

**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. 07-12395 (BRL)
	)	
Debtors.	)	
	)	Jointly Administered

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (I) APPROVING  
DISCLOSURE STATEMENT AND (II) CONFIRMING THE DEBTORS' FIRST  
AMENDED JOINT PREPACKAGED PLAN OF REORGANIZATION UNDER  
CHAPTER 11 OF THE BANKRUPTCY CODE**

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The Joint Prepackaged Chapter 11 Plan Of Reorganization Of Bally Total Fitness Holding Corporation And Its Affiliate Debtors, dated June 27, 2007 (the "**Original Plan**"), having been filed with the Bankruptcy Court (the "**Court**") on July 31, 2007 (Docket No. 37) by the above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**")<sup>1</sup>; and the Disclosure Statement For The Joint Prepackaged Chapter 11 Plan Of Reorganization Of Bally

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<sup>1</sup> The Debtors in these proceedings are: Bally Total Fitness of Greater New York, Inc., Bally Total Fitness Holding Corporation, Bally Total Fitness Corporation, Bally ARA Corporation, Bally Fitness Franchising, Inc., Bally Franchise RSC, Inc., Bally Franchising Holdings, Inc., 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 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 Cincinnati Corporation, BTF Europe Corporation, BTF Indianapolis Corporation, BTF Minneapolis Corporation, BTF/CFI, Inc., BTFCC, Inc., BTF Corporation, 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 La Lanne Holding Corp., New Fitness Holding Co., Inc., Nycon Holding Co., Inc., Rhode Island Holding Company, Tideland's Holiday Health Clubs, Inc., and U.S. Health, Inc.

Total Fitness Holding Corporation And Its Affiliate Debtors, dated June 27, 2007 (the “**Disclosure Statement**”), having been filed with this Court on July 31, 2007 (Docket No. 36); and the Disclosure Statement, and appropriate Ballots for voting on the Original Plan, having been transmitted to Holders<sup>2</sup> of Class 5 Claims and Class 6-A Claims against the Debtors as set forth in that certain Order (A) Scheduling Combined Hearing On Disclosure Statement And Confirmation Of Plan And Establishing Procedures For Objecting To Disclosure Statement And Plan; (B) Approving Form And Manner Of Notice Of Combined Hearing On Disclosure Statement And Confirmation Of Plan; (C) Approving Prepetition Solicitation Procedures; And (D) Granting Related Relief, dated as of August 2, 2007 (Docket No. 92, the “**Solicitation Procedures Order**”); and The First Amended Joint Prepackaged Chapter 11 Plan Of Reorganization Of Bally Total Fitness Holding Corporation And Its Affiliate Debtors, dated August 17, 2007 (the “**Plan**”), having been filed with this Court on August 17, 2007 (Docket No. 253) by the Debtors; and this Court having entered that certain Order Authorizing The Debtors, Pursuant To Section 1127(A) Of The Bankruptcy Code And Bankruptcy Rule 3019, To Modify Their Joint Prepackaged Chapter 11 Plan Of Reorganization, dated August 21, 2007 (Docket No. 268, the “**Plan Modification Approval Order**”), finding that the Plan is deemed accepted by all creditors who had previously accepted the Original Plan and that the Debtors were not required to prepare or distribute a new disclosure statement with respect to the Plan; and a copy of the Plan, as approved by the Plan Modification Approval Order and as subsequently modified since the entry of the Plan Modification Approval Order, being attached hereto as Exhibit 1; and a redline copy of the Plan showing the modifications to the Plan between the Confirmation

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<sup>2</sup> All capitalized terms used and not otherwise defined in this Confirmation Order shall have the meanings ascribed to them in the Plan (as defined below).

Hearing and entry of the Plan Modification Approval Order being attached hereto as Exhibit 2 (such plan modifications, the “**Subsequent Plan Modifications**”); and the Debtors having filed their Memorandum Of Law In Support Of Entry Of An Order (I) Approving (A) The Debtors’ Disclosure Statement Pursuant To Sections 1125 And 1126(B) Of The Bankruptcy Code, (B) Solicitation Of Votes And Voting Procedures, And (C) Forms Of Ballots, And (II) Confirming The Debtors’ Joint Prepackaged Plan Of Reorganization Pursuant To Chapter 11 Of The Bankruptcy Code, with this Court on September 13, 2007 (the “**Confirmation Memorandum**”); and the hearing to consider the adequacy of the Disclosure Statement and the confirmation of the Plan having been held before this Court on September 17, 2007 (the “**Confirmation Hearing**”) after due and sufficient notice was given to Holders of Claims against, and Interests in, the Debtors and other parties in interest in accordance with the Solicitation Procedures Order, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the local bankruptcy rules of this Court and General Order 203 of the United States Bankruptcy Court for the Southern District of New York, “Adoption of Prepackaged Chapter 11 Case Guidelines,” dated February 24, 1999 (the “**Prepack Guidelines**”), in each case as established by the affidavits of service, mailing and/or publication filed with this Court prior to the Confirmation Hearing (collectively, the “**Notice Affidavits**”);<sup>3</sup> and upon all of the proceedings held before this Court and after full consideration of: (i) each of the objections to the adequacy of the Disclosure Statement and the confirmation of the Plan filed with this Court and not subsequently withdrawn, settled or deemed moot (the “**Objections**”); (ii) the Amended Affidavit Of Tabulation Of Votes With Respect To Joint Prepackaged Chapter 11 Plan Of Reorganization

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<sup>3</sup> The Notice Affidavits are located at Docket Nos. 215, 247, 252, 254, 259, 316, 338, 377 & 378.

Of Bally Total Fitness Holding Corporation And Its Affiliate Debtors, filed on August 8, 2007 (Docket No. 143) by MacKenzie Partners, Inc., the Debtors' voting agent; (iii) testimony proffered or presented at the Confirmation Hearing, (iv) the declarations and/or affidavits filed with this Court; (v) all other evidence proffered or adduced at, memoranda and objections filed in connection with and arguments of counsel made at, the Confirmation Hearing; and (vi) the entire record of the above-captioned chapter 11 cases; and after due deliberation thereon; and good cause appearing therefor;

**IT IS HEREBY FOUND AND DETERMINED THAT:**<sup>4</sup>

A. Chapter 11 Petitions. On July 31, 2007 (the "**Petition Date**"), the Debtors commenced voluntary cases under chapter 11 of the Bankruptcy Code with this Court (the "**Chapter 11 Cases**"). The Debtors have operated their business and managed their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed pursuant to section 1104 of the Bankruptcy Code. No statutory committee of unsecured creditors has been appointed pursuant to section 1102 of the Bankruptcy Code.

B. Exclusive Jurisdiction; Venue; Core Proceeding (28 U.S.C. §§ 157(b)(2) and 1334(a)). This Court has jurisdiction over the Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Approval of the Disclosure Statement and confirmation of the Plan is a core proceeding under 28 U.S.C. § 157(b)(2) and this

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<sup>4</sup> The findings and conclusions set forth in this Confirmation Order and in the record of the Confirmation Hearing constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code.

C. Judicial Notice. This Court takes judicial notice of the docket of the Chapter 11 Cases maintained by the Clerk of this Court and/or its duly-appointed agent, including, without limitation, all pleadings and other documents filed, all orders entered and all evidence and arguments made, proffered or adduced at, the hearings held before this Court during the pendency of the Chapter 11 Cases.

D. Adequacy of Solicitation and Disclosure Statement. Section 1126(b) of the Bankruptcy Code applies to the solicitation of acceptances and rejections of the Original Plan prior to the commencement of these Chapter 11 Cases. The solicitation of acceptances and rejections of the Original Plan was exempt from the registration requirements of the Securities Act of 1933 (as amended, and including the rules and regulations promulgated thereunder, the “**Securities Act**”) and applicable state and local securities laws, and no other non-bankruptcy law applies to the solicitation. The Disclosure Statement contains adequate information within the meaning of, and for all purposes under, sections 1125 and 1126(b) of the Bankruptcy Code, and is hereby approved in all respects. Votes for acceptance or rejection of the Original Plan (as modified by the Plan and as approved in the Plan Modification Approval Order) were solicited in good faith and in compliance with sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018 and all other applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the local bankruptcy rules of this Court, the Prepack Guidelines and all other rules, laws and regulations. All procedures used to distribute Ballots to the applicable Holders of Claims and to tabulate the Ballots were fair and reasonable and conducted in accordance with the Solicitation Procedures Order and the applicable provisions of the Bankruptcy Code, the

Bankruptcy Rules, the local bankruptcy rules of this Court, the Prepack Guidelines and all other applicable rules, laws, and regulations. The forms of the Ballots were sufficiently consistent with the form of ballot annexed to the Prepack Guidelines and adequately addressed the particular needs of these Chapter 11 Cases and were appropriate for each class of Claims entitled to vote to accept or reject the Original Plan (as modified by the Plan and as approved in the Plan Modification Approval Order).

E. Transmittal and Mailing of Materials; Notice. The Debtors have given proper and sufficient notice of the hearing to approve the Disclosure Statement as required by Bankruptcy Rule 3017(a). The Debtors have given proper and sufficient notice of the Confirmation Hearing as required by Bankruptcy Rule 3017(d). The solicitation of votes to accept or reject the Original Plan (as modified by the Plan and as approved in the Plan Modification Approval Order) satisfies Bankruptcy Rule 3018. The Original Plan, the Plan and the Disclosure Statement were transmitted to all creditors entitled to vote on the Original Plan (as modified by the Plan and as approved in the Plan Modification Approval Order) and sufficient time was prescribed for such creditors to accept or reject the Original Plan (as modified by the Plan and as approved in the Plan Modification Approval Order). The solicitation materials and solicitation procedures comply with section 1126 of the Bankruptcy Code, thereby satisfying the requirements of Bankruptcy Rule 3018. Due, adequate and sufficient notice of the Disclosure Statement, the Original Plan, the Plan and the Confirmation Hearing, along with deadlines for voting on or filing objections to the Original Plan, the Plan and the Disclosure Statement, has been given to all known Holders of Claims and Interests substantially in accordance with the procedures set forth in the Solicitation Procedures Order. The Disclosure Statement, Original Plan, Plan, Ballots and Solicitation Procedures Order were transmitted and served in compliance

with the Solicitation Procedures Order and the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the local bankruptcy rules of this Court, the Prepack Guidelines and all other applicable rules, laws, and regulations, and such transmittal and service were adequate and sufficient under the circumstances.

F. Subsequent Plan Modifications. Adequate and sufficient notice of the Subsequent Plan Modifications has been given and no other or further notice is or shall be required and such Subsequent Plan Modifications are approved in full.

G. Burden of Proof. The Debtors, as proponents of the Plan, have the burden of proving the satisfaction of the elements of Sections 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence.

H. Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)). The Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying Section 1129(a)(1) of the Bankruptcy Code.

(a) Proper Classification (11 U.S.C. §§ 1122 & 1123(a)(1)). In addition to Administrative Claims, DIP Lenders Claims and Priority Tax Claims, which need not be classified, the Plan designates eleven (11) Classes of Claims and Interests. The Claims and Interests placed in each Class are substantially similar to other Claims or Interests, as the case may be, in each such Class. Valid business, factual and legal reasons exist for separately classifying the various Classes of Claims and Interests created under the Plan and such Classes do not unfairly discriminate between Holders of Claims or Interests. Thus, the Plan satisfies Sections 1122 and 1123(a)(1) of the Bankruptcy Code.

(b) Specify Unimpaired Classes (11 U.S.C. § 1123(a)(2)). The Plan specifies that Class 1 Non-Tax Priority Claims, Class 2 Other Secured Claims, Class 3 Unimpaired

Unsecured Claims, Class 4 Prepetition Lenders Claims and Class 9 Old Equity Interests in Affiliate Debtors are Unimpaired under the Plan, thereby satisfying Section 1123(a)(2) of the Bankruptcy Code.

(c) Specify Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). The Plan designates Class 5 Prepetition Senior Notes Claims, Class 6-A Prepetition Senior Subordinated Notes Claims, Class 6-B-1 Rejection Claims Against Only Bally, Class 6-B-2 Rejection Claims Against Any Affiliate Debtor, Class 7 Old Common Stock and Class 8 Old Unexercised Equity Interests as Impaired and specifies the treatment of Claims and Interests in those Classes, thereby satisfying Section 1123(a)(3) of the Bankruptcy Code.

(d) No Discrimination Within Classes (11 U.S.C. § 1123(a)(4)). The Plan provides for the same treatment by the Debtors for each Claim or Interest in each respective Class unless the Holder of a particular Claim or Interest has agreed to a less favorable treatment of such Claim or Interest, thereby satisfying Section 1123(a)(4) of the Bankruptcy Code.

(e) Classification Takes Into Account Subordination Rights. The classification and manner of satisfying all Claims and Interests under the Plan takes into consideration all contractual, legal and equitable subordination and turnover rights, whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise, that a Holder of a Claim or Interest may have against other Holders of a Claim or Interest with respect to any distribution made pursuant to the Plan.

(f) Implementation of Plan (11 U.S.C. § 1123(a)(5)). The Plan provides adequate and proper means for implementation of the Plan, thereby satisfying Section 1123(a)(5) of the Bankruptcy Code.

(g) Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)). The Plan provides that the certificates of incorporation of the Reorganized Debtors that are corporations shall prohibit the issuance of non-voting equity securities to the extent required by Section 1123(a)(6) of the Bankruptcy Code, thereby satisfying Section 1123(a)(6) of the Bankruptcy Code.

(h) Selection of Directors and Officers (11 U.S.C. § 1123(a)(7)). Pursuant to Section 5.4(b) of the Plan, the initial officers of Reorganized Bally shall be the officers of Bally existing immediately prior to the Effective Date. The board of directors of Reorganized Bally were identified by the Debtors at or prior to the Confirmation Hearing. At or prior to the Confirmation Hearing, the Debtors disclosed the identity and affiliations of any Person (each, a “**New Director**”) proposed to serve on the initial board of directors of Reorganized Bally (the “**Reorganized Board**”), and, to the extent such Person is an insider other than by virtue of being a director, the nature of any compensation for such Person. At the Effective Date, the board of directors of Reorganized Bally shall be reconstituted and declassified as provided in the Amended Certificate of Incorporation of Reorganized Bally, and the New Directors shall be appointed as the directors of the Reorganized Bally. The boards of directors and initial officers of the Reorganized Affiliate Debtors on the Effective Date shall be comprised of the same individuals who currently serve in such capacities (other than those Persons that are deemed to have resigned on the Effective Date pursuant to the Plan). The directors

and officers of the Reorganized Debtors were selected in a manner consistent with the interests of creditors and with public policy, thereby satisfying Section 1123(a)(7) of the Bankruptcy Code. No action required by the Plan (including, but not limited to the appointment of new directors to the boards of any of the Debtors) shall be a “Change of Control” under the DIP Credit Agreement, the Prepetition Senior Notes Indenture, the Prepetition Subordinated Notes Indenture, the New Second Lien Notes Indenture or the New Harbinger Subordinated Notes Indenture.

(i) Additional Plan Provisions (11 U.S.C. § 1123(b)). The Plan’s provisions are appropriate, in the best interests of the Debtors and their Estates and not inconsistent with the applicable provisions of the Bankruptcy Code, including, without limitation, provisions for (i) the assumption or rejection of executory contracts and unexpired leases; (ii) the Reorganized Debtors’ retention of certain Litigation Claims that the Debtors had or had power to assert immediately prior to the Effective Date, whether directly or derivatively; and (iii) releases of various persons and entities, exculpation of various persons and entities with respect to actions related to or taken in furtherance of the Chapter 11 Cases and preliminary and permanent injunctions against certain actions against the Debtors, their Estates and their properties.

(j) Identification of Plan (Bankruptcy Rule 3016(a)). The Plan is dated and identifies the entity submitting it, thereby satisfying Bankruptcy Rule 3016(a).

I. The Debtors’ Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Debtors have complied with the applicable provisions of the Bankruptcy Code, thereby satisfying Section 1129(a)(2) of the Bankruptcy Code. Specifically:

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

(b) The Debtors have complied with the applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of this Court.

(c) The Debtors have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the local bankruptcy rules of this Court, the Prepack Guidelines and the Solicitation Procedures Order in transmitting the Original Plan, the Plan, the Disclosure Statement, the Ballots and related documents and notices and in soliciting and tabulating votes on the Original Plan.

J. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Debtors have proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying Section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, this Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Cases and the formulation and confirmation of the Plan. The Debtors, the Prepetition Noteholders Committee, the New Investors and the Backstop Parties (and each of their respective professionals) have negotiated the Plan and participated in the Plan formulation process in good faith. The Chapter 11 Cases were filed and the Plan was proposed with the legitimate and honest purpose of reorganizing the Debtors and maximizing the value of the Debtors' assets and expeditiously distributing the New Securities and Documents and other consideration to the Debtors' creditors and interest holders pursuant to the Plan.

K. Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). Any payment made or to be made by the Debtors for services or for 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 requiring approval, has been approved by, or is subject to the approval of, this Court as reasonable, thereby satisfying Section 1129(a)(4) of the Bankruptcy Code.

L. Directors, Officers and Insiders (11 U.S.C. § 1129(a)(5)). The Debtors have complied with Section 1129(a)(5) of the Bankruptcy Code. The identity and affiliations of the persons proposed to serve as the initial directors and officers of the Reorganized Debtors after confirmation of the Plan have been fully disclosed to the extent such information is available, and the appointment to, or continuance in, such offices of such persons is consistent with the interests of Holders of Claims against and Interests in the Debtors and with public policy. To the extent available, the identity of any insider that will be employed or retained by the Reorganized Debtors and the nature of such insider's compensation have also been fully disclosed.

M. No Rate Changes (11 U.S.C. § 1129(a)(6)). The Debtors are not subject to any governmental regulatory commission with jurisdiction, after confirmation of the Plan, over the rates of the Debtors. Thus, Section 1129(a)(6) of the Bankruptcy Code is not applicable in the Chapter 11 Cases.

N. Best Interests of Creditors Test (11 U.S.C. § 1129(a)(7)). The Plan satisfies Section 1129(a)(7) of the Bankruptcy Code. The liquidation analysis set forth in Exhibit 4 to the Disclosure Statement and other evidence proffered or adduced at the Confirmation Hearing (a) are persuasive and credible, (b) have not been controverted by other evidence and (c) establish that each Holder of a Claim or 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 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.

O. Acceptance by Classes (11 U.S.C. § 1129(a)(8)). Class 1 Non-Tax Priority Claims, Class 2 Other Secured Claims, Class 3 Unimpaired Unsecured Claims, Class 4 Prepetition Lenders Claims and Class 9 Old Equity Interests in Affiliate Debtors are Unimpaired

by the Plan. Under Section 1126(f) of the Bankruptcy Code, such Holders of Claims and Interests are conclusively presumed to have accepted the Plan. Class 5 Prepetition Senior Notes Claims and Class 6-A Prepetition Senior Subordinated Notes Claims have voted to accept the Plan in accordance with Sections 1126(b) and (c) of the Bankruptcy Code and the Plan Modification Approval Order. Class 6-B-1 Rejection Claims Against Only Bally, Class 6-B-2 Rejection Claims Against Any Affiliate Debtor, Class 7 Old Common Stock and Class 8 Old Unexercised Equity Interests are deemed to have rejected the Plan. Although Section 1129(a)(8) of the Bankruptcy Code is not satisfied with respect to such rejecting Classes identified above, the Plan may nevertheless be confirmed because the Plan satisfies Section 1129(b) of the Bankruptcy Code with respect to such rejecting Classes. Section 4.5 of the Plan contemplates non-consensual confirmation of the Plan.

P. Treatment of Administrative Claims, Non-Tax Priority Claims and Priority Tax Claims (11 U.S.C. § 1129(a)(9)). The treatment of Allowed Administrative Claims and Allowed Non-Tax Priority Claims under Section 3.1(a) and Section 3.2(a) of the Plan, respectively, satisfies the requirements of Section 1129(a)(9)(A) and (B) of the Bankruptcy Code, and the treatment of Allowed Priority Tax Claims under Section 3.1(b) of the Plan satisfies the requirements of Section 1129(a)(9)(C) of the Bankruptcy Code, thereby satisfying Section 1129(a)(9) of the Bankruptcy Code.

Q. Acceptance by At Least One Impaired Class of Claims (11 U.S.C. § 1129(a)(10)). Class 5 Prepetition Senior Notes Claims and Class 6-A Prepetition Senior Subordinated Notes Claims are impaired classes of Claims that have voted to accept the Plan in accordance with Sections 1126(b) and (c) of the Bankruptcy Code, determined without including any acceptance of the Plan by “insiders,” thereby satisfying Section 1129(a)(10) of the Bankruptcy Code.

R. Feasibility (11 U.S.C. § 1129(a)(11)). The evidence proffered or adduced at the Confirmation Hearing (i) is persuasive and credible, (ii) has not been controverted by other evidence, and (iii) establishes that the Plan is feasible and that there is a reasonable prospect of the Reorganized Debtors being able to meet their financial obligations under the Plan and their business in the ordinary course and that confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Reorganized Debtors, thereby satisfying the requirements of section 1129(a)(11) of the Bankruptcy Code. This Court has made this finding after taking into account, and fully considering, pending litigation against the Debtors and Reorganized Debtors.

S. Payment of Fees (11 U.S.C. § 1129(a)(12)). All fees payable under 28 U.S.C. § 1930 have been paid or will be paid pursuant to Section 12.5 of the Plan, thereby satisfying Section 1129(a)(12) of the Bankruptcy Code.

T. Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13)). Pursuant to Section 7.4 of the Plan, the Reorganized Debtors shall continue to pay all retiree benefits of the Debtors for the duration of the period for 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.

U. No Unfair Discrimination; Fair and Equitable (11 U.S.C. § 1129(b)). Class 6-B-1 Rejection Claims Against Only Bally, Class 6-B-2 Rejection Claims Against Any Affiliate Debtor, Class 7 Old Common Stock and Class 8 Old Unexercised Equity Interests (collectively, the “**Rejecting Classes**”) are deemed to have rejected the Plan. The evidence proffered or adduced at the Confirmation 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 the Rejecting Classes, as required by sections 1129(b)(1) and (b)(2) of the Bankruptcy Code, because either (a) the Holders of such Impaired Claims represented by the respective Rejecting Class will receive or retain on account of such Claim property of a value, as of the effective date of the plan, equal to the allowed amount of such Claim or (b) no Holder of any interest that is junior to the Impaired Interest represented by the respective Rejecting Class will receive or retain any property under the Plan on account of such junior interest, and no Holder of a Claim in a Class senior to the Rejecting Classes is receiving more than 100% recovery on account of its Claim. Thus, the Plan may be confirmed notwithstanding the deemed rejection of the Plan by the Rejecting Classes.

V. Principal Purpose of Plan (11 U.S.C. § 1129(d)). The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of Section 5 of the Securities Act of 1933 (15 U.S.C. § 77e).

W. Good Faith Solicitation (11 U.S.C. § 1125(e)). The evidence proffered or adduced at the Confirmation Hearing (i) is persuasive and credible, (ii) has not been controverted by other evidence, and (iii) establishes that the Debtors, the Reorganized Debtors, the Prepetition Noteholders Committee, the Prepetition Senior Noteholders, the Prepetition Senior Subordinated Noteholders, the Prepetition Senior Notes Indenture Trustee, the Prepetition Senior Subordinated Notes Indenture Trustee, the Backstop Parties, the New Investors (if the Harbinger Investment Effective Date Condition has been satisfied) and Liberation (if the Harbinger Investment Effective Date Condition has been satisfied) and their respective Related Persons (collectively, the **“Protected Parties”**) have (a) solicited acceptances or rejections of the Original Plan and subscriptions to the Rights Offering in good faith and in compliance with the applicable provisions of the Bankruptcy Code, including without limitation, sections 1125 and 1126(b) of

the Bankruptcy Code, the Bankruptcy Rules, the local bankruptcy rules of this Court, the Prepack Guidelines and any applicable non-bankruptcy law, rule or regulation governing the adequacy of disclosure in connection with such solicitation and (b) participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code in the offer and issuance of any securities under the Plan. Accordingly, each of the Protected Parties is entitled to the protections afforded by Section 1125(e) of the Bankruptcy Code and the exculpation, release and limitation of liability provisions and protections set forth in Article X of the Plan.

X. Satisfaction of Confirmation Requirements. Based on the foregoing, the Plan satisfies the requirements for confirmation set forth in Section 1129 of the Bankruptcy Code.

Y. Retention of Jurisdiction. This Court may properly retain jurisdiction over the matters set forth in Article Eleven of the Plan and as contemplated herein.

Z. Findings Regarding Third-Party Releases and Related Provisions. The release, exculpation and injunction provisions contained in the Plan, including, without limitation, those contained in Article Ten of the Plan, (i) have been negotiated in good faith and at arms' length, (ii) are consistent with sections 105, 1123(b)(6), 1129, and 1142 of the Bankruptcy Code, (iii) are each necessary for the Debtors' successful reorganization and are integral to the structure of the Plan and formed part of the agreement among all parties in interest embodied therein, and (iv) satisfy the applicable standards contained in In re Metromedia Fiber Network, Inc., 416 F.3d 136 (2d Cir. 2005).

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. Approval of Disclosure Statement. The Disclosure Statement (a) contains sufficient information of a kind necessary to satisfy the disclosure requirements of applicable

non-bankruptcy law, including, without limitation, the Securities Act, (b) contains “adequate information” (as such term is defined in section 1125(a)(1) and used in section 1126(b)(2) of the Bankruptcy Code) with respect to the Debtors, the Plan, and the transactions contemplated therein, and (c) is approved in all respects.

2. Approval of Solicitation and Notice Procedures. The notice and solicitation procedures utilized by the Debtors in soliciting acceptances and rejections of the Original Plan and to provide notice of this Confirmation Hearing are approved in all respects. The form of Ballots used to solicit votes on the Original Plan are approved in all respects.

3. Confirmation of the Plan. The Plan is approved and confirmed under Section 1129 of the Bankruptcy Code. Each of the terms and conditions of the Plan, and the exhibits and schedules thereto, are an integral part of the Plan and are incorporated by reference into this Confirmation Order. The Plan complies with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the local bankruptcy rules of this Court and the Prepack Guidelines relating to and regarding confirmation.

4. Objections. All Objections to approval of the Disclosure Statement and confirmation of the Plan that have not been withdrawn, waived, or settled and all reservations of rights included therein, are overruled on the merits and for the reasons set forth on the record at the Confirmation Hearing. All withdrawn objections are deemed withdrawn with prejudice.

5. Provisions of Plan and Confirmation Order Nonseverable and Mutually Dependent. The provisions of the Plan and this Confirmation Order, including the findings of fact and conclusions of law set forth herein, are nonseverable and mutually dependent.

6. Plan Classification Controlling. The classification of Claims and Interests for purposes of the distributions to be made under the Plan shall be governed solely by the terms of

the Plan. The classifications set forth on the Ballots tendered to or returned by the Debtors' creditors in connection with voting on the Plan (a) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan, (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims or Interests under the Plan for distribution purposes, and (c) may not be relied upon by any creditor or interest holder as representing the actual classification of such Claims or Interests under the Plan for distribution or any other purpose (other than for evidencing the vote of such party on the Original Plan).

7. Binding Effect. Pursuant to Section 1141 of the Bankruptcy Code, effective as of the Effective Date, the provisions of the Plan (including the exhibits and schedules to, and all documents and agreements executed pursuant to or in connection with, the Plan) and this Confirmation Order shall be binding on (a) the Debtors, (b) all Holders of Claims against and Interests in any of the Debtors, whether or not Impaired under the Plan and whether or not such Holders have accepted or rejected the Plan, (c) each Person or Entity receiving, retaining or otherwise acquiring property under the Plan, (d) any non-Debtor party to an executory contract or unexpired lease with a Debtor, (e) any Person or Entity making an appearance in the Chapter 11 Cases or any other party-in-interest in these Chapter 11 Cases, and (f) each of the foregoing's respective heirs, successors, assigns, trustees, executors, administrators, affiliates, officers, directors, agents, representatives, attorneys, beneficiaries, or guardians.

8. Claims Arising Under the DIP Credit Agreement. On the Effective Date, any and all DIP Lenders Claims shall be (A) paid in full in Cash or (B) assumed by the applicable Reorganized Debtors pursuant to the terms and conditions of the New Credit Agreement. On the full payment or other satisfaction of such Claims, unless such DIP Lenders Liens have been

continued as part of the New Credit Agreement pursuant to clause (B) above, the DIP Lenders Liens shall be deemed released, terminated and extinguished, 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.

9. Revesting of Assets. Subject to the Restructuring Transactions permitted by Section 5.2 of the Plan, after the Effective Date, the Reorganized Debtors shall continue to exist as separate legal entities in accordance with the applicable law in the respective jurisdiction in which they are incorporated or formed and pursuant to their respective certificates or articles of incorporation and by-laws, or other applicable organizational documents, in effect immediately prior to the Effective Date, except to the extent such certificates or articles of incorporation and by-laws, or other applicable organizational documents, are amended, amended and restated or otherwise modified under the Plan. Notwithstanding anything to the contrary in the Plan, including Section 5.1 thereof as to the limited substantive consolidation provided therein, the Claims of a particular Debtor or Reorganized Debtor shall remain the obligations solely of such Debtor or Reorganized Debtor and shall not become obligations of any other Debtor or Reorganized Debtor solely by virtue of the Plan or the Chapter 11 Cases. Except as otherwise provided in the Plan or this Confirmation Order, on and after the Effective Date, all property and assets of the Estates of the Debtors, including all claims, rights, and Litigation Claims of the Debtors, and any other assets or property acquired by the Debtors or the Reorganized Debtors under or in connection with the Plan, shall vest in the Reorganized Debtors free and clear of all Claims, Liens, charges, other encumbrances, and Interests, subject to the Restructuring Transactions and Liens which survive the occurrence of the Effective Date as described in Article Three of the Plan. On and after the Effective Date, the Reorganized Debtors may (i)

operate their businesses, (ii) use, acquire, transfer and dispose of property and (iii) compromise or settle any Claims, in each case without notice to, hearing before, supervision of or approval by this Court and free and clear of any restrictions of the Bankruptcy Code, the Bankruptcy Rules or the local bankruptcy rules of this Court, other than restrictions expressly imposed by the Plan or this Confirmation Order.

10. Distributions are Fair. The distribution of Cash, New Common Stock and the other New Securities and Documents to the Holders of Allowed Claims and Allowed Interests in exchange for their Allowed Claims and Allowed Interests, as applicable, is fair and for reasonably equivalent value.

11. Distributions Exempt from Securities Laws. The New Common Stock, the New Senior Second Lien Notes, any New Harbinger Subordinated Notes, any New Subordinated Notes, any New Junior Subordinated Notes, any Rights Offering Senior Subordinated Notes (and offer of the Rights for the Rights Offering Period to Holders of Allowed Class 6-A and 6-B-1 Claims), and any other New Securities and Documents issued or deemed issued under the Plan are exempt from registration under the Securities Act of 1933, and any state or local law requiring registration, to the fullest extent permitted pursuant to section 1145 of the Bankruptcy Code, except to the extent that: (i) the Holders of any of the foregoing are “underwriters,” as that term is defined in section 1145 of the Bankruptcy Code, (ii) the New Common Stock is issued to the New Investors, in which case such New Common Stock is exempt from such registration pursuant to Section 4(2) of the Securities Act, and/or (iii) in the event that the Backstop Rights Offering Effective Date Condition is satisfied, certain of the New Securities and Documents are issued to the Backstop Parties, in which case such New Securities and Documents are exempt from such registration pursuant to Section 4(2) of the Securities Act.

12. Exit Financing. On the Effective Date, the Reorganized Debtors are authorized to enter into the New Credit Agreement, as well as execute, deliver, file, record and issue any notes, documents, instruments or agreements in connection therewith and perform their obligations under the New Credit Agreement and any such notes, documents, instruments or agreements in connection therewith (collectively with the New Credit Agreement, the “**New Credit Agreement Documents**”), 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 New Credit Agreement). The Liens and security interests to be granted by the Reorganized Debtors pursuant to the terms of the New Credit Agreement and the New Senior Second Lien Notes Indenture shall be deemed perfected on the Effective Date, subject only to such Liens and security interests as may be permitted under the New Credit Agreement and the New Senior Second Lien Notes Indenture, as applicable. The New Credit Agreement Documents shall be in form and substance acceptable to the Debtors, the New Agent and the New Lenders.

13. New Stockholders Agreement and Registration Rights Agreement. In the event that the Backstop Rights Offering Effective Date Condition is satisfied, Reorganized Bally is authorized to enter into and consummate the transactions contemplated by the New Stockholders Agreement and Registration Rights Agreement and such documents, and any agreement or document entered into in connection therewith, shall become effective and binding 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 New Stockholders Agreement and Registration Rights Agreement, as applicable). In the

event that the Harbinger Investment Effective Date Condition is satisfied, there shall be no New Stockholders Agreement or Registration Rights Agreement in connection with the Plan.

14. Releases, Exculpation and Limitation of Liability. The releases, exculpation and limitation of liability provisions contained in the Plan, including, but not limited to, those provided in Article Ten of the Plan, are fair and equitable and given for valuable consideration and are in the best interest of the Debtors and all parties-in-interest, and, accordingly, are hereby authorized, approved and binding on all Persons and Entities described therein. To the extent that a release or other provision in the Plan constitutes a compromise of a controversy, this Confirmation Order shall constitute an order under Bankruptcy Rule 9019 approving such compromise.

15. Injunctions. The injunctions contained in the Plan, including, but not limited to, those provided in Section 10.2(d) and Section 10.6 of the Plan, are hereby authorized, approved and binding on all Persons and Entities described therein. Except as otherwise provided in the Plan, this Confirmation Order or in any document, instrument, release, or other agreement entered into in connection with the Plan or approved by order of this Court, this Confirmation Order constitutes an injunction from and after the Effective Date restraining all Persons or Entities who have held, hold, or may hold Claims against or Interests in the Debtors from taking any of the following actions against any of the Debtors, the Reorganized Debtors, the Estate(s), or any of their respective assets or property: (A) commencing or continuing, in any manner or in any place, any action or other proceeding with respect to any such Claims or Interests; (B) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree or order with respect to any such Claims or Interests; (C) creating, perfecting, or enforcing any Lien or encumbrance with respect to any such Claims or Interests; (D) asserting a setoff or right of

subrogation of any kind against any debt, liability or obligation due to the Debtors with respect to any such Claims or Interests; and (E) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan with respect to any such Claims or Interests; provided, however, that nothing contained herein shall preclude such Persons or Entities from exercising their rights pursuant to and consistent with the terms of the Plan, this Confirmation Order or in any document, instrument, release, or other agreement entered into in connection with the Plan or approved by order of this Court. Pursuant to Section 10.7 of the Plan, 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.

16. SEC Issues. Except with respect to the Plan-Related Claims (as defined below), nothing in this Confirmation Order or the Plan (i) 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, the environmental laws or any criminal laws of the United States or any state and local authority against the Released Parties, but excluding any Plan-Related Claims, (ii) 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 whatsoever, including, without limitation, any Claim, suit or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state or local authority, but excluding any Plan-Related Claims, or (iii) exculpate any Released 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, the environmental laws or any criminal laws of the United States or any

state and local authority against the Released Parties, but excluding any liabilities in respect of any Plan-Related Claims. Notwithstanding anything to the contrary in this Confirmation Order or the Plan, the Securities and Exchange Commission (“**SEC**”) expressly reserves its right to continue to investigate, and, in its sole discretion, prosecute and enforce any and all Claims against any or all of the Debtors or the Reorganized Debtors arising from any prepetition violations by any Debtor of any of the U.S. securities laws other than Plan-Related Claims (collectively, the “**Reserved SEC Claims**”), including, without limitation, any claims for disgorgement of any benefits received by any Debtor as a result of any such violations and any Claims for penalties imposed by the SEC in respect of any such violations. For the avoidance of doubt, pursuant to Section 10.2(b) of the Plan, all Plan-Related Claims of the United States Government or any of its agencies or any state and local authority whatsoever are released, waived and discharged. Nothing in this Confirmation Order or the Plan shall result in the discharge of any Reserved SEC Claims, and the SEC expressly reserves its rights to assert that any and all Reserved SEC Claims are non-dischargeable as against the Reorganized Debtors pursuant to Sections 1141(d)(6)(a) and 523(a)(2)(A) of the Bankruptcy Code. The SEC has advised this Court and the Debtors that, as of the entry of this Confirmation Order, it has not yet determined whether to assert any Reserved SEC Claims against any or all of the Debtors or Reorganized Debtors.

17. Assumed Contracts and Leases.

(a) Generally. All of the executory contracts and unexpired leases of the Debtors are hereby assumed in accordance with the provisions and requirements of Sections 365 and 1123 of the Bankruptcy Code, effective as of the Effective Date (the “**Assumed Contracts and/or Leases**”), except those executory contracts (including, without limitation, employment

agreements) and unexpired leases that (i) have been previously assumed or rejected by order of this Court, (ii) are the subject of a motion to reject pending on the Effective Date, (iii) are identified on Exhibit E-1 or Exhibit E-2 to the Plan, (iv) are rejected pursuant to the terms of the Plan or this Confirmation Order, or (v) previously expired or terminated pursuant to its own terms.

(b) Compensation and Benefit Programs. Except as otherwise expressly provided in the Plan, this Confirmation Order or listed on Exhibit E-1 or Exhibit E-2 to the Plan, all employment and severance policies, and all compensation and benefit plans, policies, and programs of the Debtors applicable to their employees, retirees, and non-employee directors and the employees and retirees of its subsidiaries, including, without limitation, all savings plans, retirement plans, healthcare plans, disability plans, severance benefit plans, incentive plans (including, without limitation, the Prepetition Management Incentive Plan), life, and accidental death and dismemberment insurance plans, are treated as executory contracts under the Plan and included in the defined term “Assumed Contracts and/or Leases”. Any payment obligations under any assumed employment contracts and benefit plans that have been or purport to have been accelerated as a result of the commencement of any Chapter 11 Case or the consummation of any transactions contemplated by the Plan or this Confirmation Order shall be reinstated and such acceleration shall be rescinded and deemed not to have occurred.

(c) Workers’ Compensation Programs. Except as otherwise expressly provided in the Plan or this Confirmation Order, as of the Effective Date, the Debtors and the Reorganized Debtors shall continue to honor their obligations under: (i) all applicable workers’ compensation laws in states in which the Reorganized Debtors operate; and (ii) the Debtors’ written contracts, agreements, agreements of indemnity, self-insured workers’ compensation

bonds, and any other policies, programs, and plans regarding or relating to workers' compensation and workers' compensation insurance. All such contracts and agreements are treated as executory contracts under the Plan and included in the defined term "Assumed Contracts and/or Leases".

18. Approval of Assumed Contracts and Leases.

(a) Court Approval. The Debtors' assumption of the Assumed Contracts and/or Leases is hereby approved. The Assumed Contracts and/or Leases shall remain in full force and effect for the benefit of the Reorganized Debtors, notwithstanding any provision in such Assumed Contracts and/or Leases (including, without limitation, those described in Sections 365(b), (c), (e) and (f) of the Bankruptcy Code) or under applicable non-bankruptcy law that purports to (a) terminate, modify, or restrict, or permit a party other than the applicable Debtor party to terminate, modify or restrict, such contract or lease or the applicable Debtor party's rights, benefits and privileges thereunder; (b) create or impose, or permit a party other than the applicable Debtor party to create or impose, any additional duties, obligations, penalties, default rates of interest or payments (monetary and non-monetary) upon the applicable Debtor party, in either case as a result of or in connection with (i) the filing of a petition for relief under Chapter 11 of the Bankruptcy Code by the applicable Debtor party or (ii) the applicable Debtor party's insolvency or financial condition at any time before its applicable Chapter 11 Case is closed, and/or (c) prohibit, condition, or restrict assignment or transfer of such contract or lease by the Debtors.

(b) Cure Disputes. The amounts, if any, due by the Debtors pursuant to each Assumed Contract and/or Lease that is in default shall be satisfied by payment of such amount in Cash on the Effective Date or on such other terms as the parties to such Assumed Contract

and/or Lease may otherwise agree in writing. In the event of a dispute regarding the amount and timing of any cure payments, the Debtors and applicable non-Debtor parties shall promptly confer after entry of this Confirmation Order to attempt to resolve any such dispute consensually without further order of this Court. In the event such dispute cannot be resolved consensually by the applicable parties, then the Debtors shall, within thirty (30) days after the Effective Date, file a notice of dispute with this Court (and promptly serve such notice on the applicable landlord) and such dispute shall be set for a status conference at the next scheduled omnibus hearing in these Chapter 11 Cases, with subsequent evidentiary hearings to be established by this Court as and if necessary. The payments, if any, or other actions, if any, that this Court determines the Debtors are required to pay or otherwise perform to assume the applicable Assumed Contract and/or Lease pursuant to Section 365(b)(1) of the Bankruptcy Code shall be promptly paid or undertaken as required by Final Order resolving the applicable dispute (and the undisputed portion of any cure claim shall be paid on the later of the Effective Date or the date required under the applicable Assumed Contract and/or Lease). Unless a dispute is otherwise litigated to Final Order, nothing in this Confirmation Order, the Plan or the assumption of the Assumed Contracts and/or Leases shall, or shall be deemed to, operate as a discharge, release, injunction or waiver of any Claims or Causes of Action that any of the non-Debtor parties may have against the Debtors (or that the Debtors may have against the non-Debtor parties) under the applicable Assumed Contract and/or Lease (whether such Claims or Causes of Action arose or accrued prior to or after the applicable assumption date, were known or unknown, or relate to setoff or recoupment), and the Debtors and Reorganized Debtors reserve all of their respective rights and defenses related thereto (and the non-Debtor parties reserve all of their respective rights and defenses related to any Claims or Causes of Action that the Debtors may have against them).

Attached hereto as Exhibit 3 is a non-exclusive list of the unexpired leases of non-residential real property that the Debtors assumed on the Effective Date.

19. Approval of Rejected Contracts and Leases. All of the executory contracts and unexpired leases of the Debtors that are identified on Exhibit E-1 or Exhibit E-2 to the Plan, or that are otherwise rejected pursuant to the terms of the Plan or this Confirmation Order, (collectively, the “**Rejected Contracts and Leases**”) are rejected by the Debtors and such rejection is hereby approved by this Court effective as of the Confirmation Date (the “**Rejection Date**”); provided that, with respect to the rejection of any unexpired lease of non-residential real property, such Rejection Date shall occur on the later of the Confirmation Date or the date on which the Debtors have vacated the applicable leased premises. All proofs of claim with respect to Claims arising from or in connection with the Rejected Contracts and Leases, if any, must be filed with this Court within thirty (30) days after the applicable Rejection Date. Any and all Claims arising from or in connection with the rejection of the Rejected Contracts and Leases not filed within such time will be forever barred from assertion against the Debtors or Reorganized Debtors, their Estates, or property unless otherwise ordered by this Court or provided for in the Plan.

20. General Authorizations. Pursuant to Section 1142(b) of the Bankruptcy Code and in each case without further notice to, hearing before 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, (a) the Debtors, the Reorganized Debtors and their respective officers and directors and (b) all other necessary parties are authorized and empowered to:

(a) take any and all actions necessary or appropriate to enter into, implement, and consummate the contracts, instruments, releases, leases, indentures, notes, and other

agreements, documents and transactions contemplated by or described in the Plan or in this Confirmation Order;

(b) issue, as applicable, (A) the New Common Stock, (B) the New Senior Second Lien Notes, (C) subject to satisfaction of the Harbinger Investment Effective Date Condition, the New Harbinger Senior Subordinated Notes, (D) subject to satisfaction of the Backstop Rights Offering Effective Date Condition, the New Subordinated Notes, the New Junior Subordinated Notes, and the Rights Offering Senior Subordinated Notes, and (E) any other New Securities and Documents, and enter into the New Credit Agreement; and

(c) perform any and all other acts that are necessary, appropriate, or required to comply with or carry out the terms and conditions of the Plan or this Confirmation Order.

21. Authority to Act. The Debtors, the Reorganized Debtors and their respective officers and directors are authorized and empowered pursuant to Section 303 of the Delaware General Corporation Law and other applicable corporation, limited liability company and limited partnership laws of jurisdictions in which the Reorganized Debtors are incorporated, organized or formed, to take any and all actions necessary or desirable to implement the transactions contemplated by the Plan and this Confirmation Order, in each case without any requirement of further vote, consent, approval, authorization or other action by the stockholders, security holders, officers, directors, partners, managers, members or other owners of the Reorganized Debtors or notice to, order of, or hearing before this Court. Each federal, state, and local governmental agency or department is hereby authorized and directed to accept any and all documents and instruments necessary and appropriate to consummate the Plan and the transactions contemplated thereby.

22. Exemption From Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, (a) the issuance, transfer, or exchange (or deemed issuance, transfer or exchange) of notes or equity securities under the Plan or this Confirmation Order, including, without limitation, the

New Senior Second Lien Notes, the New Harbinger Subordinated Notes, the New Subordinated Notes, the New Junior Subordinated Notes, the New Common Stock, the Rights, the Rights Offering Senior Subordinated Notes and the other New Securities and Documents; (b) the creation of any mortgage, deed of trust, Lien, pledge, or other security interest; (c) the making or assignment of any lease or sublease; or (d) the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan or this Confirmation Order (including, without limitation, any merger agreements, agreements of consolidation, restructuring, disposition, liquidation, or dissolution, deeds, bills of sale, and transfers of tangible property) will not be subject to, and are hereby exempted from, any stamp tax, recording tax, personal property tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes. Except as otherwise ordered by this Court, all sales, transfers, and assignments of owned and leased property approved by this Court on or prior to the Effective Date, shall be deemed to have been in furtherance of, or in connection with, the Plan. Each federal, state, commonwealth, local, foreign, or other governmental agency is hereby authorized and directed 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, including, without limitation, the New Credit Agreement.

23. Professional Fee Claims.

(a) Professional Fees Bar Date. All final fee applications for Professional Fees incurred prior to the Effective Date and for services rendered during or in connection with

the Chapter 11 Cases shall be filed with this Court no later than the Business Day that is sixty (60) days after the Effective Date, or such other date as approved by order of this Court (the “**Professional Fees Bar Date**”); provided, however, that the reasonable fees and expenses incurred on or after the Petition Date by the Prepetition Noteholders Committee Professionals pursuant to agreements with the Debtors entered into prior to, on, or subsequent to the Petition Date, or by the Prepetition Senior Notes Indenture Trustee or the Prepetition Senior Subordinated Notes Indenture Trustee, shall be paid by the Debtors or Reorganized Debtors as Administrative Claims in the ordinary course of the Debtors’ business, without application by or on behalf of any such parties to this Court, and without notice and a hearing, unless specifically required by this Court. For the avoidance of doubt, pursuant to the terms of the Investment Agreement, the reasonable fees and expenses incurred by the New Investors pursuant to the Investment Agreement shall be payable on the Effective Date without application by or on behalf of the New Investors to this Court and without notice and a hearing in accordance with the terms of the Investment Agreement. If the Debtors or Reorganized Debtors and any such applicable party cannot agree on the amount of fees and expenses to be paid to such party, the reasonableness of any such fees and expenses shall be determined by this Court.

(b) Service of Final Fee Applications. All final fee applications of Professionals shall be filed with this Court and actually served on or prior to the Professional Fees Bar Date upon the following parties (collectively, the “**Notice Parties**”) (i) Latham & Watkins LLP, Counsel for the Debtors, Sears Tower, Suite 5800, 233 S. Wacker Drive, Chicago, IL 60606, Attn: David S. Heller; (ii) Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, NY 10004, Attn: Tracey Hope Davis; (iii) Akin Gump Strauss Hauer & Feld LLP, Counsel for the Prepetition

Noteholders Committee, 590 Madison Avenue, New York, NY 10022, Attn: David H. Botter and (iv) Kasowitz, Benson, Torres & Friedman LLP, Counsel for the New Investors, 1633 Broadway, New York, New York 10019, Attn: Andrew K. Glenn.

(c) Objections to and Hearing to Approve Final Fee Applications. Any objection to any final fee application shall be filed with this Court, together with proof of service thereof, and served upon the applicable Professional and the other Notice Parties, so as to be actually received not later than 4:00 p.m. (prevailing Eastern Time) on the date that is twenty (20) days after such final fee application is filed with this Court and served upon the Notice Parties (the “**Professional Fees Objection Deadline**”). Only those objections made in writing and timely filed and received by the Professional Fees Objection Deadline will be considered by this Court. If no objection to a final fee application is timely filed and served in accordance with the procedures set forth herein, then this Court may enter a final order approving such uncontested final fee application without further notice and the Reorganized Debtors may pay the amounts described in such uncontested final fee application (or if any final fee application is the subject of an objection, the Reorganized Debtors may pay the undisputed amounts described in such final fee application). The hearing to consider approval of the final fee applications, if necessary, will be held as soon as reasonably practicable after the expiration of the Professional Fees Objection Deadline and the date of such hearing will be promptly provided to the applicable Professional and Notice Parties and posted on the Debtors’ restructuring website.

24. Resolution of Disputed Claims. Except as otherwise ordered by this Court, any Claim or Interest that is not an Allowed Claim or Allowed Interest, as applicable, shall be determined, resolved, or adjudicated in accordance with the terms of this Confirmation Order and the Plan, including, without limitation, Section 8.1 of the Plan. Notwithstanding anything in

the Bankruptcy Code, the Bankruptcy Rules, the local bankruptcy rules of this Court, the Plan or this Confirmation Order to the contrary, to the extent that any Holder of a Claim or Interest files a proof of claim or proof of interest with respect thereto with this Court but is not required by Section 8.1(a) of the Plan to file such proof of claim or proof of interest, then such Claim or Interest shall be deemed to be a Disputed Claim or Disputed Interest, as applicable, unless and until either (i) the Debtors or Reorganized Debtors provide written notice to the Holder of such Claim or Interest that the Debtors or Reorganized Debtors have no objection to such Claim or Interest based on their books and records or (ii) such Claim or Interest becomes an Allowed Claim or Allowed Interest, as applicable, pursuant to Final Order entered by this Court (or any other court of competent jurisdiction) after the Effective Date expressly Allowing such Disputed Claim or Disputed Interest, as applicable.

25. No Distributions Pending Allowance. Notwithstanding any other provision of the Plan or this Confirmation Order to the contrary, no payments or distributions of any kind or nature shall be made with respect to all or any portion of a Disputed Claim or Disputed Interest unless and until all objections to such Disputed Claim or Disputed Interest have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim has become an Allowed Claim or the Disputed Interest has become an Allowed Interest.

26. Old Common Stock Cash Amount. Notwithstanding any other provision of the Plan or this Confirmation Order to the contrary, the Debtors and Reorganized Debtors shall only be obligated to satisfy Allowed 510(b) Equity Claims and Allowed Interests arising from Old Common Stock from the Old Common Stock Cash Amount reserve established pursuant to Section 8.4 of the Plan and no other asset or property of the Debtors, the Reorganized Debtors or

their respective Estates shall be required to be used or otherwise monetized to pay or otherwise fund such Allowed Claims and/or Allowed Interests.

27. Payment of Fees. All fees payable pursuant to section 1930 of title 28, United States Code shall be paid on, or as soon as reasonably practicable after, the Effective Date.

28. Discharge of the Debtors. To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or this Confirmation Order, all consideration distributed under the Plan shall be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims of any kind or nature whatsoever against the Debtors, the Estates or any of their respective assets or properties, and regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims. Except as otherwise expressly provided by the Plan or this Confirmation Order, upon the Effective Date, the Debtors, and each of them, shall be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) of the Bankruptcy Code from any and all Claims of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code, whether or not (i) a proof of the claim based on such debt is filed or deemed filed under section 501 of the Bankruptcy Code; (ii) such claim is allowed under section 502 of the Bankruptcy Code; or (iii) the holder of such claim has accepted or rejected the Plan.

29. Termination of Interests. On the Effective Date, except as otherwise provided in the Plan or this Confirmation Order, the Old Common Stock and the Old Unexercised Equity Interests in Bally shall be terminated, cancelled and extinguished. Notwithstanding the foregoing, on the Effective Date, the Old Affiliate Interests shall remain effective and

outstanding and be owned and held by the same applicable Person(s) that held and/or owned such Interests immediately prior to the Effective Date. Each Affiliate Debtor shall continue to be governed by the terms and conditions of its applicable organizational documents as in effect immediately prior to the Effective Date, as amended or modified by the Plan or this Confirmation Order.

30. Notice of Confirmed Plan. In accordance with Bankruptcy Rules 2002(f)(7), 2002(k) and 3020(c), as soon as reasonably practicable after the Confirmation Date, the Debtors shall serve notice of the entry of this Confirmation Order, substantially in the form annexed hereto as Exhibit 4 (the “**Notice of Confirmed Plan**”), by first-class mail, postage prepaid on all known creditors, equity security holders, and other parties in interest in these Chapter 11 Cases; provided, however, that such notice need not be given or served under or pursuant to the Bankruptcy Code, the Bankruptcy Rules, the local bankruptcy rules of this Court or this Confirmation Order to any Person or Entity to whom the Debtors mailed a notice of the Confirmation Hearing, but received such notice returned marked “undeliverable as addressed,” “moved-left no forwarding address” or “forwarding order expired,” or similar reason, unless the Debtors have been informed in writing by such Person or Entity of that Person’s or Entity’s new mailing address. The notice described herein is adequate and appropriate under the particular circumstances and no other or further notice is necessary or required.

31. Publication/Notice. As soon as reasonably practicable after the Confirmation Date, the Debtors shall cause the Notice of Confirmed Plan to be published one time in The Wall Street Journal. The Debtors may, but are not required to, publish the Notice of Confirmed Plan in such other papers or publications as they deem appropriate.

32. Limited Substantive Consolidation. In accordance with Section 5.1 of the Plan, the Debtors are substantively consolidated solely for the limited purposes of treating Class 5 Claims and Class 6-B-2 Claims, including, without limitation, for voting, confirmation and distribution purposes. Notwithstanding anything in the Plan or this Confirmation Order to the contrary, the Debtors are not substantively consolidated with respect to the other Classes of Claims or Interests set forth in the Plan, or for any other purpose. Accordingly, for voting, confirmation and distribution purposes, (i) any obligation of any Debtor and all guarantees with respect to Class 5 Claims and Class 6-B-2 Claims thereof executed by one or more of the other Debtors shall be treated as a single obligation and any obligation of two or more Debtors, and all multiple Impaired Claims against such entities on account of such joint obligations, shall be treated and Allowed only as a single Impaired Claim against the consolidated Debtors, and (ii) each Class 5 Claim and Class 6-B-2 Claim filed or to be filed against any Debtor shall be deemed filed against the consolidated Debtors and shall be deemed a single Class 5 Claim and Class 6-B-2 Claim, as applicable, against and a single obligation of the consolidated Debtors. Except as set forth in this paragraph, such limited substantive consolidation shall not and shall not be deemed to (other than for purposes related to the Plan): (i) affect the legal and corporate structures of the Reorganized Debtors, subject to the right of the Debtors or Reorganized Debtors to effect Restructuring Transactions as provided in Section 5.2 of the Plan, (ii) cause any Debtor to be liable for any Impaired Claim or Unimpaired Claim under the Plan for which it otherwise is not liable, and the liability for any such Claim shall not be affected by such substantive consolidation, (iii) affect Intercompany Claims of Debtors against Debtors, (iv) modify, affect or otherwise alter the Old Affiliate Interests, (v) affect any obligations under any leases or contracts assumed under the Plan or this Confirmation Order or otherwise arising subsequent to the filing

of the Chapter 11 Cases, or (vi) affect any obligations to pay quarterly fees to the United States Trustee. From and after the Effective Date, each of the Reorganized Debtors will be deemed a separate and distinct entity, properly capitalized, vested with all of the assets of such Debtor as they existed immediately prior to the Effective Date and having the liabilities and obligations provided for under the Plan.

33. No Liability for Protected Parties. Based on the factual findings described in this Confirmation Order, the Protected Parties are not, and on account of or with respect to the offer or issuance of any security under the Original Plan or Plan, and/or solicitation of votes on the Original Plan, will not be, liable at any time for any violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Original Plan or the offer and issuance of any securities under the Original Plan or Plan, including pursuant to the Subscription and Backstop Purchase Agreement and/or the Investment Agreement. The Protected Parties have solicited votes on the Original Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the local bankruptcy rules of this Court and the Prepack Guidelines and all other applicable rules, laws, and regulations and are, therefore, entitled to, and are hereby granted, the protections afforded by Section 1125(e) of the Bankruptcy Code and the exculpation, release and limitation of liability provisions set forth in Article Ten of the Plan.

34. Pending Litigation. Except as set forth in the proviso of this sentence, and subject to the occurrence of the Effective Date, nothing in the Plan or this Confirmation Order shall impair the respective rights, if any, of any of the Debtors (or the Reorganized Debtors) or non-Debtor Persons or Entities (other than Holders of Rejection Claims and/or 510(b) Equity Claims) that are party to any action pending in any federal or state court as of the Petition Date to proceed

with such action in such federal or state court, to the extent permitted by, and subject to the provisions of, applicable non-bankruptcy law, without serving the Debtors the writing referred to in Section 8.1(b) of the Plan or filing any pleading with this Court; provided however that (i) pursuant to Section 8.1(b) of the Plan, the Debtors and the Reorganized Debtors reserve their rights to request that any such action be removed to, and/or determined by, this Court, (ii) the non-Debtor parties to such action reserve all of their respective rights to oppose any such request, and (iii) the Debtors, the Reorganized Debtors and the non-Debtor parties to such action expressly reserve their respective rights, if any, to arbitration of any and all Claims asserted or assertable in such action (including, in the case of a putative class action, any rights to arbitration of the underlying Claims on a non-class and non-collective basis); provided further that the Debtors and Reorganized Debtors shall have until ninety (90) days after the Effective Date (or such later date as approved by this Court for cause shown after notice and hearing) to file with this Court an objection to the alleged Claims arising from such pending action and notice requesting that any such pending action be removed to, and/or determined by, this Court, and such removal deadline is hereby extended and approved pursuant to Bankruptcy Rule 9027.

35. Substantial Consummation. “Substantial Consummation” of the Plan, as defined in 11 U.S.C. § 1101(2), shall be deemed to occur on the Effective Date.

36. Estimation Proceedings. Any and all rights of the Debtors and Reorganized Debtors under Section 502(c) of the Bankruptcy Code are reserved.

37. Other Rights. Any and all rights of the Debtors and Reorganized Debtors under Section 502(e) of the Bankruptcy Code are reserved.

38. Reversal or Modification of Confirmation Order. Except as otherwise provided in this Confirmation Order, if any or all of the provisions of this Confirmation Order are hereafter

reversed, modified, vacated or stayed by subsequent order of this Court, or any other court of competent jurisdiction, such reversal, stay, modification or vacatur shall not affect the validity or enforceability of any act, obligation, indebtedness, liability, priority or Lien incurred or undertaken by the Debtors or the Reorganized Debtors, as applicable, prior to the date that the Debtors received actual written notice of the effective date of such reversal, stay, modification or vacatur. Notwithstanding any such reversal, stay, modification or vacatur of this Confirmation Order, any such act or obligation incurred or undertaken pursuant to, or in reliance on, this Confirmation Order prior to the date that the Debtors received actual written notice of the effective date of such reversal, stay, modification or vacatur shall be governed in all respects by the provisions of this Confirmation Order and the Plan, or any amendments or modifications thereto, in effect prior to the date that the Debtors received such actual written notice.

39. Failure to Consummate Plan. If each of the conditions to consummation and the occurrence of the Effective Date contained in Section 9.2 of the Plan has not been satisfied or duly waived on or before the first Business Day that is thirty (30) days after the Confirmation Date, or such later date as shall be consented to by the Debtors and (i) the New Investors, if the Investment Agreement is then in effect, and/or (ii) the Majority Backstop Parties, if the Subscription and Backstop Purchase Agreement is then in effect, then upon motion by the Debtors and upon notice to such parties in interest as this Court may direct, this Confirmation Order shall be vacated by this Court. If this Confirmation Order is so vacated, the Plan shall be null and void in all respects, and nothing contained in the Plan or this Confirmation Order shall constitute a waiver or release of any Claims by, or against, any of the Debtors or the allowance of any Administrative Expense or Claim.

40. Break-Up Fee and Expense Reimbursement to New Investors. In the event that the Debtors' obligations under Section 8.2 of the Investment Agreement become due and owing, then the Debtors shall immediately pay the New Investors the Break-Up Fee and Expense Reimbursement owing under Section 8.2 of the Investment Agreement to the extent provided therein.

41. Retention of Jurisdiction. Pursuant to Sections 105(a) and 1142 of the Bankruptcy Code and notwithstanding the entry of this Confirmation Order or the occurrence of the Effective Date, this Court shall retain jurisdiction over the Chapter 11 Cases and all matters arising under, arising in, or related to, the Chapter 11 Cases and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction over the matters set forth in Article Eleven of the Plan. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Confirmation Order.

42. Guarantors of New Senior Second Lien Notes. Attached hereto as Exhibit 5 is the list of Affiliate Debtors that are guarantors of the New Senior Second Lien Notes.

43. Non-Voting Equity Securities. Notwithstanding anything to the contrary in the organizational documents of the Reorganized Debtors, the Reorganized Debtors shall not have the authority to issue any class of non-voting equity securities on the Effective Date.

44. Headings. The headings contained within this Confirmation Order are used for the convenience of the parties and shall not alter or affect the meaning of the text of this Confirmation Order.

45. Objecting Former Officers and Directors. Nothing in this Confirmation Order or in the Plan shall prejudice the respective rights of John W. Dwyer and Lee S. Hillman (collectively, the "**Objecting Former Officers and Directors**") and the Debtors with respect to

the classification, estimation or allowance or disallowance of any of the Claims of the Objecting Former Officers and Directors or the executory or non-executory nature of any of the Debtors' organizational documents or any contract (including any option or warrant agreement) between any Objecting Former Officers and Directors and any Debtors, including, without limitation, (a) the respective rights of the Objecting Former Officers and Directors (i) to contest the treatment of any of the Debtors' organizational documents or any of the contracts between any Debtor and any Objecting Former Officers and Directors as an executory contract or to contest the right of any Debtor to reject any such organizational documents or contracts pursuant to Section 365 of the Bankruptcy Code or (ii) to seek to have their Claims classified and Allowed as Class 3 Claims or to contest any other classification of their Claims or (b) the rights of the Debtors (i) to seek to treat any of the organizational documents of any Debtor or any contracts between any Objecting Former Officers and Directors and any Debtor as an executory contract and/or to reject any such organizational documents or contracts pursuant to Section 365 of the Bankruptcy Code, (ii) to seek to classify any Claim of any Objecting Former Officers and Directors as a Class 6-B-1 or Class 6-B-2 Claim or as a 510(b) Claim (that is part of Class 7) or (iii) to seek the disallowance of any Claim of any Objecting Former Officers and Directors pursuant to Section 502(e)(i) of the Bankruptcy Code or to seek estimation of any such Claim pursuant to Section 502(c) of the Bankruptcy Code. Notwithstanding the foregoing, the Reorganized Debtors shall be authorized to issue and file with the appropriate governmental authorities their respective amended by-laws and articles of incorporation (or similar organization documents) as contemplated by the Plan, and the foregoing reservation of rights shall not impair the validity, effectiveness or enforceability of such organizational documents; provided, however, that the issuance and filing of any amended by-laws or articles of incorporation (or similar organization

documents) by any Reorganized Debtor shall not affect any Claims of any Objecting Former Officers and Directors under any by-laws or articles of incorporation of any Debtors in effect at any time prior to the Effective Date.

46. References to Plan Provisions. The failure specifically to include or reference any particular provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Plan (and the exhibits and schedules thereto) be confirmed in its entirety and incorporated herein by reference.

47. Confirmation Order Controlling. If there is any conflict or inconsistency between the Plan and this Confirmation Order, the terms of this Confirmation Order shall control and govern.

48. Immediate Effectiveness of this Confirmation Order. Pursuant to Bankruptcy Rule 3020(e), the ten day stay of this Confirmation Order imposed thereby is waived and the Debtors are hereby authorized to consummate the Plan and the transactions contemplated thereby immediately upon the entry of this Confirmation Order upon the docket and upon the satisfaction or waiver of the conditions set forth in Article Nine of the Plan.

Dated: September 17, 2007  
New York, New York

/s/Burton R. Lifland  
United States Bankruptcy Judge