

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

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

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**INTERIM ORDER (A) AUTHORIZING USE  
OF CASH COLLATERAL, (B) PROVIDING ADEQUATE  
PROTECTION, AND (C) SCHEDULING A FINAL HEARING**

Upon the Motion, dated December 3, 2008 (the “**Motion**”),<sup>1</sup> of Bally Total Fitness Holding Corporation and certain of its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the “**Debtors**”) for entry of (i) an interim order (the “**Interim Order**”): (a) authorizing the Debtors’ use of cash collateral, (b) granting adequate protection with respect to any diminution in the value of the interests in the Prepetition Collateral, and (c) scheduling a final hearing on the Motion (the “**Final Hearing**”); and (ii) entry of a final order (the “**Final Order**”) (a) authorizing the Debtors’ use of cash collateral, and (b) granting the Prepetition Secured Creditors adequate protection with respect to any diminution in the value of the Prepetition Secured Creditors’ interests in the Prepetition Collateral, all as more fully set forth in the Motion; and the Court having subject matter jurisdiction to consider the Motion and the relief request therein pursuant to 28 U.S.C. section 1334 and the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated July 19, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. section 157(b); and venue being proper

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<sup>1</sup> Capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Motion.

before the Court pursuant to 28 U.S.C. sections 1408 and 1409; and due and proper notice of the Motion having been provided to (i) the Office of the United States Trustee for the Southern District of New York, (ii) counsel to the agent for the Senior Secured Lenders, (iii) counsel to the indenture trustees for the Senior Secured Notes and Subordinated Toggle Notes, (iv) counsel to certain prepetition creditors, (v) the holders of the fifty largest unsecured claims (on a consolidated basis) and (vi) counsel to the Debtors' equity holders, and no other or further notice need be provided; and the relief requested in the Motion being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before the Court (the "**Preliminary Hearing**"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefore:

**IT IS HEREBY FOUND THAT:**

A. On December 3, 2008 (the "**Petition Date**"), the Debtors each filed a voluntary petition for relief under Chapter 11 of Title 11, United States Code, 11 U.S.C. §§ 101 *et seq.* (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Southern District of New York. The Debtors are continuing to operate their businesses and manage their properties as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner and no official committee has yet been established in the Debtors' Chapter 11 cases.

B. This Court has jurisdiction over these Chapter 11 cases and the Motion pursuant to 28 U.S.C. § 157(b) and 1334. Consideration of this Motion constitutes a core

proceeding as defined in 28 U.S.C. § 157(b)(2). The statutory predicates for the relief sought herein are sections 105, 361 and 363 of the Bankruptcy Code and Rule 4001(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”). Venue of the Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Without prejudice to the rights of any other party, the Debtors acknowledge and agree that pursuant to the Credit Agreement among Bally, 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 the Senior Secured Lenders, the Senior Secured Lenders provided pre-petition financing of up to \$292 million, consisting of \$50 million in a senior secured revolving credit facility with a \$40 million sublimit for letters of credit (the “**Revolver Facility**”) and a six-year \$242 million senior secured term loan facility (the “**Term Loan**”). The proceeds from the Term Loan and the Revolver Facility were used to refinance the amounts outstanding under the Company’s debtor-in-possession financing agreement and to provide additional working capital.

D. Without prejudice to the rights of any other party, the Debtors acknowledge and agree that pursuant to the Guarantee and Collateral Agreement, dated October 1, 2007, made by Bally and the other Debtors in favor of the Agent, obligations under the Credit Agreement are secured by (subject to certain exceptions) first priority liens and security interests on certain assets and property of the Debtors, including without limitation, accounts, deposit accounts, chattel paper, commercial tort claims, contracts, documents, equipment, general intangibles, instruments, intellectual property, inventory, investment property, all pledged securities, receivables, goods, and books and records and the proceeds thereof (collectively the “**Prepetition Collateral**”).

E. Without prejudice to the rights of any other party, the Debtors acknowledge and agree that in connection with the second waiver, dated September 23, 2008 (the “**Second Waiver**”), the Senior Secured Lenders were granted security interests in approximately 53 leasehold and fee-owned property interests (the “**Encumbered Leases**”). Notwithstanding the Second Waiver, as of the Petition Date, the Debtors have 350 leases that had not been pledged to the Senior Secured Lenders (the “**Unencumbered Leases**”).

F. Without prejudice to the rights of any party, the Debtors further acknowledge and agree that certain cash on hand of the Debtors and amounts generated by the collection of accounts receivable, sale of inventory or other dispositions of the Prepetition Collateral constitute proceeds of the Prepetition Collateral and, therefore, is cash collateral of the Senior Secured Lenders within the meaning of Section 363(a) of the Bankruptcy Code (the “**Cash Collateral**”).

G. Without prejudice to the rights of any other party, the Debtors acknowledge and agree that as of the Petition Date, the Agent and the Senior Secured Lenders had made loans and financial accommodations such that (i) Bally was liable to the Agent and the Senior Secured Lenders in respect of loans made by the Agent and the Senior Secured Lenders to Bally pursuant to the Credit Agreement in the aggregate principal amount of not less than \$285.1 million, (ii) Bally was contingently liable to the Agent and the Senior Secured Lenders in the aggregate face amount of approximately \$5.7 million on account of Bally’s reimbursement obligations with respect to letters of credit issued pursuant to the Credit Agreement which remained outstanding as of the Petition Date, (iii) Bally was liable to the Agent and the Senior Secured Lenders for fees and expenses incurred in connection with such loans and letters of credit as provided in the Credit Agreement, and (iv) each Debtor party to a guarantee executed

and delivered in respect of the Prepetition Obligations was contingently liable to the Agent and the Senior Secured Lenders pursuant to such guarantee (collectively, the “**Prepetition Obligations**”).

H. Without prejudice to the rights of any other party, the Debtors acknowledge and agree that on October 1, 2008, Bally issued \$247,337,500 of the Senior Secured Notes under that certain Indenture, dated as of October 1, 2007 (the “**Senior Secured Notes Indenture**”) between Bally and U.S. Bank National Association (“**U.S. Bank**”) as Trustee. The Debtors have granted U.S. Bank, on behalf and for the benefit of the holders of the Senior Secured Notes, a second priority lien on the Prepetition Collateral.

I. Without prejudice to the rights of any other party, the Debtors acknowledge and agree that the Senior Secured Lenders and the Senior Secured Noteholders (together, the “**Prepetition Secured Creditors**”) are entitled, pursuant to Sections 361 and 363(e) of the Bankruptcy Code, to adequate protection of their interest in the Prepetition Collateral to the extent of the diminution in value, including for the use of the Cash Collateral, the use, sale, lease, depreciation, or other diminution in value of the Prepetition Collateral other than the Cash Collateral, and the imposition of the automatic stay.

J. Good cause has been shown for the entry of this Order. The ability of the Debtors to finance their operations requires the use of Cash Collateral, absent which immediate and irreparable harm will result to the Debtors, their estates and creditors, and the possibility for a successful chapter 11 case. In the absence of the use of Cash Collateral, the continued operation of the Debtors’ businesses would not be possible and serious and irreparable harm to the Debtors, their estates and their creditors would occur. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses in the ordinary

course of business or to maintain their property without the use of Cash Collateral. The relief requested in the Motion is therefore necessary, essential, and appropriate for the continued operation of the Debtors' businesses, the management and preservation of their property. The use of the Cash Collateral is therefore of the utmost significance and importance to the preservation and maintenance of the going concern value of the Debtors and their estates, and the preservation of prospects for a successful reorganization of the Debtors under Chapter 11 of the Bankruptcy Code.

K. The Prepetition Secured Creditors have not objected to the Debtors use their Cash Collateral. In addition, based on the record presented to the Court at the Preliminary Hearing, the terms of the Debtors' use of the Prepetition Secured Creditors' Cash Collateral appear to be fair and reasonable, and to reflect the Debtors' and their respective directors' exercise of prudent business judgment consistent with their fiduciary duties.

L. The Debtors have requested immediate entry of this Order pursuant to Bankruptcy Rule 4001(b)(2). The use of the Preparation Secured Creditors' Cash Collateral is necessary to avoid immediate and irreparable harm to the Debtors. This Court concludes that entry of this Order is in the best interest of the Debtors' estate and creditors.

M. Notice of the Preliminary Hearing and the relief requested in the Motion has been given to: (a) the United States Trustee; (b) counsel to the Agent; (c) the creditors listed on the Debtors' consolidated list of fifty largest unsecured creditors, as filed with the chapter 11 petitions; (d) counsel to the indenture trustee for the Senior Secured Notes; (e) counsel to the indenture trustee for the Subordinated Toggle Notes; and (f) counsel to Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund L.P. Under the circumstances, such notice of the Preliminary Hearing was given in accordance with

Sections 102(1) and 363 of the Bankruptcy Code, Bankruptcy Rules 2002 and 4001(b), and the local rules of this District.

Based upon the foregoing findings and conclusions, and upon the record made before this Court at the Preliminary Hearing, and good and sufficient cause appearing therefor;

**IT IS HEREBY ORDERED** that:

1. The Motion is granted as set forth herein. The Debtors are hereby authorized to use the Cash Collateral (including, without limitation, Cash Collateral consisting of proceeds from any disposition of Prepetition Collateral prior to the Petition Date) on an interim basis for general corporate purposes and costs and expenses related to these Chapter 11 cases in accordance with the Budget attached as Annex A hereto and the terms and conditions of this Order.

2. Subject to the terms and conditions of this Interim Order, and in accordance with the Budget (as defined below), the Debtors are authorized to use Cash Collateral for the period (the “**Specified Period**”) from the Petition Date through the earliest to occur of (a) the date an order is entered granting or denying the Motion on a final basis, and such order is no longer subject to appeal, certiorari or other review, or (b) 11:59 p.m. (Eastern time) on [\_\_\_\_], 2009. Except as otherwise expressly provided herein, Cash Collateral may be used during the Specified Period solely up to the amounts (not to exceed 115% of the amounts set forth in the Budget on a cumulative, aggregate rolling basis measured weekly as of the close of business on Friday of each week), at the times, and for the purposes identified in the cash collateral budget reasonably approved by the Agent (the “**Budget**”), a copy of which is attached hereto as Annex A. The authorization for the Debtors to use Cash Collateral shall terminate at the expiration of the Specified Period.

3. Notwithstanding anything to the contrary in the Credit Agreement, the Revolving Agent, in its capacity as Issuing Lender (or such other Issuing Lender acceptable to the Revolving Agent), is hereby authorized (but not directed) to amend, replace, renew or reissue any Letter of Credit outstanding under the Credit Agreement as of the Petition Date, so long as (i) the aggregate face amount of the sum of Letters of Credit outstanding after any such amendment, replacement, renewal or reissuance, does not exceed the aggregate face amount of the Letters of Credit outstanding as of the Petition Date and (ii) any such amendment, replacement, renewal or reissuance is on the same terms and conditions as any Letters of Credit outstanding under the Credit Agreement as of the Petition Date.

4. As adequate protection for, and to the extent of, any diminution in the value of the Preparation Secured Creditors' interest in the Prepetition Collateral resulting from (x) the use of the Cash Collateral pursuant to Section 363(c) of the Bankruptcy Code, (y) the use, sale, lease, depreciation, or other diminution in value of the Prepetition Collateral (other than the Cash Collateral) pursuant to Section 363(c) of the Bankruptcy Code and (z) the imposition of the automatic stay pursuant to Section 362(a) of the Bankruptcy Code (the amount of any such diminution being referred to hereinafter as the "**Adequate Protection Obligations**"), the Preparation Secured Creditors are granted:

- a. *Interest Payments.* The Debtors will make monthly interest payments to the Agent, for the benefit of the lenders under the Revolver Facility, in the amount of approximately \$300,000.
- b. *Expense Reimbursement.* The Debtors will pay the Agent's reasonable and documented expenses, not to exceed \$100,000 monthly, for professional fees in connection with monitoring the Debtors' use of Cash Collateral and the Chapter 11 Cases.
- c. *Senior Secured Lenders' Replacement Liens.* The Senior Secured Lenders shall receive (effective as of the Petition Date), first priority perfected replacement liens (the "**First Priority Replacement Liens**") on all of the Debtors' rights in property acquired postpetition of the same type as the



Prepetition Collateral (collectively, with the proceeds and products of any and all of the foregoing, the “**Postpetition Collateral**”) and the Encumbered Leases in the same relative priority as the Prepetition Liens

- d. *Senior Secured Notes Replacement Liens.* The Senior Secured Noteholders shall receive (effective as of the Petition Date) second priority perfected replacement liens (the “**Second Priority Replacement Liens**,” and together with the First Priority Replacement Liens, the “**Replacement Liens**”) on all of the Debtors’ rights in the Postpetition Collateral.
- e. *Senior Secured Lenders’ Real Estate Liens.* The Senior Secured Lenders shall receive (effective as of the Petition Date) first priority perfected liens (the “**First Priority Real Estate Liens**”) on all of the Debtors’ rights in the Unencumbered Leases in the same relative priority as the Prepetition Liens.
- f. *Senior Secured Notes Real Estate Liens.* The Senior Secured Noteholders shall receive (effective as of the Petition Date) second priority perfected liens on the Unencumbered Leases (the “**Second Priority Real Estate Liens**,” and together with the First Priority Real Estate Liens, the “**Real Estate Liens**”).

5. Notwithstanding the granting of the Real Estate Liens to the Senior Secured Lenders and the Senior Secured Notes, the Debtors preserve their rights, subject to Court approval, to pledge the Unencumbered Leases to a lender who provides debtor-in-possession financing, with liens superior to the First Priority Real Estate Liens and the Second Priority Real Estate Liens.

6. The Replacement Liens shall be senior to all liens and encumbrances of all other secured creditors in and to such Postpetition Collateral granted, or arising, after the Petition Date (including, without limitation, liens and security interests, if any, granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtor). The Replacement Liens and the Real Estate Liens granted pursuant to this Order shall constitute valid and duly perfected security interests and liens, and the Prepetition Secured Creditors shall not be required to file or serve financing statements, notices of lien or similar instruments which otherwise may be required under federal or state law in any jurisdiction, or

take any action, including taking possession, to validate and perfect such security interests and liens; and the failure by the Debtors to execute any documentation relating to the Replacement Liens and the Real Estate Liens shall in no way affect the validity, perfection or priority of such Replacement Liens and Real Estate Liens. If, however, the Agent, in its sole discretion, shall determine to file any such financing statements, notices of lien or similar instruments, or to otherwise confirm perfection of such Replacement Liens and the Real Estate Liens, the Debtors are directed to cooperate with and assist in such process, the stay imposed by Section 362(a) of the Bankruptcy Code is hereby lifted to allow the filing and recording of a certified copy of this Order or any such financing statements, notices of lien or similar instruments, and all such documents shall be deemed to have been filed or recorded at the time of and on the date of this Order.

7. The approval of the Interim Order shall be without prejudice to the rights and remedies of any party in interest, including the Debtors and any statutory committee, to: (a) review, object to, challenge or contest the validity, perfection or priority of the Prepetition Secured Creditors' liens and security interests on the Prepetition Collateral or the allowable amount of the Prepetition Obligations; or (b) otherwise assert any claims or causes of action against the Prepetition Secured Creditors related thereto.

8. The provisions of this Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (a) confirming any plan of reorganization in these Chapter 11 cases; (b) converting any of these Chapter 11 cases to a Chapter 7 case; or (c) dismissing any of these Chapter 11 cases. If an order dismissing these Chapter 11 cases under Section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with Sections 105 and 349 of the Bankruptcy Code) that (a) the

Replacement Liens and Real Estate Liens granted pursuant to this Order to the Prepetition Secured Creditors shall continue in full force and effect, shall remain binding on all parties in interest notwithstanding such dismissal until the obligations secured thereby shall have been paid and satisfied in full and (b) this Court shall retain jurisdiction, notwithstanding such dismissal, for the limited purposes of enforcing such Replacement Liens and Real Estate Liens.

9. Notwithstanding any provision in other “first day” orders entered by this Court authorizing the Debtors to make payments in respect of Prepetition Obligations, the provisions in this Order conditioning the payment of such amounts or limiting the amount of such payments are controlling.

10. Upon satisfaction of the Prepetition Obligations, the Prepetition Secured Creditors shall release all liens and security interests upon the Prepetition Collateral, Real Estate Liens and all Replacement Liens.

11. The Final Hearing to consider entry of the Final Order is scheduled for \_\_\_\_\_, 2008 at \_\_\_\_:\_\_\_\_ \_\_.m. (Eastern time) before Honorable \_\_\_\_\_, United States Bankruptcy Judge, Courtroom \_\_\_\_ at the United States Bankruptcy Court for the Southern District of New York. The Debtors shall, on or before [\_\_\_\_\_\_ \_\_\_\_], 2008, mail copies of a notice of the entry of this Interim Order and the Final Hearing, together with a copy of this Interim Order and the Motion, to the parties having been given notice of the Preliminary Hearing, to any party which has filed prior to such date a request for notices with this Court and to counsel for any statutory committee of unsecured creditors appointed pursuant to Section 1102 of the Bankruptcy Code. The notice of entry of this Order shall state that any party in interest objecting to the use of the Cash Collateral shall file written objections with the United States Bankruptcy Court Clerk for the Southern District of New York no later than 4:00 p.m. on

[\_\_\_\_\_] \_\_], 2008 and objections shall be served so that the same are received on or before such date by: (a) Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attention: Kenneth H. Eckstein, Esq., Attorneys for the Debtors, (b) Skadden, Arps, Slate, Meagher & Flom LLP, 333 West Wacker Drive, Chicago, Illinois 60606, Attention: Tim Pohl, Esq., Attorneys for the Agent for the Senior Secured Lenders, and (c) the Office of the United States Trustee.

Dated: New York, New York  
December \_\_, 2008

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UNITED STATES BANKRUPTCY JUDGE