Officer

Appendix 2
Notice of Confirmation

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
BALLY TOTAL FITNESS OF)	
GREATER NEW YORK, INC., <u>et al.</u> ,)	Case No. 08-14818 (BRL)
)	
Debtors.)	Jointly Administered
)	

**NOTICE OF ENTRY OF ORDER CONFIRMING THE SECOND
AMENDED JOINT PLAN OF REORGANIZATION OF THE DEBTORS UNDER
CHAPTER 11 OF THE BANKRUPTCY CODE**

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. **Confirmation of the Plan**

On August [], 2009, the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") entered an order (the "Confirmation Order") confirming the Second Amended Joint Plan of Reorganization of the Debtors Under Chapter 11 of the Bankruptcy Cod, dated August 14, 2009 (as subsequently amended, supplemented or modified, the "Plan"), in the chapter 11 cases of the above-captioned debtors and debtors in possession (collectively, the "Debtors"). Unless otherwise defined in this Notice, capitalized terms and phrases used herein have the meanings given to them in the Plan and the Confirmation Order.

2. **Discharge of Claims and Termination of Interests**

Except as provided in the Plan or in the Confirmation Order, the treatment of all Claims and Equity Interests in the Plan shall be in exchange for and in complete satisfaction, discharge, and release of all Claims and Equity Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtors, the Reorganized Debtors or any of their respective assets or properties, arising prior to the Effective Date. Pursuant to section 1141(d) of the Bankruptcy Code and except as otherwise expressly specified in the Plan or the Confirmation Order, upon the Effective Date the Confirmation Order shall act as a discharge of all debts of, Claims against, and Liens on the Debtors, their respective assets and properties, arising at any time before the Effective Date, regardless of whether a proof of Claim with respect thereto was filed, whether the Claim is Allowed, or whether the holder thereof votes to accept the Plan or is entitled to receive a distribution hereunder. Except as otherwise expressly specified in the Plan, after the Effective Date, any holder of such discharged Claim shall be precluded from asserting against the Debtors, the Reorganized Debtors, or any of their respective assets or properties, any other or further Claim based on any document, instrument, act, omission, transaction, or other activity of any kind or nature that occurred before the entry of the Confirmation Order.

In accordance with the foregoing, except as provided in the Plan, the Confirmation Order constitutes a judicial determination, as of the Effective Date of a discharge of all Claims and other debts and liabilities against the Debtors and a termination of all Equity Interests and other rights of the holders of Equity Interests in the Debtors, pursuant to sections 524 and 1141 of the Bankruptcy Code, and such discharge shall void any judgment obtained against the Debtors at any time, to the extent that such judgment relates to a discharged Claim or terminated Equity Interest.

3. **Injunctions**

On the Effective Date, except as otherwise provided in the Plan or in the Confirmation Order.

All Persons or entities who have held, hold, or may hold Claims against the Debtors that arose before or were held as of the Effective Date, are permanently enjoined, on and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind against or affecting a Debtor, its Estate or its Assets, with respect to any such Claim, (ii) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or order against the Debtors or the Reorganized Debtors on account of any such Claim, (iii) creating, perfecting, or enforcing any encumbrance of any kind against the Debtors or the Reorganized Debtors or against the property or interests in property of the Debtors on account of any such Claim, (iv) asserting any right of setoff, or subrogation of any kind against any obligation due from the Debtors or the Reorganized Debtors or against the property or interests in property of the Debtors on account of any such Claim; and (v) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Equity Interests released or settled pursuant to the Plan. Such injunction shall extend to successors of the Debtor (including, without limitation, the Reorganized Debtors) and their respective properties and interests in property. Such injunction shall not apply in respect of Ordinary Course Administrative Claims.

Pursuant to section 105 of the Bankruptcy Code, no holder or purported holder of an Administrative Claim, Claim or Equity Interest shall be permitted to commence or continue any action, employment of process, or any act to collect, offset, or recover any Claim against a Released Party that accrued on or prior to the Effective Date and that has been released or waived pursuant to this Plan.

4. **Releases**

General Releases by Debtors and Reorganized Debtors. Without limiting any other applicable provisions of, or releases contained in, the Plan, as of the Effective Date, the Debtors and the Reorganized Debtors, on behalf of themselves and their estates, shall be deemed to release unconditionally (i) all of their respective officers, directors, employees, partners, advisors, attorneys, financial advisors, accountants, and other professionals who served or were employed by the Debtors at any time between October 1, 2007, and the Effective Date, (ii) the Prepetition Administrative Agent, (iii) the officers, directors, principals, members, employees,

partners, subsidiaries, affiliates, advisors, attorneys, financial advisors, accountants, and other professionals of the Prepetition Administrative Agent, (iv) the Prepetition Term Loan Holders and the Prepetition Revolver Facility Lenders, (v) the officers, directors, principals, members, employees, partners, subsidiaries, affiliates, advisors, attorneys, financial advisors, accountants, and other professionals of the Prepetition Term Loan Holders and the Prepetition Revolver Facility Lenders, (vi) the Exit Revolver Lenders and the Exit Term Loan Lenders, (vii) the officers, directors, principals, members, employees, partners, subsidiaries, affiliates, advisors, attorneys, financial advisors, accountants, and other professionals of the Exit Revolver Lenders and the Exit Term Loan Lenders, (viii) the members of the Unsecured Creditors' Committee, (ix) the officers, directors, principals, members, employees, partners, subsidiaries, affiliates, advisors, attorneys, financial advisors, accountants, and other professionals of the Unsecured Creditors' Committee, (x) the Senior Secured Notes Indenture Trustee, (xi) the Subordinated Notes Indenture Trustee, (xii) Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund, LP. (collectively "Harbinger") as the former equity owners of Bally, and (xiii) the officers, directors, principals, members, employees, partners, subsidiaries, affiliates, advisors, attorneys, financial advisors, accountants, and other professionals of Harbinger (collectively the "Released Parties," and each a "Released Party") from any and all claims, obligations, suits, judgments, damages, rights, Causes of Action and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, based in whole or in part upon actions taken solely in their respective capacities described above or any omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, or the Plan, provided, however, that (a) no individual shall be released from any act or omission that constitutes gross negligence or willful misconduct, (b) the Reorganized Debtors shall not relinquish or waive the right to assert any of the foregoing as a legal or equitable defense or right of set-off or recoupment against any Claims of any such persons asserted against the Debtors, (c) the foregoing release shall not apply to any obligations that remain outstanding in respect of loans or advances made to individuals by the Debtors or to any obligations under the Exit Facilities outstanding as of the Effective Date, and (d) the foregoing release applies to the Released Parties solely in their respective capacities described above.

Releases by Holders of Claims or Equity Interests. Without limiting any other applicable provisions of, or releases contained in, the Plan, as of the Effective Date, (i) Persons who directly or indirectly, have held, hold, or may hold Claims or Equity Interests who voted to accept the Plan, and (ii) to the fullest extent permissible under applicable law, as such law may be extended or interpreted subsequent to the Effective Date, all Persons who directly or indirectly, have held, hold, or may hold Claims or Equity Interests, will be deemed, by virtue of their receipt of Distributions and/or other treatment contemplated under the Plan, to have forever released and covenanted with the Reorganized Debtors and the Released Parties not to (y) sue or otherwise seek recovery from any of the Reorganized Debtors or any Released Party on account of any Claim, including but not limited to any Claim based upon tort, breach of contract, violations of federal or state securities laws or otherwise, based upon any act, occurrence, or failure to act from the beginning of time through the Effective Date in any way related to the Debtors or their business and affairs or (z) assert against any of the Reorganized Debtors or any Released Party any claim, obligation, right, cause of action or liability that any holder of a Claim or Equity Interest may be entitled to assert, whether known or unknown, foreseen or unforeseen,

existing or hereafter arising, based in whole or in part on any act or omission, transaction, or occurrence from the beginning of time through the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, or the Plan, provided, however, (i) the foregoing release will not apply to obligations arising under the Plan, (ii) the foregoing release will not be construed to prohibit a party in interest from seeking to enforce the terms of the Plan, and (iii) nothing in the Confirmation Order or the Plan shall 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, federal securities laws, 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 the Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action or other proceedings against the Released Parties for any liability whatever, including without limitation any claim, suit or action arising under the Internal Revenue Code, federal securities laws, the environmental laws or any criminal laws of the United States or any state or local authority, nor shall anything in the Confirmation Order or the 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 any liabilities arising under the Internal Revenue Code, federal securities laws, the environmental laws or any criminal laws of the United States or any state and local authority against the Released Parties (provided that the foregoing shall in no way affect or limit the discharge or injunction granted to the Debtors under sections 524 and 1141 of the Bankruptcy Code.

Exculpation With Respect of Released Parties. Without limiting any other applicable provisions of, or releases contained in, the Plan, as of the Effective Date, the Debtors, the Reorganized Debtors, and the other Released Parties (i) shall have no liability whatsoever to any holder or purported holder of an Administrative Claim, Claim, or Equity Interest for any act or omission in connection with, or arising out of, the Plan, the Disclosure Statement, the negotiation of the Plan, the negotiation of the documents included in the Plan Exhibits, the pursuit of approval of the Disclosure Statement or the solicitation of votes for confirmation of the Plan, the Chapter 11 Cases, the consummation of the Plan, the administration of the Plan or the property to be distributed under the Plan, or any transaction contemplated by the Plan or Disclosure Statement or in furtherance thereof except for any act or omission that constitutes willful misconduct or gross negligence as determined by a Final Order, and (ii) in all respects, shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations and any other applicable law or rules protecting such Released Parties from liability.

5. Cancellation and Surrender of Existing Securities and Agreements

Except for distributions to Class 7 and Class 10 described in the Plan, notwithstanding any other provision of the Plan, as a condition precedent to receiving any distribution under the Plan, each holder of a promissory note, or other instrument or security evidencing a Claim (other than the Exit Term Loan Lenders in their capacity as such) must tender such promissory note or other instrument or security to the Reorganized Debtors or must execute and deliver an affidavit of loss and furnish an indemnity or bond in substance and

amount reasonably satisfactory to the Reorganized Debtors.

Any holder of a Claim that fails to surrender such instrument or to provide the affidavit and indemnity or bond before the later of six months following the (i) Effective Date or (ii) the date such holder's Claim becomes an Allowed Claim shall be deemed to have forfeited all rights and/or Claims and may not receive or participate in any distribution under the Plan.

By reason of the Plan, the Debtors shall have no continuing duties under the Senior Secured Notes Indenture or the Subordinated Notes Indenture, the Debtors' obligations under the Senior Secured Notes Indenture and the Subordinated Notes Indenture shall be discharged and all claims against the Debtors thereunder shall only be payable in accordance with the Plan. Notwithstanding the foregoing, if a Subordination Dispute occurs, the Senior Secured Notes Indenture and Subordinated Notes Indenture shall remain in effect until such Subordination Dispute has been resolved by entry of a Final Order and the Subordinated Notes Plan Distribution have been distributed in accordance with such Final Order, including without limitation: (1) all provisions relating directly or indirectly to the Subordination Dispute and the rights of holders of Senior Indebtedness (as defined in the Subordinated Notes Indenture; (2) all rights and powers of the indenture trustees under each respective indenture; and (3) all protections each indenture trustee has under the respective indentures, including lien rights with respect to any Plan distributions.

Upon completion of the Distributions to Classes 7 and 10 in accordance with Article III (B)(7) and (10) of the Plan, the Senior Secured Notes Indenture Trustee and the Subordinated Notes Indenture Trustee shall coordinate with DTC to surrender the Senior Secured Notes and the Subordinated Notes and cancel the respective positions.

6. **Rejection Damage Claims**

Exhibit A to the Plan sets forth the executory contracts and unexpired leases to be rejected under the Plan. Pursuant to the Order Establishing Deadline for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof [Docket No. 515] (the "Bar Date Order"), any party whose executory contract(s) and/or unexpired lease(s) are subject to rejection pursuant to the Plan must file a proof of claim for any damages resulting from the rejection of such executory contract(s) and/or unexpired lease(s) (a "Rejection Damages Claim") no later than 30 days after the effective date of rejection (the "Rejection Damages Bar Date"). All such proofs of claims shall be filed by the Rejection Damages Bar Date in accordance with the requirements of the Bar Date Order. If any party fails to timely and properly file a Rejection Damages Claim by the Rejection Damages Bar Date, such party shall be forever barred, estopped and enjoined from asserting such Rejection Damages Claim against the Debtors or receiving distributions under the Plan in these cases on account of such Rejection Damages Claim. Pursuant to section X.D. of the Plan, the Debtors reserve the right to amend Exhibit A at any time prior to the Effective Date.

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

Each executory contract and unexpired lease to which a Debtor is a party that has not been previously assumed or rejected in the Debtors' chapter 11 cases, and is not listed on Exhibit A to be rejected, is specifically assumed by the Debtor that is a party to such executory

contract or unexpired lease as of, and subject to the occurrence of, the Effective Date of the Plan. The cure amount for each unexpired lease and executory contract to be assumed pursuant to the Plan is listed on Exhibit B to the Plan. The cure amount to be paid in connection with the assumption of any unexpired lease and executory contract under the Plan that is not specifically identified on Exhibit B shall be \$0.00. Pursuant to Article X.B. of the Plan, any party objecting to the cure amount proposed by the Debtors must file an objection no later than 10 days after the Effective Date of the Plan.

8. Fee Claims

All requests for compensation or reimbursement of Fee Claims shall be filed and served on the following parties, as well as such other entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Court, no later than 45 days after the Effective Date:

- *To the Debtors*: Bally Total Fitness Corporation, 8700 W Bryn Mawr Ave., Third Floor, Chicago, IL 60631-3507, attention: General Counsel, Tel (773) 399-7626, Fax: (773) 399-0126, with a copy to Kramer Levin Naftalis & Frankel, 1177 Avenue of the Americas, New York, NY 10036, attention: Kenneth Eckstein, Esq., Tel: (212) 715-9100, Fax: (212) 715-8000.
- *To the Unsecured Creditors' Committee*: Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036, attention: David Botter, Esq., Tel: (212) 872-1000, Fax: (212) 872-1000.
- *To the Exit Revolver Lenders*: Buchalter Nemer, A Professional Corporation, 1000 Wilshire Blvd., Ste. 1500, Los Angeles, California 90017, attention: Pamela Kohlman Webster, Esq., Tel: (213) 891-0700, Fax: (213) 896-0400; Hahn & Hessen LLP, 488 Madison Avenue, New York, NY 10022, Attention: Rosanne Thomas Matzat, Esq., Tel. (212) 478-7410, Fax (212) 478-7400.
- *To the Exit Term Loan Lenders*: Dewey & LeBoeuf LLP, 1301 Avenue of the Americas, New York, New York 10019, attention: Irena Goldstein, Esq., Tel: (212) 259-8000, Fax: 212-259-6333.
- *The Office of the United States Trustee*: 33 Whitehall Street, 21st Floor, New York, New York 10004, attention: Paul K. Schwartzberg, Esq., Tel.: (212) 510-0500, Fax: (212) 668-2255.

Holders of Fee Claims that are required to file and serve applications for final allowance of their Fee Claims and that do not file and serve such applications by the required deadline shall be forever barred from asserting such Claims against the Debtors, Reorganized Debtors or their respective properties, and such Fee Claims shall be deemed discharged as of the

Effective Date. Objections to any Fee Claims must be filed and served on the Reorganized Debtors, counsel for the Reorganized Debtors, and the requesting party no later than 75 days after the Effective Date (unless otherwise agreed by the party requesting compensation).

9. **Effective Date**

A separate notice of the occurrence of the Effective Date shall be served on all known holders of Claims and Equity Interests as soon as practicable after the occurrence thereof.

10. **Copies of Confirmation Order**

Copies of the Confirmation Order may be obtained at Bally's website at www.kccllc.net/Bally.

Dated: New York, New York

August [___], 2009

KRAMER LEVIN NAFTALIS & FRANKEL LLP

/s/ _____

Kenneth H. Eckstein

P. Bradley O'Neill

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Counsel for Debtors and Debtors in Possession