

COURT FILE NUMBER	Q.B. 1195 of 2020
COURT	COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
JUDICIAL CENTRE	SASKATOON
APPLICANT	BTA REAL ESTATE GROUP INC.
RESPONDENT	FAMILY FITNESS INC.

AND IN THE MATTER OF THE RECEIVERSHIP OF  
FAMILY FITNESS INC.

DOCUMENT	<b>SECOND REPORT OF THE RECEIVER JANUARY 29, 2020</b>
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ADDRESS FOR SERVICE AND  
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## INTRODUCTION

1. Effective October 13, 2020 (the “**Receivership Date**”), pursuant to a consent order granted by the Court of Queen’s Bench For Saskatchewan (the “**Court**”) granted in Action No. Q.B. 1195 of 2020 (the “**Consent Receivership Order**”), Alvarez & Marsal Canada Inc. was appointed the receiver and manager (the “**Receiver**”), without security, of all of the current and future assets, undertakings and properties of every nature and kind whatsoever, including but not limited to trust property and wherever situated including all proceeds thereof (collectively, the “**Property**”) of Family Fitness Inc. (“**Family Fitness**” or the “**Company**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”), in the within action (the “**Receivership Proceedings**”).
2. The Consent Receivership Order empowers and authorizes, but does not obligate, the Receiver to, among other things, manage, operate and carry on the business of the Company and to take possession and control of its Property and of any and all proceeds, receipts and disbursements arising out of or from the Property, and to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business subject to Court approval as necessary. The Property includes any property relating to the operations of the Company and the business name “Evolution Fitness Gym” at certain specific locations. On November 11, 2020, an amendment to the Consent Receivership Order (“**ACRO**”), clarified that the “operational locations” only include the following gyms:
  - a) 2121 E Quance St. (the “**East Gym**”);
  - b) 358 McCarthy Blvd. (the “**North Gym**”); and
  - c) 3615 Pasqua St. (the “**South Gym**”).
3. On November 23, 2020, the Court granted an Order approving the Sale and Investment Solicitation Process (the “**SISP**”) prepared by the Receiver for the potential sale of Family Fitness’ business and/or its assets. Included in this Order, the Court authorized the Receiver to negotiate, finalize and execute a definitive

stalking horse bid agreement of purchase and sale (the “**Stalking Horse Bid**”) between the Receiver and the Stalking Horse Bidder.

4. On November 27, 2020, this Honourable Court granted an order approving the actions, activities and conduct of the Receiver from October 7, 2020 to and including November 15, 2020, as actions and activities described in the first report of the Receiver dated November 16, 2020 (the “**First Report**”). Further, the Court granted an Order approving the fees and disbursements of the Receiver and its legal counsel, Torys LLP (“**Torys**”), as reported in the First Report.
5. The purpose of this second report of the Receiver (the “**Second Report**” or “**this Report**”) is to provide this Honourable Court and relevant stakeholders in the Receivership Proceedings with information relating to:
  - a) the activities of the Receiver since the First Report and First Supplement to the First Report (dated November 19, 2020);
  - b) the details of the BTA Stalking Horse Process and the selection of the Superior Offer being the BTA Stalking Horse APA (both terms as defined in the Supplement to the First Report) and the Receiver’s request for approval of the sale approval and vesting order for the BTA Stalking Horse APA;
  - c) the Receiver’s request from this Honourable Court to:
    - i. approve the repudiation of the lease between Family Fitness and De Lage Landen Financial Services Canada Inc. (the “**DLL Lease**”); and
    - ii. approve the repudiation of the Lease Indenture dated August 11, 2008, as amended by an Assignment and Assumption of Lease, dated October 1, 2015, concerning the lease of property described as Block D, Plan 96R35131 Ext 4, between Family Fitness Inc. and 575794 Saskatchewan Ltd (the “**South Facility Lease**”);

- d) the details relating to the disputed funds (the “**Disputed Funds**”) held by ASF Payment Solutions (“**ASF**”) and the details related to the approximately 900 ASF memberships that were transferred to SM Fitness (the “**Disputed Memberships**”);
- e) the Receiver’s application for the sealing of Confidential Appendix 1 and Confidential Appendix 2 to the Report (the “**Sealing Order**”);
- f) the final statement of receipts and disbursements (the “**Final Statement of Receipts and Disbursements**”) of the Receiver for the period from October 13, 2020 to January 22, 2021 (the “**Reporting Period**”);
- g) the Forecast Receipts and Payments (as defined below);
- h) approve the Receiver to be empowered and authorized to assign Family Fitness into bankruptcy, as outlined in the proposed discharge order;
- i) the Receiver’s application for approval of the Receiver’s and Torys’ fees and expenditures;
- j) the request for approval of the Receiver’s actions and activities as described in the Second Report;
- k) authorizing the Receiver to destroy any and all documents, accounting records, and other paper (the “**Records**”) if not collected by BTA, or secondly by any of the current directors or shareholders of Family Fitness after 30 days of providing notice as discussed in the Discharge Order; and
- l) the proposed discharge of the Receiver.

6. Unless otherwise set forth herein, capitalized words or terms not defined or ascribed a meaning in the Second Report are as defined or ascribed a meaning in the Consent Receivership Order and previously filed reports of the Receiver.

7. All references to dollars are in Canadian currency unless otherwise noted.

## **TERMS OF REFERENCE**

8. In preparing this Second Report, the Receiver has relied primarily upon information obtained through the representations of certain shareholders, management, and employees of Family Fitness. In addition, where applicable, the Receiver has relied on the Company's books and records, which were produced and maintained principally by the Company's external accountant, Senger Kaufmann CPA Professional Corp.
9. While the Receiver has reviewed certain financial information in respect of the Company for reasonableness, the Receiver has not performed an audit, review or otherwise attempted to verify the accuracy or completeness of the Company's financial information that would wholly or partially comply with Canadian Auditing Standards ("CASs") pursuant to the Chartered Professional Accountants Canada Handbook, and accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CASs in respect of financial information.

## **BACKGROUND**

10. Family Fitness is an operator of physical fitness studios carrying on business under the name of 'Evolution Fitness'. Family Fitness is 100% owned by Said Kaiss ("**Mr. Kaiss**"), who is the sole director and officer of the Company.
11. The Company's head office is in Regina, Saskatchewan. There are three (3) gyms owned by Family Fitness that operate under the 'Evolution Fitness' banner in Regina, which include the East Gym, the North Gym and the South Gym (collectively, the "**FFI Gyms**"). The 'Evolution Fitness' gym located on 1846 Scarth Street, in Regina, Saskatchewan, is owned by a related party of Family Fitness and this location is not included in the Receivership Proceedings.
12. All locations provide a range of fitness activities including weight training, individual personal training sessions, group exercise classes, and kids club through

a variety of memberships and daily drop in options. Family Fitness has active membership contracts totalling approximately 7,500. Family Fitness earns a portion of revenue at the time a member signs up and subsequently as the member makes monthly or bi-weekly payments, as applicable.

13. Based on the Receiver's review of the Company's books and records, Family Fitness owes BTA approximately \$1,032,000 for lease arrears as at the Receivership Date. Mr. Kaiss has personally guaranteed the BTA indebtedness of Family Fitness. BTA is Family Fitness' primary secured creditor and the landlord of the East Gym.
14. Should this Honourable Court approve the sale approval and vesting order with respect to the BTA Stalking Horse APA (which ultimately consists of a credit bid of BTA's secured debt for Family Fitness' assets), there will continue to remain a significant deficiency/shortfall owing to BTA. As a result, BTA is the fulcrum secured creditor and there will be no recoveries to any unsecured creditors of Family Fitness.
15. Further background information regarding the Company and its financial circumstances is contained in the materials filed in support of and relating to the Consent Receivership Order. These documents, together with the previously filed Receiver's reports and other relevant information have been posted by the Receiver on its website, including the ACRO and various application materials at: [www.alvarezmarsal.com/familyfitness](http://www.alvarezmarsal.com/familyfitness) (the "Receiver's Website").

#### **ACTIVITIES OF THE RECEIVER**

16. Since the First Supplement to the First Report, the Receiver's activities with respect to the Company have, but are not limited to, the following:
  - a) attending the FFI Gyms to supervise operations, management and staff and addressing various operational and employee matters;

- b) attending numerous conference calls with the secured creditor (BTA), its legal counsel and the Receiver's legal counsel (Torys) concerning operational, legal matters and financial updates of the Company involving the Receivership Proceedings, generally;
- c) preparing numerous summaries, schedules, and reports at the request of the secured creditor (BTA) and its legal counsel concerning operational and financial matters of the Company;
- d) multiple communication with Mr. Kaiss and his legal counsel with respect to operational matters, the SISP Procedures and his offer, matters concerning members and correlation with SM Fitness facility owned by Mr. Kaiss;
- e) marketing the Family Fitness assets through the SISP Procedures, which included hosting many meetings and communications with prospective purchasers interested in purchasing the Family Fitness assets, assembling all company information and developing a virtual data room;
- f) completion of the Stalking Horse Sales Process as discussed in further detail below;
- g) providing instructions to the Receiver's independent legal counsel, Torys, in respect of the Receivership Proceedings;
- h) monitoring the cash flow of the Company and ensuring suppliers are paid on a timely basis;
- i) borrowing of an additional \$220,000 by issuing a second Receiver's Certificate to BTA to ensure that the Receiver has adequate resources to operate in the Receivership Proceedings. Total borrowings in the Receivership Proceedings is \$420,000, as discussed further below;



- j) maintaining and updating a cash flow forecast of Family Fitness and making it available to BTA and interested parties involved in the SISF;
- k) numerous calls with the Canada Revenue Agency (“CRA”) respecting governmental programs, including the Canada Emergency Wage Subsidy (“CEWS”) and the Canada Emergency Rent Subsidy (“CERS”);
- l) continued communication with CRA with respect to finalizing its respective source deduction and GST audits. The audits are currently being completed by the CRA and discussed below in further detail;
- m) working closely with BTA (the Successful Bidder) in providing additional due diligence and supporting documents on operations and finance, while setting up transition protocols should the BTA asset vesting order be approved by this Honourable Court;
- n) engaging an independent contractor to assist the Receiver in operating the FFI Gyms, with the goal to improve efficiencies and lower overall Receivership Costs;
- o) engaging the services of McDougall Auctioneers Ltd. to conduct an appraisal of DLL Lease (equipment) all located at the East Gym;
- p) numerous correspondence with ASF, the Company’s independent service provider in maintaining and collecting for Family Fitness membership revenues, relating to the Disputed Funds and Disputed Memberships;
- q) numerous correspondence and meetings with the Receiver, the Receiver’s counsel, BTA, BTA’s legal counsel, SM Fitness (Mr. Kaiss) and SM Fitness’ legal counsel related to the Disputed Funds and Disputed Memberships;

- r) undertaking day to day management of operations of the Company, including employee and contractor supervision and monitoring cash flow to ensure timely payment of trade creditors for services rendered and approved by the Receiver; and
- s) attending to numerous and on-going meetings and discussions with various creditors (or their representatives), legal counsel to the Receiver, interested parties and other stakeholders regarding the Receivership Proceedings.

### **Canada Revenue Agency**

17. As previously reported, the Receiver understands that as at October 13, 2020, there were no “pre-receivership” GST returns outstanding with the CRA. The Receiver is up to date on its GST filings. The CRA is currently conducting a GST audit and the Receiver will be notified by the CRA upon completion. The Receiver also advises that there are no amounts outstanding with respect to source deductions per its communication with the CRA. As previously mentioned, the CRA is conducting a payroll audit and the Receiver will be notified by the CRA upon completion.
18. The Receiver confirmed with the CRA that Family Fitness was eligible for the CEWS and the CERS during the Receivership Proceedings. The Receiver was provided an online access code to submit the CEWS and CERS summaries from the CRA; however, when the Receiver attempted to submit the application it was blocked by the online program and was unable to complete the application. The Receiver held numerous discussions with the CRA related to the issues with the online submissions and were told by the CRA representative that the account had been locked due to the Receivership.
19. The CRA has now advised the Receiver that it is reviewing the Family Fitness account for its CERS and CEWS eligibility, but has not provided a timeline for the review. The Receiver believes that there is a possibility that approximately \$85,000

will be provided from the CEWS program and approximately \$40,000 from the CERS program.

20. Employee T4s and Contractor T4As were submitted to Ceridian on December 29, 2020 and Ceridian mailed out the T4s and T4As to the employees and contractors of Family Fitness. The Receiver is in receipt of all the T4s and T4As that were provided to employees and contractors of Family Fitness for the year ending 2020.

#### **Employee, Wage Earner Protection Program & s. 81.4(1) BIA Priority Claims**

21. Throughout the Receivership, the Receiver successfully kept employed approximately 130 employees and did not terminate or lay off any individuals as a result of the Receivership or COVID-19 related matters, with the exception of Mr. Said Kaiss and Mr. Wassim Kaiss. Mr. Wassim Kaiss was terminated on November 30, 2020 as there was no longer a requirement for his services and Mr. Said Kaiss was terminated on January 13, 2021 shortly after the Bid Deadline.
22. WEPPA forms were not provided to the Family Fitness employees and contractors. Per section 5.5 of the Stalking Horse APA, BTA agreed to assume all employee contracts and employment liability, should the Stalking Horse APA be approved by this Honourable Court and the Sale Approval and Vesting Order is granted. However, Mr. Wassim Kaiss was provided a WEPPA form and a Proof of Claim Form on November 30, 2020. The Receiver prepared and submitted the online information required for Mr. Wassim Kaiss to submit a WEPPA application, but the Receiver did not receive a Proof of Claim Form from Mr. Wassim Kaiss and the due date to submit a claim of January 25, 2021 has passed. Mr. Said Kaiss was not provided the WEPPA forms as he did not qualify for the program.

#### **COVID 19 Protocols & Procedures**

23. Prior to the Receivership Date, the Company had implemented a number of policies and procedures related to the COVID-19 pandemic and worked with the Saskatchewan Health Authority (“SHA”) to ensure that the gyms were following all SHA guidelines and were in accordance with the COVID-19 restrictions.

24. The Receiver worked with management at Family Fitness to ensure that proper COVID-19 protocols and procedures continued to be followed by the staff, management and all members of the FFI Gyms. The Company prepared a COVID-19 manual for its staff and members in accordance with the SHA guidelines and updated the manual regularly as new guidelines and restrictions were put in place.
25. All of the FFI Gyms were equipped with additional cleaning stations including, paper towel, hand sanitizer and sanitizing spray bottles which were mandatory for use by the members and staff. The gyms were marked with stickers on the floor to maintain social distancing for common space areas, washrooms, and change rooms. Every second to third treadmill, elliptical, step machine, and bike were unavailable for use to ensure that social distancing was maintained during a cardio workout. Signage at the gyms were located on the doors, in the change rooms and washrooms, and posters were located on the mirrors and common areas reminding the members and staff of the protocols and procedures implemented for COVID-19 including social distancing, hand sanitization, equipment sanitization and mandatory mask use.
26. The Receiver held meetings with staff to ensure that they were all trained. The Receiver also provided manuals on COVID-19 protocols and how to ensure that members were following the rules.
27. The Receiver continues to monitor the SHA guidelines for any relevant changes to the current policies and restrictions related to COVID-19.

## **SALE AND INVESTMENT SOLICITATION PROCESS**

### **Summary of sales process**

28. On November 23, 2020, the Honourable Court granted an Order approving the SISP for the sale of the Property of Family Fitness.
29. An overview of the extensive, broad-based SISP for the Company is set out below:

- a) the Receiver prepared a non-confidential teaser (the “**Teaser**”) describing the SISP and a Confidentiality Agreement (the “**CA**”). The Teaser and the CA were made available by the Receiver to prospective purchasers and were posted to the Receiver’s website following Court approval of the SISP;
- b) advertisement of the SISP was published in the Regina Leader Post and the Saskatoon Star Phoenix throughout the first two weeks of the sale process and the Insolvency Insider, on a weekly basis, throughout the sale process;
- c) the Receiver reached out to various potential bidders by direct email and to approximately fifty-one (51) potential financial and strategic buyers;
- d) all potential bidders that executed CAs were provided with access to a virtual data room (“**VDR**”) containing the SISP, BTA Stalking Horse APA and various financial and other information with respect to the property; and
- e) the deadline for receipt by the Receiver of a final binding offer from interested parties in the form of a purchase and sale agreement was January 8, 2021 (12:00 p.m. noon MT) (the “**Bid Deadline**”).

30. A copy of the Teaser of the SISP can be found in Appendix “A” to this Report.

### **Results from the SISP Marketing Process**

- 31. There were eight (8) prospective purchasers who signed CAs and accessed the VDR and reviewed due diligence materials. No interested parties requested a site tour of the facilities.
- 32. As at the Bid Deadline, one offer was received from 102114304 Saskatchewan Ltd. (the “**304 SK Ltd. Offer**”). Details regarding the 304 SK Ltd. Offer that was

received and the Receiver's analysis thereon are contained in the Confidential Appendix 1 to this Second Report (the "**Confidential Appendix 1**").

33. Pursuant to the SISP, the process shall either go to an Auction or terminate at the end of the Bid Deadline if no Qualified Bids are received or if the Receiver is of the view that no Qualified Bids has a prospect of becoming a Superior Bid.
34. On January 12, 2021, after further due diligence, analysis and clarification by the Receiver of the 304 SK Ltd. Offer and BTA Stalking Horse Bid, the Receiver determined that the SISP should be terminated and an Auction would not be required, as in the Receiver's opinion there was no reasonable prospect that the 304 SK Ltd. Offer received would become a Superior Offer.
35. As a result of the SISP being terminated, the Receiver is seeking a sale approval and vesting order (the "**Sale Approval and Vesting Order**"), to approve the BTA Stalking Horse APA (discussed further below) and vest title of the purchased assets in and to the Purchaser.

#### **Confidential Appendix and Temporary Sealing Order**

36. The Receiver has included as Confidential Appendix 1 to this Report a copy of the 304 SK Ltd. Offer and a brief analysis of the offer and Confidential Appendix 2, which is an appraisal prepared by McDougall Auctioneers Ltd.
37. Confidential Appendix 1 and Confidential Appendix 2 contain confidential information of a commercial nature which, if disclosed to third parties prior to the closing of the sale, could materially jeopardize the SISP or (if a transaction does not close) could materially jeopardize the value that could subsequently be obtained. Accordingly, the Receiver is respectfully of the view that it is appropriate that this Honourable Court grant the sealing provisions contained in the Sale Approval and Vesting Order in relation to the Confidential Appendix. The Receiver supports the sealing of the Confidential Appendix 1 and Confidential Appendix 2 until the conclusion of the Receivership Proceedings.

## **APPROVAL OF THE STALKING HORSE APA**

### **Stalking Horse APA**

38. As discussed in the First Supplement to the First Report, the Receiver negotiated and executed a stalking horse asset purchase agreement with BTA, who is the secured creditor in these Receivership Proceedings, dated November 19, 2020, which was approved in conjunction with the SISP, by this Honorable Court on November 23, 2020.
39. The Receiver recommends the Sale Approval and Vesting Order with respect to the Stalking Horse APA and the recommendation is based on the following:
- a) this Honourable Court granted the SISP Order on November 23, 2020, approving the SISP and Stalking Horse APA;
  - b) the Receiver is of the view that a comprehensive marketing of the Company's property was undertaken, and that the market of potential purchasers was sufficiently canvassed;
  - c) the Receiver understands that the BTA Stalking Horse APA was negotiated between the Receiver and BTA in good faith and was approved by this Honourable Court on November 23, 2020;
  - d) there was no acceptable offer received in the SISP that was considered a Superior Offer to the BTA Stalking Horse APA;
  - e) the Receiver's counsel has reviewed the security of the Secured Creditor and concluded that it constitutes a valid and enforceable first-ranking security interest in the property of the Company;
  - f) the Receiver and BTA (as the fulcrum creditor) are supportive of the BTA Stalking Horse APA;

- g) the Receiver is advised that 304 SK Ltd. and Mr. Said Kaiss, as the owner of Family Fitness and guarantor of the BTA obligations, are not taking position on the Sale Approval and Vesting Order; and
- h) the Stalking Horse APA represents the best and highest offer received in the SISP and also represents the greatest overall recovery to all stakeholders of Family Fitness, in the circumstances.

40. A copy of the Amended Stalking Horse APA is attached as Appendix “B” to this report.

## **REPUDIATION OF LEASES**

### **DLL Lease**

41. Pursuant to Article 7.1 of the BTA Stalking Horse APA, it expressly provides that BTA is entitled to provide the Receiver with notice of which Contracts it wishes to treat as Assumed Contracts as late as 10 days prior to the return date of the Sale Approval and Vesting Order application. On January 22, 2021, BTA provided such notification that it wishes to not assume the DLL Lease (for all equipment located at the East Gym) and the South Facility Lease. As such, being an Excluded Contract, the DLL Security Lease would not form part of the Subject Assets. The Receiver intends to repudiate the DLL Lease as the appraised value of the assets included in the DLL Lease is materially less than the contractual buyout of the DLL Lease of approximately \$240,000. The Receiver obtained an independent appraisal from McDougall Auctioneers Ltd. (the “**Equipment Appraisal**”) and a copy of the Equipment Appraisal is attached in Confidential Appendix 2.
42. The Receiver understands that BTA has negotiated an offer to purchase the equipment located at the East Gym with DLL and that the offer includes a release of any amounts outstanding from Family Fitness to DLL. The Receiver is aware that Mr. Kaiss is a guarantor to the DLL Lease, personally, and the Receiver requested and received confirmation that DLL would also consider a release for Mr. Kaiss from any obligations as a guarantor of the DLL Lease from BTA and its



legal counsel. On January 27, 2021, the Receiver was advised by a DLL representative that this would be the intention of DLL. The Receiver intends to repudiate the DLL Lease just before closing the BTA Stalking Horse APA with BTA and simultaneously with BTA releasing its signature to purchase the said equipment from DDL relating to the DLL Lease.

### **South Facility Lease**

43. The Receiver understands that BTA is in the process of negotiating a new lease with ICR Commercial, the property management company of the South Facility Lease. The Receiver has reviewed the original lease agreement and is aware that Mr. Kaiss and Mr. Kahlid Jawari are guarantors to the South Facility Lease. Further review of the South Facility Lease showed that, subject to certain terms, the guarantees expired on December 1, 2018. The Receiver received correspondence from ICR Commercial that although the guarantee has expired, there was approximately \$218,000 owing from Family Fitness to ICR Commercial on the date of expiry and ICR Commercial will not be releasing the guarantors for the amounts outstanding at the expiry date.
44. The Receiver confirms that it will repudiate the DLL Lease and the South Facility Lease prior to the BTA Stalking Horse APA transaction closing.

### **FINAL STATEMENT OF RECEIPTS AND DISBURSMENTS**

45. The table below provides a summary of the final statement of the Receiver's receipts and disbursements relating to Family Fitness for the Reporting Period.

Family Fitness Inc. Final Statement of Receipts and Disbursements For The Period from October 13, 2020 to January 22, 2021	
<b>Receipts</b>	<b>Total</b>
Receiver's Borrowings	420,000
Member Receipts	1,114,149
Sub-Tenant Rent Received	21,231
Other Receipts	40,782
Government Subsidies	106,149
Refunds - Deposits Held in Trust	(13,221)
<b>Total Receipts</b>	<b>1,689,090</b>
<b>Disbursements</b>	
Salaries and Benefits	648,323
Lease for Facilities	512,840
Lease for Equipment	92,848
Utilities and Services	33,157
Operating Supplies	37,768
Head Office G&A	43,993
Net GST and PST Paid	54,515
Repairs & Maintenance	24,003
Professional Fees and Costs	492,990
<b>Total Disbursements</b>	<b>\$ 1,940,437</b>
<b>Net Cash Flow</b>	<b>\$ (251,347)</b>
<b>Cash Position</b>	
Opening Cash Position	347,444
<b>Change in cash flow</b>	<b>(251,347)</b>
<b>Closing Cash Position</b>	<b>\$ 96,097</b>

46. The Receiver initially froze Family Fitness' operating bank accounts on the Receivership Date with approximately \$347,000.
47. Approximately \$1.69 million has been received to date, which is comprised of the following:
- a) \$1.36 million from the operations of the Company's business as follows:
    - i. \$1.11 million from membership payments;

- ii. \$40,782 from other sources (including the purchase of drop-in passes and kids club memberships);
- iii. \$21,231 received from subtenants occupying the South and East gyms;
- iv. \$420,000 in borrowed from BTA. The Receiver is authorized to borrow \$500,000 pursuant to the Consent Receivership Order and has borrowed \$420,000 to date from BTA through Receiver's Certificates; and
- v. \$106,000 from Government Subsidy programs, specifically relating to the CEWS program.

48. Approximately \$1.94 million has been disbursed to date as follows:

- a) \$1.44 million to operate the Company's business. Of this, approximately:
  - i. \$648,000 to employee salaries and benefits paid to front office staff, sales staff, management, and contractors;
  - ii. \$513,000 for lease payments for facilities;
  - iii. \$54,000 of net GST and PST paid;
  - iv. \$93,000 for lease payments for gym equipment;
  - v. \$38,000 for operating supplies (including linen services, gym supplies, and janitorial supplies);
  - vi. \$44,000 for general and administrative expenses (including marketing and advertising, computer services, accounting services, bank fees and stationary costs); and

- b) professional fees and disbursements of approximately of \$494,000 paid to the Receiver and its independent legal counsel, Torys and Seiferling Law, for services rendered from the October 7 to December 31, 2020. The Receiver and its counsel have incurred professional fees and costs in January 2021 and have anticipated payment of these fees and costs along with its Forecast Fees and Costs as part of the “wind down” of Family Fitness to BTA.

49. Total available cash on hand with by the Receiver as at January 22, 2021 was approximately \$96,000.

#### **FORECAST RECEIPTS AND DISBURSEMENTS**

50. The table below provides a summary of the remaining estimated forecast receipts and disbursements to be collected and paid by the Receiver with respect to Family Fitness (the “**Forecast R&D**”). The Receiver has prepared this schedule as it is expecting to close on the BTA Stalking Horse APA immediately after the Court is to approve the Sale Approval and Vesting Order (assuming Court approval is obtained). Pursuant to the BTA Stalking Horse APA, no later than ten Business Days prior to the Closing Date, the Receiver will deliver to the Purchaser the Wind-Down Estimate (as such terms are defined in the BTA Stalking Horse APA). “Wind-Down Amount” means an amount in excess of any Surplus Funds (as defined in the BTA Stalking Horse APA) necessary to fund: (a) all accrued but unpaid fees and disbursements of the Receiver and its counsel subject to the Receiver’s Charge as at the Closing Date, and (b) the costs to wind down and complete the Receivership Proceeding after the Closing Date (including costs associated with the Receiver terminating and/or disclaiming any agreements (including those related to the Leased Premises)), which amount shall be subject to the Receiver’s Charge.

		<b>Timeline</b>
<b>Opening cash, Jan.23/21</b>	<b>\$ 96,097</b>	
<b>Forecast Receipts</b>	<b>264,140</b>	collections to February 12th
	<b>360,237</b>	
<b>Forecast operating expenses</b>		
- Salaries and benefits	(180,500)	
- Facility lease payments	(180,000)	
- Equipment Lease payments	(400)	
- General and administrative	(12,000)	
- Utilities and services	(20,000)	
- Janitorial and cleaning	(3,000)	
- Repairs and maintenance	(2,000)	
- Operating supplies	(3,000)	
- GST payable	(15,000)	
- Bank charges and interest	(100)	
- Consulting fees	(40,000)	to February 5th
	<b>\$ (456,000)</b>	expected payments to February 12th
<b>Professional Fees</b>		
- Receiver	(87,000)	January 1 - 23, 2021
- Counsel	(47,000)	January 1 - 23, 2021
	<b>\$ (134,000)</b>	
<b>Forecast Fees and Costs</b>		
- Receiver	(50,000)	January 24 - Feb.28th
- Counsel	(25,000)	January 24 - Feb.28th
	<b>\$ (75,000)</b>	
<b>Contingency/Holdback</b>	<b>\$ (30,000)</b>	
<b>Total Forecast Disbursements</b>	<b>\$ (695,000)</b>	
<b>Estimated Wind-up costs</b>	<b>\$ (334,763)</b>	

51. In accordance with the terms of the Stalking Horse APA, the Receiver has summarized in the below table the remaining estimate forecast receipts and disbursements to be collected and paid by the Receiver with respect to Family Fitness (the “**Wind Down Estimate**”), which may be subject to change and agreed to with BTA.

52. The Receiver estimates collections of approximately \$360,000 from Family Fitness membership payments and sub tenant rent, which includes opening cash of \$96,000.
53. Total remaining disbursements of approximately \$695,000 to be made by the Receiver in the Receivership Proceedings primarily consist of operating expenses, professionals' fees incurred and estimated to complete the Receivership Proceedings and a contingency/holdback amount of \$456,000, \$209,000 and \$30,000, respectively. The contingency amount includes potential costs associated with the CRA Payroll and GST trust audits. Should the Receiver not use any of these contingency 'holdbacks', the Receiver will deliver all remaining amounts to BTA.
54. The Receiver estimates BTA will be required to fund (due to timing of collection of membership receipts) approximately \$335,000 to cover the Forecast R&D / Wind-Up Costs. This amount may be reduced if the Receiver is permitted to collect additional receipts from members for the remainder of February 2021.

## **DISPUTED MATTERS**

### ***ASF Funds and Memberships***

55. On or about December 31, 2020, the Receiver received a notice from the shareholder of Family Fitness (Mr. Said Kaiss) that there was an additional SM Fitness Inc. ("**SFI**") account with ASF (the "**10822 ASF Account**"), which had been set up in April of 2020, when the owner of Family Fitness transferred approximately 900 Family Fitness memberships to the 10822 ASF Account (the "**Membership Transfer**"). These "ASF" accounts are accounts hosted by ASF to collect membership revenue for Family Fitness and SM Fitness and then ASF distributes these funds to the respective companies.
56. Mr. Said Kaiss brought this to the attention of the Receiver in December 2020, because he claimed that ASF would not release approximately \$236,000 being

funds held by ASF for the 10822 ASF Account due to the Receivership Proceedings.

57. The Receiver asked the owner for additional details relating to the Membership Transfer including the number of memberships transferred and various other documents relating to the ownership of the membership contracts.
58. The Receiver additionally reached out to ASF to enquire about the details of the transaction that had occurred in April 2020 and further information of the fund being held by ASF.
59. The Receiver was provided various documents, as attached to this Report as Appendix “C”, from Mr. Said Kaiss, including:
  - a) a Resolution of the Directors of Family Fitness, signed by the sole Director, Said Kaiss, and dated May 12, 2020;
  - b) a Resolution of the Directors of SFI, signed by the Directors, Said Kaiss and Matt Sawa, and dated May 12, 2020;
  - c) a Group Membership Account Purchase Agreement between Family Fitness and SFI, signed by the Director, Said Kaiss on behalf of Family Fitness and the Director, Matt Sawa on behalf of SFI;
  - d) copies of the October 2020, November 2020, and December 2020 payments made by SFI to ClubFit Fitness Inc. in the aggregate amount of \$30,000;
  - e) the original Form of Assignment Agreement between KTB Lifestyles Ltd., Shapelys Toning and Diet Centre Ltd., and ClubFit Fitness Inc. (collectively referred to as “**ClubFit Fitness**”) and Family Fitness dated February 1, 2018; and
  - f) a letter received from ClubFit Fitness to Family Fitness on April 28, 2020 demanding Mr. Said Kaiss and Family Fitness pay the April 1,

2020 payment and claiming the remaining balance of \$146,628 is due and payable.

60. The Receiver reviewed the above mentioned documents to obtain details related to the Membership Transfer and understood the following:

- a) the membership contracts included in the Membership Transfer were originally purchased by Family Fitness by way of a Membership Purchase Agreement dated January 22, 2018 between Family Fitness and ClubFit Fitness whereby Family Fitness purchased the membership list from California Fitness Regina including approximately 3,000 members;
- b) Family Fitness purchased the original contracts for an amount of approximately \$486,000 and was obligated to pay \$10,000 per month to ClubFit Fitness until the amount was paid in full;
- c) the balance owing to ClubFit Fitness as at the date of the Member Transfer was approximately \$146,628 and monthly payments were being made by Family Fitness up until the Membership Transfer;
- d) after receiving the letter from ClubFit Fitness dated April 28, 2020, Family Fitness transferred the remaining 900 members to SFI and created the 10822 ASF Account;
- e) at the date of the Membership Transfer the 900 members generated monthly revenues of approximately \$35,000;
- f) SFI paid the October, November, and December 2020 \$10,000 per month payments to ClubFit Fitness; and
- g) ClubFit Fitness removed the PPSA Registration against Family Fitness.

61. The Receiver enquired with BTA and its counsel whether they were ever informed of the Membership Transfer and BTA and its counsel confirmed that they were not



- aware of the Membership Transfer, which they believed they were required to be notified pursuant to the General Security Agreement they have with Family Fitness the personal guarantee with Mr. Said Kaiss on the BTA obligation.
62. The Receiver discussed the matter further with Mr. Said Kaiss and his counsel and received further email correspondence expressing the reasons Family Fitness entered into the Membership Transfer.
  63. The Receiver, after reviewing all of the information and corresponding with the various stakeholders, determined that the best course of action was to notify ASF and explain the membership and the revenues associated with the 900 members were in dispute and should not be released to either Family Fitness or SM Fitness until a determination by Court order or resolution between the parties could be reached.
  64. The Receiver notified both the Secured Creditor and Mr. Kaiss and their respective counsel to the instructions provided to ASF related to the Disputed Funds and Disputed Memberships. Counsel for Mr. Kaiss advised that Mr. Kaiss agreed to not contact (anymore) ASF and understands that a dispute over these members exist; however, counsel for Mr. Kaiss hoped resolution on this matter could be made in short order.
  65. On January 12, 2021, after the Successful Bidder was announced, Mr. Kaiss decided to personally move the Disputed Memberships to one of his SFI ASF Accounts without the notification or the consent of the Receiver representing Family Fitness.
  66. Upon notification from BTA, who during their due diligence of records of members noticed these 900 Disputed Memberships were moved, BTA contacted the Receiver. The Receiver held discussions with ASF and received confirmation that the Disputed Memberships were in fact moved by Mr. Kaiss; however, the Disputed Funds remained with ASF.

67. As a result of various attempts to have this matter rectified, ASF presented a solution to restore the Disputed Memberships, along with the Disputed Funds, back to their proper accounts and these amounts will not be released or moved without further Court Order or an agreement between the parties. A copy of the email advising the steps that have been taking and the go-forward are attached as Appendix “D” to this Report.
68. The Receiver confirmed with ASF that the Disputed Funds related to the Disputed Memberships are still being held by ASF in a separate account and funds continue to accrue as the members included in the Disputed Memberships make their monthly payments. The Receiver confirmed with ASF that there are approximately \$245,000 in the Disputed Funds account being held by ASF.
69. The Receiver and its counsel have not made an application to this Honourable Court related to the Disputed Funds and Disputed Memberships, as the Receiver and the secured creditor and their respective counsel all agreed that they would not bring an application forward at the Sale Approval and Vesting Order application, and that this matter may be dealt with at a later date by the Receiver, the parties involved or possibly by the licensed insolvency trustee in a bankruptcy application of Family Fitness.

#### ***Evolution Fitness Website and Social Media***

70. The Receiver was notified by Mr. Said Kaiss and his counsel that the Evolution Fitness Website, at [www.evolutionfitness.ca](http://www.evolutionfitness.ca) (the “**Evolution Website**”) contained materials related to SFI’s downtown location and SFI intends to continue to use the Evolution Fitness brand and would like the right to continue to use the Evolution Website.
71. Additionally, the Receiver was notified by Mr. Said Kaiss and his counsel that he is challenging the ownership of the Evolution Fitness Facebook page because he believes he is personally the owner of the Facebook page.

72. The Receiver understands that the SH APA contemplates the sale of intangible assets of Family Fitness to BTA, which the Evolution Website is understood to be an “intangible” asset. The Receiver is advised that BTA has expressed similar views of the Receiver that the Evolution Website is included in the SH APA.

## **RECEIVER’S BORROWINGS**

73. Pursuant to paragraph 20 of the Consent Receivership Order, the Receiver has been empowered to borrow up to \$500,000 (or such greater amount as the Court may further order).
74. On October 13, 2020, the Receiver issued Receiver’s Certificate No. 1 in the amount of \$200,000 to BTA and received and utilized these funds in the Receivership Proceedings.
75. On January 22, 2021, the Receiver issued Receiver’s Certificate No. 2 in the amount of \$220,000 to BTA and received and utilized these funds in the Receivership Proceedings. Receiver’s Certificate No. 2 is attached as Appendix “E” to this Report.
76. The terms of Receiver’s Certificate No. 1 and Receiver’s Certificate No. 2 included interest calculated and compounded monthly not in advance on the last day of each month at a notional rate of 12.55% above the prime commercial lending rate of BTA of 15% per annum from time to time, which, in the Receiver’s view, is commercially reasonable in the circumstances.
77. Pursuant to paragraph 22 of the Consent Receivership Order, Receiver’s Certificate No. 1 and No.2 have a charge over the Property of the Debtor by way of a fixed and specific charge as security for the payment of the monies borrowed, together with interest and charges, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, but subordinate in priority to the

Receiver's Borrowings Charge (as defined in the Consent Receivership Order) and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

78. BTA understands that the Receiver will be unable to pay the Receiver's Borrowings back to BTA and the Receiver is seeking specific relief confirming the same.

#### **APPROVAL OF THE RECEIVER'S AND ITS COUNSEL'S FEES AND COSTS**

79. The Receiver seeks approval from this Honourable Court of its fees and disbursements from November 16, 2020 to January 23, 2021 and those of its legal counsel's fees and disbursements from November 16, 2020 to January 23, 2021 (the "**Final Taxation Period**"), pursuant to paragraph 18 of the Consent Receivership Order. The court previously approved the Receiver's and its legal counsel fees from the October 7, 2020 to November 15, 2020, through an order dated November 27, 2020.
80. The total fees and disbursements of A&M, in its capacity as the court-appointed receiver and manager of the Family Fitness, during the Final Taxation Period aggregate of approximately \$87,000 (excluding GST). The total fees and disbursements of Torys, the Receiver's independent legal counsel during the Final Taxation Period aggregate \$44,000 (excluding GST). The total fees and disbursements of Seiferling, the Receiver's independent legal counsel during the Final Taxation Period aggregate \$8,200 (excluding GST). A summary of the Receiver's and its counsels fees and disbursements are attached as Appendix "**F**" to this Report.
81. The Receiver's and Torys' fee accounts outline the date of the work completed, the description of the work completed, the length of time taken to complete the work and the name of the individual who completed the work. Copies of the invoices will be brought to the Receiver's application before this Honourable Court set for February 5, 2021 and made available to the Court at its direction, if necessary.
82. The Receiver and the Receiver's Counsel's estimated fees and costs to complete this engagement are approximately \$75,000 (the "**Forecast Fees and Costs**"),

which include fees and costs incurred but not paid for the period of January 24, 2021 to the Receiver's discharge.

83. The Receiver is respectfully of the view that its and its counsel's fees and costs are fair and reasonable under the circumstances and respectfully requests that this Honourable Court approve the Final Taxation Period Billings of the Receiver and its counsel and the Forecast Fees and Costs.

#### **APPROVING CONDUCT AND DISCHARGE OF THE RECEIVER**

84. The Receiver respectfully requests that this Honourable Court grant an Order which, among other things, and subject to the filing of a certificate confirms the Receiver has satisfied its obligations under the Receivership Order, absolutely, forever and unconditionally discharges the Receiver from any claims against the Receiver arising from, relating to, or in connection with, the performance of the Receiver's duties and obligations as Receiver, save and except for claims based on gross negligence, fraud or wilful misconduct.
85. The Receiver respectfully of the view that it has conducted itself appropriately in these Receivership Proceedings and respectfully requests that this Court approve the actions and conduct of the Receiver since the First Report and throughout the Receivership Proceedings.
86. The Receiver's administration of the estate is substantially complete, subject to the forecast receipts to be collected and payments to be made respecting the Company as described herein and the closing requirements of the BTA Stalking Horse APA. In addition, the Receiver will perform other remaining miscellaneous administrative items to attend to post discharge, including the filing of GST returns with CRA, receiving the forecast receipts and paying the forecast disbursements, final reconciliation of accounts and addressing various other CRA matters, including finalizing the GST and source deduction audits of CRA, and attending to the ASF related matter noted herein. The Receiver is of the view these items are

administrative in nature and should not prevent this Court from granting an unconditional discharge.

87. Further, the Receiver is in custody of certain records relating to Family Fitness. The Receiver is seeking authorization from this Honourable Court to allow the Receiver to destroy any and all such Records, if the Records are not required by firstly, the Receiver; secondly, BTA, or thirdly are not requested and collected by any current directors or shareholders of Family Fitness.

88. The Receiver's next steps include, but are not limited to:

- a) collecting the remaining receipts and disbursing the funds as described in the Wind Down Amount noted herein;
- b) filing, packaging and storing all relevant books and records of Family Fitness in accordance with the Receiver's responsibilities under the BIA;
- c) arranging for the collections of any GST refunds owing by CRA to Family Fitness; and
- d) assisting CRA with its audit of GST and Source Deductions if required;
- e) closing the APA transaction with BTA and transitioning operations to BTA representatives, which include closing down various supplier and other accounts;
- f) executing repudiation agreements/notices as discussed in this Report;
- g) facilitating assigning of various leases to BTA from Family Fitness as part of the BTA Stalking Horse APA;
- h) addressing any matters (as required) to Family Fitness' potentially remaining assets, the Disputed Funds and Disputed Memberships and the Evolution Website;

- i) completing administrative tasks in accordance with Receivership discharge requirements under the BIA; and
  - j) addressing the allocation and/or destruction of the Records.
- 89. Upon completion, the Receiver will file an affidavit with the Court confirming that all outstanding matters reported in this Report have been completed. Upon filing the discharge affidavit, the Receiver will be automatically discharged without further order of the Court.

### RECEIVER'S RECOMMENDATIONS

- 90. The Receiver is of the view that it has made commercially reasonable efforts to obtain the highest and most efficient realizations of the assets of Family Fitness. The Receiver is satisfied that the interests of the stakeholders of Family Fitness have been considered during the course of the realization processes and these Receivership Proceedings.
- 91. Accordingly, the Receiver respectfully recommends this Honourable Court:
  - a) approve the Final Statement of Receipts and Disbursements;
  - b) approve an order authorizing and assigning Family Fitness into bankruptcy;
  - c) approve the Stalking Horse APA and Sale Approval and Vesting Order;
  - d) approve the repudiation of the DLL Lease;
  - e) approve the repudiation of the Lease Indenture dated August 11, 2008, as amended by an Assignment and Assumption of Lease, dated October 1, 2015, concerning the lease of property described as Block D, Plan 96R35131 Ext 4, between Family Fitness Inc. and 575794 Saskatchewan Ltd (the **South Facility Lease**);

- f) approve the actions, activities and conduct of the Receiver and the Receiver's Counsel as described in this Report and throughout these Receivership Proceedings;
- g) approve the Receiver's Forecast R&D;
- h) approve the fees and costs of the Receiver and the Receiver's counsel as set out in the Final Taxation Period Billings and Forecast Fees and Costs;
- i) authorize the Receiver to destroy any and all the records, if not required by the Receiver, or not collected by BTA or lastly, the current directors or shareholders of Family Fitness by February 28, 2021; and
- j) approve the discharge of the Receiver.

All of which is respectfully submitted this 29<sup>th</sup> day of January, 2021.

**ALVAREZ & MARSAL CANADA INC.,  
in its capacity as Court-appointed Receiver and Manager  
of Family Fitness Inc. and not in its personal or  
corporate capacity**



Orest Konowalchuk, CPA, CA, CIRP, LIT  
Senior Vice President



Jill Strueby, CPA, CA, CIRP  
Senior Manager



## **APPENDIX A**

### **FFI Teaser and SISP**

*[See attached]*

# Acquisition Opportunity: Family Fitness Inc.

Local, high-end, family-owned fitness facilities in Regina, Saskatchewan

Winter 2020



EVOLUTION  
FITNESS

Bid Deadline: January 8, 2021



# Acquisition Opportunity

## Company Background

Family Fitness Inc. (“FFI” or the “**Company**”) is a family owned, Regina based business that operates gym and fitness facilities under its operating name “Evolution Fitness”.

The Company operates three Evolution Fitness facilities, which include gyms at the following locations in Regina:

- 2121 East Quance Street
- 358 McCarthy Blvd North
- 3615 Pasqua Street South

All locations provide a range of fitness activities including weight training, individual personal training sessions, group exercise classes, and kids club through a variety of memberships and daily drop in options.

Due to government mandated shutdowns resulting in the complete closure of all three facilities in the first half of 2020, the company encountered financial challenges that resulted in Receivership Proceedings on October 13, 2020.

Notwithstanding the COVID 19 pandemic, the Company continues to operate with its strong reputation and dedicated membership base, while adhering to all governmental orders and regulations. FFI has superior facilities that position the company for profitability and growth in the future.

## Court Process

On October 13, 2020, the Court of Queen’s Bench For Saskatchewan (the “**Court**”) granted an order (the “**Receivership Order**”) appointing Alvarez & Marsal Canada Inc., as the court-appointed receiver (the “**Receiver**”) of Family Fitness Inc.

On November 23, 2020, the Court granted a sales and investment solicitation process order (“**SISP Order**”) allowing the Receiver to solicit proposals from qualified interested parties on the business and/or assets of FFI.

Under this sales process, the Court has approved a “Stalking Horse Bid”, which will result in FFI under new ownership. The SISP Order allows the Receiver to solicit further offers that may be superior to the “Stalking Horse Bid”, subject to certain adjustments as per the Asset Purchase Agreement, by the Bid Deadline (January 8, 2021). Should there not be any superior offer to the “Stalking Horse Bid”, the Receiver will proceed to Court to seek final approval to accept the Stalking Horse Bid and close the transaction.

## Acquisition Highlights



### Local Brand

- Evolution Fitness is recognized as the premier local gym chain in Regina, with a dedicated membership base over 7000 members spread across three locations.
- Evolution fitness is an established and respected local business, that is well involved in the Regina community with yearly fundraising initiatives.



### Location

- The three Evolution Fitness gym facilities that are operated by Family Fitness are well situated in highly visible and convenient locations across Regina.
- Each location is well established and has been operating as a gym for more than five years.



### Facilities

- The three Evolution Fitness facilities collectively offer more than 80,000 square feet of space for fitness operations, with approximately 500 pieces of equipment spread among the facilities, including 240 pieces of cardio equipment which are mainly new.
- All three facilities offer large open fitness areas, spacious change rooms, utility spaces to conduct workout classes, and offices for employees.



### Amenities

- All fitness facilities offer a variety of additional services to enable the best experience for members. Amenities across the three gyms include kids club, hydromassage beds, tanning booths, and percussive therapy devices.



EVOLUTION  
FITNESS



# Location Details

## Location Details

### North Gym

**Address:** 358 McCarthy Blvd North

**Facility Size:** 20,000 square feet

### South Gym

**Address:** 2615 Pasqua Street South

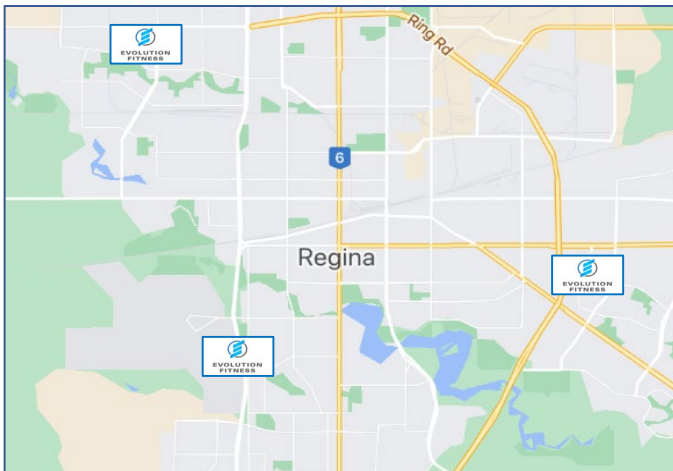
**Facility Size:** 36,400 square feet

### East Gym

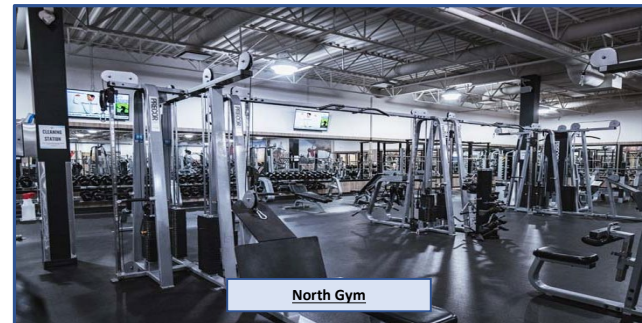
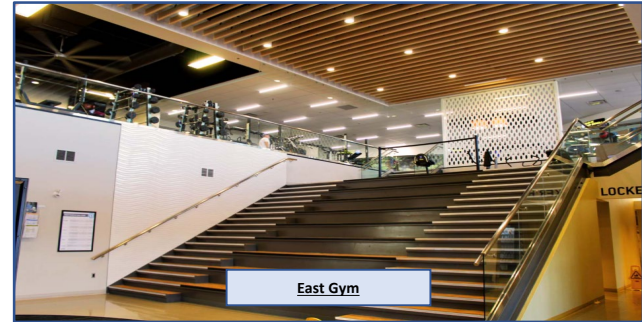
**Address:** 2121 Quance Street East

**Facility Size:** 30,300 square feet

## Location Map



## Location Photos



**EVOLUTION  
FITNESS**





# Additional Information

## Next Steps

The Receiver is conducting the SISP in accordance with the procedures included in the SISP Order posted on the Receiver's website:

[www.alvarezandmarsal.com/familyfitness](http://www.alvarezandmarsal.com/familyfitness).

Per the SISP, a qualified bidder must deliver a Definitive Sale Agreement to the Receiver by:

- **Bid Deadline:** 12:00pm MT on **January 8<sup>th</sup>, 2021**
- **Purchase Price:** Must be superior to the Stalking Horse Bid plus the "break fee".
- **Auction Date** (if applicable): January 12th, 2021 at 9:00am MT.
  - If the Receiver determines that one or more qualified bids are received, the Receiver will notify all qualified bidders by 5:00pm MT on January 9th, 2021 that they are entitled to participate in an auction.
  - The auction contemplates a minimum incremental bid of \$25,000.

A full copy of the Stalking Horse Bid is available for review on the Receiver's website.

Family Fitness Inc. and/or its assets are being offered on an "**as is where is**" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Receiver whatsoever.

Interested parties who wish to pursue a potential acquisition are required to execute a Confidentiality Agreement, which accompanies this teaser, to receive access to additional information. Please contact a representative of the Receiver listed below for further information.

A&M reserves the right at any time to amend or terminate these sale procedures, to decline an interested party the ability to participate in the process, to terminate discussions with any or all interested parties, to reject any or all offers, or to negotiate with any party with respect to a possible transaction.

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## **SISP Procedure**

Pursuant to an order (the "**Consent Receivership Order**") of the Court of Queen's Bench for Saskatchewan (the "**Court**") dated October 13, 2020, Alvarez & Marsal Canada Inc. LIT was appointed as receiver over the property, assets and undertakings of Family Fitness Inc. ("**Family Fitness**" or the "**Company**") in Court File No. Q.B. 1195 of 2020 (the "**Receivership Proceedings**").

Pursuant to a sale and investment solicitation order (the "**SISP Order**") dated November 23, 2020, the Court approved a purchase and sale agreement (the "**Stalking Horse Bid**") between the Receiver and BTA Real Estate Group or its designated nominee, as purchaser (the "**Stalking Horse Bidder**"), contemplating an offer to, subject to certain conditions, purchase the property, including all assets necessary for the operation of the Company at three (3) locations at the addresses of 358 McCarthy Blvd., 3615 Pasqua St. and 2101 E Quance St., Regina, Saskatchewan and the sale procedures, in accordance with the terms and conditions set forth herein (as such process may be amended, restated or supplemented pursuant to the terms herein, the "**Sale Procedures**").

The SISP Order and these Sale Procedures shall exclusively govern the process for soliciting and selecting bids for the sale of the Property.

### **Definitions**

1. All capitalized terms used herein shall have the meanings given to them in Appendix "A hereto.

### **SISP**

2. These Sale Procedures describe, among other things, the Property available for sale, the opportunity for the acquisition of the Property, the manner in which interested parties (the "**Potential Bidders**") may gain access to or continue to have access to due diligence materials concerning the Property, the manner in which bidders and bids become Qualified Bidders and Qualified Bids, respectively, the receipt and negotiation of bids received, the ultimate selection of one or more Successful Bid(s), and the process for obtaining approval of one or more Successful Bid(s) by the Court (collectively, the "**SISP**").
3. The SISP will be carried out by the Receiver in accordance with these Sale Procedures. In addition, the closing of any transaction may involve additional intermediate steps or transactions to facilitate consummation of such sale, including additional Court filings. In the event that there is a disagreement or clarification required as to the interpretation or application of these Sale Procedures or the responsibilities of the Receiver hereunder, the Court will have the jurisdiction to hear such matter and provide advice and directions, upon application of the Receiver with a hearing on no less than three (3) Business Days' notice.

### **As Is, Where Is Sale**

4. The sale of the Property and the Business will be on an "**as is, where is**" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or

description by the Receiver or any of its Representatives, except to the extent set forth in the relevant Definitive Agreement(s) with the Successful Bidder(s). Specifically, the representations, warranties, covenants or indemnities associated with the sale of the Property shall not be materially more favourable to the Successful Bidder than those set out in the Stalking Horse Bid.

#### **Free of Any and All Claims and Interests**

5. All of the right, title and interest of the Company in and to the assets will be sold and transferred free and clear of all Security Interests, claims, options, and interests therein and there against (collectively, the "**Claims and Interests**") pursuant to the approval and vesting order (the "**Approval and Vesting Order**") granted by the Court, with the exception of permitted encumbrances. Contemporaneously with such Approval and Vesting Order(s) being made, all such Claims and Interests shall attach to the net proceeds of the sale of such assets (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), except to the extent otherwise set forth in the Definitive Agreement(s) with the Successful Bidder(s).

#### **Solicitation of Interest**

6. As soon as reasonably practicable after the approval of the SISP Order by the Court:
  - (a) the Receiver will prepare a list of Potential Bidders for the Property. Concurrently, the Receiver will prepare a non-confidential initial offering summary (the "**Teaser**") notifying Potential Bidders of the existence of the SISP and inviting the Potential Bidders to express their interest in making a Bid for the Property in accordance with these Sale Procedures;
  - (b) the Receiver shall cause a notice of the SISP contemplated by these Sale Procedures and such other relevant information which the Receiver considers appropriate to be published in the Regina Leader Post and Saskatoon Star Phoenix and shall invite Bids from interested parties. The opportunity to acquire the Property and the Business will be posted on the Receiver's website as soon as practical following the issuance of the SISP Order. At the discretion of the Receiver, the Receiver can additionally conduct a targeted marketing process to solicit interest from other interested parties;
  - (c) the Receiver shall distribute to the Potential Bidders the Teaser, a copy of the SISP Order (including the Sale Procedures) and a form of Confidentiality Agreement acceptable to the Receiver; and
  - (d) after execution of the Confidentiality Agreement in proper form the Receiver will provide the Potential Bidders and the Stalking Horse Bidder with access to the Data Room.

### **Participation Requirements**

7. Unless otherwise provided for herein, ordered by the Court, or agreed by the Receiver, in order to participate in the Sale Procedures and be considered for qualification as a Qualified Bidder, a Potential Bidder must, prior to the distribution of any confidential information, deliver to the Receiver:
  - (a) an executed Confidentiality Agreement, which shall enure to the benefit of any Successful Bidder(s) of the assets or any part thereof on the closing of the Successful Bid(s);
  - (b) a specific indication of the anticipated sources of capital for such Potential Bidder and preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit support or enhancement that will allow the Receiver to make, in its reasonable business or professional judgment, a determination as to the Potential Bidder's financial and other capabilities to consummate the proposed transaction;
  - (c) a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder, full disclosure of the direct and indirect owners of the Potential Bidder and their principals; and
  - (d) a written acknowledgement of receipt of a copy of the SISP Order approving these Sale Procedures and agreeing to accept and be bound by the provisions contained therein and herein.
8. A Potential Bidder that has satisfied all of the requirements described in Section 7 above and who the Receiver determines has a reasonable prospect of completing a transaction contemplated herein, will be deemed a "**Qualified Bidder**". Notwithstanding these requirements, the Receiver may, in its sole and absolute discretion, designate any Potential Bidder as a Qualified Bidder.

### **Due Diligence**

9. The Receiver shall provide any person deemed to be a Qualified Bidder with access to the Data Room and further access to such due diligence materials and information relating to the Property, as the Receiver deems appropriate, including access to further information in the Data Room, where appropriate.
10. The Receiver (and its Representatives) do not make any representations or warranties whatsoever, and shall have no liability of any kind whatsoever, as to the information or the materials provided through the due diligence process or otherwise made available to any Potential Bidder, Qualified Bidder, Qualified Final Bidder or Successful Bidder, with respect to the Property or any part thereof, the Company's Business, including any information contained in the Teaser or Data Room and provided or made in any management presentations.



11. The Receiver reserves the right to limit any Qualified Bidder's access to any confidential information (including any information in the Data Room), where, in the Receiver's discretion, such access could negatively impact the Sale Procedures, the ability to maintain the confidentiality of confidential information, or the value of the Property. Requests for additional information are to be made to the Receiver. The Receiver shall not be obligated to furnish any due diligence information after the Bid Deadline.

### **PHASE 1**

#### **Bid Procedure**

##### ***Bid Deadline***

12. From the date of the SISP Order until the Bid Deadline, the Receiver, in accordance with the terms of the SISP Order, will solicit Bids for the Property from Qualified Bidders and, from the date of its designation as a Qualified Bidder until the Bid Deadline, each Qualified Bidder will have the opportunity to make a Bid to the Receiver.
13. Each Qualified Bidder must deliver its Bid to the Receiver so as to be received by the Receiver not later than Noon (Calgary Time) on December 18, 2020 (the "**Bid Deadline**").

##### **Bid**

14. In assessing a Bid, the Receiver will consider the following things, among others, when determining whether such Bid constitutes a Qualified Bid:
  - (a) it includes a letter stating that the Bid is irrevocable until the earlier of: (i) 11:59 p.m. on the Business Day following the closing of a transaction with a Successful Bidder in respect of the Property or a part thereof; and (ii) thirty (30) Business Days following the Bid Deadline; provided, however, that if such Bid is selected as a Successful Bid, it shall remain irrevocable until 11:59 p.m. (Calgary Time) on the Business Day following the closing of the Successful Bid or Successful Bids, as the case may be;
  - (b) it includes a duly authorized and executed purchase and sale agreement, substantially in the form of the Stalking Horse Bid (the "**Definitive Sale Agreement**"), specifying the Purchase Price, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the Qualified Bidder with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such ancillary agreements), as well as copies of such materials marked (in the form of a blackline) to show the amendments and modifications to the Stalking Horse Bid and such ancillary agreements and the proposed Approval and Vesting Orders;
  - (c) it does not include any request or entitlement to any break fee, expense reimbursement or similar type of payment;
  - (d) it provides for consideration at closing sufficient to satisfy the Qualified Consideration Requirement;

- (e) it includes evidence sufficient to allow the Receiver to make a reasonable determination as to the Qualified Bidder's (and its direct and indirect owners' and their principals') financial and other capabilities to consummate the transaction contemplated by the Bid, which evidence could include but is not limited to evidence of a firm, irrevocable commitment for all required funding and/or financing from a creditworthy bank or financial institution;
- (f) it is not conditioned on: (i) the outcome of unperformed due diligence by the Qualified Bidder; and/or (ii) obtaining any financing capital and includes an acknowledgement and representation that the Qualified Bidder has had an opportunity to conduct any and all required due diligence prior to making its Bid;
- (g) it fully discloses the identity of each entity that is bidding or otherwise that will be sponsoring or participating in the Bid, including the identification of the Qualified Bidder's direct and indirect owners and their principals, and the complete terms of any such participation;
- (h) it includes an acknowledgement and representation that the Qualified Bidder:
  - (i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be acquired and liabilities to be assumed in making its Bid;
  - (ii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, including by the Receiver or any of its Representatives, except as expressly stated in the Definitive Sale Agreement submitted by it;
  - (iii) confirms that the contemplated transaction will be made on an "**as is, where is**" and "**without recourse**" basis;
  - (iv) is a sophisticated party capable of making its own assessments in respect of making its Bid; and
  - (v) has had the benefit of independent legal advice in connection with its Bid;
- (i) it includes evidence of, in form and substance reasonably satisfactory to the Receiver, authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the Bid;
- (j) it is accompanied by a refundable deposit (the "**Deposit**") in the form of a wire transfer (to a trust account specified by the Receiver), or such other form acceptable to the Receiver, payable to the Receiver, in trust, in an amount equal to 10 percent

of the proposed Purchase Price, to be held and dealt with in accordance with these Sale Procedures;

- (k) if the Qualified Bidder is an entity newly formed for the purpose of the transaction, the Bid shall contain an equity or debt commitment letter from the parent entity or sponsor, which is satisfactory to the Receiver, that names the Receiver as third - party beneficiary of any such commitment letter with recourse against such parent entity or sponsor;
- (l) it includes evidence, in form and substance reasonably satisfactory to the Receiver, of compliance or anticipated compliance with any and all applicable regulatory approvals, the anticipated time frame for such compliance and any anticipated impediments for obtaining such approvals;
- (m) it provides contact information for any business, financial or legal advisors retained or to be retained in connection with the contemplated transaction; and
- (n) it contains other information reasonably requested by the Receiver.

#### **Stalking Horse Bid**

- 15. Pursuant to the SISP Order, the Stalking Horse Bid has been designated as such by the Receiver.
- 16. The Purchase Price under the Stalking Horse Bid will be \$800,000 plus the Assumed Liabilities (collectively, the "**Stalking Horse Bid Price**").
- 17. The Stalking Horse Bidder shall be entitled to increase the consideration of the Stalking Horse Bid. For greater certainty, nothing in this Section 17 shall restrict the ability of the Stalking Horse Bidder to, as agreed to by the Receiver, make amendments to the assets to be acquired and/or liabilities to be assumed pursuant to the Stalking Horse Bid.
- 18. If the Stalking Horse Bid is terminated at any time during the SISP, and there is no Qualified Bid received that satisfies the Qualified Consideration Requirement, the Receiver shall apply to the Court to seek advice and directions as to the continuation, modification or termination of the SISP.

#### **Assessment of Qualified Bids**

- 19. All Bids that, in the opinion of the Receiver, meet the criteria set out in Sections 12, 13 and 15, respectively, shall be deemed a "**Qualified Bid**" and, collectively, "**Qualified Bids**" and each Qualified Bidder who has submitted a Qualified Bid shall hereinafter be referred to as a "**Qualified Final Bidder**". The Stalking Horse Bid shall be deemed to be a Qualified Bid and the Stalking Horse Bidder shall be deemed to be a Qualified Final Bidder for all purposes of these Sale Procedures.
- 20. The Receiver shall be entitled, either prior to or following the Bid Deadline, to seek to clarify the terms of any Qualified Bid submitted by a Qualified Final Bidder. The Receiver may also select any or all Qualified Bid(s) for further negotiation and/or clarification of

any terms or conditions of such Qualified Bids, including the amounts offered, before identifying the highest or otherwise best Qualified Bid(s) received, as the case may be.

21. The Receiver may accept a revised or clarified Qualified Bid, provided that the initial Qualified Bid was received by the Receiver prior to the Bid Deadline.
22. The Receiver may waive compliance with any one or more of the items specified in Sections 14 and 154, and deem such non-compliant Bid to be a Qualified Bid; provided, however, that the Receiver shall not be entitled to waive the Qualified Consideration Requirement nor deem any Bid that fails to satisfy such requirements to be a Qualified Bid.
23. If the Receiver determines that: (a) no Qualified Bid was received; or (b) at least one Qualified Bid was received but it is not likely that the transactions (other than the Stalking Horse Bid) contemplated in any such Qualified Bids will provide greater consideration than the Stalking Horse Bid, the Stalking Horse Bid shall be deemed to be the Successful Bid and the Stalking Horse Bidder shall be the Successful Bidder, and the Receiver shall terminate the SISP and seek to implement the Stalking Horse Bid, including, by filing an application with the Court within five (5) Business Days (or as Court availability exists) of such termination seeking approval to implement the Stalking Horse Bid.
24. If the Receiver determines that (a) one or more Qualified Bids were received, and (b) it is likely that the transactions contemplated by one or more of such Qualified Bids will be consummated, the SISP will not be terminated and the Receiver will promptly notify all Qualified Bidders by no later than 6:00 p.m. MT on the day after the Bid Deadline, including the Stalking Horse Bidder, that they are permitted to participate in the Auction (as defined below).

### **Auction**

25. If, in accordance with Section 24 above, the Auction is to be held, the Receiver will conduct an auction (the "**Auction**"), as 9:00 am (Calgary Time) on December 21, 2020, at the offices of Torys LLP or other location as shall be communicated by the Receiver in a timely manner to all entities entitled to attend at the Auction, which Auction may be adjourned by the Receiver, subject to continued compliance with completion of the Auction by the date set out in these Sale Procedures, to another time and place selected by the Receiver (provided that notice thereof is sent to such entities). The Auction shall run in accordance with the following procedures:
  - (a) at least 12 hours prior to the Auction, each Qualified Bidder who has submitted a Qualified Bid must inform the Receiver whether it intends to participate in the Auction (the Qualified Bidders who so inform the Receiver shall be referred to as the "**Auction Bidders**");
  - (b) at least 12 hours prior to the Auction prior to the Auction, the Receiver will provide copies of the Qualified Bid which it believes is the highest or otherwise best Qualified Bid (the "**Starting Bid**") to all Auction Bidders;

- (c) only representatives of the Auction Bidders, the Receiver, and the Stalking Horse Bidder (and the advisors to each of the foregoing entities) are entitled to attend the Auction in person;
- (d) at the commencement of the Auction, each Auction Bidder shall be required to confirm that it has not engaged in any collusion with any other Auction Bidder with respect to the bidding or any sale;
- (e) only the Auction Bidders will be entitled to participate in the Auction and make any bids at the Auction; provided, however, that in the event that any Qualified Bidder elects not to attend and/or participate in the Auction, such Auction Bidder's Qualified Bid, as applicable, shall nevertheless remain fully enforceable against such Auction Bidder if it is selected as the Successful Bid at the conclusion of the Auction;
- (f) all Subsequent Bids (as defined below) presented during the Auction shall be made and received in one room on an open basis. All Auction Bidders will be entitled to be present for all Subsequent Bids at the Auction with the understanding that the true identity of each Auction Bidder at the Auction will be fully disclosed to all other Auction Bidders at the Auction and that all material terms of each Subsequent Bid will be fully disclosed to all other Auction Bidders throughout the entire Auction;
- (g) all Auction Bidders must have at least one individual representative with authority to bind such Auction Bidder present in person at the Auction;
- (h) the Receiver may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make Subsequent Bids, requirements to bid in each round, and the ability of multiple Auction Bidders to combine to present a single bid) for conducting the Auction, provided that such rules are (i) not inconsistent with these Sale Procedures or any order of the Court made in the Receivership proceedings; and (ii) disclosed to each Auction Bidder at the Auction;
- (i) bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one subsequent bid is submitted by an Auction Bidder (a "**Subsequent Bid**") that the Receiver determines is (A) for the first round, a higher or otherwise better offer than the Starting Bid, and (B) for subsequent rounds, a higher or otherwise better offer than the Leading Bid (as defined below); in each case by at least the Minimum Incremental Overbid (as defined below). Each bid at the Auction shall provide net value of at least \$25,000 (the "**Minimum Incremental Overbid**") over the Starting Bid or the Leading Bid, as the case may be; provided, however, that the Receiver shall retain the right to modify the increment requirements at the Auction, and provided, further that the Receiver, in determining the net value of any incremental bid, shall not be limited to evaluating the incremental dollar value of such bid and may consider other factors as identified in the "Selection Criteria" section of these Sale Procedures set forth below. After the first round of bidding and between each

subsequent round of bidding, the Receiver shall announce the bid (including the value and material terms thereof) that it believes to be the highest or otherwise best offer (the "**Leading Bid**"). A round of bidding will conclude after each Auction Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid;

- (j) the Receiver reserves the right, in its reasonable business judgment to make one or more adjournments in the Auction of no more than 2 hours each, to among other things (i) facilitate discussions between the Receiver and the Auction Bidders; (ii) allow the individual Auction Bidders to consider how they wish to proceed; (iii) consider and determine the current highest and best offer at any given time in the Auction; and (iv) give Auction Bidders the opportunity to provide the Receiver with such additional evidence as the Receiver, in its reasonable business judgment, may require, including that the Auction Bidder (including, as may be applicable, the Stalking Horse Bidder) has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing overbid amount;
- (k) the Stalking Horse Bidder shall be permitted, in its sole discretion, to submit Subsequent Bids, provided, however, that such Subsequent Bids are made in accordance with these Sale Procedures. No other person is entitled to submit a stalking horse bid in whole or in part;
- (l) if, in any round of bidding, no new Subsequent Bid is made, the Auction shall be closed and the then Leading Bid will become the "**Successful Auction Bid**";
- (m) the Auction shall be closed within 1 Business Days of the start of the Auction unless extended by the Receiver, at its sole and absolute discretion; and
- (n) no bids (from Qualified Bidders or otherwise) shall be considered after the conclusion of the Auction and the selection of the Successful Auction Bid.

#### **Selection Criteria- No Auction Process**

- 26. The Receiver will assess the Qualified Bids received, if any, and will determine whether the transactions contemplated by such Qualified Bids are likely to be consummated. Such assessments will be made as promptly as practicable after the Bid Deadline.
- 27. Evaluation criteria with respect to the assessment each Qualified Bid may include, but are not limited to items such as:
  - (a) the proposed Purchase Price and the net value (including assumed liabilities and other obligations to be performed or assumed by the Qualified Final Bidder) provided by such Qualified Bid;

- (b) the claims likely to be created by such Qualified Bid in relation to other Qualified Bids;
  - (c) the counterparties to the Qualified Bid;
  - (d) the proposed revisions to the Stalking Horse Bid and the terms of the transaction documents;
  - (e) other factors affecting the speed, certainty and value of the transaction (including any regulatory approvals required to close the transaction);
  - (f) the Property included or excluded from the Qualified Bid and the transaction costs and risks associated with closing multiple transactions versus a single transaction for all or substantially all of the Property; and
  - (g) the likelihood and timing of consummating the Qualified Bid.
28. The Receiver will identify the highest or otherwise best Qualified Bid(s) received (each such Qualified Bid, together with a Successful Auction Bid, will be referred to interchangeably as the "**Successful Bid**"). The Qualified Final Bidder(s) or Auction Bidders who made the Successful Bid(s) are the "**Successful Bidder(s)**". The Receiver will notify the Qualified Final Bidders of the identities of the Successful Bidder(s). If the Stalking Horse Bid is deemed to be the highest and best Qualified Bid, then the Stalking Horse Bid will be the Successful Bid, as the case may be.

#### **Definitive Agreements**

29. The Receiver will finalize the Definitive Agreement(s) in respect of any Successful Bidder(s), conditional upon approval of the Court, by no later than 5:00 p.m. (Calgary Time) by the end of December 2020 or such later date or time as the Receiver may determine appropriate in consultation with the Successful Bidder(s).

#### **Approval Hearing**

30. As soon as reasonably possible following the Bid Deadline and, in any event, within five (5) Business Days of the execution of the Definitive Agreement(s) by the Receiver and the Successful Bidder(s), the Receiver shall apply to the Court (the "**Approval Hearing**") for the Approval and Vesting Order, which may, among other things, approve the Successful Bid(s), authorize the Receiver to enter into any and all necessary agreements with respect to the Successful Bidder(s) and/or vest title to the assets or any part of the assets in the name of such Successful Bidder(s).
31. The Approval Hearing will be held on a date to be scheduled by the Court upon application by the Receiver, and in any event, not later than end of January 2021 or such later date as the Receiver and the Successful Bidder(s) may agree.
32. All Qualified Bids (other than any Successful Bid(s)) shall be deemed rejected on and as of the date of closing of the Successful Bid or date upon which all Successful Bids have closed, as the case may be.

33. If, following approval of the Successful Bid(s) by the Court, the Successful Bidder(s) fail to consummate the transaction for any reason, than the Receiver shall be entitled to re-engage with the Qualified Final Bidder(s) to attempt to renegotiate the Qualified Bids without further order of the Court.

### **Deposits**

34. All Deposits shall be retained by the Receiver and deposited in a non-interest bearing trust account. If there is Successful Bid, the Deposit(s) paid by each Successful Bidder whose Successful Bid is approved at the Approval Hearing shall be applied to the Purchase Price to be paid by that Successful Bidder upon closing of the approved Successful Bid and will be non-refundable. The Deposits of Qualified Final Bidders not selected as a Successful Bidder shall be returned to such Qualified Final Bidders within five (5) Business Days after the date on which their Qualified Bid is no longer irrevocable in accordance with these Sale Procedures. If there are no Successful Bid(s), all Deposits shall be returned to the respective Qualified Final Bidder(s) within two (2) Business Days of the date upon which these Sale Procedures are terminated.
35. In each case where:
- (a) a Successful Bidder breaches any of its obligations under a Definitive Agreement;
  - (b) a Qualified Bidder or Qualified Final Bidder breaches its obligations under the terms of these Sale Procedures; or
  - (c) a Qualified Final Bidder fails to complete the transaction contemplated by its Qualified Bid:

the Deposit provided by the applicable party will be forfeited to the Receiver as liquidated damages and not as a penalty. The Receiver shall apply any forfeited Deposit in a manner the Receiver sees fit.

### **Notice**

36. The addresses used for delivering documents to the Receiver as prescribed by the terms and conditions of these Sale Procedures are set out in **Exhibit 1** hereto. All bids and/or associated documentation shall be delivered to the Receiver by electronic mail, personal delivery or courier. Interested Potential Bidders requesting information about the qualification process, including a form of Stalking Horse Bid, and information in connection with their due diligence, should contact the Receiver at the contact information contained in **Exhibit 1**.
37. The Receiver: (a) may reject, at any time any Bid (other than the Stalking Horse Bid) that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Consent Receivership Order, these Sale Procedures or any orders of the Court applicable, or (iii) contrary to the best interests of the Company, their estates, and/or stakeholders as determined by the Receiver, acting reasonably; (b) in accordance with the terms hereof, may impose additional terms and conditions and otherwise seek to modify the Sale



Procedures at any time in order to maximize the results obtained; and (c) in accordance with the terms hereof, may accept bids not in conformity with these Sale Procedures to the extent that the Receiver determines, in its reasonable business judgment.

38. Prior to the conclusion of the Auction, the Receiver may impose such other terms and conditions, on notice to the relevant bidders, as the Receiver may determine to be in the best interests of the estate and its stakeholders that are not inconsistent with any of the procedures in these Sale Procedures.
39. These Sale Procedures do not, and shall not be interpreted to, create any contractual or other legal relationship between the Company, the Receiver and any Potential Bidder, Qualified Bidder, Auction Bidder or Successful Bidder, other than as specifically set forth in definitive agreements that may be executed by the Receiver.

#### **No Amendment**

40. There will be no amendments to these Sale Procedures not contemplated herein without the approval of the Court, on notice to the service list in the Receivership Proceedings, subject to such non-material amendments as may be determined to by the Receiver.

#### **Further Orders**

41. The Consent Receivership Order, SISP Order, the Sale Procedures, and any other Orders of the Court made in the Receivership Proceedings relating to the Sale Procedures shall exclusively govern the process for soliciting and selecting Bids.
42. Unless otherwise indicated herein, any event that occurs on a day that is not a Business Day shall be deemed to occur on the next Business Day.
43. All dollar amounts expressed herein, unless otherwise noted, are in Canadian currency.
44. Each Qualified Bidder, upon being declared as such under the Sale Procedures, shall be deemed to have irrevocably and unconditionally attorned and submitted to the jurisdiction of the Court in the Receivership Proceedings in respect of any action, proceeding or dispute in relation to the conduct or any aspect of the Sale Procedures and the SISP.
45. At any time during the SISP, the Receiver may apply to the Court for advice and directions with respect to the discharge of its obligations and duties herein.

**Exhibit 1 – Addresses and Contact Information of the Receiver**

**Alvarez & Marsal Canada Inc. LIT**

Attention: Orest Konowalchuk

Phone: (403) 538-4736

Email: [okonowalchuk@alvarezandmarsal.com](mailto:okonowalchuk@alvarezandmarsal.com)

Fax: (403) 538-7551

Bow Valley Square 4

Suite 1110, 250 6th Ave SW

Calgary, Alberta

T2P 3H7

**Appendix "A"**  
**Defined Terms**

**"Approval and Vesting Order"** is defined in Section 5.

**"Approval Hearing"** is defined in Section 30.

**"Bid"** means an offer to acquire all or part of the Property of the Company, or an offer to restructure, recapitalize or reorganize the Business and affairs of the Company as a going concern.

**"Bid Deadline"** is defined in Section 13.

**"Business"** means the business being carried on by the Company.

**"Business Day"** means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are open for business in the City of Calgary.

**"Claims and Interests"** is defined in Section 5.

**"Company"** is defined in the preamble.

**"Confidentiality Agreement"** means a confidentiality agreement in favour of the Receiver executed by a Potential Bidder, in form and substance satisfactory to the Receiver, which shall enure to the benefit of any Successful Bidder.

**"Court"** is defined in the preamble.

**"Data Room"** means a confidential virtual data room which contains documents furnished by the Company and a physical data room providing access to relevant technical information.

**"Definitive Agreements"** means all Definitive Sale Agreement(s).

**"Definitive Sale Agreement"** has the meaning set out in Section 14(b).

**"Deposit"** is defined in Section 14(j).

**"Expense Reimbursement"** has the meaning given to it in the Stalking Horse Bid.

**"Potential Bidder"** is defined in Section 2.

**"Property"** means all of the undertakings, property and assets of the Company.

**"Purchase Price"** means the price payable by a Successful Bidder for the selected Property pursuant to a Definitive Agreement and subject to adjustment in accordance with Section 3.4 of the Stalking Horse Bid by payment of the Wind Down Amount to the Vendor, providing a credit to the Debtor in the amount of the Credit Agreement Bid Amount against the Debtor's obligations under the Credit Agreement and assumption of the Assumed Liabilities.

**"Qualified Bid"** is defined in Section 19.

**"Qualified Bidder"** is defined in Section 8 and **"Qualified Bidders"** means more than one of them.

**"Qualified Consideration"** means consideration sufficient to repay immediately on closing: (a) the Secured Debt Repayment Requirement, any claims ranking senior in priority thereto that are or would be payable in the Receivership Proceedings, including any priority payables, and the Expense Reimbursement in cash.

**"Qualified Consideration Requirement"** means the requirement that any transaction, whether on its own, or in combination with one or more non-overlapping Qualified Bids for different Property, provides for consideration of at least the Qualified Consideration.

**"Qualified Final Bidder"** is defined in Section 19.

**"Receiver"** means Alvarez & Marsal Canada Inc. LIT, in its capacity as receiver and manager in the Receivership Proceedings and not in its personal or corporate capacity.

**"Receivership Proceedings"** is defined in the preamble.

**"Representatives"** when used with respect to a person means each director, officer, employee, consultant, contractor, financial advisor, legal counsel, accountant and other agent, adviser or representative of that person.

**"Sale Procedures"** is defined in the preamble.

**"Secured Debt"** has the meaning given to it in the Stalking Horse Bid.

**"Security Interest"** means any mortgage, charge, pledge, assignment, hypothecation, title retention, finance lease or security interest, including any trust obligations, creating in favour of any creditor a right in respect of the Property.

**"SISP"** has the meaning set out in Section 2.

**"SISP Order"** is defined in the preamble.

**"Stalking Horse Bid"** is defined in the preamble.

**"Stalking Horse Bid Price"** is defined in Section 16.

**"Stalking Horse Bidder"** is defined in the preamble.

**"Successful Bid"** is defined in Section 28.

**"Successful Bidder"** is defined in Section 28 and **"Successful Bidders"** means more than one of them.

**"Teaser"** is defined in Section 6(a).

## **APPENDIX B**

### **Amended Stalking Horse APA**

*[See attached]*

**ALVAREZ AND MARSAL CANADA INC., solely in its capacity as Court-appointed receiver and manager of all of the assets, undertakings and properties of FAMILY FITNESS INC. and not in its personal capacity and without personal or corporate liability**

**- and -**

**BTA REAL ESTATE GROUP INC.**

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**AGREEMENT OF PURCHASE AND SALE  
FAMILY FITNESS INC. OPERATING AS “EVOLUTION FITNESS GYM”  
REGINA, SASKATCHEWAN**

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**AGREEMENT OF PURCHASE AND SALE**

**THIS AGREEMENT** made as of January 15, 2021 (the “**Execution Date**”).

**BETWEEN:**

**ALVAREZ AND MARSAL CANADA INC., solely in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of FAMILY FITNESS INC. and not in its personal capacity and without personal or corporate liability**

**(the “Vendor” or “Receiver”)**

**AND:**

**BTA REAL ESTATE GROUP INC.  
(the “Purchaser”)**

**RECITALS:**

- A.** Pursuant to an order of the Court of Queen’s Bench for Saskatchewan (the “**Court**”) dated October 13, 2020 (as amended and as may in the future be supplemented, amended or restated from time to time, collectively the “**Appointment Order**”), the Receiver was appointed receiver and manager, without security, of all of the assets, undertakings and properties of Family Fitness Inc. (“**FFI**” or the “**Debtor**”).
- B.** At the time of the making of the Appointment Order, the Debtor owned the Subject Assets (as defined herein) and operated the Business from leased premises located in Regina, Saskatchewan, being:
  - 358 McCarthy Boulevard North;
  - 3615 Pasqua Street; and
  - 2101 E Quance Street,(collectively, the “**Leased Premises**”).
- C.** The Appointment Order authorizes the Receiver to market any or all of the Subject Assets, including advertising and soliciting offers in respect of the Subject Assets, or any part or parts thereof, and to negotiate such terms and conditions of sale as the Receiver in its discretion may deem appropriate.
- D.** The Debtor is indebted to the Secured Creditor in the approximate amount of \$1,243,000.00.
- E.** The Purchaser has agreed to act as a “stalking horse bidder” by way of a credit bid in connection with the sale of all of the right, title and interest of the Debtor (if any) in and to the Subject Assets, meaning that, in the absence of the Receiver’s acceptance of a bid for

the Subject Assets made in accordance with the SISP Procedure which is superior to this Agreement (as determined by the Receiver in accordance with the SISP Procedure), the Purchaser has agreed to purchase on an “as is, where is” and “without recourse” basis all of the right, title and interest of the Debtor in and to the Subject Assets, with no representations or warranties whatsoever, as discussed further in section 2.3(a) below, on the terms and subject to the conditions set forth in this Agreement, in accordance with the SISP Procedure and subject to obtaining the Vesting Order.

- F. The Receiver intends to seek the SISP Procedure Order authorizing and directing the Receiver to enter into this Agreement and to carry out the SISP Procedure.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth in this Agreement and the sum of \$10.00 paid by each of the Vendor and the Purchaser to the other and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties hereby agree and declare as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

The terms defined herein shall have, for all purposes of this Agreement, the following meanings, unless the context expressly or by necessary implication otherwise requires:

**“Accounts Receivable”** means all accounts receivable, trade receivables, bills receivable, trade accounts, book debts, notes receivable, rebates, refunds, and other receivables of FFI, in each case, whether current or overdue, with all interest accrued on such items. For greater certainty, Accounts Receivable includes, subject to any priority claims a third party may have in same, all amounts owing to the Debtor under the Memberships.

**“Agreement”** means this agreement of purchase and sale and the schedules attached hereto, as amended from time to time.

**“Alternative Transaction”** has the meaning ascribed thereto in Section 8.2.

**“Applicable Laws”** means, with respect to any Person, property, transaction, event or other matter, any law, rule, statute, regulation, order, judgment, decree and orders of courts of competent jurisdiction, treaty, the terms and conditions of all permits, licenses, approvals and authorizations, or other requirement having the force of law relating or applicable to the Subject Assets, such Person, property, transaction, event or other matter.

**“Appointment Order”** has the meaning ascribed thereto in the Recitals.

**“Assignment and Assumption of Contracts”** means an assignment and assumption of the Assumed Contracts to be delivered on Closing pursuant to Sections 6.1 and 6.2, in form acceptable to the Vendor and Purchaser, each acting reasonably.



**“Assignment and Assumption of Leases”** means an assignment and assumption of the Leases to be delivered on Closing pursuant to Sections 6.1 and 6.2, in form acceptable to the Vendor and Purchaser, each acting reasonably.

**“Assumed Contracts”** has the meaning ascribed thereto in Section 7.1.

**“Assumed Employees”** has the meaning ascribed thereto in Section 5.5.

**“Assumed Liabilities”** means any and all outstanding liabilities related to the Subject Assets that are not vested off title to the Subject Assets in accordance with the Vesting Order.

**“Back-up Bid”** has the meaning ascribed thereto in the SISP Procedure.

**“Books and Records”** means, collectively, the books and records of the Debtor relating exclusively to the Subject Assets, including financial, corporate, operations and sales books, records, books of account, sales and purchase records, lists of suppliers and customers, business reports, plans and projections and all other documents, surveys, plans, files, records, assessments, correspondence and other data and information, financial or otherwise, including all data, information and databases stored on computer-related or other electronic media.

**“Business”** means the business of owning, operating, marketing and developing the gyms and fitness facilities located at the Leased Premises and all such other commercial activities incidental and ancillary thereto.

**“Business Day”** means any day, other than a Saturday, Sunday or statutory holiday in the Province of Saskatchewan.

**“Claims”** means all past, present and future claims, suits, proceedings, liabilities, obligations, losses, damages, penalties, judgments, costs, expenses, fines, disbursements, legal fees on a solicitor and client basis and other professional fees and disbursements, interest, demands and actions of any nature or any kind whatsoever, whether known or unknown, whether asserted, threatened, pending, contingent or existing, and whether based on contract, tort, statute or other legal or equitable theory of recovery, and **“Claim”** means any one of the foregoing.

**“Closing”** means the transfer of possession, risk, beneficial and legal ownership of the Subject Assets from the Vendor to the Purchaser, the exchange of the Closing Documents and payment of the Purchase Price by the Purchaser to the Vendor, and all other items and consideration required to be delivered on the Closing Date pursuant hereto, the closing and consummation of the Transaction.

**“Closing Certificate”** has the meaning ascribed thereto in Section 2.6.

**“Closing Date”** means the date upon which the Closing Certificate is filed. .

**“Closing Documents”** means the agreements, instruments and other documents to be delivered by the Vendor to the Purchaser pursuant to Section 6.1 and the agreements, instruments and other documents to be delivered by the Purchaser to the Vendor pursuant to Section 6.2.

**“Confidential Information”** has the meaning ascribed thereto in the non-disclosure agreement entered into between the Parties.

**“consent”** means any approval, authorization, consent, order, license, permission, permit (including any environmental permit), qualification, exemption or waiver by any Governmental Authority or other Person.

**“Contract Notice Date”** has the meaning ascribed thereto in Section 7.1(a).

**“Contracts”** means, collectively, all contracts and agreements relating to the Business entered into by the Debtor or any manager or agent on behalf of the Debtor, or which have been assigned to the Debtor, or which otherwise bind and/or benefit the Debtor as owner of the Business, and includes, without limitation, the Warranties, but excludes the Leases and any contracts or agreements which are not assignable without the consent of the counterparty thereto.

**“Court”** has the meaning ascribed thereto in the Recitals.

**“Credit Agreement”** means, collectively, the Lease agreement dated August 30, 2013, and the General Security Agreement, dated September 26, 2013, between, among others, FFI, as tenant and debtor, and the Secured Creditor, as landlord and secured creditor.

**“Credit Agreement Bid Amount”** means the portion of the Secured Creditor’s Secured Debt equal to the Purchase Price less the amount of the Receiver’s Certificate Obligations owing to the Purchaser as of the Closing Date, if any, inclusive of the amount equal to the Wind-Down Estimate, as evidenced by the Receiver’s Certificates, and as adjusted in accordance with Section 3.4.

**“Data Room Information”** means all information provided to the Purchaser in electronic form in relation to the Debtor, the Business, and/or the Subject Assets.

**“Debtor”** means FFI.

**“Encumbrances”** means all mortgages, pledges, charges, including the Receiver’s Borrowings Charge and the Receiver’s Charge, liens, debentures, hypothecs, trust deeds, assignments by way of security, security interests, options, conditional sales contracts or other title retention agreements or similar interests or instruments charging, or creating a security interest in, or against title to, the Subject Assets or any part thereof or interest therein.

**“Excluded Assets”** means the assets listed in Schedule “B”.

**“Excluded Contracts”** means all Contracts other than the Assumed Contracts.

**“Execution Date”** means the date noted on Page 2 of this Agreement.

**“Expense Reimbursement”** has the meaning set ascribed thereto in Section 8.2(b).

**“Final Order”** means, in respect of any order, such order after (i) the expiry of applicable appeal periods; or (ii) in the event of an appeal or application for leave to appeal or to stay, vary, supersede, set aside or vacate such order, final determination of such appeal or application by the applicable court or appellate tribunal.

**“General Conveyance”** means the general conveyance in the form attached as Schedule “G”.

**“Governmental Authority”** means any government, regulatory authority, government department, agency, utility, commission, board, tribunal, court or other rule making entity having jurisdiction on behalf of any nation, province or state or other subdivision thereof or any municipality, district or other subdivision thereof, or having jurisdiction over the relevant circumstances, or any person acting under the authority of any of the foregoing.

**“GST”** means the goods and services taxes, interest, penalties and fines imposed under Part IX of the *Excise Tax Act* (Canada) and the regulations made thereunder.

**“Leased Premises”** has the meaning ascribed thereto in the Recitals.

**“Leasehold Improvements”** means any changes made to the Leased Premises by or on behalf of the Debtor in order to fit the Leased Premises for the Business and that are not considered to be (a) fixtures either by law or by virtue of the terms of the Leases, or (b) property of the landlords, sublandlords or Third Party, as applicable, of such Leased Premises.

**“Leases”** means all offers to lease, sublease or sub-sublease, binding letters of intent, security leases and agreements to lease or sublease, leases, subleases, renewals and/or extensions of leases or subleases, amendments to any of the foregoing and other rights (including licences, concessions or occupancy agreements, parking and/or storage agreements and licences, but excluding rights in the nature of easements) granted to or for the behalf of, or which bind, FFI, as lessee, together with all security, guarantees and indemnities relating thereto, in each case as amended, renewed, extended or otherwise varied from time to time, and **“Lease”** means any one of the Leases.

**“Losses and Liabilities”** means, in relation to a matter, any and all:

- (a) losses, costs, damages, expenses and charges (including all penalties, assessments and fines) which a Party suffers, sustains, pays or incurs, directly or indirectly, in connection with such matter and includes costs of legal counsel (on a full indemnity basis) and other professional advisors and reasonable costs of investigating and defending Claims arising from the matter, regardless of whether such Claims are sustained and includes taxes payable on any settlement payment or damage award in respect of such matter; and
- (b) liabilities and obligations (whether under common law, in equity, under Applicable Law or otherwise; whether tortious, contractual, vicarious, statutory or otherwise; whether

absolute or contingent; and whether based on fault, strict liability or otherwise) which a Party suffers, sustains, pays or incurs as a result of or in connection with such matter;

but excluding indirect, incidental, consequential, exemplary, special or punitive losses or damages suffered, sustained, paid or incurred by a Party.

**“Memberships”** means the agreements between the Debtor and the customers of the Business which provides the customers access and use of the gyms and fitness facilities located at the Leased Premises in exchange for a fee paid by such customers.

**“Nominee”** has the meaning ascribed thereto in Section 2.8.

**“Notice”** has the meaning ascribed thereto in Section 12.17.

**“Outside Date”** means February 28, 2021, or such later date as agreed to by the Parties.

**“Parties”** means the Vendor and the Purchaser, collectively, and **“Party”** means any one of them.

**“Permitted Encumbrances”** means any one or more of the following: (i) inchoate or statutory Encumbrances of contractors, subcontractors, mechanics, workers, suppliers, materialmen, carriers and others arising in the ordinary course of business in respect of the construction, maintenance, repair or operation of the Business or Subject Assets, provided that such Encumbrances are related to obligations not due or delinquent or are being contested in good faith through appropriate proceedings, (ii) rights of expropriation, access, use or any other right conferred or reserved by or in any statute of Canada or Saskatchewan, (iii) rights of landlords or land owners under any documents related to the Leased Premises, (iv) Encumbrances appearing on title to the Leased Premises as of the Closing Date and Encumbrances for taxes (which term includes charges, rates and assessments, any other governmental charges or levies) or charges for electricity, power gas, water and other services and utilities, in each case, that have accrued but which are not due or delinquent or that is being contested in good faith through appropriate proceedings, (v) registrations or Encumbrances such as easements, rights of way, restrictive covenants, servitudes and other similar rights in land granted to, reserved or taken by any Governmental Authority or public or private utility, or any registered subdivision, development servicing, site plan or other similar agreement with any Governmental Authority or public or private utility which individually and in the aggregate do not materially detract from the value of the Leased Premises or impair the current and prior use of the Leased Premises in the operation of the Business or the future intended use of the Leased Premises, (vi) provisions of Applicable Laws, including by-laws, regulations, ordinances and similar instruments relating to land use development and zoning, and (vii) Encumbrances filed by, at the request of the Purchaser, or which are otherwise expressly approved by the Purchaser in writing or that are otherwise created by the acts or omissions of the Purchaser or its affiliates.

**“Person”** means an individual, partnership (limited or general), corporation, trust, unincorporated organization, government or any department or agency thereof, and the successors and assigns thereof or the heirs, executors, administrators or other legal representatives of an individual.

**“PST”** means taxes, interest, penalties and fines imposed under the *Provincial Sales Tax Act* of Saskatchewan and the regulations made thereunder.

**“Purchase Price”** has the meaning ascribed thereto in Section 3.1.

**“Purchaser”** means BTA Real Estate Group Inc. or its Nominee.

**“Purchaser Consents”** has the meaning ascribed thereto in Section 7.1(c).

**“Purchaser’s Solicitors”** means W Law LLP or such other firm or firms of solicitors or agents as are retained by the Purchaser from time to time and Notice of which is provided to the Vendor.

**“Receiver”** has the meaning ascribed thereto in the Recitals.

**“Receiver’s Borrowings Charge”** has the meaning given in paragraph 20 of the Appointment Order and used therein.

**“Receiver’s Certificate”** has the meaning given in paragraph 22 of the Appointment Order and used therein.

**“Receiver’s Certificate Obligations”** means all outstanding obligations of any kind pursuant to the Receiver’s Certificate, and secured by the Receiver’s Borrowings Charge.

**“Receiver’s Charge”** has the meaning given in paragraph 17 of the Appointment Order and used therein.

**“Receiver’s Website”** means [www.alvarezandmarsal.com/familyfitness](http://www.alvarezandmarsal.com/familyfitness)

**“Receivership Proceeding”** means the receivership proceeding with respect to the Debtor commenced by the Appointment Order.

**“Representatives”** means, with, respect to any Party, the respective directors, officers, servants, agents, advisors, employees, consultants and representatives of that Party.

**“Secured Creditor”** means BTA Real Estate Group Inc.

**“Secured Debt”** means as of November 1, 2020, \$1,243,000.00, which represents the debt outstanding and interest accrued under the Credit Agreement as of that date, plus interest that shall continue to accrue from and after that date, together with all costs, expenses and charges and any other amounts recoverable by the Purchaser under the terms of the Credit Agreement.

**“SISP Procedure”** means the sale procedure approved by the Court pursuant to the SISP Procedure Order, authorizing the Receiver to enter into this Agreement, approving the sale of the Subject Assets to the Purchaser as contemplated by this Agreement and, in particular, the Purchase Price, as a baseline or “stalking horse” bid, and setting out the terms and conditions of a timetable

for a sale process with respect to the Subject Assets, with such amendments as are satisfactory to the Receiver and Purchaser acting reasonably.

**“SISP Procedure Order”** means an order of the Court substantially in the form attached as Schedule “D” hereto.

**“Subject Assets”** means all the right, title and interest (if any) of the Receiver, and the Debtor, in and to the tangible and intangible properties, assets, interests, rights and claims related to the Business, wherever located, as of the Closing Date, including without limitation those items detailed on Schedule “A” attached hereto, along with the following assets:

- (c) the Leases;
- (d) the Assumed Contracts;
- (e) the Memberships;
- (f) the Leasehold Improvements;
- (g) the “Evolution Fitness Gym” business name;
- (h) the Accounts Receivable; and
- (i) all other personal property not contemplated by the foregoing,

but excludes the right, title and interest of the Receiver and the Debtor in and to the Excluded Assets and the Excluded Contracts.

**“Successful Bid”** has the meaning given to it in the SISP Procedure.

**“Successful Bidder”** has the meaning given to it in the SISP Procedure.

**“Surplus Funds”** means any and all funds held by the Receiver in respect of the Receivership Proceeding as of the Closing Date.

**“Third Party”** means any Person other than the Parties, their affiliates or their respective Representatives.

**“Transaction”** means the purchase and sale of the Subject Assets provided for in this Agreement.

**“Vendor”** means the Receiver.

**“Vendor Entity”** means the Vendor and its Representatives, and each of their respective successors and assigns.

**“Vendor’s Solicitors”** means Torys LLP or such other firm or firms of solicitors or agents as are retained by the Vendor from time to time and Notice of which is provided to the Purchaser.

**“Vesting Order”** means the order of the Court, substantially in the form attached hereto as Schedule “E”, with such amendments as are satisfactory to the Receiver and Purchaser acting reasonably, approving the sale by the Receiver of the Subject Assets to the Purchaser or to the Nominee, and vesting in the Purchaser or the Nominee all right, title and interest of the Debtor in the Subject Assets, free and clear of all Encumbrances other than the Permitted Encumbrances.

**“Vesting Order Application”** means an application made by the Receiver in the Receivership Proceeding seeking the granting of the Vesting Order.

**“Warranties”** means any existing warranties and guarantees in favour of the Debtor in connection with the construction, condition or operation of the Subject Assets or any component thereof or any improvements made to the Subject Assets or any component thereof which are assignable without the consent of the counterparty thereto.

**“Wind-Down Amount”** means an amount in excess of any Surplus Funds necessary to fund: (a) all accrued but unpaid fees and disbursements of the Receiver and its counsel subject to the Receiver’s Charge as at the Closing Date, and (b) the costs to wind down and complete the Receivership Proceeding after the Closing Date (including costs associated with the Receiver terminating and/or disclaiming any agreements (including those related to the Leased Premises)), which amount shall be subject to the Receiver’s Charge.

**“Wind-Down Estimate”** means an estimate of the Wind-Down Amount that is prepared by the Receiver, in form and substance satisfactory to the Purchaser, acting reasonably.

## 1.2 Schedules

The following schedules attached hereto form part of this Agreement:

Schedule “A”	-	Subject Assets
Schedule “B”	-	Excluded Assets
Schedule “C”	-	SISP Procedure
Schedule “D”	-	SISP Procedure Order
Schedule “E”	-	Form of Vesting Order
Schedule “F”	-	Assumed Employees
Schedule “G”	-	Form of General Conveyance
Schedule “H”	-	Form of Officer’s Certificates

## Schedule "I" - FFI Terminated Employees

**1.3 Computation of Time Periods**

Except as expressly set out in this Agreement, the computation of any period of time referred to in this Agreement shall exclude the first day and include the last day of such period. If the time limited for the performance or completion of any matter under this Agreement expires or falls on a day that is not a Business Day, the time so limited shall extend to the next following Business Day.

**1.4 Rules of Construction**

The following rules of construction shall apply to this Agreement unless the context otherwise requires:

- (a) the headings in this Agreement are inserted for convenience of reference only and shall not affect the meaning, interpretation or construction of this Agreement;
- (b) all documents executed and delivered pursuant to the provisions of this Agreement are subordinate to the provisions hereof and the provisions hereof shall govern and prevail in the event of a conflict;
- (c) any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto and in force at the date hereof;
- (d) whenever the singular or masculine or neuter is used in this Agreement, the same shall be construed as meaning plural or feminine or referring to a body politic or corporate, and vice versa, as the context requires;
- (e) the words "hereto", "herein", "hereof", "hereby", "hereunder" and similar expressions refer to this Agreement and not to any particular provision of this Agreement;
- (f) reference to any Article, Section or Schedule means an Article, Section or Schedule of this Agreement unless otherwise specified;
- (g) if any provision of a Schedule hereto conflicts with or is at variance with any provision in the body of this Agreement, the provisions in the body of this Agreement shall prevail to the extent of the conflict; and
- (h) "include" and derivatives thereof shall be read as if followed by the phrase "without limitation".

**1.5 Interpretation if Closing Does Not Occur**



If Closing does not occur, each provision of this Agreement which presumes that the Purchaser has acquired the Subject Assets shall be construed as having been contingent upon Closing having occurred.

## **ARTICLE 2 AGREEMENT OF PURCHASE AND SALE**

### **2.1 Purchase and Sale of the Subject Assets**

Subject to the terms and conditions of this Agreement, the Vendor agrees to sell, assign, transfer, convey and set over, and the Purchaser agrees to purchase and accept, the Subject Assets, pursuant to the Vesting Order, in consideration of the payment of the Purchase Price. This Agreement shall be completed on the Closing Date electronically subject to the terms and conditions of this Agreement, which conditions, for greater certainty, include the issuance of the SISP Procedure Order, the determination by the Receiver that this Agreement is the Successful Bid, and the issuance of the Vesting Order.

### **2.2 Binding Agreement**

The agreements of the Vendor and the Purchaser set forth in Section 2.1 create and constitute a binding agreement of purchase and sale for the Subject Assets in accordance with and subject to the terms and conditions of this Agreement, including the issuance of a Vesting Order.

### **2.3 Acknowledgement of Purchaser as to Condition of the Subject Assets**

- (a) Notwithstanding the foregoing or anything else contained herein or elsewhere, the Purchaser acknowledges and agrees that:
  - (i) The Subject Assets are being sold and purchased and the Transaction is being effected, on an “as-is, where-is” and “without recourse” basis, without any representation, warranty or covenant by the Vendor or any other Person concerning the Subject Assets, or the Receiver’s or the Debtor’s right, title or interest in or to the Subject Assets, or the uses or applications of the Subject Assets, whether express or implied, statutory or collateral, arising by operation of law or otherwise, including express or implied warranties of merchantability, fitness for a particular purpose, title, description, quantity, condition or quality, and that any and all conditions and warranties expressed or implied *The Sale of Goods Act* (Saskatchewan) do not apply to the sale of the Subject Assets and are hereby waived by the Purchaser. For greater certainty, the Vendor makes no representation or warranty, express or implied, of any kind, at law or in equity, with respect to:
    - A. the accuracy or completeness of the Data Room Information or any other data or information supplied by the Vendor or the Debtor or any of its Representatives in connection with the Subject Assets;

- B. the ability of the Purchaser to obtain any necessary approval from any Governmental Authority in order for the Purchaser to operate the Business and/or the Subject Assets;
  - C. the quality, condition, fitness, suitability, serviceability or merchantability of any of the Subject Assets; or
  - D. the title of the Debtor to the Subject Assets.
- (ii) The Purchaser acknowledges that it will perform due diligence, inquiries and investigations in respect of the Subject Assets and shall rely solely upon its own findings resulting therefrom and not upon any information, documentation, statement or opinion, written or oral, provided by the Vendor or any agent of the Vendor other than and only to the extent of the representations and warranties set out in Section 5.1.
- (iii) The Vendor makes no representations or warranties, other than and only to the extent of the representations and warranties set out in Section 5.1, of any nature whatsoever, including with respect to Data Room Information, any Confidential Information or documentation disclosed to the Purchaser, nor with respect to the Subject Assets (including, without limitation, title thereto and/or the state of any Encumbrances) or the Transaction.
- (iv) As part of the Purchaser's agreement to purchase the Subject Assets and to accept the Subject Assets in "as-is, where-is" condition, and not as a limitation on such agreement, the Purchaser hereby unconditionally and irrevocably waives any and all actual or potential rights or Claims the Purchaser might have against the Vendor and/or Vendor Entity in respect of the Subject Assets or the Transaction or pursuant to any warranty, express or implied, of any kind or type relating to the Subject Assets or any other assets, the condition of the Leased Premises or any other aspect of the Transaction. Such waiver is absolute, unlimited and includes, but is not limited to, waiver of express warranties, implied warranties, any warranties at law and/or in equity, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and Claims of every kind and type, including, but not limited to, Claims regarding defects, whether or not discoverable, product liability Claims, or similar Claims, and to all other extent or later created or conceived of strict liability or strict liability type Claims and rights.
- (v) The Vendor shall not be responsible or liable for any misrepresentation, lack of disclosure or incorrect or incomplete disclosure of any nature whatsoever or failure to investigate the Subject Assets on the part of any broker or sales agent, or any other purported or acknowledged agent, representative, contractor, consultant or employee of the Vendor or any third party.
- (vi) The Vendor shall not be required to produce any abstract of title, deed or documents or copies thereof or any evidence as to title.

- (b) The provisions of this Section 2.3 shall not merge on, but shall survive, Closing.

## **2.4 Intentionally deleted.**

## **2.5 SISP Procedure Order, Vesting Order**

- (a) The Receiver and the Purchaser acknowledge that (i) this Agreement is subject to, *inter alia*, Court approval, and (ii) Closing of the Transaction is subject to this Agreement being determined by the Receiver to be the Successful Bid, and to the issuance of the Vesting Order.
- (b) The Receiver shall use its commercially reasonable efforts to obtain the SISP Procedure Order on or before November 23, 2020, or such other date on which the Parties may agree.
- (c) If this Agreement is determined to be the Successful Bid pursuant to the SISP Procedure, the Receiver shall make appropriate commercially reasonable efforts to promptly thereafter file and serve the Vesting Order Application, on notice to the necessary parties.
- (d) The Purchaser shall provide all information, if any, and take such actions as may be reasonably requested by the Receiver to assist the Receiver in obtaining the SISP Procedure Order, and if the Purchaser is the Successful Bidder, the Vesting Order, and any other order of the Court reasonably necessary to consummate the Transaction.
- (e) From and after the Execution Date, the Receiver shall provide such prior notice as may be reasonable under the circumstances before filing any materials with the Court that relate, in whole or in part, to this Agreement, the Purchaser, or the Vesting Order and shall consult in good faith with the Purchaser regarding the content of such materials prior to any such filing (provided that the Receiver shall not be obligated to incorporate the comments of the Purchaser into any such filings).

## **2.6 Closing Certificate**

The Parties hereby acknowledge and agree that the Receiver shall be entitled to file with the Court a certificate, substantially in the form attached to the Vesting Order (the “**Closing Certificate**”), upon receiving written confirmation from the Purchaser that all conditions to Closing under this Agreement have been satisfied or waived. The Receiver shall have no liability to the Purchaser or any other person as a result of filing the Closing Certificate.

## **2.7 Receiver’s Capacity**

The Purchaser acknowledges and agrees that in all matters pertaining to the SISP Procedure, this Agreement, including in its execution, the Receiver has acted and is acting solely in its capacity as receiver and manager of the Business, Subject Assets and the Debtor pursuant to the Appointment Order and not in its personal, corporate, or any other capacity and the Receiver and its agents,

officers, directors, employees and representatives will have no personal or corporate liability under or as a result of this Agreement, or otherwise in connection herewith.

## **2.8 Election of Nominee Purchaser**

The Purchaser may elect to nominate a subsidiary corporation in its control as a nominee purchaser (the “**Nominee**”). Purchaser shall provide notice of its election to nominate the Nominee no later than ten business days prior to the Closing Date. In the event that the Purchaser should make such election, the Vendor shall convey the Subject Assets to the Nominee instead of the Purchaser, subject to the satisfaction of all conditions set out in this Agreement. The Purchaser’s election of the Nominee shall not relieve the Purchaser of any obligations owing to the Vendor pursuant to this Agreement and the Purchaser shall remain, together with the Nominee, jointly and severally liable to the Vendor for any breach of this Agreement for which it or the Nominee is responsible.

## **2.9 Transfer of Assets**

- (a) Provided that Closing occurs, and subject to the terms and conditions of this Agreement, possession, risk, beneficial and legal ownership of the Subject Assets shall transfer from the Vendor to the Purchaser on the Closing Date.
- (b) Notwithstanding anything in this Agreement to the contrary or any other information provided to the Purchaser (including, without limitation, the confidential information memorandum, Data Room Information, or otherwise), the Parties acknowledge that although the Vendor has provided the information contained in Schedule “A” attached hereto, which includes details of the Subject Assets, they recognize that there may be unintended omissions or mis-descriptions contained therein, including property which may be listed in Schedule “A” but which does not exist and/or is missing as of the Closing Date. As such, the Parties acknowledge that if such property does not exist and/or is missing, and if such property is objectively immaterial in quantity and value, the Vendor shall not be in breach of this Agreement, nor shall: (i) any condition to Closing be unsatisfied; (ii) the Purchase Price be adjusted; or (iii) the Closing delayed, and such property shall not form a part of the Subject Assets and in the event that such property is objectively material in quantity and value, the Vendor shall not be in breach of this Agreement nor shall any condition to Closing be unsatisfied but, the Purchase Price shall be adjusted to account for the change to the Subject Assets, provided that the adjustment to the Purchase Price shall not exceed an aggregate \$100,000 under all circumstances and, if necessary, the Closing shall be delayed, for a period of 3 business days for the adjustment to be determined.

## **2.10 Assumption of Liabilities**

- (a) In determining the Purchase Price, the Parties have taken into account the Purchaser’s assumption of responsibility for the payment of all costs for existing or future Assumed Liabilities associated with the Subject Assets, as set forth in this Agreement, and the absolute release of the Vendor and Debtor of all and any responsibility or liability therefor.
- (b) Subject to Closing, the Purchaser hereby agrees to: (i) assume, discharge, perform and fulfil the Assumed Liabilities from and after the Closing Date; and (ii) indemnify and save

harmless the Vendor from all Claims, Losses and Liabilities, damages, and other amounts arising directly or indirectly out of or in connection with the Assumed Liabilities.

### **ARTICLE 3 PURCHASE PRICE**

#### **3.1 Purchase Price**

- (a) The Purchase Price for the Subject Assets, exclusive of GST and PST where applicable, shall be equal to \$800,000.00, plus the assumption of the Assumed Liabilities (the “Purchase Price”).
- (b) The Purchaser shall satisfy the Purchase Price, subject to adjustment in accordance with Section 3.4, by:
  - (i) payment of the Wind Down Amount to the Vendor;
  - (ii) providing a credit to the Debtor in the amount of the Credit Agreement Bid Amount against the Debtor’s obligations under the Credit Agreement; and
  - (iii) assumption of the Assumed Liabilities..

#### **3.2 Purchase Price Allocation**

The Parties shall agree upon the allocation of the Purchase Price in respect of each of the Subject Assets, both acting reasonably, on or before Closing. The Parties shall each report the purchase and sale of the Subject Assets for all federal, provincial and local tax purposes in accordance with the agreed upon allocation.

#### **3.3 Wind-Down Amount**

No later than ten Business Days prior to the Closing Date, the Receiver will deliver to the Purchaser the Wind-Down Estimate.

At Closing, if the Receiver is not holding Surplus Funds to fully fund the Wind-Down Amount, the Purchaser shall deliver to the Receiver the amount required to satisfy the Wind-Down Estimate by way of funds advanced by the Purchaser in its capacity as “Lender” to the Receiver as evidenced by Receiver’s Certificates, which amount shall be subject to the Receiver’s Charge and applied by the Receiver to fund the fees and disbursements of the Receiver and its counsel approved by an order of the Court. Any portion of the Wind-Down Estimate that is not required to fund the Wind-Down Amount and that has not been applied in accordance with this Section on the date of the Receiver’s discharge shall be returned by the Receiver to the Purchaser on such date. If the Wind-Down Amount exceeds the Wind-Down Estimate, the Purchaser shall deliver to the Receiver, within three Business Days of written request by the Receiver to the Purchaser, such additional funds as are required to fund the Wind-Down Amount. If the Wind-Down Amount is lower than

the Wind-Down Estimate, the Receiver shall (i) notify the Purchaser of such excess and (ii) deliver to the Purchaser, within three Business Days of written request by the Purchaser to the Receiver, all excess funds held by the Receiver.

### **3.4 Adjustments**

- (a) The Purchase Price will be adjusted as of the Closing Date for all items that are adjusted in accordance with usual commercial practice for adjustment between a vendor and purchaser with respect to the purchase and sale of a comparable property in Saskatchewan, including, without limitation, rent, realty taxes and utilities, and payments under equipment rental or lease agreements, the Vendor being responsible for all expenses and entitled to all income related to the Business in respect of the period prior to the Closing Date and the Purchaser being responsible for all expenses and entitled to all income related to the Business in respect of the period from and including the Closing Date, in each case except as otherwise provided herein.
- (b) The Vendor shall prepare a statement of adjustments in accordance with this Section 3.4 and deliver it to the Purchaser at least two (2) Business Days prior to the Closing Date and shall have annexed to it the calculations used by the Vendor to arrive at all debits and credits on the statement of adjustments. The Vendor shall give the Purchaser's representatives reasonable access to the Vendor's working papers and backup materials in order to confirm the statement of adjustments.
- (c) If the adjustment amount for any item was an initial adjustment or was omitted from the statement of adjustments at Closing, such item will be re-adjusted or adjusted, as the case may be, after Closing on or before the date that is the first to occur of (i) six (6) months after the Closing Date and (ii) ten (10) days before the date on which the Receiver is discharged by the Court as receiver and manager of all of the assets, undertakings and properties of FFI (the "**Final Adjustment Date**"). There shall be no adjustments after the Final Adjustment Date.
- (d) Notwithstanding the foregoing provisions, on Closing, if the adjustments are a credit in favour of the Purchaser (that is, the amount payable on Closing would be less than the Purchase Price), the amount of such adjustment shall be deducted from the Credit Agreement Bid Amount, and if the adjustments are a credit in favour of the Vendor (that is, the amount payable on Closing is more than the Purchase Price), such amount shall be added to the Credit Agreement Bid Amount.

## **ARTICLE 4 CONDITIONS**

### **4.1 Conditions for Vendor**

The obligation of the Vendor to complete the Transaction shall be subject to the following conditions:

- (a) on the Closing Date, all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser shall have been complied with or performed in all material respects;
- (b) on the Closing Date, all of the representations and warranties of the Purchaser set out in Section 5.2 shall be true and accurate in all material respects as if made as of the Closing;
- (c) on Closing, receipt of all deliveries to be made by the Purchaser as set out in Section 6.2;
- (d) on the Closing Date, there shall be no order issued by any Governmental Authority delaying, restricting or preventing, and no pending Claim or judicial or administrative proceeding, or investigation against any Party by any Person, for the purpose of enjoining, delaying, restricting or preventing, the consummation of the Transaction or otherwise claiming that this Agreement or the consummation of such Transaction is improper or would give rise to proceedings under any Applicable Laws;
- (e) all waivers, consents, and/or approvals from any Governmental Authority and all Purchaser Consents, as the Vendor reasonably determines are required in connection with the consummation of the Transaction, shall have been obtained;
- (f) on the Closing Date, the Receiver shall have determined in accordance with the SISP Procedure that this Agreement is the Successful Bid; and
- (g) on the Closing Date, the Appointment Order, the SISP Procedure Order and the Vesting Order shall be Final Orders and no order shall have been issued which restrains or prohibits the completion of the Transaction.

The conditions set forth in this Section 4.1 are for the sole benefit of the Vendor and may be waived in whole or in part by the Vendor by Notice in writing to the Purchaser prior to the applicable date set forth above for their respective waiver or satisfaction provided that the Vendor is not entitled to waive the condition for the issuance of the Vesting Order and Final Order.

#### **4.2 Conditions for Purchaser**

The obligation of the Purchaser to complete the Transaction shall be subject to the following conditions:

- (a) on the Closing Date, all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor shall have been complied with or performed in all material respects;
- (b) on the Closing Date, all of the representations and warranties of the Vendor set out in Section 5.1 shall be true and accurate in all material respects as if made as of the Closing (except as such representations and warranties may be affected by the occurrence of events or transactions expressly contemplated and permitted by this Agreement or the SISP Procedure);

- (c) on Closing, receipt of all deliveries to be made by the Vendor as set out in Section 6.1;
- (d) on the Closing Date, there shall be no Order issued by any Governmental Authority delaying, restricting or preventing, and no pending Claim or judicial or administrative proceeding, or investigation against any Party by any Person, for the purpose of enjoining, delaying, restricting or preventing, the consummation of the Transaction or otherwise claiming that this Agreement or the consummation of such Transaction is improper or would give rise to proceedings under any Applicable Laws;
- (e) on the Closing Date, the Appointment Order, the SISP Procedure Order and the Vesting Order shall be Final Orders and no order shall have been issued which restrains or prohibits the completion of the Transaction;
- (f) on the Closing Date, the Receiver shall have determined in accordance with the SISP Procedure that this Agreement is the Successful Bid; and
- (g) on the Closing Date, the Subject Assets shall be in substantially the same condition as they were at the Execution Date, subject to reasonable wear and tear.

The conditions set forth in this Section 4.2 are for the sole benefit of the Purchaser, and may be waived in whole or in part by the Purchaser by Notice to the Vendor prior to the applicable date set forth above for the waiver or satisfaction of each such condition, provided that the Purchaser is not entitled to waive the condition for the issuance of the Vesting Order and Final Order.

#### **4.3 Satisfaction of Conditions**

Each Party agrees to proceed in good faith, with promptness and reasonable diligence to attempt to satisfy those conditions contained in Sections 4.1 and 4.2, as applicable, that are within its control, acting reasonably. The Parties shall cooperate with each other and the Purchaser shall provide the Vendor with information in its possession or control necessary to seek the SISP Procedure Order and the Vesting Order. Each Party shall promptly notify the other of the occurrence, to such Party's knowledge, of any event or condition, or the existence, to such Party's knowledge, of any fact, that would reasonably be expected to result in any of the conditions set forth in Section 4.1 or Section 4.2 not being satisfied.

#### **4.4 Non-Satisfaction of Conditions**

- (a) If any of the conditions set out in Section 4.1 are not satisfied or waived on or before the Closing Date, the Vendor may terminate this Agreement by Notice in writing to the Purchaser given on the Closing Date, in which event this Agreement shall be terminated and of no further force or effect whatsoever, provided, however, if this Agreement is terminated pursuant to Sections 4.1(d), (f) or (g) the Expense Reimbursement set out in Section 8.2(b) shall apply, and each of the Parties shall be released from all of its liabilities and obligations under this Agreement save for those specified to survive termination. However, the Vendor may waive compliance with any of the conditions set out in Section



4.1 in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition contained in Section 4.1 in whole or in part.

(b) If any of the conditions set out in Section 4.2 are not satisfied or waived on or before the Closing Date, the Purchaser may terminate this Agreement by Notice in writing to the Vendor given on or before the Closing Date, in which event this Agreement shall be terminated and of no further force or effect whatsoever, provided, however, the Expense Reimbursement set out in Section 8.2(b) shall apply, and each of the Parties shall be released from all of its liabilities and obligations under this Agreement save for those specified to survive termination. However, the Purchaser may waive compliance with any of the conditions set out in Section 4.2 in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition contained in Section 4.2 in whole or in part.

(c) All conditions to be satisfied on Closing shall be deemed to be satisfied if Closing occurs.

## **ARTICLE 5 COVENANTS, REPRESENTATIONS AND WARRANTIES**

### **5.1 Representations and Warranties of Vendor**

The Vendor represents and warrants to and in favour of the Purchaser that, as of the date of this Agreement:

- (a) Status. The Vendor has been appointed by the Court as receiver and manager of all of the assets, undertakings and properties of the Debtor pursuant to the Appointment Order, a copy of which is available on the Receiver's Website.
- (b) Authorization. Subject to the issuance of the SISP Procedure Order, the Receiver has all necessary power and authority to enter into this Agreement.
- (c) Enforceability. Subject to the issuance of the Vesting Order, this Agreement constitutes a valid and binding obligation of the Receiver enforceable against it in accordance with its terms subject to any limitations imposed by Applicable Laws, and the Receiver has the necessary power and authority to carry out its obligations hereunder.
- (d) Residence. The Vendor is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

### **5.2 Representations and Warranties of Purchaser**

The Purchaser covenants, represents and warrants to and in favour of the Vendor that, as of the date of this Agreement:

- (a) Status. The Purchaser is and shall continue to be a valid and subsisting corporation under the laws of its jurisdiction of organization and is authorized to carry out the Business in the jurisdiction where the Subject Assets are located. The Purchaser has all necessary power, authority and capacity to enter into this Agreement and all other agreements contemplated by this Agreement and to perform its obligations under this Agreement and all other agreements contemplated by this Agreement.
- (b) Authorization. The execution and delivery of this Agreement and all other agreements contemplated by this Agreement by the Purchaser and the consummation of the Transaction contemplated by this Agreement by the Purchaser have been duly authorized by all necessary corporate action on the part of the Purchaser.
- (c) Enforceability. This Agreement constitutes a valid and binding obligation of the Purchaser enforceable against it in accordance with its terms subject to any limitations imposed by Applicable Laws.
- (d) No Breach. Neither the entering into nor the delivery of this Agreement nor the completion by the Purchaser of the Transaction contemplated hereby will conflict with, or constitute a default under, or result in a violation of: (i) any of the provisions of the constating documents or by-laws of the Purchaser; or (ii) any Applicable Laws.
- (e) No Bankruptcy. The Purchaser: (i) is not an insolvent Person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) or the *Winding-up and Restructuring Act* (Canada); (ii) has not made an assignment in favour of its creditors or a proposal to its creditors or any class thereof; (iii) has not had any application for a bankruptcy order filed or presented in respect of it; and (iv) has not initiated proceedings with respect to a compromise or arrangement with its creditors or for its winding up, liquidation or dissolution.
- (f) GST. The Purchaser will on Closing be a GST registrant under the *Excise Tax Act* (Canada) and be the sole “recipient” of a supply as defined thereunder and will provide its registration number to the Vendor on or before the Closing Date.
- (g) Residence. The Purchaser is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada) and *Investment Canada Act* (Canada).
- (h) Broker’s Fees. The Purchaser has not incurred any obligation or liability, contingent or otherwise, for broker’s or finder’s fees in respect of the Transaction for which the Vendor or the Debtor shall have any obligations or liability.

### 5.3 GST and PST

To the extent commercially reasonable and as agreed between the Parties, each acting reasonably, the Parties shall jointly elect under Section 167 of the *Excise Tax Act* (Canada), following the prescribed form and including the prescribed information, that no tax shall be payable with respect to the transfer of the Subject Assets made pursuant to this Agreement.

The Purchaser hereby represents and warrants to the Vendor as follows:

- (a) the Purchaser shall be purchasing the Subject Assets on the Closing Date, as principal for its own account and not as an agent, trustee or otherwise on behalf of another person;
- (b) the Purchaser shall be registered under the *Excise Tax Act* (Canada) for the purposes of collection and remittance of GST;
- (c) the Purchaser shall be liable, and remit to the appropriate governmental authority all PST in connection with the transfer of the Subject Assets made pursuant to this Agreement;
- (d) the Vendor shall not collect GST nor PST on Closing regarding the Subject Assets; and
- (e) the Purchaser shall indemnify and save harmless the Vendor from and against any and all GST and PST, penalties, costs and/or interest which may become payable by or assessed against the Vendor as a result of the Transaction or any inaccuracy, misstatement or misrepresentation made by the Purchaser on the Closing Date in connection with any matter raised in this Section 5.3 or contained in any declaration referred to herein.

#### **5.4 Election for Accounts Receivable**

No later than five (5) Business Days prior to the Closing, the Purchaser shall advise the Vendor if the Purchaser wishes to jointly elect pursuant to section 22 of the *Income Tax Act* (Canada), with respect to the purchase and sale of the Accounts Receivable. In the event the Purchaser does wish to make such election, and to the extent commercially reasonable and as agreed between the Parties, each acting reasonably, the Parties shall jointly elect following the prescribed form and including the prescribed information.

#### **5.5 Employees**

- (a) Other than the FFI Terminated Employees, as set out below, the Purchaser hereby agrees to assume the contracts of employment, whether verbal or written, for all employees of Vendor listed in Schedule F, pursuant to the *Saskatchewan Employment Act*. The Vendor and Purchaser acknowledge and agree that the Purchaser's responsibility for the employees shall be effective as of the Closing Date.
- (b) In addition, the Purchaser shall, from and after the Closing Date, assume all obligations to and continue the engagements of all contractors and consultants of the Vendor also listed on Schedule F hereto and, without limitation, assume all written agreements in connection with such contractors and consultants and all obligations in connection with the termination of any engagement occurring on or after Closing. The Vendor hereby

agrees to provide copies of all written agreements with contractors or consultants, or, where no written agreement exists, summaries of the terms and conditions of the engagement of the contractor or consultant.

- (c) The Purchaser shall recognize all service of all of the employees of the Vendor listed on Schedule “F” who continue in employment with the Purchaser following the Closing (the “**Assumed Employees**”) with the Vendor or, if longer, as recognized by the Vendor. The Purchaser shall assume all liabilities and be responsible for all obligations owing to the Assumed Employees subsequent to Closing.
- (d) The Vendor shall cooperate with the Purchaser in giving notice to the employees concerning such matters referred to in this Section 5.5 as are reasonable under the circumstances. The Vendor and Purchaser shall exercise reasonable efforts to persuade the employees of the Vendor to continue in employment with the Purchaser.
- (e) Should any employee be terminated by the Vendor prior to the Closing Date, then Vendor shall be solely responsible for any notice, pay-in-lieu of notice, or severance payments required to be made to the employees who refuse to accept continued employment.
- (f) The Purchaser and Vendor agree that the Purchaser is not assuming the employment of the employees listed in Schedule “I” (the “**FFI Terminated Employees**”), and agree that the Vendor shall be solely responsible for the termination of the FFI Terminated Employees prior to the Closing Date, and the Vendor shall have sole responsibility for any associated notice, pay-in-lieu of notice, or severance that is owing, or may be claimed, by those employees.

## 5.6 Federal Subsidy Joint Election for Asset Sale

To the extent commercially reasonable and as agreed between the Parties, each acting reasonably, and if all the applicable eligibility requirements in the Income Tax Act (Canada) are met (such as the conditions set out in subsection 125.7(4.1)), the Parties shall jointly elect under Section 125.7(4.1)(e) of the Income Tax Act (Canada), that the revenue attributable to the Subject Assets earned in the corresponding Prior Reference Period, as that term is defined in the Income Tax Act (Canada) (the “Assigned Revenue”), shall be assigned to the Purchaser for the purpose of enabling the Purchaser to include the Assigned Revenue in a claim for benefits for which the Purchaser is eligible under the Canada Emergency Wage Subsidy (the “CEWS”) and Canada Emergency Rental Subsidy (the “CERS”).

The joint elections shall:

- (a) be executed in respect of each Qualifying Period, as that term is defined in the Income Tax Act (Canada), occurring at the time of execution, or after execution, of this Agreement until the earlier of the end of the Qualifying Period in which the Vendor ceases to have corporate status, or the CEWS and CERS programs are terminated; and
- (b) follow the prescribed form and include the prescribed information, in the event such form is released by the Canada Revenue Agency, or otherwise be in the form of an election

agreement reasonably acceptable to both parties, evidencing at a minimum the election to be made and the amount of Assigned Revenue being assigned to the Purchaser for that Qualifying Period.

The Vendor agrees to sign all such documents and take all such actions as may be necessary to carry out the joint elections referred to in this Section. By signing the joint elections, the Vendor and the Receiver are not taking any position on the Purchaser's eligibility for the CEWS or CERS, or on the applicability or validity of the joint elections. The Purchaser is fully responsible and liable for all risks associated with claiming any benefits under the CEWS or CERS and any joint elections filed in respect of these claims.

## **ARTICLE 6 CLOSING DOCUMENTS**

### **6.1 Vendor's Closing Documents**

At Closing, the sale, transfer, assignment, and conveyance by the Vendor of the Subject Assets to the Purchaser, free and clear of all Encumbrances other than the Permitted Encumbrances, shall be effected by the issued and entered Vesting Order. On or before Closing, subject to the provisions of this Agreement, the Vendor shall prepare and execute or cause to be executed and shall deliver or cause to be delivered to the Purchaser the following:

- (a) a true and complete copy of the Vesting Order;
- (b) the Closing Certificate;
- (c) the Assignment and Assumption of Leases, and such other assignment, assumption and other documents as are required by the terms of the Leases;
- (d) the Assignment and Assumption of Contracts, and such other assignment, assumption and other documents as are required by the terms of the Assumed Contracts;
- (e) a notice to the account debtors of the purchased Accounts Receivable, if any, notifying such account debtors of the transfer of the purchased Accounts Receivable, and directing such account debtors to pay, after Closing, the Accounts Receivable to the Purchaser or as the Purchaser directs;
- (f) a certificate of an officer of the Vendor (in such capacity and without personal liability) confirming that the representations and warranties set out in Section 5.1 are true and accurate in all material respects, substantially in the form attached hereto as Schedule "H";
- (g) a completed GST Form-44 related to the tax election referred to in Section 5.3;
- (h) a completed T2022 related to the tax election referred to in Section 5.4, is applicable;

- (i) to the extent in the Vendor's possession or control, all keys and all security cards relating to the Leased Premises, and all combinations to lockers, vaults and combination locks located at the Leased Premises;
- (j) to extent in the Vendor's possession or control, all login information and passwords related to the Subject Assets;
- (k) to the extent in the Vendor's possession or control, original copies of all Leases and all Assumed Contracts, if any.
- (l) to the extent in the Vendor's possession or control, all post-dated cheques endorsed (without recourse) in favour of the Purchaser;
- (m) any plans and specifications in the Vendor's possession or control relevant to the construction of the Leasehold Improvements;
- (n) the statement of adjustments;
- (o) a document setting out the agreed upon allocation of the Purchase Price;
- (p) an undertaking by the Vendor to re-adjust the adjustments in accordance with Section 3.4(b);
- (q) an undertaking by the Vendor to re-adjust the Wind-Down Estimate; and
- (r) the General Conveyance.

All documentation shall be in form and substance acceptable to the Purchaser and the Vendor, each acting reasonably and in good faith, provided that none of such documents shall contain covenants, representations or warranties which are in addition to or more onerous upon either the Vendor or the Purchaser than those expressly set forth in this Agreement.

## **6.2 Purchaser's Closing Documents**

On or before Closing, subject to the provisions of this Agreement, the Purchaser shall execute or cause to be executed and shall deliver or cause to be delivered to the Vendor, as applicable, the following:

- (a) for and on behalf of the Debtor, a fully executed release and waiver with respect of the amount outstanding under the Credit Agreement equal to the Credit Agreement Bid Amount;
- (b) a fully executed release and waiver with respect to the Receiver's Certificate Obligations outstanding to the Purchaser on Closing;
- (c) funds equal to the Wind-Down Estimate, if any;

- (d) a document setting out the agreed upon allocation of the Purchase Price;
- (e) the Assignment and Assumption of Leases, and such other assignment, assumption and other documents as are required by the terms of the Leases;
- (f) the Assignment and Assumption of Contracts, and such other assignment, assumption and other documents as are required by the terms of the Assumed Contracts;
- (g) a certificate of an officer of the Purchaser (in such capacity and without personal liability) confirming that the representations and warranties set out in Section 5.2 are true and accurate in all material respects, substantially in the form attached hereto as Schedule “H”;
- (h) a completed GST Form-44 related to the tax election referred to in Section 5.3;
- (i) a completed T2022 related to the tax election referred to in Section 5.4, is applicable;
- (j) an acknowledgement in favour of the Vendor confirming that each of the Purchaser’s conditions as set out in Section 4.2 have been satisfied or waived;
- (k) an undertaking by the Purchaser to re-adjust the adjustments in accordance with Section 3.4;
- (l) an undertaking by the Purchaser to re-adjust the Wind-Down Estimate;
- (m) the General Conveyance; and
- (n) such other documents as may be reasonably required by the Vendor to complete the purchase and sale of the Subject Assets.

All documentation shall be in form and substance acceptable to the Purchaser and the Vendor each acting reasonably and in good faith, provided that none of such documents shall contain covenants, representations or warranties which are in addition to or more onerous upon either the Vendor or the Purchaser than those expressly set forth in this Agreement.

### **6.3 Registration and Other Costs**

- (a) The Vendor shall be responsible for the costs of the Vendor’s Solicitors in respect of this Transaction. The Purchaser shall be responsible for the costs of the Purchaser’s Solicitors in respect of this Transaction. The Purchaser shall be responsible for and pay all registration fees payable in respect of registration by it of any documents on Closing and all federal and provincial sales and other taxes payable by a purchaser upon or in connection with the conveyance or transfer of the Subject Assets, including provincial retail sales tax and goods and services tax.

- (b) The Purchaser shall indemnify and save harmless the Vendor and its shareholders, directors, officers, employees, advisors, representatives and agents from all claims, actions, causes of action, proceedings, losses, damages, costs, liabilities and expenses incurred, suffered or sustained as a result of a failure by the Purchaser:
  - (i) to pay any federal, provincial or other taxes payable by the Purchaser in connection with the conveyance or transfer of the Subject Assets whether arising from a reassessment or otherwise, including provincial retail sales tax and goods and services tax, if applicable; and/or
  - (ii) to file any returns, certificates, filings, elections, notices or other documents required to be filed by the Purchaser with any federal, provincial or other taxing authorities in connection with the conveyance or transfer of the Subject Assets.
- (c) The Purchaser further agrees to pay all such amounts including interest and penalties, if any, in connection with foregoing.
- (d) This Section shall survive and not merge on Closing. For greater certainty, the foregoing obligation to indemnify shall not cease and terminate.

#### **6.4 Closing Escrow**

All Closing Documents shall be delivered into trust electronically to the other Party's counsel and the funds equal to the Wind-Down Estimate, if any, to the Vendor, on or before the Closing Date. Such Closing Documents and the funds equal to the Wind-Down Estimate, if any, shall be held in trust until both Parties, acting reasonably, are satisfied that all conditions set forth in Sections 4.1 and 4.2 to be satisfied on or before Closing have been satisfied (or waived).

Upon successful registration of the Vesting Order, the Closing Documents and the funds equal to the Wind-Down Estimate, if any, shall be released from trust.

#### **6.5 Post-Closing Receipt of Cash, Cheques or Instruments**

Subject to any court order, from and after the Closing Date until the completion of the Receivership Proceeding, the Vendor shall promptly transfer any cash, cheques or other instruments of payment to the Purchaser that it receives payable to the Debtor, or payable to the Receiver, in respect of the Subject Assets.

### **ARTICLE 7**

#### **ASSUMED CONTRACTS AND PURCHASER CONSENTS**

##### **7.1 Contracts**

- (a) On Closing, the Purchaser shall assume those Contracts and Leases that the Purchaser advises the Vendor it wants to assume (the "**Assumed Contracts**") by Notice delivered to the Vendor no later than ten (10) Business Days prior to the return date of the Vesting Order Application (the "**Contract Notice Date**"). For certainty, the subject Assumed



Contracts shall not include contracts respecting any of the employees, contractors or consultants listed in Schedule “F”. Further, the Purchaser shall have received consents to transfer respecting the Assumed Contracts that contain assignment restrictions. At any time on or prior to the Contract Notice Date, the Purchaser may elect to exclude any Contracts or Leases from the Subject Assets, and add such Contracts or Leases to the Excluded Contracts list by giving written notice to the Vendor of its intention to do so.

- (b) The Vendor shall terminate on or before the Closing Date, all Contracts or Leases other than the Assumed Contracts. Additionally, the Vendor may, at its discretion, seek an order of the Court disclaiming any of the Contracts or Leases other than the Assumed Contracts.
- (c) The Purchaser shall, forthwith upon the Receiver determining that this Agreement is the Successful Bid, use commercially reasonable efforts to:
  - i. identify and request in writing all material consents, permissions and approvals by Third Parties and Governmental Authorities in connection with the Transaction customarily obtained prior to Closing (the “**Purchaser Consents**”); and
  - ii. provide prior written notice to all Third Parties and Governmental Authorities in sufficient time to allow any Purchaser Consents having an expiry period to expire (if not refused) prior to the Closing Date.
- (d) The Purchaser acknowledges that the Vendor has no obligation to obtain consents to transfer the Leases and Assumed Contracts to the Purchaser, and that the Purchaser is solely responsible for obtaining consent to transfer the Leases and Assumed Contracts. Without limiting the generality of the foregoing, it is the sole obligation of the Purchaser, at the Purchaser’s sole cost and expense, to:
  - i. obtain and pay the cost of any consents, permits, licences assignments, registration fees, attorney and agent fees, filing fees, issue fees or other authorizations and assignments necessary or desirable for the transfer of such right, title and interest, to the Purchaser or for the operation or use of the Business and/or Subject Assets;
  - ii. obtain all Third Party consents that are required to complete the Transaction and own and operate the Business and the Subject Assets;
  - iii. obtain the consents to transfer the Leases; and
  - iv. provide any and all financial assurances, remedial work or other documentation that may be required by Governmental Authorities or any Third Parties to permit the transfer to the Purchaser of any of the Subject Assets, and registration of the Purchaser as owner, of any of the Subject Assets.
- (e) To the extent the Vendor is able, however, to transfer any permits and licences to the Purchaser, the Vendor will use commercially reasonable efforts to transfer such permits and licences to the Purchaser, provided that the Purchaser pays all costs associated with such transfer. The Purchaser shall indemnify the Vendor for any Claims, Losses and

Liabilities incurred by the Vendor as a result of the Purchaser's failure to obtain any such consent, approval, licence and permit. The Purchaser shall assume the Assumed Contracts, to the extent they are assignable and in force on Closing, pursuant to the Assignment and Assumption of Contracts.

- (f) Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign the Leases and Assumed Contracts, to the extent the Leases and Assumed Contracts are not assignable under Applicable Law without the consent of any other Person unless such consent has been obtained.

## **ARTICLE 8 TERMINATION**

### **8.1 Termination**

This Agreement may be terminated at any time prior to Closing as follows:

- (a) automatically and without any action or notice by either the Vendor to the Purchaser or the Purchaser to the Vendor, immediately (i) if the SISP Procedure Order is not granted by the Court by November 23, 2020, or such other date on which the parties may agree, (ii) upon the selection by the Receiver of a Successful Bid if this Agreement is neither the Successful Bid nor the Back-up Bid selected at such time, or (iii) upon the Closing of the Successful Bid if this Agreement is the Back-up Bid;
- (b) subject to any approvals required from the Court, if any, by mutual written consent of the Vendor and the Purchaser;
- (c) by notice from the Vendor to the Purchaser or from the Purchaser to the Vendor, following the issuance of an order or any other action by a Governmental Authority to restrain, enjoin or otherwise prohibit the transfer of the Subject Assets as contemplated hereby;
- (d) automatically and without any action by either the Vendor or the Purchaser if Closing has not occurred on or before the Outside Date, unless otherwise agreed to between the parties in writing to extend the Outside Date;
- (e) by the Vendor, if there has been a material violation or breach by the Purchaser of any agreement, covenant, representation or warranty which would prevent the satisfaction of any condition set forth in this Agreement and such violation or breach has not been waived by the Vendor or cured, unless the Vendor is in material breach of its obligations under this Agreement; and
- (f) by the Purchaser, if there has been a material violation or breach by the Vendor of any agreement, covenant, representation or warranty which would prevent the satisfaction of any condition set forth in this Agreement and such violation or breach has not been waived by the Purchaser or cured, unless the Purchaser is in material breach of its obligations under this Agreement.

## 8.2 Effects of Termination

- (a) If this Agreement is terminated pursuant to Section 8.1:
- (i) all further obligations of the Parties under or pursuant to this Agreement shall terminate without further liability of any Party to the other, subject to the Expense Reimbursement set out in Section 8.2(b) and all other provisions that state they survive termination shall survive termination and shall remain in full force and effect; and
  - (ii) the Purchaser shall return to the Receiver all documents, work papers and other material of the Receiver and the Debtor, as the case may be, relating to the Transaction, whether obtained before or after the execution hereof.
- (b) In consideration for the Purchaser's expenditure of time and money in acting as the initial bidder in the stalking horse bid and the preparation and negotiation of this Agreement and subject to the terms and condition of this Agreement and of the SISP Procedure Order, upon termination of this Agreement by the Receiver (except any termination pursuant to Subsection 8.1(e)) or the closing of a sale and a transfer of the Subject Assets to a Person other than the Purchaser (an "**Alternative Transaction**"), the Receiver shall pay to the Purchaser the amount of \$40,000.00 (the "**Expense Reimbursement**") in order to reimburse the Purchaser for the Purchaser's expenses in connection with the Transaction, provided that the Receiver's obligation to make such payment is conditional upon an Alternative Transaction being completed, whereupon such payment may be made from the proceeds of the Alternative Transaction.
- (c) Payment of the Expense Reimbursement shall be made by the Receiver upon Court approval of said payment after consummation of the Alternative Transaction. Upon payment of the Expense Reimbursement to the Purchaser, the Parties shall have no further obligations under this Agreement.

## ARTICLE 9 LIABILITIES AND INDEMNITIES

### 9.1 General Indemnity

If Closing occurs, the Purchaser shall, without any further necessary action on the part of the Vendor or the Purchaser:

- i) assume, perform, pay, discharge and be liable to the Vendor for; and
- ii) as a separate covenant, save and hold harmless and indemnify the Vendor, the Debtor and each other Vendor Entity from and against;

all Losses and Liabilities suffered, sustained, paid or incurred by any of them to the extent arising or accruing on or after the Closing Date and which relate to the Subject Assets, and/or the Assumed

Liabilities, including but not limited to all Losses and Liabilities attributable to the operation, ownership, use, construction or maintenance of the Business and/or Subject Assets arising or accruing on or after the Closing Date. The Purchaser's indemnity obligation set forth in this Section 9.1 shall survive the Closing Date indefinitely.

## **9.2 No Merger**

There shall not be any merger of any liability or indemnity hereunder in any assignment, conveyance, transfer or document delivered pursuant hereto notwithstanding any rule of law, equity or statute to the contrary and all such rules are hereby waived.

## **9.3 Holding of Indemnities**

The Vendor will hold the indemnities contained in Section 9.1 in trust on behalf of all of the other Vendor Entities and may enforce the same on their behalf.

# **ARTICLE 10 PERSONAL INFORMATION**

## **10.1 Personal Information**

The Purchaser covenants and agrees to use and disclose any personal information contained in any of the books, records or files transferred to the Purchaser or otherwise obtained by the Purchaser in connection with the Transaction only for those purposes for which it was initially collected from or in respect of the individual to which such information relates or as otherwise permitted or authorized by Applicable Law. The Purchaser's obligations set forth in this Section 10.1 shall survive the Closing Date indefinitely.

# **ARTICLE 11 CONFIDENTIALITY AND PUBLIC ANNOUNCEMENTS**

## **11.1 Confidentiality**

- (a) Neither Party may disclose the terms or contents of this Agreement, including the name of the other Party, or any information concerning negotiations leading to this Agreement and the Transaction, without the prior written consent of the other Party.
- (b) Prior to Closing, all information obtained by the Purchaser from the Vendor respecting the Subject Assets shall be retained in confidence by it and used by it only for the purposes of this Transaction; provided, however, that nothing contained herein shall prevent the Purchaser from using or disclosing information pertaining to the Subject Assets after Closing.
- (c) Notwithstanding Sections 11.1(a) and 11.1(b), a Party may release or provide information about the Transaction:

- i. as is required by Applicable Laws (including as may be required to obtain the Vesting Order) or stock exchange requirements applicable to the disclosing Party; provided that such disclosing Party shall make reasonable commercial efforts to provide the other Party with the details of the nature and substance of such required disclosure as soon as practicable and in any event prior to such disclosure;
- ii. as is required to enable such Party to fulfil its obligations under this Agreement, including obtaining any approvals or consents to the Transaction required from Governmental Authorities (including approval of the Vesting Order) or Third Parties; or
- iii. to a bank or other financial institution to obtain financing or any required consent of the bank or other financial lender of such Party.

### **11.2 Public Announcements**

Except as otherwise required by Applicable Laws or a Governmental Authority, or as may be required in connection with the Receivership Proceeding or SISP Procedure, no press release or public announcement with respect to this Agreement or the Transaction may be made prior to Closing except with the prior written consent and joint approval of the Vendor and the Purchaser. Where the public disclosure is required by Applicable Laws, a Governmental Authority or in connection with the Receivership Proceeding, the Party required to make the public disclosure will use its reasonable commercial efforts to obtain the approval of the other Party as to the form, nature and extent of the disclosure.

## **ARTICLE 12 GENERAL**

### **12.1 Obligations as Covenants**

Each agreement and obligation of any of the Parties in this Agreement, even though not expressed as a covenant, is considered for all purposes to be a covenant.

### **12.2 Applicable Law**

This Agreement shall be construed and enforced in accordance with the laws of the Province of Saskatchewan and the laws of Canada applicable therein and shall be treated in all respects as a Saskatchewan contract.

### **12.3 Currency**

All reference to currency in this Agreement shall be deemed to be reference to Canadian dollars.

### **12.4 Invalidity**

If any immaterial covenant, obligation, agreement or part thereof or the application thereof to any Person or circumstance, to any extent, shall be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation or agreement or part thereof to any

Person, party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby. Each covenant, obligation and agreement in this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

### **12.5 Amendment of Agreement**

Except as expressly provided otherwise in this Agreement, no supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the Parties in the same manner as the execution of this Agreement.

### **12.6 Time of the Essence**

Time shall be of the essence of this Agreement.

### **12.7 Further Assurances**

Each of the Parties shall from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.

### **12.8 Entire Agreement**

This Agreement and any agreements, instruments and other documents herein contemplated to be entered into between, by or including the Parties constitute the entire agreement between the Parties pertaining to the agreement of purchase and sale provided for herein and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, with respect thereto, and there are no other warranties or representations and no other agreements between the Parties in connection with the agreement of purchase and sale provided for herein except as specifically set forth in this Agreement or the Schedules attached hereto.

### **12.9 Waiver**

No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise expressed or provided.

### **12.10 Solicitors as Agents and Tender**

Any Notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement (including, without limitation, any agreement to amend this Agreement) may be given or delivered and accepted or received by the Purchaser's Solicitors on behalf of the Purchaser and by the Vendor's Solicitors on behalf of the Vendor and any tender of Closing Documents may be made upon the Vendor's Solicitors and the Purchaser's Solicitors, as the case may be.

### **12.11 Merger**

Except as otherwise expressly set out herein, this Agreement shall merge with the Closing of the Transaction contemplated herein.

### **12.12 Successors and Assigns**

All of the covenants and agreements in this Agreement shall be binding upon the Parties and their respective successors and permitted assigns and shall enure to the benefit of and be enforceable by the Parties and their respective successors and their permitted assigns pursuant to the terms and conditions of this Agreement.

### **12.13 Residual Credit Agreement Debt**

Subject to the terms and conditions set forth in the applicable loan documentation and an order of the Court, the execution, delivery and effectiveness of this Agreement shall NOT directly or indirectly: (a) be construed as a waiver or release of the Secured Creditor's right, title and interest in and to the Secured Creditor's Secured Debt that does not form part of the Credit Agreement Bid Amount, and such indebtedness will remain owing by the Debtor under the Credit Agreement to the Secured Creditor and continue to accrue to the Secured Creditor from and after the Closing Date, (b) constitute a consent or waiver of any past, present or future violations of any provisions of any of the Credit Agreement and/or any Secured Creditor loan documents related thereto or this Agreement, and (c) amend, modify or operate as a waiver of any provision(s) of any of the Credit Agreement and/or any Secured Creditor's loan documents related thereto or any right, power or remedy of the Secured Creditor under the Credit Agreement and/or any Secured Creditor loan documents related thereto. Except as expressly set forth herein, the Secured Creditor reserves all of its rights, powers, and remedies under the Credit Agreement and any Secured Creditor loan documents related thereto, and Applicable Law.

### **12.14 Access of Receiver to Books and Records**

The Vendor shall, for a period of six (6) years from the completion of the Transaction, have access to the Books and Records relating to the Business and the Subject Assets which are transferred and conveyed to the Purchaser pursuant to this Agreement, and the right to copy such material at its own cost, to the extent necessary or useful in connection with the completion of the administration of the Receivership Proceeding.

### **12.15 Tax Matters**

The Purchaser and the Vendor agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Subject Assets as is reasonably necessary for the preparation and filing of any tax return, claim for refund or other required or optional filings relating to tax matters, for the preparation for and proof of facts during any tax audit, for the preparation for any tax protest, for the prosecution of any suit or other proceedings relating to tax matters and for the answer to any governmental or regulatory inquiry relating to tax matters.

## 12.16 Assignment

Neither Party may assign their interest in or under this Agreement or to the Subject Assets prior to Closing without the prior written consent of the other Party, which consent may be withheld in such other Party's sole and unfettered discretion.

No assignment, transfer, or other disposition of this Agreement or the Subject Assets or any portion of the Subject Assets shall relieve the Purchaser from its obligations to the Vendor herein. The Vendor shall have the option to claim performance or payment of the obligations from the Purchaser or the assignee or transferee, and to bring proceedings in the event of default against either or all of them, provided that nothing herein shall entitle the Vendor to receive duplicate performance or payment of the same obligation.

## 12.17 Notice

Any notice, demand, approval, consent, information, agreement, offer, request or other communication (a "Notice") to be given under or in connection with this Agreement shall be in writing and shall be given by telecopier, facsimile transmission or other electronic communication

which results in a written or printed notice being given, addressed or sent as set out below or to such other address or electronic number as may from time to time be the subject of a Notice:

(a) Vendor: Alvarez and Marsal Canada Inc.  
250 6 Ave South West, Suite 1100  
Calgary, AB T2P 3H7

Attention: Orest Konowalchuk and Jill A. Strueby  
Facsimile: (403) 538 7551  
Email: [okonowalchuk@alvarezandmarsal.com](mailto:okonowalchuk@alvarezandmarsal.com)  
and [jstrueby@alvarezandmarsal.com](mailto:jstrueby@alvarezandmarsal.com)

(b) with a copy to the Vendor's Solicitors:

Torys LLP  
525 - 8th Avenue SW, 46th Floor  
Calgary, Alberta T2P 1G1

Attention: Kyle Kashuba  
Facsimile: (403) 776.3800  
Email: [kkashuba@torys.com](mailto:kkashuba@torys.com)

(a) Purchaser: BTA Real Estate Group Inc.

210 Brookhurst Crescent  
Saskatoon, Saskatchewan, S7V 1C5



Attention: Fazal Anwar  
Email: fazal.e.anwar@gmail.com

(b) with a copy to the Purchaser's Solicitors:

W Law LLP  
Suite 300, 110 – 21st Street East  
Saskatoon, SK S7K 0B6

Attention: Mike Russell  
Facsimile: (306) 652.0332  
Email: [mrussell@wlaw.com](mailto:mrussell@wlaw.com)

Any Notice, if sent by telecopier, facsimile transmission or other electronic communication with confirmation of transmission prior to 5:00 p.m. (Saskatchewan time), shall be deemed to have been validly and effectively given and received on the Business Day it was sent, unless the confirmation of transmission was after 5:00 p.m. (Saskatchewan time), in which case it shall be deemed to have been received on the next Business Day.

#### **12.18 Effect of Termination of Agreement**

Notwithstanding the termination of this Agreement for any reason, the Expense Reimbursement provisions contained in Section 8.2 and all other provisions that state they survive termination shall survive termination and shall remain in full force and effect.

#### **12.19 Planning and Development Act of Saskatchewan**

This Agreement and the transactions reflected herein are subject to compliance with *The Planning and Development Act, 2007* (Saskatchewan).

#### **12.20 Commissions**

The Purchaser is solely responsible to pay all other fees and/or commissions claimed and/or otherwise owing to any other Person with whom the Purchaser had any communications and/or dealings in respect of the Subject Assets and the Purchaser shall indemnify and save the Vendor harmless from all Claims with respect to same. This Section shall survive and not merge on Closing.

#### **12.21 No Personal Liability of the Vendor**

The Vendor is executing this Agreement solely in its capacity as Court-appointed receiver and manager of the assets, undertakings and properties of the Debtor and not in its personal or corporate capacity and neither the Vendor nor its directors, officers, agents, representatives, servants or employees shall have any personal or corporate liability hereunder or at common law, or by statute, or equity or otherwise as a result hereof.

## **12.22 Dissolution of the Debtor**

The Purchaser acknowledges and agrees that nothing in this Agreement shall operate to prohibit or diminish in any way the right of the Debtor or the Vendor to dissolve, wind-up, make an assignment in bankruptcy in any manner or at any time subsequent to the Closing Date as it may determine in their sole discretion, which may be exercised without regard to the impact any such action may have on the Vendor's ability to fulfil its obligations under this Agreement that survive Closing.

## **12.23 Remedies Cumulative**

No failure on the part of any Party to exercise any right or remedy will operate as a waiver thereof. A Party will not be precluded from exercising any right available to it at law, equity or by statute because of its exercise of any single or partial right, and a Party may exercise any such remedies independently or in combination.

## **12.24 Independent Legal Advice**

Each of the Parties to this Agreement acknowledges that it has had the time and opportunity to obtain independent legal advice with respect to the execution of this Agreement, or has waived that opportunity, and each of the Parties to this Agreement has read, understands and agrees with all of the terms and conditions contained in this Agreement.

## **12.25 Counterparts; Electronic Transmission**

This Agreement may be executed in any number of counterparts, all of which taken together shall be deemed to constitute one and the same instrument. The Parties agree that this Agreement may be transmitted by telecopier or electronic transmission via email and that the reproduction of signatures by way of telecopier or electronic transmission via email will be treated as though such reproduction were executed originals and each Party, if required by the other Party, undertakes to provide the other with a copy of this Agreement bearing original signatures within a reasonable time after the date of execution.

**[Signature page follows]**

IN WITNESS WHEREOF the Vendor and Purchaser have executed this Agreement as of the Execution Date.

**ALVAREZ AND MARSAL CANADA INC.**, solely in its capacity as court-appointed receiver and manager of all of

the assets, undertakings and properties of FAMILY FITNESS INC. and not in its personal capacity and without personal or corporate liability

By:

Name:

Title:

---

**BTA REAL ESTATE GROUP INC.**

By:

Name: Fazal Anwar

Title: President

---

I have authority to bind the Corporation.

## **1. GENERAL CONVEYANCE**

This General Conveyance made this [■], day of [■], 202■.

### **BETWEEN:**

**FAMILY FITNESS INC. (“Debtor”) by and through ALVAREZ AND MARSAL CANADA INC., solely in its capacity as Court-appointed receiver and manager of all of the assets, undertakings and properties of the Debtor and not in its personal capacity and without personal or corporate liability (the “Vendor”)**

- and -

**BTA REAL ESTATE GROUP INC. (the “Purchaser”)**

**WHEREAS** the Vendor and the Purchaser entered into that Asset Purchase Agreement dated January 15, 2021 (the “**Agreement**”);

**AND WHEREAS** the Vendor has agreed to sell and convey the Debtor’s entire right, title, estate and interest in the Subject Assets to the Purchaser and the Purchaser has agreed to purchase and accept all of the Debtor’s rights, title, estate and interest in and to the Subject Assets in accordance with the terms and conditions contained in the Agreement;

**AND WHEREAS** the Subject Assets shall be conveyed to the Purchaser;

**NOW THEREFORE** in consideration of the premises hereto and the covenants and agreements hereinafter set forth and contained, the Parties hereto covenant and agree as follows:

### **2. Definitions**

All capitalized terms not defined herein shall have the same meaning as set out in the Agreement.

### **3. Conveyance**

The Vendor, for the consideration provided for in the Agreement, the receipt and sufficiency of which is acknowledged by the Vendor, hereby sells, assigns, transfers and conveys the entire right, title, benefit and interest of the Debtor (whether absolute or contingent, legal or beneficial) in and to the Subject Assets to the Purchaser, its successors and assigns, and the Purchaser purchases and accepts such interests from the Vendor, TO HAVE AND TO HOLD the same absolutely, subject to the terms of the Agreement, the Permitted Encumbrances and compliance with the terms of the Leases and all other Assumed Contracts.

4. Effective Time

This General Conveyance and the transfer of title to and possession of the Debtor's interest in and to the Subject Assets will, subject to the terms of the Agreement, be effective as of the Closing Date.

5. Subordinate Document

This General Conveyance is executed and delivered by the Parties pursuant to the Agreement for the purposes of the provisions of the Agreement, and the terms hereof shall be read in conjunction with the terms of the Agreement. If there is a conflict between the provisions of the Agreement and this General Conveyance, the provisions of the Agreement shall prevail to the extent of the conflict.

6. Enurement

This General Conveyance enures to the benefit of and is binding upon the Parties and their respective administrators, trustees, receivers, successors and permitted assigns.

7. Further Assurances

Each Party shall, after the date of this General Conveyance, at the request of the other Party and without further consideration, do all further acts and execute and deliver all further documents which are reasonably required to perform and carry out the terms of this General Conveyance.

8. Governing Law

This General Conveyance will be governed by and construed in accordance with the laws of the Province of Saskatchewan.

**IN WITNESS WHEREOF** the Parties have duly executed this General Conveyance.

**ALVAREZ AND MARSAL CANADA INC.**,  
solely in its capacity as court-appointed  
receiver and manager of all of the assets,  
undertakings and properties of FAMILY  
FITNESS INC. and not in its personal capacity  
and without personal or corporate liability

**BTA REAL ESTATE GROUP INC.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name: Fazal Anwar  
Title: President

**SCHEDULE ■**

**OFFICER'S CERTIFICATE**

Re: Section ■ of the Asset Purchase Agreement (“**Agreement**”) dated [■], 2021, between **ALVAREZ AND MARSAL CANADA INC.**, solely in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of FAMILY FITNESS INC. and not in its personal capacity and without personal or corporate liability (the “**Vendor**”) and **BTA REAL ESTATE GROUP INC.** (the “**Purchaser**”)

Unless otherwise stated, the definitions provided for in the Agreement are adopted in this Certificate.

I, ■, ■, hereby certify on behalf of the [**Vendor/Purchaser**] and not in any personal capacity that:

1. Each of the representations and warranties of the [**Vendor/Purchaser**] contained in Section ■ of the Agreement is true and correct in all material respects as of the Closing Date.
2. All Closing conditions for the benefit of the [**Vendor/Purchaser**], pursuant to Section ■ of the Agreement, have been satisfied or waived.
3. This Certificate is made for and on behalf of the [**Vendor/Purchaser**] and is binding upon it, and I am not incurring and will not incur any personal liability whatsoever with respect to it.
4. This Certificate is made with full knowledge that the [**Vendor/Purchaser**] is relying on the same for the Closing of the Transaction.

Dated this \_\_ day of \_\_\_\_\_, 2021.

Per: \_\_\_\_\_  
Name:  
Title:

## **SCHEDULE “A”**

### **SUBJECT ASSETS**

#### **Real Property Leasehold Interests**

**1. 358 McCarthy Boulevard North Lease**

Leasehold interest in property described as Block E, Plan Number 99RA27210 pursuant to a commercial lease agreement between Normanview Crossing Inc. as Landlord and Northland Gold’s Gym Corp. as tenant, dated February 6, 2006, as assumed by Family Fitness Inc. as Tenant pursuant to an October 1, 2015, Assignment and Assumption of Lease agreement.

**2. 3615 Pasqua Street Lease**

Leasehold interest in property described as Block D, Plan 96R35131 Ext 4 pursuant to a commercial lease agreement between 575794 Saskatchewan Ltd. as Landlord and Northland Gold’s Gym Corp. as tenant, dated August 11, 2008, as assumed by Family Fitness Inc. as Tenant.

#### **Leased Personal Property**

**3. ULI Canada Inc. – Equipment Lease**

Family Fitness Inc.’s equity in or rights to equipment or chattels leased to Family Fitness Inc. as lessee by ULI Canada Inc. as lessor pursuant to Lease No. 3000240001, dated December 28, 2015, as amended by Equipment Lease Payment Deferral Agreement dated April 3, 2020.

#### **Equipment and Personal Property**

**4. 358 McCarthy Boulevard Location Equipment**

All equipment described in Appendix “1” to Schedule “A.”

**5. 3615 Pasqua Street Location Equipment**

All equipment described in Appendix “2” to Schedule “A,” except to the extent that such equipment is described in Lease No. 3000240001, dated December 28, 2015, described above.

**6. 2121 Quance Street East Lease Equipment**

All equipment or other items of personal property described in Appendix “3” to Schedule “A,” except to the extent that such equipment is described in Lease No. 001-0200956-000, dated November 15, 2015, described above.

**7. Remaining Personal Property**

All other personal property not specifically referenced herein including, without limitation, office supplies, computers, printers, copiers, facsimile machines, promotional or marketing materials, signage, point-of-sale equipment, furniture, cleaning supplies, inventory, parts, or audio-visual equipment.

### **Intangible Property**

#### **8. Evolution Fitness Gym Business Name, Website, Brand Value and Goodwill**

All trade-marks, trade names or business names including the business name “Evolution Fitness Gym”, copyrights, computer systems, code, applications, systems, databases, data, member data, member lists, lists of member contact information, website content, passwords, know-how, formulae, processes, technical expertise, research data, trade secrets, industrial designs and other similar property.

#### **9. Website and Social Media Accounts**

All websites, domain names, social media accounts, including:

- (a) [www.evolutionfitness.ca](http://www.evolutionfitness.ca);
- (b) Facebook account: Evolution Fitness Regina;
- (c) Instagram account: evolutionfitnessyqr; and
- (d) Twitter account: @EvolutionFitnessYQR.

#### **10. Accounts Receivable**

All outstanding accounts receivable, choses in action of Family Fitness Inc. or amounts owing to Family Fitness Inc.

#### **11. Prepaid Expenses**

All prepaid expenses.

#### **12. Insurance**

The interest of Family Fitness Inc. in all contracts of insurance, insurance policies and insurance plans; any insurance proceeds net of applicable deductibles; the benefit of Family Fitness Inc.’s rights to insurance claims.



**[Appendix “1”]**

# Appendix "1"

**Equipment listing reflects FFI's books and records as at October 13, 2020.**

Equipment Report for Evolution Fitness - McCarthy Location				
ID	Model	Manufacturer	Type	SerialNumber
14	Climbmill	Matrix	cardio	CS24150903399
15	Climbmill	Matrix	cardio	CS24150903427
16	Climbmill	Matrix	cardio	CS24250903425
17	Jacob's Ladder	Jacob's Ladder	cardio	5625
27	Upright Bike	Precor USA	cardio	atpyl19050008
28	Upright Bike	Precor USA	cardio	atpyk21050009
29	Upright Bike	Precor USA	cardio	atpyl19050007
30	Recumbant Bike	Precor USA	cardio	a965l05050022
31	Recumbant Bike	Precor USA	cardio	a965j24050009
32	Recumbant Bike	Precor USA	cardio	a965l05050017
35	rowing_machine	concept_2	cardio	0105060-300035342-01
43	AMT	Precor USA	cardio	a927k26070062
44	AMT	Precor USA	cardio	a927k26070061
45	AMT	Precor USA	cardio	a927k26070060
46	AMT	Precor USA	cardio	a927k27070001
47	AMT	Precor USA	cardio	a927k27070003
48	AMT	Precor USA	cardio	a927k26070059
49	Camber Curl	Precor USA	strength_selectorize	bk98c02060003
50	Angled Seated Calf	Precor USA	strength_selectorize	bfrhc02060001
51	Leg Sled-Seated	Precor USA	strength_selectorize	bn36b28060002
52	Leg Extension	Precor USA	strength_selectorize	bcfec07060002
53	Seated Leg Curl	Precor USA	strength_selectorize	bnhmc06060001
54	back extention 363	Precor USA	strength_selectorize	bffkc07060002
55	abductor	Precor USA	strength_selectorize	bkcac04060001
56	abductor	Precor USA	strength_selectorize	be42c070600003
57	dip/chin assist	Precor USA	strength_selectorize	
58	pec/fly	Precor USA	strength_selectorize	BFKBB28060002
59	pulldown	Precor USA	strength_selectorize	bbwcc06060001
60	glute isolater	Precor USA	strength_selectorize	berwc06090001
61	a.bench/ pro ab	Precor USA	strength_selectorize	bf45c07060001
62	pull up	hammer strength	strength_misc	bwcldr a00 0832
63	abdominal isolation	Precor USA	strength_selectorize	ba44c02060001
64	a.bench left	Precor USA	strength_selectorize	bkfbc07060001
65	vertical chest press	Precor USA	strength_selectorize	bc33c06060002
66	Vertical Row	Precor USA	strength_selectorize	b287c03060001
67	Shoulder Press	Precor USA	strength_selectorize	BFJDC01060002
68	reverse lat	Precor USA	strength_selectorize	bjrnc 02060001
69	seated dip	Precor USA	strength_selectorize	bfctc07060001
70	flat tricep ex.	Precor USA	strength_selectorize	btbnc03060001
71	vertical bench press	Precor USA	strength_selectorize	bc33c06060001
72	Camber Curl	Precor USA	strength_selectorize	bk98c02060002
73	Abdominal Isolator	Precor USA	strength_selectorize	ba44b22060001
74	bench	Precor USA	strength_misc	bwecd06060029
75	Leg Extension	Precor USA	strength_selectorize	bcfec02060005
76	Seated Leg Curl	Precor USA	strength_selectorize	bnhmc07060001
77	leg sled prone	Precor USA	strength_selectorize	bn36c02060001
78	Upright Bike	Precor	cardio	
79	Recumbent Bike	Precor	cardio	
80	Stepper	Precor	cardio	
81	Stepper	Precor	cardio	
82	Elliptical	Precor	cardio	
83	Elliptical	Precor	cardio	
84	AMT	Precor	cardio	
85	AMT	Precor	cardio	
86	bench	Precor USA	strength_misc	bkcwc07060001
87	bench	Precor USA	strength_misc	beyfc03060002
88	bench	Precor USA	strength_misc	bttac03060001
89	ab-coaster	abcoaster	strength_misc	
90	bench	Precor USA	strength_misc	btfec03060002
91	bench	Precor USA	strength_misc	abjaec07060001
92	ab lift	Precor USA	strength_misc	bkcwc03060002
93	bench	Precor USA	strength_misc	bttac03060002

Equipment listing reflects FFI's books and records as at October 13, 2020.

Equipment Report for Evolution Fitness - McCarthy Location				
ID	Model	Manufacturer	Type	SerialNumber
94	bench	Precor USA	strength_misc	btfeb08060004
95	abcoaster	abcoaster	strength_misc	
96	bench	Precor USA	strength_misc	00xml05050238
97	bench	Precor USA	strength_misc	00xml05050236
98	bench	Precor USA	strength_misc	bjeac03060002
99	bench	Precor USA	strength_misc	bbmnc03060001
100	bench	Precor USA	strength_misc	
101	bench		strength_misc	beyfc03060001
102	bench		strength_misc	ba24c01060001
103	bench		strength_misc	bjeac03060001
104	bench		strength_misc	ba24c06060001
105	bench		strength_misc	bm97c03060001
106	bench		strength_misc	beyfb21060003
107	iso lat row	hammer strength	strength_plateloaded	ilr0w e00 7163
108	iso lat front / lat pull down	hammer strength	strength_plateloaded	ilpd b00 4995
109	iso lat high row	hammer strength	strength_plateloaded	ilhr c 4958
110	pull up	Precor USA	strength_plateloaded	bjmcc03060002
111	bicep curl bench	Precor USA	strength_plateloaded	bjfrb24060004
112	bicep curl bench	Precor USA	strength_plateloaded	bjfrb24060001
113	weight stand	Precor USA	strength_misc	bctrb20060002
114	iso lat incline press	hammer strength	strength_plateloaded	ILIPH E00 6868
115	iso lat bench press	hammer strength	strength_plateloaded	ilbph d00 6475
116	iso lat shoulder press	hammer strength	strength_plateloaded	ILSP C00 7233
117	iso lat decline press	hammer strength	strength_plateloaded	ildcp c00 3907
118	weight stand	Precor USA	strength_misc	bctrb20060004
119	Bench Press	Precor USA	strength_plateloaded	bcbbc04060001
120	Shoulder Press	Precor USA	strength_plateloaded	bcdjc07060001
121	Incline Bench Press	Precor USA	strength_plateloaded	bjprc04060001
122	dip/chin assist	Precor USA	strength_selecterize	bbtmc03050001
123	Pull Down	Precor USA	strength_selecterize	
124		Precor USA	strength_selecterize	
125	long pull	Precor USA	strength_selecterize	
126	pec fly / rear delt	Precor USA	strength_plateloaded	BFKBC01060001
127		Precor USA	strength_plateloaded	
128		Precor USA	strength_plateloaded	
129		Precor USA	strength_selecterize	
130	long pull	Precor USA	strength_selecterize	
131		Precor USA	strength_misc	
132		Precor USA	strength_misc	
133	calf raise	Precor USA	strength_plateloaded	b527b22060001
134	calf raise	Precor USA	strength_plateloaded	b527c02060001
135	squats	Precor USA	strength_plateloaded	bkdrc06060001
136	bench	Precor USA	strength_plateloaded	bkdrc03060001
137	Bench Press	Precor USA	strength_plateloaded	bjprc04060002
138	leg curl	Precor USA	strength_plateloaded	bnnjc0606001
139	Leg Extension	Precor USA	strength_plateloaded	bgagc07060001
140	Bench Press	Precor USA	strength_plateloaded	bcbbc04060004
141	squat bench	Precor USA	strength_plateloaded	bj38c07060001
142	angled leg press	Precor USA	strength_plateloaded	bjtlc01060002
143	machslide	Precor USA	strength_plateloaded	bjwjc02060001
144	Super Squat	Precor USA	strength_plateloaded	bc43c02060001
145	Incline Bench Press	Precor USA	strength_plateloaded	bthwc04060001
146	Bench Press	Precor USA	strength_plateloaded	bcbbc04060003
147	squats	Precor USA	strength_plateloaded	bcgcc06060001
148	weight shelf	Precor USA	strength_plateloaded	bctrb20060005
149	weight shelf	Precor USA	strength_plateloaded	bctrb20060001
153	Elliptical	Precor USA	cardio	aewec02060066
155	bench	Precor USA	strength_misc	ba24c06060002
182	Power Plate	Power Plate	misc	16000 387
183	Dual Cable Cross GZFM 6024.2	Free Motion Fitness	strength_misc	U70249931
184	ANTERIOR	Technogym	misc	ME0511100244
185		precor	misc	ME1011100331
186	Stretch Machine	Technogym	strength_selecterize	ME1015100304

Equipment listing reflects FFI's books and records as at October 13, 2020.

Equipment Report for Evolution Fitness - McCarthy Location				
ID	Model	Manufacturer	Type	SerialNumber
189	Functional Trainer	Precor	strength_misc	BMKKE08120001
190	Treadmill	Precor	cardio	AMWZD05120035
191	treadmill	precor	cardio	AMWZD05120038
192	treadmill	precor	cardio	AMWZD05120042
193	treadmill	precor	cardio	AMWZD04120090
194	treadmill	precor	cardio	AMWZD05120026
195	treadmill	precor	cardio	AMWZD05120036
196	treadmill	precor	cardio	AMWZD05120034
197	treadmill	precor	cardio	AMWZD05120001
198	treadmill	precor	cardio	AMWZD05120039
199	treadmill	precor	cardio	AMWZD05120050
200	treadmill	precor	cardio	AMWZD05120040
201	Treadmill	Precor	cardio	AMWZD05120037
202	treadmill	precor	cardio	AMWZD05120045
203	treadmill	precor	cardio	AMWZD05120046
204	treadmill	precor	cardio	AMWZD05120051
205	treadmill	precor	cardio	AMWZD05120041
206	treadmill	precor	cardio	AMWZD05120032
207	treadmill	precor	cardio	AMWZD05120047
208	treadmill	precor	cardio	AMWZD05120043
209	treadmill	precor	cardio	AMWZD05120033
210	Bed	HydroBed	misc	
213	AMT	precor	cardio	AJTEE15120022
214	amt	precor	cardio	AJTEE15120025
215	amt	precor	cardio	AJTEE15120027
216	amt	precor	cardio	AJTEE15120004
217	Climber	Precor	cardio	AJTEE15120002
218	Climber	Precor	cardio	AB34C12120001
219	upright_bike	precor	cardio	AYZGD24120010
220	upright_bike	precor	cardio	AYZGD24120010
221	recumbant_bike	precor	cardio	AXHUD16120008
222	recumbant_bike	precor	cardio	AXHGD16120007
223	Elliptical	precor	cardio	ADFXD09120038
224	Elliptical	precor	cardio	ADFXD09120030
225	Elipitical	precor	cardio	ADFXD09120029
226	Elliptical	precor	cardio	ADFXD09120034
227	Elliptical	precor	cardio	ADFXD09120035
228	Elliptical	precor	cardio	ADFXD09120032
229	Elliptical	precor	cardio	ADFXD09120028
230	elliptical	precor	cardio	ADFXD09120004
231	elliptical	precor	cardio	ADFXD09120001
232	elliptical	precor	cardio	ADFXD09120015
233	Elliptical	precor	cardio	ADFXD09120031
234	Elliptical	precor	cardio	ADFXD09120002
235	Krank	Matrix	cardio	KCO1111105539
236	Krank	Matrix	cardio	KCO1111105538
241	amt	precor	misc	
242	amt	precor	misc	
243	amt	precor	misc	
244	amt	precor	misc	
245	amt	precor	misc	
246	amt	precor	misc	
247	amt	precor	misc	
248	amt	precor	misc	
249	amt	precor	misc	
250	VARIO 700 UNITY	Technogym	cardio	DAF33V15000897
251	VARIO 700 UNITY	Technogym	cardio	DAF33V15001126
252	RECLINE 700 UNITY	Technogym	cardio	DAD33V15001194

Equipment listing reflects FFI's books and records as at October 13, 2020.

Equipment Report for Evolution Fitness - McCarthy Location				
ID	Model	Manufacturer	Type	SerialNumber
253	UPRIGHT BIKE	Technogym	cardio	DAC33V15001329
254	VARIO 700 UNITY	Technogym	cardio	DAF33V15001182
255	VARIO 700 UNITY	Technogym	cardio	DAF33V15000917
256	AMT	Matrix	cardio	EP308150505800
257	AMT	Matrix	cardio	EP308150705868
258	AMT	Matrix	cardio	EP308150505804
259	AMT	Matrix	cardio	EP308150505807
260	CROSSOVER 700 UNITY	Technogym	cardio	DAG73V15000445
261	RECUMBANT BIKE	Technogym	cardio	DAD33V15001199
262	UPRIGHT BIKE 700 UNITY	Technogym	cardio	DAC33V15001332
263	JOGNOW 700 UNITY	Technogym	cardio	DAK3AV15000475
264	JOGNOW 700 UNITY	Technogym	cardio	DAK3AV15000473
265	JOGNOW 700 UNITY	Technogym	cardio	DAK3AV15000479
266	JOGNOW 700 UNITY	Technogym	cardio	DAK3AV15000480
267	JOGNOW 700 UNITY	Technogym	cardio	DAK3AV15000335
268	JOGNOW 700 UNITY	Technogym	cardio	DAK3AV15000336
269	spin_bike	technogym	cardio	D92BBNE016006479
270	spin_bike	technogym	cardio	D92BBNE016006481
271	spin_bike	technogym	cardio	D92BBNE016006532
272	spin_bike	technogym	cardio	D92BBNE016006415
273	spin_bike	technogym	cardio	D92BBNE016005000
274	spin_bike	technogym	cardio	D92BBNE016006498
275	spin_bike	technogym	cardio	D92BBNE016004993
276	spin_bike	technogym	cardio	D92BBNE016006531
277	spin_bike	technogym	cardio	D92BBNE016006451
278	spin_bike	technogym	cardio	D92BBNE016005030
279	spin_bike	technogym	cardio	D92BBNE016006555
280	spin_bike	technogym	cardio	D92BBNE016006416
281	spin_bike	technogym	cardio	D92BBNE016006524
282	spin_bike	technogym	cardio	D92BBNE0160006413
283	spin_bike	matrix	cardio	LARB0006769B151
284	spin_bike	matrix	cardio	LARB0006796B151
285	spin_bike	matrix	cardio	LARB0006819B151
286	spin_bike	matrix	cardio	LARB0006761B151
287	spin_bike	matrix	cardio	LARB0006786B151B151
288	spin_bike	matrix	cardio	LARB0006759B151
289	spin_bike	matrix	cardio	LARB0006524B151
290	Spin Bike	Matrix	cardio	LARB0006788B151
291	Spin bike	Matrix	cardio	LARB0006773B151
292	Water Rower	WaterRower	cardio	130667
293	Water Rower	WaterRower	cardio	130774
294	Water Rower	WaterRower	cardio	130670
295	TANNING BOOTH	HEX	misc	H2C-10373-0209
301	GZFM6001-3 Shoulder	Freemotion	strength_selecterize	V53273167
302	GZFM6020-3 Lat	FreeMotion	strength_selecterize	V43272942
303	GZFM6000-3 Chest	Freemotion	strength_selecterize	V53273159
304	GZFM6003-3 Tricep	FreeMotion	strength_selecterize	V43272890
305	GZFM6002-3 Bicep	FreeMotion	strength_selecterize	V53273178
306	GZFM6004-3 Row	Freemotion	strength_selecterize	V53273182
307	Rower	WaterRower	misc	130601
308	Adjustable Bench	Precor	misc	BA24C06060001

**[Appendix “2”]**

## Appendix "2"

**Equipment listing reflects FFI's books and records as at October 13, 2020.**

Equipment Report for Evolution Fitness - Pasqua Location				
ID	Model	Manufacturer	Type	SerialNumber
1	Treadmill	Matrix	cardio	FTM501E150325978
2	Treadmill	Matrix	cardio	FTM501E150325976
3	Treadmill	Matrix	cardio	FTM501E151029943
4	Treadmill	Matrix	cardio	FTM501E150426278
5	Treadmill	Matrix	cardio	FTM501E150426307
6	Treadmill	Matrix	cardio	FTM501E150325974
7	Treadmill	Matrix	cardio	FTM501E150426279
8	Treadmill	Matrix	cardio	FTM501E151029944
9	Treadmill	Matrix	cardio	FTM501E150325979
10	Treadmill	Matrix	cardio	FTM501E150325975
11	Treadmill	Matrix	cardio	FTM501E150426282
12	Treadmill	Matrix	cardio	FTM501E150426289
13	Treadmill	Matrix	cardio	FTM501E150426281
14	Treadmill	Matrix	cardio	FTM501E150426280
15	Treadmill	Matrix	cardio	FTM501E150426288
16	Treadmill	Matrix	cardio	FTM501E150426290
17	Treadmill	Matrix	cardio	FTM501E150426291
18	Treadmill	Matrix	cardio	FTM501E150426292
19	Ascent Trainer (no arms)	Matrix	cardio	EP617151000526
23	Ascent Trainer	Matrix	cardio	EP308150505801
24	Ascent Trainer	Matrix	cardio	EP308150505808
25	Ascent Trainer	Matrix	cardio	EP308150505802
26	Ascent Trainer	Matrix	cardio	EP308150505806
27	Ascent Trainer	Matrix	cardio	EP308150605851
28	Ascent Trainer	Matrix	cardio	EP308150505805
30	Ascent Trainer	Matrix	cardio	EP308150605849
31	Ascent Trainer	Matrix	cardio	EP308150505803
32	Ascent Trainer (no arms)	Matrix	cardio	EP617151000524
33	Ascent Trainer	Matrix	cardio	EP308150605852
34	Ascent Trainer	Matrix	cardio	EP308150705865
35	Ascent Trainer	Matrix	cardio	EP308150605850
36	Ascent Trainer (no arms)	Matrix	cardio	EP617151000525
37	Upright Cycle	Matrix	cardio	CB92151008164
38	Upright Cycle	Matrix	cardio	CB92151008163
39	Upright Cycle	Matrix	cardio	CB92151008165
40	Upright Cycle	Matrix	cardio	CB92151008175
41	Recumbent Bike	Matrix	cardio	RB307150706473
42	Recumbent Bike	Matrix	cardio	RB307150706472
43	Recumbent Bike	Matrix	cardio	RB307150706467
44	Stepper	Matrix	cardio	CS11B151002942
45	Stepper	Matrix	cardio	CS11B151002948
46	Stepper	Matrix	cardio	CS11B151002941
47	Hybrid Cycle	Matrix	cardio	CB93150501963
48	Hybrid Cycle	Matrix	cardio	CB93150702085
49	Climbmill	Matrix	cardio	CS24151003448
50	Climbmill	Matrix	cardio	CS24151003400
51	Climbmill	Matrix	cardio	CS24151003398
53	Spin Bike	Matrix	cardio	LARB0006767B15I
54	Spin Bike	Matrix	cardio	LARB0006785B15I
55	Spin Bike	Matrix	cardio	LARB0006818B15I
56	Spin Bike	Matrix	cardio	LARB0006821B15I
57	Spin Bike	Matrix	cardio	LARB0006814B15I
58	Spin Bike	Matrix	cardio	LARB0006817B15I
59	Spin Bike	Matrix	cardio	LARB0006794B15I
60	Spin Bike	Matrix	cardio	LARB0006782B15I
61	Spin Bike	Matrix	cardio	LARB0006797B15I
62	Spin Bike	Matrix	cardio	LARB0006770B15I
63	Spin Bike	Matrix	cardio	LARB0006815B15I
64	Spin Bike	Matrix	cardio	LARB0006795B15I
65	Spin Bike	Matrix	cardio	LARB0006760B15I
66	Spin Bike	Matrix	cardio	LARB0006798B15I
67	Spin Bike	Matrix	cardio	LARB0006819B15I

Equipment listing reflects FFI's books and records as at October 13, 2020.

Equipment Report for Evolution Fitness - Pasqua Location				
ID	Model	Manufacturer	Type	SerialNumber
69	Spin Bike	Matrix	cardio	LARB0006816B15I
70	Spin Bike	Matrix	cardio	LARB0006822B15I
71	Spin Bike	Matrix	cardio	LARB0006768B15I
72	Spin Bike	Matrix	cardio	LARB0006786B15I
74	Spin Bike	Matrix	cardio	LARB0006820B15I
75	Spin Bike	Matrix	cardio	LARB0006759B15I
76	Spin Bike	Matrix	cardio	LARB0006761B15I
77	Spin Bike	Matrix	cardio	LARB0006771B15I
78	Spin Bike	Matrix	cardio	LARB0006793B15I
79	Spin Bike	Matrix	cardio	LARB0006796B15I
80	Spin Bike	Matrix	cardio	LARB0006769B15I
81	Spin Bike	Matrix	cardio	LARB0006777B15I
82	Spin Bike	Matrix	cardio	LARB0006762B15I
83	ANTERIOR Stretch Machine	Matrix	strength_misc	ME0515100141
84	Jacobs Ladder	Jacob's Ladder	cardio	5730
85	Rear Delt/Pec Fly	Precor	strength_misc	BGJPG17090002
86	Power Plate	Power Plate	strength_misc	16000992PP04128510
87	Matrix Aura Back Extension Bench	Matrix	strength_misc	G3FW52DE1509GA099
88	Matrix Aura Back Extension Bench	Matrix	strength_misc	G3FW52DE1507GA017
89	Matrix MG Adjustable Ab Bench	Matrix	strength_misc	FW214E1410GA017
90	Matrix Aura Multi-adjustable Bench	Matrix	strength_misc	G3FW80E1504GA062
91	Matrix Aura Flat Bench	Matrix	strength_misc	G3FW81E1509GA029
92	Versa Leg Press Plus LS/HS-B	Matrix	strength_misc	VSGM64E1509GA024
93	Versa Leg Extension Plus LS-B	Matrix	strength_misc	VSGM62E1508GA012
94	Versa Seated Leg Curl Plus LS-B	Matrix	strength_misc	VSGM61E1505GA005
95	Matrix Aura Functional Trainer 400	Matrix	strength_misc	G3MS11E1505GA007
96	Smith Machine	Matrix	strength_misc	VYPL811511002
97	Versa Ad/Ab Plus LS-B	Matrix	strength_misc	VSGM69E1408GA021
98	Ultra Seated Leg Curl-Black	Matrix	strength_misc	G7GM45E1509GA003
99	Ultra Leg Ext-Black	Matrix	strength_misc	G7GM44E1510GA001
100	Ultra Glute-Black	Matrix	strength_misc	G7GM55E1509GA034
101	Versa Ad/Ab Plus LS-B	Matrix	strength_misc	VSGM69E1408GA023
102	Ultra Prone Leg Curl-Black	Matrix	strength_misc	G7GM54E1510GA017
103	Ultra Div. Lat Pulldown-Black	Matrix	strength_misc	G7GM42E1506GA020
104	Ultra Div. Seated Row-Black	Matrix	strength_misc	G7GM43E1509GA031
105	Ultra Conv Chest Press-Black	Matrix	strength_misc	G7GM41E1506GA063
106	Ultra Pec Fly-Black	Matrix	strength_misc	G7GM52E1507GA008
107	Ultra Conv Chest Press-Black	Matrix	strength_misc	G7GM41E1506GA064
108	Ultra Cov Shoulder Press-Black	Matrix	strength_misc	G7GM40E1507GA042
109	Aura Dip Chin Assist-Black	Matrix	strength_misc	G3GM21E1509GA035
110	Ultra Seated Tri.Press-Black	Matrix	strength_misc	G7GM47E1510GA008
111	Ultra Indep.Bicep Curl-Black	Matrix	strength_misc	G7GM46E1510GA002
112	MG 45 Degree Leg Press-Black Built	Matrix	strength_misc	PL04BE1506GA077
113	MG Hack Squat-Black Built	Matrix	strength_misc	PL212E1508GA051
114	MG 45 Degree Leg Press-Black Built	Matrix	strength_misc	PL04BE1506GA054
115	Matrix MG Seated Calf	Matrix	strength_misc	PL03BE1510GA023
116	Matrix MG Squat/Lunge	Matrix	strength_misc	PL09BE1509GA002
117	Matrix MG Vertical Bench Press	Matrix	strength_misc	PL210E1509GA005
118	MG Vertical Decline Bench -Black Built	Matrix	strength_misc	PL204E1508GA014
118	Treadmill	Matrix	cardio	FTM501E150426292
119	MG Lat Pulldown-Black Built	Matrix	strength_misc	PL08BE1509GA031
120	Matrix MG Shoulder Press	Matrix	strength_misc	PL06BE1509GA019
121	Matrix MG Seated Row	Matrix	strength_misc	PL07CE1508GA013
122	MG Incline Bench-Black Built	Matrix	strength_misc	PL211E1508GA028
123	Matrix MG VKR w/Chin	Matrix	strength_misc	FW223E1509GA041
124	Matrix Aura Functional Trainer 400	Matrix	strength_misc	G3MS11E1509GA039
125	Matrix MG Breaker Olympic Shoulder	Matrix	strength_misc	FW207E1405GA044
126	Matrix MG Breaker Olympic Flat Bench	Matrix	strength_misc	FW202E1509GA033
127	Matrix MG Breaker Olympic Incline	Matrix	strength_misc	FW204E1505GA040
128	MG Breaker Oly Dec Bench-Black Pad	Matrix	strength_misc	FW206E1412GA005
129	Matrix MG Breaker Olympic Flat Bench	Matrix	strength_misc	FW202E1508GA081
130	Matrix MG Breaker Olympic Flat Bench	Matrix	strength_misc	FW202E1509GA040
131	Matrix MG Breaker Olympic Incline	Matrix	strength_misc	FW204E1504GA051



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Equipment Report for Evolution Fitness - Pasqua Location				
ID	Model	Manufacturer	Type	SerialNumber
132	Matrix Aura Adjustable Pulley	Matrix	strength_misc	G3MS53E1511GA009
133	Matrix Aura Triceps Pressdown	Matrix	strength_misc	G3MS52E1510GA003
134	Matrix Aura Lat Pulldown	Matrix	strength_misc	G3MS51E1511GA004
135	Matrix Aura Adjustable Pulley	Matrix	strength_misc	G3MS24E1509GA047
136	Matrix Aura Adjustable Pulley	Matrix	strength_misc	G3MS24E1511GA010
137	Matrix Aura Lat Pulldown	Matrix	strength_misc	G3MS51E1509GA035
138	Matrix Aura Triceps Pressdown	Matrix	strength_misc	G3MS52E1510GA009
139	Matrix Aura Seated Row	Matrix	strength_misc	G3MS53E1511GA006
140	Matrix MG Standing Arm Curl	Matrix	strength_misc	FW213E1505GA016
141	Matrix Aura Adjustable Decline Bench	Matrix	strength_misc	G3FW83E1510GA086
142	Matrix Aura Utility Bench	Matrix	strength_misc	G3FW84E1509GA013
143	Matrix Aura Multi-adjustable Bench	Matrix	strength_misc	G3FW80E1504GA063
144	Matrix Aura Utility Bench	Matrix	strength_misc	G3FW84E1506GA011
145	Matrix Aura Multi-adjustable Bench	Matrix	strength_misc	G3FW80E1509GA230
146	Matrix Aura Flat Bench	Matrix	strength_misc	G3FW81E1509GA025
147	Matrix Aura Multi-adjustable Bench	Matrix	strength_misc	G3FW80E1509GA233
148	Matrix Aura Multi-adjustable Bench	Matrix	strength_misc	G3FW80E1509GA231
149	Matrix Aura Adjustable Decline Bench	Matrix	strength_misc	G3FW83E1510GA089
150	Matrix Aura Barbell Rack	Matrix	strength_misc	G3FW96E1506GA041
151	Matrix MG Adjustable Ab Bench	Matrix	strength_misc	FW214E1410GA018
152	Matrix MG Ab Crunch Bench	Matrix	strength_misc	PL50BE1508GA007
153	Posterior-Stretch Machine	TechnoGym	strength_misc	ME1011100325
154	Concept 2 Rower	Concept	cardio	5.1315E+18
155	Stretch Machine	Precor	strength_misc	00xMJ06080314
156	Smith Machine	Matrix	strength_misc	VYPL811511003
157	MG MEGA Full Power Rack 8" Tall IS	Matrix	strength_misc	MGPR331512001
158	MG MEGA Full Power Rack 8" Tall IS	Matrix	strength_misc	MGPR331511022
159	MG MEGA Full Power Rack 8" Tall IS	Matrix	strength_misc	MGPR331511021
160	Kinesis-Alpha	TechnoGym	misc	M5550-FN0000-06000171
161	Kinesis-Beta	TechnoGym	misc	M5650-FN0000-06000101
162	Kinesis-Gamma	TechnoGym	misc	M5600-FN0000-06000185
163	Kinesis-Delta	TechnoGym	misc	M5700-FN0000-05000220
164	Tanning Bed 1		misc	HZC-10374-02-09
165	Tanning bed 2		misc	
166	Tanning bed 3		misc	HZC-10375-02-09
167	Hydro Bed 1		misc	
168	Hydro Bed 2		misc	
169	Full Power Rack	Atlantis	strength_plateloaded	70365
170	Full Power Rack	Atlantis	strength_plateloaded	70234
171	Full Power Rack	Atlantis	strength_plateloaded	70364
172	Multy Power Station	Atlantis	strength_plateloaded	70351
173	Leg Curl C-606	Atlantis	strength_misc	70339
174	Back D-215	Atlantis	strength_misc	70333
175	Atlantis	Atlantis	strength_misc	70358
176	Legs c-113	Atlantis	strength_misc	70347
177	Treadmill	Curve	cardio	287620814
178	Bike	WattBike-Pro	cardio	22015620
179	Bike	WattBike-Pro	cardio	22015622
180	Bike	WattBike-Pro	cardio	22015608
181	Bike	WattBike-Pro	cardio	22015623
182	Bench	Precor	strength_misc	PRECOR
183	Bench	York	strength_misc	37-068
185	Bench	York	strength_misc	37-082
186	Bench	Precor	strength_misc	PRECOR
187	Super Squat 624	Precor	strength_misc	BNJMC11090001
188	Recumbent Bike	Precor	cardio	A952A07090009
189	AMT	Precor	cardio	AJTEE15120023
190	AMT	Precor	cardio	AJTEE15120021

Equipment listing reflects FFI's books and records as at October 13, 2020.

Equipment Report for Evolution Fitness - Pasqua Location				
ID	Model	Manufacturer	Type	SerialNumber
201	Seated bench	MATRIX	misc	G3FW84E1506GA011
202	Krank Cycle	Matrix	cardio	KC01111105543
203	Rower	Water Rower	misc	130604
204	Rower	Water Rower	misc	130795

**[Appendix “3”]**

## **SCHEDULE “B”**

### **EXCLUDED ASSETS**

**1. 2121 Quance Street East Lease**

Leasehold interest in property described as Blk/Par F Plan No 101859914 Extension 0 between BTA Real Estate Group Inc. as Landlord and Family Fitness Inc. as Tenant pursuant to a commercial lease agreement dated August 30, 2013.

**2. 3615 Pasqua Street Lease**

Leasehold interest in property described as Block D, Plan 96R35131 Ext 4 pursuant to a commercial lease agreement between 575794 Saskatchewan Ltd. as Landlord and Northland Gold's Gym Corp. as tenant, dated August 11, 2008, as assumed by Family Fitness Inc. as Tenant.

**3. De Large Landen Financial Services Canada Inc. – Equipment Lease**

Family Fitness Inc.'s equity in or rights to equipment or chattels leased to Family Fitness Inc. as lessee by De Large Landen Financial Services Canada Inc. as lessor pursuant to Lease No. 001-0200956-000, dated November 15, 2015, as amended by Addendum to Lease No. 001-0200956-000, dated April 10, 2020.

## **SISP Procedure**

Pursuant to an order (the "**Consent Receivership Order**") of the Court of Queen's Bench for Saskatchewan (the "**Court**") dated October 13, 2020, Alvarez & Marsal Canada Inc. LIT was appointed as receiver over the property, assets and undertakings of Family Fitness Inc. ("**Family Fitness**" or the "**Company**") in Court File No. Q.B. 1195 of 2020 (the "**Receivership Proceedings**").

Pursuant to a sale and investment solicitation order (the "**SISP Order**") dated November 23, 2020, the Court approved a purchase and sale agreement (the "**Stalking Horse Bid**") between the Receiver and BTA Real Estate Group or its designated nominee, as purchaser (the "**Stalking Horse Bidder**"), contemplating an offer to, subject to certain conditions, purchase the property, including all assets necessary for the operation of the Company at three (3) locations at the addresses of 358 McCarthy Blvd., 3615 Pasqua St. and 2101 E Quance St., Regina, Saskatchewan and the sale procedures, in accordance with the terms and conditions set forth herein (as such process may be amended, restated or supplemented pursuant to the terms herein, the "**Sale Procedures**").

The SISP Order and these Sale Procedures shall exclusively govern the process for soliciting and selecting bids for the sale of the Property.

### **Definitions**

1. All capitalized terms used herein shall have the meanings given to them in Appendix "A" hereto.

### **SISP**

2. These Sale Procedures describe, among other things, the Property available for sale, the opportunity for the acquisition of the Property, the manner in which interested parties (the "**Potential Bidders**") may gain access to or continue to have access to due diligence materials concerning the Property, the manner in which bidders and bids become Qualified Bidders and Qualified Bids, respectively, the receipt and negotiation of bids received, the ultimate selection of one or more Successful Bid(s), and the process for obtaining approval of one or more Successful Bid(s) by the Court (collectively, the "**SISP**").
3. The SISP will be carried out by the Receiver in accordance with these Sale Procedures. In addition, the closing of any transaction may involve additional intermediate steps or transactions to facilitate consummation of such sale, including additional Court filings. In the event that there is a disagreement or clarification required as to the interpretation or application of these Sale Procedures or the responsibilities of the Receiver hereunder, the Court will have the jurisdiction to hear such matter and provide advice and directions, upon application of the Receiver with a hearing on no less than three (3) Business Days' notice.

### **As Is, Where Is Sale**

4. The sale of the Property and the Business will be on an "**as is, where is**" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or

description by the Receiver or any of its Representatives, except to the extent set forth in the relevant Definitive Agreement(s) with the Successful Bidder(s). Specifically, the representations, warranties, covenants or indemnities associated with the sale of the Property shall not be materially more favourable to the Successful Bidder than those set out in the Stalking Horse Bid.

#### **Free of Any and All Claims and Interests**

5. All of the right, title and interest of the Company in and to the assets will be sold and transferred free and clear of all Security Interests, claims, options, and interests therein and there against (collectively, the "**Claims and Interests**") pursuant to the approval and vesting order (the "**Approval and Vesting Order**") granted by the Court, with the exception of permitted encumbrances. Contemporaneously with such Approval and Vesting Order(s) being made, all such Claims and Interests shall attach to the net proceeds of the sale of such assets (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), except to the extent otherwise set forth in the Definitive Agreement(s) with the Successful Bidder(s).

#### **Solicitation of Interest**

6. As soon as reasonably practicable after the approval of the SISP Order by the Court:
  - (a) the Receiver will prepare a list of Potential Bidders for the Property. Concurrently, the Receiver will prepare a non-confidential initial offering summary (the "**Teaser**") notifying Potential Bidders of the existence of the SISP and inviting the Potential Bidders to express their interest in making a Bid for the Property in accordance with these Sale Procedures;
  - (b) the Receiver shall cause a notice of the SISP contemplated by these Sale Procedures and such other relevant information which the Receiver considers appropriate to be published in the Regina Leader Post and Saskatoon Star Phoenix and shall invite Bids from interested parties. The opportunity to acquire the Property and the Business will be posted on the Receiver's website as soon as practical following the issuance of the SISP Order. At the discretion of the Receiver, the Receiver can additionally conduct a targeted marketing process to solicit interest from other interested parties;
  - (c) the Receiver shall distribute to the Potential Bidders the Teaser, a copy of the SISP Order (including the Sale Procedures) and a form of Confidentiality Agreement acceptable to the Receiver; and
  - (d) after execution of the Confidentiality Agreement in proper form the Receiver will provide the Potential Bidders and the Stalking Horse Bidder with access to the Data Room.

### **Participation Requirements**

7. Unless otherwise provided for herein, ordered by the Court, or agreed by the Receiver, in order to participate in the Sale Procedures and be considered for qualification as a Qualified Bidder, a Potential Bidder must, prior to the distribution of any confidential information, deliver to the Receiver:
  - (a) an executed Confidentiality Agreement, which shall enure to the benefit of any Successful Bidder(s) of the assets or any part thereof on the closing of the Successful Bid(s);
  - (b) a specific indication of the anticipated sources of capital for such Potential Bidder and preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit support or enhancement that will allow the Receiver to make, in its reasonable business or professional judgment, a determination as to the Potential Bidder's financial and other capabilities to consummate the proposed transaction;
  - (c) a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder, full disclosure of the direct and indirect owners of the Potential Bidder and their principals; and
  - (d) a written acknowledgement of receipt of a copy of the SISP Order approving these Sale Procedures and agreeing to accept and be bound by the provisions contained therein and herein.
8. A Potential Bidder that has satisfied all of the requirements described in Section 7 above and who the Receiver determines has a reasonable prospect of completing a transaction contemplated herein, will be deemed a "**Qualified Bidder**". Notwithstanding these requirements, the Receiver may, in its sole and absolute discretion, designate any Potential Bidder as a Qualified Bidder.

### **Due Diligence**

9. The Receiver shall provide any person deemed to be a Qualified Bidder with access to the Data Room and further access to such due diligence materials and information relating to the Property, as the Receiver deems appropriate, including access to further information in the Data Room, where appropriate.
10. The Receiver (and its Representatives) do not make any representations or warranties whatsoever, and shall have no liability of any kind whatsoever, as to the information or the materials provided through the due diligence process or otherwise made available to any Potential Bidder, Qualified Bidder, Qualified Final Bidder or Successful Bidder, with respect to the Property or any part thereof, the Company's Business, including any information contained in the Teaser or Data Room and provided or made in any management presentations.

11. The Receiver reserves the right to limit any Qualified Bidder's access to any confidential information (including any information in the Data Room), where, in the Receiver's discretion, such access could negatively impact the Sale Procedures, the ability to maintain the confidentiality of confidential information, or the value of the Property. Requests for additional information are to be made to the Receiver. The Receiver shall not be obligated to furnish any due diligence information after the Bid Deadline.

### **PHASE 1**

#### **Bid Procedure**

##### ***Bid Deadline***

12. From the date of the SISP Order until the Bid Deadline, the Receiver, in accordance with the terms of the SISP Order, will solicit Bids for the Property from Qualified Bidders and, from the date of its designation as a Qualified Bidder until the Bid Deadline, each Qualified Bidder will have the opportunity to make a Bid to the Receiver.
13. Each Qualified Bidder must deliver its Bid to the Receiver so as to be received by the Receiver not later than Noon (Calgary Time) on December 18, 2020 (the "**Bid Deadline**").

##### **Bid**

14. In assessing a Bid, the Receiver will consider the following things, among others, when determining whether such Bid constitutes a Qualified Bid:
  - (a) it includes a letter stating that the Bid is irrevocable until the earlier of: (i) 11:59 p.m. on the Business Day following the closing of a transaction with a Successful Bidder in respect of the Property or a part thereof; and (ii) thirty (30) Business Days following the Bid Deadline; provided, however, that if such Bid is selected as a Successful Bid, it shall remain irrevocable until 11:59 p.m. (Calgary Time) on the Business Day following the closing of the Successful Bid or Successful Bids, as the case may be;
  - (b) it includes a duly authorized and executed purchase and sale agreement, substantially in the form of the Stalking Horse Bid (the "**Definitive Sale Agreement**"), specifying the Purchase Price, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the Qualified Bidder with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such ancillary agreements), as well as copies of such materials marked (in the form of a blackline) to show the amendments and modifications to the Stalking Horse Bid and such ancillary agreements and the proposed Approval and Vesting Orders;
  - (c) it does not include any request or entitlement to any break fee, expense reimbursement or similar type of payment;
  - (d) it provides for consideration at closing sufficient to satisfy the Qualified Consideration Requirement;



- (e) it includes evidence sufficient to allow the Receiver to make a reasonable determination as to the Qualified Bidder's (and its direct and indirect owners' and their principals') financial and other capabilities to consummate the transaction contemplated by the Bid, which evidence could include but is not limited to evidence of a firm, irrevocable commitment for all required funding and/or financing from a creditworthy bank or financial institution;
- (f) it is not conditioned on: (i) the outcome of unperformed due diligence by the Qualified Bidder; and/or (ii) obtaining any financing capital and includes an acknowledgement and representation that the Qualified Bidder has had an opportunity to conduct any and all required due diligence prior to making its Bid;
- (g) it fully discloses the identity of each entity that is bidding or otherwise that will be sponsoring or participating in the Bid, including the identification of the Qualified Bidder's direct and indirect owners and their principals, and the complete terms of any such participation;
- (h) it includes an acknowledgement and representation that the Qualified Bidder:
  - (i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be acquired and liabilities to be assumed in making its Bid;
  - (ii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, including by the Receiver or any of its Representatives, except as expressly stated in the Definitive Sale Agreement submitted by it;
  - (iii) confirms that the contemplated transaction will be made on an "**as is, where is**" and "**without recourse**" basis;
  - (iv) is a sophisticated party capable of making its own assessments in respect of making its Bid; and
  - (v) has had the benefit of independent legal advice in connection with its Bid;
- (i) it includes evidence of, in form and substance reasonably satisfactory to the Receiver, authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the Bid;
- (j) it is accompanied by a refundable deposit (the "**Deposit**") in the form of a wire transfer (to a trust account specified by the Receiver), or such other form acceptable to the Receiver, payable to the Receiver, in trust, in an amount equal to 10 percent

of the proposed Purchase Price, to be held and dealt with in accordance with these Sale Procedures;

- (k) if the Qualified Bidder is an entity newly formed for the purpose of the transaction, the Bid shall contain an equity or debt commitment letter from the parent entity or sponsor, which is satisfactory to the Receiver, that names the Receiver as third - party beneficiary of any such commitment letter with recourse against such parent entity or sponsor;
- (l) it includes evidence, in form and substance reasonably satisfactory to the Receiver, of compliance or anticipated compliance with any and all applicable regulatory approvals, the anticipated time frame for such compliance and any anticipated impediments for obtaining such approvals;
- (m) it provides contact information for any business, financial or legal advisors retained or to be retained in connection with the contemplated transaction; and
- (n) it contains other information reasonably requested by the Receiver.

#### **Stalking Horse Bid**

- 15. Pursuant to the SISP Order, the Stalking Horse Bid has been designated as such by the Receiver.
- 16. The Purchase Price under the Stalking Horse Bid will be \$800,000 plus the Assumed Liabilities (collectively, the "**Stalking Horse Bid Price**").
- 17. The Stalking Horse Bidder shall be entitled to increase the consideration of the Stalking Horse Bid. For greater certainty, nothing in this Section 17 shall restrict the ability of the Stalking Horse Bidder to, as agreed to by the Receiver, make amendments to the assets to be acquired and/or liabilities to be assumed pursuant to the Stalking Horse Bid.
- 18. If the Stalking Horse Bid is terminated at any time during the SISP, and there is no Qualified Bid received that satisfies the Qualified Consideration Requirement, the Receiver shall apply to the Court to seek advice and directions as to the continuation, modification or termination of the SISP.

#### **Assessment of Qualified Bids**

- 19. All Bids that, in the opinion of the Receiver, meet the criteria set out in Sections 12, 13 and 15, respectively, shall be deemed a "**Qualified Bid**" and, collectively, "**Qualified Bids**" and each Qualified Bidder who has submitted a Qualified Bid shall hereinafter be referred to as a "**Qualified Final Bidder**". The Stalking Horse Bid shall be deemed to be a Qualified Bid and the Stalking Horse Bidder shall be deemed to be a Qualified Final Bidder for all purposes of these Sale Procedures.
- 20. The Receiver shall be entitled, either prior to or following the Bid Deadline, to seek to clarify the terms of any Qualified Bid submitted by a Qualified Final Bidder. The Receiver may also select any or all Qualified Bid(s) for further negotiation and/or clarification of

any terms or conditions of such Qualified Bids, including the amounts offered, before identifying the highest or otherwise best Qualified Bid(s) received, as the case may be.

21. The Receiver may accept a revised or clarified Qualified Bid, provided that the initial Qualified Bid was received by the Receiver prior to the Bid Deadline.
22. The Receiver may waive compliance with any one or more of the items specified in Sections 14 and 154, and deem such non-compliant Bid to be a Qualified Bid; provided, however, that the Receiver shall not be entitled to waive the Qualified Consideration Requirement nor deem any Bid that fails to satisfy such requirements to be a Qualified Bid.
23. If the Receiver determines that: (a) no Qualified Bid was received; or (b) at least one Qualified Bid was received but it is not likely that the transactions (other than the Stalking Horse Bid) contemplated in any such Qualified Bids will provide greater consideration than the Stalking Horse Bid, the Stalking Horse Bid shall be deemed to be the Successful Bid and the Stalking Horse Bidder shall be the Successful Bidder, and the Receiver shall terminate the SISP and seek to implement the Stalking Horse Bid, including, by filing an application with the Court within five (5) Business Days (or as Court availability exists) of such termination seeking approval to implement the Stalking Horse Bid.
24. If the Receiver determines that (a) one or more Qualified Bids were received, and (b) it is likely that the transactions contemplated by one or more of such Qualified Bids will be consummated, the SISP will not be terminated and the Receiver will promptly notify all Qualified Bidders by no later than 6:00 p.m. MT on the day after the Bid Deadline, including the Stalking Horse Bidder, that they are permitted to participate in the Auction (as defined below).

### **Auction**

25. If, in accordance with Section 24 above, the Auction is to be held, the Receiver will conduct an auction (the "**Auction**"), as 9:00 am (Calgary Time) on December 21, 2020, at the offices of Torys LLP or other location as shall be communicated by the Receiver in a timely manner to all entities entitled to attend at the Auction, which Auction may be adjourned by the Receiver, subject to continued compliance with completion of the Auction by the date set out in these Sale Procedures, to another time and place selected by the Receiver (provided that notice thereof is sent to such entities). The Auction shall run in accordance with the following procedures:
  - (a) at least 12 hours prior to the Auction, each Qualified Bidder who has submitted a Qualified Bid must inform the Receiver whether it intends to participate in the Auction (the Qualified Bidders who so inform the Receiver shall be referred to as the "**Auction Bidders**");
  - (b) at least 12 hours prior to the Auction prior to the Auction, the Receiver will provide copies of the Qualified Bid which it believes is the highest or otherwise best Qualified Bid (the "**Starting Bid**") to all Auction Bidders;

- (c) only representatives of the Auction Bidders, the Receiver, and the Stalking Horse Bidder (and the advisors to each of the foregoing entities) are entitled to attend the Auction in person;
- (d) at the commencement of the Auction, each Auction Bidder shall be required to confirm that it has not engaged in any collusion with any other Auction Bidder with respect to the bidding or any sale;
- (e) only the Auction Bidders will be entitled to participate in the Auction and make any bids at the Auction; provided, however, that in the event that any Qualified Bidder elects not to attend and/or participate in the Auction, such Auction Bidder's Qualified Bid, as applicable, shall nevertheless remain fully enforceable against such Auction Bidder if it is selected as the Successful Bid at the conclusion of the Auction;
- (f) all Subsequent Bids (as defined below) presented during the Auction shall be made and received in one room on an open basis. All Auction Bidders will be entitled to be present for all Subsequent Bids at the Auction with the understanding that the true identity of each Auction Bidder at the Auction will be fully disclosed to all other Auction Bidders at the Auction and that all material terms of each Subsequent Bid will be fully disclosed to all other Auction Bidders throughout the entire Auction;
- (g) all Auction Bidders must have at least one individual representative with authority to bind such Auction Bidder present in person at the Auction;
- (h) the Receiver may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make Subsequent Bids, requirements to bid in each round, and the ability of multiple Auction Bidders to combine to present a single bid) for conducting the Auction, provided that such rules are (i) not inconsistent with these Sale Procedures or any order of the Court made in the Receivership proceedings; and (ii) disclosed to each Auction Bidder at the Auction;
- (i) bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one subsequent bid is submitted by an Auction Bidder (a "**Subsequent Bid**") that the Receiver determines is (A) for the first round, a higher or otherwise better offer than the Starting Bid, and (B) for subsequent rounds, a higher or otherwise better offer than the Leading Bid (as defined below); in each case by at least the Minimum Incremental Overbid (as defined below). Each bid at the Auction shall provide net value of at least \$25,000 (the "**Minimum Incremental Overbid**") over the Starting Bid or the Leading Bid, as the case may be; provided, however, that the Receiver shall retain the right to modify the increment requirements at the Auction, and provided, further that the Receiver, in determining the net value of any incremental bid, shall not be limited to evaluating the incremental dollar value of such bid and may consider other factors as identified in the "Selection Criteria" section of these Sale Procedures set forth below. After the first round of bidding and between each

subsequent round of bidding, the Receiver shall announce the bid (including the value and material terms thereof) that it believes to be the highest or otherwise best offer (the "**Leading Bid**"). A round of bidding will conclude after each Auction Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid;

- (j) the Receiver reserves the right, in its reasonable business judgment to make one or more adjournments in the Auction of no more than 2 hours each, to among other things (i) facilitate discussions between the Receiver and the Auction Bidders; (ii) allow the individual Auction Bidders to consider how they wish to proceed; (iii) consider and determine the current highest and best offer at any given time in the Auction; and (iv) give Auction Bidders the opportunity to provide the Receiver with such additional evidence as the Receiver, in its reasonable business judgment, may require, including that the Auction Bidder (including, as may be applicable, the Stalking Horse Bidder) has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing overbid amount;
- (k) the Stalking Horse Bidder shall be permitted, in its sole discretion, to submit Subsequent Bids, provided, however, that such Subsequent Bids are made in accordance with these Sale Procedures. No other person is entitled to submit a stalking horse bid in whole or in part;
- (l) if, in any round of bidding, no new Subsequent Bid is made, the Auction shall be closed and the then Leading Bid will become the "**Successful Auction Bid**";
- (m) the Auction shall be closed within 1 Business Days of the start of the Auction unless extended by the Receiver, at its sole and absolute discretion; and
- (n) no bids (from Qualified Bidders or otherwise) shall be considered after the conclusion of the Auction and the selection of the Successful Auction Bid.

#### **Selection Criteria- No Auction Process**

- 26. The Receiver will assess the Qualified Bids received, if any, and will determine whether the transactions contemplated by such Qualified Bids are likely to be consummated. Such assessments will be made as promptly as practicable after the Bid Deadline.
- 27. Evaluation criteria with respect to the assessment each Qualified Bid may include, but are not limited to items such as:
  - (a) the proposed Purchase Price and the net value (including assumed liabilities and other obligations to be performed or assumed by the Qualified Final Bidder) provided by such Qualified Bid;

- (b) the claims likely to be created by such Qualified Bid in relation to other Qualified Bids;
  - (c) the counterparties to the Qualified Bid;
  - (d) the proposed revisions to the Stalking Horse Bid and the terms of the transaction documents;
  - (e) other factors affecting the speed, certainty and value of the transaction (including any regulatory approvals required to close the transaction);
  - (f) the Property included or excluded from the Qualified Bid and the transaction costs and risks associated with closing multiple transactions versus a single transaction for all or substantially all of the Property; and
  - (g) the likelihood and timing of consummating the Qualified Bid.
28. The Receiver will identify the highest or otherwise best Qualified Bid(s) received (each such Qualified Bid, together with a Successful Auction Bid, will be referred to interchangeably as the "**Successful Bid**"). The Qualified Final Bidder(s) or Auction Bidders who made the Successful Bid(s) are the "**Successful Bidder(s)**". The Receiver will notify the Qualified Final Bidders of the identities of the Successful Bidder(s). If the Stalking Horse Bid is deemed to be the highest and best Qualified Bid, then the Stalking Horse Bid will be the Successful Bid, as the case may be.

#### **Definitive Agreements**

29. The Receiver will finalize the Definitive Agreement(s) in respect of any Successful Bidder(s), conditional upon approval of the Court, by no later than 5:00 p.m. (Calgary Time) by the end of December 2020 or such later date or time as the Receiver may determine appropriate in consultation with the Successful Bidder(s).

#### **Approval Hearing**

30. As soon as reasonably possible following the Bid Deadline and, in any event, within five (5) Business Days of the execution of the Definitive Agreement(s) by the Receiver and the Successful Bidder(s), the Receiver shall apply to the Court (the "**Approval Hearing**") for the Approval and Vesting Order, which may, among other things, approve the Successful Bid(s), authorize the Receiver to enter into any and all necessary agreements with respect to the Successful Bidder(s) and/or vest title to the assets or any part of the assets in the name of such Successful Bidder(s).
31. The Approval Hearing will be held on a date to be scheduled by the Court upon application by the Receiver, and in any event, not later than end of January 2021 or such later date as the Receiver and the Successful Bidder(s) may agree.
32. All Qualified Bids (other than any Successful Bid(s)) shall be deemed rejected on and as of the date of closing of the Successful Bid or date upon which all Successful Bids have closed, as the case may be.

33. If, following approval of the Successful Bid(s) by the Court, the Successful Bidder(s) fail to consummate the transaction for any reason, than the Receiver shall be entitled to re-engage with the Qualified Final Bidder(s) to attempt to renegotiate the Qualified Bids without further order of the Court.

### **Deposits**

34. All Deposits shall be retained by the Receiver and deposited in a non-interest bearing trust account. If there is Successful Bid, the Deposit(s) paid by each Successful Bidder whose Successful Bid is approved at the Approval Hearing shall be applied to the Purchase Price to be paid by that Successful Bidder upon closing of the approved Successful Bid and will be non-refundable. The Deposits of Qualified Final Bidders not selected as a Successful Bidder shall be returned to such Qualified Final Bidders within five (5) Business Days after the date on which their Qualified Bid is no longer irrevocable in accordance with these Sale Procedures. If there are no Successful Bid(s), all Deposits shall be returned to the respective Qualified Final Bidder(s) within two (2) Business Days of the date upon which these Sale Procedures are terminated.
35. In each case where:
- (a) a Successful Bidder breaches any of its obligations under a Definitive Agreement;
  - (b) a Qualified Bidder or Qualified Final Bidder breaches its obligations under the terms of these Sale Procedures; or
  - (c) a Qualified Final Bidder fails to complete the transaction contemplated by its Qualified Bid:

the Deposit provided by the applicable party will be forfeited to the Receiver as liquidated damages and not as a penalty. The Receiver shall apply any forfeited Deposit in a manner the Receiver sees fit.

### **Notice**

36. The addresses used for delivering documents to the Receiver as prescribed by the terms and conditions of these Sale Procedures are set out in **Exhibit 1** hereto. All bids and/or associated documentation shall be delivered to the Receiver by electronic mail, personal delivery or courier. Interested Potential Bidders requesting information about the qualification process, including a form of Stalking Horse Bid, and information in connection with their due diligence, should contact the Receiver at the contact information contained in **Exhibit 1**.
37. The Receiver: (a) may reject, at any time any Bid (other than the Stalking Horse Bid) that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Consent Receivership Order, these Sale Procedures or any orders of the Court applicable, or (iii) contrary to the best interests of the Company, their estates, and/or stakeholders as determined by the Receiver, acting reasonably; (b) in accordance with the terms hereof, may impose additional terms and conditions and otherwise seek to modify the Sale

Procedures at any time in order to maximize the results obtained; and (c) in accordance with the terms hereof, may accept bids not in conformity with these Sale Procedures to the extent that the Receiver determines, in its reasonable business judgment.

38. Prior to the conclusion of the Auction, the Receiver may impose such other terms and conditions, on notice to the relevant bidders, as the Receiver may determine to be in the best interests of the estate and its stakeholders that are not inconsistent with any of the procedures in these Sale Procedures.
39. These Sale Procedures do not, and shall not be interpreted to, create any contractual or other legal relationship between the Company, the Receiver and any Potential Bidder, Qualified Bidder, Auction Bidder or Successful Bidder, other than as specifically set forth in definitive agreements that may be executed by the Receiver.

#### **No Amendment**

40. There will be no amendments to these Sale Procedures not contemplated herein without the approval of the Court, on notice to the service list in the Receivership Proceedings, subject to such non-material amendments as may be determined to by the Receiver.

#### **Further Orders**

41. The Consent Receivership Order, SISP Order, the Sale Procedures, and any other Orders of the Court made in the Receivership Proceedings relating to the Sale Procedures shall exclusively govern the process for soliciting and selecting Bids.
42. Unless otherwise indicated herein, any event that occurs on a day that is not a Business Day shall be deemed to occur on the next Business Day.
43. All dollar amounts expressed herein, unless otherwise noted, are in Canadian currency.
44. Each Qualified Bidder, upon being declared as such under the Sale Procedures, shall be deemed to have irrevocably and unconditionally attorned and submitted to the jurisdiction of the Court in the Receivership Proceedings in respect of any action, proceeding or dispute in relation to the conduct or any aspect of the Sale Procedures and the SISP.
45. At any time during the SISP, the Receiver may apply to the Court for advice and directions with respect to the discharge of its obligations and duties herein.



**Exhibit 1 – Addresses and Contact Information of the Receiver**

**Alvarez & Marsal Canada Inc. LIT**

Attention: Orest Konowalchuk

Phone: (403) 538-4736

Email: [okonowalchuk@alvarezandmarsal.com](mailto:okonowalchuk@alvarezandmarsal.com)

Fax: (403) 538-7551

Bow Valley Square 4

Suite 1110, 250 6th Ave SW

Calgary, Alberta

T2P 3H7

**Appendix "A"**  
**Defined Terms**

**"Approval and Vesting Order"** is defined in Section 5.

**"Approval Hearing"** is defined in Section 30.

**"Bid"** means an offer to acquire all or part of the Property of the Company, or an offer to restructure, recapitalize or reorganize the Business and affairs of the Company as a going concern.

**"Bid Deadline"** is defined in Section 13.

**"Business"** means the business being carried on by the Company.

**"Business Day"** means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are open for business in the City of Calgary.

**"Claims and Interests"** is defined in Section 5.

**"Company"** is defined in the preamble.

**"Confidentiality Agreement"** means a confidentiality agreement in favour of the Receiver executed by a Potential Bidder, in form and substance satisfactory to the Receiver, which shall enure to the benefit of any Successful Bidder.

**"Court"** is defined in the preamble.

**"Data Room"** means a confidential virtual data room which contains documents furnished by the Company and a physical data room providing access to relevant technical information.

**"Definitive Agreements"** means all Definitive Sale Agreement(s).

**"Definitive Sale Agreement"** has the meaning set out in Section 14(b).

**"Deposit"** is defined in Section 14(j).

**"Expense Reimbursement"** has the meaning given to it in the Stalking Horse Bid.

**"Potential Bidder"** is defined in Section 2.

**"Property"** means all of the undertakings, property and assets of the Company.

**"Purchase Price"** means the price payable by a Successful Bidder for the selected Property pursuant to a Definitive Agreement and subject to adjustment in accordance with Section 3.4 of the Stalking Horse Bid by payment of the Wind Down Amount to the Vendor, providing a credit to the Debtor in the amount of the Credit Agreement Bid Amount against the Debtor's obligations under the Credit Agreement and assumption of the Assumed Liabilities.

**"Qualified Bid"** is defined in Section 19.

**"Qualified Bidder"** is defined in Section 8 and **"Qualified Bidders"** means more than one of them.

**"Qualified Consideration"** means consideration sufficient to repay immediately on closing: (a) the Secured Debt Repayment Requirement, any claims ranking senior in priority thereto that are or would be payable in the Receivership Proceedings, including any priority payables, and the Expense Reimbursement in cash.

**"Qualified Consideration Requirement"** means the requirement that any transaction, whether on its own, or in combination with one or more non-overlapping Qualified Bids for different Property, provides for consideration of at least the Qualified Consideration.

**"Qualified Final Bidder"** is defined in Section 19.

**"Receiver"** means Alvarez & Marsal Canada Inc. LIT, in its capacity as receiver and manager in the Receivership Proceedings and not in its personal or corporate capacity.

**"Receivership Proceedings"** is defined in the preamble.

**"Representatives"** when used with respect to a person means each director, officer, employee, consultant, contractor, financial advisor, legal counsel, accountant and other agent, adviser or representative of that person.

**"Sale Procedures"** is defined in the preamble.

**"Secured Debt"** has the meaning given to it in the Stalking Horse Bid.

**"Security Interest"** means any mortgage, charge, pledge, assignment, hypothecation, title retention, finance lease or security interest, including any trust obligations, creating in favour of any creditor a right in respect of the Property.

**"SISP"** has the meaning set out in Section 2.

**"SISP Order"** is defined in the preamble.

**"Stalking Horse Bid"** is defined in the preamble.

**"Stalking Horse Bid Price"** is defined in Section 16.

**"Stalking Horse Bidder"** is defined in the preamble.

**"Successful Bid"** is defined in Section 28.

**"Successful Bidder"** is defined in Section 28 and **"Successful Bidders"** means more than one of them.

**"Teaser"** is defined in Section 6(a).

COURT FILE NUMBER Q.B. No. 1195 of 2020

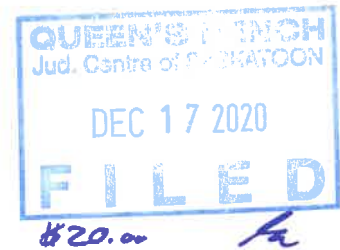
COURT OF QUEEN'S BENCH FOR SASKATCHEWAN  
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE SASKATOON

APPLICANT BTA REAL ESTATE GROUP INC.

RESPONDENT FAMILY FITNESS INC.

IN THE MATTER OF THE RECEIVERSHIP  
OF FAMILY FITNESS INC.



## ORDER

### (Approval of Sale and Investment Solicitation Process, and Stalking Horse Agreement)

Order made this 23 day of November, 2020.

Before the Honourable Mr. Justice Scherman in Chambers the 23<sup>rd</sup> day of November, 2020.

Upon application by Kyle Kashuba and Jessie Mann, counsel on behalf of the receiver, Alvarez & Marsal Canada Inc. (the "**Receiver**"), and upon hearing from Mike Russell, counsel on behalf of BTA Real Estate Group Inc., and counsel on behalf of other parties participating, and upon reading the Notice of Application dated the 16<sup>th</sup> day of November, the First Report of the Receiver dated November 16<sup>th</sup>, 2020 (the "**First Report**"), a supplemental report of the Receiver (the "**Supplemental Report**"), dated November 19<sup>th</sup>, 2020, and the draft Order, all filed with proof of service; and upon reading the pleadings and proceedings herein;

### THE COURT ORDERS:

#### SERVICE

1. To the extent required, the time for service of notice of the application for this order is hereby abridged and service thereof is deemed good and sufficient.

#### SISP PROCEDURES, STALKING HORSE BID AND BREAK FEE AND EXPENSE CHARGE

2. Capitalized terms utilized in this Order that are not otherwise defined in this Order shall have the meanings ascribed to them in the Procedures for the Sale and Investment Solicitation Process (the "**SISP Procedures**") in the form attached as Appendix A to the Supplemental Report.

3. The SISP Procedures (subject to any amendments thereto that may be made in accordance therewith) are hereby approved subject to the following changes to certain of the dates noted therein:

	Previous Date and Time	Current and Approved Date and Time
Bid Deadline (Paragraph - 13)	Noon (Calgary Time) on December 18, 2020	Noon (Calgary Time) on Friday, January 8, 2021
Auction Deadline (Paragraph - 25)-__	9:00 am (Calgary Time) on December 21, 2020	9:00 am (Calgary Time) on Tuesday, January 12, 2021
Definitive Agreement (Paragraph - 29)	End of December 2020	Friday, January 15, 2021
Approval Hearing (Paragraph - 31)	End of January 2021	End of January 2021

4. The Receiver is hereby authorized and directed to carry out the SISP Procedures and to take such steps and execute such documentation as may be necessary or incidental to the SISP Procedures, including, without limitation, entering into any resulting agreement(s) or transaction(s) which may arise in connection thereto, as the Receiver determines are necessary in connection with or in order to complete any or all of the various steps, as contemplated by the SISP.
5. Each of the Receiver and the Stalking Horse Bidder (solely in its capacity as the Stalking Horse Bidder) and their respective affiliates, partners, directors, employees, advisors, agents, shareholders and controlling persons shall have no liability with respect to any losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of the SISP Procedures or the conduct thereof, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or willful misconduct of any of the foregoing in performing their obligations under the SISP Procedures (as determined by this Court).
6. The Receiver is hereby authorized to negotiate, finalize and execute a definitive stalking horse agreement of purchase and sale (the “**Stalking Horse Bid**”) between the Receiver, as the seller (acting in its capacity as the Court-appointed receiver and manager of Family Fitness Inc. (the “**Debtor**”)) and the Stalking Horse Bidder, as purchaser, substantially in the form attached as Appendix “B” to the Supplemental Report.
7. The Stalking Horse Bid submitted by the Stalking Horse Bidder is hereby approved as the Stalking Horse Bid pursuant to and for purposes of the SISP Procedures, provided that nothing herein approves the sale to and the vesting of any assets or property in the Stalking Horse Bidder pursuant to the Stalking Horse Bid and that the approval of the sale and vesting of such assets and property shall be considered by this Court on a subsequent motion made to this Court if the Stalking Horse Bidder is the Successful Bidder pursuant to the SISP Procedures.
8. The Receiver’s obligation to pay the Break Fee and Expense Reimbursement pursuant to and in accordance with the Stalking Horse Bid is hereby approved.
9. The Receiver is hereby authorized and empowered to apply to this Court to amend, vary, or seek any advice or directions with regard to the SISP or with regard to the approval or vesting of any transactions, in connection with the SISP.

10. Pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver may disclose personal information of identifiable individuals to Potential Bidders and their advisors in connection with the SISP Procedures, but only to the extent desirable or required to carry out the SISP Procedures. Each Potential Bidder (and their respective advisors) to whom any such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information solely to its evaluation of a transaction in respect of the Receiver and/or the Debtor and the Property, and if it does not complete such a transaction, shall return all such information to the Receiver, or in the alternative destroy all such information. The Successful Bidder shall be entitled to continue to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## GENERAL

11. Service of this Order shall be deemed good and sufficient by:
  - (a) serving the same on the persons listed on the service list created in these proceedings; and
  - (b) posting a copy of this Order on the Receiver's website at <https://www.alvarezandmarsal.com/familyfitness> and service on any other person is hereby dispensed with.
12. The Receiver is at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.
13. This Order and all of its provisions are effective as of 12:01 a.m. Saskatchewan Time on the date of the issuance of this Order.

ISSUED at the City of Saskatoon, in the Province of Saskatchewan, this 17 day of December, 2020.



REGISTRAR DLI

**CONTACT INFORMATION AND ADDRESS FOR SERVICE**

Name of firm:	Torys LLP
Name of lawyer in charge of file:	Kyle Kashuba and Jessie Mann 4600 Eighth Avenue Place East 525 – Eighth Ave SW Calgary, AB T2P 1G1
Address of legal firms:	1.403.776.3744 and 1.403.776.3770 1.403.776.3800
Telephone number:	kkashuba@torys.com and jmann@torys.com
Fax number:	39108-2008
E-mail address:	
File no.	

COURT FILE NUMBER Q.B. No. 1195 of 2020  
COURT OF QUEEN'S BENCH FOR SASKATCHEWAN  
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE SASKATOON

APPLICANT BTA REAL ESTATE GROUP INC.

RESPONDENT FAMILY FITNESS INC.

**IN THE MATTER OF THE RECEIVERSHIP OF FAMILY FITNESS INC.**

**ORDER**  
**(Sale Approval and Vesting Order and Sealing Order)**

Before the Honourable Justice \_\_\_\_\_ in chambers the 5<sup>th</sup> day of February, 2021.

On the application of Alvarez & Marsal Canada Inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of the assets, undertakings and properties of Family Fitness Inc. (the "**Debtor**") pursuant to the Order of this Court made on October 13, 2020 (as may be amended from time to time) (the "**Receivership Order**"); and upon hearing from counsel for the Receiver, the Purchaser (as defined herein) and the Debtor and upon reading the Notice of Application dated January 29, 2021, the Second Report of the Receiver dated January 29, 2021 (the "**Second Report**"), and a proposed Draft Order, all filed and the pleadings and proceedings having taken herein:

The Court Orders:

**SERVICE**

1. Service of the Notice of Application on behalf of the Receiver and the materials filed in support thereof (collectively, the "**Application Materials**") shall be and is hereby deemed to be good and valid and, further, shall be and is hereby abridged, such that service of such Application Materials is deemed to be timely and sufficient.

**APPROVAL OF TRANSACTION**

2. The sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and BTA Real Estate Group Inc. (the "**Purchaser**") dated January 29, 2021 and appended to the Second Report, for the sale to the Purchaser (or its nominee) of the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**") is declared to be commercially reasonable and in the best interests of the Debtor and its creditors and other stakeholders and is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary.
3. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable (including any steps necessary or desirable to satisfy and/or comply with any applicable laws, regulations or orders of any courts, tribunals, regulatory bodies or administrative bodies in any jurisdiction in which the Purchased Assets may be located) for the completion of the Transaction or for the conveyance of the Purchased Assets to the Purchaser (or its nominee), subject to such amendments as the



Receiver and the Purchaser may agree upon, provided that any such amendments do not materially affect the Purchase Price.

## VESTING OF PROPERTY

4. Upon the Receiver determining that the Proposed Sale has closed to its satisfaction, and, for certainty, the Receiver has received payment of the Wind Down Amount (as defined in the Sale Agreement), and on terms substantially as approved by this Honourable Court pursuant to this Order, the Receiver shall deliver to the Purchaser (or its nominee) a Receiver's certificate substantially in the form set out in **Schedule "A"** hereto (the "**Receiver's Certificate**").

5. The Receiver may rely on written notices from the Purchaser regarding fulfillment or, if applicable, waiver of conditions to closing of the Proposed Sale under the Sale Agreement and shall have no liability with respect to the delivery of the Receiver's Certificate.

6. Upon delivery of the Receiver's Certificate all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on **Schedule "B"** hereto shall, save and except for the encumbrances listed in **Schedule "C"** hereto (the "**Permitted Encumbrances**"), vest absolutely in the name of the Purchaser (or its nominee), free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, interests, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, judgments, enforcement charges, levies, charges, or other financial or monetary claims (collectively, "**Encumbrances**") and all rights of others, 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:

- (a) any encumbrances or charges created by the Receivership Order;
- (b) all charges, security interests or claims evidenced by registrations pursuant to *The Personal Property Security Act, 1993*, SS 1993, c P-6.2, or any other personal property registry system; and
- (c) those Encumbrances listed in **Schedule "D"** hereto;

and, for greater certainty, this Court orders that all of the Encumbrances (save and except for the Permitted Encumbrances) affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets and, for certainty, the Receiver shall have no liability with respect to the repayment of the "Receiver's Certificate", as, only as relates to this paragraph 6, such term is defined in paragraph 22 of the Receivership Order (including, for certainty, any further Receiver's Certificates issued pursuant to paragraph 22 of the Receivership Order).

7. Upon delivery of the Receiver's Certificate to the Purchaser, the Receiver shall be and is hereby authorized to effect such discharges or revisions in the Saskatchewan Personal Property Registry as may be reasonably required to conclude the Transaction.

8. For the purposes of determining the nature and priority of the Encumbrances:

- (a) the net proceeds from the sale of the Purchased Assets (the "**Net Sale Proceeds**") shall stand in the place and stead of the Purchased Assets; and
- (b) from and after the delivery of the Receiver's Certificate to the Purchaser, all Encumbrances and all rights of others shall attach to the Net Sale 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 that possession or control immediately prior to closing of the Transaction.

9. The Purchaser (and its nominee, if any) shall, by virtue of the completion of the Transaction, have no liability of any kind whatsoever in respect of any Claims against the Debtor.
10. The Debtor and all persons who claim by, through or under the Debtor in respect of the Purchased Assets, save and except for the persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely barred and foreclosed from all estate, right, title, interest, royalty, rental and equity of redemption of the Purchased Assets and, to the extent that any such person remains in possession or control of any of the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).
11. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Debtor, or any person claiming by or through or against the Debtor.
12. Immediately after the closing of the Transaction, the holders of the Permitted Encumbrances shall have no claim whatsoever against the Receiver or the Debtor.
13. Forthwith after the delivery of the Receiver's Certificate to the Purchaser (or its nominee), the Receiver shall file a copy of the Receiver's Certificate with the Court, and shall serve a copy of the Receiver's Certificate on the recipients listed in the Service List maintained with respect to these proceedings.
14. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, the Debtor and the Receiver are hereby authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees. 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.
15. Notwithstanding:
  - a) the pendency of these proceedings;
  - b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 in respect of the Debtor and any bankruptcy order issued pursuant to such applications;
  - c) any assignment in bankruptcy made in respect of the Debtor; and
  - d) the provisions of any federal statute, provincial statute or any other law or rule of equity,

the vesting of any of the Purchased Assets in the Purchaser (or its nominee) pursuant to this Order and the obligations of the Debtor under the Sale Agreement, 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 nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 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.

16. The Transaction is exempt from any requirement under any applicable federal or provincial law to obtain shareholder approval and is exempt from the application of any bulk sales legislation in any Canadian province or territory.

#### **MISCELLANEOUS MATTERS**

17. The Receiver, the Purchaser (or its nominee) and any other interested party, shall be at liberty to apply for further advice, assistance and directions as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction, including, without limitation, an application to the Court to deal with interests which are registered against title to the Real Property after the time of the granting of this Order.
18. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States 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 as 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.
19. Service of this Order on any party not attending this application is hereby dispensed with. Parties attending this application shall be served in accordance with the Electronic Case Information and Service Protocol adopted in the Receivership Order.

#### **SEALING ORDER**

20. Confidential Appendix 1 and Confidential Appendix 2 to the Second Report shall be kept sealed and confidential, and shall not form part of the public record but shall be kept separate and apart from the other contents of the Court file in respect of this matter in a sealed envelope which sets out the style of cause of these proceedings and a statement that the contents thereof are subject to a Sealing Order, and shall not be opened except by a Judge of the Saskatchewan Court of Queen's Bench or by further Order of the Court.

**ISSUED** at Saskatoon, Saskatchewan, this 5<sup>th</sup> day of February 2021.

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(Deputy) Local Registrar

#### **CONTACT INFORMATION AND ADDRESS FOR SERVICE**

Name of firm:	Torys LLP
Name of lawyer in charge of file:	Kyle Kashuba and Jessie Mann
Address of legal firms:	4600 Eighth Avenue Place East 525 – Eighth Ave SW Calgary, AB T2P 1G1
Telephone number:	1.403.776.3744 and 1.403.776.3770
Fax number:	1.403.776.3800

E-mail address:

kkashuba@torys.com and  
[jmann@torys.com](mailto:jmann@torys.com)

File no.

39108-2008

**SCHEDULE "A"**  
**FORM OF RECEIVER'S CERTIFICATE**

COURT FILE NUMBER Q.B. No. 1195 of 2020

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN  
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE SASKATOON

APPLICANT BTA REAL ESTATE GROUP INC.

RESPONDENT FAMILY FITNESS INC.

**IN THE MATTER OF THE RECEIVERSHIP OF FAMILY FITNESS INC.**

**RECEIVER'S CERTIFICATE**

**RECITALS**

- A. Pursuant to an Order of the Honourable Mr. Justice B. Scherman of the Court of Queen's Bench of Saskatchewan (the "**Court**") dated October 13, 2020 (as amended from time to time), Alvarez & Marsal Canada Inc. was appointed as the receiver (the "**Receiver**") of the assets, undertakings and property of Family Fitness Inc. (the "**Debtor**").
- B. Pursuant to an Order of the Court dated February 5, 2021, the Court approved the agreement of purchase and sale made as of January 29, 2021 (the "**Sale Agreement**") between the Receiver and BTA Real Estate Group Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 4 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.
- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

**THE RECEIVER CERTIFIES** the following:

- 1. The Purchaser (or its nominee) has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
- 2. The conditions to Closing as set out in Article 4 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser (or its nominee);
- 3. The Transaction has been completed to the satisfaction of the Receiver; and
- 4. This Certificate was delivered by the Receiver at **[Time]** on **[Date]**.

**ALVAREZ & MARSAL CANADA INC., in its capacity as Receiver of the undertaking, property and assets of FAMILY FITNESS INC., and not in its personal capacity.**

**Per: \_\_\_\_\_**

**Name: Orest Konowalchuk, LIT**

**Title: Senior Vice President**

**SCHEDULE "B"**  
**PURCHASED ASSETS**

*[Please see definition of "Subject Assets" as set forth in the Sale Agreement]*

**SCHEDULE "C"**  
**PERMITTED ENCUMBRANCES**

\*All capitalized terms herein shall have the meaning ascribed thereto in the Sale Agreement.

"Permitted Encumbrances" means any one or more of the following: (i) inchoate or statutory Encumbrances of contractors, subcontractors, mechanics, workers, suppliers, materialmen, carriers and others arising in the ordinary course of business in respect of the construction, maintenance, repair or operation of the Business or Subject Assets, provided that such Encumbrances are related to obligations not due or delinquent or are being contested in good faith through appropriate proceedings, (ii) rights of expropriation, access, use or any other right conferred or reserved by or in any statute of Canada or Saskatchewan, (iii) rights of landlords or land owners under any documents related to the Leased Premises, subject to any agreement that may be concluded at any time between any such landlord or land owner and the Purchaser so long as such agreement does not adversely impact the Receiver, (iv) Encumbrances appearing on title to the Leased Premises as of the Closing Date and Encumbrances for taxes (which term includes charges, rates and assessments, any other governmental charges or levies) or charges for electricity, power gas, water and other services and utilities, in each case, that have accrued but which are not due or delinquent or that is being contested in good faith through appropriate proceedings, (v) registrations or Encumbrances such as easements, rights of way, restrictive covenants, servitudes and other similar rights in land granted to, reserved or taken by any Governmental Authority or public or private utility, or any registered subdivision, development servicing, site plan or other similar agreement with any Governmental Authority or public or private utility which individually and in the aggregate do not materially detract from the value of the Leased Premises or impair the current and prior use of the Leased Premises in the operation of the Business or the future intended use of the Leased Premises, (vi) provisions of Applicable Laws, including by-laws, regulations, ordinances and similar instruments relating to land use development and zoning, and (vii) Encumbrances filed by, at the request of the Purchaser, or which are otherwise expressly approved by the Purchaser in writing or that are otherwise created by the acts or omissions of the Purchaser or its affiliates.



**SCHEDULE "D"**  
**ENCUMBRANCES TO BE DISCHARGED**

## **SCHEDULE “F”**

### **ASSUMED EMPLOYEES**

1	CHELOMBITKO, SERGEY
2	WITTMAN, SARAH
3	MAKWANA, UPASHNA
4	HORACK, HOLLY
5	CRUICKSHANK, KARLA
6	OCRETO, MARK L
7	HUDY, COLE
8	PEART, SHANNICA
9	MELLNICK, LUCAS
10	TOWERS, ROSETTA
11	MACAULAY, RYAN
12	CALDERON, ALEJANDRO
13	DELGADILLO ARROYO, LUZ ESTRELLA
14	HOFFERT, KYLE
15	RAHMAN, SABBIR
16	OEHLER, FRANK C
17	WESTON, LINNEA
18	BILAWSKI, BREIANNA
19	ELBERG, EASTON
20	PRUDUN, JON
21	ADIVAREKAR, SAURABH
22	SUNNY, ALBERT
23	BROWN, KEITH G
24	MCPHERSON, HAYDEN
25	SPIVAK, NATALIA
26	LALOUDAKIS, GEORGIA
27	MOLLOY, EMILY
28	ALEMU, MEKLIT
29	SZATKOWSKI, KAITLYN
30	RAIMONDO-FILOMENO, MARIANA
31	HAGEN, LAURA
32	SENGAHUDAYAN, ROUBA
33	RICHARDSON, SAMANTHA
34	DILLON, ANGELINA
35	JEANNOTTE, MADISON
36	LERAT, JAMIE
37	WHITE, KATRINE
38	HANSEN, TONI
39	BORTHWICK, DWIGHT

40	PAPPAS, SHELLEY
41	ENNS, ADINE
42	SWYSTUN, BLAIR
43	PAPPAS, STEPHANIE
44	BONE, BRONWYN
45	NEWMAN BRAUN, JESSICA
46	KETTLEWELL, KIM
47	LEWKO, ERIN
48	CUDDINGTON, LONI
49	MORRIS, RACHEL
50	SEIDLIKOSKI, NOELLE
51	FORSYTH, KYLEE
52	KONKEL, JULIE
53	MALECKI, KATHY
54	JOHNSON, CARLA
55	LOISELLE, CARLOTTA
56	KRUPSKI, NICOLE
57	FRY, MARY
58	PORTER, SABRINA
59	VALENZUELA URBALEJO, TANYA
60	POLLOCK, ALISON
61	SCHOENROTH, JOHNATHAN
62	LAVOIE, SHEENA
63	KRUPPI, ERRYN
64	HALL, JODY
65	CHRISTIANSEN, KYLA
66	KENNEDY, ERIN
67	SCHWINDT, CANDACE
68	WALLACE, BRENDEN
69	WEDEWER, SUSAN
70	OLATE, MIRANDA
71	LINDGREN, KAYLA
72	MARTIN, TOM
73	MOKER, ALEX
74	TONIELLO, SHANESSA
75	FOSTER, CHRISTOPHER
76	FOSTER, TANYA
77	HARPER, BRITTNY
78	SMITH, JODINE
79	SLUGOSKI, TAMMY
80	HACKL PINNO, ADRIANA
81	MILE, CHARITY
82	CABRERA, MIMI

83	TONIELLO, CINDY
84	HENDERSON, DAWNA
85	ZARKOW, JESSICA
86	KENT, ANTOINETTE
87	PETRIE, MORGAN
88	LIM, NOEMI
89	MCCOMB, CATHY
90	PARISONE, HELEN
91	HESS, BROOKLYN
92	LAMONTAGNE, NICOLE
93	PERENTES, MANJEET
94	OTTENBREIT, ALANA
95	KLIPPENSTINE, VICKI
96	KUZ, TESSA
97	NG, JENNY
98	SZETO, CHRISTINA
99	TEMPLEMAN, JANCI
100	OLYNYK, ROXANNE
101	HALL, ERIN D
102	REICHERT, MORGAN
103	ESCARREGA VALENZUELA, VANIA
104	HACHEY, MICHELLE
105	ALBERCA, ERWIN
106	GARBUTT, HALLIE
107	TAGADIAD, SERVANDO JR
108	BUDHDADEV, NISHA
109	HOBBINS, KENDRA
110	JOVANOVA, BRANKA
111	OSERA, RANDY
112	LONG, LACY
113	VIBERT, KIM
114	BAMBALAN, MELINDA
115	WIEBE, CAITLIN
116	KOHONICK, MIRANDA
117	BOTHA, NICO
118	TRIGOSO, FRANCISCO
119	TRAPP, LOGAN
120	REZNIKOV, KRISTINA

**SCHEDULE “H”**

**TERMINATED EMPLOYEES**

Nil.

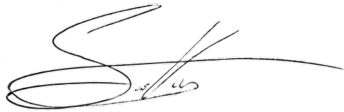
## **APPENDIX C**

### **Disputed Funds and Membership Documents**

*[See attached]*

**Resolution of the Directors of Family Fitness Inc.**

In their meeting on May 12, 2020, the Directors of Family Fitness Inc. have read and approved the Agreement with SM Fitness Inc. to purchase the liabilities and potential revenue of all the members of Club 10822 previously acquired in January 2018 from California Fitness.

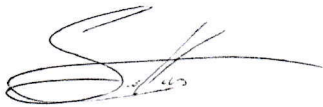
A handwritten signature in black ink, appearing to read 'Skye Kaiss', with a stylized, flowing script.

Skye Kaiss

Director

**Resolution of the Directors of SM Fitness Inc.**

In their meeting on May 12, 2020, the Directors of SM Fitness Inc. have read and approved the Agreement with Family Fitness Inc. to purchase the liabilities and potential revenue of all the members of Club 10822 previously acquired by Family Fitness Inc. in January 2018 from California Fitness.

A handwritten signature in black ink, appearing to read 'Skye Kaiss', with a stylized, flowing script.

**Skye Kaiss**

**Director**

A handwritten signature in black ink, appearing to read 'Matt Sawa', with a stylized, flowing script.

**Matt Sawa**

**Director**



# **Group Membership Account Purchase Agreement**

**Between**

**Family Fitness Inc. (FFI)**

**And**

**SM Fitness Inc. (SM)**

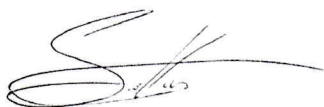
Pursuant to the Membership Purchase Agreement dated Jan 22, 2018 between Family Fitness Inc. and Clubfit Fitness Inc. whereby FFI purchased the membership list of all the members enrolled in the previous California Fitness Regina club and since FFI now wants to sell the aggregate of the remaining members on that list and since SM is willing to buy that list, now therefore the signing parties have agreed to the following:

1. SM will assume the liability currently borne by FFI towards Clubfit Fitness Inc. by continuing to pay \$10,000 per month to Clubfit Fitness Inc. until the present account balance of \$146,628 is fully paid.
2. Presently all the gyms in Saskatchewan are mandated to close by the Provincial Government until further notice due to the pandemic caused by COVID-19 and therefore all membership billing has been put on freeze until such a time when the gyms can open. Despite this freeze on membership revenue; however, SM shall continue to make the regular monthly payments to Clubfit Fitness Inc. at the rate of \$10,000 per month.
3. This agreement between FFI and SM was presented to Clubfit Fitness Inc. and received their approval.
4. Once the gyms re-open and membership billing resumes, SM shall be entitled to the full revenue generated from the membership list sold under this agreement which is currently compiled with our mutual billing agent ASF under Club 10822. Any revenue generated from this list, no matter how small or big, is by virtue of this agreement the property of SM and shall be deposited to the bank account as directed by any SM Director.
5. The revenue generated from these members shall continue to be the property of SM as long as these members continue to remain members at SM.

6. It is the intention of FFI and SM to keep in effect the reciprocity agreement whereby all members at FFI and SM can use any of the 4 Evolution Fitness facilities in Regina.

Signed in Regina on this 12<sup>th</sup> day of May 2020.

Family Fitness Inc.

A handwritten signature in black ink, appearing to be 'Skye Kaiss', with a stylized, flowing script.

Per: Skye Kaiss  
Director

SM Fitness Inc.

A handwritten signature in black ink, appearing to be 'Matt Sawa', with a stylized, flowing script.

per: Matt Sawa  
Director

Front

SM FITNESS INC.  
1846 SCARTH ST.  
REGINA SK  
S4P2G3

ROYAL BANK OF CANADA  
ROCHDALE CROSSING BRANCH  
5483 ROCHDALE BLVD.  
REGINA, SK S4X 3P9

000405

CHEQUE NO.

405

DATE

0 8 1 0 2 0 2 0  
D D M M Y Y Y Y

PAY

\*\*Ten Thousand and 00/100

\$\*\*10,000.00

TO THE  
ORDER  
OF

Clubfit Fitness Inc.  
Box 565  
Christopher Lake, Saskatchewan S0J 0N0



SM FITNESS INC.

PEN

\*000405\* 1087550031

10051231

Back

Negotiating Institution: RBC ROYAL BANK  
Deposit Transit Number: 07758-003  
Account Number: 1000272  
Date (YYYYMMDD): 20201008  
Item Sequence Number: 9636046283

MDC ATMD: X348

Envelope #: 357

Printer ID# 1021  
ID d'imprimeur 1021

Deposit to the Credit of  
CLUBFIT FITNESS INC.  
TR # 07758-003 ACC. #100-027-2

Endorsement - Signature or Stamp / Endossement - Signature ou timbre

BACK/VERSO

Front

SM FITNESS INC.  
1848 SCARTH ST.  
REGINA SK  
S4P2G3

ROYAL BANK OF CANADA  
RODGDALE CROSSING BRANCH  
5053 RODGDALE BLVD.  
REGINA, SK S4A 2P9

000406

CHEQUE NO.

406

DATE

0 8 1 1 2 0 2 0  
D O M M Y Y Y Y

PAY

\*\*Ten Thousand and 00/100

\$\*\*10,000.00

TO THE  
ORDER  
OF

Clubfit Fitness Inc.  
Box 565  
Christopher Lake, Saskatchewan S0J 0N0



SM FITNESS INC.

*[Handwritten signature]*

\*000406\* :08755\*003\* 100\*512\*3\*

Back

Negotiating Institution: RBC ROYAL BANK  
Deposit Transit Number: 07758-003  
Account Number: 1000272  
Date (YYYYMMDD): 20201109  
Item Sequence Number: 9639855253

Deposit to the Credit of  
CLUBFIT FITNESS INC.  
TR # 07758-003 ACC. # 100-027-2

Printer ID# 1021  
ID d'imprimeur 1021

MDC ATMD: X348  
Envelope #: 089

Endorsement - Signature or Stamp / Endossement - Signature ou timbre

BACK/VERSO

Front

SM FITNESS INC.  
1546 SCARTH ST.  
REGINA SK  
S4P2G3

ROYAL BANK OF CANADA  
ROCKDALE CROSSING BRANCH  
3853 ROCKDALE BLVD.  
REGINA SK S4X 0Y9

000407

CHEQUE NO.

407

DATE

0 8 1 2 2 0 2 0  
D D M M Y Y Y Y

PAY

\*\*Ten Thousand and 00/100

\$\*\*10,000.00

TO THE  
ORDER  
OF

Clubfit Fitness Inc.  
Box 565  
Christopher Lake, Saskatchewan S0J 0N0



SM FITNESS INC.

PER

\*000407\* 1087550031

10051231

Back

Negotiating Institution: RBC ROYAL BANK  
Deposit Transit Number: 07758-003  
Account Number: 1000272  
Date (YYYYMMDD): 20201208  
Item Sequence Number: 9634505726

MDC AT MID: X348  
Envelope #: 223

Deposit to the Credit of  
CLUBFIT FITNESS INC.  
TR # 07758-003 ACC. #100-027-2

Printer ID# 1021  
ID d'imprimeur 1021

Endorsement - Signature or Stamp / Endossement - Signature ou timbre

BACK/VERSO

**THIS ASSET PURCHASE AGREEMENT** made effective as of the 22<sup>nd</sup> day of January, 2018 (the "Effective Date")

**BETWEEN:**

**CLUBFIT FITNESS INC.**, a body corporate incorporated under the laws of the Province of Saskatchewan,

(the "Vendor")

**AND:**

**FAMILY FITNESS INC.**, a body corporate incorporated under the laws of the Province of Saskatchewan,

(the "Purchaser")

**WHEREAS:**

- A. The Vendor is engaged in the Business (as defined below);
- B. The Purchaser is engaged in a business similar to the Business;
- C. The Vendor desires to sell to the Purchaser, and the Purchaser desires to purchase from the Vendor, all of the Vendor's right, title and interest in and to the Purchased Assets (as defined below) upon the terms and subject to the conditions hereinafter contained.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration given by each Party to the other Party (the receipt and sufficiency of which are hereby acknowledged), it is agreed among the Parties hereto as follows:

**1. INTERPRETATION**

1.1 *Defined terms:* In addition to any terms defined elsewhere in this Agreement, the following terms will have the meanings assigned to them below, unless the context requires otherwise, for the purposes of this Agreement:

- (a) "Agreement" means this Asset Purchase Agreement, including all Schedules and all instruments supplemental to or in amendment or confirmation of this Agreement;
- (b) "Assumed Liabilities" has the meaning given in Section 2.3 of this Agreement;
- (c) "Business" means the business of the Vendor pertaining to, arising from, related or connected with the provision of fitness and health club facilities, personal training, and other related services in Regina, Saskatchewan;
- (d) "Claims" means, in respect of any matter, all judgments, executions, suits, claims, demands, proceedings, actions, causes of action, damages, losses, penalties, costs, liabilities, fines, interest and expenses (including, without limitation, legal fees on a solicitor and own client basis) arising directly or indirectly as a consequence of such matter;

- (e) **"Closing Date"** means February 1, 2018, or such other date as the Vendor and Purchaser may agree upon in writing;
- (f) **"Closing Date Statement"** means the statement agreed to between the Vendor and the Purchaser showing, as of the Closing Date, (i) a listing of the Memberships and, (ii) a calculation of the Purchase Price.
- (g) **"Closing Time"** means 12:01 p.m. on the Closing Date or such other time on the Closing Date as the Parties hereto may agree upon in writing;
- (h) **"Customer Contracts"** means each of the Vendor's contracts and agreements with Customers relating to their corresponding Memberships;
- (i) **"Customers"** means the Vendor's customers of the Business including, without limitation, any person who becomes a customer of the Business before, on or after the date hereof;
- (j) **"Encumbrances"** means mortgages, charges, pledges, security interests, liens, encumbrances, debentures, actions, claims, demands, rights of first refusal, options and equities of any nature whatsoever or howsoever arising and any rights or privileges capable of becoming any of the foregoing;
- (k) **"Governmental Authority"** means any federal, state, provincial, municipal, local or other government or governmental agency, regulatory body, court, ministry, department, authority, board, bureau or commission, domestic or foreign;
- (l) **"Interim Period"** means the period from and including the Effective Date to and including the Closing Date;
- (m) **"Liability"** means any debt, obligation, duty or liability of any nature (including any unknown, undisclosed, contingent, indirect, conditional, implied, joint, several or secondary liability), regardless of whether such debt, obligation, duty or liability would be required to be disclosed on a balance sheet and regardless of whether such debt, obligation, duty or liability is immediately due and payable, and whether secured or unsecured;
- (n) **"Location"** means the physical location and premises from which the Vendor operates the Business as of the Effective Date being 1240 Hamilton Street, Regina, Saskatchewan;
- (o) **"Memberships"** means collectively, the Prepaid Memberships and the Monthly Memberships;
- (p) **"Monthly Membership"** means: (i) a membership that a Customer has obtained to use the Vendor's fitness and health club facilities on a month-to-month basis or, (ii) any other membership that a Customer is using for the purpose of using or accessing the fitness and health club facilities on a month-to-month basis as of the Closing Date;
- (q) **"Non-Competition Agreement"** means a non-competition, non-solicitation and confidentiality agreement in substantially the form attached to this Agreement as Schedule B;
- (r) **"Parties"** means the parties to this Agreement, and **"Party"** shall be read accordingly;

- (s) "person" means and includes any individual, corporation, partnership, firm, joint venture, syndicate, association, trust, Governmental Authority, and any other form of entity or organization;
  - (t) "Personal Information" means all information about an identifiable individual that is protected by Privacy Laws;
  - (u) "Prepaid Membership" means a membership that a Customer has prepaid to use the Vendor's fitness and health club facilities for a period of time of no less than twelve (12) months and which is not a Monthly Membership as of the Closing Date;
  - (v) "Privacy Laws" has the meaning given to that term in Section 5.1(m);
  - (w) "Purchase Price" has the meaning given in Section 3.1;
  - (x) "Purchased Assets" means all of the Vendor's rights, title and interest in, to and under:
    - (i) the Memberships, (ii) the Customer Contracts, and (iv) all rights of actions and claims (and benefits therefrom) of the Vendor in respect of the Memberships Receivables or Customer Contracts whether or not an action or any other proceeding shall have been commenced prior to the Closing Time;
  - (y) "Transactions" means the purchase and sale transactions contemplated pursuant to this Agreement, as it may be amended in writing by the Parties;
- 1.2 *Schedules:* The following Schedules are incorporated in and form an integral part of this Agreement:
- Schedule A – Form of Assignment Agreement
  - Schedule B – Form of Non-Competition Agreement
- 1.3 *Currency:* All dollar amounts referred to in this Agreement are in lawful money of Canada.
- 1.4 *Choice of law and Attornment:* This Agreement shall be governed by and construed in accordance with the laws of the Province of Saskatchewan and the laws of Canada applicable therein.
- 1.5 *Interpretation not affected by headings or Party drafting:* The division of this Agreement into articles, sections, paragraphs, subsections and clauses and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "*this agreement*," "*hereof*," "*herein*," "*hereunder*" and similar expressions refer to this Agreement and the Schedules hereto and not to any particular article, section, paragraph, clause or other portion hereof and include any agreement or instrument supplementary or ancillary hereto.
- 1.6 *Number and gender:* In this Agreement, unless there is something in the subject matter or context inconsistent therewith: (a) words in the singular number include the plural and such words shall be construed as if the plural had been used; (b) words in the plural include the singular and such words shall be construed as if the singular had been used; and; (c) words importing the use or any gender shall include all genders where the context or Party referred to so requires, and the rest of the sentence shall be construed as if the necessary grammatical and terminological changes had been made.



## **2. PURCHASE AND SALE**

- 2.1 On the terms and subject to the fulfillment of the conditions herein, the Purchaser will purchase from the Vendor, and the Vendor will sell, transfer and assign to the Purchaser, all rights, title and interest in the Purchased Assets, free and clear of all Encumbrances and free and clear of any Claims or litigation in respect thereof.
- 2.2 Notwithstanding anything to the contrary in this Agreement, all assets, properties and rights other than the Purchased Assets shall be excluded from and shall not constitute the Purchased Assets transferred to the Purchaser.
- 2.3 The Purchaser shall not assume and shall not in any manner be responsible for any Liability of the Vendor or the Business whatsoever except for the obligations of the Vendor under the Customer Contracts arising after the Closing Time, but only to the extent such obligations (a) are to be performed after the Closing Time, (b) do not arise as a consequence of any breach of default by the Vendor on or prior to the Closing Time, and (c) are ascertainable solely by reference to the express terms of such Customer Contracts (collectively, the "Assumed Liabilities").
- 2.4 Subject to the terms of this Agreement, the Vendor shall be entitled to all revenue generated from, or in respect of, the Purchased Assets up to and including February 14, 2018 and the Purchaser shall be entitled to all revenue generated from, or in respect of, the Purchased Assets from and after February 15, 2018.

## **3. PURCHASE PRICE**

- 3.1 The purchase price for the Purchased Assets inclusive of all applicable federal and provincial sales taxes shall be the sum of the following amounts (collectively, the "Purchase Price")
  - (a) \$188.00 multiplied by the total number of Prepaid Memberships in effect as of the Closing Date up to a total maximum amount of 300 Prepaid Membership; and
  - (b) \$188.00 multiplied by the total number of Monthly Memberships in effect as of the Closing Date.
- 3.2 Notwithstanding Section 3.1, the Parties acknowledge that all Prepaid Memberships in effect on the Closing Date shall be included in the Purchased Assets.
- 3.3 The Purchase Price shall be due and payable in successive \$10,000.00 monthly instalments (each such instalment on the 15<sup>th</sup> day of each month), with the first instalment payment being due and payable on June 15<sup>th</sup>, 2018.
- 3.4 Notwithstanding any other provision of this Agreement, the Purchaser covenants that any amount paid to the Purchaser by a Customer in respect of such Customer's Membership will be used firstly to satisfy any obligation owed to the Vendor in respect of the Purchase Price.
- 3.5 If any portion of the Purchase Price is not delivered to the Vendor within seven (7) days from the date it becomes due and payable pursuant to this Agreement, the Purchaser will pay interest to the Vendor on such outstanding sums as and from the date such payment was due to the date on which such sums are paid to the Vendor at the rate of 10% per annum.
- 3.6 The entire Purchase Price shall become immediately due and payable without further notice to the Purchaser, upon the occurrence of any of the following events:

- (a) the Purchaser fails to deliver to the Vendor any portion of the Purchase Price as it becomes due and payable pursuant to this Agreement, and such failure continues for a period of 30 days;
- (b) the Purchaser undergoes a corporate change of control, without the prior written approval of the Vendor; or
- (c) the Purchaser transfers or assigns all, or substantially all, of the operating assets of any of the individual fitness facilities operated by the Purchaser to a third-party.

#### **4. PAYMENT OF TAXES**

- 4.1 The Vendor shall be liable for and shall pay all applicable federal and provincial sales taxes, goods and services taxes, excise taxes and all other taxes, duties and other like charges properly payable on and in connection with the conveyance and transfer of the Purchased Assets to the Purchaser. The Purchaser will do and cause to be done such things as are reasonably requested to enable the Vendor to comply with such obligation and with any tax elections necessitated thereby in an efficient manner. The Vendor shall self-assess for federal sales taxes payable in respect of the Transactions and pay same to the applicable Governmental Authority as required by applicable laws and provide the Purchaser with evidence of such self-assessment and payment within 30 days of the Closing Date.
- 4.2 The Vendor represents and warrants to the Purchaser that the Vendor is registered for purposes of the GST Legislation and its GST number is GST #87038 3668 RT0001. The Purchaser represents and warrants to the Vendor that the Purchaser is registered for purposes of the GST Legislation and its GST number is GST #830992343.

#### **5. REPRESENTATIONS AND WARRANTIES OF THE VENDOR**

- 5.1 The Vendor represents and warrants to the Purchaser as follows, and confirms that the Purchaser is relying upon the accuracy of each such representation and warranty in connection with the purchase of the Purchased Assets and the completion of the Transactions hereunder:
  - (a) *Corporate Authority:* The Vendor is a corporation duly incorporated and validly subsisting in all respects under the laws of its jurisdiction of incorporation, and has all necessary corporate power and capacity to own its properties and to carry on its business as it is now being conducted. The Vendor has good right, full corporate power and absolute authority to enter into this Agreement and to sell, assign and transfer the Purchased Assets to the Purchaser in the manner contemplated herein and to perform all of the Vendor's obligations under this Agreement. The Vendor has taken all necessary or desirable actions, steps and corporate and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of, this Agreement and the sale and transfer of the Purchased Assets by the Vendor to the Purchaser.
  - (b) *No Other Purchase Agreements:* No person has any agreement, option, understanding or commitment, or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement, option or commitment, for the purchase or other acquisition from the Vendor of any of the Purchased Assets, or any rights or interest therein.
  - (c) *Contractual and Regulatory Approvals:* The Vendor is not under any obligation, contractual or otherwise, to request or obtain the consent of any person, and no permits,

licences, certifications, authorizations or approvals of, or notifications to, any Governmental Authority are required to be obtained by the Vendor in connection with the execution, delivery or performance by the Vendor of this Agreement or the completion of any of the Transactions.

- (d) *No Litigation:* There are no actions, suits or proceedings before any court, against or affecting the Vendor or any of the Purchased Assets which would materially and adversely affect the Transactions. There are no proceedings by or before any governmental commission, board, authority or other administrative officer against the Vendor or the Purchased Assets, nor have any such proceedings been threatened.
- (e) *Vendor's Assets:* The Vendor is the legal and beneficial owner of, and has good and marketable title to, the Purchased Assets, free and clear of any and all Encumbrances whatsoever, including any liens for taxes.
- (f) *Customers:* On or before the Closing Date, the Vendor will provide to the Purchaser a true and complete list of all Customers of the Business as of the date hereof (the "Customer List"). The Customer List shall also include an accurate description of all amounts paid by each Customer to the Business on account of such Customer's applicable Membership during the months of November and December, 2017. To the best of the Vendor's knowledge and subject to each Customer's right to cancel or terminate their membership, all of the Customer Contracts are assignable by the Vendor to the Purchaser and the Purchaser is entitled to all rights and benefits of the Vendor thereunder without the prior consent of any such Customer.
- (g) *Absence of Certain Changes or Events:* Since July 1, 2017, the Vendor has not:
  - (i) created any Encumbrance upon any of the Purchased Assets,
  - (ii) except in the ordinary course of business, waived, cancelled or written-off any rights, claims, accounts receivable or any amounts payable to the Vendor under any Customer Contract;
  - (iii) made any change in the method of billing Customers or the credit terms made available by the Business to Customers or any change in the method of collection of prepaid revenue and accounts receivable.
- (h) *Privacy Law Compliance:* Other than the notice required to be given to individuals that their personal information has been disclosed to the Purchaser pursuant to the transactions contemplated by this Agreement within a reasonable amount of time after these transactions are completed: (i) the Vendor has been, and the Vendor is, in compliance with all legal requirements applicable to the Vendor with respect to the protection of Personal Information, including, without limitation, the *Personal Information Protection and Electronic Documents Act* (Canada) and such other laws relating to the protection of Personal Information (collectively, the "Privacy Laws") as may be applicable to the Business.
- (i) *Residency.* The Vendor is not and shall not be, at the Closing Date, a non-resident of Canada within the meaning of the *Income Tax Act* (Canada).

**6. REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

- 6.1 The Purchaser hereby represents and warrants to the Vendor as follows, and confirms that the Vendor is relying upon the accuracy of each such representation and warranty in connection with the purchase of the Purchased Assets and the completion of the Transactions hereunder:
- (a) *Corporate Authority and Binding Obligation:* The Purchaser is a corporation duly incorporated and validly subsisting in all respects under the laws of its jurisdiction of incorporation, and each has all necessary corporate power and capacity to own its properties and to carry on its business as it is now being conducted. The Purchaser has good right, full corporate power and absolute authority to enter into this Agreement and to purchase the Purchased Assets from the Vendor in the manner contemplated herein and to perform all of the Purchaser's obligations under this Agreement. The Purchaser has taken all necessary or desirable actions, steps and corporate and other proceedings to approve or authorize, validly and effectively, the entering into of, and the execution, delivery and performance of, this Agreement and the purchase of the Purchased Assets by the Purchaser from the Vendor.
  - (b) *Contractual and Regulatory Approvals:* The Purchaser is not under any obligation, contractual or otherwise to request or obtain the consent of any person, and no permits, licences, certifications, authorizations or approvals of, or notifications to, any Governmental Authority are required to be obtained by the Purchaser in connection with the execution, delivery or performance by the Purchaser of this Agreement or the completion of any of the Transactions.
  - (c) *Privacy Laws Compliance.* The Purchaser will not use or disclose any Personal Information transferred to the Purchaser under this Agreement except for purposes consistent with the purposes for which such Personal Information was initially collected by the Vendor as described in Section 5.1 of this Agreement or as may be required or permitted under Privacy Laws.

**7. SURVIVAL OF REPRESENTATIONS AND WARRANTIES BY VENDOR**

- 7.1 The representations and warranties made by the Vendor and contained in this Agreement, or contained in any document or certificate given in order to carry out the Transactions, will survive the closing of the purchase of the Purchased Assets provided for herein and, notwithstanding such closing or any investigation made by or on behalf of the Purchaser or any other person or any knowledge of the Purchaser or any other person, shall continue in full force and effect for the benefit of the Purchaser for a period of one year following the Closing Date.

**8. SURVIVAL OF REPRESENTATIONS AND WARRANTIES BY PURCHASER**

- 8.1 The representations and warranties made by the Purchaser and contained in this Agreement or contained in any document or certificate given in order to carry out the Transactions will survive the closing of the purchase and sale of the Purchased Assets provided for herein and, notwithstanding such closing or any investigation made by or on behalf of the Vendor, or any other person or any knowledge of the Vendor, or any other person, shall continue in full force and effect for the benefit of the Vendor for a period of one year following the Closing Date.

**9. COVENANTS BY THE VENDOR**

- 9.1 *Conduct of Business:* During the Interim Period, the Vendor shall:

- (a) carry on the Business diligently and only in the ordinary course and endeavour to preserve the Purchased Assets; and
- (b) not sell or dispose of any of the Purchased Assets.

9.2 *Transfer of Purchased Assets:* At or before the Closing Time, the Vendor will cause all necessary steps and corporate proceedings to be taken in order to permit the Purchased Assets to be duly and regularly transferred to the Purchaser free and clear of any and all Encumbrances.

9.3 *Facility Closure:* The Vendor covenants and agrees with the Purchaser as follows:

- (a) The Vendor shall maintain operation of the current Business in the Location up to and including February 14, 2018; and
- (b) Commencing on February 15, 2018, the Vendor shall permanently cease operation of the Business at each of the Locations for as long as the Purchaser is not in default of any of its obligations under and pursuant to this Agreement for a period of more than 30 days, and shall post notice in visible locations at each of the Locations to confirm and evidence the same to the Customers and the general public;

## **10. COVENANTS BY THE PURCHASER**

10.1 *Refunds:* The Purchaser shall be responsible for authorizing and funding of any refund amounts granted to Customers after the Closing Date in respect of the Fitness Memberships or the Customer Contracts.

10.2 *Existing Pricing:* For a minimum period expiring on the second anniversary of the Closing Date, the Purchaser will honour any pricing commitments included in the Customer Contracts that are acquired by the Purchaser as part of the Purchased Assets.

## **11. CONDITIONS TO THE OBLIGATIONS OF THE PURCHASER**

11.1 The Purchaser shall not be obligated to complete the purchase of the Purchased Assets pursuant to this Agreement, unless, on or before the Closing Date, each of the conditions listed below in this Section 11.1 have been satisfied. The Vendor shall take all such actions, steps and proceedings as are reasonably within their control as may be necessary to ensure that the conditions listed below are fulfilled at or before the respective times set out below:

- (a) on the Closing Date, the representations and warranties of the Vendor contained in this Agreement or in any documents delivered in order to carry out the Transactions shall be true and accurate on the date hereof and at the Closing Time. In addition, the Vendor shall have complied with all covenants and agreements herein agreed to be performed or caused to be performed by each of them at or prior to the Closing Time;
- (b) by no later than the Closing Date (i) the Vendor shall have provided the Purchaser with confirmation that the membership revenue earned and received by the Vendor during each of the months of November and December, 2017 was no less than \$66,500 in each month; and
- (c) prior to the Closing Date, the Purchaser and the Vendor shall have agreed upon the Closing Date Statement.

11.2 The conditions contained in Section 11.1 hereof are inserted for the exclusive benefit of the Purchaser and may be waived in whole or in part by the Purchaser at any time. The Vendor

acknowledge that the waiver by the Purchaser of any condition or any part of any condition shall constitute a waiver only of such condition or such part of such condition, as the case may be, and shall not constitute a waiver of any covenant, agreement, representation or warranty made by the Vendor herein that corresponds or is related to such condition or such part of such condition, as the case may be. If any of the conditions contained in Section 11.1 hereof are not fulfilled or complied with as herein provided, the Purchaser may, at or prior to the Closing Time at its option, rescind this Agreement by notice in writing to the Vendor and in such event the Purchaser shall be released from all obligations hereunder and shall be entitled to pursue any remedy available to the Purchaser under law or equity.

## **12. CONFIDENTIALITY**

- 12.1 Each Party will, hold in strictest confidence, and not use in any manner whatsoever, and only disclose to those of its representatives who have a need to know same, from the date hereof and for a period of five (5) years thereafter, any Confidential Information (as defined below) of the other party, whether provided before or after the date of this Agreement, other than: (a) Confidential Information which comes into the public domain without breach of this Agreement; (b) where disclosure of Confidential Information is required by applicable legal requirements or in order to enforce rights under this Agreement; (c) where such Confidential Information is known to the recipient free of any confidentiality obligation at the time of receipt; (d) where the Confidential Information which has been disclosed had already ceased to be confidential through no fault of the disclosing Party or its representatives; or (e) where disclosure of the Confidential Information is made with the prior written consent of the other party. Each party will not disclose the terms of this Agreement at any time other than as provided in clauses (b) and (e) above.
- 12.2 For the purposes of this Agreement, "**Confidential Information**" of a Party means all information, and all documents and other tangible items which record information, whether on paper, in computer readable format or otherwise, relating to such party's business (including the terms of this Agreement, business plans, way of doing business, business results or prospects), which information is of a confidential nature (and is known or should have been known by the other party as being of a confidential nature) and has been or is from time to time made known to or, in the case of the Purchaser only, is otherwise learned by it or any of its representatives as a result of its due diligence investigations of the Business and its review of the data, books and records relating to the Business, or in the case of the Vendor only, as a result of ownership and/or the operation of the Business prior to the Effective Date, including all Personal Information collected from Customers.

## **13. JOINT COMMUNICATION TO CUSTOMERS**

- 13.1 On or before the Closing Date, the Purchaser and Vendor shall jointly form an acceptable communication letter and notice to the Customers regarding the Transactions contemplated herein. Such communication letter shall include without limitation, notice to the Customers that the Purchaser is now their service provider and that their Personal Information was disclosed to the Purchaser pursuant to the Transactions contemplated by this Agreement (in accordance with Privacy Laws), and the Purchaser shall give updated payment instructions to and obtain updated payment authorizations from the Customers.

## **14. CLOSING**

- 14.1 *Closing of Transactions:* Subject to the terms and conditions hereof, the closing of the Transactions contemplated by this Agreement shall take place at the Closing Time, and shall take place remotely via the exchange of documents and signature pages via email or at such other date or place, and in such a manner, as the Purchaser and Vendor may mutually agree.

14.2 *Closing Date Deliveries:* On or before the Closing Date:

- (a) the Vendor shall deliver, or cause to be delivered to the Purchaser:
  - (i) an assignment agreement for the Purchased Assets in a form that is satisfactory to the Purchaser, acting reasonably;
  - (ii) a Non-Competition Agreement duly executed by the Vendor;
  - (iii) All other instruments, agreements and documents required to be delivered by the Vendor at or prior to the Closing Date pursuant to this Agreement and such other certificates of authority and instruments as Purchaser may have reasonably requested in order to give effect to the Transactions.
- (b) the Purchaser shall deliver, or cause to be delivered to the Vendor:
  - (i) a personal guarantee of Said Kaiss in a form that is satisfactory to the Purchaser, acting reasonably;
  - (ii) a security agreement granting the Vendor a purchase money security interest in any revenue generated by the Purchaser in respect of the Purchased Assets;
  - (iii) all instruments, agreements and documents required to be delivered by the Purchaser at or prior to the Closing Date pursuant to this Agreement and such other certificates of authority and instruments as the Vendor may have reasonably requested in order to give effect to the Transactions.

**15. INDEMNIFICATION**

15.1 *Indemnity by the Vendor:* The Vendor hereby indemnifies and saves the Purchaser harmless from and against any Claims which may be made or brought against the Purchaser or which the Purchaser may suffer or incur as a result of, in respect of or arising out of, whether directly or indirectly:

- (a) any non-performance or non-fulfilment of any covenant or agreement on the part of all or the Vendor contained in this Agreement or in any other agreement or document given in order to carry out the Transactions or pursuant to this Agreement; and
- (b) any misrepresentation, inaccuracy, incorrectness or breach of any representation or warranty made by the Vendor contained in this Agreement or contained in any other agreement or document given in order to carry out the Transactions or pursuant to this Agreement;

except, in each case, for Claims that result from willful misconduct of the Purchaser or the breach by the Purchaser of its representations and warranties hereunder.

15.2 *Indemnity by the Purchaser:* From and after the Closing Date, the Purchaser shall indemnify and the Vendor harmless from and against any Claims which may be made or brought against the Vendor or which the Vendor may suffer or incur as a result of, in respect of or arising out of, whether directly or indirectly:

- (a) any non-performance or non-fulfilment of any covenant or agreement on the part of the Purchaser contained in this Agreement or in any other agreement or document given in order to carry out the Transactions or pursuant to this Agreement; and

- (b) any misrepresentation, inaccuracy, incorrectness or breach of any representation or warranty made by the Purchaser contained in this Agreement or contained in any other agreement or document given in order to carry out the Transactions or pursuant to this Agreement;

except, in each case, for Claims that result from willful misconduct of the Vendor or the breach by the Vendor of its representations and warranties hereunder.

- 15.3 *Claim Limitations.* Notwithstanding anything contained in Section 15.1 and Section 15.2, under no circumstances shall any Party be indemnified for punitive, special, incidental, consequential, indirect or any other similar damages, including lost profits, lost revenues, business interruptions or loss of business opportunity or reputation.

## 16. RISK

- 16.1 Until the Closing Time, all Purchased Assets shall be and remain at the risk of the Vendor.

## 17. NON MERGER

- 17.1 The representations, warranties, covenants, and agreements of the Parties contained herein and those contained in the documents and instruments delivered pursuant hereto or in connection herewith will survive the Closing Date, and notwithstanding the completion of the Transactions, the waiver of any condition herein (unless such waiver expressly releases the other Party of such representation, warranty, covenant, or agreement), or any investigation by the Purchaser, same will remain in full force and effect.

## 18. NOTICES

- 18.1 Unless otherwise specifically provided for herein, any notice required to be given to a Party shall be delivered by courier, facsimile or email to the appropriate Party at the address hereinafter set forth:

in the case of the Purchaser, to:

c/o MLT Aikins LLP  
1500, 1874 Scarth St.  
Regina, SK S4P 4E9

in the case of the Vendor, to:

c/o Cuelenaere LLP  
Barristers and Solicitors  
#500, 128-4<sup>th</sup> Avenue South  
Saskatoon, SK S7K 1M8

or to such other address as shall be furnished in writing by either Party to the other from time to time. For the purposes of this Agreement such communications shall be deemed to be received one (1) Business Day following faxing, the date of delivery if delivered by courier, and the date of read receipt if delivered by email. Any Party may change its address for notice hereunder by notice to the other Party.



**19. MISCELLANEOUS**

- 19.1 *Further Assurances.* The Vendor and the Purchaser hereby covenants and agrees that at any time and from time to time after the Closing Date it will, upon the request of the other, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, assignments, transfers, conveyances and assurances as may be required for the better carrying out and performance of all the terms of this Agreement.
- 19.2 *Waiver.* Any Party hereto which is entitled to the benefits of this Agreement may, and has the right to, waive any term or condition hereof at any time on or prior to the Closing Time; provided, however, that such waiver shall be evidenced by written instrument duly executed on behalf of such Party.
- 19.3 *Severability:* If any term, covenant, agreement or condition of this Agreement or the application thereof to any person or circumstances is to any extent held or rendered invalid, unenforceable or illegal, then, the remainder of this Agreement or the application of any such term, covenant or condition to persons or circumstances other than those with respect to which it is held invalid, unenforceable or illegal, shall not be affected thereby and shall continue to be applicable and enforceable to the fullest extent permitted by law.
- 19.4 *Expenses of Parties.* Each of the Parties hereto shall bear all expenses incurred by it in connection with this Agreement and the Transactions including, without limitation, the charges of their respective counsel, accountants, financial advisors and finders.
- 19.5 *Assignment.* The rights of the Vendor hereunder shall not be assignable without the written consent of the Purchaser, such consent not to be unreasonably withheld. The rights of the Purchaser hereunder shall not be assignable without the written consent of the Vendor, such consent not to be unreasonably withheld.
- 19.6 *Successors and Assigns.* This Agreement shall be binding upon and enure to the benefit of the Parties hereto and their respective successors and permitted assigns. Nothing herein, express or implied, is intended to confer upon any person, other than the Parties hereto and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.
- 19.7 *Time of essence:* Time shall be of the essence hereof.
- 19.8 *Entire Agreement:* This Agreement, together with any ancillary agreements and other documents to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties hereto pertaining to the subject-matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, and, except as stated, contain all of the representations and warranties of the respective Parties. This Agreement may not be amended or modified in any respect, except by written instrument executed by all of the Parties.
- 19.9 *Counterparts.* This Agreement may be signed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. A signed counterpart provided by way of facsimile transmission or email (of a scanned image of the signed counterpart) shall be as binding upon the Parties as an originally signed counterpart.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date set forth above.

**CLUBFIT FITNESS INC.**

Per: \_\_\_\_\_

Name: Don Skopich

Title: President

I/We have the authority to bind the  
corporation

**FAMILY FITNESS INC.**

Per: \_\_\_\_\_

Name: Said (Skay) Kass

Title: President

I/We have the authority to bind the  
corporation

**THIS ASSET PURCHASE AGREEMENT** made effective as of the 22<sup>nd</sup> day of January, 2018 (the "Effective Date")

**BETWEEN:**

**SHAPELYS TONING AND DIET CENTRE LTD.**, a body corporate  
incorporated under the laws of the Province of Saskatchewan,

(the "Vendor")

**AND:**

**FAMILY FITNESS INC.**, a body corporate incorporated under the laws of the  
Province of Saskatchewan,

(the "Purchaser")

**WHEREAS:**

- A. The Vendor is engaged in the Business (as defined below);
- B. The Purchaser is engaged in a business similar to the Business;
- C. The Vendor desires to sell to the Purchaser, and the Purchaser desires to purchase from the Vendor, all of the Vendor's right, title and interest in and to the Purchased Assets (as defined below) upon the terms and subject to the conditions hereinafter contained.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration given by each Party to the other Party (the receipt and sufficiency of which are hereby acknowledged), it is agreed among the Parties hereto as follows:

## **1. INTERPRETATION**

1.1 *Defined terms:* In addition to any terms defined elsewhere in this Agreement, the following terms will have the meanings assigned to them below, unless the context requires otherwise, for the purposes of this Agreement:

- (a) "Agreement" means this Asset Purchase Agreement, including all Schedules and all instruments supplemental to or in amendment or confirmation of this Agreement;
- (b) "Assumed Liabilities" has the meaning given in Section 2.3 of this Agreement;
- (c) "Business" means the business of the Vendor pertaining to, arising from, related or connected with the provision of fitness and health club facilities, personal training, and other related services in Regina, Saskatchewan;
- (d) "Claims" means, in respect of any matter, all judgments, executions, suits, claims, demands, proceedings, actions, causes of action, damages, losses, penalties, costs, liabilities, fines, interest and expenses (including, without limitation, legal fees on a solicitor and own client basis) arising directly or indirectly as a consequence of such matter;

- (e) **"Closing Date"** means February 1, 2018, or such other date as the Vendor and Purchaser may agree upon in writing;
- (f) **"Closing Date Statement"** means the statement agreed to between the Vendor and the Purchaser showing, as of the Closing Date, (i) a listing of the Memberships and, (ii) a calculation of the Purchase Price.
- (g) **"Closing Time"** means 12:01 p.m. on the Closing Date or such other time on the Closing Date as the Parties hereto may agree upon in writing;
- (h) **"Customer Contracts"** means each of the Vendor's contracts and agreements with Customers relating to their corresponding Memberships;
- (i) **"Customers"** means the Vendor's customers of the Business including, without limitation, any person who becomes a customer of the Business before, on or after the date hereof;
- (j) **"Encumbrances"** means mortgages, charges, pledges, security interests, liens, encumbrances, debentures, actions, claims, demands, rights of first refusal, options and equities of any nature whatsoever or howsoever arising and any rights or privileges capable of becoming any of the foregoing;
- (k) **"Governmental Authority"** means any federal, state, provincial, municipal, local or other government or governmental agency, regulatory body, court, ministry, department, authority, board, bureau or commission, domestic or foreign;
- (l) **"Interim Period"** means the period from and including the Effective Date to and including the Closing Date;
- (m) **"Liability"** means any debt, obligation, duty or liability of any nature (including any unknown, undisclosed, contingent, indirect, conditional, implied, joint, several or secondary liability), regardless of whether such debt, obligation, duty or liability would be required to be disclosed on a balance sheet and regardless of whether such debt, obligation, duty or liability is immediately due and payable, and whether secured or unsecured;
- (n) **"Location"** means the physical location and premises from which the Vendor operates the Business as of the Effective Date being 2031 Park Street, Regina, Saskatchewan;
- (o) **"Memberships"** means collectively, the Prepaid Memberships, the Monthly Memberships and the Promotional Memberships;
- (p) **"Monthly Membership"** means: (i) a membership that a Customer has obtained to use the Vendor's fitness and health club facilities on a month-to-month basis or, (ii) any other membership that a Customer is using for the purpose of using or accessing the fitness and health club facilities on a month-to-month basis as of the Closing Date;
- (q) **"Non-Competition Agreement"** means a non-competition, non-solicitation and confidentiality agreement in substantially the form attached to this Agreement as Schedule B;
- (r) **"Parties"** means the parties to this Agreement, and **"Party"** shall be read accordingly;

- (s) "person" means and includes any individual, corporation, partnership, firm, joint venture, syndicate, association, trust, Governmental Authority, and any other form of entity or organization;
  - (t) "Personal Information" means all information about an identifiable individual that is protected by Privacy Laws;
  - (u) "Prepaid Membership" means a membership that a Customer has prepaid to use the Vendor's fitness and health club facilities for a period of time of no less than twelve (12) months and which is not a Monthly Membership as of the Closing Date;
  - (v) "Privacy Laws" has the meaning given to that term in Section 5.1(m);
  - (w) "Promotional Membership" means a membership that was obtained by a Customer in the month of January, 2018, to use the Vendor's fitness and health club facilities for a period of three (3) months;
  - (x) "Purchase Price" has the meaning given in Section 3.1;
  - (y) "Purchased Assets" means all of the Vendor's rights, title and interest in, to and under: (i) the Memberships, (ii) the Customer Contracts, and (iv) all rights of actions and claims (and benefits therefrom) of the Vendor in respect of the Memberships Receivables or Customer Contracts whether or not an action or any other proceeding shall have been commenced prior to the Closing Time;
  - (z) "Transactions" means the purchase and sale transactions contemplated pursuant to this Agreement, as it may be amended in writing by the Parties;
- 1.2 *Schedules:* The following Schedules are incorporated in and form an integral part of this Agreement:
- Schedule A – Form of Assignment Agreement
  - Schedule B – Form of Non-Competition Agreement
- 1.3 *Currency:* All dollar amounts referred to in this Agreement are in lawful money of Canada.
- 1.4 *Choice of law and Attornment:* This Agreement shall be governed by and construed in accordance with the laws of the Province of Saskatchewan and the laws of Canada applicable therein.
- 1.5 *Interpretation not affected by headings or Party drafting:* The division of this Agreement into articles, sections, paragraphs, subsections and clauses and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this agreement," "hereof," "herein," "hereunder" and similar expressions refer to this Agreement and the Schedules hereto and not to any particular article, section, paragraph, clause or other portion hereof and include any agreement or instrument supplementary or ancillary hereto.
- 1.6 *Number and gender:* In this Agreement, unless there is something in the subject matter or context inconsistent therewith: (a) words in the singular number include the plural and such words shall be construed as if the plural had been used; (b) words in the plural include the singular and such words shall be construed as if the singular had been used; and; (c) words importing the use or any gender shall include all genders where the context or Party referred to so requires, and the rest of

the sentence shall be construed as if the necessary grammatical and terminological changes had been made.

## **2. PURCHASE AND SALE**

- 2.1 On the terms and subject to the fulfillment of the conditions herein, the Purchaser will purchase from the Vendor, and the Vendor will sell, transfer and assign to the Purchaser, all rights, title and interest in the Purchased Assets, free and clear of all Encumbrances and free and clear of any Claims or litigation in respect thereof.
- 2.2 Notwithstanding anything to the contrary in this Agreement, all assets, properties and rights other than the Purchased Assets shall be excluded from and shall not constitute the Purchased Assets transferred to the Purchaser.
- 2.3 The Purchaser shall not assume and shall not in any manner be responsible for any Liability of the Vendor or the Business whatsoever except for the obligations of the Vendor under the Customer Contracts arising after the Closing Time, but only to the extent such obligations (a) are to be performed after the Closing Time, (b) do not arise as a consequence of any breach of default by the Vendor on or prior to the Closing Time, and (c) are ascertainable solely by reference to the express terms of such Customer Contracts (collectively, the "Assumed Liabilities").
- 2.4 Subject to the terms of this Agreement, the Vendor shall be entitled to all revenue generated from, or in respect of, the Purchased Assets up to and including February 14, 2018 and the Purchaser shall be entitled to all revenue generated from, or in respect of, the Purchased Assets from and after February 15, 2018.

## **3. PURCHASE PRICE**

- 3.1 The purchase price for the Purchased Assets inclusive of all applicable federal and provincial sales taxes shall be the sum of the following amounts (collectively, the "Purchase Price")
  - (a) \$62.00 multiplied by the total number of Prepaid Memberships in effect as of the Closing Date up to a total maximum amount of 75 Prepaid Memberships;
  - (b) \$62.00 multiplied by the total number of Monthly Memberships in effect as of the Closing Date; and
  - (c) \$62.00 multiplied by the total number of Promotional Memberships in effect as of the Closing Date up to a total maximum amount of 200 Promotional Memberships.
- 3.2 Notwithstanding Section 3.1, the Parties acknowledge that all Prepaid Memberships and all Promotional Memberships in effect on the Closing Date shall be included in the Purchased Assets.
- 3.3 The Purchase Price shall be due and payable in three (3) equal monthly instalments (each such instalment on the 15<sup>th</sup> day of each month), with the first instalment payment being due and payable on March 15<sup>th</sup>, 2018.
- 3.4 Notwithstanding any other provision of this Agreement, the Purchaser covenants that any amount paid to the Purchaser by a Customer in respect of such Customer's Membership will be used firstly to satisfy any obligation owed to the Vendor in respect of the Purchase Price.
- 3.5 If any portion of the Purchase Price is not delivered to the Vendor within seven (7) days from the date it becomes due and payable pursuant to this Agreement, the Purchaser will pay interest to the

Vendor on such outstanding sums as and from the date such payment was due to the date on which such sums are paid to the Vendor at the rate of 10% per annum.

- 3.6 The entire Purchase Price shall become immediately due and payable without further notice to the Purchaser, upon the occurrence of any of the following events:
- (a) the Purchaser fails to deliver to the Vendor any portion of the Purchase Price as it becomes due and payable pursuant to this Agreement, and such failure continues for a period of 30 days;
  - (b) the Purchaser undergoes a corporate change of control, without the prior written approval of the Vendor; or
  - (c) the Purchaser transfers or assigns all, or substantially all, of the operating assets of any of the individual fitness facilities operated by the Purchaser to a third-party.

#### 4. PAYMENT OF TAXES

- 4.1 The Vendor shall be liable for and shall pay all applicable federal and provincial sales taxes, goods and services taxes, excise taxes and all other taxes, duties and other like charges properly payable on and in connection with the conveyance and transfer of the Purchased Assets to the Purchaser. The Purchaser will do and cause to be done such things as are reasonably requested to enable the Vendor to comply with such obligation and with any tax elections necessitated thereby in an efficient manner. The Vendor shall self-assess for federal sales taxes payable in respect of the Transactions and pay same to the applicable Governmental Authority as required by applicable laws and provide the Purchaser with evidence of such self-assessment and payment within 30 days of the Closing Date.
- 4.2 The Vendor represents and warrants to the Purchaser that the Vendor is registered for purposes of the GST Legislation and its GST number is GST #12097 7236 RT0001. The Purchaser represents and warrants to the Vendor that the Purchaser is registered for purposes of the GST Legislation and its GST number is GST #830992343.

#### 5. REPRESENTATIONS AND WARRANTIES OF THE VENDOR

- 5.1 The Vendor represents and warrants to the Purchaser as follows, and confirms that the Purchaser is relying upon the accuracy of each such representation and warranty in connection with the purchase of the Purchased Assets and the completion of the Transactions hereunder:
- (a) *Corporate Authority:* The Vendor is a corporation duly incorporated and validly subsisting in all respects under the laws of its jurisdiction of incorporation, and has all necessary corporate power and capacity to own its properties and to carry on its business as it is now being conducted. The Vendor has good right, full corporate power and absolute authority to enter into this Agreement and to sell, assign and transfer the Purchased Assets to the Purchaser in the manner contemplated herein and to perform all of the Vendor's obligations under this Agreement. The Vendor has taken all necessary or desirable actions, steps and corporate and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of, this Agreement and the sale and transfer of the Purchased Assets by the Vendor to the Purchaser.
  - (b) *No Other Purchase Agreements:* No person has any agreement, option, understanding or commitment, or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement, option or commitment, for the purchase or other

acquisition from the Vendor of any of the Purchased Assets, or any rights or interest therein.

- (c) *Contractual and Regulatory Approvals:* The Vendor is not under any obligation, contractual or otherwise, to request or obtain the consent of any person, and no permits, licences, certifications, authorizations or approvals of, or notifications to, any Governmental Authority are required to be obtained by the Vendor in connection with the execution, delivery or performance by the Vendor of this Agreement or the completion of any of the Transactions.
- (d) *No Litigation:* There are no actions, suits or proceedings before any court, against or affecting the Vendor or any of the Purchased Assets which would materially and adversely affect the Transactions. There are no proceedings by or before any governmental commission, board, authority or other administrative officer against the Vendor or the Purchased Assets, nor have any such proceedings been threatened.
- (e) *Vendor's Assets:* The Vendor is the legal and beneficial owner of, and has good and marketable title to, the Purchased Assets, free and clear of any and all Encumbrances whatsoever, including any liens for taxes.
- (f) *Customers:* On or before the Closing Date, the Vendor will provide to the Purchaser a true and complete list of all Customers of the Business as of the date hereof (the "Customer List"). The Customer List shall also include an accurate description of all amounts paid by each Customer to the Business on account of such Customer's applicable Membership during the months of November and December, 2017. To be best of the Vendor's knowledge and subject to each Customer's right to cancel or terminate their Membership, all of the Customer Contracts are assignable by the Vendor to the Purchaser and the Purchaser is entitled to all rights and benefits of the Vendor thereunder without the prior consent of any such Customer.
- (g) *Absence of Certain Changes or Events:* Since July 1, 2017, the Vendor has not:
  - (i) created any Encumbrance upon any of the Purchased Assets,
  - (ii) except in the ordinary course of business, waived, cancelled or written-off any rights, claims, accounts receivable or any amounts payable to the Vendor under any Customer Contract;
  - (iii) made any change in the method of billing Customers or the credit terms made available by the Business to Customers or any change in the method of collection of prepaid revenue and accounts receivable.
- (h) *Privacy Law Compliance:* Other than the notice required to be given to individuals that their personal information has been disclosed to the Purchaser pursuant to the transactions contemplated by this Agreement within a reasonable amount of time after these transactions are completed: (i) the Vendor has been, and the Vendor is, in compliance with all legal requirements applicable to the Vendor with respect to the protection of Personal Information, including, without limitation, the *Personal Information Protection and Electronic Documents Act* (Canada) and such other laws relating to the protection of Personal Information (collectively, the "Privacy Laws") as may be applicable to the Business.



- (i) *Residency.* The Vendor is not and shall not be, at the Closing Date, a non-resident of Canada within the meaning of the *Income Tax Act* (Canada).

## **6. REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

- 6.1 The Purchaser hereby represents and warrants to the Vendor as follows, and confirms that the Vendor is relying upon the accuracy of each such representation and warranty in connection with the purchase of the Purchased Assets and the completion of the Transactions hereunder:
  - (a) *Corporate Authority and Binding Obligation:* The Purchaser is a corporation duly incorporated and validly subsisting in all respects under the laws of its jurisdiction of incorporation, and each has all necessary corporate power and capacity to own its properties and to carry on its business as it is now being conducted. The Purchaser has good right, full corporate power and absolute authority to enter into this Agreement and to purchase the Purchased Assets from the Vendor in the manner contemplated herein and to perform all of the Purchaser's obligations under this Agreement. The Purchaser has taken all necessary or desirable actions, steps and corporate and other proceedings to approve or authorize, validly and effectively, the entering into of, and the execution, delivery and performance of, this Agreement and the purchase of the Purchased Assets by the Purchaser from the Vendor.
  - (b) *Contractual and Regulatory Approvals:* The Purchaser is not under any obligation, contractual or otherwise to request or obtain the consent of any person, and no permits, licences, certifications, authorizations or approvals of, or notifications to, any Governmental Authority are required to be obtained by the Purchaser in connection with the execution, delivery or performance by the Purchaser of this Agreement or the completion of any of the Transactions.
  - (c) *Privacy Laws Compliance.* The Purchaser will not use or disclose any Personal Information transferred to the Purchaser under this Agreement except for purposes consistent with the purposes for which such Personal Information was initially collected by the Vendor as described in Section 5.1 of this Agreement or as may be required or permitted under Privacy Laws.

## **7. SURVIVAL OF REPRESENTATIONS AND WARRANTIES BY VENDOR**

- 7.1 The representations and warranties made by the Vendor and contained in this Agreement, or contained in any document or certificate given in order to carry out the Transactions, will survive the closing of the purchase of the Purchased Assets provided for herein and, notwithstanding such closing or any investigation made by or on behalf of the Purchaser or any other person or any knowledge of the Purchaser or any other person, shall continue in full force and effect for the benefit of the Purchaser for a period of one year following the Closing Date.

## **8. SURVIVAL OF REPRESENTATIONS AND WARRANTIES BY PURCHASER**

- 8.1 The representations and warranties made by the Purchaser and contained in this Agreement or contained in any document or certificate given in order to carry out the Transactions will survive the closing of the purchase and sale of the Purchased Assets provided for herein and, notwithstanding such closing or any investigation made by or on behalf of the Vendor, or any other person or any knowledge of the Vendor, or any other person, shall continue in full force and effect for the benefit of the Vendor for a period of one year following the Closing Date.

**9. COVENANTS BY THE VENDOR**

**9.1 *Conduct of Business:*** During the Interim Period, the Vendor shall:

- (a) carry on the Business diligently and only in the ordinary course and endeavour to preserve the Purchased Assets; and
- (b) not sell or dispose of any of the Purchased Assets.

**9.2 *Transfer of Purchased Assets:*** At or before the Closing Time, the Vendor will cause all necessary steps and corporate proceedings to be taken in order to permit the Purchased Assets to be duly and regularly transferred to the Purchaser free and clear of any and all Encumbrances.

**9.3 *Facility Closure:*** The Vendor covenants and agrees with the Purchaser as follows:

- (a) The Vendor shall maintain operation of the current Business in the Location up to and including February 14, 2018; and
- (b) Commencing on February 15, 2018, the Vendor shall permanently cease operation of the Business at each of the Locations for as long as the Purchaser is not in default of any of its obligations under and pursuant to this Agreement for a period of more than 30 days, and shall post notice in visible locations at each of the Locations to confirm and evidence the same to the Customers and the general public;

**10. COVENANTS BY THE PURCHASER**

**10.1 *Refunds:*** The Purchaser shall be responsible for authorizing and funding of any refund amounts granted to Customers after the Closing Date in respect of the Fitness Memberships or the Customer Contracts.

**10.2 *Existing Pricing:*** For a minimum period expiring on the second anniversary of the Closing Date, the Purchaser will honour any pricing commitments included in the Customer Contracts that are acquired by the Purchaser as part of the Purchased Assets.

**11. CONDITIONS TO THE OBLIGATIONS OF THE PURCHASER**

**11.1** The Purchaser shall not be obligated to complete the purchase of the Purchased Assets pursuant to this Agreement, unless, on or before the Closing Date, each of the conditions listed below in this Section 11.1 have been satisfied. The Vendor shall take all such actions, steps and proceedings as are reasonably within their control as may be necessary to ensure that the conditions listed below are fulfilled at or before the respective times set out below:

- (a) on the Closing Date, the representations and warranties of the Vendor contained in this Agreement or in any documents delivered in order to carry out the Transactions shall be true and accurate on the date hereof and at the Closing Time. In addition, the Vendor shall have complied with all covenants and agreements herein agreed to be performed or caused to be performed by each of them at or prior to the Closing Time;
- (b) by no later than the Closing Date (i) the Vendor shall have provided the Purchaser with confirmation that the membership revenue earned and received by the Vendor during each of the months of November and December, 2017 was no less than \$66,500 in each month; and

- (c) prior to the Closing Date, the Purchaser and the Vendor shall have agreed upon the Closing Date Statement.

11.2 The conditions contained in Section 11.1 hereof are inserted for the exclusive benefit of the Purchaser and may be waived in whole or in part by the Purchaser at any time. The Vendor acknowledge that the waiver by the Purchaser of any condition or any part of any condition shall constitute a waiver only of such condition or such part of such condition, as the case may be, and shall not constitute a waiver of any covenant, agreement, representation or warranty made by the Vendor herein that corresponds or is related to such condition or such part of such condition, as the case may be. If any of the conditions contained in Section 11.1 hereof are not fulfilled or complied with as herein provided, the Purchaser may, at or prior to the Closing Time at its option, rescind this Agreement by notice in writing to the Vendor and in such event the Purchaser shall be released from all obligations hereunder and shall be entitled to pursue any remedy available to the Purchaser under law or equity.

## 12. CONFIDENTIALITY

- 12.1 Each Party will, hold in strictest confidence, and not use in any manner whatsoever, and only disclose to those of its representatives who have a need to know same, from the date hereof and for a period of five (5) years thereafter, any Confidential Information (as defined below) of the other party, whether provided before or after the date of this Agreement, other than: (a) Confidential Information which comes into the public domain without breach of this Agreement; (b) where disclosure of Confidential Information is required by applicable legal requirements or in order to enforce rights under this Agreement; (c) where such Confidential Information is known to the recipient free of any confidentiality obligation at the time of receipt; (d) where the Confidential Information which has been disclosed had already ceased to be confidential through no fault of the disclosing Party or its representatives; or (e) where disclosure of the Confidential Information is made with the prior written consent of the other party. Each party will not disclose the terms of this Agreement at any time other than as provided in clauses (b) and (e) above.
- 12.2 For the purposes of this Agreement, "Confidential Information" of a Party means all information, and all documents and other tangible items which record information, whether on paper, in computer readable format or otherwise, relating to such party's business (including the terms of this Agreement, business plans, way of doing business, business results or prospects), which information is of a confidential nature (and is known or should have been known by the other party as being of a confidential nature) and has been or is from time to time made known to or, in the case of the Purchaser only, is otherwise learned by it or any of its representatives as a result of its due diligence investigations of the Business and its review of the data, books and records relating to the Business, or in the case of the Vendor only, as a result of ownership and/or the operation of the Business prior to the Effective Date, including all Personal Information collected from Customers.

## 13. JOINT COMMUNICATION TO CUSTOMERS

- 13.1 On or before the Closing Date, the Purchaser and Vendor shall jointly form an acceptable communication letter and notice to the Customers regarding the Transactions contemplated herein. Such communication letter shall include without limitation, notice to the Customers that the Purchaser is now their service provider and that their Personal Information was disclosed to the Purchaser pursuant to the Transactions contemplated by this Agreement (in accordance with Privacy Laws), and the Purchaser shall give updated payment instructions to and obtain updated payment authorizations from the Customers.

#### 14. CLOSING

14.1 *Closing of Transactions:* Subject to the terms and conditions hereof, the closing of the Transactions contemplated by this Agreement shall take place at the Closing Time, and shall take place remotely via the exchange of documents and signature pages via email or at such other date or place, and in such a manner, as the Purchaser and Vendor may mutually agree.

14.2 *Closing Date Deliveries:* On or before the Closing Date:

- (a) the Vendor shall deliver, or cause to be delivered to the Purchaser:
  - (i) an assignment agreement for the Purchased Assets in a form that is satisfactory to the Purchaser, acting reasonably;
  - (ii) a Non-Competition Agreement duly executed by the Vendor;
  - (iii) All other instruments, agreements and documents required to be delivered by the Vendor at or prior to the Closing Date pursuant to this Agreement and such other certificates of authority and instruments as Purchaser may have reasonably requested in order to give effect to the Transactions.
- (b) the Purchaser shall deliver, or cause to be delivered to the Vendor:
  - (i) a personal guarantee of Said Kaiss in a form that is satisfactory to the Purchaser, acting reasonably;
  - (ii) a security agreement granting the Vendor a purchase money security interest in any revenue generated by the Purchaser in respect of the Purchased Assets;
  - (iii) all instruments, agreements and documents required to be delivered by the Purchaser at or prior to the Closing Date pursuant to this Agreement and such other certificates of authority and instruments as the Vendor may have reasonably requested in order to give effect to the Transactions.

#### 15. INDEMNIFICATION

15.1 *Indemnity by the Vendor:* The Vendor hereby indemnifies and saves the Purchaser harmless from and against any Claims which may be made or brought against the Purchaser or which the Purchaser may suffer or incur as a result of, in respect of or arising out of, whether directly or indirectly:

- (a) any non-performance or non-fulfilment of any covenant or agreement on the part of all or the Vendor contained in this Agreement or in any other agreement or document given in order to carry out the Transactions or pursuant to this Agreement; and
- (b) any misrepresentation, inaccuracy, incorrectness or breach of any representation or warranty made by the Vendor contained in this Agreement or contained in any other agreement or document given in order to carry out the Transactions or pursuant to this Agreement;

except, in each case, for Claims that result from willful misconduct of the Purchaser or the breach by the Purchaser of its representations and warranties hereunder.

15.2 *Indemnity by the Purchaser:* From and after the Closing Date, the Purchaser shall indemnify and the Vendor harmless from and against any Claims which may be made or brought against the Vendor or which the Vendor may suffer or incur as a result of, in respect of or arising out of, whether directly or indirectly:

- (a) any non-performance or non-fulfilment of any covenant or agreement on the part of the Purchaser contained in this Agreement or in any other agreement or document given in order to carry out the Transactions or pursuant to this Agreement; and
- (b) any misrepresentation, inaccuracy, incorrectness or breach of any representation or warranty made by the Purchaser contained in this Agreement or contained in any other agreement or document given in order to carry out the Transactions or pursuant to this Agreement;

except, in each case, for Claims that result from willful misconduct of the Vendor or the breach by the Vendor of its representations and warranties hereunder.

15.3 *Claim Limitations.* Notwithstanding anything contained in Section 15.1 and Section 15.2, under no circumstances shall any Party be indemnified for punitive, special, incidental, consequential, indirect or any other similar damages, including lost profits, lost revenues, business interruptions or loss of business opportunity or reputation.

## 16. RISK

16.1 Until the Closing Time, all Purchased Assets shall be and remain at the risk of the Vendor.

## 17. NON MERGER

17.1 The representations, warranties, covenants, and agreements of the Parties contained herein and those contained in the documents and instruments delivered pursuant hereto or in connection herewith will survive the Closing Date, and notwithstanding the completion of the Transactions, the waiver of any condition herein (unless such waiver expressly releases the other Party of such representation, warranty, covenant, or agreement), or any investigation by the Purchaser, same will remain in full force and effect.

## 18. NOTICES

18.1 Unless otherwise specifically provided for herein, any notice required to be given to a Party shall be delivered by courier, facsimile or email to the appropriate Party at the address hereinafter set forth:

in the case of the Purchaser, to:

c/o MLT Aikins LLP  
1500, 1874 Scarth St.  
Regina, SK S4P 4E9

in the case of the Vendor, to:

c/o Cuelenaere LLP  
Barristers and Solicitors  
#500, 128-4<sup>th</sup> Avenue South  
Saskatoon, SK S7K 1M8

or to such other address as shall be furnished in writing by either Party to the other from time to time. For the purposes of this Agreement such communications shall be deemed to be received one (1) Business Day following faxing, the date of delivery if delivered by courier, and the date of read receipt if delivered by email. Any Party may change its address for notice hereunder by notice to the other Party.

## 19. MISCELLANEOUS

- 19.1 *Further Assurances.* The Vendor and the Purchaser hereby covenants and agrees that at any time and from time to time after the Closing Date it will, upon the request of the other, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, assignments, transfers, conveyances and assurances as may be required for the better carrying out and performance of all the terms of this Agreement.
- 19.2 *Waiver.* Any Party hereto which is entitled to the benefits of this Agreement may, and has the right to, waive any term or condition hereof at any time on or prior to the Closing Time; provided, however, that such waiver shall be evidenced by written instrument duly executed on behalf of such Party.
- 19.3 *Severability:* If any term, covenant, agreement or condition of this Agreement or the application thereof to any person or circumstances is to any extent held or rendered invalid, unenforceable or illegal, then, the remainder of this Agreement or the application of any such term, covenant or condition to persons or circumstances other than those with respect to which it is held invalid, unenforceable or illegal, shall not be affected thereby and shall continue to be applicable and enforceable to the fullest extent permitted by law.
- 19.4 *Expenses of Parties.* Each of the Parties hereto shall bear all expenses incurred by it in connection with this Agreement and the Transactions including, without limitation, the charges of their respective counsel, accountants, financial advisors and finders.
- 19.5 *Assignment.* The rights of the Vendor hereunder shall not be assignable without the written consent of the Purchaser, such consent not to be unreasonably withheld. The rights of the Purchaser hereunder shall not be assignable without the written consent of the Vendor, such consent not to be unreasonably withheld.
- 19.6 *Successors and Assigns.* This Agreement shall be binding upon and enure to the benefit of the Parties hereto and their respective successors and permitted assigns. Nothing herein, express or implied, is intended to confer upon any person, other than the Parties hereto and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.
- 19.7 *Time of essence:* Time shall be of the essence hereof.
- 19.8 *Entire Agreement:* This Agreement, together with any ancillary agreements and other documents to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties hereto pertaining to the subject-matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, and, except as stated, contain all of the representations and warranties of the respective Parties. This Agreement may not be amended or modified in any respect, except by written instrument executed by all of the Parties.

- 19.9 *Counterparts.* This Agreement may be signed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. A signed counterpart provided by way of facsimile transmission or email (of a scanned image of the signed counterpart) shall be as binding upon the Parties as an originally signed counterpart.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date set forth above.

**SHAPELYS TONING AND DIET CENTRE LTD.**

Per: 

Name:

*Don Shkopich*

Title:

*President*

I/We have the authority to bind the corporation

**FAMILY FITNESS INC.**

Per: 

Name:

*Sandra Kass*

Title:

*President*

I/We have the authority to bind the corporation

**THIS ASSET PURCHASE AGREEMENT** made effective as of the 22<sup>nd</sup> day of January, 2018 (the "Effective Date")

**BETWEEN:**

**KTBL LIFESTYLES LTD.**, a body corporate incorporated under the laws of the Province of Saskatchewan,

(the "Vendor")

**AND:**

**FAMILY FITNESS INC.**, a body corporate incorporated under the laws of the Province of Saskatchewan,

(the "Purchaser")

**WHEREAS:**

- A. The Vendor is engaged in the Business (as defined below);
- B. The Purchaser is engaged in a business similar to the Business;
- C. The Vendor desires to sell to the Purchaser, and the Purchaser desires to purchase from the Vendor, all of the Vendor's right, title and interest in and to the Purchased Assets (as defined below) upon the terms and subject to the conditions hereinafter contained.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration given by each Party to the other Party (the receipt and sufficiency of which are hereby acknowledged), it is agreed among the Parties hereto as follows:

## **1. INTERPRETATION**

1.1 *Defined terms:* In addition to any terms defined elsewhere in this Agreement, the following terms will have the meanings assigned to them below, unless the context requires otherwise, for the purposes of this Agreement:

- (a) "Agreement" means this Asset Purchase Agreement, including all Schedules and all instruments supplemental to or in amendment or confirmation of this Agreement;
- (b) "Assumed Liabilities" has the meaning given in Section 2.3 of this Agreement;
- (c) "Business" means the business of the Vendor pertaining to, arising from, related or connected with the provision of fitness and health club facilities, personal training, and other related services in Regina, Saskatchewan;
- (d) "Claims" means, in respect of any matter, all judgments, executions, suits, claims, demands, proceedings, actions, causes of action, damages, losses, penalties, costs, liabilities, fines, interest and expenses (including, without limitation, legal fees on a solicitor and own client basis) arising directly or indirectly as a consequence of such matter;



- (e) **"Closing Date"** means February 1, 2018, or such other date as the Vendor and Purchaser may agree upon in writing;
- (f) **"Closing Date Statement"** means the statement agreed to between the Vendor and the Purchaser showing, as of the Closing Date, (i) a listing of the Memberships and, (ii) a calculation of the Purchase Price.
- (g) **"Closing Time"** means 12:01 p.m. on the Closing Date or such other time on the Closing Date as the Parties hereto may agree upon in writing;
- (h) **"Customer Contracts"** means each of the Vendor's contracts and agreements with Customers relating to their corresponding Memberships;
- (i) **"Customers"** means the Vendor's customers of the Business including, without limitation, any person who becomes a customer of the Business before, on or after the date hereof;
- (j) **"Encumbrances"** means mortgages, charges, pledges, security interests, liens, encumbrances, debentures, actions, claims, demands, rights of first refusal, options and equities of any nature whatsoever or howsoever arising and any rights or privileges capable of becoming any of the foregoing;
- (k) **"Governmental Authority"** means any federal, state, provincial, municipal, local or other government or governmental agency, regulatory body, court, ministry, department, authority, board, bureau or commission, domestic or foreign;
- (l) **"Interim Period"** means the period from and including the Effective Date to and including the Closing Date;
- (m) **"Liability"** means any debt, obligation, duty or liability of any nature (including any unknown, undisclosed, contingent, indirect, conditional, implied, joint, several or secondary liability), regardless of whether such debt, obligation, duty or liability would be required to be disclosed on a balance sheet and regardless of whether such debt, obligation, duty or liability is immediately due and payable, and whether secured or unsecured;
- (n) **"Location"** means the physical location and premises from which the Vendor operates the Business as of the Effective Date being 3775 Sherwood Drive, Regina, Saskatchewan;
- (o) **"Memberships"** means collectively, the Prepaid Memberships, the Monthly Memberships and the Promotional Memberships;
- (p) **"Monthly Membership"** means: (i) a membership that a Customer has obtained to use the Vendor's fitness and health club facilities on a month-to-month basis or, (ii) any other membership that a Customer is using for the purpose of using or accessing the fitness and health club facilities on a month-to-month basis as of the Closing Date;
- (q) **"Non-Competition Agreement"** means a non-competition, non-solicitation and confidentiality agreement in substantially the form attached to this Agreement as Schedule B;
- (r) **"Parties"** means the parties to this Agreement, and **"Party"** shall be read accordingly;

- (s) "person" means and includes any individual, corporation, partnership, firm, joint venture, syndicate, association, trust, Governmental Authority, and any other form of entity or organization;
- (t) "Personal Information" means all information about an identifiable individual that is protected by Privacy Laws;
- (u) "Prepaid Membership" means a membership that a Customer has prepaid to use the Vendor's fitness and health club facilities for a period of time of no less than twelve (12) months and which is not a Monthly Membership as of the Closing Date;
- (v) "Privacy Laws" has the meaning given to that term in Section 5.1(m);
- (w) "Promotional Membership" means a membership that was obtained by a Customer in the month of January, 2018, to use the Vendor's fitness and health club facilities for a period of three (3) months;
- (x) "Purchase Price" has the meaning given in Section 3.1;
- (y) "Purchased Assets" means all of the Vendor's rights, title and interest in, to and under: (i) the Memberships, (ii) the Customer Contracts, and (iv) all rights of actions and claims (and benefits therefrom) of the Vendor in respect of the Memberships Receivables or Customer Contracts whether or not an action or any other proceeding shall have been commenced prior to the Closing Time;
- (z) "Transactions" means the purchase and sale transactions contemplated pursuant to this Agreement, as it may be amended in writing by the Parties;

1.2 *Schedules:* The following Schedules are incorporated in and form an integral part of this Agreement:

Schedule A – Form of Assignment Agreement

Schedule B – Form of Non-Competition Agreement

1.3 *Currency:* All dollar amounts referred to in this Agreement are in lawful money of Canada.

1.4 *Choice of law and Attornment:* This Agreement shall be governed by and construed in accordance with the laws of the Province of Saskatchewan and the laws of Canada applicable therein.

1.5 *Interpretation not affected by headings or Party drafting:* The division of this Agreement into articles, sections, paragraphs, subsections and clauses and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "*this agreement*," "*hereof*," "*herein*," "*hereunder*" and similar expressions refer to this Agreement and the Schedules hereto and not to any particular article, section, paragraph, clause or other portion hereof and include any agreement or instrument supplementary or ancillary hereto.

1.6 *Number and gender:* In this Agreement, unless there is something in the subject matter or context inconsistent therewith: (a) words in the singular number include the plural and such words shall be construed as if the plural had been used; (b) words in the plural include the singular and such words shall be construed as if the singular had been used; and; (c) words importing the use or any gender shall include all genders where the context or Party referred to so requires, and the rest of

the sentence shall be construed as if the necessary grammatical and terminological changes had been made.

## **2. PURCHASE AND SALE**

- 2.1 On the terms and subject to the fulfillment of the conditions herein, the Purchaser will purchase from the Vendor, and the Vendor will sell, transfer and assign to the Purchaser, all rights, title and interest in the Purchased Assets, free and clear of all Encumbrances and free and clear of any Claims or litigation in respect thereof.
- 2.2 Notwithstanding anything to the contrary in this Agreement, all assets, properties and rights other than the Purchased Assets shall be excluded from and shall not constitute the Purchased Assets transferred to the Purchaser.
- 2.3 The Purchaser shall not assume and shall not in any manner be responsible for any Liability of the Vendor or the Business whatsoever except for the obligations of the Vendor under the Customer Contracts arising after the Closing Time, but only to the extent such obligations (a) are to be performed after the Closing Time, (b) do not arise as a consequence of any breach of default by the Vendor on or prior to the Closing Time, and (c) are ascertainable solely by reference to the express terms of such Customer Contracts (collectively, the "Assumed Liabilities").
- 2.4 Subject to the terms of this Agreement, the Vendor shall be entitled to all revenue generated from, or in respect of, the Purchased Assets up to and including February 14, 2018 and the Purchaser shall be entitled to all revenue generated from, or in respect of, the Purchased Assets from and after February 15, 2018.

## **3. PURCHASE PRICE**

- 3.1 The purchase price for the Purchased Assets inclusive of all applicable federal and provincial sales taxes shall be the sum of the following amounts (collectively, the "Purchase Price")
  - (a) \$62.00 multiplied by the total number of Prepaid Memberships in effect as of the Closing Date up to a total maximum amount of 75 Prepaid Memberships;
  - (b) \$62.00 multiplied by the total number of Monthly Memberships in effect as of the Closing Date; and
  - (c) \$62.00 multiplied by the total number of Promotional Memberships in effect as of the Closing Date up to a total maximum amount of 200 Promotional Memberships.
- 3.2 Notwithstanding Section 3.1, the Parties acknowledge that all Prepaid Memberships and all Promotional Memberships in effect on the Closing Date shall be included in the Purchased Assets.
- 3.3 The Purchase Price shall be due and payable in three (3) equal monthly instalments (each such instalment on the 15<sup>th</sup> day of each month), with the first instalment payment being due and payable on March 15<sup>th</sup>, 2018.
- 3.4 Notwithstanding any other provision of this Agreement, the Purchaser covenants that any amount paid to the Purchaser by a Customer in respect of such Customer's Membership will be used firstly to satisfy any obligation owed to the Vendor in respect of the Purchase Price.
- 3.5 If any portion of the Purchase Price is not delivered to the Vendor within seven (7) days from the date it becomes due and payable pursuant to this Agreement, the Purchaser will pay interest to the

Vendor on such outstanding sums as and from the date such payment was due to the date on which such sums are paid to the Vendor at the rate of 10% per annum.

- 3.6 The entire Purchase Price shall become immediately due and payable without further notice to the Purchaser, upon the occurrence of any of the following events:
- (a) the Purchaser fails to deliver to the Vendor any portion of the Purchase Price as it becomes due and payable pursuant to this Agreement, and such failure continues for a period of 30 days;
  - (b) the Purchaser undergoes a corporate change of control, without the prior written approval of the Vendor; or
  - (c) the Purchaser transfers or assigns all, or substantially all, of the operating assets of any of the individual fitness facilities operated by the Purchaser to a third-party.

#### **4. PAYMENT OF TAXES**

- 4.1 The Vendor shall be liable for and shall pay all applicable federal and provincial sales taxes, goods and services taxes, excise taxes and all other taxes, duties and other like charges properly payable on and in connection with the conveyance and transfer of the Purchased Assets to the Purchaser. The Purchaser will do and cause to be done such things as are reasonably requested to enable the Vendor to comply with such obligation and with any tax elections necessitated thereby in an efficient manner. The Vendor shall self-assess for federal sales taxes payable in respect of the Transactions and pay same to the applicable Governmental Authority as required by applicable laws and provide the Purchaser with evidence of such self-assessment and payment within 30 days of the Closing Date.
- 4.2 The Vendor represents and warrants to the Purchaser that the Vendor is registered for purposes of the GST Legislation and its GST number is GST #89730 0166 RT0001. The Purchaser represents and warrants to the Vendor that the Purchaser is registered for purposes of the GST Legislation and its GST number is GST #830992343.

#### **5. REPRESENTATIONS AND WARRANTIES OF THE VENDOR**

- 5.1 The Vendor represents and warrants to the Purchaser as follows, and confirms that the Purchaser is relying upon the accuracy of each such representation and warranty in connection with the purchase of the Purchased Assets and the completion of the Transactions hereunder:
- (a) *Corporate Authority:* The Vendor is a corporation duly incorporated and validly subsisting in all respects under the laws of its jurisdiction of incorporation, and has all necessary corporate power and capacity to own its properties and to carry on its business as it is now being conducted. The Vendor has good right, full corporate power and absolute authority to enter into this Agreement and to sell, assign and transfer the Purchased Assets to the Purchaser in the manner contemplated herein and to perform all of the Vendor's obligations under this Agreement. The Vendor has taken all necessary or desirable actions, steps and corporate and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of, this Agreement and the sale and transfer of the Purchased Assets by the Vendor to the Purchaser.
  - (b) *No Other Purchase Agreements:* No person has any agreement, option, understanding or commitment, or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement, option or commitment, for the purchase or other

acquisition from the Vendor of any of the Purchased Assets, or any rights or interest therein.

- (c) *Contractual and Regulatory Approvals:* The Vendor is not under any obligation, contractual or otherwise, to request or obtain the consent of any person, and no permits, licences, certifications, authorizations or approvals of, or notifications to, any Governmental Authority are required to be obtained by the Vendor in connection with the execution, delivery or performance by the Vendor of this Agreement or the completion of any of the Transactions.
- (d) *No Litigation:* There are no actions, suits or proceedings before any court, against or affecting the Vendor or any of the Purchased Assets which would materially and adversely affect the Transactions. There are no proceedings by or before any governmental commission, board, authority or other administrative officer against the Vendor or the Purchased Assets, nor have any such proceedings been threatened.
- (e) *Vendor's Assets:* The Vendor is the legal and beneficial owner of, and has good and marketable title to, the Purchased Assets, free and clear of any and all Encumbrances whatsoever, including any liens for taxes.
- (f) *Customers:* On or before the Closing Date, the Vendor will provide to the Purchaser a true and complete list of all Customers of the Business as of the date hereof (the "Customer List"). The Customer List shall also include an accurate description of all amounts paid by each Customer to the Business on account of their such Customer's Membership during the months of November and December, 2017. To the best of the Vendor's knowledge and subject to each Customer's right to cancel or terminate their Membership, all of the Customer Contracts are assignable by the Vendor to the Purchaser and the Purchaser is entitled to all rights and benefits of the Vendor thereunder without the prior consent of any such Customer.
- (g) *Absence of Certain Changes or Events:* Since July 1, 2017, the Vendor has not:
  - (i) created any Encumbrance upon any of the Purchased Assets,
  - (ii) except in the ordinary course of business, waived, cancelled or written-off any rights, claims, accounts receivable or any amounts payable to the Vendor under any Customer Contract;
  - (iii) made any change in the method of billing Customers or the credit terms made available by the Business to Customers or any change in the method of collection of prepaid revenue and accounts receivable.
- (h) *Privacy Law Compliance:* Other than the notice required to be given to individuals that their personal information has been disclosed to the Purchaser pursuant to the transactions contemplated by this Agreement within a reasonable amount of time after these transactions are completed: (i) the Vendor has been, and the Vendor is, in compliance with all legal requirements applicable to the Vendor with respect to the protection of Personal Information, including, without limitation, the *Personal Information Protection and Electronic Documents Act* (Canada) and such other laws relating to the protection of Personal Information (collectively, the "Privacy Laws") as may be applicable to the Business.

- (i) *Residency.* The Vendor is not and shall not be, at the Closing Date, a non-resident of Canada within the meaning of the *Income Tax Act* (Canada).

## **6. REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

6.1 The Purchaser hereby represents and warrants to the Vendor as follows, and confirms that the Vendor is relying upon the accuracy of each such representation and warranty in connection with the purchase of the Purchased Assets and the completion of the Transactions hereunder:

- (a) *Corporate Authority and Binding Obligation:* The Purchaser is a corporation duly incorporated and validly subsisting in all respects under the laws of its jurisdiction of incorporation, and each has all necessary corporate power and capacity to own its properties and to carry on its business as it is now being conducted. The Purchaser has good right, full corporate power and absolute authority to enter into this Agreement and to purchase the Purchased Assets from the Vendor in the manner contemplated herein and to perform all of the Purchaser's obligations under this Agreement. The Purchaser has taken all necessary or desirable actions, steps and corporate and other proceedings to approve or authorize, validly and effectively, the entering into of, and the execution, delivery and performance of, this Agreement and the purchase of the Purchased Assets by the Purchaser from the Vendor.
- (b) *Contractual and Regulatory Approvals:* The Purchaser is not under any obligation, contractual or otherwise to request or obtain the consent of any person, and no permits, licences, certifications, authorizations or approvals of, or notifications to, any Governmental Authority are required to be obtained by the Purchaser in connection with the execution, delivery or performance by the Purchaser of this Agreement or the completion of any of the Transactions.
- (c) *Privacy Laws Compliance.* The Purchaser will not use or disclose any Personal Information transferred to the Purchaser under this Agreement except for purposes consistent with the purposes for which such Personal Information was initially collected by the Vendor as described in Section 5.1 of this Agreement or as may be required or permitted under Privacy Laws.

## **7. SURVIVAL OF REPRESENTATIONS AND WARRANTIES BY VENDOR**

7.1 The representations and warranties made by the Vendor and contained in this Agreement, or contained in any document or certificate given in order to carry out the Transactions, will survive the closing of the purchase of the Purchased Assets provided for herein and, notwithstanding such closing or any investigation made by or on behalf of the Purchaser or any other person or any knowledge of the Purchaser or any other person, shall continue in full force and effect for the benefit of the Purchaser for a period of one year following the Closing Date.

## **8. SURVIVAL OF REPRESENTATIONS AND WARRANTIES BY PURCHASER**

8.1 The representations and warranties made by the Purchaser and contained in this Agreement or contained in any document or certificate given in order to carry out the Transactions will survive the closing of the purchase and sale of the Purchased Assets provided for herein and, notwithstanding such closing or any investigation made by or on behalf of the Vendor, or any other person or any knowledge of the Vendor, or any other person, shall continue in full force and effect for the benefit of the Vendor for a period of one year following the Closing Date.

**9. COVENANTS BY THE VENDOR**

9.1 *Conduct of Business:* During the Interim Period, the Vendor shall:

- (a) carry on the Business diligently and only in the ordinary course and endeavour to preserve the Purchased Assets; and
- (b) not sell or dispose of any of the Purchased Assets.

9.2 *Transfer of Purchased Assets:* At or before the Closing Time, the Vendor will cause all necessary steps and corporate proceedings to be taken in order to permit the Purchased Assets to be duly and regularly transferred to the Purchaser free and clear of any and all Encumbrances.

9.3 *Facility Closure:* The Vendor covenants and agrees with the Purchaser as follows:

- (a) The Vendor shall maintain operation of the current Business in the Location up to and including February 14, 2018; and
- (b) Commencing on February 15, 2018, the Vendor shall permanently cease operation of the Business at each of the Locations for as long as the Purchaser is not in default of any of its obligations under and pursuant to this Agreement for a period of more than 30 days, and shall post notice in visible locations at each of the Locations to confirm and evidence the same to the Customers and the general public;

**10. COVENANTS BY THE PURCHASER**

10.1 *Refunds:* The Purchaser shall be responsible for authorizing and funding of any refund amounts granted to Customers after the Closing Date in respect of the Fitness Memberships or the Customer Contracts.

10.2 *Existing Pricing:* For a minimum period expiring on the second anniversary of the Closing Date, the Purchaser will honour any pricing commitments included in the Customer Contracts that are acquired by the Purchaser as part of the Purchased Assets.

**11. CONDITIONS TO THE OBLIGATIONS OF THE PURCHASER**

11.1 The Purchaser shall not be obligated to complete the purchase of the Purchased Assets pursuant to this Agreement, unless, on or before the Closing Date, each of the conditions listed below in this Section 11.1 have been satisfied. The Vendor shall take all such actions, steps and proceedings as are reasonably within their control as may be necessary to ensure that the conditions listed below are fulfilled at or before the respective times set out below:

- (a) on the Closing Date, the representations and warranties of the Vendor contained in this Agreement or in any documents delivered in order to carry out the Transactions shall be true and accurate on the date hereof and at the Closing Time. In addition, the Vendor shall have complied with all covenants and agreements herein agreed to be performed or caused to be performed by each of them at or prior to the Closing Time;
- (b) by no later than the Closing Date (i) the Vendor shall have provided the Purchaser with confirmation that the membership revenue earned and received by the Vendor during each of the months of November and December, 2017 was no less than \$66,500 in each month; and

- (c) prior to the Closing Date, the Purchaser and the Vendor shall have agreed upon the Closing Date Statement.

11.2 The conditions contained in Section 11.1 hereof are inserted for the exclusive benefit of the Purchaser and may be waived in whole or in part by the Purchaser at any time. The Vendor acknowledge that the waiver by the Purchaser of any condition or any part of any condition shall constitute a waiver only of such condition or such part of such condition, as the case may be, and shall not constitute a waiver of any covenant, agreement, representation or warranty made by the Vendor herein that corresponds or is related to such condition or such part of such condition, as the case may be. If any of the conditions contained in Section 11.1 hereof are not fulfilled or complied with as herein provided, the Purchaser may, at or prior to the Closing Time at its option, rescind this Agreement by notice in writing to the Vendor and in such event the Purchaser shall be released from all obligations hereunder and shall be entitled to pursue any remedy available to the Purchaser under law or equity.

## 12. CONFIDENTIALITY

12.1 Each Party will, hold in strictest confidence, and not use in any manner whatsoever, and only disclose to those of its representatives who have a need to know same, from the date hereof and for a period of five (5) years thereafter, any Confidential Information (as defined below) of the other party, whether provided before or after the date of this Agreement, other than: (a) Confidential Information which comes into the public domain without breach of this Agreement; (b) where disclosure of Confidential Information is required by applicable legal requirements or in order to enforce rights under this Agreement; (c) where such Confidential Information is known to the recipient free of any confidentiality obligation at the time of receipt; (d) where the Confidential Information which has been disclosed had already ceased to be confidential through no fault of the disclosing Party or its representatives; or (e) where disclosure of the Confidential Information is made with the prior written consent of the other party. Each party will not disclose the terms of this Agreement at any time other than as provided in clauses (b) and (e) above.

12.2 For the purposes of this Agreement, "Confidential Information" of a Party means all information, and all documents and other tangible items which record information, whether on paper, in computer readable format or otherwise, relating to such party's business (including the terms of this Agreement, business plans, way of doing business, business results or prospects), which information is of a confidential nature (and is known or should have been known by the other party as being of a confidential nature) and has been or is from time to time made known to or, in the case of the Purchaser only, is otherwise learned by it or any of its representatives as a result of its due diligence investigations of the Business and its review of the data, books and records relating to the Business, or in the case of the Vendor only, as a result of ownership and/or the operation of the Business prior to the Effective Date, including all Personal Information collected from Customers.

## 13. JOINT COMMUNICATION TO CUSTOMERS

13.1 On or before the Closing Date, the Purchaser and Vendor shall jointly form an acceptable communication letter and notice to the Customers regarding the Transactions contemplated herein. Such communication letter shall include without limitation, notice to the Customers that the Purchaser is now their service provider and that their Personal Information was disclosed to the Purchaser pursuant to the Transactions contemplated by this Agreement (in accordance with Privacy Laws), and the Purchaser shall give updated payment instructions to and obtain updated payment authorizations from the Customers.



#### 14. CLOSING

14.1 *Closing of Transactions:* Subject to the terms and conditions hereof, the closing of the Transactions contemplated by this Agreement shall take place at the Closing Time, and shall take place remotely via the exchange of documents and signature pages via email or at such other date or place, and in such a manner, as the Purchaser and Vendor may mutually agree.

14.2 *Closing Date Deliveries:* On or before the Closing Date:

- (a) the Vendor shall deliver, or cause to be delivered to the Purchaser:
  - (i) an assignment agreement for the Purchased Assets in a form that is satisfactory to the Purchaser, acting reasonably;
  - (ii) a Non-Competition Agreement duly executed by the Vendor;
  - (iii) All other instruments, agreements and documents required to be delivered by the Vendor at or prior to the Closing Date pursuant to this Agreement and such other certificates of authority and instruments as Purchaser may have reasonably requested in order to give effect to the Transactions.
- (b) the Purchaser shall deliver, or cause to be delivered to the Vendor:
  - (i) a personal guarantee of Said Kaiss in a form that is satisfactory to the Purchaser, acting reasonably;
  - (ii) a security agreement granting the Vendor a purchase money security interest in any revenue generated by the Purchaser in respect of the Purchased Assets;
  - (iii) all instruments, agreements and documents required to be delivered by the Purchaser at or prior to the Closing Date pursuant to this Agreement and such other certificates of authority and instruments as the Vendor may have reasonably requested in order to give effect to the Transactions.

#### 15. INDEMNIFICATION

15.1 *Indemnity by the Vendor:* The Vendor hereby indemnifies and saves the Purchaser harmless from and against any Claims which may be made or brought against the Purchaser or which the Purchaser may suffer or incur as a result of, in respect of or arising out of, whether directly or indirectly:

- (a) any non-performance or non-fulfilment of any covenant or agreement on the part of all or the Vendor contained in this Agreement or in any other agreement or document given in order to carry out the Transactions or pursuant to this Agreement; and
- (b) any misrepresentation, inaccuracy, incorrectness or breach of any representation or warranty made by the Vendor contained in this Agreement or contained in any other agreement or document given in order to carry out the Transactions or pursuant to this Agreement;

except, in each case, for Claims that result from willful misconduct of the Purchaser or the breach by the Purchaser of its representations and warranties hereunder.

15.2 *Indemnity by the Purchaser:* From and after the Closing Date, the Purchaser shall indemnify and the Vendor harmless from and against any Claims which may be made or brought against the Vendor or which the Vendor may suffer or incur as a result of, in respect of or arising out of, whether directly or indirectly:

- (a) any non-performance or non-fulfilment of any covenant or agreement on the part of the Purchaser contained in this Agreement or in any other agreement or document given in order to carry out the Transactions or pursuant to this Agreement; and
- (b) any misrepresentation, inaccuracy, incorrectness or breach of any representation or warranty made by the Purchaser contained in this Agreement or contained in any other agreement or document given in order to carry out the Transactions or pursuant to this Agreement;

except, in each case, for Claims that result from willful misconduct of the Vendor or the breach by the Vendor of its representations and warranties hereunder.

15.3 *Claim Limitations.* Notwithstanding anything contained in Section 15.1 and Section 15.2, under no circumstances shall any Party be indemnified for punitive, special, incidental, consequential, indirect or any other similar damages, including lost profits, lost revenues, business interruptions or loss of business opportunity or reputation.

## 16. RISK

16.1 Until the Closing Time, all Purchased Assets shall be and remain at the risk of the Vendor.

## 17. NON MERGER

17.1 The representations, warranties, covenants, and agreements of the Parties contained herein and those contained in the documents and instruments delivered pursuant hereto or in connection herewith will survive the Closing Date, and notwithstanding the completion of the Transactions, the waiver of any condition herein (unless such waiver expressly releases the other Party of such representation, warranty, covenant, or agreement), or any investigation by the Purchaser, same will remain in full force and effect.

## 18. NOTICES

18.1 Unless otherwise specifically provided for herein, any notice required to be given to a Party shall be delivered by courier, facsimile or email to the appropriate Party at the address hereinafter set forth:

in the case of the Purchaser, to:

c o MLT Aikins LLP  
1500, 1874 Scarth St.  
Regina, SK S4P 4E9

in the case of the Vendor, to:

c o Cuelenaere LLP  
Barristers and Solicitors  
#500, 128-4<sup>th</sup> Avenue South  
Saskatoon, SK S7K 1M8

or to such other address as shall be furnished in writing by either Party to the other from time to time. For the purposes of this Agreement such communications shall be deemed to be received one (1) Business Day following faxing, the date of delivery if delivered by courier, and the date of read receipt if delivered by email. Any Party may change its address for notice hereunder by notice to the other Party.

## **19. MISCELLANEOUS**

- 19.1 *Further Assurances.* The Vendor and the Purchaser hereby covenants and agrees that at any time and from time to time after the Closing Date it will, upon the request of the other, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, assignments, transfers, conveyances and assurances as may be required for the better carrying out and performance of all the terms of this Agreement.
- 19.2 *Waiver.* Any Party hereto which is entitled to the benefits of this Agreement may, and has the right to, waive any term or condition hereof at any time on or prior to the Closing Time; provided, however, that such waiver shall be evidenced by written instrument duly executed on behalf of such Party.
- 19.3 *Severability:* If any term, covenant, agreement or condition of this Agreement or the application thereof to any person or circumstances is to any extent held or rendered invalid, unenforceable or illegal, then, the remainder of this Agreement or the application of any such term, covenant or condition to persons or circumstances other than those with respect to which it is held invalid, unenforceable or illegal, shall not be affected thereby and shall continue to be applicable and enforceable to the fullest extent permitted by law.
- 19.4 *Expenses of Parties.* Each of the Parties hereto shall bear all expenses incurred by it in connection with this Agreement and the Transactions including, without limitation, the charges of their respective counsel, accountants, financial advisors and finders.
- 19.5 *Assignment.* The rights of the Vendor hereunder shall not be assignable without the written consent of the Purchaser, such consent not to be unreasonably withheld. The rights of the Purchaser hereunder shall not be assignable without the written consent of the Vendor, such consent not to be unreasonably withheld.
- 19.6 *Successors and Assigns.* This Agreement shall be binding upon and enure to the benefit of the Parties hereto and their respective successors and permitted assigns. Nothing herein, express or implied, is intended to confer upon any person, other than the Parties hereto and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.
- 19.7 *Time of essence:* Time shall be of the essence hereof.
- 19.8 *Entire Agreement:* This Agreement, together with any ancillary agreements and other documents to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties hereto pertaining to the subject-matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, and, except as stated, contain all of the representations and warranties of the respective Parties. This Agreement may not be amended or modified in any respect, except by written instrument executed by all of the Parties.

- 19.9 *Counterparts.* This Agreement may be signed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. A signed counterpart provided by way of facsimile transmission or email (of a scanned image of the signed counterpart) shall be as binding upon the Parties as an originally signed counterpart.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date set forth above.

KTBL LIFESTYLES LTD.

Per: 

Name:

Don Shkopich

Title:

President

I/We have the authority to bind the corporation

FAMILY FITNESS INC.

Per: 

Name:

Said (Serge) Kassin

Title:

President

I/We have the authority to bind the corporation

KTB LIFESTYLES LTD, SHAPELYS TONING AND DIET CENTRE LTD., CLUBFIT FITNESS INC.

Don Shkopich

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28th day of April, 2020

KTB LIFESTYLES LTD, SHAPELYS TONING AND DIET CENTRE LTD., CLUBFIT FITNESS INC.  
142 S Industrial Dr, Prince Albert, SK S6V 7L8

Attention: Skye Kaiss and Family Fitness Inc,

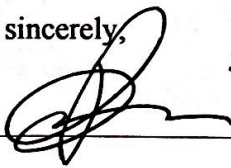
As per the membership purchase agreement dated January 22, 2018, you are required to pay \$10,000/mth on the 1<sup>st</sup> of each and every month until the "Debt" is paid in full. The April 1, 2020 remains outstanding despite my numerous requests for payment. As per the membership purchase agreement, if any payments are not paid when due, the full outstanding remaining balance (\$146,628.00 CAD) becomes immediately due and payable.

I hereby demand payment of the full amount of the remaining Debt (\$146,628.00) to be paid within 10 days from the date of this notice at the following address: 142 S Industrial Dr, Prince Albert, SK S6V 7L8.

Please note that if legal proceedings are required to secure payment of the debt owing, this notice will be tendered in court as evidence of your failure to attempt to resolve this matter. Further, you may be liable for any court costs, lawyer fees and damages, including punitive damages.

You may want to contact legal counsel to discuss your legal rights and responsibilities.

Yours sincerely,



---

Don Shkopich, President

KTB LIFESTYLES LTD, SHAPELYS TONING AND DIET CENTRE LTD., CLUBFIT FITNESS INC.

## **APPENDIX D**

### **ASF Disputed Funds and Membership Email**

*[See attached]*

**Strueby, Jill**

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**From:** David Webb <david@club-os.com>  
**Sent:** Wednesday, January 27, 2021 2:39 PM  
**To:** Strueby, Jill; Oosterbaan, Stephen  
**Cc:** Jeremy.hanson; Legal  
**Subject:** Update - Disputed Memberships

**EXTERNAL EMAIL**

Jill/Stephen,

We wanted to update you on the memberships transferred from 10822 to 4275.

To summarize, ASF cannot be in a position to take sides in any business dispute among our customers, especially when a court appointed receiver is involved. Therefore, our need to stay neutral and to act as fairly as possible throughout this evolving situation necessitates the following:

- ASF will revert the 900+ members recently transferred by Skye from #10822 to #4275 (the "10822 Members") back to #10822.
- ASF will hold the ~\$245,000 of reserves we currently hold on behalf of 4275/SM Fitness Inc. in the account #10822, and will continue to hold these funds until either (1) the Court directs ASF to release such funds, or (2) an agreement among the various interested parties (namely, Skye, Family Fitness and SM Fitness) is reached. Additionally, ASF will be holding an additional \$15,072.41 in reserve related to the 10822 Members (for context: after the transfer of these memberships to #4275 on 1/12, #4275 received \$15,072.41 in remits tied to these memberships on 1/15. Since the ownership of the 10822 Members is in question, we will need to "hold back" that amount and place it in reserves with #10822 until a final determination or agreement is made regarding ownership of the 10822 Members.).
- Any future amounts received by ASF related to the 10822 Members will continue to accrue in account #10822 until the Court directs ASF to release such funds, or an agreement is reached among the parties.
- ASF will freeze all control and access to account #10822 from all third parties (except where read-only access may be required) until further notice.

We also understand that the Receiver intends to report to the Court on this matter in its report to be filed with the Court this Friday, January 29, 2021.

Of course, as the situation evolves, we reserve the right to change course as necessary or reasonable. Rest assured, where possible, we will strive to communicate any changes to the above plan with all parties prior to executing on them.

Thank you.

--

**David Webb**  
SVP, Operations

Mobile: (860) 248-5632





## **APPENDIX E**

### **Receiver's Certificate No. 2**

*[See attached]*

## RECEIVER'S CERTIFICATE

CERTIFICATE NO. 2

AMOUNT \$ 220,000.00

1. THIS IS TO CERTIFY that Alvarez & Marsal Canada Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of FAMILY FITNESS INC. (the "**Debtor**") acquired for, or used in relation to the Debtor's business, including all proceeds thereof (the "**Property**") appointed by Order of the Court of Queen's Bench For Saskatchewan (the "**Court**") issued the 13<sup>th</sup> day of October, 2020 (the "**Order**") made in action Q.B. No. 1195 of 2020, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$420,000.00, being part of the total principal sum of \$500,000.00 which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the 1<sup>st</sup> day of each month after the date hereof at a notional rate per annum equal to the rate of 12.55% per cent above the prime commercial lending rate of Bank of Canada 2.45% from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act* (Canada) and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at c/o W Law LLP, #300 - 110 21<sup>st</sup> E, Saskatoon, SK S7K 0B6.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the 22<sup>th</sup> day of January, 2021.

ALVAREZ & MARSAL CANADA INC., solely in its capacity as Receiver of the Property, and not in its personal capacity



Per: \_\_\_\_\_  
Name: Orest Konowalchuk  
Title: Senior Vice President

## **APPENDIX F**

### **Summary of Professional Fees**

*[See attached]*

**Family Fitness Inc. - In Receivership**

APPENDIX F

## Summary of Receiver's Fees and Disbursements

November 15, 2020 to January 23, 2021

Inv. No.	Period	Fees	Disbursements	Total Fees & Disbursements	GST	Total
3	November 15 to December 31, 2020	156,318.50	8,085.29	164,403.79	8,220.19	172,623.98
4	January 1 to January 23, 2021	85,337.00	2,030.57	87,367.57	4,368.38	91,735.95
<b>TOTAL</b>		<b>\$ 241,655.50</b>	<b>\$ 10,115.86</b>	<b>\$ 251,771.36</b>	<b>\$ 12,588.57</b>	<b>\$ 264,359.93</b>

## Summary of the Receiver's counsel (Torys LLP) Fees and Disbursements

November 7, 2020 to January 23, 2021

Inv. No.	Period	Fees	Disbursements	Total Fees & Disbursements	GST	Total
1522237	November 7 to November 30, 2020	53,966.00	475.95	54,441.95	2,721.10	57,163.05
1525714	December 1 to December 31, 2020	11,665.00	43.00	11,708.00	583.25	12,291.25
1527443	January 1 to January 23, 2021	44,983.00		44,983.00	2,249.15	47,232.15
<b>TOTAL</b>		<b>\$ 110,614.00</b>	<b>\$ 518.95</b>	<b>\$ 111,132.95</b>	<b>\$ 5,553.50</b>	<b>\$ 116,686.45</b>

## Summary of the Receiver's counsel (Seiferling Law) Fees and Disbursements

November 12, 2020 to January 18, 2021

Inv. No.	Period	Fees	Disbursements	Total Fees & Disbursements	GST/PST	Total
1497	November 12 to December 18, 2020	5,510.00	6.00	5,516.00	606.10	6,122.10
1567	December 18 to January 18, 2021	1,900.00		1,900.00	209.00	2,109.00
<b>TOTAL</b>		<b>\$ 7,410.00</b>	<b>\$ 6.00</b>	<b>\$ 7,416.00</b>	<b>\$ 815.10</b>	<b>\$ 8,231.10</b>

**CONFIDENTIAL APPENDIX 1**

**304 SK Ltd. Offer**

*[See attached]*

## **CONFIDENTIAL APPENDIX 2**

### **Equipment Appraisal**

*[See attached]*