

CITY OF SAN DIEGO CONSENT TO ASSIGNMENT

THIS CITY OF SAN DIEGO CONSENT TO ASSIGNMENT (Consent) is made by the City of San Diego, a California municipal corporation (CITY), Club One, Inc., a Delaware Corporation (LESSEE/ASSIGNOR), and Fit Athletic - CMR, a California limited liability company (ASSIGNEE), to be effective as of January 21, 2014 (Effective Date), as follows:

RECITALS

This Consent is made with regard to the following facts:

- A. CITY and LESSEE/ASSIGNOR entered into that certain City of San Diego Lease and Operating Agreement dated March 23, 2011 (the "Lease"). The Lease pertains to that certain CITY-owned property in Carmel Mountain Ranch, consisting of approximately 1.290 acres of land ("Premises"), which includes an outside swimming complex with adjacent parking lot.
- B. LESSEE/ASSIGNOR desires to assign its interest in and to the Lease to ASSIGNEE, pursuant to that certain Asset Purchase Agreement dated December 6, 2013, for which LESSEE/ASSIGNOR now seeks CITY's Consent. A copy of the Asset Purchase Agreement is attached hereto as Exhibit "A." In order for the CITY to consent to such an assignment, ASSIGNEE must agree to assume all rights and obligations of LESSEE/ASSIGNOR under the Lease, which was not accomplished through the Asset Purchase Agreement.
- C. LESSEE/ASSIGNOR and ASSIGNEE acknowledge that the City's act of consenting to the requested assignment will not, except as may be expressly provide herein, relieve LESSEE/ASSIGNOR or ASSIGNEE from any requirements under the Lease, including but not limited to rent.

NOW, THEREFORE, in consideration of the following terms and conditions, CITY, LESSEE/ASSIGNOR, and ASSIGNEE respectfully agree as follows:

- 1. CONSENT BY CITY: Upon the effective date of this Consent, CITY consents to LESSEE/ASSIGNOR's request to assign its interests in and to the Lease to ASSIGNEE. By this Consent, CITY does not release LESSEE/ASSIGNOR from the Lease obligations for, and LESSEE/ASSIGNOR shall remain liable for, the payment of all rents and for the performance of all obligations of under the Lease arising prior to and after the effective date of this Consent should ASSIGNEE fail to perform under the Lease.
- 2. ASSUMPTION BY ASSIGNEE: Pursuant to the terms of the Lease, ASSIGNEE agrees that it will assume the rights and obligations assigned to it by LESSEE/ASSIGNOR and that it will keep and perform all covenants, conditions, and provisions of the Lease,

including, without limitation, Lease provisions pertaining to indemnification of the CITY and insurance requirements.

3. USE: The Premises shall be used solely and exclusively for the uses set forth in the Lease.
4. ADDITIONAL CONSIDERATION: In accordance with Section 4.4, LESSEE/ASSIGNOR has agreed that in the event of an assignment of the Lease, LESSEE/ASSIGNOR shall pay to CITY two percent (2%) of the gross amount paid to LESSEE/ASSIGNOR in connection with an approved assignment of the Lease ("Additional Consideration"). Pursuant to the Asset Purchase Agreement, the sum of Three Hundred Thousand Dollars (\$300,000.00) shall be paid by ASSIGNEE to LESSEE/ASSIGNOR in connection with the Asset Purchase Agreement, which includes the assignment of the Lease. Two percent (2%) of said purchase amount is equal to Six Thousand Dollars (\$6,000.00), which amount shall be due and owing to CITY, in full, concurrently with closing of the Asset Purchase Agreement between LESSEE/ASSIGNOR and ASSIGNEE. The CITY's Consent is contingent upon, and shall be null and void without, the payment of said Additional Consideration.

The payment of the Additional Consideration shall be made payable to the City Treasurer and mailed to:

Vladimir Balotsky, Supevising Property Agent
City of San Diego
Real Estate Assets Department
1200 Third Avenue, Suite 1700
San Diego, CA 92101

5. SUBSEQUENT ASSIGNMENTS; RECAPTURE: This Consent does not constitute consent to any other subsequent subletting or assignment of the Lease and does not relieve ASSIGNEE or any persons claiming under or through ASSIGNEE of the obligation to obtain the prior written consent of CITY prior to subletting and/or assigning the Lease.
6. INSURANCE: Prior to the Effective Date of this Consent, ASSIGNEE shall provide CITY with all Certificates of Insurance required under the Lease. Such certificate(s) and binder(s) shall name as additional insureds the CITY, its employees, officers, elected officials, its representatives and agents.
7. MASTER LEASE CONTROLS: The Lease shall control with regard to the rights of CITY and obligations of LESSEE/ASSIGNOR and ASSIGNEE. CITY shall not be bound by any term or condition in the Asset Purchase Agreement.
8. CONTROLLING LAW: The terms and conditions of this Consent will be construed in accordance with and will be governed by the laws of the State of California.

9. CAPTIONS: Captions in this Consent are included for convenience only and do not modify any of the terms of this Consent.
10. ENTIRE AGREEMENT: This Consent constitutes the final, complete, and exclusive statement between the parties pertaining to the terms of CITY's Consent. This Consent supersedes all prior and contemporaneous understandings or agreements of the parties pertaining to this Consent, whether oral or written, and is binding on and inures to the benefit of their respective heirs, representatives, successors or assigns. No party has been induced to enter into this Consent by, nor is any party relying on, any representation or warranty outside those set forth in this Consent. Any agreement made after the date of this Consent is ineffective to modify, waive, or terminate this Consent, in whole or in part, unless that agreement is in writing, is signed by the parties to this Consent, and states that said agreement modifies this Consent.
11. WAIVER: Except as explicitly stated in this Consent, nothing contained in this Consent will be deemed or construed to modify, waive, impair, or affect any of the covenants, agreements, terms, provisions, or conditions contained in the Lease. In addition, the acceptance of rents by CITY from ASSIGNEE or anyone else liable under the Lease will not be deemed a waiver by CITY of any provisions of the Lease.
12. NOTICE: Any notice that may or must be given by any party under this Consent and/or the Lease will be delivered (i) personally, (ii) by certified mail, return receipt requested, or (iii) by a nationally recognized overnight courier, addressed to the party to whom it is intended. Any notice given to CITY, LESSEE/ASSIGNOR, or ASSIGNEE shall be sent to the respective address set forth below, or such other address as the party may designate for service of notice by a notice given in accordance with the provisions of this section. A notice sent pursuant to the terms of this section shall be deemed delivered (a) when delivery is completed, if delivered personally, (b) three (3) business days after deposit into the United States mail, or (c) the day following deposit with a nationally recognized overnight courier if overnight delivery is requested by that courier.

Address for CITY:

City of San Diego
Real Estate Assets Department
1200 Third Avenue, Suite 1700
San Diego, CA 92101
Attn: Director

Address for LESSEE/ASSIGNOR:

Club One, Inc.
555 Market Street, 13th Floor
San Francisco, CA 94105
Attn: Robin Klaus

Address for ASSIGNEE:

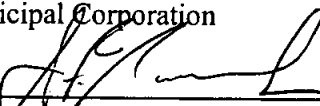
Fit Athletic Holdings, LLC
350 10th Avenue, Suite 200
San Diego, CA 92101
Attn: Steven Schnall
Email: Schnall@ontichodings.com

13. **CAPITALIZED TERMS:** All terms spelled with initial-capital letters in this Consent that are not expressly defined in this Consent will have the respective meanings given such terms in the Lease.
14. **AUTHORITY:** Each individual executing this Consent on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Consent on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Consent is binding upon such person or entity in accordance with its terms. Each person executing this Consent on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid, and such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, this Consent is executed by CITY acting by and through its Mayor, or his designee, and by LESSEE/ASSIGNOR and ASSIGNEE through their legal representatives.

CITY:

THE CITY OF SAN DIEGO, a California
Municipal Corporation

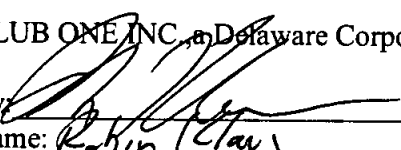
By: 

James F. Barwick, CCIM
Real Estate Assets Director

Date: 1/21/14

ASSIGNOR:

CLUB ONE INC, a Delaware Corporation

By: 

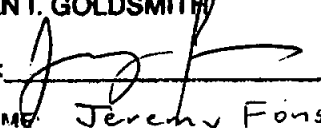
Name: Robin (Clay)

Title: CEO

Date: 1/10/14

Approved As To Form And Legality

JAN I. GOLDSMITH

BY: 

DATE 1/21/14

NAME

Jeremy Fonseca

TITLE

Deputy City Attorney

ASSIGNEE:

FIT ATHELTIC - CMR, LLC,
a California limited liability company

By: 
Name: Steven Schnall
Title: Manager
Date: 1/7/14

APPROVED as to form and legality this
_____ day of _____, 2014

JAN I. GOLDSMITH, City Attorney

By: _____
Name: _____
Title: _____

EXHIBIT "A"
TO
CONSENT TO ASSIGNMENT

ASSET PURCHASE AGREEMENT
(Carmel Mountain Ranch)

[to follow behind this page]

**ASSET PURCHASE AGREEMENT
(Carmel Mountain Ranch)**

This Asset Purchase Agreement ("Agreement") is made and entered into this 6th day of December, 2013 ("Effective Date"), by and between Club One, Inc., a Delaware corporation ("Seller"), and Fit Athletic – CMR, LLC, a California limited liability company ("Buyer").

WITNESSETH:

WHEREAS, Seller is engaged in the business (the "Business") of operating an athletic club known as Club One – Carmel Mountain Ranch, operated under the name "Frog's", located at 12171 World Trade Center, San Diego, California (the "Club" or the "Leased Premises"); *two lease 1. Sec. Sec 4. 6 2. City lease*

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Business by purchasing the Assets (as defined below) and assuming certain identified liabilities and obligations of the Business, all upon the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, Buyer acknowledges that Seller, directly and/or through subsidiaries, operates and maintains other athletic clubs at other locations ("Seller's Other Clubs"), that Seller is also engaged in the business of managing health and fitness activities for various third parties on a contract basis ("Seller's Other Businesses"), that those persons employed by Seller who directly operate or provide services to the Club on a day-to-day basis are referred to in this Agreement as the "Club Employees", and that, pursuant to this Agreement, Buyer will not acquire any of the assets, or assume any of the liabilities, of any of Seller's Other Clubs or Seller's Other Businesses and will not be entitled to make offers of employment to any of Seller's employees other than the Club Employees. For avoidance of doubt, the parties acknowledge that, simultaneously herewith, Seller and an affiliate of Buyer are entering into a separate agreement (the "Other Property Agreement") for the purchase by Buyer's affiliate of certain assets and properties of Seller in connection with the one of Seller's Other Clubs, namely the athletic club known as Club One – Solana Beach, also operated under the name "Frog's".

NOW, THEREFORE, Buyer and Seller, in consideration of the mutual representations, warranties, covenants and agreements and upon the terms and subject to the conditions hereinafter set forth, agree as follows:

**ARTICLE 1
SALE AND PURCHASE OF ASSETS**

Section 1.1 Assets to be Purchased by the Buyer. Subject to the terms and conditions set forth herein, at the Closing (as defined in Section 2.1), Seller will transfer, convey and assign (or cause to be transferred and assigned) to Buyer, and Buyer will purchase and acquire from Seller, all rights owned, directly or indirectly, by Seller in the Assets (as defined below).

(a) As used herein, "Assets" means all of Seller's right, title and interest in and to all of the assets used in and constituting the Business that are owned or leased, directly or indirectly, by Seller or in which Seller has any other interest, including without limitation all of the

following, but only (in each case) to the extent such assets are used in and constitute the Business; provided, however, that notwithstanding anything herein to the contrary, the Assets will not include, and at the Closing Seller will not transfer, convey and assign (or cause to be transferred and assigned) to Buyer, and Buyer will not purchase and acquire from Seller, any rights owned, directly or indirectly, by Seller, in any of the Excluded Assets (as defined in subsection (b) below):

(i) Any and all personal property, including without limitation any and all fitness and non-fitness equipment and machinery used in connection with the Club. A furniture, fixtures and equipment ("FF&E") list will be provided to Buyer from Seller, pursuant to Section 2.3(a) below;

(ii) Any and all leasehold improvements, furniture, furnishings, office equipment, and fixtures located at the Leased Premises (also to be included on the FF&E list);

(iii) Any and all of the inventories of the Business, including supplies, products, apparel and other like items, other than (i) retail inventory containing any of the Seller IP (as defined below) and (ii) Excluded Inventory (as defined below) (collectively, the "Inventory");

(iv) Any and all goodwill and going concern values attendant to the operation of the Club;

(v) Any and all of Seller's right, title and interest in, to and under all contracts and agreements with members of the Club ("Members") for use of the Club ("Membership Contracts") and, at the election of Buyer, any and all of Seller's right, title and interest in, to and under any other assignable contracts, leases and other agreements related to the Business (collectively, the "Contracts"); it being acknowledged by the parties, for avoidance of doubt, that since the Lease (as defined in Section 4.6) is to be terminated at the Closing upon the effectiveness of the New Lease (as defined in Section 3.2(g)), Buyer will not acquire any of Seller's rights under the Lease;

(vi) Any and all warranties in favor of Seller covering the Assets;

(vii) Any and all business records maintained by Seller relating to any of the Assets, including without limitation, all Membership Contracts, membership lists, computerized data relating to memberships, sales records, customer lists, supply lists and catalogues relating to the Club; provided, however, that Seller's obligation to transfer such business records is only to the extent that Seller is permitted by law to transfer such records or provide such information to Buyer, does not include any records pertaining to any of Seller's Other Clubs or any of Seller's Other Businesses, and in any event covers only such records as they may exist in their present hard-copy or electronic format;

(viii) Any and all assignable licenses, permits, authorizations and other approvals from any governmental authority or other third party used or held for use in connection with the Business; and

(ix) Any and all rights, causes of action and claims of Seller arising out of any of the Assets with respect to events occurring on or after the Closing.

(b) As used in this Agreement, "Excluded Assets" means the following assets, whether or not related to the Business or the Club:

- (i) all cash and cash equivalents of Seller;
- (ii) all policies of insurance or indemnity and all fidelity, surety or similar bonds, and the coverages afforded thereby, as well as all rights related thereto, including but not limited to rights to refunds of unearned premiums;
- (iii) the Excluded Inventory (as defined below);
- (iv) all claims for refund of taxes and other governmental charges of whatever nature paid by Seller;
- (v) all licenses, permits, certifications and authorizations related to the Business or the Club that are not assignable, including all pre-paid amounts and rights to refunds relating to such non-assignable licenses, permits, certifications and authorizations;
- (vi) all licenses, permits, certifications and authorizations of Seller not related to the Business or the Club, whether or not assignable;
- (vii) all rights in connection with and assets of any and all employee benefit plans for Club Employees as of the date of the Closing;
- (viii) all of Seller's corporate, financial and tax records, including without limitation Seller's corporate charter or other organizational documents, taxpayer and other identification numbers, seals, minute books, stock transfer books, blank stock certificates and other documents relating to the organization, maintenance and existence of Seller as a corporation;
- (ix) all personnel records and other records that Seller is required by law to retain in its possession;
- (x) all Seller IP (as defined below), except the right granted by the Frog's License (as defined in Section 6.6), which license includes the right for Buyer, in connection with the operation of the Club, to sell supplies which contain the Frog's logo;
- (xi) all software owned by Seller or in which Seller has rights of use, other than software that is licensed for use by the Business pursuant to contracts or agreements assigned to Buyer at the Closing;
- (xii) all rights Seller has under this Agreement and all rights, causes of action and claims to the extent arising out of any of the assets described in clauses (i) through (xi) above;
- (xiii) all goodwill related to Seller, other than the goodwill of the Club;

(xiv) any and all personal property (such as photographs, office decorations and the like) located at the Leased Premises, which is owned by employees of Seller, independent contractors engaged by Seller or other such third parties and is not owned by Seller;

(xv) all assets, of any nature, which is not maintained at the Club and are related to Seller's Other Clubs or Seller's Other Businesses; and

(xvi) those additional items, if any, listed in Exhibit "A" as "Additional Excluded Assets", as such list may be modified, with Buyer's reasonable consent, prior to the Closing.

(c) As used in this Agreement, "Excluded Inventory" means those items, if any, listed in Exhibit "B" as "Excluded Inventory", as such list may be modified, with Buyer's reasonable consent, prior to the Closing.

(d) As used in this Agreement, "Seller IP" means, subject to the Frog's License (as defined in Section 6.6), all of Seller's right, title and interest in each of the following: trademarks, service marks, trade names, copyrights, know how, patents, trade secrets, proprietary computer software, data bases and compilations, operating manuals and other such business-related materials developed by Seller and its affiliates, web page content, licenses (other than any licenses contained within contracts or agreements assigned to Buyer at the Closing), internet domain names and other such intellectual property of any nature, including all registrations, letters patent and applications therefor, in each case related to or used in connection with the Club, any of Seller's Other Clubs or for any of Seller's Other Businesses.

Section 1.2 Assumption and Retention of Liabilities.

(a) At the Closing, Buyer will assume the following liabilities (collectively, the "Assumed Liabilities"): (i) all liabilities expressly assumed by Buyer under the terms and conditions of this Agreement; (ii) all liabilities and obligations arising out of actions taken or events occurring after the Closing concerning the ownership, use and operation of the Club or the Assets; and (iii) all liabilities and obligations arising out of actions taken or events occurring after the Closing under the terms of any contract, permit, lease, license or other authorization, right or privilege that is assigned to Buyer pursuant to this Agreement.

(b) Seller will retain, and will be responsible for paying, performing and discharging when due, all liabilities of Seller existing as of, or arising out of actions taken or events occurring before, the Closing other than the Assumed Liabilities (collectively, the "Retained Liabilities"), and Buyer will not assume or have any responsibility for any of the Retained Liabilities.

(c) Subject to the allocation and proration of expenses of the Club pursuant to Section 1.6, (i) if at any time on or after the Closing, Buyer receives an invoice, billing statement or other request for payment of an Retained Liability, Buyer will promptly deliver it to Seller for disposition, and (ii) if at any time on or after the Closing, Seller receives an invoice, billing statement or other request for payment of an Assumed Liability, Seller will promptly deliver it to Buyer for disposition.

Section 1.3 Purchase Price; Payment. The purchase price to be paid by Buyer to Seller for the Assets (the "Purchase Price") will be Three Hundred Thousand Dollars (\$300,000). At the Closing, (i) the Purchase Price, plus or minus the Total Prorations (as defined in Section 1.6(a)), and minus the Tax Clearance Holdback Amount (as defined in Section 6.4), if any, will be paid to Seller, and (ii) the Tax Clearance Holdback Amount, if any, will be delivered to the Holdback Agent (as defined in Section 6.4), pursuant to the terms of Section 6.4 and the Holdback Agreement (as defined in Section 6.4).

Section 1.4 Allocation of Purchase Price. The parties shall allocate the purchase price as follows: one-third of the final Purchase Price shall be allocated to the fitness equipment being transferred herein; one-third of the final Purchase Price shall be allocated to the remaining FF&E being transferred herein; and one-third of the final Purchase Price shall be allocated to the leasehold improvements to the Leased Premises. That allocation shall be conclusive and binding upon the parties for all purposes, and neither party may file any tax return or other document with, or make any statement or declaration to, any governmental entity that is inconsistent with that allocation. None of the final Purchase Price is being paid for, and none shall be allocated to, Seller's rights under the Pool Lease (as defined in Section 3.2(e)), which will be assigned to Buyer as a condition to the Closing.

Section 1.5 Sales and Transfer Taxes. Buyer will pay all sales and use taxes arising out of the transfer of the Assets; provided that Buyer will not be responsible for any business, occupation, withholding, transfer or similar tax, or any taxes of any kind, related to any period before the Closing.

Section 1.6 Allocation and Proration of Income and Expenses.

(a) **Intent.** The Purchase Price has been determined and accepted by both parties on the basis that, except as otherwise specifically provided for in this Agreement, all income and expenses associated with the operation of the Club on and after the Closing are for the account of, and will be allocated to, Buyer, and all income and expenses associated with the operation of the Club prior to the Closing are for the account of, and will be allocated to, Seller, and that to the extent that any income or expense is attributable to the period that commences prior to the Closing and concludes on or after the Closing (a "Prorable Period"), such income or expense will be prorated between Buyer and Seller, with the portion of the income or expense related to the portion of the period ending immediately prior to the Closing being for the account of Seller, and the portion of the income or expense related to the portion of the period commencing immediately after the Closing being for the account of Buyer. Based on the determinations to be made by the parties' representatives as set forth in Section 1.7, the Closing Statement (as defined in that Section) will set forth the various positive and negative adjustments to the Purchase Price resulting from such allocations and prorations (the sum of which is referred to herein as the "Total Prorations").

(b) **Specific Items.** Without limiting the generality of the foregoing, the allocation or proration of the following items will be allocated to Buyer or Seller, or prorated between them, as follows:

(i) any and all dues and corresponding payments by Members who are obligated to pay on a monthly basis for use of the Club ("Monthly Dues"), which Monthly Dues are

received with respect to a Proratable Period, will be prorated as provided above if collected by Seller prior to the Closing Date and will constitute a Receivable subject to such proration if collected by Buyer on or after the Closing;

(ii) subject to the provisions of subsection (iii) below, any and all dues and corresponding payments received by Seller prior to the Closing from Members who have prepaid for use of the Club for a period greater than one month ("Prepaid Multi-month Dues") will be retained by Seller without proration, except that if the use of the Club covered by such Prepaid Multi-month Dues extends beyond 180 days after the Closing, then the Purchase Price will be reduced by an amount equal to that portion of the Prepaid Multi-month Dues covering the use of the Club after that 180 day period;

(iii) notwithstanding the provisions of subsection (ii) above, Prepaid Multi-month Dues received by Seller after September 4, 2013 will be prorated, with the Purchase Price being reduced by an amount equal to that portion of the Prepaid Multi-month Dues covering the use of the Club after the Closing;

(iv) with respect to any fees (other than Prepaid Multi-month Dues) received by Seller prior to the Closing relating, in whole or in part, to services (such as personal training or group exercise) to be provided by the Club after the Closing: 25% of such fees will be retained by Seller, and the remaining 75% will be prorated, with the Purchase Price being reduced by an amount equal to that portion of such proratable prepaid fees applicable to that portion of the prepaid services to be provided after the Closing;

(v) any and all Initiation Fees payable by a Member prior to the Closing will be allocated 100% to Seller if collected by Seller prior to the Closing Date and will constitute a Receivable owed 100% to Seller if collected by Purchaser on or after the Closing Date. As used herein, "Initiation Fees" means all payments made by a Member at the time of or in connection with such Member's initial enrollment in the Club, including but not limited to enrollment fees and processing fees; provided that Initiation Fees will not include any Monthly Dues or Prepaid Multi-month Dues collected along with such enrollment payments (that is, any portion of such enrollment payments constituting payment for the right to use the Club's services or facilities following enrollment as contrasted with payments required for enrollment itself);

(vi) any and all rent and other charges payable pursuant to the Lease (as defined in Section 4.6(a)) with respect to a Proratable Period will be prorated between Buyer and Seller as provided above whether paid in advance by Seller prior to the Closing or owed by Buyer in arrears on or after the Closing;

(vii) any and all charges for utilities will be paid directly to the obligee by Seller, based upon meter readings as of the date of Closing and at the prevailing rates, if possible (in which case, Buyer will be solely and directly responsible for all charges by the obligee thereafter); otherwise, such charges will be prorated between Buyer and Seller as provided above, whether paid in advance by Seller prior to the Closing or owed by Buyer in arrears on or after the Closing, based upon the number of operating days occurring before and after the date of Closing during the billing period for each charge; provided that, in all cases, Buyer will be responsible for causing all utilities

for the Club which were registered in the name of Seller prior to the Closing to be registered after the Closing in the name of Buyer;

(viii) all other ordinary and customary operating expenses, such as personal property taxes, permit fees, inspection fees and the like, will be prorated between Buyer and Seller as provided above whether paid in advance by Seller prior to the Closing or owed by Buyer in arrears on or after the Closing;

(ix) the night before the Closing, representatives of Buyer and Seller will estimate the amount of cash on hand at the Leased Premises ("Register Cash"), all of which will belong to Buyer at the Closing, and Seller will receive a credit to the Purchase Price equal to the amount of Register Cash so estimated; and

(x) compensation and other amounts payable to Club Employees will not be subject to allocation or proration but will instead be payable by Seller under the provisions of Section 6.10.

(c) **Payments Not Cleared by the Closing.** To the extent that any of the allocations or prorations hereunder consist of expenses credited as having been paid by Seller based on checks or other forms of payment that, as of the Closing, had been issued or initiated by Seller but not yet been cleared for payment, Seller will have the continuing obligation to cause such checks or other forms of payment to be cleared for payment. To the extent that any of the allocations or prorations hereunder consist of income credited as having been received by Seller based on checks or other forms of payment that, as of the Closing, had been issued or initiated by the obligor but not yet been cleared for payment, Seller shall be entitled to receive such income after the Closing.

Section 1.7 Pre-Closing Procedures. At least five days prior to the Closing, representatives of Buyer and Seller, cooperatively and in good faith, will make determinations as to the respective amounts of all income and expenses associated with the operation of the Club that were (or are reasonably expected to be) collected or paid by Seller prior to the Closing, all or any portion of which is allocable to Buyer under the provisions of Section 1.6. The representatives will reflect such determinations in a summary report in form reasonably acceptable to both parties (the "Closing Statement"). Prior to the Closing, each party will sign and retain a copy of the Closing Statement, which will be deemed to be a part of this Agreement. Each of such determinations will, to the extent feasible, be finally determined at the pre-Closing meeting between the parties' representatives. To the extent that any of the determinations cannot be finally made at the meeting, such determinations will be made, as of the Closing, as an estimate based on the best information then available to the parties (with that fact referenced on the Closing Statement), and the parties will make final determinations as to all such estimated amounts and make corresponding adjusting payments in accordance with Section 6.8.

Section 1.8 Attorney, Accountant and Advisor Fees. Each party will bear its own costs, expenses and fees for such parties' attorneys, accountants and other advisors incurred in negotiating the terms and conditions of this Agreement.

ARTICLE 2 CLOSING

Section 2.1 Closing Date. The closing of the transactions contemplated hereby (the "Closing") will take place on December 21, 2013, or on such other date to which the parties may mutually agree in writing, provided that the date for the Closing may be extended by either party as provided below (the date for the Closing, as set forth above, as it may be extended or changed by the parties, is referred to herein as the "Scheduled Closing Date"). Buyer and Seller shall each have one automatic right to extend the date of Closing by up to 20 days (until no later than January 10, 2014) should such party reasonably believe more time is necessary to complete this transaction, including without limitation as the result of believing that any condition to the Closing will not be satisfied or waived by the initial Scheduled Closing Date. Either party, in order to exercise the extension right, must notify the other of that election by no later than December 20, 2013, and if both parties exercise their extension rights but designate different extended dates for the Closing, then the extended Scheduled Closing Date will be the later of the two designated dates. If the Scheduled Closing Date is extended, then all other related dates under this Agreement shall also be extended by a corresponding number of days.

Section 2.2 Closing. The Closing will occur by the delivery of the documents and funds, as provided in Sections 2.3(c) and 2.4, with the Closing not being considered to have occurred until all such deliveries have been received, as confirmed by the recipients. Funds may be delivered by cashier's check, wire transfer or such other method of payment as the parties shall mutually agree, at the time of Closing, to be acceptable. The Closing will take place at 10:00 a.m. on the Scheduled Closing Date at the Club, or at such other time and/or place as the parties may mutually determine, it being understood that the parties contemplate, and at or prior to the time of Closing may agree, that the Closing not require the presence of the parties, or their representatives or agents, at a single location, but instead be conducted, in whole or part, by the electronic delivery of the Closing documents and/or funds, in which case all such deliveries will be considered to have been made in escrow, to be released by the recipients from escrow only upon the parties' confirmation that all deliveries have been received.

Section 2.3 Seller's Deliveries.

(a) Within five days after the Effective Date, Seller shall deliver to Buyer the following items:

- (i) A fully completed Exhibit A, setting forth all of the Additional Excluded Assets;
- (ii) A fully completed Exhibit B, setting forth all of the list of Excluded Inventory;
- (iii) A fully completed Exhibit C, setting forth the list of Additional Permitted Encumbrances;
- (iv) A fully completed FF&E list, as referenced in Section 1.1(a)(i);

- (v) An Updated Member list, as referenced in Section 4.5 below; and
- (vi) A schedule of the personal training contracts or group exercise contracts entered into by Seller on or before the Effective Date with which Buyer will have to comply after Closing.
- (b) Buyer shall have five days after receipt of the items provided by Seller under Section 2.3(a) above to inspect such items and, if any are unacceptable to Buyer, to notify Seller in writing of Buyer's decision to terminate this Agreement; provided that a failure by Buyer, for any reason, to deliver such notice within that five-day period will constitute Buyer's irrevocable acceptance of the information contained in the items and irrevocable waiver of Buyer's right of termination hereunder.
- (c) At the Closing, Seller will deliver the following additional items to the Buyer for the purposes of closing this transaction:
 - (i) such instruments of conveyance and other documents (such as bills of sale, deeds, assignments, certificates of title, and the like) as either Buyer or Seller may deem necessary or appropriate to convey the Assets to Buyer free and clear of all liens, claims, charges and encumbrances other than Permitted Encumbrances (as defined in Section 4.4), and to evidence Seller's ownership of, marketable title to, and right to convey the Assets consistent with the transaction contemplated by this Agreement, each of which instruments and/or documents shall be in such form as Buyer and Seller, in good faith, may mutually determine to be acceptable (collectively, the "Conveyance Documents"), signed, as applicable, by Seller;
 - (ii) the books and records required to be delivered with the Assets; provided that between the Effective Date and the Closing Seller will provide Buyer with reasonable continuing access to such books and records to assist Buyer in preparing for the Closing and transfer of the Business;
 - (iii) All assignable licenses, permits, authorizations and other approvals from other governmental authority or other third party used or held for use in connection with the Business, as referenced in Section 1.1(a)(ix), above; provided that between the Effective Date and the Closing Seller will provide Buyer with reasonable continuing access to such assignable licenses, permits, authorizations and other approvals to assist Buyer in preparing for the Closing and transfer of the Business;
 - (iv) Seller's share of any other costs required by this Agreement to be paid by Seller in connection with Closing;
 - (v) A counterpart of the Holdback Agreement (as defined in Section 6.4), as signed by Seller; and
 - (vi) a certificate of the Chief Executive Officer of Seller certifying that all of the representations and warranties of Seller are true and correct as of the Closing, the conditions of Seller to the Closing have been satisfied or waived and Seller has performed all of the covenants required by it to be performed as of the Closing.

Section 2.4 Buyer's Deliveries at Closing. At the Closing, Buyer will deliver to Seller the following:

- (a) the Purchase Price, plus or minus the Total Prorations, and minus the Tax Clearance Holdback Amount;
- (b) the Tax Clearance Holdback Amount, which will be delivered to the Holdback Agent, pursuant to the Holdback Agreement, as such terms are defined in Section 6.4;
- (c) the Conveyance Documents, signed, as applicable, by Buyer;
- (d) Buyer's share of any other costs required by this Agreement to be paid by Buyer in connection with Closing;
- (e) A counterpart of the Holdback Agreement (as defined in Section 6.4), as signed by Buyer and the Holdback Agent; and
- (f) a certificate of a Managing Member of Buyer certifying that all of the representations and warranties of Buyer are true and correct as of the Closing, the conditions of Buyer to the Closing have been satisfied or waived and Buyer has performed all of the covenants required by it to be performed as of the Closing.

ARTICLE 3 CONDITIONS PRECEDENT TO CLOSING

Section 3.1 Conditions to Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement will be subject to the fulfillment, at or prior to the Closing, of each of the following conditions, in each case unless waived by Seller:

- (a) Buyer shall have performed all of its obligations under this Agreement to complete the purchase and sale of the Assets;
- (b) All Conveyance Documents and all other documents necessary to complete the purchase and sale of the Assets which Buyer is to deliver or cause to be delivered on or before the Closing shall have been delivered by Buyer, duly executed as required;
- (c) No party to the transactions contemplated hereby or any of their affiliates shall have received, on or prior to the Closing, any notice of any pending or threatened litigation or regulatory proceedings which could have a material adverse effect on the transactions contemplated hereby, or on any of the Assets or on the Club; provided, however, that the provisions of this Section 3.1(c) will not apply if Seller has solicited or encouraged any such litigation or regulatory proceedings;
- (d) No statute, law, rule, regulation or order of any court or administrative agency shall be in effect which enjoins, restrains or prohibits Seller or Buyer from consummating the transactions contemplated hereby;

(e) Seller will be released from continuing liability under the Lease pursuant to an instrument reasonably satisfactory to Seller, signed by the Landlord; and

(f) The closing of the purchase and sale under the Other Property Agreement shall occur simultaneously with the Closing.

Section 3.2 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions, in each case unless waived by Buyer:

(a) Seller shall have performed all of its obligations under this Agreement to complete the purchase and sale of the Assets;

(b) All Conveyance Documents and all other documents necessary to complete the purchase and sale of the Assets which Seller is to deliver or cause to be delivered on or before the Closing shall have been delivered by Seller, duly executed as required;

(c) No party to the transactions contemplated hereby or any of their affiliates shall have received, on or prior to the Closing, any notice of any pending or threatened litigation or regulatory proceedings which could have a material adverse effect on the transactions contemplated hereby, or on any of the Assets or on the Club; provided, however, that the provisions of this Section 3.2(c) will not apply if Buyer has solicited or encouraged any such litigation or regulatory proceedings;

(d) No statute, law, rule, regulation or order of any court or administrative agency shall be in effect which enjoins, restrains or prohibits Seller or Buyer from consummating the transactions contemplated hereby;

(e) The lease that Seller currently has from the City of San Diego for the swimming pool being used by the Club (the "Pool Lease") will have been assigned to Buyer effective at the Closing, with the consent of the City of San Diego;

(f) The number of Members of the Club as of a date within 10 days prior to the Closing, as such date and number may be reasonably determined by the parties each acting in good faith, shall not be less than 2,900;

(g) Buyer shall enter into an agreement with the Landlord for a new lease for the Leased Premises (the "New Lease") on terms satisfactory to Buyer in its sole discretion; and

(h) The closing of the purchase and sale under the Other Property Agreement shall occur simultaneously with the Closing.

Section 3.3 Efforts to Close. Subject to the terms of this Agreement and without limiting the obligations of the parties specified otherwise in this Agreement, each party will perform its obligations hereunder and will use its reasonable best efforts to cause each of the conditions to Closing to be satisfied as soon as possible and, in any event, prior to the Scheduled Closing Date.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer as follows:

Section 4.1 Authorization and Good Standing. Seller is a corporation validly existing and in good standing under the laws of the State of Delaware, and is qualified to do business in California. Seller has all requisite corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transaction contemplated herein. Seller has taken all corporate, board or shareholder action required to have been taken by Seller with respect to the authorization, execution and delivery of this Agreement.

Section 4.2 Capacity and No Conflicts.

(a) Seller has all power and authority necessary to enter into and to perform this Agreement. Seller is not prohibited by agreements to which it is a party or by its organizational documents from entering into this Agreement and consummating the transactions contemplated herein.

(b) The execution of this Agreement, the consummation of the transactions contemplated herein and the fulfillment of the terms hereof will not:

(i) Result in a breach of any order of any court or governmental entity or any legal requirement applicable to Seller with respect to the Business or the Leased Premises;

(ii) Cause any acceleration of maturity of any agreement, commitment, loan, note, obligation, bid, offer or proposal (whether written or oral, or implicit or explicit) with respect to the Business or the Leased Premises, including without limitation any amendment, assignment, assumption or renewal thereof, to which Seller is or will be a party, or by which Seller is or will be bound, or as to which Seller is an obligor or guarantor; or

(iii) Result in the creation or imposition of any Encumbrance other than a Permitted Encumbrance (as those terms are defined in Section 4.4) upon, or give any other person any interest or right (including without limitation any right of termination or cancellation or change) in or with respect to, any of the Assets or any contract, commitment or obligation with respect to the Business or the Leased Premises.

(c) Upon execution and delivery, this Agreement constitutes or will constitute a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other such laws concerning the rights of creditors generally and the application of equitable principles.

Section 4.3 Assets. The Assets are all of the assets required to operate the Business and the Leased Premises as such operations are presently conducted. All tangible Assets (including all exercise or fitness equipment) are in good operating condition and repair, subject to ordinary wear and tear, and are suitable for the operation of the Business as presently operated. None of the Assets is used by Seller in the operation of any other athletic club or facility. During the three-year

period prior to the Effective Date, there has not been any material interruption of the operation of the Business due to inadequate maintenance of any of the Assets. Seller has not made any material warranty (or similar) claim with respect to any of the Assets, nor, to the knowledge of Seller, does any matter, defect or condition exist that would serve as the basis for such a claim.

Section 4.4 Title to Assets. Seller has good and marketable title to the Assets and, at the Closing, the Assets will be free from all Encumbrances other than Permitted Encumbrances. As used herein, "Encumbrance" means any title defect, claim of ownership, mortgage, security interest, lien, pledge, claim, option, right of first refusal, objection or any other restriction or third-party right of any nature whatsoever; and "Permitted Encumbrance" means (i) liens for taxes not delinquent, (ii) purchase money liens arising or incurred in the ordinary course of business of the Club which secure Assumed Liabilities, (iii) statutory landlord's, mechanic's, carrier's, workmen's, repairmen's or other similar liens arising or incurred in the ordinary course of business of the Club for amounts which are not delinquent and which are not, individually or in the aggregate, material to business of the Club, and (iv) such other liens, if any, that are set forth on Exhibit "C" as "Permitted Encumbrances".

Section 4.5 Membership Contracts. Seller has provided Buyer with a schedule of the Membership Contracts, together with information relating to renewals and aging schedules of membership tenure and membership dues and initiation fees or the equivalent thereof with respect to such Membership Contracts, which schedule and information were true and complete as of the date provided to Buyer. Pursuant Section 2.3 above, Seller agrees to provide Buyer with an updated schedule of the Membership Contracts, together with information relating to renewals and aging schedules of membership tenure and membership dues and initiation fees or the equivalent thereof with respect to such Membership Contracts. This updated schedule which shall be provided by Seller to Buyer shall be true and complete as of the date provided to Buyer. Such schedule and information included and the updated schedule, will include information (as to the identity of the Member and the term of the Membership Contract) with respect to all Members who, as of the date of such schedule and information and date of the updated schedule, have prepaid dues or fees covering periods after the Effective Date. The forms of Membership Contract used by Seller at the Club (copies of which have been provided to Buyer) comply (or, when used, did comply) in all material respects with all applicable laws of the State of California. Seller has not accepted membership applications or entered into Membership Contracts that do not provide for payment of periodic dues or fees at rates customarily charged by Seller. All Membership Contracts entered into by Seller with respect to the Club arose from valid sales in the ordinary course of business in accordance with all applicable laws. Seller has not engaged in or offered any special promotion programs or discount programs for membership, or otherwise discounted membership dues or fees, other than in accordance with Seller's ordinary business practices.

Section 4.6 Lease. - *This lease is for the adjacent Building occupied by Club One (not the City lease for pool)*

(a) Pursuant to a lease (the "Lease") between Richard D. Meyer (the "Initial Landlord") and Southern California Fitness, Inc., a California corporation (the "Initial Tenant"), dated August 7, 1995, as amended by a First Amendment to Lease dated July 12, 1999 between the Carol F. Soifer Living Trust U.T.A. dated January 22, 1998 (as the successor landlord, referred to herein as the "Landlord") (the "First Amendment to Lease"), and as assigned from the Initial Tenant to Seller by the assignment referred to in the First Amendment to Lease, Seller has a valid leasehold

estate in and to the Leased Premises, free and clear of all Encumbrances other than Permitted Encumbrances. Seller has provided Buyer with a true and complete copy (including all amendments) of the Lease.

(b) Other than Seller, there are no parties physically occupying or using any portion of the Leased Premises, nor do any other parties have the right to physically occupy or use any portion thereof.

(c) Seller has not received written notice of any violation of any legal requirement affecting the Leased Premises issued by any governmental entity that has not been cured, nor to Seller's knowledge is there any circumstance that is likely to give rise to such a notice.

(d) Seller has not received any written notice to the effect that (i) any condemnation or rezoning proceedings are pending or threatened with respect to the Leased Premises, or (ii) any legal requirements with respect to the Leased Premises, including, without limitation, any zoning regulation or ordinance (including with respect to parking), board of fire underwriters rules, building, fire, health or similar law, code, ordinance, order or regulation, have been violated, including with respect to signage, nor to Seller's knowledge are there any such pending or threatened proceedings or any violations of any such legal requirements.

(e) To Seller's knowledge, the Leased Premises do not require any modification, improvement or expenditure in order to comply with a lease (including, without limitation, the Lease) or other occupancy agreement, or with any legal requirements or other requirements of any governmental entity that are currently in effect or that have been approved, ratified or adopted as of the Closing that will become effective after the Closing.

(f) The Leased Premises are in good operating condition and repair, subject to ordinary wear and tear, and are suitable for the conduct of the Business as presently conducted at the Leased Premises.

(g) The Lease is the only lease, license or permission required for the occupancy of the Leased Premises, the parties acknowledging, for avoidance of doubt, that other licenses and permits are required for the operation of business at the Leased Premises, as contrasted with the occupancy of the Leased Premises themselves.

Section 4.7 Environmental Representations.

(a) To Seller's knowledge, Seller has not, with respect to the Club or the Assets, stored, treated, disposed of, arranged for or permitted the disposal of, transported, handled or released any Hazardous Materials in violation of any applicable environmental laws. As used herein, "Hazardous Materials" means chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum and petroleum products or byproducts, asbestos, polychlorinated biphenyls, noise, radiation or radon, in each case with respect to which liability or standards of conduct are imposed pursuant to any applicable environmental laws.

(b) To Seller's knowledge, there is no condition or activity relating to the Club that would violate any applicable environmental laws, and Seller is not in violation of, and has not violated, any applicable environmental laws with respect to the Club or the Leased Premises.

(c) Seller has made available to Buyer all information known to Seller regarding the environmental condition of the Leased Premises, and all information regarding the history of compliance with environmental laws of the operations conducted thereon.

(d) There is not, with respect to the Club or the Assets, any administrative proceedings, judgments, declarations or orders by governmental authorities, nor any claims by any other person or entity, relating to the presence or release of any Hazardous Materials on, in or under the Leased Premises pending or, to Seller's knowledge, threatened or recently filed against Seller, nor, to Seller's knowledge, against any other person whose liability for any such claims Seller has retained or assumed contractually.

(e) To Seller's knowledge, there are not on, in or under the Leased Premises any asbestos-containing materials requiring removal or encapsulation or any polychlorinated biphenyls in any hydraulic oils, transformers, capacitors or other electrical equipment which, in either case, are regulated under applicable environmental laws.

(f) To Seller's knowledge, no Hazardous Materials originating from any neighboring or adjoining properties have migrated onto, or are migrating towards, the Leased Premises and no Hazardous Materials on, in or under the Leased Premises are migrating or have migrated onto or towards any neighboring or adjoining property.

Section 4.8 Utilities. To the best of Seller's knowledge, all water, sewer, gas, electric, telephone and drainage facilities which are used by Seller in the operation of the Club are installed to the Leased Premises and are in working condition.

Section 4.9 Permits, Etc. All permits, licenses, registrations and approvals of and from all governmental authorities necessary for the operation by Seller of the Club are in full force and effect, and any of such permits, licenses, registrations and approvals which may legally be transferred to Buyer will be so transferred at the Closing, subject to such terms and conditions (including without limitation the release of Seller from any continuing liability thereunder) as Seller may reasonably require.

Section 4.10 Compliance With Applicable Laws. Seller is in material compliance with all federal, state, local and foreign laws, statutes, rules and regulations applicable to the Club; the Club has conducted all of its past activities and operations in material compliance with all federal, state, local and foreign laws, statutes, rules and regulations applicable to the Club; Seller has conducted all of its past activities and operations in material compliance with all federal, state, local and foreign laws, statutes, rules and regulations, as the same existed from time to time; and Seller has not received any notification that it is in violation of any laws, regulations or orders and no such violation exists.

Section 4.11 No Conflicts. The execution, delivery, and performance of this Agreement: (a) will not conflict with any provision contained in Seller's organizational documents; (b) will not

result in any conflict with, breach of, or default (or give rise to any right of termination, cancellation, acceleration, modification or loss of any right or benefit) under, or require any notice, consent or approval which has not been obtained with respect to, any term, condition or provision of any material Contract, and (c) will not violate any law applicable to Seller, the Club or the Assets. Neither the execution of this Agreement nor the consummation of the transactions described in and contemplated by this Agreement will result in the creation of any lien on any of the Assets.

Section 4.12 Litigation Involving Seller. There is no action, suit, proceeding or investigation (including, without limitation, any action, suit, proceedings or investigation with respect to any federal, state or local laws, rules or regulations regulating the discharge of Hazardous Materials (as defined in Section 4.7(a)) into the environment or otherwise relating to the protection of the environment and federal, state or local tax audits) pending or threatened against or affecting Seller or any of its affiliates or any of the Assets which could materially and adversely affect any of the Assets, and no governmental entity has served upon Seller any notice claiming any violation of any statute, ordinance or regulation or noting the need for any repair or remediation with respect to the Assets, requesting data or access, requiring testing or other investigation relating to environmental conditions or requiring any change in the Assets.

Section 4.13 Financial Statements. Any financial statements and other related accounting documents and records of or related to Seller's operation of the Club provided by Seller to Buyer were, as of the date they were so provided, accurate and complete, consistent with the books and records of Seller and presented fairly the financial condition of the Business as of the respective dates thereof and the results of operations of the Business for the respective periods covered thereby. Any such financial statements, documents and records provided from the Effective Date until the Closing will also be consistent with the books and records of Seller and will also present fairly the financial condition of the Business as of the respective dates thereof and the results of operations of the Business for the respective periods covered thereby.

Section 4.14 No Undisclosed Liabilities. Seller is not obligated for, nor to Seller's knowledge are any of the Assets subject to, any liabilities or adverse claims or obligations, absolute or contingent, which have or could have a materially adverse effect on the operation of the Club or the sale, conveyance, grant, transfer, assignment and delivery of the Assets to Buyer in accordance with the terms of this Agreement. Seller is not in default with respect to any terms or conditions of any material contractual liability or obligation relating to the operation of the Club or the Assets. There are no debts, liabilities or obligations of Seller with respect to the Club or the Assets not previously disclosed to Buyer in writing.

Section 4.15 Taxes. Seller has filed in proper form all federal, state, local and foreign tax returns required to be filed prior to the date hereof, which relate to the Assets or to the operations of the Club. All taxes, fees, assessments and charges due and payable by Seller on or before the date hereof pursuant to said returns have been paid. There is no unpaid interest, penalty or addition to the tax due or claimed to be due from, or any unpaid tax deficiency, determination or assessment outstanding against Seller relating to the Club and, to Seller's knowledge, there is no basis therefor. As used in this Agreement, the terms "tax" and "taxes" refer only to taxes and other charges imposed with respect to the ownership, use and/or operation of the Club and the Assets (such as property taxes and business taxes imposed by city and county taxing authorities) and not to taxes or

other charges imposed on Seller based on the income received by Seller from the operation of the Club.

Section 4.16 Employees. Other than as disclosed to Buyer in writing, there are no pending, threatened or, to Seller's knowledge, reasonably anticipated charges against Seller with respect to the Club Employees under any applicable law pertaining to the employment or termination of labor, including, without limitation, the Occupational Safety and Health Act, the 1990 Immigration Act and the Immigration and Nationality Act, if applicable, and any other acts relating to wages, hours, collective bargaining, equal employment opportunity and employment and labor in general, and to the payment of social security and similar taxes; and to the extent of any remedial orders issued under any such applicable laws, Seller has fully complied therewith. Prior to or contemporaneously with the Closing, Seller will comply with its obligations under Section 6.10 with respect to the payment of compensation owed to the Club Employees as of the Closing.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as follows:

Section 5.1 Authorization and Good Standing. Buyer is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of California with full power and authority to own and operate its properties and to carry on its business as it is now being conducted. Buyer has all requisite limited liability company power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated herein. Buyer has taken all action required by its operating agreement and law to have been taken by Buyer with respect to the authorization, execution and delivery of this Agreement.

Section 5.2 Capacity and No Conflicts.

(a) Buyer has all power and authority necessary to enter into and to perform this Agreement. Buyer is not prohibited by agreements to which it is a party (or restrained by its organizational documents) from entering into this Agreement and consummating the transactions contemplated herein.

(b) Upon execution and delivery, this Agreement constitutes or will constitute a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other such laws concerning the rights of creditors generally and the application of equitable principles.

Section 5.3 Litigation. There is no action pending, or to the knowledge of Buyer threatened, against Buyer that challenges, or seeks to enjoin or prevent the execution or delivery of this Agreement, the performance of the terms and conditions hereof or the consummation of the transactions contemplated herein.

Section 5.4 Financial Representations. Buyer is solvent and has funds available to pay the Purchase Price. Buyer is not entering into this Agreement and the transactions contemplated herein with the intent to burden, delay or defraud its present or future creditors.

ARTICLE 6 OTHER AGREEMENTS

Section 6.1 Continuing Access to Information; Access to Landlord; Buyer's Representatives at the Club. From the Effective Date through the Closing, Seller will, subject to applicable fiduciary, privacy and other legal obligations, afford to Buyer and Buyer's accountants, counsel and other representatives a continuing right to examine and review all aspects of the operation of the Business, the Club, the Assets, the Lease and the Leased Premises. Seller has provided and, until the Closing, will continue to provide Buyer with access to the Landlord to negotiate the terms and conditions of Buyer's possession and operation of the Leased Premises. From the Effective Date through the Closing, Buyer will have the right, on reasonable terms and conditions to be set by Seller, to have one or several representatives of Buyer present at the Club to observe operations, plan renovations, interview employees and review books and records, as needed.

Section 6.2 Preservation of the Business. From the Effective Date through the Closing, Seller will continue to operate the Club as previously operated, shall maintain the Club in the same condition as it now exists (subject to normal wear and tear) and will use its best efforts to preserve the goodwill of the Club's suppliers, Members, and others having business relations with the Club. Seller will not modify, amend, terminate or take any action concerning the Club outside of the ordinary course of business in accordance with previous practices without the written consent of Buyer. Prior to the Closing, Seller will continue to use commercially reasonable efforts to retain existing Members and sell additional memberships, but Seller will not provide unusual sales incentives or provide Members with free or reduced dues in excess of Seller's customary practices.

Section 6.3 Cooperation. Seller will use commercially reasonable efforts to secure all necessary consents, approvals, authorizations, exemptions and waivers from third parties as shall be required in order to enable Buyer to operate the Club following the Closing and to effect the transactions contemplated hereby. Buyer and Seller will each use commercially reasonable efforts to cause the consummation of the transactions contemplated hereby in accordance with the terms and conditions hereof. Buyer and Seller will reasonably cooperate with and assist each other in effecting an orderly transition of the operation of the Club at the Closing.

Section 6.4 Tax Clearances. Seller and Buyer will work together cooperatively and in good faith to submit applications upon the Closing for, and to seek to receive as soon thereafter as possible, tax clearances with respect to the Business from the California Employment Development Department (as to employment taxes payable with respect to any employees of the Club) and the California Board of Equalization (as to sales taxes payable with respect to sales made by the Club) (collectively, the "Tax Clearances"). At the Closing, as security for Seller's obligations to pay employment taxes and sales taxes with respect to the Club through the Closing, an amount equal to \$7,000 (the "Tax Clearance Holdback Amount"), which would otherwise be payable to Seller at the Closing, will instead be delivered into a trust account maintained by Buyer's attorneys, Stark & D'Ambrosio, LLP (the "Holdback Agent"). The Holdback Agent will hold the Tax Clearance

Holdback Amount, in escrow for distribution to Seller upon the receipt of the Tax Clearances, all as set forth in an agreement among Seller, Buyer and the Holdback Agent, to be prepared by the Holdback Agent at least five days prior to the Closing and reasonably acceptable to Seller and Buyer (the "Holdback Agreement"); provided that the Tax Clearance Holdback Amount shall not limit Seller's liability to Buyer in the event that the Tax Clearances are not received and liability is imposed on Buyer for Seller's obligations to pay employment taxes and sales taxes with respect to the Club through the Closing.

Section 6.5 Sale of Prepaid Multi-Month Memberships. From the Effective Date through the Closing, Seller will not, without Buyer's written consent, not to be unreasonably withheld, sell any Membership Contracts that entitle the Member, on the payment of Prepaid Multi-month Dues, to use the Club for a period longer than one month.

Section 6.6 Frog's License. Subject to, and effective upon, the Closing, Seller hereby grants to Buyer a fully prepaid, royalty-free, perpetual and transferable license to use the "Frog's" logo and trademark in connection with, but only in connection with, the operation of the Club after the Closing (the "Frog's License").

Section 6.7 Transition of Electronic Billing Services. Seller will provide Buyer with reasonable access to Seller's billing service and will authorize the billing service to work directly with Buyer to facilitate a smooth transition of the billing and collection of dues after the Closing. Seller will instruct its billing service to be prepared to credit to Buyer all post-Closing electronic fund transfers ("EFT") and Automated Clearing House ("ACH") drafts with respect to the Club, so that, to the extent reasonably practicable, the transfer of such EFT and ACH drafts from Seller to Buyer will occur simultaneously with the Closing. If necessary as reasonably determined by Buyer, Seller will, following the Closing, continue to process the billing and collection of dues of the Club on Buyer's behalf through Seller's billing service until such time as such electronic debit arrangements have been fully integrated into Buyer's system; provided, however, that in no event will Seller be required to continue to do so after the 60th day following the Closing.

Section 6.8 Post-Closing Determination of Pre-Closing Estimates. If any of the determinations required to be made under Section 1.7 and included on the Closing Statement are made as estimates rather than final determinations, then by the 60th day following the Closing or such other day as may be mutually selected by the parties (in either case, the "Final Determination Date") representatives of Buyer and Seller, cooperatively and in good faith, will make final determinations of each of the estimated items. The parties will reflect such determinations in a summary report in form reasonably acceptable to both parties (the "Closing Adjustment Statement"), which statement will set forth the net amount, if any, by which the aggregate of such final determinations differs from the aggregate of the estimates set forth on the Closing Statement (the "Net Adjustment Amount"). Each party will sign and retain a copy of the Closing Adjustment Statement, which will be deemed to be a part of this Agreement, and Seller or Buyer, as the case may be, will promptly make a cash payment of the Net Adjustment Amount to the other party. If the parties are unable, by the Final Determination Date, to reach agreement upon a Closing Adjustment Statement, then the matter will constitute a dispute and, at any time thereafter, at the request of either party, the dispute will be resolved pursuant to the provisions of Section 9.13.

Section 6.9 Collection of Receivables. Upon the Closing, Seller will cease all efforts to collect any outstanding Receivables, and Buyer will have the sole and exclusive authority and right to collect all outstanding Receivables after the Closing; provided that, with respect to any Receivables that are subject to proration (as provided in Section 1.6), Buyer will use commercially reasonable efforts to collect, and promptly remit to Seller its prorated share of, such Receivables. As used in this Agreement, "Receivables" means any and all accounts, instruments, notes, drafts, acceptances and other forms of receivables from third parties, including, without limitation, customers and employees, arising from the conduct of the Club (including the sale of goods and services) before the Closing, whether or not in the ordinary course of business of the Club, together with any unpaid financing charges accrued thereon.

Section 6.10 Employee Matters. Seller will terminate all Club Employees as of the Closing. Seller will have sole responsibility for any compensation due on termination of employment, any severance payments, any accrued vacation time, any accrued bonuses and any other employee benefits due to, as well as any employment-related claims (including workers compensation claims) made by, any of its former employees with respect to their employment by Seller prior to the Closing Date, whether or not Buyer offers employment to or employs any such former employees of Seller. Buyer may, in its sole discretion, extend offers of employment to those of Seller's former employees whom it desires to hire, which offers shall be on terms and conditions which Buyer shall determine in its sole discretion. Seller agrees to provide Buyer the ability to communicate with and interview the Club Employees, beginning on the Effective Date and up through the Closing Date (the "Interview Period") for the purpose of Buyer potentially hiring any of the Club Employees; provided that all such communications and interviews will be subject to each of the Club Employees first receiving a letter or other written communication in a form mutually acceptable to Seller and Buyer, in an effort to effect a smooth transition of the operations of the Club to Buyer and to alert the Club Employees of the potential for the sale of the Club to Buyer not to occur.

Section 6.11 Pre-Closing Communications with Members; Press Releases; Post-Closing Notice. Subject to Section 9.12(b), as soon as practicable following the Effective Date, the parties will cooperate with each other in good faith to prepare and distribute a notice to the Members and/or prepare and distribute a press release, in either case in such form and substance mutually acceptable to the parties, with the objective of announcing the parties' entry into an agreement to sell the Club to Buyer, subject to various conditions to the closing of the sale, and Buyer's intentions with respect to the renovation and operation of the Club following the purchase. On, or as soon as practicable following, the Closing, the parties will send a notice to all Members in compliance with the provisions of Section 1812.88 of the California Civil Code regarding the assignment of the Membership Contracts from Seller to Buyer.

Section 6.12 Reasonable Cooperation. Buyer and Seller will both provide their best efforts to reasonably cooperate with each other in the transfer of the Business from Seller to Buyer and to perform their obligations under this Agreement, which will include the Seller's continued performance, at Buyer's request for a period not to exceed 60 days, of such transitional services for Buyer as Seller may reasonably determine (and on such terms as Seller may reasonably determine) to be appropriate.

Section 6.13 Re-branding. Seller owns all of the Seller IP (as defined in Section 1.1(d)), which includes ownership of trademark rights associated with, among other words, the words "Club One" (the "Club One Trademark Rights") and Frog's (the "Frog's Trademark Rights"). Seller is not conveying, and Buyer is not acquiring, any of the Seller IP, except that, pursuant to the Frog's License (as defined in Section 6.6), Seller is granting to Buyer a license to use the "Frog's" logo and trademark in connection with, but only in connection with, the operation of the Club after the Closing. Buyer intends to re-brand the Club, which may take up to six months to complete. During such re-branding, and thereafter as Buyer may elect, pursuant to the Frog's License, Buyer may use the "Frog's" logo and trademark in connection with the operation of the Club (including, without limitation, in signage and on products sold at the Club). To the extent, if at all, that at the Closing, Club One Trademark Rights are in use in any signage, products or other items located at the Club, Buyer will use its best efforts to remove all such use of the Club One Trademark Rights as soon as practicable and in any event by no later than the 30th day following the Closing. For avoidance of doubt, the parties expressly acknowledge and agree that the rights granted to and the obligations imposed on Buyer under this Section do not entitle Buyer to any rights in any of the Seller IP beyond the rights expressly granted by the Frog's License and the limited right to continued use of the Club One Trademark Rights at the Club during the period (not to exceed 30 days) during which they are to be removed by Buyer.

Section 6.14 Club One Network Memberships. The parties acknowledge that certain of the Members and certain members of Seller's Other Clubs hold "Club One Network Memberships" that allow members of Seller's Other Clubs with such network memberships the right to use the Club and allow Members with such network memberships the right to use certain or any of Seller's Other Clubs, in each case without additional charge. For the period beginning on the Closing and ending January 31, 2014, (i) Buyer will permit members of Seller's Other Clubs who, as of the Closing, hold Club One Network Memberships covering the Club to use the Club without additional charge, and (ii) Seller will permit Members who, as of the Closing, hold Club One Network Memberships to use Seller's Other Clubs covered by such network memberships without additional charges.

Section 6.15 Further Assurances. At any time and from time to time after the Closing, each party will, at the request of the other party, execute and deliver any further instruments or documents and take all such further action as such party may reasonably request in order to transfer into the name of Buyer any and all Assets contemplated to be sold pursuant to this Agreement and to otherwise fulfill the parties' respective obligations hereunder.

ARTICLE 7 TERMINATION PRIOR TO CLOSING

Section 7.1 Termination. This Agreement may be terminated at any time prior to the Closing:

- (a) by Buyer if any conditions to the obligations of Buyer set forth in Section 3.2 have not been satisfied or waived by the Scheduled Closing Date;
- (b) by Seller if any conditions to the obligations of Seller set forth in Section 3.1 have not been satisfied or waived by the Scheduled Closing Date;

(c) by Buyer if the Closing shall not have occurred by the Scheduled Closing Date; provided, however, that the right to terminate this Agreement under this Section 7.1(c) shall not be available to Buyer if Buyer's failure to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur on or prior to such date;

(d) by Seller if the Closing shall not have occurred by the Scheduled Closing Date; provided, however, that the right to terminate this Agreement under this Section 7.1(d) shall not be available to Seller if Seller's failure to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur on or prior to such date;

(e) by either party in the event that any governmental authority shall have issued an order, decree or ruling or taken any other action restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become final and nonappealable; or

(f) by the written consent of Buyer and Seller.

Section 7.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 7.1, this Agreement shall become void and thereafter there shall be no liability on the part of either party; provided that (i) the parties' respective obligations under Section 9.12 (Confidentiality; Non-Disclosure) will survive the termination of this Agreement indefinitely, and (ii) such termination will not relieve either party from liability for any willful breach of this Agreement occurring prior to such termination. Upon such termination, each party will return to the other party any documents or materials related to the transaction contemplated hereby which were received from the other party.

Section 7.3 Waiver. Buyer and/or Seller may (a) extend the time for the performance of any of the obligations or other acts of the other party, (b) waive any inaccuracies in the representations and warranties of the other party contained herein or in any document delivered by the other party pursuant hereto, or (c) waive compliance with any of the agreements or conditions of the other party contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party to be bound thereby. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition, of this Agreement. The failure of either party to assert any of its rights hereunder shall not constitute a waiver of any of such rights

ARTICLE 8 INDEMNIFICATION

Section 8.1 Indemnification by Seller. From and after the Closing, Seller shall indemnify, defend and hold harmless Buyer and Buyer's affiliates, managers, officers, shareholders, employees, independent contractors, agents, successors and assigns (the "Indemnified Buyer Parties") against and with respect to any and all claims, liabilities, losses, damages, costs and expenses (including without limitation interest, penalties and reasonable attorneys' and accountants' fees and reasonable disbursements incurred in investigating or defending any of the foregoing or in

asserting, preserving or enforcing any rights under this Agreement), whether or not resulting from third-party claims (each of the foregoing, a "Loss," and, collectively, "Losses") arising out of or as a result of:

(a) Any and all liabilities of Seller, including the Retained Liabilities; the parties acknowledging and agreeing, for avoidance of doubt, that, upon and following the Closing, Seller will have no liability for any of the Assumed Liabilities;

(b) any misrepresentation or inaccuracy in any of Seller's representations or warranties set forth in this Agreement;

(c) a default or breach by Seller of any of Seller's covenants, agreements or obligations set forth in this Agreement or in any other document, instrument, written statement, certificate or exhibit delivered pursuant to or in connection with this Agreement;

(d) the operation of the Business or the Leased Premises by Seller prior to the Closing;

(e) Seller's ownership, possession, use, lease, or license of any of the Assets prior to the Closing;

(f) any tax obligation of Seller, including any tax obligation related to the Business or the Leased Premises arising from activities prior to the Closing;

(g) any and all claims, actions, suits, arbitrations, legal or administrative inquiries, proceedings, audits, or investigations of any nature (collectively, "Actions") against any Indemnified Buyer Party that relate to Seller or the Leased Premises in which the principal event giving rise thereto occurred prior to the Closing, or that result from or arise out of any action or inaction prior to the Closing of Seller or any director, officer, employee, independent contractor, agent, representative or subcontractor of Seller; or

(h) any and all Actions, demands, assessments, audits, fines, judgments, costs and other expenses (including, without limitation, reasonable legal fees and expenses) incidental to any of the foregoing or to the enforcement of this Section 8.1.

Section 8.2 Indemnification by Buyer. From and after the Closing, Buyer shall indemnify, defend and hold harmless Seller and Seller's affiliates, managers, officers, shareholders, employees, independent contractors, agents, successors and assigns ("Indemnified Seller Parties") against and with respect to any Losses arising out of or as a result of:

(a) Any and all liabilities of Buyer, including the Assumed Liabilities;

(b) any misrepresentation or inaccuracy in any of Buyer's representations or warranties set forth in this Agreement;

(c) a default or breach by Buyer of any of Buyer's covenants, agreements or obligations set forth in this Agreement or in any other document, instrument, written statement, certificate or exhibit delivered pursuant to or in connection with this Agreement;

(d) the operation of the Business or the Leased Premises by Buyer after the Closing (except to the extent the Loss results solely from any inaccuracy in Seller's representations and warranties hereunder);

(e) Buyer's ownership, possession, use, lease, or license of any of the Assets after the Closing (except to the extent the Loss results solely from any inaccuracy in Seller's representations and warranties hereunder);

(f) any tax obligation of Buyer related to the Business or the Leased Premises arising from activities after the Closing (except to the extent the Loss results solely from any inaccuracy in Seller's representations and warranties hereunder);

(g) any and all Actions against any Indemnified Seller Party that relate to Buyer or the Leased Premises in which the principal event giving rise thereto occurred after the Closing, or that result from or arise out of any action or inaction after the Closing of Buyer or any director, officer, employee, independent contractor, agent, representative or subcontractor of Buyer (except to the extent the Loss results solely from any inaccuracy in Seller's representations and warranties hereunder); or

(h) any and all Actions, demands, assessments, audits, fines, judgments, costs and other expenses (including, without limitation, reasonable legal fees and expenses) incidental to any of the foregoing or to the enforcement of this Section 8.2.

Section 8.3 Procedure and Survival.

(a) The obligations of the parties to indemnify each other, and the related representations, warranties and covenants, shall survive the Closing for a period of three years, or, if longer, until the final resolution of any judicial or administrative proceeding related to a Loss.

(b) In connection with any claim that might give rise to indemnification hereunder, the party claiming indemnity shall give prompt written notice to the indemnifying party, specifying the nature of the claim in reasonable detail and the amount thereof, to the extent known; provided, however, that the failure to so notify shall not relieve the indemnifying party from any liability it may have, unless and to the extent that the indemnifying party ultimately is found to have been prejudiced thereby. If the claim is by a third party, the indemnified party shall be entitled to participate with the indemnifying party in the defense of such claim, by its own counsel at its own cost and expense. The indemnified party shall cooperate with the indemnifying party in such defense, and the indemnifying party shall consult with and obtain the consent of the indemnified party prior to settling or otherwise disposing of any claim. Such consent shall not be unreasonably withheld.

Section 8.4 Limits on Indemnification. Notwithstanding anything to the contrary in this Agreement, the following limitations shall apply:

(a) Neither party shall be liable to indemnify the other party once the amount of the cumulative Losses paid for by such party (excluding Losses due to fraud or misrepresentation by such party) exceed 20% of the Purchase Price.

(b) Neither party shall be liable to indemnify the other party until the amount of the cumulative Losses with respect to which indemnification is claimed by such party exceed \$25,000, after which the entire amount of Losses may be claimed by such party.

ARTICLE 9 MISCELLANEOUS

Section 9.1 Survival. The representations and warranties made in this Agreement or in any certificate or other document delivered pursuant hereto or in connection herewith and the covenants and agreements contained herein to be performed or complied with at the Closing, prior to the Closing or in connection with the Closing shall survive the Closing and the purchase and sale of the Assets contemplated hereby until the second anniversary of the date of the Closing; provided that if written notice of a claim has been given prior to the expiration of the survival period, then the representations and/or warranties relevant to such claim will survive as to such claim until the claim has been finally resolved.

Section 9.2 Entire Agreement; Amendment. This Agreement constitutes the sole understanding of the parties with respect to the subject matter hereof. No amendment, modification or alteration of the terms or provisions of this Agreement shall be binding unless the same shall be in writing and duly executed by the parties hereto.

Section 9.3 Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto; provided, however, that this Agreement may not be assigned by either party without the express prior written consent of the other party, except that Buyer may, at its election, assign its rights under this Agreement to any subsidiary or affiliate and Seller may, at its election, assign its rights under this Agreement to any subsidiary or affiliate to which it shall have transferred the Assets. If this Agreement is assigned with such consent or pursuant to such exceptions, the terms and conditions hereof shall be binding upon and shall inure to the benefit of such assignee; provided, however, that no assignment of this Agreement or any of the rights or obligations hereof shall relieve either party of its obligations under this Agreement.

Section 9.4 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall, for all purposes, be deemed to be an original and all of which taken together shall constitute the same instrument.

Section 9.5 Headings. The headings of the Sections and paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof.

Section 9.6 Waiver. Any of the terms or conditions of this Agreement may be waived in writing at any time by the party which is entitled to the benefits thereof. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of such provisions at any time in the future or a waiver of any other provision hereof.

Section 9.7 Fees of Brokers and Other Intermediaries. Each of the parties:
(a) represents and warrants that it has not taken and will not take any action that would cause the

other party to have any obligation or liability to any person for any brokerage, finder's or other fees or commissions earned by any broker, finder or investment banker engaged by or on behalf of such party for services in connection with the transactions contemplated by this Agreement; and (b) agrees to indemnify the other party for any breach of the foregoing representation and warranty, whether or not the Closing occurs. Seller shall be solely responsible for the payment of all costs, expenses, fees and commissions due to Integrity Square, LLC, and Buyer shall not bear any portion of such costs, expenses, fees or commissions.

Section 9.8 Expenses. Seller and Buyer shall each pay all costs and expenses incurred by it or on its behalf in connection with this Agreement and the transactions contemplated hereby, including without limitation, fees and expenses of its own financial consultants, accountants and counsel.

Section 9.9 Notices. Any notice, request, instruction, consent or other document to be given hereunder by either party hereto to the other party shall be in writing and delivered personally, sent by registered or certified mail, postage prepaid, or sent by email, with a confirmation copy of said email sent by registered or certified mail, postage prepaid, and shall be deemed given when postmarked (in the case of mailing) or received (in the case of email), addressed as follows:

If to Seller: Club One, Inc.
555 Market Street, 13th Floor
San Francisco, California 94105
Attn: Robin Klaus
Email: Robin.Klaus@ClubOne.com

with copy to: Farella Braun + Martel LLP
235 Montgomery Street, 17th Floor
San Francisco, California 94104
Attn: Bruce Maximov
Email: bmaximov@fbm.com

If to Buyer: Fit Athletic Holdings, LLC
350 10th Avenue, Suite 200
San Diego, California 92101
Attn: Steven Schnall
Email: schnall@onticholdings.com

with copy to: Stark & D'Ambrosio, LLP
501 W. Broadway, Suite 960
San Diego, California 92101
Attn: Patrick Stark
Email: Patrick@Starkllp.com

or at such other address for a party as shall be specified by like notice. Any notice which is delivered personally in the manner provided herein shall be deemed to have been duly given to the party to whom it is directed upon actual receipt by such party (or its agent for notices hereunder).

Any notice which is addressed and mailed in the manner herein provided shall be conclusively presumed to have been duly given to the party to which it is addressed at the close of business, local time of the recipient, on the third day after the day it is so placed in the mail.

Section 9.10 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California applicable to agreements made and to be performed wholly within such jurisdiction.

Section 9.11 Attorneys' Fees. If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

Section 9.12 Confidentiality; Non-Disclosure.

(a) During the course of its review of the Business and the Club in connection with the transactions contemplated by this Agreement, Buyer may receive or have access to non-public information regarding Seller and/or the Business or the Club. Buyer shall hold all such non-public information in strict confidence and shall not disclose any such non-public information to any third parties either during the term of this Agreement or following the Closing or any earlier termination of this Agreement; provided that this restriction will terminate on the Closing as to non-public information regarding the Business or the Club (but not as to non-public information regarding Seller which does not constitute non-public information regarding the Business or the Club). Notwithstanding the foregoing, (i) during the term of this Agreement, Buyer may provide such non-public information to its attorneys, accountants and financial advisors to the extent necessary to obtain their advice, so long as they agree similarly to abide by the non-disclosure requirements of this provision; and (ii) Buyer may disclose such non-public information in response to a subpoena or other such legal process, so long as Buyer (A) provides immediate notice to Seller of Buyer's receipt of such legal process (to afford Seller an opportunity to oppose or seek protective provisions regarding such disclosure), and (B) in any event, discloses no more than is minimally necessary to meet Buyer's legal obligations with respect to such legal process. Upon the Closing or earlier termination of this Agreement, Buyer shall promptly deliver, and shall cause each of its agents (including without limitation its attorneys, accountants and financial advisors) promptly to deliver, to Seller all documents in the possession of Buyer or its agents which contain any such non-public information regarding Seller (excluding only such non-public information regarding the Business or the Club that constitutes an Asset acquired by Buyer at the Closing); and upon a termination of this Agreement without the Closing, this delivery obligation shall extend as well to all documents in the possession of Buyer or its agents which contain any such non-public information regarding Seller or regarding the Business or the Club.

(b) The parties agree that any information or data involving the sale and purchase of the Assets and the consummation of the other transactions described in or contemplated by this Agreement; including, without limitation, the Purchase Price and other terms and provisions set forth herein, is of a confidential nature and not generally known to the public. In order to preserve the confidentiality of all such information and data and the goodwill associated with the sale and

purchase of the Assets, the parties agree not to divulge, communicate or disclose any such information or data, except as may be required by law, in connection with the performance of their respective covenants, duties and obligations set forth in this Agreement.

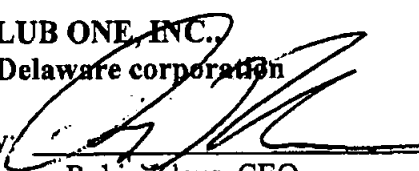
Section 9.13 Resolution of Disputes. The parties shall submit any dispute concerning the interpretation of or the enforcement of rights and duties under this Agreement to final and binding arbitration pursuant to the American Arbitration Association. At the request of either party, the arbitrators, attorneys, parties to the arbitration, witnesses, experts, court reporters or other persons present at the arbitration shall agree in writing to maintain the strict confidentiality of the arbitration proceedings. Arbitration shall be conducted by a single, neutral arbitrator appointed in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The award of the arbitrator shall be enforceable according to the applicable provisions of the California Code of Civil Procedure. The arbitrator may award damages and/or permanent injunctive relief, but in no event shall the arbitrator have the authority to award punitive or exemplary damages. Notwithstanding the foregoing, a party may apply to a court of competent jurisdiction for relief in the form of a temporary restraining order or preliminary injunction, or other provisional remedy pending final determination of a claim through arbitration in accordance with this paragraph. If proper notice of any hearing has been given, the arbitrator will have full power to proceed to take evidence or to perform any other acts necessary to arbitrate the matter in the absence of any party who fails to appear.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, Seller and Buyer have entered into this Agreement as of the Effective Date.

SELLER:

CLUB ONE, INC.,
a Delaware corporation

By: 

Robin Klaus, CEO

BUYER:

FIT ATHLETIC - CMR, LLC,
a California limited liability company

By: _____

Steven Schnall, Co-Managing Member

IN WITNESS WHEREOF, Seller and Buyer have entered into this Agreement as of the Effective Date.

SELLER:

CLUB ONE, INC.,
a Delaware corporation

By: _____
Robin Klaus, CEO

BUYER:

FIT ATHLETIC - CMR, LLC,
a California limited liability company

By:  _____
Steven Schnall, Co-Managing Member

EXHIBIT "A"

LIST OF ADDITIONAL EXCLUDED ASSETS

Portable hydraulic lift, if located at the Club at the time of the Closing.

077923977155.2

EXHIBIT "B"

LIST OF EXCLUDED INVENTORY

NONE.

07792\3977155.2

EXHIBIT "C"

LIST OF ADDITIONAL PERMITTED ENCUMBRANCES

NONE.

-07792\3977155.2

DEPOSIT REQUEST FORM

Rec 1/21/14

PLEASE DO NOT LEAVE ANY SECTION BLANK - N/A IF NOT APPLICABLE

Requesting Agent: BALOTSIC		Date: 1/21/2014	
Internal Order (Job No.): 221925		Sr. Act Clerk ONLY (New Security Deposits): New SAP BP#: _____ New SAP CA#: _____	
Depositor (Name on check): Club One			
Address: 555 Market St. 13th floor. SF CA 94105			
Lessee Name: Club One		Lease: _____ Sublessee: _____	
Project Name & Descriptive Location: Consent to Assignment - Fit Athletic - CMR			
Description of Payment: E.G., Earnest Money Deposit, Processing Fee (ROE permit, new lease, etc.), Security Deposit, Interest, Refund from Escrow, Trust Fund, etc... Additional Consideration			
Security Deposits ONLY: Scheduled Termination Date: _____			
OFFICIAL RECEIPT NO.: N/A		CHECK NO.: 00077006	
BANK CHECK DRAWN: California Bank & Trust		DATED: 1/16/2014	

FILL IN CORRECT ACCOUNTING DATA:

COST OBJECT- as needed					
FUND	GL ACCOUNT	COST CENTER	INTERNAL ORDER	WBS ELEMENT	AMOUNT
100000	418039	1613 000012			\$6,000 ⁰²

READ Trust - Security Deposit ONLY: COST CENTER Not needed FUND 820062 GL ACT 110998

Processing Fees ONLY:	All-General Fund	1613000001	100000		
	Water Dept.	2013000001	700011	}	422069
	MWWD	2012150001	700000		
	Airport (Brwn Fld)	2111000011	700033		
	(MYF)	2111000012			