

COURT NO. B200193  
ESTATE NO.11-2636604  
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
SNFW FITNESS B.C. LTD.

ORDER MADE AFTER APPLICATION

) THE HONOURABLE MADAM )  
BEFORE ) ) 23/JUL/2020  
) JUSTICE FITZPATRICK )

ON THE APPLICATION of Bank of Montreal (“**BMO**”) coming on for hearing at the Courthouse at 800 Smithe Street, Vancouver, British Columbia on the 23<sup>rd</sup> day of July, 2020; AND ON HEARING Jordan Schultz and Emma Newbery, counsel for BMO, and those other counsel listed on Schedule “A” hereto; AND UPON READING the material filed, including the Third Report of the Proposal Trustee dated July 22, 2020 (the “**Report**”);

THIS COURT ORDERS AND DECLARES THAT:

1. The sale transaction (the “**Transaction**”) contemplated by the Asset Purchase Agreement dated July 22, 2020 (the “**Sale Agreement**”) between the Receiver and FW Fitness BC Ltd. (the “**Purchaser**”), a copy of which is attached hereto as Schedule “B” (without schedules) and a full copy of which is attached as Appendix “F” to the Report, is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the assets described in the Sale Agreement (the “**Purchased Assets**”).

2. Notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 is not required in respect of the Transaction.

3. Upon delivery by the Receiver to the Purchaser of a certificate certifying all conditions have been satisfied or waived and the Transaction has completed (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing, all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia (all of which are collectively referred to as the "**Encumbrances**"), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Receiver's Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.

5. The Receiver is to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof.

6. Pursuant to Section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* or Section 18(10)(o) of the *Personal Information Protection Act* of British Columbia, the Receiver is hereby authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed in Schedule 1.1(17) to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

7. Subject to the terms of the Sale Agreement, vacant possession of the Purchased Assets, including any real property, shall be delivered by the Receiver to the Purchaser at 12:00 noon on the Closing Date (as defined in the Sale Agreement).



8. The Receiver, with the consent of the Purchaser, shall be at liberty to extend the Closing Date to such later date as those parties may agree, without the necessity of a further Order of this Court.

in accordance with  
the Sale Agreement

9. Notwithstanding:

- (a) these proceedings;
- (b) any applications for a bankruptcy order in respect of the Debtor now or hereafter made pursuant to the Bankruptcy and Insolvency Act and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made by or in respect of the Debtor,

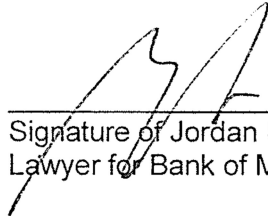
the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

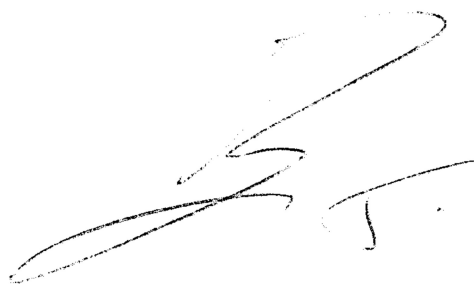
10. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

11. The Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

12. Endorsement of this Order by counsel appearing on this application, other than counsel for BMO, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

  
\_\_\_\_\_  
Signature of Jordan Schultz  
Lawyer for Bank of Montreal



BY THE COURT.  
  
\_\_\_\_\_  
REGISTRAR IN BANKRUPTCY



**SCHEDULE "A"**

(List of Counsel)

<b>COUNSEL</b>	<b>NAME OF PARTY(IES) REPRESENTED</b>
Kimberley A. Robertson	SNFW FITNESS B.C. LTD.
Kendall Andersen	Counsel for FW Fitness B.C. Ltd.
Michael Hochberg / Gasper Galati	Morgan Crossing Shopping Centre and its manager Strathallen Property Management Inc. <b>By Phone</b>
Gordon Plottel	Project 120 Developments Ltd. <b>By Phone</b>

**SCHEDULE "B"**

(See Attached)

**THE BOWRA GROUP INC.,**  
**in its capacity as Receiver of SNFW FITNESS B.C. LTD., and not in its personal capacity**  
**- and -**  
**FW FITNESS BC LTD.**

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**ASSET PURCHASE AGREEMENT**

**July 22, 2020**

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ASSET PURCHASE AGREEMENT dated July 22, 2020

BETWEEN:

**THE BOWRA GROUP INC.,**

**in its capacity as Receiver of SNFW FITNESS B.C. LTD and not in its personal capacity**

- and -

**FW FITNESS BC LTD.**

**RECITALS:**

- A. SNFW Fitness B.C. Ltd. (the “**Company**”) carries on the business of operating fitness facilities in the British Columbia Lower Mainland, Vancouver Island and Okanagan region under the brand names Steve Nash Fitness World and Sports Club, UFC Gym, Crunch Fitness and British Columbia Personal Training Institute.
- B. On April 3, 2020, the Company filed a Notice of Intention to Make a Proposal with the Official Receiver pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”);
- C. Pursuant to an order of the Supreme Court of British Columbia (the “**Court**”) dated April 24, 2020 (as the same may be amended and restated from time to time, the “**Sale Process Order**”), the Court approved a sale procedure (the “**Sale Procedure**”) to be conducted by the Company, with the assistance of The Bowra Group Inc. (the “**Proposal Trustee**”) and MNP Corporate Finance Inc., for the solicitation of offers to acquire any of the Company’s assets;
- D. The Company’s assets, including the Purchased Assets (as defined below), have been marketed for sale in connection with the Sale Process Order and the Sale Procedure;
- E. On July 21, 2020, the Proposal Trustee was appointed Receiver, by instrument, of all of the right title and interest in and to the assets and undertakings of the Company;
- F. The Vendor has agreed to sell to the Purchaser, and the Purchaser has agreed to purchase from the Vendor, the Purchased Assets and to assume the Assumed Liabilities, all in consideration for the Purchase Price (as defined below) and on the terms and conditions set out in this Agreement (the “**Transaction**”) and in accordance with the Sale Process Order and the Sale Procedure; and
- F. Accordingly, the Parties wish to enter into this Agreement so as to conclude the Transaction, the consummation of which shall be subject to approval by the Court by way of an Order approving the Transaction and vesting the Purchased Assets in the Purchaser (the “**Sale Approval Order**”).



**THE PARTIES AGREE AS FOLLOWS:**

**ARTICLE 1  
INTERPRETATION**

**1.1 Definitions.** In this Agreement, including the Recitals to this Agreement, unless the context otherwise requires:

- (1) “**Accounts Receivable**” means all accounts receivable, trade accounts receivable, notes receivable, book debts and other debts due or accruing due to the Company, and the full benefit of any related security.
- (2) “**Affiliate**” means, with respect to any Person, any other Person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlled” and “controlling” have meanings correlative thereto.
- (3) “**Agreement**” means this asset purchase agreement, including all Schedules, Appendices and Exhibits to this asset purchase agreement, as amended, supplemented, restated and replaced from time to time in accordance with its provisions.
- (4) “**Applicable Law**” means all laws, statutes, codes, ordinances (including zoning), decrees, rules, regulations, by-laws, statutory rules, published policies and guidelines, notices, judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, injunctions, orders, decisions, settlements, writs, assessments, arbitration awards, rulings, determinations or awards, decrees or other requirements of any Governmental Authority having the force of law and any legal requirements arising under the common law or principles of law or equity, in each case, as are applicable at the relevant time or times to such Person or its business, undertaking, property or securities and emanate from a Governmental Authority having jurisdiction over such Person or its business, undertaking, property or securities.
- (5) “**Approvals**” means franchises, licences, qualifications, authorizations, consents, certificates, registrations, exemptions, waivers, filings, grants, notifications, privileges, rights, orders, judgments, rulings, directives, Permits, and other permits and approvals.
- (6) “**Assumed Liabilities**” has the meaning attributed to that term in Section 2.3(1).
- (7) “**Books and Records**” means all books, records, files and papers of the Company relating to the Business, including title documentation, Software documentation (including operator and user manuals, training materials, guides, listings, specifications and any revisions or additions to such documents), electronic data, financial and Tax working papers, financial and Tax books and records, business reports, business plans and projections, sales and advertising materials, sales and purchases records and correspondence, trade association files, research and development records, lists of present and former customers and suppliers, personnel and employment records of the Hired Employees, minute and share certificate books, all other documents and data (technical or otherwise) relating to the Business, the Purchased Assets or the Assumed Liabilities, and all copies and recordings of the foregoing.

- (8) “**Business**” means the business carried on currently and prior to the date of this Agreement by the Company consisting of operating fitness facilities in the British Columbia Lower Mainland, Vancouver Island and Okanagan region under the brand names Steve Nash Fitness World and Sports Club, UFC Gym, Crunch Fitness and British Columbia Personal Training Institute.
- (9) “**Business Day**” means any day, except Saturdays and Sundays, on which banks are generally open for non-automated business:
- (a) for purposes of Section 6.10, in the place specified in that Section; and
  - (b) for all other purposes in this Agreement, in Vancouver, British Columbia.
- (10) “**CASL**” means *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act (Canada)* and the regulations made thereunder.
- (11) “**Closing**” means the completion of the Transaction on the Closing Date in accordance with this Agreement.
- (12) “**Closing Date**” means the date that is two Business Days following the satisfaction of waiver of all conditions set out in Article 4 (other than those conditions that cannot, by their nature, be satisfied until the Closing, but subject to the satisfaction or waiver of those conditions at the Closing), or such other date as agreed to by the Parties in writing.
- (13) “**Contract**” means any agreement, contract, indenture, lease, occupancy agreement, deed of trust, licence, option, undertaking, promise or any other commitment or obligation, whether oral or written, express or implied, other than a Permit.
- (14) “**CRA**” means the Canada Revenue Agency or any successor agency.
- (15) “**Effective Time**” 12:01 a.m. on the Closing Date.
- (16) “**ETA**” means the *Excise Tax Act (Canada)* and the regulations made thereunder.
- (17) “**Employees**” means all individuals who are currently, or were as of March 18, 2020 and immediately prior to their termination by the Company, employed by the Company in the Business, whether full-time, part-time, salaried, hourly, unionized or non-unionized, as set out on Schedule 1.1(17).
- (18) “**Encumbrance**” means any encumbrance, lien, charge, hypothec, pledge, mortgage, title retention agreement, security interest of any nature, prior claim, adverse claim, exception, reservation, restrictive covenant, agreement, easement (whether or not registered against title), lease, licence, right of occupation, option, right of use, right of first refusal, right of pre-emption, privilege or any matter capable of registration against title or any Contract to create any of the foregoing.
- (19) “**Equity Interests**” means, with respect to any Person, any and all present and future shares, units, trust units, partnership or other interests, participations or other equivalent rights in that Person’s equity or capital, however designated and whether voting or non-voting.

- (20) “**Excluded Assets**” has the meaning attributed to that term in Section 2.2.
- (21) “**Excluded Liabilities**” has the meaning attributed to that term in Section 2.3(2).
- (22) “**General Conveyance and Assumption Agreement**” means the General Conveyance and Assumption Agreement to be entered between the Vendor and the Purchaser substantially in the form of Schedule I.1(22).
- (23) “**GST/HST**” means all Taxes payable under Part IX of the ETA (including where applicable both the federal and provincial portion of those Taxes) or under any provincial legislation imposing a similar value added or multi-staged tax.
- (24) “**Governmental Authority**” means any domestic or foreign government, whether federal, provincial, state, territorial, local, regional, municipal, or other political jurisdiction, and any agency, authority, instrumentality, court, tribunal, board, commission, bureau, arbitrator, arbitration tribunal or other tribunal, or any quasi-governmental or other entity, body, organization or agency, insofar as it exercises a legislative, judicial, regulatory, administrative, expropriation or taxing power or function of or pertaining to government.
- (25) “**Hardware**” means computer hardware, mainframes, personal computers, servers, client/server stations, devices, network equipment, routers, semi-conductor chips, embedded Software, communication lines, storage media and other equipment.
- (26) “**Hired Employees**” means those Employees who accept the Purchaser’s offer of employment provided for in Section 5.6(1) and continue their employment with the Purchaser after Closing.
- (27) “**Intellectual Property**” means, individually and collectively, howsoever created and wherever located: (a) all domestic and foreign patents and applications thereof and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof; (b) all inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical data, schematics and customer lists, and all documentation relating to any of the foregoing; (c) all copyrights in all works (including Software) and database right, copyright registrations and applications thereof, and all works of authorship and moral rights, and all other rights corresponding thereto throughout the world; (d) all trade names, domain names, corporate names, trade dress, distinguishing guises, logos, slogans, brand names, trademarks (whether registered or common law and whether used with wares or services and including the goodwill attaching to such trademarks) and registrations and applications for registration thereof; (e) all Software (in source code and object code form) and databases, and any proprietary rights in such Software and databases; (f) all integrated circuit design, mask work, or topography registrations or applications thereof; (g) all industrial designs and applications for and registration of industrial designs, design patents and industrial design registrations; (h) other intellectual or industrial property whatsoever; (i) all income, royalties, damages and payments now and hereafter due and/or payable with respect to any of the foregoing, including damages and payments for past or future infringements thereof; and (j) all rights to sue for past, present and future infringements of any of the foregoing.
- (28) “**Interim Period**” means the period from the date of this Agreement to the earlier of (a) the Closing Date, and (b) the date this Agreement is terminated in accordance with Section 4.3.

- (29) “**Internal IT Systems**” means all Hardware, Software and internal networks and communications technologies and services that are owned, leased or licensed by the Company in connection with the Business.
- (30) “**Inventories**” means inventories, including all finished goods, works-in-progress, raw materials, spare parts, replacement parts, and all other materials and supplies to be used or consumed by the Company in the provision of services.
- (31) “**IP Assets**” means all Intellectual Property that is owned by the Company or in which the Company has rights, including the Intellectual Property listed or described on Schedule 2.1(e).
- (32) “**Leases**” means the leases and agreements in the nature of a lease (including all amendments, renewals, extensions and assignments) in respect of real property leased to the Company set forth on Schedule 2.1(a), including all leasehold improvements owned by the Company forming part of the leased real property thereunder.
- (33) “**Other Agreements**” has the meaning attributed to that term in Section 6.4.
- (34) “**Outside Date**” means August 14, 2020, or such later date as the Parties may agree to in writing.
- (35) “**Parties**” means collectively, the Purchaser and the Vendor, and “**Party**” means any of them.
- (36) “**Permits**” means franchises, licences, qualifications, approvals, authorizations, consents, certificates, certificates of authorization, decrees, orders-in-council, registrations, exemptions, consents, variances, waivers, filings, grants, notifications, privileges, rights, orders, judgments, rulings, directives, permits and other approvals, obtained from, issued by or required by a Governmental Authority.
- (37) “**Person**” is to be broadly interpreted and includes an individual, a corporation, a partnership, a joint venture, a trust, an association, a syndicate, an unincorporated organization, a Governmental Authority, an executor or administrator or other legal or personal representative, or any other juridical entity.
- (38) “**Personal Information**” means information about an identifiable natural person, but does not include the name, title, business address or telephone number of an employee of the Company, that is to be disclosed to the Purchaser at Closing or that was disclosed to the Purchaser to permit the Purchaser to carry out its due diligence in connection with the Transaction.
- (39) “**Personal Property**” means all machinery, equipment, furniture and other personal property owned by the Company (including those in possession of third parties), including those set forth on Schedule 2.1(b).
- (40) “**Proceeding**” means any suit, action, dispute, investigation, claim, arbitration, order, summons, citation, directive, charge, demand or prosecution, whether legal or administrative, any other proceeding, or any appeal or application for review, in each case, at law or in equity or before or by any Governmental Authority.
- (41) “**Purchase Price**” has the meaning attributed to that term in Section 2.4.
- (42) “**Purchased Assets**” has the meaning attributed to that term in Section 2.1.

- (43) “**Purchased Contracts**” has the meaning attributed to that term in Section 2.1(g);
- (44) “**Purchaser**” means FW Fitness BC Ltd., a company incorporated under the laws of British Columbia.
- (45) “**Purchaser’s Counsel**” means Borden Ladner Gervais LLP.
- (46) “**Representatives**” means, with respect to any Party, its Affiliates and, if applicable, its and their respective directors, officers, employees, agents and other representatives and advisors.
- (47) “**Software**” means software, including all versions thereof, whether installed locally, on a local area network or delivered through the internet, and all related documentation, manuals, source code and object code, program files, data files, computer related data, field and data definitions and relationships, data definition specifications, data models, program and system logic, interfaces, program modules, routines, sub-routines, algorithms, program architecture, design concepts, system designs, program structure, sequence and organization, screen displays and report layouts, including any and all modifications, changes, release, versions, upgrades, updates or patches of any of the foregoing, and all other material related to such software.
- (48) “**Statutory Plans**” means benefit plans that the Company is required by a domestic or foreign statute to participate in or contribute to in respect of an Employee, director or officer of the Company or any beneficiary or dependent thereof, including the Canada Pension Plan and plans administered pursuant to applicable health, Tax, workplace safety insurance, workers’ compensation and employment insurance legislation.
- (49) “**Tax Act**” or any reference to a specific provision thereof means the *Income Tax Act* (Canada) and legislation of any legislature of any province or territory of Canada (including the *Taxation Act* (Québec)) and any regulations made thereunder in force of like or similar effect.
- (50) “**Taxes**” means taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed in respect thereof (including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, gains, capital stock, production, gift, wealth, environment, net worth, utility, sales, goods and services, harmonized sales, use, consumption, valued-added, excise, stamp, withholding, premium, business, franchising, property, employer health, payroll, employment, health, social services, education and social security taxes, surtaxes, customs duties and import and export taxes, development, occupancy, social services, licence, franchise and registration fees and employment insurance, health insurance and Canada, Québec and other government pension plan premiums or contributions), and “**Tax**” has a corresponding meaning.
- (51) “**Transmission**” has the meaning attributed to that term in Section 6.10(1).
- (52) “**Vendor**” means The Bowra Group Inc., a British Columbia company, in its capacity as Receiver of the Company, and not in its personal capacity.

**1.2 Construction.** This Agreement has been negotiated by each Party with the benefit of legal representation, and any rule of construction to the effect that any ambiguities are to be resolved against the drafting party does not apply to the construction or interpretation of this Agreement.

**1.3 Certain Rules of Interpretation.** In this Agreement:

- (a) the division into Articles and Sections and the insertion of headings and the Table of Contents are for convenience of reference only and do not affect the construction or interpretation of this Agreement;
- (b) the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Agreement and not to any particular portion of this Agreement; and
- (c) unless specified otherwise or the context otherwise requires:
  - (i) references to any Article, Section or Schedule are references to the Article or Section of, or Schedule to, this Agreement;
  - (ii) “including” or “includes” means “including (or includes) but is not limited to” and is not to be construed to limit any general statement preceding it to the specific or similar items or matters immediately following it;
  - (iii) references to Contracts are deemed to include all present amendments, supplements, restatements and replacements to those Contracts;
  - (iv) references to any legislation, statutory instrument or regulation or a section thereof are references to the legislation, statutory instrument, regulation or section as amended, re-enacted, consolidated or replaced from time to time; and
  - (v) words in the singular include the plural and vice-versa and words in one gender include all genders.

**1.4 Computation of Time.** In this Agreement, unless specified otherwise or the context otherwise requires:

- (a) a reference to a period of days is deemed to begin on the first day after the event that started the period and to end at 5:00 p.m. on the last day of the period, but if the last day of the period does not fall on a Business Day, the period ends at 5:00 p.m. on the next succeeding Business Day;
- (b) all references to specific dates mean 11:59 p.m. on the dates;
- (c) all references to specific times are references to Pacific time; and
- (d) with respect to the calculation of any period of time, references to “from” mean “from and excluding” and references to “to” or “until” mean “to and including”.

**1.5 Performance on Business Days.** If any action is required to be taken pursuant to this Agreement on or by a specified date that is not a Business Day, the action is valid if taken on or by the next succeeding Business Day.

**1.6 Currency and Payment.** In this Agreement, unless specified otherwise:

- (a) references to dollar amounts or “\$” are to Canadian dollars;

- (b) any payment is to be made by an official bank draft drawn on a Canadian chartered bank, wire transfer or any other method (other than cash payment) that provides immediately available funds; and
- (c) except in the case of any payment due on the Closing Date, any payment due on a particular day must be received and available by 2:00 p.m. on the due date and any payment received and available after that time is deemed to have been made and received on the next succeeding Business Day.

**1.7 Schedules.** The following Schedules are attached to and form part of this Agreement:

Schedule 1.1(17)	Employees
Schedule 1.1(22)	Form of General Conveyance and Assumption Agreement
Schedule 2.1(a)	Leases
Schedule 2.1(b)	Personal Property
Schedule 2.1(e)	IP Assets
Schedule 2.1(g)	Purchased Contracts
Schedule 2.1(h)	Permits
Schedule 2.2	Excluded Assets
Schedule 2.4(3)	Purchase Price Allocation
Schedule 4.1(1)(b)	Required Permits and Approvals

## ARTICLE 2 PURCHASE AND SALE

**2.1 Agreement to Purchase and Sell.** Subject to the terms and conditions of this Agreement, as of the Effective Time, the Vendor shall sell, transfer, convey and assign to the Purchaser and the Purchaser shall purchase and acquire from the Vendor, free and clear of all Encumbrances substantially all of the Company's right, title and interest in and to all of the Company's property and assets (other than the Excluded Assets), whether real or personal, tangible or intangible, of every kind and description and wheresoever situate (collectively, the "**Purchased Assets**"), including the following:

- (a) the Leases;
- (b) the Personal Property;
- (c) the Inventories;
- (d) the Accounts Receivable;
- (e) the IP Assets;
- (f) the Internal IT Systems;
- (g) all Contracts set out in Schedule 2.1(g) (the "**Purchased Contracts**");
- (h) all Permits and all pending applications for, and renewals of, Permits, in each case to the extent transferable to the Purchaser, listed in Schedule 2.1(h);
- (i) all Books and Records (except, in the case of those required by Applicable Law to be retained by the Company or the Vendor, copies thereof);

- (j) all goodwill, together with the exclusive right of the Purchaser to represent itself as carrying on the Business;
- (k) all Proceedings of the Company against third Persons in the conduct of the Business or otherwise arising by reason of any facts or circumstances that occurred or existed prior to the Effective Time, in each case whether or not an action or any other proceeding is commenced prior to the Effective Time;
- (l) all non-disclosure agreements to which the Company is a party, and all rights of settlement in respect of any Proceedings against the Company;
- (m) all rights to deposits and prepaid expenses, including related claims for refunds and rights of set-off that are not excluded pursuant to Section 2.2(b) or that are not listed on Schedule 2.2;
- (n) subject to Section 5.5, all insurance benefits, including rights and proceeds, arising from or relating to the insurance policies maintained by the Company prior to the Closing Date, unless expended in accordance with this Agreement; and
- (o) the list of email addresses for which the Company has obtained the express written consent to the receipt of “commercial electronic messages” (as defined in CASL).

**2.2 Excluded Assets.** The following assets (collectively, the “**Excluded Assets**”) are not part of the Transaction, are excluded from Purchased Assets and remain the property of the Company, subject to the rights of the Vendor as Receiver:

- (a) all cash on hand or in banks or other depositories, term or time deposits and similar cash items including all accrued interest thereon and any capital gains relating thereto;
- (b) all Tax instalments paid by the Company and all rights to receive any refund of, and/or credit in respect of, Taxes paid by the Company;
- (c) all personnel and employment records that the Company is required by Applicable Law to retain;
- (d) all rights of the Company under, and assets of, all benefit plans, arrangements, programs, schemes or policies offered to Employees of the Company, and all Contracts relating to any such plans, arrangements, programs, schemes or policies;
- (e) all constating documents, minute books, shareholder records and corporate seals of the Company;
- (f) except to the extent provided in Section 2.1(n), all insurance policies maintained by the Company;
- (g) the assets and Contracts listed in Schedule 2.2; and
- (h) any Purchased Asset which, by its terms or under Applicable Law, is not capable of being sold, transferred, conveyed or assigned by operation of the Sale Approval Order.



## 2.3 Liabilities.

- (1) Subject to the terms and conditions of this Agreement, the Purchaser shall assume, pay, satisfy, discharge, perform and fulfil, from and after the Effective Time, only the following obligations and liabilities of the Company:
  - (a) all liabilities and obligations of the Company under the Purchased Contracts, including performance obligations arising under pre-paid membership agreements and pre-paid personal training agreements, in each case, which arise in respect of the period after the Effective Time and do not relate to any default existing prior to or as a consequence of the Closing;
  - (b) all liabilities and obligations of the Company that arise under the Permits listed in Schedule 2.1(h); and
  - (c) all liabilities and obligations that are assumed under Section 5.6(2);(collectively, the “**Assumed Liabilities**”).
- (2) Other than the Assumed Liabilities, the Purchaser shall not assume or have any obligation to discharge, perform or fulfill any obligation or liability of the Company of any kind whatsoever (collectively, the “**Excluded Liabilities**”) and all Excluded Liabilities remain the obligation and responsibility of the Company, including the obligations and liabilities of the Company:
  - (a) for Taxes payable, collectible or remittable by the Company;
  - (b) owing to a lender or creditor of the Company, including any bank overdrafts or bank indebtedness and any indebtedness or liabilities other than the Assumed Liabilities owing under any promissory note, or Contract for the borrowing of money;
  - (c) arising out of or relating to products or services of the Company to the extent manufactured, sold, shipped or rendered prior to the Effective Time;
  - (d) arising out of any Proceeding against the Company in the conduct of the Business or otherwise no matter when arising by reason of any facts or circumstances that occurred or existed prior to the Effective Time, in each case whether or not an action or any other proceeding is commenced prior to the Effective Time;
  - (e) in respect of the Hired Employees to the extent that such obligations and liabilities are based on facts, circumstances or events that arise before the Effective Time, and all obligations or liabilities of the Company in respect of other Employees including, in each case, all obligations and liabilities under all Employee benefit plans, arrangements, schemes or policies offered by the Company and Contracts relating thereto, all severance payments, damages for wrongful dismissal and all related costs in respect of the termination by the Company of the employment of any Employee who does not accept the Purchaser’s offer of employment referred to in Section 5.6(1);
  - (f) for refunds arising under any membership agreement of any type and pre-paid personal training agreements in respect of which the Purchaser has assumed performance obligations pursuant to Section 2.3(1)(a); and

(g) relating to an Excluded Asset.

#### **2.4 Purchase Price and Purchase Price Allocation.**

- (1) Subject to the terms and conditions of this Agreement, the aggregate purchase price (the "**Purchase Price**") to be paid by the Purchaser to the Vendor for the Purchased Assets is:
  - (a) \$9,000,000; and
  - (b) the amount of Accounts Receivable acquired, if any.
- (2) If any Purchased Asset is not capable of being sold, transferred, conveyed or assigned to the Purchaser on the Closing Date, then the Purchase Price shall be reduced by the amount of the replacement cost of such Purchased Asset and such Purchased Asset shall be retained by the Vendor and shall be deemed to be an Excluded Asset.
- (3) The Purchaser and the Vendor shall allocate the Purchase Price in accordance with Schedule 2.4(2) and shall report the purchase and sale of the Purchased Assets for all Tax purposes in a manner consistent with that allocation. If any Governmental Authority does not agree with that allocation, the Purchaser and the Vendor shall use their best efforts (which is not to be construed as requiring the Purchaser or the Vendor to commence or participate in any litigation or administrative process challenging the determination of any Governmental Authority) to agree on a different allocation acceptable to that Governmental Authority, and the Purchaser and the Vendor shall amend the original allocation and the relevant tax returns accordingly.

#### **2.5 Payment of Purchase Price.** At the Closing, the Purchaser shall pay and satisfy the Purchase Price:

- (1) by payment to or to the order of the Vendor of the amount of \$9,000,000 plus the amount of Accounts Receivable acquired, if any, pursuant to the flow of funds memorandum to be entered into by the Purchaser and the Vendor and their respective counsel; and
- (2) by the execution and delivery of the General Conveyance and Assumption Agreement.

**2.6 Transfer Taxes.** The Purchaser shall pay to the Vendor or, where permitted by Applicable Law, directly to the appropriate Governmental Authorities, all sales and transfer taxes, registration charges and transfer fees, including GST/HST, payable by it in respect of the purchase and sale of the Purchased Assets under this Agreement, and, on request of the Vendor, the Purchaser shall furnish to the Vendor proof of direct payment to a Governmental Authority. The Purchaser shall indemnify and save harmless the Vendor from any amounts, including interest and penalties, that may be assessed against the Vendor arising out of the failure of the Purchaser to pay, when due, any Taxes described in this Section.

**2.7 GST/HST Election.** The Purchaser and the Vendor shall jointly elect under subsection 167(1) of the ETA and under any similar provision of any applicable provincial legislation imposing a similar value added or multi-staged tax, that no tax be payable with respect to the purchase and sale of the Purchased Assets pursuant to this Agreement. The Purchaser and the Vendor shall make those elections in prescribed form containing prescribed information and shall file those elections in compliance with the requirements of applicable legislation.

**2.8 Accounts Receivable Election.** If requested by the Purchaser, the Purchaser and the Vendor shall elect jointly in the prescribed form under Section 22 of the Tax Act and under any similar provision of any

other applicable provincial legislation as to the sale of the Accounts Receivable forming part of the Purchased Assets and described in Section 22 of the Tax Act and shall in that election allocate an amount equal to the portion of the Purchase Price allocated to those assets pursuant to Schedule 2.4(2) as the consideration paid by the Purchaser for those assets. The Parties shall file such election forms, along with any documentation necessary or desirable to give effect to such election, with CRA and any other appropriate taxation authority within the prescribed time limits.

**2.9 Payment of Taxes.** The Company shall pay, collect and remit all Taxes relating to the Business which arise, or are related to a period of time, prior to the Effective Time.

**2.10 “As-is, Where-is”.** The Purchaser acknowledges that: (a) it is purchasing the Purchased Assets on an “as is, where is” and “without recourse” basis and on the basis that the Vendor has not guaranteed or will not guarantee title to the Purchased Assets and that the Purchaser has conducted such inspections of title to the Purchased Assets as it deems appropriate and has satisfied itself with regard to these matters; and (b) it has inspected the Purchased Assets and will accept the same on the Closing Date, in their then current state, condition and location. Except as otherwise expressly provided in this Agreement, no representation, warranty or condition whether statutory, expressed or implied, oral or written, legal, equitable, conventional, collateral or otherwise will be given by the Vendor as to title, outstanding liens, description, fitness or purpose, merchantability, quantity, condition, quality, suitability, durability, assignability, or marketability therefor or any other matter of thing whatsoever, and all of the same are expressly excluded. The Purchaser acknowledges and agrees that it has inspected the Purchased Assets and has relied on its own investigations as to the matters set out above and in determining to purchase the Purchased Assets pursuant to this Agreement. The description of the Purchased Assets contained herein is for the purpose of identification only. No representation, warranty or condition has or will be given by the Vendor concerning completeness or accuracy of such description.

### **ARTICLE 3 CLOSING ARRANGEMENTS**

**3.1 Closing.** Subject to the satisfaction or waiver by the applicable Party of the conditions set out in Article 4, the Parties shall hold the Closing on the Closing Date, at such time as agreed to by the Vendor and the Purchaser and at the offices of the Purchaser’s Counsel in Vancouver, British Columbia or at such other place as agreed to by the Vendor and the Purchaser.

**3.2 Vendor’s Closing Deliveries.** At Closing, the Vendor shall deliver or cause to be delivered to the Purchaser all certificates, agreements, documents and instruments as required under Section 4.1(1)(g).

**3.3 Purchaser’s Closing Deliveries.** At Closing the Purchaser shall deliver or cause to be delivered to the Vendor all payments, certificates, agreements, documents and instruments as required under Section 4.2(1)(d).

### **ARTICLE 4 CONDITIONS OF CLOSING**

**4.1 Conditions for the Benefit of the Purchaser.**

(1) The Purchaser shall be obliged to complete the Transaction only if each of the following conditions precedent has been satisfied in full at or before the time of Closing on the Closing Date:

- (a) the Vendor has complied with or performed all of the obligations, covenants and agreements under this Agreement to be complied with or performed by the Vendor on or before the Closing Date, to the satisfaction of the Purchaser, acting reasonably;
- (b) all Permits and Approvals described in Schedule 4.1(1)(b) have been obtained, in each case in form and substance satisfactory to the Purchaser, acting reasonably, and are in full force and effect;
- (c) there is no injunction or restraining order issued preventing, and no pending or threatened Proceeding, against any Party, for the purpose of enjoining or preventing, the completion of the Transaction or otherwise claiming that this Agreement or the completion of the Transaction is improper or would give rise to a Proceeding, under any Applicable Law;
- (d) the Purchaser shall have entered into an arrangement regarding each of the Leases with the applicable landlord whereby each Lease is assigned to the Purchaser and making such other modifications as the Purchaser deems necessary, in each case, form and substance satisfactory to the Purchaser, acting reasonably;
- (e) the Purchaser shall have obtained binding insurance policies regarding the Purchased Assets and the Business in form and substance satisfactory to the Purchaser, acting reasonably;
- (f) the Court shall have granted the Sale Approval Order providing for:
  - (i) approval of this Agreement and the performance of the same by the Vendor;
  - (ii) the vesting of the Purchased Assets in the Purchaser, free and clear of any Encumbrances; and
  - (iii) such other provisions as reasonably requested by the Purchaser or that would customarily be contained in an approval and vesting order granted by the Court;
- (g) the Vendor has caused to be delivered to the Purchaser the following:
  - (i) all deeds, conveyances, bills of sale, assurances, transfers, assignments and any other documentation or action which in the opinion of the Purchaser are necessary or reasonably required to transfer the Purchased Assets to the Purchaser with good and marketable title, free and clear of all Encumbrances, in each case duly executed by the Vendor and in form and substance satisfactory to the Purchaser, acting reasonably;
  - (ii) a certificate in respect of the Company issued by the relevant Governmental Authority under Section 187 of the *Provincial Sales Tax Act* (British Columbia) and under similar Applicable Laws;
  - (iii) the General Conveyance and Assumption Agreement, duly executed by the Vendor;
  - (iv) a bill of sale for Personal Property, duly executed by the Vendor;
  - (v) the tax elections in Section 2.7 and Section 2.8, duly executed by the Vendor; and

- (vi) all documents and instruments required by the landlord under a Lease to permit the assignment or modification of such Lease, duly executed by the Company.
  - (h) the Purchaser shall have obtained assurances reasonably acceptable to the Purchaser that the Purchaser or its representatives can, promptly following the Closing, enter into each property previously leased by the Company where Personal Property is located or stored and in respect of which the Purchaser is not acquiring the applicable lease and remove such Personal Property.
- (2) Each of the conditions set out in Section 4.1(1) is for the exclusive benefit of the Purchaser and the Purchaser may waive compliance with any such condition in whole or in part by notice in writing to the Vendor, except that no such waiver operates as a waiver of any other condition.

**4.2 Conditions for the Benefit of the Vendor.**

- (1) The Vendor shall be obliged to complete the Transaction only if each of the following conditions precedent has been satisfied in full at or before the time of Closing on the Closing Date:
- (a) the Purchaser shall have complied with or performed all of the obligations, covenants and agreements under this Agreement to be complied with or performed by the Purchaser on or before the Closing Date to the satisfaction of the Vendor, acting reasonably;
  - (b) the Court shall have granted the Sale Approval Order, which shall not have been stayed, there shall be no outstanding appeal therefrom, and all applicable appeal periods shall have passed;
  - (c) there is no injunction or restraining order issued preventing, and no pending or threatened Proceeding, against any Party, for the purpose of enjoining or preventing, the completion of the Transaction or otherwise claiming that this Agreement or the completion of the Transaction is improper or would give rise to a Proceeding, under any Applicable; and
  - (d) the Purchaser has caused to be delivered to the Vendor the following:
    - (i) payment of the amounts required to be paid on the Closing Date under Section 2.5;
    - (ii) the General Conveyance and Assumption Agreement, duly executed by the Purchaser; and
    - (iii) the tax elections in Section 2.7 and Section 2.8, duly executed by the Purchaser.
- (2) Each of the conditions set out in Section 4.2(1) is for the exclusive benefit of the Vendor and the Vendor may waive compliance with any such condition in whole or in part by notice in writing to the Purchaser, except that no such waiver operates as a waiver of any other condition.

**4.3 Termination Events.** By notice given prior to or at Closing, subject to Section 4.4, this Agreement may be terminated as follows:

- (a) by the Purchaser or the Vendor pursuant to Section 5.5(1)(a);
- (b) by mutual consent of the Purchaser and the Vendor;

- (c) by the Purchaser unless it is in material breach of this Agreement or by the Vendor unless the Vendor is in material breach of this Agreement, if the Closing has not occurred on or before the Outside Date.

**4.4 Effect of Termination.** Each Party's right of termination under Section 4.3 is in addition to any other rights it may have under this Agreement or otherwise, whether at law, in equity or otherwise, and the exercise of that right of termination is not an election of remedies. If this Agreement is terminated pursuant to Section 4.3, all obligations of the Parties under this Agreement will terminate except that the obligations contained in this Section 4.4 and in Article 6 (except for Section 6.2) will survive.

**4.5 Waiver of Conditions of Closing.** If any of the conditions set forth in Section 4.1 has not been satisfied, the Purchaser may elect in writing to waive the condition and proceed with the completion of the Transaction and, if any of the conditions in Section 4.2 has not been satisfied, the Vendor may elect in writing to waive the condition and proceed with the completion of the Transaction. Any such waiver and election by the Purchaser or the Vendor, as the case may be, will only serve as a waiver of the specific closing condition and the other Party will have no liability with respect to the specific waived condition.

## **ARTICLE 5 COVENANTS**

**5.1 Exclusive Dealings.** During the Interim Period, the Vendor shall not take any action, directly or indirectly, to encourage, initiate or engage in discussions or negotiations with, or provide any information to, or enter into any agreement or arrangement or understanding with, any Person, other than the Purchaser and its designated and authorized Representatives, concerning any sale, transfer or assignment of any portion of the Business or the Purchased Assets. The Vendor shall notify the Purchaser promptly if any such discussions or negotiations are sought or if any proposal for a sale, transfer or assignment of any portion of the Business or the Purchased Assets is received or being considered. The Vendor shall use its best efforts to provide the Court with all necessary documents, forms, consents and other information as the Court may require in order to obtain the Sale Approval Order as expeditiously as possible. The Purchaser shall cooperate with the Vendor in its efforts to obtain the Sale Approval Order and shall make commercially reasonable efforts to provide or cause to be provided to the Vendor at the Vendor's request and cost all certificates, affidavits or other documents and instruments reasonably required by the Vendor to obtain the Sale Approval Order. The Vendor shall use commercially reasonable efforts to obtain the Sale Approval Order.

**5.2 Access.** During the Interim Period, upon reasonable request by the Purchaser, the Vendor shall promptly make available to the Purchaser and its Representatives copies of all documents and information concerning the Purchased Assets, Assumed Liabilities and Business as the Purchaser may reasonably request and which are in the Vendor's possession or control.

**5.3 Transfer of Documentation.** On the Closing Date, the Vendor shall deliver, and shall cause to be delivered, to the Purchaser the Books and Records and all documents (except, in the case of those required by Applicable Law to be retained by the Company, copies thereof) and other data, technical or otherwise, which are owned by the Company and in the possession or control of the Vendor at the Closing Date, relating to the Business or the Purchased Assets. The Purchaser shall preserve all those documents delivered to it in accordance with the Purchaser's document retention procedures or for such longer period as is required by Applicable Law. The Purchaser shall permit the Vendor and its authorized Representatives reasonable access to those documents while they are in the Purchaser's possession or control solely to the extent that access is required by the Vendor to perform its obligations under this Agreement or under Applicable Law, but the Purchaser shall not be responsible or liable to the Vendor for, or as a result of, any loss or destruction of or damage to any such documents and other data unless that destruction, loss or damage is caused by the Purchaser's negligence or wilful misconduct. The Vendor shall be responsible for all reasonable out-of-pocket costs and expenses incurred, directly or indirectly, by the Purchaser in connection with any access contemplated by this Section 5.3.

**5.4 Personal Information.**

- (1) The Vendor and the Purchaser shall:
  - (a) at all times, use and disclose the Personal Information under its control solely for the purposes for which the Personal Information was collected or permitted to be used or disclosed, unless to the extent required by Applicable Law, the Vendor or the Purchaser, as the case may be, has obtained the consent of or has given notice to the individual to whom the Personal Information relates of the additional purposes for which the Personal Information is to be used or disclosed, or such additional purposes are permitted or authorized by Applicable Law;
  - (b) protect the Personal Information using security safeguards that meet or exceed industry standards, taking into account the sensitivity of the Personal Information; and
  - (c) give effect to any withdrawal of consent by the individual to whom the Personal Information relates where the Personal Information was collected with consent.
- (2) The Purchaser shall, to the extent required by Applicable Law, notify the individuals to whom the Personal Information relates that the Transaction has been completed and of the disclosure of their Personal Information to the Purchaser.
- (3) In the event that the Transaction is not completed, the Purchaser shall, within a reasonable period of time, return the Personal Information to the Vendor or, in its discretion, destroy it and provide a certificate of a senior officer of the Purchaser to that effect to the Vendor.

**5.5 Risk of Loss.**

- (1) If, before the Closing, any material portion of the Purchased Assets or material portion of the Business is lost, damaged or destroyed or is appropriated, expropriated or seized by any Governmental Authority, and the loss, damage, destruction, appropriation, expropriation or seizure cannot, in the reasonable opinion of the Vendor, be restored within 60 days from the date of loss, damage, destruction, appropriation, expropriation or seizure, then the Purchaser may either:
  - (a) terminate this Agreement; or

- (b) reduce the Purchase Price by the amount of the replacement or repair cost of the Purchased Assets and/or the Business which were lost, damaged, destroyed, appropriated, expropriated, or seized, in which case any insurance proceeds or other compensation paid or payable with respect to such loss, damages, destruction, appropriation, expropriation, or seizure shall be retained by the Vendor and shall be deemed to be an Excluded Asset; or
  - (c) elect to complete the Transaction, in which case any insurance proceeds or other compensation paid or payable with respect to such loss, damage, destruction, appropriation, expropriation or seizure of Purchased Assets will be assigned or paid by the Vendor to the Purchaser.
- (2) If, before the Closing, any of the Purchased Assets or part of the Business is lost, damaged or destroyed or is appropriated, expropriated or seized by any Governmental Authority, and the loss, damage, destruction, appropriation, expropriation or seizure can, in the reasonable opinion of the Vendor, be restored within 60 days from the date of loss, damage, destruction, appropriation, expropriation or seizure, then upon satisfaction or waiver of the conditions set out in Article 4, the Parties will complete the Transaction; provided that (a) any proceeds of insurance payable as a result of the occurrence are to be directed by the Vendor to be paid to the Purchaser, and (b) the Purchase Price will be reduced by the mutually agreed amount of replacement or repair cost of the Purchased Assets and/or Business which were lost, damaged or destroyed to the extent that insurance proceeds do not compensate for the replacement or repair cost of the Purchased Assets and/or Business which were lost, damaged or destroyed.

#### **5.6 Employees.**

- (1) Prior to the Closing Date, but conditional on the completion of the Closing, the Purchaser shall use commercially reasonable efforts to offer employment to up to 50% of the full-time Employees effective as at the Effective Time, on terms and conditions which are in the reasonable judgement of the Purchaser equal to or better than market employment terms for similarly experienced employees in equivalent roles in the fitness industry in British Columbia. For greater certainty, unless the Purchaser elects to make an offer of employment to any Employee that is on temporary layoff, leave of absence, disability or other non-active status and that offer of employment is accepted by that Employee, the Company shall remain responsible for and the Purchaser is not assuming any liability or obligation with respect to that Employee. Notwithstanding the foregoing, except as expressly set out in this Section 5.6, nothing herein shall require the Purchaser to set up or make available to the Hired Employees pension and employee benefit arrangements or to provide pension and employee benefits.
- (2) The Purchaser shall assume and be responsible for all liabilities and obligations with respect to the Hired Employees to the extent arising on and after the Effective Time.
- (3) The Company shall be responsible for all liabilities and obligations with respect to all Employees other than the Hired Employees and with respect to the Hired Employees up to the Closing Date, including liabilities and obligations under all Statutory Plans and related to any required notice of termination, termination or severance pay (required under Applicable law or by contract), salary or wages, statutory holiday pay, overtime pay, payroll or employer health taxes, commissions, bonuses, employee benefit plan payments or contributions, vacation entitlements or expense reimbursements.



**5.7 Employee Plans.** The Purchaser is not assuming, nor will it have any liability for, any of the employee benefit plans, arrangement, schemes or policies offered by the Company. The Hired Employees shall cease to accrue any further benefits under any of employee benefit plan, arrangement, scheme or policy offered by the Company from the Effective Time.

**5.8 Use of Name.** The Purchaser shall, within 180 days from the Closing Date, remove all signage and reference to “Steve Nash” and the image and likeness of Stephen J. Nash on all premises under the control of the Purchaser and all websites and other advertising and marketing materials used by the Purchaser. In furtherance of the foregoing, the Vendor shall use its commercially reasonable efforts, on request by the Purchaser, to inform Stephen J. Nash and his Affiliates of the Purchaser’s efforts to remove all such signage and references to “Steve Nash” and the image and likeness of Stephen J. Nash from all premises under the control of the Purchaser and all websites and other advertising and marketing materials used by the Purchaser.

## **ARTICLE 6 GENERAL**

**6.1 Expenses.** Each Party shall pay all expenses (including Taxes imposed on those expenses) it incurs in the authorization, negotiation, preparation, execution and performance of this Agreement and the Transaction, including all fees and expenses of its legal counsel, bankers, investment bankers, brokers, accountants or other representatives or consultants.

**6.2 Best Efforts.** In this Agreement, unless specified otherwise, an obligation of any Party to use its best efforts to obtain any Approval does not require the Party to make any payment to any Person for the purpose of procuring the Approval, except for payments for amounts due and payable to that Person, payments for incidental expenses incurred by that Person and payments required by any Applicable Law.

**6.3 No Third Party Beneficiary.** This Agreement is solely for the benefit of the Parties and no third party accrues any benefit, claim or right of any kind pursuant to, under, by or through this Agreement.

**6.4 Entire Agreement.** This Agreement together with the other agreements to be entered into as contemplated by this Agreement (the “**Other Agreements**”) constitute the entire agreement between the Parties pertaining to the subject matter of this Agreement and the Other Agreements and supersede all prior correspondence, agreements, negotiations, discussions and understandings, written or oral, including the form of offer and contract of purchase and sale dated May 20, 2020 executed by Mark Mastrov and Christopher Smith as a pre-incorporation contract and adopted by the Purchaser. Except as specifically set out in this Agreement or the Other Agreements, there are no representations, warranties, conditions or other agreements or acknowledgements, whether direct or collateral, express or implied, written or oral, statutory or otherwise, that form part of or affect this Agreement or the Other Agreements or which induced any Party to enter into this Agreement or the Other Agreements. No reliance is placed on any representation, warranty, opinion, advice or assertion of fact made either prior to, concurrently with, or after entering into, this Agreement or any Other Agreement, or any amendment or supplement hereto or thereto, by any Party to this Agreement or any Other Agreement or its Representatives, to any other Party or its Representatives, except to the extent the representation, warranty, opinion, advice or assertion of fact has been reduced to writing and included as a term in this Agreement or that Other Agreement, and none of the parties to this Agreement or any Other Agreement has been induced to enter into this Agreement or any Other Agreement or any amendment or supplement by reason of any such representation, warranty, opinion, advice or assertion of fact. There is no liability, either in tort or in contract, assessed in relation to the representation, warranty, opinion, advice or assertion of fact, except as contemplated in this Section.

**6.5 Time of Essence.** Time is of the essence of this Agreement.

**6.6 Amendment.** This Agreement may be supplemented, amended, restated or replaced only by written agreement signed by each Party.

**6.7 Waiver of Rights.** Any waiver of, or consent to depart from, the requirements of any provision of this Agreement is effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement operates as a waiver of that right. No single or partial exercise of any such right precludes any other or further exercise of that right or the exercise of any other right.

**6.8 Jurisdiction.** The Parties irrevocably and unconditionally attorn to the exclusive jurisdiction of the Courts in respect of all disputes arising out of, or in connection with, this Agreement, or in respect of any legal relationship associated with it or derived from it.

**6.9 Governing Law.** This agreement is governed by, and interpreted and enforced in accordance with, the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia, excluding the choice of law rules of that province.

**6.10 Notices.**

(1) Any notice, demand or other communication (in this Section 6.10, a “**notice**”) required or permitted to be given or made under this Agreement must be in writing and is sufficiently given or made if:

- (a) delivered in person and left with a receptionist or other responsible employee of the relevant Party at the applicable address set forth below;
- (b) sent by prepaid courier service or (except in the case of actual or apprehended disruption of postal service) mail; or
- (c) sent by facsimile transmission, with confirmation of transmission by the transmitting equipment (a “**Transmission**”);

in the case of a notice to the Vendor, addressed to it at:

The Bowra Group Inc.  
PO Box 72, Bentall One  
505 Burrard Street, Suite 430  
Vancouver, BC V7X 1M3

Attention: Mario Mainella  
Email: mmainella@bowragroup.com

with a copy (not constituting notice) to:

Lawson Lundell LLP  
Suite 1600 Cathedral Place  
925 W Georgia Street  
Vancouver, BC V6C 3L2

Attention: Kimberley A. Robertson  
Email: [kr Robertson@lawsonlundell.com](mailto:kr Robertson@lawsonlundell.com)

Dentons Canada LLP  
20<sup>th</sup> Floor, 250 Howe Street  
Vancouver, BC V6C 3R8

Attention: Jordan Schultz  
Email: [jordan.schultz@dentons.com](mailto:jordan.schultz@dentons.com)

and in the case of a notice to the Purchaser, addressed to it at:

FW Fitness BC Ltd.  
Waterfront Centre  
200 Burrard St. #1200  
Vancouver, BC V7X 1T2

Attention: Chris Smith  
Email: [csmith@snclubs.com](mailto:csmith@snclubs.com)

with a copy (not constituting notice) to:

Borden Ladner Gervais LLP  
Waterfront Centre  
200 Burrard St #1200  
Vancouver, BC V7X 1T2

Attention: Kendall E. Andersen  
Andrew Hennigar  
Email: [kandersen@blg.com](mailto:kandersen@blg.com)  
[ahennigar@blg.com](mailto:ahennigar@blg.com)

- (2) Any notice sent in accordance with this Section 6.10 is deemed to have been received:
- (a) if delivered prior to or during normal business hours on a Business Day in the place where the notice is received, on the date of delivery;
  - (b) if sent by mail, on the fifth Business Day after mailing in the place where the notice is received, or, in the case of disruption of postal service, on the fifth Business Day after cessation of that disruption;
  - (c) if sent by email during normal business hours on a Business Day in the place where the Transmission is received, on the same day that it was received by Transmission; or

(d) if sent in any other manner, on the date of actual receipt;

except that any notice delivered in person or sent by Transmission not on a Business Day or after normal business hours on a Business Day, in each case in the place where the notice is received, is deemed to have been received on the next succeeding Business Day in the place where the notice is received.

(3) Any Party may change its address for notice by giving notice to the other Parties.

**6.11 Assignment.** No Party may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its rights or obligations under this Agreement to any Person.

**6.12 Further Assurances.** Each Party shall promptly do, execute, deliver or cause to be done, executed or delivered all further acts, documents and matters in connection with this Agreement that any other Party may reasonably require, for the purposes of giving effect to this Agreement.

**6.13 Severability.** If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, that provision will, as to that jurisdiction, be ineffective only to the extent of that restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement, without affecting the validity or enforceability of that provision in any other jurisdiction and, if applicable, without affecting its application to the other Parties or circumstances. The Parties shall engage in good faith negotiations to replace any provision which is so restricted, prohibited or unenforceable with an unrestricted and enforceable provision, the economic effect of which comes as close as possible to that of the restricted, prohibited or unenforceable provision which it replaces.


**6.14 Successors.** This Agreement is binding on, and enures to the benefit of, the Parties and their respective successors.

**6.15 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together constitute one agreement. Delivery of an executed counterpart of this Agreement by facsimile or transmitted electronically in legible form, including in a tagged image format file (TIFF) or portable document format (PDF), shall be equally effective as delivery of a manually executed counterpart of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement on the date first above written.

THE BOWRA GROUP, INC., in its capacity as Receiver of SNFW FITNESS B.C. LTD., and not in its personal capacity

By:   
Name: MARIO MAINELLA  
Title: PRESIDENT

FW FITNESS BC LTD.

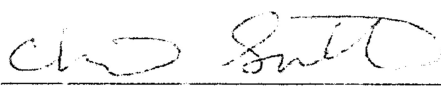
By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the Parties have duly executed this Agreement on the date first above written.

THE BOWRA GROUP, INC., in its capacity as Receiver of SNFW FITNESS B.C. LTD., and not in its personal capacity

By: \_\_\_\_\_  
Name:  
Title:

FW FITNESS BC LTD.

By:   
Name: Chris Smith  
Title: President + CEO