

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

In re:) Chapter 11
)
Jillian's Entertainment Holdings, Inc.,) Case No. 04-0_____
et al.,¹) (Jointly Administered)
)
Debtors.)

**JOINT LIQUIDATING PLAN OF REORGANIZATION OF JILLIAN'S
ENTERTAINMENT HOLDINGS, INC. AND CERTAIN OF ITS SUBSIDIARIES
PURSUANT TO CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE**

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May ____, 2004

¹ The Debtors are the following entities: Jillian's Entertainment Holdings, Inc., Jillian's Entertainment Corporation, Derby City Promotions, Inc., Jillian's America Live of Minneapolis, Inc., Jillian's Billiard Café II of Raleigh, NC, Inc., Jillian's Billiard Café of Akron, Inc., Jillian's Billiard Café of Columbia, South Carolina, Inc., Jillian's Billiard Café of Raleigh, NC, Inc., Jillian's Billiard Club of Annapolis, Inc., Jillian's Billiard Club of Champaign Urbana, Inc., Jillian's Billiard Club of Champaign Urbana, LP, Jillian's Billiard Club of Charlotte, NC, Inc., Jillian's Billiard Club of Cleveland Heights, Inc., Jillian's Billiard Club of Cleveland Heights, LP, Jillian's Billiard Club of Cleveland, Inc., Jillian's Billiard Club of Louisville, Kentucky, Inc., Jillian's Billiard Club of Manchester, NH, Inc., Jillian's Billiard Club of Pasadena, Inc., Jillian's Billiard Club of Seattle, Inc., Jillian's Billiard Club of Tacoma, Inc., Jillian's Billiard Club of Worcester, Inc., Jillian's Billiard Club of Worcester, LP, Jillian's Gators of Minneapolis, Inc., Jillian's Inc., Jillian's Knuckleheads of Minneapolis, Inc., Jillian's Management Company, Inc., Jillian's of Albany, NY, Inc., Jillian's of Arundel, MD, Inc., Jillian's of Concord, NC, Inc., Jillian's of Covington, Kentucky, Inc., Jillian's of Farmingdale, NY, Inc., Jillian's of Franklin, PA, Inc., Jillian's of Gwinnett, GA, Inc., Jillian's of Hollywood, CA, Inc., Jillian's of Houston, TX, Inc., Jillian's of Indianapolis, IN, Inc., Jillian's of Katy, TX, Inc., Jillian's of Memphis, TN, Inc., Jillian's of Minneapolis, MN, Inc., Jillian's of Montreal, Inc., Jillian's of Nashville, TN, Inc., Jillian's of Norfolk, VA, Inc., Jillian's of Rochester, NY, Inc., Jillian's of San Francisco, CA, Inc., Jillian's of Scottsdale, AZ, Inc., Jillian's of Westbury, NY, Inc., Jillian's of Youngstown, OH, Inc., and River Vending, Inc.

TABLE OF CONTENTS

Article I. Definitions, Rules of Interpretation, Computation of Time and Governing Law	2
A. Rules of Interpretation, Computation of Time and Governing Law.....	2
B. Defined Terms	2
Article II. DIP Facility Claims; Administrative Claims; Priority Tax Claims	11
A. DIP Facility Claims.....	11
B. Administrative Claims	12
C. Priority Tax Claims.....	12
Article III. Classification and Treatment of Classified Claims and Equity Interests.....	12
A. Summary	12
B. Treatment of Claims and Equity Interests	13
Article IV. Treatment of Disputed Claims.....	17
A. Objections to Claims; Prosecution of Disputed Claims.....	17
B. Estimation of Claims.....	17
C. Payments and Distributions on Disputed Claims.....	17
Article V. Distributions.....	18
A. Means of Cash Payment.....	18
B. Delivery of Distributions	18
C. Undeliverable Distributions	18
D. Withholding and Reporting Requirements	19
E. Time Bar to Cash Payments.....	19
F. Distributions After the Effective Date	19
G. Interest.....	19
H. Fractional Dollars; De Minimis Distributions	20
I. Set-Offs	20
J. Settlement of Claims and Controversies.....	20
Article VI. Implementation of the Plan.....	20
A. Establishment of the Post Confirmation Estate	20
B. Corporate Action.....	21
C. Preservation of Rights.....	21
D. Cancellation of Notes, Instruments, Debentures and Equity Interests.....	23
E. Dissolution of Committee(s).....	23
F. Insurance Preservation; Directors and Officers Insurance; Indemnification	23
G. Accounting	23
Article VII. Executory Contracts and Unexpired Leases.....	23
A. Rejection of Executory Contracts and Unexpired Leases.....	23
B. Rejection Damages Claim.....	24

Article VIII. Post Confirmation Estate; Plan Administrator.....	24
A. Generally.....	24
B. Purpose of the Post Confirmation Estate	24
C. Termination of Post Confirmation Estate	24
D. Termination of Plan Administrator.....	24
E. Compensation of Plan Administrator.....	25
F. Administrator Fund.....	25
G. Exculpation; Indemnification.....	25
Article IX. Conditions Precedent to Confirmation and the Effective Date	25
A. Acceptance or Rejection of the Plan.....	25
B. Conditions Precedent to Confirmation Date of the Plan.....	26
C. Conditions Precedent to the Effective Date of the Plan.....	26
D. Waiver of Conditions Precedent	27
E. The Confirmation Order	27
Article X. Effect of Plan Confirmation.....	27
A. Discharge of Claims and Termination of Interests	27
B. Termination of Subordination Rights and Settlement of Related Claims.....	28
C. Injunction	28
D. Terms of Existing Injunctions or Stays.....	28
E. Exculpation	28
F. Releases.....	29
Article XI. Miscellaneous	30
A. Payment of Statutory Fees	30
B. Section 1146 Exemption.....	30
C. Business Day.....	31
D. Severability	31
E. Conflicts.....	31
F. Further Assurances.....	31
G. Notices	31
H. Filing of Additional Documents	32
I. Successors and Assigns.....	32
J. Closing of Case.....	32
K. Section Headings	33
L. Further Information.....	33
Article XII. Retention of Jurisdiction	33
Article XIII. Modification, Revocation, or Withdrawal of the Plan.....	34
A. Modification of Plan.....	34
B. Revocation, Withdrawal or Non-Consummation	34

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JOINT LIQUIDATING PLAN OF REORGANIZATION OF JILLIAN'S
ENTERTAINMENT HOLDINGS, INC. AND CERTAIN OF ITS SUBSIDIARIES
PURSUANT TO CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE

Jillian's Entertainment Holdings, Inc., together with its direct and indirect domestic subsidiaries: Jillian's Entertainment Corporation, Derby City Promotions, Inc., Jillian's America Live of Minneapolis, Inc., Jillian's Billiard Café II of Raleigh, NC, Inc., Jillian's Billiard Café of Akron, Inc., Jillian's Billiard Café of Columbia, South Carolina, Inc., Jillian's Billiard Café of Raleigh, NC, Inc., Jillian's Billiard Club of Annapolis, Inc., Jillian's Billiard Club of Champaign Urbana, Inc., Jillian's Billiard Club of Champaign Urbana, LP, Jillian's Billiard Club of Charlotte, NC, Inc., Jillian's Billiard Club of Cleveland Heights, Inc., Jillian's Billiard Club of Cleveland Heights, LP, Jillian's Billiard Club of Cleveland, Inc., Jillian's Billiard Club of Louisville, Kentucky, Inc., Jillian's Billiard Club of Manchester, NH, Inc., Jillian's Billiard Club of Pasadena, Inc., Jillian's Billiard Club of Seattle, Inc., Jillian's Billiard Club of Tacoma, Inc., Jillian's Billiard Club of Worcester, Inc., Jillian's Billiard Club of Worcester, LP, Jillian's Gators of Minneapolis, Inc., Jillian's Inc., Jillian's Knuckleheads of Minneapolis, Inc., Jillian's Management Company, Inc., Jillian's of Albany, NY, Inc., Jillian's of Arundel, MD, Inc., Jillian's of Concord, NC, Inc., Jillian's of Covington, Kentucky, Inc., Jillian's of Farmingdale, NY, Inc., Jillian's of Franklin, PA, Inc., Jillian's of Gwinnett, GA, Inc., Jillian's of Hollywood, CA, Inc., Jillian's of Houston, TX, Inc., Jillian's of Indianapolis, IN, Inc., Jillian's of Katy, TX, Inc., Jillian's of Memphis, TN, Inc., Jillian's of Minneapolis, MN, Inc., Jillian's of Montreal, Inc., Jillian's of Nashville, TN, Inc., Jillian's of Norfolk, VA, Inc., Jillian's of Rochester, NY, Inc., Jillian's of San Francisco, CA, Inc., Jillian's of Scottsdale, AZ, Inc., Jillian's of Westbury, NY, Inc., Jillian's of Youngstown, OH, Inc. and River Vending, Inc. as debtors and debtors in possession (collectively, the "Debtors"), hereby jointly propose the following joint liquidating plan of reorganization pursuant to section 1121(a) of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq.

Reference is made to the Disclosure Statement accompanying the Plan, including the exhibits thereto, for a discussion of the Debtors' history, business, results of operations and properties, and for a summary and analysis of the Plan.

All holders of Claims and Equity Interests are encouraged to consult the Disclosure Statement and read the Plan carefully before voting to accept or reject the Plan.

ARTICLE I.
DEFINITIONS, RULES OF INTERPRETATION,
COMPUTATION OF TIME AND GOVERNING LAW

A. Rules of Interpretation, Computation of Time and Governing Law

1. For purposes of the Plan: (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neutral gender shall include the masculine, feminine and the neutral gender; (b) any reference in the Plan to a contract, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (c) any reference in the Plan to an existing document or exhibit Filed, or to be Filed, shall mean such document or exhibit, as it may have been or may be amended, modified or supplemented; (d) unless otherwise specified, all references in the Plan to Sections, Articles and Exhibits are references to Sections, Articles and Exhibits of or to the Plan; (e) the words "herein" and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (g) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (h) any term used in capitalized form in the Plan that is not defined herein but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be.

2. Except as otherwise specifically provided herein, in computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

3. Except to the extent that the Bankruptcy Code or Bankruptcy Rules are applicable, and subject to the provisions of any contract, instrument, release, indenture or other agreement or document entered into in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State in which the Bankruptcy Court resides, without giving effect to the principles of conflict of laws thereof.

B. Defined Terms

Unless the context otherwise requires, the following terms shall have the meanings ascribed to them below when used in capitalized form herein:

1. *13% Notes* means the \$10 million 13% senior subordinated unsecured notes due April 28, 2006, issued pursuant to the Subordinated Note and Warrant Purchase Agreement by Holdings to Bridge East Capital, L.P. (in the amount of \$7 million) and Fleetboston Robertson Stephens Inc. (in the amount of \$3 million) as agent for other investors.

2. *Administrative Agent* means the agent to the Prepetition Lenders under the Credit Agreement.

3. *Administrative Claim* means a Claim for costs and expenses of administration of the Chapter 11 Cases Allowed under section 503(b) or 1114(e)(2) of the Bankruptcy Code and entitled to priority pursuant to section 507(a)(1) of the Bankruptcy Code incurred after the Petition Date, including, but not limited to: (a) any actual and necessary costs and expenses of preserving the Debtors' Estates and operating the businesses of the Debtors (such as wages, salaries, commissions for services and payments for inventories, leased equipment and premises); (b) compensation for legal, financial, advisory, accounting and other services and reimbursement of expenses Allowed by the Bankruptcy Court under section 330, 331 or 503(b) of the Bankruptcy Code to the extent incurred prior to the Effective Date; (c) all fees and charges assessed against the Debtors' Estates under section 1930, Chapter 123 of Title 28, United States Code; and (d) all obligations designated as Allowed Administrative Claims pursuant to an order of the Bankruptcy Court.

4. *Administrator Fund* means an amount of the Sale Proceeds, acceptable to the Prepetition Lenders, that shall be reserved to fund the Plan Administrator's compensation and expenses. The precise amount of the Administrator Fund shall be set forth in the Post Confirmation Estate Agreement.

5. *Affiliate* means any Entity that is an affiliate of Holdings within the meaning of section 101(2) of the Bankruptcy Code.

6. *Allowed* means, with respect to any Claim or Equity Interest, except as otherwise provided herein, any of the following: (a) the amount set forth on the Debtors' books and records, that is not otherwise the subject of a pending objection or dispute; (b) a Claim or Equity Interest that has been scheduled by the Debtors in their Schedules as other than disputed, contingent or unliquidated and as to which (i) the Debtors or any other party in interest have not Filed an objection or (ii) no contrary proof of Claim has been Filed; (c) a Claim or Equity Interest that either is not a Disputed Claim or Equity Interest or has been Allowed by a Final Order; (d) a Claim or Equity Interest that is Allowed: (i) in any stipulation with the Debtors of the amount and nature of such Claim executed prior to the Confirmation Date and approved by the Bankruptcy Court; (ii) in any stipulation with the Debtors of the amount and nature of such Claim executed on or after the Confirmation Date and, to the extent necessary, approved by the Bankruptcy Court; or (iii) in any contract, instrument, indenture or other agreement entered into or assumed in connection with the Plan; (e) a Claim relating to a rejected executory contract or unexpired lease that (i) is not a Disputed Claim or (ii) has been allowed by a Final Order; or (f) a Claim or Equity Interest that is Allowed pursuant to the terms of the Plan.

7. *Avoidance Actions* means all claims and any avoidance, recovery, subordination or other actions against insiders and/or any other Entity arising under the Bankruptcy Code, including sections 506, 510, 542, 543, 544, 545, 547, 548, 549, 550, 551, and 553 of the Bankruptcy Code or otherwise.

8. *Ballot* means each of the ballot forms distributed to each Holder of an Impaired Claim in which the Holder is to indicate acceptance or rejection of the Plan.

9. *Bankruptcy Code* means the Bankruptcy Reform Act of 1978, as codified in Title 11 of the United States Code, 11 U.S.C. § 101, et seq., as amended from time to time.

10. *Bankruptcy Court* means the United States District Court having jurisdiction over the Chapter 11 Cases and, to the extent any reference is made pursuant to section 157 of Title 28 of the United States Code or the General Order of the District Court pursuant to section 151 of Title 28 of the United States Code, the bankruptcy unit of such District Court.

11. *Bankruptcy Rules* are, collectively, the Federal Rules of Bankruptcy Procedures and the Official Bankruptcy Forms, as amended from time to time, and the Federal Rules of Civil Procedure, as amended from time to time as applicable to the Chapter 11 Cases or proceedings therein.

12. *Bar Date* means the date for filing proofs of Claim relating to any Claim as set forth in the Bar Date Order.

13. *Bar Date Order* means that order of the Bankruptcy Court (A) Establishing a Bar Date for Filing Certain Administrative Expense Claims; (B) Establishing a Bar Date for Filing Proofs of Claim; and (C) Approving the Form and Manner of Notice Thereof.

14. *Business Day* means any day, excluding Saturdays, Sundays or “legal holidays” (as defined in Fed. R. Bankr. P. 9006(a)).

15. *Cash* means legal tender of the United States of America or equivalents thereof.

16. *Cash Assets* means the Debtors’ Cash as of the Effective Date other than (i) the Sale Proceeds and (ii) any Cash that is to be transferred pursuant to any Sale(s).

17. *Causes of Action* means all claims, actions, causes of action, choses in action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, third-party claims, counterclaims, and crossclaims (including, but not limited to, the Avoidance Actions) of the Debtors, the Debtors in Possession, and/or the Post Confirmation Estate (including, but not limited to, those actions listed in the section of the Disclosure Statement titled “Preservation of Causes of Action; Settlement of Causes of Action” and those causes of action set forth in a schedule that will be Filed with the Bankruptcy Court prior to the Confirmation Hearing) that are or may be pending on the Effective Date or instituted by the Plan Administrator, on behalf of the Post Confirmation Estate, after the Effective Date against any Entity, based in law or equity, including, but not limited to, under the Bankruptcy Code, whether direct, indirect, derivative, or otherwise and whether asserted or unasserted as of the date of entry of the Confirmation Order.

18. *Chapter 11 Cases* means the cases commenced under chapter 11 of the Bankruptcy Code by the Debtors on the Petition Date currently pending before the Bankruptcy Court.

19. *Claim* means a “Claim” (as defined in section 101(5) of the Bankruptcy Code) against one or more of the Debtors, including, but not limited to: (a) any right to payment from one or more of the Debtors, whether or not such right is reduced to judgment, liquidated, unliquidated, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (b) any right to an equitable remedy for breach of performance by one or more of

the Debtors, if such performance gives rise to a right of payment from one or more of the Debtors, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

20. *Claims Reserve* means the aggregate of the following:

- (a) the amount of Administrative Claims that are not Allowed and have not been disallowed by a Final Order of the Bankruptcy Court, but are Disputed Claims as of the Effective Date—such amount to consist of the aggregate amount of such Claims set forth in the Schedules and/or asserted in all proofs of Claim Filed or otherwise asserted (but to no extent shall any Claim be counted twice), by the Holders of such Administrative Claims;
- (b) the amount of Priority Tax Claims that are not Allowed and have not been disallowed by a Final Order of the Bankruptcy Court, but are Disputed Claims as of the Effective Date—such amount to consist of the aggregate amount of such Claims set forth in the Schedules and/or asserted in all proofs of Claim Filed or otherwise asserted (but to no extent shall any Claim be counted twice), by the Holders of such Priority Tax Claims;
- (c) the amount of Other Secured Claims that are not Allowed and have not been disallowed by a Final Order of the Bankruptcy Court, but are Disputed Claims as of the Effective Date—such amount to consist of the aggregate amount of such Claims set forth in the Schedules and/or asserted in all proofs of Claim Filed or otherwise asserted (but to no extent shall any Claim be counted twice), by the Holders of such Other Secured Claims; and
- (d) the amount of Other Priority Claims that are not Allowed and have not been disallowed by a Final Order of the Bankruptcy Court, but are Disputed Claims as of the Effective Date—such amount to consist of the aggregate amount of such Claims set forth in the Schedules and/or asserted in all proofs of Claim Filed or otherwise asserted (but to no extent shall any Claim be counted twice), by the Holders of such Other Priority Claims.

21. *Class* means a category of Holders of Claims or Equity Interests as set forth in Article IV of the Plan.

22. *Committee* means any and all committees appointed in these Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code, as constituted from time to time, up to the Effective Date.

23. *Confirmation* means the entry of the Confirmation Order, subject to all conditions specified in Article IX.B herein having been satisfied or waived pursuant to Article IX.D of the Plan.

24. *Confirmation Date* means the date upon which the Confirmation Order is entered on the docket of the Bankruptcy Court.

25. *Confirmation Hearing* means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider Confirmation of the Plan in accordance with section 1129 of the Bankruptcy Code, as the same may be adjourned from time to time.

26. *Confirmation Order* means the order of the Bankruptcy Court confirming the Plan in accordance with the provisions of Chapter 11 of the Bankruptcy Code.

27. *Consummation* means the occurrence of the Effective Date.

28. *Credit Agreement* means the \$45 million Credit Agreement dated as of October 14, 1998, as amended from time to time, among Jillian's Entertainment Corporation as borrower, Holdings and all domestic subsidiaries of Jillian's Entertainment Corporation as guarantors, the Prepetition Lenders as initial lenders, and Fleet National Bank as initial issuing bank, swing line bank and Administrative Agent.

29. *Debtors in Possession* means the Debtors as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

30. *DIP Facility* means, pursuant to the terms and conditions set forth in the DIP Order, that certain debtor in possession credit facility provided to the Debtors.

31. *DIP Facility Agent* means the agent for the DIP Lenders under the DIP Facility.

32. *DIP Facility Claim* means a Claim arising under or as a result of the DIP Facility.

33. *DIP Lenders* means those lenders under the DIP Facility.

34. *DIP Order* means the Bankruptcy Court order entered on the Debtors' Motion for (I) Interim and Final Orders Authorizing (A) the Debtors to Enter into Postpetition Credit Agreement Pursuant to 11 U.S.C. §§ 105 and 364 and Bankruptcy Rule 4001(c); (B) Use of Cash Collateral Pursuant to 11 U.S.C. § 363; and (C) Granting Adequate Protection to Prepetition Secured Pursuant to 11 U.S.C. §§ 361, 363 and 364 and (II) the Scheduling of a Final Hearing Pursuant to Bankruptcy Rule 4001(c).

35. *Disclosure Statement* means the written Disclosure Statement for the Joint Liquidating Plan of Reorganization of Jillian's Entertainment Holdings, Inc. and Certain of Its Subsidiaries Pursuant to Chapter 11 of the United States Bankruptcy Code, as amended, supplemented, or modified from time to time, and that is prepared and distributed in accordance with section 1125 of the Bankruptcy Code, Bankruptcy Rule 3018 and other applicable law.

36. *Disputed Claims or Equity Interest* means a Claim or Equity Interest, or any portion thereof: (i) listed on the Schedules as unliquidated, disputed or contingent; (ii) is the subject of an objection or request for estimation Filed or is otherwise disputed by any of the Debtors or any other party in interest in accordance with applicable law and which objection has not been withdrawn, resolved, or overruled by a Final Order of the Bankruptcy Court; (iii) such

Claim is in excess of the amount scheduled as other than disputed, contingent or unliquidated or (iv) is otherwise disputed by any of the Debtors or any other party in interest in accordance with applicable law, which dispute has not been withdrawn, resolved, or overruled by a Final Order.

37. *Distribution* means any consideration given to any Entity by the Debtors under the Plan.

38. *Effective Date* means the date selected by the Debtors which is a Business Day after the Confirmation Date on which all conditions specified in Article IX.C herein have been satisfied or waived pursuant to Article IX.D and no stay of the Confirmation Order is in effect. When used in the Plan, Effective Date means on the Effective Date or as soon as reasonably practicable thereafter.

39. *Encumbered Actions* means the Causes of Action on which the Prepetition Lenders held a Lien as of the Petition Date.

40. *Entity* means a Person, a corporation, a general partnership, a limited partnership, a limited liability company, a limited liability partnership, an association, a joint stock company, a joint venture, an Estate, a trust, an unincorporated organization, a governmental unit or any subdivision thereof, the United States Trustee or any other entity.

41. *Equity Interests* means any interest in any Debtor, including, without limitation, (i) a share in a corporation, whether or not denominated "stock," or similar security, and whether or not issued, unissued, authorized, or outstanding, (ii) an interest of a limited partner in a limited partnership, (iii) an interest of a general partner in a general partnership, or (iv) a warrant, option, contract, or right to purchase, sell, or subscribe to a share, security, or interest of a kind specified in (i), (ii), (iii), or (iv) of this definition.

42. *Estate(s)* means individually, the Estate of each Debtor in the Chapter 11 Cases, and, collectively, the Estates of all Debtors in the Chapter 11 Cases, created pursuant to section 541 of the Bankruptcy Code upon commencement of the Chapter 11 Cases.

43. *File or Filed* means file or filed with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases.

44. *Final Decree* means the decree contemplated under Bankruptcy Rule 3022.

45. *Final Order* means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, with respect to the subject matter, that has not been reversed, stayed, modified or amended, and is no longer subject to appeal, *certiorari* proceeding or other proceeding for review, reargument, or rehearing, and as to which no appeal, *certiorari* proceeding, or other proceeding for review, reargument, or rehearing has been timely requested or is then pending and the time to file any such appeal, *certiorari* proceeding or other proceeding for review, reargument, or rehearing has expired or as to which any right to appeal, petition for *certiorari*, reargue, or seek rehearing shall have been waived in writing in form and substance satisfactory to the Debtors.

46. *Forfeited Unsecured Distributions* means the undeliverable or unclaimed Distributions relating to Allowed Unsecured Claims, that are deemed forfeited pursuant to Article V.C.2 of the Plan.

47. *Heller Loan* means that certain Loan and Security Agreement dated as of October 5, 2000 (and all related documents) among Jillian's of Houston, TX, Inc., Jillian's of Arundel, MD, Inc., Jillian's of Memphis, TN, Inc., Jillian's of Westbury, NY, Inc., Jillian's of Minneapolis, MN, Inc. and River Vending, Inc. as borrowers, Holdings as guarantor, and Heller EMX, Inc. as agent and lender.

48. *Holder* means any Entity owning or holding a Claim or Equity Interest.

49. *Holdings* means Jillian's Entertainment Holdings, Inc., a Delaware corporation.

50. *Impaired* means, when used with reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

51. *Information Agent* means Kurtzman Carson Consultants LLC, 12910 Culver Blvd. Suite I, Los Angeles, CA 90066, (310) 823-9000, attention Jonathan A. Carson.

52. *Intercompany Claim* means any Claim held by any Affiliate against any other Affiliate that is a Debtor or its Estate.

53. *Lien* means any charge against or interest in property to secure payment of a debt or performance of an obligation.

54. *Main Event Note* means the unsecured 10% subordinated note due 2001 issued by Holdings to The Main Event, Inc on May 12, 1998.

55. *Mutual Releases* means the mutual releases described in Article X.F of the Plan.

56. *Other Forfeited Distributions* means any undeliverable or unclaimed Distributions on account of Administrative Claims, Priority Tax Claims, Other Secured Claims and Other Priority Claims that are deemed forfeited pursuant to Article V.C.2 of the Plan.

57. *Other Priority Claim* means any Claim accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

58. *Other Secured Claim* means a Secured Claim other than the Prepetition Lender Secured Claims, including without limitation, Claims arising from the Scottsdale Notes to the extent the Scottsdale Notes are Secured Claims.

59. *Person* means a "person" as defined in section 101(41) of the Bankruptcy Code.

60. *Petition Date* means the date on which the Debtors Filed their respective petitions for relief commencing the Chapter 11 Cases.

61. *Plan* means this Joint Liquidating Plan of Reorganization of Jillian's Entertainment Holdings, Inc. and Certain of Its Subsidiaries Pursuant to Chapter 11 of the United States Bankruptcy Code, including, without limitation, any exhibits, supplements, appendices and schedules hereto, either in its present form or as it may be amended, modified, altered or supplemented from time to time in accordance with the terms and provisions hereof.

62. *Plan Administrator* means the Person designated by the Debtors and retained as of the Effective Date, under the Post Confirmation Estate Agreement, as the employee or fiduciary responsible for, among other things, the matters described in Article IV and Article V herein. The Plan Administrator shall have all rights and powers necessary to effectuate the Plan. When the context requires, any reference to the Plan Administrator or the Post Confirmation Estate shall mean the Plan Administrator on behalf of the Post Confirmation Estate.

63. *Post Confirmation Estate* means the grantor trust to be created on the Effective Date in accordance with the provisions of Article VI.A of the Plan and the Post Confirmation Estate Agreement for the benefit of Holders of certain Allowed Claims.

64. *Post Confirmation Estate Agreement* means the trust agreement, to be Filed with the Bankruptcy Court prior to the Confirmation Hearing, that, in part, addresses the retention, including compensation, of the Plan Administrator and discloses the identity of the Plan Administrator.

65. *Post Confirmation Estate Assets* means the Unsecured Claim Pool, the Claims Reserve, the Administrator Fund and the Causes of Action and the proceeds thereof.

66. *Prepetition Lender Deficiency Claim* means any Claim arising from the Credit Agreement that is not paid in such amount as is provided in Article III.B.1(b).

67. *Prepetition Lender Disbursement* means the aggregate of (A) the Cash Assets, (B) the proceeds or recoveries recovered on account of the Encumbered Actions available on the Effective Date and (C) the Sale Proceeds subject to and reduced by (i) the Sale Expense Pro Rata share of the Sale Costs and (ii) any Distributions made to Holders of Allowed Other Secured Claims pursuant to Article III.B.2(b), but only up to an amount no greater than the full amount of the Allowed Prepetition Lender Secured Claims.

68. *Prepetition Lender Secured Claim* means any Claim arising from the Credit Agreement to the extent such Claim is a Secured Claim.

69. *Prepetition Lenders* means the lenders under the Credit Agreement.

70. *Priority Tax Claim* means a Claim of a governmental unit of the kind specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code.

71. *Professional* means any professional or other Entity that (a) has been retained in the Chapter 11 Cases by a Final Order of the Bankruptcy Court pursuant to sections 327, 328 or 1103 of the Bankruptcy Code or otherwise, including, but not limited to, Carl Marks Consulting Group LLC, Houlihan Lokey Howard & Zukin, Robert Falls & Co., Hilco Appraisal Services, LLC, Frost Brown Todd LLC and Kirkland & Ellis LLP, or (b) seeks compensation or

reimbursement of expenses in connection with the Chapter 11 Cases pursuant to section 503(b)(4) of the Bankruptcy Code.

72. *Pro Rata* means proportionately so that with respect to an Allowed Claim, the ratio of (a) (i) the amount of property distributed on account of a particular Allowed Claim to (ii) the amount of that particular Allowed Claim, is the same as the ratio of (b) (i) the amount of property distributed on account of all Allowed Claims of the Class in which the particular Allowed Claim is included to (ii) the amount of all Allowed Claims in that Class.

73. *Released Parties* means any Entity granted a release by the Debtors in Article X.F of the Plan.

74. *Residual Proceeds* means the amount, if any, of the Sale Proceeds that exceeds the sum of (i) Allowed DIP Facility Claims; (ii) Allowed Administrative Claims; (iii) Allowed Priority Tax Claims; (iv) Allowed Other Secured Claims; (v) Allowed Other Priority Claims; (vi) the Unsecured Claim Pool; (vii) the Claims Reserve; (viii) the Administrator Fund; and (ix) the full amount of the Prepetition Lender Secured Claims.

75. *Sale(s)* means any sale or sales of any assets of the Debtors approved by a Sale Order.

76. *Sale Costs* means an amount equal to the (i) the amount of the Allowed DIP Facility Claim; (ii) the amount of the Allowed Priority Tax Claims as of the Effective Date, provided, however, that such amount must be consistent with the estimates of the Debtors and otherwise reasonably acceptable to the Prepetition Lenders; (iii) the amount of the Allowed Administrative Claims through the Effective Date, including the Carve-Out (as that term is defined in the DIP Order); (iv) the amount of the Allowed Other Priority Claims as of the Effective Date, provided, however, that such amount must be consistent with the estimates of the Debtors and otherwise reasonably acceptable to the Prepetition Lenders; (v) the Unsecured Claim Pool; (vi) the Claims Reserve; and (vii) the Administrator Fund.

77. *Sale Expense Pro Rata* means proportionately so that with respect to an Allowed Secured Party Claim, the ratio of (a) (i) the amount of that particular Allowed Secured Party Claim to (ii) the Holder's proportionate share of the Sale Costs is the same as the ratio of (b) (i) the amount of all Allowed Secured Party Claims to (ii) the Holders of all Allowed Secured Party Claims proportionate share of the Sale Costs.

78. *Sale Order* means one or more orders of the Bankruptcy Court approving one or more sales pursuant to the Debtors' Motion for Order Under Sections 105(a), 363, 365 and 1146(c) of the Bankruptcy Code (A) Authorizing the Sale(s) of Certain or All of the Debtors' Assets, Free and Clear of Liens, Claims and Encumbrances, (B) Approving Asset Purchase Agreements, and (C) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with Such Sale(s).

79. *Sale Proceeds* means the consideration (Cash or otherwise) received by the Debtors pursuant to and in connection with the Sale(s).

80. *Schedules* means the respective schedules of assets and liabilities and the statements of financial affairs Filed by the Debtors in accordance with section 521 of the Bankruptcy Code and the Official Bankruptcy Forms of the Bankruptcy Rules as such schedules and statements have been or may be supplemented or amended.

81. *Scottsdale Notes* are those certain Registered Secured Promissory Notes in the aggregate principle amount of \$750,000 bearing interest at a rate of 12% per annum issued in 2001 by the Jillian's of Scottsdale, AZ, Inc. to JWC Equity Funding, Inc., Steven Foster, Daniel Smith, Greg Stevens, Kevin Troy, and Ronald Widman.

82. *Secured Claim* means: (a) a Claim (other than a Claim in any way arising from or relating to a Claim of a lessor for damages resulting from the termination of a lease of real property) that is secured by a Lien on a property in which any of the Estates has an interest, which lien is valid, perfected and enforceable under applicable law or by reason of a Final Order, or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim Holder's interest in any of the Estates' interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; or (b) a Claim Allowed under the Plan as a Secured Claim. For purposes of classification and treatment, the definition of Secured Claim shall exclude DIP Facility Claims.

83. *Secured Party Claim* means (i) the Allowed Prepetition Lender Secured Claims and (ii) the Allowed Other Secured Claims.

84. *Subordinated Note Claims* means any Claim arising from (1) the 13% Notes and the Main Event Note and (2) any portion of the Claims arising from the Scottsdale Notes that are not Secured Claims.

85. *Unimpaired* means, when used with reference to a Claim or Equity Interest, a Claim or Equity Interest that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

86. *Unsecured Claim* means any Claim, including the Prepetition Lender Deficiency Claim, against any of the Debtors other than an Administrative Claim, a DIP Facility Claim, a Priority Tax Claim, a Prepetition Lender Secured Claim, an Other Secured Claim, an Other Priority Claim, a Subordinated Note Claim, an Intercompany Claim, or an Equity Interest.

87. *Unsecured Claim Pool* means \$250,000 to be funded from the Sale Proceeds, plus interest, if any, accrued on such amount after the Effective Date.

ARTICLE II.

DIP FACILITY CLAIMS; ADMINISTRATIVE CLAIMS; PRIORITY TAX CLAIMS

A. DIP Facility Claims

On or prior to the Effective Date, the DIP Facility Agent shall receive in full satisfaction, settlement, release, and discharge of and in exchange for the Allowed DIP Facility Claims, if any, (i) Cash equal to the principal amount under the DIP Facility owing together with all

accrued and unpaid interest, fees, expenses and charges as set forth in the DIP Order or (ii) such other treatment as to which the Debtors and the DIP Lenders have agreed upon in writing.

B. Administrative Claims

Each Allowed Administrative Claim shall be paid by the Debtors, at their election, (i) in full, in Cash, in such amounts as are (1) incurred in the ordinary course of business by the Debtors, or (2) in such amounts as such Administrative Claim is Allowed by the Bankruptcy Court upon the later of the Effective Date or the date upon which such Administrative Claim is Allowed, (ii) upon such other terms as may exist in the ordinary course of the Debtors' business or (iii) upon such other terms as may be agreed upon between the Holder of such Administrative Claim and the applicable Debtor.

C. Priority Tax Claims

On, or as soon as reasonably practicable after, the latest of the Effective Date or the date such Priority Tax Claims becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Priority Tax Claim, (i) Cash equal to the unpaid portion of such Allowed Priority Tax Claim or (ii) such other treatment as to which the Debtors and such Holder have agreed upon in writing.

**ARTICLE III.
CLASSIFICATION AND TREATMENT
OF CLASSIFIED CLAIMS AND EQUITY INTERESTS**

A. Summary

1. The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes, including voting, Confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Equity Interest shall be deemed classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that such Claim or Equity Interest is Allowed in that Class and has not been paid or otherwise settled prior to the Effective Date. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims have not been classified, but the treatment for such unclassified claims are set forth in Article II.

2. Subject to the occurrence of the Effective Date, the Debtors will be deemed consolidated for the following purposes under the Plan: (a) no Distributions will be made under the Plan on account of the Intercompany Claims; (b) the guarantees of certain Debtors of obligations of other Debtors, including, but not limited to, those obligations arising under the Credit Agreement, the Heller Loan, and the 13% Notes, will be deemed eliminated so that any Claim against any Debtor and any guarantee thereof executed by any other Debtor and any joint and several liability of any Debtor with another Debtor will be deemed to be one obligation of the deemed consolidated Debtors; and (c) each and every Claim against a Debtor will be deemed

asserted against the consolidated Estates of all of the Debtors, will be deemed one Claim against and obligation of the deemed consolidated Debtors and their Estates and will be treated in the same Class regardless of the Debtor.

3. The classification of Claims against and Equity Interests in the Debtors pursuant to the Plan is as follows:

Class	Claim	Status	Voting Right
1	Prepetition Lender Secured Claims	Impaired	Entitled to vote
2	Other Secured Claims	Impaired	Entitled to vote
3	Other Priority Claims	Unimpaired	Not entitled to vote – deemed to accept
4	Unsecured Claims	Impaired	Entitled to vote ²
5	Subordinated Note Claims	Impaired	Not entitled to vote – deemed to reject
6	Intercompany Claims	Impaired	Not entitled to vote – deemed to reject
7	Equity Interests	Impaired	Not entitled to vote – deemed to reject

B. Treatment of Claims and Equity Interests

1. Class 1 – Prepetition Lender Secured Claims

(a) Classification: Class 1 consists of all Prepetition Lender Secured Claims.

(b) Treatment: On, or as soon as reasonably practicable after, the Effective Date, the Administrative Agent shall receive, in full satisfaction, settlement, release and discharge of and in exchange for the Allowed Prepetition Lender Secured Claims, (i) the Prepetition Lender Disbursement or (ii) such other treatment as to which the Debtors and the Administrative Agent have agreed upon in writing. The Prepetition Lenders shall also receive (x) any excess amount remaining in the Claims Reserve after all such Disputed Claims have been resolved and all payments in connection therewith have been distributed and (y) any Other Forfeited Distributions pursuant to Article V.C. Holders of a Prepetition Lender Deficiency Claim, if any, shall be entitled to participate in, and receive a Distribution to be made to Class 4 Claims pursuant to Article III.B.4(b).

(c) Voting: Class 1 is impaired. Holders of Prepetition Lender Secured Claims in Class 1 are entitled to vote to accept or reject the Plan.

² Pursuant to Article III.B.4(c), in the event that Holders of Other Secured Claims (Class 2) reject the Plan, Class 4 will be deemed to have voted to reject the Plan.

2. Class 2 – Other Secured Claims

(a) Classification: Class 2 consists of all Other Secured Claims.

(b) Treatment: On, or as soon as reasonably practicable after, the later of the Effective Date or the date such Claim becomes an Allowed Other Secured Claim, each Holder of such Allowed Other Secured Claim shall receive one of the following distributions in full satisfaction, settlement, release and discharge of and in exchange for the Allowed Other Secured Claim, at the option of the Debtors or Plan Administrator, upon notice to and consultation with the Prepetition Lenders: (i) cash equal to the fair market value of the property upon which a Lien has been asserted securing such Claim subject to and reduced by such Holder's Sale Expense Pro Rata share of the Sale Costs, or (ii) the property securing such Allowed Other Secured Claim, or (iii) such other treatments as which the Debtors and such Holder shall have agreed upon in writing; but only up to an amount no greater than the full amount of the Allowed Other Secured Claim.

(c) Voting: Class 2 is impaired. Holders of Other Secured Claims in Class 2 are entitled to vote to accept or reject the Plan.

3. Class 3 – Other Priority Claims

(a) Classification: Class 3 consists of all Other Priority Claims.

(b) Treatment: On, or as soon as reasonably practicable after, the later of the Effective Date or the date such Other Priority Claim becomes an Allowed Other Priority Claim, each Holder of an Allowed Other Priority Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Other Priority Claim, (i) Cash equal to the unpaid portion of such Allowed Other Priority Claim or (ii) such other treatment as to which the Debtors and such Holder have agreed upon in writing. Other Priority Claims that are (i) Allowed on or prior to the Effective date shall be funded from the Sale Proceeds and (ii) Allowed after the Effective Date shall be funded from the Claims Reserve.

(c) Voting: Class 3 is unimpaired. Holders of Other Priority Claims in Class 3 are deemed to accept the Plan and are not therefore entitled to vote to accept or reject the Plan.

4. Class 4 – Unsecured Claims

(a) Classification: Class 4 consists of all Unsecured Claims.

(b) Treatment: If Holders of Other Secured Claims (Class 2) reject the Plan pursuant to section 1126 of the Bankruptcy Code, Holders of Allowed Unsecured Claims shall not receive any Distribution on account of such Unsecured Claims under the Plan. If the Holders of Other Secured Claims (Class 2) accept the Plan pursuant to section 1126 of the Bankruptcy Code, Holders of Allowed Unsecured Claims shall receive the following treatment:

(1) the Holders of Allowed Unsecured Claims shall receive a Pro Rata share of the Unsecured Claim Pool and the Residual Proceeds, if

any, at such time when all Unsecured Claims have been Allowed or otherwise resolved. The Plan Administrator, however, in its sole discretion, may distribute a percentage of the respective Pro Rata shares of the Unsecured Claim Pool to Holders of Allowed Unsecured Claims prior to such time when all Unsecured Claims have been Allowed or otherwise resolved; provided, however, the Plan Administrator shall continue to holdback an appropriate amount of the Unsecured Claim Pool, in its sole discretion, that he deems necessary to ensure proper Pro Rata Distributions to Holders of Disputed Unsecured Claims which subsequently become Allowed Unsecured Claims;

(2) pursuant to Article V.C of the Plan, the Forfeited Unsecured Distributions, if any, shall return to the Unsecured Claim Pool to be distributed on a Pro Rata basis to the remaining Holders of Allowed Unsecured Claims by the Plan Administrator in accordance with Article III.B.4(b)(1);

(3) in the event that the full amount of the Prepetition Lender Secured Claims are satisfied pursuant to Article III.B.1, (i) excess Claims Reserve amounts, if any, and (ii) Other Forfeited Distributions, if any, shall become part of the Unsecured Claim Pool to be distributed on a Pro Rata basis to the Holders of Allowed Unsecured Claims by the Plan Administrator in accordance with Article III.B.4(b)(1);

(4) recoveries, if any, received on account of any Cause of Action (other than the Encumbered Actions) pursued by the Debtors or the Plan Administrator shall be added to the Unsecured Claim Pool to be distributed on a Pro Rata basis to the Holders of Allowed Unsecured Claims by the Plan Administrator in accordance with Article III.B.4(b)(1);

(5) in the event that the full amount of the Prepetition Lender Secured Claims are satisfied pursuant to Article III.B.1, any further proceeds or recoveries recovered on account of the Encumbered Actions that become available after the Effective Date shall be added to the Unsecured Claim Pool to be distributed on a Pro Rata basis to the Holders of Allowed Unsecured Claims by the Plan Administrator in accordance with Article III.B.4(b)(1); and

(6) in the event that, as of the Effective Date, the actual aggregate amount of allowed fees and expenses of the professionals retained by any Committee in these Chapter 11 Cases, together with any allowed reimbursable expenses of the members of any such Committee (collectively, the "Committee Allowed Fees"), is less than the amount of the Committee Fee Carveout (as defined in the DIP Order), then the Unsecured Claim Pool shall be increased in amount by the difference between the Committee Allowed Fees and the Committee Fee Carveout; provided, however, that in the event that, as of the Effective Date, the

Committee Allowed Fees are more than the amount of the Committee Fee Carveout (the “Committee Fee Additional Costs”), then the Unsecured Claim Pool shall be decreased or reduced in the amount of the Committee Fee Additional Costs.

(c) Voting: Class 4 is impaired. Holders of Unsecured Claims in Class 4 (including the Prepetition Lender Deficiency Claim) are entitled to vote to accept or reject the Plan; provided, however, that, in the event that Holders of Other Secured Claims (Class 2) reject the Plan, Class 4 will be deemed to have voted to reject the Plan.

5. Class 5 – Subordinated Note Claims

(a) Classification: Class 5 consists of all Subordinated Note Claims.

(b) Treatment: On the Effective Date, the Subordinated Note Claims will be canceled and the Holders of Subordinated Note Claims shall not receive or retain any Distribution or property on account of such Subordinated Note Claims under the Plan.

(c) Voting: Class 5 is impaired. Because Holders of Subordinated Note Claims will receive no Distribution under the Plan, Class 5 will be deemed to have voted to reject the Plan.

6. Class 6 – Intercompany Claims

(a) Classification: Class 6 consists of all Intercompany Claims.

(b) Treatment: On the Effective Date, all Intercompany Claims shall be cancelled and Holders of Intercompany Claims shall not receive any Distribution on account of such Intercompany Claim under the Plan.

(c) Voting: Class 6 is impaired. Because Holders of Intercompany Claims will receive no Distributions under the Plan, Class 6 will be deemed to have voted to reject the Plan.

7. Class 7 – Equity Interests

(a) Classification: Class 7 consists of all Equity Interests.

(b) Treatment: On the Effective Date, all Equity Interests shall be cancelled and the Holders of Equity Interests shall not receive or retain any Distribution or property on account of such Equity Interests.

(c) Voting: Class 7 is impaired. Because Holders of Equity Interests will receive no Distribution under the Plan, Class 7 will be deemed to have voted to reject the Plan.

**ARTICLE IV.
TREATMENT OF DISPUTED CLAIMS**

A. Objections to Claims; Prosecution of Disputed Claims

1. After the Effective Date, the Plan Administrator shall object (and shall take over, and continue prosecuting, any outstanding objections by the Debtors) to the allowance of Disputed Claims filed with the Bankruptcy Court. All objections shall be litigated to Final Order; provided, however, that the Plan Administrator shall have the authority and sole discretion to file, settle, compromise or withdraw any objections to Claims, without approval of the Bankruptcy Court.

2. There shall be no deadline to object to or investigate and review Claims, and any objections to Claims and settlement thereof shall be dealt with as the Debtors or the Plan Administrator, as the case may be, in their sole discretion, deem to be appropriate. Further, the Plan Administrator shall have the sole and complete discretion to decide not to review and/or object to proofs of Claim below a certain dollar amount to the extent such review and/or objection would be uneconomical.

3. Unless otherwise provided by the Plan or the Post Confirmation Estate Agreement, no Bankruptcy Court approval shall be required in order for the Plan Administrator to settle and/or compromise any Claim, objection to Claim, cause of action, or right to payment of or against the Debtors, their Estates or the Post Confirmation Estate.

B. Estimation of Claims

The Debtors or the Plan Administrator may at any time request that the Bankruptcy Court estimate any contingent or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtors or the Plan Administrator previously have objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. Subject to the provisions of section 502(j) of the Bankruptcy Code, in the event that the Bankruptcy Court estimates any contingent or Disputed Claim, the amount so estimated shall constitute the maximum allowable amount of such Claim. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Debtors or the Post Confirmation Estate may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation and resolution procedures are intended to be cumulative and not necessarily exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

C. Payments and Distributions on Disputed Claims

No interest shall be paid on Disputed Claims that later become Allowed Claims or with respect to any distribution to such Holder. No distribution shall be made with respect to all or any portion of any Claim, a portion of which or all of which is a Disputed Claim, pending the entire resolution thereof.

ARTICLE V. DISTRIBUTIONS

A. Means of Cash Payment

Cash Payments, made pursuant to the Plan, shall be in U.S. dollars and, at the option and in the sole discretion of the Debtors or the Plan Administrator, be made by (a) checks drawn on or (b) wire transfers from a domestic bank selected by the Debtors or the Plan Administrator. Cash payments to foreign creditors may be made, at the option of the Debtors or the Plan Administrator, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

B. Delivery of Distributions

Subject to the provisions of Rule 2002(g) of the Bankruptcy Rules, and except as otherwise provided herein, distributions and deliveries to Holders of Allowed Claims shall be made at the address of each such Holder as set forth on the Schedules filed with the Bankruptcy Court, unless superseded by the address set forth on timely filed proof(s) of claim or some other writing Filed with the Bankruptcy Court and served upon the Plan Administrator.

C. Undeliverable Distributions

1. Holding of Undeliverable Distributions

If any Distribution to any Holder is returned to the Plan Administrator as undeliverable, no further Distributions shall be made to such Holder unless and until the Plan Administrator is notified by such Holder, in writing, of such Holder's then-current address. Upon such an occurrence, the appropriate Distribution shall be made as soon as reasonably practicable after such Distribution has become deliverable. All Entities ultimately receiving previously undeliverable Cash shall not be entitled to any interest or other accruals of any kind. Nothing contained in the Plan shall require the Debtors or the Plan Administrator to attempt to locate any Holder of an Allowed Claim or an Allowed Equity Interest.

2. Failure to Claim Undeliverable Distributions

Any Holder of an Allowed Claim entitled to an undeliverable or unclaimed Distribution that does not provide notice of such Holder's correct address to the Debtors and the Plan Administrator within the later of six (6) months after (i) the Effective Date or (ii) the date of the initial Distribution made by the Debtors or the Plan Administrator to such Holder, shall be deemed to have forfeited its claim for such undeliverable or unclaimed Distribution and shall be forever barred and enjoined from asserting any such claim for an undeliverable or unclaimed Distribution against any of the Debtors, their Estates or the Post Confirmation Estate. In such cases, the Other Forfeited Distributions shall be distributed in accordance with Article III.B.1 and the Forfeited Unsecured Distributions shall be distributed in accordance with Article III.B.4 of the Plan. Nothing contained in the Plan shall require the Debtors or the Plan Administrator to attempt to locate any holder of an Allowed Claim.

D. Withholding and Reporting Requirements

In connection with the Plan and all Distributions thereunder, the Debtors and the Plan Administrator shall comply with all tax withholding and reporting requirements imposed by any U.S. federal, state or local or non-U.S. taxing authority, and all Distributions hereunder shall be subject to any such withholding and reporting requirements. The Debtors and the Plan Administrator shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations, on account of such Distribution, and (b) the Debtors and the Plan Administrator reserve the option, in their discretion, to not make a Distribution to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements satisfactory to the Debtor or the Plan Administrator for the payment and satisfaction of such tax obligations or has, to the Debtors' or Plan Administrator's satisfaction, established an exemption therefrom. Any Distributions to be made pursuant to the Plan shall, pending the implementation of such withholding and reporting requirements, be treated as undeliverable pursuant to Article V.C.2 of the Plan.

E. Time Bar to Cash Payments

Checks issued by the Plan Administrator on account of Allowed Claims shall be null and void if not negotiated within ninety (90) days from and after the date of issuance thereof. Requests for reissuance of any check shall be made directly to the Plan Administrator by the Holder of the Allowed Claim. Any claim relating to such voided check shall be made on or before the later of: (i) sixth (6th) month after the Effective Date; or (ii) one hundred and eighty (180) days after the date of issuance of such check. After such date, all claims relating to such voided checks shall be discharged and forever barred, and the Post Confirmation Estate shall treat all such moneys related to Allowed Unsecured Claims in the same manner as the Forfeited Unsecured Distributions and all such moneys related to all other Allowed Claims in the same manner as the Other Forfeited Distributions in accordance with Article III.B.1 and Article III.B.4 of the Plan respectively.

F. Distributions After the Effective Date

Distributions made after the Effective Date to Holders of Claims that are not Allowed Claims as of the Effective Date, but which later become Allowed Claims, shall be deemed to have been made on the Effective Date.

G. Interest

Unless otherwise required by applicable bankruptcy law, post-petition interest shall not accrue or be paid on any Claims, and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim.

H. Fractional Dollars; De Minimis Distributions

Notwithstanding anything contained herein to the contrary, payments of fractions of dollars will not be made. Whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment made will reflect a rounding of such fraction to the nearest dollar (up or down), with half dollars being rounded down. The Plan Administrator will not make any payment of less than twenty dollars (\$20) on account of any Allowed Claim, unless a specific request therefor is made in writing to the Plan Administrator on or before ninety (90) days after the Effective Date.

I. Set-Offs

Consistent with applicable law, the Plan Administrator may, but shall not be required to, set-off against any Allowed Claim and the Distributions to be made pursuant to the Plan on account thereof (before any distribution is made on account of such Claim), the claims, rights and causes of action of any nature that the Debtors, their Estates, or the Post Confirmation Estate may hold against the Holder of such Allowed Claim; provided, however, that neither the failure to effect such a set-off nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors, their Estates, the Plan Administrator or the Post Confirmation Estate of any such claims, rights and Causes of Action that the Debtors, their Estates, or the Post Confirmation Estate may possess against such Holder.

J. Settlement of Claims and Controversies

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided under the Plan, the provisions of this Plan shall constitute a good faith compromise of all Claims or controversies relating to the contractual, legal and subordination rights that a Holder of a Claim may have with respect to any Allowed Claim with respect thereto, or any distribution to be made on account of such an Allowed Claim. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims or controversies, and the Bankruptcy Court's finding that such compromise or settlement is in the best interests of the Debtors, their Estates and Holders of Claims and is fair, equitable and reasonable.

ARTICLE VI. IMPLEMENTATION OF THE PLAN

A. Establishment of the Post Confirmation Estate

1. On or prior to the Effective Date, the Debtor shall consummate one or more Sale(s). On the Effective Date, the Debtors, on their own behalf and on behalf of Holders of Allowed Claims, shall execute the Post Confirmation Estate Agreement and shall take all other steps necessary to establish the Post Confirmation Estate. On the Effective Date, and in accordance with and pursuant to the terms of the Plan, the Debtors shall assign and transfer to the Post Confirmation Estate all of their right, title, and interest in and to all of the Post Confirmation Estate Assets, notwithstanding any prohibition of assignability under applicable non-bankruptcy law. In connection with the transfer of the Post Confirmation Estate Assets, including any attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any

documents or communications (whether written or oral) transferred to the Post Confirmation Estate, shall vest in the Post Confirmation Estate and its representatives, including the Plan Administrator, and the Debtors, the Post Confirmation Estate and the Plan Administrator are authorized to take all necessary actions to effectuate the transfer of such privileges.

2. For all federal income tax purposes, all parties (including, without limitation, the Debtors, the Plan Administrator and the beneficiaries of the Post Confirmation Estate) shall treat the transfer of assets to the Post Confirmation Estate in accordance with the terms of the Plan, as a transfer of such assets by the Debtors to the Holders of Allowed Claims and followed by a transfer by such Holders to the Post Confirmation Estate, and the Post Confirmation Estate beneficiaries shall be treated as the grantors and owners thereof.

B. Corporate Action

Upon the entry of the Confirmation Order by the Bankruptcy Court, all matters provided under the Plan involving the corporate structure of the Debtors shall be deemed authorized and approved without any requirement of further action by the Debtors, the Debtors' shareholders or the Debtors' boards of directors. The Debtors (and their boards of directors) shall dissolve or otherwise terminate their existence upon the Effective Date.

C. Preservation of Rights

The Debtors are currently investigating whether to pursue potential Causes of Action against other parties or Entities. Under the Plan, the Plan Administrator retains all rights of and on behalf of the Debtors and the Post Confirmation Estates to commence and pursue any and all Causes of Action (under any theory of law, including, without limitation, the Bankruptcy Code, and in any court or other tribunal including, without limitation, in an adversary proceeding filed in the Debtors' Chapter 11 Cases) discovered in such investigation to the extent the Plan Administrator deems appropriate, other than any Causes of Action against the Released Parties, as all such Causes of Action have been released by the Debtors under Article X.F of the Plan. Potential Causes of Action, other than any Causes of Action against the Released Parties, currently being investigated by the Debtors, which may but need not (if at all) be pursued by the Debtors prior to the Effective Date and by the Plan Administrator after the Effective Date to the extent warranted include, without limitation, the potential claims and Causes of Action set forth in the section of the Disclosure Statement titled "Preservation Causes of Action; Settlement Causes of Action" or set forth on a schedule Filed with the Bankruptcy Court prior to the Confirmation Hearing.

Subject to the releases and exculpation provisions herein, potential Causes of Action which may be pursued by the Debtors prior to the Effective Date and by the Post Confirmation Estate and the Plan Administrator after the Effective Date, also include, without limitation any other Causes of Action, whether legal, equitable or statutory in nature, arising out of, or in connection with the Debtors' businesses or operations, including, without limitation, the following: possible claims against vendors, landlords, sublessees, assignees, customers or suppliers for warranty, indemnity, back charge/set-off issues, overpayment or duplicate payment issues and collections/accounts receivables matters; deposits or other amounts owed by any creditor, lessor, utility, supplier, vendor, landlord, sublessee, assignee, or other Entity; employee,

management or operational matters; claims against landlords, sublessees and assignees arising from the various leases, subleases and assignment agreement relating thereto, including, without limitation, claims for overcharges relating to taxes, common area maintenance and other similar charges; financial reporting; environmental, and product liability matters; actions against insurance carriers relating to coverage, indemnity or other matters; counterclaims and defenses relating to any Claims or other obligations; contract or tort claims which may exist or subsequently arise; and any and all Avoidance Actions pursuant to any applicable section of the Bankruptcy Code arising from any transaction involving or concerning the Debtors.

In addition, there may be numerous other Causes of Action which currently exist or may subsequently arise that are not set forth herein or in the Disclosure Statement because the facts upon which such Causes of Action are based are not currently or fully known by the Debtors and, as a result, cannot be raised during the pendency of the Chapter 11 Cases. The failure to list any such unknown Cause of Action in the Disclosure Statement is not intended to limit the right of the Plan Administrator to pursue any unknown Cause of Action to the extent the facts underlying such unknown Cause of Action subsequently becomes fully known to the Debtors or the Plan Administrator.

The Debtors and the Plan Administrator do not intend, and it should not be assumed that because any existing or potential Causes of Action have not yet been pursued by the Debtors or are not set forth herein, that any such Causes of Action have been waived.

Unless Causes of Action against an Entity are expressly waived, relinquished, released pursuant to the Mutual Releases, compromised or settled in the Plan, or any Final Order, the Debtors expressly reserve all Causes of Action, known or unknown, for later adjudication and therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to such Causes of Action upon or after the Confirmation or Consummation of the Plan.

Except as otherwise provided in the Plan or in any contract, instrument, release, indenture or other agreement entered into in connection with the Plan, in accordance with section 1123(b)(3) of the Bankruptcy Code, any claims, rights, and Causes of Action that the respective Debtors or the Post Confirmation Estate may hold against any Entity shall vest in the Post Confirmation Estate subject to the Liens of the Prepetition Lenders and the Prepetition Lender Secured Claims relating to the Encumbered Actions, and the Plan Administrator, on behalf of the Post Confirmation Estate, shall retain and may exclusively enforce, as the authorized representative of the Post Confirmation Estate, any and all such claims, rights, or Causes of Action, as appropriate, in accordance with the best interests of the Post Confirmation Estate and the Holders of Allowed Claims entitled to Distributions under the Plan, and the terms of the Post Confirmation Estate Agreement. The Plan Administrator, on behalf of the Post Confirmation Estate, shall have the exclusive right, authority, and discretion to institute, prosecute, abandon, settle, or compromise any and all such claims, rights, and Causes of Action without the consent or approval of any third party other than the Prepetition Lenders and without any further order of the Bankruptcy Court or any other court.

D. Cancellation of Notes, Instruments, Debentures and Equity Interests

On the Effective Date, except to the extent provided otherwise in the Plan, all notes, instruments, debentures, certificates and other documents evidencing Claims and all Equity Interests in any of the Debtors shall be canceled and deemed terminated and surrendered (regardless of whether such notes, instruments, debentures, certificates or other documents are in fact surrendered for cancellation to the appropriate indenture trustee or other such Person). On the Effective Date, any indentures to which any Debtor is a party shall be deemed canceled as permitted by section 1123(a)(5) of the Bankruptcy Code.

E. Dissolution of Committee(s)

On the Effective Date, any and all Committees shall dissolve and the members thereof and the professionals retained by such Committees in accordance with section 1103 of the Bankruptcy Code shall be released and discharged from their respective fiduciary obligations without need of any further Bankruptcy Court approval.

F. Insurance Preservation; Directors and Officers Insurance; Indemnification

1. Nothing in the Plan, including any releases, shall diminish or impair the enforceability of any policies of insurance that may cover any claims against the Debtors or any other Entity.

2. The Post Confirmation Estate shall assume the pre-Effective Date obligations to the Debtors' directors and officers solely to the extent that such obligations are covered by directors and officers insurance policies. Other than as set forth in the preceding sentence, the Post Confirmation Estate shall not be liable or responsible in any way for any pre-Effective Date obligations to the Debtors or their directors and officers.

G. Accounting

Any and all reserves, including the Claims Reserve and the Unsecured Claim Pool, maintained by the Debtors or the Plan Administrator, as the case may be, in connection with the distribution of funds on account of the Allowed Claims, may be maintained by bookkeeping entries alone; the Debtors or the Plan Administrator, as the case may be, need not (but may) establish separate bank accounts for such purposes.

**ARTICLE VII.
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

A. Rejection of Executory Contracts and Unexpired Leases

Any executory contracts or unexpired leases which have not (i) expired by their own terms on or prior to the Effective Date, or (ii) been assumed, assumed and assigned, or rejected with the approval of the Bankruptcy Court in connection with the Sale(s) or otherwise, shall be deemed rejected by the Debtors as of the Effective Date, and the entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of the rejections of such executory contracts and unexpired leases pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

B. Rejection Damages Claim

Each entity that is a party to an executory contract or unexpired lease that is rejected as of the Effective Date pursuant to this Plan and the Confirmation Order will be entitled to File, not later than thirty (30) days following the Effective Date, a proof of Claim for damages alleged to have been suffered due to such rejection; provided, however, that the opportunity afforded an Entity whose executory contract or unexpired lease is rejected as of the Effective Date pursuant to this Plan and the Confirmation Order to file a proof of Claim shall in no way apply to Entities that may assert a claim on account of an executory contract or unexpired lease that was previously rejected by the Debtors for which a prior Bar Date was established. Any Entity that has a Claim for damages as a result of the rejection of an executory contract or unexpired lease pursuant to this paragraph of the Plan that does not File a proof of Claim in accordance with the terms and provisions of the Plan with the Bankruptcy Court (and serve such proof of Claim upon the Plan Administrator) will be forever barred from asserting that Claim against, and such Claim shall be unenforceable against, the Debtors or the Post Confirmation Estate.

ARTICLE VIII. POST CONFIRMATION ESTATE; PLAN ADMINISTRATOR

A. Generally

The Debtors, after consultation with the Prepetition Lenders, shall appoint the Plan Administrator, and except as may be otherwise authorized by Order of the Bankruptcy Court and provided by this Plan, shall have the sole authority to administer all assets prior to their transfer to the Post Confirmation Estate. The Plan Administrator shall perform his duties under the Plan and the Post Confirmation Estate Agreement until death, resignation or discharge and the appointment of a successor Plan Administrator will be in accordance with the Post Confirmation Estate Agreement.

B. Purpose of the Post Confirmation Estate

The Post Confirmation Estate shall be established for the primary purpose of liquidating its assets, in accordance with Treas. Reg. § 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business. The Post Confirmation Estate shall not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth herein. The Post Confirmation Estate is intended to qualify as a “grantor trust” for federal income tax purposes with the beneficiaries treated as grantors and owners of the trust.

C. Termination of Post Confirmation Estate

The Post Confirmation Estate will dissolve when all Disputed Claims have been resolved, all Distributions have been made pursuant to the Plan and all other obligations under the Plan have been fulfilled.

D. Termination of Plan Administrator

The duties, responsibilities and powers of the Plan Administrator shall terminate when the Post Confirmation Estate dissolves.

E. Compensation of Plan Administrator

The Plan Administrator shall be compensated from the Administrator Fund pursuant to the terms of the Post Confirmation Estate Agreement. Any professionals retained by the Plan Administrator shall be entitled to reasonable compensation for services rendered and reimbursement of expenses incurred from the Administrator Fund. The payment of the fees and expenses of the Plan Administrator and its retained professionals shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court.

F. Administrator Fund

Immediately prior to the dissolution of the Post Confirmation Estate, any remaining Administrator Fund amounts, if any, will be distributed in the same manner as would excess Claims Reserve amounts.

G. Exculpation; Indemnification

Except as modified by the Post Confirmation Estate Agreement, no Holder of a Claim or any other party-in-interest will have, or otherwise pursue, any Claim or cause of action against the Plan Administrator, the Post Confirmation Estate or the employees, professionals thereof (solely in the performance of their duties thereas), for making payments in accordance with the Plan or for implementing the provisions of the Plan.

**ARTICLE IX.
CONDITIONS PRECEDENT TO CONFIRMATION
AND THE EFFECTIVE DATE**

A. Acceptance or Rejection of the Plan

1. Acceptance by Impaired Classes

An Impaired Class of Claims will have accepted the Plan if the Holders of at least two-thirds in amount and more than one-half in number of the Allowed Claims in the Class actually voting have voted to accept the Plan, in each case not counting the vote of any Holder designated under section 1126(e) of the Bankruptcy Code.

2. Elimination of Classes

Any Class that does not contain any Allowed Claims or Equity Interests or any Claims or Equity Interests temporarily allowed for voting purposes under Federal Rule of Bankruptcy Procedure 3018, as of the date of the commencement of the Confirmation Hearing, will be deemed not included in the Plan for purposes of (i) voting to accept or reject the Plan and (ii) determining whether such Class has accepted or rejected the Plan under section 1129(a)(8) of the Bankruptcy Code.

3. Nonconsensual Confirmation

The Bankruptcy Court may confirm the Plan over the dissent of any Impaired Class if all of the requirements for consensual confirmation under subsection 1129(a), other than subsection 1129(a)(8), of the Bankruptcy Code and for nonconsensual confirmation under subsection 1129(b) of the Bankruptcy Code have been satisfied. In the event that any impaired Class of Claims or Equity Interests shall fail to accept the Plan in accordance with section 1129(a) of the Bankruptcy Code, the Debtors reserve the right to (i) request that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code or (ii) amend the Plan.

B. Conditions Precedent to Confirmation Date of the Plan

The occurrence of the Confirmation Date shall be subject to satisfaction of the following conditions precedent:

1. The entry of the Confirmation Order in form and substance satisfactory to the Debtors and the Prepetition Lenders.

2. All provisions, terms and conditions hereof and of any purchase agreements relating to any Sale(s) are approved in the Confirmation Order or in another Final Order of the Bankruptcy Court.

3. The Sale Order becomes a Final Order and the Debtors close the Sale(s).

4. The Debtors are authorized to take all actions necessary or appropriate to enter into, implement and consummate the Plan and other agreements or documents created in connection with the Plan.

5. The provisions of the Confirmation Order are nonseverable and mutually independent.

6. All Entities shall be permanently enjoined from enforcing or attempting to enforce any contractual, legal and equitable subordination right satisfied, compromised or settled pursuant to Article X.B of the Plan.

C. Conditions Precedent to the Effective Date of the Plan

The occurrence of the Effective Date and the Consummation of the Plan are subject to satisfaction of the following conditions precedent:

1. Confirmation Order. The Confirmation Order as entered by the Bankruptcy Court shall be a Final Order in full force and effect, in form and substance reasonably satisfactory to the Debtors and the Prepetition Lenders.

2. Execution of Documents; Other Actions. All actions, documents and agreements necessary to implement the Plan shall have been effected or executed, including the Post Confirmation Estate Agreement.

D. Waiver of Conditions Precedent

To the extent legally permissible, each of the conditions precedent in Article X.B and Article IX.C may be waived, in whole or in part, by the Debtors in their sole discretion, but after consultation with the Prepetition Lenders. Any such waiver of a condition precedent may be effected at any time, without notice or leave or order of the Bankruptcy Court and without any formal action other than proceeding as if such condition did not exist. The failure of the Debtors to exercise any of the foregoing rights shall not be deemed a waiver of any other rights. Upon the waiver of any conditions to the Effective Date set forth in Article IX.C. of the Plan, and subject to the satisfaction in full of each of the remaining conditions set forth in such Article, the Plan shall become effective in accordance with its terms without notice to third parties or any other formal action.

E. The Confirmation Order

If the Confirmation Order is vacated for whatever reason, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (i) constitute a waiver or release of any Claims by or against, or any Equity Interests in, any of the Debtors; (ii) prejudice in any manner the rights of the Debtors or the Prepetition Lenders; or (iii) constitute an admission, acknowledgment, offer or undertaking by the Debtors or the Prepetition Lenders in any respect.

ARTICLE X. EFFECT OF PLAN CONFIRMATION

A. Discharge of Claims and Termination of Interests

1. Except as provided in the Confirmation Order, pursuant to section 1141(d) of the Bankruptcy Code, the rights afforded under the Plan and the treatment of Claims and Equity Interests under the Plan shall be in exchange for and in complete satisfaction, settlement, discharge and release of all Claims and termination of all Equity Interests. Confirmation shall (a) discharge the Debtors from all Claims and other debts 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 Claim based on such debt is allowed pursuant to section 502 of the Bankruptcy Code or (ii) the Holder of a Claim based on such debt has accepted the Plan; and (b) terminate all Equity Interests and other rights of equity security holders in the Debtors.

2. As of the Confirmation Date, all Entities shall be precluded from asserting against the Debtors, their Estates, the Post Confirmation Estate, the Plan Administrator, their successors or their property, any other or further Claims, debts, rights, causes of action, liabilities or Equity Interests based upon any act, omission, transaction or other activity of any nature that occurred prior to the Confirmation Date. In accordance with the foregoing, the Confirmation Order shall be a judicial determination of discharge of all such Claims and other debts and liabilities and Equity Interests of or in the Debtors, pursuant to sections 524 and 1141 of the Bankruptcy Code, and such discharge shall void any judgment obtained against the Debtors at any time to the extent that such judgment relates to a discharged Claim or Equity Interest.

B. Termination of Subordination Rights and Settlement of Related Claims

The classification and manner of satisfying all Claims and Equity Interests and the respective distributions and treatments hereunder take into account and/or conform to the relative priority and rights of the Claims and Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code or otherwise, and any and all such rights are settled, compromised and released pursuant to the Plan. **The Confirmation Order shall permanently enjoin, effective as of the Effective Date, all Persons from enforcing or attempting to enforce any such contractual, legal and equitable subordination rights satisfied, compromised and settled in this manner.**

C. Injunction

1. **Except as otherwise expressly provided in the Plan, all Entities that have held, hold or may hold Claims against or Equity Interests in the Debtors are permanently enjoined, from and after the Effective Date, from taking any of the following actions against any of the Debtors, their Estates, the Post Confirmation Estate, the Plan Administrator, the Prepetition Lenders or any of their property on account of any Claims or causes of action arising from events prior to the Effective Date: (i) commencing or continuing in any manner any action or other proceeding of any kind; (ii) enforcing, attaching, collecting or recovering by any manner or in any place or means any judgment, award, decree or order; (iii) creating, perfecting, or enforcing any Lien or encumbrance of any kind; and (iv) asserting any defense or right of setoff, subrogation or recoupment of any kind against any obligation, debt or liability due to the Debtors.**

2. **By accepting Distributions pursuant to the Plan, each Holder of an Allowed Claim receiving Distributions pursuant to the Plan will be deemed to have specifically consented to the injunctions set forth herein.**

D. Terms of Existing Injunctions or Stays

Unless otherwise provided, all injunctions or stays provided for in the Chapter 11 Cases pursuant to sections 105, 362 or 525 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date. The Confirmation Order will permanently enjoin the commencement or prosecution by any Entity, whether directly, derivatively or otherwise, of any Claims, Equity Interests, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released pursuant to the Plan.

E. Exculpation

Neither the Debtors, their Estates, the Post Confirmation Estate, the Plan Administrator, the Prepetition Lenders nor any of their respective present or former officers, directors, shareholders, employees, advisors, attorneys or agents acting in such capacity or their respective affiliates, shall have or incur any liability to, or be subject to any right of action by, the Debtors or any Holder of a Claim or an Equity Interest, or any other party in interest, or any of their respective agents, shareholders, employees, representatives, financial advisors, attorneys or

affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of, (a) any act taken or omitted to be taken on or after the Petition Date, (b) the Disclosure Statement, the Plan, and the documents necessary to effectuate the Plan, (c) the solicitation of acceptances and rejections of the Plan, (d) the Mutual Releases or the solicitation thereof, (e) the Chapter 11 Cases, (f) the administration of the Plan, (g) the distribution of property under the Plan, (h) any contract, instrument, release or other agreement or document created or entered into in connection with the Plan or the Chapter 11 Cases, or (i) the Sale(s), and in all respects shall be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under the Plan.

F. Releases

1. Releases by the Debtors

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtors in their individual capacities and as debtors in possession, shall forever release, waive and discharge all claims, obligations, suits, judgments, demands, debts, rights, causes of action and liabilities, whether direct or derivative, liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are based in whole or in part on any act or omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to (i) the Debtors; (ii) the parties released pursuant to the Mutual Releases; (iii) any act taken or omitted to be taken on or after the Petition Date; (iv) the Disclosure Statement, the Plan, and the documents necessary to effectuate the Plan; (v) the solicitation of acceptances and rejections of the Plan; (vi) the solicitation of the Mutual Releases; (vii) the Chapter 11 Cases; (viii) the administration of the Plan; (ix) the property to be distributed under the Plan; (x) the Sale(s) or (xi) any contract, instrument, release or other agreement or document created or entered into in connection with the Plan or the Chapter 11 Cases, against (a) the current and former directors, officers and employees (in their capacities as such) of any of the Debtors (other than for money borrowed from or owed to the Debtors by any such directors, officers or employees as set forth in the Debtors' books and records as of the Effective Dates); (b) the Debtors' agents and Professionals; (c) each Holder of a Prepetition Lender Secured Claim (Class 1 Claims), an Other Secured Claim (Class 2 Claims) and an Unsecured Claim (Class 4 Claims) that votes to accept the Plan; (d) each Holder of a DIP Facility Claim, if any; and (e) the Plan Administrator.

2. Mutual Releases by Holders of Claims and Interests

As of the Effective Date, in exchange for accepting consideration pursuant to the Plan, all Holders of Prepetition Lender Secured Claims (Class 1 Claims), Holder of Other Secured Claims (Class 2 Claims) and Holders of Unsecured Claims (Class 4 Claims) that vote to accept the Plan, Holders of DIP Facility Claims, if any, and the current and former directors, officers and employees of the Debtors (in their capacity as such) shall forever release, waive and discharge all Claims, obligations, suits, judgments, demands, debts, rights, causes of action and liabilities (other than the right to enforce the Debtors' obligations under the Plan and the contracts, instruments, releases, agreements and documents delivered under the Plan), whether direct or derivative, liquidated or unliquidated, fixed or contingent, matured or unmatured, known or

unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are based in whole or in part on any act or omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to (i) the Debtors; (ii) the parties released pursuant to the Mutual Releases; (iii) any act taken or omitted to be taken on or after the Petition Date; (iv) the Disclosure Statement, the Plan, and the documents necessary to effectuate the Plan; (v) the solicitation of acceptances and rejections of the Plan; (vi) the solicitation of the Mutual Releases; (vii) the Chapter 11 Cases; (viii) the administration of the Plan; (ix) the property to be distributed under the Plan; (x) the Sale(s) or (xi) any contract, instrument, release or other agreement or document created or entered into in connection with the Plan or the Chapter 11 Cases, against each of (a) the current and former directors, officers and employees (in their capacities as such) of any of the Debtors (other than for money borrowed from or owed to the Debtors by any such directors, officers or employees as set forth in the Debtors' books and records as of the Effective Date); (b) the Debtors' agents and Professionals; (c) each Holder of a Prepetition Lender Secured Claim, an Other Secured Claim and an Unsecured Claim that votes to accept the Plan; (d) each Holder of a DIP Facility Claim, if any; and (e) the Plan Administrator.

ARTICLE XI. MISCELLANEOUS

A. Payment of Statutory Fees

All fees payable pursuant to 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on or before the Effective Date to the extent required by applicable law.

B. Section 1146 Exemption

Pursuant to section 1146(c) of the Bankruptcy Code, (a) the creation, modification, consolidation or recording of any mortgage, deed of trust, lien, pledge or other security interest; (b) the making, recording or assignment of any lease or sublease; or (c) the making recording or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, 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 any stamp tax, recording tax, personal property tax, real estate transfer tax, sales or use tax or other similar tax. Any transfers from the Debtors to the Post Confirmation Estate or otherwise pursuant to the Plan shall not be subject to any such taxes, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment. Unless the Bankruptcy Court orders otherwise, any of the foregoing transactions taken on or prior to the Effective Date shall be deemed to have been in furtherance of, or in connection with, the Plan.

C. Business Day

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

D. Severability

The provisions of this Plan shall not be severable unless such severance is agreed to by the Debtors and such severance would constitute a permissible modification of the Plan pursuant to section 1127 of the Bankruptcy Code.

E. Conflicts

Except as set forth below, to the extent that any provision of the Disclosure Statement, the Post Confirmation Estate Agreement, or the Confirmation Order (or any exhibits, schedules, appendices, supplements or amendments to the foregoing) or any other order referenced in the Plan, conflict with or are in any way inconsistent with the terms of the Plan, the Plan shall govern and control.

F. Further Assurances

The Debtor, the Plan Administrator, all Holders of Claims receiving Distributions under the Plan, and all other parties in interest shall, from time to time, prepare, execute and deliver agreements or documents and take other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

G. Notices

All notices, requests, and demands required by the Plan or otherwise, to be effective, shall be in writing, including by facsimile transmission, and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered to all of the following, or in the case of notice by facsimile transmission, when received by all of the following, addressed as follows or to such other addresses as Filed with the Bankruptcy Court:

To the Debtors: Jillian's Entertainment Holdings, Inc. c/o Dick Walker 4500 Bowling Boulevard, Ste 200 Louisville, KY 40207 (502) 638-9008 (telephone) (502) 638-0635 (facsimile)	To the Prepetition Lenders and DIP Lenders: Buchanan Ingersoll PC c/o Vincenzo Paparo, Esq. and Louis T. DeLucia, Esq. 140 Broadway, 35 th Floor New York, NY 10005 (212) 440-4483 (telephone) (212) 440-4401 (facsimile)
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<p>With a copy to the Debtors' Counsel:</p> <p>Kirkland & Ellis LLP c/o James W. Kapp III, Esq. 200 East Randolph Drive Chicago, Illinois 60601 (312) 861-2000 (telephone) (312) 861-2200 (facsimile)</p> <p>Frost Brown Todd LLC c/o Edward M. King, Esq. 400 West Market Street 32nd Floor Louisville, Kentucky 40202 (502) 589-5400 (telephone) (502) 581-1087 (facsimile)</p> <p>and</p> <p>c/o Ronald E. Gold, Esq. 2200 PNC Center 201 East Fifth Street Cincinnati, Ohio 45202 (513) 651-6800 (telephone) (513) 651-6981 (facsimile)</p>	<p>To Counsel for any Committee (if and when appointed)</p>
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H. Filing of Additional Documents

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

I. Successors and Assigns

The rights, benefits and obligations of any entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such entity.

J. Closing of Case

The Plan Administrator shall, promptly upon the full administration of the Chapter 11 Cases, file with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases.

K. Section Headings

The section headings contained in this Plan are for reference purposes only and shall not affect in any way the meaning or interpretation of the Plan.

L. Further Information

Requests for further information regarding the Debtors should be directed to the Information Agent.

**ARTICLE XII.
RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain and have exclusive jurisdiction after the Effective Date over any matter arising under the Bankruptcy Code, arising in or related to the Chapter 11 Cases or the Plan, or that relates to the following, in each case to the greatest extent permitted by applicable law:

1. to enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan;

2. to determine any and all motions, adversary proceedings, applications and contested or litigated matters that may be pending on the Effective Date or that, pursuant to the Plan, may be instituted by the Plan Administrator or the Post Confirmation Estate after the Effective Date; provided, however, that the Plan Administrator and the Post Confirmation Estate shall reserve the right to commence collection actions, actions to recover receivables and other similar actions in all appropriate jurisdictions;

3. to ensure that distributions to Holders of Allowed Claims are accomplished as provided herein;

4. to hear and determine any timely objections to Administrative Expense Claims and Priority Claims or to proofs of Claim and Equity Interests filed, both before and after the Confirmation Date, including any objections to the classification of any Claim or Equity Interest, and to allow, disallow, determine, liquidate, classify, estimate or establish the priority of or secured or unsecured status of any Claim, in whole or in part;

5. to enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, reversed or vacated;

6. to issue such orders in aid of execution of the Plan, to the extent authorized by section 1142 of the Bankruptcy Code;

7. to consider any modifications of the Plan, to cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including the Confirmation Order;

8. to hear and determine all applications for awards of compensation for services rendered and reimbursement of expenses incurred prior to the Confirmation Date;

9. to hear and determine disputes arising in connection with or relating to the Plan or the interpretation, implementation, or enforcement of the Plan or the extent of any Entity's obligations incurred in connection with or released or exculpated under the Plan;

10. to issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with consummation or enforcement of the Plan;

11. to determine any other matters that may arise in connection with or are related to the Plan, the Disclosure Statement, the Post Confirmation Estate Agreement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan or the Disclosure Statement to be executed in connection with the Plan;

12. to hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

13. to hear any other matter or for any purpose specified in the Confirmation Order that is not inconsistent with the Bankruptcy Code; and

14. to enter a Final Decree closing the Chapter 11 Cases.

ARTICLE XIII.

MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN

A. Modification of Plan

The Debtors reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, in their sole discretion, but after consultation with the Prepetition Lenders, to amend or modify the Plan at any time prior to the entry of the Confirmation Order. Upon entry of the Confirmation Order, the Debtors may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan as modified if the proposed modification does not materially and adversely change the treatment of the Claim of such Holder and the votes of each Class for or against the Plan shall be counted and used in connection with the modified plan of reorganization.

B. Revocation, Withdrawal or Non-Consummation

The Debtors reserve the right to revoke or withdraw the Plan prior to the Confirmation Date and to file subsequent plans of reorganization. If the Debtors revoke or withdraw the Plan, or if the Confirmation Order confirming the Plan shall not be entered or become a Final Order, then (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Equity

Interest or Class of Claims or Equity Interests), assumption or rejection of executory contracts or leases affected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (1) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtors or any other Entity, (2) prejudice in any manner the rights of the Debtors, the Prepetition Lenders or any other Entity, (3) constitute an admission of any sort by the Debtors, the Prepetition Lenders or any other Entity, or (4) constitute a release of any Causes of Action possessed or maintained by the Debtors.

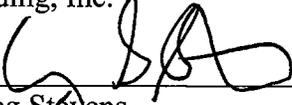
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Dated: May 23, 2004

Respectfully submitted,

Jillian's Entertainment Holdings, Inc.
Jillian's Entertainment Corporation
Derby City Promotions, Inc.
Jillian's America Live of Minneapolis, Inc.
Jillian's Billiard Café II of Raleigh, NC, Inc.
Jillian's Billiard Café of Akron, Inc.
Jillian's Billiard Café of Columbia, South Carolina, Inc.
Jillian's Billiard Café of Raleigh, NC, Inc.
Jillian's Billiard Club of Annapolis, Inc.
Jillian's Billiard Club of Champaign Urbana, Inc.
Jillian's Billiard Club of Champaign Urbana, LP
Jillian's Billiard Club of Charlotte, NC, Inc.
Jillian's Billiard Club of Cleveland Heights, Inc.
Jillian's Billiard Club of Cleveland Heights, LP
Jillian's Billiard Club of Cleveland, Inc.
Jillian's Billiard Club of Louisville, Kentucky, Inc.
Jillian's Billiard Club of Manchester, NH, Inc.
Jillian's Billiard Club of Pasadena, Inc.
Jillian's Billiard Club of Seattle, Inc.
Jillian's Billiard Club of Tacoma, Inc.
Jillian's Billiard Club of Worcester, Inc.
Jillian's Billiard Club of Worcester, LP
Jillian's Gators of Minneapolis, Inc.
Jillian's Inc.
Jillian's Knuckleheads of Minneapolis, Inc.
Jillian's Management Company, Inc.
Jillian's of Albany, NY, Inc.
Jillian's of Arundel, MD, Inc.
Jillian's of Concord, NC, Inc.
Jillian's of Covington, Kentucky, Inc.
Jillian's of Farmingdale, NY, Inc.
Jillian's of Franklin, PA, Inc.
Jillian's of Gwinnett, GA, Inc.
Jillian's of Hollywood, CA, Inc.
Jillian's of Houston, TX, Inc.
Jillian's of Indianapolis, IN, Inc.
Jillian's of Katy, TX, Inc.
Jillian's of Memphis, TN, Inc.
Jillian's of Minneapolis, MN, Inc.
Jillian's of Montreal, Inc.
Jillian's of Nashville, TN, Inc.
Jillian's of Norfolk, VA, Inc.

Jillian's of Rochester, NY, Inc.
Jillian's of San Francisco, CA, Inc.
Jillian's of Scottsdale, AZ, Inc.
Jillian's of Westbury, NY, Inc.
Jillian's of Youngstown, OH, Inc.
River Vending, Inc.

By: 
Name: Greg Stevens
Title: Chief Financial Officer of Jillian's
Entertainment Holdings, Inc.